

A clear understanding of the just-war criteria is essential for the drafting of declarations of war. The reason for this is that, when the initiation of a war is broached, the first question that everyone asks is, "Why?" In response, the declarer of war must give his reasons, "Because. . . ." But, to fill in the dots, the declarer needs to answer each of the *ad bellum* criteria in turn. Needless to say, this is the optimal response. It is seldom done. The only example of a fully reasoned declaration of war in American history is the *Declaration of Independence*.

Recently, I have had think in greater depth about the criteria. My first conclusion is the just-war criteria are unfairly labeled "the just-war criteria." Rather, they really respond to any and all actions. As an ethical or moral issue, whenever one decides to act--to *do* anything--that person should ask, "Why am I going to do X?" In response, this person must give his reasons, "Because. . . ." But, again, in order to fill in the dots, one has to respond to each of the *ad actionem* criteria in turn. Hence, the criteria are really just-action criteria.

My second conclusion is that the criteria are more complex than is generally assumed. To show this complexity, three different versions are reproduced below, followed by the more complex listing I have working toward. In particular, because of my work on the declaring of war, I have become aware of the importance and the complexity of the procedural criteria.

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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)

(Potter, R. B., Jr. (1970). The moral logic of war. *McCormick Quarterly*, 23, 203-233. Reprinted in C. R. Beitz & T. Herman (eds.). (1973). *Peace and war*. San Francisco, CA: W. H. Freeman.)

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

(The United States Catholic Conference. (1993, December 9). The Harvest of Justice Is Sown in Peace. *Origins*, 23 (26).)

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 die 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, J. T. and J. Kelsay, eds. (1990). *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. New York: Greenwood Press (page 58).)

An Outline of the Just-War/Action Criteria

I. *jus ad bellum* (actionem)

A. Procedural Criteria: Who? How? and What?

1. Competent authority
 - a. by convention (i.e., the nation's war leader as decision-maker, *ultima ratio regum*)
 - b. by constitutional design (i.e., a representative political institution as decision-maker (e.g., Roman Senate, Dutch Estates, Second Continental Congress))
2. An open declaration of war
 - a. Typology of the legitimate declarations: "The contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war." (Hague Convention III of 1907, *Relative to the Opening of Hostilities*)
 - b. Textual legitimacy
 - i. Conditional, open and determined declaration
 - α. Indictment
 - β. Denunciation
 - γ. Declaration of Peace terms/war aims
 - ii. Absolute, open and determined declaration

- α. Indictment
- β. Denunciation
- γ. Declaration of peace terms/war aims
- δ. Declaration of war

B. Justificatory Criteria: What and Why?

- 1. Just cause
 - a. Assuming "Competent Authority" (I. A. 1.), then "just cause" is argued from the content of a "legitimate text" (I. A. 2. b.)
- 2. Right Intention
 - a. Assuming "Competent Authority" (I. A. 1.) and "Just cause" (I. B. 1.), then "Right Intention" is also argued from the content of a "legitimate text" (I. A. 2. b.)

C. Prudential Criteria: Whether?

- 1. Comparative justice
 - a. the coherence of our chosen ends-means compared with those of our conflict partner
 - b. the coherence of our chosen ends-means compared with our other options
 - c. the coherence of our conflict partner's chosen ends-means compared with his other options
- 2. Last resort
 - a. chronology/summary of principal negotiations
- 3. Probability of success
 - a. to be testified to in the open and determined declaration with language such as, "And for the support of this Declaration, with a firm Reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."
- 4. Proportionality of ends: Calculating the consequences of the principle of double effect
 - a. a cost-benefit analysis of attempting to attain our ends
 - b. a cost-benefit analysis of our conflict partner's attempting to attain his ends

II. *jus in bello (actione)*

- A. Proportionality
 - 1. calculated with regard to the "peace terms/war aims" (I. A. 2. b. i. γ and ii. γ)
- B. Discrimination
 - 1. calculated with regard to the relationship between the facts on the ground and the "peace terms/war aims" (I. A. 2. b. i. γ and ii. γ)
- C. Right intention
 - 1. calculated with regard to the "justness" of "Proportionality" and "Discrimination"

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