A BLACKSTONIAN APPROACH TO INTERNATIONAL RELATIONS

At the close of a century that has witnessed two world wars and countless smaller conflicts, it is perhaps particularly appropriate to revisit the discussion of the morality of warfare. This discussion has been carefully avoided by many international relations theorists since the end of the Second World War. Contemporary scholars of war have tended to confine themselves to descriptive analyses of the causes of international armed conflict.[1] On the question of war's morality, modern scholars of world politics are relatively silent.[2] Those who have addressed the question have proposed rather unsatisfactory answers.[3] Most, however, simply ignore the question of the morality of war. The writings of this majority of theorists evince either a passive acceptance of war as part of the international system or an unexamined conviction that wars are to be avoided at all possible costs. Both of these views of war beg the moral question of whether war is ever justified and, if it is, under what circumstances it is justified.

To answer these questions, this note will turn to an author whose name does not appear in contemporary international relations literature

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[1] *See generally* JAMES E. DOUGHERTY & ROBERT L. PFALTZGRAFF, JR., CONTENDING THEORIES OF INTERNATIONAL RELATIONS: A COMPREHENSIVE SURVEY (3d ed. 1990) (discussing the development of international relations theory in the twentieth century).

[2] Recent scholarship in international relations concentrates on describing the causes of war without assessing whether any particular state action is moral. *See, e.g.*, BRUCE BUENO DE MESQUITA & DAVID LALMAN, WAR AND REASON: DOMESTIC AND INTERNATIONAL IMPERATIVES (1992); JIM GEORGE, DISCOURSES OF GLOBAL POLITICS: A CRITICAL (RE)INTRODUCTION TO INTERNATIONAL RELATIONS (1994); EDWARD D. MANSFIELD, POWER, TRADE, AND WAR (1994); THE USE OF FORCE: MILITARY POWER AND INTERNATIONAL POLITICS (Robert J. Art & Kenneth N. Waltz eds., 4th ed. 1993); DAVID W. ZIEGLER, WAR, PEACE, AND INTERNATIONAL POLITICS (5th ed. 1990).

[3] Michael Walzer simply avoids the ontological nature of morality in his book *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. Walzer writes:

> There is a particular arrangement, a particular view of the moral world, that seems to me the best one. I want to suggest that the arguments we make about war are most fully understood . . . as efforts to recognize and respect the rights of individual and associated men and women. The morality I shall expound is in its philosophical form a doctrine of human rights, though I shall say nothing here of the ideas of personality, action, and intention that this doctrine probably presupposes. . . . At every point, the judgments we make (the lies we tell) are best accounted for if we regard life and liberty as *something like* absolute values and then try to understand the moral and political processes through which these values are challenged and defended.

MICHAEL WALZER, JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS xxix-xxx (2d ed. 1992) (emphasis added). Walzer never explains what it means for life and liberty to be *something like* absolute values.

with regularity: Sir William Blackstone. While Blackstone addressed himself to an analysis of the common law of England, his *Commentaries on the Laws of England* provide both a law theory and a rights theory by which to evaluate the actions of states. These principles of law and rights provide significant insight into international relations in general and the question of the morality of armed conflict in particular. The arguments Blackstone articulated regarding individuals' inalienable right to life and the means by which that right may be forfeited can be applied to the international system in order to develop answers to the moral questions that war inevitably raises.

I. CURRENT INTERNATIONAL RELATIONS THEORY

Contemporary international relations is characterized by a dedication to the avoidance of controversial moral questions. One author has noted that the twentieth century in general has been "unfallow ground for normative international relations theory."[4] In prior centuries, normative questions were given much thought. Just war theory was a vital aspect of international relations as a whole, and this discussion of war's morality was led by Christian theologians.[5]

During much of the twentieth century, the dominant school of international relations has been realism (including realism's offspring, neorealism); realist and neorealist writings are still very influential as the century ends.[6] The realist conception of world politics is distinctly amoral and resistant to questions concerning when a state may rightfully (i.e., legitimately) fight another state.[7] Realism, briefly stated, rests upon the following four assumptions:

> (1) that nation-states, in a "state-centric" system, are the key actors; (2) that domestic politics can be clearly separated from foreign policy; (3) that international politics is a struggle for power in an anarchic environment; (4) that there are gradations of capabilities among

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[4] CHRIS BROWN, INTERNATIONAL RELATIONS THEORY: NEW NORMATIVE APPROACHES 8 (1992). Brown goes on to argue that the emphasis on empirical international relations has begun to abate in recent years and gives examples of this shift. *Id.* at 9-10.

[5] *See id.* at 132.

> The ethics of international violence is a subject dominated by a single notion, that of the 'just war.' . . . The origins of the notion are to be found in attempts by Christian theologians to come to terms with the implications of the dispersed nature of political power in medieval Christendom and, at a less theoretical level, in attempts by the Church as an institution to control the civil authorities by promulgating codes of conduct which restricted the tactics available and defined quite narrowly which such authorities were, in any event, entitled to make war.

Id. (footnote omitted).

[6] *See* DOUGHERTY & PFALTZGRAFF, *supra* note 1, at 81.

[7] *See id.* at 83.

> nation-states—greater powers and lesser states—in a decentralized international system of states possessing legal equality, or sovereignty.[8]

Realism emerged as a reaction against utopianism, a view of world politics with a "normative emphasis . . . [on] the possibility of transforming the nation-state system through international law and organization."[9] Realism rejects this conception of international relations and "posits that the prospects for effecting a dramatic and fundamental transformation in the international system are not great."[10] Additionally, realist interpretations of world politics assume "that moral principles in their abstract formulation cannot be applied to specific political actions. The statesman operates in an international environment that is distinguishable from the environment within the state by the absence of authoritative political institutions, legal systems, and commonly accepted standards of conduct."[11]

Neorealists accept the above assumptions of classical realism but depart from classical realists over the issue of what is the primary driving force of international relations. Classical realists posited that human nature drove world politics, but neorealists contend that it is the nature of the international system itself that determines the course of international relations.[12] According to neorealism's primary architect, Kenneth Waltz,

> [t]he structure of the system, notably the number of actors and their respective capabilities, shapes the patterns of interaction that will take place, including the number of states aligned with each other in opposing groupings as part of a balance of power. . . . In Waltz's perspective, international systems are transfigured by changes in the distribution of capabilities among its units.[13]

Neorealism claims to have "inject[ed] greater rigor into the realist tradition by defining key concepts more clearly and consistently, and

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[8] *Id.* at 81.

[9] *Id.* Utopians were, according to E.H. Carr, "intellectual descendants of eighteenth-century Enlightenment optimism, nineteenth-century liberalism, and twentieth-century Wilsonian idealism." *Id.* at 4. The utopians, unlike the realists, were very concerned with normative international relations questions. *See id.* They believed that "environing circumstances shape[d] human conduct and that such factors can be altered as a basis for transforming human behavior." *Id.* at 5. "In sharp contrast to realist theory, . . . utopianism holds that humankind is perfectible, or at least capable of improvement." *Id.* This latter tenet, of course, conflicts with the point of view of the Christian natural law school. Blackstone, who will be discussed in depth later in this note, represents this Christian natural law school well. He believed that man's reason is "corrupt, and his understanding full of ignorance and error." 1 WILLIAM BLACKSTONE, COMMENTARIES *41.

[10] DOUGHERTY & PFALTZGRAFF, *supra* note 1, at 81-82.

[11] *Id.* at 83.

[12] *See id.* at 120.

[13] *Id.* at 121.

developing a series of propositions that could be subjected to empirical testing and investigation."[14]

Realists and neorealists both purport to concern themselves primarily with the international system as it is.[15] Morality has a very small role to play in the international arena posited by the realists:

> Some realists dismiss the role of morals in politics at all levels, others are amoralist only in international relations. The characteristic position is that to be concerned with morals is likely to lead to a 'moralising' [sic] attitude to international affairs and this in turn is likely to lead to disaster. Prudence is the only virtue of the statesman. The important point here is the assumption that the alternative to the prudentialism of the realist is a universalist code in which principles of conduct appropriate to private life are applied inappropriately to international affairs.[16]

As a consequence of this disregard for morality (which could restrain state action), the realist world is consigned to the state of nature described by Thomas Hobbes: "a war of all against all."[17] Realists do not address whether this situation is moral. To them, that is a moral question outside the realm of international relations.

All of this is not to say that no attention has been paid to issues of morality. While realism may have been largely dominant in international relations theory during much of the century, it has been challenged. Some theorists have continued the search for a theory of just war. Michael Walzer's book, *Just and Unjust Wars*, represents one of the few recent scholarly attempts to revisit the morality of war in a detailed manner. Walzer, however, also stands outside the historical just-war tradition of the Christian natural law theorists. Unlike the early Christian theologians, Walzer does not ground his arguments in a fundamental law that transcends mankind. His book is concerned with "the practical question of what ought to be done in particular concrete circumstances."[18] Walzer is not concerned with the "epistemological

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[14] *Id.* at 119.

[15] "Realism validates itself by its claim to correspond to reality." BROWN, *supra* note 4, at 97.

[16] *Id.* (footnotes omitted).

[17] MARTIN WIGHT, INTERNATIONAL THEORY: THE THREE TRADITIONS 31 (Gabriele Wight & Brian Porter eds., 1992). Hobbes argued that a state of nature existed among those who had not formed a society through a social contract. *See id.* Since states have not formed a society through social contract with one another, then they must still be in a state of nature, and Hobbes's conception of the state of nature was very bleak. *See id.* To realists, then, "[i]nternational law is too nebulous and too constantly violated to be understood as more than a peacetime convenience of sovereign states. . . ." *Id.* at 32.

[18] BROWN, *supra* note 4, at 10.

status of ethical statements."[19] Consequently, there are questions Walzer leaves unanswered, the most vexing of which is why people should be concerned about just and unjust wars in the first place. If this ultimate question is never asked, then no system of practical morality will ever be complete and will necessarily degenerate into question-begging.

Walzer is not alone in his failure to confront the fundamental moral questions of what ontologically makes wars just or unjust. In *International Relations Theory: New Normative Approaches*, Chris Brown discusses the new deontological moral philosophy. This philosophy contends that there are "certain kinds of duties on, and rights of, individuals which are absolute."[20] However, these rights apparently exist in mid-air: "[T]he obvious objection to this way of thinking . . . is that there is no satisfactory account available of the ontological status of rights and duties. Why should we respect the rights of others when it is inconvenient to do so?"[21]

Brown goes on to discuss some answers to this question. He first turns to religion: "It is possible to imagine a theological answer to this question on the lines that it is God's will that we should behave in this way, or that all human beings have rights by virtue of being part of God's creation."[22] Brown then notes that the Roman Catholic natural-law tradition provides a potential answer to the crucial ontological question.[23] The consequences of adopting a theological answer to the question of morality are too risky, however: "[T]he theologian's answer to this question is only compelling if the major premise is acceptable, which for many it will not be."[24] Here, then, as in Walzer, a fundamental question is avoided and left unanswered. Brown has confronted the ultimate issue upon which a theory of just war depends and has backed away from it because many will not find the major premise acceptable.

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[19] *Id.* This epistemological question is crucial, however. Without knowing (or, at least, theorizing about) how we know what is right and wrong, how is it possible to construct a theory of just war? Walzer simply avoids this issue:

> I am not going to expound morality from the ground up. Were I to begin with the foundations, I would probably never get beyond them; in any case, I am by no means sure what the foundations are. The substructure of the ethical world is a matter of deep and apparently unending controversy. Meanwhile, however, we are living in the superstructure. . . . This is a book of practical morality.

WALZER, *supra* note 3, at xxix. This quotation illustrates why the few moral discussions in contemporary international relations are so unsatisfactory: they simply give up on the question of why certain actions are right or wrong.

[20] BROWN, *supra* note 4, at 91. Deontology roughly denotes the type of moral philosophy employed by Walzer.

[21] *Id.* at 93.

[22] *Id.*

[23] *See id.*

[24] *Id.*

As possible substitutes for the natural law, Brown offers conventionalism and naturalism.[25] Conventionalism holds that "human rights are the product of convention and . . . [are] binding."[26] Morality then becomes merely what everyone can agree upon. This answer, of course, once again begs the question of why human conventions are binding on any particular person. Conventionalism is a very weak foundation upon which to build a theory of just war. There seems to be no more unassailable convention of world history than that states routinely engage in ruinous warfare against each other. Conventionalism does not suffice to justify either this practice or any other. Brown states, however, that this may be "the best available" argument after having summarily dismissed a natural-law answer that did not engage in question-begging but rather posited the existence of a supernatural Being whose dictates must be obeyed.[27]

Naturalism is the other possible source of rights and duties identified by Brown. Naturalism traces back to Aristotle and avers that there are "natural qualities of human beings—the 'virtues'—which are both objectively discernible and the basis for moral judgment."[28] As in the case of deontology and conventionalism, crucial questions are left unanswered: 1. From whence do these natural qualities come? and 2. How can these natural qualities be discerned? By ignoring this latter question, Brown commits the same error as Walzer: he ignores epistemology. There is no account given of how any of these qualities of morality can be known.

The theological, natural-law answer mentioned by Brown does not commit the logical fallacies involved in these other approaches. While it is beyond the scope of this note to engage in extended apologetics, it seems apparent that by positing the existence of a supernatural Deity outside the natural world who prescribed laws both physical and moral to govern that world, the Roman Catholic natural lawyers avoided the problem of relativism that plagues deontology and conventionalism. The Roman Catholic natural law tradition also provided a basis for the natural qualities discussed by Aristotle and a way in which they could be known. It is in this natural law tradition that one finds William Blackstone. It is now the task of this note to examine the answers he can provide to the question of when wars may be fought in justice.

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25 *See id.* at 93-95.

26 *Id.* at 93.

27 *Id.*

28 *Id.* at 94 (citation omitted).

II. A BLACKSTONIAN VIEW OF INTERNATIONAL RELATIONS

A. Blackstone's Discussion of International Relations

William Blackstone's *Commentaries on the Laws of England* contain little direct analysis of international relations. Part of Blackstone's analysis, however, concerns offenses against the law of nations and will be helpful in developing a general Blackstonian approach to international relations. These offenses against the law of nations will be addressed after a discussion of Blackstone's writings regarding the king's prerogative.

The only significant discussion of international relations concerns in Blackstone's *Commentaries*, other than his analysis of offenses against the law of nations, is an analysis of the king's prerogative in regard to foreign affairs. In analyzing the king's prerogative under the English constitution, Blackstone in the first book of the *Commentaries* notes the primacy of the monarch in foreign affairs.[29] This analysis is arguably more related to domestic political arrangements than to international relations itself and does not lead one closer to a Blackstonian natural law understanding of international relations and just war.

The fourth book of the *Commentaries*, however, contains an interesting chapter concerning "offences [sic] against the law of nations."[30] In this chapter, Blackstone writes,

> The law of nations is a system of rules, deducible by natural reason, and established by universal consent among the civilized inhabitants of the world; in order to decide all disputes, to regulate all ceremonies and civilities, and to insure the observance of justice and good faith, in

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[29] *See* 1 BLACKSTONE, *supra* note 9, at *252-66.

> [T]he king has the sole prerogative of making war and peace. For it is held by all the writers on the law of nature and nations, that the right of making war, which by nature subsisted in every individual, is given up by all private persons that enter into society, and is vested in the sovereign power . . . .

Id. at *257. Blackstone's discussion of the power of the monarch in foreign affairs has been extensively discussed. *See, e.g.*, Louis Fisher, *Presidential Independence and the Power of the Purse*, 3 U.C. DAVIS J. INT'L L. & POL'Y 107, 108 (1997); David I. Lewittes, *Constitutional Separation of War Powers: Protecting Public and Private Liberty*, 57 BROOK. L. REV. 1083, 1115-16 (1992); Robert F. Turner, *The Constitution and the Iran-Contra Affair: Was Congress the Real Lawbreaker?*, 11 HOUS. J. INT'L L. 83, 93 (1988); John C. Yoo, *The Continuation of Politics by Other Means: The Original Understanding of War Powers*, 84 CAL. L. REV. 167, 202-3 (1996); Jonathan E. Ladd, Note, *Negotiating With the Palestinian Liberation Organization: Presidential Prerogative or Congressional Control?*, 57 GEO. WASH. L. REV. 732, 737 (1989).

[30] 4 BLACKSTONE, *supra* note 9, at *66.

> that intercourse which must frequently occur between two or more independent states, and the individuals belonging to each.[31]

Since there is no judge to which to appeal in conflicts between nations, the nations can only appeal to "the law of nature and reason, being the only one in which all the contracting parties [to international rules, agreements, and treaties] are equally conversant, and to which they are equally subject."[32] Thus, the law of nations corresponds to the law of nature except as modified by international agreements made pursuant to the law of nature.[33]

Blackstone argued that the law of nations was part of the common law of England for the purpose of punishing offenses against the law of nations committed within the common law's jurisdiction.[34] These offenses included violation of safe-conducts, infringement of the rights of ambassadors, and piracy.[35] Blackstone's apparent reason for this discussion of the law of nations was to discuss how offenses against the law of nations could be punished under the common law by the English courts. He does not lay out a comprehensive international relations theory, although it seems clear that he believed that nations were in a state of nature in reference to one another.[36]

Blackstone does not address offenses against the law of nations by states themselves in any great detail because these offenses "can rarely be the object of the criminal law of any particular state [except for the three offenses discussed above]."[37] When states violate the law of nations, the only answer is war:

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[31] *Id.*

[32] *Id.* at *67.

[33] The correspondence Blackstone sees between the law of nations and the law of nature has been noted by various authors. *See, e.g.*, Louis Rene Beres, *Why and How Saddam Must Be Punished: A Jurisprudential/Philosophic Explanation*, 75 U. DET. MERCY L. REV. 667, 679 (1998); Curtis A. Bradley, *The Charming Betsy Canon and Separation of Powers: Rethinking the Interpretive Role of International Law*, 86 GEO. L.J. 479, 509-10 (1998); Andrew Lenner, *Separate Spheres: Republican Constitutionalism in the Federalist Era*, 41 AM. J. LEGAL HIST. 250, 255 (1997). These authors do not, however, address the substance of the law of nature and use Blackstone primarily as a historical reference.

[34] "[T]he law of nations (wherever any question arises which is properly the object of it's [sic] jurisdiction) is here [in England] adopted in it's [sic] full extent by the common law, and is held to be a part of the law of the land." 4 BLACKSTONE, *supra* note 9, at *67.

[35] *See id.* at *68.

[36] *See id.* at *67.

[37] *Id.* at *68. Blackstone laid out the process to be followed by a state when an individual violated the law of nations:

> But where the individuals of any state violate this general law, it is then the interest as well as duty of the government, under which they live, to animadvert upon them with a becoming severity, that the peace of the world may be maintained. For in vain would nations in their collective capacity observe these universal rules, if private subjects were at liberty to

> [O]ffenses against [the law of nations] are principally incident to whole states or nations: in which case recourse can only be had to war; which is an appeal to the God of hosts, to punish such infractions of public faith, as are committed by one independent people against another: neither state having any superior jurisdiction to resort to upon earth for justice.[38]

This quotation raises the question of what constitutes an offense against the law of nations. If an offense against the law of nations, in Blackstone's conception of that law, corresponds to an offense against the law of nature, then an offense against the law of nations can be determined by an analysis of what Blackstone conceived as an offense against the law of nature.

B. Offenses Against the Law of Nature

If nations are in a state of nature with respect to one another, as Blackstone's depiction of the law of nations leads one to believe, then it is appropriate to analogize to the individual in the state of nature in order to deduce those offenses a state may commit against the law of nature. This analogizing from the individual-level to the state-level is not novel in the field of international relations. International relations theorists often have analogized from the individual in the state of nature to the nation in a state of nature.[39] A description of how an individual may commit an offense against the state of nature is necessary at this point.

Blackstone's state of nature is not the anarchic war of all against all described by Hobbes.[40] Rather, the state of nature is governed by the law of nature; this law of nature is the will of man's maker, God.[41] This law of

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> break them at their own discretion, and involve the two states in a war. It is therefore incumbent upon the nation injured, first to demand satisfaction and justice to be done on the offender, by the state to which he belongs; and, if that be refused or neglected, the sovereign then avows himself an accomplice or abettor of his subject's crime, and draws upon his community the calamities of foreign war.

Id.

[38] *Id.*

[39] As Kenneth Waltz wrote,

> The social contract theorist, be he Spinoza, Hobbes, Locke, Rousseau, or Kant, compares the behavior of states in the world to that of men in the state of nature. By defining the state of nature as a condition in which acting units, whether men or states, coexist without an authority above them, the phrase can be applied to states in the modern world just as to men living outside a civil state.

KENNETH WALTZ, MAN, THE STATE AND WAR: A THEORETICAL ANALYSIS 172-73 (1959).

[40] *See supra* note 17 and accompanying text.

[41] *See* 1 BLACKSTONE, *supra* note 9, at *39.

nature is "binding over all the globe, in all countries, and at all times . . . ."[42]

Law, according to Blackstone, has two principal objects: rights and wrongs.[43] In order to achieve an understanding of wrongs, one must first understand rights. Since this note is concerned with the state of nature, only those rights possessed in the state of nature will be addressed. There are only absolute rights in the state of nature, according to Blackstone.[44] These rights are vested by the "immutable laws of nature"[45] and may be "denominated the natural liberty of mankind."[46]

One of the rights "inherent by nature in every individual"[47] is the right to life. The right to life shall be the focus of this note's inquiry. Life cannot be "legally disposed of or destroyed by any individual, neither by the person himself nor by any other of his fellow-creatures, merely upon their own authority."[48] However, the right to life can be forfeited through a violation of the law of nature.[49] In Blackstone's discussion of this forfeiture, he is careful to point out that, at least in England, this forfeiture can only be determined through due process of law.[50]

To return the discussion to an international relations context, it seems safe to assert that a nation's right to continued independent existence (i.e., its sovereignty) roughly corresponds to the individual's right to life. While this analogy is not perfect, it allows one to analyze how a nation might lose its right to a sovereign existence. If a person must commit a *malum in se* act before forfeiting his right to life, then a state must commit a similar act before losing its right to continued existence.

A person commits a *malum in se* act when he violates the law of nature.[51] These acts, if committed by an individual, include murder,

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[42] *Id.* at *41.

[43] *See id.* at *122.

[44] *See id.* at *123. "By the absolute *rights* of individuals we mean those which are so in their primary and strictest sense; such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy, whether out of society or in it." *Id.* (emphasis in original).

[45] *Id.* at *124.

[46] *Id.* at *125.

[47] *Id.* at *129.

[48] *Id.* at *133.

[49] *See id.* "[N]o human legislature has power to abridge or destroy [the natural rights of life and liberty], unless the owner shall himself commit some act that amounts to a forfeiture." *Id.* at *54. Since a forfeiture is defined by Blackstone as a violation of the law of nature, the forfeiture must be committed through a *malum in se* act. *Id.*

[50] *See id.* at *133-34. Due process of law is a "fourteenth-century English phrase meaning natural law." HAROLD J. BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION 12 (1983). This reinforces the idea that one must commit a *malum in se* act before one can forfeit one's right to life.

[51] *See* 1 BLACKSTONE, *supra* note 9, at *54.

theft, and perjury.[52] In a state of nature, the individual is vested with the power of punishing crimes.[53] Since individual states are in a state of nature in the global system, each possesses an equal authority to punish infringements of the law of nations/nature.[54]

The analogs of these individual *mala in se* acts at the international level, while perhaps not readily apparent, can be deduced. A possible international relations analog of murder is state-murder. State-murder would be the unjustified invasion and destruction of another sovereign state by an aggressor state. Attempted state-murder could be an invasion that does not result in the destruction of the invaded state, but this attempted state-murder could consist in something less than an invasion. A particularly relevant contemporary concern in this area would be state-sponsored terrorism. Since state-sponsored terrorism aims to influence another nation's policies by attacking citizens of that nation, such action may justly be considered an infringement of the other nation's sovereignty (i.e., right to continued independent existence). In a Blackstonian conception of international relations, such acts would result in the aggressor state's forfeiture of its right to sovereignty. A state would then be justified in declaring and making war on an aggressor state.

The international relations analog of theft is somewhat more difficult to discern. An analog of theft may be piracy. Piracy was actually discussed by Blackstone as one of the offenses against the law of nations.[55] Piracy, as defined by Blackstone, consisted in "committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there."[56] For purposes of analysis at this point, only state-sponsored piracy shall be considered. State-sponsored piracy would be a violation of the law of nations/nature. However, it is unclear whether participation in piracy would result in a nation's forfeiture of its right to continued independent existence/sovereignty. A case could be made that continued acts of piracy would result in such a forfeiture and would justify a victim of state-sponsored piracy to take up arms against the piratical state.

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[52] *See id.*

[53] *See* 4 *id.* at *7.

> It is clear, that the right of punishing crimes against the law of nature, as murder and the like, is in a state of mere nature vested in every individual. For it must be vested in somebody; otherwise the laws of nature would be vain and fruitless, if none were empowered to put them in execution: and if that power is vested in any *one*, it must also be vested in *all* mankind; since all are by nature equal.

Id.

[54] *See supra* text accompanying note 38.

[55] *See* 4 BLACKSTONE, supra note 9, at *71-73.

[56] *Id.* at *72.

The last offense against the law of nature to be considered is perjury. Perjury is a "false statement knowingly made in a proceeding in a court of competent jurisdiction or concerning a matter wherein an affiant is required by law to be sworn as to some matter material to the issue or point in question."[57] An analog of perjury at the international level might be the misrepresentation of material facts in the negotiation of an international pact; dishonesty in carrying on foreign relations in general might also closely correspond to the general idea of perjury although foreign relations may not typically be conducted under oath. Once again, as in the case of piracy, it is doubtful that a Blackstonian approach to international relations would justify war in the case of a single act of dishonesty. A train of untrustworthiness and deception on the part of a member of the world community might, however, provide cause for some kind of military reprisal by other states.

The difficulties encountered in considering each of these violations of the law of nations/nature concern the appropriate response to the violations. While a certain state action may be characterized as a violation of one of the laws of nations/nature, this does not necessarily mean that war is an appropriate response. The state may have forfeited some right, but this might not be its right to continued independent existence/sovereignty. Since war is seemingly analogous to capital punishment, Blackstone's comments regarding the appropriateness of the death penalty on the individual level are helpful.

Blackstone was concerned about the imposition of the death penalty for offenses other than those for which Scripture had prescribed the death sentence.[58] He did not believe that the death penalty should be lightly imposed:

> The practice of inflicting capital punishments, for offences [sic] of human institution, is thus justified by that great and good man, Sir Matthew Hale: "when offences [sic] grow enormous, frequent, and dangerous to a kingdom or state, destructive or highly pernicious to civil societies, and to the great insecurity and danger of the kingdom or it's [sic] inhabitants, severe punishment and even death itself is necessary to be annexed to laws in many cases by the prudence of law-givers." It is therefore the enormity, or dangerous tendency, of the

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[57] BLACK'S LAW DICTIONARY 1139 (6th ed. 1990).

[58] *See* 4 BLACKSTONE, *supra* note 9, at *9.

> With regard to offenses *mala in se*, capital punishments are in some instances inflicted by the immediate *command* of God himself to all mankind; as, in the case of murder, by the precept delivered to Noah, their common ancestor and representative, "whose sheddeth man's blood, by man shall his blood be shed." . . . But they are sometimes inflicted without such express warrant or example, at the will and discretion of the human legislature; as for forgery, for theft, and sometimes for offences [sic] of a lighter kind.

Id.

> crime, that alone can warrant any earthly legislature in putting him to death that commits it.[59]

Thus, a state's infractions of the law of nature must be serious and tend towards danger in order for force used against it to be justified.

In the case of state-murder or attempted state-murder, the appropriateness of the use of force is clear. Since Blackstone viewed capital punishment for murder as part of God's law,[60] war against an aggressor state is justified, whether the aggression be invasion or state-sponsored terrorism that takes lives. This is the easy case.

A more difficult case is presented by the state that engages in piracy or dishonesty. This seems to fall more under the category of offenses identified by Blackstone as requiring "enormity, or dangerous tendency."[61] The nation that wishes to go to war against a nation engaging in these types of offenses must clearly establish a train of abuses before the use of force could be justified under a Blackstonian analysis. The clear lesson of Blackstone is that violence, whether at the domestic or international level, should not be embarked upon lightly:

> To shed the blood of our fellow creature is a matter that requires the greatest deliberation, and the fullest conviction of our own authority: for life is the immediate gift of God to man; which neither he can resign, nor can it be taken from him, unless by the command or permission of him who gave it; either expressly revealed, or collected from the laws of nature or society by clear and indisputable demonstration.[62]

III. A BLACKSTONIAN ANALYSIS OF THE AMERICAN BOMBING OF SUDAN AND AFGHANISTAN

To conclude this discussion of Blackstonian principles in the international relations arena, it is appropriate to apply these principles to an actual international incident. The American attack on Sudan and Afghanistan in August 1998 in response to the terrorist bombing of American embassies in East Africa will now be analyzed according to the principles discussed above.

On August 20, 1998, the United States attacked paramilitary training camps in Afghanistan and a pharmaceutical plant in Sudan; President Clinton described these attacks as responses to earlier bombings of U.S. embassies in Africa.[63] The target of the strikes was a "stateless confederation of terrorist groups, without strict hierarchy,

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59 *Id.* at *9-10.

60 *See id.* at *9.

61 *Id.*

62 *Id.* at *11.

63 *See* Barton Gellman & Dana Priest, *U.S. Strikes Terrorist-Linked Sites in Afghanistan, Factory in Sudan*, WASH. POST, Aug. 21, 1998, at A1.

government or territory."[64] Shortly after the attack, the Sudanese Interior Minister Abdel Rahim Mohammed Hussein told the Cable News Network that "the destroyed facility was 'a factory for medical drugs' [not a chemical weapons plant as the U.S. alleged]."[65]

The Sudan bombing quickly became highly controversial. As the days passed after the bombing, evidence began to surface that the U.S. Administration's evidence regarding the alleged chemical weapons plant may not have been very compelling. Sudan allowed journalists to investigate the bombed-out factory; they discovered that the factory—"whatever else it was doing—made urgently needed medicines for a desperately poor country."[66] State Department spokesman James Foley had to admit that the "facility very well may have been producing pharmaceuticals."[67] The Administration's defense of the strike consisted mainly in a soil sample taken at the plant site that indicated the presence of a chemical that serves as a precursor for VX nerve gas.[68] The Administration's evidence was persuasive though not definitive, according to Jonathan Tucker, a chemical weapons expert at the Center for Nonproliferation Studies of the Monterey Institute of International Studies: "'There are a lot of questions about the soil sample: Where was it taken? Who took it? The chain of custody of the sample' to ensure that it wasn't contaminated."[69]

Were these strikes against Afghanistan and Sudan justified? According to the Blackstonian principles discussed above, this is very doubtful. First, the U.S. did not attack the governments of Afghanistan and Sudan; it instead attacked sites of alleged terrorist activities within those nations. This raises a critical problem Blackstone directly addressed.[70] If the terrorists were residents of Afghanistan and Sudan, as the U.S. alleged, it was "incumbent upon the nation injured [in this case, the U.S.], first to demand satisfaction and justice to be done on the offender, by the state to which he belongs. . . ."[71] Even assuming that U.S. actions fulfilled this requirement, the next steps American officials took were not those prescribed by Blackstone. Blackstone argued that, if the state to which the offender belonged did not punish him, then the

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64 *Id.*

65 *Id.*

66 Karl Vick, *U.S., Sudan Trade Claims on Factory; Washington Cites Toxin in Soil Sample*, WASH. POST, Aug. 25, 1998, at A1.

67 *Id.*

68 *See* Terry Atlas & Ray Moseley, *'Smoking Gun' for Sudan Raid Now in Doubt*, CHI. TRIB., Aug. 28, 1998, at 1.

69 *Id.*

70 *See supra* note 37.

71 4 BLACKSTONE, *supra* note 9, at *68.

injured state should go to war with the offender's state.[72] The U.S. did not do this. Rather, the U.S. carried out a strike best characterized as a police action; it conducted war-like activities without assuming the full responsibilities of war. Blackstonian principles leave no room for this. These principles require a nation to count the cost of war before engaging in hostilities.

The United States did not count the cost of war. It chose instead to act as a policeman in a territory outside its jurisdiction. In the case of the Sudan, the U.S. did this based on the less-than-convincing evidence of a soil sample. Even if Afghanistan and Sudan were defiantly refusing to bring known terrorists to justice (a basis that was not used by the U.S. as a justification for the strikes), the U.S. acted precipitately. In the England of Blackstone's day, due process of law was required before life could be taken.[73] Nations should apply this principle to the international arena and refuse to violate the sovereignty of another nation without first seriously considering whether such action is justified. The cost must be counted: the destiny of nations and the fate of individual human lives depend upon this reckoning.

V. CONCLUSION

As previously demonstrated,[74] current theory in the field of international relations has cut the moorings to its heritage in the Christian idea of the law of nations/nature. Without a normative basis for addressing questions of international relations, the world almost necessarily is left at the mercy of the state with the most guns. No reasonable person would want to live in such a world. Therefore, an alternative to contemporary international relations thought is needed.

The principles contained in William Blackstone's *Commentaries on the Laws of England* provide an alternative to the tunnel vision of modern international relations theory. Only by founding this theory on a sure foundation of enduring principle can there be a hope for true peace. Everything else is shifting sand.

The principal lesson of Blackstone is that the rights of states, like the rights of persons, should not be treated lightly. Before going to war, a state must be convinced that another state is an aggressor who, through its violation of the laws of nations/nature, has forfeited its right to continued independent existence/sovereignty. Only in this way can the deaths of those who will fight in the war to punish an aggressor be justified. "To shed the blood of our fellow creature is a matter that requires the greatest deliberation, and the fullest conviction of our own

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72 *See id.*

73 *See supra* note 50 and accompanying text.

74 *See supra* Part I.

authority. . . ."[75] Because nations are sovereign entities and because human life is precious, no military action should be taken without a strong conviction of justification. Any action taken without this fullest conviction of authority is merely an exercise of brute force and can justly be repelled. If state leaders can be brought to an understanding of this principle, they hopefully will consider more fully the heavy responsibility that rests on their shoulders when they commit troops to military action. Perhaps then the world of the twenty-first century can be spared some of the horror of the twentieth.

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[75] 4 BLACKSTONE, *supra* note 9, at *11.