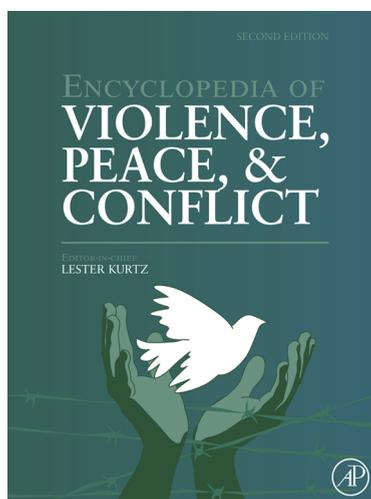


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Just-War Criteria

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The Criteria
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Glossary

Consequentialist Ethics The view that decisions should be based primarily on the consequences of action.

Deontological Ethics The view that decisions should be based primarily on principles of moral duty.

Jus ad bellum ‘The law or right to war’, the criteria that should be debated before deciding ‘to’ initiate a war.

Jus in bello ‘The law or right in war’, the criteria that should be debated before deciding to use this or that strategy, tactic, or weapon during a war.

The just-war criteria organize discussions of war. They provide a language and structure for choosing the lesser of two evils. Consequently, they do not provide an external or mechanical means to calculate the justice or injustice of either side’s decision to wage war. Initially, the *jus ad bellum* criteria are used to organize the debate as to whether or not to begin a war. Subsequently, when the decision is for war, the *jus in bello* criteria are used to organize debates over appropriate diplomatic, economic, or military actions during the war. The empirical foundation of the criteria is the principle of double effect, the principle that every action produces both good and bad, intended and unintended consequences. Because of this double effect, decisions concerning which of two evils to choose should be made only after a thorough investigation of both the justification and the prudence of the

alternative courses of action and the means by which each alternative will be accomplished. It is the specific purpose of the criteria to ensure that this investigation is disciplined and thorough, none of the important perspectives or circumstances having been left out.

The Criteria

The just-war criteria, as the three versions in **Table 1** indicate, are not fixed and immutable. Through the millennia different authors have compiled different lists, shifting and changing the emphasis as their interests and circumstances demanded. For example, in his *Summa Theologica*, Thomas Aquinas was content with listing the three justificatory criteria of the *ad bellum* criteria – competent authority, just

cause, and right intention, ignoring the prudential criteria. He also emphasized the competent authority criterion as part of the effort to minimize and control private wars, which were a great problem during the Middle Ages. In 1983, the Catholic bishops listed only two *in bello* criteria, adding right intention to their list a decade later, in 1993. The only settled points are (1) that the criteria, whatever their number, are founded upon the operation of the principle of double effect; and (2) that the question of war and peace divides into two distinct parts: the initial decision to begin a war, that is, the *jus ad bellum* criteria, and subsequent decisions on the diplomatic, economic, or military conduct of the war, that is, the *jus in bello* criteria.

Inasmuch as the second version of the criteria in **Table 1** is the most elaborate, it will be adopted for purposes of illustration. To add specificity to the discussion, the *Declaration of Independence* will be used to illustrate the *ad bellum* criteria, while the Allied carpet

bombing of World War II will be used to question the *in bello* criteria. Sherman's march to the sea also raises interesting *in bello* questions.

Two additional points of interest: Unlike the *ad bellum* criteria, the *in bello* criteria of discrimination and proportionality of means have been codified in international law. They are the principles that animate the laws and customs of war as codified in the Hague and Geneva Conventions. This neglect of the *ad bellum* criteria may, however, be changing with the publication of *The Responsibility to Protect* and *A More Secure World*. Second, none of the criteria invoke or rely upon any sort of religious principle. Although the criteria have been associated with the Christian Church since Augustine and Islam since the ninth century, they are based upon the entirely secular principle of double effect, as the following discussion will demonstrate.

Table 1 Three versions of the Just-war criteria

Version 1:

A. Just causes to resort to war.

1. To protect the innocent from unjust attack.
2. To restore rights wrongfully denied.
3. To reestablish an order necessary for a decent human existence.

B. Criteria for determining a just cause:

1. Lawful authority
2. Clear declaration of causes and aims
3. Just intention
4. Last resort
5. Probability of success
6. Proportionality of ends
7. Maintenance of *jus in bello*
 - a. Noncombatant immunity (Potter 1970)

Version 2:

I. *Jus ad bellum* (Right to war)

- A. Just cause against a real and certain danger
- B. Competent authority
- C. Comparative justice
- D. Right intention
- E. Last resort
- F. Probability of success
- G. Proportionality of ends

II. *Jus in bello* (Right in war)

- A. Proportionality of means
- B. Discrimination, i.e., noncombatant immunity
- C. Right intention
(United States Catholic Conference 1993)

Version 3:

In order to be fought justly.

1. War must be publicly declared.
2. War must be declared by a competent authority.
3. War must be fought with the right intention.
4. War must be fought for a just cause.
5. War must be fought for a proportionate reason.
6. War must be fought for a just peace.
7. War must be a last resort.

(Johnson and Kelsay 1990, 58)

Jus ad bellum

Justificatory criteria

Just cause

The purpose of the war must be to enhance and further peace and justice by righting some grievous wrong. The traditional causes listed in the first version in **Table 1** establish the general categories of legitimate purposes.

Given the importance of this criterion, more than half of the *Declaration of Independence* is devoted to arguing the colonists' just cause, presenting both philosophical and practical reasons. In terms of philosophy, the rebellion is justified because the Crown had frustrated the basic purpose of all government by denying the colonists their 'inalienable rights', and thereby had lost all legitimacy. In terms of practical politics, Jefferson listed 27 specific grievances, ranging from "He has forbidden his Governors to pass Laws of immediate and pressing Importance, ..." to "He has abdicated Government here, by declaring us out of his Protection and waging War against us."

Competent (legitimate or lawful) authority

Not only must the authority be competent in the general sense of being a legitimate sovereign, it (or its ally) must also be competent in the particular sense of being the legitimate sovereign over the territory or issue under dispute in the war. For example, during the Opium Wars, Great Britain was a competent authority to wage war in the general sense of being an internationally recognized sovereign, but she was not competent in the particular sense of being the legitimate sovereign of China, and, therefore, able to legislate whether the Chinese would or would not import opium.

Until the fourteenth century, this criterion was used to disallow revolutionary wars because their leaders were not sovereign authorities. Under pressure from the Counter-Reformation, John Calvin developed his Lesser

Magistrates doctrine, which holds that duly constituted, but inferior, public authorities possess a duty to lead an oppressed people in revolt against obstinately tyrannical 'Superior Magistrates'. In line with Calvin's doctrine, the *Declaration* asserts the colonists competence to wage war in two different way: First, under natural law, it asserts in the very first sentence that, "When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, . . ."

Then, in the concluding paragraph, competence is based upon the rock of representative government, "We, therefore, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; . . ."

Calvin's Lesser Magistrate doctrine does not, however, extend to guerrilla wars or wars of national liberation, which, most frequently, are private wars led by groups with no recognized standing. Yet, if the case can be made that the revolutionary party or group does possess a publicly recognized mandate similar to that of Lesser Magistrates, as the African National Congress and Nelson Mandela could, then it would be possible to argue that that party or group possessed competent or legitimate authority to declare war against its oppressor.

Right intention

Despite the fact that the war will produce unintended evil consequences, one's own intentions must be good. This means not fighting out of a desire for revenge or to injure others, but only for a just cause, avoiding unnecessarily destructive acts or seeking unreasonable conditions such as unconditional surrender, and reconciling at the first opportunity. Implicit in a right intention is a formal, public declaration of war, as called for in two of the versions in **Table 1**. For, out of 'a decent respect to the opinions of mankind' a clear public declaration of the war's causes and aims is required to show the rightfulness of one's intentions.

In the *Declaration*, the rectitude of the colonists' intentions is not only asserted formally in the concluding paragraph (cited above) but is also demonstrated by means of the colonists' prudence and long-suffering, "Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." But prudence and

long-suffering must eventually give way before a radical imbalance in the relative justice that separates each side's cause. Hence, the *Declaration* continues, ". . . when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards of their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government."

Prudential criteria

Comparative justice

In general, the justice of one's cause must be significantly greater than that of the adversary. This criterion forces each side to consider the position and perspective of the other side. The *Declaration* makes this comparison implicitly throughout, but, in the transition from the philosophical to the practical reasons for independence, it explicitly emphasizes the gross imbalance in comparative justice. While the Americans are seeking "Life, Liberty, and the pursuit of Happiness," "The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world."

Last resort

Since war is, at best, the lesser of two evils, it should be chosen only as a last resort. Thus, the intended results of the war must be judged in relation to (1) the accumulating injustice if nothing is done; (2) the delayed arrival of justice if other less decisive options are chosen; and (3) the unintended harmful consequences (both known and unknown) of the war.

In the *Declaration*, last resort is shown not just by the 'prudence' shown by the Colonists, but also by the fact that:

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time. . . . We have reminded them. . . . We have appealed to their native justice and magnanimity, and we have conjured them. . . .

But to no avail, "They too have been deaf to the Voice of Justice and of Consanguinity." Consequently, as a last painful resort, "We must, therefore, acquiesce in the Necessity, which denounces our Separation, and hold them, as we hold the rest of Mankind, Enemies in War, in Peace, Friends."

Probability of success

This criterion is primarily an injunction against lost causes. Beyond prohibiting lost causes, this criterion, when combined with right intention, suggests that one should avoid the even greater evils that will result from defeat in war. This is the only criterion that the *Declaration* does not address.

Proportionality of ends

The good to be realized must be greater than the evil inflicted. In a world of limited resources and limited effects, only a relatively few actions can be justified as proportional to and compatible with the ends sought.

The handling of this point in the *Declaration* is quite weak. The only explicit reference allows, "that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." However, the entire *Declaration* is also suffused with a feeling that royal tyranny has become entirely unacceptable and, hence, a return to good government is well worth the evils of war.

Jus in bello

Having disciplined the debate that led to a decision to wage war, new issues, questions, and dilemma arise. During the course of the war, one must ensure that the means selected, for example, the carpet bombing of World War II, do not negate the ends sought.

Discrimination of means

To minimize the war's evil consequences and maximize its good consequences, only selected diplomatic and economic sanctions are permitted. Wholesale sanctions that injure an entire population are forbidden. In the case of military operations, only military facilities and persons should be attacked, and these should be attacked with the amount of force required to achieve the objectives of the attack. In other words, the principle of noncombatant immunity must be upheld, as the Geneva Conventions demand. In this regard, did the carpet bombing of German and Japanese cities uphold the principle of noncombatant immunity within the limits of the principle of double effect? Was the bombing limited to military targets?

Proportionality of means

None of the diplomatic, economic, or military acts of war may be so devastating as to render the whole war unjust by increasing the unintended evil effects to the point where they overwhelm the intended good effects. For example, was the destruction of 62 of 63 German cities of over 100 000 population and 66 Japanese cities, two by atomic bombs, disproportionate to the good produced by their destruction?

Right intention

The aim of diplomatic, economic, or military operations must be to achieve reconciliation and peace as expeditiously as possible. Their aim cannot be vengeance or wanton destruction. Even during combat, individuals, units, and governments must keep their emotions under control. In this regard, how did the carpet bombing speed reconciliation?

Evaluating the Criteria

Four comments are in order: First, it should be clear that the criteria are designed to assist in making agonizing choices between the lesser of two evils. If any of the viable options were good, then there would be little need for such an elaborate and belabored debate. For example, when the options are between sending the military to intervene in Bosnia or standing by while the country is ethnically cleansed, the agony of the decision will force a full and detailed debate over each of the criteria before a final judgment is made. It should be equally clear that the criteria are not designed to mechanically determine which of the two evils under consideration is the 'truly' just option. The criteria organize and discipline the dispute; they do not settle the controversy. Each individual and nation must still come to its own best judgment.

Second, because of the indeterminate and controversial character of each of the criteria individually and all of them together, consensus is seldom possible. The American Revolution is an excellent example of this. However, persuasive the reasoning of the *Declarations of Independence* may be, 20% of the colonialists were not persuaded and remained loyal to the British Crown. A fifth of the population opposed the war as unjust, unneeded, and waged by unlawful authorities. This would appear to be about right: In even the most just of wars, approximately 20% of the population will disagree and condemn the war as unjust. In wars where the justice of the cause is less clear than during the American Revolution, the percentage will be even higher. This is another reason a clear and public declaration by a competent authority is needed. Without such a formal declaration, how are either individuals or the international community to judge the justice of the cause, the competence of the authority, or the rightness of the intentions? Only after 4 July 1776 was it possible to make these judgments. Only after 4 July 1776 was it possible to move beyond personal opinion and begin to debate these complex judgments as a matter of public policy. The 2003 invasion of Iraq is perhaps an apposite example of how a lack of a formal, fully reasoned, public declaration of war leads to confusion over the 'real' cause, authority, and intention of a war.

Third, as James Turner Johnson has pointed out, from the late nineteenth century through to the publication of

The Challenge of Peace in 1983 by the US Catholic Conference of Bishops, the notion has slowly grown that the just-war criteria imply 'a presumption against war'. The idea is that 'a presumption against war' must exist because war should always be a last resort and because modern war is disproportionately devastating. Accordingly, the starting point for any debate should be that (1) war is not justified in the given case, (2) alternatives 'do' exist, and (3) 'the presumption against war' can be overridden only if the strongest possible circumstances, reasons, and arguments can be adduced, as, for example, Hitler's invasion of Poland or Serbian ethnic cleansing of Kosovars from Kosovo.

While superficially plausible, 'a presumption against' something is only a polite way of phrasing a prejudice against that thing. Such prejudices, however, are unacceptable distortions because they prejudice. An honest effort to judge the lesser of two evils must begin with an open mind and a willingness to follow the circumstances wherever they lead. For example, surgery is always a last resort; it is always the lesser of two evils. Yet, if surgery is indicated, the surgeon is competent, and the prognosis good, then the patient should go under the knife. Entering the surgeon's office with 'a presumption against surgery' is to allow one's prejudices to endanger one's health.

Fourth, it should be clear that none of the criteria are grounded in any religious doctrine. Instead, they are all grounded in the need to sort out the consequences of the principle of double effect. When one sits down to discuss the decision to initiate a war, what else would one debate besides how right one's own cause was and how wrong was that of the other side? What else would one debate besides the probability of success; whether the last resort had arrived, and so forth? This commonsense quality is perhaps seen most clearly in the *in bello* criteria. Although they are clothed in an ethical language, they wear military uniforms equally well. That is, the principle of double effect and the call for noncombatant immunity are but another way to express the Pentagon's doctrine of minimizing 'collateral damage'.

The need to minimize the 'collateral' or unintended damage done by military operations arises out of two reciprocal principles of war: the principle of mass and the principle of economy of force. In order to achieve victory, one must concentrate the mass of one's military forces at the decisive time in the decisive place. Massing forces in one place means that forces must be economized in every other place, allocating a minimum of the available forces to secondary efforts. In other words, one must make a discriminate and proportionate use of one's forces, so as not to waste limited military resources. And, of course, the greatest waste of military resources is to use them against nonmilitary people and facilities – a commonsense military observation that returns one to the ethical call for noncombatant immunity found in the

Geneva Conventions. Indeed, the only excuse for diverting military forces away from military objectives and against civilian people and facilities is a desire for vengeance and wanton destruction, which, not incidentally, is a violation of the *in bello* criterion of right intention.

Issues Raised by the Criteria

The commonsense quality of the just-war criteria makes one wonder why other non-European cultures have not developed a similarly elaborate set of criteria. The response is paradoxical: On the one hand, all the major cultures of the world possess something similar to the European just-war criteria. They all recognize the principle of double effect – what the Buddhists call dependent co-arising (*paticcasamuppada*). Hence, they all possess codes of chivalry and other customs and traditions to ameliorate the savagery of military operations. For the same reason, the initial decision to declare war is debated in all cultures in terms of its causes, its probability of success, whether the tools of diplomacy have been exhausted, and so forth.

On the other hand, only in Europe and in Islam were the criteria elaborated in such detail and so explicitly. In other cultures, they remain informal and not always explicitly stated in a formal and legalistic manner. For example, Sun-Tzu in his *Art of War* emphasizes that *dao* (moral influence) is the first factor to be considered before engaging in war, a thought that the commentator Chang Yu elaborates as, "When troops are raised to chastise transgressors, the temple council first considers the adequacy of the rulers' benevolence. . . ."

Next, the temple council considers the probability of success criterion, which Sun-Tzu interprets as consisting of four factors: weather, terrain, command (i.e., the abilities of the opposing generals), and doctrine (i.e., the organization and training of the opposing armies). Early on, the criteria were treated informally in Europe as well. For example, scattered passages in the *Iliad* articulate a rudimentary set of just causes for the war against Troy but no attempt at systematization: "to fight for Helen and her property," "[to] take vengeance on the men who break their oaths," "[for] injuring the host who entertained him." Homer recognizes that only the most compelling circumstances can justify a resort to war. He, therefore, provides not one, but three just causes. Still, there is no effort at further elaboration or systematization.

Systematization in Europe

However, systematization of the criteria soon began. Aristotle, in his *Rhetorica ad Alexandrum*, outlines in rudimentary fashion the arguments that should be made when one wishes either to initiate or prevent war. In both cases, the justice of one's cause and the probability of success are

the cardinal points. Thus, Aristotle advises Alexander that, "The pretexts for making war on another state are... either to avenge past or present wrongs or to gain some advantage such as glory, resources, or strength, while the factors leading to success are the favor of the gods, the number of troops, an abundance of resources, the wisdom of the general, excellent allies, and superior position."

In the ancient world, the most sustained effort at articulating the criteria took place in early Republican Rome, where the issues of war and peace were submitted to sustained scrutiny and systematization in the *collegium fetiales*, the religious congregation that was responsible for sanctifying the ratification of treaties and declarations of war in accordance with the *jus fetiale*. The *jus fetiale* was a well-established tradition of law built upon the principle that, "Therefore the only justification for war is that peace and justice should afterwards prevail," as Cicero tells his son in *De Officiis*. The *jus fetiale* has since been lost; we know of it only through scattered references and a long passage in Livy.

Still, the knowledge that legal criteria for a just war could be and had been articulated survived the fall of Rome and became the basis of Christianity's response to war. During the zenith of the Roman Empire, Christianity had been a marginal dissident religious sect that was often persecuted. Excluded from political power, the Church seldom took a position one way or another on political issues, in general, and on war, in particular. Whether this silence concerning war was motivated by indifference to all things secular or by religiously based pacifist principle is difficult to say. Considerable evidence exists to support both positions.

But whatever her motivation while excluded from political power, as the Empire in the west slowly disintegrated under repeated barbarian invasions, the Church was forced, first, to assume greater and greater political responsibilities and, eventually, to consider the issue of war in all its practical details. In response to repeated questions as to whether a good Christian prince could wage war or a good Christian soldier could kill in war, Augustine and others seized upon Cicero and the ancients to respond, yes, thereby drawing the ancient pagan thinking on just-war into the Christian Church. However, the concern at this time was pastoral, not legal. Augustine and the Church were responding to the immediate concerns of the times and the laity. There was as yet no attempt to systematize the Church's position on war. For example, to learn of Augustine's attitude toward the just war, one must read a dozen or more scattered passages in his letters and books, as will be seen shortly.

During the Middle Ages, however, the Church's needs and attitude changed yet again. A unique relationship developed between the Church of Rome and the multitude of feudal principalities into which Christendom was divided. This created conditions that soon stimulated a renewed interest in systematizing the just-war criteria.

For, during this period, the Church maintained enormous moral authority but had little interest in usurping the temporal power of the feudal barons. It was, as a result, an influential but a relatively disinterested observer of the innumerable wars that these petty princes waged. Being influential, the Church's endorsement of one side or the other in a war was of considerable political and psychological value. Being relatively disinterested, feudal barons felt safe in asking the Church to endorse their side and condemn the other. Consequently, Church authorities received a constant stream of requests from both sides for judgments as to which belligerent possessed justice on his side. As the heirs of ancient Roman administrative and legal practices and with the knowledge that the Romans had once possessed the *jus fetiale*, the natural response of the canon lawyers was to begin systematizing an explicit set of criteria with which they could organize their briefs and by which bishops and popes could render a decision.

At first, the criteria grew like topsy, multiplying seemingly uncontrollably to cover all aspects of war. Then, as noted above, Aquinas reduced the list to the three justificatory *ad bellum* criteria, thereby simplifying, clarifying, and generalizing the criteria. In the seventeenth century, Hugo Grotius, relying largely upon the writings of Alberico Gentili, secularized the criteria and incorporated them into international law. In the late nineteenth and twentieth century, after further secularization and elaboration, the *in bello* criteria provided the intellectual foundations for a series of conventions negotiated in the Hague and at Geneva. In this manner, the just-war criteria became one of the foundations upon which the laws of war, also known as international humanitarian law, were built.

More recently, during the great antinuclear protests of the 1980s, the just-war criteria entered politics in a most remarkable manner. Drawing upon the Church's traditional just-war doctrines, first, the Catholic bishops in 1983 and, then, the United Methodist bishops in 1986, published long and thoughtful pastoral letters concerning America's nuclear policy. The Catholic bishops concluded on the basis of a just-war analysis that a 'nuclear war' would be immoral and unacceptable, but found that a policy of 'nuclear deterrence' was 'conditionally' acceptable. The United Methodist bishops, however, went a step further and found that even 'nuclear deterrence' was immoral and unacceptable on just-war and other grounds.

In response to the bishops' just-war challenges, Secretary of Defense Caspar Weinberger, with the assistance of his aide, General Colin Powell, and Secretary of State George Shultz prepared thoughtful responses. Secretary Weinberger responded in a 28 November 1984 speech before the National Press Club and in his annual report to the Congress, while Secretary Shultz responded in a 9 December 1984 address at Yeshiva University. Both sidestepped the conclusions of the Methodist and Catholic bishops concerning nuclear policy, with which they

strongly disagreed, but both agreed that the just-war criteria were a necessary and valuable guide to decision making. They then went on to list the five criteria that they felt should guide policy makers before committing American combat forces to action. These included the three *jus ad bellum* criteria of just cause – reinterpreted as ‘national interests’ – probability of success, and last resort, and the two *jus in bello* criteria of proportionality of means and discrimination of means.

In this manner, the traditional just-war criteria were revived from within the Christian Churches, injected into the ongoing political debate, and stimulated prominent political leaders to formally introduce them into the highest policy-making levels. This was achieved, in part, by listing only the most pragmatic of criteria but, more so, by redefining ‘just cause’ in the realist or Machiavellian manner as ‘national interest’. Deciding for or against war on the basis of perceived ‘national interests’ not only removes all religion from the debate, but, many would argue, all morality as well. Be that as it may, a slimmed down version of the traditional Christian just-war criteria is now firmly established at policy-making level in the Departments of Defense and State, as was seen during the Persian Gulf War, 1990–91, where it was called the Powell Doctrine, after General Powell, then the Chairman of the Joint Chiefs of Staff.

Defining a ‘Just’ Cause

But explicit systematization is not the only or, indeed, the most important distinguishing characteristic of the European just-war criteria. More important is the contentious issue of the value that defines a ‘just’ cause. Needless to say, opinions differ. Indeed, even within the European tradition, different values are proposed. In addition to a realist or Machiavellian definition of ‘just cause’ as *raison d’état* or ‘national interest’, some hold that self-defense is the defining value, while others insist that only comparative justice can define a ‘just’ cause. But, before addressing this division within the European tradition, a brief survey of other cultures will be useful.

Harmony in China

The role of war in the Chinese tradition is, not to punish aggressors, but to ‘chastise transgressors’, those who have betrayed the benevolence of the emperor by disrupting the harmony of empire. The crucial question, therefore, is not the justice or injustice of the transgressors’ demands, but rather the state of the emperor’s benevolence. Having framed the moral issue in this way, two possibilities exist: If the temple council finds the emperor’s benevolence inadequate, then he, and not the rebels, must be chastised. If, however, the temple council finds the emperor’s benevolence adequate, then the dogs of war should be loosed, the transgressors chastised, and harmony restored

to the empire. Debating the adequacy of the emperor’s benevolence is, needless to say, an exceedingly delicate task, not only politically, but logically as well; for, the mere existence of rebellious transgressors demonstrates a deficiency in the emperor’s benevolence. This inconvenient conclusion generates a perplexing dilemma: A truly benevolent emperor never needs to war, while a warring emperor is not truly benevolent. However, the temple council might resolve this dilemma, the value that defines a ‘just’ cause is not so much an European concern with either self-defense or comparative justice as an East Asian concern with harmony.

With the overthrow of the Chinese Empire in 1911 and the eventual conquest of power by Mao Tse-tung and the Communist Party in 1949, ‘chastising transgressors’ was no longer the official just cause for war. Now, it was the general Marxist–Leninist goal of throwing off the capitalist oppression of workers and peasants, with a specifically Chinese emphasis on overthrowing colonialist oppression through the People’s War. And, indeed, Mao’s People’s War doctrine did inspire many revolutionary movements in Vietnam, Cuba and Latin America, Africa, and elsewhere in Asia.

However, 5000 years of history are not so easily overturned. Without reviving the Confucian terminology, ‘chastising transgressors’ nonetheless would appear to be the true justification for Chinese military operations since 1949. This is evidenced by the 1949–50 invasion of Tibet, the 1950 Chinese intervention in the Korean War, the 1962 Sino–Indian War and the border incidents following, and the continuing threat to invade the ‘renegade’ province of Taiwan. None of these military operations were People’s Wars to free colonial people; they are all operations either to recover ‘lost’ parts of the traditional Chinese empire or to ‘chastise’ those who have or would infringe on China’s traditional sphere of influence. Internally as well, the military has been employed often to ‘chastise transgressors’, most spectacularly in 1989 to quell the student protests in Tienanmen Square.

With the economic transformation of China since Mao’s death, world revolution and People’s War are no longer being exported from China. Any future military operations will no doubt be justified officially as exercises of defending ‘national interests’, in the modern *raison d’état* mode. Yet, not far below the surface rhetoric, one will find the traditional need to ‘chastise transgressors’ so as to restore the harmony of the empire.

Duty in India

In India, the defining value is not harmony, but duty, seen as the submission to the inexorable working of *dharma* and *karma*. The primary problem, therefore, is learning how these forces have determined the world. Ideally, one learns of one’s duty through enlightenment, as happens in the *Bhagavad Gita*. The *Gita* is a dialogue in which

Lord Krishna enlightens a skeptical Prince Arjuna on the *karmic* and *dbarmic* forces that determine his duty, which is to fight and win a great battle fated for the morrow. In general, the need for enlightenment arises out of the workings of the principle of double effect, “Whatever austerities you undergo, / Kunti’s son, do as an offering to me. / Thus you will be released / From the bonds of action [i.e., *karma*], its fair and evil fruits, . . .” More particularly, the need arises out of Arjuna’s insistent demand to know why he should fight and shed the blood of his kinsmen? The crucial moment comes in the eleventh chapter when Lord Krishna gives the Prince “the eye of a god. / [To be]hold my mystery as the lord,” in order that he may achieve enlightenment.

Having seen Krishna’s myriad forms, but not yet understanding their meaning, Prince Arjuna asks again, “Tell me, you of awful form, who are you? / . . . / I wish to know you, who have been from the beginning, / For I do not know what you have set out to do.” To which Lord Krishna responds, “I am time, destroyer of worlds, grown old / Setting out to gather in worlds. / These warriors drawn up, facing the arrows, / Even without you, they shall cease to be. / Therefore, stand up. Seize honor. / Conquer your foes. Enjoy the rich kingdom. / They were killed by me long ago. / Be but the means, left-handed archer.”

Neither the justice or injustice of each side’s demands nor the need to restore harmony is the primary value under discussion. Instead, it is the need to do one’s duty so that one can conform to one’s fate, to the workings of *dbarma* and his *karma*. The practical problem with valuing duty over justice, of course, is that Krishna seldom provides the required enlightenment. Gandhi, a close student of the *Gita*, resolved this problem by arguing that knowledge of one’s fate resulted from ‘austerities’: One did one’s duty, suffered the consequences, and, from that suffering, truth emerged; one learned, *post facto*, how *dbarma* and *karma* had shaped his fate. Life, therefore, was *satyagraha*, a struggle for truth. For, just as it was Prince Arjuna’s duty to fight and “Enjoy the rich kingdom,” it was equally the duty of his kinsmen to fight and “cease to be.” No one but Lord Krishna knew this before the battle; all knew it after.

To be sure, Gandhi and others do not advocate blindly doing one’s duty. Every effort should be made at enlightenment. One must analyze the circumstances as best as one can. The comparative justice of each side’s cause, the probability of success, and so on, must be debated and judged. Yet, in the final analysis, the workings of *dbarma* and *karma* are seen but darkly. The only certainty is that one has a duty to suffer one’s fate in a disinterested manner, especially when one is fated to “Enjoy the rich kingdom.” Consequently, true enlightenment comes only *post facto*, only after one has done one’s duty and ‘struggled for truth’.

Religion and justice in Islam

Islam distinguishes two types of war: *barb* and *jibad*. *Jibad* is war in defense of Islam. *Harb* is every other type of war. Lacking a religious motivation, *barb* (literally, war) is incapable of being ‘truly’ just. Its nonreligious, purely political, purposes render it suspect, even when otherwise just. *Jibad* (both the personal and political struggle to overcome evil) promises more than simple political gain. It promises a just and equitable polity built upon Islamic values. Peaceful proselytizing activities are of course preferred in the creation of an Islamic polity, but, under certain conditions, war may be a necessary adjunct.

By the ninth century, Sunni jurists had developed criteria to define these circumstances: A *jibad* must meet the *ad bellum* criteria of a just cause, right intention, competent authority, probability of success, aim for peace, and, before the combat begins, an invitation to accept Islamic rule must be issued. The *jibad* must also be conducted in accordance with Islamic values, which means the *in bello* criteria of discrimination in the use of military forces and preserving noncombatant immunity. The Shiite jurists generally accepted these same criteria, disputing with the Sunni jurists only the identity of the authority competent to declare *jibad*.

The formal similarity with the European criteria is not remarkable. However, the Islamic criteria always remained religious at heart. They were never secularized to the same degree as the European criteria. Thus, the final invitation to accept Islamic rule is not the same as the European last resort criterion, and the just cause is often a simple refusal to accept the invitation to accept Islamic rule. Nor would ‘national interests’ ever be acceptable as just cause. For, the Islamic values that *jibad* is supposed to defend and extend are, “. . . the values associated with pure monotheism; to command good, forbid evil, and bring about justice in the earth.” Thus, it would appear that, should the Islamic criteria ever undergo secularization, the values that define a ‘just’ cause in Islam are not far distant from those that define a ‘just’ cause in the secularized European tradition.

Unresolved values in Europe

As already noted, the values that define a ‘just’ cause in the European tradition are not settled. Ignoring the provincial interpretation of ‘just’ as ‘national interests’, international law holds that self-defense constitutes a ‘just’ cause. A countercurrent denies this and insists that comparative justice alone can constitute a ‘just’ cause. The countercurrent traces its origins from Roman law as filtered through Cicero to Augustine to parts of Aquinas. The international law current draws upon the natural law tradition and stretches from Aristotle to other parts of Aquinas to Thomas Hobbes to Grotius from whence it entered international law, where this right is enshrined in many documents, most prominently in Article 51 of the

United Nations Charter, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense . . ."

Self-defense

Although denying a right of self-defense violates all of our intuitions, asserting such a right is not without problems. To begin with, the international law right is based upon an analogous individual right: Since each individual is said to possess 'a right of self-defense', then, by analogy, so do nation-states. But drawing analogies from individual persons to nation-states is extremely treacherous; nation-states are not simply an individual writ large.

More problematic is the fact that the assertion of a personal right of self-defense is based upon an instinct, the instinct for self-preservation. But can an instinct form the grounds for a right? Do we possess a right to free speech because we have an instinct to gossip? or because participation in politics is impossible unless each participant is able to speak his mind freely? More than an instinct is needed to ground 'a right of self-defense'?

Diplomatically, the assertion of a right of self-defense shunts debate into a discussion of 'aggression'. For, if the exercise of this right justifies a resort to war, it can be activated only by an act of 'aggression'. Unfortunately though, 'aggression' cannot be defined mechanically as "The first use of armed force by a State . . ." as the 1974 United Nations Resolution 3314 defining aggression notes. In the absence of a mechanical definition, "... whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case . . .," as the preamble of the same United Nations Resolution also states. In other words, whenever 'all of the circumstances of a particular case' lead the Security Council to believe that the side that struck first in a war was justified in striking first, then the 'aggressor' is not an 'aggressor'. Hence, it is the comparative justice of each side, and not 'aggression' *per se*, that really determines the case.

Legally, the assertion of a right to self-defense creates an extremely ambiguous situation. For, as soon as one nation exercises this right by responding to an attack, the attacking nation is no longer an aggressor, since she is now exercising her own right of self-defense against attack. To avoid this dilemma, criminal law has long since held that "There can be no self-defense against self-defense." The point, of course, is that the party exercising its right of self-defense also claims that the other party was unjustified in attacking in the first place. Again, it is comparative justice, not an instinct for self-preservation, that is really at issue.

Morally, the assertion of a right to self-defense largely annuls the proportionality and discrimination criteria. The point of calling for discrimination of means and due proportionality of both ends and means is to constrain

the destruction caused by military operations. In minor wars in which the existence of the state is not in question, no one objects to such constraint. However, all constraint is lost in what Michael Walzer in his very influential 1977 book, *Just and Unjust Wars*, calls 'supreme emergencies;' when the very existence of the state itself is in jeopardy. Walzer and others argue that the consequences of the destruction of the state are so enormous that comparative justice is no longer a valid concern. Instead, the state's right of self-preservation overrides all constraints. In 'supreme emergencies,' the end of preserving the state justifies whatever means are available, including possibly nuclear means.

Opponents of this consequentialist perspective propose instead a deontological perspective. First, they deny that the continued existence of the nation-state is of absolute value. History demonstrates that states come and go too frequently to sustain such a claim. The French, for example, are on their fifth republic. Second, they point out that, if the survival of nation-state 'does' represent an absolute value such that a 'supreme emergency' frees the state from all moral constraints in a war, then what is the point of the criteria? In sum, the deontological perspective argues that Walzer and the consequentialists cannot have it both ways. They cannot argue for the constraining influence of the just-war criteria in minor wars, but deny that same influence in 'supreme emergencies'. Comparative justice, not an instinct for self-preservation, is, once again, the underlying concern.

Comparative justice

Interestingly, self-defense does not loom large in the traditional arguments on defining 'just' cause. Cicero, for example, was dogmatic about the matter. Making a four-part argument, he asserted, first, that peace and justice were the only justification for war; second, that, "... justice, above all, [is] the basis of which alone men are called 'good', ... [and] no one can be just who fears death or pain or exile or poverty, or who values their opposites above equity;" moreover, third, "... that if anything is morally right, it is expedient, and if anything is not morally right, it is not expedient;" from which he concluded, *contra* Walzer, that "... there are some acts either so repulsive or so wicked, that a wise man would not commit them, even to save his country."

Aquinas was less dogmatic, but more ambiguous and more discriminating. He was ambiguous because he allowed that, "... the controlled use of counter-violence constitutes legitimate self-defense." He was more discriminating because he understood that the crucial case is not that of 'counter-violence' but the imposition of the death penalty. Self-defense is usually argued by asking, "What would you do if a gunman attacked you or your family?" To which the expected response is "I would defend myself and my family." This case is, then,

presented as a clear example of the instinct for self-preservation, from which it is then assumed that a person must possess a right of self-defense. But the crucial case is not a direct attack upon the self, which must be presumed to be also an unjust attack and, hence, governed by the comparative justice criterion. The decisive case is the imposition of the death penalty by a lawful authority.

When Aquinas takes this case up, he, first, acknowledges the instinctual basis of a right of self-defense, "A person condemned to death would seem to be entitled to defend himself, if he has a chance to do so. For whatever is prompted by nature would seem to be legitimate, as being in accordance with the natural law." He, then, replies that, "A man is condemned to death in two ways. First, justly. And in such a case he is not entitled to defend himself, A man may, however, also be condemned unjustly. Sentence in such a case is like the violence of brigands, It follows that one is in such a case entitled to resist evil sovereigns in the same way as one is entitled to resist brigands," Once again, the comparative justice of one's cause determines one's right of self-defense, not the simple instinct for self-preservation.

Unlike Aquinas, Augustine was unambiguous. He denied any 'right of self-defense', "In regards to killing men so as not to be killed by them, this view does not please me," Augustine of course recognized a natural instinct for self-preservation, "That he [any man] loves his body and wishes to have it safe and whole is equally obvious." But that was precisely the problem. To defend oneself was only to demonstrate concupiscence, an inordinate desire for the things of this world, in general, and an inordinate love of self, in particular. Instead of this instinctual egotism, one should look to higher things, ". . . you should love yourself not on your own account but on account of Him who is most justly the object of your love," Augustine, however, was not so otherworldly that he counseled turning the other cheek whenever attacked. Comparative justice, not self-defense, was his principle, "War and conquest are a sad necessity in the eyes of men of principle, yet it would be still more unfortunate if wrong doers should dominate just men."

But, if 'wrong doers' should not be allowed to dominate 'just men' then there is little practical difference between defining 'just' cause in terms of self-defense or in terms of comparative justice. In most cases, the decision will be the same, because the attacker will also be a 'wrong doer'. Yet, in a small number of the cases, the attacker will not be a 'wrong doer', and the decision will be different. In these few cases, in these 'supreme emergencies', by valuing comparative justice over the survival of the nation-state, one would act like Cicero's "wise man," who would do no injustice even to save his country, and not like the Nazi SS, who would do any injustice to save their country, believing as they did that "*Unsere Ehre Heisst Treue*," "Our Honor Is Named Loyalty."

It would appear, therefore, that, while serviceable, the international-law principle of self-defense is not the most solid value with which to define 'just' cause. Defining 'just' cause in terms of comparative justice would appear more solid. However, comparative justice is not without its difficulties, too. For, in any war, both sides will loudly proclaim the justice of their cause. More perplexing, in most wars, both claims will sound persuasive. Were this not the case, there would never be an occasion for war.

Inasmuch as both sides too easily persuade themselves that 'their' cause is 'just', it creates a situation that appears identical to the working of *dbarma* and *karma*. In defense of its interpretation of the comparative justice criterion, each side possesses a duty to suffer their fates, to wage the war and, thereby, to learn the truth *post facto*. The difference between the Hindu and the countercurrent in the European tradition is that the Hindu speak of enlightenment and a 'struggle for truth', while the Europeans speak, as the Athenian ambassadors did at Melos, of might deciding right.

In summary then, while the just-war criteria of today had their roots in ancient Greece and Rome and flourished and developed in the medieval Christian church before being taken over by modern-day international law and policy makers, these European criteria, nonetheless, have parallels in other cultures. This is the case because all cultures acknowledge the operation of the principle of double effect. As a result, all cultures possess a more or less formal and systematic way to debate and decide whether a war is 'just' and how to minimize its many unintended evil effects. Where the cultures part ways is in their degree of systematization and secularization, on the one hand, and in the value that the 'just' cause should embody, on the other hand. In China, the debate is conducted in terms of restoring harmony; in India, in terms of accomplishing one's duty; in Islam, in terms of fostering religion; in modern international law, in terms of self-defense and preserving the sovereignty of the nation-state, while in Augustinian thought, the debate is conducted in terms of comparative justice.

See also: Declarations of War; Guerrilla Warfare; Justifications for Violence; Militarism; Terrorism; World War II

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Juvenile Crime

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Glossary

Delinquent A juvenile who commits an offense in violation of the legal norms of society. The official status of delinquent is defined by the juvenile court. However, criminologists often define delinquents based on their self-reported offenses.

Juvenile Court A legal setting where juveniles may be adjudicated as Children in Need of Supervision (CHINS) or delinquent. In many states, the juvenile court may also transfer or waive a juvenile to criminal court where they can be charged as a juvenile offender.

Juvenile Crime An act that is in violation of the legal norms of society for which a juvenile may be brought into the criminal court. It is broadly associated with delinquency and includes a wide range of behaviors that are in violation of the criminal law. Juvenile crime has

come to mean more than just delinquency because a segment of juveniles are now eligible for waiver to criminal court. These juveniles have been considered as criminally responsible for their offenses, and may be viewed as having committed acts of crime.

Juvenile Offender A juvenile who commits an offense for which he or she is criminally responsible. This may take place by means of waiver from juvenile court or by considering the juvenile criminally responsible for certain categories of felony offenses.

Status Offender A juvenile who commits an act that is considered illegal because of the juvenile's age. A juvenile who fails to attend school or who runs away may be adjudicated as a status offender. In several states, status offenders are defined as CHINS.

Introduction

The official definition of juvenile crime is rooted in legal rules for classifying juveniles as delinquents, status offenders, or juvenile offenders. The exact legal definition of a juvenile crime depends on the current state of juvenile justice. There is variation not only in the legal statutes between counties and states within a nation, but also considerable variation between modern-day nation-states in

the definition of juvenile crime. The one certain definition of juvenile crime is that there is a lack of consistency in its age and offense-specific characteristics. In general, juvenile crime may be considered offenses in violation of the legal norms of society for which a juvenile may be brought into the criminal court. It is different from status offenses and acts of delinquency. A juvenile charged with a crime may be prosecuted in criminal court instead of juvenile court. But a juvenile charged with a status offense can never be