

# Symposium: War and Liberty

## War and Liberty

Aeon J. Skoble  
Bridgewater State College

It's a cliché of the left that "business ethics" is an oxymoron. That is a tired cliché not only because it is so old as to be entirely devoid of humor, but also because it actually is not true. On reflection, it's perfectly obvious that commerce may be practiced ethically or unethically, that people engaged in business make decisions with moral content as often as many others. To the extent that it was ever funny, the cliché would have depended for its humor on the presupposition that there is something *prima facie* wrong with business, a Marxian suspicion that all businessmen are corrupt profit-maximizers. More reasonable analysis reveals that ethical people may engage in commerce, and so business ethics is a legitimate concept after all. Analogously, some, not all on the left, scoff at the allegedly oxymoronic notion of "just war theory," and I'll be arguing that here too there is some legitimacy to the concept, although it may not correspond to the traditional model of just war theory.

Actually, the similarities to business ethics continue, and are illustrative. In addition to the critique of business ethics that stems from an opposition to capitalism, one might also criticize the idea of business ethics on the grounds that in a dog-eat-dog, competitive world, one has to be realistic and do what is necessary to get ahead, that there is no room for high-minded moralism in the cost-benefit analysis. Cynics might think in terms of the explanation from *Fight Club* (1999): "A new car built by my company leaves somewhere traveling at 60 mph. The rear differential locks up. The car crashes and burns with everyone trapped inside. Now, should we initiate a recall? Take the number of vehicles in the field, A, multiply by the probable rate of failure, B, multiply by the average out-of-court settlement, C. A times B times C equals X. If X is less than the cost of a recall, we don't do one." Similarly, proponents of a just war theory will face skepticism from two points of view. One is the position generally known as "military realism"—"*inter arma silent leges*" (in times of war the laws are silent)—which is the

view that there are no rules (and, hence, no standards of justice) in war, and that there shouldn't be, on the grounds that the only important thing is to win by any means necessary. The other point of view is pacifism, which is the position that war is inherently unjust, so just war theory really *is* an oxymoron. It is this latter position to which I'll be primarily speaking today.

Pacifism may take on different shades. Some oppose war on the grounds that war entails violence, and since violence is bad, war must be bad also. This argument fails because of the falsehood of the second premise: violence is not always bad—in self-defense or defense of a helpless third party, violence may be justified. As Dirty Harry (*Magnum Force*, 1973) put it, “there's nothing wrong with shooting as long as the right people get shot.”

A more sophisticated argument for pacifism might be that wars are fought between states, and states use war to enhance their power, or, as Robert Higgs has demonstrated,<sup>1</sup> ratchet up the scope of their power. So wars tend to serve state purposes and violate human rights. Hence, they must be unjust. One variation on that argument that we might hear from anarcho-libertarians is that wars are fought between states, and since states are illegitimate, *ergo* wars are illegitimate. While I have some sympathy for these last two arguments, I think they are defeasible. I will sketch a theory on which, even from a libertarian framework, wars may be defensible under certain circumstances, but that some of the traditional components of just war theory need to be revised to accommodate the priority of individual liberty and autonomy.

Just war theory refers to a set of proposed moral constraints on warfare. Traditionally,<sup>2</sup> there are two parts to just war theory: *jus ad bellum* and *jus in bello*. *Jus ad bellum*, “justice of war,” assesses the reasons given for the choice to go to war in a particular context, while *jus in bello*, “justice in war,” assesses the means a nation or individuals employ when fighting. The *jus ad bellum* criteria have generally been taken to be: just cause, just intentions, legitimate authority, reasonable costs, and last resort. But these have traditionally been interpreted in terms of states as sovereign actors, with an inviolate realm of autonomy. I want to argue, on the one hand, that the conception of political legitimacy thus invoked fails to take into account liberal conceptions of human rights, and that therefore the theory cannot reliably provide justice. But, on the other hand, the anarcho-libertarian pacifist argument also fails to produce justice. So I'm going to argue that just war theory can be defended against anarcho-libertarian pacifism, but that only with the modifications I suggest will this work.

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<sup>1</sup> Robert Higgs, *Crisis and Leviathan* (Oxford University Press, 1987).

<sup>2</sup> I would say “canonically,” but the puns would be too easy.

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What follows is a discussion of a major problem with just war theory as traditionally conceived, and how I suggest it be remedied. Traditional just war theory views states as actors. Historically, this is based on the monarchist idea that the monarch is rightly in complete control. But then we see the root of some of the tenets of just war theory—for example, the idea that there has to be some reasonable chance of success is meant to prohibit kings from treating soldiers as cannon-fodder just to keep up appearances. The idea of just cause means that a king can't start a war, for instance, to avenge a personal slight. Seen from this historical perspective, these principles are quite helpful in terms of protecting individuals from being abused by rulers. Just war theory is, in that sense, historically a limitation on state power. But, of course, in the context of democratic republics, it makes less sense to think of states as actors, and this way of categorizing can lead people to reify the state, as exemplified by Mussolini's claim that the state is a "living, ethical entity" which expresses "the real essence of the individual."

Part of the historical context that underlies this is the idea that all kings are moral equals. This is essential for the notion of sovereignty which informs just war theory. Since kings (and, hence, states) are moral equals, it would be wrong for one to violate the sovereignty of the other. So France cannot simply invade Holland because it would like to have canals. In its historical context, this is a plus: it emphasizes peace and discourages aggression.

The problem is that the notion of state sovereignty in the modern era leads to a view of the moral equivalence of all states—Communist China is then no different from Republican Switzerland—and this is detrimental to human rights, because it means that a tyrannical state is immune from outside pressures to liberalize. Michael Walzer<sup>3</sup> goes some of the way in this direction, but not to the ultimate conclusion. The argument is that sovereignty needs to be based in service to people, that is, protecting their rights, so illegitimate regimes don't have sovereignty at all. There's a Lockean component here also: If rights are conceptually prior to the state, then state sovereignty must derive from a theory of legitimacy which is based on protection of rights rather than from a theory of moral equality of all states. The rights component gets lost when we adopt a "realist" model of legitimacy, such as actually holding power or being "recognized" by the UN.

Now, what are the causes which might count as "just cause"? Least controversial is defense against aggression. The right to respond to force with force seems fairly straightforward, although in a moment I will indicate why it might not be for some. A bit less obvious is defense of another. If B is invaded by A, B might have the right to repel the invasion, but utterly lack the

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<sup>3</sup> Michael Walzer, *Just and Unjust Wars* (Basic Books, 1977).

power to do so. C's assistance would be justified on the grounds that B was unjustified in aggressing against A in the first place. C's right to use force against A follows from B's right.<sup>4</sup> More controversial still are interventions; for example, taking sides in a civil war or preventing a genocide or removing a tyrant. It might seem as though only in this last case does it even matter what model of legitimacy we adopt. If A is attacked, isn't A's right of self-defense absolute regardless of whether it is attacked by a republic or a tyranny? Traditional just war theory would answer yes, but I think it actually does matter. Since tyrannical states have no legitimacy, if they are attacked by free states,<sup>5</sup> they cannot claim that their sovereignty is being violated. In other words, intervening to protect rights against a tyrant is *not* a violation of sovereignty—at least not any kind of sovereignty worth defending. (Nevertheless, the attack would have to satisfy other justice conditions, e.g., it would have to be intended to liberate oppressed people or prevent a genocide rather than to seize raw materials or to acquire territory.)

Some will argue that a free society has no business interfering in other societies' internal politics. But this is, ironically, or paradoxically, a holdover from the old monarchist mindset. The old order on which traditional just war theory is based, and on which sovereignty is the paramount value in international relations, depends on a moral equivalence between states which is derived from a statist view, not an individualist view. On a non-statist, individualist view, *individuals*, not states, have rights. States may have powers, but the just powers derive from the consent of the governed. The putative right of any state to sovereignty thus is a function of its protection of the rights of the people in its domain. So a free society may very well have some business "interfering" in tyrannical or genocidal states—namely, the business of protecting life and liberty. The very language—that this is "interference" in a state's own affairs—implies that the state has some right of action which is presumptively respected, and again, this can only be justified by old-order thinking, not by liberal thinking. (I am not here arguing that they are obliged to do so, only that they are permitted to do so, or that they do no wrong by doing so.)

Now, one anarcho-libertarian pacifist objection is that since there's really no such thing as a free state, no state may attack another under the rubric I've outlined. But some private group in an anarchist society could presumably seek to liberate oppressed people. And it's true that some states

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<sup>4</sup> I say "right," not duty, here. I am not committed to the claim that helping a defenseless third party is an obligation—it might be, but for now I'll settle for its being permissible.

<sup>5</sup> I realize the oxymoronic nature of this expression from a radical-libertarian perspective—substitute "mostly free" or "minarchist," if you prefer.

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are more free than others. So it's not clear why an imperfectly free state would be acting unjustly in similar circumstances. For example, the U.S. is not completely free, but I fail to see why that would make it unjust for the U.S. to have intervened to prevent the Rwandan genocide.

Note that judging an action to be permissible is not to judge it to be prudent, which is why I stop short of arguing that such interventions are obligatory. There may be some cases in which it would be permissible, but imprudent, to send in the troops. Recall the standard principle of traditional just war theory about when there is relatively little or no chance of success. So, for example, the Chinese government is tyrannical, and their unjust occupation of Tibet is *ceteris paribus* cause for intervention, but they're also a nuclear power with inter-continental missiles. That's a good reason *not* to intervene in Tibet, even though the Chinese would have no right to complain if they were dislodged. Clearly, too much military adventurism will hamper the primarily self-defensive role of the military, as well as being prohibitively expensive, but to say that is not to say anything about the propriety of any particular action. Also, neither of these objections would apply if armed conflict were not solely the province of the state.

A different sort of objection is that the military uses coercion in order to operate. This argument had a great deal more merit in the case of conscript armies. I think it is clear enough that conscription is tantamount to slavery. But in the context of an all-volunteer army, this is not a factor. However, the military is nevertheless an example of the state using coercion, namely, coercively obtained funding, so while it may not violate the rights of foreign tyrants or its own soldiers, it violates the rights of people in the society who are obliged to pay for it. It thus enhances government power in objectionable ways. The government steals money from us, and then uses it however it wants to, including the funding of activities to which we might not consent, including some military operations. But, of course, *everything* the state does it does with confiscated funds. The fire department is operated with confiscated tax dollars, but that doesn't mean putting out fires is immoral in and of itself. To argue that the state ought not to provide a particular good or service is not to argue that the provision of that good or service is intrinsically evil. The state ought not to operate fire departments, but fire departments are themselves good things. The state ought not to operate schools, but schools are themselves good things. If a state-run fire department were doing something immoral, such as failing to respond to alarms in minority neighborhoods, we might argue that this is an unethical way of operating a fire department, and we might be led by that discussion into a discussion of why it would be preferable to privatize that service. But it would be a mistake to argue on the basis of a particular unethical use of a service to the idea that the service itself is unethical. In the case of the military, I would expect the radical-libertarian view to be that this too ought to be privatized, not that it

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shouldn't exist. When my house catches fire, I will call the state-run fire department, even though I think the state ought not to be in that business. Why? Because they *are* in that business. So the relevant practical question becomes, what moral guidelines ought to govern that profession and its administration? Some uses of it might be ethical, others unethical. Some military operations are ethical, others unethical. It would be a mistake to argue from the immorality of some to the immorality of all.

What's evil is the state's using coercion to accomplish certain ends, but not all of those ends are themselves evil. Between a coercively funded state-run military force averting a genocide and a privately funded and operated military force averting a genocide, the latter is preferable. What is wrong with the former is not what it is trying to do. Let us go back to the fire department example: It is wrong for the state to grant itself a monopoly on the provision of this service, and to steal to fund it, but there is nothing intrinsically wrong with the mission or activity of the fire department inasmuch as they are performing their proper function of fighting (and to some extent preventing) fires. So, too, with the army: defending against a hostile invader is morally right, so even if the state should not use coercive practices to fund this activity, the activity itself is not wrong. Surely libertarian theory provides for engaging agents in one's defense. So the more tricky question is, is it morally appropriate to use force to help another defend against aggression from a third party? It may depend on the circumstances, but surely it is right at least some of the time. Would it have been morally right to have helped the Poles defend against German aggression in the 1930s? To put the point more abstractly: If it's right for me to do X, then it is permissible for me to appeal for help doing X. If it's right for you to do X, then it is permissible for me to help you do X. Oppressed populations have a right to overthrow tyrannical regimes, but may lack the power to do so. Coming to their assistance is at least permissible (and again, I am not here arguing that it is obligatory). What makes it seem objectionable is the fact that coercively obtained funds are being used to do it. But that is an argument against the state's involvement in such activities as a whole, not an argument against the propriety of doing that particular thing. A privatized, Lincoln-Brigade-style operation to liberate the Kuwaitis would have been preferable to the first Gulf War, but that would have been illegal. Given that the state does run the military, the relevant practical question is when is it using the military justly and when is it not. If it would have been permissible for a private force to liberate Kuwait, then it was permissible for the U.S. military to do so, even though we may also think that this (like everything else) ought to be privatized. Even though the state should not coercively monopolize the fire department, when they put out a fire, they are acting rightly. When I teach my classes, I am acting rightly. When a U.S. soldier liberates an oppressed person from a tyrant, he is acting rightly. The military is not intrinsically

immoral. It is a useful service which need not and ought not be a state enterprise, but is.

We agree that it's bad that the state runs fire departments, but as long as they do, I'd argue that it's right for them to come and put out a fire. I see this as analogous to saying that it's bad that the state runs a large military force, but as long as they do, it's right for them to engage in justified fighting. Of course, it's more problematic in the latter case what counts as justified fighting, but *that's my point*: Traditional just war theory can go some of the way toward illuminating that, but it requires modification to allow for greater consideration of individual rights against the putative sovereignty of tyrannical regimes.

This brings me to the most troublesome objection, famously identified by Higgs,<sup>6</sup> that states tend to exploit crisis situations, especially military ones, so as to expand the scope of their own power and then, ratchet-like, rarely relinquish the new powers once the crisis has been averted. It doesn't require too much imagination to see ways that the state might even manufacture a crisis, *1984*-style, in order to keep hold on its power. But, first of all, this can't be helped in one sense: If we're going to have states at all, and I'm not saying we should, then this is likely an inescapable fact of life given the nature of the state, and we see it in areas other than military actions. We see it in domestic social issues, from drug policy to wealth redistribution to pornography. As long as we have a state, we will see the Higgs effect. Second of all, our best hope for mitigating this in the context of military affairs is to elevate individual liberty to paramount status in just war theory, as I have suggested. This would have the effect of keeping liberty in the forefront of popular thinking, reducing the appeal of other, less savory rationales for war-fighting. Also, elevating protection of individual liberty to the forefront of just war theory would help reinforce it as the paramount value in politics generally. If we could regulate military affairs so as to prioritize individual liberty over the rights of states, then this would go a long way in the domestic sphere.

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<sup>6</sup> In Higgs, *Crisis and Leviathan*.

