

JUST WAR - A HUMANIST CRITIQUE

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War has provided some of the most stirring stories humans tell each other and has been the setting for many acts of outstanding heroism and selflessness as well as many of the opposite character and vast numbers whose moral character is ambiguous. But we can all agree that war is a nasty business - death, injury, disruption, destruction. Can it be avoided? Can it ever be justified? There is a vast literature on these questions, some theological, some philosophical, some theoretical, some practical. In this paper I do no more than tickle the surface.

Are humans irredeemably violent?

Some say that war is simply "natural" - a product of our evolution as brutal, lawless tribal animals. But maybe war is actually a manifestation of our ability to act communally in the interest of all: so Jacob Bronowski in *The Ascent of Man* who says the problem began when some people became farmers:

War, organised war, is not a human instinct. It is a highly planned and co-operative form of theft. And that form of theft began ten thousand years ago when the harvesters of wheat accumulated a surplus, and the nomads rose out of the desert to rob them of what they themselves could not provide.

In any case the view of human nature as irremediably sinful and violent is false, given undue prominence by the Christian church's need to justify its wicked doctrine of original sin. Primitive societies on the whole lived (and live) in harmony with each other and with nature. Our instincts may include aggression - but we also have instincts for cooperation. Humanists say that we are often able to use our intelligence and our reasoning ability to seek non-violent solutions.

Pacifism?

So, is pacifism the answer to war? With the value we attach to promoting happiness, avoiding suffering, and our belief that this is our only life, pacifism is obviously attractive.

The very early Christians were in effect pacifists, relying on Jesus' teaching about turning the other cheek - at least, until they fell out over doctrine, when at a surprisingly early date they began to resort to violence against each other. And when Constantine adopted Christianity for the Roman empire, pacifism was obviously impractical as an imperial policy and so was marginalised.

But is pacifism justifiable in humanist terms? It requires us to meet violence with persuasion and passive resistance, not just when we think such course may be the most

advisable but always, as a matter of principle.

Are we to let an aggressive expansive country run by a dictator invade its neighbours, slaughter their leading people and recruit their youth to invade the next land? The second World War was one when it was very difficult to justify sitting on your hands.

If you have a morality based on dogmatic prescriptions which include absolute refusal to use violence, maybe you could do this with a good conscience. But humanist morality is more nuanced, more concerned with consequences. Reluctance to fight is a humanist virtue, absolute refusal to do so in all circumstances is a dogma incompatible with humanist moral reasoning.

So if war and use of violence *are* sometimes justified, when and how can that be?

Just War?

There is a long history of thinking about the rights and wrongs of making war. Let me look through that history.

In the Indian epic the *Mahabharata*, committed to writing around the 4th century BCE but dating from much earlier, there is a long discussion about whether the suffering caused by war can ever be justified, in the course of which criteria like **proportionality** (chariots must not attack cavalry, only other chariots, people in distress must not be attacked), **just means** (no use of poisoned or barbed arrows), **just cause** (no attack is justified merely out of rage), and fair treatment of captives and the wounded. The Mahabharata anticipated European theories on war by centuries but had little influence in the West.

Instead, our philosophy on war has its origin in thinking by the Greeks and (especially) the Romans that was taken over and developed by the Christian church.

In Greece **Aristotle** saw the ideal state as having the ability to defend itself against an aggressor but not itself making war or seeking an empire - unlike Athens, whose imperial ambitions brought about its own downfall. Aristotle wanted states to be small and self-sufficient and saw this as conducive to peace and the good life for their citizens. This was essentially practical thinking rather than theoretical.

In Rome in the 1st century BCE the idea of universal law began to emerge. It was called *ius gentium* - law shared by all nations or peoples. **Cicero** in his *de Officiis* observed that such laws as those that no one may injure another for his own benefit were of this character and he saw this universal law as the order of nature.

In the second century CE the Roman jurist **Gaius** developed this distinction between the laws of one land and those shared by all: on the one hand there was the domestic *ius civile* or civil law and on the other the *ius gentium*:

All peoples who are ruled by laws and customs partly make use of their own *ius*, and partly have recourse to the *ius* which are common to all men; for

what every people establishes as *ius* is their own and is called the *ius civile*, just as the *ius* of their own city; and what natural reason establishes among all men and is observed by all peoples alike, is called the *ius gentium*, as being the *ius* which all nations employ. Therefore the Roman people partly make use of their own *ius*, and partly avail themselves of the *ius* common to all men . . .”

By the early third century a third category had been added, with the jurist **Ulpian**, unlike Cicero, adding to *ius civile* (which applied to a single community) and *ius gentium* (applying to all mankind) *ius naturalis* (seen as applying to all living creatures) - and this appearance of natural law enabled the term *ius gentium* to be given a new usage as the law affecting relations between nations, as in ambassadors and treaties.

The beginnings of just war theory in the west came with the adoption of Christianity as the official religion of the Roman empire, which as previously observed wrecked any even theoretical notion of Christian pacifism.

Into that gap came **Augustine of Hippo**, who in the 4th-5th centuries CE set about defining when killing might be justified despite the sixth commandment. He brought in the notion of *legitimate authority*: God has given authority to his servants to ensure the observance of his law:

They who have waged war in obedience to the divine command, or in conformity with His laws, have represented in their persons the public justice or the wisdom of government, and in this capacity have put to death wicked men; such persons have by no means violated the commandment, ‘Thou shalt not kill’.

Indeed, peacefulness in the face of a grave wrong that could only be stopped by violence would be a sin.

But it took another 900 years before in the 13th century Thomas Aquinas developed a clear doctrine of just war. His three conditions included first Augustine’s legitimate authority, now defined as a *properly instituted authority* such as the state, second *just cause* such as restoration of some good that has been denied or punishment of evil conduct by a government, and third *right intention* which must be maintained throughout the fighting, making the restoration of peace the central motivation and disallowing motives of gain or vengeance.

But these were slippery concepts, and later developments included both extensions to what came within the definition of a just war - for example, preventative war against a tyrant about to attack might be justified - and new limits. In particular the 16th century Spanish and Portuguese theologians of the **School of Salamanca** (such as Francisco de Vitoria, Domingo de Soto, Martín de Azpilcueta, Tomás de Mercado and Francisco Suárez) said that war could only be justified in order to avert a greater evil. Self defence was justified only if it had a reasonable chance of success; the use of violence had to be commensurate with the evil, i.e., the minimum necessary; the people could (remarkably) defy their government if they opposed a war and even depose it; and war must always be a

last resort after the use dialogue and diplomacy had definitively failed. Wars to extend Christianity and convert the pagan were inherently unjust.

Modern Concepts of Just War

Let me now critically examine the modern idea of just war theory, which has outgrown its Greek, Roman, and Christian origins. It has been developed in great detail and is now the dominant way of thinking about war in the modern world, part of the modern system of international law.

There are three bodies of just war theory. The first concerns the circumstances in which war may be justified - (*ius ad bellum*). This is what I wish to examine today. After many centuries of development, it is unsurprising that the theory has many attractions.

The second is about conduct during war (*ius in bello*): for example, innocent civilians must not be deliberately attacked, prisoners of war must be treated decently. This is the area of the four Geneva conventions of 1949 and their later protocols. There is also a developing third body of law about the period after the conflict (*ius post bellum*).

So, when is making war justified? Only when **all** the criteria of a just war are met. This list of the criteria is a typical presentation of what is required:

- Just cause
- Competent authority
- Right intention
- Probability of success
- Last resort
- Proportionality

Let me examine each of these in turn.

Just cause

It seems basic that a just war must have a just cause - but what does that mean? St Augustine's support of 'holy war' has long been dropped. So probably has punishment of guilty enemies, which was present in theological writings 500 years ago, and the recapture of lost property or land.

But it is not entirely clear what is included. After all, even Iraq claimed just cause when it invaded Kuwait in 1990! What objective criteria are possible?

In 1993 the US Catholic Conference said: "*Force may be used only to correct a grave, public evil, i.e., aggression or massive violation of the basic human rights of whole populations.*" So there is a question of scale. There is also a question of balance: rarely are there not rights and wrongs on both sides of a conflict, and to overcome the presumption against the use of force, the injustice suffered by one party must significantly outweigh that suffered by the other.

Resistance against aggression - self-defence in particular - is held to be a just cause: but does it apply only to those attacked? What of their allies? And may one anticipate attack? Moreover, is resistance to attack always a just cause? Was it with just cause that the Russians resisted Napoleon in 1812? His victory would have resulted in political reform and the emancipation of the serfs several decades earlier than happened in fact, and probably a better future for Russia as a whole, if not necessarily for the Tsarist nobility. Morality in war as elsewhere is not necessarily zero-sum symmetrical.

Preemptive use of force has sometimes been held to be justified: protecting innocent people whose lives are imminently threatened is a plausible just cause for intervention. But is it right to punish a state for an offence not yet committed? And if so, how far in advance of the anticipated attack? Might it have been justified to find an occasion to use force against Hitler in the mid-1930s and so deter him from further aggression? Maybe - but then think of the pre-emptive strike against Iraq and its mythical weapons of mass destruction: how sure can we be of an opponent's intentions - and of our own motives? How right was Clausewitz to talk of the 'fog of war'! At least the current position in international law is clear: preemptive strikes are outlawed unless specifically authorised in advance by the UN Security Council.

Competent authority

From the start it has been held that only duly constituted public authorities may justly wage war. Augustine spoke of war undertaken "in obedience to the divine command, or in conformity with [God's] laws" being an incarnation of "public justice or the wisdom of government". In Rome, that applied to the imperial government and not much else. In the Middle Ages, it was held to apply to nobles with no feudal superior, which might come down to kings or princes. In the modern era sovereign states have inherited the "*competence de guerre*".

But today there are large questions. Are the governments of some states properly constituted? What of puppet governments, like Quisling in Norway in World War II? What of dictatorships? But when does an authoritarian government become so oppressive as to be classed as illegitimate? The tests of legitimacy and hence competence to wage war are (it has been suggested in the *Stanford Encyclopedia of Philosophy*) that (a) the state is recognized as legitimate by its own people and by the international community; (b) the state avoids violating the rights of other legitimate states; and (c) the state makes every reasonable effort to satisfy the human rights of their own citizens, notably those to life, liberty and subsistence.

But in an age of international alliances does even a legitimate, democratic government have the necessary authority? What is the role of entities undreamed of in the past such as the United Nations? And even more difficult, in the absence of a legitimate government, does not a resistance movement have the right to make war? Think of Nelson Mandela - and then think of Islamic State.

Right intention

From the start St Augustine ruled out "the desire for harming, the cruelty of avenging, an unruly and implacable animosity, the rage of rebellion, the lust of domination and the like".

The modern interpretation of right intention is that force may be used only to the extent that it achieves the just cause: it must be solely for that purpose and not go beyond it. Thus, in the Gulf War of 1991 the US limited itself to freeing Kuwait and - despite some pressure - did not storm on to Baghdad and depose Saddam Hussein. Its 'just war' authority was exhausted once Kuwait was free. But that was an unusually clear-cut case, and when the just cause is to bring about peace, stability and democracy it is not only much more difficult to achieve such an objective by use of force but also far more difficult to decide when it has been achieved.

Probability of success

Arms may not be used in a futile cause or where disproportionate measures are required to achieve success. But when is a cause futile? Does success have to be probable? or is it enough that there is a reasonable chance of success? what about an outside chance? What of the position of Britain in 1940, alone and faced with the imminent threat of invasion by Hitler?

Last resort

Force may be used only after all peaceful and viable alternatives have been seriously tried and exhausted or are clearly not practical. The principle is plainly right, but its implementation is not straightforward. Does it require that the United Nations endorses the war? What if the UN is locked in *stasis* by rigid power bloc positions - as (in differing degrees) with Rwanda, Bosnia and Iraq? What is the role of other international treaty organisations or mediation arrangements? Maybe it seems the other side is using negotiations as a delaying tactic and has no intention of making meaningful concessions - but who is to judge if this is the case?

Proportionality

The overall anticipated benefits of waging a war must be proportionate to its overall expected evils or harms. This is where *ius ad bellum* segues into *ius in bello*. It must at least be a stumbling block to any war using nuclear weapons but might not by itself be enough to rule out chemical or biological ones.

Assessment

In summary, then, just war theory provides a clear and plausible way of thinking about the rights and wrongs of war in the calm of the moral philosopher's seminar room, but with enough uncertainty to put limits on its practical usefulness in the real life of international politics, especially given the scope for self-deception and misrepresentation of motives. The principles are often violated in practice, but that in itself shows that they are tough principles, demanding standards which we should be pressing governments to live up to.

It is at least a start. But, as we have seen, it has problems.

Perhaps the greatest is that it is based on the rights of states and draws an analogy between states and individuals. It is widely agreed that I may use violence to defend myself from attack. Then, it is suggested, by analogy a state - a community of individuals - may defend itself from aggression or invasion.

But the analogy with the individual responding to a personal attack falls down. In the individual case, if person A attacks person B, then person B is entitled in self defence if necessary to harm or even kill person A. But in the state case, if state A attacks state B, then state B claims entitlement in self defence if necessary to kill - not state A but the individual soldiers of state A. And the combatant who is killed in war is not just an enemy soldier but another human being like you. And combatants have only a limited responsibility for what they are doing - they may be unwilling conscripts, whereas some non-combatants may be enthusiastically performing vital war work. Non-combatants are in any case invariably also victims of any war - so-called collateral damage. Can that really be defended on the basis of the doctrine of double effect or unintended consequences?

Can we be happy to sacrifice these innocent victims even when we have a just cause, legitimate authority, right intention and so on? In some circumstances, perhaps: but let us look at possible alternatives to Just War theory.

Alternatives to Just War Theory

Utilitarianism is the seductive theory that what is right in any circumstances is that which produces the greatest happiness for the greatest number of people. Utilitarianism might suggest that it is often best to allow an aggressor to get away with his invasions - if there is less resistance, there will be less killing and suffering.

But Utilitarianism is a flawed philosophy. It suggests that if you can produce the greatest total of happiness for the maximum number of people by heaping all the suffering on just a few people, then that is the right thing to do - even if the minority who suffer are blameless. For example, you might need to test some new drugs. Normally you do careful trials in the laboratory, then on animals, then on people, over a period of years. But suppose there is a deadly epidemic raging and a vaccine is desperately needed to combat it. A utilitarian might say you take the next 100 people off the street and compel them to try out the possible drugs, and even if some of them die or are seriously damaged, at least the best drug is found and can be used quickly.

So in war a utilitarian would not merely *accept* individual suffering and civilian deaths as collateral damage but would actually embrace as the right and moral course torture or carpet bombing of civilian populations as in Dresden if they worked to bring victory in a just cause. The consequences would not be foreseen but unintended: they would be positively intended. It is little comfort to say that empirically torture and carpet bombing do not seem to work: most people find them quite unacceptable as a matter of principle.

Why? Because we think of people as having rights - the right to make decisions for themselves, and especially, the right to life. There are limits to what we can do to other people for the sake of a greater good. These limits are marked by the idea of *human rights* - especially *the right to life*.

So maybe we can combine the notions of just war, which sees things from the point of view of the party contemplating going to war, with the utilitarian's stress on the importance of the foreseeable outcome of war for its victims and find a new approach through human

rights.

An approach based on human rights?

First let us look briefly at the notion of human rights. By human rights, we mean, not legally enforceable rights that we necessarily actually have, but moral rights we agree everyone should have.

The idea of human rights has been articulated fully only in the last 250 years but it has its origins back in Roman times with the notion of *ius gentium* - the law of nations - and then natural law. Some notion of human rights lies unspoken behind the limitation on the rights of kings set down (but not originated) in Magna Carta.

Centuries later came the Bill of Rights of 1688 with its protection of the rights not only of Parliament but also of aspects of liberty and the right not to suffer "cruel or unusual punishment". (The latter, incidentally, was inspired, not by hanging, drawing and quartering - which was not formally abolished until 1870! - nor by public burning at the stake - a punishment last performed 38 years later in 1826 - but by the scandalous defrocking, whipping and putting in the pillory of Titus Oates, whose lies had sent at least 15 innocent Roman Catholics to the scaffold!)

The Bill of Rights was followed two years later by John Locke's *Second Treatise of Government: Of the Beginning of Political Societies* in which he wrote: "Men, by nature all free, equal and independent, no-one can be put out of this estate and subjected to the political power of another without his own consent" and another two years later by the Act of Habeas Corpus to prevent unlawful detention. Then came Tom Paine's *Common Sense*, the United States' declaration of independence ("all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness"), Paine's *Rights of Man* and the ringing rhetoric of the French revolution. In modern times, we have the Universal Declaration of Human Rights and the European and other regional declarations and conventions.

What relation do these human rights bear to the rights of states that we have been talking about hitherto?

Why do states have rights? The most persuasive answer seems to be that states need rights in order to protect the human rights of their own citizens. Here we are back with John Locke and the Founding Fathers of the USA: governments are instituted by people so as to guarantee their own basic rights. If governments protect the basic rights of their people, they are legitimate; if not, they exist only by force or at best by the lassitude of their populations. Indeed, as human rights lawyer Geoffrey Robertson has written:

Any system of law . . . inferentially confers 'rights' on the citizens to whom it applies, at least in the negative and residual sense of entitling them to behave in any manner which it does not specifically prohibit.

First among people's basic rights is the right to life. If this is to mean anything, people must

also have a *right to self-defence*. If someone is threatening my life, I have the right to defend my life - even, if absolutely necessary, by killing my attacker. And in such circumstances other people may have the right - maybe even the duty - to defend me.

As we have seen, there are two ways in which the idea of a *right to self-defence* is applied to the ethics of war. One operates at the level of the nation or state. If state A is attacked by state B, then state B has the right to defend itself. But we have rejected this because it personalises the state and ignores the individuals in it.

So the second way the idea of a *right to self-defence* is applied to the ethics of war is not by drawing an analogy between states and individuals - states have rights only in order to protect the rights of their citizens: human rights are for individuals - but by direct application to individual human rights. So we might say that a war may be justified - only 'may': you still have to consider all the circumstances - if it is fought in defence of individual human lives and human rights.

And this consideration applies also to civil wars or rebellions against illegitimate governments: citizens have the (conditional) right to defend their lives and rights against an oppressive government - and outsiders have the same right to support them.

We are not talking here, of course, of 'minor' human rights such as freedom from discrimination but major ones and in particular the right to life. Indeed, a considerable violation of human rights is preferable to a war that disturbs the basic rights of any population, such as survival; physical security; essential subsistence; and a minimal freedom to choose how to live one's life. Defence of basic human rights is a difficult justification for war given the requirement for proportionality.

Wars to defend states against aggression will often also be wars in defence of individual human rights and human lives - but not always: remember the Russians against Napoleon. Likewise, a war in defence of human rights and human lives may actually be justified in cases where there is no pre-existing state-on-state aggression - for example, it could in principle justify a rebellion or a war of 'humanitarian intervention', invading another country to protect the rights of individuals against an oppressive government.

The human rights basis for justifying the use of violence and war is a hopeful and helpful one. However, even if you downgrade or drop troublesome Just War criteria like Just Cause and Right Authority, you still need to take account of other Just War criteria such as reasonable chance of success and, especially, proportionality.

In the case of a war of intervention or a preemptive strike you have to keep in mind the likelihood of harm to your own population, who lose their own theoretical immunity. You still have to decide how much so-called 'collateral damage' - that is, harming or killing innocent bystanders - is acceptable: indeed, you are faced with difficult decisions about who is an innocent bystander and who is an active supporter of the unjust regime, which as noted is not simply a matter of who is in civvies and who is wearing a uniform.

Overall, then, wars - especially wars of intervention - are very likely to do more harm than

good:

- war is a blunt instrument, difficult to control;
- a war of intervention will not necessarily attract support from the oppressed, who may for example resort to patriotic defence of their country;
- it is almost bound to violate some human rights.

Wars of intervention will also violate the principle of non-intervention which is the only plausible basis for an 'international order' and offers the best chance of limiting war, so that on good utilitarian grounds it is worth up-holding unless there is strong international support, such as through the United Nations.

Conclusion

It can certainly be claimed that arguments such as these provide a useful frame for thinking about questions of war and its possible justification. The conclusion they point to is that a war can be morally justified only if

(a) it is fought in defence of the human rights of individuals in a community suffering serious aggression or oppression

and

(b) you can be sure on a basis of reasoning that any violation of the human rights of individuals it entails will be clearly less than will be involved if the war is not fought but some other course taken to remedy or alleviate the ills.

These conditions are not exhaustive: some at least of the Just War criteria still provide relevant considerations. They are very difficult to meet, more difficult than traditional Just War requirements, and as a result very few wars can be justified on this way of thinking.

Which is surely to be wished for.

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