

AMERICAN HEGEMONY AND ETHICS OF WAR AFTER 9/11: A Critical Approach to Revisionist Views

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Abstract: The “just war” doctrine posits that wars must be morally justified. It provides conditions that must be satisfied for a war to be justly waged and justly conducted. The doctrine’s core principles are embodied in modern international law, which has imposed a legal restraint on the use of force by even the most powerful. However, since the September 11th attacks, there has been a concerted effort among some American policymakers to reinterpret the doctrine to justify the War on Terror. Their revisions to the classic doctrine alter the nature and the scope of rules on self-defence, humanitarian interventions as well as war crimes. The paper exposes and critically analyses the revisionist arguments to show the underlying US-centred unilateralism and exceptionalism. The success of such arguments reveals how the US hegemony has extended to the global ethics on war and how it may effectively obliterate the rights-based moral constraint that the just war theory intended to provide.

Keywords: 9/11, Anticipatory Self-defence, Counterterrorism, Global Ethics of War, Just War doctrine Revisionist View, Humanitarian Intervention, War on Terror.

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"A good man must try his best enhancing human interest and eliminating the harm." Mozi

1. Introduction

Does might make right? This recurring yet fundamental question in history became once again relevant with the American airstrike against Iranians in Iraq on January 3, 2020. During this raid, the US Air Force drone killed Major General Qasem Soleimani, the head of the Quds force of the Islamic Revolutionary Guards Corps (IRGC) and his colleague, Abu Mahdi al-Muhandis, the deputy head of the Iran-backed Iraqi Popular Mobilization Forces (PMF) (Cohen et al). The US Department of Defense suspected Soleimani as the architect behind the December 27 rocket attack leading to the death of a civilian American contractor as well as the December 31 US Embassy attack in Baghdad (Mclaughlin). President Trump confirmed that he ordered a precision strike to 'terminate' Soleimani who was plotting "imminent and sinister attacks" on Americans and further added that this air strike is one of "deterrence rather than aggression" (Cohen et al).

Every human activity is subject to ethical evaluation. Use of force is not an exception. The morality of war has traditionally been evaluated under the 'just war' doctrine. It prescribes certain conditions that must be satisfied for use of force to be 'just.' Yet, the series of US military interventions that have continued in the post-9/11 era under the name of "War on Terror"¹ have presented significant ethical challenges: they failed to meet the necessary principles to be 'just.' The traditional criteria were thus revised to justify multiple US interventions in the post-9/11 era including the recent raid.² Amidst the heightened controversy surrounding

¹Some, however, argue that "war on terror" is over. Shulman, "The 'War on Terror' is Over - Now What," 263-300.

²President Trump sometimes appears to treat military interventions as an opportunity to showcase new weapons while skirting the need for a normative justification. For example, on the recent raid, Donald Trump tweeted: "The United States just spent Two Trillion Dollars on Military Equipment. We are the biggest and by far the BEST in the World! If Iran attacks an American Base, or any American, we will be

the continuing US military interventions, the primary purpose of this research is to critically examine the core revisionist views of the traditional 'just war' doctrine (or 'cosmopolitan perspectives') concerning, *inter alia*, anticipatory self-defence, preemptive strike, humanitarian intervention and war crimes to expose the underlying American unilateralism and exceptionalism. While it is beyond the scope of this paper to recount all the permutations of the just war theory during its centuries-old history, this paper focuses on the fundamental principles of the contemporary just war tradition and the recent revisionist accounts defending the War on Terror so as to illustrate how the US hegemony has extended to the global ethics of war.

2. From Just War Doctrine to Revisionism

The traditional "just war" doctrine is composed of two main categories: *jus ad bellum* (justice of the resort to war) and *jus in bello* (justice of the combat during the war). *Jus ad bellum* prescribes just cause when waging a war – a moral determination often made by leaders of a state – while *jus in bello* prescribes rules to follow in the execution of a war by the soldiers. (Walzer, *Just and Unjust Wars*, 21).

A central feature of the just war doctrine is that it is premised on the political sovereignty and territorial integrity of a state – the so-called 'Westphalian' or 'legalist' paradigm. As such, the doctrine posits that wars of aggression must be constrained. Under the prevailing reiteration of the doctrine today – as advanced, resort to war is justified only in self-defence against an armed attack (Walzer, *Just and Unjust Wars*, 58-63). Any other instances of aggression – whether for religious cause or national aggrandization – are considered illegitimate. Rules of modern international law have developed to reflect this moral understanding (UN Charter Preamble and Article 1). Contemporary international law prohibits the use of force to settle

sending some of that brand new beautiful equipment their way ... and without hesitation!" @realDonaldTrump, 5 January 2020, <twitter.com/realdonaldtrump/status/1213689342272659456?lang=en> (2 February 2020).

the disputes between nations. The UN Charter requires all member states to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence” (Article 2.4). Under the UN Charter, armed measure can be legitimately used only in two instances: one is when the Security Council authorizes such use in order to address threat to international peace and security (Article 42), and the other is when it is a measure of self-defence. Self-defence may be individual or collective. Individual self-defence is attributed to an inherent and natural right of state to defend itself (Simma et al., *The Charter of the United Nations*, 1420-21, 1427-28). Any state has the right to defend itself from an actual or imminent armed attack regardless of an authorization from the UN Security Council (Ashburton). Collective self-defence allows other UN members to aid another state under attack. In short, as stated by Hugo Grotius in his masterpiece, the *Rights of War and Peace*, defence to 'injury' is the only justifiable cause of just war (397).

Another central premise of the 'just war' doctrine is that wars should be limited and waged only when strictly necessary (Walzer, *Just and Unjust Wars*, 62). War destroys and kills. A resort to war thus should be based not only on a just cause as discussed above, but must only be waged after a public declaration, only as a last resort and must be proportionate considering its purposes. The just war principles that permit to use force should be thus read very narrowly. Unjustified, unnecessary or disproportionate aggression constitutes a serious moral wrong. It also violates rules of customary international law, which has evolved to reflect such attitudes (U.N. Charter art. 2.4).

Under this traditional just war theory, however, many aspects of the US counterterrorist military actions including the War on Terror and other humanitarian interventions could not be justified or defended. Thus, some American scholars and practitioners began to advance the so-called revisionist views when analysing the US military interventions in the post-9/11 era. We critically examine each of their core principles below.

3. Anticipatory Self-Defence / Preemptive Strike

As discussed, the traditional just war theory interprets the right of self-defence as narrowly as possible and permits only necessary use of force. Reflecting such principles, the right to anticipatory self-defence has traditionally been severely restricted under international law (O'Connell). For anticipatory self-defence to be legitimate, the following conditions must be satisfied: first, the threat needs to be imminent, and second, there must be a threat of an 'armed attack' and not any lesser use of force (Shachter 1634). More specifically, under the *Caroline* case, the threat must be "instant, overwhelming, leaving no choice of means, and no moment for deliberation" for anticipatory self-defence to be justified (Ashburton). This strict requirement describes a situation where given the immediacy of attack, there is no other reasonable option than to use force. In the *Nicaragua* case, the International Court of Justice (ICJ) similarly provided a heightened standard concerning the meaning of an 'armed attack.' In particular, the ICJ decided that the provision of arms or other forms of aid by one government to a terrorist or guerrilla group does not necessarily constitute an 'armed attack' upon the other to justify defensive use of force (ICJ Reports (101-103). It is interpreted to mean that "a government could not launch counterattacks against terrorist bases in another state unless the terrorists were agents of the state or were controlled by its government" (Lietzau 541).

Since 9/11, however, American lawyers and foreign policymakers have attempted to expand the concept of anticipatory self-defence to justify the US military interventions (Lietzau 398). The US's Operation Enduring Freedom – American military strikes against Al Qaeda and Taliban terrorist groups in Afghanistan – was defended based on such expanded concept of anticipatory self-defence. Under the traditional standards, Operation Enduring Freedom would be more accurately characterized as 'peacetime reprisal' – attack in retaliation of a prior attack during peacetime. 9/11 had already occurred; and the US was not able to provide evidence that there was an imminent threat of an armed attack from Afghanistan. Reprisals had often been tolerated by the international community (Bowett 1), even if

it is generally considered to be inconsistent with the UN's basic position prohibiting the use of force (UN General Assembly Resolution 2625). Nonetheless, the US justified the Operation based on the need for anticipatory self-defence, arguing that Afghanistan was harbouring terrorists responsible for 9/11 and such action was necessary to deter further attacks from those terrorist groups (Quigley 562). The UN Security Council Resolution 1368, which arguably authorized Operation Enduring Freedom, however, does not explicitly state that the use of force is authorized on the grounds of self-defence in response to the 9/11 terrorist attacks. This suggests at least that not all of the then Security Council members were willing to fully accept the expanded scope for legitimate self-defence.

In Operation Iraqi Freedom, the US took it much further. President Bush identified Iraq as a primary threat to the US because Saddam Hussein had been allegedly developing nuclear weapons, stockpiled chemical and biological Weapons of Mass Destruction (WMD), and Iraq was a passive participant in the 9/11 attacks by allegedly aiding Al-Qaeda. Iraq was accused of providing aid and shelter to the terrorist group, and there were allegations of a meeting between one of the 9/11 hijackers and an Iraqi intelligence agent (Ratnesar). The US finally waged an armed attack against Iraq on March 20, 2003 on the basis of these allegations, arguing that the Operation was necessary to prevent future terrorist attacks against the US given the presumable link between Saddam's regime and Al-Qaeda. The 2002 US National Security Strategy provided:

The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.

John Yoo similarly argued that "the Operation was justified [...] because of the threat posed by an Iraq armed with weapons of

mass destruction and in potential cooperation with international terrorist organizations" (575).

Bush's Operation Iraqi Freedom, however, remains to be one of the most controversial uses of force in contemporary history because the US was not able to provide sufficient evidence to justify the need for such an 'anticipatory' use of force let alone the grounds for peacetime reprisal. Before the attacks in Iraq, the US could not show credible evidence of a threat; there was no evidence of conspiracy in connection with Al-Qaeda or an imminent use of WMD against the US. Unlike in the case with Afghanistan, there was also no evidence of direct connections between Saddam Hussein and the 9/11 attack to justify such action on the basis of either self-defence or reprisal. The UN inspectors had entered Iraq to inspect WMD just before the US military campaign; but, did not discover any decisive evidence except for empty chemical warheads and 150km range missiles (CNN, "Iraq Destroys More Missiles"). American forces began searching for evidence after the war but did not find any physical remains of WMD or any direct evidence of Saddam's link with Al-Qaeda (CNN, "Arms Inspectors Look to Return to Iraq"). After the war, US Congress also recognized that there was insufficient evidence to support the allegations that were used to justify the intervention (United States Senate, "Congressional Reports").

Operation Iraqi Freedom highlights the problems inherent in the revisionist view of anticipatory self-defence. The conditions for 'preemptive' strike was unilaterally determined by the Bush administration alone. No objective evidence was required or shown before or after the attack, nor was there an authorization from the UN Security Council. Such enlarged scope of anticipatory self-defence permits US's unilateral interpretation of vague legal principles. It is doubtful that the proponents of such views would welcome other states to invoke the principle of anticipatory self-defence in the same manner. Extending the logic to others may allow one of the so-called 'rogue states' to wage a preemptive military strike to the US on the same unilateral grounds and justify such attack based on such rationale. Their

views are inherently unilateral, assuming that the US is uniquely positioned to rely on the expanded scope while others shall not.

The traditional just war doctrine and international law have provided a framework aimed at preventing unjustified and unnecessary aggression by all states. The revisionist view – as reflected in the US’s 2002 National Security Strategy – effectively eliminates the restrictive conditions containing the use of anticipatory self-defence, such as the requirement for ‘imminent’ threat (15).³ Instead of providing a workable alternative, the revisionist view remains vague, arbitrary, and highly permissive of aggression in the name of anticipatory self-defence.

Perhaps because of these misgivings, some have advanced an alternative legal ground to justify US’s unilateral decision to invade Iraq, ironically, based on the UN Security Council resolutions. For instance, John Yoo argued that US’s invasion of Iraq is legally justified because (i) Security Council Resolution 678 “authorizes Member States co-operating with the Government of Kuwait ... to use all necessary means ... to uphold and implement Resolution 660 and subsequent relevant resolutions and to restore international peace and security in the area;” (ii) Security Council Resolution 687 is one of those subsequent resolutions in which Iraq commits to disarm WMDs and to stop supporting terrorism; (iii) as recognized by Security Council Resolution 1441, Iraq materially violated Resolution 687’s commitments regarding WMDs and terrorism;⁴ (iv) hence, the US is justified in using “all necessary means” to restore peace in the area (Yoo 563-576).

³The 2017 US National Security Strategy 11 under Trump also refers – albeit much indirectly – the US’s strategy of anticipatory attacks on ‘jihadist terrorists’ even before their threat materializes. “Time and territory allow jihadist terrorists to plot, so we will act against sanctuaries and prevent their reemergence, before they can threaten the U.S. homeland. We will go after their digital networks and work with private industry to confront the challenge of terrorists and criminals “going dark” and using secure platforms to evade detection.”

⁴Resolution 1441 provides that Iraq “has been and remains in material breach of its obligations under relevant resolutions.” United Nations Security Council, “Resolution 1441,” Online.

There are numerous problems, however, in this convoluted argument, including the objection that Resolution 678, which requires co-operation with Kuwait when taking any measures under it, should be interpreted to require a meaningful nexus to Kuwait before an event could trigger the authorization. Unlike the case in the US-led Operation Desert Storm 1991, the events triggering the 2003 invasion in Iraq had no meaningful connections to Kuwait or Iraq/Kuwait cease-fire with which Resolution 687 primarily concerned. More troubling is the disregard of the UN-based multilateral approaches even when the argument relies upon the UN Security Council resolutions. Resolution 1441 is generally interpreted to require explicit authorization of the Security Council before using force (Kirgis). In short, the US-centred unilateralism and exceptionalism is a recurring theme.

4. Humanitarian Interventions

When should another state or a coalition of states intervene militarily to aid "vulnerable nations or victimized people"? (Reichberg and Syse). Self-determination is the right of people to decide their own fate themselves, including their quest for freedom, and the principle of "non-intervention ... guarantees that their success will not be impeded or their failure prevented by the intrusion of an alien power" (Walzer, *Just and Unjust Wars*, 88). Such principles of self-determination and non-intervention are foundational principles of modern international law and are reflected in the UN Charter, which precludes the UN from "interven[ing] in matters which are essentially within the domestic jurisdiction of any state" (U.N. Charter art. 2.7). In the strictest sense, any interventions in the domestic matters of another state cannot be justified based on these principles.

Nonetheless, in response to the Yugoslavian and Rwandan crises, there have been efforts to subtly revise the traditional framework to permit limited humanitarian interventions in cases of imminent natural or manmade disasters such as earthquake, flood, massacres and genocide, or counteract another intervention in a civil war (Walzer, *Thinking Politically*, 225; Walzer, "The Moral

Standing of States," 209-229). Stanley Hoffman, for instance, proposed the following "universal maxims" for *jus ad interventionem*, that is, justice concerning interventions. First, "collective" - not unilateral - intervention is allowed when a state's condition creates "grave threats to other states' and people' peace and security, and in grave and massive violations of human rights" (23). Second, sovereignty of a state may be overridden only when the behaviour of a state within its own territory "threatens the existence of elementary human rights abroad" or "the protection of the rights of its own members can be assured only from outside" (15).

Other principles of *jus ad interventionem* have advanced similarly strict rules regarding the decision to intervene. For instance, George Lucas argued that in addition to Hoffman's conditions, an intervening state should "possess no financial, political or material interests in the outcome of the intervention, other than the publicly proclaimed humanitarian ends" and should not "stand to gain in any way from the outcome of the intervention" (87). Walzer states that the decision to intervene "must be made by an appropriate collective international body." Further, state boundaries may be crossed only in "urgent" and "extreme" circumstances, and the burden of proof is placed on the intervening state to justify such urgency and extremity (*Just and Unjust Wars*, 91). He insists that such burden should be "more onerous" than justifications for self-defence: "intervening states must demonstrate that their own case is radically different from what we take to be the general run of cases, where the liberty or prospective liberty of citizens is best served if foreigners offer them only moral support"(91). As such, the doctrine of interventionism is fundamentally restrictive, rather than permissive. While it provides that sovereignty is not absolute, there are important conditions to satisfy before an intervention could be made.

More recently, however, the so-called American neo-conservatives have tried to revise the doctrine once more to effectively obliterate these restrictive conditions of *jus ad interventionem*. After 9/11, some scholars and policymakers

started to argue that the US should intervene in the Middle East on humanitarian grounds without proper considerations of the limiting conditions discussed above. The argument supports the necessity of a US military intervention to fight against religious totalitarianism in the region, which some referred to as "Islamofascism" (Ciulla). This argument, however, neither requires an authorization from an appropriate international institution nor ensuring that all other efforts - short of intervention - have been exhausted. Concerning the Operation Iraqi Freedom, it was argued that military intervention was necessary to address Saddam's crime against his own people and brutality *vis-à-vis* neighbouring nations as well as to build a liberal democracy and protect basic human rights (New York Times, "President Bush's Speech on the Use of Force").

While they defended the interventions on humanitarian grounds, their extremely permissive arguments - without consideration of the limiting factors suggested above - have revealed the following problems with their approach. First, under the suggested framework, the existence and the degree of human rights violations have been essentially a *political* determination made by the US for its strategic interest in this region. The US has not engaged in systematic military intervention to address the most serious human rights violations; rather, their interventions were selective. In fact, American policymakers once regarded Saddam as a close friend of the US to control the Iranian revolutionist group and supported the Taliban during the Cold War. When Saddam was a close ally of the US, the Reagan administration ignored atrocities committed by Saddam's regime, such as the 1988 Halabja massacre - Saddam's slaughter campaign against the Kurdish residents of the village of Halabja (The Times, "Halabja, the massacre the West tried to ignore"). The US also decided to not engage in humanitarian-based military interventions in Rwanda, while it did in Kosovo. Some have argued that the US has turned a blind eye to serious human rights violation of its important allies such as the Turkish oppression of Kurds or the Indonesian oppression of East Timorese (Lobel and Ratner).

In fact, in the case of the 2003 Iraqi invasion where much discussion took place on correcting the human rights violations in Iraq under Saddam, the US invasion made no ostensible improvements in the human rights conditions of Iraq. Some assess the situation to be worse than before:

The 2003 invasion and its resulting chaos have exacted an enormous toll on Iraq's citizens. Over the past eight years, violence has claimed tens of thousands of Iraqi lives and millions continue to suffer from the effects of insecurity... We found that, beyond the continuing violence and crimes associated with it, human rights abuses are commonplace (Human Rights Watch, "At a Crossroads").

It is also reported that the Iraqi invasion resulted in more than 40,000 deaths of civilians (BBC News, "Iraq Body Count: War Dead Figures"). It is thus dubious whether the US sincerely intended to improve the human rights and humanitarian conditions of Iraq through its military interventions.

Second, the suggested revisions to the framework is reflective of a deep-seated American unilateralism and exceptionalism. The revisionist approach considers the US to play the role of an honourable warrior, who is to "intervene forcefully to protect the intended victims, and who [...] order[s] those perpetrators of violence to stop" (Lucas). Such warrior should provide "protection and security for intended victims until their criminal oppressors are forced to desist" (Lucas). However, this is a self-appointed role. The US has not been assigned such a role by the international community. As a self-appointed warrior, the US unilaterally determines who the victims are and how to save them. In the meantime, the US has rejected existing multilateral approaches to tackle the world's human rights and humanitarian problems. The US has not yet joined important human rights and humanitarian treaties like the Rome Statute of the International Criminal Court and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines, and on their Destruction. The US has refused to be active in global efforts to prepare new international agreements aimed to provide

greater human rights protection than existing instruments such as the 1948 UN Genocide Convention (Human Rights Web).

Again, it is doubtful that the revisionist views on humanitarian intervention would be defended even if other states were to adopt this unilateral and exceptional approach to intervene on the grounds of humanitarian necessity. Under the same logic, other states may decide to conduct a military intervention into the US alleging human rights abuse in America, for instance, concerning the US treatment of the detainees in Guantanamo. Importantly, in history, human rights violations have occurred most seriously when the right to self-determination of a people is denied by foreign occupation or intervention. It is questionable why American intervention is uniquely positioned to be excused from such a violation.

5. *Jus in Bello* and War Crimes

Once a war is waged, do the same rules of *jus in bello* apply to a war against non-state actors such as terrorists? Many have argued that the traditional Westphalian paradigm is an outmoded conceptual framework to address large-scale violence conducted by non-state actors including terrorist groups. George Lucas - who makes a relatively moderate proposition for revision - argues that the traditional approach to *jus in bello* should be altered for military interventions waged to combat human rights violations or terrorists, because the nature of such 'new' conflict is significantly different from the old wars:

War in the twenty-first century had come to resemble less the invasion of Normandy, or Japan, or even of Kuwait, than it now resembled the activities of police and national guardsmen during a domestic riot, or similar situations in which domestic security forces are mobilized to counter a criminal conspiracy, gang violence, or to maintain order (Lucas 684).

Hence, Lucas argues that in humanitarian or counterterrorist interventions, soldiers act as members of an international police force and thus is required to take even greater care to ensure the proportionality in use of force and non-injury to non-combatants than would be required under traditional rules of war. Because

there is a strong imperative for soldiers in these interventions to protect the civilians and the values they intervened to protect in the first place, they should “never encompass the use of strategy, tactics, weapons systems or battlefield conduct that are themselves recognized as illegal or immoral” (Lucas 705). In short, the responsibility to engage only in moral and legal behaviour should be heightened for the intervening state than otherwise.

On the other hand, there are the so-called 'New American Realists' who argue the opposite: while they agree with Lucas that new wars call for different rules, they argue that the traditional rules of *jus in bello* should be revised to the extent that the actions that would have been considered immoral and illegal are now guilt-free. Some have proposed that maintaining the same protections for the lives of non-combatant bystanders in a war against terrorists as one would have under a regular armed conflict simply disadvantaged the 'just' side of the conflict (Reiman 93-106). Yoo argued that the Geneva Conventions are not applied to those captured and detained in Guantanamo Bay during the War on Terror because they are non-state actors who cannot be a party to international agreements governing war (PBS). Under this assumption, in the so-called Bybee memo, then Assistant Attorney General Jay Bybee advised the Bush administration that waterboarding and other forms of torture techniques may be lawfully used against such detainees (Bybee and Yoo). Alan Dershowitz similarly argued that intervening states may engage in torture or other enhanced interrogation techniques of unindicted suspects (162-163).

Such radical propositions of the so-called 'New American Realists' also echo the themes observed in prior sections of this paper. Their efforts to revise the traditional theories reflect ultimate American unilateralism and exceptionalism. Surely the proponents would not propose that other states may also unilaterally decide to designate certain Americans as non-state actors unprotected by the Geneva Conventions and other humanitarian laws, and engage in techniques long considered not only illegal but deeply immoral against them. While they say such rules are permitted given the fundamental changes in the nature

of the conflict, their conclusions are far from inevitable, as evidenced by arguments advanced by Lucas that actually calls for a heightened standard of morality and responsibility in military tactics against terrorists. In fact, President Barack Obama effectively rescinded the advice provided in the Bybee memo that permitted torture and other interrogation techniques (White House). Eventually, the Spanish Judge Baltasar Garzón Real launched an investigation of Yoo and five others (known as the Bush Six) for war crimes (Simons). On April 13, 2013, the Russian Federation banned Yoo and several others from entering the country because of alleged human rights violations accusing Yoo as one responsible for "the legalization of torture" and "unlimited detention" (Barry). Despite these efforts to push back some of the most radical revisionist propositions developed during the Bush administration, their views continue to resound in American foreign policy today, for instance, with President Trump who ran on a campaign to bring back torture, and while in office, is reported to believe that waterboarding techniques are useful and would consider reinstating such techniques (Saenz).

6. *Jus post Bellum*

After a war or a humanitarian intervention, should the intervening state or the international community concern themselves with post-intervention reconstruction? Under the traditional approach that prioritizes sovereignty and right to self-determination, interventions should operate under the principle of "in and quickly out." The intervening state or coalition of states should "prove that their motives are primarily humanitarian and that they have no imperial ambition by moving as quickly as possible to defeat the killers, rescue their victims and then leaving as quickly as possible" (Walzer, *A Foreign Policy for the Left*, 67). Such attitudes should be distinguished from the rights of the victor state to concern itself with post-war reconstruction of the defeated state so that the cause of war is removed, which has been recognized even under the traditional approach.

The recent revisionist view on *jus post bellum* expands the objective and the degree of post-war involvement. Briand Orend

and Heberle propose a model of reconstruction for *jus post bellum*, which requires construction of a 'just regime' that protects basic human rights. They criticize the traditional approach concerning *jus post bellum* to be a "vengeful" model where the victor imposes upon the defeated conditions that are "draconian" and "vengeful" (177). They reject sanctions and compensations post-war; instead, call for the victor or the intervening state to establish a legitimately-elected democratic government, economically invest in the defeated state, to work with its citizens to establish a constitution that respects human rights and the separation of powers, permit the creation of non-governmental organizations, and to even review the educational system to put an end to the old propaganda and to instil new values. According to them, these are the principles to follow to achieve justice after a war, including the US military interventions in Afghanistan and Iraq (178-179).

However, the same problems discussed earlier continue to emerge with these proposed revisions. The revisionist views assume that intervening state shall dictate the intervened state's political, social and economic reconstruction and disregard the right of self-determination and the danger of violating such right. Although 'liberal democracy' and the 'republican constitutionalism' are great American heritages, such values ought not to dominate and be imposed upon post-war reconstruction efforts when the threat that provoked the interventions are no longer present. Such revisionist logic would lead other states to impose their ideology - even non-liberal ideology - in similar circumstances.

7. Conclusion

Since September 11, 2001, some American scholars and policymakers have proposed novel interpretations of the traditional 'just war' theory to set up the philosophical and legal grounds to justify the US military interventions including the War on Terror. If one accepts these revisionist views, however, war is not limited by strict principles of necessity and proportionality. Rather, the logical conclusions of the revisionist perspective

provide that a war may be arbitrarily launched by the unilateral decision of a state; and, such prerogative shall apply only to one state: the US. Such views continue to condone US interventions in the Middle East. The Trump administration justified its recent attack on Soleimani based on the unilateral determination that Soleimani was a threat to America and that he had to be deterred. No efforts, however, were made to provide evidence of such threat or to seek a multilateral path for a collective response. The American exceptionalism underlying such revisionist approach is indicative of the way in which the hegemonic position of the US has also extended to the discourse concerning the global ethics of war. The revisionist approach requires the rest of the world to allow the honourable American warrior to do good, even when it is unrestrained by the rules of *jus ad bellum* and *jus in bello*.

Nonetheless, the events in Afghanistan, Iraq and even the recent American airstrike to terminate Soleimani show that it would be imprudent for the world to simply trust the warrior to do good. This is because experience shows, "once governments learn to kill" – and the US government is no exception with more than 40,000 civilian casualties in Iraq – "they are likely to kill too much and too often" (Institute for Advance Study). The traditional "Just War" doctrine and international laws have aimed to restrict and discipline such instinct based on a fundamental respect for everyone's right to life and self-determination, and such restrictions are all the more important when it concerns a hegemonic power such as the United States. It is hence alarming that the revisionist arguments have themselves gained ground and continue to be echoed in American foreign policy today. While this paper addresses how American "might made right" concerning *jus ad bellum* and *jus in bello* in the context of the American War on Terror, future research should also be devoted to how the American hegemony may shape the moral assessment of the long-term effects of these interventions.

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