

# Just and Unjust Proliferation\*

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Political theorists had vigorous debates about nuclear weapons in the 1980s but have been largely silent about them recently. This article seeks to reopen those discussions. It evaluates the main justifications for nuclear proliferation since 1945: arguments from consistency, nationalism, democratic legitimacy, self-defense, peaceful effects, and supreme emergency. Most of these arguments are badly flawed, as are the arguments for retaining the nuclear arsenals of many of the established nuclear powers. Instead, this article proposes a first cut at a stringent standard for judging the acquisition of strategic nuclear weapons, drawing on *jus ad bellum* and *jus in bello* principles.

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In March 1963, not long after the Cuban missile crisis, John F. Kennedy worried that without nuclear arms control, “I see the possibility in the 1970s of the President of the United States having to face a world in which fifteen or twenty or twenty-five nations may have these weapons. I regard this as the greatest possible danger and hazard.”<sup>1</sup> With nine nuclear-armed states today, he was wrong about the numbers but prescient about the dawning challenge. What once primarily preoccupied Americans and Soviets is now a problem for a host of nations from China to Israel—as well as everyone living in a common environment, and future generations entitled to an inhabitable planet.

The ongoing spread of nuclear weaponry poses moral issues of the highest importance, in addition to the more obvious, if no less terrifying, problems of maintaining the peace.<sup>2</sup> Which governments deserve to possess

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1. *Public Papers of the Presidents of the United States: John F. Kennedy, 1963* (Washington, DC: US Government Printing Office, 1964), 280.

2. For classic statements on nuclear strategy, see Bernard Brodie, *Strategy in the Missile Age* (Princeton, NJ: Princeton University Press, 1959); Thomas C. Schelling, *Arms and Influence*

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such weapons? Who, if anyone, could be trusted with such destructive power? Do outside powers have any moral standing to discourage proliferation? Yet political theory has been largely silent about nuclear weapons since the 1980s. While just war theory has increasingly become part of contemporary political debates and military planning, that seems limited to the laws and customs of conventional warfare, not nuclear confrontations.

There is a creeping legitimization of this weaponry today, with Vladimir Putin's Russia threatening to use nuclear weapons.<sup>3</sup> At a 2019 campaign rally, Narendra Modi, India's prime minister, declared, "Every other day they [Pakistan] used to say, 'We've nuclear button, we've nuclear button.' . . . What do we have then? Have we kept it for Diwali?"<sup>4</sup> A sense of fatalism or indifference about the spread of nuclear weapons has slipped into public discourse. While campaigning for president, Donald Trump said that nuclear proliferation is "going to happen anyway."<sup>5</sup> He also said, "If Japan had that nuclear threat, I'm not sure that would be a bad thing for us."<sup>6</sup> In order to deal with such assertions, it is helpful to return to moral debates about proliferation.

This article will make four main arguments. First, it is worthwhile to take seriously the arguments for proliferation as moral arguments. Those who lay claim to atomic weaponry almost always offer normative justifications for doing so, which are ubiquitous in political discussions in China, India, Pakistan, Israel, Ukraine, and other countries. Ignoring those moral arguments means sidestepping an opportunity to engage with them, either to learn from them or to try to persuade their adherents otherwise. Moreover, when the citizens of nuclear-armed countries ignore the normative rationales for nuclear proliferation from nonnuclear states, they inadvertently prove some of the less flattering contentions from advocates for proliferation: that the rich world is arrogant and self-entitled. Even for those who completely disagree with the conclusions in this article, I hope to show that these debates are worth having.<sup>7</sup>

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(New Haven, CT: Yale University Press, 1966); Thomas C. Schelling, *The Strategy of Conflict* (Cambridge, MA: Harvard University Press, 1960); Scott D. Sagan, *Moving Targets: Nuclear Strategy and National Security* (Princeton, NJ: Princeton University Press, 1989); Robert Jervis, *The Meaning of the Nuclear Revolution* (Ithaca, NY: Cornell University Press, 1989); Charles L. Glaser, *Analyzing Strategic Nuclear Policy* (Princeton, NJ: Princeton University Press, 1990); and John Lewis Gaddis, *The Long Peace: Inquiries into the History of the Cold War* (New York: Oxford University Press, 1987).

3. Nina Tannenwald, "The Great Unraveling," American Academy of Arts and Sciences, Occasional Paper, April 2018, 17–18.

4. "Our Nuke Arsenal Is Not for Diwali: Modi at Rally," *Hindustan Times*, April 22, 2019.

5. "CNN Milwaukee Republican Presidential Town Hall," CNN, March 29, 2016.

6. Maggie Haberman and David E. Sanger, "Transcript: Donald Trump Expounds on His Foreign Policy Views," *New York Times*, March 26, 2016.

7. See John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press of Harvard University Press, 1971), 358–59; and, on the dangers of only hearing arguments from like-minded

At the same time, this article draws on arguments from the many skeptics about proliferation within the newly armed countries.<sup>8</sup> It also considers the positions of nonproliferator states, some of which are captured in the landmark international convention about nuclear weapons, the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Although several nuclear powers are outside of the treaty—India, Israel, and Pakistan have never signed; Iran, Iraq, South Korea, Romania, Syria, and North Korea violated their NPT commitments with secret nuclear programs; North Korea has announced its withdrawal—it still represents the closest approximation to a global statement about nuclear proliferation. With an impressive 191 states parties, it has some stature as a source for moral theorizing.<sup>9</sup> So does a new 2017 global treaty prohibiting nuclear weapons, endorsed by 122 states, none of them with nuclear arms.<sup>10</sup> Many states which have the technological capacity to build nuclear weapons have chosen not to do so.<sup>11</sup> Their viewpoints are also worth consideration.

Second, substantively, most of the recurrent arguments for nuclear proliferation either fail or are significantly flawed. There is a persistent series of normative rationales for proliferation: an argument from consistency, an argument from nationalism, an argument from democratic legitimacy, an argument from self-defense, an argument from peaceful effects, and an argument from supreme emergency. These arguments are deficient not just for deontological reasons but also on consequentialist grounds, which play a large role in these peculiar debates which necessarily rest not only on moral argumentation but also on strategic doctrine.<sup>12</sup> Of these six theses—all of which will be evaluated later in this article—the most convincing are the arguments from self-defense and supreme emergency. But there are sharp limits on their applicability, which most of their advocates do not manage to meet. Even if one were to allow that

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people, Cass R. Sunstein, “Deliberative Trouble? Why Groups Go to Extremes,” *Yale Law Journal* 110 (2000): 75–119.

8. For Indian and Pakistani critiques of nuclearization, see Smitu Kothari and Zia Mian, eds., *Out of the Nuclear Shadow* (New Delhi: Lokayan, 2001).

9. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 487–89, T.I.A.S. no. 6839 (effective March 5, 1970). See Oona Hathaway and Scott J. Shapiro, “Outcasting: Enforcement in Domestic and International Law,” *Yale Law Journal* 121 (2011): 252–349, 322. On using law for normative theorizing about nuclear weapons, see David Kennedy, *Of War and Law* (Princeton, NJ: Princeton University Press, 2006), 142–43.

10. Treaty on the Prohibition of Nuclear Weapons, July 7, 2017; Rick Gladstone, “The U.N. Adopts a Treaty to Ban Nuclear Weapons. Now Comes the Hard Part,” *New York Times*, July 8, 2017, A7.

11. Richard Rhodes, *Arsenals of Folly: The Making of the Nuclear Arms Race* (New York: Knopf, 2007), 70; T. V. Paul, *Power versus Prudence: Why States Forgo Nuclear Weapons* (Montreal: McGill University Press, 2000), 4.

12. Joseph S. Nye Jr., *Nuclear Ethics* (New York: Free, 1986), 91–92; Gabriella Blum, “The Laws of War and the ‘Lesser Evil,’” *Yale Journal of International Law* 35 (2010): 1–69.

there are emergency moments when governments have no viable choice for self-defense other than brandishing nuclear weaponry for deterrence, such states must still face scrutiny.

Third, building from this critique of arguments for proliferation, this article proposes a first cut at a standard for judging proliferation, resting on demonstrable evidence of responsible behavior that respects both the *jus ad bellum* and the *jus in bello*. The standard is stringent, intentionally so. It considers obligations not just to the citizens of a would-be nuclear-armed country but also to the rest of humanity. The optimal proliferator state—that is, the least bad one—would acquire strategic nuclear weapons only out of self-defense, in withstanding a radical foe whose triumph would lay waste to liberal norms, having exhausted all reasonable conventional military or diplomatic options; it would be answerable to its populace and thus keen to avoid their annihilation; it would not utilize these weapons for blackmail, self-aggrandizement, or other nondefensive purposes, nor would it facilitate further proliferation; it would avoid weapons systems or postures which are destabilizing; and it would actively work to resolve its conflicts in order to disarm itself swiftly of these weapons.<sup>13</sup>

Fourth, just as important, this normative standard for acquiring strategic nuclear weapons would call into question the arguments for retaining the nuclear arsenals which the world has inherited from World War II and the Cold War. The restrictive standard proposed here serves as a marker of how often current nuclear-armed states fall short—even if, over the decades, many people have become accustomed to profoundly abnormal weapons as a normal feature of international politics.<sup>14</sup> Much of the case against the proliferation of nuclear weapons also implies an obligation to move toward disarmament of the established nuclear-armed states. All nuclear-armed states incur duties by persisting in their often indefensible possession of weapons—in particular, obligations to handle the weapons responsibly and to work toward lasting peace and disarmament.

This article will begin by reviewing the Cold War disputations over nuclear weapons, which are noteworthy because they preview today's debates about proliferation. Then it will outline and criticize those six recurrent interlinked arguments in favor of nuclear proliferation. Based on those criticisms, the article will then propose a restrictive standard for more or less justifiable proliferation. The article will conclude by suggesting that the configuration of nuclear armaments in the world today cannot pass normative muster.

13. This article is primarily concerned with strategic nuclear weapons. Many of the same arguments would apply to tactical nuclear weapons, but these weapons also are sometimes held up as satisfying *jus in bello* standards of discrimination, which introduces debates which cannot be resolved in this short article.

14. See Susan Moller Okin, "Taking the Bishops Seriously," *World Politics* 36 (1984): 527–54, 548.

## I. THE COLD WAR DEBATE

Since their creation, nuclear weapons have provoked fierce moral debates, with the early discussions anticipating some of the ones voiced today.

After Hiroshima and Nagasaki, there was a wave of revulsion against early atomic weapons, which were staggeringly lethal and indiscriminate.<sup>15</sup> Mohandas Gandhi despairingly wrote of the end of “so-called laws of war which made it tolerable.”<sup>16</sup> Bernard Brodie, the strategist who conceived nuclear deterrence,<sup>17</sup> insisted in 1959 on taking “our bearings from a moral position,” which led him to reject preventive nuclear war as “the unprovoked slaughter of millions of persons . . . on the inherently unprovable assumption that our safety requires it.”<sup>18</sup> At Oxford, G. E. M. Anscombe pilloried Harry Truman: “Choosing to kill the innocent as a means to your ends is always murder.”<sup>19</sup> For Paul Ramsey, nuclear deterrence rested on an immoral intention, making impermissible threats of mass murder.<sup>20</sup>

Japan’s government formally protested Hiroshima as an indiscriminate massacre in violation of international humanitarian law, constituting “a new crime against humanity and civilization.” Japan also branded the atomic bomb as *mala in se*, invoking the 1907 Hague Convention on land warfare, which especially prohibits the use of “arms, projectiles, or material calculated to cause unnecessary suffering.”<sup>21</sup> (Here Imperial Japan discovered a concern for international law which it forgot in its own wars in China and Southeast Asia, including the indiscriminate bombing of Chongqing, Chengdu, and other Chinese cities.)<sup>22</sup>

15. Nina Tannenwald, *The Nuclear Taboo: The United States and the Non-use of Nuclear Weapons since 1945* (Cambridge: Cambridge University Press, 2009), 73–114.

16. Mohandas K. Gandhi, “The Atom Bomb and Ahimsa,” *Hanju*, July 7, 1946.

17. Bernard Brodie, ed., *The Absolute Weapon* (New York: Harcourt Brace, 1946), 7.

18. Brodie, *Strategy in the Missile Age*, 235–36.

19. G. E. M. Anscombe, “Mr Truman’s Degree,” in *The Collected Philosophical Works of G. E. M. Anscombe* (Oxford: Blackwell, 1981), 3:62–71, 66.

20. Paul Ramsey, “A Political Ethics Context for Strategic Thinking,” in *Strategic Thinking and Its Moral Implications*, ed. Morton A. Kaplan (Chicago: University of Chicago Press, 1973), 134–35. See also Paul Ramsey, *War and the Christian Conscience: How Shall Modern War Be Justly Conducted?* (Durham, NC: Duke University Press, 1961). There was an important and variegated strain of Christian thinking about nuclear ethics from the Vietnam era to the nuclear freeze movement, encompassing St. Augustine and Reinhold Niebuhr; see Jeffrey Stout, “Ramsey and Others on Nuclear Ethics,” *Journal of Religious Ethics* 19 (1991): 209–37.

21. *Foreign Relations of the United States: The Far East* (Washington, DC: U.S. Government Printing Office, 1969), 6:472–73. See Hague Convention No. IV Respecting the Laws and Customs of War on Land, arts. 22 and 23(e), October 18, 1907, 36 Stat. 2277, T.S. 539. In December 1963, a Tokyo district court ruled that nuclear weapons violated international humanitarian law. *Shimoda v. State*, 355 *Hanrei Jiho* 17 (Tokyo Dist. Ct., December 7, 1963).

22. Rana Mitter, *Forgotten Ally: China’s World War II, 1937–1945* (Boston: Houghton Mifflin Harcourt, 2013), 176–78; Hans van de Ven, *China at War: Triumph and Tragedy in the Emergence of the New China* (Cambridge, MA: Harvard University Press, 2018), 123–26.

There were normative standards for nuclear weapons expressed in international humanitarian law, which can also be used as an authority for theorizing. In the St. Petersburg Declaration of 1874, states recognized the obligation to only aim at military targets, not at civilians.<sup>23</sup> The First Additional Protocol to the Geneva Conventions, from 1977, mandates that its parties “shall direct their operations only against military objectives.”<sup>24</sup> These principles have been elevated to the stature of customary international law.<sup>25</sup> Despite that, in a 1996 advisory opinion, a sharply divided International Court of Justice could not reach a conclusion on the legality of nuclear weapons,<sup>26</sup> finding no authority for a prohibition in treaty law or in customary international law.<sup>27</sup> Although it condemned weapons that are incapable of distinguishing civilian and military targets,<sup>28</sup> which would presumably prohibit the use of strategic nuclear weapons, the Court found itself unable to “conclude with certainty that the use of nuclear weapons would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstance.”<sup>29</sup>

In his classic *Just and Unjust Wars*, first published in 1977, Michael Walzer wrote, “Nuclear weapons explode the theory of just war.”<sup>30</sup> The use of strategic nuclear weapons would violate two cardinal standards of *jus in bello*: discrimination between military and civilian targets, since such bombs will necessarily kill enormous numbers of civilians, and proportionality, since annihilating cities makes little sense as a proportional response.<sup>31</sup> He was torn between the *jus in bello*, which required condemning

23. Saint Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, December 11, 1868, 138 Consol. T.S. 297, 298.

24. Additional Protocol Relating to the Protection of Victims of International Armed Conflicts, art. 48, June 8, 1977, 1125 U.N.T.S. The United States is not a party to this but does feel itself constrained by it where it has become customary international law. See Additional Protocol Relating to the Protection of Victims of International Armed Conflicts, Sec. III.C, June 8, 1977, 1125 U.N.T.S.

25. See Matthew C. Waxman, “Detention as Targeting,” *Columbia Law Review* 108 (2008): 1365–1430, 1386.

26. “Legality of the Threat or Use of Nuclear Weapons,” 1996 I.C.J. 226 (July 8), 263. On the question of whether the threat or use of nuclear weapons was generally contrary to international humanitarian law, the Court split seven to seven, with the president casting the deciding vote; *ibid.*, 266.

27. *Ibid.*, 253–55. Customary international law is found “primarily in the actual practice and *opinio juris* of States” (Continental Shelf [Libyan Arab Jamahiriya/Malta], Judgment, *I.C.J. Reports* 1985, 29), but it was not clear to the Court that the nonuse of nuclear weapons since 1945 represented an expression of an *opinio juris*.

28. I.C.J., “Legality of the Threat,” 257.

29. *Ibid.*, 262–63.

30. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 1977), 282.

31. *Ibid.*, 269. See also Nye, *Nuclear Ethics*, 50. Although some critics of Walzer have questioned *jus in bello* proscriptions on noncombatant immunity, these skeptics do not suggest that nuclear strikes could be justified. Jeff McMahan argues that the intentional targeting of civilians could be morally acceptable if they bear moral responsibility for waging an

even threats to use city-destroying weapons, and the *jus ad bellum*, which endorsed self-defense and thus seemed to require such threats: "So we move uneasily beyond the limits of justice for the sake of justice (and of peace)."<sup>32</sup>

Next came a vigorous debate in the 1980s, the era of the nuclear freeze campaign. Henry Shue warned against allowing the utopian goal of abolishing conventional war to legitimize nuclear threats.<sup>33</sup> Jonathan Schell and others argued for abolishing nuclear weapons,<sup>34</sup> which skeptics doubted was feasible.<sup>35</sup> Much of the discussion concentrated on the morality of deterrence, often weighing the difficult question of whether one could threaten actions which would be wrong if actually done. Gregory Kavka and Joseph Nye concluded that deterrence could be justified on consequentialist grounds as a way of defending peace and liberty against a Soviet threat.<sup>36</sup> The American Catholic bishops issued a pastoral letter arguing that while it was wrong "to intend to kill the innocent as part of a strategy of deterring nuclear war," they would grudgingly allow "a strictly conditioned moral acceptance of nuclear deterrence."<sup>37</sup>

Others refused to accept deterrence as moral. Anthony Kenny made a deontological objection: "If we are told that a certain policy or course of action involves genocide, or murder, or torture, or enslavement, we should not ask: 'And what good will it do?' We should have nothing further to do with it."<sup>38</sup> Jeff McMahan, writing in a special issue of *Ethics* debating nuclear deterrence, questioned the simple deontological objection that it was wrong to make a threat which would be wrong to carry out, or wrong to form a conditional intention to do a wrong. Instead, he proposed a modified deontological argument against deterrence which weighted the likelihood of using atomic weapons, other things being equal.<sup>39</sup>

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unjust war (*Killing in War* [Oxford: Oxford University Press, 2009], 203–35), while Cécile Fabre argues that civilians may be liable to attack if they are "causally and morally responsible for wrongful enemy deaths" ("Guns, Food, and Liability to Attack in War," *Ethics* 120 [2009]: 36–63). Neither position could excuse using strategic nuclear weapons.

32. Walzer, *Just and Unjust Wars*, 282.

33. Henry Shue, "Having It Both Ways," in *Nuclear Deterrence and Moral Restraint*, ed. Henry Shue (Cambridge: Cambridge University Press, 1989), 13–20.

34. Jonathan Schell, *The Fate of the Earth* (New York: Knopf, 1982); and Jonathan Schell, *The Gift of Time: The Case for Abolishing Nuclear Weapons Now* (New York: Holt, 1998).

35. Gregory S. Kavka, *Moral Paradoxes of Nuclear Deterrence* (Cambridge: Cambridge University Press, 1987), 119–25; Nye, *Nuclear Ethics*, 93–97.

36. Gregory S. Kavka, "Some Paradoxes of Deterrence," in *Moral Issues*, ed. Jan Narveson (Oxford: Oxford University Press, 1983), 72–87; Nye, *Nuclear Ethics*, 81, 98–131.

37. National Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response* (Washington, DC: United States Catholic Conference, 1983), 76, 79.

38. Anthony Kenny, *The Logic of Deterrence* (Chicago: University of Chicago Press, 1985), 22–23.

39. Jeff McMahan, "Deterrence and Deontology," *Ethics* 95 (1985): 517–36, 534–35. For a critique, see C. A. J. Coady, "Deterrent Intentions Revisited," *Ethics* 99 (1988): 98–108.

These Cold War debates concentrated on the US-Soviet standoff, with relatively little attention paid to future proliferation.<sup>40</sup> Walzer favored disarmament but admitted that any state that was threatened by nuclear bombs would probably get its own if it could. He acknowledged that new regional balances of terror might have an impact on the balance of the great powers, “thereby introducing new moral considerations that I cannot take up here.”<sup>41</sup>

## II. SIX ARGUMENTS IN SEARCH OF A BOMB

Nuclear proliferation today sparks a series of serious moral objections, even beyond those voiced in the Cold War. Some of these nuclear-armed states could provide nuclear technology to terrorist groups, which would result in the deaths of vast numbers of innocent civilians.<sup>42</sup> Nuclear arms races cost money, which poor countries—and rich ones too—could better spend on providing public services for their people.<sup>43</sup> (Zulfikar Ali Bhutto said in 1965 that if India got the bomb, then so would Pakistan “even if we have to feed on grass and leaves.”)<sup>44</sup> The more nuclear states there are on a hair-trigger, the higher the chances are of an accidental launch or a blunder into an unwanted apocalypse.<sup>45</sup> There is some harm done to citizens of neighboring states by forcing them to live in fear of extermination and the potential for vastly worse harm should the weapons ever be used. Proliferation tends to beget proliferation, with newly armed states providing help to other newly armed states or to unarmed states.<sup>46</sup> The taboo against nuclear weaponry is eroded, arguably to the detriment of all.<sup>47</sup> And acquisition of nuclear weapons by repressive governments renders them immune to foreign pressure to respect the human rights of their citizens.

Despite all that, a variety of leaders and thinkers have argued that their countries are entitled to possess atomic weapons. Their contentions

40. For an exception, see Nye, *Nuclear Ethics*, 87–90.

41. Walzer, *Just and Unjust Wars*, 274.

42. Graham Allison, *Nuclear Terrorism: The Ultimate Preventable Catastrophe* (New York: Holt, 2004).

43. C. Rammanohar Reddy, “The Wages of Armageddon,” in Kothari and Mian, *Out of the Nuclear Shadow*, 143–54.

44. Feroze Hassan Khan, *Eating Grass: The Making of the Pakistani Bomb* (Stanford, CA: Stanford University Press, 2012), 7.

45. Scott D. Sagan, *The Limits of Safety: Organizations, Accidents, and Nuclear Weapons* (Princeton, NJ: Princeton University Press, 1993); Graham T. Allison, Albert Carnesale, and Joseph S. Nye Jr., eds., *Hawks, Doves, and Owls: An Agenda for Avoiding Nuclear War* (New York: Norton, 1985); Bruce G. Blair, *The Logic of Accidental Nuclear War* (Washington, DC: Brookings Institution Press, 1993).

46. Chaim Braun and Christopher F. Chyba, “Proliferation Rings: New Challenges to the Nuclear Nonproliferation Regime,” *International Security* 29 (2004): 5–49.

47. Tannenwald, *Nuclear Taboo*.

often echo earlier debates about proliferation going back to the Truman administration. The advocates of proliferation have used a series of interlocking arguments, which are somewhat artificially separated below into six arguments for the purposes of assessing them in turn—as will be done in greater detail in the sections which immediately follow.

First, there is an argument from consistency, which is often voiced as protestations against “nuclear apartheid.” If one country can have nuclear weapons, why can’t others? Who are nuclear-armed states to tell other countries that they are unworthy to get the bomb?

Second, there is an argument from nationalism. Governments claim that their nuclear armament demonstrates their national greatness or technological prowess.

Third, there is an argument from democratic legitimacy. On this account, democracies have distinctive traits, particularly public accountability or checks and balances, that make them trustworthy with nuclear weapons.

Fourth, there is an argument from self-defense. Under standard principles of the *jus ad bellum* embodied in the United Nations Charter, states are entitled to defend their political sovereignty and territorial independence from armed attack. For countries whose conventional forces could not repulse their enemies, atomic weapons may be the only guarantee of national security, or even their continued existence.

Fifth, there is an argument from peaceful effects. A generalized form of an argument for self-defense, it claims that the deterrent capabilities of nuclear weapons are so awesome that they can pacify stubborn interstate quarrels—and might even abolish the scourge of war.

Finally, there is an argument from supreme emergency. On this account, when there is an overwhelming military threat to liberal civilization, states are temporarily allowed to use terrible means that would otherwise be immoral—conditionally justifying the otherwise wrongful tactic of threatening nuclear retaliation.

Before turning to a critique of these six arguments, it should be noted that questions of nuclear proliferation are not only about the *jus in bello* but also about the *jus ad bellum*. The objection to proliferation is not just that such bombs may violate *jus in bello* principles of discrimination, proportionality, and necessity,<sup>48</sup> or cause unnecessary suffering, or that their radioactive poisons might be considered as *mala in se*.<sup>49</sup> The spread of nuclear armaments also may make the outbreak of conventional or nuclear war more or less likely, which is morally important. By only examining the

48. Jeffrey G. Lewis and Scott D. Sagan, “The Nuclear Necessity Principle,” *Daedalus* 145 (2016): 62–74.

49. On the outlawing of poisons, see John Fabian Witt, *Lincoln’s Code: The Laws of War in American History* (New York: Free, 2012), 2–4, 183.

*jus in bello*, outsiders might overlook the reasons for making nuclear threats, such as resisting real evils from aggressive or brutal governments.<sup>50</sup>

#### A. *The Argument from Consistency*

Soon after the atomic bombing of Hiroshima and Nagasaki, Henry Wallace, Truman's commerce secretary, told the cabinet that he was "completely, everlastingly and wholeheartedly in favor of giving" the technological know-how "to the Russians."<sup>51</sup> After China's nuclear test in 1964, the official *People's Daily* argued, "So long as U.S. imperialism possesses nuclear bombs, China must have them too."<sup>52</sup> When India in 1998 carried out its watershed second round of tests of nuclear weapons, its defense minister, George Fernandes, conceded that "an atom bomb was morally unacceptable. But why should the five nations that have nuclear weapons tell us how to behave and what weapons we should have?"<sup>53</sup> In September 2019, Turkey's president, Recep Tayyip Erdogan, said publicly that some countries armed with "missiles with nuclear warheads" told the Turks that "we can't have them. This, I cannot accept."<sup>54</sup>

This recurrent argument about the hypocrisy of nuclear-armed governments is often framed as a way of subverting an unjust global hierarchy, sometimes with accusations of racism by richer, stronger, or whiter countries. K. Subrahmanyam, who was India's leading strategic thinker, complained about a "nuclear apartheid regime" for the "nonwhite nations of the world."<sup>55</sup> In 2005, the Iranian government complained that the United States, the only country to have "caused this single nuclear catastrophe in a twin attack on our earth now has assumed the role of the prime preacher in the nuclear field while ever expanding its nuclear weapons capability."<sup>56</sup>

An argument from consistency often includes a clarion call for abolishing all nuclear weapons. After North Korea's second nuclear test in May 2009, one of its diplomats apprised the United Nations General

50. Jeff McMahan links *jus in bello* to *jus ad bellum* in "The Ethics of Killing in War," *Ethics* 114 (2004): 693–733, 713–14.

51. Harry S. Truman Library and Museum, President's Secretary's Files, box 174, Atomic Bomb, cabinet minutes, September 21, 1945.

52. John Wilson Lewis and Xue Litai, *China Builds the Bomb* (Stanford, CA: Stanford University Press, 1988), 1–2.

53. Amitav Ghosh, "Countdown," *New Yorker*, October 26 and November 2, 1998, 190. See also Jaswant Singh, "Against Nuclear Apartheid," *Foreign Affairs* 77 (1998): 41–52.

54. "Erdogan Says It's Unacceptable That Turkey Can't Have Nuclear Weapons," Reuters, September 4, 2019.

55. K. Subrahmanyam, "India and the International Nuclear Order," in *Nuclear India in the Twenty-First Century*, ed. D. R. SarDesai and Raju G. C. Thomas (New York: Palgrave Macmillan, 2002), 63–84, 67.

56. IRNA, "Iran Issues Statement at IAEA Board of Governors Meeting," August 10, 2005, transcribed in FBIS.

Assembly's disarmament committee that his regime sought "total and comprehensive elimination of nuclear weapons in the world," led by the states with the "largest nuclear arsenals."<sup>57</sup> On this account, as a first-best option, nobody would have nuclear weapons; a second-best option would be that everyone has them; and the worst option would be that you do not have them but your rivals or global hegemony do.

The argument from consistency has a Kantian sheen to it, invoking the universalization of a maxim. It is nevertheless a weak one, for at least five interconnected reasons.

First, from a deontological perspective, if an action is wrong in itself, it does not matter that others have committed the same wrong. If one man repeatedly tells lies, publicly insults other people, or commits fraud, that does not imply that everyone else is also entitled to lie, insult, or defraud. The point of the Kantian categorical imperative is to avoid a world where everyone lies, insults, or defrauds.

Second, decent societies routinely impose bans or limitations on the possession of dangerous items. California and Maryland have regulations about flamethrowers.<sup>58</sup> In most countries, civilians are not permitted to get automatic or semiautomatic weapons. (The United States is an exception, with consequences that underline the benefits of regulation.) Only licensed doctors are allowed to prescribe morphine or chemotherapy drugs, and almost all countries ban or tightly restrict heroin.<sup>59</sup> One might complain if these statutes were imposed in ways that were arbitrary, counterproductive, or unfairly discriminatory, but not if they are reasonably aimed at public safety. For very dangerous things, it is prudent to demand conscientious stewardship.

Yet advocates of proliferation on the grounds of consistency downplay any putative duties of a responsible nuclear state. Newly nuclear-armed states are usually more intent on seeking unilateral advantage than on guaranteeing a reciprocal deterrence. They may seek destabilizing weapons systems, pursue nuclear superiority, or endorse aggressive strategic doctrines.<sup>60</sup> Yet a strict argument from consistency would draw no limitations to the spread of this weaponry, regardless of the quality of stewardship.

There is no need for hypotheticals to explore the implications of such a position, since it was evidently held by Mao, who was consistent

57. "DPRK's Efforts for Peace in Korean Peninsula Reiterated," *KCNA*, October 18, 2009, <https://kcnawatch.co/newstream/1528107050-369828288/speech-of-dprk-permanent-representative-at-geneva-disarmament-session/>. See also Lewis and Xue, *China Builds the Bomb*, 241.

58. Seung Lee, "Elon Musk Wants To Sell You a Flamethrower for \$500," *Mercury News*, January 28, 2018.

59. On the limits of physicians' authority, see Arthur Isak Applbaum, "The Idea of Legitimate Authority in the Practice of Medicine," *AMA Journal of Ethics* 19 (2017): 207–13.

60. See National Conference of Catholic Bishops, *Challenge of Peace*, 79–80.

about consistency. Soon after getting its own bomb, China proposed to help Indonesia, under Sukarno's leftist rule, to acquire nuclear weapons. Speaking to a visiting Indonesian delegation in 1965, Mao scorned the Soviet Union and the United States: "Two big countries in the world want to monopolize nuclear power, but we won't listen to them."<sup>61</sup> Indonesia's foreign minister wanted "more Afro-Asian countries to obtain nuclear weapons and to break the monopoly of nuclear technology by the Western imperialists and the Soviet Union."<sup>62</sup> It is not clear where such an expansion of nuclear weaponry stops, if at all.

Third, the breach of a norm does not necessarily warrant the extirpation of that norm. After a murder, life is still regarded as precious. If one person in your neighborhood gets a flamethrower, you might not urge everyone on the block to do likewise on grounds of consistency. (You might consider moving to California or Maryland.) Or if consistency is understood as being about universal permission, one neighbor's acquisition of a flamethrower need not imply a blanket license for any or all neighbors to get flamethrowers.

Fourth, the consistency argument begs the question of whether countries are better or worse off with a nuclear arsenal. If the latter, the question of consistency in possession is mostly moot, even if the distribution of nuclear weaponry in the world today is largely arbitrary. Imagine, not entirely fancifully, that the United States and the Soviet Union had obliterated each other during the Cuban missile crisis. What foreigner would complain about not being allowed their fate? Furthermore, imagine that before their mutual incineration, the Americans and Soviets had been preventing your own country from getting nuclear weapons for avowedly racist reasons. Even so, your relief at not being eradicated in the nuclear conflagration would outweigh your sense of outrage at the bigotry of those extinct superpowers. Although justifiable postcolonial resentments may lie behind pointing out the unfairness of a double standard, such complaints of that sort are less important than a government's moral obligations to protect its citizenry and to avoid endangering other innocent human beings.

Finally, while the complaint about a hypocritical and racist world order must be taken seriously, the appropriate response would be a thick set of more humane, inclusive, and just policies by the powerful countries, not simply the thin policy of more atomic bombs. Nuclear weapons do not lift people out of poverty, nor do they reduce economic inequality.<sup>63</sup>

61. Taomo Zhou, "Ambivalent Alliance: Chinese Policy towards Indonesia, 1960–1965," *China Quarterly* 221 (2015): 208–28, 222–23.

62. Taomo Zhou, "China and the Thirtieth of September Movement," *Indonesia* 98 (2014): 29–58, 43.

63. Amartya Sen, *The Argumentative Indian: Writings on Indian History, Culture and Identity* (New York: Farrar, Straus & Giroux, 2005), 259.

B. *The Argument from Nationalism*

Governments often seek atomic weapons to show the greatness or modernity of their nation, or to gain political legitimacy from a demonstration of national power.<sup>64</sup> Charles de Gaulle saw nuclear weapons as “a political means to sit at the table of the Great Powers.”<sup>65</sup> In a study of India’s nuclear weapons, George Perkovich argues that India was not particularly responding to uncertain security threats from China and Pakistan, but rather built atomic weapons largely owing to domestic concerns, including repudiating colonialism, demonstrating the prowess of Indian scientists, and gaining recognition as a major power.<sup>66</sup>

This argument, too, is an inadequate one. Why should all humanity accept risks to ourselves, future generations, or the planet for the parochial glorification of one ephemeral nation in the present day? Such claims exalt the unilateral prestige of one group while ignoring the welfare of all the others.<sup>67</sup> There are cogent arguments against nationalism, which are no less powerful for being familiar: nations are artificial social constructions whose moral standing is dubious,<sup>68</sup> nationalism is suspect as a way of dividing humanity and discriminating against outsiders,<sup>69</sup> and the allegedly exceptionalist national destiny of one lucky group should not imperil the well-being or survival of others.<sup>70</sup>

64. Scott D. Sagan, “Why Do States Build Nuclear Weapons? Three Models in Search of a Bomb,” *International Security* 21 (1996–97): 54–86; Jacques E. C. Hymans, *The Psychology of Nuclear Proliferation* (Cambridge: Cambridge University Press, 2006); Lewis and Xue, *China Builds the Bomb*, 4–9.

65. Jean Lacouture, *De Gaulle: The Ruler 1945–1970* (New York: Norton, 1992), 415.

66. George Perkovich, *India’s Nuclear Bomb: The Impact on Global Proliferation* (Berkeley: University of California Press, 2001), 6. See also Sen, *Argumentative Indian*, 254; Aijaz Ahmad, “The Hindutva Weapon,” in Kothari and Mian, *Out of the Nuclear Shadow*, 203–11; and, on Hindu nationalism, Martha C. Nussbaum, *The Clash Within: Democracy, Religious Violence, and India’s Future* (Cambridge, MA: Belknap Press of Harvard University Press, 2007).

67. Stanley Hoffmann, *Duties beyond Borders* (Syracuse, NY: Syracuse University Press, 1981), 27.

68. E. J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1992); Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1991); Daniel N. Posner, “The Political Salience of Cultural Difference,” *American Political Science Review* 98 (2004): 529–45.

69. George Orwell, “Notes on Nationalism,” *Polemic*, October 1945, 32–47. See also Paul Gomberg, “Patriotism Is Like Racism,” *Ethics* 101 (1990): 146–51; Immanuel Kant, “To Perpetual Peace: A Philosophical Sketch,” in *Perpetual Peace and Other Essays*, trans. Ted Humphrey (Indianapolis: Hackett, 1983), 108; and George Kateb, *Patriotism and Other Mistakes* (New Haven, CT: Yale University Press, 2006), 8. For attempts to reconcile nationalism with liberalism, see Yael Tamir, *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1993); and Alan Patten, “Democratic Secession from a Multinational State,” *Ethics* 112 (2002): 558–86.

70. Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), 31–38.

While the argument from nationalism is usually couched in parochial terms—for French, Indian, or North Korean greatness—it could more charitably be constructed as meaning that all nations are entitled to seek glory and to do so through the same means. Yet that argument would still falter from its elevation of the hazy good of national prestige as a nearly unlimited reason for adopting dangerous policies. Nor does it explain why those nations that choose not to build nuclear weapons should accept dire risks for the self-satisfaction of the more nationalistic polities that do.

Furthermore, nationalist enthusiasm around nuclear arms is often meant to bolster the domestic political supremacy of ruling factions, often vile ones. The Chinese Communist Party hoped that developing nuclear weaponry would buttress its legitimacy in the aftermath of the catastrophic famine of the Great Leap Forward.<sup>71</sup> North Korea's state press routinely lauds its military and scientists under the leadership of Kim Jong-un.<sup>72</sup> The mere continuance of a political party in power hardly justifies the acquisition of nuclear weaponry.

Another critique—and one that might gain more traction among nationalists—would be that this argument flounders because of an inherent militarism.<sup>73</sup> Surely one could equally well demonstrate the scientific prowess of one's country in peaceful ways. Why not develop the first medical therapies for fatal prion disorders such as Creutzfeldt–Jakob disease, or land a human being on Mars, with all the attendant scientific advances ensuing from such projects, rather than mimic what others have already done in building a nuclear weapon?

While many nationalists embrace atomic weaponry, a better moral reaction would be horror or shame at the prospect of incinerating and poisoning millions of our fellow beings. These weapons are not badges of national greatness but ignominious emblems of humanity's inability to co-exist peacefully. “Gladiators fight and win; and that brutality gets its reward of applause,” wrote St. Augustine. “But to my thinking it would be better to be punished for any kind of cowardice than to gain the glory of that kind of fighting.”<sup>74</sup>

### C. *The Argument from Democratic Legitimacy*

Americans, Indians, Britons, and Israelis often suggest that their democracies are better custodians of atomic military power than their authoritarian

71. Zhou, “China and the Thirtieth of September Movement,” 41.

72. “Tradition of Great Chollima Upswing Goes On,” *Pyongyang Times*, March 2, 2018, <https://kcnawatch.co/newstream/1519977634-701823227/tradition-of-great-chollima-upswing-goes-on/>.

73. See William James, “The Moral Equivalent of War,” in *War: Studies from Psychology, Sociology, Anthropology*, ed. Leon Bramson and George W. Goethals (New York: Basic, 1968), 21–31.

74. St. Augustine, *Concerning the City of God against the Pagans*, trans. Henry Bettenson (1467; repr., London: Penguin Classics, 1984), 105.

enemies. After India concluded its 2008 nuclear deal with the United States, ending a three-decade American moratorium on nuclear trade with India, Pratap Bhanu Mehta argued that “India satisfies the criteria of what is called a ‘responsible’ nuclear power: a democratic country that does not engage in proliferation. Iran, Pakistan, North Korea or for that matter China do not meet this criteria.”<sup>75</sup>

This follows a distinguished tradition of seeing republics as distinctive in making war.<sup>76</sup> Either democratic leaders are more constrained by Madisonian checks and balances, or they are more accountable to their public and therefore less belligerent.<sup>77</sup> Immanuel Kant argued that an unaccountable king could easily go to war for trivial reasons. But if “the consent of the citizenry is required in order to determine whether or not war should be declared, it is very natural that they will have a great hesitation in embarking on so dangerous an enterprise,” since they would be the ones suffering in combat and paying war taxes.<sup>78</sup>

Such Kantian arguments imply that nuclear weapons are safer, although not safe, in the hands of a democratic polity.<sup>79</sup> When democratic leaders have plunged into disastrous wars, they have often paid a political price: Harry Truman in Korea, Anthony Eden in Egypt, Pierre Mendès-France in Algeria, Lyndon Johnson in Vietnam, Menachem Begin in Lebanon, and more. Conversely, it is sensible to fear the recklessness of unchecked dictators.<sup>80</sup> At the height of the Sino-Soviet confrontation in 1969, with a million Soviet troops massed at the border, Mao menacingly set off hydrogen bombs in China’s western deserts.<sup>81</sup>

Nuclear weapons, though, undercut or erase many of the particular advantages of a democratic system. This weaponry inherently forces fast

75. Pratap Bhanu Mehta, “Five Balancing Acts,” *Seminar*, April 1, 2006, 1–7, 3.

76. Michael W. Doyle, *Ways of War and Peace: Realism, Liberalism, and Socialism* (New York: Norton, 1997); John M. Owen IV, *Liberal Peace, Liberal War* (Ithaca, NY: Cornell University Press, 1997); Bruce Russett, *Grasping the Democratic Peace* (Princeton, NJ: Princeton University Press, 1993); Kenneth A. Schultz, *Democracy and Coercive Diplomacy* (Cambridge: Cambridge University Press, 2001).

77. Felix Frankfurter, *The Public and Its Government* (New Haven, CT: Yale University Press, 1930), 77–79. Eric A. Posner and Adrian Vermeule (*The Executive Unbound after the Madisonian Republic* [Oxford: Oxford University Press, 2011]) argue that politics and public opinion now constrain the US executive more than law, particularly during crises and wars, although they do not specifically consider authority over nuclear weapons.

78. Kant, “To Perpetual Peace,” 113.

79. Lee Feinstein and Anne-Marie Slaughter, “A Duty to Prevent,” *Foreign Affairs* 83 (January–February 2004): 136–50; see also Michael Doyle, “Liberalism and World Politics,” *American Political Science Review* 80 (1986): 1151–70.

80. Plato, *Republic*, trans. Allan Bloom (New York: Basic, 1968), 556e–567b, 245–46; Hoffmann, *Duties beyond Borders*, 36; Jessica L. P. Weeks, *Dictators at War and Peace* (Ithaca, NY: Cornell University Press), 14–36, 82–134.

81. Patrick E. Tyler, *A Great Wall: Six Presidents and China* (New York: PublicAffairs, 1999), 73.

decisions about retaliatory strikes, which in turn force swift decisions about preemptive strikes.<sup>82</sup> The strategic nuclear imperative of “use it or lose it” is a technological one that transcends regime type. Thus, any nuclear-armed government, whether democratic or authoritarian, will be pressured to put the authority to launch in the hands of a powerful executive.<sup>83</sup>

Should a democracy fight a nuclear war, it could hardly do so with the transparency, deliberative procedures, and public accountability ordinarily required in moral justification of a just war.<sup>84</sup> In a nuclear crisis, there is no time to convene legislators and await their deliberations, and any such diffusion of the authority to launch would risk a strike on a legislature. Governments must place a premium on secrecy as well as speed, which further militates against the involvement of a parliament full of blabbermouths. So the awesome choice will rest in the hands of a single person or a small coterie of leaders. The legislative and judicial branches fade into insignificance as the executive becomes all-powerful.

Even without nuclear weapons, Congress has often retreated from restraining war-making US presidents. Curtis Bradley and Jack Goldsmith recount dozens of instances of Congress authorizing the use of force going back to the 1790s,<sup>85</sup> while Harold Koh warned about “a history of executive avoidance of legislative constraint in foreign affairs that goes back to Vietnam.”<sup>86</sup> In the only empirical example of a nuclear war, Truman saw no need to seek the approval of Congress before dropping atomic bombs on Japanese cities. After Trump’s election, the Senate held hearings about curbing the president’s sole authority to launch. Still, it is hard to imagine Congress debating about a nuclear first strike on China or North Korea; or if a Chinese or North Korean first strike was on its way, there would not be time for Congress to gather to ponder retaliatory options. A democratic politician would probably feel some responsibility to her or his citizenry, more than a dictator would, but there is no institutional guarantee of that. When it comes to wielding the most lethal weapons in history, Donald

82. Brodie, *Strategy in the Missile Age*, 223–63.

83. Garry Wills, *Bomb Power: The Modern Presidency and the National Security State* (New York: Penguin, 2010).

84. See Avner Cohen, *Israel and the Bomb* (New York: Columbia University Press, 1998), 344. Conversely, Adrian Vermeule (“Emergency Lawmaking after 9/11 and 7/7,” *University of Chicago Law Review* 75 [2008]: 1155–90) suggests that the extra emergency authority granted to an executive facing a terrorist threat does not go beyond what rational legislators would grant.

85. Curtis A. Bradley and Jack L. Goldsmith, “Congressional Authorization and the War on Terrorism,” *Harvard Law Review* 118 (2005): 2047–2133, 2072–78; see also Curtis A. Bradley and Jack L. Goldsmith, “Obama’s AUMF Legacy,” *American Journal of International Law* 110 (2016): 628–45.

86. Harold Koh, *The National Security Constitution: Sharing Power after the Iran-Contra Affair* (New Haven, CT: Yale University Press, 1990), 4. For an argument that presidents need and usually get approval from Congress, see David Barron, *Waging War: The Clash between Presidents and Congress, 1776 to ISIS* (New York: Simon & Schuster, 2016).

Trump and Narendra Modi are almost as unchecked as Vladimir Putin and Xi Jinping.

#### D. *The Argument from Self-Defense*

Self-defense is the most common argument for getting nuclear weapons. After NATO's air war to help the Kosovars in 1999, Subrahmanyam argued that India needed nuclear weapons so that it would not wind up like Slobodan Milošević's Serbia.<sup>87</sup> North Korea's regime contends that it needs nuclear weapons to fend off the United States, lest Kim meet the fate of Saddam Hussein or Muammar al-Qaddafi.<sup>88</sup> When the International Court of Justice weighed the legality of nuclear arms, half the judges were persuaded that the threat or use of such weapons might be lawful "in an extreme circumstance of self-defence, in which the very survival of a State would be at stake."<sup>89</sup>

This argument from self-defense is most salient for Israel and Pakistan. For Israeli military planners fearing a fatal combined assault by the Arab states (the "everything scenario"), nuclear arms offered a chance to convince Arab governments that the Jewish state could not be wiped off the map.<sup>90</sup> Pakistan's conventional forces are far smaller than those of India, and it lacks strategic depth, disadvantages which are partially offset by nuclear weapons.<sup>91</sup> After the loss of East Pakistan—now an independent Bangladesh—in the 1971 war with India, Bhutto's new government decided, among other steps, to seek a nuclear bomb.<sup>92</sup>

Such an argument from self-defense proceeds from well-established *jus ad bellum* principles. States are entitled to defend their territorial integrity and political sovereignty from aggression. Since aggressive war is the core violation of the *jus ad bellum*, there must be a moral argument for defensive measures to deter armed attack.<sup>93</sup> While Walzer conceded that deterrence is "a bad way" of coping with nuclear rivalries, "there may well be no other that is practical in a world of sovereign and suspicious states. We threaten evil in order not to do it, and the doing of it would be so terrible that the threat seems in comparison to be morally defensible."<sup>94</sup>

87. Subrahmanyam, "India and the International Nuclear Order," 64. For Subrahmanyam's earlier and contradictory advocacy of intervention in Bangladesh in 1971, see Gary J. Bass, "The Indian Way of Humanitarian Intervention," *Yale Journal of International Law* 40 (2015): 227–94, 239, 241, 249, 253.

88. Peter Baker, "Disarmament, Nuclear Deterrents and the Fall of Libya," *New York Times*, April 30, 2018, A7.

89. I.C.J., "Legality of the Threat," 266.

90. Cohen, *Israel and the Bomb*, 9–14.

91. Anatol Lieven, *Pakistan: A Hard Country* (New York: PublicAffairs, 2011), 198; Perkovich, *India's Nuclear Bomb*, 409–11.

92. Khan, *Eating Grass*, 68–92.

93. See National Conference of Catholic Bishops, *Challenge of Peace*, 74.

94. Walzer, *Just and Unjust Wars*, 274.

In *The Law of Peoples*, John Rawls wrote that there would be no need for nuclear weapons among liberal and decent peoples, who could ban them. But “so long as there are outlaw states—as we suppose—some nuclear weapons need to be retained to keep those states at bay and to make sure they do not obtain and use those weapons against liberal or decent peoples.”<sup>95</sup>

Walzer treats proliferation as a response to the proliferation of others, which could be seen as a form of self-defense. Moreover, unarmed countries risk extortion by their armed enemies.<sup>96</sup> Once India conducted its nuclear tests in 1998, could one really expect Pakistan not to follow suit?

Yet even acts of legitimate self-defense are not necessarily innocuous. Under the logic of what Robert Jervis and other political scientists call the security dilemma, actions by one state in international anarchy to make itself more secure often prompt similar measures by its rival, leaving them both less secure.<sup>97</sup> Nuclear strategists worry that proliferation is a “nuclear domino effect,” where each additional state’s acquisition of such weapons prompts its enemies to follow suit.<sup>98</sup> So even if a single decision to act in self-defense might seem justifiable, it could lead to a chain of consequences that are impermissible.

There are two normative objections here, the first of which deals with an exception to the *jus ad bellum* and the second of which goes to its core. First, some of the governments which are claiming self-defense are not worth saving. In Walzer’s account of the *jus ad bellum*, he derives a state’s self-defensive rights to territorial integrity and political sovereignty from the rights of individuals who consent in some way to be governed.<sup>99</sup> But he also allows exceptions, most notably for a national minority seeking to secede and for humanitarian military intervention to prevent mass atrocities, giving the example of India’s war to liberate Bangladesh.<sup>100</sup>

95. John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 9.

96. See Richard K. Betts, *Nuclear Blackmail and the Nuclear Balance* (Washington, DC: Brookings Institution Press, 1987).

97. Robert Jervis, “Cooperation under the Security Dilemma,” *World Politics* 30 (1978): 167–214. See also Niccolò Machiavelli, *The Prince*, trans. Harvey C. Mansfield Jr. (Chicago: University of Chicago Press, 1985), 69.

98. Nicholas L. Miller, “Nuclear Dominoes: A Self-Defeating Prophecy?,” *Security Studies* 23 (2014): 33–73.

99. Walzer, *Just and Unjust Wars*, 53–54.

100. *Ibid.*, 87–95, 101–8. On national self-determination, see John Stuart Mill, “A Few Words on Non-intervention” (December 1859), in *Dissertations and Discussions: Political, Philosophical, and Historical* (New York: Holt, 1882), 3:238–63; Michael W. Doyle, *The Question of Intervention: John Stuart Mill and the Responsibility to Protect* (New Haven, CT: Yale University Press, 2015); Lea Brilmayer, “Secession and Self-Determination: A Territorial Interpretation,” *Yale Journal of International Law* 16 (1991): 177–202; and Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004). On India’s motives, see Gary J. Bass, *The Blood Telegram: Nixon, Kissinger, and a Forgotten Genocide* (New York: Knopf, 2013), 88–101, 119–33, 334–35; and Gary J. Bass, “The Indian Way of Humanitarian Intervention,” *Yale Journal of International Law* 40 (2015): 227–94.

Other liberals go further. Anna Stilz suggests that states only have rights to territory if they meet certain conditions, including ruling in the name of the people, protecting basic rights, and not being a usurper.<sup>101</sup> Rawls's argument for holding nuclear weapons in self-defense only justifies the defense of decent peoples against outlaw states, not the defense of an outlaw state. (Although Rawlsian ideal theory makes an awkward fit with the distinctly nonideal character of nuclear moral theory, it seems appropriate to consider the basic legitimacy of the state which is being defended by nuclear weapons.) David Luban has criticized Walzer for deferring to claims of national sovereignty on the grounds that there is a fit between a government and its people: "The government fits the people the way the sole of a boot fits a human face: after a while the patterns of indentation fit with uncanny precision."<sup>102</sup>

Many of the governments which acquire nuclear weapons are grotesquely cruel toward their own citizens. Stalin got the bomb after such atrocities as the Great Terror, the decimation of the kulaks, and the Ukraine terror-famine,<sup>103</sup> and Mao did so soon after the Great Leap Forward—in which at least thirty million people perished from a state-created famine—and soon before the bloody convulsions of the Cultural Revolution.<sup>104</sup> South Africa wielded atomic weapons in defense of apartheid. North Korea is a Stalinist totalitarian dynasty with a functioning gulag, perhaps the most repressive regime on the planet,<sup>105</sup> which had a 1995–98 famine in which between six hundred thousand and one million people died—as much as 5 percent of the population.<sup>106</sup> Such a regime is not the custodian of its citizens' rights but their tormentor.

This is not to suggest invasion to overthrow such regimes, since humanitarian intervention can only be justifiable as an emergency measure—and anyway there are no military scenarios that do not involve a retaliatory bloodbath of South Koreans.<sup>107</sup> But the prolongation of the Kim dynasty is

101. Anna Stilz, "Nations, States, and Territory," *Ethics* 121 (2011): 572–601.

102. David Luban, "The Romance of the Nation-State," *Philosophy and Public Affairs* 9 (1980): 392–97, 396. See also Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy and Public Affairs* 9 (1980): 209–29; and Hoffmann, *Duties beyond Borders*, 39, 58–59.

103. David Holloway, *Stalin and the Bomb* (New Haven, CT: Yale University Press, 1994).

104. Roderick MacFarquhar, *The Origins of the Cultural Revolution: The Great Leap Forward 1958–1960* (New York: Oxford University Press, 1983), 2:11–15; Frank Dikötter, *Mao's Great Famine: The History of China's Most Devastating Catastrophe, 1958–1962* (London: Bloomsbury, 2010); Yang Jisheng, *Tombstone: The Great Chinese Famine, 1958–1962*, trans. Stacy Moshier and Guo Jian (New York: Farrar, Straus & Giroux, 2012).

105. UN General Assembly, Human Rights Council, *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, A/HRC/25/CRP.1, February 7, 2014.

106. Victor Cha, *The Impossible State: North Korea, Past and Future* (New York: Ecco, 2012), 188. For a higher estimate, see Barbara Demick, *Nothing to Envy: Ordinary Lives in North Korea* (New York: Spiegel & Grau, 2010), 145.

107. Barry R. Posen, "The Price of War with North Korea," *New York Times*, December 6, 2017.

not a valid reason for South Koreans or Japanese to have to live in terror of its nuclear missiles. Even in a less extreme case, such as what Luban calls “ordinary oppression,”<sup>108</sup> it is hard to applaud nuclear armament of repressive states, even if one must prudentially accept it.

There is a second and more fundamental normative problem with an argument from self-defense: it stretches the *jus ad bellum* and forgets the *jus in bello*. The claim of national defense is not an unlimited one but must be balanced against the legitimate claims of other countries. Under customary international law, the right of self-defense must follow *jus in bello* principles of necessity and proportionality and pass muster under the laws and customs of armed conflict.<sup>109</sup> Strategic nuclear weapons wipe out cities even when they are launched second rather than first, which is impermissible. Although Kant could not have imagined nuclear weapons, he argued that “a war of extermination” which would cause “the destruction of both parties” should be “absolutely prohibited,” as well as “all means used to wage it”—which could imply abolishing nuclear weapons altogether.<sup>110</sup>

Israelis or Pakistanis, or NATO states during the Cold War, might reply that they have no viable conventional options. Without nuclear weaponry, they would face far larger conventional forces fielded by hostile Arabs and Iranians, Indians, or Soviets and their Warsaw Pact satellites.<sup>111</sup> But most of the time, states have a variety of policy options to seek security. They still make choices, however limited, and those choices can be judged, although not unrealistically. “The statesman is not always knocked to the floor, having to survive or else,” wrote Stanley Hoffmann. Even when survival is at stake, he argued, there are cacophonous policy debates about how best to attain security.<sup>112</sup>

Indeed, some endangered and nuclear-capable states have chosen disarmament as a path to their security.<sup>113</sup> Etel Solingen argues that after China got the bomb in 1964, denuclearization has become the norm in East Asia: Japan, South Korea, and Taiwan have renounced nuclear weaponry, and Southeast Asia created a nuclear-free zone.<sup>114</sup> South Africa, after fighting numerous conflicts with its neighbor states, scrapped its nuclear weapons by 1991 and joined the NPT, soon before its transition

108. Luban, “Romance of the Nation-State,” 395.

109. I.C.J., “Legality of the Threat,” 42–43.

110. Kant, “To Perpetual Peace,” 110.

111. George Bunn, “U.S. Law of Nuclear Weapons,” *Naval War College Review* 32 (1984): 46–62, 55–56.

112. Hoffmann, *Duties beyond Borders*, 14–15.

113. James Joseph Walsh, “Bombs Unbuilt: Power, Ideas, and Institutions in International Politics” (PhD diss., MIT, 2001).

114. Etel Solingen, *Nuclear Logics: Contrasting Paths in East Asia and the Middle East* (Princeton, NJ: Princeton University Press, 2007), 3–53, 57–117.

to democracy.<sup>115</sup> So long as Israel remained opaque about its nuclear weaponry, Egypt and other Arab governments apparently felt little urgency about getting atomic bombs of their own.<sup>116</sup>

Even a just war can only be fought under conditions of necessity and as a last resort; following Kavka's wrongful intentions principle, the same should be true of making nuclear threats against civilians.<sup>117</sup> So Israel and Pakistan would have to claim that doing so was a last resort. Pakistan's legitimate fears of India would more productively be channeled into seeking peace in Kashmir and reorienting its domestic politics away from rallying anti-Indian hostility. Israel, too, has good reasons to fear many Arab states and Iran, who are morally wrong to reject the Jewish state's right to exist. Still, a two-state solution, with a self-governing Palestinian state living peacefully alongside a secure Israel, would be morally praiseworthy in itself and could undermine at least some of the basis for Arab and Iranian hatred toward Israel.

No doubt, it is excruciatingly difficult to resolve intractable, enduring conflicts. Hamas and Narendra Modi—who in August 2019 revoked the autonomy and statehood of Jammu and Kashmir—are hardly ideal partners for peace. Peace overtures can be rebuffed or provoke escalating counterdemands; peacemakers can be sabotaged by extremist spoilers such as the fanatic who murdered Yitzhak Rabin,<sup>118</sup> and even if there were a Palestinian state living in peace with Israel, Israel might well face ongoing Iranian or Arab threats that would make it want a nuclear deterrent. Still, at least a last-resort test gets the incentives right: the governments of Imran Khan and Benjamin Netanyahu should have to demonstrate that they have exhausted all practical options for peace.

The outside world has obligations here too. When reliable allies will help to protect them, states are more willing to shun nuclear weapons.<sup>119</sup> Japan and South Korea are technologically capable of building nuclear weapons, but for now they shelter under US extended deterrence commitments. In contrast, Ukraine, which inherited Soviet nuclear weapons, offers a disastrous counterexample. Under combined US and Russian pressure, it gave up that arsenal, trusting a Russian security assurance from 1994 to respect Ukraine's existing borders and not to use or threaten force.<sup>120</sup> Those commitments were trampled to the letter in 2014 when

115. Paul, *Power versus Prudence*, 116–17.

116. Cohen, *Israel and the Bomb*, 5; Walsh, "Bombs Unbuilt," 142–249.

117. Kavka, *Moral Paradoxes of Nuclear Deterrence*, 33–43.

118. Gabriella Blum, *Islands of Agreement: Managing Enduring Armed Rivalries* (Cambridge, MA: Harvard University Press, 2007), 45–48; Andrew H. Kydd and Barbara F. Walter, "The Strategies of Terrorism," *International Security* 31 (2006): 49–80, 72–76.

119. Nuno P. Monteiro and Alexandre Debs, "The Strategic Logic of Nuclear Proliferation," *International Security* 39 (2014): 7–51, 10, 16–18.

120. Sonni Efron, "Ukraine Disarmament Deal Met with a Note of Disdain," *Los Angeles Times*, January 15, 1994. There were identical deals for Belarus and Kazakhstan, the other Soviet republics left with Soviet nuclear weapons.

Russia invaded and annexed Crimea, leaving many Ukrainians embittered. Still, as these varied examples show, a commitment to nuclear nonproliferation must also mean a commitment to peacemaking, robust international guarantees of security, and a safer international order.<sup>121</sup> Those two goods go together.

#### *E. The Argument from Peaceful Effects*

In 1964, China claimed that “the more exclusive the monopoly of nuclear weapons held by the U.S. imperialists and their partners, the greater the danger of a nuclear war.”<sup>122</sup> That argument is backed up by a number of eminent political scientists, usually from the realist school, who argue that nuclear proliferation will bring international peace.<sup>123</sup>

Bruce Bueno de Mesquita and William Riker show that when all states have the bomb, the chance of interstate war drops to zero.<sup>124</sup> After the end of the Cold War, John Mearsheimer recommended that the United States encourage “limited nuclear proliferation” in Europe, so that Germany and Ukraine got the bomb.<sup>125</sup> He later argued that Japan and India deserved to go nuclear.<sup>126</sup>

There are two main prongs in questioning this argument. First, there is an empirical critique, and second, skepticism about the empirics undercuts a utilitarian case for deterrence that rests on probabilistic calculations. By trying to avoid an evil which has a higher probability of happening (conventional aggression), optimists about proliferation risk a far worse evil which has a lower probability of happening (nuclear annihilation). While international relations is a domain of lesser evils, pro-deterrence utilitarians are placing considerable weight on those probabilities—particularly given the fallible nature of current social science. Furthermore, McMahan argued for the principle of adopting the nuclear policy most likely to avoid the worst disaster for future generations (nuclear annihilation), unless that policy would increase the probability of a less grievous disaster (Soviet domination) by significantly more than it reduces the

121. On the effectiveness of peacekeeping, see Virginia Page Fortna, *Does Peacekeeping Work? Shaping Belligerents' Choices after Civil War* (Princeton, NJ: Princeton University Press, 2008).

122. Lewis and Xue, *China Builds the Bomb*, 242.

123. See Kenneth Waltz's argument in Scott D. Sagan and Kenneth N. Waltz, *The Spread of Nuclear Weapons: A Debate* (New York: Norton, 1995).

124. Bruce Bueno de Mesquita and William H. Riker, “An Assessment of the Merits of Selective Nuclear Proliferation,” *Journal of Conflict Resolution* 26 (1982): 283–306.

125. John J. Mearsheimer, “Back to the Future: Instability in Europe after the Cold War,” *International Security* 15 (1990): 5–56, 8; John J. Mearsheimer, “The Case for a Ukrainian Nuclear Deterrent,” *Foreign Affairs* 72 (1993): 50–66.

126. Sagan and Waltz, *Spread of Nuclear Weapons*, 48. John J. Mearsheimer, “India Needs the Bomb,” *New York Times*, March 24, 2000.

probability of the worst disaster—a point which pro-proliferation realists would need to answer.<sup>127</sup>

A full empirical critique is beyond the scope of this short article. Still, there are reasons for some modest skepticism. Political scientists studying international relations are rarely unequivocal in making predictions, and properly so.<sup>128</sup> There are only a handful of issues on which there is an almost universal professional consensus among social scientists (e.g., that liberal democracies rarely attack each other), and this is not one of them. There is only one empirical case of nuclear war to study, and deterrence is difficult to observe. Bernard Brodie himself warned that deterrence could fail.<sup>129</sup>

New nuclear confrontations in South Asia, East Asia, or the Middle East may prove unstable.<sup>130</sup> Scott Sagan points to Japan's 1941 surprise attack on Pearl Harbor—despite Admiral Yamamoto Isoroku's prescient warning that it could lead to the fiery obliteration of Tokyo by US bombers—as an example of how deterrence can fail even when the target country has robust military forces and can credibly threaten devastating retaliation.<sup>131</sup> As Albert Wohlstetter warned in a classic 1959 article, the ability to retaliate rests on maintaining a reliable peacetime deterrent force which could weather a first strike, having surviving leaders capable of deciding to counterattack and conveying that command to the remainder of the armed forces, as well as the ability of the retaliatory weapons to reach enemy territory and penetrate both active and passive defenses.<sup>132</sup> Smaller nuclear arsenals are inherently more vulnerable to attack, which tempts enemy states to destroy a nascent nuclear program now rather than allow a hated neighbor to break out as a nuclear-armed adversary.<sup>133</sup>

127. Jeff McMahan, "Nuclear Deterrence and Future Generations," in *Nuclear Weapons and the Future of Humanity*, ed. Avner Cohen and Steven Lee (Totowa, NJ: Rowman & Allanheld, 1986), 319–39.

128. See John Lewis Gaddis, "International Relations Theory and the End of the Cold War," *International Security* 17 (1992–93): 5–58.

129. Brodie, *Strategy in the Missile Age*, 393. See also Stanley Hoffmann, "States and the Morality of War," *Political Theory* 9 (1981): 149–72, 170; Bruce Russett, "Ethical Dilemmas of Nuclear Deterrence," *International Security* 8 (1984): 36–54, 54.

130. S. Paul Kapur, "India and Pakistan's Unstable Peace: Why Nuclear South Asia Is Not Like Cold War Europe," *International Security* 30 (2005): 127–52.

131. Scott D. Sagan, "The Origins of the Pacific War," *Journal of Interdisciplinary History* 18 (1988): 919–20.

132. Albert Wohlstetter, "The Delicate Balance of Terror," *Foreign Affairs* 37 (1959): 221–34. See also Brodie, *Strategy in the Missile Age*, 281–86; Roberta Wohlstetter, *Pearl Harbor: Warning and Decision* (Stanford, CA: Stanford University Press, 1962), 398–401; Barry R. Posen and Stephen Van Evera, "Defense Policy and the Reagan Administration," *International Security* 8 (1983): 3–45; and Keir A. Lieber and Daryl G. Press, "The End of MAD? The Nuclear Dimension of U.S. Primacy," *International Security* 30 (2006): 7–44.

133. Sagan and Waltz, *Spread of Nuclear Weapons*, 17; Matthew H. Kroenig, "Time to Attack Iran," *Foreign Affairs* 91 (2012): 76–86.

Great powers, too, may be galvanized to smash a hostile country's emerging nuclear programs before they reach fruition, as the United States considered before China got the bomb.<sup>134</sup> Many newly nuclear-armed countries are close to each other, forcing lightning reaction times. In impoverished or unstable countries, command-and-control or retaliatory launch capabilities may be weak, which also tempts enemy predation. As Sagan argues, even established and new nuclear powers have been frighteningly subject to accidents and errors.<sup>135</sup> Rickety governments are at risk of coups or upheaval during an international crisis, replaying the Kennedy administration's fears that Nikita Khrushchev had been toppled by Soviet hardliners during the Cuban missile crisis. And some of the new proliferators are embroiled in enduring rivalries intensified by ideological or nationalist hatreds, such as the Indo-Pakistani or Arab-Israeli conflicts.

One might expect more robust deterrence when only one side had nuclear weapons. Yet the record is not clear-cut. As Vipin Narang concludes in a study of the nuclear postures of China, France, India, Israel, Pakistan, and South Africa, the possession of secure second-strike nuclear forces was not enough to systematically deter conventional war.<sup>136</sup> There are five cases when states without nuclear weapons have attacked states which had them, including China striking the United States in Korea in 1950, Argentina invading the British-held Falklands in 1982, and the devastating Egyptian and Syrian surprise attack against Israel in 1973—one of the most perilous moments in Israel's existence.<sup>137</sup>

There is some evidence that acquiring nuclear weapons can make certain states more aggressive, rather than less, because of what political scientists call the stability-instability paradox: since both sides know that escalation from conventional conflict to nuclear war would be devastating, their nuclear forces cancel each other out and may leave them freer to engage in conventional warfare.<sup>138</sup> Following that logic, both Amartya Sen and Scott Sagan have argued that the Kargil War was in part sparked by Pakistan's new possession of nuclear weapons, emboldening the Pakistan army to pick a conventional fight with India.<sup>139</sup> Similarly, Victor Cha claims

134. Sagan and Waltz, *Spread of Nuclear Weapons*, 55–66. Francis J. Gavin, "Blasts from the Past: Proliferation Lessons from the 1960s," *International Security* 29 (2004–5): 100–135, 100–101.

135. Sagan and Waltz, *Spread of Nuclear Weapons*, 75–91.

136. Vipin Narang, *Nuclear Strategy in the Modern Era: Regional Powers and International Conflict* (Princeton, NJ: Princeton University Press, 2014), 11.

137. T. V. Paul, "Nuclear Taboo and War Initiation," *Journal of Conflict Resolution* 39 (1995): 696–717, 696–97; Ari Shavit, *My Promised Land* (London: Scribe, 2014), 202, 248.

138. Jervis, *Meaning of the Nuclear Revolution*, 20; Glaser, *Analyzing Strategic Nuclear Policy*, 46; Glenn H. Snyder, "The Balance of Power and the Balance of Terror," in *The Balance of Power*, ed. Paul Seabury (San Francisco: Chandler, 1965), 184–201, 198–99.

139. Sen, *Argumentative Indian*, 260–61; Scott D. Sagan, "A Nuclear Iran," *Journal of International Affairs* 60 (2007): 135–50, 139.

that North Korea's recent belligerence is motivated by a sense among its leadership that their nuclear arsenal makes them invulnerable to retaliation from foreign powers.<sup>140</sup>

Realists could reasonably quarrel with any part of this analysis. Those are important debates to have, and this brief discussion is hardly meant to close them. Yet it is difficult to be sanguine about nuclear proliferation as it is unfolding today. It is certainly plausible that in stable dyads, nuclear weapons have a robust deterrent effect, but social scientists are not sure exactly how strong it is—whether it would afford protection against miscalculation, hair-trigger decisions, nationalist hatred, or the sheer desperation of a government such as Imperial Japan in 1941. Absent more certainty, nuclear skeptics would not feel freed from their moral qualms.

When dicing with death, the odds matter. As McMahan notes, “whether it would be wrong to form the conditional intention to use nuclear weapons will always depend on questions concerning the evaluation of outcomes and the assessment of probabilities.”<sup>141</sup> Some of us might be prepared to risk a 1 percent chance of the greater evil of a nuclear war in order to avoid the 99 percent chance of the lesser evil of conventional aggression, while no sensible person would accept a 50 percent chance of nuclear war to stop a 50 percent chance of conventional attack. But what about a 20 percent chance of nuclear conflagration to forestall, say, a 60 percent chance of conventional aggression? What if the odds of nuclear war were “somewhere between one out of three and even,” as Kennedy later reckoned about the Cuban missile crisis?<sup>142</sup> Even if a deterrence breakdown is highly unlikely, each newly armed state could add to the chances of apocalypse. The argument from peaceful effects rests heavily on these probabilities of greater and lesser evils, repeated with each new nuclear-armed state, but it is hard to share the robust confidence of the proliferation optimists about them.

#### *F. The Argument from Supreme Emergency*

Rather than accommodating just war theory to nuclear weapons, some of their advocates instead toss the rulebook out the window, albeit temporarily. Walzer notes that nuclear deterrence was defended “in terms that follow closely the lines of the supreme-emergency argument.”<sup>143</sup> Following Walzer's account, Rawls argues that it is acceptable to “set aside—in certain

140. Cha, *Impossible State*, 238.

141. McMahan, “Deterrence and Deontology,” 520. Risk is a crucial theme for McMahan (*ibid.*, 536). Cass Sunstein (“Probability Neglect: Emotions, Worst Cases, and Law,” *Yale Law Journal*, 112 [2002]: 61–107) notes that people are prone to irrational panics about nuclear threats.

142. Theodore C. Sorenson, *Kennedy* (London: Hodder & Stoughton, 1965), 705.

143. Michael Walzer, “Emergency Ethics,” in *Arguing about War* (New Haven, CT: Yale University Press, 2004), 33–50, 48.

special circumstances—the strict status of civilians that normally prevents their being directly attacked in war.”<sup>144</sup> A supreme emergency allows a temporary exemption from ordinary moral rules in order to prevent an intolerable submission to a paramount evil. Such a loophole risks rubbishing just war theory altogether, something which constrains only until you might lose a war.<sup>145</sup>

This argument from supreme emergency stands as an extreme form of the argument from self-defense. For both Walzer and Rawls, supreme emergencies rest on two prongs: the nature of the prospective defeat, and the military prospects. These are empirical questions; as Adrian Vermeule suggests, emergencies can be understood in part as a question of epistemic fact.<sup>146</sup> If the enemy is an ordinary one, then a losing country faces only a normal defeat, not a supreme emergency; and if the enemy is extraordinarily evil but is not winning on the battlefield, then there is no emergency.<sup>147</sup>

On both prongs, the foremost example is Nazi Germany. For Walzer, it is the exceptional horror of Nazism, coupled with Germany’s military strength, that would justify nuclear deterrence.<sup>148</sup> Confronted with Germany’s genocidal racism, totalitarianism, and expansionism, could one really forbid free countries from using nuclear threats to defend their liberty and self-rule? Rawls also believes that Nazism represents a threat to all decent values. Constitutional democracy itself, Rawls wrote, was at risk in Europe. Nor was there any possibility of political accommodation with Hitler. Thus, Rawls was prepared to justify the British bombing of German cities, but only at the moment of maximum military peril, which he exactly circumscribes: from the conquest of France in June 1940 until the Soviet Union withstood the German invasion in autumn 1941, or perhaps until the tide turned in 1943 at Stalingrad.<sup>149</sup>

Other enemies hardly reach Hitler’s standard of menace. Walzer condemns the bombing of Hiroshima, arguing that the United States instead should have relaxed its demand for unconditional surrender, since the Japanese empire was engaged only in a more or less ordinary kind of military expansion which warranted its defeat but not its total conquest.<sup>150</sup> Rawls,

144. Rawls, *Law of Peoples*, 98.

145. Hoffmann, “States and the Morality of War,” 165–67. For a defense of emergency as a coherent theory, see Adrian Vermeule, “Holmes on Emergencies,” *Stanford Law Review* 61 (2008): 163–202. See also Mark Tushnet, “Emergencies and the Idea of Constitutionalism,” in *The Constitution in Wartime: Beyond Alarm and Complacency*, ed. Mark Tushnet (Durham, NC: Duke University Press, 2005), 39–54.

146. Vermeule, “Holmes on Emergencies,” 167–68.

147. Walzer, *Arguing about War*, 47.

148. Walzer, *Just and Unjust Wars*, 113–17.

149. Rawls, *Law of Peoples*, 99.

150. Walzer, *Just and Unjust Wars*, 267–68.

too, rebukes the US firebombing of Japanese cities and the atomic bombing of Hiroshima and Nagasaki because “the supreme emergency exemption never held at any time for the United States in its war with Japan.” Although he provided no verdict on whether an expansionist Japanese empire constituted a supreme threat to decent values—an omission that is hard to imagine if Rawls had been Chinese or Korean—he implied a somewhat more favorable opinion of Imperial Japan by suggesting that a political deal could have been cut with its leadership.<sup>151</sup> Regardless of what one thinks of the plausibility of his argument that negotiations with militarist Japan could have ended the war in 1945,<sup>152</sup> the doctrinal point here is that an argument from supreme emergency relies on an assessment of the likelihood and implications of defeat—which can be altered swiftly by a shift in military fortunes or a change of government.

Walzer contends that the limited justifiability of Cold War deterrence rested on the awfulness of Soviet dominance, even though that threat was not as grim as that posed by Nazi Germany. For Walzer, a lesser kind of peril would justify deterring the Soviet Union: “It requires only that we see appeasement or surrender to involve a loss of values central to our existence as an independent nation-state.”<sup>153</sup>

This seems like a somewhat milder kind of supreme emergency, but Walzer later returned to graver claims about the Soviet menace: “We accepted the risk of nuclear war in order to avoid the risk, not of ordinary, but of totalitarian, subjugation.”<sup>154</sup> So it takes some kind of totalitarian menace to warrant a deterrent threat as awful as nuclear Armageddon: on a strong account, something like Nazism or Stalinism; on a weaker account, a grave threat to liberal values.

These arguments remain controversial. Jeremy Waldron suggests that in Walzer’s view supreme emergency is less a positive legal doctrine than an expression of the utmost normative crisis, laden with paradox and ambiguity.<sup>155</sup> Henry Shue fears that Walzer’s exemption could explode prior restraints. He powerfully writes that such an argument from extremity breaks with previous liberal doctrine forbidding the indiscriminate killing of innocent individuals. The prospect of national defeat, he contends, does not constitute a supreme emergency; nor did the Soviet threat. Only the threat of national extermination or enslavement could count. He concedes that “people would have had to do what it actually took to win against at least the Nazis,” but he sees Nazi Germany as an extraordinarily rare

151. Rawls, *Law of Peoples*, 99.

152. See Sadao Asada, “The Shock of the Atomic Bomb and Japan’s Decision to Surrender,” *Pacific Historical Review* 67 (1998): 477–512.

153. *Ibid.*, 273.

154. Walzer, *Arguing about War*, 48.

155. Jeremy Waldron, “Reflections on ‘Supreme Emergency,’” NYU Law School, public law working paper no. 17–45, November 2017, 8–9, 12–13.

exception, a set of one—and anyway denies that the Allied bombing of German cities helped win the war.<sup>156</sup>

Furthermore, since an argument from supreme emergency is bounded in time, it could be misused in two ways: either too early or too late. First, the argument could be invoked as a rationale for getting nuclear weapons well before an actual supreme emergency exists. Nonnuclear states facing a new supreme emergency would have to race to get fissile material, build weaponry, and acquire delivery systems; they might prefer to hedge their bets by starting that work early just in case. Second, weapons acquired in a supreme emergency may be kept long after the peril has passed. Nazi Germany and the Soviet Union are long gone; the American nuclear arsenal remains.

### III. A STANDARD FOR JUDGING PROLIFERATION

From the critique of these six widespread arguments for proliferation, I propose a first cut at a normative standard for judging proliferation, drawing on principles of the *ius ad bellum* and the *ius in bello*.

It is a stringent standard. The least bad proliferator state would acquire nuclear weapons to defend itself against a radically illiberal enemy under conditions of supreme emergency, having exhausted all other reasonable military and diplomatic options to preserve itself. Its emergency claim would be strongest if the foe was one whose victory would threaten liberal civilization. In its domestic politics, the proliferator state should be committed to representative government so that its citizenry could punish a government that recklessly risked their annihilation. It would not showcase atomic weapons for blackmail, self-promotion, unjust coercion, or anything but self-defense, nor would it help other countries get their own nuclear weapons. And having acquired these weapons in a temporary emergency, it would work actively to get rid of them once that emergency had ended.

This strict standard has an echo of what Amy Gutmann discusses as “responsible stewardship” in bioethics. She posits that because humans are uniquely able to affect the world’s safety with synthetic biology, we must act collectively for the betterment of all, including future generations and nonhumans.<sup>157</sup> The phrase, often used in environmentalism, has a grotesque ring applied to nuclear bombs. Still, it may be a reminder that since nuclear weapons have so much impact on rights-bearing persons outside of the societies which acquire them, any would-be proliferator owes duties

156. Henry Shue, *Fighting Hurt: Rule and Exception in Torture and War* (Oxford: Oxford University Press, 2016), 247–71.

157. Amy Gutmann, “The Ethics of Synthetic Biology,” *Hastings Center Report* 41 (2011): 17–22.

toward noncitizens, future generations, and other living creatures. It is impermissible to wield weapons with global impact only for the benefit of those within one society.

The bar here is intentionally set very high, although it is still meant to be workable. Some governments might complain that it is impractical, since they might have to wait until a supreme emergency was looming to start building the national infrastructure for making nuclear weapons, as in the Manhattan Project. That would be easier for countries which already had a substantial fissile-material production operation, such as Japan. Still, in practice, states have often jump-started nuclear programs for threats well short of a supreme emergency. India began secretly building its technological infrastructure in 1948, soon after independence.<sup>158</sup> That highlights the practical need for a restrictive normative standard.

These exacting grounds for judging proliferators require a few notes of clarification. First, when so many human lives are on the line, including those of civilians protected under the *jus in bello*, prudence becomes a moral imperative—which necessitates an evaluation of strategic nuclear doctrines. Proliferation is safest when done carefully and in tandem, so that enemy arsenals and force postures are balanced to ensure functional deterrence—which, to be sure, is unlikely when bitter foes are arming themselves.<sup>159</sup> Proliferator states should disavow destabilizing weapons which tempt a first strike. And responsible governments should heed the NPT, where nuclear states pledge not to transfer nuclear weapons directly or indirectly or to help states build or acquire nuclear weapons.<sup>160</sup> That alone rules out North Korea and Pakistan, both of which have recklessly helped spread nuclear weapons technology.

Second, while democratic governments lose many of their advantages over authoritarian ones in hair-trigger nuclear confrontations, liberal institutions are still preferable to dictatorial ones—although not as much as the democratic advocates of proliferation suggest. Under both Walzer's and Rawls' accounts, supreme emergency can only be invoked by states defending liberal principles, which obviously rules out China or North Korea. Both for normative legitimacy and for effective deterrence, rulers making choices about nuclear brinkmanship should see themselves as wards of their people, beholden to them and responsible for their well-being. Furthermore, liberal universalism could make such leaders properly mindful of their duties toward noncitizens, more so than a nationalistic polity that only considered the well-being of its people. At a minimum, a government seeking nuclear weapons should have robust domestic accountability, nonviolent

158. Perkovich, *India's Nuclear Bomb*, 13–22.

159. Kenneth N. Waltz, "More May Be Better," in Sagan and Waltz, *Spread of Nuclear Weapons*, 17–29.

160. NPT, art. I.

procedures for the transfer of power, firm civilian control of a depoliticized military,<sup>161</sup> and a record of political stability. Here India looks noticeably better than Pakistan.

Third, the standard insists on a state's duty to pursue peace. After all, the arguments from self-defense and supreme emergency are predicated on threats; states which seek extraordinary weaponry are also obliged to make commensurate efforts at reconciliation. Seeking peace does not mean a capitulation to unjust or destabilizing demands; the United States should not abandon South Korea and Japan to face North Korean aggression. But it does mean an energetic and creative commitment to resolving international disputes.

This normative standard is appropriately stringent—so much so that, as will be argued in more detail below, it would probably disqualify all strategic arsenals in the world today. Arab and Iranian threats to wipe out Israel come closest to qualifying as a supreme emergency for the Israelis. Still, while Israel—and perhaps Pakistan—might be able to argue that its neighbors pose a threat to its existence that justifies its nuclear capabilities, that claim would only stand if it had taken all reasonable nonnuclear measures to alleviate that menace, particularly the pursuit of a diplomatic settlement. This entails a robust commitment to making peace and concern for human lives in Kashmir, the West Bank, and Gaza.<sup>162</sup> Instead, Pakistan sponsors terrorist attacks against India while also claiming a moral necessity to threaten India's civilians with nuclear annihilation.

#### IV. THE IMMORALITY OF NUCLEAR WEAPONRY TODAY

##### A. *The Absence of Supreme Emergency*

This article has tried to make the case that most of the arguments for nuclear proliferation are badly flawed. Yet much of the criticism leveled against those arguments can equally well be extended to the justifications for the current nuclear arsenals of the established nuclear weapons states, including those countries legally recognized as such in the NPT.

If the accounts of supreme emergency from Walzer and Rawls are right, they have radical implications for states which have the bomb for decades: almost none of the nuclear standoffs in the world today have any moral standing. States may only get nuclear weapons when facing extreme threats,<sup>163</sup> but they have kept them long after those threats are

161. Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, MA: Belknap Press of Harvard University Press, 1957); Sagan and Waltz, *Spread of Nuclear Weapons*, 49.

162. For peace plans in Kashmir, see Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace* (Cambridge, MA: Harvard University Press, 2003), 201–65.

163. Alexandre Debs and Nuno P. Monteiro, *Nuclear Politics: The Strategic Causes of Proliferation* (Cambridge: Cambridge University Press, 2016).

gone.<sup>164</sup> Even if one saw the Cold War as a protracted emergency, the Soviet Union collapsed almost three decades ago. As Walzer warned in 1977, “Supreme emergency has become a permanent condition.”<sup>165</sup>

Back in the debates of the 1980s, US and Soviet nuclear arsenals were accepted only as an unavoidable but temporary evil that should be curtailed eventually.<sup>166</sup> Pope John Paul II declared that deterrence had to be a temporary position along the way to progressive disarmament.<sup>167</sup> More recently, Pope Francis called for an outright ban on nuclear weapons.<sup>168</sup> Yet the established nuclear powers have done little to achieve that kind of disarmament.<sup>169</sup>

There is an obvious danger that an exception for supreme emergency will be abused, eroding restraints upon war.<sup>170</sup> Walzer and Rawls had in mind liberal states that have created a way of life which is worth defending, but nonliberal states, including Rawls’s “decent hierarchical peoples,” might offer claims of supreme emergency too—which risks turning the exemption into a gaping hole.

Even for liberal states, Walzer specifically rules out threats from Alexander and Napoleon for invoking supreme emergency.<sup>171</sup> Despite their blustery nationalism, neither Xi nor Putin would rank as more threatening than a Napoleon, whose continent-wide wars raged for decades, let alone a Hitler. Even on Walzer’s weaker formulation about supreme emergency, where we face “a loss of values central to our existence as an independent nation-state,” neither Xi nor Putin would seem to qualify. For all the gravity of ongoing disputes over Taiwan, the South China Sea, Ukraine, trade, and human rights, neither China nor Russia is engaged in the kind of conquest practiced by Alexander or Napoleon.

India and Pakistan have enduring nationalist grievances and ideological disagreements with each other, but these awful tensions are not sufficient to warrant invoking a supreme emergency for decades. Nor could Indians really justify their nuclear bluff against Pakistan as forestalling a loss of values central to their independent existence. India fared badly against Pakistan in their 1965 war, yet it lost neither its freedoms nor its democracy. The Kargil War, a limited engagement, did not threaten India with a loss of its liberties—unless it had triggered a nuclear war. For its part, Pakistan has valid reasons to fear a military defeat at India’s hands. Still, even in its darkest hour of 1971, Pakistan’s losses were the direct

164. See Shue, *Fighting Hurt*, 265–66.

165. Walzer, *Just and Unjust Wars*, 274.

166. Nye, *Nuclear Ethics*, 99, 120–31.

167. National Conference of Catholic Bishops, *Challenge of Peace*, 74.

168. Tannenwald, “Great Unraveling,” 15.

169. Subrahmanyam, “India and the International Nuclear Order,” 63.

170. Walzer, *Just and Unjust Wars*, 230–32.

171. Walzer, *Arguing about War*, 47.

consequence of its brutal military crackdown on its Bengali population, which opened the door to Indian marauding; if Pakistan's junta had ruled less cruelly, they might not have lost more than half their population.<sup>172</sup>

There are adversaries today who really are ideologically devoted to the eradication of liberal values, but they are much weaker—terrorist groups such as Al Qaeda and ISIS. Whether or not such organizations are deterrable,<sup>173</sup> they are not the reason why the major democracies hold their nuclear arsenals. To the contrary, some of the stockpiles create insecurity, with the peril that unprotected Russian or Pakistani nuclear weapons might be seized by terrorists.

As Walzer rightly noted, “supreme emergency is never a stable position.”<sup>174</sup> The continuing spread of nuclear weapons ushers in a world in which countries get the bomb not out of a need to resist some exceptional threat to bedrock liberal values but for roughly the same unexceptional reasons that they acquired tanks and artillery. In many parts of the world, citizens have come to accept as commonplace the possession of extraordinary weapons as leverage for ordinary political disputes.

### B. *Haves and Have-Nots*

My criterion for judging proliferation applies equally to established nuclear powers and would-be nuclear claimants. The United States, Britain, and France are certainly more accountable and responsible than North Korea, but that is hardly sufficient to make them blameless custodians of atomic weaponry. The United States' nuclear policy today often concentrates on lower-yield weapons which might be more credibly used for coercive threats, or to destroy targets which are too hardened and deeply buried for conventional weapons. Yet the United States retains a vast strategic arsenal, and Jeffrey Lewis and Scott Sagan doubt that US nuclear war plans really adhere to crucial *jus in bello* principles of discrimination, proportionality, and necessity.<sup>175</sup>

There are weighty duties on nuclear-armed states. To defuse some of the justifiable resentments of postcolonial states, the rich countries should be building a more equitable world order, recognizing what Mathias Risse has termed “humanity's collective ownership of the earth.”<sup>176</sup> These powerful countries should be working to provide international security through security guarantees, redoubled efforts at peaceful resolution of regional disputes, and support and funding for the International Atomic Energy

172. Bass, *Blood Telegram*.

173. Graham T. Allison, “Deterring ISIS,” *National Interest*, September–October 2016, 5–10.

174. Walzer, *Just and Unjust Wars*, 283.

175. Lewis and Sagan, “Nuclear Necessity Principle,” 64.

176. Mathias Risse, *On Global Justice* (Princeton, NJ: Princeton University Press, 2013), 17.

Agency. Anyone advocating steps toward nuclear disarmament should be preoccupied with the old causes of the bloody wars of the preatomic age. If South Korea and Japan are left vulnerable, they are more likely to get nuclear weapons. When Russia violated its own solemn undertakings to a disarmed Ukraine, as it did when it annexed Crimea, it was not only invading and dismembering a weaker neighbor but also undermining the global nonproliferation regime for everyone.

That regime rests on a bargain between the haves and have-nots. The deal was well understood at the time it was negotiated: countries that do not have nuclear weapons promise not to acquire them, in return for which they get access to peaceful uses of atomic energy and a commitment by nuclear-armed states to the goal of disarmament.<sup>177</sup> More precisely, those who have nuclear weapons pledge not to transfer nuclear weapons to anyone or to help any non-nuclear weapon state build its own arsenal,<sup>178</sup> and those who do not have these weapons pledge not to manufacture them or get them from another state.<sup>179</sup> Those states without nuclear capability are to be allowed to enjoy the civilian benefits of the technology.<sup>180</sup> Since many nonarmed states were wary of an inequitable bargain favoring the nuclear-armed states, all of the parties to the NPT agree “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”<sup>181</sup>

The nuclear-armed states have, of course, done no such thing. Subrahmanyam witheringly wrote that the indefinite renewal of the NPT in 1995 meant “a perpetual nuclear apartheid treaty,” reminiscent of “protectorate status extended to native rulers during the imperial era.”<sup>182</sup> A new 2017 Treaty on the Prohibition of Nuclear Weapons, endorsed by 122 states but shunned by all the nuclear-armed powers, shows a widespread frustration at the unmet promises of disarmament.<sup>183</sup>

To rebut such complaints, the nuclear-armed powers should revive the core bargain of the nonproliferation regime by reviving norms of

177. George Bunn, *Arms Control by Committee: Managing Negotiations with the Russians* (Stanford, CA: Stanford University Press, 1992), 59–82; George Bunn, “The Nuclear Nonproliferation Regime and Its History,” in *U.S. Nuclear Weapons Policy: Confronting Today’s Threats*, ed. George Bunn and Christopher F. Chyba (Washington, DC: Brookings Institution Press, 2006), 75–125; Henry D. Sokolski, *Best of Intentions: America’s Campaign against Strategic Weapons Proliferation* (London: Praeger, 2001), 39–62.

178. NPT, art. I.

179. NPT, art. II.

180. NPT, arts. IV–V.

181. NPT, art. VI.

182. Subrahmanyam, “India and the International Nuclear Order,” 67.

183. William C. Potter, “Disarmament Diplomacy and the Nuclear Ban Treaty,” *Survival* 59 (2017): 75–108; Tannenwald, “Great Unraveling,” 25–27.

nonuse and stability, pursuing arms control, and taking some steps toward global disarmament.<sup>184</sup> This would follow the spirit of Kant's call for the gradual abolition of standing armies.<sup>185</sup> Even if the horizon is decades or generations away, better to be moving in the right direction. Under the Treaties of Tlatelolco, Rarotonga, Bangkok, and Pelindaba, respectively, Latin America, the South Pacific, Southeast Asia, and much of Africa are formal nuclear-free zones.

No doubt, substantial disarmament would require great caution. Thomas Schelling warned that even after nuclear abolition, states would hedge with plans to rebuild their atomic weapons swiftly, resulting in instability and a rush to preempt.<sup>186</sup> Still, done carefully, steps toward disarmament are not entirely fanciful.<sup>187</sup> Ronald Reagan, with his secretary of state, George Shultz, became an advocate of nuclear abolition, proposing the total elimination of the American and Soviet nuclear stockpiles in 1986 at the Reykjavík Summit with Mikhail Gorbachev.<sup>188</sup> Barack Obama committed to seek a secure world without nuclear weapons in a 2009 speech in Prague, tried to get the Senate to ratify the Comprehensive Test Ban Treaty, and signed and ratified the New START Treaty with Russia.<sup>189</sup> While Reagan and Obama stigmatized nuclear weapons, that came to a halt with Trump—who bragged to Kim that “I too have a Nuclear Button, but it is a much bigger & more powerful one than his, and my Button works!”<sup>190</sup>

Even if my arguments are entirely wrong, a revived normative debate over nuclear armament would be valuable. The retired chief of the US Strategic Command recently wrote that “*jus in bello* concerns” prompted his force to “expand non-nuclear strike alternatives, and add significant flexibility into our contingency plans.”<sup>191</sup> These debates move nuclear planning into sunlight and away from bureaucratic biases that might countenance unjustifiable policies.<sup>192</sup> They highlight the ways in which both the established and newly armed nuclear states have failed to uphold their parts of the nonproliferation bargain. They call proper attention to the ways in which postcolonial countries feel exploited by the rich, powerful countries—a goad to a more fair and equal world order. They offer a first step,

184. I.C.J., “Legality of the Threat,” 265.

185. Kant, “To Perpetual Peace,” 108.

186. Thomas C. Schelling, “A World without Nuclear Weapons?,” *Daedalus* 138 (2009): 124–29, 127.

187. C. Robert Kehler, “Nuclear Weapons and Nuclear Use,” *Daedalus* 145 (2016): 50–61, 53–54.

188. Philip Taubman, *The Partnership: Five Cold Warriors and Their Quest to Ban the Bomb* (New York: Harper, 2012), 225–70.

189. Michael McFaul, *From Cold War to Hot Peace: An American Ambassador in Putin's Russia* (Boston: Houghton Mifflin Harcourt, 2018).

190. Philip Rucker, “Trump to North Korean Leader Kim: My ‘Nuclear Button’ Is ‘Much Bigger & More Powerful,’” *Washington Post*, January 3, 2018.

191. Kehler, “Nuclear Weapons and Nuclear Use,” 56–58.

192. Lewis and Sagan, “Nuclear Necessity Principle,” 64–65.

at least, toward new standards of more responsible atomic policy, rather than accepting the acquisition and ongoing possession of nuclear weaponry by reckless or unaccountable governments. And they suggest the need for reinvigorated efforts at regional peacemaking that could reduce the drive for nuclear weapons in vulnerable states—a turn toward the duty of peace.