

JUST AND UNJUST WARS

A MORAL
ARGUMENT WITH
HISTORICAL
ILLUSTRATIONS

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CONTENTS

Preface to the Third Edition xi

Preface xvii

Acknowledgments xxv

PART ONE THE MORAL REALITY OF WAR

- 1 Against "Realism" 3
 - The Realist Argument 4
 - The Melian Dialogue*
 - Strategy and Morality 13
 - Historical Relativism 16
 - Three Accounts of Agincourt*
- 2 The Crime of War 21
 - The Logic of War 22
 - The Argument of Karl von Clausewitz*
 - The Limit of Consent 25
 - The Tyranny of War 29
 - General Sherman and the Burning of Atlanta*
- 3 The Rules of War 34
 - The Moral Equality of Soldiers 34
 - The Case of Hitler's Generals*
 - Two Sorts of Rules 41
 - The War Convention 44
 - The Example of Surrender*

PART TWO THE THEORY OF AGGRESSION

- 4 Law and Order in International Society 51
 - Aggression 51
 - The Rights of Political Communities 53
 - The Case of Alsace-Lorraine*
 - The Legalist Paradigm 58

gest that every boundary dispute is a reason for war. Sometimes adjustments should be accepted and territories shaped so far as possible to the actual needs of nations. Good borders make good neighbors. But once an invasion has been threatened or has actually begun, it may be necessary to defend a bad border simply because there is no other. We shall see this reason at work in the minds of the leaders of Finland in 1939: they might have accepted Russian demands had they felt certain that there would be an end to them. But there is no certainty this side of the border, any more than there is safety this side of the threshold, once a criminal has entered the house. It is only common sense, then, to attach great importance to boundaries. Rights in the world have value only if they also have dimension.

The Legalist Paradigm

If states actually do possess rights more or less as individuals do, then it is possible to imagine a society among them more or less like the society of individuals. The comparison of international to civil order is crucial to the theory of aggression. I have already been making it regularly. Every reference to aggression as the international equivalent of armed robbery or murder, and every comparison of home and country or of personal liberty and political independence, relies upon what is called the *domestic analogy*.⁹ Our primary perceptions and judgments of aggression are the products of analogical reasoning. When the analogy is made explicit, as it often is among the lawyers, the world of states takes on the shape of a political society the character of which is entirely accessible through such notions as crime and punishment, self-defense, law enforcement, and so on.

These notions, I should stress, are not incompatible with the fact that international society as it exists today is a radically imperfect structure. As we experience it, that society might be likened to a defective building, founded on rights; its superstructure raised, like that of the state itself, through political conflict, cooperative activity, and commercial exchange; the whole thing shaky and unstable because it lacks the rivets of authority. It is like domestic society in that men and women live at peace within it (sometimes),

determining the conditions of their own existence, negotiating and bargaining with their neighbors. It is unlike domestic society in that every conflict threatens the structure as a whole with collapse. Aggression challenges it directly and is much more dangerous than domestic crime, because there are no policemen. But that only means that the "citizens" of international society must rely on themselves and on one another. Police powers are distributed among all the members. And these members have not done enough in the exercise of their powers if they merely contain the aggression or bring it to a speedy end—as if the police should stop a murderer after he has killed only one or two people and send him on his way. The rights of the member states must be vindicated, for it is only by virtue of those rights that there is a society at all. If they cannot be upheld (at least sometimes), international society collapses into a state of war or is transformed into a universal tyranny.

From this picture, two presumptions follow. The first, which I have already pointed out, is the presumption in favor of military resistance once aggression has begun. Resistance is important so that rights can be maintained and future aggressors deterred. The theory of aggression restates the old doctrine of the just war: it explains when fighting is a crime and when it is permissible, perhaps even morally desirable.* The victim of aggression fights in self-defense, but he isn't only defending himself, for aggression is a crime against society as a whole. He fights in its name and not only in his own. Other states can rightfully join the victim's resistance; their war has the same character as his own, which is to say, they are entitled not only to repel the attack but also to punish it. All resistance is also law enforcement. Hence the second presumption: when fighting breaks out, there must always be some state against which the law can and should be enforced. Someone must be responsible, for someone decided to break the peace of the society of states. No war, as medieval theologians explained, can be just on both sides.¹⁰

There are, however, wars that are just on neither side, because the idea of justice doesn't pertain to them or because the antagonists are both aggressors, fighting for territory or power where

* I shall say nothing here of the argument for nonviolent resistance to aggression, according to which fighting is neither desirable nor necessary. This argument has not figured much in the development of the conventional view. Indeed, it poses a radical challenge to the conventions: if aggression can be resisted, and at least sometimes successfully resisted, without war, it may be a less serious crime than has commonly been supposed. I will take up this possibility and its moral implications in the Afterword.

they have no right. The first case I have already alluded to in discussing the voluntary combat of aristocratic warriors. It is sufficiently rare in human history that nothing more need be said about it here. The second case is illustrated by those wars that Marxists call "imperialist," which are not fought between conquerors and victims but between conquerors and conquerors, each side seeking dominion over the other or the two of them competing to dominate some third party. Thus Lenin's description of the struggles between "have" and "have-not" nations in early twentieth century Europe: "... picture to yourselves a slave-owner who owned 100 slaves warring against a slave-owner who owned 200 slaves for a more 'just' distribution of slaves. Clearly, the application of the term 'defensive' war in such a case... would be sheer deception..."¹¹ But it is important to stress that we can penetrate the deception only insofar as we can ourselves distinguish justice and injustice: the theory of imperialist war presupposes the theory of aggression. If one insists that all wars on all sides are acts of conquest or attempted conquest, or that all states at all times would conquer if they could, then the argument for justice is defeated before it begins and the moral judgments we actually make are denied as fantasies. Consider the following passage from Edmund Wilson's book on the American Civil War:¹²

I think that it is a serious deficiency on the part of historians... that they so rarely interest themselves in biological and zoological phenomena. In a recent... film showing life at the bottom of the sea, a primitive organism called a sea slug is seen gobbling up small organisms through a large orifice at one end of its body; confronted with another sea slug of an only slightly lesser size, it ingurgitates that, too. Now the wars fought by human beings are stimulated as a rule... by the same instincts as the voracity of the sea slug.

There are no doubt wars to which that image might be fit, though it is not a terribly useful image with which to approach the Civil War. Nor does it account for our ordinary experience of international society. Not all states are sea-slug states, gobbling up their neighbors. There are always groups of men and women who would live if they could in peaceful enjoyment of their rights and who have chosen political leaders who represent that desire. The deepest purpose of the state is not ingestion but defense, and the least that can be said is that many actual states serve that purpose. When their territory is attacked or their sovereignty challenged, it makes sense to look for an aggressor and not merely for a natural predator.

Hence we need a theory of aggression rather than a zoological account.

The theory of aggression first takes shape under the aegis of the domestic analogy. I am going to call that primary form of the theory the *legalist paradigm*, since it consistently reflects the conventions of law and order. It does not necessarily reflect the arguments of the lawyers, though legal as well as moral debate has its starting point here.¹³ Later on, I will suggest that our judgments about the justice and injustice of particular wars are not entirely determined by the paradigm. The complex realities of international society drive us toward a revisionist perspective, and the revisions will be significant ones. But the paradigm must first be viewed in its unrevised form; it is our baseline, our model, the fundamental structure for the moral comprehension of war. We begin with the familiar world of individuals and rights, of crimes and punishments. The theory of aggression can then be summed up in six propositions.

1. *There exists an international society of independent states.* States are the members of this society, not private men and women. In the absence of an universal state, men and women are protected and their interests represented only by their own governments. Though states are founded for the sake of life and liberty, they cannot be challenged in the name of life and liberty by any other states. Hence the principle of non-intervention, which I will analyze later on. The rights of private persons can be recognized in international society, as in the UN Charter of Human Rights, but they cannot be enforced without calling into question the dominant values of that society: the survival and independence of the separate political communities.

2. *This international society has a law that establishes the rights of its members—above all, the rights of territorial integrity and political sovereignty.* Once again, these two rest ultimately on the right of men and women to build a common life and to risk their individual lives only when they freely choose to do so. But the relevant law refers only to states, and its details are fixed by the intercourse of states, through complex processes of conflict and consent. Since these processes are continuous, international society has no natural shape; nor are rights within it ever finally or exactly determined. At any given moment, however, one can distinguish the territory of one people from that of another and say something about the scope and limits of sovereignty.

3. *Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.* As with domestic crime, the argument here focuses narrowly on actual or imminent boundary crossings: invasions and physical assaults. Otherwise, it is feared, the notion of resistance to aggression would have no determinate meaning. A state cannot be said to be forced to fight unless the necessity is both obvious and urgent.

4. *Aggression justifies two kinds of violent response: a war of self-defense by the victim and a war of law enforcement by the victor and any other member of international society.* Anyone can come to the aid of a victim, use necessary force against an aggressor, and even make whatever is the international equivalent of a "citizen's arrest." As in domestic society, the obligations of bystanders are not easy to make out, but it is the tendency of the theory to undermine the right of neutrality and to require widespread participation in the business of law enforcement. In the Korean War, this participation was authorized by the United Nations, but even in such cases the actual decision to join the fighting remains a unilateral one, best understood by analogy to the decision of a private citizen who rushes to help a man or woman attacked on the street.

5. *Nothing but aggression can justify war.* The central purpose of the theory is to limit the occasions for war. "There is a single and only just cause for commencing a war," wrote Vitoria, "namely, a wrong received."¹⁴ There must actually have been a wrong, and it must actually have been received (or its receipt must be, as it were, only minutes away). Nothing else warrants the use of force in international society—above all, not any difference of religion or politics. Domestic heresy and injustice are never actionable in the world of states: hence, again, the principle of non-intervention.

6. *Once the aggressor state has been militarily repulsed, it can also be punished.* The conception of just war as an act of punishment is very old, though neither the procedures nor the forms of punishment have ever been firmly established in customary or positive international law. Nor are its purposes entirely clear: to exact retribution, to deter other states, to restrain or reform this one? All three figure largely in the literature, though it is probably fair to say that deterrence and restraint are most commonly accepted. When people talk of fighting a war against war, this is usually what they have in mind. The domestic maxim is, punish crime to prevent violence; its international analogue is, punish aggression to

prevent war. Whether the state as a whole or only particular persons are the proper objects of punishment is a harder question, for reasons I will consider later on. But the implication of the paradigm is clear: if states are members of international society, the subjects of rights, they must also be (somehow) the objects of punishment.

Unavoidable Categories

These propositions shape the judgments we make when wars break out. They constitute a powerful theory, coherent and economic, and they have dominated our moral consciousness for a long time. I am not concerned to trace their history here, but it is worth emphasizing that they remained dominant even during the eighteenth and nineteenth centuries, when lawyers and statesmen regularly argued that war-making was the natural prerogative of sovereign states, not subject to legal or moral judgment. States went to war for "reasons of state," and these reasons were said to have a privileged character, such that they needed only to be alluded to, not even expounded, in order to terminate all argument. The common assumption in the legal literature of the time (roughly from the age of Vattel to that of Oppenheim) is that states always have, like Hobbes individuals, a right to fight.¹⁵ The analogy is not from domestic to international society, but from the state of nature to international anarchy. But this view never seized the popular imagination. "The idea of war and the launching of it," writes the foremost historian of the theory of aggression, "were for the ordinary man and for public opinion always loaded with moral significance, demanding full approval if waged with right and condemnation and punishment if without . . ."¹⁶ The significance ordinary men attached was exactly of the sort I have been describing: they drew the terrifying experience of war, as Otto von Bismarck once complained, back to the familiar ground of everyday life. "Public opinion," Bismarck wrote, "is only too ready to consider political relations and events in the light of those of civil law and private persons generally . . . [This] shows a complete lack of understanding of political matters."¹⁷

I am inclined to think that it shows a deep understanding of