A Better State of Peace?

Syria, Military Intervention and Just War Moralities in Conflict

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From the time Augustine first wrote in the fifth century, 'war is waged in order to obtain peace' (2001, p.217), to the strategist Liddell Hart's more recent statement, 'The object in war is a better state of peace' (1974, p.338), the nature of war's aims and desired end-state has included contested political, moral, social, cultural, ideological and religious dimensions. That the pursuit of a better state of peace can be invoked from the classical just war tradition to modern strategic thinking highlights both its contested and malleable nature. Despite the huge shifts in emphasis and developments in its ontological underpinnings over time, the principle of going to war to achieve – somehow – a better or lasting peace remains at the core of the just war tradition. Several recent studies have explored this principle with regard to *just post bellum,* with Orend's insights in particular highlighting crucial considerations (2002; Allan and Keller, 2006; Stahn and Easterday, 2014). However, the desired or intended end-state of war continues to play a significant role in *ad bellum* justifications and *in bello* applications of military force, as well as shaping *post bellum* recovery.

Orend recognised that future work would need to be done to extend just war principles from traditional inter-state war to complex intrastate warfare that might include insurgency, terrorist and proxy war dimensions. Elsewhere, Williams and Caldwell (2006) are critical of the lack of discussion of the 'end of peace' by just war theorists. They also discuss the difficulty of identifying a suitable basis for their analysis, settling upon human rights as their preferred foundation (2006, p.315), in a shift away from Walzer's location of such rights in a communitarian, state-based framework (2000, p.54). Gross (2015) offers a contrasting perspective, applying established just war criteria in the context of just guerrilla warfare. Human rights are used to provide the basis of his theoretical approach as well as being a key aim of the pursuit of legitimate self-determination: a key element of the insurgent's anticipated better state of peace (2015, p.25). However, one limitation in applying Gross's approach to Syria

would be the use of his historically Western just war framework in relation to insurgent groups who would reject both its philosophical basis and practical conclusions. This paper will contribute to developing that wider understanding and application of just war reasoning in the course of examining recent events in Syria with a view to understanding the difficulties of articulating what a better state of peace might look like and how or if it could be achieved.

Events in Syria since 2011 have been characterised by humanitarian crisis, political crisis, and a crisis of truth. Competing truth claims surround the behaviour and aspirations of the internal contending parties, truth about the interests of third party regional powers who are waging their own proxy wars within the borders of that benighted country, and truth about the religious claims of key protagonists. Into this already complex mix can be added the geopolitical interests of Russia, the US and the European Union, the latter being the target destination of hundreds of thousands of citizens fleeing Syria and other war-torn states in North Africa and the Middle East. The significance of this paper lies in its ability to explore the difficulty of attempting to apply just war criteria to a situation defined by uncertainty, rapid change with external interests similarly in flux, competing moral frameworks and global institutions with limited power to influence events, when just war reasoning itself is increasingly characterised by philosophical rivalry.

Consequently, this article will analyse three factors that highlight the limits of just war in the steadily deteriorating situation in Syria. The first section of the paper contrasts the ease of identifying a *prima facie* just cause with the difficulty of specifying what a better state of peace might look like. Section 2 explores the political and other difficulties of pursuing a better state of peace even if a desired hypothetical end-state can be articulated. Section 3 then uses those identified political constraints as a lens through which to look back at current just war reasoning and highlight the inconsistencies and moral rivalries therein that will shape the tradition for future decades and even centuries. Then the final section will bring together the political and other challenges facing Syria with the ambiguities and moral rivalries currently shaping just war in an attempt to propose a practical, though limited, way ahead in a situation whose uncertainties and opacity increase daily while the hopes of peace for millions of people fade.

From just cause to a better state of peace: a problematique

Over many centuries, just cause has emerged as the dominant criterion on which the others rest – or at least revolve around – in the process of evaluating the extent to which recourse to war or the application of martial force is morally justi-

fied. From the notion of 'punishing evildoers in the stead of God' in the Middle Ages, as recorded by Johnson (1981, p.xxii), to contemporary understandings rooted in international law and self-defence, just cause dominates moral thinking and frequently impacts upon political planning when recourse to war is being proposed by political leaders. President Obama (2013) illustrated such thinking when he referred to America's 'just war' against terrorist threats like al-Qaeda being fought for a just cause: 'self-defense'. Historically, the three recurring aspects of just cause are: self-defence or defence of the innocent; recovery of property or people wrongly seized; and just punishment – usually of evil, however understood (Augustine, 1994, p.221-2; Elshtain, 2001, p.2; Rengger, 2002, p.359).[1] With the emergence of something like the modern concept of sovereignty in the seventeenth century, just cause for war has become increasingly associated with the rights of states to defend themselves (Bartelson, 1995; Jackson, 2007; Elshtain, 2008), its legal parameters set out in the Charter of the United Nations (1945). However, within twenty-first century just war discourse Elshtain (2004, p.108, 186) has argued for the need to punish Afghanistan for the actions of the perpetrators of 9/11 – though none were Afghans and their links to Afghanistan tenuous compared to their links to Saudi Arabia – and to punish Saddam Hussein's Iraqi regime for its treatment of Iraqi Kurds in the 1980s and Shia Muslims in the 1990s.

Humanitarian intervention, one of several forms of military intervention, adds another dimension to *ad bellum* considerations. Walzer, a reluctant interventionist, has written: 'Humanitarian intervention is justified when it is a response (with reasonable expectation of success) to acts "that shock the moral conscience of mankind"' (2000, p.107). Regardless of the reading applied to Syria since 2010 and the rise of violent, brutal opposition to the violent, brutal regime of President Assad, the situation would appear to satisfy the just cause criterion for some form of military intervention against either or both sides. An analysis commissioned by the UN High Commissioner of Human Rights reported in August 2014 that a minimum of 191,369 identified, documented killings took place in Syria between March 2011 and April 2014 (Price, Gohdes and Ball, 2014, p.2).[2] In addition, by March 2014 – and the exodus has continued since then – the UNHCR reported 2.6 million refugees and 6.5 million internally displaced people within Syria (Pinheiro, March 2014). Furthermore, in 2014 a separate UN Commission reported multiple violations and abuses of Syrians, ranging from beheadings and torture, to sexual abuse and 'a massive number of

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[1] These are merely three examples from a broad literature.

[2] The five datasets used provided initial records of 318,910 killings which was reduced to 191,369 after a systematic methodological assessment (p.5-6).

war crimes and crimes against humanity' (Pinheiro, June 2014). Syrian government forces and members of the opposition Jabhat Al-Nusra and ISIS were specifically identified by the UN as perpetrators of those actions (Pinheiro, June 2014).

Beyond the atrocities identified so far, on the matter of potential chemical weapon deployment in Syria, President Obama (2012) warned that their use by either the Assad regime or its opponents would precipitate a change of US approach: 'a red line for us is we start seeing a whole bunch of chemical weapons moving around or being utilized. That would change my calculus'. One year later an attack took place against anti-government forces in the Damascus suburb of Ghouta (Reuters, 2013). The UN Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August 2013 concluded that 'chemical weapons have been used in the ongoing conflict between the parties in the Syrian Arab Republic', based on 'clear and convincing evidence that surface-to-surface rockets containing the nerve agent Sarin were used': with government forces the most likely culprits (UN Mission, 2013, p.5). An estimated 1,400 men, women and children were killed in the chemical attack, with many more suffering symptoms consistent with nerve agent exposure: eye irritation, breathlessness, convulsion and disorientation (UN Mission, 2013, p.5). Despite his earlier suggestion to the contrary, confirmation of chemical weapon use did not shift Obama's calculus to the extent of a full-scale military intervention on humanitarian grounds.

Comparisons with recent US/UK/NATO military interventions suggest that the imminence, severity and widespread extent of the harms perpetrated on Syrians either by government or opposition forces reached Walzer's justificatory 'bar' of acts 'that shock the moral conscience of mankind' sufficiently to prompt intervention (2000, p.107). In March 1999 Prime Minister Tony Blair made a case to the British parliament for military intervention in Kosovo based substantially on the displacement of 250,000 Kosovars and other repressive activities by Serb paramilitary and other forces (Blair, 1999). In New York in 2001, 3,000 people were killed in the 9/11 attacks on the United States, prompting not only retaliatory self-defence against the organisation behind them – al-Qaeda – but the Taliban government of Afghanistan that knowingly or otherwise hosted the anti-American attackers that gathered there from other countries (Kean et al).[3] Justifications for the 2003 Iraq War, primarily by the US and UK, referred to Saddam Hussein's use of chemical weapons against Iraqi Kurds in 1988: albeit

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[3] The 9/11 Commission Report sets out the involvement of al-Qaeda in Afghanistan. It also acknowledges that some its source material was obtained under torture and not always corroborated.

many years after the event.[4] They also referred to suspected Iraqi WMD capability, with hyperbole prioritised over verifiable evidence in the public discourse of both UK and US governments. The displacement of hundreds of thousands of Iraqi Marsh Arabs in 1991 – another historical act – featured regularly in Blair's speeches. Colonel Gadhafi's actions in Libya immediately prior to the 2011 UN-authorised intervention fell far short of the raw numbers identified so far in regard to the interventions mentioned in this paragraph (United Nations Human Rights Council, 2012).

In sum, if just cause for military intervention can be measured in the raw statistics of human suffering, then Syria must satisfy the criterion: the chemical use was 'clear and present' and the threat of its use *actual* rather than historical or suspected. The numbers of people killed over a three-year period by government or opposition forces – almost certainly well above 200,000 – exceeds that in Afghanistan, Iraq and Libya in the three years preceding their interventions. The millions of internally and externally displaced Syrians has rarely been paralleled in human history outside the two World Wars, destabilising neighbouring states and making any restoration of a unified political community in its pre-2010 form unfeasible. If just cause alone was the basis of just war or just intervention then the next step towards action would, at least superficially, seem straightforward.

However, Walzer's reference to humanitarian intervention in response to events that shock the moral conscience of mankind contains an important parenthetical clause that can be overlooked, when he adds: 'with reasonable expectation of success' (2000, p.107). Setting aside, for now, other just war criteria like right authority, right intention, proportionality (the long term good should somehow outweigh the harm done in the process of fighting a war) and last resort, what would success in Syria look like? Returning to the underlying principle of just war raised earlier – that it should achieve a better state of peace – it soon becomes clear that, even if a just cause can be articulated, any definition of a better state of peace will be suffused with competing ideological, philosophical, cultural and religious dimensions. With these complexities in mind, consider how geo-political considerations further exacerbate shifting and competing regional and internal interests in the pursuit of peace.

Layers of complexity

Political priorities in Washington and Moscow and the relationship between the two capitals shape the respective responses of Presidents Obama and Putin, as does the issue of the nature of what a 'successful' resolution to current events

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[4] Justifications for the 2003 Iraq War are set out and analysed in great detail in Lee, 2012.

might actually look like. These differences have also resulted in the UN Security Council's inability to agree a collective response to the situation in Syria with Russia and China vetoing a resolution condemning the Syrian authorities (UN News Centre, 2011), a pattern that has continued since.

For the US, the security and stability of Israel has been a long-standing foreign and domestic policy priority, resulting in Israel being 'the largest recipient of US Foreign Military Financing' (Sharp, 2012). Any risk that the Syrian conflict will spill over into Israel is of concern. On Syria's Northern flank Turkey is an important NATO ally and the only officially Muslim NATO member, with internal tensions involving the Kurdish opposition group, the PKK complicating its response to ISIS on or near its border (BBC, 10 August 2015). However, in Northern Syria, in defending their homelands and motivated by a further desire for independence, the Kurdish Peshmerga have provided the most stubborn resistance to the expansion of IS in the region, most notably in Kobane (BBC, 9 October 2014). On Syria's South-western border another complicating regional factor adds to the already unstable dynamics of the situation: Lebanon. Mumford describes how, after 2000, President Bashar al-Assad formed a close relationship with the Hizballah leader Hassan Nasrallah, 'cementing a seeming symbiosis between the state and its non-state proxy' (Mumford, 2013, pp.54-55). That relationship originally enhanced Hizbollah's capacity to act against Israel, for example. Reciprocally, as Assad's regime increasingly came under internal attack from 2011 onwards Hizbollah came to his support. If Hizbollah had 'an initial deference to Syria', that has now been outgrown (Mumford, 2013, p.101).

If Obama and Cameron's desire in 2013 to take action against the Assad regime[5] had come to fruition – or does so in the near future – one likely outcome will be some form of Islamist polity. The difficulty for Cameron and Obama is in identifying and choosing the group(s) to support. Numerous Islamist groups oppose Assad's government while also being hostile to the US, UK and their liberal democratic leanings. ISIS is in the strongest position at the time of writing, for whom American conceptions of freedom, protected by law under the Constitution, are anathema to the ideology and religious position of al-Baghdadi and the self-declared Islamic State. To illustrate, in 2005, when al-Baghdadi's forerunner al-Zarqawi was expanding his power in western Iraq with coordinated violence against local tribes, voting in elections was considered 'the worst form of apostasy, with the sovereignty of popular will placed above that of God'

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[5] In an interview on 27 August 2013 David Cameron – like Blair in relation to Saddam Hussain a decade before – implied (but could not advocate outright) a change of regime in Syria: https://www.gov.uk/government/speeches/syria-transcript-of-pms-interview [Accessed 1 September 2015]; Obama, B., 30 August 2013, 'Remarks by President Obama and the Presidents of Estonia, Lithuania, and Latvia', https://www.whitehouse.gov/the-press-office/2013/08/30/remarks-president-obama-and-presidents-estonia-lithuania-and-latvia [Accessed 20 August 2015].

(Burke, 2015, p.68). Further complicating US decision-making is the reluctance of its citizens to see another protracted, costly war in the Middle-East.

The 'enemy' cannot be conveniently reduced to the single most serious threat – say ISIS – at a particular point in time, without also oversimplifying the situation. My enemy's enemy – al-Qaeda – may not be my friend but, simply, a lesser enemy in not particularly well-fitting friend's clothing whose cause I may be about to advance. Zelin provides a comprehensive account of the relationship between ISIS and al-Qaeda, with its offshoot the Jabhat-al-Nusra (the Al-Nusra Front) (2014). Although both are rooted in anti-Soviet jihad in the 1980s with a degree of ideological overlap, differing leadership styles and political goals – purifying and purging the global Islamic community vs changing 'apostate insti-tutions' respectively – emerged with competition for influence post-invasion Iraq, then post-uprising Syria (Zelin, 2014, p.2). A formal arrangement in 2004 proved to be short-lived, descending into informal agreements and then outright violence in January 2014 when Jabhat-al-Nusra allied itself with other Islamist groups and the Free Syrian Army to drive ISIS out of the Aleppo province (BBC, 21 August 2014). This was followed by complete disaffiliation in Febru-ary 2014 (Burke, 2015, p.78).

On 4 July 2014, Abu Bakr al-Baghdadi declared the Islamic State and him-self as its head, instituting a particularly harsh, barbaric rule that would kill non-cooperative Muslims that opposed it as readily as any other enemy it identified (Burke, 2015, p.80). In contrast, Jabhat-al-Nusra demonstrated in Aleppo that it is willing to be flexible in choosing allies to both oppose Assad and advance the Al-Qaeda cause. Consequently, when the US successfully degrades the ISIS leadership, like the killing of its deputy leader Fadhil Ahmad al-Hayali in Au-gust 2015 (BBC, 21 August 2015), the interests of Al-Qaeda are advanced. Fur-ther, the interests of the Assad regime are advanced, as are the regional interests of Iran through its backing of Syria's predominantly Alawite leaders (Sadjadpour, 2013). In addition, such actions disrupt or enhance the ebb and flow of successful proxy backing for both ISIS and Al-Qaeda from supporters in Saudi Arabia, Qatar, Jordan, Libya, Tunisia and elsewhere. Iran's opposition to ISIS and its relationship with the US and its Western allies is paradoxical: in Syria it supports the Assad government against ISIS while also therefore oppos-ing the US and its anti-Assad stance; meanwhile in Iraq, Iran's support for the Iraqi Shia population against the expansion of ISIS/IS informally allies it with America.

For the just war proponent, somewhere in that maelstrom of physical, ideo-logical and inter-religious violence lies the pursuit of a better state of peace. The desperation of millions of Syrians – and the consequent just cause that emerges

for the use of force in the alleviation of their suffering – risks a 'something-must-be-done' reaction beyond the Middle East. This could even make matters worse if a better state of peace is not agreed and pursued by major external powers or, perhaps ideally, the United Nations. May highlights that 'the United Nations sees peace as the ultimate object of any type of legitimate armed conflict', though the preceding discussion highlights the institutions limitations in a highly complex environment (2012, p.12). More importantly for just war considerations, May links the moral case for starting war – which can reasonably be extended to military intervention – with the moral basis for the ending of war (2012, p.12). However, when in 2012 the UN Security Council considered a resolution on the escalating violence in Syria by threatening sanctions against the Assad regime, the moral arguments presented did not supersede Russia's and China's political priorities and consequent veto (UN, 19 July 2012).

For Russia, Assad-led Syria has been an important regional ally and trading partner for decades. The most obvious strategic benefit Russia receives from the relationship has been the long-term access to the naval port at Tartus. Over several years Putin has made clear his determination for Russia to strengthen its 'spheres of interest' – Trenin describes these as more specific and identifiable than 'spheres of influence' – and take a more assertive role in defending those in its international affairs (2009, p.13). The supply of weapons and military technology to Syria has also been an important part of that relationship, posing a genuine threat to any US attempts to use air power against the Assad regime (Oliphant and Loveluck, 2015). In September 2015 Putin confirmed his commitment to saving the Assad regime, stating in interview: 'We support the legitimate government of Syria…there is no other solution to the Syrian crisis than strengthening the effective government structures and rendering them help in fighting terrorism' (CBS, 2015).

In common with the US, Russia has no desire to see a successful Islamist insurgency in Syria (in terms of administering and holding power in even a limited geographical area) in case it provides succour and motivation to anti-government Muslim groups within Russia and its proxies. The rise of militant Salafism in Tatarstan, for example, combined with a decline in ethnic Russians in the nation poses a significant separatist threat (Keenan, 20-13). This concern is not without basis. Since 2012, more than 1,500 people have been killed or injured in Russia's North Caucuses in clashes between Islamist fighters and government security forces (Crews, 2014, p.125). Further, Russia's default position is non-intervention – unless in its own interests are threatened, in which case its basis for acting is *realpolitik* and self-interest rather than Western just war principles. To that end, in September 2015 Syrian state television broadcast footage of Rus-

sian military personnel operating in Syria in support of Assad's forces (Coghlan et al, 2015).

With such contrasting interests in what 'a better state of peace' might look like it is very difficult to see how common cause for action can be made between the US and Russia. One possibility would be some form of transitional government that keeps Assad's regime firmly within the official Syrian power structures. However, any degree of even temporary tacit support for – or sustaining of – the regime that used chemical weapons against its own citizens would, in turn, undermine the initial just cause for US actions. Consequently, a key danger in applying just war reasoning to the situation, particularly by Western leaders, is that it merely collapses into the Realist domain, its moral framework and vocabulary subsumed within the interest of the (American, Russian, British or other) state.

Almost as serious for just war reasoning would be its marginalisation to the status of a protesting voice in Western, perhaps even global, politics more broadly, an easily ignored cry of conscience rather than a basis for political decision-making in even the most complex and paradoxical of circumstances. There are already indications that this is happening with the UN's commitment to Responsibility to Protect. The six criteria proposed by the International Commission on Intervention and State Sovereignty (ICISS) as the basis upon which to decide whether or not to intervene to protect oppressed populations have clear and obvious roots in the just war tradition: '*right authority, just cause, right intention, last resort, proportional means* and *reasonable prospects*' (2001). However, in 2009, before to the escalation of political violence in Syria in 2011 and four years after the UN's adoption of *Responsibility to Protect* (R2P) in 2005, the UN Secretary General observed: 'The United Nations and its Member States remain underprepared to meet their most fundamental prevention and protection responsibilities' (2009, p.6). The failure of the UN to provide a coherent, meaningful response to the escalating humanitarian disaster in Syria suggests the *realpolitik* has marginalised – and continues to marginalise – the idealism espoused in the UN (even if cynically by some) in the 2005 R2P text.

A shift can be seen in Obama's rhetoric from 2009 onwards. In his Nobel Prize acceptance speech he stated his belief that 'force can be justified on humanitarian grounds', and raised the challenges of fighting just wars in pursuit of just peace:

> *In today's wars, many more civilians are killed than soldiers; the seeds of future conflict are sown, economies are wrecked, civil societies torn asunder, refugees amassed, children scarred ... meeting these challenges ... will require us to think in new ways about the notions of just war and the imperatives of a just peace (Obama, 2009).*

Given his audience in Oslo City Hall for the award of the Nobel Peace Prize it is reasonable to infer that Obama's speech sought to interpellate the ideals of just war and just peace into the policy domain and the difficult choices that he, like other presidents, must make. However, away from that venue he has had, like every other state leader, 'to strike a balance between protecting the national interest and promoting the nation's values' (Indyk et al, 2012, p.142). Indyk *et al* would go on to argue that in the Middle East, America's national interest has been prioritised over its espoused values by every president from Roosevelt to the present. If Indyk *et al* are correct, and their argument is persuasive, then events in Syria present Obama with an almost, and perhaps actual, irreconcilable paradox. This paradox manifested itself in Obama's statement to the UN on Syria on 28 September 2015 when he said:

Together, we must strengthen our collective capacity to establish security where order has broken down, and to support those who seek a just and lasting peace. Nowhere is our commitment to international order more tested than in Syria … Yes, realism dictates that compromise will be required, to end the fighting and ultimately stamp out ISIL.[6] But realism also requires a managed transition away from Assad and to a new leader. (Obama, 2015)

Obama's call for the idealist-oriented 'just and lasting peace' sits in tension with his explicit acceptance the 'realism dictates that compromise will be required'. The paradox is explored further by Atlas who states: 'There has always been a tension in American foreign policy between pursuing American "values" (foreign policy idealism) and protecting American "interests" (foreign policy realism)' (2012, p.353). Convenient though it might be for the just war advocate – especially in an academic context – to focus solely on the ideal of fighting just wars in a just manner in pursuit of a just peace, the practicalities of political decision-making complicate matters. For example, morally ambiguous means might be proposed in pursuit of apparently 'good' ends, or high ethical in bello standards can be deployed in pursuit of morally questionable ends.

In August 2013, the UK government published its legal position on military intervention in Syria against the Assad regime following the use of chemical weapons. (It is acknowledged that legal and moral arguments are not synonymous even if, at times, elements of vocabulary and foundational principles overlap.) Using language common to just war moral arguments, it stated that the UK would act under what it called 'the doctrine of humanitarian intervention' if the following criteria were satisfied:

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[6] ISIL, ISIS and Daesh are used synonymously in this article, despite subtle differences in the meanings of these three names.

(i) there is convincing evidence, generally accepted by the international community as a whole, of extreme humanitarian distress on a large scale, requiring immediate and urgent relief;

(ii) it must be objectively clear that there is no practicable alternative to the use of force if lives are to be saved; and

(iii) the proposed use of force must be necessary and proportionate to the aim of relief of humanitarian need and must be strictly limited in time and scope to this aim (i.e. the minimum necessary to achieve that end and for no other purpose) (UK Government, 2013).

Despite addressing what in just war terms are the *jus ad bellum* criteria of just cause, last resort (to save lives in this case) and proportionality, the more fundamental question of what a better state of peace would look like against the backdrop of competing domestic and regional interests was not answered. Furthermore, there was no articulation of *how* the use of force would result in a better situation rather than a worse one for the people of Syria. As events progressed in September 2015 Julian Lewes, Chair of the UK Parliament Defence Select Committee, summarized the political and moral bind the UK government found itself in: 'We are still wedded to this fixation that the dictator Assad must be removed and until the government abandons this idea, they are going to find themselves caught between two fires…the British remain stuck in a trap of our own making and we have to choose between the lesser of two evils. I believe that Daesh is the greater of two evils' (Brown, 2015). Cameron's 'ideal' 2013 solution of protecting the Syrian people by acting against the Assad regime was challenged by the potential unintended outcome of creating the conditions for ISIS to extend its area of control.

One reason for the omission of what a better state of peace might look like and how military intervention could achieve is that they are impossible to objectively articulate: what might look best to the US and UK would not be what looks best to Russia. 'Peace' is not some higher ontological condition in the international political system waiting to be accessed by the pure in heart. Practically, since it is local and regional actors that have to live with and sustain any better state of peace in the long term, it would seem apparent that their views should be uttermost in any considerations. In 2013, ISIS, through al-Baghdadi, explicitly rejected the Syria-Iraq border imposed by the Sykes-Picot Agreement of 1916. That it remains part of the regional political discourse after a century should serve as a caution about imposing external solutions on people who do not want them. The more long term perspective that just war has traditionally

offered would appear to be relevant in the Syria situation but it does not necessarily sit comfortably alongside short-term policy imperatives.

Just war in conflict

The changeable philosophical basis of just war reasoning over the past two millennia and more provides plenty of opportunity for advocates to seize on a particular aspect of the tradition that somehow enables them to say what they want to say in a way that they want to say it. At different times in history political leaders and combatants have been able to form themselves as ethical beings in relation to varying and sometimes competing conceptions of a just war (Lee, 2010). In terms of just war's relevance to Syria and political decision-making, which flows from the practical challenges set out so far, uncertainty, contingency and ambiguity will be embraced as essential characteristics of both the political domain and the tradition of thought that would frame war with justice.

Historically, war has done more to shape just war reasoning than vice versa: from Augustine to Aquinas, Grotius and on to modern theorists – and all the contributors to the tradition in between – just war has consistently responded to war and its broader cultural contexts For example, Grotius' seventeenth century writings and emerging ideas on moral and legal relations between states – including war – were a response to political, social, military and religious circumstances at the time, most notably changes in the ways in which states interacted with one another. While his ideas would subsequently influence others across a number of fields for centuries to follow, his thinking did not appear in an ontological or epistemological vacuum. Drawing a loose parallel, consider the just war theorists of the late twentieth century: Paul Ramsey responding to the advent and proliferation of nuclear weapons; Michael Walzer responding to events surrounding the Vietnam War in *Just and Unjust Wars*; Jean Bethke Elshtain responding to 9/11 with *Just War Against Terror*; Jeff McMahan's individual rights-based just war as a philosophical response to all of the above just war proponents and others not listed whose ideas are rooted in a communitarian ontology (2009, Preface). McMahan explicitly states his intent to 'challenge the received wisdom about the morality of killing in war' because he considers that that approach 'make[s] it easier for governments to lead their countries into unjust wars' (2009, Preface).

With rapid advances in mass communication, scholarly opportunity (or requirements to publish) and continuous wars and regular military interventions since the end of the Cold War, it is historically consistent in changing times for there to be a widening interest in just war reasoning, with rival approaches stak-

ing their claims on the discursive battlefields that are prompted by actual battlefields and the political leaders who create them. Consequently, to an increasing degree 'just war' itself is becoming a domain of ontological and epistemological dispute. If Grotius' seventeenth century writings – and the context in which they were written – contributed significantly to a shift from the previously Christian-dominated just war reasoning based ultimately on divine authority manifested through divine command or divine moral order, to a non-religious approach based on human reason and emergent law, then current disputes over the priority of individual rights may yet achieve something approaching that level of paradigmatic significance for the tradition.

Consider how the ideas of the aforementioned just war theorists exist in tension at both a theoretical level and when applied to the case of Syria. For Elshtain, 'Grotius's arduous task is to think through how to bind those particulars known as sovereign states' (2008, p.150), a task that would ultimately contribute to the development of international law and International Relations as distinct fields of enquiry that retain conceptual links to the ethics of war. It would also fix modern conceptions of the state as political community – and the rights of those political communities – in the philosophical foundations of just war reasoning: the communitarianism that continues to underpin contemporary just war theory that considers itself, even loosely, to sustain a degree of continuity with historical just war. The most influential combination of these elements in recent decades is probably Walzer's setting of the just war in what he terms the 'legalist paradigm', which recognises the existence, independence, inter-relationships and inviolability of the state and proscribes aggression against it (2000, p.61-62). However, while Syria retains some characteristics of statehood, with significant amounts of its land and population controlled by forces opposed to the Assad government its legitimacy is increasingly disputed. Any sense of Syria as a political community – even one where some of its citizens were previously poorly treated by state institutions – has been replaced by multiple competing communities and interests, partly in their own right and partly as proxies.

Turner Johnson's just war reasoning is firmly rooted in the tradition as historically understood and his study of the same (1999, p.vii). He describes his work as being 'focused on the tradition that has developed and carried this idea historically and the implications to be drawn from this tradition of just war for present-day reflection and, maybe, practical decision-making' (2009, p. 246). However, he recognises that since the end of the Cold War the 'Western conception of human rights as grounded in nature and vested in the individual' has grown in importance in the international order' (Turner Johnson, 1999, p.101). Simultaneously, the 'conception of human rights as pertaining to communities

has increasingly become associated with the claims of ethnic, religious and national groups seeking their own autonomy or their own states' (Turner Johnson, 1999, p.101). Although written in 1999, these words could have been penned specifically to capture the dynamics of the rights-based arguments that are at work in the complex interactions of individuals, groups and states in and around Syria (including the state of Syria itself). Turner Johnson is not hostile to the application of historical ethical just war concepts to modern ethical challenges: contrarily, he is keen to do so. However, he is unyielding on the point that if the terminology of 'just war' is to be employed in considerations of justice about and within war, then there must be at last a degree of legitimising continuity with the historic tradition, the central element of which is the reminder that 'just war is about seeking to achieve the end of peace' (Turner Johnson, 2009, p.250). The nature of that anticipated peace is as philosophically disputed as the competing political aims that manifest themselves in violent contest.

Walzer describes his best known work, *Just and Unjust Wars,* as 'a book of practical morality', his approach 'casuistic' and by his own admission, at times, more concerned with the strength of his examples than the ambiguities involved (2000, pp.xxi-xxii). Although he emphasises the practical nature of his approach, and even opted not to provide a detailed theoretical basis for the 'rights' aspect of his approach, his is a firmly communitarian just war theory. He states:

> *Individual rights (to life and liberty) underlie the most important judgements that we make about war. How these rights themselves are founded I cannot try to explain here. It is enough to say that they are somehow entailed by our sense of what it means to be a human being. If they are not natural, then we have invented them, but natural or invented, they are a palpable feature of our moral world. States' rights are simply their collective form (Walzer, 2000, p.54).*

So, although individual rights play an important part in Walzer's just war theorising they do so only insomuch as they underpin the rights of states: the state being the primary actor in the international domain (the word 'inter*national*' connotes an inherent prioritisation of the political community). It follows in the Syria example that if the rights of individuals that underpin the rights of the state are grossly undermined, then the rights of the state are similarly compromised. Although reticent for many years about the broad principle of military intervention, between his first of edition of *Just and Unjust Wars* in 1977 and the fourth in 2006, Walzer has become increasingly, if always reluctantly, persuaded of its potential legitimacy and necessity.

Given Walzer's reticence to rush to war and military intervention it is interesting that McMahan should critique the former so robustly, specifically his rights-oriented ideas contained in *Just and Unjust Wars*, setting out to demonstrate that some of Walzer's principles 'do not and cannot derive from the basic

moral rights of individuals and indeed, in some cases, explicitly permit the violation of those rights' (McMahan, 2007, p.91). One of McMahan's basic assumptions is that Walzer derives his just war principles in their entirety from the moral rights of individuals, expressed in an inadequate manner. Though he does not state it explicitly, McMahan holds a universalised version of Walzer's assumption that all individuals share this pre-existent, real thing called basic human rights – of the sort outlined in the UN Charter – and he disputes the way Walzer applies those rights in his state-centric theorising. So while McMahan explores Walzer's use of moral sources, it is not with a view to a greater understanding of how Walzer constitutes his moral order from those moral sources it is with the narrower purpose of demonstrating the extent to which the moral rights of individuals can underpin, or otherwise, Walzer's essentially communitarian just war theory. As Orend notes, however: 'It is ironic that so much weight it put upon human rights in Walzer's just war theory yet so little is said either about their nature or their justification' (2000, p.528). At a time when mass rape, the killing of gay men, execution of prisoners and other atrocities are being committed in Syria by ISIS, the relevance of Western, nuanced rights-based just war arguments seems increasingly tenuous.

Herein emerges the most significant point of contention between contemporary just war discourses and their application in the political realm: whether the state or the individual is prioritised in its philosophical underpinnings. At the risk of future embarrassment this paper will go further and predict – something that more sensible scholars avoid – that this current ontological struggle is of paradigmatic significance for the future of just war reasoning and will be seen as such decades and more from now. Idealist, individual rights-based approaches will take a place within the 'tradition', despite being viewed by advocates of collective rights-based just war approaches as a problematic, possibly illegitimate, Johnny-come-lately interloper.

Draper deals with this tension by viewing 'traditional just war theory' to be that of medieval Europe, setting the tone for further analysis by stating that 'some of its basic principles are little more than vague aphorisms, and others are simply mistaken' (2016, Kindle). Arguing for a Lockean, individual-rights based approach, Draper rejects historically-accepted features of just war such as the principle of double effect and the moral agency of states, sub-state groups or militaries (2016, Kindle). Internally consistent, and philosophically robust within the constraints and limitations he places around his own just war theorising, Draper follows the path initially trodden by McMahan in setting out an individual rights approach. However, it is not independently thinking and acting individuals that are contesting the Syrian civil war but individuals who associate

themselves with – and act through – specific political groups with collective values and goals. Consequently, Draper provides an appropriate departure point to return to the problems of just war-based ethical decision-making in relation to Syria where millions of individuals are affected: with the rights that they supposedly possess being violated on a daily basis. Further, one paradox that emerges from Syria is the possibility and actuality of Muslims asserting their right to reject Western notions of rights.

The challenge of righting wrongs

The challenge of making sense of events in and around Syria in 2015 – let alone providing a military solution, ethical or otherwise – seems impossible. To attempt to do so from an exclusively Western or other external philosophical tradition or political perspective would be naïve and inadequate. To revisit the question of just cause for military action solely from an individual rights-based just war position seems like hacking at the branch on which the interlocutor sits. Few in the Assad regime or any of its main internal opponents can claim to aspire to the fulfilment of rights as set out in the UN's universal declaration. Assad, together with his father before him, has consistently violated human rights, so expressed, for decades. Yet in a state characterised by extreme religious, ethnic and cultural diversity a semblance of common life – far from perfect to be sure – was achieved. So how is a better state of peace – a 'better' version of that common life – to be restored? To point to the violation of individual rights is easy: murders, rapes, starvation, homelessness, statelessness, brutality happen on a daily basis. To assert that 'something should be done' is similarly easy. But who is to act, to use force, and against whom and on what basis, to remedy or at least partially improve the situation?

Universal rights may have been declared by the UN in 1948, but not within a universal, cosmopolitan polity: the signatories were states, many of them simultaneously breaching the articles to which they became party. The rivalries within the UN Security Council have already been touched upon and the obvious needs to be restated: there is no universally authoritative political entity coming to the rescue of the Syrians whose lives are deteriorating or ending by the day. There is little scope to explore the point here but there is a discussion to be had about the extent to which advocating an ideal solution that cannot be practically implemented can even be considered to be ethical as opposed to self-indulgent. Clearly this is an appeal to pragmatism as an alternative to idealism within the tradition, a more eloquent version of which is advocated by Coker (2008).

Just war advocates in both the individual rights-based and collective rights-based parts of the tradition (and I am granting for now that they are both part of the tradition) are equally reliant on states as the primary actors in any attempt to find a way forward. It may also be the case that whether they like it or not – and idealist, cosmopolitan-oriented just war advocates are likely to object most – theorists will have to include sub-state groups in their moral calculus as they will be part of any future better state of peace. In working towards that better state of peace a further philosophical tension is at work between deontological and utilitarian considerations. The codified just war criteria that have emerged over many centuries suggest a deontological imperative to satisfy certain conditions before force can be applied in a just war (or just intervention). However, Elshtain does not allow for such a rigid understanding of just war: 'Just war thinkers do not propound immutable rules – they are not, to repeat, deontologists – so much as clarify the circumstances that justify a state's going to war' (2007, p.6). Further, from a contrasting perspective on individual rights Draper argues for the limits of deontological accounts of just war if they do not also include those rights in their ontological foundations (2016). So just war does not take a straightforward deontological approach to war.

With a different emphasis Walzer notes: 'Considerations of utility play into the [just war] structure at many points, but they cannot account for it as a whole,' (2000, p.xxii) while Orend argues that Walzer's just war theory is 'anti-utilitarian in nature...a rights-based account that foregoes the unpredictable cost-benefit calculations of utilitarianism in favour of firm rules and regulations, grounded in respect for the life and liberty of the human person' (Orend, 2000a, p.4). So just war should not be viewed as a straightforward utilitarian approach to war either. However, given Walzer's own qualified acknowledgement of a place for considerations of utility in just war thinking, Orend surely overstates the case against utilitarianism in Walzer's work. Within the just war criteria themselves, 'proportionality' and 'reasonable chance of success' lend themselves to calculations of utility.

Norman explains that utilitarianism aggregates together the interests and benefits to individuals in the process of trying to determine which course of action will result in the greatest amount of good (1998, p.185). In the process, however, the rights of those who are not going to benefit from a particular course of action are necessarily going to be ignored or violated for what is argued as the greatest good for the highest number of people. This would appear to mitigate against a utilitarian approach being applied to Syria, particularly in any just war approach that prioritises individual rights. However, since the various interested and contending parties are extremely unlikely to agree on the need for,

or basis of, any intervention – regardless of the of the rules or criteria in which proposed action is framed – a crude version of utilitarianism might at least offer an imperfect starting point. Even if it necessarily denies or encroaches on the rights of many people involved. (I accept that this will not be acceptable to the idealist who wishes to see everyone's rights being upheld at all times.)

A pragmatic reading of the situation is that, *de facto*, nobody in Syria and much of its surrounds currently experiences individual human rights as they are defined and enforced under, say, under the European Convention on Human Rights. Consequently, a pragmatic approach that improves the lot of the majority on a utilitarian basis might at least provide a starting point if some concept of what 'improving the lot' can be established: reduced violence, food, water, shelter, rudimentary education and health provision in a policed environment. In the long term, for social and political structures to be rebuilt in Syria – if it remains one polity – the basis of a common life will have to be worked out over generations, not years. Western just war advocates may have to (will have to, in my view) concede that what emerges as a better state of peace for the Syrian people may well be an affront to many of the values and assumptions that underpin their (our) moral calculations: especially the notion of individual human rights as set out in the Universal Declaration. Furthermore, future stability will depend on the establishment of an enduring political community – or more than one – that begins to acquire the accoutrements and status of statehood but within which 'rights' may be interpreted as those bequeathed by God: an affront to secular communitarian and cosmopolitan Western just war advocates alike.

Conclusion

The political, ideological, cultural, religious and military violence that continues to redefine Syria, displace its people and provide a catalyst for the expansion of extreme forms of militant Islam, is almost matched in its complexity by any attempt to analyse events through the prism of Western just war. The clash of ideologies represented in the clash of political violence means that a broadly, not even universally accepted definition of a better state of peace is almost impossible to articulate, and even more difficult to achieve.

In this struggle between political groups, communities and the official state of Syria – such as it is – communitarian concerns and ambitions are dominant. Considerations of Western notions of human rights are most noticeable by their absence from the concerns of the contending parties: the 'right' to live under some imagined, idealised echo of an early Islamic caliphate drives the extremes of ISIS violence. Debauched sexual cruelty and the rape of enslaved women and

girls from other sects and religions is promoted as the 'right' of the honourable jihadist, in conformity to the ISIS interpretation of the Koran (Callimachi, 2015).

In this context, and setting aside the *realpolitik*-based decisions and actions from Washington to Moscow via Europe thus far, disputes about the most legitimate or effective ontological basis for any Western just war analysis and proposed remedy of the situation can appear as relevant as arguing over how many angels can dance on a pin head. On the one hand, individual rights-based just war arguments are idealistic, appear to be neat and well-argued and provide significant challenges to just war as traditionally understood with its communitarian leanings. Their basis in the Universal Declaration of Human Rights and its philosophical underpinnings coincide with the increased importance of the individual as a political actor in recent decades. However, individual rights-based just war arguments also have significant weaknesses in that whatever solutions they currently might propose for Syria, the task of operationalising those ideas will ultimately fall to the machinery of willing and capable states whose leaders commonly weigh domestic political concerns above international events, no matter how tragic or abhorrent. Further, the idea of framing a solution to Syria's myriad problems in terms of Western conceptions of individual rights could cause more problems than it solves.

Meanwhile, communitarian-based just war approaches like those of Walzer, Turner Johnson and others, are rooted in a much more extensive history within the tradition which, in turn, encompasses numerous philosophical clashes and developments. Perhaps the most important two lessons that (re)emerge for just war theorising from events in Syria is that idealised solutions mean little if they can only remain as ideas, while practical, pragmatic solutions will be limited, imperfect and even demonstrably 'unjust' for a proportion of those affected. Elshtain wrote: 'the just war tradition acknowledges the tragedy of situations in which there may be a "right thing" to do on some absolute standard of justice but no prudent or decent way to do it' (2001a, p.3). If history is any kind of reasonable indicator about the durability and adaptability of the just war tradition, the rivalry between individual-based and collective-based just war theories will stretch beyond the lifetimes of all the protagonists currently involved. Further, their paradigmatic incommensurability suggests that some form of philosophical rapprochement is not feasible. However, if the pursuit of a better state of peace underpins both competing just war frameworks then it should be reasonable to hope that constructive dialogue can be prioritised above agonistic triumphalism, both in Syria and in the subsequent as-yet unknown tragedies that will surely follow.

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Abstract

The moral bedrock on which the just war edifice has always rested is the use of force in pursuit of a better state of peace. Since 2011 a multifaceted and ever-changing civil war in Syria – with its local, regional and international consequences – has brought the contested, highly complex nature of the use of force for political ends into sharp focus. It also brings into view the competing state-centric and individual rights-centric philosophical bases of just war reasoning in the twenty-first century. This paper will explore the difficulties of making just war-based ethical choices in relation to political, ideological, cultural and religious complexities of events in and around Syria: all in pursuit of a better state of peace. Subsequently, using a novel analytical approach, the process will then be reversed, with the complexities of the Syria situation being used as a lens through which to view tensions in contemporary just war reasoning. Competing individual rights-based and collective rights-based approaches to just war will be analysed – including the application of elements of deontological and utilitarian reasoning within them – demonstrating strengths and limitations in each. The article concludes somewhat pessimistically that because notions of a better state of peace concerning Syria are contested, malleable and socially and culturally

situated, there can similarly be no clear, unitary political solution to a crisis characterised by shifting political, ethnic and religious rivalries. Further, an interrelated homogeneous ethical justification for the use of force within a just war tradition is similarly difficult to articulate given the increasingly clear moral rivalries between competing just war approaches.

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