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Ethics and War

What are the ethical principles underpinning the idea of a just war, and how should they be adapted to changing social and military circumstances? In this book, Steven P. Lee presents the basic principles of just war theory, showing how they evolved historically and how they are applied today in global relations. He examines the role of state sovereignty and individual human rights in the moral foundations of just war theory, and discusses a wide range of topics including humanitarian intervention, preventive war, the moral status of civilians and enemy combatants, civil war, and terrorism. He shows how just war theory relates to both pacifism and realism. Finally, he considers the future of war and the prospects for its obsolescence. His clear and wide-ranging discussion, richly illustrated with examples, will be invaluable for students and other readers interested in the ethical challenges posed by the changing nature of war.

STEVEN P. LEE is Donald R. Harter Professor in Humanities at Hobart and William Smith Colleges in Geneva, New York. He is the author of *Morality, Prudence, and Nuclear Weapons* (Cambridge, 1993) and *What Is the Argument? Critical Thinking in the Real World* (2002), the editor of *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory* (2007) and the co-editor of *Ethics and Weapons of Mass Destruction* (Cambridge, 2004).

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An Introduction

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In memory of my parents,
Bob and Marguerite Lee

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This conference should be, by the help of God, a happy presage for the century which is about to open. It would converge in one powerful focus the efforts of all States which are sincerely seeking to make the great idea of universal peace triumph over the elements of trouble and discord. It would, at the same time, confirm their agreement by the solemn establishment of the principles of justice and right, upon which repose the security of States and the welfare of peoples.

Czar Nicholas II on the opening of the Hague Peace Conference of 1899

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Preface

War is a horror, a scourge of humanity. There is no other way to describe it. It is, along with pestilence, famine, and death, one of the Four Horsemen of the Apocalypse, and war is a significant contributor to the other three. Much of the human-caused suffering our species has endured over time has been the result of war. Yet there is an ethics of war. The *just war tradition* is an intellectual effort, spanning two millennia in the West, to come to moral terms with war. It is an attempt to balance the horror of war against the poor arrangements of the world that leave participation in organized inter-group violence as sometimes the only instrument available to rectify major injustices. This need makes war barely tolerable, while the horror demands its constraint. The ethics of war lies in that balance.

Just war theory is a systematic account of the ethics of war constructed from the materials of the just war tradition. This volume examines just war theory and its basis in the tradition. In addition to offering an account of the elements of the tradition, I argue for the thesis that the tradition is able to provide a moral analysis of contemporary war, despite the radical changes that war has undergone. I do this by developing a version of just war theory that takes these changes into account. In other words, I test the adequacy of the tradition by presenting a theory coming out of that tradition that (I argue) offers a satisfactory moral analysis of the nature of war as we find it in the twenty-first century.

The just war tradition has developed, in part, as a practical effort to limit the horror of war. This is both a strength and a weakness of the tradition. Its practical orientation is a strength to the extent that the tradition has had an impact on military practice, lessening the human suffering of war. The tradition has, arguably, been able to impose some restraint on the application of state power in its most naked and violent form. To succeed in this, the tradition exemplifies the characteristic I call tolerable

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divergence, meaning that the theories' prescriptions do not fall so far outside the practically acceptable that they are treated by decision makers as irrelevant. This strength in the tradition has a corresponding weakness. The tradition has had to compromise with the political and military reality of war. In contrast, an account of the morality of war founded in a more free-floating moral theory, such as a Kantian formalism or a Millian utilitarianism, would not be compromised in this way. The just war tradition is a compromise with the moral ideal. But a morality of war grounded in the moral ideal would have less of an impact on the practice of war.

The just war theory I present differs from other such theories in two respects. First, at the level of justice in going to war (*jus ad bellum*), other just war theories tend to be collectivist in that they give special moral weight to states and to state sovereignty. In contrast, my approach, while it recognizes that war is conflict between social groups, shifts the locus of primary moral value from collectives to individuals, founding *jus ad bellum* in individual human rights. Second, at the level of justice in the conduct of war (*jus in bello*), the tables turn. Traditionally, *jus in bello* has been regarded as based in the rights of individuals, combatants and civilians, because the actors at this level are individual combatants, and some surprising implications of this individualistic approach have been raised by recent commentators. In contrast, I introduce a collectivist element into our moral understanding of *jus in bello*, collectivist in the sense that the moral liability to attack in war may be based more on who you are than what you have done.

Because this volume concerns the just war tradition, it does not offer an extended discussion of the alternative tradition of *realism*, which develops a normative account of war primarily in terms of what is in the national interests of states. There are, however, important relations between the two traditions, and some of these are discussed.

It is appropriate here to express my debt to Michael Walzer's *Just and Unjust Wars*, the most significant work on the ethics of war in the past half century. Walzer's arguments and responses to them animate a large portion of this text.

By way of acknowledgment, I begin by thanking my many students in courses on the morality of war over the years, who have stimulated my thought and helped me to get clearer on a number of the issues discussed in this book. Some have valiantly made their way through earlier

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versions of some of these chapters. Thanks are also due to my home institution, Hobart and William Smith Colleges, which has provided me with an opportunity to teach in this area and granted me leaves important in the gestation of this work. Hobart and William Smith is a superb institution in the liberal arts tradition, providing an atmosphere conducive to research as well as teaching.

I would like to thank my editor, Hilary Gaskin, for giving me the opportunity to write this book and encouraging my efforts in that direction. Also, thanks are due to the anonymous reviewers for the Press, who helped make this a better book.

I have been working on these topics for over a decade, and during that time I had three fellowships that were very helpful. In 2003–2004, I held a Resident Fellowship at the Center for the Study of Professional Military Ethics at the United States Naval Academy. While in Annapolis, I had the freedom to pursue my work and the opportunity to observe the care the military academies take in instructing future combatants in the morality of war. Special thanks to Albert Pierce, Director of the Center, and to Colonel Michael Campbell. In 2007, I held a Research Fellowship at the Centre for Ethics, Philosophy, and Public Affairs at the University of St Andrews. I owe special thanks to John Haldane, the director of the Centre, and to Nicholas Rengger. In 2008, I was the H. L. A. Hart Visiting Fellow, at the Centre for Ethics and the Philosophy of Law in University College, Oxford. There I had the opportunity to work with Henry Shue and four of his graduate students, Seth Lazer, Janina Dill, Per Ilsaas, and Zahler Bryan in the "war workshop," a weekly seminar, in which I had the chance to try out some early and rough portions of this text.

Several friends read and commented on portions of the manuscript, including Stephen Nathanson, Frederik Kaufman, Henry Shue, Karen Frost-Arnold, Scott Brophy, Derek Linton, and Eric Barnes. To them I owe many thanks for their help in allowing me to avoid some of the mistakes the manuscript surely contained.

Finally, the greatest thanks to Cherry Rahn, my life partner, for all the help and support she has given me through the writing process.

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