

Last Resort

I

By their very nature, just war theories are concerned with restraints. They place at least some restraints both on how military organizations behave during and when they start wars. The restraints are not so onerous as to forbid war altogether -- for if they were onerous, we would be dealing with pacifist rather than with just war theories. But these restraints are nonetheless supposed to be genuine -- for if they were not, we would be operating under some sort of "anything goes" realist banner.

Within the framework of just war theories related to starting wars (*jus ad bellum*), the restraints placed upon military organizations are fairly standardized. The list usually includes just cause (i.e., that there are good reasons for going to war), proper authorization or competent authority (i.e., that the president, legislature, etc. of a government, and not some wild-eyed general or half-crazed citizen, initiate a country's entry into a war), and right intention. (i.e., that actions once a war starts and after it is over are consistent with the just cause for starting the war in the first place). These are St. Thomas Aquinas' criteria in his Summa Theologica (1952: II/II Q. 40, Art. 1, 577-79). However, more recent writers have felt compelled to add the following standards or criteria: reasonable hope of success (i.e., that a war should not be entered into if failure of the military mission is certain), proportionality (i.e., that the rationally anticipated costs of war are not out of proportion to the ends the war is supposed to achieve)

and last resort (Childress, 1986:263-68; U.S. Catholic Bishops, 1986:244-48; Weigel, 1992:20-6).

It is this last standard that I want to focus on in this paper. As I do, keep in mind that although, as Childress notes, some just war theorists do not treat these restraint standards as necessary conditions for just entry into war (1986:269), I suspect most often they are so treated. Thus, thinking in terms of necessary conditions, if a nation fails to meet even one of the several restraint standards, the war in which it is engaged is said to be unjust. This means that if any one of the standards for going to war is flawed by being stated badly and/or prone to misinterpretation, it can defeat the purpose of operating as a standard within just war theory. This paper argues that the last resort standard of just war theory is, in fact, flawed so that it ought to be replaced in favor of another standard that I will call non-hasty resort.

II

What does last resort mean? To help answer this question, think for a moment about the other meaning of resort. Our meaning of last resort has to do with options, choices and the like. So last resort in war and other grim settings means something like the last choice available. We are, according to the last resort standard, to choose war only after we have exhausted all the other available options.

The other meaning of resort has to do with places to stay, like a resort hotel. Now imagine that you are in the mountains looking for a resort where you can stay in order to rest and to practice your skiing. But others are there for the same reasons; and, as a result, it is difficult to get a reservation. There are five resorts in the

area. You call the first four, but all are filled to capacity. So now you call the last resort for a reservation. This time you are lucky and you get the last room in the last resort.

Notice how it makes sense to talk about the last resort because it is clear what the number of resorts in the vacation area where you hope to stay is. Similarly we can make sense of last room in the last resort because we know how many rooms it has. Consider next a non-military example of last resort having to do with choice. You need to find a spouse before the end of the year because your aunt's will says that only if you marry before then will you inherit the 40 million dollars she has left behind. There are three spouse candidates. The first two turn down your offers of marriage. So in desperation you turn to your last resort.

Even with this simple sounding example, notice that things are not really simple. Let us suppose that the third candidate also turns you down. What should you do? Resign yourself to poverty? Or, do something even more desperate, such as look for work? Obviously no!. There are other resorts to which you can appeal. Why not go back to the first two candidates and ask them over again? This time why not tell them about the 40 million dollars? Maybe now at least one will listen to reason, and accept your offer of marriage. Or why not find a fourth, fifth or sixth candidate? Anyone will do in order to get your hands of the 40 million.

Your problem of finding a spouse which appeared to have a set of closed options now appears to be open-ended instead. It is closed only in the sense that time is not on your side. If it comes to that,

your last resort is the person who accepts your offer of marriage and whom you marry no later than moments before New Year's Day.

My suggestion is that going to war is more like the situation in which your aunt has placed you; and less like looking for the last room in the last resort hotel. Getting involved in war is thus generally open-ended so that it is impossible or near impossible to give meaning to the expression LAST resort.

Consider how someone who is against going to war might exploit the open-ended nature of the last resort standard of just war theory. That standard insists that diplomacy should be tried first before resorting to war. It also insists that a boycott should be tried; and also a blockade. But talking about diplomacy, a boycott and a blockade in the singular should not conceal from us that these (and perhaps some fourth option) are not three (or four) steps that need to be taken before the last step of going to war is itself taken. Each step represents instead a series of options. Thus different diplomatic moves, boycotts and blockades can be implemented. And some of them might be repeated or extended. Consider the often repeated expression 'give the sanctions a chance to work' in connection with the Persian Gulf War. Suppose the United Nations waited until January of 1992 to see what effects the various sanctions against Iraq might have had. Let us suppose that after waiting, Saddam still refused to undo his occupation of Kuwait. Would we have, by then, reached the point of saying that war is the last resort? Hardly! Those opposed to the war could, and probably would, have argued at this point that the sanctions should be extended; or be tightened. Or they could, and probably would, have argued that new diplomatic initiatives should be

tried. If they had argued in this manner, they would be taking advantage of the open-ended nature of most of life's choice situations in order to postpone indefinitely the option of last resort. Their postponement would be of the kind to make going to war well nigh impossible. Under the guise of being just war theorists, those arguing in this manner would be arguing as de facto pacifists.

There is another problem with the last resort criterion. It is not just almost impossible to apply the expression 'last resort' when it is taken literally, but that the criterion also suffers from a presumption that going to war is always the least desirable option available. Why else develop a theory that insists that war be the last option?

But is this presumption a valid one? Consider the situation before the Gulf War started in January 1991. A blockade was in place against Iraq. In some ways, this measure was militarily effective since it kept Iraq from being resupplied with such weapons as tanks, aircraft and other high-tech equipment. Unfortunately, these same measures were also effective in less desirable ways. Insofar as the blockade slowed or stopped the delivery of commodities of use to both the military and civilians, the latter as well as the former in Iraq and Kuwait were also affected negatively. Indeed, a blockade like the one imposed on Iraq is referred to by Walzer as " a radically indiscriminate act of war" (1992:3.) Of course the ill effects of such a blockade are not just a function of the blockade itself. Dictators can control their nations' economies so that if there is a shortage of some sort, their friends are not the most likely ones to suffer from pangs of hunger. We can be sure, then, that the Kuwaitis

did not fare well during the period of time before the war started; nor did the Kurds and the Shiites.

But beyond the effects of the blockade, those people not especially friendly to Saddam suffered in more direct ways. Some were killed, others tortured, and still others were exploited in one way or another. That is, it was not as if during the time the sanctions against Iraq were in place that the situation in both that country and Kuwait was totally benign. Some people were paying a heavy price while we were waiting for the sanctions to work.

We can look at it from the other side. Not only is a condition of "peace" (as in Iraq and Kuwait before the Coalition forces attacked) sometimes not so wonderful, but war itself is sometimes not so horrible. I do not mean to glorify war. But the fact is that some wars are won quickly, efficiently and in such a way that loss of life and property is not so extensive as is sometimes supposed. It is just hyperbole to suggest that all wars (because they are inherently violent, cruel, etc.) are always more costly than any of the "peace" options and, therefore, that all wars should be engaged in only as a last resort. In contrast, the proportionality standard in just war theory is not hyperbolic in this way. It says that "the damage to be inflicted and the costs incurred by war must be proportionate to the good expected by taking up arms" (U.S. Catholic Bishops, 1986:248). Although this version of proportionality does not explicitly say so, it suggests that some wars might just be less costly than some forms of "peace." My point is that last resort contradicts what proportionality suggests and that, of the two, the latter is more plausible.

So far I have presented two arguments against last resort. First, it is often very difficult, and at times impossible, to characterize operationally what 'last' means in last resort. Second, the implications of the last resort standard that not going to war ("peace" of a certain kind) is always better than a condition of war can be questioned.

III

In a sense, however, my attack on last resort is too strong. There is a point to it even if the hyperbole built into the expression 'last resort' encourages us to lose sight of it. Surely part of what this standard is telling us is that in many but not all circumstances we should not try war as a first resort, or possibly a second resort since war causes great harm and is notoriously unpredictable.

But what is right about last resort is, I think, only partly expressed diachronically in terms of numbers of resorts adopted. We can see this by trying to replace last resort (because of its faults) with a new numerical standard such as, "Don't choose war as your first, second, third or fourth option." If one conceives of war as an evil to be avoided whenever possible, this standard is certainly better than "Don't choose war as a first option." But the obvious question to ask here is: "Why stop at the fourth option?" That is, what logical, empirical, ethical, etc. principle informs us about where we should stop? It is pretty clear that for just war theorists no such principle exists.

But, then, how should a substitute standard be formulated so as to articulate what is right about last resort? Before answering this question, it is important to more fully understand this standard by

making one additional point about it. Last resort does not forbid going to war in certain circumstances as a first resort. It did not, for example, advise the Polish government in September 1939 to negotiate with the German government as the Wehrmacht was moving toward Warsaw. Nor did last resort advise as a first resort that the Polish government capitulate. The issue of capitulation is dealt with by the likelihood of success standard in just war theory; not by last resort. The point is that last resort is intended to apply only in situations where a nation has a choice of entering into a war (Cohen, 1989:64).

So the substitute criterion also need not apply to situations where a nation is under attack. It only needs to do what the last resort standard claims to do; only better.

How, then, should the substitute standard or criterion be stated? Unfortunately, there is no simple way. It must, I think, involve a two step process of assessment. The first step obligates the nation contemplating going to war to go through a process of identifying and characterizing the reasonable options (resorts) available to it including going to war. As a part of this process, it would likely become clear that even the war option is not unitary. That option might include air strikes only, some form of limited war, total war, etc. Whatever the number of reasonable options identified happen to be, the second step would involve ordering these options in such a way that one would be identified as most reasonable, another as second most reasonable, etc. The one, or the several, war options would be placed in the list along with the various non-war options. However, reflecting in part the force of last resort, there would be a

presumption that at least some non-military options would be chosen before any of the various military options. As a presumption, there is no necessity here. It could be the case, then, that in some special situations where a nation had a choice, certain war options would come first or near first. But for most settings, negotiation, sanctions and other like options would be tried before any of the war options were chosen. In this way, part of the motive of the last resort standard would be satisfied: viz., the part that says a nation should not enter a war precipitously.

Three final points are in order. First, like last resort, a reassessment would be required under our new standard after each option is chosen. That would obviously be the reasonable thing to do since, with the passage of time and the changes brought about by actually acting on the first, second, etc. options, the overall situation could likely change enough so as to make earlier calculations obsolete. In theory, however, such a reassessment could make our new criterion open-ended like the last resort standard. If it did, then the new standard would be no better than the old one. This leads to the second point. The main way our new standard differs from last resort is in discouraging the tendency toward open-endedness. It does this in two ways. First, as has been explained, it does not automatically rank the war options last (whatever that means) and so in some sense is somewhat more permissive when it comes to starting a war than is the the last resort standard. Second, by stressing the notion of reasonable options, it limits the options available for choice to a certain number. To be sure, the notion of reasonable is extremely vague and possibly ambiguous; and thus is subject to a

variety of interpretations. So it is possible for some people to assess a situation where war threatens in such a way that almost any option that avoids war is labelled reasonable. In this way the new standard could be twisted so as to receive an open-ended interpretation just like the old one. However, most "reasonable" interpretations of reasonable will encourage us to limit our options and thereby help us avoid openendedness. Third, and finally, what quick label, comparable to last resort, should be used for the new standard? I have already suggested non-hasty resort. This name reflects the sense of the last resort criterion that going to war is pretty serious business into which only fools rush in. At the same time, it does not suggest, as last resort can be interpreted as suggesting, that war is so evil that it ought never be chosen as a reasonable option.

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