

HISTORY 165
WAR AND DIPLOMACY IN AMERICAN HISTORY
JUST WAR THEORY AND INTERNATIONAL LAW

Just War Theory is the basis on which nations seek to justify, both legally and morally, going to war. Not all regimes concern themselves with such justifications (e.g. Nazi Germany), but in general this theory is an accepted part of international law.

Just war theory draws on the work of several key writers, the most important being St. Augustine and St. Thomas Aquinas.

St. Augustine (354-430) provides the foundation for just war theory in Western thought. For a war to be just, it must be

fought for the right reasons—i.e., the attainment of peace rather than the infliction of harm, punishment, domination, or revenge—and

it must be waged under rightful authority.

St. Thomas Aquinas (1225-1274) codified Augustine's reflections into the distinct criteria that remain the basis of just war theory as it is used today. Much of this organization appears below.

There are two traditional categories of requirements for just wars.

Jus Ad Bellum The conditions required for justly going to war; the right to go to war.

1. *Just Authority*: The first condition in just war theory is just authority, also known as competent authority. A just war must be initiated by a political authority within a political system that allows distinctions of justice. Dictatorships or deceptive military actions are typically considered as violations of this criterion. The importance of this condition is key. Plainly, we cannot have a genuine process of judging a just war within a system that represses the process of genuine justice. A just war must be initiated by a political authority within a political system that allows distinctions of justice.
2. *Just Cause*: This is the central condition for many discussions over the justification of a war. If a just cause cannot be shown, many people will reject the call to war. Almost all nations and leaders who wage war *claim* to do so on the basis of a just cause, but this isn't enough. Iraq, for instance, explicitly claimed to have a just cause in its 1990 invasion of Kuwait. It is not enough to simply claim to have a just cause. We must be able to show that a state has committed a wrong for which war is the proper redress. Unprovoked aggression, such as an invasion, clearly fails to meet the just cause requirement, although an action of anticipatory self-defense might meet it. On the other hand, few would deny a nation the right to defend itself against unprovoked attack; such defense clearly meets the definition of just cause. The defense of an ally against an aggressor is also generally considered a clear just cause.

3. *Just Intention:* The just intention (or right intention) condition in just war theory sets a limit to the extent of the war. Even given a just authority and a just cause, it is possible for a warring state to go beyond the bounds of its justification. In the 1991 Gulf War against Iraq, the coalition forces led by the US stopped short of invading and occupying Baghdad. In answer to the criticisms of this action, US military leaders pointed out that the just cause and sole objective of the war was to liberate Kuwait from Iraqi occupation. Having achieved that objective, the UN coalition had reached its limits, and the coalition thus negotiated a cease-fire. Calls to occupy Iraq, assassinate Saddam Hussein, or use nuclear weapons clearly exceeded the authority of the US and UN action. A just war is limited to the pursuit of the avowed just cause.
4. *Last Resort:* War is morally permissible only when no other means to achieving the just cause is possible. This means that the nation considering war has exhausted all potential solutions, including political and diplomatic. This condition seems to mitigate against the national pride that sometimes leads to war as the resort of choice. A nation may have to compromise and negotiate to win solution short of war. But the condition of last resort requires that political and diplomatic approaches to a solution have been fully attempted.

Jus In Bello The conditions required for the just conduct of war; the right conduct in war. The criteria provide standards of conduct for nations, armies, and individual soldiers at war. Some people have the idea that in war, anything goes; "all's fair in love and war." But this is never the case in any war. Armies maintain some standards of lawful vs. criminal behavior. Armies have police, prisons, and courts. It is true that some armies show no legal or moral restraint when it comes to the treatment of the enemy (and some are hostile to their own state's populations), but those are militaries that act contrary to the just war criteria. Individuals who violate these principles are often subject to punishment by domestic or positive international law (e.g., the Geneva Conventions). The general elements of jus in bello include:

1. *Proportionality:* The proportionality of the use of force in a war. The degree of allowable force used in the war must be measured against the force required to correct the just cause and limited by just intention (see *Jus Ad Bellum*).
2. *Discrimination:* The combatants discriminate between combatants and noncombatants.
3. *Responsibility:* A country is not responsible for unexpected side effects of its military activity as long as the following three conditions are met:
 - (a) The action must carry the intention to produce good consequences.
 - (b) The bad effects were unintentional.
 - (c) The good of the war must outweigh the damage that the war causes.