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JUSTIFYING WAR: THE JUST WAR TRADITION UNTIL 1919

The University of Oklahoma PH.D. 1982

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JUSTIFYING WAR: THE JUST WAR TRADITION UNTIL 1919

A DISSERTATION

SUBMITTED TO THE GRADUATE FACULTY

in partial fulfillment of the requirements for the

degree of

DOCTOR OF PHILOSOPHY

BY

PERRY GLENN LOVETT

Norman, Oklahoma

1982

JUSTIFYING WAR: THE JUST WAR TRADITION UNTIL 1919

APPRCVED BY

Ronald M. Peters

Paul A. Tyson Jr.

Rufus Y. Hall

Russell D. Buhite

DISSERTATION COMMITTEE

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PREFACE

A quarter century has passed since the Ivy League professor's opus appeared on the paperback racks of a shiny drugstore in the Southwest.[1] To a curious nineteen-year-old student, interested in world affairs but untutored in the handiwork of publish or perish, this prescription for limited nuclear war appeared to be incredibly unwise.

Then--almost two decades ago--John Kennedy edged the human race to the brink of disaster with his October resolution to force the U.S.S.R. to remove I.R.B.M. missiles from Cuba. Throughout those days the worried reaction of a young married person to the affair was amazement at the President's poor judgment.

Surprise slipped into dismay when, during the decade before this dissertation was begun, the anguish of Vietnam dominated American national life. Year after year, the Vietnamese War proved public policy to be deficient in reason, knowledge, honesty, and humane behavior. Were the student of international studies ever to have lost hope, this tragic period would have been the time.

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[1]Henry A. Kissinger, Nuclear Weapons and Foreign Policy abrid. ed. (Garden City: Doubleday, 1958).

Yet hope "adorns and cheers our way"[2] as concern for world affairs and matters of foreign policy persist. From these three cases and from many other events, issues, and ideas has come not an inclination to abandon public policy but the motivation to pursue this dissertation. To these beginnings the academic community of the University of Oklahoma has added much inspiration.

An English proverb says, "Gratefulness is the poor man's payment." The directing committee earns gratitude for textual improvements, for encouragement, and for the patience of Job. Geri Rowden, who types everything with polished professionalism, merits a treasure of thanks. The libraries of the University of California at Berkeley, Washington State University, the University of Kansas, Oklahoma State University, Oklahoma City University, and the University of Oklahoma plus many other institutions affiliated with inter-library loan are due recognition for valuable assistance to the research effort. Patricia A. Zidek of the inter-library loan at Oklahoma, helping always with prompt expertise, deserves special praise. Final fond mention goes out to the Graduate College for granting research funds.

The dissertationist must produce if he or she is to graduate; but the wiser student avoids getting carried

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[2]Oliver Goldsmith, The Captivity: An Oration in The Collected Works of Oliver Goldsmith, vol. 1, ed. Arthur Friedman (Oxford: At The Clarendon Press, 1966), p. 222.

away by the laborious research and the hard task of composing. A contemporary literary figure playfully told her readers about the origin of contagion:

> Once the disease of reading has laid hold upon the system it weakens it so that it falls as easy prey to that other scourge which dwells in the ink pot and festers in the quill. The wretch takes to writing.[3]

The ailment turns chronic. A historian concluded that "those who are infected with the writer's malady . . . write because they must."[4] The dissertation student needs no such added compulsion. The about-to-be-doctor seldom possesses genius; and, as Maupassant discovered, average writers are "simply conscientious and tireless workers" who can only struggle unrelentingly.[5] A modest perspective would help, lest one fare like Goethe, who took nearly sixty years to finish Faust.

Still, academic writings of any kind ought to be deeply serious matters that are done well. Dante held that lovers of truth, who have inherited the rich work of the past, "should labour for those that are to come after them."[6]

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[3]Virginia Woolf, Orlando (New York: Harcourt, Brace, and Jovanovich, 1956), p. 75.

[4]Carl L. Becker, Detachment and the Writing of History, ed. Phil L. Snyder (Ithaca: Cornell University Press, 1958), p. 131.

[5]Guy de Paupassant, Pierre and Jean, trans. Leonard Tancock (New York: Penguin Books, 1979), p. 31.

[6]Dante Alighieri De monarchia l. 1, trans. F. J. Church in R. W. Church, Dante (London: MacMillan and Co., 1879), p. 1.

This attitude of civilization-building ought to prevail among all scholars--graduate students included.

Whether or not the present effort serves this purpose of truth, the reader must decide. What does stand out is that the project got carried away. The search was over-done, the reading excessive, and the writing painstakingly slow. The words of an Englishman four centuries past faithfully tell the tale:

> And the longer I have tarried . . . like a ma that would fayne travell a great journey, having a weake body, and a lusty mind. And before he commes halfe way to the end of his pilgrimage: his legges waxe lame, and he calleth for his crutche, and yet when there is no remedy, must either of force hoppe homeward againe, or hale forward as fast as he may, to come to the knitting up of his attempted labour.[7]

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[7]Thomas Churchyard, A Lamentable and Pitfull Description of the Wofull Warres in Flanders (London: Ralph Newberie, 1578; reprint ed., Amsterdam: Theatrum Orbis Terrarum, Ltd., 1976), n.p.

JUSTIFYING WAR: THE JUST WAR TRADITION UNTIL 1919

INTRODUCTION

Still thou art blest, compar'd wi' me!
The present only toucheth thee;
But och! I backward cast me e'e,
On prospects drear!
An' forward, tho' I canna see,
I guess and fear!

Robert Burns, "To a Mouse"[1]

Purposes of Justification

War has always been an activity gone made. Because of the wild, furiously destructive nature of war, human beings have sought to tame it through standards of justification. Since classical times, they have attempted gradually to establish purpose by recognizing the essential humanity of war's participants and by drawing boundaries to order the ends and means of war. They have strived to reduce both the frequency and intensity of war and to promote a comprehensive and lasting peace. The yardstick of these struggles

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[1]Robert Burns, Robert Burns Poems and Selected Letters, ed. Anthony Hepburn (London: Collins, 1959), p. 90. (written in 1785)

has been justice seen as natural and reasonable. The long, ever-growing development of these justifications has been called the just war tradition and represents the major perspectives available for the examination of questions relating to war. This study proposes to trace fully for the first time the just war evolution as a political tradition from its origins until the year 1919.

The Growth of Justification: A Historical Approach

Understanding ethical questions relating to war necessitates an interpretative narration of the development of just war ideas. Ideas of how human beings ought to behave regarding warfare have been recorded for well over two thousand years. These justifications have occupied vital positions in cultural developments and continue to do so. While continuity between a certain thinker and one of his predecessors may be hard to prove and the exact connection between a current of thought in one age and that of a bygone time impossible to establish, the justification of war has indubitably undergone a long, creative evolution. While the just war also needs to be subjected to critical analysis from a strictly philosophical vantage point, it must first be understood in terms of the formation of a living culture in which persons have always acted upon their heritage to argue, believe, reject, modify, and conceive justifications as they have fought, destroyed, and died.

Because justifications of war have grown and will grow over time, a historical approach to these ideas and ideals promises to best interpret their essential meanings. Admittedly, most often in the study of political science, including international relations and foreign policy, historical treatments do not commend themselves. Even when a scholar does try to enlarge the research focus beyond a non-historical specialization, it may feature a circumscribed hunt for conspicuous jackpots instead of broad, historical explanations. Were political science like a natural science--chemistry, for example--not much room would need be taken by the history of the science; however, social affairs do not mainly consist of fixed, discoverable properties and their manipulation, but of growth processes of multitudinous and ancient origins. The just war tradition may be studied as an evolution of political ethics.

Ethical Issues in the Study of Politics

Strengthening the Field of International Relations

The investigation of ethics in foreign policy has generally drawn insufficient attention from academics and policy makers alike, although the discussion of policies central to war and peace has traditionally provided the core of the study of international relations. International relations theorists usually emphasize the power

theory;[2] but, even if the power theory were to be admitted, international relations would involve beliefs concerning justification of that power. First, any descriptive framework must include whatever normative elements can be perceived as operative; and, secondly, these elements, within themselves, describe certain things as real. Description and prescription comprise useful, formal designations for overlapping, complementary aspects of the intellectual process and in no way ought to represent overdrawn distinctions between empirical and normative theory.

Although caution must be taken to avoid overemphasizing the lack of interest in ethical policy studies as a part of the field of international relations, deficiencies exist that spell more than a mere academic loss for political science. The power-oriented study of foreign policy and international relations displays an abundance of independently esoteric constructs and a scarcity of studies about the real issues critical not only to international well-being but to the very survival of the human race. Scholars endeavoring to synthesize or to clarify past efforts must elbow past a crowd of fresh creations that promise to antiquate or repudiate most everything since Socrates. Much of the time, little of substance gets uttered about the acute problems upon which hang the destiny of the earth.

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[2]For the best known American representative of the power theory see Hans J. Morgenthau, Politics Among Nations, 5th ed. (New York: Alfred A. Knopf, 1978), pp. 10-11.

Despite this neglect by the average political scientist studying international relations and foreign policy, so-called normative theorizing persists because ethical conceptions are put into practice through politics. Normatively-oriented political studies have always existed side-by-side with empirical studies. The allegedly idealistic, institutionalist field of study between the two world wars produced "hard" data and empirical approaches of great import in makred contrast to what was afterwards frequently assumed about the era. In the same way, normative studies persisted during the quantitative emphasis following the Second World War. By mid-century the just war tradition, which had enjoyed a comparative renaissance following the First World War through the attention of analysts in a variety of disciplines increasingly concerned with foreign policy, demanded accelerated attention by political science. Justification of war became the most pressing ethical consideration in a chaotic world threatened with complete destruction.

The Requirements of Political Science

Yet international relations and foreign policy studies have frequently fallen victim to determinism by adhering to the dominant trends in political science. Determinism sucks the life-blood from value considerations. Without going into the too common charges against behavioralism in political science,[3] it is vital to recognize that

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[3]See David Easton, "The New Revolution in Political Science," The American Political Science Review 63 (December

political scientists--besides sometimes lacking relevancy --can easily assume the limits of reality to comprise sort of a natural necessity that is an unfortunate variant of the natural law thesis. The "is" dominates the normative to exclude any "ought." Rather, the discipline needs to be more hopeful in order to be both more observant and more imaginative. Many kinds of scientists or seekers of knowledge, who appear to be working within highly organized systems that long ago were set up to exclude dreams and wants as a way of insuring objective study, must have curiosity about what they observe. Yet, within the workings of the scientific method with its careful attempts to avoid bias, little attention to human desires is needed. As thinkers generally have learned to be precise in procedure and language, objectivity has become more prized than individual wills, public choices, and political ethics.

Certain aspects of political life are without doubt recurrent, and political science today widely seeks to isolate variables of human behavior in politics; but for the investigator to apprehend the workings of will as intrinsic in politics and to keep in mind the problems of determinism would aid rather than constrain research. Political

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1969): 1051-61. Wherever the best opportunities may dwell, there lurk fully as many pitfalls of unfruitful study on all sides of the field. Perhaps too much has been expected from scholars too quickly. Because no critical variable has been discovered, and no great design has been created, the interrelationships between various approaches are becoming more apparent. The need to integrate each small contribution becomes ever more clear.

scientists have greater needs than the restricted curiosities that may be appropriate for many other scholars: they must imagine encouraging possibilities. The individual must be free to consider the "ought."

Considering Individuals in Political Thought and Action

The basic raw material of the political theorist is the individual human being. Writers concerned with human nature in international relations and foreign policy tend to follow one of two bleak viewpoints. Were man irreparably warlike, then he would be a captive of himself and be an individual devil. Were he basically peaceful, he then would be trapped within an insane civilization, i.e., a social devil. Both are incorrect. The individual human being is neither wholly rational nor purely irrational, and neither entirely "bad" nor completely "good." A human being operates within a frame of reference which filters his perceptions of fact, as well as molding his determination of action through conscious reference to values. Human beings do not merely observe; they perceive. Even exacting accounts reflect patterns according to highly structured pre-conceptions, some of which may be termed values. Not all values or facts related to war and peace will be internalized by the individual, irrespective of their import; and some matters considered important by the individual will not be incorporated by the political system. Individuals do comprise the

primary unit of politics; and individuals, when convinced that one can mold policies and when better informed as to what policies can be chosen, will act to effect better public policies.

Meeting the Human Needs of Will and Knowledge

Choices Can Be Made

Responsible Individuals Choose

The first belief the present climate of opinion needs to incorporate is that choices can be made. Political ethics rests on individual choice. The choices that human beings make involve free will, from which follows responsibility for the consequences. Responsibility is the essence of political ethics all the way from responsible citizens to responsible governments.[4]

The individual is primarily responsible, not the state, for the state is not a moral person. If a critic assigns irresponsibility and immorality to the state, he personifies it as much as its statist defenders almost always do. Personifying the state tends to release the

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[4]When responsible, "We did it" or "I did it" assumes that "We" or "I" can be held accountable along a continuum from blameworthy to praiseworthy for specified actions and that certain future actions may be implied on the part of either "we" or "I" or the witnessing party or parties. Responsibility also calls in the concept and practice of being responsive to a public, especially in the case of the most democratic of governmental systems.

individual from responsibility and does not encourage his assertion of control over the state, which he must accomplish to complete his moral ends. To the extent any actual government effectively denies its individuals the opportunity to make decisions and to implement them, the government is dysfunctional. Its essential function is to serve the wills of its individuals. Whatever the causes may be that the government does not properly function as its purpose intends, to impede control by the individuals that comprise its constituent parts means to deny that the government is real. From the irrationality of such illegitimate situations springs revolutions. Existing and non-existing degrees of choice and responsibility provide the essence behind notions of freedom and liberty.

Functioning Freedom

Many persons, political thinkers especially, assign an august value to individual freedom or liberty and proceed to wrangle about what it is. Definitions have varied from doing what one ought to do (following one's real will within a unanimous citizenry, as J. J. Rousseau thought), to being free from certain things (actually having security, food, health, and other things of positive value, as T. H. Green understood), to being free to get things (being unrestrained by other persons in mutual non-interference, as J. S. Mill advocated). Mahatma Gandhi's belief that each person beholds different parts of truth and sees it from different angles

of vision, points to the ecclectic nature of understanding freedom;[5] and, oddly enough, Isaiah Berlin's argument for an uncluttered approach indicates the basic elements.[6] Berlin's ideas meant that a valid definition ought not to express other values such as social justice or harmonious feelings of community--however commendable in themselves--but ought to stand clearly for an unfettered man. These thinkers, taken altogether, help one conclude that freedom ought to signify more than a single value that expresses personal potential because freedom ought to support other values and that freedom is greatest when persons face a selection of meaningful choices and when they actually choose with a prepared and uncoerced will. Only in this manner can truly moral decisions be made.

The problems of morality have increased with each step that human beings have taken in the long journey of exercising control over their environment. Moral questions were in order when the first primitive weapons were raised against fellow human beings; and with each enrichment in the art of blood-letting, the necessary questions rose quantitatively until they took a quantum leap in 1945. To be able to exercise, through prepared and uncoerced wills, governmental responsibility for policy, the individuals of a

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[5]Mohandas K. Gandhi, All Men Are Brothers, ed. Krishna Kripalani (New York: UNESCO, 1958), p. 143.

[6]Isaiah Berlin, Two Concepts of Liberty (London: Oxford University Press, 1958).

nation-state must believe that they can exercise choices that do exist.

Invalidating Deterministic Assumptions

Many assumptions handicap human beings from meeting the nuclear emergency. One's immediate reaction might be to absolve human beings of responsibility for choosing by pointing with good reasons to the difficulties persons have had in controlling their lives. Long ago peoples learned that accidents, diseases, rabid dogs, floods, droughts, and a multitude of other disasters frequently doomed them to suffering; but they also learned to take persistent steps to prevent or ameliorate many of these circumstances. Dramatic acceptance of the sweep of history, spread by the Hebrews, Augustine, Hegel, and Marx, among others, also could properly indicate that human beings many times are not capable of easily working their wishes and ought not to be blamed for events that they cannot prevent. Life may appear disturbingly accidental and, at the same time, subject to grand movements of history; but human beings can still exercise a great deal of control over their personal lives and over public policy.

If having purpose is supposed to have meaning for human beings, no more than some degree of inevitability can be admitted. Any ideas of fatalism, pessimism, or materialism from the Greeks, Romans, and Hebrews on down to the Marxists can claim that inevitability shows purpose--but

not if purpose means something somebody thinks they want to do. Certainly, the Comtian fashion of equating indispensable and inevitable lacks common sense.

The trend during the twentieth century has been to excuse persons completely from responsibility by ascribing individual actions to the determinism of material forces, inherited characteristics, or the group. Dismal, hopeless Augustinian-Hobbesian views of unchangeable evil man appear to be giving way to an equally absolute conception of man as a materially, biologically, and socially determined bystander. Admittedly, in the first instance, disciples of Marx have supplied action-oriented, progressive ideas for traditional and transitional societies; and, in the last instance, the well-intentioned, social-psychological successors to Durkheim have aided the down-trodden by pointing their accusing fingers, not so much at happenstance, as at the chains of society. Yet the handicaps of total denial of personal responsibility soon outrun the benefits and cannot help the individual in the long run. Getting carried away with these deterministic variables has restricted the intellectual capacity of contemporary human beings to deal with the tremendous problems of material and social evolution. Feelings of helplessness have been compounded.

Many Westerners today take for granted the rapid acceleration of material progress and consequent problems; and, especially in the case of nuclear weapons, they possess a vague feeling that reality has become too enormous to

consider. The now common-place notion of cultural lag involves the continual widening of a chasm between cultural values or social ability to adapt on the one hand and the novelty of science and technology on the other. As the fissure has widened into a gigantic division, the realities of science and technology have been ever more in conflict with the practices of civilization's institutions.

Throughout the thousands of years that man has exercised innumerable controls over material evolution, cultures and socieites have had their ups and downs--oftimes seeming to follow cycles--while science and technology have appeared independently to be almost always more steady in advancement than society as a whole. There are temptations to exaggerate these characteristics by falsely attributing unwavering, cumulative progress to science and technology while forgetting that they are culturally transmitted and, more importantly, by failing to acknowledge that the world today is heir to a multitude of relatively continuous aspects of cultures long since "dead." Science and technology do not act by themselves to create social problems; nor can they alone liberate mankind. If each material advance produces circumstances that seem to clutch populations or drag them toward uncertain futures, these events are not inevitable; for each truly widens the general sphere of choice.

No doubt pure curiosity activates creative scientists the world over and spurs them on to productive

discoveries, which ought not be discouraged by over-control but which could prove even more valuable if better directed. While most persons may not think that science can be socially handled, fashionable opinion, concurrently, holds that contemporary society naively trusts science somehow to solve most of its pressing difficulties. Part of the trouble is that science and applied science are pursued for their own sakes, which means that they are really pursued without purpose. Material progress itself is allowed to determine, to proceed without complex interdependency with social purpose, when even the material world within itself demands attention to purpose. The search for truth has never injured society, and unhampered curiosity can even serve humanitarian purposes. Nature is not the enemy to be wrestled down or deplored, but the source of good-tidings when cultures seize present alternatives and develop long-term goals.

Making Choices: A Summary

Individuals will choices. Free individuals must assume responsibility for their political decisions, which also can properly be called moral or ethical choices. The state exists as an abstraction and never wills anything; rather the state collectively serves the wills of the individuals who compose it. Recognition of the exercise of wills contradicts deterministic assumptions of historical forces, accident, materialism, the social group, and inherited traits. Neither must the cultural lag, as a by-product of

man's handling of science and technology inevitably doom man, for purpose can be installed by free wills sufficiently prepared.

Never before has the need for well-informed choices been as great, because the arsenals of the super-powers alone contain megatonnage at levels almost beyond our comprehension --levels more than sufficient to end civilization. The very existence of nuclear weapons forces responsible human beings to examine their purposes, for any use of the weapons forbodes a destruction for which no defense is possible for all sides and neutrals alike. The justification of war and the threat of war demand the best credible answers.

Tapping the Possibilities of Knowledge

A Perspective of Just War Evolves

The second realization, then, that the contemporary climate of opinion needs to embody is that guidance and inspiration are available for making responsible political decisions concerning warfare. If civilization does not give way to the idea common since ancient times that the original natural man enjoyed ethical superiority in his primitive state, there must exist increased confidence that human beings can contribute to gradual ethical improvements in civilization. By exploring the most profound questions of politics and suggesting many of the answers, political

thinking has already created a universal heritage. The just war tradition comprises a vital and growing part of this legacy.

There has long existed an expanding tradition of successes and failures in facing the issues and in limiting the ends and means of war. No one person or age has been predominant in the process. The just war tradition has improved over time into a relevant and ever-enlarging contemporary network of normative perspectives, which have derived from centuries of written expression by human beings who have created and mirrored the values, needs, and other aspects of behavioral patterns in the physical and biological world.

Purposes of the Evolution

The human race has taken the field in a profusion of wars, but has simultaneously perceived that wars bear predominantly negative fruit. In response to this situation, a tradition of justification has progressively developed. The tradition has endeavored: (1) to reduce the frequency of war, (2) to abate the intensity of war, (3) to build in the direction of a general peace, and (4) to conform war more closely to the dictates of justice. Curtailing war's frequency spawned a number of criteria important to the actual going into war, particularly those concerned with the cause. The ultimate trend proved to be limiting just cause to the single fact of self-defense. The task of minimizing the damage done by war begat rules of conduct,

which slowly grew. All enduring aspects of the tradition of justification leaned upon the longing for peace and every one became a civilizing step toward that goal. The standard of justice was envoked in each significant question discussed and supplied the basic premises of each major principle discovered.

Understanding Justice

The just war does imply notions of what is desirable, right, fair, legal, proper, or factual that coincide with ideas about how individuals and groups treat or ought to treat one another, which are perceived as justice. Conceptions of justice can be based on law, morality as a self-evident standard, social norms, or a number of other rules, standards, and practices and can include subsidiary meanings such as rights, duties, deserts, and claims. The classical notion was that justice involved giving to each man his due; but only equality and difference were implied--not what he was actually due. Classical attempts to provide definitions and to resolve difficult questions brought forth ideas of proportion and balance; yet, not quantitative absolutes but less obvious standards ranging from right reason to relative attitudinalism have been the major concerns of human beings trying to decide what justice is. The just war tradition always has been, in part, an effort to develop or understand what is just in the initiation and conduct of warfare and, in part, a struggle to promote justice.

Ideas of justice within the lengthy evolution of justifying war have mainly relied on views about what is natural and reasonable. Each basic criterion of the just war has unfolded in accordance with convictions that justice must follow (or be) nature and reason. Natural law thinking has predominated as the vehicle of justification.

Structuring the Just War

The justification of war primarily has meant accounting for the reasons that states and individuals go to war and the ways that wars are fought. The just war tradition (bellum justum) may be divided loosely into justice in going into a war (jus ad bellum) and justice in fighting a war (jus in bello). Of the seven major principles that have evolved in the just war tradition, the first five may be subsumed under the jus ad bellum; and the last two may be categorized under the jus in bello, often called just means or just conduct. The seven main principles of just war tradition may be termed: (1) just cause, (2) competent authority, (3) last resort, (4) right intention, (5) hope of victory, (6) proportionality, and (7) discrimination.[7]

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[7]For representative treatments of just war principles see: Robert M. Brown, Religion and Violence (Philadelphia: The Westminster Press, 1973), pp. 19-20; Norman K. Gottwald, "Nuclear Realism of Nuclear Pacifism," in God and the H-Bomb, ed. Donald Keys (New York: Bellmeadows Press and Bernard Geis Associates, 1961), p. 60; Richard S. Hartigan, "Noncombatant Immunity: Reflections on Its Origins and Present Status," Review of Politics 24 (1967): 60; James T. Johnson, Ideology, Reason, and the Limitation of War (Princeton: Princeton University Press, 1975), p. 26;

Although overlapping boundaries and interdependence would make complete separation for independent analysis an arbitrary and incoherent exercise, operational and analytical considerations call for distinguishing each of the two divisions and especially each of the seven principles.

Listing the Seven Principles

Just Cause

Just cause may be said to involve (a) real self-defense from immediate armed attack on one's own state, on an allied state, or on a friendly state; or it can mean (b) a popular revolution.

Competent Authority

The rule of competent authority requires that the final decisions in going to war and the first steps in actual inauguration of hostilities (a) be taken by the highest lawful state authority representing the people or by a representative revolutionary leader, and that (b) there be a

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Edward LeRoy Long, Jr., War and Conscience in America (Philadelphia: The Westminister Press, 1968), pp. 24-33; D. Thomas O'Connor, "A Reappraisal of the Just War Tradition," Ethics 84 (January 1974): 167-73; Ralph B. Potter, War and Moral Discourse (Richmond, Va: John Knox Press, 1969), pp. 43-44; Richard L. Putrill, "On the Just War," Social Theory and Practice 1 (Spring 1971): 97-101; Paul Ramsey, The Just War (New York: Charles Scribner's Sons, 1968), p. 189; Mary E. Ruff, "Catholic and Military," America, March 6, 1982, p. 170; Robert W. Tucker, The Just War (Baltimore: John Hopkins Press, 1960), passim; Tucker, Just War and Vatican Council II: A Critique (New York: The Council on Religion and International Affairs, 1966), pp. 8-9; John

formal declaration or announcement of hostilities or resistance in order to distinguish the war from banditry or subterfuge. Actions can begin unilaterally or sometimes in concert with one or more allies or an international organization.

Last Resort

War is begun as a last resort after exhausting all peaceful means. A responsibility to pursue peace by promoting justice and by constructing international peace-building institutions must be included.

Right Intention

The right intention calls for repelling an attack in order to establish a state of affairs allowing justice. The right of peoples and nations to continued existence is mandatory and has to include re-establishment of a government, if the government be wrecked. In the case of revolution, a similar just and independent situation is to replace repressive institutionalized violence. Right intention prohibits war aims such as total victory and revenge and any other purposes not conducive to lasting peace.

Hope for Victory

A reasonable hope for victory asks less than the guarantee of winning and more than hollow triumph.

J. Vincent, Christ in a Nuclear World, 2nd ed. (Rochdale, England: Crux Press, 1963), pp. 45-46.

Clear aims must point toward a fair probability of meaningful success.

Proportionality

Just conduct as moral means of proportionality or due proportion demands that the damage likely to occur in a war be proportionate to the injury that has been suffered. To fight must be better than not to fight. The probable good needs to outweigh the evil results; thus, (1) only the necessary amount of force can be used and (2) only the necessary kinds of force are permissible. In the second case, (a) certain targets are disproportionate and (b) particular weapons also lack proportion.

Discrimination

Just conduct as discrimination in warfare similarly prohibits (a) killing or attacking non-combatants or innocent persons, often including children, the elderly, hospitalized persons, and certain uninvolved or indirectly supportive occupations, if not all non-military human beings; (b) ill-treatment of enemy prisoners and of enemy sick and wounded; (c) the utilization of certain kinds of fighting and weapons as inhumane.

Overview

The present study begins with the earliest recorded justifications of war and traces this development down through the first of the two world wars. The foundations

the basic categories and the presence of various attitude are shown to have existed among the ancient Hebrews, Indians, and Chinese. The Greek experience is analyzed in terms of the contributions of the pre-Socratics, the poets, and the playrights, as well as Plato and Aristotle. the Roman heritage proceeds according to the fetial institution, jus gentium, the natural law, and Stoicism, culminating in the just war of Cicero.

The effect of the first four centuries of Christianity upon the Western approach to justification concludes with the just war beliefs of Augustine. The Christian domination of just war thought for the next thousand years starts with Isidore, continues through Gratian, the civil and canon lawyers, the theology of Thomas Aquinas, and finishes in the complexities of medieval issues, events, and institutions.

The formative era of the modern just war, interpreted as spanning the years 1500-1650, features implications of the rise of the nation-state system, the Renaissance, the Reformation, and the law of nations. Singled out for their influential writings were the nationalistic Machiavelli, the humanistic Erasmus and More, and the Protestant Luther and Calvin. Elizabethan literature, which boasts Shakespeare, displays a humanistic and national treatment of war's justification. The law of nations is revealed to have strengthened the just war tradition by way of the

neo-scholastics, Vitoria, Suarez, and Ayala and then by the secular lawyers, Gentili and Grotius.

During the second period of the modern just war (1650-1919) international law assures the continuity of the natural law and provides specific elaborations of the just war by Zouche, Rachel, Pufendorf, Bynkershoek, Wolff, Vattel, and later legal writers. The just war after the eighteenth century is demonstrated to have enjoyed a huge growth in the areas of just conduct and peaceful settlement. Political thought from 1650 to 1919 is proved to have dealt with the just war through the efforts of theorists and political activists from Locke to Lenin. In separate national literatures the issues are found to have met wide attention, as in British poetry from Shirley to Hardy. Research discovers that the just war has developed within each country, as is witnessed by the American evolution. Influential persons within government, in literary life, in education, inside the military, and in the clergy are known to have dealt with the just war. From Penn to Franklin, from Jay to Longfellow, and from Grant to Theodore Roosevelt, the debate is heard.

The conclusion of this work summarizes the principal characteristics of the evolution of the just war. It treats the situation as of 1919 and points to contemporary expectations. The closing pages ask for responsible wills to utilize the knowledge of the just war in decisions about

the present system of international war. Under the shadow of nuclear arms, the final words plead for the just war perspective to be used today in hope that there will be a tomorrow.

CHAPTER ONE

THE FIRST JUSTIFICATIONS OF WAR

The Eastern World

The Hebrews

> Jove, Venus, and the ruddy crest of Mars
> Amid his fellow beauteously revealed
> At happy distance from earth's groaning field,
> Where ruthless mortals wage incessant wars.
>
> *William Wordsworth, "Composed by the Side of Grasmere Lake"*[1]

Mankind's earliest records of justifying war and the ways of conducting it appear mixed. Research indicates that preliterate society in general may have justified warfare as a retaliatory sanction clothed in tradition: "The waging of war is . . . normally an act of retaliation carried out by one group against another that is held responsible for an injury by a recognized body of customs."[2] Actual customary justifications and conduct remain obscure and uncertain.

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[1] The Poetical Works of William Wordsworth, vol. III, ed. Edward Dowden (London: George Bell and Sons, 1892), p. 146.

[2] A. R. Radcliffe-Brown, "Law-Primitive," Encyclopedia of the Social Sciences, ed. Edwin R. A. Seligman and Alvin Johnson, 9 (1933), 203.

Probably the most complete of presently available pre-classical evidence comes from the Middle East by way of the records of the Hebrews, although their theocratic tradition displayed little evidence of theorizing about the nature of political relations as politics.[3] To the Hebrews peace may have been a gift of God,[4] but war was likewise a command from God.[5] Other than some use of formal declaration,[6] little similarity to the just war tradition can be found in the wars of the Israelites.[7] If the Holy Bible gives an accurate indication, the causes of wars were questionable and their conduct was savagely ferocious to the point of exterminating whole peoples.

The tribes believed that God directed their victories over unchangeable, wicked enemies, whose hearts He had irrevocably hardened. The song of Moses celebrated the swallowing up of the Pharoah's chariots:

> I will sing unto the Lord, for he hath
> triumphed gloriously:
> the horse and his rider hath he
> thrown into the sea.

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[3]Charles H. McIlwain, The Growth of Political Thought in the West (New York: The Macmillan Co., 1932), p. 147.

[4]See Roland H. Bainton, Christian Attitudes toward War and Peace (New York: Abingdon Press, 1960), p. 30.

[5]See Frederick H. Russell, The Just War in the Middle Ages (London: Cambridge University Press, 1975), p. 9.

[6]C. A. Pompe, Aggressive War: An International Crime (The Hague: Martinus Nijhoff, 1953), p. 120.

[7]For discussion of just war in the Old Testament see W. P. Paterson, "War," Encyclopedia of Religion and Ethics, ed. James Hastings, vol. 12 (n.d.), p. 681.

> The Lord is my strength and song
> and he is become my salvation:
> he is my God, and I will prepare him
> a habitation;
> My father's God, and I will exalt him.
> The Lord is a man of war:
> The Lord is his name.[8]

When Joshua, in order to clear the land thought to have been divinely promised to Moses, began his process of genocide at the city of Jerico, the bloody frenzy reportedly extended even to the livestock:

> The people went up into the
> city, every man straight before him, and
> they took the city. And they utterly des-
> troyed all that was in the city, both man
> and woman, young and old, and ox, and sheep,
> and ass, with the edge of the sword.[9]

The Indians

In ancient India admonitions tantamount to the traditional just war classifications of just cause, last resort, and just conduct stood alongside Machiavellian recommendations. The Harsha Charita advised that wars were not to be fought merely for assertion of force or for territorial gain and the Yajnavalkya asked the kings to resort to war only after other alternatives failed.[10] The Manu Samhita urged kings to first attempt to conquer foes by conciliation, by presenting gifts, or by creating dissention.[11] The Indians had "highly

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[8] Exodus 15:1-3.

[9] Joshua 6:20-21.

[10] S. V. Visvanatha Aiyar, International Law in Ancient India (New York: Longmans, Green and Co., 1925), pp. 118-20.

[11] H. S. Bhatia, International Law and Practice in Ancient India (New Delhi: Deep and Deep Publications, 1977), p. 82.

developed rules to ensure fairness in fighting."[12] Unnecessary pain and destruction were condemned by ancient authorities and rules were established concerning prisoners of war, the sick, the wounded, and for the exclusion of non-combatants.[13] In the epic Mahabharata, Bhimsa spoke against fruitless acts of cruelty and asked for human treatment of conquered peoples.[14] On the other hand, the Sukraniti reads that victory was to be realized at all costs--whether or not fighting adhered to rules of morality;[15] and, in the fourth century B.C., the infamous Kautilya's fivefold method of capturing a fortress involved such acts as assassination, treachery, and destruction of crops.[16]

The Chinese

Of the ancient Far Eastern attitudes toward war, Westerners may be familiar with a few scattered bits of information, most of which originated in China. While the martial traditions of the Japanese did not display even a fully-developed Hachiman or Shinto war-god until the West had moved well into the Middle Ages, Chinese philosophers had probed

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[12] Visvanatha Aiyar, p. 148.

[13] Ibid., pp. 149 and 156 e.q. The Laws of Manu urged humane practices in fighting. Paterson, p. 683.

[14] Bhatia, pp. 98, 103, and 109.

[15] Ibid., p. 121.

[16] U. M. Ghoshal, A History of Indian Political Ideas (London: Oxford University Press, 1966), pp. 128-31.

[17] D. C. Holtom, The National Faith of Japan (London: Kegan Paul, Trench, Trubner and Co., Ltd., 1938), pp. 173-77.

the subject of war during the time of the classical Greeks. Probably as early as the sixth century B.C., Lao Tzu, the first philosopher of Taoism, wrote that war was unfortunate and that ones attitudes displayed the ends that one prized:

> Weapons are instruments of ill omens.
> They are not the instruments of the
> princely man,
> Who uses them only when he needs must.
> Peace and tranquility are what he prizes,
> When he conquers, he is not elate.
> To be elate were to rejoice in the
> slaughter of human beings.[18]

The second part of China's Eastern Chou period degenerated into an era of violence lasting from the fifth to the third centuries, which became known as the Chan Kuo or Warring States period. Before the Warring States period "warfare was on a fairly limited scale and somewhat chivalrous in nature . . . Definite rules of conduct were on the whole followed."[19] When serious and frequent fighting spread among and within the Chou states, chariot battles gave way to wars involving professional infantry, mercenaries, then conscript foot soldiers.[20] The severity of these clashes led to continuing reproaches by the developing schools of Chinese philosophy.

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[18]Lao Tzu in Albert Schweitzer, Christianity and the Religions of the World, trans. Johanna Powers (New York: George H. Doran Company, 1923), p. 60.

[19]Witold Rodzinski, A History of China I (Oxford: Pergamon Press, 1979), p. 28.

[20]New Encyclopedia Britannica, 15th ed., Macropaedia, s.v. "History of China," by John W. Lewis.

Mo Tzu, the founder of Moism and critic of Confuscianism, castigated the aggressive wars led by feudal princes as lacking proportionality even for the victor.[21] Writing in the late fifth or in the fourth century, Mo Tzu answered the claims of conquerers:

> When we consider the victory as such, there is nothing useful about it. When we consider the possessions obtained through it, it does not even make up for what has been lost.[22]

Disproportionate damage done meant that war did not meet the test of utility, as did universal love. Not only does aggressive war pour disaster on the conquered state but on the conquering state as well. It is against the purpose of government and the duty of rulers, which requires order and peace. Above all, aggression is intrinsically unjust.[23]

Yin Wen and Sung Keng, both philosophers influenced by the Moist beliefs, instructed against war and proposed disarmament.[24] Likewise, the logician Hui Shih "advocated universal love and opposed war."[25] Such convictions spread generally throughout the period. In the fourth century, the most important of Confucian scholars, the sage Mencius, condemned war for not encompassing righteousness. Human beings

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[21]See Frederick R. Struckmeyer, "The 'Just War' and the Right of Self-Defense," Ethics 85 (1971): 52; Rodzinski, p. 40.

[22]Fung Yu-Lan, A History of Chinese Philosophy, trans. Derk Bodde, vol. 1: The Period of the Philosophers (Princeton: Princeton University Press, 1952), p. 95.

[23]Augustinus A. Tseu, The Moral Philosophy of Mo-Tze (Taipei: China Printing, Ltd., 1965), pp. 384-85.

[24]Yu-Lan, pp. 150-51. [25]Ibid., pp. 194-95.

must follow their original and natural goodness because their consciences require so; and "those who are skillful in warfare should suffer the highest punishment."[26] Confucian Hsun Tzu disagreed that human beings were good by nature; they were bad but could be corrected by proper training. In this vein, princes were advised not to fight, but to win over the people of the enemy.[27] Few major philosophers of the age took the position of Han Fei, the legalist synthesizer, who thought that the military state ought to rule with raised sword over an incorrigibly wicked humanity.[28]

Most Chinese classical poets, however, did not complain of war or urge moderation but extensively glorified war, while believing that its purpose was for recognized royalty to establish order in the countryside:

> His chariots were three thousand,
> With a host of well-disciplined warriors.
> Fang Shuh led them on,
> In his carriage drawn by four piebalds,
> Four piebalds orderly moving.
> Red shone his grand carriage,
> With its chequered bamboo screen,
> and seal-skin quivers.[29]
>
> Full of grandeur and strength,
> The Son of Heaven looked majestic.
> . . . . . .
> As by the roll of thunder or its sudden crash,
> The region of Sen shook and was terrified.
> The King aroused his warlike energy,

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[26] Ibid., p. 95.

[27] Kenneth S. Latourette, The Chinese: Their History and Culture (New York: The Macmillan Co., 1962), pp. 55-56.

[28] Rodzinski, p. 41.

[29] Ts'ae K'e in James Legge, The Chinese Classics Vol. 4: The She King, 2nd ed. (Hong Kong: Hong Kong University Press, 1960), p. 285.

As if he were moved with anger,
He advanced his tiger-like officers,
. . . . . .
The royal legions were numerous;
[Swift] as if they flew on wings,
[Imposing] as the current of the Keang and
the Han;
Firm as a mountain;
Rolling on like a stream;
Continuous and orderly
Inscrutable, invincible;
Grandly proceeding to set in order the
States of Sen.[30]

Justifying War in the Classical World

Greece and Rome

The just war really began in Greece and Rome. The Greeks and Romans seem to have been among the most warlike of ancient civilizations,[31] but both displayed an ethical need to justify wars.[32] "In a sense the whole tradition of the just war from ancient Greece to the modern period forms a seamless if intricate web."[33]

In the early ages of these two civilizations law and religion were closely interwoven, making it difficult to determine where one ended and the other began. Religion was the foundation of law because it was the foundation of life.[34]

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[30]Chang Woo in ibid., pp. 557-58.

[31]Quincy Wright, "War: The Study of War," International Encyclopedia of the Social Sciences, ed. David L. Sills, vol. 16 (1968), p. 456.

[32]James Wilford Garner, "War," Encyclopedia of the Social Sciences, ed. Edwin R. A. Seligman and Alvin Johnson, vol. 15 (1933), p. 339.

[33]Russell, p. 292.

[34]Coleman Phillipson, International Law and Custom of Ancient Greece and Rome, vol. 1 (London: Macmillan and Co., 1911), pp. 43-51.

For this reason and for the reason that religion was very much a different phenomenon than it has been in the Judeo-Christian tradition with which most Westerners are familiar, absolute sorting out of religious motivations, practical legal matters, and humanistic feelings from each other is probably impossible. In the classical civilizations, ritual, tradition, superstition, notions of higher law, and secular-like, humanistic, duty-bound morality combined into religion that was a civic matter and, simultaneously, an ethical pursuit.[35]

Early criticisms of war in Greece and Rome were not primarily against war in principle but against particular ways of fighting.[36] Much was done to humanize hostilities and the Greeks and Romans claimed that their wars were just according to known principles and common opinion in both conduct and origin. What came later to be called just cause ordinarily involved reparations or atonement for wrongs.[37] A contemporary

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[35]Aristotle, The Politics of Aristotle 7, trans, Ernest Barker (New York: Oxford University Press, 1958), pp. 309-11; Ernest Barker, Church, State, and Education (Ann Arbor: University of Michigan Press, 1957), pp. 1-33; William Y. Elliott and Neil A. McDonald, Western Political Heritage (Englewood Cliffs, N.J.: Prentice-Hall, 1949), pp. 65-67; M. I. Finley, The Ancient Greeks (New York: The Viking Press, 1964), pp. 30-36; Edith Hamilton, Mythology (Boston: Little, Brown, 1942), chap. 1; Plato, The Laws xxi, trans. Trevor J. Saunders (Baltimore: Penguin Books, Inc., 1970), pp. 408-47; and George H. Sabine, A History of Political Theory, 4th ed. rev. Thomas L. Thorson (Hinsdale, Ill.: Dryden Press, 1973), chaps. 1, 2, and 3.

[36]See Donald A. Wells, The War Myth (New York: Pegasus, 1967), p. 32.

[37]See Phillipson, vol. 2, pp. 178 and 192; Hans Kelson, Principles of International Law (New York: Rinehart & Co., 1965), p. 34; Paterson, p. 684.

international lawyer wrote regarding the classical laws of war:

> The most important matters comprised in this law of war relate to the recognition of certain valid grounds for commencing hostilities; to the declaration of war, and the necessary formal preliminaries; various relaxations, including the granting of safe-conducts, the right of asylum, and the claims of suppliants; the right of the conqueror, and the occupation of enemy territory, and seizure of booty; the protection of temples, graves, and sacred objects generally; the inviolability of certain individuals; the burial of the dead; the conclusion of truces and armistices, prisoners of war, their ransom and exchange; spies, hostages; elements of neutralization and neutrality; contraband; in maritime war, questions of commercial intercourse, blockage, embargo; and, finally, the formal and solemn conclusion of peace.[38]

The Greek Experience

Pre-Socratics, Poets, and Playrights

Probably approaching three thousand years ago in the oldest known of Greek writings--the Iliad--the poet Homer depicted a prolonged and bloody war in which heroes fought to certain deaths.[39] Combat was a fact of life. Hesiod taught in the eighth century B.C. that, of the two ways of trying to outdo other persons, healthy competition proved more enjoyable than war, but war remained present always because of two reasons:

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[38]Phillipson, vol. 2, p. 179.

[39]Homerus, The Iliad, trans. Robert Fitzgerald (Garden City, N. Y.: Anchor-Doubleday, 1974).

> There is one Strife who build up evil war,
> and slaughter.
> She is harsh; no man loves her, but under
> compulsion
> And by will of the immortals men
> promote this rough Strife.[40]

At the turn of the sixth century, the philosopher Heraclitus defined the ultimate condition of existence to be conflict or some state of dialectical tension: without strife nothing could even exist. His twenty-sixth and twenty-fifth Fragments explain,

> It should be understood that war is the common condition, that strife is justice, and that all things come to pass through the compulsion of strife. War is both father and king of all. . .[41]

Seemingly logical argumentations did not alter the fact that war was proving ruinous for the Greeks. A respectable theory of history would be that internecine warfare was to destroy the city-state system within a few generations after Heraclitus postulated inevitable strife. In the meanwhile, war was not entirely accepted as a natural and fatalistically omnipresent phenomenon. The historian Thucydides focused attention to questions whose implications went well beyond narrow utility in order to encourage fuller understanding of the affairs of war--an approach which can be properly termed "moral." Particularly, as Thycydides and the envoys

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[40]Hesiod, The Works and Days, in Hesiod, trans. Richmond Lattimore (Ann Arbor: University of Michigan Press, 1959), p. 19.

[41]Heraclitus, Heraclitus, trans. Robert Fitzgerald (Garden City, N.Y.: Anchor-Doubleday, 1974).

from the isle of Melos speak to the Athenians, there was a pleading awareness of notions of justice, right, equity, and fairness.

> For we see that you are come to be yourselves judges of what is to be said here and that the outcome of the discussion will in all likelihood be, if we win the debate by the righteousness of our cause and for that very reason refuse to yield, war for us. . .[42]

> As you ignore justice and have made self-interest the basis of discussion, we must take the same ground, and we say that in our opinion it is in your interest to maintain a principle which is for the good of all--that anyone in danger should have just and equitable treatment and any advantage, even if not strictly his due, which he can secure by persuation. . .

> You debar use from the plea of justice and press us to submit to your interests, so we must expound our own, and try to convince you, if the two happen to coincide. . .[43]

> We believe that, for fortune, we shall be nothing inferior, as having the gods on our side, because we stand innocent against men unjust.[44]

Neither did the poets of Greece in the sixth, fifth, and fourth centuries B.C. stand mute before the outrages of war, but spoke with passionate concern. With burning urgency,

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[42]Thucydides, History of the Peloponnesian War.5. 86. in Thucydides, vol. 3, trans. Charles F. Smith (London: William Heinemann, 1921), p. 157.

[43]Thucydides, History of the Peloponnesian War 5.90.98. Thucydides, ed. and trans. Richard Livingstone (New York: Oxford University Press, 1960), pp. 267-68.

[44]Thucydides, History of the Peloponnesian War 5.104. Thucydides, The Peloponnesian War, vol. 2, trans. Thomas Hobbes, ed. David Grene (Ann Arbor: University of Michigan Press, 1959), p. 368.

the tragedian Aeschylus protested the unrestrained wickedness that accompanied the sacking of a city:

> Pity it were that this city, so ancient,
> should be cast to the House of Death. . .
> It is a woeful thing for maidens unripe,
> before the marriage rites, to tread
> this bitter journey from their homes.
> I would say that the dead are better
> off than this, Alas, unlucky indeed the
> fate of a city captured--murder, fire
> and rapine. . .[45]

The stout-hearted Aristophanes repeatedly called for peace: in Lysistrata he poured the scalding torrent of humor on the Athenians, and in Peace he avowed, "The day--war-hating day--has dawned at last."[46] The great dramatist Euripides likewise mourned the harsh tragedy, "the crown of war, the crown of woe," in The Trojan Women.[47] The Greeks speculated richly concerning the way human beings might correctly live. In the early nineteenth century A.D., the poet Shelley celebrated:

> But Greece and her foundations are
> Built below the tide of war,
> Based on the crystalline sea
> Of thought and its eternity;
> Her citizens, imperial spirits,
> Rule the present from the past,

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[45]Aeschylus, Seven Against Thebes, in Aeschylus II, ed. David Grene and Richard Lattimore (New York: The Modern Library, 1956), p. 320.

[46]Aristophanes, Aristophanes; Two Plays: Peace and Lysistrada, trans. Doros Alastos (London: Zeno, 1953), p. 42. See also Aristophanes, The Acharnians of Aristophanes, trans. Robert Y. Tyrrell (Dublin: Hodges Figgis and Co., 1883).

[47]Euripides, The Trojan Women of Euripides, trans. Gilbert Murray (London: George Allen, 1905).

> On all this world of men inherits
> Their seal is set.[48]

Slowly, then, the road began to be paved for the emergence of intelligible and lasting ideas concerning the justice of war in the writings of the classical philosophers. It was Plato and Aristotle who contributed the first fragmentary but distinct statements in the just war tradition.

Plato

Plato appeared to have recognized the just cause to some extent, for he had Socrates and Alcibiades agreeing that just charges for going to war involve first being unjust victims of deceit, violence, or fraud. Socrates concluded that, in going to war, the better is the more just:

> What, then, is justice but that better, of which I spoke, in going to war or not going to war with those against whom we ought or ought not, and when we ought or ought not to go to war?[49]

With much more certainty, Plato in the Republic and in the Laws found it necessary to advise arrangements for a perpetual war-making function, described in the Laws as preparation for the survival of the entire state--brought about by the evil ways of states.[50] Wars arise from the

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[48]Percy Bysshe Shelley, "Hellas" in C. D. Locock, ed., The Poems of Percy Bysshe Shelley, vol. 2 (London: Methuen and Co., Ltd., 1911), p. 69.

[49]Plato, Alcibiades I.109. in The Dialogues of Plato, vol. 1, trans. B. Jowett (New York: Random House, 1937), pp. 739-40.

[50]Plato, The Laws 8.13.

competition between states for excess wealth," a bulky mass of things, which are not in cities because of necessity."[51]

The Republic described a plan of education designed to educate philosophers as guardians because of the difficulty of balancing the characteristics of the best practitioners of war and peace. Socrates addressed Glaucon:

> Yet, they must be gentle to their own and cruel to enemies . . . Where will we find a disposition at the same time gentle and great-spirited? . . . So shall we be bold and assert that a human being . . . if he is going to be gentle to his own and those known to him, must by nature be a philosopher and a lover of learning?[52]

That the eternally-embattled city be defended appeared as an absolute necessity. If any existence at all beyond the polis could be conceived for its citizens, certainly no extension of a picture of physical security could be made beyond the physical limits of the polis. Plato and his interlocutors conceived the city to be a political entity set against the rest of the world, a world which was treated as essentially non-political and subject only to raw force. The firmer was this notion, the greater was the dehumanization of human beings, particularly the non-Greek

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[51]Plato, The Republic 2.373.374. in The Republic of Plato, trans. Allan Bloom (New York: Basic Books, Inc., 1968), pp. 50-51. In the first century B.C. the Roman love poet Tibullus echoed the complaint: "'Tis gold's to blame: no wars had ever been while still the beechen platter graced the feast." George Howe and Gustave A. Harrer, eds., Roman Literature in Translation (New York: Harper and Brothers Publishers, 1924), p. 354.

[52]Ibid. 2.375.376. pp. 52-53.

or barbarian enemy. The more the individual human being was dehumanized, the more unjust the war became.

The Republic did present a degree of moderation in the conduct of war, most significantly in respect to the innocent or non-combatants. Plato sought explicit ethical restrictions providing leniency in wars among the Greeks, even though he allowed something akin to total war whenever Greeks were to fight barbarians. When fighting Greek cities, enslavement of the vanquished should not be permitted nor should corpses be stripped or prevented from being recovered. Only a year's harvest should be confiscated from the countryside.

> When Greeks fight with barbarians and barbarians with Greeks, we'll assert that they are at war and are enemies by nature, and this hatred must be called war; while when Greeks do any such thing to Greeks, we'll say that they are by nature friends, but in this case Greece is sick and factious, and this kind of hatred must be called faction. . . Therefore, as Greeks, they won't ravage Greece or burn houses, nor will they agree that in any city all are their enemies--men, women, and children--but that there are always a few enemies who are to blame for the differences.[53]

As the need for Plato's counsel indicates, even these limitations were the preferred rule rather than the actual practice;[54] however, the Delphic League did actually enforce restrictions in the conduct and fighting of wars.[55]

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[53]Ibid.5.469.470,471, pp. 149-51.

[54]With striking similarity, war in ancient China was supposed to be "conducted only against the 'barbarians,' and not between the Chou states, which shared the same culture and institutions." In reality, war took place between these states and within them. Rodzinski, pp. 26-29.

[55]Bainton, pp. 36-37.

Because the growth of ideas about just war still remained in such a primitive state, his most clear-cut role concerned something that (1) became very casually accepted, (2) met little basic objection thereafter, and (3) was the least important of all just war criteria. Plato's most recognizably isolatable contribution to the criteria of the just war dealt with proper authority and involved the heaviest of penalties. Private wars ranked among the most serious of crimes.[56]

Aristotle

Aristotle regarded war as a means to peace, as a merely necessary or useful part of life to be distinguished from peace--which was a good in itself.

As men do business to have leisure, they "carry on war to have peace."[57] Aristotle apparently means simply that war is not for the killing but for other purposes, inasmuch as he observes that "no one desires to be at war for the sake of being at war," i.e., "for the sake of causing battles and massacres."[58] He criticized Sparta for "directing the whole

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[56]Plato, Plato: The Laws 7.112, p. 507.

[57]Aristotle, The Nicomachean Ethics 10.7, trans. H. Racham (Cambridge, Mass.: Harvard University Press, 1958, p. 615.

[58]Ibid. Even the opportunistic Brahman, Kautilya, agreed that, "when the advantages derivable from peace and war are of equal character, one should prefer peace; for disadvantages, such as the loss of power and wealth, sojourning, and sin, are ever attending upon war." Kautilya, Kautilya's Arthasastra, trans. R. Shamasastry, 6th ed. (Mysore: Mysore Printing and Publishing House, 1960), p. 296. See also Bhatia, p. 82.

of its legislation to the goals of conquest and war" and indicated that the general aims of a citizen's education ought not to concentrate on victory in war. Training for war should be pursued for three reasons: first, to prevent "men from ever becoming enslaved themselves"; second, to exercise leadership; and, third, to enable men to be masters of their inferiors. The cardinal aims of all legislation respecting war must be leisure and peace because "peace is [ought to be] the final aim of war."[59] Even though war was considered ordinary and inevitable, peace could still have been considered the paramount, and even the most normal condition--most especially in that its desirability would not have been hard to rationalize. Significance may be attached to the fact that "polemos, the Greek word for 'war,' signifies 'violent shaking' and mix up, like its cognate verb pelemizein; and eirene, meaning 'peace,' appears to contain a metaphor from continuity, as of a chain of beads, or flowing speech, or orderly assembly."[60]

In discussing slavery Aristotle commented that "in the first place it is possible that the original cause of a war may not be just."[61] While Aristotle's remark concerning

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[59]Aristotle, The Politics 7.14.15, The Politics of Aristotle, trans. Ernest Barker (New York: Oxford University Press, 1952), pp. 317-21.

[60]John L. Myres, The Political Ideas of the Greeks (New York: Greenwood Press, Publishers, 1968), p. 145.

[61]Aristotle, The Politics 1.6, p. 15.

slavery appears to provide the initial coinage of the term "just war" in existent Greek literature, expediency rather than justice sets the purposes for the rhetoric student's knowledge of war and peace," his object being to conclude a peace with the superior powers and to have the option of fighting or not with the inferior."[62]

The Experience of Rome

The Fetial Institution

While the Greeks merely conceived their religion with its human-like gods to be integral with civil pride and everyday living, Roman consciousness unmistakably contained beliefs that Romans were tools in the hands of gods that fixed for Rome a historical mission.[63] "The gods of Rome were to receive their due and were to be of assistance to the state, for the religion of Rome was "the sanctification of patriotism--the Roman citizen's highest moral ideal."[64] The law of Rome, which sprang forth from the seedbed of religious and moral ideas as well as from practical needs, was itself

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[62]Aristotle, Rhetoric 1.4. in The Rhetoric of Aristotle, trans. J. E. C. Welldon (London: Macmillan and Co., 1886), p. 28.

[63]See Franz Altheim, A History of Roman Religion (London: Methuen and Co., 1938), pp. 423-28. See also John E. Rexine, Religion in Plato and Cicero (New York: Philosophical Library, 1959), p. 48.

[64]Cyril Bailey, The Religion of Ancient Rome (London: Constable and Co., Ltd., 1911), p. 112.

subordinated to the idea of the state towering over individuals and classes.[65]

According to the Roman historian Livy, Ancus Martius (i.e., Marcius), who was elected fourth king of the Romans about 640 B.C., first instituted exacting ceremonies of war. On the occasions that an accusation against another state took place, a quasi-political council of priests inquired into the case for the senate; and, in the event the charges were determined to be just, a messenger was dispatched to demand restitution from the offensive state. If demands to a nation, which were recited before Jupiter in the name of "justice and religion" were not met in thirty-three days, the gods were exhorted by a Roman ambassador to witness that the nation called upon was unjust. Only after the king would hear a majority of the senate, consent to "a just and righteous war" was the fetial spear thrown into enemy territory.[66]

Cicero wrote, "Roman fetial law, in fact, prescribes very minutely the entity of warfare."[67] Under the jurisdiction

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[65]See Paul Vinogradoff, Roman Law in Medieval Europe (New York: Barnes & Noble, Inc., 1968), p. 143.

[66]Titus Livius, The History of Rome 1.32 (London: J.M. Dent and Sons, 1912), pp. 38-40. See also Tenney Frank, Roman Imperialism (New York: The Macmillan Co., 1921), p. 8; Frederick L. Schuman, International Politics, fifth edition (New York: McGraw-Hill Book Company, Inc., 1953), p. 41. In respect to certain individuals to which the tradition fetial institution has been attributed: Marcus Tullius Cicero, On the Commonwealth, trans. George H. Sabine and Stanley B. Smith (Indianapolis: The Bobbs-Merrill Co., 1929), p. 144 ff.

[67]Marcus Tullius Ciceronis, De officiis 1.11. De officiis/On Duties, trans. Harry G. Edinger (Indianapolis: The Bobbs-Merrill Co., 1974), p. 19.

of the college of fetials the jus fetiale prescribed the proceedings and formalities that were necessary for the declaration of war and the conclusion of peace and also the procedures for making treaties and for handling certain cases of extradition.

The Jus Gentium and the Natural Law

The fetial law involved formal recognition plus a religious sanction of customs and practices of war that came to be included in the jus gentium as a body of personal law common to all civilized peoples.[68] Old popular Latin, as well as legal Latin, used jus gentium to mean "the common law or usage of mankind--the rules, in fact, everybody recognizes.[69] The jus gentium represented sometimes the substance of law and sometimes the ideal--the jus naturale, although the distinction between the two was often unclear.[70] Similarly stated, the jus gentium sometimes appeared to include "positive morality, as well as positive law, especially that part of positive morality which is styled international law."[71]

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[68]Phillipson, I, p. 97.

[69]Frederick Pollock, Essays in the Law (N.P.: Archon Books, 1969), p. 34.

[70]Julius Stone, Legal Controls of International Conflict, p. 6 ff.

[71]John Austin, Lectures on Jurisprudence, vol. 2, 5th ed., ed. and rev. Robert Campbell (London: John Murray, 1911, p. 566.

Roman natural law has been construed as descriptive of the way persons in general had been observed to act;[72] but it is more likely that the naturalis ratio, as a common philosophical basis for all law, was based on how persons ought to act to make matters best.

As a model and source for law in practice, the natural law became part of practiced law until "the jurists of the later imperial age transferred the authority of the jus gentium, considered to be positively universal, to the law of nature regarded by its theoretical features as being universal.[73] The "ought" of the natural law came to be more than a universal imperative of reason; it took on an increased association with the "is" of the jus gentium.

Still, it is easy to magnify the solely legal character of the Roman just war--for one reason--because it is generally correct to ascribe to the Romans much of the world's legal heritage. The main idea of just war derived from Rome, as stated by one commentator, was the realization of a legal claim by the claimant as his own judge.[74] The obvious

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[72]James T. Johnson, "Natural Law as a Language for the Ethics of War," Journal of Religious Ethics 3 (Fall 1975): 238.

[73]Augustus Pulszky, The Theory of Law and Civil Society (London: T. Fisher Unwin, 1888), p. 81. Nettleship's partial lexicon concluded that, in later Latin, the two expressions became "virtually synonomous." Henry Nettleship, Contributions to Latin Lexicography (Oxford: At the Clarendon Press, 1889), p. 510.

[74]Pompe, p. 127.

contradiction between such a notion and what is today considered to be practically definitive of operational legality regarding claims, i.e., pursuit of rights, is revealed when the author adds that getting ones rights is "part of the just order."[75] Then what is really involved is natural law, or law as right, or--more properly speaking--ethics, which forms the basis of any positive law dealing with settlement of disputes.

Even though no impartial arbiter may have existed when situations of war arose, a standard did exist--the natural law, which related to decisions concerning war in the same manner that it affected the positive law in general. The natural law did not control: it influenced. If the occasion of war was held to embody the likeness of a civil suit, that quasi-judicial action needed to acknowledge the demands of natural justice. The most important fact of the Roman jus naturale was that it provided a standard that was good within itself, that was not subject to the demands of demonic powers, the wrath of compelling gods, or the whims of unreasonable dictators and transcient publics. "A system of law which purported to be grounded on its intrinsic value rather than on its power of compulsion was a unique experiment in the history of mankind."[76]

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[75] Ibid.

[76] A. P. d'Entreves, Natural Law, 2nd ed. (London: Hutchinson University Library, 1970, p. 35. Compare the intrinsic value of natural law morality with the willful

Roman Theory in Practice

Era of the Republic

During the years of the Republic, the Romans were moderate and restrained in the active practice of the just war concept in comparison to the practice of the later Empire.[77] For perhaps four hundred years before the end of the third century B.C., when the law was stretched to cover temporary arrangements with allies (societas), the state had constructed its federation on permanent defensive alliances considered to be with friends (amicus) in compliance with the defensive nature of the jus fetiale.

> A sense of fair play and a respect for legal orderliness permeates the whole early history of this people. . . . Most striking of all is the fetial institution. . . . Of course, no one would make the claim that the fetial rule invariably secured justice. . . . But the important point after all is the fact established by the existence of this institution that the Roman mos majorum did not recognize the right of aggression or a desire for more territory as just causes for war. That the institution was observed in good faith for centuries there can be little doubt.[78]

To pronounce a proposed war to be legitimate during the Republican era, a material condition demanded establishment

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commands of the anthropomorphic god of Judaism and of Christianity, supra. The Roman experience was not primarily one of divine despotism.

[77]See G.I.A.D. Draper, "The Christian and War," International Relations II (October 1962): 380.

[78]Frank, p. 9. Mos majorum means inherited custom.

of a just and adequate cause, and a formal condition imposed a solemn, public declaration. "A fully considered resolution of the senate and the people was indispensable."[79] Despite the seriousness attached to these conditions, as the Republican period wore on, the just war became increasingly a formal concept and with the coming of the Empire even the formal declaration and the fetial priest disappeared.[80]

Era of the Empire

As the conduct of war became less bound by rules with the rise of the Empire, disappointment with war also grew. The war-weary Stoics in imperial public life remained dutiful though disallusioned, with Marcus Aurelius writing harshly of war while heading his armies.[81] Tutor to Nero, the last of the Julio-Claudian line, was the Spaniard Seneca, who wrote "to destroy a single man may be dangerous; but to murder whole nations is only a more glorious wickedness."[82] To Seneca, men combined into a nation, devised the tragedy of war from the beneficial gifts bestowed upon them by nature:

> We check manslaughter and isolated murders; but what of war and the much-vaunted crime of slaughtering whole peoples? . . . Man,

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[79]Phillipson II, p. 230.

[80]Pompe, p. 120.

[81]Bainton, p. 30.

[82]Seneca, "Of Anger," Seneca's Morals, trans. Roger L'Estrange (New York: Harper and Brothers, 1917), p. 257.

> naturally the gentlest class of being, is not ashamed to revel in the blood of others, to wage war, and to entrust the waging of war to his sons.[83]
>
> What madness drives us and makes us ready to destroy one another? We spread sails to the winds intending to seek war. . . when we have escaped so many hidden rocks and the dangers of a sea full of shallows, when we have fled stormy mountains above us, through which the wind is driven headlong against sailors; after days enveloped in cloud and nights horrid with rain and thunderstorms, when the ship has been torn apart by whirlwinds . . . surely war will meet us, an enemy on the shore, ancient cities burning, and nations destined to be slaughtered but also likely to drag most of the conquerers with them . . . why do you search for death, which is plentiful everywhere?[84]

Cicero

Stoicism and the Natural Law

Evidently, nowhere is early just war at all explained in terms of Stoicism, despite the prominence of Stoicism in Roman affairs and the importance of Cicero for the just war tradition. While his writings could not be called purely Stoic because he incorporated Roman religion and even Plato's words, Cicero represented the zenith of Latin letters at the

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[83]Seneca, Epistulae morales 95.30,31. in Seneca, in Ten Volumes: Ad lucilium, Epistulae morales III, trans. Richard M. Gummere (Cambridge: Harvard University Press, 1962), pp. 77, 79.

[84]Seneca, Naturales quaestiones 5.18.6,7,9. in Seneca, in Ten Volumes: Naturales quaestiones X, trans. Thomas H. Corcoran (Cambridge: Harvard University Press, 1972), pp. 115, 117.

time that natural law had come into full flower in the beliefs of the Romans.

Cicero walked the center of the Roman state as a lawyer and a consul who supported Brutus and Cassius in the assassination of Julius Caesar; but his bequest to the ages lay in the legal brilliance of Rome that was manifested in the language and concepts of natural law. More than glorifying the legal position of natural law in a formal manner, he translated it into applied right: "True law is right reason in agreement with nature; it is of universal application, unchanging, and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions."[85] Right reason applied to all public questions, whether of peace or of war.

At the very time these words were being written, the Republican system was collapsing around Cicero. Much of his writings in defense of the ancestral system of government warned against practices that he felt were hastening the dissolution. Because the decay was further along than he realized, historians are prone to criticize the passionate republican's idealism as "resting on a romantic view of the

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[85]Marcus Tullius Cicero, De re publica 3.22. Cicero in Twenty-eight Volumes: De re publica, De legibus, vol. 16, with an English translation by Clinton W. Keyes (London: William Heinemann, Ltd., 1977), p. 211. See also John Bowie, Western Political Thought (New York: Barnes & Noble, 1961), p. 86.

old Roman state"[86] and being "deeply imbued with ideas that could never be realized."[87] Yet Roman Stoic genius was as practical as it was legal, and Cicero was the foremost of the Roman laywers. Broadly, he realized that nations adopted laws that, even if they could be fully complied with, could not measure up to the provisions of the natural law. Nowhere could this have been more foreboding than in regard to the just war and in no other area were the consequences to be more demoralizing.

The War Must Be Just

War comes to the citizens of the world after a failure in the operation of universal reason, which expresses itself in the natural law: "You must resort to force if there is no opportunity to employ reason."[88] Had this line of thinking been carried far enough into a utopian consequence, war might have been altogether rejected. As it was, peace stood for a conditional preference; "My firm opinion is that you should always work toward peace that is not going to conceal any trap."[89] Although a former member of the army

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[86]Wolfgang Kunkel, An Introduction to Roman Legal and Constitutional History, trans. J. M. Kelly (Oxford: At the Clarendon Press, 1966), p. 48.

[87]T. M. Taylor, A Constitutional and Political History of Rome: From the Earliest Times to the Reign of Domitian, 4th ed. (London: Methuen & Co., Ltd., 1915), p. 384.

[88]Ciceronis, De officiis 1.11. Edinger, p. 19.

[89]Ibid.

himself and surrounded by military heroes, Cicero declined to render to military valor the support that it had received during the Hellenic era at the Academy and Lyceum. He advised that "diplomacy in the friendly settlement of controversies is more desirable than courage in settling them on the battlefield."[90]

If wars do not coincide with the ideal operation of right-reason and if they ought not to be embarked upon by any state whenever diplomatic negotiations can prevent their occurrence, the responsibility for a just cause is indeed great; consequently, "Nellum bellum suscipi a civitate optima nisi aut pro fide aut pro salute."[91] The very least that can be demanded is that "maxime conservanda sunt iura bella."[92] Laws of war must not incorporate a skin-deep legality and a feigned sincerity; laws of war must be just.

Cicero's major statements contributing to the just war tradition are contained in his two most original works, De re publica (i.e. The Republic, The Commonwealth) and De

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[90]Ibid. 1.23. De officiis. With an English translation by Walter Miller (London: William Heinemann, 1931), p. 81.

[91]Ciceronis, De re publica 3.21. Keyes, p. 210. "No war is undertaken by the optimal, civilized-state, if not for honor or for safety." (Translation mine)

[92]Ciceronis, De officiis 1.11, De officiis, libri tres, eds. Hubert A. Holden and Charles Anthon (New York: Harper and Brothers, 1864), p. 13. "The laws of war are to be preserved to the highest degree." (Translation mine)

officiis (i.d. On Duties, On Morals, The Laws). While apparently writing on the order of Plato's Republic and Laws, Cicero meant to be less hypothetical and less removed and--though manifesting Stoic idealism--more descriptive of Roman birthrights and more practically prescriptive for Roman politics. His unequivocal but general remarks on the just war, with details being implicit in traditional Roman practices and Stoic beliefs, fell into three interdependent areas: (1) reasons for undertaking war, including the centrality of peace; (2) procedures for introducing hostilities; and (3) appreciation of moderation at all stages of war and peace.

Just Cause and Commencement of Hostilities

Wars are just only when (1) they are fought to throw back an invader and when (2) they avenge an injury to ones property by (a) reclaiming it or through (b) punishing the offending state for the loss. Fighting is to begin--except in the case of response to invasion--following communications with the enemy concerning possible reparations, and in all instances, not until after heralds proclaim that the state is going to act:

> Ac belli quidem aequitas sanctissime fetiali populi Romani jure perscripta est. Ex quo intellegi potest nullum bellum esse justum, nisi quod aut rebus repetitis geratur aut denuntiatum ante sit et indictum.[93]

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[93] Ibid., p. 14. "Now, as for war, indeed benevolent justice is scrupulously recorded in the fetial law of the Roman people: from which it may be understood no war is just

> Illa injusta bella sunt, quae sunt sine causa suscepta nam extra ulciscendi aut propulsandorum hostium causum bellum geri justum nullum potest.
>
> Nullum bellum justum habetur nisi denuntiatum nisi indictum, nisi repetitis rebus.[94]

Cicero's Reason and Moderation

A Cautious and Qualified Use of War

Because reason did not rule omnipotently, the cardinal Stoic virtue of justice frequently and reluctantly had to rely on the dictates of common-sense to employ utilitarian measures--but only to expedite a return to a more reasonable condition. By a fusion of ethical and pragmatic considerations, Cicero produced for Western civilization the first distinct recommendations for the cautious and highly qualified use of war, an idea that never afterward strayed from the center of the just war tradition. Like Aristotle,[95] Cicero indicated that the aim of war was the restoration of

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except on the grounds that it is undertaken to claim back ones own property; or that a warning is made beforehand; and, also, that a public declaration is made." (Translation mine) The usage of denuntiatum here appears to imply authoritatively delivering a message, while indictum seems to indicate the formal act of broadcasting.

[94]Ciceronis, De re publica 3.23. Keyes, p. 212. "Those wars are unjust which are undertaken without good reason; for, without the cause of avenging or repelling an enemy, wars are not carried out justly." "No war is considered just if not officially announced, if not declared publicly, and if not demanding back [ones property]." (Translation mine) Ulciscendi may include a sense of punishment, justice, and, even, defense. Propulsandorum denotes a propelling back.

[95]Supra, pp. 21-22.

a truly peaceful condition: "Quare suscipienda quidem bella sunt ob eam causum ut sine injuria in pace vivatur."[96] With the Athenians, a self-centered outlook did not reach far enough beyond immediate wartime defense to envision post-war situations that might be more conducive to a more lasting peace. The provincial leniency that Plato prescribed befitted a closed system, more resigned to war than optimistic for peace.[97]

Peace as Non-fighting

Cicero combined universalism and a trust in right reason with a more realistic and promising view of peace. The first point for Cicero to deeply comprehend, while on its face a simplistic observation, was peace as the non-existence of fighting, standing at odds with fighting for peace. The logical and moral paradox of the flat assertion that one goes to war to get peace, in the same manner that one might get wet in order to be able to become dry, had been slow for human beings to understand because of the selfish, defensive origin of the idea.

Causes of Peace and War

The second point that was beginning to be understood was that peace and war came about from actual states of

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[96]Ciceronis, De officiis 1.11. Holden, p. 13. "Wherefore, the cause for which wars are undertaken is living in peace without unjust injury." (Translation mine)

[97]Supra, p. 20.

affairs, determined in part by the ends and means of war itself. The Ciceronian praise of peace and advocacy of judicious and humanitarian restraint rested on a more firm ground than did the classical Greek estimates of peace; for the Stoic accepted the essential humanity of all participants and the basic equality of all states and peoples. The Stoic vision fostered: (1) a marked change in intentions, (2) a greater expectation of peace, and (3) a more meaningful knowledge of the nature of peace really including the situations of all opposing parties by not de-humanizing enemies.

Organizing the Participants of War

The just war category of just intentions had not clearly emerged until it could be based solidly on the Stoic belief in the universal brotherhood of man. Although the Hellenic philosophers, such as Plato, recognized many of the crucial questions of war, they could never really admit to dictates of humanity. Because of their intense devotion to the polis as the real world surrounded by hostile forces, they failed to break away from the ancient policy of treating enemies as mere objects. Physical force remained like a wild bull raging against the bodies and minds of human beings. The Stoic understanding that the material might be truly limited by universal morality has proved central to the just was conception.

Just Means

If to intend justice and peace, the context of universal law directly compelled attention to just cause and just procedure in the initiation of war, it also expedited the relating of just means both to the specific reasons for going to war and to the requisites for a peace that might longer endure. Without doubt, war should be fought "in such a way as to make it evident that it has no other object than to secure peace."[98] Even more significant than Cicero's warnings against cruelty and wantonness,[99] were the implications for just conduct directly reflecting the just cause:

> I am inclined to think, it is sufficient that the aggressor should be brought to repent of his wrong-doing, in order that he may not repeat the offense and that others may be deterred from doing wrong.[100]

The Christian Reception

The just war statements of Cicero did not advance unmolested in spirit nor in fact for many centuries; rather, they seeped into the tradition in an extended, slow process that would be impossible to trace outright. The Christians, who began partially assimilating Cicero within a couple of centuries after his death in the first century B.C., finally came to use his just war writings to frame most of their

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[98]Ibid. 1.23. Miller, p. 81.

[99]Ciceronis, De officiis 1.24. Miller, p. 83.

[100]Ibid.

comments respecting war; but they proceeded from radically different assumptions. They certainly could not agree that men got together to unite in the state because of a propitiously innate sociability. Belief of the Latin church fathers in the fall of man encouraged a low opinion of humanity which turned into an intense preoccupation by the fourth century and which contradicted Cicero's explanation that the first cause of the state was "not so much the weakness of the individual as a certain social spirit which nature has implanted in man."[101]

All the way to the seventeenth century the picture of the just society would now and then show through on the screens of men's minds; but the first Christians primarily beheld the state to be an unimportant, evil, or secondary thing.[102] Just war could not be as easily a reasonable possibility if the state did not follow the image drawn by Cicero:

> A commonwealth is the property of a people. But a people is not any collection of human beings brought together in any sort of war, but an assemblage of people in large numbers associated in an agreement with respect to justice and a partnership for the common good.[103]

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[101]Ciceronis, De officiis 1.25. Keyes, p. 65.

[102]The very first Christians hopefully expected the second coming as immanent. The question of "social conditions" did not arise, especially if an interim ethic of Christ renounced moral works in the imperfect, worldly existence and concerned itself with conditions in the hearts of individuals. Albert Schweitzer, The Kingdom of God and Primitive Christianity, trans. L. A. Garrard, ed. Ulrich Neuenschwander (New York: The Seabury Press, 1968), pp. 98-99.

[103]Ciceronis, De officiis 1.25. Keyes, p. 65.

To the early and medieval Christians, Cicero was a "pagan"; and they never were willing to attribute fully moral and just intentions to his writings on the just war. Christians distrusted "pagan" philosophies as being useless or as comprising false teachings; thus, Christian followers and leaders alike often grew intolerant of them. Tertullian asked, "What has the Christian to do with the philosopher?"[104] Arnobius answered, "Leave all knowledge and science to God."[105] Even less extreme writers never did admit their full indebtedness to Latin Platonists, Stoics, Pythagoreans, and other schools of thought.[106] Erroneous opinions concerning Cicero and the entire Roman legal experience were regularly perpetuated, as modern sentiment continued to indicate. Following Latin quotations from Cicero, de Solages cautioned:

> Mais ce serait se tromper que de croire qu'elles avaient vraiment pour lui le sens et la portee que nous sommes tentes d'y mettre . . . C'est qu'au fond le concept romain de juste est avant tout un concept formaliste. Est juste ce qui respecte la forme.[107]

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[104] S. Angus, The Religious Quests of the Graeco-Roman World (New York: Charles Scribner's Sons, 1929), p. 109.

[105] John H. Randall, Jr., Hellenistic Ways of Deliverance and the Making of the Christian Synthesis (New York: Columbia University Press, 1970), p. 184.

[106] A. H. Armstrong and R. A. Markus, Christian Faith and Greek Philosophy (New York: Sheed and Ward, 1960), pp. 43, 50-51; Martin A. Larson, The Story of Christian Origins (Washington: Joseph J. Binns/New Republic Book, 1977); ibid., p. 68. At the first, anti-intellectual tendencies did not appear as pronounced among the Greeks of the Church as amid the Latins: "The Roman theologians hated science and culture.: Randall, p. 167.

[107] Bruno de Solages, La theologie de la guerre juste (n.p.: Desclée Brouwer, 1946), pp. 38-39. "But we would be

This unfortunate parochial view of secular ethics, which darkly obscured the genuine evolution of political morality down to modern times, no doubt still exacts considerable influence. Despite much misuse of Cicero and many misunderstandings of other philosophers, plus even intentional destruction of writings, Christianity did absorb a large amount of the Greek and Latin tradition.[108] For political ethics generally for for the just war, in particular, not much cause exists to question the fact that the secular contribution has been damaged; the main question respecting Christianity asks what may have been its positive effects. The Christian response to the accusation of parochialism might legitimately be that the Christian contribution to the area of political morality dealing with the just war has more than compensated for any substantive damage.

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mistaken to believe that they had verily for him the same meaning and scope as for us. . . . It is because basically the Roman concept of justice is above all things a formalistic conception. That which respects form is justice." (Translation mine)

[108]See Paul O. Kristeller, Renaissance Thought and Its Sources, ed. Michael Mooney (New York: Columbia University Press, 1979), p. 71.

CHAPTER TWO

GENESIS OF THE CHRISTIAN JUST WAR

The lamb thy riot dooms to bleed today,
Had he thy reason, would he skip and play?
Pleased to the last, he crops the flowery food,
And licks the hand just raised to shed his blood.
Oh blindness to the future! Kindly given,
That each may fill the circle mark'd by Heaven,
Who sees with equal eye, as God of all,
A hero perish, or a sparrow fall,
Atoms or systems into ruin hurl'd,
And now a bubble burst, and now a world.

- *Alexander Pope, "Essay on Man"*[1]

Overview

Christianity evolved for nearly four hundred years within the classical Graeco-Roman age until its dominion inaugurated the age of Christian Europe. Its theology and its political thought culminated in the ideas presented by Augustine, the bishop of Hippo. From that day until the fifteenth century, Christian doctrine controlled the course of the just war.

Christianity began at a time when Oriental mystery religions flourished in the lands governed by Rome; and the

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[1]Alexander Pope, The Political Works of Alexander Pope (Philadelphia: J. J. Woodward, 1841), p. 102.

Romans first looked upon it as merely an obscure Jewish sect. Its adherents increased their numbers slowly, and they did not develop a strong institutional structure for many generations. During the first three centuries of Christianity, when Hellenistic philosophy continued to dominate political thinking, it had a great effect on Christian beliefs; increasingly, though, Christian thinking relied on its Judaic origins. In nothing was this reliance more decisive than in regard to war.

From Pacifism to Militarism

Early Pacifist Practice

The thought and practice of Christianity underwent a notable transformation between its birth and the establishment of its rule over political philosophy and the just war doctrine. What Christians said and did concerning war during these formative years has fallen into two significant question areas that have been the object of considerable dispute. Disagreements have concerned whether or not early Christianity was, in fact, pacifist and whether or not its original intent was pacifist.

Many just war accounts have suffered from the difficulties inherent in writing and interpreting history with a measure of objectivity. In recording pre-Augustinian

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[2]Concerning objectivity see Hans Meyerhoff, The Philosophy of History in Our Time (Garden City, N.Y.: Doubleday & Co., 1959).

history, Catholic writers have often tended to support church traditions that have denied the existence of early church pacifism except as an intermittent heresy.[3] A political theorist and Catholic layman wrote that "pacifism is alien to the Christian tradition. . . . Early Christianity was not pacifist."[4] Insurmountable evidence points to the contrary.[5] For nearly two hundred years believers were entirely pacifists; they probably were mostly pacifists for another century; and even as the fourth century came to a close, some remained so.[6]

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[3]A theology professor tended to exaggerate the efficacy of censorship, especially as his statement is removed from his entire work: "What was remembered of the earliest days of Christianity passed through a kind of censorship so that there is only left for us what conformed to the doctrine of the church when it had become fixed in one single form." Maurice Gouguel, The Birth of Christianity, trans. H. C. Snape (London: George Allen & Unwin, Ltd., 1953), p. 9. There have existed limits to the damage done. First, some secular writing has survived from the period; and, secondly, sources indicate that church authorities proved unable to alter, forge, or destroy all deviating religious records because (1) they did not get their hands on all of them, (2) some had been too long in use to be rejected, and (3) even the most preferred orthodox writings left much from which evidence would be gleaned.

[4]Willmoore Kendall, "Force: Christian or Unchristian, Moral or Immoral," in War and the Use of Force, ed. Willmoore Kendall and Mulford Q. Sibley (Denver: The Swallow Press, n.d.), pp. 8-9.

[5]Early Christian pacifism has been documented adequately be Cecil John Cadoux, The Early Christian Attitude to War (Headley, 1919); Adolf Harnack, The Expansion of Christianity in the First Three Centuries, vols. 1 and 2, trans. James Moffatt (New York: G. P. Putnam's Sons, 1904).

[6]Paul Ramsey, War and the Christian Conscience (Durham, NC: Duke University Press, 1961, p. xv; Paul Ramsey, in Protest: Pacifism and Politics, ed. James Finn (New York: Random House, 1967), p. 416; Norman Angell,

A majority of contemporary Christians may believe that pacifism was never intended by the historial Christ. A liberal, realist theologian rationalized:

> The good news of the gospel is not the law that we ought to love one another. The good news of the gospel is that there is a resource of divine mercy which is able to overcome a contradiction within our own souls.[7]

Similarly, the conservative layman argued, "The heretic . . . is temperamentally or intellectually incapable of getting hold of that fusion of opposites that is the fullness of the Christian faith. . . ."[8] Four leading contentions have been put forth against nonresistance: (1) that scriptural prohibitions against violence meant inner disposition rather than outward actions and that retributive justice commanded restraint and punishment of the wicked; (2) that prohibitions were only counsels of perfection to be taken as criticism, not as guides; (3) that they applied to private conduct rather than social duty; and (4) that they comprised an interim-ethic which became historically invalid as social

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"Pacifism," Encyclopedia of the Social Sciences 11, ed. Edwin R. A. Seligman and Alvin Johnson (1933); 527; Bainton, p. 85; G. A. Cranfield, "The Concept of the Just War," Australian Outlook 9 (June, 1955): 70; Margaret Aldum Gist, Love and War in the Middle English Romances (Philadelphia: University of Pennsylvania Press, 1947); and Mulford Q. Sibley, "Force and War: Politics, Morals, Christianity," Kendall and Sibley, pp. 24-25.

[7]Reinhold Niebuhr, Christianity and Power Politics (New York: Charles Scribners Sons, 1948), p. 2.

[8]Willmoore Kendall, p. 8.

responsibilities changes.[9] An analogous and common line of explanation holds that because the gospels were vague and confusing they failed to devise an answer one way or the other.[10]

Other scholars protest that the initial pacifism was appropriate because Christ enjoined his followers from all use of violence and advocated the efficiency of love to overcome.[11] Relying on textual analysis with emphasis on the Sermon on the Mount, a literal rendering indicates a plea for an open-minded, conciliatory attitude as an upright, positive force akin to Gandhi's ahimsa in the twentieth century.[12] Nys wrote:

> La doctrine de Jesus est essentiellement pacifique; a la verite, l'Evangile ne condamne pas la guerre d' une maniere absolue, mais l'enseignement chretien est instinctivement contraire a l'emploi de la force, et de's les

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[9]Cecil John Cadoux, "Christianity and the Problem of War; A Symposium of Two Articles: I. The Christian Pacifist Case," The Journal of Religion 21 (July 1941): 237. Justin Wroe Nixon, "Christianity and the Problem of War; A Symposium of Two Articles: II. A Non-Pacifist Looks at Pacifism," The Journal of Religion 21 (July 1941): 248-249. Schweitzer, The Kingdom of God and Primitive Christianity.

[10]Draper, p. 381.

[11]See Cadoux, The Early Christian Attitude, p. 244; Angell, p. 527; John H. Yoder, "'What Would You Do If . . .?' An Exercise in Situation Ethics," Journal of Religious Ethics 2 (Fall 1974): 99-100.

[12]See John V. Bondurant, Conquest of Violence: The Gandhian Philosophy of Conflict (Princeton, N.J.: Princeton University Press, 1968); Mohandas K. Gandhi, Gandhi: Selected Writings, ed. Ronald Duncan (New York: Harper and Row, 1972); Iyer Raghavan, The Moral and Political Thought of Mohatma Gandhi (New York: Oxford University Press, 1973).

premiers siecles, la guerre trouve das les peres de l'Englise de rude adversaires.[13]

If Christ commanded man to love his enemies, it took place amid intense hatred of the Roman legions, which the Jews considered to be troops of foreign occupation. The Romans considered the intolerance and extreme monotheism of the Jews and Christians to stem from a hatred of mankind.[14] In fact, a hundred years later the Romans finally felt forced to denationalize the Jews. During the first century, before the universalism of the new religion became apparent, Roman officials patiently protected the Christians from the assaults and plots "on the part of their co-religionists," the Jews. "Above all, the persecution came at this period exclusively from the Jews."[15] With the exception of the killings following the fire in the city of Rome during 64 A.D., Christians were not persecuted by the empire to a great extent until over a century after the journeys that Paul took to spread the word to Roman cities; and another century and a half elapsed until the persecution by Diocletian. The Romans did

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[13]Ernest Nys, Le droit de la guerre et les précurseurs de Grotius (Brussels: Librairie Européenne C. Muquardt, Merzbach et Falk, 1882), p. 24. "The doctrine of Jesus is essentially pacifist; in truth, the Bible does not condemn war in an absolute manner but Christianity is instinctively contrary to the use of force, and from the first centuries war meets with, in the Fathers of the Church, rugged adversaries." (Translation mine)

[14]McIlwain, p. 145.

[15]E. G. Hardy, Christianity and the Roman Government: A Study in Imperial Administration (London: George Allen & Unwin, 1925), pp. 30-33.

dislike the Christians because Christians actively practiced intolerance and, faced with neighbors engaged in everyday "idolatrous" practices, repudiated the surrounding culture.[16] They stubbornly "maintained that they alone had the truth" and "they were disliked for their unsocialibility."[17] To the Romans, no doubt, the behavior of the primitive church members was exemplary in comparison to the Jewish nationalists.

Early Christian pacifism, which generally stood for unconcern with battles at worse and giving best wishes to bystanders at best, certainly did not spell active resistance to military operations; nor did it indicate ignorance of the problems of justice in war. In the second and third centuries, Irenaeus in Against the Heresies V and Tertullian in To Scapula pictured the Christian as a law-abiding, untroublesome, loyal subject, who aided the emperor through daily prayer. Tertullian affirmed that a Christian "knows that it is by his God that the Emperor has been appointed."[18]

Increasingly, though, the central issue was whether or not a Christian could be a soldier. At first, the question did not arise for the mass of the faithful because they were

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[16]See S. Angus, Religious Quests, p. 109.

[17]W. D. Niven, The Conflicts of the Early Church (London: Hodden and Stoughton, n.d.), p. 88.

[18]Maurice Wiles and Mark Santor, Documents in Early Christian Thought (New York: Cambridge University Press, 1975), pp. 225-227. Also see Arnold J. Toynbee, War and Civilization (New York: Oxford University Press), p. 162.

Jews, women, and slaves, who, as such, were not eligible to enroll in the Roman army.[19] With minor exceptions no soldier converted to Christianity and remained in the army until the second half of the second century; and, even then Christians typically refused to serve.[20]

Religious historians have been divided on a very slight sectarian basis as to why Christians seldom served in the military during the first three centuries.[21] Catholic writers, with support from writers of other persuasions, have sometimes claimed that the objection was solely or mainly because of the refusal of idolatrous rites.[22] Because the distinctive nature of the young church consisted of monotheism, the pre-eminent duty was to remain untouched by polytheistic influences; and the "sin of idolatry was the most severely dealt with of any sin."[23] Tertullian admonished, "Principale crimen generis humani, summus saeculi reatus,

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[19]Cadoux, p. 247; T. B. Maston, Christianity and World Issues (New York: The Macmillan Co., 1957), p. 247.

[20]Cadoux, pp. 245 and 251; Ballis, p. 41 ff.; Draper, p. 384. See also Ramsey, xvi, Harnack II as cited below, p.

[21]A detailed documentation of this period: Johannas Weiss, Earliest Christianity, vol. 2, trans. Frederick C. Grant (New York: Harper Brothers, Publishers, 1959).

[22]Joseph C. McKenna, "Ethics and War: A Catholic View," American Political Science Review 54 (September 1960): 649. Also, see remarks in Ramsey, pp. xv-xvi. Joachim von Elbe, "The Evolution of the Concept of the Just War in International Law," The American Journal of International Law 33 (1939): 667; David A. Martin, Pacifism (New York: Schocken Books, 1966), p. 34; Draper, pp. 384-385.

[23]Harnack, I, p. 367.

tota causa judicii, idolatria."[24] The cult of the state itself might have been enough to cause believers to keenly divide respect for the worldly state and state leadership from religious observations. Esteem for the secular could have been difficult, particularly if purely pacific sentiments were a great consideration:

> The flogging and odious tortures which . . . were the normal accompaniment of the law courts, the harsh penalties of the military law, the wholesale brutalities of war, the ceaseless intrigues and conflicts of the rivals for the Imperial power . . . [were in] flagrant contradiction to the whole tenor of the Gospels. . . .[25]

Pacifist Writings

Christian writers before the second decade of the fourth century did not undertake to show that Christians legitimately might be soldiers.[26] Arnobius, Athenagoras, Celsus, Cyprian, Hippolutus, Irenaeus, Justin Martyr, Lactantius, Minucius, Origen, Tatian, and Tertullian were among the pacifistically-inclined apologists who are most prominently mentioned.[27] Vanderpol admitted,

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[24]Ibid. "Idolatry is the principal crime of mankind, the supreme guilt of the world, the entire reason of judgment." (Translation mine)

[25]John Eppstein, The Catholic Tradition of the Law of Nations (London: Burns Oates and Washbourne, Ltd., 1935), p. 39. See also Cadoux, pp. 245-249.

[26]Cadoux, p. 256.

[27]Ibid., pp. xvii-xxiii, and pp. 246-256; L. L. McReavy, "Pacifism," The New Catholic Encyclopedia, vol. 11 (1921): 855; Nys, p. 24; Paterson, p. 678; Daniel C. Maguire, "A Peace-making Church," American Catholics and Vietnam, ed.

> En fait, on ne trouveraid dans aucun des ecrivains ecclesiastiques anterieurs a constantin un mot d' eloge pour la carriere militarie, ni meme un passage de clarant nettement qu'il est permis aux Cretiens de se battre.[28]

The same author's interpretation--and that of some more recent Catholic explanations--was that the early church writers could not be accepted without reservations because they were relatively ignorant, had heretical tendencies, and did not have high church standing.[29] A current critic answered that pacifism was neither heretical nor alien to the mainstream of belief:

> It was a tenaciously maintained position which orthodox Christians could support with ample New Testament authority and a substantial theological tradition.[30]

The non-serving posture was still taken seriously even at the turn of the fourth century. Maximilianus was martyred for refusing to be conscripted into the empire's

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Thomas E. Quigley (Grand Rapids, Mich.: William B. Eerdmans Publishing, 1968), p. 40; Sibley, p. 25; Harnack, vol. 1; John J. Vincent, Christ, p. 45.

[28]Alfred Vanderpol, La doctrine scolastique du droit de guerre (Paris: A. Pedone, 1919), pp. 180-181; "In fact, you will not find in any ecclesiastical writers before Constantine one word of praise for the military career, nor even one passage that clearly declares that Christians are permitted to do battle." (Translation mine)

[29]Ibid., p. 181. During the first two centuries Christianity was "much more diverse" than sources usually disclose. Goguel, p. 6. In addition to the heretical versions of Christianity, there grew several variants which came to be syncretized into accepted norms. Larson, p. 438.

[30]Richard S. Hartigan, "Saint Augustine on War and Killing," Journal of the History of Ideas 27 (April-June 1966): 196.

service in 295, and shortly thereafter Lacantius wrote in his Institutes, "Militare iustu non licebit, cuius militia est ipsa justitia . . . quoniam occisio ipsa probibetus."[31]

Unification with Official Violence

Nonetheless, for most human beings the radical message attributed to Christ proved extremely hard to comprehend because it was different from what they usually had heard. As followers relied more on isolated scriptural passages, support for fighting could be found as readily as verses to the contrary. With the fading of the eschatological hope, the omnipresent pressures of the political environment became even harder to resist. The numbers of Christians in the army gradually increased; and, as Lactantius and Eusebius recorded, the original objects of the persecution were believers who were in the Roman army.[32] The largest and final phase of the persecution, to which these matters referred, arrived during Diocletian's reign; and, subsequently in the East, Licinius issued a special edict against Christian soldiers before he fell defeated under the sword of Constantine. With regimental colors streaming from the cross

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Tertullian wrote the anti-militarist On Idolatry before he took up the Montanist position, which came to be labeled heresy. Draper, p. 385.

[31]Harnack, vol. 2, p. 209, "Soldiering is not justifiable, for those whose war is in itself justifiable . . . killing is in itself prohibited." (Translation mine) The Christian's war is used metaphorically.

[32]Harnack, vol. 2, p. 211.

of Christianity, Constantine defeated Maxentius to put Christian fears to rest in the year 312.

Official toleration of Christianity was proclaimed by Constantine immediately following his victory at the Milvian Bridge; and it was confirmed jointly with Tetrarch Licinius in the Edict of Milan, which was proclaimed the following year. In Rome, the inscription upon the triumphal arch of Constantine was to read, "By the inspiration of the Divinity, he avenged the state through the just use of arms."[33] For practical purposes, the edict committed individual Christians to support war whenever the state was fighting, and the church as a whole gave up anti-militarism to adopt the imperial view.[34]

The third canon of the Synod of Arles (first council at Arlelate) in 314 stated, "Et qui in pace arma projicient ex communicentur."[35] Although controversy exists concerning how the canon was interpreted, it appears that Christian soldiers were either to be excommunicated if they left the army or, at least, that Christians were allowed to freely enlist in the military service.[36] By this time the populace already had begun to associate Rome with Christianity and

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[33]See Eppstein, pp. 49-54.

[34]Cadoux, pp. 256-257; Draper, pp. 388-389.

[35]Eppstein, p. 49. "Those who throw down their arms during peace are to be excommunicated."

[36]Joan D. Tooke, The Just War of Aquinas and Grotius (London: SPCK, 1965), p. 8.

to identify paganism with the barbarians.[37] Not only did the imperial army provide a peaceful arena for Christianity to go about its evangelism; more than any other part of the governmental structure, the army itself eventually became heavily pocketed with Christians, which aided greatly in the spread of the religion. By the year 416, non-Christians were no longer allowed to serve in the Roman army.

Yet during the near century that elapsed between the accession of Constantine and the writings of Augustine, the current did not flow in one channel. The intervening church councils showed inconsistency and uncertainty, with many of the Eastern fathers, especially, following strong, anti-militaristic views.[38] In opposition to the strong majority support for state activities, certain writers continued to bear witness against bloodshed and militarism, including Gregory Nazianzen, Basil the Great, and John Chrysostom; but the orthodox tide increasing proved too strong.[39] As in church questions generally, belief "hardened into fixed dogmas and faith degenerated into an intellectual acceptance of creedal constructions.[40]

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[37] Bainton, p. 85.

[38] Draper, 1962, pp. 388-389.

[39] Cf. Tooke, p. 9; Eppstein, pp. 52-53.

[40] Angus, Religious Quests, p. 120. "Doctrine tends to become an object in itself and a truth in no way dependent on the experience which created it. . . . Rites and practices also become detached from the religious experience. Religions usually degenerate in the end into a rationalistic cult." Goguel, p. 13.

Eusebius, who was Constantine's bishop, paved the way for Augustine by identifying the empire with divine peace-keeping; and even the anti-militaristic Chrysostom in the East along with Jerome in the West wrote that imperial peace fulfilled divine prophecy. Athanasius admonished that killing is not permissible, but added,

> To kill the enemy in battle is both lawful and worthy of praise. So those who have striven valiantly in war have great rewards presented to them and monuments erected to celebrate their famous deeds.[41]

Ambrose prayed for Roman army victories as he sought to wipe out heresy and impose orthodoxy by physical force. With the blessings of Ambrose, Christianity became the official religion of the Roman Empire by the Edict of Thessalonica in 381; and, subsequently, heresy was made an act of treason. By this time major resistance to the Church came from the so-called Christian heresies, which most of the Germanic invaders embraced, rather than from the ancient pagan cults. It was God's indignation against heresy, not Christianity, that had caused inroads into the Empire; thus, to Ambrose heresy had to be stamped out and "orthodoxy stood or fell with the Pax Romana."[42] In this manner the transition was marked from the Graeco-Roman classical age to the age of Christian Europe.

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[41]Athanasius Epistula ad anunem monachum. Quoted in Eppstein, p. 56. See also Cadoux, p. 257 ff.

[42]Russell, p. 14; see also Deane, p. 4.

Augustine and the Divine Control of War

Rationalization of Militarism

Augustine, who built upon the tendencies of Ambrose and other Latin church fathers with his voluminous stack of arguments, took up the defense of Rome and the church as the West began its long, deep decline into the Dark Ages. His most prominent work, the City of God, was composed to defend Christians from blame after the Ostrogoths had ravaged Northern Italy in the year 405 A.D. and Alaric the Visigoth had sacked Rome five years later. For a thousand years, until the dwindling of Christian dominion over political thought, his views strongly influenced the basic perspective of most political writing; and, still, with the advent of the modern era, his pessimistic opinions concerning the nature of man remained durable.

The just war stood at the center of Augustine's concerns. Critics had claimed that the Romans had been mistaken to desert their ancient gods and that Christians had proved to be disloyal subjects who were devoted to otherworldly pursuits and who quailed in the presence of force. If doubt existed concerning official church backing for the empire's martial activities, Augustine surely did much to dispel suspicions with his sustained barrage both against ideas opposed to all war-making by the state and ideas that accepted wars as long as Christians stood aside. As the

church complicated its creed and embellished its ritual, it strengthened its hierarchy. In affairs of state it moved more than half-way down the road from subservience to governmental operations to dominance of them. The motivation grew irresistable to make official violence, considered to be central to the existence of the state, not only a compatible partner with religion but a servant of it. In rationalizing militarism and the existence of the state, the influence of Augustine on political thought and practice has been massive.

The Evil Nature of Man

The most striking and influential presentation of the nature of man as evil climaxed in Augustine. Not before nor since has the indictment of an incurably corrupt human race been presented with such force; and the history of thought to this day has very often echoed Augustine's exact sentiments.

Original and Perpetual Sin

While the reputed words of Christ appear to have claimed a higher opinion of man's moral possibilities than did Augustine, even the early followers of Christ seemed less hopeful than their messiah.[43] According to twentieth century historical interpretation, the doctrine that the sin of Adam's eating the forbidden fruit continued to make all mankind evil "was unknown to Jesus."[44] Nonetheless, a contemporary

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[43]John H. Randall, Jr., Hellenistic Ways, pp. 149-50.

[44]Schweitzer, Kingdom of God, p. 88.

Catholic statement deduces that "without original sin there would be no need for universal redemption."[45] A Catholic historical work found that, "To a considerable degree, the definition of sin in church doctrine appears to have developed a posteriori, by a process which, proceeding from the salvation in Christ and from infant baptism, made the diagnosis fit the cure."[46] More accurately, the Hebrew view of a weak and sinful mankind[47] continued its evolution within the new fold. Whatever the prominence of ethical universalism, Paul's teachings and the teachings of many of his followers replaced it with grace. Worldly deeds did not ensure redemption from the state of original sin; "the grace of God alone" did so.[48] "The church and the sacraments became the exclusive vehicles of saving grace" for naturally-born sinners;[49] and church writers increasingly evidenced an intense belief in the evilness of humanity. The importance that this overwhelming notion of sinfulness has held for political thought would be hard to exaggerate. Its grip on just war notions has proven strong indeed.

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[45]Nicolas Corte, The Origins of Man, trans. Eric E. Smith (New York: Hawthorn Books, 1958), p. 105.

[46]Jaroslav Pelikan, The Christian Tradition, vol. 1, The Emergence of the Catholic Tradition (100-600) (Chicago: University of Chicago Press, 1971), p. 204.

[47]S. Angus, The Environment of Early Christianity (New York: Charles Scribner's Sons, 1929), pp. 98-99; contrasts the Greek and Hebrew notions of human nature.

[48]J. P. Mayer, Political Thought: The European Tradition (New York: The Viking Press, Publishers, 1939), p. 65.

[49]Angus, Religious Quests, p. 121.

Proper Authority

Divine Direction of the State

Necessity of State Power

The very corrupt nature of man made imperative Augustine's most significant political notion, which held that public authority was absolutely necessary. God ordains the state to tower over lustful man. Power derives from God. The nature of the state contradicted Cicero's conception of wills banded together in pursuit of justice and the common interest. Nor could Greek notions of striving for the good be admitted. Speculation about an archetypical state would prove useless in a world crawling with grasping, insatiate human beings. Anyway, the publics did not choose or direct their states or governments: God did so.

Not only were human beings presented as basically politically incapable, but, as throughout The City of God, emphasis fell not on social behavior or moral codes of conduct but on being heaven bound. Earthly life made up but a passing fragment of existence with limited importance. Although the dominance of spirituality required that lust be avoided, the main purpose of all persons ought to be obeying God and their attention ought to be directed toward the possibility of eternal life.

The Necessary Artifical State

Should Augustine's state be considered anything like natural, the reason would be solely because God commissioned it to oversee human wickedness.[50] The basic, immutable depravity of human existence overshadowed every aspect of earthly existence. The underlying artificiality of the state stood against organic-like beliefs and must have done so with considerable strength until the Thomist concern with natural law and Aristotle, only to take on new vigor with the rise of Protestantism and the growth of modern nation-states.

Perpetual War

International relations, like other social relations, remained forever in a field of battle. The earthly city "is generally divided against itself by litigation, by wars, by battles." Each section of the city "seeks to be victorious over other nations."[51] The earthly city "has its good in this world," which consists of the lowest of limited goods. Even the earthly city "is better, in its own human way by their possession."[52] For the sake of protecting

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[50]Compare with Edmund Burke's and Sir Walter Scott's ideas over thirteen centuries afterward that "society was law divinely imposed on the anarchy of Nature" and that the British constitution was a "dispensation of Providence." Crane Brinton, The Political Ideas of the English Romanticists (London: Oxford University Press, 1926), p. 115.

[51]Augustinius, Aurelius De civitate dei 15. 4, in Augustine, The City of God, trans. Henry Bettenson, intro. David Knowles (New York: Penguin Books, 1972), p. 599.

[52]Ibid.

its earthly goods, the earthly city longs to attain peace by making war. The warring sections of the city contend over things that they cannot jointly possess.[53]

Rationalization of International Dominance

Without admonishment against a nation's self-righteousness or self-interest, Augustine described a national practice of infantilism in which man loved peace as long as everyone else would be nice by giving him his own way.

> There is no man who does not wish for peace. Indeed, even when men choose war, their only wish is for victory; which shows that their desire for fighting is for peace with glory. . . . For every man is in quest of peace, even in waging war, whereas no one is in quest of war when making peace. In fact, even when men wish a present state of peace to be disturbed they do so not because they hate peace, but because they desire the present peace to be exchanged for one that suits their wishes.[54]

While wars pursued earthly goods, conquest also revealed a desire for authoritarian control. Peace practically became identifiable with accomplishing the desire of dominance. Practitioners of the Pax Romana could do but the expected:

> All men desire to be at peace with their own people, while wishing to impose their will upon those people's lives. For even when they wage war on others their wish is to make those opponents their own people, if they can--

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[53]Ibid. 19. 12, pp. 867-868.

[54]Augustinius De civitate dei 19. 12, ibid., p. 866; see also 15.3, ibid., p. 600.

> to subject them, and to impose on them their own conditions of peace . . . even the wicked when they go to war . . . desire to make all men their own people, if they can, so that all things might together be subservient to one master.[55]

Just Cause

The Will of God

God directs wars exactly as he ordains governments. Besides directly commanding wars to be fought outside the ordinary just wars concerning earthly goods,[56] he bears responsibility for these common events also. Explaining the Ostrogoth and Visigoth conquests, Augustine scolded:

> Those wretches do not give thanks to the great mercy of God, who--after deciding to use a barbarian invasion as a chastisement for men's immorality, which deserved an even harsher punishment--tempered his wrath with such great compassion.[57]

Misfortune in warfare as due punishment for worldliness finds further explanation in The City of God. God's "just judgment and mercy either afflict or console mankind" in the duration of warfare.[58] When God gives victory "to those who were fighting for the juster cause," the victory calls for rejoicing; but, if the heavenly goods are neglected, "the inevitable consequence is fresh misery" visited by God upon the already wretched.[59]

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[55]Ibid. 19.12, pp. 867-868.

[56]Augustinius, Aurelius Quaestionum in Heptateuchum 6. 10. A, in Eppstein, p. 74.

[57]Augustinius De civatate dei 5. 23, p. 219.

[58]Ibid. 5.22, pp. 216-217.

[59]Ibid. 15.4, pp. 599-600.

> Even when a just war is fought, it is in defense of his [its] sin that the other side is contending; and victory, even when the victory falls to the wicked, is a humiliation visited on the conquered by divine judgement, either to correct or to punish their sins.[60]

The just war became the on-going means to "defend" the peace of an earthly city, hopefully a peace in which citizens were Christians, most of whom would dutifully accept the dictates of a static Christian state, free from turbulence. Augustine seemed to abstract but, more accurately, talked around peace to the point of being whimsical:

> Pax omnium rerum tranquillitatis ordinis. Ordo est parium dispariumque rerum sua cuique loca tribuens, dispositio.[61]

However congenerous to the Greeks these sentiments seem, the will of God takes precedence over natural position in an order of nature. Just as God provides the crops that grow from the earth, he has given dominion to the Romans and has assigned alike ruthless tyrants and the best of emperors. He "rules and guides these events according to his pleasure."[62] The incomprehensible will of God may be exercised in cases of peace and war either indirectly through the delegated empire or directly.

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[60] Ibid. 19.15, p. 875.

[61] Augustinius De civitate dei 19. 13 in Augustine, The City of God, trans. by William C. Greene (London: William Heinemann Ltd., 1969), p. 174. "The peace of the world is orderly tranquility. Order is the arrangement of things equal and unequal in a pattern which allots to each its proper place." (Translation mine)

[62] Augustinius De civitate dei 5. 21. Bettenson, p. 216.

Specified Just Causes

Christianized Ciceronian Phrases: A Definition

Just causes of war approximate a partial repetition of Cicero with the significant addition of the person of God not only presiding over government but threatening to invoke immediate causes of unknown number and kind:

> Just wars are usually defined as those which avenge injuries, when the nation or city against which warlike action is to be directed has neglected either to punish wrongs committed by its own citizens or to restore what has been unjustly taken by it. Further, that kind of war is undoubtedly just which God Himself ordains.[63]

Self Defense

Writers commonly have failed to find the fact that Augustine, in the process of absolving the citizen of guilt, clearly spelled out the right of self defense. "The law which demands that hostile force be repelled by force for the purpose of protecting the citizens can be obeyed without lust."[64] The use of "repelled" dispells any possibility of his having meant pre-emptive strikes. When considering

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[63]Augustinius Quaestionum 6. 10. 1, p. 74. In respect to God's authority in just wars see also Augustinius Aurelius, Contra Faustum Manichaeum 22. 75, in John K. Ryan, "The Augustinian Doctrine of Peace and War," American Ecclesiastical Review 116 (June 1947): 416.

[64]Augustinius, Aurelius. De libero arbitrio 1. 4. 12, in Augustine, Augustine: Earlier Writings, trans. and ed. John H. S. Burleigh (Philadelphia: Westminster Press, 1953), p. 119.

defense, writers incline to speculate that Augustine assumed defensive war to be obviously just.[65]

God's Direct War

More importantly, scholars usually take no more than a passing notice of the wars which "God himself ordains," although this formula must have made formal justification of the Crusades easier than otherwise it might have been. All of Augustine's just wars found their justice as holy wars but the direct word of God could by-pass the state by coming through God's representative, the pope. Nowhere have commentators acknowledged that, for Augustine, the holy war and the just war became indivisible. One of the few authors to have made any distinctions has created divisions that did not merge in his account until approximately the twelfth century.[66]

The failure of scholarship to acknowledge the immediate statement of God and its relationship to the justification of holy war points to a general misinterpretation of Augustine. The standard practice takes, by itself, Augustine's paraphrasing of Cicero, not only as if it were

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[65]Tooke, Just War, pp. 11 and 148; E. B. F. Midgley, The Natural Law Tradition and the Theory of International Relations (New York: Barnes and Noble Books, 1975), p. 252; William B. Ballis, The Legal Position of War: Changes in Its Practice and Theory from Plato to Vattel (The Hague: Martinus Nijhoff, 1937), pp. 42-43.

[66]Russell, Just War pp. 2 and 38. Russell's schema, though somewhat fickle, shows the crusade to be an ecclesiastically-directed synthesis of the just war and holy war. For deficiencies of his analysis see below.

original with Augustine, but as objective rather than subjective in its meaning. Instead of fathering the just war, Augustine gouged out the objective heart of just cause and perverted the notion of objective just intention. War boiled down to conquest followed by domination. Above all, public authority required obedience.

Obedience to God

Obedience to the state constitutes a portion of general obedience. Sin must be defined as disobedience, i.e., disobedience to God, however indirectly. For a person's possible salvation, God requires obedience to his dictates rather than humanistically-based social behavior. God demands the dominance of spirituality directed toward the after life and the rejection of lust.

Although difficult to define, lust became basically sexual for Augustine. Sin dealt with warm, bare flesh.[67] On the one hand lay sin or lust, human will, demonic powers,[68] ungodliness, and worldliness; and--sharply set apart--stood godliness, God's will, and obedience. The avoidance of lust, which was repeatedly emphasized as mandatory, assumed broad categories of behavior to be prohibited and specific evil

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[67]According to Lawrence of Arabia, "The Semite hovered between lust and self-denial." At least, Semite or not, Augustine seemed to so hover. T. E. Lawrence, Seven Pillars of Wisdom (Garden City, N.Y.: Doubleday, Doran, & Co., Inc., 1935), p. 42.

[68]The Stoics and Epicureans had decried demonic powers as unreal but Christian gospel left them intact to be opposed by the power of the Christian redeemer. Shirley J.

actions to be occasionally deplored; however, the rationale did not arise from a socially-desirable, ethical prescription but from an inward-turned rejection of worldliness in obedience to a spiritual God.[69]

Just Intention

Obedience in Public Service

Obedience in the divinely-appointed state requires public service whenever necessary. Justification makes use of the language of Stoicism's imperative to duty as well as the nomenclature appropriate to the heirs of Adam. Soldiers serve as "ministers of the law";[70] and, like other public officials, they must perform ghastly acts, sometimes in ignorance. For a judge to torture an innocent man to death is not an unthinkable horror. Because of the darkness that enshrouds the life of an individual within human society, a wise man will have the heart to take his seat on the bench as a judge; "for the claims of human society constrain him and draw him to his duty." He will sit in "unavoidable ignorance" in order to serve human society until

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Case, The Evolution of Early Christianity (Chicago: University of Chicago Press, 1914), p. 279.

[69]Regarding the Christian basis of morality, see Randall, Hellenistic Ways, p. 186. For Judeo-Christian origins see Edwards, who found Babylonian laws to be the "immediate or remote progenitor" of the Hebrew regulations such as "an eye for an eye." Chilperic Edwards, The Hammurabi Code and the Sinaitic Legislation (1904; reprint ed., London: Kennikat Press, 1971), pp. 61 and 132.

[70]Augustinius Contra Faustum Manichaeum 12.74, in Eppstein, p. 69.

finally delivered from his state of human wretchedness by death.[71]

Subjective Innocence in Killing

The person, who by divine command or by acting according to the wisdom of the government--which is also of God--is "not himself responsible for the death he deals."[72] "The agent of authority is but a sword in the hand [of God]."[73] The actor disassociated himself from the action:

> There can be a homicide which is not a sin . . . When a soldier kills an enemy, or when a judge or an officer of the law puts a criminal to death, or when a weapon slips out of someone's hand without his will or knowledge, the killing of a man does not seem to me to be a sin.[74]

Slaying the enemy "allows lesser evil deeds to prevent worse being committed. . . . In killing an enemy the soldier is a servant of the law and can easily avoid lust in performing his duty."[75] His subjective feelings count, rather than the concrete actions. As a servant of the state he moves righteously and without need of Cicero's objective of humanitarian concerns. In fact, he can operate

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[71]Augustinius The City of God 19. 6, in Bettenson, pp. 860-861.

[72]Ibid. 1. 21, p. 27.

[73]Augustinius De civitate dei 1. 21, in Augustine The City of God, trans. Gerald G. Walsh et al. (New York: Doubleday and Co., Inc., 1958), p. 57.

[74]Augustine De libero arbitrio 1. 4. 9, p. 117.

[75]Ibid. 1. 4. 12, p. 118.

obediently and without sin only if he proceeds in cool self-righteousness. Augustine cautions, "Let necessity . . . not your will, slay the enemy."[76] The New Testament ought to have been spiritually, not literally, read as in turning the other cheek, which meant inward disposition. (Nonetheless, he literally read the Old Testament to justify wars.) In a manner of supplemental evidence, he concluded that any bad feeling toward an enemy spelled greater evil than slaughtering him, especially in view of the fact that human beings physically die soon anyway.[77] The culmination of these arguments meant to allow a self-vindicated soldier to destroy a disassociated enemy upon command of the state; yet Augustine failed to acknowledge each reciprocal position that his statements required.

Contradictory Standards

No matter how fiercely Augustine's man fights, he has no responsibility for his objective, violent actions--only for his subjective, hopefully-charitable, intentions. He worries about his intentions but not the enemy's intentions; he worries about the enemy's actions but not his own. He kills or cripples his individual adversary because that person is supposedly outwardly threatening, not because that person is filled with evil intentions. Moreover,

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[76]Augustinius, Aurelius Epistola ad Bonifatium 189.6, in Ryan, p. 408.

[77]See Augustinius Contra Faustum 12.74. Eppstein, p. 69.

because Augustine's individual enemy has been obliged to outwardly obey his government and because all governments concern themselves with men's actions rather than their intentions, no objective guilt can be attached to him.

Augustine approached his side and his soldier with a different attitude than he accorded the enemy. His double set of standards not only retreated from the just war gains culminating in Cicero, they did not differ practically from the unequal, de-humanizing views that first beset prehistoric war-makers. His rain of dogmatic contentions not only proved unequal to constructing a consistent system; they failed to coherently reconcile the principal problem--killing. Perhaps the Bishop of Hippo became entrapped in rationalization like that of a fictional soldier in the Spanish Civil War:

> Don't you know it is wrong to kill? Yes. But you do it? Yes. And you still believe absolutely that your cause is right? Yes. It is right, he told himself, not reassuringly but proudly. . . . But you mustn't believe in killing, he told himself. You must do it as a necessity but you must not believe in it. If you believe in it the whole thing is wrong.[78]

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[78]Ernest Hemingway, For Whom the Bell Tolls (New York: Charles Scribner's Sons, 1940), p. 304.

CHAPTER THREE

CHRISTIAN DOMINION

> God, give us peace! not such as lulls to sleep,
> But sword on thigh, and brow with purpose knit!
>
> --*James Russell Lowell, "The Washers on the Shroud*[1]

Overview

Christianity dominated political thought and the development of the just war tradition for over a thousand years. The basic Augustinian beliefs persevered long and well despite persisting references to Cicero and other classical thinkers, the turbulent winds of war, and the shaky pens of many faithful followers. Only gradually did Isidore, Gratian, the medieval legists, Thomas Aquinas, and other opinion-makers manage to expand the content and improve the spirit of the just war tradition within the context of the issues, events, and institutions of the Middle Ages.

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[1]James Russell Lowell, The Poetical Works of James Russell Lowell (Boston: Houghton, Mifflin, & Co., 1885), p. 380. (Composed in October, 1861)

The personalities, ideas, events, and structures of the Middle Ages divided into a network of intertwining streams flowing without regard for the tidy ambitions of future political scientists, philosophers, and historians. The supposed unity of these centuries scarcely meant more than the fact that most Europeans became Christianized and that the feudal system spread far and wide. The opening years of the Middle Ages, oftentimes called the Dark Ages, were fully as diverse as the succeeding years yet conferred but a sole milestone to the just war tradition.

Isidore

For over a century and a half following Augustine, no just war statement worth mentioning arose from the increasingly primitive intellectual efforts of the Dark Ages. Not until near the beginning of the seventh century did a solitary monk known as Isidore of Seville attempt to paraphrase Cicero: "Justum bellum est quod ex praedicto qeritur de rebus repetitis aut propulsandorum hostium causa."[2] Isidore repeated that a just war exists whenever it is carried out, after previous announcement, by reason of claiming back ones property or propelling back enemies. Once again a cleric rubber-stamped a bare outline of the Ciceronian conditions in an authoritative pronouncement.

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[2]Isidore Etymologiae 18. 2, in Isidori hispalensis episcopi etymologiarum sive originum, vol. 2, ed. W. M. Lindsay (Oxford: At the Clarendon Press, 1911), n.p.

Such writings do form stepping-stones of history and demand understanding something of their significance. A scholar at Oxford, for example, recently translated Isidore's statement erroneously and concluded that it provided an explicit basis for subsequent medieval concern with right authority: "Just war must be waged on valid authority, either to regain things lost or to drive out invaders."[3] True, actions such as delivering messages and broadcasting the advent of war were Roman governmental activities done officially; but Isidore's quotation had not included "valid authority."

Isidore's definition borrowed strictly Cicero's framework and neglected Augustine's words. He omitted wars that "God Himself ordains" and war "to punish wrongs," which were both central to the thesis of Augustine.

Isidore stands out, virtually alone, in an age when little came to be written about just war or anything else. Plain folk rewrote the purported wisdom of times past in a manner awkward to the point it frequently became fallacious. From isolated monks little was to have been expected for the just war, which has never grown by leaps and bounds at any time. Even "a strange mental bias" has been attributed to all the writers of the times:

> Take the case of Isidore. He gains in all his information from old books; but he

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[3]Maurice H. Keen, The Laws of War in the Late Middle Ages (London: Routledge and Kegan Paul, 1965), p. 66.

> makes no attempt to extend or expand it in the light of contemporary experience. He must have seen that much of what he recorded had been based on observation and experience, as well as "heresay" and tradition; but for him, the tradition is enough.[4]

Gratian

Over five hundred years elapsed after the days of Isidore before the Benedictine monk Gratian skillfully combined inherited texts to produce the massive Decretum. Writing in the first half of the twelfth century, Gratian pulled together the legacies of Roman law, Augustine, Isidore, and, presumably, other early medieval ecclesiastical manuscripts to which he systematically appended comments.

Gratian radically altered the Isidorian definition of the just war. He substituted a mere announcement for the previous warning that Isidore had taken from Cicero. Although Gratian's dictum follows Isidore's in its other respects, he substituted edicto for praedicto: "Justum est bellum, quod ex edicto geritur de rebus repetendis, aut propulsandorum hostium causa."[5] Cicero's denuntiatum, discussed above, meant to give notice by message, especially authoritatively; Isidore's praedicto still definitely connoted a heavy sense

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[4]Sydney H. Mellone, Western Christian Thought in the Middle Ages (Edinburgh: William Blackwood & Sons, Ltd., 1935), p. 65.

[5]Gratian Decretum 2. 23. 2. 1, in Patrologiae cursus completus series Latina, vol. 187: Decretum Gratiani, vol. 1 (Paris: Garnier Fratres, 1891), p. 1166.

of warning, of something said in advance of something else; Gratian's edicto brought forth a less grand announcement or assertion. It stood more as a statement.

If Gratian did not intentionally rationalize, he, at least, responsively recorded accepted practice. Political theory partially arises as a reflection of the time and place of its writing and partly from the wellsprings of civilized thought. The best of political theory seriously reacts to problems existing in its milieu. Political thoughts then act upon the evolutionary situation to which they have responded.

No doubt, state and church in the twelfth century felt gratified to receive a formula modified to the point of matter-of-fact formality. The point was not lost. The followers of Gratian did not ask princes to beseech or even really warn their adversaries. Any return to Cicero's detailed, delayed, and sincere notification had to be approached very gradually through the just cause by way of hestiation to fight and such methods as arbitration. Into the twentieth century, in both theory and practice, declarations of war usually meant little more than formal notice.

Remarkably, such a significant modification in wording has apparently virtually totally escaped contemporary just war literature and related works.[6] As far as the present investigation has been able to ascertain, no chronicle

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[6]Only Reguot may have noticed a change in passing. Although not saying that Gratian differed from Isidore, he wrote a single line relevant to the change in wording. His curious and ambiguous footnote, replete with errors, read:

has established the evolvement of formal commencement of hostilities, much less the purpose of Gratian's thoughts for declarations of war. Nor has any study showed awareness of the manner in which this change quietly cleared the field for the great medieval concern with proper authority.

Analysis of Gratian's relationship to the just war has been scanty and seldom very helpful. The introductory chapter of a contemporary just war study concluded that Gratian "accentuated the separation between subjective attitude and external act" by "explaining that the gospel recommendations of patience were meant to apply to spiritual attitude rather than to bodily action."[7] In the first place, the author erred if she imputed any originality to the bishop's discounting the literal injunction of turning the other cheek.[8] As dealt with above, a chain of argument opposed to literatim had even preceded Augustine's militia without malitia and has continued down to this day. Secondly, it ought to be understood that neither of the two church fathers would have agreed that a separation so-worded took place. Rather than admit dichotomy, irrespective of what he might have implied in fact, Augustine argued intensely for attitude

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"La condition requise de l'autorite est mise en avant par edicto" or "The required condition of authority is placed forward [advanced] through edicto." (Translation mine) Robert Robert Regout, La doctrine de la guerre juste (Paris: A. Pedone, 1934), p. 63.

[7]Tooke, Just War, p. 13.

[8]"And unto him that smiteth thee on the one cheek, offer also the other." Luke 6:29. See also Matthew 5:44-48 and Romans 12:19-21.

and action to move in concert. Once more, analysis must take care not to miss the crucial importance of right intention for Augustine's beliefs.

Another major just war study explained that Gratian restated Augustine by allowing religious wars but that Gratian mainly emphasized "defense."[9] Certainly Gratian believed in religious warfare; but he never pretended to a defense posture. This ambitious interpretation rests on a misleading use of the word "defense." To employ "defense" implies to a contemporary reader nothing more or less than the common language meaning of protecting oneself by repelling armed attacks. A number of activities may be involved but it does not mean first strikes against other powers for a variety of reasons.[10] To Gratian it did.

Gratian did not augment the just war theory; he carried it along. He failed to resurrect or preserve the vestiges of an advanced, formal warning and substituted in its stead a requirement of formal declaration that could have proved no more than a perfunctory ritual during his lifetime in the midst of the Crusades. He did not face the bloody realities of the Crusades.

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[9]Johnson, Ideology, pp. 36-37 and 75.

[10]This book's manipulation of defense can be understood by virtue of a previous partisan article by the same author. He considered first strikes to be defensive and acceptable: Johnson, "Natural Law."

The Civil and Canon Law

Background and Content

Whatever his failures, Gratian did truly inaugurate the methodological consideration of just war theory. For the Decretum gave birth to systematic canonical jurisprudence and provided the basic portion of canon law, which in a wide sense meant church rules and traditions. More literally and narrowly, it was the corpus juris canonici, which emanated originally from councils and came to embody legislation in the form of letters called decretals. As recognized or as promulgated, the just war was a part of the canon law from the outset.

The canon law, itself, had largely Roman roots; yet it existed alongside the Roman law (corpus juris civilis) to form one of two complex, extensive legal systems. From the fall of the Western Empire well into the medieval era the practice of Roman law had faded but it "never ceased to be a force in the Italian peninsula."[11] The same could be said of the South of France and in Visigothic Spain. The spread of the civil law during antiquity made ready for its later expansion as a legal source:

> The history of Roman Law in the Middle Age is, to a large extent, the history of the

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[11] J. R. Tanner, C. W. Previte-Orton, and Z. N. Brooke, eds., The Cambridge Medieval History (Cambridge: At the University Press, 1968), vol. 5: Contest of Papacy and Empire, chap. 21: Roman and Canon Law in the Middle Ages, by Harold D. Hazeltine, pp. 729-730; see also Hans J. Wolff, Roman Law (Norman: University of Oklahoma Press, 1951),

> world-wide diffusion of the manuscripts of these legal texts and their employment by legislators, judges, practitioners, and jurists in the work of adapting Roman law to medieval social conditions.[12]

Because Italy had been more Romanized than the other areas of Europe, it was on the peninsula at Bologna that the Roman law began its tremendous twelfth-century revival. Both the rebirth of the civil or Roman jurisprudence and the building of the canon law centered there, where Inerius had founded the glossarial school[13] of civil lawyers at the close of the eleventh century, a couple of generations before Gratian's Decretum was to appear.

From the first days of the Dark Ages, widespread violence had to provoke some consideration of war-making's justification and regulations. No records remain of most of the earliest of these remarks, even those that might have been construed to be legal. Such issues of war that civil lawyers treated, they usually approached institutionally and definitionally. Although they intended their manuscripts for legal practice, the language used proved to be abstruse. They also handled the subject of war as institutional and definitional and in a stiff Latin prose, but a little more clearly than they wrote overall. The problem of vagueness did not hamper

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pp. 183-206; Harold J. Berman, "The Background of the Western Legal Tradition in the Folklaw of the Peoples of Europe," University of Chicago Law Review 45 (Spring 1978): 553-597.

[12]Hazeltine, p. 702.

[13]Glosses were authoritative explanations of civil or canon law that were first written in margins or between the lines.

the passages on war as much, simply because the juristic implications drawn from established conjectured facts and principles proved few and brief. Even though sterile classifications according to who held command (authority) and who comprised the enemy (each making a separate kind of war) long commanded the spotlight, progress did muddle along ever slowly. The very long-range tendency proved to emphasize continued development and down-play unquestioning repetition of early medieval sources.

The Just War of Raymond of Pennaforte

Because much of the law had fallen away during the decline of the Empire, a greater infusion of tribal law and feudal regulations passed into the Roman concepts than was probably recognized at the time. Notwithstanding heavy difficulties and many partial treatments, the canonists predominantly inclined to extend and widen the ideas that they had inherited. By the thirteenth century, the Pope requested Spanish Dominican glossator Raymond of Pennaforte to write a definitive compilation of canon law. This work, Gratian's canons, and a later addition by Clement V, published in 1317, stood as the canon law until the Codex of 1917.[14]

In the second book, title five, of his Summa de poenitentia the canonist from Spain insisted on a number of

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[14]H. Daniel-Rops, Cathedral and Crusade, trans. John Warrington (New York: E. P. Dutton & Co., Inc., 1957), p. 243.

requirements for waging the just war. He took the position that authority for war resides in the church or the prince, but that persons who do the actual fighting ought to be secular not ecclesiastical. Fighting, whose object is the recovery of goods and defense of the country, exists only as a necessary means toward peace. Consequently, one ought to be moved, not by hatred, but by piety, justice, and obedience to authority.[15]

Decline of the Legists

The restoration of the corpus jurus civilis faced impassioned resistance.[16] The church might well approve of canon law structured along the sixth century Justinian model with its Code, Novels, Digest, and Institutes, but for the civil law to thrive and expand as an independent basis of authority was indeed another matter. Realization that the true Roman law itself owed no homage to the pope as its head led to increasingly spirited antagonism of the church toward the civil law as a separate authority.

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[15] In Regout, p. 68: "Quinque exiguntur ad hoc ut bellum sit justum, sci. persona, res, causa, animus et auctoritas. Persona, ut sit saecularis . . . non ecclesiastica. Res, ut sit pro rebus repetendis et pro defensione patriae. Causa, si propter necessitatem pugnetur, ut per pugnam pax acquiratur. Animus ut non fiat propter odium . . . sed propter pietatem, justitiam et obedientiam. Auctoritas ut sit auctoritate Ecclesiae praesertim cum pugnatur pro fide, vel principis." See also Ernest Nys, Les origines de droit international (Marlem: Erven F. Bohn, 1894), pp. 101-102.

[16] For remarks much in agreement with this paragraph see H. Deniel-Rops, Cathedral and Crusade, pp. 338-339.

At first, medieval kings distrusted the Roman civil law and directed impassioned prohibitions against its resusitation. The traditional laws of the realm threatened them less than did monographs about emperors. Eventually, though, the national monarchs turned from their apprehension to utilize the Roman law, with regnum and minus imperium, for their own potent purposes. The civil law grew without interruption as the nation-state grew.

Many, if not most, Romanists were canonists also. The canon lawyers who commented on the compositions of Gratian were called Decretists. The hey-day of the Decretists had dimmed even before the arrival of the thirteenth century; and by late in that century the practice of writing glosses met rejection in the hands of the post-glossators or commentators. The commentators showed even greater concern for the Roman law as it was then in current use; and they, in turn, were attacked immediately by the writings of the Renaissance humanists, such as Dante Alighieri (1265-1321). The successes of humanist criticism came easier and earlier in the wider area of political theory than in either jurisprudence or just war theory. Roman civil law did not become broadly considered in respect to existing society and the entirety of classical literature until the sixteenth century teachings of Budaeus, Alciatus, and Zasius.[17] Fruits of humanist contributions to the just war have been even more slow in ripening.

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[17]As to this one point only see Myron P. Gilmore, Argument from Roman Law in Political Thought, 1200-1600 (Cambridge: Harvard University Press, 1941), pp. 14 and 44-45.

The Just War of Thomas Aquinas

Foremost Medieval Theologian

During this entire period of work by the legists, i.e., civil lawyers and canonists, theologians brought a different interest to the Decretum and Roman sources. With these authorities, the Bible, and the writings of the church fathers they now and then elaborated just war theory. In the late twelfth century, the circle at Paris probably met some success--despite its feeble casuistry--in making just war relevant to medieval knights and their princes. Even before the great scholastic speculation arrived, theologians managed to keep alive the martial ideas of Augustine. In all likelihood, they relied primarily on Gratian to enable them to discuss both justum bellum and factors of jus in bello sufficiently to provide a degree of formalized guidance and to keep firm the Augustinian precept of war as punishment for the wicked. To this scene in the middle of the thirteenth century was to come the short life of a scholastic who approached the influence of Augustine over Christian doctrine, Western society, and the just war theory.

The singular stature of Thomas Aquinas plainly allows a treatment somewhat apart from the other notable personages and the foremost themes of the Middle Ages. The opposite also permits distinct consideration, i.e., that he was far from all-important and all-pervasive. Of all the

scholastics, he surely bequeathed the most celebrated legacy; but he did not immediately dominate political, religious, or other cultural considerations. Nor did he monopolize the just war.

Theologian Thomas Aquinas has long been considered the best of the medieval scholastics. Because his influence in the history of Western civilization has been enormous, his position in political thought long secure, and his hold on Roman Catholic doctrine authoritative,[18] a good many writers quite casually have exaggerated his role in just war thought, even to the point of treating him as if he had both started the line of thought and drawn its major structure. Of course, such assumptions have been invalid.

The Thomist Basis

Writing in the second half of the thirteenth century, when theology centered on the systematic compilation of summae, Aquinas believed, "It is the duty of clerics to dispose and counsel other men to engage in just wars."[19] Yet, in the second part of the Summa Theologica, when considering the questions "Of War," "Of Strife," and "Of

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[18]Catholic seminary students must study the writings of the Dominican Aquinas, who tried to position himself midway between the Franciscan Bonaventura's mysticism and the naturalistic religious uncertainty of Averroes, the Muslim interpreter of Aristotle.

[19]Thomas Aquinas Summa Theologica 2. 2. 40. 2, trans. Fathers of the English Dominican Province (London: Burns, Oates and Washbourne, Ltd., 1916), p. 506.

Sedition,"[20] he did not talk about the actual evil of extinguishing lives, the horrors of slaughtering, or the rights and wrongs of potentially stained individual consciences. The Summa treated three theological virtues: faith, hope, and charity. War was discussed in answering queries associated with charity. The fortieth question, "Of War" contained four articles in the form of questions, objections to the supposed implication of each of these questions, and then, replies to the objections. With this scholastic procedure similarly applied to the other two questions, Aquinas built his case mainly on biblical and church practice, the authority of Augustine, and simple assertions.

The Three Thomist Principles

Proper Authority

Princely Right

Aquinas reasoned that "in order for a war to be just, three things are necessary." First comes the authority of the sovereign" (auctoritas principis) because princes possess responsibility for the public welfare and because private persons have no need to make war, in that they can appeal to a tribunal above themselves. Private quarrels could not justify warring. Wars must be public.[21]

[20]Ibid 2. 2. 40-42, pp. 500-518.

[21]Ibid 2. 2. 40. 1, pp. 500-503.

Revolution

Revolution also could be just. Today's academics writing in the fields of international relations and comparative politics, who assume a newness to the justification of liberation or revolutionary movements versus institutionalized or structural violence, would do well to research the just war more thoroughly. The forty-first question concludes:

> A tyrannical government is not just, because it is directed, not to the common good, but to the private good of the ruler, as the philosopher [Aristotle] states . . . Consequently there is no sedition in disturbing a government of this kind, unless indeed the tyrant's rule be disturbed so inordinately, that his subjects suffer greater harm from the consequent disturbance than from the tyrant's government. Indeed it is the tyrant rather that is guilty of sedition, since he encourages discord and sedition among his subjects, that he may lord over them more securely; for this is tyranny, being conducive to the private good of the ruler, and to the injury of the multitude.[22]

The scholastic theologians, with their Christian reverence for authority and order, could scarcely have been expected to be friendly to revolutionary ideas. They ignored much of daily real life, usually including warfare and especially the Crusades. While the legists anxiously justified the Crusades, the theologians at large fell silent. Aquinas may have never mentioned them at all. But avoiding the difficulties and contradictions of Christian thought and practice may have, in the case of revolution, given ground to his devotion to authority and order. The growing medieval

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[22]Ibid. 2. 2. 41. 2, p. 518.

acknowledgement of natural law generally and the specific philosophy of Aristotle advocating a perfect polity each logically demanded the extension of proper authority to revolutions.

Just Cause

A Definition

The second condition for a just war held that there must be "a just cause" (justa causa), meaning that evil persons must deserve to be attacked because of some "fault" (culpam). Augustine is quoted as writing that just war punishes states refusing to amend wrongs or to restore what has been seized.

Objectivism Versus Subjectivism

A contemporary Thomist analysis has suggested that Aquinas principally meant injustice objective enough to be recognized by an informed, conscientious ruler of a potentially offending state. The offense would objectively present itself as a grave matter justifying a severe remedy.[23] On the other hand, authors have claimed that Aquinas asks for culpability in addition to the injury sustained; for the just war is "primarily in the nature of a punitive action

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[23]Midgley, Natural Law Tradition, p. 44. Regout vividly described the theorie tomiste in terms of both inner fault and of certitude of an act committed. If Aquinas had propounded his theory with such force, he would have appeared pacifist. He surely did not. Regout, La doctrine, pp. 83-84.

against a wrongdoer" for subjective guilt rather than an objective act.[24] The great debt to Augustine, which is little changed in its essence, and the general tone of his presentation argue for a subjectivist viewpoint. An example of tone by omission, which also bears direct significance to the establishment of guilt because it relates to the point a war begins, is the lack of an admonition to use war only as a last resort.

One account of the just war doctrine of Aquinas affords an illustration of a few of the many ways that the subjective-objective question in the evolution of just war has been misunderstood. The author errs substantially in his description beneath the third principle of Aquinas:

> While to Augustine the injury itself provides the just cause for war, Thomas Aquinas demands some fault on the part of the wrongdoer: his culpability which deserves punishment is the justifying reason for going to war. The just war is primarily of the nature of a punitive action against the wrongdoer for his subjective guilt rather than his objectively wrongful act.[25]

In the first place, this statement should have been made in interpreting just cause rather than in regarding right intention as the intent to punish. Right intention refers to the intent of the respondent not the instigator. Secondly, while Aquinas does declare a "guilt" that surely is subjective sin to him, nothing in the Summa indicates

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[24]Joachim Von Elbe, "The Evolution of the Concept of the Just War in International Law," American Journal of International Law 33 (1939): 669. In agreement: Richard S. Hartigan, "Non-combatant Immunity: Reflections on Its Origins and Present Status," Review of Politics 29 (April 1967): 210-11.

[25]Von Elbe, p. 669.

that the "wrongs inflicted" and things "seized unjustly" are less than fully objective or that they can be divorced somehow from consideration. Thirdly, as for punitive measures operating primarily, the phrase "punishing evil-doers" occurs alongside the wording "securing peace" and "uplifting the good."[26] Such distinctions do not correctly invite omission.

Right Intention

A Definition

The third necessary condition of Aquinas stated that the belligerent should have the "right intention" (recta intentio)[27] of "punishing evil-doers and of uplifting the good." In Augustine's words, "kindly severity" imposed on the godless really does them a favor, for "nothing is more hopeless than the happiness of sinners."

Proportionality

In the final reply of Aquinas respecting sedition and tyranny, quoted above, his proportionality or "greater harm" assisted in the later development of the "double effect

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[26]Thomas Aquinas Summa Theologica 2. 2. 40. 1, p. 502.

[27]A Catholic Encyclopedia writer attributes the introduction of right intention to the "Angelic Doctor." The fortieth question by itself shows that Aquinas himself did not claim such originality. J. J. Wright, "Peace, International," The New Catholic Encyclopedia, vol. 11 (New York: McGraw-Hill, 1967), p. 39. See also Ballis, The Legal Position of War, p. 48.

doctrine in Catholic, Protestant, and secular theory.[28] This doctrine gave support to the international law rule permitting deaths only when incidental to necessary military action.

Moderation for Peace

With regard to just means, he may have desired moderation in fighting because of an eye toward the conditions needed for peace following victory: "Be peaceful, therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace."[29] Respect for the rules of war was implied, as he referred to Ambrose and wrote, "There are certain rights of war and covenants, which ought to be observed even among enemies.[30] These short comments, like his other remarks, probably exerted an influence highly disproportionate to their brief length and lack of detail.

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[28]Double effect requires common sense, not playing with words: "The principle can be worded as follows. The foreseen evil effect of a man's action is not morally imputable to him, provided that (1) the action in itself is directed immediately to some other result, (2) the evil effect is not willed either in itself or as a means to the other result, (3) the permitting of the evil effect is justified by reasons of proportionate weight." John C. Ford, "The Morality of Obliteration Bombing," Theological Studies 5 (September 1944): 289.

[29]Aquinas Summa theologica 2. 2. 40. 1, p. 503.

[30]Ibid. 2. 2. 40. 3, p. 507.

A Strong, More
Natural State

With Aristotelian tools of logic applied to Catholic and Roman materials, Aquinas worked to build an architectonic whole of Christian life, a corpus christianum. The state had to play its part in the world.

> If Augustine sought the origin of the state in the fall . . . Thomas tried to dispose of this sunful quality, in large measure, by proving the state to be the indispensable and natural foundation of the kingdom of grace, the church.[31]

While Augustine's lex naturae depicted God's means of control, Aquinas complicated matters with four classifications of law: lex aeterna (external law), lex naturalis (natural law), lex humana (human law), and lex divina (divine law). Greek and Roman Stoic notions of civil governmental authority as natural smote away at the artificiality of Augustine's state.[32] The place of the state in an ordered universe moved closer to an objective one. Possibilities of improvement might enter into a state where the more truly natural law might be attained by human beings, while within pessimistic, totally pre-ordained Augustinian state none could be envisaged.

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[31]Gerrit J. Heering, The Fall of Christianity: A Study of Christianity, the State and War, trans. J. W. Thompson (London: George Allen and Unwin, Ltd., 1930; reprint ed., New York: Garland Publishing, Inc., 1972), pp. 48-49.

[32]In this regard, few scholars have written with the comprehension of Pollock: "Natural law, as conceived by mediaeval scholars, was derived partly from the Aristotelian distinction of natural and conventional justice, partly from the Latin exposition, led by Cicero, of the same idea in its later Greek forms, and partly from the still later special adaption of it by the classical Roman jurists." Pollock, Essays, p. 32.

Evaluation

The production by Aquinas of a more natural public authority to fight wars than Augustine's has been viewed in two opposing ways, both largely incorrect. First, Aquinas does not stand guilty of simply fusing a strong statist approach to Augustine's theory. However much organic notions of the state might allow for the concentration and unbridled exercise of power, statist needs were not lacking in Augustinianism. In relations of war and peace, as in all other state relations, the individual for Aquinas remained less than the common good.

Secondly, Thomism did not usher in a humanistic view of man. Man remained essentially imperfect and subservient; and, if dignity can be taken to demand independence, man remained undignified. Aquinas placed greater emphasis on reason but his conception stayed authoritarian, with the force of God at its head. Ethics continued to be supernatural, based on an anthropomorphic god external to man.

Aquinas did not write very much concerning the just war, and what he did write was not humanitarian, not concrete, and not creative. By his day theology centered on the systematic compilation of summae. Then one might ask, why, especially in the light of his reputation for being highly systematic in repeating what had been written, did he fail to organize just war thought? At least part of the answer is shown by the fact that the tenor of his writings indicated little feel for the political, social, and

economic conditions of the Middle Ages. His limited remarks did, nonetheless, become ever more influential because of the respect he engendered, the exposure he received, and, in large part, because of the continued growth of the just war tradition.

Medieval Issues, Events, and Institutions

Overview

While the system that Aquinas worked out awaited its ultimate influence upon the justification of war, other issues, events, institutions, and their protagonists continued their uneven journey down through the middle centuries. A single issue, one series of events, and two related institutions can most faithfully provide analysis in the context of the three just war categories of proper authority, just cause, and right attention, which compel consideration as both Thomist and historically persistent. Proper authority was the most debated public issue of medieval civilization. It set the parameters for political theory and held the major emphasis in just war theorizing. The Crusades were the most prominent events during the Middle Ages and formed, in the eyes of the Crusaders and their supporters, the most just of causes for war. Chivalry developed into one of the most distinctive institutions of medieval life and, in its theory, implied right intention on the part of the military class. The Peaces and Truces of God, less able than Chivalry to be

institutionalized, can be described as a partial move (non-combattancy) toward just means (which can be sub-categorized beneath right intention) and as a small moral impetus within the just war tradition.

The Proper Authority Controversy

Four Explanations for the Emphasis

Persons initially studying the just war have marveled at the medieval just war preoccupation with proper authority and have been tempted to dismiss it as inexplicable and immaterial. True, the explanations are not easily found; but the medieval devotion to *auctoritas principis* (princely, proper, constituted, competent, correct, legitimate, or rightful authority) turns out to be understandable and significant.

To account for the emphasis on proper authority one must look at four areas: (1) proper authority as substitution for other subject; (2) proper authority as essential to any state; (3) proper authority as countervailing private violence; and (4) proper authority as an adjunct to the general dispute over who ought to govern.

Avoidance

First, the major cause for writing about authority in warfare was not the *imperium* versus *sacerdotum* struggle but the habit of intentionally avoiding more difficult issues. Medieval writers discovered easier matters to attend than the need to decrease the incidence and severity of war, the undisguised meaning of Cicero's entreaties, and the deep

disparity between the assumed pacific character of Jesus and the manifest savage conduct of Christians. Whenever these problems did start to rise, no question of the war participants' right intention reached the surface because Augustine had placed responsibility in the person and actions of proper authority. Had Augustine's influence been alone, other questions would have had a hard time existing.

Reasonable Tradition

Secondly, legitimate authority as requisite to governmental war-making had long been part of just war thinking, frequently to the point of being assumed self-evident. Legal tradition since ancient times had embodied as logical necessity a public authority issuing public orders regarding warfare. Lawyers deal within a system of authority and an elemental question to them has always been, "What authority does it have?" Many canonists thought the decision to inaugurate war ought to belong to the prince because the very purpose of the state was to provide watchmen.

Private Violence

Third, personal feuds and private pilfering of goods by open force constituted a nightmarish spectacle throughout medieval times in an environment of anarchistic, individual warriors, autonomous cities, independent associations, and sundry fiefdoms. Challenges by rivals seldom went unanswered; stone walls could not forever protect castles

and towns; nor could roadways be made safe from hold-up men. To many observers, dispersed authority meant all was not well.

Church versus Secular

Fourthly, the greatest controversy of the Middle Ages revolved around who ruled. Imperial claims and papal pretentions opposed each other in a complex, see-saw battle extending from the last days of the Roman Empire until feudal allegiances gave way to nation-state aspirations approximately nine hundred years later. The Roman Empire, which had vanished at least before the fifth century, came to be resurrected in name by the Holy Roman Empire. The Holy Roman Empire could assert no more than the powers of a fictional ghost. The church had succeeded the Roman Empire in many ways and, at times, held effective civil power over wide territories. Protracted struggles with ups and downs for the contenders concerned such questions as who appointed successors to fief-holding bishops, the civil actions of such bishops, and the taxation of church property. The popes domineered over local and "imperial" civil authorities for long spans of time, while during other periods, lay rulers reduced the church to tutelage, sometimes refusing to allow it to control its own affairs. The church could raise the fear of everlasting fire and brimstone to civil princes and sound highly pervasive; but as the Middle Ages went along, princes more and more turned out to be independent-minded kings. By the fourteenth century, with proper authority remaining important for the just war, the monarchs had won.

Clerical and Secular Opponents

A Collage of Positions

The civil lawyers, church canonists, theologians, and other parties to the authority issue produced views, more often than not, far from explicit. Phrases such as "those without a superior" could be variously interpreted and words like "prince" might refer to a bishop, pope, duke, pagan chieftain, Muslim sherif, or Christian emperor. Just war calculations ordinarily ascribed authority, i.e., the power to declare war, to the pope, to the emperor, to both of them, or to a king; and they designated a "kind" of war by virtue of identifying the enemy to be infidel, heretic, Christian, or other. Some writers conceded authority to go to war to non-Christians; other authors said no.

A number of theologians differed markedly from the legists in the thrust of their concerns and in some of their conclusions. This separation refers not to sequestered cenobites studying in mountainside abbeys but especially to the schoolmen connected with Paris during the thirteenth century. Most of their work omitted the just war. Whenever prescribing against heretics, the theologians wrote uncompromisingly; but the Crusades might as well have been a passing parade during which they kept their shades drawn. They by-passed many legalisms addressing imperial claims to superior authority; and, while they believed that the pope handed the temporal sword to the ruler, this ruler could be

a king. The schoolmen disputed the exercise of civil power by the pope or church much less often than they shelved imperial claims; still, they denied the civil power to ecclesiastics with accelerating frequency and thoroughness.

John of Salisbury's Secularism

Church authority encountered a challenge as early as the mid-twelfth century in the opinions of English scholastic, John of Salisbury, who felt that the church ought to exercise spiritual, not temporal power. In spite of the unquestionable primacy of the church and the superiority of its priests, secular authority did carry out divine will. Although famous as the unparalleled medieval exponent of the tradition that the prince acted under the law, he also followed the tradition that governmental authority devolved from heaven. He not only wrote that "the wholesome wishes of faithful subjects should prevail" and that a prince should do those things "demanded by the safety and welfare of his subjects,"[33] he also wrote that "a statute or ordinance of the prince is nothing if it is not in conformity with the teaching of the church."[34] The sword making him "a minister of the priestly power" the prince received "from the hand of

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[33]John of Salisbury Policraticus 4. 3., in Policraticus, The Statesman's Book, ed. and abrid. Murray F. Markland (New York: Frederick Ungar Publishing Co., 1979), p. 49.

[34]Ibid. 4. 6, p. 53.

the church."[35] Generally speaking, the state of affairs was less than explicitly fancied, as described by a twentieth century political theorist:

> The striking fact about many medieval kings is that, according to the prevailing ideas of their time, they not only inherited and were elected but ruled also "by the grace of God," the three titles being not alternative but expressing three facts about the same state of affairs.[36]

However ambiguous the handing out of a sword by the church to an independent prince might have appeared, no question arose for Salisbury as to its use in war. No one could abuse the military profession "while preserving his reverence for God who instituted it."[37] Right intentions were insured in the hearts of Christian rulers, thus making just causes certain. While the Crusades were in full swing he wrote:

> Truly, the sword of princely power is the sword of a dove, which contends without gall, smites without wrath and, when it fights, conceives no bitterness at all.[38]

Papal Claims

In war the popes consistently knew their side fought for right, and many of them took direct command. If the church did not stand at the zenith of its control over

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[35]Ibid. 4. 3, p. 48.

[36]Sabine, A History of Political Thought, p. 210.

[37]Gist, Love and War, p. 114.

[38]John of Salisbury Policraticus 4. 3, p. 48.

civil affairs in the early thirteenth century as Innocent III was launching the Fourth Crusade and wars against heresy, it positively never sounded more supreme. During his reign, the pope staunchly insisted:

> The Lord left of Peter the government not of the church only but of the whole world[39] . . . The sacerdotium is the sun; the regnum is the moon. Kings rule over their respective kingdoms, but Peter rules over the whole earth.[40]

Three Fourteenth Century Secularists

A century later, three dissimilar apostles, who had been born around the time of the death of Thomas Aquinas, provocatively discredited the claims and practices of priestly suzerainity over civil affairs. Conservative English schoolman, William of Ockham, alleged that papal rule violated the prerogatives of temporal rulers. Marsilio of Padua, a Franciscan friar who had been rector at Paris University, sought peace by urging the state to get out of temporal affairs. The great humanist, Alighieri Dante, planned for peace through a single secular authority.

William of Ockham

With restraint that evidenced understanding of the practicalities of government, Ockham announced that

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[39] In Leo Pfeffer, Church, State, and Freedom, rev. ed. (Boston: Beacon Press, 1967), p. 18.

[40] In M. Deanesly, A History of the Medieval Church 590-1500 (London: Methuen & Co., Ltd., 1925), p. 145.

papal control of the secular signified heresy;[41] yet he expressed no wish to deposit papal power somewhere else. He purposely composed in a vague and abstract manner. He granted to the Holy Roman Empire only "a certain shadowy supremacy" and hinted that "institutions made by men are constantly subject to change."[42]

Marsilio of Padua

Marsilio asserted that law ought serve the common good, including peace and security. To be sure, the Defensor Pacis (Defender of Peace) was considered heretical because its secularism turned out to be every bit as thorough-going as Dante's call for imperial power, written less than two decades previously.[43] Marsilio believed the secular must control its business completely, including all civil penalties. Even the physical part of the Church must be subject to the state. Rulers and subjects alike ought to obey the law because of the authority inherent in the common good. Law

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[41]George H. Sabine, A History of Political Theory, 2nd ed. (New York: Henry Holt and Company, 1950), p. 307.

[42]C. W. Previte-Orton and Z. N. Brooke, eds., Cambridge Medieval History (Cambridge: At the University Press, 1964), vol. 8: The Close of the Middle Ages, chap. 20; "Political Theory in the Later Middle Ages," by Harold J. Laski, p. 631.

[43]Paul Janet, Histoire de la science politique dans ses rapports avec la morale, 3rd. ed., vol. 1 (Paris: Felix Alcan, 1887), pp. 457-461. See also Gerald Runkle, A History of Western Political Philosphy (New York: Ronald Press Co., 1968), p. 153.

represents citizen command supported by the threat of physical force.[44]

Dante Alighieri

No figure better represents the early Renaissance humanists than Dante. Conservative or reactionary in one sense because he hearkened toward an empire long since gone, he was progressive in his distaste for legalistic labyrinths, in his promotion of individualism, and in his authentic desire for peace. In approximately 1310, these attitudes resulted in De monarchia (On World-Government), which earned a place in the Catholic Index of Forbidden Books where it remained for well over three hundred years. Dante had seen enough butchery along the Italian peninsula to convince him that peace did not mean war on the way to a peace or something else along such lines: he knew which was which. To Dante, human beings could not have freedom to pursue the virtue of rational mental development without peace:

> It is by rest and quiet that the individual man becomes perfect in wisdom and prudence; so the human race, by living in the calm and tranquillity of peace, applies itself most freely and easily to its proper work; a work which, according to the saying: "Thou hast made him a little lower than the angels," is almost divine.[45]

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[44]See Nys, Les origines, pp. 38-41, especially concerning Marsilio's supposed revival of Greek ideas of the state.

[45]Dante Alighieri De monarchia l. 4, trans. Church, Dante, p. 184.

Peace, though, could not be possible between anarchial nation-states. War denied the needs of civilized society and, in going to war, humanity went against itself. Disunity could not allow the welfare of the human race because peace could never be possible between anarchial nation-states. World government appeared to Dante to be the only means to peace. As to many contemporary persons, a supreme authority seemed the necessity in order to end war.[46]

Legano: Late Legist Look at the Just War

Still, legalist John of Legnano, writing about 1360, favored papal supremacy of the pope in the question of warfare, as in other areas. His combination of Roman law and theological beliefs did nothing to improve the just cause of war or for the other conditions. Legnano's exceedingly formal approach to war spawned no standards; it only preserved a vacuous concern for authority. In the fourteenth chapter of Tractatus he expounded, "The prince, then, alone may declare war by his own authority since he has no superior

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[46]National or international unity has long been a suggested cure for war. About one-thousand-seven-hundred years before Dante, Mo-Tzu thought that, if the emperor of China "could gain real control over all state governments, then the world would be once more united in one government and thus there would be peace." Tseu, Moral Philosophy, pp. 382-383. Unlike Mo-Tzu, who had real hope for other action, contemporary political scientists consider world government to be the only truly effective option. Consequently, because they find it to be unlikely and unattractive, peace becomes hopeless to pursue.

to whom he may resort to obtain justice."[47] Once more, the old Roman concept of a prince acting as his own judge reappears. Legnano most likely referred to both pope and lay prince because he, in chapter twelve, had held the emperor to be secular lord while simultaneously insisting the pope to be both the one lord and supreme governor:

> The two governments are the priesthood and the Empire; but of these one is supreme, namely, the Papacy, to which the other is subordinated. . . . There is one Lord of the earth . . . and he is the Pope. . . . The Pope, as a matter of law, has jurisdiction over infidels. . . . The Pope, like a true prince, may declare war against infidels and grant indulgences for the recovery of the Holy Land.[48]

Bodin: Secular Implications for the Just War

When Jean Bodin advocated international struggle in preference to domestic strife, Europe had already entered a century-and-a-half formative period (roughly 1500-1650) which included protracted warfare. In Six livres de la republic, published in 1576, Bodin struck a heavy blow at French adherence to old Roman law and declined to consider copia verborum concerning emperor and pope any longer relevant to public life. Republics or commonwealths mattered. He considered true government to be part of an organism,

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[47]Giovanni da Legnano, Tractatus de bello, trans. James L. Brierly, in Tractatus de bello, De represaliis et de duello, ed. Thomas E. Holland (Washington: Carnegie Institution of Washington, 1917), p. 234.

[48]Ibid., pp. 231-232.

supreme and undivided: "If then a commonweal be but one body, how is it possible it should have manie hands, but that it must prove a monster."[49] He dispensed with many Roman legalisms. A republic's souverainete held the importance and sovereignty meant supreme power over subjects, a capacity not even bound by the laws. His enchantment with forceful rule at the head of civil society boiled down to Augustine's pure necessity. His belief that armed struggle and physical force characterized the nation-state took on a cloak of approval. Most tellingly for the just war, he set the foundation for discussion of reason-of-state.

Bodin's theory of sovereignty put to rest the proper authority controversy relating to the just war. It introduced supreme authority in war completely unencumbered even by a theoretical consent of a citizenry. Not long afterwards, contract theorists began busily constructing paradigms that allowed for at least an initial approval by the people; however, from Bodin's presentation of his thesis until this minute, the theory of an unrestrained nation-state with a centralized monopoly of violence has remained persuasive. Indeed, in international affairs it has sometimes been pervasive.

The just war theory has developed during the modern era without a concise, hard-hitting, political theory to

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[49]Jean Bodin, The Six Books of a Commonweale [Six livres de la republique], trans. Richard Knolles (London: G. Bishop, 1606), p. 177.

counteract Bodin's sovereign state notions. The first difficulty is that any governmental theory, contract, utilitarian, or other, must serve authority very strongly. That much has to be admitted. The second problem has been that particular political theories have attended to intra-state relationships, not international relations. Sole political theories have not sufficiently called on national leaderships to justify wars or to explain rationally the pursuit of national power. The just war tradition has continued to evolve, since the time of Bodin, as an attempt to meet some of these needs.

The Crusades

Killing Infidels

Pope Urban II inaugurated the Crusades in a speech to the Council of Clermont in 1095 with these words, "The Lord prays and exhorts you . . . to hasten to exterminate this vile race from the lands of our brethern."[50] He meant that the Muslims in the Holy Land ought to be wiped out; and, almost needless to say, Christendom did its best to take him at his word. The accursed infidels were assailed for two centuries; and whenever the Christian soldiers enjoyed God's blessings "many heads fixed upon spikes and spears, furnished

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[50]Department of History of the University of Pennsylvania, Translations and Reprints from the Original Sources of European History (Philadelphia: Department of History, 1910), vol. 1, no. 2: Urban and the Crusades, ed. Dana C. Munro, p. 4.

a joyful spectacle for the people of God."[51] The Crusaders relied on the ancient Jewish belief that God punished and rewarded through the tide of battle. The just war must have seemed a distant shadow. In Jerusalem alone, in three July days of 1099 every living person was killed out of a population of seventy thousand.[52] The following account of the fighting at Ascalon and the preceding fall of Jerusalem was written by Count Raymond of St. Gilles to Urban II:

> God was present when we cried for his aid, and furnished us with so great boldness, that one who saw us rush upon the enemy would have taken us for a herd of deer hastening to quench their thirst in running water. It was wonderful indeed. . . . More than 100,000 Moors perished there by the sword. Moreover, their panic was so great that about two thousand were suffocated at the gate of the city.[53]
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> With the Lord's companionship and aid, we proceeded thus as far as Jerusalem. . . . The bishops and princes ordered that all with bare feet should march around the walls of the city, in order that He who entered it humbly in our behalf might be moved by our humility to open it to us. . . . God was appeased by this humility. . . . He delivered the city and His enemies to us. . . . If you desire to know what was done with the enemy who were found there, know that in Solomon's Porch and in his temple our men rode in the

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[51] Ibid., no. 4: Letters of the Crusades, ed. Munro, p. 3.

[52] Desmond Seward, The Monks of War: The Military Religious Orders (n.p.: Archon Books, 1972), p. 13. Cf. an account in Gesta Francorum et aliorum Hierosolimitanorum indicates some possible survivors: R. G. D. Laffan, Select Documents in European History 800-1492 (New York: Henry Holt & Co., n.d.), p. 61. Eighty-eight years later when Salidin reconquered Jerusalem, "He accepted ransom for men, women, and children and released several thousands who could not pay." Philip K. Hitti, "Chivalry: Arabic," Encyclopedia of the Social Sciences, vol. 3: 442.

[53] Ibid., p. 11.

> blood of the Saracens up to the knees of their horses.[54]

Killing Christian Factionalists

The Charge of Heresy

The Crusades had a long and varied history. Crusading armies were turned upon non-believers and upon Christian factions with whom the popes disagreed. At Beziers in 1209, where thousands of so-called heretics dropped before the Crusaders' swords, a papal legate prompted, "Kill them all; God will recognize his own."[55] As it came out, the Holy See had the battalions.

Pacifism Unvanquished

A sizable portion of the Christian sufferers of Crusading carnage did have a difference of opinion with the pope; and, of these, a number had adopted pacifism. Medieval pacifism had begun a tattered history of obscure sects with changing beliefs and shifting fortunes. Modern works dealing with pacifism have reconstructed the stories of Christian pacifists largely from inquisitorial records and have had little to report concerning secular pacifism. Varieties of secular pacifists have hardly ever associated in groups, while religious individuals have generally assumed organized identity.

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[54]Ibid., p. 10.

[55]Charles T. Wood, The Age of Chivalry (New York: Universe Books, 1970), p. 94.

Starting with the eleventh century, pacifist groups began to surface. Since the time of Constantine, there may have existed a few isolated independent minds with pacifist leanings, but censorship and heavy penalties for exposure had hidden their names forever. As the groups emerged, they sometimes operated clandestinely but, most often, openly. The church reacted with all the physical force it could command. For example, when Pierre Valdes, founder of the Waldensians, distributed his wealth among the poor of Lyons in 1170, it became heresy;[56] and as these Catholics spread into Languedoc, where they were known as Albigenses, Innocent III waged a long and gory Crusade against them.

Crusades against pacifist groups served a dual purpose for the church: they stamped out heresy at the same time they strengthened papal power against temporal power. Even the enthusiasm of official opposition failed to succeed in eradicating the pacifist sectarians, at least for any length of time; and, quite probably, membership remained unbroken until the Refomation began in the early sixteenth century. Pacifist ideas were widely known, by Europeans possessing some learning, long before Renaissance humanism increased their dissemination; however, their exact relationship to the growth of just war ideas in general has not

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[56]Peter Brock, Pacifism in Europe to 1914 (Princeton: Princeton University Press, 1972), pp. 27-28; for possible motivation see specifically Matthew 19:21.

been determined. No doubt, the pressure for humanistic behavior by pacifists has been long and heavy.

The Knightly Orders

The most enduring of direct military aspects of the Crusades were the monastic military orders. Of the three greatest knightly orders, the Knights Templars declined in the early fourteenth century, the Teutonic Knights, pretty much by the middle of the sixteenth century, and the Hospitallers, not until nearly the nineteenth century. The curious tale of the Teutonic brethren illustrates well the prolonged legacy of the Crusades.

The Teutonic Knights, founded at the gates of Acre in 1198 during the Third Crusade, answered the call made decades earlier by the "peace-making" White Monk, Bernard of Clairvaux, to cross the Elbe in pursuit of heathens. The heathen were conquered, and the theocratic Ordensstaat was colonized and governed by the order in Livonia, now called Estonia. The state survived from the thirteenth century until 1559-1562. Ironically, their fellow Christians, the Russians, finished them:

> Oh, the lamentable outcries and cruel slaughters, downing and burning, ravishing of women and maids, stripping them naked without mercy or regard of the frozen weather, tying and binding them by three or four at their horses' tails, dragging them some alive, some dead, all bloodying the ways and streets full of carcasses of the aged men and women and infants.[57]

[57] Description by an English traveller, Jerome Horsey, in Seward, p. 130.

The last Hochmeister of the Teutonic Knights in Prussia became the first Hohenzollern ruler of Prussia; but the brotherhood was not turned into "a purely clerical order of priests" until 1929.[58] History hardly ends anything all at once.

Justifying the Crusades

If the Crusades increased the savagery associated with making war, they did not produce a simultaneous revulsion to war in the minds of Europeans. To the contrary, the habitual expeditions coupled with the incessant ecclesiastical appeals rationalizing warfare must have strengthened the acceptance of warfare throughout the West.

Papal Preaching

To the faithful at Clermont, Urban II had charged, "Accordingly undertake this journey for the remission of your sins with the assurance of the imperishable glory of the kingdom of heaven."[59] He and his successors and other clergy tendered many kinds of privileges and indulgences, along with the quarantee that war for Christianity was not only permissible, but desirable. In a manner typical of papal pledges, Innocent III wrote to King John of England in the spring of 1215 urging him to secure his heavenly glory by

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[58] Ibid., p. 313.

[59] Munro, Urban, p. 7.

crusading in the Holy Land: "Eia, igitur, magnifice rex, prepara te potenter ad optinendam coronam quam tibi dominus reservavit."[60]

Bernard of Clairvaux:
The Assumption of Right

About 1250, Bernard of Clairvaux wrote De laudibus novae militiae (In Praise of the New Militia) to help propagate the Knights Templars. Described as "the greatest moral force of his day," this Cisterian abbot glorified war in a manner seldom surpassed:

> How blessed your martyrdom if you fall in the field! Rejoice, gallant warrior, if you live and conquer in the Lord. . . . But to die in battle is the more precious manner of death, since it is the more glorious.[61]

In advancing the Second Crusade to the English people he preached the standard line, "In return for your taking up arms in his cause, he can reward you with pardon for your sins and everlasting glory."[62] The crusade provides a soldier with a sure thing, while an ordinary war gives no absolute guarantee. Probably as an unintentional by-product

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[60]"Come on! Therefore, magnificent king, prepare yourself powerfully to choose the crown which the Master has kept back for you." (Translation mine) C. R. Cheney and W. H. Semple, eds., Selected Letters of Pope Innocent III (London: Thomas Nelson and Sons, Ltd., 1953), p. 203.

[61]Seward, p. 11. Ailbe J. Luddy, Life and Teachings of St. Bernard (Dublin: M. H. Bill & Sons, Ltd., 1950), p. 175. See also H. Daniel-Rops, Cathedral and Crusade (New York: E. P. Dutton & Co., Inc., 1957); and Richard S. Storrs, Bernard of Clairvoux (New York: Charles Scribner's Sons, 1893).

[62]Arthur F. Holmes, ed., War and Christian Ethics (Grand Rapids: Baker Book House, 1975), p. 89.

of crusading vigor, Bernard struck a blow at service due the state:

> He who fights for some temporal interest has often good reason to fear lest . . . he slay his own soul. . . . Defeat and triumph depend not on the chances of war but on the disposition of the heart. If the war be a just one, the issue cannot be evil, as neither can it be good if the war be unjust. . . . He who in an unjust war, intending to slay, is himself slain, dies the death of a murderer; and if he prevails and overthrows his enemy, he lives a murderer.[63]

As usual, nonetheless, persuasion rode in favor of authority. No conclusion of conscientious objection surfaced. Thinkers, such as Bernard, felt no embarrassing need to own up to the logical implications stemming from the idea of a right side and a wrong side in a war. Like Augustine and the cavemen before him, he only had to operate within the commonplace dependence of the average lay person, unabashedly assuming that his side was synonymous with right. Modification of this belief has been critical to the evolution of just war theory.

Even with the ease of his convictions, Bernard pursued the traditional path of providing soldiers with the moral pallative of subjective good feelings, i.e., right intentions. The guilty deserved punishment and when a malefactor is killed, "it is not homicide, but malicide."[64] He

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[63]Luddy, Life, p. 175.

[64]Malcolm Barber, The Trial of the Templars (Cambridge: Cambridge University Press, 1978), p. 8.

closely identified intention with just cause and, in so doing, treated a just cause as producing good. The means must be included in his remark that the end justifies the consequences of war:

> If the cause of the fighting is good, the consequence of the fighting cannot be evil; just as the end will not be judged good when the cause is not good, and it has arisen from unjust intention.[65]

Crusading in the Mainstream

For the Crusaders and for those few theorizers during their time who tried to face the topic, war remained as much ordained by God as it had been in Augustine's time. Persons who have taught that somehow the holy war dwelled a thing apart, existing alongside the just war or as one rigid division within the just war, have badly misdirected scholarly efforts. Three twentieth century efforts displaying such errors include (1) a brief and incomplete historical survey of the just war, (2) a work dealing with the just war in the Middle Ages, and (3) an article focusing on holy war.[66] Even

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[65]Ibid., p. 7.

[66]Bainton, Christian Attitudes, p. 111: Completely divorced the holy war and pacifism from the just war tradition. His definition or, rather lack of one, for the "idea of a crusade" brings confusion. The crusade is termed "a war for the holy cause of peace." The author slips over from the ostensible part that a desire for domestic pease in starting the crusades and misleads the reader into guessing that the author means the ancient assurance that peace stands as the goal of each war. Russell, Just War, pp. 2-3, 38-39, and 302: followed Bainton by perpetuating a fragmented picture of the just war. His crusade formed a synthesis or "a strange hybrid of holy war and just war" (italics mine). He provided no proof of an untenable passing comment that the

writings free of crippling categories have not adequately interpreted the religious factor.[67]

Augustine neither excluded nor set apart the holy war. The reader can easily recognize justification for the holy war and crusade in Augustine's "that kind of war

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Crusades had been "sharing in the requirements" of the just war. Whatever he may have thought the requirements to have been, he tended to view them legalistically; then, curiously, he considered that just war morality gave way to just war legality by 1300. Unfortunately for the analysis, this date happens to coincide with the close of the Crusading era. Russell finished his study of the Middle Ages without comprehensive conclusions concerning the entire just war.

Michael Walzer, "Exodus 32 and the Theory of Holy War: The History of a Citation," Harvard Theological Review 61 (January 1968): 5, 11 and 13: contributed nothing toward an understanding of the Crusades or the general evolution of the just war tradition. He did not recognize any affinity in the beliefs by Augustine and Aquinas of war's righteousness in the eyes of God; and he attributed sundry opinions to Augustine, Aquinas, and Grotius, without substantiation. Perhaps worst of all, he fixed upon a minor sentence from one of Augustine's meandering, supporting arguments and threatened the reader with the prospect of a serious definition which did not materialize. Except for its theft of time, this article could not prove very detrimental to knowledge of the Crusades and the balance of just war scholarship simply because it was too unintelligible to be misleading.

[67]See James T. Johnson, Ideology, pp. 8-11: Although this book at least recognizes the existence of religion "in the mainstream of just war, it fails to see its ultimate significance and the perpetuation by religion of ancient assumptions of in-group righteousness. His categories display greater clarity than many other sources show; but he neglects to see the intermingling of the various just war categories. Nor does he comprehend the ongoing amalgamation in the just war of secular ethics, national and international law, custom, religious belief and rules, and rational thinking. He dubs "religious" the right to make war and "secular" what is allowable in time of war, and classifies two separate doctrines existing independently until the sixteenth century As indicated, supra, in the discussion of Gratian, his contemporary partisan concerns skew his conclusions into degrading the just war.

. . . which God himself ordains,"[68] a clause that came as sort of an addenda to the Ciceronian requisites. Yet, he in no way distinguished the holy war from the just war. He made no separation. Though secular in its immediate control, his just war was always a war of God; and his theocratic notions advocating the use of state force to eradicate heresy and schism contributed to a precedent in practice that history kept alive for the medieval mind. The Crusades did not represent an abberation; they maintained the most vicious rationalizations and actions known to primitive man, as perpetuated by Augustine and his emulators.

Chivalry

Practice and Ideals

Chivalry became one of the major institutions of the Middle Ages. It has become one of the most misunderstood. Pictures of chivalry may portray colorful flags fluttering in the breeze over courtyards and the shining armor of champions atop steeds competing at jousting tournaments crowded with pale maidens blushing with thoughts of romantic entanglements. But chivalry stood more for war, plunder, and quarrels than anything else. Mercy and politeness did not extend at all to the Muslims, dissenting Christians, non-believers, and other victims of crusading delirium. Gallantry did not mean so much bows to the enemy as being

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[68] Supra, p.

a gallant. The trend moved from being a monkish knight to being a knightly paramour.

Chivalric practice was supposed to express three ideals: (1) unselfish service to god and other institutional obligations, (2) romantic love, and (3) protection of the weak and helpless. It did not get far in the last case.

On a day to day basis, the knights simply did not go out into the forests to fight fire-belching dragons and watch over the poor. The black and silver cross worn by the merciless "stormtroopers," as described by one historian,[69] helped ornament a single group of knights of many knights who have been described by numerous other historians. The stories read much the same. Less organized than the ones of knighthood but equally well-armed, mercenaries roamed about, pillaging the countrysides for centuries, before, during, and after the Crusades.

Apart from the ideals of service, romance, and protection, chivalry embodied a legalistic side, which consisted mainly of military regulations for knights. Chivalric precepts became accepted locally as measures of the civil law and as a part of the law common to all nations, the jus gentium, which progressed into modern international law.[70] Chivalry, as a law of arms, was more of a likely

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[69]Seward, pp. 4, 6, and 131.

[70]Julius Stone, Legal Controls of International Conflict, 2nd ed. (New York: Rinehart & Co., Inc., 1959), pp. 335-337: remarked that the "idea of chivalry" was too

forerunner of contemporary military law in its specifics than a contributor to the international law province of the just war. Certainly, American military law has traditionally dealt in the main with practical matters of discipline,[71] which figured as one area of chivalric concern. Lawyers pleaded the rules of chivalry before medieval courts in disputes between members of the soldiering class. The courtrooms may have echoed with appeals to imperial Roman military regulations; but, significantly, issues regarding prisoners manifested the greatest moderation. For many centuries, almost all soldiers belonged to the soldiering or upper class.

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artificial to survive, although vestiges of its practices may have survived until World War II in certain naval practices and in aerial romanticism. This mistaken evaluation considered the only possible legacy to have been wild flings of fanciful sentimentality. Remarkably, he missed any contribution through international law. F. J. C. Hearnshaw, "Chivalry: European," in Encyclopedia, vol. 3. ed. Seligman and Johnson, pp. 436-441: sternly bemeaned chivalric activity and its standards until his last two sentences, where he credited improvement in honor, generosity, good manners, and manliness in serving religion. Some of these vague descriptions he had spoofed in their application or worth. None is particularly accurate or praiseworthy.

[71] Trueman Cross, Military Laws of the United States, 2nd ed. (Washington City: George Templeman, 1838). Ernest W. Puttkamer, ed., War and the Law (Chicago: University of Chicago Press, 1944). Of course, a legal volume today commences with constitutions, court precedents, and statutes for its sources or authority, as if such creations occurred in historical vacuums: Daniel Walker, Military Law (New York: Prentice-Hall, Inc., 1954).

A Literature of Chivalry

Its Representatives

There arose during the fourteenth century what can well be called a literature of chivalry. These writings spread from France where Honore Bonet's L'arbre des batailles was soon followed by Christine de Pisan's Le livre des faits et de chevalrie, which repeated much of his work and also added much. Late in the fifteenth century, William Caxton, who had printed the first book in English and the first book on English soil, translated the de Pisan volume from the French and also produced The Booke of the Ordre of Chyualry. Caxton's compilation has been termed "the most compendious mediaeval treatise on the obligations of knighthood."[72] Besides furnishing statements of everyday regulations for the soldiering class, the writers sometimes discussed specific aspects of the just war and, in general, appealed to and perpetuated the idealized side of chivalry. Caxton's words envisioned, "Therefore is the swerde made cuttynge on both sydes to sygnefye that the knyght ought with the swerd mayntene chyvalrye and Iustyce."[73]

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[72]Alfred Byles in William Caxton, The Book of the Ordre of Chyualry, ed. Alfred T. P. Byles (London: Humphrey Milford, Oxford University Press for the Early English Text Society, 1926), p. vii.

[73]Ibid., p. 77.

Bonet's Just War

Honore Bonet, student of the decretals and priest during the second half of the fourteenth century, discarded Latin to write a manual in French offering instruction in chivalric rules. The book circulated widely throughout Western Europe, plainly because it provided a much more practical and more easily understood treatment of chivalry than did canonical literature. Bonet's list of topics mixed civil quarrels and feudal duties with rights of war. The subjects included: trial by combat, duels and other individual encounters; regulations concerning soldiers' wages, and coats of arms; ransom, and rights of seizure by conquest; and criteria for truces, safe-conduct, specified times free from fighting, and persons excluded from harm.

He complained, though, that chivalric customs had come to grief and that warfare followed an opposite practice. Facetiously, he wrote that the man considered fit to carry on war must "know how to set places on fire, to rob churches and usurp their rights."[74] He must reply, also, to the "one opinion that a knight can not follow arms and war without sin."[75]

Bonet distinguishes three kinds of wars: (1) "a war ordained by the church," (2) "a just quarrel," and

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[74]Honore Bonet, The Tree of Battles [L'arbre des batailles], trans. and intro. G. W. Coopland, written in 1387 (Cambridge: Harvard University Press, 1949), p. 189.

[75]Ibid., p. 156.

(3) "unjust warfare." Paradise assuredly awaits the soldier of the sacredotal and just wars. The soldier perishing in an unjust war travels to damnation.[76] Unjust wars lack authority or they lack causes free from sin. War itself, at least on one side, coincides with good. Albeit war comes from sin, God ordains war with an aim of peace.[77] Perhaps no more ridiculous depiction of the virtue exists in any language:

> The truth is that war is not an evil thing, but is good and virtuous; for war, by its very nature, seeks nothing other than to set wrong right, and to turn dissension to peace, in accordance with Scripture. And if in war many evil things are done, they never come from the nature of war, but from false usage. . . . Thus, we must understand that war comes from God, and not merely that He permits war, but that he has ordained it. . . . We must accept and grant that war comes from divine law, that is, the law of God: for the aim of war is to wrest peace, tranquillity and reasonableness, from him who refuses to acknowledge his wrongdoing.[78]

de Pisan's Just War

Christine de Pisan's book did include many of the same topics covered by Bonet and did deal at length with military tactics. More importantly, it outlines for its readers what the authoress considered to be just in respect to war. Men can rightfully fight for the two causes of religion and defense; but wars in pursuit of private gain

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[76] Ibid., p. 156.

[77] Ibid., p. 158 and 125.

[78] Ibid., p. 125.

are immoral. Objective facts outside the individual take over whenever a person, without right intention, supports a just cause. He goes to the promised land. On the other hand, the objective facts of participation in an unjust war conducted by one's prince but against one's subjective wishes, do not obviously condemn a person.

First, if a knight, while having faith in Christ, dies in war against those persons of "evil belief," he goes straight as a martyr into heaven. Second, if he dies helping "right" in a battle grounded upon a "just and good quarrel" in "defense of the commonweal" or in keeping "freedoms and good customs of the country, he goes to paradise. He merits this reward even if his motives were sinful. Third, if a man goes against his "conscience" in a "false quarrel" that he may get prestige, wages, the opportunity to rob, or worse, he puts his soul in peril. Not quite as bad are those persons who have to follow their sovereign right or wrong in order not to lose their lands as a result of the war. If these persons feel their lord in the wrong, they ought to desire, legalistically, to "let and dismove" the war.[79]

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[79]Christine de Pisan, The Book of Fayttes of Armes and of Chyvalrye (Le livre des faits d'armes et de chevalerie], trans. William Caxton (London: William Caxton, 1489; reprinted, London: Humphrey Milford, Oxford University Press for the Early English Text Society, 1932), pp. 292-283. "I shall ansuere the shortly / thre conclusyons / The fyrst / that wythout doubte / after that the decree declareth / the knyght or the man of armes / that deyeth in the werre ayenst them of euyl byleue / for thenhaunsing of the feyth of Ihesu

The Peace of God and Truce of God

The Peace of God (Pax Dei) and the Truce of God (Treva Dei) usually comprise the entire subject matter whenever contemporary writers touch or focus upon medieval practice in wartime and its theory, the jus in bello, debitus modus, or right means. That these pronouncements, mostly resulting from church councils, have come to symbolize medieval international peace for modern civilization is

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Chiste / soo that he be repentyng & sory for his sinnes. he goeth strayghte as a martyr vnto heuen: The seconde. that yf a man of werre deyeth in a bataylle grownded vpon a juste and gode quarelle / for to help the ryght / or that hit be for the drue deffense of the lande / or for the comonwele / or for to kepe the fraunches and good customes of the place or countrey / but yf som other synne letteth hym / his sowle is not agreued but a right gret meryte he hathe therby/ & suche may the cas and the quarelle be that he goeth right forthe in to paradyse by and by / And it is determyned that he that exposeth his lyffe for to deffende iustyce / deyeth well a good dethe as it is for a fyght in a iuste quarelle for his kynge or prince / for the countrey and for the peple whiche is a merytoryouse dede / But the thirde conclusyon is contrary to the same that is to wite / that yf a man deye in a bataille whiche were ayenst hys conscyence / that is to wite / that he shuld thynke / that the quarelle were not goode / and that it were doon but for tu vsurpe and take the ryght from another / & that shuld care for noone other / but that he may be noble and take and gete his wages/ without faylle yf suche a man hathe noo leyser to haue repentaunce at hys last endyng we coude not presume that he were in waye of saluacyon / Late therfore kepe hem wel that therto putten hem self / For bothe the body & the sowle they putte in grete pareyll / yf they doo gyue hem self for to susteyne a false quarell / And to this ought straunge souldyours to take gode hede / But many there be that make noo force of the quarelle / soo that they be well payed of theyre wages / and that they may well robbe / But suche folke doon moche worse / & are lesse to be excused / than be thoo whome it behoueth / be it right or wronge / vpon peyne of losyng of theyre landes / to be with theyre naturell and souerayne lorde / how be it / that they oughte with all theyre power / yf they dide fele that theyre lorde had wrong to putte hemself in peyne and in her deuoyre for to lette and dysmoeue the werre. . . .

remarkable. No doubt, there lies their major importance: the idea of peace outdistanced the other facts.

The second major benefit, though likewise not immense in its immediate impact, was in the perpetuation of categories including non-combattants and innocent persons to be exempted from harm. Both peaces and truces usually dealt with excluded persons. The common belief that the Truce of God applied to days without fighting and the Peace of God to immune persons has been inaccurate. Both did represent promulgative attempts to encourage civil peace primarily by discouraging robbery.

The Peace of God, proclaimed at the Synod of Charroux in 989, ruled that the clergy should be protected and that peasants not be robbed of livestock. The following year the bishop Guy of Anjou announced much the same plus prohibiting the ransoming of peasants and the seizing and robbing of merchants.[80]

The earliest Truce of God still preserved was drawn up during 1035-44 for the archbishops of Arles. Both secular and canon law penalties threatened those persons violating its prescriptions to refrain from fighting during over half of each week:

> This is the peace or truce of God . . . that all Christians, friends and enemies, neighbors and strangers, should keep true and lasting peace one with another from vespers on Wednesday to sunrise on

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[80]Oliver J. Thatcher and Edgar H. McNeals, eds., A Source Book for Mediaeval History (New York: Charles Scribner's Sons, 1905), pp. 412-413.

> Mondays, so that during these four days and five nights, all persons may have peace, and, trusting in this peace, may go about their business without fear of their enemies.[81]

A truce for Besancon and Vienne, issued also in 1041, repeated these provisions and added several whole weeks. Besides Wednesday sunset to Monday sunrise, the truce covered "from Christmas to the octave of Epiphany, and from Septaugesima Sunday to the octave of Easter."[82] Gradually the numbers of days deemed free from fighting grew to include a large portion of the year and the classes of persons to be spared increased accordingly. The Peace of the Land for Elass (1085-1103) provided that feast days and each day before them plus fast days during each season be included and that "all clergy and women, merchants, hunters, pilgrims, and farmers while they work in the fields and on their way to and from their labor, shall have peace."[83]

The edicts distinguished but little between highwaymanship and beseiging expeditions. The famous speech by Urban II to the Council of Clermont (1095) inaugurating the Crusades and urging peace within Christendom aimed not at warfare, as such, but essentially at civil disturbances and banditry. He admonished, "Let robbers, incendiaries, and

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[81] Ibid., p. 415.

[82] Ibid., p. 416.

[83] Ibid., p. 420.

their accomplices be shut out from the church."[84] Again, in his first canon of the Council, he spoke of the numerous days free from the civil crimes of "murder, arson, robbery, and assault," and did so in terms of personal quarrels and banditry.

Historical myth notwithstanding, the constituted authorities could carry on war as they saw fit. The peaces and truces had no intention of interfering with this function or the activities of courts. The Peace at Terouane in 1063 read, "During the days of peace, no one shall make a hostile expedition on horseback, except when summoned by the court."[85] The Peace of the Land established by Henry IV at Mainz in 1103 dealt entirely with individual enemies and single dwellings.[86] During this same period, the Elass peace assures that, "All public enemies of the royal majesty shall be excluded from the benefits of this peace."[87] Urban II spelled out even more clearly that no restrictions applied to the dual exercise of princely authority as judicious judgment:

> It is also an exception to this constitution of peace, if the Lord King publicly orders an expedition to attack the enemies of the kingdom or is pleased to hold a council to judge the enemies of justice.[88]

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[84] Munro, Urban, pp. 3, 9, and 12.

[85] Thatcher, p. 418.

[86] Ibid., p. 419.

[87] Ibid., p. 420.

[88] Munro, Urban, p. 11. Note, also, that one attacks enemies instead of repelling invaders.

Unraveling the peaces and truces, then, shows efforts to perpetuate civil peace and not regulations against war. The blessings derived forthwith probably were small, although in the cut-throat environment a little may have seemed a great deal. The long-range benefits proved twofold. The inviolability of many categories of non-combattants undoubtedly did much to foster universal respect for such exclusion. These more humane practices, which were based on ancient precedents, moved a few steps closer to institutionalization. Even more important was the moral impetus for peace. The underlying cause of the pronouncements became their chief effect. The public desire for peace gained in respectability and dissemination. Peace, like war, feeds on itself.

CHAPTER FOUR

THE MODERN JUST WAR 1500-1650:

PART ONE

> In the late afternoon the child ceased his play on the mountain with his flocks and his dogs. Part of the battle had whirled very near to the base of his hill, and the noise was great. . . . The child heard a rattle of loose stones on the hillside, and, facing the sound, saw, a moment later, a man drag himself up to the crest of the hill and fall panting. Forgetting his mother and his hunger, filled with calm interest, the child walked forward, and stood over the heaving form. His eyes, too, were now large and inscrutably wise and sad. . . .
>
> After a silence, he spoke inquiringly: "Are you a man?"
>
> --*Stephen Crane, Death and the Child*[1]

Overview 1500-1650

A Formative Era

The just war tradition, free from the domination of religion, took giant strides in the sixteenth and first half of the seventeenth centuries, at the beginning of the

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[1]Stephen Crane, The War Dispatches of Stephen Crane, ed. R. W. Stallman and E. R. Hagemann (New York: New York University Press, 1964). (Report from the Greco-Turkish War, Harper's Weekly, March 19 and 26, 1898).

modern age. Although some analysts have felt more comfortable designating 1650 as the starting date for the modern age or at least as the kick-off time for modern nation-states, usually the entire historical period from 1500 to 1800 has been labeled early modern. The earlier date definitely is the more accurate starting mark for the modern age; nonetheless, the middle of the seventeenth century does indicate a markedly significant point of human development. The truth is that the years between about 1500 and 1650 represent one of the most clearly ascertainable and highly important eras of history. In nothing did this era stand out more definitely than in the realm of politics, where an assortment of fledgling nation-states matured into a nation-state system, forever altering the justification of war.[2]

Always the best hope is to be able to notice the most prominent trends in history. A greater achievement would be to understand the essence of each trend, including how

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[2]Compare this chapter and the next chapter with the following diverse and somewhat inaccurate statements; Bainton, Christian Attitudes, p. 122; A significant "revival" of the just war took place about 1500; Johnson, Ideology, pp. 8 and 31: At this time the "classic doctrine" but also the "modern doctrine" began to appear; Von Elbe, "The Evolution," p. 674: Near this time Vitoria's full treatment pushed the evolution of the medieval doctrine to a "climax"; Cranfield, "The Concept," p. 74: Vitoria made a "breach in the strict scholastic theory"; Draper, "The Christian," pp. 393-94: The sixteenth and seventeenth century Spaniards brought "refinements" to just war teachings; Ballis, The Legal Position, p. 168: Their "doctrine of probabilism spelled the death of the just war theory."

they all concurrently reinforce and oppose one another.[3] In no other epoch can there be witnessed more graphic cases of interaction among major social movements, institutions, and patterns of thought. Whatever shape such interrelationships may take, ideas form their most common denominator, although a single idea may appear with much variety of form and purpose. Accordingly, within and between the major evolutionary trends of this period there figured the ideas of the just war.

Understanding the justification of war during this time requires hunting within descriptive systems for disorderly and inconsistent facts. Each label, e.g., the Renaissance, stands for more of a descriptive category than a causal category, while it in no way denies possible cause-and-effect relationships, e.g., movable type upon literacy. Secondly, the evolution of the just war was an affair irregular, but with discernable direction. The just war moved across time like an uncertain river. Its beliefs seldom ran entirely forward, unmixed, and with stable parameters. Its evolution maintained continuity as modifications pushed it ahead to new developments.

Major Areas of Development

The main political directions taken by this formative era were shaped by the rise of the nation-state, the

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[3]The scholar must side-step the rationalistic paradigns of Hegelian and Marxist dialectics, which claim to have this most untidy business neatly answered.

Renaissance, the Reformation, and neo-scholasticism in conjunction with civil jurisprudence. The nation-state brought reason-of-state, nationalism, and political writings highly forceful and creatively responsive to national problems, including war. The Renaissance ushered in humanism with its humanitarian and classical pursuits that transformed much passive religious acceptance into an optimistic quest of the secular good, which embraced peace. National literatures, as in England during the late Renaissance, publicly examined numerous themes of war and peace. The Reformation helped free heads of state from lingering papal and imperial claims to authority and produced the Protestant theory of the just war. The Spanish neo-scholastics and the civil law writers responded to the nation-state system by constructing just war theory at the center of a modern law of nations.

Overview of Part One

Rise of the Nation-State

Centralization and Power

As the sixteenth century began, single monarchs holding the center of governments and claiming sovereignity set about steadily augmenting kingly power. Jealous sovereigns expanded internally and externally. Nations solidified their borders and their populations. Centralized governments more actively reached the lives of their citizens. Kings

monopolized the military function, controlled taxation, and through mercantilism regulated commerce along with the rudiments of industry. They assisted world-wide discoveries of trade routes and new lands which brought immense wealth to Europe by the mid-sixteenth century. By this time, also, the major European standing armies, which had begun to be established in the preceding century, reached a point of maturity. The distinctive weapons and organization that allowed unprecedented strategy and tactics remained basically unchanged for two centuries and, in the case of artillery, for about three centuries. These enhanced resources available to make war lay in the hands of centralized national authorities.

Nationalism and Foreign Policy

By 1500 real national unity under national monarchs had pushed aside most of the medieval myth of European unity with its uncertain and confusing latticework of feudal authority. The old, petty, localized contentiousness receded as disputes between nation-states concentrated on religious, dynastic, and territorial claims. From the wars that arose, genuine foreign policies and feelings of nationalism developed.[4]

Following the One Hundred Years War (1337-1453) Europe began an active evolution toward recognition of the

[4]For the gradual growth of the idea of the state as an independent community see Otto Gierke, Political Theories of the Middle Age (Boston: Beacon Press, 1958).

sovereign equality of states. Following the Treaty of Cambrai in 1517 concluding the Italian Wars, Europeans started moving toward the Italian practice of balance of power. Both arrangements became firmly established by the Peace of Westphalia in 1648. The so-called balance of power system lasted from then until 1914,[5] while the principle of equality of rights between states continued unabated.

Machiavelli

Niccolo Machiavelli fashioned the utmost case for the unfettered nation-state in international affairs, a state he believed compelled to perpetually assert itself militarily against other nations. Bodin, born three years after Machiavelli's death, described and promoted ultimate, centralized, undivided power in terms of sovereignty; but, first, Machiavelli urged enlarging this power as much as possible.

The Renaissance

Characteristics

The Renaissance reached its zenith about 1500 during the early stages of its northern expression. This awakening, which had originated in the prosperous Italian city states two centuries earlier, lasted in northern Europe into the

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[5] A. F. K. Organski, World Politics (New York: Alfred A. Knopf, 1968), pp. 296-98: simultaneously rejects balance of power as descriptively inaccurate and practically ineffective. Balance of power did exist. It became, like most other faulty interpretations in social science, a giant exaggeration based on some fact.

seventeenth century. Within England its fruition coupled with an expanding national culture that was to prove immensely productive at the close of the sixteenth century.

More than beautiful objects of the fine arts and literature, the Renaissance signified changed thinking. It stood for individual self-expression, creativity, lively ideas, and education. Even by the fifteenth century, literacy spread among well-to-do city dwellers and country squires and lay education expanded. Most books were coming out in printed form by the first quarter of the sixteenth century; and the demise of Latin was assured by mid-century. Readers throughout Europe could turn to ideas printed in their common languages. The old was both rejected and approved. Literate persons discarded half-hearted repetition of Christianized antiquities to slowly dicover classical literature and to develop new ways of looking at the world. Classical literature was widely revived at the same time that the seeds of scientific inquiry hesitatingly began to open. Critical-minded persons led the way in tearing aside tightly-reigned habits of thinking in terms of authority and self-abnegation, which had proscribed individual creativity. Energetic self-assertion and the worldy interests of a perfectable human being became the order of the day.

Erasmus and More

Desiderius Erasmus, the famed Dutch humanist, met the leaders of nation-states head-on. In robust language

he denounced war and pleaded for more humane behavior in its prosecution. He opposed traditional views of war and informed national policy-makers that human beings were naturally peaceful. His associate, the English writer and statesman, Thomas More, advised peace but conceded mainly defensive war. He caustically assailed the taint of custom. More's Utopia, the Dulce bellum inexpertis of Erasmus, and Machiavelli's Prince, all three, appeared in 1516-1517.

Elizabethan Literature

In the last decades of the century, there arose in Elizabethan England a rich literature that spiritedly treated the justification of war. Martial books, written by several different authors, directly carried forth much from medieval tradition. Philosophical writer and government official, Francis Bacon, recorded a conservative opinion. With grand drama and gleaming objectivity, William Shakespeare spread out the competing positions concerning war for his viewers to see. He showed fundamental understanding of humanity.

The Reformation

Characteristics

Originating in the first third of the sixteenth century, the Reformation could more properly be characterized as a separation because it split off from Roman Catholicism large numbers of Christians, who came to be called Protestants. From a church reform movement in the

first quarter of the sixteenth century it speedily transformed into a sweeping revolt that fired drawn-out religious upheavals. Besides pointing to tangible abuses, the protesters charged that Rome had deviated from true religion.

Luther and Calvin

Because of this revivalist spirit and because of the close association of Protestantism with various governments, one scarcely could have anticipated that the Protestant theories of the just war would be at all progressive. Yet they were. Martin Luther, the German religious leader who helped spark the Reformation, attempted to limit permissible wars to some kind of defense. The French Protestant organizer in Geneva, John Calvin, left less of a just war doctine than a movement--international Calvinism--which long continued to participate in and justify wars.

Machiavelli: The Nationalist

His Writings

The worldly Florentine diplomat, Niccolo Machiavelli (1469-1527), led the way for writers who concerned themselves with practical affairs and looked about for ways to deal with them. His writings came like a trade wind bringing state behavior without legalisms, carrying history that no longer read like archives, bearing reasoning minus stacks of syllogisms, and, in general, blowing formalism asunder.

Il principe (The Prince), Discorsi supra la prima decadi Tito Livio (Discourses on the First Ten Books of Titus Livy), Arte della guerra (the Art of War), and Istorie Florentine (the History of Florence) moved quickly from manuscript form into the printed word. He wrote in Tuscan Italian instead of Latin; and within a few decades many translations spread his thoughts far and wide.

The Effective Use of Force

Near the close of the Prince, while exhorting Lorenzo de' Medici to liberate Italy from its troubles, Machiavelli made his closest approach to or gesture toward the just war tradition. Like his fellow Florentine, Dante, two centuries before him, he magnified the splendor of Rome; and, also like Dante, he appealed eloquently from the materials of Roman history. Past leaders with grand virtu had produced many victories in the world of fortuna. War had never been more necessary than now; never had time been more ripe for it:

> Perchè l'impresa loro non fu più iusta di questa nè più facile, nè fu a loro Dio più amico che a voi. Qui è iustizia grande: *'iustum enim est bellum quibus necessarium, et pia arma ubi nulla nisi in armis spes est.'*[6]

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[6]Niccolo Machiavelli, Il principe 26. 2, in Il principe e altri scritti minori, ed. Michele Scherillo (Milan: Ulrico Hoepli, 1916), p. 163. "[Men of the past had no better opportunities than the present] because their enterprise was not more just than this, nor more easy; nor was to them God more friendly than to you. Here is great justice: 'That war is just that is necessary, and arming is pious whereby no hope exists except to be under arms.'" (Translation mine)

With a substantial part of Machiavelli's proofs deriving from Livy, the paraphrased Latin representation predictably follows.[7] The "just that is necessary phrase," moreover, had been jotted down by many medieval theological and legalistic writers in a manner that made it scarcely more than self-defining. It could have intended for these persons any of a variety of meanings or, now and then, no meaning whatsoever. In a vague sense, it could be taken to say that the state fought whenever reasonable to fight. Preeminently, the abstruseness of the hackneyed passage well suited the presumptive nature of Machiavelli's theory. No doubt, for Machiavelli the phrase was hollow.[8] He fostered causes but not just causes for war. Sensible princes and republic reap the rewards of booty and ransom from their victories. The following empirical-sounding sentence opens a chapter urging that war must strengthen the state and impair the foe:

> Those who make war have always and very naturally designed to enrich themselves and impoverish the enemy; neigher is victory sought or conquest desirable, excepting to strengthen themselves and weaken the enemy.[9]

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[7] "Justum est bellum, Samnites, quibus necessarium, et pia arma quibus nulla nisi in armis relinquitur spes." Titus Livius, The History of Rome, 9. 1, in Livy, vol. 4 (Cambridge; Harvard University Press, 1926), p. 164.

[8] Cf., The unhistorical conclusion of Ballis, Legal Position, p. 68: "He sets up quite a new doctrine, namely that the justice of a war is determined by its necessity."

[9] Niccolo Machiavelli, Istorie florentine 6. 1, in The History of Florence (London: Henry G. Bohn, 1847), p. 257.

Machiavelli advised effective use of physical force. The state needed to manage force in ways that maximized its force vis-a-vis the force of other states. Utilization did not necessarily mean military engagements, although he valued the glory of battle as an end in itself. The tenor of his writings was not free from the flourish and luster of the literature of chivalry--still popular at that time--that he desired to supplant. Indeed, his veneration of glory in general must have made it a principal end in itself for it to be reconciled with utility of means; but it was not pointedly valued in a clear contrast to state power per se. Even so, a crude cost-benefit analysis resembling contemporary political science began to surface: victories were sought as cheaply as possible and defeat treated realistically.

He actually employed a category of the just war by demanding a reasonable hope of success. Sometimes seeking peace held greater utility than "almost certain" defeat; "But," he complained, "men always commit the error of not knowing where to limit their hopes; and, by trusting to these rather than to a just measure of their resources, they are generally ruined."[10] If force could be augmented by wily practices, by treachery and double-dealing, the better. Sly manipulation of force seemed to possess even more than

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[10]Niccolo Machiavelli, Discorsi 2. 1. 4., 2. 9. 3, in The Discourses of Niccolo Machiavelli, vol. 1, trans. Leslie J. Walker (New Haven: Yale University Press, 1950), p. 378.

the utility of gain; it delighted Machiavelli, as if it were in itself yet another end. The deceptions of appearance join the facts of steel in a cold calculus of the nation-state. The fears and realities of war combine alike against opponents and allies, guilty and innocent:

> It is quite certain that, when a prince and a people has acquired such repute that each of the neighbouring princes and peoples is afraid to attack it and fears it, no one will ever assault it unless driven thereunto by necessity; so that it will be open, so to speak, to that power to choose the neighbour on which it seems best to make war, and industriously to foster tranquillity amongst the rest. . . . If I want to make war on some prince and between us there is a treaty the articles of which have been observed for a considerable time, rather than attack him, I shall look for some justification and ground for attacking one of his allies, knowing full well that, if his ally be attacked, either he will resent it and I shall get what I want in that war will arise, or, if he takes no notice, he will disclose either his weakness or his unreliability.[11]

The Reason of State Assumption

The studious Florentine, alone with his pen, must have believed the accumulation of superiority in state power to be a clear and rational end. Perhaps his patriotism clouded any need he might have felt to justify the common good. More significantly, he made justification impossible by interpreting public good almost exclusively as military power. In government, each ordinary procedure and every policy alternative of substance, to be at all rational, must lead toward an ultimate end. The end sometimes turns out to

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[11] Ibid., pp. 359 and 382.

be the aggrandizement of power, which comes as no surprise because the actors in government and the publicists of government have always been concerned with the power exercised by constituted authority. Commonly, these persons have been enraptured by authority, often limiting the functions of government to the police station and the fort. Such attitudes create a complex problem area in domestic politics; internationally they feed disaster.

Machiavelli's thought brought forth a picture of unhampered nationalism, emancipated from custom, law, theology, and nature. His dictates of expediency have since worn many labels, viz., raison d' état, Realpolitik, realism, state prudence, national interest, rex talonis, national power, and national security. The idea stays the same by each designation; e.g., ragione di stato probably cannot be found anywhere in his works, but his conception describes and approves it. Whatever the terminology employed, the reason of state assumption comes to suppose even less than narrow concerns of a single nation. As in the case of Machiavelli, it almost always limits itself to national power defined in terms of military potential instead of the material and non-material welfare of the public.[12] The means become identical to the end. As an

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[12]Corbett approached this observation. He wrote that there is a tendency to define nation interest "primarily in terms of the state's power": Percy E. Corbett, Morals, Law, and Power in International Relations (Los Angeles: John Randolph Haynes and Dora Haynes Foundation,

end in itself, if military strength is not assumed to be the exclusive good, it is thought the prime good. Repeatedly, in contemporary life persons with less acumen than Machiavelli treat national power as automatically knowable and even as unchangeable. Again, like Machiavelli, specific goods may be advanced on the way to achieving this power.

Conclusion

As a diplomat, Machiavelli witnessed a dangerous world of ruthless power plays in which his native land encountered grave disadvantages. As a nationalist, he desired to change this situation. He fashioned a universal account of history to support his observations and wishes. In his concern to maximize state power, he slipped into thinking of that power as being not only self-justifying but solely military in essence. Like the prince whom he asked to concentrate on immediate, militarily-related affairs, his political science provides little else substantively valuable. The nascent empirical attitude that he promoted may have been overshadowed by his failure to objectively apply this method as a historian. He did help to break away from the ritualized deference accorded religion;

1956), p. 2; A legal philosopher noted that the national interest argument limits the interest to "narrowly national concerns": Richard A. Wasserstrom, "On the Morality of War," in War and Morality, ed. Richard A. Wasserstrom (Belmont, Calif.: Wadsworth Publishing Co., Inc., 1970), p. 85.

but he aided in the genesis of nationalistic battle-cries. If he could be called the first modern political scientist, he could better be styled medieval or Augustinian in his aspiration for order. Worst of all for the just war tradition was the recommended behavior that he drew from his pessimistic beliefs about human nature and society.

Since Augustine, no other influential political thinker--unless, perhaps, Machiavelli's contemporary, Martin Luther--drew a darker portrait of a depraved human race. His evil, conspiratorial human beings were bound to remain, as Augustine foretold, in perpetual conflict. Like other deterministically-minded theorists centuries before and after him, he professed to observe then stayed to advocate. Machiavelli declared the inevitability of war and his approval of it. Aggressive violence existed because human beings naturally and permanently behaved in this manner. Such a conception predicated a general condition of irrationality; thus, the imposition of rationality upon the world could be only limited. The introduction of reason, manifesting itself in the effective use of force, could never nullify the basic nature of man; consequently, the scope of well-managed force was restricted. Machiavelli fixed the bonds of beneficial force along the nation-state's borders. To exercise reason within a universe not directed by it, the nation had to efficaciously use force against all other nations.

Erasmus and More: The Humanists

Erasmus

General Characteristics

The Dutch humanist, Desiderius Erasmus (1466-1536) opposed the violent propensities of both proud heads-of-state and dogmatic religionists. As one of the most able scholars of the Renaissance, his writings commanded much circulation and esteem. He and his friend, Thomas More, together repudiated the popular practice of Machiavellian reason-of-state and the neo-scholasticism which had arisen through the Dominican Thomist revival in the last years of the fifteenth century. Erasmus resided in England on several occasions; and he and More were associated with the dean of St. Paul's School, John Colet, who figured prominently in rejecting neo-scholastic methods. Erasmus and More also had close relationships with governments, including state service; and they joined to emphasize that rulers contemplating war owed a duty to the people not to the state.

In these two publicists can be seen the dual meaning of humanism: the revival of classical sources and the personal concern for human beings. Although More was committed to the individual, his work strongly focused on reason, which could be cited in classical sources. Though Erasmus edited Latin classics and translated Greek, his writings on war centered on compassion in the accentuation of persons.

Man's Natural Goodness
Versus Custom

Erasmus declared that human beings are naturally peaceful. They are "born for peace and good will."[13] The human race innately is gregarious, reasonable, and altruistic: nature imbues human beings with "a love of company," with "reasoning" and "a fervent desire of knowledge," and plants within them the "very seeds of benevolence."[14] While wild animals were created suitably for fighting, man was not. With soft flesh and smooth skin, with a countenance meek and demure, "this creature alone was born all to love and amity."[15] Instead of designing persons for fighting, nature endowed them with many abilities, making them admirable and useful to each other:

> Nature hath divided among men by a marvellous variety the gifts . . . to the intent truly that every man might find in every singular person one thing or other . . . for the need and profit that cometh thereof.[16]

If the utility of association suggests a budding social contract theory, his state of nature does moreso;

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[13]Desiderius Erasmus, The Education of a Christian Prince [Institutio principis Christiani], trans. Lester K. Born (New York: Columbia University Press, 1936), p. 249.

[14]Desiderius Erasmus, Dulce bellem inexpertis, in Erasmus Against War, with an Introduction by J. W. Mackail (Boston: The Merrymount Press, 1907), p. 8.

[15]Ibid., p. 7.

[16]Ibid., p. 9.

yet, not contract, but custom curses man with the cruelties of continual war. A sketch of primitive life unveils a vulnerable people whose leaders first come forth to protect them from incursions by savage animals:

> For some time those men that were in the beginning of the world led their lives in woods; they went naked. . . . He was esteemed a mighty, strong man, and a captain, that could best defend mankind from the violence of wild beasts.[17]

Custom gradually approved an escalation of slaying. In a couse of events man went from killing threatening animals to slaughtering harmless animals also. Then encounters between individuals moved to non-lethal combat and onward into the custom of war.[18]

Moderating the Evils of War

In the frenzy of war, furious men strike each other down until they fall into heaps, overflowing the fields and dying the rivers red with blood. The costs run on and on. Armies rob and destroy town and countryside, ravishing maidens and creating destitute widows and orphans, bereaved old parents, and beggars. Good laws and manners drop in neglect and moral characters ruin. Depraved thieves and murderers descend on the world.[19]

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[17]Ibid., p. 18.

[18]Ibid., pp. 17-22.

[19]Ibid., pp. 10-11; Erasmus, The Education, pp. 250-51.

Perhaps no war can really be called "just"; and even the "most justifiable war" carries with it a throng of disasters.[20] "There is scarcely any peace so evil," Erasmus observes, "that is not better than the most equal [equitable] war."[21] He sought to decrease the occurrence of war and, as a second-best alternative, to moderate the effects of war. It is significant that these divisions, besides distinguishing the justus bellum and jus in belle, represent the humanizing historical trend of the just war tradition. The Erasmian attempt advised just war guidelines with respect to last resort, just conduct, and proportionality in measuring just cause. "A good prince should never go to war at all unless, after trying every other means, he cannot possibly avoid it." He should take sufficient time to estimate all costs and weigh them against the likely final end. If no way exists to avoid war, the major concerns of the prince should thenceforth be to wage the war with the least harm to both sides and to end it as quickly as he possibly can.[22]

In actual practice, a prince, functioning as the "eye of the people," is being drawn into the fury of battle

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[20]Ibid., pp. 249, 251-52, and 255.

[21]Desiderius Erasmus, The Complaint of Peace [Querela pacis], with an Introduction by William J. Hirten (New York: Scholars' Facsimiles and Reprints, 1946), p. 39.

[22]Erasmus, The Education, pp. 249-50.

by "anger, ambition, and foolishness."[23] If he neglects to measure everything by its advantage to his people, he essentially "is not even a prince," because, Erasmus contends, "A large part of the ruling authority is in the consent of the people."[24] The implication clearly surfaces that a ruler who chooses to go to war because of his own personal defects, lacks proper authority.

The Practices of Princes

Nations must be compromising and not stubbornly maintain every one of their rights to the last man. International relations must be approached with the intention of actively fostering harmonious relationships. Matters must be intentionally overlooked and concessions made, as in a successful marriage, in order that dissention not prove destructive.[25] Princes need to turn away from their pretexts for going to war and seriously labor to stop war.[26] All persons should will peace from their hearts.[27]

Reasoning Individuals

Erasmus based the bulk of his proposals on reason, with his evidence alternating back and forth from examples

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[23]Erasmus, The Complaint, pp. 14 and 38.

[24]Erasmus, The Education, p. 252.

[25]Ibid., p. 253; Erasmus, The Complaint, p. 39.

[26]Erasmus, The Education, p. 256.

[27]Erasmus, The Complaint, p. 44.

of what was natural to what was obvious through common sense. Religion, which had occupied much of the ground in any sort of political inquiry since Augustine's era, took considerably less space. Since the importunity for peace applied first to nominally Christian princes who did still rely to some measure on Christianity, Erasmus now and again invoked their support in "Christian" terms. Unfortunately, Christianity had debased itself in regard to war. Jesus and his apostles, Peter and Paul, had completely condemned war; but the church laws and persons such as Augustine and Bernard of Clairvaux had approved war.[28]

Humanistic confidence in the potential of individuals brought rejection of traditional attitudes toward war. While Erasmus emphasized the evil nature of an institution of society and Augustine stressed the evil nature of human beings, the former was a thousand times more individualist. The remarkable element of humanism was thorough-going individualism. Augustinian and humanistic beliefs differed radically in their approaches to (1) the nature of man, (2) reason, and (3) natural law and the nature of society. For Augustine and his successors man was not only evil, but mainly without much reason. The status quo society could not be blamed for individual defects; only men as a mostly helpless crowd of individuals were to be punished. Curiously, society was considered, in a sense, natural, although

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[28]Erasmus, The Education, p. 251.

contrived by a supreme power. As a godly scheme, it could be accorded more reason than single persons. Still a greater twist, evil man's individuality glowed most brightly in the flames of hell fire, for he had but paltry individual ability to control the events of his life. Thomas Aquinas and other medievalists diluted Augustinianism; they never replaced it. At an early date, the Christians picked up on right reason, which had been eloquently expressed by the Stoics, and duely copied the phrase with thousands of pens. They verged upon but a semblance of its meaning, for it never fit into the Christian puzzle. Not even Thomas Aquinas with his methodology of reason and his more natural civil society could alter a system based on incurable evil and a super-natural, irrational force, in the concept of a god. The individual had to wait for a bona fide individualism. To the humanism of Erasmus, the ways of the world did not prove man to be hopelessly corrupt. It was the world that spoiled the individual. The individual had to rise above the unnatural, evil, and unreasonable habits of history. Erasmus wrote:

> Who would believe that they were men, if it were not because war is a thing so much in custom that no man marvelleth at it? Their eyes glow like fire, their faces be pale, their marching forth is like men in a fury, their voice screeching and grunting, their cry and frenzied clamor; all is iron, their harness and weapons jingling and clattering, and the guns thundering . . . so that nowhere may be perceived any token of man.[29]

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[29]Erasmus, Dulce bellum, p. 15.

The humanists conceived individuals to be naturally good and reasonable. Not human beings but custom was depraved. The custom of war completely hid all trace of the natural goodness of the human race. Desiderius Erasmus asked human beings to turn away from war. Enlightened political leadership could help mark the way. Mankind could do something to oppose war, not just accept it.

More

His Career

Thomas More (1478-1535), English humanist author, barrister, and diplomat was not as pacifistic as Erasmus; yet he opposed in highly positive terms the prevailing European practice of going to war for territory and glory. Though he was more conservative than Erasmus, his approach scarcely dealt with improving the Christianity of princes;[30] it relied on reason decorated with a great deal of satire, which made court behavior look even more foolish than in the writings of his Dutch friend. That Henry VIII, with his noted penchant for beheading, allowed More to live and participate in governing for nearly two decades following publication of the Utopia before doing him in supposedly for other reasons, was nothing short of remarkable.

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[30]Indeed, More's tenure as Chancellor of England marked the turning point in the transition of the English administration of equity from ecclesiastics to laymen. See William Holdsworth, Some Makers of English Law (Cambridge: At the University Press, 1938), pp. 98-99; see also Alan Harding, A Social History of English Law (Baltimore: Penguin Books, 1966), pp. 144-45.

The Public Good

More, like Erasmus and Machiavelli, addresses himself to the ruler. "The majority of princes," More laments, "have more delight in warlike matters and feats of chivalry . . . than in good feats of peace."[31] Their councilors mistakenly urge them only toward war. More tells them for the public good to forsake their quest for new dominions and learn how to govern their countries well.[32] He inveighs against the Machiavellian practice of a superordinate or dual morality to accommodate rulers. Morality lies not below the "high dignity of Kings"; nor do "two justices" provide chains for ordinary persons but license for rulers.[33]

International Behavior

The new humanist outlook in international affairs ought to encompass positive friendliness and national reason. No human being ought to be considered an enemy who has not done injury. Nature knits persons together through love and benevolence; whereas, custom, through treaties of alliance, makes men think of themselves as adversaries.[34] The Utopians, as described by their fictional visitor, Raphael Hythloday, behave much in this natural manner; and, consequently, their actions are plainly superior to the practices

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[31]Thomas More, Utopia, with an Introduction by Mildred Campbell (Princeton, N.J: D. Van Nostrand Co., Inc., 1947), p. 25.

[32]Ibid., pp. 24-25. [33]Ibid., p. 137.

[34]Ibid., pp. 136-38.

of the sixteenth century. They eschew war. Because they feel pity and compassion for oppressed peoples, they aid them in resisting tyranny.[35] Moreover, they donate one-seventh of their exports in direct foreign aid to the poor of other nations. The rest of their exports they sell on credit, not asking to collect most of the money.[36]

If the dramatic plea of Erasmus to end war resounds in the tenor of twentieth-century nuclear pacifists, the tone of More sounds in keeping with early twentieth-century just war sentiment. War no longer presides as a fixed monolith, must less as a fortuitous Machiavellian tool of the nation-state; still, it remains a despicable fact of life. Of the Utopians, More fancied:

> They detest and abhor war or battle as a thing very beastly, although by no kind of beasts is it practiced so much as it is by man. And contrary to the custom of almost all other nations, they count nothing so inglorious as the glory gotten in war.[37]

Just Cause

More outlined for the Utopians four just causes for war: (1) defense of their own land from invasion, (2) like defense of the countries of their friends, (3) assistance to revolution against tyranny in other countries, and (4) offensive action to help friends who ask them "to requite and avenge" recent injuries and offensive action whenever their own citizens are maimed or killed abroad without the assailants being surrendered

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[35]Ibid., p. 139. [36]Ibid., p. 100. [37]Ibid., p. 139.

to the Utopians.[38] They assign guilt for starting war to the county that, as a whole or through any number of its citizenry, carries off booty from Utopia's friends or mistreated their merchants without making just restoration or that kills or cripples Utopians without the culprits being yielded.

Proportionality of just cause does make offensive war concerning their own property superfluous for the Utopians. Because they hold their goods in common, any material loss caused by a foreigner becomes slight; and they counter only with a trade embargo. In the case of physical damage to individual citizens, however, proportionality is not admitted and failure to relinquish one guilty party who has hurt one citizen gives rise to war. In a more proportional vein, like Machiavelli, the Utopians recognize the utility of "craft and deceit" in vanquishing the enemy.[39]

Just Conduct

Just conduct in the Utopia reflects contradictory beliefs and values.[40] On the one hand, the Utopians graded

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[38]Ibid., pp. 139-41.

[39]Ibid.

[40]Tucker, Just War, p. 86: Robert W. Tucker states that "the American doctrine thus acknowledges that . . . there ought to be certain restraints placed on the manner in which force may be employed." At the same time, he claims that Americans believe "war has no limitations save those imposed by the limitations of force itself." See also Thomas E. Murray, Nuclear Policy for War and

human beings on the same, old, descending step-ladder from themselves, to their friends, on down to the virtually expendable, uncivilized mercenaries[41] on the bottom rung of humanity. Likewise in keeping with tradition, after a "solemly declared" proclamation of war, they sought to use severity as a deterrent to future problems: "They take such cruel vengeance on those who are at fault that ever after they are afraid to do like."[42] Again like Machiavelli, More even issues tactical battlefield advice.[43] He identifies soldering with "prowess and manliness" and lauds "fierce courage" in a fight to the death.[44] On the other hand, the Utopians had rather avoid war with its destruction and vainglory and had rather capture enemies than kill them.[45] They never lay waste to enemy lands and ask only reparations. Non-combattancy is honored, for "they hurt no man who is unarmed, unless he is a spy."[46] Whether or not More recognized the tension between the primitive fear and the civilized humanity represented by these

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Peace (Cleveland: The World Publishing Co., n.d.), pp. 26-27. Were these writers more universal in their scope, they would find the opinions and contradictions that they attribute to Americans to be common among other peoples.

[41]In contrast to Machiavelli, More advised hiring mercenaries, although he painted them as hideous cut-throats.

[42]More, Utopia, pp. 141-42.

[43]Ibid., pp. 148-50.

[44]Ibid., pp. 146-47.

[45]Ibid., p. 148.

[46]Ibid., pp. 150-51.

approaches to the conduct of war, must remain uncertain. He certainly stirred the water.

Conclusion

Thomas More viewed just war in a largely, but not outright, defensive manner. He denounced waging war for renown and real-estate. His hallmarks were reason and morality rather than reason-of-state or religion. He thought, in a mature Stoic fashion, that international morality called for active good-will. Custom may divide, but nature can write a common humanity.

Elizabethan Writers: The Diverse Neglected Thinkers

During the early modern years, from the time of the humanist awakening through the time of Grotius, there arose in England a lively public concern with military affairs. This interest no doubt produced many day to day discussions and writings; certainly it worked its way into military books and into drama. A profusion of opinions resulted, bearing upon many of the major and minor themes of the just war.

English literature pridefully flowered hand-in-hand with the creation of a mighty navy by an ambitious and increasingly well-organized, centralized monarchy. These developments ought to have been enough to have awakened contemporary just war writers to the public hearing accorded

matters of war during and immediately subsequent to the late Tudor age. Were these events not clues enough, the most cursory acquaintance with William Shakespeare should have provoked investigation into his writings and led to other sources as well, particularly the highly popular military books. A close reading of the age would possibly have unveiled the celebrated Francis Bacon holding forth on just and unjust wars. Instead, the fruits of sweeping neglect have kept just war investigators unconversant with a flush bounty of thought at the center of Western tradition.

The Military Books

A Popular Literature

The period featuring martial books encompassed roughly the sixteenth century, although a number of works circulating in newly-printed form had been written considerably before then[47] and although many of these books were widely read well into the seventeenth century. Their numbers remain unknown, but indications point to several dozen. The most influential of the military writings came off the presses in the last quarter of the sixteenth century.

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[47]Three of the early volumes still in demand during the sixteenth century, written by Bonet, de Pisan, and Caxton, were notably occupied with chivalry and were treated above. Even these writers have been virtually ignored by most contemporary just war theorists; e.g., Bonet, mentioned some years ago by Nys, has since merited an occasional off-hand notice by authors in international law: Ernest Nys, Le droit.

Four Major Books

Four of the most substantial martial publications were printed in English during the reign of Elizabeth I, the last of the Tudors, and were authored by Thomas Procter (1578), Geoffry Gates (1579), John Smythe (1590), and Bertrand de Loque (1591).[48] Less impressive were the tracts written by Thomas Churchyard (1578) and Barnabe Rich (1587).[49] These books, as a whole, discussed the requirements of just war while issuing a call for military preparedness. They drew upon their experiences in the current theater of war along with relying on traditional authorities. Their sentiments seemed to totter to the brink of reaction with their yearnings for chivalry and religion; for like all other writers at the time, they retained much from antiquity and medievalism. Mostly direct in their style, they were incomplete and strapped by many customary conceptions. Of the four most impressive books, the one by de Loque showed the most concern for the just war.

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[48]Proctor, Of the Knowledge and Conducte of Warres; Geoffrey Gates, The Defense of Militarie Profession (London: Henry Middleton for John Harison, 1579; reprint ed., New York: DeCapo Press, 1973); John Smythe, Certain Discourses Military, ed. J. R. Hale (1590; reprint ed., Ithaca; Cornell University Press for the Folger Shakespeare Library, 1964); Bertrand de Loque [Francois de Saillans], Discourses of Warre and Single Combat, trans. John Eliot (London: John Wolfe, 1591; reprint ed., Jerusalem: Israel Universities Press, 1968).

[49]Churchyard, A Lamentable and Pitifull Description of the Wofull Warres in Flaunders; Barnabe Rich, A Pathway

Procter, Gates, and Smythe

The three compositions least solicitous about the just war prize most the need for military preparedness. Smythe agrees with Procter that a long peace deteriorates military affairs. Prolonged peace contrives "covetousness, effeminacies, and superfluities," which damage martial arts.[50] Gates joins in to observe that in peacetime nations sink into "rotten idlenesse, and become of dulle wittes, lowe of courage, weake handed and feeble kneede."[51] Gates professes that justice, progress, science, and much else flourish under armed prowess. He swears that when military advantages prove dear "there wanteth science and government, without which the whole worlde woulde soons become a desolate wildernesse."[52]

The just war suppositions of Procter, Gates, and Smythe, besides being more brief than de Loque's, demonstrate less value. Procter, who thinks that wars result from coveting the property of others, at the same time, believes just war to display other causes. Procter's five categories of just causes incorporate: (1) defense, (2) the deterrence of being ready, (3) wars to keep up the nation's courage and strength, (4) wars of needed

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to Military Practice (London: John Charlewood for Robert Walley, 1587; reprint ed., New York: De Capo Press, 1969).

[50]Symthe, Certain Discourses, p. 7.

[51]Gates, The Defense, p. 20.

[52]Ibid., p. 11.

conquests, and (5) wars of religion (without definition).[53] Gates and Smythe have less to say about just war. Gates professes the Old Testament teaching that God punishes through warfare. Besides castigating evil in his subjects, he frees them from oppression, and, thirdly, specifically fosters religion. In old-fashioned Augustinian terms, man yields only to the fear of punishment.[54] Smythe does not bother to justify; his laws of war mean military law essential for order.[55]

De Loque

Two Just Causes

De Loque pleads two just causes for war. First comes defense. The laws divine and the laws of man sanction defense from "invaders," because nature has implanted into the hearts of living beings the wish to save their lives and fortunes. Defense means, too, that allies, who are being persecuted, may be assisted.[56] Religion provides the second cause. The Christian church ought not be overly quick to draw the sword, but rulers may strike out against apostates and against other rulers who suppress the church.[57]

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[53]Proctor, Of the Knowledge, n.p.

[54]Gates, The Defense, p. 10.

[55]Smythe, Certain Discourses, p. 15.

[56]de Loque, Discourses, pp. 4-5.

[57]Ibid., p. 6.

Sources of His Arguments

Throughout his book, de Loque relies on Roman sources for his humanistic feelings. For example, he cites Cicero when speaking about not encroaching on the territories of other countries; and he brings in Virgil and Seneca to buttress his propositions in praise of peace.[58] On the other hand, he employs biblical references to insure the underlying ethical validity of war and to provide approval of various aspects of war-making.

War may be undertaken with a clear conscience because of five indications: (1) God has expressly commanded wars; (2) God has advised about conduct during wars; (3) certain language, such as "God of hosts," indicates war; (4) the scriptures have praised rulers for their wars; and (5) Christ and his followers allowed wars.[59] These arguments, dating from the time of Constantine, appear full-blown once more in de Loque's discourse, as the seventeenth century nears its dawn. Ever familiar, also, was his attribution of both power and responsibility to proper authority:

> When the prince delivereth over the sword, which God has given into his hand to dispose . . . if he cause the offender to die . . . it is not he, to speake properly, who doth this execution, but it is God himself who doth it.[60]

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[58] Ibid., p. 5 and 16.

[59] Ibid., pp. 1-4.

[60] Ibid., p. 4.

Reasonable Hope of Victory
and Proportionality

War must be launched only "upon some hope conceived of good success" and with predetermined just causes of considerable magnitude."[61] Rulers ought not to embark on war except on occasions of "great extremity" because war wrecks monstrous destruction.[62] Its calamities swell to include famine, sickness, and turmoil. Reason and equity give way to the fury of force.[63] De Loque hints at the risks of a war being disproportional:

> No man is able to furnish so many contributions as he eradeth. The poore man oyeth for hunger, the innocent suffereth wrong, wives and maidens are ravished and defiled, thousands of children made orphans and fatherles.[64]

Bacon

Characteristics

The reflections of Francis Bacon (1561-1626) popularizer of the scientific method, experimenter, and chancellor of England, stayed in vogue for two centuries. Bacon's scrutiny of the just war was more limited than either the military writers or Shakespeare and his influence, likely much smaller than either. He lectured categorically, with

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[61] Ibid.

[62] Ibid., p. 14.

[63] Ibid., p. 15.

[64] Ibid., p. 16.

some knowledge of the traditional categories but without the insight, broad fairness, and intensity that characterized his dramatic contemporary.

Military Readiness

Bacon espoused a theme of military readiness much in the same mode as the martial tract writers of his time. Closely resembling Gates, he deemed that for a nation-state's "empire and greatness" it ought to embrace arms as its "principal honor, study, and occupation."[65] For a state, a just war provides a valid exercise that keeps it healthy.[66]

Cause, Authority, and Conduct

Three objective criteria determine a war's justice or injustice. The war must possess a clearly evident just cause, proper authority ("warrant of the jurisdiction"), and just conduct ("form of the prosecution"). Right or "inward intention" is abandoned to "the court of heaven."[67] How just cause can be resolved is not treated. It is unsure whether he means to describe observable practice of nations or to prescribe a mildly-demanding legal standard for them to keep a little more strictly. He does state in a factual

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[65]Francis Bacon, Works, vol. 12, ed. James Spedding, Robert L. Ellis, and Douglas D. Heath (New York: Hurd and Houghton, 1864), p. 183.

[66]Ibid., p. 185.

[67]Ibid., vol. 13, p. 207.

form that "there is that justice imprinted in the nature of men, that they enter not upon wars (whereof so many calamities do come) but upon some, at the least specious, grounds and quarrels."[68] He maintains, somewhat in line with the prevailing international law thinking, that legality of war can involve the law of nature, the law of nations, and the law divine.[69] In fact, just cause for war exists whenever a nation's basic customs run counter to the law of nature or the law of nations or in such cases that a nation demonstrates its inability to govern itself.[70] Bacon professes to adequately establish just causes for subjugating the Ottoman Turks without offering a religious basis; he nearly issues a carte blanche for imperial and colonial ambitions.

Shakespeare

War on Stage

William Shakespeare (1564-1616) wrote for theatergoers from all of English society and he addressed himself fully to the vital and complex concerns of their lives. Audiences attending his plays near the turn of the seventeenth century must have been familiar with many competing and perplexing opinions about war and peace. Ideas, such as those represented by the military tracts, made up a

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[68] Ibid., vol. 12, p. 184.

[69] Ibid., vol. 13, p. 207.

[70] Ibid., p. 209. Bacon resembles his contemporaries, Alberico Gentili and Hugo Grotius, in this cause.

common public baggage of notions touching upon the just war. The bard of Avon took no stand on the manifold thoughts he aroused, he only declined to glorify war. More than anything else, he let life act out its tale on stage for the mass of humanity to evaluate. Without an exhaustive survey, one can lightly sketch the questions he displayed. Scenes from King Henry V, Hamlet, King Henry IV, Pericles, King John, and Timon of Athens cover the range of Shakespeare's plays and easily reveal these questions. Through them can be seen a profile of the tensions that must have pulled at the theater crowds that flocked to his stirring productions.

King Henry V: The Just Cause, Proper Authority, and Right Intention

Before the battle at Agincourt, in the wee morning hours, heavy-laden with doom, Henry V, disquises himself and restlessly wanders among his too-few troops, who mill about, waiting for defeat and death. The king's secret agony hides the added anguish of responsibility, as he presses three somber soldiers for consolation. The conversation progresses:

King Henry: Methinks I could not die anywhere so contented as in the King's company;
His cause being just and his quarrel honourable.

Michael Williams: That's more than we know.

John Bates: Ay, or more than we should seek after;
For we know enough, if we know we are the King's subjects:
If his cause be wrong, our obedience to the King wipes the crime of it out of us.

Michael Williams: But if the cause be not good, the
King himself has a heavy reckoning to make . . .
I am afeard there are few die
well that die in battle . . .

King Henry: The King is not bound to answer the
particular endings of his soldiers,
the father the son, nor the master
of his servant;
For they purpose not their death, when
they purpose their services . . .[71]

The king asserts that he holds a just cause but Williams tersely questions it. Bates counters with the Augustinian claim that a subject soldier fights free of responsibility, which reposes with proper authority. Williams, feeling ill-used, then doubts that soldiers are devoid of accountability. The anxious monarch tries to find his way out through what amounts to the double effect doctrine of right intention: he intends not one soldier's death only the business at hand. Sensing these arguments echoing hollowly in his soldiers' ears, King Henry tacks on the old catch-alls of divine judgment and divine reward. Previous sin makes "some" soldiers subjects for God's vengeance through war. If not guilty, a soldier's spot-free conscience turns his death to his "advantage."[72]

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[71]William Shakespeare King Henry V 4. 1, in The Annotated Shakespeare, vol. 2, ed. with an Introduction by A. L. Rowse (New York: Clarkston N. Potter, Inc., 1978), p. 575.

[72]Ibid., pp. 575-76.

King Henry V: The Tragedy of War

Shakespeare did not subscribe to the Augustinian or crusading approval of pious death in battle. The finality of death darkly overshadowed even the fancily-dressed chivalry of war. Look upon the tragic picture of the battlefield at Agincourt where the dying Duke of York beholds the Earl of Suffolk, already dead:

> York, all haggled over,
> Comes to him, where in gore he lay insteeped,
> And takes him by the beard, kisses the gashes
> That bloodily did yawn upon his face.
> He cries aloud, "Tarry, my cousin Suffolk!
> My soul shall thine keep company to heaven;
> Tarry, sweet soul, for mine, then fly abreast,
> As in this glorious and well-foughten field
> We kept together in our chivalry!"[73]

Hamlet, King Henry IV, Pericles, and King John: Just War and Proportionality

Shakespeare's Hamlet displays stark facts of a war profitless by physical criteria: gains reckon to be disproportional to losses. Yet, like history, the play admits other motives that move across the minds of men, justifying war. As the scene opens, Prince Hamlet encounters a Danish army assembled to march against a Polish garrison in order to win "a little patch of ground," practically worthless. He first thinks the affair senseless, then, feeling left out, questions his own bravery and envies the prince who

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[73] Ibid. 4. 6, p. 584.

finds "quarrel in a straw when honour's at the stake," even though it will lead twenty thousand men to their graves.[74]

In King Henry IV, the just cause runs squarely not into doubts about killing but into the question of dying. A prudent nobleman puts the cause of honor to himself and reflects that no cause would really be worth such a price. As the scene closes, the king, expecting the rebel faction to refuse his offer of amnesty, girding for war, speaks out, "And God befriend us, as our cause is just!" A few minutes later the jovial Falstaff muses to himself: "Can honour set to a leg? . . . Who hath it? he that dies o'Wednesday . . . But will it not live with the living? No."[75] With corresponding frankness in Pericles, Boult, a servant man working for a brothel at Mytiline, excuses his position to the captured Marina:

> What would you have me do?
> Go to the wars, would you?
> Where a man may serve seven years for
> the loss of a leg, and have not money
> enough in the end to buy him a
> wooden one?[76]

Expediency, however, never seems to operate free from interaction with other considerations, such as justice or honor; and expedient policy can be subject to diverse, even dissimilar interpretations. Before the walls of

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[74]Ibid., vol. 3, Hamlet 4. 4, pp. 244-45.

[75]Ibid., vol. 2, King Henry IV, part I 5. 1, p. 457.

[76]Ibid., vol. 3, Pericles 4. 6, p. 713.

Angiers, the Duke of Austria, Lymoges, announces, "The peace of heaven is theirs that lift their swords in such a just and charitable war,"[77] while his ally, King Phillip of France, swears by his own "just-borne arms."[78] England's King John, too, speaks of his "just" title to the contested lands. Yet, not war insued, but an exchange of territory, coin, and marriage vows. Thus, Philip the Bastard complained of King John's giving in to self-interest rather than pressing full territorial claims, moving "from a resolved and honourable war to a most base and vile-concluded peace."[79]

King Henry V and Timon of Athens: Just Conduct

To his expedition in Picardy, King Henry V commands just conduct on grounds of expediency. As they prepare to proceed through the French countryside, the king directs his forces not to insult the people nor to confiscate their property without compensation: "For when lenity and cruelty play for a kingdom, the gentler gamester is the soonest winner."[80] Yet three scenes earlier Shakespears portrays a conduct of war most harsh.

Again the loathsome agony of war lashes out at the sensibilities of mankind. Before the gates of Harfleur

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[77]Ibid., vol. 2, King John 2. 1, p. 361.
[78]Ibid., p. 367.
[79]Ibid., p. 371.
[80]Ibid., King Henry V 3. 6, p. 568.

waits the ready army of Henry V, who calls out to the city to surrender or bear "impious war" by hard-hearted soldiers, who will mow down "fresh-fair virgins" and babes like grass. Nothing noble, desirable, or just can be derived from Shakespeare's description of the cataclysm confronting the defenseless people. Their leaders must capitulate or witness:

> The blind and bloody soldier with foul hand
> Defile the locks of your shrill-shrieking daughters;
> Your fathers taken by the silver beards,
> And their most reverend heads dashed to the walls;
> Your naked infants spitted upon pikes.[81]

Another surrender sequence focuses not as much on might or bargaining. The entire scene centers on an appeal to the natural justness of discrimination in killing plus the relationship between moderation in conduct following war and the construction of peace. In Timon of Athens, the Athenian Senators gaze at Alcibiades with his troops amassed before them and plead that not all Athenians stand guilty of injustice, that not all deserve the ravages of war. The walls of Athens and the grand structures within the city have not been built by guilty persons and ought not be leveled for "private faults." They ask him not to kill everyone but, "like a shepherd, approach the fold and cull the infected forth." To this plea he replies, "I will use the olive, with my sword, make war breed peace."[82]

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[81]Ibid. 3. 3, p. 562.

[82]Ibid., vol. 3, Timon of Athens 5. 4, pp. 668-69.

Conclusion

Shakespeare's dramas may have been sensational and they may have capitalized on English nationalism. Especially his histories exploited the deeds of heroic English kings; and it is possible that he even meant to promote patriotism. If he did intend to inculcate such feelings, he may indeed have satisfied his wishes. Supposing so, he masterfully turned stories of crowned heads into great dramas without grand exaltation of military exploits. His tales do not evince a jingoistic patrician molding his stories to a bellicose end; they show even a feeling for the ordinary fighting man. They suggest an appreciation of the complexities of common humanity. Like the martial books and the writings of Bacon, the plays of William Shakespeare represent a continuation of the just war tradition.

Luther and Calvin: The Protestants

Luther

Overview

Martin Luther (1483-1546), whose catalytic role in the Reformation helped bring on the modern world, opened the Protestant part of the modern just war tradition in exemplary medieval fashion, by centering on proper authority. The classification of wars according to the jurisdictional rank of their participants could just as well have placed Luther three hundred years earlier, but

his conclusions proved more original and more far-reaching. Though his analysis swayed under a cumbrous burden of authoritarianism and fondness for the status quo, he straightforwardly opposed wars of aggression, and with less spirit, supported defensive wars. Forced by events to support political separation, he flourished his basic distaste for revolution with a fluency that exceeded Augustine. He left religion out of just cause until he turned to the military defense of Protestantism; but never did he expand the specific situation into a general support of holy wars against other religious groups or non-believers. All in all, even with the new energy with which he preached the evilness of mankind, Luther left the impression that rulers could decide to go about their duties in peace, only going to war when sometimes forced to in self-defense.

Proper Authority

Three Kinds of Wars

Luther's rechte kriege or just war writings designated three distinct kinds of wars based upon the position of authority that the participants hold in the social order. Soldiers involved in warfare can encounter wars made by three "kinds of people." An equal can fight against an equal; a subject can go against his overlord; or an overlord can oppose his subject.[83] The inferior person may be

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[83]Martin Luther, Whether Soldiers, Too, Can Be Saved, trans. Charles M. Jacobs, rev., in Luther's Works, vol. 46, ed. Robert C. Schultz (Philadelphia: Fortress Press, 1967), p. 103.

a commoner or himself be titled. His solution to the second cause answers the third.[84]

The Sword of Heaven

The military is as a matter of course a valid, godly, and natural occupation.[85] Luther, in harmony with Augustine's methods and conclusions, offered biblical references to prove that God, from whom all authority flows, "instituted the temporal sword" for the sake of righteousness.[86] The prince, not as a Christian--for public and private morality, as with Machiavelli, go separate ways--but as a dutiful ruler, is bound by the orders of God to protect his subject.[87] The head of each nation lives not for himself only but signifies the community; i.e., he is eine gemeine person.[88] In deciding upon war, not his personal interests but the interests of his subjects have to be paramount.[89]

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[84]See ibid., pp. 125-26.

[85]Ibid., pp. 100 and 128; Dunning wrote in his text, "This altruistic principle is very ingeniously adapted to the support of Luther's view that the duty of the Christian subject extends to bearing arms for his sovereign": William A. Dunning, A History of Political Theories from Luther to Montesquieu (New York: The Macmillan Company, 1947), p. 11. There was nothing novel or creative about Luther's approach, which the professor at Columbia University would have known had he been familiar with the justification of war from Augustine to Luther.

[86]Martin Luther, Trade and Usury in Luther's Works, vol. 45, ed. Walter I. Brandt (Philadelphia: Muhlenberg Press, 1962), p. 276; Whether Soldiers, pp. 100 and 146.

[87]Ibid., pp. 121-22. [88]Ibid., p. 126.

[89]Luther, Temporal Authority: To What Extent It Should be Obeyed, In Luther's Works, vol. 45, ed. Brandt, p. 125.

At times, rulers have wasted enormous sums on military spending in order to spread devastation. Coinciding with the views of More, Luther points an accusing finger at the syncophants who hover about princes. The prince must not heed the biddings of "fire-eaters who would stir and incite him to start a war." Proportionality in just cause requires that a ruler "wink at faults" and "waive his rights" whenever "a wrong cannot be punished without greater wrong." For it is perversely unwise to let costs exceed profits as one "fishes with golden nets."[90]

Defense of Last Resort

Luther approved defensive war against equals, as in the case of nation-states, but then only as a last resort. No evidence indicates that he condoned offensive war or that he did not genuinely advocate restraint and truly peaceful settlement of potential disturbances:

> At the very outset I want to say that whoever starts a war is in the wrong. And it is only right and proper that he who first draws his sword is defeated or even punished, in the end.[91]

Justification derives from defense. Defense provides the sole just cause for war. When "an attack is made" one is forced to fight and the war becomes a war of "necessity," unlike the war of "desire" fought by the attacking nation.[92]

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[90]Ibid., p. 125; Luther, Trade and Usery, p. 279.

[91]Luther, Whether Soldiers, p. 118.

[92]Ibid., p. 121.

When compelled to employ force against force one properly and lawfully fights in self-defense; wherefore, Luther observes, "He who kills another in self-defense is innocent in the eyes of all men."[93] Soldiers must risk their lives and fortunes for the sake of themselves and other persons.[94]

Defense must be reluctant. To be just, action must start exclusively as a last resort. Immediately following an armed attack, the enemy or neighbor should be offered justice and peace through reliance on law, arbitration, and common agreement. After these means have been refused or following a period of tolerating enemy "evil words and tricks" plus the enemy's insistence on 'having his own way'," the ruler can justly defend his own country.[95] No provision is made for alliances or protecting friends.

The Results of War

The Protestant's stern revitalization of Augustinian predestination acutely reveals itself in the unsophisticated determinism of Luther's approach to triumph and tragedy. Nations engaged in defensive war have "seldom been defeated" because "God . . . has so ordered things that warmongers must be defeated in war." History also proves that the righteous have lost battles through their irreligious

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[93]Ibid., pp. 120-21; Luther, Temporal Authority, p. 125.

[94]Ibid., p. 152.

[95]Luther, Whether Soldiers, p. 125, difficult passages; Luther, Temporal Authority, p. 125.

over-confidence.[96] Be humble, for God wants to be feared; and, although the defender is in the right, God ultimately decides the victor through pure grace.[97]

In defensive war against equals Christian acts of love require one "to kill the enemy without hestiation, to plunder and burn and injure him"; but one must not rape wives or virgins and must extend mercy to all persons who surrender.[98] Luther neglects, however, to spell out his notions governing just conduct with much more clarity or detail.

Right Intention: Obedience and Civil Disorder

Complete certainty of an unjust war can correctly produce a feeling of conscientious objection, which necessitates civil disobedience; but unequivocal injustice requires that a person fight anyway. If a subject knows "for sure" that his ruler's appeal to arms rests on wrong, then the subject should not serve in the war. Doubtful wars do not follow this spiritual rule and present no risk for the soul. As long as the question appears uncertain, the subject ought to fight, because to do otherwise would weaken "certain obedience for the sake of uncertain justice."[99] Be they

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[96]Luther, Whether Soldiers, p. 118.

[97]Ibid., pp. 123-25.

[98]Luther, Temporal Authority, p. 125.

[99]Ibid., pp. 125-26; Luther, Whether Soldiers, pp. 130-31.

adorned with knowledge or ignorance, soldiers should be exhorted to do their duty:

> Since we know that our prince is in the right in this case, or at least do not know otherwise, we are therefore sure and certain that in obeying him we are serving God. Let everyone, then, be brave and courageous and let no one think otherwise than that his fist is God's fist, his spear God's spear, and cry with heart and voice, "For God and the emperor!"[100]

Both sides could fight with uncertainty, with the loser accepting his divine castigation as his due and the victor assuming no human responsibility for his actions. These two counts of Augustinian theology indicate godly causation:

> Whichever side then suffers defeat, whether it be in the right or in the wrong, must accept it as a punishment from God. Whichever side fights and wins in such ignorance, however, must regard its battle as though someone fell from a roof and killed another.[101]

Order and Revolution

The Dangerous Public

Luther's second kind of war based on the authority within the social order of the participants consisted of wars against one's superiors. Legitimate higher authorities owned the allegiance of any inferior down to the common man, who was superior to nobody. Although Luther later worked a way around continued obedience to the so-called emperor, his

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[100]Ibid., pp. 132-33.

[101]Luther, Temporal Authority, p. 126.

vehement opposition to revolution remained unmitigated. Censuring him for opportunism or applauding him for responding to political needs cannot obscure the fact that, from the peasant insurrection through the defiance of the papists, his passion for order and fondness for princes stayed essentially the same. Authority must keep the people under control:

> We dare not encourage the mob very much. It goes mad too quickly. . . . It is better for the tyrants to wrong them [it] a hundred times than for the mob to treat the tyrant unjustly but once. If injustice is to be suffered, then it is better for subjects to suffer it from their rulers than for the rulers to suffer it from their subjects.[102]

Without respect for rulers, no stable government can abide.[103] God alone preserves or disposes of rulers and keeping a good conscience mandates that they not be attacked.[104] When God does not prevent such interference, the rebels never benefit for long.[105] Other evidence in religious, natural, and legalistic terms entirely discredits revolution.

Due to the primacy of the soul over the body, toleration of a tyrant manifestly commends itself physically and spiritually. Reason and experience show that wars bring worse disasters than peace-time governments; but the harm that wicked rulers do their iniquitous publics is unimportantly

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[102] Luther, Whether Soldiers, pp. 105-6.

[103] Ibid., p. 107.

[104] Ibid., pp. 110 and 112-13.

[105] Ibid., p. 118.

physical anyways. "What," Luther asks, "does it matter to you if they ruin your property, body, wife, and child? They cannot hurt your soul."[106] The values placed on life and property which Luther defended against cataclysm with utilitarian arguments to moderate wars between nations have become, at this juncture, all but deserted. More than anything else, the readiness with which theologians abandon the individual in his daily life to value the supernatural sets them apart from the humanists. Humanitarianism and individualism highly value a corporeal existence.

The commander in heaven provides a singular system to police individual men's evil natures, which become even more accursed as they combine into an ungoverned society. Were a king or other lord to violate articles of rule, i.e., a social contract, no remedy would be provided because for the people to legally challenge a ruler would require a judge where none exists. No legal deficiency arises in that the workings of natural law and justice demonstrate divine wisdom in instituting temporal rule over sin.[107] Persons must not resist through force; they must rely altogether on the persuasiveness of truth.[108] Believing that God's secular arm governs original sin, Luther forbids revolution:

> If there were a better way to rule over a mob, God would have established some other form

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[106] Ibid., pp. 108-9.

[107] Ibid., pp. 107-8 and 112-13.

[108] Luther, Temporal Authority, pp. 124-25.

> of government for them than the sword and tyrants. The presence of the sword shows the nature of the children under it: people who, if they dared, would be desperate scoundrels.[109]

The Pull Toward Revolution

In the fall of 1530, the papist forces issued an ultimatum giving the evangelical forces six months in which to abandon their heresies. Luther expected war and, during that winter, altered his views to make them less at cross-purposes with armed resistance. The "supreme rogue of the world," Pope Clement III (Guilio de' Medici), had instigated a scheme through his "tonsured goats and hypocrites" to annihilate the German people. Because the pope had "incited and duped" the emperor Charles V to "fight against the gospel of Christ," the emperor should not be obeyed.[110] Imperial authority could not be allowed to overrule the gospel. Luther's highly-publicized Warning grants to the German Protestants the means of war to pursue their cause: "I will not reprove those who defend themselves against the murderous and bloodthirsty papists."[111] He declares that such action would amount to self-defense rather than sedition or insurrection.

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[109]Luther, Whether Soldiers, p. 112.

[110]Luther, Warning to His Dear German People in Luther's Works, vol. 47, ed. Franklin Sherman (Philadelphia: Fortress Press, 1971), pp. 34-35.

[111]Ibid., p. 19.

Resisting the papal forces did differ, but it was still revolution. The action arose not between individuals on the one side and the authorities of a modern nation-state on the other but within the context of obsolete semi-feudal relationships and the moribund imperial idea tottering in the wave of nation-state development. Inferiors, nonetheless, did wage war against legal superiors and blood flowed for religious issues. Yet, neither in regard to revolution nor in respect to war for religion, did Luther wholeheartedly expand his theories beyond ratification of the immediate needs of his time. Lutheranism never offered the promise to popular uprisings that Calvinism did. In the religious wars that consumed Europe until the mid-seventeenth century, Lutheranism finally took an active part; but it refrained from espousing a pointed and encompassing theory of war for the sake of religion. This holding back was to the credit of Lutheranism and to the advantage of the just war.

Calvin

Predestination for Evil Mankind

No other person did more to nurture the Reformation and to spread Protestantism than the Reformed leader at Geneva, John Calvin (1509-1564). Nor did many enthusiasts outpace Calvin in railing the unworthy, wicked nature of man. Calvin declared that God inflicts war, pestilence,

and other calamities on miserable sinners as chastisements, and that these persons should apologize for giving him cause for vengeance.[112] By perpetual descent from Adam's contagion each babe in arms draws his first breath "naturally vicious and depraved." In the customary Augustinian manner, Calvin interprets the fall of Adam: "When he was divested, his nature was left naked and destitute. . . . Having been defiled by sin, the pollution extends to all his seed."[113] From this lamentable state, strictly a sprinkling are predestined to emerge. Few are the men who are picked "like a chosen and plucked flower" to become beneficiaries of grace. The vile creatures now slinking about the earth are massa perditionis, a glob condemned and without hope for their plight; thence the fortunate "little flock" represents an exceedingly small segment of the human race.[114]

Proper Authority: A Confused Dual Role

All men live under a twofold government (duplex in homine regimen) because within man there exists two kinds of worlds, which have to be viewed separately. One kingdom

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[112]John Calvin, Tracts and Treatises on the Doctrine and Worship of the Church, vol. 2, trans. Henry Beveridge (Grand Rapids: Wm. B. Eerdmans Publishing Co., 1958), pp. 106-6.

[113]Calvin, Institutes of the Christian Religion, vol. 1, trans. Henry Beveridge (Edinburgh: The Calvin Translation Society, 1845), p. 291.

[114]Heering, Fall of Christianity, p. 58.

concerns the spiritual or the inner man and deals with training the conscience to piety; the other kind regulates solely the external conduct, i.e., the establishment of outward morality, and is called the civil or temporal government.[115]

Calvin assures that the two jurisdictions are greatly set apart and that to think otherwise constitutes a "Jewish vanity."[116] Yet, while he utterly does not delineate the proper relationships between church and state, his own demands on government never drpart far from Hebrew theocracy. Although every nation has complete freedom to issue "such laws as it forsees to be profitable," no "barbarous and savage laws" can be regarded as laws.[117] He shirks answering the predicament of conscience versus government. At the few places in the Institutes where he does recognize the conflict, he simply denies its reality: "We see how the law, while binding the external act, leaves the conscience unbound;"[118] the two governments are "not at variance."[119]

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[115]Calvin, Institutes, pp. 442-43; Calvin, Institutes of the Christian Religion, vol. 2, trans. Ford L. Battles, ed. John T. McNeill (Philadelphia: The Westminister Press, 1960), p. 1485.

[116]Ibid., p. 1486.

[117]Ibid., p. 1503.

[118]Calvin, Institutes, trans. Beveridge, pp. 443-45.

[119]Calvin, Institutes, trans. Battles, p. 1487.

Calvin believes true religion reveals itself to the righteous person who seeks it. Not only religious questions but all other answers to substantive questions of public policy must be correctly known to each good man. In practice, he really revives one solution to the tiresome old two swords controversy by wanting rulers to bow under the rod of the Holy Catholic church.

God ordains rulers and establishes their dignity as his deputies.[120] A magistrate administers all his duties, including punishments, not by himself: he simply carries out divine judgments. The lawgiver on high commands him to avenge and places in his hand "a sword to be drawn."[121] Civil authority is the "most sacred and by far the most honorable" of all callings. Thus, Calvin deduces in a fashion characteristic of the scholastics, God would not appoint rulers to handle earthly affairs while overlooking the matter of "far greater importance--that he himself should be purely worshiped according to the prescription of his law."[122] Besides the divinely-appointed functions of keeping the public peace and securing private property, the government must protect the church and maintain the outward worship of God, including defense of sound doctrine

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[120]Ibid., pp. 1489 and 1492. Romans 13:1. "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained by God."

[121]Calvin, Institutes, trans. Battles, p. 1497.

[122]Ibid., p. 1495.

by preventing idolatries, sacrileges, blasphemies, and other such offenses against religion.[123]

The Need for War

If kings and nations must preserve peace within their own territories, they surely ought to have the power of arms to lawfully protect the public from the threats of plunder and devastation from without. Natural equity and the very nature of their offices demand that they defend their dominions against any hostile aggression.[124] Defense in the face of enemy attack also properly extends to the lands of allies. Calvin, unlike Luther and the humanists, prompted the forming of alliances with neighboring princes for mutual assistance "if any disturbance arise in their territories."[125]

Concern for the welfare of the people alone should sway cautious magistrates in the recourse to arms. Wars should be started and fought with moderate conduct, not with the severity of inflamed hatred; and punishment through war should come only as a necessary last resort. Calvin warns:

> If they must arm themselves against the enemy . . . let them not lightly seek occasion to do so; indeed, let them not accept the

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[123]Ibid., pp. 1487-88.

[124]Calvin, On God and Political Duty, 2nd ed, ed. with an Introduction by John T. McNeill (New York: The Liberal Arts Press, 1956), pp. 59-60.

[125]Ibid., p. 61.

> occasion when offered, unless they are driven to it by extreme necessity. . . . Surely everything else ought to be tried before recourse is had to arms.[126]

Calvinism Evolves

It is known that Calvinism, in seeking the religious freedom to expand, eventually came to be associated with a general notion of the right of resistance to tyranny. Many investigators repeat that in the English-speaking countries, where Calvinism became influential, the religious struggle led to other freedoms. At least, for the Calvinists, the struggle for religious liberty combined with the specialness of being one of the elect (particularly a financially successful member having proved--with circular reasoning--his specialness through success[127]) to promote individualism from within a religion that initially taught that human beings were something on the order of snakes.

Calvinism, then, underwent many changes; and in none of the other areas of modification were the changes more momentous or more conspicuous than in the area of

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[126]Calvin, Institutes, trans. Battle, pp. 1500-1.

[127]From initial tenets even rejecting usury, Calvinism moved to the sober pursuits of the commercial revolution, followed by capitalistic ventures. The long and twisting road ran from the beliefs at Geneva when Servetus was burned for questioning the holy trinity to the modern industrial trinity of money, hard-work, and success. See Ernest Troeltsch, The Social Teaching of the Christian Churches, vol. 2, trans. Olive Wyon (London: George Allen & Unwin, Ltd., 1931), pp. 641-50; R. H. Tawney, Religion and the Rise of Capitalism (New York: Harcourt, Brace, and Co., 1952), pp. 102-32.

revolutionary war. Calvin's own theories concerning the right of rebellion, however, remained befogged, incomplete, and seemingly perfunctory. In the Institutes, which underwent several revisions in French and in Latin from 1536 until 1559, Calvin did not admit revolution at all until section thirty-one of the thirty-two sections concluding the twentieth and final chapter. These brief remarks followed ten sections reproving rebellion.

Providence in its divine wisdom "arranged that various countries should be ruled by various kinds of government."[128] For persons in private life to dispute about what would make up the best sort of polity would be "an idle pastime" because forms of government "contend on such equal terms."[129] Even if anything in a single public ordinance needs correcting, the remedy should be left to the "cognisance of the magistrate" and not the interference of private men, who have not been so ordered by public authority.[130] Mere vocal threats to constitutions endanger "obedience of every kind."[131]

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[128]Calvin, Institutes, trans. Battles, p. 1496.

[129]Ibid., p. 1493.

[130]Calvin, Institutes of the Christian Religion, vol. 3, trans. Henry Beveridge (Edinburgh: The Calvin Translation Society, 1846), p. 545.

[131]Calvin, Institutes of the Christian Religion, vol. 2, trans. Henry Beveridge (Edinburgh: The Calvin Translation Society, 1945), p. 442.

"The first duty of subjects," Calvin warns, "is to entertain the most honorable views of their office." The station deserves respect, even reverence, not a reputation of necessary evil or expediency for the public good.[132] God will avenge any contempt for a public office.[133]

Esteem and pious reverence for the holy word decree the authority of all princes, not exclusively the good ones. The negligent and self-interested, the thieves, and rapists and murderers, and the unjust tyrants so chastise the people "for their iniquity."[134] The worst must be payed homage the same as the best.[135] God cannot be governed by law; likewise, rulers cannot, as divine ministers, be reproached.[136]

Revolution by Rank: The Stewards of Protestantism

Calvin reiterates this sort of argument until the second half of the next to the last section of the Institutes, at which point he bears off with these distinctions. "I speak only of private men," Calvin abruptly states, not the cases in which "popular magistrates have been appointed to curb the tyranny of kings."[137] He refuses to forbid "these

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[132]Calvin, Institutes, vol. 3, trans. Beveridge, p. 442.

[133]Ibid., p. 545.

[134]Ibid., pp. 546 and 550-51.

[135]Ibid., p. 547.

[136]Calvin, Institutes, trans. Battles, p. 1497.

[137]Calvin, Institutes, vol. 3, trans. Beveridge, p. 552.

officially to check the undue license of kings."[138] To our obedience of the commands given by rulers "we must always make the exception" because: "we are subject to men who rule over us, but subject only in the Lord. If they command anything against him, let us not pay the least regard to it."

The intent of these concluding remarks taken verbatim et literatim seems neither to countenance popular revolution nor to vindicate passive resistance. The comments infer an incomprehensible program in which public officials are empowered with constitutional rights to enjoin kings who violate the wishes of God. Nonetheless, Calvinism did become associated with the right to revolution.

The rest of Calvin's theory of warfare pays little more heed to clarity and specifics than do his notions of revolution. Though he disapproved of war, his view concerning the harm or virtue of war proved a mixed one. He supported traditional behavior in most cases, while recognizing human beings to be evil creatures. Generally, John Calvin avoided both structure and detail with overly-broad and ill-defined statements concerning war.

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[138]Ibid., p. 553.

CHAPTER FIVE

THE MODERN JUST WAR 1500-1650:

PART TWO

Fold him in his country's stars,
  Roll the drum and fire the volley!
What to him are all our wars,
  What but death bemocking folley?
    Lay him low, lay him low,
    In the clover or the snow!

George H. Boker, "Dirge for a Soldier"[1]

Overview of Part Two

Writers in Part One

Many kinds of thinkers influenced the justification of war as nation-states grew during the years from 1500 to 1650; and each in some manner recognized that wars took place within a new system. Machiavelli, the humanists, Protestant leaders, and numerous other writers assumed various opinions related to the justification of wars fought by nation-states.

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[1]George H. Boker, Poems of the War (Boston: Ticknor and Fields, 1864), p. 169.

Establishing a Law of Nations

Yet no other response to the new international system assumed more prominence than did the writings of the Spanish neo-scholastics and the secular jurists. They produced a law of nations that lives today as international law. They did not abandon just war to a merciless reason of state. The founders of international legal rules recognized a community of nations, not by emphasizing disunity and the loss of medievalism, but by affirming the modern intellectual, economic, religious, and political ties that contribute to unity. They applied the just war to nation-states through a law common among all nations.

Neo-Scholastics

For over a century during the late Renaissance, Spanish neo-scholastics studied and taught the just war tradition, often presenting detailed explanations with manifest seriousness. They sought to properly order the behavior of modern nation-states within the premises of the just war. Although most of them were theologians, they tried to apply, along with their religious precepts, the jus gentium as a law among nations. The Spanish school did often apply anachronistic theological dimensions to the problems of war among modern nations; but its limited attempt to accommodate the inclinations of states to the principles of justice was by-in-large appropriately realistic. The school's Augustinianism proved more limiting than its

deference to sovereign power. If man were to be bad, the tendency, as always, would be to look at war with a mixed attitude. Sometimes war provided even positive good. The three most prominent Spanish writers were, in order of importance, the Dominican Francisco de Vitoria, the Jesuit Francisco Suarez, and Balthazar Ayala, a judge.

Secular Jurists

By the second quarter of the seventeenth century, secular Protestants had securely established the fundamentals of a law of nations. The Spaniards had helped carry forward the jus gentium, as well as other theories and practices of natural and civil law, with definite results. The interpretation of the jus gentium by Alberico Gentili, an Italian Protestant layman whose lifespan paralleled the lives of Suarez and and Ayala, claimed to be secularly legal. Gentili did pursue legality even to the point of error; and he displayed less interest in religion than did the Spaniards. Neither the law of nature nor state practices really hinged upon anyone's religious beliefs. Humanitarian concern about the ravages of war certainly reflected Stoicism more than Christian dogma. The Dutch publicist, Hugo Grotius, soon proved the viability of a largely secular law of nations built upon humane intentions and supported by natural law and inter-state custom. Grotius was the first person to truly set down a modern law of nations. His solicitude for justice in war led him to

justify war within a system of law among nations. The rather optimistic Grotius, like his fellow countryman Erasmus a century before, believed that human beings are basically virtuous. Wars, he thought, usually prove bad.

Vitoria

His Importance

Two and a half centuries following Thomas Aquinas and less than a half-century after Columbus first set sail for the Indies, a lecturer on Thomism at the University of Salamanca began to question the Spanish conquistadores. Francisco de Vitoria (1480-1543) became the first thinker to scrutinize Spanish behavior toward the Indians of the New World in light of the requirements for a just war. Vitoria's teachings rank for the Catholic just war doctrine a significance approaching the justifications of Augustine and Aquinas. As the leading neo-scholastic exponent of the law of nations, he rivaled Gentili, the lay jurist, as the foremost, recent predecessor of Grotius. During this period only Grotius matched his contribution to the just war tradition.

Proper Authority

In the manner of his Protestant contemporaries, Luther and Calvin, Vitoria affirmed that each national ruler bears the sword because he has been transformed

into "a minister of God."[2] Authorities may as reasonably exercise force against external enemies as they do against internal ones.[3] When a ruler levies war against an antagonist, he is ipso facto the judge of both claimants.[4] He properly behaves as if he were his own judge, which means not an assertion of his rights but an injunction that he is bound to give justice to claims against him.[5]

In a case where the chief of state cannot profess ignorance, his subjects may still so allege.[6] The biggest part of the population consists of lesser folk, who may rely on the discriminating powers of their betters regarding a war's justice. They may serve.[7] Nevertheless, circumstances are conceivable in which proofs of injustice might be strong

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[2]See Romans 13:4 and 6.

[3]Francisco de Vitoria, De Indis. De jure belli [On the Indians. On the Law of War] trans. John P. Bate, with an Introduction by Ernest Nys (Washington: Carnegie Institution of Washington, 1917): De jure belli, p. 166.

[4]Ibid., pp. 127-73, and 187.

[5]Ibid., p. 175; Ibid: De Indis, p. 156. In the propositions preceding "princes are judges in their own cases," De jure belli, p. 175, Vitoria deals mainly with dynastic disputes, although he mixes private and public conflicts. The carefully-construed, but short-sighted, neo-scholastic logic forces this commingling.

[6]Vitoria, De jure belli, p. 177.

[7]At the half-way mark of the twentieth century, Francis J. Connell, described as a leading Catholic moralist, thought citizens to be incapable still:

> "It is seldom possible in modern times for an ordinary citizen to acquire sufficient knowledge of the inner workings of his government to pass a certain judgment on the justice or injustice of a proposed recourse to arms." In Paul Ramsey, War and Christian Conscience (Durham: Duke University Press, 1961), p. 79.

enough to invalidate the excuse of an unknowing soldier, e.g., an unbeliever marching against Christians.[8]

Even though an affair be debatable, subjects are bound to follow their leader into either a defensive or an offensive war because a regular practice of doubting would situate the state in a position of "grave peril." Even in the most dubious episodes one ought to employ the "safer course." The soldier holds a position like the executor of a judicial decree: the legality rules. "For," says Vitoria, "although I may doubt whether the war is just, yet the next point is that I may lawfully serve in the field at my prince's command." To doubt the justness of a course of action is not enough, one must also challenge the legality; and the legality is almost always assured.[9]

The Just Cause

Nations should dwell in peace whenever it is conceivable.[10] Only when necessity compells, should a prince reluctantly raise the call to arms.[11] The just cause should bear an "exceedingly careful examination," including a hearing due the opposing side.[12] War should begin following the

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[8]Vitoria, De jure belli, p. 174.

[9]Ibid., pp. 176-77.

[10]Ibid., p. 187.

[11]Ibid., p. 173.

[12]Ibid., p. 186.

recommendation of "many, and they wise and upright men," not on the sole conclusions of the king or a few men.[13]

The just cause must pass both qualitative and quantitative tests. Neither differences in religion, extension of empire, personal glory of the prince, nor other princely advantages provide adequate cause for war.[14] To gain peace and security for one's own nation and for one's allies, just causes for war may embrace the defense of persons and possessions and offensive actions that repossess property or that vindicate a wrong received.[15] Even though otherwise just, these causes must reflect proportionality. To pursue slight wrongs is unlawful.[16] Fighting over minor harm is also not very smart; and Vitoria means to safeguard the best interests of the nation-state as a whole. If war would usher in colossal damage rather than an advance in the common good, the prince would be obliged to refrain from fighting.[17]

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[13] Ibid., p. 174.

[14] Ibid., p. 170.

[15] Ibid., pp. 166-67, and 182.

[16] Ibid., p. 171.

[17] Ibid., p. 178. Vitoria has been buffeted from one quarter by Catholic anti-nominalists objecting to his theory of invincible ignorance and from another direction by those positivist writers who would altogether exclude morality from international law. Nussbaum wrote that such conceptions of moral theology were inconsistent with the legal-political idea of sovereignty: Arthur Nussbaum, A Concise History of the Law of Nations, 2nd ed. (New York: The Macmillan Co., 1954), p. 72.

The Justice of Ignorance

Vitoria advances a proposition that just war involves not one just side versus an unjust culprit. A single objectively just posture holds, but subjective justice becomes possible for each. A country unjust in fact or law can be considered truly just in itself by occasion of its good faith based on its "demonstrable" or "invincible ignorance."[18] No inconsistency arises, Vitoria contends, in delineating a war just on both sides. Calling each of them just, however, marked a change from Augustine.

Augustine adjured states to operate on the semblance or display of the evildoer's objective guilt and to not really treat his subjective responsibility. The just party, i.e., the home state, was presumed innocent and heard no request for objective responsibility; and only leadership, rather than soldiers and citizens, bore somewhat of a subjective responsibility. Vitoria, in most cases, took away the enemy's objective guilt and also entered the possibility of his subjective guilt. The factually just side, i.e., again the home state, remained about the same with no objective responsibility for innocence or guilt and merely an undemonstrated subjective responsibility. Cutting through the complex shadings of objectivism-subjectivism leaves the fact that Vitoria became more inclined to credit both sides of a war with practical and legal equality. By this evolution the just war had improved considerably since Augustine.

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[18]Vitoria, De Jure belli, p. 177.

Just Conduct

Degrees of Guilt

Moderation due any antagonist now increased with the questioning of his guilt. His guilt seemed to take on a complexion of legality in which increased forebearance was due him according to the degree of his guilt. If one did not intend to err, his punishment ought to be less. Vitoria instructed: "For the rights of war which may be invoked against men who are really guilty and lawless differ from those which may be invoked against the innocent and ignorant."[19] The scale of just vengeance, at the same time, cannot be allowed to dwindle enough to damage the state. "Everything is lawful," Vitoria assures his listeners, "which the defense of the commonweal requires . . . for the end and aim of war is the defense and preservation of the state."[20]

Discrimination: Innocence and Religion

Discrimination involving non-combatants and other innocents is gauged by military necessity. In a just war the presumed guiltless, who are defined as the "peaceful civilian population" may be killed by dint of "collateral circumstances" such as the military necessity of storming

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[19]Vitoria, De Indis, p. 155.

[20]Vitoria, De jure belli, p. 173.

a city or resisting beleaguers. To civilians Vitoria extraneously appends the categories of women and children, even of non-believers, along with farmers and aliens. Special mention, though, does not save them from just death as an "indirect and unintended result of a military operation."[21]

Consideration of clemency stems from a person's innocence and from his religion. After a just war concludes, not all guilty contestants may be killed unconditionally.[22] Although an innocent enemy population may not be decimated to prevent future threats,[23] sometimes enemy guilty have to be destroyed.[24] No question can exist regarding non-Christian guilty enemies; the "only remedy" is their eradication.[25] Christians may not be killed in the lion's share of cases because the troops occupied in fighting on both the just and the unjust sides entered the war in "good faith" and, obviously, are free from guilt.[26] Guilty hostages, i.e., unjust combatant hostages, may be executed whenever an enemy breaks faith.[27] All enemy subjects, guilty or innocent, may have their goods plundered, even following the war.[28] Anyone in a pagan population may be enslaved at any time, but no

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[21]Ibid., p. 179.

[22]Ibid., pp. 182-83.

[23]Ibid., p. 180.

[24]Ibid., p. 183.

[25]Ibid. [26]Ibid. [27]Ibid., p. 181.

[28]Ibid., p. 180.

Christians may be spirited away to bondage.[29] Clearly greater quarter extends to innocents and Christians than to the guilty and non-believers.

The Case of the Indians

Vitoria's prescriptions for Spanish treatment of the Indians shows what he sought to accomplish and illustrates how he viewed his theories as applied policy. These lectures are better judged not only by the light of superior wisdom but by the potential of their nonappearance. Yet placing them in historical context leaves their motivation and probable effect irrevocably mixed. Even to begin evaluating Vitoria's ideas, for example, as either immediate furtherance of moral behavior or, perhaps, as commodious excuses for subsistent practices, calls for a look at exactly what he asked the Spanish to do.

By war, Spain could acquire titles that legally placed the Indians under their power. The law of nations, which is natural or a natural derivative, plus various precepts of Christianity, accorded the Spaniards rights to travel, domicile, and trade within Indian lands.[30] If the natives decline to agree to these rights and appear threatening, the Spaniards can build forts. Then "if they have sustained a wrong," they may go to war against the natives.[31]

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[29] Ibid., p. 181.

[30] Vitoria, De Indis, pp. 151-54.

[31] Ibid., p. 154.

Defense may force the armies to seize the Indian cities, enslave the "dull and stupid" Indians, and despoil them of their wealth, because "everything necessary to secure the end and aim of war, namely, the obtaining of safety and peace, is lawful."[32]

Were these contentions not enough, Vitoria runs on with a typical exhaustive neo-scholastic list of vindications, the main one being religion.[33] Christians have a right to preach everywhere, and restrictions on this ministry provide justification for taking territories and installing new princes.[34]

The professor, at this juncture, deserves neither ridicule nor high praise. He did make, at least theoretically, smaller and less blatant demands on behalf of religion than had theretofore been the practice of some theologians; and, however indirect and miniscule his appeals for restrained behavior may seem to a contemporary observer, he made them. Finally, in the twelfth part of the third section of De Indis, he called for proportionality and forbearance:

> It may be that these wars and massacres and spoliations will hinder rather than procure and further the conversion of the Indians. . . .

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[32]Ibid., pp. 154-55; cf. De jure belli, p. 173, cited supra.

[33]As if any sixteenth century theologian were about to secularize the meaning of justice, one critique described Vitorian world as "solidly anchored in a secularly oriented definition of justice." J. A. Fernandez-Santamaria, The State, War, and Peace (Cambridge: Cambridge University Press, 1977), p. 110.

[34]Vitoria, De Indis, pp. 156-59.

> I personally have no doubt that the Spaniards were bound to employ force and arms in order to continue their work there, but I fear measures were adopted in excess of what is allowed by human and divine law.[35]

The Law of Nations

Because Vitoria stood as one of the primary precursors of Hugo Grotius in the founding of international law, much debate has sought to settle the exact place in the development of international law of Vitoria and the other theorists of the Spanish school. Part of this controversy has swirled around the interpretation given jus gentium by both Vitoria and his expositors. Vitoria wrote in the first proposition, third section of his reflection on the Indians:

> Probatur primo ex jure gentium, quod vel est jus naturale vel derivatur ex jure naturali . . . 'quod naturalis ratio inter omnes gentes constituit, vocatur jus gentium.'[36]

This statement has been fairly well translated to mean:

> Proof of this may in the first place be derived from the law of nations (jus gentium), which either is natural law or is derived from natural law . . . 'What natural reason has established among all nations is called the jus gentium.'[37]

The jus gentium meant the substantive or ideal rules seen within all nations.[38] The jus naturale referred to the ideal standards known by reason and valid for all men in every nation. Western literature since before the days of

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[35] Ibid., p. 158.

[36] Ibid., p. 257.

[37] Ibid., p. 151.

[38] Supra, p.

Isidore had recognized these concepts, often with insufficient understanding, but seldom with definitional disagreement. Vitoria, himself, indicated his debt to the Justinian Code, which distinguished the jus civile (the law particular to one state) from the law of nations. The relevant passage materially differs only in its use of homines:

> Quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque jus gentium, quasi quo jure omnes gentes utuntur.[39]

The obvious alterations made by Vitoria of the ancient text were hardly dramatic. If anything, his minor changes helped a bit to clarify his direction.[40] More telling was the heavy popular emphasis that Vitoria gave the law of nations. It is clear-cut that he chiefly meant to sketch

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[39] Institutes 1. 2. 1 in Thomas C. Sandars, trans., The Institutes of Justinian, 8th ed. (London: Longmans, Green, and Co., 1888), p. 8. The translation reads: "But the law which natural reason appoints for all mankind obtains equally among all nations, and is called the law of nations, because all nations make use of it."

[40] A Belgian jurist during the time of the First World War acknowledged the textual changes made by Vitoria and tried to allay objections:

> "It has been asserted that [Vitoria] . . . substituted the word gentes for the word homines, which in vulgar Latinity often meant "persons," "men," "nations." It is enough to read the development of his thought that Franciscus de Victoria [Latinized version] gives in order to be convinced that he is dealing with gentes in the sense of "nations"; it is people whom he places side by side with one another in his argument; it is the word nationes that he uses after gentes; finally, it is the word gentes that he contrasts with the word homines. The examples which he gives in explanation of his thought are concerned with the relations of nations and with their intercourse." Ernest Nys, Introduction to De Indis. De jure belli, by Vitoria, p. 89.

universal ways of behavior among nations.[41] By stating both his observations and wishes in terms of both being the law ("is") and deserving to be obeyed as the law ("ought" to be "is"), he must have hoped to foster a law among nations, truly observed and more humane in regard to war. His instruction represented a movement from medievalism[42] toward modern international law with its over-riding concern for the problem of war.

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[41]Nussbaum, A Concise History, p. 298: Nussbaum did not understand the transition from jus gentium to modern international law, which he was wont to extract from the bosom of Grotius. In the first place, Nussbaum pursued a narrow, legalistic view of international law that tried to exclude other spheres not only from it but from its privileged areas. Religion was one of these matters. Secondly, he was adequately provoked by Professor James B. Scott, who was, among other things, editor of the Cambridge classics of international law series and the American Journal of International Law. Scott's towering over the just war area during the period of the two world wars must have had a dampening effect on just war research; but more irritating to Nussbaum was his high-flying crusade magnifying the wonderous virtues of the Spanish school, with the most fervent words of adulation reserved for Vitoria. Nussbaum concluded:

> "A grave defect in Scott's writings consists in the fact that he and his translators invariably render jus gentium as "law of nations" or as "international law"--terms which he uses indiscriminately. He is not aware that Vitoria invariably and Suarez widely employ jus gentium in the ancient and medieval sense of universal or quasi-universal law. As a result of this crude mistake Scott's exposition of Vitoria's and Suarez's doctrines abounds in erroneous references to their achievements in international law."

Scott did make weak claims as indicated by the last sentence, and several pages flaying Vitoria were valid; but the first and second sentences were incorrect.

[42]For the influence of canonistic literature on the just war ideas of Vitoria and subsequent writers: Jean Moreau-Reibel, Le droit de société interhumaine et le "jus gentium": essai sur les origenes et le développement des notions jusqu'à Grotius in Recueil des cours 77 (no. 2 1950): 523-24.

Conclusion

Voices raised to criticize Vitoria for the inhumanity of slaying soldiers fighting for a side called just, might well have asked themselves if the enemy soldiers in fact suffered more, if their guilt were any less than in Augustine's actual writings, and if Vitoria's medieval forerunners were more logical. The facts are that Augustine and his followers acted as if enemy armies were evil and the tradition had long since treated them as morally culpable; now a notification of general presumed innocence altered this presumption. The innovation of any measure of equality had to augment humanizing behavior, not lessen it. Presumptuous assignment of innocence could hardly be expected to be less humane than presumptuous assignment of guilt.

Vitoria must have felt that he had to admit that "justice" now belonged to each of two contending armies. Rather than simply being guilty of rationalizing the needs of national monarchs, he surveyed a new-fledged nation-state system in which many countries could claim Christianity. By closely identifying justice with religion and by also wanting to allow war, he saw no other choice. If he designed his arguments to shore up the nation-states, he planned for the benefit of all, not for the convenience of one side. The system was not left free-standing; rather it was joined to the principles of the just war. This fact appears distinctly in canon two at the conclusion of the second

reflection, where Vitoria appears to be requiring Christian states to support traditions of right intention and proportionality of conduct. The canon stated that war must not be waged to ruin the enemy's people but only to procure one's rights and to defend one's nation in the quest of peace and security.[43]

Whatever provoked Vitoria's lectures, the words remained. They represented one stem of the just war, one that grew upon the law of nations and waxed fuller in time. Undeniably reason of state prospered, even in the light of Vitoria's doctrines; but, first of all, reason of state pushed aside little medieval that was better than it was; secondly, it never displaced everywhere the law of nations. The time-honored conception of a guilty enemy was forced to allow more room for the cultivation of law and the nurturing of restraint. Alongside reason of state arose the buds of international law, which began to flower in the succeeding century. The potential for restriant blossomed, as the religious incentive unhurriedly waned, into a much more abundant jus in bello. Nor could the amorality of reason of state ever cover all the space being partially vacated by the myopic, old, evil-enemy morality. Centuries later the distinction between defense and armed aggression would start to push reason of state aside.

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[43]Vitoria, De jure belli, p. 187. Note that vengeance, unless it is meant to be subsumed under rights, is omitted.

Suarez

The Need for War

Francisco Suarez (1548-1617)--like Vitoria--a Spaniard and a theology professor, taught at Coimbra, which was the leading university of Portugal. Suarez taught his students that to contend war to be intrinsically evil is to state a heresy. Thus, he appropriately opens the initial section of his disputation, "On War," by citing Augustine.[44] War is based on reason. It rests on the need of a state to "guard itself from molestation" through the activity of fighting.[45]

Defensive and Aggressive Wars

Two kinds of war exist: defensive and aggressive. They are both grounded in the natural law and in Christianity. Defensive war requires that the injustice "practically speaking" be "about to take place." The injury must be "beginning, as when a man has not been entirely deprived . . . or immediately" thereafter. Offensive war occurs after the unjust act has already happened and "redress is sought through war." Offense "wards off acts of injustice and holds enemies in check." What Suarez means by the last two phrases, in particular if measured in terms of

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[44]Francisco Suarez, De triplici virtute theologica, fide, spe, et charitate, in Selections from Three Works, vol. 2, prepared by Gwladys L. Williams, Ammi Brown, and John Waldrom, revised by Henry Davis (N.p.: n.p., n.d.; reprint ed., New York: Oceana Publications, Inc., 1964), p. 800.

[45]Ibid., p. 816. Suarez means not a defensive posture but the fact of warfare.

contemporary definitions of defense, offense, and deterrence, becomes conjectural. Neither do his other comments about defense and offense provide distinct meanings. He leaves two impressions: that war is divided into offensive and defensive and that he meant to use the word "defensive" to describe as wide a range of offensive activities as did his predecessors.[46]

Proper Authority

Neo-scholastic writings continue the practice of affirming authority in the manner of a dictum. A war "declared without legitimate authority" is unjust. "Such an act," Suarez recalls, "is performed without legitimate authority, and is consequently an illegitimate act."[47]

Suarez repeats the regular verifications of a prince's authority to correct wrongdoing by other states. Because the sovereign may chastise those of his own people who go astray, it follows that he may smite others. The offending sovereign power becomes legally subject to the plaintiff because of the wrongful act and because no "commonly acknowledged superior" exists to act as judge. Just as domestic peace necessitates "lawful power to punish crimes," international "concord" requires punishment by the sovereign of the injured state "in place of a tribunal."

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[46] Ibid., pp. 802-4.

[47] Ibid., p. 809.

It should be stressed that the equality of states in this regard includes "every kind of polity" not merely monarchies. Authority has to reside somewhere, for it is needed in order to make war for peace.[48]

States do not run the great risks of misbehaving the way that a private individual avenging himself does. The rulers of nations have "public counsel" on which to rely rather than their own "unaided judgments" and "may more easily avoid the disadvantages arising from personal inclination." One might well wonder how many more millions of human beings would have perished since Suarez penned these words had not public authorities been as well-informed and unbiased. Howbeit, perhaps no one defends the potential judiciousness of unilateral adjudication by the plaintiff better than Suarez.

Proper authority to embark upon war rests with the sovereign head of state; but three sorts of persons must be taken into account when fixing upon the justice or injustice of going to war.[49] They are the rulers, the leading men and generals, and the common soldiers. Each of these three reckons with two kinds of certitude: one, a practical certitude representing the legality of his taking up arms, and the other, a theoretical certitude, asking if the cause of

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[48]Ibid., pp. 806, 816, and 818-22.

[49]Over and above, the pope can deny a ruler authority to begin a particular war. Ibid., pp. 809-10.

the war is just in itself. Suarez overlooks the fact that he weighed down the latter certainty with legality, also.[50]

Theoretical certitude deserves the principal attention because practical certitude does not admit much of a problem. The sovereign, Suarez recollects, finds himself duty bound to complete a zealous investigation of the theoretical just cause.[51] If the case appears clear or if the "more probable opinion" resides on his side he may act as the judge in a case of "distributive justice." If "equal uncertainty exists" the party that has "possession" ought to have preference by virtue of the status quo.[52]

If generals and other prominent persons of the nation-state are implored by the sovereign to advise him concerning just cause, they are obligated to industriously examine all the facts. If they are not asked, they have no more responsibility than ordinary soldiers.[53]

Regular men of arms fight when they hear the bugle blowing and are not called upon to question the justness of the cause unless the war is clearly unjust. The negative doubt of ignorance bids obedience to proper authority as the "safer course." In the situation of positive doubt,

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[50] Ibid., p. 828.

[51] This section, which reads like a property law brief, displays graphically how closely legalism circumscribed thinking for the heirs of Roman law and how persistent were the implications for the just war.

[52] Ibid., pp. 828-29.

[53] Ibid., pp. 831-32.

if the two sides contend plausibly, the correct or most probable course must be found and followed. Even at this stage, soldiers ought to consult and follow the authoritative decisions of "prudent and conscientious" leadership.[54]

Five Just Causes

Suarez claims that just causes for war number three classes of injuries; but he covers approximately five categories. Herewith he joins punishment as a war aim without mentioning the need of punishment as a just cause. The three specified just causes include: (1) refusal to restore property that has been seized; (2) denial of the common rights of transit and trade; and, (3) serious injury to ones reputation and honor. The first cause is familiar and plain; the second follows Vitoria's lead and is fairly intelligible; the third, hoary but unexplained, and potentially a Pandora's box.[55]

The first of the two additional but unlisted causes of war requires so-called "defensive" measures in support of Christianity. The other just cause arises when revolution or tyrannicide must answer tyranny or religious differences that he described as tyrannical.

The fifth section of the thirteenth disputation edges faintly toward restricting the recourse to war for religious

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[54]Ibid., pp. 832-36.

[55]Ibid., p. 817.

designs. It deems religion a just cause in but two of the three instances thus considered. Offensive wars begun because the other side is not Christian are unjust; yet when non-believers are killing innocent persons defensive war is proper. Furthermore, the needs of defense and the dictates of natural law justify the ruler of one nation going to war against any nation that prevents the preaching or the free exercise of Christianity.[56]

Revolution, or sedition as Suarez and other schoolmen call it, can involve basically three circumstances. When two factions within a state fight, the aggressor, being without property, is self-evidently wrong. The other two situations involve tyrannical princes. A tyrant who asserts dominion illegally may be attacked by any number of persons. This usurper wars continually against the state and any one man can legally defend the state from him. In the second predicament, a tyrant who governs despotically while holding a legal title cannot be assaulted by an inferior private person. The power of punishment lies in superiors and in the community as an entirety. Although an exception might be an instance of immediate, personal defense, a single citizen attempting tyrannicide usurps authority. Yet, if a judge deposes a king, the king's title ceases; and, seemingly, he too becomes subject to tyrannicide. In order to avenge against a legitimate tyrant the whole state may rise up in arms.

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[56]Ibid., pp. 825-27.

The state has this authority because his power has been granted conditionally for him to govern in the public's benefit. He may forfeit his rights by ruling for private advantage, oppressing his subjects, and, especially, by leading his nation toward heresy, apostasy, or schism. In any event, revolution must meet each condition of the just war.[57]

Right Intention

The aims of war, once it begins, are twofold: war-making attempts not solely to obtain reparation of losses but also to punish the enemy. The need for punishment is shown by Christian scriptures and--strangely--by the existence of legitimate authority prepared to inflict it.[58] While the champion recovers damages and chastens the enemy on his way to peace he must despise only injustice. As a way to reach "real and secure" peace, war confronts a peace that is unjust. Whosoever wages war hates with honor, not individuals, but the actions that he is punishing.[59] He maintains right intention.

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[57]Ibid., pp. 854-55; ibid., Defensio fidei Catholicae, et apostolicae adversus Anglicanae sectae errores, pp. 705-8 and 716-22.

[58]Ibid., De triplici virtute, pp. 817-18.

[59]Ibid., p. 802.

Proportionality and Last Resort

Wars carry in their wake terrible "slaughter," tremendous "material losses," and "other misfortunes." In order for a war to be legitimate when viewed in the light of such circumstances, the nation must suffer grave damages --serious enough that they are "commensurate with the losses that war would occasion." War has to have proportionality in its just cause and its consequences. War also has to be the only way left to repair or avenge the injustice. War has to be a last resort.[60]

Reasonable Hope of Success

There must obtain, moreover, a reasonable hope of victory in any offensive war. In a defensive battle there is no choice but to fight. Offensive wars need to entertain in "almost every case," if not a "probable expectation of victory," at least an equal balance between the hope for victory and the fear of defeat.[61]

Just Conduct

The prosecutor for a war justly causes his enemy "all losses which may seem necessary" to obtain "satisfaction" or to secure a triumph. "Hardly anything" involves injustice except "intrinsic" injury to innocent persons.

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[60] Ibid., p. 816.

[61] Ibid., pp. 822-23. Suarez does not explain the exception to this formula implied by "almost every case."

All the same, even the slaying of innocents may become an "incidental consequence" of victory. If ends are permissible, the necessary means are granted to armies. Whoever has rights to ends, has rights to means. The killer of innocent victims does not voluntarily inflict death on them, he simply allows it while he is "making use of his right." Once again Suarez exemplifies handicap of inherited legalism: in this argument, the end justifies the means. Conjointly, he rivals Augustine in denying the slayer's individual responsibility. The just warrior has no golden rule to his neighbor, if it be to his own "great detriment." He causes not death in an "essential" sense, only in an "incidental" one. Suarez says, "The victor does not really kill."[62]

Women, children, and those persons "unable to bear arms" are innocent by virtue of natural law; the jus gentium provides for ambassadors; and the positive (canon) law excludes clerics. All other persons are presumed guilty. All innocents are to be given a relative preference in being spared from suffering. Innocent persons may have their property and their liberty taken from them only in able to complete "restitution and satisfaction" for the victorious state. Suarez concludes, "The reason is that the innocent form a portion of one whole and unjust state."[63]

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[62] Ibid., pp. 840 and 848-49.

[63] Ibid., pp. 840 and 843. The severe position of Suarez regresses from that of Vitoria.

After victory has been won pointedly guilty individuals may be executed; and sometimes even great multitudes exterminated. In addition to having their property confiscated, the guilty may be enslaved. Church properties plus their guilty and innocent occupants are to be destroyed, perhaps, only as a military necessity during wartime.[64]

Conclusion

The pervasive impliction of the many rationalizations concerning just behavior during the prosecution and aftermath of war is that victory smiles on the side in command of the just cause. As usual, no mention is made concerning how to assure this result. Nor does the nature of probable cause as opposed to perfect cause seem to oblige distinctions for Suarez. As if these problems were not formidable enough, both sides can fight without being unjust. In a war two sides may lack "just cause" but still voluntarily agree to fight one another. The war resulting is essentially "opposed to justice"; yet neither side can be accused of fighting unjustly because they have equally contracted to fight.[65] The assured conquest of right, probable justice, and unjust wars without unjust participants admit to few of the differentiations Suarez makes in respect to just conduct (viz.,

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[64]Ibid., pp. 841 and 843. Killing multitudes is not explained; and the last point is unclear.

[65]Ibid., pp. 851-52.

the treatment of innocents) and within other topics as well. Without tenable specifics little coherence remains.

The writings of Suarez conveyed a harsher and colder tone than those of Vitoria. An accusation that he was very insensitive appears correct;[66] yet he did not bother to drape quite as dark an Augustinian cloth across the face of man as Vitoria did. He managed to take for granted more of the spirit of the growing nation-state; and, unlike Vitoria, he assumed rather than discussed the theory of invincible ignorance. He over-estimated the knowledge and objectivity of rulers; but his support of revolution and tyrannicide gained him none of their favor. He surely had no enthusiasm for war; however, the chains of excessive legalism bound him closely to its yoke.

Suarez labored under the same handicap as the rest of the Spanish school: his reasoning was constrained by the intricate dogma of centuries. Even so, he brought forth into the noonday sun most of the issues of the just war. If they were imperfectly dressed, they were not completely covered over with the raiments of his church; and they enriched the vestments of the secularists who followed.

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[66]Tooke, Just War, p. 189.

Ayala

Overview

Balthazar Ayala (1548-1612), who served as juriscon-sultant and judge advocate general of the Spanish army in the low countries, never merited the attention awarded him by friends of neo-scholastic just war doctrine. His opposition to revolution proved to be his most notable just war concern --which was to be expected of a military judge presiding in an occupied region. Even though not a theologian, he manifested a scholasticism more complete than Vitoria and Suarez. He composed much less intelligibly, rambled constantly, and produced little textual correlation between quoted authorities. He did deal with several technical topics--such as the degree of binding force that treaties hold for subsequent national governments[67] and the rights of nations to take and hold properly-treated hostages[68]--that became staple parts of the on-going practice of international law.

Sources

Ayala names three sources of just wars: the law of nations enjoins just wars; and, in order that nations might seek a peaceful life free from transgression, the canon law and the law of God permit just wars. Peace must be

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[67]Balthazar Ayala, De jure et officiis bellicis et disciplina militari libri III, vol. 2, trans. John P. Bate (Washington: Carnegie Institution of Washington, 1912), pp. 82-83.

[68]Ibid., pp. 31-33.

qualified or conditional: "An honorable war . . . is ever to be preferred to a disgraceful peace."[69]

Three Principal Causes

The three "principal" just causes of war take in defense, vengeance, and repression of revolution. Defending oneself and ones allies needs no command other than the law of nature (a fourth source of justice). Vengeance may be reaped for sundry wrongs, including violation of the right of passage.[70] A war may not be fought against infidels solely because they are infidels; but wars may be justly prosecuted against them if they are discovered "hindering by their blasphemies and false arguments the Christian faith and also the free preaching of the gospel."[71]

Oppostion to Revolution

Ayala brightens to the prospect of "a most just cause of war" when a prince descends on his rebellious people, who fiendishly offend both God and him.[72] Entire justice rests on his side; the insurgents possess neither authority nor cause; consequently, all legal conduct of war during and after the war is permitted against them as enemies. They

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[69]Ibid., p. 8.

[70]Ibid., pp. 10-11.

[71]Ibid., pp. 20-21.

[72]Ibid., p. 11.

may be killed, enslaved, and robbed.[73] In direct contradiction, Ayala quite abruptly refuses liberation fighters even diplomatic immunity.[74] His double standard means that the just war penalizes them but does not protect them:

> Now rebels ought not to be classed as enemies, the two being quite distinct, and so it is more correct to term the armed contention with rebel subjects execution of legal process, or prosecution, and not war . . . The laws of war, and of captivity, and of postliminy, which apply to enemies, do not apply to rebels, any more than they apply to pirates and robbers.[75]

No matter how appallingly the weight of a government crushes down upon a people, they must obey or become criminals on par with heretics and infidels.[76] Only a usurper of a throne may be killed if no other means exists for his removal.[77] The best rulers and the lesser rulers come as

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[73]Ibid., p. 12. Ayala's claim had been practiced by Spanish troops in the northern area (the Netherlands) of the low countries, which had come to open rebellion by 1567. The insurgents had won the greater part of their struggle by 1573, nine years before Ayala published his words. The Hapsburg monarch, Philip II, had been written by his commander at the siege of Alkmaar, "If I take Alkmaar, I am resolved not to leave a single creature alive; the knife shall be put to every throat." The city was Protestant. H. G. Wells, The Outline of History, vol. 2, rev. J. F. Horrabin (Garden City, N.Y.: Garden City Books, 1949), p. 808.

[74]Ayala, De jure, p. 90.

[75]Ibid., p. 11.

[76]Ibid., p. 16.

[77]Ibid., p. 17.

divine visitations on their inferiors.[78] To suggest popular criticism of rulers is "subversive of the state"; for reliance on the people, Ayala decrees, always remains "insane."[79] As one might anticipate, this sort of rationalizing has not much assisted the progressive dialogue of the just war.

Gentili

Importance

Alberico Gentili (1552-1608), who taught civil law at Oxford University for over a quarter of a century, contributed many works to the growing body of international law. Unfortunately, he wrote in Latin. Before fleeing the Italian Inquisition, he had studied law at Perugia University; and he frequently cited the Italian civil lawyers. His place in the developing law of nations was fairly definite; his record in writing about the just war in particular was considerably less so.

The Law of Nations

Gentili chooses to write about justice in war within the folds of the law of nations. The laws of war are held in common by each nation within the world community.[80] The limited attention that moral thinkers and political theorists

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[78]Ibid., pp. 17-18.

[79]Ibid., p. 19.

[80]Alberico Gentili, De jure belli libri tres, vol. 2., trans. John C. Rolfe, with an Introduction by Coleman Phillipson (Oxford: At the Clarendon Press, 1933), p. 3.

have focused on the laws of war has mixed them with "military science and the laws relating to our own citizens and soldiers," i.e., with military tactics and strategy and with codes of military conduct and discipline. Leading writers have wandered through empty chronicles of history or have confused the topic with straight civil law.[81] Gentili intends to rectify these deficiencies.

Gentili really means to say that the laws of war comprise a part of the jus gentium. The law of nations is an unwritten natural law that must be seen as the will of nations because of its continued use. Nations have not agreed by contract drawn up during convention and not "absolutely every nation" can necessarily be counted; nevertheless, the jus gentium has "successively seemed acceptable to all men"; and it should be regarded as representing the intention and purpose of the whole world."[82] The law of nations belongs to a truly world community:

> Now you have heard that the whole world is one body, that all men are members of that body, that the world is their home, and that it forms a state. Listen to these words once more, for they are beautiful.[83]

Nations fight without contradicting the theme of one world. Cicero misjudges in suggesting that war appears somehow antagonistic to the unity of mankind. The ends of war

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[81] Ibid., p. 4.

[82] Ibid., pp. 7-8.

[83] Ibid., p. 67.

justify their means: "Wars are just even though so many things which come from them are evil, because their final aim is good." War's purpose, peace, comes no way "except through bloodshed."[84] While there is no natural antipathy among men, who are all naturally kin, human beings are "uneasy and untamed" and their "desires are boundless." Negative features do not indicate natural law but a "defect" of nature.[85] Persons are friends rather than foes by nature. The causes of war are not due to nature: "harmony or discord" both result from "our acts and our customs."[86] Gentili concludes, "No war is natural."[87]

Straining to reconcile Stoicism with the practices of the modern nation-state, Gentili seems to make war and peace unnatural products of unnatural, voluntary, human actions that become customary. In contradistinction, war waged "under nature's guidance is not contrary to, but in accordance with, nature."[88] Perhaps the guidance of nature refers to the laws of war, because such laws have no origin in "human thought" but in the law of nature.[89] On the other hand, either the cause or, at least, proof of the existence of the entire law of nations is attributable to its customary usage.[90]

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[84]Ibid., p. 28.

[85]Ibid., p. 54.

[86]Ibid., p. 55.

[87]Ibid., p. 56.

[88]Ibid., p. 58.

[89]Ibid., p. 5.

[90]Ibid., pp. 7-8, as cited supra; the jus gentium is also part of the divine law, divinely created.

Proper Authority and Last Resort

Wars are initiated by proper authority. The very fact of having no superior or higher judge defines a sovereign. Were a chief of state able to appeal to someone above him to adjudicate a dispute about to lead to war, he would not be sovereign. Yet, even a supreme ruler is bound to go to war only as a last resort.[91] Before declaring war he should conjointly set up arbitration in front of "the whole world, as it were, for witnesses and spectators." Those wielders of war who hurry immediately into battle set "their faces against justice, humanity, and good precedent."[92]

No fighting may justly start ahead of a request or warning to the antagonist. If such a step fails, a declaration of war may follow. The law of nations, the natural law, truth, and the voice of the Christian god foreordain the execution of a declaration of war; and this requirement can never be abolished.[93] Conversely, nations cannot always adhere to the procedures of declaring war. This fact looms large when a nation responds to "necessary" defense, i.e., armed attack.[94] Other exceptions relate to the continuity of war and its causes. By ambiguously weeding out from the need of declaration those countries "already regarded as

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[91] Ibid., p. 15.

[92] Ibid., p. 16.

[93] Ibid., pp. 132-33 and 135.

[94] Ibid., p. 136.

enemies" and "acts of injustice that are continued,"[95] Gentili altogether befogs the question of proper declaration.

Ten Just Causes

Self-Defense and Pre-emptive Strike

Gentili describes ten categories of just cause. The first two pertain to self-defense and what is contemporarily known as a pre-emptive strike. Killing in order to defend oneself is just provided one is attacked or in the event one has cause to fear an attack. Prudent men sometimes utilize this latter case of "expedient defense." Only fools do not employ force against possible offenses. A just defense foresees perils "already mediated and prepared and also those which are not mediated but are probable and possible." To this uncertain injunction Gentili adds that it does not become just to simply pounce as soon as another nation becomes "too powerful." Besides not spelling out under what conditions pre-emptive war would begin, Gentili neglects its visibly devastating implications because, like many of his forerunners, he looks at war too much from the side of one participant.[96]

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[95] Ibid., p. 137.

[96] Ibid., pp. 58, 62-63, and 66.

Defending Other Nations and Revolutions

The second two of the four kinds of defensive just causes consist of the defense of others. In the first instance, deserving nations may be assisted;[97] and in the second, aid may be extended to revolutionaries. The subjects of other sovereignties live in the world society and deserve consideration as fellow townsmen. While one of them would have a competent judge to handle a case between him and his sovereign, no such magistrate stands between a sovereign and the commonwealth as a whole. Whenever the numbers of persons in rebellion loom large, they transform themselves from private individuals into public characters with sovereign rights based upon their power;[98] i.e., in revolutions de facto power becomes power de jure. The aroused people in possession of legitimate authority may be justly assisted in their revolution.

Three Offensive Causes

Gentili moves from defense to consider three "legitimate reasons for offensive warfare": necessary, expedient, and natural. An offensive war of necessity protects a nation's very existence, as in the situations allowing acquisition of wives or territory.[99] An offensive war

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[97] Ibid., pp. 67-73.

[98] Ibid., pp. 74-75.

[99] Ibid., p. 79.

of expediency permits revenge for wrongs suffered. The Stoics err in opposing revenge. Vengeance stems from the same "natural impulse" as self-preservation and would be just even if it "merely satisfied the mind."[100] Moreover, rulers and kingdoms ought to take revenge to uphold their reputations, which can act as a deterrent.[101] An offensive war grounded on natural reason indicates the denial of some privilege of nature, such as interference with passage or trade.[102] All three of these offensive types of war must be supposed legitimate.

Two Other Offensive Causes

Gentili's other causes of war prove even more problematical. First, he insinuates that numerous "natural" causes might properly exist. His examples, which he leaves sketchy to the point of whimsy, fall short of perceptible meaning.[103] Next, in case a private individual injures a nation-state, his home state must punish him or face war.[104] Causes bereft of life may not be resurrected;[105] but wars may be

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[100] Ibid., p. 83.

[101] Ibid., p. 84.

[102] Ibid., pp. 86-87; Gentili's position corresponds to Vitoria's advocacy of common rights under the jus gentium.

[103] Ibid., pp. 93-98.

[104] Ibid., p. 100; this cause could well have been subsumed under revenge, supra.

[105] Ibid., pp. 105-11.

passed on to future generations: "The right of vengeance is thus extended to posterity."[106] His final area of just cause concerns religion and crimes against nature.

Offense Based on Religion

Throughout four chapters in the first book of On the Laws of War Gentili casts off religion as a just cause but unwittingly draws it back about him in the twenty-fifth chapter. "Force in connection with religion is unjust," Gentili cautions. Religion is a deportment of mind and will, of choice and freedom. Force ought not to be used either to compel religion or to shield its free exercise.[107] A persecuted subject who is without authority can only flee the country.[108] The Spaniards went astray in warring against the Indians for refusing to hear the Christian gospel but were just in waging war against them for practicing "abominable lewdness, even with beasts" and for eating human flesh. The Indians, Gentili believed, had clearly sinned against the laws of nature and mankind. Before them, other peoples had perpetrated "crimes of beastly, foul, and abominable lust" such as keeping "infamous brothels." To war against these men was just.[109]

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[106] Ibid., p. 121.

[107] Ibid., pp. 38-39.

[108] Ibid., p. 52.

[109] Ibid., pp. 122-23.

The Justice of Reasonable Doubt

Justice may exist on both sides of a war in "nearly every kind of dispute" because of reasonable doubt. Neither side of a questionable dispute can be labeled "unjust" if each "aims at justice."[110] Right intention or "good motive," however, is a topic shoved to the side, to be "a problem for theologians."[111] The best laws grant equality in the rights deriving from war: "Of our laws . . . the one seems to me the clearest which grants the rights of war to both contestants."[112] More simply, both sides of a war are to be considered just before, during, and after the war. To support his conclusions, Gentili argued that one side in a civil suit would lose the case but not be considered guilty.[113] (A more candid, but perhaps less effective, excuse would have stated that war ought to be a civil, not a criminal action.) He also begged the question altogether by saying that human beings lack the ability to understand the mysterious concept of justice.[114]

The fighting man's justice does not depend on the pervasiveness of justice on both sides due to reasonable doubt. He does not decide much. What the justice of a

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[110]Ibid., p. 33.

[111]Ibid., p. 35.

[112]Ibid., p. 34.

[113]Ibid., p. 32.

[114]Ibid., p. 31.

particular cause may happen to be does not really concern the individual soldier. In any event, "The subject will always be bound to follow his lord."[115] The subject should refrain from inquiring "too curiously" as to the most just side of a war.[116]

Just Conduct

Gentili advises moderate conduct, including treatment given to excluded classes of persons; and he prescribes degrees of moderation; but he sets no hard-and-fast rule for practicing just conduct, either during or following a war. First of all, war should not harm the weak and innocent. In most situations, children, women, and the aged should be saved from death and suffering; but their immunity should cease whenever they bear arms or stoop to arrogance and insults.[117] Unarmed farmers plus businessmen from other countries must be spared.[118] Rape of women is prohibited outright.[119]

Accordingly, after a war ends, the vanquished should be left alive. Captives ought to be put to death only in "some special cases."[120] The law of nations, however, allows

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[115] Ibid., p. 127.

[116] Ibid., p. 126.

[117] Ibid., pp. 251-60.

[118] Ibid., pp. 262-63.

[119] Ibid., p. 257.

[120] Ibid., pp. 215-16.

the defeated population to be enslaved, provided they are well-treated.[121] The leaders of a people should not be killed, nor should they be imprisoned for life; still, they may be forced to accept the form of government of the conquerors.[122]

Conclusion

Gentili based the just war squarely on the law of nations, which he interpreted to be natural and actual. His reconciliation of human will, custom, and nature never worked; and, consequently, he had no well-grounded basis for warfare. He did not fully succeed in his intended removal of military regulations and the civil law from the law of nations; nor did he divorce theology from it. He did move along on all three counts. He managed well enough the minor item of omitting the military rules. The civil law and theology he retained, though with less weight than they possessed in the writings of Vitoria, Suarez, and Ayala. With each of these three concerns he participated in a pattern that had been unfolding for centuries. Unfortunately, from his vantage point, the origins of the law of nations lay in shadows obscuring its complexity of sources, including the areas he disparaged. His descriptive and prescriptive admixture not only illustrates that he wrote with less

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[121] Ibid., pp. 332-33.

[122] Ibid., pp. 337-38.

novelty than he pretended but obfuscated the meanings of the law of nations and the just war. Even so, his lack of explicitness, most pronounced in the just cause, was not rooted as much in method as in his intention to go no further. The most salient defect of Gentili's just war beliefs was his imprecise advocacy of pre-emptive war. His most progressive feature was the call he registered for international arbitration of disputes.

Grotius

Limiting War

Hugo Grotius (1583-1645), or Huigh de Groot, was a Dutch jurist, historian, poet, and sometime diplomat, who enjoyed great prestige during his lifetime and for generations thereafter. Most of his writings were eagerly read and translated into various languages, and several of them became milestones in the building of international law. Grotius had a heavy impact on the just war tradition. The greatest concern in all of his work was the limitation of war. He relied on the Stoic virtues and on humane reasoning to argue for restrictions on the initiation of war (jus ad bellum) and the conduct of war (jus in bello).

Grotius set out to present an all-embracing and methodological aggregate of rules governing relations among members of the society of nation-states.[123] He held that

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[123]Hugo Grotius, Prolegomena to De jure belli ac pacis libri tres [Three Books on the Law of War and Peace],

"nothing" of importance had survived from ancient philosophy and that succeeding theologians and doctors of law had established "next to nothing" about the law of nations.[124] As he looked at the actual practice of the justum bellum across war-torn Europe and saw little respect for either the jus ad bellum or the jus in bello, he felt a stirring need to compose his treatise:

> Fully convinced . . . that there is a common law among nations, which is valid alike for war and in war, I have had many and weighty reasons for undertaking to write upon this subject. Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.[125]

Grotius viewed man and society optimistically and mildly. Along with his hopefulness, he reflected a profoundly Stoic view of man's intrinsic sociability. Human beings form a much higher species than other animals.[126] They are social and they crave a peaceful, organized society. To sustain societies, law develops in a manner that harmonizes with

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in The Law of War and Peace, trans. Francis W. Kelsey, with an Introduction by James B. Scott (N.p.: n.p., 1925; reprint ed., Indianapolis: The Bobbs-Merrill Co., Inc., n.d.), p. 9.

[124]Ibid., p. 22; yet he hardly goes a page without citing someone.

[125]Ibid., p. 20.

[126]Ibid., p. 11.

the nature of mankind.[127] The same natural and consensual forces that stand behind national law gives rise to the law of nations.[128]

By using the words "de jure belli" ("law of war") in the title of his major work, Grotius means to inquire into the justness of war; for law stands for justice.[129] Law indicates justice in a negative manner by defining what is not just.[130] The unjust conflicts with the reasonable social good. Grotius leans toward both human will and natural law as sources or authorities for law.[131] The first page of his prologue equates the law "concerned with the mutual relations among states or rulers of states," i.e., the law of nations, with the "whole law of war and peace."[132] The law of nations originates in (1) the reciprocal relationships among members of the human race, nations, and rulers of nations, in (2) "unbroken custom" and "tacit agreement," and in (3) divine ordinance." The binding power of the law of nations derives from the will of many

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[127] Ibid., p. 12.

[128] Ibid., p. 15.

[129] Grotius, De jure belli, pp. 33-34.

[130] According to Cahn, human beings, through the use of reason and empathy, do define injustice instead of justice: Edmond A. Cahn, The Sense of Injustice (New York: New York University, 1949), p. 26.

[131] Grotius glides from one to the other of his dozen, intermingled, major kinds of law with the ease of a salmon swimming upstream; and he is every bit as impossible to follow.

[132] Grotius, Prolegomena, p. 9.

nations, which Grotius might agree be human will; but little law truly "common to all nations" lies beyond the law of nature.[133]

"The law of nature," Grotius affirms, "is a dictate of right reason."[134] The practice of going to war agrees flawlessly with the law of nature because war attempts to protect life and to acquire and guard goods helpful in living.[135] War does not conflict with the function of society, and, thus, does not violate right reason.[136] War is begun in order to reach a final purpose of peace.[137]

Six Just Causes

Defense, Recovery, and Punishment

There exist, Grotius first says, three kinds of just causes for war: defense, recovery of property, and punishment. The first cause involves security from a "threatened wrong." Fending off damage to persons and possessions derives from nature;[138] but defense is not just for a country that has given another country a just cause for war.[139]

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[133] Ibid., pp. 9 and 17; Grotius, De jure belli, p. 44.

[134] Ibid., p. 38.

[135] Ibid., p. 52.

[136] Ibid., pp. 53-57.

[137] Ibid., pp. 33 and 861.

[138] Ibid., p. 172.

[139] Ibid., p. 185.

Allies, friends, and humanity at large may be defended. Treaties of alliance for mutual assistance should be honored if a just cause presents itself.[140] Nations considered friends may be assisted if they can be "easily" aided "without loss"; and, furthermore, human beings in general may be accommodated.[141]

Defense ordinarily means resisting actions that are distinctly about to happen; but Grotius opens up the possibility of preventive war. Proper authorities may take measures against foreign powers for "action commenced" when their evil designs are assured:

> . . . It is permissible to forestall an act of violence which is not immediate, but which can be seen threatening from a distance.[142]
>
> Fear with respect to a neighboring power is not a sufficient cause. For in order that a self-defense be lawful it must be necessary; and it is not necessary unless we are certain, not only regarding the power of our neighbor, but also regarding his intention.[143]

By approving the practice of striking first at "a distance" Grotius let suspicious authoriyies captain untrustworthy ships of state in thundery seas. Although by appending uncertainty of intent, he suggested a bit more precise, sound advice than most of his precursors, he approved a practice that had almost invariably corrupted

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[140] Ibid., pp. 581 and 585.

[141] Ibid., pp. 581-82.

[142] Ibid., p. 184.

[143] Ibid., p. 549.

nations "defending" themselves. Indeed, if leaders prior to the seventeenth century had taken as the single just cause for war the broadly-interpreted Grotian concept of defense, Grotius would have still had plenty of wars to consider.

Following (1) defense of anticipated harm, Grotius claims his only other two just causes, applying to injuries already inflicted, are (2) making good losses of property and (3) exercising retribution.[144] The right to punish expands beyond its usual notions of what is due the enemy and repairing the victor's soiled dignity to include the collateral deterrent effect of preventing "a dangerous example."[145]

Unnatural Acts and Religious Impiety

Like Gentili, Grotius endorses as a just cause the disapproval of unnatural acts performed by, presumably, primitive peoples. These crimes against nature include such varied sins as impiety toward parents, cannibalism, and piracy.[146] Those peoples who sin against the law of nations "transgress divine law."[147] Grotius misses ridding himself of cultural and, expressly, religious bias in being able to make such distinctions.

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[144] Ibid., p. 171.

[145] Ibid., p. 504, Gentili had stated the second notion.

[146] Ibid., pp. 504-6.

[147] Ibid., p. 510.

A fifth separately distinguishable just cause presents itself if a foreign nation lapses into religious impiety. "Justly are those punished," Grotius avows, "who are irreverent and irreligious toward the gods in whom they believe."[149] A just cause also comes to pass against countries that persecute preachers of the Christian religion or Christian believers.[150]

On the other hand, war for the sake of religion shifted to another outlook when its applicability became less relevant to the rest of the world and more germane to the religious wars that were scarring Europe. No wars concerning doctrinal disputes, i.e., heresy, could be appraised as just.[151] Nor were wars of conversion ever to be confirmed as other than unjust wars.[152] Grotius found ready ears for these convictions, which--in little more than two decades--became incorporated into a general European peace settlement.[153]

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[149]Ibid., p. 521.

[150]Ibid., pp. 517-18, Gentili had denied this cause.

[151]Ibid., pp. 518-21.

[152]Ibid., pp. 516-17.

[153]Grotius personally had experienced the receiving end of persecution. He had been imprisoned by the Calvinists in Holland for aligning with the Armenians. For this adventure see Edward Dumbauld, The Life and Legal Writings of Hugo Grotius (Norman: University of Oklahoma Press, 1969), pp. 11-13; The Westphalia treaty of 1648 concluded a European peace following the Thirty Years' War, which in large part sprang from religious fanaticism. These commitments stood until the Vienna settlement of 1815 and its companion protocal

Approving Revolution

Grotius furnishes a final just cause for warfare by vindicating revolution. Although he overlooks applying many of the conditions of just war to resistance movements or brief acts of insurgency, he extends plenty of just cause while dealing with the subject as a kind of war, that of "subjects against superiors." A state, Grotius concedes, must try to "limit the common right of resistance" in the interest of its very existence, besides doing its duty to maintain peace and order.[154] Revolutions break out anyway. Even individuals and minorities may not be impugned for preserving themselves as a last resort on condition that they do not forsake the "common good."[155] A number of instances prove the need to sometimes violently remove public authorities. Several situations concern strictly legalistic cases of title;[156] and two others interpret the disputes in terms of the loss of title rights. If a ruler violates an original contract or a contract made subsequent to his rule he may be resisted and, if the subjects have

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at Aix-la-Chapelle in 1818. For legal and practical consequences of 1648 see: Leo Gross, "The Peace of Westphalia, 1648-1948," in The American Society of International Law, International Law in the Twentieth Century (New York: Appleton-Century-Crofts, 1969), pp. 25-46.

[154] Ibid., p. 139.

[155] Ibid., p. 150.

[156] Ibid., pp. 157-63.

"necessity" (meaning self-preservation), be killed.[157] Secondly, in the event a ruler starts out with "a truly hostile intent to destroy a whole people," he may justly be fought because he has manifestly abjured his intention of ruling.[158]

Proper Authority and Formal Declaration

That a war might be formal (legal) under the law of nations, though not necessarily just or unjust, sovereign authority must wage it and follow "certain formalities." Because the entire state is jeopardized by the hostilities, direction and support of the war should rest with the ultimate power of the state.[159] A truly sovereign power is defined as a power whose actions cannot be nullified by the wishes of other parties with legal control at the time.[160] Sovereignty and consequently the proper authority to wage war have sometimes been lodged in the people; still, many other arrangements have transpired.[161] Proper public authority affects legality but makes wars launched without just cause no less unjust.[162]

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[157]Ibid., p. 156.

[158]Ibid., pp. 157-58.

[159]Ibid., pp. 97 and 630-33.

[160]Ibid., p. 102.

[161]Ibid., p. 103.

[162]Contemporary writers often exaggerate the aspect of legality in Grotius to the neglect of Grotian natural

Wars need to be declared publicly by one or the other of the parties to the war. The proclamation may be conditional by including a demand for restitution. A declaration of war against the sovereign authority of one state applies to all subjects of that state and to its allies as well. No further formalities are required.[163] Neutrals have guaranteed rights but their territories may temporarily be seized out of military necessity.[164]

Right Intention

Often the bearer of a just cause pursues other desires, lawful or unlawful in themselves, during the course of a war: "It is necessary to observe that a war may be just in its origin, and yet the intentions of its authors may become unjust in the course of its prosecution.[165]

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law and, accordingly, misread the just war. One author thought that Grotius, as opposed to Vitoria and Suarez, concocted the idea of war by equals enforcing "punitive action against state crimes": Cornelius van Vollenhoven, "Grotius, Hugo," in Encyclopedia, vol. 7, ed. Seligman and Johnson, p. 177; another authority attributed the notion of being ones own judge to Vitoria, Suarez, Ayala, and Gentili: Ballis, The Legal Position, pp. 102-3; neither author was correct. This line of thinking was not new. It had maintained a continuous existence since republican Rome, although, in the hands of the Christians, it had lost much of its civil suit character and had taken on the complexion of a criminal court action. If anything, from Vitoria through Grotius, the civil suit attitude gained some ground.

[163]Grotius, De jure belli, pp. 633-34 and 638.

[164]Ibid., pp. 783-87 and 195.

[165]Hugo Grotius, De jure belli ac pacis libri tres, in The Rights of War and Peace including the Law of Nature and of Nations, trans. A. C. Campbell, with an Introduction

The intent turns unjust but the war and its results remain valid. Grotius might agree, too, that wars could be just according to the law of nations in an absolute, legal sense while falling short of the law of nature. Grotius admits in one brief passage the belief in dual justice:

> If we interpret the word 'just' in relation to certain legal effects, in this sense surely it must be admitted that a war may be just from the point of view of either side.[166]

This concession must refer to accepted rights that accrue to the participants under the law of nations. Grotius bases his opinion on customary practices rather than attempting to apologize for invincible ignorance. He does not set out to issue hunting licenses for nation-states. He infuses his system with natural law in a way that must restrain them.

Subjects may bear arms in an unjust war solely to defend their lives following an invasion.[167] Grotius declares: "If those under the rule of another are ordered to take the field, they should altogether refrain from doing so if it is clear to them that the cause of the war is unjust."[168] He does not indicate to what degree a common soldier should or should not investigate a war's justice.

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by David J. Hill (Washington: M. W. Dunne, 1901; reprint ed., n. p.: Hyperion, 1979), p. 273.

[166]Grotius, De jure belli, trans. Kelsey, p. 566; cf. Ibid., p. 592.

[167]Ibid., p. 595. Unlike Machiavelli, who rejects mercenaries for reasons of utility, Grotius rejects them because of injustice: ibid., pp. 585-86.

[168]Ibid., p. 587.

When a subject hesitates because he "leans to the view that the war is unjust" he ought to refuse service. This position should be adopted particularly in offensive actions as opposed to defensive ones. A subject who is certain owns immunity from penalty, while the person who is unsure may be subjected to extra taxes.[169]

Just Conduct

Nations have an absolute right to kill or injure every person within the borders of a country at war with them. This right even reaches women and children, who may be butchered "with impunity." Persons foreign to the enemy country will also be treated as enemies if they do not leave in a short time.[170] Nor does the law of nations hinder the killing of captives and hostages.[171] All prisoners and their descendents are considered slaves under the law.[172] Enemy property may be destroyed or confiscated for compensation or punishment.[173] The conqueror holds the absolute right to go as far as assuming sovereignty over the territory.[174] Only the use of poison earns total

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[169] Ibid., pp. 593-94.

[170] Ibid., pp. 646-48.

[171] Ibid., pp. 649 and 651.

[172] Ibid., pp. 690-91.

[173] Ibid., pp. 658-63.

[174] Ibid., pp. 697-98.

condemnation, although rape is denied by the Christian and "better" countries.[175]

After all these harsh provisions, Grotius turns about to decree moderation in accordance with "moral justice" (justitia interna).[176] Absolute rights must be softened. At this point Grotius imprecisely approximates a position of military necessity:

> It is the bidding of mercy, if not justice, that, except for reasons that are weighty and will affect the safety of many, no action should be attempted whereby innocent persons may be threatened with destruction.[177]

However much Grotius follows the traditional pattern of drawing invisible boundaries for the killing of innocents, he most assuredly set forth a long, clear list of groups to be excluded from military violation. The rule of non-harm to guiltless human beings applies to women and children, clerics, individuals engaged in "literary pursuits," farmers, both domestic and foreign businessmen, artisans and other workmen, and prisoners of war.[178] This list takes in most everyone but actual combatants.

Conduct during and after a war should focus on the moderation of rights rather than rigorous enforcement of absolute justice. Useless devastation from motives of

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[175]Ibid., pp. 651-53 and 656-57.

[176]Ibid., p. 723.

[177]Ibid., pp. 733-34.

[178]Ibid., pp. 735-42.

hatred should give way to prudence, utility, and extreme necessity. Enemies ought to be treated as "men" to help ease the pains of war and enrich the conditions of peace. Using examples from Roman sources, Grotius shows how the enemy can face perplexing problems as they enter a war. Respect for these difficulties, he feels, ought to temper the tone of a nation's general policy toward the opposing side.[179] Public policy in matters of war ought not strictly to follow legal rights but a more perfect justice:

> Forbearance in war is not only a tribute to justice, it is a tribute to humanity; it is a tribute to moderation, it is a tribute to greatness of soul.[180]

Proportionality and Reasonable Hope of Success

Proportionality

The anticipated outcome of a war has to be proportional to the just cause. The means, i.e., the damage expected, must be measured against the ends. The good has to outweigh the evil produced or recourse to arms has to be forsworn.[181] "It frequently happens," Grotius calculates, "that it is more upright and just to abandon one's right."[182]

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[179]Grotius, De jure belli, trans. Campbell, pp. 360-61; Grotius, De jure belli, trans. Kelsey, pp. 745-46.

[180]Grotius, De jure belli, trans. Campbell, p. 361.

[181]Grotius, De jure belli, trans. Kelsey, p. 572.

[182]Ibid., p. 567.

Hope of Success

War should not be undertaken without a reasonable hope of success, which requires more than armed force equal to the enemy's: "For to avenge a wrong or to assert a right by force of arms requires a superiority of strength."[183] Not prudence by itself but justice demands peace. A more nefarious injustice than bearing the original just cause would be the one borne by one's own people.[184] Life lies as the cornerstone of every good fortune; it "affords the basis for all temporal . . . blessings" and holds more value "than liberty."[185] Even surrender is superior to the destruction of a nation.[186]

Peaceful Settlement

When the just cause of a war looks doubtful any of three measures had best be tried: a conference, arbitration, or the use of lot.[187] When contentions seem equal on both sides of an issue, the party without "possession" holds the larger responsibility for avoiding war.[188] Grotius slowly implants the suggestion that most wars may intelligently be abandoned before they begin. He all but says that sufficient

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[183]Grotius, De jure belli, trans. Campbell, p. 783.

[184]Grotius, De jure belli, trans. Kelsey, p. 575.

[185]Ibid., p. 573.

[186]Ibid., p. 574.

[187]Ibid., pp. 560-63.

[188]Note the same legal property approach in Suarez, supra.

inquiry into matters of right and necessary resources to win would result in most wars not being started. "A cause for engaging in war," Grotius instructs, "which either may not be passed over, or ought not to be, is exceptional."[189]

Conclusion

Grotius left much to be desired. Foremost and most obviously, he fathered no pioneering reform of the nature of the just cause. As he conveyed an impression of further secularizing the laws of nations, he continued to legitimize religious causes. He did nothing to confine just cause to defense; and he gave defense no concreteness or detail. Nor did the clarity and delimitation of laws that he promised to deliver ever arrive. He brought, instead, a general confusion of private and public behavior, of legal and Christian duty, of the law of nations and natural law and of private and public war. Yet, all in all, the limitations of his thoughts do begin to recede when confronted with the impress of his contributions.

The Stoic virtues that composed much of his law of nations, even as they shrunk in comparative emphasis with the growth of positivist international law for three centuries, were always more influential than writers by the twentieth century commonly acknowledged. Grotius, himself, showed positivism in resting the laws of war and peace on the

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[189]Ibid., p. 575.

agreement of nations, while he retained and perpetuated the richness of natural law for the modern age. Not only did the burgeoning positivism at no time submerge Grotian principles from sight, it expanded certain of his tenets. As an important example, the sizable stimulus that Grotius gave neutrality found a sympathetic audience in states and also in theorists. Neutrals themselves profited and even restrained the belligerents in wars at sea. At Cambridge University it was recalled: "The wars of the last part of the seventeenth and most of the eighteenth century were naval wars. A great amount of law grew up while they were continuing."[190] Attempting the always difficult task of merging natural with positive law, Grotius failed to complete a perfect, or even a coherent, system; but he did contribute concrete proposals aimed at limiting war.

Grotius tried to restrict war both in its inception and in its conduct. He met the right to begin fighting by advising nations to try talking. Though conferences and arbitration could claim ancient lineage, his fresh appeals for them were sometimes listened to with genuine interest. He did not surrender humanity and reason to the dictates of reason of state. He decided that an individual conscientious

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[190]Henry S. Maine, International Law (New York: Henry Holt and Company, 1888), p. 127; cf. Morton A. Kaplan and Nicholas Katzenbach, The Political Foundations of International Law (New York: John Wiley & Sons, Inc., 1961), p. 203: These "realistic" authors maintained that asking neutrals to refrain from both hindering just sides and aiding unjust ones "tended to spread war" because the neutrals began taking sides. The authors presented no historical comparisons.

objector should not bear a greater burden than his state.[191]

Grotius resolved that war ought to be conducted in a more restrained and less vicious manner than had been allowed customarily by the law of nations: "The transition," an English scholar said, "from the older and crueller view as to the acts permissible in war to the modern and more humane one is very visible in Grotius."[192] The admonitions by Grotius for greater recognition of humanity during actual fighting were almost immediately held to be of great authority; and they remained so at least through the eighteenth century. A nineteenth century writer surmised, "As soon as the Roman maxims were received, warfare instantly

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[191]The contemporary attitude toward conscience and civil disobedience stands closer to Plato's Crito than to Grotius. The burdens of suffering and proof press down upon the individual. Plato's Socrates accepted an incorrect death sentence as "justice" because men, not laws, had pronounced it and because he had been for seventy years advantageously bound by that justice without leaving the city. This same statist and excessively legalistic conception of justice predominated in the United States regarding Viet Namese War protestors and racial rights demonstrators, who were expected to demonstrate their good faith by being punished--as if their causes did not speak for themselves. Unlike Grotius, but like Plato, the conservative forces claimed that, unless they accepted punishment, objectors broke the covenant and became subversive: e.g., Abe Fortas, Concerning Dissent and Civil Disobedience (New York: New American Library, 1968); see also Plato, Crito, in The Dialogues, trans. Benjamin Jowett.

[192]Thomas E. Holland, Lectures on International Law, ed. Thomas A. Walker and Wyndham L. Walker (London: Sweet and Maxwell, Lted., 1933), p. 287.

assumed a more tolerable complexion."[193] Writing about the same time, the president of Yale University listed the works of Grotius as one of the major causes of increased "humanity and mildness" in recent practices.[194] Although recognition of Grotius long remained, many of the ideas he advanced regarding conduct of war, as well as the resort to war, were so well accepted by other publicists and by statesmen that they were entirely covered over or transformed. In general principles, even more than in specific applications, lay the theoretical significance and practical importance of Hugo Grotius for the just war tradition.

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[193] Henry S. Maine, Ancient Law, 4th American ed. (New York: Henry Holt and Company, 1884), p. 241; Hall credits the ghastliness of the Thirty Years' War with convincing the world of the Grotian doctrine of limited rights to violence: William E. Hall, A Treatise on International Law, 4th ed. (Oxford: At The Clarendon Press, 1895), p. 412.

[194] Theodore D. Woolsey, Introduction to the Study of International Law, 2nd ed. (New York: Charles Scribner, 1864), p. 213. (First published, 1860).

CHAPTER SIX

THE MODERN JUST WAR 1650-1919:

PART ONE--INTERNATIONAL LAW

> The War was not strife;
> it was murder,
> each side trying to murder the other side
> evilly.
>
> - *D. H. Lawrence, "The Late War"*[1]

Overview 1650-1919

Belief that wars ought to be just both in their origins and in their conduct strengthened during the years following the general European peace settlement of the mid-seventeenth century. Within the next two and a half centuries the standard questions of justification were joined ever more frequently by proposals to secure peace. Justification of war and related matters moved forward through the discussions of international lawyers, political philosophers, social reformers, diplomats, heads of state, judges, other

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[1]D. H. Lawrence, The Complete Poems of D. H. Lawrence, vol. 2 (New York: The Viking Press, 1964), p. 715.

public officials, teachers, eccleastics, military men, poets, and other authors. Serious discourses combined with numerous less formal considerations, helping to perpetuate an intelligent review of the grave issues involved in war and peace. As the era of the modern nation-state pressed onward, most civilized persons came to entertain ideas--however undeveloped they might be--about the justification of war.

For the first two centuries following Grotius, concern for justice going into a war (jus ad bellum) held the center of the just war (bellum justum). Yet during this time, justice in fighting a war (jus in bello) met, not only with enhanced examination, but with a respect in practice probably unmatched in any previous period. By the mid-nineteenth century, this interest in humanizing the conduct of war even gained a temporary dominance in the focus of the just war. In the meantime, specific plans aimed at peaceful settlement of disputes increasingly appeared; and a popular peace movement flourished from the early nineteenth century into the opening decades of the twentieth century.

Overview of International Law

Natural Law Persists

Justification of war continued to achieve its most comprehensive consideration and most orderly display by way of international law, which expanded rapidly following the Westphalia peace arrangements. The law basically retained

its natural law character as it increased its positive law provisions. Positive international law was generally considered to include not only signed agreements or conventional law but also usage, such as was seen in court decisions, authoritative writings, or simply custom.[2] Most international law writers and most statesmen making comments followed this mixed or Grotian approach to international law until at least near the end of the nineteenth century. Consequently, writings in internatinal law most always considered the just war partially within a context of natural law. Contemporary authors, however, have very often perpetuated an inaccurate story of both natural law and the justification of war.

Contemporary Misinterpretations

Many of the contemporary writers who have neglected and misreckoned the just war during this period have exhibited three tendencies. First, they have exaggerated the intensity of positivism in international law. Secondly, some writers have on occasion acted as if the just war were solely or almost entirely the prerogative of international law. Thirdly, they have treated the just

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[2]It is unnecessary to decide herein whether or not the customary aspects of positive law could have been considered properly as part of natural law. Nor is the place of reason in critical need of resolution. For an attempt to classify different natural law arguments see: Felix Oppenheim, "The Natural Law Thesis: Affirmation or Denial?" American Political Science Review 51 (March 1957): 41-64.

war (justum bellum) as being synonymous with the just cause or the just ad bellum to the exclusion of the jus in bello. Like a number of their counterparts during the nineteenth century, some contemporary writers have considered the laws of war without recognizing them to be questions of the jus in bello.

Typical of those persons who testified to an early demise of the just war, a professor who served as a United Nations official wrote, "In the late sixteenth century the distinction between just and unjust wars began to break down." He partially attributed this alleged decline to the thesis of probabilism.[3] A Greek jurist and delegate to the Versailles Peace Conference in 1919 felt that, starting in the seventeenth century, absolute national power erased away other conceptions that were contrary to its spirit. He stated flatly that the dogma of unlimited sovereignty killed just war theory: "Le dogme de la soverainete illimitee a tue la theorie de la juste guerre."[4]

Other writers date the supposed decline during periods all the way from the second quarter of the seventeenth century through the close of the nineteenth century. Not until after Grotius did "the doctrine of natural law

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[3]Michael Akehurst, A Modern Introduction to International Law (London: George Allen and Unwin, Ltd., 1977), see also Ballis, Legal Position, supra, p. 155.

[4]Nicolas Politis, La neutralité et la paix (Paris: Librairie Hachette, 1935), p. 19.

and just war gradually fall into decay."[5] A historian in Australia concurred, "After Grotius, few thinkers sought to make the necessary distinction between the 'just' and the 'unjust' war. . . . The world ceased to enquire into the moral motives of warring states."[6] A contemporary just war study resolved that law alone makes discussion of a war's justice and injustice meaningful and that from the close of the seventeenth century until after the First World War "no serious juristic attention was given to the justice of wars."[7] A religious writer picks the same time: "During the eighteenth and nineteenth centuries, the idea of the just and unjust war was in temporary eclipse."[8]

From the University of Chicago unconcernedly came this assertion: "Before 1800, the concept of the just war was relegated to history, and it remained there until after the First World War."[9] Previously, a more widely known text of international law had also indicated that the idea of the just cause predominated until "the end of the eighteenth century" then vanished almost completely from

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[5]Pompe, Aggressive War, p. 141.

[6]Cranfield, "The Concept," p. 72.

[7]Wells, War Myth, p. 38.

[8]Gerald Draper, "The Idea of the Just War," The Listener 60 (August 14, 1958): 221.

[9]Morton A. Kaplan and Nicholas Katzenbach, The Political Foundations of International Law (New York: John Wiley and Sons, Inc., 1961), p. 204.

positive international law theory "during the nineteenth century." He did acknowledge that the just war retained "some influence on public opinion" and on "diplomatic phraseology."[10] An American professor of public law contended that, within the nineteenth century, "the conception of the law of nature and the kindred one of just war were to all intents and purposes abandoned" by international law. He admitted, however, "There was never any doubt that for moral or political reasons the cause of a belligerent might be judged just or unjust."[11] A professor of religion at Rutgers University purported to be more exact, "There is in international law no longer a 'just war doctrine', in the classic sense, by the time of the Franco-Prussian War of 1870."[12] Some interpretations have held that the just war appeared lifeless during this period, while they have assumed at the same time that the quickened jus in bello was not part of the tradition. A religious writer in America circulated this account: "The just war doctrine was dormant. But the normative imperative to limit the conduct of war was almost universally recognized."[13]

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[10]Hans Kelsen, Principles of International Law (New York: Rinehart and Company, Inc., 1952), p. 35.

[11]Nussbaum, A Concise History, p. 277.

[12]Johnson, Ideology, p. 221.

[13]W. V. O'Brien, "War," The New Catholic Encyclopedia, vol. 14 (New York: McGraw Hill, 1967, p. 798.

The Major Schools

By the second half of the seventeenth century there emerged three broad divisions of international law based on differing conceptions of origin and content. All three would subscribe to principles of the just war tradition; but the positivist position would eventually weaken for a time in its concern. Positivism taught that the law of nations began with consent, which found expression in customs and treaties. It observed that human beings take definite actions to promote their common utility within the international arena. Positivism respected states as equal and sovereign; and, as time went by, emphasized more and more the coercive enforcement of law by sovereign authority. Adherents to the school of naturalism grounded the law of nations always in some form of natural law. Though they, too, identified customary (tacit) and legislated (express) provisions, they insisted that--no matter what the content--alleged laws violating the law of nature could not be binding. They believed values are truly universal, although considerable differences exist in admitting and applying them. Naturalism claimed that the laws governing nations are established through the use of reason and, many times, that they are likewise divinely ordained. By tending to express these laws abstractly, naturalism sometimes neglected to explain they with much precision. The Grotian, eclectic, or mixed approach to

the law of nations joined together the major characteristics of the other two schools. It combined the obligations of natural justice with positive norms of law. This middle-ground accepted the reality of consensual arrangements but retained a need to found law upon something more permanent, less threatening, and more psychologically appealing than mere sovereign will. Its favorable reception long attested to its practicality.

Richard Zouche

Reason and Nature

The English positivist, Richard Zouche (1590-1660), who succeeded Gentili at Oxford and also served as judge of the admiralty, attempted to derive principles of international law from the practice of nation-states. Yet he relied almost exclusively upon reason and natural behavior to provide a basis for rules of just war. Like even the most positivistic of his successors in the seventeenth and eighteenth centuries, he held tightly only time-honored reason and retained to a noteworthy degree the venerable designs of natural law.

Universality

The law of nations, which Zouche terms jus inter gentes or law between nations, stands for "the law which is recognized in the community of different princes or peoples

who hold sovereign power."[14] One can witness this law being "observed by nations at peace and by those at war." Its character is customary because nations form general agreements, i.e., regular "customs" and conventional because, as single nations, they solemnly consent "with one another" through compacts, conventions, and treaties. Nonetheless, the natural law standard since antiquity--reason--still remains. The professor reaffirms an enduring idea of harmony: "That which natural reason has established among all men is respected by all alike and is called the law of nations."[15] Furthermore, in order to explain the law of nature and the law of nations alike, he calls upon one of the most prevalent propositions used to prove natural law--arguing from repeated occurrences: "When many persons at different times and places lay down the same principle, that principle must be referred to a universal cause."[16]

Provisions of Just War

Right Intention and Practice

First of all, just wars require right intention; at the same time, unjust wars demand wrong intention. A

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[14]Richard Zouche, Judicii fecialis, sive, juris inter gentes, et quaestionum de eodem explicatio, vol. 2, trans. J. L. Brierly (Washington: Carnegie Institution of Washington, 1911, p. 1; To the law of nations Zouche allowed both the old concept of law common to many nations internally and the view of law obtaining between nations.

[15]Ibid.

[16]Ibid., p. 2.

war may be even objectively unjust but subjectively just. The act of war itself may be just on only one side; but both contestants may perform the act justly because one of them may proceed unknowingly. "None acts unjustly," the jurist contends, "save he who knows that he is acting unjustly."[17] He guards this subjective allowance to the belligerents by asking reasonableness. One should disallow probable cause to demand "reasons of the greatest clearness."[18] In reality, nations fight both unjust wars and just wars.

Just and Unjust Causes

Just wars punish offenses against both the law of nations and the law of nature. One must be cautious, though, because "such wars . . . may easily be convicted of injustice unless the crimes are very atrocious and very plain."[19] Unjust wars can burst forth from several wrong causes, such as wanting another territory, "being greedy of danger for its own sake," and "frivolous causes."[20] Just causes, however, can be manifest. Certain of these causes even permit dispensing with the need of a formal declaration. A war "undertaken on grounds of necessary

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[17] Ibid., p. 112.

[18] Ibid.

[19] Ibid., p. 116.

[20] Ibid., p. 53.

defense" is such a war. Another obvious instance applies to rebels, who are not due the law of nations anyway.[21]

Punishment and Religious War

The dual basis for asserting jurisdiction--the law of nations and the law of nature--represented in itself no long stride of positivism beyond the claims of Grotius; and it went beyond Grotius by reintroducing the primacy of punishment. Moreover, with the justification of retribution grounded in both the law of nations and the law of nature, Zouche authorized war in the name of religion. War may legitimately proceed against three groups of malefactors: (1) worshipers of devils or wicked men, (2) atheists, and (3) persecutors of Christians. Attacks are unjust that are made against other non-Christians and against Christians with whom differences arise.[22] Muslims and heretics could claim immunity.

Peaceful Alternatives

However just or unjust causes can be, Zouche matter-of-factly records how nations proceed to have their disputes settled in four ways other than war. Independent states at times have fixed judges to handle their contentions. States also submit to the arbitration of other parties. They agree in many matters to follow the law of the place where a problem arises. Fourth, jurists publish

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[21]Ibid., p. 171. [22]Ibid., pp. 116-17.

opinions that definitely affect the reputations of nations.[23]

Conclusion

Zouche sought to influence the behavior of nations without himself producing the passion that Grotius envoked against war. His dry observations implied not complacency but reliance on the common sense potential of a practical international system. With this disposition, he mainly took stock in formal topics, including embassies, citizenship, and royal succession. His method posed questions followed by short, historical examples or briefly-stated and unexamined, authoritative opinions--mainly from Grotius and Gentili. Despite these short-comings, he discussed the just war from an outlook of confidence. This mood demonstrated more than a jurist's trust in settled ways of doing things; it displayed the English assumption of a good behavior that keeps the civil society afloat day-to-day. To a small degree Zouche presupposed for international affairs a measure of civilized conduct that thinkers such as John Locke assigned to the internal matters of nation-states. His conclusion regarding the basis of conflict promised to clear more room for optimism than did the ancient view of human wickedness held by persons like his able contemporary, Thomas Hobbes. The causes of war lie not in unchangeable, corrupt human nature; custom causes war. Zouche believed, "Man is not

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[23]Ibid., pp. 57-58.

naturally repugnant to man; it is custom that leads them to agreement or disagreement."[24]

Samuel Rachel

Plea for Humanity

Samuel Rachel (1628-1691) was a German Protestant who held professorships at Kiel, Helmstedt, and Holstein, and who, like Grotius, served as a diplomat. Although his writings represented the positivist vein of international law, they embodied a humane attitude. Despite his positivist leanings, which somewhat separated the law of nations from the law of nature, he remained committed to the ideas of the just war.

"War," Rachel lamented, "is a very harsh business and tends to brutalize the soul." Some aspects of the law of nations have been said to be lawful because they are accomplished "with impunity" and are "passed off as just." Consent has produced "legal effects" which, "when weighed in the balance of natural law, are found to be partly right, partly harsh, partly downright unjust and inhuman."[25]

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[24] Ibid., p. 58.

[25] Samuel Rachel, Dissertatio altera de jure gentium in Dissertations on the Law of Nature and of Nations, vol. 2, trans. John P. Bate (Washington: Carnegie Institution of Washington, 1916), pp. 190-91. (First published, Kiel: Joachim Reumann, 1676).

Binding Utility of Positive Law

Rachel wrote that positive laws both within and between nations add to the law of nature. Human beings stand bound together, "as if by a world-wide chain"; but they have also erected a common bond of obligatory positive laws.[26] The peculiar law of nations joins only two or a few states, but the common law of nations links together most peoples.[27] Nations--each independent--freely consent to the law of nations, which rests on the good faith of all participants.[28] The positive law of nations, whether tacitly or expressly founded, springs, like all other positive or arbitrary law, from utility.[29]

Duty to Obey Natural Law

The professor acknowledges that war falls under the jurisdiction of each of the two main divisions of law; but he concentrates on applying the law of nature rather than the positive law to war.[30] First, he compellingly presents the just war requirements of the natural law. Unwittingly, he shows that the natural law has even had utility on its side whenever nations have customarily used the positive law of war to clarify rules of just conduct set forth by the laws of nature. He concludes these remarks by demanding that belligerents follow their duty to harmonize

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[26]Ibid., p. 157. [27]Ibid., p. 173. [28]Ibid., p. 157.
[29]Ibid., pp. 182-83. [30]Ibid., p. 183.

their actions and the law of nations with the dictates of natural law. Only then does he reluctantly ascribe to the law of nations the demands of proper authority and public declaration. Without much review, he accepts the designation by Grotius of a public and solemn war, which signifies the will of a ruler or a people lawfully undertaking a war.[31]

Requirements of Just War

"Nearly all" wars "past and present" do not measure up to conscience or the rules of natural law. Rachel declares that they "must be pronounced mainly unjust.[32] The law of nature provides that just wars have just cause, proportionality of cause, last resort, right intention, and just means. The justice of the cause directs that "some hurt has been done wrongfully to one of your interests." The injury has to be "sufficiently serious" rather than "slight." The "terrible alternative" of war may not rain down if "any other peaceful means" can be found. The aim of undertaking war ought to be peace; and fighting should be stopped "as soon as possible." In embarking upon and in conducting a war the precepts of Christ ought to be followed. Above all, nations should emphasize charity.[33]

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[31]Ibid., pp. 184-85.

[32]Ibid., p. 183.

[33]Ibid.

Samuel Pufendorf

Natural Law

The German philospher, Samuel Pufendorf (1632-1694), was the main founder of what has been known as the naturalist school of international law. Pufendorf held professorships at Hiedelberg, at Lund in Sweden, and served as counsellorof state to the King of Sweden and to the King of Prussia. His major works, which contained many details in agreement with Grotius, were Elementorum (1660), De jure naturae et gentium (1672), De officio (1673).

Pufendorf proclaimed law to be real and indispensable. The situation human beings find themselves in does not allow them to live without law.[34] Because liberty without limits would be opposed to human welfare, law must restrict human behavior.[35] The "common standard of human action," which is universal and perpetual, is called "the law of nature."[36]

The State of Nature

The "natural state of man" meant not the pinnacle of perfection that political theorists had frequently invoked but "the condition for which man is understood to be

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[34]Samuel von Pufendorf, De jure naturae et gentium libri octo, vol. 2., trans. C. H. Oldfather and W. A. Oldfather (Oxford: At the Clarendon Press, 1934), p. 179.

[35]Ibid., p. 145.

[36]Ibid., p. 179.

constituted."[37] Neither did he believe in the state of nature as represented by Thomas Hobbes. He insisted that Hobbes erred: "The natural impulse or desire which Hobbes attribute[s] to mankind of subduing one another is far from being well founded."[38] Particular individuals may fight but all do not war among themselves. Nations exist in a state of nature but they do not maintain a condition of constant war.[39] Even if individuals were so inclined, they do not have a natural right to self-aggrandizement without regard to any other person, as Benedict de Spinoza claimed.[40] No such situation naturally exists.

Peace

The creation and preservation of peace forms one of the major reasons that the law of nature was "placed in the hearts of men." A foremost principle of natural law prohibits perpetrating unjust harm upon others and orders that human beings perform "the duties of humanity" plus their duties fulfilling particular agreements.[41] Peace is the ordinary condition on earth.

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[37] Ibid., p. 154.

[38] Samuel von Pufendorf, Of the Law of Nature and Nations, 4th ed., trans. Basil Kennett (London: For J. Walthoe, R. Wilkin, J. and J. Bonwicke, S. Birt, T. Ward, and T. Osborne, 1729), pp. 4-5.

[39] Pufendorf, De jure, p. 171.

[40] Ibid., p. 160.

[41] Ibid., p. 1292.

Organized Restraint

Human beings, nonetheless, possess wicked characters, stupid minds, violent passions, and a proneness to injure others. They can be restrained most efficaciously by the threat of punishment. In order to provide this defense of punishment, persons band together to form states.[42] States, in turn, may form alliances with other states. A government stands obligated for armed assistance to its allies, if provided by treaty. This help, however, must not hinder the government's "obligation to its own citizens"; nor can aid be given an ally who undertakes "unjust or rash wars."[43]

Defensive and Offensive Just Causes

Nature allows war as an exception to peace; and sometimes war becomes necessary because another threatens injury or withholds what is due.[44] Through defensive war a nation seeks protection of its citizens from injury to their persons and from harm or confiscation of their property. A nation may even strike in anticipation before an enemy attacks; but like his predecessors, Pufendorf issues no concrete guidelines. He at least admonishes, "Fear alone does not suffice as a just cause for war, unless it is established with moral and evident certitude that there

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[42] Ibid., pp. 967 and 1305.

[43] Ibid., p. 1306.

[44] Ibid., pp. 1292-93.

is an intent to injure us."[45] A nation may also undertake offensive war in order (1) to enforce payment of what is owed to it by another, (2) to compel the satisfaction of reparations, and (3) to insure guarantees against future misdeed.[46] Unjust causes of war can arise from the passions to possess and to rule and from the fear of neighboring countries, among other causes.[47]

Last Resort

Never ought a nation dash into war; instead, a nation must try to settle disputes in an unhurried and amicable manner. As Grotius recommended, so did Pufendorf advise that one could responsibly set up conferences of the concerned parties, request the assistance of arbitrators, or leave the outcome to lot.[48]

Proportionality

Greater Good

A cause otherwise just turns unjust when lacking proportionality. Any harm must be borne without war unless there exists a greater probability of good resulting for

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[45] Ibid., p. 1296.

[46] Ibid., p. 1294.

[47] Samuel von Pufendorf, De officio hominis et civis juxta legem naturalem libri duo, vol. 2, trans. Frank G. Moore (New York: Oxford University Press, 1927), p. 154.

[48] Ibid.

both the injured country and for third parties. If lashing back should forebode heavy damage to non-involved nations, humanity prescribes peace rather than war. Justice, prudence, and humanity advocate that war result in more good than harm.

Preparation for Peace

Humanity and generosity necessitate that war's conduct follow proportionality whenever a state's proper and supreme authority does embark upon war.[49] By the law of nature, an enemy invites an unlimited use of force upon himself; but the natural law also charges that war's license be pursued with "control and temperance."[50] With traditional thinking, Pufendorf adds, "Nature allows war only in such a way that he who wages it ought to set before him peace as his end."[51] Long before Pufendorf, peace as the end of war ceases to mean chiefly a simple notion excusing war, becoming instead, a broad recognition of the conditions needed to avoid more wars. Its implications reach the jus ad bellum and the jus in bello, particularly in regard to questions of proportionality.

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[49]Pufendorf, De jure, pp. 1294 and 154.

[50]Pufendorf, De officio, p. 139; Pufendorf, De jure, p. 1298.

[51]Samuel von Pufendorf, Elementorum jurisprudentiae universalis libri duo, vol. 2, trans. William A. Oldfather (Oxford: At the Clarendon Press, 1931), p. 253.

Cornelius van Bynkershoek

Legalism

The Dutch judge, Cornelius van Bynkershoek (1673-1743), captured the leading positivist role in international law during the early eighteenth century. He has been generally considered to have coolly ignored the place of morality in international relations and law. Concentrating on particular points of international jurisprudence, he wrote about maritime practice, commerce, and rules surrounding diplomats. He accepted custom as one basis for international law, giving particular credence to the most recent court decisions; but he considered treaties to be more conclusive in deciding legality. Still, like Zouche, he relied heavily on reason. His major works were De domino maris (1702), De foro legatorum (1721), and Quaestionum juris publici (1737). The first book of the Questions of Public Law dealt with war.

Generosity

The most distinctive aspect of Bynkershoek's treatment of war was his distinction between justice and generosity. His legalism forced him to back away from a broad conception of justice, leaving him to rely on the practice of generosity. After reparations are refused to a nation, justice does not require that it declare war formally.[52] "However, nations

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[52]Cornelius van Bynkershoek, Quaestionum juris publici libri duo, 2 vols. (Oxford: At the Clarendon Press, 1930), p. 18.

and princes endowed with some pride," he approvingly took note, "are not generally willing to wage war without a previous declaration."[53] With the same approach, he spoke out against the killing of captives: "Everything is lawful against the enemy, but nothing could be more cruel than to punish him for his courage."[54] Thus, even the paragon of positivist international law, Bynkershoek, assisted in fixing the standards of initiating war and the conduct of non-combattants.

Christian Wolff and Emeric de Vattel

Grotian Dominance

Although many authors referring to the story of international law have overstated the tendency toward positivism, more perceptive analysts have found that the Grotian middle ground has, indeed, attracted the largest number of adherents. At the beginning of the twentieth century, a prominent positivist educator conceded, "Grotius's influence was so enormous that the majority of the authors of the seventeenth and eighteenth century were Grotians."[55] By mid-century a text writer related, "Through the centuries, perhaps most of the writers on international law have been eclectics at least to a degree."[56]

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[53]Ibid., p. 19. [54]Ibid., p. 29.

[55]Latta Oppenheim, International Law: A Treatise, vol. 1: Peace (London: Longmans, Green and Co., 1905), p. 85.

[56]H. B. Jacobini, International Law: A Text (Homewood: The Dorsey Press, 1968), p. 28; in exact agreement:

The Two Principal Grotians

Authors surveying the schools of international law ordinarily have acknowledged the leading roles of Vattel and Wolff in developing and spreading the Grotian approach.[57] A partial understanding, however, has allowed authors to mislabel them either naturalistic or positivistic. Two such authors decided that not only Samuel Pufendorf but Wolff and Vattel should belong to the naturalist group. The three were classified as "foremost representatives of the naturalist school of international law."[58] Quite the reverse opinion had been held previously at Yale law school. Without even mentioning either of the leading positivists, Bynkershoek and Zouche, a professor wrote of Wolff: "He is the first to recognize that the question of the justice of wars falls outside the pale of positive law." About Vattel, it was concluded: "The positivist doctrine received its final and comprehensive exposition by Wolff's disciple,

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George A. Finch, The Sources of Modern International Law (Washington: Carnegie Endowment for International Peace, 1937; reprint ed., New York: Johnson Reprint Corp., 1971), p. 24; Gerhard Von Glahn, Law Among Nations, 3rd ed. (New York: Macmillan Publishing Co., 1976), p. 41; cf. the extreme position of Cranfield, "The Concept," p. 77: "After Grotius--and until comparatively recently--the positivists have carried the day."

[57]Finch, Sources, pp. 24-25; William L. Tung, International Law in an Organizing World (New York: Thomas Y. Crowell Co., 1968), p. 17; Amos S. Hershey, The Essentials of International Public Law (New York: The Macmillan Co., 1919), p. 62-63; Oppenheim, International Law, p. 85.

[58]Nussbaum, A Concise History, p. 164; similarly: Werner Levi, Contemporary International Law (Boulder: Westview Press, 1979), p. 72.

Vattel."[59] Both this interpretation of Vattel and Wolff as positivist and the naturalist explanation prove incorrect. Because Vattel and Wolff held views representing each of the two positions they placed themselves within the Grotian tradition.

Christian Wolff

Progentior of Vattel

The German philosopher, Christian Wolff (1674-1754) published his treatise of international law in 1749, upon reaching the age of seventy. While professor at the universities of Halle and Marburg he developed a thoroughgoing Grotian position.[60] Even though Wolff allowed himself to hamper his solid thought by compiling unnecessary definitions and by repeating simple syllogisms in the long used fashion, he calmly and earnestly urged nations to observe the just war. At the time of his writing, his abstract and mathematical Latin seldom attracted notice beyond academic readers; yet he heavily influenced the most popular of all Grotians--Vattel.

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[59] Von Elbe, "The Evolution," p. 682.

[60] Wolff showed the influence of the German philosopher, Gottfried W. Leibniz (1646-1716), who came to subscribe to the importance of treaties in addition to divinely inspired natural law and who admitted Hobbes to be partly correct in that nations do stand in perpetual vigilance: Gottfried W. Leibniz, Codex Juris Gentium (Praefatio), in The Political Writings of Leibniz, ed. and trans. by Patrick Riley (Cambridge: At The University Press, 1972), pp. 165-176.

The Supreme State of Nations

Wolff postulated that nations have to be considered as starting in a state of nature, individual and free.[61] From this basic situation the "great society" emerges. Wolff explains the origin of international obligation as natural and purposive, "Nature herself has established society among all nations and binds them to preserve society."[62] Nations as a whole make up "the supreme state."[63] This society is real and is intended to "give mutual assistance in perfecting itself," i.e., to combine its powers for "promotion of the common good."[64] If any member state fails to fulfill its obligations, the supreme state has the right to coerce it into performance.[65]

Divisions of the Law of Nations

The law of nations begins as nature's law applied to nations; but "the principles of the law of nature are one thing," and "the application of them to nations, another."[66] The law of nature has four divisions. First comes the necessary law of nations, which consists of the "law of nature applied to nations and binds them in

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[61]Christian Wolff, Jus gentium methodo scientifica pertractatum, vol. 2, trans. Joseph H. Drake (Oxford: At the University Press, 1934), p. 9.

[62]Ibid., p. 11.

[63]Ibid., pp. 14-16. [64]Ibid., p. 11.

[65]Ibid., p. 14. [66]Ibid., p. 9.

conscience."[67] Second, from the will of nations there has evolved the positive law of nations, which has three parts. The voluntary law of nations reflects "the presumed consent" of each, demonstrated by the implicit and universal consensus of the supreme state. The stipulative law of nations rests upon express consent and is particular rather than universal. The customary law of nations reflects long-time tacit consent of das Herkommen (usage).[68]

Contradictory Conceptions

Starting from the original position of the state of nature, Wolff describes one condition of unity, one of independence, and supposed their coexistence. He strongly states that an all-embracing international society, composed of states that have left the state of nature in order to obligate themselves for their general purposes, really does live. Next, he turns around to detail several kinds of international law, which regulates activities among the same states, now considered unattached. At no point does he admit any incompatibility between the two descriptions. The most salient of paradoxes, however, could not even exist beyond mere internal police action within the world state: war could logically transpire only from the second system of equal states under the law of nations.

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[67] Ibid., p. 10.

[68] Ibid., pp. 18-19.

Just Cause and Last Resort

"A just cause of war between nations," Wolff comments, "arises only when a wrong has been done or is likely to be done."[69] Wars are defensive or offensive. A defensive war aims at preventing damage to self and property but can be unjust in case the enemy's offensive war is just.[70] An offensive war comes about in the event one nation tries to coerce another into doing something, such as restoring goods or carrying out duties. If a right is sure, offensive war still can be just only as a last resort.[71] In instances of doubtful right, war can proceed against a state following its refusal to attend a conference of compromise or to try arbitration.[72]

Unjust Causes

The growing power of another state does not provide a fearful state automatically with a just cause of war.[73] Wolff means to restrict defensive war to the time that an "enemy takes up arms."[74] He reasons, "The intrinsic possibility alone begets no probability."[75] A nation has a right to perfect its military capacity.

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[69] Ibid., p. 314.
[70] Ibid., p. 320.
[71] Ibid., p. 321.
[72] Ibid., p. 322.
[73] Ibid., p. 328.
[74] Ibid., p. 409.
[75] Ibid., p. 329.

Nor can any nation justly punish another nation for being wicked, offending nature and God, or for practicing the wrong religion, atheism, deism, or idolatry. In such cases, no wrong has been done to the first nation. It owns no right to initiate a punitive religious war.[76]

Just Conduct and Right Intention unto Others

Just conduct and right intention merge into the golden rule. To assume that one is permitted to do anything one pleases in war is "an imaginary right."[77] When a nation conducts an unjust war and must be countered, its combattants alone may be injured. Charity and nature join to temper the rights that one effects in treating an adversary.[78] Wolff vows, "War can be waged without hatred. . . . We ought to love and cherish an enemy as ourselves."[79]

Emeric de Vattel

The Good of Humanity

Most influential of all international law writers after Grotius, stood Swiss-born Emeric de Vattel (1714-1767), nominal diplomat but serious scholar. Vattel tried to recognize and reconcile practices of the modern nation-state

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[76] Ibid., pp. 326-27.

[77] Ibid., p. 409.

[78] Ibid., p. 410.

[79] Ibid., p. 382.

considered legal by the law of nations with natural law and humane feelings. For the practical advantage of the international arena, he attempted to bridge the gap that his peers of the Age of Reason were digging between usage and their notions of unaffected reason. At the foundation of his approach, he set one of the most crucial and least-believed ideas in international relations--that the welfare of each state is indivisible from the general good of all humanity.[80]

Natural Universalism

Nature arranges for human beings to need mutual assistance; consequently, a natural society--truly a "universal society"--prevails among all human beings.[81] Individuals unite to form nation-states but retain their "duties towards the rest of the human race." The "first general law" of the international society requires that "each nation contribute as far as it can to the happiness and advancement of other nations." In working for its own interests, the nation can do only what is lawful, just, and honest, without immorally obstructing the peaceful activities of other nations.[82]

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[80]Emeric de Vattel, The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns, vol. 3, trans. Charles G. Fenwick (Washington: Carnegie Institution of Washington, 1916), p. 222.

[81]Ibid., pp. 3 and 5. [82]Ibid., p. 6.

Within the universal society of the human race, persons combine into nations directed by sovereign wills in order to pursue their "mutual welfare."[83] Each of these separate societies exists naturally on a free and equal standing with all other members of the world community, and each possesses its own interests. Vattel announces, "A small republic is no less a sovereign state than the most powerful kingdom."[84]

Sovereign Protection of Rights

Duty demands that sovereign control further the people's happiness, which is the aim of natural law.[85] Every nation mainly derives its own rights from its obligations to itself. It is a moral being and, as such, should function in line with its nature, i.e., advance and defend whatever is to its advantage.[86] Force is necessary in order for rights to be protected.[87] The sovereign, ordinarily vested by a country's people in a single person or in a senate, exercises proper authority and entirely controls a country's

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[83] Ibid., pp. 3 and 5.

[84] Ibid., p. 7.

[85] Ibid., p. 47.

[86] Ibid., p. 13; in foreign policy, advantage is too often translated out to mean whatever the government does; a conservative defect among natural law writers is considering common practice to be right behavior according to human nature; Vattel borders on this error.

[87] Ibid., pp. 130 and 248-49.

acts. For the people, the sovereign justifies employment of the nation's armed forces.[88]

If a nation threatens another nation's peace or its very existence in violation of the "laws of the natural society of nations," the transgressor may be suppressed. Conspicuous disregard for perfect rights held under the law of nations invites restraint.[89] "Perfect rights," Vattel writes, "carry with them the right of compelling."[90] Whenever a nation does not transgress perfect, external rights but violates the internal laws of conscience, others have to withstand this kind of conduct without interfering.[91]

Just Cause

Four aims may justify war. The defensive cause seeks to repel unjust attacks, while the three offensive causes either attempt to retrieve possessions, enforce rights that are due, or try to assure future security by punishing the enemy for evident injury.[92] Duty does not require an unjust state even to defend itself; to the contrary--it has no right to fight back. Many times, however, questionable situations arise. When any doubt at all is present, some

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[88] Ibid., pp. 20 and 235.

[89] Ibid., p. 8; The law of nations divides into the voluntary law based on presumed consent, the conventional law of express consent, and the customary law resting on tacit consent of nations: Ibid., pp. 8-9.

[90] Ibid., p. 7. [91] Ibid., p. 5.

[92] Ibid., pp. 244 and 246.

justice must be assumed to belong to each side. Unintentional mistakes happen. In such instances a sovereign is unaccountable because he authorizes unjust war under the control of invincible ignorance.[93]

Right and Wrong Intention

Though opposing sovereigns can follow right intention, which frees them from subjective guilt, a just cause belongs to only one side. A war can never be just on both sides. Due to ignorance of facts, not knowing the law of nature, or because of poor reasoning, the unjust side may believe in good faith that it is right; but it remains wrong.[94]

A will that clearly and generally exhibits injustices does wrong to all nations.[95] Often when standing before the opinion of mankind, nations even shamefully pretend not to patently offend justice. "Pretexts," Vattel decides, "are at least a homage which unjust men pay to justice."[96] Introducing the scourge of war unjustly must be condemned. Of the unjust belligerent, Vattel writes:

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[93]Ibid., pp. 247 and 246.

[94]Ibid., p. 247.

[95]Ibid., p. 135.

[96]Emeric de Vattel, The Law of Nations, 7th American ed., ed. Joseph Chitty (Philadelphia: T. and J. W. Johnson Law Booksellers, 1849), p. 304.

> . . . The bloodshed, the desolation of families, the pillaging, the acts of violence, the devastation by fire and sword, are all his work and his crime. He is guilty towards the enemy, whom he attacks, oppresses, and massacres without cause; he is guilty towards his people, whom he leads into acts of injustice, whom he exposes to danger without necessity or reason--towards those of his subjects who are ruined or injured by the war, who lose their lives, their property, or their health because of it; finally, he is guilty towards all mankind, whose peace he disturbs and to whom he sets so pernicious an example. What a dreadful list of woes and crimes![97]

Last Resort

War should be undertaken solely as a last resort. No other means may exist. Natural law bids that parties initially endeavor to reconcile disputes through peaceful ways. Each nation in question ought to scrutinize the issues and consider yielding, whether or not it considers its side correct. Furthermore, all nations involved in the dispute can work to achieve a compromise. Thirdly, a situation can utilize mediation to help the disputants reach an agreement.[98]

The sovereign who foregoes the "degree of circumspection proportionate to the importance of the subject" inflicts on humanity a "black catalogue" of enormities.[99]

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[97]Vattel, Law of Nations, trans. Fenwick, p. 302; The people have to "defend" their states as best they can. Troops and other persons helping the war effort simply carry out the sovereign's will and are not responsible: p. 237.

[98]Ibid., pp. 223 and 246-47.

[99]Vattel, Law of Nations, ed. Chitty, p. 301.

Only after human beings fail to abide by reason does the extremity of war finally become just and expedient. "Force," Vattel judges, "is a wretched and melancholy expedient against those who spurn at justice and refuse to listen to the remonstrances of reason."[100]

Pre-emptive War

Vattel's approval of war from fear of attack indicates the limited reach of his last resort requirement. His prescriptions for pre-emptive war appear hesitant, shifting, and uncertain. A state that enhances its power may lawfully do so. Power by itself forms no threat.[101] On the other hand, Vattel relates, "There is perhaps no case in which a state has received a notable increase of power without giving other states just grounds for complaint."[102] Evidence of undesirable actions or a reputation of evil intentions may cause a neighboring state justly to require an explanation and a guarantee of good behavior.[103] If the requests go unfulfilled, war may justly result. There also exist "gentler means," such as the balance of power arrangement in which alliances provide a counterweight against the states that are feared.[104]

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[100] Ibid., pp. 301-2.

[101] Vattel, Law of Nations, trans. Fenwick, pp. 248-49.

[102] Ibid., p. 250.

[103] Ibid., pp. 249-52.

[104] Ibid., pp. 250-51.

Wars of Revolution and Religion

In addition to the just causes of self-defense plus the first strikes thought defensive, recovering property, and asserting what is due, Vattel approves two international adventures. Neither fit easily into specifications assigned the categories already justified. One cause applies to revolution; the other, religion. A distinction rightfully exists between fomenting revolutionary movements and coming to the aid of revolutionaries. A country violates the law of nations if it agitates another country's restless subjects into rebelling; yet, Vattel vows, "Any foreign power may rightfully give assistance to an oppressed people who ask for its aid."[105] Similarly, a nation may intervene abroad to help its co-religionists whenever they are being oppressed.[106]

Just Conduct

The ruler who directs a war wields a right to follow any course necessary toward defeating the enemy, provided such conduct is "not essentially evil and unlawful."[107] Natural law does not allow means that exceed the minimum necessary to achieve just causes.[108] Vattel discloses few

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[105] Ibid., p. 131.

[106] Ibid., p. 134; Wolff denied this right.

[107] Ibid., p. 280.

[108] Ibid., p. 279.

details concerning the minimum practices that insure just conduct during combat; he deals, instead, with post-war relationships. "A generous heart," he relates," feels nothing but compassion towards a defeated and conquered enemy." Ones enemies are "men and objects of sympathy."[109] Women, children, old men, the sick, men of letters, magistrates, and, to an extent, the clergy can usually be considered non-combattants and immune from violence.[110] Even so, all subjects of the enemy may lawfully be taken prisoner --although modern civilized states rarely capture women and children.[111] The position of captured combattants turns out to be even more ambiguous and dangerous. Vattel first announces that one ceases to possess a right to kill the enemy soldier once he surrenders.[112] On the other hand, the requirements of safety can legally compel the killing of prisoners in large numbers. Whenever such cases are decided, however, respect for humanity ought to stand for more than a nation's fears.[113]

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[109] Ibid., p. 284.

[110] Ibid., pp. 238 and 282-83.

[111] Ibid., p. 283.

[112] Ibid., p. 280.

[113] Ibid., p. 285.

Nineteenth Century International Law: The Grotian Tradition

Ward

In the pre-dawn of the nineteenth century, an English novelist and commentator on international law recognized that wars ought to be legitimate and that laws are natural as well as instituted.[114] Even as the embers of clericalism no more than flickered around the framework of the law of nations, he sought to re-introduce religion to displace natural law as its foundation.[115] Yet most international law writers during the nineteenth century intended international law to stay secular and contain only nature's law jointly with the laws of usage and treaty.

Kent

European and American jurists began turning out scholarly texts in international law and in jurisprudence, which, as a rule were ecclectic and broadly supportive of justice in war. One of the main exponents of the Grotian approach was an American judge and professor whose major work went through fourteen editions spanning the second

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[114] Robert Ward, An Enquiry into the Foundation and History of the Law of Nations in Europe, vol. 1 (London: A. Strahan and W. Woodfall for J. Butterworth, 1795; reprint ed., New York: Garland Publishing, Inc., 1973), pp. 12-13.

[115] Ibid., p. xxxv.

two-thirds of the nineteenth century. He taught that international law arose from positive law and natural law:

> The law of nations . . . consists of general principles of right and justice . . . a collection of usages and customs, the growth of civilization and commerce, and a code of conventional or positive law.[116]

Nations hold the right, even face the duty, to go to war for self-protection. He dictated that war must be an absolute last resort and that war has to be less burdensome than the peace it deserts, i.e., have proportionality.

Wheaton and Polson

In a volume popular enough for new editions to be published well into the twentieth century, a positivist American jurist and diplomat simply took note that any war begun in proper form must be considered just on both sides.[117] Still, the Grotian approach continued to attract commentators, who recurrently acted both as observers and advocates. An English barrister pointed to the discrepancies of the mixed approach not as lacking logical neatness but as a matter of fact. He observed that the law of nations is based in the main on the law of nature but includes many

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[116] James Kent, Commentaries on American Law, 2nd ed., vol. 1 (New York: O. Halsted, 1832), p. 3.

[117] Henry Wheaton, Elements of International Law, 4th English ed., rev. J. B. Atlay (London: Stevens and Sons, Ltd., 1904), pp. 416-17. (First published in 1836.)

practices repugnant to the law of nature.[118] In this manner the law of nations respects the rights of states to carry on warfare but does provide for just conduct. The law of nations prohibits barbarous customs and allows nothing more than military necessity: "It condones all cruelty not absolutely necessary."[119]

Wildman

A second English lawyer, who leaned more toward positivism, still admitted the law of nature to international law, although he insisted that natural justice must be sanctioned either by usage or legislation in order to achieve any legality.[120] As might be expected, he assigned legality to the effects of unjust and just wars; but he considered legal causes to be identical with just causes. For a man's cause to reflect justice, grounds must be clear. Potentially just causes included response to invasion or other violent aggression, obviously aggressive gathering of armies, and violation of legal rights or duties.[121]

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[118] Archer Polson, Principles of the Law of Nations (London: John Joseph Griffin and Co., 1848), p. 3.

[119] Ibid., pp. 36-40.

[120] Richard Wildman, Institutes of International Law, vol. 1: International Rights in Time of Peace (London: William Benning & Co., 1849), pp. 3-4.

[121] Wildman, Institutes, vol. 2: International Rights in Time of War (London: William Benning & Co., 1850), p. 2.

Twiss

Still a third English legal expert, who served as counsel to Queen Victoria, set down that a "good cause" for engaging in war exists in the event that one nation has injured or is threatening to injure another nation. Hostilities, however, have to come about solely as a last resort. Friendly negotiations must precede hostilities and must have failed or have been too hopeless or overly dangerous to even pursue.[122]

A nation in the wrong fights an unjust war and should not do so--not even to defend itself. Defensive war, then, is "not necessarily a just war." It does always mean repelling an actual or threatened attack; and offensive war attempts to secure payment for damages.[123] Each nation maintains the "cardinal right" of self-preservation but must respect the same right in each of the other nations in the "fellowship."[124] For international society is simply "the most enlarged phase of natural society."[125]

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[122]Travers Twiss, The Law of Nations Considered as Independent Political Communities: On the Rights and Duties of Nations in Time of War (Oxford: At the Clarendon Press, 1863), pp. 54-55.

[123]Ibid.

[124]Travers Twiss, The Law of Nations Considered as Independent Political Communities: On the Rights and Duties of Nations in Time of Peace (Oxford: At the Clarendon Press, 1861), p. 144.

[125]Ibid., p. 8.

Woolsey

An American educator, who advocated a mixed approach to international legality, listed six just causes covering a broad range of activities. International law contains both positive and moral relationships; international morality forms as much a part of international law as does the "jural sphere."[126] All standards must measure up to what has been divinely placed in the nature of individual human beings. Nations are divinely obliged to protect themselves and may (1) protect their political lives and territory; (2) defend the rights of their residents; (3) fight for honor, if serious enough; (4) fight when treaty rights are abridged; (5) engage in pre-emptive strikes, including redress of the balance of power; and (6) step in to defend the religion or liberty of other nations. When states go to battle, however, they must do so as a last resort and then, not unless the war's evil is proportional to the cause. Even if last resort and proportionality are present, arbitration would be more frequently preferable to war.[127]

Halleck

Shortly after the American Civil War (1861-1865), a major-general, who had served as the Union Army's

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[126]Theodore D. Woolsey, Introdution to the Study of International Law, 2nd ed. (New York: Charles Scribner, 1864), pp. 17-19. (First published in 1860.)

[127]Ibid., pp. 188-90.

chief-of-staff, indicated that every lawfully declared war might be considered legally just--even on both sides--but not genuinely just.[128] He agreed with the often-repeated understanding that international law is either accepted by custom or promulgated by written convention; but he subjected the legitimacy of each method to the test of natural law.[129]

International Law in the Positivist Interlude

Its Character

From the ninth decade of the nineteenth century until the First World War, positivism took the lead in discussions of international law but did not itself produce many of the comments made in international law concerning the justice of war. Positivism both enlisted more advocates than before and consumed a greater share of the ecclectic outlook. As international law writers assumed a somewhat stable system of independent nation-states pursuing their national interests, they largely neglected justifying recourse to war and most often took matters of just conduct for granted. Even reason of state as an excuse for war was merely thought normal rather than really asserted.

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[128] H. W. Halleck, International Law (San Francisco: H. H. Bancroft & Co., 1861), pp. 347-48.

[129] Ibid., pp. 50-51.

Pollock and Lawrence

The ordinary positivist-leaning authors during this high point of positivism in international law did not glory in a distaste for justifying war. When authors did relate to the subject, they often variously differentiated moral observance from legal function. One such positivist professor of jurisprudence in England agreed with traditional international law that states share duties but imagined some of the duties "as positive and others as only honorable," distinguishing between law and morality.[130] He simply asked how one can classify wars as unjust without providing adequate legal sanctions. Actual practice indelibly impressed such writers as they researched history and the world scene then current; but, unlike what behavioralists later might guess, they could seldom completely forget ethical considerations. As the century came to a close, a positivist Cambridge professor showed how far the trend could go as he announced:

> Modern international law knows nothing of these moral questions. It does not pronounce upon them: it simply ignores them. To it, war, whether just or unjust, right or wrong, is a fact.[131]

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[130] Frederick Pollock, Essays in Jurisprudence and Ethics (London: Macmillan and Co., 1882), pp. 34-35.

[131] T. J. Lawrence, The Principles of International Law, 3rd ed. (Boston: D. C. Heath & Co., 1900), p. 292. (First published, 1895.)

Lawrence, Hall, Maine, and Baker

Another English legal writer observed that, since international law claims to cover state relations--including war--law ought to decide between just and unjust wars. Yet the process proves too difficult.[132] After initially making a strong case for positive law,[133] he then states that nations hold their rights and duties because of the facts of their nature. They own the right of self-preservation but also possess duties resulting from their moral natures. The nature of nations binds them to follow their duties of "good faith, of concession, of redress for wrongs, of regard for the personal dignity of their fellows, and, to a certain extent, of sociability."[134] All that international law appears capable of applying to war pertains to customary rules that determine the necessary maximum level of violence, i.e., just conduct.[135]

An English Grotian professor and jurist refused to separate moral requirements from international law proper. The law regulating nations consists of both natural and positive law: it includes "general principles of right and justice . . . a collection of usages, customs, and opinions,

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[132]William E. Hall, A Treatise on International Law, 4th ed. (Oxford: At the Clarendon Press, 1895), pp. 63-64. (First published in 1880.)

[133]Ibid., pp. 2-5.

[134]Ibid., pp. 62-63.

[135]Ibid., p. 66.

the growth of civilization and commerce, and of a code of positive law."[136]

A barrister, editor, and author construed the term "international rules" rather than international law as best describing principles of international behavior because they provide no sanctions. These rules appear "congenial to the feelings of our nature."[137] According to international rules, the just causes of war consist of protecting persons from injury and insults, guarding property, and getting what is due, including reparations.[138]

Salmond and Oppenheim

Positivists fell into a trap between applying justice to war, which suggested a meaningful standard, and not requiring justice for war, which left a significant issue area glaringly uncovered. The solicitor-general of New deliberated upon war in a context of international law and justice, although he concluded that law did not usually control war. Despite the lack of judicial force behind an international law of war, he deemed just war to be the "only kind of war which can be regarded as an essential form of state activity."[139] A German immigrant to England

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[136]Maine, International Law, pp. 32-33.

[137]Sherston Baker, First Steps in International Law (Boston: Little, Brown, & Co., 1899), p. 17.

[138]Ibid., p. 175.

[139]John W. Salmond, Jurisprudence (London: Stevens and Haynes, 1910), pp. 95-96.

offered a way to partially evade the positivist dilemma. At a time when most Europeans felt themselves highly civilized, he did away with the problem by thinking it solved. "The number of wars diminishes gradually every year, and the majority of European wars during the nineteenth century were . . . necessary and, therefore, just wars."[140]

Maxey, Taylor, Davis, and Wilson

Across the Atlantic, during the same year an American law professor stiffly recorded that, legally, each state must decide just causes for itself, but that every state has a moral obligation to other states not to take war lightly nor to begin hostilities, except as a last resort.[141] He cited Vattel's imperatives at length. An American lawyer and diplomat had earlier outlined with approval the theories of Vattel.[142] A Senator chairing the foreign relations committee had written that nations naturally judge for themselves but that resorting to war without the just cause of protecting rights, would be "entirely unjustifiable and wicked."[143] Some American professors

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[140] Oppenheim, International Law, p. 71.

[141] Edwin Maxey, International Law (St. Louis: The F. H. Thomas Law Book Co., 1906), p. 388.

[142] Hannis Taylor, A Treatise on International Public Law (Chicago: Callaghan & Company, 1901), pp. 451-53.

[143] Cushman H. Davis, A Treatise on International Law (St. Paul: Keefe-Davidson Law Book Co., 1901), pp. 139-40.

chose to tender little more than recognition that war among contending states implied legal force recognized by the law of nations.[144]

Just Conduct and Peaceful Settlement

Just Conduct

By the nineteenth century international lawyers of all persuasions had united in supporting just conduct in warfare (the jus in bello). Such laws of war--as the legal writers increasingly chose to designate them--had become a salient fact in the international community. The so-called civilized nations universally recognized the principles of just conduct, widely agreed on its details, and even managed to practice some of it. International law was called on to record a growing body of regulations providing for jus in bello.

Peace Groups

As the century progressed, just conduct became all the more tied to the efforts made by advocates of general peace. From the Napoleonic era to the First World War, an attitude of "horror and reprobation of war" coincided with the building up of armaments.[145] Private individuals

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[144]George C. Wilson, Handbook of International Law (St. Paul: West Publishing Co., 1910), p. 241; Amos S. Hershey, The Essentials of International Public Law (New York: The Macmillan Co., 1919), p. 349.

[145]Lawrence, Principles, p. 460.

spoke alone or formed organizatons; and governments negotiated rules. Peace advocates set up societies in England, Germany, France, Italy, Austria, the Netherlands, Scandinavia, and in America.[146] They ranged from absolute pacifists to those persons hoping to mitigate the frequency and destructiveness of war. Their outlooks were predominantly secular, but often religious. Yet they uniformly condemned both the continuance of war as an institution and the tragic acts of war. While individuals and groups protested and recommended, governments themselves began to make greater efforts toward preventing war and restricting conduct.

The Terms of Just Conduct

Propositions concerning just conduct asked: (1) that the general character of the war be as humane as possible, (2) that the damage and loss be limited to military necessity, and (3) that certain things not be done at all. The injured and ill on all sides were to be provided care. No harsh treatment or slavery of prisoners was to be tolerated. Armies were forbidden to pillage. Immunity from harm was to be guaranteed several classifications of persons. The exclusion of certain kinds of weaponry was to prevent useless destruction of the enemy and his property

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[146]Bainton, Christian Attitudes, pp. 190-91.

by the magnitude of the weaponry or its inability to be targeted discriminately.

Three Areas of Peace Organization

Proposals to promote peaceful settlement concentrated on three areas: (1) arbitration and mediation; (2) united action for arms reduction; and (3) permanent international organizations such as courts, unions, confederations, and federations. An institutional arrangement might utilize plans covered by the first two categories.

Building Just Conduct and Peaceful Settlement

Bilateral Treaties

Although interest in just conduct had grown rather steadily in the writings of international law and elsewhere, some of the oldest organized attempts to arrive at peace, which still shined brightly in the eyes of international lawyers, fared more dimly in actual practice. The uneven development of arbitration meant that it was little used for the first three hundred years of the modern state system. Renewal of arbitration was signaled in the Jay Treaty of 1794 between the United States and Great Britain providing for comissions to settle boundaries, debts, and war losses.[147]

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[147]The text: Hunter Miller, ed., Treaties and Other International Acts of the United States of America, vol. 2 (Washington: U.S. Government Printing Office, 1931), pp. 245-74.

The United States and Prussia had already bilaterally formalized just conduct with the Treaty of 1785. The twenty-third article of the agreement excluded unarmed towns from being attacked in the event of war and listed groups of persons to remain unmolested. Those immune from harm included women and children, farmers and fishermen, artisans and manufacturers, and scholars. The twenty-fourth article extended protection to prisoners of war.[148]

Congresses and Conventions

By the mid-nineteenth century international congresses, conducted mainly by diplomats, began to legislate the traditional concerns of just conduct and peaceful settlement. Governments unilaterally adopted their own codes of behavior. Permanent international organizations to relieve suffering and to promote peace came into being.

In 1856, the first of these efforts produced the Declaration of Paris, which regulated contraband and blockage in naval warfare.[149] The second significant development came seven years later with specifications for many aspects of conduct on land including recognition of non-combattant rights. At the request of General Henry W. Halleck, who himself was to be a writer in international law, Professor

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[148]The text: Ibid., pp. 162-84.

[149]The text: Leon Friedman, ed., The Law of War: A Documentary History, vol. 1 (New York: Random House, 1972), pp. 156-57.

Francis Lieber drafted the Instructions for the Government of Armies of the United States in the Field.[150] The Lieber Code strongly impressed Europeans and figured in the work of subsequent international congresses and the military codes of other nations. The year following the introduction of Lieber's manual, the Geneva Convention of 1864 launched the International Red Cross, which set about caring for the wounded and sick. The humanitarian reforms of the Red Cross were assisted through international meetings in several cities, including Paris and Berlin, over the next four decades until a revised convention was signed in Geneva in 1906.[151] In the meantime, the Declaration of St. Petersburg in 1868 sought to check the use of exploding projectiles; and the Declaration of Brussels in 1874 furnished a long list of just conduct depending on law and custom. This document did not complete ratification; but it did early spadework for the Hague conferences.

Czar Nicholas II of Russia issued a call in 1898 for an international congress. The czar's first intention was to explore disarmament. He and his advisors appear to have been motivated partially by the arguments of a Warsaw banker who warned that persisting in an arms race would result in "either ruin from the continuance of the armed

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[150]The text: Ibid., pp. 158-86.

[151]The texts: Ibid., pp. 187-91 and 257-69.

peace or a veritable catastrophe from war."[152] He foresaw that a future war would be a total war fought for total victory.[153] Neither the Hague Conference of 1899 nor the Hague Conference of 1907 produced disarmament. They did compose the Convention of the Pacific Settlement of International Disputes, signed in 1899, and another in 1907. These agreements prepared for arbitration, mediation, and inquiry.[154] The Permanent Court of Arbitration was born in 1899. Other conventions dealt with related matters such as contract debts and the opening of hostilities.[155]

The major result of the Hague conferences, however, was a number of conventions applying just conduct.[156] Regulations were drawn pertaining to land, maritime, and even an instance of aerial warfare. Particular attention was accorded assistance to the wounded, humane treatment of prisoners, respect for hospital ships, rejection of exploding bullets, and guaranteed status of enemy merchantmen and neutrals. Over and over again nations pledged not to pillage. Repeatedly they promised to avoid unnecessary destruction, their main criterion of just conduct.

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[152] I. S. Bloch, The Future of War in Its Technical, Economic, and Political Relations (Boston: Ginn & Co., 1902), p. 355.

[153] Ibid., p. 120.

[154] The texts: Friedman, Law, pp. 204-20 and 270-79.

[155] The text: Ibid., pp. 298-307.

[156] The text: Ibid., pp. 204-323.

Conclusion

Swiftly and coherently after Grotius, international law set out to explore and establish provisions of the just war (bellum justum) both in relation to justice going into a war (jus ad bellum) and in reference to fighting a war (jus in bello). Contrary to a contemporary misinterpretation, the jus in bello, the laws of war, or just conduct formed an integral part of the bellum justum. International law gradually became more positive; but positive international law, from whatever source, was built onside the framework of natural law. Consequently, most international law writers pursued the Grotian or mixed approach. Despite the contemporary invention of some sort of Austinian-like international law supporting a nineteenth century world of ever more blood-thirsty nation-states, such partners and partnership never existed. Nor was the just war limited to the field of international law. In other areas of civilization the two main tendencies of the just war in international law held true. These two trends were the effort to diminish the misery of war as much as possible and, yet more significant, the maturing belief that defense constitutes the only just cause.

CHAPTER SEVEN

THE MODERN JUST WAR 1650-1919:

PART TWO--POLITICAL THOUGHT

While a terrible madness pulverizes
And makes a hundred thousand men a smoking pile
--Poor dead! in the summer, in the grass, in
your happiness
Nature! O thee who make these men sacredly.

--Arthur Rimbaud, "Le Mal"[1]

Overview

Political thinking from 1650 to 1919 recognized the fact and need of justifications in both the broad area concerning going into war (jus ad bellum) and the sphere of justice while fighting a war (jus in bello). Besides international law writers, political philosophers and a host of other political commentators of numerous concerns and persuasions generated an analysis and communication of political thought unparalled during any previous age.

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[1]Arthur Rimbaud, Oeuvres poetiques (Paris: Garnier-Flammarion, 1964), p. 51. (Translation mine.)

Consistent with the long-term development of the several required just war (bellum justum) categories, the overall respectability of war met heavy resistance. The few persons who praised the virtues of war plainly played the lesser role. Even though the centuries following 1650 witnessed the creation (e.g., the United States), consolidation (e.g., Germany), liberation (e.g., Greece), and expansion (e.g., Russia) of many nation-states, the entire period features a remarkably prolonged and accelerated discrediting of war by political thought.

Thomas Hobbes

Unappreciated

The English philosopher Thomas Hobbes (1588-1679), universally accepted as having a major impact upon civilization, has been roundly misunderstood and neglected by contemporary analysits in regard to conflicts among nations. Political theorists have failed to accurately describe his international state of nature; and they have not discovered his important concern with just causes of war and last resort, much less his slight recognition of just conduct.

Why Men Fight

Hobbes did undoubtedly perpetuate a picture of mankind as ruthlessly slefish. Moreover, his style was

forceful; his logic, compelling; and his audience, considerable.[2] Consequently, contemporary international relations writers often have stretched his ideas to the point of expecting nation-states to behave permanently and constantly with fierce hostility. Hobbes did view persons as naturally self-seeking, which drove them to be dangerously aggressive toward each other. His human beings, however, could be distinguished from the craven, erratic, low, and sinful creatures known especially to Augustine and the Reformation. Hobbes himself asserted that he did not "accure man's nature."[3] In the absence of law, which must be made by a sovereign, "The desires and other passions of man are in themselves no sin."[4] Law must be established before there can be injustice; because injustice occurs whenever one breaks a covenant.[5] Human beings fight basically because they attempt to dominate other persons in order to serve their own interests. Hobbes thinks of this "will to hurt" as uniformly defensive for all and not as "equally to be condemned" as vainglory.[6]

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[2]Richard Hofstadter, The American Political Tradition (New York: Vintage, 1974), p. 20: The American founding fathers "assumed the Hobbesian war of each against all."

[3]Thomas Hobbes, Leviathan, ed. Michael Oakeshott (Oxford: Basil Blackwell, 1960), p. 83.

[4]Ibid: This passage is less known for its intrinsic meaning than for its taint of atheism.

[5]Ibid., pp. 84 and 94.

[6]Thomas Hobbes, De cive or The Citizen, ed. Sterling P. Lamprecht (New York: Appleton-Century-Crofts, 1949), p. 24.

Internal Peace

Hobbes also offered a stronger hope than Augustine for establishing order sufficient to harness the tumultous life of man. His cardinal concern was to provide peace within society for the protection of the individual. This obsession with security led to a proposed surrender of all civil power of the head of each sovereign state.

Sovereign Duty

War among nations does not entail the hardship that would characterize a state of nature among individuals. War shows itself to be part of a positive--though not totally reasonable--process through which autonomous rulers provide security:

> Persons of sovereign authority . . . are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing, and their eyes fixed on one another . . . which is a posture of war. But because they uphold thereby, the industry of their subjects; there does not follow from it, that misery which accompanies the liberty of particular men.[7]

War is bad but a reality that rulers must manage. Persons prefer peace because they fear dying[8] and because they desire to live materially well. Making war for profit is like casting dice "wherewith many lose their estates, but few improve them." Gathering booty no longer

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[7]Hobbes, Leviathan, p. 83.

[8]Ibid., p. 84.

is thought "just and honourable." Armies most commonly decrease a people's wealth.[9] Still, the sovereign's duty to promote the welfare of his subjects does require that a military establishment be kept in advance of peril, that public money be accumulated also before a need might arise, and that spies be used to acquire information.[10] Internal fighting can be made less likely if the ruler insures that "public burtherns" are equally placed and borne.[11]

Limited Power and the Individual

War reveals a residual limitation to the purportedly unlimited power of the Hobbesian ruler. Although holding an obligation to obey his ruler's commands and to defend the society, to an extent the subject reserves to himself the final authority over the destruction of his physical person. Proper authority to make peace and war conducive to the public good, Hobbes would certainly center in the sovereign.[12] This unity of power is essential for the "common defense."[13] Each person holds an obligation to fight under this authority for the country. "When the defense of the commonwealth requireth at once the help of

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[9]Hobbes, De cive, pp. 150-51.

[10]Ibid., pp. 144-46.

[11]Ibid., pp. 146-47.

[12]Hobbes, Leviathan, p. 117.

[13]Hobbes, De cive, pp. 73-74.

all that are able to bear arms," Hobbes says, "everyone is obliged."[14] Society, nonetheless, exists more for self-regard than for mutual-regard.[15] "A man," Hobbes writes, "that is commanded as a soldier to fight against the enemy . . . may, nevertheless, in many cases refuse without injustice."[16] He may be excused from service because he is afraid or in the event he chooses to hire a substitute.

Doing Unto Others as . . .

Every state operates on a basis of sovereign equality witbin the law of nations. "The law of nations and the law of nature," Hobbes defines as "the same thing." Each ruler possesses "the same right in procuring the safety of his people that any particular man can have in procuring the safety of his body."[17] To exist subject to the law of nature means that a party lives in a state of nature vis-a-vis other parties. The Hobbesian state of nature does not signify that nations carry a license to prey on one another.[18] The laws of nature have been summarized into

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[14]Hobbes, Leviathan, p. 143.

[15]Hobbes, De cive, p. 24.

[16]Hobbes, Leviathan, p. 142.

[17]Ibid., p. 232.

[18]For one of the few analyses of Hobbes regarding international war, see Richard H. Cox, Locke on War and Peace (Oxford: At the Clarendon Press, 1960), p. 145: "But for Hobbes, the law of nature is the law of nature." Cox, like other commentators, misreckoned Hobbes to mean total pandemonium.

a rule that everyone can understand: "Do not that to another, which thou wouldest not have done to thyself."[19] The state of nature, as viewed by Hobbes, turns from the traditional conception of a golden abstract ideal to a reasonable attempt to represent reality.

Last Resort and Just Conduct

The importance of just cause, last resort, and even recognition of just conduct meant that the "mere state of nature" in international affairs was, in fact, restrained. Contrary to the ordinary interpretations of Hobbes, the fifth chapter of De cive starts by acknowledging some measure of restricted behavior. In the past, regarding civil and natural laws, "in the war of nation against nation a certain mean was want to be observed."[20] The fifteenth chapter of the Leviathan rules in regard to mediators in such a way that it may be taken as applying to the external affairs, as well as the internal affairs, of civil society. Because peace is "the end," mediators of peace must be permitted safe conduct. Hobbes states, "It is a law of nature, that all men that mediate peace be allowed safe conduct."[21] Last resort is not only granted, it is considered vital. Right reason or the law of nature commands that, before

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[19]Hobbes, De cive, p. 103.

[20]Ibid., p. 63.

[21]Hobbes, Leviathan, p. 102.

going to war, one first seek peace "where there is any hope of obtaining it."[22] Just cause is even more basic, for defense bids one to abstain from providing just causes to a potential opponent.

Just Cause

The idea of just cause in war holds a critical place in the political theory of Hobbes. The most desirable situation for individual subjects is a secure, peaceful life at home. To his people, the sovereign bestows "no more to their civil happiness" than, "being preserved from foreign and civil wars, they may quietly enjoy that wealth which they have purchased by their own industry."[23] Not offensive wars, not even defensive wars are emphasized as the things "necessary to peace and common defense."[24] The sovereign must not place his subjects in jeopardy and fear by giving just cause to other nations. For him to do so violates his contract. He is not asked to do away with causes of war. It is not simply a cause of war that must be denied an assailant; it is a just cause of war:

> But first of all, it is necessary to peace, that a man be so far forth protected against the violence of others, that he may have no just cause to fear others, so long as he doth them no injury. Indeed, to make men altogether safe . . . is impossible . . . But

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[22] Ibid., p. 85; and Hobbes, De cive, p. 30.

[23] Hobbes, De cive, p. 144. (Underlining mine.)

[24] Ibid., p. 72. (Underlining mine.)

> care may be had, there is no just cause of fear; for security is the end wherefore men submit themselves.[25]

Benedict de Spinoza

The international state of nature reached a much higher degree of lawlessness in the perception of Benedict de Spinoza (1634-1677) than in the works of Hobbes and other well-known writers. The Dutch philosopher's political theory was, indeed, similar to that of Hobbes in its state of nature and its reliance on physical force as the compelling power behind law. To provide justice is to insure regular expectations. This legalistic treatment Spinoza could not carry over into the international sphere because no international civil order (in statu civili) exists. Not even treaties last past expediency because international contracts are bound by utility (utilitatis) alone.[26] The state resides among enemies. An enemy (hostis) is anyone outside the state who lives not as an ally nor as a sovereign subject.[27] The state has a right to force each enemy to become one of the two.

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[25] Ibid.

[26] Benedict de Spinoza, Tractatus Theologico-Politicus, in The Political Works (Oxford: At the Clarendon Press, 1958), p. 138.

[27] Ibid., p. 140.

John Locke

Defensive War

The English social contract philosopher, John Locke (1632-1704), opposed rule stemming from conquest and supported defensive warfare. Locke's Second Treatise of Government approved of defensive war as necessary for existence when violence arises in a state of nature. Locke approaches the choice to resist as the lesser of two evils. Because "the safety of the innocent is to be preferred . . . one may destroy a man who makes war on him."[28] Such a state exists whenever anyone professes by word or action his intention to harm another person. Protection of one's life presupposes defending one's material prosperity and freedom because both are necessities of life.[29] Fighting for freedom proves to be self-defensive in that absolute power over an individual makes possible his complete destruction.

Destruction opposes preservation in a state of nature. To form a political society one gives up the authority granted by nature to punish for oneself and turns it over to the public as a whole.[30] The society,

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[28]John Locke, Two Treaties on Civil Government, with an Introduction by Henry Morley (London: George Routledge and Sons, 1884), p. 199.

[29]Ibid., p. 200.

[30]Ibid., p. 235.

now organized to handle transgressions and disputes, decides only cases by law if they occur internally. "Injuries from without" are not treated by Locke as justiciable but something to be simply "vindicated."[31]

The Limits of Conquest

Fruits of victory in war fall directly into the path of Locke's consent of the governed and his solicitude for property. Legitimate political power originated solely from the "consent of those who make up the community."[32] When this trusteeship is violated it must be relinquished;[33] and, in the case of conquest by itself, it never will have existed. Conquest grants no rights to govern. The conquered may resist; but they should measure "the trouble and cost," i.e., the proportionality of armed revolt.[34] The conquerer does possess a despotical right over the lives of individuals to the extent they have assisted or agreed to an unjust war against his country.[35] This right extends no further than the degree of guilt of these particular persons. He may seize reparations from them only, subject to the restrictions of more urgent and better titles held by their families.[36]

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[31] Ibid., p. 236.

[32] Ibid., p. 282.

[33] Ibid., p. 269.

[34] Ibid., pp. 284-85.

[35] Ibid., p. 286.

[36] Ibid., pp. 287-90.

Proper Authority

The governments of various lands face each other in a state of nature.[37] The persons in each country have transferred to their governments their authority in relation to foreign individuals and countries.[38] The exercise for the public benefit of the powers of war and peace plus related matters must depend less on set laws, and more on ability, than does the use of other powers.[39] This "federative" power should be lodged with the executive.

Conclusion

John Locke became one of the most widely read philosophers to have written in English. His references to unjust and just wars did not force him to reveal much in specifics about justice, because a tradition dealing with just war already existed; however, he made his mark against offensive war and conquest. He certainly strengthened the plea for defensive intentions; and he attempted to limit conquest rights much more severely than international law was then doing. He created a reasoned, secular case supporting the traditional assertion that defense was the lesser of two evils. His common sense presuming away of offensive war, like his remarks on limits, rights, and

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[37] Ibid., p. 292.

[38] Ibid., p. 268.

[39] Ibid.

resistance, must have left a deep imprint on the minds of readers from early eighteenth century America to late nineteenth century India.

Charles de Montesquieu

The State of Nature

The French social contract philosopher, Charles de Montesquieu (1689-1755), wrote that peace would be the first law within a state of nature.[40] He considered Thomas Hobbes to have been unreasonable for interpreting human beings as aggressive in their original position. His own explanation placed individual persons in a much more generous light than did the theory of Hobbes. Only after men are in society do they produce a state of war between nations.[41]

Just and Unjust Practices

To justify war, Montesquieu juxtaposes from the circumstance of violence against persons living under a system of national law to the situation among nations. Because citizens have recourse to tribunals, they only employ natural defense in momentary cases when all would be lost were they to wait for the help of the law. Rather

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[40]Charles de Montesquieu, Esprit des lois (Paris: Librairie de Firmin Didot Freres, 1849), p. 6. This generosity, however, robs the individual of the responsibility that he held in the English tradition following Hobbes. Society bore a greater share of the blame. (Tranlation mine.)

[41]Ibid., p. 7.

than contrast the somewhat sheltered position of the citizen with the lawlessness of the state of nature among nations, he proceeds to justify not merely war but pre-emptive war:

> But between societies, the law of natural defense carries sometimes the necessity of attacking at the time a people sees that a longer peace will enable another to destroy it, and that to attack during that moment is the only way of avoiding this destruction.[42]

Montesquieu does assume, however erroneously, that governments would be capable of conscientious and accurate measurement whenever they fear being destroyed. For the right of nations to go to war derives from "necessity and strict justice." The arbitrary principles "of glory, of seemliness [the appearance of proper behavior], of utility" ought never be employed because such principles must flood the earth with blood.[43] A prince possesses no legitimate right to glory and could as well augment the power of his state through his reputation for justice.[44]

Conquest and Duty

Montesquieu's "droit de la guerre" essentially amounts to the just cause of defense. In that the rights of conquest deduce from the right of war, the conquerer ought to follow the same spirit. Consequently, after the war no right to kill or to enslave remains.[45] Four sorts

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[42] Ibid., p. 114. (Translation mine)

[43] Ibid. (Translation mine)

[44] Ibid.

[45] Ibid., p. 115.

of laws govern the case of conquest: the law of nature, the law which forms political societies, the law drawn from the matter itself, and the law of natural enlightenment, i.e., that which we are willing to do to others, we would want done to ourselves.[46] The law of nations, which results from the state of war, naturally requires nations to maximize good for each other in time of peace and to minimize the bad without damaging their own true interests.[47]

J. J. Rousseau

A Worse War

A native of Geneva, the philosopher, Jean-Jacques Rousseau (1712-1778), insisted that the relationsips between things, not the relationships between men, constituted war.[48] Man's natural instinct makes him peaceful and fearful; and he only turns warlike through "habit and experience."[49] War involves state versus state.[50] This situation arose, not inside an original state of nature, as Hobbes imagined, but afterwards. Political bodies removed the state of

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[46]Ibid. [47]Ibid., p. 7.

[48]Jean-Jacques Rousseau, Du contract social [Of the Social Contract], in Oeuvres completes, vol. 3 (n.p.: Editions Gallimard, 1964), p. 357.

[49]Jean-Jacques Rousseau, That the State of War Is Born from the Social State, comp. John H. Mason, The Indispensable Rousseau (London: Quartet Books, 1979), p. 107.

[50]Rousseau, Du contract, p. 357.

nature among individuals but retained it among themselves. Wars among states came to exhibit much more "inconvenience" than ungoverned conflicts among individuals:

> Men massacred each other by thousands without knowing why and committed more murders in a sole day of combat and more horrors in capturing a single town than were committed within the state of nature during entire centuries over the whole face of the earth.[51]

Just Conduct

Rousseau's approach to conduct during and after war involved a minimum of force and no rewards to encourage conquest. Rousseau claimed, "Now war bestows no right but that necessary for its end."[52] The just prince respects the person and property of private individuals. Following hostilities, neither a slave created by war nor the conquered as a people holds any obligation to obey the conquerer.[53] Still Rousseau's observations of international practice made room for military necessity in a system that expected disagreements among states to continue producing wars. He even opposed the suggestions made by the Abbe' de St. Pierre for a European confederation.[54]

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[51] Jean-Jacques Rousseau, Discours sur l'origine et les fondements de l'inegalite [Discouse on the Origin and Foundations of Inequality], in Oeuvres, vol. 3, p. 179. (Translation mine.)

[52] Rousseau, du contract, pp. 357-58.

[53] Ibid; Rousseau's opinion coincided with Locke's.

[54] Jean-Jacques Rousseau, Project for Perpetual Peace, in Indispensable, p. 106.

Conclusion

Rousseau believed that nations ought to behave themselves, but thought that they probably would not. He settled for granting them meager rights of war. Though he died even before the first year (1789) of the French Revolution, his attitudes toward going to war and practices during war would have been more at home among a number of international lawyers at the end of the nineteenth century.

Voltaire

In Candide, French encyclopedist, Voltaire (F. M. Arouet, 1694-1778) considered the causes and effects of war to be equal between antagonists. No just causes entered in as two opposing armies engaged in boucherie heroique. His story of Candide's troubles and pleasures represented human beings capable of both the most dastardly behavior and truly altruistic deeds. His approach to civilization's corrupt and unjust institutions displayed a rational emphasis of the possible. Through his satirical thrusts at the foolishness of the blind, deterministic belief by the character Pangloss that everything always turns out for the best, he cut into exaggerated, unwarranted rationalism--the very ediface of which he was supposed to have been such a pillar. He coupled his satire with vivid description of the victims of war:

> Here, old men riddled with wounds behold their wives with slashed throats, their infants clinging to their bleeding breasts. There by them, daughters gutted after having satiated the natural needs of some heroes, emit their dying gasps. The others, half-burned, cry out that someone finish granting their death. Some brains are scattered on the earth near severed arms and legs.[55]

Joseph de Maistre

Denial of Human Will

The French Catholic, Joseph de Maistre (1754-1821), draped a burden of hopeless violence over the clock that ticked the early years of the nineteenth century. His dark message outdid Augustine and Hobbes in removing war from the control of human will. War was not so much a struggle for existence as expiation by the wicked until the day of total destruction. Other justification of war scarcely received a hearing.

Punishment by Divine Will

De Maistre decided that the various explanations for war had been in error. Human beings cause war because, "It is we who render necessary all physical evils."[56] War cannot correctly be explained by glory in itself, be blamed

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[55]Voltaire, Candide, ou l'optimisme, in Oeurves choises de Voltaire, vol. 31 (Paris: Chez P. Dupont, Libraire, 1826), p. 234. (Translation mine.)

[56]Joseph de Maistre, Les soirees de Saint-Petersbourg, vol. 2 (Paris: Librarie Garnier Freres, n.d.), p. 21. (Translation mine.)

on rulers, or be attributed to the state of nature.[57] War is the instrument of divinely-predestined punishment of the human race.[58]

Omnipresent Violence

Mankind is surely social, but indeed violent. Theories have perpetuated an imaginary state named "the state of nature."[59] Good sense, though, plainly tells everyone that society is as ancient as mankind.[60] Never has there been an absence of society, domestic or international. Even an international organization for peace would have been tried by nations in the same manner as civil jurisdictions, except for a mysterious and terrible law that has demanded human blood.[61] De Maistre believed that "within the vast domain of living nature there reigns a manifest violence."[62] Of the consuming struggle to death, he wrote:

> Thus, it is accomplished without ceasing, from the mites up to man, the great law of violent destruction of living beings. The entire earth, continually imbibed with blood, is nothing but an immense alter.[63]

Soldiers as Executioners

Operating at the pinnacle of this constant destruction is man, le regne animal; for, "His tables are covered

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[57]Ibid., pp. 10, 21, and 17. [58]Ibid., p. 23.

[59]Ibid., p. 17. [60]Ibid., p. 12. [61]Ibid., p. 13.

[62]Ibid., p. 21. (Translation mine.)

[63]Ibid., p. 24. (Translation mine.)

with corpses."[64] He is charged even with slaughtering his own kind; and to accomplish this law, he must use war.[65]

Although most wars have been unjust, they have been necessary because men are coupables mortels.[66] Yet the soldier must conduct himself professionally. To achieve his extreme nobility, the soldier must exercise his functions as executioner without baseness; he must confine himself to killing his equals with the arms of his state.[67] Politics, however, is "so little governed" by considerations of justice. Justice does not determine success in war; heaven assigns the victories.[68]

Immanuel Kant

Themes

The writings of German philosopher, Immanuel Kant (1724-1804), feature three major themes concerning war: (1) that of just behavior--prohibiting unjust cause and unjust conduct; (2) that of an international organization assuring peace; and (3) that of actually glorifying war.

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[64] Ibid., pp. 22-23. (Translation mine.)

[65] Ibid.

[66] Ibid., pp. 5 and 21.

[67] Ibid., pp. 6-7.

[68] Ibid., pp. 28-29.

Just Behavior

Escaping the Natural Condition

First, wars should not involve acts that would destroy the common trust indispensable for future peace.[69] Nations possess only the right to conduct war in a way that it remains "possible to pass out of that natural condition."[70] This situation is the state of war.[71] Not peace but war is the natural state (status naturalis) among contiguous human beings.[72] Even though natural, the state of nature is intrinsically wrong.[73] "Nowhere," observes Kant, "does human nature appear less lovable than in the relations of whole nations to each other."[74]

Just and Unjust Causes

Each nation, presiding as its own judge, may exercise its independent right to go to war whenever it is overtly injured by the action of another state, but not for the

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[69] Immanuel Kant, Perpetual Peace, ed. Lewis W. Beck (Indianapolis: Bobbs-Merrill Co., 1957), pp. 7-9; Immanuel Kant, The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right, trans. W. Hastie (Edinburgh: T. & T. Clark, 1887), pp. 220 and 223.

[70] Kant, Philosophy, p. 219. [71] Ibid., p. 214.

[72] Kant, Perpetual, p. 10.

[73] Kant, Philosophy, p. 215.

[74] Immanuel Kant, On the Old Saw: That May Be Right in Theory but It Won't Work in Practice, trans. E. B. Ashton (Philadelphia: University of Pennsylvania Press, 1974), p. 80.

purposes of extermination, subjugation, or punishment.[75] The pursuit of just causes is clearly tied to just conduct; and both of these just war criteria must avoid defeating the final goal of a permanent peace.

Prohibited Conduct

Certain means may not be employed at all in war and the rights of conquest must be expressly limited. Prohibitions during the time of fighting include spying, assassination, falsifying news, and plundering.[76] Goods should be taken only by requisitioning from enemy citizens, with receipts given for them to seek compensation from their governments.[77] No territory may be annexed and no slavery imposed.[78] Prisoners need to be freely returned.[79]

International Organization

Secondly, Kant believed that the nations of the earth were moving toward unity to preclude war. Just as the civil state was formed, the cosmopolitian constitution has to come into being.[80] Violence spawns misery, and misery brings unity. Growing civilization will produce ever

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[75]Kant, Philosophy, pp. 218-19.

[76]Ibid., p. 220.

[77]Ibid., p. 221.

[78]Ibid., pp. 221-23.

[79]Ibid., p. 221.

[80]Kant, Old Saw, pp. 78-79.

more wars at increasingly higher costs. Because the people must pay the costs, they will take control; and because they are unlikely to desire poverty, they will refuse to undertake war for such causes as expansion and repaying insults.[81] As other nations likewise begin to behave in the more just manner, all will join in together. They will forsake lawlessness by allying not into a "cosmopolitan community under one head," but into a confederation, which Kant called a "federation under jointly agreed international law."[82]

International peace would require that each state possess a republican constitution, that persons be guaranteed the right to hospitable travel, and that a league of peace (foedus pacificum) be charged with establishing international law.[83] Nations would organize voluntarily and would retain the option to withdraw. Rather than to inaugurate a complete and immediate peace, the plan was to create an "approximation" of perpetual peace.[84]

Glorification of War

The third Kant theme stands directly at cross purposes to his concerns about just war and organizational evolution towards peace. Kant falls victim to romanticizing

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[81] Ibid., p. 79.

[82] Ibid.

[83] Kant, Perpetual, pp. 11, 21, and 16-18.

[84] Kant, Philosophy, pp. 224-25.

war and denigrating peace by employing such familiar notions as exaltation of bravery, worry about manliness, and even the ancient bias against commercialism. Aesthetic judgment pays higher respect to the general for his fearless courage than it accords the statesman. War, assuming it is conducted with the just conduct due civilians, waxes sublime; and the more perilous the war, the more sublime it becomes. Kant taught:

> War itself . . . has something sublime about it. . . . On the other hand, a prolonged peace favours the predominance of a mere commercial spirit, and with it a debasing self-interest, cowardice and effeminacy, and tends to degrade the character of the nation.[85]

G. W. F. Hegel

War as Destiny and Benefit

The theory that war is inevitable reached its apex in the writings of the German idealist philosopher, Georg Wilhelm Friedrich Hegel (1770-1831). Moreover, Hegel reaffirmed the complimentary idea that war produces good. To the old notion, repeated by many other Christians following Augustine, that war is divinely predistined, with reasons externally mysterious to man, Hegel brought abstract explanations.

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[85] Immanuel Kant, Kant's Critique of Aesthetic Judgment, trans. James C. Meredith (Oxford: At the Clarendon Press, 1911), pp. 112-13.

The State as Absolute Individual

The abstractions of Hegel do not treat war from the ethical and material standpoint of the individual nor do they admit a concrete view of collective morality and prudence. The Hegelian position lurks on the extreme edges of political thinking. The state becomes completely personified, while the rights and interests of human beings are dismissed as ultimately transitory and unreal. Persons become trivial (though still dutybound to sacrifice themselves in war) by being regarded as accidental. Human beings are lost within the absolute individual, the state, which has an end more important than the protection of their persons and their property--both material.[86]

The Real Case: War as Necessity

War is necessary for the state to attain full consciousness of its individuality, i.e, the mind achieving freedom by completely knowing its separateness. The state really conquers necessity because the state is free of the necessary mortality of warfare. Still war is necessary for the state. Here lies the contradiction in Hegel's conception of inevitable war.[87]

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[86]G. W. F. Hegel, Hegel's Philosophy of Right, trans. T. M. Knox (Oxford: At the Clarendon Press, 1949), pp. 208-10.

[87]Ibid.

The history of the world is the development and realization of the spirit, i.e., God's will.[88] Destiny is not a blind, non-rational product of might; rather, the universal mind that is becoming actualized is reason.[89] Reason works through will and will utilizes the states: "The state is the march of God in the world."[90]

Sovereign Equality under International Law

Each separate state represents a particular manifestation of the divine idea in the world.[91] Like the international lawyers of his time, Hegel attested to the sovereign equality of states. States see each other as such, and each one keeps "absolute value" even during war.[92] Reciprocal recognition itself has implied a covenant.[93] Hegel's international system discards the unbridled state of nature. Although a contract between an individual human being and a state would be impossible in that it assumes the person's separate existence, thus robbing him of any

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[88]G. W. F. Hegel, The Philosophy of History, rev. ed., trans. Ji Sibree (New York: P. F. Collier & Son, 1900), p. 457.

[89]Hegel, Philosophy of Right, p. 216.

[90]G. W. F. Hegel, Philosophy of Right, trans. S. W. Dyde (London: George Bell and Sons, 1896), p. 247.

[91]Ibid., p. 245.

[92]Ibid., p. 340.

[93]Ibid.

meaning,[94] contracts exist between states. They are only "so far in a condition of nature."[95] No judge presides; but their equal, dependent relationships comprise "the formal character of a contract." International law should "hold absolutely good between states"; yet it arises from sovereign wills of independent states and continues in the form of an ought. Its basic tenet is that treaties "ought to be kept."[96]

Just Conduct

Hegel supported the idea, appreciated by Cicero, that war is temporary and holds the possibility of peace. Again like Cicero, he connected this promise with moderate conduct of hostilities.[97] In the manner of Kant he assumed, "Modern wars are therefore humanely waged, and person is not set over person in hatred."[98] Wars must not be directed against domestic institutions, the family, or persons operating as private individuals. Diplomats are also immune. These concerns rest on international law while other behavior, such as arrangements regarding prisoners, depends on custom.[99]

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[94]Ibid., p. 240. [95]Ibid., p. 338.

[96]Ibid. and Hegel, Philosophy of Right, trans. Knox, p. 213.

[97]Hegel, Philosophy of Right, trans. Knox, p. 215; and Hegel, Philosophy of Right, trans. Dyde, p. 340.

[98]Hegel, Philosophy of Right, trans. Knox, p. 297.

[99]Ibid. and Hegel, Philosophy of Right, trans. Dyde, p. 338.

The Actual Causes and Benefits

On the actual level of international relations, war results from the conflict of particular wills. Hegel does not specify causes as just. He observes that states will consider themselves sufficiently abused by the violations of treaties or damages to their honor. Instead of pointing to war waged for domestic unity, he finds states turning to war more readily in order to be active after long periods of domestic activity.[100] Whatever the actual causes, war keeps peoples ethically healthy by stopping them from becoming habituated to their hardened institutions:

> Just as the blowing of the winds preserves the sea from the foulness which would result from a continual calm, so also corruption would result for peoples under continual or, indeed, perpetual peace.[101]

Jeremy Bentham

Utility in the World as One

English reformer Jeremy Bentham (1748-1842) moved away from limiting politics almost entirely to the nation-state, as if it were the be-all and end-all of political society. Bentham's central idea was that equality would provide utility in international affairs. He began by asking, as a social contract theorist might, what sort of

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[100] Hegel, Philosophy of Right, trans. Knox, p. 214; and Hegel, Philosophy of Right, trans. Dyde, p. 338.

[101] G. W. F. Hegel, Natural Law, trans. T. M. Knox (n.p.: University of Pennsylvania Press, 1975), p. 93.

international law a citizen of the world would choose; but he substituted utility for the rights common to social contracts.[102] Bentham did not assume the bias of one nation versus a certain or potential enemy. He rejected the attitudes and actions represented by reason-of-state.

Acceptability of Common Utility

A nation's sovereign should seek the "greatest happiness of the society concerned."[103] This behavior wins the most approval, while lesser measures suffer from insufficient support. Similarly, in dealing with other nations, the ruler encounters less resistance by seeking a utility common to all nations.[104] He best reaches his "particular end" by focusing on the "general end--the most extended welfare of all nations on the earth."[105] International law should aim for each nation to avoid harming other nations and to lend assistance to them.[106]

Ruin and Injustice

Violations of the fundamental rights of international law can spawn wars, although wars provide poor

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[102] Jeremy Bentham, The Works of Jeremy Bentham, vol. 2 (New York: Russell & Russell, Inc., 1962), p. 537.

[103] Ibid. [104] Ibid., p. 538. [105] Ibid.

[106] Ibid.; Although use of terms such as "law of nations" and "law among nations" persisted into the twentieth century, Bentham observed that the English expression "international law" had "taken root in the language": Bentham, Works, vol. 1, pp. 149-50.

remedies.[107] "All war," Bentham states, "is in its essence ruinous."[108] War creates the major pains of mankind.[109] To prove, following a war, that one nation is better off because an enemy nation is left in even worse shape is analogous to one man losing a leg but still being able "to hop faster than a man who lies in bed with both legs broken."[110] In the event war does come, good ought to be maximized and evil minimized.[111]

War, as a unilateral attempt to enforce rights against an opponent, cannot be justified as punitive. For the people are "always honest," and their head, the sole criminal. "There would be," Bentham wrote, "no great evil if . . . every conquerer ended his days upon the rack."[112] The people of a nation can never hold bad intentions.

Peace Proposals

Bentham's fourth essay presents "a plan for a universal and perpetual peace."[113] Among the numerous specific propositions designed to remedy the ordinary justifications of war, Bentham proposed that colonialism be abandoned[114] and that free trade be unhampered.[115] He asked

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[107] Bentham, Works, vol. 2, p. 538.

[108] Ibid., p. 552. [109] Ibid., p. 546.

[110] Ibid., p. 560. [111] Ibid., p. 538.

[112] Ibid., p. 539. [113] Ibid., p. 546.

[114] Ibid., pp. 546-48. [115] Ibid., pp. 549-50.

that secrecy in foreign affairs be discarded.[116] He pleaded for disarmament in terms of a multilateral, permanent reduction of armed forces. A nation could unilaterally grab the initiative, without danger, by publicly announcing its plans to disarm, in which case, it would "crown itself with everlasting honour."[117] Nations should set up a tribunal of arbitration. Even were an unjust decision rendered, each side would avoid war and still maintain its reputation. Bentham, supposedly the purveyor of cool, utilitarian calculus, called upon his people to reject the disposition to war:

> Oh my countrymen! Purge your eyes from the film of prejudice--extirpate from your hearts the black specks of excessive jealousy, false ambition, selfishness, and insolence. The operations may be painful; but the rewards are glorious indeed![118]

William Godwin

Defense and Democracy

English political theorist, William Godwin (1756-1836) believed that the only just cause of war was to defend "our own liberty and the liberty of others."[119] The democratic Godwin expressed the opinion that democracies are

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[116] Ibid., pp. 554-59.

[117] Ibid., pp. 550-51.

[118] Ibid., p. 553.

[119] William Godwin, Enquiry Concerning Political Justice, and Its Influence on Morals and Happiness, vol. 2, 2nd ed. corrected (London: For G. G. and J. Robinson, 1796), p. 145.

incapable of starting wars. This line of thinking, which was popular from the eighteenth into the twentieth century, he supported by specifying clearly that he meant pure democracy. "War will be foreign to the character of any people in proportion as their democracy becomes stable and unalloyed," he explained. Democracies will seldom be forced to "repel wanton invasion," because they will not often seem to give just cause.[120]

Rejection of offensive war and strict observance of defense would produce unanimity at home and respect abroad.[121] A nation should maintain toward all nations a posture that is firm and vigilant as well as frank and open.[122] Justice would "shew itself to be stronger than a host of foes."[123]

Unjust Causes

Nations ought not go to war for such unjust causes as encouraging domestic order, repaying insults to national honor, or maintaining the balance of power.[124] Nor are they able to apply international justice as they administer it internally by (1) reforming, (2) restraining from future misdeeds, (3) setting an example, or (4) receiving indemnity for damages. For one thing, only a few persons are ever to

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[120] Ibid., p. 138. [121] Ibid., p. 152.

[122] Ibid., p. 154. [123] Ibid., 153.

[124] Ibid., pp. 141-42 and 148-49.

blame; and they could not be found. In such self-vindication the dispute never ends.[125]

Proportionality, Hope of Success, and Individuality

Proportionality must rule between the supposed evil and the evil brought about by the remedy.[126] A reasonable hope of success must exist for "human blood is not to be shed upon a precarious experiment."[127] Not even the spoils of war benefit the whole community; they enrich a few.[128] Rousseau's abstract ideas err in supporting society to the exclusion of particular individuals. Only individuals can gain, not a group of men. "Set no value," Godwin announced, "on anything but in proportion as you are convinced of its tendency to make individual men happy and virtuous."[129]

Pre-emptive strikes do not produce justice. In arming for war, countries are equal. "It is not a justifiable reason," Godwin rules, "that our neighbor is preparing, or menacing, hostilities."[130] Any country can likewise arm, and do it without attacking first. Even a defensive war must be watched guardedly; for war aims tend to

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[125] Ibid., pp. 147-48. [126] Ibid., p. 143.

[127] Ibid., p. 152.

[128] Ibid., pp. 137-38.

[129] Ibid., p. 139. [130] Ibid., p. 143.

change as wars proceed.[131] Defense is the only just cause; and defense must be kept within the "narrow limits" of "repelling the enemy" from a country's borders.[132]

William Lovett and John Bright

Proponents of Change

A century of concern about social issues preceded the First World War. Those persons backing proposals to limit the occurrence and conduct of war formed part of a broad movement supporting many stands that their proponents considered progressive and humane. Frequently, individuals working for their views regarding just causes for war, just conduct, abolition of war, and related topics were also spiritedly crusading under one or more other banners. These advocates tended to be pro-democratic and libertarian, anti-imperial and anti-colonial, anti-racist or abolitionist, pro-feminist, pro-labor, and convinced of the need for free trade. Still, attention to the justification of war commanded no unity of ideology, system of belief, nor station in life. The common denominator was a desire for social change.

William Lovett

Bad Effects of War

English reformer William Lovett (1800-1877), who authored most of the Chartist declarations, approached

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[131] Ibid., p. 151. [132] Ibid., p. 146.

socio-economic problems with a perspective that reached beyond the borders of his country. He campaigned at home against war and appealed to workingmen abroad to help keep the peace. He pointed out that, besides taking human lives, war wasted the produce of labor.[133] If Kant and Hegel thought of modern warfare as being dispassionately conducted by uniformed gentlemen, Lovett saw no chance of it. The higher qualities of human beings succumb to a wild passion for destruction. War suppresses reason and pushes back progress. Lovett wrote:

> The time of war may be said to be a time when men's nobler feelings are overwhelmed by passion and when destruction without remorse is the highest aim of their ambition.[134]

Morality

Lovett presented an entirely secular conception of morality based upon properly informing individuals in order that they will possess the knowledge to behave correctly. He believed that the human brain contains both intellectual and moral capacities. The mind of man engages not only in forming ideas, remembering, observing, experimenting, and exercising the other functions of intellect; the mind is morally inclined toward goodness, excellence,

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[133]William Lovett, Life and Struggles of William Lovett (London: MacGibbon & Kee, 1967), pp. 260-65; These opinions were circulated in 1846 and included in book form by 1876.

[134]William Lovett, Social and Political Morality (London: Simpkin, Marshall & Co., 1853), p. 200.

truth, and justice.[135] These "principles of morality are general and universal, embracing the well-being of the great brotherhood of man."[136]

Educating Against War

The scarlet scourge of war must be eradicated by information. Populations get maneuvered into murdering and destroying each other; consequently, they must be educated and their institutions altered. Individual compose the national societies. Morality applies to nations, rulers, individuals collectively, and individuals singly.[137] The justice, reason, and, in fact, the very level of civilization of each nation "mainly depend on the moral and intellectual condition of its individual members."[138] Individuals should strive to get nations to give up all bloody attempts at "redressing their own grievances." Nations need to be persuaded to place their cases before an international court of justice and to establish a congress of nations.[139]

John Bright

Measured Opposition

The fire-breathing Victorian reformer John Bright (1811-1889) was born into a Quaker family, and, as a member of Parliament, gained a reputation for peace crusading.

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[135] Ibid., pp. 3-4. [136] Ibid., p. 195.

[137] Ibid. [138] Ibid., p. 6.

[139] Ibid., p. 203; Lovett, Life, p. 265.

Still, on a number of occasions, he declined to take up the question of pacifism. At London during 1863, he met the problem of justifying war by depending on generally accepted beliefs. "I speak," Bright began, "not in justification of war. I am only treating this question upon principles which are almost universally acknowledged."[140] Sixteen years later, he wrote that the question of opposing war becomes unnecessary to ask because most wars could have been avoided.[141] The locus of his attention was not an absolute non-violence but justice.

Bad Habits of Nations

Even in advance of his campaign against the Crimean War (1854-1856), Bright had contended that unjust wars, like other unjust practices, endanger all national institutions.[142] He deplored both the provocation and cost of the arms race. Before an audience many years after the Crimean campaign, he charged that nations do not extend to the disproportionate expense and suffering of war, the careful examination that they accord a single criminal trial.[143]

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[140]John Bright, Speeches on Questions of Public Policy, vol. 1 (London: Macmillan, 1868), p. 256.

[141]John Bright, The Public Letters of the Right Hon. John Bright, 2nd ed. (London: Sampson, Low Marston & Co., 1895; reprint ed., New York: Kraus Reprint Co., 1969), p. 25.

[142]Bright, Speeches, p. 369.

[143]Ibid., pp. 360-63; John Bright, "Peace and War," in Orations of British Orators, rev. ed., vol. 2 (New York: The Colonial Press, p. 342.

Herbert Spencer

His Influence

Hebert Spencer (1820-1903), the evolutionary philosopher often blamed for helping rationalize the cut-throat machinations of robber-baron businessmen, truly believed that individuals and nations ought to behave non-aggressively. However well or poorly his opinions have been apprehended, certainly few writers have attracted a wider following. A critic reports that "a million copies of Spencer's books were sold"; and "there was world-wide interest in his thought during the last quarter of the nineteenth century."[144] His stand regarding the justice of wars definitely was read.

Individual Non-interference

Spencer was an individualist. Aggression he defined thus: "a carrying on of life in a way which directly interfers with the carrying on of another's life" by harming or extinguishing the relation between effort and consequent benefit in one man."[145] To best coexist each

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[144] James G. Kennedy, Herbert Spencer (Boston: Twayne Publishers, 1978), p. 110.

[145] Herbert Spencer, Essays: Scientific Political and Speculative, vol. 3 (New York: D. Appleton and Co., 1892), p. 229; Cf., "The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it": John Stuart Mill, On Liberty (Indianpolis: Bobbs-Merrill Co., Inc., 1956), pp. 16-17. (First published in 1859.)

person must adhere to "implied limits" which can produce "special restrictions." For human beings to understand these "a priori truths" or "axiomatic truths" Spencer illustrates by example that "a certain mental growth and a certain mental discipline are needed."[146]

Government for Defense

Societies evolve, rather than arrive as finished products. The relationships of individuals and groups progress from simple, unsettled arrangements to forms that are fixed, distinct, and complex.[147] Government naturally originates from the "primal desires for defense and personal protection."[148] Even so, Spencer presents government in a contractarian manner.

This utilitarian political contract begins as a "mutual-safety confederation" correctly obedient to the "higher authority" or "law of the greatest happiness to the greatest number."[149] Government arises because of the evil of violence and maintains itself through the same evil. The

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[146]Spencer, Essays, pp. 220-22.

[147]See Herbert Spencer, First Principles (New York: D. Appleton and Co., 1891), pp. 372-74. (First published, D. Appleton and Co., 1864.)

[148]Herbert Spencer, Essays: Moral, Political, and Aesthetic (New York: D. Appleton and Co., 1875), p. 87. (First published, D. Appleton and Co., 1864.)

[149]Herbert Spencer, Social Statics (New York: D. Appleton and Co., 1881), pp. 228-29. (First published, 1850.)

essence of governmental authority reveals itself to be conventional, not ethical.[150] Like a program of shared insurance, the political structure provides a more constant and general aggression but one that is more moderate and easier for the individual to stand.[151]

Defense and Just Cause

Not non-violence but "non-aggression" is ethical. Non-aggression is only abstractly criminal. Governments are "justified in taking up a defensive attitude toward foreign enemies."[152] A defensive posture does not justify following one's country when it is in the wrong.[153] Each citizen retains the responsibility of his own actions. Spencer once informed a military officer:

> When men hire themselves out to shoot other men to order, asking nothing about the justice of their cause, I don't care if they are shot themselves.[154]

Were soldiers to examine the justice of causes, neither armies nor governments would be destroyed; neither would the country fall "prey to the first invader." Defense would still exist, with each soldier knowing his cause to

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[150] Ibid., pp. 230-31. Compare Hobbes, Leviathan.

[151] Spencer, Social Statics, pp. 296-97.

[152] Ibid., pp. 298-300.

[153] Herbert Spencer, Facts and Comments (New York: D. Appleton and Co., 1902), pp. 124-25.

[154] Ibid., p. 126.

be just. Spencer concluded, "Only aggressive war would be negated, not defensive war.[155]

William G. Sumner

War: Irrational, Interest-Seeking, Fruitless

The American economist and sociologist, William Graham Sumner (1840-1910), beheld war to be an uncontrolled, irrational force. Like Spencer, Sumner was an evolutionist, as well as a supporter of laissez-faire domestic economics and free trade policies. His essay, War (1903), however, admits no rational basis of behavior in making war. The reason of natural law deserts nature in Sumner's account of war. The "iron spur of the nature-process" irrationally creates civilization; and war makes up one form of the process.[156] Whether a state of war or one of peace obtains, depends on how keenly men compete in each situation.[157] Men fight for what they perceive to be their present interests; but the results of war have "nothing to do" with these motives.[158]

Regret and Uncertainty

Sumner appraises war as a "makeshift to be regretted." At this point his determinism begins to break

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[155] Ibid.

[156] William Graham Sumner, War and Other Essays (New Haven: Yale University Press, 1914), p. 34.

[157] Ibid., p. 14. [158] Ibid., p. 15.

down. For one situation, he suggests that increased knowledge and reason might substitute for blood and coercion; and in another case, he concedes that human nature would prevent peace. He does conclude that nations ought to fight only as a last resort. "No war," Sumner states, "which can be avoided is just to the people who have to carry it on, to say nothing of the enemy."[159]

Leo Tolstoy

Governments Cause Wars

Leo Tolstoy (1828-1910), the Russian nobleman turned novelist, naturalist, anarchist, and pacifist, indicted governments for intentionally creating an atmosphere that breeds war. Governments, he believed, are unable to refrain from provoking wars because the reason for their very existence is to provide defense of their nations from attack by other nations. Even if this function were originally needed, it is no longer. Yet governments continue to compel their countries to "destroy that union which exists and would not be impaired by anything, if there were no governments."[160] Governments, then, interfere with the natural sociability of humanity. They represent an institutional handicap to peace; clearly, they must go.

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[159] Ibid., p. 35.

[160] Leo N. Tolstoy, War - Patriotism - Peace (New York: Vanguard Press, 1926), p. 85.

Individual Responsibility

The individual faces an immediate moral and practical responsibility to reject the government's organization for war and suppression. Both serving in the military and paying taxes meant to support the military constitute "participation in murder."[161] As the czar in War and Peace tearfully mourned, "What an awful thing war is!,"[162] Prince Andry had to say, "If everyone would only fight for his own convictions, there'd be no war."[163] Tolstoyian pacifism is absolute: no war is just.

Petr Kropotkin

Evolution of Mutual Help

The Russian anarchist, Petr Kropotkin (1842-1921), believed that the controlling force in evolution is cooperation, not a Hobbesian war of each against all other beings.[164] A principle much stronger than war dominates the progressive process;[165] this principle is mutual aid, which has developed over "an extremely long evolution."[166] Society is founded

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[161]Leo N. Tolstoy, What Is Religion? (New York: Thomas Y. Crowell & Co., 1902), p. 99.

[162]Leo N. Tolstoy, War and Peace, trans. Constanc Garnett (New York: The Modern Library, n.d.), p. 232.

[163]Ibid., p. 19.

[164]Petr Kropotkin, Mutual Aid: A Factor of Evolution, rev. ed. (New York: Doubleday, Page & Co., 1909), p. xv.

[165]Ibid., p. 296. [166]Ibid., p. xiii.

on the instinct of human solidarity, which realizes the force that comes through mutual aid, as well as the pleasures of social living.[167] To recognize interdependence is to recognize a basic equality among all persons; and it is upon the feeling of equality that ethics is based. Kropotkin interprets the fact of equality in a manner that would, when universally recognized, undoubtedly exclude war:

> It is the unconscious recognition of force that is borrowed by each man from the practice of mutual aid; of the close dependency of everyone's happiness upon the happiness of all; and of the sense of justice, or equity, which brings the individual to consider the rights of every other individual as equal to his own.[168]

William Morris and John Hobson

Socialism

The socialists of the latter half of the nineteenth and early years of the twentieth centuries found themselves incapable of adhering to a comprehensive theory of justifying war. However much they might have disapproved of specific situations and general practices, they could do little more than look forward to a stateless-warless future while approving popular insurrections in the meantime.

The Final Stage

Although an assortment of socialists supported a sizable variety of ideas and actions at the turn of the

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[167] Ibid. [168] Ibid., pp. xiii-xiv.

century, the British socialists William Morris (1834-1896) and John A. Hobson (1858-1940) may be taken as representative of socialist thought concerning war. Morris believed that, in leading up to the final stage of socialism, the socialist struggle would probably employ armed revolts and civil wars. With socialism complete, the state would find "nothing left for it to do" and would perish.[169] Following the disappearance of all states, no international affairs would exist to regulate; and war, of course, would become impossible. In the short run, nonetheless, ardent socialists could favor the establishment of an international board of arbitration.[170]

Reform

Hobson blamed war on imperialism and imperialism on capitalism. His Imperialism (1902) was widely circulated; and that it exerted a strong influence on Russia's Lenin became common knowledge.[171] Hobson, who maintained both an academic career and actively participated in the program

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[169]William Morris and E. B. Bax, Socialism: Its Growth and Outcome (London: Swan, Sonnenschein & Co., 1893), pp. 284-85.

[170]Ibid., pp. 84-85; Contrast these pacific sentiments Morris encourages with the warrior scenes that he makes exuberant, joyful, and exciting: William Morris, The Story of Sigurd the Volsung and Fall of the Niblungs, 5th ed. (Boston: Roberts Brothers, 1891), p. 177; But compare: William Morris, "The Burghers' Battle" in William Morris, Poems by the Way (Boston: Roberts Brothers, 1892), pp. 13-15.

[171]J. H. Hobson, Imperialism, 3rd ed. (London: George Allen & Unwin, Lted., 1938). Lenin gave credit:

of the Labor Party, felt compelled to depart somewhat from what had been the traditional socialist path regarding war. As fighting spread over Europe, he proposed a "League of Nations."[172] More and more socialists transformed into social reformers.

V. I. Lenin

Imperialist Wars

The Bolshevik, V. I. Lenin (1870-1924), soon to become first head of the Union of Soviet Socialist Republics, would have no such international organizational answer to war nor its ramifications for theory. Instead, he predicted that the imperialist powers would indeed form alliances but that peace would appear only during temporary periods. The imperialists would inevitably oppose each other in wars.[173]

Three Other Wars

Writing in 1916-1917, before the October Revolution, Lenin sought to reinterpret and spell out Marxism's justification of war in light of the unfolding historical

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V. I. Lenin, Imperialism, the Highest Stage of Capitalism in Collected Works, vol. 22, trans. Yuri Sdobnikov, ed. George Hanna (Moscow: Progress Publishers, 1964), p. 187.

[172]J. A. Hobson, Toward International Government (New York: The Macmillan Co., 1915; reprint ed., New York: Garland Publishing, Inc., 1971), p. 6.

[173]Lenin, Imperialism, p. 295.

situation. Besides the imperialist wars, Lenin designated three other kinds of wars--all said to be progressive. There necessarily would occur against the imperialist powers "national liberation wars" waged by colonial peoples and also by small, semi-colonial states, which had been "annexed or nationally oppressed." These wars would not demand even a reasonable chance of success; for, win or lose, they would remain inevitable, progressive, and revolutionary.[174]

Awaiting Transformation

The war fought by the proletariat against the war of the bourgeois imperialists also would prove progressive. "For unless such a war is waged," Lenin dictated, "serious progress is impossible."[175] Following the victory of the proletarian war there might transpire "under certain special conditions . . . a war to defend the social state against the bourgeois states."[176]

Obviously to Lenin, international government could never bring peace to a world where international socialism

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[174] V. I. Lenin, The Junius Pamphlet in Works, vol. 22, pp. 310-12.

[175] Ibid., p. 316; Whatever they may have intended later, Karl Marx (1818-1883) and Friedrich Engels (1820-1895) had encouraged civil war in 1848, "The Communists . . . openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions": Karl Marx and Friedrich Engels, The Communist Manifesto, trans. Samuel Moore (New York: Washington Square Press, Inc., 1965), p. 116.

[176] Lenin, Junius, p. 316.

had yet to transform all peoples into free and independent nations. Nor, with the inevitability of liberation struggles, could disarmament proposals mean anything other than "absurd propaganda."[177] Traditional just war thinking made way for the Leninist statement: "The Marxist viewpoint requires that in each individual case we define the political content of the war."[178]

Socialists and Leninists alike endorsed a faith world-wide in its ambition, a belief unrestricted by national confines but, as of the First World War, still unable to face the real questions involved in the justification of war.

Von Moltke, Nietzsche, and Spengler

Characteristics of Militarism

Pro-war sentiment underwent a hearty little revival from the fading days of the nineteenth century until it was consumed in the smoke and ashes of world war. Sentiments of nationalism and imperial design, romanticism and worry about preparedness, along with a flurry of downright militarism, erected a new forum for a number of old ideas. These ideas, which claimed to describe benefits received from war or explanations of war, were substituted for

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[177] Ibid., pp. 312-13.

[178] V. I. Lenin, Open Letter to B. Souvarine in Works, vol. 22, p. 196.

responsible justification of going to war. Though just conduct won increasing acceptance, sometimes to the point of pretending chivalry, the growing obstacles confronting conduct were ignored. War was touted for purging lethargy, stagnation, corruption, effiminacy, materialism, and other bad habits. It was lauded for training persons in discipline and duty and was prescribed as a cure for divisiveness. War was the birthplace of valor. Territorial and other acquisitions made fine bounty. Nations had no recourse in disputes because no court enforced justice or guaranteed defense. Individual human nature or social nature assured war's permanence. God willed war as payment for sin or as a vehicle of historical evolution. The survival of the fittest individuals and nations created a good and explained the natural or God-given inevitability of war.

Helmuth von Moltke

Well into World War I, many kinds of individuals persisted in admiring war not only for vast, heroic, and colorful exploits but for social need and inevitability. As war grew in its capacity for devastation, the Prussian general, Helmuth von Moltke (1800-1892), ferociously defended it against criticism by peace-minded persons. While newly-united Germany continued to push forward in industrialization with nationalistic confidence, to the militarists such as von Moltke, war stood as a positive virtue. He penned these words in his eightieth year: "War is part of

God's world-order. In war are developed the noblest virtues of mankind: courage and sacrifice, fidelity, and the willingness to sacrifice life itself. Without war the world would be swallowed up in materialism."[179]

Friedrich Nietzsche

No one ever stood more solidly for the value of war than did some of the Germans at this time. If the philosopher, Friedrich Nietzsche (1844-1900), refused to beat the drums of nationalism, he supported war for other reasons; but, as deviant as Nietzsche seemed in many areas, these reasons turned out to be truly common. He saw the evils of war turning man into a more barbaric, and thus, a more natural being, "stronger for good and evil."[180] To him, "The man who has renounced war has renounced a grand life."[181] Nietzsche loudly exclaimed:

> You should love peace as a means to new wars--and the short peace more than the long. To you I do not recommend peace, but victory! . . . You say it is the good cause

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[179]Robert H. Murray, Studies in the English Social and Political Thinkers of the Nineteenth Century, vol. 2 (Cambridge: W. Heffer & Sons, Ltd., 1929), p. 16.

[180]Friedrich Nietzsche, The Portable Nietzsche, trans. Walter Kaufmann (New York: The Viking Press, 1954), pp. 60-61.

[181]Friedrich Nietzsche, Christianity as the Enemy of Nature, in The Complete Works of Friedrich Nietzsche, vol. 16: The Twilight of the Idols, trans. Anthony M. Ludovici, ed. Oscar Levy (London: George Allen & Unwin, Ltd., 1911), p. 29.

> that hallows even war? I say unto you: it is the good war that hallows any cause. War and courage have accomplished more great things than love of the neighbor.[182]

Oswald Spengler

The outbreak of war in Europe did not immediately halt the singing of war's praises. Oswald Spengler (1880-1936), who championed the magestic march of deterministic history into the twentieth century, agreed that the test of war uplifted the character of nations. He readied his thesis for publication by the summer of 1918, four years into the war of the trenches. Persistent ideas of peace, he accepted as futile necessities. Spengler saw choice to be secondary and temporary. His dark words declared:

> Life, if it would be great, is hard; it lets choose only between victory and ruin, not between war and peace. . . . Again and again, between these catastrophes of blood and terror the cry rises up for reconciliation of the peoples and for peace on earth. It is but the background and the echo of the grand happening.[183]

Conclusion

No few centuries since the time of classical Greece knew such creativity in political thought as the

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[182]Friedrich Nietzsche, Thus Spake Zarathustra, trans. Walter Kaufmann (New York: Penguin Books, 1980), p. 47.

[183]Oswald Spengler, The Decline of the West [Der Untergang des Abendlandes], vol. 2: Perspectives of World-History [Welthistorische perspektiven], trans. Charles F. Atkinson (New York: Alfred A. Knopf, 1926), p. 429.

years from 1650 to 1919. Though political thinking followed its usual course of concentrating on matters essentially internal, it placed a great deal of attention on the concerns of the just war (bellum justum). First, the pursuit of general peace appeared more and more a realistic activity. Secondly, justifications of war in respect to going into a war (jus ad bellum) and in regard to fighting a war (jus in bello) accumulated into a large and omnipresent body of thought. As in international law, the two major trends of the wider area of political thought were the attempts to mitigate the horrors of war as much as possible through more humane rules of just conduct and, even more important, the growing belief in defense as the single just cause.

CHAPTER EIGHT

THE MODERN JUST WAR 1650-1919:

PART THREE--JUST WAR IN ONE

LITERATURE: BRITISH POETRY

Of kings and courts; of kingly, courtly ways
In which the life of man is bought and sold;
How weary is our heart these many days!
. . . . . .
The common loveless lust of territory;
The lips that only babble of their mart,
While to the night the shrieking hamlets blaze;
The bought allegiance, and the purchased praise,
False honour, and shameful glory;--
Of all the evil whereof this is part,
How weary is our heart,
How weary is our heart these many days!

--William Watson, "How Weary Is Our Heart"[1]

Characteristics

For British verse the words of a Renaissance historian rang true: "History finds in poetry not only one of its most important but also one of its purest and finest sources."[2] Generations before 1650, Shakespeare had treated

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[1]William Watson, The Poems of William Watson, vol. 2 (New York: John Lane Co., 1905), pp. 80-81.

[2]Jacob Burckhardt, Reflections on History (London: George Allen & Unwin, Ltd., 1943), p. 65.

war from many angles; and even from its infancy two and a half centuries back, British poetry had spawned an occasional protest, e.g., "The werre is modir of the wronges alle" and "Pax super omne bonum scandit."[3] Yet poets for the most part, up to the mid-seventeenth century, lacked concern with war or remained generous to it. Poetry tended toward personal lyrics or grand romances. Seldom did even the most earth-shaking of modern social problems, such as war, get more attention than a passing flash of sensitivity. If great sagas partook of war, they were bent on mist-shrouded deeds of towering figures. High style and pomp built respectability for rulers and for wars. War was even supposed to cultivate the more mundane merits, such as enhancing personalities and awakening societies.[4] Yet from the days of the Protectorate to the end of the First World War, British poets proceeded to alter these positions. Many times they pronounced that grave injustice flowed from the exploits of rulers and warriors and that glory and heroics were false and illusory. The pain and waste they

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[3]"War is the mother of all wrongs": John Gower, "In Praise of Peace" in The Complete Works of John Gower: The English Works (Oxford: At the Clarendon Press, 1901, p. 484. "Peace excells over every good": John Gower in The Complete Works of John Gower: The Latin Works (Oxford: At the Clarendon Press, 1902), p. 258. (Translation mine.)

[4]Such ideas could always be found here and there, e.g., Shakespeare's servants termed war "spritely" and characterized peace as "sleepy" and a "great maker of cuckolds": William Shakespeare, Cariolanus 4.5 in Shakespeare, Annotated, vol. 3, p. 598.

came to recognize as indeed real. This change began with the giant upsurge of political speculation that took place in the second part of the seventeenth century.

The First Hundred Years

Poetic Influence

Political expression flourished in England during the second half of the seventeenth century. The expanding voice of individual political opinion made itself heard in tavern talk, speeches, letters, pamphlets, and books. Poetry grew amid the varied prose. One author has maintained that the period starting with the Stuart restoration of 1660 was "preeminently an age of prose."[5] Yet recognizing the prevalence of prose must not exaggerate away the influence that poetry exerted; for "verse of one sort or another was not only widely written; it was also subjected to constant criticism."[6] The means of political argument was often poetry.[7]

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[5]Robert P. T. Coffin and Alexander M. Witherspoon, A Book of Seventeenth Century Prose (New York: Harcourt, Brace, and Co., 1929), p. 16.

[6]James Sutherland, English Literature of the Late Seventeenth Century (New York: Oxford University Press, 1969), p. 154.

[7]Ibid., p. 161.

James Shirley

English dramatist James Shirley (1596-1666) sternly challenged sovereign practices by pronouncing the glory won in war to be meaningless. He asserted that only just deeds wither not, but flower with lasting benefits. As Calchas walked before the body of Ajax, so began the third scene of Ajax and Ulysses (1659):

> The glories of our blood and state
> Are shadows, not substantial things;
> . . . . . .
> Only the actions of the just
> Smell sweet, and blossom in their dust.[8]

John Milton

The stately works of John Milton (1608-1674) conceded nothing noble or just to wars of aggression. Of the earth's rational creatures, only men live in "hatred, enmitie, and strife."[9] Those unjust persons who seek military conquests are hardly men at all. Although they "swell with pride" about themselves, they are unworthy of even notoriety. "They err," Milton sarcastically writes, "who count it glorious to subdue by conquest . . . What do these worthies, but rob and spoil, slaughter, and

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[8]James Shirley, The Dramatic Works and Poems of James Shirley, vol. 6 (London: John Murray, 1833), pp. 396-97.

[9]John Milton, Paradise Lost: A Poem in Ten Books (London: Printed by S. Simmons, 1668), n.p.

inslave peaceful nations."[10] They steal man's freedom and despoil the works of peace.

John Dryden

Two thousand years after Alexander of Macadonia, in the twilight of the seventeenth century, John Dryden (1631-1700), recalled the young conquerer not with a garland of praise to "the great" but with this solemn reminder: "War, he sung is Toil and Trouble; / Honour but an empty Bubble."[11] Dryden spoke at the peak of his creativity and with the utmost sincerity.

William Cowper

During the succeeding century, as British poetry moved into its romantic era, war continued to provoke poetic distaste for the habits of royalty. Displaying fully as much conviction as Milton and Shirley, the English poet, William Cowper (1731-1800), severely scorned princes for the sorrow they caused by making war their plaything. Cowper's "Table Talk" called openly for change:

> But war's a game, which, were their subjects wise,
> Kings would not play at. Nations would do well

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[10] John Milton, Paradise Regain'd: A Poem in Four Books, new ed., ed. Thomas Newton (London: For J. and R. Tonson and S. Draper, 1752), pp. 103-4.

[11] John Dryden, Alexander's Feast; or the Power of Musique. An Ode in Honour of St. Cecilia's Day (London: Jacob Tonson, 1697; reprint ed., Oxford: Clarendon Press, 1925), p. 5.

To extort their truncheons from the puny hands
Of heroes, whose infirm and baby minds
Are gratified with mischief; and who spoil,
Because men suffer it, their toy the World.[12]

The Romantics

Romanticism

Glory and half-mournful sentimentality no doubt predominated in British poetry's treatment of war by the time a high point of romanticism was reached late in the eighteenth century. The art of poetry had, in all ages, been romantic. Rather than unromantic versus romantic periods, poetry has only pursued less or more romance. Changes in fashion have depended on which of the many romantic themes receive the most attention. The more romantic poetry becomes, the stronger its preoccupation with nature, beauty, and ideal personal character becomes. Inspired imaginations create instant views of these concerns. Poetry does not at any time easily concentrate on well-reasoned, formal generalizations intended to solve sharp realities. War is such a reality. Nevertheless, during the peak of romanticism, matters of war and peace did muster attention.

From the last quarter of the eighteenth century, all through the nineteenth century, writings about war and related matters varied in opinion and frequency. Some poets

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[12]William Cowper, Poetical Works of William Cowper, vol. 1 (Edinburg: James Nichol, 1854), p. 289.

stiffly opposed the ways of war; a few wrote more approvingly, others composed contradictorily. Most authors dealt with war only occasionally. Still other poets never touched the subject at all or did so in a difficult manner or in a meaningless way.

William Blake and John Keats

The impulsive William Blake (1757-1827) demonstrated the last tendency with "A War Song: To Englishmen," which was too far removed from reality to convey any message at all.[13] The London-bred John Keats (1795-1821) did put meaning into "On Peace" in 1814; but it was plural. Raphodizing about peace completed in the joy of liberty left confusion regarding his attitude toward war.[14] The other major poets at the time were more coherent concerning war and, by virtue of numbers alone, more representative of the romantic outlook on martial affairs than Blake and Keats. The most important of these were the rebellious Percy Bysshe Shelly and George Gordon Byron, the action-loving Walter Scott, and the three English lake poets--William Wordsworth, Samuel Taylor Coleridge, and Robert Southey.

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[13]William Blake, The Poetical Works of William Blake (London: George Bell & Sons, 1893), pp. 59-60.

[14]John Keats, The Poems and Verses of John Keats, ed. John M. Murry (London: Eyre and Spottiswoode, 1949), p. 4.

Percy Bysshe Shelly, George Gordon Byron, and Walter Scott

Percy Bysshe Shelly (1792-1822) sought to inspire nationalists to battle for the cause of liberty.[15] He denounced acceptance of servility and proceeded as if unleashed nationalisms would usher in a heavenly city. Even though he was supposed to have been a disciple of William Godwin, his passionate imagination allowed no room for measured ideas of justice and peace. George Gordon Byron (1788-1824) also sympathized with oppressed peoples. The "Translation of a Famous Greek War Song" exhorted:

> Sons of Greeks! let us go
> In arms against the foe,
> Till their hated blood shall flow
> in a river past our feet.
>
> Than manfully despising
> The Turkish tyrant's yoke,
> Let your country see you rising,
> And all her chains are broke.[16]

Neither he nor Shelly actually wrote very much about fighting; but both thought patriotism a virtue, even a necessity for social good. In his drama, "The Two Foscari," Byron judged patriotism to be "the parent of all honest feeling" because, "He who loves not his country can love nothing."[17]

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[15] See Percy Bysshe Shelly, The Complete Poetical Works of Percy Bysshe Shelly (London: Oxford University Press, 1905).

[16] George Gordon Byron, The Complete Poetical Works of Lord Byron (Boston: Houghton Mifflin Co., 1905), pp. 161-62.

[17] Ibid., p. 611.

Walter Scott (1771-1832) would have concurred. Though much more politically conservative than Shelly and Byron, the Scottsman was every bit as romantic in his tremendous outpouring of colorful sagas. Beginning the sixth canto of The Lay of the Last Minstrel an old bard--William Wordsworth --sang of his wild Caledonian homeland:

> Breathes there the man, with soul so dead
> Who never to himself hath said,
> This is my own, my native land?
> Whose heart hath ne'er within him burned,
> As home his footsteps he hath turned
> From wandering on a foreign strand?[18]

William Wordsworth (1770-1850), who proved the most productive poet of the high period of romanticism, typified the push and pull of war upon the poetic imagination. On the one hand, he sensed that this "rash spirit" wrought immense harm; on the other, he sympathized with Tyrolese patriots: "And God and Nature say that it is just. / That which we would perform in arms--we must!"[19] Neither of the other two English lake poets displayed such ambivalence. They both disapproved of the instigation and results of war.

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[18]Walter Scott, The Complete Poetical Works of Sir Walter Scott (Boston: Houghton Mifflin Co., 1900), p. 74.

[19]Wordsworth, Works, vol. 3, pp. 146-50. This wavering attitude also characterized some poets of other countries during the nineteenth century, e.g., Victor Hugo (1802-1885) in France and William Cullen Bryant (1804-1878) in the United States. See Victor Hugo, The Works of Victor Hugo, vol. 9: Poems and Dramas, coll. Henry L. Williams (New York: The Hamilton Book Co., n.d.);

Samuel Taylor Coleridge

Samuel Taylor Coleridge (1772-1834) reaffirmed British poetry's opposition to wars and condemnation of kings for causing them. His "Ode" wished reason and gentleness to triumph over ambition's "ruthless war." Over two decades later, in 1817, "The Destiny of Nations" blamed the murder, suicide, and waste of war on the "appetites of kings" accompanied by "the low flattery of their reptile lords."[20] On the other hand, an essay the following year advised that cosmopolitanism ought to be countered by patriotism. Morality requires patriotism in order to support the single nation-state, which supplies liberty through the compact of its citizens.[21]

Robert Southey

The third of the lake poets, Robert Southey (1774-1843), who had once jointed with Coleridge in proposing a communal experiment, eventually turned Tory and became poet laureate of England for thirty years. His works were highly

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William Cullen Bryant, The Poetical Works, vol. 2 (New York: D. Appleton and Co., 1883), pp. 305-6 and 347-48; William Cullen Bryant, Poems (New York: Worthington Co., 1888), pp. 288-89 and 304-5.

[20]Samuel Taylor Coleridge, The Complete Poetical Works of Samuel Taylor Coleridge, vol. 1 (Oxford: At the Clarendon Press, 1912), pp. 35-36 and 131-47.

[21]Samuel Taylor Coleridge, On the Law of Nations in Selected Poetry and Prose of Coleridge (New York: The Modern Library, 1951), pp. 482-88.

valued and widely received during his time. One of them, which he wrote in his youth, was "The Battle of Blemheim," a poem which caustically pointed to disproportionality and insufficient cause, even in triumph:

> They say it was a shocking sight
> After the field war won,
> For many thousand bodies here
> Lay rotting in the sun;
> But things like that you know must be
> After a famous victory.
> . . . . . .
> And every body praised the Duke
> Who this great fight did win
> But what good came of it at last?
> Quoth little Peterkin
> Why that I can not tell, said he,
> But 'twas a famous victory.[22]

From Romantics to Moderns

Thomas Love Peacock
Matthew Arnold
and Austin Dobson

Throughout the nineteenth century, other popular British poets from time to time continued to disclose their feelings about war. Thomas Love Peacock (1785-1866), Matthew Arnold (1822-1888), and Austin Dobson (1840-1921) seldom expressed their sentiments on war, but were clearly antagonistic to war as they perceived it. Peacock, while a young man, was an acquaintance of Shelly; yet he criticized the domination of literature by the romantic movement. Nor did he follow the general tendency in his own, best poem.

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[22]Robert Southey, Metrical Tales and Other Poems (London: Longman, Hurst, Rees, and Orme, 1805), pp. 44-47.

Instead, he penned a song revealing the un-romantic and rapacious results of seeking glory through war. There surely could be heard no chords of sentimental fancy as drunken singers praised themselves loudly for their victorious deeds of war:

> We orphaned many children,
> And widowed many women.
> The eagles and the ravens
> We glutted with our foemen;
> The heroes and the cravens,
> The spearmen and the bowmen.[23]

Arnold, who first published "Dover Beach" in 1867, looked around him to see the eternal tides of human misery in a world "where ignorant armies clash by night."[24] Following the Franco-Prussian War, Dobson depicted the sacrifices made by soldiers and the bereavement of their mourners. Like other British poets for two centuries past, he blamed royal ambition:

> Carry his body hence,--
> Kings must have slaves;
> Kings climb to eminence
> Over men's graves:
> So this man's eye is dim;--
> Throw the earth over him.[25]

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[23]Thomas Love Peacock, The Misfortunes of Elphin and Rhododaphne (London: Macmillan and Co., Ltd., 1897), p. 82.

[24]Matthew Arnold, Poems (London: Macmillan and Co., 1894), pp. 63-64.

[25]Austin Dobson, Collected Poems, 6th ed. (London: Kegan Paul, Trench, Trubner and Co., 1905), p. 148.

Alfred Tennyson and Rudyard Kipling

These three writers were overshadowed, however, in the latter part of the nineteenth century by the two most militaristic of British poets. During the period stretching from the romantic era to the world war, the two major British poets were the poet laureate, Alfred Tennyson (1809-1892), who embellished the exploits of her majesty's imperial forces, and Nobel winner, Rudyard Kipling (1865-1936), whose ballads presented royal battles as dandy affairs.

Each author could always claim that he dealt with reality. Each could say that his art had to be realistic and a part of the national life. Tennyson, in "Epilogue," replied to the criticism that he praised rather than regretted the "barbarism of wars." He stated that he would prefer global peace but one "must combat might with might."[26] This rationale, though frequently used by persons quick to defend war, was defensive in its essential nature; and, while this argument might have allowed acceptance or even mild praise of war, it did not directly excuse jingoism. In no light did it warrant anyone spending much of his lifetime heaping garlands and glitter on British wars, even had they proved defensive.

Kipling viewed the human race as a collection of savages. From the "General Summary" to Departmental

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[26]Alfred Tennyson, Tiresias and Other Poems (London: Macmillan and Co., 1885), pp. 164-67.

Ditties came these words: "We are very slightly changed / From the prehistoric apes who ranged / India's prehistoric clay."[27] The empire operated within this fiercely tumultous world; and he recorded it with zest. His amusing tales lent a jaunty and invigorating air to the escapades of the soldier. His drum-beat-like rhythms sounded grand. He even converged upon the deep tones of Tennyson with "Recessional," addressed to the "Lord of our far-flung battle lines."[28]

Kipling and Tennyson both could indeed plead the redeeming value of realistic description. They did participate in their national culture as mirrors. They also created much of what they purported to describe. To say that their influence was bad is a value judgment. It is an accurate judgment of fact to point out that the pageant they portrayed was unreal.

While late twentieth century observers, particularly in the United States, became prone to look back at the late Victorian era and remember the imperial strands, Tennyson and Kipling did not walk the stage by themselves. During the final years approaching the First World War, the last British poetry to seriously assess war flowed from the pen of Thomas Hardy.

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[27]Rudyard Kipling, Barrack-Room Ballads and Ditties (Philadelphia: H. Althemus, 1899), p. 11; A theory of evolution is implied; but the view of human nature still agrees with Augustine.

[28]Ibid., p. 237.

Thomas Hardy

As the English novelist Thomas Hardy (1840-1928) turned to poetry in his later years, he produced poem after poem pinpointing the manipulation of lives in doubtful causes, the inglorious waste of youth, life on the home-front, and death across the sea.[29] He assaulted old ideas of war with the poignance of reality and concluded, " The Battle-god is god no more."[30] Hardy expressed both the injustice of dying without a stake in the cause and the feeling of strangeness envoked by killing persons against whom one bore no hostility.. Looking back to 1813, Hardy pictured the battle scene at "Leipzig" as it had looked when fifty thousand men fell "in a quarrel not theirs."[31] To those soldiers who still live, the peculiar act of killing provokes perplexity, the way it does a soldier in "The Man He Killed"(1902):

> Yes; quaint and curious war is!
> You shoot a fellow down
> You'd treat of met where any bar is,
> Or help to half-a-crown![32]

Hardy's imaginary traveller in "His Country" takes a journey around the globe, ever observing the plain fact

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[29]Thomas Hardy, Poems of the Past and Present (New York: Harper and Brothers, 1902), pp. 5-36.

[30]Ibid., pp. 33-36.

[31]Thomas Hardy, Wessex Poems and Other Verses (New York: Harper and Brothers, 1899), p. 66.

[32]Thomas Hardy, Selected Poems (New York: Penguin Books, 1978), pp. 258-59.

that human beings share like experiences. As did the Stoics, he discovers that he and all other persons inhabit truly the same world. Since universal citizenship knows no boundaries, "Whom have I to fight, / And whom have I to dare, / And whom to weaken, crush and blight."[33] Yet nations continued preparing to fight as the last months passed before world war began. The poem, "Channel Firing," reflected on naval cannon practice by the British fleet in April of 1914 and condemned the rush to disaster: "All nations stirring strong to make / Red war yet redder. Mad as hatters."[34]

Conclusion

In this manner, British poetry arrived along with the rest of civilization--cluttered with contradictions but carrying a tradition that the shock

From 1919 to 1945 few poems written in English would seek to justify or even accept war. After 1945, vitually none would.

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[33]Thomas Hardy, Selected Poems of Thomas Hardy (London: Macmillan and Co., Ltd., 1953), p. 137.

[34]Carl E. Bain; Jerome Beaty; and J. P. Hunter, The Norton Introduction to Literature, 3rd ed. (New York: W. W. Norton & Co., 1981), p. 857.

CHAPTER NINE

THE MODERN JUST WAR 1650-1919:

PART FOUR--JUSTIFYING WAR

IN ONE COUNTRY: AMERICA

I wake in the night and smell the trenches,
And hear the low stir of sleepers in lines--
Sixteen million sleepers and pickets in the dark:
Some of them long sleepers for always.

--*Carl Sandburg, "Killers"*

Wide Participation

Justification of war in America proceeded along both religious and secular lines. Non-sectarian discussions were carried on by influential persons in government, literature, education, the military, and other pursuits. Leading religious-oriented opinion featured laymen, as well as members of the clergy. New England preachers, who held a prominent place in colonial political writings, were among the most conspicuous of religious persons addressing war. They remained vocal well into the nineteenth century,

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[1]Carl Sandburg, Poems of the Midwest (Cleveland: World Publishing Co., 1946), p. 81.

by which time justification of war had become greatly secular.

The Puritans

Within seventeenth century New England, a substantial number of sermons and letters dealt with justification regarding wars with the Indians; yet these addresses achieved no consensus. Puritan Thomas Hooker (1586-1647) had spoken of "the Lord's revenge"; but the reverend Cotton Mather (1663-1728) cherished the idea that justice in war ought to be "notoriously evident and apparent."[2] The founder of Rhode Island, Roger Williams (1603-1683), raised his usual dissent, when concerned with the Indian wars, and argued the case of just war. Writing over a hundred years before America's war to gain independence, Williams reportedly believed that the war of self-defense is the only just war. Divine sanction for wars in self-defense could not be nullified by the fact that past wars have exhibited a record of singularly selfish behavior. Williams advanced a public policy providing defense against internal and external attack. Conquest and military needs could never provide just causes. Williams wholly condemned offensive (aggressive) warfare and advocated utilization of commissions and arbitration to resolve conflicts among nations.[3]

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[2]Merle Curti, Peace or War: The American Struggle 1636-1936 (New York: W.W. Norton & Co., 1936), pp. 16-17.

[3]James E. Ernst, The Political Thought of Roger Williams (Seattle: University of Washington Press, 1929), pp. 114-15.

William Penn

His Influence

The most celebrated proposal reflecting on the justification of war made during pre-Revolutionary America issued from the hands of a pacifist. William Penn (1644-1718), Quaker founder of Pennsylvania, published in 1693 a plan for peace based upon an international congress.[4] This tract, though designed for Europe and composed by a man who spent most of his life in England, made an imprint in America. Penn's thoughts, like many other political ideas, were carried to the new land where they were absorbed into the American heritage.[5] Though a leader of a pacifist religious sect, Penn donated one of the earliest schemes of international organization.

Pacifism

Pacifism contained abundant varieties, many of which reluctantly consented to degrees of organized violence supporting concepts of justice. Consequently, Penn's opinions presented no paradox, though they undoubtedly provoked objections from many members of his Quaker religion and gained greater acceptance among non-pacifists than did the

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[4] William Penn, William Penn's Plan for the Peace of Europe, Old South Leaflets, No. 75 (Boston: Directors of the Old South Work, n.d.).

[5] See Francis G. Wilson, The American Political Mind (New York: McGraw-Hill Book Co., Inc., 1949), p. 44.

usual Quaker tenets alone. The pacifism practiced by Quakers, Mennonites, Dunkers, and by other religious groups with fewer numbers was a sectarian pacifism that did not exert in itself an immediate and great influence in American life outside the limited membership of the sects.[6] Pacifism made little headway until the peace movement arose in the early nineteenth century.

Just and Unjust Causes

Penn mentioned two just causes for war. "War," he reported, "cannot in any sense be justified but on wrongs received; and right, upon complaint refused."[7] Without voicing approval, he observed that the first case involves retaining things during an "invasion" by a foe and ranks as "purely defensive."[8] The second instance means "to recover" what has been lost and "is offensive." A third occasion for war, trying to conquer additional territory, would not be considered just by a parliament or court containing all European states.

Penn reminded his readers of the "bloody tragedies" that wars breed; but he argued longer against the expense

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[6]Peter Brock, Pacifism in the United States from the Colonial Era to the First World War (Princeton: Princeton University Press, 1968), pp. 946-47.

[7]Penn, Essay, p. 3.

[8]Ibid., p. 6.

[9]Ibid.

of war.[10] While peace provides the banquet of life, war gorges itself, leaving the table bare. Justice assures peace; and nations can consent to establish justice.[11]

Three Views of Justice

The essay construed justice in three lights: (1) as a present or desired attribute of war, (2) as a means to peace utterly separate from war, and (3) the decisions of an international organization for peace, not necessarily separate from war. The first involved just cause, as stated. The second interpretation of justice features it as the preventer of war. Penn affirmed that "justice . . . is a better procurer of peace than war."[12] In the third meaning of justice, parliament of nations would decide each case and--backed by armed forces--command obedience to its terms.

An Institution for Security

He believed that the states of Europe could institute peace through a parliament, which would be prepared to hear disputes that remain unresolved following initial diplomatic efforts by the parties themselves. The international body would decide each case and--backed by armed force--command obedience to its terms. In that no state would possess the will to challenge the parliament's

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[10] Ibid., pp. 1-2. [11] Ibid., pp. 2-3.

[12] Ibid., p. 3. Nowhere does he say "social contract."

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[10] Ibid., pp. 1-2.

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supremacy of power, peace would reign. Penn, the pacifist, thus sketched an organized system of security, or a government, relying on military strength. He proved that pacifists can adopt flexible positions on war; and his peace plan blazed the way for many different messages that have prescribed for the modern world the institutionalization of justice through international organization.

Growth of American Opinion

As the American experience took shape, colonial and national leaders found themselves increasingly cognizant of opinions contained in some of the most humane and practical works touching upon war's justification. Early in colonial America the curricula of American higher education incorporated major works by seventeenth and eighteenth century authors in international law, as well as other important writings containing opinions about the justification of war. Thinkers such as Vattel, Grotius, Pufendorf, and Locke made their way into language courses, lectures intended to prepare students for citizenship, the materials of moral philosophy, and the subject matter of law schools.[13] Beyond these courses in formal education, well-read fathers of the new republic regularly reached out to familiarize themselves with many of the best pieces of Western

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[13]Anna Haddow, Political Science in American Colleges and Universities 1636-1900, ed. William Anderson (New York: D. Appleton-Century Co., Inc., 1939), pp. 26-28 and 254-55.

literature pertaining to government. Montesquieu, Rousseau, and Roman masters joined the many other sources of ideals and ideas.[14]

Benjamin Franklin

Opposition to War

The most outspoken commentator on the justification of war of all the founding fathers was Benjamin Franklin (1706-1790). Franklin stoutly and consistently opposed the regular pursuit by separate nations of their ambitions and interests through warfare. More than any other leader of his time, he took a cosmopolitan, cooperative view of

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[14]Long before the revolution, Parson John Wise (1652-1725) had relied strongly on the social contract beliefs of Pufendorf: Edmund S. Morgan, ed., Puritan Political Ideas 1558-1794 (Indianapolis: Bobbs-Merrill Co., Inc., 1965), p. 252; A half century after Wise, in 1773, patriot Samuel Adams cited Grotius and Pufendorf: Samuel Adams, The Writings of Samuel Adams, vol. 2, ed. Harry A. Cushing (New York: G. P. Putnam's Sons, 1906), pp. 410 and 437; Benjamin Franklin and other prominent revolutionaries displayed interest in Grotius, Locke, Pufendorf, and Vattel: Albert de Lapradelle, "Introduction," in Vattel, Law of Nations, ed. Fenwick, pp. xxvii-xxviii; Jefferson cited the works of Pufendorf and Vattel frequently: Edward Dumbauld, The Declaration of Independence and What It Means Today (Norman: University of Oklahoma Press, 1950), p. 35; see also Benjamin F. Wright, Jr., American Interpretations of Natural Law (Cambridge: Harvard University Press, 1931), pp. 49-55, 58-61, 79, and 128; also Alan P. Grimes, American Political Thought, rev. ed. (New York: Holt, Rinehart, and Winston, 1960), pp. 94-97; although many freshman level American government texts omit Locke, acknowledgement of Locke has become legendary, e.g., Charles E. Merriam, A History of American Political Theories (New York: The Macmillan Co., 1924), pp. 89-95; also Kenneth M. Dolbeare, Directions in American Political Thought (New York: John Wiley & Sons, Inc., 1969), p. 11.

international affairs.[15] Though a diplomatic representative of the United States and an eminently respected elder statesman, Franklin looked upon the loss of life and other misfortunes of the American Revolutionary War with arrant dismay. After the revolution had been raging for several years, he wrote to an acquaintance in England showing his concern for the "many thousands of worthy men and honest industrious families butchered and destroyed by this devilish war."[16] All wars were unreasonable mistakes. They were inhumane and imprudent.[17] A country seeking an advantage would find the object "much cheaper to purchase" than to acquire through the expense of war, including the charges of a "numerous tribe" of defense contractors.[18] Men and money wasted during centuries of war could better have produced public improvements for public happiness.[19] Wars even damage humanity as a species by preventing the "flower of the nation" from reproducing.[20] Franklin hoped for the gradual growth of arbitration; for he thought that even throwing dice would be preferable to warring.[21]

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[15]Benjamin Franklin, On War and Peace, Old South Leaflets, no. 162 (Boston: Directors of the Old South Work, n.d.), pp. 18-19.

[16]Ibid., p. 3.

[17]Ibid., p. 15.

[18]Ibid.

[19]Ibid., pp. 8-9.

[20]Ibid., p. 11.

[21]Ibid., pp. 7 and 10.

Just and Unjust War

The letters of Franklin frequently reiterated his conviction that "there never was a good war or a bad peace."[22] Still, he did believe that justice should be observed among states; and he did recognize just and unjust wars.[23] War could "hardly be just on both sides."[24] Justice is a grave issue; and it should regulate both going to war and what one does during the fighting. Rather than participate in an unjust war, an officer can resign his commission; but ordinary soldiers and sailors are like slaves.[25] Whenever one does participate in war, it should be conducted as justly as possible.

Just Conduct

Franklin excluded peaceful persons from harm and prohibited the taking of property. Non-combattant immunity was to include farmers, fishermen, merchants, mechanics, manufacturers, and traders in unarmed ships. Hospitals became free from attack.[26] The English King Franklin charged with being responsible for the killing of women and children by Indians; and in repudiating murderous conduct against the Indians, Franklin reasoned that the little Indian children had committed no acts "worthy of death."[27]

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[22] Ibid., p. 8. [23] Ibid., pp. 7 and 10.

[24] Ibid., p. 14. [25] Ibid., p. 13.

[26] Ibid., pp. 3, 6-8, and 18. [27] Ibid., pp. 4-5.

He generally blamed rulers for unjust conduct; but he realized that frontiersmen become inflamed and he wavered close to placing blame for British atrocities upon the British people.

A major change that Franklin urged upon international law and practice was the abolition of privateering, which was the commissioned robbing of enemy merchantmen on the high seas.[28] He carried his condemnation of all kinds of plundering to the point of urging armies to pay for even the necessary items they take.

John Jay

Revolutionary, diplomat, and first Chief Justice of the United States, John Jay (1745-1829) mirrored Thomas Hobbes as he wrote in the fourth essay of the Federalist papers concerning "just causes of war given to other nations."[29] In the preceding number he designated two just causes of war. The first arose through "designed or accidental violations of treaties and the laws of nations"; the second ensued from "direct and unlawful violence."[30]

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[28] Ibid.; Benjamin Franklin, The Life of Benjamin Franklin, 2nd., vol. 2, ed. John Bigelow (Philadelphia: J. B. Lippincott & Co., 1884), p. 499; Privateering or taking prizes, as it was often called, had long been considered both normal and lawful, e.g., William Shakespeare, Othello, 1. 2. in Shakespeare Annotated, vol. 3, p. 280: "'Faith, he tonight hath boarded a land carack: If it prove a lawful prize, he's made forever."

[29] Alexander Hamilton, John Jay, and James Madison, The Federalist (New York: The Modern Library, 1941), p. 17.

[30] Ibid., p. 16.

Jay told the people of New York that the newly proposed constitution would create a government capable of providing greater security plus better prospects of peaceful settlement. The national government would behave more moderately, with enhanced candor, and with less adherence to pride, thus offering "fewer just causes of war."[31]

The American Outlook

Americans believed their experience new and special and themselves removed from the sordid, old intrigues of Europe; but many of them stayed well aware of international slaughter. Their idea of being different and superior not only fostered isolationism--which rested also on the fact of geographical separation--it strengthened feelings of moral leadership and humanitarian involvement. Though these mixed sentiments helped cause American foreign policy to see-saw between isolationism and involvement, at no time did the American people turn insensitive to international disputes. Neither their conviction of special gifts nor the vast expanse of oceans could immunize them against the general concerns of humanity.

The Peace Movement

Its Characteristics

Reaction by literate persons against the miserable pain, destruction and despair of the Napoleonic Wars

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[31]Ibid.

(1799-1815) began to motivate not only peace groups in Europe but also a peace movement in the United States. The young nation was fertile ground for such activity. An American man of letters described the sentiment of the American people during the second administration (1813-1817) of President James Madison: "In the American character, antipathy to war ranked first among political traits."[32]

Peace societies were established in New York, Massachusetts, and Ohio in 1815. The American Peace Society was founded in 1828; and the Universal Peace Union, in 1866. The single pacifist association of much size was the short-lived New England Non-Resistance Society, which was organized in 1838. Pacifist designs lay at the far side of the motley and slow-moving peace crusade, and usually represented a final intention rather than an immediate fixed plan. The prevalence of multifarious viewpoints even among the pacifists themselves served to mitigate a direct, concentrated influence by pacifism on the policies followed in international politics.[33] Yet peace activity as a whole enjoyed a variety of supporters with diverse beliefs. Like the European peace movement, American devotion to limiting the occurrence and conduct of war was essentially non-religious, optimistically progressive, and humanitarian.

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[32]Henry Adams, History of the United States of America, vol. 3 (New York: Charles Scribner's Sons, 1981, p. 226.

[33]For pacifist disagreements that caused weakness: Merle E. Curti, The American Peace Crusade 1815-1860 (Durham, N.C.: Duke University Press, 1929), p. 227.

Noah Worcester

As the Napoleonic era drew to a close, New England clergyman Noah Worcester (1738-1837) fueled peace activities with A Solemn Review of the Custom of War (1814). The minister charged that permitting nations to preside as their own judges had failed miserably. Not only had they shown themselves to be incapable of promoting justice, they had been unable to provide the most elementary distinction--that between innocents and the guilty. Worcester wrote:

> A mode of revenge or redress which makes no distinction between the innocent and the guilty ought to be discountenanced by every friend of justice and humanity. . . . There is as little prospect of justice in permitting war for the decision of national disputes as there would be in permitting an incensed individual to be, in his own case, complainant, witness, judge, jury, and executioner.[34]

Thomas C. Upham

At Bowdoin College, a pacifist professor of philosophy argued against the evils of war and suggested the construction of a congress of nations. In his efforts to add flesh to the often dry bones of history, he described scenes of war. By repeating a sorrowful narrative, he pictured the French retreat from Moscow. The soldiers of the Grand Army completed covered the roads:

> Some had lost their bearing, others their speech, and many, by excessive cold and hunger, were reduced to such a state of stupid

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[34]Edmund C. Stedham and Ellen M. Hutchinson, eds., A Library of American Literature, vol. 4 (New York: Charles L.Webster & Co., 1892).

> phrenzy, that they roasted the dead bodies for food, and even gnawed their own hands and arms. Some, who were too weak to lift a piece of wood, or to roll a stone towards the fire, sat down upon their dead companions, and with an unmoved countenance, gazed upon the burning logs. When they were consumed, these livid spectres, unable to get up, fell by those on whom they had been seated. Many, in a state of mental alienation, in order to warm themselves, plunged their bare feet into the fire; some, with a convulsive laugh, threw themselves into the flames, and uttering shocking cries, perished in the most horrible contortions.[35]

William E. Channing

Along with Worcester, one of the most influential ministers discussing the justification and abolition of war was William E. Channing (1780-1942). Channing delivered a lecture in 1838 directing individuals to examine the justice of wars, to speak out against those wars found unjust, and to purposely refuse to fight in them--even under penalty of death.[36] Blood-shed, he considered far too serious an event to be undertaken as if it were a trifle. War, he begrudgingly allowed and described entirely in negative terms:

> A declaration of war sends us forth to destroy our fellow creatures, to carry fire, sword, famine, bereavement, want, and woe into the fields and habitations of our brethren.[37]

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[35]Thomas C. Upham, The Manual of Peace (New York: Levitt, Lord, & Co., 1836), pp. 21-22.

[36]William E. Channing, Discourses on War (Boston: Ginn & Co., 1903), pp. 105-7.

[37]Ibid., p. 106.

"The presumption," Channing declared, "is always against the justice and necessity of war."[38] In the first place, the attitude that every ruler holds about other countries is "partial, unjust." he reckoned that one can fully expect public leaders to be too corrupt to deserve following and that untrue ideas concerning patriotism and honor will dominate public opinion. Channing warned, "A base selfishness is the principle on which the affairs of nations are commonly conducted."[39]

William Ladd

One of the most vocal lay persons working for peace and justice during this time was William Ladd (1778-1841). Ladd, a sea captain, farmer, and practical planner of peace, wrote in 1840 that the human race had begun to change its outlook on war. Many of the causes of war once accepted as justifiable had since been rejected; and with the influx of "a little more light" mankind would begin to consider war to be a "capricious arbiter of justice."[40] Ladd warned of improved technology bringing about increased fatalities and expense.[41] Justice would be much more probable if reached through an international organization than

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[38]Ibid., p. 104. [39]Ibid.

[40]William Ladd, An Essay on a Congress of Nations (reprint ed., New York: Oxford University Press, 1916), pp. 88-89.

[41]Ibid., pp. 93-94.

through war.[42] A congress of nations and a court of nations ought to be formed to establish, adjudicate, and arbitrate international law, including the regulation of just conduct, and to assist in avoiding war altogether.[43] If wars are fought, they cannot pretend to justice except as a last resort, following all other means of achieving a settlement.[44] The same moral standards apply equally to individuals and nations.

Poetry and Peace

Its Concerns

Those persons concerned with solving the problems of war found support even in American poetry. Because the new republic was inaugurated at the high point of the romantic era in poetry and because it quickly exuded a proud young nationalism, one might have expected American poets to pound out a busy path of pugnatious patriotism. Such was not the case. As New England flowered and the country earned some independence in literature, esteem for American achievements did carry with it a degree of flag-waving, but not much. Whatever might have been the reasons --revulsion against war in general, traditional opposition to standing armies,, the absence of enemies nearby, concern

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[42] Ibid., pp. 4-5.

[43] Ibid., pp. 17-23.

[44] Ibid., pp. 89-103.

with slavery and potential slave territory added by war, the ruin of civil war, or preoccupation with work, westward expansion and other pursuits of individual existence by an individualistic people--the results were the same. Pro-war poetry played an exceedingly minor role.

Henry Wadsworth Longfellow, John Greenleaf Whittier, and Oliver Wendell Holmes

Even such militant poetry as did arise had some counterweights to it. Consider Holmes as opposed to Longfellow and Whittier, all three born within a couple of years of Britain's super-nationalistic Alfred Tennyson. Oliver Wendell Holmes (1809-1894) wrote of heroics and thus achieved national fame at an early age with his patriotic objection to the proposed destruction of the warship, "Old Ironsides."[45] Yet he never approached the tenor of Tennyson. In contrast with Holmes, Henry Wadsworth Longfellow (1807-1882) was moved to publish in 1884 "The Arsenal of Springfield." The poet lamented the fact that man had upset the harmony of nature and wrought agony through the instruments of death. He complained of public resources being drained away by imperfect human beings needing the liberal remedy of education:

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[45]Edmund Fuller and B. J. Kinnick, Adventures in American Literature (New York: Harcourt, Brace, and World, Inc., 1963), p. 608.

Were half the power, that fills the world
with terror,
Were half the wealth bestowed on camps
and courts,
Given to redeem the human mind from error,
There would be no need of arsenals or forts.[46]

Shortly after Longfellow published his indictment of armaments, John Greenleaf Whittier (1807-1892) composed "The Peace Convention at Brussels."[47] He rose to defend those who opposed the "fiery waste of war" against "sneers" and suggested that their hope for peace on earth was to be applauded. A third of a century later in "Disarmament" he still exclaimed, "O men and brothers! let that voice be heard. / War fails, try peace; put up the useless sword!"[48]

Era of the Mexican War

Warriors

By the mid-nineteenth century, the expansion of the United States westward across the North American continent manifested itself in the Mexican War (1846-1848), which occasioned a fiery and bitter debate among Americans concerning the justice of the war. Support for going to

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[46]Henry W. Longfellow, The Complete Poetical Works of Henry Wadsworth Longfellow (Boston: Houghton, Mifflin, and Co., 1902), p. 71.

[47]John Greenleaf Whittier, The Poetical Works of John Greenleaf Whittier, vol. 3: Anti-Slavery Poems, Songs of Labor and Reform (Boston: Houghton Mifflin Co., 1892), pp. 318-21.

[48]Ibid., pp. 365-66.

war had surged quickly during the summer of 1845. About this time the New York Journal of Commerce gave forth an agitated call for war with Mexico:

> Let us go to war. The world has become stale and insipid; the ships ought to be all captured, and the cities battered down, and the world burned up, so that we can start again. There would be fun in that--some interest, something to talk about.[49]

William Jay

Some Americans had started looking outside their borders and threatening to use martial means even before the Mexican War. Judge William Jay (1789-1858), son of John Jay, pointed out the folly of undertaking such a military expedition into the West Indies. He later vowed the Mexican War to have been altogether unjust. He determined that wars generally display this conspicuous injustice; and he complained that injustice springs from the inattention and ignorance of the throngs of soldiers who do the fighting.[50] Jay thought that these men ought to examine the morality, as well as the necessity of each contest.

War and preparedness impoverish nations. The people under all forms of government agree to surrender their economy, morality, and happiness to the crazy pursuit of glory and military readiness. Still, they blame

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[49]Justin H. Smith, War with Mexico, vol. 1 (New York: The Macmillan Co., 1919), p. 124.

[50]William Jay, War and Peace (New York: Wiley and Putnam, 1842; reprint ed., n.p.: Jerome S. Ozer, Publisher, 1972), pp. 24-25.

not war-making but the general political institutions, which brings about revolutions "like the waves of a troubled sea."[51]

Jay did not deny a nation the just cause of self-defense; but he discovered that just cause, right intention and last resort were not being practiced. While he did not define his categories in exactly these terms, he observed that war was not begun nor waged with the correct spirit and that the prevalent causes of offensive war were pride, revenge, territorial gain, and political advantages.[52] He felt that nations could "almost always" obtain their objectives by employing other means.[53] Arbitration might well provide a means of settlement preferable to war.[54]

Albert Gallatin

Diplomat and cabinet officer, Albert Gallatin (1761-1849) resolved at the time of the Mexican War that war ought to be undertaken only when forced upon the nation in self-defense. He added that the "purely defensive war, and no other is justifiable, is necessarily attended with

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[51]William Jay, A Review of the Causes and Consequences of the Mexican War, 2nd ed. (Boston: Benjamin B. Mussey & Co., 1849), pp. 332-33.

[52]Jay, War and Peace, pp. 13-14.

[53]Ibid., p. 29.

[54]Ibid., pp. 24-25.

a train of great and unavoidable evils."[55] Nations should behave with respect to their external relations "in strict conformity with the dictates of justice."[56] During the period stretching from 1783 to 1846, the "expediency" of the use of arms by the United States was disputed; nonetheless, the "recourse to arms was always in self-defense." In contrast, the war with Mexico produced no interpretation that could justify it.[57] Unfortunately, all peoples have always "been to apt to forget the duties imposed upon them by justice toward other nations." Gallatin urged that care be taken to avoid this mistake, but that blame not be placed on patriots who rally around the flag once war has begun. Jay had appealed to the individual soldier's conscience, which implied his guilt; Gallatin thought those persons who start wars should be blamed:

> . . . I do not extend the same charity to those civilians who coolly and deliberately plunge the country into an unjust or unnecessary war. . . . We should have but one conscience; and most happy would it be for mankind were statesmen and politicians only as honest in their management of the internal or external national concerns as they are in private.[58]

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[55]Albert Gallatin, Peace with Mexico (Washington: J. & G. S. Gideon, Printers, n.d.), p. 13.

[56]Ibid., p. 12.

[57]Ibid., pp. 12 and 14.

[58]Ibid., p. 13.

U. S. Grant

The Mexican War provoked questions of justification among Americans who became prominent later. Ullyses S. Grant (1822-1885), army general and President of the United States, regretfully recalled America's role in the war. Grant served as an officer during the campaign, but wrote that its ultimate cause represented an unjust conspiracy and its actual inception, another injustice.[59] He opposed beforehand what he considered to be the unjust cause (the annexation of Texas), and later reaffirmed, "I . . . to this day regard the war which resulted as one of the most unjust ever waged by a stronger against a weaker nation."[60]

Mark Twain

In Contrast to Roosevelt

In the half-century between the climax of America's civil warfare and the first of the world wars two influential public men emerged who had definite thoughts about war. Both men were associated with the American West at a time the frontier was vanishing; and both exuded a hearty and earthy style that helped assure their popularity while delivering numerous lectures and speeches and writing many books to vast audiences. One was convinced that war could

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[59]Ullyses S. Grant, Personal Memoirs of U. S. Grant, vol. 1 (New York: The Century Company, 1895), p. 33.

[60]Ibid., p. 31.

be just; the other was disinclined to think so. One man was Theodore Roosevelt; the other, Mark Twain.

Unjust Killing

Mark Twain (1835-1910), born Samuel L. Clemens, wrote that wars are started for unjust causes. Through Satan lecturing to the youngsters of Eseldorf about the weakness of mankind, Twain stated, "There has never been a just one, never an honorable one--on the part of the instigator of the war."[61] By itself, this passage conveys little more than what is implicit in approval of defensive war--that one side is unjust. Yet Twain's writings taken as a whole show his sensitivity to human tragedy and his serious reflection about the damage that war brings. In the Private History of a Campaign that Failed, he revealed that his opinions on warfare were grounded in personal experience. He described a sorrowful incident that terminated his brief militia excursion during the first months of the American Civil War (1861-1865). War to Twain was untimately unjust killing:

> . . . He was lying on his back, with his arms abroad; his mouth was open and his chest heaving with long gasps, and his white shirt-front was all splashed with blood. The thought shot through me that I was a murderer; that I had killed a man--a man who had never done me any harm. That

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[61] Mark Twain, The Mysterious Stranger, in The Writings of Mark Twain, vol. 27: The Mysterious Stranger and Other Stories (New York: Harper and Brothers, 1929), p. 119.

> was the coldest sensation that ever went through my marrow. I was down by him in a moment, helplessly stroking his forehead; and I would have given anything then--my own life freely--to make him again what he had been five minutes before. . . . And it seemed an epitome of war; that all war must be just that--the killing of strangers against whom you feel no personal animosity; strangers whom, in other circumstances, you would help if you found them in trouble, and who would help you if you needed it.[62]

Pain and Waste

Twain intensely expressed his attitude to the pain and waste of war when he dictated The War Prayer in 1904-1905. With bitter sarcasm, he described the travail of war in terms of violent death and destruction, screaming wounded, widows and orphans--innocent but ragged, hungry, and homeless on the blood-stained ground:

> O Lord, our God, help us to tear their soldiers to bloody shreds with our shells. . . . Help us to wring the hearts of their unoffending widows with unavailing grief; help us to turn them out roofless with their little children to wander unfriended the wastes of their desolated land.[63]

Emptyness

Human beings are weak enough to be led into wars where they kill innocent people and deceive themselves to

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[62]Mark twain, The American Claimant and Other Stories and Sketches (New York: Harper & Brothers, 1899), pp. 277-79; Compare Hardy's "The Man He Killed," which was published shortly afterwards.

[63]Mark Twain, The Writings of Mark Twain, vol. 29: Europe and Elsewhere (New York: Harper & Brothers, 1929), p. 398.

the point of assuming a heavenly power to be on their side. This behavior leads not to fulfillment, but to the emptyness. Twain observed while visiting the battlegrounds at Sebastopol, long after the Crimean War. To a predominantly humorous travel yarn, he affixed this hauntingly poetic prose:

> These fearful fields, where such tempests of death used to rage, are peaceful now; no sound is heard, hardly a living thing moves about them, they are lonely and silent--their desolation is complete.[64]

Prospects

Twain supplied little in the way of recommendations to escape these results of human behavior; he suspected permanent peace to be impossible. Yet, shortly after Czar Nicholas II had made his disarmament proposals, Twain wrote from Vienna that four great powers might consent to lower their arms by ten percent yearly and be able to force the smaller powers to go along. He suggested that they could compel a peace. "Peace without compulsion," Twain reflected, "would be against nature and not operative."[65] In this letter, he legitimized as an alternative to war, the power to deter.

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[64]Mark Twain, The Innocents Abroad, vol. 2 (New York: Harper & Brothers, 1911), p. 113.

[65]Theodore Roosevelt, The Works of Theodore Roosevelt, vol. 15: State Papers as Governor and President 1899-1909 (New York: Charles Scribner's Sons, 1926), pp. 383-84.

Theodore Roosevelt

International Morality

President Theodore Roosevelt (1858-1919) who threw himself wholeheartedly into many kinds of physical struggles, who delighted in his own pugnacious temperament, and who gained control of foreign territory in order to construct a canal, did not advocate a policy of national belligerosity. He did strongly emphasize national honor; but this conviction caused him to do more than encourage fighting, it led him to accentuate high ethical principles in international relations and to base war on justice and right. In his sixth annual message to the nation, delivered in 1906, he explained:

> It is a mistake, and it betrays a spirit of foolish cynicism, to maintain that all international governmental action is, and must ever be, based upon mere selfishness, and that to advance ethical reasons for such action is always a sign of hypocrisy. . . . A really great nation must often act, and as a matter of fact often does act, toward other nations in a spirit not in the least of mere self-interest, but paying heed chiefly to ethical reasons; and as the centuries go by this disinterestedness in international action, this tendency of the individuals comprising a nation to require that nation to act with justice toward its neighbors, steadily grows and strengthens. . . . It is wicked for a nation only to regard its own interest, and foolish to believe that such is the sole motive that actuated any other nation. It should be our steady aim to raise the ethical standard of national action just as we strive to raise the ethical standard of individual action.[66]

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[66]Theodore Roosevelt, The Works of Theodore Roosevelt, vol. 15: State Papers as Governor and President 1899-1909 (New York: Charles Scribner's Sons, 1926), pp. 383-84.

Just Cause, Right Intention, and Last Resort

The honorable standards that Roosevelt advocated for international relations obliged him to rest war on justice and right. To his countrymen, Roosevelt maintained that one can loathe an "unjust war," but favor a "righteous war" as frequently the sole course available.[67] His comments went far enough to suggest right intention, just cause, and last resort. As America looked on, Europe fought, and he spoke: "War, like peace, is properly a means to an end --righteousness. . . . Whether war is right or wrong depends on the purpose for which, and the spirit in which, it is waged."[68]

Militaristic Interlude

Characteristics

Germany was not along with its militarists in the quarter century preceding the First World War. Nor was nationalistic fervor limited to Britannia's bards. While nationalism may have appeared at the time to have been a European problem, the phenomenon was to prove world-wide. Certainly, as the new century arrived, apologists for militarism and militant nationalism sometimes bore American accents.

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[67]Theodore Roosevelt, Fear God and Take Your Own Part (New York: George H. Doran Co., 1916), p. 74.

[68]Ibid., pp. 65-66.

As an arms race burned ever more hotly in Europe, the United States moved into a phase of expansionism that reached far beyond its continental boundaries. The country not only ventured into a colonialism of sorts; its people felt their muscles and decided that America was a major military power. They were correct. The United States had transformed into a predominantly urban, industrialized country. Many citizens clung to their traditional notions of isolationism, anti-colonialism, anti-militarism, opposition to war, and non-aggression. Other persons did not. Like Europeans, some Americans proceeded to approvingly interpret war as a divine contribution to a nation, a way to improve human character, a contest to decide the fittest, and as evolutionary, progressive, and inevitable. War in this era was to carry blessings to the eyes of priest, philosopher, and military man.

John Ireland

John Ireland (1838-1918) was an Irish immigrant to America who tried to reinforce both the belief that war can richly benefit a nation and the explanation employed from Augustine to Joseph de Maistre--that the Christian god predestines war. As Roman Catholic archibishop of St. Paul, Ireland addressed his flock during the Spanish-American War (1898) concerning this divine determinism:

> We thank God for the great things which are come to America through these victories. Present glory and power have come to America

> through war. . . . It seems as we glance over the history of humanity that war is one of those mysterious dispensations from God above, through which he works out his ends.[69]

William James

Even William James (1842-1910), the American philosopher and psychologist, whose famous essay asked that attitudes supportive of war be replaced with less disastrous ones, readily confessed that war contributed positive attributes to the characters of human beings.[70] During his Edinburgh lectures in 1901-1902, he had not only credited war with providing much-needed manliness and combatting detestable materialism, he had discovered in heroism life's "metaphysical mystery."[71]

Alfred T. Mahan, Homer Lea, and Leonard Wood

Attitudes

The most aggressive attitudes on war that had ever sprung from the American soil were presented in the writings of three men: rear-admiral Alfred T. Mahan (1840-1914);

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[69] John Ireland, "Peace in the Wake of Victory," in Orations of American Orators, vol. 2, rev. ed. (New York: The Colonial Press, 1900), p. 448.

[70] William James, The Varieties of Religious Experience (London: Longmans, Green, and Co., 1915), pp. 364-69.

[71] William James, "A Moral Equivalent for War," in Memories and Studies (New York: Longmans, Green, and Co., 1912), pp. 267-96. The essay was first published in 1910.

the military adventurer Homer Lea (1876-1912); and major general Leonard Wood (1860-1927).

Mahan

Mahan became an influential helmsman in the arms race at home and abroad. He won even more popularity in Europe than in his own country. Mahan contended in 1899: "Step by step, in the past, man has gained by means of the sword. . . . The time has not yet come to kick down the ladder that has so far served him."[72] Arbitration and arms reduction would not serve a country's best interests. Besides, money is better kept in armaments than spent to "demoralize the European peoples" by providing a "flood of socialistic measures."[73]

Lea

Like Mahan, an opponent of arms limitations and arbitration agreements, Lea believed that only physical power establishes the maintains nation-states.[74] He assessed wars not in measures of justice; rather, wars marked peaks or depressions in the natural evolution of each nation.[75]

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[72]Alfred T. Mahan, Mahan on Naval Warfare, ed. Allan Wescott (Boston: Little, Brown & Co., 1941), p. 342.

[73]Alfred T. Mahan, Armaments and Arbitration (New York: Harper & Brothers Publishers, 1912), p. 13.

[74]Homer Lea, The Day of the Saxon (New York: Harper & Brothers Publishers, 1912), pp. 10-11.

[75]Homer Lea, The Valor of Ignorance (New York: Harper & Brothers Publishers, 1906; reissued, 1942), p. 54.

Causes are superficial. "The source or origin of war," Lea explained, "must always be searched for, not in disputes between states, but deep down in the bowels of one or all of them."[76] This California-born military advisor to Sun Yat-Sen, father of modern China, looked upon life as brutal and wars as being always with mankind. Conflicts had moved from control by individuals to direction by nations and would later be dominated by races.[77] Justice had nothing to do with it.

Wood

Wood believed that war exists as part of the evolutionary fight that leaves the fittest to survive. He stressed preparedness as openly as did Mahan and Lea, but he did accept proposals of arbitration.[78] He even acknowledged that the human race must "continue to strive for world peace," despite the fact that he held no hope.[79] Wood thought that human beings had no choice other than to operate within a highly set situation under the tenacles of an unchangeable rule, which was "the great law which runs through the universe: the law of the survival of the most fit."[80]

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[76]Ibid., p. 53.

[77]Lea, The Day, pp. 14-15.

[78]Leonard Wood, Our Military History (Chicago: Reilly & Britton Co., 1916), pp. 33-34.

[79]Ibid., p. 44. [80]Ibid., p. 34.

Worry about War

Opinions

In the last few years before the outbreak of world war, Americans sincerely concerned with questions of war produced a diversity of opinions and founded a variety of organizations. Many of them joined Europeans in proposing arbitration, mediation, and arms reduction, as they stood in opposition to war in different degrees and sundry ways. One journalist wrote articles in popular American magazines, forecasting that the human race was moving toward world government in order to secure progress.[81] He projected a structure like the American federal system, founded on his Stoic conception of mankind as one.[82] The president of Columbia University favored a less tightly connected government, more on the order of Immanuel Kant's confederative suggestion; and, like William Lovett, he promoted education of public opinion in the interest of peace and justice.[83] A former President of the United States hoped that an international judiciary could slowly accomplish the measures necessary "to escape war."[84] An

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[81] Raymond L. Bridgman, World Organization (Boston: Ginn & Company, 1905; reprint ed., New York: Garland Publishing Inc., 1972), p. 141.

[82] Ibid., pp. 9 and 11.

[83] Nicholas M. Butler, The International Mind (New York: Charles Scribner's Sons, 1912), p. 11.

[84] William H. Taft, The United States and Peace (New York: Charles Scribner's Sons, 1914), p. 181.

academic, who likewise advocated a gradual approach to organizing peace, justified war as a last resort "in order to obtain the recognition of a right denied or to redress a wrong infliected."[85] Still another writer espousing international agreements stood farther down the road to pacifism as he promoted arbitration (1905) and the control of armaments (1908).[86] Two American educators chose to emphasize the tremendous damage wrought by war; and, like Petr Kropotkin, they opposed what they considered to be twisted Darwinism. A zoologist and associate of Herbert Hoover, as did Benjamin Franklin, charged that war eliminated the best of the species.[87] Another naturalist, who served as chancellor at Stanford University, supported this contention: "Darwin . . . saw clearly that the war system was a reversal of the process of natural selection."[88] The writer's own brother had been "harvested" in 1862.

Organizations

During the decade before 1914, numerous organizations directed towards peace were founded. Those

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[85]David J. Hill, World Organization, 2nd ed. (New York: Columbia University Press, 1917), pp. 167-68 and 185.

[86]Benjamin F. Trueblood, The Development of the Peace Idea and Other Essays (Boston: n.p., 1932).

[87]Vernon L. Kellogg, Military Selection and Race Deterioration (Oxford: At the Clarendon Press, 1916).

[88]David S. Jordan, War and the Breed (Boston: Beacon Press, (1915), p. 91; See also David S. Jordan, The Human Harvest (Boston: American Unitarian Association, 1912).

especially active in the United States included the Interparliamentary Union, the World Peace Foundation, the American Association for International Conciliation, the American Society for the Judicial Settlement of International Disputes, the Chicago Peace Society, the American School Peace League, and the Carnegie Endowment for International Peace. From 1914 to the war's end, other associations appeared. Among the most vocal of these groups were the American League fo Enforce Peace, the Church Peace Union, and the League of Free Nations Association. Americans also participated in the work of the British League of Nations Society and the Central Organization for a Durable Peace, which was an outgrowth of the Nederlandsche Anti-Oorlag Raad. Programs announced by such organizations generally utilized a great deal of pacifistic language; but the prevalent theme of this activity endorsed the building of peace through the institutionalization of justice both in a judicial or legal sense and in a concrete or ethical sense.

Conclusion

American society entered the volcanic experience of the First World War bearing several centuries of discussions concerning the justification of war. With their common inheritance of two millenia, the Americans did more than stay even with the rest of Western civilization. America

held more strongly than did Europe to the ever-growing belief that the only just cause is defense. After 1919, and again with added emphasis after 1945, Americans joined in deeply serious, and increasingly systematic discussions covering all categories of the just war.

CONCLUSION

"A planet doesn't explode of itself," said drily
The Martian-astronomer, gazing off into the air--
"That they were able to do it is proof that highly
Intelligent beings must have existed there."

John H. Wheelock, "Earth"[1]

General Characteristics of the Evolution

Because human beings had fought wars, yet recognized at the same time that wars produce preponderantly negative results, there had arisen a tradition of justification. This tradition sought to decrease both the frequency and the intensity of war, to make war more just, and to build a general peace. Lessening the frequency of war involved many facets affecting actual entry into war, especially the cause. The consensus approached ever closer to restricting just cause solely to self-defense. The creation and gradual improvement of rules of conduct sometimes diminished the effects of war and, as much as possible,

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[1]John H.Wheelock, By Daylight and in Dream (New York: Charles Scribner's Sons, 1970), p. 171.

conformed these effects to justice. Ideas about what is natural and reasonable (defined as justice) supplied the rationale for each recommendation, tendency, and standard throughout the entire development of justification. The natural law approach prevailed; and it tried to promulgate not only the most just situation in the short run but to move toward the most just war-related situation possible--a general peace. The basic material was readied for subsequent, sophisticated treatment of seven just war principles, which together sought to trim down war's frequency, its intensity, and its injustice, and to advance general peace.

The counsel of just war justifies nothing automatically; it helps one to decide. As war in general has been seen to be less and less legitimate, the specific standards have grown more complete, clear, and logical; and they have demanded an ever greater regard for humanity. Thus, the acceptable criteria themselves became established so as to prejudice the case against war.

Contemporary Beginnings

Since the Franco-Prussian War many persons had expected a general war, while other persons had supposed such a conflict to be impossible. Some analysts waited for the war as inevitable. A different observer warned that war could not be expected rationally to happen but that it definitely would happen unless governments took measures to

stop it.[2] Many other human beings thought such a conflagration impossible given the advanced stage of civilization. A Spanish novelist recorded the latter attitude:

> The elder Desnoyers was filled with amazement. . . . Was it possible that war could happen in these days of so many railroads, so many merchant mariners, so many inventions, so much activity developed above and below the earth?[3]

By the twentieth century, civilization had ceased being a collection of national cultures of the West and East. Civilization had become a world civilization. Yet antagonistic nationalisms clung to their demands for undiluted sovereignty and, over-all, still denied the existence of an international society. Feelings of unity remained at best luke-warm, which sorely dampened the recognition of shared values. Disunity had produced war in all ages; but war itself had fueled ever greater aversion to war. Although antipathy to war had not produced universally accepted ideas of unity, it had created the just war tradition. When the first world-wide conflict came, an enhanced abhorrence of war brought forth a turning point in that tradition.

With World War I, armed conflict finally came to affect immediately life on every continent. For thousands of years the human race had been fighting and justifying

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[2]Bloch, Future of War, p. 354.

[3]Ibanez, Vicente Blasco, The Four Horsemen of the Apocalypse [Los cuatro jinetes del apocalipsis], trans. Charlotte B. Jordan (New York: E. P. Dutton & Co., 1918), p. 183.

wars, culminating in the cataclysm of 1914-1918. The unprecedented destructiveness of this war forever altered the outlook of civilization on war. Nation had turned on nation. Entire populations directly experienced the ravages of war. The devastation shocked many persons away from unquestioning acceptance and out of helpless resignation. Whatever the other ramifications of the great struggle may have been, three changes stood out: (1) civilization now viewed war with much greater abhorrence than before; (2) this concern instigated a much more active discussion of justification; and (3) aggressive war no longer commanded an almost universal legitimacy. War war evil. Actual defense became the just cause.

These contemporary trends began to express themselves in all the traditional representations of the just war. In international law, where they were to take hold in custom and scholarly discourse, they revealed themselves most conspicuously in formal written instruments. The Covenant of the League of Nations (1919), the Kellogg-Briand Pact (1928), and the Charter of the United Nations (1945) led attempts to outlaw aggressive war. Article 231 of the Versailles Peace Treaty (1919) and the Nuremberg Tribunal Principles (1945) affirmed further the illegality of aggression. Nations agreed to other documents in the form of protocols and conventions--the most important of these being the Geneva Conventions of 1929 and 1949, primarily regulating the jus in bello.

Each development gained strength through the interplay of events and ideas of two decades until the death, desolation, suffering, and exhaustion of World War II (1939-1945) culminated in the atomic bomb. Obliteration bombing, which had wrought wholesale ruin and tremendous civilian carnage in such cities as Hamburg, Dresden, and Tokyo, was soon overshadowed by the instantaneous destruction of Hiroshima and Nagasaki. Over a mile from impact, a Hiroshima housewife watched dying school children calling for their mothers. She cried out, "Why, why these children?"[4] Other voices asked too.

There exist persons too callous and disillusioned (some realists) or too altruistic and disappointed (some pacifists) to admit that ethical rules are being applied to war. Most persons can realize, though, that moral considerations do not simply and casually parade as niceties nor stand beyond the pale of daily human endeavor.

Contemporary Expectations

Public Policy

As long as the policy-makers of each nation conceive their policy aims--aims based on the opinions and desires of one set of leaders and, sometimes, the complimentary aims of leaders in allied countries--to be the

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[4]Robert Guillain, "I Thought My Time Had Come," Atlantic (August 1980): 57.

measure of right, that notion of right will always be opposed by other nations. A one-sided view of right always pursues a cause of aggrandizing one's own power while diminishing the power of some other side. This rationalization of power as morality not only destroys any chance of power even being rationally defined, it corrupts moral considerations. The just war offers a far superior conception.

Political Theory

Contemporary political theorists have focused much attention on the internal policies of national governments. Political theory has sought to authorize governments, then, to define the proper kinds of domestic activities that governments are to perform and to specify the preferred amount of these activities. Deep concern for the domestic side of public policy has often spawned creative ideas and hot debates. Much more seldom has sophisticated political consciousness turned to the consideration of external affairs, which includes foreign policies of single states and international relations among many states. Few theorists have pretended to depict a general theory of utility and morality in international political behavior.

Political theory needs to confidently and vividly spell out what is and is not justifiable in the relationships among nations. The just war tradition provides a solid basis from which to start.

Analysis of the Tradition

To win the widest public acceptance, just war principles must be backed by more than flat assertion. A contemporary social theorist has postulated that just war traditiona would be acknowledged by representatives of nations were they to operate from an original position of equality. Yet he does not explain the just war principles or any other international standards but assumes, "There would be no surprises."[5] Even though respect for reason and utility are contextually implied, the just war is left not only undetailed but groundless. It is not enough to state the principles as given.

Disagreements about the substantive implementations of just war principles sometimes arise from the pursuit of differing political objectives, resulting in politically motivated misinterpretations of just war principles.[6] Many other misconceptions are purely unintentional.[7] A more solid, in-depth comprehension of just war development will serve both to inform the willing and to help shove aside

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[5]John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), p. 378; A critic, who failed to recognize the implications of accepting the just war, thought that Rawls asked for only "non-interference and non-aggression": Brian Barry, The Liberal Theory of Justice (Oxford: Clarendon Press, 1973), p. 132.

[6]E.g., William V. O'Brien, The Conduct of Just and Limited War (New York: Praeger, 1981).

[7]E.g., Inis L. Clause, Jr., "Just Wars: Doctrines and Institutions," Political Science Quarterly 95 (Spring 1980): 81-96.

the claims of the politically biased. For these reasons the evolution of the just war tradition has been traced.

The just war claims multiple origins and contains a number of current associations. Either to exclude a source or to assign sole influence to a single source constitutes a serious mistake. The just war stands not as the concern of an esoteric philosophical system or the tenet of a theology,[8] although both philosophy and religion uphold it. The just war is not a subject of only canon law, of national civil law, or of international law;[9] it is a creature of each. The just war has ties--but not exclusive ones--with chivalry and with military codes. Justification of warfare is not now confined to some specialized sphere of society; and, as with other beliefs of the general culture, it did not derive uniformly from a single fountain of inspiration.

The just war does not now offer total justice, universally accepted. The tradition operates on an imperfect and divided earth overrun with problems not easily solved and questions not soon to be answered. The just war provides a conception of imperfect justice that is not always followed, but that would be accepted by most persons in most nations.

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[8]Cf. Colin S. Gray and Keith Payne, "Victory Is Possible," Foreign Policy 39 (Summer 1980): 16.

[9]C. Josef Kunz, "The Chaotic Status of the Laws of War and the Urgent Necessity for Their Revision," American Journal of International Law 45 (January 1951): 37-61.

International War Today

Judging the War System

The earth today is an armed camp. The consequences of this predicament go far beyond such primary features as military build-up, arms traffic, alliances, and provocation. National military force has long been a basic characteristic of the international system; yet the facts of force have fundamentally worsened. The major powers and many other states maintain a permanent war footing with record destructive potential that increases daily. In addition to the threat of nuclear war, all peoples live with problems perpetuated by, and in many cases attributable to, the war system.

It is no wonder that in such a fearful, brutal, short-sighted environment, problems are easier caused than cured. There exists little mutual assistance. Nations seek spheres of influence, compete for economic dominance, or try to avoid dependency. Rather than rushing forward to pool their efforts toward problem-solving, they even hoard scientific and technological information. Damage to the atmosphere, the oceans, the land, the flora, and the fauna accumulates. Natural resources suffer depletion and maldistribution, while populations swell in number and concentration. The eyes of poverty stare across empty plates. The waste and dislocation of war spending hacks away at national economies and strains international economic

needs. Militarism suppresses publics at home and abroad. Nations know more of competition and terror than of reciprocal duty. The just war tradition can help human beings to evaluate this situation.

Judging Nuclear Deterrence

Thermonuclear weapons constitute the greatest and most immediate threat to destroy not only civilization, but all life on earth. Nuclear deterrence continues to be the official public policy of the two superpowers in response to this menace. No other policy demands greater exercise of will and knowledge in order to explore its moral and material implications; yet, few voices have suggested that the public do more than silently acquiesce to nuclear deterrence or that political leadership really analyze and justify the policy. This neglect continues to breed both poor public policy and danger. Though the balance of terror has not yet ended in Armageddon, it has been largely by the good fortune of accident and, as such, has been no more than marginally political and neither intelligent nor moral. Only when a nation's individuals assume responsibility for intelligent political choices, rather than bowing to other forces, can they lay claim to political morality.

Waiting for Moscow and New York to be obliterated, the President in Fail-Safe thought, "It's no man's fault. No human being made any mistake; and there's no point in trying to place the blame on anyone." He was wrong. There

had, indeed, been a "disappearance of human responsibility"; but it was an abdication of rationality, not an absence of blame. There can never be a "machine-made calamity."[10] If nuclear war destroys humanity, it will not be because machine systems have wrested control; it will be because human beings have not behaved responsibly.

The existing situation is not eternal nor hopelessly behond human control. What well-directed policy demands in order to approximate the general public good is a searching investigation of the implications of nuclear deterrence within a responsible perspective rather than helpless acceptance and bewildered rationalizations that may be the seedbeds of disaster. The just war tradition offers the possibility of greater understanding of nuclear policy and the war system as a whole. It provides progressive development upon which to base hope.

Were the sun to last another five to ten billion years, humanity would today be living near the very origin of its possible time on earth. In relation to this potential time, humanity would differ but little from the way one pictures cave-man ancestors peering from fog-ladden primeval forests. Or, humanity could now be witnessing its final days. Most peoples in all stages of civilization have thus far practiced war. War has been a salient fact of life--its hands of blood and iron reaching out to touch every human institution. War has many times dramatically

and quickly altered the course of history until now history may be near its end.

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[10]Eugene Burdick and Harvey Wheeler, Fail-Safe (New York: McGraw-Hill Book Co., 1962), pp. 277-79.

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