



## The idea of just war theory

1 Just war theory

2 Traditional Theory

Domestic analogy

Independence

Jus ad bellum

Jus in bello

Just post bellum

3 Dilemmas / challenges

Fighting well & winning

Equality of combatants

Just cause

4 Subsistence Wars

- War is ...
  - ... widespread and intentional armed conflict between political communities
  - ... hell.
- Three traditions:
  - (1) Realist tradition: “All is fair in love and war.”
  - (2) Pacifism: No war is ever morally justified.
  - (3) Just War Theory\*: Some wars are justified and moral standards apply.
- Just war theory is a version of non-ideal theory, it is pluralist (combining elements of consequentialist and non-consequentialist reasoning), and it has multiple sources (moral reasoning, historical cases, international law).



## Three assumptions of traditional just war theory

### (1) Three components

#### ***Jus ad bellum* [When and why war may be permissible]**

Just cause

Proper and legitimate authority

Proportionality / Necessity (last resort) / Success

#### ***Just in bello* [Whom to kill, how and when in war]**

Proportionality / Necessity / Success

Basic equality of combatants

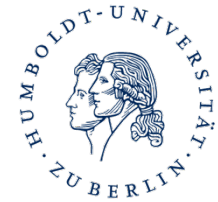
Distinction between combatants and non-combatants

#### ***Jus post bellum* [What to do when the fighting is over]**

### (2) The independence of the different components

### (3) The place of morality / domestic analogy / game changer

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## **Morality, the domestic analogy and the game changer**

### **The place of morality**

When morally assessing war and its conduct, we can rely on the moral categories (rights, responsibility, punishment) familiar from the context of individual and domestic morality.

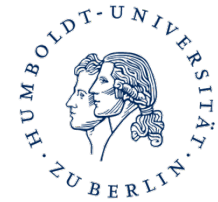
### **The domestic analogy thesis**

Because we can think (within limits) of states in analogy to individuals, the relation between states in analogy to relations between individuals, and international society in analogy to domestic society, our moral categories apply to the conduct of states.

### **The game changer assumption**

The fact that we are engaged in war makes a fundamental difference for how standard categories apply to the conduct of individuals.

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## **The independence of different components**

The components of just war theory are independent of each other because:

- (1) They address different groups of individuals with different and independent spheres of responsibility (statesmen vs. soldiers).
- (2) Just wars can be fought unjustly (Bomber Harris?) and unjust wars can be fought justly (Rommel?).
- (3) Achieving a just a cause and fighting well are independent moral requirements.
- (4) Usually, all participants believe to be fighting in a just war and it is hence to the benefit of all to maintain independent *jus in bello*.



## ***Jus ad bellum* (1/2): The condition of a just cause**

### **Key idea**

The only just cause for resort to war is to resist and defend against aggression, which is the forceful violation of an individual's rights (to life, liberty, security) or nation's basic rights (to territorial integrity, sovereignty and self-determination).

### **The particular wrong of aggression**

The aggressor forces the victim to risk their lives for the sake of their rights.

### **Cases**

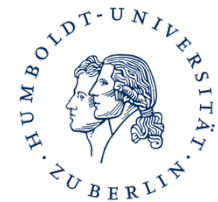
Standard: Self-defence and other defence against external attack

Non-standard: Secession, civil war, human rights violation

### **Hard questions**

Anticipation and first strike: Does the aggression have to have taken place?

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***Jus ad bellum* (2/2): The conditions of proportionality, necessity and success**

**Proportionality**

Idea: War may be waged only if the benefits of war are proportional to the costs of war accruing to all affected (wide/narrow).

Question: Do all costs and benefits matter?

**Necessity**

Idea: War may be waged only as an option of last resort.

Question: Is this a non-binary question of risks, uncertainty and expected costs?

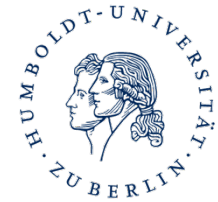
**Success**

Idea: War may be waged only if there is a reasonable chance of success.

Question: Objective/subjective? Really distinct? Really plausible?

**Note:** Underlying motivation of these conditions is consequentialist in spirit.

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## ***Jus in bello* (1/2): The equality of combatants and liability to being killed**

### **The challenge**

Individuals have a right not to be killed. How can we explain that combatants may be killed (an account of liability?) whereas non-combatants must not?

### **The standard equality of combatants assumption**

Combatants X and Y, regardless of what side they are fighting for, are equally liable to being killed and have a right to kill because

- a) X poses a threat to the life of Y
- b) Y poses a threat to the life of X
- c) It is permissible to kill threats/attackers in self-defence

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## ***Jus in bello* (2/2): Non-combatant immunity and double effect**

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### **Idea**

Non-combatants are immune from attack and must not be killed.

### **Problem**

Non-combatants are almost inevitably endangered by military action.

### **The doctrine of double effect**

It may be permitted to kill non-combatants, only if:

- 1) The act is an otherwise permissible act of war
- 2) The intended effects are permissible (kill combatant, destroy military supply)
- 3) Only the permissible effects are intended & killing civilians merely foreseen
- 4) The good intended effect is proportionate to the evil foreseen effect

**Objections:** Too weak (due care)? Too strong (acting on condition that)?





### ***Jus post bellum***

#### **Termination and limited aims**

Fighting has to end as soon as the just cause has been achieved.

#### **Rights vindication**

Those rights, the violation of which constituted the original aggression, ought to be restored after the fighting ends.

#### **Compensation**

Victims on both sides, for example non-combatants on the defeated side, will have to be compensated for losses and injuries.

#### **Discriminate punishment**

War criminals on all sides have to be punished.

**Question:** Link between *ad bellum* and *post bellum*?

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## Dilemma: Fighting well and winning

### Problem

There is a tension between *jus ad bellum* and *just in bello*. Some just wars might be won only if they are fought unjustly.

**Option 1:** Give up *jus in bello* and emphasize importance of achieving just cause

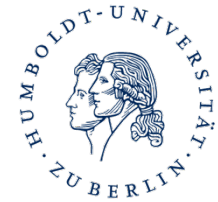
**Option 2:** *Jus in bello* is to be respected, even if the heavens fall

**Option 3:** Justice of one's cause may make a difference for how to fight

**Option 4:** *Jus in bello* may be overridden under exceptional circumstances

> Each option has problems but (3) and (4) appear most promising.

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## **The equality of combatants and the idea of the game changer (McMahan)**

### **Traditional just war theory**

- A soldier may fight an unjust war and still fight justly (independence)
- Just and unjust combatants are subject to *jus in bello* (combatant equality)
- Standard account of liability to attack: Threat.

### **Case: Wittgenstein in WW1**

### **Challenge**

Ordinarily, posing a threat does not make you liable to attack (police & murder).

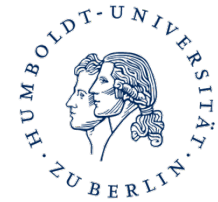
### **Alternative**

Responsibility for an objectively unjustified threat of harm makes liable.

### **Implications**

More pacifist (less killing justified), resist the game changer (one morality).

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## **The challenge to just cause**

### **The standard assumptions**

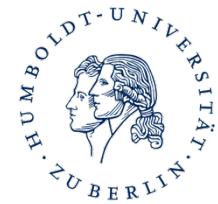
The only just cause for resort to war is to resist and defend against aggression, which is the forceful violation of an individual's rights (to life, liberty, security) or a nation's basic rights (to territorial integrity, sovereignty and self-determination).

### **McMahan's proposed revisions**

- Just cause matters for what soldiers may do in war (deny independence).
- Account of just cause: There is a just cause when P is morally responsible for action that threatens to wrong V and makes P liable to military attack.
- More expansive list of just causes: Humanitarian intervention, prevention, deterrence, etc.

*May the alleviation of poverty be a just cause for war?*

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## Case 1 for subsistence wars: Self-defence against severe deprivation (1/2)

### The first scenario: Severe deprivation

- **Right:** The poor have a right not to be subject to severe deprivation
- **Rights violation:** The affluent violate this right by subjecting the poor to severe deprivation, e.g. tariffs, patents, resource curse, etc
- **Claim:** The poor have a just cause for war against the affluent

### Challenge: Could self-defence against deprivation meet criteria for just cause?

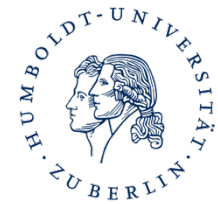
Absent other special circumstances, there might be a just cause for war only if:

- **Criterion a):** Jointly held rights to self-determination and territory are
- **Criterion b):** Subject to an armed attack.

*Note the similarities to earlier discussion (e.g. Pogge/Singer/Cohen) about:*

- *The causes of poverty/deprivation*
- *The nature of the rights violation by affluent*

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## **Case 1 for subsistence wars: Self-defence against severe deprivation (2/2)**

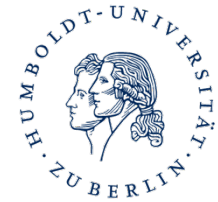
### **Meeting condition a): The right kind of right is violated**

- First strategy: Severe deprivation violates jointly held rights to political self-determination because (i) poor cannot exercise political rights, (ii) collectively spend all resources on subsistence, (iii) poverty is threat to national security.
- Second strategy: Jointly held rights to self-determination matter only as instruments for individual prospects to decent life, which is under attack more directly by being subject to deprivation.

### **Meeting condition b): It really is a kind of self-defence**

- Wide understanding of self-defence: It is not the military and kinetic attack that matters but the violation of a fundamental right.
- Intuitive case: Self-defence against nuclear testing offshore.

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## **Case 2 for subsistence wars: Self-defence against failure to help**

Might the poor have a just cause for war even if the affluent merely fail to assist?

### **Scepticism: No subsistence wars against those failing to assist**

Failure to help is merely to allow harm, which is different from posing a threat, which is the only warrant for waging war.

#### **Response 1**

By not helping the affluent are responsible for the fact that poor are subject to an ongoing threat, which is relevantly similar to responsibility for threat.

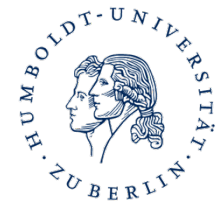
#### **Response 2**

Even if failure to help is less seriously wrong than harming, failure to help might be sufficiently wrong depending on the numbers affected.

#### **Response 3**

Intuitively: What if the child in the pond had a gun?

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## Could a subsistence war meet the other criteria of just war theory?

### 1. Liability to attack

Who (if anyone) among the affluent population is liable to attack?

- Problem : The affluent population may not intend the harm

### 2. Proportionality

Is killing in wars of subsistence ever proportionate?

- Problem: The affluent population's individual responsibility might be small

### 3. Success Condition

Do subsistence wars ever stand a reasonable chance of securing subsistence?

- Problem: Those most deprived may have smallest chance of winning.

### 4. Other jus in bello criteria

Can non-combatant immunity ever be respected?

- Problem: The only means of the poor could be asymmetric warfare?

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