

The “Just-War” Doctrine

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- a. What is the "just-war" doctrine?
- b. How does it relate to intra-state uses of coercive or lethal force by police and standing armies?
- c. Is it an adequate justification for such intra-state uses of force, or are the latter incapable of ethical justification?

Abstract:

This paper will discuss what is meant by the "just-war" doctrine and examine its relevance in respect to the use of force by the state during intra-state conflict. This question will be examined in the context of changes in international law regarding human rights during this century.

It will be argued that the use of coercive or lethal force by the state may be justified by the just-war doctrine when certain conditions prevail. However, the use of such force is constrained by the principles underlying the just-war doctrine and international law.

The just-war concept has its origins in the 4th century and was developed by St Augustine as a means of justifying "Christian participation in Roman wars" (O'Brien, 1981, p.4). The just-war doctrine has evolved over the centuries and has included contributions from scholars such as Thomas Aquinas, Francisco de Vitoria and Hugo Grotius (Decosse, 1992). By prescribing the circumstances under which a ruler could justly wage war and the limits regarding its conduct, St Augustine devised a doctrine that enabled Christians to reconcile the teachings of Christ and the commandment "thou shalt not kill" with the notion of a "just cause" which provided a justification for war. In classical just-war doctrine, holy wars of an offensive nature were permitted against non-believers (such as the Crusades) along with wars protecting vital rights or interests (O'Brien, 1981). The doctrine enabled a ruler or king to pursue war for a just cause which could be used as a rallying call to mobilise the population for war.

The just-war doctrine specifies the circumstances under which a state can justifiably engage in war (*jus ad bellum*) and how such a war should be conducted (*jus in bello*). It has been described by one commentator as a "moral obstacle course" (Decosse, 1991) and provides an ethical framework for decision making that has its origins in Christian religious doctrine. The just war doctrine allows offensive wars to be waged "justly" as well as defensive actions, although greater moral weight is given to a state acting in self-defence (O'Brien, 1981). In the 20th century the just-war doctrine was expanded to include collective security arrangements (e.g. NATO, SEATO, Warsaw Pact) and reference is made in UN Charter Article 1 (1) to the fact that a nation can legitimately resort to war pursuant to a collective security arrangement even if it has not been directly attacked. Article 2 (4) of the UN Charter states that the use of force "against the territorial integrity or political independence of any state..." is prohibited unless it is part of UN enforcement action aimed at suppressing threats to peace (e.g. UN action against North Korea) or is a legally permissible form of individual or collective security occurring in the name of self-defence (O'Brien, 1981). According to the just-war doctrine those who use violence bear the "burden of proof for doing so" (Decosse, 1992, p.88) and indiscriminate aggression for outcomes other than peace are not legitimate reasons for pursuing war.

The key elements of the just-war doctrine are as follows (Decosse, 1992) and (O'Brien, 1981):

Just-war rules for determining whether to engage in war:

1. *Just Cause:* A state engaging in armed conflict requires a just cause. As the consequences of war are serious, so must be the cause. The justness of a cause is difficult to define, although many commentators accept the following as just causes: "(1) protecting the innocent from an unjust attack (2) to restore rights wrongfully denied, (3) to re-establish a just order." (O'Brien, 1981, p. 20).

2. *Right Intention:* A war may only be waged if the intention is to achieve good over evil. A state that invades another to acquire territory would be considered as waging an unjust war, while the country defending itself would be regarded as having a righteous cause as the intention is one of self-defence. "Right intention limits the belligerent to the pursuit of the avowed just cause" (O'Brien, 1981, p.34) and restricts the state under siege from taking punitive action in the form of reprisals or seizing the aggressor's territory. The outcome of a just war is a just and lasting peace, not merely the cessation of hostilities.

3. *Competent Authority:* Only a lawful government can initiate a just war. The just-war doctrine was developed at a time when the ruler or king had absolute authority and was the arbiter of whether war would be waged.

4. *Reasonable Chance of Success:* War should only be initiated when there is a reasonable chance of success in order to minimise unnecessary bloodshed. For instance, during the Second World War, small European states (e.g Belgium and Denmark) surrendered quickly to overwhelming German forces to prevent needless civilian deaths.

5. *Proportionality of Ends:* The benefit of pursuing a just cause must be weighed against the likely consequences of war on the belligerents and non-combatants.

6. *Last Resort:* War should only be used after all other means have been exhausted (e.g. diplomacy, economic sanctions).

Just-war rules for the conduct of war:

1. Proportionality of Means - This tenet of the doctrine encourages proportionality when considering the use of force. For example, border incursions would not warrant a nuclear strike in retaliation. This rule requires that no more military force than is necessary should be used to achieve legitimate political and military objectives.

2. Discrimination of Combatants from Non-Combatants - Demands that war be waged in such a way so as to discriminate combatants from non-combatants. For instance the allied bombing of Dresden in Germany failed to meet this principle of just-war doctrine.

Focussing now on the issue of whether the just-war doctrine relates to the intra-state use of force, it will be demonstrated that the doctrine has limited relevance. In its original form the just-war doctrine did not concern itself with intra-state conflict or the use of force by the state against its own people. The doctrine was devised at a point in history when the reign of the king or ruler was absolute in accordance with the "divine right of kings." The classical just-war doctrine did not sanction the right of citizens to engage in armed dissent against the ruling power of the day. Indeed, a doctrine outlining conditions under which citizens could legitimately take up arms against their sovereign would most likely have been regarded as treason. When the just war doctrine was devised by St Augustine in the 4th century the ruler or king was considered as having the authority to make laws governing the use of coercive or lethal force by the army or navy including its use against dissenting civilians.

International law (one of the major sources of determining the "justness" of a cause) has changed considerably in the 20th century, particularly after the Second World War. The concept of human rights and mutual obligation on the part of the state towards its citizens has been incorporated into international law. The Universal Declaration of Human Rights in 1948 challenges the unbridled right of the state to deal with its citizens as it sees fit and affords protection to citizens from arbitrary arrest, detention, freedom of association and the right to peaceful assembly (Encyclopaedia Britannica (EB) Universal Declaration of Human Rights, 1996) and acts as a restraining influence against the excessive use of force by the state against its population. This has affected the relevance of the just war doctrine in respect to intra-state conflict in two main ways. Firstly, a state's right to deal with its citizens as it sees fit has been curtailed. The oppression of citizens or denial of self-determination by a government may be seen as unjust by the international

community, so to may the use of coercive or lethal force against the population. Secondly, other states under international law now have the right to intervene in cases of state sponsored genocide or repression.

Under the "natural law tradition from which most of the just-war doctrine is derived there are basically two causes for armed resistance against an incumbent regime" (O'Brien, 1981, p.162): (1) when a regime is oppressive and threatens fundamental human rights or (2) when a government behaves unlawfully or unconstitutionally, the people have a right to vest their authority in a new government (O'Brien, 1981). Furthermore, the first 1977 Protocol of the Geneva Convention provides that peoples fighting colonial or racist regimes in exercising their right of self-determination "are to be treated as if they were engaged in an international armed conflict and not a civil war." (EB, Theory and Conduct of War, 1996). On this basis an argument can be made that the just-war doctrine can be legitimately invoked by minority groups who are subject to persecution by their government or are seeking self-determination in the case of colonial domination. In such a case the use of coercive or lethal force by the state to suppress such a movement could be perceived by some in the international community as unjust and morally indefensible.

Whether the just war doctrine could be used to justify insurrection against the state by a persecuted minority would largely depend on whether the criteria for a just war was met. Indeed, in theory, the just war doctrine can be used by a persecuted people (e.g. Albanian Kosovans, Kurds, Armenians) or nationalist organisations such as the East Timorese resistance movement to justify their actions against a sovereign power. In the case of Kosovo (which is part of Yugoslavia) there is an ethnic group (i.e. Albanian Kosovans) who possess a distinct sense of nationhood and desire for self-determination arising from persecution by the state (i.e. Yugoslavia). The Kosovan struggle almost meets all of the just-war criteria. The majority of the Kosovan people are comprehensively alienated from their official government and desire self-determination and peace. The war from the Kosovan perspective is fought with the right intentions (e.g. freedom from oppression and self-defence) and its probability of success is reasonable given NATO support. However, Serb authorities have accused the KLA of killing non-combatants and intimidating civilians which is a contravention of the just war doctrine. Despite this it would appear that most of the conditions have been met for the Kosovan cause to be legitimately described as a just war. On the other hand, Serb authorities could provide an equally persuasive just-war argument in defence of their use of coercive and lethal force by their military and police. For instance they could argue that they are defending their territory against

foreign aggressors (i.e. NATO) and terrorists (KLA) with the aim of restoring the rule of Serb law over Serb territory.

A further restraint on the use of coercive or lethal force by the state is the greater likelihood that oppression instigated by the state against its own citizens will invite intervention from other states. States have the right under international law to intervene in humanitarian crises where their citizens lives are threatened or when the nationals of the "target state are faced with extreme repression or genocidal extermination" (O'Brien, 1981, p.173). This rationale was used by governments of the western alliance to justify their use of military action against Iraqi following its invasion of Kuwait. O'Brien (1981) argues that it is possible for one state to justly intervene when another commits acts of genocide or violations of human rights without violating Article 2 (4) of the UN charter if the intervention is not "directed against the territorial integrity or political independence of the target state" (p.23). Military intervention by one nation against another has rarely been based on humanitarian or altruistic motives (O' Brien, 1981) although the outcome of such an intervention may result in a cessation of human rights violations by the offending state (e.g. western allied intervention on behalf of Kuwait against Iraq and the Vietnamese invasion of Cambodia to end Pol Pot's genocidal reign). States employing excessive force or repression now risk international condemnation and intervention based on this expanded notion of the just-war. A recent example is NATO air strikes against Yugoslavia following Serb military action in Kosovo. NATO has argued that its actions are morally justified, indeed a NATO spokesperson was quoted as stating that "if you've exhausted all means of diplomacy, if you observe proportionality in your tactics and if the good you procure is greater than the harm you cause" (Hattenstone, 1999, p 4) then the cause is just.

Essentially the just war doctrine can be used by either party whether this is the state or an oppressed people within the state to justify the use of violence or coercive force. People rarely fight in a war without claiming their cause is just and God is on their side. The just war doctrine essentially applies to warfare conducted between states, although in the context of recent United Nations protocols and charters it can be interpreted in such a way so as to apply to intra-state conflict in some cases.

After examining whether the just war doctrine sanctions the use of lethal force by police or standing armies in an intra-state conflict, it is appropriate to reflect on whether this justification is adequate. The immediate response to this question is why would a government employ lethal force against its own citizens? Australia has both

armed police and standing armed forces and yet incidents of widespread coercive or lethal force against Australian citizens are rare occurrences. In general, Western democracies provide channels for dissent within the political process including an accommodation of issues around self-determination. For example the French Quebecois have been agitating for independence from Canada for many years without the central government deploying troops to suppress this secessionist movement. However, in states where there is a little tolerance for political dissent, the use of coercive force tends to be more prevalent (e.g. Chile after the Pinochet coup). Generally, these repressive actions are not justified under the just-war doctrine by the offending state, but are referred to as "internal security matters" which demand the use of force to preserve the integrity and unity of the state (e.g. Papua New Guinean military action against the separatist movement in Bougainville was justified on these grounds).

There are however limited circumstances where the state's use of coercive or lethal force could be ethically justified according to the just war doctrine and international law. For example if a state is engaged in a defensive war against another state, and the aggressor state seeks to exploit divisions within the defending state by actively arming, encouraging and sheltering rebellious parts of the civilian population then the defending state may justify the use of force against selected elements within the civilian population (i.e. those engaged in armed rebellion) by using the just war doctrine as a defence for its actions. Such an action might be regarded as "just" in accordance with the just war doctrine if it met the following conditions:

- the use of force is sanctioned by the legitimate authority of the state
- the cause is one of self-defence
- is fought with the right intentions
- proportionality of force is observed
- non-combatant's rights are respected

and the state is not an oppressive, racist or a colonial regime by international standards.

There are, however, numerous other justifications for the use of coercive or lethal force by a state apart from the just-war doctrine, such as the need to maintain national unity, the need to preserve public order (this justification is often used against nationalist or terrorist groups such as the IRA), the need to maintain harmony such as ethnic or religious unity (e.g. military action by Serbs against the Muslim Kosovan population).

In conclusion, the just war doctrine mostly applies to international conflict, but developments in international law have expanded the types of conflict that can be perceived as "just." In some cases, civil wars and other intra-state conflicts involving genocide and the persecution of the civilian population may be seen as a "just" reason for intervention by other states or as legitimate grounds for a minority group to defend itself. Depending on whether these conflicts satisfy the rest of the conditions for a just war, then the violence may be justified under the just war doctrine. The power of the doctrine seems to lie in its legitimising effect, in reinforcing a side's belief that it is acting on the side of good rather than evil. As to whether it is an adequate justification for the use coercive or lethal force against the civilian population in most cases such violence is indefensible. However in a minority of situations when certain conditions prevail some may argue that there is adequate justification for the use of force to maintain the integrity and sovereignty of the state.

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