# Just War Theory as War, Justice and Theory.

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## The return of the Just War.

By the Just War Theory I am going to understand a bunch of recent theories of applied ethics belonging to analytic ethics tradition, which started to emerge in the early 60th of the 20th century. The early 60th is the turning point in the development of Anglo-American or analytic ethics. It is marked by the tectonic shift from value free meta-ethics to normative ethics and from normative ethics to applied ethics. Just war theory is a theory of applied ethics. Its major claim is that not only that we can know the unique moral formula of the just war; we can also find out the way of ethical implementation the formula in the political life. Like any theory of applied ethics Just War Theory consists of two major parts: the normative theory and the application of the theory. In what follows I will follow this structure. I will scrutinize the major theoretical assumptions, which I consider to be faulty and possible practical application with I consider horrible.

Of course the Just War conception or doctrine is much older than the JWT. It is one of the four traditional normative conceptions of war, namely: pacifism, militarism, realism and just war. Pacifism is the rejections of war. Militarism is glorification of war. Realism is the subjugation of war to political necessity. Just war thinking may be placed somewhere in between militarism and pacifism. Militarism also justifies war by moral necessity. In terms of morally justified war thinking war may only be justified only if it serves to prevent even greater violence and even more devastating wars. In justified war mode of thinking violence is regarded as the greatest evil, but, unlike pacifism as a possible instrument to prevent greater violence. This way of thinking existed all through human history and within all cultures. Violence has always been regarded as a double blade, which was in need of thorough justification. In European cultural traditions the just war doctrine has a theological backbone and was founded by Augustine and Aquinas. It was secularized by Hugo Grotius in the 17th century who provided philosophical foundations for the International Law. The contemporary Just War Theory is much more ambitious. It claims the status of a theory based on the unique knowledge of both the nature of justice and the nature of war, which would enable us to make the wars truly just. The theory has become widely popular especially as a normative theory of international relations to the extent of substituting the theory of realism of Morgenthau and Lebow as a guidance for decision making in the matters of war and peace.

The contemporary JWT is represented by hundreds of particular theories of different quality. Some of them are simply bad. Some contain nothing but mere propaganda. Some are both. I am not going to take the lower quality theories into account. Any theory may have its ups and downs. In order to be fair to the theory I will take into account only well-heeled theories and generally regarded as paradigmatic ones. I will concentrate on the views of Michael Walzer, a founding father of the renovated theory and Steven Lee. Not only may they be regarded as the strongest Just War Theorists. They also represent two paradigms of this theory, namely, the paradigm of sovereignty (Walzer), and human rights paradigm (Lee). The paradigms are not exclusive. They are a kind of matreshka doll sequence of shells. The later paradigm of human rights claims the status of the larger outer shell nesting the smaller nucleus of sovereignty. The paradigm of sovereignty claims the reverse ordering. In other words the paradigms do not contradict each other in terms of the justification of war. But the sequence is different. Far Walzer sovereignty is the main issue and national self-defense constitutes the primary just cause. The defense of human rights comes next. For Lee human rights are the main issue and the defense of human rights world over constitutes the just cause. Self-defense comes next. In a way the defense of human rights is the best self-defense.

The typical formal structure of any JWT is a set of principles: 6 principles of Jus ad Bellum and 2 principles of Jus in Bello. The principles of Jus ad Bellum are the following: Just Cause, Good Intentions, Legitimate Authority, and Proportionality. These four are the most ancient theological principles promulgated by Augustine. Two more principles were added to the list more recently: Reasonable Chance of Success and Last Resort. The principles of Jus in Bello variety include Proportionality (In Bello) and Discriminations. The war may be rendered just not only if it is a just response to the grave injustice and a way to rectify the wrong. It must also be waged justly. Namely, one is supposed to discriminate among combatants and noncombatants and never apply excessive military force, beyond the needs of a decisive victory. I am not going to disclose the meaning of all the principles to the full extent. That is the usual and typical content of the discourse between different particular theories belonging to the general trend of JWT. In what follows I will try to pin down the typical misapprehension of the JWT in terms of theory and practice.

## JUST war theory against just WAR theory.

The Just War Theory is violating the famous dictum of Clausewitz: “War is not to be taken lightly”. I do believe that JWT does take war lightly. In a way the Just War Theorists are making the same mistake, which was exposed by Clausewitz and which was committed by his predecessors, namely, the usage of a static rather than a dynamic concept of war. War is not something to be understood as having a fixed nature. On the contrary, war is constantly changing its nature. By word of Clausewitz war is a real chameleon, and that is its primary characteristic. No finite set of principles can suit war taken in its dynamic conceptions. To illustrate what I mean I will draw only two sets of distinction. 1. The distinctions between political and natural war. 2. The distinction between conventional and absolute war.

The Greeks knew two different wars, for which even had different names. One is a war proper; the second is some kind of less honorable organized violence, more resembling hunting. The first, political war exists only among the Greeks and it must be fought according to the rules. The second kind of fighting, natural war is the war waged on barbarians. Peace is the normal state of affairs for relations among Greeks, war is a kind of a temporal discord, which is why this war must be fought according to the rules and it must be constrained both in terms of the starting of the war and in terms of fighting the war. On the contrary the permanent struggle is normal, when it comes to the relations with the barbarians and peace is the exception. The same distinction existed all through European history. War as a duel on larger scale was only fought among the Europeans. In the colonial wars no constraints were taken into account. Or if taken, the constraints were self-inflicted pragmatic constraints, not the moral ones. The emergence of human rights paradigm of the JWT revitalizes the notion of the natural war. The natural war is the war normally against non-liberal, hierarchical or rogue states, which do not recognize the liberal values. That is the main issue of the famous essay by John Rawls “The Law of Peoples”.

The second important distinction is between conventional and absolute war. The principles of the just war theory are only applicable to the conventional war. But the conventional war is only possible if we do not have much to lose in this war. The wars between European monarchies of the 18th – 19th century were conventional wars more resembling family discords. It is true any war is a slippery slope, threatening to fall down into a full blown absolute war. The level of enmity tends to grow exponentially at any war. Still, according to Clausewitz the political nature of war, if only we are capable to hold it within political constrains, brings us to terms, since the hell of absolute enmity is unwelcome by everybody. With the criminalization of the political enemy, as one of the consequences of just war mode of thinking the distinction between absolute and conventional war tends to disappear to plunge us almost from the very beginning into the hell of absolute war. The principles of the just war are only applicable within very narrow scope, namely political war and conventional war. It is naïve to think that the principles themselves may turn absolute or natural war into conventional or political. The mistake of this sort is known in ethical theory as the fallacy of moralizing. I do not even mention the newest forms of warfare, like Hybrid war, Proxy war, Information war, Cyber war or Colored revolution type of hostility. The just war principles are totally inapplicable there.

## Which justice?

What is Justice? The term Justice in a combination of words “just war” is used as if justice is something absolutely stable and distinguishable. This is not the case. What then is the possible meaning of justice in JWT? When it comes to justice, we can hardly get out of the general framework set by Plato and Aristotle. Our thinking of justice is shaped by these thinkers to the very core. First of all we have to distinguish two types of justice: general justice (Plato) and particular justice (Aristotle). The general justice or Platonic justice is the justice of the general ideal of social unity itself. It is the general pattern of social organization to be inflicted on the unwilling and prone to anarchy social matter. This justice presupposes a philosopher-king and a bunch of guardians using well placed kicks to insure the just order. The just social order is inserted forcefully on the reluctant herd. The particular or Aristotelian justice is almost the opposite. It is the justice of self-sufficient and autonomous individuals willingly shaping the necessary framework of their cooperation. The three major strands of particular justice, according to Aristotle are: Distributive justice, Retributive justice, Commutative justice (justice of exchange).

The Greeks never thought of war in terms of general justice. Justice of the war among the Greeks was a case of particular justice, based mostly on the idea of retribution. As to the war on barbarians it had nothing to do with justice at all. In one of the Platonic dialogues, Alcibiades claims that it is just to wage a war “when we have been deceived, or done violence to or deprived of something”. (Plato. Alcibiades 1 107c-109d). Particular justice of war is a reactive one. It is so to say “justice of fairness”. Unfortunately this kind of justice is only possible within as a very fragile balance, the violation of which threatens with the war of everyone against everyone. The particular justice model was shaping the Westphalian order. It was used to constitute the international justice before the world collapsed into the Second World War. It also constitutes the UN Charter, only within some stronger guarantees of international law.

The general justice of war, unlike the particular justice is a proactive one. The Romans were well aware of the general justice of war. For them it was nothing else but the famous “Pax Romana”, which was only possible within the general framework of clandestine as well as open violence and subjugations of peoples comprising the Empire. The general justice of war should be regarded as the pattern of justice used by Augustine in his just war doctrine. This is the justice of peace supported by strong word religion, going out of its way to subdue the rest of the word to the advancing religion. The contemporary JWT is a proactive, general, Platonic and Augustinian justice of shaping the reluctant world. The peace it is about to achieve may be achieved by means of forceful shaping the world, by means of violence if necessary.

## What Theory?

When it comes to the theory claim, it is natural toe ask: What theory? This question is both easy and difficult the answer. The question finds and easy to answer because the theory has some definite birth marks, which allow us to place it in the certain tradition of ethical thought, namely as a middle level normative analytic ethics theory, applied ethics variety. Its close relatives are the theory of justice by john Rawls and some even more practical theories of applied ethics like the theory justifying abortion or euthanasia. At the same time this is a strange theory, to say the least. Any middle level theory is supposed to belong to some general theory. The just war theory violates the basic conditions for the theory. Not only there is no general ethical theory to embrace all the diverse principles of just war, the principles themselves belong even to contradictory ethical traditions, not to mention theories. Judging by the normative message of its principles, Just War Theory simultaneously belongs to teleological ethics and deontological ethics. More than that, some of its principles are amoral, rationalistic principles. It simply means that any just war theory is self-contradictory and can be used to justify the opposite moral outcomes with the equal success. Still there are some general ethical theories, capable to adopt the JWT.

The prodigal son may be fostered by the general ethical theory of emotivism to begin with. The major claim of ethical emotivism is that moral statements are nothing else but the utterances although lacking any truth value, but widely applicable in our daily life, when it comes to the subjugating of other people or simply inflicting our will on them. The moral statements are simply clandestine commands shaped as a universal moral statement. Instead of saying “give me your money”, I may say “It is your moral duty to help the poor” with much better effect. Indeed the JWT may be regarded as a branch of emotivism. What we really do by using the JWT is claiming that our wars are always just, and the wars of our opponents are always unjust. In this case the JWT should be regards solely as an instrument of the information warfare.

The other general theory to claim parenthood is the so called intuitionism, which was very popular in the early 1930. Especially the theory of David Ross. According to intuitionism, morality is nothing else but a set of intuitively comprehensible moral principles irreducible to any single of major principle. Ross managed to coin 7 so called ‘prima facie principles’. Since these principles do contradict each other we must always balance them and take the moral decisions as a result of a complicated constant moral compromise. The problem with intuitionism, widely criticized in later ethical theory is that it can never possibly bring any moral decision making to the end. We can never justify our moral intuitions to others if they do not coincide. Beside, any ethical reasoning sounds a little better than a whim. The JWT with its set of basic principles shares the same fallacy and is remindful of prima facie duties of Ross.

Probably one more almost forgotten general ethical theory may claim right on JWT is ethical pragmatism by John Dewey. The credo of this theory is the biblical "By their fruits ye shall know them". And the only possible criterion of moral value is supposed to be success of actions. In war terminology by success we may understand victory. It this case victory is the only criterion of truth for the just war theory.

These three general ethical theories may successfully claim parenthood of the JWT and the baby has truly inherited some character traits of all the parents. It is a pragmatic theory of ethics, since it is about military success. It is intuitionism since it tends to balance the prima facie just war principles and there is no single principle around which all the rest of the principles may be organized. It is emotivism, since it is used by and large in information warfare in order to inflict our will on the opponent.

## The practical contradictions of the just war theory.

We so far outlined the theoretical assumptions of the JWT. Now we are coming to some practical consequences of the application. As a theory of applied ethics, just war theory is supposed to be applied. The practical application of the theory brings in many problems. The just war theory is self-contradictory. Here are the two most vivid contradictions of the JWT.

The militaristic principles of Jus in bello tend to clash with the pacifistic principles of jus ad bellum. *The more just is our war ad bellum, when we are at war, the less just is our war in bello*. And the other way around: *the more just our war in bello, the less just our war ad bellum*. Walzer understands this contradiction, and tries to hide it by means of smuggling in the notion of “supreme emergency”. In case of the supreme emergency we possess the special right to trash the principles of jus in bello and even most of the jus ad bellum principles and wage an absolute war without any constraints. The Nazi, for example constituted such a supreme emergency and the firebombing of Germany was upright. Now, what is the use of moral principles if one of the sides always posesses a right to reject the principles and switch to supreme emergency mode? Suppose we are waging a war on somebody and try to stick to some principles of just war. Then all of a sudden you enemy says with a grin: “sorry guys, I am switching to supreme emergency mode, you look like unmeasurable evil”. Will you continue to wage a constrained war? If the transition is so easy why do we reject the same right for the ISIS terrorists? May be they do have the case of supreme emergency. It all sounds clumsy. But this is how the theory works.

The second contradiction is that the JWT is sounds to be a theory for over dogs. The weaker side, or down dogs can hardly afford fighting justly. We have to recollect the famous Napoleonic dictum: “ il faut operer en partisan partout ou il y a des partisans”. The contradiction reveals the hidden agenda of the JWT which is to criminalize the enemy. Not only is your political enemy an enemy, he is also a pervert, a brigand, a pirate, a rogue state, etc. You can also switch to emergency mode. But the contemporary wars are asymmetric ones, which mean that the stronger side can criminalize the opponent without even starting a war. This brings us to the brink of the absolute war even without starting a war. It all becomes possible because JWT is introducing moral distinctions rather than political ones. The moralization of the conflict is the shortest cut to the hell of absolute war.

The third contradiction is that the contemporary war can never be just in terms of particular justice as opposed to the general justice. The contemporary war is no longer a duel. One of the major reasons, which render just war impossible, is that the contemporary war is always a war on civilians and these are mostly noncombatants who fall victims of the contemporary warfare even with be best of intentions. To call this war just is the mockery on the meaning of justice. In fact many languages are capable to fix this problematic nature of the justice of war. Just War sounds clumsy in Russian, as well as in German, because the meaning of war in these languages embeds the injustice of the practice of the contemporary war and may be even all the previous ones. In the other words the theoretical possibility of war to be just can be never realized in practice. War may be rendered just in terms of general justice, but general justice thinking may be rejected by the supposed victims of this war. To insist on the possibility of justice of the contemporary war is to exercise in hypocrisy. Besides, by means of reserving justice solely to ourselves we tend to perpetuate the war. War may nevertheless be rendered morally necessary, although still unjust.

The fourth contradiction. The human rights paradigm of the JWT should be regarded strictly speaking as militarism and not a just war doctrine. Militarism is also a moral doctrine its only difference from just war thinking is that violence is justified by some other moral values different from reducing violence itself. In the traditional the justified War is supposed to be justified only as a way to reduce violence, not the other way around. If the war is justified by referring to human rights it is clear cut militarism, as we tend to think that violence is better than human rights violation. This kind of thinking renders war perpetual. The justified war thinking proper shares with pacifism one important point of departure, namely the claim, that violence is the worst possible evil. Violence may only be justified as the way to reduce violence, not by the way of promulgating any other value. The human rights militarism is hardly any better other forms of militarism, like national grandeur militarism, or virtue militarism.

## [Don't ask for the meaning, ask for the use](http://yandex.ru/clck/jsredir?from=yandex.ru%3Bsearch%2F%3Bweb%3B%3B&text=&etext=984.pRWFJklwuGHEFlhC3bEaet-j_BkGh1mN4jlROAfBkpY067wJoVvwZpPWOofU6rUoEpbKsncorjL4snioG2vr2GHXmvvq4xQF-HMDNlcNHGI1RLoMrG4RhfxOPCVAXZQH.3f543062bc522372ebcfd8ebb2a5b1f9798ea391&uuid=&state=PEtFfuTeVD5kpHnK9lio9WCnKp0DidhEWbcdj2mRqenlRMIZpuf8i6TZq_E3ewnkWr3Dp3Z0X1GmD_HgcA8fqtWnGg74ZjYL&data=UlNrNmk5WktYejR0eWJFYk1Ldmtxdi1ZMklYdXlhYkIzcHlLbzllNFVPU1piYW4xUjRuUno4QzktQU96akZSVTlpV1NqMG5NZkxzd3B5ckhhSnUyUXBKeG8xdUNpTmgzeVVQX3NKc21XbHM0TDZuOFp3NmVPcXczUUFibU82cEhUT0R3UURQQlc0bnFrNXZGSFhqSlRkVnpfcVdXVmxWazhINmRRTU45aENJMEwtczQwTGlFUHc&b64e=2&sign=11bb0472ea70021e7e5da3af5ff629be&keyno=0&cst=AiuY0DBWFJ5Hyx_fyvalFJWMDfndy_ILy3k1R5JGiQHqyFmR_FffUW4v9fhTGJJ6lgXWr4p97R-Bi0kslAW48q3E9zl7PM2XLeelsQ6fBMiES9GJlyt2TKrXAUfnNM6bTQeOvEur3YqCCOtNkf1vpyEE0CFHqkpYfFZMf6jfBlieDm-n5SlPK7GfYlWprX0S7oHVc6YmnQ_nf7N3B2kyIM65xZKhmHSRTUU5omsm6aZnS6u4DcnqHptTgnEHQxYcfGDd3AfbMLCD8DaVSxBRjYpR6ycDEB96bQysAMtJg_Jr3beJkL6vW1b3exC01MeGs6DuVMrUJfrRmrS89VhehpSIfrFTnXiERz-9G7hYshlX_l5Yqm1_xWyhehRJg_pDG3xyYoDGSrRNSKhhNSmabQ85ygy9Uhxl1WdDQc6TfTJ_e8zE9RlX_OSVEF4pSwzJcrrbpkzFH50gb-q8dpnUUheTS3kTgD5UPmTUAD_YFsyjPF_sm3DCBMm8kpetlocw9EL2mPucxRz3nSpkqfrk1GgNxsRva-UAkk8rjaFs3II&ref=orjY4mGPRjk5boDnW0uvlrrd71vZw9kpiYnFO8du5m6yA0jcRSv1BL7ckM5__fGaF_HhUTmdVX1E79dgE3whrXgCu_nLuN6M5O08G_pj6oyLlub8klizOkbIOy4UxHz4VsQqeG8exMTHiX8EW_vMwvbZTpNh3MhPIjkh619TbRdXXv4l1eH7Zy0-KnE-kpQMlGtRAOPCPwuKry5f3VafK9rkzjJ5PwAEOqn_1agEJJ0yYM-NRWaMDiGpaQnyo2k6gExVXU-mqhBVQ-mMdV6OEHq_sQuyqWws&l10n=ru&cts=1457192694349&mc=5.080703201973232).

Any major Just War Doctrine was becoming famous not only due to its theoretical excellences but mostly due to its specific practical application. The theological doctrine promoted the crusade. The secular doctrine of Hugo Grotius promulgated internarial law. The clandestine agenda of the JWT is to substitute the international law by referring to quasi moral necessity of justice. It should be understood in terms of a new major paradigmatic shift of the nature of sovereignty. We are witnessing a fundamental process, which deserves a fundamental explanation. I believe the only possible deep-down explanation of this process of change is the transformation of political sovereignty. Indeed every major transformation of war and the understanding of its justice has always been a mirror image of every major transformation of sovereignty. It is evident that every major transformation of the moral purpose and meaning of war has followed every major transformation in the conduct of war. We are witnessing a tectonic shift comparable to the shift from the wars of hunter- gatherers to the wars of the empires of the ancient world; or from the wars of empires to the wars of kings; or from the wars of kings to the wars of industrial nation-states. We may also refer to this process as the transition from the war of modernity to the war of post-modernity. Hardt and Negri rightfully assert that

‘Traditionally war has been conceived as the armed conflict between sovereign nation-states. To the extent that the sovereign authority of nation-states, even the most dominant nation-states, is declining and there is instead emerging a new supranational form of sovereignty, a global Empire, the conditions and nature of war and political violence are necessary changing’.

This new global form of sovereignty, which today is starkly evident, is totally different from all previous forms. It takes a ‘network form’. A ‘network power’, a new form of sovereignty, is now emerging, and it includes as its primary elements, or nodes, the dominant nation-states along with supranational institutions, major capitalist corporations, and other powers. This network power we claim is “imperial” not “imperialist’. The character of the sovereignty of nation-states, which waged wars in the past, is no longer a dominant or true form of sovereignty. Traditional sovereignty is on the decline as well as in the so-called sovereign nations propelling it. The core or hub of the network form of sovereignty is, above all, exemplified by the United States, the major driving force of the new global authority. But even while the United States, the sole remaining superpower, is declining as a nation- state, it is taking over the role by default what I shall call from now onwards a type of consensual and transcendental ‘global sovereign authority’. Based on the assumed supremacy of power, the concept and practice certainly forms new, substantial military dynamics. Being translated into normative terms it demands JWT as its natural moral or ethical mode.

## Prolegomena to morally justified war which is about to emerge.

What if anything can substitute the JWT if we share neither its theoretical assumptions nor practical implications. In what follows I will draw some major characteristics of the contemporary morally justified war. The war must be justified by moral necessity rather than by justice. What follows are the major prolegomena for the future wars which could be rendered morally necessary.

1. The illusion of just war must be rejected. The contemporary war can never be just. The contemporary war is not in the business of doing justice.
2. War may be justified by strong and legitimate motives of Interest, Honor and Security of an agent, which should be separated from Greed, Hybris and Fear as unreasonable motives. In many cases the harm inflicted by means different from war or organized violence may be much greater than any military aggression or interventions. Here I mean the case of cyber war, blockade, hybrid war, etc.
3. The same kind of possible justification should be reserved to our opponent, whoever he is. The opponent should be regarded as an honorable foe.
4. The moral justification of war can only be valid as a language of discourse and a way to amend the international law, but not as a reasoning to trigger war directly.