

Nigel Biggar's Just War: Reflections on *jus ad bellum*

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Abstract

This paper raises some questions about Biggar's accounts of the just cause and proportionality criteria for a just war. With respect to just cause, it argues that Biggar is committed to a broader range of justifications for war than one might think. Regarding proportionality, it claims that his account thereof invites reflection on the morality of conscription, and, more important still, given the book's main aim—to refute Christian pacifism—in fact should lead him to embrace pacifism.

Keywords

Pacifism, just cause for war, proportionality in war, last resort, killing

Introduction

In his fascinating book, *In Defence of War*, Nigel Biggar argues against Christian pacifism and employs his conception of the just war to derive judgements about specific wars, or phases therein.¹ In particular, he argues (contra most just war theorists) that the casualties incurred by the Allies during the Somme Battle were not disproportionate, and that the battle therefore cannot be condemned on those grounds; he also argues (again, contra most theorists) that, on balance, the invasion of Iraq by the Allies was justified.

I will not take issue with the empirical evidence Biggar marshals in support of his overall conclusions with respect to those specific cases. Rather, I will focus on some aspects of his overall account of what makes a war just. In line with the tradition, Biggar holds that judgements concerning the justness, or lack thereof, of a war must consider the following criteria, which divide into two categories.

1. Nigel Biggar, *In Defence of War* (Oxford: Oxford University Press, 2013). Page numbers in the text refer to the book.

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1. *Jus ad bellum*: Does the war have a just cause? Is the decision to go to war taken by a legitimate authority? Is the war fought with the right intentions? Is the war the option of last resort? Is the war a proportionate response to the injustice which gives rise to the just cause? Does the war have a chance of success?
2. *Jus in bello*: Is the war fought in a proportionate way? Do combatants discriminate between enemy soldiers and enemy civilians?²

Some of the most interesting passages of Biggar's book pertain to the question of the relationship between those various requirements. On some views, each is as important as the other, such that failing to meet, for example, the requirement of proportionality suffices to render the war unjust even if one did have a just cause, and vice versa. Biggar, by contrast, holds that the deontic requirements are more important than the prudential requirements. The former—which, with respect to the *jus ad bellum*, include just cause, last resort, legitimate authority and right intention—call on belligerents to decide whether or not to go to war without attending to the consequences of doing so (hence the adjective 'deontic'). The prudential requirements—to wit, proportionality and chance of success—are, precisely, requirements to take consequences into account.

In this paper, I first raise some questions with regard to Biggar's account of the deontic requirement of the just cause, and then subject his views on proportionality to scrutiny. I conclude that his defence of the priority of the deontic requirements over the prudential requirements, grounded as it is in deep worries about proportionality, sends him straight back into the arms of the pacifist.

Just Cause

Let us begin with the just cause requirement, which, as Biggar rightly notes, is prior to all others in the sense that if a belligerent lacks a just cause, its war *in toto* remains wholly unjustified. I have two clarificatory questions and an observation. First, at the end of his interesting discussion of Rodin's account of the just war in chapter 5, Biggar argues that 'national institutions and customs that enable [individuals] to flourish in important ways' are worth defending by force when under 'grave and unjust threats' (212). It is not entirely clear to me whether, by 'grave and unjust threats', Biggar means lethal threats, or threats which, whatever form they take, undermine those institutions. In so far as, usually, aggression takes a lethal form, one might think that the question—which is sparked by contemporary discussions of bloodless invasions—is spurious. But recent developments in the relationship between Ukraine and Russia suggest that it is worth addressing. Let us assume that the people of Crimea are worse off under the tutelage of the Russian Federation than they are under the jurisdiction of the Republic of Ukraine. In the scope of a few weeks, the former in effect managed to annex that territory, with (to the best of my knowledge) only two military or quasi-military deaths—as

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2. Biggar disagrees with the claim, made in recent scholarship, that one should add to this list requirements pertaining to justice after war (*jus post bellum*), for these, he claims, are already included in the *ad bellum* requirement of right intentions. I have some sympathy with his point.

close to a bloodless invasion as one can get. Or suppose that, in the next few months, Russia threatens to raise the price of gas to such an extent as to make it impossible for Ukraine to pay, and does so as a means to get the Ukrainian people to fold and agree to join Russia in an expanded federation. This is not a ludicrously implausible scenario. Nor is it ludicrously implausible to suppose that some belligerent, in the not too distant future, would be able to attack another party remotely by disabling its IT infrastructure. Does Biggar think that the victims of those acts would have a just cause for war?³

Suppose that Biggar's answer is 'yes', that an aggression need not take a kinetic and lethal form in order to provide its victim with a just cause for war. One would then have to justify killing those attackers given that they themselves do not shed blood. Suppose now that the answer is 'no', that an aggression must be lethal. A further issue, then, is whether it is a necessary condition for a lethal aggression to constitute a just cause that it should undermine existing, human-flourishing conducive national institutions. At first sight, the answer seems straightforwardly 'yes'. But imagine now that the attacker proposes to replace existing institutions with better ones. Even if the attacker uses lethal force, or the threat thereof, to enforce its will on its victims, *ex hypothesi* the latter will be better off. There, too, killing individual enemy soldiers is hard to justify—as is the infliction of collateral damage on innocent individuals in the course of a defensive war of that kind.

Second, Biggar argues that grave injustice is a just cause for war. Although he also says that economic depression, though an evil, is not usually an injustice, so that the prospect of facing such a depression is usually not a just cause (123), I wonder what his views are on systematic failures by the affluent to provide basic life-saving resources to the very needy. The evil, in such cases, is not just economic depression, but life-threatening poverty. Whether one thinks that the affluent are under a positive duty to transfer parts of their resources to the very poor, or that they are merely under a negative duty not to harm them in such a way as to cause their poverty, such failures are profoundly, grievously unjust. It would seem that on Biggar's own account of the just cause, wars which the life-threateningly poor might wage against the affluent would satisfy the just cause requirement.⁴

Third, an observation. Biggar claims that a belligerent which lacks a just cause simply cannot meet any of the other conditions for a just war, including the proportionality requirement. To some extent, he is right. Only to 'some', however, for although a war might be unjust *in toto*, it might have just phases. Consider, for example, German soldiers who fought Soviet soldiers as the latter were advancing towards Berlin, as a way to ensure that as many of their comrades as possible would fall into the hands of British and American troops rather than the Soviet army, whose exactions against prisoners of war were well-known. It seems to me that those German soldiers had a just cause for so acting, even though they were thereby weakening Soviet forces and granting the Nazi regime a stay of execution, short as it was. If so, it is opportune to ask whether their

3. This is known as the problem of bloodless invasion in the philosophical literature. For a classic discussion, see David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2002). For recent discussions, see Cécile Fabre and S. Lazar (eds.), *The Morality of Defensive War* (Oxford: Oxford University Press, 2014).

4. I defend the view that what I call 'subsistence wars' can be just in Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012).

defensive actions fulfilled the criterion of proportionality. The lesson to draw here is that judgements about individual soldiers' liabilities must be attentive to those soldiers' discrete aims within the war, and cannot focus solely on the war's overall justification. I should add that this particular task of disaggregating war into its constitutive phases and bearing judgements on the former in the light of the latter, and vice versa, is one that just war theorists on the whole do not carry out particularly well (I include myself in that particular verdict).

Proportionality

Let me now turn to the requirement of proportionality. *Ad bellum*, it holds that, when deciding whether to wage war, actors should ensure as far as they can that the harms occasioned by the war do not outweigh the goods it brings about. *In bello*, it requires of soldiers that, when selecting targets, or deciding whether to carry out a particular campaign, they should weigh up the goods and bads thereof. Two difficulties mar the requirement, however (146): first, those goods and bads are not commensurate with each other; second, assuming that there is a common measure by which they can be weighed up against each other, the future is notoriously unpredictable, and it is impossible therefore to arrive at a precise calculation.

I shall argue presently that Biggar's worries about proportionality seem to prove too much. For now, let me raise an issue which he does not address, but which strikes me as crucial. In his discussion of proportionality and the battle of the Somme, on the basis of which he concludes that the latter was not in fact disproportionate, he states that mass combatant casualties are justified for the sake of fighting injustice (140–41). But this strikes me as too quick. For willingly to sacrifice one's own life for the sake of injustice is one thing; whether one may sacrifice other people's life, as military commanders do when sending soldiers into battle, for the sake of resisting injustice is another. Here, Biggar has two options. Either he argues, following Thomas Hobbes, that the state is morally permitted to sacrifice the lives of its soldiers even though soldiers themselves are morally permitted to refuse to serve. Or he argues that we are under an enforceable duty, in general, to expose ourselves to a high risk of dying, or at any rate being grievously wounded physically or psychologically, for the sake of justice. The Hobbesian claim sanctions both mutiny and desertion, and I doubt that Biggar would accept that; the alternative claim sanctions conscription, for which Biggar provides no defence (and which, it must be noted, was in place in Britain from 1916 onwards, and in France from the very beginning of the war).

Assume that, in the light of the injustice which the war aims to block, what appears as disproportionate casualty rates in fact are not. It remains to be seen what role exactly is played by the requirement of proportionality in Biggar's account of the just war. As I noted at the outset, he thinks that the deontic criteria such as just cause and right intentions are more important when judging whether a war is just than the prudential criteria of proportionality and chance of success. His main argument for that thesis is that 'the deontological criteria are susceptible of definite determination to a degree that proportionality is not' (319). This is because proportionality is future-oriented; a judgement that war is proportionate is necessarily a judgement about what will or might happen in the future—in

other words, about events that we simply cannot predict or foresee. I have some sympathy with Biggar's argument here. At the same time, there are reasons to doubt that judgements that one has a just cause or goes to war with the right intentions, or that war is the option of last resort, are always easier to make than judgements of proportionality. Disputes over, for example, territory, are notoriously complex, revolving as they often do around decades of perceived injustices on both sides. Likewise, claims to the effect that one fights with the right intentions are notoriously vulnerable to the difficulty of unearthing what collective intentions are given the plurality of individuals involved; they also suppose that agents' intentions are transparent to those agents themselves and to third parties, which is far from a foregone conclusion. To take the case of the 2003 war against Iraq, which Biggar argues was on the whole justified, why did cabinet members endorse Prime Minister Blair's decision to go to war? Because they were intent on removing a dictator? Because they sought to remain in favour with the Prime Minister and secure their seat? And, if the latter, was their aim merely to advance their career? Or to advance their career with a view to increasing chances that their own conception of what was good for Britain domestically would be turned into policy? A combination of all of those? How on earth do we know? Finally, claims that the war was the option of last resort are vulnerable to uncertainties about the strength of one's position relative to one's adversary, in the dance of bluff and counter-bluff which is characteristic of preludes to war.

But let us assume that I am wrong on all those counts, and that the requirement of proportionality does indeed play second fiddle to the deontic requirements. The difficulty, here, is this. For Biggar, proportionality is a seriously slippery and problematic requirement: remember, the problem is not merely the impossibility of foreseeing the future, it is also that the goods and bads of war are incommensurate. But if so, and other than in those cases where it seems absolutely clear that going to war would be disproportionate, then one may wonder why we should invoke proportionality at all.⁵ For if we simply cannot know with any degree of reliability whether the war, or phases within the war, will bring about more good than bad, and if, thus, we simply cannot know what the consequences of our decision to go to war or mount a given campaign, will be—then all we are left with are the deontic requirements, notably just cause, right intention and last resort. And if that is the case, then we must ask ourselves what we ought to do under those conditions of epistemic uncertainty: go to war and thereby run the risk of killing agents who in fact ought not to be killed, for the sake of a cause that we believe is just though it might not be; or desist from going to war and thereby run the risk of allowing ourselves, or third parties,⁶ to suffer grievous injustice for the sake of sparing the lives of agents whom we think are innocent but in fact are not. Our judgement here largely depends on whether we think that there is a presumption against killing in general—a presumption that is captured by the Fifth Commandment in the Old Testament and Jesus' teachings about non-violence in the New Testament. True, peace can sometimes bear the seeds of evil; true, peace ought not to be secured at all costs. That is an important lesson

5. Two such clear cases, for Biggar, are the 1956 Hungarian uprising and the 1968 Prague Spring, and their repression by the Soviet Army: going to war against the USSR in defence of the Hungarian and Czech oppositions would clearly not have been worth the costs.

6. The case of third parties arises when we refuse to wage a war of humanitarian intervention.

of Biggar's book. But if we do not and cannot know whether we had better fight for the sake of peace, thereby killing many who might not in fact be liable to die, or whether we had better stay at home, thereby allowing ourselves, or third parties, to suffer the injustice of foreign domination—it is not clear to me at all that we should opt for the former. At any rate, more work needs to be done to show that we should.

Conclusion

To conclude, I have raised some questions about Biggar's accounts of two key requirements of the just war, to wit, just cause and proportionality. My main concern is that his account of proportionality proves too much: it does lead him to conclude, contra much recent academic and policy writings, that the Somme was not disproportionate and that the Iraq war could not be condemned on those grounds; but for those very same reasons, *when coupled with the presumption against killing*, it should lead him back towards pacifism.

The *underlined* is crucial, of course: perhaps Biggar would not accept that presumption at all. In fact, he is critical of the view that the normative dice should be loaded against war (see 320–21). But—to ask it bluntly—in what sense, then, is his theory of the just war Christian?