

THE LIMITS OF JUST WAR THEORY  
HOW POWER AND MORALITY ARE INTIMATELY LINKED

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In discussing moral standards to be applied internationally, it is reasonable to understand ideas about the mind as so distant from the events of international relations as to exclude inquiries falling under the domain of cognitive science. Contrary to this, I will argue that the only coherent way to understand both descriptive and prescriptive accounts of morality is to first understand the central aspects of human nature in terms of cognition. The *continuous* exercise of power over individuals within institutional contexts is, I will argue, the most coherent way to understand the sense of justice applied to international relations. In connection with this, I will derive a method of ethics from this understanding and apply this standard to Just War Theory as elucidated by Michael Walzer, drawing heavily from figures such as John Mikhail, John Rawls, Alasdair MacIntyre, and Noam Chomsky.

1 Walzer's Just War Theory and Moral Norms

The constant changes in social and moral norms over several thousand years often indicates to observers that moral standards depend primarily or entirely on the society in question. As Walzer notes, this position lacks theoretical foundation:

But even fundamental social and political transformations within a particular culture may well leave the moral world intact or at least sufficiently whole so that we can still be said to share it with our ancestors. It is rare indeed that we do not share it with our contemporaries, and by and large we learn how to act among our contemporaries by studying the actions of those who have preceded us. The assumption of that study is that they saw the world much as we do. That is not

always true, but it is true enough of the time to give stability and coherence to our moral lives (and our military lives).<sup>1</sup>

Building on the framework provided by universal moral grammar, Hauser echoes this line of thought. “We are equipped with a grammar of social norms, based on principles for deciding when altruism is permissible, obligatory, or forbidden. What experience does is fill in the particular details from the local culture, setting parameters, as opposed to the logical form of the norm and its general function.”<sup>2</sup> The human mind approaches the world with principles innate to its genetic endowment which construct norms along a finite and fixed potential range of empirical manifestations. All social and moral norms, then, are based on the same, highly constrained,<sup>3</sup> biologically-endowed moral competence of the human species. Reflecting the core of Walzer’s point, Chomsky notes that for a discussion on the appropriateness of norms and judgments to occur in the first place indicates an underlying commonality.<sup>4</sup>

Addressing the “moral equality of soldiers,” Walzer argues that the stability of the moral world is present even in hatred-laden trenches. War remains a “rule-governed activity” reflecting human moral sentiments even “in the midst of hell,” as the license to kill is not seen as the license to kill anyone, but rather this license is governed by the soldiers’ “war rights.”<sup>5</sup> Moving to a more fundamental point, Walzer discusses whether the individual who participates in war does so on their own volition, or due to factors

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<sup>1</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Fifth Edition (New York: NY: Basic Books, 2015), 16

<sup>2</sup> Marc Hauser, *Moral Minds: The Nature of Right and Wrong* (New York: HarperCollins, 2006), 290.

<sup>3</sup> John Mikhail, “Moral Grammar and Human Rights: Some Reflections on Cognitive Science and Enlightenment Rationalism,” in *Understanding Social Action, Promoting Human Rights*, eds. Ryan Goodman, Derek Jinks, and Andrew Woods (Oxford: Oxford University Press, 2012), 171.

<sup>4</sup> Noam Chomsky, *Understanding Power: The Indispensable Chomsky* eds. Peter R. Mitchell and John Schoeffel (New York: The New Press, 2002), 359-361.

<sup>5</sup> Walzer, *Just and Unjust Wars*, 36-37.

originating in their society. He entertains the idea that the coercive nature of the “disciplinary system of the state catches them up and sends them into war [at so young an age] that they can hardly be said to make a moral decision at all.”<sup>6</sup> Such a question highlights the responsibility attributed to soldiers. “And then how can we blame them for (what we perceive to be) the wrongful character of their war?”<sup>7</sup>

Walzer goes on to note that, even in the most extreme cases a soldier’s will “never completely disappears. And at those moments in the course of the fighting when they must choose, like Rommel, to kill prisoners or let them live...they are responsible for what they do.”<sup>8</sup> The more interesting response, however, comes in a footnote to the question posed. He responds to Nozick’s claim that “It is a soldier’s responsibility to determine if his side’s cause is just; if he finds the issue tangled, unclear, or confusing, he may not shift the responsibility to his leaders, who will certainly tell him their cause is just.”<sup>9</sup> Highlighting the role of external factors, Walzer says, “But it isn’t elitist merely to recognize the existence of authority structures and socialization processes in the political community, and it may be morally insensitive not to.”<sup>10</sup>

The importance of institutional socialization will present itself as my argument develops. Walzer’s just war theory, particularly the legalist paradigm as he understands it, frames states in the international system as analogous to individuals in civil society. “Every reference to aggression as the international equivalent of armed robbery or murder...relies upon what is called domestic analogy.”<sup>11</sup> He uses this analogy with the qualification that

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<sup>6</sup> Ibid., 39-40.

<sup>7</sup> Ibid., 40.

<sup>8</sup> Ibid.

<sup>9</sup> Robert Nozick, *Anarchy, State and Utopia* (New York, NY: Basic Books, 1974), 100.

<sup>10</sup> Walzer, *Just and Unjust Wars*, 40.

<sup>11</sup> Ibid., 58.

“international society as it exists today is a radically imperfect structure,” and that “society might be likened to a defective building, founded on rights...It is unlike domestic society in that every conflict threatens the structure as a whole with collapse.”<sup>12</sup> From this imperfect analogy, Walzer derives two presumptions: (1) Military resistance is to be favored once aggression has begun; (2) The law is to be enforced against the state(s) responsible for the emergence of violence.<sup>13</sup>

Walzer proceeds to illustrate the six points of the legalist paradigm, with the significant qualification that throughout the book he will offer serious revisions to these points. The legalist paradigm, however, is the primary formulation of a theory of aggression (the necessity of which is fundamental) because it recognizes the “complex realities of international society” through its reflection of “the conventions of law and order.”<sup>14</sup>

## 2. Just War Theory and Universal Moral Grammar

Enough has been said for our purposes regarding Walzer’s theory. In assessing Walzer’s just war theory as elucidated in *Just and Unjust Wars*, Chomsky argues that the conclusions regarding the legitimate use of violence are essentially reiterations of the United Nations Charter, and that the theory itself is of little to no use in evaluating the international problems of the real world. For instance, Chomsky points out that Walzer’s justification for the bombing of urban centers in Germany by the British amounts to his assertion that “the policy seems cruel.”<sup>15</sup>

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid., 59.

<sup>14</sup> Ibid., 60-63.

<sup>15</sup> Noam Chomsky, “Lecture on Just War Theory” (lecture, U.S. Military Academy, West Point, West Point, NY., April 20, 2006). For the passage Chomsky cites, see Walzer, *Unjust Wars*, 323-324.

Walzer's reliance on his own moral intuitions in several historical cases indicates that the proper avenue of study, according to Chomsky, is moral psychology to illuminate problems of international justice. Referencing work done by John Rawls, John Mikhail, and Marc Hauser, Chomsky notes that, drawing from UMG, the significance of evidence in favor of innate moral principles shared by all human individuals can be found within international agreements on principles of international justice, such as the principle of universality implicit in various reaffirmations by the UN of Article 51 of the UN Charter which holds that, contrary to popular belief regarding the right of intervention and the responsibility to protect, "Allowing one to so act is to allow all."<sup>16</sup> I will provide extended remarks by the High-Level Panel Chomsky cites regarding Article 51 for the sake of clarity:

[190] The short answer is that if there are good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council, which can authorize such action if it chooses to. If it does not so choose, there will be, by definition, time to pursue other strategies, including persuasion, negotiation, deterrence and containment - and to visit again the military option.

[191] For those impatient with such a response, the answer must be that, in a world full of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all. [192] **We do not favour the rewriting or reinterpretation of Article 51.**<sup>17</sup>

Why is popular interpretation of the Charter incorrect in this regard? Why do soldiers in war often lack the perspective to evaluate the justice of their cause in a rigorous fashion?

Why do organisms that possess shared rules and principles for the acquisition and application of moral systems (with various international agreements such as the UDHR as

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<sup>16</sup> Ibid.

<sup>17</sup> United Nations, *A more secure world: Our shared responsibility: Report of the High-level Panel on Threats, Challenges and Change* (Washington, D.C.: United Nations Foundation, 2004), 63

evidence of this<sup>18</sup>) often find their judgments of war inextricably tied to their home state? Why does Walzer employ the domestic analogy for his just war theory, and what does this mean for ethics in international relations? The answers to these questions are two-fold and inseparably linked: institutional socialization and power. The general nature of such phenomena operates according to the general rule of human experience that, although the experiences provided by innate faculties are finite, individuals tend to perceive their own experiences as more finite and fixed than is possible, and more desirable than alternative experiences (which are perceived as impossible).

Institutional socialization must occur in such a way as to orient universal, innate, and fixed mental principles towards the production and reproduction of institutional structures, which are often manifestations of power systems. The state acts, then, as not just the primary unit of power in international affairs, but also as the institution which is responsible for the socialization for those living under it, including those who control it directly. As Walzer notes in the context of war, though applicable for institutions broadly, “war is an intensely collective and collectivizing experience...Wars are fought by individuals, indeed, but not by individuals who are engaged in defending themselves. They are members of a collective, to which they attach value.”<sup>19</sup> Walzer’s mistake is to derive an ethical standard for international relations based on the domestic analogy.

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<sup>18</sup> Mikhail, “Moral Grammar and Human Rights,” 171-173.

<sup>19</sup> Walzer, *Just and Unjust Wars*, 340-341.

### 3 The Domestic Analogy, the Ontological Status of States, and the Is-Ought Gap

The domestic analogy makes an odd assumption: that states in the international system are like individuals in civil society.<sup>20</sup> This, however, is false, as states and their domestic supporters are institutions representing a highly specific form of socialization,<sup>21</sup> and thereby representing just one highly specific set of power dynamics possible in human social organization.<sup>22</sup> To derive an ethical standard from this particular set of norms and behaviors resulting from state socialization is a fundamental mistake. What would be a better way of judging wars and other international events? This question raises deeper questions regarding the relationship of empirical facts and moral values; of is and ought.

A passage from Hume's *Treatise of Human Nature* regarding the movement from existing facts about human affairs to normative evaluations of human affairs (this direct movement being considered illogical)<sup>23</sup> pervades contemporary moral philosophy.

Fitzpatrick argues that one way of solving Hume's problem is by noting a faulty assumption that Hume makes regarding the use of language in moral statements. Hume recommends

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<sup>20</sup> Civil society is understood by Walzer to mean the 'natural' state of human beings. A more accurate way of putting this would be to say that the domestic analogy is a selective way of understanding human affairs in that it falsely assumes (1) Humans in civil societies (states) are representative of human ethical life; (2) As a result of (1), the ethical standard to judge wars is to be derived from the behavior of those in civil society mirrored onto states. There is no reason to suppose that the socialization of humans into state institutions is *fundamental* in assessing human behavioral potentialities or ethical duties.

<sup>21</sup> States have not existed for all human pre-history; indeed, only a small fraction of it. Furthermore, and more to the point, the phenomenon of war is a relatively recent one in human existence, does not seem to be inevitable for any society, and is not representative of the totality of human social behavior. See R. Brian Ferguson, "The Prehistory of War and Peace in Europe and the Near East," in *War, Peace, and Human Nature: The Convergence of Evolutionary and Cultural Views* (New York, NY: Oxford University Press, 2013), 191; R. Brian Ferguson, "Ten Points on War," *Social Analysis: The International Journal of Social and Cultural Practice* 52, no. 2 (2008): 32-49, doi: 10.3167/sa.2008.520203.

<sup>22</sup> As Hauser notes, "Our biology, and the biology of all species on earth, sets up a range of possible behaviors. The range we observe is only a limited sampling of the potential variation. This is because our biology interacts with the environment, and environments change. But from the fact that environments change we are not licensed to assume that cultures will change in parallel, entirely unconstrained." See Hauser, *Moral Minds*, 420.

<sup>23</sup> David Hume, *A Treatise of Human Nature: Being An Attempt to Introduce the Experimental Method of Reasoning into Moral Subjects*, ed. L.A. Selby-Bigge (Oxford: Clarendon Press, 1975), 469-470.

that his readers do not move from factual premises to moral conclusions. But Hume himself is then recommending that readers move from Hume's empirical observation of systems of morality to the conclusion that they should not reason in this way.<sup>24</sup> A second objection Fitzpatrick employs is that Hume "overlooked the role of the question." It is correct, as a matter of logical validity, that we cannot deduce an ought from an is. Hume's mistake lies, Fitzpatrick argues, in the belief that the transition from is to ought "could only be effected by means of a logical deduction."<sup>25</sup> Finally, following Wittgenstein's analysis of value judgments in language, Fitzpatrick argues that moral judgments exceed the bounds of significant language.<sup>26</sup>

According to Wittgenstein, to utter the statement 'This is a good chair,' the "goodness in question is relative to an end we have chosen to adopt."<sup>27</sup> Fitzpatrick claims, contrary to Wittgenstein, that there is no choice involved in what end is involved in moral judgments. "For this reason, moral judgments stand at the apex of the various conscious operations we perform as human beings, for their subject matter and their standard is humanity itself. In moral discourse, it is our humanity that is at stake."<sup>28</sup> MacIntyre argues that Hume's is-ought gap is incorrectly interpreted as a behemoth of logical truths; timeless, mystified, and seemingly insurmountable.<sup>29</sup> He notes that one can move from the factual claim, 'He is a sea-captain,' to the valid inference that 'He ought to do whatever a sea-captain ought to do'. This shows that Hume's principle implicit in the is-ought gap,

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<sup>24</sup> Joseph Fitzpatrick, "Hume's 'Is-Ought' Problem: A Solution," *New Blackfriars* 81, no. 951 (2000): 216-217, <http://www.jstor.org/stable/43250445>.

<sup>25</sup> *Ibid.*, 219-220.

<sup>26</sup> *Ibid.*, 222.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, 223.

<sup>29</sup> Alasdair MacIntyre, *After Virtue*, Third Edition (Notre Dame: Notre Dame University Press, 2007), 59.

namely that an 'is' statement cannot logically lead to an ought statement, is not generalizable, and that "an 'is' premise can on occasion entail an 'ought' conclusion."<sup>30</sup>

MacIntyre addresses the possible objection that, while an 'ought' statement can be derived from an 'is' statement in the example above, such statements cannot contain conclusions of an evaluative nature. He counters this objection by pointing out that the is-ought gap defenders have already conceded that their principle is not generalizable, and depend on the use of key terms rather than on "any unrestrictedly general logical principle." To determine if a change in language is the key to the objection leveled against MacIntyre's conception of the is-ought gap, he employs a counter-example using watches and farmers:

Such concepts are functional concepts; that is to say, we define both 'watch' and 'farmer' in terms of the purpose or function which a watch or a farmer are characteristically expected to serve. It follows that the concept of a watch cannot be defined independently of the concept of a good watch nor the concept of a farmer independently of that of a good farmer.<sup>31</sup>

Concepts of 'good' and 'bad' are inextricably bound up in the functions of something or someone.

#### 4 International Justice, Rawls, and Moral Principles

If moral values can be derived from existing states of affairs, then the correct ethical standard ought to be derived from how existing human moral systems are structured; from the moral principles innate to all human beings, which underpin all human moral systems, and from which the sense of justice develops.<sup>32</sup> MacIntyre's virtue theory makes the mistake of moving from the correct conception of the is-ought gap, to the incorrect

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<sup>30</sup> Ibid., 57.

<sup>31</sup> Ibid., 58.

<sup>32</sup> See John Rawls, *A Theory of Justice*, Revised Edition (Cambridge: Harvard University Press, 1999), 41.

conception of ethics as goods internal to practices.<sup>33</sup> The moral principles of the mind are abstract<sup>34</sup> (though housed within physical structures) and, armed with our conception of the is-ought gap, ethical theory should treat such principles as the material from which moral values are derived.

Rawls' conception of reflective equilibrium provided the initial steps forward in utilizing a generative understanding of moral intuitions in the service of moral theory by seeing "if the principles which would be chosen [in the original position] match our considered convictions of justice or extend them in an acceptable way."<sup>35</sup> As Mikhail notes, Rawls' metaethical framework, in an attempt to collapse the distinction between descriptive inductive practices and normative inductive practices, "rejects the division of labor implicit in the noncognitivists' accounts, wherein it is the job of the social scientist, but not the philosopher, to pursue the tasks of descriptive ethics." He continues, "Instead, Rawls advocates a return to an older conception of ethics, assumed by all the leading Enlightenment moralists, who placed the structure of intuitive moral reasoning, and thus the properties of the human moral faculty, at the forefront of their inquiries."<sup>36</sup>

For Rawls, the sense of justice is borne out of the moral faculty which houses a fixed set of principles. Since this is the case, he "wishes to suggest that reflecting on a moral theory may cause a person's sense of justice to be transformed."<sup>37</sup> This framework puts

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<sup>33</sup> "A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents from achieving any such goods." MacIntyre, *After Virtue*, 191.

<sup>34</sup> See Hauser, *Moral Minds*, 420.

<sup>35</sup> Rawls, *Theory of Justice*, 17.

<sup>36</sup> John Mikhail, *Elements of Moral Cognition: Rawls' Linguistic Analogy and the Cognitive Science of Moral and Legal Judgment* (New York: Cambridge University Press, 2011), 218.

<sup>37</sup> *Ibid.*, 210.

Rawls' idea of the original position in a reinvigorated light. It is useful, then, to illustrate the original position as it applies to international relations:

Now at this point one may extend the interpretation of the original position and think of the parties as representatives of different nations who must choose together the fundamental principles to adjudicate conflicting claims among states. Following out the conception of the initial situation, I assume that these representatives are deprived of various kinds of information. While they know that they represent different nations each living under the normal circumstances of human life, they know nothing about the particular circumstances of their own society, its power and strength in comparison with other nations, nor do they know their place in their own society.

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This original position is fair between nations; it nullifies the contingencies and biases of historical fate.<sup>38</sup>

By not paying attention to the nature of the human moral faculty, Walzer's just war theory is unable to provide a universal, rigorous standard for judging the morality of international events.<sup>39</sup> By assigning fundamental moral value to practices rather than principles, MacIntyre's post-is-ought gap framework fails in a similar way. The principles which are to guide the actions of states are those that would be chosen in a hypothetical situation in which our existing moral faculty can be studied rationally and universally to derive a coherent balance of principles of international justice; a balance that may change over time as new insights are experienced, but the fundamentals of which may remain constant, providing moral stability to the international system.

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<sup>38</sup> Rawls, *Theory of Justice*, 331-332.

<sup>39</sup> Walzer's early remarks on his unwillingness to study the foundations of morality are in striking in that they are meant to persuade the author that his extended remarks are sound, despite the absence of an explicit basis. See Michael Walzer, preface to *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Fifth Edition (New York: NY: Basic Books, 2015), xxvii-xxix.. However, Walzer's reliance on the intuitions of the reader may be revealing of the structure of morality itself, *in that we already know implicitly what is moral and immoral, but making this knowledge conscious is a matter of science, not introspection.*

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