

Chapter 37

Just War

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There are three broadly defined positions on the morality of war. The first is pacifism, which holds that it is always wrong for a state to resort to war and always wrong for an individual to participate in war. The second is 'political realism', the view that war lies beyond and is unconstrained by morality. The third, which occupies the broad space between these opposing extremes, is that war is sometimes but not always morally permissible and that there are moral constraints on the conduct of war.

This middle ground between pacifism and political realism is dominated by a tradition of thought known as the 'theory of the just war' that has evolved over many centuries, beginning roughly with the writings of Augustine of Hippo and persisting with remarkable continuity to the present. It is perhaps surprising that the main contributors to the development of this theory have been theologians and jurists rather than philosophers. There is little about the morality of war in the work of the great figures in the history of philosophy, and even today this subject tends not to attract the attention of the most eminent philosophers. One exception is Michael Walzer, whose *Just and Unjust Wars*, published in 1977, has been highly influential.

Although there is substantial continuity within the tradition, there are significant differences between the principles endorsed by the classical theorists, such as Aquinas, Grotius, Vitoria and Suárez, and the currently orthodox version of the theory. In general, the older writings are concerned more with moral rights, justice and desert, while the theory that has developed in tandem with international law over the past two centuries is concerned more with the regulation of war in ways that limit its instances and the harm it causes to all affected (Reichberg, forthcoming).

Just war theory is an anomaly in contemporary philosophical ethics by virtue of being widely accepted as essentially correct. Many discussions of the ethics of a particular war simply apply the central principles of the theory in a mechanical fashion, with little or no reflection on whether they are valid or how they should be interpreted (Elshtain, 2003, pp. 59–70). In other areas of ethics, by contrast, there is widespread and intractable disagreement about basic principles. The ethics of war is thus the only area in contemporary ethics in which most people not only assume that there is an acceptable theory but also agree what it is. This is particularly surprising given that the content of the theory is an amalgam of medieval Catholic theology and modern international law.

The central distinction in the theory is between the principles that govern the resort to war (*jus ad bellum*) and those that govern conduct in war (*jus in bello*). There are six commonly recognized principles of *jus ad bellum* and two of *jus in bello*. Each principle states a necessary condition of permissibility. For a war to be permissible, it must satisfy all the requirements of *jus ad bellum*. Similarly, for an act of war to be permissible, it must satisfy both requirements of *jus in bello*.

In the remainder of this chapter, I will discuss each of the just war principles, suggesting doubts about some and offering controversial interpretations of others. I will conclude with a brief reflection on the relation between the morality of war and the law of war.

The least controversial and arguably the most important of the just war principles is the requirement of *just cause*, which is that there must be a sufficient reason for war, a goal or 'cause' capable of justifying the terrible forms of action that war inevitably involves. How is it determined what constitutes a just cause for war? The tradition offers relatively little guidance. The classical writings tend to suggest that one state has just cause for war against another if the latter is guilty of committing, or (on some accounts) imminently threatens to commit, a *wrong* against the former that is sufficiently serious to count as a violation of its rights. Just wars, on this view, must be *reactive*, but need not be *defensive*, since they may also be punitive or restitutionary. According to the contemporary theory, by contrast, the only uncontroversial just cause for war is defence against aggression. This mirrors the insistence in Articles 2(4) and 51 of the United Nations Charter that it is illegal for one state to use military force against another except in 'individual or collective self-defense if an armed attack occurs'.

The shift to the more restrictive account of just cause is one of a number of changes for the worse in the recent evolution of the just war tradition, which is coming under increasing pressure to revert to a more expansive account. The idea that the sole just cause for war is defence against aggression may, particularly during the Cold War, have been salutary in pragmatic terms, but it is wrong as a matter of moral principle and the arguments that have been offered to support it are inadequate.

The menu of possible just causes for war contracted during a period in which the dominant paradigms in international relations and international law held that states were the only significant units whose moral, political and legal relations were to be regulated by norms and laws beyond those internal to states themselves. States were understood as autonomous individual agents, analogous in relevant ways to individual persons and governed in their relations with one another by principles analogous to the moral and legal principles governing relations among persons. It seems that reflective people have accepted this conception of states primarily because they have attributed great value to the survival and integrity of distinct political communities, assumed that the state is the ideal form that such a community could take, and assumed further that widespread acceptance of a doctrine of state sovereignty would facilitate the survival and integrity of states. Given these assumptions, it is natural to conclude that virtually the only just cause for war against a state is to stop it from attacking and thus from violating the sovereignty of another state – though one may concede, as Walzer does, that a state's sovereignty may legitimately be overridden to stop it from committing the worst types of crime against its own citizens, such as massacre, enslavement or mass expulsion.

An alternative understanding, which has roots in certain classical writings, is that there is a just cause for war if, and only if, the people warred against are responsible for wrongs to others that are of a type sufficiently serious to make those people morally liable to military attack, if that is necessary to prevent or redress those wrongs. To say that they are liable to attack is to say that because they have wronged or threaten to wrong others, they lack a right not to be attacked by or on behalf of their victims, so that even if they would be *harmed* by being attacked, they would not thereby be *wronged* or treated unjustly (McMahan, 2005).

According to this view, there are just causes for war other than defence against aggression. The rectification of wrongs previously committed – for example, the recovery of what was previously lost to successful aggression – may be a just cause, as may the protection of innocent people from threats from their own government. The latter, which is the aim of ‘humanitarian intervention’, has recently become a potent challenge to the idea that defence against aggression is the only just and legal cause for war. While humanitarian intervention may, in particular cases, be morally objectionable for a variety of reasons – for example, because the ostensible beneficiaries, fearing that the intervening agent would exploit its position of power, do not welcome it – it need not be objectionable because it violates the sovereignty or self-determination of the state against which it is directed. For in many cases of conflict within a state, the state may be so radically divided that there is no single collective ‘self’ whose self-determination would be threatened by intervention. And in any case the sovereign rights of a state do not include a right to persecute some sector of the citizenry without external interference. When the protection of a people from their government is a just cause for war, state sovereignty is not overridden; it is compromised because the state has made itself liable to attack.

A second principle governing the resort to war is *competent authority*, which insists that war may be initiated only by those who are appropriately authorized to do so. Cynics will find that one reason this requirement has survived in the tradition is that it seems to rule out domestic rebellion and revolution. In the past, theorists of the just war who endorsed the principle were likely to find favour with the political authorities and their versions of the theory were in consequence likely to flourish and survive. But this cannot be the full explanation of the principle’s prominence in the theory. A more charitable understanding is that the point is to prevent a people from being taken to war and induced to kill others by individuals who have no claim to represent or to act on behalf of that people. It is illegitimate for people to be committed to war through a process that circumvents whatever mechanisms they have established for expressing their collective will.

It is clearly important in pragmatic terms to subject the resort to war to institutional constraints that involve procedures of authorization. But it is not a necessary condition of just or justified war that it be initiated only by persons who are properly authorized to do so. Suppose the Canadian hordes were to pour across the border, intent on conquering the USA, but that the stalwart militias of Montana were to rise *en masse* in spontaneous opposition. Suppose that the Canadian aggressors had blocked all communication from the federal government to the citizenry, so that proper authorization of war was impossible, but that the opposition in Montana was large-scale, coordinated and protracted. This would be a war that failed to satisfy the requirement of competent authority but it would clearly be just.

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There are two opposing conceptions of the metaphysical nature of war. According to the first, war is a relation between collectives, usually states. According to the second, war is a complex set of relations among individual persons. The first of these approaches is naturally more hospitable to the requirement of competent authority than the second. In a matter as grave as war, a collective must not become committed to action through a process that circumvents its own institutional mechanisms for the expression of the collective will. But if war is fundamentally a matter of individuals acting in co-ordination to protect their own rights and the rights of others against a common threat, then the members of the Montana militias may together be fighting a just war despite the absence of any higher authorization of their action.

The third principle of *jus ad bellum* is *right intention*, which holds that belligerents may resort to war only for the right reasons. Although the requirement is not often stated this way, what it requires is that war must be intended to achieve the just cause. The just cause may not be exploited as cover for a war motivated by other concerns.

This principle raises difficult questions of interpretation. It cannot plausibly demand that a belligerent have no reason for going to war other than to achieve the just cause. Just as a bystander may permissibly intervene to prevent a mugging both in order to defend the victim and to get a reward, so a state may permissibly go to war, for example, both to defend another state against unjust aggression (a just cause) and to secure whatever profits are to be had from defeating the aggressor (not a just cause). Right intention thus has to permit *some* intentions other than to achieve the just cause, but it is unclear what the limits should be. The aim of securing a profit is not a just cause for war but it is also not an unjust aim. What should right intention imply about a case in which a state goes to war intending to achieve both a just cause and an ancillary aim that is unjust?

I will put this interpretive question aside in order to note a related challenge to the plausibility of the principle itself. Suppose that a state has an important just cause for war to which it is wholly indifferent. It wants to go to war, however, to achieve an aim that is either neutral or unjust. If it goes to war, it will not intend to achieve the just cause but will nevertheless achieve it as a side effect of pursuing the neutral or unjust cause. Suppose, finally, that the just cause cannot be achieved except by this state's going to war and that the achievement of the just cause would greatly outweigh any bad effects of the state's pursuing the neutral or unjust cause. Is it permissible for this state to go to war?

Moral philosophers are deeply divided on the general question of the relevance of intention to the permissibility of action. Some, perhaps now the majority, argue that permissibility is determined by the reasons there are for or against action, not by what the agent's mental states happen to be. These philosophers claim that it is permissible for the state to go to war in the conditions described, even though it would do so for the wrong reason, or with a bad intention.

Other philosophers continue to defend the traditional view that an act done with a wrongful intention is for that reason wrong. It may seem implausible, however, to say that it is impermissible for the state to go to war when that is the only way that an important just cause can be achieved, just because the state's intention would be bad. What matters is whether the just cause is achieved, not what transpires in the minds of the state's political leaders.

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This challenge misinterprets the view that intention is relevant to permissibility. The defenders of this view do not claim that the state in this case must not go to war. They may, indeed, claim that it is not only permissible but even morally obligatory for the state to go to war, *with an acceptable intention*. It is not the case that the only alternative to going to war for an unacceptable reason is not to go to war at all. If, moreover, the state simply will not go to war except for a bad reason, it seems permissible for others to encourage it to go to war for that reason in order to ensure that the just cause will be achieved. When the state's wrongdoing consists only or primarily in its acting with a wrongful intention, others may exploit its wrongdoing in the service of a just cause.

It has seemed to many people that the question of intention can be easily solved by recognizing that intention is indeed morally relevant – but only to the evaluation of agents, not to the permissibility of action. On this view, the leaders of a state who achieve a just cause but for bad reasons may act permissibly but nevertheless be bad people. This, however, does not seem an adequate response. The morally significant difference between acts of terrorism and acts of war that kill innocent people as a side effect of attacking military targets is that terrorists kill innocent people intentionally, as a means of achieving their aims. But even – or perhaps especially – if the terrorists' ultimate aims are no worse than those of the soldiers, what we want to say is not so much that the terrorists are bad people but that their action is wrong.

The fourth principle of *jus ad bellum* is *last resort*. This does not literally claim that war is permissible only if all less destructive means of achieving the just cause have been tried and have failed. Rather, it means that war must, in the circumstances, be necessary for the achievement of the just cause – hence a better label would be the 'requirement of *necessity*'.

Some requirement of this sort is clearly plausible. It would be wrong to go to war if there were an equally effective but peaceful means of achieving the just cause. Yet this principle requires extensive interpretation. This is because different options may have different probabilities of achieving the just cause, or might achieve the just cause with varying degrees of completeness. Suppose, for example, that there is a just cause, that immediate resort to war offers a 90 per cent chance of achieving it with complete success, but that there is also a peaceful alternative that has a 30 per cent chance of achieving it, though not quite so fully as war would. Is war necessary? Not, perhaps, if there is no cost to trying the peaceful means; in that case the peaceful means ought to be tried. But suppose that if the peaceful means is tried and fails, the probability that war can succeed will have been reduced to 60 per cent. If, in these conditions, war is said to be unnecessary because there is a potentially effective non-violent alternative, many will conclude that the requirement of last resort, or necessity, is not a plausible requirement.

There is another ground for scepticism. Suppose that a state has a just cause for war (for example, the defence of a weaker state against unjust aggression), that it could pursue this just cause either by war or by non-belligerent means, and that both means have the same probability of being completely effective. Suppose, however, that the peaceful means would require even greater sacrifices than war (for example, great economic costs), while war promises certain compensations (for example, the ability to force the aggressor to pay appropriate reparations). Suppose that only this state has the

power to achieve the just cause and that it would be better, from an impartial point of view, for the state to fight the war than to allow the just cause to go unachieved. But suppose, finally, that the state is not morally *required* to pursue either means of achieving the just cause and that it will not pursue the peaceful means because it is against its interests to do so. The requirement of necessity implies that it is not permissible for this state to go to war; yet that seems wrong.

The fifth principle of *jus ad bellum* is *proportionality*, which holds, roughly, that the relevant good effects a war can be expected to achieve must be sufficiently important to justify causing the relevant expected bad effects. As in the case of the requirement of necessity, there are clear cases of wars that this principle rules out: for example, a war fought to defend possession of an insignificant piece of territory would be disproportionate if it had a significant probability of escalating to nuclear war. But here too there are difficult issues of interpretation. The main problems have to do with which effects count, and how.

For example, not all the good effects that a war could be expected to have count in favour of going to war. That a war would teach valuable lessons about comradeship, what matters in life and so on to some of the soldiers, or give them exhilarating experiences of combat, is not a consideration that can weigh against and help to justify the incidental or unintended killing of innocent civilians on the other side. In fact, it seems that the only effects that can legitimately count in favour of war in the proportionality calculation are those that consist in or flow from the achievement of the just cause. For the requirement of just cause is a restriction on the types of aim it can be permissible to pursue by means of war. Thus good effects that are not part of a just cause cannot, by hypothesis, be permissibly pursued by means of war; hence they cannot contribute to the justification for the war by weighing against the expected bad effects (McMahan, 2004, pp. 708–18).

Similarly, not all the bad effects a war could be expected to have count against it. It may not, for example, be relevant to proportionality that some of the resources necessary for fighting a just war would otherwise have gone to the foreign aid budget. Or a war may have bad effects for which those who prosecute the war are not responsible – for example, if a just war against one country somehow provokes governmental repression in another. And even among the bad effects that do count, not all count in the same way. Suppose we know that in order to defend ourselves successfully against unjust aggression, we will have to kill a very large number of enemy combatants. Most of these combatants would be emotionally and cognitively immature young men who had been conscripted and lied to by their government. If we would suffer only a comparatively insignificant loss by simply yielding what the aggressor seeks (for example, sovereignty over a few economically insignificant and largely uninhabited islands), even a war of defence might be disproportionate. This shows that the deaths of unjust combatants *do* count in the proportionality calculation. But they do not count in the way that the deaths of innocent civilians count – or even, on one view, in the way the deaths of just combatants count. For example, a war that would require the killing of 100,000 unjust combatants to prevent them from unjustly killing 10,000 civilians would *not* be disproportionate.

These claims may be more compelling if we consider analogues at the individual level. If the only way you could prevent a person from unjustifiably bruising you would

be to kill him, you would have to allow yourself to be bruised, for to kill him would be disproportionate. But if you faced a threat of death from twenty unjust attackers, it would not be disproportionate to kill them all if that were necessary to save your life.

The sixth and final requirement of *jus ad bellum* is that there should be a *reasonable hope of success* in achieving the just cause. The idea here is that if a war would be genuinely hopeless, it would be wrong to expose one's own citizens, combatants and non-combatants alike, to the risks of war, and perhaps wrong to harm enemy combatants, who are often not to blame for their unjust war, for no good reason. Yet to the extent that this requirement is plausible at all, it seems redundant; for if there is little chance of achieving the just cause, there will be little expected good to weigh against the expected bad effects of war, in which case war would be disproportionate.

There is, however, some reason to doubt that a reasonable hope of success is necessary for a war to be just. For intuitively it seems permissible, for example, to resist unjust aggression even if one cannot hope to avoid defeat. Defiant resistance seems permissible when the alternative is meek submission, even if the only difference it would make to the outcome would be to increase the number of casualties. (I refer here only to voluntary resistance. It would not be permissible for a government to demand that its citizens sacrifice themselves in a gesture of defiance against their own will.)

If a hopeless war of defence could be permissible, does this show that satisfaction of the proportionality requirement cannot be a necessary condition of a just war? Perhaps; but one could argue that even hopeless defiance involves an assertion and defence of people's *dignity* in circumstances in which it would otherwise be lost along with their political self-determination, and that the defence of dignity is sufficiently important to outweigh the harms inflicted on aggressors, which are in any case discounted in the proportionality calculation because of the aggressors' liability to defensive attack.

This defence of the proportionality requirement may seem intuitively plausible, yet it presupposes that the defence of dignity can be a just cause for war – one that can carry the full weight of justification when the just cause of national defence cannot be achieved. It also assumes that the assertion of dignity can outweigh – that is, matter more than – the lives of a large number of people, many of whom may be hapless conscripts who bear little responsibility for the threats they pose.

These are questionable assumptions. But the issues are too large to be settled here. Let us turn in the remainder of this brief chapter to the principles of *jus in bello*. These principles are almost universally held to be independent of the principles of *jus ad bellum*. This 'independence thesis' implies that a war may be just yet fought in an unjust manner, or unjust yet fought in a manner that is just or, in Walzer's words, 'in strict accordance with the rules' (Walzer, 1977, p. 21). These rules, which govern the conduct of war, are held to be neutral between just and unjust combatants and to be equally satisfiable by either. Just and unjust combatants have the same moral status – the same rights, immunities and liabilities. Walzer refers to this as the 'moral equality of soldiers', though 'moral equality of combatants' is more accurate.

According to the moral equality of combatants, unjust combatants do not do wrong merely by fighting in an unjust war. They do wrong only if they violate the rules of *jus in bello*. It is, however, difficult to see how this could be right. A war consists of the individual acts of those who fight it. Sometimes the character of a whole can be different from the characters of the constituent parts, but it is hard to see how a war as a

whole could be impermissible when all the individual acts of which it is composed are permissible.

Notice, too, that unjust war involves the killing and maiming of just combatants, who do not lose their moral rights merely by defending themselves and others against unjust attack. They are, therefore, innocent in the relevant sense, which is given by Walzer when he writes that '*innocent* [is] a term of art' that we apply to people to indicate 'that they have done nothing, and are doing nothing, that entails the loss of their rights' (Walzer, 1977, p. 146). Just combatants are therefore innocent in the relevant sense. Normally it is wrong to kill innocent people even as a means of achieving a goal that is *just*. How, then, could it be permissible to kill such people as a means of achieving goals that are *unjust*?

It seems, therefore, that unjust combatants cannot have the same rights and permissions in war that just combatants have. If that is true, the independence thesis cannot be correct.

The two main requirements of *jus in bello* are discrimination and proportionality. Just war theorists have obviously assumed that unjust combatants can satisfy both. It is obvious, for example, that unjust combatants can satisfy the principle of discrimination as traditionally understood, which holds that while it is permissible to attack combatants, it is not permissible intentionally to attack non-combatants. The principle is, indeed, often given another label – the 'principle of non-combatant immunity' – that presupposes this traditional interpretation. But in its generic form, the principle of discrimination is simply the requirement to discriminate morally between legitimate and illegitimate targets, intentionally attacking only the former. Among persons, legitimate targets are those who are liable to attack, who have done something 'that entails the loss of their rights'. But, as we have just seen, it is not plausible to suppose that just combatants lose their right not to be attacked merely by engaging in self- or other-defence against unjust attack. Just combatants are therefore illegitimate targets. It follows that unjust combatants cannot satisfy the requirement of discrimination, since they have no legitimate targets. (The claim that the relevant distinction for purposes of discrimination is not the distinction between combatants and non-combatants raises the question whether some non-combatants may be morally liable to attack. But there is no space to pursue this difficult issue here.)

Consider next the *jus in bello* requirement of proportionality, which holds that the expected good effects of an act of war must be sufficiently important to justify the harms it would inflict – principally the foreseeable but unintended harms it would inflict on the innocent. But if there is no just cause, acts of war by unjust combatants will have effects that, from an impartial point of view, are almost exclusively bad, and cannot in any case have good effects that are capable of outweighing the bad – for, as noted earlier, the only good effects that can have justificatory force in war are those that constitute or perhaps flow from the just cause.

It seems, therefore, that acts of war by unjust combatants can be neither discriminate nor proportionate. It follows that unjust combatants act wrongly by fighting in an unjust war and that neither the moral equality of combatants nor the independence thesis can be correct. There is usually, however, considerable uncertainty about whether a war is just. This makes the application of principles that distinguish between just and unjust combatants quite difficult in practice. In particular, to hold unjust

combatants liable to punishment merely for participating in an unjust war may be both unfair and counterproductive. Since, moreover, unjust wars will continue to be fought, it is vital that those who participate in them, particularly those who believe or suspect that their cause is unjust but will continue to fight nonetheless, should feel themselves bound to respect certain rules and to obey certain constraints. It is, in other words, of the utmost importance to regulate and constrain the unjust wars that will inevitably occur.

To achieve this goal, we need more than a moral theory that implies that all participation in an unjust war is wrong. We need conventions and laws that apply neutrally to just and unjust combatants alike and that can be obeyed even by unjust combatants who recognize that their war is unjust. Unlike the principles of the just war that are non-conventional in nature, these principles must be designed, not discovered, and their point is not to express the demands of justice but to limit and contain the violence of war.

The tendency in just war theory over the past century has been towards convergence with the international law of war. If I am right, however, the theory of the just war has been moving in the wrong direction. We should expect substantial divergence between the non-conventional morality of war, which should guide the conscience of the individual combatant, and the laws and conventions that will best serve the aim of limiting and confining the violence of war.

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