

But Is It Good Enough? *Jus ad Vim* and the Danger of Perpetual War

Christian Nikolaus Braun^{*} 

Just and Unjust Uses of Limited Force: A Moral Argument with Contemporary Illustrations, Daniel R. Brunstetter (Oxford: Oxford University Press, 2021), 304 pp., cloth \$100, eBook \$99.99.

Humane: How the United States Abandoned Peace and Reinvented War, Samuel Moyn (London: Verso, 2022), 416 pp., cloth \$30, paperback \$20.00, eBook \$12.99.

The war in Ukraine has shocked the world community. Putin's war of aggression has returned large-scale warfare to Europe, a type of armed conflict that many hoped had become a relic of days past. Despite the return of large-scale war, however, the post-1945 empirical record shows that limited force has been the predominant face of armed conflict. Until relatively recently, just war thinking, the ethical framework that seeks to grapple with the rights and wrongs of armed conflict, hesitated to embrace limited force as a distinct ethical category. Michael Walzer was the first to suggest *jus ad vim* (the just use of limited force) as a category capable of filling what he considers to be a gap in just war theory.¹ While it took some time for *jus ad vim* to gain traction in the just war debate, Walzer's initial call has subsequently been embraced by thinkers who see the ethics of limited force as distinct from large-scale war. In the eyes of these thinkers, *jus ad vim* is independent from the frameworks that apply respectively to the domains of war and peace.

Christian Nikolaus Braun, Radboud University, Nijmegen, Netherlands (christian.braun@ru.nl)

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Daniel R. Brunstetter's *Just and Unjust Uses of Limited Force: A Moral Argument with Contemporary Illustrations* is the first book-length proposal for such a framework. Brunstetter's pioneering contribution marks the culmination of a decade of scholarship on limited force, significant parts of which have been published in this journal.² Brunstetter proposes a framework of *jus ad vim* that should be seen as independent from the *jus ad bellum* decisions about just war, arguing that since limited force unleashes less destructive power than large-scale war, it could function as a tool of justice in international affairs. While Brunstetter acknowledges that *jus ad vim* is more permissive than *jus ad bellum*, he seeks to avoid the slippery slope toward a more violent world, which is why he suggests a careful recalibration of *jus ad bellum* that is not overly permissive.

Despite not explicitly engaging with the *jus ad vim* debate, Samuel Moyn's *Humane: How the United States Abandoned Peace and Reinvented War* is arguably the most powerful critique of the use of limited force published to date. Though Moyn's primary concern is international law, not just war thinking, the implications of his arguments can be easily transposed. Providing a historical account of the attempt to humanize war by regulating its conduct, Moyn warns that exactly because limited uses of force seem more humane, they may be "especially apt to endure in time and spread in space" (p. 13). While Moyn acknowledges that moral progress has been made by regulating war conduct, he worries that humankind has lost sight of the higher-level goal of outlawing war once and for all. Moyn's argument implicitly asks: Is humanizing war good enough?

In this essay, I reflect on the divergent arguments about limited force made by Brunstetter and Moyn. Arguing that the two positions can be reconciled, I assert that Brunstetter is correct that limited force has a role to play in establishing and maintaining a just world order. At the same time, however, I hold that Moyn is right to warn about the danger that limited force may lead to perpetual war. The way to ensure that limited force both works toward justice and does not result in perpetual war, I argue, is to focus more on considerations of *jus ante bellum* (right before war) and *jus post bellum* (right after war), the so-called "growing edges of just war theory."³ Drawing on the just war tradition, I hold that thinking about the just use of limited force points to the very heart of the tradition—namely, its "dual theme" of permission and restraint.⁴ Further, I assert that the responsible use of statecraft, which just war thinking seeks to inform, accepts that limited force constitutes a legitimate tool to facilitate order, justice, and peace. However, it is also true that any justifiable use of force must be restrained

and limited and aim for a just peace. The embrace of limited force should thus be complemented with an effort by state leaders to bolster the edges of just war in order to create a security environment that requires the use of limited force less frequently. In other words, I argue that *jus ad vim* should complement considerations of *jus ante bellum* and *jus post bellum* as parts of a holistic just war thinking that seeks to facilitate a just peace.

THE CASE FOR *JUS AD VIM*

Before engaging with Brunstetter's substantive argument on *jus ad vim*, it is important to note that he seeks to "follow in the footsteps of Michael Walzer" (p. 16).⁵ Walzer's seminal account in *Just and Unjust Wars* starts from what he calls "the legalist paradigm," the regulatory framework of the post-1945 world order that includes international law. The importance of international law for Brunstetter's conceptualization is worth highlighting, as it provides a fruitful basis to engage with Moyn's legal perspective. Brunstetter detects an ethical space for limited force in what he calls "areas of contested and fragmented sovereignty," areas that are "characterized by warlike violence being used outside war zones" (p. 31). For Brunstetter, such security environments can adequately be handled by neither the law enforcement nor the war paradigm. On the one hand, the law enforcement paradigm, characterized by the action the police can take during peacetime, does not allow the level of force that would be needed to quell the security threat. On the other, the amount of force the military can employ under the war paradigm would seem excessive (p. 8). Therefore, a hybrid framework in between the law enforcement and war paradigms is needed to address the ethical challenge posed by areas of contested and fragmented sovereignty. Brunstetter accepts that there are more just causes for using limited force than there are for going to war, arguing that the new framework has the potential to be morally advantageous compared to conventional war because limited force is limited in scope, intensity, and destructiveness, and also seems more predictable. In order to make sure that the use of limited force indeed remains limited, Brunstetter proposes two overarching maxims; namely, a "presumption against escalation" and a "predisposition towards maximal restraint." These two maxims are supposed to keep the use of limited force in the ethical space between the law enforcement and war paradigms. In what he sees as a "recalibration" of just war, Brunstetter engages with a number of uses of limited force, including

drone strikes, limited air strikes, the imposition of no-fly zones, and special forces operations. Brunstetter seeks to address what he sees as shortcomings of the established just war framework for conceptualizing these examples by developing a distinctive framework for just uses of limited force. In order to do that, he proposes a set of principles that are adapted to the ethical challenges posed by the use of limited force. In this sense, Brunstetter's moral argument echoes calls from certain international lawyers who have identified a need to introduce new rules for the use of limited force that sit between the legal frameworks of international humanitarian law (IHL) and international human rights law (IHRL).⁶

At the same time, however, Brunstetter recognizes that limited force is necessarily less capable of achieving the moral good that a just war might be able to obtain: a just peace. As limited force is more circumscribed in nature, its ambition to establish justice is necessarily also more limited. Brunstetter refers to the more moderate objectives of limited force as "moral truncated victory" (pp. 92–96). He identifies two principles guiding the pursuit of truncated victory; namely, "the re-establishment principle" and "the containment principle." The former calls for the use of diplomacy in tandem with limited force so that the goal of reestablishing a modest state of order may be achieved. The latter allows for the use of limited force in urgent circumstances where the military action aims at the containment of imminent or ongoing threats (p. 23). Brunstetter also emphasizes conciliation, including non-Western forms, as an important factor in the pursuit of truncated victory.

The concern that limited force must be limited in ambition also explains Brunstetter's point of departure regarding his suggestion for a new moral framework. In fact, *jus post vim* (justice after limited force) reasoning is so central to his conceptualization that it is the font from which the *jus ad vim* (the just use of limited force) and *jus in vi* (the just conduct of limited force) principles follow (p. 89). As part of his theorizing, Brunstetter adapts the traditional *jus ad bellum* criteria of just cause, last resort, proportionality, right intention, and legitimate authority, in light of the ethical challenges posed by limited force. Undertaking this adaptation, he seeks to find the right balance between accepting that there are more just causes for using limited force than there are for war and upholding the two overarching restraining maxims noted above. This balancing lets Brunstetter foreground prudential considerations, as demonstrated by a new criterion of "probability of escalation," which seeks to avoid the transition of limited force to large-scale war (chapter 5). In the context of the escalation principle,

Brunstetter introduces the “Rubicon assessment.” This assessment is supposed to function as a practical test aimed at making sure that the use of limited force unleashes an amount of force that avoids triggering a conventional war (p. 140). Put differently, it constitutes a deliberation process about whether a conventional war is justifiable in a specific case or if limited force should be used instead. It differs from the established *jus ad bellum* criterion of last resort in the sense that the Rubicon assessment is not about whether or not force is justifiable, but about what level of force should be employed.

Critics of *jus ad vim*—besides objecting that it is fundamentally redundant as an independent ethical framework⁷—have concentrated on what Brunstetter calls the “permissiveness critique.” The permissiveness critique is underpinned by the worry that introducing a third set of rules besides those that govern the law enforcement and just war paradigms could be taken to justify the resort to armed force more easily. In other words, a theory of *jus ad vim*, in the eyes of its critics, lowers the threshold of last resort for employing force in a morally troublesome way.⁸ In fairness to Brunstetter, he develops *jus ad vim* in part as a response to what he sees as the abuses of limited force by the Obama administration, proposing a framework for such action that is meant to “avoid being lured to the dark side of militarism” (pp. 19–20). Critics, however, fear that because limited force appears more compartmentalized and therefore containable, it may encourage greater profligacy on the part of states in respect to the recourse to arms. In the context of armed drones, oftentimes the preferred means to unleash limited force, some have worried about a regime of perpetual force, or *vis perpetua*, that loses sight of the goal of any just war; namely, to facilitate a just peace.⁹

ON THE “COSMETIC PRETTIFICATION” OF WAR

As indicated above, Moyn’s *Humane* concentrates on the development of what today is known as international humanitarian law, and while his focus is on the legal, it is of course true that ethical considerations have been a major driving force in the codification of this body of law. Moyn’s main argument is that the attempt to ease the human suffering caused by armed conflict has contributed to the acceptance of war as an inevitable aspect of human interaction. In other words, the humanization of war has come at a cost; regulating its conduct, and thus restraining its horrors, has moved the higher-level goal of abolishing war

to the background. As he puts it succinctly: “We fight war crimes but have forgotten the crime of war” (p. 10).

Moyn provides a compelling argument that engages with important historical debates that triggered the development of IHL. For the purpose of this essay, I concentrate on his treatment of the U.S. post-9/11 military conduct, as it relates directly to Brunstetter’s *jus ad vim* argument. While Moyn argues that its origins were already present in the George W. Bush administration, he identifies a dual expansion and humanization of war as an “ominous trademark” of the Obama presidency (p. 270). In short, the Obama administration made the case that the expanded use of limited force, such as drone strikes and commando operations, was not only legal but also more ethical compared to the large-scale wars of the Bush era because the more calibrated uses of force it employed allowed for full compliance with IHL. By limiting itself to minor kinetic force that would only be unleashed after rigorous collateral damage estimates enabled by drone technology, the administration claimed to achieve an unprecedented compliance with the *jus in bello* principles of military necessity, distinction, proportionality, and humanity. In fact, the administration decided to be more strict than IHL in certain aspects of its targeting policy and integrated elements of the more restrictive IHRL, a move Moyn labels “cosmetic prettification” (p. 294). When using this term, Moyn is referring to President Obama’s requirement that “before any strike is taken, there must be near-certainty that no civilians will be killed or injured.”¹⁰ This requirement went beyond the demands of IHL, which accepts that legitimate military operations may cause unintended harm to civilians. At first look, making IHL more restrictive by supplementing it with elements taken from IHRL may seem morally advantageous. For Moyn, however, the Obama administration’s claim of having humanized war further by introducing the hitherto strictest targeting standard functioned as a fig leaf used to cover a questionable expansion of the U.S. military footprint around the world.

Crucially, Moyn argues that the administration’s justification succeeded in the sense that many critics, under the impression that war had been sufficiently humanized, stopped questioning the waging of the “forever war” as such. Moyn does not suggest that humanitarian organizations, such as Human Rights Watch or Amnesty International, no longer criticized the Obama administration’s military conduct. However, in a striking contrast to earlier humanitarians (and to their own activism), these groups, convinced that their calls for more humane war were being answered, no longer concentrated their advocacy on the higher-level

goal of abolishing war in the first place. As Moyn demonstrates, the Obama administration's argument has continued to shape public debate and its approach has been continued by the Trump and Biden administrations.¹¹ It is worth noting that Brunstetter largely agrees with this aspect of Moyn's critique, which is why his new framework seeks to address what he sees as the excesses of the Obama administration's use of limited force.

Moyn builds his argument using two high-profile addresses given by President Obama. The first is Obama's 2009 Nobel Peace Prize lecture, in which he laid out his thinking about war and peace.¹² The second was delivered at the National Defense University (NDU) in 2013 and provided a justification of the administration's use of limited force.¹³ These two addresses, I argue, can help us grapple with the permissiveness critique of *jus ad vim*. Obama gave prominent attention to the tension between his expansion of humane warfare and the ideal of bringing an end to all war in his Nobel Peace Prize lecture. According to Moyn, at Oslo Obama effectively "conceded an indefinite postponement [of the ideal] in the name of keeping Americans safe" (p. 281). While, in his address, Obama expressed his admiration for the nonviolence of Mohandas Gandhi and Martin Luther King Jr., he argued that "as a head of state sworn to protect and defend my nation, I cannot be guided by their examples alone." Consequently, mindful about "the hard truth" that it would be impossible to abolish war for the time being, Obama's Nobel Peace Prize lecture had a pessimistic outlook toward that long-held desire. At the same time, however, Obama also had something to say about the effort to "build a just and lasting peace." In a clear nod to the just war categories of *jus ante bellum* and *jus post bellum* Obama identified a need to create conditions that might be able to avoid the "tragic choices" associated with waging war.¹⁴

The 2013 NDU address, according to Moyn, is especially noteworthy because of an exchange Obama had with a peace activist who interrupted the delivery of his address. Remarkably, the activist did not demand an end to the "forever war." Rather, she urged the president to be more humane in his authorization of force. In Moyn's eyes, not questioning the war as such may be taken as evidence for his argument that the Obama administration's defense of humane warfare had been successful. Obama's response to the activist was similarly striking, as he acknowledged that there are limits to the humanization of war: "We cannot use force everywhere that a radical ideology takes root; and in the absence of a strategy that reduces the wellspring of extremism, a perpetual war—through drones or

Special Forces or troop deployments—will prove self-defeating, and alter our country in troubling ways . . . [T]his war, like all wars, must end.”¹⁵ In other words, despite presiding over the most far-reaching embrace of humane war to date, Obama indicated that he was aware of the dangers that come with it.

In the remainder of this essay, I will argue that Obama’s expanded use of limited force, which has continued ever since and gives rise to *ius ad vim* reasoning, looks to both the past and future of just war thinking. I will note that the tension between humanizing war and the goal of peace reflects the dual theme of permission and restraint that for centuries has informed the just war tradition. Looking into the future, I will identify a need for just war thinkers to grow the edges of just war with the hope that its core—namely, the morally justifiable use of armed force—can move to the background. In employing tools of nonviolent peacebuilding, before the outbreak and in the aftermath of war, an effort should be made to create the conditions that no longer require the use of limited force. In concrete terms, practices such as mediation, demobilization, infrastructure development, postconflict reconciliation, and human rights promotion, can show the way out of a *vis perpetua*. Thus, the just war tradition can be taken to reconcile the two divergent positions on limited force advocated by Brunstetter and Moyn.

JUST WAR AS A TOOL OF STATECRAFT

The just war tradition as it evolved historically was meant to inform the practical decision-making of those in authority who held responsibility for the common good.¹⁶ Simply put, just war was conceived of as a tool of statecraft. In order to make sound decisions on war and peace, state leaders were tasked to apply the insights of just war faithfully to maintain or establish order, justice, and peace. Ideally, they would be able to do so without the use of armed force. After all, the tradition has always held that the overall condition of war is a great moral evil, as in any war at least one side is fighting an unjust war. That said, however, although any killing should be carried out with regret, the tradition affirms that if certain conditions have been met, responsible statecraft compels state leaders to authorize the use of armed force in the service of the three objectives of good statecraft singled out above. Regarding the last of these three objectives, the tradition did not conceive of peace as a state of affairs where violence would be absent. Rather, peace would be a *tranquillitas ordinis*, a tranquility in which order and

justice could flourish. Maintaining and establishing a *tranquillitas ordinis*, it was acknowledged, would at times require the use of armed force.¹⁷ I would argue that, in its thinking about the rights and wrongs of war, the tradition has put too great of an emphasis on the violent tools of statecraft. Put differently, historically speaking most attention has been allocated to the core of just war thinking (that is, *jus ad bellum* and *jus in bello*), while the “edges” of just war (*jus ante bellum* and *jus post bellum*), which include nonviolent peacebuilding, have not received sufficient attention. Contemporary just war scholarship has sought to fill this gap by foregrounding *jus ante bellum* and *jus post bellum*, which, respectively, seek to prevent the outbreak of armed conflict and, in its aftermath, create the conditions that avoid a return to it.¹⁸

Finding the right equilibrium between permission and restraint has also been a prominent theme in the conversation about the just use of limited force. Despite agreeing on certain goals, Brunstetter and Moyn arrive at opposite conclusions about the use of limited force. On the one hand, Brunstetter’s argument in favor of using the distinct *jus ad vim* category is informed by the idea that limited force in places of contested and fragmented sovereignty, if employed in the right way, can make a contribution toward an international security environment that is more just. On the other hand, Moyn is skeptical about justifying an expansion of limited force in the name of humanizing war, as he fears it risks losing the overall objective of outlawing war once and for all. Brunstetter, like Obama, recognizes this variation of the permissiveness critique, which is the reason why he emphasizes the importance of *jus post vim* in his theory. At first look, it seems that Brunstetter’s and Moyn’s basic outlooks are mutually exclusive. However, to me it seems that both viewpoints can be engaged in a way that provides important insights about the morally justifiable use of limited force and the desire to avoid perpetual war. My suggestion is that both Brunstetter and Moyn operate from a basic just war outlook, although they judge the theme of permission and restraint differently with regard to limited force.

Employing the just war tradition as a tool of statecraft both affirms the justifiability of limited force and provides the resources to address the looming threat of a *vis perpetua*. As established in the criterion of right intention, any just war must pursue a just peace defined as *tranquillitas ordinis*. Limited force arguably has a role to play in maintaining or establishing such an order. Although Brunstetter does not explicitly employ this terminology, parts of his thinking about the moral good that limited force may achieve point back to this key insight of the

just war tradition. At the same time, responsible statecraft also requires state leaders to work for a more just world order that requires less frequent employments of force.

I therefore hold that the acceptance that limited force can be justifiable should be complemented by an effort to make its use unnecessary. Just war as a tool of statecraft needs to go beyond thinking about when armed force can be justifiable. Although it is doubtful that armed force can ever be transcended entirely, the just war tradition identifies a moral obligation to approximate such a state of affairs. In both his Nobel Peace Prize lecture and his NDU address, Obama demonstrated that he understood the complexity of just war as statecraft in both its violent and nonviolent dimensions, although he heavily emphasized the former vis-à-vis limited force. However, this ostensible shortcoming of Obama's foreign policy, succinctly highlighted by Moyn, should not betray the fact that the U.S. response to violent extremism could have been different. Going into the future, the ongoing work on jus ante bellum and jus post bellum should be brought to bear more directly on the conditions that give rise to the employment of limited force.¹⁹ While the core of the just war tradition will continue to be the morally justifiable use of armed force, the goal should be that the edges can be grown to such an extent that a vis perpetua can be avoided.

NOTES

¹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2006), pp. ix–xviii.

² See, for example, Daniel Brunstetter and Megan Braun, "From *Jus ad Bellum* to *Jus ad Vim*: Recalibrating Our Understanding of the Moral Use of Force," in "Just War and Its Critics," special section, *Ethics & International Affairs* 27, no. 1 (Spring 2013), pp. 87–106; and Daniel R. Brunstetter, "Wading Knee-Deep into the Rubicon: Escalation and the Morality of Limited Strikes," in "The Ethics of Limited Strikes," roundtable, *Ethics & International Affairs* 34, no. 2 (Summer 2020), pp. 161–73.

³ Mark J. Allman and Tobias L. Winright, "Growing Edges of Just War Theory: *Jus Ante Bellum*, *Jus Post Bellum*, and Imperfect Justice," *Journal of the Society of Christian Ethics* 32, no. 2 (Fall/Winter 2012), pp. 173–91.

⁴ James Turner Johnson, *Can Modern War Be Just?* (New Haven, Conn.: Yale University Press, 1984), p. 2.

⁵ Parts of this section draw on Christian Nikolaus Braun, *Limited Force and the Fight for the Just War Tradition* (Washington, D.C.: Georgetown University Press, 2023).

⁶ See Rosa Brooks, "Drones and the International Rule of Law," in "The International Rule of Law," roundtable, *Ethics & International Affairs* 28, no. 1 (Spring 2014), pp. 83–103.

⁷ For the redundancy critique, see Helen Frowe, "On the Redundancy of *Jus ad Vim*: A Response to Daniel Brunstetter and Megan Braun," *Ethics & International Affairs* 30, no. 1 (Spring 2016), pp. 117–29.

⁸ See C. A. J. Coady, *Morality and Political Violence* (Cambridge, U.K.: Cambridge University Press, 2008), p. 93.

⁹ Christian Enemark, "Drones, Risk, and Perpetual Force," *Ethics & International Affairs* 28, no. 3 (Fall 2014), pp. 365–81.

- ¹⁰ Barack Obama, “Remarks by the President at the National Defense University” (remarks, National Defense University, Fort McNair, Washington, D.C., May 23, 2013), obamawhitehouse.archives.gov/the-press-office/2013/05/23/remarks-president-national-defense-university.
- ¹¹ For the latest claim that the United States is employing very strict standards for counterterrorism strikes, see the *New York Times*’ reporting on the Biden administration’s new targeting policy. Charlie Savage, “White House Tightens Rules on Counterterrorism Drone Strikes,” *New York Times*, updated October 10, 2022, www.nytimes.com/2022/10/07/us/politics/drone-strikes-biden-trump.html?smid=tw-share.
- ¹² Barack Obama, “Remarks by the President at the Acceptance of the Nobel Peace Prize” (remarks, Oslo City Hall, December 10, 2009), obamawhitehouse.archives.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize.
- ¹³ Obama, “Remarks by the President at the National Defense University.”
- ¹⁴ Obama, “Remarks by the President at the Acceptance of the Nobel Peace Prize.”
- ¹⁵ Obama, “Remarks by the President at the National Defense University.”
- ¹⁶ For excellent accounts of the just war tradition, see Alex J. Bellamy, *Just Wars: From Cicero to Iraq* (Cambridge, U.K.: Polity, 2006); James Turner Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton, N.J.: Princeton University Press, 1981); and Gregory M. Reichberg, *Thomas Aquinas on War and Peace* (Cambridge, U.K.: Cambridge University Press, 2017).
- ¹⁷ George Weigel, *Tranquillitas Ordinis: The Present Failure and Future Promise of American Catholic Thought on War and Peace* (New York: Oxford University Press, 1987).
- ¹⁸ See, for example, Ned Dobos, *Ethics, Security, and the War-Machine: The True Cost of the Military* (Oxford: Oxford University Press, 2020); and Carsten Stahn, Jennifer S. Easterday, and Jens Iverson, eds., *Jus Post Bellum: Mapping the Normative Foundations* (Oxford: Oxford University Press, 2014). For a proposal of a just peace framework that is meant to transcend the just war framework, see Lisa Sowle Cahill, *Blessed Are the Peacemakers: Pacifism, Just War, and Peacebuilding* (Minneapolis: Fortress, 2019).
- ¹⁹ As noted previously in the text, Brunstetter does engage with what he calls “jus post vim,” but the jus ante bellum and jus post bellum I have in mind would be more ambitious, including, for example, poverty reduction and the fight against climate change as drivers of conflict.

Abstract: In this essay, I reflect on the divergent arguments about limited force made by Daniel R. Brunstetter and Samuel Moyn in their respective monographs. Arguing that their positions can be reconciled, I agree with Brunstetter that limited force has a role to play in establishing and maintaining a just world order. At the same time, however, I am mindful of Moyn’s warning that limited force may lead to perpetual war. The way to ensure that limited force both works toward justice and does not result in perpetual war, I argue, is to focus more on considerations of *jus ante bellum* (right before war) and *jus post bellum* (right after war), the so-called “growing edges of just war theory.” I hold that the responsible use of statecraft, which just war thinking seeks to inform, accepts that limited force constitutes a legitimate tool to facilitate order, justice, and peace. However, any justifiable use of force must be restrained and limited and aim for a just peace. The embrace of limited force should thus be complemented with an effort by state leaders to bolster the edges of just war in order to facilitate a security environment that requires the use of limited force less frequently.

Keywords: just war theory, limited force, *jus ad vim*, *jus ante bellum*, *jus post bellum*