

Razprave na temo Etika vojne in miru*

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*Nigel Biggar***In Defence of Just War:
Christian tradition, Controversies, and Cases**

Abstract: Drawing on the author's recent book, *In Defence of War* (Oxford University Press, 2014), this essay begins by observing that the Christian tradition of thinking about the justification of war is stronger in certain respects than Michael Walzer's philosophical version. It then proceeds to consider four controversial features of Christian 'just war' reasoning: that the form of just war is basically punitive; that the authority of international law is only penultimate; that national interest need not be immoral and can be morally legitimate; and that the requirement of proportionality is elastic. Finally, it deploys 'just war' criteria to analyse three cases: Britain's belligerency against Germany in 1914, the rebellion in Syria in 2011, and Israel's Operation 'Protective Edge' against Hamas in Gaza in 2014.

Key words: just war, Christian tradition, international law, Michael Walzer, proportionality, national interest

Povzetek: **V obrambo pravične vojne: Krščansko izročilo, razprave in primeri**

Avtor izhaja iz svoje pred kratkim objavljene knjige *In Defence of War* (Oxford University Press, 2014) in na začetku članka ugotavlja, da je krščansko izročilo glede upravičenosti vojne v nekaterih vidikih močnejše kot filozofska različica Michaela Walzerja. V nadaljevanju govori o štirih spornih značilnostih krščanskega razmišljanja o »pravični vojni«: da je oblika pravične vojne v osnovi kaznovalna; da je avtoriteta mednarodnega prava samo predzadnja; da nacionalni interes ni nujno nemoralen in je lahko moralno legitim; in da je zahteva po proporcionalnosti raztegljiva. Na koncu ob uporabi kriterijev »pravične vojne« razčlenjuje tri primere: britansko bojevitost do Nemčije leta 1914, upor v Siriji leta 2011 in izraelsko operacijo »Zaščitni rob« proti Hamasu leta 2014.

Ključne besede: pravična vojna, krščansko izročilo, mednarodno pravo, Michael Walzer, proporcionalnost, nacionalni interes

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1. Just war thinking: why Christian?

What I write below about just war thinking will operate primarily in terms of the Christian tradition. Why? Will this not limit the appeal of what I have to say, attracting only the interest of Christians and excluding others? Why do I not talk about just war in secular terms, which are universally intelligible and accessible? Why must I be religious, confessional, sectarian?

I have two reasons. First, I do not believe in the possibility of secular language. That is to say, I do not believe that there is a set of terms that is neutral between rival worldviews, which members of a plural society should adopt when communicating with each other about public affairs. Nor do I believe that religious worldviews are irrational *per se*, and that public discourse must be non-religious in order to be rational. There is no view from nowhere; there are only diverse confessions. What is more, non-religious views—Aristotelian, Hobbesian, Kantian, Marxist, Nietzschean, etc.—are quite as plural and quite as conflicting as religious ones.

How, then, can we communicate, perchance agree? By setting out as candidly and clearly what we think and why; by inviting others to do the same; by engaging in the give-and-take of conversation; by identifying points of agreement; by reasoning together about points of disagreement; and by learning from one another.¹ I do not doubt that non-Christians will be puzzled by some things that I say, and that they will disagree with others. But I am equally confident that many of them will find much to which they can consent. After all, the common world that we inhabit does rein in the divergence of our construals. What is more, different traditions are seldom *absolutely* strange to one another: certain strands of Christianity and Islam incorporate Aristotle, for example, and both Locke and Kant are more theological than atheist moral philosophers usually care to remember.

In brief, my view of secularity is not that of Habermas or Rawls; it is that of Augustine. In this Augustinian view, secularity is the public space where plural voices put their differences on the table, negotiate, and compromise. That's my first reason for specifying my view of just war thinking as Christian.

My second reason is that there is a variety of ways of construing the justification of war, and some are better than others. It might be assumed that Christian thought is *passé* and that it's been surpassed by modern philosophical versions. In fact, however, I think that David Rodin's critique of Michael Walzer's just war thinking is pretty damning and that, ironically, it inadvertently illuminates the strengths of the Christian tradition.²

Further, Christian thinking differs from contemporary moral philosophy on just war in one fundamental respect: it conceives of just war as basically punitive in form. This brings us to the first of the controversies that I have chosen to discuss.

¹ I have written about this at some length in *Behaving in Public: How to Do Christian Ethics* and in Chapter 7 and the Conclusion of *Religious Voices in Public Places*.

² See my discussion of David Rodin, *War and Self-Defense* (Oxford: Clarendon Press, 2002) in Chapter 5 of *In Defence of War*.

2. Controversies

2.1 Just war as punitive

As I see it, one respect in which Christian thinking about just war is ethically superior to Walzerian moral philosophy is that it does not take national self-defence as its paradigm. To make national self-defence *simply* the model of justified war issues in some counter-intuitive judgements: for example, that as soon as the Allies invaded the borders of Nazi Germany, Hitler's belligerency became self-defensive and so justified and the Allies' war-making became aggressive and so unjustified. This conclusion reveals, I think, that to identify justified war with national self-defence is morally simplistic, ignoring questions of motive, intention, cause, and proportion. In contrast, Christian thinking holds that justified war is always a response to a grave injustice that aims to rectify it. This response may take defensive *or* aggressive forms. It may move seamlessly from defence to aggression or it may begin with aggression. Justified aggression is what so-called 'humanitarian intervention' is about. The doctrine of the Responsibility to Protect is, in effect, a reassertion of the classic Christian paradigm of justified war.

This paradigm involves a claim about justified war that is very controversial and arouses quite some alarm: namely, the claim that the basic form of justified war is punitive—even, I would say, retributive. This view is characteristic of Christian thinking at least up to Grotius in the 17th century, and since then in the cases of Jean Bethke Elshtain and Oliver O'Donovan. Therefore, it is also a major reason why many believe that just war thinking should cut itself loose from its Christian moorings. Why is this? Two main reasons are given. First, that to allow just warriors to think of themselves as punishing the enemy is to encourage them to loosen the constraints on how they wage war. And second, that many, perhaps most, fighting on the unjustified side will not be morally culpable and will therefore not be liable for punishment.

My response to the first objection is this. If justified defence is only and always defence against an injustice, it necessarily has the form of retribution. Let me make clear that by 'retribution' I do not mean 'retributivism': I do not mean the ethic that prescribes an eye for an eye, a wasteland of equal suffering. Rather, my meaning derives from the etymology of the Latin verb *retribuere*, that is, a handing or paying back of what is due. So by 'retribution' I mean simply a hostile reaction to an injustice. All punishment has this basically retributive form.

The question of what purposes one wants to achieve through one's hostile, retributive reaction remains open and is yet to be determined. It could be one or more of several ends: defence, deterrence, or ultimately reform and reconciliation. In Christian eyes, the end or goal of punishment should never be the suffering of the unjust perpetrator *for its own sake*. Justified war, therefore, is retributive in its basic form, but not retributivist in substance. It is a hostile reaction to injustice, but it does not aim simply to make the perpetrator suffer for its own sake.

The difficulty that many people have in describing justified war as retributive is, I think, an expression of a general cultural tendency to equate punishment and

retribution with retributivism, and to see it therefore as a form of vengeance meted out by the self-righteous. In Christian eyes, however, punishment and retribution should only ever be meted out by one group of self-conscious sinners upon another, and if it is to be just punishment, it cannot be vengefully retributivist but must aim at defence, deterrence, and eventual reconciliation. Accordingly, it *must* be proportioned to those ends, and it *must* suffer such constraints as that proportion imposes.

What about the issue raised by the second objection, namely, the liability of soldiers fighting in an unjust cause? The first thing I want to say is that, while an element of tragic fate often characterises the predicament of a soldier fighting in an unjust cause, that does not relieve him of responsibility or excuse him from culpability. Take this example. At the *Deutscher Soldatenfriedhof* at Maleme in Crete there is a permanent exhibition (or at least there was ten years ago). This tells the story of the three von Bluecher brothers, the youngest still in his teens, who were all killed in the same place on the same day in May 1941. How did they all end up there? The two younger ones hero-worshipped the oldest—as younger brothers often do—and when he joined the parachute regiment, they followed. In the past I have used this to illustrate the element of tragedy that attends even the actions of unjust warriors, in the course of arguing that we should regard them with a measure of sympathy. One does not have to agree with what these three young men were doing falling out of the sky onto Crete in 1941, in order to share a sense of sadness at their untimely deaths and a sense of common human fate-dness. Nevertheless, a friend of mine who fought with the Royal Ulster Constabulary against the I.R.A. during the most violent phase of the ‘Troubles’ in Northern Ireland, is less inclined to be sentimental and has challenged me not to assume the three brothers’ innocence. It is, after all, quite possible that they were convinced Nazis and that they had participated in atrocities elsewhere in Europe. Certainly, after landing on Crete the *Fallschirmjaeger* were involved in some brutal reprisals against civilians.

My second comment on the issue of the liability of unjust soldiers is to say that, in the absence of the possibility of more precise discrimination, it seems to me reasonable for the just warrior not to give benefit of doubt and to presume guilt. This does make war *rough* justice—but even civil courts have been known to punish the innocent.

Third, I’m not convinced that someone has to know subjectively that they’ve done wrong to be liable for punishment. Indeed, many of those who are rightly punished refuse to accept that they are guilty.

And fourth, the fact that just warriors understand themselves to be punishing unjust warriors does not mean that just warriors cannot submit themselves to *in bello* conventions that bind just and unjust alike, for the pragmatic purpose of limiting violence.

2.2 International law as penultimate authority

On the one hand, respect for the authority of international law is important. In the opening pages of the chapter on law and morality in my book, I quote with explicit approval a passage from Robert Bolt's play, *A Man for all Seasons*, where Sir Thomas More presents a powerful argument for affording the benefit of law even to the Devil himself—in other words, that the good of political order is often worth the toleration of a measure of injustice. The dramatic context is that More is urged by his daughter, Margaret, and his future son-in-law, Nicholas Roper, to arrest Richard Rich, an informer. The subsequent argument rises to this climax:

Margaret (exasperated, pointing to Rich): While you talk, he's gone!

More: And go he should if he was the Devil himself until he broke the law!

Roper: So now you'd give the Devil benefit of law!

More: Yes. What would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that!

More: Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—Man's law's, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake. (Bolt 1960, 38–9.)

I do think, then, that sometimes one should tolerate a measure of injustice out of respect for the law. I also think that respect for the authority of law is very important for international trust, and that any state proposing to bend (or, less likely, break) the law should still show it the respect of making a case before the U.N. For that reason, I think that the Blair government's attempt to secure a second U.N. Resolution on Iraq in March 2003 was absolutely right, and far better than the Bush government's barely concealed contempt for the U.N. So in the absence (probably fortunate) of a global state, and in order to stave off international anarchy, I certainly and explicitly affirm the authority of international law.

Notwithstanding that, the question of what actually *constitutes* international law is a controversial one. Is it simply what is written in treaties or does it also embrace customary law as expressed in state-practice? And how should different bodies of law relate to one another? Should the battlefield be governed by the Laws of War or by International Humanitarian Law? When lawyers pronounce, »International law says this« or »Under international law that is illegal«, we ought not to be over-impressed. They're behaving as advocates, behaving politically, pushing a particular point of view. If they were more honest and less political—or more academic and less lawyerly—they would claim, »International law says this or that, according to my interpretation of it«. There is more than one reasonable view of what international law is and what it says.

What is more, a Christian monotheist is bound to acknowledge that positive international law, whatever it is, cannot have the last word. This is because, like any moral realist, he assumes that there is a universal moral order that transcends national legal systems and applies to international relations even in the absence of positive international law. He believes that there are human goods and moral obligations that exist in and with the nature of things, and which exercise a guiding and constraining moral authority long before human beings articulate them in statutes or treaties. He holds that the principles of moral law are given or created before positive laws are made. Legal statutes and social contracts are therefore not crafted in a primordial moral vacuum. They are born accountable to a higher, natural law, and their word is neither first nor last. If that were not so, then Nuremberg was nothing but victors' vengeance dressed up in a fiction of 'justice', and today's high-blown rhetoric of universal human rights is just so much wind.

One thing that this implies is that military action can sometimes be morally justified in the absence of, and even in spite of, positive international law. Therefore, Christian just warriors cannot join those who believe that the 'legitimacy' of military intervention to prevent or halt grave injustice is decided simply by the presence or absence of authorisation by the United Nations Security Council. Loath though lawyers are to admit the penultimate nature of the authority of positive law, they do, when pressed. Writing of NATO's 1999 intervention in Kosovo, Martti Koskenniemi has admitted that »most lawyers—including myself—have taken the ambivalent position that it was both formally illegal and morally necessary« (Koskenniemi 2002, 162).

It seems to me that it is possible to break the treaty-letter of international law, while making a serious case that one is acting within its spirit; and that, insofar as other nations are persuaded, the authority of the law will not be damaged. What is vital is to assure the international community that one remains bound by common norms, even when one's reading of them is controversial. If the manner of literal transgression is respectful, the law's authority can be saved and international trust maintained.

2.3 The morality of national interest

In the popular Kantian view of ethics, self-interest is regarded as an immoral motive.³ According to this view, therefore, where national interests motivate military intervention, they vitiate it. There is, however, an alternative and, I think, superior eudaemonist tradition, which found classic expression in Thomas Aquinas. Combining the Book of Genesis' affirmation of the goodness of creation with Aristotle, Thomist thought does not view all self-interest as selfish and immoral.

³ The ethics of Immanuel Kant are usually held to be simply 'deontological', viewing the only truly moral act as one that is done out of a pure sense of duty or reverence for the moral law. So conceived, the truly moral act stands in stark contrast to a merely prudential one, which seeks to promote the agent's interests. Whether this common, deontological view of Kant fully captures his thought I doubt. I think that a better reading has him argue that truly moral acts are those where the duty of justice as fairness disciplines—rather than excludes—the pursuit of interest.

Indeed, it holds that there is such a thing as morally obligatory self-love. The human individual has a duty to care for himself properly, to seek what is genuinely his own good. As with an individual, so with a national community and the organ of its cohesion and decision, namely, its government: a national government has a moral duty to look after the well-being of its own people—and in that sense to advance its genuine interests. As Yves Simon wrote, »What should we think, truly, about a government that would leave out of its preoccupations the interests of the nation that it governs?« (Simon 2009, 55) This duty is not unlimited, of course. There cannot be a moral obligation to pursue the interests of one's own nation by riding roughshod over the rights of others. Still, not every pursuit of national interest does involve the committing of injustice; so the fact that national interests are among the motives for military intervention does not by itself vitiate the latter's moral justification.

This is politically important, because some kind of national interest needs to be involved if military intervention is to attract popular support; and because without such support intervention is hard, eventually impossible, to sustain. One such interest can be moral integrity. Nations usually care about more than just being safe and fat. Usually they want to believe that they are doing the right or the noble thing, and they will tolerate the costs of war—up to a point—in a just cause that looks set to succeed. I have yet to meet a Briton who is not proud of what British troops achieved in Sierra Leone in the year 2000, even though Britain had no material stake in the outcome of that country's civil war, and even though intervention there cost British taxpayers money and British families casualties.⁴ Citizens care that their country should do the right thing.

The nation's interest in its own moral integrity and nobility alone, however, will probably not underwrite military intervention that incurs very heavy costs. So other interests—such as national security—are needed to stiffen popular support for a major intervention. But even a nation's interest in its own security is not simply selfish. After all, it amounts to a national government's concern for the security of millions of fellow-countrymen. Nor need it be private; for one nation's security is often bound up with others'. As Gareth Evans puts it: »these days, good international citizenship is a matter of national self-interest.« (Evans 2008, 144)

So national interest need not vitiate the motivation for military intervention. Indeed, some kind of interest will be necessary to make it politically possible and sustainable. It is not unreasonable for a national people to ask why they should bear the burdens of military intervention, especially in remote parts of the world. It is not unreasonable for them to ask why *they* should bear the burdens *rather than* others. It is not unreasonable for them to ask why *their* sons and daughters should suffer and die. And the answer to those reasonable questions will have to present itself in terms of the nation's own interests. And it could and ought to present itself in terms of the nation's own morally legitimate interests.

⁴ The British casualties were very light: one dead, one seriously injured, and twelve wounded (<http://www.eliteukforces.info/special-air-service/sas-operations/operation-barras/>, as at 24 November 2009).

2.4 The elasticity of proportionality

One of the most controversial features of my version of Christian just war thinking is my understanding of the proportionality of military action. This is the requirement that war, to be justified, must be 'proportionate'—both before it is launched and in the waging of it. The best sense that I can make of proportionality is elastic and permissive. This permissiveness troubles me, but I can see no rational way of tightening it. One conceivable way of tightening it is to think of proportionality as a state of affairs that can be seen to obtain when a cost-benefit analysis shows an excess of goods over evils. My problem with this is that, while it may be conceivable, it is not possible. This is because such cost-benefit analysis falls prey to the incommensurability of the relevant goods and evils. That is, the relevant goods and evils are so radically different in kind that this is no common currency in which to measure them: they are *incommensurable*. So, for example, how does one weigh against each other, on the one hand, the goods of regime-change in Berlin in 1945, the liberation of Europe from fascism, and the ending of the Final Solution against, on the other hand, the evils of 60–80 million dead and the surrender of eastern Europe to the tender mercies of Stalin?

Some years ago, the BBC dramatised the memoirs of a Battle of Britain pilot, Geoffrey Wellum. At the end of the dramatisation, the real, ninety-year old Wellum appeared, looking out over the iconic white cliffs of the southern English coastline. And as he gazed out to sea, he said, »Was it worth it? Was it worth it? All those young men I fought and flew with? All those chaps who are no longer with us? I suppose it must have been. I am still struggling with that.« Now, did Wellum mean that he doubted that Britain should have fought against Hitler in 1940? I don't think so. Rather, I think he was giving voice to the truth that the loss of each life is an absolute loss, for which there is no compensation. I think that »Was it worth it?« is the wrong question, because there is no sensible way of answering it. Such a 'weighing up' of goods and evils cannot be done. Were it possible, proportionality could be determined with some precision. Since it isn't possible, proportionality is more elastic.

Nevertheless, there are other concepts of proportionality that do make sense to me. One such concept is the aptness of means to ends—or, in the case of disproportion, the inaptness. Thus for NATO to have gone to war against Russia in 1956 to save the Hungarians, or in 1968 to save the Czechs, or even in 2014 to save the Ukrainians, and to risk world-destroying nuclear war, would have been to undercut its goal—a free and flourishing Hungary, Czechoslovakia, or Ukraine. Thus, too, to engage in military operations that result in large-scale civilian deaths, when a vital part of the counter-insurgency strategy is to win civilian hearts and minds, would be self-subverting and in *that* sense disproportionate.

In addition to the aptness of means to ends, there is also the concept of proportionality as the efficiency of means to ends. Thus, Field-Marshal Douglas Haig's over-ambitious strategy at the Somme in 1916 was more expensive of his own

troops' lives than a less ambitious strategy would have been. In that sense, British casualties on the Somme were disproportionate, because inefficient.

Finally, proportionality makes sense in terms of sufficient resources of men, materiel, and political support to sustain successful belligerency: when one ceases to have sufficient of these to wage war successfully, to persist is disproportionate.

3. Cases

From discussing some of the controversial issues raised by my understanding of just war I move now to present some topical and illustrative instances of its application. These instances do not pretend to be comprehensive: they are snapshots, not panorama. Their purpose is to show the theory at work, and in the second and third cases, to show it developing. Until I came to consider the 2011 rebellion against the Assad regime in Syria and the 2014 conflict between Israel and Hamas in Gaza, the importance, respectively, of the systemic nature of grave injustice and of the political dimension of *in bello* proportionality had not occurred to me.

3.1 Britain's belligerency against Germany, 1914: 'just cause' and the injustice of preventative war

If you had been reading British newspapers in the last year or so, you would have picked up that historians disagree about who to blame most for the escalation of war from its Balkan beginnings into a continental and then global conflagration. Until very recently, a dominant consensus endorsed the thesis of Fritz Fischer that Berlin was primarily responsible. This view prevailed, I believe, even among German historians. In the past twelve months, however, Christopher Clark's, *The Sleepwalkers*, has challenged this consensus. Clark concludes his account of the outbreak and escalation of the war by saying that »[t]here is no smoking gun in this story; or, rather, there is one in the hand of every major character.... the outbreak of war was a tragedy, not a crime« (Clark 2013, 561). »The crisis that brought war in 1914«, he tells us, »was the fruit of a shared political culture«, which rendered Europe's leaders »sleepwalkers, watchful but unseeing, haunted by dreams, yet blind to the reality of the horror they were about to bring into the world« (562).

I am not persuaded by Clark's argument, not because of its history, but because of its ethics. I think he draws too sharp a distinction between tragedy and crime, as if they are always mutually exclusive alternatives. Crime often has a tragic dimension. Human beings do make free moral choices, but our freedom is often somewhat fated by forces beyond our control. In addition, Clark assumes that because blame was widespread, it was shared equally. I disagree. The fact that blame's spread is wide does not make it even.

With regard to the particular issue of whether Britain's entry into the war on 4 August 1914 had just cause, which is the most basic of the justifying criteria, a

moral judgement has to be made about Germany's decision to invade Belgium, Luxembourg, and France, because without that invasion Britain would not have fought.

So why did Germany invade? She invaded because she feared that France would attack in support of Russia. According to just war reasoning, however, the mere threat of attack is no just cause for war. Only if there is substantial evidence that a threat is *actually in the process of being realised* would the launching of *pre-emptive* war be justified. It is not justified to launch a *preventative* war simply because one fears that an enemy *might* attack. In August 1914 France was not intending to attack Germany (and nor, of course, was Belgium). Indeed, France deliberately kept one step behind Germany in her military preparations so as to make her defensive posture unmistakable, and as late as 1 August she reaffirmed the order for her troops to stay ten kilometres back from the Franco-Belgian border (Strachan 2001, 91; Stevenson 2004, 30). Notwithstanding this, Germany declared war on France on 3 August on the trumped-up pretext that French troops had crossed the border and French aircraft had bombed Nuremberg.

It was the German government, dominated by its military leadership, that launched a preventative war against France and Belgium in August 1914. Why did they do it? Because, as social Darwinists they took it for granted that war is the natural way of deciding the balance of international power; because they foresaw that the longer the next war was delayed, the longer would be the odds against Germany's victory; and because (to quote David Stevenson) »the memory of 1870 [the Franco-Prussian War], still nurtured through annual commemorations and the cult of Bismarck, had addicted the German leaders to sabre-rattling and to military gambles, which had paid off before and might do so again« (Stevenson 2004, 596).

Clark's metaphor of the 'sleepwalker' is a powerful one, which picks out important features of the situation in the run-up to the outbreak of world war. But a metaphor is, by definition, always both like and unlike the reality it depicts, and shouldn't be taken literally. Germany's leaders were not actually sleepwalkers, but fully conscious moral agents, making decisions according to their best lights in a volatile situation of limited visibility. In such circumstances, which are not at all unusual, error was forgivable. Not so forgivable, however, was their subscription to the creed of a Darwinist *Realpolitik*, whose cynicism about human motives owes more to Thomas Hobbes's anthropology than to Charles Darwin's science, and which robbed their political and military calculating of any moral bottom line beyond that of national survival through dominance.

It is perfectly natural for a nation not to want to see diminished its power to realize its intentions in the world. But if social Darwinism thinks it natural for a nation to launch a preventative war simply to forestall the loss of its dominance, just war reasoning does not think it right. Just cause must consist of an injury, be it actualised or actualising, and Germany had suffered none.

3.2 Rebellion in Syria, 2011: from 'just cause' via the systemic character of injustice to 'last resort'

Under Bashar al-Assad's father, Hafiz, the Syrian regime was populated largely by members of the Alawite minority, dominated by the military and security forces, and secured and enriched itself through the patronage of business. It was also fiercely repressive of dissent, holding that it alone stood between peaceful order and anarchy—not least that which would ensue, if Islamists such as the Muslim Brotherhood were ever to get their hands on the levers of power. Upon Hafiz al-Assad's death and his son's election to the presidency in 2000, there was some hope that Bashar would pioneer both economic and political reform, and indeed he gave some early signals that these hopes would be met.

However, when in 2011 symptoms of the 'Arab Spring' began to blossom in Syria, the regime reflexively reverted to its customary, repressive mode. In the first week of March 2011 ten children in Deraa, aged between nine and fifteen, wrote an anti-regime slogan (probably more anti-corruption than pro-democracy) on the wall of their school. For this misdemeanour the Syrian authorities had them arrested, sent to Damascus, interrogated, and apparently even tortured (Lesch 2013, 55–56).⁵ On 15 March a few hundred protesters, many of them relatives of the detained children, began protesting in downtown Deraa. Their ranks swelled to several thousand. Syrian security forces, attempting to disperse the crowd, opened fire and killed four people. The next day the crowd ballooned to about 20,000. On 23 March, according to reports, the security forces killed at least a further fifteen civilians and wounded hundreds of others. President Assad subsequently refused to punish the governor of Deraa, his cousin.

I have described the evolution of events in some detail, in order to make clear that the Syrian rebellion was originally an act of non-violent protest against arbitrary and ruthless state coercion. Only when it became clear that the state was unrepentant, and that its very centre was prepared to *own* the arbitrary repression by refusing to repudiate it, did peaceful protest develop into armed rebellion. David Lesch reports that »most opposition elements, if convinced that Bashar was serious about reform, would have been willing to give him one more chance« (85). As it was, Assad's refusal to dismiss the governor of Deraa and his blaming the unrest on external interference, meant that the »[t]he reckless nature of this act [of arresting the Deraa children] became a potent symbol of the decades of arbitrary oppression« (93). It also made it clear that this oppression was essential, not accidental, to the regime. Since March 2011, of course, the regime has confirmed and deepened the indiscriminate ruthlessness of determination to eliminate opposition by the probable use of chemical weapons aga-

⁵ Most of what I know about the modern history of Syria and its current politics I owe to Lesch's book. Is Lesch a reliable guide? Judging by the plaudits extracted from reviews in the *Financial Times*, *International Affairs*, and the *Times Literary Supplement*, it would seem so. By his own account he met regularly with Bashar al-Assad from 2004-8 and had meetings with high-level Syrian officials until well into 2013 (Lesch 2013, vii).

inst rebels in the Ghouta suburb of Damascus on 21 August 2013, and possibly on several earlier occasions.⁶

Given this history, it seems to me that the armed uprising in Syria did have just cause as an act of self-defence against injustice that was not merely grave, but systemic and persistent. Why is this significant? Because the systemic commitment of the regime to the grave injustice implies the improbability of peaceful, political reform and confers on the resort to armed rebellion the status of 'last resort'.

3.3 Israel's Operation 'Protective Edge' against Hamas in Gaza: the political dimension of military proportionality

It is clear, both in morality and in international law, that Israel has a right to defend her citizens against indiscriminate killing by Hamas's rockets. It is not so clear that her recent self-defence has been proportionate, either in the sense of 'strictly necessary' or in the sense of 'instrumentally apt to the end'.

Provided that Israel targets enemy combatants and that such targeting is necessary, there is no upper limit to the number of civilian casualties that may be incurred, tragically, as 'collateral damage'. Let me make the point by reference to another case. When the Allies invaded Normandy seventy years ago, their bombers killed 20,000 French civilians. This was undoubtedly terrible and tragic. But if we think that Allied success was worth 20,000 civilian deaths, can we say that it wouldn't have been worth 40,000 or 100,000? If we are judging simply by numbers, I do not think that we can. Provided that the military means chosen are necessary, there is no absolute maximum to the collateral damage that may be incurred.

However, we should interrogate the claim of necessity by asking about its end: To what end are the chosen military means necessary? If it is to fend off of harm to Israeli civilians, then it seems that Israel's 'Iron Dome' missile system already achieves that with, according to her own officials, ninety per cent efficiency. It is arguable, of course, that complete defence must extend beyond deflecting the harmful effects to uprooting their cause. This would justify military action against Hamas.

Still, if the end is to uproot the cause of attacks on Israel, then military means alone do not suffice. Military means alone, then, are not apt. While the bombardment of Gaza has weakened Hamas's military power, it has not uprooted it. Without a political solution, it will simply revive to fight again.

⁶ The Assad regime, backed by its ally, Russia, does not deny that chemical weapons were used, but pins culpability on the rebels. At the time of writing (September 2013) there is no proof positive either way. Nevertheless, there are strong circumstantial reasons for attributing the use to the state—including the requisite delivery systems. Indeed, according to the London *Times* (13 September 2013), United Nations inspectors are expected to report that munitions casings found at the scene of the crime point to an origin in the state's forces. Moreover, notwithstanding his manifest reluctance to intervene in Syria, and his consequent interest in giving Assad benefit of whatever plausible doubt, President Obama appears quite convinced that the regime is responsible. So is the French government, which is not famous for being Washington's poodle. For a summary of earlier occasions of the use of chemical weapons, in which the Syrian regime might be implicated, see: www.bbc.co.uk/news/world-middle-east-22557347.

It is within Israel's power to take diplomatic, confidence-building initiatives without waiting for reliable Palestinian interlocutors. Unilaterally, she can end the illegal settlements in the West Bank. Since she does not do so, her military assaults on Gaza are inapt and therefore disproportionate.

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