Lecture #7: Just-War Theory

Just-War Theory & its Theoretic Rivals

- Alternative answers to the question of the morality of war
  - Pacifism
  - Comprehensive Pacifism = Any act of killing another human being is wrong
  - Anti-war Pacifism = War is always wrong
- Just-War Theory
- Non-pacifist Alternatives to Just-War Theory
  - (Note: These theories are alternative to separate parts of the Just-War Theory. They are different, but are consistent with one another.)
  - Staatsraison (raison d'état) = Reasons of state (the national interest) are sufficient to justify war.
  - Kriegsraison (raison de guerre) = Reasons of war (military necessity) are sufficient to justify any action within a war.

Just-War Theory: Its General Content

- Just-War Theory
  - Formulation #1 (closer to Childress’ account):
    1. (Against Staatsraison): There are (prima facie) duties against killing others (& hence against waging war)
    2. (Against Pacifism): These duties can sometimes be overridden.
      It is not always wrong to go to war.
      Though it is still the case that only under certain circumstances is it permissible to go to war.
    3. (Against Kriegsraison): There are some things that it would be wrong to do, even in a justified war (or, there are impermissible ways of waging even an otherwise permissible war).
  1. Formulation #2:
    1. Going to war is not always wrong. (Denial of Pacifism)
    2. The Jus ad bellum: It is only permissible to go to war when certain justice-related conditions are met. (Denial of Staatsraison)
  - The Jus in bello: There are justice-related constraints on what one may do even in a justified war. (Denial of Kriegsraison).

Just-War Theory: The Criteria

<table>
<thead>
<tr>
<th>ST. THOMAS’ CRITERIA</th>
<th>A LONGER LIST OF CRITERIA</th>
<th>AN ORGANIZED FORMULATION</th>
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<tbody>
<tr>
<td>Legitimate Authority</td>
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<td>The Jus ad bellum: A person has a right to participate only in wars which are:</td>
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<tr>
<td>Just Cause</td>
<td>Just Cause</td>
<td>1. declared by legitimate authority,</td>
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<td></td>
<td></td>
<td>2. waged for ...</td>
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<td></td>
<td></td>
<td>(a) a just cause (i.e., to right a wrong), for the vindication of which war is both</td>
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<td></td>
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<td>(b) proportionate (incl. with some prospect for success) &amp;</td>
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<td></td>
<td>(c) the last resort, &amp;</td>
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<td></td>
<td></td>
<td>3. rightly intended (i.e., aimed at justice and peace).</td>
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<tr>
<td>Right Intention</td>
<td>Right Intention</td>
<td>The Jus in bello: A soldier at war has a right to perform only those actions which are:</td>
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<td></td>
<td></td>
<td>1. approved by legitimate authority,</td>
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<td></td>
<td></td>
<td>2. discriminate, proportionate, and militarily necessary, &amp;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. rightly intended.</td>
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Morality & War

The Four Central Questions about Morality & War

1. Is war subject to moral evaluation? (Nihilism vs. Moralism)
2. Is going to war always morally wrong? (Pacifism vs. Just-War Theory)
3. Under what conditions is going to war justified? (Jus ad bellum vs. Raison d’état)
4. Is it permissible to kill non-combatants in war? (Jus in bello vs. Raison de guerre)
Specifying Just Cause

• What would constitute Just Cause?
  – The classical answer is that any of the following constitute just cause:
    • Repelling attack
    • Recapturing things taken
    • Punishment
  – In sum: To be justified, war must be a response to a precedent injustice committed by the enemy.
  – This leaves some questions (next slide).

Some Questions about Just Cause

• Could a pre-emptive attack (striking first when one is about to be attacked) ever be justified?
• Could a preventive war (starting a war now to avoid having to fight one later) ever be justified?
• Does the UN Charter constitute an agreement not to wage war except to repel attack?
  – Strictly a legal question, if it does, we might have a moral duty to adhere to this as a promise we had made.

Prevention, Pre-emption & Defense

• Some theorists distinguish three cases:
  – defense against actual attack
  – pre-emptive war (“anticipatory self-defense”) — the first use of armed force in cases where the “necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation” (Daniel Webster (1782–1852))
  – preventive war — “when we make war through fear that we may ourselves be attacked” (Alberico Gentili (1552–1608)); he means a more remote fear
• The distinction between repelling an attack & anticipatory wars (preemptive or preventive) is easy.
  – But it’s not clear that that is the morally relevant line
• The distinction between preemptive & preventive wars is harder.
  – Though this distinction seems to have greater moral importance.

The (A?) Bush Doctrine

“For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists, often conditioned the legitimacy of preemption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack.

“We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries. Rogue states and terrorists do not seek to attack us using conventional means. …. Instead, they rely on … [the use of] weapons that can be easily concealed, delivered covertly, and used without warning.…

“The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.

“The United States will not use force in all cases to preempt emerging threats, nor should nations use preemption as a pretext for aggression, …”

—“National Security Strategy of the United States,” 17 Sept 2002

“Some have said we must not act until the threat is imminent. Since when have terrorists and tyrants announced their intentions, politely putting us on notice before they strike? If this threat is permitted to fully and suddenly emerge, all actions, all words, and all recriminations would come too late.”

—President George Bush, “The State of the Union — 2003”

Just-War Theory & Anticipatory War

• Just-war theory permits war only as a response to a precedent wrong.
  So when (short of actual attack) is a wrong committed?
  – Violations of agreements?
  – Announced intention to attack together with acquisition of instantly or clandestinely deliverable WMD?
  – Acquisition of certain capabilities against a background of hostile behavior, independent of explicit threats?

Two Additional Theses about Morality & War

(but not part of Just-War Theory)

• Some wars meet the criteria of the Just-War Theory.
  – Denying this thesis is sometimes called “Just-War Pacifism” since it uses just-war principles to reach a pacifist conclusion.
• It is sometimes morally obligatory to go to war.
  – This is not a thesis of the Just-War Theory itself, which only asserts that there is a right to go to war.
  – It would however follow from the just-war theory in combination with two other plausible principles:
    • A government has a duty to provide for the security of its citizens (or to come to the aid of its neighbors).
    • Sometimes the only effective means of fulfilling that duty is to go to war.
Application of the Just-War Theory

- The point of the Just-War Theory is to make a judgment about a particular war.
- Making such a judgment requires also factual knowledge about a particular situation, relying on:
  - history
  - political science
  - military science

Presumptivist Justification of the Criteria

<table>
<thead>
<tr>
<th>Legitimate Authority</th>
<th>Doing justice (making sure goods &amp; harms are distributed according to desert) is an important duty for the state; less of a duty for individuals.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Just Cause</td>
<td>Beneficence alone does not generally override non-maleficence. Justice (combined with beneficence) is what makes the overriding of non-maleficence possible.</td>
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<tr>
<td>Last Resort</td>
<td>When war is not a last resort, one can fulfill one’s duty of beneficence without violating one’s duty of non-maleficence.</td>
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<tr>
<td>Proportionality</td>
<td>When the harm is great enough and the benefit small enough, not even justice can justify overriding one’s duty not to do the harm.</td>
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<tr>
<td>Prospect of Success</td>
<td>When the good is impossible to reach, the duty of beneficence does not require one to pursue it (especially by overriding one’s duty of non-maleficence). Without this, how would one be helping?</td>
</tr>
<tr>
<td>Right Intention</td>
<td>Perhaps the duty of self-improvement requires that one do things for the right reasons.</td>
</tr>
<tr>
<td>Just Means</td>
<td>Failing this criterion could create problems in various ways. E.g., violating non-combatant immunity would undercut the supporting duty of justice (right country, but wrong individuals would be being harmed). Other details here might come from Childress’ emphasis on moral traces.</td>
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Childress’ Questions about Application

- The Relation between the criteria & justification
  - Are the criteria individually necessary & collectively sufficient? I.e., Do all the criteria have to be met?
  - Or are only some individually necessary?
  - Or is it only necessary that the war meet some of the criteria, without it mattering which?
  - Or are the criteria themselves only prima facie requirements?
- Do the criteria give only a right to go to war or do they create a duty to go to war?
- What degree of certainty is required?

Are the Just-War Criteria Absolutely Necessary or only Presumptive?

Operation Fork (The Invasion of Iceland)

- Background
  - Iceland was an independent state ruled by the King of Denmark
  - it lacked any armed forces
- Chronology
  - 9 April 1940—Operation Wesertübung: German invasion of Denmark
  - 9 April 1940—UK’s offer to defend Iceland against possible attack (by Germany) was rejected by the Icelandic Government
  - 10 April—Iceland declared the King unable to carry out his duties
  - 10 May—Operation Fork: UK invaded Iceland to ensure Allied control of the sea lanes to North America
- Moral Questions
  - Had Iceland committed an injustice?
    - If so, what?
    - If not, was the invasion justified?
      - Perhaps the criteria hold only prima facie?

Childress’ Presumptivist Defense of Just-War Theory

- His general principles
  - We have a prima facie duty not to harm others.
  - This duty can be overridden by the duties to help others & to do justice.
  - Overridden duties leave moral traces; they do not just disappear
- Application of these principles
  - General (as before): In a situation where one person (or group of people) is unjustly attacking another and one can help the victims only by harming the attackers, one’s duty to help the victims of the attack is greater than one’s duty not to harm the attackers.
  - As defense of the Just-War Theory: What do the criteria do? Each in its own way assures that circumstances really do cause the duty to help to be greater than the duty not to harm. (For details, see next slide.)

My Answers to Childress’ Questions

- How to apply the criteria
  - In an historical judgment about a war
    - E.g., Was the Allied war on Germany (WWII) justified?
    - The answer is that some are necessary (in particular Just Cause), the others should mostly be met.
  - In a judgment about one’s own actions
    - E.g.,
      - May government leaders wage this war?
      - May soldiers fight in this war?
    - The answer is that all are necessary with respect to that action.
      - If the leaders launch a war prematurely (i.e., not as last resort), they do wrong.
      - The soldier who fights the war does not do wrong; the leaders’ bungling has made fighting the last resort for the soldiers.
- Do the criteria give only a right to go to war or do they create a duty to go to war?
  - The government has a duty to provide for the security of its citizens & to come to the aid of its neighbors but not to all of its neighbors all the time), and
  - Sometimes the only effective means of fulfilling that duty is to go to war.
- What degree of certainty is required?
  - That varies with the danger and other circumstances.