

ASSESSING MORAL TRAGEDY PACIFISM*

AVALIANDO O PACIFISMO DA TRAGÉDIA MORAL

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ABSTRACT *Pacifism and just war theory share the same binary approach to analyze the morality of war. According to binarism, any war is either morally justified or morally unjustified and when waging a war is morally unjustified, not waging that war is morally justified. Moral tragedy pacifism, advocated by Nicholas Parkin, argues that while waging war is always morally unjustified, on some occasions not waging war may also be morally unjustified. On those occasions, agents face a moral tragedy, in which there is no morally justified choice, all things considered. In this essay, I present three arguments against moral tragedy pacifism and indirectly in favor of binarism.*

Keywords: *Pacifism. Just war theory. Moral tragedy. War. Moral dilemma.*

RESUMO *O pacifismo e a teoria da guerra justa têm a mesma abordagem binária para analisar a moralidade da guerra. De acordo com o binarismo,*

* Article submitted on: 27/12/2023. Accepted on: 11/09/2024.

qualquer guerra é moralmente justificada ou moralmente injustificada, e quando travar uma guerra é moralmente injustificado, não travar essa guerra é moralmente justificado. O pacifismo da tragédia moral, defendido por Nicholas Parkin, argumenta que, embora travar a guerra seja sempre moralmente injustificado, em algumas ocasiões não travar a guerra também pode ser moralmente injustificado. Nessas ocasiões, os agentes enfrentam uma tragédia moral, na qual não há escolha moralmente justificada, considerando todos os aspectos. Neste ensaio, apresento três argumentos contra o pacifismo da tragédia moral e indiretamente a favor do binarismo.

Palavras-chave: *Pacifismo. Teoria da guerra justa. Tragédia moral. Guerra. Dilema moral.*

I. Introduction

Pacifism is a tradition defined by its moral opposition to war. Within this tradition are included different versions that offer their own moral rationale for opposition to war (Ryan, 2024: chapter 2). There are many ways of reconstructing the tradition and ordering the different versions. The most important separation is usually drawn between absolute pacifism and conditional pacifism (see, Bazargan, 2014; Fiala, 2023). As the name implies, absolute pacifism holds that waging war is *always* a morally impermissible action.¹ Conditional pacifism, on the other hand, claims that war can be morally justified only if certain highly unlikely conditions are satisfied.

Robert L. Holmes argued for a type of conditional pacifism, according to which war could be morally justified only if it meets the condition of not seriously harming or killing innocents.² This type of pacifism has been conceived as the only plausible alternative to just war theory. Thus, the spectrum of possible positions within the debate on the morality of war would consist of: absolute pacifism (which rejects all war), conditional pacifism (which rejects all realistic war) and just war theory.³

1 Absolute pacifism must argue that there is a morally relevant feature present in any phenomenon reasonably characterized as “war” that renders it a morally impermissible action and that cannot be morally defeated by any benefits that war may produce.

2 Holmes (1989).

3 Realism is usually incorporated into this taxonomy. But, technically, realism is not a position on the morality of war (on the possible moral justification of war), but a position that denies that morality applies to the phenomenon of war. For a classic critique of realism, see Walzer (1977, chapter 1).

Some authors argue that it is possible to speak of a “just war pacifism”, which would be a more plausible version of conditional pacifism than the one defended by Holmes.⁴ This seems to be no more than a semantic dispute. Once the conceptual possibility of conditional pacifism is accepted, it remains to discuss what are the conditions that would justify war.⁵ Thus, even the most permissive just war theorist would be a “conditional pacifist,” one who sets conditions much more likely to be met than Holmes.

If a meaningful distinction is to be drawn between conditional pacifism and just war theory that reflects more than a mere semantic dispute, it must be asserted that the conditions of moral permissibility of war are for conditional pacifists of virtually impossible fulfillment (like Holmes’s conditional pacifism).

Despite their differences, pacifists and just war theorists share the same binary approach to analyze the morality of war. According to this binarism, waging war would always be either morally justified or morally unjustified and when waging a war is morally unjustified, not waging that war is morally justified.⁶

Against binarism, Nicholas Parkin has argued for a pacifism centered on the concept of moral tragedy. According to *moral tragedy pacifism* (hereafter MTP), the decision to wage war, given the massive violation of innocent people’s rights it entails, can never be morally justified. However, on exceptional occasions, given the massive violation of innocent people’s rights that could be avoided only by war, not waging war is also morally unjustified. On these exceptional occasions the agents who must decide are faced with a moral tragedy, where there is no morally justified alternative and where they will inevitably act incorrectly. This rejection of binarism puts MTP in opposition to pacifism, absolute and conditional, and just war theory.

In this paper I will argue against MTP and indirectly in favor of binarism. The paper is structured as follows. In section II, I point out the central differences between conditional pacifism and just war theory. MTP partially takes up the

4 The term “just war pacifism” was coined by J. Sterba (1992). In the literature, this type of just war pacifism is often called *contingent pacifism*. Contingent pacifism asserts, unlike conditional pacifism, that the death and harm to innocent people involved in any realistic war can be justified on grounds of proportionality. For a presentation of different versions of contingent pacifism see Bazargan (2014). For a discussion of the differences between conditional pacifism and contingent pacifism see Parkin (2018).

5 This is what Ryan describes as the “demarcation problem” of pacifism and just war theory. Once absolute pacifism is rejected, it is difficult to say what is distinctive about the pacifist position as opposed to just war views that doubt if their standards are ever met (Ryan 2018: 279). Several papers have been published that discuss the reconcilability between pacifism and just war theory; among them, Sterba (1992; 1994), Reitan (1994), Cochran (1996), Neu (2011).

6 It is important to note that, throughout the text I am leaving aside the possibility that there are morally indeterminate wars (that it cannot be fact-relatively determined whether they are morally justified or morally unjustified). Both binarism and MTP work on the basis that this moral indeterminacy does not exist.

criticisms against conditional pacifism that could be made from just war theory. In section III, I present the characteristics of MTP and define the concept of “moral tragedy.” In section IV, I offer three arguments against MTP. In section IV.1, I argue that there is no scale of deaths of innocent people that makes a war tragic in the relevant sense. In section IV.2, I argue that there are two senses of “lesser evil,” a justificatory sense and a non-justificatory sense, and that war admits of a justificatory sense. In section IV.3, I argue that MTP has implausible consequences for the moral status of combatants faced with the decision of whether or not to participate in a tragic war. In section V, I present conclusions.

A preliminary clarification on the focus of the present paper is in order. As will become apparent, this paper is part of what is often called contemporary just war theory. It is safe to say that the debate on contemporary just war theory began with Michael Walzer’s *Just and Unjust Wars* in 1977 (the same year that the first protocols of the Geneva Convention were approved) and continued with the development of revisionist critiques of the Walzerian approach that began to take place in the 1990s, with the work of authors such as Jeff McMahan, Cecile Fabre and David Rodin. This contemporary thematic affiliation does not imply denying that there have been deep and interesting reflections on the morality of war prior to these contemporary debates. To say that this paper is part of so-called contemporary just war theory simply allows the reader to understand it as a contribution to the debate that has occupied the last decades of analytical practical philosophy.

II. Conditional Pacifism and Just War Theory

Parkin presents MTP as a reaction to just war theorists’ critique of conditional pacifism.⁷ Conditional pacifism holds that a war can be morally justified only if it meets the condition of not seriously harming or killing innocents.⁸ This position involves two conceptual compromises. First, it assumes an absolute distinction between action and omission; more specifically, between killing and letting die. According to this distinction, given the choice, the action of killing innocents is lexically worse than letting N number of innocents die by omission. Second, it implies a rejection of the relevance of intention for moral

⁷ Parkin (2014, pp. 631-632; 2019, p. 266).

⁸ This is a necessary but insufficient condition for the moral justification of war. Moreover, war is supposed to be necessary. As is usual in the philosophical literature on the subject, by “war” I mean the act of waging war and not the phenomenon of war itself. For example, the object of moral analysis is P’s action of waging a war against Q (“P’s war”) and not the war between P and Q.

permissibility. For Holmes, it is irrelevant whether an innocent person is killed intentionally or as a merely foreseen side-effect of an action.⁹

Just war theorists recognize that war, insofar as it involves the killing of innocent people, is always morally impermissible in a *pro tanto* sense. However, they claim that, just as we have a duty not to kill innocents we also have a duty (or, at least, a permission) to prevent the killing of innocents when the moral cost of doing so is proportionate.¹⁰ Actions that intentionally or foreseeably cause the death of innocent people can be proportionate and justified as a lesser evil when they are the only means available to prevent the killing of a *significantly* greater number of innocent people (for a defense of the existence of an obligation to pursue the lesser evil option, see Frowe 2018; for a critique of that position but which defends a permission to pursue the lesser evil option, see Gordon-Solmon, 2022).

The lesser-evil justification for violent actions, while recognizing the moral relevance of the consequences of agents' decisions, is not consequentialist.¹¹ For this reason, it is compatible with a distinction between action and omission, characteristic of deontologism. However, unlike conditional pacifism, this distinction must be *non-absolute*, that is, it must recognize that the action of killing innocents is not lexically worse than letting N number of innocents die by omission. Note that this non-absolute distinction is especially plausible when applied to decisions that pose either the choice of killing or the choice of letting different people die.¹²

The lesser evil justification, given that it recognizes that the rights of innocent people are being infringed, is also compatible with a duty of reparation or compensation to those who have been harmed. Of course, war produces many irreparable harms, such as death or very serious damage to physical integrity.

9 Holmes (1989, chapter 6). Although Holmes devotes much of this chapter to discuss the concept of "innocence" for the purposes of this paper it is not necessary to take a position on any particular definition. Within reasonable limits, under whatever definition of innocence is used, it can plausibly be asserted that any realistic war involves the death of innocents. I accept that this is a controversial assumption. I will say more about it below.

10 As Ryan (1983) points out, the debate between pacifists and non-pacifists can be understood in terms of a difference over the requirement of proportionality. For conditional pacifists killing innocents is always disproportionate. This is not to say that preventing the killing of innocent people is morally unimportant, but that it is never important enough to justify the action of killing innocent people as a lesser evil. Although it can justify other violent actions, even harmful actions against innocents, which do not involve death, as a lesser evil.

11 By "consequentialist" I mean any normative theory that states that the moral correctness of an action depends on the maximization of a certain value or set of values.

12 This is different from Rachels' classic analysis to reject the distinction between action and omission in euthanasia. Rachels (1975) compares different scenarios, some including actions and others including omissions that culminate in the death of the same person.

The philosophical literature on the morality of war has focused primarily on the moral correctness of actions within war. It is in this *in bello* realm that authors mostly discuss the application of the lesser evil justification for harming innocents. However, the decision to wage war from the point of view of *jus ad bellum* must inevitably be justified as a lesser evil. This is so for two reasons.¹³

First, in any realistic war (even if waged on one's own territory against an unjust army of occupation) there will be combatants on the unjust side who are innocent, that is, who are not morally responsible for the unjust threats of their side: either because they are epistemically justified in participating in the war, because they have been conscripted, or because they are under coercion. These individuals have not forfeited their right not to be lethally attacked and, therefore, their death can only be justified as a lesser evil when it is the only means available to prevent serious harm or the death of a significantly greater number of innocent people. I admit that this claim may be rejected by those who believe that mere participation in a war (even under conditions of coercion or conscription) implies a sort of moral gamble by combatants on either side and that, for reasons of distributive justice, they are liable to be lethally attacked when their side turns out to be unjust.¹⁴ I believe that the theory of liability underlying this objection has counterintuitive implications and is ultimately wrong. But for those who do not accept the first reason why I claim that any realistic war must be justified as a lesser evil, there is still a second reason.

Second, if it is accepted that there is some degree of responsibility for harm to innocents by the enemy side that would not have occurred if the war (the confrontation between the sides) had not taken place, then such harm must weigh against the proportionality of the war and be justified as a lesser evil. It may be that the moral weight of harm to innocents produced by the enemy side is different from the moral weight of harm to innocents produced by one's

13 Certainly, war as a whole includes defensive harms that may be justified on liability grounds (against persons who lost a right not to be so harmed) and defensive harms that may be justified on lesser evil grounds (against persons who did not lose a right not to be so harmed but that right is justifiably infringed). Since all realistic war involves harm against persons who did not forfeit a right not to be so harmed, when war is assessed from the point of view of *jus ad bellum*, it must be assessed as a lesser evil. To say this does not imply denying the role of justification based on liability. In fact, it is necessary to know the scope of the liability justification of a war (what percentage of defensive harms within that war admit a justification on liability grounds) in order to know the scope of the lesser evil justification (what percentage of defensive harms within that war require justification on lesser evil grounds).

14 Following Lazar's (2010) dilemma of responsibility, I consider that an acceptable interpretation of the idea of moral responsibility must avoid over-inclusion and under-inclusion. An over-inclusive interpretation is one that enables one to consider many non-combatants who have made marginal contributions to an unjust war as liable (a person who has lost his or her right not to be harmed proportionately and necessarily). An under-inclusive interpretation, on the other hand, allows only a small number of persons involved in the unjust aggression to be considered liable, rendering any type of defense practically unjustifiable.

own side.¹⁵ But, even if that were the case, harm to innocents by the opposing side deserves *some* moral weight in the assessment of the proportionality of war from the point of view of *jus ad bellum*. The justification of the harm to innocents that the enemy side will foreseeably impose can only be given on lesser evil grounds. This perspective makes it possible to consider within the evaluation of *jus ad bellum* proportionality the innocent combatants of one's own side who will be harmed. I believe that this is a positive consequence of incorporating into the moral evaluation of the war the harm that the enemy side will produce and that would not occur if the war did not take place.¹⁶

In short, the action of waging war from a *jus ad bellum* perspective can only be justified as a lesser evil, either because our side will (1) intentionally or foreseeably kill innocent noncombatants, (2) kill innocent combatants, and/or (3) contribute to the establishment of conditions for the enemy side to intentionally or foreseeably kill innocent people.

III. Moral tragedy pacifism

War is a resource of difficult moral justification in practice. This is a matter of consensus between pacifists and just war theorists. In fact, the latter have serious problems agreeing on real examples of just war. This should not be surprising. Any realistic war involves massive violation of rights and its consequences are unpredictable.

However, as mentioned in the previous section, just war theorists argue that, exceptionally, war could be justified as a lesser evil. This would occur when it represents the only means to avoid a significantly greater violation of rights.¹⁷ In such exceptional cases, there is a duty towards potential victims to avoid their death in a proportionate manner that defeats the duty not to kill other innocent people. This does not imply that this duty not to kill innocent people, correlative to a right not to be harmed, loses all normative force. On the contrary, it remains a moral evil that is justified as a lesser evil, that generates

¹⁵ Bazargan (2014).

¹⁶ It is possible that harm to innocent combatants on one's own side may be of less moral weight than harm to innocent non-combatants on one's own side. Perhaps, it should be contemplated that the combatants have volunteered to expose themselves to those risks (although, certainly, this does not apply to all cases and the idea of "voluntariness" can be problematized). The point is that harm to innocent combatants deserves *some* consideration in the *jus ad bellum* proportionality of war and that a war in which many innocent combatants are killed is not equivalent in terms of proportionality to one in which few innocent combatants are killed.

¹⁷ Although war involves the massive violation of multiple rights, for the sake of simplicity, from here on I will only refer to the violation of the right to life of innocent people.

duties of reparation towards the victims and that could even enable a permission to lethally resist the infringement of rights by the victims.¹⁸

Just war theorists understand the morality of war in binary terms, either the decision to wage war is morally justified or it is morally unjustified (and not waging war is morally justified). Although the resort to war is normally morally unjustified (because it involves the death of many innocents), it may exceptionally be morally justified as a lesser evil (when it is the only means of preventing the death of a significantly greater number of innocent people). Conditional pacifism also adopts the justified/unjustified binarism but asserts that war is never morally justified (and not waging war is always morally justified), since there is a duty not to kill innocents that cannot be defeated.

Nicholas Parkin argues that this binary way of analyzing the morality of war does not fully represent the tragic dimension of the decision that agents sometimes have to make. For Parkin, the decision to wage war is always morally unjustified, given the number of innocent deaths that war entails. However, he argues that, exceptionally, not waging war is morally unjustified, given the significantly greater number of innocent deaths that could be prevented.

Where just war theorists find a course of action justified as a lesser evil, MTP finds a morally tragic situation in which one will inevitably act wrongly, regardless of the decision taken. In turn, this approach contradicts conditional pacifism, which believes that there is a morally justified option: not waging war.

Several authors have described waging war as a moral tragedy, but in doing so they refer to a different idea than that of MTP.¹⁹ A moral tragedy is a type of moral dilemma composed of particularly horrendous or terrible alternatives.²⁰ A moral dilemma has the following characteristics.

1. The agent has an obligation A (e.g., not to wage a war where innocents will die) and has an obligation B (e.g., to prevent the death of a significantly greater number of innocent people).

¹⁸ Gowans (1994, p. 3) argues that certain morally bad actions, although justified as a lesser evil, leave a moral remainder. On the discussion of the right to resist a justified aggressor see Frowe and Parry (2022, §5).

¹⁹ Among these authors: Nagel (1972), Evans (2005) and Statman (2006). Michael Neu (2011; 2012; 2013) criticizes binarism but does not argue for a tragic position of war as MTP. Neu's critique is of the methodology proper to contemporary just war theory which holds that the only relevant discussion is about the justification of war ignoring or denying the ambiguity, agony, and doubt of moral thinking about war in the real world (2013, p. 475). As Parkin (2019, p. 271) acknowledges, Neu seems to have modified his position more recently and adopted MTP (in Neu, 2017), although perhaps Neu was showing signs of advocating MTP in earlier work (e.g., 2013, p. 462, footnote 4).

²⁰ Parkin (2014, p. 635; 2019, p. 263).

2. The agent may fulfill her/his obligation A (she/he may not wage a war where innocents will die) and she/he may fulfill her/his obligation B (she/he may prevent the death of a significantly greater number of innocent people).
3. The agent cannot fulfill both his obligation A and her/his obligation B: if she/he fulfills A, she/he cannot fulfill B (if she/he does not wage a war where innocents will die, she/he cannot prevent the death of a significantly greater number of innocent people). If she/he fulfills B, she/he cannot fulfill A (if she/he prevents the death of a significantly greater number of innocent people, she/he will not be able not to wage a war where innocents will die).
4. Obligation A does not morally defeat obligation B
5. Obligation B does not morally defeat obligation A

Characteristics 4 and 5 are those that allow us to distinguish a moral dilemma from a simple moral conflict between duties or moral requirements. In a non-dilemmatic moral conflict one moral requirement clearly defeats another (Sinnott-Armstrong, 1988, Chapter 1). For example, in the classic Kantian example, it could be stated that the positive duty to avoid the death of an innocent person defeats the negative duty not to lie to the murderer.

Most authors who describe the decision to wage war as a moral tragedy technically refer to a very difficult moral conflict (one that involves the death of many innocents) but which has a course of action (or omission) that is morally justified as a lesser evil. Christopher Gowans clearly illustrates this idea when he states that “the action that all things considered ought to be done, or may be done, nonetheless has one or more tragic-making characteristics”.²¹

In a moral dilemma, the agent will inevitably act in violation of a moral obligation that has not been defeated and, consequently, will act unjustifiably. There are decisions in which there does not appear to be a right answer, *all things considered*. An example of such a decision is faced by the protagonist of *Sophie's Choice*, who must, when faced with the order of a Nazi official, either send one of her two sons to the gas chamber or refuse to choose and condemn both to death. This is a moral tragedy, a dilemma in which the choices are especially horrifying, in which it is not clear that there is an alternative that morally defeats the other and justifies any decision. Theoretical proposals that, like consequentialism or Kantian deontology, deny the existence of moral dilemmas, must confront this type of cases that seem intuitively dilemmatic.

21 Gowans (1994, p. 226).

MTP asserts that the decision to wage war is either clearly unjustified or tragic. When war is presented as the only available recourse to prevent the death of a significantly greater number of innocent people than we would cause by waging war, according to MTP, we are faced with two incompatible moral requirements, and neither defeats the other. On the one hand, there is a duty not to kill innocents and, on the other hand, a duty to prevent the death of a significantly greater number of innocent people.

For Parkin, both options (waging a war in which many innocents will die and not preventing the death of a significantly greater number of innocent people by waging war) present a degree of intrinsic immorality such that neither of them can be morally justified. For this reason, we will inevitably act in a morally unjustified way by violating undefeated moral demands.

The binarism proper to just war theory and conditional pacifism cannot capture this tragic dimension of the decision to wage war, in which it is not permissible to wage war (because we will cause the death of many innocents) but neither is it permissible not to wage war (because we refrain from preventing the death of a significantly greater number of innocent people).

In what follows, I will present three arguments against MTP. First, three clarifications are in order. First, I start with the recognition that the idea of moral tragedy is conceptually plausible. I will not deny that there may be dilemmatic situations in which there is no course of action (or omission) that morally defeats another and in which all alternatives are especially terrible. Denying the conceptual plausibility of dilemmas is a simpler way to reject MTP but less promising for two reasons: (1) as we saw with the *Sophie's Choice* example, there are decisions that seem intuitively dilemmatic and (2) war is popularly perceived as a particularly tragic phenomenon and the decision to wage war is portrayed in historical novels, series, and movies as an instance in which there seems to be no clearly correct answer. To deny the existence of moral dilemmas without attending to the specific case of war would imply disregarding the intuitive power of MTP and the appeal of discussing it. Therefore, my aim will be to acknowledge the conceptual plausibility of the idea of moral tragedy as conceived by MTP but to deny that it can be applied to the decision whether or not to wage war.

Second, I will not focus on the discussion about the excusability of agents acting in tragic situations. Parkin devotes part of his work to analyze the moral culpability of people who are faced with a situation in which they have no morally justified option to choose from. Here, I will only deal with moral justification, which is a category that implies a moral evaluation of the actions of the agents and not of the agents (Reitan, 2002, pp. 445-446).

Third, I will adopt, like Parkin, an objectivist position on the possible tragic character of the decision to wage war. Whether such a decision may indeed involve two incompatible and morally unjustified choices will depend on the objective force of the moral requirements instantiated in such choices and not on the belief, opinion or feelings of the agents in a position to decide.²²

IV. Arguments against MTP

IV.1 The problem of scale

Conditional pacifism holds that there is a presumption against the act of killing innocents that cannot be defeated. Killing innocents is an intrinsically and absolutely immoral act. This position assumes an absolute distinction between action and omission that is difficult to sustain. Intuitively, there is at least a permission to kill an innocent person if it is the only means available to prevent the death of many other innocents.²³ On this intuition rests the classic trolley case. Redirecting the trolley, killing an innocent person, is *pro tanto* morally impermissible. Such a person has done nothing to forfeit his right not to be harmed and there is a *pro tanto* duty not to kill him. However, it is usually recognized that such a *pro tanto* duty can be defeated by another *pro tanto* duty to save many people when it can be done by incurring a proportionate moral cost. Thus, there is a duty or, at least, permission, *all things considered*, to redirect the trolley.²⁴

Part of the intuitive force of the example seems to lie in the *manner* in which the rights of the innocent person are infringed, namely, unintentionally and non-opportunistically. It is the absence of these characteristics that mostly leads to the opposite conclusion in cases such as the forced transplant or

22 Parkin (2014, p. 637). This is what Derek Parfit calls a fact-relative perspective (as opposed to evidence-relative or belief-relative perspectives). According to the fact-relative perspective, moral justification depends on certain moral facts and not on the evidence or belief that agents have about those facts (Parfit, 2011, pp. 150-162). For MTP, waging war is always morally unjustified from a fact-relative perspective and not waging some wars is also morally unjustified from a fact-relative perspective.

23 Holmes does not address isolated cases in which killing one innocent person can save many innocents. His aim is to discuss the death of many innocents that takes place in realistic wars. However, he accepts that there may be cases outside of war where the death of innocents is justified (1989, p. 212). The trolley case I mention below is the most intuitive illustration of that possibility.

24 If it is accepted that the trolley case gives rise to a permission to redirect the trolley, then the agent has two morally permissible options: to redirect the trolley and not to redirect the trolley. This would not be a dilemmatic case, since there is at least one morally permissible option. Analogously, just war theory can present the conditions under which there emerges a mere permission to wage war (and not a duty to do so). In that case, there would be two morally permissible options (to wage war and not to do so). MTP denies this by asserting that there is neither a permission to wage war nor a permission not to do so. That is the tragic nature of war. On the duty to wage permissible wars, see Oberman (2015).

the man we can push onto the tracks to prevent the trolley from killing 5 innocent people. This does not imply that the distinction between intentional/unintentional and opportunistic/eliminationist harm is absolute, such that it might justify the unintentional death of an innocent P to prevent the death of many other innocents, but never the intentional death of P for that same purpose. Such an absolute distinction would be as implausible as the absolute distinction between action and omission proposed by conditional pacifism.

However, the action of intentionally and/or opportunistically attacking the right to life of an innocent person seems to require, in order to be morally justified, compliance with a more demanding criterion of proportionality than the same attack carried out in a merely foreseen or eliminatory manner.

MTP does not deny that one innocent person can justifiably be killed to prevent the deaths of significantly more innocent people. Parkin argues that it is the massive *scale* of innocent deaths that makes waging war always a morally unjustified choice.²⁵

Undoubtedly, the mass death of innocents is considerably more difficult to justify morally than the unintentional death of an innocent person in the trolley case. But why does the mass death of innocents present such a degree of intrinsic immorality that it could not be justifiable as a lesser evil to prevent the death of a significantly greater number of innocent people? Parkin proposes the following example to illustrate his position.

The moral tragedy solution suggests that in certain cases, all options are tragic and unjustified, even when the consequences of one option are noticeably better than another. For example, imagine a case in which we can only prevent the killing of 1,000,000 innocents by killing 100,000 innocents. Even if we hold that letting 1,000,000 innocents be killed is worse than killing 100,000 innocents, we might nevertheless hold that the situation is a moral tragedy in which there is no morally right course of action to take. The claim is that a good moral system cannot justify the killing of 100,000 innocents to save 1,000,000, since that would not pass whatever threshold is required to justify it.²⁶

In the next section I will return to the idea that one course of action may be “*noticeably better than another*” but still morally unjustified mentioned in the quotation. Here I am interested in analyzing the problem of the moral nature of the scale of harm caused. For Parkin, the killing (intentional or unintentional) of

25 Parkin (2014, p. 631) argues: “The sort of anti-war pacifist argument I have in mind is non-absolute; it holds that modern war very commonly, or perhaps even inevitably, involves harm to innocent persons on a scale that is too great to be justified.” The importance of scale is taken up in Parkin (2019, p. 266).

26 Parkin (2014, p. 646).

100,000 innocents cannot be justified by any good moral system since it would violate any threshold of justification. This can be interpreted in two ways.

Parkin may mean that killing 100,000 innocent people is a disproportionate moral cost to avoid the death of 1,000,000 and therefore does not represent a lesser evil. However, this would not be a morally tragic situation: there is a morally forbidden option (the disproportionate action of killing 100,000 innocent people) and a morally obligatory option (that of not killing 100,000 innocent people and letting 1,000,000 die).²⁷ Certainly, considering the consequences of each alternative, it is a difficult moral decision, but it is not dilemmatic. The harm to be prevented would not be sufficiently greater than the harm the agent would cause and, consequently, does not justify violating the right to life of 100,000 innocents as a lesser evil. The lesser evil justification for actions that infringe rights is binary in nature: either action X is justified as a lesser evil (and rights would be infringed) or action X is not justified as a lesser evil (and rights would be violated).²⁸ Note that considerations could be incorporated into the proportionality analysis that could modify the conclusion regarding the lesser evil character of a specific course of action. For example, it might be morally relevant that special duties are owed to the persons whose death is to be prevented (they could be fellow citizens, colleagues, or subjects of a regime that the agent directs). Also, as we have seen, the intentional/unintentional distinction could make it possible to justify, as proportionate, the unintentional death of 100,000 innocent people as a lesser evil, but condemn, as disproportionate, the intentional death of those same people. The discussion on the acceptability of these considerations in the proportionality analysis starts by recognizing the binarism: either one option is justified as a lesser evil, and is obligatory (or, at least, permissible), or it is not, and is prohibited.

Parkin is not attempting to engage in a binary analysis of proportionality. He is attempting to present a tragic case in which the options available to the agent are both morally unjustified and neither defeats the other as the lesser evil.

27 For the sake of simplicity, and because Parkin does not dwell on this issue, I have not raised the question of the special duty a state may have towards innocent people it might save by war. These special duties impact on the proportionality assessment of a war. So even on MTP, a war that would be merely unjustified (perhaps in the context of a humanitarian intervention) would be tragic if it prevented the deaths of innocent people towards whom one has a special duty to protect (presumably the citizens of one's own state in the context of external aggression). I am grateful to an anonymous *Kriterion* referee for raising this concern.

28 This distinction between infringement and violation of rights I take up from McMahan (2009, p. 10). Parkin, as an advocate of MTP, believes that the death of 100,000 innocent people can never be justified as a lesser evil and therefore always constitutes a violation of rights (2019, p. 269). This does not necessarily imply that McMahan's distinction is meaningless. Perhaps, causing the death of 100,000 innocent people always constitutes a violation of rights, but causing the death of one innocent person (or a small number of innocent people) could be justified and be a case of infringement. For the reasons I state in this section, this position is unjustified.

Let us focus on Parkin's assertion that the option of killing 100,000 innocents does not meet an acceptable threshold of justification. As we saw, this should not be understood in a comparative sense. Parkin is not claiming that the death of 100,000 innocents does not satisfy an acceptable threshold of justification because it does not prevent a sufficiently greater harm. Otherwise, it would not be a tragic decision, there would be a morally justified choice (to let 1,000,000 die).

Parkin argues that the death of 100,000 innocents represents such a scale of harm that it renders the option intrinsically and absolutely unjustifiable regardless of the harm that can be prevented. Consequently, it never admits justification as a lesser evil.

MTP could be understood as "threshold pacifism." When an action involves a number N of innocent deaths that exceeds a certain threshold, the action is morally unjustified, *all things considered*. It could be that the death of N innocents is the only means available to avoid the death of many other innocents. In that case, one would be in the presence of a tragic decision: acting is unjustified (because it implies the death of N innocents above the threshold) and not acting is also unjustified (because it implies not preventing the death of a significantly greater number of innocent people). Inevitably, one will act unjustifiably, violating an undefeated moral requirement. In other words, due to the scale of the harm both options are morally *on par*.

Theoretical proposals that appeal to the idea of a threshold are often criticized for the arbitrariness of the threshold. It seems impossible to determine in a justified, i.e., *non-ad hoc*, manner an instance within a continuum from which a decisive normative change would occur that would necessarily render actions beyond the threshold unjustifiable and actions prior to the threshold justifiable. I find these kinds of objections unsatisfactory. The fact that one cannot precisely determine the point within a continuum from which a decisive normative change occurs does not imply that such a change does not occur. There may be clear cases of instances above the threshold and below the threshold, in between which only a "gray zone" can be established. In any case, the task of those who make use of the threshold idea is to reasonably reduce that gray zone and, correlatively, to widen the range of clear cases. But it seems unjustified to condemn the use of the threshold idea just because it cannot offer a precision alien to the phenomenon of morality. For this reason, I will not insist on this line of criticism.²⁹

²⁹ I agree with Neu (2013, pp. 469-470) in his critique of proposals within the just war tradition that seek this unreasonable level of precision.

The problem with MTP is not the lack of precision in establishing a threshold beyond which certain types of actions would be unjustified, but the idea that such a threshold may exist. In other words, the problem with MTP is that it asserts that at some point a decisive normative change occurs by virtue of the scale of the harm caused.

If it is accepted that it is possible to justify the killing of one innocent person to prevent the killing of a significantly larger number of innocent people, why couldn't the killing of 100,000 innocent people be justified to prevent the killing of a *significantly* larger number of innocent people?

The first argument against MTP on this issue is based on a counterexample. Imagine a war that will involve the total death of 100,000 innocents, but that does not include any particular *in bello* act of killing innocents that would not be justified as a lesser evil in normal contexts. In this war, the total death of 100,000 innocents can be disaggregated into 100,000 cases of unintentional killing of one innocent person to prevent the killing of 10 innocents. If each of these cases of unintentional killing of one innocent person is justified *in bello* to prevent the killing of 10 innocent people, then the total death of 100,000 innocent people would be justified *in bello* to prevent the killing of 1,000,000 innocent people.

Arguably, the decision that matters to MTP is that of the scope of *jus ad bellum*. Certainly, pacifists focus primarily on the conditions that justify recourse to war and not on the actions that take place once the war has begun. Now, an agent P who has perfect information and knows that the war he decides to wage will involve 100,000 individual acts of lesser evil to avoid the killing of 1,000,000 innocents is in no morally different condition from a *jus ad bellum* perspective than an agent Q who knows that the war he decides to wage will involve the total death of 100,000 innocents, but will allow the killing of 1,000,000 to be prevented. The only difference is that P knows how each innocent death will occur and Q knows only that a total of 100,000 dead innocents will occur. If P's decision to wage war is justified, and there is no reason not to opt for an alternative composed of individually justified actions, Q's decision must also be justified. Note that this counterexample does not deny that epistemic factors are morally relevant. It simply shows that the scale of innocent deaths in a war is not by itself a factor that allows a war to be considered tragic in the relevant sense. Such innocent deaths can be justifiably produced (each as a lesser evil) at the level of *jus in bello*.

The second argument seeks to respond to a possible reply from MTP. It could be argued that the proportionality of rights-violating acts does not represent a linear function. While the killing of one innocent person could be

justified as a lesser evil when it is the only means available to prevent the killing of 10 innocent people, this does not imply that the killing of 2 innocent people is justified as a lesser evil to prevent the killing of 20 innocent people. Perhaps, the killing of 2 innocent people requires, in order to be proportionate, that the harm to be prevented be much greater than twice what justifies the killing of one innocent person. If this idea is feasible, justifying the killing of 100,000 innocent people as a lesser evil might be impossible in practice. There would not be a sufficiently large number of people whose death could be prevented that would justify the killing of 100,000 innocent people as a lesser evil.³⁰

Note that this position does not justify MTP. It is not only the very nature of the scale of innocent deaths that makes such an option unjustifiable, but the absence of a sufficiently large number of deaths to be prevented. In fact, in the absence of that number of deaths to be prevented that would justify as a lesser evil the option involving the killing of 100,000 innocents, there is a morally justified option, namely, not to kill 100,000 innocents. For this reason, a tragic situation does not arise.

However, I believe that the proposal that interprets the proportionality of the lesser evil justification as a nonlinear function when dealing with a disjunction between deaths produced or deaths prevented is not acceptable. If the 5 innocent people whose deaths can be prevented by redirecting the trolley have a right to be saved when the moral cost is the unintended death of one innocent person, *ceteris paribus*, 10 people have a right to be saved when the moral cost of doing so is the unintended death of two innocent people.

I recognize that in practice (not in these highly artificial trolley cases) opting for a course of action that will cause the unintended killing of 100,000 innocents in order to prevent the death of 1,000,000 is harder to justify than opting for a course of action that will cause the unintended killing of one innocent person in order to prevent the death of 5. But that is because of the epistemic difficulties that often accompany the kind of decisions that involve the potential death of thousands of people. The decision to wage war is infinitely more morally risky than the decision to redirect the trolley. War is, as pacifists have incessantly pointed out, an unpredictable resource that involves an inevitable risk of spiraling violence and its medium- and long-term consequences are unfathomable. The scale of innocent deaths could function as a proxy for the moral risks involved in certain decisions, but it is

30 Of course, assuming that those 100,000 people will only die if we choose to act. The conclusion would be different if those people will die regardless of which option is chosen.

not a decisive variable in itself, such as to justify a threshold beyond which it becomes unjustifiable.

IV.2 Confusion between two senses of lesser evil

Parkin takes up a distinction made by Martha Nussbaum between obvious questions and tragic questions.³¹ The tragic question is, in the authors' opinion, a priority question and consists in defining whether or not a given decision is dilemmatic. In other words, whether it is possible for the agent to opt for a morally justified course of action *all things considered* or not. The obvious question is what the agent should do, regardless of whether or not he has a morally justified option.

If a certain decision is recognized as tragic (as MTP argues about the decision to wage certain wars), does the obvious question make sense? Parkin believes that even if two courses of action are morally unjustified that does not mean that they are equally bad. Between two unjustified courses of action, one may be "less bad" than another. Let us return to Parkin's example of causing the deaths of 100,000 innocent people. Parkin argues as follows.

The tragedy is not resolved just because one option is in some sense preferable to another. Neither action can be justified if they are both highly unjustifiable, even if one has "less bad" consequences than the other. In such a scenario, an agent might be compelled to elect one action over another but would not be justified in doing so.³²

Undoubtedly, the idea that there can be degrees of moral impermissibility between impermissible options is reasonable. For example, if a murderer tries to kill me and can choose to do so painlessly or very painfully, even though both options are unjustified (I have done nothing to forfeit my right to life and the murderer is not appealing to a lesser-evil justification for killing me), one is more impermissible than the other. Arguably, one action (killing me painlessly) is "less evil" than another (killing me in a very painful way), even though both are morally unjustified.³³ This understanding of impermissibility seems sensible to me, and MTP seeks to apply it to the tragic decision to wage war. Perhaps, killing 100,000 innocents is "less bad" than letting 1,000,000 innocents die, but it is not justified as a lesser evil.

Obviously, for those who adopt binarism, this way of understanding war makes no sense. The decision to wage war is either justified as a lesser evil, in

31 Nussbaum (2000). This distinction is also taken up by Neu (2011; 2012; 2013).

32 Parkin (2014, pp. 646-647).

33 Parkin (2014, p. 635).

which case there is a duty or at least permission to wage it, or it is not justified as a lesser evil, in which case there is a duty not to wage it. In the previous section, I criticized the idea that there are a number of innocents whose death is intrinsically and absolutely unjustifiable, and thereby indirectly argued in favor of binarism. Here I am interested in offering a second line of indirect argument in favor of binarism by showing that the decision to wage war is not analogous to the decision of the murderer mentioned above.

There is a sense of “lesser evil” in which it can be said that the murderer who unjustly wants to kill me has a duty to choose the “less bad”, painless alternative. According to this sense, which can be called “non-justificatory sense,” it would be morally worse for the murderer to kill me in a very painful way. This sense of “lesser evil” is a synonym for the requirement of necessity, according to which the least harmful means must be chosen to obtain a certain end. Of course, this requirement is insufficient to justify an action because, even if the means is the least harmful available the end may be unjust (as in the case of the murderer who aims to kill me) or because the least harmful option may be disproportionate to a just end (for example, when to prevent the theft of a purse I decide to kill the assailant painlessly and not in a very painful way). However, it is reasonable to say that if a murderer is going to kill me, he has a duty to do so painlessly.

In the debate on the morality of violence, the idea of “lesser evil” is presented not as an isolated requirement of necessity, but as a complete type of justification that presupposes the fulfillment of the requirement of necessity and proportionality. In this second sense, which can be called “justificatory sense”, the murderer’s decision to kill me painlessly is not justified as a lesser evil. The violation of my right to life is not the only means to prevent a significantly worse outcome from a moral point of view.

As I understand it, this second justificatory sense of lesser evil does not apply to the murderer’s decision and does apply to the war case for two reasons. First, in the murderer’s case the option of not killing me is presumed to remain available. Arguably, the killer is not justified in killing me painlessly because he has the option not to do so. Consider the following example which does not exhibit this feature.

Bank robbery: Juan has planned a bank robbery with Pedro, an unbalanced and especially irascible person. To pull off the robbery, Juan knows that they must either kill 1 security guard or kill 10 hostages. The plan agreed upon by Juan and Pedro involves killing the security guard. However, in the middle of the robbery, everything goes wrong. Pedro, in a fit of rage, decides that he is

going to kill 10 hostages. Juan knows that the only way to prevent Pedro from killing the hostages is to shoot him, but to do so, he must unintentionally kill the security guard who is positioned in the path of the shot.

Once the plan is initiated and in the face of Pedro's irascible reaction, Juan does not have available a course of action that does not involve the death of an innocent person. That alternative was available in T1, when they decided to initiate the plan. Now, in T2, there is no turning back and Juan must choose between letting 10 hostages die or killing the security guard and Pedro. I think it is plausible to claim that the unintentional death of the security guard and Pedro in T2 can be justified as a lesser evil. This does not imply that, from a global perspective, which also contemplates Juan's decision at T1, Juan should be excused for producing the guard's death. Juan was not justified in T1 in initiating the course of action that resulted in T2. He made that decision freely and competently. Therefore, his action (killing the guard) is not excusable.³⁴ This is compatible with recognizing that he was justified in killing the guard on the basis of a lesser-evil justification, just as any other person (not involved in the robbery plan) would have been justified in the same circumstance as Juan: armed and with no other means to prevent the death of 10 hostages than the one that implies unintentional death of the security guard. In this sense, lesser evil considerations provide agent-neutral reasons for acting.³⁵

The decision to wage war has the same morally relevant feature as the robbery example that is absent in the murderer example, namely, the availability of an option that does not involve the killing of innocents. If such an option were available, the decision to wage war would be impermissible. For example, a political leader might be presented with the following options.

- a) Continue to negotiate peacefully;
- b) Not to continue negotiating and not to wage war (allowing the death of 1,000,000 innocent people);
- c) Not to continue to negotiate and wage war (causing the death of 100,000 innocents but preventing the death of 1,000,000).

34 To use Neu's (2013, p. 462) terminology, Juan's situation is an inauthentic tragedy, because he contributed to causing it in a way that can be described as deliberate, reckless or negligent.

35 In Juan's case, he may also have (as a result of his responsibility in the robbery) special, agent-relative reasons for intervening.

Faced with these options, the leader should opt for option (a). When option (a) is on the menu, *ceteris paribus*, that is the only permissible alternative. Now, if the political leader has decided to cut down the path of peaceful negotiation, cannot return to it and has only options (b) and (c) available to him, he would be justified for reasons of lesser evil to opt for (c). This does not imply that his decision to cut off negotiations in T1 was morally justified, nor that he should be excused for his actions in T2 from a global perspective.³⁶

Second, the lesser evil justification for opting for (c) is given not only by the absence of (a) but also by the fact that the death of 1,000,000 innocents is a significantly greater harm. If waging war would only prevent the death of 200,000 innocents, then it would not be justified as a lesser evil. Similarly, if the option that includes the unintentional death of the security guard in the bank example only allowed the death of 2 hostages to be avoided, then it could not be justified as a lesser evil.

I agree with Parkin when he states that the approach according to which a choice consisting of a less bad action is insufficient to justify it is the standard approach to morality. However, that approach applies to actions that are taken in the context of a situation in which there is a course of action available that does not involve a violation of rights (in which case the violation of rights would be morally unnecessary) and actions that do not prevent significantly greater harm than they produce (in which case the violation of rights would be disproportionate).

That is not the case in the war discussed by Parkin. Therefore, MTP should argue why in the absence of an available course of action that does not involve a violation of rights, the decision to opt for the lesser evil course of action (which prevents a significantly greater harm) would not be morally justified as a lesser evil.

IV.3 The status of tragic combatants

Although Parkin focuses only on the possible excusability of political leaders faced with the tragic decision to wage war, one may wonder about the moral status of combatants facing the decision to participate in a tragic war.³⁷

36 I believe that similar conclusions could be drawn about those political leaders who fail to take preventive measures to avoid escalation to situations like (b) and (c), for example, by funding and promoting nonviolent national defense strategies. In the absence of effective nonviolent defensive options to avoid serious harm, a leader may be justified in waging war as a lesser evil, but that does not justify his refusal to promote and employ nonviolent defensive strategies in the past or excuse him for the innocent deaths that occur in the absence of such techniques.

37 Parkin (2014, pp. 640-644; 2019, pp. 274-276). Historically, there is disagreement among pacifists as to whether or not opposition to war should imply a moral condemnation not only of the authorities who make the decision

According to MTP, there would be no justified (just) wars and, therefore, all combatants would be acting unjustifiably (unjustly).³⁸ However, tragic combatants, those whose political community faces a dilemmatic situation, while acting in violation of an undefeated moral demand (duty not to contribute to the death of many innocents), are also responding to an undefeated moral demand (duty to prevent the death of a larger number of innocents). This makes it possible to distinguish them from the combatants of an unjustified non-tragic side, who are not responding to any undefeated moral requirement.³⁹

Now, tragic combatants who decide not to participate in the war are in the same moral position as tragic combatants who decide to participate in the war. Both violate an undefeated moral demand and respond to an undefeated moral demand, only in exactly opposite ways. Is this the correct position? Binarism seems to be closer to the reasonable answer.

Regular combatants have the obligation to participate in morally justified wars and the obligation not to participate in morally unjustified wars. In the case of conditional pacifism, combatants have an obligation not to engage in any realistic war. From this perspective, the role played by combatants *qua* combatants is not justified.⁴⁰

Just war theory admits that there can be morally justified realistic wars and that regular combatants must participate in them when demanded by a legitimate authority (see Estlund, 2007; Renzo, 2019; Venezia; Sánchez Brígido, 2022). Faced with this demand, the moral position of a combatant who decides not to participate in the war is not identical to the moral position of a combatant who decides to participate in the war. Regular combatants have a special duty and not merely permission to respond to the order to fight in a justified war. This is what distinguishes a regular combatant from an ordinary citizen, who is under no obligation to enlist in any justified war.

to wage war but also of soldiers and civilians who contribute to war in varying degrees. Sometimes pacifists regard soldiers as victims of state power (see Fiala; Kling, 2023, p. 27). But one can also find positions that emphasize the moral responsibility of soldiers (Ryan, 2011).

38 For the distinction between justice and justification, Neu (2012).

39 For reasons of expository simplicity, I am leaving aside agent-relative and lesser-evil considerations that a combatant might have for engaging in an unjustified war and for not engaging in a justified war. For a discussion of these considerations, see Steinhoff (2016). Here I stick to the schematism of the traditionalist and revisionist approaches to just war theory that Steinhoff rightly criticizes.

40 Even if one believes that morally justified realistic wars can exist, one can reject the permissibility of the establishment of a regular army because of the moral costs involved (Dobos, 2020). If one believes that morally justified realistic wars cannot exist, then the discussion on the permissibility of the establishment of a regular army is (almost) closed from the beginning.

The problem is that for MTP, as for conditional pacifism, all realistic war is unjustified and, exceptionally, not fighting some wars may also be unjustified. MTP has two alternatives.

First, to accept that when faced with a tragic war (the product of a tragic decision) regular combatants have a duty to fight *all things considered* if demanded by a legitimate authority. But if so, then tragic combatants would not be faced with a tragic decision. They have a morally obligatory choice: to participate in a morally unjustified war.

Second, MTP could consistently assert that any decision the combatants make will be morally unjustified. Subsequently, given the tragic nature of their decision they may be subject to an excuse for having made the decision they made. But if this is so, the order to wage this tragic war that the authority issues to the combatants and the very function of a regular army responding to civilian control of the population lacks moral weight. In this way, MTP morally equates the decision of the tragic combatant P who obeys the decision of the legitimate authority to wage a war and the decision of the tragic combatant Q who, under the same conditions, decides not to obey it; regardless of the commitments previously assumed by both combatants with that legitimate authority and the members of their political community. This equalization is unacceptable. Even if one believes, as I believe, that combatants should not blindly obey the orders of the political authority and should evaluate the justification of any war in which they are command to participate, the decision to participate in the war is either justified or unjustified (in light of this critical evaluation made by the combatant and the order issued by the authority).

V. Concluding remarks

Parkin articulates an interesting and intuitively appealing proposal different from classical (absolute and conditional) pacifism and just war theory. In fact, MTP is a type of non-absolute pacifism that does not collapse into just war theory and avoids the so-called “demarcation problem.” However, to achieve this it must reject binarism. This rejection of binarism brings problems that must lead us to reject MTP. In this paper I showed that there is no scale of deaths of innocent people from which it makes sense to claim that war is tragic and not simply morally unjustified or justified as a lesser evil. I also argued that while there is a non-justificatory sense of lesser evil according to which one option being less bad than another does not make it permissible, in cases where there is no option that does not involve the death of innocents, choosing the option that involves the death of innocents in order to prevent the death of

a significantly greater number of innocent people can be justified as a lesser evil (this is the justificatory sense of lesser evil). Finally, I argued that MTP has implausible consequences regarding the status of soldiers faced with the decision of whether or not to participate in a tragic war. Either the combatants have a duty, all things considered, to participate in the war (in which case, they would not be faced with a moral dilemma and would not be tragic combatants) or they are tragic combatants and the order to fight in that war issued by a legitimate authority lacks moral weight.⁴¹

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41 This work was supported by a doctoral fellowship from the Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET - Argentina). I would like to thank the members of the SADAF WIP group on self-defense and war who greatly enriched an initial draft with their comments (Alejandro Chehtman, Eduardo Rivera López, Marcelo Ferrante, Mercedes Cavallo, Leandro Dias and Luciano Venezia) and the two anonymous reviewers from *Kriterion*.

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