

ISTANBUL BILGI UNIVERSITY  
INSTITUTE OF SOCIAL SCIENCES  
POLITICAL SCIENCE PHD PROGRAM

A FEMINIST CRITIQUE OF JUST WAR TRADITION

Yakup Ceki Bilmen

112802011

Thesis Supervisor: Prof. Dr. Pınar Uyan Semerci

ISTANBUL  
2018

A Feminist Critique of Just War Tradition  
Haklı Savaş Geleneğinin Feminist Bir Eleştirisi

Yakup Ceki Bilmen

112802011

Tez Danışmanı: Prof. Dr. Pınar Uyan Semerci.....  
İstanbul Bilgi Üniversitesi

Jüri Üyesi: Yrd. Doç. Dr. Mehmet Ali Tuğtan.....  
İstanbul Bilgi Üniversitesi

Jüri Üyesi: Doç. Dr. Yelda Yücel.....  
İstanbul Bilgi Üniversitesi

Jüri Üyesi: Doç. Dr. Alper Kaliber.....  
Altınbaş Üniversitesi

Jüri Üyesi: Doç. Dr. Senem Aydın Düzgit.....  
Sabancı Üniversitesi

Tezin Onaylandığı Tarih: 8 Ocak 2018

Toplam Sayfa Sayısı: 335

Anahtar Kelimeler (Türkçe)

- 1) Haklı Savaş Geleneği
- 2) Feminizm
- 3) Cinsiyet
- 4) Yahudi-Hristiyan Geleneği
- 5) Batı Felsefesi

Anahtar Kelimeler (İngilizce)

- 1) Just War Tradition
- 2) Feminism
- 3) Gender
- 4) Judeo-Christian Tradition
- 5) Western Philosophy

## Preface

I believe to dedicate a certain period of one's time to a study like this, induces one to ponder certain questions. I am still grappling with the question of to what extent this thesis is a product of mine or the product of the circumstances that I have found myself in. Unlike millions of smart and talented people in Turkey who were less fortunate than me, I found myself in this world to be born in to an urban middle class family which has the means and the will to finance my education and provided me with the means to satisfy my needs so I can concentrate on my studies uninterrupted. Unending discussions between Foucault and Sartre regarding if the agent or the structure plays the decisive part in existence and if it is the greatest of all anthropocentric fallacies to define "human beings" as *the* beings with their actions who can bring meaning to an ultimately meaningless world, are still at play to find the answers to the question I mentioned above.

But I believe the period I have spent for writing this thesis, especially focusing on groups of women who, in different ways, found themselves in situations which are quite unfortunate and tragic, had only exacerbated my own pessimistic understanding of justice and led me closer to the famous saying of Fyodor Dostoyevsky that "I swear to you gentlemen, that to be overly conscious is a sickness, a real, thorough sickness.". However, the bright side of this study for me was the opportunity that I have found to reanalyze the clichés of realism when I was concentrating on its similarities with the Just War Tradition. As a student of politics, thinkers like Thucydides, Morgenthau, Waltz or Machiavelli were like demigods for me, who were uttering the words of wisdom for the benefit of "humanity". But once, the word "humanity" is subjected to a more thorough analysis, its façade simply tattered and for whose interests, certainly not for the interests of many groups of women, these words of "wisdom" has been uttered is revealed.

I should also mention that it would not be possible for me to finish this thesis without the support of several people. First and foremost, I would like to thank my thesis advisor Prof. Dr. Pınar Uyan Semerci and the jury members Yrd. Doç. Dr. Mehmet Ali Tuğtan and Doç. Dr. Yelda Yücel for all their support in this process. I also would like to thank my wife Karen Bilmen for all her understanding since for a long period of time I have dedicated long hours to this study and she was always there to patiently support me in this process. Finally, I would like to thank my mother Fortüne Maya, my brother Avi Bilmen and my uncle Marko Maya for all their support and encouragement for me to pursue more education.

## CONTENTS

|  |     |
|--|-----|
| INTRODUCTION.....  | 1   |
| 1. JUS AD BELLUM PRINCIPLES AND THEIR FEMINIST CRITIQUE....  | 46  |
| 1.1 JUST CAUSE.....  | 46  |
| 1.2 LEGITIMATE AUTHORITY.....  | 56  |
| 1.3 RIGHT INTENTION.....   | 67  |
| 1.4 LAST RESORT.....   | 71  |
| 1.5 INTELLECTUAL FRAMEWORK.....  | 74  |
| 1.5.1 Favoritism for State and Social Order.....   | 75  |
| 1.5.2 Invoking the Concept of Family.....  | 89  |
| 1.5.3 Anarchy, Insecurity, State and Androcentric<br>Language and Construction of Female Body..... | 92  |
| 1.5.4 Dualistic Thinking inherited from Western<br>Philosophical Tradition.....                    | 109 |
| 1.5.5 Natural Law Tradition and Dualistic Thinking.....  | 119 |
| 1.5.6 Human Nature and Abstract Thinking.....  | 126 |
| 1.5.7 Religious Influences.....  | 130 |
| 1.6 MILITARY AS THE ARM OF LEGITIMATE<br>AUTHORITY.....  | 140 |
| 1.7 MILITARY AS THE DISSEMINATOR OF MASCULINIST<br>VALUES.....                                     | 145 |
| 1.8 CHIVALRIC TRADITION AND STATE.....   | 154 |
| 1.9 THE LEGITIMATE AUTHORITY: MISOGYNIST<br>STATE.....   | 157 |
| 1.10 RIGHT INTENTION, DOUBLE EFFECT AND THE SELF<br>RELIANT MAN.....                               | 166 |
| 1.11 LAST RESORT AS A LIP SERVICE.....   | 172 |
| 1.12 JUST CAUSE AS THE GUARDIAN OF SOCIAL<br>ORDER.....  | 175 |
| 2 JUS IN BELLO PRINCIPLES AND THEIR FEMINIST CRITIQUE.....   | 182 |
| 2.1 RIGHT CONDUCT.....   | 182 |
| 2.2 PROPORTIONALITY OF MEANS AND NET BENEFIT.....  | 189 |
| 2.3 DISCRIMINATION.....  | 195 |
| 2.4 THE CONCEPT OF HONOR AND THE RIGHT CONDUCT .....   | 202 |
| 2.5 THE JUST WARRIORS.....   | 209 |
| 2.6 THE PRINCIPLE OF DISCRIMINATION AND GENDER<br>ROLES.....                                       | 212 |
| 3 JUS POST BELLUM PRINCIPLES AND THEIR FEMINIST CRITIQUE....                                       | 231 |
| 3.1 JUS POST BELLUM PRINCIPLES.....  | 231 |

|   |     |
|---|-----|
| 3.2 HUMANITARIAN INTERVENTION FOR STABLE JUS POST BELLUM PHASE.....       | 242 |
| 3.3 PROBLEMS OF DUALISTIC WORLD VIEW AND THE REDEFINITION OF WAR.....     | 251 |
| 3.4 REDEFINITION OF JUS POST BELLUM PRINCIPLES AND INTERNATIONAL LAW..... | 262 |
| 3.5 THE ISSUE OF VIOLENCE AND HUMANITARIAN INTERVENTION REDEFINED.....    | 267 |
| 3.6 PATRIARCHY IN JUS POST BELLUM PERIOD.....                             | 281 |
| 3.7 RE-EVALUATION OF TRADITIONALLY ACCEPTED CONCEPTS.....                 | 290 |
| 3.8 PEACE AGREEMENTS.....   | 294 |
| 3.9 PATRIARCHY AND GENDER ROLES.....                                      | 296 |
| 3.10 MILITARY AND MILITARISM IN JUS POST BELLUM PERIOD.....               | 306 |
| CONCLUSION.....   | 309 |
| BIBLIOGRAPHY.....   | 321 |

## Abstract

This thesis analyzes the Just War tradition from a feminist perspective. The main hypothesis of this thesis is that the Just War tradition, both directly and indirectly, lends its support to the social, political and philosophical ideas and practices that subordinate women in their societies. To arrive such a conclusion, this study analyzes three different phases of the Just War cannon; *jus ad bellum*, *jus in bello* and *jus post bellum* and makes a feminist critique of each phase. The concepts; just cause, legitimate authority, right intention, last resort, right conduct, proportionality of means and net benefit and discrimination, that are employed by the Just War thinkers to gauge if a war is just or not are analyzed within the context of gender. As a tradition, that is basing its arguments on moral foundations, Just War tradition is intertwined with both Judeo-Christian, Ancient Greek and Roman teachings. This study also specifically focuses on the critique of such teachings in order to reveal the gender bias that lies at the foundations of the Just War tradition. The dualistic approach, adopted both by Western Philosophical tradition and Natural Law tradition, is examined in this thesis as well to put forward the gender bias that operates within the Just War tradition. The *jus post bellum* part of this study offers humanitarian intervention as an option for ensuring an effective gender just peace.

Key words: Just War tradition, feminism, gender, *jus ad bellum*, *jus in bello*, *jus post bellum*, Judeo-Christian tradition, just cause, legitimate authority, right intention, last resort, right conduct, proportionality of means and net benefit, discrimination, Western philosophy, Natural Law tradition.

## Özet

Bu tez, Haklı Savaş geleneğini feminist bir perspektiften incelemektedir. Söz konusu tezin temel hipotezini, Haklı Savaş geleneğinin, kadınların, buldukları toplumlarda boyun eğmelerine yol açacak olan toplumsal, siyasal ve felsefi görüş ve uygulamalara, doğrudan ve dolaylı olarak destek verdiği savı oluşturmaktadır. Bu hipotez çerçevesinde, söz konusu çalışma Haklı Savaş geleneğinin üç farklı aşamasını; jus ad bellum, jus in bello ve jus post bellum aşamalarını inceler ve bunlara feminist perspektiften bir eleştiri yöneltir. Bir savaşın adil olup olmadığını incelemek için Haklı Savaş düşünürlerinin, kullanmış olduğu; haklı sebep, ehil otoritere, doğru niyet, son çare, savaşın adil yönetimi, orantılılık ile net fayda ve ayırım ilkeleri cinsiyet çerçevesinde incelenmiştir. Savlarını, ahlaki temellere dayandıran bir gelenek olarak, Haklı Savaş geleneği, Yahudi-Hristiyan ve Antik Yunan ve Roma gelenekleriyle iç içe geçmiştir. Bu çalışma söz konusu öğretilerin eleştirilerine odaklanarak, Haklı Savaş geleneğinin temelinde yatan cinsiyet ayrımcılığını ortaya koymaya çalışmaktadır. Haklı Savaş geleneğinin içermiş olduğu cinsiyet önyargılarının ifşa edilmesi adına, Batı Felsefi geleneği ve Doğal Hukuk geleneği tarafından içselleştirilmiş olan ikilikçi yaklaşım da bu çalışma çerçevesinde bir incelemeye tabi tutulmuştur. Bu çalışmanın jus post bellum bölümü ise, iyi işleyen, cinsiyetler arası adalete dayalı bir barış sağlanması için insani müdahaleyi bir seçenek olarak sunmaktadır.

Anahtar kelimeler: Haklı Savaş geleneği, feminizm, cinsiyet, jus ad bellum, jus in bello, jus post bellum, Yahudi-Hristiyan geleneği, haklı sebep, ehil otoritere, doğru niyet, son çare, savaşın adil yönetimi, orantılılık ve net fayda, ayırım, Batı Felsefesi, Doğal Hukuk Geleneği

*Dedicated to the beloved memories of my grandparents  
Yaakov Jak and Rebecca Beki Maya*

## INTRODUCTION

“How are ye blind,  
Ye treaders down of cities, ye that cast  
Temples to desolation, and lay waste  
Tombs, the untrodden sanctuaries where lie  
The ancient dead; yourselves so soon to die”

### The Trojan Women, Euripides

“War is hell” declared the famous Union Army General William Sherman who served during the American Civil War and finally succeeded General Ulysses S. Grant as the commander of the Western Theater during the Civil War. Sherman was a professional soldier who had personally witnessed the horrible scenes in war but we, the ordinary people know what Sherman knows by experience almost by an intuition. We, the people, very well know that as Herodotus once said “in peace sons bury their fathers, in war fathers bury their sons”. Aside from the gendered and the gerontocratic nature of this aphorism, which I will deal in subsequent parts of this thesis, the fact remains that war is a grim enterprise for the people who found themselves in this horrendous human activity. But it is not only for the humans, but also for the rest of biological existence war poses a great threat. As a member of the species, who in an act of self-worshipping defined themselves as distinct beings and allegedly separated themselves from the rest of the animals in particular and the rest of the biological existence in general by naming themselves “humans”, I am ashamed and appalled of the danger we pose to the rest of the biological existence. I still can not see, if not from the obnoxious principle that might makes right, from where we derive the right to create the weapons that endanger the very existence of biological life in the earth. Because of our species’ arrogance and irresponsibility entire biological existence is situated as if it is a poker player who invested all its hopes in to a single hand and to

the wishful possibility that those nuclear weapons will never be used. From plants to non-human animals the ill effects of war and the technological development of means of violence are quite destructive and wide ranging and as the so called “human” animals we bear the entire responsibility.

However as surprising<sup>1</sup> as it maybe, there is a tradition that goes back to Ancient Greece and Rome and especially to some prominent Church “Fathers” that tries to reconcile this bloody activity; war with one of the fondest of human quests; justice. The words justice and war, an oxymoron for many analysts, come together in the Just War Tradition. For the purpose of this research it might be beneficial to put forward from the outset that Just War tradition is a misnomer for me. Apart from Saint Augustine who believes in a cosmic battle between good and evil and the divine justice in this battle and Hugo Grotius who utterly had rejected that might is right and justice can be reduced to utility seeking, this tradition neither seeks what the justice is nor tries to reconcile it with war.<sup>23</sup> The tradition which used to be part of a larger system of philosophical and political ethics in its classical age, started to focus on

---

<sup>1</sup> In the sense of reconciliation of violence with justice the existence of Just War tradition is surprising. However from the perspective of the foundation myths of the Western civilization emergence of such a tradition is not a surprise. Two of the pillars of the Western civilization; Judeo-Christian teachings and the Roman culture both refer to a violent incident in their foundational texts. In the Judeo-Christian teachings Abel kills his brother Cain and in the Roman texts Romulus kills his brother Remus. As Hannah Arendt points out, since these texts are quite foundational texts for Western civilization, this means that “in the beginning there was violence”. It is important to realize the existence of violence in the beginning because it seems that Western civilization had built its moral precepts on the basis of preventing such violence. Hence, from such a perspective it may not be a surprise to see the emergence of a tradition that is aiming to limit violence in the battlefield. I should also mention that I do recognize that this is not the only position in philosophical discussions regarding Western civilization and human violence. Especially when it comes to the emergence of state there still is a broad discussion between two general positions; one is represented by Thomas Hobbes who claims that states are there to limit our wickedness and the other by Emmanuel Levinas who claims that states are there to limit our infinite love so we can be only responsible from a limited group of people rather than the entire humanity, best depicted by the modern concepts of citizenship, sovereignty and compatriotism.

<sup>2</sup> Mathewes, Charles. “Just War and the Theology of Evil” in *Nova et Vetera*, Vol. 10/4 (2012), 1159.

<sup>3</sup> One of the most prominent modern writers of Just War theory, Jean Bethke Elshtain takes the exact opposite side of my argument and claims that in contrast with realism and militarism just war thinking insist on fusing public and private morality. Hence takes the issue of justice in to account.

military tactics during the contemporary age through the teachings of modern writers and hence going away from this quest for justice even more in its contemporary period. Especially the focus on justice has been increasingly given less importance in the favor of more emphasis on the concern of limiting the wars since some of the Just War writers had experienced the horrors of the Thirty Years Wars and how the concepts of the Just War tradition had been twisted by the apologists on both sides of the conflict to legitimize the killing of the people on the other side of the religious divide.<sup>4</sup> Such neglect on the emphasis on justice well continued in to the modern period given the moral relativism of the modern age and its claim for the impossibility of defining what the justice is. An interesting example of this tradition's shift of emphasis from justice to the limitation of violence is the United States Bishops' Pastoral Letter on War and Peace; *The Challenge of Peace* in which even the bishops who had based their understanding of Just War to the teachings of Christianity did not mention about establishing justice but based their arguments for resorting to war on the modern concept of defense.<sup>5</sup> Hence this tradition's chief aim is to limit the perils of war and to prevent wars from sliding in to total ones which would leave both the victors and the vanquished devastated. The Just War theory elaborates extensively if the necessary requirements to use violence such as just cause, legitimate authority, right intention and etc. is met or not but it does not deal with the deeper ethical questions involving women, behind the use of violence and moral justifications apart from blindly subscribing in to the Judeo-Christian moral teachings.<sup>6</sup> It is no surprise for me that James Turner Johnson described Just War tradition as "the fundamental way we in the West think about the justification and *limitation* of violence."<sup>7</sup> But the limitation does not necessarily stem from concerns

---

<sup>4</sup> Johnson, James Turner, "The Idea of Defense in Historical and Contemporary Thinking About Just War", *Journal of Religious Ethics*, Vol.36, Issue 4(2008),549.

<sup>5</sup> *Ibid.*,553.

<sup>6</sup> David Helmut, Baer and E. Capizzi, Joseph, "Just War Theories Reconsidered: Problems with Prima Facie Duties and the Need for a Political Ethic", in *Journal of Religious Ethics*, Vol. 33, Issue 1 (2005),127.

<sup>7</sup> Zehr, Nahed Artoul, "James Turner Johnson and the Classic Just War Tradition" in *Journal of Military*

of justice or morality for all, especially for women. They usually grow out of expediency and or prudence.<sup>8</sup> However, a true justice should involve, as Betty Reardon explains, capability building in which capabilities are defined as substantive opportunities and freedoms that allow individuals to do and be as they choose.<sup>9</sup> It also should, as Reardon elaborated, exclude retribution and all forms of violence<sup>10</sup> which are at the epicenter of justice understanding of this tradition. As Bat Ami Bar On and Luce Irigaray say justice requires concrete acts of empathy, relationships of compassion, kindness and hospitality by nurturing the differences among people which I believe none are undertaken by this tradition especially when it comes to its attitude towards women.<sup>11</sup> This becomes more apparent especially when it is taken in to the account that the Christian part of the Just War tradition had developed within the *Respublica Christiana*; the medieval Christian order in Europe and this system of European Law had divided the world in to two in which certain principles and limitations were brought to be implemented in wars only between European sovereigns but for the world outside the *Respublica Christiana* everything was permitted due to the fact that the people living in those lands were simply termed foes.<sup>12</sup> So I believe the concept of limited war reflects what this tradition is trying to achieve much better than the concept of just war, however the political science literature does not clearly distinguish between the two and tends to deal with the limits imposed on war under the Just War tradition literature. That's why my research will cover the Just War tradition literature.

---

*Ethics*, Vol.8, No.3 (2009),193

<sup>8</sup> A. Raymond, Gregory, "The Greco-Roman Roots of the Western Just War Tradition", in *The Prism of Just War: Asian and Western Perspectives on the Legitimate Use of Military Force*, ed. Howard M. Hensel (England: Routledge, 2010; henceforth: *The Prism of Just War*),9.

<sup>9</sup> Ragland, David, "Betty Reardon's Philosophy of Peace Education and the Centrality of Justice", in *Journal of Peace Education*, Vol. 12, No.1 (2015),37.

<sup>10</sup> *Ibid.*,40.

<sup>11</sup> Poe, Danielle."Replacing Just War Theory with an Ethics of Sexual Difference" in *Hypatia*. Vol.23/2(2008),34.

<sup>12</sup> Schmitt,Carl, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*(United States:Telos Press Publishing,2006;henceforth:*Nomos*),58-59.

I should also mention here that Just War tradition in its Western strand should not be confused with Holy War. Due to its peculiar history with religious wars and strife this tradition has rejected war in the name of religion.<sup>13</sup> It has limited the use of violence to moral and political reasons but opted the religious ones from the list of just causes for a just war. As Saint Augustine explained the outlook of this tradition clearly “no one should be compelled in to the unity of Christ but that we should act with words, fight with argumentation and triumph with reason.”<sup>14</sup> and such reasoning of fighting for the spread of religion was altogether excluded from the Just War tradition by the writings of Francisco de Vitoria who expressed explicitly that religious arguments can't be employed as just causes to conduct just wars.<sup>15</sup> Hence Just War which is focused on mundane and political issues even though it had developed out of a religious source, should not be considered as a synonym for a holy war of religion which stands in total contrast to the Just War tradition, which aims to limit the use of violence to certain cases when certain conditions are met, by recognizing no limits to the use of violence for allegedly sacred ends. In such context I should also elaborate on the issue of Just War in Islam. Even though the concept of Jihad, which has the primary meaning of the Muslim believer's individual struggle with oneself to be a better Muslim, constitutes an intellectual tool for a holy war, this doesn't mean that Islamic tradition did not include any provisions for the limitation of war. Even though the issue of Just War has not been systematically treated by the Islamic scholars there still exists a limited literature on the issue of Just War in Islam. Islamic thinkers like Al-Farabi, Ibn Khaldun and Muhammed Hamidullah all elaborated on the issues of just causes and introduced jus in bello restrictions. However, I will not deal with this limited Islamic literature on the issue because despite the existence of some provisions which can fall in to the categories of Just War tradition, the issue of Jihad

---

<sup>13</sup> O. Ilesanmi, Simeon, “Just War Theory in Comparative Perspective”, in *Journal of Religious Ethics*, Vol.28, Issue 1(2000),146.

<sup>14</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby,*The Ethics of War: Classic and Contemporary Readings* (USA: Blackwell Publishing,2006, henceforth: *The Ethics of War*),87.

<sup>15</sup> *Ibid.*,296.

still predominates the writings of these scholars. The Islamic scholars predominantly cited fighting in the name of God, as one of the just causes of a just war.<sup>16</sup> Hence it is more appropriate to examine the Islamic tradition of war within the studies related with Holy War rather than Just War. Moreover, since my main purpose is to study not only the Just War tradition but the role or to put it more correctly the absence of the role of women in it, it would be more appropriate for me to limit myself with the Western Just War tradition since the inclusion of Islamic tradition to my study would require me to examine the situation of women in Islam and this would be a huge task which can only be undertaken by a separate study.

One can clearly understand the moral dilemma one is having by studying such a problematic subject. By devising some certain specific rules, Just War tradition indeed endorses war. In the words of one of the most famous names in Just War tradition; Paul Ramsey, war is both permitted and limited in the Just War tradition.<sup>17</sup> Private use of force is never justified but the use of force for the states is justified in this tradition as long as it serves “good” purposes. Even though regulated, war is still regarded as an instrument for conflict resolution. It is inevitable that one will detest such an outlook on the one hand claiming to be protecting a group of people by placing them out of the legitimate confines of war and endorsing the killing of another group defined as legitimate targets on the other hand. However, difficult choices one is compelled to make both in politics and in life is once more demonstrated when we remember the tragic story of George and Lennie in Steinbeck’s *Of mice and men*. In this tragic novel Lennie was killed by his dearest friend George in an act of “benevolence” which left George with a tormenting conscious but spared Lennie an even more dreadful death at the hands of an insensitive crowd looking to punish him through lynching. Was George’s killing of

---

<sup>16</sup> Taslaman, Feryal Kalkavan, *Geçmişten Günümüze Haklı Savaş Kavramının Yorumu*(İstanbul:2011),93.

<sup>17</sup> Charles, J.Daryl, “War, Women and Political Wisdom: Jean Bethke Elshtain on the Contours of Justice”, *Journal of Religious Ethics*, Vol. 34, Issue 2(2006),362.

Lennie morally right? I don't have a good answer for this question. But I guess the story encompasses the logic that Just War tradition is trying to base its main argument; limitation of violence to a level which is going to be "benevolent" for at least some of the victims of this dreadful human activity.<sup>18</sup>

However as a long time student of international politics; long enough to internalize the clichés of political science like ethics and politics are separate domains at least since Machiavelli, that "statesmen" usually are confronted with political choices which have terrible but inevitable moral implications, that states as the sole owner of legitimate means of coercion are the sole legitimate actors in international politics and we, the people have a stake in obedience to the state since in an anarchic world of states, as Leopold von Ranke would have said, foreign policy defined as high politics has a supremacy over the domestic politics, I will not stop here and regard Just War tradition yet as another "well founded" tradition that will guide us through the moral "fog of war". Instead I will hold it to the test of diversity.

Let me explain what I mean by diversity and by putting the Just War tradition to its scrutiny. Diversity is the recognition of the fact that the world opens itself up differently to different people. It is in fact the recognition of the distinction between *doxa* and *episteme* and to accept that I cannot understand the other person's truth without learning his/her *doxa* which reveals itself to him/her in distinction from all others.<sup>19</sup> To put it succinctly diversity is the recognition of Hannah Arendt's words that "men, not Man live on the earth and inhabit the world". But one can ask why diversity is so important, what happens when it is not taken in to account in politics? I guess the answer lies in the fact that once we are left with a situation in which

---

18 O'Driscoll, Cian. "Why Don't You Tell Us About Them Rabbits, George? The Tragedy of Just War" in *International Studies Review*, Vol. 15(2013),234.

19 Arendt, Hannah, *The Promise of Politics*,(NewYork: Schocken Books, 2005),19.

diversity is not taken in to account, in other words perspective of different groups are not taken in to account, we usually witness as Antonio Gramsci would have said a hegemonic domination of the entire society by a certain section of it. In such cases we usually see the interests of the dominant groups to be imposed as the interests of the remaining groups in the society by subtle or coercive means. This is indeed a similar point raised by Nancy Fraser in her study on the politics of need interpretation about the welfare societies of Western Europe and North America. As she explains what do different groups of people actually need and who has the final say over these matters, are important indicators in order to reveal the power structure in such societies. It is quite crucial from which perspective and by whom such needs are defined because the ability to make the widely accepted and well established definitions over needs is itself a manifestation of power.<sup>20</sup> As I will try to demonstrate in this study unfortunately the women are excluded from the decision making mechanisms in the Just War tradition about war. The needs related with the activity of war, in this case with regard to the just war; like what constitutes a just cause, whether an attack physical or psychological that are faced by women on a daily basis in their ordinary lives deserves to be called a war or not, whether the belligerents should simply make a peace with one another once the war is over without working for a gender just post bellum period, are all seems to be determined without taking the women's needs and perspectives in to account by male adults. That's why I believe it has the utmost importance to subject any concept we deal with in politics, including the Just War tradition to the test of diversity, to the test of the other perspectives in society to understand to what extend they really are reflecting the true interests of the broadest possible people in society.

Given the limitations of time and space I will have to restrict myself concerning the issue of diversity. I will not have the opportunity to include all the different

---

<sup>20</sup> Fraser, Nancy, *İhtiyaçlar Mücadelesi* (Istanbul: Agora Kitaplığı, 2006), 6-9.

perspectives of different groups inside the society in my thesis. That's why I am going to choose just one neglected perspective that is the perspective of feminism, to scrutinize the Just War tradition. However, by choosing feminism as a critical tool to analyze Just War tradition I am not in any way trying to state that the perspectives of women are more important than the perspectives of the other groups of people whose voices are often not heard in political debates. However, I must also mention that my choice of feminism is not as arbitrary as it might seem. As a man I am quite aware of the burdens that the gerontocratic patriarchal<sup>21</sup> society imposes on me; enlisting me as a soldier and sending me to fight with others, conditioning me to be more and more aggressive in attitude by the gender roles it imposes on me and recruiting me as a guardian for the protection of women's so called honor and reducing me to a tool to control their bodies, conditioning me to curtail my emotions in public and hence making us more prone to engage in violent activities to compensate our emotional disturbances<sup>22</sup> and reducing me to a tool for making money and hence associating my worth as a human being with the amount of money/power that I am able to hold. Given such gender roles, historically speaking, it is no coincidence that more men than women had died in industrial work accidents and wars in *Europe*<sup>23</sup>. The gender roles that encourage men to play certain roles such as soldiers and menial workers and to suffer the physical downsides associated with such roles demonstrates that

---

<sup>21</sup> I am aware of the timidity in academia to use the word patriarchy. Especially the changing circumstances in the lives of Western women; declining status of the family in general and the fathers in particular in such societies had launched a debate if it is still appropriate to use the term patriarchy. However, even though familial expressions of male power diminishes in some Western societies in favor of more public expression of such power of man, the suggestions to replace the notion of patriarchy with andrarchy or fratriarchy did not stick and patriarchy is still widely used today both in feminist movements and the academia.

<sup>22</sup> It is important to note here that such attitudes like being emotional or aggressive have nothing to do with innate biological qualities of man and women. Studies conducted by anthropologists, such as Margaret Mead attested that psychological attributes are not connected with physical qualities. There exists some cultures in which man have so called "feminine" qualities such as sensitivity, compassion and fluctuating levels of emotionality whereas women have so called "masculine" qualities such as aggressiveness and cunning.(Reiter, 20)

<sup>23</sup> Here Europe is mentioned not because of a Eurocentric view because reliable records are available on accidents and war in Western societies dating back to Industrial Revolution.

societies, alongside women also harm men just because they are born as men.<sup>24</sup> In short patriarchy is making women's lives miserable but it has quite negative implications for men as well.<sup>25</sup> I should quote here to better explain myself, Marysia Zalewski who mentions that "The driving force of feminism is attention to gender not simply to women,...the concept, nature and practice of gender are key".<sup>26</sup> Moreover am I only responsible from and act for the interest of the people who are recognizably like me in some way? As men are "we" a distinct group from women? After all who are "we"? Who are included in this "we"? Will I not be able to act and be responsible from the ones who test my sense of belonging and defy conventional norms of likeness. If one understands the male domination as the domination of the entire society, women and men alike, by the hegemonic masculinities, then it would be obvious that such hegemony can only be countered by the joint efforts of resistant femininities and alternative masculinities.

The topic I chose for my thesis is "A feminist critique of just war tradition". My main hypothesis in this study is that the Just War tradition directly and indirectly supports the social, political and philosophical ideas and practices that subordinate women in their respective societies. By analyzing the Just War Tradition through the conceptual tools provided by feminist theory I am hoping to bring a novel perspective to the studies of Just War Tradition. However, this perspective will not only be a novel one but it will also be the perspective of the weak. After all, as the Feminist theorist Donna Haraway expressed "one cannot expect to generate an understanding useful to subjugated groups from the universalizing standpoint of the Master. After all he is 'the Man, the one God, whose Eye produces, appropriates and orders all

---

<sup>24</sup> Stone, Alison, *Feminist Felseye Giriş*(İstanbul: Otonom Yayıncılık,2015),24.

<sup>25</sup> Sancar, Serpil, *Erkeklik İmkansız İktidar: Ailede, Piyasada ve Sokakta Erkekler*( İstanbul: Metis Yayınları, 2009)

<sup>26</sup> Sjoberg, Laura, "The Inseparability of Gender Hierarchy, the Just War Tradition and Authorizing War" in *Just War: Authority, Tradition and Practice*, ed. John Williams, Cian O'Driscoll and Anthony F. Lang(Washington D.C: Georgetown University Press,2013,henceforth: *Authority, Tradition and Practice*),83.

difference”<sup>27</sup> The Just War tradition heavily draws from the political concepts like state, war, authority, anarchy, order...etc that themselves are the products of a gender order favoring man over woman.<sup>28</sup> Usually the classical writers of the Just War tradition suggest that there is no connection between *jus ad bellum* (the right/decision to go to war) and *jus in bello* (the law governing the actual combat) since the decision to go to war usually taken by the statesman has nothing to do with the law of engagement implemented by the soldiers.<sup>29</sup> However from a woman’s perspective there is a crucial connection between these two; that both of the activities of going to war and the actual combat are activities conducted mainly by men usually not taking the woman’s perspective in to account. As Lucinda Peach expresses “women remain largely absent from ethical and policy debates regarding when to go to war, how to fight a war and whether resorting to war is morally justifiable”.<sup>30</sup> Hence war is an enterprise that mainly coincides with the male interests. Women already confined to *oikos* and having limited or no access to *polis* usually suffer immensely during the wars which are neither of their making or nor of their conduct. As Sjoberg explains;

Government often intentionally or incidentally, leave women out of decisions about war. Often it is men who plan, prepare for, conduct, conclude, describe, and define war. Women are affected by war but mostly they react to rather than manage it. Governments rarely offer women military training, when they do, they rarely allow women full participation in the fighting of wars. Women who can fight in wars do so in militaries that value men and masculinity more than women and femininity.<sup>31</sup>

---

<sup>27</sup> Cocburn, Cynthia, “Gender Relations as Causal in Militarization and War” *International Feminist Journal of Politics*, Vol. 12, Issue 2 (2010), 141.

<sup>28</sup> Morkevicius Valerie, “Power and Order: The Shared Logics of Realism and Just War Theory”, *International Studies Quarterly*, Vol. 59 (2015), 13.

<sup>29</sup> Parry, Jonathan, “Just War Theory, Legitimate Authority and Irregular Belligerency” *Philosophia*, Vol. 43 (2015), 177.

<sup>30</sup> Cuomo, Chris J., “War is not Just an Event: Reflections on the Significance of Everyday Violence”, in *Hypatia*, Vol. 11, Issue 4 (1996), 34.

<sup>31</sup> Sjoberg, Laura, “Gendered Realities of the Immunity Principle: Why Gender Analysis Needs Feminism”, *International Studies Quarterly*, Vol. 50 (2006), 901.

However for the purposes of my study it is not enough for me to demonstrate that woman is at the nexus of jus ad bellum and jus in bello when it comes to sidelining the subordinated from the all-important decisions about war but also I would like to illustrate that the third and most neglected component of Just War tradition (the negligence itself says something about the gender order governing the gender relations) jus post bellum (justice after war) should be the most critical phase of the Just War tradition because once what for some people called “peace” is restored the gender order continues to operate for the grave disadvantage of woman which makes the word “peace” for the woman almost meaningless. A genuine jus post bellum may serve as a critical tool to transform the Just War tradition which has been heavily criticized by many analysts, as itself not being just, to a tradition genuinely seeking for justice for all sexes. Therefore, my thesis will focus on all the three components of Just War tradition; jus ad bellum, jus in bello and jus post bellum, because its starting point is that women are either not given enough voice or excluded altogether from all three.

I believe such study; the feminist critique of the Just War tradition might be a contribution to the academic studies about this literature. There are very few studies in Just War tradition literature dealing with this tradition from a gender perspective. Usually part of the studies focus on the actual use of force during the combat and how military practices can be improved to make sure that they comply with the jus in bello rules of this tradition. Another part of the Just War literature focuses on the historical development of this tradition, its legal aspects and its standing vis-a-vis the other positions on war such as pacifism and realism. Limited studies in some feminist journals do deal with some selected parts of this tradition like legitimate authority, right intention and the principle of discrimination but lack an overhaul gender analysis of this tradition which should include a critique of its moral foundations.<sup>32</sup>

---

<sup>32</sup> The situation is no different in Turkey due to the fact that the subject is not a popular one for the

Just War tradition uses seven different concepts, each belonging to three different levels of the theory (ad bellum, in bello and post bellum) to evaluate if a given war is just or not. These concepts are just cause, right intention, net benefit, legitimate authority, last resort, proportionality of means and right conduct.<sup>33</sup> I am going to analyze all these concepts in my thesis to see to what extent they reflect the patriarchal notions. Especially telling for the extent of masculinity of the Just War tradition is the sources that this tradition draws from and the group of people who had contributed to its development. Just War tradition mainly draws from the Christian Canon Law, theological tradition, Roman Law and the conduct of the knightly class. Especially since the 12<sup>th</sup> century Roman and the Canon Laws infused and shaped the language and the conditions of political and philosophical issues and reciprocally influenced the development of the laws of warfare.<sup>34</sup> As the medieval historian James A. Brundage explains;

The medieval laws of war depended in large part upon practices customary among military men, but these were changeable, often loosely defined and not always and everywhere agreed upon. Men trained in cannon and civil law saw this situation both as an intellectual challenge and as a practical problem of considerable significance. Canonists and civilians, accordingly sought to impose order on...custom...to apply principles and analytical techniques from Roman civil law to fashion

---

Turkish students to study. At the time of this writing, there are five thesis on Just War tradition of only one has been conducted at Phd level and the remaining four in Masters level. In line with the international literature that I mentioned above the one in Phd level discusses the historical development of this tradition without directing any criticism to it. It is mainly a descriptive study. The remaining four Masters thesis' are studies that incorporated the Just War tradition in to the studies of terrorism, colonialism, law and religion. However, none of those studies approach the issue from a feminist perspective.

<sup>33</sup> Dimeglio, Richard P. "The Evolution of the Just War Tradition: Defining Jus Post Bellum" *Military Law Review*, Vol. 186(2005),127.

<sup>34</sup> Helen M.,Kinsella,*Image Before the Weapon:A Critical History of the Distinction Between Combatant and Civilian*(United States: Cornell University Press,2011,*henceforth:Image Before the Weapon*),28.

mechanisms for settling conflicting claims to property and compensation that warfare inevitably produced.<sup>35</sup>

Just War tradition's main contributors are the ecclesiasts, soldiers, lawyers and statesman. That's why my study will focus among others, on the theologians like St. Augustine and Thomas Aquinas, jurists like Hugo Grotius and Francisco de Vitoria, political scientists like Michael Walzer and Cian O'Driscoll and soldiers like Carl von Clausewitz to better reflect the scope of the streams of thought that Just War tradition had borrowed from. However, I should also mention that, I find the recent development in social sciences that the social scientists are increasingly encouraged to focus on professionalizing in a specific field, disturbing. The utilitarian approach that has already penetrated the academia increasingly leading researchers to focus on "their own" issues without paying any attention to other fields since the fundamental measure of "success" is usually the number of publications one manages to make.<sup>36</sup> However, for a qualitative study like this, I believe the exact opposite approach; the one that tries to fuse the disciplines of international relations, sociology, anthropology, psychology, philosophy, political science and literature has to be adopted. That's why I believe for my study, William Shakespeare and Euripides are as important as Michael Walzer and Paul Ramsey or Pierre Bourdieu and Sigmund Freud are as important as Carl von Clausewitz and Cicero. As Serpil Sancar points out what is the basis of feminist studies is to produce qualitative knowledge and to interpret that knowledge through women's experience to better understand the oppression and exclusion<sup>37</sup>. In order to be able to come up with such a holistic understanding of women's suffering, I believe such a fusion among different disciplines is needed. Moreover, my study will not only limit itself with a single

---

<sup>35</sup> Ibid.,29.

<sup>36</sup> Uyan Semerci, Pınar "Nitel Yöntem Nedir? Ne değildir? Sosyal Bilimlerde Derinlemesine Analizin Gerekliliği" in *Farklı Pencereleer Farklı Manzaralar: Sosyal Bilimlerde Yöntem Tartışmaları*, ed. Pınar Uyan Semerci and Emre Erdoğan(Istanbul: Hiper Link Yayınları,2013),88-90.

<sup>37</sup> Ibid.,98.

strand in feminist theory but will draw from different perspectives present within feminism. It will adopt the teachings of liberal feminism in places where it propagates the equality of ability and capacity between man and women and hence pressing for more women's participation in to the public sphere. It will draw from the arguments of radical feminism when it indicates the differences between men and women and where it argues that some attitudes usually attributed to women might be better for the militaries to adopt to come with a better "right" conduct in jus in bello level. Finally, it will utilize from the arguments of postmodern feminism when it tries to expose the transitory nature of the identities which are regarded as fixed and unchanged when it comes to gender roles.

At its very heart this tradition regards war as inevitable because it mainly rests upon the Agustinian understanding of human nature depicted as evil, fallen and incurable.<sup>38</sup> That's why this tradition easily reconciles itself with the perpetuation of human problems and the inevitability of war<sup>39</sup>. However, within the scope of this study this Agustinian definition of human nature will be thoroughly examined to see if this allegedly "universal and timeless" definition of human nature is yet another reflection of patriarchal order that takes the features and behaviors of adult males as the universal norm for all human beings.

A great deal of my study will focus on the issue of legitimate authority which is the central concept to understand the Just War tradition. Since this tradition, especially by its classical writers, regards states as the sole legitimate authority to wage a just war it is quite vulnerable to criticism on that front given the fact that feminist studies consistently cite the state and its patriarchal institutions as a major problem for women's rights. The Just War tradition acts on an epistemological injustice in which

---

<sup>38</sup> Soendergaard, Bettina Dahl. "The Political Realism of Augustine and Morgenthau: Issues of Man, God and Just War" *Turkish Journal of International Relations*, Vol. 7/4(2008),2-3.

<sup>39</sup> Schott, Robin May. "Just War and the Problem of Evil", *Hypatia*, Vol.23/2(2008),124.

the Westphalian insiders; the states are given the right to conduct a just war and the Westphalian outsiders the non-state actors' wars are dubbed as unjust.<sup>40</sup> The reason why a considerable part of my thesis will deal with the notion of legitimate authority is that the state is intricately connected with the sufferings of women. It is based on a gender order that usually leaves the woman out of the political realm and subordinates her in to the supporting roles assisting the man who is usually occupied with public duties. The problem here for the women lies in the terminology that is employed by the Just War tradition. Whenever a physical conflict is absent between states Just War tradition simply presupposes the legitimate authority; the states, are in peace with one another. It does not deal with the injustices within the states and that's why call the absence of war among states as peace. This is a very serious problem for women because such distinctions like inside/outside and order/anarchy are themselves the products of patriarchal thinking.<sup>41</sup> By stressing the "cruel" nature of the state of relations among the states this patriarchal thinking simply suppresses any kind of dissenting voices in domestic politics including the voices of women. However, women, by their own experience are quite well aware of the brutal realities behind the façade of peace in domestic politics. The feminist perspective can greatly contribute to the Just War tradition literature by shedding light on the negative implications of patriarchal order in domestic politics and how it leads to wars among nations. This would be a very valuable contribution to this tradition mainly based on the Westphalian understanding of international relations that regards states as monolithic entities and show almost no interest to what is happening in domestic politics when it comes to inter-state relations. However, the main contribution of analyzing the Just War tradition from a feminist perspective would be to expose the twisted foundations of this tradition's understanding of justice. Just War tradition, as a tradition locating itself in between pacifism which denies violence altogether and

---

<sup>40</sup> Parry, Jonathan, 186.

<sup>41</sup> Tür, Özlem and Aydın Koyuncu, Çiğdem. "Feminist Uluslararası İlişkiler Yaklaşımı: Temelleri, Gelişimi, Katkı ve Sorunları" *Uluslararası İlişkiler*, Vol. 7/26( 2010),11.

realism which denies morality in most of the cases, claims to reconcile ethics and violence. However, the following parts of this study will demonstrate that as a tradition with a supposedly moral, normative claim, Just War tradition simply turns a blind eye to the daily and war related sufferings of women because its moral foundations are based on misogynist principles.

Moreover, this study; a specifically feminist critique of Just War tradition would also contribute to the studies of international relations. International relations as a discipline has been extensively studied from a feminist perspective to the extent that there exists a separate sub-discipline named feminist international relations analyzing the global issues with an eye fixed on gender.<sup>42</sup> However, Just War tradition which is part of the International Relations discipline has not been studied much from a feminist perspective thoroughly, focusing on each phase of the Just War tradition. That's why I believe this study will be contribution to a very specific area and topic within international relations discipline.

I should also mention that I am aware of the dilemma that I am likely to face regarding the extension of the limits of Just War tradition beyond the Westphalian limits and propagation of women's rights in foreign countries. The wars in Iraq and Afghanistan had hardly expanded the rights of women in those countries. Especially

---

<sup>42</sup> The issues especially stressed by Feminist International Relations are the meaninglessness of the traditional IR distinctions between domestic and foreign, private and political and the daily experiences of women and the supposedly higher ideals of constitutions. For a detailed study and specific contribution of the feminist perspective on international relations, as well as the epistemological challenge it posed to the discipline, please see "Gendering a Discipline: Some Feminist Methodological Contributions to International Relations" in *Journal of Women in Culture and Society*, 2005 by J. Ann Tickner. Also for a study explaining the contributions of feminism in terms of challenging the conventional levels of analysis in IR and the masculinity of defense and security issues please see "Political Science: Discipline Analysis, Women in the Curriculum Series", 1997 by Virginia Sapiro. It should also be mentioned that it would not be entirely correct to speak on a unitary field of "Feminist International Relations" since one should recognize there is no single Feminist IR theory but different branches of it related with Marxism, Liberalism, Post-structuralism etc. For a detailed study on Feminist IR, its varieties and focuses please see "Feminist Challenge to Mainstream IR" in *MPRA Paper*, 2016 by Gülşen Aydın.

in Afghanistan, the scenes specifically staged by the Western journalists in which Afghani women depicted in abandoning their burqas and a similar compulsion by the French soldiers in 1958 of the Algerian women to remove their hijabs not only had been ineffective but also played in to the hands of radical groups which transformed these clothes in to propaganda tools.<sup>43</sup> Likewise the American pressure in African countries like Kenya and Nigeria for the recognition of the rights of homosexuals had backfired and led Kenya and Nigeria to take draconian measures against gay and lesbian communities in those countries. Especially the Japanese case illustrates the difficulties regarding this point. Postwar constitution imposed by the United States to Japan included an article saying all laws governing gender relations shall be enacted from the standpoint of individual dignity and the essential equality of sexes. It is appalling that seventy years after this provision there is pressure from some groups in the Japanese society to repeal this article for the “defense” of traditional Japanese values.<sup>44</sup> It is understandable that different people have different customs but to what extend we shall respect those customs when those practices are violating the most basic rights of some groups like women? To ask the question in Just war terms is the destruction of patriarchal gender order a just cause for a military intervention to another state? Given the chaos ensued after the American intervention in Iraq and Afghanistan I can understand that a minimum level of “order” is critical for any society to survive but at the same time I do believe that some arrangements should be made to improve the conditions of women after the so called peace is restored. That’s why my study will also focus on the jus post bellum period which is crucial for women to see if the definition of the just peace can be broadened to include a genuine just peace for women in domestic politics.

---

<sup>43</sup> Eide, Marian, “The Stigma of Nation: Feminist Just War, Privilege and Responsibility” in *Hypatia*, Vol. 23/2 (2008), 57.

<sup>44</sup> Walzer, Michael, *Just and Unjust Wars*, (New York: Basic Books, 1977), xi

The structure of my thesis will take the following shape. My thesis will have three different parts; Jus ad bellum, Jus in bello and Jus post bellum, alongside its introduction and conclusion. The introduction part of my thesis will be a long one since it aims to provide the readers with both the historical development of the Just War tradition and the intellectual baggage that this tradition is based on, in order to put forward before the readers, the context that this tradition has been developed, before analyzing the central concepts of Just War tradition from a feminist perspective. In the Jus ad bellum part I will examine the broad environment that the “statesmen” have to confront before they take the decision to go to war. The understanding of human nature propagated by the Just War tradition, the arguments concerning the inevitability of war, the issue of legitimate authority, the traditions’ insistence and understanding of order and its basic acceptance of anarchy as given will be dealt under this part to lay out the intellectual environment that the decision to go to war is taken under this tradition. Especially the religious arguments provided mainly by Judeo-Christian tradition will be analyzed in this part of my thesis. The issue of just cause will also be dealt in this part given the fact that it is the chief tool to legitimize to go to war in ad bellum level. The issue of right intent and last resort will also be dealt in this part as the issues concerning the level of ad bellum; the decision to go to war. Then this part will end by the feminist critique of all the concepts dealt under ad bellum level. However, I should mention at the outset that since the intellectual environment that the Just War traditions operates, will be dealt in this part of my thesis, the criticism of some concepts that are relevant also for the jus in bello and jus post bellum phases will be partially examined in the feminist critique of this part to extend they are related with the intellectual backdrop of the Just War tradition.

The second part of my thesis will be the Jus in bello part. In this part I will deal with the concepts of proportionality of means, right conduct and net benefit. Here I will try to examine the tension between winning the war and fighting well. In other words;

the military form of the means/ends problem. Particularly important here is the exclusion of women and children from the list of legitimate targets for the purposes of right conduct. This seems like a benevolent rule at the first sight but given the tragedies that the spared women and children had to go through and the plain fact that adult males are considered legitimate targets in war, the burdens imposed by patriarchal order both on men and women are apparent. Following the sections concerning these three concepts; proportionality of means, right conduct and net benefit, this part will end by the critique of each concept from a feminist perspective.

The final part of my thesis will be the Jus post bellum part. In this part I will deal with one of the well accepted arguments of the Just War tradition that the resistance to aggression stops with the military defeat of the aggressor. After the defeat of the enemy the victims of aggression have the right to material reparations and political safeguards to prevent a future attack but regime change is not the part of the paradigm. As Walzer put it, this is due to the perception of the classical Just War tradition that aggression is regarded as “the criminal policy of a government not as the policy of a criminal government”. In this part I will try claim that the end of hostilities itself is not enough for the improvement of women’s conditions and hence a new paradigm for humanitarian intervention is needed which is aimed to safeguard women’s rights in other societies. Hence I will try to analyze the possibilities of humanitarian intervention for the purposes of improving the conditions of women and try to reveal the connections between aggression, war and patriarchal order in society. I hope the unraveling of this connection will be an important motivation for re-examining the deficiencies in jus post bellum phase in the Just War tradition and will contribute to more studies in post bellum level that associate a true peace; a peace that include an honorable life for women with peace among nations.

Finally, I should mention that Just War tradition at least provides us a choice; a choice between conducting an unlimited war and a war, if not looking for true justice

but at least looking to limit war and bound this grim enterprise with some legal norms. It provides the politicians and the soldiers with a freedom to make choices about moral and political issues. But it should not be overlooked that in the final analysis it is a *tradition* and it emphasizes choices are made within the context of obligations and freedoms that we found in existence and not chosen *ex nihilo*.<sup>45</sup> Just War theorist James Turner Johnson explained the traditional character of this theory as it formed in history, picking up certain *wisdoms* along the way, dropping others yet maintaining its adherence to a particular set of notions.<sup>46</sup> Hence my main task throughout this thesis will be to deconstruct this tradition and its obligations that we found in existence to understand to what extent they reflect the patriarchal norms. But the everlasting concern of the researcher is still continuing to haunt us. If Max Horkheimer is right to assume that the modern world is experiencing the eclipse of reason and we stopped thinking about the ultimate ends, then this only ushers to the researcher that her or his work will only be regarded successful if only it passes the test of utility that the modern age is obsessed with. However, I should state clearly from the outset that my main concern here in this study is not to provide conceptual tools for the modern armies to conduct their supposedly just wars in just ways but to make an overhaul critique of a quite patriarchal tradition that claims to bring justice to the grim enterprise of war without taking concerns of women in to account. That's why I hope my work will not be read as a practical manuscript for the improvement of misogynistic sides of modern armies but as an effort of a political science student to analyze a very problematic subject, in terms of gender, to reveal the twisted foundations of such patriarchal tradition.

It is important to shed some light on the development of the Just War tradition to locate my study in its proper context. I find it useful to start this part of my study with

---

<sup>45</sup> Rengger, Nicholas, "On the Just War Tradition in the Twenty First Century", in *International Affairs*, Vol.78(April 2002),363.

<sup>46</sup> Zehr, Nahed Artoul, 191.

the Greek concept of *topos* which means orientation. The theory of *topoi* was developed by Aristotle as part of the rhetoric which is the dialectics of the *agora*; the public square, in contrast to the dialectics of the lyceum and the academy. What follows from the rhetoric of the *topoi* was what one person says to another is debatable, plausible or convincing only in a given context at a given time. Hence any analysis of political concepts should start with their *topoi*, with taking in to the consideration of the contexts that such concepts have been taken in to existence and developed. That's why I accept this part of my thesis as especially important for the rest of the study because only by providing a clear understanding of the context and development of this tradition I will be able to present a holistic understanding of the Just War tradition and its critique.<sup>47</sup>

It is important to mention that Just War tradition had developed slowly and in stages with different thinkers contributing to different concepts of Just War, rather than commentaries by series of thinkers on an already well established corpus. There exist pre-Christian thinkers like Aristotle and Cicero who had elaborated on some elements of what is now called the just war tradition specifically pertaining to the issue of just cause. Aristotle mentioned in his writings about wars that are by their natures just and Cicero had written extensively about the concept of Just War.<sup>48</sup> In Classical Greece it is possible to trace the origins of what later to be termed the legitimate authority in the Just War tradition. The authority to levy taxes and wage war was only confined to the polis. The violence unleashed by pirates or military expeditions conducted by the generals without the permission of the polis was clearly condemned by the classical Greek writers like Xenophon and Herodotus. The right to declare war was only confined to the *Ekklesia* which represents the *demos*.<sup>49</sup> It is also possible to find the traces of just cause in the classical Greek writings. In Plato's *Alcibiades*, the general

---

<sup>47</sup> Schmitt, Carl, *Nomos*, 50.

<sup>48</sup> O'Driscoll, Cian, "Rewriting the Just War Tradition: Just War in Classical Greek Political Thought and Practice", *International Studies Quarterly*, Vol.59(2015), 1.

<sup>49</sup> *Ibid.*, 2.

himself is questioned by Socrates about the rightful reasons for going to war and concluded by Alcibiades that deceit, violence or spoliation are not the just causes for going to war and war against the innocent societies that are not engaging in those activities are never justifiable. For Aristotle one goes to war if harmed before, in his own, his kinsmen's or his allies defense and for the glory, wealth and power of the state.<sup>50</sup> The in bello rule of discrimination is also present in the classical Hellenic thought about war. The rule of discrimination applied by the Greeks was not based on a non-combatant immunity as we understand in the modern period but based on the protection of the sacred and the neutralized. This applied both on the people and the places as well as to the particular times of the year. Since everything inside the religious sanctuaries considered belonging to gods, everybody including both animals, humans, enemy soldiers and non-combatants were free of harm inside those places. Heralds, priests and the Greek soldiers captured in a pitched battle had also had immunity and could expect mercy.<sup>51</sup> Also in the field of proportionality the classical Greek sources imposes some limits to the combatants. However, the language adopted and mentality disclosed by the classical Greek writers on this issue reveals the gender bias with regard to fighting. The use of bow and arrow were condemned both by Herodotus, Euripides and Plato. They all regarded the use of such weapons as the abandoning of the "manly" attitude which they had associated with the hand to hand battle and swords. The description of Homer's Diomedes' of Paris as an effeminate and a "typical archer, loud mouth, all hairstyle and bedroom eyes." is a clear depiction of the Greek perception of fighters and gender. Likewise, Thucydides' depiction of the surrender of the Spartans to the Athenians at Sphacteria during the Peloponnesian War where the Spartan prisoner answered to his Athenian captors' rebuke that the Spartan was a coward with the words that "it would be a rare spindle that could be distinguished brave from the cowardly soldiers and chance and dumb luck, not prowess, determined who survived and who fell when arrows were

---

<sup>50</sup> Ibid.,3.

<sup>51</sup> Ibid.,3-4.

involved.” shows the gender bias in the Greek thinking on war. Not surprisingly the word “spindle” which denotes a sewing needle is used specifically to “demonstrate” the link with the use of long range weapons of bow and arrow and womanly attitude towards war. Euripides reflected a similar mentality by calling brave “man” not to kill their enemies by stealth, engage them face to face and not to employ spear as an instrument of war because it does not make one win but only make one steal the war.<sup>52</sup> The Greeks also had a disdain from using stratagem during the war. What the Chinese General Sun Tzu had called the indirect methods of war like deception were not well taken<sup>53</sup> by the Greeks and seen as the methods to be adopted only as the last resort.<sup>54</sup><sup>55</sup> Plato in his famous work *Republic* devised two kinds of war; one between the Greeks and the other one between the Greeks and the Barbarians. The fights between the Greeks should not even be regarded as wars. But the fights between the Greeks and the Barbarians should be regarded as war and would involve hatred. The quarrels between the Greeks should always be conducted in a way that would make the reconciliation possible in the future. The other side should not be enslaved, their houses should not be burnt down and the means of producing food for the losing side should not be annihilated as well.<sup>56</sup> There were some sort of measures in the early Greek culture such as prohibition on establishment of stone status for the commemoration of victory with the reasoning that stone is a durable material and will always remind the belligerents the animosity between them, before they were transformed by the Persian and the Peloponnesian wars for the worse.<sup>57</sup>

---

<sup>52</sup> Whetham, David, “*Just Wars and Moral Victories: surprise, deception and the normative framework of European war in the later Middle Ages* (Boston: Hotei Publishing, 2009, henceforth: *Moral Victories*), 2.

<sup>53</sup> One of the indicators that such methods of deception is not highly regarded by the Greeks is the widespread negative depiction of the mythical Greek characters of Odysseus and Sisyphos who are associated with deceit and cunning in Greek mythology and culture.

<sup>54</sup> *Ibid.*, 5-6.

<sup>55</sup> This is an interesting point in understanding the Greek psyche about war. Here, in contrast to the later developed Just War tradition, not the war itself, but a certain kind of war; the war conducted by indirect non-physical methods were advised to be resorted as a final remedy.

<sup>56</sup> *Ibid.*, 34.

<sup>57</sup> *Ibid.*, 34-35.

Another tradition that had contributed to the Western Just War tradition is Judaism in which its nascent teachings were taken by the Christian thinkers and further developed and adopted to the requirements of the time. Almost all the Christian thinkers constantly referred to the relevant parts of the Hebrew Bible and either endorsed the principles in the Jewish Bible or devised long commentaries if they are proposing a principle that is contradicting them. From Augustine to Grotius the Jewish tradition on war making had left an important mark on the development of Just War Tradition. The Jewish tradition, which influenced heavily especially the early Christianity on war making, is quite skeptical on the enterprise of war. The tension between political expediency and the concern for war making going to excesses and finally hurting the Jewish people themselves are apparent in the Judaic texts. In *Samuel* 9:19-20, the elders of Israel ask Samuel for a king to “go out before us and fight our battles”. However, the rabbis had also expressed their concerns that a king who fights “our battles” will also fight his own and as Maimonides explained they might fight battles “to extend the borders of Israel and to enhance his greatness and prestige” which were clearly not approved and seen as unnecessary wars at the expense of the people. To resolve this dilemma between the need to defend the commonwealth and to stop the political authority to go to excesses in their use of military power, the Rabbis did their best to make king’s battles very difficult to start which might be read, in Just War tradition terms, as introducing principles in *jus ad bellum* level to make war difficult to initiate.<sup>58</sup> As a result, the Jewish corpus on war came up with two kinds of war, one that is sanctioned by God; *mitzvah* which only applies to the biblical wars against the Canaanites and the one that is permitted; *reshut* which applies to the situation where one needs to wage a war for self-defense. Since the war associated with *mitzvah* was only applicable to the historically peculiar case of the war against the Canaanites, what is left for the Kings of Ancient Israel was

---

<sup>58</sup> Michael, Walzer, *Law, Politics and Morality in Judaism* (United Kingdom: Oxford University Press, henceforth: *Morality in Judaism*, 2006), 152-153.

a war of *reshut*, that is a war of self-defense. This represented a serious restriction imposed on the activity of war and also played an important role in the thinking of Michael Walzer who played an important role in the revival of this theory in modern era.

Even though Christianity had left its mark on the Just War tradition it must be stressed that in general the limitation of violence in war is connected with religion, be it a poly or monotheistic one. To begin with Roman attitude to war was firmly associated with the religious practices of the time. Romans believed that they need to satisfy a certain procedure in order to ensure that gods were on their side.<sup>59</sup> Cicero for instance clearly acknowledges the role of religion in the softening of the attitudes towards war. He states that “as for war, humane laws touching it are drawn up in the fetial code of the Roman people under all the guarantees of religion”.<sup>60</sup> But the Roman tradition that had contributed to the development of the Just War tradition can not be reduced only to the effects of religion. Roman law had played a very significant part in development of this tradition. As opposed to the Greek understanding which regarded violence as essential for the inter-polis relations and which eventually failed to conceive any other form of relation between states other than war, the Roman understanding of law acknowledged a legal relationship between belligerents other than all out existential war. It recognized a variety of wars, leagues, federations (*foedus aequum*; equitable federations and *foedus iniquum*; inequitable federations) and foreign territories.<sup>61</sup> Even Rome’s declaration of war against her enemies had taken a form of trial. The high ranking fetial priests who were in charge of the proper functioning of international relations would set out Rome’s grievances out loud and publicly and demand their redress. As Dionysius of Halicarnassus explained “it is their duty to take care that the Romans do not enter

---

<sup>59</sup> Whetham, David, *Moral Victories*, 36.

<sup>60</sup> Marcus, Tullius Cicero, *De Officiis* (E-Book, no 470001, 2014), 61.

<sup>61</sup> Schmitt, *Nomos*, 51.

upon an unjust war against any city in alliance with them.”<sup>62</sup> If redress was not forthcoming then the act of belligerency was regarded legitimate resort to war. It is important to mention that this is a clear example not only of the Roman understanding of war and politics but also a good example of one of the main principles of the Jus ad bellum phase of the Just War tradition; namely the principle of last resort. It was essential for Rome that her wars were cast in the form of defensive and therefore morally justifiable.<sup>63</sup> However it should also be mentioned that even though Roman law on warfare and her thinkers did contribute to the in bello phase of the Just War tradition, her main contribution came for the jus ad bellum part of the warfare. Under the Roman legal system the justice of the cause was demonstrated before the start of the hostilities and the military phase of the legal procedure was regarded as the administration of justice as the rituals performed by the fetial priests demonstrate.<sup>64</sup>

However, it would not be an exaggeration to state that the systematic Just War tradition starts with Augustine and hence is a tradition heavily marked by Christianity. Thinkers of the Just War tradition such as Augustine, Aquinas, Vitoria and Suarez all shared a Christian world view based on the harmony of Christian faith with *reason*<sup>65</sup>. Their philosophical approaches were informed by Christian theology. For them the study of mundane things and beings, or to put it in their understanding; creatures, were not viewed as ends in themselves but rather physical manifestation of God’s creation. Hence both philosophy and theology revolved around God which was manifested with their outlook that divine ground of being is source of order for men and societies. In other words, for these writers God was the measure of all things.<sup>66</sup> In the coming parts of this study I will try to analyze what this worldview means for

---

<sup>62</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 48.

<sup>63</sup> Whetham, David, *Moral Victories*, 36.

<sup>64</sup> *Ibid.*, 236.

<sup>65</sup> It is important to notice that their efforts involved the use of reason since reason is one of the most gendered terms in Western Philosophical tradition favoring man over woman.

<sup>66</sup> Howard M. Hensel, *The Prism of Just War*, 29-30.

women within the context of Just War. Given such centrality of Christian theology for the Just War tradition no one should be surprised that the tradition is revived in the modern age by the writings of a protestant theologian Paul Ramsey in 1960s.<sup>67</sup> But it should be mentioned that it is not for all the benign reasons that the Christian Church *fathers* had brought the ideas forward that would form the cannon of the Just war tradition. Especially before the Edict of Milan, many of the Church leaders like Origen, Justin Martyr and Clement of Alexandria either disapproved or looked down the Christians serving in the Roman army.<sup>68</sup> Especially the North African Church father Tertullian regarded the military service as evil and idolatrous. The main problem in killing someone for Christianity was the understanding that it must be a sin to kill a neighbor for whom Jesus has died for.<sup>69</sup> As I will try to explain in the subsequent parts of this thesis, this also reflects the Christian understanding of soul being superior to body. Especially the early Augustine's reflections on self-defense regards one's attempt to defend oneself as an inferior motive associated with prioritizing one's body over one's soul.<sup>70</sup>

The early Christian pacifism had coexisted with the Christian timidity towards the public affairs. The famous verse in Matthew "Render to Caesar that which is Caesar's and to God that which is God's" was propounded by the belief in the second coming of the Christ and a reward for those who carefully held themselves away from the affairs of this world.<sup>71</sup> However just as for the early Church it took several centuries to reach a settlement on the issue of marriage in which it was allowed for the laity and prohibited for the clergy, the same compromise had taken place on the issue of

---

<sup>67</sup> Johnson, James Turner, *Ethics and the Use of Force: Just War in Historical Perspective*(United States: Routledge,2016, henceforth:*Ethics and the Use of Force*),15.

<sup>68</sup> J. Regan, Richard, *Just War:Principles and Cases*(Washington D.C:The Catholic University of America Press,2013,henceforth:*Just War*),5.

<sup>69</sup> Johnson, James Turner, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry*(New Jersey:Princeton University Press,1981,henceforth:*Tradition*),xxvii.

<sup>70</sup> Corey,David Dwyer, "Luther and the Just War Tradition", in *Political Theology*, Vol 12, Issue 2(2011),313.

<sup>71</sup> *Ibid.*,xxviii.

warfare in which monks were prohibited but common people were allowed to take part.<sup>72</sup>

After the adaptation of Christianity by Emperor Constantine as the official religion of the Roman Empire and especially following the First Council of Nicaea Christianity had sought for ways to reconcile violence with the pacifism of Christ's teachings. A religion allied with an empire covering most of the world known to its inhabitants could no longer remain pacifist. Hence an attempt to reconcile tenets of Christianity with the necessity of governmental use of violence was inevitable.<sup>73</sup> Just war tradition, starting from the early Church leaders, in part had developed to serve this purpose, to present religiously acceptable arguments to the Christian soldiers to fight wars.<sup>74</sup> Reinhold Niebuhr succinctly summarizes the problem that the Christians faced with regard to using violence with the following words;

the strategy of the cross, by itself, is blind, for its implementation in a pure form results in the unwitting exploitation of its true adherents, leaving only the case of those who through appeal to their vocation, deliberately look away from the world and from its political predicaments.<sup>75</sup>

But the tradition at the end of the 15<sup>th</sup> and the beginning of the 16<sup>th</sup> centuries had taken a secular turn. The ongoing debate among the philosophers of the time about if theology and philosophy can be reconciled or not and Aquinas' answer in affirmative to this question has increasingly been challenged by the 14<sup>th</sup> and 15 century philosophers. Especially Ockhamists, inspired by Willim of Ockham had started to make a distinction between philosophy and theology and established the former as a separate discipline. He insisted that the eternal order and the laws that govern that

---

<sup>72</sup> Johnson, James Turner, *Ethics and the Use of Force*,15.

<sup>73</sup> Johnson, James Turner, *Tradition*,xxviii.

<sup>74</sup> Karadeli, Cem, "Aquino lu Thomas" in *Savaş Kuramları*, ed. Erhan Büyükakıncı(Ankara: Adres Yayınları,2015, *henceforth:Savaş*),57.

<sup>75</sup> Flescher, Andrew,"Love and Justice in Reinhold Niebuhr's Prophetic Christian Realism and Emanuel Levinas's Ethics of Responsibility:Treading Between Pacifism and Just War Theory" in *The Journal of Religion*, Vol.80, Issue 1(2000),63.

order are based on divine omnipotence, divine liberty and divine will but not on divine reason. With right reason human beings can attain what is morally correct and try to conduct their actions accordingly.<sup>76</sup> This understanding had paved the way for the secularization of the Just War tradition during the succeeding centuries since it allowed the human agency a role in the determination of moral principles for the conduct of war. The importance of this secular turn will be dealt in the following chapters of my thesis for women since Christian outlook on women in general and her participation in to the public affairs in particular is so problematic. However, it should also be mentioned that such secularization of the Just War tradition is not a complete break from the moral tenets of the Just War tradition. “The Legalist Paradigm” which represents the secularized legal part of this tradition and which was described by Michael Walzer, is based on the vindication of one’s legal rights during the combat rather than reaffirmation of a moral concept. But as Walzer himself attests, the legalist conception simply supervenes the Just War tradition and offers the advantage of greater moral clarity.<sup>77</sup> Hence the secularized Just War tradition is not a complete break from the classical Just War tradition since it still puts emphasis on the moral concerns that were propagated by the classical Just War tradition marked by religious tenets and simply brings forward an element of legal rights and obligations for the implementation of such moral principles. However it is no coincidence that my study, pretty much like Michael Walzer’s<sup>78</sup>, will, focus more on the religious tradition which gave birth to the moral and political principles that Western politics still utilizes today. As Walzer himself attests, lawyers have constructed a paper world

---

<sup>76</sup> Howard M. Hensel, *The Prism of Just War*, 64-65.

<sup>77</sup> R. Lucas Jr., George, “The role of the International Community in Just War Tradition: Confronting the Challenges of Humanitarian Intervention and Preemptive War”, in *the Journal of Military Ethics*, Vol. 2, Issue 2(2003),128.

<sup>78</sup> Walzer at the preface of his classic “Just and UnJust Wars” tells to his readers that he treat words like aggression, neutrality, surrender, civilian, reprisal and so on as terms in a *moral* vocabulary not as concepts in a legal text. He expresses that his work then looks back to that religious tradition within which Western politics and morality were first given shape.

which fails at crucial points and they are still grappling to adjust their texts to the moral principles that lay at the foundations of the Just War tradition.<sup>79</sup>

16<sup>th</sup> century religious and political climate in Europe had brought important changes for the understanding of just war. European unity of *sacerdotium* and *imperium* epitomized by a closed Christian society; the *Respublica Christiana* had been abandoned in the favor of more religious and political pluralism as a result of the Protestant Reformation. The discovery of the New World had shaken the world and in consequence the political ethics was challenged by new questions.<sup>80</sup> The ensuing division of the world between the new and the old had also its effects on the Just War tradition itself. During this period European international law internalized a new concept that would change the understanding of war between European states; the amity lines. First appeared in 1599 as a secret clause in the *Treaty of Cateau-Cambresis*, the amity lines introduced a demarcation line between the European Continent and the rest of the world. At this line Europe, as well as the European Public Law ended and the New World began. For the enterprise of war, it meant the limited understanding of war achieved by traditional European international law ceases at this line and beyond the line war knows no limits. Vitoria's rejection of the Hobbsian axiom of *homo homini lupus* and his introduction instead of *homo homini homo* is reversed by the general acceptance of the principle of amity lines where anything is possible in line with the Hobbsian understanding of anarchy beyond the demarcation lines.<sup>81</sup> Hence for the period of discoveries and the military expeditions to the New World, except for the few thinkers, the idea of Just War was only applicable to the conflicts between European belligerents. For the rest of the world there was no need to justify war waging since the states and the peoples outside the

---

<sup>79</sup> Walzer, Michael, *Just and Unjust Wars*, xxii.

<sup>80</sup> Kremer, Markus, "Morality and Just War According to Francisco Suarez", in *From Just War to Modern Peace Ethics*, ed. Heinz-Gerhard Justenhoven and William A. Barbieri Jr. (Boston: Walter de Gruyter GmbH & Co. KG, 2012; henceforth: *Peace Ethics*), 155.

<sup>81</sup> Schmitt, Carl, *Nomos*, 92-96.

amity lines were not considered to be subjected to a *justus hostis* regime where one's enemy is not regarded as a foe to be annihilated but regarded as a legitimate opponent which to be not annihilated but only defeated.

This era marked the transformation of Just War theory's foundations from a theocentric one to an anthropocentric understanding based on natural law. Humans replaced God as "the measure of all things" and the Just War tradition's focus shifted more towards on human nature and reason than theological concerns.<sup>82</sup> During this period, even though first two were theologians and gave extensive references to the Christian sources, Francisco de Vitoria, Francisco Suarez and Hugo Grotius attempted to based their arguments about just war on the principles grounded on natural law which assumed that human beings have an essence. They appealed to the "universal" human nature which is assumed to be knowable by reason<sup>83</sup> and regulated by a natural sense of justice.<sup>84</sup> Grotius commenting on the famous dictum that "laws are silent during the times of war"<sup>85</sup> made clear that the laws can be silent in the midst of arms but these are only the laws of state which are adopted for the state of peace. However for Grotius unwritten laws are in force between enemies and those are the laws that nature prescribes or the agreement of nations has established.<sup>86</sup> Especially for Vitoria, the Thomistic understanding of law as a rule or a measure of human activity was paramount. As the origins of the Roman word *lex*, the *ligare* demonstrates that law binds and oblige people to one another. Hence law is reflective of human rationality and is considered by Vitoria as a dictate of practical reason.<sup>87</sup> Natural law and reason establish a bond between all men. Therefore, as opposed to

---

<sup>82</sup> Howard M. Hensel, *The Prism of Just War*, 89.

<sup>83</sup> There are differing voices in natural law tradition like Jacques Maritain who claims that human beings have an essence but the only reason that has access to that essence is the Divine reason, not the human one.

<sup>84</sup> Corey, David D. and Charles, J. Darley, *The Just War Tradition: An Introduction*(United States:ISI Books,2012; henceforth *Just War Tradition*),12-13.

<sup>85</sup> The latin phrase reads "Inter Arma Enim Silent Leges"

<sup>86</sup> Helen M.,Kinsella,*Image Before the Weapon*,13.

<sup>87</sup> *Ibid.*,134.

the logic of amity lines, for Vitoria the principles of Just War are not only applicable to the Christians but also applicable to non-Christians. Justifications to go to war are the same for all the people everywhere in the world. They are rooted in moral realities that are not changing from people to people but applicable universally and unchanging.<sup>88</sup>

A similar line of reasoning regarding the universality of Just War is also elaborated by Suarez. His dual understanding of morality, which allows a distinction between virtues in general which can be performed by Christians and non-Christians alike and the Christian virtues, relocates the existence of moral act in man's rational nature. In consequence the good actions are understood to be performed even by the unbelievers and they can fit to God's will as well. Such understanding is a huge departure from the Just War Understandings of Augustine and Aquinas who saw it as a mean for punishing sinners. Here partly secularized understanding of Just War presupposes war itself as an enterprise that is natural but subjected to a human morality in general characterized by justice, law and virtue. For Suarez "war is not principally evil but can even be a means of true peace if conducted honestly".<sup>89</sup> The critical change in the understanding of Just War came with the end of the middle ages sustained by a system of *Respublica Christiana* and its replacement with the *Jus Publicum Europaeum*; the European International Law. The defining hallmark of this post medieval European international law was its removal of the *justa causa* from the legal study of war. The defining hallmark of a just war; *justa causa* was replaced by the concept of *Justus hostis*; the legitimate enemy with explicit assumption that any war between equal sovereigns was legitimate requiring no specific just cause.<sup>90</sup> This became the pinnacle of the *Jus Publicum Europaeum* heralded by the writings of Ayala, Gentili and Zouch who transformed the legal understanding of war in to an

---

<sup>88</sup> Ibid.,134.

<sup>89</sup> Justenhoven and Barbieri Jr.,*Peace Ethics*,157.

<sup>90</sup> Schmitt,Carl,*Nomos*,120-121.

enterprise based on mutual relations between sovereign states in which *justi et aequales hostes*; just and equal enemies confronted each other indiscriminately.<sup>91</sup>

Finally, perhaps one of the most important changes brought by the secularized understanding of Just War tradition is that the militaries themselves have chosen to interpret the just war tradition in a legal rather than a moral and ethical light.<sup>92</sup> The end of the interstate European international law from the 16<sup>th</sup> to 20<sup>th</sup> century which was sustained by the presence of empires and the papacy, had given way to the modern international law by the early 20<sup>th</sup> century.<sup>93</sup> This has taken place in following the eventual triumph of liberal ideas and institutions in the Western world during the later part of the 20<sup>th</sup> century. The apparent decline of the Just War thinking in practice during the 18<sup>th</sup> and the 19<sup>th</sup> centuries where, as the Bismarckian *reelpolitik* illustrates, the states freely engaged in assumingly short wars without any effort to justify them other than their cold blooded calculations of national interests, was reversed during the 20<sup>th</sup> century. The result of this 20<sup>th</sup> century reversal was the increasing importance of both jus ad bellum and jus in bello principles in the Western societies which had been holding quite negative attitudes towards the waging war itself and actively engaging in an effort to establish a human rights regime after the Second World War.<sup>94</sup> Especially the interest of the Belgian and the American Jurists like Ernest Nys and James Brown Scott had contributed to the revival of the Just War tradition at the beginning of the 20<sup>th</sup> century. The focus on war making once more shifted on the justness of the war conducted. War once again ceased to be simply a legally recognized matter or only a matter of legal indifference. It is acknowledged that it again should become just in the sense that aggressor is declared to be a criminal.<sup>95</sup>

---

<sup>91</sup> Ibid.,124.

<sup>92</sup> Rengger,Nicholas,355.

<sup>93</sup> Schmitt,Carl,*Nomos*,56.

<sup>94</sup> Ibid.,358.

<sup>95</sup> Ibid.,119.

Especially important to understand the modern period in Just War thinking is the emergence of non-state actors in international arena. Since the mid 19<sup>th</sup> century history witnessed the emergence of actors using political violence for revolutionary ends, usually without the state sponsorship. Their aims were to overthrow the reigning regimes. Such development has challenged the conventionally accepted idea that belligerent rights were possessed only by states.<sup>96</sup> Modern writers had to grapple with the issue of legitimate authority and violence, of which the best know ones, Paul Ramsey, James Turner Johnson and Michael Walzer all threw their weights in the favor of states being the legitimate authority, even though accepting that there exist some contenders to its exclusive monopoly of being the legitimate authority.

Once the development of the Just War tradition is laid out, it is very crucial for my study to elaborate on the intellectual framework of the Just War tradition to reveal in what kind of intellectual traditions Just War tradition draws its concepts and inspiration for arguments about war in moral context. Just War tradition is not very far from what is implied by Clausewitz's famous dictum that war is the continuation of politics by other means given the fact that this tradition has developed from a very practical concern of reconciling violence with the politics of an empire which accepted a pacifist leaning religion as its official creed. It is important to note here that such a relationship between politics and the use of violence represented by Just War tradition is not the only approach in the Western political thinking. The Western political thinking provides three different approaches to the relationship between war and politics which can be summarized as follows; war is never legitimate, that in war anything goes and in war some sort of restraint both on what we can legitimately fight for and how we can legitimately fight. The first of these approaches is known as pacifism which has been unheard of before the advent of Christianity but still existing

---

<sup>96</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 643.

as a minority opinion. The second of these approaches has many forms in the Western political thinking but best represented by the realistic traditions of *raison d'état*. Finally the third of these approaches is represented by the Just War tradition.<sup>97</sup> This point demonstrates the limited nature of the understanding of war in this tradition in which the war is part of the political settlement of disputes unlike the modern phenomenon of total war which seeks the total annihilation of the enemy including in many cases the "civilians". One of the leading modern day Just War theorists Paul Ramsey demonstrate this point quite clearly by stating that "Therefore I say the use of power and possibly the use of armed forces is the *essence*<sup>98</sup> of politics".<sup>99</sup>

The intellectual framework of the Just War tradition has been shaped to a large extent by the worldviews of the early Church "Fathers", especially Augustine and the concepts in Christianity which had result in a very positive outlook for the Christian religion. At the beginning of *The City of God* Augustine directs his criticism to the pagans by invoking the murder of the elderly king of Troy *Priam* on the altar of Zeus and contrasting the attitude of the Christians who had spared the lives of the pagans who sought refuge inside their temples.<sup>100</sup> He continues to criticize the pagans with regards to their inhumane use of their own places of worship where the pillages and enslaved mothers and children were kept inside.<sup>101</sup> His criticism of pagans is usually in *jus in bello* level. He quotes Cato saying in Senate;

Girls and young boys are ravished, children are torn from their parents' arms, matrons must submit to the victor's lust, temples and homes are plundered, murder and arson, weapons and corpses, blood and lamentations everywhere.<sup>102</sup>

---

<sup>97</sup> Rengger, Nicholas, 354-355.

<sup>98</sup> Writer's emphasis

<sup>99</sup> Taslaman and Taslaman, 11.

<sup>100</sup> Saint Augustine, *The City of God, Books I-VII* (Washington D.C: The Catholic University of America Press, 1954, henceforth: *The City I-VII*), 22.

<sup>101</sup> *Ibid.*, 24.

<sup>102</sup> *Ibid.*, 25.

However even the Barbarians when defeating the Rome showed clemency for the sake of respect to Christianity;

Vast basilicas were designated as places where refugees might assemble with assurance of immunity. There no one was to be slain or raped; many destined for liberation were to be led there by the compassionate enemy; from there no one was to be dragged away in to captivity by a cruel foe. That this was in honor of the Name of Christ and to the credit of Christian civilization is manifest to all.<sup>103</sup>

The starting point for St. Augustine was the assumption that since the ordinary Christian leaders do not have the opportunity to directly contact God and know what is God's wish, then they have no choice but to carry the heavy burden of prudential judgment.<sup>104</sup> The prudential judgment in Augustinian tradition inscribes a state of fallenness to human beings and the prudential judgment is the reflective thinking that takes the fallenness of human beings in to account. Given its sinful inclination due to the original sin, the leaders should not grow overconfident and must keep in mind their potential for error.<sup>105</sup> The universalism of human sin lies at the heart of the Augustinian tradition and it should be acknowledged that the just war tradition especially its Augustinian strands is composed by a person who regarded even the just warriors as sinners, as the creatures who suffers from the same maladies as their enemies given the understanding that as humans they are susceptible to the same temptations.<sup>106</sup>

---

<sup>103</sup> Ibid., 27.

<sup>104</sup> J.N dePaulo, Craig, A.Messina Patric and P. Tompkins Daniel. "Introduction: Confessions, Contentions and the Lust for Power" in *Augustinian Just War Theory and the Wars in Afghanistan and Iraq: Confessions, Contentions and the Lust for Power*", ed. Craig J. N de Paulo, Patric A.Messina and Daniel P. Tompkins (New York: Peter Lang, 2011, henceforth: *The Lust for Power*), I.

<sup>105</sup> Ibid., 2-3.

<sup>106</sup> Mathewes, Charles, "Just War and the Theology of Evil", *Nova et Vetera*, Vol. 10, No.4(2012),1160-1172-1173

However, it is important to mention here that, at the same time prophetic Christian realism takes love as the epicenter of any just action. It is love that justifies the exertion of coercion through violence but with the condition that the one who actually carrying out the violence will remain impressed by its ugly consequences as he is persuaded by its necessity. The coercive agent will have to be the loving agent with full self-reproach in order to be the just agent.<sup>107</sup>

As the representative of this prophetic tradition Augustine combined Christian theology with the enterprise of war. For him war can only be justified if the soul of the warrior is somehow inspired by the love of God and of his neighbor.<sup>108</sup> For him human soul is marked by earthly love (*cupiditas*) and desire. Such human condition is derived from the original sin and the fall of Adam and Eve's from grace. This condition leads humans to seek for earthly satisfaction rather than divine love (*Caritas*).<sup>109</sup> Even though the city of man is a single human community, each individual in this community work for his own interest. The problem lays in the fact that such human desires can only be satisfied by God not by human beings. This inevitably leads to a chronic condition of civil war between man in the city of man.<sup>110</sup> For Augustine;

This life of ours, if a life so full of such great ills can properly called a life, bears witness to the fact that from its very start, the race of mortal men has been a race condemned. Think first of that dreadful abyss of ignorance from which error flows and so engulfs the sons of Adam in a darksome pool that no one can escape without the toll of toils, and tears and fears.<sup>111</sup>

---

<sup>107</sup> Flescher, Andrew, 66.

<sup>108</sup> J.N de Paulo, A.Messina and P. Tompkins, *The Lust for Power*, 26.

<sup>109</sup> *Ibid.*, 27.

<sup>110</sup> Saint Augustine, *The City of God, Books XVII-XXII* (Washington D.C: The Catholic University of America Press, 1954, henceforth: *The City XVII-XXII*), 84.

<sup>111</sup> Saint Augustine, *The City XVII-XXII*, 474.

For Augustine there would have been no wars if the nature of human beings had remained intact, un-fallen, as they were created. But since the fallen statues of human beings is a given for him, then this life is full of miseries and wars and can never attain the permanent security that can only be attained in the City of God.<sup>112</sup> This is an important assertion that has serious implications for international relations which is best seen in the discipline's strong favoritism for comprehending the relations between states as a state of anarchy.

One of the basic assumptions of Just War tradition is that inter-polis relations is based on an agonistic understanding of states. Augustine clearly expresses this agonistic understanding when he justifies the Roman General Scipio Africanus' proposal in the Roman Senate that it is better for Rome to have an adversary like Carthage to keep her in her toes rather than destroying it relaxing her posture.<sup>113</sup> It should be noted that fear is the overriding factor here to keep the moral order inside the state.<sup>114</sup> It is possible to see one of the well know distinctions in International Relations here, the domestic/international dichotomy and the instrumentalization of the threat of war to promote unity in domestic politics.

His agonistic understanding of man and state relations is clearly expressed by him by the following words;

In fact the city of man, for the most part is a city of contention with opinions divided by foreign wars and domestic quarrels and by the demands for victories which either end in death or are merely momentary respites from further war. The reason is that whatever part of the city of the world raises the standard of war, it seeks to be lord of the world, when in fact, it is enthralled in its own wickedness. Even when it conquers, its victory can be morally poisoned by pride, and if, instead of taking pride in the success already achieved it takes account of the nature and normal vicissitudes of

---

<sup>112</sup> Ibid.,480.

<sup>113</sup> Ibid.,67.

<sup>114</sup> Ibid.,100.

life and is afraid of future failure, then the victory is only momentary. The fact is that the power to reach domination by war is not the same as the power to remain in perpetual control.<sup>115</sup>

The fickleness of man is a great concern for Augustine. In his *Confessions* he spent a great deal of effort in explaining that human beings sin from an early age and even the babies have despicable traits like jealousy and gluttony.<sup>116</sup> He thought that our nature can fail us in fatefulness, can hate us and can make us harm.<sup>117</sup> Augustine's understanding of man and *his* nature is intricately connected with the eschatological duality that have been embedded in the early Christian texts. In the Gospel, Luke and Mark, the final battle between good and evil has repeatedly been reported. Likewise in Paul's letters to the Ephesians one is called to take up the armor of God and fight against evil and darkness as well as in the book of Revelation the Archangel Michael was depicted to have a battle with the Satan.<sup>118</sup> It is important to note that the near-Eastern cultures in which Christianity is one of them, usually base their theological views on the world on a combat myth where a titanic struggle between the good and evil forces; between the God and an evil rival takes place. In this sense Christianity is no exception to the rule in the ancient near East.<sup>119</sup> It promotes, a dualistic understanding of human beings and the world which was later adopted by the Just War tradition through the contributions of Church "Fathers".

Cicero's man is not as evil as Augustine's. He sees in man both an inclination for cooperation and an inclination for enmity. On the one hand by citing the Greek philosopher Dicaearchus' pessimistic view on human beings that they are the greatest peril for one another, even greater than the calamities of nature, he affirms the evil

---

<sup>115</sup> Saint Augustine, *The City of God, Books VIII-XVI* (Washington D.C: The Catholic University of America Press, 1952, henceforth: *The City VIII-XVI*), 419.

<sup>116</sup> Russell, Bertrand, *Batı Felsefesi Tarihi 2. Cilt: Katolik Felsefesi* (İstanbul, Alfa Basım, 2012, henceforth: *Batı Felsefesi*), 82.

<sup>117</sup> Saint Augustine, *The City XVII-XXII*, 207.

<sup>118</sup> Mathewes, 1160-1162.

<sup>119</sup> *Ibid.*, 1163.

nature of man. But on the other hand by conceding the point that man is the source of greatest help to man, he affirms the potential for cooperation among man.<sup>120</sup> Hence it should be noted that the clear and undisputable evil attributed to the human nature in the Just War tradition, comes not through the pagan philosophers of Rome but through its Christian ones. However, Cicero's state centric approach to politics underlines the Just War tradition's favoritism for the state. Cicero as both a philosopher and a politician was quite well aware of the tension between politics and philosophy. However, unlike some of his Greek predecessors like Socrates, he was very cautious and careful on keeping a balance between politics and philosophy and to protect the public order at all costs. For him the philosopher must not risk the chaos that might follow a ruthless public examination of the principles underlying a particular order. Cicero regards a defective government better than no government. In order to instill a certain sense of civic responsibility among the Roman citizens and protect the foundations of the commonwealth Cicero endorses Platonic kind of noble lies. The myths of the foundation of Rome and the life of Romulus were all endorsed as necessary mythical stories by Cicero to secure the foundations of the Roman Republic, even though he describes them nothing more than fables in his *Laws*.<sup>121</sup>

For Augustine war is waged in order to attain peace. Even men who are bent on war want at the end of their belligerency; the peace. However when men are plotting to disturb the peace; to go to war, what they desire is another peace which is nearer to their hearts.<sup>122</sup> In other words they would like to have a new political settlement. This point is important to understand the Just War tradition in the sense that this tradition, even though devising some rules to limit war, indeed endorses it at the end of the day. Augustine's own writings attests to this. He explains;

---

<sup>120</sup> Marcus, Tullius Cicero, *De Officiis*, 212.

<sup>121</sup> E. Holton, James, "Marcus Tullius Cicero" in *History of Political Philosophy*, ed. Strauss, Leo and Cropsey, Joseph (Chicago: University of Chicago Press, 1987, henceforth: *Political Philosophy*), 157-167.

<sup>122</sup> Saint Augustine, *The City XVII-XXII*, 212.

God in giving the command, acted not in cruelty, but in righteous retribution, giving to all what they deserved, and warning those who needed warning. What is the evil in war? Is it the death of some who will soon die in any case, that others may live in peaceful subjection? This is mere cowardly dislike, not any religious feeling. The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like; and it is generally to punish these things, when force is required to inflict the punishment, that, in obedience to God or some lawful authority, good men undertake wars, when they find themselves in such a position as regards the conduct of human affairs, that right conduct requires them to act, or to make others act in this way.<sup>123</sup>

The analogy of the relationship between father and son was adopted by Augustine to further his argument on this point that a kind of “kindly harshness” is required in order to make unwilling souls to yield;

For in punishing a son, however harshly, a father’s love is certainly not cast aside, yet what he does not want, and what makes him suffer, happens because it appears that he can be cured only by unwilling suffering. Thus if the earthly state observes those Christian teachings, even war will not be waged without kindness...<sup>124</sup>

The eventual endorsement of war by Augustine can be understood by his justifications he provided for the wars of Ancient Israel. To defend Moses against the accusations that the wars of Israel were cruel, Augustine replied that there was no cruelty in punishing the people with sword who had committed sin against God.<sup>125</sup>

Later thinkers also emphasized the importance of attaining peace for a just war and reaffirmed the Christian concept of sin to legitimize their arguments for going to war.

---

<sup>123</sup> Augustine, “Contra Faustum, Book XXII, 74, <http://www.newadvent.org/fathers/140622.htm>.  
November, 20, 2016

<sup>124</sup> Saint Augustine, *Letters, Volume III*(Washington D.C:The Catholic Univeristy of America Press, 1953),47

<sup>125</sup> Augustine, “Contra Faustum, Book XXII,95, <http://www.newadvent.org/fathers/140622.htm>.  
November, 20, 2016

For instance Gratian regarded peace as the desirable condition and says war shall be resorted only in case of necessity.<sup>126</sup> For Thomas Aquinas Christian soldiers can fight against their enemies to restrain them from further sinning. So a harm to enemies can be inflicted to avoid greater evils or to support a greater good like justice or restoring moral order and concord.<sup>127</sup> Especially the preservation of order came to the fore in the Just War tradition by Aquinas who had integrated the teachings of Aristoteles in Christianity.

The period following Aquinas saw some prominent intellectuals that had transformed Just War tradition from a tradition based on religious principles to a one based on natural law and secular teachings. This represented a serious transformation in the intellectual framework of the tradition. Vitoria, Suarez, Gentili and Grotius are the thinkers worth mentioning in this respect.<sup>128</sup> The period marked by the secular transformation of the Just War tradition coincided with the efforts for the justification of the Spanish and Portuguese Empires to intervene and convert the American indigenous people to Christianity. In the 16<sup>th</sup> century, Spain waged two prominent wars in America that would change the history of the Americas. Between 1518-1521 under Hernan Cortes she fought against the Aztecs and until 1533 under Pizzaro fought against the Incas. From the beginning of these two wars there was a certain discomfort on the part of the Spanish intellectuals of the time about these two wars. Given the results of these wars such as forced conversion of local inhabitants to Christianity and allocation of plots of lands to the Conquistadores, there ensued a widespread discussion on if these wars can or can not be called just wars.<sup>129</sup> In that regard Suarez contributed heavily for the transformation of Just War tradition to a

---

<sup>126</sup> H. Russel, Frederick, *The Just War in the Middle Ages*(Cambridge:Cambridge University Press,1974,*henceforth:Middle Ages*)58

<sup>127</sup> *Ibid.*,260-261.

<sup>128</sup> Taslaman Caner and Taslaman Feryal,"Contemporary Just War Theory:Paul Ramsey and Michael Walzer",*Akademik Arařtırmalar Dergisi*, Vol.59(2013-2014),5.

<sup>129</sup> Winkel, Laurens,"Francisco de Vitoria on Just War on Both Sides and on the Legal Position of Burgundy", *Legal History Review*, Vol.75, Issue 3(2007),355.

religion blind secular tradition. What is important to understand the change in the religion dominated intellectual environment was the change in the moral tone of the guilt of the enemy. Such a moral tone in the guilt of the enemy especially stressed strongly by Augustine and Aquinas, was de-emphasized by Suarez and simply reduced to a secular guilt stemming from the violation of the laws of the natural order. Hence unbelief or heresy started to be crossed out of the list of just causes for war. The capability of going to a just war had started to be granted to every sovereign political community without any importance attached whether it is Christian or not.<sup>130</sup>

However, it is important to note here that such a secular turn in the Just War tradition which emphasizes legal norms and rights more than the moral principles still poses a problem for women. As I will try to explain in the subsequent parts of this study international law which is still grappling with the problem of extending the limits of the Westphalian state system, itself is not enough to safeguard women's rights. Hence a secular turn focusing only on the "rights" is not enough to ensure equality for women since such "rights" are conceived and codified through a male gaze. But on the other hand, simply to rely on moral principles, which are themselves the product of a quite male dominated tradition will still not help women given the fact that the absence of the discourse of "rights" and legality would leave the agents, who carry out violence or who takes the decisions about its applicability, with only with their own conscience to rely on with no mechanism to coerce them to comply with the moral principles. Given such a dilemma it is obvious that Just War tradition needs a fresh outlook that would bring forward a union between law and morality based on not a misogynistic but on a gender equal foundation.

The remaining parts of this study will focus on the Just War corpus and its feminist critique. The longest, and maybe the most crucial part, for revealing the twisted

---

<sup>130</sup> Justenhoven and Barbieri Jr., *Peace Ethics*, 162.

foundations of Just War tradition, of this study will be the next part; Jus ad bellum principles and their feminist critique. This part will focus on the jus ad bellum principles of just cause, legitimate authority, last resort and right intention as well as their feminist critique. This part also includes the analysis of the intellectual framework that Just War tradition relies on because the concepts like just cause, legitimate authority, etc. that will be analyzed in the study are all formulated by thinkers drawing extensively from such an intellectual framework. Hence a deconstruction of such intellectual framework will shed light on the Just War principles that will be examined in this study.

After the part dealing with the Jus ad bellum principles, the next section will deal with the principles that are designed to guide the soldiers during the actual combat; the jus in bello principles and their feminist critique. These included the right conduct, proportionality of means and net benefit and the principle of discrimination. For any utilitarian minded reader this part presents the most practical information about the conduct of modern militaries and their way of thinking which are still based on gender roles and concepts like honor that represents male dominance.

The third part of the remaining study will focus on what little exists on the principle of Jus post bellum and its feminist critique. The absence of the jus post bellum principles in classical Just War theory and its consequences for women will be discussed in this part together with an argument in favor of extending the limits of Westphalian world order and the need for the re-definition of the notion of humanitarian intervention by taking the perspective of women in to account.

The final part of this study will summarize its findings in all three levels of the Just War tradition and try to put forward the unresolved dilemmas the researcher faced during his research.

## CHAPTER 1

### JUS AD BELLUM PRINCIPLES AND THEIR FEMINIST CRITIQUE

#### 1.1 JUST CAUSE

This part of my study will focus on the historical development of the concept of just cause for a just war. It will try to trace the origins of the concept to Ancient Greece and Rome and more importantly to the Church “fathers” of early Christianity. I will include the explanation of what kind of arguments had been employed by the thinkers to make a cause for attack a just one. This section will also demonstrate the transformation brought by the Spanish thinkers of the *Salamanca School* who transformed the Just War tradition by granting equal rights to fight to both sides regardless of their Christian or non-Christian identities. As it will be seen below, those writers do not hold the opinion that “anything goes in war” or the Hobbesian arguments like a war disliked is deemed unjust and a war liked deemed just. They genuinely tried to provide moral arguments, even though the foundations of such moral arguments are quite problematic for women, for the list of just causes they devised. It is important to realize in this section that only one Just War writer, Christine de Pizan mentioned in her writings about the need to initiate a fight to protect women. The others did not pay any attention to the situation of women during war both in their and other societies.

Many sources regard Augustine as the prime thinker of Just War tradition and traces the start of this tradition to him. However, Just War tradition, especially the just cause to start a war has a history that pre-dates Augustine. Aristotle in his *Politics* had laid

three principles for going to war. His *justa causa* for war was prevention of enslavement, to exercise leadership which would include benefit for the people whom the rule is exercised and to make oneself master of those who naturally deserve to be slaves.<sup>131</sup> He uttered in his *Nicomachean Ethics* that a war against the people who refused to recognize their natural incapacity for self-government is “by nature just”.<sup>132</sup>

Cicero is the other pre-Christian thinker who had elaborated about Just War. However, his greatest contribution is the introduction of limited warfare that he endorsed. His *justa causa* for initiating war was establishing the peace. He wrote in *De Officiis* that “the only excuse for going to war is that we may live in peace unharmed.”<sup>133</sup> He mentions that when the victory is won, the people who were not blood thirsty and barbarous in warfare should be spared. He further elaborated on the preciousness of peace by invoking a comparison between the Athenian law giver Solon and the heroic Athenian General Themistocles and favors Solon over Themistocles by saying that Solon by his laws served his country forever but Themistocles by his victory at Salamis served only once.<sup>134</sup>

The Ambrose of Milan was one of the Church leaders to reconcile violence with the Christian teachings. He had elaborated that faith and justice should be observed even during the war. He believed that one can employ violence in order to defend not him or herself but his or her companion. He quoted from the Hebrew Bible that Moses had rushed to the defense of a fellow Jew when he had seen him tortured by an Egyptian. He, hence, described defense of one’s fellow brother as a just cause for entering a just war.<sup>135</sup> He explained that “everyone believes it is much more

---

<sup>131</sup> Aristotle, *Politics*(New York: Oxford University Press, 1995), 287.

<sup>132</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby,*The Ethics of War*,38.

<sup>133</sup> Marcus, Tullius Cicero, *De Officiis*

<sup>134</sup> *Ibid.*,

<sup>135</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby,*The Ethics of War*,67.

commendable to protect one's own country from destruction than to protect oneself from danger and that exerting oneself for one's country is much superior to leading a peaceful life of leisure with all the pleasures it involves."<sup>136</sup>

Augustine like Cicero, had defined the just cause for waging war as redress of and punishment for incurred injuries.<sup>137</sup> He clearly states that "A just war is justified only by the injustice of an aggressor".<sup>138</sup> For him whenever the war that is being waged is just, the opposing side must be wrong and the victory is bestowed to the victor by God and the defeat is retribution from God to the vanquished either to reform him or to punish his sin.<sup>139</sup> However he clearly stated that to go to war for taking the women of another people by force is forbidden.<sup>140</sup> For him the lust for domination is not a just cause for war. He criticizes the Persians, Spartans and the Athenians for having the lust for domination and considering glory the territorial expansion.<sup>141</sup> Then he continues to criticize Romans on this account that they had grown mighty by conquest and became an object of dread to the rest of the people.<sup>142</sup> After citing the territorial expansions of the Assyrian King Ninus he asked "Can waging war on neighbors, and then by a series of wars, crushing and enslaving peaceful nations be called anything else but colossal brigandage?"<sup>143</sup> Revenge, personal interest, adulation of the leader's name and any other personal gain are not just causes for going to war.<sup>144</sup> To put it succinctly three types of injustices lay the ground for a just war; to repel the invasion in the case of an enemy attack, to recover property in the

---

<sup>136</sup> Ibid.,69.

<sup>137</sup> J.N dePaulo, Craig, A.Messina Patric, *the Lust for Power*, 26.

<sup>138</sup> Saint Augustine, *The City XVII-XXII*,207.

<sup>139</sup> Ibid.,223.

<sup>140</sup> Saint Augustine, *The City I-VII*,97.

<sup>141</sup> Ibid.,150.

<sup>142</sup> Ibid.,195-196.

<sup>143</sup> Ibid.,198.

<sup>144</sup> Büyükkakıncı, *Savaş*, 63.

case the enemy declines to punish its own subjects who had committed that misdeed and to avenge prior injuries.<sup>145</sup>

Even though for both Cicero and Augustine the chief aim to go to war is to establish peace and live in peace unharmed, the deep chasm between their understandings should not be overlooked here. For the Greek and Roman tradition permanence can only be attained in *polis* and *res publica* by cultivating human affairs but for the Judeo-Christian tradition nothing belonging to this world can attain permanence, permanence can only be attained in the world to come one attends after passing away from this mundane life. As a reflection of this gap between two traditions how the peace is attained by Cicero and Augustine is quite different from one another. As Augustine acknowledges in his *City of God* for Cicero one can go to war for the defense of safety. What Cicero understands from safety is actually the permanence of the public space; *res publica* where the human actions unfold. In Augustine's words;

What he meant by safety which justifies a war was the unending permanence of a political community, the guarantee that, though the citizens individually might come and go by birth and death the community would go on forever... Safety for Cicero means security from that civic death which is a punishment for a state in a way that personal death can never be a punishment for a single citizen.<sup>146</sup>

However, for Augustine the way to reach peace is to ensure an ordered society starting from the order inside the family all the way to the ordered authority inside the political community. In the *City of God* safety can only be achieved by faith to God and by means of faith.<sup>147</sup> Even though, the issue will be discussed in the following chapters, it is important to mention here that Cicero's understanding of safety, even though idealizes the state, at least provides a political space for the citizens, unfortunately not including women, to perform their deeds in the public sphere and

---

<sup>145</sup> H. Russel, *Middle Ages*, 64.

<sup>146</sup> Saint Augustine, *The City XVII-XXII*, 429.

<sup>147</sup> *Ibid.*, 430.

have a say in their own affairs. In contrast Augustine's understanding of safety through order is much more rigid since it reflects well entrenched social hierarchies from family to religion and state.

Gratian elaborated on the just and unjust causes of war in his *Decretum*. He has quoted the Isidore of Seville that "That war is just which is waged by an edict in order to regain what has been stolen or to repel the attack of the enemies."<sup>148</sup> He states that wars motivated by cupidity and fought with the intention of private gain and booty are not just.<sup>149</sup> For him the just causes of a just war which he expanded from the ones mentioned by Isidore of Seville, were to recover lost goods, to repel an enemy attack, self-defense, defense of the Church, associates, the patria or the commonwealth.<sup>150</sup> Gratian especially devoted a considerable part of his writings to define carrying out violence against the heretics, infidels and the ones' who disputed the authority of the Pope as just causes to go to war.<sup>151</sup>

One of the most important Church "fathers" that had contributed to the Just war tradition's cannon was St. Thomas Aquinas. He inherited many of the views of St. Augustine. He bases his efforts for reconciling Christianity with violence to a sermon delivered by St. Augustine who said if Christianity would have been totally opposing violence it would not be said in the Bible about the soldiers that "do not exert violence to the people and be contented with your salaries". Aquinas interpreted this saying as Christianity's endorsement of violence when necessary since it did not prohibit the military profession altogether. For Aquinas God has the primary place in one's life followed by our parents and our country since they are the ones that gave birth to us and sustain us. Hence one should regard them as sacred. Our commitment to our parents and family should be extended to our compatriots, our country and the

---

<sup>148</sup> Johnson, James Turner, 546.

<sup>149</sup> H. Russel, *Middle Ages*, 61.

<sup>150</sup> *Ibid.*, 62.

<sup>151</sup> H. Russel, *Middle Ages*, 74.

allies of our country. Therefore a war aimed at protecting our family, our country and our allies may very well be a just one.<sup>152</sup>

For Aquinas a war should be based on a just cause. The ones whom the war is declared must have done something wrong that they must have been deserved to be declared war upon. For him to redress past injustices and recovering the lands unjustly taken from your country are just causes for war.<sup>153</sup>

Aquinas had based his claims on the justness of some of the wars on the Jewish roots of Christianity and extensively quoted the Old Testament to substantiate his claims. By quoting Deuteronomy he states that in the first place the Law commended that war should be declared for a just cause and an offer for peace should be extended before laying a siege on a city.<sup>154</sup> As an Aristotelian he combined the Aristotelian and patristic virtues of fortitude and prudence for the defense of the common good which was defined as the patria. Hence for Aquinas an army endowed with fortitude should carry out the will of the proper official who himself is endowed with prudence and seek for the defense of the common good. Any other cause for war other than the preservation of the common good is ruled out by Aquinas as dangerous both to the soul and community since they were waged for the purposes of vainglory and greed.<sup>155</sup>

Christine de Pizan defined the just cause for a just war as maintaining law and justice and to withstand evil doers who oppress the people and to recover lands, lordships and other things stolen or usurped for an unjust cause by others. But she had argued against wars for pursuit of revenge or aggressive acquisition of foreign lands because

---

<sup>152</sup> Büyükkakıncı, *Savaş*, 63

<sup>153</sup> *Ibid.* 64.

<sup>154</sup> Saint Thomas Aquinas, *Summa Theologica, Part I-II*, ((E-Book, no 17897,2006, henceforth: *Summa I-II*)),1733.

<sup>155</sup> H. Russel, *Middle Ages*,262.

it is not just to take what does not belong to you and vengeance is right that does not belong to the people but only reserved for God.<sup>156</sup> Christine de Pizan, is an exceptional writer in the Just War Canon not only because she is the female thinker whose writings had been canonized by this tradition but also because she was the only one among the Just War thinkers who in a way mentioned that protecting women can serve as a just cause for a war. As she explained in her *The Book of Deeds of Arms and Chivalry*;

And third, the prince, if it pleases him may justly go to the aid of any other prince, baron or other ally and friend of his, or to help any country or land, if the need arises and if the quarrel is just. In this point are included *widows*, orphans and all who are unjustly trampled underfoot by another power.<sup>157</sup>

Even though Pizan did not explicitly mentioned women in her writing, what is understood mainly from the “widows” in the medieval European context is the women. However, two points should be mentioned about her proclamation of protecting women as a just cause for a just war. One is that such protection is simply left to the good will of the prince, there is no definitive or compulsory language is used at her text. The second is, as I will try to explain more thoroughly in the following parts of this study, her outlook is keenly connected with the practices of the chivalric tradition of Europe which puts a special emphasis on the notion of honor which had brought quite negative implications for women, especially in highly patriarchal societies. Hence it is quite likely that Pizan might have been invoked the protection of women or the widow in such context of honor.<sup>158</sup>

---

<sup>156</sup> Whetham, David, *Moral Victories*, 64.

<sup>157</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 214.

<sup>158</sup> It suffices to remember Don Quixote’s battles, both real and imaged, which he conducted to prove his chivalric love for the women she loved; Dulcinea del Toboso, to understand the importance of honor and chivalry for the medieval European mind.

Martin Luther made a distinction between two types of war; the ones that are started with response to an attack by the enemy and the ones initiated without such an attack by the enemy executed. He endorsed only the former and in this way he concluded that the only just cause for war is an actual attack coming from one's enemy.<sup>159</sup><sup>160</sup>

Francisco de Vitoria brought an important novelty to the studies of Just War. His endorsement of the concept of *bellum justum ex utraque parte* which means a war can be just on both sides was an important contribution to the development of the Just War tradition. In order to reach the justifiability of war for both sides he introduced the canon law doctrine of ignorance in to the notion of *justa causa*.<sup>161</sup> Confronted with the Spanish atrocities in the New World and the conventional wisdom in Spain at the time that being non-Christian constitutes an enough reason to wage war against the inhabitants of the New World, he undoubtedly rejected difference of religion as just cause for war. For him a just war can only be waged to incur a wrong committed by one's enemy.<sup>162</sup> As he explained in his *De Jure Belli* that "the sole and only just cause for waging war is when harm has been inflicted". But he also adds that "not every or any injury gives sufficient ground for waging war".<sup>163</sup> Faith can be spread by preaching but cannot be coerced. By granting recognition to the existing administrative structure of the Native American, Vitoria also granted the right to self-defense for the native inhabitants and declared that in case of an attack by the native inhabitants the Spanish can only defend themselves not start hostilities that would end in atrocities. For Vitoria war is justifiable only when and where the injustice violates

---

<sup>159</sup> Corey, David D.,316.

<sup>160</sup> It is important to note here that by endorsing the existence of an actual physical attack by the enemy as the just cause for a just war, Luther departs from the Augustinian understanding of just cause which endorses the wars stemming from the intention of one's love for one's neighbor such as assisting the fellow Christians in other lands or responding to an allies cries for help. However to limit one's capacity for war only to a response to a physical attack of the enemy is a serious departure from this Augustinian tradition and huge step towards to the international system what later be called Westpahlian state system.

<sup>161</sup> Winkel,358.

<sup>162</sup> Corey, David D. and Charles, J. Darley, *Just War Tradition*,131.

<sup>163</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby,*The Ethics of War*,314.

the natural law.<sup>164</sup> He argued that Indians and the Christians had the equal rights. It is worth mentioning that his assertion of equality which sounds quite natural to a modern ear was revolutionary at the time. Then the ideas of Juan Gines Sepulveda were common stock in trade at the time, which were based on the Aristotelian understanding of natural master and slaves and master's( in this case the Spaniards) right to subjugate the slave (in this case the native Americans).<sup>165</sup> He added the recovery of stolen property and defense against aggression in his list of causes for a Just War. His perspective for the just cause was centered around the defense of the public good.<sup>166</sup> Consequently a Spaniard professing Christianity had no direct right to wage war against the native people just because he was spreading Christianity.<sup>167</sup> His unbiased understanding of just cause was the result of his outstanding rejection of the division of the world through amity lines. As Carl Schmitt explains;

Of course, for Vitoria, recognition or even acceptance of lines beyond which the distinction between justice and injustice was suspended was a sin and an appalling crime.<sup>168</sup>

Suarez distinguished between two types of violence. One is violence that is naturally permitted and the other one is violence that needs authorization by positive law.<sup>169</sup> The naturally permitted violence is the defensive war in which the revision of unlawful occupation, the defense of fatherland and public welfare are all included as just causes. This right to defense belongs to the natural law but aggression is part of the international law (*jus gentium*) because it requires the involvement of the institutions of the states. Defense responds to an action in progress but aggression requires the accomplishment of an injury. Hence with his new understanding of international law which is seen by Suarez as an instrument of resolving problems

---

<sup>164</sup> Corey, David D. and Charles, J. Darley, *Just War Tradition*,131-132.

<sup>165</sup> Schmitt,Carl,*Nomos*,102-103.

<sup>166</sup> Corey, David D. and Charles, J. Darley, *Just War Tradition*,132.

<sup>167</sup> Schmitt,Carl,*Nomos*,105.

<sup>168</sup> *Ibid.*,106.

<sup>169</sup> Justenhoven and Barbieri Jr.,*Peace Ethics*,157.

among sovereign states and the embodiment of their mutual political and moral commitment to one another, Suarez added the violation of the international law among the just causes for war. He also included violation of good reputation and all the military measures that serve the subsequent satisfaction of an injury already committed.<sup>170</sup> The right to punish stems from natural law but only positive law can define who gets to do punishing and how. He also adds that not every cause is sufficient to justify a war. Only serious causes that commensurate with the losses are causes for a just war. He regards inflicting grave harm in the face of a slight offence as an injustice.<sup>171</sup>

Grotius included the defense of one's life, recovery of property and punishment as the just causes for a just war. Defense of one's life has its origin directly in the nature which permits each person his or her own protection. War for the recovery of property is allowed by Grotius only for some limited cases, especially allowed only when a necessity is involved. Punishment is only adoptable as a just cause when a certain damage has been done to the party in question, it can not be applied to crimes that have only just begun with no serious harm to a belligerent.<sup>172</sup>

One of the most prominent modern thinkers of Just War theory Paul Ramsey invoked the Augustinian understanding of one's love towards his neighbors for the military intervention to another state. He broadened the scope of *justa causa* which was reduced by the legalist paradigm to the principle of self defense. In addition to defense against aggression he endorsed assistance to one's friends as a just cause for a just war.<sup>173</sup>

---

<sup>170</sup> Ibid.,157-159.

<sup>171</sup> Steinhoff,Uwe,"Just Cause and Right Intention" in *Journal of Military Ethics*,Vol.13/1(2014),34.

<sup>172</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby,*The Ethics of War*,402-406.

<sup>173</sup> Taslaman and Taslaman,8.

For Michael Walzer sufficient threat without the actual one is a just cause to go to war. By introducing the concept of sufficient threat Walzer endorses the preemptive war. For him for a threat to be sufficient for military intervention there have to be present two conditions; a manifest intent to injure and an active preparation that makes this intent a positive danger.<sup>174</sup>

For Jeff McMahan just cause is an aim that satisfies the following two conditions; “that it may permissibly be pursued by means of war and that the reason why this is so is at least in part that those against whom the war is fought have made themselves morally liable to military attack”.<sup>175</sup>

The most crucial difference in this part between the classical and the modern writers, except Ramsey, that the classical writers were guided mostly by religious/moral concerns but the modern ones are much more preoccupied by legal ones. As a result, the limited number of modern writers<sup>176</sup> who dealt with the issue of just cause conceived the just cause not as a moral reaffirmation of one’s good intention in declaring war but as a legal necessity of complying with the modern principle of self-defense which is initiated as a response to an aggression.

## 1.2. LEGITIMATE AUTHORITY

This part of my study will focus on the concept of legitimate authority in the Just War tradition. This concept is crucial to understand in order to reveal the state centric origins of the Just War tradition since both the legitimate agents which can carry out

---

<sup>174</sup> Ibid.,10.

<sup>175</sup> Steinhoff,Uwe,32.

<sup>176</sup> It is not a coincidence that few modern writers dealt with the issue of just cause because modern just war tradition, by granting moral equality to both of the belligerents by the principle of “*justi et aequales hostes*; just and equal enemies confront each other indiscriminately” simply led many of its modern thinkers to accept causes of war propagated by lawful sovereigns as just by definition.

violence and the legitimate enemies which can respond to that violence in kind are defined as states and in some cases as state like entities. In this section I will try to summarize the views of the Just War thinkers about the legitimate authority in historical continuum and also try to render how the legitimate authority; the state is interwoven with familial and social authorities. This point is especially important from the perspective of gender analysis given the tacit alliance between patriarchal family, society and state and their role in the subjection of women in such patriarchal societies.

Legitimate authority is one of the most fundamental elements of the Jus ad bellum phase of the Just War tradition. Even though a clear conception of legitimate authority fully developed by the Romans and especially by Augustine, there are traces of legitimate authority in the Ancient Greek sources as well. Plato in his *Laws* expressed that no one apart from the legitimate authority should decide on the issues of war and peace. He explains

If someone should make peace or war with certain parties in private, apart from the community, the penalty is to be death... If some part of the city should by itself make peace or war with certain parties, the Generals are to bring those responsible for this action into court and the judicial penalty for someone who is convicted shall be death.<sup>177</sup>

The defining hallmark of the Roman legal tradition with regard to war, in contra distinction to the preceding civilizations, was its recognition of the category of the *hostis*; the enemy. It distinguishes legitimate enemies from the thieves and the criminals. As Pomponius said; “There are enemies who declare war on us, or against whom we publicly declare war; others are robber or brigands”.<sup>178</sup> This is a clear recognition of the state as the legitimate authority since only an enemy state can legitimately wage war against Rome. As a representative of the Roman tradition

---

<sup>177</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 29-30.

<sup>178</sup> Schmitt, *Nomos*, 51.

Cicero never justifies the private war given that for him state's moral authority comes from its responsibility to provide public wealth.<sup>179</sup> For him some of the enemies do not deserve to be treated the way the legitimate enemies (*Justus hostis*) are supposed to be treated in line with the laws of war. For instance, the pirates who were regarded as the common foe of all world, were not required to be treated the way lawful enemies deserve. The Carthaginians as a state is right to expect from Regulus to keep his promise and come back to Carthage as a hostage with the blessing of Rome but the pirates should not expect to be given their ransom if the hostage is freed in exchange of an oath to bring the ransom to the pirates.<sup>180</sup> Cicero explains;

But Regulus had no right to confound by perjury the terms and covenants of war made with an enemy. For the war was being carried on with a legitimate, declared enemy and to regulate our dealings with such an enemy, we have our whole fetial code as well as many others laws that are binding in common between nations. Were this not the case the senate would never have delivered up illustrious men of ours in chains in to the enemy.<sup>181</sup>

The people who can lawfully exercise violence during a battle are the soldiers of the state for Cicero. He quotes the letter sent by the Elder Marcus Cato to his son, who was serving in Macedonia in the war against Perseus, informing him that he was dispatched by the Consul from the army and he should be careful not to enter a battle since it is never lawful for one who is not a soldier to fight with an enemy.<sup>182</sup>

Before examining Augustine, it is important to mention here that Christianity associates authority with state and defends the state's authority to exert violence when it is necessary. The biblical passage from the Romans clearly demonstrates the strong association of state and the authority to use violence;

---

<sup>179</sup> Saint Augustine, *The City I-VII*,2.

<sup>180</sup> Marcus, Tullius Cicero, *De Officiis*,412.

<sup>181</sup> *Ibid.*, 413.

<sup>182</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,52.

For rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? Then do what is good and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoers.<sup>183</sup>

Augustine's understating of authority is keenly connected with his understanding of peace. He perceives peace among human beings as a regulated fellowship. For Augustine activity of regulation starts from the family; that the peace at home is based on the ordered harmony of authority and obedience between the members of family. The peace of the political community is attained by an ordered harmony of authority and obedience between citizens. Order is the arrangement of things whereby each of them is disposed in its proper place.<sup>184</sup> In *Contra Faustum* he explains that only the public authority can use military means justly. He explains; "The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority."<sup>185</sup>

Augustine invests the state with the legitimate authority for implementing violence against God's enemies, including its own subjects. For him, since the agent of authority is nothing but a "sword in the hand" and is not responsible for the killing, then it is not a transgression of the law that "You shall not kill" to wage war at God's bidding or for the representatives of the state to put criminals to death.<sup>186</sup> A soldier, in case of killing a man in obedience to the authority under which he is lawfully commissioned, is not guilty of murder. However if he kills on his own impulse and authority then he would be guilty of murder.<sup>187</sup> Augustine clearly endorses that as

---

<sup>183</sup> Johnson, James Turner, "Aquinas and Luther on War and Peace: Sovereign Authority and the Use of Armed Force", in *Journal of Religious Ethics*, Vol. 31, Issue 1(2003),6.

<sup>184</sup> Saint Augustine, *The City XVII-XXII*,217-218.

<sup>185</sup> Johnson, James Turner,6.

<sup>186</sup> Saint Augustine, *The City I-VII*,53.

<sup>187</sup> *Ibid.*,60.

long as commanded by the state, even a corrupt state, to wage a war the soldier should submit without the slightest doubt that his action is just. Augustine states;

The natural order, which is suited to the peace of mortal things, requires that the authority and deliberation for undertaking war be under the control of a leader and also that, in the executing of military commands, soldiers serve peace and the common well being. Therefore, a just man, if he should happen to serve as a soldier under a human king who is sacrilegious, could rightly wage a war at the king's command, maintaining the civic peace.<sup>188</sup>

At the heart of his understanding of legitimate authority lays the notion of necessity. Augustine usually invokes the following passage in Psalms when he utters about politics; "From my necessities deliver me!"<sup>189</sup> For him the people who are authorized politically are actually the people carrying a huge burden in the sense that they have to take political decisions, including decisions to go war, in a historical continuum.<sup>190</sup> So one is not only responsible for the current structures of order but for the past as well since human beings inherited a guilt. Hence our choices in this world are not made with total impunity and we are constrained with obligations imposed on us without anyone asking whether we would like to bear them or not. Hence the authorities that were legitimated to use force do not carry out their own private

---

<sup>188</sup> J.N dePaulo, Craig, A.Messina Patric, *the Lust for Power*,28.

<sup>189</sup> Here Augustine reveals the Judaic heritage that was transmitted to Christianity which perceives politics as a burden one should refrain as much as possible. Given the fact that Psalms are attributed to King David of Ancient Israel, one is faced with the highest political authority, the greatest of all the kings of Israel literally begging to God to save him from public affairs so he can fully commit himself to a tranquil devotion to God. This can of course be read as a sincere cry of a politician to save himself from *vita activa* and yearn for a *vita contemplativa*. It is telling in this sense that the Jewish tradition simply called the twelve sovereigns of Ancient Israel as *Judges* as if these people did not have political power but simply ruled over the people of Israel by merely applying the *Law*.

<sup>190</sup> Arendt in her *Eichmann in Jerusalem: A Report on the Banality of Evil* put this as one of the fundamental principles of human condition with the following words "by virtue of being born into a historical continuum one is burdened by the sins of the fathers as it is blessed with the deeds of the ancestors". And it is also important to mention that Judeo-Christian tradition has already contain a similar view for human action, since God succesively warns the children of Israel not to stray from God's path because if they do God would punish not only them but also their children and the children of their children.

vengeance but compelled by the particular situation that they have found themselves in. As Augustine said "it ought to be necessity not your will that destroys an enemy who is fighting you".<sup>191</sup>

For Augustine the coercion applied by the legitimate authority; the state was not punitive but therapeutic. Like a doctor compelling their patients' bodies with medicine or teachers compelling their students to put them in a situation where they can perform the activity of learning, the same is true for the civic authorities who compel their citizens with the hope of effecting changes in their behavior for correction.<sup>192</sup> As he explained in his *Letter to Vincentius* about the use of legitimate coercion by the legitimate authorities;

You also think that force should not be used to liberate a human being from disastrous errors, although you see through the most certain examples that God himself does this, and no one's love is more profitable for us than this... If it were always praiseworthy to suffer persecution, it would have been sufficient for the Lord to say Blessed are they who suffer persecution without adding for the sake of justice. ... Therefore sometimes a person suffering persecution is unjust and a person employing persecution is just.<sup>193</sup>

His approach is the one that is based on a "benevolent" violence for the wrongdoer. He expressed that "men are prevented by being alarmed, from doing wrong, it may be said that a real service is done to them".<sup>194</sup>

For Gratian the highest praise for a soldier was his obedience to the orders of his commonwealth and to the commands of the prince or the legitimate authority.<sup>195</sup> To further elaborate on the point Gratian makes a comparison between the judicial

---

<sup>191</sup> Mathewes, 1170-1171.

<sup>192</sup> Ibid., 1180.

<sup>193</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 86-87.

<sup>194</sup> Charles, J. Daryl, 364.

<sup>195</sup> H. Russel, *Middle Ages*, 61.

process and the just war. He states that both are means of correcting an unjust situation; the first one an ordinary procedure and the other an extraordinary measure followed by extreme circumstances. In either case the need for armed violence in pursuit of justice is obvious for the constituted authority and the initiative rested with the authorities rather than the soldiers under their command who can wage just wars. Those who dared to use violence without the necessary authority fell under the condemnation of Christ that "they that take the sword shall perish with the sword."<sup>196</sup> He endorsed the use of violence by the soldiers with the condition that they operate under the lawful authority;

when force is required to inflict punishment, that in obedience to God or some lawful authority, good men undertake wars, when they find themselves in such a position as regards the conduct of human affairs, that this very position justly compels them either to give such orders or to obey them.<sup>197</sup>

The Decretists, who had written during the late part of the twelfth century on Gratian's work *Decretum*, especially on the part 23 Cause which deals with the issue of war, had already limited the person who can issue an edict for going to the war with the person of the prince.<sup>198</sup><sup>199</sup> For instance one of the most well know Decretists, Pope Innocent IV explained that;

War, properly speaking can only be declared by a Prince who does not have a superior. He can declare war against those who would not be liable to an execution of jurisdiction, for example against those who fall under the rule of some other prince. Also, for the defense of ancestral laws."<sup>200</sup>

---

<sup>196</sup> Ibid.,69.

<sup>197</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,112.

<sup>198</sup> Johnson, James Turner,547.

<sup>199</sup> This should also be understood as a part of the struggle between the princes and the feudal authorities who had been claiming that they also have the requisite authority to wage a justified war. By positioning it self on the side of the Prince, Just War tradition had taken a stance for the centralization of political power in the hands of the sovereign.

<sup>200</sup> Ibid.,547.

Gratian, like Augustine, believed that the punitive violence has the benevolent effect for the wrongdoers. As he explained in *Decretum*; “that those who are punished are more cherished than those who remain unpunished”.<sup>201</sup> I will try to elaborate on the ill effects of such provisions on women in the subsequent parts of this study, but in this section it is important to note that Gratian, like Augustine before him, envisages a benevolent role for violence as long as such violence is exerted through a legitimate authority.

Aquinas states that only the state can declare war. Since the state is entrusted with the defense of its citizens it might resort to violence in some occasions.<sup>202</sup> For him the use of sword for public authorities is legitimate.<sup>203</sup> He explains in his *Summa Theologia*;

For it is not the business of the private individual to declare war because he can seek for redress of his rights from the tribunal of his superior. Moreover, it is not the business of the private individual to summon together the people, which has to be done in wartime. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that commonweal against internal disturbances, when they punish evil-doers, according to the words of the Apostle; *He beareth not the sword in vain: for he is God's minister, an avenger to execute wrath upon him that doth evil*; so too it is their business to have recourse to the sword of war in defending the common weal against external enemies.<sup>204</sup>

As a theologian who reconciled Christianity with Aristotelian thought Aquinas had introduced the Aristotelian concept of common good to the Just War tradition. His acceptance of man as a social and political animal had led him to regard politics as a practical action which's ultimate end is the preservation of a *virtuous community*

---

<sup>201</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 115.

<sup>202</sup> Büyükakıncı, *Savaş*, 64.

<sup>203</sup> H. Russel, *Middle Ages*, 259

<sup>204</sup> Johnson, James Turner, 9.

<sup>205</sup>life. He legitimized the public use of force by the legitimate authority, which is the state, by the argument that they care for the common good of the community, as a physician can amputate a putrid limb to save the whole body likewise a public authority can kill to save the community.<sup>206</sup> Hence killings by the public officials motivated by charity are acceptable for Aquinas.<sup>207</sup>

Honore Bouvet, as a thinker who lived during the age of conflict between the prince and the nobility and resulting tilt of power in to the favor of princes, took a position on legitimate authority that would favor the princes. He explained that the legal process of employing violence for the purpose of carrying out justice requires the license of a sovereign. As he explained further; "as a man can not take upon himself to do justice on another who has wronged him, but the prince must do justice between these men".<sup>208</sup> As a Thomist he has put a special emphasis on the supremacy of public on private. He continually emphasized that the private right of individual soldiers must not be in conflict with the public rights of the crown.<sup>209</sup>

Christine de Pizan, as a woman, was an exception during the middle ages in this tradition that was entirely dominated by man. She propagated the idea that legitimate wars can only be waged by sovereign princes who are the heads of their jurisdictions and have no temporal superiors.<sup>210</sup> However it should be mentioned that, for her, this also includes landed lords with temporal authority.<sup>211</sup>

---

<sup>205</sup> Here both the words virtuous and community are crucial if the Aristotelian understanding of human beings as *zoon politikon* is accepted. Community is important because as a *zoon politikon* man is an animal who can only survive inside the *polis*, hence within a community. However this should be a virtuous community since what is sought by the human beings is not only life but a good life.

<sup>206</sup> Ibid.,260.

<sup>207</sup> Ibid.,261.

<sup>208</sup> Whetham,David, *Moral Victories*,56.

<sup>209</sup> Ibid.,68.

<sup>210</sup> Ibid.,63.

<sup>211</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby,*The Ethics of War*,212.

Martin Luther understood the world as a disorderly and sinful place in which the responsibility of the state is to use force and punish the evil to protect the righteous.<sup>212</sup> For Luther *bellum* meant the Prince's use of force both against internal and external enemies. The state's responsibility derives from the Christian love in which "it is the work of Christian love to protect and defend a whole community with the sword and not let the people be abused."<sup>213</sup> If the rulers fail to punish the evildoers and protect the innocent they would be sinner in the eyes of God.<sup>214</sup> Much like Augustine his understanding of legitimate authority and its right to wield arms is connected with a benign love of an authoritative figure towards the ones that authority strives to help and rescue. He explains;

A good doctor sometimes finds so serious and terrible a sickness that he amputates or destroy a hand, foot, ear or eye, to save the body. Looking at it from the point of view of the organ that he amputates, he appears to be a cruel and merciless man but looking at it from the point of view of the body which the doctor wants to save, he is a fine and true man and does a good and Christian work as far as the work itself is concerned.<sup>215</sup>

Vitoria argued that the authority to declare war resides in the governing authorities. In a similar fashion to Aquinas, Vitoria puts forward the preservation of public good at the center of his Just War theory. The state can not adequately protect the public good if it can not avenge a wrong and take measures against those who would destroy the public good.<sup>216</sup> However Vitoria brings an important novelty to the concept of legitimate authority to decide on war. The thinkers up to Vitoria undoubtedly gave the right to decide on war to the leaders of the states. However Vitoria clearly utters that "war should not be declared on the sole dictates of the prince, nor even on the

---

<sup>212</sup> Johnson, James Turner,14.

<sup>213</sup> Ibid.,16.

<sup>214</sup> Ibid.,16-17.

<sup>215</sup> Corey, David D.,315.

<sup>216</sup> Corey, David D. and Charles, J. Darley, *Just War Tradition*,133.

opinion of the few, but on the opinion of the many, and of the wise and reliable”.<sup>217</sup> But still the individual doesn’t have the right to fight to avenge an injury or to seize back a property formerly taken from oneself. Such an endeavor can only be undertaken by the commonwealth which has the right to avenge injuries both to itself and to its members. However, the critical issue for Vitoria is the issue of complete authority. The entities that have the legitimate right to use violence in case of a war are the ones that have the complete authority at their hands. The entities which are part of the larger units should leave the right to use of violence to larger units that they are part of.<sup>218</sup>

Suarez makes a distinction between a defensive and an offensive war. He elaborates that the issue of legitimate authority is an issue that should be considered only within the context of offensive war since during a defensive one everyone is automatically conceded the right to use violence to protect themselves.<sup>219</sup> For Suarez the ruler of the sovereign political community has the right to go to war. The ruler has to have this right because he needs coercive powers to protect public welfare.<sup>220</sup> The government has to take action against the law breaker. He stated that “war is often necessary for a state so that it is able to prosecute injustices and to punish the enemies; otherwise the nations could not preserve themselves in peace.”<sup>221</sup>

The modern writers of the Just War tradition also directly and indirectly dealt with the issue of legitimate authority. Paul Ramsey regards the nation state as the legitimate authority to conduct a Just War. Until it is supplanted by an effective higher authority nation states have the right to use violence.<sup>222</sup>

---

<sup>217</sup> Ibid.,133.

<sup>218</sup> Howard M. Hensel, *The Prism of Just War*, 42-43.

<sup>219</sup> Ibid.,43.

<sup>220</sup> Justenhoven and Barbieri Jr.,*Peace Ethics*,162.

<sup>221</sup> Ibid.,172.

<sup>222</sup> Taslaman and Taslaman,11.

James Turner Johnson recognizes the state as the legitimate authority to conduct war but he acknowledges that there are two contenders to the state; UN Security Council and regional security alliances.<sup>223</sup>

Michael Walzer deals with the issue of legitimate authority that can go to Just War only indirectly. But his insistence that protection of territorial integrity and sovereignty belong to political authority and following his contractual understanding of state formation, it is safe to say that it is the states that are invested with this political authority. Hence Walzer's understanding of legitimate authority is the states.<sup>224</sup>

### 1.3. RIGHT INTENTION

This part of the study is going to focus on the rightness of one's intentions in matters pertaining to war. One of the most important concepts in this section is the early Christian understanding of neighborly love and one's willingness to wage war for the benefit and good of one's neighbor. Especially important, from the perspective of gender relations is the question of if one's intentions, which are claimed by the Just War thinkers as internal dispositions, can be separated from one's actions? This is an important question to ponder given the fact that in many patriarchal societies violence against women is supposedly legitimized with reference to this logic of benevolent harshness which envisages a freely acting male agent carrying out violence against women in good intention to save her from some sort of dishonor.

Augustine can be credited for introducing the notion of right intention to the area of waging war. Here what is important is not the outward action but the interior motive

---

<sup>223</sup> Johnson, James Turner, *Ethics and the Use of Force*, 29.

<sup>224</sup> *Ibid.*, 11.

of the belligerent. The act of war should be waged for the moral good of the enemy. This includes punitive correction and rehabilitation of the transgressor.<sup>225</sup> Here Augustine's understanding of neighborly love should be examined to understand the bizarre concept of war waged for the good of the enemy which was later termed as *benigna asperitas*; benevolent harshness.<sup>226</sup>

Love of neighbor is man's attitude towards his neighbor and this stems from divine love (Caritas). A person is to love his neighbor as God does and he is to love his neighbor as he loves himself.<sup>227</sup> However one's capacity to love his neighbor depends on his capacity to love God. By accepting God's love, man denies himself and he loves and hates as God does. He not only renounces himself but also all mundane relations. He starts to regard himself solely as created by God and reject whatever he himself had made including the relations he had established. In such a context the neighbor loses his worldly concrete meaning for example as a *friend or enemy*<sup>228</sup> because for the lover who loves as God loves, the neighbor ceases to be anybody but a creature of God. Here the one who loves as God loves, loves his neighbor neither for his own sake nor for his neighbors'.<sup>229</sup> This is the understanding that lays behind Augustine's understanding of right intention of the leader to go to war. The leader should have the neighborly love and wage the war for the purpose of his enemy's (neighbor's) moral good. Hence just as parents may sometimes discipline a child by resorting to violence out of love then, fighting and killing in war too might be acts carried out of love for one's enemy.<sup>230</sup> He clearly stated that "it is not war in itself to be feared but malice and hatred".<sup>231</sup>

---

<sup>225</sup> H. Russel, *Middle Ages*, 26.

<sup>226</sup> Corey, David D., 319.

<sup>227</sup> Hannah Arendt, *Love and Saint Augustine* (Chicago: University of Chicago Press, 1996; henceforth *Love*), 93.

<sup>228</sup> Writers emphasis

<sup>229</sup> *Ibid.*, 94.

<sup>230</sup> Corey, David D., 319.

<sup>231</sup> Howard M. Hensel, *The Prism of Just War*, 55.

Later, Gratian had incorporated Augustine's *benigna asperitas* to his own teachings. He justifies the punishment of an evil doer as an act of benevolence which was carried out for the evil doer's best interest. For him the wars waged with a benevolent intention are useful tools for separating the sinner from its sin.<sup>232</sup> For him even the vengeance can be rightly or wrongly administered based on one's intentions. If it is administered properly then the will of the agent is focused on the love of justice but when it is administered unjustly it is on the love of inflicting punishment.<sup>233</sup>

Like Gratian Aquinas too had incorporated Augustine's *benigna asperitas* to his own teachings. He explained "it is necessary sometimes for a man to act otherwise than gently for the common good or for the good of those with whom he is fighting."<sup>234</sup> Aquinas clearly states that the ones who declares war must have a right intention. They either should establish some good or redress an evil situation.<sup>235</sup> However he is not keen on this point as much as he is keen on the requirements of just cause and legitimate authority. He suggested that a just war can still be waged by a legitimate authority in the absence of the right intention on the part of the soldiers as long as a just cause is present.<sup>236</sup>

Vitoria had attached an immense importance to the right intention of the belligerents. Right intention in going to war should aim the establishment of peace and security which promoted the public good. Even if gross injustice were to justify going to war, if the war left surrounding nations worse off than before than it would not be justified to wage that war. Hence for Vitoria the reasonable chances for attaining justice must

---

<sup>232</sup> H. Russel, *Middle Ages*, 58.

<sup>233</sup> Corey, David D. and Charles, J. Darley, *Just War Tradition*, 73.

<sup>234</sup> Corey, David D., 19.

<sup>235</sup> Büyükakıncı, *Savaş*, 64.

<sup>236</sup> H. Russel, *Middle Ages*, 268.

be well evaluated before starting hostilities.<sup>237</sup> His right intention is not only confined to the policy makers but also includes the soldiers who are fighting the battles. He expressed that “even soldiers, if they fight in bad faith, are not excused”.<sup>238</sup>

Even though Suarez doesn't directly propose a concept of right intention, his outlook on morality includes some clues about the way he would have seen the right intention in belligerency. For Suarez morality has two parts; one external and one internal. External aspect of morality requires one to obey the laws and the internal aspect necessitates one to do the good in a good manner which is understood as an inner orientation of will (*intentio*) towards the good that is identical with the will of God.<sup>239</sup> As long as an action is directed towards the good and unless it contradicts the reasoned judgment it would not be considered a sin. Everything done in good intention is morally acceptable and legitimate.<sup>240</sup>

Three prominent modern Just War tradition thinker all have differing views about the principle of right intention. Paul Ramsey includes the concept of right intention in to the criteria that are necessary for Just War. He states that right intention is an intention shaped not by self-interest but by the aim to prevent injustice and to restore justice.<sup>241</sup>

Compared to Paul Ramsey, Michael Walzer has a more nuanced understanding of right intention. He recognizes the fact that states may have mixed intentions when going to war and moral purity on the part of the states is not attainable.<sup>242</sup>

---

<sup>237</sup> Corey, David D. and Charles, J. Darley, *Just War Tradition*,132.

<sup>238</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,318.

<sup>239</sup> Justenhoven and Barbieri Jr., *Peace Ethics*,155.

<sup>240</sup> *Ibid.*,172.

<sup>241</sup> Corey, David D. and Charles, J. Darley, *Just War Tradition*,11.

<sup>242</sup> *Ibid.*,11.

James Turner Johnson associates the right intention with the jus post bellum phase and argues that to go to war with wrong intentions will lead to wrongful acts during the war which will make the establishment of a just peace much more difficult once the war is over.<sup>243</sup>

#### 1.4 LAST RESORT

This section is going to provide the reader with a brief historical overview of the principle of last resort. Just War writers, especially from early middle ages on advised the rulers to resort to war only as the last option, after diplomatic engagements have been exhausted. It is interesting to note that in terms of Christianity, this principle represents a return to its early pacifist tenets in the form of a Pastoral Letter which stated that the Catholic tradition in fact starts with a presumption against war. It should also be mentioned that Just War writers all preached caution to the rulers before going to war but at the same time appealed to problematic concepts like reason and making calculations in terms of gender.

Even though the concept has fully been developed in the early modern ages, it is still possible to find the rudimentary arguments about what would later be called the principle of last resort in the jus ad bellum phase of the Just War tradition in the classical and Middle Ages. It has already been mentioned that the fetial priests of the Roman Empire had to visit the enemies of Rome and convey the grievances of the Empire to them before any hostilities can be initiated. Even though he doesn't make a comprehensive treatment of the principle Augustine makes it clear that war is an activity to be taken reluctantly. He expressed that "it is advisable to avoid war in so

---

<sup>243</sup> McCready, Doug, "Ending the War Right: Jus Post Bellum and the Just War Tradition", *Journal of Military Ethics*, Vol.8, No.1(2009), 72.

far as is possible, and to undertake it only in cases of extreme necessity when no alternative remains.”<sup>244</sup>

Christine de Pizan elaborated on the justness of war and defined the just war as one which’s justness was determined before going to war. In order to ensure this, she had envisaged a system in which princes consulting impartial advisors and attempting arbitration with the enemy before going to war. Only by devising such practices a war can be considered just.<sup>245</sup>

Martin Luther explained that after orienting his mind and confessing to God that the war is a punishment brought by God against the deeds they have committed; the ruler’s next responsibility is to offer the enemy a final chance to settle the issue without the need to resort to violence. He does not regard this as forsaking the just cause of God. Once this offer has been made then rulers were free to take up arms with good conscience.<sup>246</sup>

But mainly it was the neo-classical Christian Just War thinkers Vitoria and Suarez who had elaborated comprehensively on the principle of last resort. Vitoria emphasized the importance of continuous dialogue among the adversaries in an effort to avoid the use of armed force. The ruler should carefully study the causes of war and listen to the arguments of the opponents to understand if they are ready to negotiate genuinely and fairly. He had elaborated that “for the just war it is necessary to examine the justice and the causes of war with great care, and also to listen to the arguments of the opponents, if they are prepared to negotiate genuinely and fairly”.<sup>247</sup>

---

<sup>244</sup> Howard M. Hensel, *The Prism of Just War*, 51.

<sup>245</sup> Whetham, David, *Moral Victories*, 64.

<sup>246</sup> Corey, David D., 319.

<sup>247</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 318

He concluded that the prince should only go to war when he is dragged reluctantly but inevitably to it.<sup>248</sup>

Suarez explained that one should only resort to war if culpable offender refuses to give satisfaction for that injury without resort to war. He favors caution and direct negotiations as well as arbitration between the belligerents. As he states “to avoid war in so far as is possible...by upright means” and if no danger of injustice is to be feared “arbitration is plainly the best means of decision and consequently resort should be had to it.”<sup>249</sup>

Samuel von Pufendorf claimed that even though going to war is natural for one, one still should refrain from going to war when more evil than good is likely to ensue by war. He advised that one should not immediately recourse to arms when one thinks oneself wronged. First, one should explore the opportunities for amicable settlement of the matter by different means such as starting a dialogue, finding an arbitrator or submitting the question to lot.<sup>250</sup>

Emer de Vattel argued that men are not always reasonable to solve their quarrels by an appeal to reason. He brings forward the argument that forcible means are a sad and unfortunate expedient to be employed against the people who refuse to listen to reason but after all such means should be adopted when all others are failed. He claimed that a “wise and just nation, a good ruler, will only use it as a last resort”.<sup>251</sup>

National Conference of Catholic Bishops in 1983 and 1993 which had result with a pastoral letter detailing why Catholic tradition starts with a presumption against war elaborates on the principle of last resort. The letter proposes that for a war to be

---

<sup>248</sup> Howard M. Hensel, *The Prism of Just War*, 51.

<sup>249</sup> *Ibid.*, 51-52.

<sup>250</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 457-458.

<sup>251</sup> *Ibid.*, 509.

justified all peaceful alternatives must have been exhausted.<sup>252</sup> For the Catholic Bishops national leaders bear a moral obligation to make sure that non-violent alternatives were considered seriously such as preventive diplomacy and conflict resolution. Only then they should resort to violence unwillingly.<sup>253</sup>

### 1.5 INTELLECTUAL FRAMEWORK

“Let me tell you something about the very rich. They are different from you and me. They possess and enjoy early, and it does something to them, makes them soft where we are hard and cynical where we are trustful, in a way that, unless you were born rich, it is very difficult to understand”.

F.Scott Fitzgerald, *The Rich Boy*<sup>254</sup>

In this part my study I am going to start focusing on the feminist critique of the Jus ad bellum principles and the intellectual framework that this tradition is basing its arguments. Like the rich, men are usually born with privileges that are taken for granted by them. Their expectations from women especially regarding the activities for the production and the biological reproduction of life are imposing a huge burden on women. Their appropriation of female goods and labor, their exclusion of women from the properties that their families possess and their control of women's bodies for their own selfish purposes beg a serious effort for the amelioration of the conditions of women in their respective societies. But for such a change to take place first and foremost the women as subject have to be constructed and accepted by man as his

---

<sup>252</sup> Ibid.,673.

<sup>253</sup> Ibid.,682.

<sup>254</sup> Fitzgerald, F.Scott,*All the Sad Young Men*(UK:Alma Classics,2013),3

political equal.<sup>255</sup> The objectification of women by man, which dispossess her in social and political walks of life, should come to an end. To put it in Sartrean terms, the hemorrhage should take place and the man should understand that the other person, of which he has been objectifying has her own projects, desires and wishes in life. In order to come up with such an understanding of women in Just War theory, the concepts that makes up the intellectual framework of this tradition should be examined thoroughly with an eye specifically fixed at gender issues in this tradition.

The subsequent parts of this chapter is going to focus on the concepts that together makes up the intellectual environment for the Just War tradition and their critique from a gender perspective.

### 1.5.1 Favoritism for State and Social Order

In this section of my study I will focus on the writings of the Just war thinkers with regards to the very entity that ensures and protects the norms of male domination in patriarchal societies; namely the state. It is important to stress that such state

---

<sup>255</sup> I am aware of the post-modern position that regards a unitary subject impossible and accepts the subject to be constructed always in relation to her own social context and her identity to be always fluid and in constant making. However I will not adopt such a post-modern stance in this study because I believe, some generalizations have to be made in political discussions, in order to make way for a genuine atmosphere of debate. But the post-modern position by constantly deconstructing the subject does not allow one to engage in such kind of debate. It might be a valuable tool for critically analyzing a concept, but it is not functional for solving political problems which require legislations that inevitably include generalizations since *sui generis* legislation for each and every person is not possible. In other words my position is that deconstruction has to be followed by a reconstruction. However such reconstruction should take the moral values as its base that would provide equality and dignity to women in their respective societies. Moreover, dismantling of the subject has even a more dangerous implication for politics which have already started to be taken place in the discipline of history at least since Hegel. The shift of attention from people to the processes in the discipline of history; such as reading history as the result of larger processes like capitalism, industrialization, socialism etc. simply is leading to the eradication of the subject and as a result the human praxis as well, from history. Deconstruction of the subject not followed by a reconstruction runs a similar risk for the discipline of politics. Seyla Benhabib directs a similar criticism to the deconstruction of the agent without a reconstruction in which she asks how women's emancipation project can be achieved without a principle that guides agency, autonomy and individuality.

centricism and inducement of ethos for submission to state authority are quite detrimental for women to fight for their rights. This section will also try to reveal the “moral” concern of the Just War thinkers which finds its expression in the notion of social order and its connection with this tradition’s state centrism.

The intellectual framework that the Just War theory operates in is based on some of the most problematic assumptions about domestic and international politics that are quite heavily criticized by the Feminist scholars. The classical Just War theorists endorse the centrality of the states and the inevitability of war.<sup>256</sup> Since the states are regarded as the units of analysis, sovereignty, in the case of Just War theory which meant nothing more than a Weberian definition of monopolizing the legitimate means of violence at home, unquestionably belongs to them. Just War tradition is biased in the favor of status quo in the political settlement which in practice means that it places, independent non-state actors at a grave disadvantage.<sup>257</sup> The concentration and the monopolization of power at the hands of state in this tradition runs so deep that even the much venerated principle of self-defense is rendered ineffective in some cases where one of the parties to a conflict is a non-state actor.<sup>258</sup><sup>259</sup> The tradition’s favoritism for the state has a schizophrenic side as well in which on the one hand non state actors are considered too loose on binding with the rules and more prone to violate the laws of combat by engaging in tactics that are beyond the bounds of the laws of war, on the other hand allegedly the entity which is considered to be more strict in its adherence to the laws of combat, the state is subjected to corpus of enormous and evermore growing jus in bello rules and regulations. This is a clear

---

<sup>256</sup> Morkevicius, Valerie, “Power and Order: The Shared Logics of Realism and Just War Theory”, *International Studies Quarterly*, Vol. 59 (2015), 13.

<sup>257</sup> O. Ilesanmi, Simeon, 149.

<sup>258</sup> The Israeli case is a good one to demonstrate the point. The Separation Wall built by Israel was not accepted as an act of self-defense under the Article 51 by the International Court of Justice due to the fact that it was built in response to an attack by a non-state actor. This implicitly gives the message that self-defense under Article 51 is a tool to be used between contending states.

<sup>259</sup> Kretzmer, David, “The Inherent Right to Self Defence and Proportionality in Jus ad Bellum” in *European Journal of International Law*, Vol. 24, Issue 1 (2013), 244-245.

contradiction and a demonstration of blind favoritism for the state since it does not make any sense to centralize the use of legal violence at the hands of an entity which's historical practices could not managed to impede the breaking of laws governing the humane conduct of war and led to the very emergence of jus in bello rules.

In a presumed anarchical world, the states are imbued with a sense of insecurity, hence accept war as inevitable. It should be made clear that as a theory preceding the modern Westphalian state system, Just War theory should still be considered as state centric. The founding "Church fathers" of the Just War theory like Augustine and Aquinas limited the just use of violence to the legitimate authority which might mean many types of political entities in pre-modern period. However, it should be mentioned that those theorists had focused their attention to entities in which the power was being centralized and increasingly resemble modern states. In that sense they had chosen to focus on the political communities of their time what can today be called state like entities. Especially when the definition of the legitimate authority by Vitoria and Grotius considered, as an authority confined to the heads of independently sovereign political communities, the Just War tradition's state centrism became apparent. Even modern Just War theorists like Walzer invokes the primacy of the states with reference to the communitarian logic that perceives states as the collective forms of individuals' life and liberty. As Walzer himself explains "states, even oppressive ones, may continue to enjoy the legitimate authority to defend themselves using force so long as some modicum of common life exists within the state".<sup>260</sup> For him the primacy of the state is so crucial that his articulation of the principle of supreme emergency allows the state which had found themselves in such extreme emergency situation where their existences are at stake, to simply disregard the in bello rules except proportionality and usefulness. His statement that "to

---

<sup>260</sup> Morkevicius, Valerie, 13-14.

completely eliminate a state is thus evil objectified in the world” reflects the supreme importance he attaches to the state.<sup>261</sup> Vitoria, preceding Walzer, also had demonstrated that to what extent state, in this case as the defender of peace and security, is crucial for the Just War theorists and how prepared they are to give up *jus in bello* rules when its existence is at stake. He suggested that

a prince may do everything in a just war which is necessary to secure peace and security from attack...Tranquility and peace are counted among the good things which men strive for; without security all other good things together can not make happiness. <sup>262</sup>

Virginia Woolf back in 1930s had realized that in an Imperialist and war ready Britain women are regarded as second class citizens and she wrote that “As a woman I don’t want a country.”<sup>263</sup> However an even more critical issue for woman is if their integration in to the political community is somehow hindered by the existing political, social, economic and cultural norms, are they allowed to conduct a Just War against the political system that subjugate them. If above mentioned norms reproduces a system in which woman finds themselves as subjugated and vulnerable to violence, would have they been able to obtain the blessing of the classical just war theorists. As I tried to demonstrate in the introduction part of this study the answer to this question is a definitive no because for the just war theorists the legitimate authority which can carry out violence is the state and its authorized representatives. They did not envisage for any other group to be “blessed” with exerting violence. Of course one should clearly define what she/he understands from violence to give her/his honest opinion on this subject. If violence is simply reduced to a physical phenomenon as Hannah Arendt did, to an instrument that increases one’s physical strength then one should only look for examples of physical violence to decide if

---

<sup>261</sup> Ibid.,15.

<sup>262</sup> Ibid.,15.

<sup>263</sup> Burstyn, Varda,240.

woman should rebel to the conditions that they are subjected to.<sup>264</sup> But if the definition of violence is extended, as Johann Galtung did, to include all kinds of subjugations targeting basic human needs in particular and life itself in general and aiming to reduce level of one's ability to meet those needs below the necessary level, then one is confronted with a different picture. As Galtung put it if violence includes avoidable hunger, pain, sickness, destruction of one's environment, alienation and exclusion then one should look at the system of production and administration that lays behind the extended form of violence carried out against woman.<sup>265</sup> Especially the feminist critiques of the state shed some light on the definition of violence and its association with the state. Many of the feminist theorists make a distinction between direct violence that is the extension of war and assault and ends in death or injuries and indirect violence resulting in hunger and disease stemming from economic, cultural and legal discrimination against women.<sup>266</sup>

What seems to lie beneath such a reverence for state in this tradition is its desire for a moral social order. Augustine, Gratian and Aquinas repeatedly demonstrate the importance of the hierarchical moral order in state in their writings. Especially the traditional concern of the Just War theorists for order had reinforced their quest for legitimate authority. By devising such a concept they ensured the limitation of the right to use violence to the political actors and by forbidding private wars prevented force to be used against the top political leaders sitting at the top of the usually feudal pyramids.<sup>267</sup> As indicated by Aquinas "it is not the business of a private individual to declare war, because he can pursue his right before the judgement of his superior."<sup>268</sup> There are indeed two separate words exist in the Roman tradition for the use of force; one of them; *bellum* is used for the use of force

---

<sup>264</sup> Arendt, Hannah, *On Violence* (New York: Harcourt Publishing Company, 1970), 46.

<sup>265</sup> Cockburn, *Buradan Baktığımızda*, 232-233.

<sup>266</sup> Tır and Koyuncu, 12.

<sup>267</sup> *Ibid.*, 14.

<sup>268</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 177.

by the states and *duellum* is used for the employment of force for the individuals. It should also be mentioned that war can be just as the name Just War tradition attests, but a duel never deserves the status of just or unjust as the lack of any tradition named *justum duellum* demonstrates.<sup>269</sup>

In reinforcing the position of the state in the Just War tradition, especially a very problematic turn would have taken place later by Grotius which ended up with equating legitimacy with legality.<sup>270</sup><sup>271</sup> As Morkevicius states;

By the Protestant Reformation, it becomes clear in the discourse of Just War that the legitimate authority is encapsulated in the *position*<sup>272</sup> of the sovereign not in the person of the sovereign himself.<sup>273</sup><sup>274</sup>

Augustine wholeheartedly endorsed the submission of the people to the ruler's will with no qualifications. In *Contra Faustum* he explained that;

If a just man should happen to serve as a soldier under a human king who is sacrilegious, he could rightly wage war at the King's command, maintaining the order of civic peace. For what he is commanded to do is not contrary to the sure precepts of God, or else it is not sure whether it is or not.

---

<sup>269</sup> Johnson, James Turner, *Ethics and the Use of Force*, 18.

<sup>270</sup> *Ibid.*, 14.

<sup>271</sup> We have seen the terrible consequences of the logic of equating legality with legitimacy. This logic is well embedded in the German Staatslehre tradition. The testimonies of the Nazi officials after the Second World War demonstrate how the so called legality of the Third Reich orders pertaining the atrocities simply led the Nazi soldiers to accept them as legitimate without any questioning. Unfortunalty such was the death of the Socratic morality which induces in to the person to be "in disagreement with the entire world rather than to be in disagreement with one self." As Socrates had said, no one would like to spend his life with a murderer, refering to one's internal uneasiness in such a situation.

<sup>272</sup> Writer's emphasis

<sup>273</sup> *Ibid.*, 14.

<sup>274</sup> Later such understanding of the state will culminate in Frederich the Great's words of "I am the first servant of the state". This is a very long way( not necessarily a progress) from XIV.Louis's words of "I am the state"

In this latter case, perhaps the iniquity of giving the orders will make the King guilty while the rank of servant in the civil order will show the soldiers to be innocent.<sup>275</sup>

Augustine's position on submission to the will of the authority is obvious. But even the Just War thinkers who had doubts about such an unquestioning obedience to the rules, like Luther, at the end choose to side with the incumbent authorities when it comes to people following the orders of the rulers. Luther has asked the simple question of what if the ruler is wrong? Then is it a sin to follow the ruler in his decision to wage war as a subject? He answered his own question as, if one is sure beyond doubt that the ruler is wrong then one can reject serving the ruler. However certain knowledge is hard to come by. For most of the cases one doesn't know or can not find out if the ruler is wrong then one should simply obey. The issue here is when active political consciousness and political obedience conflict with one another Just War thinkers almost always throw their lots on the side of political obedience against active political consciousness.<sup>276</sup> This is a crucial issue for women since many of the societies that they live propagate patriarchal norms, redundancy of active political consciousness for women and blind political obedience. This means that women being left alone with no hopes of success in abolishing such patriarchal norms that disfavors them in their societies. Even the Just War thinkers like Aquinas who conceded a right to rebel against a tyrant had associated such right to an ambiguous criterion rendering it ineffective at the end. For him rebellion should be undertaken only when the benefit that would be achieved from for the larger society would be greater than the harm to be brought by the act of rebellion.<sup>277</sup> Hence by tying the right to uprising against the legitimate authority to a sort of utility principle which is quite difficult to measure in most of the cases, Aquinas indeed make rebellion impossible in practice. As he described regarding the question on sedition "wherefore it is evident that the unity to which sedition is opposed is the unity of law and common

---

<sup>275</sup> Corey, David D.,325.

<sup>276</sup> Ibid.,325.

<sup>277</sup> Howard M. Hensel, *The Prism of Just War*, 52.

good". Hence in the philosophy of Aquinas, it is the incumbent authority and the reigning legal codes that have the upper hand against the dissenting group of people.<sup>278</sup> Moreover, he openly stated by his answer to the question on strife in *Summa Theologica* that;

For if an officer of a prince or judge, in virtue of their public authority, should attack certain men and these defend themselves, it is not the former who is said to be guilty of strife, but those who resist the public power. Hence it is not those who attack who are guilty of strife and commit sin, but those who defend themselves inordinately.<sup>279</sup>

He views the people who disagrees with the conventional wisdom quite negatively and describes them as people creating strife and hence committing sin. As Aquinas explains "a seditious man is one who incites others to sedition...and the sin of sedition is not only in him who sows discord, but also in those who dissent from one another inordinately".<sup>280</sup> As this quote implies it is not only a sin, in the eyes of Aquinas, to disagree with the other but also it is a sin for others to join the one who disagrees with the rest of the society.

To apply this to the case of women living in patriarchal societies, it would be almost impossible to convince the public opinion that to stand against the political authority for the sake of women is a greater good than the harm brought by the upheaval since what is good and what is bad are politically constructed in society and there is great likelihood that such moral notions would reflect the patriarchal norms of the societies that they were developed. But it should also be mentioned that Just War tradition's conscious effort to discourage people from politics<sup>281</sup> and to create politically inactive people are not only confined to women but also applies to man. Vitoria's point makes

---

<sup>278</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 185

<sup>279</sup> *Ibid.*, 183.

<sup>280</sup> *Ibid.*, 184.

<sup>281</sup> This is no surprise since this tradition is heavily barrowing from Christianity which regards politics as a burden to be shouldered by the few for the greater benefit of the rest and from Judaism in which the greatest King of Israel, David exclaim to God "deliver me from my necessities"

this quite clear who thinks that unless specifically charged with responsibility to assist the legitimate authorities, “the *lesser subjects*<sup>282</sup> who are not invited to be heard in the counsels of the prince nor in the public council are not required to examine the causes of war, but may lawfully go to war trusting in the judgement of their *superiors*”<sup>283 284</sup>

As James Turner Johnson explains since private individuals have no right to recourse to war, they should appeal to their superior for justice and it is the superior’s business, as Aquinas put it, to seek to give it to them.<sup>285</sup> Aquinas explains that only the authority can take the sword in hand for the good of the community, but if a private person takes the sword even again for the good of the community that would be nothing more than murder. That is defined by Aquinas as injustice committed by this private person indulging in such an act.<sup>286</sup> In a similar vein, the Decretist Pope Innocent IV had asked if it is justified for an individual to respond to an attack directed to himself and answered in affirmative that the person may defend himself on the spot but shall not seek to punish the evildoer for deterring him from another future attack. Avenger is only the Prince who acts in the name of the God and execute wrath on the evildoer.<sup>287</sup> The problem for women in such understanding is that the institution that is supposedly responsible for seeking justice is quite patriarchal and does not care for the wellbeing of women in most cases. Since it is the state, and by extension, in patriarchal societies man is responsible for the quest for justice and people are not given the right to pursue it by themselves, then this would only mean the preservation of the status quo that disfavors women. One should also note that such an outlook is not a surprise for a tradition which’s some later modern accounts

---

<sup>282</sup> My emphasis

<sup>283</sup> My emphasis

<sup>284</sup> Howard M. Hensel, *The Prism of Just War*, 54.

<sup>285</sup> Johnson, James Turner, 10.

<sup>286</sup> Cole, Darrell, “Thomas Aquinas on Virtuous Warfare” *Journal of Religious Ethics*, Vol 27, Issue 1 (1999), 71.

<sup>287</sup> Johnson, James Turner, 548.

had incorporated the principle of *a reasonable hope for success* to the Just War tradition corpus and hence induces timidity to start hostilities for the ones who are not sure of their clout for winning the war. There exist many passages inside the Just War canon that promotes such timidity towards one's seeking for one's rights. The reasonable prospect for success principle, adopted by Grotius is a good example for this, as he explained that life is in greater value than liberty<sup>288</sup> hence it is better to forgo our rights than to engage in Just War that would create a huge carnage and with little prospects for winning.<sup>289</sup>

Almost near obsession of the Just War tradition for the state authority is better revealed in the writings of Luther. He defines the reason to go to war, in other words his *justa causa* as "what else is war but the punishment of wrong and evil? Why does anyone go to war, except because he desires peace and *obedience*<sup>290</sup>".<sup>291</sup> His understanding of authority is quite hierarchical as well. As he explains;

For the governing authority must not be resisted by force, but only by confession of the truth. If it is influenced by this, well and good; if not you are excused, you suffer wrong for God's sake. If however, the antagonist is your equal, your inferior or of a foreign government, you should first offer him justice and peace, as Moses thought the children of Israel. If he refuses, then, mindful of what is best for you defend yourself against force by force, as Moses so well describes it in Deuteronomy 20.<sup>292</sup>

---

<sup>288</sup> This might have a connection with the Judeo-Christian teachings which strictly forbids suicide. The Roman tradition does not always value life over liberty given the common practice among the Roman Patricians to commit suicide when they get old in which they won't be able to live honorably by themselves without outside assistance. This Roman upper class practice gives the message that, in contrast to Judeo-Christian ethics, for some Romans there were situations where life is not in greater value than liberty.

<sup>289</sup> Howard M. Hensel, *The Prism of Just War*, 92.

<sup>290</sup> My emphasis

<sup>291</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 265.

<sup>292</sup> *Ibid.*, 267.

He claims to understand the sufferings of the peasants and have sympathies with many of the grievances of them. But he clearly states that peasants have no right to “sword”, their killing is murder and their collective action in arms is not a just war but a rebellion. It is only the sovereign who is responsible for the order which serves justice and peace. In his pamphlet of 1525 *Against the Robbing and Murdering Hordes of Peasants* he called on the German princes to “stab, smite and slay” the insurgents.<sup>293</sup> The Prince is the only one who can gauge whether a just cause exists or not and he is the only one who can use for with the right intention if such a just cause exists.<sup>294</sup> This clearly demonstrates the tragedy of Just War tradition in terms of women. There are writers like Luther in this tradition who actually understands the sufferings of the underdog but still associates authority only with the state. To put it in Weberian terms, just in order to safeguard state’s monopoly on the legitimate means of coercion and its right to use them they choose to remain silent to injustice. Women cannot expect any help for the betterment of their conditions from such a state centric tradition in its current state, especially given the fact that women usually found themselves at the bottom of such patriarchal hierarchies and hence are seen by the Just War tradition as the people who should submit to the will of the state which is governed by people allegedly in higher ranks in social hierarchies.

The adulation of state by the Just War tradition continues when the tradition had taken a secular turn as well. Grotius explains all *men* have a natural right to secure themselves from injuries by resistance, there inevitably emerges a superior right in the states over the people to secure the desired peace for all. Such right of the state leads to the restriction of the use of the right of resisting injuries towards every other person. If that would not be the case Grotius explains “there would be no longer a state but multitude without union such as the Cyclopes were, everyone gives law to

---

<sup>293</sup> Corey, David Dwyer, 308.

<sup>294</sup> Johnson, James Turner, 17.

his *wife and children*".<sup>295</sup> Grotius further quotes and goes great lengths to prove that submission to the state authority is inevitable and commonly accepted;

So we find that the resistance in question (resistance of the people against the state<sup>296</sup>), is looked upon as unlawful, according to the usage of all states. All human societies (St. Augustine tells us) unanimously agree to obey Kings. So Aeschylus; A king absolute, accountable to none. And in Sophocles; They are princes, we must obey, why not?. And in Euripides; We must bear with the follies of princes.... Tacitus; The Gods have bestowed a sovereign power on princes leaving subject the glory to obey and the bad treatment we receive from a king, must be looked on as good treatment. Seneca says; we must bear patiently whatever the king commands, whether just or unjust; a thought he borrowed from Sophocles. And likewise in Sallust; to do anything with impunity is peculiar to a king... and in Aristotle; if magistrate strikes, *he* shall not be struck again.<sup>297</sup>

As in the other Just War thinkers who are coming from strong religious backgrounds like Augustine and Luther, Grotius' writings endorsed the state authority in the name of peace and order and advises the subject to submit before it regardless of the extent of its mistreatments unless they do not in conflict with the tenets and the requirements of the natural law. However as mentioned above such an understanding of state authority will do nothing more than to endorse and re-affirm the already existing gender status quo which works for the grave disadvantage of women because subsequently what has been achieved by such adulation of the state, its order and its capacity to protect its people is a Schmittian<sup>298</sup> perspective on state in which the fidelity of the people is achieved in exchange of the protection provided by state. And such a fidelity based understanding of state clearly hamper's one's capacity to question and oppose the well-established practices of state which is exactly what is needed for the improvement of women's rights in patriarchal societies.

---

<sup>295</sup> Grotius, Hugo, *Rights of War and Peace, Book I*(United States:Liberty Fund Inc.,2005),338-339.

<sup>296</sup> My note

<sup>297</sup> Ibid.,340-342.

<sup>298</sup> German Jurist Carl Schmitt

As the examples from the Just War thinkers demonstrate Just War tradition is a heavily state-centric one in which it constantly reinforces state authority; the authority of the very entity that implements, in most cases, the misogynist practices and close avenues for women that lead to the public sphere. Hence by demanding almost an unquestioned authority to state, Just War tradition does the exact opposite of what is needed to improve women's positions in patriarchal societies; questioning of state authority and practices.

The exclusion of women from the all-important decision of going to war is quite apparent in the Just War tradition. One of the most important tools to be integrated in to the political community providing eligibility to public affairs hence giving a say to a person in matters of war is citizenship. Many of the patriarchal cultures associates belongingness to a political community with military service and what is quite problematic for women is that given the sexual morphologies and the traditional gender roles associated with them, women are usually not allowed to serve in the military. Inevitably their belongingness to the political communities that they are living in are always questioned due to their "inability" to serve in the military.<sup>299</sup> From the perspective of the Just War tradition a more fundamental problem arises regarding the citizenship. Citizenship for woman is not even regarded as an issue for the Church fathers of the Just War tradition. Aquinas when elaborating on why the ancient Israelites had denied other people to integrate in to their political community and play a role in "temporal matters concerning the public life of the people" stated that event though people were not allowed to be citizens, some individual;

Was possible by dispensation for a man to be admitted to citizenship on account of some act of virtue; thus it is related that Achior, the captain of the children of Ammon was joined to the people of Israel with all the succession of his kindred. The same applies to Ruth the Moabite who was a

---

<sup>299</sup> Cockburn, *Buradan Baktıgımızda*, 268.

virtuous women; *although it may be said that this prohibition regarded men and not women who are not competent to be citizens absolutely speaking.*<sup>300301</sup>

Aquinas clearly sees women as physically unfit to engage in to combat. He thought that there are two kinds of contests; earthly and spiritual. For the earthly combats fitness of age, physique and rank are required which made Aquinas state that slaves, old man, boys and women are not eligible for fighting. But on the other hand when it comes to the spiritual contests women are at least or even more adept to combat as men.<sup>302</sup> Here once again woman are debarred from the affairs of the polis; the activity of combat in this case and confined to the spiritual realm due to the preconceived notions that are produced on the basis of dualistic sexual morphologies. Even more important is that many women who have been born and raised in patriarchal cultures usually consent to their roles which excludes them from the public affairs of the state and confines them to submissive roles of the patriarchal family order. They sign with their own hands the patriarchal contract which submits them to such secondary roles, provide them some form of “security” and respect as mothers who transmit the cultural norms from one generation to the other in exchange of their exclusion from politics.<sup>303</sup> Hence it is no surprise that the concept of family, which I will deal in the next section, is invoked both by Augustine and Aquinas in the context of Just War. The former had employed it for the endorsement of state as the legitimate authority which stands at the pinnacle of different kinds of authorities in which familial authority is one and the latter exploited it to justify going to war for the protection of families which, as a true Aristotelian would have said, by their association forms the political community.

---

<sup>300</sup> Aquinas, *Summa I-II*, 1735.

<sup>301</sup> My emphasis

<sup>302</sup> Saint Thomas Aquinas, *Summa Theologica, Part III* ((E-Book, no 19950,2006, henceforth:*Summa III*)),1379.

<sup>303</sup> Cockburn, *Buradan Baktıgımızda*,240.

### 1.5.2 Invoking the Concept of Family

In this section I will turn my attention to the concept of family and how family was employed by the Just War thinkers to legitimize social and international hierarchies. It is going to be analyzed here the male dominated structure of family and its implications for women as well as the role of family institution to determine gender roles with regards to the actual use of means of violence.

Especially problematic regarding the Just War theorists' understanding of order is their efforts to base the international order on an internal one based upon the traditional hierarchies within the family. Especially Augustine's understanding of peace based on ordered harmony of authority and obedience among the family members demonstrates the patriarchal nature of Just War tradition and its understanding of even supposedly harmless concepts like peace and tranquility and if those desired conditions will be attained, on whose expense they will be attained. Moreover Grotius' attribution to law the task to protect the social order which is based on the peculiar position of women as the subject and property of man is yet another reflection of the patriarchal nature of this tradition.<sup>304</sup> Grotius makes it clear in *Decretum* that he prefers a patriarchal hierarchy in society starting from the prince running down to the father inside the family;

It is not in vain that regal power, the right of the prosecutor, the iron claws of the executioner, the arms of the soldier, the discipline imposed by the ruler, and even the severity of a good father have been instituted; all these means have their measure, their causes, reasons and utilities.<sup>305</sup>

---

<sup>304</sup> Helen M. Kinsella, *Image Before the Weapon*, 73.

<sup>305</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 118.

Since this tradition is based on the assumption that political authority is essential to the social life which should be based on ordered social relations, it empowers state to organize the social life, which indeed includes the family life, in line with the tenets of morality and if required to do it by force.<sup>306</sup> The frequent definition of nation as a family usually leads to the naturalization of the social hierarchies within the states by associating them with the “naturalness” of the family institution in which the patriarch subordinates the wife and the children and the family forms an organic unity with the nation with inherently having the same interests.<sup>307</sup>

Given the patriarchal nature of traditional families in many societies it is not difficult to envisage to whose extend such international “peace” will be attained. It should be mentioned that even in Western societies which are considered to be advanced in women’s rights and conscious of gender inequalities, the notion and the order within families are designed in such a way that they further the interest of the males. As Judith Butler indicates in a society which is allegedly as gender conscious as France, the family as an institution serves as the bearer of male culture to the next generation of French man and fathers are given a special place as the role models that would convey such norms to their children.<sup>308</sup> Moreover as Jürgen Habermas put it, the exclusion of women from public sphere has a lot to do with the intransigence shown by man to the transformation of traditional roles within the family.<sup>309</sup> The role played by family for the subjugation of women and their exclusion from the public sphere is an important reason for the need for the transformation of the family structures for more public participation for women.

---

<sup>306</sup> David Helmut, Baer and E. Capizzi, Joseph, 124-125.

<sup>307</sup> Blanchard, Eric M., “Rethinking International Security: Masculinity in World Politics”, in *Brown Journal of World Affairs*, Vol. 21, Issue 1(2014),68.

<sup>308</sup> Butler, Judith, *Frames of War: When is Life Grievable?* (United Kingdom: Verso, 2009, henceforth: *Frames*), 112-13.

<sup>309</sup> Habermas, Jürgen, *Kamusalığın Yapısal Dönüşümü* (İstanbul: İletişim Yayınları, 1997), 22.

It is clear that for *many women*<sup>310</sup> the institution of family itself is the root of their problems. It makes women to labor for the other male members of the family for the activities that would reproduce the biological existence of the members of the family but in exchange the women are given less ownership and rights in the familial goods.<sup>311</sup> Family structure in patriarchal societies takes a shape in which women's unpaid labor in domestic tasks of physical and managerial nature providing the necessary leisure and free time for men to indulge in extra domestic goals and activities.<sup>312</sup> Also what is contained within the familial order and still constituting one of the greatest problems for women living in patriarchal societies is the violence against women by their husbands; physical in the form of beatings and sexual in the form of rape. Just War tradition by keeping the familial order intact and even reinforcing it by its stress on the importance of it inside the larger order of society and adopting it as a *justa causa* worth dying for is actually turning a blind eye to the sufferings of women.

It is worth mentioning in this context that there seems to be a connection between the familial roles and women's exclusion of combat related roles which brings great benefits for the ones; mainly males, who can assume them, for obtaining full citizenship with all the priviledages of fully participating the public affairs. A study conducted by Karen Kampwirth in Nikaragua and El Salvador had put forward that the number of women fighters in guerilla movements had risen dramatically after 1950s after the husbands of those rural women had left them for big cities to find work.<sup>313</sup> This implies a connection between the dismantling of family structure,

---

<sup>310</sup> To better reflect the diversity confined inside the general term "women" I should mention that family does not mean subordination for all groups of women. Women of colored backgrounds usually regard their families not as social groups where they are submitted but as focal groups where they can find solidarity against the racism they are subjected to in their daily lives.

<sup>311</sup> Walby, Sylvia, *Patriyarka*,25.

<sup>312</sup> Burstyn, Varda, "Masculine Dominance and the State", *The Socialist Register*, (1983),68-69.

<sup>313</sup> Kampwirth, Karen, *Kadımlar ve Gerilla Hareketleri: Nikaragua, El Salvador, Chiapas, Küba* (İstanbul: Sümer Yayıncılık,2014,*henceforth: Gerilla Hareketleri*),24.

familial roles and the transformation of gender roles in which the emancipation from the norms imposed by family structures on women had paved for them a new space to join guerilla movements which means a radical restructuring of women's relationship with the means of violence. An interesting data from Nicaragua testifies to this development that 47% of the fighters who died fighting against Somoza regime in Nicaragua were raised in fatherless families.<sup>314</sup>

Moreover, the anthropologists claim that families since their inception includes different gender roles for man and women in which childcare and works related with household have been assigned to women whereas war, hunting and managerial tasks have been associated with man. Even though in some cultures, old women can have some influence over adult man, generally speaking man have higher status than women and have control over them.<sup>315</sup> It is important to note here that Just War tradition by defining man as the soldier and the just warrior, in other words; as the protector of the family, re-affirms such role of man within the families. Hence Just War tradition, pretty much like its support to the state, lends its intellectual support to a patriarchal institution; the family, and defines it, both as a necessary institution for the well functioning of society and valuable social order in which's defense one is suppose to wage war.

### **1.5.3 Anarchy, Insecurity, State and Androcentric Language and Construction of Female Body**

This part of my thesis will focus on the gender critique of the concepts like anarchy and insecurity that the states supposedly find themselves in and readily adopted by the Just War tradition. Moreover, the androcentric language adopted by the Just War

---

<sup>314</sup> Ibid.,29.

<sup>315</sup> Gough, Kathleen, "Ailenin Kökeni" in *Kadın Antropolojisi*, ed. R. Reiter, Rayna (Ankara: Dipnot Yayınları, 2012), 55-56.

thinkers and the construction of the female body with reference to this language will also be analyzed in this part. Especially critical to shed more light on the Just War tradition is the way such androcentric language is used to ascribe different roles to man and women during war which are based on hierarchies that locate man above women in most of the cases. This part will also include the meaninglessness of the inside outside dichotomy adopted by the Just War tradition when it comes to the safety and wellbeing of women who usually find themselves located at “inside” in this dichotomy but still suffers from violence.

It is quite clear that the intellectual framework that the Just War tradition operates in is highly male dominated. I believe one of the main criticisms that was directed in 1980s by feminist writers to the realist tradition in international relations should be directed to the Just War tradition as well as a tradition that shares many of the assumptions of realism with regards to the state, order, anarchy and the inevitability of war. The classical Just War tradition bases its analysis in the anarchy and the inevitability of war in inter-state relations. As Eric Patterson explains many of the just war theorists, including the contemporary ones, assumed and continued to assume that the states are in a state of undeclared war rather than peace.<sup>316</sup> Augustine’s preference for a strong Carthage that will keep the Romans in shape is mentioned in the first section. The underlying logic beneath Augustine’s preference for a strong Rome is his belief in the inevitability of the conflict. Such inevitability in the tradition has been seen through the secular and religious eyes at the end to substantiate that the war really is inevitable. For the sincere believers like Augustine and Ramsey, violence is the profound shaper of the world and as people who are living inside the city of man we have no other choice to resort to war. For the secular minded intellectuals like Walzer the international relations are based on anarchy which leads states to rely on self-help. The war’s inevitability for Walzer does not stem from any

---

<sup>316</sup> Eric D.,Patterson, *Ending Wars Well*(United States: Yale University Press,2012),32.

kind of religious pre-supposition but is the result of mundane conditions; the result the way the world works.<sup>317</sup> However, as a tradition that associates justice with order, Just War tradition is concerned not with the violence itself but with the injustice done to the states.<sup>318</sup> Indeed, the very existence of the jus in bello laws itself attests to the fact that Just War tradition merely accepts war as inevitable and directly concern itself to proper regulation of it. The problem that this reasoning; that there is anarchy outside and the likelihood of war all the time, for the women is that such an understanding highlights the soldierly, protective roles of the man in society. To constantly stress the anarchical character of the inter-state relations empowers the social standing of man, who were entrusted with protecting the country, at the expense of women who are usually excluded from such role.

Theories of the Just War tradition, like the realist theories, are based on foundational stories by androcentric authors.<sup>319</sup> For instance take Walzer's construction of inter-state relations and the gendered way he chooses to describe it as an example to understand the perspective of the Just War tradition. For Walzer, war among states is like a family feud. In this family feud the occasional killing of a father, grown up son, an uncle or nephew has been going on for years. As long as nothing more happens there is always a possibility for reconciliation. But if someone kills a woman or a child, then the result might be a massacre or a series of massacres. This is similar to intermittent war among states. From such allegory he concludes that there must be some limits among states which he defined with a gendered reference to the killing of woman and children.<sup>320</sup> Similarly the definition of the state by Grotius adopts the 17<sup>th</sup> century Dutch family for comparison. He defined the power of the household essentially similar to the power of the state. He regarded the Dutch home as a

---

<sup>317</sup> Butler, *Frames*, 15.

<sup>318</sup> *Ibid.*, 17.

<sup>319</sup> Tickner, J. Ann "Searching for the Princess? Feminist Perspectives in International Relations", *Harvard International Review*, Vol. 21, Issue 4(1999), 45.

<sup>320</sup> Helen M., Kinsella, *Image Before the Weapon*, 32-33.

microcosm and a good example for the conditions necessary for the properly governed commonwealth.<sup>321</sup>

As a discipline, politics is not a gender blind enterprise but a quite gendered one and women are either excluded from politics all together or included in marginal numbers only after it is provided that they assume masculine roles and personalities.<sup>322</sup> One of the most fundamental criticisms directed by Feminist writers in 1980s to especially to the social sciences was that at the heart of the social sciences there exists a hidden male perspective that makes women's perspective invisible.<sup>323</sup> Just War tradition is no different in that sense. It constantly excludes women from the all-important decision to go to war. The textual analysis also puts forward that when the Just War thinkers were composing their texts they have mainly been thinking about man when they have been writing about war. For instance, one of the most fundamental writers for the Just War tradition, Aristotle in his *Rhetoric* employed the pronoun used to denote males in the parts dealing with what a politician should do to determine if the country should or should not go to war;

As to Peace and War, *he* must know the extent of the military strength of *his* country, both actual and potential, and also the nature of that actual and potential strength and further, what wars *his* country has waged and how it has waged them. *He* must know these facts not only about his own country but also about neighboring countries.<sup>324</sup>

Christine de Pizan is no different than Aristotle. In her writings dealing with *jus ad bellum* phase of going to war she explains;

---

<sup>321</sup> Ibid.,72.

<sup>322</sup> Tickner, J. Ann 46.

<sup>323</sup> Tür, Özlem and Aydın Koyuncu, Çiğdem "Feminist Uluslararası İlişkiler Yaklaşımı: Temelleri, Gelişimi, Katkı ve Sorunları", *Uluslararası İlişkiler*, Vol.7, Issue 26(2010),6.

<sup>324</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,45-46.

In order that a prince may go about this matter justly, *he* will follow this course; *he* will gather together a great council of wise *men* in *his* parliament, or in that of *his* sovereign if *he* is a subject and not only will *he* assemble those of *his* own realm, but in order that there be no suspicion of favor, *he* will also call upon some from foreign countries that are known not to take sides, *elder statesmen* as well as legal advisors...<sup>325</sup>

However, in order to better understand the gendered perspective of the Just War tradition, the institution that was defined as the legitimate of authority to conduct war; the state has to be analyzed. The problem starts with the very definition of the state and the attributes ascribed by the Just War tradition to this entity. The presumed competitive behaviors of the states inside the anarchical systems, which has been adopted by the Just War tradition as well, clearly parallels the self-interested behaviors associated with man as actors in the marketplace. Also the attributes ascribed to the states like independence, strength, autonomy and self-help are paralleling the attributes traditionally associated with the *sovereign*<sup>326</sup> man.<sup>327</sup> The sovereign man who is autonomous, is also contrasted with the women who are rendered as relational.<sup>328</sup> Also the unsocialized behavior of states in the international system of anarchy is a reflection of unquestioned acceptance of the traits of adult males as the human nature. However, as the feminist theorists usually point if the generational continuity will be assured and the states will not seek for the total annihilation of humanity, some sort of cooperation have to be induced among them. Especially important is the replacement of the competitive and conflictual state behavior with empathic cooperation. In order to achieve this, the soulless clichés of state interests and imperatives of realpolitik which disregards the real stories of real people, should give way to dialogue; to hearing others' stories and appreciating the

---

<sup>325</sup> Ibid.,215.

<sup>326</sup> It is important to make the distinction that is made within the different groups of women when it comes to man as well. Usually such texts take the sovereign man as references for the states, but man like the women are coming from different ethnic, racial, economic and social backgrounds and being born as man does not necessarily makes one, sovereign in every facet of life.

<sup>327</sup> Tickner,46.

<sup>328</sup> Stone, *Feminist Felsefeye Giriş*,47.

experiences of others.<sup>329</sup> Hence competition and self-help, as portrayed by the Just War tradition, are not the only traits that characterize human beings and by extension states, cooperation and solidarity are also common traits among people.<sup>330</sup> The recognition of the fact of human connectedness and as Arendt would have said the importance of the collective action which springs from the ability to act in concert with the others are the tools that would empower women.<sup>331</sup>

The sovereign or the hegemonic man which was adopted by the Just War tradition in particular and Western philosophical tradition in general is quite problematic from the perspective of feminist outlook. This usually leads to the construction of masculine identities in forming hierarchies in which man are located above women and always associated with the roles containing power. Especially the International Relations discipline employs identities such as citizen warrior, rational man, civilian strategist and good soldier to construct masculinities in its analysis with regard to the international politics.<sup>332</sup> It is so apparent that Just War tradition also uses and in a way supplies the gendered International Relations discipline with such definitions that associate man with the means of violence such as being a soldier and regards them automatically as rational.

It should be mentioned that, the changing understanding of the state in the modern period which is supposed to bring better conditions for the women has not meet the good expectations. The image of the state in the 17<sup>th</sup> century illustrated with Hobbes' Leviathan, a *man* in armor carrying a sword, was the reflection of the understanding of the state during that period. It was associated with a King who had gone to wars for reputation and adventure and whose prizes were fame, wealth and *women*. Such

---

<sup>329</sup> Sjoberg, Laura, "The Paradox of Double Effect: How Feminism Can Save the Immunity Principle", in *Women's Policy Journal of Harvard*, Vol.8(2011),64.

<sup>330</sup> Stone, *Feminist Felsefeye Giriş*,47.

<sup>331</sup> Sjoberg, Laura,64-65.

<sup>332</sup> Blanchard, Eric M.,63.

image was transformed in the 19<sup>th</sup> century by the emergence of republican form of government which was associated with the will of the people. However later it was realized that the “people” do not necessarily include women. Even more than a century of the re-emergence of the republican ideals in the modern period, in many societies states only provide formal equality and rights for women without letting them to be in equal footing with men in public spaces.<sup>333</sup> This has a very important consequence; women were usually left out of the public sphere and the critical issues have been defined without their voices have been heard. In this regard, especially criticized by the feminist thinkers is the concept of security. Like the mainstream international relations theories, Just War tradition also regards the search for security for the states as a paramount activity. However, for the amelioration of women’s status in their societies such quest should be taken out of its high politics context. The experiences of women in terms of war, marriage, trade and work are quite important issues when the notion of security is extended to include “non-conventional” areas and unfortunately these experiences are simply referred as “human interest” deserving little attention without the need for any political interests.<sup>334</sup> Hence security should be redefined in a multi-dimensional way to include the reduction in every form of physical, structural and ecological violence. Rather than the “security” of the states, as entities no one born and dies, the emphasis should be focused on the security of the society and the individuals. Especially feminist thinkers like Christine Sylvester rejects that extensive military capabilities are providing security for women. Especially the military establishments are institutions that reject women, reinforce the patriarchal norms in the society, make women dependent on man and expose women to the state violence. As Tickner reveals, even though the young males are said to be going to war to protect women and children, the increasing number of dead women and children in modern wars, in some cases exceeding adult males, demonstrates who

---

<sup>333</sup> Sjoberg, Laura, 47.

<sup>334</sup> Enloe, Cynthia, *Muzlar, Plajlar ve Askeri Üsler* (İstanbul:Çitlembik, 2003, henceforth: *Askeri Üsler*), 33.

indeed are exposed to the greatest harm during the wars.<sup>335</sup> As a tradition that is constantly emphasizing the importance of security by focusing on the issue of anarchy and associating it with the preservation of the Westphalian state system, Just War is actually endorsing an understanding of security that is identifying security with state borders. This is quite apparent when one observes the change of the notion of sovereignty especially by the works of Hugo Grotius. By the introduction of a new understanding of sovereignty which focuses not on the sovereign's right to rule but on the right of a particular populace inhabiting a specific territory with specific boundaries and having their own traditions, Grotius had changed the understanding of sovereignty and contributed to emergence of the Westphalian understanding of it which emerged not only based on the calamities of Thirty Years Wars but also by his own writings.<sup>336</sup> However women's experience prove the opposite, that to live in a state secured by borders do not necessarily bring safety, security and well-being to the women who are constantly subjected to "day to day" violence of man inside those "safe" borders. As the feminist writer Jacqui True indicates simply subscribing in to the inside/outside dichotomy would blind one to the suffering of the women and their insecurity "inside" their states.<sup>337</sup> As Young explains;

In gendered understandings, furthermore, women and men are generally positioned differently as insiders and outsiders because of the objectification of women in masculinist politics. Women tend in the main to be less powerful and more vulnerable whatever their status in this context. Their visibility is problematic because of the ways in which masculinist politics contains them largely as objects within it.<sup>338</sup>

However, it is not enough to analyze the outlook on Just War tradition regarding the state to understand the gendered stereotypes in this tradition, the language adopted by

---

<sup>335</sup> Tür and Koyuncu, 13.

<sup>336</sup> Johnson, James Turner, 549.

<sup>337</sup> Blanchard, Eric M., 65.

<sup>338</sup> Youngs, Gilligan, "Feminist International Relations in the Age of the War on Terror: Ideologies, Religions and Conflict", *International Feminist Journal of Politics*, Vol.8, Issue 1(2006), 8-9.

its thinkers also play an important role to better analyze this tradition in terms of gender. The problem that the Just War tradition poses for the woman stems from the fact that almost all of its classical and its modern thinkers are male. But even more important is the observation of Luce Irigaray that even when the discourses are diversified they remain to be the different varieties of the same phallogocentric language. Even though extensive knowledge on women exists in various different disciplines, including political science, sociology and anthropology, this knowledge is derived from the questions asked by man about their mothers, sisters and daughters rather than from the questions asked by women about themselves.<sup>339</sup> On this point Judith Butler stresses the importance of preserving a space for the discourses that fall outside the mainstream. This is crucial because the main task of democratic politics for her is not the inclusion of every kind of discourse in to the mainstream one but to preserve the possibilities of exclusion from the mainstream discourse because the point where exclusion starts is the very point that the mainstream discourse faces its own boundaries and limits.<sup>340</sup> The introduction of feminist discourses in to the Just War studies is also important from a Hegelian perspective. As Herbert Marcuse mentioned in his *One Dimensional Man*, one of the greatest problems associated with modern politics is its all inclusive nature. What he calls *the system* simply takes every kind of opposition and soften them and turns them in to a moderate one that can easily be integrated in to the existing system. In Hegelian terms this represents an impediment to the development of *polemos* which promises the two opposing forces to face one another and the synthesis they produce would advance humanity in to a higher stage of development. Even though the logic of linear progress and advancement is open to serious criticism, this phenomenon captures well what can be lost in an all-encompassing system/discourse if alternative discourses are simply integrated in to the mainstream one without posing any challenge to its basic tenets.

---

<sup>339</sup> Leibowitz, Lila, "Cinsiyet Farklılıklarının Evrimi Üzerine Perspektifler" in *Kadın Antropolojisi*, ed. R. Reiter, Rayna(Ankara: Dipnot Yayınları,2012),8.

<sup>340</sup> Özkazanç, Alev, *Feminizm ve Queer Kuramı*(Ankara: Dipnot Yayınları, 2015),32

Julia Kristeva's analysis which is based on the tenets of French psychoanalyst Jacques Lacan demonstrates what is meant by the danger of all encompassing language. She makes a distinction between semiotic associated with women and symbolic associated with man. Semiotics represents the phase before the language in which the infant develops a special bond with the maternal body. These include the drives, rhythms and voices experienced during the relationship of the infant with the mother. However, those semiotic drives later are repressed by the symbolic during the development of the lingual phase. Even though semiotics is not totally repressed it still continues to exist with the framework set by the symbolic, in other words it still lives on within the language. However, the crucial point is it is not the symbolic that lives inside the framework of semiotics but the opposite which demonstrates the importance of the man's/father's law to be regarded as a subject in this world. <sup>341</sup>

This might be stemming from the epistemological paradigm brought by the Enlightenment in which episteme is constructed with reference to a duality between the knowing subject and a known object. As a result, this understanding portrays knowledge as a product of the antithesis between subject and the object.<sup>342</sup> Unfortunately the same epistemological paradigm associates only the man, not the women with knowledge. According to Hans-Georg Gadamer the epistemology of enlightenment brings hierarchical dichotomies in which the female is always presented as the underprivileged.<sup>343</sup> Due to the pervasiveness of this language female is a non-existent subject. In an economy of significations where the signifier and the signified are both based on the male perspective, then the relationship between the male and female can not be properly represented.<sup>344</sup> Wittig explains this point simply by saying that gender is a category that exists only for women, for men there is no

---

<sup>341</sup> Ibid.,62-63

<sup>342</sup> J.Hekman, Susan, *Toplumsal Cinsiyet ve Bilgi: Postmodern Bir Feminizmin Ögeleri*(İstanbul; Say Yayınları,2016,*henceforth: Toplumsal Cinsiyet*),24.

<sup>343</sup> Ibid.,35.

<sup>344</sup> Butler, Judith, *Cinsiyet Belası: Feminizm ve Kimliğin Altüst Edilmesi*(İstanbul; Metis Yayınları,2008,*henceforth: Cinsiyet Belası*),57

need for gender because men is equated with what is universal. Male does not signify a sex because it does not signify the characteristics of man, but of the general.<sup>345</sup> Josephine Donovan encapsulates this problem of perspective by stating that “to know one’s history and roots means looking at the world not through the prism of others imposed on oneself but through the prism of one’s own people.”<sup>346</sup> In such a gender biased linguistic environment it is no surprise that the women’s experience are not taken in to account in definitions of war. As Walzer put it what is war and what is not war is something that people decide.<sup>347</sup> It is quite telling that the just war tradition does not call the everyday experience of women which is full of violence not as a war. This is quite an obvious example for whose favor and for whose disfavor the gender regime works and where the just war tradition stands in it. By simply adapting a language in which the concept of war itself is defined with no reference to the experiences of women which are full of violence and in some cases even involves them being murdered by their male companions, Just War tradition simply substantiates criticism of Irigaray and the need for a novel language that would take the experiences of women in to account.

Judith Butler in her *Gender Trouble: Feminism and the Subversion of Identity* expresses her view that the boundaries and the surfaces of bodies are politically constructed.<sup>348</sup> I believe the exclusion of women from the all important decision to go war in jus ad bellum level and her exclusion to take part in war in jus in bello level are the reflections of this political construction of female body. This female body is linguistically constructed by a system which is produced by male subjects on the basis of a subjection marked by gender differences.<sup>349</sup> Usually these gender differences are reflected as the natural consequences of the dualistic sexual

---

<sup>345</sup> Ibid.,70.

<sup>346</sup> Donovan, Josephine, *Feminist Teori* (İstanbul: İletişim Yayınları, 2014), 13.

<sup>347</sup> Walzer, Michael, *Just and Unjust Wars*, 24.

<sup>348</sup> Butler, Judith, *Cinsiyet Belası*, 37.

<sup>349</sup> Ibid., 45.

morphology. According to this reasoning man and women have different biological features. The most common reflection of this morphology is that man are physically stronger than women hence gender roles should follow this natural biological principle. However not only the sexual morphology doesn't have to take a dualistic shape, think about the hermaphrodites, but even if it would have taken a dualistic shape the gender roles do not necessarily have to be based on this duality. If gender can be institutionalized without any reference to biological sex, then a female body can very well have been associated with the gender roles traditionally associated with male subjects such as serving in the army as soldiers.<sup>350</sup> Beauvoir recognizes this by stating that the female body should not be an essence which is definitive and restrictive but should be the state and the instrument of their freedom.<sup>351</sup> A clear example of this in the Just War tradition is the pre-acceptance of the physical weakness of the female body and the woman's exclusion from the roles associated with the actual combat itself. For this tradition woman and children<sup>352</sup> are regarded as civilians to be protected during the in bello phase of the war. However, it is worth to mention that even though women are banded together with children and elderly man as non-combatants, only the category of women is accepted as always already civilian. Children and the elderly are regarded as civilians momentarily bounded by their chronological age. However women are always civilians as a result of being born in to a certain sex.<sup>353</sup> This is a clear essentialist outlook based on the premise that it is possible to extrapolate women's behavior or roles from their biological sexes. Hence it is possible to identify Just War tradition with gender essentialism which rejects that gender is an end result of a complex process of socialization.

---

<sup>350</sup> Ibid.51.

<sup>351</sup> Ibid.,59.

<sup>352</sup> Please consider the fact that the presumed physical weakness of the woman and children have put them in to the same category.

<sup>353</sup> Helen M.,Kinsella,*Image Before the Weapon*,16.

When it comes to war, the roles of women are quite clear and the linguistic constructions of their roles play an important part for the sustenance of the war efforts. Just War tradition by constantly placing women in civilian categories plays a major role in the construction of such dualistic roles during the war. Women's roles during war are well depicted by the novels like Hemingway's *A Farewell to the Arms* where women are restricted to non-combatant roles like medical staff in the hospitals or reduced to objects of pleasure for the battle hardened soldiers in the form of prostitutes as the Second World War Korean "comfort women's" agonizing experience demonstrated. It is interesting as well as telling that even in a society like the Israeli one which has not only legalized but also made compulsory the service for women in the army, the women in the pre-state period were regarded as secondary and sent to the kitchen and laundry despite the fact that there existed a dire need for human power in actual combat.<sup>354355</sup> It is clear that such roles within the military to a great extent reflect the highly gendered civilian labor market in which women usually serve in "complementary" roles such as secretaries, nurses or assistants regarded as inferior to the positions held by men.<sup>356</sup>

The propaganda conducted by the warring parties for instance during the world wars, conveyed to the people with a male patriarchal rhetoric in which on the one hand the labor of the women is almost described as sacrosanct but on the other categorized with reference to roles associated with female gender and confined to the activities such as nursing, tailoring and serving as secretaries.<sup>357</sup> It is clear that patriarchal societies impose heavy burdens on men as the alleged "protectors" of the society and

---

<sup>354</sup> Tami Amanda, Jacoby, *Women in Zones of Conflict*,35.

<sup>355</sup> The situation in Israel is still based on a gender regime that clearly separates between men and women in terms of the military service. Not only women are not put in to the combat situations but the married women are neither conscripted for active or reserve forces. (Charles,360)

<sup>356</sup> Yuval Davis, Nira, *Cinsiyet ve Millet*(İstanbul:İletişim Yayınları,1997),188.

<sup>357</sup> Yamaner, Onur, *20. Yüzyılda Savaş ve Kadın*(İstanbul:Biğe Kültür Sanat Yayın,2016, henceforth: *Savaş ve Kadın*),11.

expects from women to satisfy all the needs of the man and his family.<sup>358</sup> For instance during the Second World War, a war that is regarded as one of the most just wars by many accounts, in the United States women were given tips in magazines and instructions about how to become the dream girl and how to fight for the dream man all explained in martial language true to the spirit of the times, whereas young man were given training on how to fight in battles.<sup>359</sup> Such roles are not assigned arbitrarily to women. As Cynthia Enloe explained the roles such as mothers, wives, sisters, workers and prostitutes are quite important for the war plans designed by man.<sup>360</sup> Even though it is assumed that “all man” would like to serve in the military, the fact remains that there are great many man who would like to dodge military service and the militaries face shortage of “man power”. The allure of military service had declined dramatically in the countries like the United States, Russia, Israel and Canada due to the reports about the abuse of soldiers and uncompetitive pay scales.<sup>361</sup> For the commanders to attract the number of man to the military that they see necessary, they do not only control women but the very idea of femininity. As she explains;

Out of their sense of need, those military officials and civilian state authorities responsible for preparing war and waging war have tried to maneuver different groups of women and the ideas about what constitutes “femininity” so that each can serve military objectives.<sup>362</sup>

In a situation where obligatory military service no longer exists, the Western military planners rely on their own abilities to convince the young man and their parents through propaganda aimed at associating volunteering for military service with

---

<sup>358</sup> Ibid.,146.

<sup>359</sup> Melissa A. McEuen, *Making War, Making Women: Femininity and Duty on the American Home Front, 1941-1945*(United States: University of Georgia Press, 2011, henceforth: *Making Women*),16.

<sup>360</sup> Cockburn, Cynthia, *Buradan Baktığımızda: Kadınların Militarizme Karşı Mücadelesi*(İstanbul:Metis Yayınları, 2009, henceforth:*Buradan Baktığımızda*),285-286.

<sup>361</sup> Cynthia H., Enloe, *Militarizing Women's Lives*, 235

<sup>362</sup> Ibid., 36.

masculine identity a man is alleged to have. For this strategy to work, the military planners have to have either active cooperation or passive compliance of the mothers of those young man who would be the future soldiers. Hence mothers usually militarized to sustain those objectives and the notion of motherhood is co-opted to the strategies adopted by the military commanders.<sup>363</sup>

This point is well demonstrated by the policies of the German government during the First World War when the government started a campaign for the German women to shave and donate their hairs to be used for the production belts for the German submarines instead of the camel hairs which could not be imported to Germany due to the Allied blockade.<sup>364</sup> It illustrates the point that women during wars had even been turned in to voluntary sources of raw materials. It is clear that in order to change the gender roles associated with woman pertaining the actual combat the connection between gender and biological sex must be shattered and as Butler explains a new type of gender, free from the dualist sexual morphology, which is adopted by the Just War tradition, must be constructed. One can even claim that not only gender but also sex is constructed. Before the gender signs there were no signs associated with the bodies.<sup>365</sup> As Freud explains heterosexuality is *produced* not only by prohibiting incest but also by prohibiting homosexuality even before it. The *Oedipal* conflict presupposes that the heterosexual desire has already been secured and the distinction between the heterosexual and homosexual desires had already been made. As Judith Butler explains based on the explanations of Freud that one should accept that male and femaleness are not characteristics that are natural or given by birth but performances that emerge only by the realization of heterosexuality.<sup>366</sup>

---

<sup>363</sup> Ibid.,237.

<sup>364</sup> Yamaner, Onur, *Savaş ve Kadın*, 72-73.

<sup>365</sup> Butler, Judith, *Cinsiyet Belası*,54.

<sup>366</sup> Butler, Judith, *İktidarın Psikik Yaşamı* (İstanbul: Ayrıntı Yayınları, 2015), 136-137.

Given the arguments above it is apparent that Just War tradition is a tradition constructed with reference to gender differences. It assigns different roles such as soldier and civilian to man and women in line with the expectations of the patriarchal societies on both genders. Tradition constantly elaborates on the poor fate of the widows and children as Luther and de Pizan did, and hence it automatically assigns combat roles to man and non-combat roles to women.<sup>367</sup> And unfortunately it seems true that even the wars considered as just as the Second World War on the part of the Allies, brought the association of negative images with women. Women during that war had increasingly been identified as sex objects whose primary roles in life was to find husbands and boosting the morale of the soldiers on front. It is even more appalling that such identification had come during when the women in the Western world had allegedly been being empowered by their integration in to workforce to compensate the lack of male workers who went to serve in the battle fronts. It should be mentioned that such secondary roles such as nursing, cooking or tailoring which are roles that are confined to the assistance to the male soldiers who are actually carrying out the fighting makes women powerless because such roles keeps women out of the common obligation of common defense. They reinforce the patriarchal hierarchy that endorses man's role as the guardian of the society and the homeland and hence keep the women in the subordinate positions.<sup>368</sup> It is important to mention here that state as an institution plays an important role in the deepening of such roles. The rhetorical language based on the duality of "home" and "war" fronts adopted by the state has been instrumental for the adaptation of such gender roles during the war. The "home" front which is associated with women is presented as a sphere to be protected by male soldiers. Yuval Davis explains that when there is no clear separation between the so called home and war fronts usually the gender based division of labor withers away.<sup>369</sup>

---

<sup>367</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 268.

<sup>368</sup> Yamaner, Onur, *Savaş ve Kadın*, 147.

<sup>369</sup> Yuval Davis, Nira, *Cinsiyet ve Millet*, 179.

However, it should also be mentioned that the association of women with such secondary roles by the Just War tradition has also to do with the fact that this tradition is reflection of the conventional categories well embedded inside the discipline of International Relations. As a field of study International Relations reflects androcentricism which is based on the centrality of male experience. As Jacoby explains “*men*<sup>370</sup> have historically served as leaders, diplomats, soldiers and other figures of authority who are associated with the main structures of International Relations”.<sup>371</sup>

Such wartime gender roles are keenly associated with the way the concept of security and war are perceived in the Western political tradition. The language that is used to describe security and war draws almost exclusively from the experiences of men. Underneath the claim of universality propagated by the Western political tradition for its concepts of security and war, one finds the values associated with hegemonic masculinity to be promoted. As a consequence of such problematic language war is reflected in the Just War tradition as an experience to which women are exterior. As Jean Elshtain put it “men have inhabited the world of war in a way that women have not”. Women generally depicted as victims of war and rarely as agents.<sup>372</sup> However it is important to note that when the Just War tradition is examined, due to its emphasis on hierarchal structure of society, it is increasingly revealed, in parallel with the hegemonic masculinity discourse, that not only women but some man also are excluded from the decision making experience of war. For instance, as Vitoria expressed;

---

<sup>370</sup> My emphasis

<sup>371</sup> Tami Amanda, Jacoby, *Women in Zones of Conflict: Gender Structures and Women's Resistance in Israel* (Canada: McGill-Queen's University Press, 2005, henceforth: *Women in Zones of Conflict*), 12.

<sup>372</sup> A. Mingst and L. Snyder, *Essential Readings*, 96.

Lesser subjects who are not invited to be heard in the councils of the prince nor in public council are not required to examine the causes of war, but may lawfully go to war trusting the judgement of their superiors... Men of lower condition and class cannot prevent war even if they consider it to be unjust, since their opinion would not be heard; it would therefore be a waste of time for them to examine the causes of war.<sup>373</sup>

Hence both the dualistic rhetoric and the hierarchical understanding adopted by the Just War tradition, simply reinforces the hegemonic masculinities in the patriarchal societies.

#### **1.5.4 Dualistic Thinking inherited from Western Philosophical Tradition**

This part is going to focus on the dualistic thinking that the Just War tradition inherited from the Western philosophical tradition and the way it has been instrumentalized to construct gender roles in Just War tradition. Especially important in this section is the reason and emotion dichotomy and its employment to exclude women from war related matters. This section will also reveal the abstract way of thinking connected with such dualities and how it reflects a certain kind of aloofness from the phenomenon in question which is usually only a luxury bestowed to the ones in positions of power; in the case of war related matters, the man rather than women.

There is a deeper reason lying underneath the Just War tradition's insistence of ascribing such different roles to women and man. It should be mentioned that one of the chief reasons for the discrimination of women is the Cartesian dualities embedded in the Western philosophical tradition. In this tradition the distinction between body and the soul/mind always buttresses hierarchical relations between the sexes. The mind does not only make the body submit but also dreams about delivering itself entirely free from all its temporality. In the Western philosophical tradition mind is

---

<sup>373</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 319.

associated with man and body with women.<sup>374</sup> Man aspiring for limitlessness with his association with the mind, the women suffers her entrapment in to the body. The roots of this dichotomy is found in one of the traditions that had sown the first seeds of Just War tradition; namely the Ancient Greece. The Ancient Greek Philosophical tradition encompasses the world in dualities; light/darkness, good/evil, continuity/change, limit/limitlessness, reason/emotion, soul/body and man/woman. However the critical point is that the dualities are not presented in a complementary fashion but in a hierarchical one.<sup>375</sup> In such dichotomies man is located by the Ancient Greek philosophers like Pythagoras on the active side and the women in the passive side of the dualities. Such hierarchies had been formed by the Greek philosophers with reference to the functions of human reproduction with an understanding that father is the one constituting the principle of formation and the actual reason behind the human reproduction and the women is simply a matter or a vessel that is nourishing the product of the father.<sup>376</sup> The problem is that, the set of desirable qualities in these dualities are associated with man and the undesirables with women. It is worth to mention here that one of the first thinkers that had elaborated on Just War, Plato is quite instrumental in planting this dualistic understanding in to the Greek philosophy. His insistence that form is superior to matter and the world of ideas are the real perfect world as opposed to the existing world which is only composed of the replicas of the world of ideas, is a clear demonstration of his dualistic understanding of the universe.<sup>377</sup> As a tradition molded

---

<sup>374</sup> A. Mingst and L.Snyder, *Essential Readings*,60.

<sup>375</sup> It is important to note that in the early Ancient Greek tradition there still was a sort of equality between mind and soul as exemplified by the internal discussion of Homer's Achilles between killing Agamemnon representing passion of the soul and withdrawing his support of the campaign representing the reason of the mind. But by Plato, as the examples from the animal and the metaphysical worlds; the dog and the winged chariots illustrate, the passion of the soul is subordinated to the reason of the mind. In this regard it is telling that the decline of *kalliopolis* starts from the transformation of the good regime to a timocracy which is the regime based on the rule of honor marked by emotions/passions.(Shuffelton,396.)

<sup>376</sup> Lloyd, Genevieve, *Erkek Akıl: Batı Felsefesinde Erkek ve Kadın*(İstanbul:Ayrıntı Yayınları,2016,*henceforth:Erkek Akıl*),24-25.

<sup>377</sup> Berktaş,Fatmagül,*Tek Tanrılı Dinler 130-131*.

in Western philosophical tradition, Just War tradition is a reflection of this dichotomy of body and mind and form and matter.

Gratian's *Decretum* is a good example to trace the body and mind distinction of the Western Philosophy within the Just War tradition. In the part he was dealing with one of the most difficult questions in Christianity; that how violence can be reconciled with pacifist teachings of early Christianity, Gratian employed the body and mind duality to justify Christians' resort to violence. After quoting extensively from the pacifist verses from the Bible such as "if anyone strikes you on the right cheek turn him the other also" and "if anyone forces you to go one mile, go with him two miles", Gratian elaborates on the inward and outward deeds;

The precepts of patience have to prevail less in outward deed than in the preparation of the heart. Hence Augustine said in his *Sermon on the Child of the Centurion*; the just and pious man ought to be ready to put up with the malice of those he wants to become good, in order that the number of the good may increase, instead of adding himself by equal malice to the number of the wicked. In sum, these precepts are rather for the preparation of the heart which is internal, than for the deed which is in the open; so that patience and the benevolence are to be confined to the secret of the *mind*<sup>378</sup>, while that has to show in the open what would seem to profit to those we want to become better.<sup>379</sup>... From all this we gather that soldiering is not a sin and that the precepts of patience are to be observed in the preparation of the heart not in the ostentation of the *body*.<sup>380381</sup>

Likewise, Christine de Pizan's writings attest to what extent the reason and emotion dichotomy had penetrated in to the Just War tradition. In the part of her book, *The Book of Peace*, that deals with the causes of war, she reminds the readers that one should not succumb to *his* will and be directed by his reason. She explains by quoting Roman poet Ovidius and the philosopher Seneca that;

---

<sup>378</sup> My emphasis

<sup>379</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,111.

<sup>380</sup> My ephasis

<sup>381</sup> *Ibid.*,112.

These are horrible faults in those that give themselves over to them, and especially for true princes, not tyrants, who should possess true nobility and to whom Ovid says: "Be victorious over your heart, you man who wants to conquer everything". And similarly Seneca says "You who want to subdue everything, submit first to reason, and when reason rules you, you will be the ruler; but when your will governs you, you will be ruled over".<sup>382</sup>

Johnson's definition illustrates how the form and matter duality had penetrated in to the Just War tradition;

*Conceptions*<sup>383</sup> of statecraft and the role of armed force in good government that takes various specific forms over time *but remain fundamentally stable*. This tradition is as a whole a repository of the way in which the Western culture has come to think of the values which political life exists to support, protect and foster...<sup>384</sup>

The so called fundamentally stable conceptions; the forms, are reflected as the basis of the Just War tradition as well the values in which the political life exists to support. Deontological is contrasted with the prudential in the jus ad bellum phase of the just war decision making by Johnson and deontological was set as the standard the politician should take to make the decision to go to war in accordance with the demands of Just War. Likewise Walzer accepts that the moral understanding of when a war is justified and how should it be conducted is universal.<sup>385</sup> The crucial point in all these dualities; form/matter, body/mind, reason/emotions is that they regard abstractions like morality and reason as superior to concreteness since they have been influenced by the form and matter debate in Western philosophical tradition. However, the abstract notions of values and conceptions, as defined by Gilligan, are tools for male way of thinking since they assume a certain kind of aloofness from the

---

<sup>382</sup> Ibid.,226.

<sup>383</sup> My emphasis

<sup>384</sup> Zehr, Nahed Artoul, 193.

<sup>385</sup> Johnson, James Turner, *Ethics and the Use of Force*, 21.

phenomenon. They fail to take the needs of individuals in to account and for Gilligan, should be replaced with an ethic of care which pay foremost attention to the specific needs of the individuals. As Zehr explains;

This account suggests that the values arrived at through a process of historical engagement not only exercise an advisory role but hold authority over contemporary practical reasoning regarding the just use of force. Through faithful adherence to these values contemporary practical reasoning may be steered along a correct course.<sup>386</sup>

However, one should give credit at least to one of the Just War thinkers; Thomas Aquinas for not indulging in such stable and unchanging concepts. Especially in his conception of virtue, which is critical to define the just warriors, he had made such a flexible and relative definition that he managed to ensure the principle of plurality in human values. He defined virtuous and the vicious as follows; "it is owing to the conditions of men, that certain acts are virtuous for some, as being proportionate and becoming to them, while they are vicious for others, as being out of proportion to them".<sup>387</sup> Darrell even cited Aquinas' ability to recon with human plurality as the main reason for him not deeply engaging with the jus in bello rules since such virtuous behavior would change from one war setting to another. Given the fact that Aquinas is a follower of Aristoteles<sup>388</sup> it should come as no surprise for anyone that he promotes the plurality in human affairs. However even the recognition of such plurality in human affairs do not prevent Aquinas from adopting the concept that has been most associated only with man; reason, as the guide in moral conduct in war. He elaborated that "it is right and true for all to act according to reason".<sup>389</sup>

---

<sup>386</sup> Zehr, Nahed Artoul, 193.

<sup>387</sup> Cole, Darrell, 69.

<sup>388</sup> As we will see the acknowledgement of plurality in human affairs did not prevent Aristotle to further ideas disfavoring women.

<sup>389</sup> Ibid., 70.

Hence Just War tradition by adopting the form and matter duality of the Western philosophy and as a result adopting the hierarchical stands in this dichotomy in the favor of form which itself is associated with man rather than women; such as basing its arguments on ambiguous concepts like values, indeed reveals its gendered nature.

Another Greek Just War theorists Aristotle had even been more instrumental than Plato in planting ideas disfavoring women in Western philosophical tradition. His world is based on hierarchical dualities in which soul is superior to body, reason to emotion and man to woman. The pure reason (nous) which is peculiar only to man is related with divine soul and is superior to everything in the world. Hence the mind of the man is superior to any kind of matter and is sacred. It is even in higher status than the perfect male Apollonian body. The women, who were seen as deficient man by Aristotle, are the slaves of their bodily functions and are subservient to the intellectually active man.<sup>390</sup> The main function of women for him is motherhood. However this does not make her the determining subject in procreation because Aristotle thinks that women body is nothing more than a vassal that contains the seed of man who only has soul.<sup>391</sup> The Greek tragedy of the time is a good example to demonstrate this hierarchical duality propagated by Aristotle. In Aeschylus' *Oresteia*, Orestes whose father Agamemnon was killed by his mother Clytemnestra, kills his mother to avenge his father's death. Then he was set up by the goddess of night and earth The Furies but defended by the god of reason and enlightenment Apollo. Orestes finally were brought into trial which ended in a draw in the citizen jury and released as a result without any punishment. By some accounts this tragedy by Aeschylus, in which the male protagonist had managed to be saved from the female deity by the help of male deity representing reason, records the moment in which the matriarchal gods were started to be superseded by the patriarchal ones. It is no

---

<sup>390</sup> Interestingly, more than two millenia later a similar kind of phallogocentric view was propounded by Freud in his theory of penis envy.

<sup>391</sup> Zehr, *Naked Artou*, 132-133.

coincidence that the same period marks the beginning of the Hellenic consciousness towards advancement in civilization and the so called Hellenic enlightenment.<sup>392</sup>

It is crucial to note, especially to understand the lack of women in the decision making mechanisms of war during the *jus ad bellum* phase in this tradition, that such a transformation of Greek understanding away from emotion towards for reason had taken place in a context where emotions were regarded as detrimental for one's faculties to take important decisions concerning public affairs such as war and peace. For instance, the Athenian politician Cleon during his deliberation to the Athenian people on the fate of the Mytilenians who had rebelled against Athens, clearly expressed that sentiments should be out of the picture when taking public decisions;

The orators who charm us with *sentiment*<sup>393</sup> may find other *less important arenas*<sup>394</sup> for their talents, in the place of one where city pays a heavy penalty for a momentary pleasure, themselves receiving fine acknowledgments for their fine phrases.<sup>395</sup>

Neither the political rival of Cleon, Diodotus who had propagated the exact opposite view before the Athenian Assembly that the Mytilenians should not be killed and enslaved, is different in opinion when it comes to the place of emotions in public affairs. He said before the Assembly that; "I think the two things most opposed to good counsel are haste and passion; haste usually goes hand in hand with folly, passion with coarseness and narrowness of mind."<sup>396</sup> Likewise the passions were disparaged by Aristoteles within the context of war. He regards an attack emanating out of passions not as bravery. As he stated "even asses would be brave when they are

---

<sup>392</sup> Barrett, William, *Irrational Man: A Study in Existential Philosophy*(New York:Anchor Books,1962, *henceforth:Irrational*),277-278.

<sup>393</sup> My emphasis

<sup>394</sup> My emphasis

<sup>395</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,9.

<sup>396</sup> *Ibid.*,9.

hungry; for blows will not drive them from their food and lust also makes adulterers do many daring things.<sup>397</sup>

The importance of reason in Aquinas' writings are quite apparent as well. As an Aristotelian he ascribes immense importance to temperament in behavior. Temperance is one of the cardinal virtues of a just soldier. He regraded temperance as restraint of passions when they are contrary to reason. This is a virtue that is very important for the *jus in bello* phase of the war since temperance is the virtue that can check actions born from hate and revenge. This is a cardinal virtue ensuring a proper combat behavior. In a similar fashion he explains that excellence in soldering depends upon courage and excellence in leading soldiers depends upon prudence.<sup>398</sup> Both of the activities of courage and prudence are again based on reason since courage is defined not only as a physical act of daring but an intellectual act of standing against one's passions, and prudence is defined as the way reason should operate in practice. Here it is quite obvious that Aquinas is also drawing from the distinction of Western philosophical tradition between passions and the reason and makes the passions to submit to the reason.<sup>399</sup> By attributing temperance, which is nothing more than using one's reason to rein in appetites, to the soldier for their proper behavior in the battlefield he willingly or unwillingly associates reason with man, as one clearly understand from the male pronoun he used to refer to the soldiers.

Moreover, it is also quite apparent in the *jus ad bellum* phase of the war that reason is again in play for the Prince who would take the decision to go to war both for Gratian and Aquinas. Gratian introduced the concept of judge to the *jus ad bellum* level of going to the war by expressing that a justified resort to force by a Prince is like a judge's decision to pronounce justice. Later accounts on the issue of justified resort to

---

<sup>397</sup> Aristotle, *Nicomachean Ethics*(New York: Oxford University Press,2009),53.

<sup>398</sup> Cole,Darrell,68.

<sup>399</sup> Ibid.,62-63.

war, adopted by Aquinas, claimed that the princes or the sovereigns by the virtue of the authority of their offices empowered to act as judges in that matter and decide whether it would be justified to resort to force.<sup>400</sup> Here the equation is quite simple for the Just war theorists the Princes who had all been regarded as man were automatically associated with enough reason to be able to make necessary judgements to come up with a plausible decision whether to go or not to go to war.

The Just War theorists in the modern age has endorsed the primacy of reason over emotions as well. Paul Ramsey, as one of the leading modern figures in Just War tradition explains the indispensability of reason in the quest for justice during his response to the Christian accusations that the basis of his Just War teachings is not based on *agape* but on reason. He explains;

The reasonable re-description of human actions in these instances is either a product of a love informed reason or else it is a foolish waste of time. Where faith seeks understanding, still it is the understanding that is illuminated. If we believe in order to know, it is still reason that knows. Where love transforms natural justice, still it is our perceptions of justice that are informed and reshaped.<sup>401</sup>

The chief result of such dualistic thinking in Just War tradition is the exclusion of women from the public sphere, and by extension from the decision making about war related issues in *jus ad bellum* and *jus in bello* matters. Since women are associated not with reason but with body, emotions and absence of reason they are easily left out of such decision making mechanisms related with war. Just War theorists always conceive the Princes as males, as the male pronoun adopted by them in their writings, who would take the decisions about war and advised them in some cases to receive advise from other “wise man” before going to war. But the so called “irrational” and “emotional” women are totally absent in such decision making mechanisms.

---

<sup>400</sup> Johnson, James Turner, 547-548.

<sup>401</sup> Ramsey, Paul, “Some Rejoinders”, in *Journal of Religious Ethics*, Vol. 4, Issue 2(1976), 192.

Hence it is clear that the Just War tradition as a tradition confined to the limits of Western thought is a reflection of this duality. The *just warriors* coming to save the *beautiful souls* who are almost always conceived as women is a clear illustration of this dichotomy. It has also adopted the practice of conceiving the world in dualities such as good and evil, combatant and non-combatant and peace and war. For instance, Gratian in his *Decretum* had written extensively to justify the use of violence for the Christian soldiers and rebut the pacifist position inherent in Christ's sayings. In one of his explanations why violence should be utilized by the Christians he refers to this dichotomy in the Western philosophical tradition by stating that "as the soul was more important than the body, so the precepts of patience applied more to the inward disposition of a person than to his external acts".<sup>402</sup>

Moreover, as the feminist theorist Spike Peterson elaborated scientific revolution that have taken place in the 17<sup>th</sup> century had also reinforced such dualistic categories. It had changed our understanding of the world and the man's place in it. Starting from the 17<sup>th</sup> century, scientific reasoning was deliberately constructed as "male" and promoted as superior to "female". Gradually man "the knower" was started to be identified with science and reason, women were associated with emotion and irrationality.<sup>403</sup> Even though the Just War tradition seeks for the preservation of women in actual combat by placing her in to the category of civilians or by outlawing slavery and women to be taken as prizes of war by the victors, Just War tradition still looks at the women through the prism of body. Women fall prey to the victors or regarded as non-combatants because of the weakness of their bodies. As Wittig elaborates the dualistic limitations on sex serves the purposes of biological reproduction aimed by the system of compulsory heterosexuality.<sup>404</sup> The concern

---

<sup>402</sup> H. Russel, *Middle Ages*, 57-58.

<sup>403</sup> Tickner, 46.

<sup>404</sup> Butler, *Cinsiyet Belası*, 69.

with the Just War tradition is that as a tradition molded within the patriarchal tradition of Western Philosophy if its benign attitude toward women in war such as prohibition of slavery, rape and provision of relatively safe status of “civilian” reflects a deeper anxiety of losing the monopoly on the “means” of heterosexual reproduction and their transfer to one’s enemy and the loss of a valuable source for agricultural production.<sup>405</sup>

### 1.5.5 Natural Law Tradition and Dualistic Thinking

This part is going to focus on the other current that had induced a dualistic thinking in to the Just War tradition; namely the natural law tradition. Here the natural roles ascribed to women by natural law tradition and its understanding of universal law that can be conceived by reason are important to understand the problematic sides of the Just War tradition given the fact that reason is not associated with all humanity but only with man in this tradition.

A critical point connected with this duality embedded in Western Philosophy and especially in the teachings of Vitoria, Suarez and Grotius with regard to the Just War theory is the natural law tradition. The pinnacle of the natural law tradition is the assumption that human beings have inalienable natural rights that, not even the governments have right to interfere. Both the French and the American revolutions are the expressions of this understanding. However the problem with this tradition is the fact that the thinkers like Vitoria, Suarez and Grotius, who had developed this tradition envisaged such natural rights only for man not for women.<sup>406</sup> For instance for Grotius, by generation parents acquire rights over their children and by parents he

---

<sup>405</sup> In many of the horticultural societies small scale agricultural production was seen as the expertise of women and the labor of women had produced considerable agricultural surplus which had led many such societies to wage wars to “acquire” women, as a valuable source as the producers of such agricultural products. (Burstyn,53)

<sup>406</sup> Donovan, Josephine, *Feminist Teori*, 22.

means both parties; both father and the mother. But if there is variance in the exercise of these rights the right of the father is given the preference on the basis of the assumed superiority of sex. As Grotius explained “deservedly the woman who is made subject for the male, for equality in rank produces strife”.<sup>407</sup> He further elaborates on his understanding of sovereignty with reference to marriage. Men have rights over women not only because the marriage is the most natural association but also because women submits to men by a vow which binds herself to him. The act of binding, as in the binding in marriage, finds its parallel in the binding of men to a sovereign power. Since by the law of marriage the husband is superior, by the law of nations the sovereign is the superior. But by its own terms association is subjection due to the natural law in which women do not have the necessary *reason* to conclude a contract. Women have no capacity and authority actually to vow.<sup>408</sup> This should be considered with reference to the importance given by the Just War tradition to the act of promising and keeping them even in difficult times as the story of Regulus demonstrates which will be explained in the *jus in bello* section of this study. Similarly, in his rebuttal to the enslavement of the American Indians by the conquering Spaniards Vitoria invoked the arguments of rationality. He denied that the American Indians lack rationality and in an effort to soften the Aristotelian arguments in favor of slavery he brought forward implicitly the argument that women lack reason. He explained that;

Nor did Aristotle mean that it is lawful to seize the goods and lands, and enslave and sell the persons, of those who are by nature less intelligent. What he meant to say was that such men have a natural deficiency, because of which they need others to govern and direct them. It is good that such men should be subordinate to others, like children to their parents until they reach adulthood, and like a *wife to her husband*.<sup>409/410</sup>

---

<sup>407</sup> Helen M., Kinsella, *Image Before the Weapon*, 71-72

<sup>408</sup> *Ibid.*, 72.

<sup>409</sup> My emphasis

<sup>410</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 293.

It is important to note within this context that the natural law tradition is based on the understanding that natural rights and natural law are apriori rights that can only be understood by reasoning which is apparently conceived as absent in women by the Just War thinkers. Such reasoning, as an expression of the 17<sup>th</sup> century Newtonian outlook of the world, is based on the assumption that if the physical world can be reduced to a few simple mathematical laws that can be understood by human reasoning then ethical, political and aesthetic worlds should also be organized based on these few mathematical laws.<sup>411</sup> As also propagated by the Enlightenment the working of the world is rational and such mathematical rationality is revealed by natural law since each man can reach such laws through reasoning. Such mechanical understanding of the world that lies at the root of the natural law tradition depicts the world as a clock and the God as the great clock setter. However, this understanding of the world is highly problematic. The Newtonian paradigm perceives the world in a duality where the things that are not based on reason and mathematical laws are regarded as secondary, incomplete, unreal and the other. Unfortunately, the perspective propagated by the male thinkers associate women with this category. Here the world is divided into two in which the public-political realm is governed by reason and the private realm is infested with irrationality, emotional relations, as opposed to the rational relations of the public realm, faith, moral judgments, aesthetic problems and women.<sup>412</sup> This understanding also presupposes that rational element and the rational world should rule over and control the irrational one.<sup>413</sup> The order, the Newtonian paradigm says, should be imposed to non-order, to the marginal and to the world of the non-rational other. Descartes' passion, apparent in his writings for man's ability to control and bring tranquility to the world, is a great illustration of this

---

<sup>411</sup> Donovan, Josephine, *Feminist Teori*, 22-23.

<sup>412</sup> *Ibid.*, 24.

<sup>413</sup> A similar criticism was uttered by Nietzsche in his "The Birth of Tragedy" where he traces this development back in to Socratic rationality and Socrates' unending searching gaze.

understanding.<sup>414</sup> The end result of this proposition is that the irrational should be controlled by the rational inevitably leads to the supremacy and domination of man over women. Such thinking that is based on the exaltation of the human, indeed man's, reason and intellect simply paves the way for the imposition of such male reason to the allegedly the ones devoid of reason; the women.<sup>415</sup><sup>416</sup> The historical developments also intensified this trend. The Industrial Revolution by strictly separating the workplaces and living spaces and confining the former to the segregated areas where we call factories today, deepened the dichotomy of public and economic realm governed by reason and private space that is devoid of it.<sup>417</sup> Even a natural law theorist as open minded for his time as John Locke, who regarded natural rights exist not only for man but also for women, associated the faculty of rationality only with man not with women. Since for Locke the sine quo non for taking part in public affairs was rationality, the women were excluded from the public realm altogether by Locke's natural law theory.<sup>418</sup> The reason and emotion dichotomy also presents itself in Machiavelli's and Francis Bacon's writings. Machiavelli defines *fortuna* as a woman who should be managed by cold blooded calculations or by force. However, for him the latter is a better way to deal with *fortuna* because *she* surrenders more easily to courage than to rational calculations. Here the dissociation of reason with women is quite apparent.<sup>419</sup> Likewise the scientific methods developed by Francis Bacon included an effort for the imposition of scientific methods to the organic nature and as in the observation of the planets in the outer space rational processes have to be applied to the phenomenon devoid of emotional effects. The

---

<sup>414</sup> Ibid.,24-25.

<sup>415</sup> Ibid.,25.

<sup>416</sup> Here it should also be mentioned that the intersection of such Newtonian world view with the outlook propagated by the monotheistic religions produces a combustible mixture in which not only women but also the animals fall prey to the so called rational gaze of the males and simply reduced in to objects to satisfy the biological needs of the man; women in terms of sexuality and animals in terms of nutrition.

<sup>417</sup> Ibid.,25.

<sup>418</sup> Ibid.,28.

<sup>419</sup> Ibid.,68

association of women with the nature resisting the imposition of the rational scientific methods coincides with this period. As a result woman, reduced in to an object, in order to continue to live should be controlled and manipulated in a cosmos operating in perfect rationality.<sup>420</sup> Hugo Grotius, for instance, had based his distinction between combatant and non-combatant on the ability to discriminate or reason. He saw this as the central difference between the sexes and as a result concluded that women are the non-combatants due to their inability to reason.<sup>421</sup> Hence it is important to realize that one of the intellectual currents; the natural law tradition, that had extensively contributed to the Just War tradition, when combined with the 17<sup>th</sup> century scientific revolution in Europe, had played an important role to inject prejudices against women, especially with regard to their participation to the public affairs and definition of their war related roles, in to the Just War tradition.

Given the ubiquity of such dualities in the Just War tradition, it is important to note that even the very method of conceiving the world in dichotomies has connections with a male outlook on life. The duality of the concepts of the Just War tradition such as good and evil, combatant and non-combatant, just cause and unjust cause...etc. is also the reflection of the understanding on how the reasoning process works that itself is invested with a male outlook on thinking. According to the duality/dichotomy paradigm in Western philosophical tradition the main task of the philosopher is to search for the defects of the preceding philosophers and to counter them with arguments as well as propagating one's own arguments by keeping in mind all the possible counter arguments that they can be attacked. The problem with this kind of reasoning is its aggressiveness since it constantly looks for the defects of the others in order to find a counter argument to attack it. Such reasoning automatically assumes

---

<sup>420</sup> Ibid.,70-71.

<sup>421</sup> Helen M.,Kinsella,*Image Before the Weapon*,22.

that reasoning process requires some sort of duality and associates aggressiveness with man and hence equates reasoning with being a man. <sup>422</sup>

As it was mentioned in the case of Grotius, Natural law tradition also plays a role in the constant definition of women as the non-combatant and her protection from the violence unleashed by war by the principle of discrimination by the Just War tradition. The divine social order which is manifested by the natural law tradition is based on discourses of gender which defines particular categories of individuals as innocent depending on their sex and age. Suarez, for instance, drawing from this tradition, explains that natural law *assumes*<sup>423</sup> the existence in a given act or object, of the rectitude which it prescribes or the depravity which it prohibits. This is in contradistinction with the canon law and the law of nations which render evil what they prohibit. Hence in the first case the characteristic is inherent within the act or object, whereas in the second it is attributed to the act or object through the law. From this perspective, the women and also the children are considered innocent by the natural law because innocence exists within the woman and children, just as woman and children exist as innocent. Following this line of reasoning Vitoria stated that women are *presumed* to be innocent unless it can be proved of a particular woman that she is guilty. Hence it is no surprise that Suarez defined the list of innocent, by the natural law, as to include women, children, diplomats and priests. <sup>424</sup> Such automatic association of some qualities with women and children is the result of the theocentric understanding of the Natural Law tradition which regards those laws as eternal and non-changing depending on time and space since they reflect the will of the ultimate decider in cosmos; God. Moreover they are regarded as unchanging also because they are seen as reflecting a human nature that is fixed and non-changing for

---

<sup>422</sup> Stone, *Feminist Felseye Giriş*,18-19.

<sup>423</sup> My emphasis

<sup>424</sup> Howard M. Hensel, *The Prism of Just War*,57.

all times.<sup>425</sup> As Hugo Grotius explained “for the principles of the law of nature, since they are always the same, can easily be brought in to systemic form”.<sup>426</sup> That’s why such categories like combatant and non-combatant embedded in to the Just War tradition through natural law tradition is still lingering to a great extent and it requires an enormous effort to change those conventionally accepted categories since they are assumed to be based on an unchanging eternal law.

Consequently, for the Just War tradition, if we participate in to the eternal order through natural law and it is a standard of good and evil then the innocence of woman and children is not only derivate of the eternal order but is itself a standard of good and evil. That’s why age and sex differences provide visible signs to be taken to understand one’s internal traits such as guilty or innocent and therefore employed as a means to distinguish between whom to spare and whom not to spare.<sup>427</sup>

However, an important point should be made to reflect both the patriarchal nature of the Just War tradition and how it poses difficulties not only for women but also for man. Gender reflects a certain kind of power relations based on patriarchal hierarchies which are propagated not only by man but in many cases for woman as well. However there are some men who can understand the burdens imposed on them by this system.<sup>428</sup> One aspect of the Just War traditions reveals this point. Just War tradition defines women, children and elderly people as civilians and exclude them from the list of legitimate targets in war. Gratian for instance includes women alongside pilgrims, clerics and monks, not adult man, in to the list of people who should be excluded from violence on pain of excommunication and anathema.<sup>429</sup> What this practically means is that adult males are more legitimate military targets

---

<sup>425</sup> Ibid.,34-35.

<sup>426</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby,*The Ethics of War*,391.

<sup>427</sup> Howard M. Hensel, *The Prism of Just War*,70.

<sup>428</sup> Cockburn, Cynthia, *Buradan Baktığımızda*, 29.

<sup>429</sup> H. Russel,*Middle Ages*,70.

compared to woman, children and elderly people. Hence violence towards them is more acceptable than the rest. As Walzer pointed out, Just War thinkers argue that soldier simply by fighting lose their human rights and became others who can be freely sacrificed.<sup>430</sup> Sandra Harding in her studies on feminism explains that rather than focusing on a limited questioning on which research methods are more feminist than the other it makes much more sense to focus on the questions.<sup>431</sup> How the questions are constructed and structured by the patriarchal system. Just War tradition's emphasis on the principle of discrimination; that the women, not adult man should be regarded as civilians is a clear manifestation of its patriarchal nature. Here the question of who should be protected and who must physically fight is constructed with reference to the heterosexual-sexual morphologies and the gender roles associated with them. The problem here lies in the domineering structure of the patriarchal society in general and compulsory military service in particular which do not pay any sensitivity to the choice of the male citizens to be or not to be fighters. Rather than "compelling" man to be the fighters in their societies it would be much more appropriate and just to come up with a system in which both male and female citizens to perform public service in order to meet the defense needs of their societies. The security policies of the states should accept the man and women as equal citizens and base their practices on the equal responsibility of both sexes.<sup>432</sup>

### 1.5.6 Human Nature and Abstract Thinking

This part of my study will analyze the human nature and the abstract understanding of Just War tradition especially vis-à-vis the concept of justice. The way characteristics

---

<sup>430</sup> J.Peach, Lucinda,"An Alternative to Pacifism? Feminism and Just War Theory",*Hypatia*, Vol.9,No.2(1994),161.

<sup>431</sup> Walby, Sylvia,*Patriyarka Kuramı*(Ankara:Dipnot Yayınları,2014,*henceforth:Patriyarka*),37.

<sup>432</sup> Sancar,Serpil,"Önsöz" in *Militarizmin Cinsiyetçi Suretleri: Devlet, Ordu ve Toplumsal Cinsiyet*, Çiğdem Akgül(Ankara:Dipnot Yayınları,2011 *henceforth:Cinsiyetçi Suretler*)11.

usually associated with men were presented by this tradition as if these are the universal characteristics of human nature and hence envisaging only the man as the agent will be discussed in this part.

Another important issue to be dealt within the intellectual framework of the Jus War tradition is its human nature. The human nature ascribed to the humans by the Augustinian tradition is gender biased. His understanding of human beings marked by earthly love; cupiditas, fallen and prone to do evil actions are well embedded in the Just War tradition. However, such generalizations about the human nature are always susceptible to the criticism of the fallacy of universalism. One of the most important contributions of the Feminist theory is to question the universality of such claims like human nature. Feminist theorists suggest that there is no generic and neutral concept called "the human being" and there has never been. There are no human beings exist, but only man and women with the associated gender roles. Western Philosophy points out experiences that are claimed to speak for humanity. However once such philosophical categories are examined thoroughly it would be revealed that the same Western philosophy neglects the gender differences that shape those allegedly universal experiences.<sup>433</sup> Once the concept of the so called universal human being which is reflecting no one but man is shattered, its secret other; the concept of women is revealed. Such perspective of the feminist thinkers paved the way for the re-introduction of diversity within social sciences by shedding light on the differences on women which are based on race, culture, class and etc.<sup>434</sup> It is clear that different women suffer in their societies in differing degrees depending on how their sex and gender intersects with other sources of disadvantage that they have.<sup>435</sup> By following Beauvoir a similar criticism can be directed to the Augustinian understanding of

---

<sup>433</sup> Benhabib, Seyla, Butler, Judith, Cornell, Drucilla and Fraser, Nancy, *Çatışan Feminizmler: Felsefi Fikir Alışverişi* (İstanbul: Metis Yayınları, 2008, henceforth: *Çatışan Feminizmler*), 27-28.

<sup>434</sup> Berktaş, Fatmagül, *Tarihin Cinsiyeti* (İstanbul: Metis Yayınları, 2003), 11.

<sup>435</sup> Marshall, Jill. "Feminist Jurisprudence: Keeping the Subject Alive", *Feminist Legal Studies*, Vol.14, Issue 27(2006), 28.

human beings that the universal definition of man coincides with male gender.<sup>436</sup> Her existential understanding rejects any given nature to be attributed to human beings. It is impossible to identify human existence with a given essence.<sup>437</sup> For Beauvoir the existential analytics of women hostility is based on a subject who is male and equated with the universal. The female who is at odds with the universalizing norms is portrayed as partial.<sup>438</sup> Hence Augustine's understanding of human nature is based on a definition of man which itself is based on the universal definition of man constructed with reference to the qualities of male gender and excluding the female one. One should not be surprised to see the parallels between the human beings defined by Augustine who are prone to violence, aggressive and insecure and the male gender roles promoting toughness, aggressiveness and bodily strength in males. Moreover, from a postmodern feminist perspective to ascribe a unitary nature to human beings itself is quite problematic. This is indeed attributing an essence to the subject who lives in constant fluidity, never manages to attend unitary and completeness and who is a social construct; a product of multiple structures and discourses.<sup>439</sup>

The abstract thinking mentioned above vis-à-vis the understanding of human nature by the Just War theorists has also been embedded in to the theory's outlook on punishment itself. Just War theory by adopting an abstract approach regarding the concepts of justice and rights simply disregards the needs of the human beings who found themselves in the midst of the horrors of war. As Ruddick points out the abstractness of Just War theory controls "our perceptions of war, turning our attention from bodies and their fate to abstract causes and rules for achieving them". For instance, in Augustine one sees the self and the body regarded only as relative and

---

<sup>436</sup> Butler, *Cinsiyet Belasi*, 56.

<sup>437</sup> Hutchings, Kimberly, "Simone de Beauvoir and the Ambiguous Ethics of Political Violence", *Hyptia*, Vol.22, Issue 3(2007), 117.

<sup>438</sup> Butler, *Cinsiyet Belasi*, 58.

<sup>439</sup> Marshall, Jill, 30-31.

temporary as parts of the earthly existence. The evil of war for him is not embedded in the physical extermination of the body which will be experienced by everyone sooner or later but in the vices such as love of violence, revengeful cruelty and lust for power.<sup>440</sup> It is important to realize here the subtle argument stretching like a thread in the Just War tradition in particular and Western philosophy since Plato in general that intellect is more important than body and the form is more important than the matter. The reduction of actual lives to abstract-hypothetical beings by the Just War tradition is countered by Ruddick who proposed the adoption of a maternal thinking on war which will generate "a sturdy anti-militaristic of the body in which birth is privileged over death."<sup>441</sup> Here it is crucial to see the parallel between the Just War tradition's abstract understanding of human beings and the abstract understanding of modern law regarding the moral and legal dilemmas of our time. As Carol Gilligan pointed out the female approach which is based on an ethic of care and relationships as opposed to male approach based on an ethic of justice identified with abstractions, rights, autonomy, separation, formality and neutrality to legal and moral dilemmas had been downplayed by legal doctrine and scholarship. The crucial point to demonstrate is that the legal perspectives based on the prevailing moral theories have taken a partial perspective and supposed it to be universal. Hence the prevailing legal perspectives unduly emphasize rules and abstraction and downplays context and reciprocal responsibility.<sup>442</sup> The abstract nature of thinking associated by Gilligan by the male approach to thinking is adopted by the Just War tradition in its understanding of justice as well. Gilligan criticizes such way of thinking as one not taking the special needs of the individuals and considering on how the relationships between them can be sustained in a healthy way.<sup>443</sup> One of the most salient examples of such male understanding of justice in the Just War tradition is the way the jus in

---

<sup>440</sup> J.Peach, Lucinda, 158.

<sup>441</sup> Ibid.,159.

<sup>442</sup> A. MacKinnon, Catharine, "Feminism and Legal Theory", *Harvard La Review*, Vol.101(1998),827-828.

<sup>443</sup> Stone, *Feminist Felseye Giriy*,12.

bello principles are applied during the development of the Just War tradition during the Middle Ages. The separation of the world in to a *Respublica Christiana* and the rest and considering the jus in bello principles that limit war applying only to the territories that fall inside the *Respublica Christiana* is a very distorted and abstract understanding of justice. Especially the fact that war is defined by this tradition, as an activity in which combatants are allowed to kill and maim other combatants reflects to what extend Just War tradition is far from the ethics of care. Those people who were defined as combatants simply are allowed to kill each other without knowing anything about each other as individuals.<sup>444</sup> They are simple abstractions to one another. As Gilligan points out about the male way of thinking on justice, it simply disregards the needs of individuals, in this case the needs of the people who live outside the amity lines brought by *Respublica Christiana*. As the feminist writer Robin Schott explains with reference to the principle of discrimination of the Just War theory “concerns and feelings that express emotional awareness of human reality behind the sanitized abstractions of death and destruction become marked as feminine and thus are both difficult to speak and hear”.<sup>445</sup>

### 1.5.7 Religious Influences

This part of my study will try to examine the religious foundations of the Just War tradition. This part is especially important since Just War tradition’s main argument is instilling a certain sense of morality in to the bloody activity of war. It is crucial to understand where these moral principles come from. The following parts in this section will try to analyze the Greek and the Judea Christian religious influences on the Just War tradition and the implications of their moral tenets on women.

---

<sup>444</sup> Shue, Henry, “Laws of War, Morality, and International Politics: Compliance, Stringency and Limits”, *Leiden Journal of International Law*(2013),274.

<sup>445</sup> Sjoberg,Laura,65.

It is true that Just War tradition is not totally a consequentialist one since it does not endorse war as long as its consequences are beneficial for the initiators. It is deontological in the sense that both resorting to war and its conduct is regulated through certain moral principles such as just cause, right intention or principle of discrimination.<sup>446</sup> However, simply being deontological is not enough for the Just War tradition to be respectful for women's rights and improve their conditions in their society. Equally important as the deontological principle is the culture that such deontological moral teachings are drawn from and given its Judeo-Christian historical baggage Just War tradition is not offering a promising heritage for women. A very problematic issue for the women is the way they have been perceived by the monotheistic religions; especially by Judaism and Christianity given the fact that Just War tradition is an offshoot of this tradition and its special and recurring emphasis on moral order is based on the moral teachings of Judea-Christian religion. In this regard, the endorsement of violence against the heretics and the infidels by Gratian as just causes for just wars is noteworthy. As the terms "heretic" and "infidel" are mere categories that anyone by any vice can be associated with, so they have been quite instrumental for silencing the opponents and dissent. As the history of especially the Middle Ages illustrates women are one of the groups who frequently found themselves as "heretics" and "infidels" and subjected to the worst form of violence in the name of Church in the form of witch hunts.<sup>447</sup>

---

<sup>446</sup> Hurka, Thomas "Proportionality and Necessity",1  
<http://www.trinitinture.com/documents/hurka.pdf>, March 31,2017.

<sup>447</sup> It should be mentioned here that the association of women with the mythical beings called withces is not only connected with Christianity but also a result of the Newtonian understanding of the world. The witch represents the women who has powers that can not be comprehended by rational faculties. She represents the "other" in this perfectly rational cosmos and that's why she has to be submitted by any means for the triumph of perfect rationalism. As opposed to civilization, allegedly represented by man, women in the form of withces, represent the nature and its wildness. She creates storms, brings forth diseases, corrupts the crops and kills the babies. She, in short, is the chaotic nature that has to be controlled and submitted by any means possible by the man. It is also important to mention that women who are usually associated with nature and dissociated from civilization, targeted in some battles such as US-Indian Wars and Guatemalan Civil War by

Hence the religious framework that the Just War tradition draws its principles is quite problematic in terms of women. As it was mentioned before, Just War tradition was born out of a religious framework; by drawing both from polytheistic Greek and Romans and from the monotheistic tenets of Christianity<sup>448</sup>. However, it is apparent that religion plays one of the most important roles for making women submitting to the inferior roles in their societies. With little exaggeration the history of religions is at the same time a history of the sliding down of the women's status in their societies. As the history of religious myths reveals, the changes in the places of women in religious myths directly affects their status' in their respective societies. This is a development that can be attested both by polytheistic and monotheistic religions. For instance as the Sumerian texts reveal, the name of the Goddess Namu has gradually started to be erased from the religious texts since the 3000 B.C and replaced by male storm and lightning Gods.<sup>449</sup> This development has also accompanied by developments in agriculture in which the horticultural societies where women were held in high esteem due to their cultivation abilities were replaced by societies based on plow usage that are considered to be a male tool. It is telling in this sense the Ancient Greek religious myths about women depicts the first women, in the *Theogony*, Pandora as a *kalon kakon*; beautiful evil and associates her with the hardships that befall to the human beings as punishment. Hesiod described, in *Works and Days*, that the punishment for Prometheus for stealing the fire and handing it to

---

claiming that those Indian and some Guatemalian women were outside the confines of civilization, that they were uncivilized. Hence the deadly consequences of being left out of the so called civilized word are apparent in these two cases.(Kinsella,20)

<sup>448</sup> In this part of my thesis I use the term Christianity to refer not only to New Testament but also to the Old Testament. The Judea-Christian tradition is so keenly connected to the same myths and texts that I don't see any reason to separate them from one another. Especially within the context of Just War tradition, Christian thinkers like Ambrose, Augustine, Gratian, Aquinas, Grotius and Suarez had barrowed immensely from the prophets and the teachings of the Hebrew Bible that I see no problem of treating these two religious traditions as one when it comes to assessing the Just War tradition.

<sup>449</sup> Berktaş, Fatmagül, *Tek Tanrılı Dinler Karşısında Kadın: Hristiyanlıkta ve İslamiyette Kadının Statüsüne Karşılaştırmalı Bir Yaklaşım* (İstanbul: Metis Yayınları, 1995, henceforth; *Tek Tanrılı Dinler*), 49.

the human beings is an “evil thing in which they may all be glad of heart while they embrace their own destruction”. It is important to stress that according to the Ancient Greek religious myths when Zeus ordered the Gods of the Greek Pantheon to endow Pandora, which means all endowed in Greek, with skills from all the Gods, she was given the skill associated with domestic work and dishonor rather than public affairs and honor. She was given the skills of needlework and weaving by Athena and by Hermes a “deceitful” nature and a “shameless” mind. It is important to remember the association of deceitfulness with women and the honest directly physical way of fighting techniques endorsed as honorable by the Just War tradition for the just warriors. Hesiod described the women as “the deadly race and the tribe of women who live amongst mortal men to their great trouble, no helpmates in hateful poverty, but only in wealth.”<sup>450</sup> Such exclusion of women from public affairs and her confinement in the Greek psyche in to the domestic affairs finds one of its best expressions in the dialogues of *Lysistrata* by Aristophanes. In explaining why women of Greece rebelled against man Lysistrata utters the following words;

Be calm then and I'll go ahead. All the long years when the hopeless war dragged along, we, unassuming, forgotten in quite. Endured without question... and we sometimes would ask you, our hearts deep with sorrowing though we spoke lightly, though happy to see. “what’s to be inscribed on the side of the Treaty Stone? What dear was said in the Assembly today?” “Mind your own business” he had answered me growingly “hold your tongue woman, or else go away” and so I would hold it.... Well so I did nothing but sit in the house, feeling dreary, and sigh. While ever arrived some fresh tale of decisions more foolish by far and presaging disaster. Then I would say to him “O my dear husband, why still do they rush on destruction the faster?” at which he would look at me sideways, exclaiming “keep for your web and your shuttle your care, or for some hours hence your cheeks will be sore and hot; leave this alone, war is Man’s sole affair!”<sup>451</sup>

---

<sup>450</sup> Imus, Ashleigh, “Pandora and the Great Jar”, *Salem Press Encyclopedia of Literature*, Januray (2015),2.

<sup>451</sup> Aristophanes, *Lysistrata*(New Zealand: Floating Press,2012),50-52.

Also the women in early Christianity who was given a high status in society through the images of virgin Mary and the praising words attributed to Jesus about women and above all Christianity's greatest novelty in its nascent period that everyone regardless of her or his status is equal before the God, gradually faltered and the Judaic teachings of original sin and woman's creation from man's limb was incorporated by later Christianity.<sup>452</sup> As Kraemer explains; "...the move to monotheism in Western religious tradition has in fact meant the promulgation of a divinity who, from ancient Israel on, is repeatedly and primarily referred to with masculine terminology."<sup>453</sup> Moreover the Judeo-Christian tradition employ a male language for the God but also for the rest of the inhabitants of the hyper human cosmos like the prophets, priests, messiahs, angels and demons.<sup>454</sup> The Adam and Eve story resembles to the story of Pandora in Ancient Greece since it puts the blame of human suffering squarely on women and Eve's encouragement of Adam to eat from the fruit of the forbidden tree.<sup>455</sup>

Here it is important to elaborate more on the Judeo-Christian conception of a male God given the fact that the two significant arguments of Christianity; neighborly love and benign violence, were adopted by the Just War tradition to comply with the commands of the Judeo-Christian God. Even though the clear date is not known, approximately towards or right after the end of the Babylonian exile of the Jews during the 6<sup>th</sup> Century BC, the Judaic understanding of God had undergone a major change. The Jewish God which had been conceived as a God of a particular tribe where it existed alongside the Gods of other tribes and peoples, started to be conceived as the only God. The First Commandment in Ten Commandments that "you shall have no other gods before me" demonstrates this transformation clearly.

---

<sup>452</sup> Berktaş, Fatmagül, *Tek Tanrılı Dinler*, 101.

<sup>453</sup> Ross Shepard, Kraemer, *Women's Religion in the Greco-Roman World: A Sourcebook* (New York: Oxford University Press, 2004; henceforth: *Women's Religion*), 415.

<sup>454</sup> *Ibid.*, 417.

<sup>455</sup> Imus, Ashleigh, 2.

What is important to understand for the purposes of Just War tradition is that the Jewish prophets of the time declared that to be victorious in warfare the Ancient Israelites should gain the favor of the one and only God and to worship other Gods is a sin.<sup>456</sup> The Jewish tradition cites many passages mentioning the idolatry among the Ancient Israelites and how God was furious about idolatry such as offering sacrifices to other Gods. Here the Jewish texts started to attribute a patriarchal character to their conception of God. Since God is omnipotent and the Jewish people were God's chosen people, then the pain and the sufferings of the Jewish people as they experienced during the exiles, can only be explained by their sinfulness. Hence the Jewish people should have been purified by punishment. This mentality, as Bertrand Russell explains, is the mentality of patriarchal subjection which is the practice of punishing the one who doesn't comply with your will.<sup>457</sup> This point is important since it both reveals the patriarchal nature of the Jewish understanding of God and the roots of the Christian conceptions of benign violence and the violence perpetrated in the name of the neighborly love in the sense that the ones who indulge in sin can still remain to be the beloved of the God but they can also be punished by violence to be purified from their sins. It is also important to note that the conceiving of God as a male is quite apparent in Christianity in the sense that the trinity is presented as the "Father", the "Son" and the "Holy Spirit".<sup>458</sup> Such male understanding of God and Jesus have frequently been instrumentalized for patriarchy and women's subordination.<sup>459</sup> The Hebrew and the Christian Bibles both utilize the image of the patriarchal God to introduce discipline in to the human affairs, especially in to the familiar affairs between the parents and the children. It should be mentioned that such discipline also involves violence. In the Book of Proverbs attributed to King Solomon of Ancient Israel, it says "Wisdom is found on the lips of the discerning, but a rod is

---

<sup>456</sup> Russell, Bertrand, *Batt Felsefesi*, 22.

<sup>457</sup> *Ibid.*, 24.

<sup>458</sup> Canceran, Delfo, "Image of God: A Theological Reconstruction the Beginning", in *Asia Journal of Theology*, Vol.25, Issue 1 (2011), 5.

<sup>459</sup> *Ibid.*, 5.

for the back of he who lacks judgement". In a similar fashion Hebrews 12:5-11 of the New Testament reads "...because the Lord disciplines those he loves, and punishes everyone he accepts as a child".<sup>460</sup> The image of a patriarchal God ready to punish *his* beloved is quite apparent in biblical sources.<sup>461</sup>

Arguably the religion that left its mark on the Just War tradition is Christianity. One of the most critical developments brought by the monotheistic religions that led to the fall of women's status in societies is changing understanding of bringing new life to the world. By the development of monotheism, the concrete and observable act of giving birth and bringing a new human being in to this world which used to provide enormous prestige to women was reinterpreted and started to be attributed to not to women themselves anymore but to the decision of a male God.<sup>462</sup><sup>463</sup> Moreover by elaborating that women were being created from man's limb, the monotheistic religions had reversed the relationship between man and women in which the biological mothers of man had found themselves to become the daughters of man in those mythical stories.<sup>464</sup> Here it should be mentioned that the debasement of woman's biological ability to give birth had already started with the polytheistic religions as expressed by Aiskhylos' Oresteia in which the male God Apollon defines the mother not as a life giver but as a vessel who carries the seed of man which has the real power of bringing life in to the world. Likewise the Roman cult of Isis was

---

<sup>460</sup> Hamman, Jaco, "The Rod of Discipline: Masochism, Sadism and the Judeo-Christian Religion", in *Journal of Religion and Health*, Vol.49, No.4 (2000),321.

<sup>461</sup> There might be different explanations for the prevalence of such patriarchal understanding in Judeo-Christian tradition that puts emphasis on physical punishment in the form of violence, but the Freudian explanation focuses on the unresolved dilemmas of the Oedipal Complex where the sadistic stage experienced by the child turns in to a masochistic stage in which the punished child reconcile the violence that *he* suffers through the love of his parents to himself; as Freud explains the child usually says "I am being beaten by my father/mother who loves me". (Hamman, 324)

<sup>462</sup> Berkay, Fatmagül, *Tek Tanrı Dinler*, 53.

<sup>463</sup> In this regards, I guess it is no coincidence that one of the most well known stories of Judaism is the story of Rachel who is one of the matriarchs in Jewish tradition. Rachel was presented as a barren woman whose barrenness was only uplifted following her prayers to God. Here the message seems quite explicit; it is not the woman herself but the God who decides if one is going to have a child or not.

<sup>464</sup> *Ibid.*, 54.

widely worshipped both by women and men but the higher offices in this cult was held by man.<sup>465</sup> However it should be mentioned that monotheistic religions had taken this outlook and integrated it in their own belief systems.<sup>466</sup> Moreover, apart from the question of who brings new life in to the world, the question of who is responsible from the suffering in this world is also distorted to put the blame on women. Christianity through the story of lost Eden that it adopted from Judaism put the blame on the origins of suffering on women. Eve, representing all the women in the world is blamed with the fall and banishment of humanity from the Garden of Eden through her eating of forbidden fruit. Here it is obvious that monotheistic religions perceive women as the source of evil and suffering in the world and aim to punish and control her body.<sup>467</sup> The punishment envisaged for man and women reflects who is seen as the source of suffering in this world. Man will have to toil the soil and have difficulty to earn his life. But women's punishment will be directed to her body. She would have suffered bodily during her labor.<sup>468</sup><sup>469</sup> The way women is excluded from the myths of monotheistic religions is expressed through the story of covenant. The Judaic story of covenant, which was adopted later to the Christian Canon as well, elaborates on an agreement made between the God and the patriarch Abraham. Here, in order to make the covenant with God, Abraham in his senior age had to go through circumcision which he goes through to conclude the covenant with God. Here in the most fundamental aspect of Christianity, as it is called together with Judaism as a religion of the covenant, the women are excluded. The covenant is made only with man and signified through an operation made on the male sexual organ.<sup>470</sup>

---

<sup>465</sup> Ross Shepard, Kraemer, *Women's Religion*, 243.

<sup>466</sup> Berktaş, Fatmagül, *Tek Tanrılı Dinler*, 59.

<sup>467</sup> *Ibid.*, 68.

<sup>468</sup> *Ibid.*, 70-71

<sup>469</sup> Unfortunately in many monotheistic cultures women are still not given the means that can ease their pain during the labor with the excuse that it would mean to interfere with the will of God who envisaged a painful labor for the women.

<sup>470</sup> *Ibid.*, 71.

Given such a background it is no surprise that Christianity's outlook on women reflects the well-known traditional dichotomies of private and public realms. There exist outright verses in the New Testament against women taking part in public affairs such as prohibitions for women to speak out in the public by Saint Paul.<sup>471</sup> He specifically envisages a subordinate role for women in which women should not attempt to govern man and try to acquire knowledge and attempt to teach it to others. They should, for Saint Paul, submit to their husbands as they submit to God. Christianity had brought a reciprocal relationship between man and woman in which man is supposed to love his wife and woman has to respect her husband. However even this seeming reciprocity is misleading in which love is only an emotion than can be expressed without any reference to social norms, however respect can only be expressed through rigid social norms and for woman to be subjected to these social norms mean her being subjected to social control.<sup>472</sup> Especially the Church "fathers" had re-evaluated the stories in the Old Testament in way that created a misogynist understanding in Western Christianity. For instance, Saint Augustine, in trying to attempt to find out why had women been created in the first place, concluded that she wouldn't have been created for accompanying man since another man can play such role better than a woman and she wouldn't have been created for helping him either since another man can help him in much better way. So he concluded that women wouldn't have been created for any other reason than giving birth to his children.<sup>473</sup> This is actually is simply a restatement of the argument that women are simply a vessel for man's seed. Another Church *father* describes women with the following slanders; "Each of you women is an Eve...You are the gate of hell, you are the temptress of the forbidden tree, you are the first deserter of divine law."<sup>474</sup>

---

<sup>471</sup> Donovan, Josephine, *Feminist Teori*, 42.

<sup>472</sup> Berktay, Fatmagül, *Tek Tanrılı Dinler*, 103.

<sup>473</sup> *Ibid.*, 105.

<sup>474</sup> *Ibid.*, 105-106.

What is critical for the Just War tradition is the exclusion of women from the all-important decision of deciding to go to war. As I tried to demonstrate above this exclusion has also its roots in the Christian and Pre-Christian religion. For centuries Church fathers spoke against women's taking any role within the church hierarchy and playing a part in any of the important religious rituals. Tertullian, for instance, at the beginning of the third century taken a staunchly rejectionist position about granting the women authority to baptize. He outright rejected the story of Thecla<sup>475</sup> as an evidence that women can baptize and teach. He argued that women has no claim for any strong leadership position.<sup>476</sup> Similarly the polytheistic religions of Greece and Rome had put forward animosity towards the women carrying out authoritative important leadership roles as the example of the priest structure of the cult of Isis demonstrates where the high ranking positions were reserved for man. The Judaic roots of the Just War tradition does not promise a happy picture for the women's participation to the public affairs as well, as it was demonstrated by the writings of one of the most influential Rabbis in modern Judaism; the Rabbi Avraham Isaac ha-Kohen Kook. His writings are reflective of the Jewish outlook on women. He had mentioned in his writings openly that there should no suffrage be granted for women and "it is man's manner to dominate and not women's manner to dominate. Roles of authority, judgement, and testimony are not her domain, as all her honor is within the confines of the home."<sup>477</sup> Likewise according to the Maimonides Jewish women are forbidden to hold positions of political authority in a Jewish polity.<sup>478</sup> Hence it should be seen as no surprise that Just War tradition born out of these heritages does not contemplate any military or political leadership position during the process of deciding and conducting wars.

---

<sup>475</sup> Thecla was depicted in the early Christianity as a women saint who baptized herself.

<sup>476</sup> Ross Shepard, Kraemer, *Women's Religion*, 242.

<sup>477</sup> Michael, Walzer, *Morality in Judaism*, 110.

<sup>478</sup> *Ibid.*, 23.

## 1.6 MILITARY AS THE ARM OF LEGITIMATE AUTHORITY

This part of my thesis will try to analyze operating arm of the legitimate authority; the military. I will try to explain in this section how militaries are used to promote hegemonic masculinities which result in subordination of both women and some man who are deemed as not masculine enough. Also this part will delve on the issue of military bases and the roles they imposed on women which includes their subordination to man in uniform.

Moreover, it should be noted that for the jus in bello level, Just War tradition accepts the military institution as a legitimate authority for the execution of violence in the battlefield. However this tradition brings forward no criticism against the disciplinary practices of the military over the male bodies with the intention of producing, as Foucault would have said, docile bodies with the multiple purposes of sending them to war, making them economically useful and politically submissive in their civilian lives.<sup>479</sup> It is well documented by various studies that man suffers violence as part of the disciplinary practices in the militaries around the world. Usually beatings are employed as instruments for demonstration to all soldiers that if not submit to the orders of the superiors and do perfectly what they are expected to do from them, the same fate will be awaiting for them as well. Military as an institution is not only the embodiment of the legitimate use of violence towards “outside” but also operates on this principle; the violence, in its internal dealings. As Jacolyn Cock has stated “compulsory military service includes ending the individuality of young males and shaping them as soldiers.”<sup>480</sup> As a tradition that does not strayed from the path of patriarchal norms Just War tradition by staying silent to the internal operation of militaries, which are based on the legitimization of violence against their own soldiers

---

<sup>479</sup> Altınay, Ayşegül, “Askerlik Yapmayana Adam Denmez: Zorunlu Askerlik, Erkeklik ve Vatandaşlık” in *Erkek Millet Asker Millet: Türkiye’de Militarizm, Milliyetçilik, Erkeklikler*, ed. Nurseli Yeşim Sümbüloğlu (İstanbul: İletişim Yayıncılık, 2013 henceforth: *Erkek Millet*), 214.

<sup>480</sup> Ibid., 216-217.

in their internal dealings, hypocritically endorses violence for some group of people; the adult males, and allegedly rejects it for the others; women, elderly and children, as we will see, for all the wrong reasons. Military is one of the primary institutions that contribute to the formation of hegemonic masculinity. Military service offers young males unique resources to identify with in order to construct their hegemonic masculinity such as emotional control, overt heterosexual desire, physical fitness, self discipline, self reliance, the willingness to use aggression and physical violence and risk taking. Masculinity and the use of violence are regarded so central in the military culture that even some American military planners criticized the U.S involvement of peacekeeping missions with the argument that military service is about war, not peace and participation of U.S to the peacekeeping missions adversely affect the military recruits who volunteered for the army to reaffirm their manhood by participating in to wars but found themselves in to the peacekeeping missions instead.<sup>481</sup> Military as an institution provides man the very resources such as economic security in the form of steady paychecks to enable him to play the hegemonic masculine role that was envisaged for him to play. Even more crucial is that militaries make man to claim the patriarchal dividends by supplying them with the means of violence in the forms of weapons and armed forces. As Helen Hatchell explains “the most explicit areas where masculinities are positioned, reproduced or reconstructed are linked with military and with war, so that despite far reaching political social and technological changes, the warrior still seems to be a key symbol of masculinity”.<sup>482</sup>

Moreover militaries by deliberately excluding women from combat roles and trainings and placing men in such positions provide leverage for man over women.<sup>483</sup> Especially the transformation of male bodies by physical training and infusion of

---

<sup>481</sup> Cynthia H., Enloe, *Militarizing Women's Lives*, 240.

<sup>482</sup> Hatchell, Helen, “Masculinities and Violence: Interruption of hegemonic discourses in an English Classroom”, *Discourse: studies in the cultural politics of education*, Vol.27, No.3(2006),388.

<sup>483</sup> Hinojosa, Ramon, “Doing Hegemony: Military, Men and Constructing A Hegemonic Masculinity”, *The Journal of Men's Studies*, Vol.18/2(2010),180-181.

perceptions on civilians who are portrayed as lazy and lacking self-discipline provides the soldiers to dominate the civilians. <sup>484</sup>The horrible effects of such a mentality is clearly seen when the soldiers and the civilians found themselves to share the same space, as it frequently happens in modern urban combat, in which targeting civilians and rape of man and women are pretty common by the soldiers. Moreover the masculinist military culture values the denigration and sexual objectification of women as well as inscribing on men a culture that would lead them to consider gender differences natural and positioning masculinity both on opposition and superiority over femininity.<sup>485</sup> As Cynthia Enloe elaborates on this issue, the practices of the militaries are not only issues that are confined to the national borders where such practices occur. Military politics that dominate the international politics today due to the well known clichés of the realist paradigm of international relations invoking a separation between high and low politics, indeed need the physical existence of military bases all over the world. Such existence plays a key role in the normalization of the omnipotence of the military violence in such societies. As Enloe explains such

Bases are artificial societies created out of unequal relations between men and women of different races and classes...Most bases have managed to slip in to the daily lives of nearby community. A military base, even one controlled by soldiers of another country, can become politically invisible if its ways of doing business and seeing the world insinuate themselves in to a community's schools, consumer tastes, housing patterns, children's games, adults' friendships, jobs and gossip.<sup>486</sup>

The existing of such bases plays an important role in the introduction and reproduction of problematic gender relations to the countries where they are established. It shapes the global sexual politics through the existence of the soldier

---

<sup>484</sup> Ibid.,184.

<sup>485</sup> Weitz,Rose,165.

<sup>486</sup> Cuomo, Chris J.,37.

figure, introduction of foreign and previously unknown conceptions of femininity and masculinity, the reproduction of problematic family structures which are usually based on patriarchal values on military bases and through the various systems of prostitution that coexist alongside the military bases around the world which are overlooked by high level military commanders by the expectation that those prostitutes will sexually satisfy the rank and file soldiers and they will not indulge in a mutiny.<sup>487</sup> Expectations imposed upon the wives of soldiers serving in military bases around the world illustrates how the reproduction of patriarchal gender roles are encouraged. Militaries which would like to reproduce themselves without outside interferences try to transform their military bases in to communities and look for the active cooperation of the wives of the military staff to accomplish this goal. This process involves unpaid labor of the wives of soldiers which means that the wives are expected to comply with the traditional roles which confine themselves to the domestic servant roles and accept that they won't have their own professional careers. They are expected to value to the extent of the support they provide to their husbands to further their careers.<sup>488</sup> This promotes both the patriarchal roles within the family and puts women in disadvantage vis-à-vis their husbands who are defined as the sole breadwinner of the family. Moreover, it also makes women dependent on the military; the very institution that promotes the misogynist values. Many of the women who are usually called the camp followers who were dependent on the favors of the militaries at war to sustain their lives or wives of professional soldiers expressed great concerns about their own future prospects when the wars are over and the military bases are decided to be closed down.<sup>489</sup>

The existence of such bases also strengthens the grip of men over the female bodies. A clear example of this is the debates conducted by the War Cabinet headed by

---

<sup>487</sup> Ibid.,37.

<sup>488</sup> Enloe, Cynthia, *Askeri Üsler*,111.

<sup>489</sup> Cynthia H., Enloe,*Maneuvers: The International Politics of Militarizing Women's Lives*(United States: University of California Press,2000,*henceforth: Militarizing Women's Lives*),43.

Winston Churchill during 1942 over the issue of the presence of American soldiers in the British soil. Some of the members of the cabinet who got disturbed by the growing number of British women finding the black American soldiers attractive proposed a three tiered plan to reduce the likelihood of contact between the British women and the American soldiers. According to the plan British cabinet would try to prevent black Americans to be dispatched to Britain as soldiers. If this endeavor did not work it would try to confined the physical presence of the black American soldiers to the bases located in the shore and if that wouldn't work as well it would ask the American government to send more black women soldiers and red cross members to be sent to Britain to accompany the black American soldiers and prevent them to look for the company of the British women.<sup>490</sup> The existence of such bases, established for one of the wars described as one of the most just by many, well demonstrated how men see women in times of conflict; either as national symbols to be protected from foreign men or as pleasure objects that should accompany men during tough times to satisfy their sexual needs. The fact that black women during the Second World War, volunteered to serve in the U.S military not to serve as sexual accompaniments of the male soldiers but to take part in defense of their country is simply overlooked by the all-male members of the British War Cabinet.

Hence Just War tradition supports and even idolizes the very institution; the military, which contributes heavily to dissemination of patriarchal values in many societies by the gender roles it conveys to its male soldiers and to their wives.

---

<sup>490</sup> Ibid.,108.

## 1.7 MILITARY AS THE DISSEMINATOR OF MASCULINIST VALUES

This part of my thesis is going to focus on the military as an institution disseminating the misogynist values especially through an honor code that is deeply ingrained in to the mentalities of modern armies. The atmosphere created by such values and as a result, the way the limited number of women who serve in the armies is treated will be discussed in this section. This part is important to reveal the true face of the very institution; the military which is endorsed by Just War tradition as the agent of justice when it comes to integrate women to itself.

The endorsement of violence by the leading names of the Just War tradition; Augustine, Aquinas and Gratian, creates another problem for woman that this tradition indeed explicitly justifies the military profession and implicitly the very institution that carries the actual violence out in the battlefield; the military. When one thinks about the issue of national security, one enters in an almost exclusively male domain. Advancing the security interests of the state is considered to be the task of man, not of women.<sup>491</sup> And the military itself is a privileged arm of the state. As the Weberian definition of state demonstrates state is associated with a monopoly on the means of violence and military is one of the most important institutions through which such “essential” role of the state is performed. Since it is regarded as a sine quo non of the state, militaries are given the license in many areas denied to other branches of the state such as establishing their own court systems to try their own staff, keeping their own representatives in diplomatic missions in the form of military attaches, backing up its own policies by means of violence, run its own universities

---

<sup>491</sup> Tickner, J. Ann, “Man, the State, and War: Gendered Perspectives on National Security” in *Essential Readings in World Politics 2<sup>nd</sup> Edition*, ed. A. Mingst Karen and L. Snyder Jack (United States: W.W. Norton & Company Inc., 2001, *henceforth: Essential Readings*), 94.

and hospitals and being exempt from nondiscriminatory practices that are compulsory for other institutions.<sup>492</sup>

Especially the way militaries are associated with national security make these institutions one of the guardians of established social order which work for the grave disadvantage of women. The efforts of the military bureaucracies, reminiscent of Foucault's concept of governmentality, on profiling the populations demonstrate the extent of the influence these institutions have on social order. As Enloe explains;

The military can use this extraordinary status in relation to the state to define national security. The concept of national security has, in turn, been used to define the social order supposedly necessary to ensure that national security. In this circular process, national security can come to mean not only the protection of the state and its citizens from external foes, but perhaps even primarily, the maintenance of the social order. The social order includes in its turn those gender definitions that bolster ideological militarism.<sup>493</sup>

The problem the military institution poses for the woman is that it reflects the patriarchal norms and it is considered a masculinist institution which is dominated by men and by cultural attitudes inculcated in to men such as rejection of any sign of weakness.<sup>494</sup> The British General Sir Ian Hamilton writing back in 1910 described compulsory military service as the "greatest machine that have been invented to this date for the production of a certain specific kind of human mind and body". He said;

A citizen with a straightened back, widened chest, clean, submissive, punctual, and diminished personal initiative... Yes compulsory military service is an enormous organizer. The prides

---

<sup>492</sup> Cynthia H., Enloe, *Militarizing Women's Lives*, 46.

<sup>493</sup> Ibid., 46.

<sup>494</sup> Weitz, Rose, "Vulnerable Warriors: Military Women, Military Culture, and Fear of Rape", *Gender Issues*, Vol. 32(2015), 165.

of the proud ones are shattered, the weak ones are strengthened, the national thinking is enshrined....<sup>495</sup>

As Feminist International Relations scholars successively pointed out military is one of the institutions in modern societies that functions as the central guarantor and producer of masculinity. It adopts conscious policies to exclude gays and women from the army to maintain the so called heterosexual masculinity of the army. Especially the methods designed for the high level leadership of the militaries emphasize the value of constant testing of one's masculinity and avoidance of acquiring a reputation for failure.<sup>496</sup>

One good example for this masculinity testing is the chivalric notions of sacrificing one's life for the one's country which is prevalent in the military codes. Beauvoir explained such attitude as "it is not in giving life but in risking life that man is raised above the animal: that is why superiority has been accorded in humanity not to the sex that brings forth but to that which kills". As Beauvoir's explanation for male superiority suggest sacrificing one's life for one's country is considered to be the highest form of patriotism in which women usually are excluded from.<sup>497</sup> Here I am not trying to suggest that an idealized version of citizenship should be based on sacrifice that is equally be open to man and women alike, on the contrary I think an idealized version of citizenship should focus not on sacrifice, especially the sacrifice of one's life, but on responsibility which is shouldered both by man and women equally for the sake of their commonwealth. Moreover to reduce the definition of sacrifice to one's giving of his life for his country is itself problematic since women do make sacrifices during the wars even when they don't participate in to them directly as the wife and mothers waiting for their loved ones to return from the military fronts or sometimes they even pay an enormous price by trying to continue

---

<sup>495</sup>Sümbüloğlu, *Erkek Millet*, 207.

<sup>496</sup> Blanchard, Eric M., 70-71.

<sup>497</sup> A. Mingst and L. Snyder, *Essential Readings*, 94.

living after their loved ones are lost in the battles.<sup>498</sup> Moreover, the fact remains that since World War II, strategic bombing has made cities a part of the battle space and hence had added to the sacrifices of women.

It is important to mention that we are not simply talking about a historical phenomenon here. The chivalric notions of honor which is based on degradation of women's status has been adopted not only by the militaries during the formation of modern states during 18<sup>th</sup> and 19<sup>th</sup> centuries but also by the modern ones. For instance, concepts of chivalry and honor still composes the heart of the military training manuals used by United States, Canada and United Kingdom. A US military training manual reads;

Laws of war require that belligerents refrain from employing any kind or degree of violence...not actually necessary for military purposes... and conduct hostilities with regard for the principles of humanity and *chivalry*<sup>499</sup>

A U.S Army Field Manual issued in 2008 stated that honor is fundamental for maintaining warrior ethos. It is clearly apparent that such practices by the modern militaries had transformed chivalric code of military conduct belonging to the Middle Ages in to a code of conduct for officers serving in modern armies.<sup>500</sup>

The masculine values like concealment of emotions, management of power and patriarchal control are well embedded inside the military norms.<sup>501</sup> Increasing occurrences of incidents of molestation by the so called "Just" warriors of the UN Peacekeeping forces are manifestations of the kind of norms that those male soldiers

---

<sup>498</sup> Charles, J.Daryl,351.

<sup>499</sup> Helen M.,Kinsella,*Image Before the Weapon*,27.

<sup>500</sup> *Ibid.*,27.

<sup>501</sup> Sumbüloğlu,*Erkek Millet*,271.

are exposed to during their military services.<sup>502</sup> The statistics on the US military demonstrates that one quarter to one third of women have sexually been assaulted during their tenures in the army.<sup>503</sup> Especially during the periods of military deployments the sexual harassments in the U.S. army skyrockets. Harassment was reported by %50 of women in a recent random national survey among the Iraq and Afghanistan veterans.<sup>504</sup> The patriarchal norms in the US military are well reflected by testimony of Kayla Williams who served in the US military during the American occupation of Iraq in 2003. She says;

I am a tough person and I am proud of it. I love my M4, its smell, its cleaning water, its powder... I love the smell of power. Once you have taken your weapon in your hand then you have a special place in....But still I wake up before the dawn and I forgot that I am not a slut. The most important thing that defines a woman in the U.S military is her sex.<sup>505</sup>

The values infused by the militaries heavily contributes to such environment. Its emphasis on male bonding and the relative absence of outside monitoring create rape prone social contexts.<sup>506</sup>

This example clearly demonstrates that the toughness and the pursuit of power usually associated with patriarchal norms are so entrenched in the military that even a woman serving in the military can not escape but to learn to love those attitudes. It is well know that women do have to adopt certain practices especially if they want to serve in the combat units. What is expected from women serving in the militaries is a self-transformation to adopt themselves to masculine practices. They should strive to become more masculine with regard to their physical endurances, talents and social responsibilities without having a reciprocal expectation from men to transform

---

<sup>502</sup> Ibid.,258.

<sup>503</sup> Weitz,Rose, 164.

<sup>504</sup> Ibid.,169.

<sup>505</sup> Smblođlu,*Erkek Millet*,268-269.

<sup>506</sup> Weitz,Rose, 165.

themselves to better understand and accommodate themselves to work with women.<sup>507</sup> The American women soldier who fought in the Iraqi War of 2003 had to adopt their bodies to male standards of war for instance by taking novel kinds of birth control pills that can reduce the frequency of their periods or by using portable urination devices distributed by the military for long military incursions.<sup>508</sup> But even more important is that no matter how hard a female soldier try to blend in even at the expense of her female identity and to integrate with the male norms dominant in the military, at the end of the day there remains the impression that she is gauged by her sex alone. Testimonies of many soldiers confirm the patriarchal nature of the militaries. Usually words like “to act like a woman” is used in order to humiliate soldiers by their superiors and to invest them with submissive traits during their services.<sup>509</sup> Moreover the attitude of militaries on sexual assaults on women inside the military is quite protective of male soldiers. As one civilian police detective who was investigating sexual assaults that the U.S Navy staff got involved testified;

It's like the military tries to keep it hush hush and keep it in their own family....I would hate for my wife and daughter to be in the military and be sexually assaulted and have them investigate. They don't have the expertise, the training and sometimes they don't have the hearth.<sup>510</sup>

In another case a female soldier in the U.S. military who decided to complain about the constant sexual harassments to her superior faced with the following answer that clearly demonstrates what the so called just warriors think about women serving in the military;

---

<sup>507</sup> Tami Amanda, Jacoby, *Women in Zones of Conflict*,36.

<sup>508</sup> Kelly, Oliver, *Women as Weapons of War: Iraq, Sex and the Media*(New York: Perseus Books,2007;henceforth:*Women as Weapons*), Introduction

<sup>509</sup> Sümbüloğlu,*Erkek Millet*,239.

<sup>510</sup> Cynthia H., Enloe,*Militarizing Women's Lives*,116.

If you want I will take it up the chain, but I have got to tell you what's gonna happen. It's gonna come back down saying that you are a complainer and its gonna go negative in your record. And I got to be honest, we are not going to do anything about it. So what do you want me to do?<sup>511</sup>

Such a military culture based on constant sexual harassment and assaults on women also paradoxically reinforce the image of man as protectors. The women's quest for "good" man who would protect them in case of sexual assault or rape actually encourages women to rely on their male comrades in the militaries.<sup>512</sup> The military practice of "battle buddy" is the very epitome of the reliance of women on their male comrades in the militaries in which male and female soldiers are paired so that male soldiers can follow the female ones to everywhere the female soldiers go inside the military bases to protect them in case of sexual assaults. Hence, military as an institution heavily infused with patriarchal norms weakens women's status both vis-à-vis the "good" and the "bad" man. By exposing them to an environment full of implicit or explicit threats of sexual assaults, the military put women at a disadvantage against the "bad" man planning to assault them. Also by making women depending on "good" man for their safety against the attacks of sexual predators it puts them also at disadvantage vis-à-vis the "good" man supposed to protect them. So even the existence of genuine "Just Warriors" inside the military only protect women at the expense of rendering them weak, dependent and inferior.

It is important to note here that such understanding of man as the protector is in line with the patriarchal notion of domination of women by man. The concept of domination has been defined by several different ways by the anthropologists which includes prior and privileged access to food sources, to be the person who provides the subsistence of the household, to be in the position of leadership, to assume protective duties, to make the first attempt to initiate sexual intercourse or to prevent

---

<sup>511</sup> Weitz,Rose,171.

<sup>512</sup> Ibid.,172.

other individuals to make such an attempt. It is clear that Just War tradition reaffirms at least two of the definitions of domination of women by man through two of the practices that it endorses. It reaffirms the domination of women by man, by simply ascribing the protective duties to man by describing man as the just warriors and women as the innocent souls. It also reaffirms the domination of women by man simply by ascribing leadership positions to men by simply excluding the women out of the decision making processes regarding the public affairs in general and war in particular.<sup>513</sup>

Despite all the hardships mentioned above one can still claim that the rising number of women who are admitted to the military is still a positive development for the gender equality. However, I believe one should also approach this development with caution. First and foremost, the admission of women to the army has been adopted by the armies by different political purposes. One clear example is the U.S army. The American army adopted a strategy of letting more women in to the army in order to ward off the pressure during the Vietnam War against the draft. By letting women “voluntarily” serve the army intended to minimize the number of man who compulsorily had to serve in the military due to the introduction of the draft. Moreover, as Enloe explains studies show that the opening up of high level positions for the women was a deliberate policy by the army commanders to prevent the high level positions of the military to be “captured” by the blacks. Admission of more women were seen as a measure for curtailing the “growing” influence of the black people in the military.<sup>514</sup>

It is true that more women are allowed to serve in the military now in the Western world but they are allowed to serve with the terms dictated by man. The women in militaries are trained to perceive themselves and their service superior to other

---

<sup>513</sup> Reiter, Rayna, *Kadın Antropolojisi*,22.

<sup>514</sup> Davis Yuval, Nira, *Cinsiyet ve Millet*,184.

women who do not serve in the military but still militarized by the policies of the militaries such as prostitutes and mother as well to their female colleagues serving in non-combat roles such as nurses or cooks. If one adopts an Arendtian understanding of the notion of power in which power emerges only when people act in concert with one another, then creation of such divisions is quite harmful for the advancement of women's position in the military and their collective stance against the politics of militarization. As Enloe points out "the more distanced each group of women has felt from the other, the less likely any of them would be to notice how the political manipulations of gender affected them all." Such an outlook which came as a result of the notion of honor usually associated with military service and which is well embedded in the military ethos, let alone creating a unity for the common cause among the women, leads the women who are all affected by the militarization to see their careers, respect and income to be jeopardized by the actions of the other militarized women.<sup>515</sup> It should be mentioned here that Just War tradition is silent on such militarization policies adopted by the states. Neither the conscription nor the service of the just warriors are free of implications for women. A classical example is the conscription of German man during the First World War by Kaiser's army which had led the wives and daughters of conscripted man to serve as prostitutes to other conscripted German male soldier as "camp followers" to sustain their families and the dispatchment of secret police by the German government to control their sexual activities since they were regarded as subversive to the health and morale of the army.

516

Moreover, the language adopted by the soldiers are reflective enough to understand what kind of patriarchal and misogynist values that they are exposed to within the armies. For instance, one of the soldiers who had participated in to the American invasion of Iraq in 2003 described the Iraqi woman killed by his sergeant with the

---

<sup>515</sup> Cynthia H., Enloe, *Militarizing Women's Lives*, xiii.

<sup>516</sup> *Ibid.*,36-37.

following words; “I am sorry the sergeant said but the *chick* was in the way.”<sup>517</sup> Another example of this sort is the song book published by the soldiers serving in tactical warrior fleet in the American base located in the United Kingdom. The songs written by the pilots demonstrates how militarization goes hand in hand with and integrated in to the sexualization of male soldiers. One of the songs reads “I fucked a dead whore by the side of the road. I knew right away she was dead. The skin was all gone from her tummy. The hair was all gone from her head. And as I lay down beside her. I knew right away I had sinned.”<sup>518</sup> Usually the male soldiers who underperform in their physical tasks during the military trainings are called by their colleagues as faggots and homosexuals who should return to their mommies and play with their sisters.<sup>519</sup> As these examples illustrate the sexual connotations for woman, even for the ones who are not victims of military violence is rampant in militaries.

Just War tradition simply stays silent to such horrible language adopted within the militaries by the so called just warriors and to the masculinist ethos reinforced by the militaries in the society. However, given its dualistic thinking which only leaves one with the choice of choosing between Just and Unjust warriors, this tradition is not well equipped to understand such varieties within the militaries and among the soldiers.

## 1.8 CHIVALRIC TRADITION AND STATE

This section of my study will focus on the concept of honor and the way it contributed to the reinforcing of state as the legitimate authority in Just War tradition.

---

<sup>517</sup> Asal, Victor and Schulzke, Marcus, “A Shot not taken: Teaching about the ethics of political violence”, in *International Studies Perspectives*, Vol.13 (2012),408.

<sup>518</sup> Enloe, Cynthia, *Askeri Üsler*,114.

<sup>519</sup> Yuval Davis, Nira, *Cinsiyet ve Millet*,189.

It will also be discussed here that the concept of honor is keenly associated with the exclusion of women from the public sphere.

I would like to turn my attention to the legitimate authority in jus ad bellum level; which is for the Just War theorists the state. The acceptance of the state as the only legitimate authority that can wage a just war by the classical Just War thinkers and the only very recent emergence of Just War thinkers who granted the right to conduct a Just War to the non-state actors is keenly associated with the chivalric roots of the Just War tradition. The chivalric tradition regards the honor, one of the manliest values of this tradition, as one of the paramount values in the battlefield. The use of irregular forces are regarded by the chivalric code as resorting to dishonoring practices due to the expectation that those forces are more likely to avoid direct confrontation and employ asymmetric tactics and finally forcing the allegedly moral agents; the states to adopt similar methods to counter them.<sup>520</sup> Hence it is quite explicit that one of the most patriarchal notions; honor is actually one of the factors behind the adaptation of one of the most patriarchal institutions; state; as the legitimate authority in *bellum justum*. Moreover, as Cynthia Cockburn explains the concept of honor connects the man and the patriarchy within the family to the man and the patriarchy within the state. The Turkish case in which one of the hills in one of the border regions in Southeast Anatolia bears a huge sign reading “Frontier is honor”<sup>521</sup> demonstrates the connection between the familial and the state patriarchies clearly.<sup>522</sup>

Regarding the concept of honor, it should also be mentioned that the concept is quite reflective of the division that confines women in to the limits of the household. The ancient Greek division of life between *polis* and *oikos* places man who had managed

---

<sup>520</sup> Whetham, David, *Moral Victories*, 5.

<sup>521</sup> This is my free translation. In Turkish it reads “Sınır Namustur”.

<sup>522</sup> Cockburn, *Buradan Baktığımızda*, 291-292

to freed himself from the necessities of biological life to the public sphere of *polis* whereas confines women in the household life of *oikos* in which the main motor of life was the reproduction of biological life. The necessities that are satisfied within the confines of *oikos* for the reproduction of biological life are things that are considered shameful and tried to be concealed within the darkness of the domain; *oikos* the women are associated with. Whereas in contradistinction to the shame associated with the household, *polis* is a sphere which is associated with man and honor.<sup>523</sup> Just War tradition as a tradition that is well immersed with the ancient Greek thought is reflective of this division and portrays the activity of war which is an activity conducted in the public sphere as honorable and tends to associate it with man and with the public institution that is bestowed with honor; the state. Cynthia Enloe stresses the importance of this point with reference to the Congressional hearings on Iran-Contra affair. She explains that man during the hearings adopts some terms such as honorable and patriotic to refer to other man in order to soften the tone of their belligerency against one another. Enloe after studying the words uttered by those man during the hearing towards one another ask if the words such as “honorable” would be used with reference to a woman if there would be one being questioned in the hearings.<sup>524</sup> She further explains what awaits the women who “dare” to go out of the confines of *oikos* and to air their opinion on public issues. The women who staged continuous demonstrations against the American military base in Greenham Britain had not only been targeted by the British police with violence but also labelled by the British media and the locals as irresponsible mothers, women who don’t take shower, lesbians and politically naive.<sup>525</sup> These women who “dared” to express their opinion out in the public openly demonized and humiliated by man who clearly associate public life activities like expressing one’s political opinions only with man. A similar kind of defamation was conducted against the Russian

---

<sup>523</sup> Habermas, Jürgen, *Kamusalığın Yapısal Dönüşümü*,60-61.

<sup>524</sup> Enloe, Cynthia, *Askeri Üsler*,41.

<sup>525</sup> *Ibid.*,117.

women who served in the Russian military during the Second World War. Usually the male pilots are honored with great words like knights of the air and held in high esteem because of their profession by the people. On the contrary, Russian female pilots who had taken part in bombing campaigns against the Axis powers were simply called as “witches of the night”. The term adopted for them reflects what kind of environment awaits the women who dared to take part in a public activity like war.<sup>526</sup> Such man must be aware of the empowering effect of participating in to the public activates such as for women as two post-revolutionary societies like Eritrea and South Africa demonstrates. In both societies the women who had participated in to the guerilla activities had managed to clinch in to high ranking political positions when the revolutionary war had come to an end.<sup>527</sup>

Moreover, the chivalric tradition that was co-opted by the Just War theory is a reflection of the women from the public sphere. According to Habermas the representative publicity is based on the *representation* of higher being in public. A lower or invaluable existence who doesn't deserve a public representation can't be represented out in the public. Such representative publicity is based on a noble code which transformed what is heroic in to chivalric. Especially the middle age tournaments describing the cavalier battles provided such public representation.<sup>528</sup> However it is clear that chivalry as a reflection of representative publicity is actually associating what is heroic with a higher being who is undeniably the man.

### 1.9 THE LEGITIMATE AUTHORITY: MISOGYNIST STATE

This section of my study will focus on the ill effects of state practices on women. It will analyze the way state provides the means of violence for man and hence provides

---

<sup>526</sup> Davis Yuval, Nira, *Cinsiyet ve Millet*,192.

<sup>527</sup> Ibid.,196.

<sup>528</sup> Enloe, Cynthia, *Askeri Üsler*,66-67.

man with the opportunity to submit women. Especially the negligence of state to support women in times of dire need will be examined to reveal the patriarchal leanings of the so called legitimate authority.

States are quite problematic entities when it comes to recognizing the distinct identities and needs of women. One should remember that, even the social contract theories, which presupposes a notion of contract between the rulers of the state and its people, do not recognize women as a distinct group. As Martha Nussbaum explains;

Women's rights are sacrificed because the individuals who are party to the contract are not persons but peoples, and thus it is the peoples as groups who are offered equal respect and dignity. However, if the group has a tradition of ignoring women's equal dignity...the Law of peoples will have no recourse against that group.<sup>529</sup>

By endorsing state as the legitimate authority to take the decision to go to war Just War tradition implicitly approves the exclusion of women from the decision to go to war. However Just War tradition does not stop only with excluding women from the decision to go to war but also lends a protection to the entity; the state, that is instrumental for their exclusion from the decision making process related with war. As one of the leading Just War theorists Johnson explains Just War tradition, especially Grotius had played an important role in the transformation of the concept of sovereignty which had led to the defense of the political entity called state against any kind of outside intervention.<sup>530</sup> Hence Just War tradition, especially by the secular transformation it had introduced to the concept of sovereignty had led to the protection of the very political entity that disfavors women. As Johnson explains;

---

<sup>529</sup> Cudd, Ann E., "Truly Humanitarian Intervention: Considering Just Causes and methods in a Feminist Cosmopolitan Frame", in *Journal of Global Ethics*, Vol.9, No.3(2013),365.

<sup>530</sup> Johnson,550.

The transformation of Just War tradition in to law of armed conflict and its development in to a major element of positive international law, the shift in the conception of sovereignty away from the idea of responsibility to maintain justice and toward a narrower conception in terms of the rights of the territorially defined state, and the focus on defense as the only form of just cause for use of military force clearly permitted for states on their own authority.<sup>531</sup>

The main problem in this protection of Just War tradition of the state by the sovereignty principle, is not that its simply submitting in to the Westphalian state order but the fact state as an entity is quite detrimental to the rights of women and carries out patriarchal policies in most cases. Even Thomas Hobbes, who, in contrast to many other natural law theorists, granted equality to women with man in state of nature, stated that in case of a contract (marriage) between a man and women in a state, all the newborn children will belong to father because families are formed not by mothers but by fathers. Hence in every state the power to manage family belongs to man.<sup>532</sup> This is a very clear picture rendering the change of power status quo between man and women when the state came in to the picture.

It has been put forward by many studies in the feminist literature that state is one of the main bearers of injustice towards women. Anthropologists put forward that women have been in better position vis-à-vis man before the emergence of the archaic states. The absence of state in the hunter and gatherer societies had put women in a better situation in the following areas; man forcing women to sexual intercourse, man controlling women through forcing them to work and exploit the fruits of their labor, man controlling women's children or separating women from their children, man restricting women physically or directly restricting their physical movement, man reducing women in to objects for their masculine activities, preventing them from gaining cultural information and knowledge, man cruelly punishing women for "adultery", man jealously safeguarding women's "honor" and virginity, man

---

<sup>531</sup> Ibid.,551.

<sup>532</sup> Hobbes, Thomas, *Elementa Philosophica De Cive* (İstanbul: Belge Yayınları, 2010),130.

depriving women from the right to divorce and man prohibiting women from re-marrying after their husbands passed away.<sup>533</sup>

Also state had made man got access to the means of violence which in turn made women more subservient before them. As Engels explained, by the emergence of state some man since they were exempt from the childcare duties had been in better position compared to women to assume economic and political roles. This made them possible to ensure a monopoly on the means of violence for themselves and this is how they established domination over women and some other man.<sup>534</sup> What Engels explains makes even more sense when the Weberian definition of state, as the monopoly on the means of violence, is taken in to consideration since according to this definition taking control of the state mechanism will result in the control of the apparatus that had already managed to monopolize the means of violence.

Even though we are not talking about a monolithic entity and states can vary from one culture to another in their inclinations towards women, we are still talking about an entity by its policies leans mainly towards patriarchal interests. Its tacit blessing to the physical and sexual male violence against women and in many cases its turning of a blind eye to the injustices of the economic, social and political status quo that favors man over women is a clear demonstration of its stance towards women.<sup>535</sup> In this context it is telling to quote James Turner Johnson on just cause;

The just cause of defense here was not self defense as this term is used today but defense of the peace and order both of immediate community and of *the fundamental structure of order* on which all communities depended.<sup>536</sup>

---

<sup>533</sup> Gough, Kathleen, "Ailenin Kökeni" in *Kadın Antropolojisi*, ed. R. Reiter, Rayna (Ankara: Dipnot Yayınları, 2012), 74-75.

<sup>534</sup> Ibid., 75.

<sup>535</sup> Walby, Sylvia, *Patriyarka*, 41.

<sup>536</sup> Johnson, James Turner, *Ethics and the Use of Force*, 18.

Johnson's main concern here is the preservation of the fundamental structure of order. He doesn't pay any attention if such order is patriarchal or not.

Another telling example, which also demonstrates the absurdity of just cause in the Just War tradition and its ill effects for women is the principle of colonial expansion of Vattel which harbors utilitarian undertones as well. Vattel explains that;

The cultivation of the soil...is...an obligation imposed upon man by nature. The whole earth is designed to furnish sustenance for its inhabitants but it cannot do this unless it be cultivated. Every nation is therefore bound by the natural law to cultivate the land which has fallen to its share....Those people...who thought dwelling in fertile countries, disdain cultivation of the soil and prefer to live by plunder, fail in their duty to themselves, injure their neighbors and deserve to be exterminated like wild beasts of prey.<sup>537</sup>

It is clearly demonstrated in this paragraph that Vattel on the one hand explicitly endorses a utilitarian approach and implicitly urges human collectives not to live a nomadic life and settle in communities that would make organized agricultural production possible. In other words, he implicitly calls the communities to form states. The history of such transformation demonstrated well how the abandonment of the nomadic life and adaptation of the tool based agricultural life had denigrated women's lives.

The women<sup>538</sup> who were beaten by their husbands or by the man whom they live together usually receive little or no support from the judiciary or from the social

---

<sup>537</sup> Howard M. Hensel, *The Prism of Just War*, 100.

<sup>538</sup> I would like to mention here that there might be differences in the problems that heterosexual and homosexual women face. For instance a well know problem more likely to be experienced by homosexual women than heterosexual ones is the ostracization experienced by their own lesbian communities when the lesbian women complain in court that they are subjected to violence by their own partners. (Price,90) Even though I do understand that, pretty much like the differences seen in the problems experienced by women from different racial, ethnic and socio-economic backgrounds, the problems experienced by women with different sexual inclinations might vary as well. However here I do take the position that there are *institutional* problems related with state,

policies of the state. In this sense there is no question that the law is grounded in patriarchy. The legal framework also support such violence in the sense that in many of the states women's forcing to having sex with their husbands without their consent is not regarded as rape and even the legal definition of rape is in many states was consciously narrowed down to the penetration of penis in to the vagina and any other penetration other than penis is dealt under the lesser crime of sexual assault.<sup>539</sup> In many cases the male police officers are reluctant to deal with such allegations of rape. Also in many cases they either look for physical evidence of rape like injuries or demand higher standards envisaged in the laws such as inquiries about to what extend the women have resisted the rape.<sup>540</sup> Here one should state the hypocrisy of the Just War tradition which on the one hand claims to utilize the power of the state to protect women from rape in the battlefield, but on the other hand endorses and idealizes the very entity; the state that remains silent to women being raped or harassed in their "daily" lives. The state is usually so slow to protect women or to indict man for their violence against women. <sup>541</sup> In some cases, state agents are indirectly responsible from the suffering of women such as sending them back to the unsafe situations rather than dealing with their complaints. This frequently happens in cases of border control police simply deporting back the women to the countries where they came from and which they are likely to face danger as a result of male violence against them.<sup>542</sup>

According to two scholars of the American criminal system, L. Thomas Winfree Jr. and Christina Dejong police practices in the United States amounts a war on women and girls. They explain that the decline in the arrest rates of males greatly exceeded

---

even though experienced to different extent by women coming from different backgrounds, common to all women regardless of their sexual inclinations.

<sup>539</sup> Walby, Sylvia, *Patriarka*,215.

<sup>540</sup> *Ibid.*,220-221.

<sup>541</sup> *Ibid.*,240.

<sup>542</sup> Price, Joshua M.,*Structural Violence:Hidden Brutality in the Lives of Women*(United States: State University of New York Press,2012,*henceforth: Structural Violence*),2.

the declines in the arrest rates of females in the U.S. The rates of arrests for petty crimes for women had risen sharply. Their study concludes that the mere existence of gender neutral laws is not enough. How those laws are implemented are also very important. As they explain regarding this matter, representatives of states approach differently to the crimes committed by women and it is the police discretion that facilitates a “war” on women and girls.<sup>543</sup> Girls are brought in to the criminal system for minor offenses more than boys and are mislabeled as being violent and masculine. The so called correctional system designed by man reflects and take in to consideration the man’s needs at worst and only dichotomizes the inmates according to the dualistic sexual morphologies as man and women. The difficulties experienced by the transgender women as inmates due to the absence of separate cells for them and the practice of forcing those women serving with man only ends up in the transgender women to be subjected to verbal, physical and sexual abuses both by the male inmates and the staff of the prisons.<sup>544</sup>

Judith Butler summarized the situation that women found themselves vis-à-vis the state with the following words that she employed to define the concept of precarity;

Precarity also characterizes that politically induced conditions of maximized precariousness for populations exposed to arbitrary state violence who often have no other option than to appeal to the very state from which they need protection. In other words, they appeal to the state for protection but the state is precisely that from which they require protection. To be protected from violence by the nation state is to be exposed to the violence wielded by the nation state, so to rely on the nation state for protection is from violence is precisely to exchange one potential violence for another.<sup>545</sup>

---

<sup>543</sup> P.Bernat,Frances and S.Holschuh,Chamois, “Is there a war on women or are females fine? An examination of sex, gender and the criminal justice field” in *Women and Criminal Justice*, Vol 25(2015),8-9.

<sup>544</sup> Ibid.,9.

<sup>545</sup> Butler, Judith, *Frames*,26.

It should have been no coincidence that for a very long time the patriarchal legal systems have combined women, children and the mentally ill to put them under the category of “constrained”.<sup>546</sup> For Sylvia Walby, state represents the transition from the individual submission of women in the household to their collective submission under the state.<sup>547</sup> This is the result of structural prejudices of state on women. Mary Macintosh brings forward a similar criticism to the state and defines state as an entity that supports the submission of women to man and the continuation of their free service that they provide for man in the household.<sup>548</sup> Especially important regarding the state’s policies on sexuality and marriage is that they clearly reflect patriarchal arrangements because until the 19<sup>th</sup> century in the West they were dealt by the Church<sup>549</sup> and then taken over by the state with no or little change where usually the necessities of capitalism dictates.<sup>550</sup> Moreover the state’s historical opposition to the development of women’s suffrage movement is well know. The state, historically controlled by men, in order to abate the granting of voting rights to women, continually articulated that if such right were given to women it would obstruct the women’s appropriate role and work in the society.<sup>551</sup> This role based outlook on women is the approach also adopted by the Just War tradition which ascribes different roles to women during war times like civilians and beautiful souls. Also state becomes part of the male violence which is being implemented in order to control women in society in two ways. First, it does not provide enough welfare support for the women which can make women less dependent on and more independent economically. Second by intervening so late or not intervening at all to the cases of domestic physical violence against women, the state makes women to turn to the very man that carriers out violence on their bodies rather to state which’s

---

<sup>546</sup> Berktaç, Fatmagül, *Tarihin Cinsiyeti*, 22.

<sup>547</sup> *Ibid.*, 45.

<sup>548</sup> *Ibid.*, 242.

<sup>549</sup> This point clearly demonstrates the problem with the Just War tradition as it is a tradition mainly borned out of Christianity

<sup>550</sup> Burstyn, Varda, 59.

<sup>551</sup> *Ibid.*, 61.

protection will either come late or not come at all.<sup>552</sup> Especially important to mention here is the function that the legal systems play in states for the subordination of women in many societies. Family, the rules with the family and the sexual practices ensure for man the possession of wealth, sexual freedom and power in society. State arranges such social power relations between genders through laws and it simultaneously legitimizes the laws and conceals the power relations in society behind the façade of legality.<sup>553</sup> The so called “equality” envisaged in the legal systems actually mean nothing if not backed by states themselves. No law gives man the right to rape a woman but there is no need for it because no law regarding rape ever made the conditions of man harder with regard to having women for sexual purposes. No law gives a blessing for pornography but there is no need for such a blessing, since despite the lip service paid to morality, no man has any real trouble accessing pornography. No law endorses the man the right to exert violence on their wives but since there is no mechanism that can prevent it then there is no need for such an arrangement. No law makes women silent in society since women are already made silence by sexual exploitation, deprivation and by lack of education. As long as the power relations dictated by the legal system coincides with the system of man’s power over women then law itself seems to be impartial and scrupulous. As long as man dominates women without the need for legal arrangements then nothing is done regarding the existing gender inequality.<sup>554</sup>

The most important physical spaces where in the democratic states the decisions to go war are taken are the parliaments. However, the female members of parliament are only a fraction of male ones throughout the democratic world. In none of the Western societies women members of parliaments comprise more than 45% of the parliaments. In a society such as the United States, where the women rights are

---

<sup>552</sup> Walby, Sylvia, *Patriyarka*, 213.

<sup>553</sup> A. MacKinnon, Catharine, *Feminist Bir Devlet Kuramına Doğru* (İstanbul: Metis Yayınları, 1995, henceforth: *Devlet Kuramı*), 272

<sup>554</sup> *Ibid.* 273-274.

relatively more advanced compared to the other parts of the world, women members of parliament only consist less than 18% of the seats.<sup>555</sup> In 2005 female members of the parliament in United Kingdom comprised only %20 of the total MPs.<sup>556</sup> Part of the explanation for the absence of women in politics is associated with the patriarchal gender roles which relate politics with the so called male characteristics of aggressiveness, stubbornness and quest for power.<sup>557</sup> Such gender roles are historically so entrenched in patriarchal societies that much of the opposition of the anti-suffragists during the end of the 19<sup>th</sup> and the beginning of the 20<sup>th</sup> centuries were revolved around the argument that if women got the vote they would forsake their traditional roles and resemble man. The early suffragists had to convince the public that women's "traditional" concerns were "natural" and would not be cast away if they were given the right to vote.<sup>558</sup>

Just War tradition by grating so much power and the sole status of legitimacy to the state which is quite misogynist in patriarchal societies, and associating with the desirable social order and placing the state as its rightful bearer and protector, indeed heavily contributes to the suffering of women who had found themselves in such patriarchal societies.

#### **1.10 RIGHT INTENTION, DOUBLE EFFECT AND THE SELF RELIANT MAN**

In this section I will focus on the concepts of right intention and double effect and will try to reveal that the Just War construction of such concepts are keenly connected with an understanding of a self reliant man which is contrasted with the feminist conception of relationality. The dismantling of the supposed unity between action and

---

<sup>555</sup> Donovan, Josephine, *Feminist Teori*, 13.

<sup>556</sup> Stone, *Feminist Felseye Giriş*, 22.

<sup>557</sup> Burstyn, Varda, 238.

<sup>558</sup> Jean Bethke, Elshtain, "Women, War and Feminism", *The Nation*, Vol. 230, Issue 23 (1980), 722.

intention, presupposed by the Just War thinkers, in this section will expose the limits of one of the most conventional arguments in Just War tradition that *jus ad bellum* and *jus in bello* levels are separate from one another.

One of the greatest contributions of feminist moral philosophy to the critique of Just War tradition would be to challenge its problematic understanding of human beings who are equated with a perfectly reasonable man. The adoption of the perspective by Feminism that regards human beings as impure agencies can bring a fresh look at the concept of right intention elaborated by the Just War theorists.<sup>559</sup> For Augustine and Aquinas the rightness of intention is decided upon not by the consequences of one's actions but by the inward disposition of the agent. As Augustine argues;

These precepts pertain rather to the inward disposition of the hearth than to the actions which are done in the sight of men, requiring us, in the innermost heart to cherish patience along with benevolence, but in the outward action to do which seems most likely to benefit those whose good we ought to seek.<sup>560</sup>

Such evaluation of inward and outward intentions and actions even led Aquinas to introduce the double effect in to the studies of Just War. He argued that "nothing prevents one action having two effects, only one of which is intended and the other of which is unintended".<sup>561</sup> However both of these thinkers presuppose an autonomous and independent man who can make rational decisions and act upon those perfectly rational decisions and *self-chosen* intentions. But especially given the chaotic environment one finds oneself in the battleground, it doesn't seem that soldiers always have the opportunity to act based on the self-chosen intentions. Moreover, as Elizabeth Anscombe has pointed out regarding the double effect of Aquinas, what lies

---

<sup>559</sup> B. Kellison, Rosemary, "Impure Agency and The Just War: A Feminist Reading of Right Intention" *Journal of Religious Ethics*, Vol.43, Issue 2(2015),318.

<sup>560</sup> *Ibid.*,319.

<sup>561</sup> *Ibid.*,320.

beneath the double effect thinking is the Cartesian way of seeing the human beings in which an intention is regarded as an interior of the mind which could be produced at will, which again stresses the independence of the will of the human agent.<sup>562</sup> Given the fact that they are representatives of a tradition that promotes such self-reliant image of man, this reasoning is not a surprise and Christianity is not the only sub trend in the Just War tradition that promotes such images. Chivalric code of the middle ages advises the knights not to employ the methods of affective surprise because knights should fight essentially as *individuals* but such effective use of surprise attacks require a level of cooperation with the others and this inevitably is at odds with the self-reliant image of the lonely knight.<sup>563</sup> For the knight courage was regarded as the only prerequisite for victory hence there was no need for organization or planning. But it should also be mentioned that such manly concepts of honor and courage and direct warfare in Just War tradition is a reflection of better times in European history in which European powers were in rise and offensive. As the writings of 5<sup>th</sup> century Roman writer Publius Flavius Vegetius Renatus had brought forward in times of decline, as it was during his life time witnessed the fall of Rome, much more defensive and dishonorable tactics in the battle field were permissible. He blessed the use of methods of the indirect form of war such as ambushes, guerilla tactics and deceptions with no reserve. It is obvious that the manly concepts of honor and courage fall apart when the illusion of self reliant image of man is broken down and allegedly more dishonorable tactics were welcomed to be employed to win the battles. As Foster Hallberg Sherwood explains;

There is an attitude discernable throughout Vegetius' work which is in striking opposition to the ethos of the medieval warrior class. Vegetius' work reflects the preoccupations of the late Empire, an Empire on the defensive, concerned to preserve the status quo. To distress the enemy by stratagems and surprise, to prevail by indirection, guile, and all measures short of open battle, to offer battle as a last resort and only in circumstances clearly favorable to one's own side; these are for the writer of the

---

<sup>562</sup> Cole, Darrell, 72.

<sup>563</sup> Whetham, David, *Moral Victories*, 7.

*Epitomia*<sup>564</sup> the fundamental principles of the military art. It is difficult to see the appeal of such principles for men whose whole military orientation was towards the offensive mode, whose very *raison d'être* was the acquisition of wealth, preferment, honor, and renown through feats of arms.<sup>565</sup>

However human beings are not as independent as they are portrayed in this tradition. They depend on other people sometimes in their lives and a good many of them for their whole lives.<sup>566</sup> Human beings are relational. No self exists in isolation from others. Everyone is encompassed with a web of interrelated relations of other human beings.<sup>567</sup> As Judith Butler argues selves are not selves in the meaning as we understand but constituted through social and political practices. She defines the vulnerability of life, any kind of life including the lives of man, with the conception of precariousness in which certain conditions have to be sustained not as static entities but as reproducible social intuitions and relations in order to maintain life. When the precariousness is taken to be the epicenter of life then there is no life without the need for shelter and nourishment, no life without the dependence on wider networks of sociality and labor and no life exists which can transcend injurability and mortality.<sup>568</sup> Taken such aspect of life, the image of man rendered as self-reliant fall in to pieces. Irigaray's ethics of sexual difference emphasizes a similar point of incompleteness of human beings. She associates human identity with sexual identity and by doing so lays the foundation in which no human being can have a full claim on human identity. Each person's experience only expresses a partial experience of human experience. A women or a man carry as part of their identity the fact that they are not the whole humanity. They carry limits that would make them lean toward the other who can not be the whole of humanity.<sup>569</sup>

---

<sup>564</sup> *Epitomia Rei Militaris* written by Vegetius.

<sup>565</sup> *Ibid.*, 134.

<sup>566</sup> B. Kellison, Rosemary, 322.

<sup>567</sup> Hannah Arendt simply calls such condition of human beings as follows "no one is the author of his/her life".

<sup>568</sup> Butler, Judith, *Frames*, 20-25.

<sup>569</sup> Poe, Danielle, 38-39.

Hence self is impure and is not independent.<sup>570</sup> Following this reasoning it is obvious that in an essentially relational self, one can not speak of intention as primarily an internal, private and interior state of mind. One's intention is constituted in actions from which others can deduce and attribute intention to that person. What matters in evaluating intention is action and what will be inferred by others from that action.<sup>571</sup> Here the separation of intention and action which is taken for granted by the classical Just War thinkers, before Aquinas, is challenged by the feminist theorists who saw them as one and united. As Elizabeth Anscombe put it "it is nonsense to pretend that you do not intend to do what is the means you take to your chosen end".<sup>572</sup> Here the feminist understanding of right intention, as a unitary will composed of intention and the action, indeed challenges one of the basic tenets of classical Just War theorists that *jus ad bellum* and *jus in bello* levels are two different and separate phases of war making. However, by uniting intention, which is considered a phenomenon belonging to *jus ad bellum* level since the intention is formulated before the hostilities start, and the action which is considered to belong to the *jus in bello* level since anything associated with the actual use of force is part of the military engagement itself, the feminist perspective actually demonstrates that these two allegedly separate levels are indeed connected with one another. However, the relationality propagated by the feminist thinkers also reveals the potential impotency of human beings in situations where they face environmental and situational factors that are beyond human control. What was labeled as moral luck by Thomas Nagel and Bernard Williams should be taken in to account when to evaluate the responsibility of the soldiers during the combat since it is not always possible to realize the intentions one holds.<sup>573</sup> However it should be mentioned that such outlook does not release oneself from responsibility. In Butler's words;

---

<sup>570</sup> B. Kellison, Rosemary,323.

<sup>571</sup> Ibid.,323.

<sup>572</sup> Ibid.,324.

<sup>573</sup> Ibid.,326.

Indeed, if it is precisely by virtue of one's relations to others that one is opaque to oneself, and if those relations to others are the venue for one's ethical responsibility, then it may well follow that it is precisely by virtue of the subject's opacity to itself that it incurs and sustains some of its most important ethical bonds<sup>574</sup>

However, the failure of the Just War thinking to take the relational side of the human lives does not only engender problems related with the intention of the actors. It also paves the way for a theory that promotes and takes aggression for granted. Just War theory by simply by focusing only on the abstract individual rights of the people and the abstract notions of justice promotes separation rather than connection. Separation is more likely to lead to alienation and ultimately to war since the origins of aggressiveness lies in the failure to connect with one another.<sup>575</sup> Especially the rhetoric adopted by the combat soldiers who allegedly serving as just warriors demonstrates the ill effects of this abstract language. One of the sergeants who served during the American invasion of Iraq in 2003 defined one of the civilians he killed in such a sterile manner that one even forgets that he is after all talking about a human being rather than an inanimate object. He says "We *dropped*<sup>576</sup> a few civilians".<sup>577</sup> Moreover the tradition has also the potential to provide excuses for the physical violence of man against women. Especially the concept of double effect by Aquinas, the benevolent force by Augustine that would direct the sinner to right course which is unrealizable to the sinner him or herself and Luther's benevolent violence conducted for the benefit of the victim in a similar fashion as the surgery performed by the doctor for the benefit of the patient are quite problematic. The problem with this double effect thinking is the assumption that the agent morality can not be reduced to the physical structure of his or her act, to the immediate material object of

---

<sup>574</sup> Ibid.,327.

<sup>575</sup> J.Peach, Lucinda,160.

<sup>576</sup> My emphasis

<sup>577</sup> Asal,Victor and Schulzke, Marcus, 408.

the act alone.<sup>578</sup> Usually in the patriarchal societies the deeds committed by man are presented as actions undertaken for the benefit of the women; such as restricting their free movement outside the house to protect their alleged honor or themselves from harm. In many cases, even the physical beatings are portrayed as being carried out for the good of the women subjected to the violence with the excuses of them from being prevented further from violating the honor codes or from sinning which would allegedly end up harming women themselves. The mentality of the double effect in which the physical act and its consequences are separated from the alleged intentions of the agent who is imagined as a moral one with the utmost moral intentions might serve as a very dangerous tool in patriarchal societies for man to suppress women and come clean with the claim that their actions are conducted for the well being of the women. Moreover when one reassess this principle of double affect with the Gratian's advice that one should not ask for an armed assistance when he or she is in trouble and such a provision shall not be also enacted as a law<sup>579</sup>, it becomes even more apparent the ill effects of the teachings of Just War tradition for women in which there is always the danger present for women that they will be subjected to a "benign and corrective" violence and they wouldn't be able to ask for assistance.

### 1.11 LAST RESORT AS A LIP SERVICE

In this section I will try to reveal the realist outlook behind the Just War tradition which turns principle of last resort in to a hollow principle which is implemented only as a lip service without the real intention of avoiding from violence. This section will also try to give examples on male monopoly on the decision making about war; in other words, on the male monopoly of decision making about the principle of last resort.

---

<sup>578</sup> Ramsey, Paul, 195.

<sup>579</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 114.

One of the principles that have been propagated by the Just War theorists is the necessity to look for other alternatives before resorting to war; the so called the principle of last resort. However, from the feminist perspective Ruddick and Elshtain claim that the Just War theorists are so realist in their view of war and its inevitability that they only pay lip service to the principle of last resort. It is clear that both the Just War theorists and the realists hold a common view about the political power which is essentially coercive and regards war as the necessary element of politics.<sup>580</sup> They do not actually seek for credible alternatives to war sincerely.<sup>581</sup> Augustine rules out non-violent methods of restoring peace from the outset in his theory. Reinhold Niebuhr likewise concludes that no form of pacifism is adequate to deal with human interest and power and claims that pacifism is not an alternative to armed conflict. Walzer simply assigns the principle of last resort to the discretion of the *statesman* and argues that non-violent approaches to conflict resolution can only succeed if the aggressor is willing to abide by the war convention which is always uncertain. For him last resort is "an endlessly receding possibility, invoked mostly by the people who would prefer never to resist aggression with force. After all, there is always something else to do, another diplomatic note, another meeting."<sup>582</sup> The absence of any mechanism that would provide contact between the belligerents and facilitate an opportunity for them to take the principle of last resort seriously is in total contradiction with the some of the pacifists strands in feminist thought that specifically cater alternatives to military strife to conflict resolution.<sup>583</sup>

However, the main problem with the principle of last resort lies in the perception of it by the Just War writers and the way actual practices conducted in its name. The people who should be consulted by the prince are always presented as "wise man". For instance, Vitoria writes in his *On Law of War* that "as Terrence says in every

---

<sup>580</sup> David Helmut, Baer and E. Capizzi, Joseph,122.

<sup>581</sup> Ramsey, Paul,156-157.

<sup>582</sup> Ibid.,157.

<sup>583</sup> Ibid.,158.

endeavor the seemly course for the wise man is to try persuasion before turning to force. One must consult reliable and wise men who can speak with freedom and without anger or hate or greed.”<sup>584</sup> Talmudic Jewish tradition requires the approval of the Great Sanhedrin; the High Court of Ancient Israel, composed of seventy one elders of which all are man.<sup>585</sup><sup>586</sup> Here the Just War tradition’s gerontocratic and patriarchal nature reveals itself. The person to be consulted before starting hostilities are not presented as a female figure, but clearly as a male figure, usually who has come of age and of course as a men representing reason and wisdom. It is important here to invoke Pierre Bourdieu’s explanation for male domination. One of the indications of the prevalence of the male domination order for him, is the self-righteousness and complacency of this system in which male order of domination does not even feel the need to take any action to prove its rightness. It simply portrays the patriarchal views as if they are impartial and feels no need to legitimize them.<sup>587</sup> Here as a tradition reflecting male domination, Just War theory is exactly indulging in what Bourdieu describes. It simply regards man of old age as the wise people on which the prince should consult for last resort purposes without giving any details why those man, not any other man or women should be consulted when it comes to deciding on war. It undertakes no effort to legitimize its propositions about consulting on the wise man.

---

<sup>584</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 318.

<sup>585</sup> Goldfeder, Mark, “Defining and Defending Borders: Just and Legal Wars in Jewish Thought and Practice”, in *Touro Law Review*, Vol.30, No.3 (2014), 641.

<sup>586</sup> Talmudic Jewish tradition also requires, in jus ad bellum level, the existence of an accepted ruler or a King and the blessing of *Urim ve Tumim*, a mystical and holy ornament worn by the High Priest of Israel and was used to seek prophetic answers together with the approval of the Great Sanhedrin. Some writers like Mark Goldfeder depicted this as an ancient checks and balances system seeking for the compromise between executive, religious and judicial branches of leadership. This may be the case but one more fact has to be mentioned here that women was absent in all three forms of leadership branches. Jewish tradition does not envisage a presence of women in high priest position and as a member of Great Sanhedrin. The ancient Jewish history knows no female rulers with the exceptions of Queen Alexandra of Jerusalem and Athaliah.

<sup>587</sup> Bourdieu, Pierre, *Eril Tahakküm* (Ankara: Bağlam Yayıncılık, 2015), 22.

Moreover, it should be mentioned that ancient pagan religious roots of the Just War tradition work for the disadvantage of women in the case of the principle of last resort. One of the most important ancient practices of last resort had been conducted in Rome through the practices of *jus fetiale* in which the efforts to communicate with the belligerents of Rome had been invested in to the hands of the priests who had been represented by men in the ancient Roman religion. Those priests had been given the task of visiting the cities of the countries which had offended Rome and tried to convince them to redress the offenses and to prevent Rome having to fight for this redress. However since, pretty much like the monotheistic ones, Roman religion also assigns such priestly role to the men, not to the women. Hence when one is talking about the practice of *jus fetiale* in Rome, one is mainly talking about a practice mainly conducted by men for the benefit of the political leaders of Rome who are themselves men as well.

#### **1.12 JUST CAUSE AS THE GUARDIAN OF SOCIAL ORDER**

This section of my thesis is going to examine the principle of just cause and how this principle has been constructed with reference to the distinction between high and low politics and how it fails to take the daily sufferings of women in their societies in to account. Here it will also be discussed that by association of legality with morality, the just cause principle of Augustine in deed leads to the reinforcement of social status quo which heavily disfavors women. This section will finally analyze the absence of the defense of women's rights and conditions as a just cause for a just war both in moral and legal arguments in Just War tradition.

The notion of just cause in the Just War tradition is another problematic issue for the women. As I tried to demonstrate in the previous part the just cause is usually envisaged by Just War thinkers as a list of rights that should either be protected or their violation be averted at the expense of starting a war. As Steinhoff points out

these thinkers claim that only particularly important aims or particularly grave rights violations can be a just cause for war.<sup>588</sup> Usually such particular violations involve the actual physical violation of one's right to live. Here the problem is that, Just War tradition as a tradition following the strict division of political issues between high and low politics, does not necessarily regards the daily problems that women face or their daily violation of rights, including women being raped, maimed and killed, in both home and other societies, as issues deserving the name of just cause for initiating war. It must have been no coincidence that no war, just or unjust, has been declared for the protection of women's rights yet since women's issues are regarded as issues belonging to low politics<sup>589</sup>. Even a writer like Christine de Pizan, who implicitly listed protection of women among the just causes for a Just War, did so only as an advice for a male prince and did not included it in to the just causes which are not discretionary but obligatory for the prince to start a just war. As she has written;

For this purpose, and likewise for the other two aforementioned purposes, that is to counteract evildoers and to recover lost property, it is not only permissible for the prince to start a war or to maintain it, indeed he is obliged to do so...<sup>590</sup>

To counteract evildoers and recovering lost property are obligatory just causes for a just war but protection of women is only an advice.

Just War tradition's specific emphasis for the defense of commonwealth rather than the individual also reinforces this trend of focusing on more general issues that are of interest to the entire commonwealth, termed as high politics, rather than on issues pertaining to the certain section of it. Aquinas' answer to the question if it is licit to

---

<sup>588</sup> Steinhoff,34.

<sup>589</sup> I should mention here that George W. Bush's statement that U.S was launching the war against Afghanistan also for liberating the Afghani women doesn't seem very sincere given his own conservative policies targeting women's bodies in the United States during his term at the office.

<sup>590</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby,*The Ethics of War*,214.

fight during holy days is a clear illustration of such understanding in the Just War tradition;

Now there is much more reason for preserving the safety of the common weal (whereby many are saved from being slain, and innumerable evils both temporal and spiritual), than the bodily safety of an individual. Therefore for the purpose of protecting the common weal of the faithful, it is licit to engage in a just war on holy days.<sup>591</sup>

Here the alleged interest of the entire commonwealth is presented as being protected. However, what is being protected is the interests defined by man according to their own sensitivities which most of the time excludes women's interests.

Another important point about the just war thinkers about the just cause is their hypocritical outlook on women. As it was mentioned before, this tradition has a dualistic understanding which associates man with reason and women with body. This leads the women to be reduced to objects to be exploited for just cause purposes without their actual well beings taken in to account. Just War thinkers acknowledge that women in one's country should be protected and list protecting women, children and one's family as a just cause for a just war. But they don't care the same women to be exploited and subjected to violence during their daily lives at home or other women in other countries suffer at the hands of man through patriarchal practices. Hence rather than the actual well-being of women Just War tradition exploits the defense of women as an excuse for war and only cares about them when the women face being hurt by the enemy soldiers which would bring dishonor to the male relatives of such fallen women.

Given the previously mentioned perspective of the Christian Church on women's public position and how women are associated with household to remain morally

---

<sup>591</sup> Ibid.,181.

pure, it is important to stress that Just War tradition, especially Augustine, is instrumental to reinforce the social gender relations within the society. As Augustine see it legal wrong done by the adversary is the just cause of a just war as well as proof of a moral wrong since he associates the legal breach of the law with committing a sin. A nation which violates the legal rights of others indeed is violating their moral rights as well. Hence in order to punish the wicked, the Christian is upholding both the legal and moral orders.<sup>592</sup> To associate legality with morality would definitely work to undermine the position of women given the fact that both the legal profession and morality in its monotheistic forms work to the grave disadvantage of women. Therefore, Augustine's arguments associating morality with legality to uphold the social order within the framework of Just War tradition simply serves to perpetuate the already problematic social status-quo for the women. Moreover his argument of holding the entire people morally responsible and hence morally culpable from the breach of other people's legal rights is problematic as well because even during the middle ages when the wars were conducted by the knights who had some share in the decision making process of the decision to go to war<sup>593</sup>, the women were excluded all together from the decision making processes regarding to going to war. Hence it is totally unfair to hold the rest of the population, the women, who had not played any part in the decision making process on war, accountable from an act; going to war and regard them as morally wicked. However, it is important to note here that by secularization of the Just War tradition, especially through the writings of Hugo Grotius the automatic link between the assumed guilt at the ad bellum level and the conduct of the war in in bello level had been shattered. Grotius defined the soldiers as the instruments and distinguished the people who are carrying out the order from the people who are actually responsible from those orders. He regarded sovereign authority as the principle element in war and the subjects as instruments. He

---

<sup>592</sup> McKeogh, Colm, "Civilian Immunity in War: From Augustine to Vattel" in *Civilian Immunity in War*, ed. Igor Primoratz (New York: Oxford University Press, 2007, henceforth: *Civilian Immunity*), 63-64.

<sup>593</sup> *Ibid.*, 67.

elaborated that “when we say instruments we do not mean by it arms and things of that kind, but *men* who in action voluntarily make their wills dependent on another’s will”.<sup>594</sup> Such approach is beneficial for women since it makes a distinction between the ones who are politically responsible and the rest of the population. At least in such an approach woman who had been excluded from the decision making mechanisms of going to war would not be held accountable from an action that they have not been undertaken. However, it should also be mentioned that the rhetorical association of men with the activity of war and the primacy of the state are still remaining intact in Grotius’ approach.

As Beth van Schaack explains “any feminist defense of the doctrine of humanitarian intervention must take its starting point the recognition that the substantial denial of women’s rights; whether civil, political, economic, social or cultural, has never served as the sole or primary basis for military intervention.”.<sup>595</sup> Women are not only subjected to bad treatment in their own societies but in many patriarchal societies they are denied the fundamental right that the Just War tradition accepts a just cause for a war; namely their right to live. But still thinkers of Just War tradition do not put forward women’s rights, including the right to live as a just cause for starting a war. Even the modern day American Just War thinkers with Christian tendencies did not add women’s rights in to the list of rights to be defended for the name of justice. Reinhold Niebuhr for instance defined the goals of justice as economic, ethnic and racial equality but did not consider to add gender equality in his list. Likewise, Paul Ramsey regarded love as the growth of a community of equals and justifies war as an instrument directing political groupings in to this end. However his community of equals do not encompass the equality of man with women as well.<sup>596</sup> Such indifference to the status of women when it comes to starting wars is not only

---

<sup>594</sup> Grotius, Hugo, *Rights of War and Peace, Book I*(United States:Liberty Fund Inc.,2005),386.

<sup>595</sup> Van Schaack, Beth, “The Crime of Aggression and Humanitarian Intervetion on Behalf of Women”, *International Criminal Law Review*, Vol 11(2011), 477-478.

<sup>596</sup> Flescher,Andrew,66-67.

confined to the modern thinkers with religious inclinations, the secular modern American thinker Michael Walzer does not add defense of women's rights in to his list which only includes cession, civil war and genocide, for the military intervention to another state.<sup>597598</sup>

A similar approach is also present for the legal corpus that is integrated in to the Just War tradition. Despite the prevalence of violence against women no international treaty or convention proscribes such violence. There is no single treaty provision *explicitly* prohibiting *violence* against women in human rights treaties such as *International Covenant on Civil and Political Rights*, *International Convention on Economic, Social and Cultural Rights*, *International Convention on the Elimination of All Forms of Racial Discrimination*, *Convention on the Elimination of All Forms of Discrimination Against Women* and *Convention Against Torture and Other Cruel, Inhuman or Denigrating Treatment or Punishment*.<sup>599</sup> Given the fact that when it comes to securing their economic interests, such as demanding indemnities or economic concessions after the war, the states are quite keen on implanting such provisions in to the peace treaties that they sign or to integrate their economic interests, such as trade liberalism, in to the international treaties, the absence of any provisions that will specifically prohibiting violence against women in human rights treaties is quite revealing regarding the priorities of the states. Only recently, after

---

<sup>597</sup> Rengger, Nicholas, 359.

<sup>598</sup> I should clearly state my opinion about the inclusion of women's rights in to the list of just causes for war in order to prevent any misunderstanding. My motive here is not to prescribe to the states to constantly go to war for the women's rights violations in other states but to demonstrate the indifference of the overwhelmingly male thinkers of the Just War tradition for the rights and well being of women. I am quite aware that defining women's rights violations as a just cause for war might immensely increase the number of wars conducted in world and might provide the states new pretexts to pursue their national interests under the cover of protecting women's rights. One always finds oneself in a dilemma in such an issue. But simply to watch women suffering in their societies is certainly not a solution.

<sup>599</sup> Treuthart, Mary Pat, "No Woman, No Cry" Ending the War on Women Worldwide and the Intenational Violence Against Women Act", in *Boston University International Law Journal*, Vol 33/75 (2015), 79.

stringent negotiations<sup>600</sup> the International Criminal Court Statute has been included some provisions that might help to ease the difficulties experienced by the women during the war. The provisions which are regarded as crimes include crimes of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence might hopefully lead to the politicians to take more gender neutral jus in bello decisions and to respect women's rights during the battles.<sup>601</sup>

---

<sup>600</sup> The inclusion of such provisions only came as a result of efforts of the Women's Caucus for Gender Justice which has faced serious opposition from some states and anti-governmental organizations.

<sup>601</sup> Van Schaack, Beth, 480.

## CHAPTER TWO

### JUS IN BELLO PRINCIPLES AND THEIR FEMINIST CRITIQUE

This part of my thesis is going to analyze the jus in bello principles in historical perspective. It should be noted that even though there are nascent arguments for jus in bello restrictions in classical Just War writers, these regulations are more an invention of the modern period. Below the principle of right conduct, proportionality means and net benefit and the principle of discrimination will be discussed.

#### 2.1 RIGHT CONDUCT

This section of my study will focus on the principle of right conduct. It will discuss the prominence of this principle in relation to its importance for jus post bellum period where sooner or later an agreement will be reached between belligerents. The historical examples of what kind of methods were regarded as wrong conduct in warfare will be discussed below.

Jus in bello principles of Just War tradition stems from the assumption that dishonorable means, expedients and conduct during the armed conflict is forbidden. This assumption is based on the principle of chivalry which asserts that one's right to adopt means to injure one's enemy is not unlimited.<sup>602</sup> The reason behind such restriction is that, as Kant perfectly explains in his *Perpetual Peace*, the perfidy has the potential to erode the mutual trust among the belligerents and this might make the return to peace unnecessarily difficult by damaging the prospects of any future negotiated settlement.<sup>603</sup> Especially the attitudes and the conduct of warfare by the

---

<sup>602</sup> Whetham, David, *Moral Victories*, 2.

<sup>603</sup> *Ibid.*, 4.

medieval knights in Europe were adopted in the Just War cannon to ensure the jus in bello principles to be adhered by the belligerents. As Neal Wood explains;

Between medieval foes there was the bond of Christian conduct and *gentlemanly* behavior...so that they did not make full use of the stratagems that had been a common part of the classical military leader's repertoire. <sup>604</sup>

However, it is possible to find some arrangements for jus in bello laws during the antiquity as well. Cicero's understanding of moral conduct in war is in exact contrast with the tenets of political realism which puts political expediency over morality. Cicero, in contrast to the classical realist perspective, thought that moral right outweighs expediency. To illustrate his point, he cites the proposal of Themistocles after the Persian War which he proposed to the representative of the Athenian people, Aristides to secretly set the Spartan fleet off the shore in fire and destroy it with no effort. His proposal was utterly rejected both by Aristides and the Athenians. He concludes that "let it be set down as an established principle, then, that what is morally wrong can never be expedient, not even when one secures by means of it that which one thinks expedient".<sup>605</sup> This is in a way connected with the Greek understanding of war which is seen as an activity closely associated with honor. As Gregory Raymond explains "during the Archaic age war was part of a competitive, honorific activity that could bestow glory and tokens of distinction on combatant depending upon whom he fought, how he fought and how he fared".<sup>606</sup> In a similar fashion the deceit performed by the Roman envoys sent to King Perseus on the eve of the Third Macedonian War in 171-168 BC in which they had pretended that the peace was imminent to discourage King Perseus to take defensive positions were not regarded as honorable and even the envoys were reproached when they came back to Rome in Senate by the older Senators. Cicero concluded that "out of all injustice,

---

<sup>604</sup> Ibid.,7.

<sup>605</sup> Marcus, Tullius Cicero, *De Officiis*,344-346.

<sup>606</sup> Howard M. Hensel, *The Prism of Just War*, 9.

nothing deserves punishment more than that of men who, just at the time when they are most betraying trust, act in such a way that they might appear to be good men".<sup>607</sup>

Cicero elaborated on the *in bello* principles of war by stating that anyone who was conquered by Rome or who deliberately lay down their arms must be shown mercy.<sup>608</sup> In Cicero one also sees the rules of conduct during the war that dictates soldiers how to behave during the hostility. One of those rules preached by Cicero is fidelity to a promise. He brought forward the example of Regulus who, during the First Punic War fall hostage to the Carthaginians and sent back to Rome to negotiate an exchange of prisoners. However, Regulus himself had made the motion in the Senate that prisoners should not be restored, chose to go back to Carthage and suffer a torturous death just to keep his promise, even though that promise was given to an enemy.<sup>609</sup>

Also plots to kill the leaders of one's enemy is not acceptable for Cicero. Strategies like collaborating with the "treacherous" soldiers of the enemy to poison the King of one's belligerents are not allowed.<sup>610</sup> Cicero states that for the wars conducted for supremacy which aims for glory, one should fight with less bitterness. For him the war for supremacy is like a personal contention with a fellow citizen in which one contends for an office and position and for his life as in the case of struggle with enemy. Therefore such wars would determine who would be supreme not who would survive and hence should be restricted in terms of violence carried out.<sup>611</sup>

Keeping one's promises was also regarded as an important principle of right conduct by Augustine. Augustine criticizes the Romans for breaking the peace treaty that they

---

<sup>607</sup> Ibid.,13.

<sup>608</sup> Marcus, Tullius Cicero, *De Officiis*

<sup>609</sup> Ibid.,

<sup>610</sup> Ibid.,67.

<sup>611</sup> Ibid.,63-64.

had concluded with the Samnites following the Seven Years War against them. His conclusion was that the Romans love glory not for justice but loves justice for glory.<sup>612</sup> Here the concept of honor, disguised within the concept of glory, and keeping one's promises are associated with one another in Augustine's thinking.

The honorable way of fighting distinguished from the shameful one is well entrenched in the Judeo Christian tradition and views of the Christian theologians as well. Deuteronomy includes a "curse on him who smiteth his neighbor in secret."<sup>613</sup> Seventh century Archbishop Theodore of Tarsus defines the killing by trickery as the killing that was deserving the severest punishment. He explains in his *Penitentials*;

One who slays a man by command of his lord shall keep away from the church for 40 days; and one who slay a man in public shall do penance for 40 days...if through anger ye shall do penance for three years; if by accident for a year; *if by a potion or any trick seven years.*<sup>614</sup>

Gratian as thinker who accepted war as an instrument of peace preached the soldiers to pursue pacific goals even in war given that their goal is to return the enemy to a state of peace. Hence the victor should show mercy to the captives.<sup>615</sup> The desire to harm, the lust for domination and the cruelty of punishment should not be endorsed. Retributive and the vengeful punishment of the "eye for eye" tradition should be avoided during the actual combat.<sup>616</sup> However it should also be mentioned that Gratian was not as keen as he was on the ad bellum principles on in bello ones. Regarding if one is supposed to fight openly or in ambushes he explains;

---

<sup>612</sup> Saint Augustine, *The City I-VII*, 292.

<sup>613</sup> Whetham, David, *Moral Victories*, 4.

<sup>614</sup> *Ibid.*, 4.

<sup>615</sup> H. Russel, *Middle Ages*, 60.

<sup>616</sup> *Ibid.*, 67.

Our Lord God himself gave the order to Joshua to set up an ambush behind him, that is, to arrange his warriors so as to trap the enemy in an ambush. This teaches us that such things are not done unjustly by those who fight a just war; so that the just man does not need particularly to worry about this, except that war be undertaken by one who has the right to do so.<sup>617</sup>

Aquinas' understanding of what constitutes and what does not constitute an injustice in the conduct of war is not as clear as Cicero and Augustine's. On the one hand Aquinas seems to be well aware of the Christian teaching of "love your brother as yourself" and the problem posed by the acts of diversion and ambushes in war to this doctrine. He regards the enemies as one's brothers. However, at the end he states that in a just war ambushes might be part of the military plan and should not be disclosed to one's enemies.<sup>618</sup>

Suarez argued that in a just war the prince can do any harm to the enemy if it is necessary to attain victory. If the goals are honest, for him the means are honest as well. However, every military action must also be conducted in moderation compared to the seriousness of the crime. Greater satisfaction than justice is not admitted by Suarez.<sup>619</sup>

One of the most important representatives of the Chivalric tradition; Honore Bouvet contributed in to the development of jus in bello principles during the middle ages. On the issue of fleeing from the battle field he employed the Chivalric concepts of honor and courage and asserted that if a warrior is in the service of a lord then fleeing from the battle field is not an option. He explains;

---

<sup>617</sup> Whetham, David, *Moral Victories*, 45.

<sup>618</sup> Büyükakıncı, *Savaş*, 66.

<sup>619</sup> Justenhoven and Barbieri Jr., *Peace Ethics*, 167.

For since he has pledged him his faith and oath he must die in defense of him and his *honor* and thus does he maintain in himself the virtue of *courage* so that he fears nothing that may befall in fighting for justice.<sup>620</sup>

In such circumstance fleeing is associated not only with dishonor but with wickedness. Bouvet explains; "I say that for nothing in the world should a man do what is dishonorable and reprehensible. But it is plain that to flee is wicked and brings great reproach and shame...to flee and quit the right thing is an evil thing."<sup>621</sup> Regarding the using of what might be called the indirect means of war; trickery and craft Bouvet invokes the Christian scripture and firmly opposes their use. For him for a thing to be called just it has to be performed justly. The redresses must be sought in a correct way. He reminds the attitude of Jesus who spoke to the world directly without any concealment. Therefore, a victory won using subtle means or deception is a victory "won in obscurity and deceit". As Bouvet explains;

According to the Holy Scripture, a man should not do to another what he would not wish another to do him. But no one in the world would wish to meet another who conquers him in battle by subtlety, so how can a man conquer his enemy by fraud or craft without offence to God?<sup>622</sup>

Especially the keeping of one's words is a very important principle for Bouvet to be performed by the soldiers. For him, for example, it would be a condemnable deception for one to give one's promise to meet an enemy for a parley and then make him a prisoner. Breaking of such a faith means also going against God. In a similar fashion Bouvet staunchly opposes the taking of a town during the period of a truce given the fact that the pledges given to one's enemy shall be kept. However, in Bouvet's thinking the underlying reason for the towns not to be captured during the period of truce is actually to ensure the credibility of the king. If king won't keep his

---

<sup>620</sup> Whetham, David, *Moral Victories*, 57.

<sup>621</sup> *Ibid.*, 57.

<sup>622</sup> *Ibid.*, 58.

words, then how will the people trust him. Here the underlying state centrism should not be overlooked since the primary motive is the establishment of the state's credibility.<sup>623</sup>

Christine de Pizan stated that pillage by the victorious armies should definitely be banned. The chivalric notion of honor is again apparent here behind Pizan's argument which she explains as follows; "It is dangerous in time of war for an army to be more driven by greed for pillage than by the intention to preserve the rightness of their cause or the honor of chivalry or to gain praise."<sup>624</sup> Reflecting the opinion of her day, she complains about the declining moral standards in fighting. She says what was formerly called fraud like breaking the truce, was now called subtlety and accepted. Again connected with notion of honor, she regards calling for the enemies for a meeting and killing them during that meeting is definitely not acceptable and evil. As she explained "this would be evil and bring *dishonor* and reproof."<sup>625</sup>

Interestingly one of the most important thinkers of the Just War tradition, Martin Luther does not propose any limitations for the right conduct of the war by the soldiers. On the contrary he seems to give them a free hand in dealing with their enemies. He urges soldiers to "kill enemies without scruple, to rob and to burn, and to do whatever damages the enemy, according to the usages of war, until he is defeated". He comments on real soldiers that they are extremely patient on resorting to war but once they draw their swords almost everything is permitted for them. In Just War terms Luther advises extreme attention and care in *jus ad bellum* level before taking the decision to go to war but once that decision is taken he doesn't propose any limits on waging war in the *jus in bello* level.<sup>626</sup>

---

<sup>623</sup> Ibid.,60.

<sup>624</sup> Ibid.,65.

<sup>625</sup> Ibid.66-67.

<sup>626</sup> Corey, David D.,321.

## 2.2 PROPORTIONALITY OF MEANS AND NET BENEFIT

Proportionality of means and net benefit principle will be discussed in this section with reference to the writings of the Just War thinkers and historical examples dating back to Ancient Greece. However, this section will first try to delve in to the issue of where this principle belongs; jus ad bellum or jus in bello phase of the conflict?

It should be mentioned here before starting this section that the principle of proportionality used to be a principle that was dealt under the jus ad bellum part of the traditional Just War theory before it was started to be dealt under the jus in bello part by the transformation of the tradition in the modern era which had resulted in more emphasis to the way the battles are conducted. It used to be employed as an intellectual tool to decide, before the hostilities begin, on the anticipated goods of waging war in relation to its harms. Even though this principle is now accepted as part of the jus in bello cannon by the majority of International Law experts, there still is a minority of International Lawyers that claim that it is the very decision to go to war that must pass the test of proportionality.<sup>627</sup> This principle is invoked within the context of self-defense in which proportionality refers to whether the force used (means) is proportionate to the legitimate ends of using that force (self-defense).<sup>628</sup> There is more to this argument when one looks at the principle of proportionality from the perspective of jus ad bellum principle of right intention. It is arguable that the military commanders who are acting with the right intention such as humanitarian intervention for saving persecuted people might evaluate the proportionality criteria very differently from a commander with a bad intention of mere conquest of other people. As Schaack puts it;

---

<sup>627</sup> Kretzmer, David, 237.

<sup>628</sup> Ibid.,239.

Although humanitarian interventions involve armed force, one can surmise that parties engaged in just wars might ultimately produce less collateral damage than those engaged in aggressive wars due to the fact that combatants and their commanders are likely to assign different values to the variables employed in the proportionality calculus; military utility and the risk of collateral harm, than their hostile adversaries...Arguably those involved in non-hostile uses of force might demand a greater degree of military necessity to justify a course of conduct or tolerate less potential for collateral harm in choosing their targets.<sup>629</sup>

After the brief explanation of where does the principle of proportionality belongs now I will turn my attention to the nascent examples of proportionality principle in the Archaic Greece. Ancient Greek culture had since Archaic age continued to have provisions for the proportionality of means. During the Lelantine War, the Greek city states Chalcis and Eretria had agreed on banning arrows and javelins. Also during the Cirraean War between the Amphictyonic League and the city state of Kirrha, two sides had agreed on not to cutoff besieged forces from food or water.<sup>630</sup> The use of bow and arrow were condemned both by Herodotus, Euripides and Plato. And Plato specifically called the Greeks not to burn down each others' houses and not to enslave each other.

The Jewish tradition also includes some provisions to prevent an army to engage in excess in its military response. Talmudic sources express that one cannot kill the pursuer after her or his evil action has come to an end as a form of punishment as well contains the provision that one cannot use force than is absolutely minimally needed.<sup>631</sup>

Aquinas associated the moderate conduct during the battle with the ends of war to be achieved in jus post bellum phase. He urged the decision maker who plan and

---

<sup>629</sup> Van Schaack, Beth,491.

<sup>630</sup> Howard M. Hensel, *The Prism of Just War*, 13-14.

<sup>631</sup> Goldfeder, Mark,634.

conduct the military operations to be peaceful in warring so that they may vanquish the ones that they fight but also bring them the prosperity of peace once the war is over.<sup>632</sup> For him the just warriors should defend themselves with due moderation. He explains that;

If a man, in self-defense, uses more than necessary violence, this will be illicit; whereas if he repel force with moderation his defense will be licit, because according to the jurists it is licit to repel force by force, provided one does not exceed the limits of a blameless defense.<sup>633</sup>

Vitoria explained that punishment should fit the crime. With regard to France he said “it would be intolerable if we were allowed to occupy the whole Kingdom of France because they had plundered a few cattle or burnt a single village.”<sup>634</sup> He regarded wars as activities undertaken only for the common good. He mentioned that if the recovery of one city would bring to the commonwealth a greater damage than the benefit it would provide, then the prince should cede his right and abstain from war.

<sup>635</sup>

A similar approach that takes the greater good of the commonwealth to the center stage was propagated by Suarez as well. He admonished that it would be contrary to reason to inflict a great damage as a response to an injury that is slight. He further said “if one prince begins a war upon another, even with just cause, while exposing his own realm to disproportionate loss and peril, then he will be sinning not only against charity but also against the justice due to his commonwealth. As a common currency among Just War thinkers he gives references to an authority figure and makes an analogy from the medical profession. He explained that “a physician would

---

<sup>632</sup> Howard M. Hensel, *The Prism of Just War*, 58.

<sup>633</sup> *Ibid.*, 58.

<sup>634</sup> *Ibid.*, 52.

<sup>635</sup> *Ibid.*, 52.

sin against the justice required by his profession if he should give medicine which would heal a present disease but would cause more serious diseases to ensue.”<sup>636</sup>

Michael Walzer defines the principle of proportionality as a matter of adjusting means to ends. But he also recognizes the difficulty in such entanglement by referring to the philosopher Yehuda Melzer that there is an overwhelming tendency in wartime to adjust ends to means instead, to redefine one’s goals in order to make them fit to the available military capabilities.<sup>637</sup>

Given the explanations of various Just War thinkers, proportionality of means in Just War tradition might be defined as a principle referring to an acceptable conduct in which military operations and tactics used during these operations are proportionate to the objectives that are aimed by these operations. Here the key is the limit imposed on the use of violence. According to this principle the amount of force applied and the harm inflicted should not be excessive.<sup>638</sup> The executioners of military force should weigh whether the number of who will be saved, will be more than the number of lives lost and the human rights that they preserve are greater than the human rights that will be sacrificed.<sup>639</sup> Also the element of necessity is involved in the principle of proportionality. Necessity is understood to resort to use of force rather than non-forcible methods. Here it is employed to assess if the force used was necessary to achieve legitimate ends of self-defense. Hence means can only be regarded as proportionate if they are deemed necessary to achieve legitimate ends.<sup>640</sup> However to determine self-defense one is obliged to determine what constitutes an attack so the state that is attacked can use its right for self-defense. But the problem with this principle is that the scale of force that constitutes an attack is not clear. UN

---

<sup>636</sup> Ibid.,53.

<sup>637</sup> Walzer, Michael, *Just and Unjust Wars*,120.

<sup>638</sup> Forge,John,“Proportionality, Just War Theory and Weapons Innovation” in *Science and Engineering Ethics*, Vol.15, Issue 1(2009),26.

<sup>639</sup> Poe, Danielle, 35.

<sup>640</sup> Kretzmer, David, 239.

Charter article 51 outlaws the “armed attack” but what constitutes an armed attack that requires a self-defense is not defined. Likewise, the article 2 of the Charter includes the provision that “threat or the use of force” without clearly defining specifically what constitutes these acts. Therefore, it is not easy to determine the proportionality without knowing in the first place if the act of the belligerent constitutes an act that grants one the right to use self-defense. There are many cases which are termed by the UN Security Council not as acts of armed attacks but as “border incidents”. For instance for the Ethiopia-Eritrea case it was decided that “localized border encounters between small infantry units, *even these involving the loss of life*<sup>641</sup> do not constitute an armed attack for purposes of the Charter.”<sup>642</sup>

Therefore, the proportionality of means is one of the most delicate principles in Just War theory. Even though the name of this principle; proportionality sounds like a mathematical concept, it has nothing to do with mathematics or concrete calculations. There is a serious difficulty in evaluating and comparing factors in the battlefield that are not quantifiable.<sup>643</sup> The force that would be employed must be judged both against the legitimate ends and the attack against which it is responding.<sup>644</sup> There is also the problem of involvement in deciding the proportionate response. The states that are engaged in conflict and themselves are attacked are more likely to apply loose standards when it comes to their own responses to those attacks whereas the non-involved states are more prone to put more stringent demands on the issue of proportionate response.<sup>645</sup> The main problem regarding the principle of proportionality seems to be the subjectivity that each and every state has corresponding to her interests. This is amply demonstrated by the states which label

---

<sup>641</sup> My emphasis

<sup>642</sup> Ibid.,242.

<sup>643</sup> Ibid.,236-237.

<sup>644</sup> Ibid.,237.

<sup>645</sup> Ibid.,238.

the military assaults of the states that they are in good terms as proportionate and the attack of the ones which they have acrimonious relations as disproportionate.

Given the ambiguity of proportionality principle, the perspective taken by James Turner Johnson seems more plausible to uphold this principle in battlefield. James Turner Johnson regards the principle of proportionality not as opposing force with similar force and no more but as a comparison between the destruction caused and the good produced. For him the proper measure of proportionality in Just War tradition is not more versus less force but harm done against good done. For him the size of a particular weapon; its gross destructive power implies nothing by itself regarding proportionality of its use. As he explains; “judgement hinges instead on the nature of the target, the likely *collateral damage*<sup>646</sup> and the way the weapon in question is actually used.”<sup>647</sup> He continues to explain that one of the bombs used during the campaign against Saddam Hussein was 4300 pound bunker buster with an immense destructive power. Yet this weapon equipped with a delayed fuse penetrated into its targets and minimized the *collateral damage*. On the other hand, in 1994 during the Rwanda genocide 800.000 Tutsi and “mixed blood” Rwandans were killed by an allegedly proportionate cold weapons; machetes and clubs.

Finally, the net benefit principle of *jus in bello* is defined by David Kretzmer as a narrow proportionality test in which the onus was on deciding if the harm caused by the necessary means outweighs the expected benefits.<sup>648</sup> This cold-blooded calculation of necessity has its roots in the Greek and Roman periods in the Just War tradition. The Greek word *ananke* which literally means necessity is used by the ancient Greeks during the battles to forgo the limitations imposed by the accepted humane conducts during the battles between the Greeks. A classical example of net

---

<sup>646</sup> My emphasis

<sup>647</sup> Johnson, James Turner, *Ethics and the Use of Force*,28.

<sup>648</sup> Kretzmer, David,240.

benefit calculation based on necessity from the Roman period is the attack of the Roman army under the command of the Scipio the Younger's to New Carthage in 209 BCe. The Roman General who was known with his benign treatment of enemy soldiers during the battles slaughtered the city's civilian population when the remaining troops retreated in to citadel for a last defense. Scipio realized that a protracted battle would be too risky since the Carthaginian armies were in ten-day distance, he ordered his soldiers to exterminate every form of life to demonstrate to the soldiers inside the citadel that resistance to the Roman forces was futile.<sup>649</sup>

### 2.3 DISCRIMINATION

One of the most important principles especially to determine women's position during the actual combat is the principle of discrimination. This part will study the historical roots of this principle with reference to Judaic teachings, Ancient Greek sources and the writings of the Just War thinkers. This section will also include the brief definition of how the discrimination principle was reflected in the legal texts dealing with the limitation of war.

Principle of discrimination is one of the most important principles in the *jus in bello* part of the Just War theory to ensure the purity of arms. Unfortunately, there is substantial evidence that civilian casualties in recent wars are on the rise despite the existence of modern and precise weapons. This attests to the fact that principle of discrimination does not operate well in practice in the battlefield.<sup>650</sup>

The principle of discrimination is composed of two sub-categories. The modern principle of distinction presupposes the belligerents to make distinction between the combatants and civilians. The remaining category of the principle of discrimination

---

<sup>649</sup> Howard M. Hensel, *The Prism of Just War*, 15.

<sup>650</sup> Sjoberg, Laura, 53.

requires the belligerents to distinguish between the civilian and military objectives and directing their assaults only to the combatants and military objectives.<sup>651</sup>

Discrimination of women and children during the war is one of the main pillars of the just war thinking. Both classical and modern day theorists as well as military strategists propagated the protection of women and children from the perils of war. In the book of Deuteronomy, it is possible to see the origins of protection provided for women in and after the war. For the non-Canaanite cities, it says all the males to be put to the sword but “if among the captives is a beautiful woman whom you desire and marry” it is appropriate to do it with the understanding that “if you are not satisfied with her, you shall let her go free and not sell her for money”.<sup>652</sup>

However, one should realize that protection of women in the Just War tradition is not unconditional and it is connected with one’s obedience to the traditionally accepted sexual norms and avoidance of the sexual promiscuity. This point is quite clear in Luther’s writings;

In a war of this sort it is both Christian and an act of love to kill the enemy without hesitation, to plunder and burn and injure him by every method of warfare until he is conquered, *except that one must beware of sin and not violate wives and virgins*<sup>653, 654</sup>

It is clear in this text from Luther that his compassion doesn’t include the women who are not virgins and who are not married. Therefore, one should always remember that, even though there are provisions in this tradition for the protection of non-combatants, they are not absolute and unconditional.

---

<sup>651</sup> Helen M., Kinsella, *Image Before the Weapon*, 2-3.

<sup>652</sup> *Ibid.*, 31.

<sup>653</sup> My emphasis

<sup>654</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 268.

Also there are some preconditions like belonging to a certain group of people in order to benefit from the principle of discrimination in the Just War tradition. Some Just War theorists clearly make an outright distinction between the Christian and the non-Christians. The protection, however limited, provided to the women and children in Christian faith were not to include the non-Christian women and children. As Vitoria put it;

That one may lawfully enslave the innocent under just the same conditions as one may plunder them...It is not to be doubted that we may lawfully enslave *the women and children of the Saracens*.<sup>655</sup> But since it seems to be accepted in the law of nations that Christians cannot enslave one another, it is not lawful to enslave fellow Christians, at any rate during the course of the war.<sup>656</sup>

Early Greek texts have also such kinds of distinctions. The Greek politician Diodotus, during his speech to the Athenians regarding the fate of the Mytilens who had revolted against Athenian rule, made a clear distinction between the guilty and the innocent and urged the Athenians to make a distinction between “who had nothing to do with the revolt, and who as soon as they got arms, of their own motion surrendered the city”.<sup>657</sup> Plato, in a similar fashion makes a distinction between the Greeks and the Barbarians and explained that the wars between the Greeks should be conducted in a much more benign manner compared to the wars against Barbarians. In these wars Greeks should not ravage lands, tear down houses, regard every man, woman and children as enemy and refrain from imposing penalty to the blameless ones who are suffering.<sup>658</sup>

Just War tradition does not only list the people to be protected but also proposes certain periods of the year to be regarded as breaks for fighting. The medieval

---

<sup>655</sup> My emphasis

<sup>656</sup> Ibid.,327.

<sup>657</sup> Ibid.,11.

<sup>658</sup> Ibid.,28.

Christian concepts of the Peace and Truce of God are good examples for this protection. As a response to the endemic violence of the period in Europe, the Truce of God movement had brought cession of violence on certain days of the week, during the religious festivals and other important days in the holy calendar. It also reaffirmed the list of persons who should be protected in times of war and it included *women*, travelers, merchants, farmers, shepherds and in some cases livestock.<sup>659</sup> However, as the Truce of God in 1027 demonstrates, the periodical cessations of hostilities usually were accompanied by additional provisions bringing forth protection to the women and their companions. The Truce of God proclaimed in the diocese of Elne in 1027 included a provision saying that a man accompanied by a woman cannot be attacked.<sup>660</sup>

Gratian regarded the women, pilgrims, unarmed poor and clerics as people who should be exempt from violence. Even though what he meant by exempt from violence is an exemption from fighting, it also follows that the ones who should not be employed to fight must also be exempt from being inflicted harm.<sup>661</sup> But his authenticity should be mentioned here regarding the principle of discrimination. He had adopted a strictly functionalist approach to the issue of discrimination. He described women, children, the aged, farmers, merchants and the clergy as the innocent *as long as* they don't take part in the fighting.<sup>662</sup> However it should be mentioned that Gratian is not the only thinker to adopt this functionalist approach. Even though his work was not canonized and integrated in to the Just War tradition, later such functionalist approach was also adopted by Locke who defined combatants and non-combatants with reference to the degree which they participate in the war effort.<sup>663</sup>

---

<sup>659</sup> Whetham, David, *Moral Victories*, 40.

<sup>660</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 95.

<sup>661</sup> Corey, David D. and Charles, J. Darley, *Just War Tradition*, 73.

<sup>662</sup> Howard M. Hensel, *The Prism of Just War*, 95.

<sup>663</sup> *Ibid.*, 97.

Even though there are very few passages in Martin Luther's writings on Just War regarding the jus in bello restrictions, he still states that women and maidens should not be violated and once the enemy is defeated and surrounded the ones who submitted should be shown mercy.<sup>664</sup>

Suarez by reference to natural law made a description of civilians. For him it was implicit in the natural law that the innocent are women, children and the people who are unable to bear arms.<sup>665</sup> This, of course, is no surprise given the tendency in natural law to define categories based on pre-determined and fixed assumptions rather than on performances.

Vitoria categorically listed women and children among the innocent. He stated that one should not draw sword against the ones who had not drawn swords to them. He associated the principle of discrimination with the natural law and claimed that it stems from the principles of natural law that one should not kill the innocent.<sup>666</sup>

Vattel defined women, children and the aged as the people who are immune from hostilities because he described them as people who cannot be soldiers. But regarding women he said if women would like to be spared and be regarded as non-combatants they should employ themselves in the "occupation of their sex and not play the men in taking arms".<sup>667</sup>

Hugo Grotius' understanding of non-combatant immunity stems from the Christian notion of charity in which unlike the modern understanding elaborated by Walzer that to be exempt from violence is a right for the non-combatants, the exemption from the

---

<sup>664</sup> Corey, David D,321-322.

<sup>665</sup> Helen M.,Kinsella:*Image Before the Weapon*,69.

<sup>666</sup> Howard M. Hensel, *The Prism of Just War*, 57.

<sup>667</sup> *Ibid.*,102.

violence of war is an exemption in a given context in which the harm to the enemy is the norm.<sup>668</sup> Hence for Grotius such exemption from violence was not a right but a mercy shown by the victors.

The modern understanding of the principle of discrimination is developed during the 19<sup>th</sup> century. It is possible to see the impact of this developing field in the American Civil War. Union Army General William Sherman, who served during the American Civil War and finally succeeded General Ulysses S. Grant as the commander of the Western Theater during the Civil War, put the rule of discrimination with the following words; “God will judge.... whether it be more humane to fight with a town full of women and children at our back or to remove them in time to places of safety among their own friends and people”.<sup>669</sup>

It was articulated explicitly at the preamble of the 1868 St. Petersburg Declaration which read “the only legitimate object which states should endeavor to accomplish during war is to weaken the military forces of the enemy”. Later in the article 22 of the 1899 and 1907 Hague regulations stipulated that the right of each belligerent to injure their enemies is not unlimited. Excessive harm to and unnecessary suffering of the combatants or the civilians were prohibited and concluded that the civilians should not be regarded as enemies. Four Geneva Conventions of 1949 and the two additional protocols annexed in 1977 basically formed the corpus for the protection of the civilians in military conflicts in the 20<sup>th</sup> century.<sup>670</sup> Article 3 of the Geneva Conventions state that the civilians are entitled to unconditional protection from being the object of attack. Article 48 of the additional protocols included the basic rule, known as the principle of distinction in which “in order to ensure respect for and

---

<sup>668</sup> Johnson,324.

<sup>669</sup> Walzer, Michael, *Just and Unjust Wars*,33.

<sup>670</sup> Helen M.,Kinsella:*Image Before the Weapon*,11.

protection of the civilian population and civilian objects, the parties to the conflict shall at all times distinguish between the civilian population and combatants and between the civilian objectives and military objectives and accordingly shall direct their operations only against military objectives.”<sup>671</sup>

However, it is important to conclude this section by mentioning the difference of understanding by the traditional and secular Just War thinkers. The critical distinction between the traditional and the secular understanding of the principle of discrimination is keenly connected with the Christian understanding of virtue during the war and the modern understanding of rights provided by the law. For the classical Just War tradition, the Christian understanding of virtue in the battlefield which is to spare someone’s life lies beneath the principle of discrimination. Such understanding presupposes that the choice lies in the hands of the just warriors to spare the lives of the non-combatants. However, as Michael Walzer puts it, the modern understanding of the principle of discrimination does not associate the sparing of the lives of non-combatants with the merciful action of the soldiers. Being spared is a right of civilians and the recognition of this right is the hallmark of the “civility” of a state.<sup>672</sup> Ramsey’s approach which is mainly based on Christian teachings is quite different than Walzer’s in which discrimination is a direct consequence of the Christian concept of *agape*; the neighborly love. As one is obliged to come to the defense of one’s neighbor, one is also responsible for not to harm any of her or his neighbors as long as that neighbor has nothing to do with the introduction of evil in question to the world.<sup>673</sup>

---

<sup>671</sup> Turner, Jacob, “Towards a Synthesis Between Islamic and Western Jus in Bello”, in *Journal of Transnational Law and Policy*, January (2012),168.

<sup>672</sup> Helen M.,Kinsella:*Image Before the Weapon*,14-15.

<sup>673</sup> Johnson, James Turner, *Ethics and the Use of Force*, 21.

## 2.4 THE CONCEPT OF HONOR AND THE RIGHT CONDUCT

The part dealing with the feminist critique of *jus in bello* principles will start from this section of my study and analyze the ill effects of ostensibly beneficial principles for women. The principle of right conduct and its connection with the concept of honor, the problems of relying on supposedly just warriors for women and the problematic gender roles imposed on women through the principle of discrimination will be discussed in subsequent sections.

This part is going to focus on one of the most problematic sides of right conduct; the concept of honor which is readily granted to men but denied to women by this tradition. Here it will also be studied how the bodies of women are turned in to battle zones where a fight for man's honor take place. This section will also try to provide a fresh outlook on the concept of honor and how it can be transformed to reflect more egalitarian ethos.

One of the most salient examples of patriarchal norms in Just War tradition in the *Jus in Bello* level is the principle of right conduct in which predominantly male soldiers are expected to act in line with the notion of honor. One of the foundational stones of Just War tradition; the Ancient Greek tradition is full of heroic stories that stress the importance of honor for the soldiers. The Sophocles' Ajax kills himself because he felt dishonored due to the presentation of Achilles' armor after he got killed, not to himself but to Odysseus and his consequent madness stemming from such shame. Likewise in Homer's *Iliad* Achilles withdraws his army of Myrmidons because of the dishonor cast by the King Agamemnon by his capture of Briseis; Achilles' war prize.<sup>674</sup> As William Allan puts not only revenge and violence were associated with manliness in Ancient Greek culture but also the tragic characters acted in a moral

---

<sup>674</sup> Shuffelton, Amy, "Consider Your Man Card Reissued: Masculine Honor and Gun Violence", in *Educational Theory*, Vol. 65, Issue 4(2015),394-395.

universe marked by pursuit of honor and justice often by means of self-help. Failure to take one's revenge was seen as diminishing one's honor and regarded as unmanly.<sup>675</sup> The notion of honor is so entrenched in to the Ancient Greek thinking that even the laws of Archaic Athens dealing with the resolution of the issue of revenge through courts rather than personal actions still kept the restitution of one's honor as one of the justified motives for pursuing revenge instead of the basic desire to punish the initial wrong.<sup>676</sup>

However, the problem associated with the concept of honor adopted by the Just War tradition is its blindness to the submission of women, especially given its extreme sensitivity to the independence of man. As the story of Regulus demonstrates an honorable man is expected by this tradition to keep his promises but even more important than this is, he is expected to preserve his freedom even if it costs him his life. William Shakespeare's *Julius Cesare* is a perfect example to understand this expectation from the honorable warrior, given the suicide of the two main military protagonists in the play; Cassius and Brutus when they understood that they were defeated by the forces of Octavius and Antonius. This clearly shows the hypocrisy inherent in this tradition when women are involved, given the fact that Just War tradition doesn't care about the status of women, which is nothing but submission to the man's will in most of the cases in patriarchal societies, and doesn't do enough especially in the jus post bellum phase of the conflicts to set her free from such submission which is regarded as anathema when men are involved. However, when it comes to man it asks from the honorable men to sacrifice his life rather than suffering such submission but for women submission seems like the natural state of affairs.

---

<sup>675</sup> Allan, William, "The Ethics of Retaliatory Violence in Athenian Tragedy", in *Mnemosyne*, Vol. 66 (2013), 595-596.

<sup>676</sup> *Ibid.*, 598.

Given such importance to the notion of honor and freedom for man, it is no coincidence that Cicero praises the “honorable” act of Regulus who had chosen to go back to his bondage in Carthage after freed to convey Carthage’s terms to the Roman Senate. Also Augustine’s rebuke for Rome for breaking the peace treaty that they have concluded with the Samnites is a reflection of the Just War tradition’s emphasis on honor. Augustine here criticizes the Romans because they dishonor their promise by braking it.

The concept of honor is aristocratic in nature and associated with highly hierarchical social structures.<sup>677</sup> It reflects the social and institutional roles in its traditional definitions like the ones adopted by the Just War tradition. However, the concept of honor doesn’t have to be confined to such misogynist definitions. It can also be re-defined, as done by Kwame Anthony Appiah, as a relational phenomenon. Granting honor to someone means being entitled to respect from others, so it is indeed a phenomenon that is relational.<sup>678</sup> Indeed, the very opposite of honor; the dishonor demonstrates the relational character of the phenomenon in which self-perception depends on how one appears to and how one’s appearance is reflected by others.<sup>679</sup> Appiah differentiates between two types of honor. One is accorded to persons based on their demonstration of excellence in some field deemed worthwhile. This type of honor, as ranking people against one another is inevitably competitive and hierarchical.<sup>680</sup> The type of honor usually adopted by the Just War tradition falls in to this category. For instance, the behavior of Regulus for keeping his promise allegedly makes him a *better* man compared to his compatriots, likewise the failure of the

---

<sup>677</sup> Shuffelton, Amy,390.

<sup>678</sup> The history of foot binding in China is a good example to demonstrate the relational character of honor. One of the most shameful practices in China against women; the foot binding in which women were forced to wear tight binding shoes to hamper the natural growth of their foot because tiny feet were regarded as the standard of beauty for women, was tried to be abolished many times by the chinese authorities. But the practice was only managed to be abolished when it became apparent that Europeans regard Chinese as uncivilized because of the prevalence of this practice.

<sup>679</sup> Ibid.,392.

<sup>680</sup> Ibid.,391.

Romans to keep their promises against the Samnites make them *worse* man in comparison with the ones who keep their promises. The just warriors who submit to the code of honor in the battlefield make them better soldiers compared to the unjust ones. However, as Appiah explains by the second understanding of honor, the concept of honor can be re-framed in a much more egalitarian way. The other type of honor accords respect equitably on the grounds that a person meets certain standards of behavior that are expected of anyone who finds her or himself in such a situation. This type of honor is closely associated with the concept of dignity which implies a self whose claim to respect exists regardless of its social relationships.<sup>681</sup> If it is not possible to dissociate honor from the *jus in bello* principles and if it still will linger as a tool for injecting dignity to the soldiers and preventing them from inflicting any harm to non-combatants, at least this concept should be transformed to reflect a more egalitarian character described at the second point above. But it should be mentioned here that in some situations honor can very well serve as a motor of change. Shame can play a vital role in this transformation. As described by Bernard Williams, as the emotional counterpart of dishonor, shame is experienced when one's ideals that are recognized by the community that gives significance to those ideals are ruptured from the self.<sup>682</sup> The social character of the phenomenon of honor is apparent here. Since someone who perceives him or herself in line with honor reflects the ideals put forwards by the community he or she lives, then those ideals formed in that society gains the utmost importance for the transformation of what honor is and how it is perceived by the agent. There is no need to say that the norms and ideals of the patriarchal societies that downgrade women and objectify them should change in order to accommodate more egalitarian ideals in terms of both sex and gender relations.

---

<sup>681</sup> *Ibid.*,391.

<sup>682</sup> *Ibid.*,393.

The concept of honor is not a gender neutral term but reflects the male dominance over the women. In patriarchal societies women are regarded as a depersonalized symbol; the embodiment of man's honor.<sup>683</sup> The qualities attributed to women in association with their honor is fidelity to their husband, virginity and chastity.<sup>684</sup> All these qualities came to create a definition of honor for women which is dependent on the judgement of man about women's behavior. The use of rape as a military instrument during war is a reflection of the association of the notion of honor with patriarchal norms in which the rape of women is deliberately devised as a way not to humiliate women but man who are supposed to be dishonored by the violation of "their women" and loss of their honor.<sup>685</sup> As Kellezi and Reicher explained it in the Kosovo context, which is portrayed as a society based on an ardent patriarchal code, the sexual violations of women are always regarded as a dishonor for the family, as one of the Kosovar respondents in their study said "If a female is dishonored then the family and the house are dishonored". Such a situation is regarded in such patriarchal societies as the failure of the family's male members to instill the appropriate values or to protect the women.<sup>686</sup> This point is quite apparent by the reactions of the male members of the patriarchal families who usually lash out to the women themselves when such "dishonoring" incidents have taken place. Such perception is implicitly demonstrated by the writings of Grotius. He regards the rape of women as an injury to a person. However, in his writings to whom this injury is done is not clear. Since he had regarded women as a subordinate to men, it is very well possible that such injury might be an offense to the husband or the family of the women who was raped.<sup>687</sup>

---

<sup>683</sup> A.Saucier,Donald, L.Strain,Megan,M.Hockett Jericho and L.McManus,Jessica,"Stereotypic Beliefs About Masculine Honor Are Associated with Perceptions of Rape and Women Who Have Been Raped", *Social Psychology*,Vol.46, Issue 4(2015),229.

<sup>684</sup> Shuffelton, Amy,401.

<sup>685</sup> A.Saucier,Donald, L.Strain,Megan,M.Hockett Jericho and L.McManus,Jessica 229.

<sup>686</sup> Kellezi, Blerina and Reicher, Stephen, "The Double Insult: Explaining Gender Differences in the Psychological Consequences of War", *Peace and Conflict: Journal of Peace Psychology*, Vol.20, No 4(2014),496.

<sup>687</sup> Helen M.,Kinsella, *Image Before the Weapon*,73-74.

The tragedy for women is that they are the targets both of the enemy soldiers and their male relatives who are allegedly there to protect them. It is telling to mention in this context that rape as an instrument for dishonoring man is not only being used against women but it has recently been started to be used against man as well. The underlying purpose of employing such horrible practice also to the man is to dishonor him through reducing his status to a "mere woman".<sup>688</sup> The understanding of honor held by man in patriarchal societies lead them to believe that aggression is appropriate, justifiable and necessary in response to provocation and insult from other man and in defense of oneself and one's family.<sup>689</sup> As Sjoberg and Peet explains;

Victimized women are the territory being fought over and wartime rape is an attack on the property and pride of male/masculine enemies. Civilian victimization is the assertion of one's belligerent's (masculine) virility and dominance and the revealing of another's (feminized) inadequacy, often inscribed on women's bodies...belligerents who attack civilians are actually attacking women specifically, not directly as women but as symbolic centers of state, nation and the war effort of their enemies.<sup>690</sup>

Since women are regarded as the bearers of national values and cultures and critical for national reproduction their bodies often become the second fronts in conflicts. Given that they are regarded by the enemies as the properties of their male belligerents, their bodies become territories to be seized and conquered.<sup>691</sup> Moreover the gendered based nationalist discourse also portray rape against enemy women not as a singular act committed against a single women but also committed to the entire enemy collective through "planting an enemy seed on the enemy soil".<sup>692</sup> Here the enemy through rape both aims at exerting violence on women and emasculating her

---

<sup>688</sup> Cynthia H., Enloe, *Militarizing Women's Lives*,110.

<sup>689</sup> A.Saucier,Donald, L.Strain,Megan,M.Hockett Jericho and L.McManus,Jessica,230.

<sup>690</sup> Sjober,Laura and Peet,Jessica,"Targetin Women in Wars", *International Feminist Journal of Politics*, Vol. 13, Issue 2(2011),166.

<sup>691</sup> Sjober,Laura and Peet,Jessica,169.

<sup>692</sup> *Ibid.*,170.

male significant others in so far as they are regarded as the gendered protectors of “their” women.<sup>693</sup> Moreover the bodies of the women who were raped by the enemy considered in many patriarchal cultures as belonging to the enemy, not to the community any more.<sup>694</sup> Here it is worth mentioning the Radical Feminist criticism of the notion of patriarchy that it especially permeates in to the women sexuality by overseeing and manipulating it to suit man’s interests. The construction of women and the protection of their bodies as just causes for just wars, association of the same bodies with the frontiers of the nation and the defining women as the transmitters of national culture to the coming generations are clear examples that patriarchy constructs a certain understanding of women to further the goals adopted by man. The Yugoslavian case is a clear example of political exploitation of women’s suffering. During the war, local governments consciously adopted a strategy of emphasizing the victimization of the Serbian women in order to strengthen the gendered narratives of “their endangered nations” and their territories without paying any attention on how such public visibility of the women victims would affect the psyche of the victims.<sup>695</sup> They were additionally victimized by the abandonment of their families, by inappropriate identity protection during when their stories are depicted in the media and when they testify before the courts.<sup>696</sup> It should be mentioned that rape has increasingly been employed in modern wars as weapon against man as well. However when it comes to man, their portrayal as rape victims are carefully concealed in order not to subvert the male identity of just warriors who defend the nation.<sup>697</sup> Hence as such examples illustrate, unfortunately, women continues to suffer from rape,

---

<sup>693</sup> B. Bergoffen, Debra, “The Just War Tradition: Translating the Ethics of Human Dignity into Political Practices”, *Hypatia*, Vol. 23/2(2008), 82.

<sup>694</sup> There is no question that the enormous problem of women’s bodies supposedly belonging to their communities should be dealt with before turning our attention to the situation of rape in which the body of the rape victim allegedly started to be owned by the rapist. However for the scope of this study I will neither have the time nor the space to deal with issue of belongingness of the female bodies to their communities.

<sup>695</sup> Korac, Maja, “Is there a right time for gender just peace? Feminist anti-war organizing revisite”, in *Gender and Education*, Issue 3(2016), 434.

<sup>696</sup> *Ibid.*, 437.

<sup>697</sup> *Ibid.*, 436.

mistreatment and violence during the wars and as a reflection of the Just War tradition's gender constructions, such as innocent souls waiting for protection, their sorrows and pains are exploited to the full extend for the purposes of publicity and propaganda.<sup>698</sup>

## 2.5 THE JUST WARRIORS

This section is going to deal with the problem posed by association of the activity of fighting only with man and the persistence of the gender roles that ascribe the just warrior role to man.

The patriarchal values infused on women that they are physically weak so that they are vulnerable to male predation is also reinforcing the image of just warriors propagated by the Just War tradition. The women, portrayed as physically weak, advised to find "good" boys and man.<sup>699</sup> The problem here with the Just War tradition is that by promoting the roles of just warrior who would defend the women and children, it is basing its argument on the patriarchal notion of danger. When the patriarchal world itself is defined as a danger, then both man and women are expected to react to this danger in line with their conventional gender roles which are presented as opposite but complementary. In such a world a real man would be the protector who would repress his own fears and leap forward to protect women and children. Whereas, in the same "dangerous" world women would wait in gratitude for the protection of their husbands or fathers.<sup>700</sup> This is in complete congruence with the image of the just warriors who are there to protect women from the horrible perils of war such as sexual assault and rape.

---

<sup>698</sup> Stone, *Feminist Felseye Giriş*,27.

<sup>699</sup> Weitz,Rose,166.

<sup>700</sup> Enloe, Cynthia, *Askeri Üsler*,42.

Moreover, the persistent image of the just warrior and its association with man in this tradition also demonstrates a deeper phenomenon in the man's psyches. Given the fact that gender roles are social constructs that need to be constantly reinforced, most man as well as women feel the need to be reminded their roles in the society. One of these roles is the "manly man" role associated with aggressive and tough behavior and such roles are dependent on women thinking of men as such.<sup>701</sup> In that sense the just warrior and the innocent concepts are quite instrumental for men to think themselves of "manly man" and women to accept them as such. Hence these concepts serve well to reinforce the social gender roles. One perfect example for this from literature is the classical second generation novel<sup>702</sup>, *Portnoy's Complaint* by Philip Roth. The American Jewish male protagonist in the novel who is demonstrating high sexual lust throughout the novel, immediately finds himself as impotent when he tried to have sex with an Israeli women soldier. It is clear that how military is instrumentalized to create the image of the manly man and man's domination over women and when the roles are reversed the psychological and physical effects unravel, as demonstrated in this illusory case in the novel, that render the nature of this constructed relationship between man and women.

The masculine image of the just warrior is also accompanied by the masculine language adopted by the Just War tradition. For instance, in one of the foundational texts; first additional protocol to the Geneva Convention, that defines who is a combatant a clear masculine language is adopted. Article 44 (3) of the First Additional Protocol reads;

There are situations in armed conflicts where owing to the nature of the hostilities an armed combatant cannot so distinguish *himself*<sup>703</sup>...such a party shall retain *his* status as a combatant

---

<sup>701</sup> Cynthia H., Enloe, *Militarizing Women's Lives*,36.

<sup>702</sup> Second generation literature is coined to denote the experiences of the people who are the children of Holocaust survivors.

<sup>703</sup> Italics in the quotation are my emphasis

provided that, in such situations, *he* carries *his* arms openly: (a) during each military engagement and (b) during such time as *he* is visible to the adversary while *he* is engaged in a military deployment preceding the launching of an attack in which *he* is to participate.<sup>704</sup>

In a similar fashion Augustine describes why and when the just warriors should take up arms with the following words;

The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like; and it is generally to punish these things, when force is required to inflict the punishment, that, in obedience to God or some lawful authority, good *men* undertake wars.<sup>705</sup>

Christine de Pizan is more explicit in her definition of the combatant who should be shown benign treatment in case of defeat. As she explains;

But according to written law the captor should act so that in exacting ransom, which is permitted according to military custom, especially when one nation is fighting against another, as French against English and others likewise, care should be taken that the ransom is not so excessive that the man is ruined by it, *his wife* and children destroyed and reduced to poverty.<sup>706</sup>

Luther's explanation in the part he was dealing with the permissibility of waging war for a person holding Christian faith in his *Whether Soldiers, Too, Can be Saved* leaves no doubt that it is the man who is the combatant and it is the women who should be saved. As he explains;

When I think of a soldier fulfilling *his* office by punishing the wicked, killing the wicked and creating so much misery, it seems an un-Christian work completely contrary to Christian love. But

---

<sup>704</sup> Turner, Jacob,169.

<sup>705</sup> Augustine, "Contra Faustum, Book XXII,74, <http://www.newadvent.org/fathers/140622.htm>.  
November, 20, 2016

<sup>706</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,221.

when I think of how it protects the good and keeps and preserves *wife*<sup>707</sup> and child, house and farm, property and honor and peace, the I see how precious and godly this work is.<sup>708</sup>

Vitoria when explaining that an all-out war which makes no difference between combatants and the non-combatants should not be carried out by the just warriors quotes *Deuteronomy* that demonstrates the association of manhood with the soldiering. As he quoted “What Lords seems to have meant was that in reality all the *adult men* in an enemy city are to be thought of as enemies, since the innocent cannot be distinguished from the guilty.”<sup>709</sup>

The personal pronoun in the English language used to describe the male sex is adopted both by Augustine, Pizan, Luther, Vitoria and also in the Additional Protocol of the Geneva Conventions dealing with the definition of the combatants. This is a clear reflection of the image of combatant; a man not a woman in the minds of the people who had drafted the text of the convention. The problem regarding the customary international law is that it is formulated as a result of the state behavior, even though today conflicts do not necessarily take place between two states.<sup>710</sup> Given the masculine and the patriarchal structure of states, such masculine language is not a surprise.

## 2.6 THE PRINCIPLE OF DISCRIMINATION AND GENDER ROLES

This part of my thesis will examine the shortcomings of the principle of discrimination and the way it only pays a lip service to actual protection of women. The underlying patriarchal logic of the principle of discrimination and its perception

---

<sup>707</sup> My emphasis

<sup>708</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*, 270.

<sup>709</sup> *Ibid.*, 326.

<sup>710</sup> Sjober, Laura and Peet, Jessica, 174.

of women as a possession will be discussed in this part of my study. The way women were objectified and denied agency, which is readily granted to man, by this principle will also be analyzed in this part.

Generally speaking, the *Jus in bello* principle of discrimination is not an easy one to uphold especially during modern combat. During the Second World War around 19 million combatant deaths were recorded compared to 17 million civilian deaths. Likewise, during the Vietnam War 2 million civilians got killed compared to 1.2 million Vietcong guerillas and North Vietnamese soldiers. Hence civilian casualties in combat are at least as high if not higher than the combatant deaths in many wars.<sup>711</sup> And it should be mentioned that Just War tradition, as a tradition favoring state centrism, had already armed the states with an intellectual tool; namely the principle of double effect, to white wash themselves out of such situations. By using such tool, states can always claim that their intended purpose was not to kill the civilians. Moreover, who is a combatant and who is a non-combatant are determined with reference to appearance, situation and belligerent motivation rather than by an objective or easily identifiable standards. Therefore, it should be noted here that definitions of combatant and non-combatant often do not involve the complexities of consent or human interdependence as frequent cases of compulsion involved in the process of enlisting the citizens for the military service. Also the definition of “immunity” itself seems to reflect an illusion in the sense that in modern warfare the destructive capabilities of the armies are so significant that even if some of those armies choose not to target non-combatants directly, their frequent practice of targeting the infrastructure, trade routes and social fabrics would still lead to immense hardships, even eventual death for the non-combatants. The immunity principle only prevents the non-combatants from taking direct participation in the war fighting. The infrastructural damage that limits people’s access to clean water and food supplies,

---

<sup>711</sup> Schott, Robin May,128.

medical care and transportation, loss of family income source, loss of social and educational opportunities and loss of freedoms in which women are mainly effected are never dealt by the Just War tradition as violence exerted to the non-combatants. However, their experiences in and after the war are far from protected. Hence the term “immunity” for the non-combatants seems like an overstatement of their situations.<sup>712</sup> And finally there is the growing trend of guerilla warfare in which one of the belligerents bases its own strategy on the enemy’s inability to distinguish between combatants and non-combatants. This makes the distinction between the combatants and the non-combatants even more difficult for the armies and turning principle of discrimination to a principle very difficult to uphold.<sup>713</sup>

However, when it is managed to be upheld it is obvious that the principle is still based on gender differences that sets women in an unfavorable position. One of the earliest examples of the principle of discrimination is found in Deuteronomy and the Jus in bello principle of discrimination there is also based on a gendered perspective. The parts of the Deuteronomy, quoted above, that elaborates on the protection of civilians mainly deal with the protection of women. However even such heavily gender based protection of civilians is problematic. The image of captured women reflected here is nothing more than a possession, only one degree removed from enslavement. The protection bestowed to the women here only encompassed her life but it endorses her being exploited as war booty. The prerequisite for marriage before such exploitation of women as a pleasure object does not change this fact.<sup>714</sup>

The immunity principle contains the gender assumptions that has been constructed through the patriarchal societies and still serve them through the discourses that they incorporated. As Judith Gardam explains;

---

<sup>712</sup> Sjoberg, 893.

<sup>713</sup> Ibid., 894.

<sup>714</sup> Helen M., Kinsella, *Image Before the Weapon*, 31.

Although in practice noncombat immunity is the rule most relevant to the protection of women, it would be a mistake to assume that the origins of the rule and its theoretical underpinnings are consistent with feminist concerns. Non-combat immunity is a means of containing or limiting violence. Although it can be regarded as based on principles of humanity, in reality it serves the purpose of the patriarchal state by keeping society stable and allowing the fighter to return to the hearth once the battle is finished. Its derivations are all gendered; from the chivalric tradition, based on the patronizing of women, to the canonical doctrine which primarily protected the Church's own to the exclusion of women.<sup>715</sup>

As it was mentioned before, the images of civilians and combatants in war are constructed with reference to gender. As Jean Elshtain elaborated women during the war are presented as beautiful souls who are delicate and in need of protection and man as just warriors and the defenders of just causes.<sup>716</sup> One of the most embarrassing examples of such depiction of women was initiated in the United States during allegedly one of the most just wars in history; the Second World War. Women in the United States told repeatedly that it is important how they colored their lips, browns and skins and how they deodorized, sanitized and adorned their bodies. They were told that "*they need to make themselves into something worth fighting for*". The reward for the ones who complied with such social expectations would be social recognition and even male companionship.<sup>717</sup>

The ideal-typical combatant is always a masculine image of the "just citizen warrior" whereas the ideal typical non-combatant is usually a feminine image who is innocent of whatever cause the enemy proposes for war. The well-known practice of association of women with nature subtly manifests itself here by the issue of innocence. There are thinkers of the Just War tradition, such as Alexander of Philo who explicitly warned the just warriors not to harm the environment during or after

---

<sup>715</sup> Sjoberg, 895.

<sup>716</sup> Sjober, Laura and Peet, Jessica, 166-167.

<sup>717</sup> Melissa A., McEuen, *Making Women*, 2.

the war as well as there is a clear prohibition in Deuteronomy against harming the nature. Some of the modern armies have also adopted such concerns for environment. However, a closer look at their justifications for non-violence to the nature attests the gendered nature of their arguments. Merrit Drucker, a major in the U.S army and a philosophy instructor at the United States Military Academy at West Point, argues that military commanders should protect environment during peace and warfare. She bases her justification on the Just War principle of non-combatant immunity. She expresses that like non-combatants natural entities are inherently valuable and the environment is *free of intention*, can not wage or fight in war and hence should be counted as an innocent non-combatant in human affairs.<sup>718</sup> It is important to note here that women is usually associated with and conceived as nature, nature likewise is ascribed an innocence based on lack of intent which means in “human affairs” the absence of praxis that qualifies it to the same category in war earmarked for women; the non-combatant.

Interestingly in some cases the women’s role, as serving to boost the morale of the male soldiers by their physical appearances, at the home front can be extended to the war front as well. For instance, in Israel, the acronym for the women’s battalion in Hebrew is “Khen” which means “allure”. It is also telling that one of the “official” duties of the women soldiers in Israel is to take care of the “boys” and to boost the morale of the military units.<sup>719</sup>

It is important to remember that in the Just War rhetoric wars are usually conducted in the name of defense or redressing a wrong. Since women and children were presented as the people to be defended, this rhetoric actually employs women in the service of humanizing the enterprise of war by associating this brutal activity, conducted allegedly by just warriors, with the defense of the innocent. As Sjoberg

---

<sup>718</sup> Cuomo, Chris J.,38-39.

<sup>719</sup> Yuval Davis, Nira, *Cinsiyet ve Millet*,189.

explains; “without just warriors and beautiful souls, the hero stories of war would have no protagonists; without protagonists war narratives would not be rhetorically strong enough to produce people willing to fight wars.<sup>720</sup> The propaganda conducted by the belligerents to convince man to fight the battles draw heavily from the Just War construction of gender categories in war.

It is important to note that such innocence goes hand in hand with the absence of praxis on the part of women, it is automatically assumed that women are non-political and hence not responsible for the causes that the enemy claims led to the start of the war. Here the image of the feminine in need of protection is especially important because the alleged honor ascribed to the male just warrior is granted not for his role of aggression but his role of protection. Hence the typology of the just warrior is in dire need for the image of the beautiful soul to exist and to receive the rewards accorded by the society in terms of honor.<sup>721</sup> The feminized other is presented as *sine qua non* of the jus in bello principle of discrimination. As Sjobeg states “she does not fight in the war but she is crucial to the fighting of the war and to war fighting narratives.”<sup>722</sup> She plays an important part for the justification of war. Her agency is irrelevant to the making and fighting of wars but her presence is essential.<sup>723724</sup> In this discourse femininity is linked with helplessness and masculinity with saving women from such helplessness. The beautiful souls are perceived as the bearers of national culture, its reproducer and its transmitters. Even in a society like Israel where there exists compulsory service for women, it is still ascribed to man, not to women, to

---

<sup>720</sup> Sjobeg,903.

<sup>721</sup> Williams, O’Driscoll and F. Lang, *Authority, Tradition and Practice*, 84.

<sup>722</sup> Ibid.,84-85.

<sup>723</sup> Sjobeg,897.

<sup>724</sup> Interesting story demonstrating the persistence of the Just War depictions of beautiful souls and just warriors, is the story of Jessica Lynch. She is an American soldier captured during the American invasion of Iraq in 2003. She was depicted as a beautiful soul in need of help, by the American media, after she was taken as a hostage by the Iraqi army. Despite the fact that she was a soldier, and fired bullets during the battle she was taken as a hostage, she still was represented as the media by a small girl since she was nineteen at the time, in need of just warriors who will save her from the hands of the Iraqis.(Sjobeg,897)

fight in order to protect society and ascribed to women to be the mothers, hence the producers of fighters.<sup>725</sup> The ultimate measure for women is the “bearing and rearing children in the home front”.<sup>726</sup> It should be remembered that just war narratives usually base their arguments on the rights of women and children to be protected from war on their motherhood relationships. The underlying message here is clear and it perpetuates gender dichotomies that men takes lives as soldiers and women give life as mothers.<sup>727</sup>

One of the underlying reasons why man not woman is portrayed as the warrior by the Just War tradition is the fact that the way tool making and tool using are perceived by our monotheistic civilization. Both the production and the usage of tools are heavily gendered in which both of these activities are ascribed only to man never to women. The military profession which entails the use of tools of violence, even though not simple but top notch ones in modern period, is still reflecting this gendered mentality of tool making and tool using. Hence one should not be surprised to see the Just War thinkers portraying only man, not women, as the just warriors justly carrying out their military operations through their modern tools of violence. Moreover, the acceptance of women as civilians is also suffering from essentialism and related with the so called bodily differences between man and women. As the modern Just War theorist Johnson explained mediaeval weapons were heavy and cumbersome and required considerable strength on the part of their bearer and hence the physically weak naturally considered non-combatants.<sup>728</sup> Therefore the distinguishing variable between the combatants and the non-combatants is physical strength in which women are traditionally associated with the lack of it. This point is evident in the writings of Suarez who automatically added women in to the list of non-combatants with people

---

<sup>725</sup> Tami Amanda, Jacoby, *Women in Zones of Conflict*,8

<sup>726</sup> Sjoberg,897.

<sup>727</sup> Ibid.,897.

<sup>728</sup> Helen M.,Kinsella, *Image Before the Weapon*,16.

who are *unable to bear arms*<sup>729</sup> without considering in the first place if woman were or were not able to bear arms. Even the much invoked modern laws; 1949 and 1977 treaties makes a distinction between the civilians and the combatants on the basis of gender which was defined with reference to reproductive capacity and sexual vulnerability.<sup>730</sup> The gender bias in the Just War tradition is better understood especially when one considers the fact that modern weaponry is developing and the technological advancements is transforming weapons from heavy to light and easily bearable ones and conducting of modern warfare is being increasingly less based on the physical strength by the emergence of high tech weapons. From such a perspective it is clear that the construction of civilian and combatant status with reference to physical prowess has nothing to do with objective criteria related with difficulties in employing women in actual combat but is connected with the social construct of gender roles. It is obvious that in order to push a button to launch a missile a specifically male muscle is not required.<sup>731</sup> As Gardam indicates “the social construct of what is to be male in our (American) society is represented by the male warrior, the defender of the security of the state. Those who do not take up arms are equated with female”.<sup>732</sup> It should also be underscored that the criteria of physical strength itself, adopted by the Just War thinkers to elaborate on the combatant and non-combatant status is reflection of power relations in which man has the upper hand. Military profession is not exclusively based on tasks that have to be performed by using physical strength. For instance, there are military situations like going in and out from the circular shaped small holes in submarines and ships that require flexibility rather than physical strength. However since the military training programs are formed by the high ranking male commanders, they favor physical strength over flexibility both in training and combat.<sup>733</sup> Hence both for the Just War thinkers and

---

<sup>729</sup> My emphasis

<sup>730</sup> Ibid.,22.

<sup>731</sup> Davis Yuval, *Nira Cinsiyet ve Millet*,193.

<sup>732</sup> Sjoberg,895.

<sup>733</sup> Ibid.,194.

the military commanders to prioritize physical strength over flexibility and to base their definitions of civilian and combatant on such act of prioritization is indeed to operate from a position of power in which one has the capacity to define and determine the issue according to *his* own will and choices that he sees fit.

However, as the development of lighter and modern weapons demonstrate, even the weakening of the physicality argument for the conduct of warfare doesn't change women's status vis-à-vis her civilian/combatant role in warfare. But equally important for the civilian status of women is their historical exclusion from the military service. The civilian status presupposes immunity from the violence perpetrated by war. However, as the Latin origins of the word *immunis* demonstrates immunity means being exempt from something. Accordingly many of the Just War theorists employed the word *immunis*; the state of being exempt from the military service, for the establishment of the civilian status.<sup>734</sup> Hence women's traditional exemption from the military service has close connections with her status of civilian as the term *immunis* actually reflects the actual exclusion of women from the military profession and the battles.

However, it is important to mention that the principle of discrimination is not only problematic for women but also for man. The principle is based on the simple fact that some people should be held responsible from the wrongdoing of the enemy and some other should be exempt from this culpability.<sup>735</sup> The problem with the Just War tradition is that as a tradition reflecting patriarchal values automatically regards man in military age; in other words man with abled physical bodies as the warriors and held them responsible from the wrongdoings of the enemy regardless of their status in their societies or their participation in to the decision making mechanisms related with the initiation or the conduct of war. In this sense Just War tradition only

---

<sup>734</sup> Ibid.,29.

<sup>735</sup> Sjoberg,54.

envisages a warrior, indeed a just warrior role for the abled bodied man. This means that this tradition turns the “civilian man” into a contradiction in itself since man should be under arms to protect the women; the beautiful souls. A man who is not fighting wars, according to this logic, is devoid of masculinity because good man fight wars to protect women. The ability to fight is presented as an integral part of idealized masculine identity. Hence Just War tradition awards the masculine just warriors with cultural and political privilege over other masculinities and femininities.<sup>736</sup> However the problem is that the civilian men *does* exist, but Just War tradition denies his masculinity and value.

Exclusion of women from the military service and their acceptance as non-combatants by the Just War theorists due to their “physical weakness” are also the reflection of *Western* gender roles. Here the assumption that is taken for granted is that women are by nature physically weak and will not be able to employed in tasks that require physical prowess. As the Sociologists Ann Oakley explains every society has rules about which behavior is appropriate for which sex but such rules vary according to the society in question. For instance, in some African societies women are employed in intensive agricultural jobs due to the assumption that they have the physical prowess required by the job. Man in such societies are only given small scale cleaning and artisanal tasks. Such societies have quite different gender roles than the modern Western societies. Hence the exclusion of women from the military profession with the excuse that they don’t have the physical abilities to accomplish the job is indeed have nothing to do with biological composition of their bodies but is associated with the gender roles attributed to women in modern Western societies.<sup>737</sup> Moreover the assumption that biologically man are more adept to serve in the army because of their aggressiveness and women are not because of their passivity is also connected with the gender roles the society expects from man and women to play.

---

<sup>736</sup> Sjoberg,896.

<sup>737</sup> Stone, *Feminist Felseye Giris*,55.

Kate Millet explains that aggressiveness in man has nothing to do with their biological features but is associated with the encouragement shown on the part of the societies for men to more freely demonstrate their aggressive behaviors. Likewise the alleged passivity of women also has nothing to do with biological features but connected with the social expectations that lead women to repress their aggressiveness and to harm themselves rather than the others.<sup>738</sup>

It is true that it is not only women but also some men are regarded as civilians by the Just War tradition. The involvement in military activity is accepted by the lay people but prohibited for the monks and the clergy.<sup>739</sup> However the difference in terms of excuse for the exclusions for these men here reflects the gender bias in this tradition. Such men are not excluded from military service because of the biological sex that they are born but because of the status that they are holding. Their exemption is not presented with potentially denigrating arguments like physical weakness but put forward by a venerating argument that they are holy people and hence should not be involved in to the corrupting affairs of warfare. Moreover, for men to be a civilian or combatant, in some cases depend on their own choices, some participate in to the wars and others chose to abstain from it. But for the women, this is not a choice, their exclusion from war is the result of structural gender subordination of women in the Just War tradition.<sup>740</sup>

One of the worst results of such gender roles, perpetrated by the Just War rhetoric, is the mourning process involved with the death and the healing process for the wounded after the war. The confinement of women to the home front, out of the public sphere eventually lead to the forgetting of their suffering and the absence of mourning for them. Patriarchal cultures usually prize the actions committed in the

---

<sup>738</sup> Ibid.,56.

<sup>739</sup> Johnson, James Turner, *Ethics and the Use of Force*, 15.

<sup>740</sup> Sjoberg,902.

public sphere for the defense of the commonwealth and associate honor with such actions and dishonor with the domestic spaces. By confining women in to the domestic spaces, Just War tradition plays a part of their stories to be forgotten and their healing process to be obstructed due to the lack of importance given to the suffering taken place out of the public sphere. What Kellezi and Reicher explains for the Kosovo war non-combat man elaborates well the similar situation of women and the importance of public sphere action during the war for patriarchal societies;

She contrasts Kosovar men who were hurt or killed fighting the Serbians with those who were injured or killed in their homes. The former case affirms Kosovar masculine identity as a fighter for the nation, it provides a positive dimension to the experience which offsets physical trauma and family celebrate those involved display their photos, and publicly commemorate those who died. The latter case undermines Kosovar masculine identity, suggesting that the victims avoided their public duty by hiding in the domestic space. At best, victims cannot derive any pride and are unwilling to speak about their experiences. At worst their families, and the community ignore them.<sup>741</sup>

Their study with the survivors of the Kosovo war found out that the people who complied with the gender norm expectations are more willing to talk about their experiences in the war and the ones who had found themselves in situations where they could not adhere to the patriarchal gender norms during the war, shied away from talking about their war time experiences. As Arendt once put it any suffering, if converted in to a story and told to the others, will be healed more easily. This makes a huge difference between the healing process for the women who had been violated during the war and who were ashamed to speak about their experiences and the man who fought during the war and proudly tell their stories after the war is over.<sup>742</sup>

However, it should also be mentioned that after all, the protection promised by the discrimination principle of the Just War theory is not an easy one to realize given the

---

<sup>741</sup> Kellezi, Blerina and Reicher, Stephen, 493.

<sup>742</sup> Ibid., 501.

total nature of the modern warfare which had already been demonstrated by the two world wars in the 20<sup>th</sup> century and the civilian losses involved in those wars.<sup>743</sup> The invention of home front which entails the civilian efforts for the war footing is a clear testimony to this fact. By the introduction of such notion of home front, the civilians have been incorporated in to the active war effort.<sup>744</sup> However, what is certain in the modern combat is the fact that the protection that is promised by the principle of discrimination does not necessarily takes place for women. As mentioned before, the civilian immunity principle is gender based in the sense that it is the reflection of chivalry tradition, religious law and state's interests. Here the "nobility" of war is based on the protection of the innocent; the woman who is supposed to be protected regardless of the actual protection takes place or not. The women are promised protection from war by man who takes credit for doing so but who do not protect them. To portray a collective fighting for their "women" leads the belligerents to exterminate the very people; the women, that the human collective is fighting for in order to attain the absolute victory. Such understanding, let alone protecting women makes them the primary targets in war. It is worth barrowing Carl von Clausewitz's concept of the center of gravity in this context. Clausewitz defines the center of gravity in war as a symbolic key to the will to fight. This center of gravity might be material but its significance doesn't lie in its materiality but in its meaning for the group that is carrying out the fighting. Once the opponent's center of gravity is defined it should be targeted with a decisive force. The belligerents should try to destroy enemy's center of gravity while try to protect their own. The warring parties usually see women as the center of gravity both for themselves and for their enemies. As Sjober and Peet put;

If protecting the feminine is a crucial cause of war, it is also a crucial strategic consideration for belligerent's calculations of their own or their opponent's strengths or weaknesses. If beautiful

---

<sup>743</sup> Sjoberg,122.

<sup>744</sup> Yamaner, Onur, *Savaş ve Kadın*,75

souls motivate fighting because they represent the good worth defending, war would be difficult to justify without them. Destroying beautiful souls could play a role in destroying both the opponent's will to fight and (symbolically and sometimes physically) the nation itself.<sup>745</sup>

Hence to portray women as the beautiful souls to be protected would inevitably lead to their labeling as the center of gravity by the belligerents in whose capture and violation would strike a lethal psychological blow to the other side.

Given such instrumentalization of women it is not a surprise to see war rhetoric that associates the main object of collective defense; the *patrie* with women. The territory of the nations is usually defined as *motherland*. The conquered territory is usually feminized and eroticized as the passive object of male love and sacrifice. Nationalism usually equate the loss or violation of territory with the rape of women and call the male members of the collective to defend and rescue the beloved land from harm and destruction. The problem with such presentation of women is that depiction of women as national symbols pave the way for policing of women's bodies as well as their sexual conduct since they are associated with the most precious of all objects to be defended; the homeland. The glorification of women indeed results in the continuation of the patriarchal system that control women's bodies and objectify them to use them as tools for its own interests.<sup>746</sup> Hence it is clear that the Just War rhetoric of beautiful souls leads women to pay a prize in the form of objectification and the opening up of their bodies, which should remain pure for the nation to remain pure, to the male control.

There is one more issue regarding the *jus in bello* principles of Just War tradition that aims for the protection of women from rape. The militarized rape of the women has the potential to re-militarized the lives of raped women in which such rapes during

---

<sup>745</sup> Sjober, Laura and Peet, Jessica, 171.

<sup>746</sup> Tami Amanda, Jacoby, *Women in Zones of Conflict*, 30.

wars by the enemy soldiers make the victim's own soldiers to avenge their humiliation and hence transforms women in to tools for the continuation of wars and makes the women on the other side of the conflict, who have usually no part in such rapes, targets.<sup>747</sup> Just war tradition's alleged attempts to protect women from rape during the wars is based on a grave hypocrisy. By staying silent and even endorsing the role of women as prostitutes for the battle hardened soldiers even by claiming that such practice of prostitution makes soldiers satisfy their sexual needs and reduce their chances of engaging in war time rape, it turns a blind eye to the sexual exploitation of a group of women, may be not through rape, but through prostitution.<sup>748</sup> It is obvious that the shallow understanding of protection from rape in the Just War tradition rather plays a lip service to the protection of women from war time sexual violence, but is not sincerely interested in the exploitation of their bodies in other, non-combat but still war related situations like prostitution during camp following.

Here there is a tacit patriarchal agreement that men who cannot defend "their" woman who represent the nation, loses his claim to that body and to that land. The ownership of women by men lies at the bottom of this protection racket that jeopardizes women's lives rather than protects them.<sup>749</sup> It should also be mentioned that the protection allegedly provided by the Just War tradition to the non-combatants are not as absolute as it has been portrayed by the proponents of this tradition. When the interests of the state or the military imperatives conflict with the necessity of the moderate conduct of war especially against the non-combatants, it is usually the latter that is sacrificed for the sake of the former. For instance, Vitoria proposes that;

It is occasionally lawful to kill the innocent not by mistake, but with full knowledge of what one is doing, if this is an accidental effect: for example, during the justified storming of a fortress or city, where one knows there are many innocent people but where it is impossible to fire artillery and

---

<sup>747</sup> Cynthia H., Enloe, *Militarizing Women's Lives*, 109.

<sup>748</sup> *Ibid.*, 111.

<sup>749</sup> Williams, O'Driscoll and F. Lang, *Authority, Tradition and Practice*, 88.

other projectiles or to set fire to buildings without crushing or burning the innocent along with the combatants. This is proven, since it would otherwise be impossible to wage war against the guilty, thereby preventing the just side from winning.<sup>750</sup>

Suarez also endorsed the killing of non-combatants when it is necessary for the conduct of war. He claimed that innocent people can incidentally be killed when such an act is necessary to secure victory. He stated that necessary measures that are essential to victory are legitimate even if they involve the death of non-combatants.<sup>751</sup> The doctrine of double effect has been adopted by the militaries to justify such situations. According to this principle an individual's right not to be killed is not absolute. It can be in some circumstances be overridden especially when doing so would bring about "good" effects. The adoption of such a principle renders such killings a lesser evil.<sup>752</sup> However such problematic understanding of the principle of double effect should be replaced with an empathetic way of fighting wars in which not the intention but the responsibility would be taken to be the main factor to decide which military targets to be adopted. Such an approach would ask who would be affected and how, by the combat related decisions taken by the soldiers. Succinctly the double effect principle asks the question of who the party intends to shoot at whereas an emphatic responsibility approach would ask the question who the party *might* hit.<sup>753</sup>

Another quite problematic aspect of Just War tradition for women is its promotion of self-sacrifice during combat. As Walzer pointed out what is fundamentally at stake in a just war is defending "rights that are worth dying for". To regard war as an activity that involves one's sacrifice of one's life in order to maintain the values worth dying for is to uphold one's own cultural norms superior to a point where even dying for

---

<sup>750</sup> Howard M. Hensel, *The Prism of Just War*, 59.

<sup>751</sup> *Ibid.*, 60.

<sup>752</sup> Parry, Jonathan, "Liability, community and just conduct in war, in *Philosophical Studies* (2015), 3315.

<sup>753</sup> Sjoberg, Laura, 65.

them is desirable. However, there is a danger that such an understanding of war might pave the way for militarism. When one's culture's moral superiority is at stake, even moderate thinkers can promote militarism intentionally or unintentionally. For instance, Jean Bethke Elshtain following the September 11, described this act of terror as an act against the American values and said "We must and will fight to defend...who we are and what we are, at our best, represent". Similarly, when Robert Dean had analyzed how come the group of a policy making elite which is so highly educated had led the United States to a disaster in Vietnam, he found out that the concept of American interests was defined at the time with reference to masculine understanding of national interest which is based on privilege, power, service and self-sacrifice. Such an understanding rules out any peaceful policy and dictated a ruthless pursuit of the protection of ideological borders during the Cold War.<sup>754</sup> The main problem for women in the rhetoric of Just War tradition for self-sacrifice during the war is that it reflects Just War tradition's inner logic that defends the existing social order under the disguise of moral values, way of life or culture by identifying it with the cause of justice.<sup>755</sup> Especially given the patriarchal nature of such cultural values, to associate them with a high moral standard that even requires one to sacrifice one's life is actually playing in to the hand of the status quo that subjugates women.

Also the *jus in bello* principles should not be taken at face value. The sincerity of the armies are quite crucial for such principles to be internalized if the women would really like to be protected during the combat. For the *jus in bello* principles to be internalized by the soldiers the militaries should educate their soldiers in line with the ethical standards. However, as Asal and Schultzke explain in depth philosophical training is usually kept in minimum during the military training. Instead the *jus in bello* principles are tried to be infused with a superficial method of punishment and

---

<sup>754</sup> Cockburn, *Buradan Baktığımızda*,292.

<sup>755</sup> Schott, Robin May,131-132.

reward. Militaries chose to teach ethics only informally within the context of military training and sometimes without even calling them ethics. Hence the military training in most of the Western armies are not concerned with providing the soldiers with a strong understanding of ethics but simply with conditioning them with reward and punishment.<sup>756</sup>

Finally, the seemingly merciful *Jus in bello* principle of proportionality is also quite problematic when viewed from a gender perspective. This principle requires the military leaders to make calculations when carrying out force if their operations will save more people than they kill. Here once again we are confronted with the faculties of so called “rational man” and his rational behavior. The value of human lives simply reduced to numbers and the mathematical calculations of military man. However, as the Nobel Prize winner Jane Addams stated during his 1931 address to the congregation of the Women’s Peace Party in Washington “war destroys sensitiveness to human lives”. It does so by diminishing the protection, the nurture, the fulfillment, the conservation and the ascent of human life.<sup>757</sup> It’s effects are not simply a matter of calculation of how many people are killed and how many were saved. Such an outlook on human lives is a clear reflection of the man constructed by the realist tradition of International Relations best illustrated by Machiavelli’s *Condottieris* which is rife with such calculations that reduces human beings in to mere numbers.

Generally speaking, as the *jus ad bellum* does, *jus in bello* principles also play an important part in legitimizing the state’s hold over women. Such gendered understanding of civilian immunity has also playing a part in strengthening the very institution that makes grave discrimination against women; the state. It portrays the state as the defender of women and security provider as well as providing a pretext in

---

<sup>756</sup> Asal, Victor and Schulzke, Marcus, 410.

<sup>757</sup> Poe, Danielle, 35.

the form of defending the innocent, for starting wars.<sup>758</sup> Such understanding of discrimination principle privileges man over women who are presented as just warriors and defenders of the security of the state. It should also be mentioned that such gender roles of protector and protected do not only justifies war but also the social dominance of masculinity.<sup>759</sup> However in reality there is and should not be an automatic association of women with innocence. The automatic association of women with civilian status and with innocence may not hold true for all cases.<sup>760</sup> There are women who play part in actual combat. But this tradition is so infused with denying agency to women that their status are granted with no reference to their actions during the warfare. Such automatic association of non-combat status is simply the reflection of the traditional dichotomy of Just War tradition that depicts women as innocents to be protected and the man as just warriors to protect them.

---

<sup>758</sup> Cynthia H., Enloe, *Militarizing Women's Lives*,167.

<sup>759</sup> *Ibid.*,168.

<sup>760</sup> Helen M.,Kinsella, *Image Before the Weapon*,8.

## CHAPTER THREE

### JUST POST BELLUM PRINCIPLES AND THEIR FEMINIST CRITIQUE

#### 3.1 JUS POST BELLUM PRINCIPLES

As it has already been mentioned during the introduction part, jus post bellum phase of the Just War tradition is the most neglected part of this tradition. Hence my study in this part will mainly focus on what little is present in this tradition regarding jus post bellum and the reasons why such negligence exists in this tradition. As it will be revealed the Westphalian nature of the Just War tradition plays an important role in this immaturity of the jus post bellum phase.

One of the most important components of the Just War tradition; the Ancient Greek culture is silent about any comprehensive change in the social structure of the defeated enemy. Hence the Greek roots of jus post bellum doesn't offer much for the women. Ancient Greek understanding offers simple choices between leniency and cruelty when it comes to deal with defeated enemies. One school of thought suggests victors should be magnanimous to abate any desire for revenge on the part of the defeated enemy which is well demonstrated by the Greek practice of letting the defeated side to collect their soldiers' deceased bodies to give them a proper burial and the ban on the defilement of the enemy soldier's bodies. The other school best described by the Thucydides' *Melian Dialogue* proposes harsh measures so the enemy's defeat would be irreversible. Greek contemplation for the jus post bellum is simply to annihilate or leave the defeated enemy as it was before the start of the hostilities. It contains no provisions for any change in the social structure of the

defeated enemy for the benefit of the subjugated groups.<sup>761</sup> This is no surprise, of course, for a culture that is as misogynist as the Ancient Greek one.

Jus post bellum phase of a conflict ideally should aim at creating a good society both in normative and technical senses after the conflict is over. International Law is employed for the jus post bellum phase to provide the legal means to bring the war-torn society in to a state of just and stable peace.<sup>762</sup> However the legal history of the jus post bellum demonstrates that states usually shy away from undertaking serious commitments regarding the defeated people that would bring constitutional change in those societies. The 1874 Brussels Conference which had proscribed laws for land warfare had enjoined the occupiers from making constitutional changes in the territories of the occupied states.<sup>763</sup> The law of belligerent occupation with its prohibition of constitutional change in the occupied states is a direct consequence of thwarting of the revolutionary principles of the French revolution which regarded universalization of popular sovereignty as a principle of international order, in the Congress of Vienna in 1815.<sup>764</sup> The Great Powers then concluded that revolutionary transformation of one state's constitutional order by another one should be restricted.

The question with the utmost importance for the jus post bellum phase of the conflict is; does victory in war imply a post conflict obligation to rebuilt the vanquished society? And if the answer is yes, what is the nature of this obligation? Legal, moral or political?<sup>765</sup> Legally speaking the only relevant articles for the jus post bellum phase of a given conflict are the articles of 39,41,42 and 51 of the Chapter VII of the

---

<sup>761</sup> Howard M. Hensel, *The Prism of Just War*, 18.

<sup>762</sup> Österdahl, Inger, "Just War, Just Peace and the Jus Post Bellum", *Nordic Journal of International Law*, Vol.81(2012),271.

<sup>763</sup> Bhuta, Nehal, "New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation", *University of Toronto Law Journal*, Vol.60(2010),800.

<sup>764</sup> *Ibid.*,802.

<sup>765</sup> Chayes, Antonia, "Chapter VII<sup>1/2</sup>: Is Just Post Bellum Possible?", *The European Journal of International Law*, Vol.24, No.1(2013),292.

UN Charter. Article 39 states that the Security Council shall determine the existence of any threat to peace, breach of the peace or act of aggression and *shall make*<sup>766</sup> recommendations or decide what measures shall be taken in accordance with articles 41 and 42 to *maintain or restore*<sup>767</sup> international peace and security. These two articles, 41 and 42, provides a broad and unrestricting leeway for Security Council action. However, the problem is the way the language of these two articles are constructed. Here the UN Council is not tasked with or obliged to engage in post-war reconstruction, but it is simply permitted to do so.<sup>768</sup> When it comes to the Hague Regulations, the situation is no different when those regulations are considered from a jus post bellum level. The well know Hague Regulations of 1899 and 1907 simply bring more humane provisions for the people under occupation and war by imposing restrictions not in jus post bellum but in jus in bello level. Some may argue in this context that war reparations are instruments for post-war reconstruction and jus post bellum provisions deal with it. But reparations, are not legal instruments dictated by law to be paid to the vanquished for reconstruction. On the contrary, they are imposed usually from the perspective of *vae victis* and only designed for the victorious powers for them to secure money and resources to recover their losses during the war. Reparations usually are one sided and do not aim to recover the losses of the vanquished.<sup>769</sup> Moreover, there is an additional problem with the legislative role of the Security Council. It is true that Security Council plays sort of a legislative role in armed conflict but it doesn't take decision of general application. Its decisions are taken on a case basis in which each and every situation is separately evaluated. It

---

<sup>766</sup> My emphasis

<sup>767</sup> My emphasis

<sup>768</sup> Ibid.,292-293.

<sup>769</sup> The latin term *vae victis* means "woe to the vanquished" and is based on the story of Gauls and the Romans in which besieged Romans were forced to submit to the victorious Gauls on apparently unjust terms imposed on them by the leader of the Gauls Brennus who had shouted on the Romans as "*vae victis*" to tell them that the concerns and the pleas of the defeated are not taken in to account by the victors.

doesn't set standards for the jus post bellum and hence has no direct effect on future cases.<sup>770</sup>

The legal and institutional immaturity regarding the jus post bellum phase is also matched by the timidity in the understanding of Just War tradition in state's policies. One of the main problems of the classical Just War paradigm for the people who are seeking a genuine peace following the war that includes fair gender relations, is that for this tradition resistance stops with the military defeat of the aggressor. The defeat is followed by peace negotiations but regime change is not part of the paradigm. As Walzer put it "it is a feature of just war theory in its classic formulations that aggression is regarded as the criminal policy of government not as the policy of a criminal government, let alone a criminal system of government"<sup>771</sup> Walzer explains the limits of the task of reconstruction of the vanquished society with reference to American role in Korean War and the way the policies of the North Korean government should be understood. Walzer explains;

Now justice in settlements is a complex notion, but it has a certain minimal content which seems to have been understood well enough by America's leaders at the beginning of the struggle. Once that minimal content has been realized, it is the rights of the people of the enemy country that rule out further fighting, whatever its added value. These rights were no doubt badly represented by the North Korean regime, but that in itself is not, as we have seen a sufficient reason for a war of conquest and *reconstruction*. It was the crime of the aggressor to challenge individual and communal rights and *states responding to aggression must not repeat the challenge once basic values have been upheld.*<sup>772</sup>

Walzer makes it clear that a state's indulgence in the failure of representing its own citizens' rights does not make an excuse for the other states to fight against the state that indulges in violation of its citizen's rights. For him, rather than providing a just

---

<sup>770</sup> Maus, Sylvia, "Jus Post Bellum Ala United Nations? Human Rights, UN Peace Operations and the Creation of International Law", *Wisconsin International Law Journal*, Vol.32(2014),683-684.

<sup>771</sup> Walzer, Michael, *Just and Unjust Wars*,x.

<sup>772</sup> *Ibid.*,120.

cause for a state to continue fighting, the rights of the people of the enemy country rules out further fighting. Hence rather than reconstruction, Walzer's notion of just war seems to be a military activity aimed at bringing *status quo ante bellum* back. He puts forward the conservative nature of the just wars with the following words; "Except when they are directed against Nazi like states just wars are conservative in character; it can not be their purpose, as it is the purpose of domestic police work, to stamp out illegal violence, but only to cope with particular violent acts."<sup>773</sup>

Hence, there is a general consensus among the Just War thinkers that Jus post Bellum phase is the most neglected part of the Just War tradition among its three main pillars. As Eric Patterson explains;

Just War theorists have largely ignored jus post bellum. Augustine suggested that wars should end in ways that promote a "secure peace" but he was far more preoccupied with questions about the just resort to violence and whether the Christian, as an individual, could morally participate in war. Similarly Aquinas focused on criteria for justly going to war... Spanish Just War theorists in the natural law tradition like Vitoria and Suarez....Unfortunately they merely addressed the morality of specific policies rather than stipulating a theory of jus post bellum. Even the most influential contemporary just war scholarship lacks a theory of jus post bellum. Michael Walzer's influential *Just and Unjust Wars* says little on the topic. James Turner Johnson's multiple histories of the Just War tradition are largely mute on jus post bellum, although he has recently suggested that part of the just resort to war is the goal a just post-conflict environment.<sup>774</sup>

The well-known classical and modern philosophers of the Just War tradition who had provided the tradition with an immense corpus in other two phases, simply remained silent on how the post-conflict phase of the wars should be conducted. As I will try to explain in the following parts, they only dealt with the concepts that are related with

---

<sup>773</sup> Ibid.,121.

<sup>774</sup> Patterson, Eric, "Jus Post Bellum and International Conflict: Order, Justice and Reconciliation" in *Rethinking the Just War Tradition* ed. Michael W.Brough, John W. Lango and Harry van der Linden(United States of America: State University of New York Press,2007, henceforth:*Rethinking*),36.

*jus post bellum* level very briefly. They have not dealt with them in a systematic fashion like they did for the other two levels of the Just War tradition.

The negligence of this third pillar of the Just War tradition is also apparent in the legal tradition. For centuries International law is divided in two categories; *jus pacis* and *jus in bello*, denoting that there are two states exist; peace and war without taking in to account a third state in which the physical battles are over yet the peace has not been established.<sup>775</sup> Concerning the legal aspect of the *jus post bellum* Österdahl states “since the topic of *jus post bellum* is just emerging in the current international law doctrine, the content of this potential body of law is largely undecided.”<sup>776</sup> In a similar fashion, Sylvia Maus states “there is no agreement on canon on *jus post bellum* principles”.<sup>777</sup> It is not a coincidence that there already is a tradition going back to centuries centered around the activity of war; the Just War tradition. But no similar tradition exists concerning peace; there is no Just Peace tradition to talk about.<sup>778</sup> The initial idea that a *jus post bellum* pillar should be added to the Just War tradition have only been proposed in 1994 by Michael Schuck. Writing for the Christian Century he asked the following question; “if Christians are called upon to probe the moral propriety of entering and conducting war by using the seven *jus ad bellum* principles... should they not be called upon to monitor the moral propriety of conducting a war through some set of just post bellum principles?” His answer to this question was in affirmative. He proposed three *jus post bellum* criteria to pay heed; humility on the part of the victor, honorable surrender and restoration of the defeated state.<sup>779</sup> Another clear indication of the negligence of the just post bellum phase of the just war tradition is its absence in contemporary political rhetoric. Former U.S President Barack Obama’s speech during the Nobel Peace Ceremony is a clear

---

<sup>775</sup> Maus, Sylvia, 675.

<sup>776</sup> Österdahl, Inger, 280

<sup>777</sup> Maus, Sylvia, 678.

<sup>778</sup> Österdahl, Inger, 276.

<sup>779</sup> McCready, 70-71.

example of such negligence. The part of his speech dealing with the Just War tradition reads;

And over time as codes of law sought to control violence within groups, so did philosophers and clerics and *statesman* seek to regulate the destructive power of war. The concept of a just war emerged, suggesting that war is justified only when certain conditions were met: if it is waged as a last resort or in self-defense, if the force used is proportional and if whenever possible, civilians are spared from violence. Of course we know that for most of history this concept of just war was rarely observed. The capacity of human beings to think up new ways to kill one another proved inexhaustible, as did our capacity to exempt from mercy those who look different or who pray to a different God. Wars between armies gave way to wars between nations; total wars in which the distinction between combatant and civilian became blurred. In the span of 30 years, such carnage would twice engulf this continent. And while it is hard to conceive of a cause more just than the defeat of the Third Reich and Axis Powers, World War II was a conflict in which the total number of civilians who died exceeded the number of soldiers who perished. In the wake of such destruction and with the advent of the nuclear age, it became clear to victor and the vanquished alike that the world needed institutions to prevent another world war.<sup>780</sup>

The speech of President Obama, not surprisingly when one considers the negligence of the just post bellum phase in this tradition, only focuses on the *ius ad bellum* and *ius in bello* phases of the war without mentioning a single word for the post-conflict phase of the wars.<sup>781</sup>

One of the reasons why Just War tradition did not pay a special attention to the *ius post bellum* phase of the conflict lies in the fact that Just War tradition, at least in its classical age, was part of a wider philosophical and political thinking and ethics which had been formed by authors who had already elaborated extensively on good governance separately from the issue of war. Hence the existence of well-founded religious, political and philosophical treaties like the writings of Aristotle, Aquinas or

---

<sup>780</sup> Eric D., Patterson, *Ending Wars Well*, 20-21.

<sup>781</sup> *Ibid.*, 21.

the moral teachings of the Old Testament were regarded enough for good governance for the *statesman*. Christianity, feudal obligations, chivalry and natural law were regarded enough for this tradition for the good governing of sovereigns at the times of peace.<sup>782</sup> Especially important, of course is to mention that each of these traditions are containing texts and teachings that are quite harmful for the rights of women and their participation in to the public affairs. Not to form a specific *jus post bellum* corpus that would include measures that would ensure gender equality and to simply leave the “good governance” during peace to the moral teachings of these traditions would mean women not being represented in the public sphere.

One of the most well-known modern figures in Just War tradition James Turner Johnson argued just post bellum is included within the *jus ad bellum* phase of the war. The states usually do not pay much attention to the post war phase and when they do it is usually the national interest that they pay attention not to justice.<sup>783</sup> But history attests to many successful wars both well considered in *ad bellum* level and well conducted in *in bello* level had been recorded as disasters because of the mismanagements for the *jus post bellum* level.<sup>784</sup> However, as Walzer put it once one has acted in ways that have significant consequences for other people she/he should not simply walk away.<sup>785</sup> Even though he did not elaborate on it, Walzer is well aware of the fact that “ it seems clear that you can fight a just war and fight it justly and still make a moral mess of the aftermath.”<sup>786</sup> Even the states that had paid attention to the *jus post bellum* phase of the war did pay little or no intention to how the society of the vanquished will be organized in terms of gender relations. Brian Orend, one of the most influential contemporary Just War theorists, is a good example for this point. He deals with the issue of *Jus post bellum* and devises three

---

<sup>782</sup> Ibid.,33-34.

<sup>783</sup> McCready,67.

<sup>784</sup> Ibid.,69.

<sup>785</sup> Ibid.,67.

<sup>786</sup> Ibid.71.

principles for a stable jus post bellum settlement which vindicates the fundamental rights of political communities. He termed them as roll back of aggression, compensation to victims and punishment of aggressors and deterrence of future aggression through demilitarization of the aggressor.<sup>787</sup> He doesn't include any political or social measure for gender equality in his blueprint for a stable jus post bellum settlement. The primary concern both for the states and the traditional writers on war is how to prevent the vanquished from starting yet another war. The Westphalian logic simply induces the black box mentality with regards the states, prevents any attention to be paid to their internal organization and is only interested with peace *among* states not *inside* them. The main concern is to ensure that the defeated state will not pose a problem to the other states in the future. Examples from the military historians clearly demonstrate the point. The military historian B.H. Liddell Hart suggests to the statesman to take the jus post bellum phase in to account but only with inter-state considerations in his mind; "if you concentrate exclusively on victory, with no thought for the after effect, you may be too exhausted to profit by the peace, while it is almost certain that the peace will be a bad one, *containing the germs of another war.*"<sup>788</sup> Even the writers that pay genuine attention like Himes who propagated the creation of a space for civil society, are only interested to establish political, economic and social stability in the defeated nation in order to "prevent the domestic consequences of the war from becoming the seed of future conflict"

However it should be mentioned that even though the term just post bellum is a modern creation, it is still possible to find very limited concerns in the Just War<sup>789</sup> tradition regarding the situation of the vanquished after the war is over. Cicero, indeed, is one of the political thinkers who understood the importance of making arrangements after the war is over; during the peace time. He criticizes the people

---

<sup>787</sup> Michael W. Brough, John W. Lango and Harry van der Linden, *Rethinking*, 39-40.

<sup>788</sup> *Ibid.*, 69.

<sup>789</sup> *Ibid.*, 74.

who regard the achievements of war in a higher esteem than the achievements of peace. For him the achievements in peace are far more important than the achievements in war.<sup>790</sup> His understanding of belligerency has a limit in the sense that physical combat would be followed by a political settlement, if possible a benign one for the one who was vanquished. He states;

As long as the empire of the Roman people maintained itself by acts of service, not of oppression, wars were waged in the interest of our allies or to safeguard our supremacy; the end of our wars was marked by acts of clemency or by only a necessary degree of severity; the senate was a haven of refuge for the kings, tribes and nations.... and so our government could be called more accurately a protectorate of the world than a dominion.<sup>791</sup>

Augustine thought that upon the end of war there should be no difference between the victor and the conquered and the vanquished should be given Roman citizenship.<sup>792</sup> Within the Christian theology Augustine endorses a vague framework for peace after the actual combat is over. He says one should be beware of seeking the peace of mere indifference; the peace of the dead.<sup>793</sup>

Gratian asserted that injuries done to one's associates must be repelled by recourse to arms to prevent the wicked to do further harm. However, such a statement should not be considered as a license to intervene to another state's internal affairs when one's associates is party to a conflict with another state. Here the word employed by Gratian for the English word associates is "socii" which means not an ally that refers to another state but refers to family, friends, neighbors, fellow citizens and persons over whom the defender has legitimate authority. It does not give the right of intervention to a third party which lacks a legitimate authority over those people. The

---

<sup>790</sup> Marcus, Tullius Cicero, *De Officiis*, 103.

<sup>791</sup> *Ibid.*, 224.

<sup>792</sup> Saint Augustine, *The City I-VII*, 278-279.

<sup>793</sup> Mathewes, 1175.

only thing for those people who happened to be under the authority of another prince is to invoke the aid of the legitimate authorities for the solution of the problems.<sup>794</sup> Hence in Gratian one does not find a principle for the intervention to the internal affairs of another state. Gratian's ideas about intervention is well confined to the framework what would later be called the Westphalian state system.

Aquinas based on the teachings of the Old Testament concludes that moderation should be used in pursuing the advantage of victory that the women and children should be spared and the fruit trees of the vanquished country should not be cut down.<sup>795</sup>

Vitoria focused in his writings on the issue of reparations to be extracted from the vanquished. He stated that the victorious side has the right to seize the goods of the enemy as indemnity for the costs of the war since enemies who have caused such injury are required to make restitution. He also wrote that it was "lawful to occupy and hold any enemy fort or city", as well to "deprive the enemy of part of his land" as necessary for the maintenance of peace.<sup>796</sup> But he preached moderation and justice on the part of the victor on engaging with the vanquished in the *jus post bellum* phase;

...must use his victory with moderation and Christian humility. The victor must think of himself as a judge sitting in judgement between two commonwealths, one of the injured party and the other the offender, he must not pass sentence as the prosecutor, but as a judge. He must give satisfaction to the injured but as far as possible without causing the utter ruination of the guilty commonwealth.<sup>797</sup>

---

<sup>794</sup> H. Russel, *Middle Ages*, 66.

<sup>795</sup> Aquinas, *Summa I-II*, 1734.

<sup>796</sup> Howard M. Hensel, *The Prism of Just War*, 61.

<sup>797</sup> *Ibid.*, 62.

### 3.2 HUMANITARIAN INTERVENTION FOR STABLE JUS POST BELLUM PHASE

“Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”<sup>798</sup>

Eleanor Roosevelt, “In Our Hands” (1958 speech delivered on the tenth Anniversary of the Universal Declaration of Human Rights)

Vladimir: But at this place, at this moment of time, all *mankind* is us, whether we like it or not.

Waiting for Godot, Act II, Samuel Beckett

Starting from this section of my thesis I will turn my attention to the feminist critique of Jus post bellum principles of the Just War tradition. Interesting enough, the great

---

<sup>798</sup> <http://www.un.org/en/globalissues/briefingpapers/humanrights/quotes.shtml>

wars of the 20<sup>th</sup> century had brought many gains for the women living in the Western World. By the end of the First World War women started to find position in jobs that were traditionally reserved for man before the start of the hostilities. They started to marry at a later age, the number of children that they had declined sharply and they were given more social freedoms such as less restrictive dress in the public. The impact of the Second World War was even more acute. They started to work in essential industries which require physical prowess, joined the armed forces and had the opportunities to shatter the sexual taboos imposed on them by the society. However, once the war is over the jobs that were available and even promoted to attract their attention were no longer available for women. They once again exposed to campaigns that had adulated motherhood and encouraged women to get married and play domestic roles in their lives.<sup>799</sup> This is a clear example that jus post bellum period is crucial for women's liberation. When the social structures are kept intact once the war is over, the natural tendency in patriarchal societies manifest itself as a return to traditional gender roles which puts women in great disadvantage. The relative improvement of women's conditions during 1960 and 1970s had only come as a result of ardent political activism on the part of women. This is why jus post bellum period has to be organized very carefully and the period what we call "peace" has to be monitored very keenly to see if it is really a peace for both sexes; in other words, if it is a gender just peace.

Such post conflict period has to be organized in such a careful manner that should address the women specific concerns of female survivors of the military conflicts. The combat roles that are associated with women and man during the war create such a situation that man are more likely to suffer direct physical damage such as being shot or wounded compared to women who are more likely to suffer from violations such as rape and sexual abuse which are keenly associated with post-traumatic

---

<sup>799</sup> Lindsey, German, *How a Century of War Changed the Lives of Women*(New York: Pluto Press, 2013, henceforth: *Century of War*),2

stress.<sup>800</sup> Women are more likely to seek social support compared to men but they are more likely to face negative reactions from their friends and family when seeking such help requiring for the treatment of post-traumatic cases. Hence the character of their injuries, the social pressure that they face when they seek treatment and the requirements for their treatment make the *jus post bellum* phase of the war even more important for women.

But one should also think about which measures can be taken to safeguard the provisions of a gender *jus post bellum*, in case it is managed to be established by the victors. It might seem a bit surprising to invoke, in the part that deals with the *jus post bellum* phase of the war, which should supposedly deal with the arrangements of peace, the notion of humanitarian intervention. As the modern Just War tradition explains this phase of the conflict is the one that the clashes are over and the start of the political settlement of the conflict begins. But shouldn't humanitarian intervention be considered part of this political settlement if the rights of the certain segments of the society is continued to be violated on a continuous basis during the post-conflict phase of the war? To end the war and let the status quo ante in gender relations prevail in the *jus post bellum* phase would simply mean leaving women on their own with no help to improve their situation. Since I answer this question in affirmative within the context of women's rights, I should elaborate on humanitarian intervention and the debate on violence that it inevitably entails. But I should also mention that the issue of humanitarian intervention is not the focal point of my study. The issue is a popular, well studied and contested subject in International Relations literature.<sup>801</sup> I will study the issue of humanitarian intervention rather briefly to point out the need for its re-evaluation to allow more space for non-military methods and how this re-

---

<sup>800</sup> Kellezi, Blerina and Reicher, Stephen, 491-492.

<sup>801</sup> There are differing perspectives on the humanitarian intervention analyzing the issue from ethical, utilitarian, social contract, natural law, communitarianism and legal positivism perspective. For more information on the debates on humanitarian intervention see Holzgrefe and Keohane, "Humanitarian Intervention: Ethical, Legal and Political Dilemmas", pp15-52.

defined notion of humanitarian intervention can be utilized for a gender just peace in jus post bellum period.

However, I should mention from the outset that I am aware of the difficulty of proposing humanitarian intervention as a panacea for “saving” women. Usually the critics air the argument that to conceive women as a group to be “saved” by men is itself demeaning for women. As the writer, I don’t hold such a view but as I will explain in the subsequent parts of this study, usually patriarchal societies are structured in a way that perpetuates women’s suffering by denying them possibilities for education, gaining political consciousness and self improvement and if any assistance wouldn’t be extended from abroad, many women’s lives might well be spent in such dire circumstances. I believe this point also relates to the discussion of state sovereignty and human rights by Michael Walzer. As a scholar supporting state sovereignty he holds the self determination of a collective in higher status than protecting individual rights through humanitarian intervention.<sup>802</sup> However the problem with such an argument is that to what extent “self determination” actualizes as long as some members of “self-determining” community are being unjustly killed, raped, exploited and barred from possibilities of self improvement.

I also would like to clarify the issue of refraining from classically defined humanitarian intervention for women’s right purposes and resorting to other means instead of militarily engaging in another country’s affairs. Definition of the term humanitarian intervention is debate one in which most of the explanations exclude and very few others include non-military options inside its definition.<sup>803</sup> Classical definitions regard humanitarian intervention as “the threat or use of force across state

---

<sup>802</sup> Aloyo, Eamon, “Reconciling Just Causes for Armed Humanitarian Intervention” in *Ethical Theory and Moral Practice*, Vol 19, Issue 2(2016) 314-315.

<sup>803</sup> David. J. Scheffer and Fernando R. Teson are among the few writers including non forcible methods in to the definition of humanitarian intervention. For more information please see David. J. Scheffer, “Towards a Modern Doctrine of Humanitarian Intervention”,pp.253-294 and Fernando R. Teson, “Collective Humanitarian Intervention”,pp. 323-371.

borders by a state or a group of states aimed at preventing or ending widespread and grave violations of fundamental human rights".<sup>804</sup> However, one can always ask the question; is it really necessary to intervene in to another country militarily and is there no other way to compel the foreign governments to give up their bad treatments against women? There certainly exist such ways. As Michael Walzer describes there are ways that entails force short of war and politics short of force which can be employed to convince the governments to stop their maltreatment of their populations. Examples for force short of war are blockades, and embargoes and for the politics short of force are supports for NGOs and economic aids.<sup>805</sup> However the first one of these methods, blockades and embargoes usually creates humanitarian situations like shortage of food, employment, water and drugs in which women disproportionately suffer from given the tendency in patriarchal societies of distributing scarce resources predominantly to man rather than women. The second method of economic aid and support to NGOs and civil society organizations usually do not produce the intended results in societies where women's rights are being extensively violated and hence they run the risk of being ineffective. However, even though they run the risk of being ineffective from time to time, we still need such kind of instruments in order to solve the issues of women without the need to resort to violence. As I will try to explain in the subsequent parts of this thesis, such measures are necessary to redefine the concept of humanitarian intervention on the basis of coercion continuum where military force is only the one side of it.

Here I do recognize that by invoking the concept of humanitarian intervention I am coming back to one of the most foundational figures of Just War tradition, whom throughout this study I criticized heavily for the implications of the concepts he

---

<sup>804</sup> Holzgrefe, J.L., "The Humanitarian Intervention Debate" in *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, ed. J.L. Holzgrefe and Robert O. Keohane (UK: Cambridge University Press, 2003), 18.

<sup>805</sup> Walzer, Michael, *Just and Unjust Wars*, xv-xviii.

introduced in to the Just War tradition for women. In the final analysis, I do reckon the fact that humanitarian intervention is no different than Augustinian saying that sometimes one has to employ violence for the defense of one's neighbor and not always for herself. I believe one should grant the credit to Ambrose and Augustine, for willing or unwillingly, laying the foundations of the intellectual ground for humanitarian interventions with their concepts of neighborly love and initiating war for the defense of the others, even though they had never specifically named women in whose defense one should start a war. This has continued well in to the middle ages in to writings of Vitoria and Suarez who endorsed intervention in to the other state's in some limited cases to change the prince but as their predecessors none of them had enacted any provisions in favor of intervention to protect women in other states. Even the modern just war writers like Walzer made such a minimalist definition for the humanitarian interventions that as Elshtain described humanitarian intervention is understood an intervention that can be carried out for grand violations like genocide but not for so called "lesser" violations like genital mutilation.<sup>806</sup> Walzer explains that;

It is not only aggressiveness, then, but also the murderousness that makes a political regime a legitimate candidate for forcible transformation. Still, the primary aim of the intervention is to stop the killing; regime change follows from that purpose. An authoritarian regime that is capable of mass murder but not engaged in mass murder is not liable to military attack and political reconstruction.<sup>807</sup>

The historical and intellectual baggage of the Just War tradition based on the separation of issues as high and low politics and defining threats in an abstract language definitely works for the disfavor of women in the case of humanitarian intervention as well.

---

<sup>806</sup> Elshtain, Jean Bethke, "Jean Bethke Elshtain Reponds", *Dissent*, Vol. 53, Issue 2(2006),109.

<sup>807</sup> Walzer, Michael, *Just and Unjust Wars*,x.

It should be mentioned that even though its classical understanding of justice was quite problematic for women, the modern Just War theory by introducing a new dichotomy; aggression and defense, in to the understanding of the concept of just cause had done away with the effort of justice altogether since the modern Just War theory simply grants the right to go to war only in response to an aggression and justice as an objective to be achieved by the sovereign ceased to exist anymore.<sup>808</sup> It is needless to say that such a limited understanding of justice would definitely limits the prospects for any kind of humanitarian intervention, including one to be conducted for women.

But before I would like to mention that I am aware of the difficulties in engaging in such a structural transformation in a given society. Nehal Bhuta implicitly points out to the fact that in engaging such a constitutional transformation in a given society we are indeed engaging in a normative judgement about the best political regime to be established in a given society which I personally do not shy away since the given patriarchal orders are not partial orders but simply ones that reflect normative judgements of different kind. As Bhuta explains;

The proposition that international law and the law of belligerent occupation can and should be adopted to promote not just constitutional transformation but a *particular vision*<sup>809</sup> of domestic constitutional order, anticipates a return to a radically more substantive concept of international order. The vision goes further than capacious and somewhat malleable notions such as democracy, political participation and development to endorse a highly specific conception of what constitutes a good polity...<sup>810</sup>

Humanitarian intervention is *ideally* considered to be the intervention of another state's internal affairs, usually with military means, to protect the groups that are

---

<sup>808</sup> Johnson,555.

<sup>809</sup> Writer's emphasis

<sup>810</sup> Bhuta, Nehal,803.

subject to oppression by their own government without seeking political ends. It is usually claimed that when politics is involved in an intervention then one can talk not about a humanitarian intervention but an intervention that has political aims other than humanitarian ones.<sup>811</sup> However, I believe exactly the opposite approach should be taken vis-à-vis the humanitarian intervention. Humanitarian intervention should be *politically* motivated but they should be politically motivated to improve the conditions of women in their societies. So the normative concern mentioned by Nehal Bhuta above, over the issue of determining a specific conception of what constitutes a good polity, should not be a concern at all when the issue is evaluated from a feminist perspective with a specific aim to improve women rights. But what is understood from politics should be clearly put forward. The humanitarian understanding of intervention should not be based on 19<sup>th</sup> century understanding of politics which reduces politics in to an activity of realpolitik in which actors ruthlessly seek their own advantage at the expense of other actors. Instead it should be based on the understanding that equal participation of all people in to the society in which equal subjects freely discuss with one another to deal with the common issues that concern man and women alike. To put this in a Habermasian way; the aim should be the creation of a truly democratic public sphere which makes free exchange of ideas between equal subjects possible. If such a goal is not aimed at then it is possible to see scenes witnessed after the US intervention in to Afghanistan after September 11 which exploited women's rights as a "just cause" to start the war against Taliban; an odd situation in which the attack itself is carried out by a neo-conservative administration which did everything to limit women's rights on the "home front" such as banning abortion clinics, to liberate Afghan women from oppression in Afghanistan which resulted with further deterioration of Afghan women's status.<sup>812</sup> It has been reported in the post-war Afghanistan, that new forms of misogyny and sexual and gender based violence have started to arisen. Forms of sexual violence that

---

<sup>811</sup> Walzer, Michael, *Just and Unjust Wars*, 102-106

<sup>812</sup> Lindsey, German, *Century of War*, 176.

are normalizing rape became rampant in the country and the worst is public attention is only directed to the issues of peace agreements and the issues that are vital for the well-being of women are only relegated to the secondary issues and dealt as every day happenings. Issues like body part mutilations within marriage, forced prostitution and increasing domestic violence are neither dealt with nor the connection between war and its contribution for the powerful warlords, who have been consistent executioners of such practices to women, to strengthen their positions in society are depicted in the public discourse.<sup>813</sup> As the Afghan women attests there is a need for a structural change to improve the conditions of women in Afghanistan which was naturally not intended by the American administration composed of people not necessarily would like to initiate such a change in their home country. As an Afghan women named Alama explains;

They keep talking about freeing us from the burqa. The reality is that burqa is not our problem; the problem is lack of security, lack of employment, lack of education and health. If we have these then we can sort out the burqa issue, some women may continue to wear it and other may take it off or wear other forms of Islamic cover such as in rural areas.<sup>814</sup>

This is not only peculiar to the Afghan women. The Kuwaiti women who were claimed to be liberated by the American intervention from the Iraqi aggression in 1991 were told to be saved from the violent patriarchal practices still in place today in Kuwait. Also this is not only confined to the Middle East. The Kosovar women had only found, after the NATO intervention that the introduction of foreign troops to Kosovo had led to the dramatic increase of sex trafficking and prostitution.<sup>815</sup>

---

<sup>813</sup> L., Ahmad and P. Anctil Avoine, "Misogyny in post war Afghanistan: the changing frames of sexual and gender based violence", *Journal of Gender Studies*, July (2016),1.

<sup>814</sup> Lindsey, German, *Century of War*,177.

<sup>815</sup> Van Schaack, Beth,489.

But to achieve the aim of creating a truly democratic public sphere, it should be understood that patriarchy both at home and at the invaded country is one of the most significant problems that leads to violence both domestic and international. However, to come up with such a conclusion the realist paradigm that associated women's issues and inevitably their sufferings with low politics should give way to an understanding of politics that is seeking gender justice and more focusing on the domestic reasons of international violence. As I will explain in the following part of this study, this is keenly connected with the issue of redefining the concept of war and the notion of security. A humanitarian intervention simply focusing on "grave" violations and employing merely military methods to those "grave" problems, defined in line with the traditional explanations of what war and security is, will not serve for the best interests of women.

### **3.3 PROBLEMS OF DUALISTIC WORLD VIEW AND THE REDEFINITION OF WAR**

One can easily understand the problem involved in extending the definition of war to include the "everyday" happenings and the problems that women face. Such an act might run the risk of overgeneralization so that the concept of war might cease to refer to an activity that is clearly defined. However, as the postmodern feminist perspective emphasizes, fluidity and change is ubiquitous both in human affairs and in political concepts. Hence the traditional understanding that war is an activity of organized killing by the states where killing is not considered murder, should be challenged. It should be challenged first and foremost because of its state-centric nature in which in its current definition the concept of war privileges one form of violence; the violence implemented by state, to another; the violence implemented by agents other than the state's, in the sense that only the violence carried out by state deserves to be subjected to a legal corpus, aiming to limit violence, requiring one to carefully consider to initiate the violence in the first place and to think about who can

and who cannot be a target of violence. Moreover, such a process of extension of the definition of war has already been set in motion. For instance, NATO has increasingly been dealing with an activity which falls outside the traditional definition of war; the organized killing, with in the concept of war; namely the cyber-attacks. NATO consistently defines cyber-attacks as part of the “hybrid warfare”<sup>816</sup>. Also as Mary Kaldor explains the definition of war has already started to change and move away from the spatial definition hold by the Just War tradition. Kaldor explains that;

Old Wars, if we think of the European wars of the nineteenth or twentieth centuries (Clausewitz was the great theorist), were contests of wills in which both sides wanted to win. They *had beginnings and endings*. With new wars the various warring parties are more interested in the condition of war than in winning or losing. Such a war is alike a mutual enterprise that’s very difficult to end, like a social condition, rather than like a contest of wills.<sup>817</sup>

Moreover, as Kaldor pointed out for the new wars, more than fighting for territory or ideals, identity is incredibly important.<sup>818</sup> Kaldor regards ethnic and religious identities that are crucial for understanding the new wars. This development also explains why the daily violence experienced by women should also be regarded as war because, even though Kaldor doesn’t mention it in her analysis, such violence also stems from a group of people; man, pretty much like other groups such as Catholics or Protestants who re-affirm their identities by fighting, reaffirm their masculine identities through the violent practices they conduct against women. As Kaldor explains, “in new wars you extend your territory, not through fighting the other guy, but politically”.<sup>819</sup> Political control of women is exactly the way the patriarchy is conducting its war against women. Finally Kaldor also points out that in

---

<sup>816</sup> [https://www.nato.int/cps/en/natohq/topics\\_78170.htm](https://www.nato.int/cps/en/natohq/topics_78170.htm)

<sup>817</sup> Metta Spencer, “New Wars and Old: An Interview with Mary Kaldor”, in *Metta Peace Magazine*, Vol. 31, Issue 4(2015),8.

<sup>818</sup> *Ibid.*,8.

<sup>819</sup> *Ibid.*,8.

new type of wars the violence is increasingly directed towards the civilians.<sup>820</sup> This is also in line with the need for the re-definition of violence directed to women not as “domestic violence” as the Westphalian logic suggests, but as a war since women in most of the classical and modern accounts are almost by definition regarded as civilians.

The concept of war cannot remain stable in an ever-changing world where the threats are transforming in a dizzying speed. However, the issue seems that the changing definition of war still reflects the bias for states in the sense that the issues that are seen as important by the state; to be more precise that are perceived as posing threats to state security like cyber-attacks are being included in to the definition of war whereas women’s issues usually deemed unimportant simply left out. However, from a feminist perspective may be the most important reason to pressure for a change of the definition of the concept of war is the fact that, as I tried to explain above, the humanitarian interventions usually adopt the Just War rhetoric. Given the conventional perception of the Just War tradition of warfare which is regarded as an armed conflict confined to a physical space with a clear beginning and a clear end conducted between legitimate authorities, it is clear that to define women’s issues as just causes for humanitarian intervention is almost impossible. To endorse gross violations of women’s rights as a just cause for a just war; in other words, as a just cause for humanitarian intervention such gender biased understanding of war has to change. If the perspective of the *vae victis* in which the perspective of the victors; the powerful will not be taken to define what war is and if there will be created a space for the perspective of the subjugated for the definition of war, then the women’s perspective has to be taken in to account. And as Cockburn explains;

---

<sup>820</sup> Kaldor, Mary, *New and Old Wars: Organized Violence in a Global Era*(USA:Stanford University Press,1999),156.

Looking at war as a woman inside the war zone, or paying attention as a feminist to women's experience of war, it is not quite so easy to set aside 'ordinary' aggression, force or violence as 'not war'. Women are saying clearly that they experience coercion by men in disturbingly similar forms in war and so called peace.<sup>821</sup>

Finally, as Betty Reardon explains traditional explanation of war regards this activity as the *political* uses of armed conflict.<sup>822</sup> However to understand war as a *political* conflict like the Just War tradition does, as I tried to mention above with reference to Clausewitz, and to regard the violence employed against women as non-political and consequently not as a war is the very perspective that the feminist outlook on war is trying to avert. As the Radical Feminist saying demonstrates personal *is* political hence physical and non-physical daily violence that women face should not be cited as non-political and claimed as a result that they do not fall in to the category of war.

The reason why Just War tradition is inadequate to address the problems that women face during the jus post bellum phase is the way this tradition conceives the world. As a tradition heavily borrowing from the Western philosophical thinking it perceives the world in dualities; such as good/evil, just/unjust, combatant/non-combatant, ally/enemy, male/female, aggression/defense and war/peace. As Daryl Charles observes about the just war tradition;

The principled reasoning that constitutes just war thinking, furthermore, calls us indeed, forces us to make moral judgements. We must distinguish, whether in the realm of domestic or foreign policy, between aggressors and victims, between the just and the unjust, between what human behavior is tolerable and what is intolerable.<sup>823</sup>

---

<sup>821</sup> Cockburn,146.

<sup>822</sup> Reardon, A. Betty, *Women and Peace: Feminist Vision of Global Security* (United States:State University of New York Press,1993; henceforth:*Feminist Vision*),39.

<sup>823</sup> Charles,359.

The problem such an outlook imposes on this tradition is not only the hierarchical division of social life between sexes in which women always find themselves as the underdog but also the rigidity that this tradition demonstrates when it comes to assess the cases of war and peace. Due to its rigid dualistic perspective which only allows a choice between war and peace Just War tradition cannot understand that in some cases, and especially in many cases where women are involved, there are situations in jus post bellum phase which should be defined as a state of war even though they do not fit in to the conceptual framework employed by the Just War tradition to describe the situations of war. Sjoberg explained this point with the following words;

While many Just War theorists see war as having a defined starting point and a defined ending point, many women's experiences of war start before the first shot is fired and do not end until long after the "peace" has been made, if at all.<sup>824</sup>

A clear example of such problematic understanding of war is the definition of war by Aquinas. He defined it simply as a state that is contrary to peace. Even though he regarded peace not necessarily a just order which is always worth preserving<sup>825</sup> his just causes for going to war to establish the truly just order and peace do not include any provisions for the improvement of the lives of women. The dualistic point of view internalized by this tradition is again in play in Aquinas' definition of war. Moreover, two of the Just War writers, Cicero who defined war as "a contention by force" and Grotius who defined it as "a state of those contending by force" again illustrate the problematic definition of this tradition in the sense that, even though Grotius acknowledges that war is a "state", both of them associates it with a level of force which fails to understand that for some groups like women there are ways of exerting violence other than physical force.<sup>826827</sup>

---

<sup>824</sup> Sjoberg, Laura,62.

<sup>825</sup> Cole, Darrell,65.

<sup>826</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,393.

<sup>827</sup> In this sense Foucault's studies are crucial to understand that the modern techniques of power rely

The problem with the Just War tradition is the spatial and the reductionist way that it defines the activity of war. This definition regards war as bounded and a separate sphere which is quite different than normal life and apart from the daily occurrences of life. The crucial point here is that war is defined as an event or a collection of events with a clear beginning and end that are typically marked by formal or institutional declarations.<sup>828</sup> However as Cuomo explains;

Many of the questions about war that are of interest to feminists including how large scale, state sponsored violence affects women and members of other oppressed groups; how military violence shapes gendered, raced and nationalistic political realities and moral imaginations; what such violence consist of and why it persists; how it is related to other oppressive and violent institutions and hegemonies can not be adequately pursued by focusing on *events*.<sup>829</sup>

Such an event based understanding regards war as an extended emergency or a series of successive emergencies in which violence based self-help, which is not permitted in domestic politics, is allowed for the states.<sup>830</sup> Such an outlook is quite clearly elaborated by Walzer with his supreme emergency principle which allows the state to leave aside even the most basic *jus in bello* principles that have been formulated in the Just War tradition through centuries. Given such a dualistic and simple understanding of war and peace, it is very difficult for the Just War tradition to come up with an adequate definition of *Jus post bellum* for women period because the very issues that constitutes war for women in their daily lives are not even regarded as

---

less on physical force for subjugation. Maybe one of the best texts that can explain women's situation in patriarchal societies is the part of Rousseau's *State of War* that depicts the situation of Odysseus and his companions inside the cave of the Cyclopes where they were waiting to be devoured by the Cyclopes but they had to wait in tranquility; that they could "*groan and be quite*".

<sup>828</sup> Cuomo, Chris J.,30.

<sup>829</sup> *Ibid.*,30.

<sup>830</sup> Shue, Henry,273.

problems or constituting war to a particular section of a population by the Just War tradition.

Inadequacy of the Just War tradition to come up with a gender neutral understanding of war that would improve the conditions of women in their own domestic societies is also apparent in its legal corpus. Even though by the addition of the two additional protocols to the 1949 Geneva Convention in 1970s, the international character of war was expanded to include the civil wars, wars of national liberation and the use of various government of force to suppress their populations, it still remained, as James Turner Johnson explained, the law of *armed* conflict.<sup>831</sup> This is the main problem with the legal tradition that is associated with the Just War tradition, like the philosophical treatises that it had emanated from it also approaches the war from the perspective of *armed* violence. The absence of arms would effectively lead to the relocation of other kinds of violence such as the ones perpetrated by the patriarchal systems in the forms of economic, physical and psychological exploitation, out of the confines of the legal corpus associated with Just War tradition. It is true that during the post Second World War era by the Nuremberg and Tokyo war crimes trials a new concept called “crimes against humanity” had developed. Declaration of *Universal Rights of Human Rights* by the United Nations followed this and this led to the formation of international human rights law. The application of the principles of international human rights law in to the cases of armed conflict had led to the emergence of the modern phenomenon; international humanitarian law.<sup>832</sup> However as the cases of wars of the dissolution of former Yugoslavia and Rwanda demonstrate the problem with the implementation of international humanitarian law is that it regards the violence as a phenomenon occurring during the period of clash of groups engaging in organized violence and not as something that can take place on a daily

---

<sup>831</sup> Johnson, James Turner, “Human Rights and Violence in Contemporary Context”, *The Journal of Religious Ethics*, Vol 26, Issue 2(1998),320-321.

<sup>832</sup> *Ibid.*,322.

basis, as it takes place for many women in patriarchal societies, during the normal course of life. For example, Article VII of the UN Charter authorizes the Security Council to use military force in cases of “threats to international peace and security”. However, one wonders what happens if perpetration under horrendous conditions of a group of people within the confines of a given state does not create a security threat to the “international peace”. Does this simply mean that this group of people can be left alone to suffer? or why the patriarchy itself is not considered as a security threat to the international peace given the propensity of such societies to normalize violence domestically and militarize their own populations and as a result creating populations ready for war.

A clear manifestation of such Just War thinking in modern period is the Catholic Bishop’s pastoral letter in 1993; *The Harvest of Justice is Sown in Peace* in which the military intervention is only justified in cases of internal chaos, repression and *widespread* loss of life.<sup>833</sup> Here the Just War tradition’s classical emphasis on order in the form of an anxiety associated with internal chaos and its reductionist understanding of violence in which the act of violence is only deserved to be countered when its level reaches the physical level of repression and the actual loss of life, was revealed.

Moreover, it is important to note that war in its traditional definition always work for the reinforcement of hierarchies within the society regardless of its gender dimension. As Graham Parsons explains; “Public war entails a hierarchy of authority wherein the subjects of that authority are, with some exceptions, morally bound to obey their political superiors, at least in matters pertaining the war”.<sup>834</sup> The activity of war, since in its traditional definitions are regarded as crisis driven situations, requires people to

---

<sup>833</sup> Ibid.,325.

<sup>834</sup> Parsons, Graham, “Public War and the Moral Equality of Combatants”, *Journal of Military Ethics*, Vol.11, Issue 4(2012),300.

obey their superiors without any dissent. It is clear that such spatial, traditional understanding of war, by reinforcing hierarchies in the society and by demanding unquestioned obedience will work against the feminist agenda for improving women's rights since implementation of such an agenda requires, not abandoning, but promotion of questioning the hierarchies and obedience to authority in patriarchal societies.

Hence the feminist perspective that would challenge the patriarchal understanding of the Just War tradition cannot be reduced on pondering how to avoid large scale organized violence which we call military conflict or war despite an alleged human tendency or human nature for war. Looking from such a perspective it is clear that Just War tradition only focuses on the ill effects of a limited definition of war without considering the effects of militarism in which the ill effects are more enduring in the sense of environmental destruction that affects both human and non-human animals and reproduction of patriarchal norms that puts women in great disadvantage. The fossil fuels exploited to energize the jet engines of war planes and the amount of chrome, nickel and steel used to build the means of violence necessary to sustain the military industrial complexes are definitive enough to attest to the effects of these to the entire biological life including the environment.

Once the reductionist perspective of the Just War tradition on war is left aside, it would be better demonstrated that behind what we call war stands the militaristic economies, symbolic systems, values and political institutions which actually made it a phenomenon that cannot be restricted to an isolated event with a clear beginning and an end.<sup>835</sup> In order to overcome the dualistic approach adopted the Just War tradition on war it should be given more emphasis not on the dualities mostly based on preconceived notions but on the lives of particular individuals who are involved in

---

<sup>835</sup> Cuomo, Chris J.,35.

large or small scale violence regardless of their adopted or ascribed identities as combatant or non-combatant, enemy or ally and male or female.<sup>836</sup>

The ordinary lives of women in patriarchal societies are a perfect example for this because in appearance there are no battles fought between armies to be described as war but the physical and psychological violence that women suffer in their ordinary lives point to a war against women under the disguise of peace.<sup>837</sup> Hence the definition of jus post bellum has to be extended from being one confined to a transitional period from the end of hostilities to the establishment of peace to a one that also encompasses what we call the period as peace itself. Carsten Stahn explained this point by the following words;

Moreover, the rationale of returning to the status quo ante itself is misplaced in some contexts...The establishment of fair and just peace requires positive transformations of the domestic order of society since peace settlements should ideally achieve a higher level of human rights protection...<sup>838</sup>

Cocburn illustrates the importance of this point by extending the definition of war. She defined war as “part of a continuum of violence from the bedroom to the battlefield.”<sup>839</sup> As Österdahl points out there is a growing consensus for the extension of the definition of jus post bellum to include the period beyond the immediate cease of hostilities. As Österdahl puts it “since typically when jus post bellum enters the picture the societies in their entirety need construction, the potential scope of the jus

---

<sup>836</sup> Ibid.,36.

<sup>837</sup> In such cases it might make much more sense to go not with the dualistic understanding of the Just War tradition that distinguish between war and peace but with the approach of Rousseau who defines the *state* of war in a broader scale that also includes the phase that does not include the actual physical confrontation.

<sup>838</sup> Stahn, Carsten, “Just Post Bellum: Mapping the Disciplines” in *American University International LawReview*, Vol.23, Issue 2(2008),335-336.

<sup>839</sup> Asal,Victor and Schulzke, Marcus,409.

post bellum is very broad.<sup>840</sup> Especially important to acknowledge is the fact that mere survival of the war by women does not mean that they haven't not taken damage due to the long term results of the war. When the wars are over women continue to be exposed to the strains imposed on them by their war stressed families, as the end of two world wars demonstrated; they lose economic opportunities outside their homes, expose to increasing domestic violence of the war torn male members of their families and suffer from the potential long term health and safety effects of wars.<sup>841</sup> This point is clearly demonstrated by the case of post-conflict Bosnia Herzegovina. The elusive Dayton Peace Agreement had led to the end of bloodbath but the problems of women in Bosnia had gotten worse during the "peace" time. The post war economic situation in Bosnia which was characterized by poverty, unemployment and lack of any hope for future prospects had provided a fertile ground for male violence against women. As Cockburn explains "many men, brutalized by the fighting, some by now experienced rapists came back and turned the home itself in to a battleground. Domestic violence and civilian rape became a 'widespread social problem and a serious breach of human rights' ".<sup>842</sup> Such an outlook on the issue of security is instrumental to reveal the state centralism of the Just War tradition which defines security at the state, not at the human level that can accommodate room for the real security and well-being of both sexes. However, as the examples above demonstrate women can very well be insecure even though the states are secure.<sup>843</sup>

Another point that goes against the conventional wisdom that peace is by definition good for women is that sometimes, as ironic as it might seem, war can be beneficial for the raising of consciousness for women's problems. This has taken place in

---

<sup>840</sup> Österdahl, Inger, 281

<sup>841</sup> Sjöberg, Laura, 62.

<sup>842</sup> Cockburn, Cynthia, "When is peace? Women's post-accord experiences in three countries: what has happened to women's hopes for peace in Northern Ireland, Bosnia Herzegovina and Israel-Palestine?" in *Soundings*, Issue 53(2013), 149.

<sup>843</sup> Sjöberg, Laura, 63.

Bosnia when foreign funders and feminist activists came to the aid of local women as a result of their appellation by the rape of local women. Also in the Israeli Palestinian conflict where a year in to the intifada, Jewish women had come in to the support of Palestinians in the face of their perceived injustice on the Palestinians.<sup>844</sup>

The problem with the definition of war put forward by the Just War tradition is its crisis based approach which awaits for the crisis; the war, to erupt in order to take action. However, what is needed is an approach propagated by feminist writers focusing on the omnipresence of the systems of oppression and domination affecting women's lives. Such crisis based approach by the Just War tradition is simply leading to the belief that absence of armed conflict is peace which is presented as the polar opposite of war. The mere existence of jus ad bellum part of the Just War tradition in which proper decision making on the part of the state agents takes places *before* the wars occur demonstrate that this tradition accepts wars as isolated events. However as Cuomo puts it "declarations of war are generally overdetermined escalations of preexisting conditions." Hence Just War tradition fails to understand the military institutions' peace time activities and their effects on war time activities.<sup>845</sup>

### **3.4 REDEFINITION OF JUS POST BELLUM PRINCIPLES AND INTERNATIONAL LAW**

It is very crucial for the above mentioned matters to be taken in to account during the jus post bellum phase. However, the jus post bellum, to deal with the issues that do not have immediate consequences for the termination of war; like women's rights, does not have to codify specific rules and regulations. It can provide the society in question with the criteria against which the other laws can be evaluated and certain

---

<sup>844</sup> Cockburn, Cynthia, 157.

<sup>845</sup> Cuomo, Chris J., 31.

fundamental guarantees such as equality of all sexes ensured. This means laying out the outer legal limits for a more equitable development of the society.<sup>846</sup> However the Just War theorists even though invoked terms like peace and justice with reference to jus post bellum period of the wars, do not associate these concepts with liberation of women and the improvement of their rights in the societies they live. For instance, Alex J. Bellamy puts the achievement of justice to the top of his list for a stable jus post bellum. For him the justice of peace should be evaluated independently of the justice of the war. He acknowledges the fact that even an unjust war would end and it is better for countries to achieve some progress towards justice than simply to cease hostilities.<sup>847</sup> Likewise Mark Evans understands that reconciliation is important for a stable jus post bellum. He claims that the victor should take an active and full part in the socio-cultural process of forgiveness and reconciliation.<sup>848</sup> M. Clifford III regarded respect for persons as an important part of jus post bellum. His list of principles to provide respect for persons include equal respect for the soldiers of the victors and the vanquished, help for the reintegration of the displaced people and the demobilized soldiers to their societies and dealing with the traumas of the combatants and non-combatants alike.<sup>849</sup> But none of these writers, even though they understood something more than a hasty peace agreement to end the war is needed for a stable just post bellum, include anything for the improvement of the conditions of women in their definitions of jus post bellum requirements. The so called realist assumptions are so deeply rooted in the minds of those analysts that a radical transformation of any society for the improvement of women's rights is traded off with a compromise with the dominant pre-war values. As M Clifford III writes;

The cultural milieu shapes how people view others, their understanding of social roles, and their values, e.g., the Western worldview in which all people, regardless of gender, have equal rights

---

<sup>846</sup> Österdahl, Inger, 281.

<sup>847</sup> M. Clifford III, George, "Jus Post Bellum: Foundational Principles and a Proposed Model", *Journal of Military Ethics*, Vol.11, No.1 (2012), 43.

<sup>848</sup> *Ibid.*, 44.

<sup>849</sup> *Ibid.*, 46-47.

strongly clashes with some tribal cultures. Demanding that the vanquished adopt the victor's standard of commutative justice can impose unrealistic expectations of dramatic and rapid cultural change. Progress toward improved commutative justice is a better, more realistic goal, one achieved through cultural sensitivity, dialogue and compromise.<sup>850</sup>

But as Korac explains, from a Marxist perspective, in order to attain a gender just peace in the *jus post bellum* phase a much deeper transformation is needed following the war. She explains;

These every day and structural forms of violence require gender relational and integrated interventions at multiple levels: state, community, and individual. How else can emancipation from patriarchally determined gender roles be achieved in a society that is structured around a capitalist patriarchy required to support liberal capitalism? Only by engaging with the gender systems of power that underpin diverse societal realms, ranging from the rule of law, justice and security to economic development, education for democracy and reconciliation and by understanding how they negatively affect both women and men can one begin to tackle the question of a gender just peace.<sup>851</sup>

What is required is not the strategy that is often employed for the people who would like to improve women's right within the given system without pressing for any changes in those systems; namely the strategy of mainstreaming. Gender mainstreaming try to improve the lot of women within the already existing structures such as government, judicial system and military. However, it fails to protect women who directly participate in to the efforts of improvement of women's rights. For instance, many women from different professional backgrounds such as social scientists, fashion designers, legislators and lobbyists believe that they do participate in to a process that would make women's position better in, for instance, militaries. But the fact remains that usually militaries deliberately would like to work these "civilian" women to achieve their own ends of recruiting certain number of women to their institutions without posing a challenge to the male dominated culture reigning in

---

<sup>850</sup> Ibid.,48.

<sup>851</sup> Korac, Maja, 439.

militaries, usually for propaganda purposes.<sup>852</sup> Hence gender mainstreaming may work to a *certain extent*<sup>853</sup> in societies that have not been subjected to serious disruption like the ones in their jus post bellum phases. But the problem with the society in jus post bellum phase is that such structures themselves would usually be in midst of transformation and radical changes which can change the system of patriarchy embedded in those institutions and wield through their clout, can be brought only by a strategy of independence, or as Cynthia Enloe calls it through “unconventional vantage points”. As Jacoby explains “women’s independent organizing is particularly significant in zones of conflict where political systems are contested and under stress”.<sup>854</sup>

However, the current perspective of International law does not provide the necessary tools for such a transformation to take place in the favor of women in jus post bellum societies. It is quite problematic when it comes to defending women’s rights in the jus post bellum phase of the conflicts. International law usually focuses on the lawfulness of peace agreements rather than the justice they provide. Moreover, as a reflection of the realist principles in international affairs, it tries to secure peace before justice in order to attain order. As Österdahl puts it; “ order, arguably traditionally has been the organizing principle in international law and in consequence has been regarded as superior to principles of justice.”<sup>855</sup> Österdahl continues as follows;

A Just peace in international law would simply be a peace laid down in a peace agreement concluded under international law and not containing conditions that would seem too unjust in a more general sense toward any of the parties. There have been few, if any qualitative demands on the peace reached and even less demands relating to the period in time following the peace.<sup>856</sup>

---

<sup>852</sup> Cynthia H., Enloe, *Militarizing Women’s Lives*, 237.

<sup>853</sup> My emphasis

<sup>854</sup> Tami Amanda, Jacoby, *Women in Zones of Conflict*, 9-10.

<sup>855</sup> Österdahl, Inger, 277.

<sup>856</sup> *Ibid.*, 277.

Given the preference of order to justice by the international law, it is not plausible to expect from such a discipline to spearhead the women's rights in the jus post bellum phase of the conflict. By taking a stance in the favor of order, international law implicitly favors the status quo when it comes to women. The tendency of international law for the preservation of the status quo runs so deep that even in a period of acute change like the jus post bellum; it prefers to establish the new order with reference to the pre-war political relationships. Bhuta explains;

Successful constitution making- when it coincides with state making- requires the coordination of socially and politically powerful groups who have the capacity to legitimate the relationship of supremacy and subordination that is essential to an effective state order. On this understanding, there is little place for internationally prescribed rules that encode specific forms of legitimacy.<sup>857</sup>

Here jus post bellum order not only is conceived as a hierarchical one but also as a one requiring the continuation of pre-war dominance of the "social and politically powerful groups" in the name of establishing the much sought after legitimacy. In societies that have patriarchal leanings this can mean only one thing; the reconstruction of the defeated society on the basis of male domination. Even the renowned and much invoked concept of international law; the right for self-determination simply disregards the differences inside the society and being considered as realized when foreign military withdraws and replaced by the internationally recognized sovereign of the territory. There exists no requirement that the sovereign be democratically legitimated by a particular standard in order to resume its control over the territory that it had lost during the war.<sup>858</sup>

The articles 43 of The Hague Regulations and 64 of the Fourth Geneva Conventions openly militate against fundamental legislative and institutional change in a foreign

---

<sup>857</sup> Bhuta, Nehal,806.

<sup>858</sup> Ibid.,820.

country. Article 43 of The Hague Regulations requires the belligerent occupant to respect the laws in force in the occupied territory. This obligation is accompanied by the obligation to re-establish and insure public order and safety as far as possible. Article 64 of the Fourth Geneva Conventions authorizes the occupying power to change the existing laws only to maintain the orderly government of the territory in question and to ensure the security of the occupying power. But it does not provide the occupant to transform the legal order in the name of implementing human rights.<sup>859</sup>

However, it should also be mentioned that it is not enough to simply reverse the relationship between order and justice and focusing on justice without subjecting the concept of justice to a radical transformation. As Korac points out with regard to the *jus in bello* phase of the war of Yugoslavian succession, without focusing on an integrated transitional justice strategy which leads to transformative processes that promotes building a “positive peace”; a peace that contains justice for all sexes, to focus on a retributive justice by only prosecuting the perpetrators of war crimes and human rights violations in international tribunals would not create a *jus post bellum* phase that would be just for both sexes.<sup>860</sup>

### **3.5 THE ISSUE OF VIOLENCE AND HUMANITARIAN INTERVENTION REDEFINED**

In this part I would like to touch upon the debate on violence because the above mentioned criticism of the international law inevitably goes hand in hand with the endorsement of humanitarian intervention to protect women which in turn transcends Westphalian understanding of International Relations. This might also involve

---

<sup>859</sup> Ibid., 824.

<sup>860</sup> Korac, Maja, 436

execution of violence against the perpetrators of women. The *jus post bellum* phase usually is understood to be the phase in which the need for violent means is over. However, given the explicit and disguised forms of violence that women face during the *jus post bellum* phase, a possibility to use violence and intervene in to the “internal” affairs of a state are always existing. Hence once the political and economic pressures to change the lives of women in a given state is not successful, it is always possible to intervene militarily, which means starting yet another just war for a just cause.

The possibility of employing violence inevitably invokes moral questions which themselves are not easy to address. But to demonstrate the way women are perceived by man in patriarchal societies I would like to draw from Beauvoir and her definition of “serious man”. For her, the serious man represents the ethically unacceptable type in life. This man identifies himself with certain particular ends and guides his actions uncompromisingly and in an absolute way in the direction of such ends. The value of his ends always outweighs the costs inherent in the means he employs. He is prone to use oppressive violence for his ends and willing to instrumentalize the others. This entails the objectification of other existents; reducing them to a thing-like status.<sup>861</sup> Unfortunately, such an objectification of women is a salient aspect of life in many of the modern societies suffering from patriarchal norms. There is an increasing intensity of objectification effort against both animals and women who are reduced to objects to satisfy man’s biological needs; former in the form of food for nutrition and the latter in the form of sexual objects to satisfy sexual desires. Against such people it seems Beauvoir herself endorses the use of violence as well. As she explains;

---

<sup>861</sup> Hutchings, Kimberly, 117.

The fact is that one finds himself forced to treat certain men as things in order to win the freedom of all...A freedom which is occupied in denying freedom is itself so outrageous that the outrageousness of the violence which one practices against it is almost cancelled out.<sup>862</sup>

Hence Beauvoir regards the employment of resistive violence both as necessary and legitimate. Necessary because those who were reduced in to thing-like status by oppression will inevitably react to this condition and this cannot happen without using violence. It is legitimate because the ultimate wrong is oppression and to redress such a wrong is not a wrong thing.<sup>863</sup> However again by following Beauvoir, I am aware that instrumental arguments for employing violence in order to achieve the goal of freedom for women has its own weakness. In such an argument one attributes a high level of independence and foresight to the agent; the political actor. In this case, the agent is understood to have the ability to detach herself from her environment and predict the consequences of her actions. But as Beauvoir points out we don't know the future and our information is impartial and imperfect as well as our control of events are limited. However, when one is confronted with the morally ambiguous world of politics, one understands that the choices one has to make will involve dilemmas; like the one involves here between letting women suffer in their societies marked by patriarchal norms or taking action even by knowing that such violent action will entail ambiguities and will be carried out by agents who have limited abilities and weaknesses.

Feminist theorists have differing views on the issue of the implementation of violence but broadly speaking there are two opinions among them both regarding violence as deplorable. However, one group of Feminist thinkers propagate that there can be no distinction between an oppressive; usually state sponsored violence and a resistive violence associated with the women trying to protect themselves from the male

---

<sup>862</sup> Ibid.,119.

<sup>863</sup> Ibid.,119.

oppression. For them political violence in all their uses is deplorable, so they adopt a position of absolute pacifism. But for another group of Feminist thinkers it is possible to make such a distinction between oppressive and resistive violence and endorse the latter.<sup>864</sup> They regard such resistive violence as a necessary evil that women cannot escape. However, they also acknowledge the moral impasse involved in endorsing such kind of necessary evil. Thinkers like Ruddick elaborates that it is not possible to solve the tradeoff between violent means and anti-oppressive ends. To employ violence even against oppression is at odds with the very values of care propagated by many of the feminist writers, first and foremost by Ruddick represented by her maternal ethic and runs the risk of reproducing the conditions that feminism tries to avert. On the other hand, to denounce violence altogether runs the risk of disability to challenge the very violence that makes women's lives miserable and not to be able to fight against the values that makes women subjugate.<sup>865</sup> Here it is appropriate to mention the way violence is understood by Georges Sorel in order to shed light on the resistive violence that is mentioned above. Sorel elaborated on a similar kind of violence within the framework of bourgeoisie and proletariat dichotomy. For him the oppressive kind of violence was one that is based on a juridical guise and sustained by the victimization of weak by the strong. In contrast, the violence implemented by the proletariat is based on sublime and heroic ethic based on a quest for equality and freedom. Sorel saw such kind of violence as necessary because there is no other way to change the world. To deny the proletariat the need for resistance is to make them accept their ongoing defeat at the hands of the dominant class. Since for Sorel the violence is endemic, there is no real choice between violence and non-violence. Instead there is the need to discriminate between different types of violence to establish what kind of violence is positive in its effects.<sup>866</sup> Sorel's position in violence is instrumental to understand the debate among the feminist scholars on violence and

---

<sup>864</sup> Ibid.,111.

<sup>865</sup> Ibid.,113.

<sup>866</sup> Ibid.,118.

to understand the arguments behind the second group of feminists in this debate that endorse violence.

The second group of feminist thinkers, even though they understand the dilemmas involved in moral dimension, see no problem in employing violence by or in the name of the weak; in this case women against the strong as a means to attain freedom and justice.<sup>867</sup> It is no coincidence that such feminist perspective that endorses the use of violence for just ends, employed the Just War theory as its framework since the justification of violence for moral/political ends usually adopts the just war framework.<sup>868</sup> Apart from a tiny minority of Catholic Bishops who in 1983 declared all kinds of force as evil and Christianity has a “presumption against war”, the Just War tradition does not regard force itself as evil, it simply states that it can both be employed for good or evil purposes.<sup>869</sup> As G. Scott Davis puts it “murder is wicked, a species of injustice, but peace, violence, injury, killing and war are generally neither just nor unjust”. Aquinas explained this point by stating that “peace is not virtue but the fruit of virtue”. The crucial point is that Just War tradition makes a choice between peace and justice and throws its weight on the side of justice however ill it has defined it.<sup>870</sup> Leaving aside the problems of Just War tradition regarding gender issues for a moment, what is important here is to understand that feminism has a strand that endorses violence and it formulates it through the framework of Just War theory which makes the revision of this tradition to include the women’s perspective even more crucial. The ethical issue of employing violence to achieve noble purposes was addressed by some of the feminist writers who only had find the Just War tradition suitable as a theory to substantiate the use of force to improve the rights of women in patriarchal societies. As I will try to explain below this is connected with the writings of modern Just War theorists who tried to include some provisions in to

---

<sup>867</sup> Ibid.,114.

<sup>868</sup> Ibid.,115.

<sup>869</sup> Johnson, James Turner, *Ethics and the Use of Force*,26.

<sup>870</sup> O. Ilesanmi, Simeon, 144.

the Just War theory that would challenge the Westphalian understanding of sovereignty, even though their concerns were nothing to do with the improvement of women's rights.

It should also be mentioned that especially the Just War thinkers of the secular age had provided some theoretical basis for the subjects to change the ways of their own governments and even justified the other states to intervene for humanitarian causes. Vitoria is a good example for this. He explained that;

The prince has the authority not only over his own people but also over foreigners to force them to abstain from harming others; this is his right by the law of nations and the authority of the whole world. Indeed, it seems he has this right by natural law; the world could not exist unless some men had the power and authority to deter the wicked by force from doing harm to the good and the innocent... If commonwealth has these powers against its own members, there can be no doubt that the whole world has the same powers against any harmful and evil men.<sup>871</sup>

He answered in affirmative, to the question in his *On Law of War* whether we may depose the enemy's princes and set up news ones in their place. He elaborated that;

However, it cannot be denied that there may sometimes be legitimate reasons for supplanting princes, or for taking over the government. This maybe because of the number or atrocity of the injuries and harm done by the enemy and especially when security and peace cannot otherwise be ensured, when failure to do so would cause a dangerous threat to the commonwealth.<sup>872</sup>

However one should keep in mind that it is crucial to substantiate the argument that patriarchy itself in a given state is a serious security threat to the other states since it promotes militarism and violence because as the quote from Vitoria illustrated, even though there are some arguments in the favor of humanitarian intervention in the Just

---

<sup>871</sup> Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,316.

<sup>872</sup> Ibid.,331.

War tradition, the main concern for intervention for this tradition is still the danger posed by a given state to the others and its capacity to disturb the “peace”.

In a similar fashion, Grotius included oppressive injury or harm by a ruler in another state inflicted upon his own people that requires punishment in to the list of just causes for just war.<sup>873</sup> Likewise John Locke explained that sovereignty rests with the people not with the Prince, hence citizens have a right to revolt against authority if it violates the law of nature and the terms of the social contract.<sup>874</sup> But it should be mentioned that as demonstrated by the three principles of Emmerich de Vattel who described maintenance of balance of power system, intervention on the just side of the civil war and colonial expansion as just causes for intervention to the internal affairs of other states, none of these writer specifically cater for women’s interests or state their rights as something to be protected.<sup>875</sup>

Even though one can be in favor of intervention in to the “internal” affairs of states to improve the conditions of women, by following the Weberian ethics of responsibility in the sense that one shall resist evil by force otherwise she or he will be responsible from its spread, I should also mention that there is a serious argument by John Stuart Mills that propagates the opposite view. His communal understanding of liberty in which the members of a political community should struggle for their own freedom, makes any effort of liberty brought by external causes irrelevant and bound to fail. He regards individual virtue as indispensable for liberty and hence believes it springs up only during the political struggle. He believes the freedom of a political community can only be won by the members of that community. People have to be free by their own efforts.<sup>876</sup> This is also in line with the Arendtian understanding of politics which stresses the importance of adopting a *vita activa*; a life dedicated to the public affairs

---

<sup>873</sup> Howard M. Hensel, *The Prism of Just War*, 91.

<sup>874</sup> *Ibid.*,96.

<sup>875</sup> *Ibid.*,98.

<sup>876</sup> Mill, John Stuart, *On Liberty*(New York:Oxford University Press,2008)

or with the Ciceroian views on the virtues of spending one's life in active public service. However, given the intransigence and strength of the patriarchal structures in many of the modern societies it is not clear how women will make their voices heard, be present in active political struggle without any outside active assistance. Such Millian arguments take the patriarchal status quo for granted and do not pay any attention to the conditions of women who suffer from political inequalities and fail to find any channels to participate in to the public affairs to better their conditions. For some certain groups in the society there may be no help unless it is extended from outside the borders of their own states. Also the fact remains that in some cases, for women such need of help might be quite urgent. To wait the development of civic consciousness on the part of women, would be no different than the Allies' decision during World War II to wait with the bombing of the rail tracks leading to Auschwitz, with the excuse that the inmates will be saved in any case when the war will be won by the Allies. But the truth that many people continued to be killed on a daily basis until the Nazis were defeated by the Allies and in a similar fashion women are being killed, raped and subjected to violence on a daily basis *now* which makes the option of waiting for the civic consciousness to develop only a luxury of the ones who are distanced and dis-attached from such dangers and have little or no stakes in their solution. However, I should also mention that humanitarian intervention in the name of women should in every case take a military form. Like the new redefinitions of the concept of war which try to bring forth the continuum approach to the notion of war, the same approach can also be taken with regard to the humanitarian intervention in which military force is only one of this coercive continuum. As A.E Cudd explains it is always possible to try diplomatic persuasion, diplomatic criticism, economic incentives, economic sanctions and embargoes before resorting to military means.<sup>877</sup> But as I tried to explain before, how effective these measures can be, are always debatable. However, such a redefinition of the notion of humanitarian intervention is

---

<sup>877</sup> Cudd, A.E, 368-369.

still crucial given the tendency of the classical definition of humanitarian intervention to focus on the “grave” violations. If in any case military force will only be deployed for “grave” violations, then there is a clear need for other kinds of non-military measures for the so called not so “grave” violations. Then a coercion continuum where military means is only one part of the continuum is needed to initiate humanitarian interventions for “lesser” crimes against women without employing military means. Such a transformation of the concept of humanitarian intervention will also contribute to the negative image of the concept especially propounded within the context of liberalism that it is a Janus faced practice on the one hand representing the legal conscience of the civilized world and the other the hubris and cruelty of the intervening powers, most of the cases European powers with the appropriate military means, down looking on the groups that they are trying to liberate.<sup>878</sup>

Moreover, to initiate such a transformation for the notion of humanitarian intervention that allows it to focus on the issues of women during jus post bellum phase is crucial because humanitarian interventions themselves are initiated in the first place with the aims and arguments specifically focusing on the positive outcome of the reconstruction process in the country intervened.<sup>879</sup> Hence for humanitarian intervention, to fall short of its most fundamental aim; to improve the conditions in the country intervened, or to skip women altogether in this reconstruction process, would be a grave contradiction.

However, it is important to denote the fact that, despite few provisions for the favor of intervention and adaptation of it by some feminist writers for improving the

---

<sup>878</sup> Gozzi, Gustavo, “The discourse of international law and humanitarian intervention” in *Ratio Juris*, Vol. 30, Issue 2 (2017), 187.

<sup>879</sup> De Brabandere, Eric, “The Responsibility for Post Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept” in *Vanderbilt Journal of Transnational Law* Vol 43(2010), 137.

conditions of women through intervention in to the internal affairs of states, Just War tradition predominantly is a Westphalian tradition that is against any kind of intervention in to the domestic affairs of states, including the conditions that women face in their societies. Hannah Arendt warns us against the dangerous language of “humanitarianism”. She holds a deeply suspicious view of the concept of and justification for political action based on humanity.<sup>880</sup> The experiences of inter-war period and the Second World War demonstrated to her that when human beings were not protected by their own sovereigns and even persecuted by them, they simply had found themselves in a state of nature similar to the one described by Hobbes. Humanity is not enough for the protection of human rights; we do need the endorsement of such rights by actual sovereigns. However, the traditional understanding of International Relations militates against one state, or group of states to intervene in to the “internal” affairs of another state. Likewise, other than few very brief provisions by few modern writers mentioned above, Just War tradition regards war as a matter that belongs to the foreign affairs. It perceives the world as a place where sovereign nations choose to whether to cross the borders of other sovereign nations to achieve certain humanitarian, territorial and security goals.<sup>881</sup> Contemporary International relations is mainly based on the Grotian notion of international law which considered the states as the sovereign and regards them as entities that are exempt from the external intervention. Confined to Europe at its inception, this Grotian understanding of international law rejected a universal or hierarchically constructed world order and instead opted for a system of equal nation states that adhered only to the rules based on treaties negotiated and signed by other states.<sup>882</sup> In the works of Grotius the medieval notion of hierarchically constructed human community governed by natural law which was enforceable under the

---

<sup>880</sup> Owens, Patricia, *Between War and Politics: International Relations and the Thought of Hannah Arendt* (United Kingdom: Oxford University Press: 2007, henceforth: *Between War and Politics*), 11.

<sup>881</sup> Ben-Porath, Sigal, “Care Ethics and Dependence: Rethinking Jus Post Bellum”, *Hypatia*, Vol. 23, No. 2 (2008), 63.

<sup>882</sup> Muldoon, James, “Francisco De Vitoria and Humanitarian Intervention”, *Journal of Military Ethics*, Vol. 5, No. 2 (2006), 130.

direction of the Pope was rejected in the favor of a system based on legal equality of states without any overarching authority that can authorize intervention in to the internal affairs of the states.<sup>883</sup> Given the equality of the states it is not surprising that the Just War tradition had taken a different turn regarding the justness of war for states. Grotius had adopted the view propagated by Vitoria that a just war can be waged by both sides. He recognized that even a belligerent party which had doubted its own legal position could still be waging a just war.<sup>884</sup> Of course the ideas of Vitoria and Grotius on the justness of war on both sides had taken the bias of the Just War tradition for the legitimate actors; the states, to a whole new level. From such a perspective the mere status of being a state is enough to wage a just war. But the mere status of being a state with the right to go war does not automatically lead the states to go to war for the protection of rights of humans in general and women's in particular. As Rengger put it; "Westphalian international law, for all that it might be fraying at the edges, still militates against this emphasis."<sup>885</sup> But for the protection of women's rights we need to move from the power politics to a cosmopolitan society that was envisaged by Kant which would even grant legal protection to citizens against their own criminal regimes. In order to achieve such a cosmopolitan society that would safeguard the rights of all a new understanding should be introduced in to the inter-state relations where military force legitimated by an appeal to a source outside the traditional world of sovereign states; the law of world citizens in a global public sphere.<sup>886</sup> The problem involved in this legalist paradigm that denies a legal basis for humanitarian intervention for the states lies in its claim that the basis for humanitarian intervention lies not in law but in morality. It belongs in to the realm not of law but of moral choice which nations, as sometimes individuals do, are forced to make.<sup>887</sup> Considering the dominance of realist paradigm in international relations

---

<sup>883</sup> Muldoon,130-131.

<sup>884</sup> Winkel,359.

<sup>885</sup> Rengger,Nicholas,359.

<sup>886</sup> Owens, Patricia, *Between War and Politics*,130.

<sup>887</sup> Walzer, Michael, *Just and Unjust Wars*,106.

which constantly suggests the redundancy of moral imperatives for states<sup>888</sup>, then to transfer the obligation to intervene from law to morality in which states are thought to care less at least since Machiavelli, is not a promising for the ones whose lives can only be improved by such interventions.

The problem of the Just War tradition when it comes to women is hypocrisy. As a tradition elaborating detailed rules and regulations regarding the protection of civilians, in most of the cases including women and by devising detailed norms of discrimination Just War tradition only pretends to protect women. However, its concerns in inter-state relations simply vanish when it comes to the Jus post bellum period. It simply leaves the same woman that she allegedly tries to protect in the battle field to her own fate in her respective society when the war is over. This is with no doubt the result of the transformation that has taken place since the writings of Hugo Grotius who re-defined the concept of sovereignty and the modern Just War theorists' definitions of just cause limited with self-defense such as Michael Walzer who simply reduced the issue of just cause in to an issue of aggression and defense.<sup>889</sup> Given the definition of war as an activity occurring only between sovereigns combined with the modern understanding that just cause arises only in case of aggression by a foreign power, then the tragedy emanates from the Just War tradition for women even becomes more apparent. The combination of such a problematic definition of war and the reduction of just cause in to a simple act of self-defense effectively rules out any hope for humanitarian intervention carried out for the improvement of the conditions of women or even to stop grave mistreatment of them.

---

<sup>888</sup> Even a realists who considered moral values as relevant like Hans J. Morgenthau claims that the principle of *Fiat Justita Perat Mundus* may be valid for individuals but not for states. In a similar fashion Weberian ethics of responsibility accepts immoral choices sometimes as necessary in politics.

<sup>889</sup> Johnson,553.

The definition of the crime of aggression, the article 8, of the International Criminal Court Statute illustrates well the state centric and the Westphalian understanding still inherent in international law. The article reads;

1. For the purpose of this Statute, "crime of aggression" means the planning, perpetration, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a *State*<sup>890</sup>, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of the paragraph 1 "act of aggression" means the use of armed force by a *State against the sovereignty, territorial integrity or political independence of another State*, or in any other manner inconsistent with the Charter of the United Nations.<sup>891</sup>

The problem with the definition of the crime of aggression is that the person will only be held accountable from the crimes he or she committed in *jus in bello* level when such crimes are committed through the machinery of the state. Hence adaptation of such state centric principle of aggression by Michael Walzer in to the Just War Canon displays the state-centric approach inherent in this tradition which endorses interventions to only other states which violates the well preserved and almost sacred Westphalian principle of state sovereignty.

The article 4 of the much renowned Geneva Convention of 1949 which defines the protected persons in war is also another good example to demonstrate the point. The article says;

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they *are not nationals*.<sup>892</sup>

---

<sup>890</sup> My emphasis

<sup>891</sup> Van Schaack, Beth, 481.

<sup>892</sup> My emphasis

Here the protection to the civilians are only offered by the condition that the persecution is carried out by a foreign government. As a document reflecting the Westphalian norms The Geneva Convention is silent on the persecutions carried out by the states against their own citizens. The article 2 of the Convention that deals with the application of the Convention says;

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between *two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.*<sup>893</sup>

The Convention clearly demonstrates that it only applies to the *states* that are parties to the agreement. Here the conflict is understood to be a military contest among states with no understanding that continual deprivation of a certain group in society of their rights by their own states is a form of war that have to be dealt with.

It is clear that a gender just *jus post bellum* can only be secured with an approach on humanitarian intervention which considers grave mistreatment of women as just cause for a just war. In order to come up with such an understanding of humanitarian intervention the overly deterrent definition of crime of aggression which almost defines any kind of offensive assault as *crime* of aggression in International Criminal Court Statute should be redefined to allow some forms of offensive assaults for women's rights not to be defined as a crime. As Schaack puts it "the codification of the crime of aggression and the eventual threat of prosecution may chill those uses of force that are protective in nature".<sup>894</sup> The codification of the crime of aggression without any exceptions for human rights, including the women's rights, would

---

<sup>893</sup> My emphasis

<sup>894</sup> Van Schaack, Beth,478.

discourage many to take action with the concern that it might lead them to face criminal charges after the humanitarian intervention is over. Moreover, it is clear that, in order to come up with a gender just definition of humanitarian intervention, the central concern of international law of maintaining peace among states should give way to the concern of establishing a legal regime focusing on individual autonomy and the sufferings of the people rather than the problems of the states.

### 3.6 PATRIARCHY IN JUS POST BELLUM PERIOD

However, what is critical for the Just War theory to still be relevant and gender neutral in the 21<sup>st</sup> century is to recognize that as Debra B. Bergoffen puts it “securing peace with justice must address patriarchal gender codes of masculinity and femininity, and are led to say that unless and until these codes are dismantled, the peace sought by the Just War tradition will remain elusive”.<sup>895</sup> Since patriarchy is a form of violence that rests on force of various kinds from intimidation of rape to social imposition of dependency<sup>896</sup>, jus post bellum period has to take in to account that without the eradication of patriarchy there is always the risk for another war. There already is an alarming tendency vis-à-vis the institutionalization of Just War theory in the form of human rights protocols and conventions that increasingly leading politicians to divert their attentions from the nature of war to the rendering of it as “clean” by adhering to a set of principles taken from the Just War tradition.<sup>897</sup> It is important to note here that by pointing patriarchy as one of the causes of war one does not automatically engage in an essentialist argument disfavoring man as demonstrating them as more prone to violence. Patriarchal structures have their negative effects on women as well and conditions them to be or at least be more

---

<sup>895</sup> B. Bergoffen, Debra, 81.

<sup>896</sup> Reardon, A. Betty, *Feminist Vision*, 39.

<sup>897</sup> Bar On, Bat-Ami, “Introduction: Thinking About War”, *Hypatia*, Vol. 23, Issue 2(2008), ix.

supportive of violence. The acts of the members of the women's wing of the Sangh Parivar; the umbrella of the Hindu nationalist associations, who went out to the streets and urged the man to kill and rape as many Muslim women as possible during 2002 in Gujerat demonstrate how patriarchy can negatively affect both man and women alike.<sup>898</sup> However the role of patriarchal gender relations in war is undeniable. It is based on a phallogocentric relation between a supreme masculine principle and a secondary feminine one in which the masculine is the source of authority. As Beauvoir elaborated this gender order is predicated on coercion and violence which has important bearings on militarization and war. Traditional explanations of war perceive this activity as political, institutional, organized and calculated. However, it has its sociological aspect as well. As Colin Creighton and Martin Shaw wrote "Aggression is not force, force is not violence, violence is not killing, killing is not war." Women from various different backgrounds continuously express that they experience coercion by men in disturbingly similar forms in war and so called peace.<sup>899</sup> In other words, the violence what we call war experienced among different collectives; like states, is being continuously experienced by women as part of their everyday lives. Interestingly enough, is how one of the most common definitions of war corresponds to the everyday experiences of women. War is a conflict in which killing is not regarded as murder and socially accepted.<sup>900</sup> The alarming reduction in legal punishment for women killings in patriarchal societies and the various ways that they are somehow legitimized by some of the population in such societies with reference to concepts like honor are clear illustration of the parallels between women's daily experiences and the experiences in war. To understand war more properly it is appropriate to locate it in a spectrum in which war is the maximal expression of violence which includes lesser forms such as sexual, intra-familial, social, economic and political. If war is refreshed and reproduced by

---

<sup>898</sup> Cockburn, Cynthia, "A Feminist Standpoint", in *International Feminist Journal of Politics*. Vol.12, Issue 2(2010),143-144.

<sup>899</sup> Ibid.,146.

<sup>900</sup> Cockburn, *Buradan Baktığımızda*,278.

violence as a banal practice, then it is obvious that the banalization of violence largely against women but also against men plays a significant role for war to be a normalized and banal experience. Moreover, if one accepts war as a result of a system or as the tip of the iceberg, as Betty Reardon does, then this act turns in to an experience lived as a result of less immediate, underlying set of institutions and relationships. As Reardon saw it, it is the result of “our competitive social order”<sup>901</sup> which is based on authoritarian principles assumes *unequal value among and between human beings*<sup>902</sup> and is held in place by coercive force.<sup>903</sup> It might be argued that the effect of patriarchy are not as visible as other causes of wars like national interests or ethnic or religious differences. But as Brian Fogarty explains wars have multiple causes and some of those causes are immediate, some are antecedent and some others are root causes or favorable conditions.<sup>904</sup> Patriarchy should be seen as one of the root causes of wars, very significant but not immediately visible at first sight. Masculinization of societies before the wars and re-masculinization in case of defeats to salvage the pride of the people demonstrates the depth of patriarchal norms in social structures that lead to war.<sup>905</sup> General tendency in societies characterized by a patriarchal gender regime is association of masculinity with authority, violence and coercion. Such masculinity both serves militarism well and seeks and needs further militarization for its fulfillment. <sup>906</sup> R.W Connell explained the relationship between violence and gender as follows;

Gender dynamics are by no means the whole story. Yet given the concentration of weapons and the practices of violence among men, gender patterns appear to be strategic. Masculinities are the

---

<sup>901</sup> Hannah Arendt associates the agonistic understanding of life among the Ancient Greeks with their demise, since it produces constant wars.

<sup>902</sup> My emphasis

<sup>903</sup> Ibid.,147.

<sup>904</sup> Ibid.,149.

<sup>905</sup> Ibid.,150

<sup>906</sup> Ibid.,152.

forms in which many dynamics of violence take shape...Evidently then, a strategy for demilitarization and peace must include a strategy of change in masculinities.<sup>907</sup>

Studies show that increasing militarization of the population also leads to the increase of violence in society in general and domestic violence in particular. Since military is an organization explicitly organized on the basis of the principles of aggression and loyalty, the more army gains upper hand inside the society the more such patterns of violence spill over into the inter-personal and inter-gender relationships.<sup>908</sup> As Cynthia Cockburn emphasizes patriarchy strengthens militarism and militarism needs patriarchy. To exploit the controversies in patriarchy might serve as a good tool to combat militarism. For instance the adaptation of the strategy of conscientious objection by homosexual man is a useful strategy to disrupt militarist practices.<sup>909</sup> Even if the Just War tradition does not pay any attention to the conditions of women in their respective societies, there are authors that claim that patriarchal relations are behind wars and given such an assumption it is important for the Just War tradition to focus on the amelioration of women's condition after the war is over if it wants to survive as a relevant theory in the modern age that can secure peace and decrease the likelihood of another war in the future. To put it in Just War tradition's terminology if, as Cynthia Cockburn claimed, patriarchy is a *casus belli* then why it should not be regarded as a *justa causa* for a *bellum justum*? Such an outlook requires the transcendence of realist; especially neo-realists assumptions about the causes of war and to focus on the so called "internal" politics of states. When it comes to aggression even the distinction between internal and external politics becomes meaningless. As the French pacifist philosopher Simone Weil said before the start of World War II, about her studies on war that her greatest mistake was to think that war is the part of foreign policy whereas it is keenly embedded in domestic politics.<sup>910</sup>

---

<sup>907</sup> Ibid.,153.

<sup>908</sup> Yuval Davis, Nira, *Cinsiyet ve Millet*,198.

<sup>909</sup> Cockburn, *Buradan Baktığımızda*,291.

<sup>910</sup> Ibid.,280.

But there is more that militates against the women's rights to be adopted as a just cause for a just war in this tradition. This is the legitimate authority and its authority to conduct war on the basis of common good. Just War tradition only authorizes the state as the legitimate authority to employ violence when it defends the common good as elaborated first and foremost by Augustine and re-affirmed by Aquinas. Such principle has both an authorizing and limiting influence on the state. A government can wage war on behalf of the common good of which it is responsible but it doesn't have the authority to wage on behalf of political goods in general. So if a government wages a war unrelated with its common good, acts illegitimately according to the Just War tradition.<sup>911</sup> This principle, presented in a realist disguise, is quite important to understand why women's rights, almost always regarded as non-essential to the common good allegedly manifested in the national interests, are not invoked as a *justa causa* for a just war. However, to the question why it is not seen an integral part of the common good for the society, the theory of patriarchy has a lot to say.

As a tradition molded in the Westphalian tradition, Just War tradition simply disregards the domestic violence against women. However one of the most important novel perspectives brought by the Feminist thinkers during the late 1980s to the studies of international relations was that many of the international problems are keenly connected with the internal ordering of the states.<sup>912</sup> And such problems of the states stemming from their internal ordering are not only the result of ethnic and identity issues but also the result of gender relations.<sup>913</sup> As Robert Keohane rightly asks " can gender be a variable to determine the state's probability to resort to war or

---

<sup>911</sup> David Helmut, Baer and E. Capizzi, Joseph, 126.

<sup>912</sup> I am aware that this statement by the Feminists thinkers is not a simple issue as it might seem. There is an ongoing debate in international relations between the neo-liberals and the neo-realists about whether it is the domestic structure of the states or the ordering of the international system that matters in ensuring peace; in other words whether Kantian or the Waltzian tradition is right in determining the condition of peace in international system.

<sup>913</sup> Tür and Koyuncu, 18.

to assess its peaceful or hostile intentions? Might the states with less gender inequality be less aggressive or might they as well perform easily coercive actions".<sup>914</sup> It is obvious that the internal ordering of states do have an important role to play on the part of the politicians to go to war. Different states with different military and economic capabilities, varying cultures of domestic violence and differing domestic political structures both take different decisions in the ad bellum phase to go to war and in the in bello phase to decide how to conduct their wars due to the influence of such factors on policy makers.<sup>915</sup> The states, in which the political power is centralized, the institutional mechanism that can convey public opinion to the policy makers are weak and the power of opposition is curtailed, faces little or no obstacles to transform itself to a war machine. Patriarchy indeed is instrumental in creating such a domestic regime because it constantly disregards women's participation in to public affairs, including the decision to go to war, and debarring an important segment of the public opinion to be heard. As Kant explains in his *Perpetual Peace* for the perpetual peace to be attained one of the imperatives is to have a Republican form of government in which the decision to go to war would not be taken by the King who is the person least effected by the war but by the people who are the ones most effected by the perils of it.<sup>916</sup> Hence Kant understood that there is a connection between the internal structuring of a state and its propensity to go to war. As Mary Caprioli states;

State international behavior may be partly determined by its degree of structural equality since inequality between men and women serves as a barrier to sustainable peace (UNESCO,1995). States with a domestic hierarchical structure characterized by strict gender divisions of domination and oppression will duplicate those patterns of violence and inequality in the international arena.<sup>917</sup>

---

<sup>914</sup> Ibid.,19.

<sup>915</sup> Balta, Evren, "Rusya ve ABD: İki Güç, İki Rejim Tipi", *Birikim*, <http://www.birikimdergisi.com/haftalik/7988/rusya-ve-abd-iki-guc-iki-rejim-tipi#.WA-O24VOLIU>

<sup>916</sup> Reiss, H.S, *Kant Political Writings*(United States: Cambridge University Press,1970),100.

<sup>917</sup> Caprioli, Mary, "Gender Equality and State Aggression: The Impact of Domestic Gender Equality on State First Use of Force", *International Interactions*, Vol.29(2003),196.

It is helpful to remember Hans J. Morgenthau's *Scientific Man v.s Power Politics* in this context. Morgenthau, apart from explaining the underlying interests underneath the allegedly universal principles of liberalism, denotes that liberalism tried to export its domestic ways for conflict resolution to the international arena where a quite different environment exists compared to the domestic one based on order of the state. Notwithstanding the criticism of Morgenthau liberalism did indeed manage to export its domestic ways in to the international relations as the establishment of League of Nations, United Nations and numerous international courts attest. In a similar fashion one should not underestimate the claim that patriarchal society might very well exports their domestic violent ways in to international relations. As Bruce Bonta points out anthropologists, based on their research on two dozen peaceful societies, concluded that these peaceful societies apply the same peaceful norms that govern the resolution of their domestic conflicts in to the resolution of the ones with outside societies.<sup>918</sup> Moreover Aristotle clearly explains the connection between the domestic constitution of the laws of a given polity and its warlike attitudes in his *Politics*;

Thus in Lacedaemon and Crete the system of education and the great part of the laws are framed with a view to war. And in all nations which are able to gratify their ambition military power is held in esteem, for example among the Scythians and Persians and Thracians and Celts. In some nations there are even laws tending to stimulate the warlike virtues, as at Carthage, where we are told men obtain the honor of wearing as many armlets as they have served campaigns.<sup>919</sup>

Caprioli, had conducted a comprehensive study on the connection between state's international behavior and its domestic gender structure. The results of her study, which she had conducted with 141 involved in militarized international disputes in between 1978-1992, confirms that the less the gender inequality in a given state, it is

---

<sup>918</sup> Ibid.,197.

<sup>919</sup>Gregory M. Reichberg, Henrik Syse and Endre Begby, *The Ethics of War*,41.

more likely that it would solve its international disputes by peaceful, non-violent means.<sup>920</sup> Her findings attest to the higher levels of propensity by the higher gender inequality states to use violence, as she denoted that states with higher gender inequality are nearly twice more likely to first resort to force than the more gender equal ones.<sup>921</sup>

Likewise, Peggy Reeves Sanday analyzed female power and male dominance in 150 cultures worldwide. Her findings demonstrate over two thirds of the societies which have war conditions that can be defined as “endemic”, gender relations are unequal, with the 33% of them being extremely unequal.<sup>922</sup>

Therefore, as Tickner has elaborated international peace is “inseparable from overcoming social relations of domination and subordination”. Within this logic it is expected that elimination of structural hierarchies which are sustained by domestic violence and oppression will lead to less violence both in domestic and international politics since the norms of equality will be transferred to international arena. An important point here should be made that neither the aggressive behavior associated with men and the passive behavior associated with women have anything to do with the “nature” of men and women. Such behavior stems from the socialization processes, inherent in patriarchal societies, that pressure men to perform violent qualities in order to fit in to the existing cultural definitions of masculinity and pressure women to perform the opposing passive behavior to fit in the cultural

---

<sup>920</sup> In her study, Mary Caprioli relied on an equality index based on the participation of women in to the labor force and the fertility rates in which more participation in to the labor force and lesser fertility rates were regarded as indications for a more equal gender order. The indicator for state aggression was taken as a state’s propensity to first resort to force. Another interesting finding of the study is the inclination of the state’s with fewer allies to first use of force. This is in parallel with the definition of power by Hannah Arendt who regarded power as “to act in concert with the others”. Since one has no or less friends to rely on or to act in concert to solve its problems, one’s propensity to solve its problems with violence increases.

<sup>921</sup> Caprioli, Mary, 205.

<sup>922</sup> Goldstein, Joshua S., *War and Gender: How Gender Shapes the War System and Vice Versa*(UK:Cambridge University Press,2001, henceforth: *War and Gender*),397.

definitions of femininity.<sup>923</sup> Hence, since such behaviors are not ingrained in men and women naturally, but thought to them as a result of socialization process, they are liable to change.

In patriarchy women simply suffers the ills and horrors of war imposed upon them by man because usually they are not given voice to express their opinions. It is telling to mention that during the Boris Yeltsin's government in Russia, many pundits asserted that it was the efforts of Russian mothers who were organized in a movement called Mothers of Soldiers Movement that made the Russian government to finish the war through the pressure they put on the government. They personally travelled to the warzone to retrieve their sons in the military who were deployed in Chechnya in a war that was perceived highly unjust by those mothers.<sup>924</sup> But in societies where such plurality in society is not recognized, in other words women are not allowed to speak out publicly the risk for internal and foreign violence is higher. Hence patriarchy paralyzing social groups like mothers, daughters and wife of soldiers, by making women's opposition to war impossible actually increases the risk for war. It is important to mention that historical examples also attest to the fact that more masculine domestic cultures are quick to resort to war to prove the so called manliness of the nation. The *Jingos*, which was the part of the American population who favored a war with Spain at the end of the 19<sup>th</sup> century, claimed that the war would be a good answer to the feminization of American politics by the increasing participation of women to politics. It would inculcate manhood to the American body politic. As the history demonstrated U.S President William McKinley submitted to the pressure of the *Jingos* and declared war on Spain to start the Spanish American War after the sinking of the U.S battleship *Maine*. A similar kind of logic has also been adopted by the American politicians vis-à-vis Israel during Cold War. Israel was seen as a worthy ally which proved itself through its military successes against the

---

<sup>923</sup> Capriol, Mary, 199.

<sup>924</sup> Cynthia H., Enloe, *Militarizing Women's Lives*, xvii.

un-masculinized Arabs in the Middle East.<sup>925</sup> Such connection of domestic violence and war was clearly expressed by the UK Feminists in 1983 by their work *Piecing it Together* which reads that;

It has become clear to us that resistance to war and to the use of nuclear weapons is impossible without resistance to sexism, to racism, to imperialism and to violence as an everyday pervasive reality. *There is a profound relationship between the fact that individual women are commonly attacked and beaten up and a nuclear war threatens the entire world.*<sup>926</sup>

A just post bellum period that fails to take the patriarchal norms in to account means that it both overlooks the poor conditions of women in their societies and contains the germs of a future war in its ill-defined state of peace.

### 3.7 RE-EVALUATION OF TRADITIONALLY ACCEPTED CONCEPTS

In order to come up with such a gender neutral; in other words, with a true peace in the jus post bellum phase it is obvious that our understanding of International Relations must change. The realist assumptions about the security, war and state relations which are based on the self-proclaimed rightness of the experiences of man and the reflection of the characteristics of hegemonic masculinity must change. The development of the Western state system which has always presented to us through agonistic relations should be accommodated to include the movements for peace. The International Relations scholars who had written about possible cooperation among states at the beginning of the 20<sup>th</sup> century and labeled as idealists and naïve by their Realist colleagues should be given more voice, if we would like to see a world ready to engage in women's issues in other countries, by casting aside the Westphalian

---

<sup>925</sup> Blanchard, Eric M., 72.

<sup>926</sup> Frazer, Elizabeth and Hutchings, Kimberly, "Feminism and The Critique of Violence: Negotiating Feminist Political Agency", *Journal of Political Ideologies*, Vol.19, No.2 (2014), 149.

limitations if necessary.<sup>927</sup> Especially important is to give voice to women in defining security. It is not that women have no idea about such vital concepts in International Relations, but that they are not given due voice. There are instances in the past when women have raised their voice about such concepts but not taken seriously by the politicians. For instance, during World War I, Jane Adams spoke to the International Congress of Women in Hague and uttered the need for more internationalism to replace the self-destructive nationalism. At the end of the Congress a resolution was adopted that questioned the protection of women and children during the war and concluded that security through military means were no longer possible given the indiscriminate nature of modern warfare. At the Women's International Peace Conference in Halifax, Canada in 1985 it was demonstrated what should true security in jus post bellum phase be. Participants had defined security as safe working conditions, freedom from the threat of war and unemployment or economic squeeze of foreign debt as well as from structural violence associated with imperialism, militarism, racism and sexism. The primary outcome of the conference was that security meant nothing if it was built on other's insecurity.<sup>928</sup> There is no question that women are in the best position to understand what this means since their security in many patriarchal societies are compromised to secure the well-being of man. Similarly 1985 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women proposed a similar multidimensional definition of security not only as the absence of violence, war and hostilities but as the attainment of social and economic justice.<sup>929</sup> As Cockburn explains recent years in the study of International Relations saw the rise of new definitions of security in which differs from the way the concept is used by the Realist thinkers and started to be employed in

---

<sup>927</sup> A. Mingst and L.Snyder, *Essential Readings*,96.

<sup>928</sup> *Ibid.*,97.

<sup>929</sup> *Ibid.*,97-98.

a much more inclusive way to include the satisfaction of basic human needs to secure the security of “humans” not states.<sup>930</sup>

However, in order to ensure that women’s perspectives to be taken in to account in politics the essentialist myths based on the moral superiority and glorification of motherhood about women should be abolished. Such ideas that regards woman as caring and nurturing mothers whose private sphere skills could benefit the world at large were heavily publicized during the early 20<sup>th</sup> century. Even though originally intended as bringing forward the positive sides of women and ascribing them positive attitudes, such claims have the downside of implying the view that women were disqualified from participating in the “corrupt”<sup>931</sup> world of politics by the virtue of their moral superiority. Many feminist thinkers saw in this essentializing myths the danger that they can result in the perpetuation of women’s subordination and reinforce dualisms that can make men more powerful. Moreover, the automatic association of femininity with peace plays in to the hands of idealized masculinity which is, as the Just War tradition clearly demonstrates, based on the construction of women as passive victims in need of protection by men. Also it implies that women are naïve in matters of domestic or international politics.<sup>932</sup>

The conventional understanding of *jus post bellum* contends that war ends with the restoration of the status quo ante in which aggressor forces are repelled, borders are restored, reparations are determined and some sort of security measures are installed. However as Sara Ruddick points out feminist just war theorizing should focus on the

---

<sup>930</sup> Cockburn, *Buradan Baktığımızda*,281.

<sup>931</sup> I should mention here that to accept politics as an enterprise that is by definition “corrupt” is a reflection of the modern Western Political tradition which accepts that at least since Machiavelli the Western political thinkers consciously lowered down the moral standards of politics that were set “too” high by the ancient Greek philosophers. However such an outlook, by reducing politics in to “realpolitik” simply indulges in a phallacy of universalism in which policies that were designed and implemented during the 18th and 19th century European contexts were regarded as the universal definition of politics.

<sup>932</sup> *Ibid.*,98.

end of the war with the aim of a post violent peace.<sup>933</sup> As I mentioned above, in order to come up with such an understanding of post jus bellum phase of the war, traditional understanding of International Relations should change. Especially the way the other collectives; other nations and states perceived by the dominant paradigm in International Relations should change. Realism, as the dominant paradigm in International Relations usually see the other states as entities to be competed and sometimes to be cooperated without forgetting that they are still entities that should not be trusted, as the abounding theories of security dilemma in Realist International Relations illustrate. However feminist thinkers like Sigal Ben-Porath claims that such an understanding should change for a more sustainable jus post bellum phase. Agonistic ethics which regards the other states and nations as collectives to be conquered should be replaced by care ethics based on attentiveness, responsibility, competence and responsiveness.<sup>934</sup> In order to achieve this, International Relations discipline should focus less on national sovereignty but more on a stronger international community that can triumph national community when needed. The defining hallmark of care ethics is that it aims to abolish dependence in the society and to change the meaning of dependence among the states. From the perspective of women, this can mean nothing but the abolishment of patriarchal order within society. However when it comes to the relationship between states based on dependence, the care ethics does not propagate the abolishment of dependence itself but the change of its meaning from its current one based on colonialism, exploitation and oppression to a one based on support and mutual benefit for the states and the citizens involved.<sup>935</sup>

---

<sup>933</sup> Eide, Marian, 55.

<sup>934</sup> Ben-Porath, 65.

<sup>935</sup> Ibid., 67.

### 3.8 PEACE AGREEMENTS

It is clear that gender is subjected to control through the exertion of violence and the disclosure of this violence that is continuously employed to subjugate gender to the heterosexual norms is a very difficult task. Many women are having lives that are not really being lived and their daily lives are turning in to torture. In order not to doom the living in to death during their lifetimes we need to think about the restrictions imposed on the human body in the name of ideal morphologies. However it is not enough only to think about those ideal morphologies but one should also bring forward the female who with her look transforms herself from an object to a subject and replies to the male subject of desire by turning herself in to an agent.<sup>936</sup> Once the so called peace is established in the jus post bellum phase woman should be regarded as an agent who has the ability to act to form the ideal conditions that will allow her to have a respectable life. However, in order for women to play part as an agent in the jus post bellum phase, women should play a greater part in peace agreements which represent a road map for a country's subsequent efforts for a gender just peace building and determine how the resources to be distributed among different actors in the country.<sup>937</sup>

It is worth to mention here that *in theory* the United Nations also started to understand how crucial for women to be present in public life and to be active and present during when the decisions are being taken with regard to peace and war. The UN Security Council Resolution 1325 explicitly recognizes women's potential for being peacemakers and reaffirms the need for their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security and the need to increase their role in decision making regarding the conflict

---

<sup>936</sup> Butler, *Cinsiyet Belası*,33.

<sup>937</sup> Ellerby, Kara, "Engendered Security: The Complexities of Women's inclusion in Peace Processes", *International Interactions*, Vol. 39, Issue 4 (2013),439.

prevention and resolution. However the fact remains that *in practice* UN Security Council Resolution 1325 rarely makes any contribution for women to be taken in to account during the conclusion of peace agreements.<sup>938</sup> Indeed another resolution by the United Nations; UN Security Council Resolution 1888 that was enacted to follow the developments with regards to the application of the provisions in the UNSC Resolution 1325 had included in its preamble of the “underrepresentation of women in formal peace processes, the lack of mediators and ceasefire monitors with proper training in dealing with sexual violence, and the lack of women as Chief or Lead peace mediators in United Nations-sponsored peace talks.”<sup>939</sup> Since 1992 women merely accounted 2.4% of signatories for peace agreements and even less than 10% of peace negotiations. A women has never been appointed as a head negotiators.<sup>940</sup> Christine Bell and Catherine O’Rourke, by their joint study of 585 peace agreements in 102 peace processes signed between 1990-2010, found out that only 16% of all the peace agreements contains provisions regarding women despite the existence of UN Security Council Resolution 1325.<sup>941</sup> Out of these agreements a mere 14 included provisions aimed at securing representation for women in legal institutions such as police forces, judiciary and public administration offices.<sup>942</sup> What can be seen in these peace agreements that they reflect the same prejudices of the just war tradition, especially regarding the combatant, victim and civilian roles, when it is observed that great majority of the agreements with references to women include these references within the context of sexual violence and rehabilitation and includes provisions calling women to be released from prisons earlier than men because of their motherhood roles.<sup>943</sup> They do not bring forward unconventional vantage points, as

---

<sup>938</sup> Van Schaack, Beth,492.

<sup>939</sup> Bell, Christine and O’Rourke, Catherine, “Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and Their Agreements”, *International and Comparative Law Quarterly*, Vol. 59(2010),944.

<sup>940</sup> Ellerby, Kara,436.

<sup>941</sup> Bell, Christine and O’Rourke, Catherine,942.

<sup>942</sup> *Ibid.*,963.

<sup>943</sup> *Ibid.*,962-963.

coined by Enloe, since if they deal with women at all, they deal with them within the context of “underrepresentation without dwelling in to the root cause of the their underrepresentation which is the over-representation of men.”<sup>944</sup>

It goes without saying that, the mere existence of the provisions themselves in the peace agreements, or the physical existence of women during the peace negotiations are not enough by themselves. Implementation of the treaty provisions related with women have to be properly implemented in post-conflict societies and given the patriarchal nature of most societies the implementation part is one of the most important for the feminist struggle to focus on. Nevertheless the existence of such provisions in peace agreements are important because without the existence of such gender provisions it becomes even more difficult for women to fight for their freedoms in post-conflict phase since in such a case they would even be devoid of the basic legal principles to improve their situations in their societies.<sup>945</sup> Moreover the changing nature of peace agreements which have recently been transformed from being a single implementation document in to a process driven phenomenon of road map<sup>946</sup> in which implementation of treaty provisions better monitored in the jus post bellum phase makes the inclusion of provisions related with women in to such agreements even more crucial.

### 3.9 PATRIARCHY AND GENDER ROLES

I think it is appropriate to mention Foucault here in order to better demonstrate what can the theory of patriarchy achieve for the analysis of the condition of women in their respective societies in jus post bellum phase. I believe the novelty that Foucault brought to the studies of power was to change our understanding of power associated

---

<sup>944</sup> Ellerby, Kara,442.

<sup>945</sup> Ibid.,948.

<sup>946</sup> Ibid.,951.

with high politics mainly related with how, when and by whom the violence will be used. His depiction of the scenes of extreme cruelty in his book *Discipline and Punish: The Birth of Prison* is a clear indication of our old understanding of power; a prince executing violence on the body of his subject. However, Foucault had managed to demonstrate how power has changed in the modern period by his emphasis on the emergence of a power economy that aims to capture not the body but the soul of the individual. For such an economy to emerge our bodies have to be shaped and disciplined to comply with the “normal”. For this to happen power had infiltrated to the spaces where traditionally not associated with it; asylums, schools, hospitals and prisons. I think to better understand the suffering of women under the patriarchal systems such Foucauldian perspective should be employed. The radical feminist perspective of “what is personal is political” is a clear expression of this need of shattering the perspective of so called high politics and simply disregarding the low one. The need for any kind of power relations from sexuality to house work should be taken in to account as subjects that should be dealt under political discussions.<sup>947</sup>

But once again we have to ask the question of what is peace? If the well-respected texts of International Relations are full of phrases like anarchy of the state system, security dilemma and the inevitability of war then how shall we believe in peace? If even the modern day Just War theorists like Paul Ramsey defines war not as an exception but an expression of Christian understanding of moral and political responsibility<sup>948</sup> and if peace is simply reduced in to the absence of physical confrontation and the quest for peace is equated with the search for ill-defined security then the political, social, economic and cultural conditions that makes woman submit will hardly change. Peace is not only the absence of war but also requires the existence of others and the end of all kinds of violence that harms others’

---

<sup>947</sup> Walby, Sylvia, *Patriyarka*, 244.

<sup>948</sup> Taslaman and Taslaman, 6.

lives.<sup>949</sup> Hence if the conditions that make woman's lives miserable do not change then one can not really talk about peace for woman. Usually this is the case even in the nationalist movements which have based their promises on the equality of all nationals. When the war is over and the victory obtained usually the founders of the new nations send the women back to their traditional gender roles and the gender equality usually remains as a pledge from a bygone age and an ideal never to be reached.<sup>950</sup> In order to change the conditions that women are subjected to during peace time it should be fight against the view that women suffer most during war.<sup>951</sup> One should be aware of the connection between the military and civilian contexts that produce the violence against women by man. It should be clearly seen that wartime violence and violence during what some people call peace by man to woman is not the natural condition of man but an expression of a power structure.<sup>952</sup> And this structure is the system of patriarchy that submits women to a system organized to perpetuate the heterosexual reproduction norms. I would like to stress the central importance of patriarchy in this analysis especially in the jus post bellum part of this study. As the Marxist Feminists would have said there might be important aspects of the subjugation of women connected with the ills of capitalism but during this study I tried to take a radical feminist stand and endorse patriarchy as still the main concept that can define the suffering of women not because it solely expresses the submissive status of women<sup>953</sup> but because it provides an explanation for ill treatment of women

---

<sup>949</sup> Cockburn, *Buradan Baktığımızda*,233-234.

<sup>950</sup> Ibid.,240.

<sup>951</sup> Ibid.,250.

<sup>952</sup> Ibid.,256.

<sup>953</sup> In this study I am also trying to demonstrate that the system of patriarchy usually goes hand in hand with gerontocracy. In such systems the younger generation of man also are submitted and in many cases where carnist cultures reign the animals are prey to this system as well. Patriarchy, at least in its Weberian definition, includes that young males who are not the heads of families are subjugated by their older sexes.(Walby,38) Another theory that demonstrates the differences of status among men is the theory that classifies society according to the social distribution of economic and political dividents in which men with hegemonic masculinities get most of the benefits followed by subordinated, marginalized,complicit, resistance and protest masculinities. (Hinojosa,181)

in pre-capitalist societies as well.<sup>954</sup> Even the Marxist Feminists themselves are aware that the notion of patriarchy has an explanatory capacity that goes beyond the capitalist system as they define it as “the patrician organization of kin and slaves with the oldest owning male, the patriarch at the head of the entire productive and reproductive unit”.<sup>955</sup> For Nancy Hartsock, patriarchal vision of gender serves to structure the material relations of gender in which both men and women are forced to participate.<sup>956</sup> As a system that covers wide range of problems related with wage labor, household work, sexuality, culture, violence and state, patriarchy provides a holistic approach to the problems encountered by women.<sup>957</sup> It reveals the twofold exploitation of women by man; the appropriation of their productive labor which was deified in, what Arendt would have called, the things of the world like cloth, shelter and food etc. and their reproductive one which was embodied in childbirth and the submission of the child in to the authority of the patriarch.<sup>958</sup> What is at stake here is for whom the women are going to use their bodies? The system of patriarchy both by defacto and dejure means make sure that women’s bodies are exploited not for their own interests but for the interests of males in their families. Defacto control is exercised through coercion and rape and dejure one is exercised through laws, norms and taboos.<sup>959</sup>

It is clear that the dismantling of such dejure control over women should be the basis of a gender just jus post bellum period. In order to construct a more equal society in the jus post bellum phase, the traditional understanding of law which is based on patriarchal interests has to change. The basis of the new legal system should be the adaptation of a Dworkinian political liberal approach in which “each person accords

---

<sup>954</sup> Walby, Sylvia, *Patriyarka*,14-15.

<sup>955</sup> Burstyn, Varda,49.

<sup>956</sup> Ramazanoglu, Caroline and Holland Janet, *Feminist Methodology: Challenges and Choices*(London: Sage Publications,2002, henceforth: *Feminist Methodology*),68.

<sup>957</sup> Walby, Sylvia, *Patriyarka*,33.

<sup>958</sup> Burstyn, Varda,53-54.

<sup>959</sup> *Ibid.*,54-55.

the other the recognition that each is to be treated as a free and equal person before both the law and other basic institutions of society.<sup>960</sup> Unfortunately it is a well-known fact that not all people are in actual political, social and legal practice equal, but the point is they should be treated in legal practice as if they are equal. Especially important in the jus post bellum phase is the efforts to increase the chances of more woman attending schools. As the Nicaraguan and El Salvador cases demonstrate more years at school or even the simple ability to read and write increases the likelihood of women to be a political activist.<sup>961</sup> Unfortunately the likelihood of women coming from illiterate backgrounds to be political activists is extremely low compared to the ones who are coming from literate backgrounds.

However, the mere attending to the schools by the women is not enough to create a more gender neutral society in the jus post bellum phase. Schools are the central places in modern states where the learning takes place. Unfortunately, hegemonic gender discourses are still prevalent in schools in many of the Western countries. As Helen Hatchell explains the situation in Australia, males and females are not only becoming males and females at the schools but also thought to become particular kind of males and females. As she explains “construction of knowledge in school curricula continues to define masculinities with and within hegemonic discourses.”<sup>962</sup> For instance, one can clearly see the reflection of Just War gender dichotomies with regards to the combatant and non-combatant roles in the study conducted by Hatchell in a classroom with English language students. For instance, a male student named Kevin expressed that it was a man’s role to be at the front, while women’s roles were non-active, non-violent and caring. Kevin answered the question that “what do you

---

<sup>960</sup> Marshall, Jill, 36.

<sup>961</sup> Kampwirth, Karen, *Gerilla Hareketleri*, 32.

<sup>962</sup> Hatchell, Helen, 383-384.

think the females were doing, how do you think they were depicted in the film?<sup>963</sup>” as follows;

I thought the women were depicted to be sad that they; the men, were leaving. I actually think that women were in the wars as, like phone operators and nurses and stuff but not on the front line... They shouldn't be allowed to fight on the front line.<sup>964</sup>

What lies at the heart of the patriarchal system is actually providing a clear answer to the question why in ad bellum level women are not in charge of the decision to go to war or not. As the above example demonstrates war is seen basically as a male enterprise decided and fought by men. Traditional gender roles identify men with soldiering and war and women with mothering and peace.<sup>965</sup> As Burstyn explains as a system it contains;

Men's conscious and systematic relegation of women into an increasingly domestic space and set of functions called in our time “the private” and exclusion from the social space and set of functions in which men have taken charge of the life of increasingly larger numbers of people, called in our time the public.<sup>966</sup>

Moreover, when the issue of taking the decision to go to war is seen from the perspective of International Relations as an activity that would have consequences in International Politics, the chances for women to have a say in this enterprise called international politics is even lower than their chances for taking part in the domestic affairs. As the Feminist scholars of International Relations like Gilligan Youngs explains this area is even more dominated by the patriarchal norms formed through time and practice that closes down the area of international politics to the

---

<sup>963</sup> The film refers to the movie called *Gallipoli*. During the course of the study conducted by Helen Hatchell the students in an Australian school were shown this movie containing the “heroic” acts of the Australian soldiers and then asked their opinion about the actions of the soldiers.

<sup>964</sup> Ibid.388.

<sup>965</sup> J.Peach, Lucinda, 152.

<sup>966</sup> Burstyn, Varda,56.

participation of women. Even though modern age sees increasing number of women participating in to the area of international politics they are still operating within an environment created and dominated by the male patriarchal values.<sup>967</sup> Hence chances for women's participation to the decision making processes with regard to war seems even dimmer when the issue is considered as part of the arena of international politics in which women rarely show any presence other than being depicted as the views of politicians in non-politics related roles.

On the other hand, it is the man who is totally associated with the enterprise of war by the Just War tradition as the rhetoric adopted by the Just War thinkers demonstrate. For instance, as Vitoria explains;

Note however that sometimes, nay, frequently not only subjects but princes too, who in reality have no just case of war, may nevertheless be waging war in good faith, with such good faith I say, as to free them from fault, as, for instance if the war is made after a careful examination and in accordance with the opinion of learned and upright *men*<sup>968</sup>. And since no one who has not committed a fault should be punished, in that case, although the victor may recoup *himself*<sup>969</sup> for things that have been taken from *him*<sup>970</sup> and for any expenses of the war, yet...it is unlawful to go on killing after the victory.<sup>971</sup>

As the quote from Vitoria illustrates the activity of war is seen as decided by man "the opinion of the learned and upright men", mainly conducted by man "the victor may recoup himself" and based on the injustices man had suffered "for things that have been taken from him". It should be denoted here that the rhetorical association of war by the Just War tradition only with man is not limited with its Christian roots. It goes beyond to its Christian roots and continues in the secular understanding of

---

<sup>967</sup> Youngs, Gilligan, 7-8.

<sup>968</sup> My emphasis

<sup>969</sup> My emphasis

<sup>970</sup> My emphasis

<sup>971</sup> Primoratz, Igor, 71.

international law marked by the natural law tradition. Hugo Grotius explains about war “When are bodies are violently attacked with danger to our lives and there is no other way of escape, it is lawful to fight the aggressor and even to kill *him*.<sup>972,973</sup>

Hence, such kind of automatic gender roles like association of war and violence with man and peace and innocence with women are among the issues that have to be dealt with in the jus post bellum phase, especially given the propensity of the patriarchal regimes, which are based on such roles, to reflect their domestic attitudes to international arena and to be more violent in conflict resolution.

It also has to be recognized that the struggle for women’s rights is in no way a strait route going in a fashion of linear progress. The apparent gains by the women which were granted by the states in the West which had found themselves in a situation where they have to keep the appearances of impartiality in 1960 and 1970s were taken back as well. Throughout the 1980s, given the rise of New Right in the Western World, the reproductive rights and the rights for equal pay which was given by one arm of the state; parliament, were taken back by other arms; courts, labor relations boards and the police forces who had protected the strike breaking companies.<sup>974</sup> What is even more interesting is that even in societies like Norwegian one, which are thought to be quite advanced in gender equality, the emancipation of women from the rule of their husbands do not necessarily mean freedom for them. Due to the corporatist nature of such societies direct access by individuals to the centers of power is not in reach of women. Usually the link between the individual and the state is established by organizations like employers’ and trade unions which’s leadership are heavily dominated by man.<sup>975</sup> Also in many cases individual emancipation of women from the rule of their husbands usually mean their control by the state which

---

<sup>972</sup> My emphasis

<sup>973</sup> Grotius, Hugo, *Rights of War and Peace, Book II*(United States:Liberty Fund Inc.,2005),73.

<sup>974</sup> Burstyn, Varda, 65.

<sup>975</sup> Walby, Sylvia, *Patriyarka*,250.

means their collective control by a mechanism that is quite patriarchal. Given such a perspective it should be pondered that if the distinction made by the Just War tradition between war and peace is relevant for women who continue to suffer from violence during their daily lives.

What is even more dangerous than this system of patriarchy and its violent repression of women is the conventional wisdom that this system is natural and will never change. For an equal and better conditions for women in jus post bellum period, this belief and naturalization of patriarchy should be abated. One of the leading Just War theorists Michael Walzer's ideas about the humanitarian intervention is a good example to illustrate this point and the problem emanating from the perspective of Just War tradition. He explicitly favors humanitarian intervention in his writings. For this reason, he wholeheartedly supported the American intervention in to the Bosnian conflict and criticized non-intervention in Rwanda. However his criteria for military intervention to another country do not include regime change but only redressing of human rights violations.<sup>976</sup> Here the problem is he only endorses the intervention to the state in human rights violation when the state in question resorts to physical violence. He claims that;

I do not believe that regime change, by itself, can be a just cause of war. When we act in the world and especially when we act militarily, we must respond to the evil that men *do*.<sup>977</sup> which is best read as the evil that they are doing or have done in the past. Aggression and massacre are legitimate causes of war and we must learn, what we have not yet learned, to respond to each of these in a timely and forceful way. But the existence of regimes capable of aggression and massacre requires a different response.<sup>978</sup>

However, there are many forms other than physical violence that women rights violations occur in the patriarchal societies and by simply focusing on the physical

---

<sup>976</sup> Taslaman and Taslaman,9.

<sup>977</sup> My emphasis

<sup>978</sup> Walzer, Michael, *Just and Unjust Wars*,xiii.

aspect of violence Walzer fails to bring a broader perspective to Just War studies in terms of women rights. For him the intervening forces have a mandate for political, but not for cultural transformation and it is not easy to change the customs and beliefs of the people who are being temporarily run.<sup>979</sup> But the problem for women is that the social practices that subjugate women in society usually are emanating and propagated by the very culture that Walzer is suggesting for the victors to avoid making any changes.

But what is more crucial for the establishment of better and equal conditions for women with man is the change that should follow the war in our understanding of politics and international relations. The “traditional” distinction between the high and low politics should come to an end and the familial, regional and personal issues that are associated with woman should at least be regarded as important as the issues of so called high politics mostly associated with how, where, when and who can use the legitimate means of violence in public.<sup>980</sup><sup>981</sup> Moreover our understanding of international relations that is based on the principle of non-intervention established by Westphalia should change. This does not only mean that a state’s sovereignty should be violated if it treats its woman in a miserable way but also the so called bottom up pressure that the modern nation states face; namely the grassroots movements should be supported in their demands of equality for women in every facet of life. A good example of the breach of state sovereignty by the women is the eventual opening up of borders by two traditional enemies India and Pakistan after the Women’s Initiative for Peace in South Asia’s ceaseless efforts of bringing together Indian and Pakistani women to demonstrate for their unity for peace.<sup>982</sup> Not only gender blind but also

---

<sup>979</sup> Ibid.,xi.

<sup>980</sup> Cockburn, *Buradan Baktığımızda*,252.

<sup>981</sup> Of course to what extent violence is part of politics is a longstanding question. There is a longstanding tradition that goes back to the Ancient Greeks who regarded polis as a physical space where not violence but lexis and non violent praxis reigns supreme and the violence was only confined to the inter-polis relations.

<sup>982</sup> Ibid.,252.

human blind perspective of the state system which was perfectly elaborated by the political theorist Jean Elshtain's words that "no children are ever born and nobody ever dies...There are states and they are what is.", points precisely what should change for a better understanding of the situations of women in their respective societies.<sup>983</sup>

### 3.10 MILITARY AND MILITARISM IN JUS POST BELLUM PERIOD

The way militaries as institutions, propagating male dominance, misogynist and war prone militaristic values were discussed above. They are one of the most important institutions in patriarchal societies that are promoting unequal gender relations. Its effects on society is not only confined with the war time but also spills over to the peace time given its privileges. They are one of the crucial institutions that have to be dealt with during the jus post bellum phase if a gender just society wants to be created.

The historian Alfred Vagts in his 1937 work *A History of Militarism* states that militarism develops during the peace time rather than the wartime and he stresses the importance of focusing on the "peace" time rather than the war itself. If a nation is going to be turned in to soldiers then they have to be subjected to a militaristic environment during the peacetime.<sup>984</sup> One of the institutions that infuse this belligerent environment is of course the military itself. One of the most common sayings in the militaries is the saying that a person who does not serve in the military can not be in use for his family, country and himself.<sup>985</sup> Here it is unclear how the women who, most of the time, are not allowed to serve in the military to be "useful"

---

<sup>983</sup> Tickner,46.

<sup>984</sup> Sömbüloğlu,*Erkek Millet*,220-221.

<sup>985</sup> *Ibid.*,223.

to themselves, their families and countries. Especially important to stress here is the wider role many of the militaries play in their societies. Militaries are the places where not only the male bodies are structured and submitted for the purposes of exerting violence abroad but also serve as centers for education for the man who have no prior education before they were enlisted for the military. Many of the illiterate man learn how to read and write and also gain some technical knowledge that might be useful in the business life after their military services. Hence most of the militaries by only enlisting man and barring women from serving function as the bearers of the existing inequalities in the society between the genders.<sup>986</sup> For instance the legislators in Turkey who had enacted the statute for the military service in 1927 knew quite well that the military service was the primary practice of citizenship and by making this practice mandatory for only the man they were about to create two different citizenship categories for two different classes.<sup>987</sup> In the Turkish context man since 1930s by the knowledge and the technical abilities that they have gained during their military services had the opportunity to be employed with better paying jobs as well as access to the critical information in the legal texts or newspapers by the advantage of being taught how to read and write, whereas many of the women did not have similar opportunities with man.<sup>988</sup> Moreover the “respectability” that is associated with serving in the military even provides some political advantages in some societies.

Another case of inequality provided by military is Israel, Russia and the United States. The studies demonstrated that in Israel, Russia and United States it enhances the electability of male politicians to the office, which in turn means that it is further deepening the problem of women not being able to serve public political roles in their

---

<sup>986</sup> Ibid.,226.

<sup>987</sup> Ibid.,238.

<sup>988</sup> Ibid.,241.

societies.<sup>989</sup> This is apparent from the fact that many of the Israeli politicians<sup>990</sup> are coming from former high level military posts, as well as many of the American Presidents including J.F. Kennedy, Lyndon Johnson and George W. Bush deliberately emphasized their success and the roles they played during their military services and the publication of Russian President Vladimir Putin by his office of the pictures depicting him in military uniforms combatting against Russia's enemies. But the problem with the militaries as male dominated institutions runs a deeper problem for gender relations. Simply to increase the number of women who will be allowed to serve in the militaries will not redress the main problem that the military as an institution creates for women. From the perspective of Luce Irigaray, the demands of the liberal feminists for the admission of more women to the institutions in the society are futile efforts because patriarchy is constructed in society through subtle symbolisms and imaginations that goes much deeper than the institutions themselves.<sup>991</sup> Opening up the institutions to women does nothing for the desired change of the symbolisms and imaginations that put women into disadvantaged positions in those institutions. In the same vein, simply to press for the admission of more women to the military would do nothing to change the cultural symbolisms and imaginations that put women in disadvantaged positions within the military institutions. That's why a much more comprehensive change, a change involving the alteration of the language and symbolisms, should be aimed at for the improvement of the conditions of women in military institutions.

---

<sup>989</sup> Cynthia H., Enloe, *Militarizing Women's Lives*, 247.

<sup>990</sup> Israel should be considered separately from the United States and Russia. Militarization of society seems to go way beyond the other two societies in Israel even to deserve the definition that Israel is the modern day Sparta given the fact that the entire social life revolves around the fact that the country has to be defended and one has to serve in the army. The Israelis usually postpone their higher educations to first serve in the army, man organize their civilian lives and business activities to the requirements of annual service in the reserve units and the prestige of service in the military is so high in the eyes of the Israelis that an ordinary Israeli even include the information above where he/she served in the military to his/her curriculum vitae to be considered by the employers during the job interviews.

<sup>991</sup> Stone, *Feminist Felseye Giriş*, 47.

## CONCLUSION

At the beginning of my study I mentioned that Just War tradition was a misnomer for me. My thesis can easily be read as an effort to substantiate this claim since a tradition that claims to be “just” and at the same time supports the moral, social, political and linguistic structures that subjugates women and in many cases man who cannot be defined as hegemonic masculinities in power relations, cannot be sincere. To give a more complete account of my study, in this part of my thesis I would like to focus my attention to different strands of feminism and which one or ones I used in my study to draw arguments. To begin with, it should be mentioned that when it comes to war, there are some common points shared by different strands of feminism. Both liberal, radical and post-modern strands of feminism agree that masculinism, which is seen as an ideology justifying male domination, both in scholarship and political military practice have to be challenged. They all see women as a disadvantaged class, unjustly exploited and dominated by man.<sup>992</sup> However, all of these strands have their differences and I drew arguments from each of them to analyze the Just War tradition in my study.

Liberal feminism broadly argues that man and women are equal in ability and the current gendered roles in war simply reflect discrimination of war.<sup>993</sup> This strand of feminism strives to make women progress in their societies and achieve equal status with man. In my own study, I relied on liberal feminist arguments in places where I propagated more women’s participation in to politics, parliament membership, military staff, as well as when proposing better education for women in jus post bellum phase as a capacity building because what lies beneath such arguments was the belief that man and women do not have different abilities but the same and what

---

<sup>992</sup> Goldstein, Joshua S., *War and Gender*,38.

<sup>993</sup> *Ibid.*,39.

is needed for women to progress in society is simply the enhancing their capacities through better education and fair opportunities.

However, I am aware of the criticism directed at Liberal feminism that it usually prescribes to women to integrate in to the already existing power structures, including the military forces and the war system itself, without changing them. Hence I tried to exploit the perspective of difference and post-modern feminisms as well in order not to limit myself with Liberal feminist arguments which, in some respects fall short of achieving a true gender just *jus post bellum* for women and man alike. Difference feminism usually focus on the argument that women's experiences are different than men and sexist cultures devalue feminine qualities instead of promoting them. Especially its radical brand argues that the oppression of women is rooted in patriarchy. Throughout my study, especially with reference to Carol Gilligan and the women's propensity to think less from an autonomous and abstract ways which are usually disconnected with the sufferings of the people on the ground, the women's propensity to apply relational thinking and paying attention to care ethics, the need for transcending the strategy of mainstreaming in *jus post bellum* period and the need to combat against patriarchy, I heavily benefitted from the difference/radical brand of feminist theory.<sup>994</sup>

Finally, even though I mentioned in my study that I am not planning to take a post-modern stance in the sense of disregarding a unitary subject in politics, I did benefit from post-modern feminist outlook in my study in other subjects. Post -modern feminism argue that gender roles are fluid, contextual and arbitrary. Many of the post-modern feminist thinkers analyzed the uses of binary oppositions that are associated with gender differences like knower/known, rational/emotional and culture/nature.

---

<sup>994</sup> Ibid.,41-47.

<sup>995</sup>Obviously I relied on such criticism when I tried to criticized the Just War distinctions based on Western philosophical tradition and Natural Law tradition.

Now I would like to broadly summarize through my findings in this study in two categories why Just War tradition should be regarded as a tradition disfavoring women. This tradition adversely affects the situation of women in their societies in two general categories; direct and indirect influences. The most important direct influence that the Just War tradition has on women is its definition of women outside the public affairs related with war. Just War texts specifically employ a male language and a male pronoun about the issues related with war. As the often quoted phrases of “wise man” whom the male Prince should consult before going to war or the fetial priests of the Roman tradition who should visit the enemy as a last resort before the start of the hostilities, indicates this tradition locate women out of the confines of decision making mechanisms related with war. This point is also connected with the twisted understanding of the Just War tradition of the concept of honor. As if it is trying to substantiate, the claim of Thomas Hobbes that “nor does it alter the case of honor, whether and action be just or unjust; for honor consisted only in the opinion of power”<sup>996</sup>, Just War tradition simply associates honor with the public activity of war, as the Greeks and Romans have always done, and hence bars such a title to be ascribed to women who are usually left out of the realm of public affairs. As it was mentioned above, this has the tragic consequence of not only the heroic deeds which were carried out by women in times of war not to be recognized and remembered but also their healing processes to be obstructed as a result. Of course, exclusion of women from decision making mechanisms related with war doesn’t mean that they don’t suffer the consequences of war. Their tragedy lies in the fact that they suffer the consequences of an activity neither of their choosing nor of their conducting. In matters related with war, women are simply denied any agency

---

<sup>995</sup> Ibid.,49.

<sup>996</sup> Hobbes, Thomas, *Leviathan*(UK: Cambridge University Press,1991),66.

and reduced to mere objects with no capacity for action. Therefore, in this tradition, due to the epistemological bias that disfavors women and the spillover of this bias to the language of the Just War writers' as well, female is a non-existent subject.

Another direct influence that Just War tradition has on women is its ill-defined understanding of just cause. Especially the moral understanding of the Church "Fathers" which defines the moral order as a just cause in which one even has to sacrifice his own life to safeguard it, is quite problematic for women given the patriarchal nature of such Judeo-Christian moral teachings. To define the moral order as sine qua non of the social order and to define the social order as a just cause is simply mean defending the patriarchal status quo that disfavors women. It should also be mentioned that this point is connected with the promotion by the Just War tradition of submitting in to the demands of the authority which is best illustrated by the *jus ad bellum* principle of hope of reasonable success in which the ones with no adequate power is advised not to initiate hostilities and bow down before the authority. It is needles to mentioned that the exact opposite ethos; the ones that favors questioning and the refusal to submit to authority is needed to improve the situation of women in patriarchal societies. Especially problematic is the seemingly harmless just cause, propagated by Thomas Aquinas and regarded as a civic virtue, the defense of common good. Here by describing only the issues that are considered "common good" for the society as just causes for which a war can be initiated, Just War tradition simply makes much more difficult for a war to be initiated in the name of women's issues given the fact that patriarchal societies rarely regard women's issues as deserving the label of "common good".

The intellectual framework that the Just War tradition had drawn from extensively also exerted a direct influence on women's place in Just War tradition since this tradition formulated its arguments on the basis of such gender loaded concepts. The dualistic understanding of Just War, provided both by Western philosophical tradition

and the Natural Law tradition, directly influenced the conditions of women within the Just War tradition. The age old distinction between emotion and reason and soul and the body propagated by the Western Philosophical tradition when combined with the Natural Law understanding which tends to associate some natural qualities to men and women and provide only the man with the capacity to understand the dictums of the natural law, created a combustible mixture for women in the Just War tradition. As a result, women has almost, always been defined by the Just War writers as passive, or to be more precise they were not recognized as agents in warfare. Corresponding to such an understanding they usually were associated with non-combat, civilian roles which do not carry out the actual violence as agents in warfare but only enters the picture in supportive roles like nurses, cooks, doctors..etc. Likewise, concepts of family, state, honor, social order, anarchy and insecurity all provided the Just War tradition with different theoretical arguments to exclude and downplay the role of women in war related activities. Especially the concept of anarchy by endorsing the Westphalian distinctions of inside and outside issues and confinement of women's issues to a relatively less important domain of issues not between but within states, affected the standing of women quite negatively. In a similar fashion, the propagation of constant insecurity among states, like Augustine, had done in his *City of God*, have usually been an instrument for silencing the dissenting voices, such as women, on domestic politics, by pointing to a constant need for unity and absence of dissent for the survival of state in such insecure interstate conditions. Moreover, the concept of honor, especially propagated through the Chivalric tradition in Just War writings, promotes phenomenon like direct physical fighting and association of indirect fights with effeminate attitudes, humiliates women. Such Chivalric tradition strengthens the social practices revolving around the concept of honor which is cited in many cases, as one of the most important notions that man invoke to suppress women in society and claim a share on their bodies since women, in many highly patriarchal societies are considered to belong to "their man".

But of course, by far the most important intellectual tool to exclude women from war related issues was the Judeo-Christian religious ethics and Ancient Greek myths about women. Both of these traditions by displaying a specifically hostile approach to women's participation in to the public affairs had paved the way for the Just War tradition to leave the women out of the war related issues. Moreover, especially the Judeo-Christian tradition which brings forward bizarre concepts like benign violence and the violence perpetrated in the name of neighborly love provides one of the most fundamental arguments usually used by man to suppress women; in which the violence or domination by man usually depicted by them as carried out for the good of women to protect them from a perceived evil. This is, as I tried to explain above, connected with the Judeo-Christian understanding of God who is depicted by this tradition, as punishing, if needed violently, the ones whom *he* really cares and loves. But such negative outlook on women is by no means is restricted with the Judeo-Christian tradition, as the Greek creation myths demonstrate women are attributed quite negative attributes in Hellenic tradition as well as the story of Pandora illustrates.

The adverse effects of Just War tradition for women takes an indirect form when it comes to this tradition's support for state and military. Even though both institutions are not the intellectual products of Just War tradition, they both are legitimized by the support landed by Just War tradition. The way the state institutions deny women the adequate support that they need and the way it enacts and implements the laws that are disfavoring women were depicted above. Likewise, military as an institution supports and disseminates the misogynist values in the society alongside a phallogocentric language. Especially given such language and values it is obvious that gender equality in such institutions cannot be reduced to inclusion of more women staff in militaries. As it was explained in this study such institutions operate on quite patriarchal honor codes and social norms that they even demand the female staff to transform themselves to comply with this masculine environment. Hence both state

and military, as its acting arm in matters of violence, are instrumental in reinforcing the patriarchal values in societies. Once the Weberian definition of state as the monopolization of means of violence is considered, the crucial role of state and military institutions became even more apparent. These two institutions by excluding women from state mechanism and monopolizing the means of violence at the same time, in deed monopolize the means of violence at the hands of man. As I tried to explain above, I prefer to subscribe in to a Arendtian understanding of definition of power; in which power is the capacity to solve problems without a need to resort to violence. However, even though violence is not power, in my understanding, I should acknowledge that it does have the effect of coercion and the ability to make the other submit. Hence Just War tradition by supporting these two institutions, and even idealizing them as the legitimate authority indeed indirectly contributes to the patriarchal environment that downplays women.

Just War tradition's indirect negative influence on women also render itself when it comes to this tradition's huge negligence of the post conflict period which is only recently termed as *jus post bellum* and started to be dealt with limited number of Just War writers. The Just War tradition as a tradition endorsing the Westphalian principles of sovereignty fails to define adequate criteria for a humanitarian intervention for the sake of women since it pays no attention to the patriarchal mechanisms that oppress women. This is keenly connected with the ill-defined approach of the Just War tradition regarding the concept of war which is perceived by this tradition as an organized violence conducted by the states with a clear beginning and an end. Just War tradition fails to grasp the fact that women are increasingly experience violence in their daily lives similar to the violence perpetrated during the wars. Hence it simply assumes that when what it calls the war is over, the peace is established for all, which is not the case given women's dire conditions in patriarchal societies. This tradition, in the final analysis, hypocritically claims to defend women during the *jus in bello* period of hostilities with the non-combatant roles it attributes

to women but leave the same women alone to the workings of patriarchal mechanisms when the war is over during the jus post bellum period. In this sense, it is telling that the secular, rights based, turn which claims that the mercy shown to the civilians in the battle field by the soldiers do not stem from the altruistic feelings of the soldiers but it is a right of the civilian which have to be fulfilled by the belligerents on the battlefield, did not take place with regard to the jus post bellum phase. Apart from the law of occupation, there are few legal arrangements dealing with the period after the hostilities come to an end. Hence any provision that can improve the situation of women in jus post bellum phase is simply left to the good will of the victors and not to the dictates of the law.<sup>997</sup> From this perspective the “peace” treaties do not reflect a genuine gender just peace in jus post bellum period given the fact that neither they were conducted and codified by women nor they take the women’s issues in to account. Hence from a feminist perspective, both patriarchy and militarism which propagate masculinist values in society remain intact when the war is over.

After touching upon my findings in my thesis, I also would like to elaborate on the limits of this study and the points where I found myself in dilemmas. As a matter of fact, I am quite contended that such dilemmas have occurred during my study because of the fact that as researchers we shouldn’t only focus on the knowledge, facts or information that suits on our arguments. We, as the researchers, might put forward our hypothesis but in my opinion we are not entitled to bend them to make them suit our arguments. Hence we should recognize that a research is an open ended process and there can always be findings that can contradict but at the same time coexist with your arguments.

---

<sup>997</sup> Stahn, Carsten,330.

The first of my dilemmas in this study is the issue of extending the limits of humanitarian intervention and to transform it to a tool that includes intervention for preventing the gross violation of women's rights. On the one hand it is clear that there is an urgent need for the improvement of women's rights in patriarchal societies, or if one has the Radical Feminist perspective, in every society since for Radical Feminists all societies are patriarchal to a certain extent, which are not only subjugating women, appropriating their labor and confining them in to the limits of the household but also in many cases subject them to psychological, sexual and physical violence and in many cases even take their most natural rights; the right to life, away from them. Unlike the classical Greek and Roman ethos which consistently stress the importance of the civic virtues in the sense of one's political maturity and struggle to change one's own conditions, I believe in patriarchal societies where women suffer grave violation of their rights, to wait for women themselves to develop such civic and political consciousness to improve their situations simply mean leaving women alone to their fate given the fact that the patriarchal system is specifically designed, or emerged depending on one's opinion, to impede women to gain such consciousness by constantly excluding them from public sphere. Therefore, humanitarian intervention to prevent gross violations of women's rights is needed to save women from such circumstances. However, on the other hand I am quite aware of the problem of extending the limits of humanitarian intervention to include the military operations carried out to save women from oppression. As previous examples from Algeria, Afghanistan, Kuwait and Iraq have demonstrated, as it frequently happens in humanitarian interventions carried out for other purposes, such rhetoric can easily be adopted by governments as a pretext and a façade to conceal their real motives behind the interventions which are usually connected with their national interests rather than altruistic motives. Hence I am aware of the risks of proposing saving women from oppression as a just cause for humanitarian intervention but still given the above mentioned examples in Nigeria and Kenya, there are many cases where political and economic pressure fails and the only alternative remains humanitarian intervention in

its classical definition which only involves military means. Even though there are risks for proposing such an extension of the scope of the humanitarian intervention, I believe the oppression faced by women necessitates such an action to be taken. However, as I tried to mention above such intervention does not have to take necessarily a military form. Classical realist arguments like, the principle of *fiat justitia pereat mundus*<sup>998</sup> is only for the common people but the politician should not be always fighting injustice in this world, especially when it suits the interests of *his* country, are arguments usually reflecting the perspective of the strong, in many cases men, who has the luxury of watching the unfolding events from afar without being affected from them. To simply wait for women to gain consciousness, even it takes ages, is not a solution to women's problems at all because of the simple fact that women are being exploited, dominated, subjected to violence, usurped of the fruits of their labor and even killed *now*, not in distant future.

The other dilemma that I faced during this study was related with the issue of high and low politics distinction and the conventional realist argument that high politics usually associated with foreign policy issues is more important than low politics. Certain parts of my study deals with the issue of patriarchy and the way it constitutes not only a problem for women in domestic politics but also a problem for the states in the sense that patriarchy itself militarizes the populations and makes the states more prone to resort to war. Here my dilemma is, throughout my study I tried to challenge the primacy of high politics over low politics but at the end I found myself presenting an argument; that patriarchy is a system that threatens peace among states, trying to convince states that patriarchy is a challenge that should be dealt within high politics; that it is associated with peace among nations. From a feminist perspective this is a serious dilemma because as Irigaray, Butler and Cockburn repeatedly pointed out what is needed is a new language that should change our outlook and bring a fresh

---

<sup>998</sup> Let justice be done even if the world perishes

perspective. In this sense presenting the patriarchy as a threat to peace among states and implying that only by presenting a problem as a threat to state interests, in other words only by labelling it as an issue of high politics, one can find a solution to it, is certainly staying within the current dominant paradigm marked by state centrism and the primacy of high politics.

I also would like to stress that there are also some limited arguments in Just War tradition that can challenge and even reverse my arguments about the strict dualistic understanding of this tradition. One of my main arguments was that Just War tradition, as a tradition dominated by masculine thinking, accepts reason as its main tool to decide on matters related with war since it is not emotions but reason that is associated with man. However, even though the jus ad bellum arguments for going to war were deliberated by Just War thinkers with reference to reason based arguments there is still the subtle current in Just War mentality that by claiming to wage war for moral purposes might always lead one to enter the domain of emotions since, as the deliberate absence of morality in realist arguments demonstrate, *purely* reason based arguments for war as propagated by realism in International Relations *almost* always leave the moral arguments out of calculations since they are seen as factors that can obstruct proper reasoning. Likewise, I also tried to criticize the Just War mentality of associating man with mind and women with body and as a result leaving women out of the war related issues since mind/reason can supposedly been found in man alone and hence man has the capacity to deal with the issue of war. However, even though it doesn't change the fact that women are excluded from public affairs related with war in this tradition, Just War tradition, even though for all the wrong purposes, in some instances reverse the body and soul dichotomy between man and women by calling women as "beautiful souls" and man as "just warriors". Here, in this case, in jus in bello level man is associated with bodily strength and hence with the warfare itself and women is presented as a beautiful soul and associated with supposedly the higher level of human existence. Hence my criticism of the duality of this tradition

should not be read as an absolute category which leaves no space for exceptions since as I tried to explain, even though few, some exceptions do exist. Finally, I should mention that, even though Just War tradition is depicted in this study as sharing many arguments with realism, in one sense it seems to diverge from classical realism. Just War tradition's insistence of right conduct in *jus in bello* level in which the Just War thinkers usually prohibited the usage of trickery, indirect fighting, plots and breaking of one's promises, as we have seen for all the wrong reasons in terms of women, stands in contrast with some of the methods preached by classical realists. For instance, it was described in a vivid account in Machiavelli's *Prince* that, how the successful princes should trick one another, even to call their enemies to their own places to kill them.<sup>999</sup> Hence regarding the right conduct, in some instances Just War tradition and realism seems to preach different things.

---

<sup>999</sup> Machiavelli, Niccolo, *The Prince*, ed. Quentin Skinner and Russell Price (Great Britain: Cambridge University Press, 1988), 32

## Bibliography

A. MacKinnon, C. 1998. Feminism and Legal Theory. *Harvard Law Review* 101:826-848.

A. MacKinnon, C. 1995. *Feminist Bir Devlet Kuramına Doğru*. İstanbul: Metis Yayınları.

A. Raymond, G. 2010. The Greco-Roman Roots of the Western Just War Tradition. In H. M. Hensel (ed.), *The Prism of Just War: Asian and Western Perspectives on the Legitimate Use of Military Force*. England: Routledge, pp.7-28.

A. Saucier, D., L. Strain, M., M. Hockett, J. And McManus, L. 2015. Stereotypic Beliefs About Masculine Honor Are Associated with Perceptions of Rape and Women Who Have Been Raped. *Social Psychology* 46(4): 228-241.

Ahmad, L. and Anctil Avoine, P. 2016. Misogyny in post war Afghanistan: the changing frames of sexual and gender based violence. *Journal of Gender Studies*, 1-16.

Allan, W. 2013. The Ethics of Retaliatory Violence in Athenian Tragedy. *Mnemosyne* 66:593-615.

Aloyo, E. 2016. Reconciling Just Causes for Armed Humanitarian Intervention. *Ethical Theory and Moral Practice*, 19(2):313-328.

Altınay, A. 2013. Askerlik Yapmayana Adam Denmez: Zorunlu Askerlik, Erkeklik ve Vatandaşlık. In Nurseli Yeşim Sümbüloğlu (ed.), *Erkek Millet Asker*

*Millet:Türkiye 'de Militarizm, Milliyetçilik, Erkeklikler.* İstanbul: İletişim Yayıncılık, pp.205-260.

Arendt, H. 1996. *Love and Saint Augustine.* Chicago: University of Chicago Press.

Arendt, H. 1970. *On Violence.* NewYork: Harcourt Publishing Company.

Arendt, H. 2005. *The Promise of Politics.* NewYork: Schocken Books.

Aristophanes. 2012. *Lysistrata.* New Zealand: Floating Press.

Aristotle. 2009. *Nicomachean Ethics.* New York: Oxford University Press.

Aristotle. 1995. *Politics.* New York: Oxford University Press.

Asal, V. and Schulzke, M. 2012. A Shot not taken: Teaching about the ethics of political violence. *International Studies Perspectives*, 13:408-422.

Augustine. 2016. *Contra Faustum Book XXII.* <http://www.newadvent.org/fathers/140622.htm>.

B. Bergoffen, D. 2008. The Just War Tradition: Translating the Ethics of Human Dignity into Political Practices. *Hypatia*, Vol. 23(2): 72-94.

B. Kellison, R. 2015. Impure Agency and The Just War: A Feminist Reading of Right Intention. *Journal of Religious Ethics*, 43(2):317-341.

Balta, E. 2016. Rusya ve ABD: İki Güç, İki Rejim Tipi. *Birikim*.  
<http://www.birikimdergisi.com/haftalik/7988/rusya-ve-abd-iki-guc-iki-rejim-tipi#.WA-O24VOLIU>

Bar On, B. 2008. Introduction: Thinking About War. *Hypatia*. 23(2):vii-xv.

Barrett, W. 1962. *Irrational Man: A Study in Existential Philosophy*. New York:Anchor Books.

Bell, C. and O'Rourke, C. 2010. Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and Their Agreements. *International and Comparative Law Quarterly*. 59:941-980.

Benhabib,S., Butler,J., Cornell, D. and Fraser, N. 2008. *Çatışan Feminizmler:Felsefi Fikir Alışverişi*. İstanbul:Metis Yayınları.

Ben-Porath,S. 2008. Care Ethics and Dependence: Rethinking Jus Post Bellum. *Hypatia*. 23(2):61-71.

Berktaş,F. 1995. *Tek Tanrılı Dinler Karşısında Kadın:Hristiyanlıkta ve İslamiyette Kadının Statüsüne Karşılaştırmalı Bir Yaklaşım*. İstanbul:Metis Yayınları.

Berktaş, F. 2003. *Tarihin Cinsiyeti*. İstanbul:Metis Yayınları.

Bhuta, N. 2010. New Modes and Orders: The Difficulties of a Jus Post Bellum of Constitutional Transformation. *University of Toronto Law Journal* 60:799-854.

Blanchard, E. M. 2014. Rethinking International Security: Masculinity in World Politics. *Brown Journal of World Affairs*, 21(1): 61-79.

Bourdieu, P. 2015. *Eril Tahakküm*. Ankara: Bağlam Yayıncılık.

Burstyn, V. 1983. Masculine Dominance and the State. *The Socialist Register*,45-89.

Butler, J. 2008. *Cinsiyet Belası: Feminizm ve Kimliğin Altüst Edilmesi*. İstanbul; Metis Yayınları.

Butler, J. 2009. *Frames of War: When is Life Grievable?*. United Kingdom: Verso.

Butler, J. 2015. *İktidarın Psikik Yaşamı*. İstanbul: Ayrıntı Yayınları.

Charles, J.D. 2006. War, Women and Political Wisdom: Jean Bethke Elshtain on the Contours of Justice. *Journal of Religious Ethics*. 34(2):341-369.

Chayes, A. 2013. Chapter VII<sup>1/2</sup> :Is Just Post Bellum Possible?. *The European Journal of International Law*, 24(1): 291-305.

Cicero, M.T. 2014. *De Officiis*. E-Book, no 470001.

Cockburn, C. 2009. *Buradan Baktığımızda: Kadınların Militarizme Karşı Mücadelesi*. İstanbul: Metis Yayınları.

Cockburn, C. 2010. Gender Relations as Causal in Militarization and War. *International Feminist Journal of Politics*. 12(2): 139-157.

Cockburn, C. 2013. When is peace? Women's post-accord experiences in three countries: what has happened to women's hopes for peace in Northern Ireland, Bosnia Herzegovina and Israel-Palestine? *Soundings*. 53:143-160.

Cole, D. 1999. Thomas Aquinas on Virtuous Warfare. *Journal of Religious Ethics*. 27(1):57-80.

Corey, D.D. and Charles, J. D. 2012. *The Just War Tradition: An Introduction*. United States:ISI Books.

Corey,D.D. 2011. Luther and the Just War Tradition. *Political Theology*. 12(2): 305-328.

Cudd, A.E. 2013. Truly Humanitarian Intervention: Considering Just Causes and methods in a Feminist Cosmopolitan Frame. *Journal of Global Ethics*. 9(3):359-375.

Cuomo, C. J. 1996. War is not Just an Event: Reflections on the Significance of Everyday Violence. *Hypatia*, 11(4): 30-45.

Cynthia, H. E. 2000. *Maneuvers:The International Politics of Militarizing Women's Lives*. United States: University of California Press.

David, H. B. and E. Capizzi, J. 2005. Just War Theories Reconsidered: Problems with Prima Facie Duties and the Need for a Political Ethic. *Journal of Religious Ethics* 33(1): 119-137.

De Brabandere, E. 2010. The Responsibility for Post Conflict Reforms: A Critical Assessment of Jus Post Bellum as a Legal Concept. *Vanderbilt Journal of Transnational Law* 43:119-149.

Dimeglio, R.P. 2005. The Evolution of the Just War Tradition: Defining Jus Post Bellum. *Military Law Review* 186:116-163.

Donovan, J. 2014. *Feminist Teori*. İstanbul:İletişim Yayınları.

E. Holton, J. 1987. Marcus Tullius Cicero. In Leo Strauss and Joseph Cropsey (eds) *History of Political Philosophy*. Chicago: University of Chicago Press, pp 155-175.

Eide, M. 2008. The Stigma of Nation: Feminist Just War, Privilege and Responsibility. *Hypatia* 23(2): 48-60.

Ellerby, K. 2013. Engendered Security: The Complexities of Women's inclusion in Peace Processes. *International Interactions* 39(4): 435-460.

Elshtain, J. B. 2006. Jean Bethke Elshtain Responds. *Dissent* 53(2): 109-111

Enloe, C. 2003 *Muzlar, Plajlar ve Askeri Üsler*. İstanbul:Çitlembik.

Eric D. P. 2012. *Ending Wars Well*. United States: Yale University Press.

Fitzgerald, F.S. 2013. *All the Sad Young Men*. UK:Alma Classics.

Flescher, A. 2000. Love and Justice in Reinhold Niebuhr's Prophetic Christian Realism and Emanuel Levinas's Ethics of Responsibility: Treading Between Pacifism and Just War Theory. *The Journal of Religion*, 80(1): 61-82.

Forge, J. 2009. Proportionality, Just War Theory and Weapons Innovation. *Science and Engineering Ethics* 15(1): 25-38.

Fraser, N. 2006. *İhtiyaçlar Mücadelesi*. İstanbul: Agora Kitaplığı.

Frazer, E. and Hutchings, K. 2014. Feminism and The Critique of Violence: Negotiating Feminist Political Agency. *Journal of Political Ideologies*, 19(2): 143-163.

Goldfeder, M. 2014. Defining and Defending Borders: Just and Legal Wars in Jewish Thought and Practice. *Touro Law Review* 30(3): 631-653.

Goldstein, J. S. 2001. *War and Gender: How Gender Shapes the War System and Vice Versa*. UK:Cambridge University Press.

Gough,K. 2012. Ailenin Kökeni. In Rayna R. Reiter (ed.) *Kadın Antropolojisi*. Ankara: Dipnot Yayınları, pp. 53-82.

Gozzi, G. 2017. The discourse of international law and humanitarian intervention. *Ratio Juris* 30(2):186-204.

Gregory M. R., Henrik S. and Endre B. 2006. *The Ethics of War:Classic and Contemporary Readings*. USA: Blackwell Publishing.

Grotius, H. 2005. *Rights of War and Peace, Book I*. United States:Liberty Fund Inc.

Grotius, H. 2005. *Rights of War and Peace, Book II*. United States:Liberty Fund Inc.

H. Russel, F. 1974. *The Just War in the Middle Ages*. Cambridge:Cambridge University Press.

Habermas, J. 1997. *Kamusalılığın Yapısal Dönüşümü*. İstanbul:İletişim Yayınları.

Hamman, J. 2000. The Rod of Discipline: Masochism, Sadism and the Judeo-Christian Religion. *Journal of Religion and Health*, 49(4): 319-327.

Hatchell,H. 2006. Masculinities and Violence: Interruption of hegemonic discources in an English Classroom. *Discourse:studies in the cultural politics of education*, 27 (3): 383-397.

Helen M.,K. 2011. *Image Before the Weapon:A Critical History of the Distinction Between Combatant and Civilian*. United States: Cornell University Press.

Hinojosa,R. 2010. Doing Hegemony:Military,Men and Constructing A Hegemonic Masculinity. *The Journal of Men's Studies* 18(2): 179-194.

Hobbes, T. 2010., *Elementa Philosophica De Cive*. İstanbul: Belge Yayınları.

Hobbes, T. 1991. *Leviathan*. UK: Cambridge University Press.

Holzgrefe, J. L. 2003. The Humanitarian Intervention Debate. In J.L. Holzgrefe and Robert O. Keohane (eds) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*. UK: Cambridge University Press, pp.15-52.

Hurka, T. 2017. Proportionality and Necessity.  
<http://www.trinitinture.com/documents/hurka.pdf> .

Hutchings, K. 2007. Simone de Beauvoir and the Ambiguous Ethics of Political Violence. *Hyptia* 22(3): 111-132.

Imus, A. 2015. Pandora and the Great Jar. *Salem Press Encyclopedia of Literature*.

J.Hekman, S. 2016. *Toplumsal Cinsiyet ve Bilgi: Postmodern Bir Feminizmin Öğeleri*. İstanbul; Say Yayınları.

J.N dePaulo, C., A.Messina P. and P. Tompkins D. 2011. Introduction: Confessions, Contentions and the Lust for Power. In Craig J.N de Paulo, Patric A. Messina and Daniel P. Tompkins (eds.) *Augustinian Just War Theory and the Wars in Afghanistan and Iraq: Confessions, Contentions and the Lust for Power*. New York: Peter Lang, 2011, pp 1-22.

J.Peach, L. 1994. An Alternative to Pacifism? Feminism and Just War Theory. *Hypatia* 9(2): 152-172.

J. Regan, R. 2013. *Just War:Principles and Cases*. Washington D.C:The Catholic University of America Press.

Jean Bethke,E.1980. Women, War and Feminism. *The Nation* 230(23):721-724.

Johnson, J.T. 2003. Aquinas and Luther on War and Peace: Sovereign Authority and the Use of Armed Force. *Journal of Religious Ethics* 31(1):3-20.

Johnson, J.T. 2016. *Ethics and the Use of Force: Just War in Historical Perspective*. United States: Routledge.

Johnson, J.T. 1998. Human Rights and Violence in Contemporary Context. *The Journal of Religious Ethics* 26(2):319-328.

Johson, J.T. 1981. *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry*. New Jersey:Princeton University Press.

Johnson, J.T. 2008. The Idea of Defense in Historical and Contemporary Thinking About Just War. *Journal of Religious Ethics* 36(4):543-556.

Kaldor, M. 1999. *New and Old Wars: Organized Violence in a Global Era*. USA:Stanford University Press.

Kampwirth, K. 2014. *Kadınlar ve Gerilla Hareketleri: Nikaragua, El Salvador, Chiapas, Küba*. İstanbul: Sümer Yayıncılık.

Karadeli, C. 2015. Aquinolu Thomas. In Erhan Büyükkakıncı(ed.) *Savaş Kuramları*. Ankara: Adres Yayınları, pp 54-75.

Kellezi, B. and Reicher, S. 2014. The Double Insult: Explaining Gender Differences in the Psychological Consequences of War. *Peace and Conflict: Journal of Peace Psychology* 20(4):491-504.

Kelly, O. 2007. *Women as Weapons of War: Iraq, Sex and the Media*. New York: Perseus Books.

Korac, M. 2016. Is there a right time for gender just peace? Feminist anti-war organizing revisite. *Gender and Education* 3:431-444.

Kremer, M. 2012. Morality and Just War According to Francisco Suarez. In Heinz-Gerhard Justenhoven and William A. Barbieri Jr.(eds.) *From Just War to Modern Peace Ethics*. Boston:Walter de Gruyter GmbH&Co. KG.

Kretzmer, D. 2013. The Inherent Right to Self Defence and Proportionality in Jus ad Bellum. *European Journal of International Law*, 24(1):235-282.

Leibowitz, L. 2012. Cinsiyet Farklılıklarının Evrimi Üzerine Perspektifler. In R. Reiter, Rayna(ed.) *Kadın Antropolojisi*. Ankara: Dipnot Yayınları.

Lindsey, G. 2013. *How a Century of War Changed the Lives of Women*. New York: Pluto Press.

Lloyd, G. 2016. *Erkek Akıl: Batı Felsefesinde Erkek ve Kadın*. İstanbul:Ayrıntı Yayınları.

M. Clifford III, G. 2012. Jus Post Bellum: Foundational Principles and a Proposed Model. *Journal of Military Ethics* 11(1):42-57.

Machiavelli, N. 1988. *The Prince*. Great Britain: Cambridge University Press.

Marshall, J. 2006. Feminist Jurisprudence: Keeping the Subject Alive. *Feminist Legal Studies* 14(1):27-51.

Mathewes, C. 2012. Just War and the Theology of Evil. *Nova et Vetera*, 10(4): 1157-1182.

Maus, S. 2014. Jus Post Bellum Ala United Nations? Human Rights, UN Peace Operations and the Creation of International Law. *Wisconsin International Law Journal* 32: 675-698.

McCready,D. 2009. Ending the War Right: Jus Post Bellum and the Just War Tradition. *Journal of Military Ethics* 8(1): 66-78.

McKeogh, C. 2007. Civilian Immunity in War: From Augustine to Vattel. In Igor Primoratz (ed.) *Civilian Immunity in War*. New York: Oxford University Press, pp.62-83.

Melissa A.,M. 2011. *Making War, Making Women:Femininity and Duty on the American Home Front,1941-1945*. United States: University of Georgia Press.

Metta, S. 2015. New Wars and Old: An Interview with Mary Kaldor. *Metta Peace Magazine*, 31(4): 8-12.

Mill, J.S. 2008. *On Liberty*. New York:Oxford University Press.

Morkevicius, V. 2015. Power and Order: The Shared Logics of Realism and Just War Theory. *International Studies Quarterly* 59: 11-22.

Muldoon, J. 2006. Fransico De Vitoria and Humanitarian Intervention. *Journal of Military Ethics* 5(2): 128-143.

O. Ilesanmi, S. 2000. Just War Theory in Comparative Perspective. *Journal of Religious Ethics* 28(1): 137-155.

O'Driscoll, C. 2015. Rewriting the Just War Tradition: Just War in Classical Greek Political Thought and Practice. *International Studies Quarterly* 59: 1-10.

O'Driscoll, C. 2013. Why Don't You Tell Us About Them Rabbits, George? The Tragedy of Just War. *International Studies Review* 15: 229-242.

Owens, P. 2007. *Between War and Politics:International Relations and the Thought of Hannah Arendt*. United Kingdom:Oxford University Press.

Österdahl, I. 2012. Just War, Just Peace and the Jus Post Bellum. *Nordic Journal of International Law* 81(3): 271-293.

Özkazanç, A. 2015. *Feminizm ve Queer Kuramı*. Ankara: Dipnot Yayınları.

P.Bernat,F. and S.Holschuh,C. 2015. Is there a war on women or are females fine? An examination of sex, gender and the criminal justice field. *Women and Criminal Justice* 25:6-10.

Parry, J. 2015. Just War Theory, Legitimate Authority and Irregular Belligerency. *Philosophia* 43:175-196.

Parsons, G. 2012. Public War and the Moral Equality of Combatants. *Journal of Military Ethics*, 11(4): 299-317.

Parry, J. 2015. Liability, community and just conduct in war. *Philosophical Studies* 172(12): 3313-3333.

Patterson, E. 2007. Jus Post Bellum and International Conflict: Order, Justice and Reconciliation. In Michael W. Brough, John W. Lango and Harry van der Linden (eds.) *Rethinking the Just War Tradition*. United States of America: State University of New York Press.

Poe, D. 2008. Replacing Just War Theory with an Ethics of Sexual Difference. *Hypatia*. 23(2):33-47.

Price, J. M. 2012. *Structural Violence:Hidden Brutality in the Lives of Women*. United States: State University of New York Press.

Ragland, D. 2015. Betty Reardon's Philosophy of Peace Education and the Centrality of Justice. *Journal of Peace Education* 12(1):37-55.

R. Lucas J. G. 2003. The role of the International Community in Just War Tradition: Confronting the Challenges of Humanitarian Intervention and Preemptive War. *the Journal of Military Ethics* 2(2): 122-144.

Ramazanoğlu, C. and Holland J. 2002. *Feminist Methodology: Challenges and Choices*. London: Sage Publications.

Ramsey, P. 1976. Some Rejoinders. *Journal of Religious Ethics* 4(2): 185-237.

Reardon, A. B. 1993. *Women and Peace: Feminist Vision of Global Security*. United States: State University of New York Press.

Reiss, H.S. 1970. *Kant Political Writings*. United States: Cambridge University Press.

Rengger, N. 2002. On the Just War Tradition in the Twenty First Century. *International Affairs*, 78: 353-363.

Ross, S.K. 2004. *Women's Religion in the Greco-Roman World: A Sourcebook*. New York: Oxford University Press.

Russell, B. 2012. *Batı Felsefesi Tarihi 2. Cilt: Katolik Felsefesi*. İstanbul: Alfa Basım.

Saint Augustine. 1953. *Letters, Volume III*. Washington D.C: The Catholic University of America Press.

Saint Augustine. 1954. *The City of God, Books I-VII*. Washington D.C: The Catholic University of America Press.

Saint Augustine. 1952. *The City of God, Books VIII-XVI*. Washington D.C:The Catholic Univeristy of America Press.

Saint Augustine. 1954. *The City of God, Books XVII-XXII*. Washington D.C:The Catholic Univeristy of America Press.

Saint Thomas A. 2006. *Summa Theologica, Part I-II*. E-Book, no 17897.

Saint Thomas A. 2006. *Summa Theologica, Part III*. E-Book, no 19950.

Sancar, S. 2009. *Erkeklik İmkansız İktidar: Ailede, Piyasada ve Sokakta Erkekler*. İstanbul: Metis Yayınları.

Sancar, S. 2011. Önsöz. In Çiğdem Akgül (ed.) *Militarizmin Cinsiyetçi Suretleri: Devlet, Ordu ve Toplumsal Cinsiyet*. Ankara:Dipnot Yayınları.

Schmitt,C. 2006. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*. United States:Telos Press Publishing.

Schott, R.M. 2008. Just War and the Problem of Evil. *Hypatia* 23(2): 122-140.

Shue, H. 2013. Laws of War, Morality, and International Politics: Compliance, Stringency and Limits. *Leiden Journal of International Law*, 271-292.

Shuffelton, A. 2015. Consider Your Man Card Reissued: Masculine Honor and Gun Violence. *Educational Theory* 65(4): 387-403.

- Sjoberg, L. 2006. Gendered Realities of the Immunity Principle: Why Gender Analysis Needs Feminism. *International Studies Quarterly* 50: 889-910.
- Sjober, L. and Peet, J. 2011. Targeting Women in Wars. *International Feminist Journal of Politics* 13(2):163-182.
- Sjoberg, L. 2013. The Inseparability of Gender Hierarchy, the Just War Tradition and Authorizing War. In John Williams, Cian O'Driscoll and Anthony F. Lang (eds.) *Just War: Authority, Tradition and Practice*. Washington D.C: Georgetown University Press.
- Sjoberg, L. 2011. The Paradox of Double Effect: How Feminism Can Save the Immunity Principle. *Women's Policy Journal of Harvard* 8:53-69.
- Soendergaard, B. D. 2008. The Political Realism of Augustine and Morgenthau: Issues of Man, God and Just War. *Turkish Journal of International Relations* 7(4): 1-20.
- Stahn, C. 2008. Just Post Bellum: Mapping the Disciplines. *American University International Law Review* 23(2): 311-374.
- Steinhoff, U. 2014. Just Cause and Right Intention. *Journal of Military Ethics* 13(1): 32-48.
- Stone, A. 2015. *Feminist Felseye Giriş*. İstanbul: Otonom Yayıncılık.
- Tami A., J. 2005. *Women in Zones of Conflict: Gender Structures and Women's Resistance in Israel*. Canada:McGill-Queen's University Press.

Taslaman C. and Taslaman F. 2013-2014. Contemporary Just War Theory:Paul Ramsey and Michael Walzer. *Akademik Arařtırmalar Dergisi* 59: 1-20.

Taslaman, F. K. 2011. *Geçmişten Günümüze Haklı Savaş Kavramının Yorumu*. (unpublished Phd Thesis). Istanbul University, Institute for Social Sciences,İstanbul.

Tickner, J. A. 2001. Man, the State, and War: Gendered Perspectives on National Security. In A. Mingst Karen and L.Snyder Jack (eds.) *Essential Readings in World Politics 2<sup>nd</sup> Edition*. United States: W.W. Norton&Company Inc.,pp. 94-101.

Tickner, J. A. 1999. Searching for the Princess? Feminist Perspectives in International Relations. *Harvard International Review* 21(4): 44-48.

Treuthart, M.P. 2015. No Woman, No Cry” Ending the War on Women Worldwide and the Intenational Violence Against Women Act. *Boston University International Law Journal* 33(75): 73-129.

Turner, J. 2012. Towards a Synthesis Between Islamic and Western Jus in Bello. *Journal of Trasnational Law and Policy* 21:165-206.

Tür, Ö. and Aydın K., Ç. 2010. Feminist Uluslararası İlişkiler Yaklaşımı: Temelleri, Gelişimi, Katkı ve Sorunları. *Uluslararası İlişkiler* 7(26):3-24.

Uyan Semerci, P. 2013. Nitel Yöntem Nedir? Ne değildir? Sosyal Bilimlerde Derinlemesine Analizin Gerekliliği. In Pınar Uyan Semerci and Emre Erdoğan (eds.) *Farklı Pencereleer Farklı Manzaralar: Sosyal Bilimlerde Yöntem Tartışmaları*. İstanbul: Hiper Link Yayınları, pp. 87-106.

Van Schaack, B. 2011. The Crime of Aggression and Humanitarian Intervention on Behalf of Women. *International Criminal Law Review* 11: 477-493.

Walby, S. 2014. *Patriyarka Kuramı*. Ankara: Dipnot Yayınları.

Walzer, M. 1977. *Just and Unjust Wars*. New York: Basic Books.

Walzer, M. 2006. *Law, Politics and Morality in Judaism*. United Kingdom: Oxford University Press.

Weitz, R. 2015. Vulnerable Warriors: Military Women, Military Culture, and Fear of Rape. *Gender Issues* 32(3):164-184.

Whetham, D. 2009. *Just Wars and Moral Victories: surprise, deception and the normative framework of European war in the later Middle Ages*. Boston: Hotei Publishing.

Winkel, L. 2007. Francisco de Vitoria on Just War on Both Sides and on the Legal Position of Burgundy. *Legal History Review* 75(3):355-362.

Yamaner, O. 2016. *20. Yüzyılda Savaş ve Kadın*. İstanbul: Bilge Kültür Sanat Yayın.

Youngs, G. 2006. Feminist International Relations in the Age of the War on Terror: Ideologies, Religions and Conflict. *International Feminist Journal of Politics*, 8(1):3-18.

Yuval Davis, N. 1997. *Cinsiyet ve Millet*. İstanbul: İletişim Yayınları.

Zehr, N. A. 2009. James Turner Johnson and the Classic Just War Tradition. *Journal of Military Ethics* 8(3):190-201.

**Internert Sources**

<http://www.un.org/en/globalissues/briefingpapers/humanrights/quotes.shtml>

[https://www.nato.int/cps/en/natohq/topics\\_78170.htm](https://www.nato.int/cps/en/natohq/topics_78170.htm)