

CONCEPTS OF JUST WAR. By Yehuda Melzer. Leyden: Sijthoff. 1975. Pp. X and 190.

The events at Entebbe airfield in July 1976, as well as the contentions of national liberation movements as to the rightness of their recourse to military action, have revived interest in the question when a state may or may not apply force, regardless of the provisions of the United Nations Charter or the contention that only the United Nations is able to wage a just war. This modern aspect of the problem is the basis of Dr. Melzer's monograph on *Concepts of Just War*, with the historical development of *bellum justum* being "only referred to and not systematically exposed" (p. 4). The author declines to discuss nuclear warfare in its relation to just war, for "when faced with the contingencies of the bureaucratic killing of tens of millions, our moral institutions—the only way to somehow anchor our judgment—deter us. We are then left with nothing substantive, merely preaching statements of moral revulsion or, alternatively, the vague talk of theoretical courage to think the unthinkable" (p. 5).

Perhaps the chief point that emerges from this study is one that is made by the author right at the beginning—the question of 'justness' depends upon one's ethical and moral principles, and the ethical system within which they develop (p. 14). Despite this, Dr. Melzer insists that the whole positive law which is relevant to his analysis is the Charter, so that 'just' and 'unjust' become 'legal' and 'illegal' (p. 17). But it is perhaps difficult to apply such terms with any sense of realism or value when one recalls that decisions of the United Nations are made by politicians on political issues as dictated by their governments for political reasons—hardly a way of deciding lawfulness. To some extent the position is redeemed: "The reason we do not know what a legally justified war is, is not that we do not know how to read the Charter (or have confusions about the definition of aggression). Rather the inverse. We do not know how to read (or rewrite) the Charter because we are in no position to settle our basic ethical and political disagreements as to what are the circumstances which justify resort to war. There is ground to suspect, moreover, that this is why room was left in the Charter for conflicting interpretations" (pp. 36-7).

Dr. Melzer draws attention to the logicity of the argument that once it is agreed that a belligerent, especially if that be oneself, is waging a just war, then obviously there can be no rules of war operating to protect his opponent (pp. 58-9), but Nuremberg has shown that even war criminals are entitled to justice and a fair trial (p. 61). Moreover, evidence abounds that even those convinced of the justice of their cause are still prepared to restrict the freedom of action of their own forces. Nuremberg also indicates that while municipal legality provides no defence against a charge of international criminality, it does show that "an act which constitutes a crime under internal law does not make an individual liable *unless* it constitutes a crime under international law as well" (p. 64)—a point that was apparently glossed over in the Angola mercenaries trial. While this aspect of Nuremberg has some significance from the point of view of 'just war', it is somewhat difficult to appreciate why the learned author has gone into such detail (pp. 57-105) on the Nuremberg Principles, for these do in fact seem hardly relevant, especially after one has dismissed the argument that since there is no *jus ad bellum* there can be no *jus in bello*, unless one assures that the

criminality of aggressive war as defined at Nuremberg is of such relevance to the concept of 'unjust' war (pp. 93-7) that all of the Principles become relevant. On the other hand, these Principles become more significant for *Concepts of Just War* if one concedes that, as a result of militancy necessity, criminal activities are indulged in during the war which, by their quantity and kind, convert what might have begun as a legal war into an unjust one (p. 93).

In addition to the lengthy discussion of the Nuremberg Principles, Dr. Melzer has an almost equally detailed analysis of pacifism in its various philosophical manifestations. Here, too, the reviewer finds the connection with *Concepts of Just War* a little vague, unless one acknowledges that the author was not really concerned with what his title implies, but that writing in the American atmosphere of Vietnam his purpose was to analyse the contentions of those who refused to fight or who condemned the posture of the United States on the basis of an illegal war. He does, however, in seeking to refute what may be called absolute pacifism, refer to Nazism and the Second World War. He argues that "underlying the pacifist position is the assumption that the alternative to the killings of war may be very bad indeed, but not as bad as the war. The Nazis denied that choice. Since for some human groups, practically and in Nazi theory, no way of life, however poor, and no place for life, however remote, was available, then the pacifist must either accept fighting or deny that other groups are his concern" and he concludes that they have "not even a very bad alternative open to them other than fighting" (pp. 144-5). In other words, since force against Nazism is just, then the pacifist must take part in that just war. But this, surely, denies the possibility that for the pacifist even to wage a 'just' war may in fact be 'unjust' and must thus be rejected.

Regardless of his actual concern with the problem of the justness of war, Dr. Melzer makes an interesting point on the relation between means and end: "Whenever an end for a war is defined simply in terms of survival, it is not clear how restrictions on means are possible. But what frequently happens in modern wars is not that; what happens most of the time is that initially narrow ends are redefined to again make proportional the use of means which look out of all proportion to the initial ends" (p. 171). This view lends support to his argument that the justness of war should be looked at from the point of view of its initiation, of its conduct and of the attitude of the citizenry (p. 172). It is unfortunate that the style is complex, and is frequently aggravated by misprints and convoluted statements that do not always amount to proper English sentences.

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