

Morality versus Legality: When is war justified?

International law on war and human rights is fundamentally rooted in ethics and a desire for justice. The existence of any laws preventing war are thus intended to preserve the right to human life, which is labelled by Norman – author of *Ethics, Killing and War* - as not a legal, but a moral right. Despite the existence of the International Criminal Court (ICC), it remains extremely difficult for states and their leaders to be legally condemned and prosecuted. Due to the difficulty of enforcing international law and the fact that morality is at the core of law, it follows that it is in essence the morality of war that will determine its justifiability.

Before being able to distinguish between just and unjust wars, one must first grasp why war is, in itself, immoral. This is ultimately the case because war involves the large-scale massacre of human beings – many of whom are innocent - and has an inherent lack of respect for human life. Killing is contrary to our moral instincts and the ethical code, developed by Kant, based on moral laws that may not be broken – from which modern day human rights have emerged. According to these principles all human life is sacred and therefore killing should not be permitted, excluding certain exceptions, such as self-defence. The House

of Lords reaffirmed this concept in 1988 in *Beckford v The Queen*.¹ In this case Lord Griffiths held that a man is permitted to kill – even intentionally – if attacked and if he can reasonably believe he is in danger. However, a moral law preventing murder is unnecessary for most, as this “rule” is indubitably - as labelled by Norman - “a conventional moral view.”

Nonetheless, a theory outlining a list of criteria that a war must meet in order to be considered just, has evolved. The “just-war theory” has evolved over time from the foundations laid out by Aristotle and Cicero and the Christian thinkers Augustine and Aquinas into a modern just war theory. Although many arguments have been put forward in favour of war, the only valid justification for a war is when a nation is forced to defend itself from foreign aggression. This can be summarised using Cicero’s words in *De Officiis (On Duties)*, “the only excuse...for going to war is that we may live in peace unharmed.”

The difficulty of enforcing international law and the distinctive ease of falsely justifying war make it very difficult to legally condemn a war for being unjust. There is no international police force that is able to act swiftly to punish those who “disturb the peace.” Instead police powers are allocated amongst all members of an international society such as the United Nations (UN), who’s Charter establishes the protocol when a member state is a victim of aggression. According to Article 44 of the Charter, no Member State is legally obliged to provide military forces. The result is an inconsistent policy that often ends up in an intervention occurring for reasons other, or as well as, the protection of a

¹ [1988] A.C. 130

nation and its people. Moreover, the ICC does not have jurisdiction of the crime of aggression, which is a serious flaw if Walzer - a political philosopher and author of *Just and Unjust Wars* - is right when he claims, "aggression is the only crime states can commit against each other." Even in the United Kingdom, the courts have held – as expressed by Lord Bingham of Cornhill – that "aggression is not a crime in the domestic law of England and Wales."² So, as well as the integral difficulty of enforcing international law, the laws of war are, as argued by Walzer, "radically incomplete." Thus, it is not usually possible to denounce a war for being legally unjust, and as such, one must focus on morality.

Although moral philosophy often focuses on the decisions made by individuals, these theories can be transferred to a national level. As such, states have rights just as individuals do, that are not be violated. It follows that war is an attack on a state, which is truly an attack on the rights of the individuals who make up the state. Consequently, we may deduce that if an individual may kill in self-defence, a state may do the same. Therefore, a war that is purely defensive and is a mere response to violent aggression will always be a just war.

Despite the existence of extensive just-war theories, most wars are nowhere near ethical, as the murder of countless people cannot be justified by simply adhering to a list of criteria. There are indeed exceptional cases in which wars are justified, despite the fact that they have not been defensive – such as some, but nowhere near all, wars of alleged humanitarian intervention.³ There are

² *R v Jones (Margaret)* [2006] 1 A.C. 136

³ For example: the Indian intervention in Bangladesh in 1971

often alternative motives and as Walzer rightly points out, “states don’t send their soldiers into other states, it seems, only in order to save lives.” A typical example being the 2003 invasion of Iraq, officially justified by the alleged existence of Weapons of Mass Destruction. However, the fact that these did not exist has left many suspicious of the motives and the true agenda of the Bush administration. Regardless of their actual intentions, preventing terrorism and saving the people of Iraq of a ruthless dictatorship may - at the very least - not have been priorities that were as prominent as portrayed.

Although a war of *only* humanitarian intentions would indeed be just, it is rarely that simple and many unjust wars are fought under the banner of justice and the protection of humanity. It follows, that after centuries of philosophical debate, Cicero’s words in 44 B.C - interpreted in the most literal of senses – still hold true, because a war can truly only be categorically labelled as just when the sole purpose is to be able to “live in peace unharmed.”