CHAPTER ONE

Epistemic Bias

Legitimate Authority and Politically Violent Nonstate Actors

Caron E. Gentry

From the earliest Western articulations to current understandings of legitimate authority, *jus ad bellum* criterion has been granted to a political entity with the most sovereign power, while said entity has also been imbued with a perceived moral competency. Within both the classical and contemporary writings on the Just War tradition, legitimate authority is often presented as having dual elements: the first element reflects a political or procedural “authority” to declare war; the second is a moral investiture of what it means to be “legitimate,” “right,” or “competent.” Thus, this chapter traces the historical development of political authority and then examines what it means within the tradition to possess moral or ethical legitimacy.

In doing so, this chapter, much like Kimberly Hudson and Dan Henk’s to follow, deals more with a priori epistemological constructions of Just War than with the tradition’s material concerns. Whereas Hudson and Henk’s chapter deals with rapid conceptual changes to human security, this chapter argues that constructions of legitimate authority are perhaps not moving quickly enough. Today, both political authority and moral legitimacy are reflected in Westphalia’s emphasis on sovereign states as the primary actors in international affairs. Therefore, I argue, the conflation of political and moral authority results in an “epistemic injustice,” one that upholds sovereign states as Westphalian “insiders” and other actors, particularly politically violent substate actors, as “outsiders.”

Often argued as one of the most important criteria of *jus ad bellum*, legitimate authority is also one of the longest standing. Plato and Aristotle articu-
lated that entities, whether individuals or institutions “entrusted with the ‘care for the common good,’” were the only authorities that could properly decide on the use of force. Accompanying this idea was the distinction between “good” and “bad” authority. Within a particular community, “good” authority was considerate of the health of the entirety, while “bad” considered the ruler’s own good or a smaller party’s interests. My concern is that legitimacy is still derived from “morality” and such “morality” is defined and limited to a specific way of acknowledging and constructing politics and international affairs.

Miranda Fricker argues that epistemic injustice is a particular way of denying people epistemic authority based off of their identity. Said theory of epistemic injustice is applicable to the Just War tradition’s reliance on Western ideas of statehood, war craft, and moral legitimacy. This chapter owes a debt to Virginia Held and Tarik Kochi for helping construct a criticism of the present binary between sovereignty/legitimacy and substate actors/illegitimacy necessary to applying the philosophical concept of “epistemic injustice” to international affairs.

**DUAL NATURE: AUTHORITY AND LEGITIMACY**

In such a brief section it would be impossible to create a comprehensive understanding of the development of legitimate authority. Instead this section seeks to introduce the reader to the definition, historical development of procedural authority, and the conflation of sovereignty with moral credibility. Broadly conceived, legitimate authority is the highest political authority that can make the decision to go to war: “competent” or “legitimate” authority is described “as whatever authority happens to be in place within a state.” The dual element criterion is often viewed as one of the most important to *jus ad bellum*. The first element resides in the political authority of the sovereign to call the military to war and then to call it back. Such an understanding is often referenced as “procedural” authority and is distinguished from the moral/ethical values embedded within legitimacy. Legitimacy is explicitly normative and often conceptualized as doing what is right or good for a particular community; in the contemporary writings of Michael Walzer and Alex J. Bellamy legitimacy is tied to democratic states.

A brief timeline of legitimate authority highlights its evolution from sovereign monarch or government to sovereign state. Articulations of legitimate authority, as previously stated, began in the Western tradition in Ancient
Greece with Plato and Aristotle conceiving of authority as the entity with highest or supreme authority to act for a political community. When St. Augustine communicated his own basic formulations of the Just War tradition, procedural authority to go to war resided in the monarch as the highest authority in the Holy Roman Empire.\(^{12}\)

In the Middle Ages, some scholars saw authority to declare war as diffused across secular authorities. The Catholic Church also claimed some degree of legitimate authority with respect to the right to declare a Holy War. St. Aquinas continued the thinking of St. Augustine, who believed the most important criterion was the sovereign’s legitimate authority, placing it above two other early (\textit{jus ad bellum}) criteria, just cause and right intention.\(^{13}\) (In contrast, James Turner Johnson argues that currently legitimate authority is secondary to just cause.\(^{14}\)) As natural law replaced Christian theology and as the Westphalian system took shape, authority became more explicitly linked to the sovereign state.\(^{15}\) The marriage of (legitimate) authority to the sovereign state remained stable between the mid-1600s to the mid-1900s. The absolute authority that states possessed in this period is in stark contrast to the current understanding of legitimate authority. The Westphalian norms of non-intervention and non-aggression, that to some degree bound absolute authority, became codified in international law by the mid-nineteenth century; this was most evident in the creation of the UN.\(^{16}\) At this time, the United Nations Security Council (UNSC) was recognized as holding legitimate (procedural) authority to declare war, and a state’s (procedural) authority was limited to instances of self-defense.\(^{17}\)

Two issues in the post–World War II era have complicated and thus somewhat expanded modern legitimate authority. The first expansion of legitimate authority after the establishment of the UN was reflective of the postcolonial period and the rise of nationalist movements. The 1977 Protocol Additional Geneva Conventions expanded legitimate authority to include anticolonial and territorial-based movements that hold state aspirations, even if these expansions came seemingly late in the postcolonial era.\(^{18}\) The second expansion reflects the growing awareness of humanitarian crises in the post–Cold War period. The UN’s adoption of the “Responsibility to Protect” (R2P) doctrine in 2005 allows for the UNSC to authorize war for humanitarian purposes. The intervening forces could be UN Blue Helmets or states granted permission to intervene for non-self-defensive purposes.\(^{19}\) Therefore, R2P weakens states going to war only in self-defense while also strengthening the UNSC’s authority.
 Nonetheless, in contemporary work, procedural authority is often tied to sovereign states, and democratic ones at that. Throughout *Just and Unjust Wars*, Michael Walzer conceives of Just Wars as fought between sovereign, autonomous states (making some exception for nationalist self-determination). While these states may be represented by politicians and lawyers in the international arena, the states themselves are the highest representation of the will of the people. For instance, Walzer argues that the “moral standing” of a state “depends upon the reality of the common life it protects”—a common life that is best if it respects liberties. Thus authority and legitimacy are granted by the people and are a tacit conveyance of a belief in liberalism and the (moral) supremacy of democracy. Walzer’s construction of democratic legitimate authority is echoed by Alex J. Bellamy’s 2008 book on just war and terror. He creates a near essentializing argument that pits Western democracies, which if they are to be moral agents of legitimate authority should stay true to their democratic values, against radical Islam. This is not to pick a fight with liberalism per se, but to point out that liberal values (democracy, rights, liberties, and prosperity) are a particular way of approaching how to order the world. Liberal values are claimed to be desired universally, yet the violence of colonialism, the proxy wars of the Cold War, and the method for fighting the “War on Terror” negate this (something Bellamy agrees with in his criticism of the Bush administration). The creation of a liberal hermeneutic presents a Manichean vision that delegitimizes other voices, here substate actors. This could broadly be conceived of as an epistemic injustice, as is argued later.

A normative conceptualization of authority leads to the second piece of legitimate authority’s dual nature. Even if the conflation of legitimate authority with sovereign, democratic states is a newer development in the Just War tradition, granting authorities moral credentials is certainly not. As stated in the introduction, Ancient Greek thought believed authority was legitimate if it represented the good of a particular *polis*. St. Augustine was the first to imbue it with heavy theological weight—the sovereign was the highest authority precisely because God placed him there. The decision to go to war is discerned through the sovereign’s relationship with God: “a right will is in union with the divine law.” Since Augustinian legitimate authority rests on the righteousness and piety of the authority, right intention and just cause will follow as a matter of course.

St. Aquinas places a heavy emphasis on sovereign authority because it is the “sovereign’s responsibility to seek the good for the society he governs,”
and limiting authority to the sovereign yields “good” results: “order, justice, and peace.”
In his challenge to the Catholic Church, Luther argued “rightful authority belonged to secular powers.”
Still, this secularizing challenge led directly to the Thirty Years War and its outcome: the Peace of Westphalia. It was under Westphalia that the state became the primary actor in international affairs. While states under Westphalia are tacitly bound by norms, there is a certain amount of tension between raison d’état and ethical ideals. Overriding the tension, states almost had a free reign in going to war. Thus, the strengthening of the state and its previously held moral credentials led to a binary: states’ actions are inevitably viewed as legitimate and substate actors’ actions as illegitimate (or less important, valued, credible).

Just War is an inherently ethical framework, meaning that to critique the moral basis is to critique something fundamental within the tradition. It is argued quite well and extensively that the “legitimacy” of an “authority” must be “concretely evaluated” in order to uncover the ethics of a particular potential war.
Yet, this represents a certain epistemic perspective that determines what constitutes not only “moral” legitimacy but authority as well. However, as a tradition it is meant to grow and develop. Legitimate authority has become so wedded to Westphalia that perhaps it has a difficult time engaging and understanding substate agents.

**EPISTEMOLOGICAL INJUSTICE, WESTPHALIAN STATEHOOD, AND LEGITIMATE AUTHORITY**

Epistemic injustice is based within an understanding of power as socially situated (social power), which creates either active or passive (in)justice that further contributes to the marginalization of particular populations. Fricker specifically illustrates two types of interpersonal or intergroup situations: testimonial and hermeneutical injustices, respectively. Yet, even if her examples are micro- and meso-based, this does not mean her argument does not have application to International Relations (IR) and then to the Just War tradition. International Relations and its adherence to the Westphalian system constructs social power as the purview of state actors—a construction leading to the hermeneutical injustice of denying power, credibility, and ultimately legitimacy to nonstate actors. To demonstrate a link between epistemic injustice and global politics, this section explains Fricker’s argument before applying it to International Relations.
Fricker’s overarching goal is to bring ethics to “our most basic everyday epistemic practices: conveying knowledge to others by telling them, and making sense of our own social experiences.” Epistemic injustice occurs when someone is wronged “in their capacity as a subject of knowledge.” This can happen in two different ways: 1) as a testimonial injustice, “when a hearer wrongs a speaker in his capacity as a giver of knowledge, as an informant”; and 2) a hermeneutic injustice, which happens when “someone is wronged in their capacity as a subject of social understanding.”

Fricker rightly argues that since humans are socially situated and social interactions are imbued with power, there are issues of power and justice that exist between people and in how we try to make sense of one another (epistemic practice). Therefore, social power, or the “idea that power is a socially situated capacity to control others’ action,” is at the core of epistemic injustice. Within social power is a “subspecies” of power—identity power, “which is directly dependent upon shared social-imaginative conceptions of the social identities of those implicated in the particular operation of power.” Identity power is beholden to the self-explanatory “identity prejudice,” which ultimately leads to “identity-prejudicial credibility deficit” (italic emphasis removed)—meaning that because a person belongs to a certain group his or her epistemic credibility is doubted or denied. Such an injustice strikes at something “essential to human value.”

States have access to “identity power” as the recognized primary actor in IR. Through the development of the state system, focusing especially on the significance of the Treaties of Westphalia, the sovereign, autonomous state has come to represent and be acknowledged as the primary actor in International Relations. As such, this lessens the prominence and perceived importance of other actors. Situating states in this way is dependent upon an acceptance of social power—states acquire and maintain power as a means of influencing other states and asserting their place in the world.

The moral legitimacy that has been invested in states simply by their existence is the problem. States are legal entities that solve problems through the use of power however one wishes to define it: social, structural, or physical power. That the state is the location of various activities, from identity to economics to protection, is not a problem. Yet, to conflate states’ legal authority with moral authority “complicates the discussion” and may “contribut[e] to the problem of violence.” Legal status (procedural authority) and moral credibility
Epistemic Bias

(legitimacy) should be understood differently. Walzer does make this differentiation: if a political community shows promise of self-governance, it may constitute a legitimate authority. Arguably, however, few such substate actors are actually recognized as being credible enough for self-governance. Even though the Chechens won their first war for national self-determination against Russia, with both sides using terroristic violence, Russia is seen as (slightly) more competent and far more legitimate (at least) as a state. This is an identity prejudice, speaking to a hermeneutical injustice.

State behavior may be constrained by norms, but as privileged actors, those who control state behavior are free to ignore norms at will depending on how much power, whether military or economic, that state possesses. Therefore, the leaders and elites of states decide whether or not that state will follow a certain standard. This can be seen in both the flaunting of norms or acquiescence to them: ranging from the United States invading Iraq in 2003 against the UNSC decision to the United States adhering to World Trade Organization (WTO) rulings, even if it went against U.S. financial interests.

Granted, the physical entity that is a state does not possess knowledge nor does it judge another actor’s capacity for knowledge. But the politicians, advisors, and academics who determine how the global system is going to run determine this based on an epistemic construction of how it should be run. Thus, those in privilege are going to maintain a system that protects said privilege. Such privilege and power are based within a particular epistemology that exists because those who create and maintain policy in the international system grant “truth” to the primacy of the state and thus to the “logic” and “reality” of Westphalia. Further, such actors who guide state behavior are going to maintain, limit, and therefore privilege those with legitimate access to power. States are in. Nonstate actors are out—or are in only to the degree that states decide they are important, like the United States accepting WTO rulings. Substate actors are granted legitimacy when it serves the purposes of those with power.

Finally, as the Just War tradition has developed, it is particularly beholden to how norms and values shift, and such norms and values shift according to epistemic beliefs of those contributing to the tradition. The construction of the tradition has consistently conflated the political operation of the state with a moral one. Thus, the Just War tradition’s acceptance of state primacy carries with it a problematic ethical weight that creates exclusionary boundaries related to the identity politics of state versus substate actors. This would not
necessarily be a problem, except that most of the wars in the world today are not fought between states; they are fought within states or by nonstate actors. Despite both the aforementioned 1977 Additional Protocols Geneva Conventions and its roots in Lockean thought (i.e., if the state has become tyrannical, a group of citizens has the right, nay the obligation, to rebel), groups that utilize political violence are still not satisfactorily theorized in the Just War tradition. There is an epistemic bias that exists toward “terrorist organizations” that deny legitimacy to their violence and to their entire raison d’être.

By no means does this chapter seek to argue that all dissatisfied peoples everywhere take up arms—there are better and more productive solutions. Yet, once a substate group begins to arm, “terrorism” is most often the label given to it. A politically violent substate actor may receive international support if opposition to the regime already exists. Take, for instance, the support given to the Libyans against Muammar Gaddafi as opposed to fundamental lack of support granted to the Tamilese against the Sri Lankan state—both involve state-conducted genocidal acts and ethnic cleansing against substate actors. Furthermore, Nelson Mandela was considered a terrorist until the international community finally recognized and sought to end the injustice of South African apartheid. Hence, the perception of legitimacy, which shifts and is fluid in time, is derived from identity power.

HERMENEUTICAL INJUSTICE: POLITICALLY VIOLENT SUBSTATE ACTORS IN INTERNATIONAL RELATIONS

Actors who choose to use political violence as a means of bringing attention to their cause or as a way of furthering it do invite judgment upon themselves. There is an ethical dilemma in using violence—it is harmful and destructive and typically only adds to or begins a cycle of violence. This goes for states as well. Yet, state violence or war is seen as more acceptable, legitimate, and credible than substate violence. This hypocrisy drives international affairs, and it both feeds and is fed by hermeneutical injustice.

Explained in another way, hermeneutical injustice happens when “members of hermeneutically marginalized groups are left inadequately conceptualized and so ill-understood [that] . . . the content of what they aim to convey” is “not heard as rational” and therefore is discounted or dismissed. While many terrorism studies scholars argue that terrorism is a rational activity, the discourse that surrounds agents and actors who challenge Westphalia belies this.
ism lacks a universally acceptable definition because it is a subjective term used to discredit groups that challenge the state system. It is not difficult to find work that deconstructs the label of “terrorist”/“terrorism” as delegitimizing and discrediting. Substate groups that choose to use political violence against the state are inadequately conceptualized and ill understood because they create fear and anxiety by challenging the status quo. The denial of credibility to substate actors is arguably a hermeneutical injustice because they lie outside of Westphalian norms in two ways: they are substates, and they challenge the monopoly on violence.

Fundamentally, recognizing substate agents as credible, legitimate actors is difficult. While Heinze and Steele’s recent volume on Just War and nonstate actors does a tremendous job in creating an unbiased definition of nonstate actors, it is still hard to overcome the fundamental problems in defining what exactly constitutes terrorism. Heinze and Steele grant legitimacy to nonstate actors by identifying them as “entities that are potentially emerging as challengers to the prevailing authority, or who are filling a voice where such authority is weak or contested.” They include “substate rival communities” (U.S. Civil War), “organized armed groups” (Hizbollah), and “terrorist organizations” (Al Qaida). Nevertheless, whereas identifying the authority may be easy, explicating any legitimacy is not.

Most terrorism studies scholars are willing to admit that the term “terrorist” is pejorative, loaded, and ultimately problematic. This is often blown off with the cliché one person’s freedom fighter is another’s terrorist. While such explanations are watery, it is a dilemma that is not going to be easily resolved—although many are trying to reduce the watery dilemma to one centered on the targeting of civilian populations. For instance, Bellamy recognizes that the label of terrorism is often prone to subjectivity and cliché, but he maintains that terrorism is a “moral definition.” While moral definitions are tricky because “they have to be universizable,” nonetheless Bellamy sets out to establish that terrorism is distinguishable from other forms of political violence. Terrorism is illegitimate and immoral “in every circumstance” because it intentionally targets noncombatants for political purposes. Yet, Virginia Held argues that using the noncombatants-as-targets as a basis for defining terrorism is deeply problematic (see also Harry Gould’s chapter in this volume).

Kochi argues that Just War still holds a particular moral vision that marginalizes other kinds of violence, most specifically non-Western and terrorist violence. Therefore, he argues that a person subscribing to or critical of Just War
might be better served by asking a series of questions that speak back to the hegemony of the Westphalian tradition:

What might be some of the forms of right that a theorist would need to consider? A non-exhaustive list might include: the question of “legitimacy” of the state and international law; competing notions of sovereignty; moral and legal justifications of violence and coercion; differing accounts of individual and group rights; secular and religious conceptions of political community; differing forms of ethical life; and, competing notions of the “good,” “democracy” and “freedom” enunciated both historically and in the present.\footnote{I owe an enormous debt to my undergraduate research assistant, Colin Barnard, who investigated the historical development of legitimate authority in the Just War tradition during his senior year at Abilene Christian University.}

Both Kochi and Fricker argue for changing our epistemic practices; he calls for “epistemic labor” and she “epistemic virtue.” In essence, both are extending a desire to understand the identities and ideas of others and how these construct notions of legitimacy. In this argument, it is necessary to see how different communities think differently about sovereignty and the right of the community that may lay outside of Western/Westphalian constructions of the state, morality, and credibility.

Notes

I owe an enormous debt to my undergraduate research assistant, Colin Barnard, who investigated the historical development of legitimate authority in the Just War tradition during his senior year at Abilene Christian University.


3. Ibid., 12.


6. Held, \textit{How Terrorism Is Wrong}; Kochi, \textit{The Other’s War}.


8. Ibid., 7.


13. Ibid., 9.


21. Ibid., 53–54; see also Syse and Ingierd, “What Constitutes a Legitimate Authority?,” 12.


27. Ibid., 14.


31. Ibid., 5.
32. Ibid., 5, 7.
33. Ibid., 3.
34. Ibid., 4.
35. Ibid.
36. Ibid., 5.
37. See, for instance, Laura Sjoberg, “Gender, Just War, and Non-state Actors,” in Heinze and Steele, *Ethics, Authority, and War*, 151–76.
40. See Bellamy, *Just Wars*.
43. Kochi, *Other’s War*, 255.
44. Ibid., 253.
46. Kochi, *Other’s War*, 250.
52. Gentry, “Gender and Terrorism.”
54. Ibid.
55. Hoffman, Inside Terrorism; Jackson, Writing the War.
56. Bellamy, Fighting Terror, 29.
57. Ibid., 30.
59. Kochi, Other’s War, 28.