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Just War and Political Judgement in Theory and Practice ¹

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ABSTRACT

Critics from the political right such as Carl Schmitt argue that the notion of Just War undermines the possibility of establishing restraints in the conduct of war by precluding the possibility of a 'just enemy'. Critics from the political left agree with the sentiment concerning the conduct of war, if not with the Schmittian approval of the notion of a 'just enemy', but push their critique further, arguing that Just War, which they understand as constituting a theory, actually legitimises war. Both of these positions have some purchase in so far as they point to a degree of self-righteousness which may sometimes accompany the sense that one is engaged in a Just War – but such self-righteousness is not a necessary concomitant of just war thinking. Part of the problem for both sets of critics is that they understand just war thinking in theoretical terms, or as necessarily linked to a particular tradition. Rather, just war thinking is better understood as providing a set of categories which help us to decide whether the resort to violence and coercion might be the morally justifiable response to a particular situation, all things considered. Such categories represent the beginning of the process of exercising political judgement on the matter in hand, and, in principle, are neither right wing nor left-wing, radical or conservative – nor is just war thinking necessarily state-centric (any more than Clausewitzian realism, which tells us when the resort to force might be *effective* is necessarily state-centric). In short, just war thinking needs to be understood as contributing to a '*phronetic*', practice-oriented account of (international) politics.

¹ Thanks for comments to Stephanie Carvin, Toni Erskine, Andrew Jillions, and Pietro Maffettone and to the participants in the Colloquium *The Just War: The State of the Art* USIP, Washington DC, August, 200; any errors that remain are, of course, my responsibility.

The aim of this chapter is to defend the position that while the categories associated with just war *thinking* may help us to exercise judgement in particular cases, we should avoid Just War *theorizing* altogether.² The intended distinction here is best summarised by saying that whereas those who look to Just War theory expect to be given *answers*, those who prefer to talk of just war thinking hope to discover good *questions*. In the first case, the expectation is that Just War theory will tell us whether a particular war, or a particular action in a war, is just; in the second case, the hope is that just war thinking will help us to make the wider judgement as to whether, in the particular circumstances of the case, a resort to force, or a particular forceful action, would be the right thing to do, all things considered. In the first part of the chapter this conception of the just war will be employed to defend the notion from its enemies, but also from some of its friends. The second part will examine the conventional categories used in just war thinking, with a view to showing that they are best understood as the basis for some good questions rather than as providing good answers. Finally, some wider conclusions about the nature of ethical thinking and social science theory will be drawn.

Friends and Enemies of the Just War

The position defended here is, I believe, consistent with the just war tradition as articulated by, e.g. SS Augustine and Thomas Aquinas – although I argue that it does not need this support – but it runs counter to modern expectations, certainly as those expectations are expressed in popular discourse. To illustrate the point, consider the debate on the justice of the Gulf War 1990/91 in the UK – interesting because this was the first time in recent British history when classical just war thinking/theorising was deployed in a quite heated political debate, to the extent that the religious correspondent of the London *Times*, Clifford Longley, felt it necessary to enlighten the public by publishing a centre-page op-

² I will use upper case to refer to Just War theory, lower case to refer to just war thinking and to the just war tradition (using the latter term very loosely).

ed piece entitled 'Going by the Aquinas Book'!³ In the war of the Oxford Anglican theologians, Richard Harries, then Bishop of Oxford, opined that the coming war to evict Saddam Hussein from Kuwait met the standard criteria for a just war; the then Professor of Divinity at Oxford University, Rowan Williams, now Archbishop of Canterbury, argued that it did not.⁴ The two learned doctors expressed opinions on whether the 'last resort' had actually been reached, on the proportionality of the coalition war effort in response to the Iraqi offence, on the level of civilian casualties to be expected, and so on – all subjects upon which there was no reason to believe they possessed the expertise or knowledge to make informed judgements. The point is that both controversialists seemed to assume that Just War theory would tell them whether or not the war was just. My argument is, first, that just war thinking cannot provide unambiguous answers of this sort, and should not be expected to, and, second, that the judgements called for by just war thinking are varied in nature, and require expertise and experience that is not confined to, or often possessed by, theologians and moral theorists.

In the case described above, just war thinking needed to be protected from its putative friends, but understanding just war thinking as an aid to judgement allays some (but only some) of the concerns of enemies of the notion of a just war. The most serious of such enemies is, I judge, Carl Schmitt, who, unlike modern critics from the left, is clear about the implications of rejecting just war thinking, yet still wishes to do so. Schmitt's position – expressed most clearly in *The Nomos of the Earth* – is that to describe a war as 'just' encourages a self-righteous fury which will demonise the enemy and stand in the way of establishing limits in warfare.⁵ Every war becomes a total war, because every

³ *The Times*, 3 November, 1990. In the Second World War there was an understandably somewhat muted debate about area bombing that used just war terminology.

⁴ Richard Harries, 'The Path to a Just War', *The Independent*, 31 October, 1990, and 'A just war not a crusade' *The Observer*, 20 January, 1991; Rowan Williams, 'Onward Christian Soldiers?' *The Guardian*, 1 November, 1990.

⁵ Carl Schmitt *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, Translated and with an Introduction by G.L. Ulmen, New

war is a war between good and evil, and with evil there can be no compromise. This is strikingly similar to the argument put forward, in different terms, by some modern students of 'critical security studies' who write of Just War theory as delegitimizing 'the Other', encouraging a Manichean world view and so on.⁶

The difference between these superficially similar critiques, is that Schmitt is hostile to the notion of a just war because of his nostalgia for an era when (allegedly) interstate war was regarded as a kind of duel between legitimate enemies, whereas modern critics are unclear on what alternative to the just war they propose. Schmitt wants to clear the space for war as an act of state within a European states-system, the *Jus Publicum Europaeum*, and understands, correctly, that just war thinking is incompatible with the idea that war is *simply* a political act of this kind (even though, I would argue, state interest is a legitimate component of the wider judgement that war is the appropriate response to a particular state of affairs). Schmitt clearly cannot accept the notion that war can only be waged for a just cause, and for that reason he is right to see his approach as incompatible with the tradition, but he is wrong to think that just war thinking automatically leads to the demonising of enemies and the end of restraint. He may be right that it sometimes has this effect on people who think of themselves as just warriors – not difficult to find contemporary examples from all points on the political compass – but this self-satisfied approach is, or ought to be, contrary to a good understanding of what using just war criteria as a basis for political judgement ought to involve.

York: Telos Press, Ltd. 2003 – original date of publication 1950/2nd German ed. 1974. I have written at greater length on Schmitt and the Just War in 'From Humanised War to Humanitarian Intervention: Carl Schmitt's Critique of the Just War Tradition' in Louiza Odysseos and Fabio Petito eds. *The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order* London: Routledge, 2007.

⁶ A classic statement of this position is Ken Booth 'Ten Flaws of Just Wars' in Ken Booth ed. *The Kosovo Tragedy: The Human Rights Dimension* – Special Double Issue of *The International Journal of Human Rights* 4, 2000 283-288; in the same collection see also Chris Brown 'A Qualified Defence of the Use of Force for Humanitarian Reasons'.

Modern critics of just war thinking from a left perspective, such as Ken Booth, are rather less clear-sighted than Schmitt. They make the same misjudged critique of just war thinking as Schmitt, but crucially without the endorsement of war as an act of policy. The result is either a pacifist stance or an attempt to distinguish between 'progressive' and 'reactionary' uses of violence. Pacifism is, of course, a very well established position with a long and distinguished pedigree, from Jesus to Tolstoy and Ghandi, but it is open to the obvious objection that an absolute rejection of violence, whatever the circumstances, puts power in the hands of those who are not similarly disposed and can lead to the perpetuation of injustice. Belief in a God who will provide an ultimate guarantee that justice will prevail may make this position tenable for some, but this is an argument that cuts no ice with non-believers, or, for that matter, with a majority of believers.⁷ In practice most 'pacifist' thinkers are, actually, 'pacifistic', to adopt a term of Martin Ceadel, that is they are predisposed against violence but prepared to countenance it in some circumstances, which, of course, opens the door to just war thinking, properly understood.⁸

The alternative position on the left is to distinguish between the progressive and the reactionary use of violence, supporting the former, opposing the latter. At one level, this is simply an instrumental, Clausewitzian approach to violence in which matters of justice are irrelevant or, perhaps, predetermined – one side in a conflict is, by definition, just and therefore no further questions need to be asked about its conduct. This is also an argument that works in reverse; figures such as

⁷ A good account of Christian pacifism is offered by Theodore J Koontz, 'Christian Nonviolence: An Interpretation' in Terry Nardin ed. *The Ethics of War and Peace* Princeton NJ: Princeton University Press, 1996; in the same collection Michael G Cartwright offers an alternative reading 'Conflicting Interpretations of Christian Pacifism'.

⁸ Martin Ceadel 'Pacifism and Pacificism', in Terence Ball and Richard Bellamy eds., *The Cambridge History of Twentieth-Century Political Thought* Cambridge: Cambridge University Press, 2003, pp. 473-92. A similar position is defended in Richard Norman *Ethics, Killing and War* Cambridge: Cambridge University Press, 1995. It is fair to say that for both Ceadel and Norman the circumstances in which the use of force could be considered justified are so circumscribed as to be virtually impossible of achievement, but, still, the door to just war thinking has been opened.

Noam Chomsky or John Pilger regard the United States as axiomatically unjust and therefore any state or group is justified in opposing US policy by violence (and justified also in using whatever tactics they think likely to be effective).⁹ This position, of course, is vulnerable to exactly the charge of promoting a Manichean view of the world, and legitimating the crusading spirit. Perhaps rather more interesting, and certainly more Clausewitzian is the position exemplified by Karl Marx and Friedrich Engels in their writings on the Crimean War in the 1850s.¹⁰ Rather than attributing justice to any particular country, their judgements were entirely based on a utilitarian calculation as to the implications of the war for the revolution; on this basis they opposed the nascent peace movement of the day and broadly supported the Anglo-French position, Czarist Russia being the great opponent of the revolution. Marx and Engels read and admired Clausewitz, as did Mao Zedong whose *On Protracted War* quotes Clausewitz liberally, albeit without citing him.¹¹ These writers, along with other figures in their tradition such as Lenin and Trotsky, regard violence in purely instrumental terms, as a means to an end, neither morally superior nor morally inferior to other means. This being so, their opposition to just war thinking is as understandable as is the opposition of Carl Schmitt, and as unacceptable as is his position to anyone who is not prepared to see violence in this light.

Although the remedies they offer are, I think, unacceptable for one reason or another, it would be wrong to dismiss out of hand all the criticisms of Just War theory offered by Schmitt, Booth and other figures on the right and left. As noted above, it would be right to be sceptical of a Just War theory which purported to tell us whether or not a particular war was just and therefore to be supported, or

⁹ See, e.g. Chomsky *Failed States: the Abuse of Power and the Assault on Democracy* Harmondsworth: Penguin, 2007 or John Pilger, *Hidden Agendas* NY: Vintage, 1998.

¹⁰ Karl Marx & Friedrich Engels *The Eastern Question* London: Cass Reprints, 1994, see also <http://www.marxists.org/archive/marx/works/subject/newspapers/new-york-tribune.htm>

¹¹ http://www.marxists.org/reference/archive/mao/selected-works/volume-2/mswv2_09.htm

unjust and therefore to be opposed. This sort of certainty is rarely provided by even the best developed ethical theory and, as the critics allege, constitutes a standing invitation to engage in the demonization of one's enemies. On the other hand, if we understand just war thinking as providing a set of questions which act as an aid to the exercise of political judgement these dangers are much less apparent. If we reject the pacifist position that violence is never justifiable (which we should, because we have no reason to believe that violence is always and necessarily the greatest evil) and if we reject the Clausewitzian view that violence is simply one tool to be used whenever it might be effective (which we should because although violence may not be the greatest evil, it is an evil nonetheless) then we will need to exercise judgment as to when violence is indeed the appropriate response to a situation, and the classic just war questions will help us to perform this task.

The Canonical Categories of the Just War

The canonical questions ask of any particular action whether the force employed, or to be employed, is intended to right a wrong, is the last resort, is proportional to the offence, has reasonable prospects of producing a successful outcome, is undertaken with proper authority, and with care being taken, as far as possible, to protect the innocent. We should ask these questions, not because that is what Just War theory or the just war tradition requires us to do, but because they are the appropriate questions to ask. There is every reason to be interested in what, say, Thomas Aquinas had to say about these questions, because of the undoubted power of his intellect – but the questions are not important because he, or anyone else, asked or answered them. As will be apparent in the following discussion, they are not necessarily the only questions that need to be asked, and perhaps some of them are not as important as they once were, but, taken together, they constitute a good starting point

An important point to understand, and again a source of confusion to both friends and enemies, is that the questions posed above require not just the exercise of 'judgement' per se, but the exercise of different kinds of judgement. Thus, what constitutes a 'wrong' that should be righted involves legal and

political as well as moral considerations. The 'Legalist Paradigm' set out in Part I of Michael Walzer's very influential, and generally excellent, book *Just and Unjust Wars*, defines the wrong to be righted in legal terms, that is as an act of inter-state aggression, but this is too restrictive.¹² Both the tradition, as James Turner Johnson has argued, and common sense dictate that a wider judgement needs to be made here.¹³ It may well be the case that, *contra* David Rodin, as a general rule national sovereignty and territorial integrity should be protected, but the exercise of judgement involves precisely deciding when such general rules should be broken in response to other, more compelling, considerations.¹⁴ Walzer acknowledges this by instancing genocide and mass enslavement as examples of state behaviour which would justify violating sovereignty, and this opens up the possibility that there are other just causes of this kind. As always, judgements have to be made.

Judgements concerning 'right intention' will (or should) involve a distinction between motives and intentions; thus, in the context of the Iraq War of 2003, Fernando Tesón supports what he takes to be the laudable intention of removing Saddam, and argues that this would not have been vitiated had the motive for the intervention been, say, to gain control of Iraq's oil.¹⁵ It is not necessary to follow him all the way with this argument to see the distinction he is drawing. From another angle, 'right intention' is, perhaps, one area where one might well argue that a judgement is not actually required; the stress the Just War tradition lays on intentions could be seen as generated by theological concerns. Clearly

¹² Michael Walzer *Just and Unjust Wars* 3rd Ed NY: Basic Books, 2006. Walzer does acknowledge that there are some limited additional circumstances where force might be justified.

¹³ James Turner Johnson *The War to Oust Saddam Hussein: Just War and the New Face of Conflict* Lanham MD: Rowman & Littlefield, 2005. One does not have to accept Johnson's argument in this particular case to agree that in some circumstances the use of force might be an appropriate response to human rights violations.

¹⁴ David Rodin *War and Self-Defence* Oxford: Clarendon Press, 2004.

¹⁵ Fernando Tesón 'Ending Tyranny in Iraq', *Ethics & International Affairs*, 19, 2, 2005.

intentions are important if the fate of one's immortal soul is at stake, but if this consideration is no longer salient, then intentions are only really significant in consequential terms. Thus, to return to Iraq 2003, the alleged desire for oil would be relevant if and only if it led the Coalition to do things that were otherwise undesirable, or undermine the intention to remove a tyrant (by, for example, striking a deal with Saddam or his sons to allow him to stay in power in exchange for oil concessions).

Whether action is a 'last resort' relies on a judgment as to the diplomatic-strategic realities of a given situation, which only those with inside knowledge may be in a position to make. The notion of last resort very clearly does not require all other options to be tried before force is employed – what it requires is a judgement about the plausibility of non-violent measures in achieving the desired goal. Last resort could in fact be the first resort, if only one course of action is viable. A 'reasonable prospect of success' is again, a matter for the exercise of diplomatic-strategic expertise. Both of these notions are widely misused, as the aforementioned debate between Richard Harries and Rowan Williams illustrated. Neither of these clerical gentlemen was actually in a position to be able to make the kind of judgement required – although it would have been perfectly proper for them to have demanded that those who were in this position should take these factors into account.

'Proportionality' is another difficult notion; once again, the root idea is simple – folk wisdom is full of warnings against taking sledgehammers to crack nuts, and modern game theory finds 'tit for tat' the best strategy for playing iterated Prisoner's Dilemma – but putting it into effect is not so easy. It requires a judgement about outcomes that may be difficult to make; we never know what the consequences of our actions will be, or, equally important after the event, what the consequences of our inaction might have been. And our actions are rarely a response to a discrete act in the way that the principle of proportionality seems to suggest they are, or should be. Thus, for example, setting into motion a European-wide war might be thought a disproportionate response to the German invasion of Poland in 1939, but the latter took place in the context of a series of German aggressions and the judgement that this could not go on seems

reasonable, in spite of the misery that followed. Again, perhaps more controversially, it might be argued that the dispatch of an expeditionary force to re-take the Falkland Islands in 1982, with the consequent loss of over a thousand lives, was a disproportionate response to the bloodless occupation of a sparsely-inhabited territory, but it could equally be said that there was an important principle at stake which should be weighed in the balance along with other costs. Similar points could be made, on a larger scale, about the response to Saddam's invasion of Kuwait in 1991.

The wider point here is that a judgement as to the effects of forceful action needs to be made. A calculation has to be made, and into the balance are thrown both the direct and indirect consequences of action, as well as those of inaction. One of the standard critiques of humanitarian interventions is that appropriate cases are selected not in accordance with the seriousness of, say, the human rights violation involved, but in response to essentially political criteria; powerful states get away with things that the weak would not, friends and allies are treated differently from those with whom the interveners have no such connections. This is certainly the case, but there is no reason to be surprised that this should be so, nor to regard this as delegitimizing particular actions. Calculations of political interest always feed into judgments as to whether there is 'a reasonable prospect of success'; 'success' has to be understood in the context of the maintenance of medium/long term political relations as well as that of solving particular problems.¹⁶ Even the most vigorous critics of selectivity usually acknowledge that starting World War Three in response to China's behaviour in Tibet, or Russia's in Chechnya would not be a good idea, and it should be equally obvious that the fact that one cannot act in these cases does not constitute a reason for not acting in other circumstances where such dire results would not be forthcoming.

¹⁶ I have discussed this issue at length in Chris Brown 'Selective Humanitarianism: In Defence of Inconsistency' in *Ethics and Foreign Intervention* ed. Deen Chatterjee and Don Scheid, Cambridge University Press, 2003 pp. 31-50.

'Proper authority' is a difficult notion, although the root idea, that force should not be used when an appeal to a superior authority is available as an alternative, is quite simple – domestically, this is what distinguishes the rule of law from a system built on blood-guilt and vendetta. In the medieval context of St Thomas Aquinas and the Schoolmen, the private use of force was a constant possibility, indeed reality, given the decentralised nature of political power, and the requirement of proper authority constituted a real limitation on the legitimate use of force (or would have, had it been widely obeyed). Nowadays, the term reeks of ambiguity. Are sovereign states the proper authority for the use of force? The positivist account of international law that dominated in the century before 1919 certainly took that view, albeit with the occasional nod in the direction of the importance of arbitration. Or has the United Nations – or perhaps the Security Council thereof – taken over this role? The UN Charter can certainly be read to this effect, but the record of the UNSC over 65 years is not encouraging in this respect – those who have looked to this body to right an injustice have almost always been disappointed. Michael Glennon argues cogently that the attempt to impose international law on the use of force via the UN has failed, and failed repeatedly.¹⁷ Even if such a blanket judgement seems a step too far, it is generally the case that in the democracies an appeal to the UN is usually made as an expression of opposition to action, in the realistic expectation that the UN will never legitimise the resort to war. It is interesting that on the one occasion in recent history where the UN did support military action by the US and its allies – over Saddam's aggression in Kuwait in 1990 – it was denounced by opponents of the action as having been manipulated by the Americans.¹⁸

¹⁷ Michael Glennon 'Why the Security Council Failed' *Foreign Affairs*, May/June, 2003. Edward C Luck et al 'Stayin' alive: The Rumours of the UN's Death have been exaggerated' *Foreign Affairs* July/August, 2003 put the opposing point of view.

¹⁸ See e.g. Noam Chomsky *World Orders, Old and New* London: Pluto Press, 1997. Not everyone on the left went down this route, see Fred Halliday 'The Gulf War and its Aftermath: First Reflections'. *International Affairs* 67,2, 1991

Perhaps 'proper authority' resides neither in the sovereign state (because this would make the state a judge in its own cause) or the UN (because this would imply that the UN has authority which, in fact, it lacks) but in some notion of international public opinion, amorphous though this notion may be. Consider, for example, NATO's Kosovo intervention in 1999; *pace* some forced legal interpretations by the British Foreign and Commonwealth Office, this was not authorised explicitly by the UN. On the other hand, it was supported by all of NATO's members and the members of the European Union (with varying degrees of enthusiasm, admittedly) and a resolution to condemn the action was defeated in the UN Security Council by 12 votes to 3, all of which suggests that this was not simply an example of states inventing their own justifications for action.¹⁹ It was such facts that led the *Independent International Commission on Kosovo* to describe the intervention as 'illegal but legitimate'.²⁰ This rather fuzzy approach to proper authority also gives due recognition to the fact that international law usually provides no arbiter when it comes to matters of interpretation of UNSC Resolutions and the like. Thus, for example, the British Government's position that previous UNSC Resolutions covered the use of force in Iraq in 2003 without the need for further specific authorisation was certainly a minority view, but, *pace* rhetoric about an 'illegal' war, there is no definitive way of determining whether or not the argument was valid.

The final traditional question concerns the protection of the innocent, which, once again, requires quite complex moral reasoning and the exercise of different kinds of political judgement. Conventionally, International Humanitarian Law understood innocence in terms of the combatant/non-combatant distinction, and this is broadly reflected in Walzer's notion of the 'War Convention'.²¹ The

¹⁹ The contrast with Iraq 2003 is striking; then the Coalition gave up the attempt to gain a positive resolution from the UNSC not because of the certainty of several vetoes, but because, unlike 1999, there was no majority in their favour.

²⁰ Independent International Commission on Kosovo *The Kosovo Report: Conflict, International Response, Lessons Learned* Oxford: Oxford University Press, 2000.

²¹ Walzer, *op cit*. Modern IHL defines a legitimate target as someone 'directly participating in hostilities', but this, of course, requires interpretation (are soldiers held in reserve 'directly participating'?)

idea that wearing a uniform makes one a legitimate target has an appealing simplicity, but, predictably, things are not actually that clear-cut.²² Not all people who wear uniforms can be considered legitimate targets all the time, and, conversely, there may be some people who do not wear uniforms, but who are not in any moral sense innocent. Compare, for example, the position in 1942 of a conscripted, socialist-leaning, pay-clerk in the German Army in an office hundreds of miles behind the lines with that of a Nazi-party member and munitions worker – the fact that the former wears a uniform while the latter does not hardly seems the most relevant difference between them. Again, there may be innocent civilians who are protecting combatants, deliberately or against their will.²³ The notion of ‘double effect’ comes into play here – in some circumstances it may be legitimate to use force even though one knows that the result will be unintended harm to the innocent.²⁴ This is a disturbing idea, but one that is difficult to avoid without adopting policies that reward the unscrupulous; the alternative –an absolute prohibition on harm to the innocent – could easily result in, for example, weapons facilities being situated in school playgrounds or hospitals by those who are prepared to be less absolutist in their approach (or who regard the notion of ‘innocence’ with suspicion or disfavour).

These are the conventional questions that just war thinking suggests we should ask of any potential use of force. There is no reason to think that these questions are the only ones that we should ask, or that all of them remain relevant. As to the latter, as noted above, one might, for example, take the view that questions of ‘right intention’ are of little value in the absence of an explicitly theological context. Similarly, there may be pertinent questions that arise today that didn’t

²² See the essays collected in David Rodin & Henry Shue, eds. *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* Oxford: Oxford University Press, 2008.

²³ On which see Michael Gross *Moral Dilemmas of Modern War* Cambridge: Cambridge University Press, 2009 and in this volume.

²⁴ See P.A. Woodward ed. *The Doctrine of Double Effect: Philosophers Debate a Controversial Moral Principle* Notre Dame, IN: University of Notre Dame Press, 2001; T. A. Cavanaugh ed. *Double Effect Reasoning: Doing Good and Avoiding Evil* Oxford: Oxford University Press, 2006.

loom as large in the past. One such might concern the role of domestic public opinion in circumstances where violence is deployed; it is clear that in the western democracies any act of state-violence needs to be justified to the people, and the terms of such justification are not necessarily aligned with the kind of questions asked by the tradition. Thus, for example, military operations that are perfectly legitimate within the terms of the traditional questions posed by just war thinking may be unacceptable to western public opinion because of the casualties involved – and such opinion nowadays is not simply oriented towards ‘friendly’ casualties, but is often also concerned with ‘enemy’ casualties. This, I suspect, is one reason why some Catholic theologians whose tradition originated just war thinking as a moral praxis have now adopted a more legalistic conception of the notion.²⁵

Finally, before moving on, it should be noted that although the term just *war* nowadays points us towards interstate violence on a largish scale, the questions that just war thinking suggests we should ask are relevant in any situation where violence or coercion is under consideration. At the interstate level, such coercion includes economic sanctions, which are often put forward as a morally acceptable alternative to violence, but which frequently harm the innocent – but the just war questions are equally salient in the case of domestic and inter-societal conflicts. This position is actually true to the tradition, which was developed at a time when the current distinction between ‘international’ and ‘domestic’ could not be drawn. There is an analogy here between just war thinking and the Clausewitzian account of the dynamics of conflict. As already noted, revolutionaries from Marx and Engels through to Lenin and Mao have explicitly employed Clausewitzian ideas to advance their cause, and students of industrial relations have been similarly impressed by his understanding of the relationship between politics and conflict and limited and absolute war. Clausewitzian understandings of conflict, of course, concentrate on cause and

²⁵ See, e.g. Joseph Boyle ‘Traditional Just War Theory and Humanitarian Intervention,’ *Humanitarian Intervention: Nomos XLVII*, ed. M. Williams and T. Nardin (New York: New York University, 2006), 31–57.

effect, while just war thinking focuses on the moral dimension of action, but both modes of thought are relevant outside of the areas where they were first developed.

Judgement and Practice: Against Theory

The discussion offered above of notions such as ‘just cause’ and ‘right intention’ could have been extended at much greater length, and, of course, has been in the standard texts on the subject, and elsewhere in this volume, but it is not my intention to add anything more on these matters. Instead, in the last section of this chapter, I wish to focus on *the way* in which we think about these matters, rather than *what* we think about them. My core argument is that just war thinking should not be approached as though it could provide us with an algorithm to determine what course of action to follow. An algorithm is a method of solving a problem by following a series of well-defined steps. An algorithmic approach to Just War would approach a particular situation where violence was contemplated with a checklist of questions rather similar to those that used to be found on the back of a United States Visa Waiver form – in that case, half a dozen questions where the answer to each must be an unambiguous ‘no’ (as in ‘no, I am not a convicted war criminal’). In the case of an algorithmic approach to Just War, the answer always has to be ‘yes’ – is there a just cause? Yes; right intention? Yes; proper authority? Yes and so on – and if every box can be ticked, we have a Just War and can get on with it. Conversely, one ‘no’ causes the algorithm to produce a negative verdict.²⁶ This is the wrong approach at a fundamental level; none of the questions that just war thinking invites us to ask can be answered in this way, and the attempt to do so impoverishes the notion.

There is a still wider point here about the nature of the social sciences and of ethical thinking on social problems. Bent Flyvbjerg has much of interest to say on this subject in an important but somewhat neglected text (neglected at least

²⁶ Actually, nowadays there are usually two algorithms in play, one for whether to go to war (*ad bellam*), the other for the conduct of a war (*in bello*). This distinction is unknown to Aquinas, and an unhelpful product of theoretical thinking about Just War.

by scholars of International Relations), *Making Social Science Matter*.²⁷ Drawing heavily on Aristotle, Flyvbjerg contrasts general, theoretical, context-independent, knowledge with concrete, practical, context-dependent knowledge; his thesis is that the modern social sciences wrongly privilege the former over the latter. Aristotle in the *Nicomachean Ethics* distinguishes three ‘virtues of thought’, *episteme* (scientific knowledge), *techne* (craft knowledge) and *phronesis* (prudence, or practical wisdom).²⁸ The desire to produce general, context-independent theory corresponds to Aristotle’s account of science, but is generally inappropriate in the social sciences, and wholly inappropriate when it comes to action-guiding knowledge of the sort that Just War theory purports to provide. This is, or should be, the province of *phronesis*, of deliberation not about ‘things that cannot be otherwise or about things that cannot be achieved’, but about ‘the truth, involving reason, concerned with action about things that are good or bad for a human being’ (Book VI, 5, § 3, 1140). Prudence (*phronesis*) is not just about universals, but also about ‘knowledge of particulars, since it is concerned with action and action is about particulars’ (Book VI, 7, §7, 1141b). It is also about experience; Aristotle has interesting things to say here, reassuring to the greying part of the population,²⁹

[prudent] young people do not seem to be found. The reason is that prudence is concerned with particulars as well as universals, and particulars become known from experience, but a young person lacks experience, since some length of time is needed to produce it. (Book VI, 8, §5. 1142a)

²⁷ Bent Flyvbjerg *Making Social Science Matter: Why social inquiry fails and how it can succeed again* Cambridge: Cambridge University Press, 2001.

²⁸ Aristotle *Nicomachean Ethics* trans Terence Irwin, Indianapolis, IN: Hackett, 1999, Book VI 1138b ff. (References in the main body of the text are to this edition/translation)

²⁹ Perhaps it shouldn’t be reassuring since in war young people (e.g. junior officers and NCOs) will often have to make important decisions about, e.g. specific targets and tactics; here there is perhaps a limited role for checklists and box-ticking. Thanks to Andrew Jillions for this point.

In our world, we are not altogether comfortable with this way of proceeding. It is interesting that whereas there are terms in English to describe those who follow the virtues of *episteme* and *techne* – ‘scientist’ and, in different contexts, ‘technician’ or ‘artisan’ – there is no obvious word for those who exercise the virtue of *phronesis*. In some ways this is not surprising; in terms of the history of thought, Stephen Toulmin has given a compelling account of the way in which, in the seventeenth century, the moral insights of renaissance humanism and the classical world were put aside.³⁰ Under the influence of Descartes and Hobbes, along with many lesser talents, formal logic came to displace rhetoric, general principles and abstract axioms were privileged over particular cases and concrete diversity, and the establishment of rules (or ‘laws’) that were deemed of permanent as opposed to transitory applicability came to be seen as the task of the theorist – in other words, although Toulmin does not put it this way, matters properly within the purview of *phronesis* came to be seen, wrongly, as matters of *episteme*. Toulmin suggests that at this time moral reasoning became ‘theory-centered’ rather than ‘practically-minded’, that is, a matter of following a theoretically-validated rule, rather than of making a practical judgment, and was impoverished thereby.

The shift to which Toulmin refers is of considerable significance for the argument of this chapter. The seventeenth century writers who effected this reorientation were not simply rejecting the generous, open-minded thinking of humanists such as Montaigne, but also, and very explicitly, they were rejecting Aristotle, Aquinas and the Schoolmen, in the latter case, that is, the very scholars who took a few thoughts of Augustine on war and society and applied Aristotelian methods to create the basis for just war thinking. Hobbes – a consistent anti-Aristotelian – has nothing directly to say about just war, but his near contemporary Grotius, from a standpoint similar to Hobbes, had a lot to say on the subject and can, I think, be seen as the author who does most to turn the

³⁰ Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity*, Chicago: University of Chicago Press, 1990.

medieval notion of just war thinking into Just War theory, impoverishing it thereby.³¹

A further victim of the seventeenth century shift away from context-dependent knowledge – in this case suffering ‘collateral damage’ as it were – was the Augustinian tradition of realism as exemplified in our age by writers such as Hans J. Morgenthau. By reifying the complex thought of Augustine and Aquinas into a set of rules the producers of Just War theory have lost contact with the observations on political life and political psychology that make Augustine in particular such a fascinating writer, even for those, such as the present author, who find it impossible to accept his concepts of original sin, atonement and predestination.³² In what was perhaps his best book, *Scientific Man vs. Power Politics*, Morgenthau castigated the desire to find abstract, logical moral rules that would somehow enable the process of judgment to be circumvented; this was very much part of the mind-set of ‘scientific man’, and fundamentally untrue to the texture of the moral life that Morgenthau always tried to illuminate.³³ Although certainly not a Just War theorist, there is much in Morgenthau’s work that contributes to just war thinking, in ways that are clearly not true of, say, modern structural realism.

Still, the move towards a *phronetic* social science does not simply rely on Aristotelian formulations or a nostalgia for classical as opposed to structural realism. Flyvbjerg draws quite substantially on Pierre Bourdieu’s

³¹ Richard Tuck *The Rights of War and Peace: Political Thought and International Order from Grotius to Kant* Oxford: Oxford University Press, 1981 sets out the similarities between Hobbes and Grotius, but without endorsing the position argued for here.

³² A prominent modern Augustinian who has contributed much to just war thinking is Jean Bethke Elshtain – see her *Augustine and the Limits of Politics* Notre Dame IN: University of Notre Dame Press, 1997 and *Just War Against Terror: Ethics and the Burden of American Power in a Violent World* New York: Basic Books, 2003.

³³ Hans J. Morgenthau *Scientific Man vs. Power Politics* Chicago: University of Chicago Press, 1947. Morgenthau’s interest in Aristotle is documented in Tony Lang *Political Theory and International Affairs: Hans J Morgenthau on Aristotle’s The Politics* Westport CT: Greenwood Press, 2004.

understanding of the 'theory of action', and Bourdieu is a major influence on the 'practice turn' in contemporary international studies – see, for example, the work of Vincent Pouliot.³⁴ Pouliot stresses the inarticulate, tacit nature of the 'logic of practicality' which is certainly not Aristotelian, but his emphasis on experience and learning how to proceed by doing is consistent with the approach advocated in this chapter, and in general the practice turn has very positive implications for just war thinking. Of course, those committed to the generation of a context-independent theoretical account of human behaviour will always be dissatisfied with the kind of practical, case-based, experience-based reasoning that underlies just war thinking – they will look to developing a Just War theory that provides answers rather than an invitation to exercise judgement. And, many of the critics of the Just War assume that this is indeed the purpose of just war thinking and criticise it accordingly.³⁵ But if we can wean ourselves away from this mode of thought, and accept that the just war thinking is an aid to judgement, nothing more but also, and very importantly, nothing less, we will find much within the tradition that is valuable, and the questions it has generated indispensable.

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³⁴ Pierre Bourdieu *Practical Reason: On the Theory of Action* Cambridge: Polity Press, 1998; Vincent Pouliot *International Security in Practice* Cambridge: Cambridge University Press, 2010.

³⁵ But not Schmitt – he had a very clear understanding of just war thinking, and rejected it for reasons which have nothing to do with the distinction between theoretical and practical reasoning.