



Philosophical Frontiers
ISSN 1758-1532
Vol. 3, Issue 1 (2008)
pp. 177 - 181

Fotion, Nicholas (2007). *War & Ethics: A New Just War Theory*. Continuum International: New York. 178 pp. (pbk), ISBN 0826492606.

Joshua Finnell
McNeese State University

In *War & Ethics*, Nicholas Fotion undertakes three main tasks. The first is critical: to analyze 'Just War Theory' (JWT) in the evolving context of modern warfare between nations and non-nation groups, using various case studies to illustrate the strengths and weaknesses of the theory. The second task is modification: to construct a new Just War Theory to incorporate wars between nations (JWT-Regular) and wars between nations and non-nation groups (JWT-Irregular). The third and final task is defensive: to show that Just War Theory in general, and the twin theory in particular, are useful tools in assessing when a war is just.

In the book's opening chapter, Fotion relates the ethics of war to ethical considerations in various realms (medicine, law, business) by underscoring their need to deal with exceptions to rules and principles. A lawyer may breach the confidentiality principle, but he/she must have good reason (i.e. client says he/she will commit a horrific crime) and have exhausted all other possibilities (i.e. trying to talk him/her out of committing the crime). By going to war, a nation or non-nation group takes exception to the universal principle of "do not kill others." While they may proceed with good reason, a consideration of alternative resolutions must be employed. Just War Theory, then, is a tool used to assess reasons for and methods engaged to avoid armed conflict. As a corollary, the theory tests whether making exceptions to major ethical principles is justified.

In Chapters 2 and 3, Fotion lays out the general structure of Just War Theory and briefly touches upon the criticisms he will respond to in the last chapter of the text. Fotion divides the theory into two distinct categories: principles satisfied before starting or entering a war (*jus ad bellum*) and principles satisfied during the war (*jus in bello*). Because it is often a lengthy state of affairs, and not a single event, war requires

continued evaluation. Broadly stated, a nation must satisfy the following criteria before entering a war: *just cause*, *last resort*, *proportionality*, *likelihood of success*, *right intentions*, and *legitimate authority*. According to Fotion, just cause may be claimed if the instigating nation cites one of six reasons: *under attack*, *under recent attack*, *about to be attacked* (*preemptive strike*), *ally under attack*, *ally under recent attack*, or *to prevent genocide*. During the war, a nation must periodically assess two criteria: *proportionality* (of individual battles) and *discrimination*.

The ensuing four chapters test the utility of the theory against various historical examples. Fotion uses examples such as the German/Polish war of 1939 and the Korean War to illustrate that JWT can be applied successfully in a variety of cases. In case of the German/Polish war, Poland had *just cause* (recently attacked), there were no *last resorts* to try (Poland was attacked), *proportionality* (living in freedom outweighed living under Nazi rule), *likelihood of success* (expecting French support, had confidence in their army), *right intentions* (stopping German aggression), and *legitimate authority* (military fighting under the legitimate government of Poland). On the other hand, Germany only satisfied two of the criteria: *legitimate authority* (Hitler) and *likelihood of success* (stronger military than most knew about).

Moving from 1939 to Castro's 1950 overthrow of Batista, Fotion pushes on the criteria of JWT to expose its inability to deal with the evolving modern world. Did Castro have just cause as defined by JWT? He wasn't under attack, nor was he protecting an ally in a similar situation, launching a preemptive strike, or stopping a humanitarian catastrophe. However, his reasons (the government was not elected, it was corrupt and oppressive) aggregate into reasonable justification, according to Fotion. Outside of just cause, Castro had could not have possibly fulfilled the *likelihood of success* principle before embarking upon his military campaign. Moreover, did Castro, a self-proclaimed leader of rebels, have legitimate authority to launch an attack?

Fotion also addresses other instances not involving rebel groups. In 1999, did the North Atlantic Treaty Organization (NATO) have legitimate authority to launch air-strikes on Kosovo? Should it have been the United Nations? As with a rebel group, reasons Fotion, it is difficult to decide which extra-national political entity is the legitimate authority.

In Chapter 8, Fotion focuses on the distinction between prevention and preemption. JWT-R allows for preemption as *just cause* (i.e. knowledge of a serious and imminent threat to a nation) but not prevention (i.e. striking the first blow when an enemy is not ready to attack, nor will it be in the future). In cases such as these, negotiations must be employed to fulfill the criteria of *last resort*. However, when

nations are fighting non-nations, prevention may be justified due to the fact that some non-nations use their lack of identity as a defensive move. Non-nations also often possess very little public property (munitions factories, for example) or anything of value that may be used as a tool in negotiation of last resort. Moreover, when nations fight one another they are in a “state of war.” When war is declared between nations, both sides are prepared to attack and be attacked. However, wars between nations and non-nations can be ongoing struggles that lull in violence, but build over a period of time. Fotion uses the example of the Tamil/Sinhalese conflict in Sri Lanka. If violence resurges after a lull in fighting, is it a new war? Or is it the continuation of the old war? The difficulty of applying JWT-R is that the theory must make this distinction. In a continuing struggle, if the Tamils strike the Sinhalese after a period of non-violence, are they striking first in a new war (unjustified by JWT-R) or are they continuing an old struggle (justified by JWT-R)? Fotion reasons that “even if the preemptive/prevention distinction can be made, it is not worth making” (108).

Given the critiques of JWT-R, Fotion outlines the criteria of a new just war theory between nations and non-nations in the next chapter: Just War Theory - Irregular (JWT-I). The focal point of this modified just war theory is not the introduction of new principles, but the application of the principles asymmetrically. Similar to JWT-R, a nation must satisfy the same six criteria before entering a war: *just cause*, *last resort*, *proportionality*, *likelihood of success*, *right intentions*, and *legitimate authority*.

Again, a nation can claim just cause if any one of the following are cited: *under attack*, *under recent attack*, *about to be attacked (preemptive strike)*, *ally under attack*, *ally under recent attack*, or *to prevent genocide*. However, under this new theory, a nation is given significant slack with respect to attacking “preventatively.” Nevertheless, permission to attack in this way has to be granted on a case-by-case basis. Non-nations, or irregular forces, may initiate war if the people they represent are being exploited, subjugated, enslaved or slaughtered, or if members of the same religion or ethnic group in another nation are being exploited, or any multitude of good reasons are cited. This would give Castro justification for initiating a war against Batista.

In JWT-I, *just cause*, directly correlates to the next principle: *last resort*. When nations choose to attack non-nations or irregular forces, they are not necessarily required to follow the principle of *last resort* because many last resorts (boycotts, sanctions) are simply not available. However, they may appeal to politic factions that are sympathetic to a non-nation's grievances. Irregular forces, on the other hand, must appeal to *last resort* as the nations they wish to attack are highly visible and identifiable. Therefore, this principle would be applied asymmetrically: nations need not satisfy the principle of *last resort*, but non-nations must satisfy the principle.

Conversely, a nation must fulfill the *likelihood of success* to initiate war but not the irregular force. As Fotion points out, “to condemn rebel groups for not satisfying the success principle is to invite them never to start their revolutions” (120). Since non-nations are usually outnumbered, less organized, and militarily weaker than most nations, it would be easy to say that non-nations are never justified in starting a war. Again, Castro and the 26th of July movement need not satisfy this principle to launch a just war. *Good intentions* and *proportionality* (the war as a whole), however, must be satisfied by a nation and a non-nation.

Similarly, nations must demonstrate *legitimate authority* whereas irregular forces or non-nations need not fulfill this principle. As Fotion points out, non-nation groups tend not to have legitimate authority. They may have charismatic leaders, but these leaders do not have legitimate authority. As with the *likelihood of success* principle, non-nation groups cannot fundamentally fulfill this principle, meaning no rebel group could ever justify initiating war.

During war under JWT-I, both a nation and non-nation must periodically assess two criteria: *proportionality* (of individual battles) and *discrimination*. However, since non-nation groups often use anonymity as a defensive tactic in warfare, nations are given more slack in regard to the *discrimination* principle. Specifically, Fotion states, “This does not mean that they can attack innocents intentionally, but it does mean that the amount of collateral damage allowed by the Rules of Engagement will be greater – inevitably so” (122). Irregular forces, on the other hand, are held strictly to the *discrimination* principle since the nation they are attacking is highly visible and their soldiers are identifiable.

Fotion outlines intricately the necessary adjustments to Just War Theory - Regular. Yet, even were we to accept the asymmetrical application of JWT principles, it is not clear that Fotion’s new theory is immune to common criticism applied to JWT: whether it is every actually used and whether it causes more wars than prevents. It is not just that there remains some question about applicability, but also whether, with respect to these criticisms, the principles of Just War Theory (Regular or Irregular) are too ambiguous to do perform rigorous ethical work.

The criticism that Just War Theory is not actually utilized by leaders making decisions is a realist claim. As Fotion points out, this criticism is not specific to Just War Theory, but to ethical theory in general. Whether people steal or don’t steal in the real world has no bearing on whether an ethical principle limiting the act of stealing is flawed. As Fotion states, “Realism is right in claiming that JWT is underused, but this is a flaw of all ethical theories” (135).

However, realists will insist that due to human psychology leaders more often than not act out of self-interest. In doing so, they actually cause less war than utilizing a Just War Theory assessment because war is usually against one's own self interest. Fotion admits that Just War Theory gives credence to humanitarian efforts – providing justification for more wars - but self-interest theory gives credence to starting war for imperialistic reasons. Fotion reasons that “realists cannot legitimately claim that they are more on the side of the angels than are the just war theorists” (133).

What about ambiguity? The looseness of the aforementioned principles is exactly where the criticism against JWT is most biting. Is an electronic attack on a nation's national security database a form of aggression justifying war? When exactly are negotiations exhausted? How do we know the intentions of a leader? Fotion responds directly, “that looseness does not prevent applying the theory directly to certain situation,” and indirectly, “critical thinking is needed not just to interpret already stated principles, but also to help supplement these principles” (147). Fotion's numerous historical examples support the direct claim, and the indirect claim is exactly how we engage all ethical theory.

Doubts may remain about the strength of Fotion's new Just War Theory, but he leaves little uncertainty that Just War Theory is still a useful structure within which the discourse of war may be debated. JWT forces those engaged in debates about war to articulate more clearly their stance on war. Filling out the details of a neglected theory with well-researched, clearly written, historical examples, this stimulating book contributes to the growing literature on the ethics of war.