
Thucydides and Just War: How to Begin to Read Walzer's Just and Unjust Wars

Robert Howse*

Abstract

Thucydides is usually considered a realist thinker who denies a meaningful place to right or justice in international relations. In Just and Unjust Wars, however, Michael Walzer develops a powerful critique of realism through an engagement with Thucydides. This article compares Walzer's treatment with Leo Strauss's anti-realist interpretation of Thucydides, suggesting many similarities between Walzer's approach and Strauss's. Both Walzer and Strauss hold that, even in war, necessity does not eliminate meaningful margins of moral choice. Strauss's much more expansive treatment of Thucydides helps us appreciate the subtleties of Walzer's terse argument against realists.

I began to read *Just and Unjust Wars* as a sophomore at the University of Toronto; I was learning Thucydides at the time, from Clifford Orwin¹ – and also confronting Leo Strauss's interpretation.

I fast forward a few decades. Last spring, at one of our favourite cafes on the Tel Aviv beachfront, Gabby Blum revealed to me the plan for a conference on *Just and Unjust Wars*. I was immensely excited. For some years now, I have been teaching Thucydides to law students, along with Chapter One of Walzer's *Just and Unjust Wars*; this is always the start of my seminar on the history and theory of international law. Whether in Ann Arbor, or Washington Square, or Tel Aviv, Thucydides read through these lenses

* Lloyd C. Nelson Professor of International Law, NYU Law School and Faculty Co-Director, Institute for International Law and Justice. This is a revised and somewhat expanded version of the notes on which I based my dinner address at the conference to honour Michael Walzer, 'The Enduring Legacy of Just and Unjust Wars – 35 Years Later'. I have not tried to present these notes in the format of a scholarly essay. Thus the defects and strengths of oral presentation remain in the written text. Thanks go to Ruti Teitel for very helpful comments on an earlier version. Email: howserob@gmail.com.

¹ At the time, Orwin was developing the interpretation of Thucydides that would eventually be published as the magnificent book, *The Humanity of Thucydides* (1994). He had studied with Walzer as a PhD candidate in Harvard's Department of Government, as well as with some of Leo Strauss's most prominent students, Allan Bloom (as an undergraduate at Cornell) and Harvey C. Mansfield Jr (at Harvard).

always proves empowering to students. They discover a rich, complex moral vocabulary, deeply connected to the reality of war and the self-understandings of the protagonists, which allows them to talk intelligently and respectfully to one another about the place of law in war. When we get to discussing Iraq and Afghanistan and Palestine, we find ourselves able to transcend the polarization of debate that has too often gripped both the academy and the nation in the last decade.

But one only gets to this place if one is able to read Thucydides as Walzer reads him; or, as I shall also explain, the way that Strauss and Orwin also read him.

For at first glance Thucydides is the problem not the solution. As Walzer observes, Thucydides is the *locus classicus* for the position known as ‘realism’. The statement of the Athenian generals on Melos, that there is no justice between the weak and strong, that the strong take what they can, and the weak bear what they must, has been taken again and again as the clearest expression of the view that law and morality have no effective place in war, and perhaps in international politics more generally – except as self-justificatory or apologetic rhetoric. Once again, in the recent book by Jack Goldsmith and Eric Posner on the ‘limits’ of international law,² we have Thucydides cited for this proposition.

The first chapter of *Just and Unjust Wars* cuts off realism at the pass, as it were, by having us reconsider the statement of the Athenian Generals in the context of Thucydides’ entire book; and this is connected to Walzer’s demand that we be open to the possibility that the realist elements in Thucydides’ own work are different from the realism that results from Hobbes’ appropriation of Thucydides. In reverting to Thucydides and Hobbes, Walzer unapologetically states that the ‘most compelling form’ of the realist argument is to be found in its ‘source’. Game theory and all the other methods by which social science studies ‘behaviour’ do not join the essential issue, but assume its resolution in one direction.

The issue is a *philosophical* one: whether morality, justice, and law are primary phenomena for human beings or whether they are derivative from or epiphenomenal to ‘interests’ – somehow defined in amoral or pre-legal terms. If the latter is the case, then interests will always triumph where there is a conflict. Justice will win only where interests, however understood, are on its side (and it is assumed that human beings do not have an autonomous interest in justice itself). Behaviourist social science begs the fundamental question: its investigations *assume*, to use a Marxian image, that things like interests or preferences or drives are the base, and norms and laws the superstructure. This particular simplification of the human situation cannot itself be derived or proven from observation: neither the persistence of transgression in human society nor even its apparent prevalence over law-abidingness in the most extreme situations settles the issue in favour of the realists. Indeed, the very articulation of the conduct in question as transgression implies a consciousness or awareness of man’s original orientation towards law.

Walzer says that he does not aim ‘to write a full philosophical response to Thucydides and Hobbes’. And he does not have to. He needs only to open up the fundamental

² *The Limits of International Law* (2005).

question. If the 'realist' debunking of the moral and legal vocabulary of war is premised on an *assumption*, a debatable philosophical position, then we can hardly be ashamed of being unscientific, much less deluded or naïve, just because we revert to a moral vocabulary that, unlike the reductionist substitute of 'realism', reflects cumulative experience of argument and judgement in human history as well as our common sense intuitions.

(That is not to say that words like 'aggression' or 'self-defence', or 'cruelty', or 'dishonour' have self-evident or natural meanings. Rather, what is important is that we can argue lucidly with one another in this vocabulary when deliberating on our own choices and judging the choices of others. I will come to that aspect of Walzer's chapter in a moment.)

Now I want to draw attention to a contrast between Walzer's approach of cutting off realism at the pass and the mainstream response of the international legal academy to the sceptical 'realism' of, for instance, Goldsmith and Posner. The mainstream response is to go into the social science woods hunting for methods and mechanisms that would somehow vindicate law and its 'behavioural' force in a world where human beings are assumed, fundamentally, to be driven by something deeper and more fundamental than law itself. But if we assume such a world the battle against the realists is largely lost – because anyone who knows social science realizes that even the best regression analysis is unlikely to overcome the presumption that, if states or state actors behave in accordance with law, it is still not *law* or an orientation towards legality that is doing the effective work of determining behaviour, but some underlying 'interest'. Thus, Teitel and I in our own response to Goldsmith and Posner in *Global Policy*³ refuse to accept the premise that behaviour is driven by something like interests determined in isolation from moral beliefs and legal demands. We therefore reject the proposition that making sense of law in international relations requires some theory or mechanism to explain how words not backed by force could connect to 'behaviour'. Instead, as we claim, 'law or normative direction by rules is a given of the human situation'.⁴ This is an understanding common, I believe, to the Bible, to classical political philosophy (Plato and Aristotle), and also to important strands in modern philosophy as well – Montesquieu, Kant, Tocqueville, for instance. Of course this view needs to be *philosophically defended*: but I suggest it is closer to our given human experience as a whole than the opposite proposition, which the likes of Goldsmith and Posner *assume* but which they do not defend philosophically. Here with his usual terseness Walzer makes the point far better and in far fewer words than can I: 'judgment is as common a human *activity* as loving or fighting'.

Of course, the distinctive way in which human beings are normatively guided (unlike the way in which other animals are guided by 'instinct') implies the possibility of transgression. The difficulty that the realists exploit is that the nature of war is such that it is very hard in practice to draw a legal line that will not be subject to overwhelming pressures for transgression, at least much of the time. Working through, as Walzer

³ 'Beyond Compliance: Rethinking Why International Law Really Matters', 1 *Global Policy* (2010) 127.

⁴ 'Posner's Missing Concept of Law', 2 *Global Policy* (2011) 117.

has us do, the realism in Thucydides and the realism of Hobbes makes us see that though this difficulty is genuine and serious, it does not imply that we can or should *dispense* with moral and legal judgement in war. Thus, as Walzer points out even before beginning his engagement with Thucydides, the invocation of necessity and duress as characteristic of war does not place war beyond the plane of law and morality; rather these concepts explicitly or implicitly play a legal/moral function in determining the responsibility or blame of those engaged in its conduct. These notions, as he says, are forms of normative discourse not amoral theories of human 'behaviour'.

This leads us to the Melian Dialogue. Melos was a Spartan colony, and its leadership had refused, unlike the other island states of Greece, to be subject to Athens' empire. In the Dialogue, two Athenian generals bluntly tell the leadership of Melos that they must yield to Athenian power or be destroyed. Having recited the line from which the realists derive their slogan, as it were, about there being no justice between the weak and the strong, the strong exacting as much as possible and the weak bearing what they must, Walzer, in a brilliant and (Orwin's word) terse remark, raises the possibility that the meaning of the Generals' statement may be something other than arrogant, 'in your face' *Machtpolitik*. For the Generals portray Athens itself as subject to the necessities imposed by such a reality; the necessity to remain strong and not be seen as weak. Thus, the Generals argue that they have no choice but to subjugate the Melians; otherwise they risk being viewed as weak or vulnerable; they must either expand their empire or lose it. In other words, while having demanded that all considerations of justice be excluded from the debate with the Melians, the Generals cannot stop themselves from adducing considerations that, at some deep level, resonate in considerations of justice. And if the Athenians are right about their situation, could what appears at first sight as bullying aggression now appear as perhaps justifiable or at least excusable self-defence? But, as Walzer observes, this leads to a consideration of the *choices* that Athens has. The Generals may not be speaking in a depraved way, Walzer suggests, but rather with impatience; they think that the necessities bearing on both sides, given the course of the war, and therefore the margins of choice faced by Athens and Melos, are evident. The issue is how to get to a reasonable outcome within those margins, one not utterly destructive of either side. The Melians appeal to the gods and the possibility of help from the Spartans in order to dispute their margins of choice as presented by the Athenians. In other words, they insist that they have the choice of trying effectively to resist Athens by force. But the appeal to the Spartans and the Gods offers no answer to the Athenians' own sense that they have no choice but either to subjugate the Melians or to destroy them.

As Walzer notes, the fact that the Generals appear convinced by the necessities bearing on both sides does not mean that these necessities are beyond debate. 'Would the destruction of Melos really reduce Athenian risks? Are there alternative policies? What are the likely costs of this one? Would it be right? What would other people think of Athens if it were carried out?' (at 8). As Walzer points out, the ultimate decision of Athens to destroy the Melians was one that was extensively debated in the Assembly. There was a vote and no inevitability to the hawks winning the day.

This lack of inevitability is underscored, as Walzer notes, by a different episode in Thucydides, the debate over the fate of Mytilene. Then, at an earlier point in the war where the Athenians perhaps felt less strongly its necessities, they repented of their decision to destroy the entire people of one their colonies as punishment for attempted rebellion against Athenian rule. The matter was reheard in the assembly, and the position of the doves – that only the leadership should be destroyed, not the common people – won the day. Until now Walzer seems to be arguing with or engaging with Thucydides' realism, assuming that Thucydides' perspective is that of the Athenian Generals. By raising the case of Mytilene, also presented with great vividness and drama by Thucydides, Walzer opens up the possibility that it is mistake to identify Thucydides' views with those of the Athenian Generals, rather than the dove Diodotus, for example, who makes a remarkable speech in the Athenian assembly to argue that sparing the common people in Melos is entirely consonant with the Athenians' interest in their own security.

As Walzer emphasizes, and as Thucydides makes clear, the reconsideration of the original decree to put to death the whole population of Mytilene was brought about in the first place 'by moral anxiety, not political calculation'. Diodotus' speech provides a way in which Athenians can understand their interests that makes those interests consonant with their moral intuition that the original decree is overly harsh or cruel. Diodotus shows the Athenian people that, contrary to Cleon's suggestion, they have the possibility to choose what to do with the Melians, based on reflection and deliberation; they can do better than being driven by rage and fear.

In bidding the Athenians simply to yield to those original drives, suspending reflection and reconsideration, Cleon deprives them of freedom; a kind of freedom even the demos of Mytilene were able to exercise, because, as Diodotus shows, while initially driven to revolt against Athens they were able to reconsider that course of action and disassociate themselves from the leaders of the rebellion. There is a certain parallel between the rhetoric of Diodotus and Walzer's own rhetoric. Walzer is so deftly able to tarnish the allure of realism because he is able to show how much freedom – of reflection, deliberation, judgement, and choice of action – we lose by accepting the realist view of the human situation, how disempowered we become by simply buying into the vocabulary of inevitability, of 'driveness'. Cleon goes so far as to tell the Athenian demos that they are no longer really a democracy – the threat from those they have subjugated gives them no choice but to operate like a police state. In trying to deny to the Athenian citizens the fruits of democracy, it may be that Cleon had the actual effect of making some of the Athenians more empathetic with the striving of the Mytilenians for their freedom *from* Athens.

But Walzer notes there is a more radical realist challenge to the possibility of moral argument altogether – while this challenge seems implicit in the Athenian Generals' eschewing of arguments from justice as 'beautiful words' (*onomaton kalon*), it is more fully developed by Hobbes. The vocabulary of moral argument has no meaning other than that which is self-interestedly claimed by the speaker. 'One calleth cruelty what another justice.' Walzer speculates that Hobbes might even have had the Mytilenean debate in mind, where, as noted, Thucydides tells us the Athenians came to feel that their original decree was cruel, while the hawkish Cleon argued that it is merely just severity.

Walzer's reply is that the difference between just severity and cruelty, while a matter of moral disagreement, is not one of self-serving definitions of terms. And when we look at Cleon's own argument we see that Walzer is right: for Cleon is at pains to show that the common people, and not only the leadership, are blameworthy and hence proper objects of revenge in the same way as the leadership. Cleon and the Athenians who came to see their original decree as cruel do not disagree or fail to understand each other on the difference between cruelty and just severity. They *both* understand cruelty as punishment that is out of proportion to the blameworthiness of those to whom it is directed.

I do not know whether Michael Walzer penned 'Against Realism' in awareness of Leo Strauss's reading of Thucydides. Yet, despite the (mis)identification today of Strauss with the 'tough guy' realist interpretation of Thucydides, Strauss's book-length essay on the *Peloponnesian Wars* offers support for all of the terse, bold strokes in Walzer's chapter, which I have reproduced above. Strauss observes that Thucydides' silence concerning his own judgement of the Athenian position on Melos can no more be read as an endorsement of that position than as a rejection of it (at 145). Nevertheless, Strauss does accept the conventional view of the centrality of the Melian Dialogue in Thucydides' narrative; in various ways, according to Strauss, Thucydides himself indicates the 'unique importance' of the dialogue (at 184). Strauss articulates the complexity of Thucydides' judgement on the Melian Dialogue in the following manner: Thucydides presents the decision of the Melian elite not to yield to the Athenians as a foolish act. It is a foolish act in the sense that it would be unreasonable – contrary to common sense moral judgement – to choose 'death and extinction' rather than 'overlordship' by another city. But of course the Melians would clearly be choosing 'death and extinction' only if in fact they did not have a reasonable chance of prevailing against the Athenians, i.e., resistance is foolish only if the Melians are wrong about the gods and the Spartans. Thus, it would appear that Thucydides endorses the position of the Athenians to the extent that he does not believe in a divine law according to which imperial domination is an injustice that is or to be punished by the gods. Walzer gets this and puts it much more tersely: rather than telling a tale of divine retribution Thucydides is making a 'more secular statement'.

Strauss makes the remarkable observation that 'the principle most forcefully stated by the Athenians on Melos' is 'perfectly compatible' with 'fidelity to covenants': 'it is only incompatible with covenants that would limit a city's aspirations for all future times; but such were not the covenants with which Thucydides had seriously to be concerned' (at 191).

At one level, this is a reminder of the obvious, which is however neglected in the purely power-political interpretation of the Melian Dialogue: the principle that there is no justice between the weak and strong implies not the complete *absence* of right from international politics, but rather that right is significant only in relations between more or less *equal* powers. Thus the radicalism of the Athenian Generals that gives the Melian Dialogue its unique importance does *not* consist in the denial of right altogether in international relations.

Further, as Strauss suggests, the natural right of the stronger – arguably the ‘most forcefully’ stated principle of the Athenian Generals in that it is stated as a necessity of nature that binds the gods as well as men – need not imply limitless expansionism. A strong power’s ‘natural’ impulse to rule can know some limits or bounds (at 191). It is not the natural right of the stronger but the legitimation of the boundless desire to have more, hence the right to take more without limit, which constitutes the real radicalism of the Athenian Generals on Melos (at 193).

These remarkable observations on the Melian Dialogue by Strauss allow us to grasp the full significance of one of the key distinctions in Walzer’s argument, albeit one presented rather subtly and quietly. For Walzer, there is a crucial difference between necessity understood as an iron law that even the gods cannot escape, and necessity in the sense of what is indispensable for security. In the former case, moral choice disappears, but in the latter case it does not. As Walzer notes, but does not really explain, the Athenian Generals shuttle in their speech between these two meanings. So when the Generals deploy necessity in the latter sense, i.e., what is needed for security in a given situation, they allow us to raise all kinds of questions that permit moral argument and debate: whether the preservation of the empire was itself necessary, whether it could withstand arrangements that allowed certain allies more autonomy than subjugated colonies, whether the destruction of Melos would really reduce the risks to Athens.

The more radical claim of the Athenian Generals is that limitless or boundless striving for domination is an iron law of the universe. This radicalism or extremism may, as Walzer suggests, reflect ‘a certain loss of ethical balance, restraint and moderation’. Strauss’s essay deals at length with how this loss is presented by Thucydides as eventually leading even to the dissolution of internal order within Athens, the destruction of civilized life.

As Strauss shows, through the Mytilenian debate, Thucydides attempts to reconstruct moderation at the level of speech; for Diodotus in his intervention in that debate makes the argument that there are in fact two iron laws of necessity: the striving for domination and the striving to resist it, each of equal greatness. Diodotus invites the Athenian assembly to see the empire from the perspective of those subjugated by it. This is how ethical balance or moderation might be restored by the capacity to reflect, distancing one’s own drives and urges to the extent that one can see those of the other. The Athenian Generals cannot see how much freedom means to the leaders of Melos. They preach to the Melians about necessity, but they feel the burden only of their own necessities – just as the Melians, imprisoned in the perspective of *their* necessities, do not have an answer to those of Athens. To come back to Diodotus’s argument, it supposes the existence of both necessities. Both the drive towards empire *and* that towards freedom are compatible with the ability to back off, to re-think, and ultimately to limit oneself, to have some boundaries. Such reconsideration is more consistent with democratic deliberation (the Mitylenean debate) than with the private conversation between the leaders of a great power and those of a small one (the Melian Dialogue). But all such discussions, the law of war can, at the very least, serve as a reminder of boundaries and their place in our humanness.

Now let us return to Melos one last time. If, as Walzer suggests, the radical claim of necessity by the Athenian Generals reflects an ethical imbalance, a loss of moderation, Thucydides hints that this loss may not be total, a complete collapse of conscience. And here I end with an important observation of Clifford Orwin. Orwin reminds us that the Generals, even if they do not have empathy with the Melians' plea for freedom, do empathize with the Melian leadership's concern with honour or dignity. The Athenian Generals argue *not* that it is morally meaningless for the weak to think of subjection to the strong in terms of indignity, but rather that the *kind* of subjugation that the Athenians are required to demand of the Melians is not incompatible with dignity. They will have to pay tribute to Athens, but they will keep their city. Insofar as the Athenian Generals appear to promise moderation or mildness in their rule; they thus themselves admit that even the principle that the 'strong take what they can and the weak bear what they must' does not ultimately dispense with the requirement for 'fine words'. As Orwin eloquently puts it, 'the Athenian Generals understand that the dignity of the strong includes respecting the dignity of the weak'. That Athens operates its own empire in as moderate or mild a fashion as is possible within the limits imposed by the necessities of empire is of course a normative argument. It suggests that the striving for power, like the drive to retain power, is itself compatible with boundaries, with limits, and thus that the moral imbalance Walzer and Strauss identify in the Generals' response to the Melians concerning the gods is not simply endemic to the reality of war. But even if it is a moral demand and a moral boundary of some kind, is the respect of the strong for the dignity of the weak a requirement of justice, of *right*? The historical trajectory of modern humanitarian law,⁵ in its response to far greater atrocities than those committed in what Thucydides described as the greatest war, may help us to answer to this question.

⁵ R. Teitel, *Humanity's Law* (2011).