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Critically Evaluate at Least Two Positions that can be Found in Contemporary Debates about Just War Theory

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The following essay will present an evaluation of the just war theory using the 1st Gulf war as a case study. I have chosen this case as the intervention reveals a number of issues regarding applying just war theory to contemporary conflict. It was one of the first conflicts that combined a multinational force with the support of the international community and legitimised under the auspices of the United Nations and international law. Thus debates on the just war theory move beyond the responsibility of the sovereign nation state to multinational and supra-national justifications for war. This has set the precedent for evaluating the justification of conflict since then.

The just war theory focuses around the just cause of going to war and just conduct during war, and this criteria will be introduced before providing different theoretical positions on just war theory. Attention will be made to Pacifism, Realism and Liberalism. The Iraq case study will then be introduced forming the main bulk of analysis, expanding on the positions of just cause and just conduct within the just war framework. Throughout this, Realism and Liberalism will be offered as contending perspectives within just war theory in explaining the behaviour of states in conflict. The final part of the argument develops the moral limitations of just cause and just conduct to consider the moral equality of soldiers.

Jus ad Bellum and Jus in Bello

Jus ad Bellum: The Just Cause

The essential criteria for *jus ad bellum* concern the principles that resorting to war is seen as a just cause proclaimed by legitimate authority. This has origin in the Thomas Aquinas who also added that war must not be made in the desire to hurt, or a thirst for power[1]. Originally this legitimate authority was present in the sovereign head of a political community, but contemporary conflict has developed to considerations of international law. Hugo Grotius is influential in this, developing theory on rights of war and peace to extend intervention in (for what would not be deemed humanitarian crises) as a right that states have, or possibly an obligation[2]. Thus inter-governmental institutions, such as the U.N have the legitimate authority to permit the use of force, or may be required to sanction this force[3]. War also must represent the right intention, not only through cause but through the motives in responding. Following on from this is that war is seen as the last resort; all other options such as diplomacy have to be exhausted, and the only option left is armed conflict.

Jus in Bello: The Just Conduct

Jus in bello, in setting the conditions for conduct during war is explicit in that non-combatants have immunity, and should be protected during conflict. In this sense proportionality of means is crucial. Military actions must not inflict more harm than good as this is inconsistent and thus contradictory to the justifications set out in the proportionality of *jus ad bellum*. This would thus concern political and military strategic concerns for the choice of weaponry and establishing legitimate and non-legitimate targets. These brief outlines of the respective levels of criteria will be the focus of extensive attention in the case study. The criteria described above have been selected as the most important

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in terms of this argument. The full list of criteria is articulated by Robert L. Holmes in 'can war be morally justified'[4].

Positions in the Just War Theory Debate

Pacifism, Realism and Liberalism

War, for pacifists can never be justified as all acts of violence of any kind are seen as morally unacceptable. With regard to just war theory, pacifism renders the theory as self contradictory[5]. This position has strong emotive support in the experiences of total war and the increasing technological advancements of modern weaponry. Nuclear proliferation presents a situation where the weaponry would have no principle of proportionality. What this does is separate war from moral limitations due to the indiscriminate potential of weaponry[6]. In criticising just war theory, the nature of war is misperceived, 'confusing objective or factual limitation with moral potential, and ignoring the inherent tendency of all war to sacrifice morality to political expediency'[7].

A realist position would possibly share this distrust of the just war theory, in relation to the Machiavellian reason of the state, national interest becoming the precedent of state foreign policy in how they conduct relations with other states. Pacifism could thus be deemed too idealistic, and unrealistic. This permeates from realism into liberalism also, if we consider the democratic peace thesis, originating in utopian Kantian thought. Michael Doyle[8] accepts that liberal democracies are just as war prone as non democratic states and sometimes justify military intervention in terms of promoting long term international peace. In this respect, war must be assumed as congenial to the international system, but this does not mean it cannot be subjected to ethical and moral limitations.

The contemporary international context of war has created strains on the just war theory, and one of the essential developments the case study shows is concern for responsibility. The case study will address both *jus ad bellum* and *jus in bello* respectively, offering realist and liberal interpretations to compliment analysis with differing theoretical positions. The argument will end by introducing responsibility to the argument, concerning international law and justice with consideration to the instruments of war itself, soldiers. To be attended to is the moral space between the right to self defence converting to a right to kill someone.

Testing the Just War Theory in Contemporary Conflict

1st Persian Gulf War (1990-1991)

This case helps to illustrate the different theoretical positions regarding just war theory. The 1st Gulf war was novel in the multinational support generated and the legitimacy of the conflict in relation to international law. Integral to this analysis is to determine whether the war was just according to just war criteria compared with other theoretical positions. Realist arguments and liberal internationalism offer secular frameworks in determining the morality or permissibility of conflict. Realist positions view war from perspectives of self-defence, so national interest and security are paramount, which questions if moral concepts should be considered in conflict. Liberal internationalism, advocating the globalisation of democracy and proliferation of Doyle's 'zone of peace'[9], would place collective security as an integral principle of multi-lateral action, such as this case. Under the auspices of inter-governmental institutions like the U.N, interventions of this kind aim to control or subdue the extents to which the national interest is pursued; such as unilateral action.

Importantly, just war theory operates on two levels, the purpose of which to provide internal criticism of the cause and conduct in war. This is important as one does not qualify the other; both are independent and must be satisfied accordingly within the tradition. Thus dualism of *jus ad bellum* and *jus in bello* restrain on decisions made both by political agents and military strategists. This works in favour of the theory, through separating the subjective cause and objective means, considerations of morality are not consequential. Put simply, a just cause may not produce a just outcome; it is dependent on different levels of criteria. Applied to the first Iraq war, a precedent was set in that morality becomes a condition in Western countries that military strategy has to meet[10].

Jus ad Bellum

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Just Cause and Legitimate Authority

Iraq invaded Kuwait in 1990[11] to unanimous international condemnation. This act of Iraqi aggression compromised the political sovereignty and territorial integrity of Kuwait, inferring the inherent right to self-defence according to the U.N charter[12]. If international law stipulates that acts of war are justified in self-defence against aggression, would this deem it permissible for foreign intervention? Problematically, the international law framework undermines the concept of the 'just war' by deeming the use of force an illegitimate instrument of state policy to settle disputes. The U.N charter, however, remains ambiguous regarding self-defence and action taken by the international society of states to repel aggression. Thus, in terms of international law, the use of force, in instances of humanitarian crises makes the use of force permissible. This can be identified in consultation of Chapter VII[13] of the U.N charter where article 42 of the charter authorised military force to repel Iraq out of Kuwait[14].

There are a number of issues to be raised here. If legitimacy for military action is derived from international law, then this could render the just war theory obsolete. Legal positivist arguments would deem that law is law regardless. In this respect, does international law become a pre-requisite, or the pre-amble to justifying conflict? In support, it does seem to offer objective criteria, whereas *jus ad bellum* is inherently subjective. Both the allied forces and the Iraqi state may have maintained a subjective belief that their respective actions inhibited a just cause. One result of the first Iraq war is that no moral justification for war can be made without a recognised legal foundation.

Developing from earlier orthodox Christian just war theorists such as Augustine, the scope within *jus ad bellum* has been markedly reduced. Couched in religious language, he expressed that 'There are some whose killing God orders'[15], which further emphasises the subjective interpretations that could be gathered from this. If say, this was applied to a contemporary context, we can still imagine frightening consequences. In the war on terror, the 'Bush Doctrine' set out a foreign policy to justify military campaigns in Afghanistan and Iraq based on pre-emptive action in self-defence[16]. This created a dichotomy between the forces of good and evil, between liberal democracy and illiberal autocracies. This could create a paradox where moral limitations on war could be replaced by subjective impulses based on religious conviction, similar to the justification of mass slaughter during the crusades[17], done in the name of protecting territory (Christian Jerusalem).

Right Intention

Developing *jus ad bellum*, we arrive at the concern of right intention. From engaging with the literature, the objectives justifying intervention were made explicit. The allied intervention in Kuwait was not aimed at the destruction of the Iraqi state, as in doing so this would violate Iraqi territorial integrity. Instead, the intention was to reverse the occupation of Kuwait[18]. The nature of modern conflict in the context of legitimate authority is important here. The allied intervention in Kuwait encompassed a combined multinational force, authorised with the legitimacy of international consensus. The point suggested is that modern conflict is continually deliberated through entrenched moral concerns in the international system.

Can this process however be explained through other theoretical frameworks? Interestingly, the multinational nature of the 1st Gulf war deviates from classical just war thinking, as the focus is no longer on the political community with the sovereign as the principle actor in the deployment of armed force[19]. There are a number of issues to consider. The U.N has not shown the necessary organisation in order to take appropriate decisions as stipulated in the U.N charter, such as chapter VII. James Johnson thus argues that the institution cannot be capable of forming and justifying arguments relating to *jus ad bellum* in relation to just war theory[20]. This may also provide argument against a legal positivist position and subsequently place the sovereign state as the central unit of analysis in the international system. At the present moment in time, there has not been enough experience of war justified in this way for there to be substantive theory. Theorising on the international co-operation that this example illustrates is in its infancy. One may argue then that the just war theory, in its focus on the sovereign nation state may struggle to fit the new levels of criteria. International law has narrowed the objective justifications explicitly to self-defence. Developments need to be made in this respect also, with reference to article 51 of the U.N charter concerning self-defence. Clarification needs to be made regarding positions on pre-emptive action, which remain ambiguous. This is of vast importance concerning the recent war on terror, as a more objective and clarified article would allow the

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falsification of anticipatory military action, evident in the war on terror in Afghanistan and Iraq.

Liberalism, specifically with regard to liberal internationalism develops the justifications for armed conflict, moving beyond specific national interest but to secure long term peace. Secular considerations on collective security, originating in the Kantian 'pacific union'[21] as envisaged in the democratic proliferation of peace. The allied intervention in this context is to create collective security alliances in order to establish peace through spreading liberal democracy. A paradox seems to emerge then where military intervention has become a 'necessary instrument of humanitarianism'[22]. A criticism of this is in its ethnocentrism. This calls into question the 'right intention' of *jus ad bellum*. The intervention may well form foreign policies that are based in normative assumptions about the nature of war and peace and what the international system should resemble. The normative model of the democratic peace thesis for example is the assumption in its validity, what ought to be is a particular conception. This is in the same way that just war theory adopts subjective criteria determining the permissibility of war. War then cannot be ethical on both sides according to just war theory. If it was then war would never be permissible. War can be subjectively just on both sides, but not objectively. Despite these criticisms, this case illustrates that Iraqi aggression can be identified objectively, as they fired the first shot[23]. In this instance, it can be confidently argued that there was present, a right intention.

Last Resort

The principle of last resort is difficult, and in application to the just war theory, it, at times becomes unproductive. Michael Walzer[24] points this out by indicating that there is always something one could do, one last economic sanction, other attempts at resolving matters through diplomatic means. This assumption would make war morally impermissible. This maxim, I believe should not be taken literally. This is because hindsight can be inferred in the opposite direction. Inaction to an event such as the Iraqi invasion of Kuwait would have brought vehement criticisms, possibly claiming that action should have been taken pre-emptively. Military intervention on behalf of the Kuwaiti's would be permissible, even obligatory after the Iraqi invasion. One could satisfactorily argue that the last resort maxim was pursued, leaving military action the only choice. In consideration of *jus in bello*, by continuing economic sanctions this would be detrimental to the lives of non-combatants. Proportionality, the Iraqi people would suffer from this that the agents and political institutions of the Iraqi regime. We must also maintain that the just cause is qualified in opposition to behaviour of Saddam Hussein's regime, not the citizenry.

Jus in Bello

Proportionality of Means and Discrimination between Combatants and Non-combatants

In defence of the Just war theory, proportionality provides an important medium with which to constrain conflict and places morality to the centre of debates regarding foreign policy and military strategy. One of the main strengths of just war theory is to provide internal criticism. Walzer makes the distinction that just war theory is a doctrine of people who expect and do sanction force, those involved in the agency of political and military strategy[25]. So importantly, the theory holds political and military personnel accountable. In this case, the principle of non-intervention was maintained. This was achieved through the restoration of the Kuwaiti status-quo and the removal of the aggressor from Kuwait's territorial boundaries. Importantly, the allies did not advance on Iraq itself, as this would have constituted a violation of Iraqi political and territorial sovereignty. With respect to both the Iraqi and the Kuwaiti status quo, regime change would have to be internal.

In relation to discrimination between combatants and non-combatants, careful consideration was made by allied forces to strike at military and strategic targets, aimed at the destruction of the Iraqi military capabilities. In this framework military strategy and morality become intertwined. A realist position would seek to dismiss the meaningfulness of moral argument[26]. Realism forms another secular argument, theorising that force is distinct and separate from morality. In this paradigm then, issues of justice should never proscribe the behaviour of the state, and state behaviour is explained through the pursuit of national security and interest. In proportionality arguments, strategy plays an integral role. Would the U.S have come to Kuwait's aid if they were uncertain on their chances of success? Albert Pierce links realism and strategy together coherently, describing war as a function of state

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interests[27]. Pierce then develops his argument to try and link ethics and strategy, and cleverly does this by developing the realist argument of Clausewitz. For Clausewitz, the political objective drives everything[28], but there are limits to this. Once effort and cost exceed the value of a political objective, then this objective must then be replaced by peace[29]. The focus on objectives here acts to restrain what he called 'primordial violence, hatred and enmity'[30]. The conclusions from this put a price on political objectives, which in terms of just war theory reaffirms its critical edge. As well as being a justifying tool for war, it can limit both the cause and conduct of war. There is thus evidence of congruence between strategy and just war theory.

Moral Equality of Soldiers- A Paradox

How does the just war theory develop from a right to self-defence, ubiquitous in *jus ad bellum* convert to a forfeiture of the right to life of a perceived enemy? This argument is developed by David Rodin to ascertain how soldiers become the appropriate objects of violence[31]. As the Iraq case showed, Iraq as the aggressor state forfeited its own right to political and territorial sovereignty by invading Kuwait, yet as Rodin points out, there is a gap in the moral explanation between the right to act against an aggressive state and the right to act against soldiers[32]. As objects and instruments of the aggressor state, then killing must be justified. This is supported through the paradigm of the actual conflict.

A great deal of the fighting took place in the desert, acting as a conventional battlefield, where the only distinction to be made was between allied combatants and enemy combatants. In this context, the moral equality of soldiers follows that each soldier has an equal right to pursue everything in their own power for self-preservation. This notion of self-preservation then seems to undermine *jus in bello*, as there is a potential for a vacuum of responsibility on the part of soldiers. In the conclusion of the war, allied forces attacked the retreating Iraqi army, described as a 'turkey shoot'[33]. This asymmetry between the military capabilities of the allies and the Iraqi's in this instance must demand proportionality to extend *jus in bello* to the conduct of individual soldiers. In the example described, when an army is in retreat, there is no moral equality between soldiers, the allies should have been held responsible for their actions.

Conclusion

This essay has aimed to identify the main moral positions that exist within just war theory and apply them to an appropriate case study. What has been discovered is that just war theory maintains its strength as constraint to the behaviour of states regarding justifying war and their conduct during. It seems that morality and principles of justice are now contingent to how states provide legitimacy and justification to decisions regarding conflict. Realism and Liberalism offer the most compelling positions to question the role of moral limitations in the formation of political and military strategy. This can be applied to the Middle East, where there seems to be a dichotomous relationship being played out between (Western) liberal democratic states and non democratic states, which is dangerous reducing just war theory as too subjective and rendering it potentially obsolete.

The final part addresses the need for more strident measures to be taken to ensure notions of *jus in bello* apply to individual soldiers. Moral equality of soldiers is justified in self-defence, but not in instances of retreat, as this simply sanctions mass murder. Further analysis would focus on developing inter-governmental institutions as agents of applying just war theory and the importance of the relationship between just war theory and the formation of international law.

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