Just War and Human Rights
Burkhardt, Todd

Published by State University of New York Press


For additional information about this book
https://muse.jhu.edu/book/50036

For content related to this chapter
https://muse.jhu.edu/related_content?type=book&id=3131035
Conclusion

Just war theory not only establishes a framework regarding when the use of force is morally justified (such as in cases of self-defense) but also sets limits to the destructive acts of war by appealing to standards of conduct that incorporate discrimination (distinction), proportionality, and necessity. Just war theory also frames what is morally required of both the victor and the vanquished regarding rebuilding, reparations, and reconciliation during the postwar period.

Just war theory has been a constitutive part of Western political philosophy for the past two thousand years because it has remained germane to the conversation vis-à-vis declaring, fighting, and ending war justly. Just war theory has remained relevant because of constant evaluation, analysis, critique, and contribution by philosophers, theologians, soldiers, state leaders, and civilians alike. And what is absolutely relevant and critical to the ethics of war in the twenty-first century is human rights, and aligning just war theory with human rights, because human rights are a class of rights that play a special role in foreign policy. “They restrict the justifying reasons for war and its conduct, and they specify limits to a regime’s internal autonomy.”

Political control of a territory and population no longer guarantees the moral right to nonintervention. Although this was thought sufficient to underwrite political sovereignty and so a right to nonintervention, it is now thought merely necessary. The additional requirement of meeting basic human rights is also necessary. The idea of sovereignty is still tied to the right to nonintervention. However, we have come to recognize and accept that sovereignty is something that depends on certain moral conditions being met, to include basic human rights reasonably safeguarded. Unjust war, oppression, and genocide arise from unjust state institutions in which those states (deliberately or not) encourage, allow,
or fail to prevent the systematic and widespread violation of human rights. In addition, resorting to war for reasons of self-defense does not just entail fighting until a state’s rights have been vindicated. Rather, “the aim of a just war waged by a just well-ordered people is a just and lasting peace.” There can be no lasting peace without justice, and justice is predicated on the fulfillment of human rights, which constitute the core of international justice.

Although recognizing that human rights are essential to developing and maintaining international peace and stability is foundational, this realization has been slow and intermittent at times. For example, although the Universal Declaration of Human Rights was ratified in 1948, it took almost twenty years after that to develop and ratify its two main conventions: the 1966 International Covenant on Economic, Social, and Cultural Rights and the 1966 International Covenant on Civil and Political Rights. And then it has taken decades more for those conventions to become anything close to effective in guiding state behavior. However, the human rights movement that marked the latter half of the last century shows little sign of losing its history-shaping force and momentum, and that is because human entitlements are fundamental to life. The honoring of human rights provides reasonable protections against standard threats to the basic necessities that are needed in order for people to live. Human rights advocates prescribe a two-pronged approach. That is, human rights obligations dictate how a state acts domestically, toward its own people, and how a state acts internationally, toward people of other states.

Although war or the use of armed force is justified when specific events unfold as a response to severe injustice, this does not suggest that those who are warranted to use force can do so without limitations. The nonideal conditions we face often involve circumstances leading to unjust international attacks and/or unjust domestic institutions that might seem to call for war as a just response. While war might be permissible as a response to severe injustice, there are limits on the conduct of war even when it is a warranted response, and a state pursuing a just war or just use of force must do so with right intention. The idea of right intention not only is the overarching constraint on war but is also what unifies *ad bellum*, *in bello*, and *post bellum* (of, in, and after phases of war).

Fundamental to achieving or at least setting the conditions for a just and lasting peace is having a right intention. Although right intention has been a guiding principle in just war, it has lost some traction over
the years. But as I have tried to show, aligning the just war tradition with the norm of right intention is essential in order to set conditions for a just and lasting peace. The Augustinian concept of right intention is a fundamental principle of the entire just war tradition and all phases of war, not just the *ad bellum* phase. Right intention, is an essential part of war and needs to be further explored and revitalized as not only a mainstay in the just war tradition but in fact the only principle that unites all three phases of war.

Constitutive of having a right intention is that a state’s political leadership and military set the goal of achieving a just and lasting peace. A lasting peace is not possible unless certain standards of basic justice are secure—primarily, the honoring of basic human rights. And so fighting with right intention and establishing conditions for a just and lasting peace demand certain reforms to just war theory, because the ethics of war are predicated on honoring human rights. Vindicating a just cause and doing so in a just manner, which respects human rights and takes due care to insulate noncombatants from the ills of war but also recognizes and honors human rights throughout the postwar period, will reliably serve as a means to a just and lasting peace.

The intent of this book has been to analyze the concept of right intention and attempt to formulate and articulate all that right intention requires. By engaging in discourse about right intention, I have attempted to ascertain what policies and courses of action are consistent with right intention and the privileging of human rights. A just war tradition that places significant emphasis on human rights can and should be squarely made part of a state’s foreign policy.

I have focused on six main areas: that just war is governed by an overarching principle of right intention; that having right intention compels states to proactively analyze postwar obligations before they arise; that the residual effects of war continue to kill civilians after the fighting is over, so there are obligations to mitigate these harms; that states are morally required to intervene when a state has failed in its responsibility to protect its own citizens’ physical security, subsistence, and basic liberty rights; that justified drone strikes can be predicated on responsibility to protect norms; and that the Fourth Geneva Convention needs to be updated in order to reflect right intention and the human rights movement. The aim of this book has been to explore certain key elements of the claim that a just war is one fought with the right intention of not only vindicating a just cause and doing so in a just manner
but also reliably serving as a means to a just and lasting peace. These issues are not only timely but pressing and can all be argued for from the root idea that if force is to be governed by a right intention oriented toward peace with justice, various reforms are required. However, even if these issues that I have elaborated do not incorporate all of the necessary changes, their discussion here will spark further interest, discourse, and contributions.