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From: *How and Why to do Just War Theory (Critical Exchange)*

Ed. Cian O'Driscoll – ANU

Beyond the Killing Paradigm

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I take the central question at the heart of this debate to be a twofold one: on the one hand, to what extent can contemporary just war theory be effective as a mode of political *criticism*? And, on the other, to what extent should it be *connected* to other things as a means of grounding and activating its critical potential? I take the term “critical” here to express the hope that, perhaps among other things, a particular mode of theorizing can question and challenge the exercise of power and the strategic pursuit of partisan interests by means of that power rather than being enlisted uncritically in its service. The opposite might be characterized following Robert Cox as “problem-solving” work (1981). The worry that just war theory might just turn out in the end to be guilty of serving the interests of the powerful by helping them solve the problems posed by pursuing nefarious ends by means of violence is a deep and familiar one. Critiques abound that accuse just war theory of doing more to lend the appearance of legitimacy to wrongful violence than to put up to it a meaningful show of resistance. If just war theory is to prove itself a worthy pursuit, then it is incumbent on proponents to give us reasons to hope that it can be redeemed from such accusations.

My contribution to thinking about this consists of three thoughts. First, in and of itself, just war theory is properly seen as critically inert. What just war theorists from backgrounds as different as liberal cosmopolitanism, communitarian pluralism, Augustinian or Thomistic theology, and so on, share is a generic framework. That framework provides a cluster of concepts, principles, and terms—those sketched by Cian O'Driscoll in his introduction to this debate—through which advocates of any of these substantive philosophical views may debate the ethics of particular wars and some other acts of violence. In their generic form, some of the most central of these generic terms are intuitive to the point of triviality and put up little or no resistance to real proposals for war. “Just Cause,” for instance, reflects the common-sense idea that harms shouldn't be inflicted without sufficiently good reason; “Proportionality,” that an act is unlikely to be justified if it does more harm than good. Given the thinness of these commitments, it is frequently possible to argue either way in relation to a particular war. Opponents can agree, for instance, that war requires a “just cause” while asserting wholly incompatible versions of what truly constitutes such a cause. As such, just war theory is therefore available for deployment by any number of different actors arguing from any number of different political or philosophical positions. That being said, secondly, just war theory may also be used by insurgents bent on challenging hegemonic powers, as when they claim to have just cause to fight them and use just war terminology to explain why (a possibility powerfully illustrated by Jessica Whyte's discussion of the Vietnamese war against the US in this section). Extending contemporary just war theory to cases of non-state political violence (“resistance,” “rebellion,” “revolution,” and even “riot”) may assist in making its tools more

widely available for, as it were, a critical praxis of this kind (e.g. Finlay 2015; Gross 2015; Pasternak 2019).

However, the claim I would like to spend most time on is my third, which is that, if we are to redeem some true critical potential in just war theorizing as such, then, before we connect it to any particular practices, we need to connect it to other kinds of theory. Once we do that, the resulting apparatus may more properly be called *a theory in its own right*. And at the same time, moreover, it may indeed offer a robust, philosophically reflexive, and politically powerful means of critical engagement with the practice of violence in contemporary politics. What just war theory needs is to be connected much more fully to political theory in a broader sense. That this is necessary and, indeed, how it is possible can be seen most clearly by specifying six assumptions that, it seems to me, underpin modern theories of justified political violence. So, whereas Kimberly Hutchings emphasizes in her contribution the conditions ‘that sustain and reproduce the possibility of war,’ my aim is to draw attention to the underlying beliefs that sustain and reproduce a belief in the legitimacy of war.

The assumptions I identify are required before just war theory theory can present itself as a meaningful enterprise; yet none of them are formally recognized as part of just war theory—it’s in this twofold sense that they are “critical” preconditions. Together, they make up the idea of what we might call, following Sheldon Wolin, an “economy of violence”—roughly, the idea that a judiciously calibrated increase in violence introduced now by conscientious political actors (a just war) can diminish the amount of violence (or related evil) that we can expect later (Wolin, 2004). Identifying them as critical foundations underpinning just war theory invites comparisons with other types of theory (e.g. of revolution, political obligation, and state authority). But it’s also true that at least some of these assumptions are typically theorized and accounted for much more fully in political theory and the history of political thought than in narrowly focused ethical inquiry. While just war theorists often assume them only implicitly and in a generic, abstract form, each must be specified more fully in order to justify fully the belief that violence—in particular, war—may be a legitimate recourse in some cases.

The first belief is that violence—especially killing—is peculiarly, if not uniquely, evil. As such, resorting to its deliberate use requires special justification. This supports, if you like, a basic presumption against (lethal) violence (and especially war, understood as organized mass (lethal) violence). While just war theorists generally seem to share this assumption in one form or another, it is less usual for them to offer a systematic account of how violence ought to be defined (for exceptions, see McMahan 2001 on killing and Coady 2008 on violence; cf Finlay 2017) and what it is about violence that gives it this status.

Without the first assumption, it’s unclear why fighting would need a specialist ethics. Without the other five, it’s unclear how just war would be possible. Second is that, in spite of assumption 1, some goods are valuable enough to justify resorting to violent means: the evil of being deprived of them is commensurable with that of violence itself. Again, any particular account of just war theory must assimilate a wider theory of moral and political value in order to function at all. Sometimes this is well-articulated—e.g. by Michael Walzer or by Cécile Fabre—but sometimes it draws implicitly on a background theory by citing “intuitions.”

Third, theories of legitimate violence assume that the values worth engaging in (lethal) violence for are subject to anthropogenic factors, typically (though not only) by aggressive, destructive behaviour, that diminish their availability. They create or threaten scarcity or render the possessors of those goods insecure—for instance, when an aggressor creates a situation where at least some of those now living will inevitably die and forces others to intervene to try to remedy the scale and distribution of suffering. This is, of course, a central theme in IR theory and has been given careful, systematic treatment in classic texts in political theory, e.g. by Machiavelli, Hobbes, and Lenin.

Fourth, just war theory has to assume that violence as a means has a functionality relevant to the causes of scarcity. A full account of this assumption would have to explain how the increase in violence that *we* introduce diminishes or mitigates the total destruction (or obstruction) of goods expected overall. It isn't enough, however, that violence might function as a means of addressing such sources of scarcity; it is also necessary that agents employing it can predict its effects. Assumption 5 maintains that it is possible to predict not only what will happen if a particular strategy *is* adopted but also that it is possible to gauge the likely consequences of deciding against action or choosing some other alternative. These are presupposed by the principles of Necessity and Proportionality.

Finally, to justify imagining that deliberate acts of violence can predictably improve the prospects for sustaining or producing the relevant goods presupposes the existence of an agent capable of making the necessary calculations and applying them. Just war theory envisages not only individual acts of, say, defensive violence against literally imminent threats, but also coordinated violence executed by large numbers of people, what really has to be assumed here is some overarching subject whose moral and strategic competence supervenes on the actions of individual agents. This might be provided by a state, for instance, or a non-state organization like a national liberation movement.

Each of these themes has received extensive theoretical attention in the history of political thought, in theories of the state, human nature, and revolution. Just war theory, by contrast, frequently incorporates them tacitly as assumptions and in an abstract rather than fully theorized form. However, a fully-realized, reflexive account of legitimate violence—including a theory of truly just war—is achievable only through the systematic investigation and contestation of these critical preconditions. And, for this, a much closer connection with political theory more broadly conceived is necessary.

Approaching just war theory critically in this way might, of course, ultimately lead to a rejection of the very idea of just war. If it turned out, for instance, that the problem of scarcity was corrigible, as theorists of world peace imagine, then the possibility of just war would be moot. Likewise, many pacifist philosophers question violence's functionality, arguing its use inevitably gives rise to renewed causes for further violence while never quite addressing the injustices it was directed against. However, let's assume, for now, that the assumptions are likely to hold up to critical scrutiny and look for a moment at one type of case where thinking carefully through these connections with other *theoretical* fields of inquiry might shed light on connections between just war theory and political *practice*. The practice I want to turn to is that of *rioting*.

The increased incidence of political demonstrations globally that diverge from the orthodox restraints of civil disobedience, from Occupy to Black Lives Matter and the Hong Kong pro-democracy demonstrations, has raised philosophical questions about whether violent protest might not sometimes be justifiable. Avia Pasternak's account (2019), for instance, explicitly invokes just war theory as a resource for arguing that it surely must be in some cases. Pasternak draws chiefly on revisionist accounts of just war as an extension of individual rights of self-defence to argue that rioters can sometimes satisfy the conditions of Just Cause, Necessity, Proportionality, and Discrimination. I have some doubts about whether just war theory in its present form really can sustain this view. But the difficulties that I perceive suggest problems arising from the limitations of a theory whose underlying assumptions need renewed critical attention rather than with the practice itself.

As quite a prevalent phenomenon involving the deliberate use of violence, rioting seems like something that just war theory ought to be able to comment on. But I suspect that, without careful reflection on its critical assumptions, just war theory lacks the suppleness needed for the task. For one thing, the decentralized, spontaneous nature of riots as Pasternak characterizes them means they are unlikely to be answerable to a theory of *jus ad bellum* that has been designed to evaluate singular decisions by unified actors faced with the question of starting a war. But I'll focus on two other areas of doubt.

Consider, first, the question of functionality. Pasternak is at pains to argue that the violence of rioters—burning cars, smashing windows or damaging buildings belonging to public or private companies, and so on—can be justified where it can be described as “defensive.” And yet, the language she uses to characterize riot tends to emphasize its communicativeness, its ability to express outrage and vent pent-up anger: “Rather than a display of maddened violence, the political riot is a communicative episode – its participants intending to deliver a message to the police, the government, and to fellow citizens” (2019, 391). There are, perhaps, metaphorical uses of the term “defensive” that might apply to the violent outbursts of someone seeking to be recognized rather than ignored or making a demand. But these metaphors conceal as much as they reveal. The value of such acts, if they have any, is likely to have to do with helping mobilize or galvanize a movement or restoring a sense of lost agency to the oppressed, themes more typical of Frantz Fanon's images of decolonization than of revisionist just war theory. But rather than condemning actions that don't fit the self-defence paradigm, I think the mismatch invites closer and deeper inquiry into the functionality assumption. We need to think more systematically about what it is that we think violence might do for us: are there ways that it can contribute to confronting injustices other than through the elimination of threats in literal acts of self-defence? Or, if you like, are there better ways of capturing the purposiveness of violence than “self-defence”?

At least as striking a problem, however, arises in relation to the first two critical assumptions: concerning the evil of violent means and concerning the question of what values might be commensurable with it. Here, it seems to me, just war theorists have frequently bought into what appears to be a false economy in methodological terms. JWT gives paradigmatic status to *killing* as both that form of violence whose justification the theory needs to account for and as the type of threat that might justify a resort to war. This seems economical methodologically because, on the one side, *if* we can decide what values or threats

justify *killing*, then it seems likely we'll implicitly have covered all other—presumably *lesser*—values and threats. That way we don't have to elaborate explicitly a theory of punching, for instance, or wounding (or of smashing shop windows or burning cars). A theory that justifies killing already, implicitly, justifies these lesser harms. On the other side, just war theory acknowledges that there might be cases where you can justify killing in defence against a non-lethal threat, but whether this is a valid justification rests on the paradigmatic status of killing: the lesser threat must be shown to be commensurate with killing, i.e. “proportionate” (in David Rodin's sense (2002)).

However, both facets of the killing paradigm generate a false economy that comes into view when just war theory is applied to a practice like rioting. Just war theory already struggles to explain how killing can be permissible when war defends against threats to “non-vital” interests and associated rights (Rodin 2002). But at least when we know that war entails killing, we have a clear threshold of severity marked by that fact: war kills; therefore, it cannot be undertaken against threats that are incommensurate with killing. By contrast, rioting is characterized by Pasternak and other defenders of “uncivil disobedience” as involving sub-lethal violence. That being the case, it's a lot less clear what to measure threats and injustices against when calibrating the standards of just cause and proportionality for such cases. In order to make appropriate judgements, we would need to look much more closely at the deeper assumptions underlying JWT and to theorize more fully the evil of violent means as such (as opposed to killing, and war using lethal force) on the one hand, and the values that might be commensurable with it on the other.

I suppose, then, what I think we need is a broadening of just war theory to encompass a wider, deeper, and richer “ethics of violence.” More than that, I think we need an ethics of political violence nestled within a wider, deeper, and richer political theory, i.e. a theory that pays much closer attention than just war theory generally does to the nature and effects of violence, to its relationships with other modes of oppression and injustice, to questions of value and value hierarchies, to the nature of political agency more generally, and to the causes of scarcity, insecurity, and disrespect that motivate a resort to force. What this could bring about is a stronger critical perspective on just war theory itself. To quote Cox, just war theory might thereby come to be assimilated within a theory that is “more reflective upon the process of theorizing itself” as a result of being “clearly aware of the perspective which gives rise to theorising, and its relation to other perspectives” (1981, 128).

Christopher J. Finlay

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