Notes

PREFACE


INTRODUCTION

2. Ibid., 94.
3. Ibid., 89.

CHAPTER 1. RIGHT INTENTION AND A JUST AND LASTING PEACE

4. Ibid.
5. Ibid.
6. Ibid.
9. Ibid.

10. Orend, 35.


12. Ibid.

13. Ibid., 51.

14. Article 2.4 of the UN Charter states: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. http://www.un.org/en/sections/un-charter/chapter-i/index.html. And Article 51 of the UN Charter declares, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.” http://www.un.org/en/sections/un-charter/chapter-vii/index.html.

15. Aquinas.


17. Ibid., 189.

18. Ibid.


21. Ibid., 155.


23. Ibid., Book XIX, Section 17, 695.

24. Ibid.

25. Ibid., Book XV, Section 4, 481.

26. Ibid., Book XIX, Section 13, 690.

27. Ibid., Book XIX, Section 12, 687.

28. Ibid., 689.


30. Ibid.

31. St. Augustine further states, “It is therefore with the desire for peace that wars are waged. And hence it is obvious that peace is the end sought for
by war. For every man seeks peace by waging war, but no man seeks war by making peace" (Book XIX, Section 12, 687).

32. Swift, 115.
33. Ibid., 114.
36. Ibid., 162.
37. Ibid., 163.
39. In the following section, I address the fact that public acts are our best evidence for interpreting a state’s intention, whereas in the fourth section I make the case that an overall assessment regarding whether a state has met the requirements of right intention can only be reached after the totality of that state’s conduct has been completed.
41. Rawls, 96.
43. Ibid.
46. Walzer, _Just and Unjust Wars_, 268.
47. Lee, 84.
49. Ibid.
50. Boyle, 45.
51. Ibid.
52. Rawls, 96.
53. Allen Buchanan, _Justice, Legitimacy, and Self-Determination_ (Oxford: Oxford University Press, 2004), 5. Here, I adopt Allen Buchanan’s view regarding legitimacy. Buchanan goes on to say, “The state is not merely an instrument for advancing the interests of its own citizens; it is also a resource for helping to ensure that all persons have access to institutions that protect their basic human rights” (ibid., 8).
54. Rawls, 82.
55. Ibid., 94.

57. Rawls, 96.

58. Although I recognized that there are specific *jus post bellum* norms relating to apology, forgiveness, reconciliation, etc., I will not be taking them up in this chapter.

59. Walzer, 156.

60. Ibid.

61. Ibid.

62. Ibid.


65. Rawls, 96.


68. Rawls, 52–53.

69. Ibid.

70. Terms of Surrender; http://www.pbs.org/behindcloseddoors/pdfs/Terms Of German Surrender.pdf.


73. Ibid., 21.


75. Ibid., 87.


77. Ibid.

78. Ibid., 14.

79. Ibid., 2.

80. Rawls, 68.

81. Ibid., 75.

82. I do not intend to give a full defense of the Rawlsian position here, because that is not my focus. Instead, I appeal to the Rawlsian position precisely
because his position allows for the possibility of illiberal or nondemocratic but still well-ordered decent polities. It is not that Rawls is a relativist about justice or does not stand foursquare with liberal democracy. Rawls does think that liberal democratic regimes are superior to other forms of government. However, he also thinks that those committed to liberal democracy ought to reject the use of force to bring about liberalization and/or democratization where the conditions of well-ordered decency are fulfilled, and that informs his understanding of the right intention of a just and lasting peace and aim of war. Rawls's viewpoint expresses a liberal democratic vision of just international relations. But it is also a vision that at least well-ordered nondemocratic or nonliberal peoples could also reasonably affirm. Rawls's assumption is that decent peoples could reasonably accept the Law of Peoples (respect basic human rights; respect freedom and independence; obey treaties and restrictions in war; treat other states as equals; and honor the right to nonintervention and the duty of assistance), and so, therefore, liberal democratic peoples have sufficient reasons to extend recognition/respect to decent peoples.

Rawls holds that a just and lasting peace is a peace between decent well-ordered states, whether liberal democratic or otherwise, who have just relations with one another. It does not require that all states be just, so it is less demanding (in that sense) than many other views. While some theorists think a just and lasting peace demands more than Rawls thinks it demands (that is, they think it demands that all states be just), all or nearly all theorists agree that it requires at least what Rawls says it requires. Therefore, I believe that the Rawlsian position can be realized as a more sensible view, something like the lowest common denominator among reasonable views. Others might demand more but everyone demands at least what Rawls demands regarding human rights. It is less demanding and so arguably less controversial and more likely to be taken up within just war theory as part of global public reason. Some will still suggest that international justice demands more than Rawls seems to think. However, one may still think it is wrong to aim at the more demanding notion of coercive regime change/denying political self-determination when going to war.


84. Ibid., 17.

85. Allen Buchanan, “Democracy and Secession,” in *National Self-Determination and Secession*, ed. Margret Moore (Oxford: Oxford University Press, 1998), 17. Buchanan goes on to say that individuals are governed by the majority: “Unless one (unpersuasively) defines self-government as government by the majority (perhaps implausibly distinguishing between the individual’s apparent will and her ‘real’ will, which the majority is said to express), an individual can be self-governing only if he or she dictates political decisions. Far from constituting self-government for individuals, majority rule, under conditions in
which each individual’s vote counts equally, excludes self-government for every individual” (ibid., 18).

86. Rawls, 59–60.
87. Altman and Wellman, 41.
88. Rawls, 62.
90. Rawls, 62.
91. Ibid., 102.
92. Ibid., 101.
93. Ibid., 102.
94. Ibid.
95. Walzer, 256.
96. Rawls, 102.
97. Ibid., 37.

**CHAPTER 2. REASONABLE CHANCE OF SUCCESS**

5. May, 226.
6. Walzer, 129.
9. Ibid., 260.
10. “The U.S. Administration uncritically accepted what a small number of academics and exiles had told them, namely that the Iraqi people would welcome Americans as liberators and there would be no need for a heavy occupation force” (ibid., 254).
11. Ibid.
12. The Powell Doctrine was named after General Colin Powell, chairman of the Joint Chiefs of Staff at the time of the first Gulf War (1990–91). The doctrine is based in large part on the Caspar Weinberger Doctrine; see M. Cohen, “The Powell Doctrine’s Enduring Relevance,” *World Politics Review*. Caspar Weinberger was Ronald Reagan’s secretary of defense (1981–87) and Powell’s former boss. The Powell Doctrine states that a list of questions must be answered affirmatively before military action is taken by the United States: (1) Is a vital national security interest threatened? (2) Do we have a clear attainable objective? (3) Have the risks and costs been fully and frankly analyzed? (4) Have all other nonviolent policy means been fully exhausted? (5) Is there a plausible exit strategy to avoid endless entanglement? (6) Have the consequences of our action been fully considered? (7) Is the action supported by the American people? (8) Do we have genuine broad international support? Although it also seems that the United States could not have answered question number eight in the affirmative, this falls outside the scope of my project. Another item that will not be addressed in this chapter is whether the United States was justified in invading Iraq. The United Nations Security Council Resolution 1441 declared that Iraq was in material breach of previous UN resolutions and that Iraq “will face serious consequences” as a result of its continued violations of UN resolutions. *UN Security Council*; http://www.un.org/News/Press/docs/2002/SC7564.doc.htm. However, UNSCR 1441 was ambiguous about the characteristics of the serious consequences. UNSCR 1441 did not specifically authorize the use of force to bring about Iraqi compliance. However, the U.S. policymakers believed that it did.


15. I am not suggesting that a military use limited force when engaging enemy combatants. The U.S. military’s mindset is to gain the initiative and use decisive overwhelming force to impose its will on the enemy. I concur with this principle. However, what I do suggest is that operations continually be planned to mitigate, as best as possible, collateral damage as well as for combatants to accept more risks while reducing harm or potential harm to civilians on the battlefield.


17. George Lopez, 17.


20. Ibid., 352.


24. Ibid.
26. Ibid.
27. Walzer, 121.

29. I would like to suggest that although the UN has the potential to oversee the occupation and reformation of dysfunctional institutions, the questions still remains as to whether the UN is in fact such an apparatus. The UN has been very ineffective regarding similar past issues, so the UN should only be considered as one example of such a multilateral force. It is quite possible that a regional, Genocide and Atrocities Prevention Act of 2016, or other coalition might be better suited to handle such an endeavor.
32. Ibid.
34. Hass, 182.

36. This quote is usually misattributed as Plato’s. However, George Santayana is the rightful author. Santayana’s remark was in response to President Wilson’s comment that the World War I was the war to end all wars. George Santayana, “Tipperary,” *Soliloquies in England and Later Soliloquies*, 1922; http://platodialogues.org/faq/faq008.htm.
37. Obama *Nobel Prize Speech*.

CHAPTER 3. POST BELLUM OBLIGATIONS OF NONCOMBATANT IMMUNITY


2. By stating *jus ad bellum* and *jus in bello* civilian immunity norm, I am referring to the *jus in bello* principle of noncombatant immunity and the *jus ad bellum* principle of right intention.

4. Guerrillas or insurgents blur the line of this distinction and want the privileges of both categories. Further discussion of this issue falls outside the scope of this chapter.

5. Walzer, 36.

6. I recognize the case of the naked soldier: a soldier tending to personal hygiene that is caught off guard by the enemy. Sure, it is legally permissible for a combatant to kill a naked enemy combatant, but morally it raises questions. I prefer to bracket that topic for now.


8. Ibid.

9. In some cases, civilians do pose a threat of varying levels (in some cases even as much or potentially more than soldiers do, e.g., a scientist designing advanced munitions or a key propagandists generating popular support for the war compared to an average citizen buying war bonds to help finance the war, etc.), but these civilians still fall into the category of noncombatant and as such are not supposed to be intentionally targeted. Maybe there is more culpability with some civilians over others, and some philosophers believe that it is morally permissible to intentionally target those civilians that are culpable. I do not agree with this perspective. However, for now, I do not plan on addressing this topic.


11. The principle of noncombatant immunity declares that intentionally targeting civilians is forbidden, because civilians are currently harmless. However, civilians can impose a direct threat (riots, unruly crowd, hitting soldiers, etc.) to military forces. When this occurs, those civilians can be intentionally targeted with nonlethal munitions (rubber bullets, paintballs, sting grenades, tear gas, etc.). This would not only be a proportionate response, since it would only cause temporary incapacitation without leaving permanent side effects, but also nonlethal munitions provide a way of subduing aggressive civilians and deescalating the current situation. Soldiers that do not have nonlethal options would mostly err on the side of using lethal force. Killing or permanently maiming civilians only leads to straining and compounding the current relations between both states. The use of nonlethal munitions is relatively new, so much more analysis needs to be done. However, nonlethal munitions are potentially useful and permissible.

12. In some cases, civilians play an informed role when it comes to the decision for a state to go to war, but I am focusing on the typical citizen of a state, not political leaders who make decisions without the approval of the civilian populace.

14. Additionally, when the war is officially over, combatants lose their authority to kill and liability to be killed. They *en masse* join the civilian population and are afforded the same rights: life and liberty. These former combatants require the same basic necessities as well.

15. Walzer, 135.


17. Thomas Nagel advocates “[t]hat hostility or aggression should be directed at its true object; this means both that it should be directed at the person or persons who provoke it and that it should aim more specifically at what is provocative about them” (“War and Massacre,” *Philosophy and Public Affairs* 1, no. 2 (1972): 88. Nagel’s point is that soldiers should be attacking enemy soldiers and that bomber pilots should be bombing purely military targets (military vehicles, army headquarters, army combatants, etc.).

18. Ibid., 87.

19. I am not suggesting that a military use limited force when engaging enemy combatants. A military’s mindset is to gain the freedom to maneuver and use decisive overwhelming force to impose its will on the enemy. However, operations need to be thoroughly planned to mitigate, as best as possible, collateral damage (to include residual effects).


23. Media coverage has abounded with questions of the legitimacy of drone attacks (e.g., do they violate a nonbelligerent nation’s airspace; is it permissible to use a drone to kill a suspected terrorist, or to target the family of a terrorist; can the secret authorization to kill U.S. citizens deemed by the U.S. government to be terrorists be justified, etc.). Stories of drone attacks that strike or miss their intended targets and cause collateral damage such as killing innocent civilians are routinely broadcast on the nightly news. Although the use of drones has brought attention to unintended but foreseen consequences (as well as many other issues), belligerents are not held accountable for their destructiveness of dual purpose facilities. There has been neither significant media coverage nor a demand by the international community for stringent accountability of belligerents’ actions regarding the targeting of dual purpose facilities, especially ones that seem to contribute significantly to the welfare of civilians.

25. Ibid.
26. Ibid.
27. Ibid.
28. Ibid.
29. Ibid., 174.
30. Ibid.
31. These are independent reforms. Ex post review might be warranted apart from the issue of repairing damages that violate the basic human rights of noncombatants.
32. My viewpoint is analogous to Allen Buchanan and Robert Keohane’s regarding the preventive use of force without Security Council approval. Although I am not discussing preventive use of force, Buchanan and Keohane’s concept fits nicely with my point.
34. Covering ex post repair costs can be accomplished multiple ways. Most likely, it would include a combination of not only monies but also the use of the victor’s internal assets, that is, some implementation and integration of the army corps of engineers, local construction, fabrication, and supply companies of the vanquished state, international and local contractors, outsourcing to private firms, etc. I wish to bracket this subject in order to stay on topic.
36. Ibid., 46.
37. I will discuss this in more detail in the seventh section.
38. Shue and Wippman indicate that “the indirect costs stemming from the long-term effects . . . are less visible and more difficult to ascertain and so often ignored” (Henry Shue and David Wippman, “Limiting Attacks on Dual-Use Facilities Performing Indispensable Civilian Functions,” *Cornell International Law Journal* 35 (2002): 564.
39. Ibid., 560.
40. Ibid.
41. Ibid., 574.
42. Ibid., 559.
43. I believe that Shue, in a more recent article, attempts to press his point too far. Shue suggests that “[c]urrent doctrine represents at least in part a daring attempt to return to moral-bombing.” *Targeting Civilian Infrastructure with*
Smart Bombs: The New Permissiveness, 6. The goal of morale-bombing (directly bombing populated areas) is to break the will of the people, hoping that the citizens will in turn demand that its government sue for peace. This tactic was used by the Allies and Nazi Germany during World War II. One of the reasons that this tactic was accepted as part of war was that collateral damage was incredibly high even when bombing military targets, because of the limited technology associated with bombing at the time. In the 1940s there were not any smart or precision guided munitions, so belligerents used carpet bombing. At best, American bombers could reasonably guarantee that only 25 percent of their payload would strike within three city blocks of the desired military target. Dropping hundreds if not thousands of bombs during a bombing run increased the likelihood that the military target would be destroyed. Collateral damage and incidental loss of civilian life was extremely high. It many cases, it would have been hard to tell if a specific bombing run was focused on a military or a civilian target, because civilian deaths would be very high in both cases.

Shue wants to suggest that military forces—in particular those of the United States—are now resorting again to indiscriminate bombing tactics like those used in World War II. In his article, Shue reveals the United States’ joint targeting (“joint” refers to all military forces: Army, Navy, Air Force, and Marines) doctrine, which states, “Civilian populations and civilian/protected objects, as a rule, may not be intentionally targeted, although there are exceptions to this rule” (6). However, the U.S. Joint Targeting doctrine further stipulates what qualifies as an exception to the rule. “Acts of violence solely intended to spread terror among the civilian population are prohibited; the protection offered civilians carries a strict obligation on the part of civilians not to take an active part in armed combat, become combatants, or engage in acts of war; civilians engaging in combat or otherwise taking an active part in combat operations, singularly or as a group, lose their protected status.” Joint Targeting, E-2; emphasis added. That is, the exception to the rule that allows for the bombing of civilians is that those civilians have lost their protected status because they have picked up a weapon and joined the fight similar to the role of a militia member, an insurgent, or a thug.

Shue’s point does have some merit, though, because the bombing doctrine does seem to suggest that bombings are permitted to cause terror, so long as there is some military advantage that can be cited. Then again, it seems hard to suggest that there would not be terror associated with any bombings. Even bombing a purely military target such as a munitions factory, whose destruction killed civilian workers as an unintended side effect, would cause unease, fear, terror, and duress among the civilian population because civilians have neither control nor insight into what will happen next.

U.S. doctrine does attempt to mitigate harming the civilian population by incorporating a military lawyer (staff judge advocate [SJA]) into the target
planning. “The SJA should be immediately available and should be consulted at all levels of command to provide advice about law of war compliance during planning and execution of exercises and operations; early involvement by the SJA will improve the targeting process and can prevent possible violations of international or domestic law.” Joint Targeting, E-6. In addition to having a military lawyer review targets for legal permissibility, a plausible way forward is to better train and educate intelligence analysts (the military staff personnel who determine the facilities to be targeted) about the civilian contribution and residual effects imposed on the civilian population if specific facilities are targeted and destroyed.

44. Buchanan and Keohane, 12.

45. On another note, there will be hard cases. There will be cases that need to be reviewed to determine whether damage to a dual use facility caused by an attack or some other action is what threatens human rights. For example, suppose State A destroyed a power plant that is dual use (it provides civilian electricity but also provides the energy for a major munitions plant) in State B. After it is destroyed, State B opts not to divert power from another electric plant to its civilian population previously dependent on the damaged facility but rather to divert that power to the munitions plant. State B should be held accountable for taking electricity away from its own citizens to power the munitions plant. It is possible that State A will be obligated to repair the power grid if it decides to bomb it again in order to render no electricity to the whole geographical vicinity. Or if State A decides to bomb and destroy the major munitions factory, State B can then divert that power back to its civilian populace since the major munitions plant has been completely destroyed.

46. Buchanan and Keohane, 11. How institutionally to take up that moral terrain is through the use of some sort of international body, which would review potential injustices. However, the organization and composition of such an external commission, along with its rules and authoritative nature, would have to be worked out.

47. But also, it is possible that if the victor was destitute after the conflict, other states would volunteer to assist the victor with repairing the dual purpose facilities in order to protect civilians from residual harms.


CHAPTER 4. NEGATIVE AND POSITIVE CORRESPONDING DUTIES OF THE RESPONSIBILITY TO PROTECT

2. In order to justify the use of military force, there has to be serious and irreparable harm inflicted on human beings. “Grievous issues”—in this context—refers to genocide, war crimes, ethnic cleansing, and crimes against humanity. Genocide is “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group including: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group” (The 1948 Convention on the Prevention and Punishment of the Crime of Genocide [Article 2]; http://www.un.org/en/preventgenocide/adviser/genocide_prevention.shtml). War Crimes “are namely, violations of the laws or customs of war; such violations shall include, but not be limited to, murder, ill-treatment or deportation to War labour [foreign forced labor] or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.” Charter Nuremberg Trial 1945 [Article 6]; http://www.icrc.org/ihl.nsf/WebSearch?SearchView&Query=war+crimes&SearchFuzzy=TRUE&SearchOrder=4. Crimes against Humanity “are namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated” (ibid). Furthermore, “Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan” (ibid). Ethnic Cleansing is “the planned deliberate removal from a specific territory, persons of a particular ethnic group, by force or intimidation, in order to render that area ethnically homogenous.” Genocide Prevention Project, 2009; http://www.preventorprotect.org/overview/definitions.html. However, “there is no formal legal definition of ‘ethnic cleansing,’ though its scope is within the definitions of war crimes and crimes against humanity” (ibid.).

3. ICISS, xi. Although the ICISS states that the principle of nonintervention yields to the international responsibility to protect, I will make the case for an international responsibility to protect based on basic human rights as being what we all owe to one another.

4. Ibid.

5. Ibid., xii.

7. ICISS, xii.
8. UN GA 2005 WS, para 139.
10. While measures such as freezing assets might be “peaceful,” they do seem to involve coercion. Within the context of the R2P doctrine, “peaceful measures” refers to actions that do not involve military intervention. Peaceful measures—depending on how intrusive they are—can be used as a form of persuasion or as a form of coercion; although possibly coercive, they are a lesser form of coercion than military intervention.
11. Ibid., 3. Additionally, “The Security Council and the General Assembly can appoint fact-finding missions to investigate and report on alleged violations of international law; the Human Rights Council may also deploy a fact-finding mission as well as appoint a special rapporteur to advise on the situation” (4).
12. Ibid., 4.
20. Ibid., 114.
21. Ibid.
22. Ibid., 141.
23. Locke, Second Treatise, 55.
24. Ibid., 52.
25. Ibid., 71.
26. Ibid.
27. Ibid., 90.
29. Ibid. 261–63.
30. David Luban, “Just War and Human Rights,” *Philosophy & Public Affairs* 9, no. 2 (1980): 165. Luban uses this statement to explain that once a government is recognized as having authority and control over a piece of land, the UN observes the duty of nonintervention toward that state and does not interfere into its domestic affairs. The UN’s indifference toward what constitutes authority is problematic because it excludes the moral dimension of legitimacy. Rather, it should be that when State A recognizes State B’s sovereignty, it implies that State B has met necessary conditions that give it the moral right to nonintervention.

31. Ibid.
32. Rawls, 80.
33. ICISS, 8.
35. Rawls, 80.
37. I will elaborate further on these necessary conditions in sections 7, 8, and 9.
40. Ibid.
41. Ibid.
42. Shue, 16.
43. Ibid., 30.
44. Ibid., 36.
45. Ibid., 37.
46. Shue, 19.
48. Ibid., 65.
49. *Peace-enforcing* and *peacekeeping* forces are terms used by the UN and NATO. A peace-enforcing mission usually involves nonpermissible borders. That is, at least one party to the conflict (the targeted state) does not welcome outside intervention, so the foreign military force is not given permission to enter the target state’s territory. As a result, the peace-enforcing military unit enters the target state by force. A peace-enforcing mission will most likely involve combat
operations in order to subdue forces that not only have failed to follow UNSC resolutions but also continue to pursue their unjust and aggressive aims. Peacekeeping missions are usually welcomed by the parties to the conflict. These parties have usually agreed to an armistice and prefer the assistance of UN-sponsored troops to keep the peace between the two parties. Both peace-enforcing and peacekeeping missions are not necessarily about peace but about enforcing rights. R2P military intervention is limited to severe violations of physical security rights, so there is a sense in which it secures some measure of peace (in the sense of stopping a certain sort of violence), but the goal is vindicating the rights, not merely securing peace (which could be obtained perhaps by making large cash payments to despots, etc.).

50. I will elaborate much more on the use of armed drones (unmanned aerial vehicles—UAVs) as justified uses of force short of war (*jus ad vim*) in the next chapter.


53. Ibid.

54. I endorse the existing R2P doctrine, which limits application to only actual rather than apprehended widespread violations of physical security rights. This seems to be a better choice than allowing belief or perception to dictate that R2P intervention is necessary. It is not just enough that the state (primary duty bearer) fails the duty but that persons actually lack the object of the right. That is, the content or object of the right is not secured for them. Persons that are the victims of a genocide campaign are denied the object of the right, namely the right to life. Specifically, civilians are actually being harmed by acts of genocide, ethnic cleansing, war crimes, or crimes against humanity.

55. Shue, 114.


60. Ibid., 1. May states that not only are soldiers’ rights being affected but citizens’ rights as well since they will have to bear the financial burden of the military intervention.

61. Ibid., 11.

62. Ibid., 13.
64. Ibid.
65. Ibid., 101.
66. Ibid., 141.
67. Ibid.
69. McMahan, 154.
70. Tan, 39.
71. Ibid.
72. Ibid.
73. Shue, 111–18.
74. Ibid., 111–12.
76. Shue, 112. Shue states, “One is required to sacrifice, as necessary, anything but one’s basic rights in order to honor the basic rights of others” (ibid., 114).
78. Beitz, 151.
79. For example, “During the 2004 Presidential election, candidates Bush and Kerry raised concerns about any measures that might tie U.S. hands in advance, thereby compromising the sovereign right of the U.S. to decide when to go to war.” Jennifer Welsh, “The Security Council and Intervention,” in *The United Nations Security Council and War* (Oxford: Oxford University Press, 2008), 557. On another note, state autonomy is probably one of the key factors that led to “state representatives failing to endorse the Secretary-General’s set of criteria for the use of force at the UN Summit of World Leaders, held in September 2005,” and instead unanimously agreed to relegate intervention to a case-by-case basis (ibid., 557).
81. Ibid., 101.
82. Vattel (Preliminaries, lv).
83. Reidy, 185.

CHAPTER 5. JUSTIFIED DRONE STRIKES ARE PREDICATED ON THE RESPONSIBILITY TO PROTECT

1. Personality strikes are those that are directed against a specific person. Signature strikes are those that are directed against a person(s) who is engaged in suspicious behavior, e.g., digging a ditch near a road, armed men meeting or traveling in a convoy, etc. A person’s behavior or action at a particular moment
is consistent with actions or behaviors of what an insurgent or terrorist would be doing that would justify defense. The surveilled person emits a threatening signature. Therefore, that person—although not positively identified as an insurgent or terrorist—can be legally targeted with an armed (kinetic) drone strike because of an action that is actually or construed to be a justified threat.

2. Although the September 14, 2001, “Authorization for Use of Military Force” (AUMF) sanctions the use of United States Armed Forces against those responsible for the attacks on September 11, 2001, the document only distinguishes Al Qaeda by name and refers to other organizations not by name but only generically as associated groups/forces. On September 11, 2014, President Obama publicly announced to Congress that he wants an AUMF against the Islamic State. The Islamic State (also known as ISIL [Islamic State of Iraq and the Levant] and ISIS [Islamic State of Iraq and Syria]) is one of those groups that have been recently identified as posing a significant threat as well. Like Al Qaeda, “ISIL poses a threat to the people of Iraq and Syria, and the broader Middle East—including American citizens, personnel, and facilities.” Obama, “Statement by the President on ISIL.” However, Congress has not yet approved such an AUMF against ISIL so the Obama administration uses the 2001 AUMF as its authorization to target ISIL, citing that ISIL is similar in nature to Al Qaeda and must be disrupted, degraded, and ultimately destroyed in order to protect American lives and interests. Although there might be legal issues surrounding this (using a 2001 AUMF as the approval document and authority to engage an enemy that materialized in 2014), I prefer to bracket this topic for now.


4. “Lawfulness of a Lethal Operation Directed against a US Citizen who Is a Senior Operational Leader of Al Qa’ida or an Associated Force,” aka “white paper.” Although not an official legal memo, the white paper was represented by administration officials as a policy document that closely mirrors the arguments of classified memos on targeted killings by the Justice Department’s Office of Legal Counsel, which provides authoritative legal advice to the President and all executive branch agencies.

5. In addition to the categories of state or nonstate actor, there could also be a substate actor, which has no intent or capacity to influence outside of the state. That is, its influence is contained within a specific state’s boundaries and does not bleed over to the subregional, regional, or international domain. However, a substate actor can greatly harm the people of the state it influences or coerces.

6. St. Augustine, De Civitate Dei (The City of God), Book XV, Section 4, 481, and Book XIX, Section 12, 687.

7. “Targeted killings are premeditated acts of lethal force employed by states in times of peace or during armed conflict to eliminate specific individuals


9. Ibid.


11. Ibid.

12. “Seriousness and closeness” is Michael Walzer’s rendition of the components of imminent threat.


16. Ibid., 261–63.

17. ICISS, 8.


23. Ibid.


25. Ibid.

26. Below is a further elaboration of the UNSC’s five basic criteria of legitimacy for the use of force:

1. **Seriousness of Threat:** Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing,
ethnic cleansing, or serious violations of international humanitarian law, actual or imminently apprehended?

2. **Proper Purpose**: Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

3. **Last Resort**: Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

4. **Proportional Means**: Are the scale, duration, and intensity of the proposed military action the minimum necessary to meet the threat in question?

5. **Balance of Consequences**: Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?

A More Secure World: Our Shared Responsibility, 67. The UNSC’s five basic criteria of legitimacy for the use of force mirror current just war philosophy regarding *jus ad bellum* (justice of war) criteria of when a state can resort to war. Those *jus ad bellum* principles are *just cause*, *right intention*, *last resort*, *proportionality*, and *reasonable chance of success*.

27. Ibid., 3.

28. Ibid., 67.


33. Ibid.

34. Ibid., 72.

35. I am not suggesting that those adults actually believe that a drone will strike their child if he or she is out past 9 p.m. I am suggesting that drones are part of their family’s environment. This is similar to my mom telling me (when I was a child) to come in when the street lights “come on,” but with a twenty-first-century (and drone warfare) adaptation.


37. Ibid.


Both the United States and the UK use the armed, U.S.-manufactured MQ-9 Reaper. France and Italy currently only have unarmed versions of the Reaper. The Netherlands will soon be authorized to buy the unarmed version of the Reaper from the United States as well.

45. Ibid. 11.
46. Ibid.

**CHAPTER 6. UPDATING THE FOURTH GENEVA CONVENTION**

2. Ibid.
4. Elements of justice are required by right intention and so required in the period of transitional justice as well as the *post bellum* phase. Transitional justice and *jus post bellum* overlap and “both concern how to regard just practices and institutions after war” (May, 6). Although both transitional justice and *jus post bellum* are focused toward a just and lasting peace, “transitional justice often concerns the way to move from an authoritarian regime that did not respect the rights of the people to a regime that does respect rights, and *jus post bellum* normally concerns how to move to a situation of stability after war” (ibid).
6. This treaty is commonly known and referred to as the Fourth Geneva Convention or the GCIV.
9. 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the 1966 the International Covenant on Civil and Political Rights (ICCPR).


12. Ibid., 58.

13. Ibid., 60.


15. Ibid.

16. Ibid., 64.

17. Ibid.

18. It is permissible for basic liberty to be somewhat restricted in an occupied territory. Displaced persons may be temporarily placed in a refugee camp or restricted from travel for their own safety until essential infrastructure services are restored.

19. The Laws of War, 233. Even if there had been treaties prior to World War II that required more stringent accountability and responsibilities by the occupying powers, it is hard to imagine that Nazi Germany would have actually abided by them during the war.


22. Ibid., 232.

23. Ibid., 247.

24. Ibid., 248.

25. Ibid., 250.

26. Protocol I provides additional protections such as Article 54, which states, “Starvation of civilians as a method of warfare is prohibited; it is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations, and irrigation works.” Adam Roberts and Richard Guelff, eds., Documents on the Laws of War (Protocol I) (Oxford: Clarendon Press, 1982), 417. In addition, Article 55 states, “Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage” (ibid., 418). On a side note, in 1991 Iraq violated Article 55 of Protocol I by dumping oil into the Persian Gulf and igniting hundreds of oil wells in Kuwait. Although Iraq claimed military necessity for these two actions (producing an oil slick to impede a possible Coalition amphibious landing operation and producing a smoke screen in order to hamper Coalition bomber attacks), its actions were not proportionate to the environmental damage that was caused.
27. Documents on the Laws of War (Protocol I), 428.
28. Stahn, 316.
31. Ibid., 57.
32. May states that “reconciliation as a just post bellum concept involves a process of returning previously warring parties to a point not only where they do not engage in violence toward each other but also where there is sufficient trust so that a robust and just peace can be attained—and where a just peace means that human rights are protected” (86). I believe that clearly defined and updated rules (legal embodiment of relevant moral norms) governing the obligations and restrictions of the parties to the conflict are essential to the reconciliation process. Having an updated preestablished legal framework facilitates a working relationship in which each party not only understands its own obligations ahead of time but is also aware of the other party’s responsibilities and obligations.
33. Stahn, 317.
34. Ibid.
35. Ibid., 318.
37. Ibid.
38. Ibid., 298.
42. Ibid.
43. Laws of War (GCIV), 247.
44. “ICCPR” and “ICESCR”; http://www.unhcr.org/refworld/docid/3ae6b36c0.html. There is no recognized international legal definition of “peoples,” but the term refers to a group of persons that “enjoy some or all of the following common features: a common historical tradition, ethnic identity, cultural homogeneity; linguistic unity, religious or ideological affinity, territorial connection, and common economic life.” “Indigenous Affairs: Self-determination,” 8. In the context of an occupied territory the term peoples applies to the entire population within the occupied territory. The entire population has the moral and legal right to freely choose the type of government they want without coercion or interference. Because the state exists to serve and to protect the
peoples of a given territory, those peoples should be permitted to reform their
own government in their own way.

45. “The Security Council and the General Assembly can appoint
fact-finding missions to investigate and report on alleged violations of interna-
tional law.” “Summary of the Report of the Secretary-General on ‘Implementing
the Responsibility to Protect’,” International Coalition for the Responsibility to
Protect (ICRtoP), 2009; http://www.responsibilitytoprotect.org/files/ICRtoP%20
Summary%20of%20SG%20report.pdf.

shall determine the existence of any threat to the peace, breach of the peace,
or act of aggression and shall make recommendations, or decide what measures
shall be taken in accordance with Articles 41 and 42, to maintain or restore
en/documents/charter/.

47. “The Responsibility to Protect,” International Commission on Inter-
vention and State Sovereignty (ICISS) (Ottawa: International Development
Research Centre, 2001), 39.

48. Ibid.

49. In chapter 3 on R2P, I focused almost entirely on the second tenet
of the R2P doctrine (the responsibility to react using peaceful and/or coercive
measures) and briefly mentioned the first tenet (the responsibility to prevent
using subregional and regional education, awareness, and early warning signs).
However, there is a third tenet, which is the responsibility to rebuild, which
addresses the securing of institutions necessary for peace with justice, and
I think that this R2P doctrine is a good fit to explain that there is also a
need for the Geneva Convention to address some of these essential postwar
issues that the R2P doctrine has already recognized as essential in postwar
rebuilding.


51. Ibid.

52. “The Rule of Law and Transitional Justice in Conflict and Post-conflict
report.pdf.

53. The Peacebuilding Commission (PBC) is an intergovernmental
advisory body that supports peace efforts in countries emerging from conflict,
and is a key addition to the capacity of the international community in the
broad peace agenda. The Peacebuilding Commission plays a unique role (1) in
bringing together all of the relevant actors, including international donors, the
international financial institutions, national governments, and troop-contributing
countries; (2) marshaling resources; and (3) advising on and proposing integrated
strategies for postconflict peacebuilding and recovery and, where appropriate,

55. Osterdahl and Zadel, 197.

CONCLUSION

2. Ibid., 94.