

Critical Dialogue

Just War and Ordered Liberty. By Paul D. Miller. Cambridge: Cambridge University Press, 2021. 278p. \$99.99 cloth, \$29.99 paper. doi:10.1017/S153759272100387X

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Paul Miller's *Just War and Ordered Liberty* provides a fascinating intellectual history of the just war tradition, as well as an intriguing synthesis of these traditions to produce a new just war framework. That framework, in turn, can be used to address a wide array of security challenges of the twentieth century, such as rebellions, military intervention, nuclear proliferation, failed states, terrorism, and cyberattacks.

The book begins with a discussion of three just war traditions—Augustinian, Westphalian, and Liberal—and the historical transitions between them. For each tradition, Miller focuses on the writings of two to four leading proponents; for example, Cicero, Augustine, Aquinas, and Vitoria for the Augustinian tradition. In chapters 6 and 7, Miller proposes a new just war framework that combines elements of the Augustinian and Liberal traditions. He then explores his framework in chapter 8 with several short case studies including the recent US wars in Iraq and Afghanistan.

When is war just? What does justice require? According to Miller's interpretation of the Augustinian tradition, a just war rights a wrong that has violently upset the tranquility of order. Wars for glory, profit, or revenge are not just. Wars for self-defense or to protect property are just—but so are wars to protect the innocent and punish the wicked. In addition, the Augustinian tradition stresses that peace, justice, and order must be established at the end of the war. Peace without justice is not peace at all. Enemies are to be loved, not destroyed; a stable peace requires that the rehabilitated enemy be integrated into and satisfied with the just postwar order.

Miller argues that the Augustinian tradition, which encouraged intervention for the common good, led to levels of violence that conflicted with a tradition designed to limit conflict. In response to events such as the Wars of Religion, the Westphalian tradition emerged as the dominant point of view. The legalistic Westphalian tradition argues that sovereignty is absolute: supreme authority

domestically, political independence, and territorial integrity. Thus, the character of the state and behavior within its own borders should be irrelevant to the international community. The Westphalian tradition attempts to dampen international conflict by privileging borders, prohibiting humanitarian interventions, opposing rebellion, preserving the balance of power, and limiting just wars to defense of the sovereign state.

Miller contends that the Liberal tradition emerges after World War II with a focus on individual human rights. Liberals argue that sovereignty is conditional on the maintenance of peace and order. Universal human rights form an external standard against which the behavior of rulers can be judged by the international community. Liberals argue that extreme violations of human rights—genocide, crimes against humanity, war crimes, and ethnic cleansing—permit humanitarian intervention. Although the Liberal tradition does not discard the Westphalian tradition whole cloth, it creates an important class of exceptions to the rule of absolute sovereignty.

Miller believes that contemporary just war scholarship falls short because it lacks a unified framework useful across issue areas (nuclear weapons, terrorism, failed states, etc.), and it is ahistorical in that it ignores the Christian tradition on just war (pp. 155–56). In response, he constructs a new just war framework in chapters 6 and 7 that integrates two key aspects of the Augustinian tradition into the currently dominant Liberal tradition: (1) a focus on the common good and (2) an emphasis on postwar peace, order, and justice. Although Miller recognizes that focusing on the common good could significantly increase the number of “just” military interventions, he contends that the expansion of violence would be tempered by the difficult requirement to establish a just peace (p. 184).

What does justice require for Miller? The establishment of a better peace (i.e., one that reduces the causes of war that led to the outbreak of violence) but not simply any peace. As the title of the book foreshadows, a just peace requires “ordered liberty.” Politically the only just form of government involves democracy and human rights (p. 158). Economically the only just structure involves capitalism, free trade, freedom of the seas, and sanctity of contract (p. 169). Miller believes that “ordered liberty is as close to a universal value system as the world has yet seen” (p. 158). Any threat to ordered liberty at the domestic or

international level justifies war. Moreover, in the aftermath of any military intervention, ordered liberty must be established (or reestablished).

The new framework forces both Miller and his readers to grapple with several interesting and complex questions. First, what role should identity play in a just war? According to Miller, liberal states are just, and illiberal states are unjust. Liberal states are sources of peace, and illiberal states are sources of war. The author advocates investing in a democratic peace among liberal states and militarily balancing against illiberal states (p. 172). Although he qualifies this at times by stating that behavior matters (p. 205), identity is central to his new just war argument. If a liberal state is attacked, it is just to defend it. If rebels express liberal views, you can intervene in a civil war on their behalf. If you militarily intervene in a humanitarian crisis, you have a moral obligation to establish a liberal regime after the war. However, Miller rejects the liberal imperialist claims that war is justified against all illiberal states (pp. 197, 218) and that a threat to ordered liberty requires (as opposed to permits) a military response (p. 189).

Second, should state-building play a central role in US foreign policy? According to Miller, any military intervention, humanitarian or otherwise, must end with ordered liberty. This would require the establishment of democracy and capitalism in the target country, as well as the integration of this country into the liberal international order. Miller argues that the withdrawal from Iraq in 2011 (p. 212) and Afghanistan in 2020–21 (p. 215) were moral failures because the job of creating a liberal order was incomplete. Importantly, instead of seeing these cases as failures in state-building, Miller contends that the US government did not commit sufficient time and resources to the state-building effort in the first place (p. 251).

The state building issue raises additional questions. Can liberal leaders accurately estimate the cost of establishing ordered liberty before choosing to intervene? Although Miller touches on problems of motivated and cognitive biases in the closing paragraphs, it is clear that US leaders have engaged in wishful thinking with respect to establishing postwar stability for the last 40 years (e.g., Afghanistan, Iraq, and Somalia). How long is enough? Although Miller says certainly not forever, he advocates staying in Afghanistan until the job is done (p. 216). Finally, how long will the public in a liberal state support the use of troops and the expenditure of dollars to complete the state-building project? If liberal publics are impatient, the requirement for ordered liberty may prohibit any military intervention.

Third, what is the proper role for multilateral organizations in sanctioning just war? Miller explicitly states that he is not concerned with unilateral (or bilateral) interventions by states (pp. 201–2, 235). If the cause is just, the execution is just, and the result is ordered liberty, then Miller is comfortable with the intervention. Although UN sanctions can make the case for just war stronger,

multilateral permission is not necessary. But in cases of humanitarian interventions, the propensity for decision makers to see what they want to see (i.e., motivated bias) or cherry pick information that seems to support their position (i.e., confirmation bias) raises the issue of the wisdom of the crowd. The requirement to persuade other states of the severity of the humanitarian crisis to justify the violation of sovereignty seems vital to balancing the Westphalian prohibition on intervention with the Augustinian permissiveness on intervention.


Fourth, should we require the establishment of ordered liberty in all cases of military intervention? Miller explicitly raises this issue with respect to Afghanistan after 9/11: the United States could have invaded Afghanistan to destroy al-Qaeda and to topple the Taliban for supporting groups that engaged in international terrorism (p. 215). It could have then left the country quickly in the hands of various illiberal warlords. Miller sees this realist approach as inherently unjust. But if transforming Afghanistan into a liberal image of America is unlikely to succeed or be prohibitively costly, is order without liberty a just option?

Finally, is a liberal economy a necessary condition for a just war? Miller uses liberty as a broad term encompassing both political and economic liberty. However, he does explicitly state that capitalism and free trade are essential elements of ordered liberty (p. 169). By including both economic and political liberalism, he has doubled the amount of state-building required in an intervention. Moreover, there is far less of a global consensus that American-style capitalism is just. Forcing capitalism on states may well be perceived as economic imperialism and undermine how just a military intervention is perceived by citizens in the target country.

Miller's thought-provoking synthesis of just war traditions will provide scholars and practitioners with an excellent starting point for debating how to reduce conflict by finding the right balance between respecting state sovereignty and engaging in morally justifiable interventions for the common good.

Response to David L. Rousseau's Review of *Just War and Ordered Liberty*

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— Paul D. Miller 

I thank David Rousseau for his thoughtful review of my book. He summarizes its key points and themes and raises a number of provocative questions. I will try to answer some while also clarifying a few points.

In summarizing my argument, Rousseau elides some of the nuance I worked hard to maintain. For example, he asserts that I believe that “the only just form of government involves democracy and human rights.” But I instead wrote, “Democracy and human rights are the closest approximation in this world to a just regime” (p. 158).

Some may feel that is a distinction without a difference, but I chose my phrasing carefully. I do not believe democracy and human rights are the ideal form of true justice, nor that other regimes are wholly and completely unjust. I recognize there is a spectrum of justice. I do believe, without apology, that democracy and human rights are the furthest along that spectrum, but that is a far cry from saying they are “the only just form of government.”

Similarly, Rousseau suggests that I argue that “any threat to ordered liberty at the domestic or international level justifies war”; that “if rebels express liberal views, you can intervene in a civil war on their behalf”; that “any military intervention, humanitarian or otherwise, must end with ordered liberty”; and that “liberal states are just and illiberal states are unjust. Liberal states are sources of peace and illiberal states are sources of war.” These statements all reflect *something* of what I believe, but I would want to qualify them: not “any threat” but violent threats of sufficient magnitude; not any rebels but those who already have just cause.

Most importantly, I do not assert that “any military intervention” must end in democratic state-building. As I argue, “These [*jus post bellum*] criteria will look different in different kinds of military operations. At the low end, I suggest that there are no *jus post bellum* obligations in the wake of a simple punitive strike or a one-off military reprisal against a terrorist attack,” but *post bellum* obligations scale up under some conditions, such as if the scope of the war grows larger (p. 187).

These matters aside, Rousseau raises a crucial point. He suggests, “If liberal publics are impatient, the requirement for ordered liberty may prohibit any military intervention.” He makes the point specific to Afghanistan: “But if transforming Afghanistan into a liberal image of America is unlikely to succeed or be prohibitively costly, is order without liberty a just option?” I am more sympathetic to this argument now, after having seen how the interventions in Afghanistan and Iraq ended, than I was five years ago—or even five months ago. Nonetheless, I am still cautious: we did not know at the beginning how impatient the public would become. Nor am I convinced that the project in Afghanistan was intrinsically too difficult; we made too many mistakes to disprove the possibility of doing it right. But his point is one I make in the book as well: if ending wars well is too hard, better not to fight in the first place because war, to be just, should establish a better peace.

War and Rights: The Impact of War on Political and Civil Rights. By David L. Rousseau. Ann Arbor: University of Michigan Press, 2021. 332p. \$80.00 cloth.

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David Rousseau and I have both written books about the relationship between war and rights (or, in my case, war and liberty more broadly). His is descriptive; mine, prescriptive. He aims to describe the impact that war has on rights at home; I make an argument about what the relationship between war and ordered liberty ought to be at home and abroad.

Rousseau outlines three possibilities: that war hurts rights; that war helps rights; or that the relationship is complex and changes over time, hurting in the short term and helping over the long run. Drawing on the relevant body of literature, he calls notions that war hurts rights the “Garrison State” hypothesis: the national security state cracks down on dissent in wartime to ensure national cohesion and prevent sedition. The idea that war helps rights he calls the “Extraction” hypothesis: war is expensive, and states must buy citizens’ loyalty and sacrifice by conceding to their demands for more say in how things are run.

Which is true? He argues, like all good scholars, that it depends. Specifically, it depends on how big the threat is and how involved is the population. A small threat with an uninvolved population yields no change in rights at all. (A small war with a highly invested population is a null set and plays no role in his analysis.) A big threat with an uninvolved population results in the Garrison State. The state takes the war seriously, but the population does not have a stake in it, and so the people lack leverage to demand accountability. A big threat with large popular participation is where things get interesting. In that case, the state starts out acting like a Garrison, but as the war wears on, the population demands reform as part of the bargain for their wartime sacrifice. In this case, rights follow a “J-curve,” declining early on before improving in the long run. Rousseau bolsters his case with large-N statistical work and historical case studies drawn from different countries and time periods, relying on the mixed-methodology approach currently favored in political science. His cases on the Austro-Hungarian Empire and, later, on African Americans’ military service are especially interesting. If there is a flaw in the book—and this is a quibble more than a flaw—it is that some of the statistical material will be inaccessible even to other scholars and might have been better relegated to an appendix, leaving the main text to focus on the argument. His choice of case studies is also a double-edged sword. Although the diversity of cases bolsters the scope of his claims, one might ask whether the cases can be too diverse; for example, is the case of ethnic minorities in Imperial Russia comparable to the global progress of women’s suffrage in the twentieth century? But I think the first cut of the blade is sharper: his study has an admirable ambition and sweep to it, which require a broad case selection.

The chapter on African Americans’ military service and their gain in civil and political rights is an excellent example of how a mixed-methodology research design generates a strong argument. Rousseau surveys the history

of African Americans' military service in major wars from the American Revolution through World War I, showing how each war was followed by incremental gains in their legal and political status in at least part of the United States. He marshals statistical data, where available, to demonstrate the level of mobilization. He then spends the bulk of his chapter on World War II, for which survey data from African American soldiers are available. The survey data enable Rousseau to explore his hypothesized causal mechanism: that high mobilization triggers a bargaining process in which the citizenry exchanges wartime support for more rights at home. The data strongly support Rousseau's main contention.

If Rousseau is right—and his argument is persuasive on its face—I conclude that the United States and other democracies ought to reinstitute the draft. There is nothing to be gained by an uninvolved population, regardless of the size of the threat. If one believes, as I argue in my book, that war ought to aim at the vindication of ordered liberty at home and abroad as the only legitimate just cause and just effect of war; and if, as Rousseau argues, wars end up *restricting* liberty if populations are uninvolved in them; then to safeguard liberty in wartime, ensuring a high degree of popular participation is essential.

I suspect it is also likely that a more involved population would be more selective about the wars it fights and more likely to demand either rapid withdrawal or complete victory. It is highly likely that there would have been substantially more, and earlier, opposition to the war in Iraq; conversely, the population might have felt far more invested in the war once it started, in turn empowering them to demand more rapid adaptation and accountability when the administration's strategy proved faulty, instead of waiting until 2007. Either course had risks and benefits, but they both had strategic logic to them. A highly involved population might have debated the merits of either choice and, either way, owned and borne the risks together. Instead, the US population was disengaged compared to prior US conflicts, enabling US policy makers to choose the worst of all possible strategies: they tried to split the difference between going all in, on the one hand, and heading home, on the other.

From Rousseau's argument, we would conclude that either case—using force massively or not at all—would be preferable from the standpoint of rights. Short, rapid wars would generate less of a Garrison state effect and have a minimal impact on rights. Some domestic surveillance programs might not have happened if the wars were brief. On the other end of the spectrum, longer wars for complete victory would create the J-curve: a highly invested population would have leverage to demand that the government respect their rights. Voters might have eventually demanded reforms: for example, curtailing the FBI's use of "sneak-and-peak" searches and "National Security Letters" to collect citizens' private information. Some recent history bears out

the hypothetical. For example, after Edward Snowden, an NSA contractor, leaked details of alleged surveillance programs, the US media and population were—momentarily, at least—highly invested in the story. President Barack Obama appointed a panel to study the issue and in 2013 announced a raft of reforms to protect civil liberties.

Rousseau's main concern is with the impact of rights at home, within the state waging war. But there is another conversation to be had about the impact of war on the rights or liberties of the other side (an omission that might be another quibble with the text). The indefinite and unaccountable authority the US government claimed for itself to unilaterally designate terrorist targets anywhere in the world, at any time, by any means did not affect Americans' rights (except for a tiny number of American citizens killed by alleged drone attacks because they had apparently defected to the other side). Yet they had a dramatic impact on the liberties of enemy combatants, nearby civilians, and the nations in which they lived.

The kind of drawn-out, inconclusive war that US policy makers were enabled to wage because of voter indifference surely made such tactics more attractive as risk-free, low-cost forms of violence. These types of interventions were attractive to US presidents because they shifted the burden and risk from US voters to foreign nations, minimizing the chance that voters would be affected and the risk that they might start to pay attention. The same interventions exposed swaths of the rest of the world to the possibility of indefinite US military intervention with no end state. That amounts to a violation of people's right to freedom from fear, freedom to not live in a warzone, or their right to basic public safety.

In other words, presidents chose a form of warfare that helped them evade accountability for their own political convenience at the cost of imposing "endless war" on other countries—because the alternative of helping fix broken societies is too expensive and politically unpopular. Endless war was a feature, not a bug, of US strategy, and its imposition on other nations was immoral. This is an impact of war on rights that would be a fruitful avenue of further research, taking Rousseau's study as a building block. It is, of course, possible that a highly engaged population might endorse this approach to war anyway because they might not care about the morality of whatever strategy brings them victory or about the rights of the other side—which is another way of saying that voters might not care if the wars they fight are just or not. One hopes that proves not to be the case.

Response to Paul D. Miller's Review of *War and Rights: The Impact of War on Political and Civil Rights*

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— David L. Rousseau 

I am grateful to Paul D. Miller for his thoughtful review of my book and for the interesting questions he raises. *War*

and Rights provides a theoretical framework for understanding the rare conditions under which warfare may lead to an expansion of political and civil rights. Political leaders facing an existential threat often expand political rights in exchange for critical human and financial resources needed for the war effort. Although political rights play a central role in both *War and Rights* and Miller's *Ordered Liberty*, they do so in different ways. Miller's prescriptive argument provides a framework to help decision makers (and citizens) decide whether the contemplated war should be considered just or unjust. For example, a war is just if it is fought for the common good and if it provides for a stable and liberal postwar political order. Miller envisions rational political leaders consciously choosing a policy to expand liberalism at home and abroad.

In contrast, *War and Rights* outlines a more complex two-level process that mixes unintentional consequences and intentional choices. Political leaders typically engage in wars with no intention of overturning the domestic political order. However, as the costs of large-scale wars mount, they may reluctantly begin to bargain with opposition groups. Opposition leaders then consciously exploit the pressing wartime situation to make their case for inclusion. African Americans leaders, for example, pursued a "Double V" campaign in World War II that explicitly linked victory for democracy abroad with victory in civil rights at home.

In his review, Miller claims that the logic of his book and mine supports the reinstatement of the military draft. I think we both agree that if the public pays the costs of war, it will be much more vigilant in holding leaders accountable for war, which will in turn make leaders more cautious about entering wars. This is

the causal mechanism of the Democratic Peace. However, conscription plays an even more critical role in the causal story presented in *War and Rights*. As Robert Dahl argues, regimes can be compared along two dimensions: contestation and inclusiveness. Both "closed hegemonies" (low contestation, low inclusiveness) and "competitive oligarchies" (high contestation, low inclusiveness) exclude significant portions of society from the political arena. The qualitative cases and quantitative analyses in *War and Rights* demonstrate that conscripting the disenfranchised increases demands for greater political inclusion and the probability of political reform. Moreover, the total wars of the twentieth century led to the inclusion of both those serving directly in the military and those participating indirectly in the war economy.

Miller also notes that *War and Rights* focuses almost exclusively on the expansion and contraction of rights at home. This is certainly true. But war clearly affects rights in opposing states. In *War and Rights*, this is addressed tangentially, such as in the comparison of Austria-Hungary and Imperial Russia in World War I and the diffusion of democracy across international borders after wars. But *War and Rights* is mostly inward looking. The leaders in Austria-Hungary were focused on decisively defeating Serbia and bringing the troops home by Christmas. They were slow to recognize that the massive mobilization for the long and bloody war would lead to demands for greater political inclusion and contestation both at home and abroad. *War and Rights* explains why the political revolutions in Vienna, Berlin, and Petrograd (St. Petersburg) were the predictable but unintended consequences of total war.