THE DOCTRINE
OF
JUST WAR
CHAPTER - III

THE DOTRINE OF JUST WAR

Pacifism:

It is nearly two decades since John XXIII issued the pacem in Terris and as many years since the Vatican II called for an "entirely new attitude" towards war. This new attitude reflected the pacifism and non-violence that characterized the thinking of early Christians.

Pacifism is essentially a complex of perceptions leading to or derived from Christian faith. These perceptions are - the perception of God.

- the perceived relationship between devotee and God.

- the objective of that relationship.

For the pacifist, wars do come as a result of human error but his God never chooses this option of devastation to show displeasure. Success and failure, for a pacifist, lie with God.

The theory and practice of non-violence has thus been the key to the pacifist alternative to war. The pacifist's insistence upon non-violent resistance is a refusal to succumb to the delusion of succeeding over evil by adding to it. This sense of confidence in "abandonment" is grounded in the belief that God's power will be made perfect in our eternity: However hopeless a situation appears, God's vengeance will not be omnipresent. For the pacifist, this offers greater security than .

reliance on nuclear deterrence. But the very fact that much is left to be decided by the Almighty makes pacifism seem a sort of hopelessness. It would however be wrong to assume pacifism to be unrealistic or to think that nuclear pacifists are devoid of awareness of policy issues.

Pacifists hold the primacy of religious commitment over national identities and loyalties. Christians must refrain from participating in violence exchanges. They are obligated to work for removing disparities in society, thus removing the root cause of conflict. Pacifists are agreed on the importance of diplomacy and peaceful solutions but they are likely to put more emphasis on self confession and mutual understanding. Pacifism also calls for an expanded definition of the concept of common good. For the pacifists, the state too is bound by the limits of morality and is not above the citizen.

Pacifists object to the production, possession and use of nuclear weapons. These forbidden acts are a "crime second only to the Crucification of Christ. The state, whose prime function is to meet the needs of the individuals, could hardly take up functions destructive of the common good. For the pacifist, even the risk of national defeat, loss of


freedom, sacrifices, hardships are better than a prospect of a final holocaust. Reaching out to the potential enemy and self-analysis could lead to a response in kind. For him, politics has made diplomacy a continuation of war by other means, contrary to Clausewitz’s view of war as an instrument of diplomacy.

The theory of pacifism was an obvious though unconscious device by which behaviour of Christians could be accommodated to the needs of the state. Ironically, there is no answer for Christians killing Christians.

**Nuclear Pacifism**

The nuclear pacifists sanctions use of violence as a last resort. However they disagree amongst themselves on the question of deciding which dispute warrants they use of violence and how much. They agree on the legitimacy of non-use of nuclear weapons as it serves no military or defensive purpose — all this on the basis of cost, proportionality and discrimination.

They are critical of the doctrine of nuclear deterrence and the problems associated with it. They prefer to seek alternatives to nuclear weapons which would stabilise relations or maintain peace amongst conflicting nations. They believe that easier options could be worked out rather than relying solely on the means of defence which destroy societies politically, economically, socially, psychologically and ecologically.
The Just War Theory

The central problem is that of an adequate philosophical orientation towards the nature of war itself. War is not a generalised violence: there are certain self-imposed and other limitations attached to it—maybe not worth mentioning but which hardly weaken it. This intrinsic imperative towards control is derived from the need to maintain order and discipline in order to conserve moral and material forces. The difficulty, however, lies in maintaining restraints derived from criteria other than those inherent in sound strategy and the requirement for good order and military discipline. The first criteria dominated the politics of ecclesiastical influence in Europe till the 16th century when the necessities of warfare were accommodated to the moral code of conduct set up for Christians. The second criteria was from the 17th to 19th century—the age of Grotious when it was assumed that law of nations was founded on the substructure of perception that in the time of peace, nations ought to do maximum good, and in time of war, minimum injury without minimizing their own real interests.


2. The Just War Doctrine

Just war theory was formed out of the Medieval Just War doctrine which itself was a product of distinct religious and secular traditions. These were the:

1. Post - Reformation 'Holy War' doctrine - where just war is coded as a 'Crusade'.
2. Concepts formulated in the 16th and 17th century and developed into secular international laws.

The just war doctrine is a "mosaic of thought fashioned by theologians, philosophers, jurists, statesmen and soldiers". This doctrine is the result of several centuries of struggle. The theoretical and the practical have intermingled at every stage in the historical development of this tradition.

2.1 Origins

The origins of just war doctrine are normally traced from the early history of the Christian Church and its acceptance of the need to defend the spiritual realm within

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Augustine of Hippo set down certain conditions and circumstances when war could be justified with limits on the harm that could be done even in such 'justified' wars. This is regarded as the beginning of the Just War doctrine in Christian teaching and the foundation for Western thought regarding restraint on war.

Accordingly, the doctrine today consists of traditional scholastic Just War theory enriched by the contemporary social teaching of the Catholic Church on war, the teaching of the protestants, the moralists, the philosophers, to which one must add the positive international law of war which has been developing since the 17th century. What we confront in Just War tradition is a multifaceted unity of moral insights and practices regarding the experience and judgements of historical persons, across the borders and the whole breadth of cultural institutions.

James Turner Johnson has maintained that the Just War doctrine in its classical form does not exist in either Augustine, theologians or cannoists of the high middle ages. It can be traced from the end of middle ages (by roughly 1500 AD). The term bellum justum derives from Roman Law and

is an interesting blend of a religious and legal idea, representing a war decided and executed in adherence to the necessary formalities. But in the Roman just war, legal form was an adjunct of religious practice. It was hoped that God would assist in the conduct of war.12

Aristotle refers to waging war as a prerequisite to maintain peace. He advanced the intellectual and moral virtues and restraint while exercising coercion.13 Cicero, the Roman philosopher elaborated and refined some of the standards of moral restraint which were based on natural law.14 "We are born for Justice based upon Nature. Since Roman times there has been a fruitful inter-relationship between jus naturale (Natural Law) jus gentium the law of the people, of nations. Just War traditions basic concern was not for what men did in war but what they ought to do refrain from doing based on natural law reasoning.15

Christians attempted to combine biblical teachings with Graeco-Roman just war notions vis-a-vis the realities of international politics. The Old Testament tradition that wars are initiated under the guidance of God is in total contrast to Paul's defense of the right of states to use the sword - Hence Christians had to co-ordinate three positions on use of armed forces.

4. Emphasis of Jesus on peace and non-violent methods.

2.2 Medieval Period

Medieval Just War doctrine rather than being ecclesiastical in origin was a confluence of various streams - a fusion of religious, chivalric and secular ideas fashioning just war components into an integral whole while the religious notion conceded the right to wage war, the secular doctrines content related to the proper mode of fighting.

16. Old Testament (Deuteronomy), Chapter 7; Verse 16.
It is this modified doctrine of the Medieval Ages that is the classic just war tradition which conditioned the thinking of the theodicts of the 16th and 17th century theorists. However the gradual amalgamation of these traditions in the late medieval ages has a counterpart in the dissolution of classic Just War doctrine in the century following Reformation. At the root of this classic Just War doctrine lies the fundamental postulate that there must be a grave fault on one side and vindicative justice on the other to be undertaken by the "minister of God" - who could even be a prince. This became the central character (though not the central concept) of the doctrine in Medieval Ages, along with the statement that justice expressed itself not just through vindication but through mercy too. It also set limits on what "God's ministers" may do. Medieval Christianity produced an ad bellum but the jus in bello came out of the sensibilities of the knightly class.

2.21 St. Augustine - He structured the framework for medieval reflections and reinterpreted the New Testament. Christian could take up arms if done in the right spirit - an exercise in "benevolent severity". War and conquest are a sad necessity in the eyes of men of principle. A just war is action to restore a violated moral order.

19. Ibid., p. 46.
St. Augustine agreed with Aristotle, Cicero and other classical authors that the exercise of government entailed the administration or regulation of force - just use of force was possible only if the following Christians were asked and satisfactory answers could be obtained:

- Who ordered resort to force?
- What reasons prompted such order?
- What were the other conditions which governed decision to use force?
- What was the acceptable conduct of armed conflict with regard to armed and unarmed people?

To St. Augustine, the rightful authority to declare use of force would be the ruler or authorized civil magistrate. But be in assertion of the gravest consequence for later Just War teaching held that the church could use coercion indirectly to protect and promote the religion. Reasons for the use of force could vary from averting injuries against aggressive attacks, against wrongful seizure of assets; against past wrongs. Each of these purposes would differ regarding the degree of permissiveness in war's conduct. However his crucial innovation was to specify offences against the Christian teaching as a valid reason for employing force. (persecution of heretics, guilty of sacrilegious acts). 21

21. This provided the foundation for the just use of force against Muslims and other heretics and infidels, after the eleventh century.
St. Augustine gave great weight to correct intentions on the part of those undertaking and participating in a conflict with the sole aim of achieving peace with justice. Without the character of restraint jus in bello could not have developed. Right intention was regarded as sufficient justification provided the intention was to restore just peace. As Johnson reminds us the concept of right intention can properly be conceived as an important source for the jus in bello in Christian theological thought. St. Augustine however had the tendency to make its prosecution limitless. This is one point on which he released the spirit of restraint and anguish with which he approached the subject of force when it came to religious persecutions.

St. Augustine moderated the brutalities of warfare and gave the first hint of principle of "non-combatant immunity" though he neither developed nor elaborated it. This moral distinction later took on the greatest significance in the Just War tradition. However any violation of Christian doctrine merited punishment of even those who were morally innocent. This distinction is inherent in the classical and in the Stoic tradition of natural justice which referred to certain incontestable ways of treating people. Since the conduct of war was constrained by limitations of weapons technology in the Medieval period, there was no felt need to proceed to elaborate a separate set of principle for its conduct.
The fusion of religious, chivalric and secular ideas gave spiritual sanction to military enterprise and knightly protection to the Church. It also reinforced the authority of the prince as the only legitimate source of military command. It is for this reason that some critics have maintained that rather than serving as a model for ethical values, the Just War doctrine was no more than a conglomeration of principles of self-interest to serve a particular society and to maintain a particular status quo.

During St. Augustine's times the Christian Church came to embody the conflict. On one hand the Church was the depository of non-coercive belief and action. On the other hand, it could regulate or propagate its message by forceful means. This contradiction inherent in St. Augustine's writings remained throughout the Medieval Ages. The pacifists tradition was not predominant during this period. The lesson to be learnt, Francis Bacon (an English Franciscan of the 13th century) argued, was that war against unbelievers would anger them more against the Christian faith rather than convert them.

The 13th century opened the way for serious consideration of the problems of consolidating and clarifying the position of the Church on war. This position was based on Corpus Juris (code of cannon law) which included Decretals of Gratian and the Summa Theologica of Thomas Aquinas. From these compilations flow two streams of
thought which shaped the Just War doctrine during rest of the Medieval Ages - Scholastic Theology and Cannon Law. The latter is also inherent in secular law an important factor in late 14th and 15th centuries.

The Holy War Crusaders

The middle ages witnessed two limitations within the confines of which the doctrine of just war developed. These were:

(a) The Christian doctrine as shaped in the West, and
(b) The religious unification of Europe.

The ideological nature (in a relativistic sense) of the doctrine of Just War worked successfully towards limiting conflicts within society. The peculiarly ideological notion of Just War is a notion of justice conditioned by theology, philosophical orientation and common custom. This period witnessed the theological and philosophical unity that characterized the West. After the Reformation and the emergence of two groups of Catholic and Protestants, just cause took the form of holy cause for the holy warriors. It became a religious weapon against non-christians. The Church became the final court of appeal. For the Crusaders the threat to Christianity posed by unbelief was a


23. Russel, n.14, p.184
justification for resort to force. This period witnessed the formalisation of jus and bellum principle as between two states.

A relationship of reciprocity was applied to Europe and the Just War doctrine was utilized to specify when a just cause for war existed. This was also the period of colonialism and for the first time people of other regions came in contact with ideologies of what was once the monopoly of the west. This further broke Christian unity.

**St. Thomas Acquinas**

St. Thomas Acquinas was one of the first to emphasize the imperatives of restraint which were present in St. Augustine's writings but disregarded by the Crusaders. It is in fact this factor that advanced Just War thinking. The religious weapon for Acquinas was spiritual in nature and not a weapon of destruction. The Church could not order the use of force, though it could induce others to wage a war. The spiritual realm was superior to the natural order, yet the natural order—political and legal—had autonomous authority. The Prince had independent authority to run his own affairs even if he were an infidel or an 'unbeliever'. Right authority existed where the Magistrate was acting as the minister of God. However, Acquinas does not question what is right in war. All that he states is that just war should be defensive in nature. He also justifies use of force in certain non-military disputes.

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24 Ibid.
Acquinas qualified the religious causes and reinforced the importance of secular and temporal causes of war. A just cause for war existed, according to him, when there is a fault to be punished: where the poor and the commonwealth had to be defended from the injustice to be inflicted by the enemy.\textsuperscript{25} The concept of right intention, drawn from the views of St. Augustine, requires the Christian to love their enemies, not hurt or dominate them. This can be rightly considered as an important source for jus in bello.

All these preconditions pertained to jus ad bellum—whether a just war could be begun, whether a Christian could take up arms in the first place (not on what they may do after the war had begun). Till the 16th century this formed the principal content of the Just War doctrine. On the question of whether unbelief constituted an intolerable offence, highlighted by the Crusaders, St. Acquinas considered belief to be a matter between the person and his conscience. To conquer this unbelief was senseless. Unwilling belief, he maintained, was impossible. This became an important focal point in later thinking on Just War.

\textsuperscript{25} Ibid, p.17.

Though extensive attention was not paid to restraint on the conduct of war, the beginnings of the principle of non-combatant immunity are implicit in the writings of Aquinas. Not only is direct intentional killing of innocent persons condemned but even their indirect and unintentional killing is prohibited. These views were interwoven with and influenced by the secular principles of the chivalric code. However, Acquinas allows for the enslavement of enemy prisoners, seizing enemy property and ambush in a just war based on these conditions. A strict adherence to agreements made with the enemies is also considered absolutely necessary.

The Post-Medieval Reaction

The fragmentation of medieval society into a variety of independent nation-states and the collapse of the geographical and political domains of the Roman Catholic Church had the profoundest effect upon the Just War tradition. The Church had served as a supranational court of appeal and source of compromise in political disputes and conflicts, and consequently, just war standards were, up to a point, authoritative and effective. So long as the Church remained the dominant


institution, holy war image continued to exert enormous influence in contradiction to the pacific dispositions of the early Church period and the restraining sentiments of classical Just War theory. By the 15th and 16th centuries, the demise of respected central authority left nations with standards regarding the use of force, that were susceptible to extensive partiality and bias.

What is more, the medieval establishment encouraged the Church, despite some reluctance, to consider force a legitimate means for manipulating the conscience and for punishing and dispossessing the unorthodox. The potency of the holy-war tradition did not expire with the collapse of medieval society. After the Reformation, it continued to fire the imaginations of some reformers and their followers. The Reformed tradition reveals a particularly acute ambivalence over the use of force but there can be no question that John Calvin and many of his followers shared the medieval enthusiasm for an established, uniform Church. That very enthusiasm for bringing church and sword into close alliance, when replicated among conflicting religious groups and territories, helped to generate the bloody and protracted wars of religion, as well as the wars of imperial expansion and colonization so characteristic of the post-medieval period.

29. Ibid.
But given the diversity of contending attitudes towards war and peace within the tradition, the crusading spirit did not go unchallenged. The 16th and 17th centuries were a particularly creative period for the advocates of restraint. The modern Just War doctrine, which began in the 16th century, played down the themes of fault and vindicative justice and stressed the limits of what could be done in a just cause. Consequently, Just War doctrine was pulled in two directions, separating vindication and mercy which had existed together in the medieval age. The influential writings of early modern Just War thinkers - both Catholic and Protestants - such as Francisco de Vitoria, Francisco Suarez, Alberico Gentilli, and Hugo Grotius are in many ways elaborate glosses on this statement.

For the theorists of the modern period, it was not the teaching of the Bishop of Hippo but the Just War doctrine which had been shaped for many centuries especially by canonists and theologians which influences their thinking. They articulated something of St. Augustine's earlier anguish over combat and consumed with the cause of international peace. Grotius says that he observed that men rush to arms for slight causes, or for no cause at all and that once there is resort to force, there is no respect for law.

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36 Johnson, n.13, p.34.

divine or human. Therefore war ought not to be undertaken except for the enforcement of rights, when once undertaken, it should be carried on only within the bounds of law and good faith.

These theorists of the modern period also reasserted and elevated natural law as the basic standard for the just administration of force. They restricted and reduced the place of religious causes in legitimating force, though with different degrees of stringency. The strong urge during this period to respect the 'natural' rights of conscience, possession, and self-government of all peoples is, therefore, linked directly to the declining appeal of the holy war.

For example, Grotius makes the momentous claim that it is possible to grasp and apply a 'body of law' that 'would have a degree of validity even if we should concede.... that there is no God'. No one is entitled by special religious privilege to override forcibly the fundamental requirements of freedom and fair treatment. The result of such views is that the sphere and sovereignty of each individual's conscience in relation to the use of force dramatically expands and responsibility for the use of armed force is increased. The concern of these early modern writers greatly outstrips anything found earlier, though it was, of course, anticipated by Thomas Acquinas and others.

Grotius had particularly liberal views. He rejected medieval notions of collective guilt and punishment. He even suggests that if a strong doubt exists about the justifiability of a resort to force, a citizen should disobey, since disobedience by its very nature is a lesser evil than manslaughter. He was critical of secrecy in the initiation of hostilities. All attempts at justification of resort to arms 'ought to be clear and open'.

In the interest of moderating what Grotius saw as the "frenzy" of violence that had seized post-medieval Europe, he and the others attempted to elaborate and refine the four general categories of just war concerns that had been struggling for life for a long time.

JUST WAR PRINCIPLES:

Jus ad bellum

These categories, an amalgamation of formulations in different ways during different phases of the tradition, can be summarized briefly. The criteria fall into two broad groups. Jus ad bellum refers to the justification of war, Jus in bello, refers to the limitation of war. Jus ad bellum explores whether the alleged grounds for the initiation of armed hostilities are sufficiently grave to override the prima facie obligation of non-violence. On the other hand, Jus in bello governs the judgement regarding the use of particular means during a war.
Problems that arise in the jus in bello context cause us to reflect more about the nature of values, the threat against them, and the best methods to be used to protect and preserve them. To identify and solve these concerns we again look to the decision to go to war, i.e., ad bellum. Though they cannot be demarcated on strict lines, the logical and historical priority is with the former. It is only after the former is dealt with, that the question of latter arise.

In regard to legitimate authority there is a new and stronger emphasis upon the responsibility of secular rulers in matters of war and peace along with a substantial reduction of the temporal role of the Church. Augustine implies by the term right authority the ends of good government.

"The historic function of the requirement.... was ... to limit exactly the kind of unrestrained general violence and indiscriminate destruction that typically characterized civil wars". For the cannonists it was the means to restrict resort to force and the destruction that accompanies it.

34 O'Brien has emphasized the difference between "war decision ad bellum" and war fighting - in bello in order of priority in his book, The Conduct of Just and Limited War, n.17, Chapters 1-3.

35 Johnson, n.10, p.22.
Catholics like Suarez and Vitoria still ascribed some authority to the Pope in resolving international disputes and in recommending the use of force where the church was threatened. New conceptions of consent and popular sovereignty as the basis of political authority had emerged. It was stated that enforcement of justice was not a private prerogative of individuals, but that of a legitimately constituted government. This emphasised the complex relationship between moral precepts and political culture. Since the authority was to be the prince, it could regulate war between princes.

In cases of revolutionary insurrection, where the government has lost its legitimacy through persistent disregard for justice and violation of the human rights of its citizens, this authority may be transferred to extra-governmental movements. Thinkers like Vitoria and Grotius had developed notions which logically implied a justification, in some cases, of revolution. Gentili and Grotius became less and less enthusiastic about revolutionary stirrings. The problem of revolution would continue to be a sore point for Just War thinking ever after. Vitoria forbade the state from making war for religion, but on the other hand, his emphasis on free passage for peaceful missionaries and traders was used by colonizers to their

benefit. They had the right and authority to use force if resisted in this "noble" cause. Grotius and Gentilli transformed the Just War doctrine's requirement of proper authority to wage war into a requirement that war be a public contest solemnly declared. By formalizing the criterion of just cause, Grotius paved the way for acceptance of state sovereignty through the criterion of right authority. This identification of moral with the political has made it more problematic to make sense of the moral notion of authority in the contemporary world. Johnson rightly puts it -- The requirement that there must be a right authority for use of force means that we must enquire whether there is any authority who can control the employment of force, so as to limit its effects and behind that to inquire as to the breadth and depth of popular support this authority possesses. As to the question of just cause, the use of force can only be for the protection of peace with justice, not for the sake of vengeance or domination. Both in contemporary international law and in Roman Catholic thought since Pope Pius XII, it has been further argued that the ferocity and destructiveness of modern war make it necessary to limit the use of force to a defense against injustice. Aggressive wars, or initiated wars even in the cause of justice, are regarded as so likely to unleashed total war as to make them incompatible with

38 Johnson, n.10, p.23.
justice itself, and place serious obstacles in the creation of international institutions of world order which are prerequisites for genuine justice in the modern world. The only just cause is defense against unjust attacks.

Thus the principle of a just cause states that war is permissible to confront real and certain danger, i.e., to protect human life, to preserve the conditions for a decent existence and to secure basic human rights. It can be traced in Christian thought as far back as St. Augustine and has a history in the customs of pre-Medieval Germanic societies.

One can observe strong emphasis upon "natural" or "moral" offense as a warrant for using force, and again only a vestigial reference to religious causes. The writers also make a distinction between self-defence and a "defensive" war, and punishment as an "offensive" one, broadened to include operations intended to "defend" foreign citizens against unjust rulers and defense of allies.

There is no unanimity concerning the question of certifying or verifying the existence of a just case. This

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38. Murray John Courtney, Morality and Modern War (New York: Council on Religious and International Affairs 1959), pp.0-11, and,

41. O'Brien, n.15 , pp.19-27

42. Johnson, n.8 , pp.131-150.

was to become one of the most vexing problems for Just War theory, since belligerents are called upon, in effect, to try their own cases. Gentili's view was that, so long as both sides "aim to justice", they may legitimately fight, despite any doubts. Grotius states that if there is any doubt at all about the causes of war, then force must be forsworn. This difference produced the equally controversial doctrine of 'simultaneous ostensible justice'. This was suggested by Vittoria according to which both sides in a war might well be justified. Vittoria spoke of 'invincible ignorance'. Belligerents are deceived into believing that each have a just cause, whereby neither may have a just reason (or else even the wrong side may believe they have a justified cause to fight). Vittoria believes that both sides may be treated as having a just cause and yet bound by jus in bello.44 While Grotius, for one, rejected the idea that from a moral point of view both sides could be equally right, he readily conceded that one or both of the belligerents might understandably, if mistakenly, believe themselves to be in the right. It was his sensitivity which led him to counsel self-restraint and the need for both belligerents to declare their intents and claims publicly for all to see and judge.45

44 Johnson, n.10, pp.20-21.
45 Idid, p.21.
The requirement of having a right intention is reduced somewhat in significance because of the preference of as St. Augustine and Acquinas writers for evaluating deeds rather than motives. It is an unquantifiable aspect and a subjective matter. However since the only cause which can justify the resort to force is defense of justice, the intention of the belligerents must be limited to this end. Intention here concerns the purposes or ends which are sought to be served through the use of force. The only purpose which justifies the use of force is defense of justice and the promotion of genuine peace whose precondition is justice. Thus the requirement of right intention places limits on the purposes for which force may be employed. It may not be used for purposes of dominance or vengeance, or in any way which makes just peace unattainable. The kind of intentionality that led Vattel and others to question the bombardment of cities with red hot cannonballs and other means was lost in the turbulent waters of total war represented by World War II.


48 Obligation to non-violence continues to make a claim on our conscience, even when it is considered less stringent than the claims of justice. Refer O'Brien, n.15, pp.33-35.

The criterion of last resort is an evident corollary to the prima facie obligation not to injure human beings, until all reasonable means of solving a conflict peacefully have been exhausted. These include bi-lateral negotiations and full employment of regional and international mechanisms for conflict resolution.

Johnson aptly puts it -

"The traditional idea that force must be the last resort thus carries with it the counsels of caution and prudence and serves as an implicit reminder that force may inspire more force, with the danger of loss of rational control over events. On the other hand (it) reminds us that the use of force may be a legitimate resort, when there are no other ways left to protect values that require to be preserved. Just war tradition thus points towards neither militarism nor pacifism, but to a state of affairs between these extremes."

A resort to war must also conform to general proportionality. The values to be defended must be vital enough to outweigh the harm which accompany any use of force. On the other hand, the force employed must do no greater harm than the evil which is resisted. As William O' Brien points out:

"...There should be a balancing of effects on individual third parties and on the international common good. International interdependence means that international conflicts are difficult to constrain and that their shock waves effect third parties in a manner that must be accounted for in the calculus of probable good and evil..."


57. O'Brien, William V.O., n.15, p.27.
A related test requires that there be a reasonable hope of success. This is a counsel of prudence. It would be irrational to undertake a costly and risky venture faced with a high probability of failure. Given the presumption against violence shared by Just War theory and Pacifism, this criterion not only calls for a reasonable assurance that justice will be achieved but also that the state of affected parties will not be worse off than before. There is a need for at least some reasonable confidence of a proportionate outcome. There is, of course, a greater or lesser element of uncertainty in all such estimates. This cannot be used to justify force on the ground of ignorance of the consequences. This criterion also includes a recognition that at times maintaining key values even against odds may be a "proportionate" witness.

Finally, there is a highly relevant criterion of requirement of formal declaration of war, including a statement of charges, presumably to assure full accountability. This criterion is problematic now, given the speed with which the international events unfold. The potential adversary must be given every opportunity to change the course of events through serious political debates along with the consent of the defender country.

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These seven considerations - legitimate authority, just cause, peaceful intention, last resort, general proportionality, reasonable hope of success, and formal declaration of war - comprise a set of criteria that came to be grouped under the title jus ad bellum, meaning those conditions which must be met before a decision to go to war is considered justified.

Three additional conditions, present in the tradition but somewhat revised and systematized by the early modern theorists, make up a second category called the jus in bello, meaning the conditions for the permissible conduct of war. These dwell upon the ideas of proportionality and discrimination.

**Jus in bello**

The jus in bello norms of the Just War theory set moral limits on the means that may be used even in a conflict which is itself justified under ad bellum criteria. The fundamental principle behind the jus in bello criteria is the conviction that the total or all-out violence is never justified. As William V. O’Brien has put it,

"The single underlying requirement for the conduct of the just war is that such a war must be limited."
Discrimination

The wisdom that underlies this criterion is that non-combatants must be immune from direct attack, intended attack. The basis of this criterion is the fundamental conviction shared by both Pacifism and Just War theory, that we have a genuine obligation to protect human life. Pacifism raises this conviction to the level of the absolute, while Just War theory regretfully concludes that some acts of killing are justified, provided that there is no threat to other human lives. But the intentional and direct killing of non-combatants is murder.

Although this criterion cannot be upheld absolutely, in the condition of any modern warfare, there is no justification for discarding it. Indiscriminate killing of non-combatants is a "crime against God and man himself."


84. Ramsey argues for a non-combatant immunity as an absolute principle. O'Brien says that it could in certain circumstances be subordinated to the demands of military necessity. He also favours the limitation of war which is doubtful in the light of his above interpretation of non-combatant immunity-unless both rivals are a rational and disciplined lot. The Pastoral Letter of the Vatican II in Ibid, para 104.
The limited war practice of the 18th century centered not on the immunity from harm but on restricting the area of military operations to avoid direct threats to the civilians of the warring nations. The early modern Just War thinkers permit the unintentional killing of innocent civilians and thereby introduce the so called principle of 'double-effect'. It works as follows: If there are two effects of an action, one good and one bad, such as attacking a military installation, but in the act unavoidably kills several innocent civilians lodged therein, then the action is permissible so long as the destruction of the installation is the only effect intended. The killing of civilians in that case is regarded as a "collateral" side effect. The principle of double effect would rule out such terroristic acts as taking hostages or directly threatening lives of innocent civilians in order to exhort compliance from the enemy.

All these thinkers wrestled with the problem of defining "innocent civilians". They included such groups as young people, children, old people, "all those unable to bear arms", clerics, monastics, farmers and so on. Moreover they worried over "indiscriminate" weapons and they offered strictures against the use of wild animals and poison, because their effects were so hard to control. Discrimination was not absolute for these writers.
Johnson however makes a poignant statement:

"After any war all persons are non-combatants, and the use of weapons that will foreseeably endanger generations yet unborn... represents as much a violation of non combatancy as a bullet through the brain of a child held hostage to cause an enemy to surrender."

**Proportionality**

Like the ad bellum criterion of proportionality the in bello proportionality demands that the harm caused by a particular military means must be outweighed by the values that it can reasonably be expected to protect. However this judgement of proportion does not balance the harm caused by a particular tactic against the good being defended by the war as a whole. Such an interpretation of the in bello proportionality would remove all restraint from the use of force in defense of a just cause. Michael Walzer observes that war is entirely and singularly the crime of those who begin it, and soldiers resisting aggression or rebellion can never be blamed for anything they do that brings victory closer. Correctly understood proportionality as in in bello weighs the harm caused by the tactic in a just war against the tactical advantages gained by this means.

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It, therefore, can only justify the use of military means for the pursuit of limited military objectives. If either of these limits is abandoned, war becomes total and unjust. For in total war the prima facie obligation of non-injury is not merely overridden in the defense of other values—it is denied outright and rendered irrelevant to moral decision-making. Jus in bello requires that any use of weapons should be both proportional and discriminate.

Force is at best a marginally defensible weapon for the pursuit of justice. Were justice a more important human value than non-violence, then the use of violence would be justified whenever the cause is 'just'. On the contrary the Just War norms arise from a consideration of how the basic values of life, freedom, justice, etc are related to each other. They are a synthesis of both the political judgement and the moral commitment. The Just War criteria embody a representative tradition of Christian and humanist practical wisdom. As Stanley Hoffmann has observed, "All ethical judgements in politics are historical judgements."