
Can Modern War Be Just?

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Preface

This book has its origins in a number of lectures I have given and essays I have written over the past several years as contributions to the contemporary debate on morality and warfare. As one who has analyzed the growth and development of the major Western moral tradition on war—the “just war” tradition—I have often been challenged with the assertion that this tradition has no meaning in the current debate; this book is in part a response to those challenges. But more directly and more positively, it is the result of being invited to explore the contemporary meaning of just war tradition in a number of recent conferences, journals, and collections of essays.

The debate over morality and war in this country has a way of heating up and cooling down, then beginning again. Each new cycle in some ways repeats the old, while adding different dimensions reflecting changes in the political environment, weapons systems, current strategic and tactical theory and practice, and sometimes in the nature of moral awareness. The chapters in this book clearly reflect the cycle of debate over nuclear strategy and national defense that began in the last years of the Carter administration and turned sharply upward in the first years of the Reagan presidency. Because my arguments have been focused by the par-

ticals of this stage in the debate, some of the specific matters treated—for example, the cruise missile and the neutron warhead, “decapitation” strategy, the return to favor of conventional weaponry, and thought about “war-fighting” capabilities—may very well be as archaic to discuss after a few years as the argument over deployment of the “atomic cannon” sounds to us now. But the moral issues before us today are substantially the same as those raised in earlier cycles of the debate, and in the context of this book these specific contemporary examples of weaponry and strategic and tactical thought serve chiefly as focal points around which to develop the implications of the moral tradition of just war. The book may thus be read on two levels: as a contribution to the immediate debate, conditioned by concern over how morally to reach a judgment on specific matters such as the ones mentioned, or as a contribution to moral analysis and understanding of just war tradition, here approached as a guide to practical moral decisions and not, as in my other books, through its historical development.

The intent throughout, in any case, is to bring just war perspectives to bear on the problems posed by contemporary ways of thinking about war and means of force available to employ in case of war. Though there is much written below on current weaponry, and particularly on nuclear weapons, I am convinced that these are more symptoms than causes of the moral problem of war today. More fundamental is how we think of the place of force in political life and how we conceive the ability of contemporary nations to employ the means of force available to them in ways compatible with human values. If just war thinking is, to its critics, irrelevant to contemporary war, that is because they have lost sight of the possibility that, in some circumstances, force may be all that remains to protect and preserve values, and because they have passed negative judgment on present human capabilities to control and limit the force available to nations so as to keep it subservient to higher values and principles.

I have benefited a great deal in preparing this book from conferences, symposia, and private discussions in which I have been involved during the past several years. These in-

clude a symposium at the Woodrow Wilson Center for Scholars in Washington, D.C., held in October 1978, where I read an early version of a paper that eventually developed into chapter 2 of this book; the annual meeting of the Society of Christian Ethics held in New York during January 1980, where the paper that became chapter 4 was presented; and a conference of the Institute for Theological Encounter with Science and Technology in St. Louis during October 1981, where I read what later became chapter 3. Apart from these occasions from which specific chapters have sprung I would mention several others, which have influenced my thinking no less strongly if more generally: an invitation to deliver the D. R. Sharpe Memorial Lecture at the University of Chicago Divinity School in April 1982; in the same month, a symposium organized by the American Society of Church History, meeting in Richmond, Virginia, at which I was asked to read a paper; an invitation to lecture at the U.S. Army Major Command Chaplains' Conference in July 1982; another invitation to give a paper and participate in discussions at a conference hosted by Concordia College, Moorhead, Minnesota, in September 1982, and sponsored by the college and the Minnesota Committee for the Humanities; and a request to read a paper at the Conference on Faith and History of the American Historical Association, meeting in Washington in December 1982. At this point the first draft of the book was complete, but final revisions made during the summer of 1983 benefited as well from further discussions made possible by several other invitations to lecture: at a symposium for bishops of the Lutheran Church in America, Washington, March 1983; at a conference on the American Catholic bishops' pastoral letter held at Duquesne University that same month; at a conference of Duodecim held in Washington the following month; and at the United States Military Academy's Senior Conference XXI, held at West Point in June 1983. Over the last several years I have frequently been asked to lecture in the weekend seminars of the Georgetown University Program in National Security Studies; one such occasion was in March 1983.

There are too many individuals from whom I have

learned—civilian and military, academics in various fields, professional strategists, and others—for me to name them all here, though they clearly include the people with whom I have talked during the occasions mentioned above. I need also, though, to mention in particular the lengthy conversations I have had on a number of occasions with Chaplain (Major) Donald Davidson, United States Army, currently a member of the faculty at the Army War College, Carlisle Barracks, Pennsylvania, and with Professor William V. O'Brien of the department of government, Georgetown University.

Mrs. Brigid M. Brown not only typed the manuscript (in several stages, in the case of some chapters) but regularly engaged me in discussions about the book that helped me to clarify my thoughts and language in many instances.

A final note on how to read this book may be useful. The normal way, of course, is to begin at the beginning and read through to the end. For the reader who goes from first to last, the attempt is to provide a comprehensive overview of major areas of moral concern posed by contemporary war as these appear in just war perspective. But this normal way of reading may not be the most usual way. As already mentioned, many of the chapters below have their antecedents in discrete papers prepared for specific occasions. I have attempted to retain that discrete character in preparing this book, so that it will be possible for a person interested in only one or another issue at a given time to read only the chapter or chapters related to it. In my experience, this is how such a book as this is in practice often used, especially by students. Such a method of writing, though, tends to produce some redundancies, since the same thematic issues arise in different sets of contexts. I have tried to minimize such overlap, but where it occurs cross-references are given so that the issues under discussion can be followed in all the contexts. These cross-references should also facilitate chapter-by-chapter “dipping in,” where that is the reading method followed. The notes and bibliography are intended not only to locate my own thinking within contemporary discussion but also to guide further exploration by readers interested in pursuing further the nature of just war tradition and its implications

for moral debate over the place of force in the politics of nations.

I conclude by thanking my wife, Pamela, for her encouragement of my efforts and for making easier the time I have spent writing, and my children, Christopher and Ashley, for their tolerant acceptance of their father's often time-consuming involvement in the debate over morality and contemporary war. The book is dedicated to Chris and Ashley, and to others of their generation, who will next have to shoulder the burdens of moral life and political responsibility.

Contents

Preface	vii
Introduction	1
The Restraint of War in Western Moral Tradition; religious and secular developments in this tradition; its role in contemporary debate.	
I. The Context	
1. The Utility of Just War Categories for Moral Analysis of Contemporary War	11
The question of moral judgments about war in terms of rightness, adequacy, and practicality; the traditional concepts of just cause, right authority, last resort, proportionality, and noncombatant protection described by means of their historical functions and their implications in the context of contemporary war.	
2. Can Contemporary Armed Conflicts Be Just?	30
Analysis of five cases: war between the superpowers involving use of strategic nuclear weapons, armed conflicts involving use of tactical/theater nuclear weapons, a conventional armed conflict between established powers, insurgency or revolutionary conflict employing conventional weapons, and terrorist activity.	
II. Contemporary Weapons	
3. Morally Legitimate Defense	67
Argument for the thesis that a moral defense policy should aim at development and deployment of weapons of defense and offense	

that may be morally employed in case of need; the implications of this thesis for weapons research and development and for the question of the military draft.

4. Weapons Limits and the Restraint of War: A Just War Critique 86

A historically based comparison of approaches to arms control to show which types of approach have worked and why; specific consideration of the cases of chemical and nuclear weapons; implications for weapons policy.

III. Strategic and Tactical Planning

5. Weapons, Tactics, and Morality in War 107
Analysis of two recently developed weapons, the cruise missile and the neutron warhead, in terms of their implications for the shaping of tactics; how moral analysis is linked to both weapons and tactics.

6. Strategic Targeting 129
Moral analysis and comparison of various models of limited nuclear targeting; the relation of such models to old-style counter-population targeting as viewed from the perspective of just war thought.

IV. Special Problems

7. Individual Decisions and Morality in War 153
Obedience to orders and conscientious objection set within just war tradition, Western theories of the state and the individual, and recent theological analysis; the practical difficulties of individual "just war" decisions.

8. The Causes of War and the Restraint of War 174
The relation that should obtain between values requiring to be protected and preserved and the use of violent means to do this; whether unlimited means of war may ever morally be allowed.

Notes 191

Select Bibliography 207

Index 213

Introduction

The Restraint of War in Western Moral Tradition

During the first part of the fifth century of the Christian era, Augustine of Hippo, revered today as a saint in the Catholic faith and yet also deeply influential on Protestant theology, set down in writing certain ideas on the use of violence that have had a decisive impact on thought about war in Western culture. Augustine wrote as a Christian theologian, dealing with a problem that clearly for him was profoundly painful: how to reconcile traditional Christian teaching against the use of violence with the need to defend the Roman Empire—Christian for more than a century by Augustine's time—from the invading Vandals. The solution he reached—a justification of war under certain prescribed circumstances, yet with genuine limits on the harm that could be done even in a justified war—is generally regarded as the beginning of just war doctrine in Christian teaching, as well as a major contribution to the development of consensual Western thought on the restraint of war.

That there exists a consensual tradition in Western culture on the justification and limitation of war will be a surprise to persons who think of war as inherently incapable of restraint and of justifying reasons for war as being convenient rationalizations of state power. Yet every culture has

some such tradition, and ours has remained remarkably consistent (though going through considerable development) right up into the contemporary period, where it finds expression in international law, in military manuals of the laws and customs of war, in moral debate over nuclear arms and strategic doctrines like Mutual Assured Destruction, in the concept of conscientious objection to military service. In a fundamental sense we in the West cannot think about war without using the terms of this broad tradition, even if we disagree with what it teaches. And for this reason if for no other, it is important to understand what is implied by this dual theme of permission to engage in violence accompanied by clearly enunciated restraints on that violence. For my own part, I would have us understand this tradition for another, perhaps more pressing, reason: the experience of all-out war in the two global conflicts of this century has led a great many people to think that the use of military force must inevitably be total and unrestrained, and the problem is not simply that by thinking this way we are being unfaithful to our roots. Rather, given the destructive power of modern weaponry, to conceive of the use of force in this totalistic, unlimited way is to put the world in enormous danger. Having largely forgotten the lessons on the good of restraint in war discovered when weapons themselves imposed some limits, we have the greater responsibility to recover those lessons in a time when the only restraints on the destructiveness of war can be those set by purposeful human choice.

It is suggestive to begin our recovery with Augustine on defense. Taken as a model, this case has the disadvantage of saying little on the question of when resort to force is justified between nations, but it has the overwhelming advantage of pointing in the direction taken by subsequent efforts to define limits on the use of force. As this is the problem on which most contemporary debate focuses, in this book I concentrate on it. In classic terminology the whole range of issues on the management of force is covered by the phrase *jus in bello*, meaning literally what it is right or just to do in war, while the issues pertaining to whether to resort to war are collectively grouped under the heading *jus ad bellum*.

Our focus thus will be on the *jus in bello* of the just war tradition, the broad cultural consensus on appropriate limits to force that has developed over Western history. (The *jus in bello*, as we shall see in more detail below, proceeds from two fundamental ideas: the need to protect noncombatants in wartime and the need for the means of war to be proportionate to the tasks of war. The *jus ad bellum* includes such concepts as just cause, right authority, right intention, that the resort to war be a last resort, and proportionality in a larger, overall sense weighing the total evil a war would cause against whatever good it can be expected to achieve. In this connection, a further idea is generally added as part of the *jus ad bellum* criteria: that the goal of a war be peace, or at least a more secure peace than that which obtained beforehand. Such, at least, is the *jus ad bellum* in moral terms. In contemporary international law these ideas tend to be collapsed into regulations defining aggression and the proper limits of defense.)

Augustine treated defense by means of a paradigmatic situation involving three persons: a criminal who is attacking or about to attack a second person, the innocent victim, and a third person, an onlooker, on whose behalf Augustine offers his thoughts. What should this third person do in such a situation? We must recall that Augustine wrote within a Christian context in which the use of violence had been generally deplored: in telling his disciple Peter to sheath his sword, so the argument went, Jesus had in principle disarmed all Christians. But Augustine was not convinced by this, and his argument advanced toward a quite different conclusion. The onlooker, as Christian, must be motivated by love toward both those individuals before him, the criminal as well as the victim. Yet the criminal, who is armed, is unjustly aggressing against the innocent weaponless victim. The proper action for the Christian, reasoned Augustine, is to intervene between criminal and victim, defending the latter even at the risk of his own life against attack or threat of attack by the former. Such defense of the victim, argued Augustine, is mandated by the onlooker's love for him as someone for whom Christ died; yet Christ also died for the

criminal, and this limits what may be done toward him in defending the innocent victim. Briefly stated, Augustine argued for a proportionate response to the threat represented by the criminal: the onlooker should seek to prevent the criminal from carrying out his evil intention by defensive measures designed to thwart whatever the criminal may try. Escalation here is made the attacker's responsibility, not the defender's. The latter may meet force with proportionately effective force right up to and including the possibility of killing the criminal, if he does not relent before that. Meanwhile, the Christian onlooker, now become his innocent neighbor's defender, is not in any sense guilty for doing what he must, for he is acting the only way he can when motivated by love: opposing the doing of evil, yet separating his hatred for evil from his love for the person of the evildoer.

Though couched in centrally Christian terminology and forms of thought, Augustine's argument here introduces in sharp definition the two moral principles that have historically defined the *jus in bello*: the ideas of proportionality and discrimination or noncombatant immunity. Augustine's criminal stands for any soldier who menaces an unarmed noncombatant peacefully going about his business. Transferred to the context of war, the criminal and the defender who opposes him become enemy soldiers on the battlefield, and the purpose of war is defined in terms of the defense of peaceful life and resistance to evil actions. But opposition to the enemy's evil should not imply hatred for the enemy soldiers. Augustine's reason for this was a theological one: Christ died for the evildoers as well as for the just. But in its later development this idea was radically secularized into what is known today as the principle of humanity. Its meaning was well stated by the eighteenth-century Swiss theorist of international law, Emmerich de Vattel: "Let us never forget," he wrote, "that our enemies are men." Augustine could not have put this idea more pungently. The principle of humanity underlies the modern law of war, providing its own moral underpinning to the ideas of proportion and noncombatant immunity, though these concepts are rooted as well

in the idea of justice. From their roots in Christian theorizing about violence, then, the essential concepts of restraint in war have over the centuries become secularized, and the values undergirding them have ceased to be specifically those of Christian religion but have become perceived as generic to Western culture.

This transformation began in the Middle Ages, ironically that time in Western history when Christian religion and secular life were most closely intertwined. We can identify four distinct streams that fed into the coalescing consensus on war during this period. Two were specifically Christian: the input of scholastic theology and the related, though separate and distinctive, input of the canon lawyers. The other two streams of influence are based in traditions outside those preserved by the church: one from the civil law, based principally in Roman theory and practice, and one from the realm of chivalric life, based in both an indigenous class tradition and in considerations of *realpolitik*. The chivalric input into the developing idea of noncombatant immunity—or more accurately, the reasons behind the development of a uniquely chivalric idea of noncombatant immunity—will illustrate how secular forces have shaped and transformed just war tradition. Stated succinctly, it appears that knights had two important reasons for guaranteeing the protection of noncombatants. First, there was no glory in armed combat with a nonknight, for knights were professionals. Indeed, killing nonknights would create a bad reputation, not a good one. Second, noncombatant serfs, peasants, artisans, and merchants were the source of the wealth of members of the knightly class. Besides it being cowardly to attack an enemy through his noncombatant subjects rather than directly, each propertied member of the chivalric class had a positive interest in protecting the lives and livelihoods of the noncombatants who supported him. Both considerations gave chivalry, quite apart from specifically Christian influence, its own doctrine of noncombatant immunity, and this became joined to the other streams mentioned above in a generalized cultural consensus by the close of the Middle Ages.

This point can be generalized for the history of the development of the tradition as a whole. To take another outstanding example, much of the modern law of war, as well as contemporary doctrines of limited war, derives from the practice of "sovereigns' war" during the eighteenth century, including the wars of Frederick the Great of Prussia against virtually all of his neighboring monarchs and the wars collectively known in American history as the WAG wars (King William's, Queen Anne's, King George's wars). These were conflicts among monarchs and their private armies, not, as became the practice after the French Revolution, wars involving entire populations of one state against another. In this foremost example of limited warfare in Western history the restraint was largely due to necessity and what was perceived as necessity, not to conscious reflection on the moral tradition of restraint in war. Yet contributions to moral traditions do not themselves have to go by the name of *moral* ideas or practices, as morality is narrowly conceived. Thus the practices of restraint regularized in the sovereigns' wars have become a recognizable and significant part of the developing tradition, illustrating how, for example, considerations of military necessity can sometimes be joined to those of humanity to mitigate the cruelty of war.

The final transformation of the value base of the just war tradition away from the specifically Christian was accomplished at the dawn of the modern period, beginning with the work of a Spanish Dominican, Franciscus de Victoria, and completed by the time of the jurists Alberico Gentili and Hugo Grotius. The men who effected this transformation are the collective fathers of modern international law, and international law has been one of the major vehicles through which the tradition of restraint in war has been maintained and further developed in the modern period. But to speak of a transformation to a secular value base for the tradition means only that now these ideas of restraint are clearly the property of Western culture—and by extension through international law, world culture—rather than narrowly the values of any specific religious faith. This in turn implies that while certainly debate on morality and war may go on

within Christian theological ethics or the ethics of any other religion, debate in the public sphere should be in terms of the values of the larger society. The best contribution by theologians might be to uncover persuasively for all to see whatever it is that is unique in their own transcendence-based analysis of morality in war. In this way they contribute to the public life of the nation and the world, rather than only to the life of their own religious community.

Unfortunately, though, it is by no means clear that moral analysts, whether theological or not, have done their best in examining the implications of the traditional *jus in bello* ideas for contemporary warfare. For example, countercity targeting of strategic nuclear warheads flies directly in the face of the idea of noncombatant immunity, and terrorism also directly challenges the right of peaceful noncombatants to live their lives in safety. The deep erosion of the idea that noncombatants should be spared may be seen in the degree of support received by Lieutenant Calley in the My Lai case, in spite of the prohibition of such acts as his in military regulations, international law on war, and just war tradition broadly speaking. To recover for contemporary issues the moral wisdom developed in just war tradition thus is a matter of some importance, and this defines the scope of the following chapters.

Is it possible to identify, before we turn to the arguments in detail, what sorts of implications for contemporary war ought to be drawn from just war tradition? For my part, I am convinced that the tradition unambiguously points in the direction of counterforce rather than counterpopulation targeting of strategic weapons, toward the development of weapons that are inherently capable of being used more discriminatingly and proportionately in war than those currently available, and toward enhanced conventional warfare capabilities. While any kind of nuclear war might well be destructive out of proportion to almost any conceivable value it might serve, there is ample evidence that counterforce targeting is at least a part of both American and Soviet strategic planning, and this represents a step in the right direction, by contrast to the era of massive retaliation in the