

REVISITING THE JUST WAR THEORY

¹PhilipMary Emenike Ayika

²Francis O. Ndubisi

Abstract

Can a war, which means the destruction of human lives and heritage, be just? Are there facets within the confines of reasonableness into which the destruction of human life and resources can be articulated? An Igbo adage maintains: *onye ju ọgu, ọ naghị aju ntukwụlụ ọgu*. “One who resolves not to fight would suspend the resolution when an aggressor means harm.” When the aggressor is certain and the harm confirmed grave, one may pitch for battle to stop the harm through the principles of double effect and lesser evil.

Keywords: Just, War, Augustine.

Introduction

War involves violence done to human life, property and history. If it were the last two without loss of human life, war may be treated with levity but the last two come as a consequence of the first, yet the dignity of humanity is that human life is sacred. It is sacred because it comes from God and answerable to Him alone. How can one view this extreme aggression as just? When the lives of many are jeopardized and the blissful equilibrium is upturned; when all avenues of restoration becomes hopeless, a situational reconsideration of that dignity of man comes to the surface.

What is War?

War is defined by *Wikipedia*, 2010, as a phenomenon of organized violent conflict typified by extreme aggression, societal disruption and adaptation, and high mortality.

War is organized violent conflict. It is not a mere individual preoccupation but a civil activity. It is typified by an extreme aggression because the combatants are engaged in mortal duels, destroying lives, social amenities and social wealth of the people concerned. It even has a consequential effect of acrimonious relationship between the parties after the war.

What is Just?

Justice in Latin comes from the word *jus* meaning “law, right”. *Jussum* means order; and *Justus* means “just”. Thus in Greek language justice and just share the same root word with “order”, *dike*. To be *dikaios* is to conduct one’s affair in the order (themis) of the god, Zeus. *Dike* is thus showing what is laid down. This portrays the same meaning with the Hebrew *sedāqa* and the Igbo *Aka kwu oto* as stated in Nzomiwu (1999). The Encarta Dictionary (2010) describes “just” as acting with fairness and impartiality; valid or reasonable. Therefore if the law accepts and declares war over an aggressor of the state, it becomes a civic duty, and an individual who fights, engages in just war. There is therefore a just aggression, an aggression within the

confines of reasonableness which entails maintaining order. This has given rise to the theory called just war theory.

The Roots of Just War Theory

Maritain (1967) traces the foundation of Just War theory from ancient times through the Grecian history to the modern times.

Ancient Times: War was the normal way the old territories like Egypt, Babylonia, Assyria and Persia were harrying each other for territory and tribute. By so doing, they established themselves in the days when Aggression invariably had the sanction of a deity. The Israelites' takeover of the Canaanites was commanded by God Himself. And wars were usually as total as soldiers with limited technology could make them.

The Greeks: The Greek city states brought in diplomacy and mercy to soften their deadly rivalry but this existed only among equals. Thus War to the death or finish then began to go out of style. Aristotle, who is credited as the father of the term "**a just war**," could apply it to military action "against men, who, though intended by nature to be governed, will not submit."

The Romans: The Romans took over the idea of a just war as an instrument of efficient administration, and Cicero laid down some pragmatic ground rules.

- ⇒ Only states could wage war and only soldiers could fight them—a useful device to preclude revolution.
- ⇒ Before one state could attack another, hostilities had to be formally declared, leaving time for reply

Biblical Roots: In the Beatitudes, Jesus tells us "blessed are the peacemakers" (Matt. 5:9). Elsewhere in the Sermon on the Mount he tells us "if any one strikes you on the right cheek, turn to him the other also" (Matt. 5:39). From such verses some have concluded that Christianity is a pacifist religion and that violence is never permitted. But the same Jesus elsewhere acknowledges the legitimate use of force, telling the apostles, "let him who has no sword sell his mantle and buy one" (Luke 22:36). How are these passages to be reconciled? In broad terms, Christians must not love violence. They must promote peace whenever possible and be slow to resort to the use of arms. But they must not be afraid to do so when it is called for. Evil must not be allowed to remain unchecked. The Old Testament acknowledges frankly that there is "a time to kill" (Eccles. 3:3). At various times in the Old Testament, God commanded the Israelites to defend their nation by force of arms. Yet it was always with the recognition that peace is the goal to be worked for. Thus the psalmist exclaims, "how good and pleasant it is when brothers dwell in unity!" (Ps. 133:1). Peace is the goal, but when it cannot be achieved without force, force must be used.

In the same way, the New Testament sets forth the goal of peace but acknowledges the legitimate use of force. It does so by John the Baptist's acknowledgment that Roman soldiers, whose job it was to enforce the *Pax Romana*, or "Peace of Rome," could keep their jobs (Luke 3:14) and by Paul's observation that the state "does not bear the sword

in vain" but is "God's servant for your good" (Rom. 13:4). Consider also *the just anger* of the Lord in the Temple by upturning the tables of the money-changers and driving them away with a whip (John 2:13-17).

St. Augustine of Hippo (354-430 AD): St. Augustine had to build upon the codes of Aristotle, Plato and Cicero and thus founded the Christian concept of the just war. Maritain (1967) quotes him as saying that the motive must firstly be just.

Those wars may be defined as just which avenge injuries" or repel aggression. A just war must be fought with Christian love for the enemy—the Sermon on the Mount was supposed to be followed as "an inward disposition." No one, wrote the saint, "is fit to inflict punishment save the one who has first overcome hate in his heart. The love of enemies admits of no dispensation, but love does not exclude wars of mercy waged by the good." (p.3)

However, during the World War II, the saturation bombings of Hamburg, Dresden and Berlin which were designed primarily to kill and demoralize civilians and the atomic bombing of Hiroshima and Nagasaki had such devastating effect that sets proportionality (see below) at naught. Thus theorists believe that just-war theory does not apply to the nuclear modern world.

Just War Theory in the Modern World

Kemp (1990) situates just war as a mean within the extremes: permissivism and pacifism.

Permissivism

Here, War is said to have no morality or that moral principles do not really apply to war because war is not a matter of choices but of necessity. A Roman proverb says *inter arma silent leges* – “in times of war, the rules are silent” Thus if war is a necessity, the state has the permission to go to war anytime it chooses and also to do anything to win the war. Kemp summarises the positions of permissivism as:

- (1) A state may go to war whenever it wants and is entitled to do anything that would help it win the war.
- (2) There are only certain conditions that would justify going to war, but once those conditions are met, a nation is entitled to do anything that would help it win the war.
- (3) A nation may go to war whenever it wants to do so, but there are moral limits on what it may do to win the war.

Pacifism

Here we have absolute and limited pacifism. Absolute pacifism says that there should be no shedding of blood. This is to say that going to war or homicide is never morally permissible. The limited pacifism rejects the former and holds that it is necessary at

times to use force in order to stop the wrongful acts of others who breach the peace of humanity. The Just war theory comes under this as we have said above.

Kemp then outlined what contemporary just war theorists agree on just war theory. He drew a divide between justice towards war, *ius ad bellum* and justice in war, *ius in bello*.

Justice towards War (*Ius Ad Bellum*)

- (1) **Legitimate authority:** The earlier theorists believed in the state as the legitimate authority to define and initiate wars. Modern theorists give a place to the individual involvement in the initiation of wars. Thus any President who goes to war without the consent of his council or any military general who committed his soldiers to war without the permission of his civilian superiors are defaulters of this just war theory.
- (2) **Just cause:** this criterion cedes to this theory its name. The point it scores, which tallies with that of the theory is to make sure that war is carried out in the service of justice so as to repeal some wrong in the past or repel on-coming evil. A nation has a just cause for war only when (1) a serious wrong has been committed by the aggressor. That is to say the nation concerned wars in order to protect innocent life, to preserve conditions necessary for decent human existence and to secure basic human rights, (2) there is no other way to right the wrong, (3) resort to war will not be more destructive than righting the wrong is morally worth, and (4) there is some prospect of righting the wrong by going to war. The traditional theorists cite three types of action as justified—repulsion of attack, recuperation of captured things (or persons), and punishment of wrong-doers. Modern theorists are more restrictive, allowing self-defence only.
- (3) **Last resort:** the criterion hints at an obligation not only to see that avoidable wars are avoided, but also an obligation to see that peaceful alternatives are available even in the course of the war.
- (4) **Proportionality:** There is no other way to right the wrong. Sometimes waging war will cause more destruction than righting the wrong is worth. Resort to war will not be more destructive than righting the wrong is morally worth. There is some prospect of righting the wrong by going to war.
- (5) **Prospect of success:** This is closely related to proportionality. This is exactly what Jesus said in Luke 14:31 that a king going to war against another would not dream of that without first sitting down with his counsellors and discussing whether his army of ten thousand is strong enough to defeat the twenty thousand soldiers who are marching against him?
- (6) **Right intention:** Intentionality is a spiritual property of a person. It is an inner disposition and as such cannot really be measured. This is the case

why some modern theorists do not include it. However, its point is that anyone who wages a war not for peace and justice to prevail but out of rancour and bitterness is simply doing something wrong.

Justice in War (Ius In Bello)

The main thrust of morality in war is discrimination and proportionality. However, the following still obtains during the art of war: Legitimate authority and Just conduct.

Legitimate Authority: What applies in *ius ad bellum* applies here in *mutatis mutandis*. No single individual General has the right to make further decisions as the target area during the war without the permission of the civilian authorities.

Just Conduct: This principle imposes three restrictions - on targets, on weapons, and on tactics.

- **Target restrictions** involve the principle of immunity of unarmed civilians, and the protection afforded to ex-combatants. Allowing the medics and chaplains attend to any of the belligerents; not inhibiting certain kinds of natural resources (e.g., the water supply); and not destroying the cultural property (e.g., art museums and architectural monuments).
- **Prohibited weapons** include biological weapons, certain kinds of small arms ammunition, and chemical weapons.
- **Prohibited tactics** focus on the concept of *perfidy*. This prohibits the use of “moral camouflage” (e.g., the white flag or the Red Cross) and wearing the enemy’s uniform. The medieval Truce of God, which forbade private warfare on certain days, would be another example of such a prohibition.

Discrimination

This principle involves the target restrictions and has met a resounding treatment from many theorists like Walzer (1977); Wakin (1986); Wasserstrom (1970). The principle is based on an understanding that justifies killing only person who is making an attack in order to stop the assault. It does not justify killing another person close or dear to the attacker. In war, it is called *non-combatant immunity* since combatants are the only legitimate objects of the attacks. While some theorists base this principle on the Fundamental Human Rights of the non-combatants, some base it on consequences of such acts. Also the issue of war mongering private citizens brings up the discussion of exceptional or absolute application of the principle. Are they also targets or should the judgement be on the merit of the situation? Kemp (1990) widens the horizon of the principle to include the disabled and shipwrecked, who should not suffer anymore direct attack. Prisoners also have the right to live since they have been disarmed.

Ratner (1992) writing on the International Law and War crimes speaks on this too. However he compounds the whole treatment of the *ius in bello* into three sentences.

The second category is what we can call crimes against humanity; I am including here crimes against civilians and soldiers. These are violations of the rules as to the means and manner by which war is to be conducted once begun. These include the following prohibitions: killing of civilians, indiscriminate bombing, the use of certain types of weapons, killing of defenceless soldiers, ill treatment of POWs and attacks on non-military targets. (p 3)

Proportionality

This principle targets the use of right weapons in order to achieve the goal of the war and not cause more damage to humanity. For instance, the use of “smart bombs” to attack a limited target instead of “dumb ones” that can cause death even to civilians are prohibited. Also prohibited is the use of biological warfare and yet the unspeakable nuclear warfare.

Post War Justice (Ius Post Bellum)

Orend (2001) presents a useful summary of the principles of *ius post bellum*:

1. **The principle of discrimination should be employed to avoid imposing punishment on innocents or non-combatants:** Victor’s right does not extend to the aggressive nation’s civilian population, but that it does extend to all those engaged in the aggression and that it extends absolutely: that is, the just conqueror has absolute rights of life and death over the defeated aggressors.
2. **The rights or traditions of the defeated deserve respect:** the right always remains with those who fought against an unjust war but they do not gain any moral right to attack indiscriminately or disproportionately (such as terrorizing the invader’s own civilians or soldiers at rest), although they may carry on their claim for freedom over the generations.
3. **The claims of victory should be proportional to the war’s character:** Is it right that an army should demand unconditional surrender which implies a derogatory view of the enemy as one not to be respected either in or after war?
4. **Compensatory claims should be tempered by the principles of discrimination and proportionality:** A defeated aggressor may just be asked to pay for the damage incurred by the war (as justice demands of criminals that they pay for their crimes). But to what extent should the reparations extend?
5. **The need to rehabilitate or re-educate an aggressor should also be considered:** Economic exploitation is not the only means of subjugating the defeated: new political or religious frameworks can also be imposed sometimes as a means of “rehabilitating the defeated” or as a means to avoid the circumstances (political or economic) that may bring about further warfare; the philosopher must naturally inquire as to the justice of such measures.

Catholic Teaching on Just War (Ius Ad Bellum)

The Magisterium formally embraced the doctrine of Just War and has also adapted it to the situation of modern warfare. The most authoritative and up-to-date expression of just war doctrine is found in paragraph 2309 of the Catechism of the Catholic Church (1992). It says:

The strict conditions for legitimate defence by military force require rigorous consideration. The gravity of such a decision makes it subject to rigorous conditions of moral legitimacy. At one and the same time:

- the damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain;
- all other means of putting an end to it must have been shown to be impractical or ineffective;
- there must be serious prospects of success;
- the use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition.

These are the traditional elements enumerated in what is called the "just war" doctrine. The evaluation of these conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good. (pp.490-1).

Let us take a closer look at each of the elements in the Church's just war doctrine.

Strict Conditions: The strict conditions for legitimate defence by military force require rigorous consideration. The gravity of such a decision makes it subject to rigorous conditions of moral legitimacy. At one and the same time . . .

Here the Catechism indicates the gravity of the decision to go to war. Before this can be done rigorous consideration must be given to whether the following conditions are met. It is not enough for just some of them to be met. Instead, all must be met *at one and the same time*.

Lasting, Grave, And Certain Damage: *The damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain.* The first condition indicates that there must be an aggressor who is harming the nation or the community of nations. One cannot go to war simply to expand one's sphere of influence, conquer new territory, subjugate peoples, or obtain wealth. One only can go to war to counter aggression. In modern wars, the aggressor often has been a nation-state, such as Germany was in the First and Second World Wars. But nation-states are relatively new in world history. Throughout much of history the aggressors were much smaller and more loosely organized. Even today many small wars are fought between tribes. In recent years they have been fought between national armies and drug cartels. And in the war on terrorism a principal aggressor has been the terrorist organization al Qaeda.

The damage inflicted by the aggressor must be *lasting, grave, and certain*; an aggression that is temporary and mild would not meet this condition. It must be foreseen to have effects that are both lasting and grave. It also must be foreseen with moral certainty, moral certainty being the highest kind of assurance that is possible in geo-political matters. If this is present -- and if the other conditions are met -- then it is lawful to resort to war.

This means that it is not necessary for the aggressor to strike first. A moral certainty that the aggression will occur is sufficient. Such certainty might be present, for instance, if a party with a history of aggression began amassing troops or ammunitions. In a world where it is possible for an aggressor to strike at a distance, with little or no warning, and to cause mass casualties, it is important to identify a potential aggressor early and determine whether he poses a morally certain danger.

Other Means Impractical Or Ineffective: *All other means of putting an end to it must have been shown to be impractical or ineffective*

The second condition establishes war as a last resort. If there are other practical and effective means of stopping the aggressor, they must be used. Alternatives include one-to-one diplomacy; international pressure; economic sanctions; and such tools as blockades, quarantines, covert actions, and small-scale raids that do not amount to a full-scale war effort. It is not necessary to employ all such methods before going to war. It is sufficient if rigorous consideration reveals them to be impractical or ineffective.

Serious Prospects Of Success: *There must be serious prospects of success.* It is not possible to have a guarantee of success. Even nations with overwhelming military force can lose wars to less well-armed nations, as happened to the U.S. in the Vietnam War. This may be caused by a loss of public will, by lack of expertise in fighting a particular conflict, the intervention of other nations, the outbreak of side conflicts, or other factors. Thus what is required for this condition is that there should be a substantial possibility of success.

Greater Evils: *The use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition.*

Wars inescapably cause damage. This includes the collateral damage they produce in civilian casualties. They also can create other evils, such as destabilizing neighbouring countries, changing international alliances in harmful ways, and creating economic burdens. It is incumbent on those making the decision to go to war to attempt to the best of their ability to foresee both what damage will result if the war is conducted and what damage will result if it is not. The former must not clearly outweigh the latter.

Who Decides? *The evaluation of these conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good.*

Finally, the Catechism identifies those who have the burden of evaluating the conditions for whether a particular war is just: they are "*those who have responsibility for the common good.*" In modern nation-states, this means the government. This is

not to say that the public has no voice in such matters. Particularly in democracies, it does. The public elects its leaders and, through public debate, helps guide its leaders' decisions. Nevertheless, the general public does not bear ultimate responsibility for the decision to go to war. That belongs "to the prudential judgment" of its political leaders. They must evaluate the situation and make their best judgment whether the conditions for just war have been fulfilled.

Justice in War Doctrine (*Ius In Bello*)

Once the decision to go to war has been reached, a new set of issues on how the war is conducted is placed in focus. A particular danger in wartime is brutality toward those not engaged in combat. Frequently in the history of warfare, soldiers have maimed and even killed those who did not pose a physical threat to them. Sometimes this has escalated into genocide. The Catechism in paragraph 2314 is at pains to stress the moral illegitimacy of all of these:

Non-combatants, wounded soldiers, and prisoners must be respected and treated humanely. Actions deliberately contrary to the law of nations and to its universal principles are crimes, as are the orders that command such actions. Blind obedience does not suffice to excuse those who carry them out. Thus the extermination of a people, nation, or ethnic minority must be condemned as a mortal sin. One is morally bound to resist orders that command genocide (p. 491).

Here the issue of legitimate authority and the individuals' affinity to his conscience is outlined in handling captured combatants and non-combatants alike as the war progresses. The U.S. is famous for its humane treatment of non-combatants, wounded soldiers, and prisoners of war.

The Catechism warns against the existence of weapons of mass destruction

Every act of war directed to the indiscriminate destruction of whole cities or vast areas with their inhabitants is a crime against God and man, which merits firm and unequivocal condemnation. A danger of modern warfare is that it provides the opportunity to those who possess modern scientific weapons -- especially atomic, biological, or chemical weapons -- to commit such crimes (p.491).

The U.S. has not always been committed to this principle. In the Civil War, World War I, and World War II the United States violated it. Grave violations during World War II included the firebombing of Dresden and the atomic bombings of Hiroshima and Nagasaki. These were not attacks designed to destroy targets of military value while sparing civilian populations. They were deliberate attempts to put pressure on enemy governments by attacking non-combatants. As a result, they were grave violations of God's law. According to John Paul II (1995), "the direct and voluntary killing of an innocent human being is always gravely immoral" (No. 57)

Conclusion

War is not a moral act and as such is not encouraged. It destroys life and the ensemble of human civilisation. Peace should be sought at all costs but where the avenue of peace goes through war, it should be fought with the intention of achieving peace. Only so does just war find its meaning and relevance.

¹PhilipMary Emenike Ayika, PhD

Department of Religion & Human relations,
Nnamdi Azikiwe University, Awka
Email: Rp.ayika@unizik.edu.ng

²Francis O. Ndubisi, PhD

Department of Philosophy
Nnamdi Azikiwe University, Awka.
Email: francokechukwu@gmail.com

References

Catechism of the Catholic Church (1992). Kenya: Paulines.

Jacques M., (1967). "The Morality of War-time", Time,
<http://www.time.com/time/magazine/article/0,9171,843310-2,00.html>

John Paul II, (1995). *Evangelium Vitae*, Papal Encyclicals Online,
<http://www.papalencyclicals.net>.

Kemp K., (1990). "Morality and War", International Military & Defence Encyclopedia
<http://courseweb.stthomas.edu/kwkemp/Kosova/Morality&War.pdf>.

Microsoft Encarta (2006). Microsoft Corporation

Nzomiwu, J.P.C., (1999). *The Concept of Justice among the Traditional Igbo: An Ethical inquiry*. Enugu: Snaap,

Orend, B., (2001). *War and International Justice*. Laurier

Ratner, M., (1992). "International Law and War Crimes." The Commission of Inquiry for the International War Crimes Tribunal, <http://deoxy.org/wc/wc-ilaw.htm>.

Sirico Robert, ed, (2000). *The Social Agenda of the Catholic Church: The Magisterial texts*, London: Burns & Oates.

Wakin M.M.,ed.(1986). *War, Morality & the Military Profession*. Colorado: Westview.

Walzer M. (1977). *Just & Unjust Wars*. New York: Basic Books.

Wasserstrom R.A., ed., (1970). *War & Morality*. California: Wadsworth.