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Just War Theory

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In recent weeks, questions over the legitimacy of possible military intervention in Syria have given rise to a lot of discussion about Just War Theory. What does Just War Theory actually say? Roger Dawson SJ sets out the criteria.

The way we think about the legitimacy of war has its origins in the thought of St Augustine. He believed that the Kingdom of Peace cannot be realised within human history, only beyond, therefore we have to reckon with the reality of sin, including violence, and the possibility of war. Yet despite this reality, he had a deep abhorrence of war and so he wanted to develop a tool to assess the morality of wars in order to limit their number and brutality, and to protect the moral order of the world. This tool took the form of a set of conditions to be satisfied for a war to be considered just – what we have come to know as Just War Theory. This theory remains the primary moral framework for questions of military intervention by States, both for Christians and more generally. For example, when an international commission was asked to define the 'Responsibility to Protect' and set out the conditions for humanitarian military intervention, it used the criteria set out in traditional Just War Theory.[1]


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Criteria for a Just War

Augustine's criteria were developed by Thomas Aquinas and there have been various subsequent amendments[2], and the criteria were substantially examined by the Catholic Bishops of the USA in 1983.[3] The presumption of the theory, in keeping with Augustine's stance, is *against* war. The theory falls in two main parts: *jus ad bellum,* which is concerned with the ethics of declaring war; and *jus in bello,* concerned with conduct during war. (Today, ethicists have increasingly been talking of *jus post bellum*, concerned with the conduct of the victorious party after the war.) The criteria can be summarised as follows:

Jus ad bellum

1. Wars must be fought only on *legitimate authority*. This criterion aimed to limit conflicts by small-scale barons, captains and princelings, and is often treated as the *sine qua non* of Just War Theory.[4]
2. The cause must be *just*. The war must be fought, for example, in order to resist aggression, protect the innocent, or to support the rights of some oppressed group. There must be significant reasons which are weighty enough to overthrow the *prima facie* duty that we should not kill or injure others.
3. The war must have *right intention*. It must advance the good and avoid evil, have clear aims and be open to negotiation; it must not be for revenge or for the sake of killing and there should be no ulterior motive. It must be waged without love of violence, or cruelty; and regret or remorse should be the proper attitude. This is shaped by the pursuit of a just cause. Since peace should be the object of war, killing is a means to that end. This condition also holds for *jus in bello*.
4. It must be a *last resort*, all other attempts having failed or being unavailable.
5. There must be a *reasonable hope of justice*, or a reasonable chance of success, in order to prevent pointless wars. If there is no such hope, then it would not just be imprudent, but there would be no good grounds to override the *prima facie* obligation to not harm others if none of the just ends can be realised, and thus going to war would be immoral.[5]

Jus in bello

6. There must be *discrimination*. Non-combatants should not be directly or intentionally attacked, although it is recognised that there may be accidental casualties.

7. There must be *proportion;* that is, there must be a balance between the good achieved versus the harm done. This condition takes into account the effects on all human beings, not just those on one side, and it is the effects on humans rather than other physical damage which have priority. This condition also applies to *jus ad bellum,* in order to prevent going to war over minor disputes.

A just war, then, is *not* a war in which both sides act justly; in fact there cannot be such a war. For a war to be just, that war must be waged in order to right a wrong or to prevent an imminent injustice.

The Basis for Just War Theory

There is general acceptance that killing is, all things being equal, a grave wrong. John Rawls argues, for example, that we have a 'natural duty' which is owed to persons generally not to injure or harm others.[6] Christian theology derives the same obligation from the Decalogue and more generally from the norm of *agape*.[7] It is necessary then both to demonstrate that the *prima facie* obligation not to kill or injure others is overridden in the case of a just war and that the innocent[8] are not being directly killed.

The demands of justice are such a case. For example, outside the room in which I am writing there is a playground full of children. If someone came into the playground and started to attack the children and if I had a rifle by the desk, I would be justified in shooting the assailant, even though I myself may not be at risk. The classical natural law of justice, which is viewed as superior to the laws and demands of any State, sees all people as brothers and sisters who share in the cosmic *logos* and thus we are required to treat each other with the justice and respect owed to all.[9] Implicit is a concept of human solidarity, according to which we have mutual obligations and duties to all people. Roman law also involved contractual obligations which entitled one to protect the rights of others and seek redress from those who cause the individual or State injury or harm.

Just War Theory is based on this classical view and from it the central concepts derive: that of the prior guilt of the offending party; and of just war as a means of vindicating violated rights or a violated order of justice, or as the means of restoring justice. However, the enemy's natural rights must be protected since they are also humans and must be treated with justice and respect, even after hostilities have begun. Hence conduct in war must be just.[10]

The decision to go to war is not made simply on the basis of the enemy's deeds, for example being unjust or violating international law, but also on one's own intentions: they must be upright in terms of both means adopted and ends pursued. Moreover, all the aims and intentions must be included. It is not permissible to use some just intentions to justify the pursuit of other unjust intentions. Thus clear objectives are required. Intent, however, is complex; moreover, outcomes of wars are notoriously unpredictable: they rarely achieve their political objectives unambiguously and often become the cause of future wars.

Prima facie *obligations*

Killing is a *prima facie* wrong and always stands in need of justification: without justification on moral grounds it is an *actual* wrong. Killing, then, is never morally neutral: according to Frankena, 'even when they [the killers] are justified there is still one moral point against them'.[11] So Just War Theory in effect deals with a moral dilemma: there are two *prima facie* obligations – to avoid killing and to meet the demands of justice – and one cannot be fulfilled without sacrificing the other. The dilemma is resolved by finding justification for sacrificing one in favour of the other and the criteria are the means by which one decides. Just War Theory starts with a presumption that war is prohibited and is *not* justified unless it can be demonstrated as such, and then specifies situations in which use of force would be justified. However, the burden of proof rests on the person who intends to go to war.[12]

The distinction between *prima facie* and actual obligations is important. The argument is that what appears to be a conflict ceases to be so once the situation is correctly analysed and the actual obligations become clear.[13] 'To hold that an obligation or duty is *prima facie* is to claim that it always has a strong moral reas-

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on for its performance, although this reason may not always be decisive or triumph over all other reasons'.[14] So, other things being equal, a *prima facie* duty is normally binding but, unlike an absolute duty, it does not necessarily determine one's actual obligation.

Just War Theory provides for situations when the *prima facie* obligation is overridden. However, the obligation is not cancelled and continues to exert influence, particularly in *jus in bello*. Specifically, the theory states that the aim should be to restrain or incapacitate, rather than kill or injure; that unnecessary suffering is excluded; that aggression is only directed towards combatants when they are a threat (that is, they cease to be a legitimate target once they surrender or are injured), and that attack on non-combatants is wrong or unethical. In this sense there is a distinction between the person *qua* person, and the person *qua* soldier.[15] Moreover, any indirect or incidental effects on non-combatants must be justified by proportionality.

So in certain circumstances it is legitimate and necessary to override some *prima facie* duties in favour of others which have a stronger claim and take priority, such as to uphold justice or to protect the innocent. War, therefore, can be a moral undertaking and the State has the right to go to war, but it remains subject to moral principles and rules determined by the overridden *prima facie* obligations.

Just War Theory in the modern age

Just War Theory was formulated in times very different from our own. As Kenny observes, war is now characterised by technology, bureaucracy and alienation: the effects of the actions of combatants are largely unseen and there is therefore less sense of personal responsibility for those one has killed.[16] Can the theory be said to be adequate to the demands of war in a modern age?

The advent of sophisticated technology and nuclear weapons in the last century has raised further issues to be considered in any discussion about Just War Theory, but it has not changed the moral status of war; rather the risks are phenomenally greater and the imperative against war even stronger. Technological development now allows large scale or total wars against whole nations, but this can never be morally justified because it involves murder – the direct killing of non-combatants; even the use of high-precision 'smart weapons' still frequently causes the deaths of innocents. Although it would have been inconceivable to Augustine or Aquinas that several states would have the power to either rule or destroy the world, Just War Theory can still offer ethical guidance in the modern age. Just War is a tradition that continues to develop, and so it may be that further refinements are needed in the light of new technological and political developments, such as the invention of 'drones'. However, since Just War Theory is the only viable moral framework we have for military intervention, it would be foolhardy in the extreme to dismiss it on the grounds that it is 'out of date'.

Setting aside the added complications of modern warfare, an important question remains: has the theory ever been applied with the rigour intended and the presumption against war on which it was founded? Put simply, has there ever been a just war? The theory has been criticised for being 'hopelessly unrealistic',[17] idealistic, assuming a very high standard of morals on both sides and failing to take into account the multiple reasons relating to international relations and internal affairs that contribute to war. For example, 'intent' can be highly complex and Jones argues that to select a 'just cause' is a moral fiction: wars have multiple causes and to choose one as justification is unlikely to do justice to this complexity.[18] Although originally fashioned to limit wars, the fact that conditions hold in which a war may be considered just may in fact make war possible and more likely. The term 'just war' has tended to deny war's horrendous nature, and perhaps 'justified' or 'justifiable' would be a better term. Indeed the theory has been used as a *post hoc* justification of war, rather than as a means for deciding whether to overthrow a *prima facie* duty,[19] and thus as a means of endorsing an ethic of violence.

However, we must remember that the whole of Just War Theory is premised upon a presumption *against* war, which only occasionally may be overridden: it is intended more as a brake than a spur to military intervention. Perhaps the task for the Christian is of promoting a culture of peace and making wars less likely. As Jones says, 'The Christian must always be asking what sort of church life can promote God's peace; the church should always be a "peaceable kingdom"'.[20] Being aimed at the advisor or confessor to the ruler,

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the social 'locus' of the doctrine has been more from the perspective of those in power rather than the powerless, oppressed or (potential) victims.[21] Bernard Haring calls for a new 'moral community' which places the emphasis on healing rather than justice, and advocacy for the powerless potential victims, rather than the ruling classes at whom the theory was aimed.[22] Perhaps this would be more in keeping with the teachings of Jesus and move us more towards an ethic of peace. In view of the risks, never before has the need for peace been so great.

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[1] http://responsibilitytoprotect.org/ICISS%20Report.pdf

[2] D.S. Bax discusses the history of the doctrine in 'From Constantine to Calvin: The Doctrine of the Just War', in C. Villa-Vincenzio (ed), *Theology and Violence: The South African Debate* (Erdmans: Grand Rapids, 1988).

[3] US Catholic Bishops, *The Challenge of Peace* (London: SPCK, 1983).

[4] Childress, J.F., 'Just War Theories: the bases, interrelations, priorities, and functions of their criteria', *Theological Studies*, (1976), 427-445.

[5] Wicker, B., 'Just intervention and police action', *New Blackfriars*, 884 (1994), 378-390.

[6] Rawls, J., *A Theory of Natural Justice* (Cambridge, Mass: Harvard University, 1971).

[7] Childress, J.F., 'Just War Theories'.

[8] 'Innocent' does not mean a lack of responsibility or guilt, but whether the person is engaged in harming one's own forces or other people; the term thus covers little children and surrendered soldiers. All non-aggressors are regarded as 'innocent'.

[9] The idea was also developed by Cicero (d. 43 BC), especially in *De Officiis*.

[10] In the Catholic tradition the theory is located within a paradigm of justice and law which is concerned principally with rights. Aquinas saw the issue of war as falling within the realm of 'ordinary morality' which can be derived from natural reason, in contrast to the insights of faith deriving from revelation. Although moral laws derived from natural reason are also God's law, they are not the sole preserve of Christians but of all those of sound mind and good will (Bax, D.S., 'From Constantine to Calvin'.

[11] Frankena, W.K., *Ethics*, (2nd edn) (Englewood Cliffs: Prentice-Hall, 1973), p.55.

[12] Johnstone argues that in practice the reverse has tended to happen, the presumption being that the State has the right to wage war and it is up to those who dispute it to demonstrate why. (Johnstone, B.V., 'Abandoning the Just War Theory? The development of B. Haring's thought on peace: 1954-1990', *Studia Moralia*, 33 [1995], 289-309).

[13] See, for example, W.D. Ross, *Foundations of Ethics* (Oxford: Clarendon, 1939).

[14] Childress, J.F., 'Just War Theories'.

[15] *Ibid*.

[16] Kenny, A., *The Logic of Deterrence* (London: Waterstone, 1985).

[17] Jones R.G., 'Peace, Violence and War' In B. Hoose (ed), *Christian Ethics: an Introduction* (Cassell: London, 1998), p.211.

[18] Jones R.G., 'Peace, Violence and War', p. 210-222.

[19] See, for example, Vardy, P. and Grosch, P., *The Puzzle of Ethics* (London: Fount, 1994); and Johnstone, B.V., 'Abandoning the Just War Theory?'.

[20] Jones R.G., 'Peace, Violence and War', p. 221.

[21] Johnstone, B.V., 'Abandoning the Just War Theory?'.

[22] Haring, B., *Nonviolenza* (1990), p.277.

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