

# The Last of Last Resort

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Dr. EAMON ALOYO

Senior Researcher, Conflict Prevention Program

## Abstract

The last resort criterion occupies a hallowed place in the just war theory tradition and in the responsibility to protect (R2P) norm. Many leading just war theory scholars, R2P experts, and world leaders accept last resort as a *jus ad bellum* requirement. The most plausible version of last resort is that all peaceful policy options that have a reasonable chance of achieving a just cause must be exhausted before the use of force is permissible. Its justification is straightforward and commonsensical: war is terrible, inevitably results in the deaths of numerous innocents and destruction of their property, and thus should be avoided whenever possible. I argue that last resort should be dropped from the just war tradition because its inclusion can result in a greater number of harms to innocents than if the precept did not exist. Last resort can conflict with proportionality, necessity, and non-combatant immunity. What should matter morally is the severity and extent of harm inflicted on innocents, not whether those harms are inflicted violently or nonviolently. I suggest that the only actions that are permissible are those that are likely to inflict the fewest morally weighted harms and that meet the other just war theory precepts (excluding last resort). Thus war or violent policies may be preferable in certain rare circumstances to nonviolent alternatives, such as non-targeted sanctions, because sometimes nonviolent policies are more likely to foreseeably and avoidably inflict far greater harms on innocents than violent options.

Keywords

Just War Theory, Responsibility to Protect, Last Resort, Proportionality, Necessity, Noncombatant Immunity



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### **The Hague Institute for Global Justice**

Sophialaan 10  
2514 JR The Hague  
The Netherlands

t +31 (0)70 30 28 130  
e [info@TheHagueInstitute.org](mailto:info@TheHagueInstitute.org)  
w [TheHagueInstitute.org](http://TheHagueInstitute.org)  
t @HagueInstitute

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## Introduction

A great number of scholars, experts and policy makers accept that in order for a war to be just, it must meet the *jus ad bellum* criterion of last resort of just war theory (“last resort” for short). Although there are a variety of accounts of last resort, its most plausible formulation mandates that resorting to war is permissible if and only if peaceful options that have a reasonable chance of success of achieving a just aim have been attempted for a reasonable amount of time and have failed. This seems commonsensical. Many assume that the world would be much more violent, unjust, and disorderly without this requirement limiting when it is permissible to resort to the use of force. An otherwise diverse group of policy makers and scholars generally think that no one should use violence or wage war unless it is a last resort.

Despite the strong intuitive appeal of last resort, I argue that last resort should be jettisoned from the just war tradition because adhering to it can require the imposition of a greater number of harms on innocents than if an alternative, violent policy were enacted. I advance this argument through an internal critique of just war theory. Logically, last resort can conflict with other just war theory precepts including proportionality, necessity, and noncombatant immunity (also known as the principle of discrimination). It can conflict with these other precepts because last resort can require imposing nonviolent policies that would be disproportionate, unnecessary, indiscriminate, or some combination of these if last resort did not exist. I argue that these other precepts cover entirely the morally important aspects of last resort. As a consequence, just war theory would be more just without last resort, and therefore should be dropped as a standard criterion.

To make this argument, I defend the view that it does not matter morally whether actors inflict harms violently or nonviolently. What ought to matter morally is how severe harms are, to what degree the people harmed are morally liable to defensive harm, how many innocents are harmed or put at risk of harm, and whether the other just war theory precepts are met. I suggest that only policies that are likely to inflict the least number of severe harms on innocents and have a reasonable chance of achieving a just cause are permissible (and all other just war theory precepts are met).

I advance these arguments in the following order. First, I present several accounts of last resort, attempting to make the strongest case for each, and showing why each fails. Second, I show why all accounts of last resort can conflict with the just war theory precepts of proportionality, necessity, and discrimination, and why these other precepts already cover the morally important underpinnings of last resort. I then conclude.

## Accounts of Last Resort and Their Problems

Before exploring several prominent accounts of last resort, I make two general points. First, last resort is premised on a moral distinction between violence and non-violence. It represents the intuition that non-violence is always morally preferable to violence. As Thomas Hurka writes in explaining a standard view of last resort, “if the just causes can be achieved by less violent means, such as diplomacy, fighting is wrong.”<sup>1</sup> One reason last resort likely endured this long is that many made the mistake of concluding that because violence is generally morally worse than non-violence, it is always so. This raises the question of what qualifies as violence. There are at least three definitions of violence. Some argue that violence is the direct use of force against the body of another person, whereas others think that any rights

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<sup>1</sup> Thomas Hurka, “Proportionality in the Morality of War,” *Philosophy & Public Affairs* 33, no. 1 (2005): 35.

violation constitutes violence.<sup>2</sup> Johan Galtung, a prominent proponent of a third type of violence, known as “structural violence,”<sup>3</sup> defines it as the “*cause of the difference between the potential and the actual*, between what could have been and what is.”<sup>4</sup> He argues there is (structural) violence if modern medicine could have cured someone with tuberculosis, but the individual could not afford health care and dies as a result.<sup>5</sup>

I use the first, most restrictive, definition of violence for several reasons. First, it adheres closer to our intuitions and common sense uses of the term than the idea that all rights violations or all suboptimal social outcomes are violence. A second reason I use this definition is that it can allow for theories of liability to defensive harm where someone uses violence (in the common sense understanding of the term) against another person, but does not violate the victim’s right against not being attacked because the target of the violence has made himself liable to defensive harm. A third reason I use this definition is that it is how just war theorists typically define violence in assessments of last resort. Just war theorists, for instance, often propose sanctions as peaceful alternatives to war. This definition of violence is central to just war theory because it is a foundation of determining what constitutes war.

The following illustrates that a diverse group of just war theory scholars accept last resort as a *jus ad bellum* precept. Michael Walzer writes that “one always wants to see diplomacy tried before the resort to war, so that we are sure that war is the last resort.”<sup>6</sup> He claims that “it is obvious, for example, that measures short of war are preferable to war itself whenever they hold out the hope of similar or nearly similar effectiveness.”<sup>7</sup> Cécile Fabre argues that a key *jus ad bellum* precept is “war must be the option of last resort.”<sup>8</sup> Brian Orend argues “one wants to make sure something as momentous and serious as war is declared only when it seems the last practical and reasonable shot at effectively” achieving a just aim.<sup>9</sup> In a discussion of the standard just war theory precepts Thomas Hurka writes “war must be a last resort” in order for it to be just.<sup>10</sup> Jeff McMahan states “the fourth principle of *jus ad bellum* is *last resort*.”<sup>11</sup> James Pattison writes that one *jus ad bellum* precept is that “if intervention is not a last resort, then it should not occur.”<sup>12</sup> US politicians at the highest levels also reference last resort in their debates on the conditions required to ensure that a war is just.<sup>13</sup> The authors of the 2001 International Commission on Intervention and State Sovereignty (ICISS) report that is the foundation for the responsibility to protect also cite last resort as a necessary

<sup>2</sup> Vittorio Bufacchi, “Two Concepts of Violence,” *Political Studies Review* 3, no. 2 (2005): 193–204, doi:10.1111/j.1478-9299.2005.00023.x; For another way to classify different types of violence, see C. A. J. Coady, “The Idea of Violence,” *Journal of Applied Philosophy* 3, no. 1 (1986): 3–19, doi:10.1111/j.1468-5930.1986.tb00045.x.

<sup>3</sup> Johan Galtung, “Violence, Peace, and Peace Research,” *Journal of Peace Research* 6, no. 3 (1969): 167–91.

<sup>4</sup> Galtung, “Violence, Peace, and Peace Research,” 168, *emphasis in original*.

<sup>5</sup> Galtung, “Violence, Peace, and Peace Research,” 168.

<sup>6</sup> Michael Walzer, *Just And Unjust Wars: A Moral Argument With Historical Illustrations*, 3rd ed. (Basic Books, 1977), 84.

<sup>7</sup> Walzer, *Just And Unjust Wars*, 85.

<sup>8</sup> Cécile Fabre, *Cosmopolitan War* (Oxford University Press, USA, 2012), 5.

<sup>9</sup> Brian Orend, “The Stanford Encyclopedia of Philosophy,” ed. Edward N. Zalta, War, 2005, <http://plato.stanford.edu/entries/war/>.

<sup>10</sup> Hurka, “Proportionality in the Morality of War,” 35.

<sup>11</sup> Jeff McMahan, “Just War,” in *A Companion to Contemporary Political Philosophy*, ed. Robert Goodin, Philip Pettit, and Thomas Pogge, 2nd ed. (Chichester: Wiley-Blackwell, 2012), 673 (*italics in original*).

<sup>12</sup> James Pattison, *Humanitarian Intervention and the Responsibility To Protect: Who Should Intervene?* (Oxford University Press, USA, 2010), 34.

<sup>13</sup> Daniel R. Brunstetter, “Trends in Just War Thinking During the US Presidential Debates 2000–12: Genocide Prevention and the Renewed Salience of Last Resort,” *Review of International Studies* 40, no. 1 (2014): 77–99, doi:10.1017/S0260210513000028; Barack Obama, “Remarks by the President at the National Defense University | The White House” (National Defense University, May 23, 2013), <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

condition for the permissible use of force.<sup>14</sup> Given that so many accept last resort, what exactly does it mean? I present three accounts of last resort, from the least to the most persuasive. I additionally show why some are mistaken to believe a fourth view is an account of last resort.

The first account is the simplest. I call this account *strict last resort*. It requires all peaceful options be tried before war is permissible. As James Pattison puts it, “last resort is often interpreted literally so that every option short of the use of force must be attempted” before the resort to violence is permissible.<sup>15</sup> Helen Frowe argues that a standard view of last resort is that “a war can be just only when all other means of averting a threat or seeking redress have been exhausted.”<sup>16</sup>

There are two main features of this account. One is that nonviolent options are preferable to violent ones. The underlying reason why part of the first account of last resort is attractive is because war foreseeably and avoidably causes tragic harms to innocents and their property. If the same just end can be achieved in ways that avoid these harms, without high costs to the party striving for the just ends, they must be taken instead of war. The second feature of *strict last resort* is that it requires an actor to attempt *all* possible alternatives before violence is permissible. On this account of last resort, an actor must try diplomacy, sanctions, threats, and anything else one could imagine other than violent means before the use of force would be permissible. Attempting to reason with the offending party, but not imposing further coercive measures, such as sanctions, would not satisfy this criterion, for instance.

Despite the initial plausibility of this account, there are definitive objections to it. One major problem with *strict last resort*, as Michael Walzer argues, is that “taken literally . . . [this view of] ‘last resort’ would make war morally impossible. For we can never reach lastness [sic.], or we can never know that we have reached it. There is always something else to do...”<sup>17</sup> Because actors could always attempt additional actions or allow more time for existing efforts to achieve a just aim, a strict interpretation of this view would require pacifism. Of course, one could adopt pacifism as a result. Pacifism is not the best option because it could require nonviolent options that would produce more severe harms to innocents than war.

To circumvent one prong of this objection, one could reply that an actor could impose all nonviolent measures in rapid succession. For instance, it is possible to within a few hours impose progressively more coercive measures such as diplomacy, sanctions against individuals, and then comprehensive sanctions. Yet this cannot be what such an account would require because most policy options take some time to work. A more plausible account of last resort would therefore require giving policy options a reasonable time to work (as I discuss below).

A related problem with *strict last resort* is that many options short of war would in many circumstances have little or no chance of success in any reasonable amount of time. Such options need not and should not be tried before a resort to force is permissible. Imagine a world of 26 states. Suppose state *A* were committing crimes against humanity domestically and receiving weapons and support from state *B*, but all other states could only enforce sanctions against states *C* through *Z*. All other states should not have to impose such sanctions before attempting other options with a reasonable chance of success such as humanitarian

<sup>14</sup> Gareth Evans et al., *The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty* (Ontario, Canada: IDRC Books, 2001), 36–37.

<sup>15</sup> Pattison, *Humanitarian Intervention and the Responsibility To Protect*, 82.

<sup>16</sup> Helen Frowe, *The Ethics of War and Peace: An Introduction* (Routledge, 2011), 62.

<sup>17</sup> Michael Walzer, *Arguing About War, 1st Edition* (Yale University Press, 2004), 88.

intervention, assuming such options meet all other just war conditions. This should not be a requirement because there is no reason to believe that sanctions imposed by and on countries C through Z would have any chance of achieving the just cause. More broadly, if all options short of war are very unlikely to have any reasonable chance of success, and going to war sooner would likely save a greater number of innocents' lives, waiting to try options other than war is wrong. These objections doom the first account of last resort.

A second account of last resort holds that last resort is really a requirement of necessity. I call this account *necessity last resort*. This account holds that war is permissible only if it is necessary to achieve a just cause. McMahan writes that last resort “means that war must, in the circumstances, be necessary for the achievement of the just cause.”<sup>18</sup> (McMahan attempts to supplement his view, as I discuss below.) Hurka argues that “the last resort condition is really an *ad bellum* necessity condition.”<sup>19</sup>

This second account of last resort seems plausible as well. If a just cause can be achieved by any other means than war, proponents of this view hold, war is impermissible. War should not be a policy that is used when, say, diplomacy would suffice. The benefit of this account compared with the first is that it does not require actors to attempt policy options that have no chance of success. Hypothetically, if there were only two possible policy options, i.e., war and the above-mentioned sanctions, the first account would require attempting the sanctions but the second would not.

*Necessity last resort* suffers from other problems that are decisive objections to *strict last resort*, however. One objection is that the second account of last resort does not explicitly require actors to only try nonviolent options that have a reasonable chance of success; it only requires that the options have *some* chance of success. *Necessity last resort* requires nonviolent options to have a zero per cent chance of success, and war to have some probability of success greater than zero. War must be the only possible way to achieve a just cause. Another problem with *necessity last resort* is that epistemic limitations would make it very difficult to know when both nonviolent options and war would meet these demanding conditions. A third objective is even more problematic. If violent and nonviolent options have the same chance of success, and both would achieve a just aim, this account would require nonviolent options even if they killed far more innocent people than violent means, because war would not be necessary to achieve the just aim. These are decisive objections against the second account.

The third and most plausible account of last resort includes a reasonable chance of success component. For this reason, I call it *reasonable chance last resort*. This account of last resort requires that all peaceful options that have a reasonable chance of success be given adequate time to achieve their just aim before the use of force is permitted.<sup>20</sup> This account is a nested conditional. If (and only if) A is satisfied, then if B is satisfied too, is the condition met. If there is no reasonable chance of success of a policy, it need not be given adequate time to succeed. A. J. Coates is a proponent of such a view. He states that “what the principle [of last resort] enjoins is the exhaustion of *effective* alternatives to war. The obligation to employ sanctions or other non-military methods is conditional upon their efficacy.”<sup>21</sup> Jeff McMahan

<sup>18</sup> McMahan, “Just War,” 673.

<sup>19</sup> Thomas Hurka, “Proportionality and Necessity,” in *War: Essays in Political Philosophy*, ed. Larry May (Cambridge University Press, 2008), 129.

<sup>20</sup> David Mellow, “Iraq: A Morally Justified Resort to War,” *Journal of Applied Philosophy* 23, no. 3 (2006): 300, doi:10.1111/j.1468-5930.2006.00342.x; A. J. Coates, *The Ethics of War* (Manchester, U.K.: Manchester University Press, 1997), 197.

<sup>21</sup> Coates, *The Ethics of War*, 197.

concurr. He attempts to supplement his necessity requirement with a reasonable chance of success clause. He argues that last resort holds that “it would be wrong to go war if there were an equally effective but peaceful means of achieving the just cause.”<sup>22</sup> McMahan is consistent, but this argument is superfluous, because if there were another way to achieve a just cause, by definition war would not be necessary to achieve a just cause. John Lango writes that “roughly speaking, the last resort principle requires that measures other than war must be tried sufficiently first.”<sup>23</sup> Larry May also believes that a reasonable chance of success is a necessary condition of last resort. He argues “last resort does not dictate that we must always choose the least violent means, but only the least violent and equally efficacious means, time permitting.”<sup>24</sup>

There are two reasons why *reasonable chance last resort* is better than the previous two accounts. First, internal to this account is the reasonable chance of success criterion for nonviolent options. This avoids Walzer’s objection that last resort might require pacifism because we could never reach “lastness.” It additionally annuls the objection given the hypothetical case I present above where countries *C* through *Z* could not impose sanctions on *A* or *B*. According to this account, but not the first, countries *C* through *Z* would not have to attempt these sanctions before the resort to force would be permissible. The second feature that makes *reasonable chance last resort* better than the earlier ones is that those options with a reasonable chance of success only need to be given a reasonable amount of time to achieve their just end. Resort to the use of force is only prohibited during the time period that is reasonable for nonviolent options to work. Due to these features, the third account is clearly a more sensible, convincing, and sophisticated account than the earlier ones.

Despite the third account’s improvements over the previous two, a decisive objection remains. The central problem with *reasonable chance last resort* is that it does not stipulate that harms to innocents must be minimized. Nonviolent options may be disproportionate, indiscriminate, and unnecessary, but this third account of last resort would also require them to be attempted prior to resorting to force, assuming that they have a reasonable chance of success. This most plausible account of last resort is morally indefensible because what should matter is how many innocent people are harmed and how severe those harms are, not whether harms are inflicted violently or nonviolently.

Another way even *reasonable chance last resort* might fail in protecting the greatest number of innocents is by requiring postponing initiating war in order to give nonviolent means with a reasonable chance of success a reasonable amount of time to work. Imagine that one determines that a reasonable chance of success is 51%, and in one situation sanctions meet this requirement. Imagine a war is 95% likely to achieve a just cause in this situation, and would impose the same risks on innocents as the nonviolent policy. Suppose furthermore that in this interim period from when the sanctions would take effect and a subsequent war, the adversary would become far stronger and therefore the later war would kill a far greater number of innocents than an earlier resort to war and might have a lower probability of success. In this case, an earlier resort to war could have a higher probability of avoiding a horrific war later, and would impose the same risks for innocents.<sup>25</sup> Coates cites Churchill who argued that had those states that opposed Hitler risked earlier a “small war, a great war

<sup>22</sup> McMahan, “Just War,” 673.

<sup>23</sup> John Lango, “Preventive Wars, Just War Principles, and the United Nations,” *The Journal of Ethics* 9, no. 1–2 (2005): 260, doi:10.1007/s10892-004-3328-5.

<sup>24</sup> Larry May, *Aggression and Crimes Against Peace*, 1st ed. (New York, NY: Cambridge University Press, 2008), 87.

<sup>25</sup> Coates, *The Ethics of War*, 190–192.

could have been avoided.”<sup>26</sup> Last resort would be problematic in this case because it would have required the nonviolent option to be attempted and exhausted which would have postponed the resort to the use of force, likely resulting in the death and severe harm to far more innocents.

Some might try to defend a fourth account of last resort. I refer to this account as *specious last resort*. This account would hold that a resort to war (or violence) is only permissible if it would cause the least amount of harm. For instance, James Pattison writes, a problem with last resort is that nonviolent alternatives to war “might cause more harm than military intervention.”<sup>27</sup> Hurka is another proponent of this view. He claims “a *last resort* condition forbids war if its benefits, though significant, could have been achieved by less destructive means such as diplomacy.”<sup>28</sup> Simon Caney also attempts to defend this account. He writes that “last resort rests on the moral assumption that agents may resort to a course of action only having considered less awful options first (where ‘awfulness’ is measured in terms of number of rights violations and the nature of the right).”<sup>29</sup> John Lango argues that last resort should incorporate a reasonable chance of success<sup>30</sup> and “a standard of comparative awfulness.”<sup>31</sup> He suggests “an alternative measure [to war] does not have to be attempted first if there is no reasonable expectation that it will be less harmful.”<sup>32</sup>

*Specious Last Resort* is not an account of last resort for two reasons. It says nothing about why war should be attempted only *after* nonviolent options (with or without a reasonable chance of success) have been exhausted. It says nothing about war being the last step in a series of alternative policy options. More importantly, *specious last resort* is redundant when compared with other just war precepts. Specifically, it collapses last resort into necessity and proportionality. One might then argue, as Hurka attempts to, that proportionality can “incorporate the other just war conditions about consequences.”<sup>33</sup> He writes that “the last resort condition is in effect a comparative version of the initial, simple proportionality condition . . . it then says war is permitted only if its net outcome is better than those of all alternatives.”<sup>34</sup> Hurka is correct in his conclusion that proportionality covers some of the morally important aspects of last resort, but he is wrong that last resort is just proportionality because then last resort would be meaningless. Last resort is not just simply proportionality (or anything else). Rather, what Caney, Hurka, Lango, and Pattison discover in attempting to contort other principles into a theory of last resort is that the last resort’s most plausible formulation actually does away with the principle. The best way to account for some of the insights of the scholars who attempt to defend *specious last resort* is to drop last resort as a just war theory requirement.

## Why All Accounts of Last Resort are Problematic

To better understand why all three aforementioned accounts of last resort are problematic, consider the following hypothetical example. Imagine that country X has a just cause for war against country Y. Suppose that there are only two policy options that can achieve the just

<sup>26</sup> Coates, *The Ethics of War*, 190.

<sup>27</sup> Pattison, *Humanitarian Intervention and the Responsibility To Protect*, 82.

<sup>28</sup> Hurka, “*Proportionality and Necessity*,” 127 (*italics in original*).

<sup>29</sup> Simon Caney, *Justice beyond Borders: A Global Political Theory* (Oxford University Press, USA, 2005), 202.

<sup>30</sup> John Lango, “*The Just War Principle of Last Resort*,” *Asteriskos* 1/2 (2006): 14–15; John Lango, “*Before Military Force, Nonviolent Action: An Application of a Generalized Just War Principle of Last Resort*,” *Public Affairs Quarterly* 23, no. 2 (2009): 121.

<sup>31</sup> Lango, “*The Just War Principle of Last Resort*,” 16; Lango, “*Before Military Force, Nonviolent Action*,” 121.

<sup>32</sup> Lango, “*The Just War Principle of Last Resort*,” 16.

<sup>33</sup> Hurka, “*Proportionality in the Morality of War*,” 37.

<sup>34</sup> Hurka, “*Proportionality in the Morality of War*,” 37–38.

cause, both of which have an equal probability of success of achieving a just cause and both have an equal risk of resulting in unintended harms to innocents. Assume too that in both cases all other just war theory precepts are met, and that there are no partially liable individuals. The first policy option is the following. If soldiers from country X violently attack people in country Y, 50,000 people will be killed, of whom 25,000 are innocent. The second policy option that will achieve the just cause is economic sanctions. If leaders of country X impose these on country Y, 100,000 people will be killed, of whom 50,000 are innocent.

Adherents to all accounts of last resort would strangely require the policy option that would foreseeably and avoidably kill double the number of innocent (and liable) individuals than is necessary to achieve a just cause. This cannot be correct. Intuitively, killing far more innocent people than is necessary in order to achieve a just cause is problematic. In addition to being intuitively wrong, it would additionally violate a number of other just war precepts, as I show below. Given these two options, only the first – violent – option is permissible because it would result in the fewest deaths of innocents in the process of achieving the just cause. This is true even though the first but not the second uses violence and war to achieve just aims, and even though the sanctions have the same probability of success.

This hypothetical example is grounded in reality. Nonviolent policy options that many politicians and scholars advance as preferable to violent policies can harm as many people as violent ones. Consider the sanctions imposed against Iraq in the 1990s. As Joy Gordon an expert on the Iraq sanctions writes, “the fundamental goal of sanctions, after all, was containment. The inspections did effectively disarm Iraq; the sustained collapse of the Iraqi economy did prevent Iraq from rebuilding its military capacity.”<sup>35</sup> They also may have taken a great human toll. Assessing a variety of studies on the impact of the sanctions, Gordon estimates that the Iraq sanctions likely killed between 200,000 and 500,000 people, many of whom were children.<sup>36</sup> To put this in context, this is equal to or more than twice as many Bosnians as were killed in the 1990s war.<sup>37</sup>

Scholars have conducted more systematic studies and have found support for the claim that economic sanctions can harm large numbers of innocents. Scholars have found that economic sanctions can worsen the respect of the human rights of women,<sup>38</sup> decrease the prospects of democracy<sup>39</sup> (which in turn results in more human rights abuses on average),<sup>40</sup> harm large numbers of people by decreasing health outcomes,<sup>41</sup> and indirectly increase violations of individuals’ physical integrity rights.<sup>42</sup> The question is not only whether sanctions harm innocents, but whether they may harm a greater number of innocents than violent alternatives that might be able to achieve an identical just cause. Susan Allen and David Lektzian address

<sup>35</sup> Joy Gordon, *Invisible War: The United States and the Iraq Sanctions* (Cambridge, MA: Harvard University Press, 2010), 11.

<sup>36</sup> *Ibid.*, 87, 239; *These high casualty figures are disputed. Cf. Michael Spagat, “Truth and Death in Iraq under Sanctions,” Significance 7, no. 3 (2010): 116–120.*

<sup>37</sup> Samantha Power, *“A Problem From Hell”: America and the Age of Genocide* (New York: Basic Books, 2002), 327.

<sup>38</sup> A. Cooper Drury and Dursun Peksen, “Women and Economic Statecraft: The Negative Impact International Economic Sanctions Visit on Women,” *European Journal of International Relations*, 2012, doi:10.1177/1354066112448200.

<sup>39</sup> Dursun Peksen and A. Cooper Drury, “Coercive or Corrosive: The Negative Impact of Economic Sanctions on Democracy,” *International Interactions 36, no. 3 (2010): 240–64*, doi:10.1080/03050629.2010.502436.

<sup>40</sup> Thomas Christiano, “An Instrumental Argument for a Human Right to Democracy,” *Philosophy & Public Affairs 39, no. 2 (2011): 142–76*, doi:10.1111/j.1088-4963.2011.01204.x.

<sup>41</sup> Susan Allen and David Lektzian, “Economic Sanctions: A Blunt Instrument?,” *Journal of Peace Research 50, no. 1 (January 1, 2013): 121–35*, doi:10.1177/0022343312456224.

<sup>42</sup> Dursun Peksen, “Better or Worse? The Effect of Economic Sanctions on Human Rights,” *Journal of Peace Research 46, no. 1 (2009): 59–77*, doi:10.1177/0022343308098404.

this question in their study of the effects of sanctions and war on health. They find that “major sanctions and major military conflicts are both seen to significantly decrease HALE [Health Adjusted Life Expectancy] with sanctions having more than twice as large an effect.”<sup>43</sup>

When compared with limited uses of violence such as drone strikes, assassinations, targeted killings, no fly zones, some limited types of humanitarian intervention, and other forms of violence that harm fewer people than typical wars,<sup>44</sup> given the available empirical evidence it is reasonable to conclude that at least in some situations some violent policies may cause fewer severe harms to innocents than some nonviolent policies. A non-military option might inflict more harm overall than a military intervention, but those against whom the harm is inflicted could be liable whereas a military intervention could result in fewer harms overall but inflict more harm on innocents and therefore be disproportionate. As Jeff McMahan argues, proportionality does not require that one must choose the policy that harms the fewest people overall. Rather, McMahan argues that proportionality requires choosing an option that “achieves a net saving of the lives of those who are fully innocent.”<sup>45</sup>

In place of last resort, then, I argue that the only permissible policy is the one that has a reasonable chance of achieving a just cause while harming severely the fewest number of innocent individuals, as well as one that meets all other just war theory principles. One of the main features of my account that is distinct from traditional just war theory in general and last resort in particular is that I suggest there is nothing inherently morally special about violence or war. Last resort is one precept that draws a clear distinction between violence and non-violence. Once one shifts focus from comparing violent policies to nonviolent policies, and instead compares policies based on what Seth Lazar calls “morally weighted harms,”<sup>46</sup> the importance of last resort diminishes. Morally weighted harms discount the moral importance attached to harms inflicted against individuals in proportion to the degree they are liable to defensive harm. While violence may in general be worse than non-violence, this is not always true. My argument accounts for this. I assign equal weight to violent and nonviolent policies because both can cause harms to innocents. This is not a radical view because other just war precepts, especially proportionality, necessity, and non-combatant immunity already require this. What matters morally is how severe the harm is, how many people are harmed, and whether the individual harmed is liable to defensive harm. The mistake many in the just war theory tradition have made is believing that violent harms are different in kind from nonviolent ones, and specifically that they are always morally worse.

One might object to removing last resort from just war theory because epistemic limitations mean that wars often bring unintended and unforeseeable horrific consequences, and that in order to add an additional restraint on the use of force, last resort should remain in the tradition. Such objectors hold that war should be a last resort because we cannot predict with any certainty the likely outcomes of war, unlike nonviolent options. Walzer expresses this concern when he writes that “we say of war that it is the ‘last resort’ because of the unpredictable, unexpected, unintended, and unavoidable horrors that it regularly brings.”<sup>47</sup>

<sup>43</sup> Allen and Lektzian, “Economic Sanctions: A Blunt Instrument?,” 132.

<sup>44</sup> Daniel Brunstetter and Megan Braun, “From Jus Ad Bellum to Jus Ad Vim: Recalibrating Our Understanding of the Moral Use of Force,” *Ethics & International Affairs* 27, no. 01 (2013): 87–106, doi:10.1017/S0892679412000792; Eamon Aloyo, “Just Assassinations,” *International Theory* 5, no. 3 (2013): 347–81, doi:10.1017/S1752971913000237; Claire Finkelstein, Jens David Ohlin, and Andrew Altman, eds., *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford University Press, USA, 2012).

<sup>45</sup> Jeff McMahan, “Just Cause for War,” *Ethics & International Affairs* 19, no. 3 (2005): 3n3.

<sup>46</sup> Seth Lazar, “Necessity in Self-Defense and War,” *Philosophy & Public Affairs* 40, no. 1 (2012): 7n9, 10, 12–13, 23, 44, doi:10.1111/j.1088-4963.2012.01214.x.

<sup>47</sup> Walzer, *Arguing About War*, 155.

This objection fails because an accurate account of a reasonable chance of success and proportionality already account for this uncertainty. It is true that war can have “unpredictable, unexpected, unintended, and unavoidable horrors,” but this only means that in making assessments of a reasonable chance of success and proportionality calculations, one should make these assessments conservatively. Other policies, furthermore, can have unexpected effects as well. Even if it were true that violent options have more uncertainty, this could be accounted for in a reasonable chance of success and proportionality criteria by using a more conservative standard for war than for nonviolent options.

Upon close examination, then, no account of last resort provides a plausible reason why actors must attempt nonviolent options before violence is permissible. Sometimes, a nonviolent policy could actually harm more innocent people than violent policy. In sum, the leading accounts of last resort problematically morally discount the actual and potential harms to innocents (and liable individuals) caused by nonviolent options. Proponents of these accounts implicitly and incorrectly assume that violent harms are worse than all types of nonviolent alternatives. It is fatal flaw that last resort does not attempt to compare all types of wrongful harm, but instead supposes that violence is morally worse than non-violence.

## Potential Inconsistencies Internal to Just War Theory, And a Solution

If just war theory includes last resort as a necessary condition (as all just war precepts are typically taken to be), just war theory can be internally inconsistent because last resort can conflict with the just war theory precepts of proportionality, necessity, and non-combatant immunity. Last resort can conflict with these principles because it limits comparisons between violent and nonviolent policy options. But these other precepts should involve comparisons between violent and nonviolent options. For example, in the above hypothetical example where there were two options with equal chances of success where the violent one killed half as many innocent and liable individuals, last resort and proportionality required contradictory policies. The way traditional just war theory remains consistent is by having last resort restrict comparisons that other just war theory precepts would otherwise require comparing. Last resort would not always conflict with proportionality, discrimination, and necessity because often last resort coincides with the policy option that is proportionate, discriminate, and necessary.

There are three options regarding how last resort should relate to the other just war theory precepts. First, last resort could continue to restrict all *jus in bello* precepts and some other *jus ad bellum* precepts, such as proportionality, as it has traditionally done. The problem with this view, as I showed above, is that it can result in the death of more, and potentially many more, innocents than if last resort were dropped as a just war precept. I therefore reject this view. Second, last resort and other principles could be given equal weight as other precepts. The problem with this view is that then just war theory could be inconsistent because there is no rule to determine when last resort should restrict other precepts, or vice versa. Third, just war theorists can (and should) abandon last resort. This is the view I defend because last resort has no independent value. I argue that these other precepts already cover the morally relevant aspects of last resort. Protecting innocent individuals is more important than using a nonviolent policy.

In what follows, I show how proportionality, necessity, and noncombatant immunity can conflict with last resort, and why last resort provides no additional benefit to these other principles. This last point is crucial. Another way to put it is that these other just war theory precepts already cover all of the morally important aspects that last resort is purported to

contain. If last resort has no additional benefits, and can cause excess harms to innocents, this is a strong reason to remove it from the just war theory tradition.

## Proportionality

In this subsection, I argue that the *jus ad bellum* proportionality requirement can conflict with last resort, and that proportionality covers one important aspect of last resort because proportionality accounts for morally weighted harms. I focus on the *jus ad bellum* proportionality requirement. *Jus ad bellum* proportionality requires that overall the relevant benefits of a war should outweigh the relevant harms it inflicts.<sup>48</sup> There are complicated questions about the possibility of comparing different types of goods in proportionality calculations. It is not obvious how to compare goods such as collective self-determination and state sovereignty with the lives of innocent individuals who will be killed foreseeably although unintentionally.<sup>49</sup> As interesting as these questions are, I put these aside in order to focus on one crucial aspect of proportionality, namely harms to innocents. I do so to highlight how last resort can conflict with this central and widely accepted aspect of proportionality.

Proportionality requires comparing relevant goods and evils in three ways, which are often collapsed together. It requires first, comparing all nonviolent options to one another. Second, it requires comparing all violent options to one another. Third, it requires comparing all nonviolent and all violent policies to one another. For instance, it requires policy makers to compare targeted and non-targeted economic sanctions as an alternative to war. It also requires comparisons between various violent options, such as no-fly zones, bombing campaigns such as those launched against Kosovo in 1999, and full-scale invasions. Among these, proportionality requires choosing the policy that will harm the fewest number of innocents (holding all else constant).

Making these comparisons explicit is important because last resort interacts with and restricts proportionality in the following way. Whereas proportionality requires comparing all options, last resort does not allow comparisons of violent options to nonviolent ones until nonviolent avenues have been explored and exhausted. Another way to put this that highlights the problem with last resort is that it discounts nonviolent harms to innocents. Not only does it discount them, but it requires entirely discounting them, even in last resort's most plausible formation. Last resort requires all nonviolent options with a reasonable chance of success must be given a reasonable amount of time to succeed even if these options result in far more deaths to innocents than violent alternatives, whereas proportionality would prohibit options that would cause more harms to innocents even if the harms were inflicted nonviolently. In some circumstances, then, if proportionality and last resort are given equal standing, they can be incompatible.

In what follows, I will show that this holds true independent of a variety of leading accounts of who should be included in proportionality calculations. Proportionality calculations typically only include innocent individuals. Innocent individuals are those who retain their right not to be attacked.<sup>50</sup> Those who are liable to defensive harm (liable for short) have forfeited their right not to be attacked intentionally. In other words, an attacker who intentionally kills an individual does that individual no wrong if the victim is liable to lethal defensive harm, and the harm is necessary and proportionate.<sup>51</sup> There are two main debates about who should be liable. One centers on whether soldiers who fight with a just cause and

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<sup>48</sup> Hurka, "Proportionality in the Morality of War"; McMahan, "Just Cause for War," 3.

<sup>49</sup> David Rodin, *War and Self-Defense* (Oxford University Press, USA, 2002), 115.

<sup>50</sup> Jeff McMahan, *Killing in War*, 1st ed. (Oxford, U.K.: Oxford University Press, USA, 2009), 8.

<sup>51</sup> McMahan, *Killing in War*, 8–10.

unjust cause are morally equivalent in terms of liability.<sup>52</sup> The second debate depends on the account of liability to defensive harm one accepts. Consider each in turn.

Individuals can be divided into three groups in terms of innocence and liability: those who are fully innocent (not liable at all), those who are partially innocent (partially liable), and those who are not innocent at all (fully liable). Including only those in first group in making proportionality assessments is the traditional view, and one that McMahan terms “wide proportionality.”<sup>53</sup> Comparisons of the degree and type of harm that it is permissible to inflict on individuals who are partially liable McMahan calls “narrow proportionality.”<sup>54</sup> For instance, if someone has forfeited his right to the extent that it would be permissible to punch but not kill him, it would be narrowly disproportionate to kill him.

The traditional view regarding liability to defensive harm is that all combatants are fully liable and all civilians are innocent, and therefore all combatants, but no civilians can be intentionally targeted in war.<sup>55</sup> This view is known as the “moral equality of combatants (MEC).”<sup>56</sup> On this view, soldiers from both sides are not included in proportionality calculations, but all civilians are. Furthermore, all soldiers are fully liable to defensive harm and therefore none counts in proportionality calculations.<sup>57</sup>

McMahan contests this view by arguing that those soldiers who have a just cause and who fight justly are not liable to defensive harm.<sup>58</sup> Soldiers with a just cause who also fight justly should be included in proportionality calculations, according to McMahan, because they have done nothing wrong that would cause them to forfeit their rights. The importance of this debate for the purpose of this paper is that on either view, last resort can conflict with proportionality, and either can cause harm and death to a greater number of innocents than if the precept were dropped.

A second related debate concerns who should be included in proportionality calculations according to various accounts of liability. I will not review the numerous accounts of liability.<sup>59</sup> Proponents of these various accounts determine who is liable by relying on issues such as posing threats to innocents, causal and moral responsibility for posing a threat, whether a threat is objectively unjust, and the general acceptability of carrying out an activity that may risk posing harm to innocents. I do not argue here that one is preferable. Nor do I present a novel account of liability to defensive harm. Rather, I argue that whichever leading account of liability to defensive harm one accepts, last resort can still conflict with proportionality. Proportionality calculations entail among others morally weighted harms

<sup>52</sup> McMahan, *Killing in War*.

<sup>53</sup> Jeff McMahan, “Proportionality in the Afghanistan War,” *Ethics & International Affairs* 25, no. 2 (2011): 145, doi:10.1017/S0892679411000153; *Emphasis in original*. See too McMahan, *Killing in War*, 20–21.

<sup>54</sup> McMahan, *Killing in War*, 20–21.

<sup>55</sup> Walzer, *Just And Unjust Wars*, 41–44.

<sup>56</sup> Seth Lazar, “The Responsibility Dilemma for Killing in War: A Review Essay,” *Philosophy & Public Affairs* 38, no. 2 (March 1, 2010): 181, doi:10.1111/j.1088-4963.2010.01182.x; See too McMahan, *Killing in War*, chap. 2.

<sup>57</sup> McMahan, *Killing in War*, 22–23.

<sup>58</sup> McMahan, *Killing in War*.

<sup>59</sup> Walzer, *Just And Unjust Wars*, 145–146; Jeff McMahan, “Who Is Morally Liable to Be Killed in War,” *Analysis* 71, no. 3 (July 1, 2011): 544–59, doi:10.1093/analys/anr072; Jeff McMahan, “The Basis of Moral Liability to Defensive Killing,” *Philosophical Issues* 15, no. 1 (2005): 386–405, doi:10.1111/j.1533-6077.2005.00073.x; David R. Mapel, “Moral Liability to Defensive Killing and Symmetrical Self-Defense,” *Journal of Political Philosophy* 18, no. 2 (2010): 198–217, doi:10.1111/j.1467-9760.2009.00340.x; Helen Frowe, “A Practical Account of Self-Defence,” *Law and Philosophy* 29, no. 3 (2010): 245–72, doi:10.1007/s10982-009-9062-1; Jonathan Quong, “Liability to Defensive Harm,” *Philosophy & Public Affairs* 40, no. 1 (2012): 45–77, doi:10.1111/j.1088-4963.2012.01217.x; McMahan, *Killing in War*.

because they require comparisons among likely harms to individuals who are innocent to some degree.<sup>60</sup>

Proportionality can conflict with last resort whether one holds the traditional view of MEC or is convinced by McMahan that only those with an unjust cause are liable, irrespective of the theory of liability to defensive harm one accepts. Depending on which groups of individuals should be included in proportionality calculations does not undermine the claim that some violent policies may be more proportionate than some nonviolent policies because nonviolent policies can result in a greater number of harms to innocents than a violent policy. Proportionality thus covers one crucial aspect that last resort is intended to contain.

### Non-combatant immunity (The principle of discrimination)

Closely related to proportionality is non-combatant immunity. It is traditionally taken to mean that soldiers, but not civilians can be intentionally targeted in war.<sup>61</sup> The reasoning for this is that soldiers but not civilians have been traditionally taken to be liable. This is another *jus in bello* precept, which has two components. First, MEC holds. Second, it is impermissible to intentionally target civilians. Recently, scholars have modified this view by arguing that what matters morally is liability to defensive harm, and that this only imperfectly overlaps with the common sense notion of distinction. The main difference between these views is that the latter holds as morally irrelevant the difference between soldiers and civilians. What matters is whether an individual has met specific criteria according to which he can be targeted for violence, such as by posing a lethal threat or being morally responsible for posing a lethal threat. The latter approach to discrimination can include some civilians. For instance, Walzer argues that civilians who make tanks can be intentionally targeted in war because they are contributing to posing a threat by their work.<sup>62</sup> Some such as Jeff McMahan also argue MEC is mistaken because soldiers who fight justly and who are on the just side should not be able to be targeted for harm because they have done nothing to forfeit their rights.<sup>63</sup>

Discrimination can also conflict with last resort because last resort can require the imposition of indiscriminate policies.<sup>64</sup> As A. J. Coates and argues, in rare circumstances war may be more discriminate than peaceful options such as non-targeted sanctions.<sup>65</sup> Those who impose non-targeted economic sanctions, such as those imposed against Iraq cannot draw a distinction between liable and innocent individuals.<sup>66</sup> This is not a problem according to traditional just war theory, because as with proportionality, last resort prohibits non-combatant immunity comparisons between nonviolent and violent options until the nonviolent options (with a reasonable chance of success, on one account) have been exhausted. Again consider non-targeted economic sanctions and a limited humanitarian intervention. Suppose those who impose the economic sanctions intend to harm the civilian population with the idea that then the civilians are likely to rebel against and overthrow a horrific dictator who systematically violates the human rights of a minority in his country, thereby achieving a just cause. This would violate the non-combatant immunity requirement if the policy were violent because it requires an intervener to only intentionally target combatants (or those who are liable to defensive harm). But last resort requires imposing these economic sanctions instead

<sup>60</sup> Lazar, "Necessity in Self-Defense and War," 7n9, 10, 12–13, 23, 44.

<sup>61</sup> Seth Lazar, "Necessity and Non-Combatant Immunity," *Review of International Studies* 40, no. 1 (2014): 53, doi:10.1017/S0260210513000053.

<sup>62</sup> Walzer, *Just And Unjust Wars*, 146.

<sup>63</sup> McMahan, *Killing in War*.

<sup>64</sup> Adam Winkler, "Just Sanctions," *Human Rights Quarterly* 21, no. 1 (1999): 133–55, doi:10.1353/hrq.1999.0014; Albert C. Pierce, "Just War Principles and Economic Sanctions," *Ethics & International Affairs* 10 (1996): 99–113, doi:10.1111/j.1747-7093.1996.tb00005.x.

<sup>65</sup> Coates, *The Ethics of War*, 199.

<sup>66</sup> Winkler, "Just Sanctions," 147.

of waging war – even if it violates the non-combatant immunity principle. Violent options can be more discriminate than nonviolent ones in rare circumstances, and thus also undermine last resort.<sup>67</sup>

## Necessity

Necessity can additionally undermine last resort. Necessity is typically viewed a *jus in bello* criterion that holds that only those destructive or harmful actions that are required to achieve a just aim are permissible. Seth Lazar claims “the principle of necessity is defined by its inverse: the infliction of unnecessary suffering is always impermissible.”<sup>68</sup> He provides three criteria that are necessary and jointly sufficient to meet the necessity condition.<sup>69</sup> First, the harms inflicted must further a just cause. Second, the action must be the least harmful one in which the prospects of achieving a just end are equally good. Third, “if there is a less harmful course of action available that is less likely to succeed, then the difference in prospects of success – or effectiveness – must be sufficiently weighty to justify the difference in harm inflicted.”<sup>70</sup> Hurka’s view is similar. He argues the “*necessity* condition forbids acts that cause unnecessary harm, because the same benefits could have been achieved by less harmful means.”<sup>71</sup> Daniel Statman contends that necessity requires selecting the option “less harmful than all these alternative acts.”<sup>72</sup> Notice that these accounts of necessity do not differentiate between liable and innocent individuals. Some, however, do make this distinction. In a separate paper from the one cited above, Seth Lazar argues that a necessary action in war is “one that best contributes to [a just] victory while minimizing nonliable suffering.”<sup>73</sup>

Necessity can conflict with last resort regardless of whether one includes all those harmed in necessity calculations or limits comparisons to those who are fully innocent. Again consider the above hypothetical situation where the violent option resulted in half the number of innocents and liable individuals who were killed compared with the nonviolent option. On either view of necessity, last resort would conflict with necessity because only the violent option is necessary to achieve a just cause, but last resort would require the nonviolent option. Necessity can conflict with last resort because sometimes non-military options can impose a greater number of severe harms (on innocents) than is necessary to achieve a just cause than a military option.

In summary, proportionality, non-combatant immunity, and necessity all can conflict with last resort. There are good reasons based on consistency and morality to drop last resort as an independent precept of the just war tradition.

One might object that even if my argument is sound, last resort remains practically important because it provides an important check on policy-makers. If last resort were not part of the criteria of when a resort to force would be permissible, this objection runs, policy makers might use force far more often in ways that result in excess harms to innocents. The first reply to this objection is that it is empirically dubious. I know of no good evidence that supports the hypothesis that policy-makers refrain from using force because of last resort. Even if it were empirically accurate, one would have to show why last resort would be *more* of a restraint on policy-makers than other just war precepts. If last resort has an influence on policy makers,

<sup>67</sup> Coates, *The Ethics of War*, 198.

<sup>68</sup> Lazar, “Necessity and Non-Combatant Immunity,” 56.

<sup>69</sup> Lazar, “Necessity and Non-Combatant Immunity,” 57.

<sup>70</sup> Lazar, “Necessity and Non-Combatant Immunity,” 57.

<sup>71</sup> Hurka, “Proportionality and Necessity,” 128 (*italics in original*).

<sup>72</sup> Daniel Statman, “Can Wars Be Fought Justly? The Necessity Condition Put to the Test,” *Journal of Moral Philosophy* 8, no. 3 (2011): 436, doi:10.1163/174552411X591357.

<sup>73</sup> Lazar, “The Responsibility Dilemma for Killing in War,” 208.

then other just war theory precepts would also likely influence them in similar ways. Politicians should still have to justify their actions by showing how their policies meet the other just war theory precepts. Finally, this objector would have to show that jettisoning last resort from the just war tradition would likely result in a greater number of harms to innocents overall even if last resort does place an important check on policy makers' use of force. Suppose that dropping last resort from the tradition did increase the unjustifiable use of force in some circumstances. But also suppose that cutting it resulted in some politicians refraining from imposing unjust nonviolent policies because without last resort in the just war tradition they were more likely to critically examine such policies and therefore refrain from implementing them. Thus even if cutting last resort from just war resulted in policy-makers resorting to the unjust use of force more often and thereby causing a greater number of harms to innocents, it does not follow that therefore last resort should remain in the just war tradition because it could result in fewer innocents being harmed on balance.

## Conclusion

There is no good reason to believe that in order to be morally permissible, war or violence must be a last resort. Last resort should be removed from the just war tradition, because it can require leaders to take unjust policies in some circumstances. Specifically, it can violate the precepts of proportionality, necessity, non-combatant immunity, which cover all the morally important aspects of last resort. Any one of the conflicts between last resort and these other just war theory precepts would weigh against the inclusion of last resort in the just war theory tradition, because harms to innocents are far more important than whether that harm is inflicted violently or nonviolently. The force of my argument is that much stronger because last resort can conflict with all three precepts. Compared with these three principles, last resort provides no additional moral benefit.

Removing last resort from the just war tradition does nothing to weaken the protection of innocents or make wanton killing easier; just the opposite. Expunging last resort from the just war tradition would improve the protection of innocent individuals because it allows important comparisons between harmful violent and nonviolent policies, ones that last resort would otherwise prohibit. The longstanding view that violent policies are always worse than nonviolent ones is wrong. Nonviolent policies are sometimes morally worse than violent ones, and vice versa.

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