Just War Tradition
and the Ethics of War

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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, national (legal) 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?

Tactical    Operational    Strategic
Just War Tradition:
Overview, Criteria and Critique
Philosophies (‘isms’) on the use of force

Pacificism
**Pacificism**

*Sermon on the Mount:*  
“whosoever smiteth thee on thy right cheek, turn to him the other also.”

*Immanuel Kant:*  
“No state shall forcibly interfere in the constitution and government of another state”

**Anarchism**

*Melian dialogue:*  
“the strong do what they want and the weak suffer what they must.”

*Thomas Hobbes:*  
"war of all against all. ... life of man, solitary, poor, nasty, brutish, and short”
“isms”

Pacificism

Humanism

Legalism

Idealism

Liberalism

Conservativism

Realism (Realpolitik)

Militarism

Fascism

Anarchism

PRINCIPLE

Values

POWER

Interests
Just War Part of the Spectrum

Pacificism

Just War:
wide range of application

Anarchism
President Obama on Just War

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

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<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>
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<tr>
<td>Right intent</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

Presumption of peace:
Art. 2(4): refrain from use of force

Just Cause
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 …
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

шение

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.
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”

Moving from moral to legal

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

Average Rank Order of "Reason to Use Force" (1 = "Least Just", 7 = "Most Just")

- "To defend one's country against an attack that has already begun"
- "To stop an attack on one's country that is certain and fast approaching"
- "To protect the lives of civilians threatened by violence in other countries"
- "To show solidarity with an allied country who has been attacked"
- "To prevent an attack on one's country that is thought to be probable"
- "To avenge a prior attack on one's country by another country"
- "To acquire new territory or resources from another country"

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; civilian distinction in total war?

Cases from LOG: Sinking of the *Admiral Belgrano*; 1991 Gulf War "Highway of Death"; 1999 NATO air campaign against Serbia
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>
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<tr>
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<tbody>
<tr>
<td>Just Cause</td>
<td>+2</td>
<td>-1</td>
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<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>
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<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>
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<tr>
<td>Right Conduct</td>
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<td>-1.0</td>
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<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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</tbody>
</table>

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>
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<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>
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<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>
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<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>
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<tr>
<td>First Gulf War (1991)</td>
<td>-3</td>
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<td>-1</td>
<td>0</td>
<td>1</td>
<td>2</td>
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</tbody>
</table>

Just War Survey, 2010
Just War: 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 **pacificism**.
- 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/DS541/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!