

Just War Tradition and the Ethics of War



Dr. Walter Dorn
Canadian Forces College

Joint Command and Staff Programme (JCSP) 39
4 September 2012

Hagar the Horrible



Foreword: graduate-level education

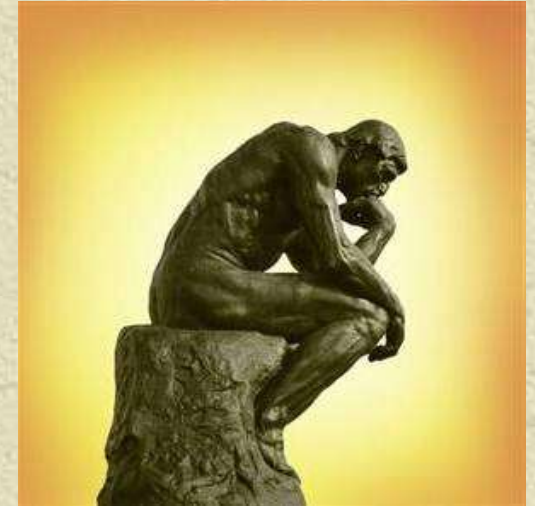
✧ Opportunity for critical thinking

- ✧ 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, national (legal) and personal



Ethics and law

- ◆ 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

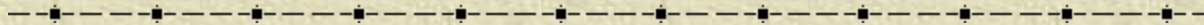
JCSP Activities

- ✱ 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?



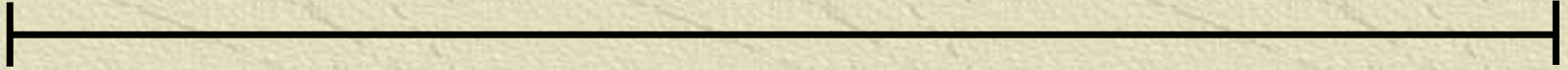
Tactical Operational Strategic

Just War Tradition: Overview, Criteria and Critique



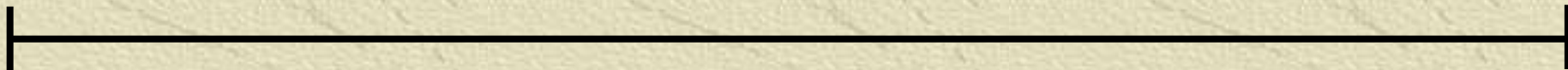
Philosophies (“isms”) on the use of force

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

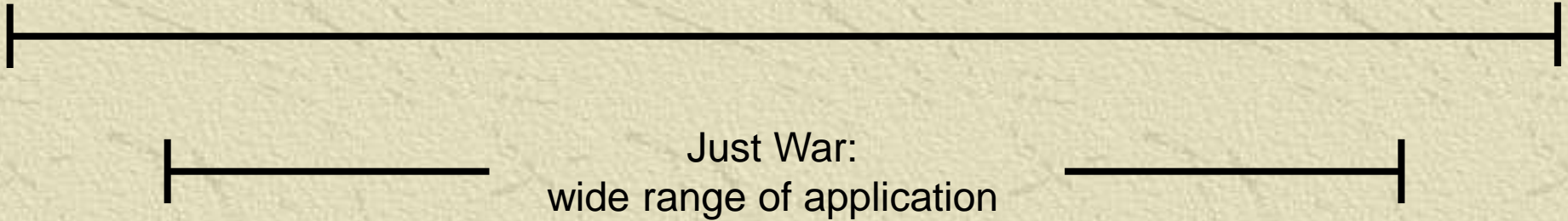
Values

Interests

Just War Part of the Spectrum

Pacifism

Anarchism



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

✠ 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

Why?

Who?

When?

What?

Where?

How?

Answering the basic questions

Why?	Just cause, Right intent, & Net benefit
Who?	Legitimate authority
What?	Proportionate means
When?	Last resort
Where?	Military not civilian targets
How?	Right conduct (<i>in bello</i>)

Just War Criteria

✠ 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

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?

✦ 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

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

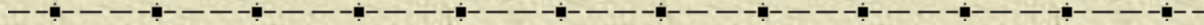
- ◆ Just or Unjust War
- ◆ How just does an operation need to be?

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

- ◆ 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

◆ Bible: Old and New Testaments

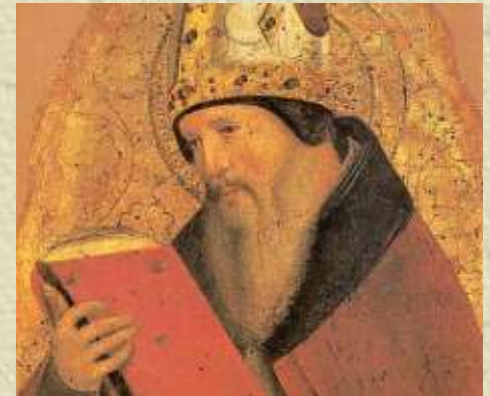
- Vengeance to forgiveness

◆ Catholic theologians

- St. Augustine (4th 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)

◆ De Victoria

- Codified Just War theory

Added:

- Last resort
- Reasonable hope of success



◆ Hugo Grotius

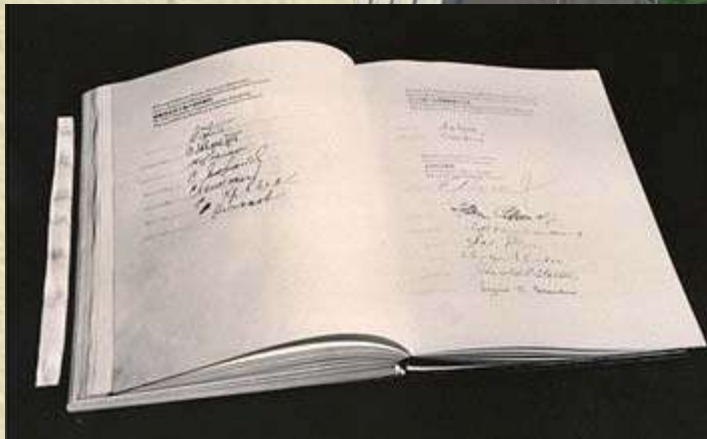
- Father of international law
- Legitimate targets (only combatants)
- Proportionality of means
- Treatment of prisoners



Evolution of international law

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

United Nations Charter



Just War Criteria in UN Charter

Presumption of peace:

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

Just Cause

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)

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

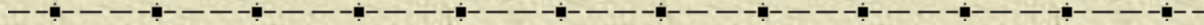
Art. 42: Should the Security Council consider that measures provided for in Article 41 would be **inadequate** or have proved to be inadequate, it may take such **action** by air, sea, or land forces as may be **necessary** to maintain or restore international peace and security....

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

✦ 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

✧ US-UK dispute 1837

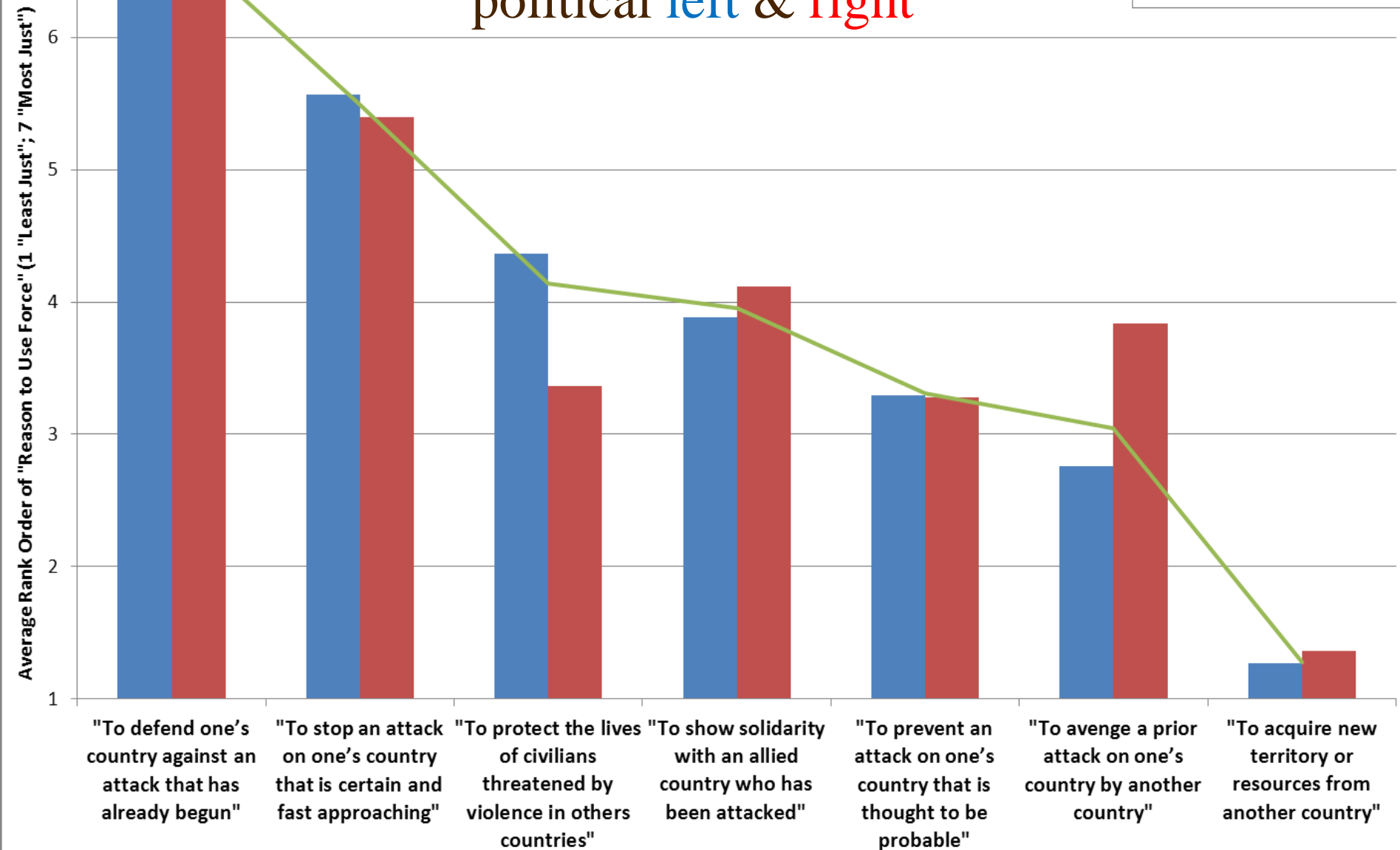


Webster-Ashburton correspondence

- ✧ 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”
- ✧ Moving from moral to legal

Source: <http://www.thefreelibrary.com/A+question+of+determinacy:+the+legal+status+of+anticipatory...-a0195265741>

Just Causes: political left & right



2. Right Intent

Interpretations:

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

3. Legitimate Authority

✧ 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

✦ Aka Net benefit

✦ To whom?

- ✦ User of force

- ✦ Host state

- ✦ International community

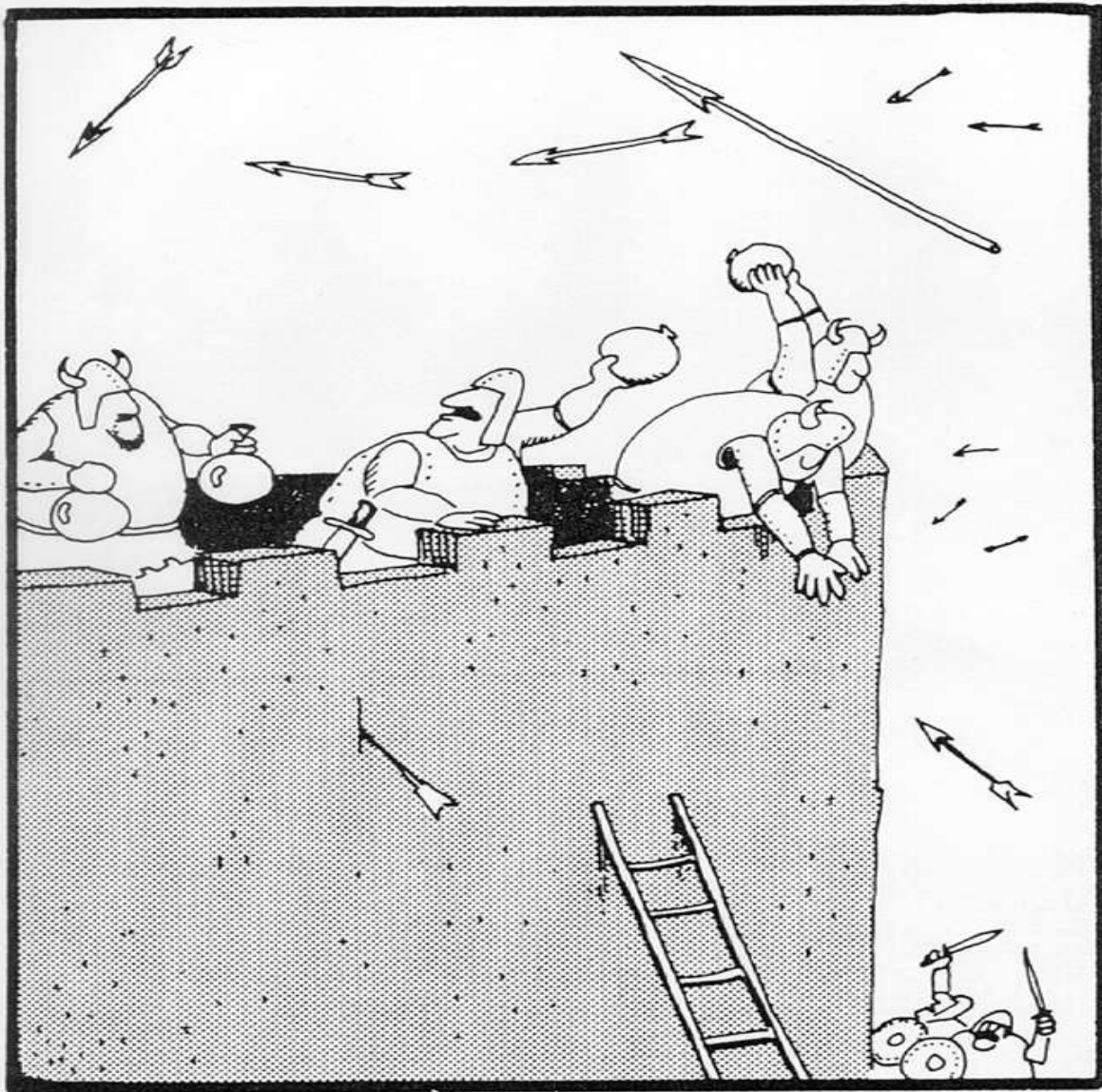
✦ What length of time?

5. Last Resort

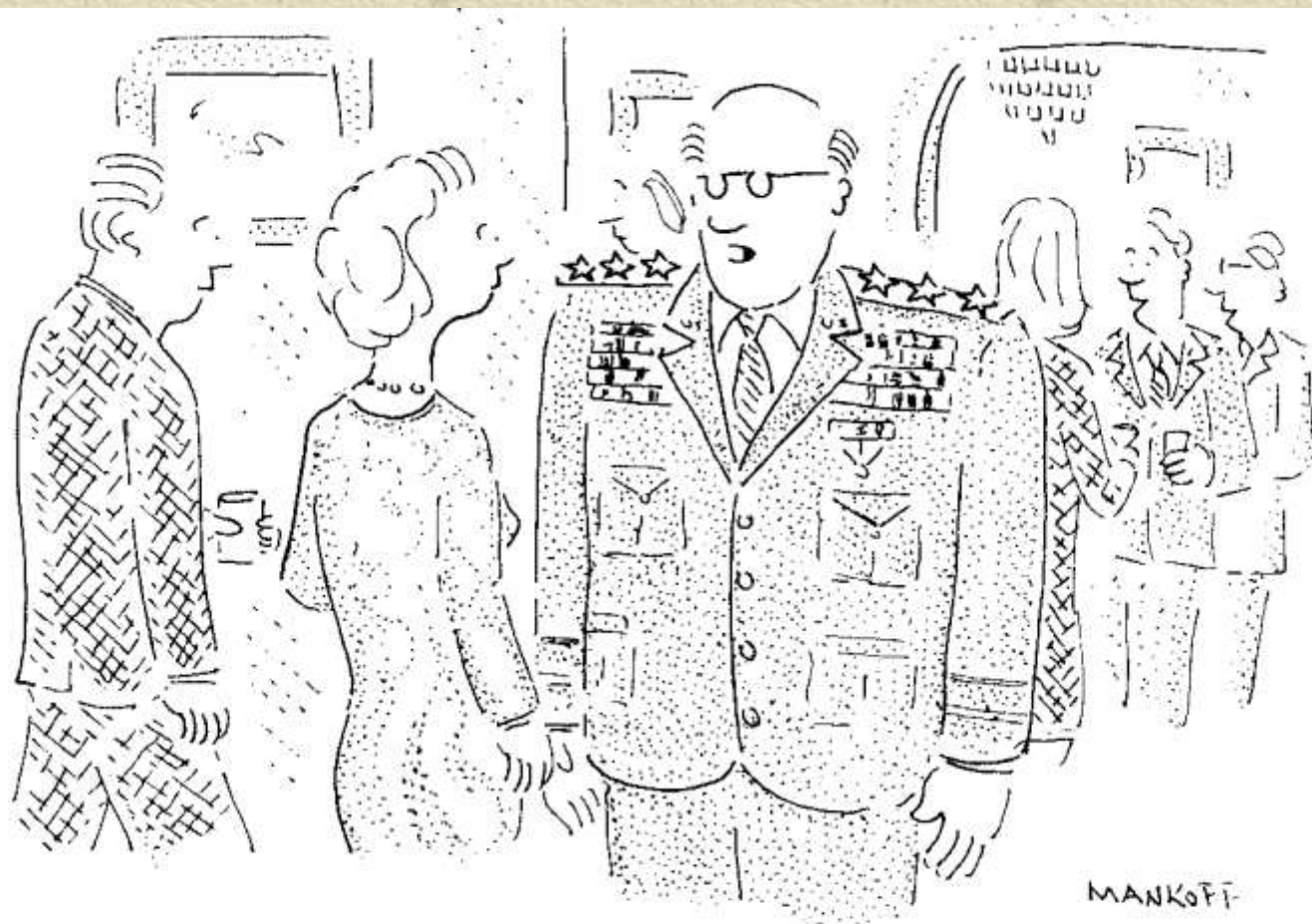
- ✦ Attempt non-violent means
- ✦ Harm to public with sanctions
- ✦ Attempt even if certain to fail?
- ✦ How long to wait?

6. Right Conduct

- ✠ 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?

Hiroshima (1945): estimated 140,000 deaths (in 6 months) from explosion, heat, fireball and radiation; civilian distinction in total war?



Cases from LOG: Sinking of the *Admiral Belgrano*; 1991 Gulf War "Highway of Death"; 1999 NATO air campaign against Serbia



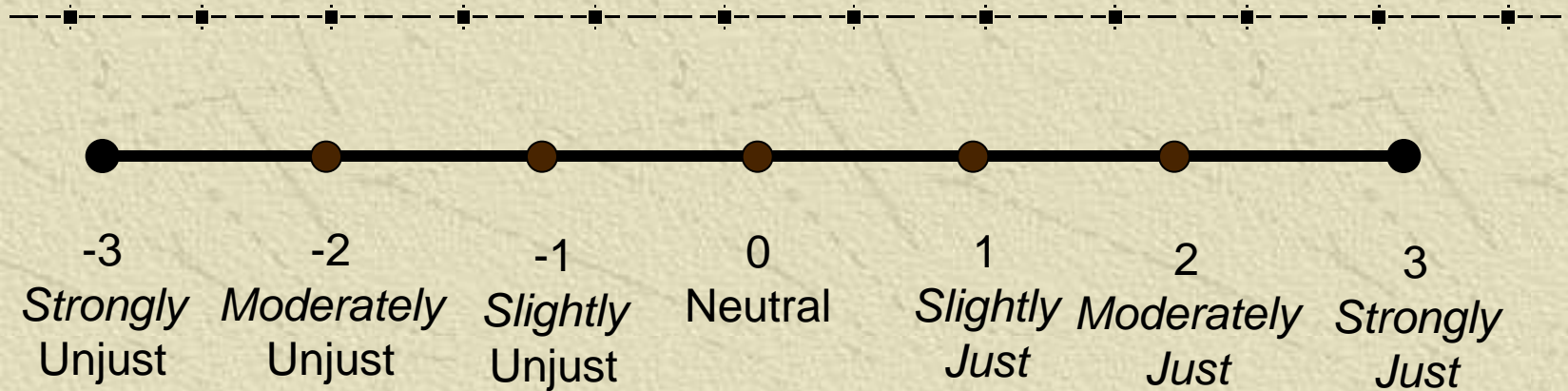
Applying JW Criteria to Specific Wars Since 1900

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>

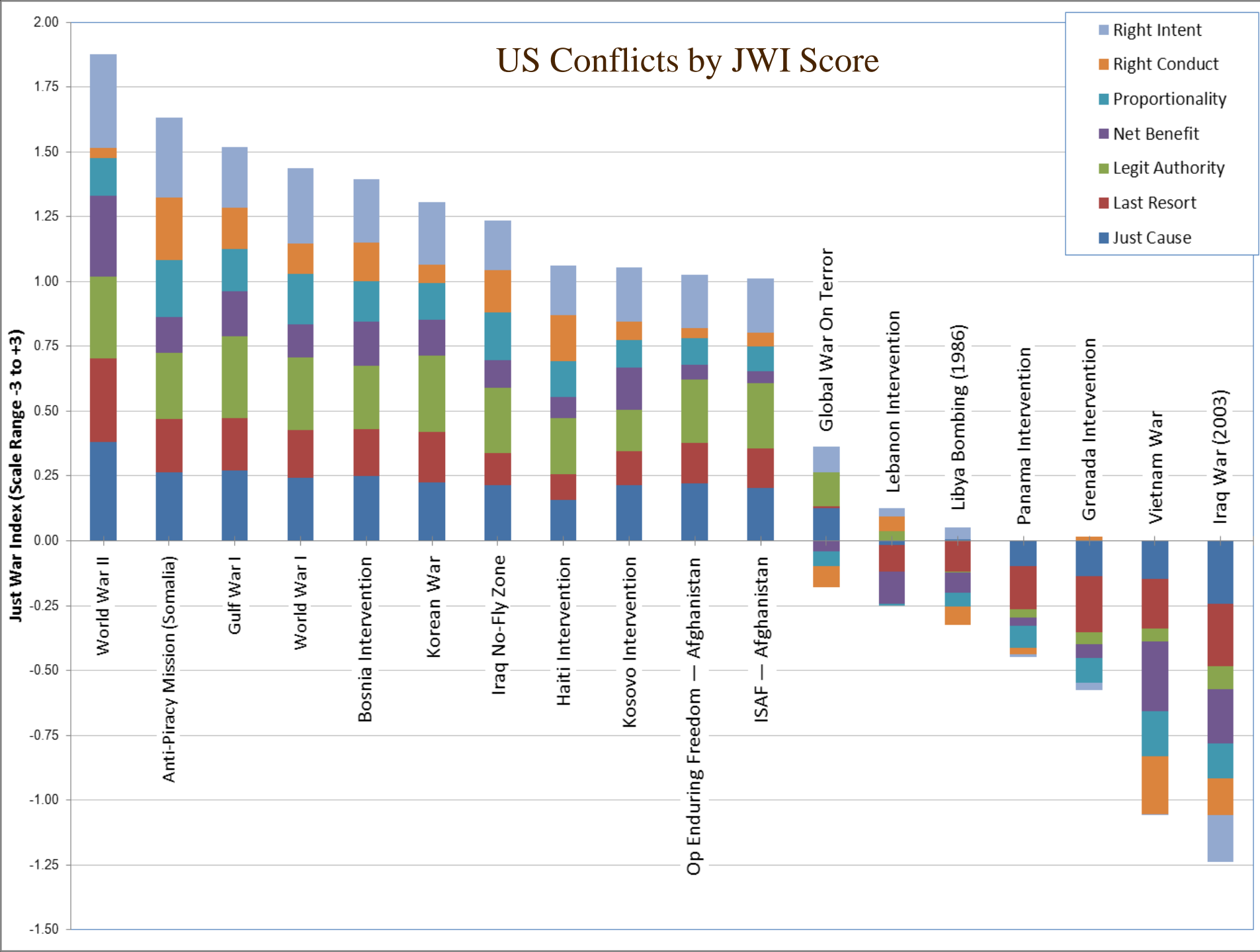
Expert Survey: Questionnaire

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:

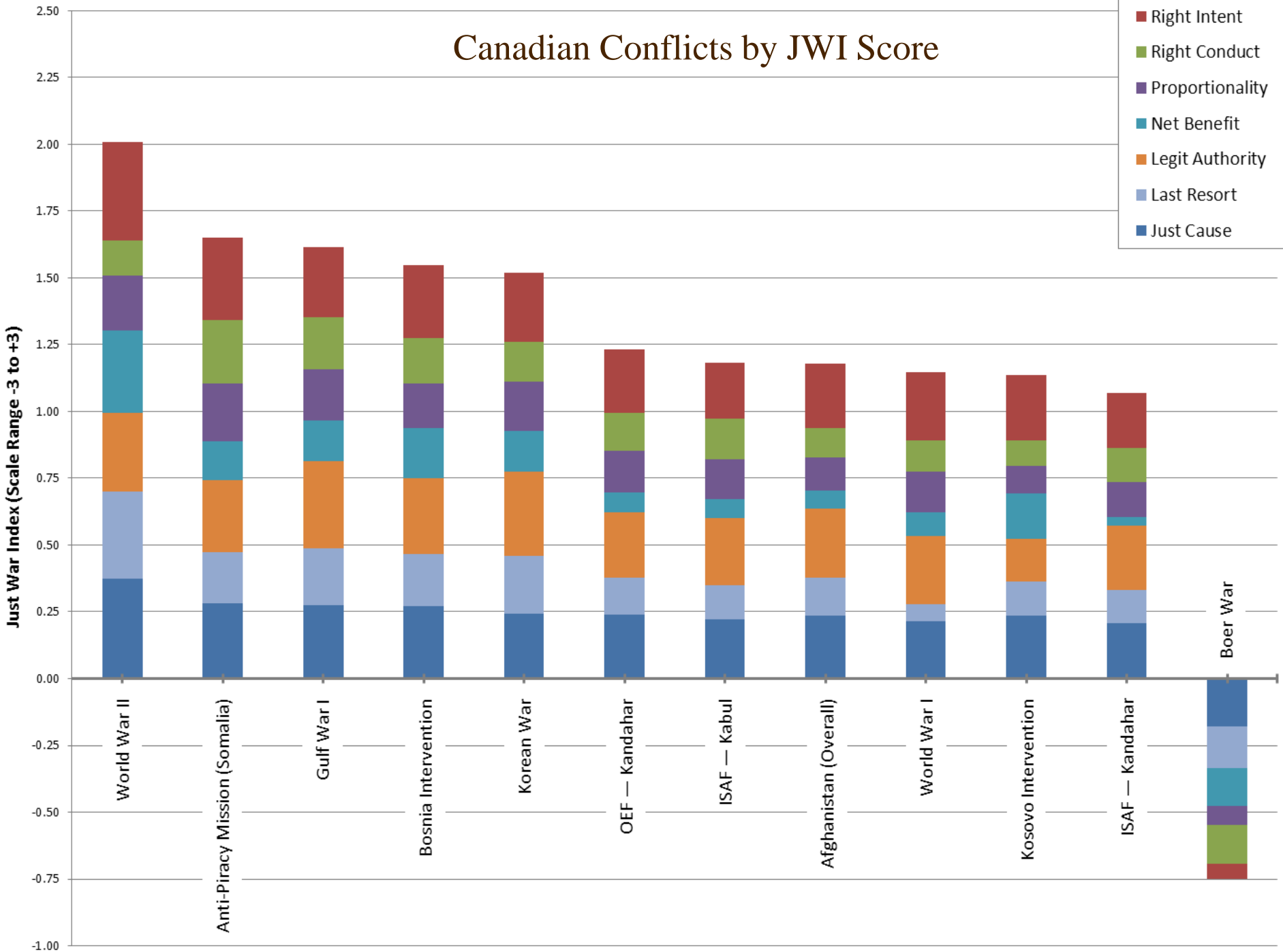
U.S. Conflicts	Strongly Disagree	Moderately Disagree	Slightly Disagree	Neutral	Slightly Agree	Moderately Agree	Strongly Agree	Unfamiliar with Conflict
World War One (1914-1918)	-3	-2	-1	0	1	2	3	?
World War Two (1941-1945)	-3	-2	-1	0	1	2	3	?
Korean War (1950-1953)	-3	-2	-1	0	1	2	3	?
First Gulf War (1991)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

US Conflicts by JWI Score



Canadian Conflicts by JWI Score

- Right Intent
- Right Conduct
- Proportionality
- Net Benefit
- Legit Authority
- Last Resort
- Just Cause



Just War: Debatable issues

✧ 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

- ✦ 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."

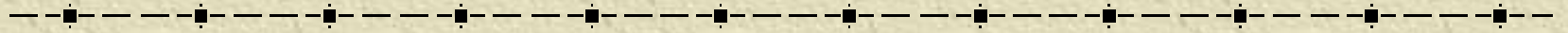
— Napoleon Bonaparte

Teaching Points

- ✧ An overview of the **historical development** of Just War Theory.
- ✧ The relationship of Just War Theory to political **realism** and **pacifism**.
- ✧ 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!*

