



Will and Capacity

Earth Thought Notebooks

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Valeurs de l'Armée de Terre

After reminding us of the major historical developments in ethical thinking in the face of warfare and the progress of military capabilities, and showing us how the notion of international humanitarian law emerged, the author makes us reflect on what has become of these notions today, in particular that of "war". In this respect, this study is highly topical.

The new geostrategic and technological context requires us to reflect on issues of will and capabilities in the context of unconventional wars, those that can be described as hybrid, asymmetric or asymetric.

Ethical reflections on the use of weapons over the centuries have resulted in a set of rules that have given rise to the corpus of international humanitarian law. However, international law is only valid between states. Faced with an enemy that is not a nation-state and therefore does not have the same limitations on the use of violence, the nation-state must find strategies for action in order to survive while maintaining its legitimacy.

This article aims to provide some historical background on the evolution of ethical thinking that led to the development of international humanitarian law.

At the Origin of Ethical Thinking

Man has always tried to give an ethical value to war, and philosophers on all continents have reflected on war and the role of the warrior.

For reasons of space, this article will be limited to Western philosophy based on Christian thought. Indeed, the term "ethics" comes from Greek, and "morality" has a Latin

etymology.

Plato already called the Greeks to moderation in their struggles between cities, while as far as the Barbarians, enemies by nature of the Greeks, are concerned, the war waged against them was natural and did not call for any particular moderation. Indeed, it was important to distinguish whether the enemy was "like us" or "different from us" because the limits on the use of violence applied only to the former.

For the Roman, war was only just if it was preceded by a "declaration of war" which followed a certain legal process. The *Latrocinium*[1] justified the extermination of the adversary, considering that he was at fault if he had not followed the legal procedure of declaration of war.

Reflection on the limits to the use of military capabilities is particularly interesting in Christian thought, because violence and murder (the gravest sin in the absolute) must be justified when the message of Christ is essentially contrary to violence in all its forms.

In Christian ethics, violence is condemned as well as war: peace is an act of virtue and war is a sin. When Christians were a minority, the defence of political unity was defended by others. Little by little, however, the majority of the subjects of the Empire became Christian, and the problem of the survival of the Empire threatened by the Barbarians arose. From then on, the bishops officially authorized Christians to serve in the armies.

Saint Ambrose (Bishop of Milan) was the first to write a treatise on Christian morality. Openly a disciple of Cicero, he entitled his treatise *De Officiis* [2] and it was addressed to priests, magistrates of the Church. He brings no novelty to Cicero's doctrine of just war, but he tries to justify it with evangelical arguments and bases the right to go to war on the duty to help one's neighbor.

St. Augustine (Bishop of Hippo), who was a lawyer and closely related to St. Ambrose, continues to reflect in his works on Christian ethics and the protection of political unity. On a juridical level, he affirms the moral correctness of the principle which allows the sentence of death by the magistrate (even if, as a lawyer, he always interceded with the secular authorities in order to obtain pardon for those condemned). From this principle it follows that the soldier has the role of judge and executioner against external enemies. It follows that, since it is the law that justifies the act of killing, there is no sin because the law exists for the defence of the people and to safeguard higher interests.

If Augustine does not admit personal self-defence, because the Christian must agree to allow himself to be killed rather than to kill his assailant, he considers that the defence of the other, and especially of the weak (the widow, the orphan, the old man) is not only possible but necessary. On this point he agrees with St. Ambrose who, in *De Officiis*, states that there are two ways of sinning against justice: one is to commit an unjust act and the other is not to defend a victim against an unjust aggressor.

In the case of war, therefore, he considers that the purpose of violence which is not a sin is to restore order which has been disturbed by a crime against God or men.

Following this same logic, Saint Bernard of Clairvaux, in the 12th century, justifies the crusades by considering them as a "malicide", that is, the killing of the evil represented by the Saracens who occupied the holy places. Therefore, all means could be used to eradicate evil. In the 13th century, Saint Thomas Aquinas, in the *Summa Theologica*, justifies war by demanding three conditions: war can only be a matter of public power, otherwise it is a crime, a just cause (even if it is difficult to define objectively when a cause

is just), and a right intention (the fact that the purpose of violence is to bring about the triumph of the common good). In the sixteenth century, Francisco de Vitoria extended this thought by giving the prince the natural right to defend the universe against injustice and thus allowed him to intervene if it was proven that subjects were suffering because of injustices by another sovereign.

Finally, a distinction should be made between *latrocinium* (war without just cause or piracy), *iustum*[3] *bellum* (war justified by morality because its objective is peace and justice) and *bellum justum*[4], which is linked to the re-establishment of a higher order within a legal framework. In practice, the material causes of war fall into four categories (defence, repossession of property, pursuit of a claim and punishment); in other cases, it is *latrocinium*, which is a mortal sin.

Finally, none of these reflections addressed the question of capability, but it was generally accepted that certain weapons were not honourable and worthy of a warrior, such as the crossbow.

From Enlightenment to Modernity

In the 17th century, Huig Van Groot laid the foundations of public international law. According to him, the exercise of the sovereign rights of the state at the international level includes the law of war, framed by norms that only allow just wars, i.e. wars that are not just. The exercise of the sovereign rights of the State at the international level includes the law of war framed by norms that allow only just wars, i.e. wars of aggression to protect the population and the patrimony of the State from aggression, and coercive wars to punish those who violate the law, provided that the violation is serious.

Throughout the seventeenth^{and} eighteenth^{centuries}, the doctrine of just war lost ground to the discretionary competence to wage war, to the use of war as a means of high national policy as a result of the creation of the nation-state (Bodin), the theory of Leviathan (Hobbes), the social contract (Rousseau) and the development of the notion of reason of state.

Similarly, in the face of new civilizations, we are witnessing an evolution of thought from "malicide" to colonization to bring about civilization.

With illuminist rationalism and the development of the concept of reason of State, the notion of war evolves and prevails over a conception of war as an intellectually neutral factual situation. Henceforth, it is no longer the subjective legitimacy to wage war that is at the heart of legal concerns, but the rights and duties governing hostilities as a fact (*ius durante bello* [5]).

In other words, from a system focused on the material legality of war (war-sanction), we are moving towards a system focused on its formal regularity (regulation of the openness and effects of war).

This evolution, already initiated in Vitoria, which distinguishes the lawful motives of war from the just limits of the law of war, is promoted by Wolff, who first emancipates the rights and obligations *durante bello* from the underlying cause of war, and then by Vattel, who anchors in the law of nations a series of rules setting limits to the lawful means of war.

Now the era of *bellum justum* is over, and the era of *liberium jus ad bellum*[6] begins, in which states conduct their policies independently, both internally and externally because of their sovereignty.

During the twentieth century, following world wars and the development of capabilities capable of destroying the planet, ethical reflection became increasingly legal with the development of international humanitarian law, which not only deals with the law of war, but also with arms control law, which aims to limit certain capabilities. In terms of development, dissemination (proliferation and sale) and use through the signing of several treaties and conventions such as the Geneva Conventions, treaties banning particularly inhumane weapons (mines, cluster munitions or chemical weapons), nuclear disarmament, non-proliferation, etc.

Today, war is evolving towards an increasingly asymmetrical and hybrid dimension by the actors (States and non-States), and we return to the notion of *latrocinium* because international law applies only to States. Consequently, ethical reflection on the limits of the use of violence is increasingly topical in the face of increasingly violent adversaries who do not hesitate to transform horror into a public spectacle and violence that is increasingly diffuse in society. Similarly, science and technology are playing an increasingly important role in a process of rapid change that is bringing new ethical and legal questions and a dematerialization of processes and thus of violence.

Conclusion

Today, France finds itself caught between its nature as a nation-state and the need to confront heterogeneous adversaries. It cannot afford to deviate from the ethical, legal and political limits that legitimize its monopoly on violence, because otherwise institutions would break the social contract vis-à-vis the nation.

The Western world is in an ethical and legal impasse because the enemies are playing with the rules of international law and pushing States out of the legal framework. Within this framework, there is no single solution; therefore, ethical reflection is necessary and could include other world views than the Western one. For example, the notion of *latrocinium* should be reflected upon in the light of Buddhist and Muslim ethics, for example, because true *jihad* is the struggle against evil within man and not the struggle against people of different beliefs. Similarly, one could reflect on the notion of war using Hindu philosophy, a civilization that has a long history in the field of military strategy and so on.

Similarly, ethical reflection on modern scientific and technological capabilities is becoming increasingly important, as man-machine hybridizations or fully autonomous weapon systems are now feasible. It is therefore necessary to address these issues and the notion of the combatant (e.g. who is responsible for a machine capable of killing by taking the decision autonomously?).

In conclusion, this is an important moment in history, because not only is the nation-state political system evolving and with it the notion of nation, but, at the same time, technology is bringing us a new form of intelligence - artificial intelligence - which will revolutionise the way we conceive of war.

1) NDR: in the first sense, military service. But it is the second meaning, act of brigandage or piracy, illegal aggression, that is used here.

2) NDR: "Duties."

[3] NDR: the i and the j can be used interchangeably, as the j was only introduced into the Latin alphabet in the 16th century (iustum or justum).

4) NDR: the difference evoked by the author between iustum bellum (justified war) and bellum justum (just war) is subtle and appears to some historians as a difference between a war in defense of a just cause and a war for profit, but just in the light of the advantages procured.

5) NDR: literally, right during war.

6) NDR: freedom of the right to make war, just or not.

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