Closer to Just: A Jewish Update to Western Just War Tradition

A Rabbinic Thesis Presented

by

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Abstract

The Western just war tradition, understood as the limitations imposed on the human capacity to wage violence based on moral, philosophical, and religious considerations, is essentially the application of Christian just war theory in modern times. Aurelius Augustine, Bishop of Hippo in the late 4th and early 5th centuries and the father of Christian just war theory, combined the just war thinking of Cicero, the early Church Fathers, and Ambrose with his own understanding of the biblical texts and historical circumstances to create a systematic theory capable of providing guidance for Christians in the Roman Empire. This theory expanded during the Middle Ages with the writings of Gratian, Aquinas, and Vitoria, and eventually, through Grotius, became the foundation for international law.

Despite, and perhaps owing to, this antiquity, Western just war tradition has been found wanting in many circles. Challenges posed by new technologies and changing global realities threaten to undermine and invalidate the moral framework of the theory, yet earnest engagement with Western just war tradition still provides the very philosophical foundation and common vocabulary necessary to keep moral issues central to our consideration of war in modern times.

An untapped source of improvement and update for the Western just war tradition is found in the historical Jewish writings on the subject of war. An oppressed minority throughout much of the formulation of their moral theory, from the Hebrew Bible to the *Talmud* and the *Mishneh Torah* of Maimonides, Jewish scholars were far more empathetic to the needs of those affected by violence than with the aggressors. Jewish just war theory, then, reflects the reality of falling from political strength to weakness, in contradistinction to the development of Christian theory which reflects the rise from weakness to power, and is thus able to help the Western just war tradition respond to contemporary challenges.

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Introduction

The Western just war tradition, understood as the limitations imposed on the human capacity to initiate violence based on moral, philosophical, and religious considerations, is essentially the application of Christian just war theory in modern times. Tracing its origins to the early Church Father Aurelius Augustine, who served as Bishop of Hippo in the late 4th and early 5th centuries, Christian just war theory is the result of concern for the way in which war might be justifiably initiated and carried out. Christian just war theory implicitly accepts the necessity of war, seeking not its abolition but providing instead the requisite grounds for its moral justification.

Competing strains of thought regarding Christian participation in war emerged within the early Church. On the one hand, a strong pacifistic tradition developed based on the Church Father's reading of the Christian Scriptures and the reality of their historical circumstance. On the other hand, Christian participation in war was seen as sometimes valorous and, above all else, sadly necessary in the imperfect world in which they lived. While Augustine's position marks a radical departure from the former point of view, his thinking was not unknown in Christian thought.

The conversion of Constantine and the Roman Empire to Christianity, propelling adherents from their roots as an oppressed minority into their new status as ruling majority, increased the necessity for practical guidance regarding Christian participation in war. Pacifism, the only realistic option for the earliest Christians, could not defend the crumbling empire from its enemies, and thus a

new understanding of Christian attitudes towards violence and war began to emerge. Augustine's philosophical teachings, assembling the building blocks of Cicero and Ambrose in formulating a theory of just war, led the attempt to adapt Christian philosophy to the new world reality.

In recent days, the Western just war tradition, based on Christian just war theory, has been found wanting in many circles. "No war has been just by all the criteria of just war theory during the whole of a conflict; every war has been called a just war by the leaders of both sides of the conflict," according to Chicago Theological Seminary professor and "just peace" advocate Susan Thistlethwaite.[1] Issues including base human instincts, realpolitik, ever more destructive weaponry, asymmetrical conflict, and many others pose challenges to any theory constituting the moral base of a country's military might. Despite these challenges, however, there is little doubt that earnest engagement with Western just war tradition provides the philosophical foundation and common vocabulary necessary to keep moral issues central to our consideration of war in modern times.

Judaism, too, has a strong intellectual tradition of moral, philosophical, and religious principles that limit human beings' capacity to wage war. Serious consideration as to the morality of war, building upon earlier biblical texts, began with the *Mishnah* and *Gemara* during Roman times and blossomed with the writings of Rabbi Moses ben Maimon in the 12th century. Like Christian theologians who attempted to rationalize and justify war because such violence

[1] David R. Smock, *Religious Perspectives on War* (Washington DC: United States Institute of Peace Press, 2002), 35.

was seen as necessary in their day, Jewish thinkers also accepted the view that war was not an absolute evil, although permission to wage war in Jewish thought was based on a wholly different rationale. The Hebrew Bible contains many instances of early Israelite engagement in warfare at divine behest, and accordingly seems to contain a more permissive attitude toward war and violence than would be stipulated by future generations of Jewish philosophers and theologians. Later, as a minority people living under foreign rule, the Jewish sages had it in their best interest to severely limit the acts of violence considered to be morally justifiable.

Jewish just war theory, then, reflects the reality of falling from political strength to weakness, in contradistinction to the development of Christian just war theory which reflects the rise from weakness to power. Christian just war theory equipped adherents of a pacifist-leaning religious tradition to handle the violent world in which they ruled, all too often at the expense of those most needing protection. Jewish just war thinking, however, developed among the people in need of that very protection. An oppressed minority throughout the formulation of their moral theory, Jewish scholars were far more empathetic with the needs of those affected by violence in a violent world than with the aggressors. Accordingly, the historical context which gave rise to Jewish just war theory makes it a particularly fertile field of material to help Western just war tradition respond to contemporary challenges.

Chapter 1

The Origins of Christian Just War Theory

Introduction to Chapter 1

Christian theologians and philosophers have long debated the role of war and violence in human conflict resolution. While typically assumed to be exclusively pacifistic at its origins, in reality Christianity has a complex and variegated relationship with war. Texts from the Hebrew Bible, the Christian Scriptures, and the early Church Fathers demonstrate competing strains of both pacifism and militarism in early Christianity.

The early Christians lived during a time when war and violence were accepted realities within their larger culture. Violence was a part of the early Christian's cultural *milieu* through their daily interactions with the Roman Empire and both their understanding of the Hebrew Bible and the philosophical traditions passed through the earlier Greeks and Romans; war was accepted as a brutal yet necessary part of the human experience. As the influence of Christianity within the Roman Empire grew and spread, Church Fathers were asked to provide guidance on Christian participation in war to both Christians living in the Empire and the emperors that ruled over them. Thinking about what constituted a morally acceptable war was no longer a theoretical issue.

Saint Augustine, assembling the building blocks formulated by Ambrose and Cicero among others, set forth the first systematic theory of what constitutes a morally just war. In this chapter we will begin to explore the forces and ideologies that gave rise to Christian just war theory in antiquity and what constituted a just war in the minds of the early Church Fathers.

Pacifism and Militarism in Early Christianity

Pacifism in Early Christianity

Despite being born into a military family and having himself served in the army of the Roman Empire for some years, Martin of Tours, born perhaps in 316 or 317 C.E., eventually came to reject military service based on his understanding of Christianity. Refusing to participate in his *donativum*, a ceremony symbolizing entrance into a new term of service, he is reported to have said: "Hitherto, I have served you as a soldier. Allow me now to become a soldier to God. Let the man who is to serve you receive your donative. I am the soldier of Christ. It is not lawful for me to fight."[2] While it is unclear if this change in Martin's mindset was precipitated by a major event or the result of a gradual shift in ideology, his words clearly illustrate a commitment to pacifism extant among many members of the early Church. Texts from the Christian Bible, statements from some of the early Church Fathers, and the way in which we understand early Christian thought and eschatology attest to the existence of a pacifistic ideal for conflict resolution in the early Church.

Texts from the Christian Bible, especially those from the Gospel of Matthew, represent "a genuine pacifistic strain."[3] For example, we find the following teaching on morals attributed to Jesus' Sermon on the Mount:

> Blessed are the peacemakers, for they shall be called sons of God…You have heard that it was said to the men of old, `You shall

[2] Jean-Michael Hornus, *It is Not Lawful For Me To Fight: Early Christian Attitudes Toward War, Violence, and the State* (Scottsdale PA: Herald Press, 1980), 144.

[3] David Lenihan, "The Origins and Early Development of the Notion of the Just War: A Study in the Ideology of the Later Roman Empire and Early Medieval Europe" (PhD diss., University of Massachusetts, 1995), 41.

> not kill, and whoever kills shall be liable to judgment.' But I say to you that every one who is angry with his brother shall be liable to judgment; whoever insults his brother shall be liable to the council,[4] and whoever says, `You fool!' shall be liable to the hell of fire…You have heard that it was said, `An eye for an eye and a tooth for a tooth.' But I say to you, do not resist one who is evil. But if any one strikes you on the right cheek, turn to him the other also; and if anyone would sue you and take your coat, let him have your cloak as well; and if any one forces you to go one mile, go with him two miles. Give to him who begs from you, and do not refuse him who would borrow from you. You have heard that it was said, `You shall love your neighbor and hate your enemy.' But I say to you, love your enemies and pray for those who persecute you, so that you may be sons of your Father who is in heaven.[5]

Taken literally as disparaging violence and war, this text ostensibly enjoined a remarkable degree of submissiveness upon the early Christians.[6] Other passages contained in the canon of the Christian Scriptures also give support to a pacifistic understanding of Jesus' message. Later in the Gospel of Matthew we find: "Put your sword back into its place; for all who take the sword will perish by the sword."[7] In Mark we read "Be at peace with one another,"[8] and in Romans we find this counsel:

> Repay no one evil for evil, but take thought for what is noble in the sight of all. If possible, so far as it depends upon you, live peaceably with all…if your enemy is hungry, feed him; if he is thirsty, give him drink; for by so doing you will heap burning coals

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[4] From the Greek συνεδρίῳ, meaning "high council," presumably referring to the Jewish *Sanhedrin*.

[5] Matthew 5:9, 22-22, 38-45, RSV. Biblical citations abbreviated RSV refer to the Revised Standard Version translation of 1901.

[6] Roland H. Bainton, *Christian Attitudes Toward War & Peace: A Historical Survey and Critical Re-evaluation* (Nashville: Abingdon Press, 1990), 62.

[7] Matthew 26:52, RSV.

[8] Mark 9:50, RSV.

> upon his head. Do not be overcome by evil, but overcome evil with good."[9]

It follows, then, that "the new reality Jesus proclaimed was nonviolent. That much is clear, from not just the Sermon on the Mount, but also his entire life and teaching and, above all, the way he faced his death."[10] Much more could be said about pacifism in the Christian Bible; so much, in fact, that numerous works have been composed on the subject.[11] For our purposes here, these few texts should suffice to demonstrate the presence of a strain of pacifism within the foundational texts of Christianity. Whatever the strength or weakness of any individual citation, "in conjunction with one another they constitute a strong body of evidence for the belief that Jesus both abjured for himself and forbade to his disciples all use of physical violence as a means of checking or deterring wrongdoers..."[12]

These texts from the Christian Scriptures laid the groundwork for an inclination towards pacifism in the early Church, an inclination further developed and supported by the early Christian philosophers and theologians. A selection of writings from the Church Fathers Justin Martyr, Origen, and Tertullian provide important evidence of a pacifistic ideal that continued to develop throughout the early history of Christianity.

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[9] Romans 12:17-21, RSV.

[10] Walter Wink, "Beyond Just War and Pacifism: Jesus' Nonviolent Way" in *The Destructive Power of Religion: Violence in Judaism, Christianity, and Islam*, ed. J. Harold Ellens (Westport CT: Praeger Publishers, 2007), 180.

[11] See Dale W. Brown's *Biblical Pacifism*; Guy F. Hershberger's *War, Peace, and Nonresistance*; or J.C. Wenger's *The Way of Peace* for more on biblically-based Christian pacifism.

[12] C. John Cadoux, *The Early Christian Attitude to War: A Contribution to the History of Christian Ethics* (London: Headley Brothers Publishers, 1919), 31.

Justin (c.100-165 C.E.), son of Priscos, was born in the Roman city of Flavia Neapolis (Samaria). A philosopher of some renown, considered by some to be the most important apologist of the second century, Justin was led to Christianity in his adult life and spent the remainder of his life defending the virtues of his beliefs.[13] The following description of Christian pacifism comes from his *Apology Against the Gentiles*, one of Justin's two extant works:

> We, who once were hating and killing each other and certainly not desirous of sitting down and eating a meal with those not of our own race, have changed. After the epiphany of our Lord Jesus Christ, we have taken on a new way of life. Instead of hating, we pray [for our enemies] and instead of despising those who have treated us unjustly we devastate them with persuasion and arguments. Living in this manner and following the good advice of Christ, we are hopeful, relying on God himself, the Lord and Master, for all things.[14]

Justin Martyr, called so due to his ironic death under Marcus Aurelius for besting an opponent in a public disputation, echoes in this text the pacifistic strain found in the Sermon on the Mount: violence and violent actions should not be undertaken by Christians to hasten a particular end, for all ends are wholly and exclusively within the purview of God.

Writing in the late second and early third centuries, and building upon the pacifism of Justin Martyr, was the philosopher Tertullian (c.160-225). Born in the North African city of Carthage, Quintus Septimius Florens Tertullianus also came to Christianity later in his life, purportedly in the early 190's. He became involved with a heretical sect known as the Montanists, presumably attracted by their

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[13] Lenihan, 149.

[14] Justin Martyr, *Apology 1.14.3*, quoted in Lenihan, 152.

moral rigor, and became a “strident and radical pacifist, advocating desertion from the military and unambiguous rejection of all military service by Christians.”[15] In his work *De Corona*, Tertullian states his opposition to Christian participation in war in no uncertain terms:

> To begin with the real ground of the military crown, I think we must first inquire whether warfare is proper at all for Christians. What sense is there in discussing the merely accidental, when that on which it rests is to be condemned? Do we believe it lawful for a human oath to be superadded to one divine, for a man to come under promise to another master after Christ, and to abjure father, mother, and all nearest kinsfolk, whom even the law has commanded us to honour and love next to God Himself, to whom the gospel, too, holding them only of less account than Christ, has in like manner rendered honour? Shall it be held lawful to make an occupation of the sword, when the Lord proclaims that he who uses the sword shall perish by the sword? And shall the son of peace take part in the battle when it does not become him even to sue at law? And shall he apply the chain, and the prison, and the torture, and the punishment, who is not the avenger even of his own wrongs? Shall he, forsooth, either keep watch-service for others more than for Christ, or shall he do it on the Lord's day, when he does not even do it for Christ Himself? And shall he keep guard before the temples which he has renounced?[16]

Tertullian goes on to claim that for a soldier who embraces Christianity later in life there must be either “an immediate abandonment of it [military service]...or all sorts of quibbling will have to be resorted to in order to avoid offending God.”[17] His statements proclaimed the perils of Christian involvement in the military with

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[15] Ibid., 179.

[16] Tertullian, “De Corona”, in *Ante-Nicene Fathers*, trans. S. Thelwall, eds. Alexander Roberts, James Donaldson, and A. Cleveland Coxe (Buffalo NY: Christian Literature Publishing Company, 1885), Chapter 11. Accessed on November 17, 2010 from http://www.newadvent.org/fathers/0304.htm.

[17] Ibid.

a clear voice, written “with the joy of inflicting discomfort on his adversaries for their error and unreasonableness.”[18]

The third of these Church Fathers, Origen (c.185-254), “the most prolific writer and greatest scholar of the pre-Constantine Church,”[19] was just as assertive in his statements about Christian participation in violence as both Justin Martyr and Tertullian. Raised in Alexandria, Origen was baptized in his infancy and raised as a Christian despite the pagan overtones of his name.[20] In his youth, he was taught the Christian scriptures in addition to Greek literature, an education almost “unrivaled among the (Church) Fathers.”[21] This knowledge of both Christian and classical sources led to a cultural integration and depth of philosophical background heretofore unknown in Christian circles and placed the burden of defending Christianity squarely on Origen’s shoulders. In his *magnum opus*, *Contra Celsum*, Origen makes the following statements about Christian non-violence in the context of defending Christianity from the charges of sedition and lack of loyalty to the Empire:

> Now the existence of many kingdoms would have been a hindrance to the spread of the doctrine of Jesus throughout the entire world; not only for the reasons mentioned, but also on account of the necessity of men everywhere engaging in war, and fighting on behalf of their native country, which was the case before the times of Augustus, and in the periods still more remote, when necessity arose, as when the Peloponnesians and Athenians warred against

[18] Henry Chadwick, *The Early Church* (London: Penguin Books, 1993), 91.

[19] Ibid.

[20] “His name means ‘Son of Horus, the god of Light,’ an Egyptian god, son of Isis and Osiris, symbolizing the rising sun. In the first centuries, those born of Christian parents sometimes bore names derived from pagan deities.” Tadros Y. Malaty, *The School of Alexandria: Book Two, Origen* (Jersey City NJ: St. Marks’s Coptic Orthodox Church, 1995), 11.

[21] Joseph W. Trigg, *Origen: The Early Church Fathers* (London: Routledge Press, 1998), 5.

> each other, and other nations in like manner. How, then, was it possible for the Gospel doctrine of peace, which does not permit men to take vengeance even upon their enemies, to prevail throughout the world, unless at the advent of Jesus a milder spirit had been everywhere introduced into the conduct of things?[22]

Origen states that the early Christians, despite being officially persecuted by the state, had good reason to support the Roman Empire. Jesus' message, in Origen's thinking, was one of complete peace. Because he argued for Christian pacifism and asked his coreligionists to abjure even defensive violence, the only way for the Christian message to spread was on the back of the peace brought by the Romans.

Origen then turns in his defense of Christianity to proving that Christians, while not participating in the physical battles of war, are no less adamant in their defense of the Empire:

> We would also say this to those who are alien to our faith and ask us to fight for the community and to kill men: that it is also your opinion that the priests of certain images and wardens of the temples of the gods, as you think them to be, should keep their right hand undefiled for the sake of sacrifices, that they may offer the customary sacrifices to those who you say are gods with hands unstained by blood and pure from murders. And in fact when war comes you do not enlist the priests. If, then, this is reasonable, how much more reasonable is it that, while others fight, Christians also should be fighting as priests and worshippers of God, keeping their right hands pure and by their prayers to God striving for those who fight in a righteous cause and for the emperor who reigns righteously, in order that everything which is opposed and hostile to those who act righteously may be destroyed? …We who offer prayers with righteousness, thought with ascetic practices, and exercises which teach us to despise pleasures and not to be led by

[22] Origen, *Contra Celsum* 2.30, in Lenihan, 169.

> them, are cooperating in the tasks of the community. Even more do we fight on behalf of the emperor.[23]

Origen, like Tertullian and Justin Martyr before him, showed utter disdain for Christian participation in war and violence. As with the texts cited from the Christian Bible, these statements are evidence of a strain of pacifism which existed throughout the early history of the Church.

Final proof of this point comes from our understanding of early Christian eschatology and thought. Two major theological and ideological tenets of the early Church functioned to advance this pacifistic message, namely, Christian indifference to this world based on the imminent second coming of Jesus and a perceived incompatibility between love and killing.

The early history of the Church is marked by a distinct indifference to this world based on the anticipated second apocalyptic coming of Jesus:

> In the Synoptic Gospels, Jesus tells his disciples to 'Give to the emperor the things that are the emperor's, and to God the things that are Gods' (Matthew 22:1; Mark 12:17; Luke 20:25). In John's gospel, Jesus tells Pontius Pilate, 'My kingdom is not from this world' (18:36). The form of civil government did not matter much to people who expected that government and all earthly things would soon disappear.[24]

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[23] Origen, *Contra Celsum*, trans. Henry Chadwick (Cambridge: Cambridge University Press, 1953), VII: 73, 509.

[24] Joseph F. Kelly, *The World of the Early Christians: Message of the Fathers of the Church* (Collegeville MN: The Liturgical Press, 1997), 155.

War and violence were seen as equally unnecessary.[25] Coupled with this idea of the limited duration of earthly society was the belief that their enemies and persecutors would receive their just deserts in the life to come.

In addition to a belief in a speedy and vindictive end of days, many early Christians saw an incompatibility between love and killing:

> Tertullian declared that the Christian would rather be killed than kill. For Minucius Felix, "It is not right for us either to see or hear a man being killed." ...Arnobius thought it better to pour out one's own blood than to stain one's hands and conscience with the blood of another. Lactantius declared that when God forbade killing he forbade not only brigandage but also that which is regarded as legal among men....Athenagoras said that the Christian cannot bear to see a man put to death even justly. Origen averred that "God did not deem it becoming to his own divine legislation to allow the killing of any man whatever."[26]

For these Christians and many others, Jesus' message was one of love and not violence. In early Christian thought, in the writings of the early Church Fathers, and in the Christian Scripture, we see a very strong pull towards pacifism. And yet, as this chapter will show, the origins of the just war theory are situated firmly in the Christian context.

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[25] "This Pauline eschatology—that the end of the world was fast approaching—was not new. Jesus and the Essenes had expressed similar sentiments. What was new was the consequential posture taken by Paul: since the world was ending the followers of Christ should accept the authority of the Roman government. To engage in revolution would be just as futile as to engage in marriage; in any event, according to Paul, the Christian should not be distracted by worldly concerns as the world ends." Lenihan, 47.

[26] Bainton, 78.

Destabilizing Pacifism

There existed a clear pacifistic strain in early Church history, as demonstrated by the aforementioned texts from the Christian Bible, statements from some early Church Fathers, and the way in which we understand early Christian thought and eschatology. And yet there is also reason to believe that these pacifistic notions were just that, a strain of thought in the development of Christianity. As David Lenihan points out, "the historiography of this militarist-pacifist controversy has been dictated by the prevailing zeitgeist."[27] When war is seen as valorous in the larger modern society, as during the First and Second World Wars, historians and theologians project back into the early days of Christianity a tolerance for warfare perhaps exceeding reality. When war is less popularly desirable, as during the Vietnam War or the current global conflict, they tend to revision our religious origins accordingly. Thus, the same sources that are used to show a clear strain of pacifism in early Christianity, namely texts from the Christian Bible, the writings of the early Church Fathers, and our understanding of Christian thought and eschatology, can also be used to cast doubts on just such a belief.

Just as there are texts from the Christian Scriptures that seem to speak to a pacifistic world view, so, too, are there texts which when read literally seem to condone a more militaristic approach. We read the following in the Gospel of Matthew:

> So every one who acknowledges me before men, I also will acknowledge before my Father who is in heaven; but whoever

[27] Lenihan, 35.

> denies me before men, I also will deny before my Father who is in heaven. Do not think that I have come to bring peace on earth; I have not come to bring peace, but a sword.[28]

Other passages contained in the canon of the Christian Bible also give credence to a more militaristic understanding of Jesus' message. In the Gospel of Luke we read: "And let him who has no sword sell his mantle and buy one....And they said, 'Look, Lord, here are two swords.' And he said to them, 'It is enough;"[29] in Second Corinthians: "by truthful speech, and the power of God; with the weapons of righteousness for the right hand and for the left;"[30] and in three of the Gospels we have an account of Jesus heaping praise on a soldier: "Truly, I say to you, not even in Israel have I found such faith,"[31] to the exclusion of a condemnation of his profession. In fact, especially in the Gospel of Matthew but elsewhere in the Christian Scriptures as well, soldiers are treated with the utmost respect and "never depicted as the violent and brutal occupiers described by other contemporary sources such as Josephus."[32]

It is certainly the case, as with all texts, that interpretation and exegesis of any biblical passage can offer a meaning quite contrary to the literal rendition. It is as true of the texts mentioned above as for those texts offered in support of the pacifistic strain. As our purpose is to show that a strain of militarism may be found alongside the pacifistic ideal in the early Christian world, here we will

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[28] Matthew 10:32-34, RSV.

[29] Luke 22:36, 38, RSV.

[30] 2 Corinthians 6:7, RSV.

[31] Matthew 8:10, RSV. See also Luke 7:1-10 and John 4:47-54.

[32] Lenihan, 44.

examine the way in which the meanings of seemingly pacifistic texts have been altered through interpretation.

Perhaps the most frequently cited text related to Christian pacifism is that found in the Sermon on the Mount: “Do not resist one who is evil. But if any one strikes you on the right cheek, turn to him the other also.”[33] It has been suggested that Jesus is not speaking literally about physical violence but metaphorically about how to handle that which is gravely insulting: “Among the Jews of that day a slap on the right cheek was not a case of assault but an extreme insult administered with the back of the hand. The point here was not that one should not defend one’s life, but that one should not resent indignity.”[34] A similarly upending interpretation can be offered for statement that “all who take the sword will perish by the sword.”[35] Many have suggested that Jesus was not admonishing his disciple for all violent acts but drawing attention to their futility in shadow of God’s will. His statement may be read, then, not as a prohibition against violence but as an eschatological claim: attempts to hasten God’s will are futile at best and destructive at worst.

Just as the texts of the Christian Bible are not as plain and indisputably pacifistic as originally presented, so, too, can the same be said of familiar texts from early Church Fathers. Justin Martyr, Tertullian, and Origen themselves were unabashedly and irrefutably pacifistic. We could also claim that they were in good company: “The period from A.D. 180 until the time of Constantine exhibits

[33] Matthew 5:39, RSV.

[34] Bainton, 61.

[35] Matthew 26:52, RSV.

both in the East and West a number of more or less explicit condemnations of military service."[36] Yet the fact "that pacifism was never promulgated or decreed as an official teaching or policy by any early church council or synod is an indicator that pacifism was not popular ideologically."[37] The frequency of polemics against Christian participation in the military, in fact, would not be necessary unless there were Christians serving in the military, for which can find evidence dating back to the 170's.

From inscriptions found on funeral monuments alone, it is clear that there were Christians serving in the military a century before Constantine.[38] Two such inscriptions, from 217 and 201 C.E. respectively, might illustrate that the discord was not as pronounced as previously thought. The following inscription was found carved into a sarcophagus found outside the city of Rome:

> Prosenes was received by God on the fifth day of the Nones in the [consulships] of Praesens and Extricatus, the latter holding the post for a second time, when Prosenes was retiring to Rome from the campaigns.[39]

The true meaning of this inscription is revealed in light of the supplementary inscription of Prosene's freedman, the Christian Ampelius, because "they describe this Christian as not only *receptus ad Deum* (received to God)—to indicate a Christian tomb—but also as *Regrediens in urbe ab expeditionibus*

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[36] Bainton, 72.

[37] Lenihan, 23.

[38] Constantine, of whom we will go into greater detail later in his chapter, is often credited with bringing two perceived opposites, namely, Christianity and the Roman Empire, into harmony.

[39] Ibid., 67.

(returning to the city from the campaigns)—to indicate military service."[40] The text of the earlier inscription is even less ambiguous:

> To the devoted memory of Cossutius Eutyches, beloved spouse of sweet Aurelia of Rome, with whom he lived twenty-eight years. A veteran of the second Parthian Severan legion. The third day before the Ides of April, the consulship of Favianus and Mucianus.[41]

Found in a Christian cemetery in Rome, it is clear that this Christian was a soldier—even though during the time such an action would have been forbidden by the Church Fathers. Nor was he alone in his military service. Eusebius relates an account of the Thundering Twelfth Legion in book five of his *Ecclesiastical History* which might be paraphrased as follows: as Emperor Marcus Aurelius led his forces to battle in the year 173 or 174, his army was overcome by a great thirst. The soldiers of the Twelfth Legion, all Christian, prayed to God that they might be saved. A heavy thunderstorm arose, bringing not only water to quench their thirst but a flood with which they defeated their enemy. While the historicity of the tale seems questionable, it does serve to situate soldiers in the Roman army well before the acceptance of Christianity by Constantine. Had all practicing Christians been pacifists during the time of the early Church Fathers mentioned, this would scarcely have been possible.

In addition to the corpus of evidence showing that Christians were involved in military service well before the rule of Constantine, we also find statements in the writings of other Church Fathers that would not be possible

[40] Ibid.

[41] Ibid., 70.

without at least nominal support of the Roman army. Clement, the pope of Rome from 92 to 101 C.E., wrote the following in his Letter to the Corinthians:

> Brothers, let us be His soldiers, therefore, in all earnestness, under His faultless commands. Let us consider those who are enrolled under our rulers, how well-ordered, and how readily, how obediently they carry out commands. Not all are prefects, or tribunes, or centurions, or in charge of bands of fifty, and so forth; but each one in his own rank carries out the commands issued by the emperor and his officers.[42]

Lenihan makes the point that such a reference to the military would be "difficult, if not impossible, if moral abhorrence of military service were common." Clement's position doesn't necessarily run counter to pacifism, yet neither does it function as a complete rejection of the military.

Similar doubt as to the purity of the pacifistic position may be cast on our understanding of Christian eschatology. As Bainton points out, "in the period when pacifism was prevalent in the early Church, however, the expectation of the Lord's speedy return was long since waning."[43] For as long as the second coming of Jesus was delayed, Christians were forced to accept the reality of earthly existence. This meant making concessions to every day life, perhaps including support of the military: "Christians living on the Persian frontier would have expected protection from Rome's age-old enemy, while those living near the African desert or the Rhine River would have been glad to see imperial troops keeping the barbarian tribes at bay."[44]

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[42] Ibid., 144.

[43] Bainton, 75.

[44] Kelly, 161.

Just as pacifism can be demonstrated to be the status quo condition of the early Church, so, too, can a more militaristic position. Accordingly, we may conclude this section by saying their neither position taken in exclusivity is entirely correct and that early Christian pacifism and militarism may best be viewed as markers on a continuum. There existed within the early Church both strains of pacifism and a growing recognition that Christians could benefit from participation in the earthly realm, even if that occasionally led to violent action.

Early Christianity and the Roman Empire

To begin to understand the complex relationship between early Christians and pacifism, we must also examine those external forces acting on the community. Biblical texts, the sayings of the early Church Fathers, and early Christian thought and eschatological concerns all represent influences internal to the Christian community. A brief survey of how the early Christians interacted with the Roman Empire, their participation in the often militaristic earthly realm, is especially important to our understanding of just war theory in as much as it, like all religious or philosophical doctrines, was not devised in a vacuum far removed from the world in which its theorists lived.

First, the early Christians were subjects of the Roman Empire, a condition which had no small bearing on conceptions of pacifism and militarism within the community. It seems likely that the earliest Christians would have been indistinguishable by outsiders from the mainstream Jewish population, if such a thing could be said to have existed. Josephus first mentions three major sects within Judaism—the Pharisees, Sadducees, and Essenes—as early as when

writing about the reign of Jonathan (152-142 B.C.E.). That said, "presumably there were more than three groups or points of view in Judea and Galilee in the late Second Temple period (and, of course, in the far-flung diaspora), and within the three that Josephus emphasizes there were, one would think, differences of opinion at any one time and various changes as time went by."[45] It is no wonder, then, that a new group originating under the umbrella of Judaism would scarcely have attracted much attention by the Roman authorities: "At first Christianity must certainly have appeared only as one more sect or group within a Judaism that was already accustomed to considerable diversity in religious expression."[46] Because of this anonymity, it is reasonable to believe that the earliest Christians, who indeed thought themselves to be Jews, would have been accorded the same status.

Of particular importance to our study here is the relationship between Jews and service in the Roman army. There were, in fact, a small number of Jews who voluntarily entered military service with the imperial forces, though these appear to be so small in number that they are the exception rather than the rule.[47] Exemption from military service seems to have been a local right enjoyed by the Jews: "The temporary exemption from military service granted in 43 [B.C.E.] to the Jews in Asia was apparently made permanent, and presumably

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[45] James C. VanderKam, *An Introduction to Early Judaism* (Grand Rapids MI: Eerdmans Publishing Company, 2001), 192.

[46] Chadwick, 13.

[47] For a fuller treatment of Jews in the Roman army, see Andrew J. Schoenfeld, "Sons of Israel in Caesar's Service: Jewish Soldiers in the Roman Military," *Shofar: An Interdisciplinary Journal of Jewish Studies* 24:3 (2006): 115-126.

extended to cover all other Jewish communities, so that, if conscription was applied, neither legionary nor auxiliary service would be demanded of them."[48] Others state the case even more unequivocally: "The Jews were exempted from military service in all the Roman empire."[49] For the earliest Christians, then, military service would have been an abstract discussion were it ever considered.

With the fall of Jerusalem and the destruction of the Temple in the year 70, the area known as Palestine was annexed as a province in the Roman Empire. "Few Jews are likely to have easily forgotten how direct Roman rule had begun,"[50] especially given the brutality of Roman suppression. There is very little information as to the underlying causes of the second century Bar Kochba Revolt, although it takes little imagination to envision a group of displaced and downtrodden Jews believing the situation could not become any worse and taking action. As in the year 70, many Jews were killed and enslaved following the revolt's failure. While the split between Judaism and Christianity was most certainly a centuries-long process, the destruction of the Temple and the Bar Kochba Revolt were most definitely formative events. Christians at this point began distancing themselves from the Jews with whom they had previously felt some sense of kinship, believing that the Jews' tribulations were "just recompense for their rejection of Jesus."[51] Their increasing distance from their

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[48] Miriam Pucci Ben Zeev, *Jewish Rights in the Roman World: The Greek and Roman Documents Quoted by Josephus Flavius* (Tubingen Germany: Mohr Siebeck, 1998), 441.

[49] Ibid.

[50] Seth Schwartz, "Political, Social, and Economic Life in the Land of Israel: 66-c.235" in *The Cambridge History of Judaism: Volume 4, The Late Roman-Rabbinic Period*, ed. Steven T. Katz (Cambridge: Cambridge University Press, 2006), 29.

[51] Ibid., 31.

Jewish origins, which should have curried favor in the Emperor's eyes, instead invited trouble with regard to the Roman Empire.

Continuing to distance themselves from the violence of the Jewish zealots should have conferred upon the Christians some level of protection. Believing themselves to be following the words of Jesus, the early Christians paid their taxes and had "every interest in the maintenance of public order, and none whatever in adopting an attitude of disaffection towards the State."[52] Unfortunately, this protection never materialized, and the unfortunate precedent of persecution under Nero was often perpetuated.[53]

Early Christians living in the Roman Empire would have experienced the Empire as a more violent place than their pagan and even Jewish neighbors. The Romans, with the destruction of the Temple, thought themselves to be stamping out the public cultic ritual of Judaism and did not concern themselves with the private behavior of its practitioners: "The state took pains to supervise and control their subject's religious activities [public], but took little interest in their mores [private], presumably because private behavior was uncontrollable under ancient conditions."[54] The non-cultic aspect of Judaism was a private affair, not subject to Roman interference. The traditional view is that Judaism was thus

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[52] Chadwick, 24.

[53] "In 64 a fire in Rome raged for almost a week and destroyed about 40 percent of the city. The populace believed that Nero had ordered the fire, and, to shift the blame from himself, he accused the Christians. The Roman historian Tacitus says that the people believed the accusations because the Christians were 'a class hated for their abominations' and their belief was a 'dangerous superstition'. It is likely that the Romans looked askance at them because they were new, foreign, and had rites that could easily be misunderstood, for example, references to eating Jesus' body and drinking his blood." Kelly, 178.

[54] Schwartz, 30.

given the status of a *religio licita*, a term which seems to have originated in the writings of Tertullian.[55] Even if this were not an official designation, as is argued by Tessa Rajak, other circumstances did indeed lead to a protected status for the Jews, even after the destruction of the Temple and the failed Bar Kochba Revolt. The reverse can be said for Christianity—even without the designation *religio illicita* conferred by Domitian (81-96 C.E.), the early Christians were subject to continuing violence and persecution despite the relative calm of the *Pax Romana*.[56] In this manner violence was a part of the early Christian experience.

Additionally, the Roman Empire was "not disposed to abandon the old gods by whose favour the legions had conquered the world."[57] The degree of persecution inflicted upon the Christians rose and fell with the varying beliefs of the Emperor. Domitian for instance, who fancied himself "Master and God", would have exacted a higher price on Christian believers (who believed not in Domitian's divinity) than Trajan, whose form of the emperor-cult was not viewed as a compulsory loyalty test.[58] Even under Trajan, however, persecution of Christians was accepted practice. Pliny, governor of Bithynia from 111-113, wrote the following to Emperor Trajan:

> It is my custom, Lord emperor, to refer to you all questions whereof I am in doubt. Who can better guide me when I am at a stand, or enlighten me if I am in ignorance? In investigations of Christians I

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[55] Tessa Rajak, "Was There a Roman Charter for the Jews" in *The Journal of Roman Studies* 74 (1984), 107.

[56] The period (1st and 2nd centuries C.E.) of relative peace characterized by a preference for consolidation and internal improvements over territorial expansion.

[57] Chadwick, 24.

[58] Ibid., 24-25.

> have never taken part; hence I do not know what is the crime usually punished or investigated, or what allowances are made. So I have had no little uncertainty whether there is any distinction of age, or whether the very weakest offenders are treated exactly like the stronger; whether pardon is give to those who repent, or whether a man who has once been a Christian gains nothing by having ceased to be such; whether punishment attaches to the mere name apart from secret crimes, or to the secret crimes connected with the name.[59]

Trajan's reply, while long on promoting homogeneity and short on malice, nevertheless condones the persecution of Christians:

> You have adopted the proper course, my dear Secundus, in your examination of the cases of those who were accused to you as Christians, for indeed nothing can be laid down as a general ruling involving something like a set form of procedure. They are not to be sought out; but if they are accused and convicted, they must be punished—yet on this condition, that whoso denies himself to be a Christian, and makes the fact plain by his action, that is, by worshipping our gods, shall obtain pardon on repentance, however suspicious his past conduct may be. Papers, however, which are presented unsigned ought not to be admitted in any charge, for they are a very bad example and unworthy of our time.

As a community, the early Christians were on the receiving, not the perpetrating, end of violent confrontations. The early persecutions, being somewhat temporally sporadic and geographically limited, "did not seriously slow down the expansion of Christianity, but on the contrary tended to give the Church the maximum of publicity."[60] Christianity continued to spread in both numbers of converts and in influence such that "by 312, when Constantine triumphed at the battle of Milvian Bridge, Christians had become, if not a majority, then at least a substantial and fairly coherent minority throughout the Roman empire and

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[59] James Stevenson and W.H.C. Frend, *A New Eusebius: Documents Illustrating the History of the Church to AD 337* (London: SPCK Publishing, 1987), 19-20.

[60] Chadwick, 29.

beyond."[61] The spread of Christianity during these early years was not by force or militarism but through the peaceful yet persistent conversions and expanding influence. Violence, while not part of the early Christian ideological tradition, played a major part in how the early Christians interacted with the world in which they lived.

Allowance for War in the Cultural Milieu

Though seemingly not part of their ideological tradition, the early Christians lived during a time that war and violence was an accepted part of the larger culture. In their daily interactions with the Roman Empire as shown above, and as shown below in their understanding of the Hebrew Bible and in the philosophical tradition passed through the earlier Greeks and Romans, violence was a part of the early Christian's cultural *milieu*. The Church Fathers, who would go on to provide the first building blocks and later systematic theories of just war, did not need to create philosophy and ideology *ex nihilo* but could draw, rather, upon established traditions.

War in the Hebrew Bible

Evidenced by its inclusion of both pro-pacifistic and pro-militaristic passages, "the New Testament in neither approving nor condemning warfare expressly only provided general principles of human conduct rather than specific precepts, and so subsequent Christian writers were forced to

[61] Harold W. Attridge, "Christianity from the Destruction of Jerusalem to Constantine's Adoption of the New Religion: 70-312 C.E." in *Christianity and Rabbinic Judaism: A Parallel History of Their Origins and Early Development*, ed. Hershel Shanks (Washington DC: Biblical Archaeology Society, 1992), 155.

accommodate...Hebrew and Roman examples of holy and just wars."[62] For many during the Early Christian period, the Hebrew Bible was taken literally and monolithically as a brutal and violent text in which the early Israelites engaged in warfare at the behest of their God. This unabashedly militaristic understanding of the Hebrew Bible, still recognized as a wholly sacred text in early Christian communities, brought violence quite prominently in the Christian cultural *milieu*.

For many writing during this period, the Hebrew Bible was a tapestry of military engagement providing many examples of divinely sanctioned warfare. "The [Church] Fathers, who knew their Old Testament well, could not forget that it was full of narratives of battles."[63] The God of Israel, with whom the Israelites entered into a special relationship, directed warfare and violence to both reward and punish His people. War "was fought not so much with God's help as on God's behalf, not for a human goal which God might bless but for a divine cause which God might command."[64] Understood in this way, the God of Israel could thus be seen as a warrior,[65] and war seen as a holy undertaking.

The early Church Fathers, for whom we have every reason to believe the Hebrew Bible was accepted as historical record, would have found justification for a divine acceptance of war as early as the Book of Genesis. Marion Benedict writes that:

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[62] Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1977), 11.

[63] Hornus, 52.

[64] Bainton, 45.

[65] See Tremper Longman III and Daniel G. Reid, *God is a Warrior* (Grand Rapids MI: Zondervan, 1995).

> In Genesis, Yahweh's partiality for Abraham, Isaac, and Jacob appears primarily in His special revelations of Himself, and His often repeated promise, foreshadowed in Noah's curse and blessings (Gen 9:25-27), to give them and their seed the land of Canaan and to make of their descendants an innumerable people. Without regard to what other tribes and nations were then occupying it, His people would eventually possess it all. Though Genesis holds no story of armed conquest of territory, the conquest when it does occur seems...the inevitable realization of a divine purpose revealed again and again to the patriarchs, and hence something which is *a priori* justifiable and even natural.[66]

It is by virtue of the special relationship between God and the Israelite patriarchs that war is described as necessary in the Hebrew Bible. Fulfillment of the promises of land, wealth, and progeny, so central to the Genesis narrative, required the displacement of previous inhabitants. "An exceedingly important point in their rationale was that Israel had invaded at the behest of Yahweh and advanced under the protection of his outstretched arm."[67] The conquest of the promised land, at least as portrayed in biblical accounts, was often a particularly violent affair:

> When Israel had finished slaughtering all the inhabitants of Ai in the open wilderness where they pursued them, and all of them to the very last had fallen by the edge of the sword, all Israel returned to Ai, and smote it with the edge of the sword. And all who fell that day, both men and women, were twelve thousand, all the people of Ai….So Joshua burned Ai, and made it for ever a heap of ruins, as it is to this day. And he hanged the king of Ai on a tree until evening; and at the going down of the sun Joshua commanded, and they took his body down from the tree, and cast it at the entrance of the gate of the city, and raised it over a great heap of stones, which stands there to this day.[68]

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[66] Marion J. Benedict, *The God of the Old Testament in Relation to War* (New York: J.J. Little and Ives Company, 1927), 29.

[67] Bainton, 47.

[68] Joshua 8:24-26, 28-29, RSV.

Wars of conquest, such as those against Jericho and Ai, were understood to be used by God as the means to satisfy a particular end, namely the acquisition of the promised land. The biblically mandated destruction of Amalek, however, appears to go one step further in that it commands the destruction of an entire people for the sake of revenge and not for particular gain. The biblical command to destroy Amalek is found in Deuteronomy 25:19: "you shall blot out the remembrance of Amalek from under heaven" and developed in 1 Samuel 15:3: "Now go and smite Amalek, and utterly destroy all that they have; do not spare them, but kill both man and woman, infant and suckling, ox and sheep, camel and ass."[69] These texts raise many questions for the modern reader which may or may not have been present in antiquity, but for our purposes here continue to illustrate that the cultural inheritance of the early Christians contained many explicit and divinely sanctioned references to violence.

All of the early Christian writers had to reconcile their beliefs about pacifism and militarism with the Hebrew Bible. Some chose an understanding which supported their pacifistic ideals. Marcion, writing in the second century, chose to divorce early Christianity completely from the Hebrew Bible:

> At the time of Clement there had already existed within Christianity for several decades an active and widespread movement which declared itself against the Old Testament and rejected the God of Israel because he was warlike and thereby contradicted the gospel. In the church of Marcion, the most remarkable reformer of the second century, it was professed that the God of the Old Testament could not possibly be the Father of Jesus Christ. The one was

[69] Both RSV.

> gracious, compassionate, brought peace and forbade striving and war, while the other was warlike, inexorable, and cruel.[70]

An early Christian biblicist who "accepted the testimony of the texts as he found it,"[71] Marcion believed the God of the Christian New Testament to supplant the "inferior God of justice operative in creation and in Israel's history."[72]

Tertullian took a different tack with the belief that the wars of the Old Testament were part of a historical past broken by the new covenant in Jesus. Origen chose a third route which allegorized the holy wars related in the books of the Old Testament in a most thoroughgoing way: "If the horrible wars related in the Old Testament were not to be interpreted in a spiritual sense, the apostles would never have transmitted the Jewish history books for reading in the church to the disciples of Christ, who came to teach peace."[73] Other early Christians, as we will see in detail in the writings of Ambrose and Augustine, found in the Hebrew Bible a model for the accommodation of religion and warfare. These writers had to turn no farther than the Hebrew Bible, already part of their cultural *milieu*, for support of their ideas.

War in the Philosophy of Cicero

Another fertile source for notions regarding war and violence already extant in the cultural *milieu* was the writing of Cicero. While scholars may debate

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[70] Adolf Harnack, *Militia Christi: The Christian Religion and the Military in the First Three Centuries*, trans. David McInnes Gracie (Philadelphia: Fortress Press, 1981), 46.

[71] Sebastian Moll, *The Arch-Heretic Marcion* (Tubingen Germany: Mohr Siebeck, 2010), 3.

[72] Attridge, 173.

[73] Harnack, 48.

whether Marcus Tullius Cicero, 106-43 B.C.E., was one of the great ancient philosophers or simply an expositor of derivative and unoriginal ideas, the influence his works exhibit on later Christian conceptions of the just war is beyond question. His ideas about justice in war, while never approaching a systematic theory, became part of the intellectual inheritance of Ambrose, Augustine, and indeed all later just war thinkers. Cicero draws heavily upon Plato and Aristotle among others for his philosophical background and methodology, incorporating their ideas (which were manifest in his own intellectual inheritance) into his writing, making him a good representative of the existing cultural *milieu*. Statements about justice in war and violence on a national scale are scattered throughout his works. Some understanding of his background and belief system will give way to a brief survey of his statements about war and accompanying commentary later in this section.

Apparently a man of some political ambition, young Cicero set his sights on Roman office. He was not inclined to join the military, as his son Marcus would later do, so Cicero opted for the other path through which it was possible to ascend to the Roman elite: the study of law. Like other nobility (and rising nobility), he studied in both Greek and Latin, a classical education which provided him with the oratory and political skills necessary to succeed in the Senate and which later gave him the resources to introduce topics of Greek philosophy into the Roman system. Cicero was eventually elected to each of the Roman offices: quaestor, aedile, praetor, and consul; and apparently served admirably as he was elected to each on his first attempt.

It was not until his exile from Rome and from political office, in roughly 58 B.C.E. and stemming from his misalignment with the First Triumvirate, that Cicero began in earnest to focus on philosophy. While his period of exile was relatively brief, his philosophical inclinations continued to find expression throughout the rest of his life. *De Re Publica*, composed after his return to favor in Rome, attempts to describe the ideal State and therein contains the philosophical underpinnings for the existence of Rome and its many institutions. The existence of an ideal State would warrant expectations of eternality, and in fact Cicero speaks of the importance of maintaining such a State, thus giving rise to the legitimization of violence in defense of the State and to statements about when and how such violence might be used in a morally justifiable way. It was not until his final work, however, that Cicero put forth his fullest statement of his statements about justice in war. *De Officiis* was penned as a letter to his son Marcus, who was just beginning his philosophical education, and speaks about a man's duties concerning what is honorable and morally right.

If only Mark Antony had agreed with the Roman philosopher and fellow Stoic, Seneca (c.1 B.C.E.-65 C.E.), that murder was a crime and not honorable or morally right, a belief which Cicero supported, perhaps Cicero would have survived his biggest political battle. Unable to overthrow Antony after numerous inflammatory speeches in the Senate, Cicero was struck down while attempting to flee the city. His legacy, the copious works of philosophy that have influenced countless philosophers and the course of history for thousands of years, begins our study of the just war in Roman philosophy.

Drawing on his legal training and involvement in the Roman government, the majority of Cicero's statements about a just war speak to what constitutes a *bellum justum*, a just war. His analysis is legalistic and primarily concerned with the lawfulness of war, a concern far predating notions of *jus ad bellum* and *jus in bello*, the justice of going to war and justice in war, respectively, and also with the framework within which it could be engaged by the Romans. In some sense, Cicero understood war to be an extension of the same legal system which functioned to protect the individual within the Republic:

> The legal foundation of the Roman just war was the analysis of contractual obligation….Breach of contract in private law justified a civil suit by the injured party to recover his *damna* and *iniuriae*, his damages and injuries. Similarly, in relations between states the injured city-state enjoyed rights to seek compensation and redress, acting both as judge and part in its own cause….Every city-state with juridical autonomy was responsible for redeeming injuries done to foreigners by its citizens, and when it defaulted on this responsibility, the other city-state had the right to punish it by war. Denial of justice became the primary cause of a just war seen as an extraordinary legal process.[74]

By understanding war as an extension of the legal system, Cicero severely limits those applications of violence which could be seen as just. As private citizens did not have standing to adjudicate disputes and had to utilize the legal system and its proper authority, so, too, was the waging of war limited to proper authorities. Violence perpetrated by individuals, groups of individuals, or improper authorities was viewed as piracy rather than war in a legal sense.[75] Another ramification of war being viewed as an extension of the legal system was

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[74] Russell, 4-5.

[75] Ibid., 5.

that even proper authorities needed proper cause to proceed. A just war, one in keeping with the standards of Roman law, could only be used to redress injury and not for purposes of offense: “Those wars are unjust which are undertaken without provocation. For only a war waged for revenge or defense can actually be just.”[76] Thus revenge (here understood as redress of injury) and defense (repulsion of attack) became the justified *causis belli* for Cicero.

It is through an expansion of the concept of redress of injury that Cicero's philosophy allowed for territorial gain. The Romans were not solely limited to seek revenge for active injuries but for all past offenses.[77] Cicero explained: “There are, on the other hand, two kinds of injustice – the one, on the part of those who inflict wrong, the other on the part of those who, when they can, do not shield from wrong those upon whom it is being inflicted.”[78] When combined with a need to redress injuries of friends and allies, it is easy to see how the Roman Empire rapidly grew in size.

Justification for war, however, neither necessitated the use of force nor relieved the just party of the need to proceed through proper course. “For since there are two ways of settling a dispute: first by discussion; second, by physical force; and since the former is characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves of discussion.”[79]

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[76] Marcus Tullius Cicero, *De Re Publica*, trans. C.W. Keyes (Cambridge: Harvard University Press, 1928), III.xxiii, 213.

[77] “The prior guilt of the offending party rendered its cause automatically unjust and justified the Roman title to defense.” Russell, 5.

[78] Marcus Tullius Cicero, *De Officiis*, trans. Walter Miller (Cambridge: Harvard University Press, 1913) I.vii, 25.

[79] Cicero, *De Officiis*, I.xi, 37.

Cicero seems to imply that we are obligated to use violence only as a last resort to redress injury or dissuade attack, again limiting the application of violence by a city-state. Even if the way of the brute is necessary, Cicero stipulates due process for its usage: “No war is considered just unless it has been proclaimed and declared, or unless reparation has first been demanded;”[80] and “No war is just, unless it is entered upon after an official demand for satisfaction has been submitted or warning has been given and a formal declaration made.”[81] We should hear in his emphasis of proper procedure two underlying principles which compel Cicero to put forth his building blocks of just war theory, namely a love of his country and desire for its preservation, rather than an interest in war itself.

Despite the turmoil he experiences as the political tides of the Republic ebbed and flowed, Cicero represented the best of the Roman system. His love of the law, of classical philosophy, and all things Roman is evident throughout his writing. Cicero’s inclusion of the aforementioned statements functions less to ensure fairness for the offending party, as he states elsewhere that certain enemies need not be extended any rights,[82] than to idealize what was already common practice:

> This stipulation (that one state should not make war upon another without a formal declaration of hostilities) was in accord with

[80] Cicero, *De Re Publica*, III.xxiii, 213.

[81] Cicero, *De Officiis*, I.xi, 39.

[82] “Nowhere was this situation more clearly expressed than in the Roman attitude towards those peoples with whom Rome had no legal relations, the barbarians who were excluded from all legal protection….Other enemies he (Ulpian) termed *latrunculi* and *praedones*, robbers and brigands who, not enjoying rights accorded to public enemies, were beyond the pale of Roman law. Cicero exemplified Roman suspicion of foreigners when he maintained that an oath to give ransom to a pirate need not be fulfilled since the pirate was not a legitimus *hostis* but a common enemy of mankind lacking in all honor.” Russell, 7, 8.

> Roman practice which required that the *Fetiales*, a college of priests, should first deliver an ultimatum, allowing thirty days for a reply. If satisfaction were not given hostilities would be solemnly announced to the enemy. These *Fetiales* presided also over truces and treaties.[83]

Cicero's love for his country and desire for its preservation may also be seen in the Platonic idealization of the State found in *De Re Publica*: "There is some similarity, if we may compare small things with great, between the overthrow, destruction, and extinction of a State, and the decay and dissolution of the whole universe."[84] The State was to be preserved even at the cost of human life, for while individuals die, the State should live forever.[85] War, then, was not virtuous unless it functioned to preserve the State. Moreover, Cicero recognizes peace as the highest idea towards which humans should strive, and upon its achievement war should conclude. As Cicero writes:

> The only excuse, therefore, for going to war is that we may live in peace unharmed; and when the victory is won, we should spare those who have not been blood-thirsty and barbarous in their warfare…[and] ensure protection to those who lay down their arms and throw themselves upon the mercy of our generals.[86]

We see in Cicero's writings not a systematic theory of just war but statements and principles; in effect, building blocks concerning war's allowance, restriction, and proper conduct to achieve the goal of preserving the State. The existence of an ideal State, best exemplified for Cicero by Rome, would warrant expectations of eternality and give rise to the permission of violence in defense of

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[83] Bainton, 41.

[84] Cicero, *De Re Publica*, III.xxiii, 213.

[85] Cicero, *De Re Publica*, III.xxxiv.

[86] Cicero, *De Officiis*, I.xi, 37.

the State and to statements about when and how such violence might be used in a morally justifiable way. Writing several centuries before the early Christian theologians, Cicero's statements about war and violence would have been part of their cultural inheritance. These building blocks of thought play a major role in the Christian just war thinking of Ambrose and the later theory laid down by Augustine, both of whom demonstrate a clear admiration for Cicero as a just war thinker.[87]

Rise of Christian Just War Theory

Christianity, the Empire, and Constantine

The conversion of Constantine to Christianity signified a turning point in the relationship between the Empire and the Church, even though it has been suggested that anti-Christian sentiments were not as uniform as is commonly believed.[88] Constantine's personal acceptance of Christianity did more than bring an end to whatever Christian persecution remained, as "the sovereign autocrat was inevitably and immediately involved in the development of the Church, and conversely the Church became more and more implicated in high political decisions."[89] The new relationship between the Empire and the Church, characterized by such increasing cooperation that eventually their fates would be

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[87] John Mark Mattox, *Saint Augustine and the Theory of Just War* (New York: Continuum Books, 2008), 14.

[88] "Certain points now seem to be beyond dispute: (1) Constantine's "conversion" brought about no abrupt or complete reversal. By the time he acceded to power, all of the leaders, old and new, of the empire had come to realize that it was futile to persecute the Christians; only by favors could they be conquered." Hornus, 201.

[89] Chadwick, 125.

seen as intertwined, ushered in the new religious and political reality with which later Church Fathers were familiar. To understand better the *sitz im leben* that gave rise to Ambrose's and Augustine's writings on just war, we need to explore further what it meant to be a leader of the Church following Constantine's conversion.

In the year 312, Constantine waged an attack on his rival Maxentius despite leading vastly inferior forces. His victory he attributed not to his rival's poor military decisions but to a vision he received of Jesus:

> In the *Vita Constantini*, Eusebius maintains that at noon, before the battle, Constantine and his army, while he was praying to the god of his father, saw a cross over the sun with the inscription "In this sign, conquer." That night Christ appeared to him and told him to paint the cross on the shields of his soldiers (*Vita* 1.27-32).[90]

Constantine believed this promise, and when he was victorious, "he repaid the Christian god by issuing, with Licinius, the 'Edict of Milan' (313), giving the Christians freedom of worship."[91] Thus began Constantine's relationship with Christianity, which lasted for the rest of his life. Some scholars claim that from this time forth he was a believing Christian,[92] while others assert that Christianity was only a tool through which, along with paganism, he gained control of the Empire: "J. Moreau has argued that the most exact parallel to Constantine's

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[90] Catholic University of America, "Constantine I, The Great, Roman Emperor" in *New Catholic Encyclopedia* (New York: McGraw-Hill Book Company, 1967), IV, 227.

[91] Kelly, 194-195.

[92] "His letters from 313 onwards leave no doubt that he regarded himself as a Christian whose imperial duty it was to keep a united Church. He was not baptized until he lay dying in 337, but this implies no doubt about his Christian belief. It was common practice at this time (and continued so until about A.D. 400) to postpone baptism until the end of one's life." Chadwick, 127.

attitude was that of Napoleon. For Napoleon simultaneously upheld Catholic and Muslim cults and viewed religion, like the army, as a means of acquiring and maintaining power."[93] While his personal beliefs remain a matter of some controversy, it is clear that Constantine eventually tied his political fate to that of the Church.

The transition from paganism to Christianity in the Roman Empire, however, should be seen as more complex than simply emanating from one military victory. The early Christians, whose population continued to grow despite varying degrees of persecution, never wavered in their support of the Empire. As was shown earlier, Christians had even long served as soldiers in the defense of the Roman Empire. The true threat during this time came from beyond the Empire's borders, from those pagans and barbarians who represented a threat to the same. Eventually Roman Christians and Roman pagans alike became more concerned with keeping the barbarians at arm's length than with infighting.

Constantine's acceptance of Christianity, on the one hand, and the gradually improving conditions for Christians, on the other, led to an unprecedented new relationship between the Church and the Empire. With the improved relationship came new challenges for the early Church: "The Emperor's benefactions to the Church and the peace he achieved exerted a subtle but powerful pressure on Christian theologians…"[94] While there is no extant evidence that Constantine brought about any theological changes by force of

[93] Hornus, 203.

[94] Russell, 12.

rule, his influence surely held sway over Church leaders. Indeed, these leaders began to look towards Rome as the fulfillment of Christianity:

> Christian authors could the more easily look upon the empire and the Church as partners because Constantine has restored the *Pax Romana*. The minority view of Melito and the Asiatic bishops in the second century that Rome and Christianity were conjoin works of God became under Constantine the prevailing position. The theologians recognized that the empire had pacified the world, established universal communication, and made possible the proclamation of the gospel to all nations. Christianity, they claimed, had coincidently tamed belligerent peoples by overcoming the demons which incited them to war. The Roman peace and the Christian peace thus supported each other, and the prophecy that swords should be beaten into plowshares had received fulfillment in the *Pax Romana*....The religion of the one God and the empire of one ruler were recognized as having been made for each other.[95]

Eusebius, in his Oration on Constantine, said that indeed harmony was realized in the partnership between Rome and the Church.[96] It was on the strength of this partnership that the termination of pacifism as the desired Christian position was realized, for an attack on the Empire was viewed as an attack on the Church itself. This partnership also led to the normalization of Christianity:

> In the generations after Constantine, following the example set by the first Christian emperor, church buildings replaced temples, baths, and other secular works as the principal source of outlay for public and private munificence, and the civic landscape took on an increasingly Christian character–reflected not only in places of worship, but in a variety of charitable establishments (hospitals and hostels) and monastic communities. Nor were such Christian buildings any longer confined to the peripheral locations which had been occupied by the first martyr shrines, as churches now began to encroach upon the heart of the city, alongside the rest of the

[95] Bainton, 86-87.

[96] Ibid.

> public buildings and residential quarters which comprised the urban centre.[97]

It is with this understanding of a new privileged relationship between the Church and the Empire that we turn to the writings of Ambrose and Augustine on the just war.

War in the Philosophy of Ambrose

Born in the year 340 C.E., Aurelius Ambrosius, popularly known now and in his time as Ambrose, brought Christian a "flavor" to the philosophy of Cicero. Described as a bright boy who was born into a Christian political family, Ambrose's schooling and aspirations led him to follow in his father's footsteps upon his father's death at an early age. After a classical education combining Greek and Latin with Roman Law, Ambrose served as governor of Aemilia-Liguria, quartered in the major city of Milan. Ambrose's classical training allowed him to incorporate earlier Greek ideals and methodologies into his thinking and practice while developing the oratorical skills necessary for success in Roman government.

The death of the Bishop of Milan, Auxentius, in 374 C.E. brought turmoil to the community over which Ambrose presided. Auxentius, an Arian, believed that Jesus was created by God and therefore not heretofore eternal. This view ran afoul of the Niceans, who believed in the consubstantiality of God and Jesus. The polarization of the community of Milan over this issue of theology made the

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[97] David Hunt, "The Church as a Public Institution" in *The Cambridge Ancient History Volume XIII*, eds. Averil Cameron and Peter Garnsey (Cambridge: Cambridge University Press, 1998), 250-251.

election of a new Bishop rather difficult, and Ambrose in his role as governor arrived at the site of the election to calm dissent. The following folklore is recorded in the Catholic Encyclopedia: “He began a conciliatory discourse in the interest of peace and moderation, but was interrupted by a voice (according to Paulinus, the voice of an infant) crying, ‘Ambrose, Bishop’. The cry was instantly repeated by the entire assembly, and Ambrose, to his surprise and dismay, was unanimously pronounced elected.”[98] While the actual sequence of events is lost to history, in short order Ambrose was baptized and transitioned from being governor to bishop despite a lack of formal theological training.

Fortunately for Ambrose, it was his training in law and government, and not his theological background, that allowed him to succeed. One of Ambrose’s most significant contributions to the Church, and, indeed, to our study of just war theory, was the relationship he helped forge between the Church and the State:

> As bishop of the city where the emperors had their residence, Ambrose raised Milan to recognition as the most important see of the West. He occupied a place of preeminence in the Church and contributed much to its prestige in the early years of peace when a strong pagan party still hoped to enjoy the protection of emperors not always Catholic. His religious policy was threefold: the protection of the Church against the violence of the emperors; the demand that the civil power respect the moral law; and the fostering of a close union of Church and state by which the state eventually favored only the Catholic religion and discouraged all others. Thus, without any [overt] political ambition on his part, Ambrose gained a stronger power than the emperor in that he could exercise a moral check on him.[99]

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[98] James Loughlin, “St. Ambrose” in *The Catholic Encyclopedia* (New York: Robert Appleton Company, 1907), retrieved October 28, 2010 from New Advent: http://www.newadvent.org/cathen/01383c.htm.

[99] Ludwig Schopp, “Saint Ambrose: Letters” in *The Fathers of the Church* (New York: Fathers of the Church, Inc, 1954), xii.

The influence that Ambrose was able to exert over the Roman emperors led to remarkable strides in cooperation between the Church and the state. This was especially true with the emperor Gratian, who went as far as to ask Ambrose "to instruct him fully in the Catholic faith."[100] Due to both personal relationships and the power of the offices of bishop and emperor, in an ever increasing sense the Church and the state were becoming intertwined, such that an attack on one might be perceived as a threat to both.

For Ambrose, the defense of the empire coincided with the defense of the faith:[101] "the courage of soldiers who defended the Empire against barbarians and Roman citizens from thieves was full of justice, and Ambrose prayed for the success of imperial armies."[102] When, in 378, the Goths would no longer endure the treaty that had been made with the late Emperor Valens, they began to attack. In a long section of his *Exposition of the Christian Faith*, composed at Gratian's request before he was to fight the Arian Goths, Ambrose assures Gratian of a victory. This pericope sets forth many of the theological underpinnings of the conceptual building blocks that Ambrose contributes to the concept of a more just war and is therefore included despite its relative length:

> I must no further detain your Majesty in this season of preparation for war, and the achievement of victory over the Barbarians. Go forth, sheltered, indeed, under the shield of faith, and girt with the sword of the Spirit; go forth to the victory, promised of old time, and foretold in oracles given by God. For Ezekiel, in those far-off days, already prophesied the minishing [sic] of our people, and the Gothic wars, saying: "Prophesy, therefore, Son of

[100] W.H.C. Frend, *The Rise of Christianity* (Philadelphia: Fortress Press, 1984), 620.

[101] Bainton, 90.

[102] Russell, 13.

> Man, and say: O Gog, thus saith the Lord – Shalt thou not, in that day when My people Israel shall be established to dwell in peace, rise up and come forth from thy place, from the far north, and many nations with thee, all riders upon horses, a great and mighty gathering, and the valour of many hosts? Yea, go up against my people Israel, as clouds cover the land, in the last days."
>
> That Gog is the Goth, whose coming forth we have already seen, and over whom victory in days to come is promised, according to the word of the Lord. Enough, yea, more than enough, Almighty God, have we now atoned for the deaths of confessors, the banishment of priests, and the guilt of wickedness so overwhelming, by our own blood, our own banishment – sufficiently plain is it that they, who have broken faith, cannot be safe. Turn again, O Lord, and set up banners of Thy faith.
>
> No military eagles, no flight of birds, here lead the van of our army, but Thy Name, Lord Jesus, and Thy worship.[103]

Contained within this treatise are notions of Ambrose's general acceptance of war, the idea that the Hebrew Bible sanctions war for believers, and that those who have broken faith with the Church (or never held faith) may be reprimanded with violence. The first point, Ambrose's general acceptance of war, might be taken for granted given his involvement with Roman government prior to becoming a bishop, were it not for early Christianity's tumultuous relationship with violence and warfare. While Ambrose does not single-handedly change the position of early Christianity, as shown above, his statements reconciling Christianity and military action are somewhat startling. More on the relationship between Christianity and the Empire will follow in later sections; let it suffice for now to state that from Ambrose we hear no prohibition against war, neither in principle nor terms of Christian participation.

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[103] Ambrose, "Of the Christian Faith" in *Nicene and Post-Nicene Fathers, Volume 10: Ambrose Select Works and Letters* (Peabody MA: Hendrickson Publishers, 1994), II:16, 243-244.

To the second point, that the Hebrew Bible is rife with examples of just war, we read in Bainton: “From the Old Testament Ambrose enthusiastically appropriated many examples of military prowess.”[104] The Hebrew Bible can be read as a tapestry of military engagement, and, when, understood literally, it provides many examples of divinely sanctioned warfare. By re-actualizing the biblical Gog as the then modern-day Goths, Ambrose finds divine permission to engage them in war directly in the Hebrew Bible.

Finally, Ambrose is quick to sanction violence against heretics, for, as stated before, their existence was an attack on the Christian faith, for him the emanation of God’s will: “The barbarians were Arians. The Danubian provinces which offered so weak a resistance to the invaders were also Arian. Ambrose regarded the whole incursion as a proof of the divine wrath because of the spread of unbelief.”[105] It is little wonder that Ambrose would allow Gratian to remove by force those that threatened his interpretation of Christianity.

We see also in Ambrose’s writings a collection of statements about just conduct in war. Justice, an important virtue in Roman culture, applies even to the enemy:

> Here is another measure of the greatness of justice: it is never without relevance, no matter what the place, or the person, or the time. Even warring parties maintain its importance: so, if it has been decided with an enemy that battle will take place at a particular place or on a particular day, it is regarded as a violation of justice to arrive at the place in advance or to bring forward the time.[106]

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[104] Bainton, 90.

[105] Ibid.

[106] Ambrose, *De Officiis*, trans. Ivor J. Davidson (New York: Oxford University Press, 2001), I:139, 197.

Elsewhere Ambrose states: "*Quod nec locis nec personis nec temporibus excipitur*: Justice must be upheld in every situation without exception."[107] This notion that justice is of prime importance and should be accorded even to the enemy is tempered, however, by Ambrose's belief that right intention is often the arbiter of justice. It may be more just to correct an enemy, as a parent might correct a child, than to allow them to continue on their misguided path, an idea we will see more fully developed in the writings of Augustine.

Tied to the notion of justice is his position that an enemy should be treated in a manner that is commensurate with his offense:[108]

> But a deeper vengeance is taken on fiercer foes, and on those that are false as well as on those who have done greater wrongs, as was the case with the Midianites. For they had made many of the Jewish people to sin through their women; for which reason the anger of the Lord was poured out upon the people of our fathers. Thus it came about that Moses when victorious allowed none of them to live. On the other hand, Joshua did not attack the Gibeonites, who had tried the people of our fathers with guile rather than with war, but punished them by laying on them a law of bondage. Elisha again would not allow the kings of Israel to slay the Syrians when they wished to do so.[109]

While violence or war may be used when commensurate with an enemy's offense, Ambrose, in general seems, to be inclined towards mercy. Peace is the desired outcome of every situation, including war, and it is incumbent upon man to maintain peace, both for himself and for his neighbors:

> So the glory of courage does not consist merely in physical strength or the power of muscle: it is to be found far more in valorousness of spirit. And the law of valour consists not in doing people an injury

[107] Ambrose, *De Officiis*, 578, from the commentary offered by Davidson.

[108] Mattox, 22.

[109] Ambrose, "Duties of the Clergy," I:29, 24.

> but in protecting them from such things. In point of fact, the person who fails to deflect an injury from his neighbour, when he is in a position to do so, is as much at fault as the one who inflicts it. This was where holy Moses took his earliest steps towards proving his courage in war. For when he saw a Hebrew being ill-treated by an Egyptian, he defended him–and did it so successfully that he finished the Egyptian off and hid him in the sand.[110]

The combination of ideas presented by Ambrose, including notions of justice, *bellum justum*, and proportionality reveal him to be something of a Christian Cicero. Like Cicero before him, Ambrose sets forth important building blocks with which to construct the concept of a just war that would influence all of medieval theory and practice. These building blocks, however, never approached a systematic theory:

> "Yet it remained an unstable amalgam of examples of Old Testament wars and Roman morality serving as a clumsy weapon against barbarians and heretics. Blessed with a succession of orthodox and forceful emperors, Ambrose did not feel obligated to examine the authority required for a just and holy Romano-Christian war. Still lacking was a systematic grounding of the just war on both Old and New Testament moral principles."[111]

It is with the continued rise of Christianity and interplay between Rome and the Church that we see in Ambrose's disciple, Augustine (354-430), the first systematic articulation of just war theory. As with Cicero and Ambrose, however, there is no extant work of Augustine's that exclusively discusses just war. Indeed, others have applied to Augustine the same charges that were leveled above: "His remarks on the subject are scattered throughout a great variety of his works including sermons, commentaries, letters and apologetic pieces, which

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[110] Ambrose, *De Officiis*, I:179, 221.

[111] Russell, 15.

were written over a period of more than thirty years."[112] Yet there exists with Augustine a cohesion that is missing in the writings of his predecessors:

> Although when viewed separately, his just-war statements may appear fragmentary, when woven together, they constitute a remarkable tapestry. Upon careful inspection of that tapestry, one cannot but be struck by the unity that is readily apparent in his just-war thought. Augustine also addresses a number of themes allied to the topic of just war (such as the use of violence by the state in the punishing of criminals or in coercing religious practice), which, if carefully considered in tandem with his just-war pronouncements, do much to illuminate his view on just war. The consistency evident in his expression of these varied but related ideas leads verily to the assumption that Augustine's just-war statements arise from a consistent set of premises, which guide him to his conclusions; in other words, they reveal the presence of an underlying, if unstated, *theory*.[113]

War in the Philosophy of Augustine

Saint Augustine, unlike those before him, set forth a comprehensive and systematic treatment of just war than his predecessors, which would serve as the foundation for Christian and indeed Western thinking on the subject through the current time. As Christopher Columbus was to the discovery of America, Augustine is to just war theory: "not the first to come into contact with it, but certainly the one whose contact with it, unlike all those who came before him, made a lasting impression upon the entire subsequent development of the Western world."[114] Truly Augustine is "the giant figure in the literature of the just

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[112] Louis J. Swift, *The Early Fathers on War and Military Service* (Wilmington DE: The Liturgical Press, 1983), 110.

[113] Mattox, 5.

[114] Ibid., 2.

war"[115] in that "the whole Western just-war tradition that follows from the fifth century AD on, in both Christian and secular varieties, traces its roots not to Plato or Aristotle, nor even to earlier Church Fathers, but rather to Augustine."[116] Our survey of the just war in Augustinian thought, then, deserves more substantial treatment than does that of prior authors because it is to serve as the basis for our understanding of Western thinking about justice in war.

Augustine, father of the first systematic treatment of just war, now becomes the subject of our study. Let us begin with a brief biography of the man himself before examining his relationship with Ambrose, his place in both Church and State, and his philosophy of just war.

Aurelius Augustine was born in the North African town of Thagaste. Son of Patricius, vocationally a Roman consul and religiously a pagan, Augustine was born into a working-class family that worked hard to provide him with a classical education grounded in philosophy and rhetoric. About his father we know little, even from his great autobiographical work, *The Confessions*, except that Patricius was generous but hot-tempered and extolled by all for his sacrifices in providing Augustine with the best possible education: "Who did not extol my father, for that beyond the ability of his means, he would furnish his son with all necessaries for a far journey for his studies' sake? For many far abler citizens did no such thing for their children."[117] Indeed, Augustine was afforded the classic

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[115] Lenihan, 193.

[116] Mattox, 2.

[117] Augustine, *The Confessions of St. Augustine*, trans. Edward Pusey (New York: P.F. Collier & Son, 1914), II,iii. http://www.bartleby.com/7/1/2.html (accessed November 6, 2010).

literary education of a rhetorician, first in Thagaste and then in Carthage. There he was asked to learn the works of Vergil and Cicero by heart,[118] the influence of whom had direct bearing on his treatment of just war.

Upon his father's passing, Augustine's mother, Monica, assumed responsibility for the completion of his education. We know much more about Monica and her influence on Augustine, in as much as their relationship serves as a constant thread throughout *The Confessions*. Although she is depicted throughout the book as an "all-absorbing mother, deeply injured by her son's rebellion," we are also told that she was a genuinely impressive woman, "restrained, dignified, above gossip, a firm peacemaker among her acquaintances, capable, like her son, of effective sarcasm."[119] A Christian all her life, Monica appears to have believed that a good classical education, despite its deeply pagan roots, would eventually lead her son to Christianity and was thus willing to continue her husband's support of Augustine's studies.

It seems that her plan worked, since it was the study of Cicero's now lost work *Hortensius* that started Augustine on the long and winding path towards Christianity:

> The *Hortensius* of Cicero, now lost with the exception of a few fragments, made a deep impression on him. To know the truth was henceforth his deepest wish. About the time when the contrast between his ideals and his actual life became intolerable, he learned to conceive of Christianity as the one religion which could lead him to the attainment of his ideal. But his pride of intellect held him back from embracing it earnestly; the Scriptures could not bear

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[118] Peter Brown, *Augustine of Hippo: A Biography* (Berkeley: University of California Press, 2000), 24.

[119] Ibid., 17-18.

> comparison with Cicero; he sought for wisdom, not for humble submission to authority.[120]

With enough Christian influence to frequent the church in Carthage, if for no other explicit reason than to search for companionship,[121] Augustine began to search for true wisdom in the Christian Bible. There he found a Latin far less developed than that used by classical rhetoricians and a text cluttered by stories and genealogies for which he had little use. It was not until he accepted a professorship in Milan and came under the influence of Ambrose that Augustine was to be baptized into the Christian Church at Easter time in 387.

Much will be said later about the influence of Ambrose specifically on Augustine's thinking about just war; here let us try to paint a more general picture. Augustine first made the acquaintance of Ambrose following his disillusionment with Manichaeism, a religious tradition offering a straightforward path to true wisdom:

> They had claimed to offer absolute certainty, straightforward and unambiguous, to any rational man. The 'Wisdom' contained in their books described the exact reality of the universe; all a man need do, was to act in conformity with this knowledge.[122]

When he later transcended his schoolboy fascination with the group, he "began to appreciate the great attractions of a life-time of philosophical discipline."[123] Augustine looked to Ambrose for direction, reportedly telling a friend that if only

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[120] Internet Encyclopedia of Philosophy, s.v. "Augustine," http://www.iep.utm.edu/augustin/ (accessed November 6, 2010).

[121] Augustine, *Confessions*, III.

[122] Brown, 70.

[123] Ibid.

one was ready to teach him, “he would find me at a very critical moment most fervently disposed and very apt to learn.”[124] At first, as we read in *The Confessions*, Augustine saw Ambrose as somewhat cold and distant:

> For I could not ask of him, what I would as I would, being shut out both from his ear and speech by multitudes of busy people, whose weaknesses he served. With whom when he was not taken up (which was but a little time), he was either refreshing his body with the sustenance absolutely necessary, or his mind with reading. But when he was reading, his eye glided over the pages, and his heart searched out the sense, but his voice and tongue were at rest. Ofttimes when we had come (for no man was forbidden to enter, nor was it his wont that any who came should be announced to him), we saw him thus reading to himself, and never otherwise; and having long sat silent (for who durst intrude on one so intent?) we were fain to depart, conjecturing that in the small interval which he obtained, free from the din of others' business, for the recruiting of his mind, he was loth to be taken off.[125]

It wasn’t until he heard Ambrose preach that Augustine became enraptured. A brilliant thinker and orator, Ambrose first proved his mettle by defending the Hebrew Bible against the Manichaean criticisms: “With some relief Augustine now heard how it was possible to see the Patriarchs in a different light: what had once appeared to him, when a Manichee, as a collection of formidable and disgusting *bons peres de famille*, were presented by Ambrose as a stately procession of authentic ‘philosophers’, each one symbolizing the state of a soul purified by wisdom.”[126] Indeed the musings of all later philosophers stood on

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[124] Augustine, “On the Profit of Believing” in *Seventeen Short Treatises of Saint Augustine*, trans. C.L. Cornish and H. Browne (Oxford: J.H. Parker, 1847), 597.

[125] Augustine, *The Confessions of Saint Augustine*, trans. Arthur Symons (London: Walter Scott, 1898), 120.

[126] Brown, 74.

compromised ground when compared with the word of Moses and God according to Ambrose, a meaningful redemption of the Bible for Augustine.

It seems that "the influence of Ambrose on Augustine is far out of proportion to any direct contact which the two men may have had."[127] While we might expect the writings and thought of any student to be influenced by that of his teacher, Ambrose's sermons and theological underpinnings held remarkable sway over Augustine. Ambrose was to baptize both Augustine and his son Adeodatus, an acceptance of Christianity which forever changed the course of his life.

Upon his return to north Africa following his conversion to Christianity, Augustine became a priest at Hippo in 391 and bishop in 395, a position in which he served until his death. Most notable for our study of just war theory was the state of the Roman Empire during the time of Augustine's reign as bishop:

> In order to acquire a proper perspective on just how desperate things were in Augustine's day, it is instructive to note the socio-political circumstances prevalent during much of his life. The great migrations of barbaric peoples from northern Europe and central Asia constituted the Empire's single greatest challenge. And since, as is so often the case in history, big problems seem to lend themselves to violent solutions, war was never far from being a reality—particularly in the form of civil war within the provinces of the Empire itself. However, in addition to the pressures being applied to the northern and eastern frontier, North Africa was being threatened by the Vandals—invaders whose depredations are so dreadful that the word "vandalism" lives on in the language to perpetuate their infamy. Augustine lived through the sacking of North Africa and the wanton destruction of churches by these Vandals.[128]

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[127] Brown, 77.

[128] Matox, 23.

The Roman Empire was facing unprecedented threats from both the inside and the outside, undoubtedly coloring Augustine's view of Rome and the means necessary for its defense. While Cicero spoke of justice in war during the expansion and rise of the Roman Empire, at a time when the state was to live forever, and Ambrose was writing during the Empire's 'glorious' conversion to Christianity, Augustine was experiencing its decline. North Africa was sacked by the vandals in his lifetime, and both the Roman state and army ceased to exist in 476 C.E., "a mere 46 years after Augustine's own death."[129] The eternal city of the Christian Empire, Rome, fell to Alaric during the prime of Augustine's life, and the importance of the Roman downfall on his theory of just war cannot be overstated.

Augustine, unlike Cicero before him, did not base his comments about just war upon a the philosophical understanding of justice, that of rendering to every man his due. That God ordained the wars of the Hebrew Bible, including the destruction of Ai in the Book of Joshua, rendered irrelevant human considerations of what constituted justice, for God's every action must be just: "Another kind of war that, without any doubt, could be called just is that undertaken on the command of God, in whom there can be no injustice and who knows what is right."[130] In Augustine's view, God is the only possessor of true justice, and the best that morally depraved humans can achieve is some degree

[129] Ibid., 23.

[130] Augustine, *Questiones in Heptateuchem*, quoted in Lenihan, 218.

of relative justice. He illustrates this point, albeit somewhat sarcastically, in *The City of God*:

> Justice removed, then, what are kingdoms but great bands of robbers? What are bands of robbers themselves but little kingdoms? The band itself is made up of men; it is governed by the authority of a ruler; it is bound together by a pact of association; and the loot is divided according to an agreed law. If, by the constant addition of desperate men, this scourge grows to such a size that it acquires territory, establishes a seat of government, occupies cities and subjugates peoples, it assumes the name of kingdom more openly. For this name is now manifestly conferred upon it not by the removal of greed, but by the addition of impunity. It was a pertinent and true answer which was made to Alexander the Great by a pirate whom he had seized. When the king asked him what he meant by infesting the sea, the pirate defiantly replied; 'The same as you do when you infest the whole world; but because I do it with a little ship I am called a robber, and because you do it with a great fleet, you are an emperor.[131]

Augustine, in his personal sphere, should be best thought of as a pacifist: "From his writings, we can deduce that Augustine was a personal pacifist who would have preferred to die at the hands of a murderer rather than exercise the legal right of self-defense. In book one, chapter five, of his *De Libero Arbitrio*, Augustine articulated unambiguously the position of a personal pacifist…"[132] This notion is very important to our understanding of Augustinian thought because it speaks of a general reluctance to engage in violence even when relatively justified (the principle of comparative justice, that is, able to override the strong presumption against violence, in modern *jus ad bellum* principles). Augustine's personal sense of pacifism serves to add depth, not hypocrisy, to his

[131] Augustine, *The City of God Against the Pagans*, trans. R.W. Dyson (Cambridge: Cambridge University Press, 1998), 147-148.

[132] Lenihan, 195.

thoughts on the just war. First, as a religious leader, Augustine continues and is thus protected by the Ciceronean principle that clergy are exempt from participation in war. Second, and perhaps most important, Augustine's personal conviction to refrain from violence while allowing Christian participation highlights two major principles that undergird his understanding of just war, namely the importance of order and of proper intention.

Order was an essential part of how Augustine viewed the world, a view not surprising given the chaos taking place within the Roman Empire. Without order "the world would be prey to chaos and the unbridled passions inherent in sinful man."[133] Thus we read in *The City of God*:

> Of the universal peace which the law of nature preserves through all disturbances, and by which, through God's ordinance, everyone comes to his just desert. The peace of the body, therefore, lies in the balanced ordering of its parts; the peace of the irrational soul lies in the rightly ordered disposition of its appetites; the peace of the rational soul lies in the rightly ordered relationship of cognition and action; the peace of body and soul lies in the rightly ordered life and health of a living creature; peace between mortal man and God is a ordered obedience, in faith, under an eternal law; and peace between men is an ordered agreement of mind with mind. The peace of a household is an ordered concord, with respect to command and obedience, of those who dwell together; the peace of a city is an ordered concord, with respect to command and obedience, of the citizens; and the peace of the Heavenly City is a perfectly ordered and perfectly harmonious fellowship in the enjoyment of God, and of one another in God. The peace of all things lies in the tranquility of order…"[134]

Augustine tolerated and even perhaps supported the Roman military for its ability to protect order amidst chaos. While it seems Augustine has already given up on

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[133] Ibid., 196.

[134] Augustine, *City of God*, 938.

the view of Ambrose's that the Church and the State were conjoint works of God, he recognized in the Roman Empire and the earthly Church a relative justice that was important for the preservation of peace and even, with regard specifically to the Church, a role as the "directive force in the coming order"[135] to be imposed by Jesus.

The second principle undergirding Augustine's understanding of just war is that of proper intention: "Virtually every passage from Augustine that deals with war profitably could be included in a discussion of right intention."[136] Violence, even when otherwise undertaken justly, cannot be a source of enjoyment or amusement lest it be deemed unjust. Augustine identifies as evil the desire called *libido*, "the love of those things which a man can lose against his will."[137] In order to be secure in the enjoyment and possession of created things, too many in the world "lustfully endeavor to possess and retain created things," a trait which keeps them removed from true love of God.[138] This lust after created things, including land and domination, has no place in the scheme of God's true justice:

> The iniquity of those against whom the Romans waged just wars certainly aided the growth of their empire. That empire would undoubtedly have remained small had their neighbours been peaceful and just, and so never provoked them into war by doing them harm. But, on the other hand, if men were always peaceful and just, human affairs would be happier and all kingdoms would

[135] Bainton, 92.

[136] Mattox, 54.

[137] Augustine, *On Free Choice of the Will*, trans. Anna S. Benjamin and L.H. Hackstaff (Indianapolis: The Bobbs-Merrill Company, 1964), 10.

[138] Lenihan, 199.

> be small, rejoicing in concord with their neighbours. There would be many kingdoms among the nations of the world as there are now houses of the citizens of a city. Hence, waging war and extending sway over conquered nations may seem to wicked men to be felicity, but to good men it is seen only as a necessary evil.[139]

Here, finally, we come to what seems to be the crux of Augustine's allowance for just war. War, never to be undertaken with zeal or glee, was nonetheless a necessary evil to "avenge injuries, if some nation or state against whom one is waging war has neglected to punish a wrong committed by its citizens, or to return something that was wrongfully taken."[140] Augustine's conception of a just war is an expansion of Ciceronean thought in that it goes beyond simple redress of injuries committed to a sort of "penal sanction analogous to the awarding of punitive damages in private law."[141] For Augustine, then, the injuries to which he refers need not only include the violations of order among nations but also violations of the moral order. The Roman army, intertwined as it was with the Church, could view "violations of the laws of God…worthy of punishment by violent action."[142] Augustine develops this thought in one of his most famous statements about the just war, found in *Contra Faustum Manichaeum*:

> What is the evil in war? Is it the death of some who will soon die in any case, that others may live in peaceful subjugation? This is mere cowardly dislike, not any religious feeling. The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like; and it is generally to punish these things, when force is required to inflict the punishment, that, in obedience to God or some lawful authority,

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[139] Augustine, *City of God*, 161.

[140] Augustine, *Questiones in Heptateuchem*, quoted in Swift, 135.

[141] Mattox, 46.

[142] Ibid.

> good men undertake wars, when they find themselves in such a position as regards the conduct of human affairs, that right conduct requires them to act, or to make others act in this way.[143]

With his motivations made manifest, we turn now to the various statements about the just war found in Augustine's writings. For heuristic purposes made evident in the following chapter, the following statements about just war are divided into the modern categorizations of *jus ad bellum* and *jus in bello*. These statements are culled from Augustine's many extant works, although, as previously discussed, this does not necessarily constitute a lack of organization in Augustine's thought.

We find in *Contra Faustum Manichaeum* a statement about the *jus ad bellum* principles of just cause and competent authority:

> For it makes a difference for which causes and under what authority people undertake the waging of war. But the natural order which aims at the peace of mortals demands that the authority and the decision to undertake war rest with the ruler, while soldiers have the duty of carrying out the commands of war for the common peace and safety….For no one has any power over them unless it has been given to him from above. There is, after all, no power except at the command or permission of God. If, therefore, a just man is perhaps serving as a soldier under a godless human king, he can correctly fight at his command so as to preserve the order of civil peace.[144]

According to Augustine, the proper authority to wage war rests in God, of whom alone all actions are known to be just, or God's representative on earth (understood to be the emperor when the Roman Empire became Christian). One

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[143] Augustine, "Contra Faustum" in *Augustine: The Writings Against the Manicheans, and Against the Donatists; Nicene and Post-Nicene Fathers Volume 4*, ed. Philip Schaff (Peabody MA: Hendrickson Publishers, 1994), 301.

[144] Augustine, *Answer to Faustus, a Manichean: Contra Faustum Manichaeum*, trans. Roland Teske (New York: New City Press, 2007), 352.

operating outside of this competent authority, and not in accordance with the true justice of which only God is capable, would be hard pressed to define his actions as just.

Although other texts about the principle of right intention may be found above, we also find in *Contra Faustum Manichaeum* and in one of Augustine's *Sermons* (302), respectively, powerful texts relating to this subject:

> If it is supposed that God could not enjoin warfare, because in after times it was said by the Lord Jesus Christ, "I say unto you, That ye resist not evil: but if any one strike thee on the right cheek, turn to him the left also," the answer is that what is required here is not a bodily action, but an inward disposition. The sacred seat of virtue is in the heart, and such were the hearts of our fathers, the righteous men of old.[145]

> It is malice and not military service that keeps soldiers from being good. If you are in the military, I don't want you to leave the military. Nor do I want you to be a soldier who would oppress the poor. I want you to listen to the Gospel. It doesn't bar you from military service, but it does prohibit wickedness.[146]

Biblical interpretation, as shown above, has the power to invert all problematic passages. Despite his personal pacifistic views, Augustine understands this text from the Sermon on the Mount as metaphorical to lend support to the just war.

Texts about another *jus ad bellum* principle, namely, that peace must be the ultimate objective of war, are found in at least three of Augustine's writings. The first, from *The City of God*, speaks about the ideal of peace: "Of the happiness of eternal peace, which is the end or true perfection of the saints, we may say of peace, then, what we have already said of eternal life: that it is our

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[145] Augustine, *Contra Faustum Manichaeum 22.76*, quoted in Lenihan, 207.

[146] Augustine, *Sermon 302.16*, quoted in Lenihan, 220.

Final Good."[147] Elsewhere, in Augustine's Letters (numbers 189 and 229 respectively), we find the following about the principles of peace as the ultimate objective of war and of war as the last resort:

> Peace should be the object of your desire; war should be waged only as a necessity, and waged only that God may by it deliver men from the necessity and preserve them in peace. For peace is not sought in order for the kindling of war, but war is waged in order that peace may be obtained.[148]

> But it is a greater glory to destroy war with a word than men with the sword, and to secure and maintain peace by means of peace rather than by war. There is no doubt that those who fight are also seeking peace, if they are good men, but they are seeking it through bloodshed, whereas you have been sent to prevent blood from being shed.[149]

Peace, the end of violence, and the avoidance of future violence were explicitly held by Augustine to be of greater value than just war, and at all times the waging of war was justifiable only if it was a means to these larger ends.

Finally, we turn to two principles connected to *jus in bello*, namely, proportionality and discrimination. Augustine seems to be the first figure in just war thinking "to offer a version of what is now known as 'the doctrine of military necessity'."[150] This necessity recognized the upper limit of what was permitted during war and forms the basis for later notions of proportionality:

> For he whose aim is to kill is not careful how he wounds, but he whose aim is to cure is cautious with his lancet; for the one seeks to destroy what is sound, the other that which is decaying…[W]hat

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[147] Augustine, *The City of God*, 932.

[148] Augustine, *Letters 189.6,* in Mattox, 60.

[149] Augustine, *Letters: Volume 5 (204*-270*),* trans. Wilfrid Parsons (New York: Fathers of the Church, 1956), 152-153.

[150] Mattox, 61.

> is important to attend to but this: who were on the side of truth, and who were on the side of iniquity; who acted from a desire to injure, and who from a desire to correct what was amiss?[151]

Augustine rightly suggests that those who seek only to kill are less judicious in their use of force than those who have a greater goal in mind. The surgeon, too, wields a blade, though, unlike the blood-thirsty, it is used precisely to correct a perceived wrong. If the greater goal is understood to be peace, the violence though which that peace is to be obtained must be restrained.

Limiting the scope of violence is so important to Augustine that Lenihan claimed that he "agonized over the death of a single adversary."[152] Tied to the principle of proportionality is that of distinction, of identifying against whom it is just to take action in warfare:

> Obviously, right reason demands a change in what was right to do at some earlier time, if the time or circumstance is changed, so, when these objectors say it is not right to make a change, truth answers with a shout that it is not right not to make a change, because then it will be right in both ways, if the change accords with the variation in time. This may happen, too, with different persons at the same time, so that one may, the other may not do something without harm, the difference lying not in the deed but in the doer. Similarly, in the case of one and the same person at different times, it may be proper to do something now but not at another time, the difference lying not in the doer but in the time of the deed.[153]

Augustine's conception of distinction and proportionality require a degree of flexibility among combatants. Actions that may be appropriate at one time and

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[151] Augustine, *Letter 93.8,* quoted in Mattox, 61.

[152] In contrast to Aquinas, whose just war formulation "provided the basis for the acceptance and justification of the deaths of millions." Lenihan, 302.

[153] Augustine, *Letters: Volume 4 (131-164*), trans. Wilfrid Parsons (New York: Fathers of the Church, 1953), 38.

against one enemy may be later deemed inappropriate if one or both variables were to change. What constitutes just waging of war is thus subject to constant transformation.

These principles of just war, both *jus ad bellum* and *jus in bello*, were woven together by St. Augustine to create the first systematic exposition of just war theory. By assembling the building blocks laid down by Cicero and Ambrose, among others, and adding his own theologically-driven morality, Augustine set forth a conception of proper conduct leading up to and in warfare that has survived to this day. In the following chapter we will examine the way in which the Augustinian conception of just war became the basis of international law and our current Western conceptions of just war tradition.

Chapter 2

Challenges to Western Just War Tradition

Introduction to Chapter 2

The Christian theory of just war, first articulated systematically by Augustine in the late fourth and early fifth centuries, continued to grow and evolve throughout history. Augustine's formulation of the just war heavily influenced the works of Gratian (died c.1155) and Aquinas (1225-1274) in the Middle Ages and, through them, all subsequent treatments of just war in the Christian canon. With the writings of Vitoria and Grotius, the Christian theory of just war continued to expand, serving as the basis for international law, and, in fact, a straight line can be drawn from the just war thinking of Augustine to our Western conceptions of morality and ethics in war.

While each of the aforementioned scholars and theologians built and improved upon the foundations laid by Augustine, certain principles regarding what constitutes a just war are similar among their works. Delineating these principles, related to *jus ad bellum* and *jus in bello*, allows for a broad picture understanding of just war and how the moral theory is understood and utilized in the present day.

Despite its established pedigree, and perhaps because of it, just war theory is not without detractors. Recognizing that human beings often favor self-interest over established moral conventions and that the world is a very different place more than 1,600 years after Augustine first systematically wrote about just war, many challenges to the principles of just war and to the theory itself have arisen. Understanding the nature of these challenges is important for determining how the just war theory can continue to evolve and adapt, for the

very challenges that have the potential to destabilize our conceptions of morality necessitate the existence of a more adequate comprehensive moral theory.

The Historical Progression of Christian Just War Theory

The Christian theory of just war, first treated systematically by St. Augustine in the late third and early fourth centuries, continued to grow and evolve throughout history. Although Augustine's influence was conspicuously absent in the centuries following his death, as we will soon see, his thoughts and legacy were foundational to the writings of Gratian and Aquinas in the Middle Ages and, through them, all subsequent treatments of just war in both Christian canon and international law. Indeed, despite some sixteen centuries having elapsed since Augustine's day, "his influence becomes evident as one examines the similarities between Augustine's actual statements on just war and contemporary statements on the same or similar issues."[154] To understand the theory of just war in the modern context requires an understanding of its early origins in Augustinian thought, for while much has been built upon the foundation provided by Augustine, the substructure remains strong. A brief survey of post-Augustinian thinkers will illustrate just how the early Christian notions of Augustine regarding just war became the very foundation for what we regard as the modern Western formulation of ethical behavior in war.

The period following the death of Augustine (430) was littered with no shortage of violent conflicts, and yet the Augustinian formulation of just war was

[154] Mattox, 3.

left unmentioned for centuries. "Time and again occasions arose that would have been ideal opportunities to utilize this concept, yet the just war was never resorted to."[155] Leo the Great, who served as Pope from the year 440 to his death in 461, negotiated for peace with Atilla the Hun in 452 and the barbarian leader, Genseric, in 455 without resorting to calls for a just war. Because he was known to have strong pacifistic tendencies, writing that the command to love one's neighbor "included not only those who are connected with us by friendship, or neighborhood, but absolutely all men,"[156] we might assume that Leo chose to ignore Augustine's more militaristic formulation. The fact that other, more militarily inclined, Christian leaders also failed to make mention of Augustine suggests that other factors might also be involved. In his secular and religious reference work, *Etymologiae*, Isidore of Seville (c. 560-636) offered considerable attention to the treatment of the just war.[157] Despite serving as the archbishop of Seville for more than three decades and being named the last of the Church Fathers in the West, from both of which one might infer extensive religious scholarship, Isidore's understanding of just war was based wholly on classical sources to the exclusion of Augustinian principles. This is also true of the writings of Gregory the Great (540-604), who served as Pope from 590 until 604.

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[155] Lenihan, 240.

[156] Ibid., 243.

[157] "There are four kinds of wars; namely, the just wars, unjust wars, civil wars and fratricidal civil wars. The just war is one that is carried on to gain satisfaction from an enemy after a warning has been given. Another justification for a just war would be to repel an invading enemy. An unjust war is one that starts out of madness and for no legitimate reason. Cicero gave this definition in the Republic: unjust wars are those that begin without cause." Isidore, *Etymologiae* 18, in Lenihan, 248.

The Lombard invasions during Gregory's reign would have been the ideal time to employ the classical Augustinian formulation of the just war:

> The Lombards presented a two-tiered threat to Gregory. On the spiritual level, they represented the reintroduction of Arianism. On the physical level, they were capable of the actual destruction of the city of Rome. These possibilities certainly met the threshold requirement of the just war—that unjust and unprovoked aggression be committed.[158]

It certainly seems that the requirements for the Augustinian formulation of just war had been met, and yet there is no mention of Gregory invoking the rhetoric or moral grounding of the just war in his actions. Indeed, Pope Gregory seems to go in the opposite direction, seizing the military initiative "like an Old Testament patriarch."[159] Lacking legitimate political authority, Gregory urged the military leaders to perform military tasks at the behest of the clergy, convinced that "rulers could count on divine aid in performing military tasks" and insisting that "their refusal to do so rendered them liable to horrible divine punishment inflicted by ferocious enemies."[160] It takes little imagination to trace this logic, devoid of Augustine's notion of the just war, through the reign of Charlemagne (747-814) and into the Crusades.

That Augustine is not mentioned by these three religious scholars, or by others during the first centuries following his death, leads David Lenihan to conclude that the just war was a peripheral tenet in the thinking of Augustine. A second, and perhaps more feasible possibility for this notable absence, given the

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[158] Ibid., 294.

[159] Russell, 27.

[160] Ibid., 28.

amount of ink Augustine spilled on the subject, is offered implicitly by Frederick Russell. From the appearance of *Gravi de pugna* in the 5th century, an epistle falsely attributed to Augustine, Russell draws his clues. In quite simple terms, this document assured anxious Christians that God was on their side and would grant them victory in battle. This oversimplification and perversion of the Augustinian notion that divine providence governed the outcome of battle, saying nothing of who would prevail, was much easier to understand than "the genuine Augustinian opinions in all their complexity."[161] Scattered throughout his works and possessing considerable intricacy, it seems likely that Augustine's treatment of the just war had simply not entered the common discourse.

It wasn't until the writings of Gratian, and later Thomas Aquinas, that Augustine's conception of the just war was woven into a readily accessible whole. Around the year 1140, the monk Gratian completed his *magnum opus*, a massive compilation of Church or canon law known as the *Concordia Discordantium Canonum*, the *Decretum*.[162] A textbook for students of canonical jurisprudence and theologians alike, "Gratian's accomplishment lay not so much in the originality of his treatment as in his conscientious montage of texts bearing on problems of Christian morality and Church discipline."[163] The impact of the

[161] Ibid., 27.

[162] It has been argued recently that the *Decretum* was composed by at least two scholars. See Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2002). While interesting to note, Winroth's conclusion does not change the assertions in this thesis.

[163] Ibid., 55.

Decretum on both the Catholic Church and the secular world cannot be overstated:

> Gratian's *Decretum* was one of the cornerstones of canon law. Its definitions of concepts and terminology as well as its actual solutions to legal problems have in many cases been definitive and survive in the most recent compilation of the law of the Catholic Church, the *Codex iuris canonici* of 1983. But the influence of Gratian's *Decretum* is not restricted to the law of the Catholic Church. During the middle ages, canon law regulated areas that would today be thought of as thoroughly secular, such as business, warfare, and marriage. Together with Roman law, canon law formed a coherent and autonomous legal system, the so-called *ius commune* (European Common Law). This system was the only legal system that was studied at the universities, and during the middle ages (and in some countries also much later) it was in fact used in local judicial practice and in producing local law codes.[164]

The *Decretum*, then, served as both a foundational text for canon law and for national law (insomuch as it existed separately from Church law at the time). Dealing with a broad scope of material, the *Decretum* also devoted a large section to the legality of war. Causa 23, "the *locus classicus* of text concerning warfare", was infused with the influence of St. Augustine to the point that "it would be difficult to fault Gratian for the comprehensiveness of his selection of Augustinian texts:"[165]

> Now, as to what constitutes a just war….Augustine, in Seven Questions Concerning the Heptateuch, says:"...Just wars are usually defined as those which have for their end the avenging of injuries, when it is necessary by war to constrain a nation or a city which has either neglected to punish an evil action committed by its citizens, or to restore what has been taken unjustly."[166]

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[164] Winroth, 2.

[165] Russell, 56.

[166] "Gratian and the Decretists: War and Coercion in the Decretum" in *The Ethics of War: Classic and Contemporary Readings*, eds. Gregory Reichberg, Henrik Syse, and Endre Begby (Oxford: Blackwell Publishing, 2006), 112-113.

Gratian here reiterates Saint Augustine's understanding of what constitutes a just cause for the waging of war. The quote from Augustine itself is neither novel nor surprising; what is of most interest for purpose of this thesis is the way the quote was incorporated into Gratian's writings. Causa 23 is "entirely devoted to the topic of recourse to force and armed coercion in a Christian perspective" and "much of it is taken from St. Augustine."[167] To prove his points about just war, Gratian continually cites the writings of Augustine: "Hence Augustine said in his *Sermon on the Child of the Centurion*….Likewise, [Augustine] against the Manicheans….On this subject, Augustine wrote in his *Questions on [the book of] Numbers*….Likewise, Augustine [writes] in *On the Lord's Sermon on the Mountain*…"[168] In just the first five sections, or Questions, of Causa 23, references to Augustine are triple in number over all other referents combined.[169] This heavy reliance on Augustinian thought ensured that the simple confidence of the falsely-attributed *Gravi de pugna* was replaced with a treatment of just war that "hewed to the Augustinian outlook without deviation or addition."[170] Gratian codified the bulk of Augustine's thinking on the just war, and it is through his pen that the Augustinian principles became the foundation for modern international jurisprudence.

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[167] Ibid., 105.

[168] Ibid., 109-121.

[169] Augustine is quoted 18 times in the initial five sections of Causa 23. The remaining 6 references are distributed as follows: Ambrose thrice, Isidore of Seville once, Pope Gregory once, and Pope Nicholas (c.800-867) once.

[170] Russell, 58.

While Gratian ensured that the Augustinian treatment of the just war would serve as the predominant legalistic model for the future, it was Thomas Aquinas who "gave the impression to posterity that this doctrine has been a part of Christian tradition for a thousand years."[171] Aquinas, like Gratian before him, continued to build the just war theory upon the foundations laid by Augustine. While his contributions to just war theory are important, they are largely beyond the scope of this thesis except as necessary to demonstrate that Aquinas perpetuated the influence of Augustine's thought.

A student at the University of Paris, Aquinas studied in the same theology department which had recently given rise to the Circle of Peter the Chanter, a group of medieval moralists "heavily dependent on Augustine, via Gratian, for their just-war schema."[172] It was here that he laid the plans for the *Summa Theologiae*, in which the initial treatment of the just war relies heavily on the foundations laid by Augustine: "Aquinas's contribution to the ethics of military force results principally from the deft ordering of ideas taken from earlier authors (principally Augustine and Gratian), thereby providing a compact precis of the emerging medieval consensus on just war."[173] Because of the quantity of Augustinian material incorporated by Aquinas' early writings, it is often falsely assumed by his students that the just war thinking of Augustine was an unbroken

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[171] Lenihan, 296.

[172] Ibid., 304.

[173] "Thomas Aquinas: Just War and Sins Against Peace" in *The Ethics of War: Classic and Contemporary Readings*, eds. Gregory Reichberg, Henrik Syse, and Endre Begby (Oxford: Blackwell Publishing, 2006), 170.

chain to Aquinas' day, augmenting its deserved authority with the falsely assumed weight of history.

In Question 40 of *Summa Theologiae*, Aquinas begins to address what constitutes a just war by reiterating Augustine's position:

> In order for a war to be just, three things are required. First, the authority of the prince by whose command the war is to be waged. For it is not the business of a private individual to declare war, because he can pursue his right before the judgement of his superior….For this reason Augustine says in *Contra Faustum* (XXII, 75): "The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who are princes."[174]

Proper authority, namely by the supreme ruler of the land, is essential to the just war. Aquinas implicitly gives two explanations for why this is so. The first, taken directly from the writings of Augustine and referenced by the quote from *Contra Faustum*, is that the prince is a divinely authorized authority and is therefore most capable of waging war in accordance with God's will. The second explanation is found in his own words and references a notion found in Ciceronian thought. When man has a grievance with his fellow man, he need only turn to the courts for resolution. The same is not true of princes, who are the ultimate authority in the land. War is the only possible means through which a prince can seek justice.

Aquinas's second requirement for the just war is also familiar from the principles of Augustine:

> Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault (culpa). Wherefore Augustine says…(Questions. In

[174] Ibid., 177.

> Hept., q. X, super Jos.): “A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly.”[175]

This second cause is left somewhat ambiguous in the above-mentioned quote. Just cause is required for the waging of a just war, and for the conditions in which this is fulfilled Aquinas seems to rely again on Augustine: to avenge wrongs, as punishment, for refusing to make amends and to restore territory captured. Elsewhere in his writings, however, Aquinas parts ways with the Augustinian tradition. While Augustine’s ideas were useful in setting the stage for his discourse, Aquinas’ innovations came from thoroughly Aristotelian philosophy:

> Thomas Aquinas’s just-war writing was certainly not completely original, being heavily dependent on Gratian for the structure of its argument and Augustine for its authoritative foundation. What was brilliantly original, however, was Aquinas’s application of the Aristotelian natural-law principles to a philosophy of the state. This philosophical innovation vested the state with an absolute power far transcending the limited and checked state that Augustine envisioned from the city of man.[176]

In this conception of just war, the state had powers far exceeding that in Augustinian thought. The ruler of a province was entrusted with the care of the community, such that his primary duty was “to keep secure from external enemies the multitude committed to his care.”[177] Defense of the common good, then, was of primary concern to the ruling party, who could use war as a morally justified means to that end. In many ways this was more permissive on the principle of just cause than is found in the works of Augustine: “Aquinas’s

[175] Ibid.

[176] Lenihan, 313.

[177] Russell, 262.

application of Aristotelian natural-law principles to a philosophy of the state...vested the state with an absolute power far transcending the limited and checked state that Augustine envisioned for the city of man."[178]

The third necessity for a just war mentioned in Question 40 of *Summa Theologiae* involves the intentions with which one goes to war:

> Thirdly, it is necessary that those waging war should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil….For it may happen that the war is declared by the legitimate authority, and for a just cause, and yet be rendered illicit through a vile intention. Hence Augustine says in *Contra Faustum* (XXII, 74): "The passion for inflicting harm, the cruel thirst for vengeance, an implacable and relentless spirit, the fever of revolt, the lust of power, and such things, all these are rightly condemned in war."[179]

Right intention, as in the thinking of Augustine, is a necessary internal state of mind for the propagation of just war. An improper state of mind could render war unjust even if the other two necessary precursors for a just war were met.

Most important to note from these texts on just war in the thinking of Thomas Aquinas is the way in which he incorporates the Augustinian just war theory. Because he made reference to and continued to build upon the foundations laid by Augustine, Aquinas brought Augustinian thought to the fore almost a millennium after it was originally conceived.

Continuing the march towards the present, Francisco De Vitoria (1492-1546) dealt explicitly with the questions of what makes a war just and what

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[178] Lenihan, 313.

[179] "Thomas Aquinas: Just War and Sins Against Peace" in *The Ethics of War: Classic and Contemporary Readings*, 177.

is justice in waging war, two categories foreshadowed in the thought of St. Augustine:

> In arguing for the moral acceptability of a limited resort to violence, Vitoria introduces two ideas that will be discussed throughout this *relectio*: the distinction between defensive and offensive war, on the one hand, and the connection between war and just punishment, on the other. In this first part he also mentions the idea—alluded to in subsequent passages—that there is a "good of the whole world" (*bonum totius orbis*), which ought to serve as the horizon for decision-making about war.[180]

Vitoria "distinguished between offensive and defensive wars, although he found the former to be sometimes justifiable."[181] While Vitoria drew heavily upon the tradition handed him by Augustine and Aquinas, he also drew from the practical canon law that was gradually becoming the basis for international law to develop and inform his own principles of just war.

For evidence of his reliance on the Augustinian tradition, we look to *On the Law of War*, "one of the fullest ethical treatments of war to have appeared up to its day:"[182]

> It seems that wars are altogether prohibited for Christians….I reply with a single proposition: A Christian may lawfully fight and wage war. This conclusions is proved by Augustine in several places.[183]

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[180] "Francisco De Vitoria: Just War in the Age of Discovery" in *The Ethics of War: Classic and Contemporary Readings*, eds. Gregory Reichberg, Henrik Syse, and Endre Begby (Oxford: Blackwell Publishing, 2006), 308.

[181] James W. Child, *Nuclear War: the Moral Dimension* (New Brunswick NJ: Transaction Books, 1986), 7.

[182] "Francisco De Vitoria: Just War in the Age of Discovery" in *The Ethics of War: Classic and Contemporary Readings*, 308.

[183] Ibid., 309.

Vitoria here relies upon the thinking of Saint Augustine for his refutation of Christian pacifism. This is only the first of many mentions of Augustine in *On the Law of War*, which can indeed be found throughout the text:

> The same proof [against Christian pacifism] holds true for offensive war; that is to say, not only war in which property is defended or reclaimed, but also war in which vengeance for an injury is sought. This is proved by the authority of Augustine….In this matter [of just authority] the prince has the same authority as the commonwealth. This proposition is expressly expressed in Augustine's dictum: "The natural order, being concerned with peace, requires that the authority and decision to undertake war be in the hands of princes" (*Contra Faustum* 22:75)….The sole and only just cause for waging war is when harm has been inflicted. This is first proved by the authority of Augustine: "The usual definition of just wars, etc." (*Quaest in Heptateuch*. 6. 10).[184]

Like Gratian and Aquinas before him, upon whose works he also draws, Vitoria relies on heavily on the just war thinking of Saint Augustine. By using Augustinian proof texts to provide the ideological foundations for his original thinking, Vitoria both demonstrated that the just war thinking of Saint Augustine continued to be relevant well beyond a millennia after his death and ensured its relevance for subsequent generations.

Unlike Gratian, whose objective was to compile the thinking about just war which which he agreed, Vitoria significantly advances the discussion beyond that provided by Augustine. The conclusion of *On the Law of War* provides a relatively compact statement of overarching principles that can be derived from Vitoria's just war thinking:

> From all this we may deduce a few rules and canons of warfare: First Canon: since princes have the authority to wage war, there should strive above all to avoid all provocations and causes of

[184] Ibid., 310, 312, 314.

> war….It is a mark of utter monstrousness to seek out and rejoice in causes which lead to nothing but death and persecution of our fellow-men, whom God created, and for whom Christ suffered death. The prince should only acceded to the necessity of war when he is dragged reluctantly but inevitably into it.
> Second canon: Once war has been declared for just causes, the prince should press his campaign not for the destruction of his opponents, but for the pursuit of the justice for which he fights and the defense of his homeland, so that by fighting he may eventually establish peace and security.
> Third Canon: Once the war has been fought and victory won, he must use his victory with moderation and Christian humility….He must give satisfaction to the injured, but as far as possible without causing utter ruination of the guilty commonwealth. Let him remember above all that for the most part, and especially in wars between Christian commonwealths, it is the princes themselves who are completely to blame; for subjects usually fight in good faith for their princes.[185]

Vitoria here puts forth a number of important thoughts about just war. While the First and Second Canons reformulate ideas found in the writings of Augustine and Aquinas, the Third Canon contains a number of ideas important to future conceptions of just war not emphasized in the writings of these earlier thinkers. Vitoria here expresses the basis for absolving soldiers of personal responsibility in determining whether each war is just when he articulates that it is the rulers that are to blame. Also present in this Third Canon is the basis for *jus post bellum* which will be further discussed in Chapter 4.

Considered by many the father of international law, Hugo Grotius (1583-1645) built upon the traditions proffered by Gratian, Aquinas, and Vitoria in his *magnum opus De Jure Belli Ac Pacis*, “On the Law of War and Peace.” Grotius “did not establish his theory of international law in an intellectual vacuum. His concept of international law is indeed firmly rooted in a longstanding tradition

[185] Ibid., 332.

of Christian legal thought...illustrated by reference to various examples of medieval Christian theology as well as the canon law tradition."[186] In this sense, Grotius' theory of international law is truly Christian in nature, and his statements about just war should be seen in the same light: "Grotius overall adheres to the idea of the Christian just war theory in viewing just wars as necessary evils."[187] The notion that war is a necessary evil for the restoration of a just legal order can be traced to directly to Cicero, although due to his strong Christian undertones and influence, it is safe to assume this idea, and indeed the bulk of his foundation, were derived from Augustine. Thus we see many references to Augustine in Grotius' writings:

> St. Augustin defines those wars to be just, which are intended to avenge injuries….Augustin has said that, in the prosecution of a just war, the justice of the cause is no way affected by the attainment of the end, whether the object be accomplished by stratagem or open force….Augustin has well observed, that it makes no difference whether any one should commit a crime himself, or employ another as his instrument.[188]

While Grotius' writings on just war make frequent reference to Augustine, Grotius quickly surpasses Augustine in both breadth and depth of scholarship on this topic. *On the Law of War and Peace* is composed of books and chapters that provide practical advice on a wide variety of issues related to war, as one would expect from a document that serves as the basis of international law. To do

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[186] Christoph A. Stumpf, *The Grotian Theology of International Law: Hugo Grotius and the Moral Foundations of International Relations* (Berlin: Walter de Gruyter, 2006), 9.

[187] Stumpf, 204.

[188] Hugo Grotius, *On the Law of War and Peace*, trans. A.C. Campbell (Whitefish MT: Kessinger Publishing, 2004), 176, 232, 242.

justice to Grotius' exposition of just war is a thesis unto itself and falls well beyond the scope of this work.

The treatment of just war theory in the writings of Grotius brings us directly into the modern period in that his work formed the basis for international law on the subject: "The Grotian tradition of war developed in a particular manner from 1874 to 1949 in the context of the framing of the laws of war."[189] While influenced by a myriad of scholars, all of the modern conventions of war bear the imprint of Hugo Grotius and by extension St. Augustine: "It can be argued, in fact, that the modern international law of war, as expressed in the Hague Regulations of 1899 and 1907 and later in the United Nations Charter, as well as in the Geneva Conventions of 1949 and the Protocols of 1977, codifies and elaborates aspects of just war standards."[190] The Augustinian notion of just war even appeared as recently as in a speech given by President George Bush defending his actions in the Gulf War of 1991:

> The war in the Gulf is not a Christian war, a Jewish war, or a Moslem war; it is a just war. And it is a war with which good will prevail. We're told that the principles of a just war originated with classical Greek and Roman philosophers like Plato and Cicero. And later they were expounded by such Christian theologians as Ambrose, Augustine, Thomas Aquinas.[191]

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[189] Karma Nabulsi, "Conceptions of Justice in War: From Grotius to Modern Times" in *The Ethics of War: Shared Problems in Different Traditions*, eds. Richard Sorabji and David Rodin (Burlington VT: Ashgate Publishing, 2007), 56.

[190] Smock, XXX.

[191] George Bush, Speech to the National Religious Broadcasters, January 28, 1991 in Richard L. Johannesen, *Contemporary American Speeches* (Dubuque IA: KendallHunt Publishing, 2000), 99.

The just war principles of St. Augustine can indeed be traced through the theologians and philosophers giving rise to the most modern conventions in war. While this brief overview captures only the most direct route to the present, many other just war thinkers have been influenced by Augustinian tenets. "Augustine...was the first great formulator of the theory that war might be 'just,' which thereafter has mainly directed the course of Western Christian thinking about the problem of war."[192] This is true, writes John Mattox, "even if earlier or later authors in diverse societies also addressed similar just-war themes, and in a more systematic way."[193] Having shown that it is upon the foundations of Augustine that our current conception of the just war is based, we turn first to delineating the tenets of modern just war theory before examining the challenges that seek its delegitimization.

Principles of Just War Theory

The original systematic treatment of the just war by Augustine, utilizing the building blocks proffered by previous thinkers and theologians, became the foundation upon which many just war theorists would build. Gratian, Aquinas, and Grotius, to name several previously mentioned, as well as scores not treated in this thesis for clarity of focus, expanded, modified, and adapted the Augustinian tradition they received. These theories collectively became known as just war theory, which in our modern conception might best be understood as

[192] Paul Ramsey, *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (Durham NC: Duke University Press, 1961), 15.

[193] Mattox, 3.

the family name for the group of theories that represents moral doctrines related to engagement in war:

> The just war tradition...may be thought of in a variety of ways….First, conceived as a moral doctrine, its function is to provide a basis from which to judge actual and proposed weapons and weapons systems and to prepare the conceptual and attitudinal groundwork out of which more moral weapons may arise. Second, conceived as a statement of a cultural consensus, in the form of a more or less coherent though broadly based set of traditional restraints on the resort to war and the conduct of war, just war tradition may be employed to test the continuity between the way we think about such matters today and the ways people linked to us by ties of historical continuity thought about them in the past. These two meanings of just war tradition overlap…"[194]

Because there is so much overlap between the various ethical and moral theories regarding war, some have suggested that it is possible to "formulate a kind of generic version of the theory that represents the thinking of most of the family members."[195] Doing so is heuristically useful, in that it allows a broad picture of just war thinking to be quickly understood, although not without cost. All too often, attempts to list the general tenets of just war thinking remove the religious overtones and influences, perhaps making them seem more palatable to modern thinkers but succeeding only in veiling the theory's true origins, separating the principles from their deeper moral rationale. As there is little danger in this thesis of forgetting the importance of said religious origins, we will here delineate the tenets of modern just war theory using this approach before examining the challenges which seek the theory's delegitimization.

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[194] James Turner Johnson, *Can Modern War be Just* (New Haven CT: Yale University Press, 1984), 86.

[195] Nicholas Fotion, *War and Ethics: a New Just War Theory* (London: Continuum Books, 2007), 10.

As mentioned in Chapter 1, it is often useful to divide the principles of just war into the categories of *jus ad bellum* and *jus in bello*, justice of war and justice in war respectively. Michael Walzer, perhaps the preeminent modern just war thinker, embraces these categories in his own work, tracing their usage back to the Middle Ages:

> The moral reality of war is divided into two parts. War is always judged twice, first with reference to the reasons states have for fighting, secondly with reference to the means they adopt. The first kind of judgment is adjectival in character: we say that a particular war is just or unjust. The second is adverbial: we say that the war is being fought justly or unjustly. Medieval writers made the difference a matter of prepositions, distinguishing *jus ad bellum*, the justice of war, from *jus in bello*, justice in war. These grammatical distinctions point to deep issues. *Jus ad bellum* requires us to make judgments about aggression and self-defense; *jus in bello* about the observance or violation of the customary and positive rules of engagement. The two sorts of judgement are logically independent.[196]

Jus ad bellum, then, seeks to specify the situations and conditions which define the right of one sovereign group to engage in warfare or violence against another such group. *Jus in bello*, however, is concerned with the actions one is permitted to take in the actual prosecution of a war. Both categories are necessary for a war to be considered just: "A nation with just cause may go to war, either to vindicate justice or to restore violated rights, but it is not permitted to employ unjust means in order to win even a just war."[197] The following survey of the principles is meant to paint a broad picture of just war theory, beginning

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[196] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustration*s (New York: Basic Books, 2006), 21.

[197] Richard Shelly Hartigan, "Noncombatant Immunity: Reflections on its Origins and Present Status," *The Review of Politics* 29:2 (1967), 204.

with principles under the category of *jus ad bellum*, makes no claim to be comprehensive.

Just Cause

One of the major underlying beliefs of just war theory is a strong predilection for a state of peace. Indeed, as many, including Augustine himself, have stated, the goal of just war is nothing less than a just and sustainable peace. To deviate from the ideal requires a clear and compelling reason, a just cause:

> Although war exists as an ethical possibility, there also exists a *strong* presumption against the resort to war as a means to resolve difficulties...in addition to a state's having a just cause for the prosecution of war, a position which, for good or ill, both (or multiple) parties to a conflict are likely to claim...the claims of an aggrieved party also must be of such magnitude that the presumption against war is overridden.[198]

Traditional formulations of the principle of just cause have enumerated a small, heretofore thought to be exhaustive, number of legitimate reasons one sovereign entity may "justly" go to war against another. Self-defense is the first and most intuitively justifiable reason. If one group is actively being attacked by another, repulsion of the aggressor is just cause for engaging in warfare: the desired state of peace has already been ruptured, and the cost of not responding to the aggression—exploitation, plunder, or obliteration—may be significantly higher than the cost of war. This repulsion is considered just whether undertaken by the entity facing the aggression or by its allies acting as "good neighbors." A second just cause is found when the initial aggressive act has recently passed; recovery

[198] Mattox, 9.

of stolen assets, persons, or property is also considered a just cause for engaging in warfare. The third traditionally-mentioned just cause for waging war is the punishment of evil or wrongdoing. While this notion is somewhat more subjective, its inclusion as a just cause for war is easy to understand with the light of history: "If a nation is conducting genocide or genocide-like activity against a large group of its own citizens or the citizens of a conquered nation, humanitarian intervention is justified."[199]

Proper Authority

Only those recognized to be the ultimate authority within a sovereign group, whether a nation-state or a smaller entity, have the authority to enter into war if it is to be considered just. Relegating the decision to go to war to the duly elected or otherwise supreme leader, be it a monarch or a governing body, removes some danger of arbitrariness from the process. By virtue of their position, the leader/s have the knowledge necessary to ensure that not only the *jus ad bellum* but also the *jus in bello* principles are adhered to.

Right Intention

While it is almost impossible to measure without the light of history, a third principle of *jus ad bellum* is right intention. Invisible, but no less real, the true intention of the proper authority in deciding to wage war is important. A war waged to distract from internal political tensions, to gain personal fame or wealth, or to monopolize power and authority would fall outside the realm of just cause,

[199] Fotion, 12.

even if a just cause did exist and could be used as a screen. Other improper intentions, including the desire for the expansion of territory or resources, hatred of one's enemy, or a desire for vengeance are perhaps less obviously wrong. It is foreseeable that these, and other, improper intentions could lead to disastrous decision-making leading to and during the course of war:

> Intentions speak to actions. Having the right intention, then, is more like aiming to act in accordance with just cause. If the just cause is that an aggressor has invaded our neighbours' territory, then having the right intention means doing what can be done to stop the invasion. Another example of having the right intention would be when a nation takes steps to liberate a friendly nation that has been recently occupied. Still another example would be when a nation takes steps to stop a humanitarian disaster. In all these cases of having the right intentions, the nation involved does its good work and then retires its military forces from the scene so that the saved, liberated, or the disaster-prone nation is allowed to resume its affairs without excessive interference from the nation that has helped it.[200]

In the aforementioned cases, right intention is realized only when the military forces stand down and life returns to normal. Improper intention might be realized by wanton killing and destruction in the case of hatred or vengeance, or a lingering or occupying force after the war has ended in the case of a desire for expansion.

Last Resort

Exemplifying the strong "presumption in favor of peace that undergirds just war doctrine,"[201] the fourth principle of the just war is that it can only occur as a last resort. All reasonable means must be explored to resolve the dispute or the

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[200] Ibid., 17.

[201] Smock, XXIX.

impetus towards war before war itself can be waged, including negotiations, boycotts, sanctions, mediations, and so on. Unfortunately, it is almost always impossible to determine whether *all* possible means have been exhausted, adding a bit of subjectivity to this otherwise straightforward principle: “To be sure, one of the traditional difficulties of applying this standard has been finding a way to ascertain when the search for peaceful resolution may acceptably give way to the use of force.”[202] In hindsight one can almost always find avenues not fully explored, and as a result the principle is best understood as the exhaustion of all reasonable options, given the information available and the prevailing circumstances. Only when nothing short of war will resolve the grievances or wrongs perpetrated may war be waged.

Tied to the principle of last resort is the importance of public declaration:

> The aggrieved state must set forth the reasons that impel it to war as an indispensable part of its demonstration that all other means for peaceful resolution short of war have been exhausted. Such a declaration serves, among other things, as an occasion for national reflection as to whether all means short of war truly have been exhausted prior to the commitment to the enterprise of the nation’s resolve, energies, and resources. The declaration may come in the form of an ultimatum, which sets forth those remedies short of war that remain available, with the requirement that the offending party avail itself to those remedies prior to a specified time.[203]

In a way, then, an ultimatum is the final resort when everything else has been exhausted. When a nation or other aggrieved party believes war to be the last resort, the delivery of an ultimatum serves as one final chance to avoid armed

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[202] Ibid.

[203] Mattox, 10.

conflict. That said, the same ultimatum produced at the beginning of the diplomatic confrontation would hardly be the final resort.

Reasonable Probability of Success

The fifth principle of *jus ad bellum* is one of prudence. There must be a reasonable expectation of the ability to return to a just peace to warrant the pain and suffering of war: “A war that presents little or no hope of serving as a vehicle for obtaining satisfaction for just grievances is not morally justifiable.”[204] Success, though, is often situationally based:

> In one situation it may mean the total destruction of enemy forces. In another it may mean holding the enemy at bay. In still another it may mean making the enemy pay dearly for whatever gains it makes. It may even mean survival.[205]

It is this last case, survival, where it may be just to wage a violent defense even without a reasonable probability of success, such as when facing obliteration, that expands what may be reasonably meant by success.

The five above-mentioned *jus ad bellum* principles speak to the permissibility of a just war. In some ways, these principles might be understood as a necessary check-list to be completed when determining whether a war might be considered morally justified. Ability to be used as a check-list is more obvious for the principles of just cause and proper authority and less obvious for principles which might need to be verified by all of the facts later available to history, including proper intention and last resort.

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[204] Ibid.

[205] Fotion, 16.

In any case, the permissibility of waging a just war does not by itself imply moral obligation to do so. When war is deemed unavoidable and is undertaken by a sovereign entity, the following *jus in bello* principles are necessary throughout the actual conduct of the war for it to continue to be just.

Proportionality

The first of two major principles about just conduct in war, namely, proportionality, is the principle which holds that only the minimum amount of force necessary to obtain one's military objectives may be used. Here a distinction might be made between excessive or gratuitous force and overwhelming force: "Excessive force does more damage in battle than is necessary," while overwhelming force "may induce the enemy not to yield serious resistance."[206]

Violence that causes superfluous suffering or excessive casualties would be considered gratuitous and lacking in proportionality. This principle necessarily limits the weapons and means available to those waging a just war. Weapons with the ability to inflict pain or injury above that which is necessary to achieve the military objective, including hollow point bullets which explode upon impact and burning phosphorous rounds which fuse to bone and often achieve little more than a normal round, are forbidden by this principle. So, too, are weapons which cause damage well beyond the scope of the battle. Blinding lasers, for example, were banned by international convention before ever appearing on the battlefield for their ability to extend the suffering of war well beyond the wars

[206] Ibid., 21.

conclusion.[207] In a sense, then, the principle of proportionality "declares that the weapons, tactics, and strategy of warfare must be morally efficient, so to speak."[208]

Overwhelming force, on the other hand, which brings about a quick end to violent conflict without superfluous suffering or casualties, is well within the standard of proportionality and perhaps even meritorious. While counter to the traditional notion of proportionality in that the opposing soldier is not given the fighting chance envisioned by early just war thinkers, reducing the suffering and devastation of war is certainly in keeping with the goals of just war theory.

Discrimination

The second principle of *jus in bello*, discrimination, is the traditional imperative imposed by just war theory upon the belligerent party to distinguish between combatants and non-combatants. "Traditionally, non-combatants have included wounded soldiers, prisoners of war, clergymen, women not in the military, children, the aged, the infirm, all of whom are presumed not to be engaged in the war effort."[209] Combatants, then, are those who are engaged meaningfully in the war effort, whether wearing a uniform and brandishing a weapon or not: "Permitted targets include members of a military establishment, those who provide the military with equipment and supplies and those civilians

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[207] Michael L. Gross, *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict* (New York: Cambridge University Press, 2010), 65.

[208] Smock, XXIX.

[209] Mattox, 11.

who work directly for or lead the military."[210] While this principle of just war is both intuitive and morally defensible, it is here that we begin to assess the challenge posed to just war theory in the present day.

Challenges to Just War Theory

Just war theory, articulated first by Augustine in the 4th and 5th centuries C.E. and continually adapted until modern times, in its attempt to provide a moral framework for the waging of war, is not without detractors. Many modern objections have been raised to the theory, in whole or in part, from different positions on the religious spectrum: "Because just war thinking is something of a compromise for many Christians, and therefore sits rather uneasily in the tradition, doubts and reservations about it abound. Throughout the centuries, pacifists have tended to believe that such thinking surrenders the essential elements of the faith, while at the other extreme crusaders have often held that just war standards unduly inhibit the cause of the righteous."[211] The same can be said for philosophical objections: just war theory attempts to strike a middle ground between pacifism on the one side and realism on the other: "Unlike doctrines of pacifism, it does not seek to outlaw all war; it assumes that some military violence is morally justified. At the same time, unlike doctrines of realism, JWT [just war theory] does not assume that any use of military violence that furthers a belligerent's national interests is justified: it seeks to impose moral

[210] Fotion, 22.

[211] Smock, XXXII.

limits on military violence."[212] Even the complexity of the theory itself, which allows it to maintain these sometimes precarious middle positions, makes it an easy target for critics: "If one part of the theory can't be attacked, the thinking goes, surely another part can be."[213] It is important to examine the nature of these objections, both existential and situational, in order to understand the current status of just war theory and its relevance and utility in the modern world.

Perhaps one of the most basic existential challenges to *jus ad bellum* is that nations simply fail to utilize the principles of just war theory in the run-up to war. War, in this view, is the product of self-interest and is not subject to the rational, ethical critique of the collective. Leaders, groups, and nation-states all engage in war for their own benefit or that of their people, too often with little regard for those against whom the violence is being perpetrated. Continuing to rely upon the *jus ad bellum* principles developed in the just war theory, these critics argue, ignores the real reasons why wars are initiated and is, at best, futile. In a interview for the *Harvard International Review*, even Michael Walzer suggested that "decisions-makers [sic] are commonly moved by a complex set of considerations, in which politics and economics figure along with but also, usually, before morality" and that while the world would be much different if decision-makers had only moral motives and no others, "that is not a world that any of us can ever expect to live in."[214] While the presence of a just war theory

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[212] Steven P. Lee, *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory* (Dordrecht Netherlands: Springer, 2007), 3.

[213] Fotion, 25.

[214] Michael Walzer, "Words of War: Challengers to the Just War Theory," *Harvard International Review* 26 (2004), 37.

might change the vocabulary with which we speak about war, a pessimistic view would suggest that vocabulary is the only thing that has changed.

Tied closely to this challenge is the thought that even when nations do invoke the language of the just war prior to its initiation, they always do so in support of their position or as window dressing to cover what is really taking place:

> Another common criticism is closely tied to the first [mentioned above]. It goes something like this. Nations do sometimes use JWT. It is not as if they are unaware of the theory's existence. But they use it as window dressing. It makes good public relations to invoke ethical concerns such as those found in JWT. They say things such as "we are not aggressors, the enemy is" and "we have sent in our troops for humanitarian reasons." Those who use these expressions pretend that they are acting in accordance with ethical standards but, when the chips are down, become involved in war or not from self-interest.[215]

Here the theory of just war does more harm than good, providing a cover under which an aggressor might act that can only be refuted with the light of history. Because so many of the *jus ad bellum* principles are tied to internal motivations, it is difficult to determine the justice of one's cause in real time.

A third and final fundamental challenge often presented to the very existence of just war theory, specifically actions in war, suggests that warfare is simply beyond the scope of morality. War, driven by self-interest, is "a clash of power pure and simple, in which moral distinctions have no relevance."[216] "War is a world apart, where life itself is at stake, where human nature is reduced to its

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[215] Ibid.

[216] Child, 23.

elemental forms, where self-interest and necessity prevail,"[217] and is therefore beyond, or beneath, moral judgement. Put simply, this realist critique would suggest that "war is hell," that in times of war the laws are silent,[218] and that no intellectual attempt to place restraints upon it will prevail amidst the chaos.

Of particular interest in modern times, however, are the situational critiques of just war that arise during attempts to apply the theory in the modern world. Much has changed since the foundations for the just war were laid by Augustine, and the theory has been shown to struggle with the complexities of modern conflict. A metaphor presented by David Rodin helps to illustrate the way in which this is true:

> One of the oldest and most enduring images of war is that of the game of chess. Although chess is clearly an abstraction, it powerfully embodies a conception of a particular type of war, and moreover, it is a conception that has significant moral content. On the chessboard, two equally configured forces, displaying clear and distinguishable uniforms, do battle on a bounded field and in strict accordance with rules that specify how conflict is to commence, how it is to be conducted, and how it is to be terminated.
> Chess can be seen as reflecting moral assessments appropriate to war in two ways: first, with its emphasis on equality and reciprocity, chess gives us an image of war as a fair fight between two combatants; second, because battle occurs on a clearly demarcated field isolated from all non-combatant elements, it accords with one of the most important elements of our idea of justice in war—that soldiers use force only against other combatants, and use due care not to expose non-combatants to risk of harm. Yet there are forms of war that do not embody the symmetry and equality implicit in the chessboard image of war.[219]

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[217] Walzer, *Just and Unjust Wars*, 3.

[218] Walzer, *Arguing about War*, ix.

[219] David Rodin, "The Ethics of Asymmetric War" in *The Ethics of War: Shared Problems in Different Traditions*, eds. Richard Sorabji and David Rodin (Burlington VT: Ashgate Publishing, 2007), 153.

The chessboard as an image of war comes from an idealization of the conditions under which the principles of just war theory might be most purely realized. While it is possible that some wars in the chivalrous past have conformed to these standards, it is difficult if not impossible to imagine conflicts of this kind today. The forms of war we are most likely to encounter, both in modern history and into the future, are the latter mentioned by Rodin, those without the symmetry and equality implicit to the chessboard image. The scenarios we could propose here that illustrate the dissolution of the chessboard metaphor are almost infinite and pose a major problem for the traditional conception of just war. "In response to contemporary forms of armed conflict, including genocidal civil wars and global terrorism, some just war theorists are presently engaged in projects of rethinking or reappraising just war principles,"[220] presumably because our current conceptions of just war have been found wanting. For purposes of this section, we will look in some detail at those posed by advances in technology and the rise of asymmetrical conflict as they are the most commonly raised challenges to the relevance of just war theory in modern times.

Advances In Technology

The first specific or situational critique, separate from the existential claims mentioned above, is that posed by advances in technology: "It is sometimes suggested that the just war tradition is outmoded: that the scale and conditions of modern warfare are so different from what pertained in the past that traditional

[220] John W. Lango, "Nonlethal Weapons, Noncombatant Immunity, and Combatant Nonimmunity: A Study of Just War Theory," *Philosophia* 38 (2010), 476.

criteria can no longer be applied."[221] Indeed, advances in modern technology, from helicopters capable of instantly shifting the lines of battle to evermore destructive weaponry, have greatly changed the modern field of battle. Closely tied to these advances are the ways in which they are deployed: "A related change is the Revolution in Military Affairs, the way the uses of military violence have been affected by the development of advanced forms of military technology, such as precision-guided munitions."[222] To understand whether just war theory, in its current form or with any level of contemporary update, might be able to meet this challenge, we must further explore how advances in technology challenge the principles of the just war, specifically those of *jus in bello.*

A complete listing of the technological advances in war since Augustine, since Grotius, or since even the turn of the millennium would be all but impossible: "We are having a complete technological revolution in the art of war approximately every five years."[223] That said, we can make several overarching generalizations about the trajectory of advancement. First, the range of weaponry continues to increase, extending the battlefield well beyond threats that the eye can perceive. The maximum effective range of the sword or bow and arrow from Augustine's day is significantly less than that of a bullet, a mortar shell, or an intercontinental ballistic missile. Second, the number of casualties

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[221] Richard Harries, "Application of Just War Criteria in the Period 1959-89" in *The Ethics of War: Shared Problems in Different Traditions*, eds. Richard Sorabji and David Rodin (Burlington VT: Ashgate Publishing, 2007), 222.

[222] Lee, 5.

[223] Paul Ramsey, *The Just War: Force and Political Responsibility* (Oxford: Rowman & Littlefield Publishers, 1983), 173.

each piece of military weaponry is capable of exacting continues to increase. The human toll taken by a vat of boiling oil, horrific in its time, now seems quite small when compared to canisters of mustard gas in World War I or the nuclear weapons of World War II. Third, the precision, or gross lack thereof, with which modern weapons can be deployed depending on their design continues to improve. The SCUD missiles of the First Gulf War seem amateurish compared to the precision-guided bombs being employed by unmanned aerial drones in the War on Terror. Each of these technological advances, and the ways in which they are used, have forever changed the global situation to which the just war principles of proportionality and discrimination attempt to be applied.

The just war notion of proportionality has had to expand considerably to cope with the first aforementioned trajectory of advancement. As the maximum effective range of military weaponry continues to increase, the effective cost of going to war continues to decrease. Commanding generals can dispatch long-range weapons without the considerable risk to their own soldiers posed by hand to hand or even small arms combat, conceivably lowering the threshold for the consideration of the military option. The morality of proportionality as a *jus ad bellum* consideration, namely whether the offense committed against a sovereign entity warrants a military response, is at risk due to this advancement in technology.

Also in question is the degree to which the *jus in bello* conception of proportionality might be maintained. In the chessboard conception of the battlefield, each soldier fights in such a way as to remove a limited number of the

opposing force from battle at one time. The sword and the spear are deadly weapons but are limited in the number of soldiers they can affect at any given moment. As the range of weaponry increases it often becomes necessarily less precise; a bomb is needed to do the work of a bullet when sent from thousands of miles away. The larger weapon, however, causes damage well beyond that of a bullet, damage that may be superfluous and beyond the notion of proportionality. This, in and of itself, is not a challenge to the concept of a just war, for we might simply say that use of such weapons is unjust. It is impossible to remove this technology from the world, however, and these weapons seem likely to be a part of every future conflict—even those considered just.

The second trajectory of advancement, the number of casualties each piece of weaponry may exact, presents a challenge to the *jus in bello* notion of discrimination. When a soldier uses a weapon designed to kill one person at a time, through responsible use he or she can often be reasonably assured that only the intended target will be affected. However, as the size of the weapon and its capability for destruction increases, its ability to discriminate between targets diminishes. A canister of mustard gas used on an open field of battle might only affect soldiers, but in the increasingly urban environments in which modern military engagements occur this cannot be taken for granted. A “smart” bomb used to target a building will end the lives of everyone inside, soldiers and civilians alike. And the current climax of this inability to discriminate—the nuclear bomb—raises the stakes to hundreds of thousands, if not millions, of people who might be killed indiscriminately by one weapon. While these developments were

presumably inconceivable when Augustine was originally formulating the notion of discrimination between combatants and non-combatants, modern conceptions of just war theory must adapt to this challenge brought by advances in technology or be rendered irrelevant.

With respect to the third trajectory of technological advancement, the precision with which weapons can and cannot be deployed, we can envision a multidirectional challenge to the principles of just war. While the weapons which may be deployed from a distance are considerably larger in size than the sword or the bullet, leading to less targeting discrimination, advances in how they are deployed may also increase discrimination:

> One fruit of the new technology is the "smart bomb," an explosive that can be delivered with much greater accuracy than in the past. Such weapons make states potentially more effective in adhering to the principle of discrimination because, with greater accuracy, the bombs have smaller explosive yields and do less collateral damage.[224]

A smaller, more tactically deployed weapon increases the likelihood of minimizing collateral or unintended deaths, but their very presence is still a challenge to just war theory. The same might be said for proportionality. While technological advances have led to larger and more devastating weapons, the converse is also true; increases in technology have also allowed for that devastation to be scaled back.

The aforementioned considerations only begin to scratch the surface of the ways in which advances in modern technology pose a threat to long-held conceptions of the just war. Much more could be said about these challenges,

[224] Lee, 16.

and indeed numerous works have been composed on this very subject.[225] The most daunting challenge to just war theory, however, comes from that of asymmetrical conflict.

Asymmetrical Conflict

One could argue that all conflicts since the beginning of warfare could be categorized as asymmetrical, for any conflict from which a winner emerges must have favored the winning side in one way or another. Assuming that this level of linguistic precision may not be what is meant by the term asymmetrical warfare, we can still come up with countless historical examples of a mighty army either conquering a weaker force (the Roman army against various adversaries, to name one) or falling to a decided underdog (the Bible is rife with such examples). The term asymmetrical war, however, at least as used in the modern context, has become a piece of technical jargon:

> 'Asymmetric war' is a new term for an old set of military practices which have grown dramatically in importance in recent years.[226] The term refers to the use of non-conventional tactics to counter the overwhelming conventional military superiority of an adversary. Kenneth F. McKenzie Jr, writing in the US strategic context, defines asymmetric war as: 'Leveraging inferior tactical or operational strength against American vulnerabilities to achieve disproportionate effect with the aim of undermining American will in order to achieve the asymmetric actor's strategic objectives.'[227]

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[225] See James Turner Johnson's *Can Modern War Be Just* or Richard T. De George's "Non-Combatant Immunity in an Age of High Tech Warfare" in Lee's *Intervention, Terrorism, and Torture* for more comprehensive treatments of the moral implications of technological advance.

[226] According to Rodin, the first usage of the term as technical jargon appears to have been in the 1997 US Quadrennial Defense Review Report. Rodin, 166.

[227] Rodin, 154.

Asymmetrical war, then, refers not necessarily to the size of an army or fighting force, but rather to those military tactics and maneuvers which are utilized to counter the military superiority possessed by just one side. This superiority can take multiple forms, namely, material, legal, and moral forms:

> Material asymmetry reflects the disparity of arms between the opposing sides. Material asymmetry is common in any war. Nations, after all, go to war when they feel they have the upper hand. But in asymmetric war the material asymmetry is glaring, indeed monopolistic, as the weaker side often lacks sophisticated weaponry, tanks, a navy, an air force or air defense system.
>
> Legal asymmetry points to the disparate status of the parties to the conflict. On one hand, sovereign nation-states are the building blocks of the international order and the only legitimate purveyor of armed force. They confront, on the other hand, an array of nonstate actors that include guerrilla organizations or militias representing national groups and wielding some governmental authority such as Hamas or Hezbollah, remnants of a defeated government such as the Taliban, insurgents fighting occupation and their own governments like al-Qaeda in Iraq, or international terrorist organizations such as al-Qaeda.
>
> Finally, moral asymmetry reflects the power of just cause. The sides to an asymmetric conflict are not morally equal. In wars of humanitarian intervention and the war on terror, moral asymmetry favors the stronger side, reinforcing its material and legal advantage. In wars of national liberation, however, the moral advantage shifts to the weaker side, thereby offsetting its material and legal disadvantage...[228]

The material, legal, and moral power discussed above grants superiority in a military conflict and is not necessarily connected to the size of an army. Though it often happens that asymmetrical conflict occurs between a nation-state and a nonstate actor, leading us to believe the asymmetry is really one of military size, this need not be the case. Wars of national liberation, for example, give moral

[228] Gross, 13-14.

and sometimes legal superiority to the numerically smaller force. Whatever the cause of the asymmetry, an asymmetrical conflict as used in common parlance is one in which the disadvantaged party uses non-conventional tactics in an attempt to gain the upper hand.

These non-conventional tactics often fall outside of the notions of the classically conceived just war: "All seek to obtain a strategic advantage from a position of conventional military weakness by subverting the paradigm of war which has become accepted, particularly in the developed Western countries."[229] The tactics of asymmetrical conflict are often the tactics of weakness, not the tactics of choice, and often lack the moral considerations their proponents would favor (or not) under better circumstances: "...groups that feel that they have a just cause against the USA (or, on a smaller scale, a regionally dominant power such as Russia or Israel) have great incentive to use asymmetric or unconventional means. In many cases, this is the only kind of military recourse available that would not lead directly to suicidal defeat."[230] The principles of just war theory, then, are often abandoned by the inferior force in the interest of military expediency or self-interest.

While the tactics utilized in asymmetrical conflict pose an existential challenge to just war thinking, an even greater threat to just war exists in the actions of the privileged party:

> Humanitarianism prohibits torture, summary execution, and weapons that cause unnecessary suffering, while protecting

[229] Rodin, 154.

[230] Ibid., 155.

> noncombatants from direct attack, pillage, reprisals, indiscriminate destruction or property, and kidnapping. Newly emerging tactics that embrace enhanced interrogation techniques, such as waterboarding, forced stress positions or exposure to cold; nonlethal chemical weapons; assassination; and widespread attacks on civilians impinge directly on these long-standing prohibitions. The baffling question is why the United States and some of its allies blatantly employ unlawful means of warfare as they wage asymmetric war…"[231]

The superior fighting force, whether by size, material advantage, legal status, or moral standing, often employs tactics which fall outside of the *jus in bello* principles that have given rise to international law: "Unencumbered by reciprocity, that is, the ability of an adversary to respond in kind, many military organizations find torture, assassination, and blackmail useful."[232] Indeed, according to some views, the reason why even superior forces have a difficult time concluding asymmetrical wars is that "they find it extremely difficult to escalate the level of violence and brutality to that which can secure victory."[233] Faced with challenges that are not realized on the "chessboard field of battle," including non-uniformed combatants, terrorism, and no expectation of reciprocity, superior conventional forces are struggling to maintain both their military superiority and their moral credibility. The very combatants we would look to in order to uphold just war principles are struggling with the ways in which these same principles seem to "prevent" them from winning the war.

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[231] Gross, 2.

[232] Ibid., 3.

[233] Gil Merom, *How Democracies Lose Small Wars: State, Society, and the Failures of France in Algeria, Israel in Lebanon, and the United States in Vietnam* (Cambridge: Cambridge University Press, 2003), 15.

Just war theory, then, is facing a serious barrage of critiques regarding its application to modern warfare. Some of these critiques, particularly those that challenge the very existence of a theory allowing for moral engagement in war, have been leveled against conceptions of the just war for many centuries. Others, including the situational critiques offered by advances in technology and asymmetrical conflict, have only entered the conversation in modern times. It is imperative, however, that the Western just war tradition continue to evolve and adapt to meet these and other challenges, for the very challenges that have the potential to destabilize our conceptions of morality, in fact, necessitate the existence of a more adequate comprehensive moral theory.

Chapter 3

The Origins of Jewish Just War Thinking

Introduction to Chapter 3

Jewish scholars and theologians throughout history have also been concerned with matters of war and its morally-acceptable discharge. Beginning with the Hebrew Bible, the foundational text for much of Jewish tradition, we find disparate statements that seem to both mandate and condemn Jewish participation in war. Texts in support of Jewish participation in war are interwoven with those that demand a more just war and those that champion peace. When understood through a Jewish lens, we see that the Hebrew Bible is in no way monolithic in its attitudes about war.

This plurality of thought continues into the period of the Rabbis. Teachings about war, often derived from and expanding upon the biblical texts, are scattered throughout the classical rabbinic writings. As these texts continue to represent a plurality of thought on the subject of war, its practice, and its limitations, these teachings never coalesce into a systematically organized formulation of just war theory as is found in the writings of St. Augustine in the same period.

It isn't until the writings of Maimonides that a more comprehensive Jewish just war doctrine was codified. Interested in organizing the *halakhot* of Judaism in such a way as to be most easily understood, Maimonides' *magnum opus*, the *Mishneh Torah*, dealt with all of the laws of Judaism to his day, including those pertaining to a more just war. Within his writing we find a surprising number of parallels to our contemporary understanding of just war tradition and thus a possible source of update.

The Hebrew Bible

Although it has been viewed as an exclusively militaristic text by the early Church Fathers, the Hebrew Bible is by no means monolithic. Texts about brutal military campaigns and conquests are, in fact, interwoven with texts propounding the virtues of peace, the damaging effects of war and violence, and even with texts that prescribe limiting warfare. Any suggestion that there exists a violent "Old" Testament as opposed to a loving "New" Testament is an "all-too-easy generalization" at best, minimizing the complex and variegated relationship with war in ancient Israelite culture.[234] To this end it has been suggested that the Hebrew Bible cannot be considered a book, with the implied assumption of uniformity, but rather "a library, composed of writings presenting widely variant viewpoints."[235] Instead of looking for a clean, single-sided view on war, John Wood suggests that it would be better to view the Hebrew Bible as containing different strands or traditions which run as parallels in their understanding of war:

> The varied experiences of the people, of course, would have a profound impact on how they viewed political enemies. These experiences took on the form of stories and anecdotes which circulated orally among the people. These diverse stories produced diverse attitudes about how to deal with hostilities. In other words, the sacred texts of the ancient Israelites...are ambiguous about war because they faithfully reflect the deep ambiguity felt by those struggling to relate their faith in the Lord of history to the brutal realities of inevitable and pervasive conflict.[236]

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[234] Susan Niditch, *War in the Hebrew Bible: A Study in the Ethics of Violence* (New York: Oxford University Press, 1993), 5.

[235] Benedict, 1.

[236] John A. Wood, *Perspectives on War in the Bible* (Macon GA: Mercer University Press, 1998), 153.

The way in which various passages referring to violence and war were utilized by the early Church Fathers, in support of their thinking about what should be considered a just war, was treated in Chapter 1; here we will more fully examine the texts of the Hebrew Bible as they form the earliest conceptions of Jewish attitudes towards war. Texts about violence and war, about peace and tranquility, and texts which establish the earliest Jewish notions of justice in war are found in the Hebrew Bible, all three of which will be elaborated upon here as we begin our study of just war in the Jewish tradition.

Before our study commences, one note about terminology is called for. The words "just war," a phrase used first in the writings of Aristotle,[237] are absent from Jewish sources until the most recent times. This is not to say that Jewish sources were not concerned with the moral philosophy of war, as will be shown in the following chapter, but simply that the phrase does not occur in Jewish writings. One can imagine multiple reasons for this linguistic omission: wishing to appear far removed from secular, pagan, or Christian influence, the earliest rabbinic sources rarely used philosophical terminology, even when discussing related topics. Moreover, from a historical standpoint, by the medieval period in which Maimonides compiled a more systematic treatment of the Jewish views on the subject, the "just war" was anything but just in the Jewish perspective. In the modern period, however, "just war" has come to refer to the moral-philosophical discussion of war regardless of how just it is actually deemed to be. As such, the phrase will be used when discussing both Jewish and Christian conceptions.

[237] "Aristotle...is the earliest recorded Western source to use the actual words 'just war' in his *Politics* at 1256b." Lenihan, 15.

War in the Hebrew Bible

The books of the Hebrew Bible, especially the so-called "historical" books of Joshua, Judges, Samuel, Kings, Chronicles, Ezra, and Nehemiah, relate in some detail the military origins of the Israelite people: "The Historical Books tell a story of a nation whose early political history was shaped by war. Its subsequent history is played out against the background of conflict, death, and battle."[238] While the historicity of these accounts and the people involved can, and should, be questioned by the modern reader, such concerns are not evident in the treatment of these texts by their earliest interpreters and therefore will not receive due consideration until Chapter 4. The accounts of Israelite military success and failure are found throughout the Hebrew Bible, and, being quite numerous in appearance, little is to be gained for our purposes by listing each and every occurrence. As a final point about methodology, it should be noted that any organizing schema for the Hebrew Bible should be seen as an overlay on the text for heuristic purposes and not emanating from the Bible itself. The texts to be discussed in the brief survey below are important for the understanding of Jewish conceptions of a morally sound war, either because they serve to teach us something about the Jewish conception of war or because they illustrate broader classifications utilized later in rabbinic sources and are arranged accordingly.

[238] Bill T. Arnold and H.G.M.Williamson, *Dictionary of the Old Testament: Historical Books* (Downers Grove IL: InterVarsity Press, 2005), 974.

Perhaps the most well known texts about war in the Hebrew Bible are those related to the supposed conquest of the land.[239] As shown in Chapter 1, a literal reading of the patriarchal narratives of Genesis reveals a divine promise of immense wealth, numerous progeny, and occupation of the biblical land of Canaan. Abraham and his descendants were assured that the land would be theirs at divine behest:

> And the Lord said to Abram, after Lot had parted from him, "Raise your eyes and look out from where you are, to the north and south, to the east and west, for I give all the land that you see to you and your offspring forever. I will make your offspring as the dust of the earth, so that if one can count the dust of the earth, then your offspring too can be counted. Up, walk about the land, through its length and its breadth, for I give it to you."[240]

While Abraham and his descendants were said to have realized these promises on a small scale, they were not described as being realized on a national level until the completion of the Egyptian narrative. Following the early Israelite Exodus from Egypt, the Hebrew Bible continues with the people's attempts to enter the promised land of Canaan. The battles and skirmishes which result are often referred to as the Wars of Conquest. Major collections of these war narratives are found in the Book of Numbers, relating to the Israelite approach to Canaan and conquest of Transjordan, and in the Book of Joshua, involving the

[239] Deriving from the biblical accounts found in the Book of Numbers and Joshua, the military conquest of the Land of Canaan by the ancient Israelites has long been taken as historical fact. A recent work by William Dever calls these assumptions into question: "By the late 1960s, however, the assault or conquest model was assaulted itself. And the threat came from the same quarter that once staunchly upheld the theory—archaeology." Dever lists other models which might be more accurate, including the "peaceful infiltration model" and the "peasant revolt model" before suggesting that no one model is as of yet satisfactory. William G. Dever, *Who Were the Early Israelites and Where Did They Come From* (Grand Rapids MI: Eerdmans Publishing Company, 2003), 44ff.

[240] Genesis 13:14-17, TNK. Biblical citations abbreviated TNK refer to the New Jewish Publication Society translation of 1985. Where no abbreviation is given translations are my own.

conquest of the land of Canaan itself. We begin our study of war in the Hebrew Bible with one such purported War of Conquest:

> When the Canaanite, king of Arad, who dwelt in the Negeb, learned that Israel was coming by the way of Atharim, he engaged Israel in battle and took some of them captive. Then Israel made a vow to the Lord and said, "If You deliver this people into our hand, we will proscribe their towns." The Lord heeded Israel's plea and delivered up the Canaanites; and they and their cities were proscribed. So that place was named Hormah.[241]

In this battle against the Canaanite king of Arad, the importance of divine favor in achieving victory is made quite clear. Whether or not the attack constituted a surprise, there being some debate over whether this should be considered a defensive war or one in which Israel committed an act of aggression by presence,[242] the Israelites are portrayed as initially suffering both military defeat and captivity. The battle turned when the people Israel cried out to their God for assistance. We see in the biblical text over and over again the perils of going to war without proper divine assurance. Nowhere is this made more clear than in another story from the Book of Numbers:

> Moses said, "Why do you transgress the Lord's command? This will not succeed. Do not go up, lest you be routed by your enemies, for the Lord is not in your midst. For the Amalekites and the Canaanites will be there to face you, and you will fall by the sword, inasmuch as you have turned from following the Lord and the Lord will not be with you." Yet defiantly they marched towards the crest of the hill country, though neither the Lord's Ark of the Covenant nor Moses stirred from the camp. And the Amalekites and the

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[241] Numbers 21:1-3, TNK.

[242] "The attacks against Israel by Egypt at the Red Sea, by Amalek at Rephidim, by the king of Arad at Hormah, by Sihon at Jahaz and by Og of Bashan all result in defensive engagements, although the entry of Israel into areas controlled by the kings of Arad, the Amorites and Bashan were likely seen by those three as potentially offensive in nature." T. Desmond Alexander and David W. Baker, *Dictionary of the Old Testament: Pentateuch* (Downers Grove IL: InterVarsity Press, 2003), 880.

> Canaanites who dwelt in that hill country came down and dealt them a shattering blow at Hormah.[243]

When God was not with the Israelites, in this text and in many others, due to a transgression on the part of the people, they suffer defeat. Success in battle was seen as being entirely dependent on God's will. In this sense, religion and God are inextricably linked with warfare:

> Among all the peoples of antiquity, war was linked with religion. It was begun at the command of the gods, or at least with their approval, manifested by omens; it was accompanied by sacrifices, and conducted with the help of the god who ensured victory, for which they were thanked by an offering of part of the booty. In antiquity, then, every war was a holy war, in a broad sense.[244]

Every war in which Israel engaged was holy in the sense that success and failure hinged not on military prowess but divine favor. For the ancient Israelites, God was the ultimate arbiter and authority; military power was but an instrument to be used for the fulfillment of God's perceived will: "The physical strength He granted man was likewise to be employed only as an instrument for carrying out His will in His world."[245]

Marion Benedict writes that while the God of the Hebrew Bible was not concerned only with war, like the Greek God Ares or the Roman Mars, "in the sense...of a God who Himself participates in battle, who instigates His own people or others to fight, who strengthens the side He approves, or in some way decrees the victor, and so can and does use warfare as an effective means of

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[243] Numbers 14:41-45, TNK.

[244] Roland de Vaux, *Ancient Israel: Its life and Institutions*, trans. John McHugh (London: McGraw-Hill, 1961), 258.

[245] David S. Shapiro, "The Jewish Attitude Towards Peace and War" in *Israel of Tomorrow*, ed. Leo Jung (New York: Harald Square Press, 1949), 194.

achieving His purposes, Yahweh has been found to be a God of war throughout most of the Old Testament material."[246] It seems likely that the ancient Israelites, in keeping with the beliefs of their time, would have accepted that the God of the Hebrew Bible was an active, literal participant in battle who sided wholly with the Israelites. Thus we read "Advance, O Lord! May Your enemies be scattered, And may Your foes flee before You!"[247] when the Ark of the Covenant was sent into battle, and when the Ark was set to rest in the camp: "Return, O Lord, unto the ten thousands of the families of Israel."[248] Texts in support of this position are abundant: God is understood to be marching in the column of the Israelite army,[249] an army thrown into mayhem when God's dwelling was captured.[250] "Beginning with Exodus 15:1-18 and forward, Yahweh is portrayed as a warrior who leads his people in battle and fights for them."[251] This physical understanding of God's involvement was necessarily limited in duration, for the fall of the First Temple would have meant the destruction of God's physical

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[246] Benedict, 163.

[247] Numbers 10:35, TNK.

[248] Numbers 10:36, TNK.

[249] "When you hear the sound of marching in the tops of the baca trees, then go into action, for the Lord will be going in front of you to attack the Philistine forces." 2 Samuel 5:24, TNK.

[250] "The Philistines fought; Israel was routed, and they all fled to their homes. The defeat was very great, thirty thousand foot soldiers of Israel fell there. The Ark of God was captured….A Benjaminite ran from the battlefield and reached Shiloh the same day….When he arrived, he found Eli sitting on a seat, waiting beside the road—his heart trembling for the Ark of God. The man entered the city to spread the news, and the whole city broke out in a cry….Eli asked, "What happened, my son?" The bearer of the news replied, "Israel fled before the Philistines and the troops also suffered a great slaughter. Your two sons, Hophni and Phinehas, are dead, and the Ark of God has been captured." When he mentioned the Ark of God, Eli fell backward off the seat beside the gate, broke his neck and died." 1 Samuel 4:10-18, TNK.

[251] Richard S. Hess, "War in the Hebrew Bible" in *War in the Bible and Terrorism in the Twenty-First Century*, eds. Richard S. Hess and E. A. Martens (Winona Lake IN: Eisenbrauns, 2008), 21.

presence were it not conceptualized otherwise. While a fascinating study in theology, further development of this point is not necessary here; the above should suffice to prove that God was believed to be an integral part of the ancient Israelite battles.

Just as in the Book of Numbers, God continued to play a large role in the Wars of Conquest recorded in the Book of Joshua:

> The Lord said to Joshua, "See, I will deliver Jericho and her king and her warriors into your hands. Let all your troops march around the city and complete one circuit of the city. Do this six days, with seven priests carrying seven ram's horns preceding the Ark. On the seventh day, march around the city seven times, with the priests blowing the horns. And when a long blast is sounded on the horn—as soon as you hear that sound of the horn—all the people shall give a mighty shout. Thereupon the city wall will collapse, and the people shall advance, every man straight ahead." …Joshua commanded the people...The city and everything in it are to be proscribed for the Lord….All the silver and gold and objects of copper and iron are consecrated to the Lord; they must go into the treasury of the Lord." …They burned down the city and everything in it. But the silver and gold and the objects of copper and iron were deposited in the treasury of the House of the Lord.[252]

At God's command, the city of Jericho was to be completely destroyed, in just the same manner as we saw in the earlier texts relating to Hormah (the very name of which is connected to the Hebrew root *ḥerem* meaning "destroyed"). This complete destruction, of both property and person, is a major component in a number of biblical wars. These "most chilling biblical war texts" refer to situations in which all human beings among the defeated are "devoted to destruction."[253] In 1 Samuel 15:3 we read: "Spare no one, but kill alike men and women, infants

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[252] Joshua 6:2-5, 16, 17, 19, 24, TNK.

[253] Niditch, 28.

and sucklings, oxen and sheep, camels and asses;" in 22:19: "He put Nob, the town of the priests, to the sword: men and women, children and infants, oxen, asses, and sheep—all to the sword;" and in Joshua 6:21: "They exterminated everything in the city with the sword: man and woman, young and old, ox and sheep and ass."[254] The language of these passages speaks to a complete and utter lack of mercy on behalf of the fighting army.

Susan Niditch, in her monograph *War in the Hebrew Bible*, argues for two possible explanations of this apparent cruelty which runs so counter to the fundamental values we would wish to find in the Bible, both of which relate to ancient conceptions of the deity. The first way to begin to conceptualize this "most shocking of ancient Hebrew ideologies of war" is the notion of "the ban as God's portion."[255] In this understanding of the complete destruction of the enemy, the spoils of war are set aside as a form of payment for God's support in war. Sometimes, as in the initial text from Joshua, the spoils of the city—monetary riches, animals, or slaves—are set aside for the service of God. During times of complete annihilation of people, animals, and belongings, all of the aforementioned might be considered sacrifices to God. In the second model of understanding, the complete destruction of the enemy is related to God's justice, with the authors of the biblical text using this destruction as "a means of rooting out what they believe to be impure, sinful forces damaging to the solid and pure relationship between Israel and God."[256]

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[254] All TNK.

[255] Niditch, 29.

[256] Ibid., 56.

Whether understood as originating from ancient sacrificial practices or an attempt for national purity, this type of complete destruction is reserved for two groups of people in the biblical text: “From the biblical text itself it is clear that the *ḥerem*, the total destruction of persons and goods, is limited in application to a single category of conflict: the wars of conquest of the promised land. Any additional instances, such as the total destruction of the Amalekites, were exceptions.”[257] Let us say a bit more about each group.

The first group to be condemned to complete destruction are the seven nations that were the previous occupants of the land of Canaan:

> In the towns of the latter peoples...which the Lord your God is giving you as a heritage, you shall not let a soul remain alive. No, you must proscribe (from the root “*ḥerem”*) them—the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites—as the Lord your God has commanded you.[258]

These nations, against whom the Wars of Conquest were fought, are regarded with special vehemence in the text. The second group condemned to complete and total destruction were the Amalekites:

> Amalek came and fought with Israel at Rephidim….And Joshua overwhelmed the people of Amalek with the sword. Then the Lord said to Moses, "Inscribe this in a document as a reminder, and read it aloud to Joshua: I will utterly blot out the memory of Amalek from under heaven”...The Lord will be at war with Amalek throughout the ages.[259]

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[257] Everett E. Gendler, “War and the Jewish Tradition” in *Contemporary Jewish Ethics*, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1978), 194.

[258] Deuteronomy 20:16-17, TNK. Other listings of the nations occupying the land of Canaan include the Moabites, bringing the total to seven (Ezra 9:1, 2 Chronicles 20:1).

[259] Exodus 17:8, 13-14, 16, TNK.

As noted by Kellner, the situation of the Amalekites differed from that of the seven nations. For reasons never made clear in our text, with the possible exception of attacking the Israelites from behind,[260] the nation of Amalek is singled out for this merciless treatment: "Amalekites never received favorable reviews by biblical authors, no matter in which war trajectory they are found."[261] As the nation of Amalek is believed to have occupied the area immediately south of Canaan,[262] battles against Amalek are not subsumed under the umbrella of Wars of Conquest and are an exception to the major scholarly classifications of biblical wars fought only at the direct instigation of God.

Two other major categories of war, in addition to Wars of Conquest, are commonly recognized in the Hebrew Bible: defensive wars and wars of expansion.[263] De Vaux recognizes as defensive wars the battles undertaken by Saul and those mentioned in the Book of Judges: "The Israelites first had to withstand the counter-attacks of the Canaanites and of those other peoples out of whose lands they had carved their territory; later they had to fight against the Philistines, who were making inroads from the coast."[264] The wars mentioned in

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[260] "Remember what Amalek did to you on your journey, after you left Egypt—how, undeterred by fear of God, he surprised you on the march, when you were famished and weary, and cut down all the stragglers in your rear. Therefore, when the Lord your God grants you safety from all your enemies around you, in the land that the Lord your God is giving you as a hereditary portion, you shall blot out the memory of Amalek from under heaven. Do not forget!" Deuteronomy 25:17-19, TNK.

[261] Niditch, 102.

[262] Norman K. Gottwald, *The Hebrew Bible: A Socio-Literary Introduction* (Philadelphia: Fortress Press, 1985), 290.

[263] Kellner, 193.

[264] De Vaux, 247.

the Book of Judges are somewhat problematic and will be treated in the next section. Here let us look at one of the defensive wars undertaken by Saul:

> Nahash the Ammonite marched up and besieged Jabesh-gilead. All the men of Jabesh-gilead said to Nahash, "Make a pact with us, and we will serve you." But Nahash the Ammonite answered them, "I will make a pact with you on this condition, that everyone's right eye be gouged out; I will make this a humiliation for all Israel." ...The next day, Saul divided the troops into three columns; at the morning watch they entered the camp and struck down the Ammonites until the day grew hot. The survivors scattered; no two were left together.[265]

Saul, portrayed by the text to be out in the field tending his cattle, did little to provoke this attack. Defending the territory and people of Israel is seen by most all commentators as being separate from the offensive Wars of Conquest and is treated differently throughout subsequent Jewish treatments of war.

The wars in which King David engaged are also observed to be quite different than the Wars of Conquest fought at the behest of God. Seen as wars of territorial expansion, David's motivation for going to battle is sometimes ambiguous: "He declared war on the Ammonites because they had insulted his ambassadors (2 Samuel 10:1-5), and on the Arameans for going to the help of the Ammonites (2 Samuel 6-19; cf. 8:3-6). We do not know what provoked the wars against Moab (2 Samuel 8:2) and Edom (2 Samuel 8:13)."[266] As they are lacking either the defensive or divinely commanded aspects of the previous categories of war, the wars of King David are treated as optional by later commentators.

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[265] 1 Samuel 11:1-2, 11, TNK.

[266] De Vaux, 247.

In the Hebrew Bible, as shown above, there are a great many texts related to the waging of war and violence. Showing war to be for defensive purposes, expansionist purposes, and at the direct instigation of God, these texts are so abundant as to completely dominate a superficial reading of the text; it is easy to see why the Christian Church Fathers would read the Hebrew Bible as exclusively militaristic. The Hebrew Bible also contains many texts, however, which run counter to this understanding. Related to peace and Jewish conceptions of a more just war, these texts provide depth and complexity to the biblical position.

Peace in the Hebrew Bible

Although divine support was granted for the wars in which David engaged,[267] a deflating punishment was meted out at the end of his reign; because he had shed blood, King David was prohibited from building God's Temple:

> David said to Solomon, "My son, I wanted to build a House for the name of the Lord my God. But the word of the Lord came to me, saying,'You have shed much blood and fought great battles; you shall not build a House for My name for you have shed much blood on the earth in My sight. But you will have a son who will be a man at rest, for I will give him rest from all his enemies on all sides; Solomon will be his name and I shall confer peace and quiet on Israel in his time. He will build a House for My name; he shall be a son to Me and I to him a father, and I will establish his throne of kingship over Israel forever.'[268]

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[267] "David inquired of the Lord, 'Shall I pursue those raiders? Will I overtake them?' And He answered him, 'Pursue, for you shall overtake and you shall rescue';" (Samuel 30:8, TNK) and "The Lord gave David victory wherever he went." (2 Samuel 8:14, TNK) among others.

[268] 1 Chronicles 22:7-10, TNK.

As mentioned above, the Hebrew Bible must be understood not as a single book but as an entire library, comprised of multiple authors and multiple points of view. Thus we can read of a king of Israel being punished for his participation in war in the very same Bible in which God condones, commands, and actively engages in war. King David is forbidden from building God's Temple because he has "shed much blood," ostensibly while fighting battles condoned by God:

> Great and heroic as David is, ethical and godly, even in the conduct of war, he is not allowed to build God's holy dwelling on earth, the place where God's name will rest, because he has shed blood in battle. However noble and necessary the cause, the killing has disqualified him from constructing the sacred space.[269]

The responsibility for building the Temple, which is to be a house of peace, is passed to his son Solomon. In this passage and indeed throughout the Hebrew Bible, we find both explicit critiques of war and numerous texts supporting peace and tranquility in close proximity to texts about violence and war.

In the opening words of the prophet Amos, we find a condemnation of excesses in war. Directed at the nations surrounding Israel, Amos condemns them to destruction by the wrath of God not for engaging in war but for succumbing to its excesses. Using a formulaic pattern, "For three transgressions...for four, I will not revoke it," Amos first excoriates the nations surrounding Israel and then Israel itself, making clear that the people of Israel are held to the same standard of judgment:

> For three transgressions of Gaza, for four, I will not revoke it: because they exiled an entire population, which they delivered to Edom. I will send down fire upon the wall of Gaza, and it shall devour its fortresses; and I will wipe out the inhabitants of Ashdod

[269] Niditch, 140.

> and the sceptered ruler of Ashkelon; and I will turn My hand against Ekron, and the Philistines shall perish to the last man—said the Lord God. Thus said the Lord: For three transgressions of Tyre, for four, I will not revoke it: because they handed over an entire population to Edom, ignoring the covenant of brotherhood….For three transgressions of Edom, for four, I will not revoke it: because he pursued his brother with the sword and repressed all pity, because his anger raged unceasing and his fury stormed unchecked….For three transgressions of the Ammonites, for four, I will not revoke it: because they ripped open the pregnant women of Gilead in order to enlarge their own territory….For three transgressions of Moab, for four, I will not revoke it: because he burned the bones of the king of Edom to lime….For three transgressions of Judah, for four, I will not revoke it: because they have spurned the Teaching of the Lord and have not observed His laws; they are beguiled by the delusions after which their fathers walked.[270]

Amos offers a powerful condemnation of the excesses of war, condemning the nations of the world for sending into exile and enslaving entire communities, for ignoring the "covenant of brotherhood," for acting without compassion or mercy, for unchecked rage and fury, for destroying lives yet unborn, and for failing to keep faith with the dead. "The Book of Amos thus offers a powerful critique….Territorial gain is not just cause for the tactics or terror. Treaties are to be honored, war against kin is improper, excessive fury in the fighting and massive enslavement of prisoners are deemed wrong."[271] This litany of excesses reads in some ways as a basis for a more just way of waging war—with restraint, so that God's anger might not be kindled. While the statements of Amos condemn only excesses in war, the Books of Judges and Chronicles go much further in their critiques of violence.

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[270] Amos 1:6-9, 11, 13; 2:1, 4, TNK.

[271] Niditch, 139-138.

The Book of Judges has long been assumed to be a faithful rendition of the events which took place in the historical period between the death of Joshua and the birth of Samuel. Yet it has become clear to modern scholars "that the book did not originate during the tribal period, but was composed in stages much later than the premonarchic era of Israel's history. Depending on which scholar one reads, the final written stage of the book's composition during the exilic or postexilic periods is more than four centuries after the time of the judges (c. 587-398 B.C.E.)."[272] We have little reason to believe that the authors, many centuries divorced from the period of their narrative, made attempts at faithful historiography and indeed have every right to question their motivations and agenda. The Book of Judges, far from being a faithful retelling of a historical past, seems to be a poignant self-critique—at times witty and humorous, at others sarcastic and deeply dark. Nowhere is this more evident than in the treatment of war and violence.

One such humorous episode is found in Judges 3, where the violence used to depose a foreign king is grotesquely comical in its application. Introducing a new story by way of common refrain, God allows a foreign king, King Eglon (a translation of which might read "fat cow") of Moab, to rule over the Israelites for a long period of time. Ehud, son of a stranger, a left-handed (defective) Benjaminite, is called upon to save Israel:

> When Ehud approached him, he (King Eglon) was sitting alone in his cool upper chamber. Ehud said, "I have a message for you from God"; whereupon he rose from his seat. Reaching with his left

[272] Gale A. Yee, *Judges & Method: New Approaches in Biblical Studies* (Minneapolis: Fortress Press, 1995), 6.

> hand, Ehud drew the dagger from his right side and drove it into Eglon's belly. The fat closed over the blade and the hilt went in after the blade—for he did not pull the dagger out of his belly—and the filth came out. Stepping out into the vestibule, Ehud shut the doors of the upper chamber on him and locked them. After he left, the courtiers returned. When they saw that the doors of the upper chamber were locked, they thought, "He must be relieving himself in the cool chamber." They waited a long time; and when he did not open the doors of the chamber, they took the key and opened them —and there their master was lying dead on the floor![273]

Ehud, after presenting an offering to King Eglon (the Hebrew word is “minchah,” the same as a sacrificial offering to God), takes King “Fat Cow” himself as a sacrifice, stabbing him in the belly and scattering his entrails as the King arose from relieving himself. This episode, both vulgar and excessive in details, leaves little doubt that this violent act was intended not as a historical recounting of events but a dark and sarcastic look at the use of violence.

Other stories from the Book of Judges portray violence in an even less favorably. Following the defeat of Sisera, army commander for the next ruler to oppress the Israelites, we are treated in Judges 5 to a war poem attributed to victors Deborah and Barak. In the midst of extolling the military victory, we are given a glimpse into the harsh realities of war:

> Most blessed of women be Jael, Wife of Heber the Kenite, Most blessed of women in tents. He (Sisera) asked for water, she offered milk; in a princely bowl she brought him curds. Her left hand reached for the tent pin, her right for the workmen's hammer. She struck Sisera, crushed his head, smashed and pierced his temple. At her feet he sank, lay outstretched, at her feet he sank, lay still; where he sank, there he lay—destroyed. Through the window peered Sisera's mother, behind the lattice she whined:

[273] Judges 3:20-25, TNK.

> "Why is his chariot so long in coming? Why so late the clatter of his wheels?"[274]

In the midst of this war poem glorifying violence, immediately following the graphic description of Sisera's death, we are told of Sisera's grieving mother. The text shows us the dark underbelly of war, explaining, in no uncertain terms, that Sisera was not only a general but somebody's son, thus humanizing him in the eyes of the reader. This critique of violence, offered throughout the Book of Judges, extends beyond the texts given here to every mention of war and violence in the text. Instances of internecine conflict, gross excesses in war, and horrific moral acts constitute the Book of Judges, suggesting that the war and violence prevalent in Israelite society and found throughout the Bible are less desirable than otherwise imagined.

The text of Chronicles contains a similar critique of violence and war. In a retelling of a similar story from Second Kings, the author of Chronicles includes a particularly gruesome event similar to the dark, exaggerated portrayals of violence in Judges: "Another 10,000 [men of Seir] the men of Judah captured alive and brought to the top of Sela. They threw them down from the top of Sela and every one of them was burst open."[275] While these exaggerated, condemnatory illustrations of violence do exist in Chronicles, the most profound texts are actually those which omit these violent details from the narratives they are retelling. Chronicles parallels and reshapes much of what is found in the

[274] Judges 5:24-28, TNK.

[275] 2 Chronicles 25:12, TNK.

Books of Samuel and Kings, allowing volumes to be communicated in what the author chooses not to reiterate:

> The omission of David's cruel actions as a leader practicing the war ideology of expediency is marked. This is not to say that all such actions are eliminated from 1 and 2 Chronicles….But the fact that David is not pictured to engage in these acts of terror is important, implying that the author regarded such acts of war to be unseemly, indecent, and not befitting the ideal leader. The Chronicler goes further in a peaceful direction in describing the ideal leader. Even David, his hero, is disqualified from building the holy Temple in Jerusalem because he was a warrior who had killed in battle.[276]

While this *argumentum a silentio* cannot prove the Chronicler's motivations as to why the acts of violence said to be committed by David were left from the text, the text is most certainly different than that of other accounts. Niditch understands this difference as an intentional omission of many details relating to David's participation in war, thereby seeing in Chronicles a critique of war and violence that quite contradicts the traditions in the Hebrew Bible that show war in a favorable light.

A final critique of war offered here is somewhat more implicit within the biblical text. Presumably because of God's presence while fighting a War of Conquest at divine behest, soldiers were to purify themselves before going to war: "When you go out as a troop against your enemies, be on your guard against anything untoward. If anyone among you has been rendered unclean by a nocturnal emission, he must leave the camp, and he must not reenter the camp. (Deuteronomy 23:10-11, TNK)" By removing an unclean person from the war-camp, the remaining soldiers would stay pure for battle. Upon their return,

[276] Niditch, 139.

however, warriors “were considered unclean and required atoning purification,”[277] ostensibly for the blood and/or corpse guilt incurred while fighting:

> You shall then stay outside the camp seven days; every one among you or among your captives who has slain a person or touched a corpse shall cleanse himself on the third and seventh days. You shall also cleanse every cloth, every article of skin, everything made of goats' hair, and every object of wood. Eleazar the priest said to the troops who had taken part in the fighting, "This is the ritual law that the Lord has enjoined upon Moses: Gold and silver, copper, iron, tin, and lead—any article that can withstand fire—these you shall pass through fire and they shall be clean, except that they must be cleansed with water of lustration; and anything that cannot withstand fire you must pass through water. On the seventh day you shall wash your clothes and be clean, and after that you may enter the camp."[278]

Participation in the death of other human beings required a ritual cleansing, even if God was seen as having commanded the war.

In addition to these critiques of war found in the Hebrew Bible, we also find those texts which glorify and extol peace as the highest virtue. In the Books of Isaiah and Micah we find almost identical passages:

> And the many peoples shall go and say: "Come, Let us go up to the Mount of the Lord, to the House of the God of Jacob; that He may instruct us in His ways, and that we may walk in His paths." For instruction shall come forth from Zion, the word of the Lord from Jerusalem. Thus He will judge among the nations and arbitrate for the many peoples, and they shall beat their swords into plowshares and their spears into pruning hooks: nation shall not take up sword against nation; they shall never again know war.[279]

Peace, though it may not come until messianic times, was the ideal, inasmuch as “the Bible endorses peace as the desired state of international relations and war

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[277] Smock, 13.

[278] Numbers 31:19-24, TNK.

[279] Isaiah 2:3-4; Micah 4:3, TNK. The text from Micah ends with a verse not found in Isaiah: “But every man shall sit under his grapevine or fig tree with no one to disturb him.” 4:4, TNK.

as the undesired alternative."[280] This is shown again in the narrative of Solomon being given the responsibility for building the Temple: "But you (David) will have a son who will be a man at rest, for I will give him rest from all his enemies on all sides; Solomon will be his name and I shall confer peace and quiet on Israel in his time."[281] Peace, then, is the greatest prize given to man: "When Israel will obey the commands of God, its reward will be peace, a peace that stems not from weakness, but from inner moral strength."[282]

The biblical text contains a multitude of beliefs about war and peace. These beliefs both ran parallel to and competed with one another throughout the biblical text, allowing for critiques of war such as are found in Amos, Judges, and Chronicles to enter the same meta-work containing the Wars of Conquest found in Numbers and Joshua. The text also contains statements extolling peace, such as the visions of Isaiah and Micah about the end of warfare. A third strand of literature is also found in the Hebrew Bible, resembling what today we recognize as notions of a more just war.[283]

A More Just War in the Hebrew Bible

In select instances found in the Hebrew Bible, the descriptions of Israelite participation in war stem neither from God's command nor the defensive or expansionist needs and desires of the monarchy but from a sense of justice.

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[280] Smock, 14.

[281] 1 Chronicles 22:9, TNK.

[282] Shapiro, 210.

[283] Wood, 140.

God's role as a warrior, "Commander of armies is God's name"[284] is subordinated by God's role as judge of humanity, from which position God "makes judgments according to universal standards of justice….To state it differently, it is not right because Yahweh says it is, Yahweh says it is because it is true and right."[285] A war emanating from this position of justice would necessarily be different than those of Israel's past, lacking the brutality of destruction commanded upon sworn enemies and bringing notions of fairness and morality to the fore. These wars constitute a third stratum of texts, what we might now call a more morally acceptable and responsible practice of war, which may be found alongside notions of war and peace in the Hebrew Bible.

Again building on the idea that the Hebrew Bible functions more as a library than as a internally-consistent book, there seems to be an evolution within the texts involving conceptions of the relationship between the God of Israel and the nations of the world. In the earliest biblical literature, "Yahweh is the God of the Hebrews alone."[286] This henotheistic view identified God as exclusively concerned with the people Israel, recognizing in other nations deities who possessed power inferior to that of the God of Israel. As such, "the god of one tribal or national group has no responsibilities for other peoples. Their own gods must care for them."[287] The wars against the seven nations inhabiting the land of Canaan and against the Amalekites, identifiable by the complete proscription of

[284] Isaiah 47:4.

[285] Wood, 140.

[286] Benedict, 164.

[287] Ibid., 5.

conquered cities, animals, and people, seem to arise from this early theological belief. As the theology of the people Israel shifted towards monotheism, so did their conception of their God's relationship with other nations. The God of Israel became the exclusive ruler over all the world, and thus God came to serve as judge for all peoples contained within it, an understanding which could not have existed during earlier henotheistic periods of Israel's history: "In terms relevant to the situation of ancient Israel, how could Israel pretend in disputes with her neighbors that her god (and not theirs) should sit in judgment?"[288] By denying the existence of other gods and proclaiming the God of Israel to be the judge of judges,[289] judicial events became the sole province of God.

War, in so far as it functioned to resolve disputes, could now be seen as a juridical function brought about by a God concerned with all peoples. We find in the Book of Joel one such text:

> When I return good fortune to Judah and Israel, I will gather all of the nations and bring them down to the Valley of Jehoshaphat ("God will judge") and enter into judgement upon them there, on behalf of My people and My inheritance Israel, for they scattered them among the nations and divided My land. They cast lots for My people, have given a boy as a prostitute, and sold a girl for wine which they drank….Proclaim this among the nations: Sanctify war! Rouse up the warriors! Prepare all the men of war! Beat your plowshares into swords and your pruning hooks into spears, that even the weakling might say: "I am mighty." …Rouse the nations to

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[288] Robert M. Good, "The Just War in Ancient Israel," *Journal of Biblical Literature* 104/3 (1985): 388.

[289] "God stands in the divine assembly; among the divine beings He pronounces judgment. How long will you judge perversely, showing favor to the wicked? Selah. Judge the wretched and the orphan, vindicate the lowly and the poor, rescue the wretched and the needy; save them from the hand of the wicked. They neither know nor understand, they go about in darkness; all the foundations of the earth totter. I had taken you for divine beings, sons of the Most High, all of you; but you shall die as men do, fall like any prince. Arise, O God, judge the earth, for all the nations are Your possession." Psalm 82:1-8, TNK.

> the Valley of Jehoshaphat, for there I will sit in judgement all the surrounding nations.[290]

In this text, God's judgments on the surrounding nations took the shape of military action. The summons to war is not within Israel, at the time incapable of mustering the forces to defeat the surrounding nations, but among the nations against whom God alone is going to fight in keeping with earlier biblical traditions. "When Yahweh is put to the task of punishing nations, war is a tool at his disposal." Yet this war of judgment, and others, are very different from the wars of conquest understood to be commanded by God, as they have explicit moral justifications. This is seen most clearly in a text from 2 Chronicles:

> Jehoshaphat stood in the congregation of Judah and Jerusalem in the House of the Lord at the front of the new court. He said, "Lord God of our fathers, truly You are the God in heaven and You rule over the kingdoms of the nations; power and strength are Yours; none can oppose You. O our God, you dispossessed the inhabitants of this land before Your people Israel, and You gave it to the descendants of Your friend Abraham forever. They settled in it and in it built for You a House for Your name. They said, 'Should misfortune befall us—the punishing sword, pestilence, or famine, we shall stand before this House and before You—for Your name is in this House—and we shall cry out to You in our distress, and You will listen and deliver us.' Now the people of Ammon, Moab, and the hill country of Seir, into whose land You did not let Israel come when they came from Egypt, but they turned aside from them and did not wipe them out, these now repay us by coming to expel us from Your possession which You gave us as ours. O our God, surely You will punish them, for we are powerless before this great multitude that has come against us, and do not know what to do, but our eyes are on You."[291]

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[290] Joel 4:1-3, 9-10, 12, TNK.

[291] 2 Chronicles 20:5-12, TNK.

As shown by Robert M. Good, the Chronicler saw fit for the people to call upon God not in a wail of lament but a prayer for God's judgment. In many ways this text reads as a legalistic argument for Israel's case:

> Jehoshaphat produces title to Judah's territory and shows that Israel has held the land properly and with due regard for the honor and authority of Yahweh. It follows that Ammon, Moab, and [the people of] Mount Seir have no rightful claim to Judean territory. Their invasion of Judah is unlawful and should be condemned…. Jehoshaphat's lament has all the marks of a legal defense, and analytically the text treats war as a legal issue. Judah's neighbors have precipitated an armed dispute, and that dispute requires resolution.[292]

War, as seen by the Chronicler at this time in Israel's history, was a judicial matter. Jehoshaphat successfully pleaded a legitimate cause before God, the divine judge, and, before the Judean army could enter into battle, God had destroyed their opposing force through internal conflict. God's justice, capable of extending to all nations, was seen in this instance as grounded in impartial justice, as the attack "violates common norms of justice and standards of fairness."[293] It is in light of this theological development, from a henotheism which served only Israel to a more universally concerned monotheism, that we can begin to understand the conceptions of a more just war presented in the Book of Deuteronomy.

The texts about warfare in the Book of Deuteronomy differ significantly from those of an early strata of biblical literature. As such, they constitute evidence of a gap separating ancient military institutions from the laws of

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[292] Good, 393.

[293] Wood, 147.

Deuteronomy. While God's presence and involvement in wars is mentioned, "this participation is not substantiated by the presence of the ark" nor does "the ban [ḥerem]...entail dedication to the Lord, but is [rather] a punitive act of destruction" with this explicit explanation proffered.[294] Alexander Rofe suggests that this difference between the laws of Deuteronomy and the Historical Books is represents a major shift: "its silence indicates an ideational and temporal distance from them all. Clearly D's [the Deuteronomist's] world, with its laws of warfare, is a different one, centuries removed from the onset of the monarchy."[295] The laws of warfare in the Book of Deuteronomy, then, should be seen as quite different from texts relating to other biblical wars.

Passages related to a more just war in the Book of Deuteronomy are found in four separate chapters interspersed with other topics. While this may lead some to conclude a lack of unity, Rofe and others believe that in both form and content these laws "were initially conceived of as one group."[296] It is here that we find texts which anticipate our modern concerns for a more just war. As is typical of biblical exegesis, much is derived from a relative paucity of text. To make this section less confusing, the text of Deuteronomy is broken into small segments with accompanying explanation.

Chapter 20 of Deuteronomy begins with an exhortation against fear when going into battle:

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[294] Alexander Rofe, "The Laws of Warfare in the Book of Deuteronomy: Their Origins, Intent and Positivity," *Journal for the Study of the Old Testament* 32 (1985): 25-26.

[295] Ibid.

[296] Ibid.

> When you take the field against your enemies, and see horses and chariots—forces larger than yours—have no fear of them, for the Lord your God, who brought you from the land of Egypt, is with you. Before you join battle, the priest shall come forward and address the troops. He shall say to them, "Hear, O Israel! You are about to join battle with your enemy. Let not your courage falter. Do not be in fear, or in panic, or in dread of them. For it is the Lord your God who marches with you to do battle for you against your enemy, to bring you victory."[297]

It would seem that this strong insistence on courage without fear is predicated on notions of faith in God's deliverance and may therefore be the remnant of earlier traditions. If success in battle was dependent upon God, fear or a lack of courage would signal a lack of faith, a situation unacceptable in a holy war: "Those who were afraid did not have the necessary religious dispositions and were to be sent away."[298] Such a lack of courage could also have deleterious affect on the surrounding soldiers: "Is there anyone afraid and disheartened? Let him go back to his home, lest the courage of his comrades flag like his."[299] The text continues with an attempt to assemble those troops fit for battle:

> Then the officials shall address the troops, as follows: "Is there anyone who has built a new house but has not dedicated it? Let him go back to his home, lest he die in battle and another dedicate it. Is there anyone who has planted a vineyard but has never harvested it? Let him go back to his home, lest he die in battle and another harvest it. Is there anyone who has paid the bride-price for a wife, but who has not yet married her? Let him go back to his home, lest he die in battle and another marry her."[300]

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[297] Deuteronomy 20:1-4, TNK.

[298] De Vaux, 259-260.

[299] Deuteronomy 20:8, TNK.

[300] Deuteronomy 20:5-7, TNK.

These texts, when taken collectively, seem to require consent on the part of soldiers being led to war. In contrast to what we saw regarding the Wars of Conquest, in which every available man was expected to fight, the conscription methods mentioned here highlight the challenges of a civilian militia. Those from whom too great a price would be extracted for participation in war were exempt from the fighting. Johannes Pedersen suggests that there is a profound humanitarian consideration at play here: "In all three cases a man has started a new, important undertaking without having finished it yet. In such a case something has been created, which is greater than the man himself, a new totality has come into existence. To make a breach in this prematurely, that is to say, before it has attained maturity or has been finished, involves a serious risk of sin."[301]

Concern then switches from Israelite preparation for battle to how the battle itself is to be conducted. In verses 10-15 we read:

> When you approach a town to attack it, you shall offer it terms of peace. If it responds peaceably and lets you in, all the people present there shall serve you at forced labor. If it does not surrender to you, but would join battle with you, you shall lay siege to it; and when the Lord your God delivers it into your hand, you shall put all its males to the sword. You may, however, take as your booty the women, the children, the livestock, and everything in the town—all its spoil—and enjoy the use of the spoil of your enemy, which the Lord your God gives you. Thus you shall deal with all towns that lie very far from you, towns that do not belong to nations hereabout.[302]

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[301] Johannes Pedersen, *Israel: Its Life and Culture*, Vol. III-IV (London: Oxford University Press, 1959), 10.

[302] Exodus 20:10-15, TNK.

Something akin to a ultimatum must be offered to the nations outside of the land of Canaan prior to waging war, granting them the opportunity to forego battle. Should these terms be unacceptable to the inhabitants of the city, only those males of the city, those capable of participating in battle, are to be killed: “By our standards a cruel ruling, it is yet far more lenient than the war practices of the monarchic period: it limits the slaughter to the fighting population and generally calls for negotiation prior to combat.”[303] This is a marked shift from the notion of *ḥerem*, which mandated the destruction of all inhabitants, seen again in Deuteronomy 16-18:

> In the towns of the latter peoples, however, which the Lord your God is giving you as a heritage, you shall not let a soul remain alive. No, you must proscribe them—the Hittites and the Amorites, the Canaanites and the Perizzites, the Hivites and the Jebusites—as the Lord your God has commanded you, lest they lead you into doing all the abhorrent things that they have done for their gods and you stand guilty before the Lord your God.[304]

What makes this iteration of the command for destruction different from the occurrences in Numbers and Joshua is the explicit reason given for the action. As mentioned before, this brutal violence is no longer carried out to demonstrate obedience to God but based upon a stated rationale, however faulty. It is entirely possible that this change, from carrying out the ban as a way of honoring God to avoiding idolatrous practices as a way to honor God, either acknowledges the diminished capability of the Israelites to wage war as a result of changing historical circumstances or is further evidence that the author of Deuteronomy

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[303] Alexander Rofe, *Deuteronomy: Issues and Interpretation* (Edinburgh: T&T Clark, 2002), 156.

[304] Deuteronomy 20:16-18, TNK.

was quite far removed from monarchic practice and unfamiliar with the older motivations. Rhetorically, at least, a distinction still existed between the inhabitants of the land of Canaan and those of far-away towns.

The biblical text continues with the laws regulating the conduct of a siege. Constructed in the same syntactical manner as verse 10, we are told:

> When in your war against a city you have to besiege it a long time in order to capture it, you must not destroy its trees, wielding the axe against them. You may eat of them, but you must not cut them down. Are trees of the field human to withdraw before you into the besieged city? Only trees that you know do not yield food may be destroyed; you may cut them down for constructing siegeworks against the city that is waging war on you, until it has been reduced. [305]

The trees surrounding an encircled city are to be protected from harm. While non-fruit-bearing tress may be used for the construction of siege equipment, those trees which produce food are never to be harmed. The reasons for this prohibition are never stated explicitly, though many rationales seem to fit. From a practical perspective, these instructions are for a protracted siege, one lasting for an extended duration, and the food produced by the fruit tress would serve as "extended resources of sustenance for the besieging army."[306] On humanitarian grounds, the fruit trees would presumably have been essential to supporting the inhabitants of the city: "This law...exudes, as well, humaneness and a universal concern, its sympathy extending here even to vegetative life."[307] Again, on quite practical grounds, preservation of the trees would be beneficial to the future

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[305] Deuteronomy 20:19-20, TNK.

[306] Michael G. Hasel, *Military Practice and Polemic: Israel's Laws of Warfare in Near Eastern Perspective* (Berrien Springs MI: Andrews University Press, 2005), 29.

[307] Rofe, 31.

Israelite inhabitants should the siege prove successful: “It would not be in Israel’s interest to destroy the very resources that would later sustain them.”[308] While a major text for the Jewish ecological movement, this text also will prove important as a major just war criterion unique to the Jewish tradition.

The texts related to a more just war continue in Chapter 21 with discussion of what constitutes justice after the war has concluded:

> When you take the field against your enemies, and the Lord your God delivers them into your power and you take some of them captive, and you see among the captives a beautiful woman and you desire her and would take her to wife, you shall bring her into your house, and she shall trim her hair, pare her nails, and discard her captive's garb. She shall spend a month's time in your house lamenting her father and mother; after that you may come to her and possess her, and she shall be your wife.[309]

This law prohibits the rape of female captives, requiring not only more just treatment in allowing her to mourn those members of her family which died but also the protections inherent in marriage: “This humane ruling reflects a universal concern with limiting soldiers’ unbridled brutality and demonstrates consideration for the feelings of captives.”[310]

The section of Deuteronomy related to waging a more just war continues with two other texts which have already been mentioned, namely the religious need of soldiers for ritual purification following battle (Deuteronomy 23:10-12) and of newlyweds to be exempt from conscription (Deuteronomy 24:5). Taken as a whole, these texts from the Book of Deuteronomy contain many ideas about

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[308] Hasel, 35.

[309] Deuteronomy 21:10-13, TNK.

[310] Rofe, 30.

proper conduct leading up to and in warfare. Running parallel to passages about both war and peace, these texts serve to situate a Jewish concern with a more just war as early as the Hebrew Bible.

The Rabbinic Period

Using the biblical material as a base, the early rabbis grew and developed the corpus of material discussing war in the Jewish tradition. At times expanding upon the biblical texts and often using them selectively to establish a greater point, these teachings about war are scattered throughout the classical rabbinic writings, including the apocryphal texts, the *Mishnah*, *Talmud*, and the homiletical midrashim to name a few sources. Representing a plurality of thought on the subject of war, its practice, and its limitations, these teachings never coalesce into a fully developed formulation of just war theory but instead serve as learned building blocks among which trends may be observed. The following is meant as a brief survey, designed to introduce the reader to the developing tradition of what we might call just war theory in a Jewish context, and makes no attempt at comprehensiveness.

A great, if infrequently utilized, wealth of information about early Jewish tradition, between the completion of the Hebrew Bible and the composition of the *Mishnah*, exists in the literature of the Second Temple period that never entered the biblical canon. While some of the works written by Jews living in both "the land of Judah and in the far-flung diaspora,"[311] including Ezra, Daniel, and Malachi were included in the Bible, others were excluded for a multitude of

[311] VanderKam, 53.

reasons. Commonly referred to as apocryphal literature, from the Greek word meaning “hidden”, or pseudepigraphal literature, of falsely attributed authorship, these texts teach us much about “the history of the Jews, their customs and outlook, and their legal norms and practices in the post-Biblical period.”[312]

For our study of war in the Jewish tradition, the Book of 1 Maccabees is of particular interest. Written in Hebrew in a style which imitated biblical historiographies, 1 Maccabees presents an account of the history of Judea from 175 to 134 B.C.E. including the Maccabean revolt. Of initial interest, following our study of the relationship between God and war in the Hebrew Bible, is the lack of a clearly defined role for God in the Maccabee’s victory: “The author is clearly a believing Jew who emphasizes the piety of Judah’s family, the Hasmoneans, and their trust in God. At the same time, he gives full credit for their success to their own sagacity and tenaciousness.”[313] Far from the attitudes of the biblical authors surveyed above, the prevailing belief seems to be that such activity “ought not to be ascribed to God...neither God nor angels win battles but the good generalship of the sons of Mattathias.”[314]

An additional development in the Jewish conception of war found in 1 Maccabees is that related to the waging of war on the *Sabbath*:

> Many pursued them [the Jews who set out to follow Mattathias], and overtook them; they encamped opposite them and prepared for

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[312] Menachem Elon, *Jewish Law: History, Sources, Principles* Vol. III (Philadelphia: Jewish Publication Society, 1994), 1033.

[313] Lawrence H. Schiffman, “1 Maccabees” in *HarperCollins Bible Commentary*, ed. James L. Mays (New York: HarperCollins, 2000), 800.

[314] G.R. Beasley-Murray, "Doctrinal Developments in the Apocrypha and Pseudepigrapha," *The Evangelical Quarterly* 19.3 (1947): 179.

> battle against them on the *sabbath* day. And they said to them, "Enough of this! Come out and do what the king commands, and you will live." But they said, "We will not come out, nor will we do what the king commands and so profane the *sabbath* day." Then the enemy hastened to attack them. But they did not answer them or hurl a stone at them or block up their hiding places, for they said, "Let us all die in our innocence; heaven and earth testify for us that you are killing us unjustly." So they attacked them on the *sabbath*, and they died, with their wives and children and cattle, to the number of a thousand persons. When Mattathias and his friends learned of it, they mourned for them deeply. And each said to his neighbor: "If we all do as our brethren have done and refuse to fight with the Gentiles for our lives and for our ordinances, they will quickly destroy us from the earth." So they made this decision that day: "Let us fight against every man who comes to attack us on the *sabbath* day; let us not all die as our brethren died in their hiding places."[315]

Here, 1 Maccabees seems to cite an earlier law forbidding participation in violence on the *Sabbath*. While the historicity of many biblical and apocryphal accounts should be called into question, corroborating evidence from the writings of Josephus supports the idea of a general Jewish refusal to participate in violence on the *Sabbath*.[316] As seen above, if observance of such a law would become known to one's enemies, disaster would ensue. "However, when Mattathias and his men realized that this practice might lead to the total destruction of the Jewish people, they instructed their forces to fight in self-defense on the *sabbath*, and since then 'and until this day it has been our practice to fight even on the *sabbath* whenever there is a need to do so.'"[317] This development, like so many others in the early rabbinic period, recognized the

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[315] 1 Maccabees 2:32-41, RSV.

[316] Siting *Antiquities*, Book XII, 1:1, Elon (1035) writes: "Josephus quotes the testimony of a Greek author, Agatharchides, that the Jews did not even defend Jerusalem on the *sabbath* and thus allowed Ptolemy Lagos (ca. 300 B.C.E.) to conquer the city without a battle."

[317] Elon, 1036, siting Josephus' *Antiquities*, Book XII, 6:2.

reality of the world in which the Jewish people were living. While even defensive engagements were looked down upon on the *Sabbath*, the greater value of *pikuach nefesh*, of saving a life, was essential to Jewish survival.

The rabbis of the *Mishnah* and *Talmud* likewise had to respond to earlier laws and norms in the traditions passed down through the generations. The *Mishnah*, the corpus of Jewish religious law formulated and codified around 200 C.E., is comprised of the three extant branches of Jewish tradition:

> *Mishnah*...means study as well as oral instruction. In this sense the *Mishnah* comprises the three branches of tradition: *midrash* as the interpretation of the text of Scripture; the *halakhot* as the statues formulated independently of Scripture; and finally the *haggadot*, i.e. all non-*halakhic* material.[318]

Culminating in the compilation by Judah Ha-Nasi referred to by the same name, the sages of the *Mishnah* were quite unwilling to dismiss the biblical sources which were seen as containing the direct speech and later the influence of God. To better square the world in which they were living with the tradition they inherited, the early rabbis divided the wars of the Hebrew Bible into distinct categories:

> What has been said applies to a battle waged of free choice [*milḥemet reshut]*; but in a battle waged in a religious cause [*milḥemet mitzvah]* all go forth, even the bridegroom out of his chamber and the bride out of her bridechamber. R. Judah said: What has been said applies to a battle waged in a religious cause; but in a battle waged in duty bound [*milḥemet ḥovah]* all go forth, even the bridegroom out of his chamber and the bride out of her bridechamber.[319]

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[318] H.L. Strack and Gunter Stemberger, *Introduction to the Talmud and Midrash*, ed. Markus Bockmuehl (Minneapolis: Fortress Press, 1996), 109.

[319] *Mishnah*, Sotah 8:7. Herbert Danby, *The Mishnah* (Oxford: Oxford University Press, 1933), 303.

While discussing the exemptions from military service granted to those whom have recently built a house, a vineyard, or have taken a new wife, the *Mishnah* suggests that different exemptions apply to the different wars in Israel's history. By the year 200 (and drawing upon earlier traditions), the wars of the Israelites were divided by the sages into different categories: battles of free choice, *milḥemet reshut*, battles for religious causes, *milḥemet mitzvah*, and battles in which participation is duty-bound, *milḥemet ḥovah*. The *Talmud*, in discussing this *mishnah*, seeks to clarify the categorizations:

> Rava said: The wars of Joshua, fought to conquer Eretz Yisrael, all agree were obligatory. The wars of the House of David that were fought for gain, all agree were discretionary. When do they disagree? With regard to a war fought to reduce the numbers of the idolaters, so that they will not come upon [Israel] in war.[320]

It should be noted that the differences between *milḥemet mitzvah*, war for a religious cause, and *milḥemet ḥovah*, in which participation is duty-bound, are minimal and often treated as one, "leaving in effect the distinction between mandatory and discretionary wars."[321] This is so because God was not understood to command wars at the time in which these commentaries on the biblical text were written, thus leaving only the defensive war as mandatory (as will be further discussed in Chapter 4).

The division of war into categories was not an exercise in exegesis *l'shma*, for its own sake: "The battles for self-defense recorded in the first five books of

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[320] Analyzing *Babylonian Talmud*, Sotah 44b. *Talmud Bavli: Sotah Volume 2 (Folios 27b-49b): Artscroll Talmud Schottenstein Edition*, ed. Michoel Weiner et al (New York: Mesorah Publications, 2000), 44b[2-3]. The Artscroll translation includes commentary meant to elucidate the text and is therefore not an exact translation.

[321] Gendler, 198.

the Bible were ‘obligatory’, while the wars fought by King David to expand his territory were merely ‘permitted’—a historical distinction used to imply progressive limits to religious sanctions for subsequent military engagement rather than to expose a broad Biblical mandate for further wars.”[322] By categorizing as mandatory only those wars that were divinely sanctioned, including the Wars of Conquest in Joshua and Numbers, the early rabbis effective removed the concept of obligatory participation in war. Two explanations may be offered for why this is true. First, as the seven nations were long since defeated and the wars leading to their defeat were the only mandatory wars, God was no longer seen as mandating Jewish participation in this type of violence. The second explanation is derived from a different *mishnah*:

> On that day came Judah, an Ammonite proselyte, and stood before them in the House of Study. He said to them, May I enter into the congregation? Rabban Gamaliel said to him: Thou art forbidden. R. Joshua said to him: Thou art permitted. Rabban Gamaliel said to him, Scripture says, ‘An Ammonite or a Moabite shall not enter into the assembly of the Lord; even to the tenth generation. (Deuteronomy 23:3)’ R. Joshua said to him, But are the Ammonites and the Moabites [still] where they were?[323]

This *mishnah* suggests that the Ammonites and Moabites, and by extrapolation all of the seven nations, were so confused and dislocated that they could not longer be persecuted based on their nationality. “From the *Mishnah* onwards, rabbinic literature dealt with these [nations] as exceptions, no longer relevant, it was noted, because the people concerned had intermarried to the point that they

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[322] George Wilkes, “Judaism and Justice in War” in *Just War in Comparative Perspective,* ed. Paul F. Robinson (Burlington VT: Ashgate Publishing, 2003), 11.

[323] *Mishnah*, Yadaim 4:1; Danby, 783.

were no longer distinguishable."[324] Without ability to identify the sworn enemy, two categories of war were taken off the table, and the Jewish people were no longer obliged to fight.

Another interesting point is found in the text from the *Babylonian Talmud* mentioned above. The sages are said to disagree "with regard to a war fought to reduce the numbers of the idolaters, so that they will not come upon [Israel] in war,"[325] a war we would now classify as pre-emptive. The *Talmud Yerushalmi*, dealing with the same difference of opinion, goes a step farther in suggesting that "R. Judah would call an optional war such as one in which we go forth against the enemy. He would regard a war of obligation as one in which the enemy makes war on us."[326] The pre-emptive strike, in this view, is at best seen as discretionary.

Further qualifications and restrictions were also placed on the discretionary wars: "When...there are no doubts as to the discretionary character of the war, the freedom of action of the government is drastically limited."[327] The *Talmud*, based upon a biblical story of King David, sets out a fairly lengthy decision-making process:

> A harp hung over David's bed, and as soon as midnight arrived, a northerly wind blew upon its strings and caused it to play of its own accord. Immediately David arose and studied the Torah until the

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[324] Wilkes, 11.

[325] *Babylonian Talmud*, Sotah 44b.

[326] Jacob Neusner, *The Talmud of the Land of Israel*: Sotah v. 27 (Chicago: University of Chicago Press, 1984), 226.

[327] Efraim Inbar, "War in the Jewish Tradition," *The Jerusalem Journal of International Relations* 9:2 (1987), 92.

> break of dawn. At the coming of dawn, the Sages of Israel entered into his presence and said unto him: 'Our Sovereign King, thy people Israel need sustenance.' 'Go and support yourselves by mutual trading,' David replied. 'But,' said they, 'a handful does not satisfy the lion, nor can a pit be filled with its own clods.' Whereupon David said to them: 'Go and stretch forth your hands with a troop [of soldiers].' Immediately they held counsel with Ahitophel and took advice from the *Sanhedrin* and inquired of the *Urim* and *Tummim*.[328]

The process which precedes the Israelites going out to war is described as somewhat cumbersome. After seeking the counsel of the king, the king's advisor Ahitophel was sought: "If this story describes a regular constitutional pattern of decisionmaking, Ahitophel stands for a counseling body subservient to the king."[329] The *Sanhedrin*, the body of some seventy one scholars, was to be consulted next, followed by the *Urim* and *Thummim*, the lots cast by the priests to divine God's wishes for the people Israel. It would seem that each of these institutions had the ability to declare the war unwise, presumably forestalling its initiation. Similar processes are described in other places in the corpus of early Jewish literature, perhaps giving this process more traction than one narrative might alone. In the *Mishnah* we read: "He [the High Priest] may send forth [the people] to a battle waged of free choice by the decision of the court of one and seventy (Sanhedrin 2:4);"[330] and in the Book of 2 Maccabees: "After consulting privately with the elders, he determined to march out and decide the matter by

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[328] *Babylonian Talmud*, Sanhedrin 16a. Isidore Epstein, *The Soncino Talmud* (New York: Judaica Press, 1973), accessed using Davka Corporation's *Judaic Classics*.

[329] Inbar, 93.

[330] Danby, 384.

the help of God before the king's army could enter Judea and get possession of the city,"[331] which Ephraim Inbar understands to mean the *Sanhedrin*.[332]

In many ways, the same process by which a discretionary war, a *milḥemet reshut*, is approved is the same process by which it is rendered practically impossible. In much the same way as the quintessential case of the *ben sorer u'moreh*, the stubborn and rebellious son, is resolved, the rabbis respond to the situation in which their inherited tradition conflicts with their socio-political status by making it impossible to meet the preconditions necessary for the action. "The thrust of most of the early rabbinic literature on the subject was, however, to urge the dissociation of Jews from any aspect of war-making."[333] This is not to say, however, that the early rabbis were in any way pacifist. As shown in the text from 1 Maccabees, there are situations in which the sages recognized a need to take another's life. This can be seen in following talmudic text:

> Rava said: What is the *Mishnah's* reason for ruling that someone caught tunneling into a house may be killed? Why does he deserve to die? The Gemara explains: There is a presumption that a person does not hold himself back from defending his property, and knowing this, [the burglar] surely tells himself in advance, "If I go break into the house, [the occupant] will confront me and not allow me to rob him, and if he confronts me, I will just have to kill him. And the Torah therefore tells the occupant: If someone comes to kill you, anticipate him and kill him first.[334]

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[331] 2 Maccabees 13:13, RSV.

[332] Inbar, 92.

[333] Wilkes, 12.

[334] Analyzing *Babylonian Talmud*, Sanhedrin 72a. *Talmud Bavli: Sanhedrin Volume 2 (Folios 42b-84a): Artscroll Schottenstein Edition*, ed. Hersh Goldwurm (New York: Mesorah Publications, 2004), 72a[1-2]. As above, the Artscroll translation includes commentary meant to elucidate the text and is therefore not an exact translation as presented here.

This text from the *Babylonian Talmud*, presenting a classic "kill or be killed" argument, allows for the taking of a pursuer's life in self-defense. This argument holds despite the extremely low burden of proof necessary for lethal action: "The *Talmud* rules that a person is permitted to kill a pursuer to save his or her own life regardless of whether the person being pursued is a Jew or a non-Jew. While there is some dispute among modern Jewish law authorities as to whether Jewish law *mandates* or merely *permits* a non-Jew or bystander to take the life of one who is trying to kill another, nearly all authorities posit that such conduct is, at the least, permissible."[335] Self-defense, then, remains a valid reason for violent action during this time. It is perhaps telling, however, that "security problems do not constitute a *carte blanche* to wage a *milhemet mitzvah*."[336] Even in cases of self-defense do we find a limit on the use of violence in the rabbinic sources.

One last source of texts which convey material of interest to a study of early rabbinic conceptions of war are the early homiletical *midrashim*. An immense collection of literature, the books of homiletical midrashim contain rabbinic exegesis and homilies, most often arranged by biblical book. *Leviticus Rabbah*, which is of interest to our survey here, contains thirty-seven such sermons which represent the aggregate work of numerous named and anonymous authors. The time of redaction is believed to be around 400 or 500 C.E., though the homilies each contain many older traditions. We read in one

[335] Michael J. Broyde, "Just Wars, Just Battles, and Just Conduct in Jewish Law: Jewish Law is Not a Suicide Pact!" in *War and Peace in the Jewish Tradition*, eds. Lawrence Schiffman and Joel B. Wolowelsky (New York: Yeshiva University Press, 2007), 9.

[336] Inbar, 86.

such homily a censure of King David's general Abner for organizing a dual between soldiers[337]: "Abner was killed because he played with the blood of his soldiers."[338] This condemnation of violence for sport or without object speaks to a rejection of antagonistic war: "It seems that the Sages were well aware of the dangers in deviating from instrumental objectives when using force."[339] Indeed, as we will see at a later time in the development of Jewish conceptions of a more just war, not only must military objectives be stated before a conflict is to begin, an attempt to avoid war must be made. Thus we read in the discussion of *Parashat Tzav* in *Leviticus Rabbah*: "How meritorious is peace? Even in a time of war one must initiate all activities with a request for peace."[340]

The statements about war, scattered throughout the writings of the early rabbinic period including the Apocrypha, *Mishnah*, *Talmud*, and homiletical *midrashim*, represent the rabbis' attempts to blend the traditions they inherited with the world in which they lived. Writing at a time far removed from the period of the monarchy, the rabbis no longer had control of Jewish sovereignty and a Jewish army. Their writings about war thus became a theoretical exercise. As such, their statements contain a multitude of views on the subject of war, its

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[337] "Once Abner son of Ner and the soldiers of Ish-bosheth son of Saul marched out from Mahanaim to Gibeon, and Joab son of Zeruiah and the soldiers of David also came out. They confronted one another at the pool of Gibeon: one group sat on one side of the pool, and the other group on the other side of the pool. Abner said to Joab, "Let the young men come forward and sport before us." "Yes, let them," Joab answered. They came forward and were counted off, twelve for Benjamin and Ish-bosheth son of Saul, and twelve of David's soldiers. Each one grasped his opponent's head and thrust his dagger into his opponent's side; thus they fell together. That place, which is in Gibeon, was called Helkath-hazzurim." 2 Samuel 2:12-16, TNK.

[338] *Leviticus Rabbah* 26b, in Inbar, 89.

[339] Inbar, 89.

[340] Quoted in Broyde, 19.

practice, and its limitations, and though these teachings never coalesce into a fully developed formulation of just war, trends of limiting the application of violence and increasing the emphasis on peace except in cases of defense may be observed.

War in the Writings of Maimonides

Rabbi Moses ben Maimon (1138-1204),[341] much like Saint Augustine in the Christian tradition, set forth a more comprehensive and systematic treatment of just war theory than those Jewish sages who came before him, developing an ideology that would serve as the model for Jewish thinking on the subject well into the modern era. Building on the biblical and rabbinic sources, Maimonides both organized and advanced the extant Jewish thinking on matters of war. Our survey of the origins of the just war in the Jewish tradition concludes with this giant of medieval *halakhic* thought, exploring first his biography and the circumstances under which he was writing before exploring his philosophy of what constitutes a morally sound war.

An accurate dating of Moses ben Maimon's birth is difficult given the status he achieved in the Jewish world. His grandson wrote that he was born on the eve of Passover in the year 1135, a day with rich symbolic significance to the Jewish people and one commonly referenced in biographical works.[342] Some modern scholars, in the same work that traced his lineage back to Judah Ha-Nasi

[341] Commonly referred to as Maimonides, a play on his surname.

[342] Joel L. Kraemer, *Maimonides: The Life and World of One of Civilization's Greatest Minds* (New York: Doubleday, 2008), 23.

and King David, have even added in the hour of his birth, though this seems exceptionally speculative to the point of fiction.[343]

Conservative sources put his birth in the year 1138 in the Almoravid-controlled city of Cordoba, and it is here that we begin a brief treatment of Maimonides' life. Cordoba, the capital city of Andalusia, was by far Europe's largest and most vibrant city: "As both a cultural and a political center, Cordoba boasted a multitude of libraries and observatories, mosques, madrasas (colleges), and hospitals—enticing scholars throughout the eastern Islamic world."[344] Here Moses was born to a rabbi and physician father, Maimon, and a completely unknown mother, believed to have died during childbirth. As was the custom of the time, Maimonides was educated at home, yet with an education surprising to even modern education: "Its Jewish component included the Hebrew Bible, *Mishnah*, *Talmud*, and related codes and commentaries, and its secular subjects incorporated astronomy, logic, mathematics, optics, law, and rhetoric."[345]

It was not long before this relatively affluent life came to an end. The Almohads, teaching a more puritan, ascetic understanding of Islam, arose in opposition to the Almoravids and brought to an end the Golden Age of Spain. Conquering Cordoba in 1148, the Almohads quickly stripped away the religious and social freedoms previously granted the Jews. Facing the choice of forced

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[343] David Yellin and Israel Abrahams, *Maimonides* (Philadelphia: Jewish Publication Society, 1903), 1.

[344] Edward Hoffman, *The Wisdom of Maimonides: The Life and Writings of the Jewish Sage* (Boston: Trumpeter Books, 2008), 6.

[345] Ibid., 7.

conversion or death, the Maimon family, like many others, chose to flee. Young Maimonides moved from city to city for the next eleven years of his life, studying and even writing as the opportunities arose, until the family settled in the Moroccan city of Fez in 1159.

Fez, home to many libraries and academies, seemed a respectable choice, especially given the relaxed persecution of minority groups during the later-half of 'Abd al-Mu'min's reign.[346] This illusion quickly faded, and once again religious intolerance drove Maimonides' family to desperation: "Scholars today vigorously debate whether the Maimon family itself publicly converted to Islam in Fez to avoid the treat of execution….The evidence is definitely suggestive but still inconclusive."[347] That said, there was some upside to this uncomfortable existence. It is likely that Maimonides would have studied with the Jewish sages when possible and with the Muslim academics when prudent, a combination that, when combined with his previous education, led to brilliance in both rabbinic and philosophical spheres.

When forced out of Fez in 1165 by the immanent fear of persecution, the Maimon family eventually landed in the Eretz Israel port of Acre. In many ways this was a transfer from the skillet to the fire as the Muslim persecution was replaced by the aftermath of the First Crusade: "Only a few thousand dispirited Jews lived in the entire land, under hostile Christian rule since the First Crusade culminated triumphantly in 1099."[348] Put rather crudely, it was here that

[346] Kraemer, 84.

[347] Hoffman, 10.

[348] Ibid., 12.

Maimonides experienced first hand the effects of a theory of just war gone wrong. Recognizing that a comfortable and meaningful Jewish existence did not exist in the land at that time, Maimonides again relocated, this time to the cultural center of Alexandria.

It was in Alexandria that Maimonides came to enjoy the successes for which he is known. Always writing and engaging in Jewish scholarship, in Alexandria Maimonides was free to openly follow in his father's footsteps as both a rabbi and physician. In the words of Abraham Joshua Heschel, if one did not know that Maimonides was the name of a man, one would assume it was the name of a university.[349] His scholarship was indeed immense:

> The writings and achievements of this twelfth-century Jewish sage seem to cover an impossibly large number of activities. Maimonides was the first person to write a systematic code of all Jewish law, the *Mishneh Torah*; he produced one of the great philosophic statements of Judaism, *The Guide to the Perplexed*; published a commentary on the entire *Mishnah*; served as physician to the sultan of Egypt; wrote numerous books on medicine; and, in his "spare time," served as leader of Cairo's Jewish community.[350]

It is in the fourteenth book of his *Mishneh Torah*, completed during the prime of his life, some 31 years before his death in 1204, that we find the most organized work on the subject of war in the Jewish tradition prior to the modern State of Israel.

Maimonides, following in the methodological footsteps of Alfasi and Joseph ibn Migash, succeeded in organizing the *mitzvot* of the Hebrew Bible and

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[349] Joseph Telushkin, *Jewish Literacy* (New York: HarperCollins, 2001), 176.

[350] Ibid.

then early rabbinic Judaism in a most systematic way. Instead of the conversant, relational scheme utilized in the *Talmud* and the *midrash*, Maimonides' rabbinic *magnum opus* was topically arranged. His motivations and objectives are made clear in his introductory statements to what he called the "great compilation:"

> At the present time, when dire calamities keep following one another and the needs of the moment brush aside all things, our wise men have lost their wisdom, and the understanding of our astute people is hidden. Hence, the commentaries, the codes of law, and the *responsa* that were written by the *geonim*, who strove to make them easily intelligible, have presented difficulties in our days, so that only a few are capable of understanding them properly. Needless to say, this applies to the *Talmud* itself (the Babylonian as well as the Jerusalem), the *Sifra*, the *Sifrei*, and the *Tosefta* —works that require wide knowledge, a learned mind, and ample time before one can discern from them the correct practice as to what is prohibited or permitted, and the other laws of the Torah. Therefore I, Moses ben Maimon, the Sephardi, bestirred myself and, relying upon the Creator, blessed be He, have made a thorough study of all these books, and have determined to compose a work containing the results derived from all these books concerning what is prohibited or permitted, unclean or clean, as well as the other laws of the Torah.[351]

In order to make the laws of the Torah and the corpus of rabbinic literature to his time more accessible and practicable, Maimonides arranged them in such a way as to be most easily understood. It is within this rubric that he encountered all of the laws of the Jewish tradition, including those pertaining to a more just war. His statements about war, then, should not be construed as an ideologically motivated treatise on the subject, but rather a codification of the received tradition with the inevitable gloss of one organizing the material.

Maimonides, writing during a time in which the Jewish people lacked sovereign self-rule, let alone a standing army, was in a situation far removed from

[351] Introduction to Maimonides' *Mishneh Torah*, quoted in Elon, 1184-1185.

that of the early Christians interested in just war: “The rabbinic fathers had no such hopes that Roman Emperors would seek their religious findings, nor could Maimonides and other Jewish medieval scholars expect their *halachic* deliverances to be heeded by regnant powers. Naturally, then, there was no felt urgency to formulate anything so directive of the use of power as a fully elaborated ‘just war’ doctrine...”[352] Yet we find within Maimonides’ work a number of statements with surprising parallels to our modern understanding of just war theory. With this preliminary adumbration of his background, methodology, and situation in life now in mind, we begin our study of the just war in Maimonidean thought in such a way as to pay tribute to his systematization.

Treatise ten in the fourteenth book of the *Mishneh Torah* deals with *Laws Concerning Kings and Wars*.[353] The first of the laws related directly to warfare and of interest to this study is found in Chapter 4, Halakhah 9:

> The property of those who are executed by the State belongs to the king. The royal treasures of the kingdoms he subdues belong to him. The plunder that the people take is brought to him and he first takes one half thereof. The other half is distributed equally among those who were in the thick of the fight and those who stayed behind, looking after the baggage, as it is written: *For as is the share of him that goeth down to the battle, so shall be the share of him that tarrieth by the baggage; they shall share alike.* (1 Samuel 30:24)

Maimonides, from the outset, cannot take a pacifist position given the tradition he has received. The kings of Israel have the right to wage war in order to build their treasuries, though we later see that such monetary gain cannot be for

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[352] Gendler, 189.

[353] Translations from this section of the *Mishneh Torah*, unless stated otherwise, are taken from Maimonides, *The Code of Maimonides: Book Fourteen, the Book of Judges*, trans. Abraham M. Hershman (New Haven CT: Yale University Press, 1977), 205-243.

personal benefit. A monarch is permitted to add to his treasury only that which is necessary for the maintenance of the kingdom, with the remainder of the booty going to the service of God. An interesting parallel thus develops between Maimonidean thought and the early Church Fathers: "the material success of Israel's king redounds to the glory of the Lord."[354] Indeed, as we read in Chapter 4, Halakhah 10:

> But whatever he does should be done by him for the sake of Heaven. His sole aim and thought should be to uplift the true religion, to fill the world with righteousness, to break the arm of the wicked, and to fight the battles of the Lord. The prime reason for appointing a king was that he execute judgment and wage war, as it is written: *And that our king may judge us, and go out before us, and fight our battles.* (1 Samuel 8:20)

Given a biblical tradition in which certain wars were seen as mandated by God, there should be little surprise that one of the duties of the king was to fight the battles of the Israelites. Two interesting points develop from the above *halakhah*. First, we see here the beginnings of what is later referred to in modern just war thinking as "proper authority." The king, by reason of his appointment, has the proper authority vested in him to precipitate war. Secondly, we must examine further the role of war in uplifting the "true religion," the king's "sole aim." According to Maimonides, ensuring universal adherence to the Noaḥide law is a principal duty of the Jewish people, so much so that compulsion is a viable tool for achieving this end:

> Maimonides writes: "Moses bequeathed the Torah and the commandments to Israel alone...and to those of the other nations

[354] Gerald J. Blidstein, "Holy War in Maimonidean Law" in *Perspectives on Maimonides: Philosophical and Historical Studies*, ed. Joel L. Kraemer (Portland: The Littman Library of Jewish Civilization, 2008), 214.

> who wish to convert to Judaism. But no coercion to accept the Torah and the Commandments is practiced on those who are unwilling to do so. Moreover, Moses was commanded by God to compel all people to accept the Commandments enjoined upon Noaḥides. Anyone who does not accept them, is to be put to death (*Kings and Wars* 8:10)." As argued by Heinemann in his study of the Almohade impact on Maimonides, we learn here of a duty placed upon the Jewish people to achieve universal adherence to Noaḥide laws, among which the ban on idolatry is likely most crucial.

Impressing upon the nations of the world the seven commandments desired by Jewish tradition to be binding upon all mankind, in that it seeks to "fill the world with righteousness," seems to be a legitimate aim of war. Yet this is not the same as living in a perpetual state of war, for though one is traditionally prohibited from saving the life of an idolator, so, too, is one "forbidden to kill him 'since he is not at war with us'. This distinction rests on more than prudence alone; it affirms that the existence of the idolatrous in the world is not an immediate call to battle."[355] Given Maimonides' insistence on upholding the Noaḥide laws, this revelation is somewhat startling and speaks of a general reluctance to engage in war. More on this subject will follow when examining the need to make offers of peace to the seven nations which occupied the Land of Canaan.

In Chapter 5, Halakhah 1 we read of the seven nations in Maimonides' categorization of the wars in the Hebrew Bible:

> The primary war which the king wages is a war for a religious cause. Which may be denominated a war for a religious cause? It includes the war against the seven nations, that against Amalek, and a war to deliver Israel from the enemy attacking him. Thereafter he may engage in an optional war, that is, a war against neighboring nations to extend the borders of Israel and to enhance his greatness and prestige.

[355] Ibid., 215.

This formulation of wars for a religious cause, or *milḥemet mitzvah*, includes one such war not mentioned in the classical rabbinic sources, namely: "a war of clear and immediate defense against an attack already launched."[356] Perhaps based on the talmudic principle allowing for defense from a pursuer with presumed evil intent, this is nonetheless an expansion of the category of mandated war. Given the plight of Jews throughout much of their history, however, it is hardly uncalled for. It would also seem that permitting war to enhance the king's greatness and prestige would also be an expansion of the permitted, optional war, that is, *milḥemet reshut*, and thus Ephraim Inbar seeks some explanation:

> When defining *milḥemet reshut* as 'a war against neighboring nations to extend the borders of Israel and to enhance his [the king's] greatness and prestige' (*Kings and Wars* 5:1), Maimonides probably attempts to explain their rationale. It is possible that 'extending the borders of Israel' also has military significance and that Maimonides understands the need for strategic depth. In any case, territory is considered to be one component of national power, therefore, additional territories also have a security dimension.[357]

It is unclear whether this explanation is *post facto* or a natural derivative from the general tenor of Maimonidean thought.

Returning to the notion of proper authority, Chapter 5, Halakhah 2 places restrictions on the kings ability to wage optional war:

> For a war waged for a religious cause, the king need not obtain the sanction of the court. He may at any time go forth of his own accord and compel the people to go with him. But in case of an optional war, he may not lead forth the people save by a decision of the court of seventy-one.

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[356] Gendler, 198.

[357] Inbar, 86.

A ruling of the *Sanhedrin* is necessary prior to engagement in a *milḥemet reshut*, presumably as a check upon the king's motivations and the necessity of the war. Proper authority, in cases of both a mandatory and an optional war, lies with the king, though it is expanded when there is question of judgment: "Maimonides probably fears that the permission of waging a discretionary war could strengthen militaristic tendencies,"[358] and thus reiterates the checks and balances upon the system.

In keeping with the aforementioned limit applied to the waging of war by the expansion of necessary authority, we find in Chapter 5, Halakhah 4 a reiteration of the rabbinic "confusion" surrounding the seven nations:

> It is a positive command to destroy the seven nations, as it is said: *But thou shalt utterly destroy them* (Deuteronomy 20:17). If one does not put to death any of them that falls into one's power, one transgresses a negative command, as it is said: *Thou shalt save alive nothing that breatheth* (Deuteronomy 20:16). But their memory has long perished.

The seven nations originally inhabiting the Land of Canaan, as well as the nation of Amalek, are no longer identifiable by the geographical borders and are, in rabbinic fact, intermingled through intermarriage. Maimonides goes one step further, stating that by the medieval period the very memory of the seven nations has perished. It is here that we see a glimpse into his philosophy, as recorded in *The Guide of the Perplexed*:

> Do you not see in the texts of the Torah, when it commanded the extermination of the seven nations and said 'thou shalt save alive nothing that breatheth, (Deuteronomy 20:16)' that it immediately follows this by saying: 'That they teach you not to do after all their

[358] Ibid., 90.

> abominations, which they have done unto their gods and so yet sin against the Lord your God? (Deuteronomy 20:18) Thus it says: do not think that this is hard-heartedness or desire for vengeance. It is rather an act required by human opinion…[359]

In this amazing text, Maimonides turns a large chunk of biblical and rabbinic thought upon its head. Given the rationale provided following the command to utterly destroy the seven nations, God is not acting out of malice but because of the moral weakness of God's chosen people. Human frailty, not God, is to be blamed for the vulgarity of the Hebrew Bible.

Maimonides follows this radical departure from the inherited tradition with another passage which is even closer to our understanding of just war. In *Mishneh* Torah, Chapter 6, Halakhah 1 we read:

> No war is declared against any nation before peace offers are made to it. This obtains both in an optional war and a war for a religious cause, as it is said: *When thou drawest nigh unto a city to fight against it, then proclaim peace unto it* (Deuteronomy 20:10). If the inhabitants make peace and accept the seven commandments enjoined upon the descendants of Noah, none of them is slain, but they become a tributary, as it is said: *They shall become tributary unto thee, and shall serve thee* (Deuteronomy 20:11).

In all situations, against even the seven nations or Amalek, an offer of peace was to be made before resorting to war. Echoing the modern just war precepts of war as a last resort and the necessity of a proper declaration, this *halakhah* seems to eliminate the possibility of a hastily declared war, limiting the scope of violence:

> Other teachings are directly applicable to traditional attempts to limit injury of persons during war. The rabbinic tendency to modify the biblical meaning of certain texts towards what we might designate "humane ends" was noted above with Maimonides' insistence that even the "seven nations" were first to be offered

[359] Moses Maimonides, *The Guide of the Perplexed* Vol.1, trans. Shlomo Pines (Chicago: University of Chicago Press, 1963), Part I, Ch. 54; 126-127.

> peace rather than *ḥerem*, and that such acceptance meant that "not one person was then to be slain." The attempt to prevent unnecessary injuries and deaths during conflict, especially among noncombatants, is expressed in a number of rabbinic rulings.[360]

Understood here to be a precondition to the just war which, in turn, allows for the waging of a just war, Maimonides turns from *jus ad bellum* to *jus in bello*. Many of the remaining statements related to war found in Maimonides' codification of the Jewish law engage this later category.

The first of such statements related to *jus in bello*, the waging of a just war, is found in Chapter 6, Halakhah 7:

> When siege is laid to a city for the purpose of capture, it may not be surrounded on all four sides but only on three in order to give an opportunity for escape to whose who would flee to save their lives, as it is said: And they warred against Midian, as the Lord commanded Moses (Numbers 31:7). It has been learned by tradition that that was the instruction given to Moses.

One of the major criticisms leveled against the scholarship undertaken by Maimonides with the whole of the *Mishneh Torah* is his failure to cite sources. Without clear access to the textual sources, unless one is extremely learned in the text, he or she would be hard pressed to refute what Maimonides states so resolutely. Here, when suggesting a law so absurd by military standards that it is almost humorous, Maimonides does state his source—one which can scarcely be argued: the commandment to only surround a city on only three sides during a siege was taught to Moses himself. It seems unfortunate that *Moshe Rabbeinu* never thought to teach this to Joshua prior to his attack on Jericho. While

[360] Gendler, 201.

humorous, this claim does give us further insight into the degree to which Maimonides will go to protect the innocent during war.

As an extra measure of protection for the people during times of war, Maimonides reiterates and clarifies the laws related to preserving natural means and resources for sustaining life in Chapter 6, Halakhah 8:

> It is forbidden to cut down fruit-bearing trees outside a (besieged) city, nor may a water channel be deflected from them so that they wither, as it is said: Thou shalt not destroy the trees thereof (Deuteronomy 20:19). Whoever cuts down a fruit-bearing tree is flogged. This penalty is imposed not only for cutting it down during a siege; whenever a fruit-yielding tree is cut down with destructive intent, flogging is incurred. It may be cut down, however, if it causes damage to other trees or to a field belonging to another man or if its value for other purposes is greater (than that of the fruit it produces). The Law forbids only wanton destruction.

Two interesting points are raised in this text. First, there is absolutely nothing sacred about the fruit-bearing tree. It is not to be saved at all costs, but rather only if the fruit yields greater value than other intended usages. It is only wanton destruction that is forbidden. Second, we see in this text the prohibition against diverting a water channel. Ostensibly to prevent the death of the fruit tree, this law also ensures the availability of water to the people, in addition to the availability of food. It is not at all certain that this protection is put in place for benefit of the besieged resident. It may be, rather, for future inhabitants of the city. This is supported by Chapter 6, Halakhah 10, which labels as transgressing the prohibition against wanton destruction anyone who “tears clothes, demolishes a building, stops up a spring, or destroys articles of food with

destructive intent." This notion, of preserving those resources which support life, encourages not only *jus in bello* but also *jus post bellum*.[361]

Maimonides, writing in the 12th century, set out to recapitulate and demystify the laws of Judaism from the *Talmud* to his day. The *Mishneh Torah*, Maimonides' *magnum opus*, pulls together the texts from the Hebrew Bible and the early rabbinic tradition into a singular source. This amazingly scholarly work sought to both condense the verbose, often multi-directional discussions of *halakha* found in traditional Jewish texts and arrange these *halakhot* by topic, such that students and practitioners of Judaism alike could "discern from them the correct practice."[362] Much like the laws pertaining to Nazarites and to the way in which sacrifices were to be offered in ancient Temples, however, Maimonides' treatment of the just war was less about practical relevance than about simplifying and preserving the legal tradition for future generations. Texts that were not practically relevant were often dismissed by those interested in more practical religious guidance, so Maimonides' work represents the most focused attempt to deal with Jewish law related to war until the modern period: "Texts dealing with war are scattered in various sources and there is no comprehensive, systematic treatment of this issue with the exception of Maimonides' attempt to deal with it."[363] Writing some millennia after the Israelite monarchy, in a period without Jewish self-rule or a standing army, his notions of

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[361] Walzer, Orend, and others argue for the inclusion of a third classification of just war thought, that of justice after the war, *jus post bellum*.

[362] Introduction to Maimonides' *Mishneh Torah*, quoted in Elon, 1184.

[363] Inbar, 83-84.

what constituted a just war had no practical bearing on the world in which he lived. The same can also be said of the notions of a more just war in the *Mishnah*, *Talmud*, and, in fact, much of the Hebrew Bible. While this lack of self-rule and political inability to marshal the forces necessary for war stifled the development of a Jewish just war theory to rival its Christian counterpart, it is for precisely this reason that the Jewish tradition might be able to offer a meaningful update to Western just war tradition.

Chapter 4

Closer to Just: A Jewish Update to Western Just War Tradition

Introduction to Chapter 4

The Western just war tradition, so essential to the way we speak about war, is nonetheless facing numerous challenges to its principles regarding what constitutes a just war and indeed to its very existence. It is imperative that the Western just war tradition be able to evolve and adapt in response to these challenges, for the very challenges that have the potential to destabilize our conceptions of morality in fact necessitate the existence of this comprehensive moral theory.

Multiple models for the improvement and update of just war tradition in the West have been proposed. The most fruitful draws upon the established just war ethic that arose in Jewish tradition outside the influence of Augustine. Jewish approaches to war and its instigation contain very different concerns than those of early Christianity, owing to the historical circumstances in which it developed. It is for precisely this reason that Jewish notions of just war can help the Christian or Western just war tradition respond to contemporary challenges.

Historical Jewish conceptions of the just war, from the Book of Deuteronomy through the rabbinic period and culminating with the writings of Maimonides in the 12th century, offer guidance on some of the jus ad bellum and jus in bello principles currently found wanting in Christian just war theory. Perhaps the most promising update, however, is the moral foundation provided by Jewish just war thinking for the inclusion of a new category of just war concerns, namely, jus post bello.

Susceptibility of Just War to Update

Chapter 2 of this thesis raised a number of critiques which have been leveled against just war theory in recent years, from existential challenges, including the implausibility of nations or rulers looking beyond their own self-interest when declaring war, to the situational challenges posed by technological advances and asymmetrical conflict. Each of these challenges presupposes the existence of a standardized theory of just war used by all parties to a conflict. While a generic theory of this type has been formulated in modern times by the distillation of all of the thinking about just war that has entered our cultural *milieu*, this process necessarily separates each individual principle from its origins. This is heuristically useful for a quick understanding of the major ideas of just war theory, as shown in Chapter 2, but troublesome in the development of just war thinking in general. It is imperative that the Western just war tradition be able to evolve and adapt in response to contemporary challenges, for the very challenges that have the potential to destabilize our conceptions of morality in fact necessitate the very existence of this comprehensive moral theory. Multiple models for producing these updates exist, the most successful of which requires reuniting our understanding of just war theory with its origins.

At first glance, an overwhelming number of formulations of just war theory seem to exist. Influenced by the author's socio-political world view, notions of what constitutes a just war can vary widely. While some of these have sought to narrow the scope of what can be considered just to such a degree that just war theory would little differ from pacifism in application, others have sought to

expand the permissibility of just war such that it would be scarcely recognizable as a limit on the application of warfare. When separated from their moral ideological and theological underpinnings, these principles of just war are both numerous and chaotic. This has led Johnson and others to believe that just war thinking, as we know it today, cannot be considered an individual doctrine but rather a group of doctrines:

> What is before us is not a doctrine, as it is often called, especially in religious circles, but a tradition including many individual doctrines from various sources within the culture and various periods of historical development and representing variations in content. If we would speak of "just war doctrine," we are immediately confronted by a bewildering multiplicity. We must ask, "Whose doctrine?" and end up favoring one or the other lifted up out of the whole.[364]

While it is true that many variations in content can be found among just war doctrines, the source and origin of each doctrine is most always the same. As we have noted repeatedly throughout this thesis, the just war doctrine most commonly lifted up out of the whole is that which traces its lineage to Augustine. The just war thinking with which we are most commonly familiar, that which has entered our understanding as the Western just war tradition, is none other than the doctrine of Augustine.

An attempt to categorize the foundational Augustinian notions of just war, then, should look remarkably similar to the basic delineation of the principles previously expounded as generic. Indeed, of the seven major principles of just war listed in Chapter 2, Mattox finds direct textual support in the works of

[364] Johnson, 12.

Augustine for five and strong inferential support for the remaining two.[365] While any attempt to impose such classifications on a philosophical system is bound to feel somewhat artificial and contrived, the degree to which Augustine's thinking overlaps with our current understanding should illustrate the extent to which we continue to rely on his original foundations. Little did Augustine know that when he cast the die for just war thinking into the medieval period it would survive until the present day.[366]

What, then, of the multitude of just war doctrines from Aquinas, Gratian, Vitoria, Grotius and others, including the prolific writings of contemporary figures? While each presents changes to just war thinking that might indeed be new and novel, these developments are all designed to be improvements on the foundations provided by Augustine. With few exceptions, these developments are adaptions and modifications rather than innovations, doing little to change the discourse about just war radically. This is hardly surprising inasmuch as Augustine's just war theory has become entrenched in our cultural *milieu*:

> But just war theory is not only an argument about war in general; it is also the ordinary language in which we argue about particular wars. It is the way most of us talk when we join political debates about whether to fight and how to fight. Ideas life self-defense and aggression, war as a combat between combatants, the immunity of noncombatants, the doctrine of proportionality, the rules of surrender, the rights of prisoners—these are our common heritage, the product of many centuries of arguing about war.[367]

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[365] See Mattox, 73-84.

[366] Referencing Russell, 26.

[367] Walzer, *Arguing about War*, IX-X.

This argument suggests that the just war theory of Augustine has so far transcended its Christian origins as to become indispensable to the way we even think about war. Updates to the just war tradition that come from within this influence, moreover, will necessarily continue to bear the imprint of Augustine.

Attempting to adapt and modify the principles formed by the historical doctrines that built upon Augustine's foundations might be thought of as a first model for responding to the challenges leveled against Western just war tradition. This first model, modifying current principles and adapting the just war tradition from within, has indeed become quite popular among contemporary authors. Works from such notable figures as Michael Walzer and Brian Orend,[368] among many others, speak of adapting and updating just war theory in response to modern challenges: "Many scholars have suggested that the just war tradition needs to adapt its rules, and potentially adopt new rules, to respond to the "new" aspects of war…"[369] The general categories of just war principles, including just cause, proper authority, right intention, proportionality, discrimination, etc., are accepted as fixed and proper, but their tenets are expanded or contracted to meet the challenges of the day. This model continues to accept the general foundation set forth by Augustine and offers incremental change to keep up with the changing world.

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[368] Walzer, *Arguing about War*, xii; Brian Orend, "Just War Theory and the Ethics of war and Peace" in *The Ashgate Research Companion to Ethics and International Relations*, ed. Patrick Hayden (Burlington VT: Ashgate Publishing, 2009), 115.

[369] Laura Sjoberg, "Gender, Just War, and Non-state Actors" in *Ethics, Authority, and War: Non-State Actors and the Just War Tradition*, eds. Eric A. Heinze and Brent J. Steele (New York: Palgrave MacMillan, 2009), 156.

A second model for proposing updates to just war theory focuses not on updating the principles of the theory from within but on developing and applying a different moral framework from which to consider the issues:

> It might be objected that, in making moral judgments about particular issues, just war theorists have to accept just war principles as fixed and unalterable premises. In opposition to this objection, which stems from a foundationalist metaethics, I shall presuppose a coherentist metaethics (Hare 1996). According to coherentism, just war principles can be used to make moral judgments about particular issues; but, reciprocally, moral judgments about particular issues can be used to revise just war principles. Just war principles are not fixed and unalterable."[370]

In this model, it is recognized that the moral judgments we make as individuals or collectively as societies might be very different than those of Augustine and his successors. These judgments would then lead to a whole new way of thinking about war, not bound by the traditional categories but only by the limits of our collective conscience. While this model has the potential to radically change the way in which we think about just war, in practice we are still hindered by the fact that our modern discourse is so influenced by Augustinian notions. As the discourse itself is influenced, so are the outcomes.

A third, even more promising model for updating the Western just war tradition in response to the challenges of the day comes from a source beyond Augustine's reach. Composed under much different social and political constraints, the Jewish understanding of just war from antiquity until our own day has remained completely autonomous, divorced from the influence of both Saint Augustine and his followers. Unlike models one and two, which can offer only

[370] Lango, 476.

adaptations and modifications based on the Augustinian themes, Jewish just war thinking has the ability to propose true innovations from a separate source. As will be shown in the following sections, the Jewish tradition approaches war and its instigation with very different concerns than those of early Christianity, and it is for precisely this reason that Jewish notions of just war can help the Christian or Western just war tradition respond to contemporary challenges.

Differentiation in Historical Context that Allows for Update

Ancient Jewish writings on just war, explored in Chapter 3, arose in historical contexts that were very different from those in which the Christian writings that have become the dominant just war theory developed. The Jewish writings about ethics and morality in war reflect the thinking of a minority population subjected to war rather than a majority capable of bringing war to bear, just or otherwise. Jewish just war writings, including the Hebrew Bible, reflect the reality of falling from political strength to weakness, in contradistinction to the development of Christian just war theory, which reflects the rise from weakness to power. This difference in historical situation led to many different conclusions about war than are generally accepted in just war thinking today. In order to understand better how this is so and what we might learn from this difference in origins, we must first begin to grasp the circumstances in which the Jewish texts were composed.

Historical Context for the Writings About War in the Hebrew Bible

The major initial source of texts on the just war in Jewish tradition is the Hebrew Bible. As previously mentioned, however, the Hebrew Bible is far from monolithic in its understanding of war: "In fact, the history of attitudes to war in ancient Israel is a complex one involving multiplicity, overlap, and self-contradiction. There is more than one variety of ban ideology, and various war ideologies coexist during any one period in the history of Israel."[371] Composed over many centuries and representing the agendas and world views of a multitude of authors, a full understanding of the historical circumstances which gave rise to the Bible's composition is well beyond the scope of this thesis. A basic overview of the major periods from which we glean information about the just war, including the period of the early monarchy and the later exilic period, should suffice to show how different the circumstances were in which Jewish writers contemplated just war from those of Christianity.

A cursory reading of the biblical account of the early monarchy would suggest that during this time the Israelite tribes were brought together into a centralized state:

> For nearly a century at the beginning of the Iron II period (ca. 1025-586 BCE), most of Palestine was organized as a national state with a dynastic figure—a king—at its head. During the preceding two centuries, coinciding with the emergence of loosely connected Israelite tribal groups, people had lived mainly in small settlements scattered throughout the central highland areas and in a sprinkling of small cities in the lowlands and valleys. Then, with startling rapidity, a centralized state was formed late in the eleventh century. By the middle of the tenth century, according to the biblical narrative, this state reached near-imperial proportions, complete

[371] Niditch, 154.

> with a capital city, complex regional centers, a royal court, luxury goods, and other social, economic, and political features associated with the concentration of power in a monarchy.[372]

This amazing transformation from tribal groups to a unified monarchy is thought to have joined the people Israel under one political structure. Consolidation from "chieftainship" to "hierarchic kingship" seems to have "catapulted Israel into the forefront of ancient Near Eastern states," making it the preeminent regional power: "To be a state in the Syro-Palestinian corridor meant to be caught up in an international web of trade, diplomacy, and war. Under David and Solomon, Israel was amazingly successful in that political-military game."[373] For the first time in Israelite history, and the only sustained time in more than 2,500 years, the Israelites were an independent, sustained autonomous social and political group with their own system of governance.

With this self-rule came the burden of self-defense, a very real challenge to the Israelite monarchy. An acceptance of at least some degree of historicity in the biblical text would suggest that the need to raise an army and sustain a coordinated defense against the Philistines was, in fact, the major precipitating factor in the rise of the monarchy:

> The most commonly recognized factor in the rise of kingship in Israel has been the centralized military threat of the Philistines who gained a solid hold on the southern coastal plain after 1150 B.C.E. and by 1050 B.C.E. were posing a serious threat to the mountainous heartland of Israel. The Philistines had the advantage of oligarchic leadership, unlike the divisive Canaanite city-states, and their iron weaponry and mobile strike force made them

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[372] Carol Meyers, "Kinship and Kingship: The Early Monarchy" in *The Oxford History of the Biblical World*, ed. Michael D. Coogan (New York: Oxford University Press, 2001), 165.

[373] Gottwald, 323-324.

> effective fighters in the hill country. This highly unified military threat called forth a countervailing unified military defense on Israel's part.[374]

Facing repeated and skilled attacks from the surrounding Philistines, this model of state formation suggests the Israelites banded together as a national group to wage a sustained defense against invasion. The use of violence and war, then, was central to the development of the monarchy and necessarily changed the way in which war was viewed by the people Israel:

> Israel had now become a state (and later would becomes two states) with taxing and conscripting powers and a monopoly of force over and above its people. To carry out these powers there were standing armies and empowered bureaucrats. These powers reached into the fields and villages to take crops and to conscript peasants for social purposes decided by a small minority in the royal court rather than by tribal elders sifting the mind of the people for a consensus.[375]

Decisions about conscription and war were removed from the hands of tribal leaders, who were prone to infighting according to the biblical narrative, and placed solely in the province of the king, who was given the power to act on what he believed to be the national interests of the people. War was understood to be an essential tool of the king's for the defense of the kingdom. In this biblically-based understanding, David, among other kings of the early monarchy, had little recourse against his enemies other than war, and was justified in its use not least of all because David's enemies were cast as God's enemies as well. The king was understood as doing God's bidding and success was granted when the king's actions were in accord with divine will. In this way the biblical account of

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[374] Ibid., 319.

[375] Ibid., 323.

the development of the monarchy, beginning with “the disastrous collapse of the tribal confederation in the face of severe military pressure from neighboring peoples” and culminating “in the development by David and then Solomon of a dynastic monarchy with a brilliant royal court and a glorious temple in Jerusalem,” normalizes and even glorifies the place of war in contributing to the success of Israelite society.[376]

Recent scholarship, including literary analyses of the books of Samuel and Kings, has challenged this understanding of the history of the early monarchy and with it acceptance of the divinely commanded war:

> ...Scholars recognized that the dramatic tales of Samuel and Saul, and of David and Solomon, are embedded in the so-called Deuteronomic History (DH). A “school” or group of traditionalists, probably originating in the northern kingdom of Israel after the division of the monarchy when Solomon died and shifting to Jerusalem after the collapse of that kingdom in 722 BCE, collected and told stories about Israel’s emergence and history, beginning with the “conquest” of Joshua and extending to the demise of the southern kingdom of Judah in the sixth century BCE.[377]

These stories of emergence and early history were written by a group of people, well after the collapse of the early monarchy, who knew how the unification would end and therefore knew the editorial framework and theological interpretations necessary to “anticipate and explain the horror of those events.”[378] These writings capture segments and whole stories that are full of legend and folklore and which convey the agenda of their authors far more successfully than explicit history writing could:

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[376] Meyers, 170

[377] Ibid.

[378] Ibid.

> The account of the early monarchy is replete with traditional literary materials, including stylized motifs such as the sending of messengers or the hiding of spies; repeated type-scenes such as battle accounts and news of defeat; private dialogues in settings that preclude eyewitness records; strong interest in the private life and character of a few individuals at the expense of details about their public works and worlds.[379]

The authors of the biblical text were less interested in conveying faithful historiography than in advancing their own agenda. Recognizing the highly-stylized writing and acknowledging the biases of the biblical account does not, however, mean that it is without historical value. Archeological evidence and extra biblical sources seem to confirm the presence of a monarchy in early Israel, and kernels of historicity may be buried among the theological overlay present in the texts. The success and autonomy of an Israelite monarchy before the 6th century B.C.E., then, is more than plausible, though the glorification of divinely ordained war seems to miss the larger theological overlay we can see imposed upon the text. Beginning with the theological belief that the God of the Israelites is the most powerful of all, the demise of the Israelite monarchy at the hands of a foreign army must be attributed to something other than a failure of God. A recurrent pattern was thus built back into the text, granting success in military endeavors only when the kings actions were aligned with the will of God. Military failure was punishment for misdeeds, either of the king or the people, and possible only because God demanded it. The notion that God commanded engagement in warfare, then, should be seen as advancing the agendas of the authors and not representing a faithful account of the past.

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[379] Ibid.

The conclusions that we can draw about historical circumstances of the early monarchy, then, are at best questionable. It seems that there was a period in which the tribes of Israel were drawn together into one national entity and united under a king, as shown by both biblical and extra-biblical sources, and that they possessed political sovereignty and military autonomy at that time, a situation which would not be recaptured for a significant duration for just over 2,500 years. The king would have possessed the ability to declare war, and presumably would have done so with startling frequency to defend the early monarchy in a tumultuous area of the world. The notion that war would have been declared at the behest of God, however, seems contrary to our understanding of the process through which the text was composed, as it ignores the agenda of the texts authors writing long after the early monarchy collapsed. The Israelite fall from political strength to weakness occurred before the texts relating those events, fictive or otherwise, were written. As the period in which these "earliest" texts about the Jewish understanding of war were written is not the period they portray, an understanding of the historical circumstances which influenced their authors requires knowledge not of the early monarchy but the period following its dissolution.

The second period which needs to be examined in order to understand just how different the circumstances in which the Jewish and Christian notions of the just war were conceived is the period of the exile. This period witnessed the end of Israelite sovereignty (in both the kingdoms of Israel and Judah),

completing the fall from political strength, and the writing of the primary texts about the biblical conceptions of war.

The people Israel, having tasted political power in the early monarchy, saw it quickly dissolve with the end of the united kingdom and more so with the collapse of the northern kingdom. Assyrian forces attacked Damascus and Israel, turning "most of the northern kingdom into directly governed Assyrian provinces:"[380]

> Frequently the [Assyrian] policy [of conquest] worked on a three-state progression: seek voluntary submission of local rulers; conquer by force if voluntary submission does not happen; punish any recalcitrance or rebellion by taking over governmental control and deporting local leadership, while substitution populations drawn from other locales.[381]

Assyrian inscriptions, other archeological texts, and the biblical sources suggest that all three stages were carried out at the expense of the northern kingdom. The writings of the prophet Hosea describe the desperation and strife the pervaded the last decades of Israel's independence, a far cry from the empowered texts in the Books of Samuel and Kings. Israelite rebellion against Assyrian forces, ideologically instigated by Hosea, resulted in a complete loss of sovereignty for the people. In just 200 years, then, the Israelite people of the northern kingdom had fallen from political strength to complete servitude and weakness:

> The year 722 BCE brought an era to an end. Judah stood in suspended animation, awaiting what Assyria would have in store for

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[380] Gottwald, 346.

[381] Edward F. Campbell, Jr., "A Land Divided: Judah and Israel from the Death of Solomon to the Fall of Samaria," in *The Oxford History of the Biblical World*, ed. Michael D. Coogan (New York: Oxford University Press, 2001), 237.

> it. Israel was in ruins, its leadership deported and its remaining population left to the agonies of deprivation and of occupation by people alien to their ways. Sargon's accounts speak of either 27,280 or 27,290 exiles and of the capture of chariots (50 in one inscription, 200 in another). He also claims to have rebuilt Samaria "better than it was before." The archeological evidence suggests the devastation: at Tirzah, Shechem, and Samaria the wreckage speaks eloquently, emblemized [sic] by the fine Assyrian seal found in the collapsed ruins of House 1727 at Shechem. The silence of the written sources for what followed in the north is deafening.[382]

The devastation wrought on the northern kingdom by the Assyrians' superior military force brought Israelite military sovereignty to a crashing halt. This fall from power meant that the people of Israel were now being subjected to war and violence rather than perpetrating it, presumably creating a much different stance towards the use of force within the population. The writings of the prophet Amos, believed to have originated around this time, echo this trend.[383] While the writings of Samuel and Kings tried to project a pro-military disposition back into the time of Israelite sovereignty, the prophet Amos condemns the excesses of war in his time of powerlessness: "Fallen, not to rise again, is maiden Israel; abandoned on her soil with none to lift her up."[384]

Following the destruction of the northern kingdom, the kings of Judah sought to appease the Assyrian rules by acting as compliant vassals, all the while

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[382] Ibid., 239.

[383] "Another redactional study of the Book of Amos [to distinguish from a six-part redactional study mentioned previously] simplifies the stages: (1) the words of judgment by Amos on Israel's ruling class in the mid-eighty century ("Amos A"); (2) a reinterpretation and expansion urging repentance on Judah and remnants of Israel in the midst of the hopeful reforms of Josiah in the last third of the seventh century ("Amos B"); (3) a reinterpretation and expansion for Judahite exiles or recent returnees to Palestine once both kingdoms had fallen ("Amos C")." Gottwald, 355-356, referencing Robert B. Coote, Amos Among the Prophets: Composition and Theology (Philadelphia: Fortress Press, 1981).

[384] Amos 5:2, TNK. Citations regarding Amos' condemnation of the excesses of war may be found in Chapter 3.

eyeing a return to power and enacting anti-Assyrian programs. Hezekiah, for instance, tried and failed at several rebellions, eventually being again forced into submission and to pay tribute when the Assyrian army dealt the southern kingdom a crushing blow:

> According to the Annals, composed several months after the campaign, the Assyrian Army besieged and captured forty-six of Hezekiah's 'strong walled cities as well as the small cities in their neighborhood'….The next step in the campaign, according to the version in the Annals, was the siege of Jerusalem. Sennacherib claimed that he had invested Jerusalem and completely sealed it off: Hezekiah was shut up 'like a caged bird', and 'the going out of his city gate I made utterly impossible'.[385]

Exactly why the Assyrians didn't destroy Jerusalem is the subject of disagreement. The prophet Isaiah attributed it to God's will for Jerusalem, while others have suggested that it was the typical Assyrian policy "to keep a rebellious but now chastened local vassal on the throne after demilitarizing and looting his land apart from the capital city."[386] Whatever the actual events, it seems clear that the Israelites were sinking further and further from their early monarchic climax of political strength.

The powerlessness that accompanied this fall from self-determination was reenforced again and again during the last days of the southern kingdom. Although the Assyrian Empire soon fell, the Egyptians quickly filled the vacuum in order to secure eventual sovereignty over the land. The Egyptians, in short order, fell to the Babylonians. These changes of the dominant imperial power

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[385] Hayim Tadmor, "The Period of the First Temple, the Babylonian Exile and the Restoration" in *A History of the Jewish People*, ed. H.H. Ben-Sasson (Cambridge: Harvard University Press, 2002), 142.

[386] Gottwald, 369.

and the constant battles being fought in the land took a bitter toll on the lives of the Israelite inhabitants. It was a defeated King Jehoiachin that submitted to the Babylonians rather than witness the destruction of Jerusalem, although his surrender was both short lived and costly:

> Jehoiachin's submissions saved Jerusalem for a time, but the price was high. The king and his court were led to Babylonia. The Temple and king's treasuries were plundered, and 10,000 people, mainly choice troops and artisans, were taken captive and brought to Babylonia.[387]

This exile decimated the upper-class and the skilled-labor populations in Israel and was still only the precursor of the major exile that would accompany the fall of Jerusalem in 586. With the destruction of the Temple, the major religious institution, and complete demise of self-governance, Israel completed its fall from political strength to utmost weakness:

> During this period, for the first time in Jewish history, the people were subjected to two cataclysmic phenomena: destruction and exile—the destruction and exile of the 'ten tribes' of Israel by Assyria; the destruction and exile of Judah by Babylonia. By their very impact, these events served as milestones.[388]

One cannot overstate just how impotent the people Israel were during the time of exile. Strangers in a foreign land, cut off from community and religion as they had once known it, this group was a sparse remnant of the early monarchy. Yet it is here, in this situation of complete and utter powerlessness, that the major

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[387] Tadmor, 155.

[388] Ibid., 182.

remaining biblical texts concerning Israelite understanding of war, including Chronicles[389], Numbers[390], and Deuteronomy[391], were composed.

Our interpretations of the military references, both militaristic and pacifistic, within these works must be reevaluated in light of the historical circumstances under which their authors were writing. Falling from political strength to weakness, the authors of these works were writing in a situation of powerlessness some hundreds of years or more from the time period in which their writings were set. Many different ideologies about war emerged during this time corresponding with many different agendas, including both pro-militaristic texts, creating a proud and empowering narrative history for the downtrodden Israelites in exile, and pro-pacifistic texts, explicitly and from first-hand account stating the effects of war on the losing party. Whatever their agenda, these first texts about war in the Jewish tradition reflect the reality of a people disabused of their political power.

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[389] "Written between 525 and 375 BCE—depending on whether the Books of Ezra and Nehemiah belong to the same work—Chronicles repeats large parts of Samuel and Kings to which they add some fresh information and much additional interpretation. Chronicles cite many sources on the kings and prophets, but the outcome is a religiously edifying work that must be used cautiously for reconstructing history." Gottwald, 301-302.

[390] "...The Bulk of Numbers was composed of P material, especially Numbers 1-10 and 26-36. This P material originated after the exile of Judah to Babylon in 587 B.C." Alexander and Baker, 613.

[391] "While we will most likely never be able to provide a specific date for Deuteronomy, I believe everything in the work points to a postexilic composition. As Davies and others suggest, this is not a work written during a strong monarchy or an entrenched priestly caste undergoing a reformation; this is a document written as an anachronistic memoir, justifying a hoped for, future-oriented reform. More than anything else, this is a generative document, one designed to provide a culture with room for growth and tools for survival." David H. Aaron, *Etched in Stone: The Emergence of the Decalogue* (New York: T&T Clark, 2006), 162,

Historical Context for the Writings About War in the Rabbinic Period

The period between the fall of the First Temple in 586 B.C.E. and the destruction of the Second Temple in 70 C.E. was tumultuous at best for the Israelite inhabitants of Eretz Israel. While Cyrus restored the Israelites exiled to Babylonia to their homeland and permitted the rebuilding of the Temple when he captured Babylon for the Persian Empire in 538 B.C.E., life in Eretz Israel was far from desirable:

> Until the latter part of the fourth century BCE, Palestine fell within the sphere of influence of the great eastern empires (Egypt, Babylonia and Persia). Its political history was shaped by the balance of forces that determined the rise or fall of those powers.[392]

The land changed hands repeatedly, from the Babylonians to the Persians to the Greeks to the Ptolemaic Egyptians to the Seleucids, with each transition wreaking havoc on the people and the land. While the Israelites were permitted a semi-independent client kingship reporting to the supreme ruler in many of these dynasties, true political control remained out of their grasp.

These governors did succeed, however, in developing political alliances and making the most out of the times when the distant kings and emperors were distracted. Judea, as the land was now called, rose and fell based on the political savvy of the puppet-ruler, perhaps culminating in the Jewish theocracy allowed to develop under the Seleucids. The Hasmonean Dynasty even formed a small army "to protect the kingdom and to realize their plans for conquest."[393]

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[392] Menachem Stern, "The Period of the Second Temple" in *A History of the Jewish People*, ed. H.H. Ben-Sasson (Cambridge: Harvard University Press, 2002), 185.

[393] Ibid., 230.

The writings about war preserved in the First Books of Maccabees are believed to date to this transitory period in which the Jewish people had a relevant fighting force. Jews briefly tasted once again the power of self-determination, only to have it stripped away in short order by the Romans.

The final crushing blow dealt to the Jews in Judea came with the failed revolt ending with the destruction of Jerusalem in 70 C.E.:

> The failure of the Jewish revolt against Rome (66-73/4CE) brought about a comprehensive transformation of life in Palestine: the old political system was replaced by direct Roman rule, the Roman army became a permanent presence, the size of the population and the ration of Jews to pagans changed.[394]

Eretz Israel was annexed to the Roman Empire as an imperial province, political rule transferred to a Roman governor, and the Tenth Legion stationed near what was once the city of Jerusalem. Political and legal authority was no longer in Jewish hands, and for the next several centuries very little power was given to Jewish authorities:

> ...The very fact of annexation makes it very unlikely that the Roman government in any way authorized any of the aforementioned survivors to serve as leaders of the Jews. The point of annexation was to subject the inhabitants of a province to direct Roman rule, not to continue client kingship in an altered form. In other words, the Romans are unlikely to have supported a “patriarch” (*nasi*), still less to have imposed patriarchal rule on the Jews.[395]

For now, however, the religious leaders of Judaism reconstituted and reorganized in the Galilee, attempting to figure out a new way forward without the Temple cult and waiting for Roman anger at the failed rebellion to subside. Much like the

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[394] Seth Schwartz, “Political, Social, and Economic Life in the Land of Israel, 66-c.235” in *The Cambridge History of Judaism V.4*, ed. Steven T. Katz (Cambridge: Cambridge University Press, 2006), 23.

[395] Ibid., 26.

exile to Babylonia, this partially self-imposed exile to the North reinforced exactly how powerless the Jews had become. Relations with the Roman Empire, however, eventually warmed:

> Relations with the Romans seem to have slowly improved; they probably recognized Shimon b. Gamaliel as the official representative of the Jews, while Hadrian's successor, Antoninus Pius (138-161CE), relaxed the ban on circumcision to allow the Jews to have their own sons circumcised. It remained forbidden to enter Jerusalem, as is attested by a number of mainly Christian writers, but this ban was very soon relaxed as well...[396]

The Jewish community in Eretz Israel eventually normalized into a "recognized and established religious community governed by authorized Jewish officials."[397] While the Jews were granted semi-autonomous religious and social control over their internal communal affairs, true political power, including the execution of capital punishment and the ability to raise an army, was withheld:

> The primary aim of the *Mishnah* was to enable the Torah to be put into practice in such a fashion and to such an extent as was both appropriate and possible under the changed political and social circumstances in which Judaism found itself in the second century CE. In concrete terms, this means that the *Mishnah* formulates the rabbinic view of the world and reality following the loss of the Temple and (especially after the catastrophe of the Bar Kochba revolt) in increasing cognizance of the fact that political autonomy—and thus the realization of the political mission of the Torah in the wider sense—would remain unattainable for a long time to come. The domination of Edom, the Roman world power, was unbroken and had to be accepted as a fact that one had to come to terms with.[398]

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[396] Peter Schafer, "From the Bar Kochba Revolt to the Arab Conquest of Palestine" in *The History of the Jews in Antiquity*, eds. Peter Schafer and David Chowcat (New York: Harwood Academic Publishers, 1995), 163.

[397] Schwartz, 28.

[398] Schafer, 164-165.

Firmly under Roman rule and with the foresight to recognize that Judaism would never return to its old ways, the rabbis of this time sought to adapt the sacred texts of their religion, believed then to be historically accurate, to their new socio-political situation. The fall from political strength to weakness was now complete.

Historical Context for the Writings About War in the Medieval Period

The final major period we have to examine in order to understand the historical circumstances which gave rise to the Jewish conceptions of just war is that of the Middle Ages, especially the era of Maimonides'. As a brief biography of his life and times was given in Chapter 3, here we need only take note of the general status of Jews during his time. The plight of Maimonides life was very common to Spanish Jews of the 12th century. Living as minority religious group under the political and religious rule of whomever happened to be the dominant power often created uncertain, volatile situations. In the initial years of the Almoravid dynasty there was much disruption and difficulty for the Jews, though things eventually stabilized such that the Jewish community flourished in the later years of Almoravid rule. Under the Almohads, a competing Muslim group that took over in the middle of the 12th century, the religious and social freedoms previously granted the Jews were stripped away:

> According to the account of R. Abraham ibn Daud, a contemporary chronicler, the Jews fled from the Almohades *en masse* and under difficult conditions. Some Jews turned to the Christians 'and sold themselves to help them flee from the lands of Ishmael, while others fled naked and barefoot'.[399]

[399] H.H. Ben-Sasson, "The Middle Ages" in *A History of the Jewish People*, ed. H.H. Ben-Sasson (Cambridge: Harvard University Press, 2002), 467.

Choosing to escape the persecutions that often accompanied shifts in the ruling powers, Maimonides fled to the Moroccan city of Fez. Religious persecution here was not significantly different than it was across Europe, and after only five years of relative calm his family again had to move; Jews attempting to escape the perils of powerlessness had to scatter quite far and wide. Some chose to travel north to the Rhone Valley and Germany, others west to the areas of Turkey and Egypt. Each situation illustrated the degree to which the Jews were powerless, subject to the whims of the rulers under which they were living. The only encounter Jews had with war and violence in the 12th century and indeed throughout the Middle Ages was as its victims.

Nowhere was this more true than in Eretz Israel. The small Jewish communities which remained in the land did so under hostile Christian rule since the massacres of the First Crusade. Maimonides, as well as many others, recognized that comfortable and meaningful Jewish existence was not to be had in the Jews' ancestral homeland, and sought the relatively persecution-free existence of Alexandria and later Fustat (Old Cairo). This is not to say that in these places the Jews enjoyed any significant level of autonomy or political self-rule, only that it was more comfortable to be a minority group there than in many other places. The Jews, as was true of every period since the early monarchy, remained nearly powerless politically.

Writings about just war in Jewish tradition until the most recent era have certainly reflected this historical situation. The Jewish communities from which we have texts pertaining to morality and ethics in war experienced armed conflict

in a much different way than their Christian contemporaries. Lacking self-rule and the ability to marshall military forces, Jewish theologians and philosophers had little reason to believe their guidance would be heeded by the political powers and did not take up concerns of just war in earnest:

> Naturally enough, questions of war and peace occupy relatively little space in the literature of *halakhah* and Jewish religious thought. Exiled from their land and ousted from sovereignty, the Jews for the most part regarded their national wars as hypothetical, associated with the biblical past or messianic future, and Jewish sages were called upon primarily to deal with real-life questions and to provide spiritual guidance.[400]

When Jewish scholars did speak of war, however, they did so from the vantage point of those subject to war rather than those propagating the violence. The Jewish just war theory reflects the reality of falling from political strength to weakness and is accordingly more restrictive of war than the Christian tradition, which reflects the rise from weakness to power. We see in the Jewish tradition repeated attempts to limit war and its excesses in every period in which war is mentioned, including the Hebrew Bible. While pro-militaristic passages related to conquest of the land and divine commands to engage in war are certainly present, they are now seen as representing the theological understandings of the texts' authors and not as actual historical events. This does nothing to change the fact that Jewish figures until the most recent of days considered these events to have happened at God's behest; on the contrary, it makes the minimization of war in classical Jewish sources all the more profound.

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[400] Aviezer Ravitsky, "'Prohibited Wars' in Jewish Religious Law," *Meorot: A Forum of Modern Orthodox Discourse 6:1* (2006): Ravitsky 3.

While the development of Jewish thought on just war takes a more restrictive course than that of Christianity, it is important to note that both (and indeed all) just war theories seek to limit the application of violence and view war only as a necessary evil. War, which causes catastrophic damage to both peoples and entire societies, is sometimes still preferable to not engaging in violent conflict: "Judaism recognized that the intelligent, restrained and moral use of counter-power is the only method by which we can neutralize evil. It affirmed that evil must be fought and not submitted to in every circumstance."[401] This is perhaps most easily understood when a nation or people is facing destruction, as was true of the Jews in World War II. Whatever the circumstances leading to the Nazi regime, to fail to act on behalf of the conquered nations or on behalf of the peoples facing extermination would have been to succumb to a great evil than engaging in war.

Thus while the Jewish tradition has sought to minimize the excesses of warfare, it is not generally understood as pacifistic: "It must be affirmed that Judaism rejected total pacifism, but that it believed strongly in pragmatic pacifism as a higher morally more noteworthy religious position."[402] Choosing to refrain from violence in certain applications is a preferred religious and moral position, although this is not true for each and every case. Stated even more succinctly,

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[401] Maurice Lamm, "After the War—Another Look at Pacifism and Selective Conscientious Objection (SCO)" in *Contemporary Jewish Ethics*, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1978), 235.

[402] Ibid., 238.

"theological pacifism has no place in the Jewish tradition."[403] While peace is the highest virtue and the desired state of affairs, there is a recognition that "violence in the service of justice is not to be abhorred within the Jewish tradition."[404]

Given the intermingling between the Church and the state from the time of Constantine forward, it is little surprise that moral and ethical considerations of the Church should overlap with those of the nation-state and be used to guide political decisions. The same cannot be said about the Jewish understandings of just war. Composed under much different historical circumstances and socio-political constraints than the parallel Christian tradition, the Jewish understanding of a just war from antiquity until the most recent of days has been divorced from the daily practical concerns of actual conflict and isolated from Augustinian thought. It is for precisely these reasons, however, that Jewish notions of just war can serve as a source for updating certain aspects of Christian or Western just war tradition.

Closer to Just: A Jewish Update to Christian Just War Theory

Jus ad Bellum

As shown in Chapter 2, the Jewish tradition of just war delineates different categories of war that may be considered just. The first category, *milḥemet mitzvah* or war believed to be commanded by God for a religious cause, was so

[403] Michael J. Broyde, "Fighting the War and the Peace: Battlefield Ethics, Peace Talks, Treaties, and Pacifism in the Jewish Tradition" in *War and Its Discontents: Pacifism and Quietism in the Abrahamic Traditions*, ed. J. Patout Burns (Washington DC: Georgetown University Press, 1996), 19.

[404] Broyde, *Just Wars, Just Battles, and Just Conduct in Jewish Law*, 30.

far limited in the rabbinic mind as to become practically extinct.[405] The remaining two categories, *milḥemet ḥovah* and *milḥemet reshut*, obligatory wars and optional or discretionary wars, differed mainly in the way in which they could be pursued in both biblical and rabbinic law. With the phasing out of the religiously commanded war, the only wars in which Israelite engagement was necessary were those of defense. Waging a war for defensive purposes was the sole province of the king, who was not required to consult with any other sources before engagement: "In the case of milḥemet mitzvah, in contrast to discretionary war, the ruler has the legal prerogative to declare a state of war and to mobilize the nation to the war effort."[406] The same is not true of the discretionary war, which required a much more elaborate means of approval:

> For a war waged for a religious cause, the king need not obtain the sanction of the court. He may at any time go forth of his own accord and compel the people to go with him. But in case of an optional war, he may not lead forth the people save by a decision of the court of seventy-one.[407]

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[405] In classical rabbinical sources, this type of war was to be wrought in one of two instances: (a) Joshua's war of conquest against the seven Canaanite nations; or (b) the campaign against Amalek (Gendler, 198). The religiously commanded war mentioned in the Bible was only to be fought against Amalek, the sworn enemy of the people, or those who kept the people from their divinely promised inheritance. This type of war was included in the just war thinking of later rabbinic authorities, from the *Mishnah* to the writings of Maimonides, because of its centrality in the biblical text and to the narrative history of the people Israel. One one hand, the castigated nations were already removed from relevance and no longer posed a threat to the people Israel, and on the other, the rabbis were powerless to enact martial force. Instead of ignoring this piece of biblical legislation, the rabbis effectively minimized it to the point of irrelevancy. Of the seven nations and of the Amalekites it was suggested that they were so intermingled within other groups that they were indistinguishable and that their very memory perished. By removing the relevance of these nations, the rabbis removed the necessary participation of the people in divinely commanded war, thus restricting one of the situations in which war could be considered just in the Jewish tradition.

[406] Inbar, 92.

[407] Maimonides, *Kings and Wars*, 5:2.

Proper authority for declaring and waging a defensive war, one of "clear and immediate defense against an attack already launched", belongs to the king alone. Any other type of war, including those that are pre-emptive and offensive, required an expansion of proper authority in the rabbinic world view. The king alone was not permitted to make the decision in these cases and had to consult the wider community, including the priests, the *Urim* and *Thummim*, and the *Sanhedrin*:

> The process of ratifying the king's decision to go to war is rather lengthy. The people take the initiative in going to war; the monarch is also involved, and afterward...the king's advisor. Subsequently the *Sanhedrin* is consulted as well as the *Urim* and *Tumim*—a priestly device for obtaining oracles….The decision making...is quite decentralized.[408]

Rabbi David Saperstein noted that expansion of proper authority based on the type of war is not currently found in Christian just war theory:

> Saperstein pointed out that for Christians the notion of right authority is one of the least defined, most amorphous, of the criteria. In the Jewish tradition, because it is a tradition of laws, there is a greater clarity on this point. Most Jewish interpreters believe that in the case of a preemptive war or an offensive war—that is, one not fought strictly in self-defense—the supreme council of Jews, the *Sanhedrin*, had to be involved in making the decision. Such a decision could not be left to the executive alone.[409]

The *Sanhedrin*, the council of religious sages that acted as the legislative and judicial body for the people Israel, was to have say in whether the people could go to war in all cases that were not strictly defensive. In this way the *Sanhedrin* served as a check on the king's authority and the protector of the moral norms of

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[408] Inbar, 92-93.

[409] Smock, 15.

society. It is in this expansion of authority necessary for the waging all but purely defensive wars that we find the first Jewish update to Christian just war theory. For a wars of pre-emption or aggression to be just, a larger moral consensus is needed beyond that of the supreme leader of the instigating nation or party.

Saperstein considers the United States Congress to be the equivalent of the *Sanhedrin* with regard to the expanded proper authority to authorize war: "The *Sanhedrin* was part representative of the people, part legislative body, part judicial body, and part protector of society's moral norms. Its closest American equivalent is the Congress."[410] A war authorized by the appropriate legislative body instead of one supreme ruler would function as a check on the absolute power of an individual to declare war, presumably restricting a move to war taken in haste or out of impure motivations. A war authorized by the member countries of the North Atlantic Treaty Organization (NATO) would likewise increase the likelihood of justice when going to war, as a greater coalition of national interests would provide a check not only against just one ruler but also against only one nation. So, too, would authorization by the United Nations, following the vote of the many religiously and culturally disparate member nation-states, provide an even greater check on proper authority. In the increasingly global community in which we live, we might generalize and say that the larger the consensus supporting military action, the greater the chance of that action being just. This is not to say that numbers alone guarantee that true justice is obtained, for this is

[410] Ibid., 15-16.

most certainly not the case.[411] The point is that the larger and more diverse the authorizing body, the greater the likelihood of justice in war.

The United Nations, "an international organization founded in 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights,"[412] created a political structure not present in Saint Augustine's world-view. The UN, like any treaty organization or collection of states which demand a selective loss of sovereignty in favor of a greater collective good, provides a challenge to the notion that an individual ruler or state is the ultimate and proper authority when making decisions about the justice of war. The blueprint for an expansion of proper authority to include these modern structures exists within the Jewish just war theory and serves as the first possible update to Christian just war theory.

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[411] An example can be found in the 1994 Rwandan genocide: "The UN Security Council, admittedly, did not authorize any intervention in Rwanda beyond an observer force. But this was so because none of the major powers—the permanent members of the Council—thought they had any national interest in doing so. The Council also decided to interpret its mandate very narrowly, contending that its charge to look after interstate peace and security would not permit it to rule and intervene in cases of intrastate conflict or war. But this was less principled and more ad hoc than it might originally seem, especially given the fact that in 1993 the Security Council authorized intervention in Somalia, despite the fact that no demonstrable cross-border security issue was involved. So, it seems that the lack of UN Security Council authorization would not be an insurmountable obstacle to the moral case being made here for intervention….In fact, we might say that it was precisely the lack of UN action that would have made purely domestic authorization in the would-be intervenor, for instance the United States, the appropriate site for obtaining proper authority." Brian Orend, *War and International Justice: A Kantian Perspective* (Ontario, Wilfrid Laurier University Press, 2000), 208-209.

[412] "UN at a Glance," accessed January 21, 2011, http://www.un.org/en/aboutun/index.shtml.

Jus in Bello

A second update to Christian just war theory is derived from the concern for non-combatants in the Jewish tradition. As we have mentioned in the preceding section, historical Jewish statements about just war inevitably represent the reality of falling from a position of political strength to one of political weakness. For the vast majority of armed conflicts faced throughout the history of the Jewish people, Jews have been the victims of violence and not the perpetrators. This historical reality has led to a pronounced sensitivity towards the needs of the civilian, non-combatant population. While included in Christian just war theory as the *jus in bello* principle of discrimination, the most serious challenges to modern conceptions of just war theory arise from the application, or lack thereof, of this principle. The overwhelming centrality of the need to protect the non-combatant in Jewish just war thinking lends itself to a refocusing, if not a re-visioning, of this extant Christian principle all too often jeopardized by military expedience.

Maimonides, writing in the 12th century, spent his early life fleeing from persecution. It is of little surprise, then, that we find in his writings the most restrictive of comments about discrimination between combatants and non-combatants, even to the exclusion of strategic military sense:

> Why shouldn't the victims of warfare construct their own case law, their own account of injuries and suffering that should never have been inflicted? There is one wonderful example of this sort of thing, where Maimonides, working from a *midrashic* text and speaking for generations of refugees, proposes a novel law of siege warfare: a

> city, he says, can only be surrounded on three sides—so that the civilian inhabitants can flee.[413]

To quote Maimonides directly, “When siege is laid to a city for the purpose of capture, it may not be surrounded on all four sides but only on three in order to give an opportunity for escape to whose who would flee to save their lives.”[414] In this view, the siege of a city must allow a means of escape for those who wish to flee, often assumed to be the civilian population, even at the cost of military victory:

> Of course, a city surrounded on only three sides is not in fact surrounded. If people can leave, then the food supply inside the city can be stretched out, perhaps indefinitely; or other people can enter, bringing supplies and reinforcements. It is hard to see how the city could ever be taken given this rule, which seems clearly designed for the sake of the inhabitants, not of the army outside, though this is ostensibly a Jewish army….It is enemy civilians who are treated kindly here, for the ordinary or four-sided siege is a war against civilians.[415]

If this rule were ever to be followed, it seems apparent that siege warfare would need to be abandoned, and thus it constitutes a most powerful statement about the need to protect the lives of non-combatants and a “radical alternative to the standard version of international siege law.”[416] The civilian was to be protected at all costs.

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[413] Michael Walzer, “The Ethics of Warfare in the Jewish Tradition” (Joseph S. Gruss Lecture, the Tikvah Center for Law and Jewish Civilization, New York, Fall 2006), 8

[414] Maimonides, *Kings and War*, 6:7.

[415] Michael Walzer, *Law, Politics, and Morality in Judaism* (Princeton NJ: Princeton University Press, 2006), 163.

[416] Ibid.

This overriding desire to protect the civilian population, even at the cost of military success, is not taken for granted today. Especially in the case of asymmetrical conflict, the status of the civilian as non-combatant becomes questionable:

> In principle, we generally have more compassion for enemy civilians than the soldiers they support. Caught up in the machinations of politicians, the civilian population is unthreatening and deserves protection as long as civilians sit on the sidelines while armies fight it out. In reality, however, civilians are not always so innocent. Enemy civilians do not sit quietly on the sidelines. Instead, they often take an active interest in the goings-on while providing succor to their soldiers who are fighting to kill.[417]

Civilians are generally assumed to be non-combatants, protected by the laws of war derived from Christian just war theory. To target them for attack would be unjust. Yet more and more civilians are seen blurring the line of the non-combatant, taking more and more active roles in the fighting. The point at which they cross the line is a major challenge to Christian just war theory, a question that is "particularly pressing in asymmetric wars where there are few unambiguous military targets to begin with."[418]

The response offered by traditional Jewish just war thinking seems to be that which would frustrate the military strategist: one must always error on the side of protecting the possibly innocent, for the civilian is to be protected even at the expense of victory. This overwhelming emphasis is a radicalized version of the Christian just war principle of discrimination and thus a second source of update to that tradition.

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[417] Gross, 23.

[418] Ibid.

Jus post Bellum

The third and most substantial update that Jewish just war theory can offer its Christian counterpart derives initially from the conceptions of justice in war found in the Book of Deuteronomy. Among the laws relating to how the Israelites were to engage in battle and deal with the conquered peoples we find a law which at first glance relates to environmentalism:

> When in your war against a city you have to besiege it a long time in order to capture it, you must not destroy its trees, wielding the ax against them. You may eat of them, but you must not cut them down. Are trees of the field human to withdraw before you into the besieged city? Only trees that you know do not yield food may be destroyed; you may cut them down for constructing siegeworks against the city that is waging war on you, until it has been reduced.[419]

The people Israel, when laying siege to a city, were forbidden to cut down the fruit-bearing trees. No rationale is offered for this prohibition, although many seem to fit. From a purely practical perspective, this prohibition against destroying the trees capable of offering a life-sustaining source of food is in the self-interest of the conquering army. Following the successful capture of the city, the same fruit-bearing tress which provided the enemy population with sustenance would yield the same fruits for the Israelites. More immediately, the fruit trees would extend the resources of the attacking army during times of a protracted siege.

Maimonides, writing some 1,500 or more years after the composition of Deuteronomy, attempts to explain the text and in doing so expands that which is

[419] Deuteronomy 20:19-20.

forbidden. In Chapter 6, Halakhah 8 of *Kings and Wars*, Maimonides proposes that:

> It is forbidden to cut down fruit-bearing trees outside a (besieged) city, nor may a water channel be deflected from them so that they wither, as it is said: Thou shalt not destroy the trees thereof (Deuteronomy 20:19). Whoever cuts down a fruit-bearing tree is flogged. This penalty is imposed not only for cutting it down during a siege; whenever a fruit-yielding tree is cut down with destructive intent, flogging is incurred. It may be cut down, however, if it causes damage to other trees or to a field belonging to another man or if its value for other purposes is greater (than that of the fruit it produces). The Law forbids only wanton destruction.

Wanton destruction of the fruit-bearing tree is prohibited, as is the destruction of the water channel which provides support for the tree. Just as the prohibition against diversion of the water channel is good for the tree, so, too, is it good for both the besieged residents of the city and its future occupants. This is supported by Chapter 6, Halakhah 10, which labels as transgressing the prohibition against wanton destruction anyone who "tears clothes, demolishes a building, stops up a spring, or destroys articles of food with destructive intent." The notion of preserving those systems which support life is important not only as a matter of just conduct in war but also for the rebuilding and normalizing life after war. A just end to war, *jus post bellum*, is a major new category for the organization of just war principles.

Jus post bellum seeks a secure and lasting peace: "It concerns the propriety of conduct during the termination phase of war: the lead-up to, and immediate aftermath of, signing a peace treaty which brings the war in question

to an end."[420] It also seeks to develop a set of standards for the compensation owed by the failed aggressor and to stipulate what is necessary in terms of rehabilitation.

Unfortunately this major categorization of just war principles is extremely recent in its development and has been largely ignored by the Christian just war theory:

> Just war theorists have largely ignored *jus post bellum*. Augustine suggested that wars should end in ways that promote a "secure peace," but he was far more preoccupied with questions about the just resort to violence and whether the Christian, as an individual, could morally participate in war. Similarly, Aquinas focused on criteria for justly going to war, although he points out that punishment of evildoers is commensurate with just war.[421]

The same is true for even the most influential contemporary just war scholars: "Michael Walzer's influential *Just and Unjust Wars* says little on the topic. James Turner Johnson's multiple histories of the just war tradition are [also] largely mute on *jus post bellum*…"[422] This is most unfortunate, because a just end to war should be seen as equally important to both just cause and just action: "Just as a war may be begun justly, but then fought unjustly, it stands to reason that a way may be begun justly, and fought justly, but then end with a set of unjust settlement terms. To block this, a set of *jus post bellum* norms ought to be

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[420] Brian Orend, *Michael Walzer on War and Justice* (Montreal: McGill-Queen's University Press, 2001) 135.

[421] Eric Patterson, "Jus Post Bellum and International Conflict: Order, Justice, and Reconciliation" in *Rethinking the Just War Tradition*, eds. Brough, Lango, and van der Linden (Albany NY: State University of New York Press, 2007), 39.

[422] Ibid.

constructed."[423] The notion of *jus post bellum*, then, seeks to include all parties to a conflict in the development of a lasting peace.

The concern placed upon the existing infrastructure shown in the Jewish tradition, shown specifically with relation to the trees and other life-support structures in the Book of Deuteronomy and the writings of Maimonides but ostensibly pertaining to all such structures upon which civilians depend, provides a strong basis upon which to build the *jus post bellum* category of just war principles. The Jewish tradition, reflecting the reality of a fall from political strength to weakness, shows special concern for the needs of the oppressed and a moral duty to protect those who are without power. It is the lessons learned throughout history that have made the Jewish tradition an especially fertile resource when looking for updates to Christian and Western just war tradition.

[423] Orend, 135.

Conclusions

The Western just war tradition remains the foundation for how we conceptualize a more just war. Its ability to integrate our moral and ethical concerns with the realities of war and violence blends the realities of this imperfect world with notions of the ideal world in which we would like to live. From furnishing the principles that offer practical guidance on how a just war must be initiated and conducted to supplying the very vocabulary with which we talk about war in the modern era, Western just war tradition is indispensable to modern socio-political discourse.

In the course of this study, we have shown that there is a direct connection between Western just war tradition as we know it and the just war writings of the Church Father Aurelius Augustine. Augustine, who combined the sparse and loosely connected statements about just war, the building blocks of just war thinking, found in the writings of Cicero, the earliest Church Fathers, and Ambrose into a systematic, integrated whole, is rightly known as the father of Christian just war theory. His principles and formulations of the just war made clear that though war was a necessary evil, the waging of war need not be divorced from the highest aspirations of religion.

Though a marked shift from the pacifistic strains present in early Christianity, Augustine's just war ethic was not created *ex nihilo* but drew upon militaristic understandings of both the Hebrew and Christian Bibles. With the rise and subsequent conversion of Constantine came a conflation of matters of the Church and of the State, and both Christian soldiers serving in the Roman army

and the Roman Emperors looked to Augustine's conception of the just war for guidance on matters of *jus ad bellum* and *jus in bello*, the justice of going to war and justice in war, respectively.

The Christian just war theory espoused by Augustine continued to develop through the Middle Ages in the writings of Thomas Aquinas and Gratian, two scholars who relied heavily on the foundations laid by Augustine and who quoted him extensively in their works. Through the writings of Vitoria and Grotius, Augustine's just war theory then became the basis for international law, including the modern conventions regarding war upheld today. Augustine, then, is not only the father of Christian just war theory but also just war tradition in the West.

Despite, and perhaps owing to, this antiquity, Western just war tradition is not without faults. The principles derived from many centuries of thinking about just war, including proper authority, proportionality, and discrimination, face grave challenges instigated by constantly changing technology and global realities. These challenges, despite their potential to invalidate the just war tradition, instead underscore the importance of a comprehensive moral theory which seeks to integrate human ideals with our objectionable but sometimes necessary actions.

One fertile source for updates to the Western just war tradition in response to these challenges came from historical Jewish understandings of morality and ethics in war. As shown in this study, Jewish formulations of just war thinking reflect the historical reality of falling from political strength to weakness, in contradistinction to the development of Christian just war theory, which reflects

the rise from weakness to power. Attempts to limit war and its excesses are found in every period in which war is mentioned in the Jewish tradition, including the texts of the Hebrew Bible, reflecting the authors' historical circumstances and the war-weariness of a people continually on the receiving end of violent actions.

Maimonides, writing in the 12th century, offered the most comprehensive, systematic treatment of just war in the Jewish tradition. While the purpose of his *magnum opus*, the *Mishneh Torah*, was to simplify and make accessible the laws of Jewish tradition, Maimonides' editorial hand can be seen at work when relating his conceptions of a more just war. Influenced by his own life experiences and the historical circumstances that had befallen the Jewish people since the early biblical period, Maimonides' expansions and modifications of Jewish just war thinking were considerably more restrictive than in those found in the parallel Christian theory in his time.

Maimonides' codifications of the Deuteronomic regulations concerning siege warfare and the biblical conceptions of proper authority, along with his own expansion of these ideas, create a just war ethic—far removed from the influence of Augustine—that can help the Western just war tradition respond to its challenges. Historical Jewish just war thinking offers both a blueprint for the expansion of proper authority to include the modern international organizations not conceived of in Augustine's day and a re-visioning of the need to protect the non-combatant population. In addition to offering theoretical improvements to the categories of *jus ad bellum* and *jus in bello*, Jewish just war thinking also

provides a historical foundation for consideration of the relatively new category of just war thought, namely, *jus post bellum*.

Numerous questions have arisen in the course of this study that are worthy of further consideration. First, advances in biblical criticism have opened new doors to our understanding of statements about war in the Hebrew Bible. The Books of Judges and Chronicles, long understood to be the duly recorded militaristic history of the Israelite people, may now be seen as stunning critiques of war and violence in Israelite society. The extent to which this might alter Jewish understandings of war and peace is an important area for future study. Second, a significant period of Jewish history, from Maimonides' time until the contemporary period, was left unexplored in this thesis. Any further attempt to offer improvements to Western just war tradition from the Jewish religion would benefit from the concerns and scholarship of this period. Finally, and perhaps most importantly, this thesis does not take into account the changes to Jewish thinking about just war that has accompanied the formation and defense of the modern State of Israel. The recent explosion of just war thinking with regard to the Israeli Defense Forces and the Jewish rise to political power and self-determination in Israel provides material for a many a future thesis.

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