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### Just and Unjust Wars - and Just and Unjust Arguments

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Title: Just and Unjust Wars - and Just and Unjust Arguments  
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## Introduction

Arguments - sometimes thought of as the stock-in-trade of philosophers - vary greatly as to form and content and even kind. Despite the great differences among them, legal argumentation, political debates, mathematicians' proofs, interpersonal disagreements, and philosophical discourse all fall under the rubric "argument." There are, correspondingly, different models or paradigms for thinking about arguments, with the result that the literature on argumentation is fragmented and often at cross-purposes. Three models deserve special mention because they are so entrenched in our ways of thinking and speaking about arguments: arguments as proofs, argumentation as war, and arguing as making-a-case.

Of these, the argument-is-war metaphor has received the most attention. It has been criticized by many authors in many ways - many of those critiques raising important and relevant issues. Some offer keen insights. Others propose creative alternatives. As an aggregate, they ought to have a greater persuasive effect on our speaking and thinking than they have in fact had. For all that, the metaphor remains as entrenched as ever in our collective thinking - and not without good reason, for it is a rich vital metaphor. We are not done with it yet. The points of similarity between wars and arguments are manifest. We can easily imagine overhearing someone talk about:

disagreements & differences	strategies
conflict & engagement	negotiations
attacks & counterattacks	positions
opposing sides	retreats
neutral observers/mediators	alliances
victory, defeat, & deadlocks	triumph & surrender

without being able to determine whether it was argumentation or war that was being discussed. Moreover, there are many concepts from the vocabulary of war which are easily and immediately, if not commonly, applied to argumentation:

blitzkriegs	heavy artillery
siege	ambushes
appeasement	deterrence

This ready transfer of concepts also flows, albeit not as torrentially, in the other direction, from argumentation to war:

establishing a position	concessions
finding common ground	justifications
credibility	refutations & rebuttals

This is not to deny the dissimilarities, and the prominent elements peculiar to each. Wars, but not arguments, typically include:

armies	prisoners of war
chains of command	KIAs & MIAs
the balance of power	conquest

Conversely arguments, but not wars, typically include:

explanations & clarifications	premises & conclusions
audiences & juries	objections & replies
inference & fallacies	questions & answers

Still, the argument-is-war metaphor should be accorded its due: it is, after all, an apt metaphor insofar as it captures so much of our argumentative practice; it is a vital metaphor insofar as it informs as well as reflects that practice; and it is a powerful one insofar as it is hard to escape its conceptual gravity. It is not, of course, an exact fit, but that it is simply to reiterate that it is a metaphor, a vehicle for organizing our thinking about things, rather than an unorganized collection of facts that could serve as a literal description. The war metaphor is also, in many ways, an unfortunate one insofar as some of its effects on our thinking and practice can be counted as negative. It is odd, to say the least, that someone who has become convinced of something in an argument - that is, someone who has gained a new, well-justified and battle-tested belief - is invariably described as the "loser" of the argument! That argument has been pursued at length elsewhere and so will not be rehearsed here (Cohen 1995). For all that, the argument-is-war metaphor is a very fertile one because its semantic fecundity enables us to see certain features of arguments - and perhaps wars as well - that were otherwise scarcely visible.

To see how this works, consider the phenomenon referred to by the marvelously euphemistic military phrase "collateral damage." It refers to the carnage wreaked on non-combatants by proximate military actions. A moment's thought is all that is needed to find its counterpart in argumentation: consider, for example, children within earshot of heatedly arguing parents. They are indeed innocent but injured non-combatants within proximity to the fighting. That feature of arguments might have been (and largely does seem to have been!) overlooked were not the template of the language of war in play. Similarly, the war-cluster concepts of

simmering hostilities without a lasting peace  
wars of aggression  
guerilla warfare  
humanitarian interventions  
exit strategies  
and possibly even war crimes (!)

all have argumentative counterparts worthy of greater analytic elucidation and philosophical attention.

The juxtaposition of war and argument is, of course, also a juxtaposition of argument and war, so, conversely, the conceptual vocabulary of argumentation might be expected to provide new ways of looking at war. Such concepts as:

burdens of proof	dialectical closure
persuading/convincing	settlement vs. resolution

are not typically applied to wars, but perhaps they ought to be.

The topic that I want to explore here is one small but important part of our thinking about wars and the light that they might shed on thinking about argumentation, viz., JUST and UNJUST WARS. To what extent can the literature on these concepts be applied to arguments? Are there Just and Unjust Arguments? The conclusion I reach is that the concepts are indeed applicable and they do help shed light on some argumentation phenomena, but only within certain limits.

*Jus ad bellum* and *jus in bello*. The discourse of just war theory often begins with the distinction between *jus in bello* and *jus ad bellum*, that is, between justice in the conduct of a war and justification for going to war in the first place. The distinction may be problematic on careful analysis in some particular contexts, but it is clear enough initially to be intuitive, acceptable, and helpful. Soldiers are responsible for how they wage wars and nations are responsible for why they wage wars. Unjustifiable actions in war are counted as war crimes, even if the wars in which they occur are just. If, however, the wars are unjust, they are counted as internationally illegal acts of aggression for which the national governments or military commands, rather than individual soldiers, are responsible.

Amazingly, there is no obvious counterpart to be found in the literature of argumentation theory. While much has been written about the proper conduct in argumentation, there is no counterbalancing mass of writing on when and why to engage in argumentation in the first place. The reasons for this are not hard to fathom. The costs of going to war are inevitably so high morally, politically, and economically that they create a very strong presumption against war. Moreover, because the political and economic costs have to be paid by both sides, political and economic gain by one side cannot play any part in the moral justification of military actions. Wars of conquest, for example, are unjustified even if there are very great economic and political benefits gained and there are very few casualties on either side.

The corresponding costs for arguments are minimal: neither soldiers nor civilians lose their lives, cities do not get destroyed, cultures are not endangered. It is true that personal relations may be put at risk by an argument, but not necessarily. If a member of the audience at an academic conference decides to engage a speaker at that conference, in an argument, there is no cost at all! There may be a price to pay if the argument becomes so nasty that any subsequent professional contact they might have would be poisoned, but that would be a consequence of the conduct of the argument rather than the mere fact of the argument. Indeed, argumentation is to be expected in this context. More than that, it is welcomed and even desired. Argumentation *per se* is not a bad thing. War *per se* is. Argumentation is not something to be avoided. War is. Arguments - understood now as critical discussions - are good things. They clarify our positions, strengthen our convictions, lead us to new beliefs, and, for some of us, even provide a measure of enjoyment. What's to justify?

Of course, arguments are not all light and goodness. Philosophical argumentation may on occasion approach the ideal of critical engagement - both passionate in its pursuit of resolution and dispassionate insofar as its participants are emotionally distanced from any particular outcome - but what is at best uncommon among academics is much rarer still in other contexts. There is a lot of negative baggage that is commonly associated with arguments. They can be acrimonious and challenging. They can be emotionally draining. They can be intellectually upsetting. They can be wastes of time. These are the potential costs, what have to be weighed against the possible benefits in justifying arguments. The possible benefits include better-justified beliefs, better-articulated beliefs, intellectual satisfaction, and possibly some pleasure.

A straightforward utilitarian calculation might seem called for: you ought to argue when the benefits are likely to outweigh the costs and you ought not argue when the reverse is probably the case. But for all its elegance, the simple utilitarian formula is naive. Argumentation serves many purposes, among which are the fulfillment of sundry logical, rational, epistemological, social, and ethical obligations. Argumentation, in Ralph Johnson's felicitous phrase, is "Manifest Rationality" (Johnson 2000). If we are to be rational beings, and argumentation is indeed manifest rationality, then, in pursuit of self-actualization, we should argue. This line of thinking is independent of any utilitarian consequentialist considerations. Even were it not worth living, striving for the examined life would still be an epistemological mandate (if not a moral one).

In the rest of the allotted space, let me offer some preliminary thoughts on the contexts for arguments followed by three points from Just War Theory that I think are particularly applicable and relevant to arguments: (1) self-defense as a justification for arguing, (2) pre-emptive arguments, and (3) second- or third-party interventions. These will provide the data for principles concerning the mandates and prohibitions for arguing.

## Contexts

There are times and places for arguing. We have all been socialized well enough to know this quite well. We argue when something is arguable, but not always. It would, for example, be completely out-of-place to take exception to something kind, but unwarranted, that was said about the deceased in the eulogy at a funeral service. It is neither the time nor the place to argue. The interruption would be unjustified. At the other extreme, it would be just as wrong to remain silent in response to something unfavorable, even if it were warranted, that was said about a defendant for whom you were the designated defense attorney in a criminal trial. Again, at an academic conference like IL@25, arguments are welcomed.

It is not, of course, usually that clear-cut. Several factors are at play. Suppose that at a family gathering, an elderly and cranky relative makes an off-hand remark that is offensive, perhaps something like a derogatory comment about an absent member of the family or a bigoted attack on some ethnic group. Should you argue? On the one hand, there may be an intellectual obligation to rebut the charge on behalf of the maligned parties, but if it's your 92 year old great uncle who suffers from Alzheimer's who said it, perhaps it would be better to let it slide. After all, it is only a family gathering. However, if it was your 15 year-old niece who said the same thing, and it was heard by your 10 year old son - who also hears your silence in response - then you should indeed say something. The obligation to your son - the present audience - is even stronger than any obligations you might have to the direct targets.

Who is present, the audience, is not the only relevant factor in determining when to argue and when not. It also matters who the would-be arguers are. While all of us may have obligations to truth and justice, we are not equally bound to defend them in all circumstances. Is a prosecuting attorney obligated to challenge helpful testimony that she knows to be false? Perhaps, but certainly not to the extent that the defense attorney would be! Similarly, a congressional representative qua representative is more obligated to defend her own constituents' interests than those of others. Closer to home, it is more incumbent on me, as a teacher, to argue with any misinformed students in my classes than with ignorance in the public at large. Personal circumstances are relevant. The subject matter of the argument is also a determinant. Even though candidates for public office in a political debate are already engaged in an argument, they need not - and should not - argue about, say, their religious differences, no more than theologians in their own scholarly exchanges should argue politics. As philosophers, we may be inclined to follow Socrates' lead in thinking that pretty much everything is fair game for argumentative scrutiny, that pretty much any time is a good time to argue, and that just about the worst thing of all is to lose faith in argumentation. The call to philosophical debate may be timeless, but there are other more timely considerations in our lives. As we have seen, there are times that preclude certain arguments or even argumentation per se. And there can also be a timely urgency to, say, political debate that trumps philosophy's more leisurely demands.

### Arguments in Self-Defense

The first and most obvious justification for going to war is self-defense. And because nations are manifestly entitled to defend themselves, appeals to self-defense have, historically, been the rhetoric of first recourse. Even when the fighting is not obviously about self-defense - and sometimes even when it has obviously not been about self-defense - that is the language used. When the U.S. sent troops 10,000 miles across the world to Southeast Asia, to cite one striking example, the "Domino Theory" was invoked to cast the war as a war of self-defense. Where there might have been an interesting and possibly cogent appeal to the legitimate interests of the South Vietnamese people, there was instead a convoluted appeal to American national security. And when American troops were sent 5,000 miles across the world to Southwest Asia, to cite the most recent example, terrorism was cited to try to turn that action into a matter of self-defense. Self-defense is a powerful trump card.

Something similar seems to hold true of arguments. Direct personal attacks justify rebuttals. If the eulogist in the earlier example abused the forum provided by the occasion to make scurrilous remarks about one particular member of the audience, that might indeed count as the kind of provocation that would justify an immediate response. Interrupting the eulogy would be, if not altogether forgivable, then at least more readily understandable.

The Just War Theory extension of the principle of self-defense to other legitimate interests of the state besides just territorial integrity also has a ready counterpart in argumentation - and with the same caveats. Thus, for example, Israel is generally regarded (i.e., pretty much everywhere except the Arab world) as having been justified in beginning the hostilities of the Six-Day War of 1967 because of the Egyptian blockade of the Straits of Tiran. That blockade, which was in contravention of international law, was not an attack on Israel's territory. It was instead an attack on its economy.<sup>1</sup> In contrast, the American intervention in Grenada cannot be justified this way because no serious interests were at stake. Other justifications would be necessary.

What are our argumentative self-interests? Attacks on our person merit replies, but so do criticisms of our beliefs. This is especially true of those beliefs with which we strongly identify or with which we are strongly identified. A member of the clergy, a political party apparatchik, or activists in a cause would be expected to respond to criticisms of his religion, her politics, or their cause. Rebuttals would be justified and permitted. Contextual factors may, of course, override the permission, but there is some *prima facie* justification.

### Pre-emptive Arguments

Pre-emptive military strikes, like any other military actions, need to be justified by reference to some critical interests, but the pre-emptive aspect needs special attention. Strategic first-strikes during the run-up to a war are unjustified so long as that war can be reasonably regarded as avoidable. Justification for pre-emption is, therefore, much more difficult - which explains why diplomatic exchanges between belligerents often reduces to the level of kindergarteners - "But they started it!" - and military history is littered with so many examples of trumped up provocations.

The analogy with arguments begins to break down here. When presumptions against argumentative engagement do exist, it is always contextual, not generic. Thus, while it is the possibility of Just Wars that needs the kind of explanation provided by a theoretical framework, it is the phenomenon of Unjust Arguments that has to be explained. The Socratic model is again revealing: the philosopher in the marketplace would need reasons not to argue, rather than reasons to argue.

With regard to pre-emptive arguments, then, no extra or special justification is needed. Entering into an argument pre-emptively is on a par with engaging in argument in response to some other interlocutor's initial move - understanding the term "argument" here in the idealized sense of a critical discussion designed to resolve differences.

In application, this apparently allows non-stop argumentation among rational agents. And that they may indeed be the implicit utopian ideal of the philosophical community. (Do you know of any philosophers who require a provocation to have an argument?) All that is needed is two or more interlocutors and a subject matter about which there is some kind of "dissensus," by which I mean anything from outright disagreement to simple lack of consensus. If you believe a proposition P and I disbelieve it, believing Not-P instead, there is an occasion to argue. But so is the case where I simply do not believe P rather than positively disbelieving it. And for that matter, so is the case in which I do believe P, but with less commitment and enthusiasm, or for different reasons. Even the requirement that there be two or more voices is not really necessary: we argue with ourselves when we deliberate, when we want to test out ideas for ourselves. William James's twin epistemological commandments, to believe what is true and to disbelieve what is false, need to be complemented by a Quinean-Harmanian third: adjust the strength of one's commitments to one's beliefs to match the strength of the available reasons. But that determination can result only from argumentation.

## Humanitarian Interventions

As the world has become more interconnected, communication more immediate, and the possibilities for military actions greater and more varied, the discourse of Just War theorists has increasingly focused on the subject of humanitarian interventions. It is not enough merely to express moral outrage at the events in East Timor, Bosnia-Herzegovina, or Rwanda and Burundi. Knowledge of those events together with the ability to do something about them give rise to certain positive obligations to intervene - whether or not there are national interests at stake. To be sure, there are costs and risks to be weighed. If the potential risks are too high, the obligation is outweighed, so a case has to be made to the citizens of the intervening country about those costs. There is also a case to be made to the community of nations about the goals of the action and assurances as to the limits of the intervention. The presence of some great social injustice or moral outrage in another country would still not justify a war of conquest. If all of these factors line up - the moral affront is great enough, the cost to the intervening country is minimal enough, and the scope of the intervention is sufficiently well circumscribed - then it would be a decision against military action that would be blameworthy.

Just as the justifications for war can, in the presence of the right combination of abilities and opportunities, actually create moral obligations to go to war, the license to argue can, in the right circumstances, become a mandate to argue. Many of the obstacles to justifying intervention are easier to hurdle - the potential risks and costs, for example - but some obstacles could be more difficult - violations of argumentative rights or intellectual rights do not demand redress the way that violations of human rights or civil rights do.

Consider the following examples of third-party intervention. In each case, the intervention seems either permitted or mandated, but for different reasons and to different degrees, so extracting universal governing principles is not easy:

- an argument between young siblings that threatens to become violent, when a parent is near at hand;
- a factual dispute between students in class, to which the teacher has knowledge that could settle the issue;
- stalemated deliberations between union and management, who agree to mediation;
- a discussion between three people at a social gathering which evolves into an argument between two of them, and then reaches a stage of interest to the third;
- an overheard argument between two people at a similar gathering in which one disputant is clearly winning, but is doing so by arguing unfairly, perhaps by arguing grossly fallaciously or else without giving the other interlocutor a chance to speak;
- an overheard argument at a social gathering on a subject that is simply of interest to the third party;

In one case (the mediator), the intervention is actually invited and welcomed; in two others, the outside voice (parent, teacher) has some authority either by position or expertise. In all three cases, there is some sort of mandate to enter the argument.

The other cases are more problematic as well as more instructive. What makes them problematic is that the third-party is not part of the discourse circle, *ex officio*, as it were, as teacher, parent, or mediator, although in the first of the remaining cases, the conversational history licenses, but does not require, involvement. Argument can be a form of social engagement, and the new

interlocutor is really just re-engaging. Intervention in the next case, against the bullying arguer, can be justified by a general appeal to fairness. Depending on how egregious the abuse is and how high the contextual deterrents to intervention are, the contribution to the argument could be justified, unjustified, or even required. Is there anything peculiar to the nature of argumentation - as opposed to general behavioral guidelines - to be gleaned? I think so. The canons of rational debate, much like the moral law, are value-bearing and prescriptive. The contextual deterrents and incentives to intervention cannot be assessed without reference to the subject matter of the argument or the semantic content of individual argumentative moves. Truth may be a counterpart to goodness in some ways, but not all truths are worth arguing about - including some very important truths. And yet, the fact that many metaphysical and other philosophical assertions often have, to put it mildly, "minimal perlocutionary effect" does not mean that intervention in philosophical disputation is never justified. On the contrary, philosophical arguments, because they are impersonal, may be the most open to outside contribution. In the abstract ideal of philosophical argumentation, no voice would ever be excluded - which is, I take it, what Peirce was after when he wrote that the first directive for philosophical enquiry was to keep all avenues open.

Now consider the last case, uninvited third-party intervention in an argument that is being fairly conducted. While the intervention will, presumably, be on one side or the other of a two-party dispute - unless it opens a third position - it need not be on behalf of one side to counterbalance the abuses of the other, so more information is needed. Does the interested third party have an ulterior motive, like, an evangelist eavesdropping on a religious discussion, a real estate agent insinuating herself into a discussion of the relative merits of selling houses independently or through brokers, or a rival to one of the arguers in either business affairs or affairs of the heart? Is the intervention on behalf of absent parties unable to speak for themselves? Or is it someone who simply has strong feelings about a certain movie who steps into a critical discussion of its merits? There are many reasons why we argue, and they are all relevant. There is a parallel here to military intervention officially justified on humanitarian grounds but with other ends in mind.

## Winning and Losing

That brings us to one final case, Socrates. Here is where the parallel to war breaks down most thoroughly. Socratic interrogation was generally unprovoked, almost invariably unwelcome, and yet always admirable nonetheless. Part of the reason is that there is a valuable by-product to successful argumentation that is of benefit to all - not just the winning party. Indeed, losing an argument with Socrates was a sure way to end up gaining a great deal. It is, after all, the so-called "losers" of arguments who gain new beliefs - and not just any belief but ones that have been thoroughly examined and carefully evaluated and tested. That is no mean benefit, and yet the war-metaphor only allows for winning and losing as outcomes. Argument is not like that. We should not enter into arguments thinking that winning and losing are the only outcomes. If we welcome other resolutions, we should have different exit-strategies. But that means abandoning the idea that arguments, like wars, always need justification. That is why, in the end, there would be something curious about a theory of Just Argumentation. We should not need it, and so should not want it. Instead, a theory of Unjust Arguments - with its implication that the default is that argumentation per se needs no justification - would surely better serve our purposes.

## Notes

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<sup>1</sup> The example is cited by Walzer 2000 in the context of discussing Israel's pre-emptive strikes. Egypt, regarding itself as already in a state of war, did not feel the need for any additional justification for the blockade beyond its strategic effect against a belligerent nation.

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