

O'Brien

Conduct of Just and Limited War

Fundamental Tenet of Just War Doctrine

- **Fundamental tenet of just war doctrine:** the presumption is always against war

JUS AD BELLUM— "Right to War"

- War is morally permissible or justifiable if these conditions are met:
 - A. There must be competent authority to order war for public purpose
 - B. There must be
 - (i) a just cause,
 - (ii) the means must be proportionate to the just cause, and
 - (iii) all peaceful alternatives must have been exhausted
 - C. There must be right intention on the part of the just belligerent

A. Competent Authority Condition: Problems of competence

1. War must be declared by public authorities for public purposes, generally only states are capable of waging war

Problems:

- a. disputes of the constitutional competence of an official or organ of state to initiate war
- b. problems of persons or organizations claiming revolutionary rights in acts of civil war and terrorism: the problem is determining who the authority is

U.S. Authority to Declare War

- Only Congress can declare war.
 - But, the Supreme Court has given the President, as Commander-in-Chief, the power to declare a “state of war” initiated against the U.S. and may then send troops to fight
- President Bush did not seek or get approval from Congress for a war with Iraq. President merely sought Congress’ approval to use force against Iraq and fund the military actions
- When is the last time Congress has issued a formal declaration of war?

U.N. and War

- The United Nations Security Council can declare military action against any country not adhering to U.N. Resolutions
- Military authorization requires unanimous support from the five permanent members of the Security Council: U.S., Great Britain, France, Russia, and China
- There was no vote in the Security Council approving of military action in Iraq over and above Resolution 1441
- President Bush stated, “The United Nations Security Council has not lived up to its responsibilities, so we will rise to ours.”
- With this declaration, the U.S. and its allies prepared to attack Iraq without U.N. approval

A. Competent Authority Condition: Problems of competence

2. Conditions for not treating terrorists as criminals but as a competent authority
 - a) character – capable of organizing a government
 - b) magnitude – length and size of conflict
 - c) degree of success of the revolutionaries
- If a conflict continues for long enough, revolutionaries may gain acceptance as competent authorities for just war consideration

B. Just Cause Conditions, I

1. Substance of the just cause: must be "sufficiently serious and weighty" to overcome prohibition on killing; there needs to be substantial aggression
 - a) To protect the innocent from unjust attack
 - b) To restore rights wrongfully denied
 - c) To re-establish a just order
 - d) Just cause could include preservation of a way of life
- All of these concern the ends for which war might be justified
 - Problem: evaluating the substance of just cause leads inescapably to a comparative analysis of the political-social systems posed in warlike confrontation

B. Just Cause Conditions, II

2. Forms of pursuing just cause – defensive and offensive wars

- a) justice of self-defense is axiomatic (acts in self-defense can allow one to waive the condition of probable success)
- b) offensive wars to enforce justice for oneself--not internationally accepted

B. Just Cause Conditions, III

3. Proportionality Condition – proportionality between just ends and means

- a. Ends held as just cause must be sufficiently good and important to warrant the means of the war
- b. Projection of the outcome of the war is required in which the probable good expected from success is weighed against the probable evil that the war will cause
 - i) requires weighing of good and evil for both sides, neutrals, international common good, etc.
 - ii) requires recalculation over time
 - iii) requires a judgment that there is a probability of success for the just party – war of self-defense may be engaged in irrespective of the prospects for success

Just Cause for U.S. War Against Iraq?

- What were the reasons the U.S. gave for using force against Iraq?
 - Iraq possessed weapons of mass destruction (WMD)
 - Iraq had links to terrorists
 - Liberating Iraqis from tyranny and oppression
- Of these three justifications, which were true?
- Do any of these three justifications meet any of the Just Cause conditions for a just war?

Nature of the Reasons for U.S. War with Iraq

- For the substance of the reasons of a just cause to be considered relevant to waging a defensive war, then it appears those reasons must arise from and be relevant to an event or events which threaten the state advocating war
- When did the desire to invade Iraq and remove Hussein take shape?
- What event(s) initiated the need to invade Iraq? Are these events relevant to the justifications for waging war?

When Did the Push for “Regime Change” Start?

- 1991: Wolfowitz argues for regime change
- Bush Sr. and Clinton relied on UN to disarm Iraq
 - US refused to lift sanctions as long as Hussein in power
 - Sanctions proved very effective in disarming Iraq
- 1999: Presidential-candidate Bush tells ghostwriter that he would try to invade Iraq if he could because a successful war would allow him to push his domestic agenda
- 2001: Bush spun WTC attacks and anthrax attacks as tied to Iraq (10/2001)
 - Bush knew that WTC attacks not tied to Iraq
 - Bush knew that anthrax was an American strain and Iraq not involved

Downing Street Memos

- Peter Ricketts, Blair’s Political Director, memo from March 2002

"First, the THREAT. The truth is that what has changed is not the pace of Saddam Hussein's WMD programmes, but our tolerance of them post-11 September. This is not something we need to be defensive about, but attempts to claim otherwise publicly will increase scepticism about our case. I am relieved that you decided to postpone publication of the unclassified document. My meeting yesterday showed that there is more work to do to ensure that the figures are accurate and consistent with those of the US. But even the best survey of Iraq's WMD programmes will not show much advance in recent years on the nuclear, missile or CW/BW fronts: the programmes are extremely worrying but have not, as far as we know, been stepped up....US scrambling to establish a link between Iraq and Al Qaida is so far frankly unconvincing....The second problem is the END STATE. Military operations need clear and compelling military objectives...For Iraq, "regime change" does not stack up. It sounds like a grudge between Bush and Saddam. Much better, as you have suggested, to make the objective ending the threat to the international community from Iraqi WMD before Saddam uses it or gives it to terrorists."

What To Make of the Downing Street Memos

- Is the justification for war with Iraq tied to a clear threat or event?
- How imminent must a threat be before one can justify war?
- If there is a need to package a war so that it appears justifiable, then can one reasonably claim that the war is justifiable?
- Can “regime change” ever be justification for invasion from an outside force?
 - Might “regime change” be used to justify violent conflict by an internal revolutionary group?

B. Just Cause Conditions, IV

4. Exhaustion of Peaceful Remedies Condition: the state that fails to exhaust the peaceful remedies available before resorting to war is prima facie an aggressor
 - Did the U.S. and its allies exhaust all peaceful remedies?
 - Was there a mechanism in place before the invasion for peacefully examining the alleged threat?

C. Right Intention Condition

1. Right intention limits the belligerent to the pursuit of the avowed just cause—can't pursue other causes not part of the just cause
2. Right intention requires that the just belligerent have in mind as ultimate object a just and lasting peace
3. Right intention insists that charity and love exist even among enemies
 - no gratuitous cruelty
 - just belligerent's actions must be based on charity

Meeting the Right Intentions Condition?

- To what extent has the U.S. and allies occupation of Iraq met the Right Intentions condition?
- Were there other reasons for invading Iraq not explicitly stated?
 - Send message to terrorists?
 - Military presence intended to thwart relations between Axes of Evil?
 - Allow US to remove troops from Saudi Arabia?
 - Long-term military bases in Middle East?
 - US control of oil supplies and policies?
 - Remove threat to Israel?

JUS IN BELLO – "Right in War"

- Limitations on the conduct of war
- Just means:
 - i) no harm to innocents intended
 - ii) means not disproportionate to end

A. Principle of Proportion, I

- Principle of Proportion: are the means judged with respect to (i) the end of the war, or (ii) with respect to the intermediate political/military goals (the reason for war)?
 1. Problems with making means justify the ends (*raison d'etat*)
 - a. relation of means to ends of war gives little justification for particular military actions; if all means lumped together, then one accepts them all or none at all, even though some discrete means might be just in certain cases
 - b. have to accept/reject solely in terms of just cause, i.e., total good to be expected if war is successful balanced against the total evil the war is likely to cause

A. Principle of Proportion, II

2. An act could be proportionate or disproportionate to a legitimate military end regardless of the legitimacy of the just cause end *raison d'etat*
3. There's a need to be realistic and fair in evaluating individual command responsibility for belligerent acts; but, this requires *raison de guerre* and not *raison d'etat*
4. Two-fold form of proportionality
 - a. any military means must be proportionate to a discrete, legitimate military end
 - b. military means proportionate to discrete, legitimate military ends must also be proportionate to the object of war, the just cause

B. Principle of Discrimination, I

- Principle of Discrimination: prohibits direct, intentional attacks on non-combatants and non-military targets
1. If the presumption against killing is overcome, then the only killing permitted is limited to combatants.
 2. Moral Axiom: evil may never be done in order to produce a good result
 - killing non-combatants intentionally is always an inadmissible evil

B. Principle of Discrimination, II

- Two responses to the Principle of Discrimination
 - a. Pacifism: if principle of discrimination is unconditionally binding, then a just war is difficult, if not impossible to envisage
 - b. Principle of Double Effect: intended vs. unintended effects
 - If the intent of the war-time action is some legitimate military purpose and the act itself results in the unintended death of innocents, then the deaths are regrettable but not in violation of the Principle of Discrimination
 - Accidental “collateral damage” seems acceptable

Are All Concomitant Undesired Effects Accidental?

- In many cases, an attack on a justifiable military target is known to threaten the lives of non-combatants
- If it is known that an attack will result in the deaths of non-combatants, then the resulting deaths are intended; hence, unjust.

“If the attacker knows that there are non-combatants intermingled with combatants to the point that any attack on the military target is highly likely to kill or injure non-combatants, then the death or injury to those non-combatants is certain ‘intended’ or ‘deliberately willed’”

B. Principle of Discrimination, III

4. Problem with the principle of discrimination

- a) non-combatants is hard to define
 - b) military targets is broadly defined
 - c) modern warfare's practice of total societal mobilization requires attacking mobilization base and the likely deaths of non-combatants
- O'Brien thinks that the erosion of the distinction between combatants and non-combatants due to total societal mobilization results in the elimination of the Principle of Discrimination as a limit on justice in war-time activities

Questions

1. How can one tell when peaceful remedies are exhausted?
2. How can one tell whether a war will be successful, meet objectives, etc.?
3. How can a country act with charity toward another?
4. How do we measure the good achieved in war versus the evil?
5. Isn't war bound to deviate from principle of discrimination?
6. What constitutes a "competent" authority?
7. What would the pacifist say to, i) substance of just cause, ii) proportionality between ends and means, iii) calculating of consequences?