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Kant's Just War Theory

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Kant's Just War Theory

by

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A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
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Abstract

The main thesis of my dissertation is that Kant has a just war theory, and it is universal just war theory, not a traditional just war theory.

This is supported by first establishing the history of secular just war theory, specifically through a consideration of the work of Hugo Grotius, *Rights of War and Peace*. I take his approach, from a natural law perspective, as indicative of the just war theory tradition. I also offer a brief critique of this tradition, suggesting some issues that are endemic to these kinds of theories.

From this general understanding, the version of Kant's just war theory present in Brian Orend's work *War and International Justice: A Kantian Perspective*, is explored and rejected as another traditional just war theory. Orend attempts to shoehorn Kant into a tradition which Kant rejects as ineffective, and poorly grounded. Orend's work is not without merit, and his view is reconceptualized in the last chapter.

If not a traditional just war theory, then either a new category of just war theory needs to be established, or the thesis ought to be rejected. Thus, the next task is to defend against the claim that Kant does not have a just war theory at all, as claimed by Howard Williams in his work *Kant and the End of War*. This is rejected as insufficiently nuanced in its interpretation of Kant, and also for resulting in principles contrary to Kant's moral theory. This view is also utilized in a new manner in the last chapter.

Prior to describing the new category of just war theory, I consider the general approach Kant had to war. To do this, I explore his philosophical approach on ever more specific areas of

philosophical investigation. I conclude that Kant has a dynamic and progressive understanding of the concepts he investigated, including philosophy, humanity, ethics, politics, and, eventually, war.

In the penultimate chapter, I establish what I call a universal just war theory. I consider and name the traits of both a traditional just war theory and a universal just war theory, using Marxist communism as an explanatory example of universal just war theory. This provides an intellectual space for Kant's theory to reside, which is also consistent with his philosophical approach.

The last chapter is universal devoted to the explanation and application of Kant's universal just war theory. I offer an overarching principle for Kant's view of conflict and defend it as a universal just war theory. I also revisit the place Orend and Williams views' have in a proper understanding of Kant on just war. I end with an application of Kant's just war theory to previous conflicts, as a demonstration of the practical value of this view.

Thus, through first a negative argument against current conceptions of Kant's views of just war theory, and then a positive argument for Kant's general philosophical approach and a new category of just war theory, I offer an interpretation of Kant on just war theory. I argue this interpretation is superior to previous ones, and recommends real world applications for just war theorists to utilize.

Introduction

The aim of this work is to demonstrate the universal just war that is present in the work of Immanuel Kant. This will be accomplished in two stages. In the first two chapters, I will offer a negative argument against the claims that Kant has a traditional just war theory and that Kant has no just war theory. In the remaining three chapters I will offer a positive argument for Kant having a universal just war theory. This will start with a consideration of Kant's general approach to philosophy inquiry, followed by a general description of what a universal just war theory is, and culminate in a combination of the two, where I will offer my version of a Kantian universal just war. Framing the considerations of this work is the general topic of secular just war theory.

The idea that there might be a moral aspect to the evaluation of war dates to at least the ancient Greek city-states. The first codified versions of this notion appear in the works of religious scholars of various Abrahamic faiths. I take it as *prima facie* obvious that Kant does not adhere to the divine justification these theories rely on. The switch from a religious concern over to a secular theory occurred over a period of time, and in a gradual way. However, within this process of secularization, the work of Hugo Grotius, *The Rights of War and Peace*, marks a watershed moment. His work collates a number of ideas present in religious contexts, and offers a secular justification for them. This was quickly followed by 17th century jurist Samuel von Pufendorf and 18th century lawyer Emer de Vattel, who offer their own understanding of a secular international law including a just war theory.

Contemporary writings on this topic saw something of a resurgence in the United States after the Vietnam conflict. Michael Walzer, Richard Regan, Larry May, Sidney Axinn, Jeff McMahan, and many others, have written on this topic, offering a plethora of just war theories. These writers, and their theories, largely stick to the program as it was set out by Grotius and his contemporaries. As such, to best understand the intellectual landscape this philosophical inquiry occupies, a brief overview of Grotius will help orient the beginning of the just war tradition, and provide a foundation for comparison in the coming discussion.

Hugo Grotius and the Origins of Traditional Just War Theory

Hugo Grotius was a 16th century jurist who, according to some, started the practice of international law in earnest. His work *The Rights of War and Peace* details, in secular terms, what proper action is among states and sovereigns. In it, Grotius provides, among many other considerations, a just war theory. This is among the first secular just war theories, which I will be calling traditional just war theories. Grotius includes sections on justice before war, *jus ad bellum*, justice in war, *jus in bello*, and justice after war, *jus post bellum*. Each of these areas of moral concern have continued to evolve as other thinkers have approached the topic. Grotius can be understood as providing a foundation for contemporary traditional just war theories.

The Nature of War. Before any progress can be made in answering the question of separating just wars from unjust wars, a prior brief about what constitutes a war in general is needed. In the third chapter of the first book of his work, Grotius spells out what he believes to be the relationship between justice and war. He starts with a general definition of war, then considers, within defined limits, what are the most basic requirements for a war to be commenced justly. He also considers Christian and other theological and historical backing for his secular arguments,

however, those supports are unnecessary for his argument, serving only to legitimize and bolster his position in certain circles of the time, and are tangential to the current concern.

Grotius makes some distinctions among various kinds of conflicts. He first distinguishes between private and public wars. A private war “is that which is carried on by private persons without authority from the state.”¹ Grotius considers the restrictions placed on this natural right by the erection of systems of justice, concluding that, while “...greatly abridged after courts of justice were established...there may be cases where private redress may be allowed.”² The takeaway notion for private wars for Grotius is that, while in a civil society with a system of legal recourse, private wars are unacceptable, except in cases of imminent threat to one’s person.

In contrast to private wars, Grotius gives a definition of public wars as those “carried on by the person holding the sovereign power.”³ This kind of war is what is typically thought of in the vernacular sense of warring states. Both of the wars considered so far are pure, that is entirely of one kind, either private or public. In addition to these pure wars, Grotius mentions mixed wars. Grotius defines mixed wars as wars “carried on, on one side by public authority, and on the other by private persons.”⁴

After this differentiation between public, private, and mixed, wars, Grotius distinguishes between formal and informal public wars. Formal public wars are “made on both sides, by the sovereign power of the state, and ... must be accompanied by certain formalities.”⁵ This formal war, Grotius contrasts to an informal war, where either, the war was not declared on both sides

¹ (Grotius 1901) (pg. 55) (Bk1, Ch3, Sec1)

² (Grotius 1901) (pg. 56) (Bk1, Ch3, Sec2)

³ (Grotius 1901) (pg. 55) (Bk1, Ch3, Sec1)

⁴ (Grotius 1901) (pg. 55) (Bk1, Ch3, Sec1)

⁵ (Grotius 1901) (pg. 57) (Bk1, Ch3, Sec4)

by a sovereign power, or the other formalities of war are not observed. By sovereign power, Grotius means the power “whose actions are not subject to the control or any other power.”⁶

For Grotius, for a war to be a formal public war, the sovereign power must declare war. This authority can come either from the sovereign themselves, or from a duly appointed surrogate of the sovereign for the war in question. Grotius admits of two exceptions to this general definition, both of which result in a mixed war. First, when “subordinate magistrates may, by their office, reduce a few disobedient and tumultuous persons to subjugation, provided, that to do it, requires not a force of such enormous magnitude as might endanger the state.”⁷ This would not be a formal war, as the sovereign power of the state did not declare it, nor would it be a private war, as one side is acting as, and in the interest of, the state. Second, “if the danger be so imminent as to allow no time for an application to the sovereign executive power.”⁸ Again, this would not be a formal war for Grotius, nor a private one. Grotius does allow for the legal practice of tacit approval by the sovereign of subordinate magistrates, “when attacked, or threatened with attack”⁹ to commence war-like measures. However this an exception to the exception, elevating it again to the level of formal public war, because this would be, for Grotius, legally equivalent to the war being declared by the sovereign power.¹⁰

Within these two exceptions of informal public wars, Grotius specifies the status of the private side of the war. He claims that such actions lack the requisite sovereign authority and other formalities of formal public wars, and as such: “In the case of rebellion, the subjects taken in arms, have no right to be treated as prisoners of war, but are liable to punishment as

⁶ (Grotius 1901) (pg. 62) (Bk1, Ch3, Sec7) e.g. the King, the Emperor, the collective Executive-Legislative-Judicial Federal government.

⁷ (Grotius 1901) (pg. 58) (Bk1, Ch3, Sec4)

⁸ (Grotius 1901) (pg. 58) (Bk1, Ch3, Sec4)

⁹ (Grotius 1901) (pg. 59) (Bk1, Ch3, Sec5)

¹⁰ This sentiment is echoed in modern American law with the Presidential War Powers Act, allowing the President to take such action necessary for the immediate defense of the nation without procedural approval of the Congress.

criminals.”¹¹ Thus, it can be observed, the importance of the sovereign power to declare war is of paramount importance to the definition of public war for Grotius. In the rest of his work, Grotius confines himself to the consideration of formal public wars, shortening this simply to ‘war.’¹²

Having answered the question of what a war is, and offering a miniature taxonomy of different kinds of war, Grotius is now in a position to offer a meaningful answer to the question of how to separate just wars from unjust ones. As noted, Grotius keeps to the consideration of formal public wars, as these are the only ones that can fulfill all of his requirements for a just war, and so are the only ones he needs to address. To begin, Grotius recommends several principles of *jus ad bellum* to guide a nation beginning a just war.

Principles of Just War. Grotius offers several requirements for a war to be considered just. He includes, along with his basic point, a series of interpretations, and clarifications, for application to a wide variety of potential applications. This leads, as his jurist training would suggest, to a legal tone, as if he is drafting a contract for nations to adhere to. While many of his considerations are interesting and philosophically important, e.g. the status of voluntary slaves, when ambassadors are fair targets, the justification of spies, etc., these subjects distract from the basic outline of what becomes the foundation for contemporary just war theories. Instead of an exhaustive exposition of his views, I will offer a bullet-point style statement of Grotius’ principles, with some minimal explanatory notes.

Jus Ad Bellum. Grotius has relatively few principles for beginning a just war. These are mirrored with little to no change in many contemporary versions of just war theory. By far the most important principle of *jus ad bellum* for Grotius is the just cause criteria. He dedicates

¹¹ (Grotius 1901) (pg. 58) (Bk1, Ch3, Sec5 footnote)

¹² This is the first indication of theoretical difficulty that will plague all three of Kant’s contemporaries, viz. the restriction of their just war theory to formal public wars.

several chapters to what a just cause is, and what causes are unjust, even explicating some doubtful causes, which fall somewhere in between. Missing from these principles, is a requirement for the proper authority to have the right intent to declare war. There is an implicit argument to be made for such a requirement, however, Grotius never explicitly claims that a politician must have the proper intent, only the state. Thus, the following are, for Grotius, principles of *jus ad bellum*:

- Just Cause¹³ - to prevent or repair an injury, including for other nations
- Last Resort¹⁴ - diplomacy must have been attempted in good faith and failed
- Proportionality¹⁵ - something of a utilitarian concern, the means of war might render the end unjust to pursue
- Likelihood of Success¹⁶ - the horrors of war cannot be brought to bear with no hope of attaining the just cause
- Declaration by Proper Authority¹⁷ - a de facto requirement for any formal public war

Jus In Bello. Having considered Grotius' *jus ad bellum* and sketched out the general requirements for a war to be considered just for a particular belligerent, next to be considered is his *jus in bello*, the limits he places on combatants, even if the war they are fighting is just. Grotius offers several principles of conduct, each with a substantial amount of detail regarding various exceptions and other matters of litigious interest.

The watchword for his *jus in bello* principles seems to be faith. Not religious faith, although there is plenty of that in his work, but a preservation of the ability to trust ones fellow human.

¹³ (Grotius 1901) (pg. 74-75) (Bk2, Ch1, Sec1,2,18)

¹⁴ (Grotius 1901) (pg. 281) (Bk2, Ch24, Sec4)

¹⁵ (Grotius 1901) (pg. 282) (Bk2, Ch24, Sec5)

¹⁶ (Grotius 1901) (pg. 283) (Bk2, Ch24, Sec7)

¹⁷ (Grotius 1901) (pg. 317) (Bk3, Ch3, Sec5)

For example, if I play a billiards hustler for cash, and lose because they play so well, then I have lost that money fair and square. If, when we both pull out our money, they steal it and run, then I have been wronged. The difference being that, in the first case there were certain lines we agreed not to cross, facilitating the execution of the bet; but in the second case, there was no structure to the bet, and so no way to trust that individual in the future. Nations do not have the luxury of running and never encountering each other again, so faith in their fellow nation becomes paramount for their thriving and even their survival. What this means, for Grotius, in a time of war is his *jus in bello* principles:

- Respect neutral territory¹⁸ - not all nations need to be involved, and if they must, do so in a way that protects them from your conflict as much as possible
- Embassies inviolable¹⁹ - peace is the aim of war, so those charged with brokering it must be protected
- Respect the dead²⁰ - war does not negate this near universal cultural precept
- Keep faith (however deception allowed)²¹ - specifically, no lying or treachery, but stratagems of war are allowed
- No soliciting treason²² - accepting a freely given offer of treason is acceptable
- What the enemy does is permissible to do as well²³ - only those fighting can judge what is acceptable to do, and if 'they' do 'it', then 'it' must be acceptable to do
- Noncombatant immunity²⁴ - formal public wars have a cause, the completion of which guides the actions taken in the war

¹⁸ (Grotius 1901) (pg. 93-94) (Bk2, Ch2, Sec10)

¹⁹ (Grotius 1901) (pg. 204) (Bk2, Ch18, Sec3,8)

²⁰ (Grotius 1901) (pg. 213) (Bk2, Ch19, Sec1)

²¹ (Grotius 1901) (pg. 291) (Bk3, Ch1, Sec1-4,7-11)

²² (Grotius 1901) (pg. 305) (Bk3, Ch1, Sec21)

²³ (Grotius 1901) (pg. 325) (Bk3, Ch4, Sec3)

²⁴ (Grotius 1901) (pg. 359) (Bk3, Ch11, Sec1,2,19)

- Spies allowed²⁵ - a de facto permissibility in a world where everyone uses them
- Destruction for military necessity only²⁶ - related to the military necessity of executing the cause of war
- Plunder as a state method of recovering debt²⁷ - related to the destruction of property, a nation may need to directly secure the debt owed by the belligerent
- Truce permissible²⁸ - cease fires, and the like, can be conducive to the creation of peace
- Sovereign bound by commitments made by authorized subordinates²⁹ - not every exchange can be between independent sovereigns, so authorized subordinates need the power to act for the state
- Tacit faith³⁰ - respecting the flag of truce, genuine surrender, etc., in short, all manner of action that demonstrates the possibility of future peace

Jus post Bellum. Grotius offers a complete just war theory, including a section on proper action after a war. This is largely negative, offering prohibitions against certain actions, and placing restraints on other permissible actions. Grotius is primarily concerned with the lasting peace between nations, so an attitude of caution runs throughout these *jus post bellum* considerations:

- No collective punishments³¹ - nations might be the same, but the individuals responsible for state action and the crimes of war are not
- Moderation in terms of surrender and conquest³² - a prudential consideration, important for the adherence by both parties to the peace

²⁵ (Grotius 1901) (pg. 331) (Bk3, Ch4, Sec15)

²⁶ (Grotius 1901) (pg. 368) (Bk3, Ch12, Sec1,5,8)

²⁷ (Grotius 1901) (pg. 337) (Bk3, Ch6, Sec2,4,26)

²⁸ (Grotius 1901) (pg. 404) (Bk3, Ch21, Sec1-4,13)

²⁹ (Grotius 1901) (pg. 411) (Bk3, Ch22, Sec2,4,8,9)

³⁰ (Grotius 1901) (pg. 415) (Bk3, Ch24, Sec2,3)

³¹ (Grotius 1901) (pg. 262) (Bk2, Ch21, Sec7and8)

³² (Grotius 1901) (pg. 372) (Bk3, Ch15, Sec1)

- Postliminium for all people³³ - Prisoners of war (POWs) and the like returned to their respective nations
- Postliminium for things plundered by the unjust belligerent³⁴ - unjust gains are unacceptable, looted items by an unjust belligerent must be returned
- Keep faith with the former enemy³⁵ - a nation must keep to the agreed to terms even if it harms them
- Power to make war is the power to make peace³⁶ - requires the proper authority, which also started the war, to end the war
- Prior and accrued debts and penalties are still in force³⁷ - war does not reset relations, merely delays the collection of debts and penalties
- Limit of conqueror to just punishment³⁸ - otherwise the original unjust belligerent now has a just cause to start the war up again
- Political hostages and pledges permitted, but protected from punishment by proxy³⁹ - a concession to the practice of the time, still not permissible to enforce collective punishment
- Peace, once made, inviolable⁴⁰ - prioritizing order over justice, war is the ultimate courtroom in an anarchic international community, so a decision made there is final

Conclusion. Grotius founded the secular tradition of just war theory. Relying on his training as a jurist, he attempts to present a mixture of customs that nations already follow and practices they should follow, resulting in a contract-like codification of his just war theory. In addition to

³³ (Grotius 1901) (pg. 354) (Bk3, Ch9, Sec7)

³⁴ (Grotius 1901) (pg. 375) (Bk3, Ch16, Sec1-4)

³⁵ (Grotius 1901) (pg. 381) (Bk3, Ch19, Sec11)

³⁶ (Grotius 1901) (pg. 386) (Bk3, Ch20, Sec2)

³⁷ (Grotius 1901) (pg. 391) (Bk3, Ch20, Sec16)

³⁸ (Grotius 1901) (pg. 399) (Bk3, Ch20, Sec49,50)

³⁹ (Grotius 1901) (pg. 400) (Bk3, Ch20, Sec55)

⁴⁰ (Grotius 1901) (pg. 418) (Bk3, Ch25, Sec1,2,6)

explaining the nature of war, Grotius offers principles for moral evaluation of action before, during, and after, a war. Unsurprisingly, there has been some criticism of this seminal work in just war theory, regarding both its content and its methodology. However, this first attempt at a secular just war theory should not be dismissed as inadequate so quickly. The project Grotius undertakes in this work is a major advance in the theory of international relations.

Forde Interprets Grotius

Among the commentators on Grotius, one whose writing hits very close to the same mark as this work is Steven Forde, in his paper *Hugo Grotius on Ethics and War*. In it, Forde considers the project Grotius sees himself attempting, and adds clarifying commentary to help avoid anachronistically pidgin-holing Grotius into a more convenient contemporary category. He begins by explaining where Grotius saw himself, theoretically between idealism and political realism. Then he continues, explaining the mechanics of Grotius' theory of privileging the human will, in making the law of nations, over the more morally stringent natural law, with examples of permissions of the law of nations. Ultimately, Forde concludes that Grotius was forging a middle path between amoral political realism, and overly moral pacifism, thus bringing a practical ethics to international relations.

Forde explains Grotius as coming to the topic of international relations with essentially two options: idealism, in the form of Christianity and pacifism, and political realism, with all its amoral Machiavellianism. Both of these paths seemed unacceptable: "His desire is for an *effective* set of moral restraints on states."⁴¹ Forde explains that this is some set of moral precepts that are sufficiently permissive to be applicable to realist nations, and yet stringent enough to provide some form of moral restraint. To this end, Grotius sets the initial standard, his natural

⁴¹ (Forde 1998) (pg. 639) Emphasis in original.

law, rather low: “Grotius’s natural law bars only clear, positive injustices, acts that are unambiguously destructive to society.”⁴² Thus, Forde notes, Grotius is breaking with the natural law tradition that demands utter perfection of morality to follow from the divine aspect of humanity. This is vital for Grotius’ project, as Forde sees is, because this laxity of natural laws “gives them a better chance of actually being observed.”⁴³ This negative outlook, of minimal restriction, does not seem to have been morally liberal enough. Forde continues his examination of Grotius’ project by noting the way human will, and the advent of civil relations, alters, and morally weakens, Grotius’ version of the natural law.

Forde explains that Grotius’ version of pre-state interaction, a communism where property is common, transforms into the civil relation we now know with the advent of private property. This, Forde explains, alters the requirements of the natural law; “it adapted itself to evolving human practices.”⁴⁴ Two further examples of these changes are slavery and war.

Forde contends that, strictly speaking for Grotius, the natural law forbids slavery, as personal liberty is a guarantee of natural law based on human nature. However, he notes that, for Grotius, “[t]he law of nations, not the law of nature, provides for the needs of civil man.”⁴⁵ Thus, Forde explains that, for Grotius, some form of society might require the practice of slavery, and so, by the law of nations, it must be a permissible practice. This latitude in the human will to amend the natural law, for Grotius, extends quite far. Forde notes that, most contractarians, both now and of Grotius’ time, believe many principles apply to all societies, regardless of immoral powers instituting the contrary, e.g. government benefits the governed, or sovereignty resides in the people. Grotius, Forde explains, understands that “these are matters to be determined by the

⁴² (Forde 1998) (pg. 640)

⁴³ (Forde 1998) (pg. 641)

⁴⁴ (Forde 1998) (pg. 641)

⁴⁵ (Forde 1998) (pg. 642)

founding compact.”⁴⁶ This altering of the natural law to accommodate modern humanity is taken up with a consideration of permissions.

Forde explains that what Grotius means by permissions is an act that is forbidden by natural law, minimal though it may be, yet permitted by the law of nations, the creation of human will. Forde explains that, for Grotius: “a permission does forbid others from hindering the act. Outside parties are effectively barred from enforcing whatever legal provision is addressed by the permission, even if it is a provision of the natural law.”⁴⁷ The limit placed on permissions, and the ability of the human will to alter the natural law to the law of nations in general, Forde takes from Grotius himself: “human law cannot command what natural law forbids or forbid what that law commands (II.2.5, 192).”⁴⁸ Anything not forbidden or commanded is fair game for human will to alter. Thus permissions are very wide in scope, to the point of absolute acceptability, for Grotius, and the alteration of the natural law to the law of nations is correspondingly comprehensive.

As this concept relates to just war theory, Forde notes that many principles are founded on permissions. “Many rules having to do with the extent of belligerent violence, for example, and the treatment of prisoners of war are, according to him [Grotius], the product of permissions against natural law.”⁴⁹ The most obvious and egregious permission, Forde explains, relates to the very commencement of a just war. In a strict sense, only one belligerent has a just cause to go to war, Forde explains. However, he continues, to demand that the other belligerent “must simply surrender without fighting” would be an impotent requirement, and “fails the test of practicality

⁴⁶ (Forde 1998) (pg. 643)

⁴⁷ (Forde 1998) (pg. 644)

⁴⁸ (Forde 1998) (pg. 644) (Grotius, Book 2, Chapter 2, Section 5)

⁴⁹ (Forde 1998) (pg. 644)

proposed by Grotius...⁵⁰ Instead, Forde explains, Grotius utilizes many permissions to make just war theory practically applicable: “For the ideal of just war, the law of nations has substituted the institution of legal war.”⁵¹

Forde is quick to explain that this is not as amoral and Machiavellian as it may initially appear. He notes that, properly and rigorously applied, just war theory would be the cause of innumerable disputes to settle past wrongs. He makes an analogy to civil lawsuits: “Just as the law of nations has been forced to suspend the natural law requirements for the equality of contracts and the rationality of contractors in order to avoid endless lawsuits, it must abridge just-war doctrine in order to prevent old conflicts being constantly reopened in the name of justice.”⁵² What is presented, Forde explains, is an impossible situation, where actually applying the theory properly results in it not achieving its intended goal.⁵³

Forde admits that there is something amiss about the permissions granted to unjust belligerents and unjust combatants. He is clear however, that, “[t]he harsh realities of international politics, especially war, sometimes make justice impossible or even counterproductive.”⁵⁴ Forde reiterates that these unfortunate permissions “do at least have the redeeming justification of minimizing suffering.”⁵⁵ Regarding the theory of permissions, and the law of nations generally, Forde notes that: “Though the permission itself may be worthy of condemnation from a moral point of view, it is at least theoretically coherent to say that human law may grant such permissions as required by the grave imperfections of this world.”⁵⁶

⁵⁰ (Forde 1998) (pg. 645)

⁵¹ (Forde 1998) (pg. 645)

⁵² (Forde 1998) (pg. 645)

⁵³ This should look familiar as a contradiction in will, in Kantian terms, which, following through the line of thought, results in an imperfect duty to not apply just war theory in a strict and pedantic fashion.

⁵⁴ (Forde 1998) (pg. 645)

⁵⁵ (Forde 1998) (pg. 645)

⁵⁶ (Forde 1998) (pg. 646)

In short, Forde argues that Grotius, attempting to provide a middle ground between idealism and amoralism, concocts a view that is both applicable to international relations as he found them, and provides a moral restraint, and, potentially, reform. This stems from how Forde understands Grotius to be grounding his theory, in natural law, and how the social evolution of humanity has necessitated changing in this original foundation into the law of nations. The result is a list of permissions and exception to strict morality that appear quite alien to others in the natural law moral tradition.

Kant's View of Grotius

While not the only place in his work when Grotius is mentioned, Kant's critique of Grotius, and others, as 'sorry comforters' is famous. This occurs in Kant's *Toward Perpetual Peace* in the section titled 'Second Definitive Article for Perpetual Peace,' in which Kant argues that rights of nations are based on a federalism of free states. His main criticism cuts to the theoretical core of Grotius' endeavor. However, even Kant, in his *Universal History*, admits to the imperfection of humanity, beings of both animal instinct and rational thought, which is a founding feature of Grotius' natural law and subsequent law of nations.

Throughout his work, Grotius claims to be making an appeal to either a natural law, or a law of nations. The use of 'law' in these cases can be understood as applicable in two different senses. In the first case, this is a moral precept. As Forde notes, the natural law Grotius develops is a moral code based on human nature, and so law, in this case, can be understood as meaning a moral principle. However, also per Forde, Grotius does not intend to indicate a pure moral principle in the phrase 'law of nations.' In this case, Grotius is conflating, by using the word 'law' in a much more litigious sense, while still hoping to retain the moral force of the other meaning.

Kant critiques Grotius' code as having "not the slightest *lawful* force and cannot even have such force (since states as such are not subject to a common external constraint)..."⁵⁷ This critique is, strictly speaking, true. Grotius cannot claim, as he does, that the sovereign power is subject to no legal constraints, and at the same time, attempt to impose a legal restriction on it. This leaves Grotius with the other, moral, meaning of the term 'law' in the phrase 'law of nations.' This is a fairly emptied meaning, as it has been Grotius' attempt to move away from an idealistic understanding of just war theory. However, this comes as little surprise, due to the ambiguity Grotius employs, and attempts to capitalize on, in his use of the term 'law.'

It is here that Kant's second, and more telling, critique applies. He claims that Grotius, or his philosophical compatriots, is "always duly cited in *justification* of an offensive war, though there is no instance of a state ever having been moved to desist from its plans by arguments armed with the testimony of such important men."⁵⁸ This is a claim of doubt as to the actual moral force of Grotius' principles. Without the resort to legal censure, Grotius is relying on the moral force of a semi-realist theory to move sovereigns to restrain themselves from morally dubious, but politically advantageous, actions. So, while its veracity is in doubt, Kant's hyperbolic empirical claim that states do not choose morality over prudence is highly relevant.

This brief, but uncompromising, critique of Grotius by Kant reveals the tenuous nature of Grotius' theoretical underpinnings. Kant succinctly puts the notion that Grotius is attempting to thread the horns of a complex dilemma: too realist, and the moral force of the argument is lost, too moral, and the political force is lost. In attempting to find a middle ground, Grotius might just be presenting a theory "couched philosophically or diplomatically,"⁵⁹ but is ultimately vacuous.

⁵⁷ (Kant, *Towards Perpetual Peace* 1996) (pg. 326) [8:355] Emphasis in original.

⁵⁸ (Kant, *Towards Perpetual Peace* 1996) (pg. 326) [8:355] Emphasis in original.

⁵⁹ (Kant, *Towards Perpetual Peace* 1996) (pg. 326) [8:355]

Conclusions from Interpreters

Grotius attempts to provide, among other theories, a secular just war theory. His attempt is explained by Forde as a middle path between the two extremes of idealism and amorality. Also, Kant gives a brief, and negative, review of Grotius' attempt. I find myself in agreement with both of these thinkers on their assessments of Grotius' just war theory. It is, at the same time, a practical doctrine, and hopelessly permissive and accommodating. These characteristics are interconnected, and indeed stem from basic assumptions in Grotius' premises. His two problematic assumptions are, first, that only formal public war can be just, and, second, that just war theory is an endeavor in political theory. Grotius is attempting, in his just war theory, to provide a primarily practical doctrine. In doing so, he avoids the problems encountered by idealist pacifists, in that they are ignored, but adopts the foundational problem of amoral political realism, that war is an inherently amoral activity. What Grotius attempts to keep, with little success, and breaking with the realist position, is the moral relevance of individual actions, be it in the person of the sovereign, or a combatant.

Grotius offers a list of principles. This list, as Forde explained, is based on the concept of the law of nations, which, in turn, is an altered understanding of the natural law, as human society develops. In this way, Grotius can be understood as a natural law theorist, but bases his moral law on a different understanding of the relationship between human nature and the resulting natural law. While other natural law theorists of his time saw the flawed nature of humanity as a deficit to strive to eliminate, Grotius took this as a limit on what can be expected of morality. This is the distinction that allows Grotius to develop a just war theory that is sufficiently applicable to the realist politics of his time. It is also the distinction between a theory of moral politics and a theory of political morality.

Grotius does find a middle path in the application of just war theory, however he fails on the theoretical level to provide a moral theory at all.⁶⁰ Given the project he was attempting, a practical secular just war theory, this is no surprise. However, the resulting political theory is answering a different question than contemporary readers might be inclined to pose. He replaces the primacy of good and right with the political realist notion of state interest. Instead of asking ‘what is good to do before, during, and after, war?’ Grotius is asking, and answering, question ‘what is politically prudent, in the long run, to do before, during, and after, war?’

Regarding the larger project this work begins, investigating Kant’s understanding of just war theory, Grotius, and the theory he proposes, can be seen as baseline. What Grotius advances as a secular just war theory is canonical to the tradition. This kind of theory, which is secular, politically motivated, practical in purpose, and embodied by a bill of principles, is the model for a traditional just war theory.⁶¹ There are other contemporaries of Kant’s that fit this model, e.g. Pufendorf and Vattel, and current philosophers that advance this kind of theory. A contemporary traditional just war theory will better conform to the general feelings of right and wrong that pervade the current international structure. However, unless such a theory strives to be centrally ethical, it will face many of the same issues as Grotius.

The Project Outlined

Given this understanding of the beginning of secular just war theory, the critiques offered of other traditional just war theorists should sound familiar. Further, the criticisms of other interpreters of Kant should have more bite than their modest working would initially suggest.

⁶⁰ Grotius does provide some theoretically promising points, chief among them, is his treatment of his moral principles as applying to everyone equally. This universal equality of moral principle, such as they are, is both a point in Grotius’ favor, and a prime area of confusion about the nature of his project.

⁶¹ Although, given its attributes, the use of the term ‘just’ in its moral sense is dubious at best. It is more likely to consider the term ‘just’ used here in its legal or social sense.

Also, this topical framework should help structure an evaluative stance on the success of the ultimate theory advanced. If it is too similar to the one offered by Grotius, and falls prey to the same criticism, something of importance has been missed. The goal, as stated, is to offer a Kantian universal just war theory, which is importantly distinct from pacifist or realist views and from traditional just war theories.

The first chapter will be dedicated overturning the position advanced by Brian Orend, that Kant has a traditional just war theory. Orend offers a version of Kant's just war theory that follows the same principle distinctions that Grotius makes for his. This comparative analysis will take the contemporary traditional just war theorist Richard Regan as a foil to Orend's view. While the *jus ad bellum* section of Orend's version is nearly identical to Regan's, Orend offers an additional *jus in bello* principle, and has an entire *jus post bellum* section that Regan leaves out. While Orend attempts to establish his interpretation on the intrinsic value of humanity, he ultimately fails to sufficiently distinguish his theory from Regan's, and remains a traditional just war theory.

The second chapter will address the point that Kant may not have a just war theory at all. If Kant does not endorse the political expediency underpinning traditional just war theories, then there is a concern that Kant might endorse a version of the pacifist position. Howard Williams interprets Kant as taking just such a stance. He considers how Kant views war in his larger philosophical corpus, then develops a more specific view within Kant, on just war. He extends this to an understanding of international foreign aid, which seems to disagree with Kant's writings on the matter. I argue that, as the implication of his view is not supported by Kant, then there must be something importantly wrong with Williams' interpretation of Kant.

This concludes the negative portion of my argument. Kant does not have a traditional just war theory, nor does he adopt a pacifist position. The positive argument I offer consists of three parts, one considering how Kant approached philosophical inquiry, another considering a new kind of just war theory called universal just war theory, and the third puts these together to make my version of Kant's just war theory.

The third chapter begins my positive argument by considering, broadly, how Kant approached philosophical issues. I argue that he had a progressive and evolutionary methodology. This is evident in Kant's earlier works about the creation of the universe from force, and the eventual harmony of the rotation of the Earth and the orbit of the Moon. Later Kant applies this method to the use of reason and the categorical imperative. I end this chapter with a look at Kant's *Idea for a Universal History with a Cosmopolitan Aim*, where Kant utilizes a progressive and evolutionary approach to understand the nexus of history, politics, society, and ethics. The result is that any just war theory Kant might endorse needs to have this feature of being progressive and evolutionary.

In the fourth chapter, I consider the question of Kant's just war theory from a topical perspective, explicating a new kind of just war theory. I begin by considering the commonalities of representative traditional just war theories, and conclude that there are five distinctive characteristics of these kinds of just war theories. Alternatively, I offer a new kind of just war theory called a universal just war theory, which has three distinctive characteristics as illustrated by the Communist just war theory that is set out by Karl Marx, Frederick Engels, and Vladimir Lenin. This theory is then criticized to demonstrate the improvements that a Kantian just war theory would need to instantiate.

In the fifth and last chapter I bring the third and fourth chapters together. With an understanding of how Kant would approach developing a just war theory, and an understanding of a new kind of just war theory as an alternative to the two positions spelled out in the first two chapters, I am able to offer a Kantian universal just war theory. After explicating the theory, I demonstrate how it realizes the features of a universal just war theory, and show that it is not a traditional just war theory. I also revisit the interpretations of Kant by Orend and Williams, showing that they explain portions of my understanding of Kant's overall view, and that I offer the remaining piece of the general theory. I end with a brief application of my rendering of Kant's universal just war theory to Operation Iraqi Freedom, concluding that it was, generally, a poorly fought conflict.

Chapter 1 – Orend on Kant’s Just War Theory

Introduction

The main thesis of this work is that Kant has a universal just war theory. The first stem in accomplishing this is to argue against alternative interpretations of Kant. Particular to the intended interpretation, the view that Kant has a traditional just war theory, such as the kind Grotius offers, must be addressed. After that view is dealt with, the next chapter will consider the view that Kant does not have a just war theory at all. This will set the stage for the positive argument, that Kant does have a just war theory, it is not a traditional one, but a universal just war theory.

Since Grotius, there have been some alterations made to the various criteria of *jus ad bellum*, *jus in bello*, and *jus post bellum*. Most notably, Brian Orend has offered an interpretation of Kant, which follows along the lines that Grotius offers, in his work *War and International Justice: A Kantian Perspective*. Orend grounds his version of a Kantian traditional just war in Kant’s writings, despite the popular interpretation of Kant as viewing Grotius, among others, as a ‘sorry comforter.’ As a foil to clarify Orend’s understanding of Kant and traditional just war theory, another contemporary author of just war theory will be included in the discussion. Richard J. Regan, in his work *Just War: Principles and Cases*, offers a contemporary traditional just war theory, and will be used to contrast the views of Orend. While not alone in his view of just war theory, Regan offers a particularly clear theory that readily allows for comparison. Orend’s Kantian interpretation of traditional just war theory will be shown to largely agree with Regan’s understanding of just war theory.

In terms of the larger project, the consideration of Orend, along with Regan, will aim to discount the idea that Kant has a traditional just war theory. As noted with Grotius, such a theory is grounded in political necessity, and not moral requirement. Kant's consideration of politics, while comprehensive and complex, takes the state as, at base, a moral entity, but not one with inherent worth. Regan offers good reasons to believe that a contemporary traditional just war theory might be able to capture just such a sentiment, and Orend's interpretation, through a Kantian lens, even more. However, these theories still have the remnants of *realpolitik* on them, and are founded on the health and welfare of the state as such, not the state as a protector of other moral entities, namely its citizens.

Justifying the Resort to War

Before considering the theories that separate just wars from unjust wars, a brief note about the resort to war is in order. The reasons offered for resorting to war, thus necessitating a just war theory, offers insight into what the creators of these theories believe they are doing. Further, it also notes important constraints on the applications of the theory that is developed from the justification to start a war. Richard Regan offers a justification for the general resort to war. This is a general position that most, if not all, contemporary just war theorists can adopt. Brian Orend also offers reasons for his interpreting Kant as a just war theorist, as opposed to a political realist or a pacifist. How Orend understands Kant as justifying the resort to war will be beneficial to understanding his interpretation of Kant, and suggest a critique of it.

Set Up In his book, *Just War: Principles and Cases*, Richard Regan presents a version of the case for a just war. Regan begins with the foundational, and popular, claim that war needs to be justified. He then offers what he believes to be the set of criteria that are individually necessary and jointly sufficient to justify going to war. He follows this with a brief consideration of what it

means to justly conduct a war, the *jus in bello* to the previous *jus ad bellum*. Before considering specific cases, Regan ends with a look at what the invention of nuclear weapons might mean for the behavior of aggressors in a just war. This last concern is particularly problematic for traditional just war theorists, who might, as Regan does, slip into the pacifist position due to the means used to accomplish the end.

Regan opens his discussion of the need to justify war with a Hobbesian sentiment of the need for a sovereign power to secure rights. Regarding nations, Regan claims that rationality would dictate the surrender of some powers to an international power to secure the rights of the individual nations. In the absence of such an international power, Regan claims that there is still a moral duty to avoid war. He holds the position that human beings, having the capacity to reason, have a moral duty to avoid violence as living in peace and cooperation is a specifically human goal.

In the second part of his book, *War and International Justice: A Kantian Perspective*, Brian Orend begins his explanation of a contemporary Kantian just war theory with a consideration of Kant's position on human rights and the theoretical underpinnings of states' rights. From there, Orend offers a Kantian refutation of both realism and pacifism. With this negative argument clearing the way, Orend is free to fill the space with his own understanding of Kantian just war theory. Orend's understanding of Kant as offering a just war theory, and its being closer to the theories of Grotius and his ilk, needs to be justified.

Orend describes the aim of his investigation into the justification of war as a refutation, because he understands the pacifist and political realist views to be alternatives to just war theory, and "not hopelessly benighted doctrines, nor are they literally self-contradictory."⁶² Thus,

⁶² (Orend 2000) (pg. 127) Note that, regarding pacifism, this is in direct conflict with the position of Jan Narveson in *Pacifism: A Philosophical Critique*.

Orend hopes to offer robust versions of both pacifism and realism, and defeat them with a stronger argument to the contrary.

Realism The first view that both Regan and Orend consider is the political realist notion that there is no relationship between justice and war, war being part of the political arena, and the political arena is amoral. How this is argued for, and what the counter argument is, are different questions for these thinkers.

Orend considers the realist position as a group of related doctrines. He distinguishes descriptive realism from prescriptive realism, and prudential prescriptive realism from moral prescriptive realism, and each of these are divided into strong and weak. The prevailing continuity between all of these positions is “a strong suspicion about applying moral concepts and judgments to the conduct of international affairs.”⁶³ Orend considers each of the positions he sets out in turn, resulting in a rejection of realism as incompatible with just war theory. This conclusion is not as powerful as the one offered by Regan, however, it does have the advantage of preserving the core principles of realism, the sanctity of the state, and subordinating it to a moral understanding of just war theory.

Orend does agree with Regan in one particular regarding realism, that nations ought to act morally. In discussing the problems of descriptive realism, Orend notes that “we have had a very long history of utterly coherent normative thought about international relations in general and warfare in particular.”⁶⁴ He takes this as evidence that the claim that moral concepts are inapplicable to the international realm is simply wrong. This echoes, to some extent, the argument put forth by Michael Walzer regarding the realist doctrine.

⁶³ (Orend 2000) (pg. 128)

⁶⁴ (Orend 2000) (pg. 131)

Michael Walzer, another contemporary traditional just war theorist, in his book *Just and Unjust Wars*, describes the realist objection to just war theory, that justice has no place in discussions of war, and offers his own refutation. He does this by making an analogy to military strategy. The argument legitimizes, even for the realist, the use of descriptive ethics, and he then argues for a close connection between descriptive and normative ethics. This refutation of the realist argument can be understood as an explanation that the committed realist, in this instance, makes a naturalistic fallacy.

From Thucydides' *History*, Walzer recounts the discussion between the Athenian generals and the city magistrates of Melos, resulting in an explanation of political necessity as more important than moral virtue in international relations. Walzer interprets this passage as Hobbes does, as an argument for political realism, where the moral terms employed in discussion of just war are merely expressing the preferences of the speaker. For Hobbes, Walzer explains, a particular story involving the interest of the state must accompany the charge of injustice, and without it the war is not unjust, merely disliked.⁶⁵

With this presentation for the division of morality from war, Walzer turns to an argument by analogy to refute its conclusion. All arguments by analogy are only as strong as the analogy, so Walzer begins by claiming that there is a strong similarity between the use of moral language to describe war and the use of strategic language to describe war. "Strategy, like morality, is a language of justification."⁶⁶ Just as strategic terms match to actual events in the world, Walzer claims that moral terms also match actual events in the world, even if the particular terms are disputed. The difference, for Walzer, between descriptive and proscriptive statements, is that

⁶⁵ To be sure, there are more recent realist approaches, such as John Mearshimer's *The Tragedy of Great Power Politics*. However, the meta-ethical commitments are unchanged, and are subject to the same arguments.

⁶⁶ (Walzer 1977) (pg. 13)

description occurs post hoc, and proscription occurs ante hoc. “It is only when [these judgments’] substantive content is fairly clear that moral and strategic terms can be used imperatively... The moral theorist is in the same position [as the strategic theorist].”⁶⁷

As an example, Walzer asks the reader to consider an incompetent commander attempting to relate the events of a battle in strategic terms. While the commander may not be gifted at prior proscriptive strategy, the report can still make use of descriptive strategic language. Similarly, Walzer explains, even if the prescriptive moral language is ignored or poorly employed, descriptive moral language can still be used to describe the events of a battle or an entire war. Thus Walzer succeeds in demonstrating that, while the actual events associated with war may not be morally laudable, they can, at least, be described in the language of morality. Further, with proper forethought, morally dubious actions can be proscribed against. Even in restricting such an account to discussing the benefits of the state, as a political realist would prefer, it is a value claim, not a mere descriptive claim, which is being asserted.

In this way, even the most ardent realist must admit to a relationship between justice and war which is circumscribed by descriptive ethics. Regarding normative ethical claims, the realist is faced with few alternatives. First, they might abandon their view and accept Walzer’s point that normative ethics comes part and parcel with descriptive ethics, thereby legitimizing the use of just war theory. Second, they might attempt to argue that, while normative ethics typically follows from descriptive ethics, it does not in the case of war. Such a claim would be a value claim, but would need to rest on some descriptive feature of war, thus committing the naturalistic fallacy. Further, such a claim would demand justification for the treatment of morally prescriptive claims as different from other prescriptive claims, i.e. strategic ones.

⁶⁷ (Walzer 1977) (pg. 14)

While Orend would be content with such a refutation of descriptive realism, and perhaps even some other kinds of realism he makes note of, the moral claim that some realists advance, that nations are morally obligated consider only national interest, still needs addressing. Orend distinguishes strong moral prescriptive realism from weak moral prescriptive realism. The weak version mirrors the strong version, that nations ought to only consider national interest, but adds the condition: only when other nations are doing so as well. Thus, for Orend, this weak version can be accommodated within just war theory, as a special case with an overarching moral theory.

The moral realist position is grounded on the claim that a nation's duty is to protect and advance the interests of its citizens and only them. Orend counters that, much like a defense attorney, there is "a minimal set of fair and just standards"⁶⁸ that needs to be adhered to regardless of one's political, or partisan, situation. He further explains that, on the international level, this minimal set of standards is the Universal Declaration of Human Rights.⁶⁹ So, while it may be the case that "above and beyond the threshold level of minimal justice established by human rights, states may justifiably pay more attention, and give greater weight, to the interests of its own citizens," there is a limit to the preferential treatment, even in times of war.⁷⁰

Orend defends his claim for the use of the Universal Declaration of Human rights as the minimal set of standards with an appeal to cosmopolitan rights. He argues for the Kantian position that there are duties owed to everyone as members of the shared world, and believes that the Universal Declaration of Human Rights explicates these duties. Orend is accepting of some partial treatment, however, he claims that any tribal feelings "do not justify doing serious harm and grievous injury to other human beings."⁷¹ There is an applicable analogy to intra-nation

⁶⁸ (Orend 2000) (pg. 141)

⁶⁹ (Orend 2000) (pg. 141)

⁷⁰ (Orend 2000) (pg. 144)

⁷¹ (Orend 2000) (pg. 145)

loyalty: a province within a nation may consider its citizens before the citizens of other provinces, however, by virtue of their shared membership to a single nation, each province cannot entirely ignore the citizens of other provinces.⁷²

Having considered the realist position in a thorough and nuanced manner, Orend has succeeded in offering a defeating argument to each of the related set of claims that realists might advance. He next considers the pacifist objection to just war theory.

Pacifism Walzer has a further argument against the pacifist position, however, it does not match up with the argument suggest by Regan, unlike the case of political realism. Orend disagrees with Regan's view, and takes great pains to explain the variety of pacifist positions, and refute them. Together, Regan and Orend offer arguments against the pacifist position that any traditional just war theorist, including Walzer, would accept.

Regan's claim for the justification of war is a substantially negative one, with a similar appearance to the dirty hands theory of leadership. Regan claims that, for an individual, pacifism affects a single person. No one else has a right to interfere because what a person does with themselves, as long as it is morally permissible, is their right to do.⁷³ This freedom of action does not hold true in the case of statesman, Regan claims. A leader needs to consider the welfare of all the citizens of the nation, and so must be willing to do individually morally objectionable acts for the good of the nation, and its people. For Regan, if statesman were to practice pacifism, they would, necessarily, subjugate the citizens of the nation they lead to the first aggressors they encounter. Such a policy of knee-jerk capitulation would overturn the rights of the people as citizens to be protected by the state, specifically from said aggressor. This necessity of the

⁷² Admittedly, there is a legalistic argument here that does not hold in a state of nature. However, with the advent of the UN, there is grounds for a legalistic argument. Further, this is an analogy of moral duty, not legal ties.

⁷³ This line of reasoning can be justified along Utilitarian, Kantian, and Rawlsian lines of reasoning with ease.

statesman to behave with questionable morality, Regan claims, makes the justification of war possible. Regan takes this argument as sufficiently refuting the pacifist position within the realm of statecraft, and turns next to the conditions for allowing these morally suspect leaders to engage their nations in war justly.

Orend does not accept Regan's critique of the pacifist position. In employing a dirty hands justification for war, Regan is implicitly charging the pacifist with a clean hands morality. Orend explains that, when a moral theory calls for inaction of any kind, a clean hands criticism may be leveled. However, that does not make it a powerful objection. Orend notes that "[t]he very point of morality itself, we might say, is to help keep one's hands clean."⁷⁴ That is, morality, by definition, cannot require one to act immorally. Dirty hands only seem dirty because of the judgment of those in other circumstances.

As an alternative, Orend offers two versions of pacifism, consequentialist and deontological, which both advance the claim that war is always unacceptable due to "the specific *kind and degree* of violence war involves."⁷⁵ Consequentialist pacifism motivates this claim with an appeal to the cost/benefit analysis of war, and deontological pacifism motivates this claim with an appeal to the fundamental duties war violates, e.g. do not kill. Orend puts forward powerful arguments against each position.

Orend explains the consequentialist pacifist's position as one that understands war to be always more costly than the benefits it may produce. However, as consequentialist reasoning is based on a cost/benefit analysis, Orend notes that there is always the possibility that an exception to the general pattern may occur.⁷⁶ Given very special circumstances, a consequentialist might

⁷⁴ (Orend 2000) (pg. 147)

⁷⁵ (Orend 2000) (pg. 146) Emphasis in original.

⁷⁶ (Orend 2000) (pg. 151)

recommend resorting to war. Thus, Orend notes, there is not a categorical rejection of just war theory by the consequentialist pacifist, merely a critique of past wars.

Orend moves on to consider the deontological pacifist's objection to war. The position, Orend characterizes, is that "the very activity of war-fighting violates a foremost duty of morality/justice."⁷⁷ While somewhat vague in its presentation, Orend notes the lack of specification of the duty violated, Orend offers an equally vague solution. While generally frowned upon, in this instance, vagueness is helpful. The class of positions grouped under deontological pacifism take this form, and are differentiated from each other by specification of variables, i.e. who violates which duty. Orend, in offering a general understanding of deontological pacifism and a general form of a rebuttal, overturns the entire class of related objections.

Orend begins his critique by agreeing with the deontological pacifist that duties, and their attendant rights, "are reasons to treat persons in certain ways."⁷⁸ Given this, Orend claims that the reasons offered for treating people in particular ways may change given different circumstances. He explains that "forfeiture [of a right] ... amounts to nothing more than the claim that the weight of reasons in the situation informs us that V [the victim] does nothing wrong in responding to A's [the aggressor] aggression with lethal force if necessary."⁷⁹ This, it should be noted, brings circumstances again to the forefront of the discussion. Orend then considers the view that the particular aggressor in war, e.g. the soldier, is in fact innocent.

This understanding of the innocence of the soldier stems from a disconnect between the motives of the aggressing nation to send the soldier to war and the motive of the individual

⁷⁷ (Orend 2000) (pg. 153)

⁷⁸ (Orend 2000) (pg. 158)

⁷⁹ (Orend 2000) (pg. 158)

soldier to actually fight, specifically to kill or be killed. Orend offers a number of, individually sufficient, reasons for still justifying the killing of innocent soldiers. Most importantly, Orend notes that, importantly, “soldiers *are* aggressors.”⁸⁰ This echoes Jeff McMahan’s sentiment in his book *Killing in War*. According to McMahan, soldiers are not moral equals on the battlefield, as “it is morally wrong to participate in a war that is unjust.”⁸¹ For Orend, the implication of this is that the aggressing soldiers, regardless of personal feelings regarding the war, are acting immorally. Thus, Orend concludes that “states possess an on-the-whole justification in responding to aggressive armed forces with forces of their own.”⁸² On the individual level, it is permissible to react to these individual aggressors, i.e. enemy soldiers, with lethal force if necessary.

Another aim of the deontological pacifist that Orend considers is the protection of innocent civilians. They are, by definition, innocent, so the arguments justifying the killing of aggressive soldiers will not suffice. Instead, Orend offers the doctrine of double effect as a justification. This notion will be discussed further within the discrimination criteria of *jus in bello*. For now, Orend notes the distinction between intending and foreseeing, and contends that, in following *jus in bello* principles, a state can be understood as intending only to pursue their just cause.

For the pacifist, it is unreasonable for a state to allow a single innocent to die for political reasons, and for Orend, it is unreasonable for a state to allow the threat of innocent deaths prevent it from fulfilling its function. For Orend, as for Kant, the state is a moral entity, deriving its worth from the function it serves, viz. the protection and promotion of its citizens’ autonomy.

⁸⁰ (Orend 2000) (pg. 160) Emphasis in original.

⁸¹ (McMahan 2009) (pg. 6)

⁸² (Orend 2000) (pg. 161)

Orend concedes that, while not a defeating argument, his understanding of the function of the state offers a compelling reason to accept just war theory despite the deontological pacifist's remaining objection.⁸³

Having justified the use of just war theory, Orend goes on to explicate his understanding of a contemporary Kantian just war theory. I contend that what he offers is still, fundamentally, a traditional just war theory. Regan's traditional just war theory, building on the work of Grotius those like him, will be seen to be closely resembling Orend's. This resemblance offers good reason to consider Orend's version of just war theory a traditional one. However, Orend does attempt to offer a different motivation behind his principles, a Kantian one, and this provides good reason to attempt to preserve his version of just war theory, to some extent.

Jus ad Bellum

Now that the resort to war has been justified, these thinkers begin their considerations of a just war theory by noting the necessary and sufficient conditions for beginning a war justly. Regan and Orend have slightly different motives behind their views, but the overwhelming agreement has asymmetric benefits, aiding the moral force of Regan's view, and harming the Kantian nature of Orend's view.

Preliminaries. In recognition of the history of the tradition he is a part of, Regan points to the philosopher Thomas Aquinas and the later philosophers Francisco de Vitoria and Francisco Suárez for having developed a six point theory of just war which, purportedly, grounds war in secular morality, avoiding an appeal to any kind of higher power, e.g. God.⁸⁴

Regan credits the first three points of the theory to Aquinas: (1) the decision to engage in war must be made by the legitimate authorities, (2) the war in question needs to be fought for a

⁸³ (Orend 2000) (pg. 167)

⁸⁴ (Regan 1996) (pg. 17-18)

morally laudable cause, (3) within nations currently, or soon to be, engaged in war, the statesmen who actually make the decision to engage in war, must reach said decision for the appropriate reasons.⁸⁵ These first three conditions are the starting point for Regan's just war theory.

Regan credits the last three points of just war theory to the two later philosophers Francisco de Vitoria and Francisco Suráz: (4) the requirement of proportionality in recourse to war, (5) the diplomatic or non-violent avenues open to redress harms done must all be explored fully, prior to resorting to war, (6) even a war that meets all the previous criteria, must have a reasonable chance of success.⁸⁶ With these six individually necessary and jointly sufficiently conditions, Regan offers a view of *jus ad bellum* that can be readily applied to almost any conflict, given the appropriate information, which he does in the second part of his book.

Orend offers a different historical grounding of his views. He explains that, for his just war theory, the genesis is from the Kantian argument for the resort to armed force to protect states' rights. Orend notes nine rights that each state is entitled to, and enumerates the nine attendant duties that each state is bound by, in a Kantian context. Orend takes this endeavor to be the positive correlate to the negative arguments he offered against realism and pacifism. For Orend, the question of when a state may resort to war is answered by its fulfilling all of the six criteria he sets out. These principles are, like Regan's theory, individually necessary and jointly sufficient to grant the moral permissibility of war. Another important note of correlation between Orend's view and the traditional just war theories is that Orend requires that states submit to "public scrutiny and standards of evidence and reasonableness."⁸⁷ Last, by way of preliminaries,

⁸⁵ (Regan 1996) (pg. 17)

⁸⁶ (Regan 1996) (pg. 17-18)

⁸⁷ (Orend 2000) (pg. 176)

Orend's set of principles, like traditional just war theories, only makes war permissible, not obligatory.⁸⁸

Declaration of War. The first condition of *jus ad bellum* Regan explores is the condition that war must be declared by those who have the legitimate authority to do so. Regan explains that the question of who has this authority can generally come from a legalistic argument, however he also makes mention of the Hobbesian idea that ultimate governmental authority resides in the popular support of the people. This does not mean, Regan clarifies, that if a vast majority of citizens of a particular nation expressed a desire to engage another nation in war, legitimacy may be ascribed to the leader of a spontaneous 'Army of the People' to fulfill this condition. This condition eliminates the possibility of random citizens coming together to take up arms against another group of people, or nation. Similarly, a party leader within a democratic nation cannot declare war without the appropriate civil office of authority to legitimate their claim. Regan offers real world example in the Constitution of the United States, on the state level, and in the Charter of the United Nations, on the international level. Without legitimate authorization, a war would not be a conflict among nations, but rather, a conflict between a nation and the private army of the illegitimate provocateur of war. In Grotius' terms, the result would be a mixed or private war instead of a public one.

Orend also requires a declaration of war by proper authorities.⁸⁹ He explains that the appropriate authorities must make this declaration publically, and, at the same time, make a commitment to the preservation of human rights during the war. Orend goes somewhat further than Regan regarding popular consent of the war. While Regan offered it as a possible legitimation, Orend requires it: "The people must, in some public procedure, meaningfully

⁸⁸ (Orend 2000) (pg. 177)

⁸⁹ Orend calls this his third requirement of *jus ad bellum*.

consent to the launching of a war on their behalf.”⁹⁰ This consent may take any number of forms, from a representative democratic decision to direct popular vote. Orend does not specify the method of conformation, nor the requirements of such a conformation. Additionally, the requirement of the commitment to human rights is vaguely defined. Orend note that “a state ... may not violate any human rights, whether foreign or domestic, either in peace or war.”⁹¹ This requirement appears related to a later requirement of Regan’s, of just intent. More generally, it seems, Orend requires a contractual declaration of adherence to *jus in bello* moral requirements. Without the popular conformation, or the commitment to human rights, the legitimacy of an otherwise proper authority to declare war is truncated.

The differences between Regan’s and Orend’s versions of this criteria are minimal. Orend can be understood as attempting to make the same requirement that Grotius declared, more morally stringent than Regan does. There is a slight difference in motivation regarding the acceptance of this principle. Grotius considers this criteria a politically required nicety to differentiate public wars from private and mixed conflicts, and Regan views it in much the same way. Orend can be read to take this requirement as a fulfillment of the moral obligation of a state to protect its citizens and promote their autonomy. Interpreting Orend in this way, however, still leaves the criticism that the particular principle expresses is a state-centered one, and not necessarily a universal requirement of war, e.g. a war of defense by a league of peaceful nations, or an oppressed insurgency, may not be required to declare war to respond to the aggressing nation with force.⁹²

⁹⁰ (Orend 2000) (pg. 192)

⁹¹ (Orend 2000) (pg. 193)

⁹² There is the possibility that, in this case, a conditional declaration of war has already been made in the form of declared political sovereignty. However, such a conditional claim would also exist in a state of nature, and render this requirement universally unnecessary.

Just Cause. The second condition of just war Regan sets out is that the decision to go to war must be founded in a just cause. Regan explains that this means that the nation deliberating the decision to go to war needs to have been wronged by the potential enemy in some way, or the potential enemy needs to have wronged a third nation. Motives such as national interest and land/resource grabbing, as seen throughout much of history, are not consistent with waging a just war. Wars are only just if waged in a protective manner, to secure the rights of the nation and its people. This has the consequence that, for any given war, only one side of the war is fighting a just war, the side defending its, or another nations, rights. The aggressing nation is waging an unjust war, as it is violating a duty to nonaggression. Regan also links this consideration to the *jus in bello* condition of proportionality, which will be discussed later, by explaining that the wrong done must be of sufficient measure to warrant the atrocities of warfare. A petty wrong, such as a random citizen accidentally wandering across a border, does not legitimate the loss of life, on either side.⁹³

Orend also offers a version of the just cause principle.⁹⁴ He bases it on the rights and duties of a state. This is not unlike the justification for the limits Grotius and Regan place on their understanding of a just cause. Orend asserts that a state has nine rights, and nine attendant duties to adhere to. A violation of any one of these rights or duties might, in an international state of nature, offer a nation a just cause to go to war.⁹⁵ Given the myriad ways in which these violations might occur, Orend offers three specific classifications for a just cause: “1) self-defense from aggression; 2) the defense of others from aggression; and 3) armed intervention in

⁹³ (Regan 1996) (pg. 48)

⁹⁴ Orend calls this his first requirement of *jus ad bellum*.

⁹⁵ (Orend 2000) (pg. 177)

a non-aggressive country wherein grievous human rights violations are occurring.”⁹⁶ These are similar to the general causes set forth by Grotius.

The key difference between the two sets of just causes is illustrated by the acceptance by Orend of intervention in other nations’ domestic affairs. Orend grounds this claim with the concept of a minimally just state. If, Orend claims, a state is minimally just, then they are treating their citizens justly, otherwise, the state is violating their human rights. In that case, another nation may be called on by the citizenry to secure their rights. Orend notes that there are two additional criteria for such foreign intervention. First, a state must be requested to help.⁹⁷ This requirement can be seen as an interpretation of the proper authority criteria applied to a foreign group of oppressed people. Second, the intervening state must commit to the rebuilding of the unjust nation they are going to war against.⁹⁸ This criteria is a specific extension of Orend’s *jus post bellum* principles, which will be discussed later. In allowing for the possibility of morally acceptable foreign intervention, Orend sets his theory apart from Grotius and, to a lesser extent, Regan. Orend grounds his principles on a moral conception of the state, beyond the legal entity that Grotius understands it to be.

Just Intent. The third condition of *jus ad bellum* that Regan sets out is that the decision by the statesmen to go to war must be made with just intent. Regan explains that this involves a molding of the reasoning statesmen use regarding war, to objective moral reasoning. He explicates five concepts that the just intent consists of, and that the statesmen in question must conform to all of them in order to be justified in declaring war. Regan enumerates them as follows: 1) avoid war by all reasonable means, 2) evaluate one’s own proper authority in the

⁹⁶ (Orend 2000) (pg. 178)

⁹⁷ (Orend 2000) (pg. 187)

⁹⁸ (Orend 2000) (pg. 187)

power to make war, 3) adhere to the conditions of proportionality, 4) fight with just methods, and 5) end with just peace terms and at the achievement of just reparation for wrongs done.⁹⁹

This condition eliminates the possibility of excusing a war for personal interest by means of an apparently morally acceptable cause, e.g. it disallows war profiteering. These criteria must be evaluated by the statesmen themselves, and there is the danger of slipping into oversimplification and demonization. A note should be made about the wide, and concurrently narrow, scope of the condition of just intention. The first three considerations of just intent are three other criteria of Regan's just war theory brought to bear on the personal agenda of the state's leader. The fourth consideration of just intent involves the doctrine of *jus in bello*, e.g. intending to fight dirty from the outset is unacceptable.¹⁰⁰ The fifth consideration of just intent deals with *jus post bellum*, and the changing of a just war into an unjust war. This condition of just war provides a just war with an inherently conditional nature, and criteria for the excommunication of a particular war from the realm of justice. These five considerations may be applied to a war in general, however, here the concern is whether or not the individual statesman considering war personally follows them.

Orend's understanding of this just intent criteria is conceptually vaguer than Regan's.¹⁰¹ For Orend, it is not a specific statesman that must have this intent, but rather the state itself. This is an extension of the state as a moral entity, and the analogy to the individual, as capable of moral action, and represents the most distinct example of the difference in foundation of Orend's and Regan's just war theories. Orend demands, first, that the state resort to war "for the sake of vindicating those rights whose violation grounds its just cause."¹⁰² Second, Orend requires that a

⁹⁹ (Regan 1996) (pg. 84-85)

¹⁰⁰ This is related to proportionality and the Red Lily Effect discussed below.

¹⁰¹ Orend calls this his second requirement of *jus ad bellum*.

¹⁰² (Orend 2000) (pg. 190)

state must commit itself to the “norms of *jus in bello* and *jus post bellum*.”¹⁰³ In practice, a statesman would be the orator of such sentiments, however, the moral commitment must be made by the state, not an individual.

One consequence of this requirement is, for Orend, that “it is not the case that two states can go to war with each other, each in self-defense.”¹⁰⁴ This is a problem for Orend’s just war theory, and any just war theory that always requires one side to be in the wrong. There is an epistemic element to all moral judgment calls. If one nation believes, for any number of reasons, that another is not to be trusted, then no amount of reassurance that there will not be an attack will suffice. In that instance, interpretations of incomplete data might recommend to the paranoid state that they are in clear and imminent threat of attack, thus justifying an aggressive response. The attacked nation would then have a justified cause to respond aggressively, and a war of mutual self-defense occurs. This difficulty is not overcome by the later requirement of last resort, as an imminent threat requires an immediate response; at that point, war is the last resort.

Midpoint Analysis. These conditions are the core of Regan’s just war theory, and already, comparisons to Grotius’ version abound. Thus far, these criteria are preemptively unproblematic, meaning that, before any bullet is fired, or any wartime measure is signed, the questions posed by these conditions are, theoretically, answerable. The first three conditions contain an element of epistemic uncertainty, namely knowing who has the authority to declare war, why war is being declared in general, and why war is being declared personally by those who decide to engage in war. However, these questions are answered easily enough, provided honesty is a quality of the political leaders in question. Further, there are more abstract metaphysical and epistemological concerns about the nature of human knowledge. With the following three

¹⁰³ (Orend 2000) (pg. 190)

¹⁰⁴ (Orend 2000) (pg. 191)

criteria, even barring such abstract concerns, the questions they pose are not easily answered, in principle, by even the most honest politician.

Interestingly, Orend's principles of *jus ad bellum* also have an important theoretical split at the midpoint. The three noted criteria of Orend's theory are staunchly deontological, and grounded on a Kantian understanding of proper action by a moral agent. In this case, the moral agent in question is a state considering war. The last three, however, have a somewhat consequentialist bent to them. Orend offers reasons for their inclusion in his Kantian just war theory, but does not entirely remove the consequentialism from them. To be clear, the difficulties of Regan's criteria, and their split, also apply to Orend's *jus ad bellum*, and vice versa. Thankfully, Orend and Regan claim that they are engaged in somewhat different projects, so the problems of one, in this instance, are irrelevant to the overall goals of the other.

Macro-Proportionality. The fourth condition for just war theory Regan lists is that a just war must be initiated in proportion to the wrong done to the nation declaring war. This condition eliminates the possibility of petty grievances being escalated to war and allowing a moral excuse for the awfulness that ensues. Simply put, not all aggressions merit the horrors of war, so, Regan cautions, to fight a just war, the decision to not go to war must be even worse than the atrocities of war itself. For statesman to do otherwise would be for them to actively harm the people and nation that they are supposed to be protecting.

Regan explains that this determination of proportion is a judgment call based on three evaluative considerations: first, the value of the wrong done to the nation, second, an objective evaluation, as is possible, of the expected cost of engaging in warfare, including property and lives lost, and, third, the value of the cost.¹⁰⁵ For Regan, the comparison of these two values, the

¹⁰⁵ (Regan 1996) (pg. 63)

wrong and the cost, will provide an answer to the question of proportionality. If the first value does not rise to the level of sufficient reason, compared to the harm done by not going to war, or if the second value is objectionably high, with the same comparison, then war ought to be avoided. Regan is sympathetic to the difficulty of attaining a factual description of possible future events, and the somewhat arbitrary nature of assigning abstract values. However, he insists, these considerations must be made, and can assist a deliberating statesman in coming to a decision. In practice, the analysis of this condition is complicated, where estimates proliferate, and disagree, prior to an event as complicated and chaotic as war, and only one version of events can actually play out.

Orend offers a proportionality criteria as well.¹⁰⁶ He describes this principle as macro-proportionality, to distinguish it from a *jus in bello* principle of micro-proportionality. In explaining his understanding of this requirement, Orend cites Regan, and uses his explanation to a great extent. He continues beyond Regan's consideration, offering general categories of costs and benefits to be weighed. While this is helpful in applying his just war theory, it does not significantly differentiate his understanding of this requirement from Regan's.

Last Resort. The fifth condition for just war theory presented by Regan is that war ought to be declared only as a last resort. Regan means by this that all other diplomatic and non-aggressive approaches must be taken first, and repeatedly, with genuine effort. By requiring diplomatic relations, a war started without either belligerent addressing the other, and thereby failing to find a non-violent solution, is not morally acceptable. However, Regan places a limit on these alternatives to war; there must exist a reasonable expectation that diplomatic methods will repair the wrong done by the aggressive party. Regan consents that in the case of invasion, a nation can

¹⁰⁶ Orend calls this his sixth requirement of *jus ad bellum*.

do nothing but fight or surrender, and so war is the last, first, and only resort.¹⁰⁷ Short of invasion, however, Regan allows for a wide latitude of diplomatic options to be set in place, including economic sanctions and appeal to the international community. A nation must have a reasonable belief that mediations, negotiations, or arbitrations will not successfully resolve the issue at hand before going to war, otherwise, Regan says, a nation is not justified in waging war.

Orend's version of the last resort principle, no precipitous use of force, is slightly different, but essentially similar, to Regan's.¹⁰⁸ Orend notes Walzer's criticism of the nature of the last resort principle to agree with it, and legitimize his alternative. Orend explains that there is not real last resort, another attempt at diplomatic relations may always be made. Further, he notes that force short of war, e.g. economic sanctions, embargos, isolation, etc., can be utilized. The requirement that war be literally the last resort is stringent to the point of banning war entirely. Orend advocates the alternative moral principle that war ought to not be pursued rashly, or with undue haste. While this criteria is cosmetically different from that offered by Regan, and Grotius, it amounts to the same idea, given the explanation offered by these other traditional just war theorists.

Chance of Success. The sixth and last condition for *jus ad bellum* Regan presents is that an otherwise just war must also have a reasonable chance of success. For Regan, war can only be made legitimate if the cause being fought for can be achieved.¹⁰⁹ If, for example, a small, weak, nation was engaged in a just war against an overwhelmingly powerful enemy, and further, that enemy has developed a devastating, nation eliminating, weapon, the hopelessness of the justly warring smaller nation would invalidate the justness of their cause. Provided that stronger nation

¹⁰⁷ This might be the start of a case that Walzer calls a supreme emergency.

¹⁰⁸ Orend calls this his fourth requirement of *jus ad bellum*.

¹⁰⁹ (Regan 1996) (pg. 49)

was willing, the smaller nation would be morally required to enter into treaty negotiations. This condition prevents a war, which would otherwise be just, from being called just if starting it would end lives and terrorize individuals with no purpose.¹¹⁰

Orend concurs with this last criteria as well, requiring a probability of success.¹¹¹ Orend notes that this criteria must be carefully applied, least it “amount to rewarding aggression.”¹¹² His general point seems to be that nations are not suicide pacts. Orend explains that a nation’s citizenry “owe themselves” the due care of having a chance of success, however long the odds, before beginning a war.¹¹³ With that proviso, however, Orend’s reasoning for including it in his *jus ad bellum* are the same as Regan’s, and just as consequentialist as well.

Final Analysis. Regan’s last three conditions are significantly different from his first three in that they inherently contain an element of uncertainty within them. They are only answerable in hindsight, and perhaps not even then. They require the politicians considering the decision to go to war to guess, hopefully with the benefit of advisors, about specific conditions of the future. Regan is not ignorant of this problem and confronts it by stating the simple fact that statesmen are morally required to make these predictions and all that can be required of them is to use their judgment and the resources available to them as best as they are able. Of course, such decisions based on incomplete data are made all the time, and must be. While a somewhat contentious ethical view, the epistemic point, regarding the difficulty of evaluating future conditions, stands.

At the end of his consideration of his *jus ad bellum* criteria, Orend takes a side note to explain the legitimacy of using what appears to be blatant consequentialist reasoning in what is

¹¹⁰ Walzer eliminates this condition in a supreme emergency, where the choices a nation has are fight a hopeless war or be extinguished.

¹¹¹ Orend calls this his fifth requirement of *jus ad bellum*.

¹¹² (Orend 2000) (pg. 196)

¹¹³ (Orend 2000) (pg. 197)

purportedly a Kantian theory. He begins with a reminder that Kantian internationalism, as he describes it, is fundamentally concerned with procuring basic human rights. Orend continues that, as we are moral and rational agents, we must consider, in addition to the formal set of rules governing the interactions of the international community, the implication of following said rules. Thus, for Orend, everyone “ought to be concerned not only with that system’s core principles and their intrinsic moral rationale but also with their concrete consequences in the real world.”¹¹⁴

This explanation sets Orend apart from other traditional just war theorists. It grounds his consequentialist reasoning on a Kantian understanding of progress throughout history. In requiring a consideration of the practical consequences of moral doctrines, Orend demonstrates an understanding of the multi-layers approach Kant has to political conflict. On the most abstract level, the moral principles are absolute, and ought to never be violated. On the most practical level, moral reasoning yields to a certain extent to realist considerations of political necessity. In his justification of his last three criteria, Orend offers a glimpse at a method of bridging the two. However, the criteria he offers places his just war theory firmly on the practical end of the conceptual gap.

Jus in Bello

Once a war has been started, justly or not, a nation has an obligation to fight it well. Thus, in addition to explicating the necessary and sufficient conditions for beginning a war, just war theorists must consider the ramifications of just conduct within a war. There is some debate as to whether or not these two areas of just war theory are necessarily connected. Jeff McMahan offers an argument for the separation of the conceptual arenas in his work *Killing in War*. This concern,

¹¹⁴ (Orend 2000) (pg. 200)

along with concerns about whether or not the principles offered are sufficiently specific and coherent, will be addressed. Prior to that, Regan's and Orend's *jus in bello* principles must be explicated, again revealing a surprising amount of similarity.

Regan already touches on a notion of *jus in bello* and *jus post bellum* in his third *jus ad bellum* criteria, on an individual or personal level. He develops this, to a certain extent, to provide the substance of the just intent criteria. From this, his *jus in bello* doctrine can be better understood. In general, Regan restricts the *jus in bello* part of his traditional just war theory to the principles of discrimination and proportionality. He also offers, briefly, a consideration of the abstract implications of the impact an unjustly conducted war has on a just cause, or a justly started war.

Orend adheres to the distinction, with little argumentation being offered for his view. He does note, in relation to his introduction of *jus post bellum*, it is possible to imagine the different stages of just war theory being adhered to or not, independently. He explains "we can imagine a war justly begun being fought unjustly."¹¹⁵ This claim is not so much an argument, as it is a flat rejection of the connection between *jus ad bellum* and *jus in bello*. Orend does offer a *jus in bello* theory, however, it is deprioritized, being significantly shorter than his *jus ad bellum* and *jus post bellum* sections. The only justification for this apparent disinterest is that Kant does not investigate this area of just war theory to a great extent either. Orend explains that it is one of few "great deficiencies of Kant's account."¹¹⁶ Thus, for Orend, "the Kantian tradition seems to have comparatively little to contribute in this regard."¹¹⁷ With that caveat, Orend does offer three

¹¹⁵ (Orend 2000) (pg. 217)

¹¹⁶ (Orend 2000) (pg. 4)

¹¹⁷ (Orend 2000) (pg. 4)

Kantian principles of *jus in bello*, the first two of which match up remarkably well with those offered by Regan.

Discrimination. The first principle of *jus in bello* for Regan is the principle of discrimination. This means, Regan explains, that enemy military personnel must be the targets of military actions, and that the effect on enemy civilians must be minimal. Regan claims that the civilians of the enemy nation are not personally morally responsible for the creation of the cause for the just war, nor are they actively participating in it. Further, Regan continues that enemy soldiers are not personally morally responsible either; however they become legitimate targets by virtue of their active participation in bringing about the cause of the just war.¹¹⁸ Here he makes a comparison to a homicidal maniac, against whom deadly force may be justified, but who is none the less not morally responsible for their actions.

The reason for the acceptability of targeting enemy combatants is related to the reasoning for not harming surrendered enemy soldiers. In this case, for Regan, the surrendered soldiers are no longer contributing to the creation of the just cause for war, and therefore ought to be treated like their civilian counterparts. Regan continues this line of reasoning, breaking with other traditional just war theorists, claiming that civilian and military spies, infiltrators, and the like, ought to also be granted the same degree of protection as civilians and prisoners of war.¹¹⁹

Continuing to break with convention, Regan allows the legitimate targeting of an aggressor's political leaders. He explains that the political leaders are just as, perhaps even more so, responsible for the creation of a just cause, and, as such, they open themselves up to the

¹¹⁸ (Regan 1996) (pg. 87)

¹¹⁹ (Regan 1996) (pg. 88)

potential of direct targeting.¹²⁰ Regan accepts that there is a long tradition of not attempting to kill or assassinate a political leader, however he denies the moral grounding for it.

This understanding of the principle of discrimination results in a number of further, interesting, rules to follow for *jus in bello*. Of note, Regan offers an answer to the question of shooting the naked soldier: “Targeting off-duty, combat-related military personnel, however, would not violate the principle of discrimination, since such personnel are combat-related whether they are on duty or off duty, whether they are in or out of uniform, whether they are awake or asleep.”¹²¹ The general method of discrimination may be described as discovering what category of person an individual falls in, and whether or not that category itself falls into the category of responsible for the war effort, or not. Of course, there is a certain vagueness to this method of discrimination, which Regan addresses.

Regan considers the case of the civilian worker at a shoe factory. He explains that, if this is a shoe factory that makes military footwear, and therefore directly supports the war effort, then the factory is a legitimate military target, thus, so is the worker. However, he continues, the worker is not a legitimate target when they are not actively working at the factory. This has the convenient moral conclusion that any workers killed in a bombing of such military infrastructure are acceptable targets. Regan distinguishes this case from the shoe factory that only makes baby shoes. In that instance, when the production in question does not directly go to supporting the war effort, the factory is not a legitimate military target, and neither are the workers.

While there may still be issues with vagueness, requiring the judgment call of military of civilian leaders, this is an important improvement over Grotius’ understanding of war as every citizen of one nation against every citizen of another. This principle is an absolute one, allowing

¹²⁰ (Regan 1996) (pg. 88)

¹²¹ (Regan 1996) (pg. 89)

only for a categorical rejection or acceptance of a particular target. The next principle, the principle of proportionality, Regan explains is more utilitarian in nature having an inherent vagueness in all of its applications, not merely in borderline cases.

Orend also supports a principle of discrimination as his first principle of *jus in bello*. His justification is that nations “are entitled to respond with lethal force only against the source of the serious and lethal threat that is aimed against them.”¹²² This would appear to have all the limits and permissions that Regan’s version of the principle of discrimination has. However, Orend mixes discrimination with non-combatant immunity in a different way than Regan. For Orend it is a categorical rule that “civilian populations may not be targeted.”¹²³ This still leaves some vagueness to the judgment Orend might make regarding some of the cases Regan considers. There is also the concern that Orend explicitly states in his *jus ad bellum* principle of proper authority that the citizenry must be consulted, and consent to a war being fought on their behalf. Thus, the general citizenry are responsible for the war, each individual bearing their portion of the blame. This rather muddies any clear line of discrimination. Orend’s remaining principles of *jus in bello* offer further guidance.

The principle of discrimination is *prima facie* acceptable. However, it fails to account for anything deeper than a behaviorist account of contribution to the war effort. This might be a good thing in the case of an individual that is a fervent supporter of the war, but does nothing to actually advance the cause. In the case of the unwilling supporter, an individual that does not support the war *qua* national policy, who only wants peace, but needs a paycheck, or any number of other motivations, and contributes minimally to the war effort, then the principle of discrimination seems to have gotten something wrong. If a person is an acceptable target on the

¹²² (Orend 2000) (pg. 165)

¹²³ (Orend 2000) (pg. 165)

basis of their *de facto* contribution to the war effort, then a minimally devoted war supporter should actually be considered an illegitimate target, as the odds are good that a more fervent individual will replace them, thus increasing, not decreasing, the overall war effort. If a person is an acceptable target on the basis of their personal commitment to the war effort, then a minimally devoted war supporter would again be an illegitimate target, as they are, or are very close to, a pacifist.

Last, regarding the principle of discrimination, both Regan and Orend fail to properly distinguish in theory those who directly contribute to the war effort from those who do not. Instead, Regan relies on example and the reader's ability to abstract from them, and Orend offers no explanation at all. For Regan, this leaves interpretative difficulties. One objection, not dissimilar to an objection of opportunity cost, a pacifist might make is that every citizen, in failing to protest and actively oppose an unjust war, is passively and, in some cases, actively supporting the war effort, e.g. a soldier who knows that all is well at home is much more effective than one who wonders if their loved ones have basic luxuries and necessities like shoes and running water. On this account, there is good reason to believe that every government employee and government subsidized employee contribute directly to the war effort. This conclusion, however, does not seem to be one that either Regan or Orend want to accept.

For Orend there is the further concern that he requires the citizenry to assent to a war, thus involving all in the responsibility for the war. This is a problematic shift back to Grotius' understanding of war as all citizens of one nation against all citizens of another. Clearly Orend would not endorse the random murder of a citizen of an enemy nation by civilians, but the moral responsibility for the war is present nonetheless.

Micro-Proportionality. Regan begins his consideration of the principle of proportionality with a look at the doctrine of double effect. In essence, Regan explains, actions have more than one effect, and may have both positive and negative outcomes. In that case, there needs to be a systematic method of distinguishing acceptable actions with negative effects, and unacceptable actions. Regan offers four conditions to determine if an act with both negative and positive effects is morally acceptable. First, the act itself must not be morally unacceptable; second, the intended effect must be good; third, the good effect must not be accomplished by immoral means; fourth, the positive effect must ‘outweigh’ or at least ‘equal’ the negative effect.¹²⁴ This last condition is the principle of proportionality. Proportionality in military actions, or micro-proportionality as Orend calls it, is always a judgement call about the outcomes of said actions.¹²⁵ Nonetheless, much like the political leader considering proportionality before war, these are decisions similar to those made every day by less morally scrutinized individuals.

Orend also has, as a second principle of *jus in bello*, a proportionality principle. He calls it micro-proportionality, in contrast with the *jus ad bellum* principle of macro-proportionality. Orend applies this principle specifically on the tactical level¹²⁶, requiring that “only if the benefits of the proposed tactic seem at least proportional to the costs may a state and its armed forces employ it.”¹²⁷ Orend offers little to no further explanation of this principle, and none that significantly distinguishes it from Regan’s. This principle does provide some assistance in clarifying the principle of discrimination. Instead of holding the citizenry blameless, as Regan does, Orend seems to consider them on the list of responsible parties, albeit particularly far down

¹²⁴ (Regan 1996) (pg. 96)

¹²⁵ (Regan 1996) (pg. 98)

¹²⁶ He does not consider the strategic level of proportionality. It would be interesting to know whether or not Pyrrhic victories would be considered morally acceptable for Orend.

¹²⁷ (Orend 2000) (pg. 165)

on it. Thus, the citizenry at large falls below the low water mark of proportional punishments, and are, for all practical purposes, unpunishable.

The principle of micro-proportionality is also *prima facie* acceptable, and, when examined, problematic. While there are practical concerns about the objectivity and accuracy of individuals' judgements regarding the respective values of acceptable and unacceptable targets, and the harms done, this is merely a concern about the human ability to reason ethically. A more poignant issue is the framework of the doctrine of double effect within which the principle of proportionality is placed.

Kant notes that to will an end, one also wills the necessary means within one's power to achieve that end.¹²⁸ However, the doctrine of double effect only applies in cases where the action is predictably morally both unacceptable and acceptable. The second condition Regan offers for the applicability of the doctrine of double effect, that the intended effect is good, seems impossible from the outset as both bad and good effects must be intended, the bad being a necessary means to the good. This also conflicts with the third condition, that the good effect not be accomplished through immoral means. With this Kantian understanding of willing an action, no case where the doctrine of double effect might apply would be morally acceptable. Thus the principle of proportionality, in this form, is incoherent from a Kantian standpoint.

Heinous Means. Orend departs significantly from Regan, and other traditional just war theorists in general, in his inclusion of a third *jus in bello* principle. Orend claims that there is a moral obligation in war not to use intrinsically heinous means. He does not expand significantly on this claim, however, he does offer some examples to illustrate his intent; mass rape, conscription of POWs, and the use of nuclear, biological, or chemical weapons, are all noted as forbidden means

¹²⁸ (Kant, Groundwork 1996) (pg. 70) [4:417]

of waging war.¹²⁹ This indicates a general understanding of the phrase ‘heinous means’ which brings it close to the second version of Kant’s categorical imperative, to respect humanity.

In his historical inspection of Kant’s writings on just war theory, Orend offers a different explanation of this third principle. He claims it stems from the sixth preliminary article for perpetual peace Kant offers in his work *Perpetual Peace*. The alternative phrasing Orend uses here is that nations at war are not allowed to use means that “are inconsistent with the long-term ideal of perpetual peace”¹³⁰ However, this is still vague, and is a distinct claim from the ‘heinous means’ principle. At best, Orend can be said to allow a significant amount of latitude in judgment regarding the means employed to win a justly started war, and that the limits placed on such means would not be difficult for a morally sensitive statesman or military leader to adhere to.

Orend’s third principle, on heinous means, bears a moral resemblance to the principle of discrimination. Both are absolute principles setting up a moral dichotomy. In this instance, the issue is the notion of what an intrinsically heinous means actually is. The vagueness in such a principle might be considered a good thing, at first glance. It allows for the appropriate use of judgment by those in the best epistemic position to make said judgments. However, given its vague nature, it also renders the other two principles Orend offers superfluous. Orend seems likely to accept that deliberately targeting non-combatants is an intrinsically heinous means, as is wanton and pointless death and destruction. These kinds of actions are barred by his third principle, and also covered by his first and second, respectively. In attempting to be more specific and restrictive regarding acceptable action in war, Orend actually succeeds in

¹²⁹ Note that, regarding the technologically inferior means described, Grotius also forbids these as unacceptable means of waging a just war.

¹³⁰ (Orend 2000) (pg. 57)

amalgamating and extending the two principles Regan offers. The result is a single principle that allows for a moral grounding of judgments regarding actions in war in general, and the moral anchoring of his two other principles specifically.

This is problematic for Orend because such a principle is on a different level of abstraction than the rest of the just war theory he is offering. While his *jus ad bellum*, and the other two principles of *jus in bello*, are firmly rooted in a world with anarchic international relations, and a need for a certain amount of realism, this principle is not. Such a principle is at least a rung higher in abstraction, covering both the world as it is, and the world as it should be, after the creation of a pacific league of nations, and the world as ideal, after the advent of perpetual peace. Orend's, Regan's, and Grotius', just war theories make fundamental assumptions that are incompatible with their application to a league of peaceable nations, or to a state of perpetual peace. Of course, given its genesis, for Kant's *Perpetual Peace*, this broader applicability should come as no surprise. Nor should its apparent inappropriateness in being placed on the same level as the kind of claims Grotius, with a traditional just war theory, would endorse.

General Criticisms. Regan offers two principles as general guidelines for developing more specific rules of war, and Orend asserts nearly identical principles. Both repeatedly reference national policy and international law; however, neither explicitly endorse these policies wholesale. There are some that conform with this *jus in bello* and some that do not, either by going too far or not far enough. Thus Regan can be understood as offering a moral theory of *jus in bello*, attempting to ground two generally applicable principles, proportionality and discrimination, in morally acceptable and morally unacceptable action broadly construed. Further, Orend can be understood as taking such a theory a step further with his third principle.

This method of justification is separate from a political *jus in bello*, such as Grotius offered, which attempts to ground its precepts in political advantage and a calculus of power relations. While an improvement over a political *jus in bello*, there are still important concerns about Regan's two principles of *jus in bello* and the ethical consistency of applying them. Also, Orned's *jus in bello* might suffer from the same issues as Regan's, given their cosmetic similarity, and would need to rely on his Kantian justification of his just war theory to avoid them. Both of these accounts rely on a fundamental split between *jus ad bellum* and *jus in bello*. However, there is good reason to believe that this is a fallacious distinction.

In his work *Killing in War*, Jeff McMahan offers an argument for the conceptual entanglement of *jus ad bellum* and *jus in bello*. As already noted, he claims that soldiers fighting without a just cause are not the moral equal of soldiers fighting for a just cause.¹³¹ This is part of a larger view McMahan advances. He explains that "it is hard to see how just combatants could become legitimate targets simply by offering violent resistance to unjust attacks."¹³² If a nation is responding to an attack, giving it just cause, then the combatants attacking it are, initially, attacking soldiers that have yet to offer any violence to themselves or their country. The defending combatants are made so by being attacked unjustly. Thus, for McMahan, the principle of discrimination cannot be fulfilled by soldiers fighting without a just cause. This is a problem for all traditional just war theories.

Orend addresses this concern, briefly, in connection with a justification for his *jus ad bellum*. He notes that "soldiers ought not to be held responsible for the (in)justice of the wars they are ordered to fight by their political leaders."¹³³ While Orend does not offer a defense of

¹³¹ (McMahan 2009) (pg. 6)

¹³² (McMahan 2009) (pg. 16)

¹³³ (Orend 2000) (pg. 176)

this claim, it is a compelling notion that the moral responsibilities of deciding to go to war, and participating in a war, are two separate questions. He continues that, for democracies, the responsibility for the decision to go to war “might reasonably be seen as being defused throughout the citizenry.”¹³⁴ This reveals a disturbing distinction in the framing of this issue between Orend and McMahan.

In his understanding of the moral question surrounding conduct before and during war, McMahan is specifically noting the moral responsibility of individual soldiers to make their own moral judgments. This has several difficulties. As a soldier, there is typically a pledge to follow the lawful orders of their superiors, and the morality of an order to go to war, if technically legal, has no bearing in the fulfillment of that promise. In the event that the war in question is unjust, McMahan’s view places the individual soldier in the unenviable position of immorally acting to break their promise, or immorally acting to contribute to an unjust war. Further, McMahan’s view does not distinguish levels of epistemic privilege. A statesman that fulfills the *jus ad bellum* requirement of proper authority is in a much better epistemic position to judge the morality of the decision to go to war than a soldier without similar resources. Traditional just war theories, including Orend’s, are not focused on the individual soldier’s moral judgment, but rather the moral judgement of the nation as a whole, taken as a moral entity. Thus, in separating *jus ad bellum* from *jus in bello*, they allow for a degree of sensitivity to these issues that McMahan does not.

A last concern with Regan’s *jus in bello* is his explanation of the interaction between a just cause and unjust means for waging a war, and the effect this has on the overall justness of the war. He claims that “a belligerent can hardly claim that it is fighting a just war if it wages

¹³⁴ (Orend 2000) (pg. 176)

war in a systematically unjust way.”¹³⁵ This claim, a succinct summary of his view, demonstrates two issues with Regan’s theory. First, there is a vagueness to the proposition. Regan fails to be more specific, and so allows interpretations of moral acceptability to fluctuate based on personal judgment of the belligerents involved. Second, there is the theoretical issue that this claim bars certain whole groups from engaging in war. According to a strict reading of Regan’s principles of discrimination and proportionality, a number of activities that are generally considered unacceptable methods of waging warfare are actually acceptable, i.e. certain kinds of hostage taking¹³⁶, assassination, landmines, etc. However, Regan does not restrict himself thusly. He claims that “belligerents have moral responsibilities with respect to the subject matter of the [international war] conventions.”¹³⁷ This expansion leaves Regan open to criticism of the Red Lily Effect, and the categorical rejection of certain groups to wage war, despite fulfilling the six conditions of his *jus ad bellum*.

In his book, *A Moral Military*, Sidney Axinn makes mention of a phenomenon he calls the Red Lily Effect. It is an argument for the legitimation of terrorist and guerilla tactics by disproportionately poor belligerents, due to inequity in international law and moral theory, against their better funded and better equipped adversaries. Axinn explains that the unorthodox methods used are the only methods available to the disadvantaged combatants, and are precisely the methods that are prohibited by international convention. He goes on to note that today’s laws of war are deliberately minimal so as to avoid such a problem. However, for Regan’s theory, this becomes a problem.

¹³⁵ (Regan 1996) (pg. 98)

¹³⁶ Consider the implied threat of the Davy Crockett nuclear device: “if it seems like you are going to take our position, we will detonate a nuke and kill us all.” While not a typical form of hostage taking, the similarities are striking. Further, consider the threat of a drone strike on an active group of soldiers if certain demands are not met by another group or individual.

¹³⁷ (Regan 1996) (pg. 99)

This criticism of laws in general uncovers a hidden condition for Regan's *jus ad bellum* theory, viz. that there exists a minimum amount of capital and continued income, relative to the enemy belligerent. This might be considered a corollary to the six condition, that there is a chance for success. Regardless of where it is placed, such a condition is a purely political one, grounded on factors of political power and made at the convenience of those with more than most. Axinn concludes his consideration of the Red Lily Effect with the recommendation to "pay attention to the argument that a particular law can be improved."¹³⁸

Despite the issues associated his just war theory, Regan offers a more morally grounded version of just war theory than Grotius and his contemporaries. While their particular conditions of *jus ad bellum* are similar, Regan attempts to provide an ethical foundation, not a mere political one. Further, his *jus in bello* is, for the most part, an ethical theory, founded on a moral principle, despite lacking an explication of it. However, there is still an unfortunate residue of the political realist theory it attempts to replace.

Regan's theory is improved upon by Orend with a Kantian approach to just war theory. While the *jus ad bellum* principles are identical, and Regan's *jus in bello* principles are parroted, the justification for them is somewhat different. Regan offers little explanation for the moral underpinnings of his theory, resulting in an assumption of some sort of admixture of a political and moral rule based system. Alternatively, Orend is explicit in grounding his just war theory in a Kantian understanding of international relations, but with questionable success. This still constitutes a vast improvement and advancement in traditional just war theory. However, prior to critiquing Orend's view generally, the last part of his just war theory, *jus post bellum*, must be explicated and explained.

¹³⁸ (S. Axinn 2009) (pg. 184)

Jus post Bellum

Once a nation has begun a war, justly or not, and fought it, justly or not, there is still an obligation, according to some theorists, to end the war well. To that end, Orend offers a third section of just war theory he calls *jus post bellum*. This, he explains, is the section describing the general ethical obligations a victor nation has towards a defeated nation. Orend claims that this historically began with Kant. As noted earlier, Grotius has some explicit dictates regarding forbidden actions to take against a defeated nation. It would be more accurate to claim that Kant offers the first positive duties of *jus post bellum*, while Grotius, and other earlier thinkers, have a merely negative understanding of proper action after war.

Orend suggests a justification for this separate category that follows the same line of reasoning as the justification for the distinction between *jus ad bellum* and *jus in bello*. He claims that one might “imagine a war justly begun, and justly fought, but ending with a set of unjust settlement terms.”¹³⁹ This may seem obvious, however, Orend is right to point out that other prominent thinkers in the area of just war theory have failed to address this section with the same vigor and rigor as either *jus ad bellum* or *jus in bello*. Regarding the grounding of the specific principles he offers, Orend claims that they are a fulfillment of a Kantian principle of international relations. Thus, for Orend, these principles are simply a continuation of Kant’s more general arguments.

Guiding Notions. Orend begins by assenting to the notion, proposed by Walzer, that there is no such thing as total surrender. This is a fairly straightforward argument for Walzer; that to demand more of a surrendered aggressor than a just recompense for their actions is, itself, an act of aggression. Thus, for Orend, there must be some sort of structured limits for acceptable action

¹³⁹ (Orend 2000) (pg. 217)

after war by a victorious nation. He explicates three general precepts for guiding the more specific principles of *jus post bellum*.

The first proposition is that “the unjust gains from aggression must be eliminated.”¹⁴⁰ The second proposition is that the aggressing nation “requires punishment” in terms of both compensating their victims and punishing the individual wrongdoers responsible for the aggression.¹⁴¹ The third proposition is that future threats of aggression are deterred possibly through “demilitarization and political rehabilitation.”¹⁴²

These guiding propositions fit into a larger understanding Orend has of the act of just war. He makes an analogy to a sick patient.¹⁴³ He explains that the patient is humanity, and war is like a desperate surgical measure. It is damaging and requires a period of rehabilitation and recuperation. Orend explains that, when done correctly, “the patient is materially better off than prior to the exercise.”¹⁴⁴ Notably, this is a consequential concern, perhaps for the safety and progress of humanity as a whole, but still decidedly consequentialist. This marks a problem for Orend’s claim that his *jus post bellum*, and so the entire just war theory it is a part of, is a purely Kantian theory.

Regarding the specific principles that Orend endorses as the principles of *jus post bellum*, which follow from the general propositions he described, there are five.

Just Cause. Orend’s first principle of *jus post bellum* is that there is a just cause for termination. Orend explains that the just cause for ending a war is, specifically, a set of circumstances where the aggressing state is willing to, in the peace accords, abdicate all, or most, gains of their

¹⁴⁰ (Orend 2000) (pg. 225)

¹⁴¹ (Orend 2000) (pg. 226)

¹⁴² (Orend 2000) (pg. 226)

¹⁴³ Kant does the same, which will be further discussed later.

¹⁴⁴ (Orend 2000) (pg. 226)

aggression, and are willing to accept a degree of punishment. This punishment includes both the compensation to the victim state for the aggression and the prosecution of those individuals responsible for the aggression within the state.

This principle is distinct in form from Grotius' theory of *jus post bellum*. Grotius specifically denies the possibility of the legitimate punishment of one state by another, as it infringes on the defeated state's sovereignty, and so all sovereignty. However, there is another connection to the political roots of traditional just war theory. Orend abandons the "as if" of states as independent moral actors. This is demonstrated first by his principle not allowing for a just cutting of losses. If an aggressing nation is victorious, then there can be no just ending of the war by the victim state. This overturns the segregation of the realms of just war theory that Orend has endorsed to this point. Further, in demanding trials of the individuals responsible for the state's aggressive action, Orend deliberately breaks from a conception of international relations as actions of states, to a conception of it as cosmopolitan citizenship. This conflates two distinct understandings of international relations that Kant describes. One being the world as he came to it, as an international state of anarchy, and the other being the world as it ought to be, after the establishment of perpetual peace.

Right Intent. Orend's second principle of *jus post bellum* is that the war must be ended with a right intent. Orend explains that the state must end a war with a commitment to the other *jus post bellum* principles, e.g. revenge is unacceptable. As a part of that commitment, Orend specifies that the nation "must commit itself to symmetry and equal application with regard to the investigation and prosecution of any *jus in bello* war crimes."¹⁴⁵ This principle is notably similar to

¹⁴⁵ (Orend 2000) (pg. 232)

the *jus ad bellum* principle of just intent, in that there is a requirement to concurrently commit to other principles of just war theory.

This principle is generally unproblematic, if a bit superfluous. Any just nation that fulfills the other principles of *jus post bellum* could hardly be said to do so accidentally, and so would already adhere to this principle. Further, the necessity of punishing *jus in bello* war crimes for both the aggressor and victim nation seems a foregone conclusion for any minimally just nation, to use Orend's phrasing. The punishment of crimes is an important foundation for any civil society. Thus, this principle would seem to appeal to only those pedantically legalistic in their application of moral dictums, and so applicable only in the anarchic international condition where states must prosecute and judge their own claims.

Public Declaration. Orend's third principle of *jus post bellum* is, at first glance, an amalgamation of three separate principles. It stipulates that a war must be publically declared as ended by a proper authority and with a protection of domestic rights. Orend offers little explanation for this principle, or how to interpret it. Looking at the similar *jus ad bellum* principle offers some insight.

The *jus ad bellum* principle of public declaration of war also requires a proper authority. In both cases, it seems, the justification is to facilitate an understanding between nations that the actions taken by individuals are endorsed and on behalf of the state. This, in turn, facilitates the restoration of peace between nations. This is a sentiment that was expressed by Grotius, as a requirement of political continuity. For Grotius, an individual may act on their own accord or as a proxy for the state. In the second case, it is understood that the sovereign is acting. Thus, in requiring the proper authority to end a war with a public declaration, Orend is requiring a state

action, instead of the individual actions of soldiers or officers, which the state might later disavow.

The further requirement that there be a protection of domestic rights seems, again, superfluous. Orend considers a minimally just state to be one that fulfills a set of duties, among which is an explication of the obligations it has to its citizens and to foreigners. In acting thusly, a state would already be obliged to protect the domestic rights of any peoples under its control. Perhaps Orend can be understood as requiring the victorious nation to take a measure of responsibility in the immediate aftermath of a war for the state functions of the nation it defeated. If that were the case, the danger of colonialism would need to be deterred in some manner.

Discrimination. The fourth requirement of Orend's *jus post bellum* is that there is discrimination in the allocation of responsibility of the aggression and the *jus in bello* war crimes. In particular, Orend notes that "undue and unfair hardship is not to be brought upon the civilian population."¹⁴⁶ This echoes the sentiment of his *jus in bello* version of this principle. This *jus post bellum* principle has the same issue of vagueness as the *jus in bello* version. Further, there is the concern analogous to the *jus in bello* issue of the doctrine of double effect. Any action taken by the victor nation to hold political leaders of the defeated nation responsible for the initial aggression and violations of *jus in bello* principles, must effect the nation's population as a whole.

This principle, in keeping consistent with Orend's prohibition on undue hardship, has a hidden corollary that the victor nation must, temporarily, govern for the defeated nation as they would want to be governed. This consideration for the will of the defeated nation's people is consistent with the concept of state sovereignty that Orend has promoted, namely in his explication of state duties. Orend does give credit to Kant for having a similar requirement as a

¹⁴⁶ (Orend 2000) (pg. 232)

long term principle of *jus post bellum*, however, Orend fails to reconcile this broader notion with the immediate after effects on the political situation of a defeated nation. In particular, the citizenry of the defeated nation wanted to war against the victorious nation, so governing them as they would want might well involve building up their military capacity to begin another conflict. This is obviously not something Orend would endorse, but might be a requirement of any new government placed over a sufficiently stubborn population.

Proportionality. The fifth requirement of Orend's *jus post bellum* is that there is proportionality in the requirements of the terms of peace for the vindication of the rights violated by the aggressor. Specifically, Orend notes that "the people of a defeated aggressor never forfeit their human rights."¹⁴⁷ To a specific, contemporary, issue, Orend explains that his requirement makes unacceptable the concept of unconditional surrender. What is less obvious is how Orend views the acceptability of a mandated complete cultural transformation.

The culture of a nation's people is, importantly, a part of their personal and national identity, and, should it be a particularly querulous one, might legitimately be understood as significantly contributing to a conflict.¹⁴⁸ This cultural transformation might be both required by the principle of proportionality, and considered excessive by the requirement of discrimination or a violation of the defeated nation's rights. Thus, one or both of these principles needs significant alteration.

Critique. The first three and the fifth requirements of *jus post bellum* have analogous principles in Orend's first three and the sixth principles of *jus ad bellum*. The fourth principles of Orend's

¹⁴⁷ (Orend 2000) (pg. 233)

¹⁴⁸ As a concrete example, consider any of the mutually exclusive religious factions. To fulfill a reasonable vindication of nations' rights, it might be necessary, after the defeat of one such group, to demand a complete cultural shift away from religious exclusion to secure many of the nation's rights. Such security would be for the future protection of both the victor nation and other nations that cannot coexist with the particular brand of religious exclusivity which permeated the cultural of the aggressive nation which was defeated.

jus post bellum has correlative principles in his first two *jus in bello* requirements. This similarity of moral precepts offers some insight into Orend's understanding of the force and implications of these *jus post bellum* principles. Further, this means that the correlative justifications for these principles share the same problems, and have some new issues as well which may reflect on the previous sections of Orend's just war theory. Orend attempts to offer a moral groundwork for his *jus post bellum*, however, the political realism present in the application of these principles is unavoidable. These principles are *de facto* principles of political expedience for the furthering of states' interests, specifically resuming continued peace on their own terms and not necessarily on the most moral terms.

Orend offers one justification for his *jus post bellum* which highlights the political, as opposed to moral, nature of his aims. He claims that there are three good reasons to codify these principles into positive international law. First, Orend claims that they are "direct outgrowths of ... existing moral thought and legal norms regulating the resort to war and conduct within it."¹⁴⁹ As noted, with Regan as an example, the existing nature of general just war theory is decidedly in line with traditional just war theory, and Grotius' project of political efficacy. Further, that these principles might be so easily made into law indicates that they are not sufficiently abstract to be applicable to an international realm too much different from our own, e.g. with a universal civil administration. A moral theory, particularly a Kantian moral theory, ought to have a certain level of universalizability which this *jus post bellum* lacks.

Orend's second reason is that his *jus post bellum* principles "are clear and readily understandable" and "they would constitute a great improvement over the current legal vacuum with regard to war termination."¹⁵⁰ This is quite true, and any well intentioned legal principles

¹⁴⁹ (Orend 2000) (pg. 233)

¹⁵⁰ (Orend 2000) (pg. 233)

would be better than none. However, that they might be a legal, instead of a moral, improvement detracts from Orend's claim of the moral nature of his theory, and the Kantian moral groundings.

Orend's third reason for the codification of his *jus post bellum* principles is dubious at best. He claims that his principles are "of compelling moral character."¹⁵¹ This is a difficult claim for Orend to make. That his principles have the structure of a moral command is clear. What is less clear is that the use of 'ought' in this context is a moral one. Consider, as an example, the first principle of Orend's *jus post bellum*, just cause for termination. It is problematic for Orend to claim, in his *jus ad bellum*, that a nation must consider the macro-proportionality of the decision to war due to the violent nature of such an endeavor, and also hold that it is immoral to stop such a violent and morally difficult endeavor. In requiring a just cause, which is more than merely ending a war, Orend demands that a losing nation, without a just cause to end the war, either behave immorally or continue to fight unto oblivion, instead of accepting unjust peace terms by the victorious aggressing nation. This situation illustrates, further, a last issue specific to Orend's *jus post bellum*, there is a potential of a victorious aggressing nation which is unaddressed.

Against McMahan's claim of the inseparability of *jus ad bellum* and *jus in bello*, Orend offers the notion of a war justly started being unjustly fought, and a war unjustly started being justly fought. This line of thought is taken up again as a justification for the need of a *jus post bellum* section of just war theory. There is the possibility of a war started and fought justly and ended unjustly, and a war started and fought unjustly and ended justly.¹⁵² Orend does not seem to accept the second possibility in his explication of a *jus post bellum*. Only a victim nation can end

¹⁵¹ (Orend 2000) (pg. 233)

¹⁵² Actually, there are eight total possibilities, however, the important distinction is in the dissonance of justice between the first two sections of just war theory and the last.

a war with just cause, and only a victim nation can discriminate within an aggressing nation those responsible for aggression, and proportionally punish an aggressing nation. This means that only a victim nation can fulfill the principle of right intent. In theory, the only requirements of Orend's *jus post bellum* that an aggressing nation can fulfill is the public declaration by proper authority parts of Orend's second principle of *jus post bellum*. If these were truly distinct realms, as Orend seems to endorse, then even an aggressing nation should be able to fulfill the *jus post bellum* requirements.

The term aggressing nation is defined by Orend's *jus ad bellum* principle of just cause. A nation is an aggressor when they do not have a just cause. That this term is being utilized in his *jus post bellum* principles indicates an acquiescence to McMahan's broader point, viz. war is a morally continuous endeavor and not a fragmented one. This is a problem of inconsistency for Orend, who does not accept this distinction in his *jus in bello*.

Orend is correct to offer a *jus post bellum* as an extension of a Kantian just war theory. The positive requirement of a victorious nation to aid in the rebuilding of a defeated nation is explicit in Kant's political consideration. Further, Orend points out that Kant does have a long term *jus post bellum*, but has "comparative silence regarding the appropriate norms of short-term *jus post bellum*, following a particular war."¹⁵³ Unfortunately, this version of a short-term positive *jus post bellum* is neither sufficiently morally grounded nor particularly Kantian in nature. Instead, Orend's *jus post bellum* is consummately traditional. While it is an improvement over previous thinkers' lack of positive *jus post bellum*, there is still significant room for moral improvement.

¹⁵³ (Orend 2000) (pg. 77)

Conclusion

Brian Orend attempts to offer a contemporary Kantian just war theory. In actuality, his theory is cosmetically similar to the contemporary traditional just war theories, such as Richard Regan's, which stem from the works of Hugo Grotius and his contemporaries. Orend attempts to distinguish his just war theory from theirs by grounding it in a moral theory, specifically Kant's. He does this by first considering what Kant actually wrote, then expanding on it. The result, ultimately, is another traditional just war theory. Orend does offer some important insights into what a Kantian understanding of international relations looks like, and some moral implications of it. Where Orend fails is in keeping to an anarchic understanding of international relations, and not expanding to a dynamic understanding of a continuously evolving international realm. Where Orend succeeds is in calling attention to the possibility of a Kantian just war theory as distinct from traditional just war theory.

Orend's traditional interpretation of Kant's view of just war theory is inadequate. However, instead of dismissing Orend's view altogether, it would be more beneficial to understand his view as a part of Kant's overall understanding of just war. An analogy might be made to Orend painting in a portion of a canvas, the rest of which Williams and I will complete, and which is framed by Kant. The next chapter will be dedicated to defeating the claim that Kant does not have a just war theory at all. This will set the stage for a positive argument detailing what kind of just war theory Kant does have, and what, specifically, it looks like.

Chapter 2 – Howard Williams’ Interpretation of Kant

Introduction

The focus of this chapter will be to explain, analyze, and critique to interpretation of Kant’s views of just war set out by Howard Williams in his book *Kant and the End of War: A Critique of just War Theory*. This is the second half of my negative argument. The first, that Kant does not have a traditional just war theory, has already been addressed in the previous chapter. I now address the concern that Kant might not have any theory about just war at all. With Williams’ view refuted, or at least cast into doubt, the ground is cleared to offer a new kind of just war theory, which is different from the traditional kind, which I will argue that Kant does have.

In his work, *Kant and the End of War: A Critique of Just War Theory*, Howard Williams attempts to motivate the thesis that Kant does not have a traditional just war theory, and, in fact, has no just war theory at all. He does this through, first, setting the concept of war in its conceptual niche throughout the corpus of Kant’s works as a whole. He then sets up the conflict between the pro- and anti- just war theory positions as a conflict that centers on interpretation of particular parts of Kant’s body of work. He next considers the sections of Kant’s works at issue, as he has framed the conflict. In Kant’s *Perpetual Peace*, Williams considers war and justice to be polarizing concepts, and in Kant’s *The Doctrine of the Right*, he considers war and justice in harmony. These disparate views are brought together and explained as a general intellectual displeasure at the idea of war, and that the apparent endorsements of it are, in actuality, vehement pleas to reform international law. The objection that Kantian thought would favor what

is now called humanitarian aid, that is, war fought to protect human rights, is addressed, and refuted. The last section of Williams' work is also a critique of contemporary traditional just war theories.

While Williams argues well against the just war tradition, and presents a strong case for his thesis, he does not succeed. Of particular importance, his claims that Kant's apparent endorsement of war is not genuine, and that wars of humanitarian aid run counter to Kantian thought, are largely misrepresented. Regarding his thesis, the first half, that Kant does not have a traditional just war theory, will be supported and argued for. The second half, that Kant opposes the very notion of a just war theory, will be presented, and refuted as a misrepresentation of Kantian thought. This will be accomplished by taking seriously the 'as if' claim of the domestic analogy, and considering Kant's ethical theory on the international level. Last, Williams' conclusions about Kant's views on foreign intervention are problematic, and derived from his interpretation of Kant, making his overall thesis vulnerable to an application of *modus tollens*.

The Concept of War in Kant's Works

Before diving straight into the debate about interpreting Kant, Williams considers how Kant understood war as a concept. To do this, Williams takes a survey of Kant's works where Kant explicitly mentions war, in as unbiased a manner as he can. The result is a good picture of what Kant explicitly says regarding war, which provides a basis for interpretations that go beyond Kant's explicit writings. This is particularly helpful here, as it demonstrates one kind of limiting condition regarding an interpretation of Kant on just war, i.e. any interpretation must not contradict what Kant actually claims. Later chapters, where my own interpretation of Kant is offered, are in line with this explication of Kant's views.

First Look. To begin his discussion, Williams attempts to “set Kant’s thinking about war in the context of his philosophy as a whole.”¹⁵⁴ He does this by focusing on Kant’s later works, and treating the concept of war in a less than literal fashion. Later, the familiar notion of conflict between political entities will be addressed. The basic claim Williams attempts to motivate is that, for Kant, “war ... is not simply a problem for international relations; it is a problem that lies at the heart of human existence.”¹⁵⁵ Thus, the holistic approach to Kantian thought that Williams is utilizing, requires war to be understood in a broader, even metaphorical, sense.

In his essay, “Idea for a Universal History with a Cosmopolitan Aim,” Kant addresses the concept of war, Williams explains, through the unsocial-sociability of humanity. This is a somewhat foggy concept that attempts to explain a contradiction in human nature: on the one hand, humans are social beings, but, on the other, tend not to get along very well. For Williams, this is where Kant waxes on the benefits of war. He explains that, according to Kant, war can be seen as resulting from the contentious drives in humanity, and has resulted in a number of beneficial outcomes. He names, as examples, advancements in technology, inhabitation of most of the globe, and, most importantly, demands that both individuals and entire societies improve themselves. Williams qualifies these apparently good outcomes, explaining that, humans must enter civil relations, and put “our natural irascibility within the restraining context of the rule of law.”¹⁵⁶ For Williams, Kant views war in this context as an activity with positive benefits, including the very creation of society.¹⁵⁷

Williams is quick to mention the teleological nature of this particular Kantian work. He explains that this context must be understood through another of Kant’s works, specifically

¹⁵⁴ (Williams 2012) (pg. 10)

¹⁵⁵ (Williams 2012) (pg. 11)

¹⁵⁶ (Williams 2012) (pg. 12)

¹⁵⁷ Note the close connection to the Hobbesian account of the motivation for the creation of the body politic.

regarding the nature of the teleological judgment. Williams explains, very briefly, that teleological judgments are judgments “that suggests that an event or an object has a functional role or worth.”¹⁵⁸ Relating this to the concept of war, Williams describes some conclusions that may be made. First, he claims that, through fatigue, states will tend over time to will less warlike ends, and attempt to establish some sort of international rights. Further, regarding the conditions precipitating war, Williams suggests that they are necessary parts of economic conditions as well, resulting in a fatalism about the continued existence of the conditions for war. However, that is where the fatalism ends. Williams concludes, regarding the teleological nature of war, that for Kant, humanity is inherently on the precipice of falling into war, however, humanity can also overcome this urge. Thus, the potential for war is an inexorable part of human and civil relations, however, so too is the ability to avoid it. The role of war can be taken as that of negative reinforcement: humanity fails to learn, pays for it, but thereby benefits in other ways.

Simari’s Work. With this first look at war in Kant’s works, Williams moves on to a more comprehensive view of the concept of war. He accomplishes this through the work of Andre Simari, who cites fourteen instances of the concept of war in Kant’s body of work. Williams considers each mention in turn, using Simari’s interpretation as a starting point for his own end. While these are each important, not all of the instances offer a new understanding of Kant’s view of war. There are, however, some particular interpretations of Williams’ that bear mentioning, as they go beyond the already noted beneficial outcomes of war and the teleological judgments about it.

First, in one of Kant’s early works, Williams explains Kant’s view of war as analogous to an earthquake, and “as a pestilence that affects the human race.”¹⁵⁹ This is a passive view of war.

¹⁵⁸ (Williams 2012) (pg. 14)

¹⁵⁹ (Williams 2012) (pg. 17)

Williams seems to indicate that this early Kantian understanding of war is as an imposition on humanity, not a result of inherent traits, as Williams earlier indicated. Williams continues investigating instances on the mention of war in Kant's work, interpreting Kant's views as progressively closer to the one he first described, until, in response to another philosopher, Mendelssohn, the view has fully developed. Along the way, Williams notes the expected call to eliminate war, and the famous description as a sublime experience.

From here on out, Williams reinforces the notion that Kant sees war as stemming from human nature and having the dual effects of immoral destruction and civil progress. In metaphorical language, Williams explains that Kant sees war as a description of problematic methodologies in practicing philosophy. He claims that, for Kant, philosophy ought to be about advocating and advancing the truth, not merely, as in war, getting the better of one's opponent. For Kant, Williams notes, "peace and sincerity are deeply connected."¹⁶⁰ While not directly linked to a just war theory, this use of war as a metaphor for bad practices is carried over into the notion that political change should occur through evolution, not revolution.

The last mention of note that Williams brings out is that, for Kant, social change is better achieved through working to change the system as it stands, not abolishing it and having to reconstitute the civil agreement from scratch. Williams continues that, in applicable terms, this is a blatant prohibition against using the end of improved social order as a just cause for war. This claim has some similar issues as Williams' overall thesis, namely that it is mostly correct but goes too far; however, this will be taken up later when Williams addresses humanitarian intervention specifically.

¹⁶⁰ (Williams 2012) (pg. 21) This seems to be indicated as much by his own moral philosophy as his Chinese influence.

Williams explains that the important issues related to his inquiry are mainly focused in Kant's *Critique of the Power of Judgment*, the guarantee of peace in his *Perpetual Peace*, and his *Critique of Pure Reason*. Ultimately, Williams intends to support the claim that Kant's overall impression of war is that, along with other general beliefs, it needs to stop.

While the positive attributes of war have already been noted, as they appear in the *Critique of the Power of Judgment*, along with war's sublimity, and its relationship to human nature, Williams adds a clarification. He explains that war is necessary to the human species, as a teacher. It makes humanity aware, he claims, of its potential, and motivates the human race to achieve that full potential. Ultimately, Williams understands Kant's claim to be that war creates peace and transforms policy from within, instead of having it imposed from without. The takeaway for Williams from Kant's *Critique of the Power of Judgment* is that war is inevitable and "is both tragic and instructive for the human race."¹⁶¹ Williams makes an analogy to the Enlightenment Project, claiming that, while not a finished task, the elimination of war is a continual duty of each generation, due to the rational nature of humanity.

Perpetual Peace. Related to the teleological view of war that Williams has endorsed, to one degree or another, he next addresses Kant's guarantee of perpetual peace. Williams states the criticism that Kant is simply assuming whatever is necessary to achieve the outcome he wants, and that the methods are supernatural to some extent. Williams explains that, from an empirical view, this would certainly be the case. There is no reason, he claims, to endorse a teleological view of humanity, or its history, let alone one that results in perpetual peace, from an empirical standpoint. However, Williams continues, such a view would be appropriate from a moral standpoint, with the aim of bringing about ethical improvement.

¹⁶¹ (Williams 2012) (pg. 27)

Williams explains that, due to the unknowable nature of the teleological assumption, it can be taken “as dogma a supposition of practical reason.”¹⁶² In this way, Williams explains, it can serve as a motivation for action. According to Williams, Kant would argue that such a supposition is impossible to disprove, and is “essential to lend completeness to our moral vision.”¹⁶³ Thus, Williams understands Kant as providing a moral guarantee, not an ontological or epistemic one. Williams notes that this is where the paradoxical nature of Kant’s understanding of war comes into sharpest focus, explaining that war creates the need for, and motivates the acceptance of, rules governing international relations, first hostile relations, and later peaceful ones. Thus, Williams interprets Kant like Clausewitz, viewing peace as an integral part of war.

As a Metaphor. In the *Critique of Pure Reason*, Kant uses war as a metaphor for some methods of discussing philosophy. Williams contends that this contains an abstract notion that is fundamental to Kant’s overarching view of war. He claims that, for Kant, “war and reason are seen as continually at odds with one another.”¹⁶⁴ In an abstract way, Williams notes reason demands the peaceful resolution of philosophical conflict through argumentation and searching for truth. This is manifested in two precepts of Kant’s for appropriate philosophical discussion. First, Williams claims, philosophers must adhere to the truth, and not simply a particular view. Second, Williams notes, philosophers must not falsely present the certainty of their claims. Here again is the connection between peace and sincerity. In a philosophical war, the actors ought to be sincere in their quest for the truth, lofty as that sounds, and it will follow.

¹⁶² (Williams 2012) (pg. 30)

¹⁶³ (Williams 2012) (pg. 30)

¹⁶⁴ (Williams 2012) (pg. 36)

Williams concludes his introductory material with an application of this latest, abstract notion of war, to international relations. He explains that both are instances of pursuing the same goal, namely peace, one intellectual the other political, and by the same means, through accepting better methods of resolving conflicts, e.g. reason and reasoning.

This, then, is the contextualization of the concept of war in Kant's body of work. Williams addresses three important different ways in which war can be viewed throughout Kant's work; first as stemming from human nature with both detrimental and beneficial outcomes, as a teleological agent of human progress, and as a metaphor for conducting philosophy. Williams brings these disparate understandings of war into focus with an emphasis on reason, and, in particular, moral reasoning. Specific to the project at hand, Williams continues with a description of the problem of Kant and just war theory, drawing the battle lines, to strain the analogy.

Williams' Outline of the Problem of Kant and Just War Theory

Having, in the first section of his work, outlined what Kant says about war, and arriving at a list of ways Kant views it, Williams is now in a position to address the question of Kant's view about just wars, a topic he did not explicitly write on in full. Williams comes to this question through the debate already in progress. Following Kant's method of antinomies, Williams presents both views, gives each its strongest support, and then attempts to reconcile them. How he views the debate is instructive, suggesting which works of Kant's might be overemphasized and which might need further investigation.

War as Disease. In his introductory statements to outlining the general problem of just war theory in Kantian thought, Williams makes an analogy between war and disease. He explains that, for Kant, this is the backdrop for approaching war, and motivates the criticism of 'sorry

comforters.’ Williams puts it succinctly: “From a practical standpoint war has to be approached as a curable disease.”¹⁶⁵ This introduction is indicative of the ultimate conclusion of the chapter, that Kant is not a traditional just war theorist.

Williams notes that, throughout his prior treatment of Kant on war, Kant rejects war at every turn. The few places Kant seems to show the slightest acceptance of it, Williams is quick to point out that Kant is merely noting a silver lining of sorts; the practical benefits of war are not best achieved by war, war merely forces the development of the human species. The “propensity of radical evil” Williams notes is inherent for Kant in humanity, and, as such, the progress of humanity towards a continuous peace is the project of human reason gradually “eliminate[ing] its mistakes.”¹⁶⁶

This is not a hopeless task, for Kant, Williams explains. The approach to war like a doctor to a disease is a metaphor Williams uses in two ways. First, he explains that, like a disease, the warlike tendencies in humanity need to be treated and eliminated for the betterment of the body as a whole, and the benefits of illness (e.g. a better outlook on life, emotional growth, close family bonds, etc.) are better achieved through other means. Also, Williams notes that there must be an assumption that the disease can be cured, otherwise there is, in practice, a potential for the patient to be given up on, and a physical evil allowed to persist where it might otherwise not have. Explaining the metaphor, Williams notes that “Kant’s critical outlook cannot persist alongside the acceptance of the complete normativity or inevitability of war.”¹⁶⁷

Setting-up the Debate. Williams departs from a focus on Kant to consider the history of just war theory as Kant would have come to it. He does this with a brief look at Grotius, Pufendorf,

¹⁶⁵ (Williams 2012) (pg. 44)

¹⁶⁶ (Williams 2012) (pg. 42)

¹⁶⁷ (Williams 2012) (pg. 44)

and Vattel, the three political theorists whom Kant explicitly mentions as ‘sorry comforters.’ In brief, Williams broadly paints these thinkers as attempting to extend natural law to politics, and “normalizing war as part of the international system.”¹⁶⁸ Williams’ critique of these thinkers is that, in bringing war into harmony with law, they fail to create the stability they aim for.

Williams also notes the contributions of Brian Orend and Susan Shell in attempting to bring Kant closer in line with these traditional just war theorists.

While Orend and Shell accept the precedence of Kant’s *Metaphysics of Morals* over his *Perpetual Peace*, for Williams, this is reversed. The primary point he argues for in the remainder of his chapter, and the setup of the conflict in Kant’s works, is to motivate the claim that Kant’s *Perpetual Peace* ought to be given theoretical priority over his *Metaphysics of Morals*. He accomplishes this through negative argumentation against various reasoning for the contrary.

Williams accepts the premise of his interlocutors that Kant appears to be more permissive of just war in his *Metaphysics of Morals* and specifically the Doctrine of Right. However, Williams argues that said permissiveness must be read in conjunction with the rest of the work, leading to a much less accepting notion of just war. Williams claims that, ultimately, Kant argues for the incoherence of bringing war under the umbrella of law. Regarding the notion of a war of self-defense, Williams explains that, for Kant, these wars are not just, but possibly excusable at best.¹⁶⁹ Alternatively, Williams is also in agreement with other interpreters of Kant that his work *Perpetual Peace* contains a general critique of war, and allows for no place of it in international law. The divergence of these views can be explained in a number of ways. Williams addresses and dismisses two popular methods.

¹⁶⁸ (Williams 2012) (pg. 46)

¹⁶⁹ (Williams 2012) (pg. 51)

First, Williams notes the possibility that chronology might be appealed to, to settle the debate. The argument might run something along the lines of: as *Perpetual Peace* was published first, it is his *Metaphysics of Morals* that should be understood as definitive. Contradictory, Williams notes that an argument might be made that, as *Metaphysics of Morals* was written over a longer time, and *Perpetual Peace* was actually written later, *Metaphysics of Morals* should be seen as Kant's more mature thoughts on the subject. Williams concludes that either publication has a good chronological claim to authority, so a better answer might lie in attempting to find a deeper agreement between the two. This, of course, is the project that Williams is undertaking, and is at issue.

Williams next brings up the possibility that Kant understood his shorter work as a sounding board, feeling out his thoughts on a subject before committing fully to them in an important academic work. Williams dismisses this possibility for three reasons. First, Williams points out the fact that *Perpetual Peace* is a book unto itself, not a mere article. Second, Williams explains that, in an important way, *Perpetual Peace* furthers Kant's treatment of particular ideas that are also in *Metaphysics of Morals*, so cannot be a rudimentary form of underdeveloped ideas. Third, Williams comments that the expected reception of *Perpetual Peace* was high both in and out of academic circles, so the thought of Kant sending the public an incomplete idea "seems highly unlikely."¹⁷⁰

Important Intermediate Conclusions. Williams concludes that Kant's understandings of war in his *Perpetual Peace* and his *Metaphysics of Morals* are actually manifestations of a deeper unified view of war. This deeper view, for Williams, is clearly not that shared by other political theorists of the time, viz. that war can be legal. What Williams sets up is the parameters of his

¹⁷⁰ (Williams 2012) (pg. 54)

argument. Essentially, if he can demonstrate a cohesive understanding of just war theory that is supported by both Kant's *Perpetual Peace* and Kant's *Metaphysics of Morals*, then he will have found Kant's actual view on just war theory.

This conclusion, while an intermediate one for Williams' larger argument against Kant having a just war theory at all, is the last acceptable conclusion of Williams' work as a whole. Williams' further premises and analyses of Kant's works, while helpful and worth investigation, ultimately lead to a conclusion that I argue against.

Another conclusion of note Williams presents in this chapter is the precedence of *Perpetual Peace* over *Metaphysics of Morals*. I accept this intermediate conclusion as well. Both Williams and I take this as a premise for the argument that Kant does not have a traditional just war theory, like Grotius and others, as Orend and Shell would argue. Williams further concludes that Kant does not have any just war theory, however, this is a premature conclusion, as the traditional just war theory is not the only kind of just war theory. The remainder of this chapter will be devoted to expanding on Williams' argument against Kant having a traditional just war theory, and arguing against the further conclusion that Kant has no just war theory.

Williams' Argument against the Agreement of Perpetual Peace and Metaphysics of Morals

His method of approach set up, and the general lines of argument clear, Williams next turns to a full consideration of the claim that Kant does not have a self-consistent view of war. To begin the essence of his argument, Williams presents a strong reading of *Perpetual Peace* and *Metaphysics of Morals* that do not agree with each other. This is accomplished by reading *Perpetual Peace* as entirely contrary to the concept of a just war theory, almost to the point of pacifism, and reading *Metaphysics of Morals* as permissive of just war theory, almost to the point of endorsement. The first, Williams accomplishes by examining the concept of 'sorry

comforter’ and a consideration of what Kant actually meant. The second, Williams accomplishes by considering the intellectual influences on Kant and the prevailing popular thought at the time. **Sorry Comforters.** Williams begins by noting that, if Kant is to be taken as a just war theorist, then his description of Grotius and the like must be interpreted unusually. Kant, Williams explains, understands the importance of the independence of states as beholden to “a principle he regards as philosophically prior, namely the necessary interdependence of legally founded states.”¹⁷¹ Thus, Kant can be understood as furthering the analogy between nations and individuals to include the interplay of autonomy and the interaction of autonomous agents, individuals in his moral philosophy, and states in his political philosophy.

Williams is quick to prevent intellectual overshoot, and explains an important limit on states that is not covered by this analogy. For Williams, Kant distinguishes states from individuals by prohibiting the coercion of states to create a commonwealth. While the individual state of nature, for Kant, may be overcome by force, Williams notes that, “the transition from an international state of nature to a settled civil condition cannot and should not occur by force.”¹⁷² Instead, Williams claims it is incumbent of the sovereigns of independent nations to abdicate the methods of war in favor of conflict resolution.

Williams delves into the typical interpretation of the term ‘sorry comforters’ by explaining that, Kant was critical of any system that attempted to provide grounds for political leaders to resort to armed conflict. Kant can be understood, says Williams, as seeing “his relationship to the policy advisor and the political and military leader as that of the critic.”¹⁷³ This is in contrast to most other just war theorists. Williams notes that just war theorists of

¹⁷¹ (Williams 2012) (pg. 57)

¹⁷² (Williams 2012) (pg. 57)

¹⁷³ (Williams 2012) (pg. 59)

Kant's time and many modern ones as well, "regard themselves as providing profitable advice to rulers."¹⁷⁴ The fact that their ideas are philosophically and ethically sound would seem to take a backseat to having "their words ... heeded and followed by those who make policy decisions."¹⁷⁵

With this basis for interpreting Kant's view of Grotius, Pufendorf, and Vattel, Williams continues to consider other interpretations of the phrase 'sorry comforters.' Williams considers alternative origins for Kant's use of the phrase, however, he concludes that the origin is of little consequence as the outcome is the same. Williams claims Kant understands Grotius, Pufendorf, and Vattel, as blaming the occurrence and frequency of war to the inadequacy of humanity. They "tak[e] for granted the presence of war in international society (as evidence of our inherent evil) rather than questioning it and asking how it might be removed."¹⁷⁶ Thus these political thinkers can be understood as "worsening the predicament of the human race, rather than effectively tackling it [the problem]."¹⁷⁷

Williams describes the difference as one of priority. For Grotius, Pufendorf and Vattel, Williams explains that Kant understands them to "have allowed their advice to underpin and follow power" while, for Kant, "power should follow advice independently given."¹⁷⁸ Thus, the point Williams is making here, that Kant does not assent to a just war theory, is supported both by Kant's explicit writings, which are the subject of interpretation, and the description of other thinkers at the time, both in terms of their ideas and their motivations.

Intellectual Influences. Williams moves on to consider the claim that Kant supports a just war theory in his *Metaphysics of Morals*. Williams begins by noting that contemporaries of Kant

¹⁷⁴ (Williams 2012) (pg. 58)

¹⁷⁵ (Williams 2012) (pg. 58)

¹⁷⁶ (Williams 2012) (pg. 63)

¹⁷⁷ (Williams 2012) (pg. 62)

¹⁷⁸ (Williams 2012) (pg. 64)

would often argue that there is a natural right to self-defense, and use the same analogy as before to conclude that there is a similar right for nations. Williams notes that both Christian Wolff and Gottfried Achenwall, intellectual predecessors of Kant, both held such a view of war. Thus, Williams concludes, it should be no surprise that Kant might allow for some small possibility of a war to be just.

Williams expands on this thought in Kant, adding that, in addition to the just declaration of war, Kant noted the importance of legitimate and illegitimate engagement in war, and added the possibility that a victorious nation might have responsibilities to a defeated one, as Orend claims. So, Williams explains, for Kant “a war fought under certain limiting conditions is compatible with a state retaining its moral personality in relation to other states in the international system.”¹⁷⁹ This indicates, to Williams, that Kant was prepared to ‘play along,’ as it were, with the international anarchy of his time, by respecting the subsumption of international law within natural law.

The Grotian framework, for Williams, that allows for just wars, is a doctrine that limits legitimate act by states in an anarchic international system, and is something that “Kant is happy to exploit.”¹⁸⁰ Williams notes, as example, wars of subjugation and wars of punishment. For Kant, Williams claims, both of these kinds of wars are contrary to the purpose of war, which is peace. For a war of subjugation, Williams explains that this is a war that inherently destroys the sovereignty of another nation, and so undermines the function of government. For wars of punishment, Williams explains, Kant understands punishment to be the proper action of a superior to a subordinate, but the international status of nations is of equals, so punishment would be inappropriate.

¹⁷⁹ (Williams 2012) (pg. 68)

¹⁸⁰ (Williams 2012) (pg. 69)

Ultimately, due to Kant's intellectual influences, and the prevailing understanding of international rights, Williams argues that Kant can be understood as accepting that certain wars of self-defense are permissible. However, Williams is quick to note, this does not, "for Kant, gain the status of a settled norm for international relations."¹⁸¹ To explicate the distinction, in the event that nations do not have a civil relation to each other, Williams understands Kant to accept that there is a right to war, however limited it may be, in his *Metaphysics of Morals*.

Thus far, Williams presents a striking picture of two different and opposing Kantian views of just war theory. On the one hand, Williams has investigated the phrase 'sorry comforters' to support the Kant that does not accept a just war theory. On the other hand, Williams has used Kant's intellectual upbringing and the views current to his time, to motivate a permissive attitude towards just war theory. The goal Williams has in mind, with these two opposing views, is to follow Kant's methods of presenting antinomies. It is in the next section of his work where Williams attempts to transcend the problem and demonstrate a cohesive view of Kant's attitude towards just war theory once and for all.

Williams' Argument for the Underlying Agreement

Williams considers how Kant's works, now understood as presenting radically different ideas, might be brought into agreement. He argues that Kant understands international law of his day as inadequate to the task it attempts, however, not all attempts at international law are so hopeless. Kant, Williams claims, sees himself as taking seriously the international law tradition and simultaneously exploring it and critiquing it. Thus, the apparent acceptance of just war theory in *Metaphysics of Morals* can be understood as a proposition that is entertained during an

¹⁸¹ (Williams 2012) (pg. 70)

investigation into existing international relations, not espousing an independent just war theory, and not endorsing any version of it.

Williams concludes in this chapter that Kant does not, in fact, have a just war theory, nor would he endorse any of the tradition that he knew. It is the second part of this conclusion that I endorse. Williams makes a compelling case of the agreement between the two works he has pitted against each other, however, he fails to make the further argument that the only kind of just war theory is a part of the tradition that Kant criticizes, accepting the false dichotomy. Of great benefit, in Williams, is his understanding of the underlying agreement between Kant's heretofore contradictory works.

Taking International Law Seriously. Williams begins by pointing out something of an obvious fact, that the major difference in *Metaphysics of Morals* is that Kant takes seriously the existing international law. This is not the case in his *Perpetual Peace*, where instead, Kant can be understood as making a theoretical fresh start of things, so to speak. Thus, Williams explains, to understand what Kant meant by taking up the international law of his day, it is important to understand the law he is taking seriously. International law was seen as a sub-category of natural law, with an application and extension of the analogy to the individual.

Williams notes a distinction between Kant's presentation of natural and international law, and his contemporaries' presentations. Williams explains that Kant does not "[insist] on an actual harmony between the development of nature and the realization of God's will."¹⁸² This is because, Williams explains, for Kant "we can only hope for God's grace in aiding us so long as we act as though *everything* depends on us."¹⁸³ Thus, Kant can be seen, for Williams, as putting

¹⁸² (Williams 2012) (pg. 73)

¹⁸³ (Williams 2012) (pg. 74) Emphasis in original.

human action and reason as primary in practical purposes. This is, for Williams, an extension of Kant's understanding of the limits of philosophy and human understanding.

Williams notes meta-philosophical goals of the philosopher as Kant describes them: "the ideal [that] is aimed at, as well as logical consistency (and theoretical veracity), is the good of the world..."¹⁸⁴ This means that the philosopher, while keeping an eye on the perfect world, must also work within the imperfect world as they find it. Kant understands that dealing with international relations must, on some level, involve an engagement with current international law, even if only to provide constructive criticism. Williams succinctly puts the Kantian approach as, "law and morality cannot be taught separately ..." ¹⁸⁵ Kant's treatment of international law, while necessary according to his understanding of the role of the philosopher, is aimed at including the categorical imperative, as morality requires.

Williams motivates the claim that Kant has a robust use of natural right in his theory of international law. Kant, Williams claims, requires adherence to laws of nature by individuals "even in the absence of the state."¹⁸⁶ This means that, for Williams, Kant denies the legal legitimacy of ever disregarding natural laws. Even if the actually adopted laws of a given state do not conform to natural law, Williams understands Kant as basing such a system on natural law, so, from a legal perspective, it is inescapable. However, Williams understands this natural law as, for Kant, being inherently moral, grounded in humans as rational beings. Thus, the notion of right involves "mediating considerations of pure moral theory with considerations of an empirical kind..."¹⁸⁷ Williams is interpreting Kant as different from Kant's contemporaries in

¹⁸⁴ (Williams 2012) (pg. 74)

¹⁸⁵ (Williams 2012) (pg. 75)

¹⁸⁶ (Williams 2012) (pg. 76)

¹⁸⁷ (Williams 2012) (pg. 77)

placing priority on moral considerations and placing empirical considerations within it, while other natural law theorists switch these priorities.

This understanding of Kant as a moralist first and a political theorist second will be instrumental in understanding his ultimate just war theory. Williams attempts to use this prioritization to exclude the possibility of just war at all from a Kantian moral system. However, in doing so, he also restricts Kant as a philosopher, in his own terms. Preventing Kant from realizing a vision of the perfect world with an understanding that the actual world will only ever vaguely resemble the ideal it strives for.

Domestic Law. Williams considers what, for Kant, innate right looks like at the individual level. He comes up with a single answer: “We have just one innate right and that is the right of freedom.”¹⁸⁸ This is closely tied to Kant’s understanding of the purpose of government, to hinder hindrances of freedom. Williams explains that, as everyone has the same innate right, we are only free as far as everyone else is, and bounded only as much as everyone else is.¹⁸⁹ Extending this conceptual treatment to non-innate rights, of acquired rights, Williams clarifies that Kant, much like his understanding of the relationship between law and morality, claims that acquired rights must be “in harmony with our innate rights.”¹⁹⁰ This understanding of natural right at the individual level is then scaled up to the international level.

Between the individual and international scales, Williams considers Kant’s treatment of national law. Williams claims that, for Kant, domestic law is not in an ideal state, and that it ought to be reformed to the point that it is in line with the innate equality and freedom of its citizens. In doing so, Williams explains, the main actors on the international stage are

¹⁸⁸ (Williams 2012) (pg. 78)

¹⁸⁹ This parallels the interpretation of the Kantian system that John Rawls promotes in his *A Theory of Justice*.

¹⁹⁰ (Williams 2012) (pg. 78)

sufficiently reforming themselves to properly respect the international law. Only after this internal reform on a national level will international law be properly grounded to “[establish] one coercive authority that can implement [international law] for all.”¹⁹¹

On the way to such a proper grounding, Williams notes that Kant argues for obedience to the imperfect, or inadequate, domestic laws. The caveat, for Kant, Williams explains, is to “not regard it as complete or wholly satisfactory in any way.”¹⁹² By the same token, Williams explains that Kant understands international law similarly: “it should be obeyed in a preemptory way; however its received structures and permissions should not be seen as wholly fixed.”¹⁹³ In terms of implementation, this should not be a difficult idea for moral, rational beings to adopt. After all, if one is already obeying the moral law, then obeying a legal prohibition against only certain kinds of morally wrong behavior should not be a problem.

Williams considers Kant’s focus on war, and the permissive attitude towards it in the then current international law, as indicative of critiquing the system at its weakest point. Kant, for Williams, has more confidence in the state of domestic law, which seems to conform to the innate right of individuals better than the state of international law. Williams suggests that Kant’s project in *Metaphysics of Morals* regarding international law is not to endorse it, in whole or in part, but to recommend a reconstruction of it. Williams explains that this is accomplished by, first reforming the provisional laws of individual nations, then reforming the international law, then creating an enforcement mechanism in the form of a peaceful league of states.¹⁹⁴ The difficulty, Williams notes, in this task is to “maintain the rule of law in the national and

¹⁹¹ (Williams 2012) (pg. 79)

¹⁹² (Williams 2012) (pg. 79)

¹⁹³ (Williams 2012) (pg. 80)

¹⁹⁴ (Williams 2012) (pg. 82)

international sphere” when it has not been firmly established in the latter, and the former is only “provisional.”¹⁹⁵

International State of Nature. Williams concludes that, regarding the state of international law, as it relates to natural right, Kant sees the system of his day as severely lacking, but with the potential to be radically reformed. Williams next considers the motivation states might have to undertake this reform. He explains that, in a state of nature there is, for Kant, a moral imperative for actors to enter into civil relations. While this state of nature is merely theoretical on the individual level, on the international level, Williams claims, this is actually the case. These two facts, Williams explains, lead Kant to claim that an international law that makes war legal as “being in contradiction with itself.”¹⁹⁶

Williams addresses the “most often referred to” section of *Metaphysics of Moral* when attempting to class Kant as a just war theorist.¹⁹⁷ He claims that Kant’s acceptance of a war of self-defense is not an outright right, in the acquired sense of rights among equals in civil relations. Instead, this kind of war, for Williams, should be understood as “not a legal or just entitlement: it is simply a right in the absence of right.”¹⁹⁸ That is, a right to persecute one’s own case when in a state where each nation is the ultimate judge of its own cause. The focus of the work as a whole, for Williams, is still, like *Perpetual Peace*, to reach beyond the conditions where war occurs.

Regarding some of the common exceptions made by natural rights scholars of the time, Williams formulates Kant’s responses. In attempting to colonize on the lands of a nomadic peoples, or to remake a constitution *via* revolution, Williams claims that Kant is in absolute

¹⁹⁵ (Williams 2012) (pg. 82)

¹⁹⁶ (Williams 2012) (pg. 84) Williams also notes, quite correctly, that we are still in a pre-civil condition.

¹⁹⁷ (Williams 2012) (pg. 85)

¹⁹⁸ (Williams 2012) (pg. 85-86)

opposition.¹⁹⁹ These are immoral acts, Williams explains, and the benefits they attempt to bring about cannot unmake their immorality.

Williams expounds on the fact that interpreting Kant is, in some respects, a matter of reading strategy. He allows that those who would read Kant as a just war theorist are not chasing a will o' the wisp, but have not drawn their synthesis from all sources. In particular, Williams notes a passage towards the end of *Metaphysics of Morals*, where Kant offers the “very firmest objections to war that we find in the whole of Kant’s writings.”²⁰⁰ Williams explains that, for Kant, the goal of international law is “to establish permanent peace amongst states arguably following precisely the path set out in the essay *Perpetual Peace*.”²⁰¹ So, instead of setting conditions to allow war to conform to right, as his contemporaries did, Williams sees Kant as using international law to end war.

Williams succeeds in interpreting *Metaphysics of Morals* in a way that is against just war theory. However, his interpretations of Kant would not be complete if he ignored the potential pro-just war reading of *Perpetual Peace*. Williams addresses the few points that would support such a reading as indicative of the different perspectives of the issue. Kant understands the problem of war as indicative of the system that traditional just war theorists assume. Williams claims that the conditions that give rise to the talk of a right to go to war are the very ones that Kant is attempting to address in his work. In other words, there is a ‘meta’ aspect to Kant’s writing that interpretations of Kant as a traditional just war theorist miss.

With the conclusion of this section of his work, Williams has succeeded in motivating a cohesive synthesis of Kant’s *Metaphysics of Morals* and *Perpetual Peace*. In interpreting Kant’s

¹⁹⁹ (Williams 2012) (pg. 87)

²⁰⁰ (Williams 2012) (pg. 88)

²⁰¹ (Williams 2012) (pg. 88)

discussion of international law as wholly critical, and elevating the arguments, Williams' presentation of the disparity of these two works collapses into deeper agreement. I find his broader conclusion, that Kant is not a just war theorist, contentious. While Williams has clearly demonstrated that Kant is not a traditional just war theorist, like his 'sorry comforters,' I do not believe he has entirely eliminated the possibility that Kant is a just war theorist. I will offer an alternative just war theory, not focusing on an anarchic international order, but which leads from such a state into civil relations.

Prior to critiquing Williams' interpretation of Kant as absolutely against just war theory, Williams' exposition of his interpretation will prove enlightening. Specifically, how he understands Kant's position on the international state of nature, unjust enemies, and foreign intervention for humanitarian aid.

Williams' Kantian Interpretation Expanded

Thus far, Williams has focused on the problem of interpreting Kant as he has set it up, as finding agreement between *Metaphysics of Morals* and *Perpetual Peace*. However, this dichotomy was set against a background of a particular understanding of how Kant understood war in general, and how it might be taken up in his political works. Williams now motivates this understanding of Kant by considering the background of international anarchy and the philosophical understanding that preceded Kant's writings on the topic. With this argument, Williams shows that his method of interpreting Kant is as well established historically as it is theoretically. This is accomplished through a consideration of thinkers prior to Kant that influenced his education on the topic, and considering some of the major conflicts within the discipline Kant is critiquing.

Other Thinkers. Williams begins with a restatement of the fundamental problem of traditional just war theories as Kant saw it: “The problem with war being so regarded as an inescapable necessity of politics amongst states is that accepting the assumption itself heightens the possibility of war occurring.”²⁰² This is a problem for Kant, and one that Williams sees Kant addressing in his *Perpetual Peace*, addressing both the common person and the policy maker. In a note, Williams explains that he understands “[t]he role of the philosopher who writes *Perpetual Peace* is to ‘throw light’ on the ‘business’ of ruling.”²⁰³ This places *Perpetual Peace*, for Williams, under the category of applied ethics, to some extent. However, that Kant has such a radically different understanding of the role of war in international politics, the relationship between the philosopher and the politician, as well as how they differ, still needs explaining.

Williams considers the influence of Gottfried Achenwall to be of particular note. Williams explains that Achenwall’s purpose in his writings is to “introduce students and the public to the problems of natural law and its history.”²⁰⁴ Williams also notes the focus Achenwall puts on teaching over theorizing. Kant, Williams explains, takes up Achenwall as an excellent scholar of a typical jurist view of the time. However, “Kant’s main objective is to point out the mistake” these thinkers make.²⁰⁵ Thus, for Williams, Achenwall is, for Kant, a framework for dealing with the problems of natural law and international relations. The topics Kant addresses, and the path to his ultimate rejection of the assumption of the necessity of war is traceable, for Williams, to the writings of Achenwall.

Another thinker in the same strain as Achenwall that Williams mentions is Johann Georg Heinrich Feder. Feder, Williams explains, wrote on the necessity of war and the notion of an

²⁰² (Williams 2012) (pg. 91)

²⁰³ (Williams 2012) (pg. 182) End of note 1.

²⁰⁴ (Williams 2012) (pg. 92)

²⁰⁵ (Williams 2012) (pg. 93)

unjust enemy. This concept will be of considerable importance in understanding Kant's views on the application of traditional just war theory. Williams explains Feder's position as motivated from the analogy between states and individuals, and the claim that natural law allows individuals to persecute their claims against each other. Feder concludes, Williams continues, that all nations are equal, and as such, may justly seek redress, by war if necessary, in the event of suffering an injustice from another nation. This is where the concept of an unjust enemy comes to the fore. Williams claims that, for Feder, a nation that acts in aggression, either initiating a war or by becoming an aggressor, acts as an unjust enemy.²⁰⁶ So, for Feder, in the event of war, a nation should "maintain the status of a 'just enemy'."²⁰⁷

With these two thinkers having set up the controversy as Kant came to it, there is good reason to justify a difference of approach within Kant's writings. Williams notes that, first, Kant wrote *Metaphysics of Morals* as "a strictly academic work" while *Perpetual Peace* is an "intervention of a philosopher" into current events.²⁰⁸ Second, Williams notes that, while both works contain Kant's actual beliefs, *Metaphysics of Morals* is "narrowly circumscribed" in its scope.²⁰⁹ Last, and most telling, Williams claims that *Perpetual Peace* "delves into impure ethics of war in a more radical way than" *Metaphysics of Morals*.²¹⁰ Thus, for Williams, the underlying agreement between the works is supported both on the theoretical level, as shown in the previous section, and on the historical level, in how Kant first found the landscape of the problem of just war theory.

²⁰⁶ The connection to Grotian and contemporary just war theories is obvious.

²⁰⁷ (Williams 2012) (pg. 96)

²⁰⁸ (Williams 2012) (pg. 97)

²⁰⁹ (Williams 2012) (pg. 97)

²¹⁰ (Williams 2012) (pg. 97)

Unjust Enemy and Potentia Tremenda. Williams presents Kant’s understanding of the transition from the international political and legal landscape of his time to an ideal status as proceeding in four steps. In the first two, Williams explains, Kant understands the permissibility to go to war to protect the nation’s rights as a “provisional condition” that needs to be abandoned.²¹¹ The last two, Williams explains, are the very steps needed to overcome the anarchic international condition, after which war is entirely illegitimate. Williams presents Kant as accepting the “alleged right to war in self-defense as a part of our role in an emerging federation of peaceful states.”²¹² This view of war was radically different from many of his contemporaries, and comes out most notably in Kant’s views on the *potentia tremenda* and the unjust enemy.

Williams explains the concept of a *potentia tremenda* as a larger nation that is continuing to expand its size and military power.²¹³ This, Williams notes, is enough of a threat that most political thinkers contemporary to Kant allow for lesser powers to band together and start a war, and claim self-defense. For Kant, Williams notes, this is apparently an area of concern. This kind of anticipatory war “is excused in the one book [*Metaphysics of Morals*] and ruled incoherent in the other [*Perpetual Peace*].”²¹⁴ While this seems, initially, to set Williams’ project back to the radical difference readings of these two books, he explains the agreement.

In the section of *Metaphysics of Morals* allowing the anticipatory war, Williams clarifies, Kant is discussing the rights of states in a state in nature. So, “we are not in the realms of international right as it should be understood.”²¹⁵ However, Williams continues, the treatment of

²¹¹ (Williams 2012) (pg. 98)

²¹² (Williams 2012) (pg. 98)

²¹³ This description is similar to the description of a regional hegemon, or a potential hegemon, regional or not, in John Mearsheimer’s theory of relative power within political realism.

²¹⁴ (Williams 2012) (pg. 100)

²¹⁵ (Williams 2012) (pg. 100)

the topic in *Perpetual Peace*, indicating that it is a practical impossibility and contrary to peace, would still hold water. Thus, for Williams, “Kant gives only a weak and passing endorsement of the right of’ anticipatory war against a potnetia tremenda.”²¹⁶ Looking at the entirety of his views on it, Williams concludes that Kant does not endorse the moral permissibility of such a cause for war.

Moving from the potential to the actual, Williams considers how Kant approaches the notion of an unjust enemy. This phrase, Williams explains, is intended to indicate “an antagonistic state which refuses to recognize any binding rules upon the conduct of states.”²¹⁷ Such a nation would not merely fail to recognize international laws, but would outright refuse to adhere to any external constraints on its sovereignty. Taking the simplistic approach first, Williams allows that, with the advent of one such nation, “all other states are entitled to unite against the unjust enemy.”²¹⁸ However, Williams also limits the legitimate action of such an endeavor to mere defense, disallowing the further conquest of the original unjust enemy nation. To finish his initial assessment, Williams advances the claim that the nations responsible for the defeat of the unjust enemy have an obligation to set up a republican government within it. This course of action, should an unjust enemy come to exist, is, according to Williams, “an obligation” in Kant’s eyes.²¹⁹

Looking at the language used, Williams offers a second, more complex, layer in his analysis of Kant’s understanding of the term ‘unjust enemy.’ Williams claims that, for Kant, such a term is problematically redundant. To clarify this, Williams first explains that Kant does not subscribe to the idea of honorable opponents in war. If an enemy is a just one, then they

²¹⁶ (Williams 2012) (pg. 101)

²¹⁷ (Williams 2012) (pg. 102)

²¹⁸ (Williams 2012) (pg. 102)

²¹⁹ (Williams 2012) (pg. 102)

either are not an enemy, or ought to not be opposed, given the justice of their cause. Thus, for Williams, the term ‘just enemy’ seems nonsensical. Conversely, for Williams, the related phrase ‘unjust enemy’ expounds doubly on the lack of justice in the cause of the belligerent.

This confusion is further compounded by considering the basis of the judgment of the causes of warring nations. Using a courtroom metaphor, the attorneys arguing the merits of their own case are the very judges they are attempting to convince. In collapsing these two roles, the attorney and the judge, into one, Williams explains, there is a danger that “all publically agreed rules are placed under threat.”²²⁰ Thus, for Williams, the system of anarchic international relations is again under moral attack. In the event that an ‘unjust enemy’ is somehow identified, all other nations, creating a defensive federation of nations, would have to agree to abandon self-judgement, and submit to the moral judgment of the federation of nations. Otherwise they risk undermining the very foundation of the international law they are attempting to uphold.²²¹

For Williams, the true issue with the discussion of unjust enemies is in the built-in assumptions that support it. Williams explains, “if the parties to the dispute could abide by rules, then there would be no dispute, and certainly they would not be enemies.”²²² Thus, the notion that an enemy has passed beyond the acceptable rules is, for Williams, a precondition, not a limiting condition, for conduct in war.²²³

²²⁰ (Williams 2012) (pg. 103)

²²¹ This is somewhat reminiscent of a contradiction of will: In attempting to foster security and autonomy, nations band together to defeat an unjust enemy. In doing so, however, these nations ignore the moral equality of a fellow nation in the anarchic international community. Thus setting a precedent that can later be used against themselves. Resulting in a reduction, not an increase, in security and autonomy.

²²² (Williams 2012) (pg. 105)

²²³ This position regarding rule-following has the unfortunate consequence that unjust systems cannot be ethically overturned. A particular rule might be unacceptable and which cannot be peacefully overturned, e.g. disbarring certain populations from both the political process and emigration. Disobeying such a rule, thereby demonstrating an unwillingness to follow all rules, does not also imply disobedience to other rules, i.e. civil disobedience against unjust rules does not imply an unwillingness to submit to other rules, e.g. those regarding conflict resolution.

In the description of one nation balking at restraints on the methods of waging war, Williams claims that there is an inherent adherence to the current, anarchic, international state of nature. Williams explains that, in such a state of nature, all nations are perpetually in a state of potential hostilities with each other, and every nation is responsible for remaining in such a state of nature. Thus, “rouge or outlaw states are different only in degree and not in kind from the average, supposedly conforming or law-respecting states.”²²⁴ Again, the moral imperative is not to keep a *jus in bello*, but to abandon the anarchic international order that makes one necessary.

The conclusion of Williams’ fifth chapter succinctly states Williams’ general understanding of Kant’s view of just war theory and international relations broadly construed: “The idea of just war belongs to an international system that is unjust overall. So the idea is thoroughly compromised by the context to which it belongs.”²²⁵ “The key theme of Kant’s presentation of international law in both works is the idea of perpetual peace ... itself.”²²⁶ “We are led in both works to cosmopolitan right or law which sets each individual human being at the center of a peaceful, legal global order.”²²⁷ This is the end, and sum, of Williams’ interpretation of Kant’s theory.

This interpretation, particularly the broad brush strokes, seems largely acceptable. Williams does an excellent job of explaining Kant’s vision of the moral imperatives of the international community. There are, however, some areas of his interpretation that could use improvement. In taking the stance he does, Williams describes Kant as more of a pacifist than Orend or Shell, and focuses, almost myopically, on Kant’s moral vision of the midpoint of history, establishing perpetual peace. Before that occurs, and as nations begin to recognize their

²²⁴ (Williams 2012) (pg. 105)

²²⁵ (Williams 2012) (pg. 112)

²²⁶ (Williams 2012) (pg. 112)

²²⁷ (Williams 2012) (pg. 112)

moral duties, there still exists an international state of nature that needs to be lived in and dealt with. To this end, the understanding of Kant as a just war theorist, offered by Orend and Shell, can be helpful. This is particularly apparent in the last section of Williams' argument, regarding a Kantian position on foreign intervention.

Williams on Kant and Humanitarian Intervention

On the issue of humanitarian intervention, meaning one or more nations violating the autonomy of another for the supposed purpose of the benefit of the violated nation's citizens, Williams claims that there is scant and insubstantial support for a Kantian justification of such actions. He considers three different arguments for particular cases, representative of case types, and argues against a Kantian foundation for the recommended action. These applications of his interpretation will reveal some of the issues in Williams' interpretation of Kant as utterly opposed to just war theory.

Case One. Williams first considers the argument of Roger Scruton for the intervention in Iraq. Williams explains that Scruton bases his argument on Kant's republican peace theory, that the republican form of government is particularly peaceful. From this, and Kant's general doctrine of international law, Scruton claims that, for Kant, "the resort to war is from time to time unavoidable."²²⁸ To this notion, Williams offers the rejoinder that, for Kant, the end is peace, and "the only justifiable means are peaceful."²²⁹

Williams clarifies Scruton's point, about Iraq in particular, explaining that, Kant's view might endorse an intervention that does not aim to annex the nation in an imperialistic fashion, but to create the means for an independent and peaceful nation, viz. a republican one. Williams also argues against this more plausible claim. Williams notes that there is already existing

²²⁸ (Williams 2012) (pg. 116)

²²⁹ (Williams 2012) (pg. 117)

international law to govern interaction among nations. Further, he notes that, for Kant, there is an obligation to work within existing law when possible. Otherwise, there would be international anarchy.

This explanation of Williams' against Scruton seems correct at first. However, there is an issue with Williams' reasoning regarding Kant's position. Williams seems to be appropriating Kant's general prohibition against rebellion to apply it on an international scale. This would not be appropriate, as the argument against doing away with a government, however flawed, is that the result would be to return citizens to a state of nature with respect to each other, and start the nation building process from scratch. In the international realm, Williams has already noted that, given the equality of sovereignty among nations, there currently exists a state of nature in the international realm. Further, laws protecting the sovereignty of nations is intended to protect the autonomy of the citizenry to live as they see fit, and to prevent imperialistic intervention. However, when a government is restricting the autonomy of its citizens beyond the needs of promoting greater autonomy, *via* hindering hindrances to autonomy, then it is no longer functioning as a government.²³⁰ Thus an intervention to restore a nation to a state of governance may indeed be justified. Of course, a caution must be made, that, as Williams notes, Kant does not support the resort to war merely for the creation of, or conversion to, a republican nation.

Case Two. Williams next considers the argument for intervention advanced by Fernando Teson. Teson, Williams explains, advocates the intervention against governments that are violating the human rights of its citizens. Williams notes that Teson correctly claims that, for Kant, "the enforcement of human rights in one part of the world should be greeted with enthusiasm in all

²³⁰ Admittedly, this might be phrased in a somewhat overreaching way. However, it is a question of degree not kind. It is the same kind of an overstep of its bounds for a government to hinder the autonomy of its citizens beyond necessary in a minor way, e.g. requiring no fish be cooked on Wednesdays, as in a major way, e.g. no persons over 5'4" may vote.

parts of the world.”²³¹ This emphasis on preserving human rights results, Williams explains, in Teson having an understanding of Kant’s position where human rights win out over national sovereignty.

Williams notes that Teson claims national sovereignty is not an absolute barrier to the international community from events within a nation’s borders. Echoing the anti-Williams position above, Teson claims that there are both internal and external components to sovereignty, which share a co-dependent relationship. Williams claims that Teson holds “international recognition is the proper counterpart to internal good order.”²³² Thus, for Teson, continued abuses of human rights by a national government strips it of a position of moral equality in the international community, thus opening it up to the possibility of intervention by other nations.

Williams explains that the consequence of such a view is that international law becomes the responsibility of each nation to enforce the world over. Further, this means, Williams explains, that Kant’s just war theory is no longer a defensive doctrine, but an active one that protects human rights writ large. Williams claims that this is an illegitimate understanding of Kant’s view of international relations. Instead of particular nations taking in upon themselves to be the world police, the proper evolution in international relations is a peaceable coalition of nations committed to aiding each other at request and need.

Williams is again considering his position from a standpoint of peaceable international relations. After the creation of an international pact committed to the peace and security of all its members, then Williams would be correct to be suspicious of Teson’s strong connection between internal order and external legitimacy. Presumably, a republican government committed to the safety and autonomy of its citizens, as any member of the pacifist league would be, would not

²³¹ (Williams 2012) (pg. 120)

²³² (Williams 2012) (pg. 122)

reach such a level of internal dissonance. However, until the eradication of the state of nature on an international level, each nation, acting as a moral agent, must be the judge of actions of each other *qua* moral agents. In the process of progressing to a more enlightened international state, human rights will, on occasion, be violated on a state wide level. In such instances, the violating government is not acting as a government, but as a league of individuals. Removing a group of individuals from a position of power is not a violation of sovereignty, rather a restoration of it.

Case Three. The last general case for international intervention Williams considers is advanced by Jürgen Habermas. It is based on a prioritization of the cosmopolitan law over international law and allows for a transcendence of international law past national sovereignty to individuals. This is of particular concern for those focused on war crimes and punishing war criminals.

Habermas, Williams explains, seems to neglect Kant's analogy between nations and moral agents. Further, Williams notes the problem of priority. While Habermas correctly places cosmopolitan law above international law, he does so with an improper relationship. It is not the case for Kant, Williams explains, that cosmopolitan law trumps international law, rather it is that cosmopolitan law is built upon international law. Thus, cosmopolitan law cannot contradict international law.

Williams notes, as a positive point in Habermas' favor, that Kant does permit the intervention of foreign nations on civil wars, as a state of nature would then exist in that nation. However, Williams is quick to note that the application to Habermas' example, Kosovo, would then be an empirical judgment call. Overall, Williams endorses the otherwise skeptical position Habermas endorses, taking this instance of recommending intervention as an anomaly.

This example provides very little in terms of furthering a critique of Williams' position as he seems to merely remind the reader of Kant's explicit writings. In his next section, Williams

offers a positive account of Kant's view of foreign intervention. He describes this as "non-activist" and "supportive."²³³

Kant's International Law. Williams notes that Kant clearly allows for an international doctrine of human rights, but at the same time, does not permit the enforcement of this doctrine by an arbitrary force. Williams notes that, "subjects should in the first instance lodge complaints with their own governments."²³⁴ Williams explains that this is because, for Kant, part of the function of government is to redress the wrongs committed within its territory. Williams makes an analogy between individuals and states as moral actors. Williams explains that individuals are permitted a "sphere of freedom" within their community, and states should be afforded a similar sphere for freedom in the international community.²³⁵

In the event of political turmoil, Williams notes, there should be a level of acceptance by the international community for less than ideal behavior. Revisiting the moral agent analogy, Williams explains that, "so long as it is not harming us we should permit them to experiment freely."²³⁶ Williams continues this line of reasoning, recalling that Kant prohibits interference with the constitution of a sovereign power. Further, Williams notes, when there is an interruption of sovereign power, Kant permits only the restoration of order, and not in an imperialistic or colonial manner.

Williams takes Kant's Preliminary Article 5, regarding the permissibility to intervene, as the foundation for this view. He describes the appropriate attitude as a "spectator" mind-set" to encourage, but not actively force, progress towards a republican constitution.²³⁷ However,

²³³ (Williams 2012) (pg. 130)

²³⁴ (Williams 2012) (pg. 130)

²³⁵ (Williams 2012) (pg. 130)

²³⁶ (Williams 2012) (pg. 131)

²³⁷ (Williams 2012) (pg. 132)

Williams notes that Kant does permit intervention if specific conditions are met. First, Williams notes as a negative condition, there needs to be an internal break down to the point that there is no clear sovereign power. Second, Williams reiterates, the intervention must be authorized by the federation of states, thus genuinely be on behalf of the peoples warring, not for conquest. Third, Williams notes that the offered aid must conform to the progression of international rights and the creation of perpetual peace, not merely the advancement of the intervening nation's interests.

These conditions, one negative, and two positive, are, for Williams, indications of moral acceptability of intervention. He is careful to note that, regardless of the fulfillment of these conditions, "there is no indication that states are obligated by law to intervene."²³⁸ For Williams, if Kant were interpreted to require intervention, or be less strict in the requirements for it, there would be left open a possibility for "unrestricted war on the part of self-appointed guardians of the international community."²³⁹ The acceptance by others of alternative interpretations of Kant, for Williams, contain the problematic assumption that war can improve the world. It is not, he explains, a better kind of war that is needed, rather a reduction in the resort to it altogether.

By treating states as moral actors, Williams utilizes a powerful tool to clarify and explain the moral quagmire that the international community often finds itself in. However, he also neglects the limits of the analogy. In accepting the "as if" that states are moral actors, Williams apparently separates the cause from the effect. The effect of being considered a moral agent is founded in the cause of having an inherent worth, which nations do not. By prioritizing international order over concerns for human rights, Williams misses the purpose for the progress of the international order itself, the creation of cosmopolitan right.

²³⁸ (Williams 2012) (pg. 135)

²³⁹ (Williams 2012) (135)

Perfect or Imperfect Duty. Williams considers a final interpretation on Kant and foreign intervention in his conclusion. The arguments center around the kind of duty intervention is, perfect or imperfect, and the implication of the determination. Williams claims that Kant only requires an imperfect duty to intervene on behalf of non-citizens against their oppressing government. This implies that, while a nice gesture, there is no moral or legal precept enforceable against an able nation to force humanitarian intervention on behalf of a subjugated population.

Williams considers the view of Carla Bagnoli, who argues that humanitarian intervention is a perfect duty. Williams notes that Bagnoli is correct in claiming that Kant requires everyone to be concerned about abuses in human rights any- and everywhere. Further, Bagnoli claims that there is “a perfect duty not to hinder the implementation of law throughout the world.”²⁴⁰ However, for Williams, Bagnoli makes too much of these principles. Williams explains that it is with the corrupt state government that the perfect duty lies, not with the international community in general. If that were so, then there would be little to the notion of state autonomy.

This is Williams understanding of Kant on international intervention for humanitarian aid. Williams finds, in Kant’s works, a set of conditions for the permissibility of foreign intervention, but not a legal or moral requirement to do so. This conclusion is most telling of where Williams goes wrong in interpreting Kant. That Williams portrays Kant as accepting of the arbitrary and capricious discrimination and disenfranchisement of citizens by their government, the entity intended to protect and advance their autonomy, reflects a deep misallocation of priority. It is the moral agent, not the state created to protect it, which is of paramount importance. This opens his argument up to a *modus tollens* counter argument.

²⁴⁰ (Williams 2012) (pg. 139)

Critique of Williams

Williams offers an interpretation of Kant's view of just wars which is inherently pacifistic. Williams considers and rejects several arguments for foreign intervention based on that interpretation. Thus, the first premise of a syllogism is suggested: if Williams is right about Kant's view on war in general, then Williams is right about Kant's view of foreign intervention. The second premise, that Williams is not right about Kant's view of foreign intervention, becomes obvious. The conclusion will then be that Williams is not right about Kant's view of war in general. The more specific claim I will attempt to defend is that Williams is missing something fundamentally important about Kant's view of war, namely that war is occasionally permissible beyond reasons of self-defense, and might even be required in certain circumstances.

In her review of Williams' book, Sarah Holtman notes that Williams' interpretation of Kant raises the concern that it "will sometimes leave us paralyzed in the face of deep injustice."²⁴¹ While she rather quickly dismisses this concern, without argument, it is an important implication of Williams' view. In describing war as, at best, permissible for defense, Williams eliminates the last option for resolving many of the problems the progressing world faces. In the face of great injustice, e.g. genocide or slavery in any of its many forms, Williams rejects the possibility of forcible intervention. He provides some reasons for this, as noted above, however, *prima facie*, this is a serious flaw in his reasoning.

Considering again the analogy between an individual and the state, there seems to be good reason to reject Williams' analysis. In considering Kant's ethics, a person who, in a bout of poor decision making, decides to shoot themselves in the foot, may, *ceterus paribus*, reasonably be forcibly prevented from doing so, if reasoned arguments fail. When this is scaled up to the

²⁴¹ (Holtman 2013)

state level, the foot becomes the lives of citizens, and the method of prevention, instead of simple restraints, might need to be war, if reasonable appeals to humanitarian concerns fail. After all, in the case of the individual determined to shoot their own foot, it might be necessary to physically wrestle the gun away from them, that is, to use coercion. In limiting permissible war to defense only, Williams degrades the expression of autonomy.

Turning the state/individual analogy around, Williams is arguing for a limit of individual autonomy to be passive in the face of immoral action. In accepting only a war of defense, on the individual level, Williams is advocating the use of force only in defense, of either one's person or of one's autonomy. This disallows the physical restraint of another that is attempting self-harm, such as shooting themselves in the foot.²⁴² However, it seems a perfectly acceptable Kantian maxim to take: if, after reasoning has failed, a person insists on causing themselves, unnecessary and wanton, imminent harm, I will restrain them from doing so. In a world where everyone acts this way, there is no contradiction in form nor in will.²⁴³ Thus, Kant would seem to accept a principle of action that prevents others from causing self-harm. Thus, Williams' interpretation implies a principle that clashes with Kant's moral framework.

That Williams' offers an inexact interpretation of Kant on the count of foreign intervention should be clear. Thus, following the syllogism set out previously, Williams must offer an incorrect interpretation of Kant on war in general. There are several solutions to this

²⁴² There might be a concern that the self-harming individual might be exhibiting unstable behavior, and might cause others harm as well. Unfortunately, if this line of reasoning succeeded, it would provide sufficient reason for a nation to intervene in the affairs of another nation that is grossly violating human rights, and Williams point would be defeated. However, there is an important, and unsupportable, hidden premise that one irrational action implies any other. Thus, such an argument is unsound.

²⁴³ Of course, the wording of these kinds of imperatives is everything. It might be better to add in something about a low likelihood of harm coming to me (the person preventing the self-harm), however, the general picture should be sufficiently painted.

difficulty. The path that seems best to me is to understand Williams as offering an interpretation of a part of Kant's view, just as Orend does.

To say, as Williams does, that Kant ultimately rejects war in all its forms comes fairly close to a tautology: when everyone, or every state, is morally upright, no one acts immorally. It would be more accurate, and certainly more helpful in understanding Kant, to say that Kant accepts war as a part of the progression towards a perfect world, but has no place in such a world. An analogy may be made to personal development: a child resorting to violence as a method of conflict resolution is acceptable on its way to maturity, but it is eventually expected, generally, to learn to control its baser urges. Williams' interpretation of Kant can be best understood as a well elucidated part within the framework of Kant's overall understanding of war. This position is the counterpart to the one described by Orend. Whereas Orend was describing the "view from the bottom," so to speak, Williams' position is explained from the standpoint of the moral pinnacle.

Aside from the internal issues of interpreting Kant consistently, there is a further complication to Williams' view. In another review of this work, Harry van der Linden claims that Williams is actually conforming to just war theory. Just war theories attempt to provide conditions that justify war. Van der Linden notes that "Williams's (sic) attempt to articulate a Kantian interventionist principle shows that he is doing what just war theorists seek to do: articulate conditions of just initiation of war."²⁴⁴ Thus, Williams seems to partially undermine his own point. Williams is, ostensibly, arguing for a version of Kant that completely rejects the moral acceptability of war. In hedging that wars of defense, and intervening in civil wars on behalf of the international federation, are morally permissible, Williams' resulting picture of

²⁴⁴ (Linden 2013)

Kant does not completely reject war. A weaker claim that Williams might still defend is that Kant does not admit the possibility of traditional just war theories' justifications for war.

This weaker claim dovetails nicely into the more charitable interpretation of Williams, that he is explaining Kant from the position of perpetual peace. After the creation of a federation of states, in which all states are in a state of perpetual peace, then war, and in particular the traditional reasons for starting one, would be unacceptable. Until then, by stipulation, there might be hostile states, or peaceable states, members of the federation, which become hostile. With these possibilities, and within those limits, there is a need for some understanding of moral action in an immoral world. Williams attempts to gesture at this, however, he does so from a headspace of the end to be reached, not from within the ongoing process.

Conclusion

Williams attempts to demonstrate Kant as a kind of pacifist in his work *Kant and the End of War: A Critique of Just War Theory*. He grounds his initial interpretation in both a historical and a theoretical investigation of Kant's view of war. The resulting view is that, for Kant, no war, with the possible exception of a war of self-defense, is acceptable. Williams extends this interpretation to address issues of foreign intervention, with problematic results. The issues noted in his account of Kant on foreign intervention undermines Williams' interpretation of Kant's view of war in general. It would be better to understand Williams as describing the Kantian position on war from a particular position within a larger framework of Kant's general philosophical system. This position will be explained more fully in the last chapter, alongside Orend and my own interpretation of Kant on just war.

The purpose of this chapter was to overturn the thesis that Kant has no just war theory. There now seems to be space for an alternative interpretation of Kant. However, the claim that

Kant does not have a traditional just war theory still holds. Before rushing ahead to describe Kant's just war theory, a justification for Kant's use of a different kind of just war theory must be made. The next chapter begins to build a position that Kant has a universal just war theory by considering Kant's general approach to philosophy and his metaphysical methodology. This will provide direction for the kind of just war theory I claim Kant endorses.

Chapter 3 – Kant’s Dynamic Metaphysical Outlook

Introduction

Thus far, I have offered a negative argument against the conceptions other writers have offered about Kant’s just war theory. Brian Orend offers a version of just war theory he claims to be in line with Kant, which resulted in another iteration of the traditional just war theory. Williams argues against Orend’s claim that Kant has a just war theory at all, but this results in a problematic understanding of Kant’s moral principles when applied to state actors. I have suggested that Kant does have a just war theory, *contra* Williams, and that it is not a traditional one, *contra* Orend. To be more specific, the positive claim I am asserting is that Kant has a universal just war theory, as distinct from a traditional just war theory. This is a part of Kant’s political theory, which is grounded in his moral theory. However, the support for this claim goes far beyond a mere sub-section of Kant’s philosophical understanding. His entire corpus of work is shot through with a dynamic conception of the world, which, in this context, results in a universal just war theory.

This chapter is the beginning of a positive argument for a particular interpretation of Kant. As such, the purpose here will be to follow the formula of the other Kant interpreters, and lay down what I believe to be Kant’s general approach to conflict and politics. To do this, I will motivate a particular thread of thought throughout Kant’s works, his dynamic and evolutionary approach to philosophical problems. With this understanding of Kant’s metaphysical approach to the world, and war specifically, a better understanding of how Kant arrives at the just war theory I claim he has will be clear. The task of the next chapter will be to come to my interpretation of

Kant's just war theory topically, that is distinguishing it from the traditional just war theories. After that, with these two convergent lines of inquiry made clear, a full positive account of Kant's universal just war theory will be offered in the final chapter.

Taking the broadest possible outlook, I will begin this chapter with a look at some of Kant's earliest writings, wherein I will show that, even from his early, pre-critical writings, Kant understood the world as a whole to be autopoietic. With this general outlook on the world, that it is self-systematizing and rationally progressive, I will next consider the second preface of his *Critique of Pure Reason* as a bridge between his physical methodology and Kant's ideal methodology. I will continue on to Kant's *What is Enlightenment*, which will offer a unified understanding of the prior concepts of reason, progress, and human development. From there, I will discuss Kant's third version of the categorical imperative. This will be a pathway from the metaphysical understanding of evolution and progress to a moral understanding. Finally, I will look at Kant's *Idea for a Universal History with a Cosmopolitan Aim*. In this work, Kant offers some specific thoughts on the moral outcome of a properly matured society of autonomous beings. These brief considerations will demonstrate that, throughout his work, and his life, Kant continuously believed in a progressive and dynamic approach to philosophy, which must therefore also be present in his just war theory.

Kant's epitaph, a quote from his own *Critique of Practical Reason*, reads: "Two things fill my mind with ever new and increasing admiration and reverence, the more often and more steadily one reflects on them: *the starry heavens above me and the moral law within me.*"²⁴⁵ This quote, and its placement by those who knew Kant best, offers some insight into Kant's mind. Kant considered these two areas of investigation to be independently important, and importantly

²⁴⁵ (Kant, *Critique of Practical Reason* 1996) (pg. 269) [5:161] Emphasis in source.

linked in a synergistic fashion. Further, his treatises on these matters, as will be noted in this chapter, demonstrate a consistent methodology to philosophical endeavors.

Kant's epitaph was chosen by his friends and colleagues as a summation of his work. Of all the potential scripts to represent the life and thought of their departed friend, they chose a particular quote, of his own making, from the conclusion of his *Critique of Practical Reason*. Given the importance placed on it by those who knew Kant best, one interpretation of his epitaph, and the message I take from it, is that to understand Kant, one must understand how he thought about these two subjects, the starry heavens and the moral law, and the connection between them.

In the conclusion of *Critique of Practical Reason*, Kant offers some explanation of this view. He notes that, given an appropriate concern for the process of reason into a particular investigation of the world, as in his example of a stone and sling, then similar investigations into the world, and subsequent gains in knowledge, can be made, "while one need never fear having to retreat."²⁴⁶ Kant extends this use of a secure methodology into the moral realm. He claims that this secure knowledge of the physical world "recommends that we take the same path in treating of the moral predispositions of our nature and can give us hope of a similarly good outcome."²⁴⁷ Thus, regardless of the matter at hand, "science (critically sought and methodologically directed) is the narrow gate that leads to the *doctrine of wisdom*."²⁴⁸ What this science is, and how Kant understood its practical dictums, is a focus of this chapter. In each of the following sections, various works are considered, and the same methodology is utilized by Kant in each. This consistence demonstrates how Kant understood the deeper connection between the starry

²⁴⁶ (Kant, *Critique of Practical Reason* 1996) (pg. 270) [5:163]

²⁴⁷ (Kant, *Critique of Practical Reason* 1996) (pg. 270) [5:163]

²⁴⁸ (Kant, *Critique of Practical Reason* 1996) (pg. 270-271) [5:163]

heavens and the moral law. There is an agreement of method, where a better understanding of one realm adds to the understanding of the other.

The Starry Heavens

In some of Kant's earliest works, he appeals to and utilizes a dynamic understanding of the world, in a physical and metaphysical manner, to establish his claims. His first published work, *Thoughts on the True Estimation of Living Forces*, presents this dynamic conception of the world in his explanation of the creation of space from energy. This natural science investigation is continued in his *The Rotation of the Earth on its Axis*, where Kant's system-wide analysis results in a harmony of movement, and an efficient allocation of forces. In his *Universal Natural History*, Kant extends his conception of the natural world to the metaphysical level, and makes it the basic explanatory mechanism of his work. This evolutionary understanding of the world is noted by Martin Schönfeld in several works. This early establishment of a dynamic worldview will be carried on by Kant into his later philosophical periods and into other areas of philosophical inquiry.

Living Forces. The general aim of Kant's work *Living Forces* was to address the debate going on at the time between the different conceptions of force, as described by Rene Descartes and Gottfried Leibniz. While a resolution to this debate was not accomplished, Kant does succeed in explaining many theses that mirror modern scientific theories regarding the fundamental nature of the physical universe. Of particular note is Kant's argument for the creation of space from energy, or force as he calls it. This demonstrates Kant's autopoietic understanding of the universe, on a fundamental level. Kant will carry this conception of nature over to other areas of his philosophical system.

Before the more fundamental development of space from force, Kant ties the concepts of space and time together, using force. He explains, in the first part of his work, that if a force is active, then one of two things must happen: 1) it is imparted into another object immediately and in its totality, 2) it is only partially transmitted. Kant notes that, if the first happened for everything, “then we would not become acquainted with any motion whatsoever, nor, in consequence, would we name the force of bodies after it.”²⁴⁹ If, however, the second case holds, as it must in a universe such as ours for some substance, then there must be both a space and time in which it happens.

Kant notes that a substance which only imparts some of its force will create two results. First, and most obviously, a second substance will act with a force. Second, the first substance “cannot remain inactive with the remaining part of its force.”²⁵⁰ Thus, there are two active substances, and “[b]ecause the consequences of this exertion cannot be found in the coexistent state of the world, one must therefore locate them in the world’s second dimension, namely, in the succession of things.”²⁵¹ Kant is here noting the necessity of time.

The first substance, still seeking to impart its force, acts again. Kant explains that it cannot act on the same substance as it did in the first instance, “for these receive only the first part of its force and are not capable of receiving the rest.”²⁵² So, the first substance must act on a third substance. Kant clarifies that this third substance cannot be at the same place as the second, otherwise the first would have acted on both simultaneously. So the third substance “must have an entirely different relation of location and position with respect to [the first] than does [the

²⁴⁹ (Kant, *Living Forces* 1749) (pg. 23) [1:19]

²⁵⁰ (Kant, *Living Forces* 1749) (pg. 23) [1:19]

²⁵¹ (Kant, *Living Forces* 1749) (pg. 23) [1:19]

²⁵² (Kant, *Living Forces* 1749) (pg. 24) [1:19]

second], the substance on which [the first] acted initially.”²⁵³ In the manner, Kant demonstrates also the point that the first substance “changes its location in acting successively.”²⁵⁴

This explanation for the understanding of how force acts in the world shows that Kant takes space and time to be importantly linked. Without the succession of things, read time, there can be no intelligible change of place for partial forces to act on multiple substances. Further, without the change in location for a partial force to act on a new substance, there is no succession of things. Thus, for Kant, space and time are codependent. This claim might not be as strong as the modern claim by physics that space and time are actually one notion, space-time, but it does create a relationship of necessity between them.

On a more fundamental level, Kant considers the very creation of space, as a presentation of a substance’s essential force. He explains that properties of substances, even down to the property of extension into a three dimensional space, “must be derivable from what contains within itself the complete ground of the thing itself.”²⁵⁵ This inherent grounding for space is found, for Kant, in the forces within substances. “The force by which any substance acts in union with other substances cannot be conceived without a certain law that manifests itself in its mode of action.”²⁵⁶ By this Kant is specifying the means of derivation of space from force. Uniformity of action among substance forces must be accompanied by a law. Which law is momentarily unspecified²⁵⁷, but there must be a law-like order to the action of substances with inherent forces.

Regardless of the exact law, Kant notes that this law must also be the kind that “determine[s] the kind of union and composition of many substances.”²⁵⁸ So the law of

²⁵³ (Kant, *Living Forces* 1749) (pg. 24) [1:19]

²⁵⁴ (Kant, *Living Forces* 1749) (pg. 24) [1:19]

²⁵⁵ (Kant, *Living Forces* 1749) (pg. 27) [1:24]

²⁵⁶ (Kant, *Living Forces* 1749) (pg. 27) [1:24]

²⁵⁷ Kant will arrive at the inverse square law for force radiating into three dimensions.

²⁵⁸ (Kant, *Living Forces* 1749) (pg. 27) [1:24]

interaction is not unique to each substance, by a general law of how substances with force interact. So this law is “the law according to which an entire collection of substances (i.e., a space) is measured, or the dimension of extension, will derive from the laws according to which the substances seek to unite by virtue of their essential forces.” So, due to the existence of force in substances, and the law governing behavior of these forces, space is a necessary result.

That Kant derives space from force, and makes a necessary connection between space and time, indicates that, in a Kantian framework, the fundamental phenomenon is force. Simply put, for Kant it all comes down to energy. A surprisingly contemporary notion. This is noted by Martin Schönfeld in his forthcoming paper *Kant’s Physics and Philosophy of Nature: Anticipating the Standard Model*. As Schönfeld puts it, Isaac Newton had an understanding of space as the stage for force to act within, that is, force extends *into* space, but for Kant “*force extends space*.”²⁵⁹ He explains that “for Kant, space is the structural consequence of the radiation of primordial force.”²⁶⁰

In this work, Kant offers many scientifically advanced theses. His discussion of the necessary connection between space and time bears striking resemblance to the modern concept space-time. His discussion of force in substances grounds space in the workings of force, i.e. energy, another highly contemporary conception of the universe. There are other such theses,²⁶¹ but these are clear and sufficient for the purpose of this section.

Kant offers his conclusions with arguments that rely on a dynamic and developmental methodology. His connection between space and time contains an assumption of dynamism in the universe. Without this property, the universe would be stagnant, as the argument for the

²⁵⁹ (Schönfeld n.d.) (pg. 12)

²⁶⁰ (Schönfeld n.d.) (pg. 12)

²⁶¹ Kant also indicates the instantiation of multiple worlds, suggesting the cosmic foam interpretation of M-theory, however that is tangential to this project.

action of forces between substances would not generate the succession of things, resulting in only a single point in time. Kant's discussion of force generating space relies on an autopoietic understanding of the universe. As Kant notes, without force, "there is no connection, without connection, no order, and, finally, without order, no space."²⁶² Thus, Kant understands space, and so time, as a necessary result of active force. No other mechanisms are needed to create the universe, simply force, and the laws it obeys.

Kant's developmental approach to philosophy is present from here at the start. It is unclear whether this is an invention of his own for understanding the natural world, or if, like the advice from Bilfinger, merely the use of good advice when he heard it. In any case, Kant clearly appreciates the importance of a holistic evolutionary approach. Beyond the early stages of the universe, Kant also applies this method to different scales in nature. Moving from the beginning of the entire universe, to the mature stages of Earth, a much smaller object of consideration, Kant continues to apply this dynamic approach in his investigation.

The Rotation of the Earth. In his response to the question of the rotation of the Earth set out by the Prussian Royal Academy of Sciences, Kant responds that the Earth's rotation is decreasing, and will eventually match the orbit of the Moon. He supports this claim through an application of Newtonian principles. The general structure of his paper is to set up the issue to be discussed, explain the method he will use, and, through a process of elimination, conclude that tidal friction will eventually result in an equivalence of Earth's rotation with the Moon's orbit. This efficiency of force allocation is supported throughout this work with an assumption of dynamic interaction between celestial bodies, and a gradual, additive, effect of the forces involved. Taken in the

²⁶² (Kant, *Living Forces* 1749) (pg. 26) [1:23]

abstract, this is a discussion about how natural forces, in this case physical ones, come into an autopoietic harmony with each other.

After restating the question, Kant immediately discounts the method of historical records as a reliable method of answering this question. If reliable records could be found regarding the number of days or hours in a year in antiquity, then, says Kant, the answer would be simply a matter of consulting them and comparing the previous length of a year with the current length. Such reliable records are, in Kant's view, not to be found. Thus, Kant concludes that a sound application of Newtonian principles would be a much more reliable method of inquiry.

With this poor method dismissed, Kant begins his negative argument along the better method of investigation. He notes that, unhindered, the Earth would rotate at a constant speed forever. So, the question becomes: is there such a hindrance to Earth's rotation, and, if so, what? Kant rejects a 'space substance' as providing friction, relying on Newton's explanation of the emptiness of space. The only remaining possibility for Kant is that the Sun and Moon act on Earth. Even with this attractive force, Kant notes that, if the Earth is solid, there would be no effect on its rotation, as the attractive force would act equally over the entirety of the globe, and no change would result. However, the Earth is not entirely solid, so Kant concludes that there must be a different result.

At this point, Kant has dismissed a number of static possibilities: simply looking up the answer, a celestial goop, and the ineffectualness of attractive forces. Considering the entire system of interacting forces, Kant leaves open the possibility of a dynamic interaction of Newtonian forces on a fluid system. The resulting account will need to explain the effect that various forces have over time, and how they result in a stable equilibrium, as Kant claims. Interestingly, while his specifics are slightly off, Kant's resulting understanding of the interaction

of the gravitational forces between the Moon and Earth is essentially vindicated by modern science.

Kant begins his positive account of the decrease in Earth's rotation by noting the obvious, that Earth has oceans, and tides. These tidal shifts, Kant explains, occur counter to the rotation of Earth, thus they have a slight, nearly imperceptible, hindering effect on Earth's rotation. However, Kant explains that, as the Earth's rotation was set at its formation, and will never regain any lost impetus, any hindrance matters. Further, Kant notes, this tidal effect against the Earth's rotation is continuous, and will add up over time. He offers some calculations to suggest what kind of timeframe this might be, and notes some problems inherent with his quick sketch. These apparent results seem less like a concentrated attempt to predict the future, and more like a gesturing lip service to the kind of results the Prussian Royal Academy of Sciences would expect of a response to their challenge, that is, more rigor than the general musings of a natural philosopher.

In any case, Kant concludes that, regardless of the exact timeline, the Earth's rotation is diminishing, and will eventually reach the point when "its [the Earth's] surface comes to rest in relation to the Moon."²⁶³ This result is corroborated for Kant by its very cause, viz. the Moon. Kant explains that the Moon is already in such an orbit regarding Earth, which could only happen by the Moon being created later than the Earth, and the Earth effecting the then liquid Moon, just as the Moon is now effecting the partially liquid Earth.

In considering how the system works as a whole, not merely the individual parts, Kant grasps a wider range of possibilities. The conclusion he reaches is a balance of physical forces. The Earth and Moon effect each other according to the same rule, and with the same result. The

²⁶³ (Kant, *The Rotation of the Earth on its Axis* n.d.) (pg. 160) [1:190]

Earth and Moon will, eventually, come into a harmonious balance of efficient motion. As it now stands, the Moon is wasting effort in dragging the tides across Earth's surface, gradually slowing its rotation. Once the Moon has sufficiently altered the rotation of the Earth, there will cease to be a strife between the rotation of Earth and the tidal friction of the Moon. Instead there will be an efficient allocation of motive forces where the Earth and Moon face each other perpetual orbit around the Sun.²⁶⁴

These conclusions are the result of Kant understanding the physical evolution of matter as it interacts within a system. That Kant was able to correctly arrive at the answer of tidal friction, although that is not his nomenclature, to the Prussian Royal Academy of Sciences' challenge bespeaks the kind of approach Kant takes to problem solving, and intellectual pursuits in general. This is reinforced in the next work he published within the following year.

Universal Natural History. Kant offers a complete cosmology in his work *Universal Natural History*. He begins with a basic set of assumptions, and derives the mechanical ordering of the solar system, the galaxy, and the universe in general. This work will not enjoy the same degree of detailed examination that Kant's prior works in this section have. This is due, in part, to the repetition of the demonstration of Kant's dynamic methodology regarding physical natural forces, and also, in part, due to the vast scope of this work, relative to his previous ones, and the narrow scope of this section. Importantly, while the treatment of previous works has established Kant's use of a dynamic approach, this work will establish Kant's use of this approach beyond the purely physical universe. This will be aided by the interpretative works of Martin Schönfeld on Kant's use of the concept of evolution.

²⁶⁴ Of course, as the Sun is also rotating and somewhat viscous, Kant would be committed to the idea that the Sun will eventually spin at the rate of the vector sum of its orbiting bodies as well.

In the preface to his system, Kant offers some justifications for the agreement of his account with the prevailing religious views of the time. Within this conciliatory portion, Kant claims: “Matter is tied to certain natural laws. In their complete dissolution and dispersion, I see a beautiful and orderly whole develop quite naturally.”²⁶⁵ Kant uses this to establish a claim about the proper relationship between his theory and religion, however, it is telling of the assumptions he made going into this project. It demonstrates a basic assumption of the self-ordering nature of the universe, that existence is autopoietic.

This is further supported by Kant’s later explanation of the innocence of his assumptions. He explains that he “placed the world in the simplest chaos, made use of no forces other than those of attraction and repulsion to develop the great order of nature, two forces which are equally certain, equally simple, and equally original and universal.”²⁶⁶ Here, as part of his appeasement strategy, Kant is showing the acceptability of his assumptions, to later legitimize the potentially religiously controversial conclusions that he will draw from them. In tandem with this interpretation, there is further support for describing Kant’s world-view as evolutionary. Kant’s derivation of complexity and order from chaos and simple principles indicates an assumption of self-governing within matter itself, i.e. matter, by its nature, ‘wants’ to become orderly and complex. These comments, made in the preface to his actual project, demonstrate his general approach to the issue, which is picked up on by other interpreters of his works, as well.

In his forthcoming paper “Kant’s Physics and Philosophy of Nature: Anticipating the Standard Model” Martin Schönfeld discusses the importance of evolution on Kant’s work. He explains that Kant understood evolution as applicable to material matter, and not necessarily life, as is typically seen. This means that, for Schönfeld, Kant believed the very fabric of reality to be

²⁶⁵ (Kant, *Universal Natural History* n.d.) (pg. 198) [1:228]

²⁶⁶ (Kant, *Universal Natural History* n.d.) (pg. 204) [1:234]

a developing, changing, process. Beyond that, Schönfeld takes Kant's evolutionary approach to go deeper than the material world. He explains that, in Kant's work *Living Forces*, Kant argues for "the emergence of matter *and* space from energy."²⁶⁷ Thus, on an even more basic level than Kant explicitly states in the preface to his *Universal Natural History*, Schönfeld shows Kant to understand creation and complexity to develop and evolve from a simple state. This is further shown in Kant's project of explaining the evolution of the universe.²⁶⁸

Kant's general argument in his *Universal Natural History* is, in the context of this section, an extended application of the same kind of dynamic forces that were discussed in his earlier works. Beginning with the universe as a whole in his seventh chapter of part two, where Schönfeld interprets Kant as anticipating the standard model of the universe, through the first chapter of part two, where Kant describes what is now called the nebular hypothesis, and down to his fifth chapter in part two, concerning the formation of Saturn's rings, Kant is applying the dynamic principles of progressive evolution to physical matter, much as he did in previous works.

This demonstrates an important principle in Kant's conception of the universe, namely that the larger system of the universe acts in accordance to the same laws as the smaller systems within it. As Kant puts it: "The shape of the heavens of the fixed stars therefore has no other cause than being exactly the same systematic constitution on a large scale as the planetary system has on a small one, in that all suns make up one system, whose universal plane of reference is the Milky Way."²⁶⁹ Kant's basic understanding of the universe is that it operates on

²⁶⁷ (Schönfeld n.d.) (Sec. 2)

²⁶⁸ Schönfeld also notes the historical travesty that the title of Kant's work is rarely translated correctly. In German it is titled *Auswickelung der Natur*, which Schönfeld translates as 'Evolution of Nature'. Due to the political and religious climate of the time, this resulted in some negative consequences for Kant when it came to light that he was the author, which perhaps contributed to the historical aversion of the use of its proper translation.

²⁶⁹ (Kant, *Universal Natural History* n.d.) (pg. 218) [1:251]

the same principles, just in different scales. Moving from the purely physical to living material, it is his third part, where Kant discusses the nature of inhabitants of other planets, which demonstrates a different kind of application of his dynamic approach.

The general system Kant develops, regarding the nature of the inhabitants that would develop on various celestial bodies, is that the perfection of their physical makeup and intellectual capacities is in proportion to their distance from the Sun, as a function of material density related to solar distance, e.g. Saturn's inhabitants are supremely excellent beings due to the rarified environment they evolved in, and Mercury's inhabitants are exceptionally poor creatures due to the density of the environment they evolved in. This is because, as Kant demonstrated in section two, the planets are arranged from the Sun in order of their density, which affects their individual planetary evolution, and so the nature of their inhabitants "is tied to and dependent on the number of impressions that the world awakens in them."²⁷⁰ As a result of its place in the solar system, for Kant, humanity is situated in an unfortunate position: too close to the sun to be free of baser urges, and too far from the sun to be exonerated of responsibility for succumbing to them.

In making this connection between the nature of planets and the nature of their inhabitants, Kant is utilizing a different kind of evolutionary perspective of creation. Kant is advocating the view that the environment within which a species develops has a formative effect on the creatures that inhabit it. This extends back to the very development of life itself. He explains that, while a planet might not now be populated, "it will be when the period of its formation is complete."²⁷¹ In other words, for Kant, the existence of life is an expected development in the life of a planet. Further, Kant notes that, the longer a planet takes to develop

²⁷⁰ (Kant, *Universal Natural History* n.d.) (pg. 295) [1:352]

²⁷¹ (Kant, *Universal Natural History* n.d.) (pg. 296) [1:352]

to this perfection, then “it will remain in the perfection of its constitution longer for the future once it has arrived at it.”²⁷² Thus, for Kant, there is a great deal of variation within the possibilities for the arrangement of matter, and the consequent nature of living beings arising from said arrangements. What is constant, however, is the development, the autopoietic evolution of matter and life in the universe. In bridging this gap, from the material world to living beings, Kant demonstrates a new application of his already well established approach to philosophical issues, i.e. a process that is dynamic, evolutionary, and developmental.

Conclusion. The aim of these earlier sections was to establish Kant as having a particular kind of methodology during this early stage of his philosophical works. In agreement with my analysis of Kant’s earlier two works, the kind of explanation Schönfeld shows that Kant has for the emergence of the conditions that lead to the world as we know it, demonstrates that Kant does not restrict his dynamic methodology to mere physical forces. Combined with Kant’s explanation of the nature of the inhabitants of various planets, the evidence seems overwhelming. Kant began his philosophical investigations with a dynamic, evolutionary methodology for approaching philosophical inquiry.

As exemplified in each of the works considered, Kant’s method focused on a progression, an increase in complexity. The universe began in a chaos, and naturally began to order itself by virtue of the interaction of forces. The Earth and Moon, acting on each other with the same kind of force, will eventually organize themselves into a harmonious system. Kant goes as far to note the interaction between the physical nature of the planets and the intellectual nature of their inhabitants, connected by the rarity or density of their matter. The more complex and active the planet material, the greater the intellectual capacity of its inhabitants, and the more moral they

²⁷² (Kant, *Universal Natural History* n.d.) (pg. 296) [1:353]

are disposed to be. Consistently, Kant is starting with the relatively simple and concluding with the relatively complex; this complexity is self-organizing and, in some important respect, goal-orientated. What has been established so far is that Kant understands the connection between the physical and moral realms to be synergistic, and he understands the natural world as autopoietic, progressive, and ontologically evolutionary.

What has not been established, and is tangential to our inquiry, is whether Kant came to these initial works with such a view already in mind, or if his meditations on the physical forces of Earth and the universe resulted in it, or a combination there of. Regardless, I argue that it must be a pervasive and broadly applicable view that cuts across all areas and times of Kant's inquiry. To support this, three different areas of Kant's philosophical system, from a period some three decades after these first writings, will be briefly examined in the remainder of this chapter.

The Moral Law

Nearly three decades after the completion of his *Universal Natural History*, Kant publishes the second edition of his *Critique of Pure Reason*. A relatively short time later, he finishes his work *An Answer to the Question What is Enlightenment*, the *Groundwork for the Metaphysics of Morals*, and *Idea for a Universal History with a Cosmopolitan Aim*. Within all of these works, Kant is still utilizing a dynamic, evolutionary methodology to investigate the questions he finds most important. The parallels in technique between early and later works suggests a foundational strain of thought, which might reliably be applied to other areas related to Kant's explicit writings.

Second Preface of Kant's Critique of Pure Reason. Kant offers a unified system of the foundations of reason in his *Critique of Pure Reason*. However, after its initial publication in 1781, it was criticized to the point that Kant felt the need to edit and republish it in 1787. This

edition had some clarifying passages, and a new preface. In this preface to the second edition, Kant offers some idea of how he views his project, and the nature of his investigation. In short, he believed it to be a revolutionary work, guiding metaphysics to the secure path of the sciences, so that the resulting knowledge would be protected from the need for later revision, having been well founded from the off. Regarding the project at hand, this new preface also offers evidence that Kant still adheres to a dynamic conception of the world so many years after his first uses of it.

Kant opens his preface to the second edition with a description of a history of thought that indicated a problematic foundation for metaphysical investigation. Specifically, he notes that, if an area of intellectual endeavor consistently finds itself backtracking and reestablishing its supposed gains, than it is not properly founded.²⁷³ Instead, the process of logic, which, for Kant, has proceeded from antiquity to his present time in a constant upward trajectory, is clearly well founded and ought to be emulated in other areas of intellectual investigation, specifically metaphysics.²⁷⁴ While this judgement of the better and worse methods of investigation by Kant is itself indicative of an evolutionary understanding of the history of intellectual traditions, the particular method valued as better than others is itself a dynamic process, viz. critique.

Kant explains that the purpose of his work, a critique itself, is to “attempt to change the old procedures of metaphysics, and to bring about a complete revolution after the example set by geometers and investigators of nature.”²⁷⁵ In order to accomplish this, Kant explains that his work “is a treatise on the method...it marks out the whole plan of the science...its limits...its inner organization.”²⁷⁶ Thus Kant can be understood as concerned with a method of generating

²⁷³ (Kant, Critique of Pure Reason 2007) (pg. 13) [Bvii]

²⁷⁴ (Kant, Critique of Pure Reason 2007) (pg. 13) [Bvii-viii]

²⁷⁵ (Kant, Critique of Pure Reason 2007) (pg. 21) [Bxxii]

²⁷⁶ (Kant, Critique of Pure Reason 2007) (pg. 21) [Bxxii]

knowledge, not with the knowledge itself. This work is an exposition of derivation, the process by which new knowledge can be securely discovered. This is a developmental focus, for the evolution, by revolution, of knowledge within metaphysics.

Kant offers a further description of this methodology he intends to apply to the process of investigation. He notes a distinction between dogmatic procedure and dogmatism. Kant explains that for something to be a dogmatic procedure is simply to “derive its proof from secure *a priori* principles.”²⁷⁷ While to be dogmatic, Kant describes as the assumption that is it possible to make advances in conceptual realms according to particular principles without first investigating the origin and justification of said principles. Kant notes that his project is a dogmatic procedure, but is the antithesis of dogmatism. This is a clear statement of Kant’s own understanding of the methodological nature of his project. It shows that Kant takes himself to be engaged in a metaprocess, a critical methodology applied to an autopoietic subject, i.e. an investigation that must also take itself as its first subject of inquiry, and thereby justify all its future findings.

Kant notes that this kind of procedure is not new to the investigation of philosophical issues. He offers Christian Wolff, “the greatest of all dogmatic philosophers,” as a corroborating intellectual.²⁷⁸ Kant notes that Wolff attempts to set philosophical inquiry on the secure path of science, however, he fails to do so merely by an omission of a critical analysis of pure reason itself, without which the resulting knowledge cannot be secured from future radical revision. Thus is seen the importance for Kant of establishing a prior justification for the process by which metaphysical investigations are conducted. Kant takes this development of a process to be paramount in any development of actual knowledge.

²⁷⁷ (Kant, Critique of Pure Reason 2007) (pg. 28) [Bxxxv]

²⁷⁸ (Kant, Critique of Pure Reason 2007) (pg. 29) [Bxxxvi]

In discussing Wolff, Kant also offers a description of the secure path of science that he is attempting to set metaphysics on. He explains it as “the lawful establishment of principles, the clear determination of concepts, the attempt at strictness of proof and the avoidance of taking bold leaps in our inferences.”²⁷⁹ These principles of proper inquiry are applicable across all areas of rational investigation. That this is how Kant describes the secure path of science, and the preferred method of investigation he previously evaluated as superior to all others. This again indicates his approach to philosophy as dynamic, process-orientated, and evolutionary, as opposed to dogmatic and intellectually stagnant.

In addition to the clear appeal to process that these principles of the secure path of science make, there is also an indication of a continuation of a search for the universal principles by Kant for a given area of inquiry. That is, regarding the principles of the cosmos, Kant applied the universal principles of Newtonian mechanics to explain the autopoietic nature of matter; here Kant is applying these universal principles of science to explain the autopoietic nature of reason. This tendency towards utilizing universal principles, or general rules, is another, more obvious, motif of Kant’s philosophy, which will be utilized in the last chapter regarding his view on the relationship between justice and war.

This look at Kant’s preface to the second edition of his *Critique of Pure Reason* has focused on a demonstration of Kant’s utilization of a dynamic method of inquiry. Kant describes his own project as focused on the method of investigation by reason. It is a dogmatic process, in that Kant is working from *a priori* principles to secure knowledge, but is not a dogmatism in that it is reflexively critical. This demonstrates an appreciation by Kant of the interaction of the concepts of reason and the concepts used by reason. He avoid a simplistic rendering of basic

²⁷⁹ (Kant, *Critique of Pure Reason* 2007) (pg. 29) [Bxxxvi]

principles in favor of a system of related concepts. He describes this system as “truly **organic**, everything being there for the sake of each member, and each member for the sake of all.”²⁸⁰

This is a clear signaling that Kant is knowingly utilizing the same methodology that he did in his earlier works on the nature of the natural universe, in investigating the physical world, to investigate the ideal realm.

Kant on Enlightenment. Having considered a more mature Kant on the topic of reason itself, now Kant turns to the relationship between the cultivation of reason and the betterment of the individual and society at large. In his work *An Answer to the Question: What is Enlightenment?* Kant offers a definition of enlightenment and applies it to both individuals and to whole cultures. This concept of enlightenment is a progressive one, which again demonstrates Kant’s general approach to philosophical investigation, and is tied, for Kant, to the fundamental nature of humanity. Further, the application of this developmental principle to both individuals and societies reinforces the conception of iterating structures on different scales e.g. the individual develops through enlightenment, as do the societies individuals inhabit.

Kant opens his considerations with a definition of enlightenment. He calls it a liberation from self-imposed minority.²⁸¹ Kant explains, by minority he means a condition of heteronomy regarding the use of one’s reason, and that this is imposed on the self by a deliberate lack of development of one’s ability to reason. This is a concern on an individual level, however, Kant also notes this phenomenon on the social level. Regardless of the level of scale considered, this condition of unenlightenment is self-imposed, and requires an individual or society to act to remedy this situation.

²⁸⁰ (Kant, Critique of Pure Reason 2007) (pg. 30) [Bxxxvii-Bxxxviii] Emphasis in source.

²⁸¹ (Kant, An Answer to the Question: What is Enlightenment? n.d.) (pg. 17) [8:35]

Kant holds little hope for a widespread enlightenment on the individual level, explaining that “it is difficult for any individual to extricate himself from the minority which has become almost nature to him.”²⁸² For a society, Kant is more optimistic, claiming “that a public should enlighten itself is more possible; indeed this is almost inevitable.”²⁸³ He notes Frederick the Great as an enlightened monarch leading the enlightenment of their society. This process of enlightenment may be accomplished, for Kant, in any society by a simple omission of hindrance of the public use of reason. The result is a progress towards enlightenment and the development of a better society.

For this social enlightenment, Kant notes that the mechanism is not so much the active force required by an individual attempting to better themselves, but rather a negative agent of change, the removal of obstacles to the natural enlightenment process. He specifically notes that “nothing is required but *freedom*...namely, freedom to make *public use* of one’s reason in all matters.”²⁸⁴ After noting that this freedom is generally denied wherever possible, Kant explains what he means by the public use of reason.

Kant makes a distinction between the use of one’s reason for one’s own purposes, and the use of one’s reason in the employ of another, or for a cause. The first case is a public use of reason, that is, it is reason utilized as “*as a scholar* before the entire public of the *world of readers*.”²⁸⁵ The second case is the private use of reason, utilized in the discharging of one’s post or office, which might “be very narrowly restricted without this particularly hindering the progress of enlightenment.”²⁸⁶ The difference, as I understand it, is that, in the public realm,

²⁸² (Kant, An Answer to the Question: What is Enlightenment? n.d.) (pg. 17) [8:36]

²⁸³ (Kant, An Answer to the Question: What is Enlightenment? n.d.) (pg. 17) [8:36]

²⁸⁴ (Kant, An Answer to the Question: What is Enlightenment? n.d.) (pg. 18) [8:36] Emphasis in source.

²⁸⁵ (Kant, An Answer to the Question: What is Enlightenment? n.d.) (pg. 18) [8:37] Emphasis in source.

²⁸⁶ (Kant, An Answer to the Question: What is Enlightenment? n.d.) (pg. 18) [8:37]

there is no cause to restrict the free use of reason, while in the private realm, the use of reason is for a particular cause that an individual has subsumed as their own, so to restrict the use of reason in this very narrow area of intellectual endeavor is simply to prevent a contradiction in the will of the individual. This private use of reason extends even to the condition of citizenship. Thus, for Kant, the government, as it attempts to fulfill its role as a safeguard of autonomy, must be obeyed, even if, in the public use of reason, a citizen rails against it.

In terms of social enlightenment, Kant rejects the possibility of a static social order. He notes the impulse of one group to impose its beliefs on another, such as a founding society dictating the terms of life for all their posterity. He explains that to do so, without the possibility of further social development, is a “crime against human nature, whose original vocation lies precisely in such progress.”²⁸⁷ For Kant, the only legitimate rules that can be imposed on a society are those which that society would endorse themselves. That is, heteronomy of succeeding generations by a previous, perhaps long dead, generation is unacceptable. Again, Kant is here rejecting a stagnation of concepts, there is a preference for a mobility of autonomy within a society, an autonomy which is constantly changing, both in its form and in its matter, i.e. what the collective autonomy dictates and to whom it applies.

Also shown in this charge by Kant against would be dictators to future societies, is an abstract ideal, towards which a society naturally works towards. As with his example of Frederick the Great, Kant is adopting a social ideal. This social evolution towards a more perfect society is the same kind of reasoning that will be utilized in explaining Kant’s attitude towards just war theory. Related to the project of establishing a dynamic methodological approach, this ideal offers a goal of development. This enlightenment is not a project for the sake of a society

²⁸⁷ (Kant, *An Answer to the Question: What is Enlightenment?* n.d.) (pg. 20) [8:39]

having something to do. Instead, it is a project with a particular end in mind. Regardless of whether or not that end is ever actually attained, the striving towards it is what matters. Kant is not demanding an immediate shift to a utopian society, rather he is insisting that the progress to the utopia described not be hindered.

From the natural world of his early works, to the critique of the very method of reason, and here to the process of proper development, Kant continues to approach his subject with a dynamic methodology which results in a comprehensive understanding of the subject itself and its relation to other areas of his philosophical system. In this work, Kant has offered a broad definition of enlightenment, which is applicable to the scale of individuals and societies alike. The result is a view that allows an individual to “postpone enlightenment in what it is incumbent upon him to know; but to renounce enlightenment, whether for his own person or even more so for posterity, is to violate the sacred right of humanity and trample it underfoot.”²⁸⁸ In the next two sections, Kant’s methods will be more closely explored, first as related to individuals, then as related to a society. As these investigations continue, they come closer to Kant’s view on just war theory.

Kant’s Third Version of the Categorical Imperative. In his work *Groundwork for the Metaphysics of Morals* Kant puts forward three different versions of a moral categorical imperative. The first focuses on the form of moral principles, the second on the matter of moral principles, i.e. humanity, and the third focuses on the complete determination that moral principles have. It is this third rendering of his categorical imperative that best displays Kant’s dynamic methodology as he applies it to individual autonomy.

²⁸⁸ (Kant, *An Answer to the Question: What is Enlightenment?* n.d.) (pg. 20) [8:39]

Kant introduces the third version of the categorical imperative as a harmonizing of the will with the universal natural law. This description is intended to focus on the subjective aspect of the moral law. Kant claims that the objective nature of the moral law is in its form and universality, however, the subjective purpose of the moral law is humanity, which is an end in itself. This leads Kant to conclude that “*the will of every rational [being is] a will giving universal law.*”²⁸⁹ Thus, the individual wills of all members of humanity are equal and must, on some level, agree. This is a process of moral interaction which occurs among moral equals.

Similar in form to the physical harmony resulting from the interactions of the Earth and the Moon, Kant calls the result of this moral harmonizing process the kingdom of ends. This is a state of the world where each individual acts as though they are a universal lawgiver. Kant notes that these laws are in the form of moral maxims, which must be in conformity with the objective principle of morality, else there arises a duty to do otherwise. Thus, Kant is offering an account of the interactions among a few different entities: an individual’s will, an individual’s use of practical reason, the wills of all humanity, and the universal law and the objective moral principle. All of these must harmonize and result in a consistent principle of action. Kant is here requiring a dynamic understanding of moral principle generation. The process, again, is developmental. The result is an efficient allocation of moral force, where the universal law clearly dictates the principles of action observable in the community. This is made even more explicit by Kant in his explanation of the differences between the various formulations of the categorical imperative.

Kant maintains that there is actually only one categorical imperative, which he has rendered in three different ways. The purpose for having these three different versions is to

²⁸⁹ (Kant, *Groundwork for the Metaphysics of Morals* n.d.) (pg. 81) [4:431] Emphasis in source.

highlight different aspects of the supreme moral principle. The first demonstrates the form, or universality, of a maxim, the second shows the matter, or the ends, of a maxim, and the third shows its complete determination.²⁹⁰ These three modes of the categorical imperative come together for Kant: “A progression takes place here, as through the categories of the *unity* of the form of the will (its universality), the *plurality* of the matter (of objects, i.e., of ends), and the *allness* or totality of the system of these.”²⁹¹ This is an explicit claim by Kant of a dynamic progress of harmonization of concepts in the moral realm, and further, is an accounting of the relationship between the various aspects of moral consideration. Kant also extends this harmony to concepts outside the moral realm.

Kant makes an analogy between moral law and natural law. He claims that “the validity of the will as a universal law for possible actions has an analogy with the universal connection of the existence of things in accordance with universal law, which is the formal aspect of nature in general.”²⁹² This analogy is based on the universality of both sets of laws in their respective realms, however, there is also an important connection between them, as humans are situated within the natural world. Thus, Kant is led to an alternative phrasing of the third version of the categorical imperative: “*act in accordance with maxims that can at the same time have as their object themselves as universal laws of nature.*”²⁹³ This formulation helps to bridge the gap between the natural and the moral, but in a manner that requires each to be independent of the other.

The physical harmonization of the Moon and Earth due to the gradual and consistent application of force is paralleled in the moral realm. Kant accepts humanity as subject to both the

²⁹⁰ (Kant, *Groundwork for the Metaphysics of Morals* n.d.) (pg. 85-86) [4:436-437]

²⁹¹ (Kant, *Groundwork for the Metaphysics of Morals* n.d.) (pg. 86) [4:436] Emphasis in source.

²⁹² (Kant, *Groundwork for the Metaphysics of Morals* n.d.) (pg. 86) [4:437]

²⁹³ (Kant, *Groundwork for the Metaphysics of Morals* n.d.) (pg. 86) [4:437]

moral and the natural laws. Thus, there needs to be a harmony between them, which allows for an overall consistency in his philosophical system, and reinforces the abstract concepts of harmony, progress, and process, through different areas of his philosophical investigations.

With his third formulation of the categorical imperative, Kant demonstrates a focus on a process driven investigation into morality. In addition, he demonstrates a continued use of universal laws, applying across the entirety of the topic of consideration. Kant also offers a suggestion of the connection between morality and nature, two distinct areas of philosophical investigation for Kant, but both with universal, and evolutionary, laws. The remaining area to demonstrate this dynamic approach in Kant's thought is in a societal or political realm. Then the next step, attempting to extend Kant's methodology to just war theory, can be made with a firm grounding in his approach to every other importantly related realm of philosophical inquiry.

Idea for a Universal History with a Cosmopolitan Aim. There are several places in Kant's body of work that might offer a demonstration of his dynamic approach to politics. However, in his *Idea for a Universal History with a Cosmopolitan Aim* Kant considers a nexus of politics, society, and ethics, and so is of particular interest to this project. This work is rife with examples of his particular philosophical approach. He applies a progressive approach to the question of discovering a unified history of humanity. This demonstration will provide the last step between Kant's general philosophical approach and a consideration of his just war theory.

In the introductory section of his work, Kant claims that "*in the large*, [history] can discover within [human will] a regular course," and that "the whole species can be recognized as steadily progressing through slow development of its original dispositions."²⁹⁴ This is, in one way, an explicit statement of an assumption of the progress of humanity, and a dynamic

²⁹⁴ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 10) [8:17] Emphasis in source.

understanding of human interaction. Further, this claim offers a coordination of Kant's investigations into human nature and the nature of the universe. Instead of treating these as distinct areas of philosophical investigation, and leaving it at that, Kant shows an interest in connecting apparently disparate areas of study, developing a richer worldview.

This is confirmed with the comment by Kant, at the end of his introduction, that philosophers who attempt to offer a history, cannot assume an aim of humanity itself, but rather “an *aim of nature* in this nonsensical course of things human; from which aim a history in accordance with a determinate plan of nature might nevertheless be possible.”²⁹⁵ With this, Kant can be taken as unifying the natural laws with the actions of humanity, which are governed both by morality and the instincts of humanity's animal nature, i.e. autonomy and heteronomy respectively. Importantly, what Kant is taking as fundamental here is the natural world, which he is fitting an investigation of history around.

This work can be interpreted as teleological, and therefore philosophically problematic and dismissible. This is not the case, and can be explained utilizing the previous work considered. In a footnote to the explanation of the relationship between the three versions of the categorical imperative, Kant offers a distinction between teleology, and what he is doing. “*Teleology* considers nature as a kingdom of ends, *morals* considers a possible kingdom of ends as a kingdom of nature.”²⁹⁶ This distinction illustrates a clear difference in methodology. A teleological approach assumes a static condition, and the dynamic processes of nature are thereby deprived of a measure of freedom, e.g. no matter what, a process has only one end, and must work along that line, either towards or away from its given end. Morals, as Kant describes them, assume a particular end as a potential future state of the world, and recommend a process to

²⁹⁵ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 11) [8:18] Emphasis in source.

²⁹⁶ (Kant, *Groundwork for the Metaphysics of Morals* n.d.) (pg. 86) [4:437 footnote] Emphasis in source.

develop towards it. The universe, and in particular those items within it capable of self-direction, is not necessitated in any way to actually bring about this progress. Kant notes that such an ideal state of the world “is a practical idea for the sake of bringing about, in conformity with this very idea, that which does not exist, but which can become real by means of our conduct.”²⁹⁷ This is how Kant understood his cosmopolitan aim, not as a natural necessity of nature, but a moral end as an ontological possibility, and one we should work towards.

With this understanding of Kant’s project, any of Kant’s nine propositions could be offered in support of the thesis of this section. The eighth proposition is perhaps the clearest representation of this dynamic approach to philosophical investigation. It claims that “One can regard the history of the human species in the large as the completion of a hidden plan of nature to bring about an inwardly and, **to this end**, also an externally perfect state constitution, as the only condition in which it can fully develop all its predispositions in humanity.”²⁹⁸ This is a proposition that combines Kant’s politics, morality, enlightenment, and natural science.

In part of his explanation of this proposition, Kant notes that, in his lifetime, nations were sufficiently interconnected to provide a bulwark against receding from the cosmopolitan aim. This recommends, to Kant, that there is a general and gradual understanding of the importance of individual freedom, the result of which is an “*enlightenment*, as a great good that must raise humankind,” and that it “must ascend bit by bit up to the thrones and have its influence even on their principles of government.”²⁹⁹ Kant understands the role of enlightenment in history to be a gauge for the development of human society, or perhaps, as the development itself. The moral evolution of humanity from a state of nature to a perfect civil constitution can be measured by

²⁹⁷ (Kant, *Groundwork for the Metaphysics of Morals* n.d.) (pg. 86) [4:437 footnote]

²⁹⁸ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 19) [8:27] Emphasis in source.

²⁹⁹ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 20) [8:28] Emphasis in source.

the level of general enlightenment. Kant is focused on the development of the species, and of societies in particular, as it is on this level of scale, the political one, that humanity can achieve the final aim of nature.

Kant claims that, with the appropriate relation set among the international community, “the end that which nature has as its aim will finally come about – a universal *cosmopolitan condition*, as the womb in which all original predispositions of the human species will be developed.”³⁰⁰ This indicates that Kant understands humanity to have a non-trivial history beyond this final end of nature. Thus, even Kant’s moral kingdom of ends as a kingdom of nature is a dynamic concept. It is the most important milestone in the history of humanity; an end, but not an ending.

In this work, *Idea for a Universal History with a Cosmopolitan Aim*, Kant approaches the intersection of morality, politics, and history, among other related topics, with a dynamic methodology. This allows him to develop a coherent, and progressive, history of humanity, and suggest the course it can and should take from wherever humanity finds itself. It is thanks to a focus on development and progress that Kant can accommodate a wide range of potential states of the world, and still offer a recommendation of how a society ought to proceed to bring about a morally ideal world. Whether or not that is achieved quickly or in the distant future, Kant’s method is still applicable.

Conclusion

The purpose of this chapter has been to demonstrate a strain of thought throughout Kant’s works. While a comprehensive investigation into all areas of his works is not possible here, a brief consideration of two apparently distant areas of Kant’s works, in both time and subject

³⁰⁰ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 20-21) [8:28] Emphasis in source.

matter, reveals a connecting thread through the utilization of a dynamic understanding of his investigation.

In his early work, Kant considers the forces that shape the Earth and the universe. He is able to explain the interactions that various natural forces have with each other, resulting in an explanation of various physical effects in the world. This is extended, in the last work of that time period considered, into an application to living beings, a precursor to his later work.

Approximately three decades later, Kant is still utilizing the same dynamic approach to elucidate and explain his object of consideration. In his exposition of the methods of reason, he adds a reflexive aspect to his methodology, to demonstrate the self-consistency, and acceptability of reason itself. In his consideration of proper human action, Kant requires that others also adopt this kind of approach to their actions, harmonizing their ends with the rest of humanity.³⁰¹ Last considered, Kant continues to utilize a dynamic approach, applies it to an intersection of many strains of thought. Instead of considering each subject as distinct units to be placed next to one another, Kant considers the way each of these processes effect each other, and what they might result in, provided proper human action.

In both the natural world, and in the moral realm, Kant understood there to be a connecting methodology to all rational inquiry. The result in each area of investigation, into the starry heavens and the moral law, is a greater harmony. Kant took these areas to be connected synergistically, where the results of one inquiry shed light on the other as well. His use of the same methods, and the agreement of the results obtained, recommends an undeniable conformation of each separate inquiry, as well as a confirmation of the whole, as well done.

³⁰¹ There is an excellent analogy here to driving in heavy traffic: one cannot simply set cruise control (on the car or in one's moral judgements) and hope for the best. Instead there must be a certain degree of sensitivity and reaction to others, or else bad things happen (a car accident or an error in moral judgement).

With a firm understanding of how Kant approached important areas of philosophy, from the natural laws of the universe to the moral development of society, there is now solid grounding to offer an interpretation of Kant on just war theory. However, before embarking on a novel interpretation which will result in a universal just war theory, some exposition of what this kind of just war theory actually is must be made. Having come to the topic of just war theory through more and more specific consideration of Kant's philosophy, now the other axis must be traversed, i.e. coming to Kant from within the topic of just war theory. After this penultimate chapter on a new kind of just war theory, a clear understanding of Kant's universal just war theory will be presented in the final chapter.

Chapter 4 – Universal Just War Theory

Introduction

In the previous chapter I began a positive argument for Kant's universal just war theory. It offers a methodological approach that Kant takes to the subject of his philosophical inquiry. The result is a different kind of just war theory. What this kind of theory is, and how it relates to the other kinds of just war theory already present, is the focus of this chapter. With this understanding of the concept of a universal just war theory, the next chapter will offer a more fully developed version of Kant's understanding of just war.

Having already discussed traditional just war theory, I now suggest a foil to it. The intent is to demarcate the intellectual space I see Kant's universal just war theory as filling. This will be accomplished by first considering the general features of traditional just war theories. Next, I will consider a set of alternative characteristics a just war theory might possess, viz. the characteristics of a universal just war theory. To better understand universal just war theory, and to show that it is more than a mere denial of the just war tradition, I will analyze the just war theory offered in the works of Karl Marx and Friedrich Engels, and Vladimir Lenin, and conclude that there is still something to be desired by this universal just war theory. Having marked the intellectual map, I will be free to consider, in the next chapter, a clearer view of the moral and political grounding of the general principle I will propose for Kant's universal just war theory.

Traditional Just War Theory Characteristics

Having considered different instantiations of traditional just war theory, it would be beneficial to consider the commonalities of traditional just war theories. As traditional just war theory is the most widely recognized type of just war theory, the traits of traditional just war theory might mistakenly be identified as the traits of just war theory in general, i.e. if not a traditional just war theory, than no just war theory at all. In order to avoid problematic conflation, a criticism of traditional just war theory will briefly be considered. This will offer a base line to distinguish a nontraditional just war theory.

Hugo Grotius offers a secular just war theory, as opposed to a religious just war theory, in his work *The Rights of War and Peace*. In the introduction, I criticized his theory for being politically motivated and grounded in realism. This was repeated in the first chapter about the views of Regan and Orend's interpretation of Kant. It is not my intention here to repeat this analysis. Instead, the aim is to note the similarities in structure of these three thinkers' views and to generate a list of traits they share, despite differences in historical positioning and starting material. I argue that these general traits, as a group, are particular to traditional just war theory.³⁰²

First Trait. Grotius discriminates between public, private and mixed wars. He then continues with only public wars as his subject matter. The resulting theory can only cope with, or apply to, conflicts between states. Non-state actors cannot, according to Grotius, have a properly just

³⁰² This endeavor is not unlike a biological classification based on gross anatomy traits. The major issue in such classification systems, that vastly different appearances might have the same origin, remains. For example, religious just war theory, another kind of just war theory, has very different methodological traits from secular/traditional just war theory; yet the origins of both modern traditional just war theory and modern religious just war theory are the same, viz. St. Augustine.

cause, nor properly declare war, nor fulfill any other of the requirements of his theory that rely on having a recognized sovereign.

Michael Walzer, in his work *Just and Unjust Wars*, notes the earliest recorded discussion of justice as it relates to war. In Thucydides' account of the discussion between the Athenian generals and the representatives from Melos the appeal of both parties is to the cause of their nations.³⁰³ Walzer explains this case, and Thomas Hobbes' interpretation of it, and accepts the parameters of the discussion, which he continues in his effort to provide another just war theory. The assumption implicit in this discussion is that it is nations that have a just cause in war, not individuals, or other groupings of individuals.

Regan also accepts this limitation as a necessary feature of his view. His discussion of proper authority explicitly claims that "the constitution and laws of nation states specify" the individuals of proper authority.³⁰⁴ Further, his entire consideration of *jus ad bellum* and *jus in bello* consistently references the United Nations and various other legal entities on a transnational level, to the point that he appends them to his work "for the convenience of ... the reader."³⁰⁵ This is both an implicit and explicit signaling that his theory is not for individuals, only nation-states.

Orend only implicitly falls to this kind of discussion. Like Regan, he also utilizes various international provisions, and suggests places where they do and do not conform to his view. I have thus far confined my examples to *jus ad bellum* considerations, however, as only states can enter into wars, only states can behave badly in war, so the limitation applies equally to *jus in bello*, and for Orend *jus post bellum*, principles as well.

³⁰³ (Walzer 1977) (pg. 5-10)

³⁰⁴ (Regan 1996) (pg. 20)

³⁰⁵ (Regan 1996)(pg. vii)

Thus, the first trait of traditional just war theory is: it applies only to state actors. This is an issue because not all conflicts that seem, in all appearances, to be wars are conducted only by recognized state actors. Examples of these kinds of conflicts abound, from rebellion of colonies, to tribal confederations, to insurgencies. Thus it seems unlikely that such a specific restriction could hold for the general concept of just war theory. As a note on general, non-metaphorical, use, the restricted range of the term ‘war’ in these traditional theories does not encompass the general use of the term ‘war’ either in a contemporary setting, or a historical one. It was Grotius himself who noted that “the Latin word, *Bellum*, **war**, comes from the old word *Duellum*, a **duel**.”³⁰⁶

Second Trait. Grotius attempts to provide a practical doctrine, applicable to the problems of his day. This results in an adoption of the well-being of the state as the ultimate justification of his principles. Grotius explains that the just cause of war, in general, is the health of the nation. This might take the form of a defensive war, or a preemptive war, or a war to rectify a violated right. In all of these cases, the justice of a war is inherently tied to the political advancement of the nation. This justification applies to all of his principles. In particular, Grotius’ *jus in bello* operates on a means/ends calculation of justification. For Grotius, the ends sought lend creditability to the means employed, even if not in a one-to-one ratio.³⁰⁷ This kind of prudential reasoning does not end with Grotius. Contemporary traditional just war theorists attempt to offer a more moral theory, but still advocate some version of this politically expeditious justification.

For Walzer, the argument from the well-being of the state takes center stage with his consideration of a supreme emergency. In this instance, for Walzer, “soldiers and statesman

³⁰⁶ (Grotius 1901) (pg. 18) (Bk1, Ch1, Sec2) Emphasis in original.

³⁰⁷ (Grotius 1901) (pg. 290-291) (Bk3, Ch1, Sec2)

[can] override the rights of innocent people for the sake of their own political community.”³⁰⁸ He does not make this a general principle. Walzer only retreats to it in the dire circumstance of a war that is about to result in a nation’s vanishing. This admission is telling, however, in that it admits that, in the final analysis, it is the state, and not the individual, that is at core being protected by his just war theory. If it were the reverse, only a war of extermination, which is a particular kind of supreme emergency, would justify this violation of innocent individuals’ rights.

For Regan, the same end of national well-being is shown with his treatment of the doctrine of double effect. He explains that an action with both morally acceptable and morally unacceptable effects may be acceptable. These violations are excused in favor of military necessity for the success of the nation. The result is the acceptance of a case where an individual(s)’ rights are violated, and the only justification which can be offered is that the violation is for the war effort. If humans were taken as foundations to his theory, Regan could offer a further explanation, about something like how this violation actually serves to protect other, more fundamental, rights.

Orend also utilizes this nation-centric reasoning in his discussion of the permissibility of war. He explains that his just war theory does not make war obligatory, “all that is here being claimed, ... , is that, ... , resort to armed forces is morally permissible.”³⁰⁹ From the stance of moral acceptability, it is entirely up to the citizenry, for Orend, whether a nation actually goes to war. While this seems, *prima facie*, as a protection of state autonomy, it is actually a serious misunderstanding of the state as a moral actor. There are moral obligations which may involve violence, e.g. self-defense.³¹⁰ In its role as a protector of citizen autonomy, a nation might be

³⁰⁸ (Walzer 1977) (pg. 254)

³⁰⁹ (Orend 2000) (pg. 177)

³¹⁰ I take it as a given that there is a *prima facie* duty to self-defense, related to the perfect duty to not commit suicide.

obligated engage in war, e.g. in the case of a dangerous condition of anarchy at its borders, which threatens its citizens autonomy/well-being.

Thus, as a second feature, traditional just war theory prioritizes the well-being of the state. This principle is what is rejected by religious just war theories. In its place is something like the well-being of the church, or the salvation of souls. I take issue with this secular principle as a primary principle in a moral theory. A state is not an actual entity. It is an “as if” assumption that derives its value from actual moral entities. To identify the well-being of a nation with the well-being of the citizenry, as an aggregate of its parts, is a categorical error. While there are certainly prudential reasons for having a state entity, no particular state entity has the moral worth of its citizens. Sacrificing some of the citizenry for the rest to have the privilege of paying taxes to the same abstract entity is morally unacceptable.

Third Trait. A third feature of traditional just war theory is a division of the moral considerations of war into two, or three, separate parts. Grotius offers specific moral rules for conduct surrounding war, which he divides into action before war, during war, and after war. This split is motivated, anachronistically, by Walzer. He notes that a justly started war may be fought unjustly, and *vice versa*. Consequently, he continues the conceptual split of war into distinct realms of moral evaluation. Walzer and Regan consider two distinct moral realms of war, viz. *jus ad bellum* and *jus in bello*.

Orend continues this trend, and even furthers it by adding a third area, namely *jus post bellum*. Orend takes this to be a contribution to the tradition by Kant, however, as noted, Grotius offered this category in his negative precepts of the treatment of a defeated enemy. Orend justifies this split in the same way Walzer justifies distinguishing *jus ad bellum* from *jus in bello*. He notes that a war fought well might be ended unjustly, and *vice versa*. These three categories

of action surrounding the activity of war are taken as the framework for the discussion of morality by traditional just war theorists.

In his book, *Killing in War*, Jeff McMahan critiques this split, arguing that the moral implications of one area might ‘bleed over’ into another. For example, he notes that soldiers fighting for the aggressing belligerent have a good reason to not fight, viz. the injustice of their cause, and so cannot be the moral equals of the combatants they face in battle. This means that, for McMahan, *jus ad bellum* invariably effects *jus in bello*. A similar implication might be made about Orend’s *jus post bellum*. A war won by immoral means, and with an unjust cause, cannot be justly resolved; the victorious aggressor is simply incapable of offering fair terms to the defeated victim nation.³¹¹

I agree with McMahan that the realms, as currently divided, do not absolutely segregate the moral realms from each other. Given the political context of these traditional just war theories, it makes sense for them to litigiously trifurcate the moral evaluation of a war as strenuously as the description of actions are *de facto* differentiated (e.g. before the war..., during the battle..., etc.). Regardless of the critique, or the justification for the trifurcation, the fact remains that, as a class, traditional just war theories do differentiate distinct realms of war.

Fourth Trait. A fourth attribute of traditional just war theory is the specificity of the discrete principles it offers. This is related to the previous feature, that there are separate realms of morality, however, it is also importantly different. For traditional just war theories, within each area, *jus ad bellum*, *jus in bello*, and *jus post bellum*, there are multiple criteria that may be met on a piecemeal basis. For example, a war with a just cause might not be declared by a legitimate

³¹¹ This would always be the case, except perhaps by the unexpected capitulation of the aggressor. However, then the aggressing nation would not be an aggressor, nor would the victim nation be dictating terms. Instead this case would be more like a person coming out of a fit of rage and attempting to make amends for beating up another person.

authority. This is an explicit feature of Grotius, Walzer, Regan, and Orend. Each of their works offer a set of claims, divided along the realms of moral evaluation, and each principle has its own, independent, support, e.g. proportionality, declaration of war, *etc.* These thinkers do not offer a general moral claim, rather a set of individually necessary and jointly sufficient criteria for the moral evaluation of a part of a war.

While such a set of criteria is typically a gold standard for scientific investigation, here I argue that this feature of specificity causes issues for traditional just war theorists. As a germane example, new technologies might not be covered by the criteria offered. One of many possible examples might be the advent of the cyber-front. It has created new moral problems that may not be covered by traditional requirements of *jus in bello*. Randall Dipert, among others, argues for this view. He claims, in his work *The Ethics of Cyberwarfare*, that cyber-harm is importantly different from traditional, ‘real world’, harm. If this is the case, then traditional just war theories will need to add new principles, or adapt old ones to be more abstract.³¹² Thus, without the possibility of amending their theories, traditional just war theorists restrict the applicability of their work to specific eras of history.

Fifth Trait. The fifth, and last, trait of traditional just war theory is that they only offer an all-or-nothing justification for war. If a state actor fails to abide by a single criteria for a given realm of morality of war, then they cannot claim moral acceptability for said realm, and so, not for the war. At best, the state actor can claim to be less morally abhorrent than another belligerent.

Grotius, Walzer, Regan, and Orend all implicitly utilize this reasoning in every area of their just war theories. Notably, Orend makes this feature explicit in his treatment of *jus ad bellum*: “each

³¹² Making criteria more and more abstract will eventually lead to a general principle for each realm of morality of war, and eventually war as a whole. This offers an interesting example of Kant’s understanding of the process of enlightenment.

jus ad bellum criterion is necessary, but only all together are sufficient, to justify resorting to war.”³¹³ Even back to Grotius, a nation that does not follow each and all the guidelines for *jus in bello*, cannot be said to have fought a war justly, e.g. not discriminating between combatants and non-combatants prevents the entire war from being considered just. Lastly, for Grotius and Orend, who offer a *jus post bellum*, the criteria for just treatment of a defeated nation is similarly an all-or-nothing proposition.

For all of these theories, in all of the areas of moral action related to war, failure in one is failure in all, and so, such a theory demands a certain level of moral perfectionism. While this sounds like exactly what a moral theory should demand, the problem for traditional just war theories becomes evident when this is combined with the fourth feature, the specificity of the principles offered. Viewed descriptively, instead of proscriptively, these specific principles allow a high degree of precision in explaining how and where, exactly, a nation acted immorally. Given this potential, it would seem more apt to allow for instances of moral failings to be expressed, while not condemning the overall endeavor.

For example, the Massacre at My Lai during the Vietnam Conflict was an instance of moral failing in a morally problematic war, according to any of the traditional just war theories considered. This event, in itself, is enough to condemn the entire conflict as immoral on the necessary-and-sufficient-conditions model the traditional just war theories use. It would seem a more accurate picture of how war and conflict is discussed, and more in line with how other complex moral actions are evaluated, to claim that My Lai was a moral failing, but there were other, more general, reasons to condemn the entirety of the United States’ involvement in Vietnam. Traditional just war theories do not have this option.

³¹³ (Orend 2000) (pg. 176)

Conclusion. These five features of traditional just war theory offer a starting point for considering other kinds of just war theories.

- 1) Applicable to only state actors.
- 2) Prioritizes the well-being of the state.
- 3) Splits moral consideration of war into discrete realms.
- 4) High degree of specificity of the discrete principles offered.
- 5) Demands a binary judgment for each realm of morality of war.

It might be that some of these features are simply attributes of general just war theory. Also, there may be other features that distinguish traditional just war theories from other kinds of just war theories. Importantly, with this baseline set of attributes, an alternative kind of just war theory can be offered that does not fall into the same problematic category of traditional just war theory. The next task will explicate some features of the kind of just war theory I advocate, a universal just war theory, and offer an example of it to better demarcate the intellectual space being considered.

Universal Just War Theory Characteristics

It is my assumption that the paradigm trait of a just war theory, generally speaking, is a method of discriminating between wars that are just and wars that are unjust. Beyond this, a just war theory might express any number of other characteristics, while still maintaining its status as a theory of just war. I denote a universal just war theory as distinct from a traditional just war theory in its expression of different features beyond this necessary trait.

In contrast to the five characteristics of a traditional just war theory, there are some features which, as a set, are particular to universal just war theory. These serve to distinguish it as a class and to describe its methods. Most obviously, a universal just war theory has a universal

principle, applying to all areas and kinds of conflicts, not simply a moral checklist. It is from this feature that I have derived its name. Another feature of universal just war theory is that it has a progressive moral stance, offering a moral ideal to work towards instead of a static evaluation of current events. A third, and final, feature is that it is amenable to corollaries to its main principle in applications to more specific moral realms or actions. These moral corollaries are derived from the main principle and are consistent with it, but are more specific and more easily applicable to specific moral problems. To be clear, there may be other general features of universal just war theories, however, these are the major attributes, and the ones pertinent to our discussion.

It should be noted that implicit in each of these principles is the Kantian principle of harmony. The universal moral principle demonstrates a correlation and agreement between all areas of military endeavor. The progressive moral stance shows an agreement between the demands of a moral theory and the progress of humanity. Last, the acceptance of corollaries recommends a connection between the various levels of abstractness in the theory, from the whole endeavor, to the individual soldier. These principles are also indicative of Kant's conception of iterative systems, where the smallest interaction, in this case the individual actions of a soldier, relate importantly to the more general system it occurs in, in this case a battle, up to the largest interactions, in this case the war in general.

As traditional just war theories are abundant, and a few have already featured in this work, an example of this new kind of just war theory will aid in clarifying this fledgling category. Further, as these characteristics are obviously Kantian in nature, and a Kantian just war theory is being explained, it would be best not to take his theory as an example of this kind of just war theory. To that end, I will consider the communist just war theory, as described by

Marx, Engels, and Lenin. Each of the features of a universal just war theory is present in the just war theory derivable from the writings of Marx, Engels, and Lenin, regarding the acceptability of revolution. While this communist just war theory will be taken as an example of a universal just war theory, even this theory is not without its problems.

General Principle. In direct contrast to traditional just war theory, a universal just war theory has a single overarching principle that covers the entirety of the morality of war. In doing so, these kinds of theories also muddy the distinctions between *jus ad bellum*, *jus in bello*, and *jus post bellum*. This approach to the relationship between war and morality is not unique, and is most commonly brought up in discussions of pacifism.

Pacifism denies the possibility of a just war as a concept, that these terms are inherently contradictory. The universal principle for a pacifist might be something like: all wars are inherently unjust. Thus, the moral evaluation for any and all parts of war are covered by a single overarching principle. Further, there is no distinction between a justly started, justly fought, and justly ended war. Instead, all actions related to advancing the end of war is rejected as morally unacceptable. This position illustrates the property of a universal principle nicely, however, it does not allow for the possibility of a just war. Orend offers several versions of this view in his lead up to discussing Kant, but all of them seem to analytically assume the injustice of war, so it would be difficult to classify this collection of views as just war theories.³¹⁴ Alternatively, a view that holds a single principle, like pacifism, which does not make all wars *de facto* immoral, unlike pacifism, would be a universal just war theory. An example can be found in the works of Marx and Engels.

³¹⁴ In defining war as unjust, the pacifist begs the question in the just war debate. This is not a problem to the pacifist, as there are other ways to argue for the injustice of war than from within the just war discussion.

In the works of Marx and Engels, there is a discernible general principle that guides the moral evaluation of a given war, viz.: *a war is just in proportion to its bringing about the proletariat revolution and the subsequent classless society*. Marx and Engels offer a version of this in their famous work *The Communist Manifesto*.

Towards the end of *The Communist Manifesto*, Marx and Engels expound on the necessity of revolution to their cause, and, given the preceding context, offer a method of evaluation for the moral acceptability of war. Specifically, they claim that “[Communists] openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions.”³¹⁵ This claim needs unpacking, starting with the existent social conditions.

Marx and Engels understood the history of the world to be a history of class struggle.³¹⁶ The idea aimed at is that the story of history leads to a goal, a classless end. This is accomplished by the handing over of the means of production to the producers themselves. Marx and Engels claim that “the theory of the Communists may be summed up in the single sentence: Abolition of private property.”³¹⁷ Thus, for the Communists, there is an imperative to, in the short term, accomplish the “formation of the proletariat into a class, overthrow of the bourgeois supremacy, conquest of political power by the proletariat.”³¹⁸ This proletariat rule would not last, being only an intermediate condition, until the classless society can be instantiated. The result of such a revolution all over the world would be, in addition to a nationless Earth, a world free of class, *ergo* free of class struggle.

This view offers an immediately available interpretation as a universal just war theory: *a war is just as it tends towards this class-free society, and unjust as it avoids this class-free*

³¹⁵ (Engels 1848) (Sec. 4, pg. 34)

³¹⁶ (Engels 1848) (Sec. 1, pg. 14)

³¹⁷ (Engels 1848) (Sec. 2, pg. 22)

³¹⁸ (Engels 1848) (Sec. 2, pg. 22)

society. Marx and Engels note that violence is not their preferred means for this end. However they are accepting of the consequences that their conflict with capitalist interests will have, namely a revolution for the end of conflict.

I argue that this so called war on war is a problematic concept. To advocate the use of the very method one is attempting to eliminate is, at best, unproductive, and, at worst, contradictory. Kant offers a general principle that advocates the elimination of war through the promotion of peace. While there are sure to be difficulties along the way, Kant does not recommend ‘stooping to their level’. He merely permits it as a potential moral necessity.

Progressive Moral Ideal. Another aspect of universal just war theories is that they offer a progressive moral ideal. By this, I mean that there is an ideal concept that is posited, and the closer reality comes to it, the morally better off humanity is. This is notably different from the all or nothing concept of moral acceptability that traditional just war theories offer. Further, there is an implicit continuum or spectrum concept attached to any ideal offered by a universal just war theory. On one end of the continuum is the world in its worst form, on the other there is the ideal world concept offered by the universal just war theory. In between these two extremes there exist a dense field of the manifold possibilities for moving from the worst possible world to the world as it ideally should be, according to the particular universal just war theory in question. There is also, somewhere in between the two extremes, the world as it is.

Before a specific moral ideal is considered, it is important to note the kind of ideal being considered. This is not a state of perfection, a return to Eden, or the land of milk and honey. The kind of moral ideal offered by a universal just war theory is better understood as a steady state, that is, the condition in human history where progress has reached its aim. A version of this is offered by Francis Fukuyama in his work “The End of History?”. Although Fukuyama does not

utilize this concept in the same manner as Kant, he does offer a clarifying example of what actually attaining this progressive moral ideal might look like.

Fukuyama notes that, there being such a condition “is not to say that there will no longer be events to fill the pages of Foreign Affairs's yearly summaries of international relations.”³¹⁹ People still live their lives and important events still take place, but, like a realized utopia, there is no further goal for humanity to collectively strive towards. For Fukuyama, this means that we have reached “the end point of mankind's ideological evolution”³²⁰ and that, politically, there was “the universalization of Western liberal democracy as the final form of human government.”³²¹ To be clear, for any moral ideal offered, there may still be important social and political issues that need addressing, after all, no one is perfect. The important point, as exemplified by Fukuyama, is that the structural aims of social order on a cosmopolitan scale have been achieved.

In understanding how to get to such a high degree of development, there are different conceptual approaches to setting the world’s relationship to either end of the progress spectrum. One method is to understand the world as a fixed point, and all possible futures are moving closer to one of the two extremes, ignoring the past and focusing on the future. Another method is to understand the actual history of humanity as a progression along this spectrum from worse to better, and then to recommend action to continue its progression to the ideal positive end of the continuum. This latter approach is taken up by Lenin in his recommendations regarding the actions the communists ought to take in context of World War I. Communists and Kant are not the only supporters of understanding history in this progressive fashion. Within the past century,

³¹⁹ (Fukuyama Summer 1989) (pg. 4)

³²⁰ (Fukuyama Summer 1989) (pg. 4)

³²¹ (Fukuyama Summer 1989) (pg.4)

the views of Aldo Leopold and, as already noted, Francis Fukuyama both utilize this social evolutionary approach to history.

In his work, the *Sand County Almanac*, Leopold argues for a broader ethical world-view than is currently accepted. He notes that, in antiquity, there was a distinctly different understanding of what counted as deserving moral consideration. Citing Odysseus hanging several servants, Leopold notes: “The ethical structure of that day covered wives, but had not yet been extended to human chattels.”³²² Leopold accepts that this has since changed to a certain extent: “During the three thousand years which have since elapsed, ethical criteria have been extended to many fields of conduct, with corresponding shrinkages in those judged by expediency only.”³²³ However, Leopold laments that “The disposal of property was then, as now, a matter of expediency, not of right and wrong.”³²⁴ In discussing the moral progress of humanity by including ever more items of expedience into morality, Leopold is taking a progressive view of human history and morality: more is better. He then continues by arguing for the inclusion of the land, including plants, animals, *etc.*, into the realms of morality. This argument is interesting, but beyond the scope of this project. It is noted here as a further example of this progressive and goal oriented stance of human history. Lenin’s use of this approach is closer to Kant’s, at least in the area of just war considerations.

In his work *State and Revolution*, Lenin offers an overview of communist literature that discusses the role of the state and the role of revolution in the communist program. He puts the relation simply at the end of his first chapter: “The supersession of the bourgeois state by the

³²² (Leopold 1949)

³²³ (Leopold 1949)

³²⁴ (Leopold 1949)

proletarian state is impossible without a violent revolution. The abolition of the proletarian state, i.e., of the state in general, is impossible except through the process of ‘withering away’.”³²⁵

Knowing that the ultimate aim of communism is a stateless and classless world commune of the proletariat, this explanation by Lenin offers at least two intermediate steps from the world as it is to the world as it ought, ideally, to be. The first step is a violent overthrow of national governments as they currently stand, e.g. bourgeois states. This would be a morally acceptable, indeed morally necessary, use of force to transform the function of the state from “suppression of the proletariat by the bourgeoisie,” into “suppression of the bourgeoisie by the proletariat (the dictatorship of the proletariat).”³²⁶ In making this transformation, a morally acceptable war must be waged against all national governments as they stand, and would be judged better or worse depending on how the outcomes lead to or detract from this first intermediary step.

The second step involves the peaceful transformation of the state from a proletarian state, to a non-entity. It ‘withers away.’ This will result in the ideal vision that communism has for the world. This second step relates to our discussion only insofar as it is reliant on a revolution to be possible. The practical and historical issues associated with those in power relinquishing it voluntarily are a side issue.

In offering an interpretation of the ideal that Marx and Engels offer through communism, Lenin expands the concept into a progressive notion with at least one fixed step requiring violent revolution. This has two results. First it makes one, specific, war morally required, beyond merely morally acceptable. Second, it furthers the notion that communism is a progressive doctrine, accepting of the potential for moral backsliding, and recommending a way to fix it. Indeed, Lenin notes that, historically, there have been worse versions of the state, from slave

³²⁵ (Lenin, *The State and Revolution* 1918) (Ch. 1, Sec. 4) (pg. 15)

³²⁶ (Lenin, *The State and Revolution* 1918) (Ch. 1, Sec. 4) (pg. 13)

owning citizenry, to feudal nobility, to the bourgeois. Each advancement, marked by violence, was a step in the right direction. His conclusion is that the final revolution, for communism, is at hand, and should be fought.

While this is a clear case of utilizing a progressive historical understanding of human history, the particulars of this version are problematic in my view. The notion of having ‘just one more’ revolution to end the cycle that has lasted literally the entirety of human history strikes me as hopelessly optimistic. Assuming the proletariat revolution does work, there might always be a call to have another one against the interim government. This view offers no definitive notion for the time frame of revolution. Instead, there is an implicit acceptance that the revolution will come when the struggle of the current set of opposing classes reaches an indefinite crisis point. I argue that such a vague and ambiguous framework for as serious a moral matter as a required war is unacceptable.

As noted, Kant also takes this progressive approach, in his work *Idea for a Universal History with a Cosmopolitan Aim*. He claims that human history is working towards a progressively better end, viz. enlightenment. In order to achieve this we need only allow our rational, i.e. moral, reasoning to flourish. The ideal world of a permanent peace with a federation of nations will come about, provided humanity stops warring long enough, and for the right reasons, for it to form, and Williams is right to emphasize the importance of a degree of pacifism. Regarding short term recommendations for dealing with conflict, Orend is right to place emphasis on the Universal Declaration of Human Rights, and a more traditional just war theory. As with Lenin’s dictatorship of the proletariat, this would only be a place holding theory until a more enlightened society of international relations renders it obsolete.

Corollaries. A last major feature of universal just war theories is that they allow corollaries to their main principle to address more specific situations that occur in the course of a war. This concept is not new to ethics. John Stuart Mill noted, in his work *Utilitarianism*, that his Greatest Happiness Principle is a general principle and that, as the science of happiness and morality advances, additional principles might be needed or may be helpful for application purposes.

Regarding universal just war theories, the possibility of specific principles might be confused with the traditional just war theories' trait of having a set of necessary and sufficient conditions. These are importantly different methods. For the traditional just war theory, the set of principles is all that there is, without flexibility. For the universal just war theory, this specificity of corollaries is an aid in application, allowing for a sensitivity to the context within each war. The specific moral principles applicable to the persons, tactics, and equipment of the Second Punic War are importantly different from those applied to World War II.³²⁷

There might be a concern that a moral principle of an intermediate level of abstraction, consider the moral principle: do not harm helpless former combatants, would be generally applicable. This principle would apply to both Hannibal's army and World War II soldiers. However, in moving up in levels of abstraction, there needs to be a further, even more abstract, principle guiding the move. Thus resulting in a general principle for all moral evaluations of war.³²⁸ An example of these kinds of corollaries can be discerned in the communist treatment of

³²⁷ As an example, consider the specific moral principle: do not shoot pilots parachuting out of a crashing airplane. This moral principle simply did not apply to Hannibal. An alternative view might be to say that this principle did apply to Hannibal, he simply did not have the opportunity to violate it. This alternative seems needlessly complex, requiring knowledge of every specific moral principle throughout time to fully articulate and apply the just war theory in question.

³²⁸ Alternatively, if there were an ad hoc set of these intermediate level moral principles, it would be just as inflexible as a traditional just war theory, unable to adapt to novel categories in war, and unable to expand in a systematic way.

past revolutions furthering the proletariat cause, a consideration already mentioned with Lenin's works, and how communists should act regarding other, immoral, wars.

In his address to the international meeting in Berne in 1916, Lenin makes some remarks on World War I. He claims that "all the Great Powers are waging an imperialist, capitalist war."³²⁹ This is a condemnation of the war as not working towards the communist ideal. He describes the war as imperialist and capitalist. Both of these terms are criticism of war specific to the time and place Lenin finds himself, yet derivable from the general principle of communist universal just war theory.

As noted, communists have a particular understanding of the advancement of society through history. In previous incarnations of the class struggle, the governments responsible for the oppression of one class of humanity could not perpetrate a capitalist war. The specific features of capitalist oppression and conflict did not exist as a social force, as communists understand it, in a slave-owning society, or one ruled by a feudal nobility. Thus, as a moral principle, the imperative 'do not engage in a capitalist war' did not exist for most of human history. At the same time, such a principle may be grounded in the general principle of communist universal just war theory. Working towards a communist utopia would not include capitalist wars. Such conflicts, at best, would merely delay the progress towards the moral goal, but it could also detract from the overall aim of human history. Thus, according to the general principle of communist universal just war theory, capitalist wars are immoral.

While the example in Lenin's work would be considered a part of *jus ad bellum* on the traditional just war account, other principles, related to other areas, might easily be considered. For example, already mentioned in Lenin's *The State and Revolution*, after the proletariat

³²⁹ (Lenin, Speech Delivered at the International Meeting in Berne, February 8, 1916 2005)

revolution, there is a *jus post bellum* moral imperative to allow the state to ‘wither away’. To be sure, using the traditional just war theory categories of *jus ad bellum*, *jus in bello*, and *jus post bellum* are not the only way, and may not even be the best way, to consider the more specific corollaries of a universal just war theory. Other methods of specification might be more useful to a particular application, as noted by both Orend and Williams.

As noted, the principle in common that makes a theory a just war theory is that it attempts to offer a method of discriminating wars into just wars and unjust wars. More specific categories of just war theories have more general features to distinguish themselves as such. Traditional just war theories have at least the five noted characteristics. With the example of the Communist just war theory, it should be clear that there is another kind of just war theory, a universal just war theory, which has three distinguishing traits: a general principle of just war, a progressive moral ideal, and an acceptance of corollaries to more specific areas of moral evaluation of war.

Problems with Accepting the Communist Universal Just War Theory

Having established the difference between traditional just war theories and universal just war theories, and noting the problems encountered by traditional just war theories, there is still a need to demonstrate the difference between a communist universal just war theory from other kinds of universal just war theories, lest the category be a set of one. Kant offers another universal just war theory, which is importantly different from that offered by Marx, Engels, and Lenin. Further, there are some important critiques of communist just war theory which motivate the preference of a Kantian universal just war theory.

The communists’ universal just war theory is importantly different from traditional just war theory in the ways mentioned above. However, it also shares some important similarities with traditional just war theories, particularly those of Grotius and his contemporaries. Where

Grotius assumes political realism, the Communists assume a class struggle. Where Grotius prioritizes the well-being of the state, the Communists prioritize the welfare of the proletariat. The empirical assumption of a history of class struggle leads to a theory based on a dubious assumption, undermining the resulting moral principle. The prioritization of the proletariat over any other class shows an unfounded bias to a particular subset of humanity. These are issues that should be resolved. A better universal just war theory would not make such a tenuously supported historical view the basis of its moral theory, nor would it have an unjustified bias against parts of humanity. Kant's universal just war theory accomplishes this.

Empirical Claims. As noted, the Marxist understanding of history assumes an inherent class struggle between the ruling class and those it subjugates. The *Communist Manifesto* opens its first section with the claim: "The history of all hitherto existing society is the history of class struggles."³³⁰ From the ancient societies, to modern day, there has always been an oppressing class and an oppressed class. There have been revolutions and upheavals, which exchange one oppressing class for another, however, none have altered this fundamental structure. Lenin, as noted, mentions the initial rule of a slave-owning class, which were replaced with a feudal class, which were overthrown by the petty bourgeoisie. None of these social revolutions managed, or tried, to alter the social power structure of an oppressing class and an oppressed class.

These kinds of historical claims by Communists are empirical claims about the history of the world. This is a problematic position to hold without a considerable amount of historical evidence to stand on. Evidence which is not offered by Marx and Engels. This alone would be reason enough to seek an improved theory, or at least withhold judgment until the historical facts are gathered. An in-depth consideration of the factors which lead to these changes in power

³³⁰ (Engels 1848) (Sec. 1, pg. 14)

would be necessary as a foundation for their just war claims. However, there is the further concern that dividing up history in this manner might not be a legitimate way to understand the movements of social progress through history. The empirical argument is difficult to make, and the writings of Marx, Engels, and Lenin, are insufficient to bolster their larger moral argument. Perhaps another communist writer could offer a coherent and justified account of history along these lines, but until then, a better theory for just war should be sought.

The historical position offered in the Communist universal just war theory is not merely a statement of fact, it is a particular interpretation of historical facts. Marx and Engels move from their interpretation of events to a moral call to action, viz. the proletariat revolution. This move from the empirical to the moral does not commit the naturalistic fallacy, as it might seem on the surface. The description of the world that Marx and Engels promote has answered the question of who needs to act, and how to accomplish their aims. It does not, for them, provide the motivation for action, merely the pragmatic starting point of the world as it is. This leads to the other significant issue with the Communist universal just war theory.

Privileged Class. Beginning with Marx and Engels, continuing with Lenin, and still utilized today, there is a priority placed on the well-being of the proletariat over any other social group. Who these individuals are varies from one communist party to another, e.g. factory workers in Germany, farmers in Russia, etc. How the proletariat change, as a description of employment, from nation to nation is easy to understand when considered in the context of Marxist social theory. The proletariat are “the exploited and oppressed class”³³¹ for any given society. Another definition of this class is “the class of modern wage labourers who, having no means of production of their own, are reduced to selling their labour power in order to live.”³³² This

³³¹ (Engels 1848) (1883 German Preface)

³³² (Engels 1848) (Footnote 1888 English Edition) (Sec. 1, pg. 14) (sic)

description applies to different groups of individuals depending on the nation they live in and the socio-environmental conditions that created the oppressed class. Thus, as a rough shorthand for our purposes, proletariat means exploited.

One possibility for this focus on the proletariat over the bourgeois is a utilitarian concern for the many over the few. Given that there is already oppression occurring, then it would better for the few to lose their elevated position than for the many to continue to be oppressed. This line of reasoning is wrong for at least two reasons: 1) the Communist ideal, where there is no oppressed minority and all persons are considered moral equals, would not condone an oppression of a class, even the former oppressors, and 2) Communists are not utilitarians, at least Marx, Engels, and Lenin, were not.

A better explanation for the fundamental privileging of the proletariat as a class is a concern about the violation of rights, using a deontological method of moral reasoning. As explained in the *Communist Manifesto*, “[The bourgeois] is unfit to rule because it is incompetent to assure an existence to its slave within his slavery, because it cannot help letting him sink into such a state, that it has to feed him, instead of being fed by him. Society can no longer live under this bourgeoisie, in other words, its existence is no longer compatible with society.”³³³ This argument rests on an assumption about the responsibilities a ruling class has to an exploited class, which, in turn, is based on a conception of human rights, i.e. humans have a right to life of a minimal standard, the bourgeois cannot maintain this standard for the proletariat, thus they are obligated to cease their oppression or risk being violently overthrown.

This basic description of the bourgeois-proletariat relationship as oppressive and exploitative assumes that if there is an oppressing group and an oppressed group, then there is a

³³³ (Engels 1848) (Sec. 1, pg. 21)

moral obligation to liberate the oppressed group. While this seems to be an acceptable moral methodology, the communists' use of it relies on their empirical understanding of history, which, as noted, is deficient. A better way to arrive at the same conclusion is to define, in moral terms not social or historical ones, what an exploited class is, and use that as a grounds for the obligation to liberate them. Such a morally focused theory would be applicable to a larger range of historical possibilities than the Communist universal just war theory, and would not be contingent upon a particular interpretation of history.

Improvement. In his book *A Moral Military* Sidney Axinn explains his choice of title as a deliberate ordering of words. He explains that a 'military morality' denotes that "the subject of morality is modified or made to fit the requirements of the military."³³⁴ Alternatively, Axinn explains that a 'moral military' captures the idea that "the military is required to meet the demands of morality."³³⁵ This second sentiment is the aim of his book. Recalling that a universal just war theory has a progressive moral ideal, a similar turn of phrase can explain the fundamental improvement an alternative to the Communist universal just war theory would need to make.

Communist universal just war theory has a moral ideal, but comes to it as the conclusion of the course of history as it has happened. This kind of view, where the history of humanity is used as a foundation for describing the moral requirements of this age, is a historical morality. An alternative theory needs to be a morally historical theory, that is, a theory that begins with a moral ideal, or set of principles, and considers how history relates to them. In an empirical investigation, history might show a generally upwards, downwards, or rollercoaster, trajectory when compared to this moral ideal.

³³⁴ (S. Axinn 2009) (pg. 5)

³³⁵ (S. Axinn 2009) (pg. 5)

As an alternative universal just war theory to the Communist version, Kant's universal just war theory fulfills all of the recommendations. His universal just war theory does not make a problematic empirical assumption, assumes a fundamental equality of all classes of humanity, and starts with a fundamentally moral ideal instead of empirical claims.

Kant does make a claim about the history of humanity, and a further claim about its end, however these are not empirical claims. The first claim, regarding history, is a metaphysical one, describing the universe and its contents from an *a priori* perspective. The second claim, regarding humanity's end, is a moral goal to be striven for, as explained by Williams. Empirical facts about events in history or the psychological capacities of human beings have no effect on Kant's claims, but certainly such facts could contradict the Communists' empirical claim. Thus, Kant's justification for his universal just war theory is much more robust than the Communists' grounds for their version.

It is only when the bourgeois, as a class, are gone that communism will be satisfied. This could be either by them voluntarily joining the proletariat or through violent overthrow by the proletariat. As the final paragraph, before the famous call to solidarity, of the *Communist Manifesto* makes clear, the time for peaceable joining has passed: "[Communists] openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communistic revolution."³³⁶ This sentiment assumes an us/them mentality that is based on social position, not moral failings, or active decisions by moral agents. Another point this call to arms raises, which is reminiscent of the problem of the traditional just war theory *jus ad bellum* criteria of last resort, is the need to justify why any particular point in

³³⁶ (Engels 1848) (Sec. 4, pg. 34)

history is the right one to declare ‘Enough!’ and begin to pursue the violent means to the moral end. Kant’s theory offers solutions to both of these problems.

Kant’s theory does demand the eradication of right’s violators as a group. All that is required before a violent correction of behavior is a genuine attempt to explain the irrationality, and immorality, of the moral agent in question. Even this recommendation might be lifted in certain, imminently threatening, circumstances, e.g. an individual threatening another individual may be engaged in reasoned discussion, but the same person actively attacking another may simply be forcibly restrained. This classification of humanity into groups, one permitted to do violence and another against which violence is permitted, is grounded in morality and the ‘violence accepting group’ is self-selecting. In the Communist version, the individuals in the group receiving violence are determined by their class, which is based on a social interpretation, and is, for the most part, an unchosen feature of their identity. The same goes for the group permitted to do violence, namely the proletariat. Thus, Kant’s version of universal just war theory offers entirely moral claims, while the Communist version relies on social and historical conditions.

Last, Kant’s theory is an appropriately moral one, not rooted in political expedience, like traditional just war theories, or a particular conception of the socio-historical development of humanity, like the Communist universal just war theory. As noted, Communist universal just war theory is dependent on a certain conception of history. From this theory of history, their moral imperatives are drawn. Kant’s theory reverses the order of priority of these concepts, addressing history though a moral lens. What this results in, given the specific moral concept that Kant utilizes as an ideal, is a universal just war theory that is first and foremost a moral theory about politics and society, not a political or social theory about morality.

Conclusion

The purpose of this chapter has been to motivate the category of a universal just war theory as a different kind of just war theory from the traditional kinds discussed by Grotius, Walzer, and the like. Five characteristic traits of traditional just war theories were described, and some exposition as to why these might be problematic as a moral theory of just war was concurrently offered. This set the stage for the three characteristic traits of universal just war theory to be explained. The writings of Marx, Engels, and Lenin, were used to showcase an example of this kind of just war theory. The last section considered some shortcomings of this communist universal just war theory, and made note of how Kant's universal just war theory will be an improvement.

Integrating this chapter into the overall course of this work, the creation, explanation, and justification, of a universal just war theory allows for a new intellectual space to be populated, along with the communist version, a Kantian just war theory. As noted with the treatment of Orend, Kant does not have a traditional just war theory. As noted with Williams, Kant does have some kind of theory about just war. Thus, it must be of a different kind. I argue, it is a universal one. The remaining chapter now must explain what Kant's universal just war theory is, justify its classification as a just war theory, and apply it to an actual instance of war.

Chapter 5 – Kant’s Universal Just War Theory Applied

Introduction

I began this work with an introduction covering Hugo Grotius’ *The Rights of War and Peace*, in which he offers a just war theory with supporting examples. Michael Walzer, arguably the contemporary successor of Grotius, offers more than simply another just war theory, he applies it to conflicts and shows the moral outcomes of his account. He is followed in style and content by Richard Regan, Brian Orend, and others. Even Howard Williams, having argued against Kant having a just war theory at all, considers some real world examples to bolster and legitimize his view. As all of these, except Williams, fall under the topic of traditional just war theories, and Kant has a nontraditional just war theory, it would seem acceptable to break the tradition. However, the style of traditional just war theorists provides a powerful demonstration of the strengths and weaknesses of a theory’s applicability to today’s world. In this last chapter, in addition to explicating what I take to be Kant’s just war theory, I will offer some consideration of Kant’s universal just war theory as it applies to contemporary conflicts.

Applying a universal just war theory, in general, is not as straightforward as it may initially seem. First, I will explicitly state what I take to be Kant’s universal just war theory. This will be compared to the features of a traditional and a universal just war theory to demonstrate and justify the classification of my version of Kant’s just war theory as a universal just war theory. Next, I will consider the limits of Kant’s universal just war theory. This will be accomplished, in part, with a reprioritization of both Orend’s and Williams’ understands of Kant’s approach to just war theory. This will be followed with a consideration of each of the

traditional subdivisions of just war theory, and the specific corollary principle related to it. I will consider the *jus ad bellum* principle as it related to the lead-up to Operation Iraqi Freedom. I will consider the *jus in bello* principle as it relates to drone warfare. Last, I will consider the *jus post bellum* principle as it relates to the treatment of Iraq after the end of Operation Iraqi Freedom. I will conclude on the hopeful note that, in adhering to Kant's general principle, the international community is progressing in the right direction.

Kant's Universal Just War Theory

Thus far, while I have gestured at what a Kantian universal just war theory might be, I have yet to actually state my understanding of it. Keeping to the traits of universal just war theory described earlier, I will offer a universal principle that can be applied to all war, and is consistent with Kant's moral and political view. This interpretation will be buoyed by a consideration of Kant's work "Universal History with a Cosmopolitan Aim".

I argue that Kant's version of universal just war theory is as follows: *Seek and keep perpetual peace, under a civil administration of right, with as moral methods as possible.*

This is a general principle, which can be applied to all wars and conflicts, everywhere and in all times. Also, it has a progressive moral ideal built into it, with the technical definitions of 'perpetual peace' and the 'civil administration of right'. Last, it is accepting of corollaries, specifically with the consideration of means, and in utilizing the phrase 'seek and keep'. How one goes about seeking and keeping, and choosing the most moral methods possible, is left open to interpretation, and so, to specification by morally relevant circumstances. In addition, this principle adheres to Kant's moral and political views. While this might not be a perfect rendering of Kant's universal just war theory, it is a start, and deserves further exploration.

As noted, this rendering of Kant's universal just war theory conforms to the three distinguishing characteristics of universal just war theories, which are: 1) it has a universal principle, 2) it has a progressive stance, and 3) it is amenable to corollaries. Further, it does not share the features of a traditional just war theory, which are: 1) it is applicable only to state actors, 2) it gives paramount priority to the well-being of the state, 3) it trifurcates moral consideration of war, 4) it has a high degree of specificity for the discrete principles offered, 5) it demands a binary judgment for each realm of morality of war. As the classification of Kant's just war theory is near the heart of this project, a closer look should be taken at the connections between these noted features and Kant's just war theory.

Not Traditional. The negative argument, that Kant's just war theory is not a traditional one, is more easily made. Regarding the first feature of traditional just war theories, that they are only applicable to states, Kant does not follow. His principle is applicable to all potential moral actors.³³⁷ In terms of application, Kant's just war theory only assumes that the entity in question is an agent, and capable of moral behavior. Of course, nations fit this description, but so too do extra-state political entities, such as transnational coalitions, insurgent groups, or individuals. In terms of potential actors, Kant's theory takes a broader stance than traditional just war theories.

The second feature of traditional just war theories is that the state, and its well-being, is the primary end to be achieved. For Kant, peace is both the primary means, and the end to be sought. These are importantly different aims, security and peace, although it may be that they frequently coincide. In the case of a traditional just war theory, it would be acceptable for one

³³⁷ There is a similarity here, in form, to Hobbes' first law of nature, to seek peace and keep it. However, the methods chosen, and the intended targets of that advice, are very different.

nation to attempt to instigate two other nations to war, for its own security.³³⁸ For Kant, this kind of hawkishness would be unacceptable. The only exception would be if the two nations egged to war can only come to peace through war with each other.³³⁹ Regardless, the primary focus for Kant is peace for all, not security for some.

Traditional just war theories, as a third characteristic, also separate the moral consideration of war into three distinct areas, which have abstract but not practical interaction. Kant's just war theory does not make such a distinction. Instead, Kant's principle can be applied to any and every action or series of related actions, at any time during the course of a war, and even across the traditional divides. There are even applications for it to actions short of war, a *jus ad vim*, as Walzer calls it. As I have stated it, Kant's just war theory does not make any distinction between actions before, during, or after war.

A fourth feature of traditional just war theories is the high degree of specificity of the individual moral principles. Kant's theory consists of a single principle, and it is abstract to a degree greater than any individual principle of traditional just war theory. If a principle in a traditional just war theory encompassed all three areas of moral evaluation of war, then it would not be sufficiently specific to be a principle within a single area of moral evaluation of war. The latter description is necessary for a traditional just war theory to have the third feature, i.e. distinct realms of moral evaluation. There is the potential counter-example of proportionality as a *jus ad bellum* principle and a *jus in bello* principle, however, the two different concepts being referred to are so distinct as to recommend, as Orend does, a differentiation in name. Thus, any

³³⁸ Proxy wars are a notoriously difficult issue for diplomats and other advocates of peace. Traditional just war theories cannot condemn them, or the political realists' tactic of passing the military buck, without an appropriately strong connection to the security of the state, for the sake of which these actions were undertaken to begin with.

³³⁹ Given the complexity of global politics, this might not be as far-fetched as it initially seems. I can think of more than one pundit that has suggested this course of action with the Middle East at various times in the recent past.

principle that does cross the divide between realms, like Kant's, cannot be sufficiently specific to count as a principle of a traditional just war theory.

The fifth and last feature of a traditional just war theory, which Kant's does not share, is the binary distinction between wars, battles, or actions within them, as acceptable or unacceptable, not better or worse. Either all the boxes are ticked, making an action is acceptable, or not, and so the action is not acceptable. Kant's principle offers the ideal to aim for, but which might not be attained, and the failure could be in a better or worse way. In this way, Kant's principle offers a quantitative as well as a qualitative scale to measure decisions related to war, i.e. a decision might be bad (as opposed to good) in the sense that it does not seek or keep perpetual peace, however it could still be better (as opposed to worse) than an available alternative that would cause more death, destruction, and continued conflict.

It should now be clear that, as a just war theory, Kant's shares none of the features of, and so cannot be, a traditional one. Now to the matter of the positive argument. Kant's just war theory does have all of the characters of a universal just war theory, and exploring those features as they relate to Kant's theory will aid in a better understanding of both.

First Universal Feature. The first feature of a universal just war theory is that it has a universal principle. As explained, this is a principle that covers all action related to war, from the first stirrings of conflict to the peace accords struck with a rebuilt defeated nation. Kant's theory offers such a principle. This is particularly notable in the use of the terms 'perpetual peace' and 'civil administration of right'. Both of these have a specific definition and use in Kant's works.

In his *Towards Perpetual Peace*, Kant's first preliminary article contains a definition of what kind of peace he is aiming for. He explains that peace "means the end of all hostilities"³⁴⁰,

³⁴⁰ (Kant, *Towards Perpetual Peace* 1996) (pg. 317) [8:343]

and that to add the word ‘perpetual’ is a “suspicious pleonasm”³⁴¹, although he does so anyway. Thus, it is clear, this principle addresses all hostilities. There might be a slight concern that Kant does not have the benefit of a modern understanding of war, and so his definition does not apply to cold wars, low intensity conflicts, *etc.* Such a charge relies on a traditionalist’s understanding of war. While Kant specifies that, as a prelude to perpetual peace there must be peace amongst states³⁴², there is no reason to limit the application of his just war theory exclusively to states as political entities. Later in the same work, Kant mentions the possibility of civil war, and treats each side as an independent political entity, capable of asserting a claim to the whole of a territory.³⁴³ That Kant did not explicitly mention non-state political actors, such as insurgency groups or transnational super-pacts, does not indicate an exclusion of them from his theory. He understands peace to mean precisely that, an absence of a condition of potential hostilities.

In his *Idea for a Universal History with a Cosmopolitan Aim*, Kant mentions the concept of a civil administration of right in his fifth proposition. Kant describes this as “the supreme problem of nature for the human species”.³⁴⁴ For Kant there is a single fundamental problem for humanity to solve, before the development of the species to its fullest potential, viz. the security of the maximum autonomy of individuals commensurate with all others’.³⁴⁵ The problem must be solved by creating a civil society, which has the power to ensure said autonomy for one against others, and for others against one. This cannot be a local phenomenon though, otherwise the problem of the species has not been solved. Thus, it is a concept covering all of humanity, all individuals, and all tribal groupings of individuals.

³⁴¹ (Kant, *Towards Perpetual Peace* 1996) (pg. 317) [8:343]

³⁴² (Kant, *Towards Perpetual Peace* 1996) (pg. 317) [8:343]

³⁴³ (Kant, *Towards Perpetual Peace* 1996) (pg. 319-320) [8:346]

³⁴⁴ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 15) [8:22]

³⁴⁵ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 14) [8:22]

These two terms, ‘perpetual peace’ and ‘civil administration of rights’, apply to all actions of moral agents. As they appear in my version of Kant’s universal just war theory, there is a demand to strive for perpetual peace, and to create a civil administration of right. This call to action is as universal as the concepts it utilizes. Thus, as I have stated it, Kant’s just war theory has the feature of being a universal principle, applying to all individuals in all conflicts in all traditional areas to moral evaluation, across all time.

Second Universal Feature. The second feature of a universal just war theory is the utilization of a progressive moral stance. In the communist version, this was something like a classless world commune. In my take on Kant’s version, the progressive moral stance is designated by the same two terms explained in the first universal feature. The idea of a perpetual world peace under a unified civil society is a moral ideal, and an important mile-marker in the development of humanity for Kant.

In his *Idea for a Universal History with a Cosmopolitan Aim*, Kant describes, in his eighth proposition, a rather utopic view of the instantiation of a world-wide civil society. In terms of the instantiation of this civil society, Kant explains that it comes slowly: “and thus gradually arises, accompanied by delusions and whims, enlightenment, as a great good...”.³⁴⁶ This goal, of a world administration, is achieved gradually, in a progressive and piecemeal manner. After it is established, humanity’s work is not done. Kant also offers an additional, elusive, goal for humanity, i.e. the development of the original capacities of the human race.³⁴⁷

Kant understands the capacities of humanity to be expressed in their fullest form only in the species, not the individual.³⁴⁸ Thus, for the proper development of humanity’s capacities,

³⁴⁶ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 20) [8:28]

³⁴⁷ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 20-21) [8:28]

³⁴⁸ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 11-12) [8:19]

there must be a certain degree of security for individuals of the species. This security is achieved and maintained by a global civil administration. This is the ultimate end of humanity, a relatively safe and fully developed species, whose individual members express these traits. This idea of a developmental utopia is a progressive stance dependent on the enlightenment of humanity as a cosmopolitan community.

A more technically accurate description of this intermediate goal, of a world-wide civil society, can be found in Kant's *Towards Perpetual Peace*. In his second definitive article for perpetual peace, Kant explains the necessity of a league of nations aimed at peace. The purpose of this league would be to guarantee a degree of peace, concomitant with the scope of the league.³⁴⁹ This league would be a bulwark against the spread and persistence of anarchic relations among nations.³⁵⁰ Kant makes an analogy to the civil union made by individuals in a state of nature. He explains that, just as individuals can decide, for their own good, to subject themselves to the protection and limitations of a civil union, so too can nations decide that entering a pacific league would be for their own good. In doing so, a state abdicates its natural right to war with other states in the league. Eventually, through defensive wars or peaceful acquiesce, the league will encompass all nations, and perpetual peace may be established.

It seems clear, from an investigation of his works *Idea for a Universal History with a Cosmopolitan Aim* and *Towards Perpetual Peace*, that Kant understands humanity as progressing towards a moral ideal, viz. perpetual peace under a civil administration of right. This is commensurate with the lack of traditional just war theory features. Instead of the state as the highest priority, Kant's view places the highest priority on humanity, from which states derive their worth. Instead of a binary decision, Kant's view offers a more nuanced understanding of the

³⁴⁹ (Kant, *Towards Perpetual Peace* 1996) (pg. 327) [8:356]

³⁵⁰ (Kant, *Towards Perpetual Peace* 1996) (pg. 328) [8:357]

morality of war. Some wars might be very wrong, detracting from the aim of perpetual peace or a global civil society. Other wars might be less wrong, passively failing to advance the cause, but not actively hurting it. Thus, my rendering of Kant's just war theory expresses the second characteristic of a universal just war theory, it has a progressive moral stance.

Third Universal Feature. The third and last feature of a universal just war theory is an acceptance of corollaries to the universal principle. I argue that Kant's just war theory offers the potential to advance more specific moral duties for action related to war, derived from the more general principle. These individually derived principles will be considered later, however, their possibility, and the moral force behind them, needs to be addressed. This feature is best expressed in the universal principle by the phrases 'seek and keep' and 'with as moral methods as possible'. While these phrases do not appear explicitly in any of Kant's works, as I have related them to perpetual peace, their use is supported most clearly by Kant's work *Towards Perpetual Peace*.

It is also the case that the general acceptance of additional moral principles derived from the universal principle is implicit in *Idea for a Universal History with a Cosmopolitan Aim*. However, Kant never explicitly offers such a principle in this work. Thus, the support for such corollaries is merely negative, that is, Kant does not outright deny the possibility of such attendant principles. The positive side of the argument is found in his *Towards Perpetual Peace*.

One aim of Kant's work is to explicate some of his views regarding principles of just international relations. With this focus, Kant's preliminary articles for perpetual peace, those moral principles that are in force prior to the establishment of a pacific league, can be grouped according to the traditional areas of moral evaluation, viz. *jus ad bellum*, *jus in bello*, and *jus post bellum*, with the addition of Walzer's *jus ad vim*.

I classify Kant's third and fifth preliminary articles for perpetual peace under the *jus ad bellum* section of the traditional divisions. The third preliminary article bans the employment of standing armies. Thus, to threaten a nation with a standing army, even in defense, would be immoral. This change in military character must occur before a war is declared, thus the classification as a *jus ad bellum* principle. The fifth preliminary article forbids interference in another state's government. This is also a *jus ad bellum* principle, related to the traditional principle of having a just cause. This article expressly eliminates one class of related potential motives for war as morally acceptable.

Kant's sixth preliminary article for perpetual peace, I argue, clearly falls under the *jus in bello* area of the traditional divisions. It forbids the use of tactics which destroy trust, during the war. Kant explains that some degree of trust is a prerequisite for a peace accord. So, a nation that uses tactics and stratagems that dissolve even the possibility of trust actively harms the progress towards peace.

Under the traditional area of *jus post bellum*, I place Kant's first preliminary article. It forbids the secret reservation of the possibility of future war in any peace treaty. After a nation is defeated, and a peace treaty agreed upon, a mental reservation to war again undoes the purpose of the treaty. This is easily seen as a violation of a perfect duty: if the maxim is, 'for the sake of the future of the nation, I will submit to this peace now, but renew hostilities as soon as is convenient', then the possibility of a peace accord of any kind is an impossibility. It is a contradiction of conception, resulting in a perfect duty to sincerity in peace accords.³⁵¹

The remaining two preliminary articles are better categorized under Michael Walzer's concept of a *jus ad vim*, or a just use of force short of war. The second preliminary article,

³⁵¹ This is simply a more specific version of the perfect duty not to lie.

forbidding the inheritance of nations, and the fourth preliminary article, barring the possibility of a national debt, do not clearly fall into any of the three traditional divisions. They do, however, apply to the use of soft force between nations. Thus, Walzer's new division of the moral evaluation of the use of force short of war between nations seem most apt.

These preliminary articles are the clearest examples of corollaries to the universal principle of Kant's just war theory.³⁵² As these are statements of Kant's views about international relations, and as they relate to conflict, they fall under the purview of what I have called Kant's universal just war theory. Thus, Kant's just war theory exhibits the third feature of a universal just war theory, accepting of corollaries.

My rendering of Kant's just war theory can be understood to feature all three of the characteristics of a universal just war theory. Further, as Kant's just war theory does not have any of the features of a traditional just war theory, it is clear that, as I have stated it, Kant's just war theory is a universal just war theory. With this as a starting point for understanding Kant's theory of just war, the next step is to explore the limits of this theory, for the sake of a better and more appropriate application of it.

Limits Within the Theory

Kant's universal just war theory offers a powerful tool for moral evaluation. It also has its limits. Brian Orend and Howard Williams suggest some of these limits in their works. These two thinkers make compelling cases for their positions, and to write them off completely would be a disservice to them and to the endeavor of understanding Kant. In keeping consistent with his own

³⁵² There is a further argument for viewing Kant's three definitive articles for perpetual peace as corollaries to his universal principle after the establishment of a pacific league.

methodology, I will be following Kant's advice, and "look above all for a certain intermediate position which concedes that both parties are to some extent right."³⁵³

To that end, I contend that it would be more accurate to place both Orend's and Williams' views within a larger framework of Kant's view, not unlike individual pictures in a framed collage. Assuming my interpretation of Kant's universal just war theory, Orend and Williams can be understood as filling in some of the more specific divisions of his general view. Instead of viewing this abstract division from the traditional view of times before, during, and after, war, these divisions will be from a socio-historic perspective, splitting human history into times before, during, and after, the formation of a pacifistic league. Orend's work offers insight into the first partition, and Williams' view inhabits the third.

Placing Orend. Starting from the beginning, Brian Orend, in his work *War and International Justice*, attempts to describe Kant as a traditional just war theorist. A general, and simplified, statement of his theory might be something like: *war is just if it is for the sake of the human rights of the citizenry and fought and ended in a manner not harmful to them.* It would be more accurate to understand Orend as offering an early phase of Kant's universal just war theory. Orend's version of Kant's universal just war theory would be best applied in a time before general political enlightenment, where political realism runs rampant, and the international order is completely anarchic. The appropriateness of this view ends when a fundamental shift occurs in the international order, and an international coalition of peaceable nations is attempted. At that point, by virtue of the advancement in enlightenment, there also needs to be a shift in the, more specific, ethical code governing acceptable international relations.

³⁵³ (Kant, *Thoughts on the True Estimation of Living Forces* 1749) (pg. 34) [1:32] I realize this is actually Bilfinger's advice, but Kant took it to heart and used it in several different and important areas of his work, which is how I became acquainted with it.

As noted in an earlier chapter, Orend offers a traditional interpretation of Kant's just war theory. The problems noted were that it is fundamentally a nation focused theory, that it assumed an anarchic international community, and it is a static theory. This last issue is derivative of the first two. As a theory, Orend's makes assumptions that do not allow Kant's just war theory to apply in a radically different international political environment from the one Kant lived in. However, taken as an explanation of a subsection of Kant's universal just war theory, these problems become vital limits of application.

Viewing Orend's assumption of an anarchic international community as a limiting condition, then Orend can be understood as solely addressing the state of nature among humans and states before the founding of a positive peace. In such a world, a traditional just war theory is appropriate. Orend prioritizes the well-being of the state, and yet grounds this priority on the moral worth of the individuals it is intended to protect. In an anarchic international community, a strong state is necessary for the protection of its citizens. With their own security established, these states may then come to the same understanding that individuals did in the state of nature, and band together for the collective good. This is born out in Kant's own writing on the state of nature.

In the second section of his *Towards Perpetual Peace*, Kant explains the danger inherent in the state of nature. Specifically, that there is "the constant threat of an outbreak of hostilities even if this does not always occur."³⁵⁴ Thus it is understood that the state of nature is one of constant uncertainty, similar to any number of descriptions of humanity in a natural state, e.g. Locke, Hobbes, Thucydides, etc.

³⁵⁴ (Kant, *Towards Perpetual Peace* 1996) (pg. 322) [8:349]

To clarify this uncertainty, Kant explains an important distinction between a civil condition and a lack of civil condition between two individuals. If there has been established a civil authority over two persons, then one must actively wrong another for there to be hostility among them.³⁵⁵ However, in a state of nature, one wrongs another “just by being near [one] in that condition.”³⁵⁶ So the state of nature is different in kind from a civil condition, and justifies coercion to a certain degree.

Kant notes that there are two options to eliminate the mutual hostility, “either enter ... into a condition of being under civil laws or leave [the] neighborhood.”³⁵⁷ Thus, when one individual attempts to establish a lawful condition, and another is recalcitrant, then “the former, who has called upon the latter for it, can treat him as an enemy.”³⁵⁸ This justifies the use of coercive force among individuals in a state of nature.

Orend treats states as moral entities, and as analogous to individuals. Thus, just as Kant justifies the use of force among individuals, Orend can justify the use of force among nations, in a state of nature. The most obvious use of justified force is a nation warring in defense of itself or another nation. Orend also notes the possibility of what are called wars of intervention. That is, one state actively commencing hostilities against another, for the sake of a population of that other nation.

The causes for all three kinds of war are related, for Orend, to the rights of a state, which, in turn, is based on the function of a state as a protector of human autonomy. Thus, if a state does not protect its citizens’ autonomy, which is its only function in a state of nature, then it is not actually a proper government. Thus, when a group of individuals, whose human rights are being

³⁵⁵ (Kant, *Towards Perpetual Peace* 1996) (pg. 322 footnote) [8:349]

³⁵⁶ (Kant, *Towards Perpetual Peace* 1996) (pg. 322 footnote) [8:349]

³⁵⁷ (Kant, *Towards Perpetual Peace* 1996) (pg. 322 footnote) [8:349]

³⁵⁸ (Kant, *Towards Perpetual Peace* 1996) (pg. 322) [8:349]

violated, becomes an insurgency, then they are actually banning together under a limited civil condition to coerce a greater condition of civil relations. If this group requires outside assistance to bring this about, then an assisting nation is justified in coercing a false government to yield to a new true government.

The moral principles Orend offers for state action after war is the best recommendation for interpreting his view as an explanation of a subdivision of Kant's universal just war theory. Orend claims that Kant explicitly offers some long term principles for bringing about a perpetual peace, such as Kant's preliminary articles for perpetual peace, however, there is an important short term gap that needs to be filled. Orend attempts to fill this gap.

Orend claims there is a responsibility the victor nation has to the defeated nation, and enumerates some specific kinds of actions to take. Implicit in this short term consideration, before any action is recommended, is an assumption by Orend that the long term aims of *jus post bellum* have yet to take place, viz. establishing a civil condition among nations. Thus, Orend tacitly accepts that the international community has not reached a sufficient level of enlightenment to have eliminated future conflict, i.e. there is not yet established a league of peaceful nations.

Due to the narrowed scope of his analysis, Orend could not have offered a full account of Kant's just war theory. He does succeed in explaining the application of Kant's universal just war theory to the period of human history before the establishment of a global civil administration. This is characterized by international anarchy, either among individuals or among states, and ends when there is an attempt at a global civil administration, a federation of peaceful nations. During this time, war is permissible, and even recommended, under specific circumstances, as Orend's view explains.

Placing Williams. Moving from one end of the enlightenment spectrum to the other, Howard Williams, in his work *Kant and the End of War*, attempts to show Kant as a kind of pacifist. A general, and simplified, version of his just war theory might be something like: *war is just if it is condoned by the civil administration, and is fought and ended in a way that reestablishes a civil condition among nations*. In his case, it would be more accurate to understand Williams as offering an understanding of a later phase of Kant’s universal just war theory. Williams version of Kant’s universal just war theory would be best applied after the universal establishment of a pacifistic league among nations. The limits placed on acceptable action are only defensible after this fundamental shift in international relations has occurred. Until then, Williams’ interpretation is too restrictive in its scope.

As noted in an earlier chapter, Williams paints Kant as a kind of pacifist. Williams explains Kant as accepting wars’ practical benefits, but holds that the faculty of reason demand all war be considered immoral. The main critique of this view is that it prevents various kinds of foreign intervention, which Kant would justify. There are places in Kant’s works where such a view is supported, however, there is also good reason to believe that this prohibition against war is importantly limited.

In the second definitive article for perpetual peace, in his *Towards Perpetual Peace*, Kant rejects the possibility of the acceptability of war, but under specific circumstances. In describing the purpose of the pacific league, Kant clarifies “[t]his league does not look to acquire any power of a state...”³⁵⁹ That is, unlike in the state of nature where individuals and individual nations can coerce others into a civil condition, this league would not. The purpose would only be to serve as

³⁵⁹ (Kant, *Towards Perpetual Peace* 1996) (pg. 327) [8:356]

a focal-point for other nations to voluntarily enter into a non-aggression pact. This sentiment is repeated in his *Idea for a Universal History with a Cosmopolitan Aim*.

In his Seventh Proposition, Kant notes that nations, like persons, are in a state of nature in regards to each other. From this, Kant explains, “through wars, ...nature drives them to do what reason could have told them...: namely, to go beyond a lawless condition of savages and enter into a federation of nations...”³⁶⁰ With an eye towards history, Kant is here advancing the position that nations, like individuals in a state of nature, are compelled to enter into a civil condition. However, this is not a coerced agreement. Instead, Kant sees the horrors of war, and the potential for more, as motivating nations to voluntarily make peace, as reason dictates.

Williams captures these sentiments in his analysis of Kant. He preserves the acceptance of the benefits of war, while lamenting the fact that they occur, and never praises them for their own sake. This interpretation is compelling, but limits Williams to an ideal theory of Kant on just war. Taking this as a boundary, as was done with Orend, Williams’ interpretation becomes unproblematic. Foreign intervention, the major sticking point for Williams’ view, becomes a non-issue, as no foreign intervention would be necessary.

There are two kinds of foreign intervention: intervention in the war of other nations, and intervention in the internal conflicts of a single nation. While both of these are at least permissible in a time of lesser enlightenment, after the creation of a world civil administration, foreign intervention becomes unacceptable.

Much like wars of defense, intervention in the conflict of two other nations would be impossible, by definition, in a world civil administration. Otherwise, there would not be an

³⁶⁰ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 16) [8:24]

established perpetual peace among nations. Wars of intervention in the internal affairs of other nations would still be logically possible, however, they would no longer be permissible.

Kant notes in his Fifth Preliminary Article for perpetual peace: “No state shall forcibly interfere in the constitution and government of another state.”³⁶¹ Kant also notes that this is “of the *strict* kind” of law that “put[s] a stop to an abuse *at once*.”³⁶² Thus it seems fairly clear that, for Kant, as a condition of perpetual peace, and the league of peaceful nations, foreign intervention of this kind is unacceptable. The only exception Kant notes is in instances where there is a civil war and the nation in question has deteriorated into a condition of anarchy.

This potential condition of anarchy seems a dubious proposition for the pacifistic league, because, as per the First Definitive Article of Perpetual Peace, the constitution of each state should be republican. In his explanation of the First Definitive Article for Perpetual Peace, Kant takes great pains to explain the difficulty of a republic going to war. He notes that the decision to war rests with the same individuals that will take the burden of the war, and so, without an extremely good cause, Kant believes it unlikely that a republic will ever decide to war. Thus, while a theoretical possibility, it is difficult to imagine that a citizenry that is sufficiently enlightened to found a republic and join a federation of peaceful nations would be willing to descend past the point of civil authority. If this decision does, somehow, come about, then there is still no threat to the international civil condition, as there would be no nation, properly speaking, to consider invaded, only a geographic area of disputed political control. The foreign intervention would be into a group of individuals in a state of nature, not a violation of state autonomy.

³⁶¹ (Kant, *Towards Perpetual Peace* 1996) (pg. 319) [8:346]

³⁶² (Kant, *Towards Perpetual Peace* 1996) (pg. 320) [8:347] Emphasis in original.

Williams explains Kant's view of just war theory as pacifistic in nature. For Williams, Kant does not condone any act of war outside of self-defense. Narrowing Williams' interpretation to Kant's view of war after the formation of a federation of states, his analysis becomes immediately applicable. It is only after this point in human history, with a sufficient level of cosmopolitan enlightenment, that wars of intervention become immoral, and wars of self-defense become unnecessary. Until then, the uncertainty that accompanies the state of nature, and the gray area of political stability inherent in moving away from it, requires an acceptance of certain kinds of war.

What Remains. Orend's and Williams' conceptions of Kant's universal just war theory combine to fill in two thirds of the enlightenment spectrum, as it relates to international relations. On the low end, Orend's realist theory shows Kant as allowing states to prioritize and protect their interests, while still grounding those interests in human rights. On the high end, Williams' pacifistic theory shows Kant as demanding a high level of moral restraint on the part of nations, while still allowing for the theoretical defense of a nation under attack, should it ever happen. The middle bit, after the attempted formation of some peaceful league of nations, but before the actual establishment of perpetual peace, there is still a gap needing exposition. In what follows, I will attempt to offer a version of Kant's universal just war theory that fills this conceptual gap.

Kant bends to the practical when he declares that finally establishing a world-wide civil administration will take time. He gives three conditions for its creation: "correct concepts of the nature of a possible constitution, great experience practiced through many courses of life and...a good will that is prepared to accept it."³⁶³ These conditions are "difficult ever to find together" and will only succeed "after many fruitless attempts."³⁶⁴ This marks one of the two important

³⁶³ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 16) [8:23]

³⁶⁴ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 16) [8:23]

boundaries within human enlightenment: 1) before an attempt to establish a positive peace, and 2) after a positive peace is established. Between these watershed moments, humanity is attempting to create a permanent peace. During this time, a realist theory of just war, such as Orend's, is too permissive of conflict, allowing war for the benefit of individual nations without a limiting condition for the benefit of all nations. Further, a pacifistic theory of just war, such as Williams', is too restrictive, preventing nations from acting for the protection of human autonomy, in its citizens or for the sake of others. The theory of just war applicable in this period must be permissive of war for development of more fertile grounds for perpetual peace, and prohibitive of war detrimental to the purpose of the creation of a civil authority.

I offer a general, simplified, rendering of a more specific just war theory, as a corollary to Kant's universal just war theory, for this time in history: *war is just if it is begun and ended for the sake of establishing perpetual peace, and fought with means not contrary to it.* This principle is sufficiently permissive of wars for the sake of a more enlightened international community, however still condemns nations who war for reasons without a broader view of humanity in mind. This corollary, like Orend's and Williams' views, is supported by readings from Kant's works.

In the Seventh Proposition of his *Idea for a Universal History with a Cosmopolitan Aim*, Kant notes that the problem of a civil constitution is conditional upon the problem of the nature of the international community. Taking a historical perspective, and abstracting away from individual human motivation, Kant explains that "all wars are therefore only so many attempts to bring about new relations between states."³⁶⁵ This will result, eventually, in a "condition...resembling a commonwealth."³⁶⁶ Thus, for Kant, there is a natural upward

³⁶⁵ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 17) [8:24-25]

³⁶⁶ (Kant, *Idea for a Universal History with a Cosmopolitan Aim* 2009) (pg. 17) [8:25]

trajectory to wars, which ends in a civil condition. This is a historical understanding, not a metaphysical necessity, and Kant notes that there is a question as to whether this progression is deliberate in nature, or mere happenstance.

In either case, I argue, it is clear that a war that is intentionally fought with this goal in mind, of an eventual civil condition among nations, is morally preferable to a war fought without it. Wars fought simply for the sake of expansion and vanity are counterproductive to the humanistic goal of perpetual peace, and are immoral when such a condition is a moral imperative of reason. Thus, if a war is to be considered just, it must have, as a contributing cause, the goal of perpetual peace.

The means used to wage such a war need not themselves positively contribute to this laudable goal. Instead, they only must not detract from the aim of permanent peace. Kant makes a similar claim in his Sixth Preliminary Article for Perpetual Peace. He specifies that means which “make mutual trust impossible during a future peace” are forbidden.³⁶⁷ He also offers a list of some examples of such activities, which is by no means exhaustive. I would recommend that, generally, in the decision making process of both belligerents there needs to be an appropriate application of reason and judgment, given the specifics of the cultures warring, the causes for the conflict, and other contingent but morally relevant variables. For a war to be just, it must not erode the progress made towards perpetual peace.

Kant also notes the importance of ending war properly. In his First Preliminary Article for Perpetual Peace, he condemns the secret intention of future hostilities during a peace pact. This principle aims to truly end a conflict. If it is adhered to, then there will be no reignition of conflict without a new, and different, cause. Further, in the case of a defeated nation, Kant’s First

³⁶⁷ (Kant, *Towards Perpetual Peace* 1996) (pg. 320) [8:346]

Definitive Article for Perpetual Peace, that every nation be a republic, can be applied. For the furthering of the possibility of perpetual peace, for Kant, the reconstruction of a nation's government must be as a republic. In a close to worst case scenario, where every nation goes to war with another nation, then at the end of the last war with a non-republic, there will be a perfect setup for the federation of peaceful nations.

There is, of course, a persistent obligation for nations not to war, and to create a civil condition among themselves. This does not deviate from Kant's political theory, and persists throughout human history until the establishment of a perpetual peace. However, this is not a principle of just war, rather a principle of just diplomacy and a condition of peaceful international relations.

To clarify, Orend and Williams each offer a corollary theory to Kant's universal just war theory. I attempt to fill in the last part of the needed corollaries along the axis of enlightenment. Thus, the final line runs: at a low level of enlightenment Orend's interpretation applies, after the attempt at a universal civil administration³⁶⁸ my interpretation applies, at a high level of enlightenment when a positive peace is established Williams' interpretation applies. There is an analogy to a painting, where Kant's universal just war principle is a frame, and Orend, Williams, and myself, each paint in a third of the canvas, resulting in a full picture of how to apply Kant's universal just war theory across the ages of human history. We currently live in a time that seems to fall into where my interpretation applies. What is left, for the following section, is to offer an application of my interpretation.

³⁶⁸ As noted above, this is an attempt at the creation of a league of nations, not, as might be misinterpreted, an attempt at world domination by a single nation.

Kant's Universal Just War Theory Applied

The previous section considered distinctions in Kant's universal just war theory through history using enlightenment as a guide. This section will be considering a specific subsection of history, between the creation of a pacifistic league and universal membership in it, and dividing it along the traditional divisions. The three areas of traditional just war theory, *jus ad bellum*, *jus in bello*, and *jus post bellum*, will be considered, and sub-corollary principles offered as guiding moral rules within each, more specific, areas of just war theory. These offered principles will then be applied to the recent incident of Operation Iraqi Freedom, to illustrate the moral results of such an analysis.

Jus ad Bellum. As already noted, a *jus ad bellum* corollary might follow the dictum: war must have the aim of eventual perpetual peace. A more specific version of this would be: *only begin a war with a clear and public policy about how it contributes to the creation of the league of pacifistic nations*. For Kant, the publicity principle for national policy offers a limiting condition to the kinds of allowable policy an individual nation can pursue. There is an analogy here to the first version of the categorical imperative, where universalized maxims are tested for contradictions. If a national policies cannot be followed publically, then it is unacceptable. Thus, regarding war, if a nation is merely resource grabbing, or has some other similarly distasteful goal in mind, then the publication of such a policy would making it impossible to actually carry out, making such a war morally unacceptable, resulting in a duty to oppose such a war.

This principle goes beyond the principles of Orend's theory, although some of his principles might be beneficial to follow in adhering to this principle. In addition to needing a proper authority, and a public declaration of war, etc., this principle requires a specific kind of just cause. In addition to a cause of defense, of self or another nation, the cause must contribute

to a perpetual peace. Thus, defending one totalitarian dictatorship against another, with no preset agreement to better the defended nation's government, would, on Orend's view, be acceptable, but not so according to this principle.

This principle also does not demand quite as much as Williams' theory. In addition to wars begun in defense, a war of intervention would be acceptable. Of particular note would be the assistance of a republican insurgence, against a dictatorship. Such a war of intervention would be laudable on this principle, while Williams would condemn it as degrading the autonomy of individual states, and the entire international order.

This principle, only begin a war with a clear and public policy about how it contributes to the creation of the league of pacifistic nations, follows the general corollary for this time of mid-level enlightenment, i.e. war is just if it is begun and ended for the sake of establishing perpetual peace, and fought with means not contrary to it. Which, in turn is an acceptable corollary to Kant's universal just war principle, i.e. seek and keep perpetual peace, under a civil administration of right, with as moral methods as possible. An application of this sub-corollary would aid in understanding its applicability in today's military landscape.

In the lead-up to Operation Iraqi Freedom, a number of issues developed that impacted the acceptability of the potential conflict. With the benefit of hindsight, many of the motivations that seemed to legitimize the use of force have been overturned. The suspicion of nuclear armaments, of continued biological and chemical weapons research, and of strong ties to terrorist organizations, have all turned out to be significantly less threatening than initially portrayed. However, these issues, while problematic, are not the primary reason for the condemnation of the decision to invade Iraq by this sub-corollary of Kant's universal war theory.

There are two significant issues that are contraindicative of compliance with this sub-corollary to a currently applicable *jus ad bellum*. The first is found in the Downing Street memo, which indicates that the United States policy of the time, July 2002, was to invade Iraq, regardless of the potential justification. The second is the assessment by the then United Nations Secretary General Kofi Annan that the invasion was illegal according to the United Nations Charter. Both of these are taken as remarks made without the intent of a political cover or attack, and both indicate a lack of concern about continued peace, or making better conditions for a future perpetual peace.

According to the Downing Street memo, the United States, and in particular the Bush administration, was intent on invading Iraq, and were simply searching for an excuse.

“Bush wanted to remove Saddam, through military action, justified by the conjunction of terrorism and WMD. But the intelligence and facts were being fixed around the policy. The NSC had no patience with the UN route, and no enthusiasm for publishing material on the Iraqi regime’s record. There was little discussion in Washington of the aftermath after military action.”³⁶⁹

These remarks, by an individual reporting on events in Washington to the British Prime Minister Tony Blair, indicate a lack of concern for long-term peace, and preparations for unilateral action against the Saddam regime, regardless of the support or condemnation of the world community, with the exception of a few key supporters to attain the military objective.

Two caveats to this report would have placed the Bush administration in a morally acceptable position. First, there needed to be a reversal of fact gathering and policy directives. Instead of finding facts to support a decision that was already made, a decision should have been

³⁶⁹ (Rycroft 2002) (pg. 1)

made with as many facts as could be quickly and accurately gathered. Second, as a limiting condition, the United Nations should have been considered an integral part of the invasion effort. Instead of a unilateral decision, the support of the international community for a public policy of military action should have been integral to the preparations. The result of failing to have these two conditions is evident in the resulting assessment by the then Secretary General of the United Nations of the invasion of Iraq by the United States.

Kofi Annan, in a BBC interview in 2004, commented that the invasion of Iraq “was not in conformity with the UN charter from our point of view, from the charter point of view, it was illegal.”³⁷⁰ He further indicated that the Security Council should have been consulted. He explains that, if Iraq was determined to be in non-compliance with their UN obligations, then “there should have been a second UN resolution” and that “it should have been up to the Security Council to approve or determine the consequences.”³⁷¹ While not the definitive legal assessment, these remarks, by an individual well placed to understand both the events that occurred and the spirit of the United Nations Charter, indicate the character of the actions leading up to the United States invasion of Iraq, namely, individualistic and unwarranted.

Thus it should be clear, the United States’ unilateral decision to invade Iraq on the basis of their possession of weapons of mass destruction and strong ties between the Saddam regime and terrorism does not accord with the moral principle of *jus ad bellum* as I have stated it. There was a potential for morally acceptable action, however, the necessary steps were not taken, resulting in a moral failure as a nation. The disregard for morally better available alternatives resulted in a morally worse beginning to a conflict that may not have be justified at all.

³⁷⁰ (Iraq war illegal, says Annan 2004)

³⁷¹ (Iraq war illegal, says Annan 2004)

Jus in Bello. After having begun a war, justly or not, a nation has an obligation to wage it as best it can, from a moral standpoint. As noted, Kant offers a *jus in bello* principle in his work *Towards Perpetual Peace*. A version of this appropriate to the current level of enlightenment, in a time of attempting to establish a global civil administration, would be: *do not wage war by means which hinder the progress of perpetual peace*.

For Kant there are two kinds of peace. One is a negative peace that is made by a lack of aggression, in a state of potential hostilities, e.g. a peace accord in an international state of nature. The other is a positive peace that must be established, and ends all potentials of future hostilities, e.g. the civil administration that averts all future war. The peace mentioned in this sub-corollary is the second, positive, kind of peace. Further, this principle is in harmony with Kant's understanding of a league of nations as a stop-gap measure to gradually establish this perpetual peace.

This principle goes beyond Orend's requirements of discrimination and micro-proportionality, and can be understood as an extension of his prohibition against heinous means.³⁷² Orend's view would simply require adhering to cultural norms that are acceptable to a particular geo-historical background. In demanding that the conditions of perpetual peace be respected, Kant's sub-corollary demands a higher degree of cultural sensitivity. This might take the form of a 'hearts and minds' campaign, or simply an extension of current prohibited targets, e.g. a cultural heritage site that is also being used for military purposes.

This principle also is not as restrictive as Williams would want a *jus in bello* principle to be. Williams interprets Kant as opposed to all wars, so it is difficult to get an in depth sense of what he would accept as moral conduct in a war of defense. It would seem plausible, however, to

³⁷² As noted in the discussion of Orend's just war theory, this third principle seems to actually include his first two, and contains some gesturing at even more restrictive principles.

understand Williams as requiring the most moral means possible utilized in actively restoring peace, going beyond a minimal moral acceptability that simply does not harm a future peace.

Thus, this principle can be best understood as a sub-corollary to the corollary principle of just war, i.e. war is just if it is begun and ended for the sake of establishing perpetual peace, and fought with means not contrary to it. As already noted, this in turn is an acceptable corollary to Kant's universal just war principle, i.e. seek and keep perpetual peace, under a civil administration of right, with as moral methods as possible. To clarify this with an example, a continued look at Operation Iraqi Freedom, and specifically the use of drone technology, will be helpful.

There are two kinds of drones, remote-operated drones and autonomous drones. The first kind, a remote-operated drone, is a piece of equipment operated by a soldier from a safe distance, and all actions of the drone are decided by this human. The second kind, an autonomous drone, is programmed and activated by humans, and all further decisions, until its return and deactivation, are made by the drone, including lethality decisions. With a few simplifying assumptions, these two kinds of drones can be assessed as acceptable and unacceptable means of waging war, respectively.

Following the lead of Johnson and Axinn, in their article "The Morality of Autonomous Robots", some assumptions should be made to clarify the morality of the matter. First, the drones in question will be assumed to be sufficiently advanced in sensory technology, at least to the point of being as accurate as an actual soldier. Second, the operational chain of command will be taken as sufficiently clear, e.g. we know who to court martial in the event of a drone violating the Laws of Armed Conflict. These assumptions clarify the important moral issue, whether or not a machine should be allowed to make a lethality decision.

In the case of a remote-operated drone, a human decides whether or not a particular target is actually engaged. This would not be a violation of the principle forbidding means hindering the creation of perpetual peace. It is simply a further evolution in complex devices designed to make killing other humans easier. These kinds of devices might be considered morally suspect, however, from a Kantian perspective, there is nothing intrinsically wrong with objects in the world, only the intention behind their use. Thus, as utilized in Operation Iraqi Freedom, remote-operated drone technology was morally acceptable in both a combat and surveillance role.

Autonomous drones create a moral concern which makes them immoral to use. This, along with the technical and litigious concerns mentioned earlier, combined to prevent the use of autonomous drones in Operation Iraqi Freedom. That there was a debate illustrates the importance of clarifying the moral obligations nations have in waging warfare.

Johnson and Axinn address this concern in their article “The Morality of Autonomous Drones”, resulting in a view that autonomous drones are immoral for three major reasons. First, autonomous drones do not treat humans with inherent dignity. Second, an autonomous drone cannot appreciate on an emotional level, if at all, the seriousness of taking a human life. Third, an autonomous drone violates military honor. Any one of these reasons would be sufficient, from a Kantian universal just war viewpoint, to ban the use of autonomous drones.

Johnson and Axinn explain that autonomous drones do not treat humans with inherent dignity. That is, drones, generally, cannot tell the difference between a rock and a human as different kinds of things, the former being an object and the latter being a moral agent. As such, in making the lethality decision, Johnson and Axinn contend that an autonomous drone violates human dignity. Further, the programmers of such an autonomous drone would act immorally in

treating humans as so much digital datum, and not as distinct kinds of beings deserving of inherent respect.

The authors further note that autonomous drones cannot appreciate the *gravitas* of killing a human being. They accept that a machine can mimic moral action, however, they further note that aping a set of physical responses does not make a machine a moral agent. An autonomous drone simply does not have a consciousness, soul, character, etc., to be affected by the importance of the decision to take a human life. Without this additional metaphysical component, it cannot be considered a moral actor, and is incapable of moral action.

Last, Johnson and Axinn note the importance of military honor. An autonomous drone does not have ‘skin in the game’. For a remote-operated drone, the pilot must have the mental fortitude to fire a weapon and live with the consequences of that decision. An autonomous drone has no such compunctions, and thus cannot demonstrate the honor and courage necessary to military honor. This is important because of the purpose of war, viz. peace. “If a nation behaves dishonorably, with no concern for the laws of warfare and simple humanitarian matters, their enemy may hate them so much that peace cannot be arranged for a very long time.”³⁷³ That is, the nation attacked by autonomous drones is being treated as less than human, and would garner nothing but derision and contempt for the attacking nation.

Considered in concert, all three of these characteristics of autonomous drones combine to take away the minimal common ground two potential enemy combatants could have, viz. their humanity. Generally, humans do not like to kill. Having that, and the emotional and moral sentiments that accompany it, as a common experience, any two belligerents have some method

³⁷³ (A. J. Axinn 2013) (pg. 13)

of humanizing each other, and starting the diplomatic process. Drones, and autonomous drones in particular, remove this, thus hindering the potential for a future peace.

Each of these reasons noted is, from the position of the sub-corollary related to *jus in bello* for current wars, sufficient for the classification of autonomous drones as an immoral means of waging war due to the hindrance they offer to the future creation of perpetual peace. Thus, beyond the debate surrounding their use in Operation Iraqi Freedom, it would be best to follow the recommendation of Johnson and Axinn “that nations renounce their use in a first strike, but reserve the right to use autonomous robots in a second strike if they are used against that nation.”³⁷⁴ I would argue that the Kantian position also forbids the second use of these weapons as well. Immoral means of waging war, those that hinder the process of perpetual peace, are not acceptable, even as a retaliatory measure. Specifically considering the use of remote-operated drones in Operation Iraqi Freedom, the moral decisions made were better than available alternatives.

Jus post Bellum. After starting and fighting a war, justly or not, a nation still has an obligation to end it well. As noted previously, Kant has some views on the proper way to end a war, notably, his requirement for genuine peace pacts and republican governments for defeated nations. These principles might be better consolidated under the *jus post bellum* principle: *conclude hostilities permanently and in a way that makes more likely the condition of perpetual peace*. This includes the demand of a genuine peace pact, and the provision of furthering the cause of perpetual peace includes, for Kant, the reconstruction of a totally defeated enemy as a republic.

³⁷⁴ (A. J. Axinn 2013) (pg. 14)

In contrast to the other two principles considered, this sub-corollary follows fairly closely with Orend's view of proper *jus post bellum*. The similarity between these two distinct interpretations of Kant's universal principle can be explained by the continual moral obligation to establish a perpetual peace. Regardless of whether a previous attempt has been made, the morally best method of ending hostilities is one that ends in a lasting peace. After all, that is the purpose of war, and the continued demand of rationality.

This sub-corollary also seems to closely agree with Williams' view of Kant's universal just war principle. This analysis is again complicated by the fact that Williams holds that Kant rejects war of any kind, however, a guess can be made regarding the best way to end a theoretical war. Williams view is focused on conflict after the creation of a league of pacifistic nations. If, for whatever reason, one of these nations should decide to begin a war, then after their defeat by the collective rest of the world, it should be reorganized to prevent any future incidents of this kind, viz. a republic that voluntarily joins the league of pacifistic nations.

These correlations, between my interpretation of Kant's *jus post bellum* and both Orend's and Williams' interpretations, may seem concerning. However, this overarching agreement should be expected from a universal just war theory, which has a progressive moral ideal. The end goal of each phase of such a theory ought to be the creation of this moral ideal, or closer conditions to it. For Kant, this moral ideal is a perpetual peace under a civil authority, and the moral obligations related to ending a war would all tend to the realization of this moral aim. A last look at Operation Iraqi Freedom, regarding the aftereffects of the conflict, should illustrate this principle.

After the initial invasion of Iraq, and the toppling of the Saddam regime, there was an effort to create a democratic republic in Iraq, with free elections and an expectation of political

stability. This situation quickly deteriorated into civil war, and the end result was a politically destabilized region and the emergence of powerful insurgency groups that maintained local control without international recognition. This is not an acceptable result for a morally well ended war. The conditions for perpetual peace have been degraded, and further complicating political expediencies have served to ensure this condition for the foreseeable future.

As noted previously, in the Downing Street memo, there was little thought spent on conditions after the initial invasion. There are two points in time of potential analysis: 1) after President Bush's Mission Accomplished Speech, and 2) after the 2011 withdrawal of American troops from Iraq. Neither of these points indicated a morally laudable resolution to the conflict.

In the first instance, then President George W. Bush offered a speech indicating that "[m]ajor combat operations in Iraq have ended. In the battle of Iraq, the United States and our allies have prevailed."³⁷⁵ This turned out to be almost farcical. While there was an attempt to bring a democratic republic to fruition in Iraq, this quickly failed. An article in the Turkish Daily News, barely three years later, reported 'one senior government official anonymously' claiming "Iraq as a political project is finished."³⁷⁶ Further, as an indicator of the future, the same senior official claimed "The parties have moved to Plan B."³⁷⁷ This was predicted to be a division of Iraq along sectarian lines, and civil war. The prevailing wisdom of the time was that "It [civil war] may be unavoidable and so it's better to get it over with."³⁷⁸ As a nation having being invaded, defeated, and an attempt made at reconstruction, this is a deplorable result. The moral obligation of a victorious nation at this stage would be to aid in peaceful resolution of internal

³⁷⁵ (President Bush Announces Major Combat Operations in Iraq Have Ended 2003)

³⁷⁶ (Karouny 2006)

³⁷⁷ (Karouny 2006)

³⁷⁸ (Karouny 2006)

conflicts, and the creation of a sufficiently strong and independent new republic. This was not borne out, and so the later point of analysis must be considered.

The second potential end of Operation Iraqi Freedom is the 2011 announcement by President Barack Obama that United States troops will be withdrawn by the end of the year. This withdrawal occurred as scheduled, and the remaining military presence was confined to indirect influences. An article in *The Guardian* explained that the four potential methods of US military involvement included: 1) embassy, consulate and private security contractors, 2) military trainers as part of an arms deal, 3) action within a NATO capacity, and 4) drones and targeted assassination.³⁷⁹ This clarification of continued influence is both a positive and negative message.

After the 2011 withdrawal, there was a significant increase in insurgency activity and sectarian violence. The methods of potential continued military involvement are positive in that they offer the United States a way to help fix the political mess that has been made of the Middle East. However, these alternatives to direct and open military involvement are negative in that they all have a quality of underhandedness to them, and are anathema to the Kantian condition of publicity for acceptable national policy. That these methods might still be needed, and given the current state of affairs for the Iraqi government, it is difficult to call this a morally successful end to the conflict.

Regardless of when one considered the end of hostilities, it is clear that Operation Iraqi Freedom was not ended in compliance with the moral obligation for advancing the goal of perpetual peace. The decisions made were morally worse than available alternatives, and not in

³⁷⁹ (Denselow 2011)

keeping with a permanent resolution of hostilities nor in creating better conditions for a future perpetual peace.

Operation Iraqi Freedom offers an object lesson in how not to approach conflict in a time of attempted global civil administration. The sub-corollaries of beginning a war with the goal of perpetual peace, and ending a war with the establishment of better conditions for perpetual peace were not adhered to. The sub-corollary of using methods that do not harm the creation of a perpetual peace was also poorly adhered to, generally speaking. However, regarding the specific issue of drone technology, there was compliance. As an overall assessment of Operation Iraqi Freedom, it was worse than it could have been or needed to be. Regarding the more general corollary, it was not begun or ended with the purpose of perpetual peace, and it was waged with means which hindered a potential future perpetual peace. Last, related to the general principle of Kant's universal just war theory, it did not seek or keep a perpetual peace, it was not condoned by the current incarnation of an attempted civil administration of right, and the means utilized were not the most moral of available alternatives.

Conclusion

The project of this chapter has been to offer a capstone for the general argument of this work. Starting with an exploration of traditional, secular, just war theory, in the introduction, a sense of the issues that needed to be overcome was suggested. In the first chapter, the theories of Brian Orend and Richard Regan were shown to demonstrate problematic similarities for Orend's Kantian interpretation of traditional just war theory. In the second chapter, Howard Williams' view, that Kant has no theory of just war, was similarly shown to have problems for an overall interpretation of Kant's position on justice and war. These two thinkers share a similar issue, in that both failed to sufficiently appreciate the dynamic metaphysical approach that Kant took

towards all of his philosophical endeavors, which was explained in the third chapter. The fourth chapter offered a new category of just war theory, a universal just war theory, which has fundamentally different characteristics from a traditional just war theory, and which better squares with Kant's approach to philosophy. This chapter has endeavored to specify a Kantian universal just war theory. In addition to placing Orend's and Williams' interpretations in a larger framework of a dynamic approach to justice and war, an application of my interpretation of Kant's universal just war theory serves to fully round out what Kant's view on just war is.³⁸⁰

In addition to the general benefits of a universal just war theory, Kant's universal just war theory also addresses some related concerns that might be better described as war-adjacent. Concepts like total nuclear exchange, low intensity conflict, and revolutions are difficult to place under the umbrella of traditional just war theories, which focus so heavily on conventional international conflict. For Kant's universal just war theory, these areas of conflict are easily dealt with as extensions of applications of the use of force in the international community.

The face of conflict is ever-changing, as evidenced by different means of waging conventional wars, e.g. autonomous drones, and new arenas of warfare, e.g. the cyber-front, and even new kinds of conflict, e.g. low intensity insurgency. These changes need not be a problem for the moral guidelines leading to a better future. Kant's dynamic approach to just war theory, combined with a proper use of reasoning and judgment, allows for hope that the guarantee of perpetual peace is not as far off as it may initially seem, and that the sweet dream that philosophers dream may yet come to fruition.

³⁸⁰ Indeed, this project can also be considered a part of Kant's secret article for perpetual peace; that is the provision that policy makers shall consult philosophers regarding the conditions for the possibility of a public peace.

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