

The crystallisation of the just war theory and its contemporary impact

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Abstract: This article aims to provide a comprehensive examination of the crystallization of Just War Theory and to uncover its contemporary implications. It begins with the Christian conciliation between the concepts of ‘war’ and ‘justice’ and highlights the solutions developed by theologians such as Augustine of Hippo and Thomas Aquinas. It continues with the secularisation of the just war principles by illustrious legal experts such as Francisco de Vitoria, Alberico Gentili and Hugo Grotius. Finally, it emphasises the current wave of scepticism regarding the Just War Theory and culminates with the views shared by Michael Walzer and Noam Chomsky. The arduous process of this study validates the need for the Just War Theory, especially in our contemporary context, ravaged by military conflicts. Additionally, it furnishes crucial ethical rules for assessing both actual and hypothetical wars.

Keywords: *Christian conciliation; ethical guidelines; just war theory; Augustine of Hippo; Thomas Aquinas.*



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Introduction

War is customarily defined as an armed conflict between states or political communities, which involves hostilities of considerable duration and magnitude. It disrupts social and economic systems by engaging large numbers of human and material resources, and generates extreme brutality, destruction, mortality and trauma. Combatants are the first to suffer as they risk being injured or losing their lives. They undergo logistic hardships, witness various atrocities and experience great fear that can torment them and their families for decades. The civilian population is equally affected, as they may be compelled to leave their homes and suffer from shortages of food, water, and medical care. Furthermore, they become easy targets of violence, ranging from rape to bombing campaigns. A long distance from the front lines does not guarantee people's peaceful existence either. News regarding the loss of loved ones, the enemy invasion of certain territories, employment gaps that require fulfilment, limited access to supplies and utility services, inflation and many other aspects submit non-combatants to severe physical and mental suffering. In order to obtain the citizens' consent to engage in war and experience its ordeal, governments often invoke a rhetoric to justify the use of organized force. "War, after all, is a matter of life and death for its participants and requires the complicity of the citizens on whose behalf it is fought, so getting it right matters" (Haytock 5). Throughout history, political leaders, philosophers, theologians, and legal experts have postulated the belief that war, despite its devastating effects, may not be the worst option. Important objectives, undesirable outcomes, or imminent danger may justify military campaigns.

The Just War Theory, as it grew to be known in Europe and, which, with certain amendments, is still used nowadays to legitimize violence under legal, moral and religious consideration, is the result of a long process of crystallization to which illustrious theologians and legal theorists such as: Augustine of Hippo (354–430), Thomas Aquinas (1225–1274), Francisco de Vitoria (c1480–1546 CE), Alberico Gentili (1552–1608) and Hugo Grotius (1583–1645) have largely contributed.

The purpose of this article is to provide an in-depth exploration of their principles and the way in which they entered under the umbrella term of 'Just War Theory'. Furthermore, it stresses the current increase in doubt about the Just War Theory and the opinions shared by Michael Walzer and Noam Chomsky. Through an exhaustive process, this study validates the usefulness and relevance of the Just War Theory, particularly in our contemporary context, which is subject to military conflicts. Likewise, it offers crucial ethical guidelines for evaluating both real and hypothetical wars.

Christian conciliation between 'war' and 'justice'

The transition of Christianity to the dominant religion of the Roman Empire during the reign of the Roman Emperor Constantine the Great (306–337 AD), placed theologians in the unfortunate position of establishing a balance between Biblical precepts and the barbarian threat. As David A. Dombrowski observes, Christian warriors "could not fight for reasons of aggrandizement" and "could not kill innocent people in their efforts" (Dombrowski 135). In the era of spears and arrows, these two major restrictions were

hard to bear.

Augustine of Hippo (354 – 430) took the burden of creating a just theory of war, notably reconfiguring Ciceronian ideas to fit the framework of Christianity (Neste 2006, 12). In his seminal work *On the City of God Against the Pagans* (*De civitate Dei contra paganos*, AD 426), Augustine polarizes two coexisting places: the City of God (*De Civitate Dei*) which is inhabited by good Christians, lovers of God, and the Earthly City (*Civitas Terrana*), which is governed by pagans, “lovers of self” (Swift 112). War, according to him, is an inevitable commonality in both states. However, it can be justified in terms of goal and cause, authority, intention and conduct only in the City of God. In other words, the renowned theologian proves that under the right conditions, war can be absolved of its sinful nature in Christianity (Walzer 925). Augustine shared Cicero’s belief that all wars were meant to bring peace. Nonetheless, he differentiates the peace sought by Christians from that of pagans in a clear way:

... it is obvious that peace is the end sought for by war. For every man seeks peace by waging war, but no man seeks war by making peace.... even wicked men wage war to maintain the peace of their own circle, and wish that, if possible, all men belonged to them... It is thus that pride in its perversity apes God...instead of His rule, it seeks to impose a rule of its own upon its equals. It abhors, that is to say, the just peace of God, and loves its own unjust peace; but it cannot help loving peace of one kind or other. (Augustine 545)

The peace established in the name of God appears in opposition to earthly peace. The latter has been corrupted by the vicious desire of man to control what is not for his own dominion. War can be justified only when it is waged for the compensation of a damage previously suffered (Deane 160) or one that will potentially occur (Swift 135). Augustine also adds a moral dimension to the material justification of war. According to him, the violation of God’s rules and Christian doctrines is a sacrilege, which has to be punished (Ören 194). Crusades against non-Christians are now permissible, as per this viewpoint. Additionally, a just war must be declared only by a legitimate authority, namely a ruler appointed by divine grace. The ruler’s decisions must be obeyed by all subjects as he follows the will of God. Conducting war requires the right intentions, such as eradicating evil and achieving peace and success. Military conflicts that aim for power and vengeance are unjust, while those that embody a divine command or serve defensive purposes are justified. While Augustine advises against using force, a state has the right to use force when necessary to protect itself. If war becomes inevitable, Christians should conduct war in a fair and just manner, taking into account the well-being of society. Augustine asserts that just warfare should be based on the *love for the neighbour*, which is unselfish love for the other (Augustine 545). The pursuit of right conduct should guarantee the minimization of war casualties. Only soldiers should be legitimized to fight and their resort to violence should be within the principle of ‘proportionality’. The clergy and other non-combatants such as women and children should be protected and shown mercy if they fall into the hands of the enemy (Howard n. pg.).

Thomas Aquinas (1225–1274) revised Augustine’s criteria for a just war in his

Summary of Theology (Summa Theologiae), a 1485 compendium of the main theological teachings of the Roman Catholic Church (Ross 143). Aquinas claimed that the authority legitimized to wage war must be represented not by “a private individual”, but by “a common weal” (Aquinas 35). Thus, the final decision remains with a government that is morally and legally responsible for the welfare and defence of subjects from internal disturbances and external interference. The just cause of war should not be considered solely defensive, but rather punitive. “Those who are attacked should be attacked because they deserve it on account of some fault,” writes Aquinas. (*Summa Theologiae* 191) The right to punish was exclusively reserved for God’s representatives on earth. The difference between an ordinary punishment and the waging of war was determined by the actor being punished, namely “the collectives” (Evans 6). In reference to the principle of *rightful intention*, Aquinas underlines that belligerents should intend “the advancement of good, or the avoidance of evil” (Aquinas 249). Although death is inevitable in war, Aquinas urges that the loss of innocent lives should be minimized and purely accidental (Aquinas 249). Unlike his predecessor, Aquinas claims that clerics can fight as long as “wars are lawful and just in so far as they protect the poor and the entire common weal from suffering at the hands of the foe” (Aquinas 433). However, he cautions: “warlike pursuits are altogether incompatible with the duties of the clerics” (Aquinas 433).

The secularisation of just war principles

The discovery of the new World and the conquest of the so-called ‘Indies’, the rise of fully independent monarchies in England, Spain and France, and the revolutionizing of warfare through the invention of gunpowder and the emergence of new weapons, generate a shift in perspective regarding military conflicts (Alvarado 1992). Within this context, the prominent Spanish thinker, Francisco de Vitoria (c1480–1546CE) removes the concept of war from the theological field and connects it with the natural law, thus giving it a secular and universal dimension. In *The Law of War (De Jure Belli* 1532), Vitoria departs from the pre-existing theoretical framework by making significant amendments. The book comprises the genesis of the contemporary international law and human rights. Regarding the *legitimate authority*, Vitoria acknowledges that the waging of war and the conclusion of peace fall within the responsibility of a state council (Vitoria 308). The council is further, headed by a monarch, whose power is conferred by his subjects. This, however, does not mean that individual soldiers can be exempted from their responsibility for their actions on grounds of ignorance or good faith, as has previously happened (Vitoria 308). Vitoria exposes the paradoxical position of the “conscientious objector”, who oscillates between the recognition that the state is capable of error and the unswerving allegiance to the monarch (Holt n. pg.). In addition, Vitoria makes a differentiation between a war that is subjectively just, meaning that it is based on “the moral perceptions or states of mind of the warring parties” and an objectively just one, which “relates to the true or real moral state of things” (Coates 148). As a result, he disputes the legitimacy of the crusades offered by previous Christian texts and vindicates the sovereignty of non-Christian peoples and their right to religious freedom. Vitoria argues: “The aborigines undoubtedly had true dominion in both public and private

matters, just like Christians” (Vitoria 329). When writing about the conduct of a just war, Vitoria takes into account the plight of non-combatants (women, children, peasants, clergy, and foreigners) and the proportionality in the means used. (293) He stresses that the prohibition on killing innocents does not prevent their deaths via “collateral circumstances,” such as in case of a siege (293). Thus, the killing of the innocent can be expected but unintended. Cobelligerents must consider whether their actions are a suitable and proportionate response to the injury they have suffered. In Vitoria’s view: “No war is just... the conduct of which is manifestly more harmful to the State than it is good and advantageous; and this is true regardless of other claims or reasons advanced to make of it a just war” (293). The purpose of a just war is a victory “pursued with moderation and Christian humility” (294). In Vitoria’s view, true peace can be established through the arbitration of a separate world power, such as the church. Acting as God’s extension on earth and adhering to international law, the church is capable of fulfilling such a role. Vitoria qualifies the war horrors in the Indies as results of “the lack of attention paid to ecclesiastical authority in the whole affair of the conquest...” (352).

Alberico Gentili (1552–1608) made several other contributions to the analytical framework of war that are still broadly used today. In his 1598 treatise, *Three Books on the Law of War* (*De iure belli libri tres*), the Italian jurist identified the law of war as: “a part of the law of nations, distinct from domestic military law and suitable to govern relations between states only after peaceful dispute settlement mechanisms fail” (Vadi 192). It is important to credit him as being the first to provide a coherently articulated tripartite form of the law of war: *ius ad bellum* (the conditions under which states may resort to war), the *ius in bello* (the law that governs the way in which warfare is conducted), and the *ius post bellum* (the rules relating to the responsibility, title, and authority in post-conflict reconstruction). Gentili promoted the idea of the bilateral justice and conceptualized war as “a dispute settlement mechanism”, rather than “a punishment for breach of the law of nations” (180). This approach led to the humanization of war conduct and peace treaties. Likewise, Gentili limited war to a conflict between states rather than individuals, precluding this way the legitimacy of civil wars, brigandage and piracy. (309) Gentili opposed imperial expansion as well, but just like author Valentina Vadi suggests, this is a debatable subject, which reflects “the ambivalence of the early modern law of nations” (302). With regards to war conduct, Gentili pleaded for moderation, the protection of the innocent, and the safeguarding of religious and cultural heritage. He endorsed preventive war as an instrument of self-defence and a tool to prevent hegemony. Unlike his predecessors, Alberico Gentili pays exclusive attention to the restoring, managing, and maintaining peace, elevating “the *ius post bellum* to a central role in the jurisprudence of war” (Lesaffer 210). Gentili’s views regarding the termination of hostilities through mutual agreements demolishes the previously existing notions of “unconditional surrender on the part of the succumbed enemy” and the “terms of just peace dictated by the victorious side” (210).

Hugo Grotius (1583–1645), the so-called “patriarch of international law” brought a legalist approach to the concept of just war (Cools 2022). In his 1625 book *On the Law of War and Peace* (*De iure belli ac pacis*), the Dutch jurist defines war as a ‘status’ [non actio, sed status] (Grotius 1), namely ‘a state which may exist even while its operations

are not continued' (Thivet 2). Moreover, he makes a distinction between public wars (waged by nations) and private wars (waged by sub-national actors such as local strongmen, warlords, and militias). Public wars are subject to the laws of nations, which are universally valid for all states, no matter whether they are among the belligerents or not. Grotius believed that an international agreement concerning war conduct could reduce casualties and provide legal symmetry to individual combatants. The limitation of war (regardless of its punitive or defensive function) to an attribute of the state ensured – in Grotius's vision – peace and stability. Small private wars, however, had to be proliferated as they contributed to instability and conflict both domestically and within international society. States were allowed to wage war against sub-national actors in order to maintain its internal stability. At the same time, sub-national actors could be responsible for dragging nations into conflict. The principle of the *legal symmetry* conferred equal rights to individuals who were fighting in a public war on behalf of a proper authority on either side. For instance, fighting for one's nation allows individuals to forgo the usual prohibitions on the use of violence. Those who fought without proper authorization faced *legal asymmetries*. They could not be considered proper combatants and therefore were not entitled to the protections of international law.

Throughout the following decades, contractualists such as Thomas Hobbes (1588–1679), John Locke (1632–1704), Jean-Jacques Rousseau (1712–1778) and Immanuel Kant (1724–1804), have developed some of the ideas presented above, but they also considerably departed from the Just War tradition. Associating war with the *state of nature*, an existence characterized by competition, lawlessness and chaos¹, a glorified flaw of human nature², the lack of reason³ or with the weakness of the state⁴, these illustrious thinkers focused more on providing an ethical litmus test for war, rather than a plea for its justification. At the same time, a clear departure from the Just War tradition is initiated by the Prussian military theorist General Carl von Clausewitz (1780–1831). His concept of the “absolute war” involved the destruction of the opposing force and the attainment of a political decision by using physical power to its utmost extent (Clausewitz 226). The simple disarming of an opponent could generate fierce resentment, when it recalibrates its position. In this sense, the use of extreme force becomes legitimate. For Clausewitz, moderation has no place in war when it comes to the achievement of “final

¹ “the state of men without civil society, which state we may properly call the state of nature, is nothing else but a mere war of all against all; and in that war all men have equal right unto all things” (Hobbs 101).

² “War itself requires no particular motivation, but appears to be ingrained in human nature and is even valued as something noble; indeed, the desire for glory inspires men to it, even independently of selfish motives” (Kant 123).

³ “A criminal who, having renounced reason ... hath, by the unjust violence and slaughter he hath committed upon one, declared war against all mankind, and therefore may be destroyed as a lion or tyger, one of those wild savage beasts with whom men can have no society nor security. And upon this is grounded the great law of Nature” (Locke 136).

⁴ “War then is a relation, not between man and man but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders” (Rousseau 6).

victory” (226).

Most of the Just War principles were coalesced into a coherent body of thought during the Hague Peace Conferences (1899 and 1907), and later during the Geneva Convention (1864–1949). The multilateral treaties resulted on these occasions state: “the main rules, restrictions, and prohibitions concerning the use of violence and different methods of warfare in international and non-international armed conflicts” (Bouchet-Saulnier 391). They establish among many others, the protection of civilians and their property; the treatment of the wounded, deserters, prisoners of war, hostages, partisans and spies; the regulations regarding truces and prisoner exchange; parole of former rebel troops; the conditions of any armistice and respect for human life (Gardam 7).

Contemporary perspectives on war

The outbreak of the First World War (1914–1918) brought with it a revival of the Just War Theory. Both German and British theologians endeavoured to justify the military actions undertaken by their countries. Four years of global combat and the loss of around 8.5 million soldiers and 13 million civilians, were motivated by Cardinal James Gibbons as follows: “Our Lord Jesus Christ does not stand for peace at any price... If by Pacifism is meant the teaching that the use of force is never justifiable, then, however well meant, it is mistaken, and it is hurtful to the life of our country” (Bridgeman 256).

The Second World War (1939–1945), which culminated with the atomic bombings of Hiroshima and Nagasaki (on 6 and 9 August 1945), the geopolitical tension between the United States and the Soviet Union, known as the Cold War (1947–1991) and particularly the Vietnam War (1955–1975), generated a thorough reassessment of the just war principles. The new realities of war prompted scholars to divide into groups: the realists and the pacifists (Lazar n. pg.). The first reject the very concept of a just war. The second assert that no plausible moral theory could license the exceptional horrors of war (Lazar n. pg.).

In *Just and Unjust Wars* (1977), Michael Walzer delves into a range of ethical dilemmas and controversial issues, including proportionality, civilian casualties, non-combatant immunity and the use of force. Through historical case studies such as the Vietnam War and the Israeli-Palestinian conflict, Walzer offers insights into the complexities of moral decision-making in times of war. The author asserts that:

War is a world apart, where life itself is at stake, where human nature is reduced to its elemental forms, where self-interest and necessity prevail. Here men and women do what they must to save themselves and their communities, and morality and law have no place. *Inter arma silent leges*: in time of war, the law is silent. (Walzer 3)

The Gulf War (1990–1991) raised a great wave of scepticism regarding the Just War Theory. Although its advocates continued to defend it by outlining its “positive contributions to public policy debate” (Smock 10), numerous opponents voiced their opinions particularly during events such as the 1992 symposium sponsored by the United

States Institute of Peace. As modern warfare cannot be morally justified, just-war theory is no longer viable for them. It only works as “a pretext and a cover for arbitrary violence” (Little xxxii). David Little exposes its “vagueness and indeterminacy of the standards” and claims that they encourage people “to condone the use of force prematurely, rather than to seek peaceful alternative” (xxxii). Langan criticizes the just-war theory for its dependence on nation-states, saying that their future existence and legitimacy are actually questionable (Smock 6). Geyer dismisses the just-war tradition claiming that it “is preoccupied with intention and discounts consequences” (qtd. in Smock 8).

Modern military activities are now integrated with almost all economic and technological systems, making them legitimate targets and posing a risk of “immense non-military human costs” (Smock 8). The increasing destructiveness of modern weapons makes Susan Thistlethwaite propose a reformulation of the Just War Theory into a just-peace doctrine, “focusing on common security against violence” (qtd. in Smock 35). Such an approach is meant to rationalize the decision of waging war, protect human life, enforce the restrictions imposed by the United Nations and eventually, eliminate the institution of war. Robert Johansen dismisses the reformulation of the Just War Theory underlying its endorsement of the use of force and promote “a crusading spirit in which triumphalism prevails” (qtd. in Smock 9). In his view, the just war theory is out of date for at least four reasons:

Just-war theory is very difficult to apply impartially. The UN Charter provides a greater constraint on the use of force than just-war thinking does. It reflects a very unsophisticated attitude, toward what causes war. Just-war practitioners usually do not take seriously enough alternative means available for handling security questions and conflict resolution (qtd. in Smock xxv).

Finally, numerous specialists who happen to be Christians, but also Jews and Muslims, feared that just-war theory may legitimise religious violence and unleash “greater intransigence and increased bloodshed” (Smock 12).

Following the 9/11 terrorist attacks, the Just War Theory has once again become the centre of attention in countless conferences organized all over the world. Conference proceedings such *War Crimes and Collective Wrongdoing* (2001) edited by Aleksandar Jokic, *Human Rights and Military Intervention* (2002) by Alexander Moseley and Richard Norman, and *Just War in a Comparative Perspective* (2003) by Paul Robinson question the nature of war crimes, nationalism, ethnic cleansing and collective responsibility from a variety of moral, political and legal perspectives. During his speech on Just War Theory delivered at West Point Academy on April 20, 2006, Noam Chomsky underlines that:

literature merits careful attention, but is ultimately not very instructive about just war. Secondly, the notions of human nature should be at the heart of the discussion although serious inquiry into this is still in its early stages. Thirdly, the codifications seem to be sensible, but actions in the real world, all too often,

reinforce a famous maxim of Tacitus, that “the strong do as they can, while the weak do as they must”. (Chomsky n. pg.)

Converting theory into reality is an arduous and lengthy process. The intention to restrict armed conflicts based on moral perceptions is often thwarted by interests that defy the ethical order of things. Nonetheless, the existence of a coherent Just War Theory enforced by international treaties, is imperative to avoid futile human and economic losses.

Conclusion

The Just War Theory plays an instrumental role in the debate on warfare. It persuades people to engage in war and endure its hardships by legitimizing the use of force and establishing specific conduit boundaries. Renowned thinkers such as Saint Augustine, Saint Thomas Aquinas, Francisco de Vitoria, Alberico Gentili and Hugo Grotius managed to crystallize a series of principles that are still valid today and, if strictly followed, can help prevent unjust wars and encourage alternative conflict resolution methods.

Nowadays, Just War Theory emphasizes that ethical rules should be binding on everyone, ensuring fairness and accountability. By addressing questions about proportionality and discrimination, it limits the use of force. Ethical restraint prevents underhanded tactics and excessive vengeance, promoting stability and post-war relations. Despite numerous opponents who claim that the Just War Theory may be out-dated or difficult to apply impartially, respecting and encouraging its existence is crucial for the survival of the civilized world we know. Albert Einstein is frequently quoted as saying: “I know not with what weapons World War III will be fought, but World War IV will be fought with sticks and stones” (qtd. in Calaprice 173). The end of the world is a certainty when the principles of Just War Theory are abandoned. By examining the evolution of the Just War Theory and highlighting its fundamental principles, this article provides a consistent framework for future conversations about real or hypothetical wars.

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