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Prefaces and Postscripts: Walzer's *Just and Unjust Wars* at Age 40

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PREFACES AND POSTSCRIPTS:

WALZER'S *JUST AND UNJUST WARS* AT AGE 40

David Luban¹

I must begin with a personal recollection. In 1977 I was teaching philosophy at Kent State University, my first job out of graduate school, and I visited Cambridge over winter break. In those days before Amazon and the Internet, visiting an academic center with a major bookstore was a pilgrimage of sacred status, and the Harvard Coop was my temple of choice, up there with the legendary bookstores of Hyde Park. At the Coop the first thing I saw on display was stacks of the newly-published *Just and Unjust Wars*. I was already a Walzer fan from reading *Obligations*, so I made a beeline for the new book and, as the cliché goes, snapped it up and read it straight through when I got home. The next fall I taught a seminar on *Just and Unjust Wars*, and my students and I worked our way through it chapter by chapter over a full ten-week quarter.

When I leafed through *Just and Unjust Wars* in the Harvard Coop, I naturally fixed on the opening sentences of Walzer's preface:

I did not begin by thinking about war in general, but about particular wars, above all about the American intervention in Vietnam. Nor did I begin as a philosopher, but as a political activist and a partisan.

On the next page, he explained his reason for writing the book: "I promised myself that one day I would try to set out the moral argument about war in a quiet and reflective way. ... I want to defend the business of arguing, as we did and as most people do, in moral terms. Hence this book...."

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¹ University Professor, Law and Philosophy, Georgetown University; Distinguished Visitor in Ethics, Stockdale Center for Ethical Leadership, United States Naval Academy. I wrote this essay as a keynote address for the USMA-Villanova conference on Ethics of War and Peace, which in 2017 took as its topic Michael Walzer's *Just and Unjust Wars*, on the 40th anniversary of its publication. Throughout these notes, I abbreviate the book's title *JUJW*.

This stuff was like Chapman's Homer to me – “then felt I like some watcher of the skies when a new planet swims into his ken.” The need was urgent to set aside the emotions and anger that were tearing the country apart and reflect on Vietnam from a broader, more dispassionate, more philosophical moral point of view. But before Walzer, I think few of us had any idea how to start. *Just and Unjust Wars* was my first exposure to just war theory, and to say it was my best exposure would greatly understate how powerfully it affected me. To borrow a Holmesian phrase, it hit me where I lived.

That, it turned out, was literally true, for the Vietnam War was omnipresent in Kent, Ohio throughout the late '70s when I taught there. Even seven years after May 4, 1970, the shooting cast a shadow over the campus, and that shadow was the shadow of the war, inextricably linked with the antiwar movement and the backlash against it. I knew some of the wounded students – one paralyzed for life – as well as the parents of one student, Allison Krause, who was killed. In that year of 1977 I memorably paced off the shooting with one of the National Guardsmen involved, who came back to town as an act of expiation. The Vietnam vets studying at KSU on the GI Bill were my age, and some became my friends, and co-activists.

I've been emphasizing *Just and Unjust Wars'* Vietnam connection, but an admirable fact about the book is that it is timeless as well as timely. This places Walzer in the company of the just war theorists of the past. When Grotius wrote *The Rights of War and Peace*, he very much had in mind the war between Portugal and the Dutch East Indies Company. But his famous defense of private war is not simply a brief for the Dutch East Indies Company, although the Company happened to be Grotius's client. The arguments transcend their epoch and they matter now. So too with *Just and Unjust Wars*. To be sure, the book discusses the Vietnam War more than once, and passes severe moral judgment on its justice and conduct. Walzer has said that Israel's Six Days' War was also on his mind when he wrote the book, and his chapter on prevention vigorously defends Israel's pre-emptive strike against the Egyptian air force. But what's noteworthy about these case-judgments is that Walzer treats them no differently, no less even-handedly, and at no greater length, than any of his other historical illustrations – no differently than, say, the War of the Spanish Succession or Bradley's bombing of St. Lô.

Just and Unjust Wars is now in its fifth edition, and each succeeding edition includes an “updating” preface discussing issues raised by the wars fought since the last edition. But these prefaces are like the book itself – they raise issues of abiding, not just temporary, importance, and Walzer treats them that way. Can any modern war be just? – That’s the question in the preface to the 1992 edition, raised by objectors to the first Gulf War. What about humanitarian interventions? – that’s his question in the 1999 edition’s preface, the year of Kosovo and four years after Srebrenica.

And what of the use of force-short-of-war, the *jus ad vim* – a concept that Walzer introduced into just war theory in the preface to the 2005 edition, when he considers what might have been done instead of invading Iraq? In the fifth, and most recent edition, the preface discusses the morality of asymmetrical conflicts, with the U.S. vs. Taliban and Israel vs. Hamas conflicts in view. In the fifth edition he also added a new postscript – his rejoinder to revisionist just war theory. There, he reflects on the method of moral argument when we think philosophically about war. Like the book itself, the prefaces and postscript are at once timely and timeless. (I would hope to see future editions reprint them all together.)

Within contemporary academic debates, philosophers often call Walzer’s version of just war theory the “standard” or “orthodox” view, and I couldn’t help noticing that in his new postscript Walzer borrows those words as well.² Now in one way it’s undeniably orthodox: his fundamentals coincide in most respects with the international law of armed conflict. Walzer’s theory of just cause is that of the U.N. Charter. The moral equality of soldiers is the law of the Geneva Conventions; so is the moral equality of “their” civilians and “ours.”³ The very architecture of the law of war separates *jus ad bellum* and *jus in bello* by placing their rules in different legal instruments.

But in the tradition of just war philosophy, there is nothing standard or orthodox about Walzer at all – something I never appreciated until, a few years ago, I finally doubled back to read the historical authors Walzer cites⁴ – Aquinas and Augustine, Vitoria and Grotius and Pufendorf. Call them “the Greats” for short. Among

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² *JUJW*, 5th ed., p. 345.

³ Additional Protocol I draws no nationality distinction when it imposes obligations not to target civilians and to take all feasible steps to protect them.

⁴ *JUJW*, 5th ed., p. 336.

the Greats, aggression was by no means the unique crime of war, nor was self-defense the sole just cause. Nor did the Greats unanimously accept the moral equality of combatants: for example, Vattel argued that as a moral matter it is wrong for soldiers to fight on the unjust side, although the law should treat combatants symmetrically.⁵ That sounds more like McMahan than it does like Walzer.

This is not a criticism of Walzer. Just the opposite. What reading the traditional sources highlights is the deep originality of *Just and Unjust Wars*. It may have revived a forgotten tradition, but it is not merely a twentieth-century update of traditional doctrines, nor are Walzer's arguments a restatement of the Greats. If *Just and Unjust Wars* is by now the "standard" theory, and therefore the latest of the Greats, that is because Walzer made it so.

One way *Just and Unjust Wars* is hardly standard is its distinctive philosophical style, the use of "historical illustrations" not merely to *illustrate* but to propel his moral argument. In his preface, Walzer describes his method as "casuistic," and so it is. Some cases describe single incidents, some describe entire wars, some scrutinize discrete philosophical arguments, like Mill on non-intervention or Sidgwick on *in bello* proportionality and necessity.

Now, today's analytic just war theory in what I'll call the Oxford Style also makes crucial use of cases. But the cases are radically different from Walzer's, and serve different purposes. Walzer insists on real cases, while the Oxford Style makes a point of using unreal or "toy" cases. This is for a reason. The point of an Oxford Style case is to pare away all morally confounding side issues so only the principle under scrutiny is tested. When a sequence of toy cases is artfully constructed, you will find yourself pulled toward one and only one intuitively right answer for each case in the sequence, and those answers will vary as the philosopher manipulates first one variable and then another. The procedure is like a law professor's cascade of hypotheticals as she torments her first-year students to force them to explain how Case A, where you found for the plaintiff, wouldn't compel you to find for the plaintiff

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⁵ Emer de Vattel, *The Law of Nations*, ed. Béla Kaposy & Richard Whatmore (Indianapolis: Liberty Fund, 2008), Bk. III, Ch. XII, §§188-192, pp. 589-93; Bk. III, Ch. III, §39, p. 489.

in Case B where justice plainly runs the other direction. The idea is to subject principles to a stress test in a controlled setting.

Walzer's cases don't work that way, and they do a different job. It matters crucially to him that his are real cases, and although he makes them brief – which is no less a form of abstraction than the Oxford Style – they are never toy cases. In the fifth edition postscript, he explains how he prepared to write *Just and Unjust Wars*, first by reading the Greats and the manuals of international law. But (he continues)

the greater part by far of my reading was not in theory at all but in military history, both academic and popular, and then in the memoir literature produced by soldiers of different ranks (preferably the lower ranks: junior officers and foot soldiers, who make the toughest moral decisions on the battlefield); and then in wartime journalism and commentary (especially about Vietnam, the immediate occasion of my own writing). Finally I read many of the novels and poems that deal with the experience of fighting and with the company of soldiers. The nontheoretical genres, and the books and articles they include, seemed to me the critically necessary material for my project .... I wanted the moral arguments of my own book to ring true to their authors – and to the men and women about whom they were writing.⁶

It obviously bugs Walzer that analytic philosophers don't think they need that kind of reading, or at any rate that they don't write as if they need it. Oxford Style philosophers may respond that real-life cases contain too many confounders to be useful in a stress test of moral principles. You do a stress test in a doctor's office, not while the patient is playing football. But stress-testing isn't Walzer's aim, which, in the words I've just quoted, is rather to make "the moral arguments of my book ring true" to the soldiers. (Parenthetically, I can't help wondering whether memoirs by civilians trapped in a battle space, or burying their collaterally damaged children, or crowded into DP camps don't also belong on the required reading list, to make the moral arguments ring true to those men and women

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⁶ Ibid., 336.

as well. A reading list should include a little more *Mother Courage* and a little less *Band of Brothers*)

Perhaps more important than this difference, it's crucial to the Oxford Style that the toy cases are usually set in civilian life: Anne coerces Barry to break Camille's leg, which Dipak can prevent by shooting Anne, or the like. The thought is presumably that we can see the moral essentials most clearly outside the fog of war. Doing so will enable us to think better about the wartime cases. That may be true, provided the examples are ecologically valid when transferred from civilian society to the battlefield. Walzer suspects they can't be, and in the postscript to the fifth edition, he complains that the Oxford Style constructs what would be a marvelous morality of war if war were a peacetime activity – in my view one of the deepest-cutting philosophical one-liners I've ever read.⁷ The distinctiveness of war must not get blurred in the fog of peace.

Apart from ringing true to soldiers, it seems to me that Walzer intends his examples to serve four other functions: first, to reassure us and himself that the issue on the table is a real one, with real urgency; second, to convey to civilian readers something of what decision-making in war must feel like; third, to verify that his prescriptions aren't too fanciful or demanding for soldiers and sailors to use in actual combat; and fourth, to give readers food for thought. On the "food for thought" point, one the most attractive features of *Just and Unjust Wars* is that every case in it invites further reflection and conversation. Nothing ends with a "QED," and the reader is tempted to continue the conversation with "But wait a minute ...." not with "well, that settles that."

One way to describe this stylistic difference is through a lovely distinction Avishai Margalit draws in *The Ethics of Memory*, between "i.e. philosophy" and "e.g. philosophy" – roughly, philosophy proceeding top-down from first principles and philosophy proceeding bottom-up from examples. Rawls's theory of justice is paradigmatic "i.e." philosophy. "E.g." philosophy like Margalit's starts with cases, and it wends its way to its conclusions by reflecting on those cases. "E.g." philosophy never lets the cases get wholly out of sight. It takes comfort from Sidney

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⁷ Ibid., 338. Walzer first used this line in his "Response to McMahan's Paper," *Philosophia* 34 (2006), p. 43.

Morgenbesser's dictum that to explain why a man slipped on a banana peel you do not need a general theory of slipping.⁸

Now in my view *Just and Unjust Wars* lies near the happy Aristotelian mean between "i.e." and "e.g.". Walzer is more systematic than, say, Jon Elster, whose best writing is "e.g." all the way down. By contrast, Walzer's initial statement of the Legalist Paradigm has nothing of the "e.g." about it: it's a straightforward catalogue of six general propositions.

Overall, though, Walzer's method of organizing theory around real cases places him in the "e.g." camp. "I.e." just war theory first works out a general theory of the use of lethal violence in individual self-defense, then applies it to wartime. "E.g." philosophy resists such procedures and demands that just war theory start with war – or rather, with *wars*, plural, meaning actual cases. Both methods have their strengths and their risks. The chief risk of Walzer's procedure is that the cases might not generalize as far as he wants them to generalize. The chief risks of the Oxford Style are scholasticism and unreality.

As befits a fortieth birthday party, let me return again to the moment of birth. It is worth remembering two major events of 1977. That June, diplomats adopted the Protocols to the Geneva Conventions, the first treaties to set out the *jus in bello* rules of distinction and proportionality in the form familiar today. No doubt Walzer's book was already in galleys by then, so there was no influence in either direction. Walzer was not keeping track of the Geneva negotiations, but it's remarkable how closely significant Protocol rules track *Just and Unjust Wars*.

To take the most telling example, recall Walzer's distinctive version of the doctrine of double effect: he insists that it's not enough for soldiers *not to intend* to cause civilian collateral damage; they must *intend not* to do so. Protocol I imposes a legally novel affirmative obligation to take all feasible precautions to avoid civilian harm⁹: this is, in essence, Walzer's concept of "intending not," cast in the form of legal rules. Now I don't much believe in *Zeitgeists*, but it's hard not to suspect that the Geneva drafters and Walzer were breathing the same intellectual and moral air. When we

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⁸ Sidney Morgenbesser, "Scientific Explanation," in 14 *International Encyclopedia of the Social Sciences* 122 (David Sills ed., 1968).

⁹ Additional Protocol I to the Geneva Conventions (1977), art. 57(2).

re-read these pages today, we should remember that Walzer wrote his double effect analysis without the benefit of any hard-law rules to draw on.

There are also differences. Notably, Walzer is suspicious of *in bello* proportionality and its utilitarian assumptions, whereas AP I embraces it. This is a crucial difference, because Walzer's mistrust of utilitarianism is central to his argument. It brings me to the second event of 1977 that matters.

During the first half of 1977, the Carter administration was formulating and publicizing its pro- human rights foreign policy – a watershed moment for the human rights movement. Following two years after the Helsinki Accords, it was a pivotal moment in American diplomacy that deeply boosted human rights movements around the world.

The relevance is obvious. Walzer's first-edition preface cautions that he is not going to expound any theory of morality from the ground up. But, he continues,

I want to suggest that the arguments we make about war are most fully understood ... as efforts to recognize and respect the rights of individual and associated men and women. The morality I shall expound is in its philosophical form a doctrine of human rights.¹⁰

It's worth recalling that Walzer began work on *Just and Unjust Wars* the year after Rawls published *A Theory of Justice*, defending the priority of the right over the good in the teeth of the utilitarian conventional wisdom of the previous two decades of moral philosophy. In 1974 Nozick published *Anarchy, State, and Utopia*, with its strongly individualistic theory of natural rights. Alan Donagan's rights-based *The Theory of Morality* appeared the same year as Walzer's book, and so did Dworkin's *Taking Rights Seriously*, announcing that rights are moral trump cards; Charles Fried would publish *Right and Wrong* the following year. For the moment, human rights had become the lingua franca of moral philosophy. As I recall, most of these philosophers had been meeting on a regular basis to discuss their works-in-progress, rather like the Oxford Inklings meetings where Tolkien and C.S. Lewis read rough

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¹⁰ *JUJW*, 1st ed., xxi-xxii.

drafts to their friends over beer and bangers at a pub. What this efflorescence of rights theories means for just war theory is worth thinking about, and I will reflect on it shortly.

Let's return to human rights as they function in *Just and Unjust Wars*. Remember that Walzer calls his book "a doctrine of human rights."¹¹ But human rights actually plays a smaller direct role in the argument of *Just and Unjust Wars* than this language would lead us to expect. It makes two important cameo appearances, once in the *jus ad bellum* and once in the *jus in bello*.

The former is the one that over the years I've had the most trouble with. In Walzer's theory, aggression is the crime of war because it assaults the right to self-determination of political communities. Now, political communities are collectives, so we are talking here about collective or group rights. Let's re-read what Walzer says about human rights in his first preface: he calls them "the rights of individual *and associated* men and women." Walzer leaves space for collective rights. It's easy to overlook those words "... and associated", especially because later Walzer says that the rights of states "derive ultimately from the rights of individuals."¹² It's natural, but I think mistaken, to read *Just and Unjust Wars* as a doctrine of individual human rights.

Walzer gets from individual rights to community rights via a metaphorical social contract – a metaphor, he tells us, "for a process of association and mutuality,"¹³ a common life shaped over a long period of time. He wants us to recognize that this common life matters to us as much as personal liberty and free speech matter to us. It matters enough to be included as the substance of a right. Is it, though, a collective or an individual right? I think it must be collective. If we're forced to analyze it as an individual human right, it would be the individual's right to share in the common life of her people.

But that is an awkward and misleading way to put it: it sounds like an individual right against exile or isolation or group persecution, which is not at all what Walzer is talking about. I take this as evidence that the right to a common life fits more comfortably

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¹¹ Ibid.

¹² *JUJW*, all editions, p. 53.

¹³ Ibid., p. 54.

as a group right, not an individual right.¹⁴ It's the revisionists who are really the individual-rights theorists in today's just war theory, for it is they whose starting question is what makes an individual liable to be killed notwithstanding the right to life.

As Walzer elaborates the right to share in a common life, it generates a political right of self-determination. The latter move, I should say, doesn't follow automatically. It isn't automatic that the Kurds and Catalans and Kosovars need political self-determination to enjoy their common life, and it isn't hard to imagine scenarios where political self-determination could ruin the Catalans' common life as it exists today, turning a prosperous province into a struggling statelet.

But suppose we accept the premise that peoples have a collective right of self-determination. Walzer derives two of his major doctrines from it: first, that military aggressions are the crime of war. Second, in one of the most famous parts of the book, Walzer endorses John Stuart Mill's argument against military interventions to free an oppressed people: for Mill and Walzer, self-determination requires that they be left to work out their destiny for themselves, whether it be authoritarian or democratic.

Recalling the opening words of his first preface, it now seems glaringly obvious that Walzer had Vietnam in mind. The U.S. claimed to be supporting South Vietnam's self-determination, but in reality we were propping up a puppet government. Regardless of what we – or many South Vietnamese – thought of the Communists, self-determination meant the Vietnamese should work their destiny out themselves, violently or not, as in the end they did. Whatever we think today about Vietnam's government, it's *their* government.

But there's a complication here. Walzer's model of a Burkean social contract – a common life worked out by a people over time – fits ethnically homogeneous states best, and stable, historically multi-ethnic states second best. Artificially pieced-together multi-ethnic states where tribal or clan or religious ties are stronger than ties to whole, and where group antagonisms run just below the surface, are a less good fit. And states plagued by political,

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¹⁴ Graham Parsons thinks the tension between group and individual rights is why it is so hard to make *Just and Unjust War's* *ad bellum* and *in bello* theories hang together. Graham Parsons, "The Incoherence of Walzer's Just War Theory," *Social Theory and Practice* 38(4): 663-88 (2012).

racial, or religious oppression don't fit at all. In a racist or apartheid state, the right of political self-determination benefits the common life only of the dominant group, and therefore it isn't truly a common life. Not only does it exclude the victim groups from that common life, it impedes them from fashioning a common life of their own. As I shall suggest in my conclusion, this is a grave danger today.

By no means am I suggesting that outside military intervention is the cure for the disease of oppression – “Libya” is the two-syllable refutation of that thought. But when sovereignty serves as a screen for oppression, and large parts of the nation don't enjoy its common life, Walzer's theory isn't the explanation of what's wrong with intervention. He recognized this in the first (and succeeding) editions,¹⁵ but it isn't until the preface to his third edition, where – with Srebrenica in mind – he fully acknowledges that in states like Bosnia the value of sovereignty to the victims is small and the barrier to intervention is low.¹⁶

Besides its role in the theory of *jus ad bellum*, human rights also figures in the *jus in bello* – but, I think, mostly indirectly. There is a small section titled “Human Rights,” built around a case study, “The Rape of the Italian Women.” The example, drawn from World War II, is that the Free French fighting in Italy needed the aid of Moroccan mercenaries, who insisted on the right to rape Italian women as part of their fringe benefits. Does military exigency justify the deal?¹⁷ Tony Pfaff has written about a parallel dilemma 60 years later, in Iraq. Should U.S. police trainers turn a blind eye to an Iraqi policeman who used torture, because firing him would turn his powerful family against us?¹⁸

Walzer writes that “men and women ... have a moral standing independent of and resistant to the exigencies of war. A legitimate act of war is one that does not violate the rights of the people against whom it is directed.”¹⁹ I believe this is the only place where Walzer directly invokes individual rights. And to me it's noteworthy that the context is a critique of utilitarianism, which Walzer introduced in the preceding section. Throughout the book,

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¹⁵ *JUJW*, all editions, p. 101.

¹⁶ *JUJW*, 3rd ed., xiv.

¹⁷ *JUJW*, all editions, 133.

¹⁸ Tony Pfaff, *Development and Reform of the Iraqi Police Forces* (Jan. 2008), 31-48, at <https://ssi.armywarcollege.edu/pubs/display.cfm?pubID=840>.

¹⁹ *JUJW*, all editions, 135.

we see a suspicion of utilitarianism – not only here, but also in the analysis of preventive war and in his “skepticism of the proportionality rule” that he explicitly acknowledges in the 2015 Preface.²⁰ One philosophical function of rights-talk has been to counteract utility-talk, and that seems to me an important function rights-talk plays in *Just and Unjust Wars*.

Now, in his discussion of human rights Walzer also acknowledges in passing that rights can be “surrendered or lost” by voluntary actions.²¹ One might say that the granular, detailed analysis of rights-forfeiture is one of the main occupations of the analytic just war theory industry. But Walzer doesn’t really take it up, because – in my reading – the kind of legalistic and Hohfeldian intricacy of analytic just war theory is not the approach to human rights he favors. Immediately following the Rape of the Italian Women, we find Walzer’s discussion of “The Status of Individuals”²² and the famous examples of “naked soldiers” – cases where soldiers are morally revolted by the prospect of picking off an individual enemy soldier taking a bath, or pulling up his trousers, or enjoying a beautiful sunrise, or lighting a cigarette. Although Walzer doesn’t call this a human rights issue, it seems like a natural continuation of the preceding section on human rights – intended as such. To me, it describes an experience of the other that underlies all genuine human rights thinking: the experience of human solidarity across lines, including battle-lines. Confronted by the individuated, helpless, and momentarily non-threatening enemy, one says simply – *ecce homo*, behold the man.

Gabriella Blum has coined the phrase “the individualization of war,” by which she means the gradual infusion of individual-rights thinking into the laws of war – and individualization has become a major topic in contemporary writing. In his 2015 Postscript, Walzer takes care to emphasize that war is an intensely collectivizing experience.²³ It’s part of his rejoinder to the revisionist penchant for thinking of killing in war as, so to speak, a mere accumulation of individual killings in war. But I find in his discussion of the naked soldier – and in his critiques of utilitarianism, and in his stated commitment to human rights – a countervailing

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²⁰ *JUJW*, 5th ed., xv.

²¹ *JUJW*, all editions, 135.

²² *JUJW*, all editions, 138.

²³ *JUJW*, 5th ed., 340-41.

sympathy for individualization. I would describe it as humanistic, in the sense reflected in Terence's beautiful line "I am human, and nothing human is alien to me." Warfare is not alien, but neither is the sheer humanity of the human being on the other side. One way, then, to identify the difference between the analytic philosophy of human rights and the approach in *Just and Unjust Wars* is the difference between a kind of legalistic focus on the logic of rights and a kind of humanism, each with its own strengths and weaknesses. Human rights theory can't do without an analysis of rights and liabilities. But just war theory would be morally impoverished without the kind of humanism we find in *Just and Unjust Wars*.

My remarks so far have been, so to speak, a preface to *Just and Unjust Wars*. I want to conclude with a postscript. I have been emphasizing that the year 1977 was a time of human rights ascendancy, in philosophy, in foreign policy, and in public discourse. Today, unfortunately, we are in an era of human rights retreat if not collapse. At the apogee of human rights, politicians would deny their human rights violations. Today they feel no need. In our time of authoritarian populism, leaders spit on human rights and their supporters cheer. I am not talking only about Myanmar and the Philippines and Turkey and Syria. I'm talking about Western-style democracies as well.

We see it in continental Europe's elections and the British yellow press's loathing for the European Court of Human Rights. Our own president said he would bring back waterboarding in a heartbeat, whether it works or not, because they deserve it. Last December, Israel's supreme court rolled back its landmark anti-torture decision of 1999,²⁴ and much of the Israeli public views its human rights organizations as enemies of the army.

In 1977, philosophers might have been inclined to see utilitarianism as the opponent of rights theorizing. Today, we must recognize that the opponent of rights is populist nationalism. One hallmark is a pugnacious commitment to state sovereignty as a

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²⁴ At the time of this writing, the decision is not available in English translation. For detailed summaries, see Elena Chachko, "'Pressure Techniques' and Oversight of Shin Bet Interrogations: Abu Gosh v. Attorney-General," *Lawfare* weblog, Dec. 22, 2017, <https://www.lawfareblog.com/pressure-techniques-and-oversight-shin-bet-interrogations-abu-gosh-v-attorney-general>; and Yuval Shany, "Back to the 'Ticking Bomb' Doctrine," *Lawfare* weblog, Dec. 27, 2017, <https://www.lawfareblog.com/back-ticking-bomb-doctrine>.

shield against outside human rights pressure, something we see vividly today in Hungary and Poland. Another hallmark is, unfortunately, a powerful commitment to the rights of political communities, but one that comes coupled with an angry sense that the political community doesn't include everyone who lives in the state's territory – not the refugees, not the immigrants, not the ethnic and racial minorities. These are the alien other, not part of “our” communal life. Earlier, I remarked on how Walzer's concept of political community works best to model homogeneous nation-states like Norway, and worst to model multi-ethnic states with angry majorities.

Now none of this directly undermines the validity of Walzer's theory of *jus ad bellum*; but it does weaken the political theory on which it rests. It raises an orange flag over state sovereignty grounded in the rights of political communities, when the communities are being flagrantly gerrymandered to exclude minority residents. More damagingly, rage at the alien other places enormous stress on one of Walzer's central commitments: the moral equality of civilians, carrying the requirement that soldiers must take equivalent risks to spare “their” civilians and ours.

Ultimately, though, the humanism of *Just and Unjust Wars* plainly outshines the weakness I've identified. Unfortunately, at age forty, the humanism of *Just and Unjust Wars* finds itself under worldwide siege. As an admirer of the book and the vision behind it, I can only wish for the siege to break – and for many happy returns, and a next edition with a preface that affirms human rights in a time of peril.