

THE JUST WAR

Introduction

Just war theory deals with the justification of how and why wars are fought. The justification can be either theoretical or historical. The theoretical aspect is concerned with ethically justifying war and forms of warfare. The historical aspect, or the "just war tradition" deals with the historical body of rules or agreements applied (or at least existing) in various wars across the ages. For instance international agreements such as the Geneva and Hague conventions are historical rules aimed at limiting certain kinds of warfare. It is the role of ethics to examine these institutional agreements for their philosophical coherence as well as to inquire into whether aspects of the conventions ought to be changed.

Historically, the just war tradition--a set of mutually agreed rules of combat--commonly evolves between two similar enemies. When enemies differ greatly because of different religious beliefs, race, or language, war conventions have rarely been applied. It is only when the enemy is seen to be a people with whom one will do business in the following peace that tacit or explicit rules are formed for how wars should be fought and who they should involve. In part the motivation is seen to be mutually beneficial--it is preferable to remove any underhand tactics or weapons that may provoke an indefinite series of vengeance acts. Nonetheless, it has been the concern of the majority of just war theorists that such asymmetrical morality should be denounced, and that the rules of war should apply to all equally. That is just war theory should be universal.

The just war tradition is as old as warfare itself. Early records of collective fighting indicate that some moral considerations were used by warriors. They may have involved consideration of women and children or the treatment of prisoners. Commonly they invoked considerations of honour: some acts in war have always been deemed dishonourable, whilst others have been deemed honourable. Whilst the specifics of what is honourable differ with time and place, the very fact of one moral virtue has been sufficient to infuse warfare with moral concerns. The just war theory also has a long history. Whilst parts of the Bible hint at ethical behavior in war and concepts of just cause, the most systematic exposition is given by Saint Thomas Aquinas. In the *Summa Theologicae* Aquinas presents the general outline of what becomes the just war theory. He discusses not only the justification of war, but also the kinds of activity that are permissible in war. Aquinas's thoughts become the model for later Scholastics and Jurists to expand. The most important of these are: Francisco de Vitoria (1548-1617), Francisco Suarez (1548-1617), Hugo Grotius (1583-1645), Samuel Pufendorf (1632-1704), Christian Wolff (1679-1754), and Emerich de Vattel (1714-1767). In the twentieth century it has undergone a revival mainly in response to the invention of nuclear weaponry and American involvement in the Vietnam war. The most important contemporary texts include Michael Walzer's *Just and Unjust Wars* (1977), Barrie Paskins and Michael Dockrill *The Ethics of War* (1979), Richard Norman *Ethics, Killing, and War* (1995), as well as seminal articles by Thomas Nagel "War and Massacre", Elizabeth Anscombe "War and Murder", and a host of others, commonly found in the journals *Ethics* or *The Journal of Philosophy and Public Affairs*.

Against the just war (*justum bellum*) are those of a skeptical persuasion who do not believe that morality can or should exist in war. There are various positions against the need or the possibility of morality in war. Generally, consequentialists and act utilitarians may claim that if victory is sought then all methods should be employed to ensure it is gained at a minimum of expense and time. Arguments from 'military necessity' are of this type: for example, to defeat Germany in World War II, it was deemed necessary to bomb civilian centers, or in the US Civil War, for General Sherman to burn Atlanta. However, intrinsicists may also decree that no morality can exist in the state of war, for they may claim it can only exist in a peaceful situation in which recourse exists to conflict resolving institutions. Or intrinsicists may claim that possessing a just cause (the argument from righteousness) is a sufficient condition for pursuing whatever means are necessary to gain a victory or to punish an enemy. A different skeptical argument, one advanced by Michael Walzer, is that the invention of nuclear weapons alter war so much that our notions of morality--and hence just war theories--become redundant. However, against Walzer, it can be reasonably argued that although such weapons change the nature of warfare they do not dissolve the need to consider their use within a moral framework.

Whilst sceptical positions may be derived from consequentialist and intrinsicist positions, they need not be. Consequentialists can argue that there are long term benefits to having a war convention. For example, by fighting cleanly, both sides can be sure that the war does not escalate, thus reducing the probability of creating an incessant war of counter-revenges. Intrinsicists can argue that certain spheres of life ought never to be targeted in war: for example, hospitals and densely populated suburbs. The inherent problem with both ethical models is that they become either vague or restrictive when it comes to war. Consequentialism is an open-ended model, highly vulnerable to pressing military needs to adhere to any code of conduct in war: if more will be gained from breaking the rules than will be lost, the consequentialist cannot but demur to military necessity. On the other hand, intrinsicism can be so restrictive that it permits no flexibility in war: whether it entails a Kantian thesis of respecting others or a classical rights position, intrinsicism produces an inflexible model that would restrain warrior's actions to the targeting of permissible targets only. In principle such a prescription is commendable, yet the nature of war is not so clean cut when military targets can be hidden amongst civilian centers.

Against these two ethical positions, just war theory offers a series of principles that aim to retain a plausible moral framework for war. From the just war (*justum bellum*) tradition, theorists distinguish between the rules that govern the justice of war (*jus ad bellum*) from those that govern just and fair conduct in war (*jus in bello*). The two are by no means mutually exclusive, but they offer a set of moral guidelines for waging war that are neither unrestricted nor too restrictive. The problem for ethics involves expounding the guidelines in particular wars or situations.

The Jus Ad Bellem Convention

The principles of the justice of war are commonly held to be: having just cause, being declared by a proper authority, possessing right intention, having a reasonable chance of success, and the end being proportional to the means used. One can immediately detect that the principles are not wholly intrinsicist nor consequentialist--they invoke the concerns of both models. Whilst this provides just war theory with the advantage of flexibility, the lack of a strict ethical framework

means that the principles themselves are open to broad interpretations. Examining each in turn draws attention to the relevant problems.

Possessing just cause is the first and arguably the most important condition of *jus ad bellum*. Most theorists hold that initiating acts of aggression is unjust and gives a group a just cause to defend itself. But unless 'aggression' is defined, this proscription rather open-ended. For example, just cause resulting from an act of aggression can ostensibly be responses to a physical injury (e.g., a violation of territory), an insult (an aggression against national honor), a trade embargo (an aggression against economic activity), or even to a neighbor's prosperity (a violation of social justice). The onus is then on the just war theorist to provide a consistent and sound account of what is meant by just cause. Whilst not going into the reasons of why the other explanations do not offer a useful condition of just cause, the consensus is that an initiation of physical force is wrong and may justly be resisted. Self-defense against physical aggression, therefore, is putatively the only sufficient reason for just cause. Nonetheless, the principle of self-defense can be extrapolated to anticipate probable acts of aggression, as well as in assisting others against an oppressive government or from another external threat (interventionism). Therefore, it is commonly held that aggressive war is only permissible if its purpose is to retaliate against a wrong already committed (e.g., to pursue and punish an aggressor), or to pre-empt an anticipated attack.

The notion of proper authority seems to be resolved for most of the theorists, who claim it obviously resides in the sovereign power of the state. But the concept of sovereignty raises a plethora of issues to consider here. If a government is just, i.e., it is accountable and does not rule arbitrarily, then giving the officers of the state the right to declare war is reasonable. However, the more removed from a proper and just form a government is, the more reasonable it is that its sovereignty disintegrates. A historical example can elucidate the problem: when Nazi Germany invaded France in 1940 it set up the Vichy puppet regime. What allegiance did the people of France under its rule owe to its precepts and rules? A Hobbesian rendition of almost absolute allegiance to the state entails that resistance is wrong; whereas a Lockean or instrumentalist conception of the state entails that a poorly accountable, inept, or corrupt regime possesses no sovereignty, and the right of declaring war (to defend themselves against the government or from a foreign power) is wholly justifiable. The notion of proper authority therefore requires thinking about what is meant by sovereignty, what is meant by the state, and what is the proper relationship between a people and its government.

The possession of right intention is ostensibly less problematic. The general thrust of the concept being that a nation waging a just war should be doing so for the cause of justice and not for reasons of self-interest or aggrandizement. Putatively, a just war cannot be considered to be just if reasons of national interest are paramount or overwhelm the pretext of fighting aggression. However, possessing right intention masks many philosophical problems. According to Kant, possessing good intent constitutes the only condition of moral activity, regardless of the consequences envisioned or caused, and regardless, or even in spite, of any self interest in the action the agent may have. The extreme intrinsicism of Kant can be criticized on various grounds, the most pertinent here being the value of self-interest itself. At what point does right intention separate itself from self-interest?

On the one hand, if the only method to secure peace is to annex a belligerent neighbor's territory, political aggrandizement is intimately connected with the proper intention of maintaining the peace. On the other hand, a nation may possess just cause to defend an oppressed group, and may rightly argue that the proper intention is to secure their freedom, yet such a war may justly be deemed too expensive or too difficult to wage; i.e., it is not ultimately in their self-interest to fight the just war. On that account, some may demand that national interest is paramount: only if waging war on behalf of freedom is also complemented by the securing of economic or other military interests should a nation commit its troops. The issue of intention raises the concern of practicalities as well as consequences, both of which should be considered before declaring war.

The next principle is that of reasonable success. This is another necessary condition for waging just war, but again is insufficient by itself. Given just cause and right intention, the just war theory asserts that there must be a reasonable probability of success. The principle of reasonable success is consequentialist in that the costs and benefits of a campaign must be calculated. However, the concept of weighing benefits poses moral as well as practical problems as evinced in the following questions. Should one not go to the aid of a people or declare war if there is no conceivable chance of success? Is it right to comply with aggression because the costs of not complying are too prohibitive? Is it not sometimes morally necessary to stand up to a bullying larger force, as the Finns did when Russia invaded in 1940, for the sake of national self-esteem? Besides, posturing for defense may sometimes make aggression itself too costly, even for a much stronger side. However, the thrust of the principle of reasonable success emphasizes that human life and economic resources should not be wasted in what would obviously be an uneven match. For a nation threatened by invasion, other forms of retaliation or defense may be available, such as civil disobedience, or even forming alliances with other small nations to equalize the odds. Historically, many nations have overcome the probability of defeat: the fight may seem hopeless, but a charismatic leader or rousing speech can sometimes be enough to stir a people into fighting with all their will. Winston Churchill offered the British nation some of the finest of war's rhetoric when it was threatened with defeat and invasion by Nazi Germany in 1940. For example: "Let us therefore brace ourselves to do our duty, and so bear ourselves that, if the British Commonwealth and its Empire lasts for a thousand years, men will still say, 'This was their finest hour.'" ...And "What is our aim?... Victory, victory at all costs, victory in spite of all terror; victory, however long and hard the road may be; for without victory, there is no survival." (Speeches to Parliament, 1940).

The final guide of *jus ad bellum*, is that the desired end should be proportional to the means used. This principle overlaps into the moral guidelines of how a war should be fought, namely the principles of *jus in bello*. With regards to just cause, a policy of war requires a goal, and that goal must be proportional to the other principles of just cause. Whilst this commonly entails the minimizing of war's destruction, it can also invoke general balance of power considerations. For example, if nation A invades a land belonging to the people of nation B, then B has just cause to take the land back. According to the principle of proportionality, B's counter-attack must not invoke a disproportionate response: it should aim to retrieve its land. That goal may be tempered with attaining assurances that no further invasion will take place. But for B to invade and annex regions of A is nominally a disproportionate response, unless (controversially) that is the only method for securing guarantees of no future reprisals. For B to invade and annex A and then to

continue to invade neutral neighboring nations on the grounds that their territory would provide a useful defense against other threats is even more unsustainable.

On the whole the principles offered by *jus ad bellum* are useful guidelines. Philosophically however they invoke a plethora of problems by either their independent vagueness or by mutually inconsistent results. They are nonetheless a useful starting point for ethics and remain a pressing concern for statesmen and women.

The Principles Of *Jus In Bello*

The rules of just conduct fall under the two broad principles of discrimination and proportionality. The principle of discrimination concerns [those] who are legitimate targets in war, whilst the principle of proportionality concerns how much force is morally appropriate. One strong implication of being a separate topic of analysis for just war theorists, is that a nation fighting an unjust cause may still fight justly, or vice versa. A third principle can be added to the traditional two, namely the principle of responsibility, which demands an examination of where responsibility lies in war.

In waging war it is considered unfair and unjust to attack indiscriminately, since non-combatants or innocents are deemed to stand outside the field of war proper. Immunity from war can be reasoned from the fact that their existence and activity is not part of the essence of war, which is killing combatants. Since killing itself is highly problematic, the just war theorist has to proffer a reason why combatants become legitimate targets in the first place, and whether their status alters if they are fighting a just or unjust war. Firstly, a theorist may hold that being trained and/or armed constitutes a sufficient threat to combatants on the other side. Voluntarists may invoke the boxing ring analogy: punching another individual is not morally supportable in a civilized community, but those who voluntarily enter the boxing ring renounce their right not to be hit. Similarly, those who join an army renounce their rights not to be targeted in war; the rights of non-combatants (civilians, or 'innocents') remain intact and therefore they cannot be justly attacked. Others, avoiding a rights analysis, may argue that those who join the army (or who have even been pressed into conscription) come to terms with being a target, and hence their own deaths. This is argued for example by Barrie Paskins and Michael Dockrill in *The Ethics of War* (1979). However, since civilians can just as readily come to terms with their own deaths, their argument is not sufficient to defend the principle of discrimination. Rights based analyses are more productive, especially those that focus on the renouncing of rights by combatants by virtue of their war status, leaving a sphere of immunity for civilians.

Warfare sometimes unavoidably involves civilians. Whilst the principle of discrimination argues for their immunity from war, the practicalities of war provoke the need for a different model. The doctrine of double effect offers a justification for killing civilians in war, so long as their deaths are not intended but are accidental. Targeting a military establishment in the middle of a city is permissible according to the doctrine of double effect, for the target is legitimate. Civilian casualties are a foreseeable but accidental effect. Whilst the doctrine provides a useful justification of 'collateral damage' to civilians, it raises a number of issues concerning the justification of foreseeable breaches of immunity, as well as the balance to strike between military objectives and civilian casualties.

Another problem arises in defining who is a combatant and who is not. Usually combatants carry arms openly, but guerrillas disguise themselves as civilians. Michael Walzer, in his *Just and Unjust Wars* (1977) claims that the lack of identification does not give a government the right to kill indiscriminately--the onus is on the government to identify the combatants. Others have argued that the nature of modern warfare dissolves the possibility of discrimination. Civilians are just as necessary causal conditions for the war machine as are combatants, therefore, they claim, there is no moral distinction in targeting an armed combatant and a civilian involved in arming or feeding the combatant. The distinction is, however, not closed by the nature of modern economies, since a combatant still remains a very different entity from a non-combatant, if not for the simple reason that the former is presently armed (and hence has renounced rights or is prepared to die, or is a threat), whilst the civilian is not. On the other hand, it can be argued that being a civilian does not necessarily mean that one is not a threat and hence not a legitimate target. If Mr. Smith is the only individual in the nation to possess the correct combination that will detonate a device, then he becomes not only causally efficacious in the firing of a weapon of war, but also morally responsible; reasonably he also becomes a legitimate military target. His job effectively militarizes his status. The underlying issues that ethical analysis must deal with involve the logical nature of an individual's complicity, or aiding and abetting the war machine, with greater weight being imposed on those logically closer than those logically further from the war machine in their work. At a deeper level, one can consider the role that civilians play in supporting an unjust war; to what extent are they morally culpable, and if they are culpable to some extent, does that mean they may become legitimate targets? This invokes the issue of collective versus individuality responsibility that is in itself a complex topic.

The second principle of just conduct is that any offence should remain strictly proportional to the objective desired. This principle overlaps with the proportionality principle of just cause, but it is distinct enough to consider it in its own light. Proportionality for *jus in bello* requires tempering the extent and violence of warfare to minimise destruction and casualties. It is broadly utilitarian in that it seeks to minimize overall suffering, but it can also be understood from other moral perspectives, for instance, from harboring good will to all (Kantian ethics), or acting virtuously (Aristotelian ethics). Whilst the consideration of discrimination focuses on who is a legitimate target of war, the principle of proportionality deals with what kind of force is morally permissible. In fighting a just war in which only military targets are attacked, it is still possible to breach morality by employing disproportionate force against an enemy. Whilst the earlier theoreticians, such as Thomas Aquinas, invoked the Christian concepts of charity and mercy, modern theorists may invoke either consequentialist or intrinsicist prescriptions, both are which remain problematic as the foregoing discussions have noted. However, it does not seem morally reasonable to completely gun down a barely armed belligerent tribe. At the battle of Omdurman in the Sudan, six machine gunners killed thousands of dervishes--the gunners may have been in the right to defend themselves, but the principle of proportionality demands that a battle ends before it becomes a massacre. Similarly, following the battle of Culloden, Cumberland ordered "No Quarter", which was not only a breach of the principle of discrimination, for his troops were permitted to kill the wounded as well as supporting civilians, but also a breach of the principle of proportionality, since the battle had been won, and the Jacobite cause effectively defeated on the battle field.

The principles of proportionality and discrimination aim to temper war's violence and range. They are complemented by other considerations that are not taken up in the traditional exposition of *jus in bello*, especially the issue of responsibility.

Jus in bello requires that the agents of war be held responsible for their actions. This ties in their actions to morality generally. Some, such as Saint Augustine argues against this assertion: "who is but the sword in the hand of him who uses it, is not himself responsible for the death he deals." Those who act according to a divine command, or even God's laws as enacted by the state and who put wicked men to death "have by no means violated the commandment, "Thou shalt not kill." Whilst this issue is connected to the concepts of just cause, it does not follow that individuals waging a just, or unjust war, should be absolved of breaching the principles of just conduct. Readily it can be accepted that soldiers killing other soldiers is part of the nature of warfare, but when soldiers turn their weapons against non-combatants, or pursue their enemy beyond what is reasonable, then they are no longer committing legitimate acts of war but acts of murder. The principle of responsibility re-asserts the burden of abiding by rules in times of peace on those acting in war. The issues that arise from this principle include the morality of obeying orders (for example, when one knows those orders to be immoral), as well as the status of ignorance (not knowing of the effects of one's actions).

The foregoing has described the main tenets of the just war theory, as well as some of the problems that it entails. The theory bridges theoretical and applied ethics, since it demands an adherence, or at least a consideration of meta-ethical conditions and models, as well as prompting concern for the practicalities of war. A few of those practicalities have been mentioned here. Other areas of interest are: hostages, innocent threats, international blockades, sieges, the use of weapons of mass destruction or of anti-personnel weapons (e.g., land mines), and interventionism.

Principles of the Just War

- A just war can only be waged as a last resort. All non-violent options must be exhausted before the use of force can be justified.
- A war is just only if it is waged by a legitimate authority. Even just causes cannot be served by actions taken by individuals or groups who do not constitute an authority sanctioned by whatever the society and outsiders to the society deem legitimate.
- A just war can only be fought to redress a wrong suffered. For example, self-defense against an armed attack is always considered to be a just cause (although the justice of the cause is not sufficient--see point #4). Further, a just war can only be fought with "right" intentions: the only permissible objective of a just war is to redress the injury.
- A war can only be just if it is fought with a reasonable chance of success. Deaths and injury incurred in a hopeless cause are not morally justifiable.

- The ultimate goal of a just war is to re-establish peace. More specifically, the peace established after the war must be preferable to the peace that would have prevailed if the war had not been fought.
- The violence used in the war must be proportional to the injury suffered. States are prohibited from using force not necessary to attain the limited objective of addressing the injury suffered.
- The weapons used in war must discriminate between combatants and non-combatants. Civilians are never permissible targets of war, and every effort must be taken to avoid killing civilians. The deaths of civilians are justified only if they are unavoidable victims of a deliberate attack on a military target.

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