



Avenging of Injuries. The Revival of Punishment as an Objective of War

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Abstract

In this essay, I question the modern meaning of punishment to justify the use of military force. First, I trace why and how the punitive doctrine of war appeared. Its authors and operators were Christian theologians who, for a long time, consolidated the punitive concept's dominance. Punishment was aimed at interrupting and removing sin. This religious approach was revised in early Modern times against the backdrop of the modern state's strengthening. Next, I consider the legalist approach to war relevant to this period. Its general approach was to recognize just war, which was a response to an offense. States used war as a means of protecting their rights. I note that this approach remains dominant today, but at the same time the idea of punishment is being restored. Finally, I give examples of how the concept of punishment and retribution, including those interpreted religiously, have been used during the Russian-Ukrainian conflict.

These examples allow us to draw some conclusions about the limitations of the modern primitive concept of war.

Keywords

punishment, legalism, war, just war theory, Russia, Ukraine

The idea of punishment was a key component of the Christian approach to war. Its theology of war considered war to be just if it allowed one to terminate sinning, acknowledge one's own transgression, and eliminate sin as such. This approach generated a high degree of asymmetry and hierarchy between the parties to the conflict. As Thomas Aquinas (1947: 1359–60) formulated, conflict sides can be separated into two categories: those who operate on behalf of God and do so in accordance with His directives, and those who depart from Him and deserve being attacked for their transgressions. But this punitive approach also included the notion of achieving peace through armed combat. Christian authors believed that fighting was being waged to defeat sin and evil, not for earthly benefits. In a punitive war, the sinner comes out winning as well as being the one who gained a just victory.

By the Modern era, a war's moral legitimacy shifted from the idea of punishing the sinner to the concept of a state having a specific right to protect its sovereignty and interests using military force. This paradigm was more relevant to the era of nation-states that used force to defend their sovereignty. The concept of conflicting parties' moral and legal symmetry distinguishes it most significantly from the punitive approach. Nobody could act as another subject's judge. In the present age, we may observe a gradual revival of the idea of punitive war. The legalist approach retains its power and significance but is used on par with punitive arguments. Political leaders tend to declare that in addition to battling against violators of the law, they are also fighting against evil.

In this paper, I observe how punitive and legalist approaches to war have changed over time to show how the notion of punishment is revived in contemporary political public debates. The punitive paradigm was applied extensively during the war on terror, which was defined as a punitive war waged against evil regimes and those responsible for moral crimes. I then turn to one of the latest examples of punitive rhetoric, the full-scale war in Ukraine that started in 2022, where both sides refer to legalism, the punishment of evildoers, and to a (quasi-)religious framework, all while arguments of taking revenge through war also emerge.¹ The public conceptualization of the Russia and Ukraine conflict illustrates the rhetoric of punishment as law enforcement and spiritual practice. The purpose of this article is to clarify how the concept of punishment is being revived and what challenges it could cause. In political discourse, the use of moral and quasi-theological arguments became

¹ For a detailed analysis of the use of religious arguments in the war in Ukraine, see Smytsnyuk (2023). On the motives of revenge in global politics and in particular in the Russian-Ukrainian conflict since 2014, see Gardner (2015) and Smith (2022).

widespread after the end of the Cold War and the outbreak of the war on terror. For reasons that should be discussed in detail elsewhere, political hegemons like the United States or Great Britain sought to present their military operations not only as the restoration of international legal order but also as a crusade against evil regimes. The language of the holy war was then applied in many other conflicts, including, as we will see, the Russian-Ukrainian War. Although such a trend may confirm the idea of delegitimizing war (in order to justify the war and gain sustained support from the population, it is necessary now to use a significant arsenal of rhetorical means, including, among other things, metaphysical arguments), war risks becoming an unrestrained action of annihilation if it is conveyed in terms of retaliation and punishment.

Bellum Justum Et Punitivum

From the fourth century AD, Christianity became a legal and then a state religion in the Roman Empire and provided a framework for interpreting the fundamental phenomena and processes of social life. Power, domination, authority, and laws, including the law of armed conflict, were understood through the spiritual and theological domain. Based on a punitive paradigm, the Christian doctrine of war coupled biblical motifs with classical ancient notions of the law and justice of war. The punitive paradigm's fundamental tenet was that violence was inappropriate in all situations other than those in which punishment was required. And according to Christian doctrine, it was the one who committed the sin who deserved to be punished. War against the sinner—punitive war (*bellum punitivum*)—was considered permissible and just. However, the very legitimacy of violence, the role of war in Christian doctrine, and Christ's ostensibly peaceful teachings continued to spark discussion.

Many early Christian authors of the first centuries, Origen (1980: 509–10) or Tertullian (1959), to mention a few, were strongly opposed to war and military service.² The evangelical commandments calling for nonviolence are well known:

You have heard that it was said, “An eye for an eye and a tooth for a tooth.” But I tell you not to resist an evil person. But whoever slaps you on your right cheek, turn the other to him also . . . But I say to you, love your enemies, bless those who curse you, do good to those who hate you, and pray for those who spitefully use you and persecute you. (Matthew 5:38–39; 5:44)

St. Ambrose of Milan and St. Augustine, two outstanding writers from the fourth and fifth centuries AD, were able to reconcile the conflict between

² Reflection of Christian pacifism may be found in Bainton (1960), Johnson (1987: 3–29), Wogaman (2010: 34–36), and Yoder (1996: 90–110). For an overview of the revisionism of Christian pacifism, see Cox (2015: 104–05).

Christ's striving for nonviolence and the requirement for a wise and God-loving ruler to take up arms. Borrowing from Cicero the idea of just cause as a crucial element for the analysis of war, they formed the punitive paradigm of war canon, which made Christian nonviolence insignificant or just an individual level of relevance.³

Ambrose and Augustine referred to numerous examples in the Old Testament when the kings of old times engaged in warfare. But, as Ambrose and Augustine made clear, those rulers could only have done so with divine guidance: "David never waged war unless he was driven to it . . . After that [the victory over Goliath], he never entered on a war without seeking counsel of the Lord" (Ambrose 2017: 46. I. XXXVI. 177). The Christian doctrine of war's key premise was the idea of the divine council (*consulto Domino*), which transferred responsibility for decisions on war to God. As Augustine wrote, "they who have waged war in obedience to the divine command, or in conformity with His laws, have represented in their persons the public justice or the wisdom of government, and in this capacity have put to death wicked men; such persons have by no means violated the commandment 'Thou shall not kill'" (1907: 15. I, 21).

The classical doctrine of the just cause of war was "first, the right to defend oneself and repel force with force (*vim vi repellere*); second, a material right to recover lost property (*rebus repetitis*); and third, a punitive right to avenge injuries and punish wrongdoers (*iniuriae ulciscuntur*)" (Cox 2015: 103). The Christian doctrine of war emphasized the last cause, punishment: "Good men" will wage war only to avenge sinners. As stated by Augustine himself: "just wars are usually defined as those which have for their end the avenging of injuries" (*iusta autem bella ea definiri solent quae ulciscuntur iniurias*) (cit. ex Russell 1975: 18). The Roman (and, in general, the ancient tradition) was centered around the concept of combat to restore the prewar legal status quo or possession rights (Cicero 1928: 38; see comparison of classical and Christian views on justice of war in Russell 1975: 18–20). This is a more materialistic and practical approach—one side of the conflict must directly violate the other side's rights. In the Christian tradition we observe a significant shift, with the meaning of war changed entirely. It is not the violation of the law itself (for example, the theft of property or shrines) that is now being condemned, but the sinful essence of the act committed by the enemy. This evil essence must be avenged, although it is not necessary that evil consists

³ This canon was not presented in a separate work specifically dedicated to the problem of war. However, they wrote quite a lot on military issues, Augustine especially, and their approach can be reconstructed. See "On the Duties of the Clergy" for the primary source outlining Ambrose's view (2017: 16–110); see a list of principal sources of the Augustinian reflection on war in Mattox (2006: 44–45). Several chapters in "City of God" and "Reply to Faustus the Manichaeon" contain Augustine's views on war. Augustine's vision of war is analyzed in Langan (1984: 19–38)).

of a sinner violating someone's rights. An active and serious transgression is already a just enough cause for an attack. The Christian warriors go to war not only to regain what they have lost and to restore their own rights. They take up arms to punish the violator of justice (the order established by God) and to repay for both actual and spiritual crimes.

Being theological, Augustine's concept of just war worked within a system of argumentation that acknowledged God as the source of justice. Accordingly, this system posits a proper hierarchical structure, in which a person's distancing from God is departing from justice, but still, all parties exist within the same ontological and moral realm. That is why "good men" get the opportunity to judge others: it is presupposed that wise men and sinners share the same conception of justice. This system is asymmetrical but, at the same time, universal. The sides take different positions within the same hierarchical structure in the conflict. One is a sinner, the other punishes and takes revenge for sins; one recedes from God, and the other remains close to Him and dispenses justice on His behalf. At the same time, belligerent parties act in a common spiritual universe. This is not a Manichean struggle of good and evil. The sinner is involved in evil but is not a representation of malicious essence him- or herself. Victory over the sinner serves the sinner's good.

As we can see now, the Christian interpretation substantiates war metaphysically and morally; the Lord sends a wise and just ruler to fight. That ruler is compelled to go to war for external reasons, not from their desire. They oppose the injustice as such. The enemy is a sinner departing from God's justice. As a result, the war is not waged against the enemy but against this enemy's sins. According to this doctrine, the sinner is culpable for the war, God is responsible for it, and the wise ruler acts as a weapon of God. Sin provides justification for war, when the aim of war is to bring about peace. As a result of war, according to Augustine (2003: 226), the sinner should be punished and, if possible, healed or spiritually transformed.

Augustine identified some other just causes of war besides punishment. The defense of the homeland might provide *iusta causa*, to the extent that it allows one to protect the Church and the return of seized property (Augustine 1907: 47. III, 10). Yet punishment remains central to Augustine's approach to the justice of war. I do not mean to imply that he was the exclusive source of future Christian discourse of war. But his power and influence remained strong, and we can find references to the Augustinian punitive theory of warfare directly or indirectly in practically all medieval and Renaissance Christian literature (Mattox 2006: 1–4; 8; Russell 1975: 26).⁴

⁴ Wynn (2013: 9, 321–36) quite reasonably challenges the perception of Augustine as "the originator of just war," yet, he does not underestimate Augustine's authority for subsequent Christian tradition.

The Decline of Punitive War...

The punitive paradigm remained the basic approach to war justification until the early Modern period. In one way or another, all the prominent medieval and Renaissance authors—Thomas Aquinas, Thomas Cajetan, Francisco de Vitoria—referred to the concept of punishment in their assessments of war. Paradoxically, Hugo Grotius, who relied heavily on the Salamanca School, began the process of secularizing the just war concept and displacing the punitive paradigm with the legalist one. Indeed, Grotius became a transitional figure in this paradigm shift as he still wrote about punishment as one of the causes of just war. In particular, he emphasized the universal nature of punishment when he proved that the duty to punish was not related to civil jurisdiction or the direct suffering of a violation of law, but was “derived from the law of nature” (Grotius 1925: 333). But the other just causes that he defined—self-defense and restitution or recovery of property and obligations—laid at the core of his theory, while he did not scrutinize punishment to such a level. In his voluminous *The Law of War and Peace*,⁵ only two chapters are devoted to punishment (Grotius 1925: 304–58), where he mostly discusses the justice of punishment and not punitive war (Terumi 1993: 221–43; Salter 1999: 205–24; Geddert 2014: 559–88).

Grotius perceived war primarily as a means by which sovereigns regulate interactions with one another. When there are no alternatives for bringing an offender to justice, war is a means to deal with a trespass. As he stated: “Demosthenes well said that war is directed against those who cannot be held in check by judicial processes” (Grotius 1925: 18). Violation of rights and aiming to reestablish the legal order constituted Grotius’s natural law-based theory of war. He gave punishment a legal interpretation in which punishment is understood teleologically while at the same time the natural right to punishment is proclaimed (Grotius 2006: 136–37; Tuck 1979: 62–63). In fact, punishment turns from a cause into an aim or instrument of war.

Since the early Modern period, reflection on war began to move gradually from the spiritual sphere to the purely political domain, where sovereign states’ rights and interests prevailed over divine justice. This era’s authors were focused on the juridical or legalist interpretation of war. A reassessment of the subjects’ position in political interactions is another aspect that sets this legal interpretation apart from the religious and punitive one. We find equality of rights and moral standings in the system of international relations where the modern state dominates.⁵ As Emer de Vattel notes, “nations are free, independent, and equal,—and since each possesses the right of judging, according to the dictates of her conscience, what conduct she is to pursue in order to fulfill her duties” (2008: 75). A key feature of this sovereign-state

⁵ War as relation between equal subjects and to “marvel” at the humanization of war is analyzed in detail by Schmitt (2006: 143–47; 152–71)

universe is that national interests (*raison d'état*) influence state policies. Vattel (2008: 75–76) identifies the relativization of justice, since each state gets a chance to interpret it in its own way. One state has the same set of rights and, consequently, status as its neighbor state, regardless of its population size. Since they are all in a natural state with one another, no judge over nations or sovereigns could be established above them in case of a conflict. Hobbes' rule, "*non est potestas super terram quae comparetur ei*" (there is no power on earth to be compared with him), fully describes that anarchical disorder.

Following Carl von Clausewitz's well-known thesis about war as "the continuation of policy by other means" (1989: 87), war in such a system is an instrument of politics. A state applies it to counter other states, being equal to them in moral and legal status. A state's divine might and almighty power as a mortal god are exhibited inside national borders in its capacity to enact legislation, administer justice, and punish lawbreakers or disobedient subjects, but not on a global scale. There the Leviathans share common ground and conduct themselves in accordance with prudence, their interests, and the law of nations. The latter do not imply that a higher court existed. However, the state is typically seen as a moral person, to which certain rights are inherent as well as responsibilities and fundamental moral precepts. Hobbes' image of states as gladiators (1966: 115) led to the conclusion that warfare is a common occurrence in that world and, as such, does not deserve to be punished.

In this world, a state that has experienced a serious injustice from another state can impose punishment in response to that injustice. An offense may serve as a just cause of war if "an injury . . . have been actually received" and "war . . . must be the only remaining mode to obtain a just satisfaction" (Vattel 2008: 490). The one who was injured by the wrongdoing, for its safety and the safety of others, may inflict "on the offender a punishment capable of correcting him, and serving as an example to others" (*ibid.*: 490). However, Vattel very clearly indicates this punishment's limitations. The subject gets "the right of punishment solely from their right to provide for their own safety" (*ibid.*: 265). It can be assumed that authors of that time were constrained by adherence to tradition in continuing to refer to punishment as the cause of war rather than its aim. For Vattel, punishment was not in itself the cause and purpose of war but only a function of the right to sovereignty. Vattel's conclusion on punitive warfare as a way to correct other people is extremely tough. He calls this approach the

dangerous mistake or extravagant pretensions of those who assume a right of punishing an independent nation for faults which do not concern them,—who, madly setting themselves up as defenders of the cause of God, take upon them to punish the moral depravity or irreligion of a people not committed to their superintendency. (*ibid.*: 490)

In other words, in the world of sovereign states there is no place for "ravages of enthusiasm and fanaticism" (*ibid.*: 265).

Avenging of Injuries. The Revival of Punishment as an Objective of War

Vattel sees the risks of moralizing war, since it may be used as a tool to abuse the enemy and misuse the concept of punishment for that purpose:

Each party, asserting that they have justice on their own side, will arrogate to themselves all the rights of war, and maintain that their enemy has none that his hostilities are so many acts of robbery, so many infractions of the law of nations, in the punishment of which all states should unite. (ibid.: 589)

International interactions should be governed by law only. Immanuel Kant goes much further, contending that all punitive wars between nations ought to be avoided. In *Perpetual Peace* he writes, “between states no punitive war (*bellum punitivum*) is conceivable, because there is no relation between them of master and servant” (Kant 1917: 115). He maintains that each belligerent party will claim that justice is on their side in a situation of equality of nations.

Even if they tried to make room for punitive warfare in their arguments, theorists began to find the concept challenging from the eighteenth century. Their main difficulty was to define it as a just cause of war in a situation of moral symmetry. Another problem was related to its provoking character as leading to unrestrained hostility and potentially to a “great graveyard of the human race” (Kant 1917: 115). Punitive war, in other words, seemed incompatible with the goals of humanity’s existence.

It would be inaccurate to assert that the concept of punishment was no longer used to justify war. Public debates on war explained battles with moral and even religious reasoning. It should be noted, however, that if the idea of punishment was still present in theoretical writings on war, it was referred to as one of the war’s secondary objectives.

If sin and divine justice as a universal moral sphere cease to be perceived as part of political reality, then the legitimacy of war as a tool for fighting and punishing sin itself as such loses its significance. Restoration of violated law and justice in political systems turned out to be more significant reasons. Later, this paradigm shift “opened up a space for the emergence of modern laws of armed conflict” (Reichberg 2013: 175). The breaking of the rules of war and the committing of war crimes were added to the list of punishable acts. In this context, punishment was relevant since it allowed offenders to be retaliated against, educated, and deterred if they planned a future offense. Another form of punishment was punitive expeditions (Neff 2005: 246–49).

... and Its Revival

As we now see, the idea of puniton as a cause of war lost its theoretical meaning by the nineteenth century, when we find almost no traces of it but instead a considerable elaboration of just war theory (see Luban 2011: 312–17; Orend 2006: 20–21). However, the legalistic reinterpretation of war and

punishment prepared the subsequent revival of the idea of punitive warfare. The First and Second World Wars established precedents for prosecuting and punishing individuals and nations responsible for unleashing the war. This approach was distinct from the Christian doctrine of punitive war. Punishment was not a cause of the war, but rather a response to the manner in which it was fought. Besides, the punishment acquired the form of a legal process. The Treaty of Versailles (1919), which featured allegations against Wilhelm II and the German Government and their admission of guilt, serves as an illustration of this:

Article 227. The Allied and Associated Powers publicly arraign William II . . . for a supreme offence against international morality and the sanctity of treaties . . . (The Treaty of Peace, 1947: 371)

Article 228. The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. (ibid.: 376)

In the twentieth century it became common for those using the legalist approach to treat a law of war violation as a crime and not as some spiritual transgression. The punishment itself presupposed formalization through the tribunal's decision. This did not happen after the First World War, but, as we know, the Second World War ended with a series of tribunals. After that, the practice of having postwar tribunals has been repeated after some conflicts.

This context inspired Erich Hula (1946) to write about the revival of punitive war. Carl Schmitt's (2007) well-known skepticism about the discrimination of war also applies to that time. Considering the Nuremberg and Tokyo proceedings, Hula made a distinction between two concepts of punitive war. It could be an "offensive war waged for punitive purposes" or a "defensive war in which the defender employs his victory for inflicting punishment upon the aggressor" (Hula 1946: 425, n21). And, as Hula thought, if the aggressive war were criminalized in the twentieth century, a war aimed at exacting criminal punishment on the perpetrator would be revived. However, it would be more correct to state that it was the emergence of criminally prosecuting aggression and war crimes rather than reviving a punitive war to punish the sinner. Punishment, in that case, is not the cause of war but its aim.

Hula and Schmitt were responding to the juridical as opposed to the theological approach of punishment by war. However, in the arena of politics and international affairs, the religious overtones of punishment still had value, as Margaret MacMillan shows in her remark that Woodrow Wilson and David Lloyd George, the leaders of the United States and Great Britain, were "both from religious backgrounds, both good liberals, believed firmly in chastising the wicked. They also believed in redemption; one day Germany would

be redeemed” (MacMillan 2003: 161). Therefore, although it was not explicitly expressed, the punishment for sins may have been one of the familiar scenarios for some Paris peace conference attendees.

Legalism persisted in reviving just war theory in the twentieth century. Michael Walzer’s classic of this theory proposes a legalist concept of the morality of war, pointing out that it is “for the sake of their rights” that people are ready to risk their lives and wage wars to respond to aggression and the “wrong the aggressor commits” (2015: 51). The rights of territorial integrity and political sovereignty are considered to be the most significant. War is assigned the role of a legal instrument to protect those rights.

In modern just war theory, we can find a reevaluation of punishment as an element of war. Of course, there are zealots of a non-punitive approach, such as Jeff McMahan (2008: 67–84), who argues that punishment should only ever be used as a form of defense or deterrence and never as retribution. However, there are also powerful voices of those who associate the rise of just war theory’s relevance with the resurgence of the idea of punishment. This was particularly apparent in the 2000s, when the issue of punishment in the context of the war on terror arose both theoretically and practically. Oliver O’Donovan and Jean Bethke Elshtain are to be named among the most prominent advocates for the return of the notion of punitive war.

In his attempt to reconsider just war theory on neo-scholastic grounds, O’Donovan (2003) emphasizes the theory’s retributive and decision-making level components. A “prince” (“The authorities that exist have been established by God” Romans 13:1) who has the authority to decide should be in charge of warfare. The international authority is now given the key role. According to O’Donovan, punishment may be used to address humanitarian crises while also serving as the foundation for humanizing conflict. To him, the only justifiable motivation for invading a sovereign state is the urge to punish. The ability to do so keeps the system of international law and morality functional and vibrant; otherwise, “international justice is pushed back upon the ‘perimeter fence’” (ibid.: 57–58). But also the impulse to exact revenge on wrongdoers “impose the tightest of reins, since punishment is measured strictly by desert” (ibid.: 58). O’Donovan makes an effort to refute the misconception that punitive wars are unrestrained conflicts. He does not, however, discuss how to assure that a punitive war is undertaken in moderation.

St. Paul’s Letter to the Romans is an important source for Elshtain, another prominent just war theorist. Elshtain makes direct reference to it when discussing contemporary global challenges. She believes that because “earthly dominion has been established to serve God and to benefit all human beings,” among other things, it is the “*rightful authority* of earthly kings and kingdoms to punish wrongdoers” (Elshtain 2003: 52), to punish in particular those “aggressors whose war aim is the death and conquest of as many noncombatants as possible” (ibid.: 150). Those in positions of power, particularly the USA, are burdened by the attachment of that legitimate authority.

I am not at all convinced that there was a real “punitive turn in just war literature,” as Cian O’Driscoll (2008: 52) states. The most reliable authors do not share the view that punishment is a fundamental aspect of war; instead, they assign it a secondary and limited purpose. But it is clear that punishment as an element has reemerged and is no longer regarded as an improper cause or aim of warfare. It is hardly surprising that the theologized party of current just war theorists avidly support punishment and revenge for crime and sins. They appear to view a return to the traditional Augustinian-Thomist formulations as a logical step in their theoretical development. Although just war theory bowed in this direction, it did not go back to the notion of punishment as the foundation for reassembling the entire approach. Instead, punishment reserved its place in discussion on *jus post bellum* (Orend 2006: 165, 172–75, 177–79; Reichberg 2013: 175) or within the ethics of peacebuilding (Lederach and Appleby 2010: 108–10), along with compensation or reconstruction. Punishment is typically considered as a means of restoring post-conflict justice and is no longer seen as a just cause of war. During military tribunals or when the amount of restitution is debated, punishment may turn into the aim of postwar politics. In other words, punishment is seen as a means of ending the conflict and promoting peace. Punishment is a kind of retaliation for crimes committed during the conflict, and normally it does not provide a framework for the war as such.

What seems to be more significant is the evolution of political discourse, which O’Driscoll (2008: 91–150) also brought up. Emerging from the stupor of the end of history, diverse politicians from different political regimes and societies adopted political concepts with strong theological connotations and adapted them for contemporary, supposedly secular contexts. After the September 11 attacks, the political leaders of the United States and Great Britain, both with strong religious beliefs and backgrounds, aimed to punish the wicked by using military force. A notorious statement made by President George W. Bush expressed a political outlook typical of the war on terror: “We are in a conflict between good and evil, and America will call evil by its name” (2002). Prime Minister Tony Blair expressed similar opinions (Butler 2004: 54). Moral chaos emerged after the 9/11 attacks and the perception of evil that broke out served as the background for the global war on terror. The «axis of evil» was composed of terrorism as such and countries like North Korea, Iraq, and Iran. In addition to being a military operation, the war on terror evolved into a conflict between good and evil that was steered by God, just as it was a millennium prior. Therefore, in Bush and Blair’s appraisals of the war, the notion of punishment turned out to be a legitimate and even natural component of military operation (see Singer 2004: 143–77). The consequence of this discourse was the rejection of symmetry in the moral positions and statuses of those who engaged in political conflict and war. Spiritual punishment was intended upon someone believed to be inferior and implies acting on behalf of God. It was a serious change in the vision of war, which accelerated it and did not allow it to end. It is hardly worth talking about another paradigm shift because the legalist interpretation and the legalist framework of war retain

their dominance. But the concept of a punitive war against an evil, immoral subject has been revived, put into practice and therefore legitimized.

The Iraq War was justified by the language of spiritual conflict between good and evil deployed by American and British leadership. It is not my aim to develop or refute the thesis that it was “a systematic politics of mass deception based on lies and the use of media spectacle to create policy and promote their agenda” (Kellner 2007: 643). In the final part of this essay, however, I would like to point out that this was a rare but not exceptional instance in which the causes of religious or spiritual struggle were assigned to battles in the lower world. An ongoing conflict between Russia and Ukraine is also sometimes defined as a spiritual fight. And in what follows, I analyze how this conflict employs the concept of punitive war.

Punishment and the Conflict in Ukraine

As outlined earlier, the trajectory of the notion of punishment in war is the following: Christian authors considered punishment as the main just cause of war. By the eighteenth century, punishment was no longer perceived as a legitimate cause in theories of war. When the rhetoric of punishment was revived later, punishment appeared to be an aim of war, not its cause. It was necessary to punish the lawbreaker for the crime of aggression. It was possible to raise the moralization of war to the highest level and reintroduce the concept of a spiritual and moral hierarchy in politics against the background of the war on terror.

The Russian authorities’ discourse was incredibly moralized during preparation for its “special military operation.” The Ukrainian side was accused of radicalization, terror, genocide, Nazism, and fascism (see Kumankov 2023). Direct requests to punish or penalize, however, were comparatively seldom used. I will employ here Cian O’Driscoll’s (2008) framework of two concepts of punishment, expanding it with one more element, to evaluate the punishment rhetoric used during the conflict in Ukraine.

Cian O’Driscoll applies a two-part scheme to analyze how Bush and Blair used the concept of punishment to rationalize the Iraq War and uphold the perception that the war was just: “the first conception of punishment relates to the function of law enforcement while the second is attached to the idea of evil and the imperative to punish it wherever we may find it” (O’Driscoll 2008: 54). In other words, we can hold the enemy accountable for violating the law, or we can pretend to eradicate evil in the world. O’Driscoll’s approach is close to Hula’s logic, who, as already indicated, also distinguishes two types of punitive war. This two-part scheme could be supplemented with a third element. Punishment can also be understood and used as a form of retaliation against those who commit specific atrocities throughout the conflict (and usually both sides commit some atrocities). In this case, punishment is not the cause of war. There may be no discussion about punishment before the

war or at its initial stage. But as the conflict's horrors multiply, it emerges and eventually becomes its aim. The parties start to believe that justice must be served because of the harm done to them and the painful losses they have suffered. Such punishment as retribution can become the prevailing way of understanding the war. As a result, this punishment through war-making appear "more likely to be vengeance than retributive" (Luban 2011: 305).

Russian officials justified the Russian attack on Ukraine both in a legal and moral register. The decision to carry out a "special military operation" was presented as a just decision with references to international law (Article 51 [Chapter VII] of the UN Charter), international treaties (agreements with the Donetsk and the Luhansk People's Republic), and Russian law (permission of Russia's Federation Council) (Putin 2022a). At the same time, in his addresses to the Russians on February 21 and 24, 2022, President Vladimir Putin spoke extensively about the Ukrainian regime's immorality. This approach was designed to justify a response with the use of military force and eventually presented it as an inevitable and necessary act. Here is an illustrative fragment from his speech:

The nationalists who have seized power have unleashed persecution, a real terror campaign against those who opposed their anti-constitutional actions. Politicians, journalists, and public activists were harassed and publicly humiliated. A wave of violence swept Ukrainian cities, including a series of high-profile and unpunished murders. One shudders at the memories of the terrible tragedy in Odessa, where peaceful protesters were brutally murdered, burned alive in the House of Trade Unions. The criminals who committed that atrocity have never been punished, and no one is even looking for them. But we know their names and we will do everything to punish them, find them and bring them to justice. (Putin 2022b)

As we can see, Putin implemented both elements of O'Driscoll's scheme. Russia characterized the military operation as a law enforcement operation as well as a fight against the evil that was entrenched in Ukraine and was posing a threat to Russia and the whole world. Russian politicians sought to strengthen the moralization of the conflict. They often argued throughout 2022 about crimes committed by the West and Ukraine, as well as about genocide and terrorism. One of the most common reasoning was neo-Nazism, which allowed them to frame the conflict with Ukraine as a continuation of the Great Patriotic War. In this logic, the armed resolution of the conflict became an eschatological struggle. Notably, the framing of the conflict as a combat against evil developed throughout the conflict in 2022, and even aspects of a religious war were adopted. So, the "special military operation" was given the character of a moral and spiritual encounter, and its causality retrospectively established in the metaphysical domain.

The Ukrainian side likewise utilizes this two-part interpretive strategy. Ukraine views the conflict as defensive. In this case, Russia appears to be

a violator of the law responsible for military aggression. In June 2022, President Zelensky, developing a logic of law enforcement, made a remarkable statement that Russia had violated four hundred international treaties since 2014, among them the UN Charter, the UN Convention for the Suppression of the Financing of terrorism, the UN Convention on the Prevention and Punishment of the Crime of Genocide, the corpus of conventions governing the laws and customs of war and others (Zelensky 2022a). Quite often, Ukrainian officials claim that “Russian soldiers . . . Russian commanders and politicians . . . must be held accountable” for the war crimes they committed and the orders that led to those crimes (Zelensky 2022a).

This legalistic narrative of punishment is accompanied by the idea of punishing evil. So, President Zelensky frequently refers to Russia as an “evil state.” Between 24 February 2022 and 24 April 2023, we can find 169 postings that use this definition or denote Russia as evil on his official website. For example, on 8 May 2022, the Day of Remembrance and Reconciliation in Ukraine, Zelensky said “we missed the evil. It was reborn” (2022b), comparing the Russian invasion with Nazi aggression. The war’s purpose is defined accordingly as a complete victory over evil: “The evil state must be defeated . . . [and] must face a total defeat” (Zelensky 2023c).

Kiev’s Western allies also see the crisis in Ukraine as a confrontation of two value systems. In the President of the European Commission’s annual State of the Union Address, Ursula von der Leyen stated unequivocally “this is a war . . . on our values and a war on our future. This is about autocracy against democracy” (2022). Several examples of how the legalist view on the war is combined with the concept of punishment of evil may be found in the statement of US Vice President Kamala Harris at the Munich Security Conference on 18 February 2023. Harris claimed: “from the starting days of this unprovoked war, we have witnessed Russian forces engage in horrendous atrocities and war crimes. Their actions are an assault on our common values, an attack on our common humanity.” The Russian attitude was characterized as “barbaric and inhumane.” She concluded in a more legal way: “Principles that state that sovereign nations have a right to peacefully exist, that borders must not be changed by force, that there are inalienable human rights which governments must respect, and that the rule of law must be preserved” (Harris 2023).

A theological and eschatological perspective breaks through from the very beginning of the conflict. Here are some more examples. On 18 March 2022, presenting at a concert commemorating the anniversary of Crimea’s re-annexation with Russia, Putin said that the goal of the military operation was to save people suffering and genocide. He greeted military personnel involved in combat with a passage from Holy Scripture, “Greater love hath no man than this, that a man lay down his life for his friends” (Putin 2022c). When speaking on 30 September 2022 at a ceremony for the signing of the treaties on the accession of the Donetsk and Luhansk people’s republics and the Zaporizhzhia and Kherson regions to Russia, Putin also used passages from the Bible. He quoted the Sermon on the Mount, warning against false prophets, to criticize

the Western nations: “By their fruits ye shall know them” (Putin 2022d). That speech, however, was noteworthy especially for labeling the West as the home of “pure Satanism” and “religion in reverse.” Later, the Russian media and certain politicians made aggressive use of the subject of Satanism in the West. Ramzan Kadyrov (2022), the leader of Chechnya, stated that “Satanism openly acts against Russia in the West” and referred to the political systems of Western nations as “Satanic democracy.” Therefore, in Kadyrov’s opinion, a Big Jihad against the Shaitans rooted in the West was required.

On the day of National Unity, 4 November 2022, Russian hawkish politician, Dmitry Medvedev, gave a genuine sermon: “We have the opportunity to send all our enemies to fiery Gehenna, but this is not our task. We listen to the words of the Creator in our hearts and obey them. These words give us a sacred purpose. The goal is to stop the supreme lord of hell, no matter what name he uses: Satan, Lucifer, or Iblis. Because his goal is death. Our goal is life” (Medvedev 2022; Balachuk 2022). Religious justification was occasionally employed in more moderate contexts. The suggestion of a ceasefire in observance of Christmas according to the Julian calendar (7 January) may be an example. It was proposed by Patriarch Kirill in the beginning of 2023 and later announced by President Putin.

Finally, a metaphysical interpretation of the struggle can also be found from the Ukrainian side. In a statement dedicated to the anniversary of the outbreak of the war, Zelensky combined legalist and theological vision: “We will never forget them. We will never forgive that. We will never rest until the Russian murderers face deserved punishment. The punishment of the International Tribunal. The judgment of God. Of our warriors. Or all of them together” (Zelenskyy 2023b). The address Zelensky gave at the National Prayer Breakfast in the United States was also a sermon by form. In that speech, the Ukrainian military’s heroism was presented as a confirmation of a strength of faith: “We believe in God. We do not allow despair. Thanks to the bravery of our soldiers” (Zelenskyy 2023a).

Among Russian politicians, the theological interpretation of military action is still quite rare. The rhetoric of a holy war, however, seems appropriate to people close to the official authorities who may promote such an image of the conflict. These include, for example, conservative philosophers. Alexander Dugin (2022), probably the most well-known of them, advocates for participation in the Great Holy War and warns of the impending Armageddon. Another group consists of radical patriotic circles and Russian nationalists, including Igor Strelkov. Strelkov (2023) actively discusses how the conflict is going. He discusses religious politics, even if it seems that the justifications of political nationalism and patriotism are more natural and sufficient for him. He occasionally expresses displeasure at the Russian Orthodox Church’s and Patriarch Kirill’s lack of commitment, or the Orthodox Church of Ukraine’s separation from the Moscow Patriarchate. Strelkov specifically called on Patriarch Kirill to bless “our soldiers for overcoming and defeating the enemy” (ibid. 2023). It is worth paying attention to religious politicians and commentators.

For instance, Ramzan Kadyrov responded to the 2023 Presidential Address to the Federal Assembly by claiming that Russia is waging a holy war: “Without a doubt, this is a Holy War against the minions of Satan, who have encroached even on the Almighty” (Kadyrov 2023). All these are rather unsystematic attempts to theologize the conflict, however, they strengthen the moralization of the conflict. Its dominant interpretation matches O’Driscoll’s scheme. Military force is used as a response to the violation of the law, but also to punish evil as such, be it moral or theological evil.

It is worth paying attention to the third conception of punitive warfare—punishment for atrocities committed during a war. In the course of a war, an unjust party may commit serious and high-profile war crimes that cannot go unpunished. That could take the form of excessive hostility, indiscriminate violence, or dishonorable behavior on the battlefield. We are dealing in this case with revenge, and “retributive punishment inflicted through warfare,” as David Luban (2011: 325) refers to it. The danger of this type of punishment is that the side seeking retribution may significantly exceed the damage it has itself suffered. The current conflict provides many examples of how calls for retaliation become part of the rhetorical and media program of both warring parties. We can find a relatively stable narrative of retribution in open sources and social networks: literally, in cruel Old Testament calls for revenge for the injustices committed.

Occasionally, Russian officials use the same language. For example, in a conversation with German Federal Chancellor Olaf Scholz on 2 December 2022, Putin mentioned that “the Russian Armed Forces had for a long time refrained from pinpointing missile strikes at certain targets on the territory of Ukraine, but now such measures have become an unavoidable and inevitable response to Kiev’s provocative attacks against Russia’s civilian infrastructure, including the Crimean bridge and energy facilities” (Putin 2022d). Thus, the massive strikes on Ukraine’s civilian infrastructure that started on 10 October were justified. “Happy is he who repays you for what you have done to us—he who seizes your infants and dashes them against the rocks” (Psalm 137). The day after the Christmas ceasefire, the Russian Ministry of Defense announced that “the command of the United Group of Russian Troops has implemented a retaliation operation” (Ministry of Defence of the Russian Federation 2022). That implied that the Russian troops who were killed in the Makiivka strike on New Year’s Eve were avenged in this manner.

As we may see, both sides of the conflict are trying to simultaneously give it a legal interpretation and attach it a metaphysical significance. The Ukrainian side often declares that specific crimes or the act of aggression itself require punishment. Nevertheless, an ideological component remains. The conflict turns out to be a fight against evil or a fight for democracy (for Ukraine’s Western allies). For the Russian side, it is also a conflict with Nazism and the Western ideological (not only military) threat. In these circumstances, Ukrainian leaders are cautious about discussing revenge through military action, calls for which can be seen on the opposite side.

Conclusion. Theoretical Challenges of the Revival of Punitive Warfare

The Christian philosophy of war saw punishment of sin as a primary just cause. This strategy completely changed the meaning of war from the classical idea of combating to restore the prewar status quo or possession rights. In contrast, the enemy's sinful character required punishment as well as the sinner's subsequent spiritual healing.

The punitive paradigm of just war doctrine evolved into a legalist interpretation in the early Modern period. The natural law-based view of war emphasized rights violations and the restoration of the rule of law as the two main justifications for going to war. This legal interpretation focused on the rights and interests of sovereign states and a juridical interpretation of war. A system of international relations based on the moral and legal equality of states was another accomplishment. In this system, war was viewed as a political tool, and punishment was only in response to a serious wrongdoing by another state, albeit spiritual considerations might still be relevant.

By the nineteenth century, the concept of punishment as a cause of war had lost its theoretical meaning, but legalism maintained conditions for its revival in the twentieth century. The First and Second World Wars created precedents for the prosecution and punishment of individuals and nations responsible for unleashing wars and committing war crimes. The decision of a tribunal institutionalized punishment, and this became common practice by the twentieth century. The interest in punishment increased at the outbreak of the global war on terror, both in political practice and in the theoretical field.

The idea of punitive war, as we can see from the analysis of theoretical literature and examples, being initially part of the religious concept of war, has reemerged in political rhetoric and practice in the form of the legalistic idea of punishment for an offense. However, the legalist interpretation of punishment was not just a revival of this idea in a new context. The position that punishment holds within the structure and timeframe of the conflict has changed. Initially, punishment was one of (and the main) the just causes for war. It was a part of *jus ad bellum* reasoning, that is, the moment of entering the war. The legal framework assigns the punishment to the *post bellum* period, immediately following the conflict. Punishment turns from a cause into a goal of war.

However, not only does the concept of punishment reappear in contemporary political discourse and thought but also the idea of the necessity to combat evil, which has become quasi-ideologized and sometimes literally religious. Responding to the restrained criticism of the law enforcement approach to war expressed by Gary Bass, legalism is not "all we have now" (2002: 298). The sacralization of violence appears to be relevant. Multiple examples provided by the rationale for the Iraq War and now by polemics covering the conflict in Ukraine demonstrate that it is difficult for belligerent parties to stay exclusively in the legal mode of perception of war. The theological and

eschatological vision breaks through when the conflict participants try to depict it as a spiritual last battle, seeking to increase the legitimacy of their actions and emphasize the seriousness of the crisis they are facing. So, punishment as a form of law enforcement is supplemented by the imperative to punish evil and totally exterminate, as outlined by O'Driscoll and earlier by Hula.

The implementation of punishment with the notion of revenge through war-making should be seen as a particularly threatening combination. There is no reason to defend the Christian idea of punitive warfare and try to define it as an ideal form of violence. But this doctrine assumes a certain limitation and restraint. It is no coincidence that the idea of proportionality *ad bellum* and *in bello* were also developed in Christian military thought. Organized violence was considered appropriate as a defensive means, although not in the sense of protecting *patria*, as it was in the ancient period, or self-defense and upholding sovereignty, as in a more modern sense. War was justified, but only as a form of protecting the world from sin or protecting the Church and the social and political order that was built around the Church. The original Christian spirit of punishment was aimed not at the total elimination of the subject of sin but at eradicating sin itself. This was done, among other things, for the sinner's sake. The purpose of such wars was to serve the good and peace: "the natural order which seeks the peace of mankind, ordains . . . that the soldiers should perform their military duties in behalf of the peace" (Augustine 1887: 301. XXII.75). Augustinian philosophy held not only the idea of punishment but also appeasement. Within the Christian context, these limitations were reinterpreted during the crusades when many restrictions were abandoned. On the other hand, Christian authors have always remembered them and returned to them. And, for example, Vitoria's (1725: 164–252) arguments about a just war in the New World were an attempt to limit the war even where it was not being waged on Christian territory or against Christians.

Vengeance by war and in the course of war is an archaic idea. It is more in line with pre-Christian ethics, limited by the Talion principle or not restrained at all. Punishment in this case is not the cause of war, as well as in the situation of punishing the lawbreaker. But as the horrors of the conflict grow, the idea of punishment and revenge emerges, and it eventually develops into a goal that must be attained not after the war, but immediately in the course of the war. The parties understand that retaliation is necessary for the harm done to them and the losses incurred, which may include their close friends or fellow soldiers. Retribution as punishment can turn into the dominant mode of understanding war, which is risky for a variety of reasons. First, this is a way of intensifying the ongoing conflict. Calls for revenge are not linked with demands of limiting violence. As a result, individuals or groups who are not directly responsible for the wrong being paid may become victims of this violence. This is a violation of the principle of discrimination. Second, retribution in the form of military violence may not correspond to the atrocity and the severity of the offense. That is, the idea of proportionality is violated. Third, such violent actions make the postwar reconciliation process

and peacebuilding more difficult, and the negotiation process becomes even more dramatic and difficult.

The wars in Iraq and Afghanistan and the global war on terror in general have shown that it is incredibly challenging to fight against evil as such if organized violence is used as a method. In both campaigns, quick military victories were won on the battlefield at first. However, the lack of explicit criteria for defeating evil did not allow these campaigns to be completed as quickly. Directly punishing the adversary during the campaign itself is required, which increases the amount of violence and confuses warriors. More and more research show that punishment and avenging allow the war to last longer: “Revenge motives . . . stopped the war from ‘burning out’” (Kerrigan 1997: 295). In this regard, the Ukrainian side’s desire to refrain at the official level from the rhetoric of revenge is indicative. This is an attempt to avoid conversion of legalism or Augustinianism into Manichaeism or Old Testament morality, unrestrained and exterminating.

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