

JAMES TURNER JOHNSON

Just War Tradition and the Restraint of War

A Moral and Historical Inquiry



PRINCETON LEGACY LIBRARY

**JUST WAR TRADITION AND THE
RESTRAINT OF WAR**

Just War Tradition and the Restraint of War

A Moral and Historical Inquiry

JAMES TURNER JOHNSON

PRINCETON UNIVERSITY PRESS, PRINCETON, NEW JERSEY

Copyright © 1981 by Princeton University Press
Published by Princeton University Press, Princeton, New Jersey
In the United Kingdom:
Princeton University Press, Guildford, Surrey

All Rights Reserved

Publication of this book has been aided by a grant from
the Paul Mellon Fund of Princeton University Press

This book has been composed in Linotron Caledonia

Clothbound editions of Princeton University Press books
are printed on acid-free paper, and binding materials are
chosen for strength and durability

Printed in the United States of America by
Princeton University Press, Princeton, New Jersey

First Princeton Paperback printing, with corrections, 1984

LIBRARY OF CONGRESS CATALOGING IN PUBLICATION DATA

Johnson, James Turner.

Just war tradition and the restraint of war.

Bibliography: p.

Includes index.

1. Just war doctrine.	I. Title.
U21.2.J63	355'.02'01 81-4919
ISBN 0-691-07263-9	AACR2
ISBN 0-691-02230-5 (pbk.)	

*For those who have gone before and those yet to come,
in the hope that the tradition of restraint in war
will never be lost.*

CONTENTS

<i>Preface</i>	ix
<i>Introduction</i>	xxi
PART ONE. THE PROBLEM OF UNDERSTANDING JUST WAR TRADITION	
I. Approaches to the Restraint of War	3
II. The Significance of History for the Restraint of War: Two Perspectives	19
III. The Cultural Regulation of Violence	41
IV. Natural Law as a Language for the Ethics of War	85
PART TWO. RIVAL CONCEPTIONS OF WAR AND ITS LIMITS	
V. Perspectives on the Birth of a Tradition: The Middle Ages	121
VI. The Transition to the Modern Era	172
VII. The Limited War Idea and Just War Tradition	190
VIII. Historical Concepts of Total War and Just War Tradition	229
PART THREE. MODERN WAR AND ATTEMPTS AT RESTRAINT	
IX. The Onset of Modern War and the Development of Restraints	281
X. The Just War Tradition and Contemporary War	327
<i>Select Bibliography</i>	367
<i>Index</i>	377

PREFACE

Just War Tradition and the Restraint of War is a direct outgrowth and continuation of the line of inquiry begun in my previous study, *Ideology, Reason, and the Limitation of War*.¹ When I began that book, I had in mind a two-volume historical analysis of the origin, development, and utility for restraining war of the just war doctrine of Western civilization, beginning with the coalescence of that doctrine in the Middle Ages and continuing to the present time. The resulting volume showed that the tradition of just war was a much more complex body of ideas and practices than previous scholarship had allowed, fed by a variety of secular and religious sources; its early development was similarly varied. As the medieval period gave way to the modern, however, the forms through which the just war tradition was expressed became chiefly two: a more or less coherent and widely accepted set of moral principles by which to judge the resort to war and its conduct, and a set of legal constraints on the severity of war contained in international law. That first volume ended with Vattel's *The Law of Nations* in 1740, by which time, I argued, the ideological value base for just war ideas had shifted from the religious—the church's notion of "divine law"—to a secular concept of "natural law," as conceived by Grotius, Locke, Vattel, and others who sought to put the regulation of social conflict in terms that, in theory at least, could be agreed to by all men. The present book, "volume two" of the study as first conceived, continues that story, with the same interest in identifying the major lines of historical metamorphosis of just war ideas and analyzing them in terms of their value bases.

Part One of this book will explore the methodological prob-

¹ James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200-1740* (Princeton and London: Princeton University Press, 1975). Hereafter *Ideology*.

lem of understanding just war thought historically. In this section I will raise to view some of the assumptions about the historical and communal basis of moral values that have motivated both my books on just war tradition, suggest some affinities with the thought of others, and sketch out how this tradition has the character of a cultural—that is, communal—attempt to regulate violence. My own understanding of the nature of moral values is that they are known through identification with historical communities, while moral traditions represent the continuity through time of such communal identification. This implies that moral life means, among other things, keeping faith with such traditions; it also requires, more fundamentally, that moral decision making be understood as essentially historical in character, an attempt to find continuity between present and past, and not an ahistorical activity of the rational mind, as both Kantianism and Utilitarianism, the major strains, respectively, of contemporary theological and philosophical ethics, would hold.² The present book is not an appropriate context for a thorough investigation and defense of this conception of ethics, though I hope to return more systematically to this matter in a future volume. Yet Part One will indicate the theoretical and methodological context out of which the present book and its predecessor have come.

Parts Two and Three turn away from how to understand the just war tradition toward the development of the tradition itself. The progression is broadly chronological, from the Middle Ages to the present, but my approach has been to focus on major themes and significant individual thinkers rather than to attempt to plot a general calendar of the evolution of ideas and practices bearing on the restraint of war. Further, with the exception of Chapters V and VI, which depict the beginnings of just war tradition and the transitions that were necessary for it to carry forward into the modern period, the entire

² For further exploration of this perspective see my essay, "On Keeping Faith: The Uses of History for Religious Ethics," *Journal of Religious Ethics*, Spring, 1979, pp. 98-116.

weight of Parts Two and Three is on the eighteenth through twentieth centuries. The chronology of *Ideology, Reason, and the Limitation of War* ended with Locke and Vattel, who provide benchmarks for the completion of the transformation of just war theory to a thoroughly secular basis. Though a religious doctrine remained, it was increasingly isolated from the actual practice of war by the rationalism of the modern period and the establishment of the nation-state independent of ecclesiastical control. Chapters V and VI, by reviewing from new perspectives the periods treated in the previous book, provide the historical context for further investigation. The chronology of the present book proceeds in Chapter VII with Frederick the Great of Prussia, a contemporary of Vattel, whose perfection of the art of limited war represents the coming to prominence of another kind of secular approach to the restraint of war, the military. Historically the Napoleonic Wars brought an end to the eighteenth-century form of limited war, and the discussion, in Chapter VIII, of the great military theorists of the early nineteenth century, Jomini and Clausewitz, probes the implications of this development for subsequent efforts to hold war in check.

The memory of Napoleon remained vivid among military professionals until at least three-quarters of the way through the nineteenth century; by this time, though, warfare had begun being transformed in destructive power far beyond anything Napoleon had known. The agent was the industrial revolution, and the specific means of change included mass-produced rifles of consistent quality; improved, cheaper, and more ubiquitous artillery; an increased availability of money, goods, and men for the purposes of war brought about by the new efficiency of production introduced by the machine; and the growth of railroads, which could move entire armies with all their equipment and keep them supplied with an ease undreamed of a century before. All these factors combined to make the wars of the last quarter of the nineteenth century quite different from those of Napoleon, whose material constraints were substantially the same as Frederick's. With the

wars of the late nineteenth century we encounter the beginning of modern war, a kind of warfare in which technology has rendered obsolete the built-in military constraints of the early limited war concept and of just war tradition before it. Thus the attempt to restrain this new sort of war has reverted again to an attempt to define positive legal and moral limits, though earlier notions of military and political constraints remain—though somewhat transformed—as elements in the tradition as well.

The American Civil War was one of the first of the “new” wars transformed in destructive power by the improved technology of the industrial age; at the same time its military leaders remained strategically and tactically in the shadow of Napoleon, a fact that, ironically, helped to increase still further the loss of life on the battlefield. The United States Army *General Orders No. 100* of 1863, *Instructions for the Government of Armies of the United States in the Field*,³ composed by law professor Francis Lieber and a committee of generals working at the behest of General-in-Chief H. W. Halleck, was the first of the now commonplace military manuals on the law of war. The *Instructions* were substantially Lieber’s work, and they incorporate elements of his own experience of war (at Waterloo) as well as of historical analysis, moral judgment, and legal precedent. The coincidence between the new destructive power of war and a legal and moral attempt to define concrete restraints makes the case of the American Civil War a fitting introduction to the problems posed by modern war. As I argue in Chapter IX, both the problems and the efforts to solve them remain typical in the twentieth century, and thus I have not treated the numerous developments in international law on war beginning with the St. Petersburg Conference of 1868, or the various wars of this century, each of which has some claim to being paradigmatic of “modern war.”⁴ Such devel-

³ This is available in Dietrich Schindler and Jiri Toman, eds., *The Laws of Armed Conflicts* (Leiden: A. W. Sijthoff; Geneva: Henry Dunant Institute, 1973), pp. 3-23.

⁴ These developments are compiled thematically in *ibid.*, and chronologi-

opments might well have formed the subject of another chapter, but I thought it more economical not to analyze them in the context of this book. One reason for this decision is that much literature has already been devoted to these developments; another is that I have already given some attention to them in the Epilogue to my previous book. Mainly I have not treated them here because, important as they are for the specific evolution of tradition on the restraint of war, their lines of development are already laid out in the analysis of the American Civil War experience. I have chosen to treat the American Civil War as paradigmatic for "modern war" in much the same way as, for example, Michael Walzer treats World War II or Paul Fussell "The Great War," World War I.

Finally, in Chapter X, I sketch briefly the recovery of just war thought by American theologians as a moral tradition relevant to the needs of the day. Paul Ramsey has undoubtedly been the leader in this recovery and application of the tradition, though the way was prepared before him by the "Christian Realism" of Reinhold Niebuhr, and certain developments in Catholic thought both preceded and dialogically accompanied Ramsey's exploration of just war theory. But in none of the figures treated in this chapter is the enterprise of recovery simply a theological one, narrowly construed; rather it represents an attempt to define what Ramsey habitually calls a "politico-moral doctrine"—a synthesis between moral thought and the requirements of politics. This was in fact, as I argued in my previous volume, achieved with just war tradition in the Middle Ages, though its peculiar synthesis broke apart with the coming of the modern era. Thus with this concluding chapter of the present book we encounter an attempt to make just war theory consciously the base of consensual efforts to restrain war, and in this sense my inquiry into just war tradition has come nearly full circle.

When I wrote *Ideology, Reason, and the Limitation of War*,

cally in Leon Friedman, ed., *The Law of War: A Documentary History* (2 vols. New York: Random House, 1972).

I complained of one-sidedness of existing scholarship on just war thought and set out to amend that by exposing to view the interrelation between secular and religious, moral and legal thought on the restraint of war. What I said there about the nature of just war scholarship remains generally true today, and I continue to be concerned to avoid the narrowness of perspective that in the past has kept, for example, theologians and international lawyers, the two major groups of commentators on just war ideas, from grasping the entire scope of the matters they have addressed.

In recent years this country has produced a flurry of writing about war, most of which has been inspired by the Vietnam experience, and some of which has been in the nature of broader moral and/or legal analysis. In particular there has been a good deal of instructive activity among international lawyers.⁵ Yet the major works of just-war-related scholarship remain, with but few exceptions, the ones singled out in the Introduction to my previous book. My indebtedness to them remains.

Four new works have had a substantial impact on my thinking about just war tradition: one book of history, one of international law, one of political philosophy, and one of literary criticism. The last two of these, Michael Walzer's *Just and Unjust Wars*⁶ and Paul Fussell's *The Great War and Modern Memory*⁷ are treated in some detail in Chapter II. As I maintain there, these works are important chiefly for their insights into how history (or more specifically, the remembrance of the past) may be thought of as significant for moral decisions; both Fussell and Walzer argue, though in somewhat different ways and from different bases, for a paradigmatic functioning of the

⁵ A good sampling of such literature is provided by Peter D. Trooboff, ed., *Law and Responsibility in Warfare: The Vietnam Experience* (Chapel Hill: University of North Carolina Press, 1975).

⁶ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

⁷ Paul Fussell, *The Great War and Modern Memory* (New York and London: Oxford University Press, 1975). Hereafter *The Great War*.

past. In Fussell's oversimplified but suggestive phrase, "Everyone fighting a . . . war tends to think of it in terms of the last one he knows anything about."⁸ But in neither of their books is there a sustained historical analysis of thought on the limits of war, nor is there concern to set their historical examples within the broader cultural and historical context. To provide such sustained analysis and to point up at least some significant features of such a context are, by contrast, among my principal aims.

The third recent work deserving mention here is an historical study, *The Just War in the Middle Ages*, by Frederick Russell.⁹ This is a tightly focused and highly detailed historical analysis of a particular facet of medieval history, and its picture of the contribution of canon law to thirteenth- and fourteenth-century ecclesiastical just war thought is convincing. The standard procedure for tracing specifically Christian just war doctrine through its historical development has been to focus on the theologians, whether the investigator is a Catholic Alfred Vanderpol,¹⁰ who focused on Thomas Aquinas and his tradition, or a Protestant Paul Ramsey,¹¹ who singled out both Thomas and his predecessor Augustine as providing the core of the church's teaching. In *Ideology, Reason, and the Limitation of War*, I moved somewhat away from this standard account, pointing to canonical contributions to the Church's doctrine and to secular contributions from the chivalric code and civil law. But Russell has convinced me that it is necessary to go further still, and the one chapter in the present book that is conspicuously outside the modern period in its historical setting, Chapter V, is the result. At the same time I have

⁸ Ibid., p. 314.

⁹ Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge, London, New York, Melbourne: Cambridge University Press, 1975).

¹⁰ See Alfred Vanderpol, *La Doctrine scholastique du droit de guerre* (Paris: A. Pedone, 1919). Hereafter *La Doctrine scholastique*.

¹¹ See Paul Ramsey, *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (Durham, N.C.: Duke University Press, 1961) and *The Just War: Force and Political Responsibility* (New York: Charles Scribner's Sons, 1968).

sought to correct the overemphasis previous scholarship has given to the theologians as opposed to the canonists, I have also used this chapter to carry further my understanding of the impact of chivalry on early just war thought. Partly this has been in response to Russell's implicit contention about the primacy of the churchly contribution to the developing tradition on restraining war, with which I do not agree; partly it was the natural fruit of further reflection on a matter already broached in my earlier book; and partly it was in anticipation of subsequent chapters in the present study (Chapters VI, VII, and VIII) in which the contribution of military thought to just war ideas is a central focus. While Russell's volume is a major work of lasting significance, it betrays that narrowness of scope which has characterized most of just war scholarship, such that it tends to obscure the forest while vividly depicting the trees. It is my purpose instead to map the forest.

Finally, I would mention a study that is still in progress, William V. O'Brien's work tentatively titled *The Conduct of Just and Limited War*.¹² This is devoted to political analysis and commentary on the laws of war and focuses on the contemporary period, though it includes some early chapters on the just war tradition as a moral doctrine. O'Brien argues, as I do, for a continuing relation between the legal *jus in bello* and the moral doctrine, conceiving both as particular expressions of the more general just war tradition. The development of the theory and practice of limited war since World War II is a central concern of O'Brien's study, and one of its strengths. Though my own discussion of limited war (Chapter VI below) reaches back farther into the past, O'Brien and I share a fundamental conviction about the relation between this largely military and political approach to the restraint of war and the broader tradition of just war; we likewise agree on the importance of military conceptions of war's limits for the shaping

¹² One chapter of this book has been published and conveys much of O'Brien's approach. See William V. O'Brien, "The *Jus in Bello* in Revolutionary War and Counterinsurgency," *Virginia Journal of International Law*, Winter 1978, pp. 193-242.

of this tradition. A further element of commonality between us, in spite of the differences of subject and mode of analysis, is the perception that just war ideas endure because they somehow act to restrain the violence of war. While O'Brien's approach is to demonstrate the worth of just war concepts for contemporary warfare, mine is an effort at conscious recollection of how and why these concepts have functioned in the past, sometimes changing form in the process of that functioning. O'Brien's influence on my thinking has thus been through reinforcing and supplementing with additional data certain shared ideas about just war tradition.

This book has been several years in preparation, and I am deeply indebted for the help I have received along the way. In the summer of 1975 I received a National Endowment for the Humanities Summer Fellowship that provided the leisure of two months to work on this project; early drafts of Chapters VII and VIII were written then. The next year, a Rockefeller Foundation Humanities Fellowship provided further impetus by funding a semester's leave. During that time I spent three months at the Henry E. Huntington Library working through its Francis Lieber Collection and preparing the first draft of what is now Chapter IX. Later, in January 1979, I returned to the Huntington for another month, this time spent checking back into the Lieber materials and pulling together into substantially the form of this book what had by that time become several hundred pages of manuscript. For the two fellowships that gave me important support near the beginning of this project I remain deeply grateful, as well as to those senior colleagues who saw promise in my undertaking and wrote letters of recommendation in support of my applications for these grants. To the staff of the Huntington Library, too, for their friendly helpfulness, I am both indebted and grateful.

On several occasions between 1973 and 1979 I was invited to participate in conferences or panel discussions having to do with the morality of war. These occasions include a graduate symposium at the University of Southern California School of Religion in March 1977; the Conference on Morality and War

held at Princeton University in April of the same year; two presentations in the weekend seminar series of the Georgetown University Program in International Security Studies, in May 1978 and September 1979; and a symposium at the Woodrow Wilson International Center for Scholars in October 1978, on the subject, "Can Contemporary Armed Conflicts Be Just?" These invitations afforded me a helpful opportunity to test my ideas in dialogue with others, a useful procedure for any author.

During this same period I read versions of what became Chapters II and IV at annual meetings of the American Academy of Religion; both papers were also published, in somewhat different form from that in this book: "Natural Law as a Language for the Ethics of War" in the *Journal of Religious Ethics* (Fall 1975), pages 217-42; and "The Significance of History for the Restraint of War" in *Religious Studies Review* (October 1978), pages 240-45. Part of the argument in Chapter VII was first worked out in an essay titled "Just War, the Nixon Doctrine, and the Future Shape of American Military Policy," published in *The Year Book of World Affairs 1975*.¹³ During this period I also published several articles in *Worldview* which, while not directly present in anything below, nevertheless represent the development of my thinking at various stages in the writing of this book. Finally, in this connection, I would mention the helpful discussions I have had on numerous occasions with members of the Working Group on War, Peace, Revolution and Violence of the American Academy of Religion and a similar group within the American Society of Christian Ethics.

I have already mentioned my indebtedness to my Rutgers colleague Frederick Russell for his interpretation of medieval just war doctrine and to William V. O'Brien of Georgetown University for his analysis of limited war in the just war context; O'Brien also read and critiqued this manuscript in its com-

¹³ The London Institute of World Affairs, *The Year Book of World Affairs 1975* (London: Stevens and Sons Limited, 1975), pp. 137-54.

pleted form. I would also mention the helpful insights I have received from James F. Childress of the University of Virginia, both for the interpretation of Francis Lieber and for his criticism of my understanding of the nature and purposes of just war tradition. Other friends to whom I am indebted for their thought in many lesser, yet still important, ways are too numerous to mention; yet I would have them too share in my gratitude.

The final typing and duplication of the manuscript was aided by a grant from the Rutgers Research Council and was accomplished indefatigably and accurately by Mrs. Adelina Rodriguez.

Finally, my thanks to my family, who have shared the burdens as well as the joys of my work on this book, and particularly to my wife Pamela both for her moral support and for her sage stylistic advice on portions of the manuscript.

James Turner Johnson
September 13, 1980

INTRODUCTION

A. THE STRUCTURE OF JUST WAR TRADITION

In Western civilization the general term for the tradition that has grown up to justify and limit war is "just war theory." This term, however, is an imprecise one—ambiguous because of the variety of contexts out of which the just war idea has arisen; because of the metamorphosis of the concept of just war over time; because of the existence at any one time of *numerous* theories; because of the imprecision of language, especially in equivalence of terms between different languages; and, not least, because of the expectations of many persons today regarding war, expectations that are transferred to the just war idea. Christian theologians often claim the just war concept as their own property, a doctrine that came into being inside the church and reached full development there. Again, international lawyers have a strong claim on the just war idea as embodied in the principles and precepts of their own discipline. Military professionals, too, can lay claim to concepts tending to restrain war as deriving ultimately from considerations of courtesy and fair play rooted in chivalry. All these claims are to some degree valid: ecclesiastics, lawyers and statesmen, and military people have through history all contributed to the growth and development of a tradition in which certain reasons for war are accepted as justifying reasons, while others are not; a tradition in which, even in the midst of battle, certain limits are to be set and observed, perhaps at the cost of one's own life or cause. No one should expect theorists representing such different perspectives as those of the Christian faith, law, and the military to agree completely; yet it is remarkable that a great deal of consensus has evolved. Similarly, when different individuals, whatever their perspective, approach the subject of war and its restraints

to deal creatively with it, no one should expect to find anything but what we do in fact find: differences of emphasis, of interpretation, of order, of the way in which concepts are related to one another, and so on. Yet again, what is remarkable is how much agreement exists among theorists who have written on the restraint of war, operating out of their own creativity at sometimes widely separated moments in time. Such agreement makes it meaningful to speak of a just war *tradition*, if not of a just war *theory*. In fact, that tradition can be expressed as a theory, if care is taken to express this theory generally and with a degree of open endedness. That is, room must be left for particular interpretations of the general provisions of the theory and also for development of its ideas to cope with new experiences of reality.

As I will be using this term, just war tradition is expressed in terms of certain general ideas. First, there are those concepts relating to the justification for going to war, gathered together under the traditional rubric *jus ad bellum* (the right to make war): the ideas of just cause, right authority, right intention, that the war not do more harm than good (proportionality), that it be a last resort, and that its purpose be to achieve peace. As an illustration of the divergence of meaning that has historically been attached to these terms, just cause in the Middle Ages could be construed in terms of punishing evildoers in the stead of God,¹ while today it tends to be put, especially in international law, in terms of outlawing aggression and defining a limited right of self-defense.² Yet there is also convergence. Religious apologists involved in the struggles between Catholics and Protestants during the Reformation era often justified their cause as opposition to Antichrist; twentieth-century ideologues similarly argue against their ideological enemies.³ Such divergence and convergence have both contributed to the just war tradition. These phenomena and

¹ Thomas Aquinas, *Summa Theologica*, II/II, Quest. XL, Art. 1.

² Cf. the Kellogg-Briand Pact and Articles 2 and 51 of the United Nations Charter.

³ Cf. Johnson, *Ideology*, chapter II.

their implications will provide a running theme throughout this book. The *jus ad bellum* of just war tradition is a rich mixture of ideas.

The other main component of just war tradition, the *jus in bello*, or law of war, has to do with the restraint or limiting of war once begun. Though contemporary moralists often define the *jus in bello* in terms of two principles, discrimination and proportionality, historically it appears in terms of two sets of legal or customary restraints: those on the extent of harm, if any, that might be done to noncombatants, and those on the weapons of war. Either way of speaking says much the same thing. In fact, discrimination to a moral theorist such as Paul Ramsey amounts to nothing more than the expression of the idea of noncombatant immunity through a moral principle. The relation between weapons limits and the principle of proportionality is not, however, one of identity. Proportion, in its *jus in bello* sense (as opposed to the *jus ad bellum* sense, in which it refers to the total amounts of good and evil expected to be done by a particular war that is being contemplated), does refer to types of weapons and the levels of their use. It tends to rule out using cannon to kill mosquitoes: a nuclear weapon where a conventional one will do, a lethal gas instead of a temporarily incapacitating one. But proportionality also has implications for noncombatant immunity: a weapon might be disproportionate in a given situation because it cannot be used discriminately against combatants without harming noncombatants in the vicinity. Further, the weapons bans that have occurred historically are not easily correlated with considerations of proportionality. To use an example from the past, crossbows were long banned in medieval canon law for use in wars among Christians; yet they were not disallowed in wars of Christendom against Islam. If the reason was consideration of proportionality, it should have applied in both sorts of wars. Again, poison has long been considered an illegitimate weapon of war in Western culture. Today this prohibition finds expression in a widely honored international convention banning the use of gases in warfare. But given the

right conditions, some kinds of gas warfare can be more productive and less destructive than other sorts of warfare that are not prohibited by international convention or by custom.

Though I tend to find the terminology of historical attempts of define noncombatant immunity and weapons restrictions more useful, and though it is, I believe, more basic, usage in this book will alternate between these and the moral principles of discrimination and proportionality in treatments of the *jus in bello*. Something can be gained from each way of speaking; moreover, as I shall argue in Part One, the connection between history and moral values is an important one. As to the precise content of either or both pairs of terms, the same sort of divergence and convergence can be found in the case of the *jus in bello* as in that of the *jus ad bellum*, and further discussion is best left until later.

B. THE ORIGINAL JUST WAR QUESTION

Although Western tradition on limiting war has its earliest roots in pre-Christian cultures, just war doctrine proper owes its early development to Christian theologians and canonists who incorporated earlier thinking into their own positions before, in turn, these latter positions were amalgamated with secular legal, philosophical, and military thought and were themselves secularized. Three persons were especially influential in giving fundamental shape to Christian just war thought: Augustine, Gratian, and Thomas Aquinas.

Augustine, writing around 400 A.D., recast Roman and Hebraic ideas on war into a Christian mold while erecting a systematic moral justification for Christian participation in violence. Augustine was not the first Christian thinker to turn his attention to the problem of Christians and violence; the first examples of such attention occur in the New Testament. But he treated the problem more systematically than anyone before him, placing it in the context of a theological world view that stressed the work of charity in transforming history; thus he shaped just war doctrine in a definitive and lasting way for

those after him. Some seven centuries later, Gratian's role in the development of this tradition within the Church was to recover the essence of Augustine's thought on war when it was in danger of being forgotten, and to propagate it in such a way that its significance for Christian doctrine could not be ignored. Successive waves of canonistic interpreters and commentators after Gratian refined and drew out the implications of the Augustinian justification of Christian participation in war for medieval society. The contribution of Thomas Aquinas in this area is much less significant for his own time than for later development of just war theory. In his own thirteenth century, the canonists loom much larger; yet in the sixteenth century, when medieval just war theory was being summarized and recast for the modern period, it was to Thomas that churchly writers, both Catholic and Protestant, looked. Since that time the canonists have receded further into the background, while theologians continue to return to Thomas's brief thoughts on war.

These major theorists reveal the specifically Christian characteristic of just war theory up through the Middle Ages; they all begin from what we might term "the original just war question": Is it ever justifiable for Christians to participate in war? The very success of just war theory has tended to divide Christians from the Middle Ages and forward into those who accept participation in violence, specifically war, and those who do not. Hence Roland Bainton's widely accepted characterization of Christian positions on war in three groups: pacifism, the just war, and the holy war or crusade.⁴ This description has the advantage of holding up to view three ideal types with their historical inspirations, arranged along a spectrum from those who reject all participation in violence to those who embrace war without restraints in the cause of true religion. But Bainton's three types have the disadvantage of all ideal types: they are not real. LeRoy Walters has shown that the

⁴ Roland Bainton, *Christian Attitudes toward War and Peace* (Nashville, Tenn.: Abingdon, 1960), p. 148.

historic crusades were conceived by their participants as just wars, and that even on the theoretical level the same sorts of arguments were used to justify each.⁵ A similar argument, concentrating on the historical similarities and not on theory and developed at book length, was made by the seventeenth-century English writer Thomas Fuller in *The Historie of the Holy Warre*,⁶ and one might further cite all those advocates of religious wars in the Middle Ages and the century following the Reformation who promoted their cause in the language and ideas of the just war.⁷

At the other end of the spectrum, Bainton's ideal typology too neatly separates pacifism from just war theory. For on the one hand, no one, universal "pacifism" has characterized historic Christian opposition to violence. Edward LeRoy Long, Jr.'s *War and Conscience in America* opens by distinguishing several kinds of pacifists in America in the sixties;⁸ this listing only suggests the range of pacifist positions that have emerged among Christian believers over nearly two thousand years. Again, the debate over Christian association with violence extends back to the New Testament, and even to the person of Jesus himself. What, precisely, was the message for later Christians in the rebuke Jesus gave Simon Peter after the latter had used a sword to cut off an ear of one of the men who had come to arrest Jesus in Gethsemane? (See John 18:10-11.) It is only broadly (and unhelpfully) true to say that Christian interpretations of this event have fallen into two groups, those that see it as a rejection of all violence and those that regard it as a rejection of a specified act of unjustified violence. Like the concept of the just war, that of pacifism is no absolute. Rather, there are many forms, theoretical and historical, of both.

A further problem with the Bainton typology is that it ob-

⁵ LeRoy Walters, "The Just War and the Crusade: Antitheses or Analogies?" *The Monist*, October 1973, pp. 584-94.

⁶ (Cambridge: Thomas Buck, Printer to the University, 1639).

⁷ Cf. Johnson, *Ideology*, chapter II.

⁸ (Philadelphia: The Westminster Press, 1968).

scures the strong antiviolence sentiment that has motivated much of the historical development of just war thought and that directly underlay the original just war question that shaped Christian doctrine at least until the late Middle Ages. That just war theory *permits* Christians to participate in *one particular form* of violence under *certain specified conditions* is clearly true; yet such permission goes hand in hand with *limitation*. If a Christian must repudiate all violence to be termed a pacifist, the result must be to make many who would call themselves pacifists fall in the just war camp, where restraint is the keynote and some level of violence is accepted in some circumstances as not being contrary to the teachings of Christ.

Historically the earliest forms of Christian pacifism appear to have been shaped at least as much by the alienation of the primitive church from politics as by an abhorrence of violence. One example, outstanding both because it so well expressed the theme of Christian reticence to participate in worldly affairs and because of its influence upon subsequent thought, is the work *On Idolatry* by Tertullian, a North African Church father who wrote about 200 A.D.⁹ In this treatise Tertullian considered not just military service but various other sorts of occupations as well, asking whether they were permissible means of livelihood for Christians. He rejected woodworking, silver- and goldsmithing, the life of study, that of the teacher, civil government service, and, of course, military service for the same reason: all are inherently idolatrous. The evil of violence itself was not here an issue, and Tertullian was somewhat extreme among Christian pacifists in this regard. It has been argued from the earliest Christian times that killing the neighbor for whom Christ died is the ultimate problem in the soldier's calling. But until the Constantinian reform, which made Christianity the state religion of the Roman Empire, this antiviolence theme coexisted and commingled with that theme

⁹ In S. L. Greenslade, *Early Latin Theology* (Philadelphia: The Westminster Press, 1961), pp. 83-110.

so well expressed by Tertullian, whose roots are to be found in Jesus's admonition, "Render to Caesar that which is Caesar's, and to God that which is God's" (Matthew 22:21), and whose earliest expression can be found in Paul's advice to Christians to keep themselves separate from the world (see Galatians 5, Ephesians 4). Early Christian pacifism was inevitably and deeply colored by this theme of separation, fed both by such interior hopes as that an early Second Coming would reward all those who carefully held themselves in readiness aloof from the "flesh" and the world, as well as by such exterior pressures as the periodic waves of repression and persecution Christians were made to suffer, along with other religious minorities who resisted absorption into the Roman politico-religious system.

Beginning with Constantine, however, the clear distinction and opposition between church and world ceased. Now the church and the world coexisted, and the way was open to the development that culminated in medieval Christendom, when the Christian religion provided the spiritual side to a universal reality whose other side was the secular life in all its forms. Those pacifists who would set up a church-world opposition in a post-Constantinian context had to draw upon evidence less clear than that provided by the conflict between early church and empire. Though the separation theme continued (and continues) to be found useful by some Christians, both as individual thinkers and writers and as organized groups of believers (consider, for example, the Anabaptist tradition of separation from society, in America attested notably by the Amish churches), after Constantine there was a persuasive rival: a social and political realm covering most of the world known to its inhabitants, now allied to the theological and moral teachings of Christian religion. Christianity could no longer be pacifist in the same sense as before, and two important results of this fact were, on one hand, increased stress on the evil of violence itself and, on the other hand, an attempt to reconcile Christian beliefs with the necessity of governmental use of armed power: the just war doctrine.

Given Augustine's deep positive feelings for "the city of earth," Rome, and Roman culture as he knew them in the late classical era, it is remarkable that, when these were attacked and in desperate danger of being overwhelmed by invaders from the North, he found it necessary to *justify* Christian participation in their defense. That he had to do so testifies to the persistent influence of an antiviolence tradition in Christian life. The power of the original just war question meant that Augustine had to address Christian responsibility in this crisis by means of the twin themes of permission and limitation.¹⁰ Just as resort to force by individual Christians was hedged about by the need to protect the innocent neighbor and the equally strong need to do no more harm than necessary to the guilty neighbor whose evil intent must be thwarted, so in the case of resort to force by the state, participation in that force by Christian citizens was hedged about by those conditions or criteria that formed the nucleus of Christian just war doctrine: right authority, just cause, right intention, proportionality, last resort, the end of peace.

It is undoubtedly true that Augustine recognized a form of just war unknown to secular Rome and remote from the provision of classical Roman law: war in which God's own will was manifest and in which God himself called his people to battle. Augustine knew and commented upon the Biblical stories of such wars waged by Israel.¹¹ It is also undoubtedly true that such wars were just, alongside other wars undertaken by the state without express warrant from God but with just causes. Yet there is a considerable difference between these concepts. To point to Augustine's discussion of Israel's wars commanded by God as the beginning of Christian holy war thought, in which Augustine admitted a ruthless, bloody form of war at variance with the caution expressed in his just war thought,

¹⁰ For a theological interpretation of these themes in Augustine's just war thought see Paul Ramsey, *War and the Christian Conscience*, chapters II and III.

¹¹ See Augustine, *Quaestiones in Heptateuchum*, VI, 10, 44.

is to misinterpret him.¹² The difference between the commanded wars of Israel and other just wars is one of degree only, not an absolute difference of type. In the former, unlike the latter, it is *certain* that the conditions for a just war are fulfilled; the fact of God's command confers that certainty. In other cases, where God's express warrant cannot be discerned, more caution must be taken as reason aided by charity attempts to discover whether the conditions are all met and to what degree. Restraint and limitation are the inevitable consequences of lack of absolute certainty such as God alone can give. Where the original just war question is not answered with a clear command from God—and for Augustine the only historical examples of such answers were in the Old Testament—Christians are only *relatively* permitted to engage in war, and this permission is hedged about with restraining conditions. In short, rather than being a notable example of an exception to Augustine's just war thought, his treatment of Israel's commanded wars reinforces the just war concept. Only in the clear case of a command from God is a Christian unequivocally sure that his participation in war is justified. The case of the commanded wars of Israel is a reminder to Christians that, without God's clear, unequivocal warrant, they must be very careful in taking up the sword against others. Church practice ratified this caution until well into the Middle Ages by requiring that, after wars, soldiers do penance for the sins they might have committed while in arms—for they might, after all, have been waging war unjustly, on poor authority, with some element of evil intent, and so on.

The lack of a separate and distinct *jus in bello* in the later sense in Augustine's just war thought may be somewhat explained by the considerations just raised. While it is possible to discern in his concept of proportionality and his concern for the innocent in war the germs of what centuries later became the *jus in bello* of Western tradition on limiting war,¹³ perhaps

¹² Cf. Russell, *The Just War in the Middle Ages*, chapter I.

¹³ See Johnson, *Ideology*, chapter I.

it is also possible to say something stronger. In the context of the original just war question, and recalling that only God's express command can satisfy Christians that they are clearly permitted to make war in a given instance, the theme of limitation in Augustine's just war thought appears more concrete. If commanded wars may be waged more unrestrainedly, it is because that is God's will expressly communicated to his people. Where that will is not so clear, the Decalogue's command "Do no murder," the Levitical proscription on shedding human blood, Jesus's commands to "Love thy neighbor as thyself," and "When struck on the one cheek, turn the other also"—indeed, the entire antiviolence tradition well-rooted in Biblical precepts and ratified by early Christian practice—stands as a constant reminder to Christians who have taken up the sword that they can never act as though what they do is absolutely right. The Christian warrior must feel a hand on his shoulder and a cautioning voice in his ear, even though he believes he is right to have taken up arms—at least, so far as he is able to discern for himself. Though he has been assured that he may, given certain circumstances, participate in war, his own powers alone to discern that these circumstances are present do not allow him to direct unlimited violence toward the enemy. There is, to be sure, no separate and distinct *jus in bello* in Augustine's thought on war; yet the weighty presence of limitation is felt nonetheless. It is the direct result of Augustine's attempt to find a satisfactory answer to the original just war question. It is this presence, furthermore, that ultimately made possible the joining of the Church's *jus ad bellum* to the *jus in bello* concerns expressed by soldiers, statesmen, and lawyers outside the Church.

C. THE PURPOSE OF JUST WAR TRADITION

One of the most difficult and pressing problems confronting anyone who approaches the subject of war and its restraint rises from the expectations held by persons in their own time as to the nature of war and its purposes, and the nature of

restraints on war and their purposes. Historically a kind of oscillation can be observed in the interpretation of the core concepts of just war tradition as theory has attempted to adjust to such general expectations.¹⁴ We live today in an era in which the destructive capabilities of weapons—not only nuclear weapons, or chemical or biological ones, but even conventional ones—are so great as to threaten civilization itself in the case of an all-out war. At the same time, strong ideological differences divide East from West, and hatred and distrust rooted in the colonial period divide North from South. While the expectation of general destruction in the case of all-out war tends to call into question whether any war can be morally justified in our time, the existence of strong ideological and cultural differences among nations and peoples promotes the expectation that, if war is begun, it cannot be restrained.

The core of truth in the perceptions that give rise to these expectations is undeniable. It is also undeniable that, when the capability to do great damage is joined to divisive distrust and fear, the resulting danger is much greater than when either is present alone. But are the implications often drawn from these observations also true? Is any conceivable war unjustifiable? Is restraint in war unimaginable?

I would not treat these questions lightly, for they express a profound seriousness about the dangers, moral as well as physical, that the violence of war inevitably brings. But if such questions cannot be dismissed lightly, neither can they be answered lightly. It is not at all clear, in spite of contemporary pacifist arguments resting on the destructiveness of modern weapons, that this is a time in which no wars can be justified and no wars can be restrained. At the same time an unrestrained war of mutual mass destruction, such as a thermo-nuclear interchange between the superpowers would be, is a kind of war that is unrestrained by definition and morally unjustifiable in any terms I know. Short of this kind of holocaust, as a name for which “war” seems pale and indistinct,

¹⁴ See below, chapter X, A.

we are in a realm where decisions are based on relative values, on calculations of costs versus benefits, on customary ways of acting—in short, a terrain not essentially unlike that of the period before Hiroshima, Nagasaki, and the subsequent nuclear arms race. This is a realm in which war and perceptions of national interest cannot be separated, in which weaponry and manpower have a real cost that must be weighted against whatever gains their expenditure will likely produce, in which disregard of the status of noncombatants carries implications so serious as to offset expectations of military gain. The concepts that make up the tradition of just war have developed over history in exactly such a landscape, and for that reason they are applicable guides to the justification and restraint of war today.

The term *just war* is misleading, suggesting as it does that at some point in time there has been or may be a conflict in which one side is morally perfect. Historically the concept of holy war has made precisely this claim, and holy war apologists have rendered such conflicts by analogy with heavenly battles between the forces of light and darkness. The contemporary concept of ideological war has often been expressed in similar terms. But the greater component of the just war tradition has always been addressed to more mundane matters, to relative value judgments about conflicts of a nature less than apocalyptic. Indeed, from the sixteenth century onward, when the Spanish theorist Franciscus de Victoria argued against difference of religion as a just cause for war, the concept of holy war has been separated from thought on the justification of war and the restraint of war.¹⁵ There is a lesson in this for present-day apologists of war for ideological reasons. The principal intention of just war thought is to serve as a source for guidelines in making *relative* moral decisions. The era for which it is meant to serve is history—our own time of moral grays and shadows, not the apocalyptic time of stark light and darkness. If there has never been a just war, in the absolute

¹⁵ See below, chapter IV, B.

sense of justice, then this should serve as a reminder that human moral decisions inevitably contain something of tragedy: for every gain there is a loss. If one's own side is not an incarnation of good, it is equally true that one's enemies are not the embodiment of evil. As Vattel wrote, "Let us never forget that our enemies are men."¹⁶ While *just* war is the term used by tradition, a more exact term would be *justifiable* war, implying that the process of moral decision making applied to war must be ongoing so long as the war in question lasts and must be a relative one, with evidence of good and evil admitted on both sides of the conflict.

But just war tradition has to do not only with deciding whether or not a war is justifiable, it has also to do with the extent to which war may be prosecuted once begun. Here the distinction between absolutism and the weighing of relative values takes on a somewhat different coloration. Obviously, the principle of proportionality implies relativistic thinking. But is discrimination an absolute or a relative principle? Putting this in the other set of terms defined above, are noncombatants by definition to be given absolute immunity from the ravages of war, or are they to be accorded protection only up to the point at which some other value weighs more heavily in the scales of moral decision? The line between these two alternatives is by no means clear; it is possible, even when the idea of absolute immunity of noncombatants is accepted, to define circumstances in which harm to noncombatants can be accepted. These are nonetheless two alternative ways of perceiving the rights owed to noncombatants in wartime, and the difference is great enough to demand sustained treatment in this book.

My purpose in raising this matter now is to say that, just as in the *jus ad bellum*, so in the *jus in bello* we encounter guidelines that remain relevant in the present day. The mere fact that weapons of relatively uncontrollable mass destruction

¹⁶ Emmerich de Vattel, *The Law of Nations* (London: n.n., 1740), bk. III, sect. 158.

are available does not imply any *necessity* that they be used against other persons in war. The decision to do so remains in the realm of moral activity and demands a procedure by which moral valuation can take place. There are numerous ways of limiting wars, and the *jus in bello* guidelines are aimed at educating decisions about those ways. There is further a kind of implicit impetus in this part of just war tradition to conceive strategies and tactics, to invent and deploy weapons that are less massively destructive of persons and their values than those already at hand. It is thus, for example, an implication of just war tradition that an alternative should be found to tactical nuclear weapons intended for use against land forces. Use of such weapons, besides risking escalation to a general nuclear interchange, would cause immediate and long-term damage to noncombatants that is hard or impossible to justify. In this way too, then, the just war tradition provides guidelines to moral decision making. The question remains, though, *how* this historical tradition is significant for the restraint of war. What relation can be discerned between the actual values found in just war tradition and those that persons today or in any new age seek to bring to bear on the subject of war and its restraint? More simply, how is history—the history of human involvement in war and the attempt to restrain it—significant for contemporary moral analysis and judgment relating to the justification and limitation of war? This is a basic question this book seeks to answer.

**PART ONE. THE PROBLEM OF
UNDERSTANDING JUST WAR
TRADITION**

CHAPTER I

Approaches to the Restraint of War

NUMEROUS perspectives have been brought to the study of efforts to impose moral and other restraints on warfare and violence. The effect might be compared to looking into a locked house through its various windows; each vista reveals only some of the contents and internal structure. In this and the three following chapters I will examine just war tradition through some of the "windows" that yield the most significant knowledge of it. All four of these chapters have to do with how to understand the sources and nature of the restraints on war comprised in this tradition. They are all, in this sense, "methodological," though there is considerable substantive material in these discussions also. My purpose throughout is not to deal with all possible approaches to the subject of this book or even all those that have been tried. Rather my intent is to examine perspectives and problems central to understanding the development, nature, and functioning of the just war tradition. The scope and detail of the treatment given in Chapters II-IV follows from the close relationship between the topics of these chapters and the remainder of this book.

The approaches treated in the present chapter are not central to my own effort to understand and interpret the tradition, and indeed they have little to do with interpreting the *tradition*, understood as a developing body of theory and practice as it has taken shape over history. They hold promise, nonetheless, for progress in understanding efforts to define and apply restraints to war. We will outline these methods and the service they have rendered and can render, as well as the limitations that must be observed with each. The first approach, that of searching for principles undertaken by some theologians and philosophers, needs to be understood as an

historically and culturally conditioned series of attempts to abstract and simplify the contents of the just war tradition so as to make them meaningful in given historical and cultural contexts. The second approach, the cross-cultural, analytical efforts of contemporary social scientists, could be of inestimable value in strengthening international law by uncovering points of contact between the Western just war tradition, out of which historically international law has come, and the traditions of restraint of war and violence that have grown up in non-Western societies.

A. THE UNCOVERING OF MORAL PRINCIPLES

Much ethical theorizing proceeds by means of reflection upon the relation (or relations) between moral principles of more or less absolute character and particular problems or situations confronting persons, either actually or in the imagination. Thus Paul Ramsey has argued that Christian ethics generally, and Augustinian just war theory in particular, derive from Christian charity, a unique kind of love whose principle might be described as self-giving toward the needy neighbor. Christian absolute pacifists typically take the antiviolence tradition in the Bible as providing a statement of quite precise principles: "Do no murder" and "Turn the other cheek" seem to admit of no mitigating interpretation. But principles do not have to be absolute; for example, James Childress applies to just war doctrine the concept of *prima facie* obligations, which he borrows from moral philosopher W. D. Ross. Such an obligation "always has a strong moral reason for its performance although this reason may not always be decisive or triumph over all other reasons." For Childress the duty not to injure or to kill another human being is such a *prima facie* duty.¹

Principles may thus be absolute or relative, singular or multiple, grounded in theological or philosophical reasoning.

¹ James F. Childress, "Just War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria," *Theological Studies*, September 1978, p. 430.

Common sources have included revelation, natural law, and "right reason" employed in connection with both. In just war tradition all these conceptions are found, posing a serious problem of relativity. So many different principles, as well as ways of working with them, have been adduced as basic to this tradition that they sometimes oppose one another. Let us consider one illustration of this problem, the question of defining the meaning of "justice."

Is there a basic just war principle? If there is, then assuredly it must be justice. But the matter is far more complex than it first appears. What concept of justice is intended? One possibility is distributive justice, which embodied in the concept of proportionality implies that the evils of war and any goods it might bring should be distributed according to relative guilt and innocence among the persons affected by the war. This concept of justice seems strongest where there is greatest concern for noncombatants, war victims, and the problems of the aftermath of war. Another strong possible meaning for justice in the just war context is vindicative justice, which in the thought of Thomas Aquinas and, to a lesser extent, his followers is paramount. According to this conception, strongly urged by Alfred Vanderpol, what matters is setting right a wrong already suffered, punishing (in God's name and as his agent) those who created the wrong. The following summarizes this notion of the justice in just war tradition: "The prince (or the people) that declares war acts as a magistrate under the jurisdiction of which a foreign nation falls, *ratione delicti*, by reason of a very grave fault, a crime which it has committed and for which it has not wished to make reparation. As the depository of authority to punish a guilty subject, he pronounces the sentence and acts to execute it in virtue of the right of punishment that he holds from God: 'Minister enim Dei est, vindex in iram ei qui malum agit.' ('He is the minister of God to execute his vengeance against the evildoer.')"² The concept of

² Alfred Vanderpol, *La Doctrine scholastique*, p. 250. In the passage quoted, I translate from the French.