

Cicero's Philosophy of Just War

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Submitted for publication in Andree Hahmann and Michael Vazquez, eds.,
Cicero as Philosopher. Interpretation, Legacy, and Judgment.

ABSTRACT: Cicero's ethical and political writings present a detailed and sophisticated philosophy of just war, namely an account of when armed conflict is morally right or wrong. Several of the philosophical moves or arguments that he makes, such as a critique of "Roman realism" or his incorporation of the *ius fetiale*—a form of archaic international law—are remarkable similar to those of the contemporary just war philosopher Michael Walzer, even if Walzer is describing inter-state war and Cicero is describing imperial war. But if it is clear that Walzer presents a detailed philosophy of just war, then I argue we should draw the same conclusion for Cicero. The result is a deeper appreciation of the insight and novelty of Cicero's view of just war. The paper concludes by arguing against the claim that Cicero's philosophy of just war is derivative from the Stoic philosopher Panaetius, whom Cicero drew upon in the organization of his *On Duties*. Just as Walzer's *Just and Unjust Wars* was written in response to America's war in Vietnam, Cicero's just war philosophy was written in response to the wars (both civil and external) of Gaius Caesar.

Keywords: Cicero, just war, *On Duties (de officiis)* Michael Walzer, Fetial college, justice

Word count: 10,800 Words

Introduction

Does Cicero have a philosophy of just war? At first glance, the question seems hardly worthy of scholarly debate. Cicero's writings, including *On the Republic* (*De re publica*), *On the Laws* (*De legibus*), and especially his *On Duties* (*De officiis*) contain substantive discussions of what *On Duties* calls "the justice of warfare" (*iura belli* [1.34]) or "the duties in war" (*de bellicis quidem officiis* [1.41]).¹ Although some of the discussions are fragmentary (for instance, Laelius' "pro-justice" speech in *On the Republic* 3.28-40, discussed below), rather clearly Cicero discusses the relationship between justice and armed conflict and falls within the tradition of ancient Greek and Roman thinkers that constitute part of the just war tradition, such as Plato and Aristotle.² Indeed, subsequent thinkers in the just war tradition, from Augustine of Hippo in antiquity to early modern natural lawyers such as Hugo Grotius identify Cicero as part—and perhaps even the founder—of that tradition.

Although the thesis of my paper is an affirmative answer to my opening question, I think defending that affirmative answer is more complicated for a number of reasons. First, to paraphrase Clifford Geertz, whereas it seems non-controversial to identify the writings of contemporary just war thinkers such as Jeffrey McMahan or Helen Frowe as examples of a Just War Social Philosophy, perhaps Cicero's discussion of justice and armed conflict are better

¹ My quotations from Cicero derive from the editions of Griffin and Atkins (1991) for *On Duties*, and Zetzel (2017) for *On the Republic* and *On the Laws*; Winterbottom (1994) provides the Latin text for *On Duties* and Powell (2006) provides the Latin text for *On the Republic* and *On the Laws*.

² See Plato, *Rep.* 2.373d-374e, 5.466d-471e, Aristotle, *Politics* 7.1-3. Recent scholarly discussions of Cicero as a just war thinker include Pangle and Ahrens Dorf (1999), Bellamy (2008), Keller (2012), Barnes (2015), Stewart (2018), Atkins (2018), 166-191, Atkins (2022), and Atkins (forthcoming).

identified as his Political Opinion of Roman military practices or perhaps even an Ideology that seeks to prop up the unjust Roman imperialism of his predecessors.³ In other words, although Cicero discusses the justice of warfare, perhaps it is better to characterize those remarks as “just war thinking” rather than a detailed, well-argued philosophy of just war. Secondly, Cicero’s most detailed discussion of justice and warfare falls within his general discussion of the duties of justice in the first book of *On Duties* (1.34-40). But as Cicero himself reports in numerous places, the theoretical framework and apparently even the philosophical content of *On Duties* derives from a now-lost treatise by the 2nd C. BCE Stoic philosopher Panaetius, namely his *Peri tou kathêkontos*.⁴ According to this objection, although we may find a just war philosophy in Cicero’s *On Duties*, it is largely derivative from another source, with Cicero merely adding Roman exempla to make the Greek Stoic philosophy more palatable for his Roman audience.

Jed Atkins (forthcoming) has provided the most recent and detailed analysis of Cicero’s remarks on the justice of war across all his writings. Atkins’ strategy is to show that Cicero makes use of many of the concepts of contemporary just war. For example, that Cicero commends that magistrates

T.1: wage just wars justly (*duella iusta iuste gerunto*); let them be sparing of the allies; let them contain themselves and their men; let them augment the glory of their people; and let them return home with honor (*Leg.* 3.9)

³ Harris (1979), 166-175, forcefully makes the case that “just war” language did little to mitigate pro-imperial Roman attitudes in the 3rd and 2nd C BCE. Atkins (forthcoming), 201-207, responds to the claim that that wars for imperial glory are at odds with the Fetial principle of non-aggression.

⁴ See *Off.* 1.6-10, 1.152, 1.161, 2.16, 2.35, 2.60, 2.88, 3.7-12, 3.33-34. Brunt (2013), 203-211, argues that the excursus on justice in war is substantially Panaetian.

suggests that Cicero recognized the distinction between whether a war is just (*ius ad bellum* in the subsequent tradition) and whether it is conducted in a just fashion (*ius in bello* in the subsequent tradition). Further, Atkins' corpus-wide survey of Cicero's remarks turns up relatively clear examples of just war concepts such as just cause, discrimination, proportionality, and proper authority (185, 192-93). But unfortunately, although Cicero discusses such examples, it is not entirely clear that he has a systematic understanding of the various concepts of just war philosophy. If one wishes to defend the claim that Cicero's discussions of just war is a robust philosophy (i.e., a substantive philosophical account), one needs greater clarity about how those concepts do (and do not) cohere.

Although I agree with Atkins that Cicero should be considered as a philosopher of just war, I would like to offer a different kind of argument to support that claim, one that I believe augments Atkins' articulation of Cicero's use of just war concepts. Indeed, I find in Cicero's writings—specifically *On the Republic* Book 3 and *On Duties* 1.34-40—philosophical “moves” or arguments that seem strikingly similar to philosophical arguments one finds in Michael Walzer's *Just and Unjust Wars*, his ground-breaking works of contemporary just war theory, first published in 1977. Walzer's *Just and Unjust Wars* begins with a philosophical refutation of the position of “realism,” namely the doctrine that a nation-state should conduct its international affairs solely with regard to its own national interest and that morality (and justice) have no purchase in international politics. Further, the central argument of *Just and Unjust Wars* consists in providing a moral defense and philosophical revision of what Walzer calls the legalistic paradigm, namely those instruments of international law—such as the Geneva and Hague traditions of

Humanitarian Law or the Charter of the United Nations—that govern the use of armed conflict between nation-states. I argue that in *On the Republic* and *On Duties*, Cicero makes philosophical “moves” that are quite similar to those of Walzer, even if they originate in very different moral and legal frameworks. But if one believes that we can accurately describe Michael Walzer as a philosopher of just war, then the similar moves or argumentation in Cicero’s writings also warrant the claim that he too is accurately described as a philosopher of just war.

In order to defend the claim that Cicero has a robust, sophisticated philosophy of just war, in the first part of my paper I look at the critiques of “realism” that we find in Walzer and Cicero and explain why such a critique is an integral part of any philosophy of just war. The absence of such a critique in the writings of Plato and Aristotle further argues for the novelty of Cicero’s philosophy of just war. In the second part of my paper I look at how Walzer and Cicero creatively incorporate “international law,” (namely, Walzer’s legalistic paradigm and Cicero’s use of the Fetial college in Rome) into their philosophies of just war. In the third part of my paper I consider a counter-argument to my position, namely the argument that Cicero’s account of just war is ultimately derivative from the Stoic ethical philosophy of Panaetius (185-110 BCE), a Greek philosopher whom Cicero credits for the structure of his analysis in *On Duties*. I argue that such a counter-argument fails to recognize the importance of Cicero’s critique of Julius Caesar in *On Duties*, including a critique Caesar’s conduct in the Gallic Wars. But such a critique, at the least, requires Cicero to augment and even revise whatever general principles he draws from Panaetius.

Part I: Just war philosophy and the critique of “realism”

Although there is ample variety of just war philosophies in the just war tradition—some based on divine law, some based on natural law; some quite permissive, some quite strict—a core tenant of any just war philosophy is the claim that the concepts of morality can validly be applied to armed conflict. Such claims about the applicability of morality to armed conflict have general taken two different forms: the tradition has characterized specific wars as just or unjust (for example, the current war of territorial aggression taking place between Russia and Ukraine); the tradition has also characterized specific actions in war as just or unjust (for example, the use of cluster munitions, which deploy small bomblets over a wide area, often at the threat of harming non-combatants). That a war or use of munition is just or unjust is conceptually distinct from whether that war or munition is proscribed by international law and is thus “illegal.” But all just war philosophies make some kind of claim about the immorality, i.e., the injustice, of such military actions independent of their illegality.

To claim that a military action of a state or an individual combatant is unjust or immoral is controversial, both historically and today. A conceptually robust just war philosophy seems to require an argumentative response to the claim that military actions are amoral (or incapable of moral evaluation). Thus, Michael Walzer’s *Just and Unjust Wars* begins with a chapter-length critique of the doctrine that “*inter arma silent leges*” (or that “in times of war, the laws are silent” [3]). The contemporary realism that Walzer critiques takes a number of forms: it can consist in the claim that nation-states act in their self-interest out of necessity (either descriptively or normatively); it can claim that the use of moral language in international affairs veils what is in

fact actions of national self-interest; and it can claim that statements about the morality of armed conflict are culturally or historically relative. But Walzer's just war philosophy cannot get off the ground, as it were, without some sort of reply to the claim that the conceptualization of international affairs is fundamentally amoral. And thus, Chapter 1 of Walzer's *Just and Unjust Wars* calls into question the invocation of "necessity" in statecraft, the descriptive reality of using a word like "massacre" to describe attacks on non-combatants, and the trans-historical reality of prohibitions against killing prisoners (8, 14, 20).

Although both Plato and Aristotle occasionally comment about the morality of armed conflict, they never present a sustained defense of the applicability of moral concepts to "international" affairs or a critique of realism in international affairs.⁵ For instance, when Socrates responds to the Thrasymachean claim that justice "Justice is nothing other than the advantage of the stronger" (*Rep.* 338c2–3), what Socrates denies is that the ways that rulers exploit the ruled is ideologically relative to those in power or that the immoralist who flouts the social conventions of the weak is ultimately better off or happier.⁶ When Aristotle critiques 4th C. Spartan imperialism, he does so on the grounds that Spartan militarism produced stunted citizens who were incapable of exercising leisure (and not significantly better combatants than their

⁵ Although I use the term "international" in my paper, the concept of a "sovereign nation-state" is a best an anachronism in ancient Greece and Rome. Plato and Aristotle discuss the interrelations of poleis and (less frequently) the leagues or alliances they form (e.g., the Delian League).

⁶ Jyl Gentzler points out that Socrates has Thrasymachus consider the case of an unjust city which unjustly enslaves others—specifically whether such a city is stronger with or without justice (*Rep.* 1.351ab)—but Socrates fails to develop the example into a robust account of the justice (or injustice) of inter-poleis domination.

Theban foes at the Battle of Leuctra in 371 BCE [*Pol.* 7.14.1333b6-10, 7.15.1333a35-b5]). Put slightly differently, one can find in both Plato and Aristotle a response to the immoralist who claims that injustice is superior to justice. But realism is not, properly understood, an argument for the superiority of injustice; rather, realism claims that armed conflict is amoral, namely it is neither just nor unjust. But neither Plato nor Aristotle respond to the claim that inter-poleis relations are fundamentally amoral. Although Plato and Aristotle are part of the just war tradition and make claims about the morality of armed conflict, I do not believe that they offer a philosophical defense of those claims against the “realists” of 5th and 4th C. Greece.⁷

Thus, when we turn to book three of Cicero’s *On the Republic*, in which the characters of Philus and Laelius enact a debate on the place of justice in public affairs, I believe that Cicero provides a defense of just war that is both analogous to Walzer’s critique of realism and historically unprecedented in the just war tradition. Admittedly, Book 3 of *On the Republic* presents a number of exegetical challenges. Unlike Cicero’s *On Duties*, which Cicero writes in his own voice as a letter to his son (*Off.* 1.1-4, 2.1-8), *On The Republic* is a dialogue in which characters, rather than Cicero himself, speak. Further, Book 3 is quite fragmentary and much of

⁷ Thucydides depicts a version of realism in his Melian dialogue (5.105) to which Plato appears to respond most explicitly in the critique of Callicles in the *Gorgias* (specifically, with respect to the claim that the unjust “get more” than the just [*Gorg.* 483c-484a]). But Callicles never claims that war is amoral or incapable of moral evaluation; rather, like Thrasymachus, he provides an immoralist’s argument that the unjust are better off than the just. Syse (2012) argues that Plato stands at the beginning of the just war tradition, but he characterizes Plato as offering an “ethic of war” rather than a just war philosophy. No doubt, Plato’s *Republic* philosophizes about war, both its origins (in the account of the “city of pigs” in *Republic* Book 2) and its just conduct (between Greeks and non-Greeks in *Republic* book 5). But philosophizing about war is not identical with offering a philosophy of just war (although obviously they overlap).

Laelius' argument in support of just war must be reconstructed from summaries of his speech in Augustine's *City of God* and Lactantius' *Divine Institutes*. Thus, some of the precise details of Laelius' account of just war—for instance, the specific procedures of the Fetial Rites—remain a subject of scholarly debate.⁸ Nonetheless, the dialogue between Philus and Laelius includes arguments for and against international justice in armed conflict and shows, I believe, that Cicero—like Walzer—appreciates that arguments about just war must commence with a counter-argument to the claim that states can and should disregard the distinction between justice and injustice in their public affairs with other states.

The dialogue between Philus and Laelius appears to have been inspired by a speech made by Carneades, a skeptic and head of the Academy, in 155 BCE that notoriously balanced speeches on justice and injustice, illustrating how Academic skepticism sought to balance opposing arguments as irresolvable.⁹ But although elsewhere in his writings Cicero shows sympathy for Academic skepticism (e.g., *Off.* 2.7-8), *On the Republic* ultimately endorses Laelius' pro-justice argument and Philus himself presents his anti-justice arguments (which he characterizes as “the defense of wickedness”) reluctantly and under compulsion.¹⁰ Perhaps most significantly, whereas

⁸ See especially Barnes (2015), 64-68, and Atkins (forthcoming), 186-192. For scholarly debate on the historical procedures of the Fetial Rites, see Santangelo (2008).

⁹ Lactantius, *Divine Institutes* 5.14.3-5 recounts the details of Carneades' visit to Rome and his opposing speeches. For a recent review of the details of Carneades' speeches about justice, see Vander Waerdt (2022). In general, I follow the analysis of the dialogue in Schofield (2021), 125-135.

¹⁰ Julia Annas points out that the fragmentary nature of Laelius' speech makes it very hard to determine his precise arguments against Philus' position. I do not disagree, but I do not think that undermines the claim that Cicero offers a response to the argument of realism. Since Scipio gets the final word in *On the Republic* 3, Annas suggests perhaps Cicero puts the final verdict in his mouth (which we also lack).

Carneades first praised justice and then praised injustice, Cicero has his characters flip the order: Laelius' pro-justice speech concludes the debate. According to Scipio, the third character in the dialogue, justice itself constitutes a commonwealth; unjust forms of government are not "flawed commonwealths, but no commonwealth at all," according to Augustine's summary (*civ. Dei* 2.21). Whereas Carneades marshalled opposing arguments about justice against each other to achieve some sort of suspension of belief, *On the Republic* presents Laelius' pro-justice argument as a counterargument that refutes the view of Philus, thus establishing the basis of Cicero's just war philosophy. But the dialogue in *On the Republic* about international justice shows that Cicero, like Walzer, does not assume that morality has purchase on the subject of armed conflict. Regardless of the complexities of reconstructing Laelius' precise position in *On the Republic* book 3, the text shows clearly that Cicero understands that a just war philosophy needs to respond to the position of realism.

According to Lactantius, Philus echoed several of Carneades' claims, including the claim that men act in accordance with utility rather than justice, that laws and justice are culturally and historically relative, that there is no such thing as natural law, and if such a thing as justice exists, it is foolishness to follow it (*Inst.* 5.16.2-3). Although Philus' surviving anti-justice speech includes familiar tropes about the cultural relativism of religious worship or the claim that people observe laws due to punishment rather than justice (*Rep.* 3.14, 3.18), it includes a substantial "realist" argument about international relations. Philus notes that

T.2: The Athenians used to swear a public oath that all land was theirs that bore either olives or grain; the Gauls think it disgraceful to raise crops with their own hands, and so they harvest others' fields under arms. We [Romans] ourselves, the most just of people (*iustissimi homines*), don't allow the tribes on the other side

of the Alps to grow olives and vines, so that our olive groves and vineyards may be more valuable. In so doing, we are said to behave with prudence, but not with justice (*prudenter facere dicimur, iuste non dicimur*): that will show you the difference between fairness and wisdom. (*Rep.* 3.15-16)

The crucial observation from the framework of just war is that states—even just ones, like Rome—act towards other states on the basis of what is prudentially useful rather than on the basis of what is just. Were justice applicable to international statecraft, then the Romans would use justice in their relationship towards non-Roman tribes across the Alps. Their failure to treat non-Roman tribes justly in no way undermines their claim to be just, since justice doesn't exist between international entities.¹¹

Although substantial parts of Philus' anti-justice speech have survived, almost all of Laelius' pro-justice speech (*Rep.* 3.29-40) is preserved in fragments found in other authors such as Augustine, Lactantius, and Isidore of Seville. Nonetheless, as Barnes (2015) and Atkins (forthcoming) have made clear, the fragments show that Laelius' speech establishes central distinctions of the just war traditions, including just cause, self-defense, and right authority. So, for instance, Augustine preserves:

T.3: No war is undertaken by a good state except on behalf of good faith or for safety. (*civ. Dei* 22.6 [*Rep.* 34a])

Isidore of Seville preserves:

T.4: Those wars are unjust which are undertaken without cause. For aside from vengeance or to fight off enemies no just war can be waged. (*Etymologies* 18.1.2-3 [*Rep.* 35a])

¹¹ Lactantius summarizes Philus' argument as follows: "The Roman people teaches us the distance between utility and justice: by declaring war through the Fetiales and by causing injury under the guise of law, by constantly desiring and seizing others' property, they obtained possession of the entire world" (*Inst.* 6.9.2-4 [*Rep.* 3.20a]).

At least based on the testimony of Augustine and Isidore, Laelius' pro-justice speech clearly included discussion of and debate on what constitutes just war.

But I think more important for understanding Laelius' pro-justice argument about international justice is his critique of realism that is preserved in an extended summary from Augustine. In the *City of God*, Augustine notes that

T.5: There is a very strong and vigorous argument in *On the Republic* against injustice on behalf of justice. In the earlier argument [i.e., that of Philus], for injustice against justice, it was said that a commonwealth could not survive and grow without injustice; and the strongest statement was that it's unjust for men to be enslaved to masters. But if an imperial state, a great commonwealth, does not subscribe to that injustice, then it cannot rule over provinces. The answer made by justice [i.e. Laelius] is that empire is just because slavery is useful for such men, and that when it's rightly done, it's done on their behalf, that is, when the right to do injury is taken away from wicked people: the conquered will be better off, because they would be worse off if they had not been conquered. In order to bolster this reasoning, Cicero supplies a noble illustration from nature and says: 'Don't we see that the best people are given the right to rule by nature herself, with the greatest benefit to the weak? Why then does god rule over man, the mind over the body, reason over desire, anger, and the other flawed portions of the mind?' (*civ. Dei* 19.21 [*Rep.* 3.36]; cf. Augustine, *Against Julianus* 4.12.61).

Whereas Philus' "injustice" speech claimed that flourishing republics disregard justice and act solely on the basis of what is beneficial or useful to them, Augustine reports that Laelius (and perhaps Carneades) argued that benevolent empire and even slavery is just in the case that it benefits those in the provinces and beyond who are ruled or even enslaved under the empire. Apparently Cicero extends the principle that just constitutions rule in the interest or benefit of those who are ruled to the case of a just empire.

No doubt, to modern ears the notion of a "just empire" seems oxymoronic. As we will see in the next two sections of my paper, at the core of Cicero's doctrine of just war is a specification

of how a just empire deals with its allies, especially in situations in which allies commit a wrong against the empire. To be totally clear, the principles and content of Cicero's just war philosophy, such as benevolent protectorate, are fundamentally at odds with those of Walzer's just war philosophy, such as state sovereignty and non-intervention. But the argument that Cicero apparently attributes to Laelius in *On the Republic* Book 3 is a fundamental retort to the claim that states should act solely in terms of their interests. Further, Laelius' argument about just empire has entails important rules and guidelines for how such an empire must treat its allies, provinces, and subject populations, rules and guidelines which it appears that Gaius Caesar violated. Although the post-Westphalian nation-state framework rejects the fundamental premises of Cicero's just war philosophy, that does not undermine the claim that Cicero seeks to articulate a novel and coherent just war philosophy, one that will find its echoes in other just war philosophies of empire, such as Dante's *De monarchia* or de Vitoria's *De iure belli*. Clearly, Cicero's writings stand at the beginning of the tradition of just empire, which is a fundamental critique of what might otherwise be characterized as "Roman realism."

Part II: Just war philosophy and "international law"

Although the just war tradition is not essentially legalistic—one thinks of Thomas More's discussion of war in his *Utopia* or Xenophon's account of Cyrus as a just emperor on campaign in his *Cyropaedeia*—the intersection between just war and what today we call "international law" is rich indeed. Thus, it is not surprising that Michael Walzer's *Just and Unjust Wars* draws quite heavily on what he calls the "legalistic paradigm" of war, namely the various international

conventions and charters—such as the Geneva Conventions and their Protocols or the Charter of the United Nations—that provide a legal framework for adjudicating instances of armed conflict and affording legal rights to both combatants and non-combatants. But Walzer’s work is not primarily a treatise on humanitarian law; rather, one of Walzer’s more interesting philosophical moves is his revision of the legalistic paradigm on the grounds of philosophical argumentation. One such revision is his account of the moral legitimacy of humanitarian intervention which the legalistic paradigm clearly views as illegal (and which I will analyze at greater length below).

Very clearly, Cicero does not share the “legalistic paradigm” of 20th century humanitarian law. Nonetheless, I believe that Cicero’s incorporation—and subtle revision—of the *Ius Fetiale* into his just war philosophy (in both his *On the Republic* and his *On Duties*) is a philosophical move that is strikingly similar to Walzer’s incorporation—and subtle revision—of the legalistic paradigm. The fetials were a college or community of priests, originally established during Rome’s regal period (753-509 BCE), who participated in a ritualistic framework for adjudicating disagreements between Rome and its allies that were likely to result in war.¹² When Cicero was composing his just war philosophy in the middle of the 1st Century BCE, the invocation of the Fetials to adjudicate a just war had been out of use for over a century, in large part due to Rome’s

¹² Cicero claims that law of the Fetiales was established under the kingship of Tullus Hostilius (*Rep.* 2.31); Dionysius of Halicarnassus and Livy claims it was established under the kingship of Numa (*Ad Urbe Cond.* 1.32, *Ant. Rom.* 2.72). Contemporary historians are quite skeptical about the historical accuracy of the literary depictions of the fetial college during Rome’s regal period; indeed, Ando (2010), supports the view that “the fetial ritual (and of necessity the fetial law) is entirely an invention of the late Republic (24 n. 7). I follow Santangelo (2008) and Rich (2011) in viewing the evidence cautiously but constructively.

participation in transmarine wars that complicated the enactment of Fetial rituals.¹³ Nonetheless, Cicero the just war philosopher sees in the rituals of the fetials a legal framework that serves as the basis for his just war philosophy, albeit one that needs subtle revision (just like Walzer's legalistic paradigm). The "international laws" that Walzer and Cicero selectively appeal to are fundamentally different, and different in ways that have important ramifications for understanding the framework of Cicero's just war philosophy. But their philosophical moves are surprisingly similar: both see in a neglected international legal framework the resources for a compelling philosophy of just war. Let me first look briefly at Walzer's use and revision of the legalistic framework and then, at greater length, Cicero's use and revision of the *Ius Fetiale* in his own philosophy of just war.

In *Just and Unjust Wars*, Walzer articulates a "theory of aggression" (i.e., the rules of *ius ad bellum*) that governs the use of violence by states (61-62). Walzer presents the theory of aggression in two stages: he first stipulates the theory in six propositions that are based in the legalistic paradigm of 20th C. international law, and then he argues for five "revisions" of the theory based on moral argumentation about justice and fairness. The six propositions that are the basis for the theory are (T.6):

- 1) There exists an international society of independent states.
- 2) This international society has a law that establishes the rights of its members—above all, the rights of territorial integrity and political sovereignty.

¹³ Harris (1979), 166-75, argues that the fetial procedure drops out of usage in approximately 171 BCE. Santangelo (2008), 72--73, documents the effect of Rome's transmarine wars on Fetial rituals.

- 3) Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.
- 4) Aggression justifies two kinds of violent response: a war of self-defense by the victim and a war of law enforcement by the victim or any other member of international society.
- 5) Nothing but aggression can justify war.
- 6) Once the aggressor state has been militarily repulsed, it can also be punished. (Walzer, 61-63)

Walzer's theory specifies the conditions under which one state may justly use armed conflict against another state (namely, as per proposition 4, in the case of individual or collective self-defense). Further, it defines the crime of aggression (namely, as per proposition 3, the violation of territorial integrity and political sovereignty). Thus Walzer's theory of aggression is the backbone of his account of when states morally may go to war with other states.

Nonetheless, as a social and political philosopher, Walzer thinks the six propositions above require revision. For instance, proposition 5 limits the use of armed conflict to international wars (namely, when one state attacks another state). The six propositions rule out entirely humanitarian intervention or international military response to a state that, for instance, commits genocide against its own people. Thus, Walzer devotes a chapter of *Just and Unjust War* ("Interventions") that argues that the legalistic paradigm is too strict insofar as its strictures on non-intervention claim that it would be unjust for one state to stop genocide taking place in another state.¹⁴ Of course, Walzer published *Just and Unjust Wars* in 1977, over a decade before

¹⁴ Humanitarian intervention is one of the five instances in which Walzer believes the legalistic paradigm is at odds with justice and morality. The other four instances are: Pre-emptive warfare,

the genocidal violence of Bosnia and Rwanda, and international norms concerning humanitarian intervention have developed in light of those genocidal conflicts. But Walzer’s philosophical insight—and one of the reasons that his book remains relevant, a half-century later—was to see that although international law provides a starting point for understanding just war, the just war philosopher needs to go beyond the covenants and international agreements of international law to arrive at a philosophically adequate theory of just war.

The *Ius Fetiale* or “Fetial Law” is the centerpiece of Cicero’s just war philosophy and can be found in both *On Duties* and *On the Republic*. Dionysius of Halicarnassus provides a 1st C. BCE outline of the duties of the Fetial college:¹⁵

T.7: It is their duty to take care that the Romans do not enter upon an unjust war against any city in alliance with them, and if others begin the violation of treaties against them, to go as ambassadors and first make formal demand for justice, and then, if the others refuse to comply with their demands, to sanction war. In like manner, if any people in alliance with the Romans complain of having been injured by them and demand justice, these men are to determine whether they have suffered anything in violation of their alliance; and if they find their complaints well grounded, they are to seize the accused and deliver them up to the injured parties. (*Ant. Rom.* 2.72.4-5)

Although the college of the fetials clearly functions as a quasi-international arbiter of disagreement between Rome and its allies, one which adjudicates claims of justice, it is hardly a multi-lateral United Nations General Assembly or International Criminal Court in which all nation-

intervention in the cases of secession or counter-intervention, and regime change to punish aggression. Schofield (2021), 165, notes—rather serendipitously—that contemporary doctrines of humanitarian intervention are grounded in Cicero’s notion of justice, which includes the duty to come to the aid of those who have been wronged (*Off.*, 1.23, 1.28).

¹⁵ I draw upon Dionysius’ depiction of the Fetial rituals, but Livy preserves a similar depiction (*Ad Urbe Cond.* 1.32).

states possess formal equality. Rather, as one scholar has put it “Roman diplomacy was utterly unlike modern diplomacy in that it made no formal presumption of equality. Such a nicety would have baffled the ancients, who thought first in term of power, not fairness” (Levithan, 75). The Fetial college presupposes from the start Rome’s military superiority and imperial stature; it exists to ensure that Rome’s use of military force against an ally is warranted and, ultimately, agrees with the will of the gods—the ultimate adjudicators on the field of battle.¹⁶ But its framework makes clear that Cicero’s just war philosophy is the philosophy of just empire.

When we turn to Cicero’s account of the *Ius Fetiale* in *On Duties*, it is crucial to note that Cicero’s discussion of the “duties of warfare” takes place more generally within his discussion of the duties of justice, which he initially describes as such:

T.8: Of justice, the first office is that no man should harm another unless he has been provoked by injustice; the next that one should treat common goods as common and private ones as one’s own...Moreover, the keeping of faith is fundamental to justice, that is constancy and truth in what is said and agreed. (*Off.* 1.20, 23)

Although the duty of justice prohibits harming another, it not only justifies the use of harm in self-defense but it also stipulates that there is a duty to defend others who have been unjustly harmed (*Off.* 1.23). Cicero’s account of the “justice of warfare” primarily consists in specifying

¹⁶ Dionysius notes, in his description of the first stage of the fetial procedure (the *repetitio*), that before making any announcement concerning war, the fetial priest—wearing sacred robes and insignia—“proceeded towards the city whose inhabitants had done an injury; and, stopping at the border, he called upon Jupiter and the rest of the gods to witness that he was come to demand justice on behalf of the Roman state. Thereupon he took an oath that he that he was going to a city that had done an injury; and having uttered the most dreadful imprecations against himself and Rome, if wat he averred was not true, he then entered the borders” (*Ant. Rom.*, 2.72.6-7).

how the fetial practices resolve such conflicts between Rome and its allies. In *On Duties*, Cicero draws up the principles of just cause based upon the rituals of the Fetial college:¹⁷

T.9: Fairness in war (*ac belli quidem aequitas*) has been drawn up, in full accordance with religious scruple, in the fetial laws of the Roman people. From this we can grasp that no war is just [1] unless it is waged after reparation has been sought (*rebus repetitus geratur*) or [2] is announced beforehand (*denuntiatum ante*) and [3] formally declared (*indictum*). (*Off.* 1.36, enumeration added)

To appreciate Cicero's apparent revision of the *Ius Fetiale*, it is necessary to dig a little deeper into the three procedures I enumerate in the passage from 1.36.

As *On Duties* 1.36 makes clear, the college performs three different procedures: [1] a formal demand for reparation (*repetitio*), [2] a formal warning of the likelihood of war (*denuntiatio*), and [3] a declaration of the war (*indictio*). Within the framework of Cicero's articulation of the first stage of the procedure, the demand for reparation embodies a principle of non-aggression.¹⁸ The demand for reparation presupposes that the party in question has wronged the people of Rome; the head priest of the college makes clear to the party in question that the people of Rome believe they have been wronged and that if the wrong is not rectified, Rome may resort to armed conflict, rather than diplomacy, to resolve the wrong. Although it is true that the demand for reparation is not open to negotiation, nonetheless the first procedure

¹⁷ René Brouwer points out that Cicero's "has been drawn up" (*perscripta est*) reflects the fact that what the Fetial college performs is a kind of ritual; extracting a principle of right from those rituals (which Cicero appears to be doing) is moving from ritual to law.

¹⁸ Although there is debate whether Cicero's description of the Fetial Law is historically accurate (see, for instance, Santangelo [2008], 81-83), I am only concerned with the nature of the *Ius Fetiale* as it is found in Cicero's depiction, in order to understand how Cicero incorporates the rituals of the college into his own philosophy of war.

seeks to limit Rome's unilateral aggression against another party.¹⁹ And as Dionysius notes, if the offending party "were disposed to offer satisfaction by delivering up the guilty, [the fetial priest] departed as a friend, taking leave of friends" (2.72.8). As we will see in the next part of my paper, the relationship between Rome and its allies is like that between patron and client, which—while a relationship of subordination—can nonetheless be a mutually beneficial relationship.

The second and third procedures—the *denuntiatio* and the *indictio*—take place if the offending party fails to offer reparation. But first, the fetial priest repeats the demand for reparation three times, each after a ten-day period, providing the offending party a total of thirty days to respond to the *repetitio*. Dionysius describes what happens next, if the college advances to the procedures of *denuntiatio* and *indictio*:

T.10: But after the expiration of the thirtieth day, if the city still persisted in refusing to grant [the priest] justice, he called both the celestial and infernal gods to witness and went away, saying no more than this, that the Roman State would deliberate at its leisure concerning these people. Afterwards he, together with the other Fetiales, appeared before the senate and declared that they had done everything that was ordained by the holy laws, and that, if the senators wished to vote for war, there would be no obstacle on the part of the gods. But if any of these things were omitted, neither the senate nor the people had the power to vote for war. (*Ant. Rom.*, 2.72.8-9)

The first part of T.10 describes the procedure of *denuntiatio*: The fetial priest delivers a notification to the magistrates of the offending city that "denounces" their failure to make

¹⁹ Isidore preserves the claim that in *On the Republic* Book III, Laelius claimed that "those wars are unjust which are undertaken without a cause. For no war is able to be just except for that waged for the sake of revenge or repelling an enemy" (*Etym.* 18.1.2-3 [*Rep.* 3.35a]). I believe the demand for reparation makes the same point about non-aggression: just war presupposes a wrong that needs to be avenged, and/or invading enemies, and/or a wrong that needs reparation.

reparations and warns them that the Roman Senate and People of Rome may debate the initiation of warfare. The second part of T.10 describes the *indictio*: if the Roman Senate voted for war, then the fetial priest would notify the offending city that there was a formal declaration of war (a message which the priest apparently communicated symbolically by means of hurling a bloody spear into the offending party's city).²⁰

At first glance, Cicero's incorporation of the *ius fetiale* into his account of justice in war seems unremarkable. The fetial college of priests had by tradition concerned itself with claims about wronging and rectifying wrongs between Rome and its allies. And yet Cicero's incorporation of their rituals is remarkable for at least three reasons. First, grounding a just war philosophy in a society's legal procedures is actually unprecedented in ancient Greek and Roman political philosophy, at least as we have it. As Ober (1991) shows, classical Greece embraced a number of institutional procedures related to the conduct of armed conflict, but the just war thinking of Aristotle and Plato appear largely oblivious to them. Like Walzer, Cicero's decision to ground his philosophy of just war in legal institutions reflected a highly original philosophical move, one almost without precedent in Greek and Roman philosophy.²¹ But secondly, Cicero's originality in part derives from the disuse that the *Ius Fetiale* had fallen into. Although the fetial college remained in the first century BCE, it was last used—as an institutional procedure integral

²⁰ Santangelo (2008), 86-88, notes that as Rome's wars expanded beyond the Italian peninsula to transmarine wars, Rome enacted a procedure in which the bloody spear was thrown within Rome, nonetheless symbolically within the territory of the other state.

²¹ Barnes 2015 writes that "the laws of war, the *iura belli*, were not drawn up by Greek philosophy or by Christian casuistry: they were drawn up in Rome and they come from an archaic pagan rite which was practiced in the early Roman Republic" (64).

to declaring war—in 170 BCE. I suspect that Cicero rejuvenated the institution for all the obvious reasons—that it drew upon the “*mos maiorum*” or ancestral traditions of Rome (rather than those of the 1st C. BCE), that it was focused primarily on armed conflict between Rome and its allies, and that it fit quite well with the Panaetian abstract principles of justice.

A third reason why Cicero’s inclusion of the Fetial rituals into his philosophy of just war is remarkable is that it appears to show him “rebooting” an ancient ritual in a philosophically insightful way, just like Walzer’s revision of humanitarian intervention philosophically reboots the legalistic paradigm. As Dionysius notes, in T.10 above, the original procedure of *repetitio*, *denuntiatio*, and *indictio* was “conjunctive,” as it were—Rome’s wars were licit only in the case that all three procedures were followed. In *On the Republic* Book 3, Cicero appears to state such a view. For instance, Isidore reports that a lost passage (likely from Laelius’ speech) claims that

T.11: No war is war is considered just unless it is announced and declared, and unless it involves recovery of property (*Etym.* 18.1.3 [*Rep.* 35a]: *nullum bellum iustum habetur nisi denuntiatum, nisi indictum, nisi de repetitis rebus*).

The three successive “*nisi*” constructions suggests that all three procedures are necessary conditions of a just war. But recall the precise phrasing of the procedures in *On Duties*:

T.9: Fairness in war (*ac belli quidem aequitas*) has been drawn up, in full accordance with religious scruple, in the fetial laws of the Roman people. From this we can grasp that no war is just unless it is waged after reparation has been sought (*rebus repetitus geratur*) **or** is announced beforehand (*denuntiatum ante*) **and** formally declared (*indictum*). (*ex quo intellegi potest nullum bellum esse iustum nisi quod aut rebus repetitis geratur aut denuntiatum ante sit et indictum* [*Off.* 1.36:])

Cicero’s use of disjunctive conjunctions (i.e., *aut...aut*) appears to suggest that a war can be just *either* after reparation has been sought *or* the wrong has been denounced to the offending city

and the Senate's declaration of war has been promulgated. What is the difference between T.9 and T.11? As Atkins notes, in effect, a thirty-day waiting period (forthcoming, 189). Recall that the *repetitio* procedure of the traditional *ius fetiale* afforded offending parties up to thirty-days to respond, during which time the Roman senate was simply barred from declaring war. I suspect, following Atkins, that Cicero here is revising an archaic religious ritual in a philosophically thoughtful fashion—making it more responsive to military incursions and allowing the Senate to declare war if only the fetial priests have denounced the injustice (without offering the offending party 30 days to make reparation).²² Cicero not only grafts his just war philosophy unto the international legal procedures of archaic Rome; he also trims those procedures, as it were, to make his philosophy of just war more plausible and responsive.

Part III: The originality of Cicero's just war philosophy

Part I of my paper argued that the dialogue between Philus and Laelius in *On the Republic* Book 3 shows that its author recognized that a philosophy of just war required a response to the claim that states should act in the interest of what is useful or beneficial, even if it is unjust. Part II of my paper argued that the incorporation of the Fetial Laws into the duties of warfare shows that

²² Barnes (2015), 65-66, rejects the disjunctive reading of *Off.* 1.36 because it is at odds with Fetial practice and “from a theoretical point of view, the disjunctive condition seems very strange” (66). But Barnes also recognizes precisely the situation for which the disjunctive condition makes good sense, namely if “Hannibal's elephants have crossed the Alps. They are lined up in Italy, against our men. Hannibal has wronged us: his drunken soldiery has filched our horses, beaten our friends, assaulted our sisters. If we follow the fetial law, we must now ask Hannibal to right those wrongs—and sit on our backsides for a month while he decides whether or not to do so” (72). The disjunctive interpretation of the Fetial rites anticipates just such a scenario—and shows Cicero's willingness to philosophize *beyond* the rituals and traditions of the Fetial college.

the author of *On Duties* is creatively using, and philosophically critiquing, the equivalent of international law. One might concede my textual interpretations of *On the Republic* and *On Duties*, but deny that Cicero is ultimately the true author of either of these arguments. As Cicero himself notes, *On Duties* is indebted to a treatise authored by the Stoic philosopher Panaetius (185-110 BCE).²³ One scholarly tradition, argued most forcefully by Peter Brunt, takes Cicero's claim of philosophical dependence on Panaetius seriously and seeks to show that Cicero for the most part simply added Roman exempla to Panaetius' treatise.²⁴ Although Brunt's source analysis has fallen out of fashion, I think addressing it raises a very interesting question about Cicero's motivation for writing *On Duties*, a question that offers one final comparison between Walzer and Cicero.

At several points within *On Duties*, Cicero acknowledges his debt to Panaetius' *Peri tou kathêkontos* and expresses his general allegiance, at least within *On Duties*, to the Stoic account of ethical theory. For instance, after announcing the subject of the treatise to his son Marcus (to whom the work is addressed), Cicero writes that giving advice about duty

T12: is the peculiar province of the Stoics, Aristotelians and Peripatetics...I shall, therefore, for the present and on this question, follow the Stoics above all, not as an expositor (*non ut interpretes*), but, as is my custom, drawing from their

²³ *On The Republic* has Laelius say to Scipio that "I remembered that you used to discuss [the best republic] frequently with Panaetius in the presence of Polybius—possibly the two Greeks most experienced in public affairs" (1.34). Scholars have thus speculated on Panaetius' political influence on Cicero's writing, including the claim, made by Walbank (1965), that Laelius' pro-justice speech in *On the Republic* derives from Panaetius. Vander Waerdt (2022), offers a number of reasons to be skeptical of Walbank's claim.

²⁴ For other ways of interpreting the relationship between Cicero and Panaetius, see Griffin (2018b), 670-672.

fountains when and as it seems best, using my own judgment and discretion. (*Off.* 1.6)²⁵

In the immediate sequel, Cicero further notes that Panaetius raised three questions when determining one's duty, namely whether the course of action is honorable or dishonorable, whether it is beneficial or harmful, and whether what is honorable might apparently conflict with what is beneficial (*Off.* 1.9). Cicero thus structures *On Duties* into three books, one book devoted to each of Panaetius' questions.²⁶ But as Cicero notes with respect to his use of Panaetius' treatise,

T.13: I am to a large extent following [Panaetius], though not expounding him, in these books. (*ut in hic ipse Panaetius quem multum his libris secutus sum non interpretatus* [*Off.* 2.60, cf. 3.7])

The contemporary exegete thus faces the question: to what extent is Cicero's *On Duties* derivative from Panaetius and to what extent is it original and even novel?

Although the question of the originality of *On Duties*, especially in the third book, goes beyond my paper, with respect to the discussion of the duties of warfare (*Off.* 1.34-40), Brunt (2013) argued in detail that the just war philosophy of *On Duties* derives from Panaetius, with the

²⁵ Powell (1995) notes that "the word *interpres* [translated in T12 as "expositor] and its cognates are generally used in the context of a close, literal translation....Cicero uses *interpres* to refer to translators in general, whose function he makes clear that he is not performing in the philosophical works" (278).

²⁶ Cicero reports that Panaetius failed to address the third question—about the apparent conflicts between the honorable and the beneficial (*Off.* 3.7-10)—and thus the third book of *On Duties* is entirely from Cicero's own hand (*Off.* 3.33-34). Cicero also notes that Panaetius omitted discussion of two additional question, namely whether honorable actions admitted of degrees (e.g., one action could be more honorable than another) and whether beneficial actions admitted of degrees (*Off.* 1.10, 1.152-1.161, 2.88-89).

occasional “extrapolation” (i.e., addition or revision) by Cicero, for instance the inclusion of Roman exempla. Brunt’s general argument is that

T.14: The questions involved [in *Off.* 1.34-40] were as suitable for Panaetius’ consideration as any others in practical morality. I incline to think it unlikely that Cicero would have interpolated so important a discussion without taking credit for supplying an omission by Panaetius. And the general principles he lays down are consonant with Panaetius’ teaching. (Brunt 2013, 204)

In practice, Brunt’s exegetical arguments seek to show that there is very little in *On Duties* 1.34-40 that it is impossible to attribute to Panaetius due to his ignorance or chronology. So, for instance, Brunt argues that Panaetius could have been familiar with the destruction of Corinth and Carthage (both in 146 BCE), with the Platonic/Aristotelian arguments that war should be waged only for the sake of peace, and with the Roman Fetial rituals. Indeed, Brunt suggests that Panaetius, “a friend of Roman generals and notably of Scipio, the military hero of his time” would have been more attentive to matters of military prowess and honor than Cicero, given Cicero’s “own lack of military distinction” (208).

The problem with Brunt’s arguments in support of the claim that Panaetius is the original philosophic source for the discussion of the duties of warfare is that they assume the truth of the claim they support (i.e., that in *On Duties* 1.34-40 Cicero generally copied material from Panaetius’ own treatise with the occasional extrapolation), and then show that nothing in the text is inconsistent with that claim.²⁷ But such arguments only show that it is possible that

²⁷ I would also add that Brunt’s argument only holds for *On Duties*, where Cicero explicitly references Panaetius. There is no evidence (save the reference at *Rep.* 1.34) that Cicero based his earlier political works, such as *On the Republic* or *On the Laws*, on Panaetius’ philosophy, even though their teachings on just war are similar to those in *On Duties*.

Panaetius was the source for the Cicero's text; Brunt has no positive evidence to support his argument because Panaetius' treatise on duties does not survive. But further, as Dyck (1998) notes, there are several points in Cicero's account of just war that look hard to reconcile with what we know about Panaetius' general principles—for example, Cicero's account of "imperial glory" as a desirable good (135-136, 147). For instance, Cicero distinguishes two kinds of war: there are "imperial wars" in which one is "fighting for empire and seeking glory through warfare" (*de imperio decertatur belloque quaeritur gloria*); but there are also "wars of survival" in which "the question was not who would rule, but who would exist" (*uter esset, non uter imperaret* [Off. 1.38]). Panaetius' general principle—that conflict can proceed either by debate (for humans) or by force (for animals) seems at odds with the principle of imperial war fought for national glory (Off. 1.35). Dyck seems on much firmer ground than Brunt when he suggests that

T15: the example of the *fetiales* leads Cicero (*ex quo*), however, to a conception of the *bellum iustum* that is more concrete (*aut rebus repetitus geratur*) and formalistic (*aut denuntiatum ante sit et indictum*) than the Panaetian precepts. (135; cf. Off. 1.36)

That Cicero employs general Panaetian principles is entirely consistent with the claim that he is an original just war philosopher, just like Walzer employs basic principles of the legalistic paradigm (like non-intervention) in his philosophy of just war.

Although I think Dyck's depiction of Cicero's relationship to Panaetius is exegetically more plausible than Brunt's, I think one final comparison between Cicero and Walzer undermines any claim that Cicero's account of just war is merely derivative from Panaetius. One recalls that Walzer's *Just and Unjust War*, originally published in 1977 (namely, four years after the US withdrawal from the war in Vietnam and two years after the fall of Saigon), was fundamentally a

critique of America's involvement in Vietnam, a war that Walzer argued was both unjust and unjustly waged.²⁸ The longevity (and multiple editions) of Walzer's book cannot hide the fact that it is a work profoundly influenced by and in engagement with the geopolitical events leading up to its writing. And such seems to be the case, also, for Cicero's account of just war in *On Duties*, a work written late in 44 BCE, approximately six months after the assassination of Gaius Caesar (and only a year before Cicero is proscribed, captured, and murdered on 7 December, 43 BCE).

Here is how Cicero begins his account of duties in armed conflict, immediately after his general statement that the purpose of war is that "we may live in peace, without injustice" (*Off.* 1.34).

T.16: [16.1] In my opinion, our concern should always be for a peace that will have nothing to do with treachery (*insidiarum*). If I had been followed in this we would still have some republican government (if not the very best [*si non optimam, at aliquam rempublicam*]); whereas now we have none. [16.2] And while you must have concern for those whom you have conquered by force, you must also take in those who have laid down their arms and seek refuge in the faith of generals, although a battering ram may have crashed against their wall. [16.3] In this matter, justice was respected so greatly among our countrymen that the very men who had received into their good faith cities or peoples conquered in war would, by the custom of our forefathers, become their patrons (*earum patroni essent more maiorum*). (*Off.* 1.35, bracketed enumerations are my own for ease of reference below).

Running throughout Cicero's *On Duties* is a fundamental critique of Gaius Caesar, whose rash behavior (Cicero calls it "overturning all the laws of gods and men for the sake of the pre-

²⁸ *Just and Unjust Wars* devotes extended discussion to the claim that America's intervention in Vietnam was unjust (97-100), that it was waged unjustly (188-196), that it involved heinous war crimes, like the My Lai Massacre (309-316), and that the American people—both its political leaders and its citizens—bear a fundamental criminal responsibility for the war (299-303).

eminence that he had imagined for himself in his mistaken fancy” [Off. 1.26])²⁹ is a fundamental example of injustice. Cicero explicitly criticizes Caesar for his unjust confiscations and illiberal redistributions of property (1.43, 2.83-84), for overthrowing the Republic (2.2, 2.27-28), and for using fear to generate glory (2.27-28). Cicero’s account of just war appears, at least in part, as a critique of Caesar’s military practices, just like Walzer’s account was motivated by American military practices in Vietnam. Needless to say, it is chronologically problematic to characterize such an orientation as derivative from Panaetius.

Consider *On Duties* 1.35 (Text 16, quoted and enumerated above). Cicero begins (T16.1) with the claim that peace accomplished through treachery is what brought about the end of Republican government and offers “peace without injustice” as its alternative. Cicero’s account of the civil wars of Sulla and Caesar make clear what he has in mind. Prior to Sulla,

T.17: the empire of the Roman people was maintained through acts of kind service and not through injustices; wars were waged either on behalf of allies or about imperial rule; wars were waged with mercy or through necessity; the senate was a haven and refuge for kings, for peoples and for nations; moreover, our magistrates and generals yearned to acquire the greatest praise for one thing alone, the fair and faithful defense of our provinces and of our allies. In this way we could more truly have been titled a protectorate (*patrocinium*) than an empire of the world. (Off. 2.26-27)

By contrast, Cicero compares the military practices of Caesar, focusing on the example of Massilia (modern Marseilles), which was an ally of Rome even before Gaul became a Roman province. And yet, because Massilia sided with Pompey’s cause during the civil war, Caesar sacked the city

²⁹ Especially troubling to Cicero is Caesar’s mix of a laudable drive for pre-eminence and greatness of spirit coupled with injustice and selfishness (e.g., Off. 1.13, 1.64, 1.86, 2.54-55, 3.82-83). In *On Duties*, Cicero views Caesar’s assassination as permissible—even obligatory—tyrannicide (2.23, 3.1, 3.19).

and carried around a model of it “in a triumphal procession as an example to oppressed and devastated nations abroad of the empire we have forfeited” (*Off.* 2.28). Reminiscent of my reconstruction of Laelius’ speech in *On the Republic* 3 of a “just empire,” Cicero views Rome’s practice of just wars as a form of benevolent protectorate (*patrocinium*), whereas Caesar treats Roman allies like Massilia as a pawn in his own match with Pompey.

Next, T.16.2 proscribes leniency and fair treatment to those who lay down their arms, even though “a battering ram may have crashed against their walls” (*Off.* 1.35) Cicero is alluding to the treatment of combatants who surrender *after* the commencement of hostilities (namely, after a siege has already begun) and—quite likely—Caesar’s own “customary” treatment of combatants in Gaul. Indeed, Cicero seems to have in mind a passage from Caesar’s *Gallic Wars*, in which Caesar (speaking in the third person) pronounces the following “peace terms” to the Aduatuci, a Gallic-Germanic people from modern day Belgium:

T.18:. That he [i.e. Caesar], in accordance with his custom, rather than owing to their desert, should spare the state, if they should surrender themselves before the battering-ram should touch the wall; but that there was no condition of surrender, except upon their arms being delivered up; that he should do to them that which he had done in the case of the Nervii, and would command their neighbors not to offer any injury to those who had surrendered to the Roman people. (*Gallic Wars*, 2.32)

Caesar’s “peace” policy is premised on complete terror and utter submission; by contrast, Cicero counsils that in imperial wars (which is the case with the Gallic tribes), there is no need to wage war so viciously and mercilessly (*Off.* 1.38). Cicero models his own just war philosophy—more specifically, its *ius in bello* prescriptions—in opposition to Caesar’s declared model for treating those who surrender.

Finally, consider 16.3, namely the claim that the “*mos maiorum*” or customary practices of Rome viewed enemies as potential clients and allies, received in good faith. The passage is an ideal transition to Cicero’s presentation of the Fetial procedures because those rituals are an ideal example of both “*mos maiorum*” (namely, an institutional practice that dates back to the regal period and was in use throughout the 5th-2nd C BCE) and a practice of just war that is modeled upon the framework of a just empire, namely one that seeks to avoid armed conflict between Rome and its allies and which provides allies with a mechanism to resolve a dispute through discussion rather than the use of force. Although Cicero does not appear to refer to the incident in *On Duties*, it is significant that in 55 BCE Cato accused Caesar of war crimes (in breaking a truce with a German tribe and massacring several hundred thousand Usipetes and Tencteri) and moved to have Caesar surrendered by the Fetial College.³⁰

Admittedly, the politics of Cicero’s *On Duties*—bravely written amid the turmoil in Rome following the assassination of Caesar—is complicated and contested.³¹ Precisely what Cicero hoped for in practical terms in his appeal to the practices of the Fetial college, an organization whose significance in international relations during the initiation of Rome’s transmarine or overseas wars, is unclear. But from the perspective of his just war philosophy, the Fetial rituals created practices for reconciling interstate differences non-aggressively that are the opposite of those that Caesar practiced in the decade before his assassination. Indeed, it is hard to read Cicero’s account of just war without thinking of Caesar as its counter-example. But however much

³⁰ Carson (2015) provides the details of the event, including the role that the Fetial priests played within it (81-83) ; see *Off.* 3.108 for Cicero’s familiarity with the process of surrendering.

³¹ See, for instance, Long (1995) and Griffin (2018).

Cicero's implementation of the concept of justice in armed conflict was guided by the Stoic ethical principles of Panaetius, Cicero's philosophy of just war is a philosophy of anti-Caesarean unjust war. Its originality and insight preserve one way of understanding how Caesar had misled Rome and how Rome might be reoriented towards justice, even if that justice is the justice of empire. The originality and insight of Cicero's account of just war also suggest that he provides more than simply just war thinking. In *On Duties* and *On the Republic*, Cicero provides a novel yet comprehensive philosophy of just war.³²

³² I am most grateful to Andree Hahmann and Michael Vazquez for patiently awaiting my submission. I am also grateful to the participants of a presentation of my paper to the New England Symposium on Ancient Philosophy, from which I received superb feedback from Julia Annas, René Brouwer, David Fott, and Jyl Gentzler (the symposium organizer).

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