

# A Pyrrhic Victory?

## The 'War on Terror' and 'The Triumph of Just War'

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**Abstract:** This paper reflects upon the prominence of one particular stream of discourse in the official rhetoric pertaining to the 'war on terror': that relating to the notional idea of just war. It argues that a number of intriguing issues arise in relation to the emergence of just war discourse as the lingua franca of international politics. Chief among them is the matter of whether we should welcome the ascendancy of just war discourse in official rhetoric as marking the emergence of a robust and progressive normative agenda in the spheres of statecraft and international conflict. Or is this positive slant misleading, and should we instead greet this development with circumspection? Combining these concerns, the question becomes whether we should celebrate the adoption of just war vocabulary by those commanding the 'war on terror' as a triumph of progressive values, or lament it as reflecting the abuse, and indeed corruption, of that same vocabulary? Drawing upon the work of, on the one hand, Michael Walzer, and on the other, Thucydides, this paper cautions that the so-called triumph of just war theory that we have witnessed in recent years may yet turn out to be a pyrrhic victory, superficially impressive but devoid of content.

## **Introduction**

The years since 9/11 have proved to be rich ground for scholars interested in the discursive construction of international relations. Scholars such as Richard Jackson and Stuart Croft have highlighted and examined the manner by which the 'war on terror' has emerged as a 'rhetorically constructed reality', paying particular attention to the role played by political and media actors in this process (Croft, 2006: 2; also Jackson, 2005: 2). Building upon this body of work, this paper reflects upon the prominence of one particular stream of discourse in the official rhetoric pertaining to the 'war on terror': that relating to the notional idea of just war. For evidence of the prominence of this discourse, one need look no further than the remarks offered by President Barack Obama (2009) upon receipt of his Nobel Peace Prize. The President's speech was couched in the idiom of just war and urged both the assembled delegates and his wider global audience that the key challenge facing the international community as we look towards the next decade is 'to think in new ways about the notion of just war'.

A number of intriguing issues arise in relation to the emergence of just war discourse as the lingua franca of international politics. Chief among them is the matter of whether we should welcome the ascendancy of just war discourse in official rhetoric as marking the emergence of a robust and progressive normative agenda in the spheres of statecraft and international conflict. Or is this positive slant misleading, and should we instead greet this development with circumspection? Combining these concerns, the question becomes whether we should celebrate the adoption of just war vocabulary by those commanding the 'war on terror' as a triumph of progressive values, or lament it as reflecting the abuse, and indeed corruption, of that same vocabulary?

This paper will address this question over four sections. The first section provides a brief primer on just war discourse, before treating the manner by which it was employed by Bush administration officials over the course of the 'war on terror'. Drawing on Michael Walzer's influential essay, 'The Triumph of Just War Theory', the second section unpacks the view that the appropriation of just war discourse by President Bush, and others in positions of power, is, generally speaking, a good thing. The third section sets Walzer's argument against a classical counterpoint, Thucydides' account of the stasis at Corcyra. As recounted here, this episode suggests a powerful challenge to Walzer's faith in the power of normative talk to civilize international political life. Finally, returning our attention to the 'war on terror', the fourth section assesses the manner by which two particular moral-evaluative terms that pertain to the use of force – 'pre-emption' and 'torture' – have been used (and potentially redefined) in the decade following 9/11. This latter undertaking ought to give us a good indication of whether the recent historical record supports Walzer's optimism or Thucydidean pessimism. Drawing all of this together, this paper cautions that the so-called triumph of just war theory that we have witnessed in recent years may yet turn out to be a pyrrhic victory, superficially impressive but devoid of content.

### **From Just War to the 'War on Terror'**

The just war tradition is the predominant moral language through which we address questions pertaining to the rights and wrongs of the use of force in international society. Boasting a lineage that is typically traced to the sunset of

the Roman Empire, it furnishes us with a set of concepts, principles, and analytical devices for making sense of the moral-legal questions that war raises. Contemporary accounts of the tradition organize it around two independent but related poles of inquiry, the *jus ad bellum*, which speaks to the conditions under which the recourse to war might be justified, and the *jus in bello*, which treats the issue of how war might be conducted in a just manner once commenced. Although scholars disagree over which principles should take priority within these poles of inquiry, and how they relate to one another, a certain amount of consensus endures regarding the principles themselves. Few scholars challenge the view that the *jus ad bellum* requires us to think in terms of 'just cause', 'proper authority', 'right intent', and 'last resort', while most agree that the *jus in bello* directs us to questions relating to 'discrimination', 'proportionality', and 'double-effect'. These categories have been covered extensively in the literature, so there is no need to elaborate them here (see: Johnson, 1999: 27-38).

What might require a little more explanation is the notion, alluded to earlier, of just war 'discourse'. This formulation is intended to evoke the idea that just war comprises a 'moral language', that is, 'a medium of shared understanding' that discloses our moral understanding of the world while facilitating the exchange of ideas with others (Ball, Farr, and Hanson, 1989: 2). Viewed in these terms, just war is a bounded idiom or moral vocabulary that both structures and informs how we 'arrange and classify and think' about war in substantive terms (Ball, 1988: 4). It maps and delimits the rights and wrongs of warfare, encouraging certain practices while precluding others. Walzer (1992: 14-5) puts it eloquently: he claims that the terms of just war

reflect the real world ... They are descriptive terms, and without them we would have no coherent way of talking about war. ... Reiterated over time, our arguments and judgments shape ... the moral reality of war – that is, all those experiences of which moral language is descriptive or within which it is necessarily employed. It is important to stress that the moral reality is not fixed by the actual activity of soldiers but by the opinions of mankind. That means, in part, that it is fixed by the activity of philosophers, lawyers, publicists of all sorts.

As a language, then, just war contributes to the moral reality of war by establishing our frame of reference and providing us with a set of terms with which to make sense of that reality. Some of the central terms associated with just war have already been introduced – just cause, proper authority, discrimination, et cetera – but its range extends far beyond these stock phrases, potentially taking in any morally substantive term pertaining to the use of force. This means that terms such as ‘humanitarian intervention’, ‘reprisals’, ‘massacre’, ‘war-crimes’, ‘pre-emption’, and ‘torture’ could plausibly fall under its umbrella. This list is indicative, rather than exhaustive, but the latter two terms will feature again in this paper.

The relevance of introducing just war as a discourse becomes immediately apparent when one considers the prominence that it has enjoyed in the official rhetoric in the years since 9/11. President Bush and his team engaged just war discourse frequently and extensively in relation to the ‘War on Terror’, but did so in two distinct ways. In the first instance, President Bush framed the war very generally within the rubric of just war, as fought for a just cause and by just means. The second aspect of the administration’s engagement with just war discourse is perhaps more interesting and certainly more

challenging. It comprised a sustained effort to justify very specific strategies as confluent with certain particular and exactly defined just war principles and categories. We might think here of the very involved manner with which Bush administration officials invoked, and attempted to reconstitute, the meaning of very particular just war terms so as to cover military actions they were undertaking. The two cases that spring most readily to mind are 'pre-emption' and 'torture'. In both of these cases – the former relating to the *jus ad bellum* side of house, the latter referring to the *jus in bello* – the Bush administration engaged in convoluted efforts to re-calibrate the range and/or meaning of these terms in order to fit them around preferred US military practices. The more cynical among us might note that the effect of these linguistic interventions, if successful, would be to maximize the range of manoeuvre available to the US in the prosecution of the 'war on terror'. Mindful that further explication is required here, I will return to these cases in the final section.

### **The Triumph of Just War?**

In the meantime, I wish to ask a more general question: What are we to make of the fact that the Bush administration engaged so wholeheartedly with just war discourse? Is it meaningful that the administration articulated and justified its policies and decisions – including those relating to the anticipatory invasion of Iraq and the rough handling of detainees in Abu Ghraib and elsewhere – via and in relation to the idiom of just war? Just one year after 9/11, and one year into the 'war on terror', Michael Walzer published an influential essay, 'The Triumph

of Just War Theory (And the Dangers of Success)', that addressed this very question (2002 [republished 2004]).

Walzer's starting point is the observation that military and political leaders have not always been so enamoured of just war talk (or, in fact, any form of moral talk whatsoever). 'The standard reference', he writes, 'was not to justice but to interest. ... Just war theory was relegated to religion departments, theological seminaries, and a few Catholic universities' (2004: 6). This situation was not to last. The first stirrings of change occurred in the context of Vietnam, Walzer reports, when proponents and opponents of the war joined debate on the rightness or wrongness of that particular venture. Not surprisingly, members of the latter camp soon found themselves groping for a common moral language through which to express their views. Realism, they soon realized, would not work for them. It 'robbed' them of the very words they most needed – 'aggression, intervention, just cause, self-defence, non-combatant immunity, proportionality, prisoners of war, civilians, double-effect, terrorism, war crimes' – words that conveyed the moral content of acts that had hitherto been whitewashed in the bloodless jargon of Cold War strategy (2004: 7). What realism denied, just war supplied. Without fully realizing what they were doing, opponents of the Vietnam War found themselves employing just war principles and categories to press their case against a controversial conflict. They found themselves, in other words, like Moliere's Monsieur Jourdain, speaking just war intuitively, naturally, almost without their even knowing it. Later on, once the war was over, the subject of just war would become a staple subject in US military academies and university campuses. This shift from the public forum to the classroom might seem to be a backward step in some respects, but it ensured

that millions of people – futures generations of citizens and military and political leaders – were schooled in the finer points of both *jus ad bellum* and *jus in bello*. By the 1990s, it had become the lingua franca of the military and political leadership of Western democracies who invoked its categories both to justify their wars and assure their publics that they were being waged in the right manner. It is development that Walzer (2004: 12) refers to as the ‘triumph of just war theory’.

This raises the question whether the triumph of just war is something to be celebrated. That is, is it a good thing? Should we read it as marking the emergence of a robust and progressive normative agenda in the spheres of statecraft and international conflict? Two reasons suggest themselves for thinking that the triumph of just war theory is indeed a beneficial development. The first of these supposes that it is reflective of the emergence of a more normatively sensitive approach to warfare. This view takes the triumph of just war theory at face value and supposes that, because political and military leaders are talking about discrimination, proportionality, just cause, et cetera, they must really care about these things. Or, put more accurately, they must be incorporating these concerns into their plans and actions. Understood in this light, the growing prominence afforded to just war ideas in official discourse reflects the maturation of a long-term process whereby the norms of restraint governing warfare have been buttressed and consolidated. So proponents of this view like to point to the increasing ratio of smart to dumb bombs dropped during major international conflicts, the routine deference to moral and legal scruples that is now the norm in military command centres, and the swing that has taken place towards more virtuous and humanitarian forms of war



(O'Donovan, 2003: 125-6; also Ignatieff, 2000). Critics who challenge this view are shot down with the rhetorical question: Would you rather have been a civilian in Blitz-torn London or in shocked-and-awed Baghdad? The point being, of course, that these bookends demonstrate an impressive trend towards more restraint and discrimination in war over the last half-decade or so.

But not everyone is comfortable adopting such a sanguine view about the role and nature of war in the modern world. These sceptics find support for their position in damning civilian casualty statistics (80% of casualties in contemporary warfare are civilian, compared to 20% a century ago) and the brutishness of recent conflicts (for example, the 2006 Lebanon War). The inference derived from these statistics is that the turn towards just war is of no substance, being little more than a rhetorical device. Although political and military leaders may gesture towards just war ideas in their speeches and presentations, this is just a superficial moral veneer that has no correlation to their behaviour, that is, to the decisions they reach and policies they execute in times of war (for example: Carr, 2001: 64-5). Some critics go even further and suggest that the recourse to just war discourse plays a more sinister role than this, enabling bloody wars by cloaking them in the guise of justice (Fiala, 2008: xi; Booth, 2001).

It is in response to these charges that we encounter a second, more oblique but possibly more powerful, argument for thinking about the triumph of just war in positive terms. This is the argument that, though the use of just war ideas by contemporary leaders may be opportunistic or even hypocritical, it is still likely to possess behavioural significance. This is because it establishes and consolidates standards of behaviour against which those same leaders will be

judged. The implication of this is that, even if their engagement with just war discourse is cynical rather than sincere, political and military leaders 'will find themselves committed to behaving in such a way that their actions *remain compatible* with the claim that their professed principles genuinely motivated them' (Skinner, 2001: 155; also Wheeler, 2000: 7). Put more simply, unless leaders wish to expose themselves as frauds, they will be drawn over time to act in a manner consistent with their stated convictions. And in those cases where leaders fail to do even this, the just war ideas they invoked and then betrayed may be cited against them. Putting this in some kind of useful order, it is possible to say that if just war discourse is used by political and military leaders to justify their military campaigns, it also provides a means of keeping them honest. It supplies a language of immanent critique that enables us to call our leaders to task on their mendacity, and hold them to their word (Walzer, 1992: xxix; Walzer, 2004: 12). Summing up this second argument, the triumph of just war theory, that is, the adoption of just war as the lingua franca of those in power, is a good thing because it means that we, as critics and engaged citizens, have enhanced critical leverage on those in power.

### **A Pyrrhic Victory?**

There are, however, also compelling reasons for taking a more equivocal stance regarding the so-called triumph of just war. Principal among them is the concern that the triumph in question is properly understood as a pyrrhic victory. Denoting a hollow or empty triumph, the term pyrrhic victory is derived from the success achieved by King Pyrrhus of Epirus over the Romans at the Battle of

Apulia in 279BCE. This victory was achieved at such high costs that it threatened to hobble Epirus's campaign plans: 'Another such victory', he lamented, 'and we shall be lost' (Lane Fox, 2006: 305-6). This section will unpack the concern that the so-called triumph of just war should properly be viewed in this light, elaborating both a weaker and a stronger version of it.

The weak version is best introduced by an apocryphal tale recounted by Peter Temes in his 2003 monograph, *The Just War* (91-3). The story goes that, prior to the declaration of war against Iraq in 1991, President George H. W. Bush experienced strong feelings of doubt and apprehension regarding the forthcoming military action. Specifically, he was struggling to reconcile his role as commander-in-chief of a nation at war with his Christian faith. Seeking reassurance, he sought advice from a minister known to his family. The minister obliged by summarizing the basic tenets of the just war tradition on an index card, so that the president might keep reflect upon them at his leisure. On the one hand, one might read this story as corroboration of the triumph of just war – it signifies Washington's embrace of the just war – but one can also read it in a more circumspect light such that it illustrates the danger that just war theory is in the pocket of power.

The moral imparted by this story, in other words, is the potential for the transformation of just war theory into a strategic discourse that serves rather than challenges *realpolitik*. As presidents and generals alike internalize the vocabulary of just war, the possibility increases that unscrupulous commanders will deploy it as a strategic partner in battle. Aided and abetted by lawyers who are already versed in the art of 'lawfare', it should not surprise us if today's leaders display an adept hand for manipulating the language made available to

them by just war, using it to extend the range of action available to their military commanders (Kennedy, 2006: 12). By way of example we might think of the way that the Bush administration variously expanded and contracted the reference of terms such as, respectively, 'preemption' and 'torture'. We will return to these examples subsequently. For now, it may suffice to recap the general point that the language of just war may be mobilized by the military and policy elite as a strategic asset, serving to enable rather than constrain the violence of war.

At the heart of this argument is a palpable fear that the triumph of just war is actually little more than an egregious case of abuse, whereby a moral vocabulary has been manipulated to serve the interests of power. There is, however, a sense in which this argument is underdeveloped. Or, put more precisely, there is a sense in which it fails to draw out the full ramifications of the developments it discusses. Namely, it omits to discuss the very real possibility that sustained abuse is not just a negative in its own right, but might also corrode the coherence and integrity of just war as a moral discourse. This leads us, then, to the stronger version of the argument that the triumph of just war is little more than a pyrrhic victory.

The stronger version of the argument is encapsulated by Thucydides' account of the stasis at Corcyra (1998: 168-70 [3.81]). This gruelling passage, which details one of the more brutal episodes of the Peloponnesian War reveals a powerful challenge to Walzer's faith in the power of normative talk to civilize international political life. As Thucydides reports, Corcyra was a traditional Athenian ally that in 427BCE was wracked by a bitter civil war that pitted democrats and oligarchs against one another in a bloody internicine struggle. As the balance of power oscillated from one party to the other, a vicious spiral of

butchery and atrocity ensued. 'Every form of death prevailed, and whatever is likely in such situations happened – and still worse. Fathers killed sons, men were dragged from the sanctuaries and killed beside them, and some were even walled up in the sanctuary of Dionysos and died there' (168 [3.81]). This strife soon spread across the Hellenes, both merging with and pouring further fuel upon the overarching struggle between the Athenians and the Spartans. The results were catastrophic. Order broke down, passion eclipsed reason, *logos* (speech) gave way to *ergon* (action), *nomos* (convention and law) was superseded by *physis* (unmediated natural impulse), and, finally, the moral vocabulary that the Greeks used to make sense of these events buckled under their weight (Bedford and Workman, 2001; White, 1984: 62-89; Pouncey, 1980: 149). Thucydides describes these scenes in a remarkable passage (169-70 [3.81]):

So the condition of the cities was civil war. And where it came later, awareness of earlier events pushed to extremes the revolution in thinking, both in extraordinarily ingenious attempts to seize power and in outlandish relations. And in self-justification men inverted the usual verbal evaluations of actions. Irrational recklessness was now considered courageous commitment, hesitation while looking to the future was high-styled cowardice, moderation was a cover for lack of manhood, and circumspection meant inaction, while senseless anger now helped to define a true man, and deliberation for security was a specious excuse for dereliction. The man of violent temper was always credible, anyone opposing him was suspect. The intriguer who succeeded was intelligent, anyone who detected a plot was still more clever, but a man who made provisions to avoid both alternatives was undermining his party and letting the opposition terrorize him. Quite

simply, one was praised for outracing everyone else to commit a crime – and for encouraging a crime by someone who had never before considered one.

There is much to chew on in this passage, but what is most pertinent to this paper is Thucydides' depiction of the disintegration of moral language. Reversed, frayed, abused, and stretched to breaking point, moral terms have been so twisted that the words themselves have 'lost their meaning' (White, 1984: 3).

The effect of this loss of meaning is chilling, and extends far beyond semantics. It relates to the dissolution of those resources – speech, language, argument, discussion, shared norms and meanings – that make political community and indeed political life possible (de Jouvenel, 1957: 304). Herein lies the true horror of Thucydides' account of the Peloponnesian War. Maintaining a funereal pace, it narrates, one term at a time, the slow arc by which the 'delicate fabric' of Greek life was unpicked and rendered bare, denuding Hellenic society of the means to sustain itself as a social form (Pouncey, 1980: 149). By the conclusion of the Thucydides' book, which arrives seven years before the war is ended, man has already been reduced to something resembling bare life. Stripped of a shared moral language and grammar, that is, the means by which to make sense of the world and communicate to her fellow citizens, man has lost her social bearings and has no means of recovering them. Summing this up, the key point I wish to convey here is that Thucydides' narrative is clinical in its portrayal of what happens when the moral languages that sustain a society breakdown following a period of sustained abuse.

Does the Corcyran stasis have any instructive value for how we understand the fate of just war discourse in the context of the ‘war on terror’? An interesting argument can be constructed to the effect that it does. This would suppose that, although just war discourse has gained in prominence over the course of the past few years, the process by which this has taken place has had an emaciating effect upon it. And, by so degrading the principal common language available to us for debating the rights and wrongs of warfare, this emaciation of just war discourse must also impoverish the common life of international society. (If this is indeed the triumph of just war, we might well say with Pyrrhus that another such victory and we will be lost.) But, so far, all of this is just conjecture. Can we flesh it out empirically such that we would acquire a sense of whether this Corcyran pessimistic vision is closer to reality than the more optimistic vision that I associated with Walzer in the second section of this paper?

### **Two Cases: Pre-emption and Torture**

If we really wish to think about whether the triumph of just war is meaningful or pyrrhic, we need to focus our analysis on how just war discourse functions in concrete terms. With this in mind, this final substantive section will concentrate on two particular terms, mentioned earlier, that featured prominently in the Bush administration’s just war discourse over the course of the ‘war on terror’: ‘pre-emption’ and ‘torture’. Our purpose is to enquire how these terms were invoked over the course of the ‘war on terror’, so that we may ascertain whether this process enhanced or degraded their coherence and critical purchase.

Pre-emption is a *jus ad bellum* category that is typically treated as a legitimate form of anticipatory defence and therefore a bona fide just cause for war. Over the course of the 'war on terror' Bush administration officials repeatedly urged that the rules governing the right to anticipatory defence must be revised to fit the novel character of the terrorist threat facing international society. In order to unpack this argument, we must first acquire a sense of the rules to which they were referring. Briefly then, the right to anticipatory defence has historically been premised on the satisfaction of two conditions: the necessity of defence and the presence of an imminent threat (Dinnstein, 2001: 172, 219; also: Rodin, 2002: 111; and Franck, 2002: 99). Derived from Daniel Webster's celebrated intervention (2006: 563-4) in the 1837 Caroline case, these criteria have been forcefully reaffirmed in international law. The effect of this formulation is to restrict the right of anticipatory defence to 'pre-emption', that is, to responsive action in cases where a threat, though not yet realized, is both imminent and actual. Conversely, it rules out 'preventive' strikes undertaken to forestall speculative dangers, that is, threats that are still emergent rather than imminent. Pivoting on the condition of imminent threat, this distinction between 'pre-emption' and 'prevention' is of great importance. It marks the boundary between defence and aggression, which, in turn, marks the dividing line between just and unjust recourse to force in international society (Walzer, 1992: 74-85; also: Freedman, 2003; Betts, 2003; Blinken, 2003-04; and Tunc, 2009).

How then did Bush administration officials propose to amend the rules governing the right to anticipatory war, and how would this contribute to the re-constitution of pre-emption? Prompted by the President's conviction that 'new threats require new thinking', members of the administration submitted that we



must leave behind the notion that a threat must be imminent before it warrants or justifies pre-emptive action (Bush, 2002a). To pretend otherwise, they argued, would be to render the right to pre-emption meaningless in a world where threats are no longer preceded by 'a visible mobilization of armies, navies and air forces preparing to attack', but appear as a bolt from the blue (Bush, 2002b). As Bush (2003) cautioned, 'terrorists and terror states do not reveal ... threats with fair notice'. Rather they appear suddenly, with no warning and no time for evasive action. Accordingly, while the requirement of imminent threat may have made sense in an era when acts of aggression were heralded (often days in advance) by clear warning signals, it appears to make a mockery of a meaningful right of self-defence in an era defined by the threat of suicide bombs and hijacked airplanes (Cheney, 2002). The right to pre-emption, it follows, must be de-coupled from the requirement of imminent threat.

While this argument is persuasive on one level, one must pay heed to its deceptively subversive implications. It radically overhauls the received norms that govern the limits of anticipatory defence. By seeking to effect the disaggregation of pre-emption from the requirement of imminent threat, the Bush administration's arguments factor away the dividing line between pre-emption and preventive force (and, correspondingly, legitimate and illegitimate anticipatory action), thereby blurring or dissolving the distinction we draw between them. If successful, this would pave the way for folding robust forms of preventive action under the umbrella of an expanded understanding of pre-emption. This would then permit the administration to describe its recourse to anticipatory force, no matter how forthright, in terms of pre-emption (Sapiro, 2003). Viewed in this light, the Bush administration's apparently idiosyncratic

use of the term 'pre-emption' appears to generate licence for a more robust form of anticipatory force than international lawyers have historically sanctioned, significantly extending the boundaries of legitimate anticipatory defence. In this sense, the Bush administration's attention to and engagement with the category of pre-emption marks a loosening, rather than an enhancement, of restraint on the right to war.

Perhaps most interestingly though, one might also detect a pernicious and corrosive element to the Bush administration's arguments pertaining to pre-emption. As noted earlier, our understanding of pre-emption is embedded in a reference structure that includes concepts such as anticipation, imminent threat, and of course prevention. If, as the administration proposed, the requirement of imminent threat is removed from this framework, the whole schema must be debased. Or, put more figuratively, blurred, conflated, and surrendered to 'sheer cloudy vagueness' (Orwell, 1946). The net result of this would be a loss of critical capacity, such that scholars would be unable to articulate the fine distinctions they once did. By conceding the withdrawal of the category of imminent threat, we would lose the conceptual apparatus that enables us to delineate pre-emption from prevention, and therefore to determine the limits of legitimate anticipatory defence. Redolent of Thucydides' Corcyrans, commentators and critics alike would have, quite literally, lost the words (and therefore the means) to express anything other than the administration line.

The Bush administration's alleged proclivity towards torture was another heated source of controversy over the course of its tenure. In order to understand this controversy, it is first necessary to have a grasp of the stigma attached to torture (Erskine and O'Driscoll, 2009). Historically speaking, torture

- defined as any act that causes severe pain or suffering (physical and/or psychological) to a person, where such harm is intentionally inflicted for reasons such as punishing, interrogating, coercing, or intimidating either that person or a third party - has been strictly prohibited. This proscription is codified in Article 5 of the Universal Declaration of Human Rights (UDHR), the 1949 Geneva Convention, the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 1984 Convention against Torture (CAT). As Henry Shue (1978: 124) notes, 'No other practice except slavery is so universally and unanimously condemned in law and human convention'. Against this legal backdrop it is hardly surprising that any perception that the US was 'slouching towards torture' would be greeted with howls of derision from all quarters.

Yet the story is not this simple. At no point, did the Bush administration advocate torture, or openly command or license it. In fact, US officials continued to claim that they were ardently opposed to the commission of torture in international society, and further stated that the US government was not partaking in any such activities (Foot, 2006: 133). How did they square this with the brutal treatment of detainees at Camp X-Ray, Abu Ghraib, and elsewhere? Two related strategies were pursued. First, US officials turned to euphemism, describing their treatment of detainees in terms that evaded the notion of torture. It is in this light that we should interpret the admissions of prison guards stationed at Bagram Air Force Base in Afghanistan that they occasionally indulged in 'a little bit of smacky-face' with those under their power (Priest and Gellman, 2001: A01; Bravin and Fields, 2003: B9). This applies equally to Donald Rumsfeld's refusal to countenance that acts of torture had been committed on his watch. Responding to allegations of torture at Abu Ghraib, he

clarified/obfuscated: 'My impression is that what has been charged thus far is abuse, which I believe is technically different from torture. And therefore I'm not going to address the word "torture"' (Cited in: Sontag, 2004). This strategy, then, essentially amounted to re-describing acts that might reasonably be categorized as torture in more palatable terms.

The second strategy employed by US officials is, on one level, more sophisticated. It refers to the efforts of US legal officials to re-define 'torture' such that it would encompass a narrower, rather than a broader, range of actions. The principal case in point is of course the contentious 'Bybee memo', drafted in August 2002 by the Assistant Attorney-General for the attention of Alberto Gonzales, then legal counsel to President Bush. As Toni Erskine (2008: 192) observes, this intervention indicated an attempt on the part of Bybee, and the interests he served, to 'raise the bar as to what actually constitutes torture'. It effected the 'narrowing of the meaning of "torture" to encompass only "extreme acts" that would, for example, entail physical pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death"' (Erskine, 2008, 193). If conceded, this formulation would allow 'cruel, inhuman or degrading treatment' to 'evade classification as torture if the pain or suffering it produces is not of the requisite intensity'; it would, in other words, permit the US to persist with the rough-house tactics it had instituted at Abu Ghraib and elsewhere without incurring legal censure (Erskine, 2008, 193).

## **Conclusion**

Drawing this essay together, it is tempting to conclude that the record bears out Corcyran pessimism rather than Walzerian optimism. While it is indisputable that the 'war on terror' has witnessed the elevation of just war discourse to the high table of international politics, this appears to be little more than a pyrrhic victory. Though just war terminology (i.e., moral-evaluative language relating to the use of force) has obviously barged its way onto the power-politics agenda, it appears that it has been denuded of much of its substantive content in the process. Terms like pre-emption and torture appear to have been subtly altered such that they no longer offer critical purchase on the practices they are intended to circumscribe. How, for instance, can we talk about the proper bounds of pre-emption, and how are we to distinguish it from preventive war, when it has been disaggregated from the requirement of imminent threat? Similarly, what use is it to ban torture when torture is defined so narrowly as to exclude practices like those undertaken at Abu Ghraib and Bagram? So, if one were asked to pronounce on the triumph of just war on the basis of the preceding comments, one might indeed be tempted to declare that another such victory as this and all will be lost.

But perhaps this would be getting too far ahead of ourselves. After all, there is, as one prominent theorist has written, 'a certain refraction and recalcitrance' in any moral language which ensures that when one 'bends' it in one's own service, others can always bend it back (Pocock, 1973: 33). This is perfectly illustrated by the plight of Humpty-Dumpty, essayed by Lewis Carroll in *Alice Through the Looking Glass*. Strident in his manner towards Alice, he assures her that he dictates the meaning of the language he employs: 'When I use a word,

it means what I want it to mean, neither more nor less ... The question is who is to be master, that's all'. What Humpty does not realize in this instance, but which later becomes apparent, is that language does not work in this way. It is not prey to any one party's mastery; no one speaker can ever entirely control or tame it. Rather it is a social practice that is always subject to mediation and response, interpretation and re-interpretation. The upshot of this is that, even in those cases where an actor (e.g., the Bush administration) appears to have altered the meaning of certain words (e.g., 'pre-emption' and 'torture'), it does not follow that others will endorse or even accept these innovations. Additionally, it is always possible that others may intervene at a later time to reverse them or take them in a different direction. So, lest one worries that the picture painted here of contemporary just war discourse is unduly pessimistic, it should be borne in mind that the current inflection of just war merely reflects a temporary equilibrium rather than a final resting place.

For this observer at least, the *hope* – and I use that word reflectively – must be that a deeper, fuller understanding of the issues at hand must emerge over the course of time as we engage in discussion and disputation. While one can never jump in the same river twice and restore just war discourse to some putatively virginal *status quo ante-bellum* form, nor should we concede the loss of just war as a critical discourse. At least not yet. As scholars, commentators, and political actors join debate over the proper bounds of anticipation and what qualifies as torture, we may opt to trust that recent manoeuvres will be offset and channelled by the deep-lying structures and historical resonances of just war discourse. But, as I stressed above, this forecast is expressed in 'hope' rather than in expectation.

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