

# Historical Just War Theory up to Thomas Aquinas

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From at least the first millennium B.C. ideas about the justice of war, as well as customary norms regulating combat, began to be developed by Western societies. From the agonistic struggles of Greek city-states, to Rome's imperial wars of conquest, and on to the Christianised warfare of medieval Europe, war has been subjected to varying degrees of ethical analysis as well as being influenced by social pragmatism. The most important intellectual and legal product of these combined developments was (and is) the concept of the 'just war', positing that violence can be justified as a means to secure peace, justice, and order. Although separated by centuries, similarities in Western ethical treatments of war exist because (i) there exists a surprisingly stable intellectual genealogy from ancient Greece up to the present day, and (ii) most Western societies have sought to achieve broadly comparable objectives, utilising violence to realise political, economic, or religious ends, while at the same time wishing to regulate or restrict the use of violence (in a manner beneficial to themselves) by applying social, moral, or legal norms to the initiation and conduct of war. As a result, the concept of the 'just war' has enjoyed widespread acceptance and shown remarkable longevity.

The West was not unique in its reflections on the ethical status of war and violent action. In the Sumerian *Epic of Gilgamesh* (early second millennium B.C.), the two heroes debate whether or not to kill their defeated enemy Humbaba. The fearsome Humbaba begs Gilgamesh for his life, but Enkidu eventually persuades Gilgamesh to slay their prisoner – an act looked upon unfavourably by the gods.<sup>1</sup> Rules concerning proper conduct in war can be detected in the great Indian poem, the *Māhabhārata*, parts of which date back beyond 400 B.C..<sup>2</sup> During the Warring States period (481-221 B.C.) the concept of *yi bing* was developed in China, which justified war as the highest form of judicial punishment, to be utilised by rulers alone. As such, the Chinese concept of *yi bing* focused on what the West would term *ius ad bellum* (justice to wage war), but had little to say about *ius in bello* (justice in war) norms. Much of the Chinese tradition was adopted in Japan, where war – even against foreign peoples – continued to be understood as an extension of domestic law enforcement

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<sup>1</sup> *The Epic of Gilgamesh*, trans. M. Gallery Kovaks (Stanford: Stanford University Press, 1989), Tablet V, 44-7.

<sup>2</sup> N. Allen, 'Just War in the *Māhabhārata*', in *The Ethics of War: Shared Problems in Different Traditions*, ed. R. Sorabji and D. Rodin (Aldershot, UK: Ashgate, 2006), 138-49.

throughout the medieval period.<sup>3</sup> In the Islamic world, ideas corresponding to *ius ad bellum* and *ius in bello* were developed by theologians and jurists from the ninth century onwards, contributing to a complex and dynamic doctrine of *jihad*.<sup>4</sup>

While not wishing to ignore these (and other) alternative traditions, they must be laid aside. The development of just war theories in the Western tradition, from the classical period up to the completion of Thomas Aquinas's *Summa Theologiae* (1265-1274), is the principal focus of this chapter. I use the plural *theories* here deliberately, as the term 'just war theory' misleadingly suggests a single coherent and monolithic doctrine. Just war theories, sharing certain criteria for legitimating the use of violence under legal, moral, and/or religious considerations, often developed parallel to one another, but could also diverge in numerous ways. James Turner Johnson has argued that a properly recognisable just war theory did not exist prior to 1500. Johnson particularly stresses the separation of the *ius ad bellum* and the *ius in bello* traditions, the former being largely the concern of academic theologians and canonists, with the latter belonging to the secular concerns of soldiers and chivalric law.<sup>5</sup> This distinction has enjoyed general acceptance but, as has been recently highlighted, this modern distinction between *ius ad bellum* and *ius in bello* has been emphasised to the point of creating an artificially impermeable divide within pre-modern just war doctrine.<sup>6</sup> While much of Johnson's argument is persuasive, I believe it underestimates the implicit demands for proper conduct contained within theological and canonistic writings on war. It also underestimates the importance of proper authority and just cause contained in literature and legal writings ostensibly focused on the conduct of war, as well as the role played by clerics in establishing notions of combatant status and non-combatant immunity. It is the aim of this chapter, therefore, to revise the notion of a pre-modern just war doctrine bisected by the *ius ad bellum/ius in bello* distinction, and in doing so to provide an analysis of the key developments of the period. For the sake of economy, I shall simply use the term 'just war doctrine' in order to refer to the variety of classical and medieval writings which may be loosely gathered under the banner of thought on justifiable war.

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<sup>3</sup> M.E. Lewis, 'The just war in early China,' in *The Ethics of War in Asian Civilizations: A Comparative Perspective*, ed. T. Brekke (Abingdon, UK: Routledge, 2006), 185-200; K. Friday, 'Might makes right: just war and just warfare in early medieval Japan', in *Ethics of War in Asian Civilizations*, ed. Brekke, 159-84.

<sup>4</sup> J. Kelsay, 'Islamic tradition and the justice of war,' in *Ethics of War in Asian Civilizations*, ed. Brekke, 81-110.

<sup>5</sup> J.T. Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts 1200-1740* (Princeton and London: Princeton University Press, 1975); *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton: Princeton University Press, 1981).

<sup>6</sup> O. O'Donovan, *The Just War Revisited* (Cambridge: Cambridge University Press, 2003), 14-15; N. Rengger, 'The *Ius in bello* in Historical and Philosophical Perspective', in *War: Essays in Political Philosophy*, ed. L. May (Cambridge: Cambridge University Press, 2008), 30-48, at 33-5.

The period up to Aquinas also witnessed the emergence of two other important doctrines regarding war. The first is pacifism, another heterogeneous doctrine, which was present in various forms within the early Church and later re-emerged among some heterodox Christian sects from the twelfth century onwards. The second doctrine is holy war, which developed alongside the crusading movement from the end of the eleventh century, and can be understood as a corollary of Christianised just war doctrine. Pacifism – essentially a rejection of the ethics of war – and holy war – an extension of just war doctrine – will not be discussed at length.

A chapter covering nearly two thousand years of ethical reflection on war cannot hope to be exhaustive, but it can indicate the richness of thought in the period up to the publication of Aquinas's *Summa Theologiae*. Many histories of just war theory, in their hurried journey towards the sixteenth century, have too often been guilty of using Aquinas as a convenient stepping-stone between Augustine and Vitoria. Not only does this ignore several centuries of thought on war, it also gives a false impression of Aquinas's place within the history of just war doctrine. Aquinas's contribution to the development of just war doctrine was undoubtedly significant but it was not his originality of thought, rather the clarity of his systematized presentation of pre-existing arguments, for which we owe him a debt.

### **The Greco-Roman Tradition**

Informal socially mandated and enforced rules of war were developing in Europe as early as archaic Greece (800-480 B.C.), and by the late fifth century B.C. there appears to have been a set of established customs within intra-Hellenic warfare that included conditions such as formal declarations of war, periods of truce for sacred holidays, ransoming of prisoners, and, to some degree, the immunity of non-combatants.<sup>7</sup> On the other hand, Thucydides' famous account of the Melian Dialogue during the Peloponnesian War (431-404 B.C.), during which the Athenians inform the Melians that, "the standard of justice depends on the equality of power to compel and that in fact the strong do what they have the power to do and the weak accept what they have to accept", has been taken as a classic example of political realism.<sup>8</sup>

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<sup>7</sup> *Warfare in Ancient Greece: A Sourcebook*, ed. M.M. Sage (London and New York: Routledge, 1996), 127-34; M. Goodman and A. Holladay, 'Religious Scruples in Ancient Warfare', *The Classical Quarterly* 36, no. 1 (1986): 151-71; J. Ober, 'Classical Greek Times', in *The Laws of War: Constraints on Warfare in the Western World*, ed. M. Howard, G.J. Andreopoulos, M.R. Shulman (New Haven and London: Yale University Press, 1994), 12-26, at 12-13.

<sup>8</sup> Thucydides, *The Peloponnesian War*, trans. R. Warner (Harmondsworth, UK: Penguin, 1954), bk. 5. chap. 89. It remains a matter of debate whether Thucydides himself condoned this 'realist' attitude.

The works of Plato in the mid-fourth century B.C. offer the first clear engagement with war as an ethical problem. In the *Republic*, Socrates (the voice of Plato) identifies the desire for luxurious living, which necessitates the acquisition of resources from neighbouring communities, as the origin of war. Socrates goes on to make an important distinction between wars fought amongst Greeks, and wars fought between Greeks and barbarians (non-Hellenes):

[W]hen Greeks fight with barbarians and barbarians with Greeks, we'll assert they are at war and are enemies by nature, and this hatred must be called war; while when Greeks do any such thing to Greeks, we'll say that they are by nature friends, but in this case Greece is sick and factious, and this kind of hatred must be called faction.<sup>9</sup>

This creates two distinct categories of conflict: the first is war 'proper', which is natural; the second is faction, which is unnatural. It is for the latter category of conflict that Plato introduces ideas of proper conduct – including what we would now identify as proportionality and non-combatant immunity – because Greeks, as natural friends and kin, must have a view to future reconciliation:

“Therefore, as Greeks, they won't ravage Greece or burn houses, nor will they agree that in any city all are their enemies – men, women, and children – but that there are always a few enemies who are to blame for the differences. And, on all these grounds, they won't be willing to ravage lands or tear down houses, since the many are friendly...”

“I [Glaucou]...agree that our citizens must behave this way toward their opponents; and toward the barbarians they must behave as the Greeks do now toward one another [i.e. without restraint].”<sup>10</sup>

Plato clearly created an ethical distinction between war proper, which is natural and unlimited, and war as 'faction', which is unnatural and in which destructive actions should be restrained. Aristotle followed Plato in stating that intra-Hellenic warfare was a disease, while the wars fought against barbarians were natural and therefore legitimate and virtuous. Aristotle's emphasis on the importance of community and the common good led him to

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<sup>9</sup> Plato, *The Republic of Plato*, trans. A. Bloom (New York: Basic Books, 1968), bk. 5, 470c, p. 150.

<sup>10</sup> Plato, *Republic*, bk. 5, 471a-b, p. 151.

support the use of force by autonomous political communities to defend themselves, especially against barbarians. The teleological purpose of the political community was the attainment of the life of virtue, or ‘good life’, for its citizens. Therefore, in order to safeguard the perfecting process of civic development that would lead to the good life, governments were obliged to possess military strength in order to defend the community against internal and external threats.<sup>11</sup> War was not, however, an end in itself. Rather, Aristotle declared that “we wage war in order to have peace”.<sup>12</sup> This influential maxim, deriving from Plato (*Laws*, 628e, 803d), was passed down to medieval theorists via Cicero (*De Officiis*, bk. 1, §35), Augustine (Letter 189 to Boniface), and Gratian (*Decretum*, *Causa* 23, q. 1 c. 3).<sup>13</sup> Nor should war be used to threaten the good of other communities without cause. Military practice “is not to bring into subjection those not deserving of such treatment, but to enable men to save themselves from becoming subject to others”. On the other hand, liberty was not a universal right and belonged only to Greeks. Aristotle believed that slavery was the natural state of barbarian races and therefore considered wars which resulted in the conquest of “those who deserve to be the slaves” as morally legitimate. He also appears to have condoned wars for imperial expansion, as long as they were undertaken for the good of the governed rather than for the good of the ruler.<sup>14</sup>

It is clear that neither Plato nor Aristotle applied an egalitarian concept of justice to war; quite the opposite, their ethical analysis of war was deeply partisan, based principally on the disparity between Greek and non-Greek. Indeed, the classical Greek consideration of war highlights a major obstacle for just war doctrine *in toto*. Differing conceptions of justice produce divergent interpretations of what constitutes a justified war; but war is, by its nature, often a clash between societies with idiosyncratic interpretations of justice, each favouring its own interpretation and its own cause. As a result, the formulation of any universal and egalitarian definition of justice in war is hugely problematic. Nevertheless, it was Greek philosophy, particularly the Stoic school from the third century B.C., which provided a concept of natural law – as a universally applicable set of rules derived from reason – that was fundamental to later interpretations of justifiable warfare, beginning with Rome.

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<sup>11</sup> Aristotle, *The Politics*, ed. S. Everson (Cambridge: Cambridge University Press, 1998), bk. 1, 1252a.1-6; bk. 2, 1267a.20-23; bk. 3, 1280b.39; bk. 5, 1308a.25-30; bk. 7, 1328b.

<sup>12</sup> Aristotle, *Nicomachean Ethics*, trans. M. Ostwald (Upper Saddle River, NJ: Prentice Hall, 1999), bk. 10, 1177b.5-6, p. 289; see also Aristotle, *Politics*, bk. 7, 1333a.34-35.

<sup>13</sup> See also J. Barnes, ‘The Just War’, in *The Cambridge History of Later Medieval Philosophy: From the Rediscovery of Aristotle to the Disintegration of Scholasticism 1100-1600*, ed. N. Kretzmann, A. Kenny, J. Pinborg (Cambridge: Cambridge University Press, 1982), 771-84, at 780.

<sup>14</sup> Aristotle, *Politics*, bk. 7, 1333b.37-1334a.10, p. 178.

Cicero's *On Duties* (44 B.C.) is probably the most cogent exposition of the Roman concept of just war; it is certainly the most cited. Cicero's treatment of war in *On Duties*, and in his earlier *On the Commonwealth* (54/53 B.C.), centred on two key criteria: just cause and proper authority.<sup>15</sup> These criteria remain fundamental to just war doctrine up to the present day.

Cicero stressed that justice and warfare must be closely related.<sup>16</sup> The end of every just war was a restoration of peace, in the Platonic-Aristotelian sense, but in the Roman legal sense it was also the restoration of justice, essentially a restoration of the *status quo ante bellum*.<sup>17</sup> This process began with the religious tradition of fetial law (*ius fetiale*), which demanded that for a just war to be formally declared, the guilty party should have thirty-three days to redress the wrong done or make a restoration of goods. If no redress was forthcoming after this time had elapsed, then war was declared with the approval of the gods.<sup>18</sup> The right to declare war was restricted to the public authority in possession of *imperium* (sovereignty/authority), but the importance of possessing authority also extended to those who fought in wars. Cicero stated that "it is not lawful for one who is not a soldier to fight with the enemy".<sup>19</sup>

Perhaps the most important aspect of Cicero's ethical analysis of war was his clear understanding that there must exist a just cause in order for a just war to be declared and subsequently waged. The condition of just cause was based upon three assumptions: firstly, the right to defend oneself and repel force with force (*vim vi repellere*); secondly, a material right to recover lost property (*rebus repetitis*); and thirdly, a punitive right to avenge injuries and punish wrongdoers (*iniuriae ulciscuntur*). These three assumptions derived from ideas about natural law and customary law (*ius gentium* 'law of nations'), with Cicero positing an intimate relationship between what is natural and what is just. A fundamental precept of natural law was the instinct for self-preservation and, as an extension of this, the right of self-defence. To defend oneself – as a natural inclination – was a just act, as was defending one's associates.<sup>20</sup> If one also takes the Aristotelian idea that man is naturally a political animal,

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<sup>15</sup> Plato had earlier stated that war and peace must be controlled by the public authority not private individuals. Violations of this law were punishable by death: Plato, *The Laws*, trans. T.J. Saunders (Harmondsworth, UK: Penguin, 1975), bk. 12, 942, 955.

<sup>16</sup> Cicero, *On Duties*, ed. M.T. Griffin and E.M. Atkins (Cambridge: Cambridge University Press, 1991), bk. 1, §34.

<sup>17</sup> F.H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), 18-19.

<sup>18</sup> Cicero, *Duties*, bk. 1, §36. See also A. Watson, *International Law in Archaic Rome: War and Religion* (Baltimore and London: John Hopkins University Press, 1993), 27-8, 62-3.

<sup>19</sup> Cicero, *Duties*, bk.1, §37, p. 16.

<sup>20</sup> *Ibid.*, bk. 1, §11 and §13.

then it is a short step to justify defence of the state on similar natural principles of self-defence.

Nevertheless, violence was only to be utilised if provoked by injustice: “Wars, then, ought to be undertaken for this purpose, that we may live in peace, without injustice; and once victory has been secured, those who were not cruel or savage in warfare should be spared.”<sup>21</sup> The natural defence of material goods was slightly more problematic since, according to a strict interpretation of the law of nature, all goods should be held in common. Custom, however, had clearly legitimated private property holding, and thus the *ius gentium* provided a convenient vehicle to justify private ownership. Cicero also appears to have made room for the expansion of imperial power for the sake of glory as a just cause to wage war. While wars for empire might seem to contradict the principle that ‘war is for the sake of peace’, Cicero argued that increased Roman *imperium* would produce greater security and consequently such wars could be understood as defensive, in that they defended Rome against rivals and guaranteed peace.<sup>22</sup>

Regarding proper military conduct, certain *ius in bello* restraints were included in Cicero’s understanding of just war. Cicero recommended that states should conduct themselves honourably at all times (thereby maintaining virtue), emphasising that faith should be kept with the enemy, that the use of poison or treachery should be rejected, and that justice should be maintained “even towards the lowliest”.<sup>23</sup> Enemies who had refrained from cruelty should be spared, even those who refused to surrender immediately:

And while you must have concern for those whom you have conquered by force, you must also take in those who have laid down their arms and seek refuge in the faith of generals, although a battering ram may have crashed against their wall.<sup>24</sup>

Virtue demanded that men acted reasonably and with moderation, and this extended to “inflicting such punishment as fairness and humanity allow”.<sup>25</sup> Punishment, therefore, should be governed by reason not by cruelty. Cicero also explained that when Rome was engaged in “fighting for empire and seeking glory through warfare,” such wars should be waged less bitterly than defensive wars against mortal enemies, because in this latter type of warfare,

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<sup>21</sup> Ibid., bk.1, §35, pp. 14-15; see also bk. 1, §§20, 23, 80; bk. 3, §§22-3; Cicero, *De Re Publica*, trans. C. Walker Keyes (London: William Heinemann, 1927), bk. 3, §23.34.

<sup>22</sup> Cicero, *Duties*, bk. 1, §§34-8; bk. 2, §§26-9; bk. 3, §§46-9, 86-8.

<sup>23</sup> Ibid., bk. 1, §§35, 39-41; bk. 3, §99.

<sup>24</sup> Ibid., bk. 1, §35, p. 15.

<sup>25</sup> Ibid., bk. 2, §18.

“the question was not who would rule, but who would exist.”<sup>26</sup> Ultimately, Cicero relied on an ethic of honour to limit the conduct of war, based on the assumption that all just wars were for the sake of justice and peace. He recommended that soldiers should be moved by the principles of *humanitas* and *honestum*, and while they were not legally enforceable rules of engagement, it cannot be denied that they were concerned with *ius in bello* principles.

### **The Early Church**

The historicity of an uncompromisingly pacifist early Church was challenged by Adolf Harnack as long ago as 1904, and a revisionist approach has gained further support since the 1970s. It has been argued that although principles of non-violence were apparent in the early centuries of Christianity, this did not necessarily entail a universal rejection of violence nor a rejection of military service.<sup>27</sup> Early Christian discussion on the topic of war appears to have focussed not on the ethics of war *per se*, but on the problem of whether or not Christians could participate in Roman military service. Modern attempts to reconstruct an early Christian ethic of war are further problematized by the fact that the Roman army’s requirements for oath-taking and idol-worship, rather than a common Christian doctrine of pacifism, may have provided the principal stumbling blocks for Christian military service. What seems likely is that early Christian attitudes to military service and violence were dependent upon geography and time, with different communities throughout the empire adopting and developing their own approach.<sup>28</sup> Moreover, early Christian writings on war, including the works of Augustine of Hippo, are not in the form of extended or dedicated analyses. Many of the remarks concerning war and military service are incidental and couched within ethical discussions of virtue, justice, and the wider role of Christians within

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<sup>26</sup> Ibid., bk. 1, §38.

<sup>27</sup> A. Harnack, *Militia Christi: The Christian Religion and the Military in the First Three Centuries*, trans. D. McInnes Gracie (Philadelphia: Fortress Press, 1981) [originally published as *Militia Christi: die christliche Religion und der Soldatenstand in den ersten drei Jahrhunderten* (Tübingen, 1904)]; J. Helgeland, ‘Christians and the Roman Army A.D. 173-337’, *Church History* 43, no. 2 (1974): 149-200; J. Helgeland, R.J. Daly, and J. Patout Burns, *Christians and the Military: The Early Experience* (London: SCM Press, 1987); J.T. Johnson, *The Quest for Peace: Three Moral Traditions in Western Cultural History* (Princeton, NJ: Princeton University Press, 1987), 5-65; J.H. Yoder, ‘War as a Moral Problem in the Early Church: The Historian’s Hermeneutical Assumptions’, in *The Pacifist Impulse in Historical Perspective*, ed. H.L. Dyck (Toronto: University of Toronto Press, 1996), 90-110; A. Kreider, ‘Military Service in the Church Orders’, *The Journal of Religious Ethics* 31, no. 3 (2003): 415-42.

<sup>28</sup> For example Tertullian, *De Idolatria*, chap. 19 and *De Corona Militis*, chap. 11, printed in *The Early Fathers on War and Military Service*, ed. and trans. L.J. Swift (Wilmington, DE: Michael Glazier, 1983), 41-2, 43-4; S. Gero, ‘Miles Gloriosus: The Christian and Military Service according to Tertullian’, *Church History* 39, no. 3 (1970): 285-98, at 294-8. See also *The Ethics of War: Classic and Contemporary Readings*, ed. G.M. Reichberg, H. Syse, E. Begby (Oxford: Blackwell, 2006), which provides an extremely useful selection of material in translation, inclusive of the early Church and the Middle Ages.

Roman society. Therefore to say that the early Church developed a specific ‘doctrine’ on war would be to endow an artificial sense of coherence and maturity on what was still an inchoate, constantly evolving, collection of thoughts about violence.

The potentially conflicting attitude of early Christians is apparent in the writings of two Christian apologists, Tertullian (c.160-c.220) and Origen (c.184-c.253). Both of these writers expressed a deeply felt distaste for violence, but arguably both accepted war as an inevitable and potentially legitimate activity. Tertullian objected to military service as idolatrous and decried the killing and destruction concomitant with war,<sup>29</sup> but he could not deny the legitimate power of the state to wage war because, according to Romans 13, the emperor came to power by the will of God.<sup>30</sup> Similarly, Origen argued that Christians should not be polluted by the shedding of blood, but went on to explain that Christians could pray to God, “striving for those who fight in a righteous cause and for the emperor who reigns righteously”.<sup>31</sup> Certain wars were justifiable because the safety and expansion of Christianity ultimately depended upon the *Pax Romana*, which was itself dependent upon the use of force.<sup>32</sup> Therefore, while elements of early Christian thought can justifiably be described as pacifist, their pacifism was probably what Martin Ceadel has described as ‘exemptionist’, in so far as the stipulations for non-violence applied to Christians as a spiritual elite, but did not necessarily apply beyond the sect.<sup>33</sup>

By the fourth century, Christian writers were moving closer to an identifiable ethics of just war. Ambrose of Milan (d.397), combining Ciceronian thought with Christian theology, played an influential role in producing a more detailed Christian interpretation of ethically acceptable warfare.<sup>34</sup> Ambrose agreed with Cicero that wars to defend the *patria* were lawful, as were those that defended associates against attacks from barbarians or brigands.<sup>35</sup> Courage, as discussed by Ambrose, “consists not in doing people an injury but in protecting them”. This moral obligation to defend third-parties even extended into the private sphere:

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<sup>29</sup> Tertullian, *De Patientia*, chap. 3 and chap. 7, in *Patrologia Latina*, ed. J.P. Migne (Paris, 1844-55) [henceforth *PL*], 1:1254 and 1:1262; Tertullian, *Adversus Marcionem*, bk. 3, chap. 14, in *PL*, 2:340; Tertullian, *Apologeticus Adversus Gentes pro Christianis*, chap. 25, in *PL*, 1:431; *De Corona*, chap. 12, in *PL*, 2:94-5.

<sup>30</sup> Helgeland, ‘Christians and the Roman Army’, 150-2; Helgeland et al, *Christians and the Military*, 21.

<sup>31</sup> Origen, *Contra Celsum*, trans. H. Chadwick (Cambridge: Cambridge University Press, 1953), bk. 8, chap. 73, p. 509. For examples of Origen’s ‘pacifism’: *ibid.*, bk. 3, chap. 8; bk. 5, chap. 33; bk. 7, chap. 26.

<sup>32</sup> Origen, *Contra Celsum*, bk. 2, chap. 30; J.F. Childress, ‘Moral Discourse about War in the Early Church’, *The Journal of Religious Ethics* 12, no. 1 (1984): 2-18, at 10.

<sup>33</sup> M. Ceadel, ‘Ten Distinctions for Peace Historians’, in *The Pacifist Impulse in Historical Perspective*, ed. H.L. Dyck (Toronto: University of Toronto Press, 1996), 17-35, at 29-30.

<sup>34</sup> See also L.J. Swift, ‘St. Ambrose on Violence and War’, *Transactions and Proceedings of the American Philological Association* 101 (1970): 533-43.

<sup>35</sup> Ambrose *De Officiis*, ed. and trans. I.J. Davidson, 2 vols. (Oxford: Oxford University Press, 2002) [all references are to vol. 1], bk. 1, chap. 28, §129.

“the person who fails to deflect an injury from his neighbour, when he is in a position to do so, is as much at fault as the one who inflicts it.”<sup>36</sup> In such a case, the right of the innocent not to suffer harm outweighed the right of the guilty not to have harm done to them. The moral duty to protect the innocent led Ambrose to condone defensive violence as an act of Christian charity (*caritas*), because justice is “born for others rather than itself”.<sup>37</sup> Logically, this justified the use of force by the public authority in order to protect its subjects.

Ambrose’s concern was not only with just cause and proper authority. Like Cicero, he stressed that even warring parties must maintain justice: promises made to the enemy should be honoured, no unfair advantage should be seized on the battlefield, and the defeated should be shown mercy.<sup>38</sup> These sentiments have a ‘chivalric’ tone to them that would not appear out of place in the writings of Honoré Bouvet or Christine de Pizan. Where Ambrose differed significantly from the classical tradition was his understanding of private self-defence. In the Greco-Roman tradition the justification for waging war stemmed in large part from the natural law principle that everything possessed a right to self-preservation, from the individual to the political community. The Christian justification of war, however, did not follow this logic. Despite the legal and moral justifications that Ambrose extended to those defending their associates or the *patria*, he did not extend the same legitimacy to individual Christians faced with violence against their own person or property.<sup>39</sup> Doing violence to another in order to save oneself displayed an egotistical love rather than a brotherly love, and the Christian should prefer the spiritual good of salvation over corporeal health.<sup>40</sup> This prioritisation of spiritual health applied especially to the clergy, whom Ambrose prohibited from using arms. This polarity in Ambrose’s thought hinders any simplistic categorisation of Ambrose as either a defender of classical just war doctrine or a pacifist. Nevertheless, he made an important step in Christian thought by drawing a distinction between specific uses of violence that were morally justified – even laudatory – and others that were not. This would be of crucial importance to the emergence of a state-centred Christian ethic of war under Augustine.

While few modern commentators would still call Augustine’s contribution to the ethics of war “revolutionary”,<sup>41</sup> all would agree that Augustine’s contribution was fundamental to the

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<sup>36</sup> Ambrose *Officiis*, bk. 1, chap. 36, §§178-9. Cf. Cicero, *Duties*, bk. 1, §7.

<sup>37</sup> Ambrose, *Officiis*, bk. 1, chap. 28, §136.

<sup>38</sup> Ambrose, *Officiis*, bk. 1, chap. 29, §§139-140; bk. 2, chap. 7, §33; bk. 3, chap. 14, §§86-8; chap. 15, §91.

<sup>39</sup> Swift, ‘St. Ambrose’, 537.

<sup>40</sup> Ambrose, *Officiis*, bk. 1, chap. 28, §131; bk. 3, ch. 4, §27.

<sup>41</sup> P. Monceaux, ‘Augustine’, in P. Batiffol et al, *L’Église et le Droit de Guerre* (Paris: Bloud and Gay, 1920), 40-77, at 76.

long-term evolution of just war doctrine.<sup>42</sup> Augustine's approach to thinking about war was based on his concept of the imperfection of temporal government and on his view that war – a phenomenon of an essentially sinful world – was inevitable.<sup>43</sup> True peace, according to Augustine, would only be found in the heavenly city. Yet the prevalence of wars approved by God in the Old Testament indicated that war could indeed be used as a tool of justice. War was a product of, but also a remedy for, sin. Moreover, in order to create a stable environment for the Church to fulfil its spiritual mission of guiding souls toward true heavenly peace, it was necessary that earthly peace and justice should be defended by force.

Augustine was not the first Christian writer to justify war, nor did he create a systematic theory of just war. Nonetheless, through emphasising the classical conditions of just cause and proper authority, as well as, crucially, the more Christian concern of charitable disposition (correct intention), Augustine provided later writers with a framework within which the legitimacy of specific wars could be assessed.

Following the classical tradition, Augustine insisted that war was not an end in itself, rather a means for obtaining peace, which was a state of tranquillity founded upon justice. Wars should not be fought by choice, but according to necessity: "Peace ought to be what you want, war only what necessity demands."<sup>44</sup> Every just war, then, must have as its cause the restoration of justice:

Those wars are customarily called just which have for their end the revenging of injuries, when it is necessary by war to constrain a city or a nation which has not wished to punish an evil action committed by its citizens or to restore that which has been taken unjustly.<sup>45</sup>

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<sup>42</sup> The scholarship on Augustine is vast, but for informative treatments of Augustine's thought on war: R.A. Markus, 'Saint Augustine's Views on the 'Just War'', in *The Church and War*, ed. W.J. Sheils, Studies in Church History 20 (Oxford: Blackwell, 1983), 1-13; J. Langan, 'The Elements of St. Augustine's Just War Theory', *The Journal of Religious Ethics* 12, no. 1 (1984): 19-38; P. Ramsey, 'The Just War According to St. Augustine,' in *Just War Theory*, ed. J.B. Elshtain (Oxford: Blackwell, 1992), 8-22; H. Syse, 'Augustine and Just War: Between Virtue and Duties', in *Ethics, Nationalism, and Just War: Medieval and Contemporary Perspectives*, ed. H. Syse and G.M. Reichberg (Washington, DC: Catholic University of America Press, 2007), 36-50.

<sup>43</sup> Augustine, *The City of God*, trans. M. Dodds (1950; repr., New York: Modern Library, 1993), bk. 17, chap. 13, p. 595; bk. 22, chap. 22, p. 846.

<sup>44</sup> Letter 189 to Boniface, in *Augustine: Political Writings*, ed. E.M. Atkins and R.J. Dodaro (Cambridge: Cambridge University Press, 2001) [henceforth Augustine, *Writings*], 217.

<sup>45</sup> Augustine, *Quaestiones in Heptateuchum* (PL, 34:545-824), bk. 6, chap. 10, translation cited Johnson, *Ideology*, 36.

As can be seen, the justice served by war consisted of both a restorative element (the restoration of goods stolen or damaged), but also, more importantly, a punitive element, independent from the concept of redress for damage caused by the enemy. Augustine expanded the concept of just cause to include violations of the moral order as well as the civil, for by predicating the justice of the state on divine justice (in accordance with Pauline reasoning in Romans 13), any violation of the state's justice potentially became a violation of divine justice, thereby deserving of punishment. This increased the scope of war's punitive function and prepared the ground for later formulations of holy war against heathens and heretics. Indeed, much of Augustine's thought on war can only be properly understood in the context of his opposition to the Donatist heresy, and his belief that heretics should be forcibly returned to the orthodox faith.<sup>46</sup>

Accepting Old Testament precedent, Augustine declared that any war waged on divine command was just without doubt.<sup>47</sup> Following convention, Augustine restricted the prosecution of war to the public authority, although his lack of specificity in defining what constituted public authority would cause much disagreement among medieval theorists. Augustine believed that states which lacked justice merely committed robbery on a grand scale, but he maintained that a Christian sovereign offered the only real hope of enforcing temporal justice and peace, and by extension also possessed the authority to wage war. The just sovereign, and those officials acting under his authority, could wage war for the sake of justice and the common good, free from motivations such as hatred or the "lust to dominate" (*libido dominandi*).<sup>48</sup> As representatives of the public authority, soldiers and magistrates who killed were merely instruments of the state's justice. Like the judge or executioner, the military official committed no sin when killing by order of the sovereign authority; indeed, if a soldier disobeyed an order to kill, he was guilty of treason. In a letter to the Roman military commander Boniface, Augustine made quite clear that soldiering was a duty that could be practiced free of sin, and only those who 'took the sword' (Matt. 26:52) without authority, as

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<sup>46</sup> For a collection of Augustine's anti-Donatist works in translation, see *A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church*, ed. P. Schaff, 1st ser. (1886-90; repr., Grand Rapids MI: Eerdmans, 1994-96), 4: 369-651. For Augustine's views on religious coercion: R.A. Markus, *Saeculum: History and Society in the Thought of St Augustine* (London: Cambridge University Press, 1970).

<sup>47</sup> Augustine, *Quaestiones in Heptateuchum*, bk. 6, chap. 10.

<sup>48</sup> Augustine, *City of God*, bk. 4, chap. 1; bk. 3, chap. 3. See also Russell, *Just War*, 18n7.

opposed to ‘using the sword’ with authority, were guilty of breaching Christ’s command to do no violence.<sup>49</sup>

The possibility of waging war free from sin was entirely dependent on whether the soldier could adhere to the last of Augustine’s three conditions: correct intention. The New Testament injunction to preserve charity and love (*caritas*) had led Ambrose to deny the right of the private Christian to use violence in self-defence. How, then, was the soldier able to use violence without violating *caritas*? The key was Augustine’s emphasis on the inward disposition of the just warrior. War itself was a morally neutral action – it was the motivations of those who waged it that determined its intrinsic justice or injustice. Lust for dominion, hatred, cruelty: these were the dispositions that made war unjust. The soldier motivated by piety, duty to the common good, and love for justice could wage war against sinners without himself committing sin. By resisting sinners, the just warrior not only defended the innocent, he also limited the capacity of the unjust to add to their sin. Therefore the use of violence became an act of charity:

If the earthly commonwealth observes Christian precepts in this way, then even wars will be waged in a spirit of benevolence; their aim will be to serve the defeated more easily by securing a peaceful society that is pious and just. For if defeat deprives the beaten side of the freedom to act wickedly, it benefits them.<sup>50</sup>

Seen in this light, war could be understood as a virtuous activity in which courage, duty, self-sacrifice, and honour could all be found. This was very much a continuation of traditional Roman attitudes to wars in defence of the *patria*; the change was that the *patria* had now coalesced with the *ecclesia*.

Augustine has been accused of giving little thought to *ius in bello* norms, allowing the just belligerent to wage wars that showed no discrimination regarding innocent or guilty, combatant or non-combatant. It is true that Augustine considered war as an arena of absolute moral truth – one side just, the other side unjust – although he did recognise that some morally good soldiers might fight for an unjust sovereign, and consequently deserved mercy

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<sup>49</sup> Augustine: Letter 189 to Boniface, in Augustine, *Writings*, 216; *City of God*, bk. 1, chap. 21 and 27; Letter 47 to Publicola, in *Nicene and Post-Nicene Fathers*, ed. Schaff, 1: 292-4 (also cited in *Decretum*, C. 23, q. 5 c. 8); *Contra Faustum Manichaeum*, bk. 22, chap. 70, in *Nicene and post-Nicene Fathers*, ed. Schaff, 4: 299.

<sup>50</sup> Augustine, Letter 138 to Marcellinus, in Augustine, *Writings*, 38 (see also *Nicene and Post-Nicene Fathers*, ed. Schaff, 1: 485); cf. *City of God*, bk. 19, chap. 16.

in defeat.<sup>51</sup> However, the accusation that Augustine disregarded *ius in bello* norms ignores the role he believed that correct intention should play in determining the actions of the just warrior. Soldiers fighting with correct intention would fulfil their duty and kill the enemy if necessary, but they would also exercise proportionality and mercy: “The desire to do harm, the cruelty of vengeance, an unpeacable and implacable spirit, the fever of rebellion, the lust to dominate, and similar things: these are rightly condemned in war.”<sup>52</sup> While Augustine made no guarantees that innocents would not perish in war, he certainly considered cruelty in war as a display of condemnable *malitia* (wickedness) rather than legitimate *militia* (military service).<sup>53</sup> It was deeply ingrained within Augustine’s entire concept of justifiable warfare that soldiers would fight according to moral norms. To do otherwise was to contradict the very notion of a just belligerent engaged in a just war. Therefore to argue that Augustine’s thought on war ignores *ius in bello* principles is to miss the point of his vision of a Christian soldier “fighting peacefully” at the command of the public authority and in defence of justice. Furthermore, Augustine was primarily interested in spiritual salvation, and saw corporeal death as a lesser evil than spiritual damnation. Thus he too denied the right of self-defence to private Christians: “As to killing others in order to defend one's own life, I do not approve of this, unless one happen to be a soldier or public functionary”.<sup>54</sup> Augustine’s acceptance that innocents will die on both sides during war is comprehensible from an eschatological perspective, but it does not follow that he believed soldiers were free to act without restraint or that all moral norms ceased to apply during war.

### **The Middle Ages**

A century-and-a-half after Augustine, the Visigothic bishop, Isidore of Seville (c.560-636), briefly discussed just and unjust wars in his encyclopaedic *Etymologies*:

A just war is that which is waged in accordance with a formal declaration and is waged for the sake of recovering property seized or of driving off the enemy. An unjust war is one that is begun out of rage, and not for a lawful reason.<sup>55</sup>

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<sup>51</sup> Augustine, *Contra Faustum*, bk. 22, chap. 75, in *Nicene and Post-Nicene Fathers*, ed. Schaff, 4: 301.

<sup>52</sup> Augustine, *Contra Faustum*, bk. 22, chap. 74 in *Nicene and Post-Nicene Fathers*, ed. Schaff, 4: 300-1.

<sup>53</sup> Augustine, *City of God*, bk. 1, chaps. 4-5; bk. 5, chap. 23; Letter 138 to Marcellinus; Letter 189 to Boniface; Letter 229 to Darius. In 427 A.D. Augustine chastised the Roman military commander Boniface for allowing his troops to plunder: Letter 220 to Boniface, in *Nicene and Post-Nicene Fathers*, ed. Schaff, 1: 573-6.

<sup>54</sup> Augustine, Letter 47 to Publicola, in *Nicene and post-Nicene Fathers*, ed. Schaff, 1: 293 (also cited *Decretum*, C. 23, q. 5 c. 8).

<sup>55</sup> Isidore of Seville, *The Etymologies of Isidore of Seville*, trans. S.A. Barney et al (Cambridge: Cambridge University Press, 2006), bk. 18, chap. 1, §2. Cf. Cicero, *De Re Publica*, bk. 3, chap. 23.35.

Isidore did little but borrow from Cicero, emphasising the requirements of just cause and proper authority, as well as giving a nod to the Augustinian concept of correct intention by acknowledging that rage is an unjust cause for war. He also adopted a negative stance regarding dishonourable conduct during war, judging that “a victory acquired by guile is wicked”.<sup>56</sup>

While the growth of Latin monasticism encouraged a literature extolling the benefits of peace,<sup>57</sup> it is usually accepted that little progress was made regarding the ethics of war until the Peace of God (*pax Dei*) movement emerged in southern France in the late tenth century.<sup>58</sup> Beginning with the council of Le Puy in 975, and viewed as a starting point for the medieval *ius in bello* tradition, it is argued that the peace councils initiated a debate on the status of non-combatants during war. A secondary development was the Truce of God (*treuga Dei*), which sought to limit the days on which wars could be fought. But the Peace movement was also very much an attempt to define who had the authority to wage war in order to restrict the increasing prevalence of private war-making. Prelates and magnates joined forces in order to restrict the right to make war, with the dual threats of excommunication and physical force utilised to compel obedience. Thus, along with its *ius in bello* concerns for distinguishing between combatants and non-combatants, the Peace movement also possessed a strong interest in *ius ad bellum* principles. Arguably the immediate effect of the Peace of God was not the enhanced protection of non-combatants, but the identification of who could legitimately resort to violence and for what purposes.<sup>59</sup>

Yet the Peace of God was not the first example of a concerted effort to define and protect non-combatants. As early as 697 the abbot of Iona, Adomnán, attempted to introduce into Ireland and Britain a ‘Law of the Innocents’, later known as the *Cáin Adomnáin*, which primarily sought to protect women from the violence of war. Under the stipulations of the *Cáin*, women were to be entirely separated from warfare and other forms of violence: they were not to be used as soldiers, they were not to suffer capital punishment (even if guilty of homicide), they were not to be subjected to magical curses or libellous accusations, and they

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<sup>56</sup> Isidore, *Etymologies*, bk. 18, chap. 2, §1.

<sup>57</sup> T. Renna, ‘The Idea of Peace in the West, 500-1150’, *Journal of Medieval History* 6, no. 2 (1980): 143-67.

<sup>58</sup> See collection of articles in T. Head and R. Landes, eds., *The Peace of God: Social Violence and Religious Response in France around the Year 1000* (Ithaca, NY: Cornell University Press, 1992).

<sup>59</sup> Johnson, *Quest for Peace*, 81.

were protected from rape and sexual assault.<sup>60</sup> Those who violated the *Cáin* were ‘condemned to a double punishment’ of mutilation prior to execution, followed by the relations of the perpetrator being forced to pay a monetary fine. The law even accounts for likely scenarios of corporate responsibility for violations committed during war:

If it is a host that has offended, every fifth man up to three hundred is condemned to this punishment: if they are few they are divided into three groups. The first group of them, decided by casting lots, shall be put to death and a hand and foot cut off. The second group shall pay fourteen full *ancillae*. The third group is cast out on pilgrimage across the sea under the rule of a hard discipline, because it is a great sin when someone kills the mother and sister of the mother of Christ.<sup>61</sup>

Also protected under the *Cáin* were clergy, children, and church property, with gradations of punishment according to the severity of the injury inflicted upon these groups.<sup>62</sup>

The *Cáin* is certainly an unusual document, but arguably it can be considered part of a continuous tradition of ethical thought about war developed since the classical period. The assumption that the failure to protect associates is as serious as committing a crime oneself – “And it is the same payment for someone who does the injury and for one who looks on and does not protect the victim with all his might”<sup>63</sup> – is certainly reminiscent of Ciceronian and Ambrosian thought. Alternatively, this might merely have been a pragmatic response to law enforcement in a period in which the public authority, itself lacking the resources to enforce the law, relied upon the active cooperation of the community. Even if this was the case, it need not preclude a classical influence, particularly via the medium of Ambrose.

While the *Cáin Adomnáin* may appear to be focused on *ius in bello* concerns, there remains a strong sense that war is an activity engaged in and regulated by those with public authority. Adomnán clearly directed his law at kings, taking sureties and bonds to guarantee compliance. The law was enacted and ‘imposed on the men of Ireland and Britain...[by] a proclamation of the nobles, the clerics and the laity’, and attached to the law is a guarantor list of ninety-one named kings, prelates, and nobles.<sup>64</sup> The *Cáin* was effectively a contract to

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<sup>60</sup> Adomnán’s “Law of the Innocents”: *Cáin Adomnáin: A Seventh-Century Law for the Protection of Non-combatants*, trans. G. Márkus (Glasgow: Blackfriars Books, 1997), §§33-4, 41-2, 45-6, 50-2. My thanks to Dr Alex Woolf for bringing this source to my attention.

<sup>61</sup> *Ibid.*, §33, p. 18.

<sup>62</sup> *Ibid.*, §§35-6, 40, 44.

<sup>63</sup> *Ibid.*, §35, pp. 18-19.

<sup>64</sup> *Ibid.*, §28, p. 14.

uphold the protected status of women, clergy, and children as non-combatants. Adomnán was no pacifist, however, and it has been shown that while he clearly sought to alleviate the sufferings of non-combatants, he accepted that legitimate authorities (kings and lords) could wage just war against unjust enemies.<sup>65</sup>

The ethical treatment of war gained pace after the Benedictine monk Gratian published his *Concordia Discordantium Canonum* ('Concordance of Discordant Canons'), or *Decretum*, around the year 1140.<sup>66</sup> In this collection, Gratian discussed the issue of war at length in *Causa 23*. Gratian was not the first canonist to write about war, but such was the rapid dissemination and popularity of Gratian's *Decretum*, that *Causa 23* became the springboard for almost every learned discussion of just war. Moreover, due to the pervasive influence of canon law on public and private life throughout Latin Christendom, the *Decretum* played the major role in disseminating Augustinian ideas of just war to a wide intellectual audience.<sup>67</sup>

The context for the discussion of war in *Causa 23* is an ecclesiastical one: Gratian posed the question of whether it was lawful for the pope to have authorised Catholic bishops to use force to defend the faithful against heretics. Proceeding with a dialectical form of argument typical of medieval scholastic method, Gratian provided canons from scripture and the Church Fathers both prohibiting and condoning violence, before concluding that military service is not inherently sinful. For this he relied upon the Augustinian view that the maintenance of an inwardly charitable disposition could justify violent external actions.<sup>68</sup> Gratian showed that good men wage wars of pacification (*bella pacata*) to restrain the wicked and protect the good.<sup>69</sup> In order to clarify what made a war just, he cited the definitions of Isidore and Augustine, and offered his own synthesis: "A just war is that which is waged from an edict, and in which injuries are avenged."<sup>70</sup> This definition blended both the Isidorian emphasis on authority and self-defence with the Augustinian emphasis on punitive action. Gratian outlined three principal causes of war: to repel an invasion, to recover property, and to avenge prior injuries. But what constituted an injury? By which law – natural, divine, civil, customary – was an injury to be judged? What were the limits of

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<sup>65</sup> J.E. Fraser, 'Adomnán and the Morality of War', in *Adomnán of Iona: Theologian, Law Maker, Peace Maker*, ed. J. Wooding et al (Dublin: Four Courts Press, 2010), 95-111.

<sup>66</sup> The standard modern edition is *Corpus Iuris Canonici*, ed. A. Friedberg, 2 vols. (Leipzig: Tauchnitz, 1879-81), 1: *Decretum Magistri Gratiani*.

<sup>67</sup> The most accessible introduction to medieval canon law remains J.A. Brundage, *Medieval Canon Law* (New York: Longman, 1995).

<sup>68</sup> *Decretum*, C. 23, q. 1 c. 1; dictum ante canonem [d.a.c.] 1; dictum post canonem [d.p.c.] 1. For extracts in translation, see *Ethics of War*, ed. Reichberg et al, 109-24.

<sup>69</sup> *Ibid.*, C. 23, q. 1 cc. 3, 4, 6.

<sup>70</sup> *Ibid.*, C. 23, q. 2 cc. 1-2; d.p.c. 2.

vengeance?<sup>71</sup> This lack of specificity preserved a broad application for the just war as a means of redress for all manner of grievances.

Apart from the right of self-defence and immediate defence of the *patria* and the Church, which Gratian considered licit,<sup>72</sup> the *Decretum* clearly echoes the traditional emphasis on authority. A just war could only be waged under the authority of God or a legitimate earthly *imperium*, and must be waged from an authoritative edict (*ex edicto*).<sup>73</sup> The *ex edicto* formulation provided no precision, however, regarding what or who constituted a proper authority. In the early fifth century, Augustine had naturally presumed that *imperium* was bestowed by God upon the Roman emperor and his representatives, but in the Middle Ages, with so many competing claims to jurisdiction – emperors, popes, kings, princes, bishops, barons – the fragmentation of *imperium* created a multitude of individuals claiming authority to declare war.

Fundamentally, Gratian did not consider just wars declared by the Church as qualitatively different to those declared by the appropriate secular authorities. The right of the Church to wage war was simply an extension of divine authority to wage war, as evinced by examples in the Old Testament. By making this connection between the just war and divine authority as mediated through the Church, Gratian endowed ecclesiastical authority with the authority to wage war against any of enemy of its choosing. Foremost among such enemies were heretics and heathens.<sup>74</sup> It was secular authorities, however, who were charged with executing this authority.<sup>75</sup> Although the prohibition on clerics to bear arms remained, clergy could exhort others to fight for a just cause. Prelates could not directly command the shedding of blood, but Gratian accepted that those bishops with regalian functions had a duty to gather forces and participate in a just war.<sup>76</sup> Gratian did seem aware of the contradiction that a bishop could arm a man and send him to war but could not order him to shed blood, yet by making a distinction between the *possession* and the *exercise* of a right, a bishop could issue commands that might result in bloodshed so long as such commands did not directly or explicitly order bloodshed.<sup>77</sup>

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<sup>71</sup> The term *ulciscuntur*, for example, could mean repulsion, vengeance, and punishment. See Russell, *Just War*, 66-7.

<sup>72</sup> *Decretum*, C. 23, q. 3 c. 5; q. 1 c. 7; q. 4 c. 48; q. 8 c. 15.

<sup>73</sup> *Ibid.*, C. 23, q. 1 c. 4; q. 2 c. 2.

<sup>74</sup> *Decretum*, C. 23, q. 8 cc. 7-8, 10, 17-18; C. 24, q. 3 c. 26.

<sup>75</sup> *Ibid.*, C. 23, q. 8 d.p.c. 18.

<sup>76</sup> Gratian discusses the question of clerical participation in war at length in *Decretum*, C. 23, q. 8, especially d.p.c. 6, cc. 18-20, d.p.c. 18, d.p.c. 20, d.p.c. 28.

<sup>77</sup> See Russell, *Just War*, 82.

Gratian rejected the Truce of God principle that wars should not be waged on holy days, providing a canon which stated that, if necessary, war could be fought even during Lent.<sup>78</sup> He also made no mention of a canon of the recent Second Lateran Council (1139), which prohibited bows and crossbows in wars between Christians.<sup>79</sup> Nevertheless, Gratian did repeat the *ius in bello* precepts that faith must be kept with the enemy, that mercy should be shown to the vanquished and to prisoners, and that cruelty and other destructive vices should be condemned.<sup>80</sup> Gratian also recognised the principle of non-combatant immunity by accepting that pilgrims, clerics, monks, women and the unarmed poor should be immune from violence.<sup>81</sup>

Gratian's treatment of war left many questions unresolved, and from c.1148 commentators on the *Decretum* – later known as 'decretists' – sought to clarify a number of issues, particularly what constituted just cause and proper authority. From the 1190s a new school of commentators, 'decretalists', named after their commentaries on papal decretals (letters with legislative authority), continued the debate.<sup>82</sup> The natural inclination of the canonists, who were also deeply influenced by the study of Roman law that had flourished from the tenth century, was to restrict the authority to wage war to the pope, emperor, and prelates. Consequently, both decretists and decretalists have typically been associated with the *ius ad bellum* 'tradition'. However, this neglects the importance which they too placed on correct intention as a defining criterion for just wars, and its role in regulating conduct through the prohibition of cruelty. It also neglects to give due attention to the canonists' insistence that fighting was the province of laymen, behind which is a clear belief that a combatant/non-combatant distinction did exist.

It was not until c.1160 that the first explicit reference to 'the prince' (*princeps*) as the proper authority to wage war was given by the anonymous *Summa Parisiensis*.<sup>83</sup> Even then, the term *princeps* left plenty of room for interpretation, with numerous secular and ecclesiastical lords laying claim to the title, despite Pope Innocent IV asserting that the right to declare war was limited to authorities who had no superior.<sup>84</sup> Private self-defence and defence of associates remained legitimate, although strictly speaking it was not defined as

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<sup>78</sup> *Decretum*, C. 23, q. 8 c. 15; *Ethics of War*, ed. Reichberg et al, 124.

<sup>79</sup> *Concilium Lateranenses II*, Canon 29, in *Conciliorum Oecumenicorum Decreta*, ed. J. Alberigo et al (Bologna: Istituto per le scienze religiose, 1973), 203.

<sup>80</sup> *Decretum*, C. 23, q. 1 cc. 3-4

<sup>81</sup> *Ibid.*, C. 24, q. 3 cc. 22-5.

<sup>82</sup> The major decretal collections are printed in the second volume of *Corpus Iuris Canonici*, ed. Freiberg.

<sup>83</sup> Russell, *Just War*, 88.

<sup>84</sup> Innocent IV, *In Quinque Libros Decretalium* (Turin: Nicolai Beuilaquae, 1581), bk. 2, f. 96r, col. B. For extracts in translation, see *Ethics of War*, ed. Reichberg et al, 150-5.

war (*bellum*) in the full legal sense. Such defence must be immediate (*incontinenti*) and proportional (*moderamen inculpatae tutelae*: lit. ‘the moderation of blameless defence’) to the violence suffered by the victim. This *ius in bello* principle that proportionality should regulate military conduct (including private self-defence) usually implied that the damage inflicted upon the enemy should not exceed that which had been suffered by the victim. Indeed, the defender could be liable for any excessive damages, since recourse to defensive violence was justified from a desire for justice and thus precluded actions motivated by malice or avarice.

Canonistic analysis of war became increasingly sophisticated during the late twelfth century and into the thirteenth century. Stephen of Tournai (d.1203) displayed an impressively nuanced view of subjective justice when he raised the possibility that war could be just on both sides, or indeed unjust on both sides.<sup>85</sup> Yet this did not enjoy general favour with canonists or theologians, and the understanding that one side held a monopoly of justice in a just war was dominant until at least the sixteenth century. Around 1210, Laurentius Hispanus provided five criteria by which the justice of a war could be assessed, which were later adopted by the canonist Raymond of Peñafort (d.1275). Raymond explained that war must be just regarding: (i) *persona* – the persons engaged in it (the war must be fought by laymen, not clerics); (ii) *res* – its object (recovery of property or defence of *patria*); (iii) *causa* – its cause (a necessary cause, with no other means but recourse to arms); (iv) *animus* – its state of mind (desire for justice, not hatred, revenge, or greed); and (v) *auctoritas* – proper authority (the Roman Church or a sovereign prince).<sup>86</sup> If *any* of these conditions were lacking, then the war would be deemed unjust. Assessing the justice of individual wars on the basis of this ethical framework may appear to be no more than an abstract intellectual exercise, but such frameworks also served pragmatic purposes. In just wars, spoils were classified as lawful restitution for damages; in unjust wars, princes and soldiers had no legal claim to spoils or territory captured during war, and were liable to pay damages. For an era in which warfare was a profit-driven enterprise, the legal status of spoils was relevant to rulers and soldiers alike. Of course, it is true that in the majority of cases ‘might made right’; nevertheless, many war leaders felt obliged to at least pay lip-service to the legal language of just war doctrine, even if largely ignoring its content.

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<sup>85</sup> Russell, *Just War*, 89-92.

<sup>86</sup> Raymond of Peñafort, *Summa de poenitentia*, bk. 2, §§17-19, printed in *Ethics of War*, ed. Reichberg et al, 134-47.

By the mid-thirteenth century, the decretalist Henry of Segusio ('Hostiensis' d.1271) had identified seven types of just and unjust wars. Just wars included the 'Roman War', waged by the faithful against infidels, the 'Judicial War', waged by the faithful on the authority of a judge, and the 'War of Necessity', waged by the faithful to defend themselves and their neighbours. Although generally emphasising the importance of proper authority, Hostiensis was willing to admit that every legal system permitted the Roman maxim *vim vi repellere* for the laity. But he stressed that all force must be used 'within the limits of blameless defence' and that it must be immediate (*incontinenti*), in that it must be exercised out of necessity rather than vengeance. In this regard, the 'Roman war' stood apart as a form of unlimited warfare, reserved primarily for holy wars against infidels, although military action against rebels could also be referred to as 'Roman war', or the more common term *guerre mortelle*. We can see here a parallel with the distinction made by Plato between the unlimited warfare waged by Greeks against barbarians, and the limited warfare ('faction') of intra-Hellenic conflict. On the other hand, the very fact that the 'Roman war' was cited as an extreme form of war, waged without limits, is proof that medieval lawyers and theologians alike understood other types of just warfare to be limited. Moreover, it was very rare that the full implications of unlimited war were actually applied in practice, it being neither practicable nor profitable to do so.

Hostiensis insisted that even in wars waged for a just cause and under proper authority, the presence of soldiers who fought with a vengeful spirit, or who sought to do more than recover lost goods or defend the *patria*, would render a war unjust. The necessary characteristics of the soldier were a desire for justice, rejection of wilful destruction or avarice, and the possession of compassion.<sup>87</sup> While the decretalists may not have provided specific prescriptions for the proper conduct of war,<sup>88</sup> this does not mean that questions of proper conduct, and the importance of charitable disposition in regulating conduct, were absent from canonistic thought.

Taken as a whole, what emerges from the writings of the canonists is a hierarchy of violent actions, each with its own proper authority and scope, ranging from immediate private self-defence to state-organised war for the restitution of justice or to counter external threats. By endowing the Church with the authority to judge on matters of justice, and thus with the ability to declare war, it was only a small step to a justification of holy war as a defensive

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<sup>87</sup> *Henrici de Segusio Cardinalis Hostiensis Summa Aurea...adiectis Annotationibus* (Lyons, 1597), bk. 1, f. 69v, col. B; bk. 5, f. 297v, col. A. For extracts in translation, see *Ethics of War*, ed. Reichberg et al, 161-8.

<sup>88</sup> Russell, *Just War*, 161.

action against threats to the faith. There was also an explicitly territorial aspect to the justification of holy war. Not only did Latin Christendom see itself as the rightful heir to Rome, but the holy land (particularly Jerusalem) and Iberia were regarded as Christian territories that had been illicitly conquered by heathens. Crusaders were thus waging defensive war in order to re-establish Christendom's rightful possession of the 'patrimony of Christ', and to provide protection for persecuted Christian communities. Furthermore, as these wars were waged on ecclesiastical authority they were, by definition, just. As James Brundage has argued, the crusades were a specific type of Christian holy war – characterised especially by the exclusive authority of the pope to proclaim crusades and to grant plenary indulgences – and occupied the principal place in the hierarchy of legitimate violence created by medieval canon lawyers.<sup>89</sup>

Medieval theologians largely followed the conclusions of the canonists regarding the requirements for a just war. Being primarily concerned with questions of spiritual salvation rather than ecclesiastical jurisdiction, theologians naturally emphasised that rulers and soldiers engaged in warfare should do so out of a love for justice; in general they did little more than restate Augustine's views. Many pointed to John the Baptist's advice that soldiers should be satisfied with their pay (Luke 3:14), arguing that John had tacitly approved of military service because he had not told the soldiers to leave the army. Moreover, with the crusades in full swing by the twelfth century, it is unsurprising that most theologians championed war in defence of the faith.

The English Franciscan, Alexander of Hales (c.1185-1245), gave an unusually detailed analysis of the problem of war, and provided criteria for just war similar to that of the canonists:

In order to determine if a war is just or unjust you must mark the authority (*auctoritas*), the state of mind (*affectus*), the intention (*intentio*), the condition (*conditio*), the desert (*meritum*), and the cause (*causa*).<sup>90</sup>

The stress placed by theologians on the personal responsibility of belligerents not to engage in unjust wars inevitably clashed with feudal customs of vassallic duty. The twelfth-century Parisian theologian, Peter the Chanter (d.1197), held that knights had a duty to their

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<sup>89</sup> J.A. Brundage, 'Holy War and the Medieval Lawyers', in *The Holy War*, ed. T.P. Murphy (Columbus: Ohio State University Press, 1976), 99-140; idem, 'The Hierarchy of Violence in Twelfth- and Thirteenth-Century Canonists', *The International History Review* 17, no. 4 (1995): 670-92.

<sup>90</sup> Alexander of Hales, *Summa theologica*, bk. 3, §466, cited Barnes, 'Just War', 773.

lords to fight even in an unjust war; in contrast, Peter's contemporary, Robert of Courson (d.1219), insisted that knights must never knowingly fight for an unjust cause. Thomas Chobham (d.1233/6) chose a somewhat unsatisfactory middle path, stating that knights could follow their lord in an unjust conflict, but must refrain from shedding blood and causing destruction. At least one theologian remained deeply sceptical of the motivations of the soldiery, and in this scepticism he would be joined by many more in the fourteenth and fifteenth centuries. Hugh of St Cher (d.1263) stated that the majority of soldiers fought out of a desire for earthly glory, cupidity, and hatred: such soldiers were spiritually condemned unless they performed penance.<sup>91</sup> Therefore while theologians certainly upheld the possibility and desirability of just wars, they were also attuned to the spiritual dangers faced by those who fought in war.

Like other thirteenth-century theologians, Thomas Aquinas emphasised the importance of charity in war. In his massive *Summa Theologiae* he tackled the problem of war directly in a section dealing with vices against charity (IIaIIae, q. 34-43). The question on war (q. 40) – sometimes simply referred to as Aquinas's *De bello* – as well as the questions on Discord (q. 37), Schism (q. 39), Sedition (q. 42) and Homicide (IIaIIae q. 64), were later to become highly influential on the development of just war doctrine as a result of the adoption of Thomistic thought by a number of leading Spanish theologians and jurists of the fifteenth and sixteenth centuries: Thomas de Vio 'Cajetan' (1468-1534), Francisco de Vitoria (c.1492-1546), and Francisco Suárez (1548-1617). Throughout the dialectical *Summa Theologiae*, Aquinas utilised a range of authorities (mainly scriptural, patristic, and classical texts) to posit a number of theses and antitheses for each point of inquiry. Aquinas then attempted to reconcile these conflicting authorities in his own synthetic *responsiones*.

In his question on war, Aquinas pursued four points of inquiry. The first was simply 'Are some wars permissible?'<sup>92</sup> In response to the initial objection that 'it would seem that it is always a sin to wage war',<sup>93</sup> Aquinas repeated the familiar criteria for just wars:

Three things are required for any war to be just. The first is the authority of the sovereign on whose command war is waged...Secondly, a just cause is required, namely that those who are attacked are attacked because they deserve it on account

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<sup>91</sup> J.W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols. (Princeton: Princeton University Press, 1970), 1: 210-13; Russell, *Just War*, 217.

<sup>92</sup> Thomas Aquinas, *Summa Theologiae: Latin Text and English Translation, Introduction, Notes, Appendices and Glossaries*, ed. T. Gilby et al, 61 vols. (London and New York: Blackfriars, 1964-81) [henceforth Aquinas, *ST*], 35: IIaIIae, q. 40, pp. 80-1.

<sup>93</sup> Aquinas, *ST*, 35: IIaIIae, q. 40, *art.* 1, *ad.* 1, pp. 80-1.

of some wrong they have done... Thirdly, the right intention of those waging war is required, that is, they must intend to promote the good and to avoid evil.<sup>94</sup>

The *ius ad bellum* stress on authority and cause is evident, but Aquinas's direct quotation of Augustine's stipulation that warriors must not thirst for revenge, nor desire to hurt people, nor practise any other sort of cruelty, clearly indicates that Aquinas did not conceptually divorce *ius in bello* limitations from his *ius ad bellum* focussed discussion of war.<sup>95</sup>

Aquinas's main concern was to show that just wars were a legitimate means to obtain peace. True peace must be infused with justice, which must itself be infused with charity, and thus this type of peace was distinguished from the superficial 'peace' maintained by the cruelty of a tyrant, for example. Likewise, true justice must be informed by the Christian faith; however, influenced by the natural law teaching of Aristotle and Cicero, Aquinas accepted that even pagans could exercise natural justice within a civic community.<sup>96</sup>

There has been considerable scholarly debate regarding whether a presumption against violence or a presumption against injustice underpinned Aquinas's treatment of war. Although convincing cases can be made for both interpretations, Aquinas's acceptance that just wars can serve both defensive and offensive functions, as well as his acceptance that waging just war can be meritorious, would seem to indicate that Aquinas's principal concern was that injustice should not be tolerated, rather than that war should be avoided.<sup>97</sup> Nevertheless, the intimate link that Augustine had made between charity, justice, and war, which Aquinas and his predecessors followed closely, meant that justified violence should always be informed by, and infused with, love. This dictated that violence would only be used, indeed must only be used, as a last resort and in a manner consistent with the charitable intentions of the just prince and the just combatant. Extreme violence was still legitimate within a just war if it was necessary, but *unnecessary* violence or cruelty must be absent. Thus we cannot think of the just war as being explicitly limited in terms of military conduct, but rather implicitly limited in terms of how the just combatant would be likely to act.

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<sup>94</sup> Ibid., q. 40, art. 1, *responsio*, pp. 80-3.

<sup>95</sup> Ibid., q. 40, art. 1, *responsio*, pp. 82-3.

<sup>96</sup> For Aquinas's treatment of justice, see *ST*, 37: IIaIIae, q. 57-62, especially q. 58 'De iustitia'.

<sup>97</sup> Aquinas, *ST*, 35: IIaIIae, q. 40, art. 1 and 2. For recent contributions to the 'presumption' debate, see J.F. Childress, *Moral Responsibility in Conflicts: Essays on Nonviolence, War, and Conscience* (Baton Rouge, LA: Louisiana State University Press, 1982); D. Cole, 'Thomas Aquinas on Virtuous Warfare', *The Journal of Religious Ethics* 27, no. 1 (1999): 57-80; R.B. Miller, 'Aquinas and the Presumption against Killing and War', *The Journal of Religion* 82, no. 2 (2002): 173-204; G.M. Reichberg, 'Is There a "Presumption against War" in Aquinas's Ethics?', in *Ethics, Nationalism, and Just War*, ed. Syse and Reichberg, 72-98.

Within Aquinas's justification of violence is an important realisation that any moral act might have more than one effect – both good and bad. In the pursuit of justice, the good intention of a moral act could justify negative consequences, such as the killing of an assailant or the deaths of innocents during war. Neither Aquinas nor any of his predecessors used the term 'double effect', but his justification of killing in self-defence, for example, essentially relied upon this concept.<sup>98</sup>

Concerning the other major points of inquiry, Aquinas asked: May clerics engage in warfare? May belligerents use subterfuge? May war be waged on feast days? In his response to these questions Aquinas adopted wholly traditional views. Clerics should not engage in war because it was inappropriate to their sacramental and spiritual calling, although they could exhort others to wage just war. Regarding the *ius in bello* concerns of the use of subterfuge and the waging of war on feast days, Aquinas followed the interpretation of Gratian and other canonists by stating that subterfuge was acceptable but that lying to the enemy was not permitted, and that just wars could 'be waged on feast days to protect the common weal of the faithful, provided that it is necessary.'<sup>99</sup>

While much more could be said about Aquinas's analysis of war, it remains true that his major contribution to the development of just war doctrine (which was not really felt until the fifteenth century), was his efficient systematisation of the key themes and problems which had hitherto been almost exclusively the province of canonists and their laborious method of commentary. Moreover, his stress on the role of justice and natural law was to become increasingly central to the development of just war thought from the sixteenth century onwards. For these contributions alone, Aquinas deserves a prominent place in the history of just war doctrine, but it must also be recognised that the conceptual foundations of his ethics of war did not constitute a great leap forward, but were entirely typical of their time.

## Conclusion

It is clear, then, that from the classical period through to the early Church and on to the central Middle Ages, there existed a rich tradition of ethical debate on war. This could take the form of jurisprudential analysis, theological speculation, or practical endeavours to regulate war. When Aquinas came to summarise and distil these varied discussions and

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<sup>98</sup> Aquinas, *ST*, 38: IIaIIae, q. 64, *art. 7, responsio*. See also J. Mangan, 'An Historical Analysis of the Principle of Double Effect', *Theological Studies* 10 (1949): 41-61; J.M. Boyle, Jr, 'Toward understanding the principle of double effect', *Ethics* 90, no. 4 (1980): 527-38; D. Lefkowitz, 'Collateral damage', in *War: Essays*, ed. May, 145-64.

<sup>99</sup> Aquinas, *ST*, 35: IIaIIae, q. 40, *art. 3 and 4* (quotation at *art. 4, responsio*, pp. 92-3).

customs, he did not reinvigorate forgotten knowledge or create anything particularly original: he did not need to. Equally, debate on war was not divided absolutely into independent ‘traditions’ of *ius ad bellum* and *ius in bello*. Concerns regarding the conduct of war, guided principally by the stress laid upon the correct intention of combatants, figured consistently in canonistic and theological analyses. *Vice-versa*, practical attempts to regulate conduct, primarily the protection of non-combatants, were inextricably entwined with a desire to limit the waging of war to magnates and prelates in possession of authority. This intermingling of *ius ad bellum* and *ius in bello* concerns produced a sophisticated and complex body of ethical thought about war, and paved the way for future analysis and refinement.