

IN RESPONSE

To John Kelsay on the Old Testament and Christian specificity

John Kelsay understands the reason for the focus on the New Testament in my critique of Christian pacifism (because **THAT** Testament is the more formidable obstacle for a Christian proponent of just war thinking), but he argues that attention to the Old Testament would have bolstered my case. I accept that and welcome it. He also notes that the Mennonite pacifism of Hauerwas and Yoder should not be considered a species of wishful thinking, since it is candid in admitting its own dreadful practical implication, namely, that one might have to suffer watching others die unjustly. I agree: this is not wishful thinking.

Kelsay touches on a larger, methodological point when he observes that just war theory is often articulated in terms of natural law and is therefore a “broadly cultural, rather than a specifically religious or theological phenomenon”. Thus he raises the issues of the extent to which just war thinking is Christian, and of whether I have identified it too closely with Christianity—as some commentators elsewhere have already suggested.¹ My response is threefold. First, *In Defence of War* was written with a variety of readerships in mind, but at certain points—especially in Chapters 1 and 2—Christian sceptics of just war thinking were foremost in my mind. Naturally, my argument there is that Christian just war reasoning really is *Christian*.

Second, I do not believe in secularity as neutral space. Rather, my view is Augustinian: secularity is the space where plural voices put their differences on the table, negotiate, and compromise. What is more, the secular spaces with which I am familiar are complex in their plurality. The situation is not one where there is a widespread non-religious consensus with some odd religious outliers. Non-religious views—Aristotelian, Hobbesian, Marxist, Nietzschean, etc—are quite plural and conflicting as religious ones. Therefore I think that the responsible thing to do is to speak one’s mind in one’s own terms, try and persuade others to recognise its rationality and beauty, welcome areas of overlap, and wrestle with points of mutual incomprehension and disagreement. My preferred mode is this: “I’m a Christian; this is how I see the justification of war; now let’s talk and see how much of it I can persuade you to buy”.

My third reason for writing of just war in explicitly Christian terms is that there are various ways of construing the justification of war, and some are better than others. It might be assumed that Christian thought is *passé* and that it has been surpassed by modern philosophical versions. **ACTUALLY, HOWEVER**, I think that David Rodin’s critique of Walzerian and post-Walzerian just war thinking is pretty damning and that it inadvertently illuminates the strengths of the early modern Christian tradition (as I argue in Chapter 5).

To James Turner Johnson on Augustine, punishment, and unconditional love

I am pleased that Jim Turner Johnson chose Augustine as the focus of his commentary, since it was a series of classes on Augustine in the final year of my Oxford undergraduate course in History, almost forty years ago, that **HAS** inspired much of my subsequent career. What is more, Johnson quotes the beginning of a passage that, more than any other, sums up what Augustine has long meant for me. This appears in his letter to Paulinus of Nola (95), where he expresses his anguish

¹ For example, James Turner Johnson and Nahed Artoul Zehr in *Soundings*, 97/2 (2014), pp. 234-7, 239-50.

over the infliction of punishment: “On the subject of punishing or refraining from punishment, what am I to say? ... “Trembling and fear have come upon me and darkness has covered me, and I said, ‘Who will give me wings like a dove’s?’ Then I will fly away and be at rest... [Ps 55.5-6]”.² But Augustine did not fly away, and it is for his courageous realism that he has always commanded my deepest admiration.

Johnson points out that my understanding of punishment—as properly ordered to forgiveness and reconciliation between human agents—is not quite Augustine’s, for whom punishment is mainly about disciplining the wrongdoer toward love for God. This raises two questions. First, what role does Augustine play in my thinking here? My answer is to say that Johnson is correct: I am not developing my understanding of punishment out of Augustine’s own thought. On this occasion, all I take from him and run with is the notion that harshness can be kind. But the second question is potentially more troubling: Is my account of punishment sufficiently theological? Upon reflection, I think that it is. After all, my focus here is on the *inter-human* relationship between just warriors and their enemies. Moreover, I have argued elsewhere that human beings need forgiveness for things that no other human is competent to forgive—that there are sins against God that are not reducible to sins against fellow humans—and that the self-consciousness of being in need and in receipt of God’s forgiveness is important in disposing us to have compassion for[COMMA] and to forgive[COMMA] fellow sinners.³

Johnson raises another, related issue, which intrigues me, but on which I have yet to achieve clarity. He detects in what I write a hint of the now popular notion that we should love others unconditionally and for themselves, and he contrasts this with Augustine’s idea that only God is to be loved unconditionally and that what we should love in our human neighbour is actually her devotion to God. In fact, I am not sure that I do believe that we should love another “for whoever he or she is”, partly because it is not clear what that means. I am not without sympathy for the view expressed by Aquinas that sometimes human beings can reduce themselves to bestiality (or, better, inhumanity)—that they can lose their dignity—and that it is not always obvious that they can recover it.⁴ I think that I really do believe in the possibility of absolute loss, which is what I take ‘hell’ to mean. It is not at all clear to me what is intrinsically lovable in a Hitler or Pol Pot, and I am not confident that they and their like are redeemable. Moreover, it seems to me that, while we always love other people to some extent in spite of themselves, we also love them because of their moral and spiritual qualities, or at least because we want to encourage their growth in goods and in God. Nevertheless, I do admit that for one sinner to deem another as irredeemable is both presumptuous and morally dangerous. Therefore I think that we should continue to respect (love?) inhuman humans because they remain subject to the love of God, which might yet prevail.

To Cian O’Driscoll⁵ and Hugh Beach on the virtue of callousness, the corruption of combatants, and love for the enemy

² Augustine, *Political Writings*, ed. E.M. Atkins and R.J. Dodaro, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 2001), pp. 23-4,

³ Nigel Biggar, “Forgiveness in the Twentieth Century: A Review of the Literature, 1901-2001”, in *Forgiveness and Truth: Explorations in Contemporary Theology*, ed. Alistair McFadyen and Marcel Sarot (Edinburgh & New York: T. & T. Clark, 2001), pp. 209-10, 216.

⁴ Thomas Aquinas, *Summa Theologica*, 2a2ae, q. 64, R.Obj.3.

⁵ See *Soundings*, 97/2 (2014), pp. 251-3 for my fuller response to an earlier version of O’Driscoll’s commentary.

It seems clear to me that a certain kind of emotional robustness is sometimes a virtue, and the lack of it a vice—be it on the part of a battlefield general, or a surgeon, or a head of department informing a colleague that they are about to be made redundant and lose their livelihood, or a director of graduate studies informing a student that they are not going to get their doctorate even though they have spent £60,000 in the attempt. Whether or not it is helpful or needlessly provocative to call this ‘callousness’—as I do—is moot, but in the absence of any obviously better alternative I am inclined to stick with it, and Cian O’Driscoll’s support encourages me to do so.

Nevertheless, I agree with O’Driscoll that this needs further analysis, not least because of the close connexion between callousness and brutality. He cites J. Glenn Gray’s account of the Jekyll-and-Hyde personality of a French security officer. I am troubled by the case of Alfredo Astiz, who, according to Mark Osiel,

led one of the most effective and notorious death squads during Argentina’s dirty war, during which at least eleven thousand persons were murdered. Like the far better known Adolf Eichmann, he never committed any significant wrong before or after the particular wars in which they committed their evils. Neither man displayed any malicious motives, defects of character (such as uncontrollable rage), or mental instability, whether before, after or during their crimes. It is even impossible to assert that either of these men lacked meaningful attachment to other people, leaving him incapable to empathy for human suffering.... In anticipating criminal acts he was about to commit, each apparently felt a sober sense of responding to moral obligation, not of submitting to personal inclination or temptation. Both remained completely unrepentant years later, while nonetheless expressing respect, of a kind, for their adversary.⁶

One member of Astiz’s squad recalls asking a priest about the morality of torture and being told, “You have to think like a surgeon. If you have to amputate a disease, you can’t think about how the patient will look”.⁷ What, then, is the difference between my virtuous callousness and abhorrent ‘pitilessness’? What is more, in addition to the conceptual difference, what makes a practical difference? Are there kinds of spiritual and moral training and discipline that are effective in keeping callousness from becoming vicious? According to Patrick Bury and Karl Marlantes, whom I quote liberally in my book, the answer is Yes: military training and discipline *can* be effective in preventing moral degeneration, especially into an overwhelming hatred of unscrupulous enemies and two-timing civilians.

Another important question that O’Driscoll poses is whether an Aresian excess of war is inevitable, and whether in my own account of morally virtuous just war I myself succumb to the virus of wishful thinking. Ouch. Yet I think not. It is true that I place my rhetorical weight heavily on the side of challenging the common misconception that war-fighting is inevitably driven by hatred and rage and bloodlust and incapable of restraint. Nevertheless, I take it for granted that in every human enterprise sin will manifest itself, and that no large-scale and long running war will escape moral flaws, some of them very grave indeed. This, of course, raises the important and difficult question of when it is that a corrupt part so infects the whole that the whole loses its overall justification. That said, it does seem to me that deep anger against an unscrupulous enemy is sometimes entirely warranted, and that the task should not be to deny or suppress the anger, but to discipline it. And from what Bury, Marlantes, and now Hugh Beach have written that does appear to be possible.

⁶ Mark Osiel, “The Mental State of Torturers: Argentina’s Dirty War”, in *Torture: A Collection*, ed. Sanford Levinson (Oxford: Oxford University Press, 2004), p. 132.

⁷ Osiel, “Mental State”, p. 133.

A final point raised here is whether it is really appropriate to talk about the motivation of combat soldiers in terms of ‘love’. O’Driscoll wonders pointedly whether history really confirms that soldiers commonly “fight with love in their hearts” for their enemies, and Beach prefers to talk about the Golden Rule, respect, and self-restraint than about ‘love’. I take the point. It might be that what we are talking about here is an attenuated form of love. It seems to me that terms such as love, repentance, forgiveness, and reconciliation are most at home in the context of interpersonal, intimate relations—think, parabolic Father and Prodigal Son—and that when we use them of social or political groups, we mean something analogous and attenuated. Having said that, it is a combat veteran, Patrick Bury, who invokes the Johannine saying about “greater love hath no man” to describe the behaviour of one of his squaddies in Helmand (pp. 80-1). And it was Chris Keeble, the officer commanding British paratroops at the end of the Battle of Goose Green in the Falklands War, who told me that his troops, having been characteristically relentless in combat, could be seen after the battle “cradling the wounded Argentines in their arms” (p. 83). So maybe ‘love’ is not so ill fitting.

To Tom Simpson on the intention to kill and just war as retributive

I am reassured by Tom Simpson’s approval of my account of the moral psychology of the warrior, since he himself has experienced military combat. Nonetheless, he finds my claim that a soldier should not intend to kill **THE** enemy to be implausible. His introduction of the case of capital punishment has made it clear to me that I need to qualify my view: an executioner surely must intend (that is, in my sense, want) the death of his victim. Since I do think that capital punishment can be justified in circumstances where there are no other effective means of containing a socially dangerous criminal, I cannot avoid admitting that *some* killing may be intentional.

But reflection on the case of capital punishment also moves me to wonder whether we should stop talking about ‘intention’ altogether, since it combines—and encourages us to confuse—three distinct elements: first, the choice to perform an act; second, the wanting or desiring an effect of that act; and third, the resolve to realise that effect. Hitherto, I have distinguished between choosing and intending, identifying intending with wanting. Thus, I have held it morally permissible to choose to perform an act, one of whose foreseeable effects is probably or even certainly another’s death, provided that one does not want (‘intend’) that death—that is, provided that the death is accepted with proportionate reluctance. However, since an executioner’s job is not complete until the criminal is dead, he *must* want that death. Therefore, we also need to distinguish different kinds of wanting: wanting in the sense of ‘delighting in’, which is morally forbidden; and wanting in the sense of ‘resolved upon’ with due reluctance.

Nevertheless, I still resist the claim that my premises commit me to regarding the soldier as an executioner. Defence and retribution are not alternative forms of justified killing. *Justified* defence is only and always defence *against an injustice* and therefore always has the form of retribution. By ‘retribution’ I do not mean ‘retributivism’, the doctrine that prescribes an eye for an eye, calling for a wasteland of equal suffering. Rather I mean it in terms of its etymological origin in the Latin verb *retribuere*, meaning a handing or paying back of what is due. ‘Retribution’, therefore, means simply an appropriately and proportionately hostile reaction to an injustice, and as such it is the basic form of all punishment. Through the basic form of this properly hostile reaction the purposes one aims to achieve remain to be determined and could be one or all of defence, deterrence, reform and reconciliation.

In *Christian* retribution these purposes will not include the suffering and death of the enemy as such.

As I understand it, therefore, justified war is retributive as a hostile reaction to the enemy's wrongful harms. However, the hostility should be proportioned to the ends at which it aims, and among these should *not* be the annihilation of enemy combatants *per se*. If it were, Marine A would have done no wrong; but because his retribution was disproportionate, he did do wrong. A just warrior is justified in using such force as is necessary to disable his unjust enemy, *even* if it is lethal. And the unjust enemy is liable to suffer necessarily lethal force on account of the wrong he does. Nevertheless, the just warrior is not justified in making the enemy's death (as distinct from his disablement) his aim. That is, he is not justified in intending his enemy's death, although he will very probably have to accept an awful lot more of it than a police marksman.

So where does this land me in relation to Simpson's four options. I remain unrepentant in denying that soldiers should intend to kill and so (politely) decline to bite his bullet. As a proponent of Christian just war thinking, I cannot take the first option and deny that war is retributive. And since I believe that the just soldier does encounter his enemy on the battlefield as a moral adversary, who is liable to retribution, I cannot take the third option and deny that moral reasons 'distribute'. According to Simpson, only one option remains, namely, to deny that death is the penalty that unjust warriors deserve. This is indeed the option that I take, holding that unjust warriors do not deserve death, although they are liable to it; and that just warriors ought not to intend it, but may deliberately cause it.

Such a position seems to me to be coherent, but I wonder whether Simpson would reckon it psychologically impossible for combat soldiers. Can they really be effective in battle and not delight in killing the enemy? I think that they can, for if not, it would be hard to explain why 'Marine A' deserves blame for what he did and why so many experienced soldiers blame him.

To Cecile Fabre on non-lethal threats, beneficent invasion, the sacrifice of citizens, proportionality, and the presumption against killing

I am pleased to note that Cecile Fabre and I agree on a number of points. We share equivocation over the introduction of a new category of *ius post bellum*: on the one hand, it is already logically contained in the criteria of right intention (of peace) and proportionality; on the other hand, in the light of the aftermath of the invasion of Iraq in 2003, it might be prudent to give it new prominence. We agree that a war can be unjust as a whole, and yet be just in part—that is, unjust *ad bellum* but just *in bello*. (I have no doubt, for example, that some Wehrmacht soldiers fought honourably in World War Two.) We agree, I think, that moral reasons 'distribute' (to use Tom Simpson's term). And she expresses "some sympathy" for my scepticism about determining proportionality.

Nonetheless, Fabre presses me to consider whether the "grave and unjust threats" to national institutions that, in my view, justify the defensive use of lethal force, must be themselves be lethal. I take it that the issue here is whether it would be justified to kill an unjust invader, who is not himself posing a lethal threat. The threat might rather be to subvert a democratically accountable government, limited by the rule of law and an independent judiciary, **AND TO REPLACE IT** with some form of arbitrary tyranny. I confess that I find it hard to imagine how such subversion could succeed without the *threat* of lethal force. (Russia's recent annexation of Crimea might have been achieved without much bloodshed, but it certainly was not achieved

without threatening it.) However, supposing it could be achieved without any lethal threat, it seems to me that, were it clear that the constitutional subversion would result in a gravely tyrannical regime (involving arbitrary arrests, torture, state terror, permanent disappearances, etc.), then that might constitute just cause for the defensive use of lethal violence. What about cyber-attacks? Insofar as these are merely institutionally disruptive, they should be met and deterred by a proportionate response—that is, by equal levels of cyber-disruption. However, were they, for example, to cause nuclear power plants to malfunction or the supply of electricity or water to fail, thus indiscriminately threatening civilian lives on a massive scale or directly causing widespread civil unrest, then that too might provide just cause for lethal self-defence. As for “systematic failures by the affluent to provide basic life-saving resources to the very needy”, were the plight of the very needy life-threatening and were it indeed caused by the affluent, then, given the moral obligation of the latter to apply their surplus to the needs of the former, such failures could also be just cause for the use of armed force. In all these cases, however, it is important to remember that just cause alone does not suffice to justify war.

Fabre puts a different kind of case, when she supposes an invasion that would actually improve a set of national institutions. The issue here is not whether one may offer a lethal defence against a threat that is not itself overtly or directly lethal. Rather the issue is whether one is justified in using lethal force to defend oneself against any foreign imposition **WHATSOEVER**. I think not. As I have said already, whatever the terms of international law and the assumptions of some applied philosophy, defence is not its own justification. Justified defence can only be against an unjust threat. If a foreign intervention *really would* improve one’s own institutions, then what would be unjust about it? The irritation of nationalist pride or the disturbance of existing power-structures might provide belligerent resistance with political support, but it would not provide moral justification.

A second question that Fabre poses is how to justify a state’s decision to sacrifice the lives of its citizens for the sake of resisting injustice. As a Christian, I cannot possibly take the Hobbesian option she presents, since I cannot recognise the natural right of individuals to do whatever it takes to avoid pain and death. On the contrary, I think that individuals find their fulfilment through investing themselves in the defence and promotion of what’s good, even if that investment should prove painful or even lethal. How could a disciple of the crucified Jesus suppose otherwise? Therefore, if a state’s belligerency is justified, its citizens are morally obliged to contribute to it—and if they will not volunteer, then they may be conscripted. By the same token, of course, if the belligerency is not justified, and if citizens could know that, then they are morally obliged to refuse participation.

Of all the challenging questions that Fabre raises, **THAT CONCERNING** my interpretation of the criterion of proportionality is the most important. Why do I think that the deontic requirements (just cause, right intention, legitimate authority, last resort) are more likely to decide a case than the prudential ones (probability of success, proportionality)? I accept that judgements about the deontic requirements are not always straightforward, but I do think that it is often clearer that those are being met than the prudential ones. For example, Fabre wonders how on earth we can rationally determine *the* intention behind the invasion of Iraq in 2003, given the large number of individuals involved in the decision-making process and the variety of their motives. I concede that the matter is a complex one, but I do devote ten pages of my book to constructing a rational determination (pp. 281-91) and Fabre does not make clear where she disagrees with this.

I do not hold that the prudential criteria can never be decisive. Indeed, they can be: when NATO was considering whether or not to intervene against the USSR in support of the Hungarians in 1956 **OR THE** Czechs in 1968, the risk of escalation to full nuclear exchange was rightly thought to count decisively against. So, in my view, it is not that the prudential criteria are toothless; it is just that they are very permissive. The late David Fisher was adamant that I am excessively sceptical about the possibility of rational deliberation about consequences, although (sadly) he never lived long enough to say anything that persuaded me to change my mind. I do not doubt the need to make sober estimations of what is likely to happen, if one goes to war, and to prepare for it as best one can. Nevertheless, one's best estimations always fall a long way short of control, and whenever one goes to war (or not) one takes risks. Moreover, the more one's national interest is invested in the war, the more rational it will be to take greater risks.

Fabre is astute to observe that my scepticism about rational and precise judgements of proportionality could serve to undermine my case for the justification of war in favour of pacifism. If we cannot know whether pacifism or just war is 'better', in terms of the prevalence of benefits over costs, then which is preferable depends largely on whether causing **SOME** to die is worse than allowing **OTHERS** to suffer grievous harm. Given a presumption against killing, that would seem to make pacifism preferable—unless I deny such a presumption. But in that case, how is my theory Christian at all?

First of all, I am aware that, having wrestled pacifism to a draw on prudential grounds, I found it difficult at the very end of my book to argue why one should prefer just war to it. The best that I was able to come up with was to say that history teaches us that grave political evil, when left unpunished, naturally tends to wax, and that in the 20th century we have witnessed the triumph of such evil over considerable parts of the globe. So I ended up making a somewhat weak prudential argument. To that I would now add that a world where atrocious injustice is allowed to rampage without effective contradiction, where law is impotent, is one where the innocent are bereft of hope. It is one where Auschwitz reveals the basic nature of things (at least, in this world).

Do I believe in a presumption against killing? I do not think I do. The Sixth Commandment prohibits murder, not killing. As a Christian, I believe that love is an absolute norm. I probably believe that an individual's death is always an evil. Therefore I believe that love will constrain from killing, except in situations of tragic necessity, and that even then it will permit killing only with reluctance. In a well ordered political society, moral permission to kill will be rare for a citizen, even for one charged with maintaining law and order. However, in war, it will not be so rare.

To Esther Reed on ideology-critique, empire, and international law

Comparing it with Augustine's account of Christian just war thinking, Esther Reed finds mine lacking in imperial ideology-critique. Of course, I accept that the declared motives and intentions of states or empires should not be taken at face value and deserve morally critical scrutiny. Accordingly, in my book I examined (and rebutted) Harold Pinter's and Michael Northcott's anti-imperialist critiques, respectively, of NATO's 1999 intervention in Kosovo (p. 228) and the Coalition's 2003 invasion of Iraq (pp. 292-4). However, if the motives and intentions of states deserve scrutiny, they do deserve *careful* scrutiny and not merely the application of political prejudice undisciplined by fairness, charity, or the empirical facts of the case.

How far Augustine's moral analysis of Roman empire in terms of *libido dominandi* or material greed is fair to the historical phenomenon, I must leave to the judgement of ancient historians. However, insofar as Augustine and his followers are inclined to think that all forms of 'domination' are wicked, I disagree, since I assume that the asymmetry of power is a constant fact of political and international life, that 'domination' is not the same as 'domineering', that some will always dominate others, that it is best to acknowledge this, and that the moral issue lies in what forms of domination are permissible and what are not, and why.

Moreover, it is either banal or untrue to say, as does Reed (paraphrasing, Augustine without demur), that "violence is at the core of earthly empire". On the one hand, this is trivially true in the sense that the threat and use of violence is basic to *any* political order and political peace among sinners—as St Paul acknowledged in Romans 13. On the other hand, it is importantly not true in the sense that being violent is what empire is always primarily about. Historically, empire has sometimes been centrally about the promotion of global trade, the emancipation of slaves, the liberation of women from forced marriage and honour killing and self-immolation, and the defence of civilisation against genocidal tyranny. Note: I do not say 'always'; I say 'sometimes'. We must judge the cases according to their merits.

As she finds me too uncritical of the 'loves' of Western powers (especially the U.S.), so Reed finds me too careless of the role of international law in holding dominant powers to account. For sure, I did not give this aspect equal weighting in my treatment, mainly because I felt the need to consider other, neglected truths. Nevertheless, I did take care to affirm the importance of the authority of the law. Thus, in the opening pages of the relevant chapter (6), I quote with explicit approval a passage from Robert Bolt's play, *A Man for all Seasons*, where Thomas More presents a cogent argument for affording the benefit of law even to the Devil himself—an argument that the good of political order is often worth the toleration of a measure of injustice. I also state that I consider that respect for the authority of law is very important for international trust, and that any state proposing to bend (or, less likely, break) the law should still show it the respect of making a case before the U.N. On that ground I think that the Blair government's attempt to secure a second U.N. Resolution on Iraq in March 2003 was absolutely right, and far better than the Bush government's barely concealed contempt for the U.N. So in the absence (probably fortunate) of a global state and to stave off international anarchy, I certainly and explicitly affirmed the authority of international law.

Nevertheless, I do think that the interpretation of what international law says inevitably involves particular moral-political views, and I think that that is far too little acknowledged by its advocates, who are wont to pretend that the law is unequivocal—that the meaning of legal Scripture is plain. Second, it seems to me quite clear that there are two ways, not only one, in which the authority of international law can be damaged: not only by its wilful transgression, but also by its presiding over mass atrocity. I observe that, of those who have responded critically to my views of international law since the publication of my book, not one has grasped this nettle.⁸

To Claus Kreß on international law

⁸ Paul Schulte appears to share my view, when he writes: "If bad regimes or non-state actors could enjoy complete immunity from military action ... their behaviours cannot be expected to improve. That is a major moral hazard and should be more often denounced."

As an authoritative witness against those lawyerly advocates who talk as if the meaning of international law were unequivocal, I welcome Claus Kreß's frank admission that the law in general is "rarely crystal clear" and that the law of the use of force by states "contains important ambiguities". I am also pleased to find that we share a common understanding of the rationale for the granting of equal legal rights to all combatants, regardless of the justice of their cause; and that, albeit by a different line of reasoning, Kreß confirms that a *bona fide* legal argument can (now) be made in support of the legality of unilateral humanitarian intervention under strict conditions.

I do appreciate why international lawyers would regard "with very considerable suspicion" a state's invocation of natural law to justify the transgression of positive law[**FULL STOP**] Human sinners, be they individual or collective, are always keen to invent pretexts for exempting themselves from legal constraints. Nevertheless, anyone who admits the possibility that a positive law might be unjust[**COMMA**] logically recognises a higher, moral law. And if what Martii Koskenniemi has written is true—that "most lawyers ... have taken the ambivalent position that [N.A.T.O.'s military intervention in Kosovo] was both formally illegal and morally necessary"⁹—then, whatever their initial suspicions, it is evident that even lawyers can come to recognise that some illegality is nevertheless moral.

Kreß presses me to specify what kinds of injustice warrant punishment by war. He does so, because he wants to see how far my conception of just war can be contained within current international law's concept of self-defence, whose limits are uncertain and so, for the purposes of legal argument, somewhat elastic. The question of what kinds of injustice warrant a belligerent response is moot and the answer will continue to develop in the course of the discussion of cases as they arise. Certainly I agree with the ICISS' report, *The Responsibility to Protect*, that just cause should be extended beyond genocide to include any "large scale loss of life" or "large scale 'ethnic cleansing'".¹⁰ But I am actually inclined to go beyond this to say that systemic state terrorism through torture—of the kind described in appalling detail by Justin Barozzi in his account of the activity of Saddam Hussein's Special Treatment Department¹¹—is sufficient just cause for regime-change. Just cause alone, of course, is not enough to make the moral case for going to war.

The main point, however, is that the defence that just war offers is defence of *the innocent, even within the borders of a sovereign state*, and not merely defence against another state's invasion of sovereign borders. At first glance, the terms of current international law seem amoral to the Christian just war thinker. Morally, to the just warrior defence is not necessarily just, nor aggression unjust. The invasion of a sovereign state's borders to defend the innocent against massive atrocity is just; the defence offered by a state guilty of the injustice of massive atrocity is unjust. Legally, however, the cause or intention is irrelevant. All that matters is peace between states, not justice within them. So any state that ruptures international peace by invading another is an illegal aggressor, while any state that resists invasion is a legal defender. On further reflection, however, current international law could have a moral rationale: namely, that the evils of inter-state war are so very great that *any* domestic injustice whatsoever should be tolerated rather than disturb the peace. Such a rationale may be controversial, but it is moral.

⁹ Martti Koskenniemi, "The Lady Doth Protest Too Much: Kosovo and the Turn to Ethics in International Law", *The Modern Law Review*, 65/2 (March 2002), p. 162.

¹⁰ Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), pp. 32-33, s.4.19-21.

¹¹ Justin Marozzi, *Baghdad: City of Peace, City of Blood* (London: Allen Lane, 2014), pp. 351-2.

The contextual interpretation of the UN Charter, which I offered in my book, sought to undermine such a reading of the international law on the use of force. It argued that those who composed the Charter and signed up to it in the aftermath of World War Two (surely) could not have intended to create an international system that would permit another Holocaust, should the next Hitler be careful not to threaten another state's borders, and should the next Stalin on the Security Council veto collective military action to stop it. Kreß judges, however, that my contextual interpretation “does not withstand critical scrutiny”, because there is no textual evidence in the *travaux préparatoires* to support such a reading of original intentions. If that is true, then I must accept it. Moreover, we must both accept that there here is a major point of disagreement between international law and Christian just war thinking.

Of course, the law on the use of force is not the only body of international law. There is also international humanitarian law and the relationship between the two is uncertain, providing some scope for narrowing the gap between law and just war morality. Still, my understanding is that, however they are read together, the two bodies of law still do not permit intervention to stop genocide and other crimes against humanity in the absence of Security Council authorisation.

This is where post-UN Charter state practice comes in. According to Kreß “hard State practice” (and “its weighty moral grounds”), together with the 2005 World Summit Outcome Document's explicit affirmation that a state has a duty to protect its citizens from crimes under international law, and with the principle of consistency, means that international law does now permit unilateral military intervention under certain conditions. What is interesting about this is that the morally grounded state practice, which Kreß now deploys as part of his legal argument in favour of unilateral intervention, was *illegal* when practised, since it comprises instances of unauthorised intervention which the international community has, in one way or another, tolerated as “both formally illegal and morally necessary”. The implication is that international law has developed by being forced to come to terms with morally justified transgressions, and **THAT IT THEREFORE** actually consists of the (belated) international recognition of the morality of formerly illegal acts. I wonder how international lawyers would account for this.

To Paul Schulte on international law, Christian specificity, horror and fate, the First World War, moral discrimination and *engrenage*

As it happens, this is precisely a point that Paul Schulte makes in support of my view, namely, that “law often advances through its violation”. He continues: “without previously controversial interventions, international law would not have developed its present qualified recognition of a responsibility to intervene and protect”.

Schulte raises large sceptical eyebrows at the specifically Christian terms of my discussion of just war thinking, commenting wryly: “An argument commending the determined punishment of wickedness by loving Christian warriors will encounter difficulties in the contemporary world”. Upon reading this, I can see how easily my view lends itself to caricature as sanctimonious and moralistic. But I do think that it *is* caricature and so does not do justice to what I mean by ‘love’ and ‘punishment’ or to the status of the just warrior as fellow-sinner. As for how “eccentric” the contemporary world will find my religious account, I am willing to take my chances. The “contemporary world” is not all of one irreligious mind and some of it is capable of being curious and discriminate about the unfamiliar. I accept that just war reasoning of my Christian sort will never be found wholly persuasive by everyone,

but that surely applies to any ethic. Nevertheless, it is true that the thinking about just war that developed in Latin Christendom does have close analogues, not only in the Islamic world, but also in the culturally more separate Confucian and neo-Confucian China.

Astutely, Schulte observes the contrast between, on the one hand, the restrained tone of the book cover of *In Defence of War* and, on the other, the Expressionist horror of war. He comments: “The difference in emotional tone is unbridgeable and part of the gap between British and German strategic cultures today”. That is an important point that deserves sensitive handling. All the same, I think it fair to note that I do take care to show awareness of the horror of war in the opening pages of my book. What is more, I explicitly acknowledge the element of tragedy that often attends the fate of unjust warriors, by referring to the deaths of the three von Blücher brothers on the same day in 1941 at Maleme in Crete. Nevertheless, I note that the permanent exhibition at Maleme’s *Deutscher Soldatenfriedhof* in 2003 spoke of war simply as a fate that had tragically overtaken the deceased. It discreetly by-passed the question of what young, armed Germans were doing descending from the skies onto Crete in the first place, and how, exactly, the Greeks, British, and Australians on the ground were supposed to respond to them.¹² I fully understand why contemporary Germans are disinclined to regard war in the heroic terms so familiar to Britons (and Americans) and I believe that the former have something to teach the latter. However, notwithstanding the cultural gap bequeathed us by our different national fortunes, I am confident that German friends would have little difficulty understanding my reservations about the amoral tale being told at their cemeteries. I do not think that the difference in emotional tone is unbridgeable, even if the difference is likely to remain.

Schulte carries his distaste for moral(ising) distinctions into my treatment of the First World War. Can just war thinking cope, he asks, with “**WARS WITHOUT** identifiable villains and heroes, ... driven by unwilled and unforeseen interactions”? Here he invokes Christopher Clark’s *The Sleepwalkers*, which argues that all sides in the Great War perceived themselves as fighting a necessary war of defence, and he likens critical moral appraisal to “a grossly delayed staff report written from another civilisation with the enormous condescension of posterity, in an act of intergenerational name-calling”. That is memorably and sharply put.

On the issue of culpability for the First World War, the first thing to say is that one has to disaggregate what one is judging. It makes no sense to ask who was to blame for the war as a whole. It does make sense, however, to ask whether Gavrilo Princip was justified in shooting Archduke Franz Ferdinand, whether Austro-Hungary was justified in attacking Serbia, whether Germany should have given the Austrians *carte blanche*, whether she should have invaded France and Belgium, and whether Britain was right to enter the lists alongside France.

Christopher Clark concludes his account of the war’s outbreak and escalation by saying that “[t]here is no smoking gun in this story; or, rather, there is one in the hand of every major character.... the outbreak of war was a tragedy, not a crime”.¹³ I think that this draws too sharp a distinction between tragedy and crime, making them mutually exclusive alternatives. Crime often has a tragic dimension. Human beings do

¹² More recently, in May 2013, I visited the German military cemetery at La Cambe in Normandy. There, too, the available literature spoke of the dead simply as victims of the dreadful fate of war. I do not dispute the role of fate; I merely protest against any acknowledgement at all of moral responsibility.

¹³ Christopher Clark, *Sleepwalkers: How Europe Went to War in 1914* (London: Penguin, 2013), p. 561.

make free moral choices, but our freedom is often somewhat fated by forces beyond our control. In addition, Clark assumes that because blame was widespread, it was shared equally. I disagree: the fact that blame's spread is wide does not make it even. Even if Britain can be criticised for not making her intentions clearer, the fact is that Germany launched a preventative war against France on a trumped-up pretext and invaded Belgium, whose neutrality she was treaty-bound to guarantee. Social Darwinism might think this natural, but Christian just war reasoning does not think it right. Just cause must consist of an injury, be it actualised or actualising, and Germany had suffered none.

Schulte is quite right to point out that the First World War was (even) more complex than my treatment of it admits. However, whereas he sees this as a reason to throw up his hands in ethical despair, I see it as a reason to get back to work and craft further refinements (or "tendentious distinctions"). Were the Austrians justified in defending their borders against the Italians but not against the Russians? Should the Turks not have defended themselves against their British and French invaders? I think that affirmative answers in both cases could be plausibly made, if carefully stated. Would admirers of the Austro-Hungarian empire and devotees of Ataturk **IMMEDIATELY** agree with me? Presumably not. But if contemporary Germans can admit—as Schulte thinks they probably would—that the invasion of Russia in 1941 was wrong, then self-critical Austrians and Turks might be open to my persuasion. A fruitful conversation, of course, would have to be a long and patient one.

Schulte is also right to observe that British belligerency was more morally ambiguous than I recognised in my book—in Africa, in Iraq, and in the blockade of Germany. To be fair, however, I was entirely candid in admitting that even a just war is only ever waged by sinners and, like any human enterprise, it is bound to contain elements of vice and wrong. In particular, I admitted that Field-Marshal Haig was, arguably, culpable for the inefficient and so disproportionate expenditure of his troops in 1916. So I made no claims to perfection on the part of British belligerency. But this does raise again the crucial—and difficult—question of when a vicious part so vitiates a war as to make it unjust as a whole. More work needs to be done on this, most fruitfully, I think, through the analysis of further cases.

In the end, Schulte concludes that it would be "grossly unrealistic and presumptuous" to propose "any sonorous formal alternative" to my just war analysis of Britain's belligerency in 1914-18. Instead, he offers his own judgement that it was "partially justified ... imperfectly conducted ... agonisingly costly, but unavoidable, and then unstoppable". The odd thing here is that his conclusion is not far at all from my own. The main difference is that, whereas I have exposed the reasoning **LEADING TO** my 'imperfect justification', the reasoning **LEADING TO** his 'partial justification' remains a complete mystery.

Lying behind Schulte's particular objections to my deployment of moral distinctions, I discern an admirable, humane sensitivity to the phenomenon of what he calls *engrenage*—the human condition of our being enmeshed in situations we did not choose and barely comprehend, where we are shaped by inherited culture and constrained both by the actions of others and by our own past. This is why he queries what is to be gained by "denouncing" those who were incapable of breaking out of their "cultural cage". What Schulte calls '*engrenage*', I call 'fate', and I refer to it in my book quite a lot. Indeed, I have already referred to it in this set of responses. I fully acknowledge the phenomenon, and if the tone of any of my moral judgements has been self-righteously, finger-waggingly denunciatory, then I **CAN ONLY** repent of it. Nevertheless, I do resist letting our common fatedness displace our moral

responsibility altogether—which is the temptation that draws Schulte. Take the following example. Social Darwinism was much in the cultural air of Europe in the run-up to 1914, and the chiefs of the general staff in both Berlin and Vienna had inhaled it deeply. Can they be blamed for so doing? Yes, I think that they can, for two reasons. First, Social Darwinism’s view of human motivation is cynical and degrading, and its social and international implications are amoral and dangerous. Second, not inhaling was possible, because many pre-war Europeans managed to avoid it.

It occurs to me that it might help readers who react allergically to my decisive moral judgements, if I were to explain that I usually imagine myself in the shoes of those burdened with making decisions. Decision-makers have to decide, often in a fog about facts and effects, often under pressure of time, whether to act or not to act, and whether to do this or do that. They do not have the luxury of dithering. They, like the rest of us, are fated. As Prime Minister Joseph Chamberlain commented early in 1900, while deliberating about imperial policy in South Africa during the Anglo-Boer war: “We have to lie on the bed which our predecessors made for us”.¹⁴ Just so. But lying there did not relieve him of the responsibility of making decisions, for some of which he might be morally culpable. What is to be gained by subjecting his decisions or those of his successors in 1914 to moral analysis **AND CRITICISM**? Not at all, the ugly pleasures of moral superiority over those who cannot answer back; rather, the development of realistic norms and wisdom to enhance the moral intelligence of today’s international and military agents—and of those who would hold them accountable.

¹⁴ G.H.L. Le May, *British Supremacy in South Africa, 1899-1907* (Oxford: Clarendon Press, 1965), p. 57.