ABSTRACT: The purpose of this paper is to explore the ethical requirement of a 'reasonable probability of success' when resorting to war. Section One provides a detailed outline of this jus ad bellum condition, which has received little attention within recent just war theory scholarship. It then proposes five objections to the contemporary understanding of this condition, demonstrating that it requires modification or expulsion. Section Two of this paper surveys Statman’s influential attempt to reformulate the requirement of a ‘reasonable probability of success,’ revealing several problems that his alternative entails. Section Three offers two solutions to resolve the difficulties associated with the contemporary understanding of this condition. The first solution is to take this requirement to be simply a heuristic for the ‘proportionality’ condition. This would render it a useful convention that can be ignored in ‘supreme emergencies’ as defined by this thesis. The second solution is to expel this condition entirely, not only because of the strength of the objections proposed, but also because the rejection of this condition will result in more preferable consequences overall. This paper is a contribution to just war theory scholarship, and aims to resolve the difficulties associated with the contemporary articulation of this particular condition of jus ad bellum.
Section One

Just war theory has experienced a renaissance of interest in recent years, with many commentators questioning whether the existing paradigm provides a reasonable, coherent conceptual framework for guiding statesmen, military officers, and individual soldiers. There has been a widespread rejection of the view that *inter arma silent leges*, and it has generally been accepted that war is an inherently normative activity which involves permissions and prohibitions, and moral choices which warrant praise or blame. As Walzer noted, “even the pawns of war have rights and obligations,”¹ a stance aptly reiterated by MacIntyre’s suggestion that there is no ethical dimension to warfare; rather, ethics “is the heart of the matter.”²

The last century has witnessed a profound and unanticipated revision of just war theory in response to the increasingly destructive nature of modern warfare and the devastation that the world experienced during the two World Wars. Increased attention has been given to *jus ad bellum* under the national defense paradigm whereby punitive, preventative, and commercial wars were barred along with wars of expansion and conquest, and religious crusades. The attention of this thesis will also focus on *jus ad bellum*, specifically the contemporary requirement of a ‘reasonable probability of success’ prior to resisting aggression. This thesis will explore the tenability of this criterion of just war theory, ultimately arguing that it requires urgent modification or expulsion.

This paper shall begin by espousing the origins of requiring a ‘reasonable probability of success,’ before demonstrating the logic behind including it as a *jus ad bellum* condition, and explicating exactly what it entails. It will then posit five critical problems with this condition, maintaining that the combined effect of these issues undermines the inclusion of this rule as a necessary condition for legitimately initiating hostilities. These difficulties are: a) It is contrary to the domestic analogy, b) It is opposed by the notion of tolerable divergence, c) It conflicts with our intuitive responses to historical events, d) It systematically condemns weaker belligerents, and e) It equates justice with peacefulness. Next, this thesis will briefly survey Statman’s influential attempt to salvage the ‘reasonable probability of success’ criterion by expanding the concept of ‘success,’ demonstrating aspects of his reformulation that require further elucidation.

This paper shall then conclude by offering two separate detailed alternatives to the contemporary requirement of a ‘reasonable probability of success,’ which both respond more convincingly to the aforementioned problems. The first option is to take this condition to be simply a heuristic for satisfying the principle of ‘proportionality’; a useful convention, but bypassable in ‘supreme emergency’ situations when the *created evil* of choosing to resist aggression is the same as the expected *resisted evil*. The second option can loosely be described as utilitarian, proposing that a state should *not* require a ‘reasonable probability of success’ to commence hostilities because a rejection of this principle will ultimately lead to better consequences. This thesis can thus be seen as an attempt to revise this principle of *jus ad bellum*, a doctrine which remains, in the words of Walzer, “one of the more imperfect of human artifacts.”

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Despite the inherent conceptual and empirical difficulties of calculating the outcomes of major war, both sides of an armed conflict nearly always believe that they will win prior to commencing hostilities. Yet rare occasions do exist whereby a state does have permission to resort to defensive war, even though it has no chance of winning. According to the ‘reasonable probability of success’ condition, in such cases it is immoral for this state to defend itself militarily because it is unlikely to achieve defense from the perceived threat. Contrary to the straightforward appearance of this criterion, the reasoning behind it is actually surprisingly complex. Evidence indicates that Grotius was the first to explicitly posit this condition in regards to just war theory early in the seventeenth century. In an attempt to articulate the legal state of affairs between contending parties, he denounced those “with greater Courage than Prudence [who] had drawn upon themselves the entire Ruin of their Country.” Instead, Grotius advised that:

*If one King is going to make war with another King, he sitteth down first, (the Manner and Posture of such as deliberate with great Care and Attention) and considereth, whether he be able with ten thousand to meet him that commeth against him with twenty thousand; or else, whilst the other is yet a great Way off, he sendeth an Embassage and desireth Conditions of Peace.*

The criterion that has since been established does not require certain victory, or even likely victory, simply prohibiting futile military initiatives that cannot succeed due to a lack of sufficient means to prosecute war. It has traditionally been formulated as a subjective condition, in that actual success is not required to retroactively prove that a decision to commence a war was morally permissible. This allows just war theory to be action-guiding, as statesmen and military officers are not omniscient observers, and they can only be expected to act in accord with the best information that is available to them at

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5 Ibid., 1139.
the time. As the majority of the literature relevant to this thesis makes this assumption, this thesis will remain loyal to this interpretation for convenience, although its arguments are no less persuasive for an objectivist understanding.

In Harbour’s article on the requirement of a ‘reasonable probability of success,’ she noted that this condition “is known in the English language by a number of different words: chance, hope, possibility, expectation, prospect, or likelihood,” which are often used interchangeably in just war theory scholarship.6 This thesis consistently uses the phrase ‘reasonable probability’ because the word ‘probability’ is linked to mathematics, and indicates that a rational analysis is necessary that involves high standards of calculation and estimation (recently Lango has gone as far as to argue for legalistic standards).7 Whilst this thesis acknowledges the fact that empirical judgments are still prone to error, it is clear that they produce sounder results than decisions based on emotion, opinion, or intuition.

Harbour has also pointed out that “the term ‘reasonable’ adds a further dimension of rigor… [because it] makes it clear that what is required is the conclusion that a rational and unbiased person should draw with the same evidence… [and] can thus be seen as partially mitigating the problem of the potential subjectivity of the principle of ‘just cause.’”8 Interestingly, some philosophers have argued that the notion of ‘reasonableness’ should not simply be interpreted as referring to probability. If a moralized notion of ‘reasonableness’ was employed, the standards for what counts as reasonable would not be static, and in situations whereby the consequences of defeat are more severe, what would

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8 Harbour, “Reasonable Probability of Success,” 238.
count as ‘reasonable’ would naturally be proportionately lower. As this thesis does not rely on either interpretation it will not arbitrate between them, although it is clear that this issue would have ramifications on the permission to engage in humanitarian intervention.

The reasons for establishing this condition are obvious. There are inherent features of all wars that morally require a genuine attempt to avoid them. War cannot be waged without committing wrongs, including large-scale maiming and killing, especially considering that the ratio of civilian to combatant deaths has increased dramatically in recent times. Requiring a ‘reasonable probability of success’ forces statesmen and military officers to accept moral responsibility for their decision to commence hostilities, which is crucial when considering Begby’s assertion that “a point not often recognized in philosophical reflections on just war: that in undertaking a war, a state may substantially wrong its own citizens.” For it is the citizens of a state, not the leaders, that most often bear the human cost of war, as Grotius originally alluded to when declaring:

*A King who undertakes a War upon frivolous Accounts, such as will involve his Subjects in a great Deal of Trouble, is obliged to make up the damages they suffer thereby: For tho’ he cannot be accused with any Injury done to his Enemies, yet may there be a heavy charge laid against him of wronging his Subjects, by plunging them in so much Misfortune and Misery for such Reasons.*

Coady has argued that this condition is also incredibly pertinent considering “the unbalancing effects of enthusiasm, outraged feelings, and triumphalist fervor that often precede the decision to go to war,” and “the innumerable follies that lofty military fantasies have produced.” As such, this condition is not merely a prudential rule in favor of risk aversion, but a legitimate *moral* requirement. Again, this was emphasized by

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Grotius’ original formulation which stated “it is not only Prudence, or Affection for his subjects, that requires [a Prince] to forbear engaging in dangerous war, but very often Justice itself.” A final element of this condition is that it is especially susceptible to re-evaluation throughout a conflict, and statesmen have a responsibility to weigh up regularly whether to continue fighting or not.

An initial criticism of this standard contemporary formulation of ‘reasonable probability of success’ is that it seems contrary to the domestic analogy, which has served as the moral foundation for the national defense paradigm. The domestic analogy is an intellectual tool that consists of a comparison between states and individuals, political independence and personal liberty. Proponents of this analogy maintain that states share the same moral rights as individuals to protect themselves with force against aggression. Statman employed two examples to demonstrate that intuitively, a ‘reasonable probability of success’ is not considered morally necessary for individual self-defense, so “if this is what some moral or legal theory demands of [states] it seems like a reduction of a theory.” In the first case, Statman depicts John Wayne cornered by a large number of ‘bad guys’ with only one bullet left in his gun. In this situation, it seems intuitively obvious that he is entitled to kill one of his attackers on the grounds of self-defense, regardless of the probability that this action will succeed in averting the threat.

The stronger example suggested by Statman involved a situation whereby a victim is about to get raped by a group of five assailants and has a gun with two bullets. The circumstances are manipulated so that there is no prospect of the victim avoiding rape, yet the intuition remains that it would be morally permissible for the victim to shoot two

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of the rapists. Rodin has aptly pointed out a problem with this analogy, that these “group-based examples discussed by Statman do not serve his purposes well,” because “liability is rooted in a relationship between the agency of interacting persons.”14 As such, the rape victim is permitted to kill each of their potential rapists individually because of what they intend to do, regardless of what the rest of the group do afterwards. By killing one of their assailants, the victim in Statman’s rape case is successfully averting the threat that this potential rapist poses. Conversely, if a victim-state manages to kill a handful of enemy combatants before ultimately capitulating, it has not successfully averted the threat posed by an invading army. Despite this limitation, it seems that requiring states to have a ‘reasonable probability of success’ is still opposed by our intuitions regarding analogous domestic situations. Suppose a third case in which there is only one strong assailant and a victim without a gun. If the victim is in a position where they can break the rapist’s arm, whilst also knowing that this action will not be successful in averting the rape, it still seems morally permissible for them to do so. In this way, if this moral right exists in civil society, there seems a prima facie case that states also share this right in analogous situations.

A second difficulty with ‘reasonable probability of success’ involves its application in situations where each of the other conditions of jus ad bellum have been satisfied. In essence, the ‘reasonable probability of success’ condition is demanding nonviolent defense in these situations, preventing any military action that would disrupt the aggressor’s advance and subsequent occupation. The issue is that no government has ever made a radical concession of this nature willingly, without first resisting or posturing that they will respond violently. This supports the empirical claim that nations are

instinctively compelled to struggle for survival, regardless of any moral prohibitions that have been decreed. This means that ‘reasonable probability of success’ is directly opposed to the generally accepted idea of ‘tolerable divergence,’ which maintains that if morality “is to be practically relevant, [it] must not demand such sacrifice that it is likely to be generally ignored.”¹⁵ As Walzer asserted, “fie justicia ruat coelum, do justice even if the heavens fall, is not for most people a plausible moral doctrine.”¹⁶

Another related criticism stems from our intuitive attitudes towards historical cases when ‘reasonable probability of success’ has been blatantly ignored. There are several clear examples of situations when either collective private resistance or state resistance has occurred even though success was knowingly impossible, which are admired and deemed morally praiseworthy. An often-cited example of this moral preference is the widespread reaction to the Warsaw Ghetto Uprising of 1943, which was ultimately cruelly crushed by the Germans. Primary sources demonstrate that the coalitions of Jewish activists who resisted deportation had no illusions about their chances of success, with a founder of the Jewish Fighting Organization acknowledging at the outset that “not one of us will leave here alive.”¹⁷ As such, according to the ‘reasonable probability of success’ condition, this revolt was not morally permissible and if similar circumstances were to occur again the decision makers should accept extermination meekly.

Belgium’s decision to defy Germany in 1914 is even more relevant because it involved a state resorting to war to resist an aggressor. In July 1914, Germany issued Belgium an ultimatum demanding unfettered passage for German armies through

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¹⁶ Walzer, Just and Unjust Wars, 230.
Belgium territory. Similarly to the Warsaw Ghetto Uprising, historical documents demonstrate that Belgian statesmen knew that they faced certain destruction if they did not agree to the German terms. Yet they still chose to defend themselves, and what followed has broadly been described as the ‘Rape of Belgium,’ which included 30,000 civilian deaths for the previously neutral nation. Steele has aptly declared that “even though Belgium’s decision contradicts… the just war ‘reasonable chance of success’ condition, few scholars or theorists would interpret the Belgium decision to fight in normatively negative terms.” 18 This case led Coady to conclude that “in practice it seems that determining the prospects of success is simply one aspect of the general assessment of a war’s worth… rather than a limiting criterion that rules out recourse to war whenever expectations of military success are low enough.” 19

An obvious response to both the ‘tolerable divergence’ criticism and the claim that ‘reasonable probability of success’ is counter to our moral preferences is that jus ad bellum is concerned with dictating what is theoretically morally permissible, and that any contemporary dispositions or attitudes we happen to have are completely irrelevant. However, this response ignores that fact that most individuals want to act morally because they believe they genuinely know what acting morally means. Walzer, the most influential writer on just war theory in the last century, has maintained that the pursuit should be “concerned precisely with the present structure of the moral world” so its primary task must be to “grasp and expound our common morality.” 20

The last two criticisms of ‘reasonable probability of success’ demonstrate that there is a clear moral gap between this contemporary moral constraint on the decision to resist aggression, and

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20 Walzer, Just and Unjust Wars, 20.
the actions of statesmen in the great variety of armed conflicts throughout history. As Walzer suggested, “the task of the moral theorist is to study this pattern as a whole, reaching for its deepest reasons.”

Another strong objection to requiring a ‘reasonable probability of success’ is that this unfairly systematically disadvantages the weaker party in a conflict. This is associated with a wider general criticism of just war theory that has emerged recently, which maintains that its application is only relevant to conflicts between two comparatively equal states. In former ages, war was most often characterized by clashes between armies of similar strength fighting decisive battles. Yet in recent times, most wars that have occurred can be described as militarily asymmetric, in that they have been fought between a powerful, highly-trained, well-equipped army against a state with limited means of defense. As Clausewitz famously declared, war is a true chameleon that constantly changes its color and shape. This feature of war has not been accommodated by just war theory, which has remained static and thus compromised the relevance of this discipline by failing to take into account shifts in the nature of warfare.

It could be argued that restricting asymmetric wars is prudentially desirable, but this then entails that the United States is now practically empowered with a moral invincibility. Any resistance to aggression from the United States would automatically be rendered morally impermissible due to their overwhelming global military dominance and the certainty of defeat. Linden summarizes the United States’ unparalleled position by citing their sophisticated “warfare technologies, its military budget approximating the military expenditures of the rest of the world, and its network of military bases across the

21 Ibid., 45.
globe.”^23 He continues that “the problem will become still more acute if the U.S. Space Command succeeds in its self-described task of ‘dominating the space dimension of military operations’” which will “further reduce the human costs for the United States to engage in acts of war.”^24 This is a problem for those who believe that one nation should not be entitled to complete moral hegemony over every other state in the world.

Some responses to this objection are that it is highly unlikely that the United States would ever unfairly exert its dominance in this way, or that safeguards such as the United Nations exist to prevent unprovoked violations of another state’s territory. Yet several examples exist where the United States has in fact acted in this manner. For instance, the Reagan administration attempted to overthrow the Sandinista government of Nicaragua in 1984 in order to mine their harbors. At the time, Nicaragua successfully appealed to the International Court of Justice to denounce the United States’ use of force, a decision that was simply ignored and sidestepped.\(^25\) Other examples of controversial military actions carried out by the United States include the Gulf War, the intervention in Kosovo, the Afghanistan War, and the recent war in Iraq. It seems that this problem for ‘reasonable probability of success’ is only going to become increasingly practically relevant, considering the United States reaffirmed unilateral moral certainty and commitment to maintain their international military hegemony. Ominously, the only course of action available for states that want to maintain a ‘reasonable probability of success’ may be to arm themselves with nuclear weapons, an act that should not be a morally necessary means to retain sovereignty.

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^23 Linden, “Just War Theory,” 55.
^24 Ibid., 68.
^25 Ibid., 55.
A related concern is that sooner or later the requirement of a ‘reasonable probability of success’ will be exploited by a state which has sufficient military dominance over another and knows that the weaker state adheres to just war theory. This point is similar to the ‘innocent shield problem’ that Coady argues is “an inescapable aspect of moral prohibition” because the “unscrupulous [inevitably] exploit the adherence of the scrupulous to moral standards.”

Not only could this condition encourage a superior state to attack when they otherwise would not, it could also invite them to engage in a more ruthless form of aggression. Smilansky wrote in depth on the paradoxical nature of requiring a ‘reasonable probability of success,’ contending that the more “ruthless the aggressor, the more difficult it is stop him carrying out his threat,” so this criterion “is probably met less in ruthless aggression than in more merciful ones.” This clearly results in the perverse and absurd conclusion that the more ruthless the stronger state is in a conflict, the less justified the weaker state will be to harm them in return. As Clausewitz declared, “the ruthless user of force who shrinks from no amount of bloodshed must gain an advantage if his opponent does not do the same.”

Once again, the very idea of inherently unscrupulous states may be challenged, but Walzer would aptly respond that “no one who had experience, or reflected on, the politics of the twentieth century can doubt that there are evil regimes.”

A final reason for altering the contemporary formulation of ‘reasonable probability of success’ is that it equates justice with peacefulness. The criterion seems to be the product of the anxious mood engendered by our atomic age, and the notion that *jus contra bellum*,

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29 Ibid., XIII.
justice requires the avoidance of war. However, it seems that there has been a widespread shift of perspective in recent times, with philosophers such as Johnson advocating a “presumption against injustice” rather than the contemporary “presumption against war.” He plausibly argued that force has always provided a means for dealing with injustice, and that “the concept that force itself is a major problem originated comparatively recently.” Vattell aptly observed that “flagrant injustice merits the indignation of all mankind,” and returning the emphasis of *jus ad bellum* to ‘just cause,’ ‘right intention,’ and ‘right authority’ is one way to achieve this. Lee has also asserted that the elevation of peace over justice is dubious, because “one can always have peace, of a sort, simply by choosing not to fight,” and that states have always legitimately been morally permitted “to avoid one kind of peace (domination) and to achieve another kind (independence).” The stance of this thesis is best articulated by Claude, who wrote that “it is permissible, and perhaps desirable- and, conceivably, even mandatory- to fight to promote justice… [because] evil ought to be overturned, and good ought to be achieved by force if necessary.”

**Section Two**

Considering each of these issues, it is not surprising that attempts have been made to amend the ‘reasonable probability of success’ condition in recent years. The most influential reformulation of this condition is that of Statman, who argued in favor of

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31 Ibid.
34 Claude, as cited in Ibid., 108.
expanding the concept of ‘success’ to include morally defensible aims that do not avert the threat in question.\textsuperscript{35} Statman began by pointing out that not all military success entails victory in the traditional sense, especially in asymmetrical conflicts. This initial claim can be demonstrated by the empirically determinable goals of parties in recent conflicts. For instance, Taliban insurgents believe that God is on their side, and success for them is measured by the length of time that they can continue fighting.\textsuperscript{36} Also, the United States did not seek traditionally defined military victory in the Afghanistan War, with Harbour noting their goals were a “stable, peaceful, civil society that will sustain itself without indefinite expenditure of outside forces.”\textsuperscript{37} The notion that an armed conflict can succeed in defending values, whilst also ending \textit{predictably} in military defeat, seems to capture something crucial in the moral relationship between ends and means in defensive wars. Once Statman garners acceptance of this initial premise, his paper examines what values are so morally laudable that they are worth dying for.

In making this determination, Statman considered which fundamental human values were being successfully defended in domestic cases of rape, and in the historical cases that posed a problem for ‘reasonable probability of success.’ He concluded that it was the victim’s honor that was being threatened and affirmed through forceful resistance, because in each case “in the eyes of the aggressor, [they were] just items to be used, mere objects.”\textsuperscript{38} Interestingly, the concept of honor has traditionally been evoked in just war theory as a moral constraint, preventing illegitimate actions and instances of war. Yet the idea that an individual can legitimately employ deadly force to defend their honor is

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\item \textsuperscript{35} Statman, “On the Success Condition.”
\item \textsuperscript{36} Harbour, “Reasonable Probability of Success,” 234.
\item \textsuperscript{37} Ibid.
\item \textsuperscript{38} Statman, “On the Success Condition,” 668.
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supported by the domestic analogy as it is generally accepted in civil society. Kahan and Nussbaum have examined the legal permission to use force when defending one’s premises (and perhaps even car) from invasion, concluding that “the law is prepared to endorse valuations of honor or dignity in circumstances.” 39 They stated that this law exists so that individuals are not required “to submit to certain wrongful acts that powerfully convey that person’s subordination to the will of another.” 40 Statman draws a parallel between this honor-related right, and our intuition that we can employ force “when our bodies are invaded via unwanted human contact” (probably referring to rape), declaring that the latter defensive act is also deemed legitimate because it successfully achieves a defense of honor. 41

An initial objection to this view that it is morally permissible for an individual or a state to respond with force if their honor has been threatened is that it is inconsistent with the proportionality condition of jus ad bellum. Statman anticipated this contention, acknowledging that at first glance “this seems dangerously close to the norms of the Wild West… that seem disproportionate to most of us today.” 42 On its own, the notion of honor lacks the internal resources that are necessary to prevent abhorrent uses of it, as it seems wrong that a non-threatening provocation could occasion and morally justify violence. In the past, the idea of honor has been used as a device to convince juries that it was permissible for men to kill their partner’s lover, or fathers to kill their daughters in order to protect their family honor. Kahan and Nussbaum cite the acquittal of Bernhard Goetz as a particularly shocking racial example of how “juries can use self-defense to

40 Ibid., 330.
42 Ibid., 673.
endorse the valuation of honor and dignity expressed when an enraged person uses deadly force to avenge non-life-threatening transgressions.”

In cases such as these, absolutely any force is permitted because defensive acts almost necessarily achieve some protection of honor.

It was for this reason that Statman added a further condition restricting which threats can be legitimately resisted in order to successfully defend one’s honor. In order to explicate his position, he gestured towards a distinction discussed recently by Hurka, McMahan, and McKim, between “causes that suffice in themselves to fulfill the just war condition, and contributing causes, which do not suffice in themselves… but that contribute to the justification of war once a sufficient just cause exists.” For example, most would argue that ‘promoting deterrence’ is simply a contributing cause, which does not justify war on its own, but which could add further justification to a war when combined with other weightier goals. In this sense, contributing causes can be considered ‘parasitical’ on sufficient causes, in that they rely on the latter to be a legitimate consideration. Similarly, Statman argued that threats to honor are parasitical on weightier threats to “property, bodily integrity, or life,” requiring these further threats in order to justify a forceful resistance.

He summarized: “[t]he more culpable the aggressor collective and the more severe and oppressive the threat it poses, the more probable it is that the attacked collective would enjoy moral permission to wage war under Honor.” Statman’s proposal thus allows for the intuitive belief that it is morally

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46 Ibid., 684.
permissible for victims of aggression to fight back, whilst still requiring some form of success, and not falling victim to disproportionality.

Yet there are two stronger critical issues with Statman’s reformulation of ‘reasonable probability of success.’ The first stems from the inherent ambiguity surrounding the concept of honor which is central to his thesis. Most definitions of honor rely on empirical illustrations from antiquity, and involve either the worth one has in their own eyes, or the worth one has in the eyes of their community. Statman does not declare whether he supports either of these interpretations, or both, an omission which detracts from his view and makes it extremely difficult to determine whether this value is worth killing or dying for. International law clearly states that the only rights worthy of these actions are ‘territorial integrity’ and ‘political sovereignty,’ and it could be argued that the precedence that the notion of honor receives in civil law is unfounded.

It is clear that general adherence to the idea of honor has declined dramatically over the centuries. In the past it was commonplace to strictly act in accordance with this value, as exemplified in Duke Hsiang’s decision in 638 B.C.E. not to attack his enemies as they crossed a river, instead waiting until they were properly marshaled because it was “unworthy and demeaning to strike… an uninformed host.”47 Although this is an example of honor influencing jus in bello considerations, it is clear that whilst acts which prioritize honor were praised and even expected in the past, an officer acting similarly today would be deemed irrational and charged with unnecessarily endangering the soldiers under their command. For this reason, Statman’s reformulation of ‘reasonable probability of success’

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47 Duke Hsiang, as cited in Walzer, Just and Unjust Wars, 255.
seems somewhat outdated, especially given Walzer’s conclusion that “notions of honor and chivalry seem to play only a small part in contemporary combat.”\textsuperscript{48}

In addition, it appears that it would be impossible to attach a binding definition to an abstract value like honor. Even if a particular moral vocabulary somehow became universally accepted, disparities would still exist between the weight societies attached to these values, which would prevent their application in actual cases. In the \textit{Leviathan}, Hobbes wrote that virtues such as these are “ever used with relation to the person that useth them,” as he demonstrated by gesturing towards the Spartans who “hold for honorable that which pleaseth them and for just that which profiteth.”\textsuperscript{49} This point was also strongly asserted by Walzer, who contended that values such as these “have no clear references, no certain definitions, no logical entailments… [because] in the state of war, never without qualification… [can one] succeed in bringing certainty into the world of virtue and vice.”\textsuperscript{50} Even though it can be been demonstrated that individuals and states do worry about their honor, the question of whether this is a rational concern still remains open.

These observations contribute to an understanding of honor as a morally \textit{thin} concept, to employ a term first coined in print by Williams in 1985.\textsuperscript{51} Thin concepts are evaluative, but offer no descriptive conceptual content, beyond the fact that the user of this concept likes or dislikes them. In contrast, Williams wrote that \textit{thick} moral concepts are more specific, providing both an evaluation and a description, in that they “seem to

\textsuperscript{48} Ibid., 34.
\textsuperscript{49} Hobbes, as cited in Ibid., 10.
\textsuperscript{50} Ibid.
express a union of fact and value.”\(^{52}\) Some examples of these thick or substantive concepts offered by Williams include “treachery and promise and brutality and courage,” with him adding that they are “action-guiding [yet] at the same time, their application is guided by the world.”\(^{53}\) The important claim is that statements using a thick concept can directly indicate the specific moral character of an act and the reasons why one ought to do or not do such an act. On the other hand, whilst morally thin concepts play an important role in creating the social world, they are predominantly (or wholly) evaluative, and, as such, they are less stable, informative, and straight-forward.

An example offered by Kirchin demonstrates this distinction and indicates that honor can be considered a thin concept. He stated:

*Imagine we are discussing the merits of a mutual friend, Peter. I describe Peter as being good (or honorable)… describing Peter in this way does not tell us much about his character. There are plenty of ways in which people can be morally good (or honorable), and plenty of types of action that they can typically perform. In contrast, imagine that our discussion continues and I describe Peter as being honest… this more specific description gives us more of a sense of what Peter is like, and perhaps why we think of him as good.*\(^{54}\)

The concept of honor does not seem to be action-guiding and descriptive in the same way as the thick moral concepts that have been listed. It is for this reason that Statman is obliged to provide a description of how honor, or its approximate equivalent in other languages, is in fact a thick concept, and how it can bear the moral weight that his thesis requires. His parasitical requirement is also not entirely convincing, and it could be argued that forcing citizens to fight to successfully protect a state’s honor still violates the principle of proportionality, which Walzer acknowledges “is by no means easy to do…

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\(^{52}\) Ibid., 129.  
\(^{53}\) Ibid., 140- 141.  
since the values against which destruction and suffering are to be measured are so readily inflated.”\textsuperscript{55} Statman’s proposal rests on the notion of honor and the ability of decision makers to determine whether or not it has been attacked. As such, his failure to adequately articulate this concept, or provide a means to measure its value, or explain how it can justify forcing war upon citizens when they do not have a reasonable probability of success ultimately detracts from his thesis.

The second strong objection is that even if we grant Statman the claims that a standard definition of honor could exist, that it could gain widespread acceptance, and that an individual can consistently recognize cases where their honor is threatened objectively, it still seems counter-intuitive to suggest that a state’s honor should feature in its justification for demanding citizens to resort to war. Perhaps this stems from the fact that an individual is only risking their own life when they fight to protect their honor, whereas the decision to initiate a war threatens thousands (as either intentional targets or collateral damage). Although it is apparent that individuals are sensitive to their national honor, it is not clear whether this value is actually in danger in cases of conventional war. This is related to the belief that the moral status of individual soldiers on both sides is equal, because as Walzer suggests “the battlefield distinguishes combat from domestic crime.”\textsuperscript{56}

It is clear that in cases of individual self-defense one’s honor could be threatened, because an assailant is fully culpable for their aggression, and they are both harming and wronging their victim by treating them with contempt. Yet this does not seem to be the case in conventional war where rules exist that permit behavior that is strongly condemned in peacetime, and individual soldiers on both sides face each other as moral

\textsuperscript{55} Walzer, \textit{Just and Unjust Wars}, 192.
\textsuperscript{56} Walzer, \textit{Just and Unjust Wars}, 128.
equals. In a separate article, Statman himself acknowledges this distinction, noting “wars cannot be reduced to conflicts between a given number of individuals… wars are conflicts between collectives, and though collectives are made up of individuals, they are not identical to any list of the individuals that constitute them.”\textsuperscript{57} As such, it seems that enemy soldiers are \textit{harming} but not \textit{wronging} those they attack, so in this sense an individual’s honor is not being treated with contempt when their state is attacked. If this is the case, states cannot appeal to the reasonable probability of successfully protecting their honor when deciding to resist aggression because it is not even being threatened. Benbaji aptly summarized the crucial difference in collective cases in his conclusion that “innocent attackers threaten \textit{only} my property, body, or life, culpable attackers also threaten my honor” (emphasis added).\textsuperscript{58}

\section*{Section Three}

This thesis will now present its first positive reformulation of the ‘reasonable probability of success’ criterion which attempts to diagnose and defuse the aforementioned problems with the contemporary interpretation. It takes the previously independent condition to be simply a heuristic of the ‘proportionality’ criterion of \textit{jus ad bellum}, a useful convention but no more. Put simply, the ‘proportionality’ criterion states that the ‘created evil’ that arises from a resort to war must not be greater than the ‘resisted evil’ that the war is attempting to avert. The ‘created evil’ of a war refers to the wrongs against individuals (violations of individuals’ rights), which arise from a state’s

\textsuperscript{58} Yitzhak Benbaji, as cited in Statman, “On the Success Condition,” 682.
decision to wage war. The ‘resisted evil’ refers to the wrong against the victim state that
the war is meant to avert. Coates noted that employing this restrictive principle to
theorize about war can be seen as “no different from any other form of moral reasoning,
since some notion of proportionality seems inherent in all moral judgment of situations of
conflict, where one value cannot be promoted without damage to some other competing
value.”\textsuperscript{59} It is immediately apparent that having a ‘reasonable probability of success’ will
carry great weight in determining whether this criterion is met prior to initiating
hostilities. Although there are clear difficulties associated with empirically predicting and
determining the proportionality of war, this problem is of greater concern for the
‘proportionality’ principle itself, rather than this specific thesis.

As a heuristic of the ‘proportionality’ condition, ‘reasonable probability of success’
should be taken to be a practically useful convention, rather than a universal moral rule.
Mavrodes articulated this distinction in relation to \textit{jus in bello}, proposing that some
principles are justified by their utility because their general adherence “has \textit{indirect} or
consequential moral value, despite lacking \textit{direct} moral value.”\textsuperscript{60} Echoing this view,
McMahan has also recently distinguished between “the deep morality of war” and “the
laws of war,” arguing that the latter are simply “conventions established to mitigate the
savagery of war” in order to “make the best of a bad situation by seeking to minimize the
human costs.”\textsuperscript{61} An example of a convention which was established because it reduced
the destructiveness of war was the practice of fighting with unfeathered arrows, which
were less accurate than arrows which were feathered, thereby decreasing the overall

\begin{itemize}
\item \textsuperscript{59} Coates, \textit{The Ethics of War}, 167.
\item \textsuperscript{60} Mavrodes, as cited in Lee, \textit{Ethics and War}, 204.
\item \textsuperscript{61} Jeff McMahan, as cited in Ibid.
\end{itemize}
death toll in hostilities. Although this convention reduced the intensity and duration of conflicts, circumstances are certainly conceivable whereby it would be proportional for a warrior to ignore this rule, and by doing so they would not be violating a basic moral principle. Similarly, although in most cases adhering to the ‘reasonable probability of success’ convention is advisable because it will assist in ensuring proportionality, circumstances may arise whereby the ‘created evil’ from a decision to resist aggression with force is not greater than the ‘resisted evil’, even though a state may not have a ‘reasonable chance of success.’ In cases such as these, this convention can be bypassed, allowing a state to resist this aggression whilst still acting morally.

Interestingly, other philosophers have also suggested that the ‘reasonable probability of success’ condition may have a different moral status to the rest of the jus ad bellum criteria. One reason for this could be that it was not among the original criteria listed by either Augustine or Aquinas, only gaining acceptance much later on. In their discussion of this principle, Fotion and Coppieters concluded that “just war theory should not be thought of as a fixed set of criteria to be applied to any and all situations… it should be treated in a more adaptable fashion so that in certain situations [this] criterion can be eliminated, [or] modified somewhat.” Differing slightly, Johnson maintained that the ‘reasonable probability of success’ condition has a “lower moral priority than the deontological norms of just cause, legitimate authority, and right intention,” so a state “may fight a war in violation of [this condition] if one’s deontological case is compelling.” Although his stance shares some similarities with this thesis, it seems that

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62 Walzer, Just and Unjust Wars, 42.
64 Linden, “Just War Theory,” 56.
simply making ‘reasonable probability of success’ a heuristic of the ‘proportionality’ condition is a more satisfactory solution. As will be demonstrated, it accounts for most of the difficulties that the contemporary interpretation faces, without radically modifying the discipline by introducing tiers of priority as Johnson’s proposal seems to do.

As has been indicated, the actual cases whereby this ‘reasonable probability of success’ convention can be ignored are going to be extremely rare. It is clear that in most cases when a state does not have a reasonable probability of military success, the ‘created evil’ involved with initiating hostilities will be greater than the ‘resisted evil’ involved with adopting non-violent resistance. At this point, it may be helpful to characterize such cases by employing a term utilized at length by Walzer: supreme emergencies. Although this phrase was borrowed from one of Churchill’s speeches during World War II and has been often utilized by Rawls, it was Walzer who was the originator of contemporary discussions of this concept. Walzer hesitantly argued that “in certain very special cases, though never as a matter of course in just wars, the only restraints upon military action are those of usefulness and proportionality.” It was these cases that he described as ‘supreme emergencies,’ and it is not surprising that Orend described this proposal as “probably the most controversial, and consequential, amendment to just war theory ever proposed.”

Walzer seemed to articulate three distinct types of threats that constitute a ‘supreme emergency.’ The first is the least controversial, referring to cases when an invading army does not offer surrender on terms, instead promising the extermination or enslavement of every individual it encounters. If conventional diplomatic means to prevent war have

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65 Walzer, Just and Unjust Wars, 231.
failed, and individuals are left with the choice to die without resisting or die resisting, the ‘reasonable probability of success’ convention can be ignored because the ‘created evil’ of fighting is equivalent to the ‘resisted evil’ of the alternative. This is supported by Sandin’s observation that “there is a widespread intuition that if a society faces an overwhelmingly horrible threat, then some actions that are ordinarily prohibited might become permissible or even mandatory.”67 The other two types of threat that Walzer felt constituted a ‘supreme emergency’ are the threat to replace the rule of law with the rule of barbarism, or a threat to the continued existence of a political community. From the outset, these two threats seem to be much more subjective than the first threat, because ‘extermination’ and ‘enslavement’ are ordinary language terms and are quite unequivocal. This thesis will take these last two threats to be closely related, and as such it will employ the same arguments to refute the inclusion of both as instances of ‘supreme emergencies.’

In order to demonstrate his reasoning for including the latter two threats in his account of ‘supreme emergencies,’ Walzer referred to a single historical example; Britain’s situation in World War II. Although calculations regarding this example are extremely difficult due to the fact that Germany was fighting a war with many fronts, each of which was impacting the others, this paper will attempt to consider the consequences of defeat for Britain in isolation, as Walzer encourages. Given the extremely racist, anti-liberal values that Nazi Germany held, it is clear that their triumph would have entailed the end of the existing British political community and the implementation of seemingly barbaric laws. Yet this does not seem to be radically different from the outcomes of defeat

*simpliciter*, which often entails political subjugation, loss of national sovereignty and

territorial integrity, suppression of culture, and in many cases the implementation of a puppet regime. If these threats were accepted as instances of ‘supreme emergencies,’ the setting aside of the ‘reasonable probability of success’ convention would become the rule, rather than the true exception that it morally ought to be.

Further, Walzer’s insistence that a threat to the continued existence of a political community constitutes a ‘supreme emergency’ implicitly presupposes an implausibly strong notion of ‘community’. It mistakenly implies that a community is an unchanging entity, when in reality it seems to be a constantly shifting work in progress. Brock has recently asserted “[t]he idea of nation-building highlights one of the functional features of society… [that they are] not fixed but always evolving… ethnicity can be deconstructed and reconstructed to meet the basic functional requirements of social life.”68 He then simplifies this thesis: “in principle there is no objective, essential difference that would keep people from pursuing a common political project directed at forming or upholding a state which may provide security, well-being, and a sense of purpose among the people in it.”69 It was reasons such as these that led Primoratz to conclude that “a threat to the political independence of a state… can hardly have the moral weight required by Walzer’s supreme emergency argument.”70 Requiring a threat of extermination or enslavement also guards against the cynical rhetoric and manipulative propaganda of governments that may attempt to abuse this reformulation by declaring ‘supreme emergencies’ where none exist or when it is simply in their best interest to do so. It is for these reasons that this paper will only endorse the threat of extermination or enslavement.

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69 Ibid., .
as a legitimate basis for ignoring the ‘reasonable probability of success’ convention, because in these cases resistance would still meet the ‘proportionality’ condition.

The question remains: does this reformulation respond convincingly to the several objections that detract from the contemporary interpretation? Firstly, it seems that allowing states to bypass the requirement of a ‘reasonable probability of success’ when their citizens face extermination or enslavement seems analogous with the rights that individuals enjoy in civil society. It is only in domestic cases of ‘extreme emergency,’ such as instances of rape or murder, that victims seem intuitively entitled to forcefully resist even when they have no reasonable probability of averting the perceived threat. In these cases any sort of resistance would be proportional, because the ‘created evil’ would be no greater than the expected ‘resisted evil’.

Encouragingly, it also seems that Walzer’s maxim: “do justice unless the heavens are about to fall” is in accord with the idea of ‘tolerable divergence’.71 Parallels can be drawn between the acts that this thesis permits in ‘supreme emergencies’ and Hobbes’ empirical description of how individuals act in the ‘state of nature.’ As Toner noted, “the claim that a group of people threatened with extermination may resist by any means at their disposal seems simply the same Hobbesian claim writ large.”72 Whereas the contemporary interpretation was not practically relevant because it was counter to the domestic analogy and the notion of ‘tolerable divergence,’ this reformulation acknowledges Lund’s claim that in some circumstances, “political officials facing hard choices may legitimately reject the constraints and fundamentalisms of abstract philosophy.”73 In addition, it seems

71 Walzer, Just and Unjust Wars, 231.
73 Walzer, Just and Unjust Wars, Xxiv.
that the decision-makers were acting in accord with the principle proposed by this thesis in the intuitively praiseworthy historical cases of collective resistance where the victims did not have a reasonable probability of success.

A large number of diaries and letters from inside the Warsaw ghetto have been recovered which provide a valuable insight into the reasoning of those who orchestrated the uprising. Einwohner, a prominent World War II historian, has analyzed these sources and concluded that the impetus for resistance was the realization that the ‘created evil’ from fighting would be no greater than the ‘resisted evil’ involved with non-violent resistance. Despite their suffering, the Warsaw Jews seemingly acted in accord with the ‘reasonable probability of success’ condition, because a “stubborn optimism”\(^74\) meant that they did not believe they were experiencing ‘supreme emergency.’ It was only once they realized that the Nazi’s planned mass-extermination that they considered resistance to be a proportional response, and morally permitted (and maybe required). In order to advocate resistance, Commander Anielwicz honestly appraised the situation by declaring that “he was sure that they would die like stray dogs and no one would even know their own resting place.”\(^75\) Similarly, records reveal that Commander Berlinski implored his peers to act by contending “we have no alternative- annihilation faces us in one form or another.”\(^76\) It was evidence such as this that led Einwohner to declare that “in order for collective resistance to emerge [the] Jews’ perception of their situation had to change… it was only once the ghetto fighters became aware of the hopelessness of their situation that

\(^75\) Ibid., 665.
\(^76\) Ibid., 661.
they began to plan for resistance.” In this way, she concluded that “the ghetto residents’ assessment of their situation as one in which their deaths were inevitable facilitated the construction of a motivational frame… [that] it was better for the Jews to die in battle with the Nazis than to submit meekly to being slaughtered.” It is clear that the leaders of the Warsaw ghetto uprising knew that they did not have a reasonable probability of success, but still chose to resist once they became aware that they faced extermination so their actions could not fail to be proportional.

Although the uniqueness of the Holocaust is acknowledged, this evidence demonstrates that this thesis both provides an explanation of the reasoning behind the decision-maker’s choice to resist, and allows for their action to be deemed morally praiseworthy. Interpreting ‘reasonable probability of success’ to be heuristic for the ‘proportionality’ condition also morally permits states to resist aggression that is extremely ruthless or flagrantly unjust, even when military victory is unlikely, thus providing a solution to Smilansky’s paradox and the problems associated with reducing justice to peacefulness. Making this condition a threshold convention that is inviolable beneath a certain (very high) level of harm is also compatible with Montesquieu’s view that small states “more frequently have the right to wage wars than large ones, because they are more frequently in a position to fear being destroyed.” Whilst in most situations this convention will still morally condemn the weaker belligerent, it will mean that they can not be judged to have acted morally negatively in cases where they resist extermination or enslavement, which is better than the alternative. This proposal is also

77 Ibid., 652.
78 Ibid., 662.
consistent with the recent direction of the field, as Toner articulated in his claim that the endorsement of ‘supreme emergency’ exemptions “by liberal political theorists, avowed critics of both realpolitik and consequentialism, is a significant turn in just war thinking.”

The second solution to remedy the problems with the contemporary ‘reasonable probability of success’ condition is to expel this principle entirely, because the outcomes that result from states choosing to resist aggression when each of the other jus ad bellum conditions have been satisfied are overall more desirable. In employing this argument, this thesis is shifting the focus away from the rights-based outlook traditionally associated with just war theory, to a utilitarian, or consequentialist way of thinking. It maintains that there are moral purposes or outcomes that are worth dying for, which outweigh the material gains and losses that are involved with the decision to offer non-violent resistance to unjust aggression. This shift is not unique to this thesis, as Walzer has also suggested that there are some circumstances when “the restraint on utilitarian calculation must be lifted” because some decisions are “only a matter of arithmetic.”

Although it could be argued that resistance may result in more preferable outcomes specifically for the victim-state itself, given the unavoidable uncertainty about whether the advancing aggressive army, absent resistance, will not simply exterminate or enslave the entire besieged population, this is not the contention of this thesis. Rather, this proposal is that resistance will entail more preferable outcomes overall, or as McKenna espoused “war must aim at a good which is universal rather than exclusive… the sacrifice

even of [a form of peace] may therefore be necessary sometimes for the welfare of the wider community.”

The first argument in favor of the view that a presumption supporting military resistance will entail desirable outcomes, even when a state does not have a reasonable probability of success, is that it will protect valuable rights by deterring future aggressors. Not only will it improve the deterrence posture of the state that is being attacked, it also communicates to every other potential aggressor that weaker states are not simply passive objects to be trodden upon. This is important if the national defense paradigm’s explicit suggestion is accepted; that “a wrong against a state is a much more serious matter than wrongs against individuals.” Two philosophers who would concur with the reasoning of this thesis are McDougal and Feliciano, who advocated the view that “the kind and amount of permissible… violence is that which is reasonably designed so to affect the enemy’s expectations about the costs and gains of reiteration or continuation of his initial criminal act as to induce the termination of and future abstention from such acts.”

It is apparent that strengthening a deterrence posture is even more pertinent for states than it is for individuals in society. This is because there is no effective international police force to uphold the international rules against aggression, so an effective deterrence will only exist if violations are consistently countered with force.

Resisting unjust aggression in cases when each of the *jus ad bellum* criteria are satisfied (excluding ‘reasonable probability of success’) will also empower other victim states in the same position to act thus themselves. Although he ultimately rejects a

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84 Walzer, *Just and Unjust Wars*, 211.
utilitarian framework, Statman acknowledges that one motivation for the Warsaw ghetto uprising could have been that it was “expected to encourage other victims to rise up against the Nazis.”85 There are certain community-based values that are strengthened and confirmed when evil is resisted, which acquire even greater significance when this action is perceived by a community of observers. In sharp contrast, Walzer maintained that “appeasement, even when it is the better part of wisdom, diminishes those values and leaves us all impoverished.”86 He illustrated this by gesturing towards domestic examples of appeasement, such as negotiating with kidnappers or extortionists, declaring that “we feel badly in such cases, not only because we have failed to serve the larger communal purpose of deterrence, but also and more immediately because we have yielded to coercion and injustice.”87 In this way, the deterring and empowering features of resistance greatly enhance social utility and provide a more preferable outcome than non-violent resistance.

Furthermore, there is evidence that Belgium’s decision to resist German aggression even though they did not have a reasonable probability of success was motivated by these utilitarian concerns. When presenting their reasoning for this intuitively praiseworthy decision, members of the Crown Council cited their “duty to Europe,” and noted that “the army must defend not only our rights but those of guarantor states.”88 Pertinently, the Prime Minister himself stated that the previously neutral nation had “international obligations… [because] our submission would serve no end.”89 After reviewing this case, Steele has aptly noted that “Belgian agents in fact acknowledged that the physical

86 Walzer, Just and Unjust Wars, 71.
87 Ibid., 68.
88 Ibid., 101.
existence of Belgium might end and therefore it cannot be concluded that they intended… [to] ‘cash in’ on the admiration their actions might engender from the powerful countries of Europe.” ⁹⁰ This position was shared nearly universally by spectators at the time, with one Italian journalist summarizing the situation by declaring “Belgium has defended the sacred patrimony of all civilized peoples; she has given her blood, not for her individual interests, but for an ideal which is also ours… Belgium has set Independence above Existence.” ⁹¹

This example clearly demonstrates that this thesis is not opposed to the idea of ‘tolerable divergence,’ as states have felt compelled to act in accord with it in the past. The fact that Belgian’s actions are intuitively deemed morally praiseworthy is evident by the widespread recognition and admiration that the nation received after it chose to resist. The case of Belgium also reinforces the premise that small states can influence international social structures and have decisive societal consequences. At the time, Churchill declared that “at this moment when their cities are captive, their country under yoke, their government and army forced into exile, the Belgian nation is exerting an influence upon the destinies of Europe and mankind.” ⁹² Expelling the ‘reasonable probability of success’ condition on utilitarian grounds also resolves the issue of weaker states being systematically morally condemned by the contemporary interpretation, and it places a precedence on justice rather than peace. As Toner declared:

Whole peoples, like individual people, eventually perish. One person can make his life a success by dying rather than doing evil; why not a whole people? The culture and morality of a people that so strikingly ended would not be forgotten, I think, nor would we regard as a failure a people that

⁹⁰ Ibid., 97.
⁹¹ Ibid., 111.
⁹² Ibid., 106.
perished earlier rather than later, in good form rather than in decrepitude and dissolution.93

The strongest objection to this utilitarian position is that states only exist to benefit their citizens, so why should the leaders of a state put their citizens in greater risk by choosing to resist aggression when there is no reasonable probability of success, for the sake of other non-citizens? States are given their authority in order to protect the rights of those who consent to them, and it can be argued that leaders have a greater responsibility for the interests of those they represent. In his discussion regarding the legitimacy of humanitarian intervention, Buchanan asserted that “the dominant understanding of the nature of the state and the role of government in liberal political thought… [is that] the state is an association for the mutual advantage of its members and that the government is simply an agent whose fiduciary duty is to serve the interests, or to realize the will of those citizens.”94 Lund has poignantly suggested that “political officials might sacrifice themselves in order to uphold the moral law, but they cannot sacrifice their countrymen.”95 Indeed, Statman would dismiss this proposal in the same way he refuted other utilitarian alternatives, because it “contradicts the most fundamental deontological intuition forbidding the sacrifice of some human beings, in order to save others.”96 From the outset, it is evident that the notion of internal legitimacy could irredeemably complicate this matter, so this thesis will assume that the governments of the states under discussion have been established in accord with the will of their people. Regardless, given that a government is simply an instrument to further the interests of its own

96 Statman, “Supreme Emergencies Revisited,” 64.
citizens, it seems implausible that a government could ever morally justify hopeless resistance for the sake of others.

According to traditional utilitarianism, if an action will increase overall good, it is not only permissible, but also ipso facto mandatory. This conviction is not confined to consequentialism, with Vattell also declaring that “self-defense against unjust violence is not only the right but the duty of a nation, and one of her most sacred duties.”\(^97\) However, responses such as these do not engage with the specific contention of this criticism, and would fail to satisfy proponents of the above objection. The strongest rejoinder that does adequately respond to the issue at hand stems from Buchanan’s justification of humanitarian intervention. To begin with, Buchanan noted that the state receives its justification for being a coercive apparatus by an appeal to the need to protect “basic human interests… common to all persons.”\(^98\) As the state exists to serve universal interests, Buchanan argued that “surely a way of thinking about the nature of states and the role of government that provides no basis for obligations to help ensure that the interests of all persons are protected is fundamentally flawed.”\(^99\) In responding to a similar objection to the one in the preceding paragraph, Buchanan concluded that it implies “a deep incoherence, if not an outright inconsistency” because it is based on the idea the states should only protect the universal rights “of a particular group of persons, identified by the purely contingent characteristic of happening to be members of the same political society.”\(^100\)

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99 Ibid.
100 Ibid.
There are further problems with this objection that result from some implicit assumptions that can be drawn from it. If states only have duties to protect the interests of their own citizens, this seems to entail that they also do not have any negative duties to abstain from killing or injuring the citizens of other states. Similarly, if a state is obligated to act in accord with the interests of its own citizens, and a situation arises whereby an unprovoked attack on another state would promote their interests, then such an attack would be mandatory. This clearly conflicts with international law, and more importantly with the most fundamental principles of the contemporary national defense paradigm of just war theory. It was due to these issues that Buchanan advocated a ‘state-as-the-instrument-for-justice view,’ which lends support to the utilitarian alternative presented in this thesis. He concluded that “we are not morally free to use our state merely as a framework for our mutual advantage… [because] there is a natural duty of justice that requires us to help ensure that all persons have access to institutions for the protection of their basic moral rights.”\footnote{Buchanan, 86.} One factor that contributed to Buchanan’s conclusion was that “when we are organized in a state our collective capacity for promoting just institutions abroad is greatly enhanced.”\footnote{Buchanan, 85.} This adds further weight to the stance of this thesis that rejecting the ‘reasonable probability of success’ condition can actually make a positive difference, and will result in outcomes that are overall more preferable.

There are some closing remarks that must accompany the two distinct proposals that have been presented by this thesis. The first is that both alternatives simply permit resistance, the first in ‘supreme emergencies’ as defined by this thesis, the second in

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101 Ibid., 86.
102 Ibid., 85.
every case when each of the other *jus ad bellum* conditions has been satisfied. This thesis is not claiming that states are morally obligated to resist. This paper also acknowledges that the purpose of *jus ad bellum* is to limit the occasions of war, and that any revisionism which expands the amount of instances when a state can legitimately resort to war is in danger of appearing insensitive to the philosophical motivations of this project. Yet just war theory should always remain open to philosophical criticism, as this is the only way that the rules of war can be improved. Given the strength of the five objections to the contemporary requirement of a ‘reasonable probability of success,’ it is obvious that improvement is necessary. It also seems that the two options presented by this thesis can satisfy these objections, without the additional problems that Statman’s proposal entails. Given the nature of warfare, it is clear that as an enterprise it will never be entirely morally satisfactory. The best that can be hoped for is that one day we will achieve a universal order in which unjust threats are eliminated, and the existence of nations and people can never be threatened. Whilst this peaceful order is the overall objective of just war theory, Walzer aptly concluded “the difficulty is that we sometimes have no choice but to fight for it.”\(^{103}\)

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\(^{103}\) Walzer, *Just and Unjust Wars*, 327.
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