

**AQUINAS, WALZER AND PATTISON: THE POTENTIAL FOR PMCS IN
HUMANITARIAN INTERVENTION AND JUST WAR THEORY**

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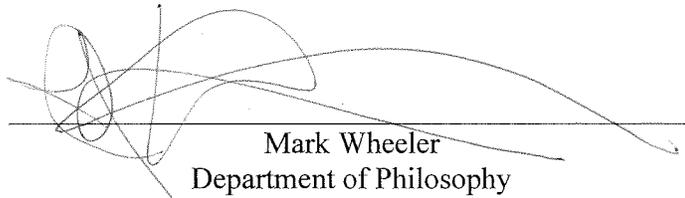
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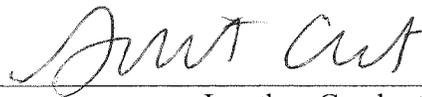
Intervention and Just War Theory



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Epitaph on an Army of Mercenaries

These, in the day when heaven was falling,
The hour when earth's foundations fled,
Followed their mercenary calling,
And took their wages, and are dead.

Their shoulders held the sky suspended;
They stood, and earth's foundations stay;
What God abandoned, these defended,
And saved the sum of things for pay.

A.E. Housman

ABSTRACT OF THE THESIS

Aquinas, Walzer, and Pattison: The Potential for PMCs in
Humanitarian Intervention and Just War Theory

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In the Just War tradition, it has been the norm that the use of mercenaries violated any claim to a just war. Just War Theorists have argued that since states employing mercenaries cannot satisfy all of the war decision principles, any state which employs mercenaries in warfare is conducting an unjust war. This line of reasoning should also be applied to contemporary private military companies (PMCs) according to many Just War theorists. In this thesis, I argue against the prohibition on PMCs in Just War Theory. PMCs can be employed in certain combat scenarios while satisfying Just War decision principles. Specifically, there is no principled reason to refrain from employing PMCs in humanitarian intervention. The use of PMCs can fill a niche left open by stronger states and the international community in preventing mass violations of human rights in places such as Rwanda in 1994.

TABLE OF CONTENTS

	PAGE
ABSTRACT.....	v
ACKNOWLEDGEMENTS.....	vii
CHAPTER	
1 INTRODUCTION	1
2 WAR DECISION PRINCIPLES AND PMCS.....	4
Legitimate Authority.....	8
The Regulation of Warfare	12
Democratic Control.....	14
Possible Solutions	15
Just Cause.....	18
Right Intention	23
In Conclusion	27
3 EMPIRICAL EVIDENCE: THE CASE OF EXECUTIVE OUTCOMES	31
Executive Outcomes Sierra Leone.....	31
Positive Results.....	37
Rwanda – Genocide Ignored.....	40
4 OBJECTIONS.....	44
Against the Objection to Sovereignty and Self-Determination	44
Syria	49
5 CONCLUSION.....	52
REFERENCES	54

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CHAPTER 1

INTRODUCTION

The term “mercenary” stirs negative emotional responses in the minds of many contemporary academics. The name inspires Medieval tales of blood thirsty warriors who savagely kill on behalf of someone or some group. The popular conception is that, mercenaries don’t kill for any ideological, religious or principled reasons, rather, they engage in slaughter and murder of people for profit. And once the mercenaries have killed their intended targets, they have often engaged in looting activities, after which they move on to the next job of murder and looting for profit. Situated in this frame, it’s no wonder that the term “mercenary” has a negative connotation. However, contemporary perceptions of these “soldiers for hire” have begun to change. As the poem above suggests, mercenaries have played a role in the salvation of many people throughout history. This point of view may offer an alternate, more sophisticated and contemporary lens through which to evaluate the role of mercenaries.

In modern militaries, mercenaries are a thing of the past. Though almost all combat is carried out by state uniformed soldiers, uniformed military personnel are not the only agents participating in military operations today. Since the early 1990’s, private military companies (PMCs) have increasingly taken on roles traditionally performed by regular uniformed militaries. These roles have ranged from training, logistical support services, technical support services, and serving as body guards, to occasionally even engaging in combat. This has been especially true in Iraq where U.S. and U.K. governments have hired a variety of PMCs, including Blackwater, Aegis, Erinys, Vinnell, and KBR, to supplement the activities of their state run militaries.¹ However, the use of these companies is not limited to

¹ James Pattison, “Just War Theory and the Privatization of Military Force,” *Ethics and International Affairs* 22, no. 2 (2008): 143.

Iraq nor is it only the U.S. and U.K. that employ the services of PMCs. “Other states, multinational companies, NGOs, and even the U.N. have hired PMCs.”²

For the foreseeable future, it appears PMCs are going to be part of military operations. While there are many responsible and reputable PMCs, the increasing frequency with which governments employ PMCs has caused strong opposition and raised numerous ethical concerns.³ However, the ethical implications of employing PMCs have been under-theorized and under analyzed in the current body of work.⁴ Many just war theorists judge PMCs to be morally impermissible. Because PMCs do not satisfy the necessary state-centric conditions of just war theory, any state which employs PMCs in warfare is conducting an unjust war. Just war theorists have traditionally required all six war decision principles to be satisfied before resorting to war. The use of PMCs in warfare violates some of the war decision principles, and therefore, invalidates any claim to a just war. These theorists tend to believe the risks associated with employing PMCs are too great to even be considered because there is simply no way to make PMCs and their employees accountable for their actions during armed operations.

The belief that PMCs violate just war theory is incorrect. In the last twenty years, PMCs have saved thousands of lives and potentially could have saved hundreds of thousands more. PMCs have proven to be effective in assisting state armies or acting alone to save the lives of many people in war torn regions. PMCs have been able to undertake and complete military missions that UN Peacekeepers have been unable or unwilling to complete. UN Peacekeepers have even been rescued by PMCs in combat. These facts give credence to the idea that PMCs are not always the evil mercenaries of the past. If just war theory is to remain a relevant tool for evaluating the morality of armed action, then it needs to be updated to incorporate considerations around the proper use of PMCs. Serious academic research needs to be conducted and the role of PMCs in just war theory needs to be debated. But because PMCs are taking on ever increasing roles in warfare, PMCs should have their place in just war theory.

² Ibid.

³ Ibid.

⁴ Ibid.

The purpose of this thesis is to update just war theory by clarifying some misconceptions about war decision principles. Once these misconceptions are understood, I will argue that PMCs should have a role in just war theory. Building on the theoretical framework of St. Thomas Aquinas and current work of James Pattison and Michael Walzer, I will argue that there is no principled reason to oppose the use of PMCs in preventing aggression or halting human rights violations.⁵ Therefore there is no principled reason to avoid using PMCs to engage in humanitarian intervention. In fact, not employing PMCs to engage in humanitarian intervention to prevent human rights violations is a decision which shirks moral responsibility.

I will make these arguments in several sections. In section one, I will address normative concerns raised about employing PMCs in just war theory. I will address and focus on the normative concerns that I believe are most relevant to PMC involvement in warfare. Specifically, I will argue that there is no principled reason to avoid using PMCs in halting aggression or preventing human rights violations according to just war theory. PMCs can satisfy legitimate authority, just cause, and right intention *jus ad bellum* criteria of just war theory. Satisfying these three criteria make the employment of PMCs in a humanitarian intervention both morally permissible, theoretically plausible, and in many ways, preferential to UN Peacekeepers. In section two, I will provide empirical evidence to support my claims. In section three I will answer various anticipated objections to my arguments. Finally, in section four, I will offer some concluding remarks.

⁵ Deane-Peter Baker and James Pattison, "The Principled Case for Employing Private Military and Security Companies in Interventions for Human Rights Purposes," *Journal of Applied Philosophy* 22, no. 1 (2012): 2.

CHAPTER 2

WAR DECISION PRINCIPLES AND PMCS

The avoidance of war and massacre requires a committed collective, ready to use force.
-Michael Walzer
Just and Unjust Wars: A Moral Argument with Historical Illustrations

As previously mentioned, critics argue that PMCs cannot be justly employed in the prosecution of armed conflict according to the principles of just war theory. These critics believe that the use of PMCs in armed conflict automatically invalidates any claims of a just war. These critics view the possibility of adapting just war theory to include the legitimate use of PMCs as analogous to opening Pandora's Box. Once the box is open, all of the evils that are contained therein will be unleashed onto the world. For example, once misgiving is there will be no way to regulate PMCs in combat situations once the box is opened and innocent people will potentially be exploited by these PMCs and will suffer as a result. The logical conclusion of this line of thinking is that since there is no way of regulating what comes out of the box, everyone would be better off if the lid was left undisturbed.

This concern is unfounded and unsubstantiated. PMCs are not bad by definition, nor are they good by definition. We cannot rightly pass moral judgment on the potential use of PMCs based only on their potential for evil. A more accurate means of assessing the risks of PMCs would be to judge them on the basis of demonstrated actions, some of which, as I will argue, contain instances in which PMCs have proved to be a lifesaving force. We must consider the possibility of a moral framework through which PMC's can be justly employed in a combat setting. The first step towards this end is to show that PMCs can, and have previously, been justly employed in halting aggression and preventing human rights violations. In the current section, I will argue that PMCs can satisfy *jus ad bellum* principles advocated by St. Thomas Aquinas of legitimate authority, just cause, and right intention in just war theory. Though there are other war decision principles, I take these three principles to be the most important and primary criteria of just war theory.

I embrace a less restrictive interpretation of just war theory. All six *jus ad bellum* principles need to be given proper consideration before going to war. But not every one of those principles should be granted equal importance. I hold that the legitimate authority, just cause, and right intention are the most important *jus ad bellum* principles. These three principles must be strictly adhered to. All three must be satisfied in the strictest of sense if a war is to be morally justified and undertaken. Probability of success, last resort, and proportionality are still very important principles and should be considered before a war is waged, but do not require as strict adherence as the other three *jus ad bellum* principles. For example, the principle of last resort requires that a:

state may resort to war only if it has exhausted all plausible, peaceful alternatives to resolving the conflict in question, in particular diplomatic negotiation. Traditional just war theorists want to make sure something as momentous and serious as war is declared only when it seems the last practical and reasonable shot at effectively resisting aggression.⁶

The intention behind this rule seems to be generally benevolent. In order to prevent the loss of life, we should try other peaceful means of diplomatic problem solving. Thus, all other options should be attempted do resolve international conflicts before resorting to war.

This idea has some interesting and unwanted consequences. First, sanctions are a typical diplomatic response to aggression. States impose economic sanctions on the aggressor state in an attempt to punish that state and deter future aggression. When this happens, the cost of living goes up drastically in the sanctioned state. The average citizen finds life much more expensive and as a result, in less industrialized nations, may suffer the loss of basic human needs like clean water, medical aid, and finding enough food to feed a family. The sovereign of the sanctioned state typically is insulated from the economic consequences and protected from the wrath of their citizens by the state's uniformed military, as was the case with Saddam Hussein in Iraq after the first Gulf War. Many ordinary Iraqi citizens starved to death and suffered as a result of sanctions while Hussein and his military supporters lived lavishly. These sanctions can create living conditions that are similar to

⁶ Brian Orend, "War," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Stanford: Metaphysics Research Lab, Center for the Study of Language and Information, Stanford University, Fall 2008), accessed March 20, 2014, <http://plato.stanford.edu/archives/fall2008/entries/war/>.

those found in war time. Further, because the average citizens of a sanctioned state feel the full effect of the sanctions, said citizens may grow to resent and despise the sanctioning state, which in turn could generate support for the sanctioned state's leader, making war more likely. Thus, sanctions can create living conditions just as adverse as those seen in war time, and the repression and resentments generated from these oppressive conditions can act as a catalyst for war itself. If sanctions are applied to the state of a ruthless sovereign, sanctions are not likely to be effective in deterring aggressive behavior. The sovereign may be, as was the case with Saddam Hussein, shielded from the negative effects of the sanctions.

Second, when encountering a particularly ruthless tyrant, attempting various diplomatic solutions can cost valuable time. These attempts at diplomacy can allow a tyrant more time to commit acts of aggression and violate the basic human rights of the citizens being persecuted. Such was the case with Nazi Germany and Adolf Hitler in World War II. While pursuing diplomatic solutions to halt Hitler's aggression, the sovereignty of several states and thousands of lives were lost. So it would seem that the more ruthless the tyrant, the greater the disregard he/she would have for societal pressures to cease tyrannical behavior, and as a result, it is less likely sanctions or embargos will have the desired political effect. Diplomatic solutions seem to be a "slap on the wrist" to ruthless tyrants and amounts to little more than sabre rattling. In such circumstances, war might be the only possible way to stop aggression and prevent further human rights violations. Further diplomatic solutions would be futile and need not be pursued. So, war need not be the absolute last resort. In fact, the more sadistic the aggressor, the more quickly force should be applied. Other diplomatic options should be considered before war. War should not be the "go to" solution in the international theater. But war should not always be the last resort when gross violations of human rights are being committed. Diplomatic options can cost just as many lives as armed conflict, possibly with fewer results.

Another principle which merits consideration as being incorrect is the probability of success principle, that is, "A state may not resort to war if it can foresee that doing so will have no measurable impact on the situation. The aim here is to block mass violence which is going to be futile."⁷ Again, the justification behind the principle is to prevent the loss of life.

⁷ Ibid.

But strict adherence to this principle also impedes a state's autonomy, especially in weaker states. Since a larger state will typically have a larger army, small states will have almost no chance of successfully defending themselves from the wanton aggression of larger states. Since these weaker states have no chance of winning, if they chose to defend themselves, these weaker states would be acting unjustly should they engage in self-protecting acts. Therefore, strict adherence to the probability of success principle would require smaller states to constantly yield to the demands of larger states. To require a high probability of success would constrain the sovereignty and self-determination of weaker states.

I believe the success principle relies too heavily on Utilitarian calculus. Yes, we ought to try to save lives, and the more lives we save the more utility that will be generated as a result. This idea does seem to promote the greater good in a utilitarian sense. But in a more principled sense, a state should always be justified in defending itself and its citizens from aggression and human rights violations. If a weak state was not entitled to resist aggression because the strong state was likely to triumph, strong states would be able to make slaves out of weaker states at will. Since weaker states were not likely to win, they would be resisting unjustly. Weaker states would have a moral obligation to surrender to strong states in order to save lives, as required in a strict interpretation of just war theory. Thus, weak states would lose any hope of self-determination and sovereignty if the success principle were strictly adhered to. Therefore, strict adherence to the success principle is not required because strict adherence would unfairly restrain the conduct of weaker states.

One of the goals of just war theory is to limit the unnecessary loss of life. Most hold that war is extremely destructive and causes the deaths of many innocent people and this should be avoided whenever possible. However, prevention of the loss of life cannot trump a state's right to self-determination and self-defense, regardless of the consequences. If a state is sovereign and is supported by the will of its people, and the will of the people is to fight to the last man and woman, then they may be justified in doing so. To take the principle of success in a strict sense would be to invalidate all revolutions against unjust war mongers and despotic tyrants, which is absurd.

Proportionality of ends is also a good principle to consider most of the time. When engaging in conflict, a state must weigh the goods expected from the conflict against the evils expected from the conflict. Only if the expected goods outweigh the expected evils should

the state wage war. The only exception to this rule would be where one state is committing mass murder and human rights violations to such an extent that the aggressors must be stopped at all costs. This exception to the rule would only be viable in regimes which were particularly vicious and evil, such as the Nazi regime. In such a situation, present harms may be necessary to ensure future peace. Occasionally, an evil emerges out of mankind which must be stopped at all costs. Therefore, there is at least one situation where proportionality is less important than the cause being pursued. And in this case, proportionality need not be strictly adhered to, though proportionality should always be considered. I shall now turn my attention to the principles of legitimate authority, just cause, and right intention.

LEGITIMATE AUTHORITY

Just war theory has traditionally held that military action must be authorized by a legitimate authority of a state in order to be just.⁸ This idea was posited by Thomas Aquinas and is still a necessary requirement to any just war. Aquinas claimed:

Three things are required for a war to be just. First, the war needs to have the authority of the ruler, at whose command the war should be waged. This is because it belongs to no private person to initiate war, since private persons can vindicate their rights in the courts of the superior, and since it belongs to no private person to convoke the people to wage war, which is necessary in war.⁹

Just war theorists require that a state or society must initiate a war in the just war tradition because it is the duty of states to protect rights. Essentially, we are dealing with two types of rights here: (1) rights of states and (2) rights of citizens. We affirm that states have rights to enable said state to defend the lives and the rights of its citizens. Current international law recognizes that states have many rights, especially the right to political sovereignty and territorial integrity.¹⁰ I interpret sovereignty in line with the natural law perspective espoused by John Locke and reiterated by the United States founding fathers in that, "governments are instituted among people to realize the basic rights of those people. If

⁸ Ibid.

⁹ Thomas Aquinas, *The Cardinal Virtues: Prudence, Justice, Fortitude, and Temperance*, trans. Richard J. Regan (Indianapolis/Cambridge: Hackett Publishing Company, Inc., 2005), 69.

¹⁰ Orend, "War".

governments do so, they are legitimate; if not, they have neither right nor reason to exist.”¹¹
 The main point to be made is that only legitimate states have rights. And if a legitimate state won’t defend the rights of its citizens, that state ceases to be a legitimate state and loses any claim to rights.

Legitimate states have a right and a duty to protect the rights of their citizens. If necessary, states may preserve these rights by waging war. Aquinas argued:

since the care of the commonwealth has been committed to rulers, it belongs to them to safeguard the commonweal of the city or kingdom or region subject to them. And as they lawfully use the sword to defend the commonwealth against domestic disturbers of the peace when they punish criminals, so also it belongs to them to safeguard the commonwealth from foreign enemies by the sword of war.¹²

Thus, a justified war can only be initiated by a sovereign state or an internationally recognized institution with similar authority, such as the United Nations (UN), because only they have the right to do so.

There are a number of well-founded reasons for desiring that states have the monopoly on war. First, by requiring a state to initiate war, a measure of responsibility seems likely. Uniformed soldiers that fight on behalf of a state are accountable to that state’s military and political institutions. If a uniformed soldier commits acts that are in violation of international treaties or violate human rights, that soldier can be punished and held accountable. If uniformed soldiers commit atrocities, the state that ordered the uniformed soldier into combat can be held accountable. States can be made to pay reparations to innocent civilians for harms committed against them. These safeguards are meant to limit the number of atrocities that inevitably occur in every war, no matter how noble or just that war might be. This normative trend has led to the notion that states have the monopoly on initiating war.

Second, private wars should not be morally permissible. Moreover, no matter how rich or noble an individual might be, this individual would not have the authority to wage a war. This is because said individual does not have the right to do so, nor does said individual

¹¹ Ibid.

¹² Aquinas, *The Cardinal Virtues*, 69.

have the right to violate the sovereignty of another state or that state's citizens. In addition, a corporation could not justly engage in a private war as they would have no more right to do so than would the individual. A corporation may be justified in defending its interests, but does not have the legitimate authority to declare war.

However, preferring that states have a monopoly on waging war does not necessarily yield positive outcomes. With almost certain impunity, strong states routinely violate the sovereignty of weaker states and the rights of their people. The United States regularly uses JSOC (Joint Strategic Operational Command) and the CIA (Central Intelligence Agency) to conduct clandestine missions across sovereign borders with the aims of murdering a particular target, with little regard for the loss of innocent life. In June 2009, the CIA killed several suspected enemy militants in South Waziristan (Pakistan) using a Hellfire missile during a drone strike. This attack was followed by another attack a few hours later on the funeral mourning the recent deaths of their neighbors.¹³ Sadly, between eighteen and forty-five innocent civilians were killed in the two attacks.¹⁴ The target of the attacks, Baitullah Mehsud, was not even present at the time of the attacks. No one in the CIA or the US government was held accountable for the deaths of the innocent civilians.

JSOC has also killed innocent civilians and seems less likely to be held accountable than the CIA. Occasionally, CIA personnel are held accountable for the killing of innocent civilians. This is only possible because the CIA can be made subject to congressional oversight, even if this rarely occurs. However, JSOC conducts classified operations which are not overseen by Congress. "They're not accountable to anybody and they know that. It's an open secret ... If there's one person they're going after and there's thirty-four other people in the building, [then] thirty-five people are going to die. That's the mentality."¹⁵ JSOC conducted its own "targeted-killing" operations in Pakistan, though the CIA would take most of the criticism for collateral damage for covert US actions in Pakistan.¹⁶ Therefore, it is not always the case that requiring states to initiate war will yield positive consequences. Though

¹³ Jeremy Scahill, *Dirty Wars* (New York: Nation Books, 2013), 250.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, 252.

¹⁶ *Ibid.*, 251.

states may occasionally punish their agents or soldiers for illegal actions, such punishments are far too few in relation to atrocities committed. Recognition of this set of circumstances provides good reason to question the just war tradition that states ought to have a monopoly on waging war considering that state militaries have been just as capable of causing harms to innocents as PMC contractors have been.

However, if only states have the right to wage war, then the legitimate authority criteria seems to rule out revolutions or struggles for liberty by oppressed people at the hands of a despotic ruler. Aquinas anticipated this problem and recognized the right of citizens of a sovereign state to justly revolt against their ruler:

A tyrannical regime is unjust, since it is directed to the private good of the ruler, not to the common good. And so disruption of this regime does not have the character of insurrection, except, perhaps, in cases where the tyrant's regime is so inordinately disrupted that the subject's people suffer greater harm from the resulting disruption than from the tyrant's regime. Rather, the tyrant, who supports discontent and factionalism in the subject people in order to be able more securely to dominate them, is the insurrectionist, since it is tyranny when governance is directed to the ruler's own good to the harm of the people.¹⁷

Therefore, if a sovereign is harming his or her subjects for his or her own personal benefit, then that sovereign is an unjust tyrant. If a sovereign is an unjust tyrant, then the tyrant's rule over a state is illegitimate. If a tyrant's rule is illegitimate, then the subjects of that state may revolt and remove the tyrant from power by armed conflict. This argument aligns perfectly with philosophies espoused by Locke and embraced by the US founding fathers, that is, once a ruler does not maintain the rights of their citizens, the ruler loses the right to exist as sovereign. Once a ruler loses his or her sovereignty, his or her rule is no longer valid (this idea is important and will be addressed in more detail later on). The subjects are then justified in violently overthrowing said tyrant and installing a more just sovereign. If the ruler is just, however, then the ruler's subjects may not justly revolt against the ruler.¹⁸ This idea does not do anything to solve the problem of non-state wars, however, it shows that some such conflicts can be morally permissible.

¹⁷ Aquinas, *The Cardinal Virtues*, 71-72.

¹⁸ *Ibid.*

The employment of PMCs is consistent with the principle of legitimate authority as traditionally conceived by Aquinas. Only a sovereign, legitimate state would be permitted to initiate a war. That just sovereign state could then hire PMCs to fight alongside of their standing military or completely alone. The sovereign initiating war or intervention would be required to accept responsibility for the actions of the PMC employees during armed conflict. If the PMC employees committed atrocities on behalf of the sponsoring state, the ruler of the state, the PMC employees who committed the atrocities, and the PMC itself must all be held morally and legally accountable. As long as PMCs agree to be held accountable to the ruler of a legitimate state and the international community, PMCs can justly be employed in war while satisfying the legitimate authority criteria established by Aquinas.

However, there are concerns that the use of PMCs might create problems with legitimate authority. Critics are concerned that the use of PMCs will hinder popular ability to control over the use of force by their government. As James Pattison argues, there are two reasons for the moral importance of legitimate authority: (1) regulation of warfare and (2) facilitation of democratic control over the use of force.¹⁹ In order to respond to these charges, I must explain the problems more clearly. After which, I will provide solutions to these problems.

THE REGULATION OF WARFARE

The idea behind the legitimate authority principle is to limit the number of agents that can choose to go to war. In addition, by restricting which particular agents can use force, “the principle of legitimate authority makes it possible to establish legal and political instruments that govern and regulate warfare.”²⁰ These legal and political instruments include the UN Charter, numerous Geneva Conventions, the UN Security Council and others. These institutions not only limit the frequency of the use of military force, but may reduce the atrocities that occur in every armed conflict. In addition, these institutions provide legal means of restitution for victims of aggression and punishment of those states or warlords which engage in aggressive acts and human rights violations.

¹⁹ Pattison, “Just War Theory,” 150.

²⁰ Ibid.

The employment of PMCs in warfare is generally consistent with the principle of legitimate authority as I have explained it. This is because states or internationally recognized institutions must declare war and authorize the use of force, not PMCs. Unfortunately, PMCs have the potential to undermine one of the key justifications for the principle of legitimate authority: limiting the frequency and atrocities of warfare.²¹ Because the PMCs are private companies, they do not fit neatly into the state based system of regulation that is the current international norm. “Although a state that employs PMCs is still subject to international law that [prohibits] certain types of behavior, [...] the use of PMCs means that it is harder to enforce such prohibitions” for a couple of reasons.²²

First, the employment of PMCs makes the application of legislative restrictions on war very difficult and unlikely. PMCs provide a way for governments to use military force without acknowledging specific state action. PMCs could be used to enable foreign policy by proxy and topple uncooperative states which reject becoming a client state.²³ PMCs could be used by less reputable non-state actors as well. Authors Schreier and Caparini have asserted that PMCs have worked for “rebel groups, drug cartels, and before 9/11, two al Qaeda-linked jihadist groups.”²⁴ Taken together, the increased use of PMCs in armed conflict means that there are more actors and less control in the international system. These factors increase the likelihood of political instability, making PMCs undesirable at best.

Second, the lack of state control over PMCs can lead to more horrific wars and other conflicts. Without state control, *jus in bello* conduct principles are less likely to be observed, especially non-combatant immunity. Uniformed state soldiers have a variety of laws and institutions which restrict their conduct in war. If state soldiers commit atrocities, they can be prosecuted by military tribunal and sentenced to prison. However, PMC employees generally operate outside the jurisdiction of most national and international law.²⁵ For example, in Iraq, “the Coalition Provisional Authority Order Number 17 specific[d] that Iraqi

²¹ Ibid., 151.

²² Ibid., 151.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

laws or regulations do not apply to contractors.”²⁶ Further, PMCs are based in several states, each with different laws regulating the use of PMCs. The effect of this lack of legal accountability and consistency is that PMCs operate with virtual impunity. PMCs are rarely held accountable for their actions. In fact, in his testimony to the U.S. House Appropriations Subcommittee, investigative journalist Jeremy Scahill claims that “while there have been sixty-four courts-martial of regular soldiers on murder-related charges in Iraq, only two private contractors have faced criminal prosecution.”²⁷ Now, not all private contractors take advantage of this lack of legal accountability and many uniformed state soldiers may not be held accountable for their actions. The point to be realized is that there exists no effective system of accountability for PMCs and this can lead to an increase in unjust actions in war, especially targeting of civilian non-combatants.²⁸

DEMOCRATIC CONTROL

The second potential benefit of the principle of legitimate authority is that it increases the potential for democratic control over the use of force. In the Western world, we tend to find democratic control valuable to our ability to self-govern and remain individually autonomous. If states are to be self-governing, a state’s citizens ought to have some say in when and how their state engages in armed conflict. And at least in theory, democratic control “is instrumentally valuable since it leads to more peaceful behavior, particularly in relations with other democracies.”²⁹ The use of PMCs throws a monkey wrench into the situation. Though the use of PMCs is largely consistent with traditional notions of the principle of legitimate authority, their employment can undermine democratic control over the use of force by enabling leaders to get around governmental restrictions.

Governments can employ PMCs to bypass congressional or parliamentary restrictions on sending troops into combat. PMCs have allowed administrations to have more ability to initiate armed conflict covertly or to extend the size of state troop involvement without the

²⁶ Ibid.

²⁷ Ibid., 152.

²⁸ The most noteworthy of such events occurred in September 2007 when Blackwater employees allegedly opened fire on civilians in Nisour Square, killing seventeen. From: Pattison, “Just War Theory,” 152.

²⁹ Ibid., 153.

need for any public debate beforehand.³⁰ This occurred in Bosnia where PMC employees were used to circumvent the cap of 20,000 U.S. troops imposed by Congress.³¹ Since PMCs are non-state actors, the use of PMCs tends to “blur the lines of command and control” on the ground and in governments. Further hampering U.S. congressional oversight, Congress is only notified about a PMC contract if that contract is over \$50,000,000.³² Even this requirement is difficult to implement as many PMCs are internationally based and are not required to provide contract details to the U.S. government. The end result may be a loss of democratic control of the government and the military by the people the government and the military are supposed to represent.

POSSIBLE SOLUTIONS

It is important to note that these problems are not theoretical problems. They are pragmatic problems aimed at *jus in bello* war conduct principles. Using PMCs seem fine in theory, but problems arise when this theory is put into practice, as I have just explained. There are several things that can be done, however, to minimize the risk associated with the employment of PMCs in the conduct of warfare. First, as James Pattison suggested, we need to reaffirm the idea of a public declaration of war in accordance with constitutional or parliamentary conventions on waging war.³³ PMCs offer governments a means of waging war without governmental approval. The American public has become so accustomed to learning of clandestine operations after the fact, that little thought is given to those operations after the fact.

Thus, we must legally require that all uses of PMCs in assistance of combat missions must be publically discussed and voted upon by the elected government officials. No leader can be allowed to use PMCs without congressional or parliamentary approval. Further, congressional representatives should solicit the opinions of their constituency and vote for or against the use of PMCs based on those opinions. These procedural acts would be necessary

³⁰ Ibid.

³¹ Ibid.

³² Peter W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca: Cornell University Press, 2003), 214.

³³ Pattison, “Just War Theory,” 154.

conditions for a conflict to be considered morally justified in which PMCs were participating. The use of PMCs must not be allowed to continue as a means for a sovereign to circumvent the will of the people in a just society. Embracing this public process will put the public spotlight on the actions of the PMC and the politicians who send them into conflict. Politicians will be less likely to approve such actions unless they feel confident that the PMC they are hiring will reflect positively on the state. This would mean that PMCs and their employees have a vested financial interest in being professional, showing restraint when necessary, and not targeting non-combatants. States will pay top dollar for the PMC that can get a job done with as little collateral and reputational damage as possible.

Second, a stronger international system regulating the use of PMCs needs to be created. “[T]he true potential for [PMCs] to serve as [just] warriors will only occur in the context of being fully accountable for torts and crimes. Many objections to the use of [PMCs] arise in large part from their lack of accountability.”³⁴ The international system needs to be able to penalize PMCs who violate international law. This punishment should include monetary fines that can be levied against the PMCs who commit human rights abuses. In addition, the system must include criminal proceedings for the PMC executives who order PMC soldiers to commit human rights violations. The PMC soldier who commits the human rights violations and the state who contracts the PMC must also be held accountable. “To consent in advance to fair and impartial criminal conduct proceedings or actions for civil damages should be a minimal requirement for [PMCs] that wish to contribute to peace through military power for hire.”³⁵

Further, the system must also include legal avenues for the families of wrongfully killed civilian non-combatants to sue PMCs and their state clients for human rights violations. This would allow families of those wrongfully killed to sue for lost wages and suffering. If any of these components are missing from this new system, any use of PMCs in

³⁴ Don Mayer, “Peaceful Warriors: Private Military Security Companies and the Quest for Stable Societies,” *Journal of Business Ethics* 89 (2010): 393.

³⁵ *Ibid.*, 391.

offensive combat operations should not be permitted. Otherwise there are no real means of controlling the behavior of PMCs or their state clients.³⁶

Third, in much the same way we require doctors to purchase malpractice insurance and drivers to purchase car insurance, we could require PMCs to purchase insurance.³⁷ International law that required PMCs to purchase insurance as a necessary condition for conducting operations would yield positive effects. First, insurance costs could be calculated based on: (1) the reputation of the PMC being insured and (2) the risky nature of the activities said PMC was engaging in. If a PMC developed a reputation for being unprofessional and for killing innocents civilians in the progression of armed conflict, no PMC insurance company would be willing to insure that PMC. The liability would be too great for the insurance company to insure a PMC which regularly employed ruthless killers who won't distinguish between combatants and non-combatants. The families and loved ones of those innocently killed civilians would sue the PMC and the PMC's insurance provider. The PMC's insurance premiums would drastically increase and eventually, the PMC could not afford insurance. Without insurance, the unprofessional firm would not be permitted to be contracted for a job and would go out of business. Thus, PMCs that do not discriminate between responsible employees and irresponsible employees would find themselves out of work. In the long run, this could lead to the normative standard of hiring only reputable PMCs and could minimize the amount and frequency of atrocities in armed conflict at the hands of less professional PMCs. The opportunity costs of PMCs acting unethically would be the potential forfeiture of future private military contracts.

Second, since PMC executives desire to avoid lawsuits and increased insurance premiums in an effort to maximize profits, PMC executives would find it financially advantageous to hire the most reputable employees. Being a company for profit is actually a good thing in this situation. The norm among PMC firms would be to hire the more restrained, seasoned, and professional soldiers to limit the potential monetary losses that would result from reckless killing. This would limit the likelihood that PMC would hire ex-

³⁶ The only exception to this rule should be in humanitarian intervention when there is no other viable action by the uniformed militaries of states. This would be a rare occurrence and would only be permitted to save large numbers of human lives. Such cases would be similar to the genocide in Rwanda.

³⁷ Mayer, "Peaceful Warriors," 396.

military personnel with extremely violent pasts. Soldiers that were dishonorably discharged for violent or aggressive acts or who displayed signs of mental instability would be unlikely to be hired. In the long run, all PMCs would be forced to adopt this model or go out of business. In effect, both the PMCs and their employees would have a financial incentive to conduct operations in a more ethical manner. And this would lead to fewer atrocities at the hands of PMC employees on behalf of their client states, making armed conflict slightly less risky and atrocious.

Again, we cannot totally avoid the collateral damage associated with warfare. Requiring malpractice insurance for PMCs would ensure that the families who lost innocent loved ones to PMC contractors would have some means to sue for lost wages and the loss of a loved one, wrongful death, etc. This would be especially important to families who lose their principle breadwinner. Requiring insurance won't guarantee that PMC contractors will abide by *jus in bello* conduct principles. It also won't guarantee that innocent civilians won't be accidentally killed. But it might enable the families of wrongly killed people to receive money to cover their basic human needs.

Both the state and the PMC are to be held legally and morally accountable. And if this is done, PMCs can justly be employed to halt aggression and prevent human rights violations. I have shown that states can satisfy legitimate authority criteria in contracting PMCs to halt aggression and prevent human rights violations. And I have provided solutions to deal with the pragmatic concerns which occupy the mind of PMC opponents. If my solutions are followed, citizens would have greater democratic control over the regulation of warfare conducted at the request of their state by PMCs. PMCs would also be more likely to conduct their actions in an ethical manner. I will now argue that PMCs can satisfy the just cause criteria of just war theory.

JUST CAUSE

The second criterion for waging a just war is having a just cause. The enemy that is being attacked must be deserving of war being waged upon them because of some wrong they committed against another state or another state's citizens.³⁸ Today, increasing numbers

³⁸ Aquinas, *The Cardinal Virtues*, 70.

of just war theorists accept that resisting aggression is the only justified cause for waging war. I will be using Michael Walzer's definition of aggression as the "violation of the territorial integrity or political sovereignty of an independent state. It is as if we were to brand as murder all attacks on a man's person, all attempts to coerce him, all invasions of his home."³⁹ Thus, aggression is not only limited to murder or seizure of property. It conceives of "murder" as all attempts to destroy both a state's and an individual's autonomy.

There is a rational basis for requiring Just Cause for going to war. Having a just cause is the most important criteria in *jus ad bellum* principles. Not only does having a just cause set the tone for the military campaign, but it also gives a morale boost to the soldiers fighting the war. Most professional soldiers take pride in their chosen profession. And whenever they feel they can fight for a good or just cause, they will fight harder for that particular cause. It would be reasonable to state that the same holds true for the contractors of PMCs. As stated earlier, the soldier for hire is not quite the mercenary of history. PMCs are no more good or evil than the end they are employed to pursue. And as long as their end is a just end, their participation can be justified.

States that have legitimate authority can justly employ a PMC in response to aggression from another state. If an invading army is threatening a sovereign state and that state's military is incapable of repelling the invaders, the victim of aggression is justified in hiring a PMC to defend their state. Even if there is no system in place to regulate the PMC, the state which is a victim of aggression would still be morally permitted to hire a PMC in their own defense. A PMC would not be permitted to intervene on its own accord. That action is prohibited by the requirement of legitimate authority and the prohibition on waging private wars. But as long as the PMC is contracted out by a legitimate authority and has a just cause, PMCs can be used alone or in conjunction with a state's uniformed military to combat aggression from external threats. The PMCs must also abide by *jus in bello* conduct principles of just war theory, especially the combatant/non-combatant distinction, an idea which is beyond the scope of this paper. But there is no principled reason that a PMC cannot be justly used in defense of a state.

³⁹ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), 52.

In fact, if a sovereign ruler's only option to defend his or her people's rights is to employ a PMC and that sovereign refuses to do so, that sovereign is at least partially morally responsible for the harms visited on his or her people. A sovereign may not like the options available in a crisis situation. But the sovereign must also realize that they must act. Refusing to choose an option because it is not an ideal solution bears moral responsibility. A sovereign ought to do whatever is necessary to defend state sovereignty and to preserve the rights of its citizens. In the absence of better options, a sovereign ought to hire a PMC for their defense. This is the reality in weak or failing states every day. In a weak or failing state, the sovereign does not have the luxury of choosing the ideal situation and is often forced into extreme, yet ultimately pragmatic, solutions.

In the last twenty plus years, many stronger states have refused to get involved in conflicts of weak or failing states. This has been especially true for the Western powers ever since the notorious "Blackhawk Down" incident in Somalia in 1993. These stronger states don't want to risk the lives of their own citizens or their military assets to save a failing or weak state. Strong states don't want to see their citizens' dead bodies being dragged through the streets of a foreign country on the evening news. Further, strong states are increasingly aware of the criticisms associated with the collateral damage inevitable in almost any military intervention. In the event of a failed intervention, the strong state would look weaker in the international theater of operations. If this were to happen, the result might be an increase in the challenges to stronger states at the hands of weaker states or militant factions existing within weaker states. Finally, there is rarely any economic incentive for strong states to get involved in the defense of weaker states. And when there are no economic incentives, stronger states rarely intervene. As a result, thousands of innocent people are murdered because of stronger states' refusal to get involved in the affairs of weaker states. Further, the UN is rarely able to marshal a force quickly enough to prevent or help bring an end to civil conflicts.

This set of circumstances has created a niche demand for some military group to intervene. And in the absence of any state willing to intervene, weak or failing states ought to be permitted to defend themselves by any and all means necessary, including by hiring PMCs to defend their national security interests. As stated previously, this is not an ideal situation, but hiring a PMC for defense is a better option than allowing the mass murder

generally associated with weak or failing states. If a state is to be considered as sovereign, it must be able to defend itself from all forms of aggression.

Unfortunately, not all weak states will be able to afford to contract PMCs. Only weak states with valuable resources seem likely to be able to pay for PMC protection. In a crisis, the UN may have an obligation to provide funds to hire PMCs in the defense of weaker states. As Doug Brooks argued, since PMCs are so efficient compared to UN forces and are available at a lower cost than UN forces, “soon the UN will no longer be able to disregard the benefits such armies offer in peace stabilizing operations.”⁴⁰ This idea deserves more attention, however, such discussion is beyond the scope of this thesis.

Weak states may also have trouble supervising PMCs in action. All governments have an interest in policing PMC behavior, making sure PMCs are not violating any laws. Since weaker states tend to have fewer resources, they may not have the resources to observe the behavior of PMCs. If weak states cannot observe PMCs, then weak states may not be able to hold PMCs accountable for any illegal actions conducted in the pursuit of their contracts. This is a serious issue. Without the ability to observe and regulate the behavior of PMCs, the potential for PMCs to harm innocent civilians, free from legal repercussions, is great.

I have just argued that weak or failing states ought to be morally free to hire PMCs in defense of external threats to their sovereignty and human rights of its citizens. The more difficult question to answer is, should weak or failing states be permitted to hire PMCs to defend their sovereignty and the rights of its people from internal threat and aggression? On the nature of insurrection and the defense of the city, Aquinas argued that internal insurrection is contrary to the common good.

Insurrection differs from war and strife in a second way. War, strictly speaking, is against foreigners and enemies – between one people and another people, as it were – and private strife is between two persons or between two groups of few persons. But insurrection, strictly speaking, is between hostile factions of the same political community (e.g., when one faction of the political community is

⁴⁰ Seden Akcinaroglu and Elizabeth Radziszewski, “Private Military Companies, Opportunities, and Termination of Civil Wars in Africa,” *Journal of Conflict Resolution* 57, no. 5 (2012): 798.

incited to war against another faction). And so insurrection, because it is contrary to a special good – namely, the unity and peace of the people – is a special sin.⁴¹

Since insurrection is aimed at harming the peace and unity of a people, insurrection is morally prohibited. Insurrection is detrimental to justice and to the common good of a political community. The blame for this ‘special sin’ “first and chiefly belongs to the leaders of the insurrection, who sin most seriously. Second, the sin belongs to the supporters of the insurrection, who disrupt the common good.”⁴² Those that cause the insurrection and harm the public interest should be punished for their actions.

In society, we do not blame the people who fight against the insurrectionists. Those that fight an insurrection are to be praised for their just actions. As Aquinas notes, “we should not call those who resist the insurrectionists and defend the common good insurrectionists, just as we do not call those who defend themselves brawlers.”⁴³ Therefore, insurrections are, by definition, aimed at the removal of a just ruler. Since insurrections are aimed at removing a just ruler they are not morally permissible. Those who combat insurrections are morally justified in doing so. Aquinas is correct because the duty of a just ruler is to protect the rights of their citizens while promoting the common good. The citizens also have a duty to support the just ruler and contribute to the common good. Since insurrectionists promote their own interests at the expense of the common good, it is morally permissible to oppose insurrections in support of a just ruler.

While insurrections are unjust and morally prohibited, some revolts against authority can be considered justified. “A tyrannical regime is unjust, since it is directed to the private good of the ruler, not to the common good. And so disruption of this regime does not have the character of insurrection, except” in cases where the people will suffer greater harms by resisting the tyrant’s regime than if the people had not resisted.⁴⁴ If opposing a tyrant will get everyone killed, then doing so may be morally prohibited. If a sovereign is just, then his or her people cannot justly revolt as that action would be insurrection and, thus, prohibited. But

⁴¹ Aquinas, *The Cardinal Virtues*, 71.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

if the sovereign is unjust, the people under his or her rule may well be justified in violently overthrowing that tyrant. Aquinas concludes that “the tyrant, who supports discontent and factionalism in the subject people in order to be able more securely to dominate them, is the insurrectionist, since it is tyranny when governance is directed to the ruler’s own good to the harm of the people.”⁴⁵ And since insurrectionists should be opposed by good people, unjust rulers or factions should also be opposed.

Therefore, there is no principle in just war theory prohibiting a weak state, a failing state, or a strong state from justly employing PMCs. States must be allowed to defend their sovereignty and protect the rights of their citizens. Any external aggression can be justly responded to with PMCs. Any internal threat which tries to wrestle power from a legitimate government or its people can be justly opposed utilizing PMCs as well. Therefore, the employment of PMC employees in the defense of a state and/or its people is perfectly consistent with just war theory as long as the PMC is hired by a legitimate authority and the cause of the hiring authority is a just cause. As the poem by A.E. Housman indicates, mercenaries, for lack of a better term, can be the salvation of innocents when others refuse to act.

RIGHT INTENTION

The right intention principle is the final necessary criteria required in order to be waging a just war. A sovereign or other legitimate authority must have the right intentions behind their desire to wage war in pursuit of a just cause. Waging war for evil purposes is strictly forbidden by just war theory. According to St. Thomas Aquinas “a right intention in waging war is required; namely, that one intend[s] that good be promoted, or that evil be avoided. Even if there should be lawful authority to declare war, and just cause, the war may be rendered unlawful because of an evil intention.”⁴⁶ Having ulterior motives such as increasing territory or revenge is specifically ruled out. The only acceptable right intention is to see that the just cause is secured.⁴⁷

⁴⁵ Ibid.

⁴⁶ Ibid., 70.

⁴⁷ Orend, "War"

An example of having a right intention would be to intend to halt aggression and human rights violations. This defense would range from humanitarian interventions to prevention of large scale human rights violations or full blown war.⁴⁸ An example of a mass human rights violation occurred in Rwanda in 1994. There over eight-hundred thousand innocent people were massacred. Based on my interpretation of just war theory, a legitimate authority (the Rwandan government) would have had a justified cause to intervene using their own state military or contracting out the intervention to PMCs. In this case, the just cause would be to stop the genocide in Rwanda. PMCs contracted in this conflict would be required to have the right intention of helping to restore political order in Rwanda and preventing human rights violations. As long as legitimate authority, just cause and right intention are strictly adhered to, humanitarian intervention in Rwanda would have been morally justified.

However, it has been objected that the use of PMC in war makes a just war impossible. The reasoning goes, that because PMC intend to fight or provide assistance to military operations for profit, they cannot satisfy the right intentions criteria in just war theory. Further, since these PMCs for hire fight for money and money alone, they do not have the right intentions behind their actions. Since PMCs do not have the right intentions behind their actions, armed intervention while employing PMCs invalidates the just cause for waging war in the first place. This should mean that the use of any PMC be rejected under just war theory's principle of right intention.

This objection seems too hasty for several reasons. First, a distinction needs to be made between intentions and motives, as they are not the same thing. As James Pattison correctly observes:

[a]n individual's *intention* is the objective or purpose that they wish to achieve with their action. On the other hand, their *motive* is their underlying reason for acting. It follows that an agent with the right intention aims to tackle whatever it is that the war is a just response to...[b]ut their underlying reason for having this intention need not also concern the just cause. It could be, for instance, a self-interested reason.⁴⁹

⁴⁸ Some philosophers believe that humanitarian interventions have the potential to destroy sovereignty. I will answer this objection in the section regarding objections.

⁴⁹ Pattison, "Just War Theory," 147.

Thus, the intention of the PMC is the attainment of the just cause that a legitimate authority wishes to achieve. The PMC's motives for acting are absolutely financial in nature. PMCs and their employees are motivated by profit. But this motive has no bearing on intentions of the PMC. In a just war, the intention of the PMC is to secure the cessation of aggression and to prevent human rights violations. The moral evaluation of PMCs and their employees ought to be limited to the realm of right intentions and not right motives.

A PMC contractor who is hired to protect a diplomat or other VIP has the intentions of protecting the life of that individual.⁵⁰ Everything the contractor does is oriented toward that goal. For instance, he or she drives an armored vehicle, carries multiple weapons, plots various escape routes, etc. His or her motive for protecting the individual is not that he or she thinks the official is worth protecting. Rather, the motives for private military contractors are to guarantee the successful completion of their present contract which will hopefully lead to a future contract.⁵¹ His or her intention is to safeguard the VIP, but his or her motives are financially oriented. This distinction between intentions and motives has been largely absent in critical evaluations of right intention. However, "once it is made, we can see that the objection to [the employment of] PMCs concerns motives rather than intentions."⁵²

Second, it is often assumed that soldiers in modern uniformed militaries are motivated to join for reasons of perceived duty or patriotism. This does happen, especially in families with a history of military service, however, these cases are in the minority. Uniformed soldiers in modern militaries often join up because doing so is their best economic option. For many individuals in lower income areas, military service may be the best economic option available. Individuals in lower income areas may not be able to get into a college, they may have few local options for quality work opportunities, or they may have a family to support. Whatever an individual's specific reason for joining, the decision to join is often economically motivated. If utilizing employees in a PMC who are motivated to fight for profit invalidates a just war, then using uniformed state soldiers who are

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

motivated to fight for economic reasons also ought to invalidate a just war. And if this were the case, then we would never be able to have a just war or be justified in defending others from aggression and human rights violations. Motives of war fighters are largely irrelevant in determining the justness of a particular conflict.

Employing a PMC to fight for a just cause might actually make the intervention more morally justified, not less. PMCs provide moral incentives more than uniformed state militaries, due to the nature of consent in PMCs versus that of uniformed state militaries. In modern armies, soldiers are required to take an oath pledging to fight all enemies of the state and to serve their duties with honor for a period of service. These soldiers are generally consenting to carry out a variety of different missions over the course of this term of service. However, the soldier does not know exactly what he or she is consenting to. These soldiers cannot know all of the types of missions or the dangers these future missions will impose upon them.

These state soldiers specifically consented to be in the military, but only generally consented to take on any specific mission. This fact often leads to the common phrase among uniformed soldiers, "I didn't sign up for this." This phrase implies the soldier did not expect the situation in which the soldier is currently involved, let's say in the middle of a specific battle. The soldier may not have strictly consented to joining the military had that soldier known the specific battle which he or she is obligated to fight. Now, because of his or her oath of consent, the soldier is morally bound to follow orders, despite their lack of consent to support each individual mission. Since the soldier consented to the hierarchy of the military, that soldier cannot refuse a mission without being court martialed and losing many of the economic incentives for which he or she may have joined the military.

By contrast, PMC contractors can pick and choose which missions to undertake. If a contractor does not like the job, they do not have to accept it. If the contractor finds that a particular mission might be too dangerous, the contractor is not forced to undertake it. The PMC contractor specifically consents to joining the PMC *and* each specific mission the PMC undertakes. As an employee of a PMC, contractors are not forced to undertake all assignments, while the traditional uniformed soldier is. Nor does the contractor have a term of service that they are required to complete. The contractor may quit at any time.

The contractor has much greater detail of the mission he or she is being asked to undertake. And the contractor can refuse the contract. The uniformed soldier has neither of these benefits, creating a situation wherein the contractor has greater informed consent than does the soldier in a state military. The end result is that “[t]he private contractor’s specific consent [to undertaking any specific mission] seems to carry more moral weight than the regular soldier’s general consent” to do the same.⁵³ And benefit would apply to any and all tasks undertaken by the soldier and the contractor alike. Therefore, there are circumstances where using private military contractors is preferential to traditional state run militaries, especially in terms of consent.

IN CONCLUSION

I do not believe that all six *jus in bellum* just war principles should be given the same level of consideration. Legitimate authority, just cause, and right intention are the most important just war principles to consider when resorting to force to resist aggression and prevent human rights violations. Not to say that proportionality, last resort, and probability of success are not important. They are very important and need to be given their proper consideration in the pre-war decision making process. However, as I have argued, there are reasons to require less strict adherence to proportionality, last resort, and probability of success in the prosecution of a just war.

The employment of PMCs to halt aggression is generally consistent with the just war tradition. As long as a legitimate authority contracts the PMC, has a just cause, and the right intentions, there is no principled reason to avoid the use of PMCs to prevent aggression and human rights violations. I admit that there exist concerns related to *jus in bello* conduct principles and the use of PMCs. What is needed is a means to hold PMCs and their employees accountable in the event that PMCs violate human rights. Once PMCs and their contractors can be held accountable for their actions, violations of human rights will be far less common.

The decision to use PMCs to halt aggression and prevent human rights violations is not an ideal choice to have to make. With this decision comes the potential for abuses of

⁵³ Baker and Pattison, “The Principled Case for Employing Private Military,” 10.

human rights and abuses of government at the hands of PMCs. PMCs have been and could be contracted by drug cartels, terrorists, and warlords. PMCs have been accused of prolonging conflicts as a means of extorting more money from countries who hire them. Yes, there are potential problems with the use of PMCs in attempts to halt aggression and human rights violations. But as I have discussed, strong states like the US, UK, Germany, France and China are hesitant to get involved in conflicts that do not promote a specific national interest or have economic incentives. The result is that when weak states erupt into civil conflict, no strong state intervenes, massive loss of lives occur, and human rights are violated. Strong states do not want to risk the loss of their own citizen's lives when there is no perceived benefit to be gained. The result is that the world watches idly by as innocent people are slaughtered.

Just war theory has been criticized as being an "ivory tower ideal". This thesis is an attempt to bring just war theory down to a practical level by promoting a pragmatic component to augment the theory. The choice to employ a PMC is a difficult decision to have to make. However employing a PMC to deal with a civil crisis might yield positive consequences from a very negative situation. In the absence of better courses of action, e.g. a strong state willing to conduct a humanitarian intervention, a weak or failing state ought to employ a PMC to defend their state and the rights of its citizens. This choice is not ideal, but can be the lesser of two evils. Opponents of PMCs might not like this idea, but until they are able to provide a better alternative, hiring a PMC for defense is going to remain the best option available in many situations.

This conclusion is not only based on a utilitarian calculus. The fundamental point of just war theory is to prevent the loss of innocent life and human rights violations. This is precisely the right intention for employing PMCs in the first place. PMCs can save lives. There is the potential for bad to come from the employment of PMCs in humanitarian intervention. However, the potential harms of employing PMCs should be weighed against the potential to save lives. In the end, saving lives takes priority in theory and in practice. And if a PMC is able to save lives and make a profit in the process, the jobs of private military contractors become that much more rewarding.

Admittedly, PMCs are capable of committing atrocities just as state soldiers have done in the past. In September 2007, Blackwater contractors were accused of killing

seventeen innocent Iraqi civilians while protecting a State Department motorcade. Not surprisingly, the Iraqi government revoked the license of Blackwater to legally work in Iraq. “While many Iraqis demanded Blackwater employees be held accountable for murder, no procedures were in place to do so.”⁵⁴ Unsurprisingly, within three days, Blackwater’s license to work in Iraq was renewed. The day after that, Blackwater was providing security services without any repercussions for the innocents killed. The September 2007 controversy was just one incident where PMC contractors participated in the killing of innocent civilians.

Earlier that year, a sniper killed three armed guards outside of the state-run Iraqi Media Network office in Baghdad.⁵⁵ Though an investigation proved that Blackwater contractors were guilty, none were ever charged for their crime. The attack was seen as being directed towards a news agency which was hostile to the US occupation of Iraq. The incident was swept under the rug and kept hidden by a wall of official US secrecy. Such occurrences have become routine in Iraq. In fact, “[d]espite reports of atrocities, including torture, no PMC employee has been prosecuted in Iraq or the U.S., although they are theoretically accountable to American domestic laws.”⁵⁶ If we do not hold PMCs and the governments accountable for the reckless behavior of their employees, we should expect this trend to continue. More regulation of both is needed if abuses of power are to be prevented.

I have argued there is no principled reason to avoid the use of PMCs in humanitarian intervention. Such a claim is a controversial one and is in dire need of epistemological support. In the following section, I will provide evidence supporting my claim by studying the actions of Executive Outcomes (EO), a former PMC which operated in Sierra Leone and Angola in the early 1990’s. On several occasions, Executive Outcomes prevented massacres and human rights violations of innocent civilians and restored legitimate governments to power. I will show that Executive Outcome’s employees were more combat effective, more cost effective, and more willing to participate in a humanitarian intervention than any other alternative, including the US or the UN.

⁵⁴ Carl Boggs, “Privatized’ Militarism: A New Era?” *Fast Capitalism* 4, no. 1 (2008), http://www.uta.edu/huma/agger/fastcapitalism/4_1/boggs.html.

⁵⁵ Ibid.

⁵⁶ Ibid.

This set of facts made EO the ideal candidate to undertake a humanitarian intervention. Executive Outcomes performed well until the Clinton administration and the UN put pressure on Angola and Sierra Leone to cancel their contracts with Executive Outcomes in favor of a UN peacekeeping force. This unfortunate decision ended up costing the lives of many innocent Africans. The UN peacekeeping force sent to Sierra Leone was ineffective in preventing human rights violations or aggression by warlords in the region. In a horribly bad situation, Executive Outcomes was the best option. Therefore, the employment of PMCs in humanitarian intervention is morally permissible in theory. I will show that it is also plausible in practice. The intervention of Executive Outcomes might not be the typical case involving PMCs, however, EO does prove that humanitarian intervention can be conducted while generally abiding by the just war tradition as I have described it.

CHAPTER 3

EMPIRICAL EVIDENCE: THE CASE OF EXECUTIVE OUTCOMES

Men with guns do not respect men with nothing but flapping gums.
-Max Boot in
Don Mayer's "Peaceful Warriors: Private Military Security Companies
and the Quest for Stable Societies."

EXECUTIVE OUTCOMES SIERRA LEONE

The former British colony of Sierra Leone is located in West Africa. Sierra Leone is the prototypical weak state. It is, by most accounts, one of the harshest places on earth to live. Sierra Leone ranks last on the United Nations' Human Development report (which rates quality of life and future prospects), infant mortality rates are around 160 deaths per thousand, only thirty percent of adults can read, and the average lifespan is around thirty-seven years.⁵⁷ Further, Sierra Leone has been racked by years of civil war and armed conflict. Things look bleak at best for those born in Sierra Leone.

The end of the Cold War began a terrible time for Sierra Leone. In 1991, a violent rebellion began by a group known as the Revolutionary United Front (RUF). Though they were a smaller group at first, the weak government was unable to stop the RUF. The RUF quickly became infamous for openly targeting civilians with murder, rape, torture, and their signature calling card, amputation of captured civilians' arms.⁵⁸ Moreover, the RUF also heavily relied on the employment of child soldiers to carry out many of its attacks. By 1995, complete anarchy engulfed Sierra Leone. "Roadside ambushes, nighttime massacres of villages, and machete mutilations had become the norm of life and death."⁵⁹ Making matters worse, the government had lost control of the diamond mines that had fueled a substantial

⁵⁷ Singer, *Corporate Warriors*, 3.

⁵⁸ Ibid.

⁵⁹ Ibid.

amount of Sierra Leone's economy. Further, the government was cut off from the countryside, which was the heart of the region's agricultural trade.⁶⁰ Clearly, something needed to be done soon to prevent further loss of life and aggression.

However, no major power would intervene on behalf of the Sierra Leone government. The UN, UK, and US all refused Sierra Leone's request for assistance.⁶¹ The world seemed resigned to watch the events unfold in Sierra Leone from the comfort of their living rooms. By April 1995, the RUF was advancing toward the capital of Sierra Leone. "There were no coherent front lines, no political causes, and for the terrorized public, no place was safe. What had begun as a civil war had become civil chaos."⁶² Out of desperation, the government of Sierra Leone turned to Executive Outcomes (EO) for assistance.

Executive Outcomes was a South African private military company that was composed largely of former special-forces soldiers from several countries. EO hired a majority of their employees from the South African Defense Force (SADF) which fought during the bush wars of the 1970's and 1980's. Using ex-SADF soldiers, EO could guarantee "common training, a pre-existing hierarchy, and extensive combat experience in low intensity conflict and counter-insurgency operations."⁶³ Further, EO was a subsidiary of a much larger holding company which had assets in transportation, mining, and provided access to attack helicopters and other weapons of war traditionally belonging to well-funded state militaries.⁶⁴ This set of facts coupled with EO's willingness to engage the RUF made Executive Outcomes the only option to deal with a horrible situation.

The leader of Sierra Leone hired Executive Outcomes, but due to the regional instability and disruption of the Sierra Leone economy, the government of Sierra Leone could not afford to pay the contract. In exchange for protection services, Sierra Leone agreed to pay EO with future diamond mining concessions. The total cost for EO's intervention was

⁶⁰ Ibid.

⁶¹ Ibid., 112.

⁶² Ibid.

⁶³ Ibid., 103.

⁶⁴ Ibid., 103-106.

about \$35 million for the 21 month period that EO was deployed in Sierra Leone.⁶⁵ “Given that the aim of EO’s contract was to reestablish the government’s control over the economically productive parts of the country and that it was a fraction of the overall military budget, the contract seemed a pretty good deal to the [Sierra Leone] government.”⁶⁶

After only nine days of fighting, the advance on the capitol had been stopped and EO had pushed the RUF back 126 kilometers into the jungle interior.⁶⁷ When EO employees entered villages ravaged by the RUF, EO employees were frequently greeted like liberating heroes. One local woman in particular said, “They saved us. They are saints!”⁶⁸ After the capital was cleared, EO secured the Kona diamond mines in the eastern parts of the country. EO took the mines back in just two days, which was critical as the mines were the source of payment for EO and provided revenue desperately needed by the Sierra Leone government.⁶⁹ Executive Outcomes eventually pushed the RUF all the way to the border regions of Sierra Leone. Unable to match the force which EO brought to bear, the RUF agreed to negotiate with the Sierra Leone government for the first time. By “February 1996, such a measure of stability had been achieved that a multiparty civilian presidential election was conducted in Sierra Leone.”⁷⁰ And when the RUF pulled out of the peace agreement it had signed with the Sierra Leone government, EO went back on the offensive and destroyed the RUF headquarters in the southeast region.

A month later, the RUF returned to the negotiating table and re-signed the peace agreement. However, the RUF would only sign the peace treaty on the condition that Executive Outcomes be required to leave the country.⁷¹ EO’s officials warned against this idea claiming that once EO left Sierra Leone, the violence would return within 100 days. Without EO, there would be no reason for the RUF to engage in political discourse. However, due to international pressure to cancel EO’s contract by the Clinton administration

⁶⁵ Ibid., 112.

⁶⁶ Ibid., 112.

⁶⁷ Ibid., 113.

⁶⁸ Ibid., 103.

⁶⁹ Ibid., 113.

⁷⁰ Ibid.

⁷¹ Ibid., 114.

and expecting a UN peacekeeping force to replace EO, the Sierra Leone government cancelled Executive Outcome's contract. Unfortunately, because the money to pay for the UN peacekeeping force never materialized, an inferior military force was used in place of the UN force. The RUF took notice of the weakened security forces and on the 95th day after EO's contract was cancelled, a coup toppled the recently reestablished Sierra Leone government.

Sierra Leone has yet to recover from the atrocities of the RUF. The fighting continued until the RUF "collapsed under the combined pressure of a rebuilt Sierra Leone Army, incursions by the Guinean army, and a revitalized UN force."⁷² Though elections were finally held in 2002, around 10,000 civilians had been killed since EO left Sierra Leone. When comparing the cost and effectiveness of EO versus the multinational peacekeeping force, there is virtually no reason to prefer the peacekeeping force over EO. The private operation of EO was about four percent of the UN's operation in cost and size.⁷³ More importantly, EO was far more successful in their operations to prevent aggression than was the multinational peacekeeping force. Executive Outcomes "defeated the [RUF] force in a matter of weeks and restored enough stability for the country to hold elections, something that the UN required years to accomplish."⁷⁴ In fact, it was privately hired gunships (piloted by EO) flying on behalf of the Sierra Leone government who are credited with rescuing UN peacekeepers under fire on numerous occasions.⁷⁵ In addition, EO was able to respond effectively within one month of their contract being signed. This ability to respond quickly without bureaucratic hold ups saved the lives of hundreds if not thousands of innocent Sierra Leone citizens. Since the UN and the international community were slow to act and were extremely inefficient, the employment of EO to engage in humanitarian intervention in Sierra Leone ought to be considered morally permissible and pragmatically preferential to any other option.

⁷² Ibid., 115.

⁷³ Ibid., 183.

⁷⁴ Ibid., 184.

⁷⁵ Ibid., 185.

The employment of PMCs is not the total solution to dealing with situations where humanitarian intervention is justified. Halting aggression and preventing human rights violations are only the first steps in helping to stabilize a tumultuous situation. The intervention is akin to stopping the bleeding of a gunshot wound in the leg. Once you stop the bleeding, surgery must proceed. The bullet must be removed from the victim, the wound disinfected, and then stitched up so that the leg can heal properly. The leg must be fixed so that, with the passage of enough time and with proper support, the victim can “stand on their own two feet” free of assistance. Without the rest of the medical operation, stopping the bleeding would be futile. The leg would not heal properly, the wound would get infected, and the victim would die.

Much like the gunshot victim, a state which requires a humanitarian intervention must be helped to get back on its feet. At a macro level, the state’s economy must be revitalized. Without the financial means to sustain an army and provide reasonable career options, a state will lack the means to protect its own sovereignty and the rights of its citizens. A strong economy will give would-be-warriors a way to make a living other than warfare. A profitable economy will enable the funding of a well-armed military and police force to deal with international and domestic threats. The desired economic stability would leave warlords with a smaller pool of guns-for-hire to wage future wars. On a micro level, displaced people must be assisted in rebuilding their homes and former lives. If a battered population is to be able to move on from a civil conflict, they need to be assisted in rebuilding a sense of pre-conflict normalcy. Life needs to be about more than mere survival if people are to have enough hope for the future to endure conflicts for the state.

What I have just said is generally consistent with *jus post bellum* rules of just war theory. Once the aggression has been halted, a state needs a smooth transition from war to peace. This idea has not been discussed at great length in the just war literature. Though this idea is important and deserves further discussion, it is beyond the scope of this paper to thoroughly investigate *jus post bellum* principles. But I find post war principles important to the future stability of a war ravaged states. Without more attention to *jus post bellum* principles, weak states plagued by years of civil war might fail despite humanitarian interventions.

As I have shown via the case of EO, PMCs can be justly utilized in humanitarian intervention in theory and practice. EO provides the empirical evidence which proves that PMCs can have positive impacts in war and can bring about the termination of civil conflicts. The RUF waged an aggressive war on the civilians and government of Sierra Leone. Executive Outcomes was hired by a legitimate authority, the Sierra Leone government. EO had a just cause of preventing violations of human rights and aggression at the hands of terrorists and warlords. And though the motive of EO and their employees was to fight for profit, the intention of EO was to stop mass murder of innocent civilians and halt aggression, which is always justified. Probability of success and proportionality were given due consideration: EO was better armed, had more years of experience, better support than did the RUF. EO's trained, battle hardened, special-forces soldiers were far superior to the RUF and their army of ruthless killers and child soldiers. Clearly, EO had a high probability of success. And since the RUF refused to negotiate with the Sierra Leone government, there was no logical reason to require that intervention be the last resort, as diplomacy had already failed. Intervention became the only viable option specifically because the RUF refused to negotiate. And as Michael Walzer suggests, "[p]olitics-short-of-force may depend on force-short-of-war. In fact, we have to sponsor and support this interaction – because these two together can help us avoid war itself."⁷⁶ And that is exactly what happened in Sierra Leone by employing Executive Outcomes.

It should be noted that Executive Outcomes has a morally problematic past. The contractors of Executive Outcomes were largely ex-South African Defense Force soldiers from the 32nd Battalion, a notoriously brutal bunch of soldiers. These soldiers operated on behalf of the apartheid government of South Africa and committed many atrocities in the late 1970's and 1980's during South Africa's bush wars with its neighbors. Though it is unclear whether all of these soldiers harbored racist tendencies themselves, it is clear that they operated on behalf of a government which did. They committed brutal murders and actively sought to sabotage the activities of their neighbor states on behalf of the South African government. Thus, it may be argued that since EO contractors have blood on their hands, they cannot participate in humanitarian intervention or just wars.

⁷⁶ Walzer, *Just and Unjust Wars*, Preface, xviii.

It may be the case that a majority of EO's contractors have acted immorally in the past. Those past actions are deplorable and should be condemned. However, those past immoral actions do not preclude the possibility of present or future morally permissible actions. People make mistakes and can learn from them. We make choices, get older, reflect on our life choices, and make different choices in the future. Perhaps some EO employees felt bad about their ties to an apartheid government and took pride from saving the lives of Africans. EO's morally problematic past may deserve more attention and individual soldiers may deserve blame for their actions. Such a discussion is beyond the scope of this thesis. However, just because EO employees have a dark past, does not entail that they cannot participate in a morally permissible humanitarian intervention. The case of Executive Outcomes draws attention to the dilemmas faced by the potential use of PMCs. While Executive Outcomes' was being accused of hiring a "mercenary army of racist killers," at the same time, some humanitarian groups, such as "Children Associated with the War" in Sierra Leone, were formally thanking EO for their work.⁷⁷

POSITIVE RESULTS

Executive Outcomes is proof that PMCs can be employed to effectively stop aggression and prevent human rights violations while satisfying necessary just war principles. Further, EO is not the only PMC to do so. Many firms have met with varying degrees of success over the last twenty-five years. A recent study in the *Journal of Conflict Resolution* by Akcinaroglu and Radziszewski found that the behavior of PMCs and their contractors will depend on the institutional constraints experienced in the market.⁷⁸ A general concern is that PMCs could try to extend a conflict in order to profit off of a prolonged war, thereby securing a more lucrative contract. However, the study by Akcinaroglu and Radziszewski showed that "prevailing opportunity structures in conflicts will determine PMC's behavior in wars."⁷⁹ Specifically, if clients place PMCs in a

⁷⁷ United Nations Commission on Human Rights, 53rd Session, Item 7, Special Rapporteur, "Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination," February 20, 1997, <http://www.globalsecurity.org/military/library/report/1997/e-cn-4-1997-24.htm>.

⁷⁸ Akcinaroglu and Radziszewski, "Private Military Companies," 796.

⁷⁹ *Ibid.*, 797.

competition based structure, we are better able to predict when the consequences of PMC employment will be less “insidious than commonly assumed.”⁸⁰

If a PMC operates in an environment which permits profiting from the prolonging of a war without financial consequences, we should expect them to do so.⁸¹ That belief is completely logical in a profit maximizing system – if you let a company exploit a client without any negative consequences, that client is going to be exploited. However, this type of exploitation only occurs if the PMC has an unchallenged monopoly on a particular market. In a competition-based market, a PMC cannot exploit a client without repercussions. If a PMC does not perform to an expected level or if the hired PMC develops the reputation for constantly bilking their clients, then that PMC will soon find itself out of clients. A legitimate authority which has many PMC options can shop around. The more effective PMCs would force the ineffective PMCs out of business. The reason being that legitimate authorities will want the most value for money. Thus, “the opportunity structure in a given conflict creates an incentive for such [PMCs] to terminate the war as quickly as possible because doing so is consistent with the companies’ underlying interest – maximization of profits.”⁸²

The data gathered in the study by Akcinaroglu and Radziszewski supports the belief that the greater the competition “among government-hired PMCs operating in a civil war-torn country in any given year, the greater the possibility that PMCs will contribute to a shorter duration of war.”⁸³ Without other competitors, PMCs will have an incentive to perform in sub-optimal fashion. As a result, the study finds that “a boost in competition is an important mechanism that drives efficiency, reputational accountability, and ultimately, increases the odds of ending hostilities.”⁸⁴ For instance, the study found that in cases where governments hired multiple PMCs to assist in a civil conflict, the likelihood of cessation of hostilities increases greatly compared to cases in which the government does not receive such

⁸⁰ Ibid.

⁸¹ Ibid., 800.

⁸² Ibid., 804.

⁸³ Ibid., 803.

⁸⁴ Ibid., 812.

help.⁸⁵ “If six PMCs intervene in the sixth year of the [conflict], for example, the [conflict] is at least 2.5 times more likely to be terminated than if just one PMC intervenes.”⁸⁶ Therefore, PMCs can contribute to a shorter civil war and the more PMCs that are hired by a government, the shorter the conflict will be. The study also found that the timing of PMCs entry into a conflict made no difference in estimating the duration of the war.⁸⁷ PMCs were just as likely to help bring an end to a civil conflict whether they were hired in the first year or the fifth year of a conflict.

A further conclusion of the study concerns PMC intervention in weak states likely to pay for protection with mineral resources. The study finds that when PMCs are being paid with future mineral concessions, PMCs are more likely to stabilize a particular situation and bring a speedy end to the intervention.⁸⁸ The PMC cannot receive payment until the conflict is stabilized to the extent that the resources can be safely extracted. Thus, PMCs being paid in natural resources have a vested interest in bringing a swift conclusion to any armed intervention. The study concludes that:

[g]iven that prevalent environment in which the PMCs operate shapes their behavior, it follows that such players are not necessarily a menace to the rule of law. Instead, market pressures are increasingly regulating their behavior. Government officials interested in ending violence would be advised to diffuse contracts among several companies rather than work with only one as doing so will encourage each company to deliver the best service or risk looking inadequate in comparison to others.⁸⁹

Therefore, PMCs are not necessarily the evil-doers that scholars and policy-makers perceive them to be. Creating a competition-based environment for PMCs to operate in can limit the potential for bad behavior by contractors. The effect of the competition-based system keeps the PMCs more “honest”. Competition can provide some of the market monitoring mechanisms that have already been called for in the academic and policy-making

⁸⁵ Ibid., 809.

⁸⁶ Ibid.

⁸⁷ Ibid., 814.

⁸⁸ Ibid.

⁸⁹ Ibid., 816.

community.⁹⁰ And once “government-hired PMCs perform optimally and the conflict ends, the international community can then help the state rebuild to secure peace”.⁹¹

It should be noted that this is only one study. More data needs to be gathered and more academic research needs to be conducted if the hypothesis of Akcinaroglu and Radzisewski are to be conclusively verified. Further, their study is only aimed at observing the civil conflicts of Africa. Perhaps an analysis of PMC intervention in other parts of the world would provide different results. However, their study does lend credence to the idea that PMCs can shorten civil conflicts. Next, I will turn my attention to a case where PMCs could have been employed to prevent human rights violations and were not. I will then analyze the moral implications of not employing PMCs in the absence of other options.

RWANDA – GENOCIDE IGNORED

From approximately April 7th to the middle of July 1994, thousands of Tutsi and moderate Hutus of Rwanda were massacred by rival Hutus. The genocide was organized by political elites in Rwanda and carried out by the Rwanda Army, the Rwanda national police, and government-backed militias. This group set up road blocks and barricades, seizing and then killing ethnic Tutsis, moderate Hutus, and anyone that would be able to pose a threat to Hutu rule. The violence continued until about the middle of July, when the Rwandan Patriotic Front (RPF), composed mostly of Tutsi refugees, was able to wrestle power back from the Hutu government and stop the mass killing. “In the end, the extremists killed nearly one million Rwandans, approximately one-tenth of the population. Were it not for the RPF’s military prowess, the genocide would have continued.”⁹² Despite having intimate knowledge of the genocide occurring in Rwanda, the UN, United States, and most of the Western world refused to get involved. No powerful state was willing to commit its own troops to the Rwandan cause.

However, there was another option. Executive Outcomes prepared an internal business exploration and determined that EO could have armed troops on the ground in

⁹⁰ Ibid.

⁹¹ Ibid., 822.

⁹² William Ferrogiaro, “The US and the Genocide in Rwanda 1994: Evidence of Inaction,” *The National Security Archive*, August 2001, <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/index.html>.

Rwanda in fourteen days and have “fully deployed 1500 personnel, supported by its own air and fire support, in six weeks.”⁹³ The goal of the operation was to set up “security islands” that would provide safe havens for refugees and disaster relief supplies.⁹⁴ This way, medical assistance and supplies could be safely delivered to the Rwandans who badly needed the help. In addition, these bases would protect humanitarian workers from being murdered or captured. This plan would have allowed the international community more time to plan and implement a coordinated multi-state effort to help Rwanda.

The estimated cost for the operation was roughly \$600,000/day, totaling about \$150 million.⁹⁵ This figure might sound like a large number, but considering that EO could have saved hundreds of thousands of lives, the money would have been well spent. EO’s private alternative was vastly superior to the eventual UN operation, which only deployed in a humanitarian role. Further, the UN operation did not deploy until after the violence had largely ceased. The UN force also ended up costing about \$3 million/day, more than five times the proposed EO intervention.⁹⁶ The contract with EO was never pursued. Most likely because no state or international governing body were willing to foot the bill or deal with negative consequences associated with normative taboos of employing a PMC.

The damage resulting from the genocide in Rwanda could have been reduced. The series of events in Rwanda and the world’s response were, sadly, typical. As I stated earlier, states do not want to commit their own troops to meddle in the affairs of another state when there is no perceived gain. Neither was any international community willing to intervene. The end result was the genocide of around 800,000 innocent people. Executive Outcomes could have prevented many of these deaths. There is great potential for PMCs in humanitarian interventions. PMCs can be the stop-gap measure used to end aggression and allow the international community time to develop a coordinated plan of action to a foreign crisis. And in the absence of better options, PMCs should have been employed to save Rwandan lives.

⁹³ Singer, *Corporate Warriors*, 185.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid., 186.

The UN has not been effective at preventing the loss of human rights or combating aggression. Time and time again aggression rages, human rights are violated, and the UN does virtually nothing. Choosing to employ a PMC might not be an ideal choice. But employing a PMC might be the best possible choice in a horribly bad situation as was the case in Rwanda. Because PMCs can be effective and willing to undertake dangerous interventions, the use of PMCs should never be completely removed from the pool of available options to resolve foreign crises. PMCs have the potential to commit murder and other atrocities, as was the case with Blackwater, for example. But PMCs also have the potential to save lives as EO has shown. The need for a PMC option is especially important when strong states and international institutions are unwilling to intervene in war torn countries such as Rwanda. “The concept of the private sector profiting from peace operations has the potential to radically transform the very nature of UN peacekeeping, opening up all sorts of new options.”⁹⁷

Less discussed is the idea that international institutions such as the UN need to recognize their own moral accountability in relation to how the Rwandan crisis was handled. In this case choosing not to employ EO cost the lives of around 200,000 Rwandans. In the absence of other options, the UN should have hired EO. The UN had a moral and legal obligation to defend innocent Rwandans from aggression and human rights violations. The UN failed to live up to its social contract with Rwanda and the international community.⁹⁸ The UN is therefore blameworthy and deserving of moral and legal judgment for its inability to protect innocent Rwandans. Again, it is difficult to determine exactly which states or individuals in the UN deserve moral and legal accountability for the inaction in Rwanda. But future academic literature should be dedicated to that particular discussion.

I have argued that it is possible for PMCs to be employed in a humanitarian intervention according to just war theory. I have substantiated my claim with empirical evidence of Executive Outcomes operations in Sierra Leone. I have also provided a study by Akcinaroglu and Radziszewski supporting the claim that employment of PMCs can lead to

⁹⁷ Singer, *Corporate Warriors*, 186.

⁹⁸ United Nations General Assembly, Resolution 260 (III) A, Article 1, “Convention on the Prevention and Punishment of the Crime of Genocide,” December 9, 1948.

the end of civil conflicts. Lastly, I have shown that using PMCs to halt aggression and end human rights violations has been more effective than any alternative. Though there is much more to discuss on the matter, I believe that I have made the cases that PMCs should have their place in just war theory. Now I will turn to potential objections which I anticipate in response to my arguments.

CHAPTER 4

OBJECTIONS

AGAINST THE OBJECTION TO SOVEREIGNTY AND SELF-DETERMINATION

Sovereignty is viewed as the most fundamental right of states. A state is the political institution which embodies sovereignty. A state that is sovereign must have definite borders and an established system to govern people within those borders. A state's sovereignty allows a state to protect the rights of its citizens and the sovereign state itself. These rights include the right to remain sovereign and the right to self-determination. A sovereign state should be allowed to determine any and all courses of action that the state deems prudent, free from external influences. If a state is not able to determine its own course of action, then that state cannot be said to be sovereign. Therefore, a sovereign state has political boundaries recognized by its citizens and by other states, and it exists to protect the rights of its citizens.

But some theorists argue that if states are to remain sovereign and self-determining, the citizens of that state must earn that right on their own. Those are the unfortunate growing pains of statehood. If there is a breakdown in the government or civil unrest among the populous, the citizens of said state must remedy the situation alone. Foreign intervention in matters of a neighboring state of any kind must be forbidden. Moreover this argument requires that states must be left to resolve their own internal matters, however problematic, if self-determination is to be maintained.

If we accept this description of sovereignty, even humanitarian interventions to prevent human rights violations would be prohibited. According to Jeffrey Whitman, when a foreign state engages in humanitarian intervention across state boundaries, state sovereignty is being violated. In particular, Whitman believes that the intervening state is actually harming the cause of human rights. Whitman argues that:

[a]dequate moral justification does not exist for setting human rights above the sovereignty of the state. The apparent conflict between human rights and sovereignty is just that – appearance rather than reality. The conflict disappears

once we recognize the proper relationship between human rights, sovereignty, and self-determination. On my view, the cause of human rights is actually supported and not hindered by respect for sovereignty and self-determination.⁹⁹

So, human rights are not competing for priority with sovereignty and self-determination.

According to Whitman, we should see that through respecting sovereignty and self-determination, the cause of human rights is upheld. According to Whitman, if a state is dealing with an internal struggle, that state must be allowed to resolve these matters on its own, free from outside interference.

Whitman's argument aligns with Mill's: that people must be made to earn their freedom. Without the struggle this "earning" entails, the people will not appreciate freedom. Freedom cannot be bestowed onto a people by a foreign state. According to Mill, without an "arduous struggle to become free by their own efforts," a people are denied the opportunity to "become attached to that which they have long fought for, and made sacrifices for."¹⁰⁰ As Mill coldly proclaims, if a people "have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own will have nothing real, nothing permanent."¹⁰¹ So, as the Millian argument goes, citizens of a state have to earn their right to sovereignty and self-determination. This process is part of the growing pains associated with the establishment and the maturation of any state.

Further, even if a state is ruled by the most despotic tyrant, that state is still a sovereign state.

The people's acknowledgement of a central governing authority within a specified geographical territory confers on the state its sovereignty. However [...] the population's recognition of a central authority does not imply approval of that government. An unpopular and oppressive totalitarian regime is no less sovereign than a popularly elected, democratic republic.¹⁰²

So, if a ruler is violating the rights of his or her citizens, the state ought to still be considered sovereign. Its citizens would be no less self-determining than in a democratic republic. No foreign power should be allowed to meddle in the affairs of a sovereign state. Flowing from

⁹⁹ Jeffrey P. Whitman, "An End to Sovereignty?" *Journal of Social Philosophy* 27, no. 2 (1996): 147-48.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid., 148.

this argument is the idea that humanitarian interventions ought to be considered a violation of a state's sovereignty.

Therefore, states are to be respected as sovereign and self-determining. No state should violate the sovereignty of another state under any circumstances, including, those circumstances involving the infringement of human rights. The cause of human rights is insufficient to justify humanitarian intervention according to Mill and Whitman. Placing human rights above sovereignty and self-determination is wrong. And only by allowing a state to struggle through its own civil unrest will any lasting freedom be gained.

This idea seems to impose too strict a requirement. A major aim of Just War Theory is to prevent aggression and human rights violations. To claim that a state's sovereignty must be respected, even if that state is committing heinous crimes against its citizens, is to claim that resistance to the Nazi massacre of Jews, Gypsies, and other Nazi undesirables in Germany by any foreign state was unjustified. As Michael Walzer properly recognizes, the law against boundary crossing must be abandoned "when the violation of human rights within a set of boundaries is so terrible that it makes talk of community or self-determination or 'arduous struggle' seem cynical and irrelevant, that is, in cases of enslavement or massacre."¹⁰³ Therefore, humanitarian intervention *is* permissible when a government is permitting and engaging in the murder or enslavement of its citizens.

A perfect case study for examining the practical application of humanitarian intervention is in the previously mentioned case of Rwanda. One may give credence to the motive behind the "growing pains" idea associated with legitimate statehood. But the point of intervention is not to deny Rwandans the ability to fight for their political future. The point is to keep them alive so that they might be able to participate in that future.

Further, when the Hutu government began to slaughter moderate Hutus and Tutsis in an attempt to seize power, the state of Rwanda was effectively split into two states: State A) the state fighting for the Hutu government and State B) the shrinking former state of Rwanda fighting to prevent harms to the Tutsis and moderate Hutus. The political map was effectively redrawn as soon as the Hutu state began the genocide against the Tutsis and moderate Hutus. Therefore, talk of the sovereignty of the former state of Rwanda based on

¹⁰³ Walzer, *Just and Unjust Wars*, 90.

the old political boundaries became meaningless. Rwanda's former political boundaries did not apply during the civil conflict. After the conflict was over, Rwanda's political boundaries could have been restored to established pre-conflict boundaries. State A was not a legitimate state as it did not seek to protect the rights of those existing inside of its boundaries.

However, State B was legitimate. Since B was legitimate, State B's government had a duty to protect the rights of its citizens. And since the human rights of State B were being violated by State A, State B was justified in resisting State A.

In this case, since State B is a legitimate state, B satisfies the legitimate authority criteria and may request assistance from allies or anyone who will lend assistance. And since B is preventing the human rights violations of its citizens and aggression from A, B has a just cause. B's most ideal choice would be to receive assistance from the military of a stronger state ally. However, as previously mentioned, no strong state was willing to intervene on behalf of State B. In the absence of any willing strong states, B would satisfy the right intentions criteria required to hire a PMC for the defense of B's people. Both the contracted PMC and State B can have the right intentions of halting aggression and preventing human rights violations, even though their motives for doing so might be different. Therefore, State B is justified in resisting A's aggression through an ally or PMC, according to just war theory. Since A was the aggressor and the formation of A was illegitimate, the international community should reestablish the sovereignty of Rwanda by combining A and B. The leaders of the aggression should be brought to justice as they would be in violation of sovereignty of Rwanda for initiating an unjust war and genocide.

In addition, a determination must be made about whether the moral value resides in the intrinsic principles of sovereignty and self-determination, or, whether the moral value resides in the purpose for respecting these principles. If sovereignty and self-determination are intrinsically valuable, then humanitarian intervention cannot be justified.¹⁰⁴ But sovereignty and self-determination should not be thought of this way. Jovana Davidovic correctly elaborates that:

¹⁰⁴ Jovana Davidovic, "Are Humanitarian Military Interventions Obligatory?" *Journal of Applied Philosophy* 25, no. 2 (2008): 136.

[s]overeignty and self-determination are not some abstract terms that have moral value without a reference to the people they serve and the rights they protect. Their moral standing emerges out of the values they aim to uphold, namely basic human rights. So, if we view sovereignty and self-determination as only the tools to preserve some other more basic moral values, like life and liberty, then it could be argued that interventions can be justified at times. In other words, if sovereignty and self-determination are only means to ends and not ends in themselves, then it would be justified to disregard them in favor of other means, specifically interventions.¹⁰⁵

So sovereignty and self-determination should be thought of as means to the end of life and liberty rather than as ends in themselves. Conceptualizing sovereignty and self-determination as means to an end would provide more latitude to intervene in a state when human rights are being violated. When the means of sovereignty and self-determination are unable to secure the ends of life, liberty and other human rights, the mean of humanitarian intervention may be used instead.

And sovereignty and self-determination do not always yield states which protect the rights of its citizens. Recall that Nazi Germany was a sovereign, self-determined state which produced abhorrent numbers of human rights violations and acts of aggression domestically and internationally. So it isn't the case that sovereignty and self-determination are intrinsically valuable and it isn't the case that absolute respect for sovereignty and self-determination yield the best results. They are only as morally valuable as the ends they are used to achieve.

Therefore the objection against humanitarian intervention based on sovereignty and self-determination fails. If a sovereign state is violating human rights and committing violent acts of aggression against its citizens or the citizens of another state, a foreign power may be justified in intervening on behalf of the victims. And if no foreign state is willing to intervene, humanitarian intervention can be justly conducted by a PMC, provided that legitimate authority, just cause, and right intention principles are satisfied. Principles of sovereignty and self-determination are only as morally valuable as the rights they are empowered to preserve. Sovereignty and self-determination must not be allowed to become a shield from which despotic rulers can hide from justice. And if sovereignty and self-

¹⁰⁵ Ibid.

determination cannot secure the rights of a state's citizens, that state and its citizens are justified in requesting humanitarian intervention to secure their just aims.

It may be the case that states do not have any moral obligation to intervene in the affairs of a neighbor. That issue is too all-consuming and outside of the scope of this paper to be addressed here. But it is certain that international institutions, such as the UN, do have a moral and legal obligation to intervene in the cases of aggression and violation of human rights.¹⁰⁶ Preventing aggression and human rights violations is part of the mandate of the UN. And if the UN has an obligation to intervene, then the states who compose the UN may also bear that obligation. If the UN is to remain relevant, it needs to do a better job upholding the aims of its charter. Perhaps individual states don't have an obligation to intervene in the affairs of their neighbors. But, without question, the UN did have an obligation to intervene in Rwanda.

SYRIA

The Syrian Civil War has been raging for over three years, with little prospect of a peaceful resolution in the near future. The conflict began in March 2011 with Syrians protesting for democratic and economic reforms to be made within the Al-Assad government. By April, protests had spread to all of Syria. Both Syrian police officers and protesters had been killed in skirmishes during protests. In response, the Syrian Army was deployed to quell future protests. After being attacked by the Syrian Army on several occasions, the protests evolved into armed rebellion, with battles being waged all across the country. The rebels were, and continue to be, vastly outgunned by the Syrian Army and they have taken heavy casualties.

According to the UN, the death toll is over 130,000, around four million Syrians have been displaced, more than three million Syrians have fled Syria, and millions more have been left to endure horrendous conditions with shortages of food, water, and medical supplies. In addition, there have been reports that protesters, student activists, liberals, and human rights advocates have been wrongfully imprisoned and tortured in Syrian state prisons. Lastly, chemical weapons have been used on civilians in Syria. Things look bleak for the average

¹⁰⁶ "Convention on the Prevention and Punishment of the Crime of Genocide."

Syrian citizen. In order to prevent future aggression by the Syrian Army and in order to stop human rights violations, it is reasonable to ask whether the rebels would be morally justified in hiring a PMC to intervene on behalf of the Syrian population according to just war theory? Would the Al-Assad regime be justified in hiring a PMC to destroy the rebels? Would a PMC be permitted to intervene on either side?

This is a difficult case. The main problem for both the rebels and the Al-Assad regime is that they both may lack the legitimate authority to hire the PMC. It cannot be said that the rebels represent the entire Syrian population, nor do the rebels speak for a majority of the Syrian population. This is almost always an issue with revolutions. Without a minimal majority, neither the rebels nor the Syrian population can satisfy the legitimate authority criteria. There is no voice which speaks for the Syrian population. Since the Syrian population does not have someone that could speak on its behalf, the Syrian population cannot count as having legitimate authority to hire a PMC.

Further complicating the matter is that the Al-Assad regime has violated the rights of many of Syria's citizens. Al-Assad has ordered the killing of many in order to maintain his position of power. He has used military power to suppress the will of his people and he has indiscriminately killed innocent civilians and rebels alike, violating war conduct principles. Since Al-Assad has acted to maintain his own position and not to benefit his people, he could qualify as an insurrectionist as defined by Aquinas. If Al-Assad is an insurrectionist, then his rule is illegitimate and he is no longer sovereign. If his regime is no longer sovereign, then his regime does not satisfy the legitimate authority criteria necessary to hire a PMC for security issues according to just war theory.

What, then, can be done to save lives of innocent Syrians being indiscriminately killed? At this juncture, only an internationally recognized authority would be able to satisfy the legitimate authority criteria. In this case, only the UN would meet the legitimate authority criteria. The UN would also satisfy the just cause and right intention criteria. The just cause would be prevention of further human rights violations and the intentions of the UN would be to halt aggression being committed in the Syrian Civil War by all parties involved. Once the violence is stopped, peace negotiations could ensue. Hopefully, the Syrian public and the Al-Assad regime could reach a political settlement and lives could be saved.

The question now becomes, “should the UN intervene by hiring PMCs?” I would answer, “yes the UN should intervene in order to prevent loss of human rights.” Based on the UN charter, the UN has a moral obligation to intervene. But it should be noted that a UN intervention would only bring temporary peace. Likely, if UN contracted PMCs were to force the Al-Assad regime and the Syrian public into some sort of political compromise, once the PMCs left the area, the conflict would resume. Having more military capabilities than the rebels, the Al-Assad regime would likely resume their power grab as soon as the PMCs were gone, as happened in Sierra Leone when EO left. Since any peace would be temporary, the UN may decide not to intervene. However, if saving lives and halting aggression are just reasons for action, then the UN should hire the PMCs to save lives.

However, PMCs are not obligated to take any contracts. As companies for profit, PMC are only likely to undertake a mission if the PMCs believe they can finish the mission without significant risk to their employee’s lives. No matter how noble the cause, PMCs must be confident that they will be able to complete a job, with little risk to its staff. Since the Al-Assad regime is well armed, PMCs may not be willing to undertake the Syria mission. PMCs would likely see the Syria conflict as not being cost effective and so may avoid the area altogether. Therefore, even if the UN were willing to outsource a Syrian humanitarian intervention, there might not be any PMCs willing to take the job. In the end, Syria might be forced to solve its own internal political problems because there are no other options. It may be the case that there is a theoretical role for PMCs to play in Syria. However, there is no pragmatic way for PMCs to play that role.

CHAPTER 5

CONCLUSION

The implementation of PMCs in humanitarian intervention can be morally permissible according to Just War Theory. PMCs can satisfy legitimate authority, right intentions, and just cause criteria necessary for any military action to be morally justified. It is preferable that humanitarian intervention be conducted by state militaries instead of by PMCs. State militaries have a better record for holding their soldiers accountable for atrocities committed during times of war. The inability to hold PMCs and their employees accountable for their actions is a concern that needs to be addressed. However, this is a pragmatic concern for policy makers and not a principled problem for theorists.

As I have argued, with more strict legal accountability, private military contractors and PMCs will be less likely to engage in activities which might cause them to lose future jobs. Contractors will not violate the human rights of a people for fear that it will cost them their livelihood and freedom. Greedy PMCs will not have as much power to prolong conflicts if market competition is maximized. The greater the number of PMCs involved in a conflict, the more likely the intervention will end sooner rather than later. And if strict regulations are enacted regarding the use of PMCs, the leaders of states will be less able to use PMCs to bypass government oversight or act in illegitimate and immoral ways.

Since PMCs can satisfy the necessary *jus ad bellum* criteria of Just War Theory as I have described them, there is no principled reason to avoid the use of PMCs in order to prevent human rights violations or to halt aggression. Given the effectiveness of PMCs and their greater informed consent, there are reasons to prefer the use of PMCs in dangerous operations. *Jus en bello* conduct principles would still need an explication in a future essay. In addition, PMCs may have a role in *jus post bello* principles. But such discussions are beyond the scope of this current thesis and will be taken up at a later date.

Just war theory has a rich tradition which has survived thousands of years. If just war theory is to remain valuable and viable, the theory must be updated from time to time. Since PMCs are going to be around for the foreseeable future, the “place” of PMCs must be

established in the Canon of just war theorists. This “place” will establish rigorous moral and legal obligations on PMCs, private military contractors, and the states that employ them. In fact, the proper placement of PMCs in just war theory may obligate international institutions, such as the UN, to hire PMCs to prevent aggression and human rights violations, in the absence of more preferable options. Though this debate is far from over, more discussion needs to take place within the academic community regarding the place of PMCs in Just War Theory.

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