International Regimes and the Just War Tradition

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ERIC A. HEINZE, DEC 23 2012

This article seeks to broadly outline the relationship between the just war tradition and the concept of an international regime as developed by "regime theory." To those even vaguely familiar with one or the other, or both, the differences may seem obvious: regime theory is a largely rationalist approach to the study of international cooperation and seeks to make causal inferences regarding the origins of international regimes and their effects on international cooperation. Just war "theory," as it is most commonly known, is essentially normative theorizing about the legitimacy of various facets of war. One is positivist social science, the other is political theory, philosophy or even theology. Yet conceiving of the just war tradition as, say, a security regime, may offer some insights that scholars and students who utilize these approaches could find interesting or useful, particularly from Grotian, social constructivist, or critical theory accounts. This article offers such a comparison in four broad categories: 1) the ontological territory occupied by the just war tradition and international regimes, 2) the intellectual or epistemological purpose of just war theory versus regime theory, 3) some basic empirical assumptions and observations of each, and 4) how each theorizes incentives to create and comply with their respective rules and principles.

I use the standard definition of international regimes from Krasner as: "explicit or implicit principles, norms, rules, and decision making procedures around which actor expectations converge in a given issue-area."[1] As it pertains to the "issue area" of war, we might point to the existence of security regimes, which would be constituted by international agreements and perhaps an international organization, that would benefit states by setting up rules and institutions that control or regulate military competition among them. Jervis uses the Concert of Europe as the quintessential example of a security regime, though a similar example might be the United Nations collective security regime.[2]

The just war tradition, by contrast, is generally understood as "the two-thousand year old conversation about the legitimacy of war that has over time crystallized around several core principles and sub-traditions."[3] Its two main categories of *jus ad bellum* (the justice of the resort to war) and *jus in bello* (the justice of the means and methods of war), each contain several broad principles to help provide guidance in judging the legitimacy of war, such as that wars may only be fought for a just cause, and that noncombatants should be immune from attack, yet the substance of these principles is constantly evolving. The just war *tradition* is actually many different just war *theories* that come in and out of fashion, and over time come to constitute what Michael Walzer has referred to as the *war convention*—the prevailing "set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct."[4] The rules and norms of the security regimes that exist today are thus influenced and informed by the war convention, and at the same time, are partially what drive its continued evolution. Yet the just war tradition is also largely a tradition of moral philosophy, and is thus constituted by ethical principles and arguments from natural law theory at least as much as positivist international law and reciprocal arrangements that we normally associate with regimes.

Clearly, then, international regimes and principles that flow from the just war tradition occupy some of the same ontological territory. Consider the collective security regime that flows from the UN Charter, which stipulates,*inter alia*, that non-self-defensive wars are not permitted except in the form of a collective enforcement operation authorized by the UN Security Council. Not only does this regime reflect the long-held just war principle that wars must have a just cause, it reinforces the rule that self-defense is indeed the preeminent just cause, and further refines it by carving out a specific exception for collective enforcement. In this sense, security regimes both constitute, and

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are constituted by, the just war tradition. Likewise, arms control agreements reflect the just war principle that the use of certain weapons should be banned or limited, yet refine and advance it by specifying which ones. One might even consider the Geneva Conventions and related treaties as a security regime in the sense that they were created to constrain behavior in a reciprocal fashion. Again, then, those international agreements that are constitutive of international regimes are also today constitutive of the war convention, yet were themselves highly influenced by long-held ethical principles from different corners of the just war tradition from Aquinas, to Grotius, to Kant, to the conveners of the first Hague Conventions.

Despite this overlap and the mutually constitutive relationship between just war principles and security regimes, the scholarly approaches of just war theory and at least some forms of regime theory have a vastly different intellectual and epistemological purpose. As indicated above, regime theory is, in a large part, a social scientific research enterprise that employs a rational actor model, frequently using game theoretic dynamics, to explain the origins and consequences of international regimes. In terms of security regimes, scholars have historically been interested in explaining the conditions under which states will form a security regime, the way in which these regimes regulate military competition among states, and the demise of such regimes.[5] Just war theory, however, is a tradition of normative theorizing that includes elements of political theory, legal theory, moral philosophy, and theology and religious ethics. Yet the "Grotian" tradition of regime theory is decidedly less positivist and sees regimes as not only a significant, but pervasive, phenomenon in the international system. As Puchala and Hopkins famously argued, "a regime is an attitudinal phenomenon. Behavior follows from adherence to principles, norms, and rules, which legal codes sometimes reflect. *But regimes themselves are subjective*: they exist primarily as participants' understandings, expectations or convictions, about legitimate, appropriate, or moral behavior."[6] The "war" regime—similar to Puchala and Hopkins's example of the colonialism regime—is thus a reflection of what states, statesmen, and global elites collectively believe is "legitimate, appropriate, or moral behavior" regarding war. Simply put, the Grotian perspective of regime theory is clearly part of the war convention and the just war tradition. Whereas many regime theorists are interested in explaining the causal mechanisms at play in international cooperation, and just war theorists are largely interested in advancing or critiquing normative arguments about what is or should be considered morally acceptable conduct in war, the Grotian perspective of regime theory clearly theorizes the regime in a way compatible with the normative purpose of just war theory.

In addition, the fact that both are interested in studying what are effectively rules and norms leads to some interesting similarities regarding what each assumes, or seeks to demonstrate, about the empirical world. In essence, both assume that the creation of security regimes, or the elaboration of rules and principles about the legitimacy of war, can regulate and mitigate military competition among states. Many regime theorists set out to *demonstrate* this empirically, and have indeed found evidence that security regimes do mitigate military competition.[7] Mainstream just war theorists however, do not seem especially concerned with whether the principles that they elaborate and discuss effect how states conduct themselves during wartime, although there is an unspoken assumption in much of the literature thatthese principles can affect state behavior. It may be more accurate to say that these just war theorists are agnostic about whether the principles they elaborate have any effect on state behavior, and see their enterprise more as one of contributing to a framework that can be used to judge the legitimacy of war.[8] The idea is that by having a legitimacy framework that allows us to make such judgments, wars broadly judged to be unjust will be discouraged by the society of states (perhaps through the regulative mechanisms of international regimes, or cognitive processes such as "shaming" that have to do with the identities of states).

Yet just war theorists from a more critical or post-structural perspective see the just war tradition as a form of discipline itself, whereby its precepts are intended to provide moral justification—that is, to *enable*—wars at least as much as to subject them to moral constraints.[9] Thus from a neo-Gramscian perspective, the just war tradition is akin to the international regimes that are part of the neoliberal economic order and provide legitimacy to and perpetuate neoliberal capitalism.[10] International regimes, like the just war tradition, can therefore also be thought of as type of legitimacy framework.

However, these empirical and conceptual affinities lead to a similar normative one, which is that both mainstream just war theorists and regime theorists tend to see the elaboration of rules (either explicating just war principles or creating regimes) as a good thing. Regimes facilitate cooperation among states that allows them to pursue their

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interests, while just war principles perhaps discourage certain behaviors during war, but certainly provide a framework for judging a war's legitimacy. Both are, by and large, viewed by scholars working in these areas to be positive things for the practice of international relations. Again, critical just war theorists would be quick to point out that the substance of just war principles, being very much a reflection of the preferences of the powerful, may itself be normatively problematic.

There is also ostensibly a difference in why just war theorists think we need just war principles, and why regime theorists think we need international regimes. One can perhaps point to a broader overarching concern with global peace and stability, which regime theorists and just war theorists alike may have a personal interest in contributing to through their research. Likewise, critics of both the just war tradition and international regimes alike would argue that both are essentially tools of the powerful, or serve as legitimating devices for otherwise normatively problematic endeavors.[11] Yet it seems to me that regime theorists see the desirability of regimes in terms of their utility for states—in that they help overcome the barriers to mutually-beneficial cooperation, which by extension can contribute to peace and stability. While some critical just war theorists likewise see just war principles as primarily enablers for states, I would argue that most just war theorists see their desirability in terms of serving a higher moral purpose by seeking to lessen the human suffering associated with armed conflict.

Note that this is a different, but related, question than that of why *states* create security regimes and why they comply with them, or why they develop and comply with rules that flow from the war convention. Yet the answer, it seems to me, is very similar. In fact, rationalist regime theorists argue that states create and comply with regimes out of rational self-interest—because they help them achieve beneficial outcomes that they would otherwise have difficulty achieving.[12] More constructivist accounts point to states' identities as reasons for abiding by regime rules.[13] While a just war theorist may not necessarily disagree with either of these arguments, they would certainly have more in common with constructivist accounts, which leave room for states to have moral aspirations that they want to fulfill by creating and complying with instruments such as the Geneva Conventions, quite aside from any rational self-interest for doing so. While some rationalist regime theorists leave room for states to have moral aspirations, which further enhances the prospect for regime compliance,[14] a constructivist account of this phenomenon arguably give us more purchase by theorizing that states act in such a fashion to reinforce their own identities as moral actors and members of a moral community. In short, rationalist regime theory entails a logic of consequences, while constructivist and Grotian accounts of regimes—which share more affinities with the normative agenda of just war theory—entail a logic of appropriateness.

In sum, there are obvious places where regime theory and just war theory share similarities and have profound differences, yet it seems clear that the concept of an international regime helps constitute, and is encompassed and constituted itself by the vast assemblage of principles, rules, norms and moral arguments that we normally associate with the just war tradition. While it may not be obvious whether it is fruitful to examine the just war tradition as a security regime, I would submit that efforts to do so must go beyond the rationalist orientation of traditional regime theory and utilize insights from the Grotian perspectives and social constructivist accounts of international regimes, which elaborate the ideational or cognitive reasons why states do or should want to place limitations on the conduct of war.

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[1] Stephen D. Krasner, "Structural Causes and Consequences: Regimes as Intervening Variables," in Stephen D. Krasner, ed., *International Regimes* (Ithaca, Cornell University Press:

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1983), 1.

[2] Robert Jervis, "Security Regimes," in Stephen D. Krasner, ed., *International Regimes* (Ithaca, Cornell University Press: 1983), 173-194.

[3] Alex J. Bellamy, *Just Wars: From Cicero to Iraq* (London: Polity, 2006), 2.

[4] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th edition (New York: Basic Books, 2006), 44.

[5] See Jervis, "Security Regimes." See also, for example, Alexander Kelle, "Assessing the Effectiveness of Security Regimes: The Chemical Weapons Control Regime's First Six Years of Operation," *International Politics* 41 (2004): 221-242.

[6] Donald J. Puchala and Raymond F. Hopkins, "International Regimes: Lessons from Inductive Analysis," in Stephen D. Krasner, ed., *International Regimes* (Ithaca, Cornell University Press: 1983), 62.

[7] For example, Joseph S. Nye, Jr., "Nuclear Learning and US-Soviet Security Regimes," *International Organization* 41 (1987): 371-402.

[8] See Bellamy, *Just Wars*, 2-8.

[9] See Brent J. Steele and Jack Amoureux, "'Justice is Conscience:' Hizbollah, Israel, and the Perversity of Just War in the 21st Century," in Eric A. Heinze and Brent J. Steele, eds., *Ethics, Authority and War: Non-State Actors and the Just War Tradition* (New York: Palgrave, 2010): 177-204.

[10] See, for example, Robert W. Cox, "Social Forces, States and World Orders: Beyond International Relations Theory," *Millennium: Journal of International* 10 (1981): 126-155. Thanks to Brent Steele for bringing this point to my attention.

[11] See, for example, Bellamy, *Just Wars*, 89-94.

[12] Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).

[13] The literature here is vast. Some examples include Jeffrey Checkel, "The Constructivist Turn in International Relations Theory," *World Politics* 50 (1998): 324-348. Ted Hopf, "The Promise of Constructivism in International Relations Theory," *International Security* 23 (1998): 171-200. See also Andreas Hasenclever, Peter Mayer, and Volker Rittberger, *Theories of International Regimes* (Cambridge: Cambridge University Press, 1997), chapter 5.

[14] Keohane, *After Hegemony*, 1984.

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