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**JUS BELLUM: THE CLASSICAL JUST WAR DOCTRINE TODAY?**

by

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**A Thesis**

**Submitted to the Faculty of Graduate Studies And Research  
through the Department of Philosophy  
in Partial Fulfilment of the Requirements  
for the Degree of Master of Arts  
at the University of Windsor**

**Windsor, Ontario, Canada**

**1998**

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## Abstract

The classical just war doctrine has had a significant influence upon the way in which we think about war and morality. First set forth by St. Augustine, it was more fully developed and arranged in a systematic manner by St. Thomas Aquinas. Philosophers and theologians who followed in this tradition, such as Vitoria and Suarez further developed the implications of the doctrine and applied its principles to concrete situations. I discuss in this essay the principles and criteria which constitute the classical just war doctrine as developed by these thinkers, and argue that it is a way of thinking about war which is highly relevant today. I consider objections against elements within the just war doctrine and also against the relevance or applicability of the doctrine to modern warfare and weapons. I also consider particular issues raised by the modern phenomenon of revolutionary guerrilla warfare and civil war in light of the classical just war doctrine. A case study of the Spanish civil war serves to illustrate the applications of the principles and criteria of the just war to a modern conflict, and indicates the value of such an evaluative theoretical tool as the just war doctrine.

*To My Parents*

## ACKNOWLEDGMENTS

I wish to thank Dr. L. Westra for serving as the Supervisor of this thesis. I also wish to thank Prof. J.A. Blair for serving as Second Reader, and Dr. R. Nelson for serving as External Reader. Each of these have contributed much helpful advice and assistance for which I am grateful. I also wish to thank Dr. R. Johnson for Chairing the Committee for my Thesis Defense.

Most of all, I would like to thank my parents for all of their love and support.

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## INTRODUCTION

The just war doctrine as it was developed by St. Augustine and St. Thomas Aquinas, along with those such as Vitoria and Suarez who followed in their philosophical tradition, has had a tremendous influence upon how we in the western world think about war and morality. Yet there are those who have questioned, and even denied, that this classical exposition of the just war doctrine is still relevant for us today in the modern world. I will argue in this essay that the medieval philosophers and theologians who developed the classical just war doctrine have much to say that is vital to us in our age of fast-attack fighter aircraft and nuclear missiles. I will attempt to demonstrate that the principles and criteria of the *jus ad bellum* and the *jus in bello* set standards which must govern the undertaking and waging of modern warfare if that warfare is to be just. Further, I will attempt to show that the modern criticisms and objections raised against the classical just war doctrine can be answered in favour of the just war theory.

In the first chapter I will examine the content of the classical just war doctrine in order to clearly understand the principles and criteria which constitute it. This will include the conditions of the *jus ad bellum* and the *jus in bello* and all of the implicit and explicit principles which follow from these. The contributions of the key thinkers in the classical just war tradition will all be considered in

their proper place. In the second chapter I will examine the main objections which have been raised against the just war doctrine, both as a comprehensive doctrine and against particular portions of it. Particular attention will be given to those who would claim that the classical just war tradition is irrelevant or simply anachronistic in light of modern military and political realities, and the weapons and tactics which reflect these new conditions. In the third chapter I will consider the issues raised by the peculiarly modern phenomenon of revolutionary guerrilla warfare, and its corollary of counter-insurgency warfare and tactics. I will also examine the unique problems posed by irregular warfare, in addition to those which attend the conduct of a modern civil war, in light of the principles of the classical just war doctrine. I will demonstrate that this doctrine offers an important means of guiding and restricting the conduct of such "small wars" and of evaluating them on moral grounds.

I will thus attempt to demonstrate throughout this essay that the principles of the classical just war are both relevant and essential for us to consider if we are to think about war and morality in a meaningful way for our modern age. The application of these principles to concrete modern scenarios and a more extensive case study will serve to demonstrate the relevancy of the classical just war doctrine today. By the conclusion of this essay I hope to have shown

that the classical just war doctrine of St. Thomas Aquinas is relevant, and indeed essential to thinking about war and morality in our modern world.

## CHAPTER I

### THE CLASSICAL JUST WAR DOCTRINE

Can war ever be just? There have been many different and often contradictory attempts to provide an answer to this question. These have ranged from an extreme form of pacifism which holds that war, and especially modern warfare, can never be just; to the opposite extreme of "realism" which holds that it is an absurdity to even consider placing any limitations on the conduct of war. The latter school of thought is derived from the writings of von Clausewitz<sup>1</sup> and has had no small influence on the practice of war in this century. There is, however, a position which is between these two extremes, and this is the classical just war doctrine, originating with Augustine and most clearly articulated by St. Thomas Aquinas (1224-1274) and those philosophers and theologians who followed in his tradition. There are versions of the just war theory other than the classical, some of them quite distinct from the version which concerns us here. Alternative just war doctrines will only be considered in the context of their relationship to the classical just war doctrine. The systematic formulation of just war principles which this doctrine contains forms the basis for a school of thinking about the moral and ethical implications of war which is still discernable in contemporary philosophical consideration of warfare. The

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<sup>1</sup> Carl von Clausewitz, *On War* (Princeton New Jersey: Princeton University Press, 1832, reprint 1978), p.76.

question which will be explored here is whether or not the classical just war doctrine is in itself still a tenable philosophical position today.

Consideration of the tenability of the classical just war doctrine will proceed by examining the principles and conditions set forth by Aquinas which must be satisfied if war is to be undertaken justly. This will be followed by examining the conditions proposed by Aquinas and several thinkers who took up his principles and developed them to produce a coherent doctrine which delineated the conditions to be satisfied if a war is to be waged justly. These developments, as will be seen, constitute more of a "fleshing out" and organic development and application of the principles found in Aquinas rather than a radical modification of or departure from these. Once the doctrine itself has been set forth, several objections and problems which have been raised in criticism will be discussed, along with responses to these objections if such can be found. The final factor which will be considered in an attempt to determine the tenability or otherwise of the classical just war doctrine today will be whether or not just war principles can be applied to the problems of terrorism and counter-revolutionary warfare today.

Classical just war doctrine has two principal parts. The first of these is *jus ad bellum* - justice to make war. The main elements of the *jus ad bellum* are found in the

discussion of war in the *Summa* of Aquinas.<sup>2</sup> Here Aquinas addresses himself to the conditions which must be met in order that war may be commenced justly. The second part of the classical just war doctrine is the *jus in bello* - justice in the conduct of war. The means employed to wage war are the concern of the *jus in bello* portion of just war doctrine. Much of this portion of the doctrine was developed by thinkers following after Aquinas and taking him as their foundation, such as Vitoria (1480-1546) and Suarez (1548-1617).

It is worth recalling that the just war doctrine is underpinned by a presumption against the waging of war. It recognizes that circumstances may exist where war may or should be resorted to by the just state, and it seeks to prescribe the limits and conditions which must be respected if war is to be commenced and waged in a just manner. The presumption of the doctrine is against war unless those extraordinary conditions exist which the just war doctrine provides.<sup>3</sup>

#### *JUS AD BELLUM*

According to Aquinas there are three necessary conditions which must be met if war is to be initiated justly:

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<sup>2</sup> St. Thomas Aquinas, *Summa Theologiae* (London: Burns Oates & Washbourne Ltd., 1916), II-II, Q.40, A.1-4.

<sup>3</sup> William V. O'Brien, *The Conduct Of Just And Limited War* (New York: Praeger Publishers, 1981), p.16.

(i) it must be initiated by lawful authority, (ii) for a just cause, and (iii) with right intention. We shall examine each of these conditions in turn.

## I Lawful Authority

In his consideration of the conditions which must be met in order for a war to be commenced in a just manner, Aquinas states that:

In order for war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged. For it is not the business of a private individual to declare war, because he can seek for redress of his rights from the tribunal of his superior. Moreover it is not the business of a private individual to summon together the people, which has to be done in war time. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them...And for this reason Augustine says: the natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority.<sup>4</sup>

The point that is clear from this first condition is that it is only the state, the sovereign nation above which there is no tribunal or authority to which recourse may be had, which may lawfully undertake a just war. War is the prerogative of neither individuals, groups, nor subordinate political bodies who may turn to a superior authority in order to redress their grievances. The legitimate authority may be a king, a parliament, or whatever branch of govern-

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<sup>4</sup> Aquinas, *Summa Theologiae*, II-II, Q.40, A.1.

ment is vested with the highest decision making authority. The fact that the legitimate authority to go to war rests with the highest governing office is in a sense a formal protocol which must be met if the declaration of war is to be just. If this condition is not met, then the war commenced would not be just.

For the classical just war doctrine, to speak of a "just" war is to consider war as a species or instance of justice. According to Aquinas, justice directs man in his relations with other men, either in regard to his relations with individuals or with others in the form of a community. Justice directs the common good of both men and states.<sup>5</sup> A just war, that is a war which satisfies the tests of both the *jus ad bellum* and the *jus in bello*, is closely related to morality and moral conduct, but "just war" is not quite interchangeable with "moral war." The latter expression being, I think, a more restrictive realm of activity than justice.

## II Just Cause

Aquinas's second requirement, that of just cause, is such that it requires some clarification. He states that:

Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault. Wherefore Augustine says: A just war is wont to be described as one that avenges wrongs, when a nation or state has to be

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<sup>5</sup> Aquinas, *Summa Theologiae*, II-II, Q.58, A.5.



punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly.<sup>6</sup>

Study of the condition of just cause has seen Aquinas's original statement elaborated in a number of different ways. The discussion of just cause advanced by O'Brien suggests that the question of just cause consists of four basic components. These four are "the substance of the just cause, the forms of pursuing the just cause, the requirement of proportionality of ends and means, and the requirement of exhaustion of peaceful remedies."<sup>7</sup> I have found this to be the generally accepted standard, and I take it as a basis for discussion of the condition of just cause.

The central role of just cause is to establish whether the end for which the war is to be waged is a morally acceptable one, that it is sufficiently important to justify the killing and destruction which accompany war. From the position of Augustine and Aquinas, it is clear that defensive war *prima facie* is a just cause. Suarez confirms this when he says that the right of self defence, for both man and the state, is both natural and necessary and that "defensive war not only is permitted, but sometimes is even commanded."<sup>8</sup> However a defensive war, while initially just,

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<sup>6</sup> *Ibid.*

<sup>7</sup> O'Brien, *The Conduct Of Just And Limited War*, p.20.

<sup>8</sup> Francisco Suarez, S.J., *The Three Theological Virtues*, in *Selections From Three Works*, ed. by G.L. Williams, A. Brown and J. Waldon in *Classics Of International Law*,

may turn into an aggressive war, and when the ends of the war change it is possible that what began as a just war could become unjust.

The next element of just cause is concerned with the forms which are used to pursue just cause. There are only two forms, and these are aggressive and defensive war. We have seen that the classical just war doctrine expressed by both Aquinas and Suarez holds that the justice of defensive war is *prima facie* given. It is important that we understand precisely what is meant by the terms aggressive and defensive war. Defensive war should not strictly be understood as being only the resort to military force in reaction to invasion by a hostile neighbour. Under the category of defensive war must be placed, in addition to the above, wars begun as response to attacks upon national interests (i.e., ships, citizens, planes) in international waters or air-space, and a war which is commenced on the grounds that the nation so attacked is assisting insurgents or rebels against its neighbour. This would be a defensive war for the nation so afflicted by its enemy.<sup>9</sup>

In the classical just war tradition, aggressive war is not condemned outright and prohibited as being unjust. Thus

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vol. 2. ed. by James Brown Scott (Oxford: Clarendon Press, 1944), Disputation XIII, Section I, p. 802.

<sup>9</sup> Richard J. Regan, S.J., *The Moral Dimensions Of Politics* (New York: Oxford University Press, 1986), pp. 147-48.

Suarez could hold that "even when a war is aggressive, it is not an evil in itself, but may be right and necessary."<sup>10</sup> This, it must be noted, is not the case in some modern modifications of the just war theory which maintain with Hugo Grotius "that the possibility of being attacked confers the right to attack is abhorrent to every principle of equity."<sup>11</sup> The classical position holds that aggressive war cannot be prohibited as unjust because it may be necessary if a state is to maintain its security from enemies or to prevent a greater injustice from occurring. Aggressive war must have as its end the punishment of unjust dealing, and punishment can only be inflicted where there is a fault and when there has been an injury to the rights of the aggressor.<sup>12</sup> This allows for a pre-emptive war or striking at an enemy before he is prepared to launch his own invasion. Indeed, even though such a war would initially appear aggressive, in principle it is essentially a defensive measure and is just provided that all other conditions for the just war are met.

To take an example, this clause of the just cause element would have allowed an Anglo-French attack against

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<sup>10</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. I, p. 803.

<sup>11</sup> Paul Christopher, *The Ethics Of War And Peace* (Englewood Cliffs, NJ: Prentice Hall, 1994), p. 88.

<sup>12</sup> Franziskus Stratmann, O.P., *The Church And War* (London: Sheed And Ward, 1928), p. 60.

Germany when she re-occupied the Rhineland with her armed forces in 1936 in blatant disregard of the conditions of the Versailles Treaty. In hindsight, many historians concur that such a war would have been brief and successful, reducing and possibly eliminating the capacity and will of Germany to initiate an expansionist and militaristic foreign policy which would lead to World War II.

For Suarez sometimes aggressive war may be necessary to prevent the gravest of injustices being inflicted upon a state. Indeed, he holds that without the option to engage in such wars it would be impossible for states to exist in peace.<sup>13</sup> From a practical point of view (and the just war doctrine is eminently concerned with the most practical matters of statecraft and warfare) it seems to me that the position of Suarez is more reflective of the serious threat to the very existence of a nation faced by imminent invasion from an aggressive neighbour. Indeed an "aggressive" war against a nation preparing to attack may quite plausibly remove the ability of a potential aggressor to wage war by placing him at a material and strategic disadvantage, and thus create an environment more conducive to a lasting and just peace. Such a war would satisfy the requirement of just cause and would, providing that it meets the other *jus ad bellum* requirements, be justly declared.

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<sup>13</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. I, p. 804.

The attempt to achieve a just peace in which states can co-exist is the end for which a just war must be waged. An unjust or oppressive peace, including that achieved by a "peace at all costs" policy, adhered to until an enemy first declared war and had begun rolling across the borders should be opposed by all means including war. This is what Aquinas means when he notes that "those who wage war justly aim at peace, and so they are not opposed to peace, except the evil peace."<sup>14</sup>

Some modern versions of just war theory, as well as international positive law, have attempted to curtail the waging of aggressive war by states to obtain justice of their own accord or to enforce their rights.<sup>15</sup> Thus the United Nations, with its attempts to provide a collective "security blanket" for states, and to hold the threat of collective military force against any potential rogue nation contemplating aggression, purports to have removed both the necessity and moral permissibility of states to "take the law into their own hands" by unilateral military enforcement of their rights.<sup>16</sup> The effectiveness of these policies has been somewhat unimpressive. Other than the successful action in the Gulf War against Iraq, the evidence of the

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<sup>14</sup> Aquinas, *Summa Theologiae*, II-II, Q.40, A.1.

<sup>15</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 23.

<sup>16</sup> John Langan, S.J., "The Just-War Theory After The Gulf War," *Theological Studies*, 53, (March 1992), p. 98.

lack of will and ability of the U.N. to enforce a just peace (by military means or otherwise) does not instill confidence, and this is confirmed by the refusal of any nation today to surrender its right of unilateral military action when it perceives vital interests to be threatened.

The next element of the just cause condition is the question of proportionality. Only the most serious causes can justify the resort to war. Aquinas does not address the demand for proportionality directly under the question of war, but rather in the question where he examines sedition. Aquinas articulates this principle when he considers whether it is lawful for subjects to rebel against an unjust ruler. Here he states that:

A tyrannical government is not just, because it is directed not to the common good, but to the private good of the ruler, as the Philosopher states. Consequently there is no sedition in disturbing a government of this kind, unless indeed the tyrant's rule be disturbed so inordinately, that his subjects suffer greater harm from the consequent disturbance than from the tyrant's government.<sup>17</sup>

Christopher notes that this introduction of proportionality to the question of the lawful exercise of force was both an important innovation and was to be taken up by subsequent thinkers in the just war tradition and incorporated as a central requirement for resorting to war.<sup>18</sup>

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<sup>17</sup> Aquinas, *Summa Theologiae*, II-II, Q.42, A.2.

<sup>18</sup> Christopher, *The Ethics Of War And Peace*, p. 57.

From the explanation of proportionality given by Aquinas has been derived the principle that the potential consequences of the war must be weighed against the good that is to be achieved. The norm of proportionality is also reflected in the injunction of Suarez that if a war is to be just, "due proportion must be observed at its beginning, during its prosecution and after victory."<sup>19</sup>

An assessment of proportionality demands that one consider not only the evil which will be inflicted upon the nation which proposes to engage in a just war, but also the evil which will be visited upon the enemy nation as a result of the war. Some who hold a modified version of just war doctrine today also insist that the evil consequences that may be visited upon neutrals and the international community at large must be considered.<sup>20</sup> This calculation, it is suggested, must be revised as necessary when conditions (the fortunes of war) change dramatically. This emphasis on possible incidental effects upon the international community is not a factor which one finds given much consideration in the classical articulation of the just war theory. Indeed, it seems that any secondary economic or social effects which a just war would have upon a non-involved third party should not be given undue influence since any such damage would be

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<sup>19</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. I, p. 805.

<sup>20</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 27.

indirect and unintended and thus would be acceptable under the principle of double effect, as we shall see.

Some classical theorists have argued that another factor that must be considered under the rule of proportionality is the probability of a successful outcome to the war. If it seems on examination of the evidence available that the odds are greatly stacked against the successful prosecution of the war, then it is not acceptable to inflict the terrible consequences which follow upon war in the name of a cause that seems unlikely to prevail.<sup>21</sup> The ruler has to be morally certain that victory can be achieved before he can justly declare war.

This is not the position of most thinkers in the classical just war doctrine. On the contrary, there are three main reasons why these classical theorists rejected the demand for moral certitude that victory is achievable. The first of these is that practically speaking the condition is almost impossible to fulfil (with any moral certainty). The second reason is that with this condition a materially inferior or weaker nation would never be able to declare war against a stronger enemy, since in this case a ruler could never claim to have moral certitude that victory was likely. Thus a smaller nation would perpetually be condemned to suffer the greatest injustice at the hands of an enemy

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<sup>21</sup> Paul Christopher, *The Ethics Of War And Peace*, p. 91.



nation with an apparently more formidable war machine. The third is the argument by Suarez that

it is often to the common interest of the state not to await such a degree of certitude, but rather to test its ability to conquer the enemy, even when that ability is somewhat doubtful.<sup>22</sup>

The final clause of the just cause requirement of *jus ad bellum* demands that all possible peaceful remedies must have been exhausted before war is resorted to. Before war can be declared the offending nation must be given notice that a cause for just war exists and an opportunity must be given for the offender to make reparation. If such satisfaction is offered, then there is no longer any cause for war.<sup>23</sup> It is clear from this requirement that a surprise attack, along the lines of a Pearl Harbour strategy of bombing first and declaring war after the fact, is not an option for the just belligerent. This is a necessary sacrifice which must be accepted as part of the price of ensuring that war is waged within the limits of justice and morality.

War must be a last resort. This requirement has given rise to an objection in light of modern warfare. The technological reality today is such that modern weapons systems are commonplace which are capable of launching devastating strikes from land, sea, and air platforms located hundreds

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<sup>22</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec.VII, p. 822.

<sup>23</sup> *Ibid.*, Disp. XIII, Sec. VII, p. 837.

or even thousands of miles away from their targets. These systems lend themselves to "first strike" employment, offering the tempting possibility of destroying enemy forces without giving him the slightest warning of what is about to occur. Giving formal notice that a state of war exists would seemingly remove a significant advantage to one who would prefer to begin a swift and potentially very successful just war.

Some have also perceived a difficulty with the demand that war must be a last resort. If all alternatives are to be exhausted before war is justly resorted to, then nations in potential conflict must submit to a higher authority, if such exists, or to mediation. However there is no shortage of reticence on the part of sovereign nations to submit issues of national importance or security before an external tribunal for adjudication.<sup>24</sup> Most states flatly reject any attempts to place limitations upon their right to resort to armed force when they perceive no other alternatives. Attempts by such organizations as the United Nations to restrict or regulate the ability of states to wage war have been in all practical terms a failure, as is witnessed by the fact that no militarily significant nation has renounced its right unilaterally to resort to war when it perceives itself to have no other alternative. Nor would it seem

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<sup>24</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 31.

possible for rival nations to submit to such arbitration when the question to be resolved is one of basic ideological or cultural survival. Since nations are not willing to exhaust all options before they resort to war, they cannot satisfy the demand of just cause, and thus there can be no just war.

It is important to understand what the demand that war must be a last resort means in the classical version of the just war doctrine. The demand that war must be a last resort should be understood as requiring a nation first to attempt peaceful resolution within its means, and only once these are exhausted war may be declared.

As to the first objection that modern technology renders the last resort clause irrelevant, this is not necessarily the case, and if a nation would wage a just war then it must restrict its use of such technology as demanded by the doctrine. This is neither unrealistic nor is it impractical. Rather it is the sort of restraint in exercising the use of force that moral nations have recognized and adhered to historically. Such technology could certainly be employed within the limits set forth by the classical just war doctrine, and thus it is not the case that in order to be just a nation must divest itself of modern conventional military technology. Rather it simply cannot use such means to initiate a surprise war instead of declaring that a cause

for war exists and giving an offender the opportunity to make satisfaction.

The second objection is that since no nation will submit to super-national arbitration on issues of national security war is never a last resort and thus commencing war can never be just. This is not the case, however, because there is today no recognized authority to which states may submit their grievances. The notion that the United Nations has such authority is rejected by sovereign nations today, despite rhetoric and pretensions to the contrary. Such authority has in fact existed in the past, and classical just war theorists such as Aquinas, Vitoria and Suarez all argued that war between Christian nations could in some circumstances never be just because the Pope, if he chose to exercise his authority, could demand that the disputants submit their quarrel to him for resolution.<sup>25</sup> There is no superior authority to whom nations can appeal today, thus what is demanded by the condition that war must be a final resort is that the offender must be given the opportunity to make restitution for the grievance which he has caused.

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<sup>25</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. II, p. 808.

### III Right Intention

The final condition which Aquinas proposes for *jus ad bellum* is right intention. By right intention Aquinas enjoins the just nation to do good and avoid evil, and he draws heavily from Augustine in formulating his position. Aquinas here states that: "Thirdly, it is necessary that the belligerent should have rightful intention, so that they intend the advancement of good, or the avoidance of evil." He follows Augustine in noting that those wars are waged with good intention which are waged to secure a just peace, to punish an evil-doer, and to promote the good. Motives such as territorial expansion, avarice and cruelty are condemned. Aquinas notes that, "it may happen that the war is declared by the legitimate authority, and for a just cause, and yet be rendered unlawful through a wicked intention."<sup>26</sup>

Right intention demands that the leaders of a nation must examine the ends for which a war is to be waged and satisfy themselves that the ends satisfy the conditions laid out above. They are further obligated to constantly recall and examine these ends to ensure that they have not changed during the course of the war, moving from acceptable ends such as self defence into the cruel or vengeful punishment of a defeated foe. In the latter case the war, although initially just, has become unjust.

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<sup>26</sup> Aquinas, *Summa Theologiae*, II-II, Q.40, A.1.

In his insistence that a just war must be waged with the object of attaining a just peace in mind, Aquinas places an additional burden upon the just belligerent. In seeking to attain and implement a just peace, the just nation is required to refrain from imposing excessively harsh penalties, and other excesses which would quite likely sow the seeds of the next war.

As the classical just war tradition was developed upon the foundation laid by Aquinas, a further question came to be considered about the *jus ad bellum* portion of the doctrine. This question was, what degree of certitude was it necessary for a ruler to possess that the war he wishes to declare is in fact just? Further, was there any obligation for military leaders and individual soldiers to satisfy themselves of the justice of their cause in which they are obligated to serve?

The question then is how certain must the belligerent be that his cause is just before he declares war. Suarez sought to answer this question, and he distinguished between three classes of person for this purpose. These three distinct classes are the ruler or sovereign, the leading men and military leaders, and the common soldiers.<sup>27</sup> Suarez insists that the sovereign is required to make a thorough examination of the cause and its justice, and to act based

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<sup>27</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VI, p. 828.

upon his findings. If there is an equal probability on both sides that their cause is just, then the sovereign must not declare war. If, however, "the opinion favouring his own side is the more probably true, he may, even justly, prosecute his own right,"<sup>28</sup> which Suarez justified by arguing that as a principle of distributive justice the more worthy party receives preference.

This "distributive principle" offers the potential belligerent a great deal of latitude, because the standard it requires is basically a balance of probability. This standard was opposed to a demand for a much more rigorous and precise certainty that the sovereign's cause is just, which was the standard required by many thinkers within the classical tradition. For example Vitoria insisted that certain knowledge of the moral guilt of an adversary is required if a war is to be justly begun.<sup>29</sup> It seems to me that the stricter requirement demanding certain knowledge of the moral guilt of an adversary nation is more consistent with the principles laid down by Aquinas and the overall recognition of the terrible consequences which attend war. For if a war is to be begun, reason demands that there must be certainty that one's own cause is just. A slightly greater probability that one's cause is more just set as the standard of belief required is really nothing other than a

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<sup>28</sup> *Ibid.*, p. 828.

<sup>29</sup> Stratmann, O.P., *The Church And War*, pp. 62-63.

licence to wage war on little more than a whim. The more rigorous standard is accepted by the preponderance of classical just war theorists and is in my estimate more in keeping with the conditions set forth in the just cause criteria since it seeks to restrict resort to war.

The next category of persons to be considered are the key advisors and military leaders. For these Suarez holds that if they are asked to make a determination or to provide advice in order to assist the sovereign, then they "are bound to inquire diligently into the truth of the matter."<sup>30</sup> If the view of these men is not solicited, however, then they are under no more obligation than common soldiers in such circumstances. They are obliged to do their duty and in turn they are not held to have any moral culpability for the decision. This stands to reason, as in such a situation the generals would simply be obligated to execute the policies of their leaders, having no control over these policies themselves. While some argue that there exists through charity an obligation for military leaders to make inquiries into the justice of the cause of war and to make their views known to the ruler, Suarez argues that if such an obligation does exist, it is not binding but only an option.<sup>31</sup>

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<sup>30</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VI, p. 831.

<sup>31</sup> *Ibid.*, p. 832.



Classical theorists are united in holding the position that common soldiers have no obligation to inquire into the justice of the cause for which they are required to fight. So long as the war is not blatantly unjust, soldiers have a duty to serve. The confidence of their leaders in the justice of the cause, and the orders of their superiors, are binding even when doubt exists. The principle involved here which protects individual soldiers from moral guilt, even if justice is on the other side, is called "invincible ignorance."<sup>32</sup> While Suarez held that it was impossible for a war to be just on both sides, the doctrine of invincible ignorance recognizes that war could be perceived as being just by the soldiers fighting on both sides. The question of moral guilt and culpability becomes especially important, as we shall see when we examine the *jus in bello* portion of the classical just war theory.

#### *JUS IN BELLO*

The second element of the just war doctrine is concerned with the conduct of a belligerent in waging war. We have seen that a state may only declare war in order to defend or restore justice. Yet justice demands that there must be a clear distinction between a guilty enemy against whom it is lawful to make war and the innocents who may not be harmed. Vitoria holds that "the deliberate slaughter of

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<sup>32</sup> Christopher, *The Ethics Of War And Peace*, p. 63.

innocents is never lawful in itself" and that such slaughter is condemned by the natural law.<sup>33</sup> In so far as citizens of a belligerent country are involved in the unjust attack against another nation, they lose the status of innocents and are considered legitimate military targets. The distinction which must be made between the combatant and non-combatant reflects the distinction between legitimate and illegitimate military objectives.<sup>34</sup>

It naturally follows from the above that it is of central importance to determine who constitutes the class of innocents. Women, children, the elderly, and religious have traditionally been accorded the status of innocent, along with the rest of the peaceful civilian population.<sup>35</sup> There are segments of the civilian population, however, which contribute directly to the war effort, such as munition workers, shipbuilders and others who are essential to the material military capacity of a nation to wage war. Those who fall into the latter class become, in the application of the classical just war doctrine, legitimate military targets as a result of their direct contribution to the war effort of a nation.

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<sup>33</sup> *Ibid.*, p. 61.

<sup>34</sup> Paul Ramsey, *The Just War* (New York: Charles Scribner's Sons, 1968), p. 145.

<sup>35</sup> Christopher, *The Ethics Of War And Peace*, p. 61.

The distinction between combatant and non-combatant applies only to the direct and intentional targeting for destruction. Just war theorists clearly recognized that as a result of collateral and unintended damage many innocent lives may be lost. It is at this point that the principle of double effect must be considered.

The principle of double effect is a central element of the *jus in bello* portion of the classical just war doctrine. The principle, set down by Aquinas, holds that an act from which both good and evil consequences flow is permissible (a) if the evil result is an unintended side effect, (b) if the evil which results is proportional to the good which is achieved, and (c) if there is no other way of achieving the desired good. It is worth looking at Aquinas's own words.

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental as explained above...And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end.<sup>36</sup>

While the principle of double effect was originally conceived by Aquinas to justify self defence, it was quickly taken up by subsequent just war thinkers and became a cardinal feature of the *jus in bello*. The principle has had tremendous effect upon all subsequent thinking about the

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<sup>36</sup> Aquinas, *Summa Theologiae*, II-II, Q.64, A.7.

just war, both in the classical and other, very different just war traditions.<sup>37</sup>

Suarez incorporated the principle of double effect into his discussion of the just conduct of war. He recognized the necessity of distinguishing between combatants and non-combatants (innocents), while at the same time acknowledging the reality that innocents will invariably become casualties as the result of legitimate military operations. This would especially hold true in sieges or battles for key population centres. Suarez applies in such a case his own version of the principle of double effect. He states that if a belligerent has satisfied the demands of the conditions laid down by the *jus ad bellum*, and thus is fighting for just ends, the means which he employs to attain a legitimate end must themselves be just. In this case, the death of innocents is not sought as an aim of operations, but is rather an incidental consequence, "hence, it is considered not as voluntarily inflicted but simply as allowed by one who is making use of his right in a time of necessity."<sup>38</sup>

Now Suarez is not here suggesting that evil may be done to achieve a good end. Both Aquinas and Suarez would reject such a claim. Rather, the evil consequences (the death of many innocents as a result of legitimate military action)

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<sup>37</sup> Christopher, *The Ethics Of War And Peace*, p. 57.

<sup>38</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VII, p. 848.

are not intended as an end in itself, and, if they are proportionate to the good which is achieved, and if there are no other means to achieve the end sought, then such consequences are permitted to follow incidentally. In the view of Suarez, legitimate ends render any means used to achieve them legitimate as well. In this way military action against those military targets where the loss of innocent lives will inevitably occur can be justified by the principle of double effect.

I think that the position of Suarez on what means may legitimately used in the conduct of war is too permissive, in fact so permissive that it renders his use of the principle of double effect redundant. For while he recognizes the importance of the status of innocents in regard to military action, he seems to issue a *carte blanche* to the initially just belligerent to use any means available, and he justifies this by arguing that if the initial end is just, the means used to achieve the end must also be just. Considered as a moral argument, this conclusion does not follow. Aquinas recognized, along with most subsequent thinkers in the classical tradition, that if the means employed to wage war are immoral or out of all proportion in the evil which they inflict, then the waging of war would become unjust. It seems that to be consistent with the basic principles of the just war doctrine, as well as to satisfy the conditions which it sets forth, we must not

follow Suarez in his argument that just ends render just any means.

A contemporary account of the principle of double effect, which is consistent with the thought of Aquinas and the classical just war thought on the matter, is provided by Michael Walzer.<sup>39</sup> His argument, in a slightly modified form, is as follows: It is permitted to perform an act likely to have evil consequences (the killing of innocents) provided that the following four conditions hold:

1. The act is in itself either morally good or indifferent, that is, it must be a legitimate act of war.
2. The direct effect of the act is morally acceptable - the destruction of enemy military personnel or resources.
3. The intention of the actor is good, he aims only at the acceptable effect, and the evil effect is neither one of his ends nor is it a necessary means to his ends.
4. The good achieved must compensate for the evil consequences; that is to say that it must be justifiable according to the rule of proportionality.

I think that Walzer's exposition of the principle of double effect is both concise and consistent with the classical just war tradition, and I shall use it as a basis for considering the objections which have been raised against the principle of double effect. This principle has given rise to much criticism, as we shall see in the following chapter.

An example will make clear the way that the principle of double effect works in practical terms. The scenario is

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<sup>39</sup> Michael Walzer, *Just And Unjust Wars* (New York: Basic Books, 1977), p. 153.

like that of hundreds of battles which took place to liberate western Europe during World War II. It is helpful to recall that in the case of any siege or battle for a city, where innocents are likely to be killed indirectly, the demands of the *jus ad bellum* become even more important, given the known likely consequences to innocents of the battle. While there are those such as Nagel who deny that a battle which sees civilians killed can be moral, Vitoria and Suarez argue that such a loss is unavoidable, especially in battles for cities. The reasons to justify such a battle, however, must be grave indeed.

Take the case of a commander who is tasked [ordered] to capture a village of key military importance which was heavily defended by an entrenched enemy in the town centre. The bulk of enemy forces are known to be entrenched around the village centre, along with an undetermined number of civilians living in and around the area. The commander in this case could legitimately intend to assault the town centre with all of the firepower and forces at his disposal, striking the enemy forces there, even though innocent casualties will inevitably result.

This assault would be legitimate according to the criteria of the principle of double effect. We have already seen that Suarez argued that in such a battle, while innocent losses will inevitably be a consequence of such action, that fact in itself cannot serve to render the action

unjust. If such were the case, any battle for a city or town, such as the thousands which occurred during the liberation of Europe in the Second World War, would be considered immoral, and by logical conclusion any war, at any time, would be immoral, a stand which is clearly rejected by the just war doctrine. We can examine the act in light of Walzer's version of the principle.

The act is a legitimate act of war, because it is directed to a legitimate military end (the capture of a town) and the means by which it is achieved is through attacking and defeating the enemy soldiers who are in the town. The second condition is met because the intended direct effect of the act is the destruction of enemy soldiers. The intention of the actor is good because he is aiming only at the destruction of enemy soldiers, and the evil effect is not an end nor is it a necessary means to his end. If, for example, the attacker was to round up the families of the defenders in the town, massacre half of them and threaten to kill the rest unless the defenders surrendered, the third condition would not be met and the act would clearly be immoral.<sup>40</sup> The final condition is that of proportionality: the good achieved must be greater than the

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<sup>40</sup> Theodore Nagel, "War And Massacre," p. 188, in Marshall Cohen, Thomas Nagel, and Thomas Scanlon, eds., *War And Moral Responsibility, Philosophy and Public Affairs* (Princeton, NJ: Princeton University Press, 1974).



evil results. Presuming that the objective was necessary, perhaps even vital, to the achievement of victory in a just war, then the cost in civilian lives, while regrettable, must be accepted as part of the price of war.

We now have a picture of the classical just war doctrine, with its two key parts, the *jus ad bellum* and the *jus in bello*. We have examined the conditions and principles which have been set forth in each of these parts to determine whether a war is commenced and waged in a just manner. It is time now to consider the many objections which have been raised against the doctrine, both as a whole and against various elements contained therein. It is to the attempt to state, evaluate, and, if possible, answer these objections that we turn in the next chapter.

## CHAPTER II

### CONTEMPORARY ISSUES

There are those who argue that the classical just war doctrine is untenable in the face of modern warfare, weapon systems and political and social conditions. There are others still who, while not completely rejecting the principles of just war, argue that the classical doctrine must be so extensively modified in light of modern conditions that the result bears no resemblance to the doctrine of Aquinas and those who followed in his thought. These contemporary criticisms particularly claim that the conditions of *jus ad bellum* and *jus in bello* have become meaningless with the increased destructive capacity of modern war. Thus one sees today the principles and precepts of the just war jettisoned in favour of positions which argue either for the "total war" strategy which rejects as impractical any attempt to moderate the destructiveness of modern weapons, or for a form of pacifism which holds that modern war is so destructive that it can never be just. Much of the criticism of classical just war doctrine comes from the adherents of the second position, and it is mainly these that we shall consider.

The first, and not uncommon, claim which must be addressed is that the nature of modern warfare is such that a just war is now impossible. According to those who hold this view the just war is nothing more than a moral anachronism since "previous norms for the 'just' war have, for

all practical purposes, been rendered obsolete."<sup>1</sup> Modern war, it is argued, is essentially different from all past warfare, due to the unprecedented destructive capability of modern weapons. Modern war is now necessarily total and involves entire populations and the national resources of nations, not simply their armies. Thus, the argument goes, it is no longer possible to honestly speak of waging war in accordance with the principles of the classical just war.<sup>2</sup> Those who argue that the just war is no longer possible in the era of modern war further claim that modern arsenals are not capable of being employed on a selective or discriminating basis. The final claim advanced by these critics is that there can exist no "just cause" which could possibly render legitimate the unleashing of even a portion of the devastating power of modern weapons upon an enemy, hence the conditions of *jus ad bellum* cannot be met and just war doctrine is a dead letter. It is necessary to consider each of these objections in turn if we are to evaluate the claim that the just war is impossible today.

In order to determine the strength of the above mentioned arguments, it is necessary to make several distinctions. First, it must be noted that there is a great difference (in terms of the effects, if not the nature) between

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<sup>1</sup> Ramsey, *The Just War*, p.148.

<sup>2</sup> Langan, S.J., "The Just War Theory After The Gulf War," p.100.

conventional weapons and nuclear weapons. In the category of conventional weapons are included chemical and biological weapons, although some argue that these are a form of intermediate "weapon of mass destruction," in a category of their own between conventional and nuclear weapons. The last two sorts of weapons are held by some to be of their very nature morally abhorrent, and for this reason distinct from any other type of weapon. These weapons, their moral status notwithstanding, fall into the category of conventional weapons because it is at least theoretically possible to employ them as strictly military weapons, against military targets, without the necessarily wider destructive consequences which attend the use of nuclear weapons. The distinction between conventional and nuclear warfare is essential to recall if one is to evaluate the moral implications of modern war, and thus to determine if such a war can ever be waged in accordance with the demands of the classical just war doctrine.

We can now consider the claim that modern conventional war is by its very nature so fundamentally different from wars in the past that it cannot be conducted within the limits set by the just war doctrine. It is not at all evident, either in theory or in practice, that this is in fact the case. Simply because modern conventional weapons systems are capable of launching greater quantities of ammunition across farther distances, with greater speed and precision and over a more sustained length of time (which is

what technical advances in military science have allowed soldiers to do, nothing more nor less), does not in itself establish that the nature of war and weapons has altered so radically from that of the past fifty or seventy-five years.

The reality and practice of modern military technology and policy indeed testify against a claim that modern war is inherently different, and rather demonstrate a measurable and incontrovertible continuity between the nature of warfare and weapons of the past and present. Neither the present technical state of modern armed forces, nor the theory of their application, even so much as suggests that modern conventional weapons are somehow unique. A consideration of the use of modern conventional weapons in a modern war demonstrates clearly that any claim which holds that modern weapons and war are fundamentally different from anything seen in the past is false.

The Gulf War provides a recent and illuminating example by which we can see that modern weapons and war are not unlike those of the past. In the ground war, when Coalition armour, artillery and infantry clashed with their Iraqi counterparts, there was nothing in the ensuing combat (in terms of technology, tactics, casualties or destruction of men and material) which was inherently different from battles in the Arab-Israeli wars or for that matter the desert campaigns of World War II. The fact that Coalition training, technology and morale shattered an enemy inferior in

these respects but with numerical superiority is neither new nor surprising. In terms of the air war, other than increased accuracy in bombing there is nothing to indicate a new type of warfare. Quite simply, the claim that modern conventional war and weapons are unlike anything seen in the past does not stand up to an analysis of the use of these weapons in modern war. The previous evaluation, it must be made clear, does not include an analysis of the effects of a distinct class of weapon, those "weapons of mass destruction," which include nuclear, biological and chemical weapons. The Coalition forces did not deploy any of these, however there is some evidence that Coalition troops were exposed to some of these weapons, perhaps inadvertently through the destruction of Iraqi installations. We shall consider the unique problems posed by weapons of mass destruction later on.

The claim that modern war can never be just has a second component to it. This is that modern weapons cannot be used in a restricted or discriminating manner, but rather that they can only be employed in an indiscriminate manner whose use will lead inevitably to escalation and eventually to total war. Analysis of recent modern wars, however, seems to indicate otherwise. It is often suggested that a modern conventional war, involving at least one great power or superpower could not be waged without an inevitable escalation in the use of increasingly destructive weapons

and leading inevitably to a nuclear holocaust.<sup>3</sup> The conduct of modern wars such as the Gulf War (on the part of the Coalition) and the Falklands War on a limited, strictly conventional basis, quite within the limits prescribed by just war doctrine, indicates that this second claim is false. Indeed not only was there no excessive escalation (where one, if not both, of the armies could have employed nuclear, chemical and biological weapons if they had been so inclined), but in fact collateral damage and civilian deaths were significantly lighter than in similar battles and campaigns of the past such as the North African campaigns of World War II.

The previous considerations have revealed serious weaknesses in the position of those who claim that modern war renders the classical just war doctrine an irrelevant anachronism, and they make easier the evaluation of the final component of this argument. That is the claim that there is no just cause which could possibly justify, and thus legitimate, the inevitable indiscriminate and widespread destruction and slaughter which modern wars must produce.<sup>4</sup> It has been shown that modern wars have been conducted in a limited and discriminating manner, without

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<sup>3</sup> Norman C. Freund, "The Just War: Viable Theory Or Moral Anachronism?" *American Journal of Philosophy and Theology*, 3, (1982), p. 78.

<sup>4</sup> Langan, S.J., "Just War Theory After The Gulf War," pp. 100-101.

the escalation to weapons that were in the arsenals of at least one of the belligerents.

The claim that nothing can justify the use of modern weapons in a modern war can thus be reduced to the claim that there is no cause worth going to war over, including self-defence, the prevention of genocide, or the defence of natural rights and justice as provided for both in natural law and international convention. That is to say, given the massive destructive power of modern weaponry, there is no good which can be obtained which would be proportional to the evil which results. Such a claim is clearly contrary to the classical just war principles. Yet it seems that the burden of proof must lie with those who would argue that modern conditions (of whatever nature) have changed and are such that they now render impossible the waging of a just war, and this burden has not been met. It remains to be seen whether, by the examination of particular issues raised by modern war, this burden can be met, at least in principle.

In light of the destructive capacity of modern weaponry, the question of proportionality in warfare is still a central concern, from the point of view of both *jus ad bellum* and *jus in bello*. The right of a nation to defend itself is also as much a reality now as it was in the time of Aquinas and Suarez, and no evidence has been offered that modern conventional weapons and warfare are necessarily



incompatible with the demands of the just war. Simply because weapons have increased in their destructive capacity does not imply that they cannot be employed on a limited and moral basis, nor indeed that they must be employed at all.

There is a further criticism of the classical just war doctrine which must be considered at this initial stage. The criticism is that the criteria of the just war, especially those of the *jus ad bellum*, are so open to interpretation, depending upon the results which one is seeking to justify or to condemn, that the various prescriptions are incapable of providing any consistent and practical means of evaluating the justice of a war.<sup>5</sup> It is argued that when one considers such criteria as "just cause" or "right intention" in order to determine the morality or otherwise of a particular act, these terms must have a clear and universally accepted meaning if any meaningful evaluation is to be considered possible. Yet these two terms, and others that are central to the just war doctrine, may be interpreted in different ways by those with different values or ideological concerns, for whom morality is at best a secondary consideration. As a consequence, it is claimed that one is left with little practical guidance from the just war doctrine when confronted with a situation where a just end is fought

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<sup>5</sup> John Howard Yoder, "Just War Tradition: Is It Credible?" *Christian Century*, (1991), p. 297.

for by using means that are disproportionate, or perhaps even unjust themselves.<sup>6</sup>

Each of the points raised should be considered in its turn. To begin, one must recall that the classical just war doctrine seeks to provide a foundation of principles by which policy can be formed and evaluated, and a determination of the morality or otherwise of particular acts may be made. Now the conditions of the *jus ad bellum*, and of the just war doctrine as a whole, must be considered in their entirety and not pulled out of context to be considered in isolation. On a superficial level, it is conceivable that in an attempt at self-justification the language of the just war doctrine may be used, at least initially, in an attempt to place the cloak of morality upon a manifestly unjust action. Such would be the claim of Germany in 1939 that she was forced to invade Poland as a matter of self defence in response to repeated Polish aggression. However despite the sophistries of those who might attempt to manipulate perceptions and the prescriptions of the just war, from a practical point of view the doctrine is so constituted that such attempts are likely to fail.

Thus while an individual criterion, such as "just cause," may on the surface seem open to interpretation, there are essential elements which mitigate against this.

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<sup>6</sup> Langan, S.J., "The Just War Theory After The Gulf War," p. 106.

As we have seen, Aquinas did not simply declare that in order for a war to be just one of the requirements is a just cause, and leave the matter at that. Rather, what this term means is explained in detail, with conditions such as self-defence, the proper end for which a war may be waged and those other conditions which serve to "flesh out" the bare bones of a particular criterion, making its intention and practical application increasingly clear. The conditions of the *jus ad bellum* and *jus in bello* must be considered in their entirety, as opposed to being pulled out of their context, and provide a clear and unambiguous means of discerning the justice or otherwise of an act of war. As we have seen in the previous chapter, when these conditions are all taken into account in evaluating this objection, we must conclude that the claim that just war criteria are vague and open to any number of interpretations cannot be reconciled with the facts.

The second criticism made against the classical just war doctrine is that it fails to offer any practical guidance in a situation where a just war is being fought using questionable, or even unjust, means. Part of this criticism seems to rest upon a failure to make a proper distinction between ends and means, and thus between the *jus ad bellum* and the *jus in bello*. It is not the case that the just war permits one to do evil to achieve a good. However an occasional, or even a pattern of, resort to unjust means in

the prosecution of a just war does not necessarily invalidate the justice of the end for which the war is waged. It is possible that if a war is pursued aggressively beyond the original just ends for which it was begun, or if disproportionate means are an inherent part of the prosecution of a war, then it can become unjust and it would be immoral to continue.<sup>7</sup> Yet this is an evaluation which must take individual circumstances into account, and one cannot simply condemn as immoral any war where improper means are employed.

The fact that on occasion the Allies resorted to unjust means in the prosecution of a just war (such as the incendiary bombing of cities or the use of nuclear weapons on cities) does not mean that World War II was not a just war. Nor does it mean that on the whole this war was not waged (by the Allies) in a basically just manner. It may be the case that individuals such as generals or statesmen on occasion mistakenly apply the just war criteria, or choose to ignore their prescriptions altogether in a given situation. In such a case there is a decision taken which is morally wrong, and the just war doctrine holds them accountable for this. The just war doctrine does indeed provide guidance as to which ends and means are just or unjust, though it cannot compel men, who have free will, to choose

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<sup>7</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. I, p. 805.

the moral alternative regardless of how clearly it is pointed out. The claim that the just war doctrine is incapable of offering practical guidance in a situation where there is a question of unjust means being used to achieve just ends is therefore false, resulting from a confusion between the *jus ad bellum* and the *jus in bello*.

Having considered some of the most common objections to the relevance or possibility of the classical just war doctrine in the modern world we must turn to a second set of objections. These are concerned largely with the conduct of modern war in relation to the prescriptions of the *jus in bello*. We will also consider the problem of nuclear war and the questions which it raises from the perspectives of both the *jus ad bellum* and the *jus in bello*.

We have seen that the just war doctrine demands the distinction between combatants and non-combatants, that is, between those who may be legitimately attacked and those who may not be. This distinction corresponds to those who are waging or making possible the waging of an unjust war, and are thus legitimate targets, and those who are innocent of any such involvement, the civilians. Freund has argued that

the distinction between the innocent who are not open to military attack (noncombatants) and those actively involved in the perpetuation of war who are open to military attack (combatants), has been apparently eclipsed by the use of modern weapons which kill innocent and guilty alike.<sup>8</sup>

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<sup>8</sup> Freund, "The Just War: Viable Theory Or Moral Anachronism?" p. 71.

An immediate defect which reduces the strength of Freund's objection is his failure to distinguish, under the category of modern weapons, between conventional and nuclear weapons. The entire analysis of modern war is based on nuclear war. Freund does not even address the possibility of modern conventional war, which we have already seen has been, and therefore can be, conducted according to just war principles. His failure to make the essential distinction between conventional and nuclear war renders Freund's argument irrelevant to a discussion of the morality of modern conventional war. The arguments Freund uses to demonstrate the inability of the classical just war doctrine to deal with the modern reality of nuclear weapons will be considered later in a discussion of the unique problems posed by nuclear war.

Modern conventional weapons are demonstrably capable of being employed in a way which can discriminate between legitimate and innocent targets. Modern artillery, armour, missiles and other conventional weapons have increased in accuracy and thus in the theoretical ability of a commander to discriminate between combatants and noncombatants.<sup>9</sup> This fact also disproves the claim that the indiscriminate nature of modern weapons is such that "the double-effect argument

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<sup>9</sup> Charles Messenger, *Armed Forces Of The World* (Hong Kong: Bison Books Ltd., 1985), p. 76.

cannot be expanded to cover modern warfare,"<sup>10</sup> since it is based upon the premise that modern warfare necessarily entails the application of indiscriminate weapons, which is not the case. While it is true that the arsenals of most modern nations include weapons of mass destruction and weapons which can be used in an indiscriminate manner, the fighting of a modern conventional war does not necessarily entail that these be deployed. This fact must be recalled when one is evaluating the possible morality of modern war.

Is it ever possible to use nuclear, or even chemical and biological weapons in a moral manner, that is, in accordance with the conditions set forth by the classical just war doctrine? There has been no small controversy on this question, and there have arisen positions at two opposite extremes. One extreme holds that these weapons must always be immoral because of their terrible destructive nature, because the consequences of their employment are always out of proportion to the good achieved, and because such weapons are unable to discriminate between combatant and non-combatant. At the other extreme lies the position that once an enemy has resorted to first use of such weapons, all moral restraint in their use must be rejected in favour of simple survival. In this view even the targeting of enemy

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<sup>10</sup> Laura Westra, "On War and Innocence," *Dialogue* XXV (1986), p. 740.

cities becomes an acceptable act of war.<sup>11</sup> As we shall see, the classical just war doctrine rejects as untenable both of these two extremes.

Before considering the issues which follow, it is necessary to recall several points. First, while perpetual peace and unity are worthy ideals, the reality of history and human existence is that wars have always been with us (and there is no evidence that would suggest anything other than they always will be). The classical just war doctrine attempts to provide guidelines for what may and may not be morally done when peace is impossible and war is inevitable, and what may be done once war has begun. Since that doctrine is practical and concerned with the world as it is, and not as it should ideally be, it must be able to offer guidance in even the most extreme and disturbing of political and military situations.

Nuclear, biological and chemical weapons are so destructive that their effects demand particular consideration, and these effects also tend to complicate a moral analysis of the potential use of weapons of these types. Thus while chemical, and even nuclear weapons, may be targeted strictly against enemy soldiers, the long term effects of radiation and chemicals upon the genetic, and especially the reproductive systems of survivors must give rise to a whole host of

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<sup>11</sup> Regan, S.J., *The Moral Dimensions Of Politics*, p. 160.



new problems that must be taken into account. When soldiers who have been exposed to even low levels of chemical or nuclear weapons return home and begin families, the genetic mutations and aberrations caused by this exposure are manifest clearly in the birth defects and deformities which afflict their children.<sup>12</sup> As we will see, these effects must be taken into account in order to examine the possible moral use of weapons of mass destruction.

Yet it is also the case that nuclear, chemical and biological weapons exist, and an ever increasing number of nations possess them. Until they go away, we must consider the morality of their possible use. Pacifists have argued that nuclear and chemical weapons, and especially nuclear weapons, cannot be used in a manner which satisfies the demands of discrimination and proportion. They insist that either unilateral disarmament or the explicit renunciation of the use of these weapons under any circumstance are the only morally acceptable options available. While perhaps initially appealing, this view does not take account of the moral obligation which a state has to protect its citizens from nuclear aggression or blackmail. Almost no military strategist has suggested that conventional weapons or technology alone are able to deter nuclear aggression. Nuclear weapons are the only presently available means of protecting

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<sup>12</sup> Rachel Carson, "Silent Spring," p. 358, in *Environmental Ethics*, L. Pojman ed. (London: Jones and Bartlett Publishers, 1994).

the citizens of a nation from nuclear attack or blackmail.<sup>13</sup> Given these other factors in the moral equation, it would be imprudent to reject nuclear weapons as *a priori* immoral.

In the discussion of the use of nuclear and chemical weapons there is an important distinction between two very different types of strategy for the employment of these weapons: countervalue and counterforce.<sup>14</sup> Counterforce applications are those which are directed strictly against enemy military forces and military assets. Countervalue applications are those which are directed against enemy cities, infrastructure, or similar noncombatant assets, whether in order to deter, terrorize or punish, or for some other end. These two distinct types of strategy are central to a proper evaluation of the use of nuclear and chemical weapons in an attempt to determine under what circumstances, if any, such use may be just according to the conditions of the classical just war doctrine.

### Chemical Warfare

We will first consider the use of chemical weapons. It would initially appear that there are strong arguments that the use of chemical weapons as a counterforce weapon could be justified under the *jus in bello* demands of proportion

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<sup>13</sup> R. Barry, O.P., "Unilateral Nuclear Disarmament And Bilateral Nuclear Sieges," *American Catholic Philosophical Quarterly*, (Autumn 1991), p. 487.

<sup>14</sup> Ramsey, *The Just War*, p. 214.

and discrimination.<sup>15</sup> To use chemical weapons exclusively against enemy soldiers on a battlefield is both technically and tactically viable. It is not any more difficult than the application of artillery, tactical air support or similar demonstrably legitimate weapon systems. There are those who claim that chemical weapons are indiscriminate weapons which cannot be employed selectively because they cannot distinguish between combatant and noncombatant targets, but this argument is defective for two reasons.

First, it is not implausible to conceive of the use of chemical weapons in a precise and selective manner against soldiers, as for example an infantry regiment moving through sparsely populated countryside or mountain terrain. In this case chemical weapons could be employed just like any other conventional weapon, such as artillery. Incidentally, this does not entail permanent contamination or render the area uninhabitable in the long term, as the most common and efficient varieties of chemical weapons are of the non-persistent variety, composed of active agents which remain effective only for a period of hours or days before they become inert.<sup>16</sup>

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<sup>15</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 149.

<sup>16</sup> Messenger, *Armed Forces Of The World*, p. 40. See also: Department of Political And Security Council Affairs, *Chemical And Bacteriological Weapons And The Affects Of Their Use* (New York: United Nations, 1969), p. 7. And: James F. Dunnigan, *How To Make War* (New York: William & Morrow Co., 1993), p. 411.

It must be recognized however that current research into even limited amounts of chemical exposure, such as that being done by Theo Colborn, indicates that serious environmental and physiological damage may be done even by exposure to minute amounts of chemicals previously thought harmless. A fuller understanding of the effects of chemicals and chemical weapons may eventually lead to a point where even the possession and production of such weapons cannot be justified on grounds of proportionality.

We can turn then to the objection that chemical weapons are immoral because they cannot be used in a way that discriminates between civilians and soldiers. While it is true that one could not deploy chemical weapons in a manner which could discriminate between soldiers and innocents in highly populated urban areas, in this case the use of chemical weapons would not satisfy the demands of the *jus in bello*, and would be immoral.

The ability to discriminate between combatants and non-combatants with these weapons, however, is not so clear cut as it may at first have appeared. That is because one cannot claim to be distinguishing between combatants and non-combatants when the effects of these weapons upon soldiers who have been exposed to them are passed on to their unborn children and future generations in the form of birth defects are taken into account. In a very real sense, then, it cannot be claimed that chemical weapons can be employed

on a selective basis which would satisfy the *jus in bello* demand for discrimination.<sup>17</sup> At the same time it must be noted, and will become increasingly evident as we progress, that there is a strong argument that from the point of view of self defence it is not practical, and from the point of view of morality it is not desirable, to unilaterally reject all use of nuclear and chemical weapons as immoral. Such a policy would likely place a nation in a position to be blackmailed by an enemy with no compunction about using these weapons, without providing any means of defence against nuclear aggression.

There are several other aspects of chemical weapons which tend to put them in a class of their own as far as morality is concerned. First, almost every government has recognized that these weapons are morally repugnant, and they have agreed to renounce their first use. These weapons are designed to affect large areas and targets, and their most natural targets are civilians rather than military forces, which are able to produce counter-measures. Further, it is only reasonable to think that once barriers to the use of chemical weapons have broken down, it is civilians - that is to say innocents - who would suffer the most from its use. An objection to any state even acquiring chemical weapons is that the existence of these weapons in

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<sup>17</sup> A.W. Galston, "Defoliants", p. 62, in *Chemical And Biological Warfare*, ed. Steven Rose (Toronto: George G. Harrap & Co. Ltd., 1968).

the arsenal of one nation causes instability and security concerns for its neighbours.<sup>18</sup> The history of tensions between the U.S. and Iraq over the potential presence of these weapons in Iraqi hands gives ample evidence of the destabilizing effects which chemical and biological weapons have on the international community.

Where, then, does this conflict between the devastating, seemingly immoral effects of chemical weapons (and other weapons of mass destruction) on the one hand, and the equally devastating and immoral effects of an unlimited and unrestricted use of such weapons (held to be outside regulation by morality in their use) on the other hand leave us? It seems to me that in such a situation we may be forced to acknowledge what Nagel calls a "moral blind alley," where;

the world itself, or someone else's actions, could face a previously innocent person with a choice between morally abominable courses of action, and leave him no way to escape with his honour.<sup>19</sup>

Faced with such a reality, the most moral route would be to limit the death and damage (to combatants and to innocents) which attend the use of these weapons as much as possible, while recognizing that it is neither possible nor desirable to reject the use of these weapons altogether. The prescriptions of the classical just war doctrine offer the most effective way of doing this. In the consideration of the

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<sup>18</sup> Rose, *Chemical And Biological Warfare*, p. 168.

<sup>19</sup> Nagel, "War And Massacre," p. 23.

possible use of nuclear and chemical weapons which follows, the existence of a "moral blind alley" and the attempt to restrict the use of weapons of mass destruction to the absolute minimum that is required for self defence must be kept in mind.

While there exists a rule of international law which prohibits the first use of chemical weapons, there is no guidance as to what is permissible once that restriction has been violated.<sup>20</sup> This question is important, since Soviet, now Russian, military doctrine governing conventional warfare relies heavily upon extensive first and consecutive use of chemical weapons as an integrated component of its overall combat doctrine.<sup>21</sup> This reliance upon chemicals as a basic part of conventional war is also the case with many client states of the former Soviet Union, who tended to employ the military doctrine of their patrons along with the technology and equipment with which they were supplied. While such tactics proved unsuccessful for Iraq in the Gulf War, that does not preclude another nation putting Soviet military doctrine to the test, including the massive employment of chemical weapons. Since there is a very real possibility of Western armies being confronted with the first use of chemicals by enemies, the subsequent use of chemical

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<sup>20</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 149.

<sup>21</sup> *Messenger, Armed Forces Of The World*, p. 37.

weapons must be considered in light of the conditions of the classical just war doctrine.

No one disputes that it would be preferable to fight a war without chemical weapons. Indeed, this has been done in World War II, Korea, and (though there is some question about Iraqi employment of chemical weapons) in the Gulf. If an enemy first uses chemical weapons, it would seem that a corresponding use, both as self defence and retaliation, would be necessary, but we could not claim that such a use is justified under the *jus in bello*. As long as the use was intended to be counterforce, the retaliatory use of chemical weapons would seem to be necessary if only to remove the unfair advantage gained by an enemy through the unlawful first use of these weapons.<sup>22</sup> Such circumstances would initially appear to illustrate an example of Nagel's "moral blind alley" where one must choose between two morally abominable choices, but this may not be the case.

I think that the case could be made for a use of chemical weapons which satisfied the *jus in bello*, if two conditions are met. First, the use of chemical weapons must be retaliatory. That is, the other side must have used them first and thus broken the "no first use" barrier which exists in international law. The second necessary condition is that the enemy use of chemical weapons must have

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<sup>22</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 149.



inflicted such harm that the only, or the most effective, defence would be a counter strike with the same type of weapon. I think that the second condition imposes a burden which would be very difficult to discharge, implying as it does that the defender must resort to all other means available to him first, from air and artillery strikes to the tactical withdrawal from a position (if this is possible - it may not be.) Indeed I find it difficult to conceive of a plausible scenario which would meet both conditions. In principle, however, it would seem that these conditions could at least theoretically be satisfied, and if they are then it may be possible to employ chemical weapons in a manner which might satisfy the *jus in bello*. I concede that the likelihood of these two conditions being satisfied is remote, and the presumption should clearly be against the use of chemical weapons.

It has been argued that chemical weapons are particularly cruel types of weapon, attacking the human being rather than the soldier, and thus that they are inherently immoral.<sup>23</sup> The long term and mutagenic effects of some chemicals would seem to strengthen this claim, but do not prove it.<sup>24</sup> Nagel considers chemical weapons along with weapons such as flamethrowers and napalm, which he views as weapons whose use is "an atrocity in all circumstances" that

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<sup>23</sup> Nagel, "War and Massacre," p. 21.

<sup>24</sup> Colborn, *Our Stolen Future*, p. 51.

he can conceive of. It is an error, however, to fail to distinguish between weapons of mass destruction and basic conventional weapons, even if their effects seem distasteful. Nagel does not take into account this distinction, nor does he consider very real tactical possibilities where such weapons may be necessary and legitimate. There are tactical situations, as when an enemy is ensconced in bunkers or tunnel systems, where a very dangerous foe cannot be dealt with by any means other than those which Nagel finds morally repugnant. The island fighting on Tarawa, Iwo Jima and Okinawa during the Pacific campaign provides ample evidence for the necessity and legitimate use of flamethrowers and napalm against enemy soldiers.

The end which justified the island fighting in the Pacific was that secure bases in a line of communication for both men and materiel were required in order to invade the Japanese home islands and win the war. The use of those islands for ports, airfields and storage areas would be impossible if they were still occupied by enemy forces. If some islands did not have to be occupied for these reasons, they were simply by-passed and their garrisons left sitting useless. It was, therefore, essential to clear these islands of enemy because these islands were necessary to the continued prosecution of the war in the Pacific.

## Napalm

It will be helpful to turn for a moment from the discussion of chemical weapons to address the objections of Nagel to the use of napalm. Most moral thinkers, and indeed the United Nations as well, disagree with the view of Nagel that napalm is a form of chemical weapon.<sup>25</sup> Napalm is rather a conventional, high explosive type of weapon which should not be held to fall within the prohibitions and moral condemnations which attend the use of chemical weapons. While it is undoubtedly the case that napalm devastates both human and non-human habitats, the same objection could be raised against any conventional weapon. For example the unparalleled artillery bombardment of the Western Front in World War I completely obliterated all life from huge tracts of land in France and Belgium. Thus while acknowledging a not insignificant minority which holds the opposite view, I must agree with the majority of those who have considered this matter and who recognize that napalm is a high explosive conventional type of weapon.

Nagel's rejection of the use of weapons which inflict terrible burns as being immoral and baneful modern scourges not only fails to hold up on the first count, but also is historically misinformed. Aquinas and Suarez would have been well acquainted with the use of "Greek Fire" during

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<sup>25</sup> United Nations, *Chemical And Bacteriological Weapons And The Affects Of Their Use*, p. 6.

countless sieges against the attackers of both castles and cities.<sup>26</sup> While inconsistent with some modern sensibilities, Greek Fire was in fact a forerunner of napalm, as it was a combination of burning pitch and sulphur which continued to burn as long as an oxygen supply was present, just like napalm. While not pleasant, the use of such weapons can in some circumstances be entirely consistent with the conditions of the just war doctrine.

While the mere use of Greek Fire does not imply that such use is necessarily moral, it is a fact that the laws of war which existed at that time, as well as common military and civilian usage, all viewed this weapon as morally acceptable.<sup>27</sup> That is not to say that since the Medievals did not condemn Greek Fire therefore we cannot condemn the comparable modern version, napalm. Rather it is to note that those theorists who developed the just war doctrine had at their disposal a theoretical instrument that allowed them to condemn the use of such weapons on moral grounds and they did not. While it may be the case that the nature of the chemicals employed in napalm is not the same as Greek Fire, and thus that there are scientific or factual differences in the composition of each substance, we should at least recognize that the rejection of such weapons on *jus in bello*

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<sup>26</sup> H.W.Koch, *Medieval Warfare* (London: Bison Books, 1978), p. 78.

<sup>27</sup> Barry, O.P., "Unilateral Nuclear Disarmament and Bilateral Nuclear Sieges," p. 496.

grounds is not without controversy. It would be thus be a mistake to condemn a weapon such as napalm *a priori* on *jus in bello* grounds.

Having thus considered the objections to napalm, we can return to the discussion of chemical weapons. These weapons may, at least in principle, be used on a selective basis against enemy soldiers provided that the two conditions discussed above are met, in a manner which might satisfy the demands of the *jus in bello*. However if chemical weapons (and not, it must be stressed, napalm or other conventional weapons) should fail to meet the demands of *jus in bello*, their use cannot be morally acceptable, no matter how good the ends may appear. It is possible, desirable and consistent with the just war doctrine to voluntarily limit the array of weapons used and to reduce the carnage caused in war by unilaterally declining to employ certain types of weapon. Yet the just war doctrine must also provide guidelines to regulate the use of these weapons when the "no first use" threshold is broken. It may be concluded that given the great harm which would attend even the limited use of chemical weapons, the likelihood that they could be employed in a way that would satisfy the criteria of the *jus in bello* is very remote, but it is at least theoretically possible.

## Nuclear Warfare

### *JUS AD BELLUM*

The possible consequences of modern weapons and war are such that the question of nuclear weapons is one of the most serious and controverted of all elements of just war thinking. While there are those who categorically condemn nuclear weapons as being inherently immoral and incapable of any just use,<sup>28</sup> this *a priori* condemnation is not an acceptable alternative for one who takes seriously the classical just war doctrine. It is true that Aquinas did not live with nuclear weapons. Nor, for that matter, did he live with firearms and explosives. That, however, is not really the point. The question for the just war thinker is a more fundamental one. The just war theory is one of principles which take account of both moral and political realities, and are not necessarily contingent upon particular stages of technological development. The relevant question is rather "can the use of nuclear weapons ever be justified under the conditions of the classical just war doctrine?" It is this question that we shall now consider. It must be made clear that the above question is not an argument that "the ends justify the means." Rather it is an attempt to examine whether the use of nuclear weapons can be morally justified under the classical just war doctrine.

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<sup>28</sup> Ramsey, *The Just War*, p. 277.

It must further be made clear that the morality of the use of nuclear weapons, and the morality of nuclear power as such, are two distinct questions which must be recognized and considered as such. There are many who argue that nuclear weapons are inherently immoral, even if never used, because of the damage caused by the process by which they are made and maintained. Even if there is never a nuclear war,

reliance on nuclear weapons requires a series of activities that have had and continue to have long-lasting negative environmental impacts. Every step in the process of acquiring and possessing nuclear weapons harms the environment, thus rendering nuclear power itself dangerous and always immoral.<sup>29</sup>

These objections are valid ones, and yet they also extend to the consideration of matters far beyond an evaluation of the morality of the use of nuclear weapons. While acknowledging the strength of criticisms about the morality of nuclear power itself, it must be recognized that these constitute a separate set of problems from those which we are considering and so in themselves cannot be decisive in our analysis.

The problems caused by nuclear weapons give rise to *jus ad bellum* and *jus in bello* issues. In some situations, these issues may tend to overlap, and thus to make the analysis more complex. Particular problems arise for the first necessary requirement of the *jus ad bellum*, that of

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<sup>29</sup> James A. Stegenga, "Nuclearism And Environmental Ethics," *International Journal of Applied Philosophy*, (Summer 1991), p. 71.

legitimate authority. It has been argued that with nuclear weapons deployed on land, sea and air under the command of field officers, it is a very real possibility that an overreaction induced by stress, confusion or false intelligence could lead to these men launching nuclear weapons on their own authority on the mistaken belief that circumstances demand it. There is the further danger that in such conditions the breakdown of communications systems could combine with a dynamic or momentum towards nuclear escalation which could result in the use and escalation of nuclear weapons beyond the control of the military commanders as well as the political leaders.<sup>30</sup> This possible loss of control and the capacity for unintended escalation bears directly upon the possibility of the moral use of nuclear weapons.

While serious, the objections alluded to above are not beyond a solution. For one thing, the command, control and communication (C3) systems are so advanced, well protected, and duplicated with back-up systems that it is unlikely, though not impossible, for the destruction of C3 to sever the chain of command. It is true that one cannot be certain as to what effects the limited or large scale use of nuclear weapons will have on C3 and thus upon the ultimate integrity

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<sup>30</sup> Francis X. Winters, S.J., "The Nuclear Arms Race: Machine Versus Man", p. 151, in *Ethics And Nuclear Strategy?*, Harold P. Ford and Francis X. Winters, S.J., eds. (Maryknoll, NY: Orbis Books, 1977).



of the control military and political leaders exercise over these weapons.<sup>31</sup> While many precise details are of necessity classified, there is every indication that present C3 is designed to continue functioning in even the most extreme conditions.<sup>32</sup> The proliferation of C3 equipment at all levels is so extended that short of all out nuclear exchange, there is no evidence that C3 degradation would contribute to or cause an unauthorized launch of nuclear weapons. There is no reason to assume that such a launch is even probable. Finally, even if one were to concede for the sake of argument the theoretical possibility of C3 breakdown, this is not a sufficient reason to declare nuclear weapons inherently immoral and all possible uses of nuclear weapons *a priori* unjust. If we are to argue that the use of these weapons is always immoral, then we must do this on other grounds.

The criterion of just cause as it is found in the *jus ad bellum*, in the context of the possible use of nuclear weapons, is essentially a question of proportionality. Indeed "the central moral issue in nuclear war is whether or not the destructiveness caused by nuclear weapons can ever be proportionate to the just cause of human freedom."<sup>33</sup>

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<sup>31</sup> *Ibid.*, p. 146.

<sup>32</sup> *Messenger, Armed Forces Of The World*, p. 259.

<sup>33</sup> Regan, S.J., *The Moral Dimensions Of Politics*, p. 163.

The devastation which would attend even a single nuclear blast would be great. One must also consider the question of radiation contamination, genetic mutations to future generations, and environmental effects. The final objection under the just cause clause is that the risk of nuclear escalation is so great that first use will almost inevitably be followed by an all out nuclear exchange which would quite likely result in the obliteration of humanity, obviously outweighing any hoped for good result.<sup>34</sup>

It is not difficult to imagine a possible scenario where the threat of a limited use of nuclear weapons could satisfy the just war demand for proportionality. The paradigmatic case which was set forth as an example of such a use of nuclear weapons for thirty years during the cold war existed in western europe where NATO forces faced down Soviet conventional forces in Germany. The Soviet dominance in men and material was such that NATO forces openly conceded that in the face of Soviet aggression NATO forces could not possibly stop them short of the English Channel without the use of tactical nuclear weapons against the massed armoured divisions of the Soviet invaders.<sup>35</sup>

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<sup>34</sup> David J. Hollenbach, S.J., "Nuclear Weapons And Nuclear War," *Theological Studies*, 43, n.4, (1982), p. 592.

<sup>35</sup> Regan, S.J., *The Moral Dimensions Of Politics*, p. 163.

When considering the question of proportionality in this case one must be clear about precisely what is at stake here. On the one hand, there is the grave option of using nuclear weapons on enemy soldiers, with all of the damage and risk which such an action entails. On the other hand, one has to consider the consequences for Europe of being conquered by and living under the imposition of the Soviet and communist system, with all that this entails. Aquinas, I think, would consider these alternatives and would agree that the evil which would result in a failure to use nuclear weapons is far greater than that which may follow as unintended side-effects from the intention of defending freedoms inherent in the natural law. In considering the morality of the possible use of nuclear weapons one must consider all of the particular circumstances of a given case. In the case of defending Europe from Soviet aggression one must take into account the reality of a Soviet ideological and political system which explicitly denied certain fundamental duties and obligations which man possesses in the natural law, such as to know and worship God.<sup>36</sup>

Admittedly, in a case such as the one above a judgement would have to be made on the basis of limited, or perhaps false, information. That is why Suarez places such emphasis upon the grave obligation of the ruler and his key military and political advisors to enquire into the justice of their

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<sup>36</sup> Aquinas, *Summa Theologiae*, I-II, Q.94, A.2.

cause as thoroughly and carefully as it is within their power to do.<sup>37</sup> I do not think that more can be asked of human beings.

The problem of damage to the environment, radiation, and possible effects upon neutral third parties must be a further consideration. While strategic nuclear weapons, those at the most destructive end of the nuclear spectrum, may pose a very serious and extensive radiation and contamination problem, this is not the case with the type of weapon most likely to be used on the conventional battlefield, tactical nuclear weapons. In the case of these weapons "the need to calculate the evil effects of widespread and long lasting fallout on belligerents, neutrals and the world community is comparatively minor or non-existent."<sup>38</sup> This observation must be contrasted with view of those who argue that even this "reduced" level of radiation and blast would be catastrophic. Not only radiation poison, but damage to the immune systems of humans and animals and environmental contamination must also be taken into account.<sup>39</sup>

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<sup>37</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VI, p. 828.

<sup>38</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 137.

<sup>39</sup> Stegenga, "Nuclearism And Environmental Ethics," p. 69.

As to the objection that any use of nuclear weapons will quite probably, if not inevitably, lead to the unlimited escalation to all out nuclear war, this seems to be more a case of reasoning towards a pre-determined conclusion than anything. The wide array of weapons in the arsenals of the nuclear powers extends from the low yield tactical to the most devastating class of high yield strategic nuclear weapons, some of the latter class quite capable of being deployed in a manner which would violate all norms, morals and precepts of the classical just war.<sup>40</sup> There is however no substantive reason to assume the probability, much less the inevitability, of such an application or escalation. The insistence upon evaluating the morality of the use of nuclear weapons considered only in the context of escalation to an all-out nuclear exchanges is based simply on speculation. Further, it is speculation which, given the precedent of modern warfare which has seen belligerents repeatedly decline to use the most destructive weapons in their arsenals, is not based on any evidence.

Right intention is as necessary for nuclear war as it is for conventional war. Aquinas's insistence that war must intend to do good and avoid evil, and to secure a just peace must still hold true. It is probable that the use of nuclear weapons will make the achievement of a just peace difficult, but it is not impossible and must still be

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<sup>40</sup> *Ibid.*, p. 129.

sought. Right intention would seem to require that nuclear weapons could only be morally employed in a limited manner, in a war of defence, and using only the minimum number and type of nuclear weapons as are required.<sup>41</sup> When used in this way, and as a last resort, it does not seem reasonable to hold a position which a priori rejects all use of nuclear weapons.

These then are some of the *jus ad bellum* issues raised by the question of the morality of the use of nuclear weapons. We will turn now to some of the *jus in bello* concerns raised by their use.

#### *JUS IN BELLO*

In order to evaluate the various *jus in bello* issues raised by nuclear weapons it is necessary to examine the main types of doctrine which propose to direct the employment of these weapons. While there are as many permutations as there are nuclear strategists, one can break the main types into certain distinct categories. Regan proceeds by considering five basic types of nuclear strategy, and his methodology will serve as a useful basis for our own considerations.<sup>42</sup> For the purposes of moral evaluation one can distinguish between the following five types of nuclear

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<sup>41</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 130.

<sup>42</sup> Regan, S.J., *The Moral Dimensions Of Politics*, p. 164.

strategy: i) counter city strategy, ii) counter C3 (command, control and communications), iii) heartland counterforce strategy, iv) theatre or intermediate counterforce strategy, and v) tactical or battlefield counterforce strategy. These distinctions are in general accord with most of the literature on this subject.

Counter city strategy is really quite straight-forward, as it is the direct targeting of cities and population centres with nuclear weapons. This targeting may be as a means of retaliation, a policy of "mutual assured destruction," or any other policy objective. Counter city targeting is blatantly contrary to just war conditions, most obviously the demands of discrimination and proportionality. It cannot be reasonably claimed that the massive death and destruction of innocents which would attend such a policy is an indirect or unintended result of a legitimate end. The principle of double effect cannot serve to justify a counter city nuclear strategy, regardless of the ends which are sought. A counter city strategy can never be morally justified by the classical just war doctrine. Thus we must conclude, along with most just war theorists, that the Allied nuclear bombing of Hiroshima and Nagasaki, a clear example of the counter city strategy, cannot be morally justified, even in view of the end sought, which was to achieve a speedy end to the war.

A counter C3 strategy for the use of nuclear weapons seems more in line with the conditions of discrimination and proportion. The targets of this strategy would be enemy missile bases, political and military headquarters, communications facilities and similar sorts of C3 infrastructure. There are two basic arguments against this type of strategy being able to satisfy the demands of the just war doctrine. The first is that should a nuclear attack on an enemy's infrastructure be unsuccessful, it will not reduce the enemy's capacity to mount a nuclear counter-city attack.<sup>43</sup> The problem with this argument is that it does not actually address the morality of the actual use of nuclear weapons on a particular target, but rather hypothesizes a possible failure and then suggests that since the strategy may not be sufficient to win a nuclear war it would not be moral. The reasoning is speculative and does not really consider the moral application of targeting C3 centres, which at this point would seem to satisfy both the demands of proportion and discrimination. It leaves unanswered the question of whether it is possible to target C3 centres with nuclear weapons in isolation from cities. Herein lies the problem with such a strategy.

The second argument against counter C3 strategy is much more convincing. It is practically impossible, so the

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<sup>43</sup> Hollenbach, S.J., "Nuclear Weapons And Nuclear War," p. 591.



argument goes, to claim that one is strictly intended to destroy enemy C3 centres because these are almost invariably located in the middle of densely populated cities. The massive civilian casualties which would attend the destruction of C3 infrastructure would seem to indicate that this strategy could not satisfy the requirement of proportion. It is doubtful as well that one could really claim to distinguish between the targeting of legitimate C3 targets and the surrounding civilians, thus failing the test of discrimination as well. This strategy would also seem to invite escalation in nuclear exchange, since the targeted enemy would have no way of distinguishing between a counter city and a counter C3 strategy, and he may well react with a retaliation strike against what he believes to be a counter city attack on himself.<sup>44</sup> The consequences are obvious. As a result, I cannot see how a counter C3 strategy could be conducted in accordance with the classical just war doctrine, and thus how such a strategy could ever be moral.

Heartland and theatre counterforce nuclear weapons could initially appear capable of being used in a manner which would pass the test of both discrimination and proportion. The targets of this strategy are strictly military and would include missile and air bases, large troop concentrations and similar combatant categories. As the targets of a retaliatory strike, for example, as long as the targets

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<sup>44</sup> *Ibid.*, p. 591.

could be destroyed in a selective manner without necessarily involving large civilian casualties, then the use of nuclear weapons in this case would seem to pass the requirements of discrimination and proportion.

These weapons still confront us with the attendant effects of nuclear weapons, which include radiation, mutagenic affects, and long term impact upon civilians and the environment in which they live.<sup>45</sup> This is especially the case with heartland and theatre class nuclear weapons, since "the high yield ground bursts required to destroy such hardened targets as missile silos and command facilities would send columns of dirt and dust into the upper troposphere and stratosphere."<sup>46</sup> Massive pollution, debris and radiation would blanket the target area and drift far from the area of the initial blast. Thus the demands of proportion and discrimination cannot be claimed to have been met.

With the use of this strategy there is a serious threat of escalation, as an enemy sees valuable military assets being destroyed deep in his own territory. There are some who argue that the use of this strategy is so likely to lead to an escalating level of nuclear exchange that this risk alone is sufficient to prohibit this strategy on moral

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<sup>45</sup> Christopher, *The Ethics Of War And Peace*, p. 216.

<sup>46</sup> Stegenga, "Nuclearism And Environmental Ethics," p. 69.

grounds.<sup>47</sup> They further argue that the risk of escalation to all-out nuclear exchange is such that the just war doctrine must forbid the use of even tactical nuclear weapons against only counterforce targets.

The argument against the use of nuclear weapons on the grounds of probable escalation seems to be based on mere conjecture. While there is the possibility of escalation, as exists with the use of conventional and chemical weapons as well, I do not see how this danger in itself could constitute sufficient grounds to reject the use of nuclear weapons in all circumstances. The objection about the virtual inevitability of escalation is based more on assuming a worst case scenario (that of an unlimited counter-value and counter-force nuclear exchange) that is crafted to suit preconceived notions about the morality of nuclear weapons in general.<sup>48</sup>

Critics such as Hollenbach claim that in a place such as the European theatre, once nuclear weapons have first been used, even at the tactical level, the likelihood of escalation is so great that a calculation of the consequences of a use of nuclear weapons must proceed on the basis of an all-out nuclear exchange. Any use of these weapons, they declare, is thus irrational and immoral because it cannot

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<sup>47</sup> Hollenbach, S.J., "Nuclear Weapons And Nuclear War," p. 594.

<sup>48</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 128.

satisfy the conditions of discrimination or proportion. They do not explain why a limited or highly selective use of nuclear weapons is so implausible. One can conceive of a scenario of limited escalation that is reasonable enough to call into question the rejection of a limited nuclear exchange. For example one nation could detonate a tactical nuclear weapon close to an enemy surface naval force operating in disputed or strategically sensitive waters either as a warning or to test the enemy resolve. The opponent might then detonate a tactical nuclear weapon of his own close to a similarly composed naval force of the first nation as a way of saying, "We don't want to take this to the next level, but we are ready and willing if you force us to." If the first side backs down, a dangerous game of nuclear brinkmanship has ended with a limited nuclear exchange at sea.

The final type of strategy to consider is the use of tactical or battlefield nuclear weapons. These particular weapons can be delivered by conventional artillery, air or missile systems, and have a greatly reduced destructive capacity compared to other nuclear weapons. It has been argued that the damage caused by tactical weapons is confined entirely to the initial blast, and there is a much reduced, if not negligible, radiation contamination concern for the environment or neutrals.<sup>49</sup> This analysis is by no

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<sup>49</sup> *Ibid.*, p. 137.

means undisputed.<sup>50</sup> Tactical NW tend to be of up to a maximum of 10 kilotons, almost one third smaller than the bombs dropped on Japan, which were each 14 kilotons. At such a distance, ground will be irradiated for a distance of 15 square kilometres around the impact area. Housing and land are rendered uninhabitable for 3.16 kilometres from the impact area.<sup>51</sup> Aside from the incontrovertible and extensive pollution which accompanies the mere production and storage of nuclear weapons, a serious problem in itself is the problem of the radiation and fallout which accompany the use of even tactical nuclear weapons. Human and animal tissue will be seriously affected, crops and soil will accumulate residual radiation poisons, and the overall impact on the land in the vicinity of the blast cannot fail to be adversely impacted.<sup>52</sup>

These weapons are, however, capable of much more precision than any other class of nuclear weapon, and would seem most likely to be able to meet the demands of both discrimination and proportion. They are designed for restricted effects on a local battlefield area, with friendly troops on the same battlefield. The paradigm for the employment of these nuclear weapons was against massed Soviet

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<sup>50</sup> K.S. Schrader-Frechette, *Nuclear Power And Public Policy* (Boston: D.Reidel Publishing Company, 1983), p. 35.

<sup>51</sup> Dunnigan, *How To Make War*, pp. 422-425.

<sup>52</sup> Christy Campbell, *War Facts Now* (Glasgow: William Collins Sons & Co., 1982), p. 154.

armoured formations just before or after they invaded NATO territory. In this situation the limited use of these weapons was viewed as the only alternative to total surrender. The use of tactical nuclear weapons against such targets in the countryside, plains, deserts or sparsely populated areas could, at least theoretically, be permissible under the just war doctrine conditions.

When evaluating the morality of the possible use of nuclear weapons, it is important to recall that there is a wide range of weapons in this category, and these have a correspondingly wide array of effects. There also exist a number of distinct strategic doctrines which attempt to elucidate the most appropriate means of employing nuclear weapons against different targets, and these must also be considered. To treat these weapons as an undifferentiated whole and basing a judgement as to the morality of their use on a scenario of all out nuclear war against civilian populations, as some do, does not make any evaluation easier.

By submitting the use of nuclear weapons to the conditions demanded by the classical just war doctrine, some conclusions about the morality of such use can be drawn. The use of nuclear weapons in a counter city or counter C3 strategy seems to be immoral in all conceivable cases. The heartland counterforce strategy initially seems able to meet the demands of the just war for the moral use of these weapons, but the long term effects upon innocents must

ultimately rule this type of weapon and strategy out as capable of being used morally. Intermediate or theatre level counterforce strategy suffers from the same defects as the previous class which prevent their moral use. The case for the possible moral use of tactical nuclear weapons is the most plausible of these, although it is not clear how strong this case would be without examining the particular circumstances of each case, including the possibility of escalation. One must bear in mind the above circumstances and the principles of the *jus in bello* in order to render a verdict as to the morality or otherwise of any use of nuclear weapons.

We saw that in some cases, it may be the case that the resort to chemical weapons may seem necessary, especially in retaliation against a first strike, but that the use of such weapons could not be moral except in what would be extraordinary circumstances. Another option would have to be found to respond to an enemy chemical attack. The tenets of the *jus in bello* prevent any attitude other than the moral condemnation of the use of such weapons. It would seem that a similar verdict must be rendered as to the morality of the use of most sorts of nuclear weapons. One cannot claim however that all uses of these weapons can be declared to be immoral, especially in the case of tactical nuclear weapons. Indeed "it is not clear that the duty to defend the order of

justice would be eliminated because the last and only reasonably available means to do so might be immoral."<sup>53</sup>

When one considers a situation where the nuclear threshold has been broken, and the very real question of how to exercise the right to self defence and national survival, while still seeking to limit as far as possible the use of nuclear weapons, the classical just war doctrine offers some solid practical guidance. As unappealing as the prospect may seem, a short and limited exchange of nuclear weapons against strictly military targets at the tactical level would certainly be preferable to an unlimited and desperate attempt to win the unwinnable. Indeed such use of nuclear weapons might be far preferable to a full scale conventional war between great powers, where the entirely legitimate and moral use of firepower may cause far more damage and death than the use of a few tactical nuclear weapons. This reality is manifestly clear when one considers the costs of modern (undeniably moral) military operations, such as the siege of Leningrad, which cost far more lives than did the dropping of atom bombs on Japan, even when one takes into account the consequences which continued over several generations.<sup>54</sup>

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<sup>53</sup> Barry, O.P., "Unilateral Nuclear Disarmament And Bilateral Nuclear Sieges," p. 488.

<sup>54</sup> *Ibid.*, p. 499.



In certain circumstances the classical just war doctrine allows that nuclear and chemical weapons could (at least in principle) be employed in a manner which would satisfy the conditions of the *jus in bello*. This does not, however, imply any judgement as to whether or not it is better policy for nations to possess these weapons in their national armouries. Indeed it is probably the case that the very existence of these weapons in the stockpiles of a variety of nations carries with it an increased danger, in the form of these weapons falling into the hands of an unscrupulous or self-serving leader. The wisdom of retaining these types of weapon is a separate question, however, and is outside of the range of the issues discussed in this essay. It is a question which must remain for another day.

In this chapter we have considered many of the key objections which have been raised against the classical just war doctrine in light of modern military and political circumstances. Arguments against the relevance of the classical just war doctrine today, and against the applicability of the doctrine to nuclear and chemical weapons have been considered, and the relevance and importance of the classical just war doctrine today has been demonstrated. It has been shown that the conditions of both the *jus ad bellum* and the *jus in bello* offer policy guidance and an important evaluative tool for considering the moral issues raised by modern weapons and strategies. We turn now to a consider-

ation of the problems posed by revolutionary guerrilla warfare and civil war in light of the classical just war doctrine.

### CHAPTER III

#### REVOLUTIONARY AND CIVIL WAR

One of the striking characteristics of modern warfare, especially those wars which have been fought since the Second World War, is the proliferation of "small wars". Wars of revolution, counter-insurgency (COIN), and guerrilla or terrorist campaigns waged by irregular armies against conventional armies were made possible by the nuclear balance of terror between the East and West, and it is these which properly deserve the name of "modern war."<sup>1</sup> Is the classical just war doctrine capable of providing moral guidelines to regulate this peculiar and "modern" type of warfare? There are those who have argued that the classical just war doctrine is at best hopelessly outdated and rigid, unable to offer any guidance especially in fluid and unconventional COIN warfare, or that at worst it is a veritable licence and moral cloak which allows modern armies to justify any atrocity against a revolutionary foe.<sup>2</sup> Yet similar suggestions were made against the classical just war doctrine with reference to modern conventional warfare and weapons of the nuclear, biological and chemical types, and these have been shown to be false. We will thus turn to examine whether the *jus ad bellum* and *jus in bello* are able

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<sup>1</sup> Ramsey, *The Just War*, p. 428.

<sup>2</sup> Donald Wells, "Vietnam and the Calculation of Atrocities," *Journal of Social Philosophy*, (Summer 1973), p. 14.

to provide any indication as to how revolutionary, COIN, and civil wars may be conducted justly.

In order to consider precisely how the classical just war doctrine relates to the various types of unconventional warfare, we will examine particular issues raised by these forms of war by the *jus ad bellum* and the *jus in bello*. It will become apparent that the classical just war doctrine can indeed offer guidance for the moral conduct of these forms of warfare, and thus is both relevant and practical given the prevalence of unconventional war and the likelihood of continued involvement by Western armies in such warfare in one capacity or another. Finally we will consider an example of modern rebellion, the Spanish Civil War, where I will attempt to demonstrate that the Nationalist rebel cause on the whole satisfied all of the conditions required for the waging of a just war, although it must be acknowledged that there were indeed occasions when the conditions of the *jus in bello* were violated.

Before we begin an examination of the issues it is necessary to clarify some of the key terms we will be using. First "revolutionary" war has several characteristics that serve to identify and distinguish it from other types of unconventional warfare. This type of war may range from a war fought with large, regular and disciplined armies through to guerrilla war, and even to terrorist campaigns which would not constitute a guerrilla war. The principal means

by which revolutionary war has historically been waged has tended to be guerrilla war, using tactics of ambush and hit-and-run against state security forces that are normally much stronger than the guerrillas.<sup>3</sup> This pattern would usually last until the revolutionaries were strong enough to take on their enemy in the open field of battle.

The second key feature of revolutionary war is that it is waged for radical political and ideological objectives which often will conflict with the conditions of the just war.<sup>4</sup> Although the motives, language, and tactics of revolutionary war are most often associated with Marxist-Leninist ideology, it is not necessarily the case that all revolutionaries share this view of the world or this particular cause.<sup>5</sup> Revolutions may be from the right or the left of the political spectrum. The great majority of revolutions, COIN operations, and terrorist campaigns however, have involved at least one belligerent inspired by Marxist-Leninist ideals. All revolutionary wars have a strong political and ideological aspect to them, and this tends to make even more complex an evaluation of these wars from the perspective of the classical just war doctrine.

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<sup>3</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 154.

<sup>4</sup> *Ibid.*

<sup>5</sup> Paul Gilbert, *Terrorism, Security & Nationality* (London: Routledge, 1994), pp. 84-86.

"Guerrilla war" I take to mean irregular warfare waged by small groups acting independently.<sup>6</sup> Guerrilla warfare is basically a tactic used by a weak belligerent against a stronger foe, and it is one with a long history stretching back to classical Greece and Rome. Since 1945, however, guerrilla war has taken on its current revolutionary aspect, with all of the political and ideological consequences which this change entails. When we discuss the issues raised by guerrilla war, we will be referring to the revolutionary version of this tactic. This is a relevant distinction because the revolutionary aspects of the struggle tend to modify guerrilla tactics in ways which are of concern from both *jus ad bellum* and *jus in bello* perspectives.

Counter-insurgency (COIN) war is the military and political operations of the state directed against revolutionaries. It is historically the role Western armies after World War II have assumed, as instanced by France and the U.S. in Indo-China, Belgium and Portugal in Africa, and the more successful example of Britain in Malaya. We will pay particular attention to the possibility of waging COIN warfare in a just manner, since this is the form of warfare in which Western armies have been, and probably in the future will be, engaged in.

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<sup>6</sup> John Pimlott ed., *Guerrilla Warfare* (New York: Bison Books Ltd., 1985), p. 8.

## *JUS AD BELLUM*

### I Lawful Authority

The condition that a just war may be declared only by a supreme political authority obviously presents a difficulty for revolutionary war and rebellion. It is this very authority which has been rejected by the rebels. There is little dispute that at least in the initial stages of a rebellion, the forces of the state have the authority to wage war against rebels. There is some question, however, as to how long this authority may be claimed, especially when the rebel cause is a just one.<sup>7</sup>

Aquinas considers the conditions under which it would be morally legitimate for a people to rebel against their rulers. When these conditions are met, then rebellion takes on the nature of self-defence of the people against an unjust aggressor. Such a war further has the character of a war fought to restore rights and justice unlawfully suppressed by a government. He states that when a government has through its own actions become tyrannical and oppressive, as when it violates the tenets of the natural law or acts in a way contrary to the common good, then that government has lost its legitimacy and it not only may be justly

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<sup>7</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 158.

overthrown, but there may in fact be an obligation for the citizens to rebel against such a government.<sup>8</sup>

There are those, such as O'Brien, who argue that an incumbent regime, by virtue of constituting the government at the time the rebellion began, retains lawful authority to wage war until it is overthrown by force of arms.<sup>9</sup> I do not think that this view is consistent with the classical just war doctrine. Since it is not possible for a war to be just on both sides,<sup>10</sup> it does not seem consistent that a belligerent waging unjust war against a rebellion could claim to be waging war with lawful authority. Since a tyrannical and oppressive government has lost the authority to govern, the lawful authority to wage war must lie with the rebels. Since only a lawful authority may declare war, any declaration of war by an unlawful authority is unjust. Any regime which is subject to a lawful rebellion under the conditions mentioned by Aquinas is *ipso facto* fighting an unjust war. While the determination that a regime is in fact lacking lawful authority and waging an unjust war will probably not compel it to surrender to the rebels, such a determination is quite relevant to an examination of whether a belligerent is waging a just or an unjust war.

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<sup>8</sup> Aquinas, *Summa Theologiae*, II-II, Q.42, A.2.

<sup>9</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 158.

<sup>10</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, sec. IV, p. 816.



## II Just Cause

While classical just war theorists are inclined to restrict the grounds which would justify revolution against an unjust government, they are precise about the conditions which would justify such a rebellion. Aquinas first states that sedition as such is morally wrong, because it is contrary to the unity of the people and the common good. However he then observes that:

a tyrannical government is not just, because it is directed, not to the common good, but to the private good of the ruler, as the Philosopher states. Consequently there is no sedition in disturbing a government of this kind, unless indeed the tyrant's rule be disturbed so inordinately, that his subjects suffer greater harm from the consequent disturbance than from the tyrant's government.<sup>11</sup>

It is clear from these conditions that if a rebellion is to be morally justified, a government must indeed be acting in a tyrannical way; that is it must be oppressing the people and denying them the most basic rights that all are entitled to under the natural law. Thus a government that does not provide freedom to know God, or basic protection of persons and property from random or arbitrary state violence, would not be acting for the common good. Mere political or economic reasons could not justify rebellion. The presumption is against the legitimacy of rebellion

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<sup>11</sup> Aquinas, *Summa Theologiae*, II-II, Q.42, A.2.

unless the government is clearly and systematically ruling in a manner contrary to the common good.

The existence of "state terrorism" would also constitute legitimate grounds for rebellion, according to the classical just war doctrine. State terrorism "involves making exceptions to laws which protect citizens in time of peace from being killed, wounded or imprisoned without the application of recognized legal processes."<sup>12</sup> Such institutionalized violations of basic human rights may in fact be sanctioned by the law of the state, but according to Aquinas such a law would not in fact be binding. Any human law is just only in so far as it is in accord with the natural law, "but if in any point it deflects from the law of nature, it is not longer a law but a perversion of law."<sup>13</sup> Such grounds for rebellion will be of particular import when we examine the justice of the Nationalist rebellion in Spain.

Suarez is in accord with Aquinas as to the grounds which may serve as just cause for rebellion against the state. Suarez likens such a rebellion to self-defence, and the oppressive ruler is an aggressor who is waging unjust war against the state as a whole and against its separate parts. In such circumstances "the whole state, or any portion thereof, has the right [to revolt] against the

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<sup>12</sup> Gilbert, *Terrorism, Security & Nationality*, p. 133.

<sup>13</sup> Aquinas, *Summa Theologiae*, II-II, Q.95, A.2.

prince."<sup>14</sup> Suarez emphasizes as well that the government must manifestly be governing in an unjust and oppressive manner, and that "all of the other conditions laid down for a just war must concurrently be present" if a rebellion is just.<sup>15</sup> Once again only the gravest of reasons may serve to justify rebellion, and ideological exhortations to achieve a people's utopia would not meet the test.

While just cause may exist in the face of a tyrannical government, the classical *jus ad bellum* criteria also apply the principle of proportion. Aquinas and Suarez both insisted that the evil consequences of the war must not exceed the evil inflicted upon the people by rebellion. If the rebellion cannot be successfully waged without simply initiating a holocaust of rebels and innocent civilians alike and which has little prospect of success, then such a rebellion would be unjust. This condition is in clear contrast to modern theories of revolutionary war, which assume that the inexorable and a *priori* just ends of their revolution, with all of its ideological motives, serve to justify whatever means are necessary to achieve victory. Thus "viewed from most contemporary revolutionary perspectives, there is no such thing as a requirement of proportion either in the *jus*

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<sup>14</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VIII, p. 854.

<sup>15</sup> *Ibid.*, p. 855.

*ad bellum* or the *jus in bello*."<sup>16</sup> Modern revolutionary war theory does not lend itself to moral restriction, whether on the basis of classical just war doctrine or of anything else.

These two contrary views as to the necessity for proportion in determining both the ends and the means of revolutionary and COIN warfare will be seen more clearly in our examination of *jus in bello* issues. The problem is this. When revolutionaries eschew all moral restraint in commencing and waging their war, they claim that the "justice" of their cause places them outside of any moral constraint. As a reaction to this position counter-insurgent forces are forced into a corner where they either will operate at a tremendous disadvantage, adhering to moral restrictions in the conduct of war which their enemy has explicitly rejected, or they follow their opponents into an abandonment of moral restraint in the conduct of the war. The consequences of such a mutual rejection of moral restrictions on what may be done in waging war is not difficult to guess, especially when we have examples such as the experience of the French and their FLN (National Liberation Front) opponents in the Algerian war which saw the end of French colonial rule before us.

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<sup>16</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 163.

The nature of revolutionary war, however, is not such that the conditions of the classical just war doctrine are simply suspended. War, after all, is war, and the moral constraints which bind belligerents in conventional war must also govern their activity in unconventional war. Moral principles do not cease to be in force simply because they conflict with the intent or the methods of one of the belligerents. Indeed, given the highly political and ideological nature of revolutionary war, a belligerent who strives to adhere to the restrictions of the just war doctrine may very well find it to his advantage in terms of a propaganda war which is waged to win the "hearts and minds" of the people. A side which takes seriously the demands of both discrimination and proportion would be much less likely to alienate or antagonize the civilian population than one which does not.<sup>17</sup> However the political and fluid nature of revolutionary war is such that determining the facts of a situation, and calculating the relevant factors in an effort to determine the morality of the cause and conduct of belligerents, is often more complex.

There is another feature of revolutionary war which has implications for the criterion of just cause, and to a certain extent that of lawful authority. This is the problem of foreign intervention in civil wars. From the Spanish

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<sup>17</sup> Regan, S.J., *The Moral Dimensions Of Politics*, p. 164.

civil war (1936-1939) which saw heavy intervention on behalf of both of the belligerents, through to Vietnam, and to countless "small wars" in Africa and Central America, foreign intervention is often inseparable from apparently internal revolutions and COIN operations. Foreign intervention raises two concerns for the just war doctrine. First, would the receipt of foreign assistance call into question, or invalidate, the lawful authority of the belligerent who is the recipient, whether it be the government or the rebels? Second, from the point of view of the potential intervenor, could intervention on behalf of a belligerent in a civil war ever be justified under the conditions of the *jus ad bellum*?

While international law generally condemns the intervention of foreign powers in civil wars as being serious violations of the sovereignty and integrity of a nation state, once one side invites foreign intervention the other usually follows quickly.<sup>18</sup> Thus one is quite often faced with the prospects of multiple foreign interventions on behalf of both belligerents. How does one evaluate the legitimacy and morality of intervention in such circumstances?

The ability of a belligerent to obtain foreign intervention and still satisfy the criterion of lawful authority to wage war would seem to be linked to the authority of the

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<sup>18</sup> Walzer, *Just And Unjust Wars*, p. 97.

belligerent to wage war in the first place. If one were to presume, as O'Brien does, that the counter-insurgent (government) has lawful authority to wage war until overthrown by force of arms, it would follow that a government could request foreign intervention at any time without prejudice to the legitimacy of its authority or its cause. If one follows the classical just war understanding of lawful authority, and the consequences for the government when it is tyrannical and the proper object of rebellion, however, a different verdict must be rendered. Just as an unjust government does not have lawful authority or just cause to wage war, so such a government could not claim to have the lawful authority to request or to employ foreign soldiers in an attempt to wage a manifestly unjust war against a people lawfully rebelling.

Whether or not rebels could legitimately call on foreign intervention would depend upon their claim to be rebelling against a tyrannical government in defence of the common good. One should further demand that the rebels must be able to demonstrate not only lawful authority and just cause, but also an identifiable and stable military contingent that is subject to a recognizable political leadership and command structure. If these conditions were met, the rebels would be entitled to belligerent status under the Geneva conference which requires that rebels be

...under responsible command, exercise such control over part of its territory as to enable them to carry

out sustained and concerted military operations and [to implement the laws of war].<sup>19</sup>

If rebels can satisfy the criteria of the *jus ad bellum*, then it is not clear why they could not legitimately request foreign intervention.

It is important to recognize that acknowledging the lawful authority of revolutionaries is not to vindicate their cause or to suggest that they have satisfied all of the other conditions for a just war. It is rather a means of distinguishing them as soldiers fighting a war rather than mere criminals acting for their own ends. Such acknowledgement reflects organization and accountability, and indicates that the rebels accept all of the obligations which bind the belligerent of any war, the *jus ad bellum* and *jus in bello* conditions.<sup>20</sup>

In the case of a rebellion against a tyrannical government, which satisfies the conditions of Aquinas and Suarez, it would most likely be acceptable and in accord with the *jus ad bellum*, although not compulsory, for a state to intervene militarily on behalf of the rebels. Both Vitoria in *De Juri Belli* and Suarez in *De Bello* asserted that European intervention in defence of Christian converts in the mission lands who had been attacked by their former co-

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<sup>19</sup> Douglas P. Lackey, *The Ethics Of War And Peace* (Englewood Cliffs, NJ: Prentice Hall, 1989), p. 30.

<sup>20</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 162.



religionists could be justified either on the grounds of defence of innocent Christians or as the just punishment of their persecutors.<sup>21</sup> Military intervention on behalf of a belligerent fighting in a just war is not contrary to the classical just war doctrine, and could justly be exercised to assist whichever belligerent satisfies all of the conditions required for the waging of a just war.

With reference to Central America, still a veritable hotbed of revolutionary and COIN warfare, an additional observation may be noted. If there were a clear case of a basically just and lawful government faced with a strictly ideologically inspired revolution, the just war doctrine would permit, but not require, some type of military intervention on behalf of the government (always recalling the demands of discrimination and proportion).<sup>22</sup> This would be the case where the revolution is motivated not because the government is unjust, but rather because in the view of the rebels it espouses the wrong ideology. Many of these groups are inspired by Marxist-Leninist principles, however the most important feature is the ideological nature of the movements as opposed to the particular inspiration. The ideological nature of such movements leads them to rebel

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<sup>21</sup> Leroy Walters, "The Just War And The Crusade: Antitheses Or Analogies," *The Monist*, (October 1973), p. 589.

<sup>22</sup> Regan, S.J., *The Moral Dimensions Of Politics*, p. 190.

against the state not because it is unjust or ruling in a manner which is contrary to the common good, but rather against a belief system. Some of these revolutionary movements also include as a part of their ideology the doctrine of the exportation of their revolution to neighbouring nations. The legitimacy of aiding a just government in the prevention of the expansion of revolutionary ideology would thus be permissible according to the just war theory. This conclusion is consistent with the insistence of Suarez that a war commenced on behalf of an ally with whom one has a form of military alliance or treaty is a just cause, so long as the other criteria of the just war are present as well.<sup>23</sup> It must be noted however that when one is considering aiding an unjust regime against such a revolution, or if the only means available cannot satisfy the demands of discrimination and proportion (as, for example, one could plausibly argue was the case with the U.S. intervention in Vietnam), then intervention may well be unacceptable from a moral point of view.

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<sup>23</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. IV, p. 817.

### III Right Intention

One must keep in mind that all of the conditions of the *jus in bello* and the *jus ad bellum* would still apply to any party who would intervene in a civil war. It would thus never be just to intervene militarily in order to satisfy national pride, on economic grounds, or simply to depose a regime that does not suit the interests of the intervening state. The position of Aquinas that it is always wrong to wage war with the intention of territorial aggrandizement, greed or cruelty applies as much to revolutions, and civil wars, and to military intervention in them, as it does to more conventional forms of warfare.<sup>24</sup>

When it comes to the question of determining right intention in unconventional types of warfare, the matter is clearly even more difficult than is the case with conventional warfare. I would suggest that each particular case must be considered on its own merits, and all of the political and moral features of each war must be considered, including both the stated and actively demonstrated intentions of each belligerent. An analysis of each belligerent in terms of the *jus ad bellum* conditions would be the most effective means available of evaluating whether or not a belligerent is fighting a just war. Indeed, it would seem that not only does the classical just war doctrine offer the best means of evaluating such wars, but also of restricting

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<sup>24</sup> Aquinas, *Summa Theologiae*, II-II, Q.40, A.1.

their conduct, as we shall see when we examine the *jus in bello* issues raised by revolutionary and COIN warfare.

#### IV Religious War

At this point it is necessary to note that there is another aspect of *jus ad bellum* which was considered by the classical just war thinkers, and which will be important for our later case study of the Spanish Civil War. Aquinas and Suarez both insisted that there are legitimate *jus ad bellum* grounds and criteria which regulate war waged on religious grounds, as well as the politically motivated wars which we considered above. As to the lawful authority for declaring war, Aquinas noted that "it pertains to clerics to dispose and induce men to wage just wars."<sup>25</sup> He also asserts that "it is lawful to carry on war on holy days for the purpose of safeguarding the commonwealth of the faithful."<sup>26</sup> Thus the protection of the commonwealth of the faithful is analogous to the just cause of protecting the common good against a tyrant. In his discussion on faith Aquinas explores the rationale for Christian military action against unbelievers which is not as a means of conversion, which he rejects, but in order to defend the faith. "The faithful of Christ frequently wage war against unbelievers, not in order to

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<sup>25</sup> Aquinas, *Summa Theologiae*, II-II, Q.40, A.2.

<sup>26</sup> *Ibid.*

compel them to believe...but rather to compel them not to hinder the faith of Christ."<sup>27</sup>

Walters notes that both Vitoria and Suarez, and most clearly the latter, specify analogous grounds for political and religious war.<sup>28</sup> The political just causes of i) self defence, ii) defence of the innocent and iii) punishment of wrongdoers are paralleled by religious equivalents of i) defence of the Church, ii) defence of the Christian faithful, iii) punishment of wrongs done to the Church or God. The religious *jus ad bellum* grounds for war are as much a part of the natural law as are their parallel political counterparts.<sup>29</sup> Suarez states that "the Church has the right of defending its preachers, and of subduing those who by force and violence hinder or do not permit this preaching."<sup>30</sup> There is, according to the classical just war doctrine, an analogy between religious and political war, and just cause for war may be of either a religious or political nature.

It is typically claimed that the nature of religious war, of crusades, is such that in such cases the conditions of *jus in bello* do not apply, as being unnecessary or inap-

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<sup>27</sup> Aquinas, *Summa Theologiae*, II-II, Q.10, A.8.

<sup>28</sup> Walters, "The Just War And The Crusade: Antitheses or Analogies," p. 590.

<sup>29</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XVIII, Sec. I, p. 749.

<sup>30</sup> *Ibid.*, p. 742.

appropriate. Neither the principle of discrimination nor that of proportion is heeded in such wars, and thus they are by their very nature immoral. It is supposedly characteristic of crusade warfare that "the mood was strangely compounded of barbarian lust for combat and Christian zeal for the faith."<sup>31</sup> This alleged contrast between undisciplined and unrestrained religious war and restrictive and disciplined secularly motivated war is rejected by the classical theorists. To be precise, there is in none of the thinkers whom we have considered any type of exhortation to unrestrained violence in the prosecution of religious war. There is in fact no distinction between the *jus in bello* conditions which govern religious and political war. The class of innocents who may never be directly attacked applies to all human beings, whether Christian or not. Vitoria makes this clear when he states that "even in war with the Turks it is not permissible to kill children. This is clear because they are innocent. Yes, and the same holds true for the women of the unbelievers."<sup>32</sup> Classical just war doctrine thus holds that religious war may be justified and restricted by the same *jus ad bellum* and *jus in bello* conditions which govern political just wars.

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<sup>31</sup> David Little, "'Holy War' Appeals And Western Christianity," p. 126, in *Just War And Jihad*, James Turner Johnson and John Kelsay eds. (New York: Greenwood Press, 1991).

<sup>32</sup> Walters, "The Crusade And The Just War: Antitheses Or Analogies," p. 591.

## *JUS IN BELLO*

Is it possible to conduct revolutionary\COIN warfare justly? The methods most often employed by both sides in such wars tend to make the conduct of war in accordance with the conditions of the *jus in bello* exceedingly difficult. We have seen that the classical conditions of the *jus in bello* are two sorts of test: that of discrimination and that of proportion. Discrimination insists, in the words of Vitoria, that "the deliberate slaughter of innocents is never lawful in itself"<sup>33</sup> and thus there must be a clear distinction between those who may be legitimately attacked and those who may not. This does not mean that innocents may never be killed, for then war would be impossible, (in contrast to Nagel, who thinks that war would still be possible)<sup>34</sup> but rather that innocents may never be directly and intentionally killed by soldiers as a means to achieving the end of victory.

Proportion requires that the good which results from the means employed must outweigh the evil consequences which result. If greater harm is caused to the people for whom the war is being waged than they suffered under a tyrannical government, then the test of proportion is not satisfied and the means are unjust. Thus no matter how noble may be the

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<sup>33</sup> Christopher, *The Ethics of War and Peace*, p. 61.

<sup>34</sup> Nagel, "War And Massacre," p. 23.

cause for which a war is fought, the systematic obliteration bombing of villages suspected of harbouring a handful of insurgents, a tactic often employed in Vietnam by the U.S. and in Afghanistan by the Soviets would not pass the test of proportion (nor of discrimination). If unjust means are routinely employed, as they often are by the state in a response to elusive rebels indistinguishable from the civilian population, then the war becomes unjust.

The first reasons that the *jus in bello* conditions are more difficult to satisfy in revolutionary\COIN warfare is that both belligerents tend to think that the ends for which they fight are sufficient to justify any means necessary. This is especially the case with Marxist\Maoist inspired revolutionaries who think that they are simply fulfilling the inevitable dictates of history and that the destruction of their enemies is a necessary step in the evolution of man towards his destiny of international socialist order and peace.<sup>35</sup> The situation is further complicated by the reality that revolutionaries are often very limited as to the tactics and strategies which they can employ, at least at the initial stages of a war. In the beginning of the revolution rebels may be faced with the choice of no war at all or a war conducted in complete disregard for the conditions

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<sup>35</sup> Pimlott, *Guerrilla Warfare*, p. 48.



of the *jus in bello*.<sup>36</sup> In addition, the strong ideological, religious or ethnic overtones of most civil or revolutionary wars tend to make the systematic application of the principles of discrimination and proportion more difficult still. This does not mean however, that the principles of the *jus in bello* cannot or should not be employed in these kinds of wars, or that they are irrelevant.

It is often the case in revolutionary warfare that the distinction between combatants and non-combatants breaks down completely. By this I mean that the traditional classes of person who are considered innocent and are never the legitimate objects of attack, such as women and children, often take part in combat operations as guerrilla fighters in revolutionary wars.<sup>37</sup> The woman with a rifle who is taking part in an ambush, and even the twelve year old child throwing grenades from the rooftops, cannot be considered anything other than combatants. This point is emphasised by the revolutionary doctrine of Mao Tse-Tung which was so successfully exported through most of Southeast Asia. Mao held that "there is no profound difference between the farmer and the soldier,"<sup>38</sup> and this principle had a direct

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<sup>36</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 176.

<sup>37</sup> W.N. Christensen and J. King-Farlow, "Aquinas And The Justification Of War," *Thomist*, (January 1971), p. 97.

<sup>38</sup> cited in Ramsey, *The Just War*, p. 435.

bearing on the methods that his followers employed to wage war.

One consequence of Maoist revolutionary war doctrine, which must be recognized and acknowledged by the just war thinker, is that the revolutionaries themselves have expanded the scope of the target which counter-insurgent forces may legitimately attack, thus lowering the threshold required for discrimination. This is not a palatable concept from the point of view of one who is seeking to restrict the use of indiscriminate violence, but it is a legitimate response to a deliberate tactic on the part of revolutionaries. The *jus in bello* condition of discrimination must not be used as a shield from behind which guerrillas must be permitted to strike with impunity. Rather, the principle of double effect may be invoked, and the casualties which accrue to innocents as a result of insurgents operating in their midst is a regrettable but necessary consequence of insurgent tactics.

There is in fact an excellent parallel between the army conducting COIN warfare and an army conducting a siege. Both are in a position where to prosecute the war will necessarily involve "the death of innocent persons, as in the burning of cities and the destruction of fortresses." These are precisely the sorts of cases to which Suarez and Aquinas intend that the principle of double effect be relevant, and where "the evils in question are not so much

brought about [with deliberation], as they are allowed to follow [incidentally]."<sup>39</sup> Ramsey notes that once the revolutionaries have expanded the legitimate scope of COIN operations, it becomes largely the criterion of proportionality that limits what may be done to them.<sup>40</sup> I do not see how any other conclusion is possible, unless one either demands that the state cease fighting once insurgents infiltrate into civilian areas and population centres, or else simply concedes that "war is hell" and there is no point in attempting to restrict the conduct of either party on moral grounds. Neither of these options is acceptable for one who takes the just war seriously, and an option between these two extremes can be deduced and applied from the *jus in bello* criteria.

Some have argued that an inability to discriminate between combatants and non-combatants, an inability which has been created as a deliberate tactic by insurgents, renders modern COIN warfare necessarily immoral. These would hold that "search and destroy" operations against an insurgent army concealed among civilians are nothing but systematic atrocities which any talk of *jus in bello* serves only to justify or conceal.<sup>41</sup>

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<sup>39</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VII, pp. 848-49.

<sup>40</sup> Ramsey, *The Just War*, p. 435.

<sup>41</sup> Wells, "Vietnam and the Calculation of Atrocities," p. 14.

I would suggest, however, that the position that insurgents hiding behind innocents may not be legitimately attacked is acceptable neither from the point of view of morality nor of common sense. To argue that since rebels have rejected any principle of discrimination in the conduct in their war, and that as a result of hiding among innocents and striking out from within their ranks rebels should be rewarded for such activities and granted immunity from attack, is mistaken. The suggestion that when insurgents fight from within the ranks of civilians then counter-insurgents have no legitimate military target cannot be justified on the grounds of failure to satisfy the test of the principle of discrimination. The reason that government forces may legitimately enlarge their target is directly related to the insurgent tactics to use human shields to conceal and protect their operations. These insurgent tactics constitute the direct and intentional employment of means which require the death of innocents as a necessary way of achieving their ends, as opposed to means where the death of innocents is incidental and not an indispensable means to achieve the desired end. This is why the double effect principle cannot be invoked in defence of revolutionary guerrilla tactics.

On the one hand, it is possible to argue that the principle of double effect would permit COIN operations against insurgents operating from among civilians, bearing

in mind that the principles of proportion and discrimination are still operational. The danger to innocents is strictly a function of the insurgent decision to employ means that are immoral and which deliberately enlarge the number of combatants and potential combatants in a given area. To argue that the use of such tactics by insurgents must prohibit COIN operations directed against them is to ignore the basic truth recognized by Aquinas, Vitoria, and Suarez who understood that war cannot be waged

without destroying innocent together with the guilty. The proof is that war could not otherwise be waged against even the guilty and the justice of a just belligerent would be balked.<sup>42</sup>

The fact that as a direct result of insurgent tactics more innocents will die than would have otherwise is the responsibility of the insurgents, and in terms of moral evaluation the responsibility for those deaths must lie with the insurgents.

The classical just war principles of *jus in bello* insist that evil may never be done in order that good may come of it. No matter how strenuously insurgents may insist that the ends justify whatever means are necessary, there is only one possible judgement which can be rendered as to the morality of such a position. This is especially the case for those who take seriously the injunction of Suarez that innocents may never be deliberately slaughtered - or delibe-

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<sup>42</sup> Christopher, *The Ethics of War and Peace*, p. 62.

rately placed in a situation where such slaughter is sure to follow - and that unintended damage to innocents must be restricted as far as is possible.<sup>43</sup> The use of civilians as concealment and protection from military action must be condemned as utterly failing to pass the test of the principle of discrimination.

Further, if there is a systematic and continual resort to immoral methods in the conduct of war, then the war is being conducted with a wicked intention and must be condemned as unjust, even if the war was initially just and satisfied the *jus ad bellum* criteria.<sup>44</sup> The continual resort to immoral means in its conduct renders a revolutionary war unjust. Such a conclusion will not, one suspects, dissuade any rebels from fighting their wars, yet this conclusion is central for anyone who is concerned to evaluate the justice or otherwise of a war.

There are, however, those who would claim that "guerrilla fighters do not violate the rules of war through living as and among ordinary citizens when not fighting."<sup>45</sup> The danger to innocent civilians, it is claimed, is not posed by the presence and activity of insurgents but rather from COIN operations that are directed at guerrillas. It is the

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<sup>43</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VII, p. 848.

<sup>44</sup> Aquinas, *Summa Theologiae*, II-II, Q.40, A.1.

<sup>45</sup> Gilbert, *Terrorism, Security & Nationalism*, p. 35.

forces of the state who are the real offenders, rather than the rebels, who are simply "tempting" the security forces by merely living among innocents. The indistinguishability between rebels and civilians is only insurmountable when the state employs massive and indiscriminate forms of attack such as artillery saturation or air strikes against suspected areas of insurgent activity, according to Gilbert. The simple application of sufficient ground forces, he says, will enable the morally aware COIN commander to fight his war in a way that resembles good police work.<sup>46</sup> We will examine these claims in order to see how they may be refuted by the principles of just war doctrine and to discern an important insight into the nature, and the morality, of revolutionary war.

The claim that the COIN forces rather than the guerrillas must be held morally accountable for the deaths of innocents which result from COIN operations has been demonstrated above to be false by the classical just war doctrine. However the claim is of additional interest because it reveals one of the difficulties which one often encounters when considering the morality of revolutionary and COIN warfare. The problem is that when push comes to shove, not only belligerents, but also their apologists show themselves all too prepared to jettison any moral restraint or injunc-

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<sup>46</sup> *Ibid.*, p. 36.

tion which would inhibit or condemn the tactics used by "their" side.<sup>47</sup>

One of Gilbert's main concerns seems to be the attempt to provide a moral and theoretical framework that would legitimate the IRA campaigns against British rule in Northern Ireland. This in turn has led him to the disturbing conclusion that the ends must be able to justify whatever means may be required to achieve victory, provided that the cause is just. The alternative to this position according to Gilbert is "simply to make a morally acceptable resort to war impossible, except for the state or for regular forces in a disintegrating state."<sup>48</sup> If we were to modify the claim of Gilbert somewhat, we would wind up with a position that is consistent with the conditions of both the *jus ad bellum* and the *jus in bello*.

Suppose we were to posit a position such as the following. "A morally acceptable resort to war is impossible except for the state, regular forces in a disintegrating state, or revolutionary forces who are able to live, fight and operate independently of direct civilian assistance and contact. By the last phrase is meant: in the same manner as conventional armies in a 'normal' war who are operating in a hostile, or at least neutral territory." We have a position

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<sup>47</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 177.

<sup>48</sup> Gilbert, *Terrorism, Security & Nationalism*, p. 36.



which is consistent with the classical view of the justice of a rebellion. This is the crux of the matter. Can a revolutionary war which relies heavily on revolutionary guerrilla or terror tactics launched from civilian areas and relying on civilians for protection and concealment, ever be waged in a manner which satisfies the conditions of the *jus in bello*? If the answer is no, then even if the revolutionaries have just cause and satisfy all of the requirements of the *jus ad bellum*, the war which they are fighting is immoral.

There is a distinction which should be noted when considering whether the tactics of guerrillas will satisfy the demands of the *jus in bello* criteria of discrimination and proportion. Revolutionary guerrillas, such as those who choose to adopt Maoist tactics of deliberately fighting from within a civilian population, and choosing to eschew any features which would identify them as soldiers distinct from civilians, do not fight in a manner which meets the test of discrimination. On the other hand rebels who fought in the manner of soldiers, attacking only military or police targets (and not attacking from the midst of civilians), who then melted back into the civilian population to live may be able to escape the above censure of the guerrilla who uses revolutionary tactics.

An example of the second sort of guerrilla tactics that might be acceptable under the *jus in bello* would be the case

of the French or Belgian resistance fighters who fought German occupation in World War II. It was clearly impossible for them to conduct conventional military operations against the occupying forces over a sustained period of time. They attacked only military or security forces, often ambushing convoys or small units in transit along areas with little civilian activity. While engaged in these operations these guerrillas always wore some identifying insignia to mark them as combatants and to distinguish them from the civilian population, whether conducting sabotage or actually ambushing troops.<sup>49</sup> The guerrillas who would conceal themselves among civilians certainly placed these people at added risk from security forces, but since this risk was usually assumed willingly it would not seem to be a violation of the principle of discrimination. The line between tactics which would and would not satisfy the *jus in bello* may be a blurry one at times. The principles of the just war doctrine do however give us some means of evaluating this type of warfare, which would seem to be a worthwhile contribution.

We have seen that the presumption of the classical just war doctrine is against the justice of rebellion unless the rule of the government is so manifestly tyrannical that it is contrary to the common good and the natural law, and further that the good achieved must be greater than the evil

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<sup>49</sup> Pimlott, *Guerrilla Warfare*, p. 26.

which results.<sup>50</sup> Now if the means employed in the conduct of the war fail to meet the requirements of discrimination and proportion, then those means are immoral, and the evil caused by resorting to war must be held as outweighing any possible good which may be achieved from war. It may be concluded, then, that unless the rebels are able to exist and fight continuously in an independent, identifiable and disciplined military body, then they will be forced to rely on methods which must be condemned as immoral and unjust. This moral condemnation stands even if the cause of the rebels is just. The simple truth is that:

No matter how much a person who passionately believes and perhaps correctly believes in a revolutionary "just cause" may squirm on the point of the argument, he can avoid being impaled on it only by asserting that "just conduct" need not be taken into account in any resort to violence.<sup>51</sup>

The classical just war doctrine provides for some latitude in the waging of guerrilla warfare, but it strives to restrict such conduct, which at the best of times flirts on the edge of conduct which cannot satisfy the criterion of discrimination. If the only means available to wage a war are immoral, then that war can never be waged justly. A harsh verdict for the partisans of revolution perhaps, but the only just verdict possible.

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<sup>50</sup> Aquinas, *Summa Theologiae*, II-II, Q.42, A.2.

<sup>51</sup> Ramsey, *The Just War*, p. 432.

As to Gilbert's final point that the application of sufficient ground troops against insurgents will remove the problem of the indistinguishability between guerrillas and civilians<sup>52</sup>, it has been demonstrated repeatedly to be mistaken in many COIN operations. It will suffice to cite the French experience in Algeria, where entire divisions of soldiers and police fought a brutal and ultimately unsuccessful COIN war that turned the city of Algiers into a bloodbath for both sides, but especially for civilians caught in the middle.<sup>53</sup> This war clearly indicated that even vast numbers of soldiers cannot wage war against guerrillas who hide behind innocents, without permitting the deaths of many more civilians than would normally be necessary. No one has ever suggested, to my knowledge, that the systematic employment of atrocity and torture by both sides (two immoral and inevitable consequences of a belligerent who deliberately wages war in violation of the *jus in bello* from behind innocents) remotely resembles police work in any form. Practical experience and empirical data indicates the mistaken nature of Gilbert's claim.

In understanding why revolutionary guerilla war must be condemned as immoral, it is perhaps helpful to recall our past discussion of chemical weapons. Chemical weapons are

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<sup>52</sup> Gilbert, *Terrorism, Security & Nationalism*, p. 36.

<sup>53</sup> Wilfred P. Deac, "War In City Streets," *Modern Warfare*, (November 1989), p. 47.

weapons which of their very nature cannot be employed in a manner which satisfies the criteria of discrimination or proportion. Revolutionary guerrilla tactics (the sort propounded by Mao) are tactics which of their very nature cannot be employed in a manner which satisfies those same criteria of discrimination or proportion, criteria which these tactics explicitly reject in an attempt to achieve a military advantage. We must condemn the latter on the same grounds that we condemned the former. To object that this position would reject as immoral many of the "wars of liberation" which have occurred in the 20th century and is thus unacceptable, is to subscribe in a most questionable manner to the doctrine that "the ends justify any means."

Another common feature of revolutionary\COIN warfare is the use of terrorism. Faced with a mounting campaign of terrorism, COIN forces usually respond with torture in order to obtain militarily significant information.<sup>54</sup> By terrorism I mean "belligerent acts neither justified by military necessity nor permitted by the laws of war; its purpose is to spread terror in the target population and break the morale of the civilian population."<sup>55</sup> Terrorism is aimed largely at innocents and by definition violates the criterion of discrimination. Terrorism is a standard weapon in

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<sup>54</sup> *Ibid.*, p. 45.

<sup>55</sup> O'Brien, *The Conduct Of Just And Limited War*, p. 195.

the arsenals of many revolutionaries, as they seem to find it a useful means of keeping up political as well as military pressure on their enemies.<sup>56</sup> It should be noted, however, that terrorism may be employed as well by the security forces of the state against insurgents and portions of the population who are suspected of supporting the insurgents. From the point of view of morality, the essential truth is that terrorist tactics cannot satisfy the *jus in bello* requirements of proportion or discrimination and they cannot be just no matter who uses them.

#### A CASE STUDY - THE SPANISH CIVIL WAR

We will turn now to an attempt to apply the principles of the just war to a concrete example of rebellion, the Spanish Civil War (1936-1939). I propose to argue that according to the classical just war doctrine, the cause of the Nationalist rebels was a just one, and they satisfied both the conditions of the *jus ad bellum* and the *jus in bello*. Since it is impossible that a war could be just on both sides, it will not be difficult to make a proper determination as to the justice of the war waged by the Republican government. Given the fundamentally ideological and religious motives of both sides, I will argue that the *jus ad bellum* criteria for religious war, and especially just

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<sup>56</sup> Pimlott, *Guerrilla Warfare*, p. 186.

cause, is of particular relevance to this conflict. We will follow a step-by-step examination of the criteria required for a war to be waged justly in order to evaluate the morality of the Nationalist rebellion.

It must be recognized that there exists a startling presumption on the part of many who consider the Spanish War that the Republican government represented democracy, tolerance and enlightenment, while the Nationalist rebels are almost invariably identified with intolerance, corruption and fascism.<sup>57</sup> I will argue that such a view is seriously distorted given the policies and activities of the Republican regime. These eventually led to such gross violations of the natural law and the common good as Aquinas understands these terms, as to provide legitimate grounds for rebellion.

Rebellion is only legitimate when the government "does really and manifestly behave in a tyrannical manner; and the other conditions laid down for just war must concurrently be present."<sup>58</sup> There must then be a case of true oppression where a government is exercising its power in a manner contrary to the common good. In order to properly evaluate the justice of the Nationalist rebellion, it is thus necessary to consider the political and legal policies of the

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<sup>57</sup> Gabriel Jackson, ed., *The Spanish Civil War: Domestic Crisis Or International Conspiracy* (Boston: D.C. Heath Co., 1967), p. 92.

<sup>58</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VIII, p. 855.

government that constituted conditions contrary to the common good. In other words, why did the rebels do what they did?

The first step on the road to civil war in Spain, and the first indication that the rebellion "would assume the nature of a crusade," was the adoption of a constitution by the Republican government in 1931. It represented a radical departure from Spanish custom; its most prominent and controversial features were the anti-clerical nature of its key clauses. These included the complete separation of Church and State, forced secularization of education, the suppression of Religious Orders, nationalization of the property of the Orders, and the disbanding of all religiously affiliated trade unions.<sup>59</sup> The implementation of these laws was accompanied by rising social unrest, riots, church burnings, mob attacks on clergy and conservative politicians, and government suspension of opposition newspapers. As this violence steadily increased, it became increasingly obvious that government security forces were either unwilling or unable to intervene. The state was ceasing to fulfil its obligation to enforce the laws and to protect the lives and property of its citizens, as certain classes of people were

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<sup>59</sup> L.A.Prado, *The Church And The Spanish War* (Madrid: Spanish Information Service, 1965), pp. 11-13.

See also: David Mitchell, *The Spanish Civil War* (New York: Franklin Watts, 1983), pp. 17-18.



increasingly targeted for violence as "enemies of the Republic."<sup>60</sup>

While riots, church burnings, and murders continued to increase, politically inspired violence was increasingly resorted to by supporters of the government and as a means of self defence for those conservative, monarchist and traditionalist political persons and parties which were deemed enemies of the people. By the time of the elections of 1936 the government had lost both the ability and the will to guarantee the safety of many of its citizens. With victory in the dubious elections of 1936 by the Popular Front (the Republican coalition which included the members of the socialist, communist and anarchist parties), and its attendant riots, plots, and counter-plots, the stage was set for rebellion.<sup>61</sup>

It may be noted that just as the Republic attempted to portray on the international stage its cause as the fight of freedom and democracy against the forces of dictatorship and fascism, the Nationalists also waged a propaganda campaign. They sought to indicate to the world that their struggle was one of a crusade on behalf of traditional Spanish values, religion and order against the onslaught of communism, atheism and anarchy. It was observed by some that it is a

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<sup>60</sup> Prado, *The Church And The Spanish War*, p. 17.

<sup>61</sup> Hugh Thomas, *The Spanish Civil War* (New York: Harper & Brothers Publishers, 1961), p.102.

strange crusade which uses Moorish troops against Roman Catholic Basques in the North of Spain, casting some doubt upon Nationalist claims.

A few remarks are thus in order regarding such an objection. First, the Basque government and clergy was reproved by both Rome (through a Papal Nuncio) and by the Spanish Bishops for siding with the Republic, and of supporting an unjust government in exchange for a measure of regional autonomy.<sup>62</sup> Second, Suarez addresses the question of whether a Christian ruler may use infidel troops in the prosecution of a just war, and he answers that such a practice is indeed acceptable.<sup>63</sup> While Nationalist (or Republican) claims should not be accepted uncritically, it would be a serious mistake to imagine that many of the rebels did not truly conceive of their war as primarily a war in defence of religion - a crusade.<sup>64</sup>

It remains to be clarified why the rebels viewed their cause as inextricably bound to the defence of the traditional religion of Spain, and essentially as a modern crusade. The majority of Nationalists readily identified the restoration of religion with the restoration of Spain. They recognized that two irreconcilable sets of values, princi-

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<sup>62</sup> *Ibid.*, p. 451.

<sup>63</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VII, p. 853.

<sup>64</sup> Martin Blinkhorn, *Carlism and Crisis in Spain* (London: Cambridge University Press, 1975), p. 261.

ples and visions of what Spain should be were fighting to determine which would triumph. In a Pastoral Letter to the Bishops of the world the Spanish Bishops noted that these two Spains were of very distinct tendencies:

On the side of the insurgents the spiritual, which aimed at the defence of order, social peace, traditional civilization and the mothercountry, and very markedly, in a great section, the defence of religion; and on the other side the materialist tendency, be it called Marxist, Communist or Anarchist, which wanted to substitute, for the old civilization of Spain with all its factors, the ultra-new "civilization" of the Russian Soviets.<sup>65</sup>

The lines of battle were thus clearly drawn for all involved.

The feature of the Spanish War which gave the rebellion the nature of a crusade was the systematic religious persecution that was the policy of the Republic. The government wished to wipe out the Christian religion in Spain and the rebels sought to protect and restore it. The extent of the persecution is made clear by the number of priests and religious martyred on the territory of the Republic. The total number murdered in "the greatest clerical bloodletting in the entire history of the Christian Church" included 12 Bishops, 283 nuns, 5,255 priests, 2,492 monks and 249 seminarians.<sup>66</sup> In addition to the murder of clergy, the bloodbath extended to an incalculable number of laymen who

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<sup>65</sup> Prado, *The Church And The Spanish War*, pp. 35-36.

<sup>66</sup> Thomas, *The Spanish Civil War*, p. 173.

were killed for professing the faith, or simply for being friends or relatives of a priest. The sadistic cruelty and fury which accompanied these crimes reflected well the nature of the regime against which the rebellion was directed.<sup>67</sup> To further indicate the extent of the hatred of religion which animated the Republicans, of the 42,000 churches and chapels in Spain, over 20,000 had been completely destroyed. In areas controlled by the Republic this total sometimes reached 100 percent of all churches in a diocese.<sup>68</sup>

The condition of the people in Spain was such that it satisfied Gilbert's criteria for determining whether the resort to revolutionary violence may be considered legitimate.<sup>69</sup> The imposition of institutionalized violence and oppression upon entire classes of Spanish citizens, on grounds of religion but also of political affiliations, is incontrovertible. Laws directed at extirpating from Spanish public life and consciousness all traces of Christianity were a hallmark of the Republic. The fraudulent elections of 1936 saw widespread intimidation and violence at polling stations,<sup>70</sup> and removed any possibility of a peaceful solu-

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<sup>67</sup> *Ibid.*, p. 174.

<sup>68</sup> Prado, *The Church And The Spanish War*, p. 38.

<sup>69</sup> Gilbert, *Terrorism, Security & Nationalism*, pp.83-87.

<sup>70</sup> Raymond Carr, *The Spanish Tragedy* (London: Weidenfeld and Nicolson, 1977), p. 17.

tion to the situation in Spain. The war in Spain was a conflict of basic moral beliefs, of two irreconcilable visions of what should constitute the political, moral and social life of Spain.

## *JUS AD BELLUM*

### I Lawful Authority

The Nationalists may rightly claim to be waging war with lawful authority according to the classical just war doctrine for the following reasons. First, the government lost its claim to be ruling legitimately when its policies became characterized by systematic persecution of whole segments of the population, who became the target of state-induced or supported violence. Such violence constitutes a form of aggression against the people, and the people have the right to self defence and indeed to overthrow such a government.

Second, the repressive anti-clerical laws which attacked the Religious Orders, education and worship are according to Aquinas not only not laws at all, but also a form of violence.<sup>71</sup> The unlawful and violently oppressive nature of the Republican regime justifies a rebellion by the people. In this case the government has become an aggressor "and is waging war unjustly against the state and its separ-

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<sup>71</sup> Aquinas, *Summa Theologiae*, I-II, Q.95, A.2.

ate parts, so that, in consequence, all those parts have the right of defence."<sup>72</sup>

Third, the majority of the leaders of the rebellion represented the traditional ruling segments of Spain. The military, civil and religious authorities which supported and directed the Nationalist cause traditionally constituted the legitimate ruling and moral authorities of Spanish life, in contrast to those artificial and foreign communist and socialist ideas and leaders who had no precedent in Spanish history or political culture.<sup>73</sup> In connection with this last point, it would be well to recall the observation of Aquinas that it is the proper office of clerics to dispose men to wage a just war in defence of religion, since this principle was recognized and confirmed by the Bishops of Spain. The Bishops clearly stated that the rebellion of the Nationalists was in fact a war waged in defence of religion in the face of Republican persecution.

## II Just Cause

Self defence against aggression, whether perpetrated by an external power or a tyrannical government, is *prima facie* a just cause. The violence, discrimination, and persecution which was directed against the Catholic people of Spain

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<sup>72</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec.VIII, p. 854.

<sup>73</sup> Prado, *The Church And The Spanish War*, p. 42.

constitutes unjust aggression which the people have a right, under the natural law, to defend themselves against by rebellion. Recall that the Church has the right to defend her ministers and faithful from violence, and that such action constitutes both self defence and the protection of innocents, both of which are just causes to resort to war. The Nationalist leaders continually cited the defence of the faith as grounds for their rebellion.

We must also consider the requirement of proportionality, which demands that only the gravest of causes can justify resort to war. This requirement also states that if the evil consequences of the rebellion cause even more harm than the people have suffered under the government, then it is unjust, even if the other conditions of the just war doctrine are satisfied. The death, destruction and suffering which attend a civil war are great, and a calculation of the consequent evils of each action is made even more difficult by the religious nature of the persecution and the rebel reaction.

The institutionalized violence and oppression which characterized the Republic since the constitution of 1931 has been noted. Given what we have noted about Aquinas's view of unjust laws and the insistence of all classical just war theorists upon the right of nations to make war in defence of the faith, it is difficult to conclude anything other than that the rebel cause has satisfied the require-

ment of proportion, given the gravity of the evil which they sought to overcome. Indeed, in addition to these grounds, the riots, mob violence and confiscation of property, combined with the unwillingness of the state to protect innocent citizens from persecution would be grave enough to satisfy the demand of proportion on their own. The refusal of the state to provide even basic security to life and property would place its citizens in circumstances not significantly different from those occasioned by rebellion. The oppression occasioned by the Republican rule must constitute unjust aggression against the people, and when faced with such circumstances "the whole state, or any portion thereof, has the right to revolt against the prince."<sup>74</sup>

The just cause condition also requires that war must be a last resort. The Nationalist supporters made repeated attempts to use political and legal means to challenge the oppressive laws, arrests, and violence, all of which were defeated by the government. By the elections of 1936, both Republicans and Nationalists recognized that only war remained to determine the future of Spain.<sup>75</sup> Both sides had drawn up their battle lines, and openly declared that war was inevitable and that the victor in the coming struggle would shape Spain according to his image while the van-

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<sup>74</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VIII, p. 854.

<sup>75</sup> Thomas, *The Spanish Civil War*, p. 111.



quished would be destroyed. There is no question that no other options remained to either party.

### III Right Intention

The final *jus ad bellum* requirement is that of right intention, which requires that the just belligerent intends to do good and avoid evil. Right intention includes a war waged to secure a just peace, to punish an evil doer, and to promote the common good. The religious dimension of classical just war doctrine also contributes relevant considerations for the criterion of right intention in the Spanish War. Aquinas's insistence that war in defence of the Christian faithful, and the claim of Suarez that war waged to defend the Church are just motives, were simply being carried out by the rebels, and thus the intention of the rebels must be considered a just one. The repeated goal of the rebels was to expel from Spain atheistic communism, and to restore peace, stability and social order, and to secure the common good. These motives certainly meet the criteria of right intention.

Since Franco and his government did everything in their power to bring about these conditions once they achieved victory, and were in fact largely successful, one can only conclude that the rebels were sincere in their intentions. The peace which followed the civil war, based on the conditions enumerated above, would constitute a just peace.

While there were some excesses committed against the forces and agents of the former government as "punishment" for atrocities committed before and during the war, these were not arbitrary, but often the result of meticulous investigation of allegations of criminal behaviour on the part of the defendants. While key members of the republican regime and military were all held accountable for their actions, most of the rank and file soldiers were left alone.<sup>76</sup>

### *JUS IN BELLO*

The two basic principles of the *jus in bello* are discrimination and proportion. These govern the means employed to wage war, and include restrictions upon both weapons and tactics. The Spanish war was fought, unlike most civil wars, largely as a conventional war without much use of terrorist or guerilla tactics. Both sides were evenly matched in terms of the quantity and quality of their weapons and equipment. The rebels received most of their planes, tanks and "volunteers" from Germany and Italy, while the Republic was armed initially by France and soon by the Soviet Union. The provision of volunteers by Germany included the famous Condor Legion, while Soviet aid included the provision of massive numbers of "advisors" and the Communist International raised and equipped International Brigades made up of volunteers from all over the western world. The

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<sup>76</sup> *Ibid.*, p. 607.

Spanish war was, however, a very passionate and bitter struggle. There were systematic atrocities committed by the government on territory which it controlled, and corresponding Nationalist reprisals in territory which they conquered. The actual conduct of a largely conventional war by both sides more often than not satisfied the conditions of the *jus in bello*, but it must be acknowledged that there were certainly instances when either one or both of the belligerents acted in a manner which failed to meet the criteria of discrimination or proportion. Indeed the tactics employed on the battlefield in Spain were incorporated by all of the future belligerents of World War II, even those who did not participate in the Spanish war, and they were employed throughout the European theatre in that conflict.<sup>77</sup> The effort of military operations were generally directed at the soldiers of the other side, and not against civilians. For military, domestic political, and international propaganda purposes both sides were inclined to conform their conduct of the war to the conditions demanded by the *jus in bello*.

The most infamous exception to this policy was the decision by the rebel commander in the North of Spain to use the bombers of the Condor Legion in an attempt to bomb the Basque city of Guernica into oblivion. It was an attempt to break the morale of the Basque separatists (who despite

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<sup>77</sup> *Ibid.*, p. 615.

being Roman Catholic had sided with the Republic in hopes of achieving political autonomy) by sheer terror. It was also an experiment in military tactics to determine how useful the terror bombing of cities would be in breaking enemy morale. Guernica was a foretaste of the massive city-bombing campaigns that would be waged by both the Germans and the Allies in World War II. Such tactics obviously fail the tests of both discrimination and proportion and must be condemned as immoral. In the Spanish war, such tactics were used on more than one occasion by both sides. In the case of Guernica the damage suffered by the Nationalist cause by the attack in international opinion far outweighed any tactical benefit that could have been obtained.<sup>78</sup> The occasional use of unjust means, whether in the cause of the Nationalists or the Republicans, do not render the wars which they fought unjust.

While the overall conduct of the fighting between the armies of both sides in the civil war met the requirements of the *jus in bello*, some qualifiers and exceptions should be noted. Although much of the campaigning and battles were fought in rural or sparsely populated areas, on more than one occasion key cities were besieged, with all of the military and moral implications which follow. The conduct of sieges, particularly the use of air power, must be considered in order to address objections that are sometimes

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<sup>78</sup> *Ibid.*, p. 609.

raised against the Nationalist conduct of the war. The question of the treatment of prisoners is also a concern of the *jus in bello* which will be discussed in our evaluation of the Nationalist conduct of the war.

As to what may justly be done in the conduct of sieges, Vitoria is clear that when a town or a fortress is besieged, if the defenders refuse to surrender, the town may be bombarded to whatever extent is required to subdue it.<sup>79</sup> In such a case the principle of double effect would apply to any innocents slain by either the attackers or defenders. Suarez insists that it is acceptable to use whatever military means are required to subdue a city, and the attacker incurs no moral guilt as a consequence of the attack.<sup>80</sup> It is another matter, however, if a besieger deliberately sets about destroying civilian areas with no military value, as the Nationalists did during part of the siege of Madrid.

While it would be entirely acceptable to bombard the city in preparation for an assault, the Condor Legion sought to determine what would be the "reaction of the civilian population to a carefully planned attempt to set fire to the city, quarter by quarter."<sup>81</sup> The bombing concentrated on hospitals and communications centres to cause even more

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<sup>79</sup> Bernice Hamilton, *Political Thought In Sixteenth-Century Spain* (Oxford: The Clarendon Press, 1963), p. 152.

<sup>80</sup> Suarez, S.J., *The Three Theological Virtues*, Disp. XIII, Sec. VII, p.848.

<sup>81</sup> Thomas, *The Spanish Civil War*, p. 329.

panic. The attack was a preliminary to what would be experienced by Hamburg, Tokyo, and London a few years later. The deliberate targeting of civilian and medical facilities is a violation of the *jus in bello*, and must be condemned as such. I do not think, however, that this particular crime, which was halted after two weeks, is sufficient to condemn the siege of Madrid as a whole, and it is certainly not sufficient grounds to condemn the entire Nationalist war effort. If this were to be the case, then by 1944 the Allied cause in World War II would have had to be condemned as unjust, given the city bombing tactics employed against both Germany and Japan.

The other most often cited example of Nationalist violations of the *jus in bello* during a siege would be the "massacre of Badajoz," an event which was portrayed by many of the European Left at the time as "a mass murder by barbarous and blood thirsty 'Moors'."<sup>82</sup> What actually happened during this siege, while not unworthy of blame, was rather less dramatic. Cut off from retreat, government forces in the city refused to surrender and inflicted heavy casualties on the rebels, and the rebel commander gave no quarter. Battle and reprisal became indistinguishable, as is often the case in sieges, because once the town was penetrated there was no one able to give orders. "Many (loyalist) militia men, who though disarmed could hardly be said to

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<sup>82</sup> Carr, *The Spanish Tragedy*, p. 152.

have surrendered, were shot in the bull ring."<sup>83</sup> 200 Republican defenders were executed in this manner. Vitoria recognizes that the execution of defenders who refuse to surrender a town is a likely consequence of any siege. While the cold-blooded execution of prisoners is wrong, the siege itself must not be held to be unjust or unlawful.<sup>84</sup>

There were of course no shortage of corresponding Republican "massacres" which failed to satisfy the standards of the *jus in bello*. The massacre of military and political leaders in the Model prison at Madrid reached almost 100 executions in response to rumours about Badajoz.<sup>85</sup> One of the most dramatic instances of the murder of innocent prisoners was the desperate use of such tactics in an attempt to force the surrender of a besieged rebel force in the Alcazar of Toledo. Among others, the son of the commander was brought forward in an unsuccessful attempt to force the surrender of the garrison, which was relieved after a celebrated 77 day siege.<sup>86</sup>

The *jus in bello* conditions are normally applicable to particular weapons, tactics and circumstances and are generally of more use in determining if this or that battle or

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<sup>83</sup> Thomas, *The Spanish Civil War*, p. 247.

<sup>84</sup> Hamilton, *Political Thought In Sixteenth-Century Spain*, p. 154.

<sup>85</sup> Thomas, *The Spanish Civil War*, p. 268.

<sup>86</sup> Carr, *The Spanish Tragedy*, p. 153.

tactic could satisfy the demands of discrimination and proportion. Since the fighting was generally of a conventional character and usually satisfied these conditions, nothing more need be said about the *jus in bello*.

From the above analysis we may conclude that the Nationalist rebellion satisfied all of the conditions of the *jus ad bellum* and the *jus in bello* for a just war, although there were occasions when the rebels used methods of waging war which failed to satisfy the tests of discrimination or proportion. The laws and actions of the Republican government constituted oppression, violence and unjust aggression against the people, and the persecution of the Church and innocent faithful all constitute just cause according to the conditions of the classical just war. A war waged for such causes is necessarily waged with a just intention, as it is waged for the common good and to achieve a just peace. In spite of Republican claims to be defending democracy and tolerance, the institutionalized violence, discrimination and religious persecution which characterized the rule of the Republic from 1931 was such that it justified rebellion.

In this chapter the peculiarly modern phenomenon of "small wars," with their attendant features of revolutionary guerrilla and counter-insurgency tactics, have been considered in light of the classical just war doctrine. It has been shown that the moral problems presented by the very nature of modern and revolutionary guerrilla warfare can be



effectively analyzed, and restricted, by the application of the criteria of the *jus ad bellum* and the *jus in bello* to this type of warfare. We have seen once again that the classical just war doctrine provides an important theoretical tool for the evaluation of the moral issues raised by these aspects of modern warfare.

With this chapter we have also examined some of the issues raised by civil war from the point of the classical just war doctrine. In particular, the Spanish civil war was examined as a case study to demonstrate the application of the principles of the *jus ad bellum* and the *jus in bello* to a concrete situation. It was argued that the cause of the Nationalist rebels was a just one, and that overall the rebels satisfied the conditions of a just war. With this chapter, then, it has been shown that the classical just war doctrine is an important element in thinking about the issues raised by the weapons and strategies of even the most "modern" components of modern warfare.

## CONCLUSION

In this essay I have attempted to set forth the principles and conditions which constitute the classical just war doctrine, and to indicate that this doctrine is most definitely relevant today when thinking philosophically about the issues raised in light of modern warfare and weapons. The principles of the just war were first established by St. Augustine, and further clarified by St. Thomas Aquinas, and developed and applied to their fullest extent by later thinkers such as Vitoria and Suarez. These principles offer a clear and viable means of guiding and developing the policies of modern nations who would wage war in a just manner. The classical just war doctrine offers a means for determining whether a particular war is just or unjust when it is undertaken, in its conduct, and in the use of particular methods or technology to wage it. These matters are clearly of great concern to us today given the military and political reality in which we live, where "small wars" abound, and where a world war seems only the push of a button away.

I have argued that those objections which have been advanced in criticism of the relevance or applicability of the just war doctrine to modern warfare are mistaken or seriously flawed, and that these only serve to highlight the importance of the classical just war doctrine today. The principles of the doctrine are applicable not only to modern nuclear and conventional warfare, but also to civil war and

revolutionary guerrilla warfare. These principles and criteria can help to shape and to restrict modern weapons and warfare in accordance with the demands of morality. The classical just war doctrine provides the theoretical tools to examine the justice of undertaking and waging a modern war, as the analysis of the Spanish civil war indicated.

I have attempted to show that the *jus ad bellum* and the *jus in bello* conditions of the classical just war doctrine are worthy of both study and application to modern circumstances. The nature of modern warfare is such that we should strive to submit its conduct to the constraints of morality in a consistent and rational manner, and this the classical just war doctrine gives us the ability to do.

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