The Shortcomings in John Rawls’s ’The Law of Peoples’

An Evaluation of the Theory based on the Syrian Civil War

Svagheterna i John Rawls ‘The Law of Peoples’
En utvärdering av teorin baserad på inbördeskriget i Syrien

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ABSTRACT

This essay presents and discusses John Rawls’s ‘The Law of Peoples’ and it’s ability to be used in practice. The theory’s ability to judge right and wrongful actions in liberal intervention is tested when applied to the current conflict in Syria, and is used to evaluate the actions made by the liberal state France, during its involvement in the crisis.

The essay will discuss shortcomings in the theory, and possible solutions to these and will also come to discuss central ideas in the theory and the liberal ism. Other writers such as Michael Doyle and Simon Caney are discussed and presented more briefly.

The essay will argue that the theory in The Law of Peoples is not sufficient to alone evaluate the conflict it is applied upon, and therefore not comprehensive enough to be used in practice without adjustments.
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I. INTRODUCTION

In 2011, and in the midst of the Arab Spring, a still ongoing civil war broke out in Syria. Like its neighbouring countries, the Syrian people started peaceful protests hoping to begin a democratic reform in the country and to achieve greater democratic liberties. The still current ruler, Bashar al-Assad, responded with military violence and came to lay the first stone on the path to the civil war. Four years have now gone since the “day of rage” (March 15, 2011) when the first protests started; many thousands civilians in Syria have lost their lives to the war, and millions have emigrated from the country to escape it.

Several states in the European Union and beyond have been in many and long discussions regarding the question of intervening in the Syrian conflict, the question of what should be done for the civilians in Syria as well as what one can do to find a peaceful solution has been central to the discussions, and the world media has followed the events intently. In a situation like this, humanitarian assistance and intervention becomes an important question and under certain circumstances, for example man-made disasters and war, foreign states become responsible to fend for the civilians in a war ridden state to ensure their safety and to defend their human rights.

Because of the importance of liberty in the liberal doctrine, the question of intervention in a foreign country becomes very difficult. The principle of allowing freedom to individuals on the domestic level also applies to states on the international level and when these principles collide, for example in a case of violations of human rights, the answer will not be straight forward.

This essay will examine France’s role in the Syrian civil war, while evaluating the principles for international relations, just war and intervention from John Rawls’s book ‘The Law of Peoples’. The aim will be to find out if the theory in question is comprehensive enough to be used in practice, which I will come to argue that it is not. Meanwhile I will also discuss if France’s actions have been justified.

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1 AnnaLena Andrews, FN-Förbundet, Världshorisont 1/14, 2014 p. 4
2 The New Arab, War in Syria: timeline of key events, March 2015
3 Världshorisont p.4
4 National Post, “France seeking support for intervention in Syria” (see also The New Arab, War in Syria)
6 Michael Doyle, Ethics & International Affairs, “A Few Words on Mill, Walzer, and Nonintervention” pp. 349-50

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I will present suggestions and alternatives to some of John Rawls’s principles, by help of other writers such as Simon Caney and Michael Doyle. I will also argue, based on the evaluation of the principles that as far as I’ve been able to judge, France’s actions has indeed been justified.

As you shall see, the essay will answer two questions; **In the Syrian civil war, has the interventions and actions made by the French government been just, based on John Rawls’s principles of liberal intervention and righteous war; and is his theory comprehensive enough to make such a judgement?**
II. TERMINOLOGY

Liberalism as defined by Michael Doyle and Stefano Recchia says that Liberalism is built upon one primary principle; the importance of the freedom of the individual. That is to honour the moral freedom of any individual, and in the international society this freedom should expand to different states as well. The main pillars of a democratic liberal society are the rights to individual freedom, political participation, private property and equality of opportunity.⁷

Tolerance - A term used in liberalism to describe the fact that liberals need to accept non-liberal views. This might be in the case of other non-liberal states and their way of life (the same applies to individuals in the domestic society). One main challenge in liberalism is to decide where tolerance against others ends. This is because there is a great importance in liberalism to the freedom and sovereignty of each state or individual but also to know when one need to overlook the value of tolerance to protect for example human rights, or to stop wrongful actions.

When discussing ‘Intervention’ I will sometimes refer to the military sense of the word, and sometimes milder forms of intervention. When a state intervenes in foreign state with miliarty means this is referred to as military intervention. A reason for the intervention might be, as in the case of this essay, that the regime in a state is violating human rights and foreign states find it necessary to intervene by force. Other means of intervention might be economical sanctions, or a refuse of trade with the state, to force the state into changing their actions. These means of intervention would be milder forms of intervention. I believe that it will be clear in my discussions as to what form of intervention I might be reffering to, if any one in particular.

I will be using the word ‘Just’ in relation to just warfare. In this sense, a just war might follow certain principles as we shall see, for example it might honour human rights as far as is possible and under certain circumstances a state might be gaging a just war as opposed to an unjust war. A just war might be grounded on the reason of self-defence as opposed to a war gaged to fulfil a certain state’s private interests. Since this subject will be discussed at length below, I hope that this short definition will suffice for now.

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⁷ Michael Doyle and Stefano Recchia, “Liberalism in International Relations”, International Encyclopaedia of Political Science ss. 1434-1439
III. BACKGROUND

To begin I would like to give a general overview of John Rawls’s ‘The Law of Peoples’. The theory is in some parts a development of his earlier idea which he has called *justice as fairness* and is in his own words “a particular political conception of right and justice that applies to the principles and norms of international law and practice”. Rawls's focus is on liberal states in particular but also what he calls “decent peoples”, and following his principles he assumes that the global society could come to a point where all states would be either liberal, or decent consultation hierarchies of decent peoples, and so together the people of these states become a Society of Peoples where all follow the principles and ideals of The Law of Peoples (henceforth TLP in short).

Rawls presents a comprehensive theory on the liberal society, liberal states and their international relations. The first chapter of the book is used to describe a realistic, utopian liberal society which Rawls finds possible to achieve and obtain would it be based on a few principles that he introduces. But this is just the first steps in TLP, and since my aim is not to discuss how to achieve an ideal liberal state I will not present these principles further. The principles are not essential to the parts of the theory that I will come to discuss.

What I understand to be Rawls’s aim with his theory is to provide the liberal society with general guidelines, not only as to how the society should work or what principles it should uphold domestically but to provide general principles, which if followed by different states can create peace and equity among them. Not all of the principles will be relevant to my discussions, and I will therefore not include all of them here. The principles shown below are the ones that will be significant to my discussion, and they will be discussed one by one throughout this essay:

1. **Peoples are to observe a duty of non-intervention.**
2. **Peoples are to honour human rights.**

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8 The Law of Peoples, p. 3
9 Ibid. pp. 3–4
10 A liberal state according to TLP will always be democratic and it is essentially the citizens within the state that have the power – the government is elected by the people and therefore under the citizen’s control. Any constitutional democratic society would be a liberal state, and so it is clear that France is one of the liberal states in Europe. (Rawls, pp 12; 24)
11 The Law of Peoples pp.12-14
12 Ibid. p. 6
13 The three principles I have not included in the text are: 1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples. 2. Peoples are to observe treaties and undertakings. And, 3. Peoples are equal and are parties to the agreements that bind them.
3. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.
4. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
5. Peoples are to observe certain specified restrictions in the conduct of war.\textsuperscript{14}

IV. THE FIRST TWO PRINCIPLES DISCUSSED

In the introduction I have very briefly rendered what happened in Syria at the very beginning of the civil war. I will now give a more detailed projection of what has happened, based on the sources I have been able to access.

During the Arab Spring, the earliest significant protests were held in the cities of Deraa and Damascus in March 2011. These protests have not been reported to be violent and according to the media, as well as the French Minister of Foreign Affairs, it was the ruler Bashar Al-Assad’s forces that first opened fire and killed protesters in Deraa.\textsuperscript{15}

Since then, France has been working towards giving humanitarian aid to the civilians in Syria, and around August 2012 they started giving assistance to the opposition of the regime by funding selected Syrian rebel groups. They were also giving aid in means of communication and protection, on the request of the Syrian National Council as well as the opposition.\textsuperscript{16}

According to The Guardian, the French government started sending money across the Turkish border to the rebel groups fighting against the regime in Syria around early December the same year, helping them to buy weapons inside Syria and assisting them in armed operations against forces fighting for the regime.\textsuperscript{17} At this point, according to The Guardian, France was the front-rank backer of the Syrian opposition, and so also indirectly fighting the oppressing regime in Syria.

\textsuperscript{14} The Law of Peoples p. 37
\textsuperscript{17} “France funding Syrian rebels in new push to oust Assad”
In light of these events, I would like to discuss the question of non-intervention, principle (4) in Rawls’s book, but in my case principle number one as this is the first one I will now discuss at length. This principle reads:

1. Peoples are to observe a duty of non-intervention.

I feel that it is important to examine this principle before we go on to look at further actions made by the French government because the question of non-intervention is so central to any discussion of intervention and in regards to the Syrian civil war, France obviously did not abide to the principle. This naturally leads us to the question of if and when it is justifiable not to abide to the rule of non-intervention and indeed intervene in a foreign state.

First of all, it is safe to say that when a government violates human rights there might be reason for intervention in a state, according to TLP. The human rights that Rawls lists in his book are, as he admits, urgent rights and are therefore not as inclusive as the liberal state might be used to. The rights that Rawls includes as rights that all societies must uphold are the right to life (meaning rights to means of subsistence and security) this means a minimum of economic security, and from what I understand the right not to fear for one’s life; the right to liberty (to freedom from slavery, serfdom, and forced occupation, and to a sufficient measure of liberty of conscience to ensure freedom of liberty and thought); to property (personal property); and to formal equality. Judging from what I understand to be the right to life, and the right to liberty in TLP I would say that the action of attacking civilians that are protesting against the regime of a country as Assad did in Syria would be to violate these rights. Therefore, we can so far establish that these incidents were indeed violations of human rights and these were the reasons for France to make its first intervention and give support to the rebel groups. This intervention was a non-militant form of intervention, and was what one might see to be a first step in taking a stand against the violations of rights in Syria at the time. A question that comes up though, is if these happenings were grave enough for TLP to support the intervention.

In *The Law of Peoples*, Rawls does not specify when it is admissible to allow intervention in the case of violation of human rights. In fact, it seems that in many cases Rawls is mainly for non-intervention. What he does say is that “[a state that] violates human rights is to be condemned and in grave cases may be subjected to forceful sanctions and even to intervention”. The issue with this statement is
that there are no guarantees to what Rawls might mean to be a ‘grave case’. One might think that it is obvious that these violations were indeed severe enough, but I am here merely observing that this reflects a lacking in TLP, since I cannot rely on it to make a clear judgement regarding the instance just discussed. Rawls therefore leaves it to the reader to individually assess what a ‘grave case’ might be and therefore when an intervention might be legitimate.

Before continuing this discussion, I would like to present the second principle of TLP, namely;

2. Peoples are to honour human rights.

According to TLP, this principle applies to all states, and any state that violates human rights automatically becomes an ‘outlaw state’, and therefore might be subject to intervention.\textsuperscript{22,23} So in this instant we are caught between the principle of non-intervention, and the principle of human rights. When Assad violated the rights of his people, we might say that Syria became an outlaw state, possibly to fall subject for intervention because Syria then did not abide by the principle of human rights. The principle of non-intervention though can only be overlooked in grave cases of human rights violations, but there are no specifications to what these might be and so we cannot find the answer in either of the two principles. A contradiction starts to arise when considering these two principles in effect. As just mentioned, a state that violates human rights would be regarded as an outlaw state, and might be subject to intervention. But given the non-intervention principle and the vague restrictions in assessing when intervention might be justified there is no way to judge what would be the correct action, in accordance with TLP. Not only is this an issue in practice, but it also creates an issue in regards to the following principles in TLP. My reason for this claim is that if one cannot justify the primary action of intervention in a state, then one will not be able to justify the actions inside the state and any actions following the intervention, as any following actions would be a consequence of the first intervention. My argument here is that if one would imagine a liberal state making an illegitimate intervention in another state, then even if they follow any of the subsequent principles (such as justifiable means of war etc.), the first action of intervention has not been justified and therefore the following actions cannot be justified. I believe that this claim illuminates the importance of having clear guidelines for when intervention is legitimate and not. Taking France as an example, if their first involvements with Syria cannot be regarded as justified, then any support

\textsuperscript{22} Ibid. p. 37

\textsuperscript{23} An outlaw state is a state that would not accept or follow any or all of the principles of TLP. These states might for example perceive it righteous to go to war to advance their own interests, possibly to gain territory or to pursue other interests of the state. A state that violates human rights would also be conceived as an outlaw state and might even be subject to intervention in grave cases. Because of the lack of democracy in Syria, as well as the people not being able to express their political views, Syria would be perceived as an outlaw state according to TLP. (Rawls, pp. 90-1; 81)
they have given to the opposition as well as any other actions within the state are not justified. Let’s say this would be in regards to a state that does not have any political or social issues, would another state then intervene without reason then this would be an infraction and violation of the first state’s sovereignty. In that case it does not matter what the liberal state is doing while intervening as the action itself is not justified. Given this line of thought, were one in need to defend France’s actions in Syria, TLP would unfortunately not be of help.

Simon Caney has discussed the question of intervention in his book *Justice Beyond Borders* (JBB in short), where he puts forth a principle very similar to Rawls’s. Caney too, gives us an example of a principle to follow in the question of justifiable intervention, though it seems a little more straightforward than Rawls’s. Caney is clearly stating that when human rights are being violated, intervention is legitimate.²⁴ He also states what these rights would include; rights to a decent standard of living, against torture, murder, unjust imprisonment and enslavement.²⁵ Caney’s account of the principle is better, firstly because it clearly states that when there are violations of human rights, humanitarian intervention is legitimate (instead of using a vague type of phrasing as in TLP). The second strength in Caney’s principle in comparison to TLP is that the human rights that Caney include are more strict than the ones Rawls count out. For example, where Rawls includes the right to life, Caney includes the right against torture and unjust imprisonment as well. With that said, there is not much missing from Rawls’s account of the principle to make it as clear as I find Caney’s, the strength of Caney’s account is in the details. I feel confident to say that in light of JBB’s principle, one can determine that France’s actions were indeed justified but I would like to argue that there might still be an even better way to go about the question of non-intervention.

I would like to refer to Michael Doyle’s idea of adopting a ‘decency standard’, meant to be used by liberals to be able to make out when intervention might be justified or when toleration need to be applied.²⁶ Doyle makes a good point which is that in the discussion of human rights it is easy to end up either too weak or too strong in the judgements.²⁷ Since liberals do not look to force any opinions or ways of life onto other societies, and at the same time do not want oppressing societies to be able to do as they will, the need for a middle ground is very important.²⁸ Even though Caney’s account of human rights are enough for my immediate objective in this instance, I can see how in other instances there might be a need for a more in depth tool to assess a situation. There might be instances where

²⁵ Ibid.
²⁶ Michael Doyle, "*Justice and Culture: Rawls, Sen, Nussbaum and O'Neil*", Political Studies Review (1) 4-17, 2003 pp. 14-5
²⁷ Ibid. p. 15
²⁸ Ibid.

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less urgent rights are violated, but still might call for some form of intervention, possibly in states where gential mutilation is performed. Using gential mutilation as an example, would one use Caney’s account of human rights and principle of non-intervention one might say that gential mutilation would be perceived as torture, but then again, one might also say that it is not (depending on the arguments presented). On the other hand, Caney also suggest that intervention should be the last resort, after any other means of influence to stop any occurring violations has already been considered or tried. One could therefore imagine that he would support the idea of influencing societies in stopping these sort of actions, and possibly then support intervention if they do not stop.29

One might say that Doyle and Caney express quite similar views. Doyle suggest that to secure that grave human rights violations (from my understanding similar to the rights that are included in Rawls’s or Caney’s account of rights) induce an intervention, and at the same time assure that the less urgent rights are being attended to, one need find a middle ground where both aspects are being considered. In promoting the less urgent rights, liberal societies can use a more indirect strategy to influence societies towards adopting more liberal institutions, and in the more severe cases intervention would be necessary.30 Doyle concludes that the idea of Rawls’s ‘decent states’ might be a good measurement to where liberals would need to practice tolerance, but still try to influence the states towards more liberal values. 31 This would mean that liberal societies would not fully accept the decent states, but would work towards people everywhere getting to enjoy freedoms such as freedom of speech and other political rights and at the same time know when intervention would be legitimate and possibly even obligatory.

Considering Caneys approach to intervention and non-intervention they seem to take similar paths. Only in JBB we do not see the same approach to the less urgent rights. Even though non-militant intervention is discussed, Caney does not include a discussion on how to deal with the less urgent rights that might need to be addressed. As an addition to TLP I therefore argue that Caney’s account of human rights might be necessary to add onto the rights presented in TLP to give a more direct approach to when intervention might be legitimate. To find a proper way to go about the intervention/non-intervention issue, I find that Doyle’s decency standard would be a suitable

29 Justice Beyond Borders, p. 249
30 Justice and Culture: Rawls, Sen, Nussbaum and O’Neil, p. 15-16
31 A decent state according to Rawls is a state where there are some political restrictions on some members of the state, possibly because of religion or gender but the general population has the same rights and opportunities. Every citizen, no matter their political status will still have an opportunity to express their views and will be represented by groups with one voice. But given that the decent society might be living after a certain comprehensive doctrine or religion, not all members of society will be equal. (Rawls pp. 64-5)
approach as this could serve as a tool for other situations than that discussed in this essay and would consequently make a good addition to TLP as well.

V. THE BURDENED SOCIETY

Leaving 2012 behind; the situation in Syria intensified when, allegedly, the Syrian regime decided to bomb neighbourhoods populated by civilians around Damascus in 2013 (it is here worth mentioning that it has not actually been surely confirmed that this attack was executed by the Syrian regime, even though this was the wide spread belief).32 The weapons used in the attack held illegal chemical toxins which spread around the areas and killed around 1,500 civilians.33 After this the involvement of foreign states ramped up, as many were holding the belief that the Syrian civilians were now at high risk, and there were worries about the Syrian regime using their weapons against other states.34 The US and Russia stuck a deal to place Syrian chemical weapons under international control, but no other interventions were made.35

During 2014 the situation worsened in Syria. The rise of the jihadist group ISIS and the continuing war between the opposition and the regime eventually lead to the opposition losing important territory and so the foreign states involved lost much of their chance to control or influence the crisis.36 The reason for this being that the opposition had lost much of its power and so made it more difficult for foreign states to support the opposition without the risk of money or supplies going into the hands of jihadist groups or forces of the regime. Many agree that the reason for the declining involvement in the crisis could be traced back to that there weren’t more critical actions taken in response to the chemical bombings in Damascus. French officials have said that they were ready at that point to intervene in Syria with military force, but had no back up and so therefore had to give it up. They had neither the military nor the diplomatic strength to go it alone and would have needed the back up of the US, who did not support an intervention at the time.37

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33 Ibid.
34 Angelique Chrisafis, The Guardian, “France expected to replace UK as key US ally in Syria intervention”, 30 August 2013
36 Armin Rosen, Business Insider, “The Syrian Civil War is on the verge of getting even worse”, 9 September 2014
37 Cecile Feuillatre, Yahoo News, ”France’s miscalculations and impotence over Syria crisis” 24 November 2015
intervention at the time of the bombings it might have made a difference, but as the oppositionist groups were left to fight on their own they could not hold their territories.

Even though there never as an intervention at this time, it seems to me that an intervention at this point would have been legitimate according to any of the philosophers discussed earlier. In Rawls’s theory, I would have to assume that this would indeed be seen as a ‘grave case’ of violation of human rights, and that TLP would support an intervention. At this point in time, where the opposition had lost territory, and ISIS kept expanding theirs it seems that one could perceive Syria as a burdened state (instead of as an outlaw state) where the conditions were preventing them from having a just or decent and social regime.38 Because Assad were no longer really ruling the country Syria did not have any concrete regime at all, and the civilians were being attacked by their former government. This then brings me to discuss the next principle which is:

3. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.

In relation to this principle Rawls explains how well-ordered societies might assist burdened societies into becoming well-ordered states. He gives three guidelines that well-ordered societies may follow to fulfil their duty of assistance towards burdened societies. Given that the civil war in has left Syria without any real government or political structure one might say that they are definitely a burdened society. For a situation such as the one in Syria, though, there is not much of TLP to bring to the table. Rawls discuss economic assistance, the importance of the people of a country feeling like they have a common goal to give them a feeling of community and of honouring human rights. These guidelines would most likely be helpful had there been some sort of regime in the country, possibly would these guidelines have been helpful before the civil war to bring more freedom to the Syrian people but they do not seem to have much to add to the situation as it is, namely a civil war. To my knowledge, there is unfortunately no mention of how to deal with a state going through a civil war in TLP. This I find quite surprising given that Rawls does state that intervention would be legitimate in grave cases of violation of human rights. It seems like the discussion of burdened states would make a good place for the theory to discuss civil wars and when a state might need to intervene on behalf of the civilians in the state. It seems that civil war is one of the most common instances where a state might need the

38 The burdened society is not well-ordered; the reason being that it does not have the capacity to bring its society to a level where it is possible to become well-ordered. This might depend on various different reasons such as the economic situation, political and cultural traditions and so forth. As with any other non-ordered state, Rawls thinks that the liberal states should be giving a helping hand - and also says that it is their duty to do so where they can - to bring these societies towards a state of being where they can be included in a well-ordered society of peoples, but still keep their own values and traditions. (Rawls, p. 106)
assistance of foreign states to get back on its feet. In a situation such as the one in Syria, there might be a need for intervention to get the civil war under control and make sure that the civilians are protected. I am not sure where Rawls would include a state going through a civil war if not under the burdened societies whos characteristics include not having a functioning political regime, amongst others.\textsuperscript{39} In such a situation it does seem to me that a state is in need of outside assistance, if not to try and solve the conflict then at least to help the civilians in the state.

In a civil war such as the one in Syria, the state in question is obviously not in capacity to arrange a secure and rightful regime by itself. If it had, there would most likely not have been a civil war to begin with. Therefore, there might be need in such an instance for foreign states to intervene and take some form of control of the state temporarily. A solution to this might be that an international institution possibly made out of a collection of states, would be the one to intervene. In TLP one could possibly add a principle for burdened societies in civil war, which justifies temporary intervention by an international institution to help the state in question to come to a peaceful solution. Something similar to this is mentioned in the book, where Rawls discuss how states might influence an outlaw state and says that there sometimes might be need for well-ordered states to form alligances on certain issues.\textsuperscript{40} Such an institution or alligance would possibly affect the fighting parties in the state, as it would come as a risk to attack the institution because it would mean to attack several states at once. If this would be possible, the institution in question could act as a third party, and if possible try to liaise between the fighting parties to bring about a solution but keep the peace at the same time. What I mean here is that there might be a need to take a state in civil war by force, to bring about greater good in the end. This idea would be a next step up from the UN which is limited in its abilities to use force against states.\textsuperscript{41}

It might be worth mentioning a point of view from John Stuart Mill here, where he says that liberalism created from intervention would not hold.\textsuperscript{42} Michael Doyle writes in his essay “A few words on Mill, Walzer and Nonintervention” that Mill argues that it is a great mistake to give a people freedom that cannot win it on its own, because the people in question would not be able to keep it. Doyle also writes that a liberal state that would take over a non-liberal state would straight away find themselves in a difficult position as they would not have many domestic supporters. \textsuperscript{43} In Syria’s case I cannot agree with this argument. Firstly, the Syrian people did try to gain freedom in the beginning

\textsuperscript{39} The Law of Peoples, p. 106
\textsuperscript{40} Ibid. p. 93
\textsuperscript{41} UN.org, “Background Information on the Responsibility to Protect”, [online]: http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml
\textsuperscript{42} Michael Doyle, “A few words on Mill, Walzer and Nonintervention”, p. 353
\textsuperscript{43} Ibid.

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of the civil war, which as we have seen was the primary reason for Assad to attack his own people. Secondly, were there an institution or state that were able to intervene and take control over Syria, with an agenda to free the Syrian people they would have the support of many civilians in Syria. Another of Mill’s points that Doyle present in his article is that the state might become dependent on foreign intervention to keep the peace, and so would not have wills and interests of its own. This I have to agree is a likely event. But would the international institution simply help the state to come into a state of peace, without imposing their own interests but merely acting as a diplomatic third party then possibly this wouldn’t need to be an issue.

Even though this might seem a bit extreme, taking Syria as an example for this sort of institution one might see that for one, there might have been an earlier intervention in the state. Even at the time when the civil war had just begun, the international institution might have been able to intervene straight away. In that case, even if the states included in the institution were divided in their opinions of the civil war they could have taken control and then try to peacefully work out a solution with the different parties. My main argument for this working better than the current state is that if there was an institution more powerful than the UN, a state in civil war would possibly respect its influence more. The institution’s main objective might be to keep peace, so that the involved state’s own opinions would not need to be a factor. Rather, its function would be to prevent violence as far as it would be possible, but would have the authority to intervene with military force if found necessary. Here one could look at Caney’s suggestion again where one would first try any other solution and concede to military force only as the last resort. As the UN seems to be restricted by politics, another international institution might be able to act faster but still in alligence with the UN. The fact that TLP does not discuss the issues around civil war makes another reason why it is not completely usable in practice.

VI. RIGHTEOUS WARFARE

On November 13th 2015 Paris fell victim to terror attacks carried out by ISIS that killed 130 people. At this point the jihadist group was infamous around the world because of its terror attacks in Arab and Western countries. The militant group originated from Iraq, but had by this time gained

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44 Ibid. pp. 353-4
45 Ray Sanchez, Tim Lister, Mark Bixler, Sean O'Key, Michael Hogenmiller and Mohammed Tawfeeq, CNN, “Mapping ISIS attacks around the world”, 13 April 2016
territory in Syria as well, and France soon sent their first air strikes against ISIS in Syria.\textsuperscript{46} Even though these were France’s first strikes in Syria, they were not their first strikes against ISIS itself as they had previously been involved in an US-led coalition carrying out attacks on the group in Iraq.\textsuperscript{47} France’s justification of the attacks in Syria were generally that they feared for the country’s safety and the safety of Syrian civilians.\textsuperscript{48}

After the attacks in Paris one would say that France had a legitimate reason for self-defence and so also intervention. To discuss the latest mentioned course of events, we need to look at a few more of the principles in TLP.

The two principles that are most relevant to this stage of the conflict are;

4. Peoples have the right to self-defense but no right to instigate war for reasons other than self-defense.

5. Peoples are to observe certain specified restrictions in the conduct of war.

First of all, we might question if France really did instigate war against ISIS in self-defense. What I mean here is that France did join the US in the attacks against ISIS in Iraq, before any attacks were made by ISIS against them. On the other hand, ISIS had by this time already been carrying out many attacks mainly in Iraq but also in some western countries, so it might be fair to say that France was making war against them to prevent any attacks against themselves, and therefore this would be viewed as self-defence. A statement made by ISIS after the attacks in Paris stated that the attacks was a response to the bombings France had already carried out against them.\textsuperscript{49} I will make a judgement call for the sake of the discussion here and say that France did indeed initiate war with ISIS in self-defense, based on a statement from The Law of Peoples, which reads:

“Well-ordered peoples, both liberal and decent, do not initiate war against each other; they go to war only when they sincerely and reasonably believe that their safety and security are seriously endangered by the expansionist policies of outlaw states.”\textsuperscript{50}

\textsuperscript{46} Bobby Ghosh, The Atlantic, ISIS: A short history, 14 August 2014
\textsuperscript{47} John Irish and Vladimir Soldatkin, Reuters, ”France hits back at Russia over Syria bombing campaign”, 20 November 2015
\textsuperscript{48} Ibid.
\textsuperscript{49} Tom Parfitt, Express, “ISIS claims Paris attacks as revenge for Syria airstrikes and insulting Islam’s prophet”, 15 November 2015
\textsuperscript{50} The Law of Peoples pp. 90-1
I do believe that this statement must suffice as support enough to say that in the situation where the world was witnessing horrifying terror attacks by ISIS, France did indeed have reason to think that their safety and security was being threatened and therefore decided to act against this threat.

Note here, as earlier discussed, that TLP does not state that there might be reason for war or intervention when it is a case of defending another state’s civilians, which was one of France’s reasons for their attacks. I am merely pointing this out again, because again we find ourselves in a situation where the protection of civilians seems to be a legitimate reason for intervention and so we see that an account for this is missing in TLP.

After the Paris attacks, France ramped up the fight against ISIS. They bombed an ISIS training camp in Raqqa, and sent fighter jets to the region ready to continue the bombings just days after the attacks in Paris. During these first bombings, president Hollande stated publicly that France was now at war against ISIS.\(^5^1\) I believe it might also be worth mentioning that I am regarding the war against ISIS as an intervention in Syria, this because ISIS were holding and gaining territory in the country and so I perceive this as a military intervention in Syria.\(^5^2\) As previously mentioned, the French government stated that they carried out the bombings not only for the safety of their own country but also for the safety of the Syrian civilians, so this as well would make it reasonable to judge it as an intervention. With this cleared up we will now look towards another question namely, was their means of action following TLP’s principles of righteous warfare (principle 3)?

As we have seen, the third principle I will discuss is the principle stating that any state will need to observe certain restrictions in the conduct of war. These restrictions are guidelines given to ensure, in main part, the safety of civilians and from my understanding, that well-ordered states make war in means that are as respectful as they possibly can be. Again, I have not included the ones that not of relevance to the discussion.\(^5^3\) The relevant principles here are the following:

\(^5^1\) Ryan Deveraux, The Intercept, “As France bombs ISIS, civilians are caught in the middle”, 19 November 2015
\(^5^2\) “The Syrian civil war is on the verge of getting even worse”
\(^5^3\) The principles not included here are somewhat summarised by myself, some direct quotes from the book. 1. The aim of just war waged by a just well-ordered people is a just and lasting peace among peoples, and especially with the people’s present enemy (direct quote). 2. Well-ordered peoples must respect, so far as possible, the human rights of the members of the other side, both civilians and soldiers, for two reasons. One is simply that the enemy, like all others, has these rights by the Law of Peoples. The other reason is to teach enemy soldiers and civilians the content of those rights by the example set in the treatment they receive. In this way the meaning and significance of human rights are best brought home to them (direct quote). 3. Well-ordered peoples are by their actions and proclamations, when feasible, to foreshadow during a war both the kind of peace they aim for and the kind of relations they seek. This principle is meant to guide mainly officials and leaders of a state in war, to remember that by acting in an as peaceful way as possible they will show what they themselves are striving towards and what kind of people they are (summarised).
a) Well-ordered peoples do not wage war against each other, but only against non-well-ordered states whose expansionist aims threaten the security and free institutions of well-ordered regimes and bring about the war.

b) In the conduct of war, well-ordered peoples must carefully distinguish between an outlaw state’s leaders and officials, its soldiers, and its civilian population. The reason being that in an outlaw state, civilians have no chance to make any decisions or impact on the state’s actions against other states. Therefore, the civilians and even the soldiers of the state cannot take on any responsibility for any aggressive actions of the state. This responsibility will be on the leaders and officials of the state only, who will be the ones initiating the war (summarised by myself).

c) Practical means-end reasoning must always have a restricted role in judging the appropriateness of an action or policy. This mode of thought must always be framed within and strictly limited by the preceding principles and assumptions. This means that there are certain lines a state must not cross in the conduct of war, and so the conduct of battles must lie within the limits the principles specify. The only exemption would be in situations of supreme emergency which will be discussed below (summarised by myself).54

Given that ISIS was at this time fighting in Syria and trying to claim territory and power and at the same time threatening the security of other states, I do believe then, in accordance with principle (a), that one can perceive ISIS as a non-well-ordered ‘state’ whose expansionist aims threatened the security and free institutions of well-ordered regimes. Because it is difficult to say who, if anyone, at this time was actually ruling in Syria I will have to assume that one can perceive any of the leaders of the fighting groups as potential leaders of the state. Following this I will perceive ISIS as one of the potential regimes in the state. Therefore, as we have previously stated, France did have reason to attack ISIS in self-defence and their actions in this sense also complies with principle (a) in TLP’s principles of conduct of war. I will therefore now leave this point and go on to the actual details of the war as far as I have understood them.

Principle (b) states that a state in war need to distinguish between an outlaw state’s leaders and officials, its soldiers, and its civilian population. As we have seen above, the reason for this being that the civilians and even the soldiers involved in a war are as a rule not to blame for the initiation of the war in an outlaw state. These decisions are made by the leaders and officials of the state and the

54 The Law of Peoples pp. 94-7

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civilians are left out of it. As for the soldiers, they are often forced into the war either by conscription or other means.\textsuperscript{55}

It was most commonly stated in the media that the first bombs that France released over Syria was onto an ISIS training camp, and as far as I have been able to tell it does not seem like any civilians were hurt in these first attacks.\textsuperscript{56} Following France’s attacks there have been questions in regards to the motives of the countries involved in the civil war, and there were also questions regarding how effective the strikes against ISIS actually were, in reflection to how badly these attacks were affecting the country and the civilians who were caught in between Assad’s forces, ISIS and the foreign countries trying to fight Assad, ISIS or both.\textsuperscript{57}

This then, brings forth the question of when it is admissible to overlook the security of civilians (principle (b)) for the sake of (in lack of a better expression) ‘the greater good’, and so brings us to principle (c). Rawls dedicates a separate paragraph for this question. Here he discusses ‘The Supreme Exemption’. This is the exception in which a state might have to ignore other principles in the conduct of war to defeat their enemy. The exemption applies where the circumstances are serious enough that the application of the exemption might avoid horrific consequences for the world, several countries or a people. Rawls uses examples of World War II and the British fighting against Germany to illuminate his point. Here he’s saying that it would have been justifiable for Britain to bomb certain German cities during the time when Germany was advancing in the war and there seemed to be a need for drastic action, because if Germany would actually win the war it might have put constitutional democracy at stake.\textsuperscript{58} It is difficult to make a judgement here on if the supreme exemption would apply to the above situation. It had to my knowledge not been confirmed that civilians had actually been hurt in the French attacks, but on the other hand any warfare in the country will obviously effect the people within the state. So if one were to discuss the effectiveness of the airstrikes, in contrast to the consequences for the civilians it seems that it is required to discuss this principle. To my understanding of the supreme exemption it seems that for it to be justifiable the threat against the well-ordered states must be immense. In 2015 ISIS were carrying out horrifying terror attacks and they were expanding their territory, but it does not seem to me that they were in the upper hand against the US, Russia, France and any other states involved in the war at this time.\textsuperscript{59}

\begin{footnotesize}
\begin{enumerate}
\item Ibid. pp. 94-5
\item Ben Doherty, The Guardian, “France launches ‘massive’ airstrike on ISIS stronghold of Raqqa”, 16 November 2015
\item Sam Gerran, RT, “Why the US, France and Britian are destroying Syria”, 5 December 2015
\item The Law of Peoples pp. 98-9
\item Karen Yourish, Derek Watkins and Tom Giratikanon, The New York Times, “Where ISIS has directed and inspired attacks around the world”, 22 March 2016
\end{enumerate}
\end{footnotesize}
So to say that there was a great threat, big enough to call a supreme emergency, such as Rawls puts it, is hard to say.

Caney discusses ‘Non-combatant Immunity’ which would be regarded as the same as the supreme exemption. This states that an intentional attack on non-combatants is wrong.\textsuperscript{60} Based on the cosmopolitan view of equal rights for everyone, Caney argues that such a theory might allow the non-combatant immunity to be violated in the case that this is needed to protect the rights of a larger group of non-combatants.\textsuperscript{61} Based on this then, we might more easily say that if France’s attacks were posing a threat to the civilians in Syria, this threat might have been smaller than the threat that ISIS was posing to the people in Syria, as well as civilians in other countries. Therefore one could possibly assume that the attacks would be justified. These two principles are again quite similar, only Caney’s account makes it a little easier again to base a judgement on. In this issue there is a question of weighing the different arguments against each other. On the one hand it is difficult to judge when one group is at greater risk than the other and this would be an issue in both theories. One cannot know with certainty that the attacks on ISIS are securing the lives of civilians. Remember that some were questioning how effective the attacks even were. Therefore depending on how effective they indeed were, and how badly they affected the civilians one might be able to conclude if they would be justified or not. If the French attacks on ISIS didn’t do much damage to them, then the attack won’t make a difference to foreign civilians who might be in possible danger. It would rather make life worse for the civilians in Syria, who are in immediate danger. This therefore seems to be a difficult area to discuss in any further depth. I will not come to a conclusion on whether these attacks could be justified, based on Caney or Rawls. There might have been a better way for France to go about this situation though, such as possibly using troops on ground. They could more easily distinguish between civilians and soldiers and this would also have meant that there wouldn’t have been as many buildings ruined by bombs when the war would finally be over. Considering this, on ground troops would seem to be the best solution as this would also give some form of long term benefit, because it would mean less harm not only to civilians but also the country itself.

In addition to this, one might also ask what right the soldiers of ISIS have in this situation. If ISIS is to be perceived in the same way as a state, then according to TLP enemies of that state should as far as they can only attack the leaders and officials. I do not believe I am able to establish enough information to examine this area in depth, as there might be a divide in some soldiers who did join the forces willingly, and there might have been others who may have been forced to join in one way

\textsuperscript{60} Justice Beyond Borders, p. 192
\textsuperscript{61} Ibid. p. 214
or the other. Only this question alone could be looked into and speculated about. For example, one might ask that if an individual is being convinced to join ISIS for various reasons, have they done it willingly or would brain washing be perceived as a means of force in this instance?

A discussion regarding Assad’s soldiers might be a better clear cut case as it is easier here to separate the leaders and soldiers because Assad’s regime was indeed part of the actual state of Syria. In the case of Assad’s soldiers it might be easier to divide the soldiers into their own group, than it is with ISIS soldiers. The soldiers in ISIS’s forces make out, from what I understand almost the entire collective that is ISIS, so one might also ask then, if they are only soldiers, or should they be regarded differently? Even though I do not know of any interaction France has had with Assad’s forces, in this instance one might ask if the support the opposition got from France would count as French interaction with the forces of the regime. In that case it’s again a question of more in depth argument and examination to judge if this interaction would be justified, in accordance with Rawls’s conduct of war. Given that this was a case of political groups fighting against soldiers, and that any other solution most probably would have had to involve military intervention by France themselves, the question might be if it is more legitimate for a liberal state to help fighters within a state, rather than intervening themselves. Is there really a difference between the two? On one hand one might say that the French support should be regarded as intervention, but on the other hand in practice it has not been regarded in this way. Considering this issue, France stands as a third party in the conflict. Even though they are not directly fighting in the state, they are a cause to any advances made by the opposition. Consequently, France is also partly reliable for any soldiers killed in Assad’s forces. Given this reasoning, France has not followed principle (b) in TLP’s conduct of war. But, another question that then arises is what else could have been done by France? It seems that military intervention would have been their only other option, and this as well would most likely had led to the deaths of some of Assad’s soldiers. It seems that the main point of this principle is to make sure that liberal states realise that soldiers might not be fighting by choice and should therefore not be regarded as an enemy. Unfortunately in war, it does not seem to be a way of fighting against an outlaw state without fighting the forces of the state.

In October 2015 the foreign minister of France said in a press conference that France’s first objective would be to fight ISIS, second to stop Assad bombing civilians in Syria, and after this look towards a political solution to the crisis.62


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In early 2016 there have been a ceasefire in Syria, brokered by the US and Russia, and peace talks are being held to promote a solution.\textsuperscript{63} France is still playing its role in the crisis and is still, amongst others, dealing with the issue of millions of refugees that have been streaming into Europe in search of security.\textsuperscript{64}

VII. CONCLUSION

First and foremost, I chose to work with Rawls’s book because I believe it is very comprehensive in its discussion in regards to intervention and righteous warfare. It has indeed been of much help in answering my question if France’s actions in the Syrian civil war was justified. Although, as have been clear I have also found some shortcomings in the theory.

When first discussing the question of non-intervention I found that Rawls’s discussion is not entirely satisfying, and it seems to me that Rawls leaves the question to be answered by the reader. I therefore argued that Simon Caney gives a better account of what human rights should be considered when justifying intervention, which are somewhat less accepting than Rawls’s and therefore makes it easier to judge if an intervention is justified or not. I argued that Michael Doyle gives a good suggestion on how the liberal doctrine could deal with finding a breaking point between tolerance and intervention.

I have also suggested that these could be added as additions to the principle of non-intervention, and argued that these additions would be important because when one cannot justify an intervention the following principles of TLP will not be relevant in any specific case of intervention.

I have then continued by discussing the role of civil war in The Law of Peoples, which is non existant. I have discussed that it would be necessary to add a principle on how to deal with civil war to the theory, and have discussed how an alligance of states might be able to intervene in a burdened state in civil war to help them bring out peace. This suggestion I believe might be in accordance with Rawls’s thoughts as he briefly mentions a similar idea while discussing intervention in outlaw states.

I have found that the ‘Supreme Exemption’ in TLP, as well as the ‘Non-Combatant Immunity’ in JBB, while relevant to any case of military intervention is difficult to use to justify actions during war. The actual damage posed onto civilians, in contrast to how many people one might save in general seems

\textsuperscript{63} Layal Abou Rahal, Dave Clark and Fran Blandy, Times of Israel, “US, France warn Syrian regime ahead of new peace talks”, 14 March 2016
\textsuperscript{64} Associated Press, “The Latest: French Minister hails Merkel’s refugee stance”, 10 March 2016
very difficult to measure. The importance of these principles seems to be primarily theoretical and moral and would most likely be easier to judge in even more severe cases. Possibly does one need to re-evaluate this principle. In regards to the supreme exemption I have also discussed the rights of soldiers, and have again found that this principle seems to be rather theoretical than practical and seems to act as a moral guideline in war, simply to remind of the difference between soldiers and the leaders of a state.

Worth mentioning is that Rawls does not discuss any counter arguments to humanitarian intervention. Given that much has been said on the subject, this is a little surprising. On the other hand, I can see how Rawls have assumed the position that intervention might sometimes be justified and have decided not to comment on any counter arguments.

I believe that based on the evaluation I have been able to make with help of TLP and other theories, France’s actions in the conflict have in most part been justified. There have been certain actions I have not been able to evaluate fully, both because of lack of information, and time to make the in depth research some of the questions would have required. Such as how much damage France imposed on ISIS, for example.

In regards to the theory, The Law of Peoples, I have found that it is not sufficient to evaluate a real life event of intervention. I have based this view on the evaluations I have made and the fact that I have had to use other writers as additions to find ground for my judgements. Overall, I believe that The Law of Peoples would benefit from small ajustments to clearify some parts of the theory. With this done, it would make it to use in practice. Though with that said it has become clear to me that there will always be situations which cannot be accounted for and it seems that for a theory to be comprehensive enough for this aim it needs to include general, and detailed principles at the same time.
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