

# Just War Tradition and the Ethics of War



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# Hagar the Horrible



# Foreword: graduate-level education

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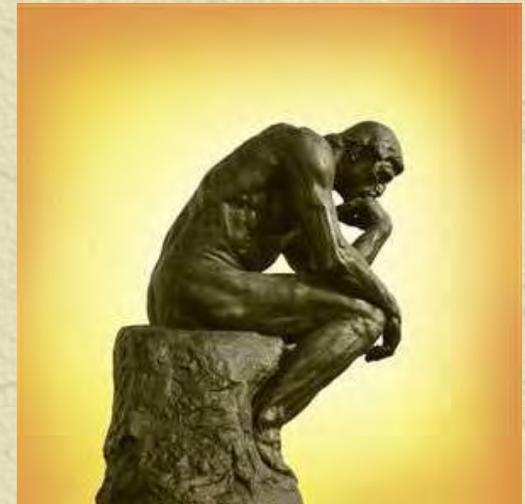
## ✦ Opportunity for critical thinking

- ◆ Pros and cons
- ◆ Thesis, antithesis and synthesis
  - Argument and counter-argument

## ✦ Education cf. training

## ✦ Ethics (Course DS541- “Leadership and Ethics”)

- ◆ Deep-seated sense of Right and Wrong
- ◆ Lots in between!
  - Absolute and relative
  - Objective and subjective
  - Institutional and personal



# Ethics and law

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- ◆ Generally “the moral leads the legal”
    - Ethical impulse to developing laws  
E.g., divine right of kings, feudalism, slavery, women’s suffrage, colonialism, nuclear testing, LOAC
  - ◆ But laws help create new ethical “norms”
- ⇒ “Inform” each other

## JCSP Activities

- ✦ Legal Obligations Affecting the Use of Force (DS-544/FUN/LE-14, DI-2)
- ✦ Legal Factors Affecting the Selection and Employment of Weapons During International Operations (DS-544/FUN/LE-12)
- ✦ Joint Targeting (DS-544/FUN/LE-13)
- ✦ Obligations Affecting the Use of Force (DS-544/FUN/LE-14)
- ✦ Legal Implications of Domestic Operations (DS-546/DOM/LD-2)

**To shoot or not to shoot?**

**When to apply lethal force?**



Personal

National

International

# Just War Tradition: Overview and Critique



# Philosophies (“isms”) on the use of force

**Pacifism**



**Pacifism**

**Anarchism**



# Quintessential Quotes

**Pacifism**

**Anarchism**

*Sermon on the Mount:*  
“whosoever smiteth thee  
on thy right cheek, turn to  
him the other also.”

*Immanuel Kant:*  
“No state shall forcibly  
interfere in the  
constitution and  
government of another  
state”

*Melian dialogue:*  
“the strong do what they  
want and the weak  
suffer what they must.”

*Thomas Hobbes:*  
“war of all against all. ...  
life of man, solitary,  
poor, nasty, brutish, and  
short”

# “isms”

Pacifism

Anarchism



Humanism

Fascism

Legalism

Militarism

Idealism

Realism (*Realpolitik*)

Liberalism

Conservatism

**PRINCIPLE**

**POWER**

*Values*

*Interests*

# Just War Part of the Spectrum

**Pacifism**

**Anarchism**



Just War:  
wide range of application



# President Obama on Just War

Over time, as codes of law sought to control violence within groups, so did philosophers, clerics, and statesmen seek to regulate the destructive power of war. The concept of a “**just war**” emerged, suggesting that war is justified only when it meets certain **preconditions**: if it is waged as a **last resort** or in **self-defense**; if the force used is **proportional**, and if, whenever possible, **civilians** are spared from violence. ....

I do not bring with me today a definitive solution to the problems of war. ... it will require us to **think in new ways** about the notions of **just war** and the imperatives of a **just peace**.

— US President Barack Obama,  
Nobel Peace Prize Ceremony,  
Oslo, 10 December 2009  
(emphasis added)



# Just War tradition

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✦ Tradition, theory, doctrine, concept

- James Turner Johnson, Michael Walzer

✦ “Presumption of peace” →

- ◆ No war except under certain preconditions
- ◆ 4 to 8 preconditions

# Basic questions about armed force

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- ✦ **Why?**
- ✦ **Who?**
- ✦ **When?**
- ✦ **What?**
- ✦ **Where?**
- ✦ **How?**

# Answering the basic questions

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- ✦ Why? Just cause, Right intent,  
Net benefit
- ✦ Who? Legitimate authority
- ✦ What? Proportionate means
- ✦ When? Last resort
- ✦ Where? Military not civilian targets
- ✦ How? Right conduct (*in bello*)

# Just War Criteria

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✦ Just cause *Jus ad bellum*

✦ Right intent

✦ Legitimate authority

✦ Net benefit (proportionality of ends)

✦ Last resort

✦ Right conduct *Jus in bello*

✦ Proportionality of means

✦ Non-combatant distinction

✦ Military necessity

# Strengths

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## ✦ Scope

- ◆ Not so specific as to apply to limited number of cases
- ◆ Not so general as to render little guidance

## ✦ Room for interpretation

- ◆ Different Just War theorists give different interpretations
- ◆ General agreement on most criteria

# Other criteria?

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## ✦ Reasonable hope of success

- ◆ Included in Net Benefit

## ✦ Aim of peace

- ◆ Included in Just Cause and Right Intent

## ✦ Public declaration of war

- ◆ Formal declaration rare; public explanations expected from legitimate authority

## ✦ *Jus post bellum* (aftermath of war)

- ◆ Included in just cause, net benefit

# Critiques of JW tradition

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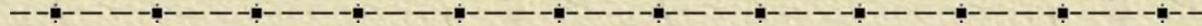
- ✦ Pacifist: too permissive
  - ◆ Not principled enough (Calhoun reading)
  
- ✦ Realpolitik (realist/militarist): too constraining
  - ◆ Not realistic (too moralistic)
  - ◆ National interests predominate not values/ideals
  
- ✦ Subjective interpretation
  - ◆ Too binding: difficult to satisfy all criteria, Just Cause sufficient (“*just do it!*”)
  - ◆ Too free: construct arguments easily, checklist pitfall
  
- ✦ Real situations not binary, yielding Yes/No answers
  - ◆ Just or Unjust War
  - ◆ How just does an operation need to be?

Response: It is a framework for analysis

# Ethical philosophies: primary considerations

	Utilitarian	Deontological	Virtue
Just cause	X		X
Right intent		X	<u>X</u>
Legitimate authority		X	
Net Benefit	<u>X</u>		
Last resort			
Right conduct		<u>X</u>	X

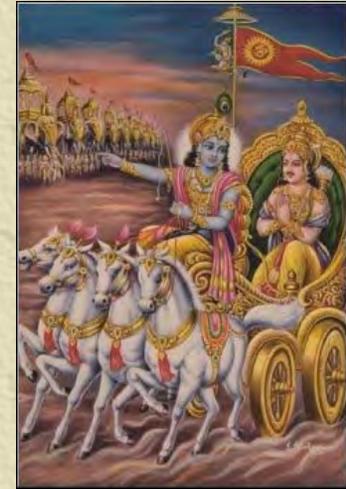
# Historical development of Just War tradition



# Ancient antecedents

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- ◆ India
- ◆ China, Babylon
- ◆ Romans (Classical)
  - College of Fetiales
    - ◆ Demand of redress
    - ◆ Formally proclaim war
    - ◆ Spear-throwing rite
  - Cicero
    - ◆ “no just war can be waged except for the purpose of punishment or repelling enemies”
    - ◆ “the only excuse ... for going to war is that we may live in peace unharmed.”



◆ Chivalry

# Just War & Early Christianity

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- ◆ Bible: Old and New Testaments
  - Vengeance to forgiveness

- ◆ Catholic theologians

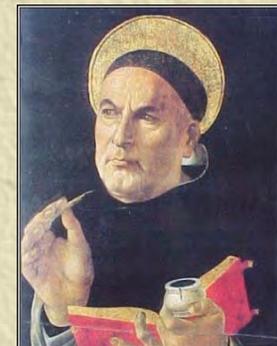
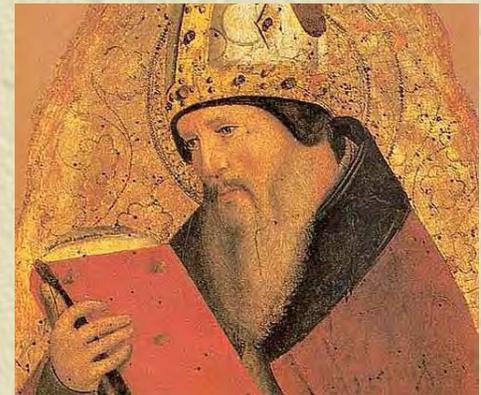
- St. Augustine (4<sup>th</sup> Century):

*Jus Ad bellum*

- ◆ Right (Just) cause
  - ◆ Defence of neighbour, not of self
- ◆ Right intention
  - ◆ Love thine enemy
- ◆ Right authority
  - ◆ Ruler

- Thomas Aquinas

- ◆ Proportionality of ends and Necessity



# Natural law and international law (Legalists)

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## ◆ De Victoria

- Codified Just War theory

### Added:

- Last resort
- Reasonable hope of success



## ◆ Hugo Grotius

- Father of international law
- Legitimate targets (only combatants)
- Proportionality of means
- Treatment of prisoners

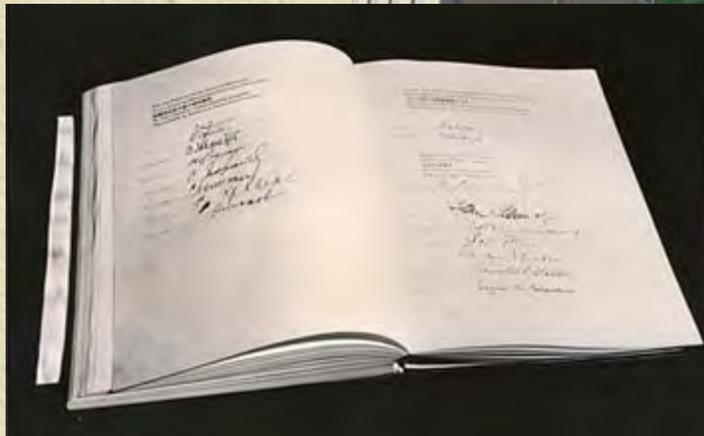
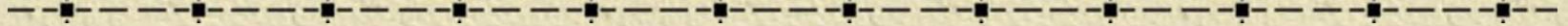


# Evolution of international law

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- ✦ Hague Conventions
- ✦ Geneva Conventions
- ✦ Military manuals on LOAC
- ✦ League Covenant
- ✦ UN Charter
- ✦ Treaties (arms control)

# United Nations Charter



# Just War Criteria in UN Charter

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## Just Cause

Art. 2(4): **refrain from use of force**

Art. 42: the Security Council ... take action as **necessary to maintain or restore international peace and security**

Art. 51: ... inherent right of individual or collective **self-defence** if an armed attack occurs

## Right Intent

Preamble: Peoples of the United Nations determined to **save succeeding generations from the scourge of war**, ... armed force shall not be used, **save in the common interest ....**

## Legitimate Authority

Art. 24: ... Members confer on the Security Council **primary responsibility** for the maintenance of international peace and security...

Art. 25: The Members of the United Nations agree to **accept and carry out the decisions** of the Security Council in accordance with the present Charter.

Art. 42: the Security Council ... take action as **necessary to maintain or restore international peace and security**

Art. 53: But no enforcement action shall be taken under regional arrangements or by regional agencies without the **authorization** of the Security Council ...

# Just War Criteria in UN Charter (cont'd)

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## Last Resort

Art. 33: parties to seek a solution by **peaceful** means

Art. 41: The Security Council may decide what **measures not involving the use of armed force**

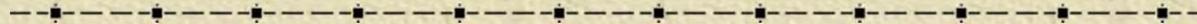
Art. 42: Should the Security Council consider that measures provided for in Article 41 would be **inadequate** or have proved to be inadequate, it may take such **action** by air, sea, or land forces as may be **necessary** to maintain or restore international peace and security....

## Right Conduct

Art. 55: promote universal respect for **human rights**

Criteria not explicitly included: Proportionality of ends (net benefit); proportionality of means.

# The Criteria



# 1. Just Cause

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## ✦ Self-defence

- ◆ Personal to collective (for “neighbours”)
  - Pre-emptive/Preventive?

## ✦ Law enforcement

## ✦ “Right a wrong”

- ◆ Meaning change over time

## ✦ Punishment

- ◆ “revenger to execute wrath upon him that doeth evil.”  
(Romans 13:4)

## ✦ Revenge?

# Caroline case: Defining self-defence

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- ✦ US-UK dispute 1837
- ✦ Canadian rebels, led by William Lyon Mackenzie, seeking a republic of Canada
- ✦ Retreated after failed Upper Canada Rebellion
- ✦ Resided on Canadian Island on Niagara River
- ✦ American sympathizers supplied money, provisions & arms via the steamboat SS Caroline
- ✦ December 29: Canadian militia crossed international boundary and seized the Caroline
- ✦ One American died
- ✦ Set ship afire and cast adrift over the Falls
  - ◆ pieces went over the falls

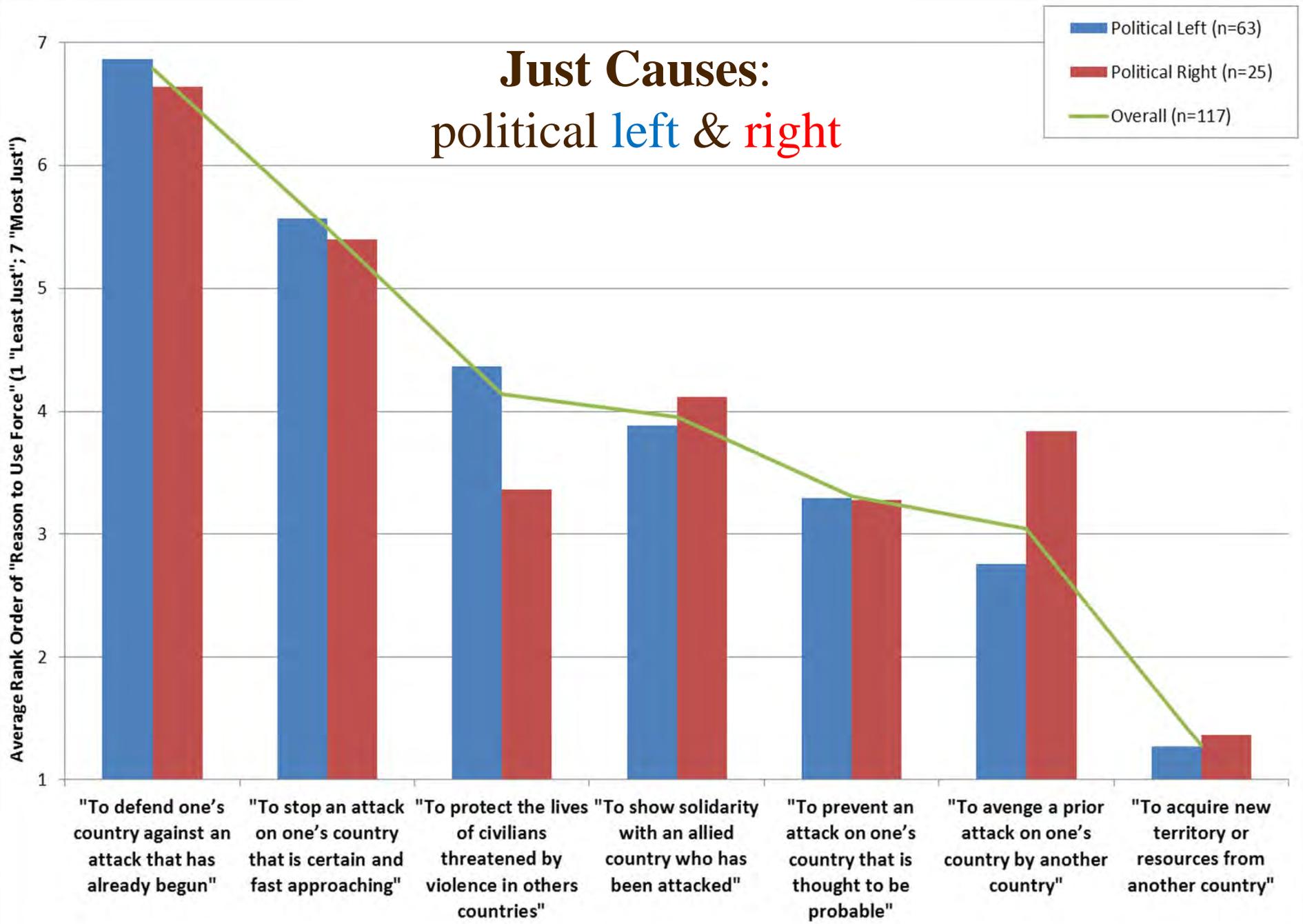


# Webster-Ashburton correspondence

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- ✧ U.S. Secretary of State Daniel **Webster** wrote to the British Ambassador Henry Fox articulating a standard requiring (April 1841)
- ✧ “Necessity of self-defence, **instant, overwhelming, leaving no choice of means, and no moment of deliberation.** ... the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.”
- ✧ Britain's Lord Ashburton, to whom the contents of Webster's letter had been shared in the form of a Note, *accepted* the proposed formula (July 1842)
- ✧ “Caroline standard” debated
- ✧ Moving from moral to legal

# Just Causes: political left & right



## 2. Right Intent

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Interpretations:

- ✦ To establish peace
- ✦ Degree to which actual motivation is same as declared motivation

# 3. Legitimate Authority

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## ✦ Tradition: only states

- ◆ “Princes” in St. Augustine
- ◆ “Knightly class”, *Kshatriya* (warrior-ruler)
- ◆ No private armies/wars

## ✦ Modern

- ◆ National
  - Parliament, Congress (debates)
- ◆ International
  - Security Council authorization
  - Unresolved tensions in international law (R2P)

# 4. Proportionality of Ends

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✦ Aka Net benefit

✦ To whom?

- ◆ User of force

- ◆ Host state

- ◆ International community

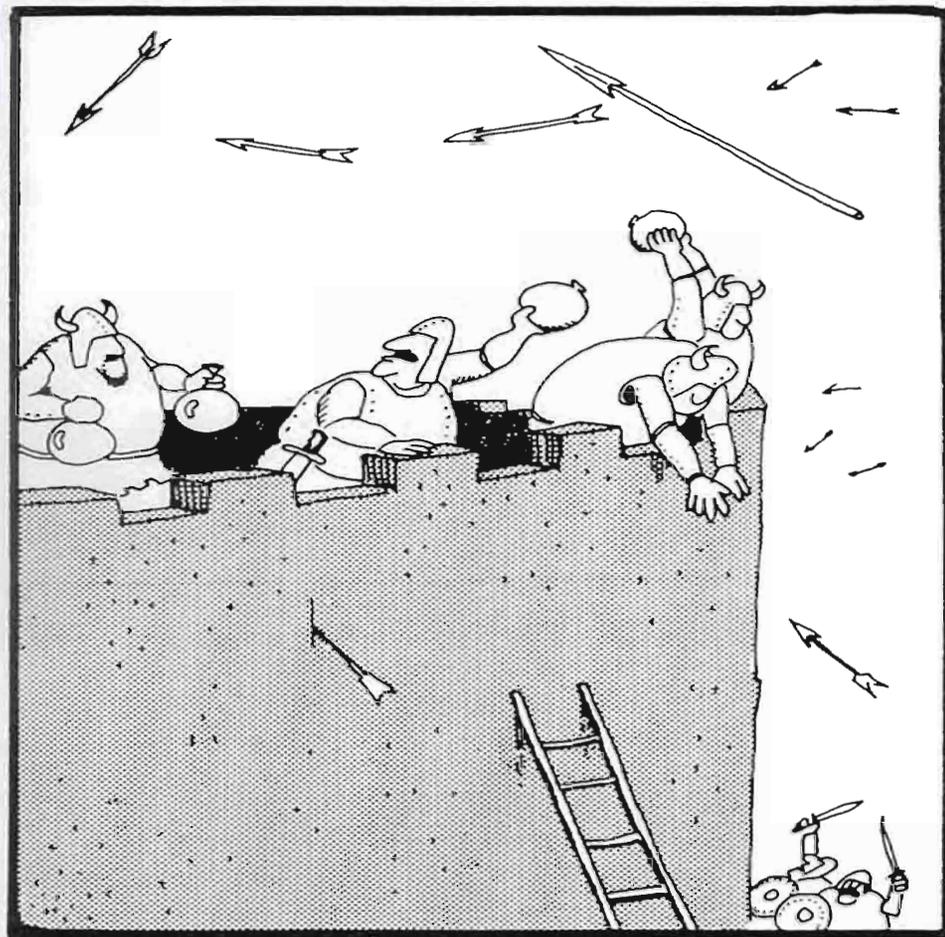
✦ What length of time?

## 5. Last Resort

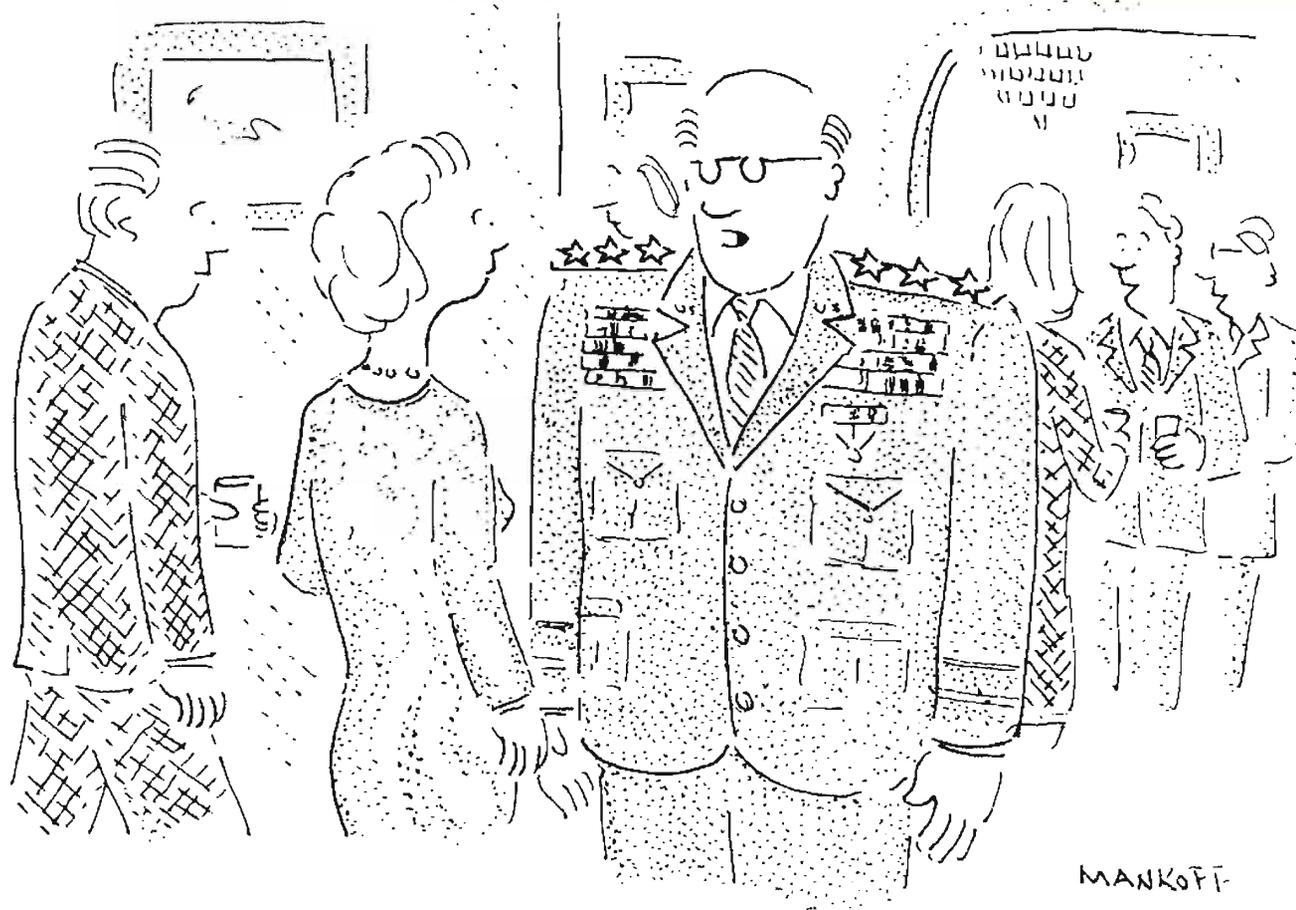
- 
- ✦ Attempt non-violent means
  - ✦ Harm to public with sanctions
  - ✦ Attempt even if certain to fail?
  - ✦ How long to wait?

# 6. Right Conduct

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- ✦ Combatant/non-combatant distinction
  - ✦ Military necessity
  - ✦ Proportionality of means



"Hot oil! We need hot oil! . . . Forget the water balloons!"



*"Look, I'd like to avoid overkill, but not at the risk of underkill."*

# Overkill?

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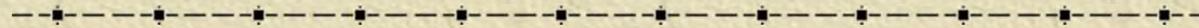
Hiroshima (1945):

estimated 140,000 deaths (in 6 months)  
from explosion, heat, fireball and radiation





# Applying JW Criteria to Specific Wars Since 1900

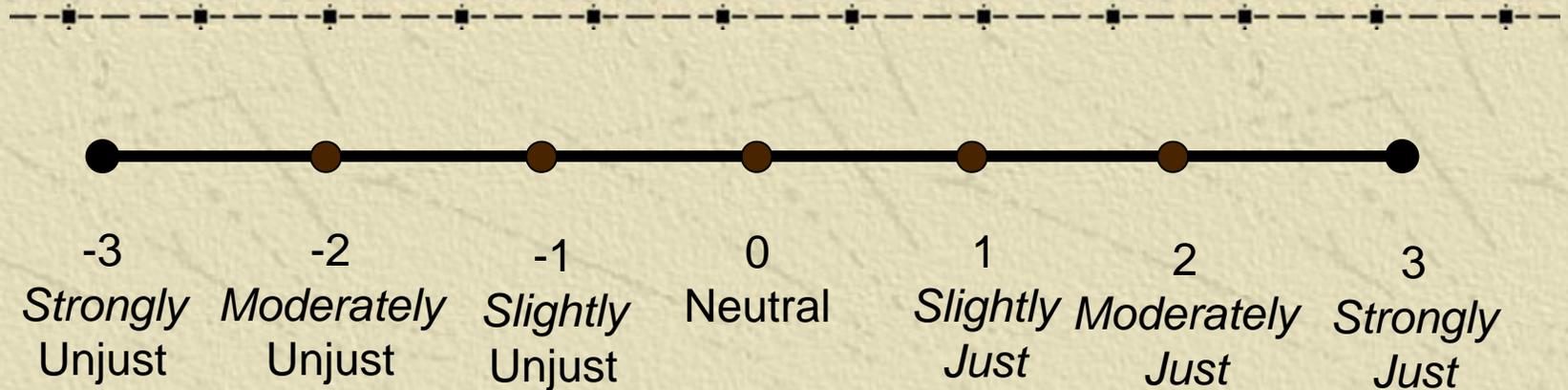


Canadian armed conflicts (12)

&

American armed conflicts (18)

# Degree of justification



Seven point spread:        -3 to +3

Seven Criteria:

*Just Cause, Right Intent, Legitimate Authority, Net Benefit, Last Resort, Proportionality of means, Right Conduct*

Just War Index: Average over all criteria

# Comparing Gulf War I and II

Walter Dorn's evaluation (2008)

	Gulf War I (1991)	Gulf War II (2003)
Just Cause	+2	-1
Right Intent	+2	0
Net Benefit	+2	-2
Legitimate Authority	+3	-2
Last Resort	+2	-2
Proportionality of Means	+2	-2
Right Conduct	+1	+1
<i>Average</i>	+2.0	-1.1

# Comparing Gulf War I and II

Results of a survey of 106 “experts” (Ph.D.s working on international affairs)

	Gulf War I (1991)	Gulf War II (2003)
Just Cause	+1.9	-1.7
Right Intent	+1.6	-1.3
Net Benefit	+2	-2
Legitimate Authority	+2.2	-0.6
Last Resort	+1.2	-1.5
Proportionality of Means	+1.1	-0.9
Right Conduct	+1.1	-1.0
<i>Average</i>	+1.5	-1.2
<i>(Percentage, 6 point scale)</i>	<i>(75%)</i>	<i>(30%)</i>

Source: Just War Survey by W. Dorn, D. Mandel and R. Cross, 2010-11

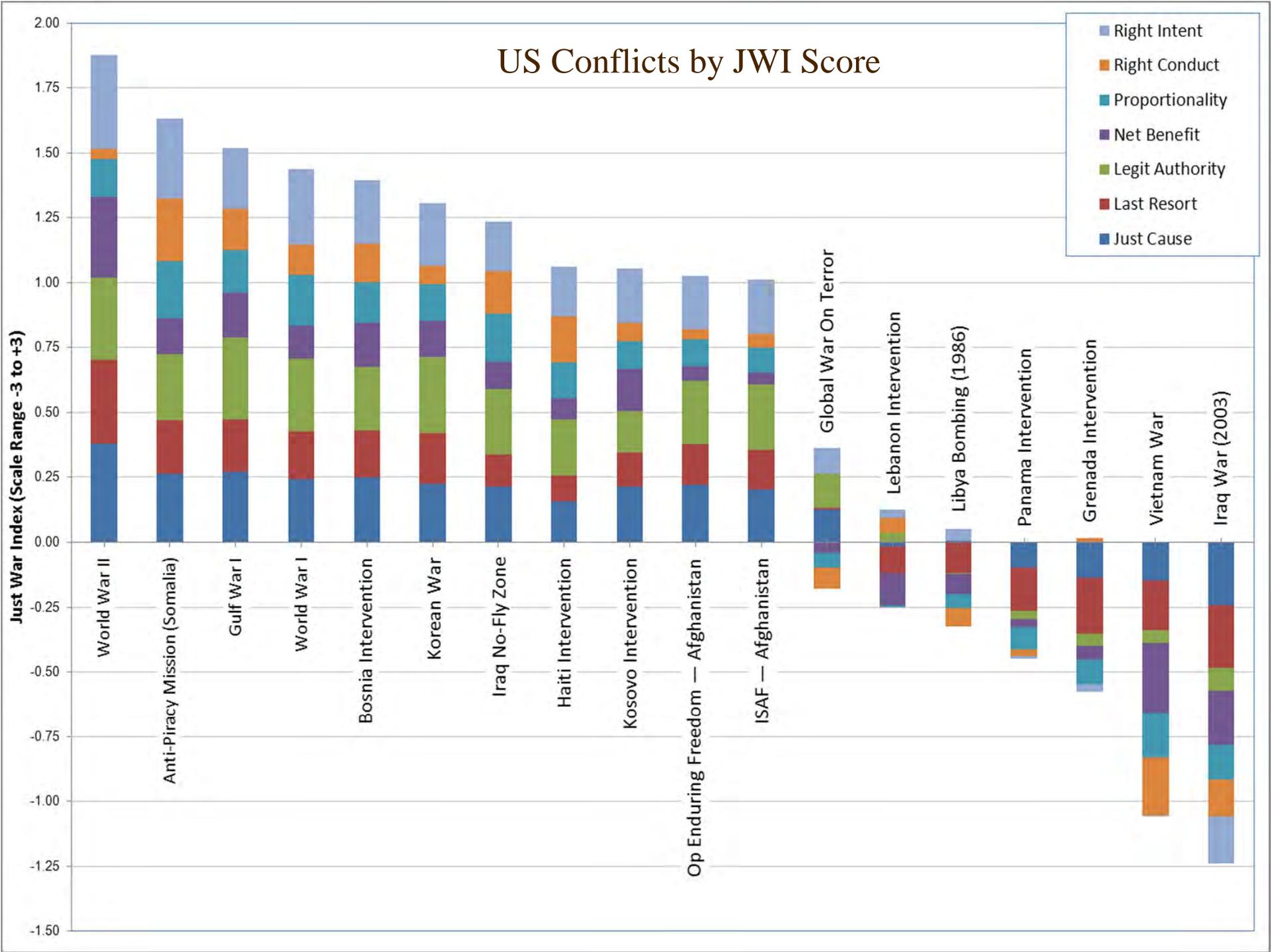
# Expert Survey: Questionnaire

To what extent do you agree or disagree that the U.S. had *Just cause* [or other criterion] to use armed force in the following conflicts?

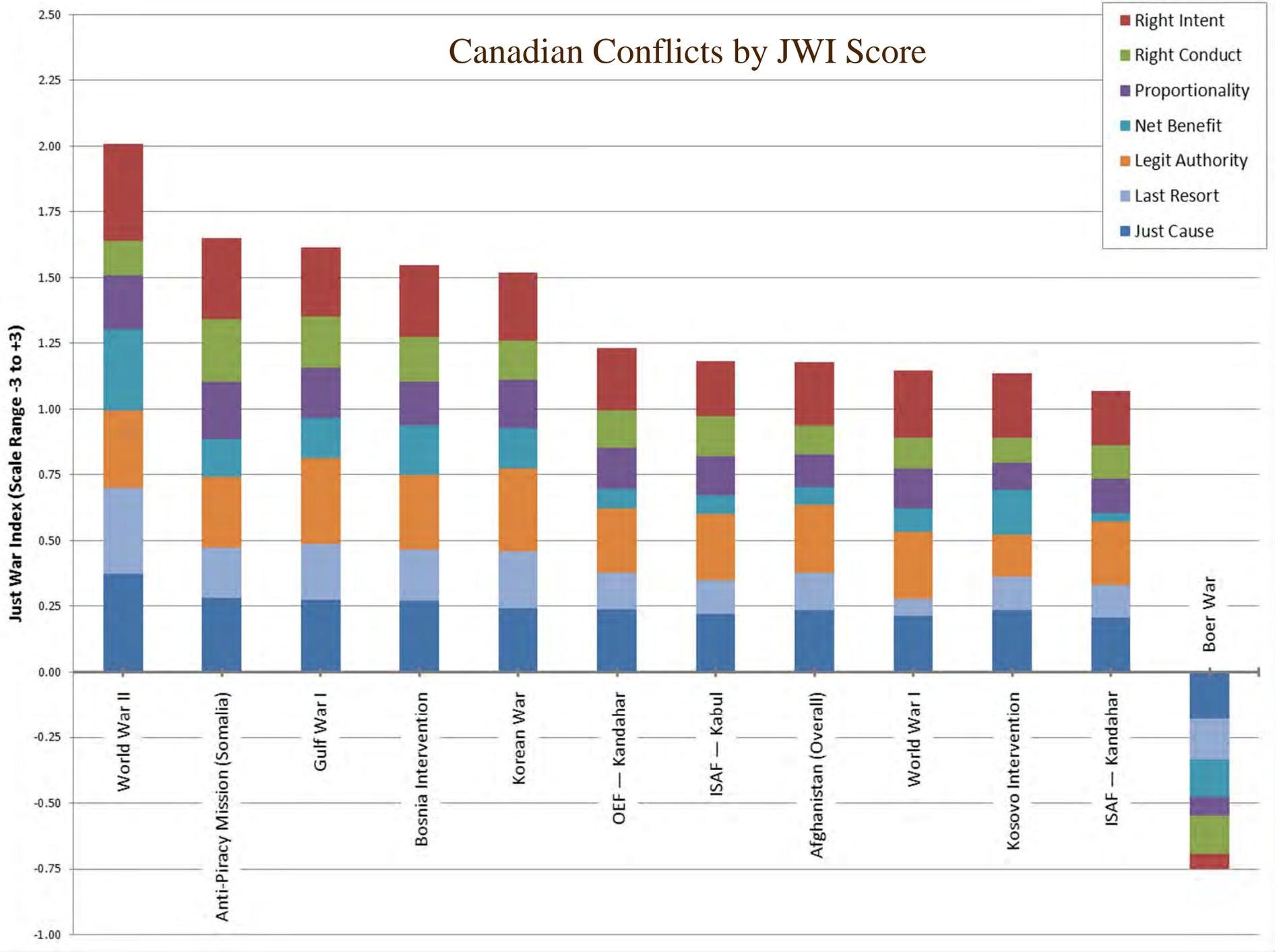
*Circle one per conflict:*

U.S. Conflicts	Strongly Disagree	Moderately Disagree	Slightly Disagree	Neutral	Slightly Agree	Moderately Agree	Strongly Agree	Unfamiliar with Conflict
World War One (1914-1918)	-3	-2	-1	0	1	2	3	?
World War Two (1941-1945)	-3	-2	-1	0	1	2	3	?
Korean War (1950-1953)	-3	-2	-1	0	1	2	3	?
First Gulf War (1991)	-3	-2	-1	0	1	2	3	?
.....	-3	-2	-1	0	1	2	3	?

# US Conflicts by JWI Score



# Canadian Conflicts by JWI Score



# Applications: Debatable issues

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✦ Weighting of criteria

✦ Non-traditional conflicts

◆ Terrorism, civil wars

✦ Scalability:

strategic/operational/tactical

◆ Just Cause → purpose of an action

◆ Right intent → Commander's intent

◆ Legitimate authority → commander giving lawful order

◆ Last resort → military necessity

◆ Proportionality of ends → Proportionality of means

# Conclusions

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- ✦ A framework for analysis; not “the answer”
  - ◆ Subjective vs objective
  - ◆ Apply opinions and argument *with* evidence and facts
  
- ✦ Elements of JW theory needed to convince and lead population, soldiers and partners

"The moral is to the physical  
as  
three is to one."

— Napoleon Bonaparte

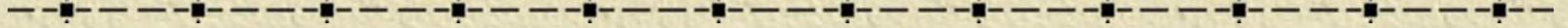
# Teaching Points

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- ✦ An overview of the **historical development** of Just War Theory.
- ✦ The **relationship** of Just War Theory to political realism and pacificism.
- ✦ Considerations for the **use** of the Just War tradition.
- ✦ The **relationship** of the Just War tradition, International Law, and International Humanitarian Law (The Laws of War or the Law of Armed Conflict).
- ✦ The **utility** of the Just War tradition in contemporary conflict.

# Hagar the Horrible





*LET THE DISCUSSION*

*BEGIN!*

