Just War Tradition and the Ethics of War

Dr. Walter Dorn
Canadian Forces College

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Hagar the Horrible

MEN, BEFORE WE LEAVE TO SACK EUROPE...

I'VE ASKED BROTHER OLAF TO SAY A FEW WORDS

GENTLEMEN... IS THIS TRIP NECESSARY?
Foreword: graduate-level education

- Opportunity for critical thinking
  - Pros and cons
  - Thesis, antithesis and synthesis
    - Argument and counter-argument
- Education cf. training
- Ethics (Course DS541- “Leadership and Ethics”)
  - Deep-seated sense of Right and Wrong
  - Lots in between!
    - Absolute and relative
    - Objective and subjective
    - Institutional and personal
Ethics and law

- Generally “the moral leads the legal”
  - Ethical impulse to developing laws
    E.g., divine right of kings, feudalism, slavery, women’s suffrage, colonialism, nuclear testing, LOAC

- But laws help create new ethical “norms”

  ⇒ “Inform” each other

JCSP Activities

- Legal Obligations Affecting the Use of Force (DS-544/FUN/LE-14, DI-2)
- Legal Factors Affecting the Selection and Employment of Weapons During International Operations (DS-544/FUN/LE-12)
- Joint Targeting (DS-544/FUN/LE-13)
- Obligations Affecting the Use of Force (DS-544/FUN/LE-14)
- Legal Implications of Domestic Operations (DS-546/DOM/LD-2)
To shoot or not to shoot?

When to apply lethal force?

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Personal

National

International
Just War Tradition: Overview and Critique
Philosophies (“isms”) on the use of force

Pacificism
Pacificism

Anarchism
Quintessential Quotes

<table>
<thead>
<tr>
<th>Pacificism</th>
<th>Anarchism</th>
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</table>
| **Sermon on the Mount**:  
“whosoever smiteth thee on thy right cheek, turn to him the other also.” | **Melian dialogue**:  
“the strong do what they want and the weak suffer what they must.” |
| **Immanuel Kant**:  
“No state shall forcibly interfere in the constitution and government of another state” | **Thomas Hobbes**:  
"war of all against all. … life of man, solitary, poor, nasty, brutish, and short” |
“isms”

Pacificism

Humanism

Legalism

Idealism

Liberalism

Conservativism

Anarchism

Fascism

Militarism

Realism (Realpolitik)

PRINCIPLE

POWER

Values

Interests
Just War Part of the Spectrum

Pacificism

Just War: wide range of application

Anarchism
Over time, as codes of law sought to control violence within groups, so did philosophers, clerics, and statesmen seek to regulate the destructive power of war. The concept of a “just war” emerged, suggesting that war is justified only when it meets certain preconditions: if it is waged as a last resort or in self-defense; if the forced used is proportional, and if, whenever possible, civilians are spared from violence. …

I do not bring with me today a definitive solution to the problems of war. … it will require us to think in new ways about the notions of just war and the imperatives of a just peace.

— US President Barack Obama, Nobel Peace Prize Ceremony, Oslo, 10 December 2009 (emphasis added)
Just War tradition

Tradition, theory, doctrine, concept
- James Turner Johnson, Michael Walzer

“Presumption of peace” →
- No war except under certain preconditions
- 4 to 8 preconditions
Basic questions about armed force

- Why?
- Who?
- When?
- What?
- Where?
- How?
Answering the basic questions

- **Why?** Just cause, Right intent, Net benefit
- **Who?** Legitimate authority
- **What?** Proportionate means
- **When?** Last resort
- **Where?** Military not civilian targets

- **How?** Right conduct (*in bello*)
Just War Criteria

- Just cause
- Right intent
- Legitimate authority
- Net benefit (proportionality of ends)
- Last resort

- Right conduct
- Proportionality of means
- Non-combatant distinction
- Military necessity

*Jus ad bellum*

*Jus in bello*
Strengths

Scope
- Not so specific as to apply to limited number of cases
- Not so general as to render little guidance

Room for interpretation
- Different Just War theorists give different interpretations
- General agreement on most criteria
Other criteria?

reasonable hope of success
- Included in Net Benefit

Aim of peace
- Included in Just Cause and Right Intent

Public declaration of war
- Formal declaration rare; public explanations expected from legitimate authority

Jus post bellum (aftermath of war)
- Included in just cause, net benefit
Critiques of JW tradition

- Pacifist: too permissive
  - Not principled enough (Calhoun reading)

- Realpolitik (realist/militarist): too constraining
  - Not realistic (too moralistic)
  - National interests predominate not values/ideals

- Subjective interpretation
  - Too binding: difficult to satisfy all criteria, Just Cause sufficient ("just do it!")
  - Too free: construct arguments easily, checklist pitfall

- Real situations not binary, yielding Yes/No answers
  - Just or Unjust War
  - How just does an operation need to be?

Response: It is a framework for analysis
## Ethical philosophies: primary considerations

<table>
<thead>
<tr>
<th></th>
<th>Utilitarian</th>
<th>Deontological</th>
<th>Virtue</th>
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<tbody>
<tr>
<td>Just cause</td>
<td>X</td>
<td></td>
<td>X</td>
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<tr>
<td>Right intent</td>
<td></td>
<td>X</td>
<td>X</td>
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<td>Legitimate authority</td>
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<td>X</td>
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</table>
Historical development of Just War tradition
Ancient antecedents

- India
- China, Babylon

- Romans (Classical)
  - College of Fetiales
    - Demand of redress
    - Formally proclaim war
    - Spear-throwing rite
  - Cicero
    - “no just war can be waged except for the purpose of punishment or repelling enemies”
    - “the only excuse … for going to war is that we may live in peace unharmed.”

- Chivalry
Just War & Early Christianity

- **Bible: Old and New Testaments**
  - Vengeance to forgiveness

- **Catholic theologians**
  - St. Augustine (4th Century):
    - *Jus Ad bellum*
      - Right (Just) cause
        - Defence of neighbour, not of self
      - Right intention
        - Love thine enemy
      - Right authority
        - Ruler
  - Thomas Aquinas
    - Proportionality of ends and Necessity
Natural law and international law (Legalists)

- De Victoria
  - Codified Just War theory
  - Added:
    - Last resort
    - Reasonable hope of success

- Hugo Grotius
  - Father of international law
  - Legitimate targets (only combatants)
  - Proportionality of means
  - Treatment of prisoners
Evolution of international law

- Hague Conventions
- Geneva Conventions
- Military manuals on LOAC
- League Covenant
- UN Charter
- Treaties (arms control)
United Nations Charter
Just War Criteria in UN Charter

Just Cause
Art. 2(4): refrain from use of force
Art. 42: the Security Council … take action as necessary to maintain or restore international peace and security
Art. 51: … inherent right of individual or collective self-defence if an armed attack occurs

Right Intent
Preamble: Peoples of the United Nations determined to save succeeding generations from the scourge of war, … armed force shall not be used, save in the common interest ….

Legitimate Authority
Art. 24: … Members confer on the Security Council primary responsibility for the maintenance of international peace and security…
Art. 25: The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.
Art. 42: the Security Council … take action as necessary to maintain or restore international peace and security
Art. 53: But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council ...
Just War Criteria in UN Charter (cont’d)

**Last Resort**
Art. 33: parties to seek a solution by **peaceful** means
Art. 41: The Security Council may decide what **measures not involving the use of armed force**
Art. 42: Should the Security Council consider that measures provided for in Article 41 would be **inadequate** or have proved to be inadequate, it may take such **action** by air, sea, or land forces as may be **necessary** to maintain or restore international peace and security….

**Right Conduct**
Art. 55: promote universal respect for **human rights**

Criteria not explicitly included: Proportionality of ends (net benefit); proportionality of means.
The Criteria
1. Just Cause

- Self-defence
  - Personal to collective (for “neighbours”)
    - Pre-emptive/Preventive?

- Law enforcement

- “Right a wrong”
  - Meaning change over time

- Punishment
  - “revenger to execute wrath upon him that doeth evil.”
    (Romans 13:4)

- Revenge?
Caroline case: Defining self-defence

- US-UK dispute 1837
- Canadian rebels, led by William Lyon Mackenzie, seeking a republic of Canada
- Retreated after failed Upper Canada Rebellion
- Resided on Canadian Island on Niagara River
- American sympathizers supplied money, provisions & arms via the steamboat SS Caroline
- December 29: Canadian militia crossed international boundary and seized the Caroline
- One American died
- Set ship afire and cast adrift over the Falls
  - pieces went over the falls

Webster-Ashburton correspondence

- U.S. Secretary of State Daniel Webster wrote to the British Ambassador Henry Fox articulating a standard requiring (April 1841)

  “Necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment of deliberation. ... the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.”

- Britain's Lord Ashburton, to whom the contents of Webster's letter had been shared in the form of a Note, accepted the proposed formula (July 1842)

  “Caroline standard” debated
  Moving from moral to legal

Source: http://www.thefreelibrary.com/A+question+of+determinacy:+the+legal+status+of+anticipatory...-a0195265741
Just Causes:
political left & right

Just War Survey, © W. Dorn
2. Right Intent

Interpretations:

- To establish peace
- Degree to which actual motivation is same as declared motivation
3. Legitimate Authority

 Tradition: only states

 - “Princes” in St. Augustine
 - “Knightly class”, *Kshatriya* (warrior-ruler)
 - No private armies/wars

 Modern

 - National
   - Parliament, Congress (debates)
 - International
   - Security Council authorization
   - Unresolved tensions in international law (R2P)
4. Proportionality of Ends

- Aka Net benefit
- To whom?
  - User of force
  - Host state
  - International community
- What length of time?
5. Last Resort

- Attempt non-violent means
- Harm to public with sanctions
- Attempt even if certain to fail?
- How long to wait?
6. Right Conduct

- Combatant/non-combatant distinction
- Military necessity
- Proportionality of means
"Hot oil! We need hot oil! ... Forget the water balloons!"
“Look, I'd like to avoid overkill, but not at the risk of underkill.”
Overkill?

Hiroshima (1945):
estimated 140,000 deaths (in 6 months)from explosion, heat, fireball and radiation
Applying JW Criteria to Specific Wars Since 1900

Canadian armed conflicts (12) & American armed conflicts (18)
Degree of justification

Seven point spread: -3 to +3
Seven Criteria:

- Just Cause, Right Intent, Legitimate Authority, Net Benefit, Last Resort,
  Proportionality of means, Right Conduct

Just War Index: Average over all criteria
## Comparing Gulf War I and II

Walter Dorn’s evaluation (2008)

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Just Cause</td>
<td>+2</td>
<td>-1</td>
</tr>
<tr>
<td>Right Intent</td>
<td>+2</td>
<td>0</td>
</tr>
<tr>
<td>Net Benefit</td>
<td>+2</td>
<td>-2</td>
</tr>
<tr>
<td>Legitimate Authority</td>
<td>+3</td>
<td>-2</td>
</tr>
<tr>
<td>Last Resort</td>
<td>+2</td>
<td>-2</td>
</tr>
<tr>
<td>Proportionality of Means</td>
<td>+2</td>
<td>-2</td>
</tr>
<tr>
<td>Right Conduct</td>
<td>+1</td>
<td>+1</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>+2.0</strong></td>
<td><strong>-1.1</strong></td>
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## Comparing Gulf War I and II

Results of a survey of 106 “experts” (Ph.D.s working on international affairs)

<table>
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<tr>
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<tbody>
<tr>
<td>Just Cause</td>
<td>+1.9</td>
<td>-1.7</td>
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<tr>
<td>Right Intent</td>
<td>+1.6</td>
<td>-1.3</td>
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<td>Net Benefit</td>
<td>+2</td>
<td>-2</td>
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<tr>
<td>Legitimate Authority</td>
<td>+2.2</td>
<td>-0.6</td>
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<tr>
<td>Last Resort</td>
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<td>Proportionality of Means</td>
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<td>-0.9</td>
</tr>
<tr>
<td>Right Conduct</td>
<td>+1.1</td>
<td>-1.0</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>+1.5</strong></td>
<td><strong>-1.2</strong></td>
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<tr>
<td><em>(Percentage, 6 point scale)</em></td>
<td><em>(75%)</em></td>
<td><em>(30%)</em></td>
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*Source: Just War Survey by W. Dorn, D. Mandel and R. Cross, 2010-11*
**Expert Survey: Questionnaire**

To what extent do you agree or disagree that the U.S. had *Just cause* [or other criterion] to use armed force in the following conflicts?

*Circle* one per conflict:

<table>
<thead>
<tr>
<th>U.S. Conflicts</th>
<th>Strongly Disagree</th>
<th>Moderately Disagree</th>
<th>Slightly Disagree</th>
<th>Neutral</th>
<th>Slightly Agree</th>
<th>Moderately Agree</th>
<th>Strongly Agree</th>
<th>Unfamiliar with Conflict</th>
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</thead>
<tbody>
<tr>
<td>World War One (1914-1918)</td>
<td>-3</td>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>?</td>
</tr>
<tr>
<td>World War Two (1941-1945)</td>
<td>-3</td>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>?</td>
</tr>
<tr>
<td>Korean War (1950-1953)</td>
<td>-3</td>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>?</td>
</tr>
<tr>
<td>First Gulf War (1991)</td>
<td>-3</td>
<td>-2</td>
<td>-1</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>?</td>
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<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>?</td>
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</table>

Just War Survey, 2010
Canadian Conflicts by JWI Score

Just War Index (Scale Range -3 to +3)

- World War II
- Anti-Piracy Mission (Somalia)
- Gulf War
- Bosnia Intervention
- Korean War
- OEF — Kandahar
- ISAF — Kabul
- Afghanistan (Overall)
- World War I
- Kosovo Intervention
- ISAF — Kandahar
- Boer War
Applications: Debatable issues

- Weighting of criteria

- Non-traditional conflicts
  - Terrorism, civil wars

- Scalability:
  - strategic/operational/tactical
    - Just Cause \(\rightarrow\) purpose of an action
    - Right intent \(\rightarrow\) Commander’s intent
    - Legitimate authority \(\rightarrow\) commander giving lawful order
    - Last resort \(\rightarrow\) military necessity
    - Proportionality of ends \(\rightarrow\) Proportionality of means
Conclusions

- A framework for analysis; not “the answer”
  - Subjective vs objective
  - Apply opinions and argument *with* evidence and facts

- Elements of JW theory needed to convince and lead population, soldiers and partners
"The moral is to the physical as three is to one."

— Napoleon Bonaparte
Teaching Points

- An overview of the **historical development** of Just War Theory.
- The **relationship** of Just War Theory to political realism and pacifism.
- Considerations for the **use** of the Just War tradition.
- The **relationship** of the Just War tradition, International Law, and International Humanitarian Law (The Laws of War or the Law of Armed Conflict).
- The **utility** of the Just War tradition in contemporary conflict.

Source: Log for C/DS547/ETH/LD-2
Hagar the Horrible

MEN, BEFORE WE LEAVE TO SACK EUROPE...

I'VE ASKED BROTHER OLAF TO SAY A FEW WORDS

GENTLEMEN... IS THIS TRIP JUST?
LET THE DISCUSSION BEGIN!