

/WAR AND JUSTICE/

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INTRODUCTION

Can war be just? Since man has discussed war, they have debated it in terms of right and wrong. Some have called this discussion a charade, and believe that war is not, and should not be called a moral action or a just action. However, the concept of a just war does exist and this concept is a prevalent thought in many contemporary writers. These writers do not deny the necessities of states to act in their interests and their right to use force in the pursuit of those interests. However, they do argue, for reasons which will become clear subsequently, inherent or built-in restraints on the use of force. These restraints are, of course moral and prudential. War, it is argued, should only be rationally undertaken as a means of achieving a political ends and only as a means of distributing justice. These purposes rule out an unrestricted use of force which is imprudent and immoral. The theory at this level claims that if force is used, it should be justified and it should be proportional.

The major problem that exists in the current writings is that force must be justified, but who is the one justifying these actions? The answer is the state. The state has its necessities, but at the same time it must insist that these necessities be limited. States have a way of interpreting the concept of just war in such an elastic way that they have caused any act they deem necessary as compatible with any act of war.

It is the purpose of this report to explore the concept of just war. The first discussion is the origins of just war. Most of the earlier theories of just war were prescientific even though some of them were based upon "empirical evidence" drawn from history. Several of the earlier theories contain perceptive insight that merits our attention as part of our cultural heritage. These early theories aid us in seeing how the problem of war was viewed in other eras, and why it was not always regarded as evil. These theories reflect conscious motivations for and rationalizations of war, which at the level of human decision-making can be "causal." They give philosophical, religious and political discussions for and against war. The early writers analyze the phenomenology of war at a more natural level of human observations. Therefore, their inclusion in any thesis dealing with just war is a necessity and it is important to understand their reasoning.

The second discussion considers the qualifications of a just war. In this section I raised several questions: What events must transpire prior to initiating just war? When is intervention just? And how must the war be conducted once it is initiated?

The third discussion considers international morality and war. One may be initially concerned over the validity of "international morality" but after careful review of existing literature it is evident that such a morality does exist. The morality that is found exists in the traditional international law and the basis of international morality found in those general principles of international law.

The final discussion considers whether nuclear deterrence is moral. Many have argued that in view of the destructive power of

nuclear weapons their use or even their use in deterrence is immoral.
However, are these writers correct? Is a nuclear threat morally
permissible?

Chapter One

THE ORIGINS OF JUST WAR

Wars have existed since the beginning of recorded time. With these wars came rules defining the circumstances under which war might be initiated (jus ad bellum). It is known that an exchange of letters and demands generally preceded hostilities as early as the fourteenth century B.C. with the Hittites' struggles. Rules of war based on notions of chivalry extend as far back as the fourth century B.C. in ancient China (the beginning of jus in bello). Sun Tzu, in The Art of War, wrote that it was forbidden to injure an enemy previously wounded or to strike elderly men. He demanded that his corps "treat the captives well, and care for them. All the soldiers taken must be cared for with unanimity and sincerity so that they may be used by us."¹

The Babylonians of the seventh century B.C., also treated both prisoners and captured peoples with restraint in accordance with well established rules. This was demonstrated after the campaign against Jerusalem in 690 B.C., when the victorious Sennacherib handled most of the conquered Jews with the prescribed mercy of the times. Sennacherib killed only the officials and patricians guilty of crimes while he treated the rest as prisoners of war and released those not accused of crimes.

¹ Sun Tzu, The Art of War, Ed. James Clavell, New York: Delacorte Press, 1983.

The rules governing warfare are expressed in the Bible, in the book of Deuteronomy. Complete annihilation of every man, woman and child was permissible in war when the Jews were fighting other nations.¹ Some believed that God gave the Jews the chance to insure that the attacking nation would be cleansed from the earth.

It was not until the time of the Greeks and the Romans that humanitarian notions or concerns gained favor. It was during this time that values of peace and harmony came to the fore. War now had to be justified to the polis in terms of some higher ideal. The Hellenistic and Roman civilizations had laws which specified that an enemy nation could be attacked only if it violated policies previously set forth. Not only was a just cause required, according to Cicero, but also a formal demand for redress of grievances and a declaration of war was necessary. Only after these qualifications had been achieved could a war (justum bellum) be considered legitimate. The war must also be conducted in accordance with religious sanctions and the expressed or implied commands of the gods.

Cicero's approach was developed from the law of reason. According to him this law of reason contains and sets forth the rules of justice which should regulate the relationships between nations, including that of war. War may not be unjust in itself, but the conditions which should regulate its occurrence and conduct spring from the international or universal reason, identifiable with the principles of justice.

¹Ed. Washburn College, "Deuteronomy," The Holy Bible, New York: Oxford University Press, 1979, pp. 261-316.