



A Critique of Jus Ad Bellum and Jus in Bello as Considerations for War

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Abstract

The principles of Jus ad Bellum and Jus in Bello, which are also referred to as the laws of just war, have been widely discussed and debated by scholars and policymakers for decades. These principles aim at regulating the conduct of war and ensuring that conflicts are conducted in a just and ethical manner. While these principles have been widely accepted and applied by the international community, they also carry several limitations, including subjectivity and interpretation, enforcement and accountability challenges, complexity and ambiguity in application, as well as susceptibility to power dynamics and selective application. This paper with the aim of critiquing the two principles, adopts analytic and hermeneutic philosophical methods. It questions the possibility for strict adherence to these principles for a just war. It argues that there are some challenges (limitations) associated with humans and their personal gains that often may becloud consideration of these principles for just war. This paper urges the contemporary society to shift its focus from justifying war and regulating combatant activities to the prevention of war and the promotion of dialogue for mutual co-existence. This approach leads to stronger alliances, increased trust and a greater potential for finding shared solutions to global challenges. Moreover, from an ethical standpoint, the prevention of war aligns with fundamental principles of human rights, justice, and compassion. The promotion of harmony reflects our collective responsibility to protect and respect the dignity and well-being of all individuals. Humans should promote non-violence and means to peaceful resolutions that is the means to uphold the values of empathy, understanding, and equality.

Introduction

Jus ad Bellum and Jus in Bello are two important concepts within the field of International Humanitarian Law (IHL) that govern the conduct of armed conflicts. These principles provide guidelines and regulations for the ethical and legal aspects of engaging in war and how to conduct oneself during armed conflict. By interpretation, Jus ad Bellum means "right to wage war", it focuses on the justification and legitimacy of resorting to war. While Jus in Bello means "the law of war or the law of armed conflict", it governs the behaviour of parties involved in armed conflict. In other words, the former outlines the conditions under which a state is justified in using military force against another state. These conditions include just cause, right intention, last resort, proportionality, and reasonable prospect of success. While the latter outlines the ethical principles that should govern the conduct of soldiers and the treatment of civilians during war. These principles include the distinction between combatants and non-combatants, the principle of proportionality, and the principle of necessity. These two IHL principles have been crucial in their potential to promote ethical conduct during armed conflict and minimize human suffering. However, like any complex ethical framework, Just War Theory is not without its critics. This paper critically examines the foundations, implications and limitations of Jus ad Bellum and Jus in Bello.

Jus ad Bellum

Jus ad Bellum, which translates to "justice of war" in Latin, is a concept within international law that focuses on the criteria and principles for determining when a state is justified in resorting to war. It provides a framework for assessing the legitimacy of a state's decision to engage in armed conflict. The origins of Jus ad Bellum can be traced back to ancient times, with its development and evolution influenced by various legal, philosophical, and religious traditions. To be specific, the concept of Jus ad Bellum finds its roots in classical antiquity, specifically in ancient Greece and Rome. Greek philosophers such as Plato and Aristotle contributed to the understanding of the justifications for going to war. Plato, in his work *The Republic*, argued that war should only be waged for defensive purposes or to promote justice (45). Aristotle, in his work *Politics*, elaborated on the concept of "just war" by emphasizing the importance of a just cause and proportionality in war (112).

The principles of Jus ad Bellum were further developed during the Middle Ages within the framework of Christian theology and natural law theory. St. Augustine of Hippo, a prominent Christian theologian, laid the foundation for the Christian understanding of just war in his work *The City of God*. Augustine argued that war could be morally justified under certain conditions, such as self-defense, protection of the innocent, and restoration of peace (325). However, he also emphasized the importance of conducting war with restraint and in accordance with moral principles. His ideas influenced subsequent theologians, including St. Thomas Aquinas. Hence, Aquinas in his masterpiece *Summa Theologica*, expanded upon Augustine's ideas and formulated the foundational principles of Jus ad Bellum within a Christian moral framework. Aquinas outlined three essential conditions for a just war:

- (1) a legitimate authority declaring war,
- (2) a just cause, and
- (3) a rightful intention (147).

He also emphasized the importance of proportionality and the avoidance of unnecessary harm to non-combatants.

The modern formulation of Jus ad Bellum began to take shape with the emergence of the modern nation-state system and the development of international law. The Treaty of Westphalia in 1648 marked a significant turning point, as it established the principle of state sovereignty and recognized the need for legal frameworks to govern interstate relations (1-5). The Dutch philosopher Hugo Grotius made significant contributions to the field with his work *On the Law of War and Peace*. Published in 1625, this influential treatise outlined the principles of just war theory based on natural law. Grotius also argued that war could be justified in cases of self-defense, defense of others, and the punishment of wrongdoing (58). However, it was not until the twentieth century that the principles of Jus ad Bellum were codified and widely accepted by the international community. During this era, the development of international law and the establishment of international organizations further shaped the principles of Jus ad Bellum. The United Nations Charter, adopted in 1945, contains provisions aimed at preventing aggression and promoting peaceful resolution of conflicts. Article 2(4) of the UN Charter prohibits the use of force in international relations, except in cases of self-defense or when authorized by the UN Security Council (United Nations, 15).

In a nutshell, Jus ad Bellum focuses on the justification for resorting to war. It establishes the conditions under which a nation can ethically and legally engage in armed conflict. According to Brian Orend, a prominent scholar in the field of International Humanitarian Law (IHL), the main criteria for Jus ad Bellum include just cause, legitimate authority, right intention, last resort, probability of success, proportionality, and the principle of reasonable hope (43). Just cause entails the presence of a significant and morally acceptable reason for initiating war, such as self-defense against an armed attack or protection of innocent civilians from egregious human rights violations. Legitimate authority refers to the authority of a recognized government or an internationally mandated body to declare and engage in war. Right intention emphasizes the importance of pursuing just and fair outcomes rather than selfish or malicious motives. Last resort implies that all peaceful means of resolving the conflict have been exhausted before resorting to war. Probability of success considers the likelihood of achieving the desired outcome through military action. Proportionality requires that the projected benefits of the war outweigh the expected harm. Lastly, the principle of reasonable hope stipulates that the expected benefits of the war should outweigh the costs and risks involved. Jus ad bellum incorporates all these principles with a prime motive of preventing unnecessary wars and promoting a just and peaceful international order.

Jus in Bello Principle

Jus in Bello, also known as the law of war or the law of armed conflict, is a set of legal principles and rules that govern the conduct of parties engaged in armed conflict. It focuses on establishing limits and regulations for the use of force and protecting individuals who are not or no longer taking part in the hostilities (Smith 15). The term "Jus in Bello" is derived from Latin words, "Jus" meaning law and "in Bello" meaning in war, put together, it translates to "the justice in war" or "the law in war". It aims to balance the military necessities of armed conflict with the principles of humanity, proportionality, and respect for human dignity (Jones 27). In

other words, *Jus in Bello* establishes the ethical and legal rules that govern the conduct of belligerents during armed conflict. Its primary goal is to limit the suffering inflicted upon individuals and protect their dignity even in the midst of war. These principles are especially crucial when it comes to differentiating combatants from non-combatants and regulating the means and methods of warfare. For example, the principle of distinction requires that combatants must distinguish between military targets and civilians, and they are prohibited from directly targeting civilians or civilian objects (Bartels 127). This principle, rooted in the principle of discrimination, requires parties to the conflict to distinguish between those who are taking part in the hostilities (combatants) and those who are not (civilians) (Johnson 42). The principle is enshrined in numerous international treaties and conventions, including the Geneva Conventions of 1949 and their Additional Protocols. It is aimed at minimizing the harm inflicted on civilians and preventing their direct targeting.

Another interrelated but important principle of *Jus in Bello* is the prohibition of targeting civilians and non-combatants. Parties to the conflict are prohibited from deliberately targeting civilians or carrying out attacks that would cause excessive civilian casualties (Brown 58). This principle is closely related to the principle of distinction and is meant to ensure that civilians are not subjected to unnecessary suffering and harm during armed conflict. The principle of proportionality is also a key aspect of *Jus in Bello*. It requires that the anticipated military advantage of an attack must outweigh the expected harm to civilians and civilian objects (Miller 73). Clearly put, the principle of proportionality inherent in *Jus in Bello* requires that the harm caused to civilians and civilian objects must not be excessive in relation to the anticipated military advantage gained. It therefore implies that the use of force must be proportionate to the legitimate military objective. This principle serves as a safeguard against excessive and indiscriminate use of force, ensuring that the harm caused during armed conflict is not disproportionate to the military advantage sought.

Furthermore, *Jus in Bello* prohibits the use of certain weapons and tactics that cause unnecessary suffering or violate the principle of discrimination. Examples of prohibited weapons and tactics include chemical and biological weapons, indiscriminate attacks, and torture (Anderson 89). To be concise, *Jus in Bello* encompasses other rules such as the prohibition of unnecessary suffering, the prohibition of torture, and the obligation to provide medical care to the wounded and sick (Bartels 139). These rules aim to safeguard the rights and well-being of individuals directly affected by armed conflict, even if they are combatants. It is essential to adhere to these principles in order to preserve humanity and minimize the suffering inflicted upon individuals caught in the midst of war.

A Critique of *jus ad Bellum* and *Jus ad Bello*

The significance of *Jus ad Bellum* lies in its ability to provide a moral and legal framework for evaluating the legitimacy of war. It serves as a guide for policymakers, military leaders, and international institutions when considering the use of force. By establishing clear criteria, *Jus ad Bellum* helps to prevent the abuse of power and promotes accountability in the international arena. Furthermore, *Jus ad Bellum* has had a significant impact on the development of international law and the establishment of institutions dedicated to maintaining peace and security. The United Nations, for instance, was founded with the goal of preventing future wars

and promoting peaceful resolution of conflicts. Its Charter incorporates many principles of *Jus ad Bellum*, such as the prohibition of the use of force except in self-defense or with authorization from the Security Council. The International Criminal Court (ICC) also plays a crucial role in enforcing *Jus ad Bellum* principles by prosecuting individuals responsible for war crimes and crimes against humanity.

Jus in Bello is of significant importance as it establishes legal and moral standards for the conduct of armed conflict. It provides guidelines to minimize human suffering, protect civilians, and preserve human dignity during times of war. By upholding the principles of *Jus in Bello*, nations and combatants can strive for a more civilized approach to warfare and work towards the prevention of unnecessary harm and devastation. However, while *Jus ad Bellum* and *Jus in Bello* are useful framework for regulating the use of force between states, they have several limitations that must be taken into account.

In the realm of cyber warfare and information operations, there have been several critics of the traditional framework of *Jus ad Bellum*, which refers to the justification for resorting to war. Peter W. Singer and Allan Friedman argue that the traditional criteria of *Jus ad Bellum*, such as just cause and proportionality, are ill-suited to address the complexities of cyber warfare (52). They highlight the difficulty in attributing cyber attacks to specific actors and the potential for escalation without clear rules of engagement. Michael N. Schmitt, an expert in international law, explores the challenges of applying traditional legal frameworks, including *Jus ad Bellum*, to cyber operations. He suggests that new legal interpretations are needed to adapt to the unique characteristics of cyber warfare, emphasizing the need for a comprehensive understanding of the term "armed attack" in the context of cyber activities (248). Gary P. Corn and Bradley J. Strawser critically examine the compatibility of just war theory, which encompasses *Jus ad Bellum*, with the challenges posed by cyber warfare. They argue that traditional just war principles need to be reconsidered to account for the distinct nature of cyber operations and the difficulties in applying concepts such as proportionality and discrimination to the cyber domain (247).

Another obvious critic of *Jus ad Bellum* is its subjectivity and potential for varying interpretations. The principles outlined in *Jus ad Bellum*, such as just cause, proportionality, and reasonable prospects of success, are open to subjective judgments. As Walzer points out, "moral and legal interpretations of *Jus ad Bellum* can vary widely" (23). Different policymakers, legal experts, and scholars may interpret these principles differently, leading to divergent conclusions about the justification for war. Another limitation of *Jus ad Bellum* lies in its enforcement and lack of accountability mechanisms. While *Jus ad Bellum* provides criteria for the just initiation of war, there is no established international body responsible for enforcing these principles or holding nations accountable for violations. Tesón observed this when he posits that, "*Jus ad Bellum* is largely unenforceable, leaving each state to decide for itself whether to comply with the principles or not" (121). As a result, states have significant discretion in determining the legitimacy of their own actions, which can lead to abuses and conflicts.

Jus ad Bellum faces the challenge of complexity and ambiguity in its application. The principles and criteria outlined in *Jus ad Bellum* do not always provide clear-cut answers or straightforward guidelines for decision-making. In concordance, May contends that "the

complexity and uncertainty inherent in international relations make Jus ad Bellum difficult to apply consistently" (134). Consequently, real-world situations often involve intricate geopolitical dynamics, diverse stakeholder interests, and contested interpretations of facts. As a result, the application of Jus ad Bellum can be highly complex and subject to interpretation, making it challenging to reach consensus on the justification for war.

More so, Jus ad Bellum is susceptible to power dynamics and selective application by dominant nations. Powerful states often have the ability to shape the narrative and interpretation of the principles outlined in Jus ad Bellum to suit their own interests. As Falk argues, "Jus ad Bellum is often applied selectively, reflecting the power dynamics within the international system" (183). This can lead to biased assessments of the justifiability of war and allow powerful nations to engage in military actions that may not meet the established criteria. Bellamy challenged Jus ad Bellum for its focus on the initiation of war rather than the conduct of war. For him, "Jus ad Bellum criteria require that states have just cause, right intention, proper authority, last resort, reasonable chance of success, and proportionality before going to war" (51). However, once the war has begun, there are no clear guidelines for how the war should be conducted. This gap in the framework can lead to significant human rights violations and humanitarian disasters during the course of the war. Jus ad Bellum is limited by its focus on state sovereignty. The framework is designed to regulate the use of force between states, but it does not adequately address the use of force by non-state actors, such as terrorist groups or transnational corporations. This gap can lead to situations where non-state actors are able to engage in violence without consequences, undermining the legitimacy of the framework. Additionally, Jus ad Bellum fails to account for the systemic causes of war. The framework assumes that wars occur as a result of individual state actions, rather than structural factors such as poverty, inequality, or resource scarcity (Buzan 56). This limitation can lead to a narrow understanding of the causes of war and limit the effectiveness of efforts to prevent conflicts.

One of the main limitations of Jus in Bello is the difficulty of applying its principles in practice. As philosopher Jeff McMahan notes, "The principles of Jus in Bello, as they have been formulated, are far too general and abstract to provide guidance in specific cases" (57). For example, the principle of proportionality, which requires that the harm inflicted on non-combatants be proportional to the military advantage gained, is difficult to apply in practice because it requires making complex judgments about the value of military targets and the potential harm to non-combatants. In many cases, it may be difficult to determine what counts as a military target, or how much harm to non-combatants is too much. Another limitation of Jus in Bello is that it may be difficult to enforce in practice. A political scientist Cécile Fabre affirms this when he reviews that, "The enforcement of Jus in Bello is notoriously difficult, since it is often impossible to monitor compliance with the rules of war" (73). This means that combatants may be able to violate the principles of Jus in Bello with impunity, which can undermine the effectiveness of the principles themselves.

Jus in Bello does not provide a clear moral distinction between combatants and non-combatants. By moral distinction, this work argues that Jus in Bello should be able to state that before any war commences, those who are not soldiers and the civilians not involved in the war should be separated. As philosopher Michael Walzer notes, "There are no clear lines of demarcation between soldiers and civilians in contemporary wars" (68). This can make it

difficult to apply the principle of distinction, which requires that combatants distinguish between military and civilian targets and refrain from attacking civilians. In many conflicts, combatants may be embedded among civilians, making it difficult to distinguish between the two. Furthermore, Jus in Bello is limited by the fact that it is primarily concerned with the conduct of individual soldiers, rather than the broader political and social factors that contribute to armed conflicts. As political theorist Andrew Linklater observes, "Jus in Bello is oriented towards individual conduct in war, rather than the structural causes of war" (84). This means that Jus in Bello may not adequately address the root causes of armed conflicts, such as economic inequality, political instability, or ethnic tensions.

Evaluation and Conclusion

The challenges associated with Jus ad Bellum and Jus in Bello necessitate a shift in our approach towards preventing war and promoting harmony. War inflicts immense suffering upon individuals and communities. It causes the loss of innocent lives, the displacement of populations, and the destruction of infrastructure, leaving behind deep scars that take generations to heal. War and armed conflicts have a destabilizing effect on regions and the world as a whole. They create power vacuums, fuel extremism, and lead to the proliferation of weapons. By prioritizing the prevention of war, we can work towards safeguarding human lives and reducing the devastating impact of armed conflicts on vulnerable populations. Shifting our focus to preventing war and promoting harmony can contribute to global stability and security. By addressing the root causes of conflict, such as economic inequality, political grievances, and social injustices, we can mitigate the conditions that give rise to violence and aggression. Obviously, War diverts substantial resources away from productive sectors of society. Enormous sums of money are allocated to military budgets, which could otherwise be utilized for education, healthcare, infrastructure development, and poverty reduction. By preventing war, societies can redirect these resources towards building strong economies, improving living conditions, and enhancing the overall well-being of their citizens.

Shifting our focus to preventing war requires a fundamental change in our approach to international relations. Instead of viewing other nations as adversaries, we should strive for cooperation, dialogue, and diplomacy. By promoting harmonious relationships between countries, we can foster mutual understanding, collaboration, and the resolution of conflicts through peaceful means. This approach leads to stronger alliances, increased trust, and a greater potential for finding shared solutions to global challenges such as climate change, poverty, and disease. Moreover, from an ethical standpoint, the prevention of war aligns with fundamental principles of human rights, justice, and compassion. The promotion of harmony reflects our collective responsibility to protect and respect the dignity and well-being of all individuals. By embracing non-violence and seeking peaceful resolutions, we uphold the values of empathy, understanding, and equality.

In conclusion, due to the limitations (challenges) inherent in Jus ad Bellum and Jus in Bello, the contemporary society should shift its focus from justifying war and regulating combatant activities to the prevention of war and the promotion of dialogue. By doing so, we prioritize humanitarian considerations, foster global stability and security, enhance economic prosperity, encourage international cooperation, and uphold ethical and moral imperatives.

Through concerted efforts to address the root causes of conflict and to resolve a dispute peacefully via dialogues, every party involved is heard and their needs trashed. By so doing, we can work towards a more peaceful, just, and harmonious world.

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