9-1-1996

Is "Just War" Theory Justifiable?

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IS "JUST WAR" THEORY JUSTIFIABLE?[1]

> War ... is only the sad recourse in the state of nature (where there is no tribunal which could judge with the force of law) by which each state asserts its right by violence and in which *neither party can be adjudged unjust* (for that would presuppose a juridical decision); in lieu of such a decision, the issue of the conflict (as if given by a so-called "judgment of God") decides on which side justice lies.... We may well be astonished that the word "law" has not yet been banished from war politics as pedantic, and that no state has yet been bold enough to advocate [this banishment]. Up to the present, Hugo Grotius, Pufendorf, Vattel, and many other irritating comforters have been cited in justification of war, though their code, philosophically or diplomatically formulated, has not and cannot have the least legal force, because states as such do not stand under a common external power.

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Immanuel Kant, *Perpetual Peace*[2]

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Kant in his essay, *Perpetual Peace*, takes what seems at first sight to be an extreme position: The just war theorists are "putting the cart before the horse." There is no sense in talking about justice or injustice in war, and in fact the phrase, "just war," is a contradiction in terms in the present world situation. And a common external power, and legal apparatus, would be necessary to get the "civilized" nations of the world out of their *de facto* "state of nature."

One may take exception to an apparent conflation of morality with legality here, as if a

political/legal interrelationship among nations must be in place before we can talk about justice or morality. In Kant's *Rechtsphilosophie*, morality is distinct and conceptually prior to the political/legal relationships. However, Kant is not necessarily departing from that conceptual analysis here.   But even though the conceptual distinction between the legal and the moral does remain, there seems to be a greater emphasis on temporal simultaneity of the two aspects than in his Philosophy of Right.

Kant's philosophy of state is generally thought to be far removed from the *Realphilosophie* of Thomas Hobbes. But here in characterizing *international* relations he seems to take a position analogous to that taken by Hobbes regarding the formation of nation-states. The analogy becomes clear if we reexamine the Hobbesian myth:

> The final cause, end, or design of men (who naturally love liberty, and dominion over others) in the introduction of that restraint upon themselves, in which we see them live in commonwealths, is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war which is necessarily consequent ... to the natural passions of men when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants.[3]

Kant does not accept Hobbes' version of the formation of the state out of the "state of nature." Nor does he accept Hobbes' merger of justice and morality with a political "leviathan" and its legal apparatus. But if we extrapolate this state-of-nature theory to the international level, a convergence of views begins to take place. In fact, Hobbes made such an extrapolation explicitly:

> [Even if] there had never been any time, wherein particular men were in a condition of war one against another; yet in all times, kings, and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms; and continual spies upon their neigbours; which is a posture of war.[4]

The nations of the world, observes Kant, are in a natural state of war and need, out of a desire for self-preservation if for no other reason, to establish once and for all the legal/moral/political institutions which will for the first time establish the possibility of a "just" relationship among nations. Until that takes place, there is, strictly speaking, no such thing as a "just war." In fact, even to talk about a long or short, widespread or highly concentrated, "state of peace" is unrealistic.   Because of national sovereignty, coupled with a lack of political organization

among the nations, the people of the world are ineluctably and essentially constituted in a state of war among themselves, even if there seem to be no overt hostilities between this or that country.

If one carries this thesis about the pervasive lack of moral/legal/political relationships among nations too far, the result may be the sort of realism that Michael Walzer in *Just and Unjust Wars* opposes, with regard to embarking on war and conduct within war. This is, what Walzer calls the "Hobbesian" realism, fueled by the insight of anarchy among sovereign nations, which bases judgements about war purely on pragmatic considerations -- the escape from fear, the preservation of power, the chances of aggrandizement -- although lip service is given to "just causes" for entering wars and "moral conduct" in war. Walzer maintains, in contrast to such realism, that even actions taken in war and diplomacy under the rubric of "strategy" involve moral or immoral judgements which are latent, and have to be unpacked. Ethical judgements enter into war, whether we make these explicit or not. But how do we get beyond *relativity* in these ethical judgements? Is certainty possible, or is ambiguity inevitable? He uses Hobbes' theory as a stepping-stone to the satisfactory solution of this problem:

> As Hobbes later explained, the names of the virtues and vices are of "uncertain signification."
>> For one calleth wisdom, what another calleth fear; and one cruelty what another justice; one prodigality, what another magnanimity...etc. And therefore such names can never be true grounds of any ratiocination.
>
> "*Never*" -- until the sovereign, who is also the supreme linguistic authority, fixes the meaning of the moral vocabulary; **but in the state of war, "never" without qualification,** because in that state, by definition, no sovereign rules.... War is only an extreme case of the anarchy of moral meanings.[5]

But, Walzer continues, we are not necessarily confined to such Hobbesian strictures. The anarchy of moral meanings is inevitable *only* in a Hobbesian context, where sovereignty begins and ends with the nation state. Unlike Hobbes, Walzer does not look to a monarchical sovereign for deliverance from the "anarchy of moral meanings"; the fixation of moral meanings is to be found rather in a rational consensus which could conceivably emerge even among the citizens of hostile nations.

But if Hobbes sinks too much into realism, doesn't Walzer distance himself from appropriate realistic considerations? For it seems optimistic in the extreme to hope for any such international consensus regarding the justice of a particular war -- especially if we look for this consensus in all the warring parties. The Gulf War is just the most recent example of the willy-nilly prevalence of moral-meaning anarchy.

Numerous books and articles have come out since the Gulf War, examining and reexamining traditional "Just War" theory. Did the war in the Gulf meet up to the standard criteria? What about "proportionality"? Was the possible danger to the international community of a Saddham Hussein and his arsenal serious enough and certain enough to justify the loss of life of hundreds of thousands of Iraqi civilians and soldiers, in addition to a few hundred allied casualties -- not to mention the immense property damage and almost 200 billion dollars in debt incurred? Was the threat to national sovereignty sufficient "just cause" to justify rescuing a nation created a half-century ago by a British official arbitrarily drawing a line on the map, a nation controlled at present by a dictatorial and often brutal patriarchy? Was fighting the war really the "last resort," in view of the strategic importance of imminent weather changes and the imminent Islamic Ramadan season? or should the allies have waited for six months to see if economic sanctions would take hold? Just what was the "proper authority" for declaring war in this case? The U. S. Congress did indeed declare war after the U. S. President had deployed troops and massive amounts of war machinery to the potential war zone, but the war was fought under nominal United Nations auspices, even though the U.N. itself is not the sort of political entity that has the authority to declare war against one of its members. And was there a "right intention," or just the pragmatic motives -- preserving oil reserves, keeping oil prices down, obviating a possible military threat to allies in the middle east, etc.?

It is interesting that much of the debate pro and con about these issues is based on utilitarian thinking, and is caught up in an unavoidable utilitarian weakness -- the difficulty of projecting unforeseen consequences of actions taken, at the time the actions are taken. But the main question about Just War theory is not whether it is a utilitarian approach to morality, but *whether it is on a moral level at all.*

The very word, "just," implies a moral relationship. But what moral relationship exists -- or can exist -- among sovereign states? Do even towns or communities have a moral relationship to one another? If we were to speak, for example, about the duty of town X to pay back a debt to town Y, or of town Y to be truthful to town X about events taking place in town Y -- clearly any obligation or duties would fall upon an individual or individuals within the town, but not upon the town itself and every individual living in it. Only individuals have duties to individuals, or rights corresponding to these duties.   There is of course a floating concept of "group responsibility" and/or "group guilt" -- of Americans for slavery, of Germans for the Nazi holocaust, and so forth -- but in the final analysis all moral responsibility has to be traced back to some conscious, intending moral agent or agents. In the civilized world, as in the later periods of the Old Testament, children "shall *not* be accountable for the sins of their fathers."

If the majority of citizens in a direct democracy mandated a war, any moral

responsibility for the decision would devolve upon those who voted for the war. But in a representative democratic-republic, of course, the process of decision-making is too diffuse to allow meaningful attribution of responsibility to individual citizens. The "buck stops" ordinarily with a handful of representatives, unless those who voted for the representative had certain knowledge of his/her forthcoming decisions on war and peace. And since morality is between individuals, states can only be in a "moral" relationship with each other when the states themselves are under the control of the majority of individuals within them. This would be a second-order, one-step-removed moral relationship; and only democracies can enter into it. If and when that happens, sovereign states would be in the same moral relationship as e.g. Nevada and California, between whom war is unthinkable, because they are in a moral relationship and have legal redress.

But it would be a misleading abstraction to take "justice" in a purely moral sense. Justice implies has a legal as well as a moral connotation. It implies a legal relationship. And here we come back to Kant's question: What viable legal relationship can exist in a context in which there is no properly constituted legislative body, enforcement apparatus, and judiciary? The justices in the World Court in the Hague may come to a unanimous decision, based on some accepted concepts of international law, concerning the rights or delinquencies of a U.N. member nation; but most decisions are without effect, due to a lack of consensus about enforcement or to the immense power of some delinquent nation which refuses to accept the Court's judgement. The refusal of the U. S. in the mid-80s to desist from the blockade of Nicaragua is just one instance of the lack of sanctions associated with World Court decisions. But even if the Court were associated with an executive branch that could enforce its decisions, is it conceivable that it could grant legality to some specific war, and declare another war illegal? This would be like the Federal Government in the U. S. declaring that the state of California had the right of warring against the state of Nevada to settle a water-rights dispute -- in effect, to legalize lawlessness. If California were to secede from the Union because of some such dispute, this would automatically create a situation of war; but California could not declare it "just" because they are outside of the only legal system of justice that pertains to this state, and the Supreme Court could not declare it "just" because the state would be outside the parameters of its legal jurisdiction. We may justifiably begin to suspect that the concept of a "legal war" is a contradiction in terms.

Our concept of "war" is just as flawed as the concept of "justice." It implies that there is some rather persistent state of *peace*, occasionally or frequently interrupted by war. For example, during the heyday of the Soviet Union, the U.S. used to contrast the periods of "detente" with the period of the "cold war", and develop strategies for avoiding a thermonuclear war or even a local tactical conflict in NATO countries. But even in the stages of detente, and even now in the post-detente era, we and the Russians have thousands of

missiles, capable of obliterating national targets, aimed at each other. Can anyone speak of peace in such a situation? If two armies were facing each other with weapons poised and pointed in a classical battlefield, no theorist calling this "peace" could escape ridicule. Of course, the U.S. and the former Soviet Union are now in the process of re-aiming the missiles at the ocean -- but this simply makes it more difficult to launch a sudden attack. It seems that the great spatial and temporal distances involved defuse the threatening nature of what is happening in the world. If a group of radicals or disgruntled soldiers were mobilizing for a coup d'état, we would see this as a warlike situation; but if dictators or terrorists on the other side of the globe are slowly and methodically gathering together the materials for developing nuclear or chemical or biological weaponry to attack specific enemies, we consider ourselves to be in a state of "peace" unless and until they actually begin to deploy their weaponry against us or our allies.

What, then -- is it a mistake to talk about "areas of peace" and "stages of peace" in the present world situation?   Strictly speaking, it is a mistake. And here we come to the fundamental problem: On the international level, we are living in that classical "state of nature" theorized by Thomas Hobbes. Hobbes of course was referring to a reconstructed *intra*national process -- the formation of states and nations; and there is considerable doubt whether there is any truth to his hypothesis of an original state in which our ancestors were fierce and brutish and there was a "war of all against all" leading as a last resort to the formation of a state "leviathan" to keep order and protect life and property. Rousseau's "state of nature" theory, which hypothesizes a very different, kind and altruistic ancestor-type, may be just as plausible. We await further anthropological evidence as to the true historical situation, which may turn out to be something between these two extremes.

But *if we apply Hobbes theory to the international scene, it is certainly correct:* Between nations there is indeed a Hobbesian "state of nature," in which the strong prey on the weak, and rights to resources and territory and even to continued existence as a nation are continually threatened, unless massive military counterforce potentials have been built up to resist potential threats. The nations of the world, like the denizens of Hobbes' hypothetical "state of nature," are indeed engaged in an ongoing "war of all against all," simply because they have not yet organized for mutual security into an international political/legal/moral relationship.

Steps in the direction of such a relationship have no doubt been made, just as the Hobbesian "natural man" would presumably have proceeded in a series of stages to create the political structures which would bring them out of the dreaded state of nature. On the international level, we may optimistically interpret the U.N., the European parliament and the Common Market, NAFTA and other regional unions as gradual movements towards a more comprehensive union, or more comprehensive pluralistic unions. But we do not need hard

anthropological evidence to convince us that we are still a long way from the final stages of international organization. And the question we must deal with is, in Hobbesian terms, how do we get out of this "state of nature" which is synonymous with a state of war, and rise to the sole moral/legal/political relationship which can be synonymous with the state of peace?

Let us consider the Hobbesian analogy a little further: The individuals victimized by their "state of nature" are driven by the instinct of self-preservation eventually towards the creation of a state. If there are any natural laws applicable to human nature, certainly the law of self-preservation is the most fundamental, since it has to do with simple continuance in existence. With sociobiological findings in mind, we might add that the drive for self-preservation would also extend in varying degrees to one's family and kinsfolk and immediate community. In any case, no "categorical imperative" or "principle of utility" or "good reasons theory" is necessary to explain and justify actions here. If there are any "natural rights", prior to any legal system of natural rights, self-preservation is no doubt the most primordial natural right (judicious application of "Occkam's razor" would probably require, however, that we refrain from tracing self-preserving actions to a source in rights, and simply explain them as instincts or drives). Certainly this is a case where the "is" and the "ought" are so inseparably intertwined that no meaningful distinction between fact and value, what is and what ought to be, is feasible. The preservation of property, as necessary for continued existence, is also be included implicitly in the "drive for self-preservation," although no precise definitions of "property" would be forthcoming in this pre-legal state of affairs. Certainly the land one has been working on, tools, goods produced, etc. would also be included in the rubric, "property."

With the advent of democratic forms of government, human rights are now guaranteed in many countries, and the guarantees are often very specific about inclusions and exclusions. If the United Nations' Universal Declaration of Rights were bolstered by an effective judiciary and by executive sanctions, we could say that we are well beyond a Hobbesian "state of nature" in that sphere. But this is certainly not the case. Individuals may have rights guaranteed within their own national boundaries, but in the international sphere they have only shadow rights. Thus it is overly optimistic and euphemistic to talk about the "rights" of Chinese dissidents or Palestinian migrant workers in Kuwait or Kurds in Iraq, or Muslims in Bosnia. If they had rights on the international scene, they would have access to redress, including political and legal redress. But all they have is what Hobbes theorized our pre-political ancestors to have: a natural tendency to combine to defend themselves against threats to their existence and property.

Continuing the analogy: In this international "state of nature" individuals would be led by self-interest itself (not necessarily by altruism or "fellow-feeling") to protect and promote the interests of others who are similarly disposed to overcome global threats to self-preservation. Some of these supportive individuals would be dwelling in states officially

recognizing human rights, others would be scattered in states with little or no recognition of individual rights. Presumably -- if we can unpack the Hobbesian myth a little further -- the individuals would take some intermediate steps to adopt strategies and create organizations which would eventually lead to the creation of an international "leviathan" that could offer comprehensive protection of the rights of all individuals. (In deference to realism, we would also have to presuppose that some, probably many, individuals would combine during these processes to assault and exploit others more effectively.)

It would be difficult to produce precise and universally acceptable definitions of democratic and nondemocratic states, progressive and oppressive states. But -- like pornography -- we can probably recognize the two extremes reasonably well even if we can't define them. Under the umbrella term, "democratic," we commonly include states largely oriented towards protection of individual rights and property, and designate as "nondemocratic" states formed to preserve the power of a select few or even a single autocrat over others and their property. In line with this distinction we may surmise that individuals in democratically-oriented states tend, out of self-interest, if nothing else, to combine to protect individuals in similarly oriented states, and would have qualms about furthering the interests of oppressive states. But it would be premature to speak of a moral duty or even a moral right to do so. No "Just War" theory is necessary to explain such combinations of democratic states.

But this does not mean that there is no moral obligation in this respect; it only means that the moral obligation is more fundamental and more subtle -- namely, to establish a moral relationship that is not yet in place. By analogy, if we were to ask if there was anything like a moral imperative for the Hobbesian denizens *prior to* their creation of political/moral institutions, the prime candidate for this honor would be the imperative to ... *rise to the moral level*, and establish moral relations. Certainly the most fundamental, but often implicit, moral choice is the choice to establish oneself in a moral relationship to others and act morally. This is a choice that many may be presumed to have made with a view to their own society or culture, but few with a view to mankind without qualification.

In the international sphere, the analogous fundamental imperative would be for establishing an international federation, with legislative, executive and judicial functions. Presumably this would be inaugurated with a nucleus of democratic states which have made considerable progress in human-rights matters. If and when such a federation is established, the moral relationship would not be between sovereign states, which are not capable of moral relationships, but between individuals; and military interventions by states would have to be agreed to by the majority of their citizenry, and on behalf of citizens in other states. (This is not to say that a majority decision is automatically moral; but that for a decision to be judged moral *or* immoral, it has to be traceable to individual moral agents.) A corollary extension of the incipient moral relationship would be intermittent, ad hoc assistance to democratic factions in

undemocratic states, where feasible.

Those trying to apply Just War theory to the Gulf war will never be able to come to a consensus pro or con about the "moral justifiability" of the war. There were obviously mixed intentions, as in any war; more than in many wars the distinction between combatants and noncombatants was continually fuzzy; and the final consequences are still not apparent for those who would like to invoke utilitarian principles. If Just War theory *were* applicable, it is conceivable that Saddham Hussein could also invoke it in his own favor. As grounds, there is not just the moot point about past history in the assignment of territorial borders to Iraq, but a host of other issues offering prima facie justification for Iraq's campaign against Kuwait: Kuwait's insistence on Iraqi payment of debts incurred in Iraq's war against Iran -- a war which was in the interests of Kuwait and Saudi Arabia; Kuwaiti incursion into Iraqi oil fields prior to the war; Kuwaiti exploitation of Iraqi currency-devaluation after the war with Iran; a possible "green light" given for the attack on Kuwait by a U. S. ambassador some months prior to the mobilization of Iraq; and -- a matter certainly not fully appreciated by Western powers -- the internal middle-eastern conflict of Pan-Arabism (over which Hussein might have been able to assume the leadership) against Islamic fundamentalism.

Humanitarian intervention to protect human rights would be in the Hobbesian self-interest of democratic peoples everywhere. But intervention to protect the rights of those who are indifferent to, or oppressive of, the rights of others, is inconsistent and counterproductive, to say the least. The Gulf War was uncomfortably murky in this respect, and this is no doubt the major reason for the current irresolvable disputes concerning conformity to Just War theory.

1.I am grateful to the Bradley Institute for Democracy and Public Values for a grant which supported the preparation of this article.
2.Lewis White Beck, Ed. (Indianapolis: Library of Liberal Arts, 1957), I:6, II:2. (Italics added)
3.Thomas Hobbes, *Leviathan*, II, 17
4.Ibid.[add reference].
5.Michael Walzer, *Just and Unjust Wars* (NY: Basic Books, 1977), pp. 10-11. Boldface emphasis added.