

# Classical Just War Theory: a Critical View

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UUM QSAR, march 23<sup>rd</sup> 2003, BBC World news in Live ::

British troops are stopped by a pocket of resistance in a small village surrounding the town. Iraqi irregulars are fighting in civilians clothes stopping the advance of elements of the British army like in classic guerrilla war. A tank tries to locate the enemy. Some unreliable shots with smoke and dust follow. Every body is waiting protecting themselves against Snipers. Why British troops are loosing there time with such a pocket of resistance? Why not to burn the village with Napalm as it was usual during the Vietnam war and go ahead? This were the concept of "just war" enters the scene. Western armies and governments are becoming more sensitive to the rhetoric of "jus in Bello" as well as "Jus ad Bellum" under the pressure of their respective public opinion. As it is well known since D.Hume, ultimately governments have nothing to support them but opinion.

The theory of the "just" war deals with the justification of the war (*jus ad bellum*) and how it must be fought (*jus in bello*) to respect the moral principles which govern our individual or collective actions. It is thus about a **moral reflection on the goals and the means of the war** starting from an ethical vision of the human interactions.

For example, were the interventions in Vietnam, Kosovo, Panama, Ivory Cost, Afghanistan or Iraq in 1991 justified, or more exactly, were they "just" interventions? If the war against Iraq is a just war, how must this war be fought? What is the difference between the war against the Iraqi government and the war against the Islamic Fundamentalist combatants? Why the Israeli raids into the territories occupied by the Palestinians are justified?

In the last century, with the development of nuclear weapons and the interventions in Vietnam, Panama, Kosovo or in the Persian Gulf, this theory of the just right war knew a revival, thanks to the work of Michael Walzer<sup>1</sup>. The language of "the theory of the just war" spread in the public debates. M. Walzer in the foreword of the second edition of his book mentions that the intervention in Panama was baptized "Operation Just Cause" As America attacks Iraq, at the times we are writing this paper, we should reconsider this theory. As in fact, all those people who opposed the war use the classical doctrine of "just war"<sup>2</sup> but those who are in favor of it do the same!

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<sup>1</sup> M.Walzer 1977, *Just and Unjust Wars*, Basic Books

<sup>2</sup> For example Jimmy Carter, the 39th president of the United States, chairman of the Carter Center in Atlanta and winner of the 2002 Nobel Peace Prize uses clearly such an Augustine's doctrine .See the New

This theory of the just war has a long history. Without going back to the Bible, nor to Aristotle or Cicero, we can say that St. Augustine and then St. Thomas Aquinas were the first who assessed the just war theory. He discusses not only the justification of the war but also the types of behavior to be adopted in such circumstances. The arguments of St. Thomas Aquinas<sup>3</sup> will become a model for the scholastics and the lawyers. The most important are: Francisco de Vitoria, Suarez, then Grotius and Pufendorf. It can be summarized in the following way.

### **The Classical Doctrine of Just war**

The "jus ad bellum" implies a "just" cause (to prevent a criminal government from harming and invading another people, or to prevent a politician to do war for his personal ambition, to protect the life of the innocents and to protect the basic human rights) to wage war. The theologians in fact insist more on "unjust" war. Are unjust the wars for territorial expansion or for the personal ambitions of the politicians. This "just" cause must be **declared** "just" by a **legitimate authority** responsible for the international public order and not by some individuals, States or private groups, (the UN Security Council). Those who wage war must have "**just**" intentions (for them the outcome of the war must be peace and nothing else), all the other peaceful alternatives to solve the conflict (diplomacy) must be exhausted, war is an **action of last resort**. They must have **reasonable chances to win** (short war against a weaker adversary). The "jus in bello" implies rules of behavior during the war which respect the two following principles: **discrimination** and **proportionality**. Armies **use means proportionate to the ends** (without using the atomic weapon). This principle of proportionality implies that the collateral effects of violence and its direct effects in terms of destruction of physical goods or human lives are minimized. The idea is that the battle must stop before becoming a massacre. **Discrimination** means the combatants are separated from the non-combatants like the innocent people, civilians, women, children, prisoners, etc.. The "jus in bello" requires that **the participants at the war are responsible for their acts**. They cannot kill civilians or combatants who surrender (Geneva convention, the Nuremberg Court of Justice, establishment of an international Court of Justice). It is striking to notice that the recent wars, the one which is rage in the Persian Gulf today or the wars to come seem to satisfy these requirements enacted by the Middle Age theologians. From where the interest of a reflection on the topicality of the Christian and classic concept of just war. The following table 1 resume this doctrine.

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York Times, on the 10 th March 2003

<sup>3</sup> Saint Thomas D'Aquin, *La Somme Théologique*, 1266-1273.

Table 1

Classical doctrine of just war		Content
<i>Jus ad Bellum</i>	<b>Juste cause</b>	Are unjust the wars for territorial expansion or for the personal ambitions of the politicians.
	<b>Legitimate authority</b>	In the hands of politicians, states or international organizations.
	<b>Integrity of intentions</b>	No underlying private interests
	<b>Action as a last resort</b>	Diplomacy
	<b>Reasonable chances to win</b>	We do not wage war against a state if we know that we will lose this war which means : prudence
<i>Jus in Bello</i>	<b>Discrimination</b>	Combatants, non combatants,
	<b>Proportionality</b>	Proportionality in the response compared to the attack
	<b>Responsibility of the combatants</b>	Responsibility of those who command

This is this doctrine we want to challenge. First of all we will cast a critical look at the classical doctrine. Second we will develop the libertarian view on this concept of "just war". Finally we will end the paper with some concluding comments.

### **A critical view on the classical doctrine of just war**

It is not so easy to define the concept of a just cause to wage war. There are huge differences between the invasion of a territory, Kuwait, by a public and national Iraqi army as in the first Gulf war and the attack of private armed bands against the Twin Towers. In the first case it is a question of liberating a territory invaded by an attacker, in the other case it is a question of chasing the attackers to punish them or to prevent them from harming again. If the cause seems just, we cannot say the same thing about the way of waging the war. A war can be "just" but the way of waging it might not be just. But

does a just cause stop at the destruction of goods or at the invasion of a territory? Do all the wars become "just" if the concept of good is extended to non-tangible goods like the honor, the feeling of being threatened, the feeling of social injustice or the religious or national ideals? When the Islamic Fundamentalists speak about the "holy" war (Jihad), do they wage war to recover a lost honor or to avenge an "injustice" or to impose their sovereignty or their lifestyle to the rest of the world? When the Americans start a military campaign to punish a recalcitrant, who refuses to render the weapons hidden in his country because the Americans consider that the possession of these weapons is a threat for them, do they wage a just war or do they simply fight to preserve their military quasi-monopoly on the rest of the world which could be endangered by the dissemination of nuclear weapons?<sup>4</sup>

It seems that this Christian and classical doctrine **rejects the wars that aim at increasing a territory or satisfying a political ambition**. But it does not reject a war aiming at preserving basic human rights. "*If the offenses against human rights are egregious and the society does not respond to the imposition of sanctions, such an intervention in the defense of human rights would be acceptable and called for*" wrote J. Rawls<sup>5</sup> who follows this traditional doctrine. Unlike the U.S. government, the few French who support the U.S. military intervention today, say that a military intervention for restoring basic individual rights of the people in Iraq is "acceptable and called for"<sup>6</sup>. But to accept the principle of humanitarian intervention to restore basic human rights is not without flaws. First you have to define what is a basic human right, then, if a government violates these rights, why the very concerned peoples do not disobey or revolt? Do we have to wait for a demand of these oppressed peoples, and who will be the real representative of the resistance? In 1942 under the occupation of the France, who was the main representative of the French resistance: the partisans of de Gaulle or the French communists? How to interpret the fact that these oppressed peoples do not emigrate neither enter in a revolt or in massive civil disobedience? In 1956 in Budapest when Hungarians revolt themselves against its own government who help them in the West when the Russians enter the country? If the people from Corsica enter a revolt because they feel oppressed by the central authority of Paris and ask the protection of the British Army does the President of France will accept such a "humanitarian intervention" from the British? Does one have to intervene militarily to save individuals or populations, who didn't ask anything from you, by simple humanitarian concern? Can one practise at the military level the assistance to people in danger which ironically is imposed on the French Citizens among themselves, but not for foreign people outside the French territory!

The notion of just cause is not workable either because all the combatants on each side claim to do a "just war". For example, at first sight, the war of Bonaparte in Egypt was

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<sup>4</sup> B.Lemennicier 2003 "[\*Nuclear Weapons: Proliferation or Monopoly ?\*](#)" in **PRODUCTION OF DEFENSE:PUBLIC OR PRIVATE ?** ed.H.H.Hoppe ( to be published)

<sup>5</sup> J.Rawls 1999 *The Law of Peoples*, Harvard University Press, pp. 93, footnote 6.

<sup>6</sup> See Alain Madelin, Bernard Kouchner or André Gluskman.

"unjust" because it served his personal ambitions and the wars of Adolph Hitler or Saddam Hussein were also unjust because they wanted to increase their territory. But Adolph Hitler and Saddam Hussein claimed to regain possession of their territory! And Bonaparte claimed to set the Egyptians free from the oppression of the English. What can we say when the two camps claim to wage a "just" war, as it happens right now with the Islamic fundamentalists or with Saddam Hussein and the American government? It is obvious that the person who "says" what is just or "unjust" cannot be that who starts the war.

But who (or which institution) is entitled to say that a war is "just"? The concept of **legitimate authority** that establishes what is a just cause is not very clear. Is the government of a State, expression of the popular sovereignty, the authority that must say that the cause is just (the USA at the moment) by virtue of the fact that its citizens were victims of an aggression or they feel threatened by an aggression as for Israel in 1967 and does that government has to wage a preventive war? Is the international law or an international organization as the UN, expression of a cartel of states, entitled to decide as the French President suggests it? Why not the individuals who were victims of an injustice since the politicians are only their delegates? What value should be granted to a cartel of states compared to the victims themselves?

The good intentions are not so simple to detect. When Bonaparte went in Egypt, he claimed to set the Egyptians free from the yoke of the Mamelukes and of the English, he also wanted to bring the civilization to the Egyptians. But meanwhile he took an obelisk that now is in Place de la Concorde and will be never given back.

The intentions will be judged like "good", if **there are no private interests of controlling behind the intervention**. In the public debates in Europe many journalists and politicians suspect the Americans of having "private" interests which would justify a military intervention in the Gulf. This intervention would become "unjust" because is distorted by the private interests of the American oilmen, and the rest of the world does not share these interests. This Christian argument, based on "intentions", you commit a sin even if you have only the intention to act in a bad way, has no value. If an individual is raping your girlfriend and you cannot intervene to protect her because you have a private interest to marry her, your girlfriend will look at you differently. If the American intervention is mainly because they want to control oil fields (oilfields that have been stolen to private owners by the local authorities through nationalization), can we let people continue to be oppressed just because our intentions are not altruistic?

The idea to use war as a last resort action shows clearly that diplomacy has to be prominent. But in that case bargaining and bad compromises will be the outcome. And how can we bargain or made concessions to a criminal government? No government is doing that with its own criminals!

The last point-to do war - only if there is a reasonable chance to win- is contradictory with the goal : stop the violation of basic human rights or the invasion of a territory. Prudence here means impotence.

This doctrine of the just war which calls upon moral principles can be criticized not only on the difficulties of interpretation but more deeply on the four following ways.

### *Realism*

The first is that the concept of morality doesn't make any sense when wars are conducted by States men. By virtue of the monopoly of Power, concentration of this Power in the hand of a few and extension of this Power to new "territories" are the laws governing the actions of States men. Then "wars are useful for the advanced of Power"<sup>7</sup> ( wars against drug dealers, cancer, bad drivers, unemployment, pimps, religious sects, terrorists, mafia, and Saddam Hussein ). Morality is made for the ordinary men in ordinary circumstances and not for States men, who put themselves out of the law, or for emergencies. We find this point of view, i.e. to get rid of the morality when studying the wars and their justification, with people having a realistic point of view on the State, as De Jouvenel and M.Olson<sup>8</sup> do, applying the criminal metaphor to the coercive power of the State.

### *Varieties of ethical views*

The second opposition comes owing to the fact that there is a large variety of ethical points of view which are often paradoxical. For example, only the result counts for a consequentialist: the end (to win the war) justifies the means (the use of the atomic bomb). For a deontologist only the rules count, even if that means to lose the war. And even inside these two great visions of morality there are different ways of judging "good" and "wrong", and this different ways do not lead to the same precepts. Very often the authorities or the soldiers use contradictory moral principles because they do not perceive the ethical bases of the value judgments that they make. This diversity or this absence of consensus makes us doubt about the utility of a moral reflection on the war. On famous argument to justify the second war or battle against Irak is to bring "liberty" to Iraquis. A consequentialist will use the most efficient means to reach his goal : "liberty" for the citizen of Irak . But can we enforce the "liberty" of the citizen of Irak by violating the "liberty" of the American citizens? What we mean by "liberty" : political liberty (democracy), economic liberties (free trade) or personal freedom (for whom) ? But democracy is not liberty because this political regime violates individuals rights. For those people who defend a deontological conception of morality, can they accept to that the goal cannot be achieved because the means for example violates their sense of duty? If a Tyrant cannot be eliminate because to do it implies collateral damages, this means also that the tyrant continues to harm his population.

### *Individualism methodology*

The third opposition to the classical doctrine of "just war " is coming from the following question: who is the sovereign on a territory ? In fact the Classical doctrine of just war is

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<sup>7</sup> B.De Jouvenel 1948, *On Power : its Nature and the History of Its Growth*, Hutchinson & Co, London, Reprint by Liberty Fund , 1993

<sup>8</sup> M.Olson 2000, *Power and Prosperity*, Basic Books.

rooted in the concept of "collective security"; We have to go back to M.Rothbard 's argument to understand this critic.

"When one government (Irak) aggresses against another (Koweit) , it is the moral obligation for other governments of the world to band together to defend the victimized State"<sup>9</sup>. There are at least two flaws in this idea.

- 1) the entry into war on the part of all theses governments implies more taxes, that is a violation of property rights on the citizens of theses States and often collateral damages to innocent people. In that case theses States are becoming aggressors.
- 2) States men claim to "own " the territory as well as the sovereignty, and theses claims are illegitimate from the point of view of individual rights if a process of consent is not in place, which is always the case.

The analogy between State aggression and individual aggression cannot be carried too far

#### *The dynamic of coercion*

The fourth and last critic we can make to the "just war" theory is linked to coercion per se. Even if a war is just, the mean used to reach the goal, is not a private army rented by the victims or an insurance company in their name, in competition with others armies, to redress torts but a military institution with a monopoly of force on a territory. This monopoly of force has its own flaws. Theses flaws are well known. The monopoly of force reduces the level of protection at a higher taxation rate. Those who gives order are not constrained by competitors to give satisfaction to the victims. They pursue their own interests i.e. to extend and concentrate their power or to compromise and share with others States this power. As the military force get its resources from the taxation and not from a free contract, the military force can expand in number of soldiers and in weapons far above what is necessary to win a just war. As the resources are not drawn from the own pockets of the combatants but from the taxation the war last longer and is more intensive and harming than otherwise. The use of coercion to reach a goal has some other implications: one of them is important in our case. Coercion by definition means that people coerced would have made another use of its resources if violence had not been used for preventing him. Then the coerced people will try to eliminate or minimize the loss resulting (from their point of view) from the use of coercion against them (be it honest people or crooks). This leads to unexpected and side effects which often increase the problem the government faces to reach the goal. Then to face these side effects more coercion is call for. The dynamic is the following. A country A under the head of tyrant invades a country B. A coalition of other governments band together to defend B and stop the aggressor. Then to control the local tyrant after his defeat, an embargo is imposed on A. The outcome of the embargo is such that the government of country A is controlling more and more the economy and the local tyrant is reinforced in his power while the population is becoming poorer. The embargo has created some vested interests who fight against the abolition of the embargo. Then a new intervention is call for to protect the

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<sup>9</sup> M.Rothbard 1973 *For a New Liberty: the Libertarian Manifesto*, Chap. 14 Fox & W>ckle

citizens of country A against its own tyrant. This new intervention will lead to unexpected and non desirable outcomes which will imply new interventions and so on.

But today, even if these views are very true and tell us that ethical discussion is non sense in this matter, we have to study the theory of just war as moral principles are used to convince public opinion to accept all the consequences of the war (for example an increasing concentration of power in the hand of few politicians as well as an extension of their power). Therefore, we have to talk about it. The moral consideration joins the rhetoric and the persuasion because the ultimate support of any government, be it a democracy or a tyranny, is public opinion.

This recall is useful in order to understand better the contribution of the libertarian thought to this debate. The libertarian thought is in keeping with the theory of the just war and its principal merit is the coherence and the clarity in developing this theory. We will prove this in the following paragraphs.

## **Libertarian Doctrine and Theory of the “Just” War**

In a society where the individuals are free, the organisation of **the protection of individual rights is in the hands of each one** since each one has full sovereignty on himself. The organization of this protection has only one purpose: the protection of the self-ownership and of the goods an individual acquired "in a just way". For reasons of compatibility of the individual rights, this protection cannot use violence or the principle of aggression or coercion to reach its private ends. **The principle of non-aggression** or non-coercion is the base of a theory of the personal freedom and thus also of a theory of the just war.

That implies two things: on one hand the only purpose of an “offensive” war is to pick up physical goods or private territories "unjustly" appropriated by the attackers and/or the compensation for the damages caused by them. On the other hand a military organisation which respects a general principle of **non-coercion** as the possibility for each individual of ensuring his own defence as he thinks is the best for him. When this individual joins others to protect his fundamental rights, he joins a political society, and does this in the spirit of article 2 of the Declaration of the Rights of Man and of the Citizen of 1789:

*"The purpose of all political association is the preservation of the natural and inalienable rights of man. These rights are liberty, property, security and the resistance to oppression"*

This point is significant with respect to the question of knowing who must say when a war is just or not. It goes without saying that in this approach there will be neither a national government, whatever its political regime (dictatorial or democratic), nor a cartel of governments under the cover of an international bureaucracy that dictates the terms of a “just” war. When this individual has weapons or pays men-at-arms, it does it to ensure **the protection of these fundamental rights** and not to ensure the timelessness of a government in place. He accepts to die to preserve his freedom, his life or his property as the freedom, life and property of those whom he loves and not to preserve the life of the members of a particular group of individuals in power. He might even wage a “just” war

against his own government. In this vision, the victims or their entitled beneficiaries will require compensation, not in an arbitrary way but through a private system of justice. Thus, the judges or the referees will dictate what will be a "just war" and the principle which emerges from this system is the **self-defense and restitution**.

*The Principle of Self-Defense: "Jus ad bellum"*

Using the armies implies **protection against an aggression**. This aggression is characterised by a failure in the obligation to respect the fundamental rights of the individuals (for example plundering a territory which is the property or the joint ownership of the individuals who live there), by creating a measurable damage and connecting the failures to respect the obligations to the damages. The first - *the failure to respect an obligation* - must cause the second - *the damage*. This excludes the "aggressions" like the attack on the honor, the insults, and the injustices other than those implying a violation of the individual rights. That excludes the wars whose aim is to impose a spiritual, social or religious ideal. That also excludes any intervention under the only pretext that the supposed attacker would have the intention to attack others or would have dangerous weapons. **The army intervenes in self-defence, and if there is damage, it goes after the aggressors to obtain reparations.** There we have a simple and unambiguous answer to the intervention announced by the USA in Iraq in 2003 compared to that of 1991 called "desert storm" following the 1990 invasion of Kuwait by the armies of Saddam Hussein. For the moment Iraq neither "aggressed" nor caused any damage to us citizens contrary to the case of the Twin Towers.

The army's mission is simple and clear. It's a body of professionals specialised in a particular protection: **protection against the predators who would come in mass and who couldn't be stopped otherwise**. The other types of threats call upon other professionals in charge of the security and protection of the individuals' fundamental rights or to the abolition of a the state interference in the economic and social life.

The principles of self-defence and pursue of the aggressors responsible for the damage are the pillars of any military intervention. This is why the decision of a military intervention should be put **in the hands of judges and not in the hands of politicians** ready to use an army to satisfy the private interests of those who helped them to be elected and to consolidate their own political power. There is also an important difference with the theory of the just war. The "judge" or the "referee" and the insurers dictate the terms of the "just war" and the compensation. There is no difference between an ordinary crime and an aggression made by the statesmen.

This question raises another question: that of the responsibility of the politicians who start the aggression or who finance wars. They do not act by themselves but they order, give commands. Is this a full responsibility or is it partially or entirely put in the hands of those who carry out their commands? The answer is that this responsibility is entirely in the hands of those who execute the commands and not in the hands of those who give orders. Here too we have an essential difference with the theory of the just war. Those who carry out orders should be sanctioned because they are responsible for their acts and they should disobey the orders when these violate the individual rights of innocent third

parties. **Civil or military disobedience is the rule that the individuals must follow** to prevent a government from starting an "unjust" war.

*The Limits of Self-Defence: "Jus in bello"*

From the general principles, "jus ad bellum" one can pass to the practical rules of the use of the weapons, "jus in bello". As E. Mack<sup>10</sup> noticed it, things are never as simple as we would like them to be! The use of an army is never as selective as it would be wished. An army on active service is not a gun with sights. Is it acceptable to kill innocents (or to threaten to kill innocents), who have nothing to do with the conflict, to fight (or to dissuade) the aggressors?

The use of a nuclear bomb, (or the threat of using it) as of any bomb, even if the bomb was used by a "terrorist" has collateral effects on the innocents. Can one kill the Iraqi soldiers who would invade our land knowing that they were enlisted by force? Aren't they also innocent? Can one make a preventive military intervention as the United States wishes it, against the Iraqi dictator as some would have wished it, a posteriori, against Hitler's Germany? Can one sacrifice all the moral principles with the only aim of winning the war? Can one torture the aggressors, the accomplices or the innocents to obtain the information supposed to be vital for continuing the combat? Can one execute his own soldiers if they refuse to obey?

The self-defence is a response to an aggression against goods and/or people. It is a question of preventing the aggression or of pursuing the aggressor so that he repairs the damages caused to the victims.

The first moral constraint imposed by the self-defence is the **proportionality** in the response. Imagine Australia invading Tahiti. The Australians decide to act because they had enough of our nuclear tests in their sphere of influence. Can the French Army use the atomic bomb on Sydney, to protect Tahiti from the Australian invasion?

The second moral constraint imposed by the self-defence is that the response should not strike innocent persons (**discrimination principle**). The victim of an aggression cannot be held responsible for **the unforeseeable collateral effects** induced by his response but he can be held responsible if these effects are foreseeable. It is obvious that if you know that in the counterattack, you can wound or to kill somebody, an innocent, you become aggressor. The principle of self-defence applies only to the aggressors. The self-defence will be then unjustified. However, if the victim of an aggression must put in balance his life and that of an innocent or if the aggressor seeks impunity attacking in the vicinity of innocents, the decision to counterattack or not, remains in the hands of the victim. When the aggressor seeks this impunity, he takes hostage the innocents. The hostages, the innocent third parties, become victims.

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<sup>10</sup> E.Mack 1995, " Rights,Just War, and National Defense" in *Liberty for the 21<sup>st</sup> Century*, ed. T.Machan and D.Rasmussen, Rwoman & Littelfield, Inc.

But can one take an hostage in order to dissuade a possible aggressor to act or a real aggressor to continue his aggression? Who attacks whom? Can one threaten a tax inspector to poison his children so that he ceases his permanent aggressions on the wallet of the taxpayers? Can one take hostage the entire population to dissuade the terrorists to act? The answer seems clearly negative. When the Germans take hostage the French population to dissuade the resistance to act and to kill the German soldiers, their behaviour is immoral because they are the aggressors. If the French government took hostage the Moslem population to dissuade the Talibans to put bombs in the Parisian subway, the French government would be the aggressor. And if the Moslems took French hostages to release their imprisoned companions, they would behave like aggressors with regard to the population. The nuclear dissuasion resembles much to this type of dilemma. The victims - those who are taken hostages - are in a state of self-defence. Therefore, they can answer back to the aggression.

This is why the armaments, and their use, **must be selective**. These weapons must strike the aggressors as much as possible. Using nuclear dissuasion in a strategy oriented against the inhabited areas is immoral. Bombardments at high altitude too. **From this point of view, the military technology made huge progresses** because a bomb can strike a ministry in a town like Belgrade without any collateral damages.

But what is worth this ethical approach towards a predator who thinks the human beings can be treated like animals and killed as the chickens or the cows are killed in the name of protecting the consumers or the people, a race or a religious ideal or a social class? Then it seems difficult to reject a consequentialist argumentation, state the partisans of dissuasion.

The self-defence **must** be effective i.e. to lead to the desired result: **the protection of the individual rights**. And if the only way of stopping the aggressor is to take hostage the innocent thirds, must one deprive oneself of this radical instrument in the name of a certain professional ethics? The characteristic of a ethic argumentation is to prohibit the use of an instrument which, even if it is very effective, violates the self-ownership of innocents.

However, it remains to be demonstrated that nuclear (or some other type of weapons) dissuasion violates the rights of innocents. Let us return to taking hostage an individual, third party in the conflict (the children of the tax inspector or the Muscovites in nuclear strategy oriented against the inhabited areas during the cold war). The principal characteristic of dissuasion by the hostage-taking is that the victim, who seeks to be protected from the aggressor, announces that he has the **conditional intention** to kill millions of innocents, if the aggressor acts. **But to have the conditional intention to commit a crime, does not mean to commit the crime**. What is wrong, is to commit the crime, not to have the intention of doing it. When the victim, to put an end to the aggression, takes hostages innocents that the predator is very fond of and that his threat is credible, he points out to the aggressor the real opportunity cost of his act of aggression. He also points out to the hostages having a link with the aggressor that it is up to them, to discipline the aggressor with which they have links. This dissuasion is there to prevent a violation of individual rights, not to cause it or to threaten the life of the hostages. It announces in advance the price which will be required to the aggressor as compensation

for the created damage. It will be noticed that the hostages in question are not innocent third parties. They are third parties who accept predators among them or who agree to put their destiny between their hands. Therefore, there is not necessarily incompatibility between the deontologic morality and certain efficiency.

*However that indicates to us the direction of research on armaments. It is necessary to find precise weapons without collateral effects on innocents.*

It is also interesting to notice that weapons being used to neutralise the attackers, without killing them, have a significant role to play in an individualistic vision of the conflicts between States, because in a certain way the true aggressors are the governments, not the men whom they send to make war. Although the latter can desert, revolt themselves against their superiors when those order a crime, we may suppose that they are innocents in a conflict exceeding them. Weapons that would neutralise them, without killing them, have an obvious strategic interest within the framework of the self-defence, even if these soldiers must be sanctioned to have carried out orders which violate the fundamental individual rights of their victims.

#### *The non lethal weapons*

He/it exists today same a variety of non lethal weapons that the governments try to use and develops more and more. They are in general chemical biologic or hoe weapons to lasers or micro waves, acoustic or electromagnetic weapons. Peppery gas, tear-gas, smelly bombs, soporifics etc are well known of the demonstrators. The weapons to bundles lasers or micro waves he/it is less, but are developed currently by the American army. The electromagnetic weapons as the bundles lasers that blind and the micro waves that give a sensation of burns coalesce the object of research. One even tests holographic pictures. The electric truncheons are already in operational as the bullets made of rubber. The acoustic weapons makes the object of experimentation. The acoustic vibrations are used for example against the dogs, they can be he against the humans. Finally some adhesive, corrosive or weakening substances are used to prevent the displacement of some materials. The slippery mosses, let's die to birdlime, acidic modifiers of fuels, lubricating sticky constitute a panoply of useful weapons to incapacitate, the displacement of hostile troops. All these weapons stopped being the science fiction.

Even though one can only guarantee they are without risks, they don't have for finality to kill. They allow governing thus to control the demonstrators or the dangerous individuals or judged such without making burrs. Their development worries the governing because they are as easy to produce and a lot of individualistic. Whoever could buy some and so to resist the state. Imagine two minutes that every driver uses his/her/its laser beam or a slippery moss or a small cannon to birdlime to escape a policeman who wants that the drivers absolutely carry their seat belt in their car or doesn't make excess of speed, or would one go in such a world? God thank you, the state is there, he stays up.... to his/her/its monopoly. He/it will forbid the citizens soon to acquire or to carry weapons of this style.

*Back to what Kind Of Intervention Is Acceptable.*

We can finish this presentation by a flash back on "jus ad bellum". The intervention of the French Army for the most different reasons, from the human cause in Yugoslavia to the assistance given to a government which attacks its own citizens in Africa and to the participation to international police operations in Iraq, Bosnia or Kosovo, cannot be labeled as self-defense or as chasing the attacker to repair the wrong caused to French citizens. If there is no threat against French citizens and if there is no protection contract for foreigners, the intervention is quite difficult to justify. Who gives us the right to interfere into the private (or public) life of other individuals if they did not ask for our help? Even if they ask for help who gives the government the right to attack its own citizens (through the tax) to finance the protection of people who ask for help? The taxpayers disapprove the payment of compensation to sportsmen who take huge risks and who endanger the life of other persons for their own pleasure whereas they could take an insurance and call upon private protection. Is this really different for the populations oppressed by their own government and which call for help? Don't they have accepted in the past the dictatorship or the government who oppresses them now?

The taxpayers of the country that helps the people from another country are innocent third parties in the conflict. Thus, they are attacked by their own government and must hold out against it. According to M. Rothbard<sup>11</sup>, the only legitimate ways to resist are:

- 1) the uprising against oppression;
- 2) the assistance of private groups, including French who would like to intervene to protect the populations attacked by their own government. This assistance can take different forms: equipment, voluntary combatants, money to finance a **private army of protection** etc.

On the other hand, we can accept **to sell** military protection to foreigners. There is nothing to say if they call upon the French Army to defend them against external attackers and that they pay the costs of the military operations. A military intervention is acceptable if it is a question of protecting French citizens who are threaten by the government of the country where they live in, provided that these French citizens who live abroad pay a higher insurance premium than the French citizens who live in France since such a protection is more expensive. All the other forms of interventions do not seem acceptable in this concept of "just" war of the libertarian doctrine.

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<sup>11</sup> M.Rothbard 1982, *The Ethics of Liberty*, Atlantic Highlands,

## Concluding Comments

In this article we do not claim to tackle all the aspects of this complex subject, but to explain the liberal doctrine of the just war, to underline its outstanding features.

The following table summarizes the differences observed between the two ways of seeing the just war: the liberal doctrine and the point of view of the international authorities that put in practice the ideas of the catholic theologians. In fact the differences are outstanding both in "jus ad bellum" and "jus in bello".

	<b>Classical doctrine</b>	<b>Libertarian doctrine</b>
<b>Juste cause</b>	Are unjust the wars for territorial expansion or for the personal ambitions of the politicians.	Strict principle of self-defense and restitution.
<b>Legitimate authority</b>	In the hands of politicians, states or international organizations.	Judges, referees or victims. (Natural right of people)
<b>Integrity of intentions</b>	No underlying private interests	Crime with victims, justification of damages.
<b>Action as a last resort</b>	Diplomacy	Judgement by arbitration with appeal
<b>Reasonable chances to win</b>	We do not wage war against a state if we know that we will lose this war, principle of precaution	No restriction because the war is not waged against a state but against people who commit crimes
<b>Discrimination</b>	Combatants, non combatants,	Aggressors, non-aggressors.
<b>Proportionality</b>	Proportionality in the response and compared to the objectives	Idem plus non lethal weapons
<b>Responsibility of the combatants</b>	Responsibility of those who command	Responsibility of those who execute

Let's take for example the conflict between Israel and the Palestinians. In 1948 the first war is a war of self-defense of the Jews attacked by Arabs. But it is not a "just" war as the doctrine defines it, because the Palestinian territory under British mandate was given by an international authority whose "legitimate" authority was not legitimate for the Arabs. In addition, the claim of a Jewish State on the land of the Jewish ancestors raised

the delicate problem of restitution. The division of the territory not having been accepted by the Arabs, the two camps could put forward the "just" war. The other wars are neither "just". In 1956 and 1967 the Israeli government attacks as a preventive measure the Egyptians after the display of their army in Sinai! The war of 1973 is a defensive war and seems to be a self-defense. But in 1982, the Israelis invade the south of Lebanon and the western bank of the Jordan. They chase the militants of the PLO and occupy a territory which is not theirs. They have a policy of settling up in the occupied territories and wage war to increase their territory. According to the theory of the "just" war this war is "unjust". The authority that decides on war in Israel is not an international organization but the government of Israel. Their objective in this war is not peace but territorial expansion and political ambitions. The interventions do not follow the principle of the war "as a last resort". Paradoxically, the "jus in bello" behavior is the most respected. Discrimination between combatants and non-combatants, selectivity of strike and proportionality in striking.

From the Palestinian point of view we can reverse the facts and evoke a "just" war within the meaning of "ad bellum" and unjust within the meaning of "in bello" lack of discrimination (the innocent civilians are hit, and this is the characteristic of the terrorism) and the proportionality is not respected since bombs are used to kill "disarmed" people.

The second war of Irak starting in march 2003 has been seen by Media and European or Middle east governments as an "unjust war " wage by the neo-conservative government of the US unlike the first one. In 2003, the government of Iraq does not invade a territory, The Head of the State does not enter a war for his political ambition. Nevertheless if Saddam Hussein is really a tyrant and the Baath Party is a clone of Nazi and Fascist parties can we accept such a tyranny "à la Hitler"? An intervention in the defense of human rights would be acceptable and called for in the doctrine of Just War. As we have mention earlier in this paper, our own government force us by law to rescue people in danger. If this law applies to French people it can be apply to foreign people. Only the principle of State Sovereignty forbid this principle to become universal. So the war is not unjust in the classical doctrine of just war. It is unjust in the libertarian point of view mainly because the war does not follow from the principle of self defense or restitution initiated by individuals. The war has not been declared by a legitimate authority : a judge. Nobody in Iraq or outside Iraq declares himself as a victim of the Iraqi regime and ask the protection of the US (where is the internal Iraqi resistance?). The battle is conduct by the military force of a State not by private armies<sup>12</sup> under the impetus of victims of the Iraq government. Paradoxically the jus in Bello is just. The British and American troops follow strictly the discrimination principle and the proportionality principle. They search for the responsible of the political regime. Except they do not use yet non lethal weapons, we can argue that like the Israeli government the troops are fighting trying to minimize the collateral damages on innocents and civilians.

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<sup>12</sup> The oil companies never raise an army to recover their property right on oil fields when the Baath party nationalize these all the petroleum fields!

These examples show the difficulty in discussing morality when the politicians who have in their hands the destiny of the individuals. Here the libertarian doctrine is very different from the classical doctrine.

*" In the world that we know, each territory is dominated by a state and a certain number of States shares the surface of the Earth. There is not yet a Super State which has a monopoly of violence on the whole world. Consequently, a state "of Anarchy" prevails between the different States"* points out M. Rothbard<sup>13</sup>. Then it is interesting to emphasize that the inter-state relations are more and more subjected to the doctrine of just war as developed by the theologians and the canonists! It is striking to notice that this doctrine are far away from the libertarian doctrines even if they have a common point: the moral constraints.

It is easily understood because the libertarian doctrine is based on a principle of individual autonomy whereas the classical doctrine of the just war is based on the concept of state sovereignty. For the libertarians the main question is the control of the delegation of powers given to the politicians to deal with the usual problems (among which to decide about the war and the way of waging it). The politicians were always considered potential attackers that it is necessary to discipline for the same reasons as the potential attackers of another State. This is because of the human nature, because of the monopoly of violence that they have on a territory and because of the concentration of this monopoly in the hands of a few people. Remember what both B.de Jouvenel and M. Rothbard said:

*"Any progress of the power with regard to the society, which was carried out for the war or for any other object, gives an advantage in war."* (B. de Jouvenel)

*"It is in the war that the State carries out its real nature; it grows in power, in number and in pride, it gets an absolute control on economy and society. "* (M.Rothbard)

This decisive advantage in the concentration of power is spread in all the States "to equilibrate" the political powers in the war.

The evil is thus in the concentration of the power and of its monopoly in the hands of a few people and not in the war itself<sup>14</sup>. The only way of having peace is not to promote the theory of the just war that a state organization will have to put in practice, but to reduce the state or to change its nature, or even to remove it. The theory of the just war in the libertarian doctrine is a theory of individual protection and not of state protection. It is striking to see that the creation and the existence even of the State of Israel is at the basis of the wars and of the contemporary terrorism. This creation and existence are the

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<sup>13</sup> M.Rothbard op.cit.

<sup>14</sup> Do not forget that Democracies do not stop the concentration of power and its extension. Democracies divide power and introduce a competition for the field (e.g. for the "Imperium") which ease the concentration of power and its extension compared to a Monarchy for example see H.H.Hoppe 2001 *Democracy the God that Failed*, Transaction Publisher

product of statesmen who cannot imagine that the populations can live in peace and protect themselves by other means than the existence of a so called "Modern State".

Just war theory provides normative content for ethical arguments about the resort to and conduct of war on the assumption, distinct from realism, that morality has a place in international politics—although like realism, it assumes that war is an enduring feature of world politics. Proponents of just war theory and the practice of limited war thus sit uneasily between realists who, 6 March 2003 Vol. 1/No. 1. say that war cannot, is not, and should not be limited by moral scruples, and pacifists who view war in nearly every instance as unacceptable. The Just War theory specifies conditions for judging if it is just to go to war, and conditions for how the war should be fought. Although it was extensively developed by Christian theologians, it can be used by people of every faith and none. The aim of Just War Theory is to provide a guide to the right way for states to act in potential conflict situations. It only applies to states, and not to individuals (although an individual can use the theory to help them decide whether it is morally right to take part in a particular war). The principles of a Just War originated with classical Greek and Roman philosophers like Plato and Cicero and were added to by Christian theologians like Augustine and Thomas Aquinas. Elements. Just War Theory is the basis on which nations seek to legally and morally justify going to war. Not all nations concern themselves with such justifications (e.g. Nazi Germany.) The United States does explicitly recognize Just War Theory as criteria for engaging in war. Thus, the criteria of Just War Theory are a primary basis for discussion and debate about US war actions. The history of Just War Theory begins in the works of some important philosophers. Augustine (354-430) provides a foundation for Just War Theory in Western literature. Thomas Aquinas (1225-1274) codified Augustine's *reflecti* —“The Triumph of Just War Theory” sketches a history of the classical —“just war” tradition and the early development of Walzer’s own political thought, decisively affected by the horrors of Vietnam, which convinced him and many others that moral constraints must be imposed on warfare. Although he everywhere praises —“the critical edge” of just war theory, his theory seems much more like a spoon than a knife in view of the glaring economic realities that he incomprehensibly ignores. In fact, throughout these essays, he expresses his progressively greater tendency to support U.S. military action abroad.