



Jus ad Bellum and Jus in Bello: Neo-Orthodoxy in the Morality of War

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Abstract

The difference between jus ad bellum and jus in bello has been a central point of the evaluation of the morality and the legality of war in international law. Over the past few decades, though, revisionist just war theorists have challenged this conservative paradigm, arguing that there is a lack of distinction between the justice of the recourse to war and the justice of the actions in war. The present paper focuses on the neo-orthodox approach to these issues by critically reviewing two works by Yitzhak Benbaji and Daniel Statman on the War by Agreement and by Arthur Ripstein on Kant and the Law of War. The work aims to evaluate the way in which these works justify the traditional convention of war and the legitimacy of laws of war to be morally independent. The paper will examine their contractarian and Kantian foundations through the qualitative doctrinal and comparative methodology, addressing the problem of national defense, the moral equality of combatants, and the Issue of the connection between morality and positive law. The results indicate that these two authors manage to reestablish the unique morality of war and present varied theoretical defenses, which increase the traditional just war template against the revisionist arguments.

I. Introduction

Moral and legal analysis of war has been one of the most long-standing and debatable questions of both international law and political philosophy (Lieblich, 2021). Armed conflict is organized violence, massive human victimization, and the disruption of normal social interactions. But in the destructive nature of this phenomenon, war has been traditionally normatively regulated both in a moral and legal context. In this tradition, the difference between *jus ad bellum*, the justice of going to war, and *jus in bello*, the justice of war conduct, has played a leading role (Muggah, 2023). The two principles combined comprise the essence of what is generally known as Just War theory, which attempts to balance the war conditions with ethical limitations and the law. This bifurcated framework is manifested in international law in the distinction between the rules of the use of force contained in the United Nations Charter and the laws of armed conflict, specifically the international humanitarian law contained in the Geneva Conventions. The philosophical difference has been most effectively stated in the orthodox or traditional Just War doctrine, especially the work of Michael Walzer in *Just and Unjust Wars* (Cahill, 2024). The work by Walzer rekindled moral concern about war because it based the judgment of armed conflict on common conventions, practice, and legal norms, as opposed to abstract moral idealism. This school of thought argues that wars can be unjust in their cause, but just in their manner, and the other way round, a war fought in a just cause can have unjust ways (van Ark, 2020). This distinction permits the moral equivalence of combatants and the protection purpose of the laws of war, especially to civilians and prisoners of war.

Nonetheless, in recent decades, this orthodox system has been under constant criticism by a circle of researchers, often known as revivalist, just war theorists. Moral thinkers like Jeff McMahan have criticized the moral consistency of separating *jus ad bellum* and *jus in bello*, saying that the morality of individual killing during war is not immune to the justice of the cause in which the war is waged (Cebula, 2020). In this sense, the war fighters who are fighting an unjust war are not morally authorized to kill, even though they adhere to all the established rules of the armed conflict (Watkins, 2020). Revisionists focus on personal moral responsibility, continuity between civilian morality and military morality, and the importance of human basic rights over customary rules of law. This revisionist twist has brought far-reaching changes in the problem of the morality of war nowadays. Revisionists challenge the idea that the current legal systems are a true expression of moral truth or simply a pragmatic compromise that aims to regulate violence by concentrating on what certain people have termed the deep morality of war.

Consequently, the classical principles like the ethical equality of war participants, the validity of the state authority loyalty, and the autonomy of the laws of war have been brought to a severe philosophical question (Fleck, 2021). These arguments are not simply hypothetical; they have far-reaching to the international law, military morality, and the authority of state violence. It is against this context that there has been an increasing range of scholarship in the attempt to justify the traditional war convention against revisionist attacks. The most visible of the neo-orthodox reactions were the works of Yitzhak Benbaji and Daniel Statman, which dealt with the topic of War by Agreement, as well as the work of Arthur Ripstein, which focused on Kant and the Law of War. Despite being based on different schools of thought, namely, contractarianism and the Kantian legal philosophy, both texts pursue the same goal, that is, to reestablish the moral and legal independence of the laws of war and to oppose the process of transforming the morality of war into the subjective morality of the individual. The book War by Agreement by Benbaji and Statman evolves the contractarian explanation of the righteousness of war on the premise that the norms of war are based on an advantageous and agreeable agreement between states and individuals. In their opinion, it is the moral authority of individuals and states to forgo some of the pre-contractual rights by means of engaging in a just enough legal system. The law of war, in its principle of the moral equality of combatants, is thereby no longer justified as a manifestation of any profound moral fact, but as an institutional regulation, organizing the rights and obligations in an international order which is only just minimally (Von Arnould, 2021). This methodology highlights the key importance of legal conventions and role-bound functions and the practical need of keeping the norms stable in the circumstances of international anarchy. In contrast, Arthur Ripstein's Kant and the Law of War offers a Kantian reconstruction of the morality of war grounded in the public nature of the state and the centrality of peace as a normative ideal. Ripstein has denied the revisionist as well as the traditional instrumental understandings of war, viewing wars rather as a state of barbarism which should be tamed by ideas that enable peace. To Ripstein, laws of war have not been made through agreement or consent, but they are consequences of the moral imperatives of public right (Ripstein, 2022). The rules of *jus in bello* are prohibitory in nature, and they serve to control actions in a manner that will leave the state of war open to exit. Ripstein comes to a unique place in his framework on the topics of national defense, state sovereignty, and the morality of combatants (Parish, 2025).

Though both criticize the revisionist theory, Benbaji and Statman, on the one hand, and Ripstein, on the other one find many differences in their theoretical premises and

conclusions(Benbaji & Statman, 2022). Such distinctions are most noticeable in how they approach jus ad bellum or the right to national self-defense and in their approach to the moral equality of combatants. Although both authors state that national defense is the only just cause of war, they support this argument using various ethical arguments(Rathbun & Stein, 2020). Likewise, as they both justify the distinction between jus ad bellum and jus in bellum, they

Give conflicting reasons as to why those fighting on the unjust side of a warist not to be condemned or punished. The current body of work on war morality has focused much on the revisionist challenge and the traditionalist reaction, but there are still a number of shortcomings(Chan, 2021). To start with, the debate has been polarized so extensively between the individualist moral philosophy and conventionalist legal theory that little attention has been given to the institutional and public law perspectives. Second, as much as both War by Agreement and Kant and the Law of War have been individually discussed, there are fewer studies that have been conducted to compare the approaches of the two studies systematically. Third, the current debates tend to be confined to questions, that is, humanitarian intervention or the morality of killing, without putting such debates in the context of the larger system of international law and popular authority. Additionally, the connection between morality and positive law is an issue of constant confusion in the literature(Ciulla, 2020). The revisionists tend to view the law of armed conflict as lacking in moral suitability, whereas the traditionalists commonly tend to defend legal norms intuitively or based on historical considerations without thoroughly means of stating the philosophical basis of their arguments. This has led to the lack of completion of understanding the mediation of moral responsibility by legal institutions in war, especially in situations where adherence to legal regulations can be inconsistent with personal responsibility(Pless et al., 2022). The paper is aimed at eliminating those shortcomings by critically and comparatively analyzing the contractarian perspective of Benbaji and Statman and the Kantian perspective of Ripstein. The paper will analyze the internal logic of these works, points of congruence, and points of disagreement as opposed to analyzing them in terms of their opposition to revisionist theory. It addresses the conceptualizations of all the accounts about the connection between morality and law, the justification of national defense as a just cause to go to war, and the moral validity of combatants in unjust wars(Molendijk, 2024). The paper follows a methodological approach of a qualitative and analytical approach to doctrines relying on philosophical writings, legal theory, and commentary provided by other scholars. By placing the War by Agreement and Kant and

the Law of War into the larger context of the Just War theory discussion, the work seeks to explain how the two books are relevant to the current discussion of the *jus ad bellum* and *jus in bello*. The analysis is also interested in the reaction to Ripstein in the edited book *The Public Uses of Coercion and Force* that offers very useful ideas on both the strengths and the limitations of the Kantian approach. The main thesis of the present paper is that Benbaji, Statman, and Ripstein effectively provide a defense of the autonomy of laws of war against revisionism but based on radically different understandings of moral authority and justice and legal duty. Benbaji and Statman focus on mutual benefit, equity, and institutional stability, whereas Ripstein bases the right to war on the population and the regulating ideal of peace. Those differences imply a lot in our perception of obedience, responsibility, and legitimacy in the war situation(Lakoff, 2022).

What is scientifically significant about this study is that it summarizes the two opposing and yet influential approaches to neo-orthodoxy of the morality of war. The paper will raise the level of understanding of the modern debate on Just War by comparing its theoretical premises and practical resolution. It further makes the fact of the relevance of legal institutions in the regulation of armed conflict, despite the moral disagreement and philosophical criticism apparent. To sum it up, the importance of the study is in its effort to explain the conceptual background of *jus ad bellum* and *jus in bello* in the current international law(Van Steenberghe, 2024). By finding out the strengths and weaknesses of neo-orthodoxy in the way it responds to revisionism, the paper aims at furthering the debate on how war can be morally and legally restricted without either falling into the trap of moral absolutism or legal formalism. The fact that this problem is identified, and the purpose of the research is stated, gives a context of how the role of law, morality, and the authority of people in the regulation of armed conflict may be reassessed(Çakmak & Güneysu, 2020).

II. Neo-Orthodox Responses to the Revisionist Challenge in the Morality of War

The problem of the morality of war in the modern era has been dominated by the conflict between the classical Just War theory and the revisionist challenge, which came up in the late twentieth and early twenty-first centuries(Karkour, 2022). The revisionist theorists have doubted the moral consistency of the established war convention, especially the distinction between *jus ad bellum* and *jus in bello*, and the equality of combatants on a moral level. This has been answered by an orthodox neo-orthodox approach, which seeks to protect the normative autonomy of the laws of war, and which offers more powerful philosophical grounds supporting traditional views(Ross, 2022). This part looks at the way

this neo-orthodox response is expressed in the writings of Benbaji, Statman, and Ripstein, in terms of their rejection of the revisionist individualism and their defense of a special morality of war.

A. The Revisionist Challenge and the Crisis of the Traditional War Convention.

The Revisionist Just War theory is initially based on a dissatisfaction with what is considered by the theory as the moral betrayals of the traditional war convention (Kirkpatrick, 2022). The main argument of the revisionist challenge is the assertion that war morality can never be detached in a meaningful sense from the ordinary peacetime morality. Under this perspective, moral rules that apply to self-defense and harm are always applicable in peace or war, and there is no reason to suspend individual moral responsibility just because violence is occurring in an institution or collective context. According to revisionists, the Just War theory, especially as presented by Walzer, is overly based on legal norms and social customs, instead of moral truth. They question the notion that those who are fighting on the wrong cause can ethically be allowed to kill the enemy soldiers who are fighting on a righteous cause (Perez Jr, 2021). Regarding a revisionist view, involvement in an unfair war has a moral parallel to involvement in criminal violence, whether orders are obeyed or laws of waging war are followed. Consequently, the principle of the moral equality of combatants is not accepted as a morally acceptable one. This criticism is applied to the distinction between *jus ad bellum* and *jus in bello*. Revisionists argue that actions of killing in the course of war cannot be morally justified in case the war does not have a just cause, even though it may be within the equal terms of proportionality and discrimination. The traditional division is thus regarded as a legal fiction to alleviate suffering and not as a morally sound distinction. Although revisionists admit that the laws of war can be used to a practical or humanitarian end, they reject the notion that the laws are reflective of what moral reality holds. The revisionist challenge has put the conventional war convention under much stress, causing the question of the moral authority of the current international law structures (Krisch, 2021). When the revisionist arguments are admitted, laws of war run the risk of being lowered to the status of instruments of convenience and not linked to the moral throne. It is on this basis that the neo-orthodox theorists would wish to revive the traditional paradigm, not by disregarding the moral issues as put across by revisionists, but by reconsidering the correlation between morality, law, and institutional power during wartime (McCarthy & Desan, 2023).

B. Contractarian Defense of the Laws of War in War by Agreement

War by Agreement by Benbaji and Statman provides a contractarian answer to the revisionist criticism, basing the morality of war on the form and the role of law institutions (Finlay, 2022). Instead of trying to adapt the laws of war to profound moral principles that govern the behavior of individuals, they say that the morality of war can and should be seen as an institutional morality shaped by a collective consensus and the mutual benefit. The main idea in their argument is that people and states have pre-contractual rights, yet they are also able to obtain the moral power to renounce some rights by becoming members of a sufficiently fair legal system. According to this model, the law is not a morally inert compromise, but a morally effective allocation of rights and responsibilities, which is both fair and mutually advantageous. The laws of war, such as the rules of combatant status and those of acceptable conduct, are justified to the extent that they help to achieve a stable and just international order (Kondowe & Wardoyo, 2025). Benbaji and Statman deny the revisionist difference between the deep morality of war and the positive law of armed conflict. They instead argue that real legal systems can produce real moral obligations where they satisfy the requirements of fairness, reciprocity, and overall compliance. Through the assimilation of social roles in such systems, individuals make role-based commitments that are not necessarily congruent with common-sense moral sentiments (Fukuno, 2026). An example is the soldiers who are expected to stick to their professional obligations when they do not have complete information on whether the war they are fighting is just or not. The logic of contractarians is applied to the case of international relations by the idea of a war contract between states (Gibbs-Kneller et al., 2022). When in minimal just anarchy, states implicitly but not explicitly come up with rules that restrict the application of force and come up with rules that govern the behaviour in case of war. Such rules do not allow some types of violence, but only permit some types of violence, such as defensive war and a legal war. The equality in morality of the combats also appears as a prerequisite of this system, which implies that there are no disparities in permissible and forbidden matters faced by soldiers on either side. Notably, Benbaji and Statman do not argue that the morality of the laws of war is ideal. Instead, they contend that these are the most sensible moral arrangements that can be made in the circumstances of non-ideal conditions (Valentini, 2021). Their explanation of the non-moral responsibility of individual soldiers to independently evaluate the justice of the war, and of the continuing moral relevance of the laws of war in an unjust war, is due to their focus on institutional stability and division of moral labor.

C. C. Ripstein's Kantian Account of War, Law, and Public Right

As much as Ripstein, like the neo-orthodox, is concerned with defending the autonomy of the laws of war, his Kantian model is in stark contrast to the contractarian model (Kramm, 2025). Ripstein dismisses the revisionist version of individualism in Kant and the Law of War, as well as the agreement-based explanations of the morality of war. Rather, he bases the morality of war on the theory of the public right advanced by Kant and the concept of the state as the community of law. To Ripstein, war is a state of barbarism where law is replaced by force as a means of dispute resolution (Fabre, 2021). But, as opposed to the revisionists, he does not find that war can only be judged based on individual moral responsibility. Instead, he reasons that morality cannot be complete without the public legal institution and that the major moral task of war is to do things that leave the chances of peace intact. Peace in this sense does not refer to a purposefulness but is a constitutive principle that defines the proper behavior of war. According to Ripstein, in the accounts of *jus in bello*, the rules are prohibitive. These rules are not permissive to kill but are discouraging to allow war to degenerate into lawless violence (Clapham, 2021). The laws of war preserve the circumstances that are required for a restoration to a state of law by limiting the application of force. It is through this that Ripstein can justify the distinction between *jus ad bellum* and *jus in bello* without supporting the moral equality of combatants as a permission issue. Ripstein believes that defensive war is the only one that can be morally justified because aggression is the imposition of one legal order on another (Ripstein, 2021a). But soldiers who fight against a wrongful cause are not ethically allowed to battle, but, on the contrary, are not allowed to do so. The fact that they can be legally immunized against punishment does not imply that they have been morally sanctioned to act in the way they do, but rather because of the ban on using war as a law enforcement tool. States have no right to penalize enemy soldiers due to their engagement in war, as this will cause a dilution of the independence of legal orders (Ginsburg, 2020). The Kantian system presented by Ripstein, therefore, is a unique defense of the traditional war convention. It upholds the independence of international law and is not subject to mutual benefit or agreement. Simultaneously, it also offers a more challenging vision of morality in comparison to contractarian accounts, which puts war squarely in the context of the larger project of creating and sustaining right in the eyes of the masses between states (Thornton, 2020).

D. Jus in Bello and the Moral Equality of Combatants

The concept of jus in bello takes centre stage in the ethical and legal governance of warfare because it regulates the actions of warfare regardless of the righteousness of the cause in which a war is waged(Ripstein, 2021b). The doctrine of the moral equality of combatants is one of the most debatable sides of it, according to which soldiers on the opposite sides of a war have an equal moral status regarding their involvement in hostilities. This principle has historically enabled combatants to commit acts of war that are legal, but whose morality need not be judged purely on the grounds of the cause of their state(Surber, 2024). Nevertheless, this is heavily disagreed with by the modern revisionist theorists who say that combatants acting on an unjust cause cannot be ethically allowed to kill those who are defending a just cause. In this argument, the neo-orthodox defenses of the moral equality of combatants presented by both Benbaji and Statman in their War by Agreement and by Ripstein in his Kant and the Law of War are based on different theoretical arguments. Benbaji and Statman discuss the problem in terms of a contractarian approach, focusing on the contribution of social rules and institutional roles to the formation of moral permissions in the case of war(Eggert, 2022). They claim that soldiers returning to the generally decent legal and political system will surrender some of the pre-contractual rights and will undertake role-based duties. This is a concession that enables the ethical and legal right to combat, even at a time when the greater justice of the war is disputed. In this view, the moral equal treatment of combatants is justified as a mutually advantageous and just norm, making the functioning of orderly armies possible and the moral

burden put on the individual soldiers less(Lang, 2022). Ripstein, in turn, will provide a Kantian explanation that dismisses the notion that jus in bello regulations provide the right to kill. Rather, he interprets these rules as mostly prohibitions aimed at ensuring that there is the potential for peace. Ripstein also states that war is a state of moral failure, but still, in the state of moral failure, certain actions are forbidden as they are detrimental to the social purpose of peace. Fighters on the wrong side, therefore, have no moral authority to fight, but they are not to be punished just because they are engaged in war(Watkins & Goodwin, 2020). It is based on the principle of international law and not on the morality of equality, but on the position of international law, and states are not allowed to bring to justice enemy soldiers in relation to the acts that they commit in the course of war in an official capacity. Although different, both accounts reach the same conclusion regarding the significance of keeping a clear line between jus ad bellum and jus in bello(Liang, 2021).

They do not subscribe to the revisionist argument that the justice of a war should inform the moral liability of individual soldiers. In such a manner, they do not undermine the practical and normative role of the law of war, specifically its protection of civilians and the control of violence. Loss of the moral equality of combatants as postulated by revisionists may make war a mechanism of moralized punishment, with the personal soldiers responsible for choices that may be out of their epistemic and moral capacities. In this regard, this neo-orthodox stance taken by Benbaji, Statman, and Ripstein strengthens the institutional nature of the *jus in bello*. It stresses the fact that laws of war are not a tool to attribute moral blame, but rather a method of minimizing harm and a means of restoring peace. The equality of the combatants, justified by either a contractarian or Kantian form of the public law, is a fundamental aspect of stability and coherence of the international humanitarian law (Fernández & Varaki, 2024). As these theories base combatant equality on legal positions as opposed to personal morality, they will provide an answer to revisionist criticisms without retreating on the humanitarian objectives of the law of armed conflict.

The following figure presents the conceptual framework used to analyse the moral equality of combatants within the *jus in bello* doctrine.

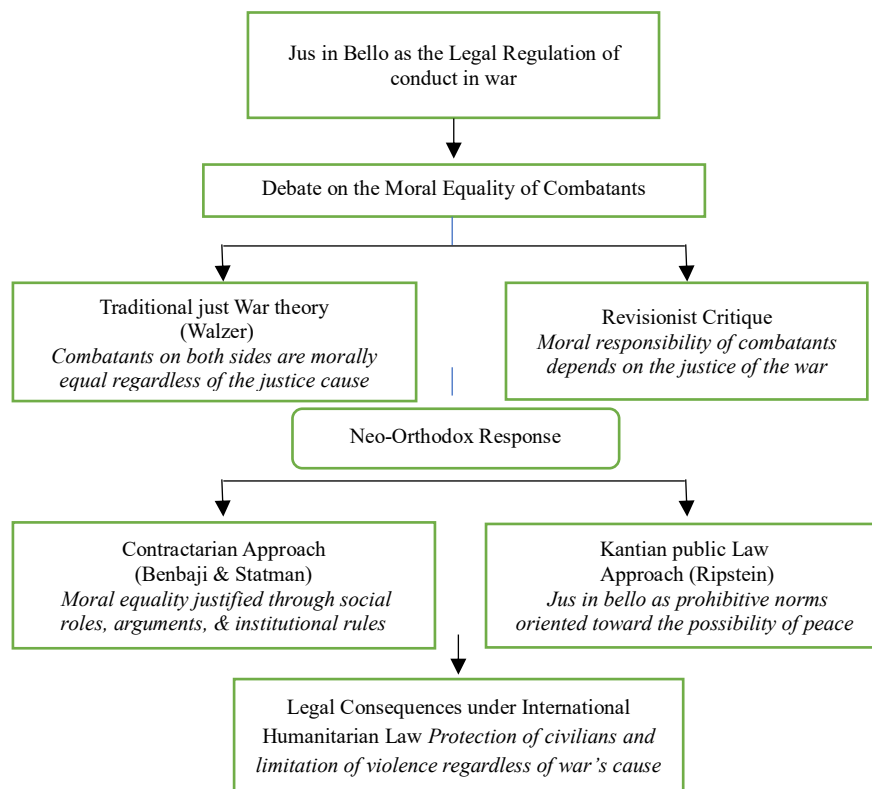


Figure 1. Conceptual Approaches to the Moral Equality of combatants in *jus in Bello*

This framework illustrates the main theoretical positions and their implications for international humanitarian law.

E. Comparative Evaluation and Contribution to the Contemporary Debate on the Morality of War

As the reviews of War by Agreement by Benbaji and Statman and Kant and the Law of War by Ripstein reveal, both works offer very strong neo-orthodox answers to the revisionist challenge in Just War theory. Although they all aim at the concept of safeguarding the autonomy of the laws of war, they vary greatly in terms of their philosophical underpinning, normative focus, and implication toward moral responsibility in warfare. Another point that can be made is that both narratives reject revisionist individualism (Lewis, 2021). Revisionist theorists assess war based mostly on personal moral accountability, and those soldiers who engage in war against an unjust cause do not have the moral authority to kill. Conversely, Benbaji and Statman, as well as Ripstein, focus on the visibility and institutionality of war. They claim that armed conflict is regulated by legal mechanisms, which cannot be brought down to personal ethical expression without compromising the stability and humanitarian role of the laws of war (Benbaji, 2022). The contractarian approach suggested by Benbaji and Statman presents a utilitarian explanation of moral equal treatment of combatants. They justify the reason as to why soldiers are not obliged to exercise independent judgment of the justice of the war they are engaged in by basing wartime morality on mutually advantageous and just legal conventions. Their explanation shows the significance of role-dependent tasks and institutional consistency in upholding adherence to *jus in bello*. Nevertheless, this method can be denounced as overemphasis on the institutional need at the cost of the individual moral agency, especially when dealing with obviously unfair or violent wars (Jackson-Meyer & Cahill, 2025). Ripstein solves this issue with his Kantian approach, where he explains that the morality of war derives its basis from the right of the masses, but not on agreement or consent. His focus on peace as the normative purpose of wartime offers a more rigorous moralism of unjust war without impeding the distinction between *jus ad bellum* and *jus in bello* (Klein, 2020). Ripstein does not support the moral legitimacy of being involved in unjust wars because it requires interpreting *jus in bello* rules in a way that makes them appear as a prohibition, and not permission. However, his model relies on an elaborate Kantian understanding of state power that might prove challenging to reduce to legal advice. All in all, this comparative analysis demonstrates that neo-orthodox Just War theory is still a viable and thought-provoking answer

to revisionist criticisms (Avis, 2024). These strategies will lead to a more realistic and institutionally based concept of armed conflict because they reiterate that war is

distinctively moral and that international humanitarian law is normatively autonomous. The importance of this analysis is that it shows that the law of war has an ethical value even in the unjust wars, which allows keeping its fundamental value to restrain the violence and maintain the peace option (Braun, 2023).

III. Conclusion

This paper has analyzed how *jus in bello* can be applied to the international humanitarian law, with special reference to the doctrine of the moral equality of combatants. It did not have the aim of just reciting the settled rules of law, but instead to evaluate the extent to which the current philosophical discussions need them and whether they undermine them. The study examined the question of whether *jus in bello* and *jus ad bellum* could be morally and legally independent despite revisionist critique and proceeded to do so by analyzing neo-orthodox defenses of the war convention, particularly those defenses put forward by Benbaji, Statman, and Ripstein. The discussion confirms that the international humanitarian law relies on the fact that there is a distinction between the justice of going to war and the justice of behaving in war. Such a distinction is not merely theoretical; it has a practical role in capping violence. Moral equality of combatants' doctrine permits the humanitarian rules to apply equally to both parties and therefore protects the protective aim of the law. In the absence of this principle, the law would be a danger of becoming an exercise of moral judgment as opposed to a structure of alleviating suffering. Notably, moral equality does not mean moral innocence. It is an institutional and legal idea that holds the state and the political level to bear the responsibility instead of being in the hands of individual soldiers. The contractarian approach of Benbaji and Statman, as well as the Kantian approach of Ripstein on the law of public, supports this point of view, but on different grounds. Whereas the former focuses on social roles and a mutually advantageous legal order, the latter underscores the publicity of the law and is geared towards an atmosphere of peace. Although they are not similar, the two points of view concur that individual fighters are not supposed to determine whether war is right or wrong. The main contribution made in this research is that it has refused the revisionist move to consolidate *jus ad bellum* and *jus in bello* into one moralistic approach. Even though revisionist opinions provide information about individual responsibility, they would cause grave practical issues when applied directly to the law of armed conflict. The humanitarian role of the law would be compromised by asking soldiers to evaluate the fairness of their cause, predictability, and reciprocity. All in all, the paper reestablishes the independence of *jus in bello* as a law system that is created to work despite morally unsound conflicts.

It pays attention to the merits of institutional obscurity, compliance-based remedies, and the persistence of applicability of the moral equivalence of combatants as one of the ways of preserving a humanitarian shield in both traditional and contemporary state military wars.

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