

The Historical Just War Tradition

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Abstract and Keywords

In what circumstances, if any, would the recourse to war be justified? What restraints should be binding on any such use of force? The pre-eminent framework for addressing these questions is the just war tradition. Boasting a history that can be traced back to ancient Rome, this corpus has been distilled over time into a set of principles that bear on two poles, the *jus ad bellum*, the norms that govern the resort to war, and the *jus in bello*, the constraints binding on its prosecution. Scholars dispute the composition of these poles, but all concur that the former turns on “just cause,” “proper authority,” and “right intention,” while the latter includes “proportionality” and “discrimination.” This chapter discusses the prizes and pitfalls that attend the study of the ethics of war in light of the historical just war tradition.

Keywords: just war, tradition, ethics of war, Augustine, pre-emption, international history, war, jus ad bellum, jus in bello

IN the preface to the first edition of *Just and Unjust Wars*, Michael Walzer (2015: xxvii) declares that his interest lies “not with the making of the moral world but with its present character.” It would be a better use of our time, Walzer implies, to devote ourselves to navigating the ethical challenges that confront us today rather than contemplating their provenance. Other theorists have echoed this call. Uwe Steinhoff (2007: 1) bids scholars to “advance philosophical analysis against common points of view and to question pre-existing, socially established frameworks of discussion and prejudices.” Jeff McMahan (2009: vii) is critical of what he calls the obvious absurdities of “the received wisdom about the morality of killing in war.” His preference, discussed in greater detail by Janina Dill in Chapter 17, is to forsake traditional shibboleths and advance a revisionist account of the ethics of war in their place. These views evoke a deeper scepticism regarding the study of the past. “History is more or less bunk,” Henry Ford (Butterfield: 1965) told the *Chicago Tribune* in 1916. “We won’t want tradition. We want to live in the present, and the only history that is worth a tinker’s damn is the history we make today.” Why, then, should we care about the historical just war tradition, by which is meant the tradition of thinking about the ethics of war that commenced in the sunset years of the Roman em-

pire, carried on through the medieval and early modern period, and was formative to the development of international law? And, if indeed we should care about it, how should we pursue that concern? This chapter treats these questions.

“Just”

The locus of the just war tradition is the eminently practical challenge of discerning whether and in what circumstances the recourse to war might ever be justified, and what if any restrictions should attach to its prosecution. Where “revisionists” (p. 210) take Walzer’s answers to these questions as their point of departure (see Chapter 17), the approach set out here is different. Delving further back in time, it asks what, if any, light the full sweep of the historical just war tradition can cast upon the same questions.

The resulting challenge is similar to that described by David Boucher in Chapter 2 of this volume. The just war scholar is enjoined to treat the formative texts of the just war tradition as a resource to be consulted. These texts reflect the combined efforts of the great and the good of previous generations to grapple with the normative questions posed by war. As such they constitute a “fund of practical moral wisdom, based not in abstract speculation or theorisation, but in reflection on actual problems encountered in war as these have presented themselves in different historical circumstances” (Johnson 1984: 15). It would be foolish to neglect such a store of communal experience. This would be an act of folly akin to discounting the wisdom of the ages. For even if we discover that our predecessors asked the wrong questions, or arrived at the wrong answers, their example (negative or otherwise) helps us better formulate our own questions and avoid repeating their mistakes. In other cases, a particular passage from a classic text, or way of framing a matter, may even cast a perspicacious light on present-day matters and ways of thinking.

The best way to develop this point is to present brief synopses of the contributions made to the just war tradition by arguably its most influential exponent, St Augustine. Augustine was born in 354 BCE in Thagaste, now Souk Ahras in Algeria. The fundamentals of his just war thinking can be glossed briefly. It was directed toward making the case that Christians are permitted by their faith to discharge military duties and serve their states in the occasion of just wars. The crucial statement in this respect derives from Book VI of *Questions on the Heptateuch* (2006: 82): “As a rule just wars are defined as those which avenge injuries, if some nation or state against whom one is waging war has neglected to punish a wrong committed by its citizens, or to return something that was wrongly taken.” According to this way of framing the matter, it is “the iniquity of the opposing side” that creates the grounds for a just war (1998: 29). This being the case, Augustine elaborated (2006: 83), “the only thing a righteous man has to worry about is that the just war is waged by someone who has the right to do so because not all men have that right.”

This way of conceiving of just war presents it as a punitive activity that is necessarily directed toward vindicating the order when it has been violated by an act of malfeasance. Seen through Augustine’s eyes, the world was a violent place, populated by people who,

despite their best efforts, were naturally inclined toward sinfulness. In order for any semblance of civility to be attained, it was essential that their wrongdoing be checked, by force if necessary (1998: 933–8). In a manner of speaking, then, the act of just war reflected an extension of the state's juridical powers. Augustine (2001a: 80) alludes to this in a 413/14 CE letter to Macedonius:

All this does not mean that institutionalised force has no point—the might of the emperor, the judge's power of the sword, the executioner's hooks, the soldier's (p. 211) weapons [. . .] They inspire fear and thus put a check on the bad, so that the good may live peacefully among the bad.

Augustine's imagery is to the point. If the executioner was a grim figure whose grisly work nevertheless did society a service by ensuring the given order could not be violated with impunity, the soldier waging a just war fulfilled a similar function.

At the same time, Augustine imposes constraints on how agents of the state should discharge their responsibilities. He wrote (2001a: 81) that it is imperative that the soldier and executioner alike wield force with the correct intention. This took both a negative and a positive form. The negative form is intuitive: any acts of war that were not waged in a spirit of benevolence were proscribed.

What is it about war that is to be blamed? Is it that those who will die someday are killed so that those who conquer might dominate in peace? This is the complaint of the timid, not of the religious. The desire for harming, the cruelty of revenge, the lust for dominating, and similar things—these are what are justly blamed in wars. (1994: 221–2)

This is the doctrine of the *libido dominandi*. It supposes that what is truly harmful in war is the cruelty it can unleash in men. What matters, then, is that men do not wage war with hatred in their hearts, or with a desire to exact suffering merely for its own sake.

The positive form taken by Augustine's requirement of right intention is more puzzling. He argues that the recourse to force should be undertaken in a benevolent spirit and with regard for the wellbeing of everyone involved, even the person warred against. Augustine explains this by an analogy to parental discipline (2001b: 38). If a father may strike his wayward son with a view to correcting the error of his ways, the same logic can be applied to warfare. War, on this view, is an act of love, and should be waged accordingly. But is it really possible to wage war in a spirit of benevolence? Augustine's emphasis on interiority resolves this tension. Both the negative and positive forms of right intention indicate that what matters for Augustine were not the actual physical acts one undertook, but the will that animated them. So long as one's actions were guided by love for one's fellow man and for God, it is permissible for Christians to wage just war.

What, if anything, can Augustine tell us about the ethics of war in the twenty-first century? The answer, for the careful reader, is quite a lot. The trick is not to expect Augustine to furnish ready-made answers to present-day questions, or to supply a seedbed from

which we can abstract universal principles. Rather, one must read Augustine on his own terms, that is, with his own intentions in mind and against the backdrop of his own context. The reader who does so will acquire a novel perspective on how just war ideas are framed today. For instance, the scholar who has familiarized herself with the writings of Augustine is uniquely placed to examine both the linkages between the ideas of punitive and just war and the question of what is lost when contemporary just war frameworks omit any reference to right intention.

(p. 212) The point is not, as it is for the foremost historian of the tradition, James Turner Johnson (2006: 195; 2011: 3), to discipline contemporary just war scholarship by referencing it to its classical antecedents. Instead, it is a horizon-expanding exercise that is designed both to acquaint us with the real diversity of imaginaries that prevailed at different historical junctures and to alert us to the degree to which they have coloured (or been excluded from) subsequent just war thought. Further, it encourages scholars to reflect upon the contextual character of today's just war discourse with a view to acquiring a clearer sense of the assumptions, conceits, and omissions that may have heretofore appeared natural and beyond question but which nevertheless have delimited our efforts at ways of thinking ethically about war.

“War”

Buried within this discussion is the thorny issue of what is meant by “war.” While some might assume that the object of discussion is necessarily conventional inter-state warfare, this would not, strictly speaking, be correct. Most just war scholars would instead contend that “war” encompasses a much broader range of phenomena, including military contests that involve non-state actors (e.g. Gross 2015). This enables just war scholars to maintain that the categories and principles they propound remain relevant even in an era that has witnessed a sharp decrease in conventional warfare. Yet it also raises a profound problem: how exactly to define a term—“war”—that appears both central to our concerns and to have slipped its traditional moorings.

This problem is especially acute in light of what some scholars (Strachan and Scheipers 2011) have called the “changing character of war.” The effect of various revolutions in military affairs has been to call into question the enduring viability of the category of “war,” understood as a unified concept. As Ian Clark (2015: 34) puts it, the question today is whether “our concept of war is recognizably the same” as that of earlier periods. Some, such as retired general Rupert Smith (2006: 2–3), assert that it is not (also Enemark 2014: 6). This is not merely a matter of nomenclature. As Clark (2015: 6–7, 14, 17–19) explains, ethical arguments about the justness of “war” are “framed by prior assumptions about the ‘essential nature’ of the violence that is under discussion.” What this means, in effect, is that we cannot sensibly determine whether a given war is justified or not until we have a clear sense of what “war” encompasses. When we undertake this task, we discover that the concept of war “already entails a broad set of assumptions about its nature and conduct,” and about how it is distinguished from other forms of violence such as

terrorism, criminality, piracy, and so on (Clark 2015: 137). Accordingly, it matters how war is defined, for it front-loads our ethical analysis, creating the conditions of possibility for some claims while marginalizing or even precluding others.

If we wish to gain a better understanding of what the concept of war encompasses, and how it primes our ethical analysis of the use of force, it is helpful to observe its usage over time. One could begin, for example, by unpacking the distinction Plato (1989: 199) (p. 213) drew between “war” and “civil strife,” move on to Cicero’s contention (1991: 17) that wars fought for imperial dominance and glory are qualitatively different from those fought for a polity’s survival, account for Isidore of Seville’s (2006: 359) delineation of four types of war (just, unjust, civil, and uncivil), and so on, till one has worked one’s way through the ages in this fashion. A brief exegesis of how one medieval thinker, Giovanni da Legnano, conceived of war will provide a flavour of what work of this kind would look like, as well as some measure of insight into what it can reasonably be expected to achieve.

Giovanni was born in Legnano, Italy, early in the fourteenth century CE, and first came to prominence in the 1350s in the context of Bologna’s fractious political scene. He enjoyed close relations with several popes, but is best remembered for his 1360 text, *Tractatus de Bello, de Represaliis et de Duello* (1917), which would prove to be a masterly influence upon no less than Honore Bouvet and Christine de Pisan, and would attract the interest of Alberico Gentili and Hugo Grotius. As the title of the book suggests, Giovanni’s first step is to differentiate war from reprisals and duels. Subsequent to this, he establishes that wars were introduced not only with the permission, but by the positive allowance of the Christian Lord, and cites St Augustine to the effect that, as the true end of a war is peace, so war (properly employed) must be a good thing. As he puts it (Legnano 1917: 224), “The end of war, then, is the peace and tranquillity of the world. Therefore we conclude that it proceeded originally and positively from God.”

It is Chapter LXXXVI of the *Tractatus* that is of most interest here (275–7). It begins with a question: how many are the kinds of corporeal wars? Giovanni identifies seven. The first is “Roman war,” which is waged by the faithful against infidels. The second is “made on the authority of a lawful judge” and it is waged, not against “enemies” per se, but against the “contumacious and rebellious.” The third is “presumptuous war.” It is war that is undertaken without the authorization of a judge. Unless one is a specialist in medieval canon law, the typology becomes even more difficult to follow from this point on. The fourth kind of war is that “which is lawful whenever it is allowed by authority of the law.” Giovanni stipulates that the title to levy war in this case falls only to the person specified by the authority and his or her friends and neighbours. It can be inferred that the opponent in this case is an enemy, properly understood, not rebels or wayward subjects. The fifth kind of war is the mirror image of the fourth. It is “war made against the authority of law, as where a man defends himself contrary to the authority of a judge and of the law.” The sixth is “voluntary” war, waged by secular princes without the authority of the emperor. Giovanni denounces wars of this kind as illicit. The seventh and final type of war is “necessary” war, which Giovanni, following the lead of Hostiensis, endorses as lawful.

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This is “war made by the faithful, when they defend themselves by the authority of the law against those who attack them; for to repel force by force is lawful.”

These categories are quite alien to how we habitually talk about war today. Nevertheless, for Giovanni, they enable us to distinguish wars that are lawful from those that are unlawful. In making this case, he furnishes an articulation of the licence to war that is redolent of Thomas Aquinas’s statement of the *jus ad bellum* (2002: 239–42). Giovanni (1917: 276) writes:

(p. 214)

For wars are said to be lawful by reason of the person declaring them, the person against whom they are declared, the thing, and the cause, and the law which allows them; and they are unlawful in converse cases. But generally there is one justifying cause, the contumacy of one who resists unlawfully. For when justice cannot be had from one who is liable, then war may be declared, for recourse is had to that instrument for help.

This framework extends into Giovanni’s account of war waged in self-defence. He sets out seven questions that ought to guide analysis of the legitimacy of wars of self-defence (p. 276). First, what kind of defence is it? Second, on whose authority is it undertaken? Third, who is conducting it? Fourth, against whom? Fifth, on whose behalf? Sixth, in what manner? And seventh, to what end? The answers to these questions bear on a wide range of issues, from whether defence of property is licit to archaic matters such as whether it is permissible for a monk to use force against an abbot. They also elucidate certain concepts, such as “*incontinenti* defence” and “anticipation” (pp. 303–4) that fell out of fashion until recent times but resonate with contemporary debates pertaining to the “War on Terror.” Thus, rather than positing a one-size-fits-all account of war as the basis of his reasoning, Giovanni advocates different strictures for different forms of warfare.

The general insight that follows from this is that different forms of warfare may require different sources of authorization, permit different levels of force, incur different limitations, and generate different legal effects. This casts an interesting light on debates about the ethics of humanitarian intervention (see Chapter 25), anticipatory defence, and indeed the uses of force short of war. Where, for instance, Daniel Brunstetter and Megan Braun (2013) submit that traditional just war principles (based on a traditional understanding of conventional war) do not account for the particularities of uses of force short of war, we might, following Giovanni, extend this argument to incorporate the entire range of forcible options available to a society. Beyond this, we might conclude that how we think about the ethics of war at any given time is coloured by how we think about war, which in turn is conditioned by the ideas and material practices of the time. The response, then, to our initial question of how to define “war” is instead to historicize it. Indeed, it is only by so doing that we may acquire a clearer sense of the nature of the challenge posed by the changing character of war to contemporary just war reasoning.

“Tradition”

If the term “war” is troublesome, the idea of “tradition” is even more so. Terry Nardin (1982: 28) charges that it is prone to be misused, while Eric Hobsbawm (1983) and Renée Jeffery (2006) warn that it is often a misnomer, and that many seemingly venerable traditions are actually recent inventions. In Hobsbawm’s words (1983: 2), they reflect “responses to novel situations which take the form of reference to old situations, or (p. 215) which establish their own past by quasi-obligatory repetition.” The provenance of the terms *jus ad bellum* and *jus in bello* furnish an apposite example. Although one might assume that these designations boast a long and illustrious history, they date only to the 1920s, and were seldom invoked in either doctrine or practice until the late 1940s (Kolb 1997).

The story of any tradition worthy of the name is one of development and revision over time. Traditions are, to quote Nardin (1992: 3), “resilient but not immutable practices that are constantly modified in use.” Thus to engage with a tradition is necessarily to “move back and forth between the general and the particular—to draw upon general principles in reaching particular judgements and decisions and, at the same time, to revise those principles in light of the circumstances in which they are used.” Accordingly, every time we draw on a tradition, we are partaking in an “on-going debate about where to draw the lines of that tradition, and how it might properly be interpreted and applied given changing circumstances.” A tradition, on this view, is a site of inquiry whose form and substance reflect the sum of its own contestation.

To think about just war as a tradition entails a rejection of the idea that it denotes a single, monolithic theory. Instead, it involves conceiving of it as a multiplicity of closely related but competing voices that, when combined, constitute a unified field of inquiry and practical judgement. Johnson (2009: 252) captures this when he likens the just war understood as a tradition to “a stream that moves through history like a river, remaining the same yet putting down elements, and picking up others as it flows, from time to time dividing into different channels and then, perhaps, recombining.” The implication of this is that a tradition should, so far as possible, be viewed in its totality, as a rolling story, the sum of its parts, rather than as an index of individuated contributions. This raises the vexed questions of how we determine where that story begins (O’Driscoll 2015) and whose voices to include (and exclude) as contributors to the tradition in our summations of the just war (Reichberg, Syse, and Begby 2006: x–xi).

There are no easy answers to these questions. They do, however, invite us to consider the perils of thinking about the ethics of war in light of the historical just war tradition. Most notably, it is all too easy to drift toward a facile conservatism that, on the one hand, discounts new thinking on the grounds that it marks a departure from the teachings of our forefathers, and on the other, fetishizes “classic” categories as abiding truths. This is a charge that can be laid against the late Jean Bethke Elshtain (2001: 18), and George Weigel (2009), and the aforementioned Johnson (1991: 16). The problem is compounded by the fact that, with the honourable exception of Christine de Pisan, the figures usually

identified as the luminaries of the just war tradition all happen to be dead white Christian males (Kinsella 2011; Sjoberg 2013). Consequently the vitality of the tradition—its flexibility, self-reflexivity, and relevance—risks being diminished, overpowered by a propensity for closure and reification. In this way a tradition that, to borrow Jaroslav Pelikan's (1984: 65) pleasing turn of phrase, ostensibly stands for the "living faith of the dead" flirts with a form of sclerotic traditionalism that is better described as "the dead faith of the living."

The corollary of this is that the history of the just war tradition is reduced to a singular narrative that is then presented as the only narrative. The development of the tradition (p. 216) is all too frequently boiled down to a story that runs from Augustine, straight to Gratian and Thomas Aquinas, from there to the Spanish neo-scholastics, before turning to the pioneers of early modern rights theory and international law, Hugo Grotius, Samuel Pufendorf, and Emmanuel de Vattel. Almost as striking as the ubiquity of this potted history is its sameness across various iterations. The difference from one telling to the next is usually little more than a matter of accent or an enhanced level of detail. This overlooks an array of different figures, issues, and possibilities. The result of this is a discourse that both repeats and reproduces itself at the expense of fresh thinking. While this promises rich fodder for exegetical debates, it channels just war thinking into a constrictive spiral that, to paraphrase G. Kitson Clark (1967: 7) both exhibits and enforces existing prejudices. When it comes to this point, tradition has been abridged into ideology (Pocock 2009: 193).

Related to this, there is always the concern that any time spent on the history of the just war tradition is time away from the pressing issues of the day. While, for instance, one is busy researching the medieval distinction between holy war and just war, one is distracted from more urgent matters such as how to tackle a violent insurgency (see Chapter 18) or what constitutes a legitimate defensive response to a cyber attack (see Chapter 20). Historical writings may fascinate the antiquarians among us, but they have little application in today's world. The charge here is that the study of history is an academic indulgence akin to a form of nostalgia that cannot really be afforded.

These perils associated with thinking about the ethics of war in light of the just war tradition are, however, avoidable. There is, as Chris Brown (2013: 38) argues, no reason for one's ethical analysis of war to finish with Augustine simply because it begins there. Engagement with the history of the tradition can enrich our ethical reasoning without taking it hostage. The work of Alex Bellamy (2006), Nigel Biggar (2013), John Kelsay (2007), and Larry May (2012) attests to this. On the one hand, their writings indicate that while just war principles are certainly not empty shells to be filled however one chooses, without any regard for their provenance, nor are they entirely determined by their past usage. It is possible to refashion them to meet new demands. On the other, they also demonstrate that some knowledge of how these principles evolved over time can be helpful when thinking about how they should be interpreted and applied in today's world. We will turn to an example of this shortly. Before that, the lesson to glean from this is that developing a sense of the past need not enslave us to it, but, rather, should furnish us with a

more variegated perspective on the challenges we confront today and some ideas about how we should address them.

The charge of irrelevance is also wide of the mark. While it may be true that the world Augustine and others were talking about is different from the one we know today, this does not strip their writings of instructive value. On the contrary, it is the key to their worth. The “strangeness” of old ideas, as G. E. R. Lloyd (2004: 11) argues, “can be turned to advantage. We can study bewilderingly diverse worldviews.” And, he continues, we can use these worldviews as a critical mirror to reflect upon the limitations and contingencies of prevailing ways of thinking about the world. March Bloch (1954: 35) reflects this view when he quotes Jules Michelet, “He who would confine his thought to present time will not understand present reality.”

(p. 217) This presupposes a further point, which is that, insofar as it is the necessary background to the present, history is “inescapable” (Hall and Bevir 2014: 828). History, assuming the form of legacies, path dependencies, and inheritances, is pervasive. It colours and conditions how we think about the world (Clark 1967: 4–5, 196). For instance—and here we conclude with the example promised previously—it would be impossible to apprehend (or challenge) the full implications of the Bush administration’s moves to conflate the categories of pre-emptive self-defence and preventive strikes without some prior knowledge of the historical relation between them (Totten 2010). Without an adequate understanding, not only of the Caroline Incident and its later significance in international law but also of the context-specific character of the principles derived from it, one cannot grasp what is at stake when discussing whether the requirement of “imminent threat” should continue to function as a limiting condition of the right to national self-defence. Accordingly, just as one requires a modicum of historical knowledge to comprehend the daily news, a familiarity with “just war past” is essential to a full understanding of “just war present.”

Conclusion

Writing in the early 2000s, Michael Walzer (2004) pronounced the “triumph of just war theory.” The idiom of just war, he argued, had, from obscure origins, assumed the mantle of the pre-eminent discourse of war and peace in the Western world. It is now, he wrote, the lingua franca, not just of Catholic theologians but also of generals, prime ministers, and presidents. Confluent with this, there occurs now, in the lead-up to each and every war in which Western powers engage, discussions regarding whether or not the military action in question can be classified as a just war. For example, in advance of the 1991 Gulf War, Richard Harries, then bishop of Oxford, proclaimed that Allied action to eject Iraq from Kuwait would satisfy the requirements of a just war, while his colleague Rowan Williams, then a professor of divinity at Oxford University, and later the archbishop of Canterbury, countered that it would not (on this debate, see Brown 2013: 36). More recently, President Obama’s decision to drape the mantle of just war over United States policies and wars in the Middle East (2009) provoked heated debates in the op-ed pages

of broadsheets across the world, while Whitley Kaufman (2006) departed from mainstream opinion (e.g. Bellamy 2006: 158–80) to claim that preventive war is compatible with the classical understanding of just war. The root of these controversies is a growing awareness of the rhetorical power of labelling a given war as just or unjust. It signifies the high moral ground in any debate about the prospective use of force.

It follows from this that how we frame the idea of “just war” matters a great deal. If, for instance, Harries could appeal to one account of the just-war tradition to sanctify the 1991 Gulf War, Williams could disavow it by reference to another. The contest then becomes one of who commands a more persuasive account of the tradition. It is at this point that having a sense of the tradition’s history and development becomes essential. (p. 218) It enables us to discern the reasonableness (or tendentiousness) of the claims proffered in its name. This can go a long way in bringing order to the messy debates that even the prospect of war occasions.

Above and beyond this, insofar as it reflects a common Western heritage and set of moral experiences, the just war tradition tells us a lot about who we—as Western societies and as active citizens—are, what values we subscribe to, and how we have come to be where we are. It reflects the workings out over time of how humankind has sought to reconcile the requirements of survival in this fallen world with the aspiration to lead a life that is in harmony with the quest for the right and the good. From Cicero and Augustine to Walzer, Elshtain, and Johnson, the variegated history of the tradition offers an acute insight into the ideals espoused by human communities and the lengths that they have been willing to go to secure them. If we are serious about understanding where we are as a society and how we got here, this is material we must engage.

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