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MINIMAL JUSTICE AND REGIME CHANGE IN BRIAN OREND'S POLITICAL ETHICS

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MINIMAL JUSTICE AND REGIME CHANGE IN BRIAN OREND'S POLITICAL ETHICS²

Brian Orend, one of the leading just war theorists, is best known today for elaborating *jus post bellum* principles while his works contain another distinctive component, concept of “minimally just” political community. This article explores Brian Orend’s conception of “minimally just” political community, especially the meaning of this concept for Orend’s version of just war theory. Orend uses Kantian political and moral philosophy in order to prove there are two key functions of state: protection of human rights and establishing order. Since human rights are universal, a state should assist in protection of human rights of every person, not only its citizen’s rights. This leads to situation when states avoid of harming foreigners and aggressive wars become banned. Orend call a state “minimally just” if it follows these rules. However, these states could violate non-intervention principle and start wars. A crucial point here is an idea that a “minimally just” state has a right to fight for the overthrow of the aggressive regimes and establishment of “minimal justice”. The author concludes that this notion helps Orend extend the list of just causes of war, though his original intention was limitation of cases when arms could be used.

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Introduction

Brian Orend, Professor of philosophy at the University of Waterloo, is best known today as one of the most prominent authors of new just war theorists generation. In his first monograph “War and International Justice: a Kantian Perspective” published in 2000, Orend elaborated original concept of “minimally just” political community that has been consistently developed in his subsequent works, particularly in the book “The Morality of War” (2006). The notion of “minimally just” political community was used by Orend in order to sustain key theses of his just war theory, while it could be considered as an autonomous political ethics concept.

Orend takes a specific Kantian position. Rational person, according to Canadian philosopher, can recognize only authority of that political system that is able to ensure the satisfaction of all his or her vital needs. In this value system personal needs rather than virtues or merits constitute the basis of ethics. In addition, government should guarantee and respect human rights. The two main functions of a state are reduced, thus, to protection of human rights and ensuring order. Moreover, state is obliged to care all human beings because human rights are universal. That means a state should refuse to harm foreign citizens and even more – help them in times of trouble. These are the basic foundation of Orend’s political ethics.

Starting with these principles – quite common to just war theory and liberal tradition – Orend comes to original assumption that every political community could be assessed at its justice. He does not demand all of the states or communities to be impeccable and virtuous, but he supposes there is a level of “minimal justice” that must be reached by a state pretending to be a legitimated member of international relations [of independent states community]. If a state is insufficiently just world community must ban it and probably try to change its regime by political or even military means.

What is striking about Orend’s “minimally just” community theory is that this idea applied to the ethics of war means expansion of the list of just causes when arms could be used as this theory offers regime change in order to create “minimally just” society as a just reason of war. Within this framework the key point of war is not political or military victory but construction of artificial institution that would tolerate basic human rights. Orend believes, therefore, any state or community could be transformed to “minimally just” without regard to national, cultural, religious or any other differences.

Orend begins as a traditional just war theorist, but adding principle of “minimal justice” applied to political communities he challenges the theory. We must raise the question, therefore, how does Orend’s theory of “minimally just” political community change traditional just war theory? There are a couple of closely connected questions: What are the consequences of integration of “minimal justice” concept into just war theory? And is it reasonable to treat regime change as a just cause of war?

In order to answer these questions we will critically evaluate Orend’s approach to “minimally just” political community. We will start with theoretical and practical implications of Orend’s rethinking of just war theory and it would be important for us to compare Orend’s and Kant’s arguments on war as Orend calls himself adherent of the German philosopher. Then we will evaluate thoroughly Orend’s concept of “minimally just” political community. It would be important for us to consider not only formal definition of the “minimal justice” but also to analyze how this concept affects Orend’s interpretation of non-classical wars. Speaking about non-classical wars, we will go deeper with the problem of humanitarian intervention. At last we will go to the regime change as a just cause of war where we will recall Michael Walzer’s argumentation on that matter. And we will conclude that Brian Orend’s theory of “minimal justice” and idea of regime change, presupposing any unjust state, even currently peaceful, may be attacked, loses relation to just war theory tradition as in fact Orend extends the number of cases when force may be used permissibly rather than limits them.

Basic foundations of Orend’s philosophy of war

First of all, Orend is famous for enrichment just war theory by elaborating *jus post bellum* principles as he (and now many after him) calls additional *bellum justum* categorical set. This

term could be literally translated from Latin as “right after war” or “justice after war”. Orend dedicated two of his most standing books – “War and International Justice: a Kantian Perspective” (2000) and “The Morality of War” (2006) – to the discussion of normative standards we should accept and follow after the war is over, the victory is gained and there comes a time of the after-war political reconstruction of the region. As Orend thinks, *jus post bellum* principles will allow us to end the war justly and ensure the establishment of a just peace. In Canadian philosopher approach three categories of principles – *jus ad bellum*, *jus in bello* and *jus post bellum* – stay inextricably linked. We may treat a conflict as a just war only if each of these principles is implemented. Even if a state has moral and legal reasons to use force in a conflict, it should know not only how to wage war justly but also how to finish it properly.

Another original feature of Orend’s approach to just war theory finds itself in the attempt to reconcile just war doctrine with Kant’s political and moral philosophy. Orend supposes it was Kant who generated *jus post bellum* notion, while this category did not get an explicit realization in the works of Kant. However, Orend finds it possible to use principles of permanent peace state derived from “On Perpetual Peace” treatise. He notes we may treat them as normative regulations that correspond to the spirit and logic of just war doctrine. In turn, Orend uses Kant’s conceptual apparatus actively. For instance, he revives Kantian teaching of *status naturalis* (natural state) as a part of his own war theory.

meta-theoretical environment that could make just war theory more grounded.

Such reminiscences are notable not because one is going to demonstrate Kant’s urgency for the contemporary philosophy – that would be nothing beyond what we already knew. What is striking here is that Orend tends to find a basis for just war theory in the fields of ethics. He is searching for a doctrine that could help him to justify *ad bellum*, *in bello* and *post bellum* principles. Just war theorists usually get along without mentioning any ethical theories as a meta-theory used in their conceptions. Michael Walzer, a leading figure in contemporary just war theory, may be named as a perfect example here. In his most influential book “Just and Unjust Wars”, as well as in the subsequent works on the problems of war and peace, Walzer stated the moral theories of his predecessors have no significance for his own theory. We may find implicit relation of Walzer’s theory to such ethical doctrines as utilitarianism or pragmatism but Walzer himself refers to utilitarianism of extremity only once when speaking about supreme emergency. Walzer notes principles of just war are self-evident and lucid in other cases and therefore they do not need any additional proof. Paradoxically, Walzer has works on moral and ethical problems and became popular as an ethicist³.

Just war theory is often accused of being not enough fundamental theory. It is criticized as it is nothing more than a set of principles that could be changed easily in accordance with the will of a person going to use this normative theory of war. In this regard Orend makes an attempt to solve this problem. He actively appeals to Kant may seem to be a really revolutionary representative of Anglo-American tradition of just war thinking. According to Orend, Kantian political philosophy should establish a meta-theoretical environment that would make just war theory more grounded and sound. The problem of Kantian influence on Orend’s political philosophy should be left for more detailed analysis in a separate article. As it was mentioned above, in this work we would like to concentrate on another remarkable concept of Orend’s political ethics, namely “minimally just” political community⁴.

“Minimally just” political community

One part of the first Orend’s book – “War and International Justice: a Kantian Perspective” – was dedicated to the problems of political ethics. Orend found and adopted two premises of Kantian political philosophy that helped him to build a theory of states’ rights and duties. There

³ See Walzer M. On Toleration. Yale University Press, 1999; Walzer M. Thick and Thin: Moral Argument at Home and Abroad. Notre Dame Press, 1994.

⁴ We will use terms “political community” and “state” as synonyms here. Orend himself claims political community is a community going to become a state, to gain public status. That means such a group has a specific structure typical for the state.

are two functions that a state mechanism fulfils, according to Orend and Kant (at least in Orend's interpretation of Kant). The first and core function of a state is:

“to rescue its people from the force, fraud and anarchy of the state of nature and to institute a civil society based on public and enforceable positive law”⁵

And a state has another function:

“prime domestic function of a state mechanism, in Kantian terms, is to secure for its peoples their human rights, at least to the best of its ability”⁶.

A state should guarantee and protect human rights and maintain law and order. And here we reveal that Kant is not the only Orend's inspirer, that he is also rooted in Max Weber's theory of political power. Orend proclaims war to be an extremely political matter as “*all warfare is precisely, and ultimately about governance*”⁷. War is, therefore, internally related to the state. War may be regarded as an opportunity to make decisions within a given territory. The sovereign gets the right to make decisions on different issues: from the principles of distribution and setting borders to the formation of the educational system or maintenance of national myths. We may find the following definition of a state in Orend's “War and International Justice”:

“A state is a political association of peoples, formed to be the authoritative source of governance for them. A state is the most authoritative political decision-making structure, backed up with a monopoly on the authorized use of coercion to enforce its decisions, within a demarcated territory”⁸

A state is defined through authority, territory and (what is particularly important) the right to use force. Politics, in turn, is also interpreted by Orend in the same way as it was done by Weber. As Weber noted, politics is a chance to dominate and it presupposes struggle for power. A state's power and ability to use force are the key features of politics. But in the 21st century not only a state may use arms. There are different types of so-called non-state actors that undermine a state's monopoly on violence. That was unknown to Weber, but this is very important for Orend and we will see later why.

Canadian philosopher raises a question on the origin of rights possessed by a state. Some of them are unique and lay beyond the reach of an individual or a group in normal conditions⁹. Taking into account two principles mentioned above Orend draws a conclusion that the human rights are directly related to the state's rights and that the human rights hold primary position.

Human rights allows a state to get its specific rights only if a state works properly that means it protects people from severity of the state of nature and maintains functioning of civil society. In other words, a state and its government obtain rights only when they respect the human rights of its citizens. In other words, the possibility of a state to have rights depends on the possibility of a person to have rights. That is so because a rational person, according to the Canadian philosopher, can recognize only the authority of a political system that is able to ensure all individual vital needs. We should note that Kant and Locke are successfully combined here. Though, we see a significant change of Kantian political ethics that finds itself in Orend's thoughts.

A person is placed in the centre of the political system. And the basis of political morality is not the concept of dignity or duty but necessity. Our needs and demands configurate political ethics, while the ideas of will or moral self-worth of a person become less important. But what needs and demands might be treated as the grounding moral principles? Orend identifies traditional liberal values as such primary needs: freedom and free market. This idea has nothing to do with Kant. It is truth that Kant postulated autonomy of will but the concept of the free

⁵ Orend B. War and International Justice: a Kantian Perspective. Wilfrid Laurier University Press, 2000. p. 111.

⁶ Ibid.

⁷ Orend B. The Morality of War. Peterborough, Ont.: Broadview Press. 2006. p. 3.

⁸ Orend B. War and International Justice. P. 110.

⁹ Such as possibility to use organized physical violence.

market was not in the ground of his moral philosophy. So if Orend calls himself Kant's successor he stays very far from orthodox interpretations of Kant's philosophy. Kant supposed any violation of the human rights was an evil deed harmful for the whole humankind. That was violation of the natural order. Kant treated a man as a morally autonomous being who should create personal moral law. Eventually people come to a conclusion that their personal law should be a universal law satisfactory for everyone. This universal law does not presume violence to be a normal measure. Based on this premise, we should note that Kantian philosophy could be hardly reconciled with just war theory, a doctrine that is closer to utilitarianism or pragmatism. Orend confirms this presumption when he speaks on personal needs as a core moral dimension of politics. He leaves Kantian ground and finds himself on the utilitarian positions.

Yet Orend keeps elements of the true Kantian thinking. In fact *a priori* value of human rights is certainly a Kantian notion. There is one important consequence of the use of Kant's doctrine of human rights in military ethics. Human rights hold universal value, and a state has a responsibility to care for the rights of all humanity and not to harm foreign citizens. Thus, aggression towards other states is illegal, and *vice versa* – the desire to assist in the protection of human rights authorizes intervention in the affairs of a sovereign state. We find here a specific deontological ethics that, according to Orend, regulates interstate relations.

Orend derives key assumptions of his own interpretation of just war theory and "minimal justice" theory from this political ethics. He claims that every political community may be assessed in order to estimate its moral potential. In other words, we are able to define the grade of justice peculiar to a state.

Orend does not mean a state should be morally irreproachable, impeccable and virtuous. He only presumes there exists a level of "minimal justice" and international community should be targeted on this level. There is no demand a state should correspond to a certain ideal of justice, and the question is not in construction of hierarchy of political justice; the fundamental point here is the fact of overpassing threshold value of justice. Only "minimally just" political communities may be regarded as legitimated participants of international relations. If a state is not "minimally just", international community should outlaw it and in the course of time try to change regime there with the use of political or military forces.

Orend reproduces actually Aristotelian concept of society. People are political animals, assigned to public life. Their desire and right to organize groups should be respected as a basic social principle and natural right. Any group organized by free people requires recognition and respect in case it is "minimally just"¹⁰. Any group should be recognized except those organized for criminal activity, such as a band of slave traders or mercenaries. All other communities should be respected and considered as full members of political and social life.

The question is how we can understand a group is "minimally just". Orend states every member of international relations should be morally evaluated and treated correspondingly. What factors could help us, then, to assess the actors of international relations? Orend claims justice is the key factor that demonstrates the character of a state. The states which are not even "minimally just" may be regarded as aggressive and dangerous political communities. In "War and International Justice: a Kantian Perspective" Orend defines that "minimal justice" of the state should be confirmed in accordance with four points. A political community is "minimally just" when it is

- “1) providing its people with domestic law and order;
- 2) providing its people with reasonably secure domestic access to the objects of their human rights;
- 3) protecting its people from outside attack and other forms of deleterious interference by non-members;
- and 4) representing its people vis-à-vis outsiders in a minimally just manner”¹¹.

¹⁰ Orend B. The Morality of War. p. 83.

¹¹ Orend B. War and International Justice: a Kantian Perspective. P. 112.

In “The Morality of War” Orend slightly changed these principles and formulated these criteria in a more particular manner. Now a “minimally just” state should be (1) generally recognized by its own people and international community, (2) avoid violating the rights of other countries, (3) make every reasonable effort to satisfy the human rights of its own citizens¹². However, the general meaning of the concept “minimally just” political community remains. The legitimacy of government should be confirmed by its moral reliability. As we noted above, specific rights of a state, including the right to wage war, appear if a state is able to protect human rights. Inability to fulfill the needs of an individual or a group means a state has lost respect for human dignity. Orend comes to a conclusion that has been already made by Locke. If a state does not care about the needs of the people, they can disobey the government and even start a war against it.

The concept of “minimally just” political community introduced into political theory offers some advantages. First of all we should note cosmopolitical component of this idea. Orend suggests that the concept “minimally just” political community should substitute such general concepts as “democratic”, “liberal”, “western” that are typical for just war language. System of government, political traditions, geographical location, and national identity do not influence the degree of justice maintained in a state. Any state or big group could be a “minimally just” community regardless of the current political course it goes by. The question is only if the government acts in accordance with the criteria stated earlier. Thus, Orend solves a vital issue facing Anglo-American tradition of just war that is often accused of serving western democracies. Some authors claim just war theory presuppose the world is divided into those who is able to pursue the policy and wage war justly and those who never can get a chance to do that. Orend harshly denies this political chauvinism.

According to the Canadian philosopher, if a state does not act aggressively and does not violate the borders of other countries and rights of its own people, it could be treated as a legal and legitimated bearer of state rights. In other words, only a “minimally just” political community gets state rights, such as political sovereignty, territorial integrity, possibility to resources, equality, recognition, self-defence and the resort to force and some others¹³. Moreover, Orend writes a state has not merely rights but also responsibilities. Most “minimally just” state responsibilities are related to its rights. We may mention such responsibilities as non-interference with other states, no force (unless justified by State Right to self-defence), resource transfer, and hospitality for foreigners¹⁴. The full list of responsibilities is much longer but it is unnecessary for us to cite it fully.

Orend states that the right and duty to wage defensive war is the most critical state right. In this case political ethics is subjected to philosophy of war. Orend introduces concept of “minimally just” political community into just war theory and this has grave consequences for the whole theory. In fact, Orend proposes that the idea of human rights and responsibility to protect them is one of the fundamental propositions of just war theory. This is also an innovation of the Canadian thinker since just war theorists traditionally associated the justice of war with the necessity to restoration of rights but they were speaking about state rights, not human.

“Minimal justice” and the problem of just war

Orend creates a specific political ontology that is based on the fundamental point of “minimal justice” principle. As we noted above this political ontology has its roots in the works of Kant, Locke, and Weber as well as Walzer. But these are not the only sources of Orend’s thoughts. Another important figure of Orend’s theory of military conflict is Carl von Clausewitz. Rehabilitation of Clausewitz in the Canadian philosopher’s works looks absolutely unexpected, especially if we take into account the growing discussion on the decline of traditional state and

¹² Orend B. The Morality of War. P. 35-36.

¹³ Orend B. War and International Justice: a Kantian Perspective. p. 112-117.

¹⁴ Ibid. p. 117-118.

appearance of new wars or armed conflicts that could not be explained by Clausewitz's theory¹⁵. Orend not only appeals to Clausewitz freely, he goes much deeper. For instance, Orend changes famous definition of Clausewitz in the following way: "it is not just that war is the continuation of policy by other means; it is that war is about the very thing that creates policy (i.e., governance itself)"¹⁶. So again, war and struggle constitute politics.

This approach allows Orend define war "as actual, intentional and widespread armed conflict between political communities... War is a phenomenon that occurs only between political communities, defined as those entities which either are states or intend to become states"¹⁷. A similar definition was repeated in "The Morality of War" where Orend adds mobilization is usually ordered when war is declared while it depends on the character of the political community engaged in the fighting.

According to the Canadian philosopher, only political groups may wage war and no one else. War is, therefore, peculiar only to the political sphere and only to political communities. Different groups could be described as a political community besides the state. As we have already mentioned, every entity intended to become a state and establish a new political order is understood by Orend as a political community. A group of insurgents or terrorist fighters may be an example of such a community. This notion has one important consequence as from Orend's point of view there is no sharp distinction between so-called old and new wars. Old or conventional wars were inter-state conflicts and new wars are intra-state clashes or hostilities between the states and non-state actors. In general, common logic of ethical evaluation of war should be applied to any kind of armed conflicts although certain adjustment of just war theory applied to asymmetric war is required. Orend follows here another authority, Michael Walzer, who repeated recently that "the same rules apply to armies and insurgents"¹⁸. An amendment of just war theory offered by Orend will be discussed hereinafter, in the next chapter.

An issue of particular importance here is whether political communities may use lethal forces without violating the requirements of morality and law and if so how to do that. In other words, in what cases use of force may be named as a just and legitimated means? In order to ask these questions Orend applies to his theory of "minimal justice". Orend suggests that only a "minimally just" political community may wage a just war. This means we are able to say there were ethical reasons to use armed forces only if we have government whose legitimacy is confirmed by its moral purity¹⁹. Orend actually introduces a preliminary *jus ad bellum* principle, which requires we should verify the state's or community's moral reliability prior to the evaluation of its actions and preparations for war.

However, that is quite an ambiguous approach. Any act of an "unjust" state, which does not meet the requirements of "minimal justice", cannot be recognized as just and therefore should be treated as unjust or illegal. Even if such a state trades with its neighbors or makes scientific research we should condemn it and suspect such a state in preparation for aggression. All contacts with this state are declared to be inadmissible. Orend's strict political ethics surpass the principles of international law and the United Nations point of view as the UN admits membership of states whose governments stand far away from matching the specified criteria of "minimal justice". According to the UN it is more important to build an area of communication between all states, even aggressive. From Orend's point of view no contact with aggressive or criminal regime is acceptable (except military intrusion we can add).

¹⁵ Criticism of Clausewitz has a long history indeed. We may name only a few most principle Clausewitz's opponents: Colin J. Les transformations de la Guerre. Paris: Bibliothèque de Philosophie Scientifique, 1911; Ludendorff E. The Nation at War (Der totale Krieg). Hutchinson, London, 1936; Crevelde M., vanThe Transformation of War, New York : Free Press, 1991; Keegan J. A History of Warfare. New York: Knopf, 1993; Kaldor M. New & old wars: organized violence in a global era (3rd ed.). Stanford, California: Stanford University Press, 2012.

¹⁶ Orend B. The Morality of War. p. 3.

¹⁷ Orend B. War and International Justice. p. 7.

¹⁸ Walzer M. Just and Unjust Wars. Basic Books, 2015. p. xiv.

¹⁹ Orend B. The Morality of War. p. 35.

Only “minimally just” political communities have right and moral sanction to start a war, however, not only “minimal justice” of a state approves the use of armed forces. War, in fact, is not an aim of “minimally just” political communities. War is undesirable, temporary moment of their political life. That is an abnormal way of political communication. Participation in war should be treated as a responsibility of “minimally just” state. They are obliged to use force in certain cases since they take responsibility to protect human rights. And *vice versa*, if a state tends to use aggressive means that allows us to conclude this state is not sufficiently just.

War is a duty of “minimally just” political community that should use certain rules of how to justify war (*jus ad bellum*) and how to wage war properly (*jus in bello*). If we consolidate all Orend’s arguments on the most important principle of *jus ad bellum* – *jus cause* principle (stating there should be a genuinely forcible reason to declare war) – we will obtain three conditions that make war justified. Firstly, Orend claims arms may be used justly when a state is a victim of aggression or it helps its ally that is under aggressive attack. This is a war of self-defense, commonly approved. Secondly, as we have already mentioned, this state itself should be a “minimally just” political community. Thirdly, the use of armed forces should satisfy the requirements of the “Core Principle on Aggression” (CPA), as Orend calls that. This principle is another theoretical creation of Orend, a specific principle put to the foundation of his military ethics.

According to this principle, if aggressive politics of a political community – if it attacks someone, threatens someone or makes evident preparations for the assault – makes it morally liable to defensive harm²⁰. Victim of aggression and/or a third party acting as a defender of the victim may use all necessary means, including lethal force, in order to defeat aggressor. However, Orend notices that it is important here that the use of these means should not violate human rights of aggressor’s citizens because victim or its ally would wage just war against the aggressor²¹. Despite the fact their government is aggressive one, civilians save their immunity from the military attack. We see here a fundamental difference between principles applied to wars waged by “minimally just” political communities and unjust states. “Minimally just” political community should take care not only after right of its citizens but also contribute to the common work on the constraint of war. Assault on the enemy civilians would mean that, first of all, a state is losing its “minimal justice” and, secondly, would be a cause of the future revanchism and reciprocal severity and create deep hostility between the opponents. We see here unambiguous influence of Kantian doctrine of perpetual peace on Orend’s military ethics. War, according to Orend, should not stimulate another war; consequently, parties engaged in a conflict should use appropriate and permissible means of war and end it justly.

Let us return to the first point mentioned by Orend, to the idea that self-defense is a *jus* kind of war. Every state is obliged to defend its borders and support allies. Legitimacy and justice of defensive war is usually beyond the question. The difficulty is Orend’s specific approach to justification of self-defense. According to Canadian philosopher, there are two ways of justification of defensive war: descriptive and normative. Descriptive justification presupposes the fact of aggression is evident. We see how one state violates the borders of the other sending its troops. This makes defensive harm legitimated and even legal, not only just war theory but international law protects the victim in this case. Normative description states there are cases when arms may be used in order to repel potential aggression. When a state’s border has not been trespassed yet but there are obvious premises of the forthcoming attack, this state gains an opportunity to take the initiative and strike first. In the tradition of just war theory this case is usually called “pre-emptive strike” while Orend himself prefer to speak about anticipatory attack. In his opinion this name allows to avoid a conflict between notions of preventive war (that is prohibited) and pre-emptive war.

²⁰ Ibid. p. 37.

²¹ Orend B. *The Morality of War*. p. 37.

Anticipatory attack becomes justified if the degree of the threat posed by the enemy state makes the possibility of war imminent. Only a real threat, “credible, grave and imminent threat”²² that comes from aggressor, not fear or suspicions, makes justification of war response valid. In this case, the aggressor is not an actor who used force earlier, but the side that planned and was preparing for an attack.

Normative justification of self-defense should be analyzed thoroughly. We should ascertain there are unquestionable confirmation that future aggressor prepares an attack²³. Generally speaking this Orend’s idea seems to be extremely contradictory and ambiguous. If we read this attentively we may get the impression that the parts were given in advance: one side of the conflict, “minimally just”, is victim, another – aggressor. Orend notably remarks that the aim of theorists and politics in war is literally reduced to “critical, ongoing examination of the evidence to determine who is the aggressor and who the defender – or whether, alternatively, it shows “a pox on both their houses” (i.e., injustice all around)”²⁴. At the worst, we are unable to find a just party and would have to conclude both sides act wrong. However, despite “the evidence in wartime can be difficult to interpret, and we can predict the players are all going to interpret it in a way maximally advantageous to their own interests”²⁵, Orend states there is still opportunity to find a just actor. In this case, Orend simply justifies any actions against the one who threaten its neighbors and who can be labeled as an aggressor. What is the difference, then, between an “aggressor” and a “victim” that is able to use military force easily (even before its borders are violated)? What is the difference in the use of force in a just war and aggressive war? Force and violence would cause suffering and deaths of civilians even in a just war, while violation of human rights by the aggressor does not always lead to physical extermination of people. We should add here a formal question on the procedure that allows us to determine approaching threats. Is it really always possible to understand your adversary is planning an action against you? From our point of view, doctrine of pre-emptive strike or anticipatory attack undermines entirety of all theoretical assumptions of just war theory. This notion contradicts to the idea of war as the last resort of solving a conflict that is also one of *jus ad bellum* principle.

Moreover, we can perceive in this Orend’s reflection on the justice to wage war inherent only to one player revival of the old Christian doctrine of *bellum justum*. For instance, we may recall one famous fragment of “City of God” by Augustine of Hippo, merited as the father of just war theory. St. Augustine justified ontological dichotomy of the world:

“But the wise man, they say, will wage just wars. Surely, if he remembers that he is a human being, he will lament that fact that he is faced with the necessity of waging just wars; for if they were not just, he would not have to engage in them, and consequently there would be no wars for a wise man. For it is the injustice of the opposing side that lays on the wise man the duty of waging wars”²⁶.

This way of reasoning appeared in political philosophy in the beginning of the 5th century is typical for contemporary just war theory as if this conception has not been secularized by such author as Grotius, Pufendorf, Kant or Walzer. Orend's interpretation of just war theory is also based on logic and reasoning. But as Carl Schmitt, an adamant critic of just war theory, noticed in “Political Theology”: “all significant concepts of the modern theory of the state are secularized theological concepts not only because of their historical development... but also because of their systematic structure”²⁷. The just war theory updated its exterior but internal content has not changed essentially as it kept a scholastic logic of war justification.

²² Ibid. p. 76.

²³ Ibid.

²⁴ Ibid. p. 44.

²⁵ Ibid.

²⁶ Augustine. City of God. London: Penguin Classics. 2003. XIX, 7, pp. 861-862.

²⁷ Schmitt C. Political Theology: Four Chapters on the Concept of Sovereignty, MIT Press.1985. p. 36.

As Chris Brown explained, authors who developed just war theory in the Middle Ages expected the Antichrist's advent. This anxious expectation manifested itself in the political thoughts of *respublica Christiana* that "believed itself to be under potential assault from the Antichrist"²⁸ and was ready to play the role of Antichrist restrainer. Augustine and many other authors expressed same ideas. It was Grotius who began secularization as "he also distinguished himself from theologians, but he was inclined to use their arguments"²⁹. Contemporary just war theory is secular in the sense that it does not need direct references to religious reasoning in order to legitimize warfare. But, as we said above, its logic and form imply there should be a kind of strong faith that makes use of force morally permissible. Priority of human rights, freedom and "minimal justice" constitutes this new kind of faith. In this context, it would be wrong to call critique of just war theory expressed in the works of such authors as Schmitt and others inappropriate or outdated as he defined that this context in our time, when religious rhetoric is removed from politics, would lead to a dangerous mode of political thinking that affects just war theory extremism.

This restoration of scholastic way of justification of war causes one significant change in the whole internal logic of just war theory. It turned out, that despite the doctrine of *jus ad bellum* presumes that the criterion of just cause (*causa justa*) should be supplemented by a number of related principles – among them are proportionality, discrimination, probability of success, right intentions and legitimated authority – this criterion becomes absolutely dominant and almost all-sufficient. Again we may draw a parallel between medieval and contemporary just war theory. According to some medieval Christian authors spreading the true faith or recapturing sacred places provided just reason for the use of force. In this sense, Pope Urban II proclaimed at Clermont "Jerusalem is the centre of the earth... She seeks and desires to be freed, and ceases not to implore your aid"³⁰. War exceeded the bounds of the political field and extended to the ideological and private spheres. As we know, just war theorists of the modern era worked hard on turning the doctrine of *bellum justum* to be a purely ethical discipline but the ambivalence of the political world has not been eradicated and Orend thoughts confirm that.

In order to explain this difficulty Orend appeals to Locke's interpretation of the state as an organization aimed at protecting its own citizens. If a state is unable to cope with this task, or ceases to be "minimally just", the citizens have a right to break the social contract, quit over the government and start fighting against it for the establishment of a new "minimally just" government. Thus, civil war is considered to be just if people come out against the government, which is no longer able to protect them³¹. On the other hand, it could be said Walzer's ethics of consequentialism may be found here. Inaction causes risks, and states must seek the way to minimize them. Missed opportunity to prevent serious human and economic losses caused by the attack of the aggressor would mean unwillingness of the government to work properly. Or even, missed opportunity to prevent aggression can be considered as if government has lack of competence and diligence to protect the citizens. Again, as it was in Lock's argument, people get right to cease to obey its government. According to the normative justification, self-defense is interpreted exactly as an act that allows a state to protect the rights of its own citizens and maintain their well-being. Liberal discourse proves itself in this Orend notion.

Works of Orend contain another important idea concerning legitimating of the use of armed force and self-defense in the case when a conflict breaks out within a state. The above-described case of the civil war is the most simple, because in this situation moral positions are assigned unambiguously – an unjust government fights against a just part of the citizens. The case is more complicated when two communities had been united into one before and then they

²⁸ Brown C. From Humanized War to Humanitarian Intervention: Carl Schmitt's Critique of the Just War Tradition // The International Political Thought of Carl Schmitt: Terror, Liberal War and the Crisis of Global Order, ed. by Louiza Odysseos and Fabio Petito, London: Routledge. 2007. p. 64.

²⁹ Schmitt C. Total Enemy, Total State, and Total War // Four Essays, 1931–1938, Washington, D.C.: Plutarch Press. 1999. p. 116.

³⁰ Reichberg G., Syse H., Begby E. The Ethics of War: Classic and Contemporary Readings. Wiley-Blackwell. 2006. p. 102.

³¹ Orend B. The Morality of War. p. 84.

started fighting each other and each of them can be treated as “minimally just. Society was divided, and none of its parts can be unambiguously called more or less just, but each of them seeks autonomy and independence in the political sense. Who can use arms in this situation? Who can pretend on acting in accordance with the idea of self-defense? In this case, if one of these groups would try to establish dominance in the former borders by military force it would be absolutely unjust. As Orend writes “preserving union, just for the sake of union, is not sufficiently serious to justify warfare”³². Groups with the equal status, according to Orend, should try to find peaceful solution of the conflict. They should negotiate the parceling out the territory and resources, that means, they should form two new states. The Dissolution of Czechoslovakia into the Czech Republic and Slovakia, the “Velvet Divorce”, can be called a perfect example of disintegration of a previously united state.

Now let us take a look to another case part of the first Orend’s point – assistance to an ally. Victim vindicator, according to Orend, acts reasonably and permissibly only when it limits itself entirely by all norms of *jus in bello* and fights with a state which aggressiveness is undoubtedly clear. State attacking another state loses its security immunity and may be subjected to attack by a third party. Initiation of war hits “*the very moral spine of human civilization itself*”³³ that makes force response permissible. Thus, the attack on the aggressor is justified by its aggressiveness due to which aggressor loses rights on security and self-determination obtained initially by any peaceful nation. However, this principle seems to be not so new. Similar idea can be found in John Stewart Mill’s essay “A Few Words on Non-intervention”. British philosopher argued that government that had resorted to force for preservation of its own power and started civil war with its own people violated principle of non-intervention and thus put itself out of all protecting norms and doctrines of war. It is permissible and justified therefore to attack such a government and help insurgents. As Mill noticed “intervention to enforce non-intervention is always rightful, always moral, if not always prudent”³⁴.

This is exactly what was criticized in just war theory by German political thinker Carl Schmitt. The world comes into a dangerous position, according to Schmitt, when one side proclaims itself to be a defender of human rights, guardian of humanity and victim vindicator. The noble desire to repulse the aggressor entails assertion of self-innocence. Violence committed by the defending party or victim’s ally is considered to be “more humane” and does not violate ethics of non-intervention. Schmitt was disturbed by the question how can universal laws tolerate these exceptions? How can morality accept such dualism? These theoretical questions may be supplied at least by one practical problem. Is it always possible to unambiguously define victim and aggressor? Schmitt concluded that usurpation of the right to define “just” and “human” parties leads to brutalization of war and dehumanization of enemy. Orend could respond to this criticism declaring that a state waging just war would tolerate all *jus ad bellum* and *jus in bello* principles that would prevent possible inhumane actions. However, we see just war theory again appears to be partly controversial.

Non-classical wars and non-classical just causes

Even more often we have to talk about so-called new wars or non-classical wars which became dominant type of an armed conflict in the past few decades. Several features are inherent to non-classical wars: asymmetry – collision of unequal political subjects; low intensity of the conflict; identity politics (ethnic, religious or tribal) is proclaimed to be a cause of war; financing by predatory economic activities, such as pillage, “taxation” of humanitarian aid, kidnapping³⁵. Just war theorists of the present tried to adapt the theory to this context as otherwise it would stay incomplete and out-of-dated. According to Orend, there are four more cases, except the self-defense, when the arms could be used legitimately. He names the following: intervention into a

³² Ibid. p. 85.

³³ Ibid. p. 40.

³⁴ Mill J.S. A Few Words on Non-Intervention // Foreign Policy Perspectives. No. 8. 1988. p. 6.

³⁵ Kaldor M. In defence of new wars. *Stability*, 2 (1): 4, 2013 pp. 1-16. Available at: <http://www.stabilityjournal.org/articles/10.5334/sta.at/> (24.01.2016).

civil war, anticipatory attack, war on terror and humanitarian intervention. Similar cases were proposed by other classics of contemporary just war theory – Michael Walzer, Nicholas Fotion and many others³⁶. Let us consider each of these four cases proposed by Orend, and their connection with his idea of “minimally just” political community.

We have already discussed anticipatory attack and intervention into a civil war briefly, so we will not dwell on the question of pre-emptive strike. But the problem of the civil war is not limited to the question of self-defense as it was discussed in the previous chapter. It is important to note that civil war is not a new type of conflict but just war theorists of our days are primarily concerned with the problem of justifying intrusion into a country where civil war has begun. The most complicated question of this discussion is if such intrusion would be a just war or an aggression? Orend amongst numerous other philosophers states it would be morally allowed to assist a group that rebelled against oppression of unjust and criminal government. Contrary to this, John Stuart Mill stated in the middle of 19th century that if trying to throw off the yoke of tyranny people “have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own, will have nothing real, nothing permanent”³⁷. Mill supposed that outside intervention into a civil war would serve as a barrier to formation of a genuinely free society. The people that received freedom from the hands of others would not appreciate and keep it properly. And a new state created with the participation of external forces would become a colony of its liberators or a scene of constant uprisings of people who disagree with the established political regime. The intervention into a civil war is possible only if it will not prevent the process of self-determination.

In fact this notion is usually ignored nowadays. Intervention to a civil war proclaimed to be morally permissible since it is directed against the tyrant who “has no moral reason to exist”³⁸. As we have already noted, Orend claims support in a struggle against the government that has lost the possibility to protect life and well-being of its citizens would be justified. Intervention in such a war on the side of the insurgents would be, according to Canadian philosopher, reasonable and even necessary if it is incontrovertibly evident that the uprising is morally justified. Walzer, focusing on the experience of the Vietnam War, suggests external forces should take a sufficient measure of participation in order to balance forces or neutralize an unfair player, but they should not engage into the conflict in full scale. This approach seems to be inconsistent to Orend. He supposes that “minimally just” states or coalitions created by these states should challenge unjust regimes and support struggle against them. And since the goal of every war is achievement of victory Orend rejects Walzer’s approach. Temporary balancing of forces cannot guarantee that just side would gain a victory. Thus, from his point of view, we should approve full-scale interference into a civil war on the side of just insurgents. In case participants of a civil war are unable to confirm justification of their motives to use armed forces, the best solution would be to abstain from intervening.

Further, terrorism has become a generally recognized global threat. World powers carry the most notable losses in collisions with terrorist or rebel groups³⁹. Terrorism is regarded as a just cause for resorting to arms as far as it is “always an impermissible tactic, since it involves the deliberate killing of innocent civilians”⁴⁰. Orend justifies war on terror by already familiar argument. Human rights are understood as core value in “minimally just” communities, and a state should insure security of its citizens and prevent them from terrorist threat by all possible means.

³⁶ See Walzer M. *Arguing about war*, New Haven: Yale University Press. 2006; Walzer M. *The Argument about Humanitarian Intervention // Dissent*. Winter 2002. pp. 29–37. Available at: <http://them.polylog.org/5/awm-en.htm> (24.01.2016); Fotion N. *War and Ethics: a New Just War Theory*, New York: Continuum. 2007.

³⁷ Mill J.S. *A Few Words on Non-Intervention*. p. 6.

³⁸ Orend B. *The Morality of War*. p. 84.

³⁹ See The Uppsala Conflict Data Program datasets <http://www.pcr.uu.se/research/ucdp/datasets/>

⁴⁰ Orend B. *The Morality of War*. p. 70.

The primary target of a terrorist act is not killing of people – although this component is also important for the terrorists – but spreading panic and fear. An important and necessary condition for the success of a terrorist act is highlighting the attack in the media. The news about committed attack should be wide spread and discussed. According Orend, it is impossible to talk about the justification of terrorism because the vast majority of terrorist strikes directed against the civilian population and not against members of the army or other security structures of the state. That means terrorists are always aggressors and counter-terrorism is always justified. Moreover, terrorist attack or threat of it seems to be obvious cases when a state has the right to retaliate or even launch a pre-emptive strike. Government should not wait for the attack to start struggle against the terrorists. Any terrorist group may and should be destroyed on the basis of only one fact that it is engaged or has been engaged in terrorist activities. That is an important task of all “minimally just” political communities which care about their own citizens and the world appeasement.

Walzer has a similar point of view on this problem. He says a commonplace of terrorist activities is targeted violence against the civilian population⁴¹. Thus terrorists violate the principle of discrimination (key *jus in bello* principle), assuming non-combatants gain immunity from attacks on them. Terrorist activity is always unacceptable, that is another point of Orend’s justification of counter-terrorism fighting. In addition, Orend notes “minimally just” governments should limit themselves by dealing only with the executors of terrorist acts. They should pay attention to those organizations and countries that sponsor terroristic groups or may be interested in such activity⁴². In Orend’s eyes, terrorism is a socio-economic phenomenon, so a victory in the struggle against it cannot be achieved until its material and economic base would be destroyed.

Lastly, the fourth non-classical just cause is humanitarian intervention that is probably the most important and contradictory argument pro war. Humanitarian intervention has become one of crucial points of political philosophy and war ethics over the last twenty-thirty years after Rwanda and Yugoslavia incidents⁴³. In contrast to war of self-defense or allied war or war with terrorism humanitarian intervention gains not only political but also a sacral meaning because it appeals directly to universality of human values. A state may be attacked even if it does not attack the neighbors when its government is accused of massive and systematic human rights violations, such as ethnic cleansing and mass murder. There is no doubt it is politically grounded, but after all it presupposes that human rights vindicator obtains a specific *auctoritas spiritualis* that allows him to use arms.

Humanitarian intervention can be considered as pre-emptive strike that is treated now as a just cause of war, as we noted above. Usually it is launched in response to actual violence, but it aimed at pre-emption of more severe consequences. This type of war rests on the idea that human rights violation is a terrible international crime and should be punished inevitably. If there is desperate trouble – government releases massacres and ethnic cleansings or criminal groups oppress innocent people – foreign army should intervene in order to save the victim. People could not always resist to mass slaughters that is why neighboring country could not wait till the situation would be solved of its own accord. As Walzer wrote “we don’t require that they [civilians] pass the test of self-help before coming to their aid. It is their very incapacity that brings us in”⁴⁴. Human dignity should be protected even by an armed force.

Traditional understanding of sovereignty as possible to determine domestic policy may cause some difficulties in the debate on military intervention into a country, where the government annihilate its own population. In this regard, Paul Christopher, the former head of

⁴¹ Walzer M. *Just and Unjust Wars*. p. 203.

⁴² Orend B. *The Morality of War*. pp. 73-74.

⁴³ Though, something similar to the language of humanitarian intervention may be found in Thomas More’s “Utopia”. More wrote there: “they [utopians] do not rashly engage in war, unless it be either to defend themselves or their friends from any unjust aggressors, or, out of good nature or in compassion, assist an oppressed nation in shaking off the yoke of tyranny”. More T. *Utopia*. NY, Dover Publication. 1997. p. 64.

⁴⁴ Walzer M. *Arguing about war*. p. 106.

the department of philosophy of the US Military Academy at West Point, said that “humanitarian intervention is *always legally prohibited* but *sometimes morally permissible*”⁴⁵. Orend referring to the International Commission on Intervention and State Sovereignty (ICISS) suggests we should interpret sovereignty primarily as a duty of the government to ensure the safety of its citizens. If a state cannot cope with this duty, and the population is unable to resist the violence of the government, we must find the strength, ready to help the citizens of this state.

Intuitively we could agree with this Orend’s presumption. But in fact the question of responsibility to engage into a humanitarian intervention remains unsolved. Most theorists, in particular Walzer and Orend, believe that the intervention should be the responsibility of individual states or regional associations that do not require the sanction of the UN. This judgment leads to new questions. What exactly states or associations should fulfill the obligation to prevent humanitarian catastrophes? What should the international community do in a situation when no state wants to intervene? How international community should act in case a state participating in the intervention is trying to solve its own political or economical problems by warring in another state?

Trying to find an answer to the first question, a British expert on international relations, James Pattison concludes that humanitarian intervention should be conducted by a subject, which would make it the most efficient way⁴⁶. However, Pattison acknowledges this decision is “temporary” because not always the most effective intervener would be willing to bear the responsibility to protect human rights worldwide. This problem touches the second question. Walzer tried to find a solution for this question in a number of articles, but we cannot say that he came to any satisfactory solution. Usually he says very vaguely that there must be found someone who would take the responsibility to solve the problem in a particular region of the globe. And it is better if this initiative would come from a local force⁴⁷.

Multilateralism is rejected as it is ‘no guarantee of anything’⁴⁸. The status of the ‘supposedly decent people of this world’⁴⁹ requires doing dirty work and sometimes abandons the principle of nonintervention. Procrastination in the time when human rights are violated would cause major increase of victims; and such procrastination is inevitable in case of collegial decision making. It is necessary therefore to make a quick decision and determine who are ‘bad guys’ in this conflict and who must be saved.

We see here reiteration of the problem of dichotomy of the political actors on just and unjust. Essential moment in contemporary theory of humanitarian intervention consists in implicit assumption that the world is separated on two divisions – on states that are subjected to universal political, social and moral laws and values and states having nothing to do with these issues. The former part makes itself responsible for the use of force. “Minimally just” part of the world is ready to intervene for the benefit of all mankind and specifically for the benefit of the people whose state finds itself under humanitarian attack. We may recall again Mill’s essay on intervention that starts with famous and epic narrative glorifying Great Britain as “equal to the greatest in extent of dominion, far exceeding any other in wealth, and in the power that wealth bestows” and further Mill adds “the whole turn of European events, and the course of European history for a long time to come, may depend on the conduct and on the estimation of England”⁵⁰. That was quite typical thinking in the moment of true greatness of Britain, but this way of reasoning seems to be enduring indeed. Not only United Kingdom in the 19th century but also Rome thousands of years ago and some western states now applied to this rhetoric. In order not to be unfounded we may appeal to Barack Obama’s Nobel Lecture “A Just and Lasting Peace” where the President of the United States stated:

⁴⁵ Christopher P. The Ethics of War and Peace: An Introduction to Legal and Moral Issues. – Prentice Hall. 1999. p. 195.

⁴⁶ Pattison J. Whose Responsibility to Protect? The Duties of Humanitarian Intervention // Journal of Military Ethics vol 7 (2008) No 4. – pp. 262-283.

⁴⁷ Walzer M. Arguing about war; Walzer M. The Argument about Humanitarian Intervention.

⁴⁸ Walzer M. Arguing about War. p. 78.

⁴⁹ Ibid. p. 81.

⁵⁰ Mill J.S. A Few Words on Non-Intervention. p.1.

The plain fact is this: The United States of America has helped underwrite global security for more than six decades with the blood of our citizens and the strength of our arms. The service and sacrifice of our men and women in uniform has promoted peace and prosperity from Germany to Korea⁵¹.

The third question – opportunity to launch a humanitarian intervention from a selfish motive – also causes problems and doubts. Walzer believes that a state starting a humanitarian intervention will undoubtedly try to make the operation profitable for itself. But in any case activity of this state will allow stopping violence against the civilian population. A state engaged into intervention gains a kind of moral sanction to protect human rights with the help of the armed forces. And also, it gains opportunity to solve its own problems in the region. However, this method of moral justification of war is highly controversial. After all, humanitarian intervention does not always help to end the conflict effectively. Often, it only causes social crisis and political collapses.

We should add that interventions as a measure of defending humanity or whole mankind would be unimaginable without this symbolic act of self-identification as the power of good or, using Orend's language, "minimally just" political community. What is for theoretical sphere, it is evident for Walzer and Orend that international society should intensify usage of military forces for the sake of universal moral values, and right to life is one of them as well as multiculturalism, fertility or tolerance. But it is not evident if such values as democracy or freedom may be named universal, that they could be accepted and understood equally and shared in every region of the world. However the question if there is any universal value equally significant for everyone is a subject of separate research.

After all, Orend bases on liberalism; he produces John Mill's line and upholds freedom and equality as basic values. So it is not merely just to send troops to the country where atrocities, massacres or ethnical cleansing happen. This activity gains status of moral duty of political leader and all nation and therefore interference for the sake of humanism may be treated as true virtue for political and military leader. Morality prevails over law in this case.

Just war theory legitimates use of force as a response to humanitarian disasters and postulates that moral principles properly ground international law. But intervention causes many unresolved problems. Among them are sovereignty offences, moral dualism and selective involvement in operations of restoring of justice. Notion of humanitarian intervention could be used by superpowers as a loophole for aggressive politics that compromises the very idea of humanitarian concerns as a just cause of war. As a result of this unfair use of moral reasoning we again could face the expansion of wars not for humanitarian motives but political wars waging for political reasons and targets where altruism serves only as a screen.

Humanitarian intervention as *casus belli* when one country could cross border of another rouses doubts both in moral and legal spheres. It is useful to take into consideration Carl Schmitt's argumentation expressed in opposition to interventions started in the name of universal humanity or morality. Schmitt disapproves the very idea that law, war and morality could be compounded and argues that discrimination of war – and humanitarian war is one of the ways this discrimination goes by – brings the world into dangerous position when global civil war could be unleashed.

Schmitt is known for his dichotomy on friends and enemies understood as key feature of political sphere. It is important to notice that clear political implies equal and just enemy who is not economical competitor or private enemy (*inimicus*) but it is always public enemy and appeared in situation when "one fighting collectivity of people confronts a similar collectivity"⁵². Just enemy or *justus hostis* is therefore a state opposing another state. Encounter of the states according to Schmitt must be treated as a perfect case of military acting, at any rate it is much

⁵¹ Barack H. Obama 'Nobel Lecture: A Just and Lasting Peace' (Nobel Media AB 2014)
<http://www.nobelprize.org/nobel_prizes/peace/laureates/2009/obama-lecture_en.html>

⁵² Schmitt C. The Concept of the Political. Chicago, London: The University of Chicago press, 2007. p. 28.

more preferable than conflict between a state and irregular forces. Interstate war is marked out by Schmitt because it is eventual collision aimed at peace and restoration of prewar order. Operation against irregular enemy does not presuppose peace treaty – only tribunal or trial.

Just war theory and particularly idea of humanitarian intervention determined, according to Schmitt, recognition of non-state actors that would be impossible in other circumstances. Bracketed and restricted war of Westphalian system (or era of *jus publicum europaeum*) was replaced by just and humanitarian war, but armed conflicts have not become more humane or rational. On the contrary they became more cruel and intensified and in Schmitt's words "the most terrible war is pursued in the name of peace, the most terrible oppression only in the name of freedom, the most terrible inhumanity only in the name of humanity"⁵³. And unfortunately acts of war, repression and genocide of the last century demonstrated justice of this observation. Schmitt declares that in modern warfare "the concept of humanity excludes the concept of the enemy, because the enemy does not cease to be a human being"⁵⁴. Humanity should remain humanity and should not be used for justifying of killing. Ethics should not trespass field of the political as in situation when you pretend on being a defender of mankind you unintentionally or rather deliberately imply your opponent is suffering from the lack of humanism and could not be understood as equal. The enemy is aggressor, criminal or pest; and such war therefore does not aim at vanquishing the enemy but at exhaust him. Here finds itself "logic of a war of *justa causa* [just cause] in the absence of recognition of a *justus hostis* [just enemy]"⁵⁵.

Politics in Schmitt's opinion must be cleaned out of all mixtures such as economical, religious or ethical interests. Problems begin when one of these spheres meddle in politics. But can we accept frankly the idea that any field of social and political life should stay out of morality. It is not possible to agree completely with Schmitt, but his notion that a state going to war should try to keep treating its enemy as a human being seems to be very important as it may be that there are no universal values and virtues except the idea of humanity. So this Schmitt's notion could help to prevent war of being simply killing and add some order and limitation to it.

Schmitt's theory should be complemented by reasoning if is it legal in some cases for international society to interfere in other country's internal affairs in order to stop repressive politics of its government and if so on what conditions we may deliver such an attack legitimately. Schmitt also has to answer how we should act when real massacres and atrocities happen. Would it be acceptable and permissible for a state to stand aside recalling the inviolability of national sovereignty?

We suppose that now Kant's theory of perpetual peace becomes rather urgent. Kant stated that it is possible to achieve universal appeasement but "without a compact between the nations, however, this state of peace cannot be established or assured"⁵⁶. In other words, reason dictates us to cooperate if the peacekeeping is at stake. That will smooth things over and will not allow a single state to act for its own good. It may be objected that such appeal to reason in the public sphere suggests the dominance of state over person and diminish the rights and freedoms of the individual. But as Orend noted "the causal role that states play in the satisfaction of the human rights of their citizens imbues them with some moral worth"⁵⁷.

Collective decision-making process may appear to be insufficiently flexible. This will cause situations when verdict to send troops and prevent ruinous consequences of evil politics would be suspended. But if we consider interventions of the past decades when one nation or a small coalition was responsible for decision it would be evident that there were hitches too. There are still many regions on the earth where regimes and political systems are lenient to violence or use it openly. These unfortunate countries are well known but we do not see anyone

⁵³ Schmitt C. The age of Neutralization and Depoliticization // Schmitt C. The Concept of the Political. p. 95.

⁵⁴ Schmitt C. The Concept of the Political. p. 54.

⁵⁵ Schmitt C. The Theory of the Partisan. A Commentary/Remark on the Concept of the Political. Telos Press Publishing, 2007. p. 21.

⁵⁶ Kant I. Perpetual Peace. Unwin Brothers Ltd., 1917. p. 134.

⁵⁷ Orend B. War and International Justice. p.109.

attacking them with military force; at best they are under the sanctions. Unilateralism is selective in its actions. If multilateralism may impel international community to initiate humanitarian operation, a single state will not send troops if only there would be really significant reasons. Can we call this selective concern for the humanitarian values truly moral?

Humanitarian intervention will be perceived as doubtful *casus belli* till international law becomes law of all nations and international politics becomes common concern. In other conditions intervention would be a mean for some states to act in their own interests on behalf of all mankind that causes conflict between morality and legality. It is therefore the prerogative of international community and universally recognized institutions of international law to violate independent state borders and sovereignty for the sake of universal moral norms. And that seems to be the only way to make the intervention truly humanitarian.

Amendments of just war theory discussed above reveal typical logic not only of Orend's interpretation of just war theory but all other authors elaborating this doctrine. Justification of war implies rectification of an injustice and punishment of offenders. Thus, tyrant loses moral right on existence, terrorism is always implicitly impermissible, political community accused of human rights violating is deprived of protection granted by international law prohibiting war.

Regime change – a just cause or a just consequence of war?

Orend's concept of "minimally just" political community has another one important consequence. When Orend applies this principle to the theory of war and political theory, it appears that he expands the list of just causes of war. Orend introduces (may be unexpectedly for himself) into the list of just cause principle willingness to change aggressive or unjust government and establishment of "minimally just" regime. On the one hand, Orend claims that regime change should not be seen as a cause of war, that it can only be the result or consequence of war. He proceeds with Walzer's criticism of regime change as a just cause of war⁵⁸. On the other hand, the logic of Orend's argumentation on "minimally just" political community and the ethics of war allow us to conclude that the lack of justice may be perceived in certain circumstances as a threat to the security of neighboring states. As a consequence, if a state is not sufficiently just member of international community gets an opportunity to fight against this state in order to change its regime. In this case, the main purpose of war is not a military victory but namely political transformation. War should help to overthrow dangerous government and create artificial power structure guiding in its domestic and foreign policy by the concerns for basic human rights and relevant to requirements of "minimal justice".

Orend treats Kant as a classical supporter of the idea of regime change in order to maintain global security and reinforcement of peaceful state. Government that cannot be named "minimally just" loses its right to exist, because it would threaten peace and bring the world into a dangerous position. The most weighted strategy in relations with such aggressive state would be to preserve its integrity and change the system of government. And the people of this state would have to accept less militant constitution and it is possible they would have to learn how to live with this constitution if they are not accustomed to democratic practices. In this case, "forcible regime change is actually a sound compromise between the two extremes of conquest, on the one hand, and, on the other, letting terrible regimes exist and thrive"⁵⁹. Containment – a tool, which was actively encouraged by Walzer – is no longer perceived as an alternative to forcible regime change. It is aggressive nature of the state that makes, according to the proposed logic, war to be inevitable and necessary. It turns out that just states possess *carte blanche* to change the world in accordance with their own ideas about how this world should be arranged. Thus, moral legitimization of the use of force was added to the legal forms. Instead of ideas of exporting "democracy" or "freedom" Orend suggests the idea of exporting "minimal justice".

Conclusion

⁵⁸ The problem of the regime change and the usage of means-short-of war is thoroughly discussed in Walzer M. *Regime Change and Just War // Dissent*. Volume 53. Number 3 (whole No. 224). 2006.

⁵⁹ Orend B. *The Morality of War*. p. 203.

We have considered the most curious and original Orend's ideas on the concept of "minimally just" political community and the impact of this political metaphor on the philosophy of war proposed by Canadian author. In other questions on the problems of *jus ad bellum* and *jus in bello* Orend tends to follow the teaching of Michael Walzer, except the slight clarifications and own interpretations of just war principle.

In general, the project of Orend is stipulated by the necessity to give new metatheoretical foundations to the just war theory. Orend finds this foundation in Kantian political and moral philosophy. Using Kantian (at least in their spirit) ideas of responsibility that has a state to protect the rights of its citizens and abstinence from violating the borders of other states, Orend formulated the theory of "minimally just" political community. It may seem to be a movement toward a constraint of war – only "minimally just" states have rights, among them the right to wage war.

However, application to the concept of "minimally just" political community makes Orend's just war theory less strict. The main objective of this ethical doctrine of war finds itself in the attempt to limit the number of wars, to restrain them. But Orend actually formulates maximalist concept of just war theory, considering regime change to be a just cause of war. If a state is unable to confirm its minimal justice other state may invade it. In other words, Orend's "minimally just" community theory applied to the ethics of war means expansion of the list of just causes for war by introducing regime change in order to create minimally just society as a just reason of war. Within this framework the key point of war is not political or military victory but construction of artificial power institution that would tolerate basic human rights. Orend believes therefore any state or community could be transformed to minimally just without regard to national, cultural, religious or any other differences.

The meaning of war is determined not only by the need to solve a political problem (to defend its own territory or avert the threat), but also to express an ethical action. Protection of universal human rights becomes an important issue as well as related problem of the exporting of "minimally just" regimes. But on the other hand, it means that the list of appropriate causes of war is enlarged. And unjust but non-aggressive state can be attacked simply because it is insufficiently just. For example, if we formally use the theory suggested by Orend we will justify an attack on the state, where the government is not able to solve economical problems and this cause falling of the living standards, which in turn endangers human rights. Even if this state does not act aggressively, it may be attacked on legal grounds.

In turn, the idea that human rights have universal status and that forcible distribution of "minimally just" regimes is ethically unquestionable lead us to the discussion on the moral unambiguity of just war theory. It appears that trying to solve one problem Orend creates another one, may be more complex. We see quite primitive picture of international relations: all nations are divided into aggressors and victims or defenders of justice. Orend rejects dividing the world on the principle of "democratic / not democratic" or "liberal / non-liberal", but as a substitute he introduces a pair of concepts "just / unjust".

Nevertheless, the concept of "minimally just" political community and built on the basis of this concept Orend's version of just war theory remains to be a significant milestone in the development of the whole tradition of *bellum justum*. That is truth despite a number of inherent contradictions and difficulties highlighted in this article. Orend is trying to find the conceptual basis for the principles of just war, offering as a basis ethics and political philosophy of Kant, concentrated on the teaching of human rights value. This change can be considered as success, and this set the difference between Orend and other contemporary authors, including the just war theory in the interpretation of Walzer.

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