

WAR AND CONFLICT STUDIES (1POL543)

**QUESTION: 'Do you agree with the claim that nothing but aggression
can justify war?'**

**ESSAY: 'Just War Theory: Limitations, Perspectives and
Contributions to International Law'**

Student: Henrique Weil Afonso

December 2007



University of Westminster

1 - Introduction

International community is witnessing the dawn of new era where the traditional conception of war is being questioned as new threats to international security rise. Such menaces are materialized as the war against terrorism, wars of national liberation and domestic 'wars' and the need for humanitarian intervention. Regardless of the significance of "new wars", International Law war-related legislation insists on turning a blind eye to the evolution of warfare and the emergence of contemporary peril brought about by some states to their own populations. Therefore, it could be argued that humanitarian intervention consists of a legitimate cause for engaging in war.

This essay will address the question of whether inter-state aggression should be regarded as the sole legitimate cause for waging wars. In order to do so, we will discuss the contributions put forward by Michael Walzer's Just War Theory. We shall begin by stating the theory's underpinning principles, with special emphasis on the so-called Legalist Paradigm. The theory's limitations will be highlighted in order to illustrate the need for redefinition of some elements. In addition, a brief discussion on how the Liberal tradition influenced the formulation of Just War Theory will be held, as well as the remarkable contrasts between "old wars" and "new wars" highlights the flaws of the Legalist Paradigm.

In a later stage attention will be drawn to the contributions Just War Theory is able to make to current International Law war-associated thought. Furthermore, the manners post-modernist International Relations theories, Social-Constructivism in particular, draw upon the decision-making process of waging

wars will be dealt with in order to emphasize the theory's input to current International Law tenets. Finally, we shall sum up by stressing the positive implications Just War Theory and Social-Constructivism are capable to make to contemporary war theory.

2 – Just War Theory: elements and criticisms

The Just War Doctrine represents a set of tenets aimed to add moral elements to war. Reckoned as a narrower doctrine, the pacifist tradition rests in the opposite side of the spectrum, for “there can be no morally valid authorization to kill human beings” (Inis, 1980: 86). According to pacifists, human beings are always an end in themselves, henceforth under no circumstances can they be regarded as a means to achieve a given objective. Conversely, rather than simply condemning war, Just War Theory gives a further step in order to establish moral boundaries, both related to the causes of going to war (*jus ad bellum*) and the conduct of warfare itself (*jus in bello*).

Granting morality to war is nonetheless an ancient concern of intellectuals and scholars. Just War Tradition tenets lies on Christian values, up to the extent that war could not be seem as sin, have one chosen to fight on the just side of the war (Inis, 1980: 87). Latter (XVII-XIX centuries), the right of waging war came to be esteemed as an absolute and paramount feature of the sovereign principle, by its way applicable only to states.

Contemporary scholars have been working on redefining Just War Theory so that a reliable war-related framework could be developed. Much debate

concerns the work of Michael Walzer (2006), especially on how the author outlines Just War Theory in face of contemporary threats, namely humanitarian intervention, terrorism and preventive war.

To begin with, an act of aggression is, according to Walzer, the sole legitimate cause for waging war, once it “challenges rights that are worth dying for” (2006: 53). Furthermore, as the United Nations General Assembly has ruled,

“Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations” (General Assembly, 1974).

Drawing on what he calls “domestic analogy”, Walzer stresses the fact that state’s territorial and political sovereignty are prone to defense in the very same way as rights of the citizens inside the state.

Once an act of aggression has taken place, a state has the right of self-defense, provided that some conditions are met. First, there has to be a just cause, rule that cannot be dissociated from the principle of proportionality (O’Connor, 1974: 168; Walzer, 2006). Similarly, wars must be conducted and declared by a legitimate authority. In addition, the military means employed must be carefully related to the moral and political ends being sought, which must be proportionate to the threat posed. The rule of discrimination immunizes non-combatants from the perils of war, consisting of a key feature of *jus in bello* (Walzer, 2006).

Furthermore, the so-called Legal Paradigm is held in an elevated esteem in Walzer's Just War Theory. In short, it states that aggression is the single most violent act a state can hold against other state. This is intimately connected to Liberal principles, mainly territorial integrity and political sovereignty, for states are granted a set of rights inside the international society of states. Should these rights be denied or threatened, war in self-defense or a war of law enforcement by the victim or any other member of the international society becomes legitimate (Walzer, 2006: 61-63).

As for the acknowledgement that anything but aggression can legitimate war, one could argue that contemporary threats vary significantly both in scope and intensity. Consequently, critics point out that the Legalist Paradigm overlooks such elements; it offers too narrow of a framework. Whenever intervention is needed to overcome concrete menaces to human rights, for instance, the Legalist Paradigm would condemn such an act for failing to meet a clear self-defense standard (Mednicoff, 2006: 386). What with wars of national liberation, wars to achieve self-determination and wars to end racial oppression: it would not be far fetched to reckon that the Legalist Paradigm needs revisited elements (Inis, 1980: 94-95).

Much debate concerning the limitations of the Paradigm has arisen in recent years. The absence of consensus on what a "just cause" would consist of as well as practical difficulties in identifying the legitimate constituted authority that is morally capable to judge war are some of the criticisms one should bear in mind when engaging in Just War Theory debates (Wells, 1969). Additionally to the mentioned tenets one shall reckon the rule of proportionality as an underpinning component of the Just War Theory. The adequate response to a harm inflicted or

its imminence is curbed by moral obligations imposed by such principle. A tendency of reinforcing “force-short-of-war” measures (Walzer, 2006: XV) has come to the fore given the destructive capability of modern means of fighting a war (O’Connor, 1974).

The distinction between Liberalism of Restraint and Liberalism of Imposition put forth by Sørensen (2007) may help us understand the limitations of the Legalist Paradigm. Liberalism of Restraint upholds state’s autonomy and the right of self-determination, whereas Liberalism of Imposition envisages states’ duty to intervene in other state’s domestic affairs whenever liberal values (freedom, justice) are in peril. What springs from such a differentiation is the conspicuous influence the former Liberal branch played over the genesis of the Legalist Paradigm. A liberal value paradigm is highlighted once there is a very thin line that sets aside legitimate humanitarian interventionism from undisputable “liberal imperialism” (Sørensen, 2007: 371). A compromise between both branches would certainly be a plus to Just War Theory.

Finally, a couple of arguments are to be made regarding the applicability of the Just War Theory through the lenses of warfare evolution. Just War Theory, it is argued, does not adequately addresses moral issues under a framework of contemporary warfare. In fact, the theory was envisaged to provide “old wars” with a set of moral tenets. In such wars, civilians were not under constant peril, as well as the weaponry available had rather limited destruction capability. The consequences for engaging in military campaigns were circumscribed to the waging states only (Patterson, 2005).

Conversely, “new wars” are fought in the cities and urban areas where the distinction between combatants and non-combatants is often blurred. Another striking difference springs from the fact that “the enemy is motivated by ideology, fearless of death, deliberate in attacking women and children, willing to defile the environment and lusts to destroy the existing political and economic other” (Patterson, 2005: 123). Old wars were waged as an act of sovereignty that concerned the belligerent states alone, whereas new wars occupy the top of the international security agenda, thereby regarding the whole international community. In short, the interconnected contemporary international arena rapidly spreads the miseries of warfare into other states’ economic, social and political global spheres.

3 – Just War Theory: a new dimension of analysis in International Law

As stated above, Just War Theory aims to add morality to war. It provides the international community with analytical tools capable of discriminating situations where it is legitimate to call to arms. Nevertheless, the extension to which such tenets have been incorporated to the interpretation of International Law is still dubious, especially when it comes to legitimizing humanitarian intervention as opposed to a blind adherence to legal texts.

Mednicoff (2006) argues that the obedience to the principles of state sovereignty and right to self-determination, underpinning tenets of the International Legal system, cannot be conciliated with the demand for humanitarian intervention

in cases such as Rwanda in 1995 and, more recently, Darfur. Regarding the latter, in spite of the disguised neglect by powerful states and international organizations, genocide is conspicuously taking place (The New York Times, 2007; Weisman, 2004).

Current International Law war-related legislation is bereft of a moral framework capable of legitimating humanitarian intervention, consequently unable to mediate the apparent conflict that stems from breaching the long upheld inviolability of state sovereignty. An attempt to identify such an inability is made by Luban (1980). According to the author, there is a wide misconception on what legitimates humanitarian intervention. To begin with, the historical misconception of the concept of 'nation' as a synonym to 'state' thwarts the recognition of the true source of a state's power: the people's will. Seeing through the Social Contract Theory prism,

"[...] aggression violates a state's rights only when the state possesses these rights. According to contract theory this entails that the state has been legitimated by the consent of its citizens. An illegitimate state, that is, one governing without the consent of the governed is, therefore, morally if not legally estopped from asserting a right against aggression." (Luban, 1980: 169)

The contemporary doctrine of *jus ad bellum* is hence branded on an uncontested respect for state's rights. Nevertheless, Just War Theory, if applied to International Law, has the potential to add a new dimension of analysis that

transcends the present legalist approach to war and conflict. Similarly, Just War Theory instigates the analysis of the justifiability of humanitarian intervention that takes into consideration the cause, means and results in a more emphatic manner than would the traditional criteria of International Law (Mednicoff, 2006). Commitment to the promotion of peace and justice must be urgently incorporated to International Law doctrine, and Just War tenets are an undisputable asset in this proposal.

A final point shall be made in the attempt to conciliate Just War Theory with its deliberative framework. In order to do so, Social-Constructivists reckon a major flaw of Just War Theory as being its lack of connection with the political context in which decisions concerning the use of force are made (Bjola, 2005). Deliberative legitimacy is described as the “non coerced commitment of an actor to obey a norm adopted on the basis of the criteria and rules reached through a process of communicative action” (Bjola, 2005: 280) and consists of a key social-constructivist concept: it provides the decision-making process with legitimacy, for (i) under a communicative action perspective all participants are committed to the accuracy of the justifications invoked; (ii) they deliberate in a context where power relations are left aside; and (iii) participants demonstrate true political clout in argumentative reasoning (Bjola, 2005).

Therefore, Social-Constructivism is undoubtedly able to add a new dimension of analysis to the decision-making process of waging wars. Should the standards put forth by the communicative action perspective in addition to the promotion of a truly democratic deliberative framework be upheld, war engaging process will be granted important tools to cope with the ever-changing threats that

fail to meet traditional International Law categories. Humanitarian intervention is therefore rendered a prominent role, and better present (and future) perspectives shall arise.

4 – Conclusion

Just War Theory consists of a remarkable contribution to war and conflict studies. Despite its inevitable flaws and limitations, the theory should not be condemned as a whole: improvements are to be undertaken so as to provide the international community with more adequate of a framework to cope with contemporary threats, being humanitarian intervention a chief concern. Similarly, the Legalist Paradigm needs revisiting once inter-state aggression, as stressed above, can no longer be understood as the unique reason for engaging wars. Intra-state menaces abound, for despotic regimes are often disguised as a [il]legitimate manifestation of the sovereign principle, which is closely related to the principle of non-interventionism.

If the perils have changed over time, so did the manners wars are conducted and fought. For Just War Theory is perfectly suitable for traditional warfare. Nonetheless, on the other end of the spectrum lies the unmerciful commitment of terrorists and dictators, wholeheartedly inclined to fight their causes at all costs, and no legal or moral boundaries are to stay in their path. International Law must be prepared to face such a challenge, and it can only accomplish such an endeavor by adopting appropriate ‘moral’ elements, and Just War Theory is certainly able to give such an account.

This is to say that legal standards should not be held as sufficient conditions to legitimate the use of force. Not only should the political framework in which decisions of such magnitude are conducted be seriously understood (Social-Constructivists contribution) but improved in terms of equality and communicative engagement. In addition, if one is committed to reducing the amoral veil of International Law, one ought to find Just War Doctrine both a useful analytical tool and, perhaps more importantly, an additional dimension that has the potential to be incorporated in formal International Law.

5- References

- Bjola, Corneliu (2005), '*Legitimizing the Use of Force in International Politics: A Communicative Action Perspective*', *European Journal of International Relations*, 2005, Vol. 11, Pp. 266.
- General Assembly (1974), '*General Assembly Resolutions 30th Session*', Resolution 3314 (XXIX), 14 December 1974 <<http://www.un.org/documents/ga/res/29/ares29.htm>>, [access 15 November 2007].
- Inis L. Claude, Jr. (1980) '*Just Wars: Doctrines and Institutions*', *Political Science Quarterly*, Vol. 95, No. 1. (Spring, 1980), Pp. 83-96.
- Luban, David (1980), '*Just War and Human Rights*', *Philosophy and Public Affairs*, Vol. 9, No. 2, Pp. 160-181.
- Mednicoff, David M. (2006), '*Humane wars? International law, Just War theory and contemporary armed humanitarian intervention*', *Law, Culture and the Humanities*, Vol. 2; Pp. 373.
- O'Connor, D. Thomas (1974), '*A Reappraisal of the Just-War Tradition*', *Ethics*, Vol. 84, No. 2. (Jan., 1974), Pp. 167-173.
- Patterson, Eric (2005), '*Just War in the 21st Century: Reconceptualizing Just War Theory after September 11*', *International Politics*, Vol. 42, Pp.116–134.
- Sørensen, Georg (2007), '*After the Security Dilemma: The Challenges of Insecurity in Weak States and the Dilemma of Liberal Values*', *Security Dialogue*, 2007, vol. 38, Pp. 357.
- The New York Times (2007), '*Sudan*', Ford Burkhart, May 31, 2007, <<http://topics.nytimes.com/top/news/international/countriesandterritories/sudan/index.html>> [accessed 15 November 2007].
- Walzer, Michael (2006), '*Just and Unjust Wars: A Moral Argument with Historical Illustrations*', (Basic Books), 4th Ed.
- Weisman, Steven R. (2004), '*Powell Says Rapes and Killings in Sudan Are Genocide*,' *The New York Times*, 10 September 2004.
- Wells, D. A. (1969), '*How Much Can "The Just War" Justify?*', *The Journal of Philosophy*, Vol. 66, No. 23. (Dec. 4, 1969), Pp. 819-829.

6- Bibliography

Baylis, John & Steve Smith (2007) (eds), *The Globalization of World Politics* (Oxford, OUP).

Bjola, Corneliu (2005), '*Legitimizing the Use of Force in International Politics: A Communicative Action Perspective*', *European Journal of International Relations*, 2005, Vol. 11, pp. 266.

Brown, Chris w/ Kirsten Ainley (2005), *Understanding International Relations*, (London: Palgrave Macmillan).

Burchill, Scott & Linklater, Andrew and others (2005), *Theories of International Relations*, (Palgrave, Macmillan).

General Assembly (1974), '*General Assembly Resolutions 30th Session*', Resolution 3314 (XXIX), 14 December 1974 <<http://www.un.org/documents/ga/res/29/ares29.htm>>, [access 15 November 2007].

Inis L. Claude, Jr. (1980) '*Just Wars: Doctrines and Institutions*', *Political Science Quarterly*, Vol. 95, No. 1. (Spring, 1980), Pp. 83-96.

Jackson, Robert & Georg Sørensen (2007), *Introduction to International Relations*, (2nd ed.), (Oxford, Oxford University Press).

Luban, David (1980), '*Just War and Human Rights*', *Philosophy and Public Affairs*, Vol. 9, No. 2, Pp. 160-181.

Mednicoff, David M. (2006), '*Humane wars? International law, Just War theory and contemporary armed humanitarian intervention*', *Law, Culture and the Humanities*, Vol. 2; pp. 373.

Nicholson, Michael (2002), *International Relations: A Concise Introduction* (London, Macmillan).

O'Connor, D. Thomas (1974), '*A Reappraisal of the Just-War Tradition*', *Ethics*, Vol. 84, No. 2. (Jan., 1974), Pp. 167-173.

Patterson, Eric (2005), '*Just War in the 21st Century: Reconceptualizing Just War Theory after September 11*', *International Politics*, Vol. 42, Pp.116–134.

Sørensen, Georg (2007), '*After the Security Dilemma: The Challenges of Insecurity in Weak States and the Dilemma of Liberal Values*', *Security Dialogue*, 2007, vol. 38, Pp. 357.

The New York Times (2007), 'Sudan', Ford Burkhart, May 31, 2007, <
<http://topics.nytimes.com/top/news/international/countriesandterritories/sudan/index.html>
> [accessed 15 November 2007].

Walzer, Michael (2006), 'Just and Unjust Wars: A Moral Argument with Historical Illustrations', (Basic Books), 4th Ed.

Weisman, Steven R. (2004), "*Powell Says Rapes and Killings in Sudan Are Genocide*," The New York Times, 10 September 2004.

Wells, D. A. (1969), '*How Much Can "The Just War" Justify?*', The Journal of Philosophy, Vol. 66, No. 23. (Dec. 4, 1969), Pp. 819-829.