

**Just War Theory and Civil War: The Challenges of Adapting an Interstate Theory
to an Intrastate Problem**

Spring 2006 CNISS Seminar Presentation

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February 15, 2006

Abstract

Historically, the just war tradition has focused on working through the moral problems of wars between states and not on wars within states. Concern for international peace and subsequent respect for state sovereignty have led theorists to conceptualize war as an inter-state affair, leaving questions of intra-state conflict aside. However, in the 21st Century domestic political violence has become a major concern, and civil war is receiving greater attention from international organizations like the World Bank and the United Nations. It is becoming widely recognized that wars between opposing political factions within states have increased, and while these conflicts vary in nature, a large number of civil wars are being fought between citizens demanding democracy, greater representation, more control over their government, better distribution of wealth, etc., and their governments, who are resisting these demands. At this time there exists virtually no theory for evaluating the justness of such civil wars, and as the current political situation shows, the need for theory is great.

This paper aims to bring civil wars into the purview of just war theory. I will do this by first describing why civil war is an important ethical concern for the international community and how this concern creates the need for an account of the just civil war. Secondly, I will describe how civil war is a unique moral problem by exploring why a commonly accepted definition of just cause (self-defense) is insufficient for application to intrastate conflicts. While much has been written on justified rebellion and secession, these accounts have not been cast in terms of just cause for civil war; thus, I approach the issue of the just civil war by appropriating a definition designed primarily for inter-state conflict. Michael Walzer's account of just cause as self-defense, juxtaposed with his discussion of the right to rebel, provide an excellent framework for determining the unique problems a successful theory of the just civil war should be able to reasonably adjudicate.

The objective of this paper is not to provide a thorough analysis of the morality of civil war; rather, I aim to bring attention to this urgent moral issue by putting it in the context of a well-established philosophical tradition. My aim is to provide an analysis of the just civil war that bridges the gap between discussions of justified rebellion and discussions about just cause, thereby casting new light on—and hopefully setting the stage for a resolution to—this very difficult moral problem.

Introduction

Historically, the just war tradition has focused on working through the moral problems of wars between states rather than on wars within states. This traditional view of armed conflict in inter-state terms is captured well in the *de jure* concept of war, in which war is described as a “conflict between states,” or an “international armed struggle.”¹ The interest in international peace has led theorists to conceptualize war as an inter-state affair, resulting in a dearth of theories geared towards intra-state conflict. Over the centuries territorial wars have dominated world history, causing major instability and innumerable deaths, and thereby warranting this state vs. state conceptualization of war; however, in the 21st Century another form of political violence is becoming a major concern.

Throughout the world are numerous uprisings to overthrow or alter extant governments, and while these conflicts vary in nature, in the majority of cases these civil wars are fought between citizens demanding democracy, recognition of their rights, better governmental efficacy, etc., and their governments, who are resisting these demands.² As more governments resort to armed conflict with groups living within their borders, and more citizens turn to violent means to attain their political ends, the need for some means of evaluating civil war becomes more urgent. At this time there exists virtually no theory

¹ Watkins, Kenneth. “Controlling the Use of Force: A Role for Human Rights Norms in Contemporary Armed Conflict.” *The American Journal of International Law*. Vol. 98, No. 1 (Jan 2004) pp.1-34 (quote from p. 3).

² Examples include the wars in the Democratic Republic of Congo, Colombia, Sri Lanka, Uganda, to name a few. Africa alone has suffered 20 major civil wars since 1960. For a listing and description of current civil wars see www.globalsecurity.org/military/world/war/

specifically for evaluating the justness of civil wars, and as the current political situation shows, the need for theory is great.

This paper aims at bringing civil wars into the purview of just war theory. I will do this by first describing why civil war is such an important ethical concern for the international community and why there is a need for a definition of the just civil war. Next, I will broach the topic of what makes a civil war just by focusing on one aspect of just war theory—*jus ad bellum*, or, just cause for war. *Just cause* will be used throughout this paper to refer to a morally justified reason for engaging in military conflict. I will approach the topic of just cause for civil war by evaluating how Michael Walzer’s definition of just cause, presented in his works *Just and Unjust Wars*³ and “The Moral Standing of States: A Response to Four Critics,”⁴ applies to the case of civil wars. This evaluation will show ways in which Walzer’s theory has difficulties addressing civil war, as well as how his theory should be adjusted so it could address it more successfully. Finally, I will demonstrate how some of the deficiencies in Walzer’s theory that prohibit it from applying to civil war are also problems for applying his theory to inter-state conflict.

Why is Civil War an Important Moral Issue?

Civil wars have tremendous impact on states. In 2004, civil war caused nearly 25 million people to be internally displaced.⁵ These internally displaced people have no home, no livelihood, and no access to food, education or healthcare beyond what is

³ Michael Walzer. (2000). *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (third ed.). New York: Basic Books.

⁴ Michael Walzer. “The moral standing of states: A response to four critics.” *Philosophy & Public Affairs* 9 (1980) 209-229.

⁵ “Internal Displacement: Global Overview of Trends and Developments in 2004” www.idproject.org/global_overview.htm

provided by humanitarian organizations. Civil war also has a major negative impact on a state's economy, often resulting in increased joblessness, poverty, malnutrition and famine.⁶ Civil war often has long-term effects on public health and medical systems, thereby increasing the likelihood of death from infectious diseases, with women and children being the most common long-term victims.⁷ While all wars are of important moral concern, civil war's widespread and detrimental impact on the potential to realize basic human rights makes it a unique moral concern.

Moreover, civil wars should concern the international community because these wars have extensive international effects. In most civil wars, warring parties seek outside military support, making the oft-used phrase "domestic affair" a rather inaccurate description of intra-state conflict. Civil wars can quickly escalate into regional wars as involved states become embroiled in divisive ethnic, religious or political affairs. Furthermore, the international effects of civil war are not limited to military involvement, but include impacts on the global economy, foreign relations, and the environment. As the trend toward globalization continues, the impact from civil wars will assuredly increase.

What does the just war theory have to offer for the analysis of civil war? One aim of the theory is to limit domestic warfare by defining just civil war such that armed conflict is only justified in a limited number of cases in which there seems to be no other option. While the impact of just war theory on the frequency of wars is difficult, if not

⁶ Kosuke Imai and J. M. Weinstein. "Measuring the economic impact of civil war." Center for International Development at Harvard University Working Paper Number 51 (2000).

⁷ Hazem Adam Ghobarah, Paul Huth and Bruce Russett. "The post-war public health effects of civil conflict." *Social Science & Medicine* 59 (2004) 869-884.

impossible, to determine, the effects are visible in the arguments used to endorse or criticize wars. While political realists may deem this talk nothing more than political rhetoric, it is important to remember that political actions do not occur in a vacuum; they are undertaken by individuals surrounded by people voicing their moral concerns on every issue. This is especially true in times of war, when no politician can escape the widespread moral commentary on her choices. To increase their value and effect, discussions of civil war need input from theorists educated in the just war tradition who have given the issue rigorous philosophical consideration.

Finally, it is possible that in the future, as the international effects of civil war become more apparent and more problematic, international law will codify a definition of the legal civil war. We should ensure the foundation of this law is grounded in a philosophically rich, comprehensive and persuasive war theory. Producing such a theory will require a cooperative effort involving considerable research, writing and discussion. Just war theorists should focus on the morality of civil war to bring attention to this very important issue and to ensure their theories benefit society in a timely manner.

Terminology

Civil war is an enormous topic, as civil wars are fought by many different groups for many different reasons. There are tribal wars, ethnic wars, religious wars, wars between rebel groups—just to name a few. For this inquiry, I will limit my usage of civil war to refer to wars fought between insurgent groups and governments within one political region. The discussion of other kinds of civil wars is also an important topic, but beyond the scope of this paper.

Discussions of war have usually focused on the state as the primary actor, but the analysis of domestic conflict requires a finer-grained terminology that divides the state into different elements. For the purposes of this paper, the term *government* will denote the major functioning political and military power in what is generally recognized as a political region (this may be a state, a region of a state, a federation of states, etc.). The members of a government's jurisdiction will be referred to as *citizens*, though I acknowledge that this is an imprecise term, since the status of citizenship is questionable during civil wars. The term *state* will be used throughout this paper to refer to the collective consisting of both the government and its citizens. Finally, I define an *insurgent group* as any group of citizenry utilizing violence against a government for some political purpose.

Walzer's Theory of Just Cause and the Just Civil War

While Walzer's writings on just war focus primarily on warfare in the international arena, he does assert that citizens have a right to rebel against illiberal, undemocratic or tyrannical governments.⁸ In this paper, I will look at how Walzer's theory of just cause as self-defense against aggression, along with his position on the right to rebel, fares when applied to the problem of civil war. In order to give a more thorough analysis of Walzer's theory overall, I apply the theory to civil war in three phases—in terms of just cause as self-defense alone, in terms of just cause as self-defense and the right to rebel, and finally in terms of just cause as the right to rebel alone. Since Walzer never claims to provide a theory of the just civil war, but writes on the justness of wars in general (which includes a discussion of the right to rebel), this approach of

⁸ Walzer (1980), 215

applying his theory in phases seems both fairer and more revealing. Each of these applications reveals different problems with Walzer's theory, while also providing insight into what kind of just war theory civil war demands. This analysis will also reveal how Walzer's theory is problematic for inter-state conflict. Finally, I will suggest what kind of adjustments should be made to Walzer's theory so it could apply to civil war in a more coherent, robust and precise manner.

Numerous problems arise when Walzer's theory of just cause is applied to civil war. One problem is his definition and description of just cause—self-defense against aggression—do not provide the kind of refined detail necessary for understanding how these notions would translate into just cause within the state. A second problem is that the theory does not allow a means for resolving conflicts between the value of the common life and the value of the right to rebel. Since civil war often involves conflict between these two values, it is important that an account of just cause for civil war address how these two values compare when one must be sacrificed for the other. Third, I will argue that Walzer's position on the right to rebel is problematic because it ignores the issues of legitimate authority and right intent; issues that must be addressed for a theory of just war to be complete.

Before analyzing how Walzer's theory applies to civil war, his position on just cause needs to be summarized. Walzer aims at limiting justifiable warfare by defining just cause for war as self-defense against aggression. His theory does allow for the use of military force outside of self-defense, like in cases of genocide, secession and other

situations that fit his “rules of disregard,” but these are exceptions to the rule.⁹ The heart of his theory lies in his views of aggression and self-defense and how these concepts can be used to determine when armed conflict is a crime and when it is justified.

Walzer describes the crime of aggression and the just cause of self-defense against aggression as inter-dependent concepts—an act can be described as aggression if and only if that act justifies self-defense. He writes, “all acts of aggression have one thing in common: they justify forceful resistance,”¹⁰ and justified self-defense can only occur in response to aggression because “nothing but aggression can justify war.”¹¹ As long as self-defense is warranted, an act is defined as aggression, even if the victim chooses surrender over defense (as it might be the case that surrender is the most desirable option if the defensive army has no hope of victory). It is important to note that in Walzer’s theory the meaning of self-defense is different than the usual meaning of defending one’s person against attack. For Walzer, aggression is not a crime because it forces individuals to fight for their lives, but because it forces them to fight for their lives along with other rights that are worth dying for.

If it isn’t just the threat to life that makes war a crime, what is it exactly that makes something an act of aggression? He claims, when “states are attacked, it is their members who are challenged, not only their lives, but also the sum of things they value most, including the political association they have made.”¹² For Walzer, aggression is

⁹ Walzer argues that intervention is sometimes justified in wars of national liberation, in cases of counter-intervention, or because a government is massacring or enslaving its citizens. For a specific list of Walzer’s rules of disregard, see page 90 in *JUW* and his amendments to these rules on pages 216-218 in *Moral Standing*.

¹⁰ Walzer (2000), p.52

¹¹ *IBID*

¹² Walzer (2000), p.53

morally reprehensible because it is an attack on what people value most, and he chooses the term “common life” to capture the essence of this most valued thing. The value of the common life is so central to Walzer’s theory that he claims “the moral standing of any particular state depends upon the reality of the common life it protects,” because “if no common life exists, or if the state doesn’t defend the common life that does exist, its own defense may have no moral justification.”¹³ In other words, if a state protects the common life that exists within its borders then it has moral standing, which means the state is legitimate in the international arena and therefore capable of claiming the just cause of self-defense against aggression. He writes, “what is at stake [in war] is not only the lives of the individuals, but the common life they have made. It is for the sake of this common life that we assign a certain presumptive value to the boundaries that mark off people’s territory and to the state that defends it.”¹⁴

Unfortunately, Walzer devotes little time to explaining this notion of a common life, and assumes his readers understand what he means by the term, despite its obvious vagueness. He does say the common life is signified by a moral understanding that comes from shared experiences and cooperative activity, and this understanding is what binds individuals together in what can be described as a single “common life.” He explains that the common life is not the product of one generation, it is a “process of association and mutuality” produced over a long period of time through many generations.¹⁵ Those who share a common life are bound together in a way that motivates them to defend one

¹³ Walzer (2000), p.54

¹⁴ Walzer (2000), p.57

¹⁵ Walzer (2000), p.54

another and their common life against foreigners (and sometimes against their own governments).

Walzer argues that only when individuals share a common life can they realize the kind of political structure capable of protecting individual rights. Rights are protected through the creation and enforcement of laws, through a military force that can defend the state against other states, and through other similar kinds of institutions. But these institutions can only exist if a well-developed political structure is in place, and he argues that, “politics (as distinct from mere coercion and bureaucratic manipulation) depends upon shared history, communal sentiment, accepted conventions—upon some extended version of Aristotle’s ‘friendship.’”¹⁶ Those who share a common life share all of these things that politics depend upon, thus the common life is a prerequisite for the development of political structures that can protect individual rights.

Walzer claims that a state’s moral standing is dependent upon whether it protects a common life because the common life is a fundamental requirement for the recognition of all individual rights. Furthermore, he argues that protection of the common life is best realized by respecting communal integrity, which means recognizing the twin state rights of political sovereignty and territorial integrity. Communal integrity connects to state rights because (although it is not a perfect match) boundaries of different common lives generally coincide with boundaries of different states. In short, communal integrity, realized through state rights, “derives its moral and political force from the rights of

¹⁶ Walzer (1980), p.228

contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out among themselves.”¹⁷

Walzer claims that when communal integrity is denied individual rights are violated. It is important to note that a violation of communal integrity entails a violation of individual rights in two ways. First, a violation denies individuals the experience of sharing a culture, history, values, etc. with a group of like-minded people (i.e. the right to a community), and secondly, it denies them access to the means by which all other rights are recognized. Thus communal integrity secures citizens’ right to a community while indirectly protecting all their other individual rights whose realization depends on the existence of a community.

Just Cause as Self-Defense Against Aggression

Given this description of self-defense and aggression, it is difficult to see how Walzer’s theory can be used to describe just cause for civil war. For example, imagine a case in which a government prohibits the practice of a certain religion and enforces this prohibition by regularly discriminating against its citizens who belong to this faith. The discrimination is not violent, but the government does prohibit the religious followers from having marriages recognized by the state, holding certain governmental offices, or owning more than one business. In the past, the police treated those who tried peacefully protesting the government’s policies harshly. The police used tear gas and rubber bullets against the protestors, and the government endorsed this treatment while making it clear that they had no intention of changing their policies. An insurgent group made up of citizens who want to practice their faith without facing discrimination decides to use

¹⁷ Walzer (1980), p.211

military force against the government in hopes of making the government change its policies. The government responds by using military force against the insurgents, and a civil war breaks out. In this case, what would Walzer's theory of just cause say about who is the aggressor and who has the right to self-defense?

It seems that Walzer's theory allows arguments to be made for either party to hold the just cause of self-defense and for either party to have committed the crime of aggression. Imagine that the insurgents see themselves as loyal citizens of their state. For generations they have fought in wars to defend it against foreign invasion, they share the same culture, ethnicity and language as their fellow citizens, and they believe their government represents them well, except in this matter of religion. Nonetheless, these citizens see their religion as so important that it is the core of what defines their common life, and that by denying their right to religious freedom, the government is attacking their common life; therefore, they are justified in using self-defense to protect this thing they value more than their lives. If aggression is defined as an attack on a common life, then it could be the case that when the government uses military force to suppress the insurgents' demands to freely live their common life, that government is committing the crime of aggression. Since self-defense is always justified against aggression, if the government is guilty of aggression, it follows that the insurgents hold just cause for self-defense against the government.

Yet, if the government does fairly well in protecting its citizens' rights, and the other citizens are willing to sacrifice freedom of religion to have their common life protected by this government to the point that they would take up arms to defend the government against violence coming from inside or outside the state's borders, the

insurgency may be viewed as an attack on the state's communal integrity. It may seem odd to describe an attack on the community that comes from within as an attack on communal integrity, but whether it comes from inside or out, using military force against a government that has the support of a substantial number of the citizens will be tantamount to an attack on the community. In this case the insurgents have committed the crime of aggression, and the government would have just cause for self-defense.

Unfortunately, Walzer's theory gives us no real guidance on how to decide which of these two conflicting claims is correct. The reason Walzer's definition of just cause provides little guidance for domestic warfare is that it is based on protecting the common life, yet his theory provides little description of what a common life is, what constitutes an attack against it, or what kinds of actions count as defense of it. He notes the difficulty in knowing when a common life exists in his discussion of secession. He writes "one cannot be sure that [a secessionist movement] in fact represents a distinct community until it has rallied its own people and made some headway into the 'arduous struggle' for freedom."¹⁸ This is quite similar to the problem of determining whether a distinct common life actually exists in civil wars where rebels, who have no interest in seceding, fight in the name of a distinct common life. To further complicate the problem, Walzer's theory bases the grounds for war on the presence of something that can only be identified with certainty once the war has begun. This way of defining just cause is not very helpful in limiting warfare. A good theory of just cause should be capable of adjudicating both the justness of potential wars and the justness of past wars.

¹⁸ Walzer (2000), p. 93

Furthermore, Walzer claims that respecting communal integrity through state rights is the best means of defending the common life, but it is difficult to interpret what respecting communal integrity means within the state. In the given example, for just cause to be granted to the government, it would have to be clear that by attacking the government the insurgents are violating communal integrity and thereby committing the crime of aggression, and it would have to be equally clear that by fighting the insurgency the government was defending a viable common life. Alternately, for the insurgents to hold just cause, it would have to be clear that what they are defending really is a common life, and that by denying these insurgents' right to practice their religion, the government is attacking their common life. While no theory of just cause will be capable of adjudicating all cases, Walzer's theory appears incapable of adjudicating in too many cases, thus for his theory to discern whether a government or an insurgent group is morally justified in resorting to arms, just cause must be more clearly defined, which will require a much more extensive description of aggression, self-defense and the common life.

The Value of the Common Life versus the Right to Rebel

It is evident that Walzer places a very high value on the right to a common life, but this value comes primarily from his belief that protecting the common life is the surest means of protecting individual rights. Individual rights provide the ultimate moral foundation for Walzer's theory, as he argues that state rights are essentially collectives of individual rights, and "individual rights (to life and liberty) underlie the most important judgments that we make about war."¹⁹ While Walzer's theory of just cause rests on the

¹⁹ Walzer (2000), p.54

notion that protecting the common life means respecting state sovereignty and communal integrity, he recognizes that there are times when this respect does not protect individual rights, and in some of these cases, (which fall under the aforementioned rules of disregard) communal integrity may be overridden. But communal integrity cannot be overridden every time a government fails to recognize its citizens' rights. Walzer argues against foreign intervention in most cases, yet asserts that, "given an illiberal, [tyrannical] or undemocratic government, citizens are always free to rebel."²⁰ The "right of revolution," which is created by the tyranny of established governments, and "held individually by each subject or citizen, rightly exercised by any group of them, of which they cannot be deprived" can be viewed as a just cause for civil war.²¹ Setting aside the problematic ambiguities in Walzer's definition the common life, and focusing instead on the right to rebel as another variant on just cause, reveals a new set of problems about how the just cause of defending the common life against aggression compares to the right to rebel. Can these two variants of just cause be reconciled into a coherent, applicable theory for evaluating the justness of civil wars?

Civil war often pits the right to a common life against the other individual rights. For example, take the previous case in which an insurgent group is using military force against its government in order to gain the right to practice a religion without discrimination. The government claims that because it is a structure created by the citizens as a means of protecting themselves against foreign invasion and as a means of having their rights recognized (just not the right to religious freedom) it is justified in fighting the insurgents. The government argues that it must fight the insurgents in order

²⁰ Walzer (1980), p.215

²¹ *IBID*

to protect its own existence so it can serve the purpose for which it was created; hence, by protecting itself, the government is protecting the citizens. Furthermore, the government claims that the government itself is an essential part of the common life of the citizens, as it is a part of the citizen's culture, history, identity, and something that was created by the citizens for the citizens.

This example differs from the former example because now the insurgents do not claim to be defending a common life that differs from their fellow citizens; in fact, they feel quite strongly that their state represents one shared common life amongst all of its citizens. In this case, they claim that the government's suppression of their religious rights justifies them in exercising their right to rebel. They value the common life that exists within the state, but they are willing to sacrifice one major element of this common life (i.e., the government) in order to obtain religious freedom. They believe their right to rebel against an illiberal government overrides the other citizens' right to a common life in which freedom of religion is systematically denied. On the other hand, the government and the citizens that support it feel that their right to a common life is more value than the insurgents' right to religious freedom, and they believe their government, although religiously illiberal, should be defended against this rebellion. Can Walzer's theory determine which group holds just cause in this case?

I argue that Walzer's theory cannot resolve this problem because his theory presents conflicting positions on where the right to a common life stands in comparison to the right to rebel. The inconsistency is found in his argument against foreign intervention. Walzer ties state legitimacy to intervention by referring to a state as legitimate in the international arena when it has moral standing, which means it has the

right to declare the just cause of self-defense against aggression. But he claims that the standard for legitimacy in the international realm differs from the standard for legitimacy in the domestic realm, as a state's legitimacy must be determined with respect to what Walzer calls a "dual reference." He calls this matter of perspective a "dual reference" because state legitimacy must be evaluated differently within the state than from outside the state. The only evaluations of state legitimacy that count within state borders are those made from the reference point of the citizen, and the only evaluations of state legitimacy that count outside state borders are those made from the reference point of the foreigner.²² In other words, this dual reference asserts that citizens of a state do not determine state legitimacy in the international realm, and foreigners do not determine a government's legitimacy in the domestic realm.

Walzer asserts that rather than asking citizens their views on their government's legitimacy, foreigners are to make a "morally necessary presumption" that states are legitimate. Before it was mentioned that moral standing depends on the degree to which the state protects the common life, but Walzer also claims that legitimacy is determined in part by the "'fit' of the government and the community, or, the degree to which the government actually represents the political life of its people."²³ For foreigners, it is only when the absence of fit between the government and the community is "radically apparent" that intervention is allowed (and these are cases that fall under the rules of disregard), but for citizens, the point of reference is different, as for them "the tyranny of

²² Given the terminology adopted for this paper it makes little sense to speak of citizens determining the legitimacy of their state (since state is defined as the collective consisting of the government and its citizens), so I will henceforth refer to legitimacy in the domestic realm as governmental legitimacy.

²³ Walzer (1980), p. 214

established governments gives rise to a right of revolution.”²⁴ He writes that there are many states the international community would find “objectively illegitimate,” places where “the ‘fit’ between government and community is not of a democratic sort,” but “there is still a ‘fit’ of some sort, which foreigners are bound to respect.”²⁵ So even if the majority of citizens concede that their state is tyrannical and thereby illegitimate in the domestic realm, foreigners are still morally bound to presume the state is legitimate in the international realm (unless other conditions exist that make it radically apparent that there is no fit between the common life and a state’s government).

Walzer makes numerous arguments for why this dual reference is morally justified. His most fundamental claim is that the presumption of legitimacy is morally justified because protecting communal integrity is essential to protecting individual rights, even in cases where these rights are not actually being protected by the state.²⁶ He explains that even though a government may not be recognizing rights currently, the only way these rights will ever be recognized and protected is through the political community, so this political community must remain intact in the hopes that it will, in time, produce a government that does protect individual rights. The political community is protected by maintaining the state’s communal integrity, so states with tyrannical governments must be treated as though they were legitimate in the international arena

²⁴ Walzer (1980), p. 215

²⁵ Walzer (1980), p. 216

²⁶ Walzer may allow for a state’s communal integrity to be overridden if there are multiple common lives present within the state and the state fails to protect each of those individual communities, but I am not addressing these kinds of situations here. I am focusing only on hypothetical cases in which state borders correspond with the single common life shared by its citizens. These cases do not involve acts of secession, which aim to sever the government’s control over a portion of territory; instead, these cases focus on a form of rebelling that aims to alter or overthrow the extant government.

because “rights are only enforceable within political communities where they have been collectively recognized, and the process by which they come to be recognized is a political process that requires a political arena.”²⁷ Thus the state is not only necessary to the protection of individual rights, it is the only means of protecting them.

While it would be wrong to equate state rights with governmental rights given Walzer’s view that the government is just a tool citizens use to protect their common life, there is a definite connection between the notion of state sovereignty and the government’s role as protectorate of the common life. If states demand the moral presumption of legitimacy from foreigners because states are the political arena in which a common life is developed and protected (and thereby individual rights are recognized and realized), it should follow that citizens should not rebel against their governments because, although the government may not be legitimate, rights can only be recognized within a political community, and an attack on this community (namely an attack on the government) could result in the citizens losing their “political arena,” and thereby losing the ability to ever have their rights recognized. Walzer claims that the arguments for presumptive legitimacy may be made to anyone, “including subjects and citizens,” but he does not consider this argument in his own assertions about rebellion.²⁸

If individual rights can only be recognized and realized within the political arena of a state, and the government is what holds a state together, why is rebellion allowed when intervention is not? Walzer has numerous practical arguments against intervention, namely that foreign states can’t accurately judge the sentiments of a divided state, that the only way a revolution can succeed is if it is fought by the citizens themselves, and that

²⁷ Walzer (1980), p. 226

²⁸ Walzer (1980), p. 214

citizen's may fight against such an intervention because they feel bound to resist. While these arguments point to important practical concerns that may actually justify Walzer's notion of dual reference, his most fundamental argument for dual reference creates a tension between his theory of just cause as self-defense against aggression and his theory of the right to rebel—a tension that makes his notion of just cause very difficult to apply to civil war.

Walzer argues that the most fundamental reason for non-intervention is that the right to a common life outweighs other rights, as it is the means by which all other rights come to be recognized. He writes,

Communal life requires and liberty requires the existence of “relatively self-enclosed arenas of political development.” Break into the enclosure and you destroy the community. And that destruction is a loss to the individual members....a loss of something valuable, which they clearly value, and to which they have a right, namely their participation in the “development” that goes on and can only go on within the enclosure.²⁹

The problem is rebellion, like intervention, involves a similar destruction of the community, yet despite this destruction and the cost that it has to other citizens, citizens always maintain the right to rebel against a tyrannical, illiberal or undemocratic government. This position seems inconsistent, given that whether the destruction of a community comes from within or from without, “individual rights are violated when communal integrity is denied.”³⁰ Furthermore, this right to rebel holds regardless of the other citizens' views about the government's fit with the shared common life that exists within the state's borders, thus Walzer's theory problematically disvalues communal integrity when it justifies the right to rebel under the very broad circumstances of an

²⁹ *IBID*, p. 228

³⁰ Walzer (1980), p.211

illiberal, tyrannical or undemocratic government. This tension creates a problem for applying Walzer's theory of just cause to civil war because it does not make sense to argue that the common life is so essential to the recognition of other individual rights that it should override all of these rights, nor does it not make sense to say that some individual rights are more important than the right to a community if these rights can only be recognized if the right to a community is respected.

For Walzer's theory to successfully apply to civil war it must provide some means of comparing the right to rebel with the right to a common life. This will entail a description of what rights Walzer is referring to when he claims that individual rights underlie the most important judgments we make about war. It seems that some rights, like the right to have access to food, water and shelter, the right to a decent standard of living, and the right to have basic security of one's person, should easily override the right to a common life because the right to a common life cannot be realized unless these rights are recognized. But it is more difficult to know if other rights—like the right to freedom of religion or the right to freedom of speech—should override the right to a community. Walzer describes a tyrannical government as one that “denies civil liberties” and “imposes religious uniformity,”³¹ but given how devastating civil war is, it may be unjust to sacrifice the stability and protection a government provides in order to gain the recognition of these kinds of rights. It may be more just that these rights be pursued only through non-military means. These are difficult questions, but they are the kinds of issues that need to be resolved for a theory of just cause to work for civil war.

³¹ *IBID*

Just Cause and the Right To Rebel

Throughout this analysis, I have considered Walzer's phrase, *right to rebel*, as synonymous with just cause for war, but my reasons for assuming he intended this equivalence should be made explicit. Walzer frequently uses "right to intervention"³² interchangeably with justified intervention, and "the right to fight"³³ interchangeably with just cause for self-defense. Although he never directly claims that just cause for war is the same as the right to wage war (be it intervention, self-defense or rebellion), his continual alternation between these two phrases must mean that he sees them as one and the same. He describes the right to rebel, and to the same effect, the right to revolution, as cases when citizens are justified in using force against an illegitimate government. This makes these rights equivalent to just cause for civil war given that one kind of civil war is an armed conflict between an insurgent group and the government within a state. But there are problems with the definition of just cause for civil war being the right to rebel (or at least Walzer's account of it), even if we assume that we can resolve cases where the right to a community conflicts with the right to rebel. I argue that Walzer's conception of the right to rebel is not robust enough to serve as a just cause for civil war for two primary reasons: one, his account does not sufficiently address the issue of legitimate authority; and two, his account does not specify a need for right intent.

If the right to rebel is as Walzer describes it, it seems that any citizen would be justified in rebelling, provided the circumstances—circumstances determined solely by the actions of the citizen's government—warrant it. Generally speaking, theories of just war take much more into consideration than the wrong (or war warranting) actions of states in

³² Walzer (1980), p. 217

³³ Walzer (2000), p. 63

their accounts of what makes a war just. While it may be that Walzer considers other issues like legitimate authority, right intent, last resort or probability of success important elements in a proper conception of the just civil war, he does not incorporate these issues into his definition of just cause. I will look at how two of these concerns, specifically legitimate authority and right intent, could be incorporated into Walzer's theory to make it stronger and better capable of addressing the moral problems of civil war.

Perhaps the most obvious problem that arises in regards to Walzer's limited account of the right to rebel is whether the right to rebel can be acted on by each individual citizen, or if there should exist amongst the citizens some kind of majority opinion that a rebellion is warranted. Walzer hints that perhaps some kind of consensus should exist, as he writes, "the tyranny of established governments gives rise to a right of revolution, held individually by each subject, *rightly exercised by any group of them*," but he does not make this requirement explicit.³⁴ This kind of problem echoes the traditional just war concern about the proper limitation on legitimate authority; a limitation that posits only individuals who meet certain criteria can actually declare or wage a just war. While the discussion of legitimate authority in the traditional just war literature has focused primarily on what kind of public authorities can legitimately lead a state into war, there is no reason why this kind of limitation should not be modified so it can apply to civil wars. The concern of legitimate authority and the question of consensus seem particularly important for Walzer's theory of just war, which focuses so heavily on communal integrity.

³⁴ Walzer (1980), p. 215 (emphasis added)

One possible account of a legitimate authority to rebel might hold that only when a certain number of citizens agree that rebellion is warranted would the right to rebel for any one of them actually obtain. The need for this kind of account of legitimate authority, in which some consensus threshold must be met, becomes evident when we consider a case in which the majority (or even a large number) of citizens would respond to a rebellion by taking up arms to defend their government. In this case, where there is a clear consensus against the rebellion, it might seem that the act of rebellion is an aggressive one based on Walzer's own description of aggression. He argues that when a state is attacked from the outside, and "substantial numbers of citizens believe themselves bound and are prepared, for whatever reason, to fight, [that] attack upon their state would constitute aggression."³⁵ This kind of attack constitutes aggression because it, like all acts of aggression, it "challenges rights that are worth dying for."³⁶

Walzer's example, in which a "substantial number of citizens" are justified in fighting a foreign invasion, is very similar to a situation in which a substantial number of citizens believe themselves bound to fight against a rebellion. In both cases, the citizens feel bound to fight to protect their political community, and in both cases the citizens appear to be unjustly forced into a situation in which this protection entails risking their lives. To argue that the two situations are different because for one the attack comes from within and for the other the attack comes from the outside seems arbitrary. Thus on Walzer's account of aggression, it seems unjust to allow the interests of a small number of rebels to justify forcing a large number of people to risk their lives fighting to protect

³⁵ Walzer (1980), p. 213

³⁶ Walzer (2000), p. 53

their right to a political community, yet a right to rebel that is justified solely by the actions of the government, with no restrictions on legitimate authority, does just that.

It is interesting to note that Walzer's definition of just cause of self-defense against aggression does entail a criterion for what constitutes a legitimate authority for states. He writes, "the moral standing of any particular state depends upon the reality of the common life it protects," because "if no common life exists, or if the state doesn't defend the common life that does exist, its own defense may have no moral justification."³⁷ Thus the just cause of self-defense against aggression can only hold for states with moral standing (i.e. legitimate states), yet the right to rebel makes no such requirements. Walzer does not specify any requirements for moral standing or legitimacy that a citizen must have in order for her right to rebel to obtain, yet the omission of such a standard seems counter to Walzer's overall project of providing a theory that limits aggressive wars.

Walzer's account of the right to rebel could benefit from the addition of a version of legitimate authority like the one I have proposed. This modification would posit that the right to rebel only obtains for any one individual when the majority of citizens feel that the rebellion is justified.³⁸ Given Walzer's interest in defending pluralism, (as he maintains that a state viewed by foreigners as illegitimate may fit with the common life of its people, and therefore that state deserves to have its communal integrity respected), it seems reasonable to argue that a consensus should exist for a rebellion to be justified. If the right to rebel is limited to a legitimate authority, then pluralism is protected because

³⁷ Walzer (2000), p.54

³⁸ The question of where the threshold of consensus should be set for a legitimate authority to exist is another difficult issue that would need to be addressed.

the citizens will maintain the right to have a government that is undemocratic, illiberal or tyrannical when such a government 'fits' their common life (given that the majority of the citizens share this view). Walzer could further add that such a consensus is unnecessary when a government's transgressions are so great that its actions satisfy the conditions for the rules of disregard. Thus if a government's behavior satisfies the rules of disregard, anyone, from the inside or out, could take up arms against the government. This kind of limitation on legitimate authority will allow a citizen's fight for her most basic rights to be justified in all cases, yet allow for pluralism and minimize the number of justified wars.

A second way Walzer could enhance his notion of the right to rebel is by limiting the right to only rebelling citizens who aim at certain specific ends. This limitation on the ends of war is known as *right intent*, or a specification of what counts as a morally legitimate goal of war. Although it is very difficult to say exactly how we should limit the ends of rebellion, it seems obvious, given our basic moral intuitions, that the ends of just civil wars must be morally legitimate. Often times, civil wars are fought by those who feel their common life is not represented by the government, but the common life they want the government to represent is not something we would consider worth fighting for. For instance, some have fought against their governments in hopes of achieving a state that only recognizes citizens of a certain race or ethnicity, while others fight in hopes of creating a political structure that enforces religious uniformity. Walzer's theory provides the moral grounds for finding these kinds of rebellions unjustifiable, but these grounds must be made explicit by stipulating a right intent on the right to rebel.

Walzer's theory asserts that the right to rebel is justified given the presence of an illiberal, undemocratic, or tyrannical government. Given that these conditions constitute just cause for civil war, it should follow that a citizen could not be justified in exercising the right to rebel if her aim is to fight the current government in order to institute another government that is tyrannical, illiberal or undemocratic. Since civil wars can result in a complete restructuring of the state, meaning victorious insurgents may be left with the duty of creating a new political structure to replace the defeated government, it is essential that their political aims not be such that they perpetuate more wars. Otherwise, there could be no end to the cycle of wars fought to overthrow or alter unacceptable governments. Given the overall aim of just war theory, and the conditions for just cause Walzer provides, it would be reasonable to add to his theory a limitation of right intent that makes the right to rebel only realizable if the goal of warfare is not to create an illiberal, undemocratic or tyrannical government.

Conclusion

This analysis of Walzer's theory reveals just some of the difficulties the theory has addressing the problems of civil war, but it also reveals how some of the problems present in Walzer's theory are not only problems relevant to civil war; they are problems relevant to all wars. For example, the problem the theory has in determining if a common life exists is especially problematic for civil war, but it is also problematic for the issue of state legitimacy, a topic specific to inter-state conflict. State legitimacy must exist in order for a state to justly exercise self-defense, but in cases where one common life is protected by the government, but the government fails to protect other common lives that exist within the state borders (as is so often the case in political reality), it is difficult to

know if the state meets the standard of legitimacy because “if the state doesn’t defend the common life that does exist, its own defense may have no moral justification.”³⁹ In this kind of situation where the government both does and does not protect the common life within its borders because there is more than one common life there and it only protects one of them, the state’s moral standing appears indeterminate.

Despite these difficulties, Walzer’s theory of just cause provides a good basis for thinking through the problems of civil war and for thinking about the kinds of problems a good theory of the just civil war should be able to address. Undoubtedly, Walzer did not design his theory of just cause with civil war in mind, so the shortcomings in the theory are not due to oversight, but because his focus was on war between states. It is valuable to see how civil war and inter-state war each bring a different set of moral problems to bear, and how one theory of just war probably cannot suffice for both. Hopefully philosophical interest in this topic will lead to the development of more nuanced and powerful theories that can better address the tangle of moral problems associated with civil war.

³⁹ Walzer (2000), p.54