Insights and Obscurities of “Juridical Pacifism” in Norberto Bobbio

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Abstract: The author argues that Bobbio’s philosophy of international relations is inspired by a highly positive conception of pacifism. Bobbio strongly rejects the Catholic notion of “just war” and claims that in the nuclear era war is the antithesis of the right, being as uncontrolled and uncontrollable as an earthquake or a tempest. Nonetheless, according to the author, Bobbio’s “juridical pacifism” still leaves a number of important political and theoretical problems in obscurity. First of all, there is room for doubt as to whether the so-called “domestic analogy,” to which Bobbio expressly alludes, is capable of furnishing the appropriate conceptual means for constructing a theory of international relations. Secondly, it is by no means certain that the concentration of supreme international authority in the hands of a global organization is the best way to construct a more secure international order. Finally, according to the author, we may well doubt whether the United Nations does derive from a universal pact or agreement and is ultimately inspired by democratic principles.

The Problem of Modern War

Bobbio’s reflections on the issue of war and peace essentially arise from his attempt to define the very concept of war. He has endeavored to bring out the radical novelty presented by the threat of war in the nuclear age, in the

1 Norberto Bobbio first broached the question of war and peace when he dedicated an entire course in the philosophy of law to this subject at the University of Turin in the academic year of 1964–65. The copy of the typescript of these lectures bore the title Il problema della guerra e le vie della pace (Turin: Cooperativa libreria universitaria editrice, 1965, edited by N. Betti and M. Vaciago). In 1966 Bobbio published an essay, under the same title, in the journal Nuovi Argomenti (I, 1966, pp. 29-90), and this is generally regarded as his most important contribution to the subject of international relations. Thirty years later, in 1979, again under the general title Il problema della guerra e le vie della pace – Bobbio published a collection of essays with il Mulino in which, besides the article that had already appeared in Nuovi Argomenti, he included three essays, published between 1965 and 1977, that are of particular theoretical relevance to the issue we are addressing here. The essays in question are: “Diritto e guerra” [Right and War] from 1965, “L’idea della pace e il pacifismo” [Pacifism and The Idea of Peace] from 1976, and “La nonviolenza è un’alternativa?” [Is Non-Violence an Alternative?] from 1977. During the 1970s and the 1980s, while still adhering
context of the “cold war” and the “balance of terror.” It is fair to say that what has fundamentally motivated Bobbio’s thought on this subject – and made it so dramatic – is the question: how can we furnish an appropriate ethical and juridical evaluation of modern war in the face of the permanent threat of an outbreak of nuclear conflict and in the face of the increasing use of deadly weapons of mass destruction.

For according to Bobbio, no wars of the past, however long and cruel they may have been, have ever threatened the survival of the human race itself. For this simple reason alone, all of the traditional theories which have attempted to provide some justification for war in one way or another now inevitably appear either puerile or monstrous. In our current historical circumstances, Bobbio argues, it is no longer possible to justify war from any utilitarian or teleological perspective. We can no longer maintain – in the manner of Humboldt, Hegel, or Nietzsche – that war may be conducive in some way to the moral development of humanity. Nor does it make sense any longer to claim with Carlo Cattaneo or Victor Cousin, for example, that war is a source of civil and social progress – as though war represented some kind of bloody but nonetheless fruitful exchange of ideas amongst the peoples involved. Nor again, Bobbio claims, can we argue that war is a factor that promotes technological progress, as Charles Darwin and Herbert Spencer maintained in a specifically evolutionary context. For modern warfare is purely and simply an essentially irrational and destructive phenomenon. It offers no advantages whatever from the material, social, or technological-scientific point of view, and is devoid of any possible moral justification.2

For these reasons Bobbio also opposes even the weaker versions of any optimistic justifications of war. He tends therefore to pass a radically negative

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ethical and juridical judgment with regard to any attempted justification of modern war. For Bobbio, it is now not merely impossible to claim that war has any role in promoting progress, but it is also impossible to claim that scientific and technological progress itself can bring about the gradual containment of war. For in reality the balance of terror that is maintained by the threat of war is not itself directed to the gradual overcoming of the latter. On the contrary, this balance of terror is based on the permanent possibility of war itself. And it is quite possible that this supposed balance constantly feeds and encourages the field of scientific and technological research in the ongoing production of ever more sophisticated and powerful weapons of mass destruction.

Bobbio is therefore also extremely critical of the doctrine of the “just war” (*bellum iustum*). Bobbio regards this doctrine not so much as an attempt to subject war to certain moral rules as a surrender of morality to the requirements of war. The Christian and Catholic theory of the “just war,” so Bobbio argues, “was already plunged into crisis with the emergence of modern warfare. And the unleashing of the possibility of atomic war has dealt this theory the final blow.” Even though it represents a kind of intermediate position between appeals to the necessity of war on the one hand and pacifist approaches on the other, the theory of the “just war” has been employed, from Saint Augustine onwards, to deny the validity of pacifism and endorse the potential moral significance of war from a broader teleological perspective. But is perfectly obvious today, Bobbio claims, that the doctrine of the just war offers no secure basis for providing relevant moral criteria for the evaluation of war. And moreover, such a doctrine is capable of what “subject” – that is to say, what “authority” – can possibly judge the rights and wrongs of the warring parties from some neutral or superior vantage point.

Thus the doctrine of the “just war,” according to Bobbio, rather than ensuring “victory for the one in the right” has been developed and exploited to bestow “the right on the one who is victorious.” And not even the moral legitimacy generally accorded to a war of self-defense on the part of a state that is attacked by another, Bobbio also argues, can be upheld in the context of our time. For the very distinction between a war of self-defense and a war of aggression has now become uncertain and ambiguous. If we resort to weapons of mass destruction, whether they are nuclear or semi-nuclear, then the notion of a war of self-defense in the strict sense has already forfeited all possible justification. The military experts admit that in any war fought with nuclear or semi-nuclear weapons what really counts is precisely to deliver the first strike. And the first strike must be catastrophic in order to destroy the

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possibility of retaliation on the part of the enemy. The only other alternative is revenge or collective suicide.⁴

Considered in the broadest and deepest normative sense, therefore, modern warfare stands above all rules or principles, and must be regarded as legibus soluta. As Bobbio writes,

Modern war now places itself outside of any possible criterion of justification or legalization, and beyond any principle of legitimacy or legality. From the perspective of “right” it is as uncontrolled and uncontrollable as an earthquake or a tempest. Although it has been considered as a means of realizing what is right (with the theory of the just war), and as an object of juridical regulation (with the development of the “rights of war”), war has once again become the antithesis of right, just as it was in Hobbes’s conception of the state of nature.⁵

For Bobbio war is the manifest expression of the anarchic and irrational condition which continues to mark the relations between sovereign states. The extreme level of danger represented by the current balance of terror between the leading military powers only reveals the weakness of the traditional theories regarding the international balance of power. At the same time it also shows the real powerlessness of international institutions. After the scourge of the Second World War the victorious powers had set themselves the task of securing a stable and universal peace, of overcoming the older idea of the balance of power and creating strong and effective supranational forms of authority instead. But the task of securing peace has still to be realized.

It is precisely the recognition of this situation, of the anarchy and irrationality created by the balance of terror between the great powers, that led Bobbio to develop his original conception of the “path of peace.” He specifically describes this position as “juridical pacifism.” Bobbio uses this expression in order to differentiate his “active pacifism” from the instrumental pacifism which confines itself to proposing certain interventions with regard to the “means” of countering the threat of war, such as measures for controlling the further production of arms or for promoting disarmament programs etc. He also wishes to differentiate juridical pacifism from forms of pacifism that are essentially inspired by ethical, pedagogical, or therapeutic considerations and attempt to educate human beings with respect to war and convert them to the virtues of mildness in place of aggression. In particular, Bobbio distances himself from the absolute pacifism of non-violence, though he deeply respects such

⁴ See Bobbio, Il problema della guerra, pp. 55–56.
⁵ Bobbio, Il problema della guerra, p. 60; see also Id., “Il conflitto termonucleare e le tradizionali giustificazioni della guerra,” in Id., Il terzo assente, pp. 23–30, and, in the same collection, “Filosofia della guerra nell’era atomica,” pp. 31–53.
a position, because it turns peace into an ultimate end rather than recognizing it as a means and a relative value, however important it may be. And he maintains, moreover, that non-violence is hardly effective in the political domain.

**Juridical Pacifism**

According to Bobbio, the solution to these problems can only be found by rethinking the conception of right and the nature of international institutions, namely by extending the principle of the “monopoly of force” to the relations between states themselves. As Bobbio puts it, with characteristic clarity:

For juridical pacifism the remedy par excellence can only be the institution of a super-state or a world-state. What makes the use of force inevitable on the international level is the absence of an authority superior to individual states that is capable of deciding which party is right or wrong in a given case, and of imposing this decision by force. For this reason, the only way of eliminating war is the institution of such a superior authority, which can only be a single and universal state over and above all existing states.

And explicitly adopting the model of the so-called “domestic analogy,” Bobbio then adds:

The reasoning that underlies this theory is one of exemplary simplicity and efficacy. Just as was necessary for individual human beings that they should all renounce the individual use of force and ascribe it to the single power of the nation state, so too the nation states must accomplish an analogous transition: it is necessary to effect the transition from the current situation of plural centers of power to one in which power is concentrated in a new and supreme institution. This institution will have to enjoy the same monopoly of force with respect to individual states as the state enjoys with respect to singular individuals.

Bobbio thus believes that a more peaceful world order can only arise from new institutions which transcend the system of sovereign states and bestow effective powers of political and military intervention to a central authority of a supranational character. And it is from this theoretical perspective that Bobbio claims that the organization of the United Nations represents an anticipation or a kind of generative nucleus for such “central

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6 On peace as an absolute value and peace as an instrumental value, see Bobbio’s entry on “Peace” in Bobbio, Matteucci, Pasquino (eds.), Dizionario di politica, especially pp. 767-768.

7 See Bobbio, Il problema della guerra, p. 80.

8 Ibid., pp. 80-81.
institutions” – already envisaged by Kant in his famous essay *On Perpetual Peace* – that will be in a position to guarantee more stable and universal conditions of peace in the future.

The juridical pacifism defended by Bobbio has deep roots in some of the classic contributions of European political thought, and particularly in the work of Hobbes and Kant. One could say that Bobbio interprets and develops the contractualist position of Hobbes in a Kantian direction, endowing it with a distinctly universalistic and cosmopolitan character. At the same time, Bobbio interprets Kant in a Hobbesian vein, regarding Kantian federalism as a real and genuine project for transcending the sovereignty of nation states and constructing a form of “world state.”

*International Institutions*

With the creation of the United Nations, according to Bobbio, the history of international relations has finally begun to embark upon the path of “juridical pacifism,” and thus to relinquish the alternatives that have always been practiced in the past, that is to say, the path of anarchy or of a merely imperial imposition of peace. The United Nations, so Bobbio believes, has emerged from a real and genuine “social pact” (*pactum socialis*), even if the required “pact of subjection” (*pactum subjectionis*), namely the submission of the contracting states to a common power that claims the exclusive exercise of coercive force. Bobbio points out that the United Nations

[…] has not given rise to a super-state, that is to say, to that form of social organization that is fundamentally characterized by sovereign power and the monopoly on legitimate use of force. The nations have remained sovereign states and have not ceded their monopoly on the use of force to any superior entity.

But even so, Bobbio argues, an “enormous step forward” has been accomplished if we compare the United Nations with the earlier League of Nations: whether through the effective universality of the agreement itself, or through the fact that Articles 42 and 43 of the Charter give the Security Council the power to take all necessary measures, including military ones, in order to re-
establish peace,\textsuperscript{11} or finally through the “democratic inspiration” behind the organization. This democratic inspiration arises from a recognition of human rights that limits the authority of international arrangements and institutions that derive from treaties and agreements between states and refuses to accord them the unlimited power typical of autocratic governments. It is no accident, Bobbio is prepared to claim, that the internal structure of the United Nations acknowledges the characteristic feature of every democratic society, namely the Assembly, where all states are represented on an equal footing and decisions are taken by majority voting.\textsuperscript{12}

For Bobbio the process of democratization will remain incomplete until the old principle of the sovereignty of states can engage with the new tendency to encourage and support a “strong common authority” within international organizations. Today the old and the new approach merely coexist: the old has forfeited its legitimacy with respect to the letter and the spirit of the Charter of the United Nations, but the new has not yet been properly realized and enjoys little real effectiveness. Thus Article 43, for example, which envisaged the obligation on the part of member states to place the requisite armed forces at the disposal of the Security Council in order to prevent or restrain violations of peace, has never been applied and has been almost entirely forgotten.\textsuperscript{13}

\textit{The Gulf War – A “Just War”?}

It is in this broad theoretical framework that we must consider the position that Bobbio adopted with regard to the Gulf War that was pursued against Iraq by the United States in 1991. From a juridical point of view, so Bobbio argued, the Gulf War was an exemplary case of a “just war.”\textsuperscript{14} In responding to the criticisms, including my own, that were provoked by his position in this matter, Bobbio explicitly referred to Michael Walzer’s book \textit{Just and Unjust Wars} as an important modern re-elaboration of the traditional doctrine of the “just war.” But Bobbio also defended the legitimacy of employing the notion of the “just war” if it is understood in a limited Aristotelian (and “Kelsenian”) sense of “legal” or “in conformity with law.” A just war, as Bobbio hastens to point out, does not signify a “holy war:” it signifies a “legitimate use of force.” If an act of aggression has actually been committed

\textsuperscript{11} Bobbio, \textit{Il terzo assente}, p. 193.
\textsuperscript{12} See Bobbio, “Democrazia e sistema internazionale,” p. 207.
\textsuperscript{13} See Bobbio, \textit{Il terzo assente}, pp. 100–101.
\textsuperscript{14} See Bobbio, \textit{Una guerra giusta?}, pp. 11 ff.
against a sovereign state – in this case that of Saddam Hussein’s Iraq against Kuwait – and thus a clear violation of international law has occurred, then the United Nations had the right to respond to the aggression in question by recourse to military force in turn. It is quite true, as Bobbio acknowledges, that the military force was not employed directly by the United Nations, under the command and control of the Security Council, as envisaged by Chapter VII of the Charter, but what matters here is the fact that the use of force was actually authorized by the Security Council. Even if the first Gulf War does not “correspond to the ideal model of juridical pacifism,” so Bobbio writes, the authorization for the use of force that was provided by the Security Council can be considered as a “stage on the way” towards the positive exercise of a supreme international form of power that transcends the sovereignty of individual states.

Here we can hardly fail to notice a significant waning of Bobbio’s earlier opposition, clearly expressed in his essay of 1966, to any attempted ethical or juridical justification of modern war. Nonetheless, it is only proper for those who by no means shared Bobbio’s view on this matter – as I myself did not – that he never concealed his perplexities regarding the effects and consequences of the Gulf War. Confronted with the suffering, the destruction, and the risks of escalation that the continuing prosecution of the conflict was increasingly producing, Bobbio finally came to express grave doubts about its appropriateness and necessity. But what effectively seemed to have escaped him is one extremely important circumstance: the Gulf War of 1991 was effectively decided upon by the American president George Bush Sr. long before the Security Council of the United Nations expressed its approval for the action. And this was in fact one of the most ambitious military expeditions in human history, mobilizing over half a million members of the US military. The war actually involved no fewer than a hundred thousand acts of bombardment – one every thirty seconds – and the dropping of more than eighty thousand tons of bombs on Iraqi territory, including the deadly “cluster bombs” and the semi-nuclear “fuel-air explosives.” It has been calculated that in the course of the forty-two days of this war the actual quantity of explosives used was higher than that used by the Allied forces during the whole of the Second World War. And we know for certain that the losses of the United States, due in part to “friendly fire” (37 cases), amounted to exactly 148 combatants, while the number of Iraqi victims, civil and mili-

16 See N. Bobbio, Una guerra giusta?, pp. 57, 75 ff., 87-90.
tary, have been estimated at many hundreds of thousands. And children account for a large majority of this figure.\textsuperscript{18}

\textit{Insights and Obscurities of Juridical Pacifism}

I should like to conclude by pointing out a number of questions which Bobbio’s reflections on war and peace, it seems to me, have left open and unresolved. An in criticizing the solutions which Bobbio himself attempted to provide I should also like to acknowledge the non-dogmatic character of his “juridical pacifism” and the profound sense of philosophical vocation that sustains it.

As I see it, Bobbio’s theoretical elaboration of “juridical pacifism” still leaves the following questions in some obscurity:

1. On the methodological level there is room for doubt as to whether the so-called “domestic analogy” to which Bobbio expressly alludes is capable of furnishing the appropriate conceptual means for constructing a theory of international relations, and in particular a theory regarding sustainable peace between peoples. It is a matter of some controversy whether contemporary “world society” – if we concede that there is such a thing – can be considered as in some sense analogous to the \textit{civil society} that encouraged the emergence and formation of the modern European state.\textsuperscript{19} The idea that we can speak today of a “global civil society” as the solid basis for a world state or world government seems to ignore the fact that European “civil society” was composed of elements that effectively made it into a highly homogeneous structure: those connected with language, religion, history, culture, the family, customs and practices etc. These social values, widely shared as they were, were capable of supporting and sustaining the political apparatus of the nation state and its centralizing institutions that exercised, when necessary, the legitimate use of force. Nothing of the kind can be said of the so-called “global civil society” today: in reality humanity now presents itself as more fragmented, disunited, and dissociated than ever. We only have to think of the growth of ethnic claims, the impressive scale of intercontinental migration, the great differences and contrasts between the major civilizations of the planet, the constant explosion of new and ever more bloody and devastating wars, and the phenomenon of terrorism, above all of suicidal terrorism, that


\textsuperscript{19} Here I may be permitted refer the reader to my book \textit{Cosmopolis}, Milan: Feltrinelli, 1995, pp. 128–146.
sets the Islamic world against the Western world. To speak of a world state in these circumstances seems to be meaningless, unless we wish to saddle the leading Western powers – and the United States in particular – with a neo-imperial role as “world policeman.”

2. In the second place, it is by no means certain that the concentration of supreme international authority in the hand of any one organization is indeed the only way, or the optimal way, to construct a more secure international system. The theory of “international regimes” developed by Stephen Krasner and Robert Keohane, for example, seems to contradict this assumption. This theory shows that there are significant areas of what may be called “co-operative anarchy” within which international legal obligations are effective and are subject to effective sanctions of one kind or another even in the absence of any supreme form of international authority. The absence of a centralized sphere of jurisdiction in the international context does not appear to be equivalent to the situation of anomy and anarchy in the radical Hobbesian sense of the bellum omnium contra omnes.20 Thus despite the absence of any identifiable “harmony balance of interests,” state actors do show a certain tendency, albeit in the context of considerable disparities of power and resources, to interact with one another, to “adapt” to one another, and to co-operate with other actors in pursuit of mutual advantages. We are talking here about a situation that could be described, to adopt the penetrating oxymoron proposed by Kenneth Waltz, as an example of “anarchic order.”21 We could also speak in this connection of an “anarchical society,” in accordance with the realist perspective of the Grotian tradition as put forward by Hedley Bull in his classic work The Anarchical Society.22

3. And, finally, it remains an open question whether the Organization of the United Nations really does represent a significant “step forward” in

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22 See Bull, The Anarchical Society, passim. According to Bull the two pillars of the international order are the Hobbesian dimension (the balance of power) and the Grotian dimension (that states acknowledge international norms and practices).
relation to earlier forms of international organization, and in particular the old League of Nations. We may doubt whether we are presented here with a genuine instance of progress if we consider the effectively hierarchical character of the United Nations and its lack of any real constitutional structure that could really compare in any way to that of a state under the rule of law. There is even more reason for doubt if we consider the principle of formal inequality that the Charter of the United Nations applies to its own member states. Finally, we may doubt whether the United Nations does indeed derive from a universal pact or agreement, is indeed inspired by democratic principles, and is indeed prepared to entrust coercive power to a “third” party that is genuinely neutral and stands super partes: the Security Council is dominated by the powerful right to veto on the part of any of its five permanent members, and especially of the United States of America, who have made ample use of this right.

These, I suggest, are all crucial problems which Bobbio’s thought has left open to question and to further reflection and examination on our part. Bobbio himself was entirely aware of this, and this is why he never stopped pursuing his reflections on these matters, remaining faithful as he did to his resolutely explorative and anti-dogmatic intellectual vocation. In the final years of his life, as his correspondence clearly indicates – including a large number of letters that I received from him23 – Bobbio became increasingly aware of the “obscurities” of his juridical pacifism and his cosmopolitan perspective.

Although he criticized certain claims in my book Cosmopolis. La prospettiva del governo mondiale – a text which we had often discussed together – Bobbio finally came to recognize the dangers involved in the idea of concentrating international power in the hands of single great powers and entirely stopped using the expression “world government” or “world state. And he quite explicitly criticized the notion of a “humanitarian war,” sharing my critique of the Kosovo War actively pursued by the United States in 1999.24 While he continued to argue that even in a nuclear age it was still necessary to distinguish between “initial violence” (aggression) and “subsequent violence” (defense), he never endorsed the Catholic doctrine of the “just war.” Nor did he ever abandon his deeply rooted pacifist outlook, or his desire to make some contribution, however slight, to the cause of peace in general. There is a passage in his essay The Problem of War and the Paths of Peace which contains a maxim that I shall never forget:

I am no optimist, but I do not infer from this that one should simply yield. The stakes are too high for us not to take up a position, each in our own place, even if the probabilities of victory are extremely slight. It has sometimes happened that a single grain of sand borne on the wind has brought some machine to a halt. Even if there were only the tiniest chance that a grain borne on the wind could end up in the cogs and gears of the mechanism and arrest its movement, the machine that we are now building is too monstrous for us not to challenge the power of fate.25

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25 See Bobbio, Il problema della guerra, pp. 94–95.