

## JUST AND UNJUST WAR

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The world has witnessed many wars. Some of which were devastating and took many lives. Examples are the first and second world wars and the 30 years' war in Europe. Some of these wars have attracted people knowingly or unknowingly and made them side with one of the belligerents. Before siding with any state waging war against another like the current war between Russia and Ukraine, we have to ask ourselves whether that war is justifiable as scholars in security term it 'Just War'. The Just War theory is a largely Christian philosophy that was first developed by St Thomas Aquinas. Aquinas was one of the most influential theologians of the last 1,000 years. The theory set out conditions against which to judge whether a war should be waged (*jus ad bellum*) and if it could be justified, and how it should be waged (*jus in bello*).<sup>1</sup> The theory attempts to reconcile three things: one, taking human life is seriously wrong; two, states must defend their citizens and defend justice; and three, protecting innocent human life and defending important moral values sometimes requires the willingness to use force and violence.

The theory specifies conditions for judging if it is just to go to war and conditions for how the war should be fought. Although it was extensively developed by Christian theologians, it applies to people of all faith and none. The Just War Theory aims to provide a guide for states to follow in potential conflict situations.<sup>2</sup> It only applies to states; it does not apply to individuals. However, an individual can use the theory to help them decide whether it is morally right to take part in a particular war. The Just War Theory provides a useful framework for individuals and political groups to use for their discussions of possible wars. The theory is intended not to justify wars but to prevent them. It shows that going to war, except in certain limited circumstances, is wrong, and thus motivates states to find other ways of resolving conflicts.

The principles of a Just War originated with classical Greek and Roman philosophers like Plato and Cicero and were added to by Christian theologians like Augustine and Thomas Aquinas. There are two parts to the Just War theory, both with Latin names: *us ad bellum* and *Jus in bello*. The former refers to the conditions under which the use of military force is justified, and the latter refers to how to conduct a war ethically. The two are also the basis for the law of war under the International Committee of the Red Cross formerly known as International Humanitarian Law (IHL). These are a set of international rules that set out what can and cannot be done during an armed conflict. The IHL's objective is to maintain some humanity in armed conflicts, saving lives and reducing suffering.<sup>3</sup> The rules are known universally as The Geneva Conventions of 12 August 1949. The Geneva Conventions and their Additional Protocols are at the core of IHL, the body of international law that regulates the conduct of armed conflict and seeks to limit its effects. They specifically protect people who are not taking part in the hostilities (such as civilians, health workers and aid workers) and those who are no longer participating in the hostilities such as the wounded, sick and shipwrecked soldiers and prisoners of war.

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<sup>1</sup>[www.bbc.co.uk/bitesize/guides/zbygjxs/revision/5](http://www.bbc.co.uk/bitesize/guides/zbygjxs/revision/5), accessed 16 May 2022.

<sup>2</sup>[www.bbc.co.uk/ethics/war/just/introduction.shtml](http://www.bbc.co.uk/ethics/war/just/introduction.shtml), accessed 16 May 2022.

<sup>3</sup>[www.icrc.org/en/document/what-are-rules-of-war-geneva-conventions](http://www.icrc.org/en/document/what-are-rules-of-war-geneva-conventions), accessed 16 May 2022.

The Conventions and their Protocols call for measures to prevent or end all breaches. They contain stringent rules to deal with what are known as ‘grave breaches.’<sup>4</sup> Those responsible for grave breaches must be sought, tried or extradited, irrespective of their nationalities. It can be argued at what point do we reach a point to say the cause is right, and the war is just?<sup>5</sup> Seven main criteria apply. First, a just war can only be waged as a last resort; all non-violent options must be exhausted before the use of force can be justified; second, a war is just if only a legitimate authority wages it. Even just causes cannot be served by actions taken by individuals or groups who do not constitute an authority sanctioned by whatever the society and outsiders to the society deem legitimate. Third, a just war can only be fought to redress the wrong suffered. For example, self-defense against an armed attack is always considered to be a just cause, although the justice of the cause is not sufficient. – (see the fourth point.) Further, a just war can only be fought with ‘right’ intentions: the only permissible objective of a just war is to redress the injury; fourth, a war can only be just if it is fought with a reasonable chance of success. Deaths and injuries incurred in a hopeless cause are not morally justifiable. Fifth, the ultimate goal of a just war is to re-establish peace. More specifically, the peace established after the war must be preferable to the peace that would have prevailed if the war had not been fought. Sixth, the violence used in the war must be proportional to the injury suffered. States are prohibited from using force not necessary to attain the limited objective of addressing the injury suffered, and seventh, the weapons used in war must discriminate between combatants and non-combatants. Civilians are never permissible targets of war, and every effort must be taken to avoid killing civilians. The deaths of civilians are justified only if they are unavoidable victims of a deliberate attack on a military target.<sup>6</sup> From the detailed analysis of these criteria, we can completely judge whether the war is just or not.

A war that starts as a just war may stop being a just war if the means used to wage it is inappropriate. A war is only just if it is both justified and carried out in the right way. Some wars fought for noble causes have been rendered unjust because of how they were fought. A war is only just if it is fought for a reason that is justified and that carries sufficient moral weight. The country that wishes to use military force must demonstrate that there is a just cause to do so. On the same note, the war may start as unjust and end as just. Hugo Grotius observes that it is possible that war can begin without a just cause but become just when a just cause arises during the fighting and takes over as the goal of the war. When this happens, it is absurd to say that an unjust war has concluded and a new, just war has begun. Rather, the same war may cease to be unjust and become just—just as a war that begins with a just cause may continue after that cause has been achieved or has simply disappeared on its own.<sup>7</sup> However, if a war in progress can either acquire or lose a just cause, then the requirement of just cause must apply not only to the resort to war but also to its continuation.<sup>8</sup> The key point here is that, once the just cause of the war has been achieved, the war should be ended; otherwise, the war lacks justification and is thus illegal. Although the theory is silent on the scale and magnitude of war, this is well captured in

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<sup>4</sup> [www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm](http://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm), accessed 16 May 2022.

<sup>5</sup> Howard Zinn, “A Just Cause Not a Just War.” *The Progressive*, 1 December 2001.

<sup>6</sup> Garry Wills, “What Is a Just War?” *New York Review of Books*, Volume 51, Number 18, November 18, 2004, review of *Arguing About War* by Michael Walzer Yale University Press, p. 208.

<sup>7</sup> Hugo Grotius, *The Rights of War and Peace* (1625), trans. A. C. Campbell (London: M. Walter Dunne, 1901), p. 273.

<sup>8</sup> David Mellow, *A Critique of Just War Theory* (Ph.D. dissertation, University of Calgary, 2003), p. 201.

the law of armed conflict and its additional protocols, which limit the means and how war is to be fought.

Many Just War theorists agree that preventing future aggression can be a legitimate goal of war once it has begun. Samuel Pufendorf, for example, writes: 'It is permitted to apply force against an enemy not only to the point where I have repelled the danger which he threatens against me, or where I have recovered or wrested from him that which he has unjustly seized from or refused to furnish me, but I can also proceed against him to obtain a guarantee for the future. So long as the other allows this to be wrested from him through force, he gives a sufficient indication that he still intends to injure me even thereafter.'<sup>9</sup> Robert Mc Kim and Jeff McMahan distinguished between an independent just cause, which could justify war or the resort to war on its own, and a conditional just cause, which could contribute to the justification for war, but only when triggered or activated by the presence of an independent just cause.<sup>10</sup> The so-called preemptive attack may be attributed to this fact if one country believes that the adversary is likely to invade, citing some previously demonstrated actions that are preparations for a major attack. These can include the acquisition of new weapons, specific types of training, or captured individuals suspected of gathering information to use it during wartime. If a country is affected in this way, it may decide to attack before the adversary completes its preparations. A preemptive attack or anticipatory use of force will be justified only if the threats of attack are more clearly imminent and not based on speculation, and they will be accepted in international law. The advantage of a preemptive strike is that, by being the first to act decisively, a state renders the enemy unable to carry out aggressive intentions. This strategy also has several drawbacks. First, the threatened state might be wrong in its assessment of the threat and launch an unwarranted destructive attack. Second, one state's use of preemptive force may set a precedent that leads to widespread abuse of the preemptive option. Scholars and politicians disagree sharply on the ultimate legitimacy of using preemptive force. However, most of them agree on several fundamental requirements for a preemptive strike to be considered potentially justifiable. Proponents of preemptive force cite Article 51 of the United Nations Charter that 'the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations.' Opponents of the strategy of preemption argue that the article conditions defensive action on the prior occurrence of an attack, rather than the perception of the possibility of an attack.<sup>11</sup> The state that responds to the threat must demonstrate that a preemptive attack is the only effective way to defend itself. The scope and scale of the preemptive action must be proportionate to the perceived threat. However, because these judgments are entirely subjective, the onus is squarely on the attacking state to justify its actions to the international community.

Today, the Just War Theory is divided into three categories, each with its set of ethical principles. The categories are *jus ad bellum*, *jus in Bello*, and *jus post bellum*. These Latin terms translate roughly as 'justice towards war', 'justice in war', and 'justice after war'. When political leaders are trying to decide whether to go to war, the just war theory requires them to test their decision by applying several principles: first, is it for a *just cause*? This requires that war be used

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<sup>9</sup>Craig L. Carr, ed., *The Political Writings of Samuel Pufendorf*, trans. Michael Seidler (New York: Oxford University Press, 1994), p. 259.

<sup>10</sup> Jeff McMahan and Robert McKim, "The Just War and the Gulf War," pp.502–506.

<sup>11</sup>[www.britannica.com/topic/preemptive-force](http://www.britannica.com/topic/preemptive-force), accessed 08 July 2022.

only in response to grave wrongs. *Self-defence* is the most common example of a just cause, but many people consider coming to the defence of another innocent nation to be a just cause as well (and perhaps the highest cause). Second, is it with the *right intention*? This requires that wartime political leaders be solely motivated, at a personal level, by reasons that make a war just. For example, even if war is waged in the defence of another innocent country, leaders cannot resort to war because it will assist in their re-election campaigns. Third, is it from a *legitimate authority*? This demands the war is declared only by a recognized political community's leaders and with that community's political requirements. Fourth, does it have due *proportionality*? This requires us to imagine what the world would be like if we went to war. For a war to be 'just,' the peace that results from it must be superior to what would have occurred if no war had been fought. This also necessitates a reasonable chance of success in going to war; otherwise, people will suffer and die in vain. Fifth, is it *the last resort*? This says that we must exhaust all other reasonable options before going to war. These involve negotiation, diplomacy, economic sanctions and so on.<sup>12</sup> Even if the principles of *jus ad bellum* are followed, the war can still be unjust.

The following ethical principles govern how combatants conduct themselves in the 'theatre of war' (*jus in Bello*). First, **discrimination** requires combatants to attack only legitimate targets. Civilians, medics and aid workers, for example, cannot be deliberate targets of a military attack. However, according to the principle of double-effect, military attacks that kill some civilians as a side effect may be permissible if they are both necessary and proportionate. Second, **Proportionality** applies to both *jus ad bellum* and *jus in Bello*. *Jus in Bello* requires that, in a particular operation, combatants do not use force or cause harm that exceeds strategic or ethical benefits. The general idea is that you should use the minimum amount of force necessary to achieve legitimate military aims and objectives. Third, **no intrinsically unethical means** is a debated principle in the just war theory. Some theorists believe that some actions are always unjustified, whether they are used against enemy combatants or are proportionate to our goals. Torture, shooting to maim, and biological weapons are commonly used examples, and fourth, **following orders is not a defence**, as the war crime tribunals after the Second World War established. Military personnel may not be legally or ethically excused for following illegal or unethical orders.<sup>13</sup> Every person bearing arms is responsible for their conduct – not just their commanders.

Once a war is completed, steps are necessary to transition from a state of war to a state of peace. *Jus post Bello* is a new area of the Just War theory that aims to identify principles for this period. Although there is no consensus yet, the following principles have been proposed: First, *Status quo ante bellum*, a Latin term meaning 'the way things were before the war' – basically rights, property, and borders should be restored to their pre-war state. Some consider this as a problem because those can be the exact causes of war in the first place. Second, *punishment for war crimes* is a crucial step to re-installing a just system of governance. Any serious offences committed on either side of the conflict, from political leaders to combatants, must be prosecuted. Third, *compensation of victims* suggests that, as much as possible, innocent victims of the conflict be compensated for their losses (although some harms of war will be almost impossible to adequately compensate, such as losing family members), and fourth, *peace*

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<sup>12</sup> <https://www.ethicscentre.org.uk/just-war-theory/> The Ethics Centre Ethics Explainer, accessed 08 July 2022.

<sup>13</sup> The Ethics Centre Ethics Explainer, accessed 08 July 2022.

*treaties* need to be fair and just to both parties, including the guilty party. The Just War theory provides the basis for exercising ‘ethical restraint’ in war. Philosopher Michael Ignatieff argues that the difference between a ‘warrior’ and a ‘barbarian’ lies in ethical restraint. In an ideal world, those in the profession of arms are trained to use force with ethical restraint.<sup>14</sup> It is also critical for advisers to understand international law as it applies to the conduct of war to advise decision-makers on the consequences of their decisions regarding the best way to prosecute a war. Although ignorance of the law is not an excuse, all parties involved must be educated so that they are aware that they may be held accountable for their actions in the future. This is what prompted the international community to decide to establish courts soon after the conflicts ended. After the Second World War, such courts included Nuremburg and Tokyo, as well as the ICTR and ICTY, which were intermittent before the establishment of the International Criminal Court (ICC) in 1998. If restraint is not exercised, we will see many suspected war criminals being tried in the future, especially those whose countries will attempt to protect them unnecessarily.

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<sup>14</sup><https://ethics.org.au/ukraine-hackivism/>, accessed 08 July 2022.