

Contemporary Just War Doctrine: A Critical Comparison of Theological and Philosophical Proposals

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Introduction

Few things are as harrowing, disturbing and heart-wrenching as war and violence. And few things are as difficult and important to argue about. The last ten-plus years have seen many new contributions to an ongoing debate about ‘the ethics of war’. Not only do the post-9/11 wars and their manifold offspring demand sustained argument. Political philosophers and theologians have also quite vocally taken sides based on their systematic reflections.

Especially in the United States scholars refer to ‘the Just War tradition’ and its key figures Augustine and Aquinas.¹ In Europe the point of contention tends to be the legitimacy of war and intervention.² Debates revolve around international law, its appropriate interpretation and the correct functioning of institutional mechanisms. Equally audible from both sides of the Atlantic are the voices of postmodern and leftist thinkers looking for alternatives to the violence of capitalism and empire.³ So there is a variety of traditions with something to say about justice and war rather than one ‘Just War tradition’.

At the same time, in terms of ‘normativity’, a real shift both towards and away from religion is taking place. *Towards* religion as the ‘warriors on terror’ as well as other

¹ Jean Bethke Elshtain, see below Ch. 1.; the Iraq War as a “clash of civilisations”: James Turner Johnson, *The War to Oust Saddam Hussein* (Lanham: Rowman and Littlefield, 2005); *Augustinian Just War Theory and the Wars in Afghanistan and Iraq: Confessions, Contentions and the Lust for Power*, ed. by Craig J. N. de Paulo, Patrick A. Messina and Daniel P. Tompkins (New York: Peter Lang, 2011)

² “*What We’re Fighting For...*” – *Friedensethik in der transatlantischen Debatte*, ed. by Gerhard Beestermöller (Stuttgart: Kohlhammer, 2006) ; *Political Practices and International Order*, ed. by Stefan Heuser and Hans G. Ulrich (Berlin: Lit Verlag, 2007)

³ Michael S. Northcott, *An Angel Directs the Storm: Apocalyptic Religion and American Empire* (London; New York: I. B. Tauris, 2004); *Evangelicals and Empire: Christian Alternatives to the Political Status Quo*, ed. by Bruce Ellis Benson and Peter Goodwin Heltzel (Grand Rapids: Brazos Press, 2008); Néstor Oscar Míguez and Joerg Rieger, *Beyond the Spirit of Empire: Theology and Politics in a New Key* (London : SCM Press, 2009); Judith Butler, *Frames of War* (London: Verso, 2009)

‘interventionists’ pointed at their faith, variously defined, whilst gathering support within established and evangelical churches. Meanwhile, philosophers turn to Christianity in the search for logical, ontological and normative sources.⁴ But there has also been a shift *away* from religion as human rights are increasingly shorn of their metaphysical, historical and ‘particularist’ elements.⁵ According to this view, human rights are part of a universal moral language that does best without religion. With the *Zeitgeist* pulling in these contrary directions, it seems the Enlightenment’s stipulation that faith and reason are divided continues to create different camps and tensions.

The question at hand

Taking the Enlightened juxtaposition of faith and rational ethics as a tentative starting point, the following pages will for the first time critically analyse five very different approaches to war and investigate whether and how a Christian perspective changes the ethics of war today. Three contemporary Christian and two philosophical authors will be juxtaposed to see how they contrast, relate to each other or even repeat each other’s assumptions. The aim is two-fold. On the one hand, it is to make these authors engage with their opponents and with arguments they would frequently dismiss as non-starters. In that sense this bridge-building exercise puts its foundations on both sides of the river – contemporary theology and philosophy. But the point is not to list the differences between, for example, a secularist libertarian like Uwe Steinhoff and a Christian neoconservative like Jean Bethke Elshtain. The originality of any comparison can only lie in finding ‘the proportion of similitude, i.e. partly

⁴ Alain Badiou, *Saint Paul: the Foundation of Universalism* (Stanford: Stanford University Press, 2003); Pope Benedict XVI and Jürgen Habermas, *Dialectics of Secularization: On Reason and Religion*, transl. by Florian Schuller (San Francisco: Ignatius Press, 2006); John Milbank, Slavoj Žižek and Creston Davis, *Paul’s New Moment* (Grand Rapids, Mich.: Brazos Press, 2010)

⁵ See below David Rodin and Uwe Steinhoff in Chs. 4 and 5; *Just War Theory: A Reappraisal*, ed. by Mark Evans, (Edinburgh: Edinburgh University Press, 2005)

sameness, hidden under the greatest dissimilarities.’⁶ Hence, the chapters below will systematically analyse the inner logic of different Just War proposals. This will allow us ‘to discover a commonality in the difference and thus prove that what is at first sight irreducibly different is in fact the same.’⁷ On the other hand, this project is part of a wider debate that tries to uncover current possibilities of meaningful, good and effective political action. Can contemporary ethics of war, both Christian and philosophical, actually live up to their own standards and successfully limit violence and suffering? Are meaningful politics possible? And what is the viable next step forward? This comparative project is driven by the desire to provide some answers to these important and complex questions.

Politics and Christian morality – different combinations

But how does one compare apples and pears? Here several intertwined levels will play together. First, I have chosen five authors with quite diverse understandings of how Christian morality and politics should relate in the first place. The core arguments of these thinkers range from Jean Bethke Elshtain’s assumption that secular civil ethics are compatible with ‘theological categories’, to Oliver O’Donovan’s very different assumption that theological ethics must be firmly located within the church. I also introduce a decisively rationalist, even anti-religious author (Uwe Steinhoff) as well as an author who appeals to the Western Just War tradition but allows the sphere of Christian morality to remain an open question (David Rodin). So there is a variety in terms of how the ‘dividing line’ between Christian morality and politics is conceived. In that regard the thesis makes a circular movement. It begins with a separation between political ethics and ‘sectarian’ theology and moves on to transformation, the idea that Christian morality transforms political ethics. The third and

⁶ Stephan Grotz, *Negationen des Absoluten. Meister Eckhart, Cusanus, Hegel* (Hamburg: Felix Meiner Verlag, 2009), p. 12.

⁷ Ibid.

central chapter introduces ‘ethics’ as sublated in the praxis of faith. Finally, Part II will again present two modes of separation. However, this separation is never as neat as it seems. Even where Christian ethics of war – a reflection on the reign of Christ, the Prince of Peace – fall behind the horizon of modern ethics, I will show that they return in a renewed fashion. In liberal modernity, each individual is a ‘prince of peace’. I will expand this idea below.

Comparing practical ethics – idealisms and realisms

On the second level, the exposition of each chapter will be devoted to ‘practical ethics’ and introduce each author’s concrete ‘Just War theory’ or ‘proposal’.⁸ However, I will not merely examine various tick-box lists of ‘Just War criteria’, although these occur. The ‘ethics of war’ are always developed with a scenario of their application in view, even if a hypothetical one, in which one says: “Here the use of violent force is justified”. With this in the background, my approach will be phenomenological and follow a dividing line that contemporary authors themselves draw: that between Just War realism and idealism.

Just war realists initially cast their lot in the sphere of the Is, of politics ‘as they are’. What matters primarily is the factual, political situation. This is closely related to a duty of power preservation and sovereign defence. In the tradition of Hobbes and Machiavelli, but equally invoking the liberalism of Fichte and Locke, realists prioritize the essential and natural right to individual or national self-defence within and against a violent ‘state of nature’. This ‘state of nature’ is understood as a fundamental reality in the international sphere and, without positive state institutions, a continuous threat to order in the domestic sphere. The catch-phrases of realists, one could say, are ‘politics’, ‘defence’ and ‘necessity’.

⁸ I will be using the tautology ‘violent force’, analogously to the German *Gewalt*. It comprises “force” as justified, legitimate, public, even surgical, but it retains the disturbing, harmful and ultimately unjustified aspect indicated by ‘violence’. For a conceptual analysis of ‘violence’, see also C. A. J. Coady, *Morality and Political Violence* (New York; Cambridge: Cambridge University Press, 2008), pp. 21-43.

Just War idealists, in contrast, take the decisively Kantian route of moral reason. They prioritize the universal, inviolable *value* of each individual above and beyond their political settings. And this has global repercussions, for example entailing the cosmopolitan vision of a global political order, a vision extracted partly from Kant's *Perpetual Peace*. It is tied to the notion of an immanent progressive current that flows in the direction of the full recognition of a universal, if not peaceful, then at least regulated, legal system of justice. Although appealing to universal human rights, idealists may draw on the theological theme of God's equal love for each individual and find precedents in Aquinas and Dante. The catchphrases of idealism, one could say, are 'morality', 'pacification' and 'freedom'.

However, these distinctions are not quite clear-cut and, as such, remain sterile categories. Instead, modern realists may appeal to universal human rights and deny any tendency to militarism, whereas idealists will argue that their cosmopolitan vision may still be realistic. In other words, each Just War proposal represents an attempt to reconcile these positions and so suggests its own 'realistic utopia'. From this angle it is clear that thinking about war is never a singular 'third way' between a putative Machiavellian 'amoralism' and pacifist 'idealism'.⁹ The ethics of war fans out into a variety of idealist and realist directions and nuances. The interesting challenge is therefore to figure out how exactly the two directions of thought are separated or combined.

In this regard the chapters ahead also come full circle. Beginning with a realist proposal, I next introduce the notion of 'transformism', the idea that there is a third way between idealism and realism. The central chapter investigates the possibility of idealism and realism being transformed and sublated in a practical, theological proposal. Part Two,

⁹ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), pp. 3-16; Roland Bainton's classical distinction is between pacifism, crusading and just war. R. John Elford, 'Christianity and War', in *Cambridge Companion to Christian Ethics*, ed. by Robin Gill (Cambridge: Cambridge University Press, 2000), pp. 171-182.

dedicated to philosophical Just War ethics, first looks at a secular idealist. The final author is again a realist.

The ethics of war through the lens of Christ and other mediators

The third level forms the analytical section in each chapter. It takes each practical proposal and locates it in its wider theological and dogmatic context. Within their assumptions about how Christian morality and politics are combined, every author's idealist or realist-leaning "realistic utopia" here is held up before a theological backdrop.

This implies two preliminary assumptions. The first one is that I take every author to be a theologian, in the sense that they relate themselves to the Christian tradition. As Karl Barth says: 'There is no philosophy that is not to some extent also theology.'¹⁰ Such a theology may be vastly off the mark of orthodoxy by presenting another 'object' of divinity. Or it may be the surprise cameo of an old orthodoxy in a new form. Incidentally, all authors I look at here connect their work to a certain understanding of the nature of Christianity. Secondly, the differentiation between ethics and dogmatics is neither that of an identity – the Trinity *is* 'impractical' – nor that of a complete separation, which is what a categorical differentiation between 'political ethics' and 'religion' might suggest. Every Just War proposal, indeed every *act* represents a reality, a truth or untruth about humanity in relation to God. This can be a positive relation or an atheist denial.¹¹ Christoph Schwöbel explains the connection between truth (and faith) and moral praxis as follows:

¹⁰ Cp. Karl Barth, *Evangelical Theology: An Introduction* (London: Collins, 1965) pp. 9-10.

¹¹ Rowan Williams, 'Introducing the Debate: Theology and the Political', in *Theology and the Political: The New Debate*, ed. by Creston Davis, John Milbank and Slavoj Žižek (Durham: Duke University Press, 2005), pp. 1-3; Stanley Hauerwas, 'On doctrine and ethics', in *The Cambridge Companion to Christian Ethics*, ed. by Colin E. Gunton (Cambridge: Cambridge University Press, 1997), pp. 21-40; Karl Barth, *Church Dogmatics*, ii, pt.2, p. 518; Oliver O'Donovan, 'Good without God? A Christian Philosopher probes the foundation for Ethics' <<https://www.youtube.com/watch?v=F3VEMI9cnyY>> [accessed 15 August, 2012]

Every *locus* of dogmatics has an ethical *pointe*, an ethical *Sitz im Leben*, because the faith that is explicated in dogmatics is the basic orientation of the Christian life. ... Every ethical concept has dogmatic premises, has a dogmatic *Sitz* in faith, because the life this concept describes has its basic orientation in Christian faith. Hence the difference between ethics and dogmatics concerns methods, perspectives and performances, but not content.¹²

Bearing these two preliminary assumptions in mind, my analysis can be understood as an in-depth, comparative theological reflection on practical ethics.

The core insight at the centre of the analysis is the notion of mediation between opposites. The greatest conceivable mediation is that between humans and the divine. How can they be brought together? How can they be reconciled? Already a problem in classical antiquity, especially for Plato, mediation is central to Christianity. Here Jesus Christ is the single and unique mediator between God and humankind. (1 Tim 2:5) The mediator is the Word, but not merely as an in-between – it is God himself, the ruler over this world. This mediation is peaceful as God is ‘the Prince of Peace’ (Isa 9:6). For Christians, he is the ‘peace, who has made the two one and has destroyed the barrier, the dividing wall of hostility’ (Eph 2:14). Here all opposites fall together. This identity of Is and Ought, of the real and the ideal, is unique, divine and sacred. Nicolaus of Cues would call Christ the *coincidentia oppositorum*, the *medium absolutum*. The Russian philosopher Vladimir Solovyev writes: ‘The mystery of God’s humanity revealed in Christ – the personal unification of the perfect divinity with the perfect humanity – is not only the greatest theological and philosophical truth; it is the nodal point of world history.’¹³ This nodal point then defines the connection between the ultimate and the penultimate, between the historical

¹² Schwöbel, *Gott in Beziehung*, p. 165. ‘Jeder *locus* der Dogmatik hat eine ethische Pointe, einen ethischen *Sitz im Leben*, da der Glaube, der in ihr expliziert wird, die Basisorientierung des christlichen Lebens ist. ... Jeder ethische Begriff hat dogmatische Voraussetzungen, hat einen dogmatischen *Sitz im Glauben*, da das Leben, das er beschreibt, in der Basisorientierung des christlichen Glaubens begründet ist. Darum bezieht sich die Differenz zwischen Dogmatik und Ethik auf die Methoden, die Perspektive und Durchführung der Darstellung und nicht den Inhalt.’

¹³ cit. in Wilhelm Blum, *Wirklichkeit des Lebens: vom Wesen der dialektischen Vermittlung in Politik und Religion* (Rheinfelden: Schäuble, 1985), p. 133.

and the eternal, the universal and the particular, the finite and the infinite. It defines what is necessary and what is contingent, and it connects the subjective with the objective. But Christ is a unique *paradox*, both as God and man, the one whose Kingdom is both here and not yet fully here. God rules all over the world (Ps 103:19), and yet his ‘kingdom is not of this world’ (John 18:36). In the *Confessions* Augustine already mentions Christ the mediator in his search for someone to reconcile him to God.¹⁴ But in the *City of God*, it marks the beginning of his substantial narrative of that city. Christ, he says, mediates between what one is and what one is to become:

Here then is the Mediator between God and men, the man Christ Jesus. For inasmuch as he is man, he is the Mediator, and as man he is the way. If there is a connecting way between the striver and the goal towards which he is striving, he has hope of reaching it; but if there is none, or if he has no knowledge what way to take, of what avail is it to know the goal that he is to reach? Now the only way that is completely proof against mistake is the way created when the same person is both God and man, God being the goal and man the way.¹⁵

Hence, faithful Christian ‘ethics’ can only be thought through this point. The paradoxical mediating unity of political and spiritual in Christ challenges all categorical *separations* between Is and Ought as well as ‘realism’ and ‘idealism’ – they can only be a *problem*. In that sense, every ‘realistic utopia’ raises and answers the question of mediation.

As an analytical horizon the Christian notion of mediation puts into context any alternative claim to embody an identity of Is and Ought, or what Augustine called ‘false mediators’.¹⁶ In political thought such an identity can be claimed for a historical, perhaps revolutionary moment. It can be claimed by mythologized sovereign states, a theocracy, or an existing international order. This kind of identity also lies behind the more subtle claim that political justice and divine love go neatly hand in hand. A Christological analysis is therefore

¹⁴ Augustine, *Conf.* x, xlii-xliii.

¹⁵ Augustine, *De Civitate Dei* (DCD), Bk. XI, Ch. 3.

¹⁶ *Conf.* x, xliii.

not merely a negligible aspect of political ethics. Understanding the relationship between the two natures of Christ is a vital exercise. Equally important as well is gaining an understanding of the two elements in the Kingdom of God, defined as both the world and ‘not of this world’. These complex relationships are crucial in understanding how the political and the spiritual, and therefore how the political and the moral cohere or clash.

In the analysis of each chapter this framework will be applied to three focal points: the political agent, action and reality. The relationship between the moral and the political will raise questions such as: what is the nature of ‘political reality’ if ‘Christ’s reign’ is thought to be a beatific vision at the end of times? What is the nature of political action, specifically war, once an ‘ethic of Jesus’ is considered impractical, except for a pious few? What is the primary body politic – the church as a ‘political society’ or the state? What is their nature? And how does that reflect the understanding of ‘legitimate authority’ to use violent force? Structurally, the chapters will then reflect the moments of identity or separation between the spiritual and the political in each instance.

Classical occidental dialectics – the working-out of this mediation – from Plato to Hegel found their fulfilment in the Christian faith.¹⁷ Augustine’s refutation of alternative ancient philosophers as well as their integration into a Christian whole represents a seminal moment in which philosophy is sublated, or integrated and transformed by theology. His doctrine of the Two Cities – and therefore the working out of how the ‘secular’ political relates to ‘Christian politics’ – are major reference points for the Christian authors I introduce, all of whom have been associated with a modern ‘Augustinianism’. Nevertheless, although he will figure in the background of the analysis here, this project is not about Augustine, or about ‘Augustinianism’.

¹⁷ Blum, *Wirklichkeit des Lebens*, p. 134.

Modern Christian ethics are deeply influenced by the paradigmatic shift inaugurated by Kant. Envisioning religion within (or rather wholly outside) reason, Kant pushes the Christ-event completely beyond the horizon of 'ethics'. This distancing is clear, whether the Christ-event is seen as a possibility or a fiction. Kant still required Jesus as a moral ideal and teacher, but after him the sphere of 'religion' eventually became an add-on, a possible spiritual dimension to practical reason. Morality had to stand firmly on its own feet in 'splendid isolation'.¹⁸ God became a functional item to demonstrate or reassure whatever is morally already known. 'Revelation' is then either forever past, the (hi)story of the man of the 1st century; or it is forever in the future, an (il-)logical possibility at best. As the re-location of the Christ-event questions the fundamental Chalcedonian unity of God and humanity in Christ, divine mediation becomes both a neglected and contested field.¹⁹

After Kant, Nietzsche saw correctly, theology returns in a modified, perhaps even intensified fashion. According to Nietzsche, Kant actually re-locates Christian 'ideals' or rather the Christian tenets of faith in a rational, immanent modus. But once declared reasonable, they become irrefutable by reason. As Nietzsche says: 'the concept "true world," the concept morality as the *essence* of the world ... were, thanks to a subtle and wily scepticism, once again, if not demonstrable, at least no longer *refutable*.'²⁰ With Christ the divine mediator pushed to a distant horizon, the gaze falls onto the human and his reason as the locus of ultimate mediation. Theology is *summed up* or sublated into anthropology. Augustine's theology had sublated Platonic philosophy and this is now reversed: theology-as-anthropology is the heart piece of political ethics. Now individuals are the 'princes of peace',

¹⁸ Bernd Wannewetsch, *Political Worship* (Oxford; New York: Oxford University Press, 2009), p. 47.

¹⁹ Christoph Schwöbel, *Gott in Beziehung* (Tübingen: Mohr Siebeck, 2002), p. 259 f.; Martin Wendte, *Gottmenschliche Einheit bei Hegel: Eine logische und theologische Untersuchung* (Berlin, New York: Walter de Gruyter, 2007), pp. 4-10.

²⁰ Friedrich Nietzsche, *The Antichrist*, transl. by Anthony M. Ludovici (Amherst, N. Y.: Prometheus Books, 2000), § 10, p. 12.

ends in themselves and moral standards.²¹ Hence, the philosophers' ethics of war investigated here are tied to the effective recognition and protection of human rights. Christian ethicists, I argue, in so far as they operate within the modern paradigm, may equally, though inadvertently accept this.

The chapters below will proceed in a circular direction also at this level: beginning with a modern theological dualism that neglects Christian mediation, it moves to a Hegelian Christology. This discovers a transformative potential in the possibility that Christian love may incarnate itself in different philosophies. Part I culminates in an exegetical approach to the Christ-event, with ethics disclosing a divine order itself. This central chapter introduces a Just War proposal and dogmatic account grounded in a biblical exegesis and closest to Augustine's notion of mediation. Part II presents two variations on the post-Kantian paradigm as understood by Nietzsche. They will be related back to the beginning chapters.

Different dialectics

On a fourth, perhaps more abstract level, the Christological horizon is tied to an essentially Hegelian analysis of each author's conceptual architecture, which means bringing out the inner necessity and logic of their vision. Hegel may not be the answer to modern Christian theology's questions. But certainly he is one way to *ask* them. On this level it is shown that in so far as other mediators take the place of the Christ-mediator, significant problems in terms of war and conflict arise. A dialectic or logic of separation, identity and continuity between

²¹ Similarly on Nietzsche Hans Blumenberg, *The Legitimacy of the Modern Age*, transl. by Robert M. Wallace (Cambridge, Mass.: MIT Press, 1985), pp. 105, 140. On progress as the secularized version of eschatology, see Karl Löwith, *Weltgeschichte und Heilsgeschehen* (Stuttgart: Kohlhammer, 1990); very similar to the present project is Milan Babík, 'In Pursuit of Salvation: Woodrow Wilson and American Liberal Internationalism as Secularized Eschatology' (unpublished D.Phil. thesis, University of Oxford, 2009).

the real and the ideal takes hold.²² First, states, wars or realities are idealised, but kept separate from a transcendent ‘utopia’. Conversely, ideals may require realisation or institutional instantiation over against realistic aspects of politics. Second, however, both approaches share the logic of the excluded Other which returns in an unmediated confrontation. This entails antagonistic, potentially unrestrained war. So the modern, ‘pluralistic’ state, which seemingly incorporates all religions, actually confronts ‘sectarian’ religion as much as ‘religious fanaticism’. In the same way, the progressivist vision of a juridified global order wants to incorporate the defensive rights of all states and individuals. But then the antagonism of war, indeed history itself, confronts us as a tragic phenomenon. Third, the initial real or ideal eventually collapses into its own opposite: the benevolent empire of realists becomes utopian, whilst idealist utopianism has to become imperialism. On these logical grounds, then, the comparison detects echoes and assonances between the authors as it maps them on to a field of a shared *theo-logic* of Western intellectual evolution.

In this respect two remarks are necessary. One concerns the prominence of Kant’s Copernican turn in my analysis. This focus can neither replace an adequate appreciation of the history of Just War thinking, nor could it possibly do justice to a genealogy of modernity. However, Kant is the most important point of reference for the ethics of war I am looking at, whether for cosmopolitan inspiration, epistemological grounding or as the intellectual opponent who writes the rules of engagement. It is always from within this *Zeitgeist* that authors appeal to Hobbes, Aquinas or Machiavelli.

The other remark concerns the relationship between Just War thinkers and actual events. Otto von Bismarck is known for a famous remark: ‘People never lie as much as before an election, during a war, and after a hunt.’ Inevitably there remains a gap between the present thinkers’ moral framework and the politicians’, because those at war act upon their

²² See especially Hegel, *Wissenschaft der Logik II* (Frankfurt: Suhrkamp, 1986), p. 64 f.; Justus Hartnack, *Hegels Logik: Eine Einführung* (Frankfurt am Main : P. Lang, 1995)

own convictions from within their own situation. To investigate what actually happened is a moral, but also political-criminal, and historical task that has been beyond the scope of the present investigation. At the same time, strong affinities between intellectual history and actual history are recognized. In this respect, Just War thinkers, standing at varying distances from actual events and each other – supportive, critical or contrarian – bear witness to historical contingency itself, the possibility that history always could have taken an altogether different path.

Summary of chapters

After this short introduction to the somewhat abstract concepts which structure my analysis, the layers of thought and the circular movement of the overall project, what remains is to sketch the sequence of the chapters to follow.

Part One is dedicated to contemporary Christian ethics. Chapter 1 looks at Jean Bethke Elshtain, who argues that a realistic political ethics need not be ‘sectarian’, whilst ‘theological categories’ can be deployed. She passionately defended the Bush government’s ‘just war against terror’ on the grounds of an Augustinian realism. However, I argue that rather than by Augustine, her proposal is sustained by a modern Marcionite dualism in the tradition of Carl Schmitt, Nietzsche, and anti-revolutionary conservatism. This becomes visible in the difference between an ‘ethic of Jesus’ and a future reign of Christ. In terms of conceptual logic, the theological dualism between the politically real and the moral ‘ideal’ – a failed mediation – leads to the politically real being idealised. So whilst a Hobbesian ‘state of nature’ is severed from Christian ‘utopia’ or any ‘idealism’, the occasion of national-defence and a human rights-order as the extension of the state becomes a quasi-revolutionary moment. Rather than finding Christ the ultimate mediating agent here, we find the liberal-

constitutional state, whose dictatorial means in the ‘state of exception’ mark a ‘strong form of sovereignty’. National defense and benevolent empire is equated with neighbour love, whilst Just War thinking as an account of statecraft gains a polemical slant.

Chapter 2 looks at Paul Ramsey. His work comprises two movements of thought. The arch of his intellectual development begins at the idealist end of the Just War spectrum and ends at the realist extreme. Practically, his analysis begins with pacifism and culminates in the ‘realistic’ support for the Vietnam War. These poles mirror the same dichotomy as Elshstain’s approach. Yet roughly in the middle of his career he argued that a Christian ethic transforms the ‘ordinary’ doctrine of war between humanitarian idealism and the realism of national defence. Here, Ramsey’s theological dualism, forming the arch of his thought, is interrupted by an agapist or ‘transformist’ motive. *Agape*, a Christ-like sacrificial love is a genuine breaking-in of a supernatural paradoxical horizon that can shake the foundations of the ‘world of systems’. Dogmatically, *agape* is antinomian and incommensurate with the world. This is tied to philosophical idealism: the possibility of ultimate, divine mediation between ‘the secular’ and God is now understood as a continuous possibility in history. Both because of this and *agape*’s formlessness, Ramsey fell back into the dichotomies of Christian realism as identified in Elshstain’s proposal. Nevertheless, it is argued that Ramsey provides the grounds for a genuinely Christian ethic of war and corrects most of Elshstain’s errors.

The third and final chapter of Part I is also the central chapter of the thesis. Oliver O’Donovan, who biblically fleshes out Ramsey’s transformist starting point, incorporates ethics into theology. His alternative to the idealism-realism divide is the political – agent, action and reality – grounded in the recognition of the Christ-event. Rather than taking sides, however, O’Donovan critically explicates the meaning of ‘Just War’-thinking in the light of Christ’s mediation. A singular eschatological paradox, it fuses the spiritual and political at the heart of the Gospel; any dualities are seen as a ‘pericardium’. O’Donovan then maps out an

intricate dialectic between the Old age of “secular” politics and the new politics of the gospel, between (political) Is and a moral (spiritual) Ought. The notion of political authority is developed through the dialectic between the old Israel and the church understood as a complex political society. The act of reconciling judgment relies on faith governing the intricate connection of law and love. ‘Political reality’ is defined through the (teleological) tension between evangelical peace and the natural law and order of the international sphere, understood positively.

Part II will turn to two philosophical authors. The first author, in Chapter 4, is David Rodin, who regards himself as an idealist. He critically examines the legal right to national-defense and shows that it is incoherent. He thinks the protection of human rights would be most effectively achieved by a universal state based on the Kantian *ius cosmopolitanum*. Nevertheless, Rodin has little ethical advice to offer for those concerned with aggression and violence in the world as it is, since he is altogether critical of what he takes to be the ‘Just War theory’. Dogmatically, Rodin’s ultimate mediator between morality and politics is not the state, but international law. I will then argue that conceptually Rodin introduces a renewed, though possibly more violent papacy into the discussion of just war. Instead of participating in Christ’s universal law of love, he suggests realising an immanent cosmopolitan ideal against sovereign states. This presents the exact counter-position to Elshtain. But because both Rodin and Elshtain subscribe to the same logic of immanent mediation, I argue that Rodin’s position is in the end fully compatible with Elshtain’s and can collapse into the same imperialism.

Uwe Steinhoff, the final author, proposes a liberal and rationalist realism, a Machiavellianism for everyone. Unlike Rodin, he rejects idealistic suggestions about how to end conflict and aggression. Instead, he investigates the conventional restraints on the human right to self-defence, arguing that certain limiting conventions may be violated in a ‘state of

exception'. Both terrorism and torture are moral possibilities. In the analytical section, I show how Steinhoff separates realistic politics from Christian, or indeed any substantial morality. Here the rational, individual rights-holder mediates between Is and Ought, between political reality and the success of their individual projects. Viewed dogmatically, Steinhoff begins his analysis from the same human rights perspective as Rodin, but he may be read as a secular analogy to the Radical Reformation. At the same time, I argue, Steinhoff's proposal is very compatible with Elshtain's, even though this may not seem obvious at first glance: his insistence on natural individual revolutionary rights represents the counterpart to her constitutional sovereign state. Moreover, following again the dialectic of failed Christological mediation, his idealising of the real ends up with a comparable liberal imperialism.

Finally, I will conclude this work by connecting it to some pressing problems in contemporary politics and warfare. Recapitulating the differences between theocentric and anthropocentric logics of mediation, I will argue that a specific understanding of the political is required in order to allow for political freedom and peace to take hold.

PART I – Christian ethics of war

Jean Bethke Elshtain's 'Augustinian realism' – the dualism and dialectic of American empire

Jean Bethke Elshtain (1941 – 2013) was neither a philosopher nor a theologian. As she put it in her introduction to her Gifford Lectures of 2006, 'What I do is political theory with ethics as the heart of the matter.'²³ According to her university staff profile, her 'task has been to show the connections between our political and our ethical convictions.'²⁴ So why begin an examination of Christian Just War theory with her work? Elshtain offers a particular constellation of politics and Christian morality. She bemoans the 'loss or distortion of central theological categories'²⁵ and talks of the 'theological categories of faith' which can be 'deployed' to understand and react to a particular political, historical event. (JWT, 120-121) Whilst in 2003 she insisted on her Lutheran background, she also admiringly cited John Paul II. In 2011 she was received into the Roman Catholic Church.

²³ Jean Bethke Elshtain, *Sovereignty: God, State and Self* (New York: Basic Books, 2008), p. ix. Hereafter: *S*.

²⁴ The University of Chicago, Divinity School, Faculty staff website
<<http://divinity.uchicago.edu/faculty/elshtain.shtml>> [accessed 10 July 2012]

²⁵ Jean Bethke Elshtain, *Just War Against Terror: The Burden of American Power in a Violent World* (New York: Basic Books, 2004), p. 113. Hereafter *JWT*.

Elshtain was raised and educated in Colorado and Wisconsin, United States, and is currently professor of social and political ethics at the University of Chicago. In 2003 she rose to the consciousness of the Just War debate, when she published a sweeping, polemical defence of the American 'War on Terror' entitled *Just War Against Terror: The Burden of American Power in a Violent World*. Appended to the book was 'What We're Fighting For: A Letter from America',²⁶ a philosophical pledge of support to the Bush government.²⁷ Apart from being invited as a 'religious leader' to counsel George W. Bush, the president also appointed her to the Council of the National Endowment for the Humanities.

Following the aggressive attack on America on September 11, goes her argument, the sovereign state was responsible and had the right to military defence of the public order. Beyond that, she argues that the global protection of human rights is part of the American national interest. After 9/11, national defence and America's benevolent imperial engagements in Afghanistan and Iraq coincided. It will not be the task here to add to the discussion on whether these wars were 'legal' or 'legitimate', but to examine what kind of political theology sustains Elshtain's Just War arguments and to contextualise them in a wider tradition. How are politics and (Christian) morality related? Who or what is the ultimate mediator in Elshtain's proposal? More abstractly, what is the (theo-)logic of the real and the ideal that results in Elshtain's practical justifications? For even though she claims that the realist-idealist divide 'serves no useful heuristic or even polemical purpose', she puts forward an 'Augustinian realism' that constantly polemicises against any form of moral 'idealism'.²⁸

After an exposition of her just war thinking, I will argue in the analytical part that in terms of the inner logic of her proposal, absent a notion of Christ's mediation, Elshtain's

²⁶ *What We're Fighting For: A Letter from America*, February 2002, Institute for American Values, <<http://www.americanvalues.org/html/wwff.html>>, [accessed 10 July, 2012]

²⁷ As a historical parallel comes to mind the 1914 "Manifest of the 93", an open letter by signed by 93 German public intellectuals defending the German Emperor Wilhelm II's preparations for war.

²⁸ Elshtain, 'On Never Reaching the Coast of Utopia', *International Relations*, 22 (2008), 147-172.

stark separation of a 'realistic' politics from 'idealism', 'utopian,' or 'sectarian ethics' results in the idealisation of the real – the state becomes the ultimate mediator. Theologically, whilst using elements of a variety of theological traditions, Elshtain is chiefly to be understood as a modern Marcionite. Marcion of Sinope was a dualist heretic of the 2nd century, who believed that the God of creation and the Saviour were two separate gods. This (theo-)logic of separation, it will be seen, determines Elshtain's proposal throughout. Wayne A. Meeks pointed out that 'the Marcionite temptation ... today is more likely to arise from neglect than from choice'.²⁹ And indeed Marcion does not explicitly appear in Elshtain's writings. So it is mainly through Richard Faber's analysis of Carl Schmitt's political theology and the latter's friend-enemy dualism in the 'state of exception' that Elshtain's Marcionism will come into focus.

I. Exposition: Just War against Terror

The reality of the situation

Against any 'utopian' or 'idealist' tendencies, Elshtain breaks a lance for 'realistic politics'. Her response to 9/11 begins with a polemic against 'humanists'. Humanists, she claims, always are inclined to close their eyes before evil. But in fact, she says, they are 'dominated by their own internal preferences rather than the concrete realities of the situation' (JWT, 1). 'Politics is not the nursery', she writes, quoting Hannah Arendt. But what is the objective 'reality of the situation'? In this case: 'What happened on September 11?' The conclusion of Elshtain's argument is presumed: one cannot describe the attacks other than as the work of

²⁹ Wayne A. Meeks, *The Origins of Christian Morality. The First Two Centuries* (New Haven: Yale University Press, 1993), p. 214.

terrorists, religious fanatics who wanted to kill as many Americans as possible and attack ‘who we are’.

Elshtain’s belabouring the ‘right description’ of these events is also an attack on postmodernists such as Richard Rorty. These authors make the truthful description of any situation contingent upon a person’s own moral agenda, with the result that there are no neutral facts, indeed no facts at all. Elshtain apparently wants to argue that there is a moral truth to which events do or do not correspond. But then she argues similarly to them: ‘... any description of an evil act as good is *false to the facts*.’³⁰ Effectively her own descriptions become factual. In contrast, ‘misdescription’ or ‘[resisting] calling things by their right names’ is done ‘in the interest of furthering an ideology’, with ‘corrosive effects’.³¹ Rather than clarifying the nature of and relation between facts, their interpretations, and moral truth, i.e. three instances, Elshtain repeats what she lays at the feet of her enemies: amalgamating facts with descriptions to further a particular political agenda. But leaving aside this problem, Elshtain’s point is to emphasise that you cannot negotiate away a violent attack.

Terrorism

Elshtain then moves erratically through a sustained ‘Just War theory’, but presents some ‘criteria’ throughout her chapters. First she clarifies the nature of terrorism with an eye on 9/11. Alluding to total war, she understands it as the

killing directed against all ideological enemies indiscriminately and outside the context of a war between combatants. According to the logic of terrorism, enemies can legitimately be killed no matter what they are doing, where they are, or how old they are. (JWT, 18)

³⁰ David Kim in fact refers to Elshtain as ‘postmodern’ in ‘City of God’, in *Christian Body Politic: 21st Century Reformed Perspectives on Church and State*, ed. by Christian Kim (Philadelphia, PA: The Hermit Kingdom Press, 2004), pp. 125-152, p. 127.

³¹ By ideology Elshtain means ‘a totalizing and closed system that discounts or dismisses whatever does not “fit” within it’ and ‘has very little use for accurate descriptions of what is going on.’ (JWT, 16)

With Michael Walzer she says terrorism ‘is the random murder of innocent people’, by which are meant non-combatants (a term, some have pointed out, already invoking a state of war). (JWT, 18) In any case, terrorism according to Elshtain is not a military strategy. She then deprives terrorists of their status as political or military subjects: ‘They have taken leave of politics. ... No political solution is possible ... when the terrorism is aimed at the destruction of innocent civilians – when that itself is the goal.’ (JWT, 18) And whereas war is the (Clausewitzian) ‘continuation of politics by other means’, terrorism is ‘*the destruction of politics by all possible means*’ (JWT, 152). Developing a ‘political arm’ may be possible for terrorists, Elshtain admits, but their actions are ‘most often in the service of wild and utopian goals that make no sense at all in the usual political ways’ (JWT, 18). Since terrorists are murderers, she continues, ‘using terms like “fighter” or “soldier” or “noble warrior” is not only beside the point but pernicious.’ ‘Such language’ – implying postmodern rhetoricism – ‘collapses the distance between those who plant bombs in cafés or fly civilian aircraft into office buildings and those who fight other combatants, taking the risks attendant upon military forms of fighting’ (JWT, 19).

Hence, according to Elshtain, only military fighters are permitted to fight. But at several points she favourably refers to the attempted Hitler assassination of 1944. This, for her, was an admirable ‘exceptional case’. Since the Hitler regime features heavily as a historical blueprint – evil, in a Nietzschean spirit, has become sacrosanct here – Elshtain may also have found Georg Elser’s assassination attempt in 1939 acceptable. But we cannot be sure, since it was also a ‘non-military’ form of fighting. The communist and therefore ‘ideological’ shadow over Elser’s mind may, in Elshtain’s schema, have qualified him as a terrorist.

Elshtain then also supports a contradiction that became a defining moment of the ‘War on Terror’. For whilst terrorists are murderers ‘with a nihilistic edge’, their actions are

nevertheless declared as ‘acts of war under international law’, triggering national defence (JWT, 20; 59). Elshtain explicitly refuses to call these murderers (as she calls terrorists earlier) perpetrators of murder, or 9/11 an act of mass murder. Terrorists thus are neither criminals nor military fighters; at the same time they commit murders that amount to military attacks which justify national defence. They become a living contradiction; indeed one could say a ‘miracle’.³² As it turned out, outside the Geneva Conventions and domestic jurisdiction, ‘the war on terror’ created the category of ‘unlawful combatants’.³³ Giorgio Agamben critically described these kinds of humans as *homines sacri*, banned individuals, a judicial contradiction in themselves. As enemies they are deprived of any legal, and here it appears also of any moral, status. Yet they are still firmly incorporated subjects of the sovereign state.³⁴ According to this understanding, which Elshtain endorses, terrorists have catapulted themselves into an anarchic ‘no-man’s land’ through their own ‘nihilistic’ actions, their ‘unlawful fighting’. Hence, the adequate places of detainment are also no-man’s-land: Guantanamo and other semi-secret prisons. With Michael Walzer, Elshtain thinks the prisons are ‘neither zones of war nor zones of peace’.³⁵ She finds this ‘tricky’: ‘What norms, rules, laws cover these zones, this no-man’s land? Much remains to be sorted out.’ Instead of ‘sorting it out’, she then sustains the category as part of the national emergency.³⁶ These politics of the ‘state of exception’, ‘the no-man’s-land’ for Elshtain also defines the ‘tragedy’ of the political world, which is part of her ‘realistic’ understanding of politics.

³² Cp. Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität*, 2nd ed. (Munich, Leipzig: Duncker und Humblot, 1934), p. 49: ‘The state of exception for jurisprudence has an analogical meaning to that of the miracle for theology.’

³³ Jill Lepore, ‘The Dark Ages. Guantanamo and Legal History’, in *The New Yorker*, March 18, 2013, pp. 28-33.

³⁴ See Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, (Stanford: Stanford University Press, 1998), esp. ‘The Camp as the “Nomos” of the Modern’, pp. 166-181. See also below Ch. 2, Paul Ramsey on the modern world as concentration camp.

³⁵ Jean Bethke Elshtain, ‘Response to Tom Farer’s “Un-just War Against Terrorism and the Struggle to Appropriate Human Rights”’, *Human Rights Quarterly*, 30 (2008), 758-766, p. 764.

³⁶ *Ibid.*

Discrimination

So Elshtain abhors terrorists on the grounds of their indiscriminate tactics. But she also sets herself apart from ‘distinction-obliterators for whom, crudely, a dead body is a dead body and never mind how it got that way’ (JWT, 20). This critique implicitly targets contemporary human-rights pacifism. Diana Francis gives us a taste of it: ‘...”discrimination” on any grounds (in this case in favour of civilians) is contrary to the nature of human rights, whose ethical foundation is their unconditionality.’³⁷ Rather than theoretically discussing the details of discrimination or its origins, Elshtain praises the American military for its training in discriminate fighting according to ‘strict rules of engagement’ and advertises America’s war to her readers. (JWT, 20-23) She supports this with selected evidence, for example the contrast between terrorist videos and American military training manuals.³⁸ Since the right intention of the U.S. is taken for granted, the destruction is ‘tragic’ and like ‘a flood roaring through a canyon’ (JWT, 108).

From there on she hints at an argument reminiscent of internationalist idealism or interventionism: ‘to do nothing when people are slaughtered makes one complicit in injustice.’ The idea is that anyone sufficiently powerful is responsible to stop indiscriminate killing. Elshtain links it to political realism, quoting herself: “”Responsible action” involves contamination – one cannot altogether avoid getting “dirty hands” when acting in the political world in a responsible way.’ (JWT, 25) Notably, this “dirty hands”-argument also covers the notion of torture. Elshtain advocates a form of “torture light” as a result of political ‘necessity’ and a government’s ‘responsibility’ in the light of ‘human wretchedness’.³⁹

³⁷ Diana Francis, *Rethinking War and Peace* (London: Pluto Press, 2004), pp. 88-89.

³⁸ On Elshtain’s problematic use of ‘tragedy’ see also Maja Zehfuss, ‘The Tragedy of Violent Justice: The Danger of Elshtain’s Just War Against Terror’, *International Relations*, 21(2007), 493-501.

³⁹ Elshtain, ‘Reflection on the Problem of “Dirty Hands”’, in *Torture: A Collection*, ed. by Sanford Levinson (New York: Oxford University Press, 2004), pp. 77-89.

Government authority and civic peace

As opposed to idealists, humanists or (terrorist) utopians, Elshtain is equally realistic about governments. In the chapter entitled ‘What is a Just War?’ she says:

The primary responsibility of government is to provide basic security – ordinary civic peace. St. Augustine calls this form of earthly peace *tranquillitas ordinis*. This is not the perfect peace promised to believers in the Kingdom of God, the one in which the lion lies down with the lamb. (JWT, 46)

Civic peace or simply ‘order’ provides the formal, neutral ground for the ‘goods that human beings cherish, including the free exercise of religion ... [mothers] and fathers raising their children; men and women going to work; citizens of a great city making their way on streets and subways’, etc. (JWT, 46)

As the alternative Elshtain invokes Hobbes’ “state of nature”, that ‘horrible circumstance’ in which ‘all persons have the strength to kill each other, “either by secret machination, or by confederacy with others.”’ (JWT, 47, 166) Referring to Hobbes, Elshtain also does *not* want to refer to him, saying he ‘somewhat overstated his point’ (JWT, 47). She wants to avoid ‘divinising’ the state by suggesting a formal minimalism: ‘When government becomes destructive of the most basic end for which it is instituted, *tranquillitas ordinis*, it abandons its minimal *raison d’être* and can no longer be said to be legitimate. This assumption is essential to political theory.’ (JWT, 48) However, with this movement the role of the state after all takes on the traits of the ‘mortal god’, since the idea that the state protects the world from descending into chaos precisely *is* the marker of divinity.⁴⁰ Her splicing together of Augustine’s divine *tranquillitas ordinis* with civic peace or “stability” thus is the beginning of the Hobbesian divinization of the state.

⁴⁰ NB: here is also an important diversion from Bonhoeffer, who says that human rights are “warranted” by God. Dietrich Bonhoeffer, *Ethik*, ed. by Ilse Tödt and others (Munich: Kaiser, 1992), pp. 173-174.

The task of government, according to Elshtain, is ‘to prevent the worst from happening’. This formula has a consequentialist tendency built into it, a problem inherent in Christian realism: ‘Any government that fails to do what is within its rightful power and purview in these matters is guilty of dereliction of duty’ (JWT, 49). If we found a government had failed to prevent a certain catastrophe or were the agent of destruction, Elshtain says, ‘we would rightly seek the restoration of basic, minimally decent civic peace and order’ (JWT, 49). Here she seems to invoke the Rawlsian concept of ‘decent peoples’, who secure minimal human rights. At the same time, she disconnects government from any substantial account of justice. ‘Earthly peace, as imperfect as it is, is better than the nightmare of Thomas Hobbes’s war of all against all’ (JWT, 52).

After a cursory foray into the Just War tradition, including the astonishing claim that Tertullian and Origen are not “Christian mainstream”, she presents her *ius ad bellum*:

First, a war must be openly declared or otherwise authorized by a legitimate authority, so as to forestall random, private, and unlimited violence. Second, a war must be a response to a specific instance of unjust aggression perpetrated against one’s own people or an innocent third party, or fought for a just cause. Third, a war must begin with the right intentions. Fourth, a war must be a last resort after other possibilities for redress and defence of the values at stake have been explored. Another *ad bellum* criterion usually noted is the prudential one: Do not enter a conflict without reflecting on whether the cause has a reasonable chance of success. (JWT, 57-58)

The content of these formal criteria is given by Elshtain’s situation, so that America is waging a ‘just war’. Here she also reads St. Paul’s ‘there is no authority except from God, and those that exist have been instituted by God’ (Romans, 13:1) as a just war criterion, meaning: ‘It is the *rightful authority* of earthly kings and kingdoms to punish wrongdoers’ (JWT, 52). In short, the United States has a divine warrant. A just cause is national defence. Indeed, in Elshtain’s proposal ‘justice’ collapses into ‘defence’ (JWT, 150).

The 'War against Terror' – a 'Just War'

Elshtain then demonstrates that the 'war against terror' fulfils the just war criteria. Her sources are government speeches, sources close to the American (conservative) establishment, proclaimed principles of the military forces and, finally, her own experience of fear on September 11, 2001. This event provided the *casus belli*, a clear break between the peaceful, almost bucolic domesticity of American life and the national state of emergency.

Elshtain then declares national defence coextensive with the 'humanitarian' mission to Afghanistan in 2001. It implies 'The love of our neighbour' or 'less theologically ... equal regard for others based on human dignity and our common humanity' (JWT, 59). American forces are 'authorized' to act on the principle that 'vital human goods, such as healthy children and mothers, cannot be achieved without a minimal level of civic peace' (JWT, 60). The principle of 'equal regard', Elshtain emphasises, underlies the Universal Declaration of Human Rights, 'just as it lies at the heart of our Declaration of Independence and Lincoln's matchless Gettysburg Address' (JWT, 168).

Moreover, she argues consequentially, more people would have died without the 'intervention'. The just cause in Afghanistan was met, since Americans were there 'to punish wrongdoers and to prevent them from murdering civilians in the future' (JWT, 61). As 'right authority' she counts the self-authorization of the U.S. by both houses of Congress. The invasion was also the 'last resort', since all other options had been 'explored'. And 'in any event; because what [the terrorists] seek is our destruction, there is nothing to negotiate about.' The prospect of success as a 'prudential consideration', however, is 'always tricky'. There is no certainty about the American global war being successful, but 'the entire world ... will be better off if the effort is successful.' Elshtain also assures the reader that the U.S. has no genocidal, revenging, or crusading intentions. Again, unlike Islamist terrorists, American

military observe the *in bello* criteria of proportionality and discrimination. Here she hints at a doctrine of double-effect: the U. S. takes the matter of ‘collateral damage’ ‘very seriously’ and ‘is doing everything to minimize civilian death’ (JWT, 69).

In the next chapters Elshtain polemicizes against those who disagree with her on intellectual (‘leftist’) or religious (‘sectarian’) grounds. But she returns to the ‘just war’ in a section on the sovereign state, invoking national unity in the face of an ‘unprecedented crisis’ (158). And in the pivotal historical moment after 9/11: ‘The time had come to put warmaking, peacekeeping, and justice together’ (JWT, 158).

The nation state and American empire

The final chapters combine two arguments about political authority. The first one is realistic, here in the sense of positivist, and based on existing power structures of the post-Westphalian nation-state system.⁴¹ Elshtain insists on the plurality of sovereign states in the international sphere and juxtaposes them with unaccountable international bodies and positive legal restraints. International law, including the traditional law of wars, becomes a question-mark: ‘So what is to be applied when? Is the court to make up law as it goes along? Even the definition of a “war crime” is often not so clear.’ (JWT, 164) Hence:

Moving in the direction of international criminal justice, international justice of a noncriminal nature, and the like and diminishing the power, responsibility, and legitimacy of states not only will prove ineffective, even disastrous in some cases, in the short run but will undermine the minimal or even major (depending on the states involved and the situation) pressure that the system of states can put on rogue actors among their own ranks over the long run. (JWT, 166)

⁴¹ Nicholas Rengger also notes the mixing of ‘just war’ theories from different contexts: ‘Just a War against Terror? Jean Bethke Elshtain’s Burden and American Power’, *International Affairs*, 80 (2004), 107-116, p. 114.

Elshtain is also suspicious of NGOs, ‘professional bodies that often have deep pockets and the ability to move in and through the international system’ (JWT, 162). She does not disavow ‘transgovernmental and international connections’. Somehow, though we do not know how, she recognizes ‘religious institutions and organizations that have been border-crossers for centuries’ (JWT, 162). But in terms of the authority to go to war, she propounds, ‘[there] is nothing in the just war tradition that stipulates that a decision to go to war is legitimate only if it is made by a group of states in concert or by any other body than a *de jure* state itself’ (JWT, 184). In so far as international law still embodies this statism, it comes in handy: the United Nations Charter ‘presumes that its members are sovereign entities that have a right to defend themselves and this means, in turn, that they have the right to determine in what that defence consists’ (JWT, 184).

The second point about political authority is a version of Wilsonian idealism, the case for global, though non-idealistic, humanitarian justice:

But equal regard, as the American founders knew, as Lincoln understood, and as we are coming to understand, must sometimes be backed up by coercive force. This is an ideal of international justice whose time has come. Equal regard is a mixture of old norms given new urgency and new possibilities. ... But in our less-than-ideal world, the one candidate to guarantee this principle is the United States, for two reasons: Equal regard is the foundation of our own polity, and we are the only superpower. (JWT, 168)

With Michael Ignatieff, Elshtain imagines ‘a sort of imperialism ... an image of the world’s superpower taking on an enormous burden and doing so with a relatively, though not entirely, selfless intent’ (JWT, 166).⁴² The primary concerns of this empire are forestalling chaotic “failed states” without minimum stability. Elshtain calls this ‘a new version of deterrence’. Moreover: ‘... [These] ethical considerations are themselves central to our national interest,

⁴² For separate commentary on Ignatieff’s work, see Derrick O’Keefe, *Michael Ignatieff – The Lesser Evil?* (London: Verso, 2011)

correctly understood. It is in our long-term national interest to foster and sustain an international society of equal regard. Strategic necessity and moral requirements here meet.’ (JWT, 170)

Finally, in her appended essay on Iraq, Elshtain once again finds her four *ius ad bellum* criteria realised. Whatever the problems with the claim that Saddam Hussein had weapons of mass destruction, she thinks his humanitarian crimes warranted the invasion of 2003:

It is a striking, and saddening, commentary that the emphasis had to be placed on the danger of WMD since Saddam’s well-documented mass murder of his own people did not rise to the level of a *casus belli* in and of itself. (JWT, 186)

In summary: for Elshtain, American civic tranquillity was destroyed by a terrorist attack, which triggered the right to national defence. This right can be exercised only by a sovereign nation state. In this sense Elshtain adheres to the realist, post-Westphalian notion of international order.⁴³ But America the superpower plays a special role: not only is it essentially and constitutionally committed to equal regard and human rights, but its global commitment to these universal values is in fact their national interest. At the same time, the state of exception opens up legal and moral grey zones for ‘unlawful combatants’.

II. Analysis: The two gods of Marcion, Carl Schmitt – and Elshtain

Elshtain got much flak for her book. Stanley Hauerwas called it ‘nothing more than an uncritical justification of the ideology of America as empire ... whose argument should not

⁴³ Notably, Elshtain was also taught by Kenneth Waltz, the founder of structural realism in International Relations. According to Waltz, the world has no central enforcer so that states are constrained in their choices by the pressures of anarchy.

convince anyone thoughtful.’⁴⁴ Nicholas Rengger concludes his review saying: ‘To make the United States as a polity the permanent agent of the global common good ... is to take up the ring of power. And the only beneficiary of that, as we know, would be Sauron.’⁴⁵ Many reviews also saw an incisive break between Elshtain’s earlier more pacific writings and the present work. However, if one consults her *Augustine and the Limits of Politics*, her journal articles as well as her 2006 Gifford Lectures, *Sovereignty: God, State and Self*, a clear continuity emerges that is intrinsic to her liberal Augustinianism.⁴⁶ I shall therefore reconstruct her theology by drawing on all of these sources.

I will focus on three pivotal, formal points of morality: First, Elshtain’s understanding of reality, specifically political reality. How is it asking for realism and how is that theologically or philosophically sustained? Where is the possibility here for a moral ideal or even ‘idealism’? Secondly, from these premises emerges the conception of the moral agent in war. What is the scope of the ‘realistic’ agent, what its ‘idealist’ counter-point, and how is this theologically maintained? Here the notion of the sovereign state having migrated from a particular notion of God will be central. Thirdly, I will analyse Elshtain’s view of moral-political action. What is her realistic conception of moral action? How does it relate to faith and what is the object of that faith? Although Augustine is a frequent reference point, his relationship between ‘making earthly peace’ and the ‘heavenly peace’ will be discussed in contrast to Elshtain’s. This host of questions is driven by one focus: the relation between the real and the ideal in the light of a possible or absent mediation, i.e. the divine Mediator as described by Augustine.⁴⁷

⁴⁴ Stanley Hauerwas and Paul Griffiths, ‘War, Peace & Jean Bethke Elshtain’, *First Things*, Oct 2003, <http://www.firstthings.com/article.php3?id_article=534> [accessed 24 Nov, 2008]

⁴⁵ Nicholas Rengger, ‘Just a War Against Terror?’, p. 116.

⁴⁶ Elshtain, *Augustine and the Limits of Politics* (Notre Dame, Ind.: University of Notre Dame Press, 1995); hereafter ALP.

⁴⁷ Elshtain mentions Augustine’s divine Mediator at least twice. ALP, 66; S, xiv.

Political reality

The earthly city and its tragedies

Not only is politics ‘not the nursery’, but it demands ‘dirty hands’. For Elshtain, politics is inherently ‘tragic’, and consequentialism – ‘preventing the worst from happening’ – is an intrinsic demand of political action. She has several sources for this notion of reality, which imposes its ‘necessities’ on the politician. (JWT, 50, 102, 105) Politics happen in a ‘violent world’.

This violent world engenders a fundamental dynamic. On the one hand there is the constant possibility of a Hobbesian war of all against all. Such ‘state of nature’-thinking is hardly the result of a theo-political reflection on the reality of creation and redemption. It is derived from a sceptical anthropology that, especially since Hobbes, cannot recognize a pre-political order.⁴⁸ Similarly to Hobbes and Carl Schmitt, but less ancient Greek than both of them, Elshtain draws on the Wild West, one of America’s own mythological spaces.⁴⁹ The movie *The Man Who Shot Liberty Valance* for her depicts a ‘violent world’. Here, in the absence of a viable authority, a steadfast sheriff who usually enforces the law, a robber roams the land. Only stout-hearted ‘tragic hero’ Tom Doniphon is courageous enough to kill and thus disarm the villain.⁵⁰ Elshtain’s conclusion is that

[law] exists. Who will enforce it? The film tells us that settled law and its routine enforcement are possible only when random violence and the fear it instills have been pushed back. ... [It] is a parable on the use of force at the service of civic peace in the

⁴⁸ Also ALP, 25-26.

⁴⁹ Eric Hobsbawm, ‘The Myth of The Cowboy’, *The Guardian*, 20 March, 2013
<<http://www.guardian.co.uk/books/2013/mar/20/myth-of-the-cowboy>> [accessed 21 March 2013]

⁵⁰ NB: The lawyer from town is the ‘tragic hero’ of the film, since Tom Doniphon obfuscates all attempts to bring law and executive together. Even when Doniphon is offered the official post of sheriff, acclaimed (and thus ‘legitimised’) by the community, he refuses and prefers executing robbers according to his own estimate.

fog of an undeclared war in which the forces of violence are pitted against all those who want to settle, raise their families, and educate their children. (JWT, 55)

Hence, the political task of '[keeping] the forces of anarchy at bay' is different from the enforcement of law. This original act mirrors Carl Schmitt's figure of the *nomos*: it is an *ordo ordinans* (order of ordering), rather than law, which is the 'enactment of acts in line with the *ought*'.⁵¹ Although criminal, the act of ordering is justified because it provides the possibility of regular law over against chaos and wilderness. Elshtain then groups her theological material around this Hobbesian or Schmittian political. She is careful not to walk immediately into a political Gnosticism. 'The world' initially is a good place: 'For believers, the created order is fundamentally good: God saw it and said it was good. This order includes human beings.' (JWT, 102)⁵² In *Augustine and the Limits of Politics* she points out that Augustine 'was in love with the world, a world he called a "smiling place." ... Only someone caught up in a love affair with the world would describe so deliciously its many delectations and articulate so artfully its temptations.' (ALP, 89) She even contrasts Augustine's 'presumption of the peace and its priority over war' with Hobbesian 'mythical beginnings that presume disorder' (ALP, 94). Yet effectively she turns away from this Augustinian 'ontology of peace': 'But the political *gravamen* seems to me to lie elsewhere' (ALP, 101).

Whilst one of her interlocutors, John Milbank, grounds a political ecclesiology in the Augustinian ontology of peace, Elshtain puts the reader on the track of a liberal social ontology. For her the 'earthly city' is where the political *gravamen* lies. At times she equates it with the state, inadvertently repeating Robert Markus' reading of Augustine's earthly city as a neutral, separate realm: 'Within *each* earthly city, the saved and unsaved come together: that is a given. At the same time, one can distinguish between better and worse earthly cities.'

⁵¹ Carl Schmitt, *The Nomos of the Earth*, transl. by Gary L. Ulmen (New York: Telos Press Publishing, 2003), p. 78; see also p. 73f.

⁵² NB: the constructivist or subjectivist tendency in 'for believers'.

(S, 9)⁵³ So politics are earthly as opposed to ‘religious’ and grounded in creation. As it stands, Elshtain’s good creator-God could equally be invoked by a transcendentalist or America’s Deist founding fathers.⁵⁴ And it is with these that Elshtain travels, beginning with an anthropology. She rarely uses the term liberalism, but for her, God created individuals: ‘That a beginning was made, man was created – one singular human being. ... God did not begin with the human species but with singularity.’ (ALP, 101) Essential rather than contingent to us, our fragile desirous bodies are then the basis for social community:

Each child enters a world whose Creator declared it good. Each child enters a world as the heir of Adam’s foundational sin. Each child, therefore, is in need of God’s grace and forgiveness. All human beings are driven by hunger and desire and experience frustration at their inability to express themselves fully and decisively, in a way that prompts others to respond, to be at one’s beck and call.⁵⁵

As creatures, humans are marked by needful weaknesses, which *construct* the earthly city: ‘There is no ur-Founder, no great bringer of order. It begins in ties of fellowship, in households, clans, and tribes, in earthly love and its many discontents. And it begins in an ontology of peace, not war.’ (ALP, 97) Effectively, then, Elshtain holds two rival versions of political reality at the same time: either we face ‘random violence’ without a state-structure, or there is after all a pre-constitutional nation, the ‘earthly city’ grounded in sociality.⁵⁶ This contradiction is somewhat glossed over: despite the goodness of its beginnings and sociality,

⁵³ More explicitly in *Sovereignty*, p. 59, and 272n.5.

⁵⁴ Transcendentalism is not far-fetched here: Elshtain held the Ralph Waldo Emerson Award 1997-1998. Adolf von Harnack also notes a proximity between Marcion and Deism. This may be anachronistic, as Sebastian Moll complains, but nevertheless of conceptual value. Notably Harnack, a self-declared admirer of Marcion, also signed the ‘Manifesto of the 93’. Sebastian Moll, *The Arch-Heretic Marcion* (Tübingen: Mohr Siebeck, 2010), p. 3 n.11

⁵⁵ Jean Bethke Elshtain, ‘Augustine’, in *The Blackwell Companion to Political Theology* (Oxford: Blackwell, 2004), pp. 35-47, p. 37.

⁵⁶ Elshtain refers to social bonds of earthly love when talking about America, and especially to morally justify moral right to national defence. When referring to states and societies to be saved by intervention, “failed states”, she uses the Hobbesian dichotomy.

Elshtain's earthly city can after all become a Hobbesian state of nature because of misguided desires.

She then ties the politics of minimal stability and containment to Augustine.

According to Elshtain, he 'tethers [the need for coercion] to his repudiation of perfectionism: If one would do the least damage (stop 'people from devouring one another like fish'), then one must be aware of the always-lurking possibility of widespread disintegration, the unravelling of social peace, and the spread of devastating fear.' (ALP, 98) Behind Augustine's minimal government lurks Hobbes' chaos. In this view, then, violence is never possibly tied to natural ends but rather 'random' and 'meaningless' – unless politically 'authorized'. In other words, a natural law or a natural moral order in an objective sense is absent here. 'Natural law' is rather equated with the natural will to survival and procreation ('earthly loves'). It is then the state that mediates between 'misguided', 'random' desires and the possibility of rightly-guided desires.

This view is sustained by Elshtain's misinterpretation of Augustine's *tranquillitas ordinis*. According to Augustine, the tranquillity of order is the peace of *all* things. It signifies the peace of body, ordered appetites, the rational soul's 'ordered agreement of knowledge and action' as well as domestic peace and peace between humans. Aware of that, Elshtain still leaves out the 'peace between mortals and God ... an ordered obedience in the faith under an everlasting law.' She omits 'the peace of the heavenly city ... [,] a perfectly ordered and fully concordant fellowship in the enjoyment of God and in mutual enjoyment by union with God.'⁵⁷ Augustine insists that this peace abides even through the most raucous political disorder, indeed that even the wretched are separated from the blessed by a law of order.⁵⁸ Since she extracts only the liberal domestic 'peace' of unharmed individuals from Augustine

⁵⁷ Augustine, DCD, XIX.13.

⁵⁸ Ibid.: '...verum tamen quia merito iusteque sunt miseri, in ea quoque ipsa miseria sua praeter ordinem esse non possunt, non quidem coniuncti beatis, sed ab eis tamen ordinis lege seiuncti.'

as politically commanding, Elshtain must rely on the state, not God, to warrant the *tranquillitas ordinis*.⁵⁹ This, one may add, is fairly conventional ‘realist’ political theory in the Hobbesian tradition.

But this must be secured by an effectively dualistic theology. Elshtain takes careful Christological and eschatological steps to neutralise the impact of the Christ-event on ‘the world of politics’, the oscillation between wilful, terrorist anarchy and governmental control at the heart of her just war proposal. Salvation history is disconnected from profane, secular history. The ‘here and now’ is ‘historic time’, not that of redemption (JWT, 30). The *saeculum* is in fact kept distinct from the Kingdom of God, a ‘beatific landscape ... at the end of time’ (JWT, 127). With this, Elshtain leaves the trail of thought investigating the reign of God here and now unexplored. For someone who wants to ‘use theological categories’, as she does, this requires primarily a Jesuology. She focuses on Jesus the man, indeed the most *atheist* of moments, to validate an anthropology of weakness: ‘the overwhelmingly central icon, symbol of the Christian faith is of a bleeding broken body on a cross.’⁶⁰ Christianity, she says, is about a ‘bleeding broken man.’ The cross demonstrates the essence of humanity as weakness and death. In effect, to say it with Franz Overbeck, Elshtain’s Christians ‘live with a corpse.’⁶¹

Jesus could be seen as providing an ‘ethic’. However, against any *imitatio*-Jesuologies Elshtain thinks he ‘preached an ethic for the end time.’⁶² He urged his disciples to ‘rely on grace and, in anticipation of the end time, [he] directed them away from temporal pursuits’ (JWT, 99). Implying a form of supererogation or super-human ‘church ethic’, Christ’s ethic is

⁵⁹ Elshtain takes this reading from George Weigel, *Tranquillitas Ordinis: The Present Failure and Future Promise of American Catholic Thought on War and Peace* (Oxford: Oxford University Press, 1987), p. 31.

⁶⁰ Jean Bethke Elshtain, Interview with Krista Tippett, <<http://www.onbeing.org/program/moral-man-and-immoral-society-rediscovering-reinhold-niebuhr/extra/complete-transcript-2>> [accessed 25 July, 2012]

⁶¹ Franz Overbeck, *Christentum und Kultur*, cit. in Friedrich W. Graf, *Der heilige Zeitgeist. Studien zur Ideengeschichte der protestantischen Theologie in der Weimarer Republik* (Tübingen: Mohr Siebeck, 2011), p. 125.

⁶² Cp. Reinhold Niebuhr, *Faith and History: A Comparison of Christian and Modern Views of History* (New York: Charles Scribner’s Sons, 1949)

‘unattainable in principle, save by the few saints among us’. Elshtain also emphasises God’s essential unintelligibility, echoing Luther’s *deus absconditus* inaccessible to philosophical reason.⁶³ Instead of pointing at revelation of God through the Incarnation and the intelligibility of this reality in faith, Elshtain’s political rationality turns away from it:

All nuance falls out of the pleas of those who seem to know *precisely* what Jesus would do in certain circumstances – forgetting that Jesus, for Christians, is God Incarnate and it is rather presumptuous to claim a direct pipeline to Him. ... Most of us do not feel authorized to drag Jesus to our own side in a political dispute with such dogmatic certainty. (JWT, 229, n. 4)

Refusing an authorized ‘dragging’ of Jesus into politics, the crucifixion of the man, ‘that moment where violence seems to have triumphed’, provides the paradigm for political reality in ‘historic time’. It is ‘pervaded with conflict’. Book XIX of Augustine’s *City of God*, Elshtain thinks (perhaps with Locke), is Augustine’s conceptual starting point. He can then positively be referred to as assenting to modern power politics: ‘Augustine appreciated that power is a *basic reality* of political life’ (JWT, 49; italics mine). In short, beyond a general, good creator God of individuals, Elshtain clears ‘the earthly city’ of the impact of the Christ-event. What remains is a sphere oscillating between pure violence and ‘tragic necessities’ of dirty hands installing order to keep the ‘forces of anarchy’ at bay.⁶⁴

The realm of utopia

The great, unmediated opposite of this is the realm of utopia, the fancy flights and heights of ‘intellectuals’.⁶⁵ This deep rift is in fact dualistic, but remains the logic of an abiding world-

⁶³ Martin Luther, Psalmenvorlesung 1513/15 (Ps. 1–84), WA 3, 124.

⁶⁴ One could regard this as an inheritance of the Christian sense of redemption. Since God reconciled humanity to himself, everyone seems equidistant. Without a definition of the relationship between divine justice and human failure, this can quickly turn into an ‘inexpensive levelling of victims and perpetrators.’ Hans-Richard Reuter, ‘Ethik und Politik der Versöhnung. Prinzipielles zu einem aktuellen Thema’, in *Politik der Versöhnung*, ed. by Gerhard Beestermöller and Hans-Richard Reuter (Stuttgart: Kohlhammer, 2002), pp. 15-36, p. 19.

⁶⁵ On Elshtain’s flawed juxtaposition of Augustine and philosophy, see Eric Gregory, *Politics and the Order of Love. An Augustinian Ethic of Democratic Citizenship* (Chicago: University of Chicago Press, 2008), p. 123, n. 89.

historical nuisance: ‘But utopias never go away, it seems. We never seem to know better – although that is a lesson a compelling realism should surely teach us.’⁶⁶

So who are the utopians? Generally, they are those who disagree with Elshtain’s estimate of ‘responsible’ possibilities of action in the light of present necessities.⁶⁷ Such ‘utopians’ are ideologues of various stripes. Communism fares worst. Then there are Kantian ‘legalists’ or ‘liberal humanists’ who insist on a positive international legal order to which every state is subject. (JWT, 110) Thirdly, there is the ‘biblically inspired vision in which the lion lies down with the lamb and the lamb does *not* have to be replaced frequently.’ (JWT, 126) This deeply critical stance towards a ‘sentimentalized Christianity’ Elshtain takes from Reinhold Niebuhr. (JWT, 106-110)⁶⁸ These utopian visions have in common that they take responsibility not for restoring the *tranquillitas ordinis* as understood by Elshtain but rather ‘world peace’ as a political project.

Elshtain’s critique of Hegel provides the context as a gateway to modern utopias. “‘Hegelianism’”, she writes in *Sovereignty*, ‘destroys any received notions of transcendence (derived from Jerusalem, one might say) in favour of dismantling that transcendence as its remainders are then folded into the logic of history’s dialectic.’ (S, 143)⁶⁹ For Elshtain, the absence of a transcendent horizon – not necessarily Christian – becomes the cause and chronic symptom of utopianism. Against this she sets factual history:

The conflict and reconciliation of human wills that is politics no longer mars the beatific landscape. One way or another, the ‘eschatological moment’ of the Kingdom of God at the end of time is brought down to earth, secularized, placed within time, and embraced as a realizable goal – despite the fact that over the long course of

⁶⁶ Elshtain, ‘On Never Reaching the Coast of Utopia’, p. 149.

⁶⁷ Agamben points out the crucial difference between suspending the law out of ‘necessity’ in favour of the *salus hominum* and ‘necessity’ as ‘the ultimate ground and very source of law’ in modern states. Giorgio Agamben, *State of Exception* (Chicago, University of Chicago Press: 2005), pp. 25-26.

⁶⁸ This dichotomy also appears in Werner Elert, against Nietzsche’s reading of Christianity as weak. Elert, *Der Christ und der völkische Wehrwille* (Leipzig: A. Deichertsche Verlagsbuchhandlung, 1937)

⁶⁹ Hegel rejects these post-Kantian invocations of transcendence as the task of philosophy. *Phenomenology of Spirit*, transl. by A. V. Miller (Oxford: Clarendon Press, 1979), p. 5.

humankind's bloody history nothing remotely approximating this vision has ever been attained. (JWT, 127)

She then grafts the early modern dichotomy between sceptical power politics and imagined utopia, as well as the 19th century concept of ideology, onto Augustine's theology. Utopian proposals become the counterparts to 'the earthly city':

He strenuously repudiates utopian possibilities and, from Plato's republic to Rousseau's polity, to Marx's classless society, to Mill's happy ordering of liberal choosers, we in the West have enshrined thinkers who promised to remove obstacles to the good life, or who assured us that such obstacles were, in principle, removable. (ALP, 90)

Instead, Augustine, according to Elshtain, 'displays the negative of ideology by articulating a canny and scrupulous attunement to the here and now with its very real limits.'⁷⁰

Notably, Elshtain is aware that 'it is useful to distinguish utopianism from moral norms and ideals *tout court*', especially since 'moral norms, utopian projects, and hard-headed political schemes are so intertwined one cannot separate them, as realists (at least in IR) insist.' However, since alternatives to the necessities and emergencies of the present moment are unthinkable, the *conceptual* distinction between (morally attainable) 'ideals' and 'utopia' cannot be made.

The historical moment of coincidence between reality and ideal

Elshtain remains keen to retain transcendence, even if it remains without fundamentally spiritual-transformative effects on the 'earthly city'. Her version of it rather echoes, amplifies and re-enforces earthly loves, bonds, and 'limits'. With various forms of utopianism rejected, the reality of politics itself is now transcendentalized and has moral implications in itself.

⁷⁰ A comparable project of 're-educating Augustine' is Eric Gregory's, *Politics and the Order of Love: An Augustinian Ethic of Democratic Citizenship*, (Chicago: University of Chicago Press, 2008)

As Gierke points out, the modern theory of human society and the state ‘was a theory of the ideal or natural Law of human society, and of the ideal or natural Rights of man.’⁷¹ So for Elshtain a ‘natural law’, albeit without being *law*, finds an ally in the Christian notion of creation:

Emerging from ‘one’ creates a fragile bond of peace, or relative peacefulness. Bonds of affection tied human beings from the start. Bonds of kinship and affection bound them further. The more these relationships are dispersed ... the more difficult it is to repair to this fundamental kinship or sociality in order to strike a blow for a decent civic order and against anarchy and random violence.⁷²

On the back of this, she is not so much interested in *Christian* ethics, but in a ‘naturalistic morality written on the hearts of sentient creatures’ (ALP, 25). This translates into an earthly civic morality: ‘Augustine creates a complex moral map that offers space for loyalty and love and care, as well as for a chastened form of civic virtue’ (ALP, 91). The *imago Dei* also provides the ground for liberal ‘individual dignity’. Elshtain gives it her own terminology: ‘human beings *qua* human beings deserve equal moral regard. Equal regard means one possesses an inalienable dignity that is not given by governments and cannot be revoked arbitrarily by governments or other political bodies or actors.’⁷³ So from a created ‘is’ Elshtain draws the ‘ought’ of equal regard. This, she argues, is then congruent with the human rights ideal:

... the post-World War II universalization of human rights deepens and enhances the importance and reach of the just war perspective rather than running counter to it. Just war

⁷¹ Otto Gierke, *Natural Law and the Theory of Society*, 2 vols., transl. by Ernest Barker (Cambridge: Cambridge University Press, 1934), vol. 1, p. xi.

⁷² Elshtain, ‘The Just War Tradition and Natural Law’, *Fordham International Law Journal*, 28(2004), 742-755, pp. 748-749.

⁷³ Elshtain, ‘International Justice as Equal Regard and the Use of Force’, *Ethics and International Affairs*, 2 (2003), 63-75, p. 66.

argument and universal human rights are not only not incompatible, they should, instead, be placed within the same frame.⁷⁴

This is a moral and, more importantly, a judicial and political concept of a claim right. Acts of aggression, which qualify as injustice, ‘trigger a justice claim.’⁷⁵

As a result, in Elshtain’s concrete Just War proposal the defensive necessities of a ‘violent world’, the ‘discontents’ of the earthly city understood as a global polity, now merge with a globally ‘expanded ideal’ warranted by creation. For Elshtain, in this unique historical moment (after 9/11) the violent realities of the situation and the real presence of a moral ideal have become identical, after all a moment of progressivist opportunity towards American supremacy. Since many neoconservatives were former Trotskyists, this was akin to a *revolutionary* moment.⁷⁶ Meanwhile, for Elshtain the opportunity of this-worldly political fulfilment could still claim to be ‘minimal’, since it only demands ‘stability.’

Notably, the collapse of the reality of politics into an ideal order – America’s exercised ‘enlightened self-interest’ – also explains Elshtain’s and Walzer’s indecision about the status of ‘unlawful combatants.’ How does one deal with the contradiction that whilst human rights are being globally defended, they are most egregiously violated? One exports it to a camp, a “grey zone” of pending moral and juridical indecision.⁷⁷ Interestingly, though, this no-man’s-land of reigning and reined-in fear is not just an ‘included exclusion’ of enemy fighters, as Agamben says, or an ongoing ‘state of emergency’. It is also a historical *motor*

⁷⁴ Ibid., p. 64.

⁷⁵ Ibid.

⁷⁶ Tony Judt, ‘Bush’s Useful Idiots’, *London Review of Books*, Vol. 28 No. 18 (2006), pp. 3-5. The Neoconservative Project for a New American Century had hoped for a ‘new Pearl Harbor’ to trigger the project of global American supremacy, so 9/11 was greeted as a moment of opportunity. Elshtain never explicitly aligns herself with neoconservatism, but her arguments are almost identical to theirs.

⁷⁷ Agamben points out that the concentration camps under the Nazi regime were a spatial arrangement of the state of exception, an essential indeterminacy, where juridical rule did not apply, but where law and fact became a curious hybrid. Hence Rudolf Diels, head of the Gestapo, could say the camps ‘were not instituted; they were simply there one day.’ It also somewhat explains why as late as 1941 the Jews could still be seen as a ‘question’ that needed a ‘Final Solution.’ In this sphere of paradoxical state of exception, as Hannah Arendt observed, ‘everything is possible.’ *Homo Sacer*, pp. 169-173.

that sustains the collapsed dichotomy of violent reality and ideal human-rights-order in the American war on terror.⁷⁸

This logic of transcendentalized or moralized political Real has consequently been described as ideological.⁷⁹ One aspect of this is the merging of law (here: 'value') and fact. What Elshtain calls the 'facts' of the death and suffering upon the crime of 9/11 violates one moral standard: the basic good of physical and mental integrity of guile- and defenceless people. This follows from her 'naturalistic morality' of civic peace, a liberal "Don't Be Cruel" guaranteed by political stability. However, without testing the case by any other objective moral standard, Elshtain merges this correct evaluation with the *content* of the government's interpretations of the crime. Hence, from the 'horror' and 'slaughter' of 9/11 as well as the fear Elshtain experienced herself, she concludes that it was not mass murder, but an international attack. Whilst 'surely there can be no doubt in anyone's mind' about that, Elshtain in good realist spirit relegates alternative visions to a category that is by definition 'politically irresponsible.'

So the basic pattern of Elshtain's political reality is a collapse of the real into the ideal in the (American) 'earthly here and now' supported by a neutralized notion of God. This is then starkly opposed to philosophical or theological 'utopias'. As we will see next, this logic becomes nowhere more visible than in Elshtain's understanding of the political agent and authority. Here, via Carl Schmitt, Elshtain's specifically Marcionite dualism comes into better focus.⁸⁰

⁷⁸ Ibid., p. 174.

⁷⁹ Hauerwas and Griffiths, 'War, Peace & Jean Bethke Elshtain'.

⁸⁰ Authoritative on Marcion is still Adolf von Harnack: *Marcion, Der Moderne Gläubige des 2. Jahrhunderts, der erste Reformator: Die Dorpater Preisschrift (1870)*, ed. by Friedemann Steck (Berlin: Walter de Gruyter, 2003) and the mature work *Marcion: Das Evangelium vom Fremden Gott : eine Monographie zur Geschichte der Grundlegung der katholischen Kirche* (Leipzig: J.C.Hinrichs, 1924)

Political agent

The Leviathan as a City upon a Hill – and its ‘rebel’ government

How does Elstain construct the moral agent? Who, in what forms and content, *should* take up arms? *Just War Against Terror* is unambiguous: the U.S. as a sovereign state ‘has a fundamental right to defend itself’ (JWT, 78). Sovereignty comes with a ‘right to integrity’. It also consists in ‘the right to determine what self-defence consists in’. Sovereign states are ‘accountable, organized entities’ with which to diplomatically engage.⁸¹ On a normative level, the United States is the bearer of universal values and human rights. So as with political reality, in Elstain’s notion of the state the ‘realistic’, factual, and ‘ideal’ bases merge: the Leviathan and the universal values of human rights.

As already mentioned, states initially arise from a *negative* task in a ‘violent world’. Their *raison d’être* is maintaining civic stability. Reminiscent of Max Weber’s sociological dictum that the legitimate state holds the monopoly of force, Elstain’s borderline between chaos and the ‘earthly city’ is equally positivistic. For Elstain, justice *is* stability: ‘States themselves ... may become disturbers of civic peace, hence agents of injustice.’ And: ‘An ossified, dictatorial order also qualifies as a violator of minimal civic peace given the instability human beings suffer in situations in which fear reigns supreme.’⁸² Effectively, (ordering) might makes right for Elstain. Uncomfortable with this, Elstain evades the

⁸¹ The insistence on states as ‘right authorities’ to go to war is general, not just confined to Elstain’s particular case of the U.S. Elstain, ‘Against the New Utopianism’, *Ethics and International Affairs*, Vol. 19, No. 2 (2006), 91-95, pp. 94-95.

⁸² Jean Bethke Elstain, ‘Equal regard and the Use of Force’, p. 3.

question: ‘... might may sometimes, on balance, serve right.’⁸³ Hence, America’s ‘superpower’ authorises it to enforce human rights everywhere; it is a ‘burden’.

At the same time, in America Elshtain discerns a special confluence of power and good. America is a metaphysical body of particular moral prominence. Here, the reality of power and stability is justified by and *coincides with* the ideal of universal human dignity. To explain ‘what is at stake’ in the War on Terror Elshtain appeals to the ‘Christian imagination’ that structures American political (self-)belief⁸⁴: ‘Ideas about the dignity of the human person are central to American democracy because they flow directly from the religiously shaped commitments of Americans.’ American democracy provides the ground of this religious fabric. There is no secular society, but a ‘panoply and interplay’ of different faiths and religions.⁸⁵ Its ‘great movement toward equality’ –following Alexis de Tocqueville – ‘was unintelligible without the Christian insistence that all human beings are equal in the eyes of God’ (JWT, 38). Moral equality is an American foundational principle, which ‘was secured in revealed and natural theology and philosophy alike’, intelligible today with or without Christianity (JWT, p. 27). The open letter ‘What We’re Fighting For’ touches again on the nation founders’ deism, their reference to universal moral truths or “laws of Nature and of Nature’s God” as the basis of ‘transcendent human dignity’ (JWT, p. 195). And, as seen, this is what America is out to defend. At the same time, however, this good remains a liberal formalism. Indeed, as Elshtain says in JWT, a common good should not be part of the state, since

⁸³ Elshtain, ‘Just War and Humanitarian Intervention’, *Ideas*, 8 (2001), 2-21, p. 5.

⁸⁴ Paul W. Kahn, ‘Sacrificial Nation’, *The Utopian*, March 29, 2010 <http://www.the-utopian.org/tagged/Paul_W_Kahn> [accessed 23 April, 2012]; Kahn’s extended Schmittian analysis is instructive: *Political Theology: Four New Chapter on the Concept of Sovereignty* (New York: Columbia University Press, 2012); also ‘On Political Theology’, *The Art of Theory* <<http://www.artoftheory.com/on-political-theology-paul-kahn/>> [accessed 12 May, 2012]; Catherine L. Albanese, *America, Religions, and Religion*, 3rd ed (Belmont ; London: Wadsworth, 1999)

⁸⁵ NB: Elshtain conflates ‘secular’ and ‘non-believing’. As soon as one talks about ‘society’ of individuals holding different ‘beliefs’, one enters sociological analysis. In contrast, see for example Karl Barth, *Church Dogmatics*, § 17: ‘Revelation as the Sublimation of Religion’.

a politics of the common good, which always sounds good, may prompt its adherents to evade doing what is necessary to curb violence, domestic and international; they may indulge in naive advocacy and refuse to engage with the least pleasant realities of a world in conflict. (JWT, 108)

The concrete institutional confluence of politics and morality is the American constitution, the *locus* of sovereignty. It is beyond the scope of this chapter to analyse American civil religion, but suffice it to say that the Constitution is its central Scriptural focus. Here the two planes of the real and the ideal are embodied or ‘bound’, as Elshtain expresses it. As a Christ-like mediator between religious citizens and God it takes the place of transcendentalized kingship: ‘If, in the older logic, the king dies, Long live the King, in America the “Great Court” never dies – it is perpetually “in session”’ (S, 154). Elshtain here claims that she does not ‘divinise’ the sovereign. But when she says ‘divinisation’ she has in mind the theocratic absolutism propounded by popes or rulers to the complete exclusion of the ecclesial or political Other. Theocracy is ‘all in the interest of a monistic fusion of power, whether into a plenipotentiary state or a plenipotentiary spiritual earthly kingdom’ (S, 59).⁸⁶ So she tacitly exempts herself from the charge of ‘divinisation’ whilst expounding the American constitutional creed.⁸⁷

The state becoming a plenipotentiary lies behind Elshtain’s defense of America’s right to go to war. Sovereignty ‘of the law’, she says, means the law *is* the sovereign, i.e. the political authority. The sovereign *will* of the people is once and for all ‘bound’ in the Constitution. Sovereignty is slightly more than ‘political authority’. It

takes on a metaphysical status here – ‘it’ exists whether an actual political body does or does not. A government may go. But sovereignty endures. Here sovereignty as a metaphysical

⁸⁶ See also *Sovereignty*, p. 15. Reading Ambrosius, Elshtain sets the “twinned” identities of earthly rulers and sacral offices against ‘theocratic absolutism’. With the political theorist’s focus on the positive decision-making institution, there are only two options: either they merge or they are separate.

⁸⁷ George W. Bush referred to American liberty as ‘God’s gift’. Purporting that the state defends *this* liberty underlines its Christological pretensions.

principle trumps arguments from political necessity or, perhaps better, the two are fused:

Political society cannot be insured without a supreme will. (S, 155)

So there is a core of will with power at its disposal which is fenced by law but answerable to necessities.⁸⁸ The Constitution unites and fuses a duality of sovereign will and positive law. The sovereign – a political *and* supra-political will – is ‘bound’ in normal times. At the same time it is alienated from the modern revolutionary-sovereign political body, the people.

However, Elshtain’s opaque formulation of a ‘fusion’ of ‘political necessity’ with the ‘metaphysical principle’ of the sovereign already suggests that the constraints of ‘law’ can break away to make space for an untrammelled will to survival. ‘If ... what is going on is really a war of survival, all bets are off’ (S, 85). And indeed, in an emergency the sovereign is ‘unbound’, as she calls it. With Carl Schmitt, the ‘sovereign is who decides on the exception’. The executive then can suspend all legal provisions in order to guarantee the continued existence of the sovereign body. The government unhinges positive law and constitutional provisions in order to preserve the nation and the law itself, violating the very human rights it purports to universally protect. Nevertheless, an emergency does not mark the return of the pre-Constitutional popular sovereign. Elshtain is not a revolutionary. Rather, the government makes use of the sovereign will: ‘An emergency does not create the sovereign power – it has been there all along – but becomes, instead, an occasion for its use.’⁸⁹

‘A form of strong sovereignty’ follows, a juridical mechanism taken from Jean Bodin. This ‘monistic’ notion of unchallengeable authority has its roots in canon law and the papal *plenitudo potestatis* (Bodin, incidentally, thought Pope Innocent IV knew last what

⁸⁸ Also JWT, pp.51, 55, 101, 102.

⁸⁹ Hence, Paul Kahn’s claim that every Supreme Court decision is the exceptional reappearance of the sovereign, and that therefore the Constitution itself presents a Schmittian exceptionalism in America, is misguided. Kahn, *Political Theology*, p. 10. Elshtain’s correct analysis, according to which *the government* exercises sovereign power in an exceptional moment even against the Supreme Court has a historical precedent in Lincoln, an ‘absolute dictator’, as Schmitt points out.

sovereignty meant). In an exceptional case, the government, with all its power, acts according to the dictates of the emergency. And:

Because at the water's edge sovereignty is one, whether one's internal arrangements are absolutist, or by contrast, the most meticulously calibrated constitutional separation of powers, one cannot have dozens of foreign policies declared, nor should presidential prerogative be challenged in a manner during a conflict that undermines significantly the executive's ability to deal effectively with that emergency. (S, 156)

As Carl Schmitt demonstrates, such a 'commissarial dictatorship' may become a 'sovereign dictatorship' when the state of exception becomes normality over an extended period of time. This was the case during the Nazi era, when the Weimar Constitution was partially suspended and *de facto* rule took its place for twelve years. Evidently this is also the case in Elshtain's America: 'Given that "peacetime" and "wartime" are not so easy to distinguish anymore, a national security apparatus having become permanent, especially so in post 9/11 America, the exception is operating, on some "normalized" level, pretty much all the time' (S, 157).⁹⁰

So the political agent, for Elshtain, is the 'strong' sovereign, a 'dictatorial' state, manifestly the United States. But what about – in principle – the moral-political duties of the individual citizen, a potential revolutionary or even tyrannicidal assassin like Georg Elser? Elshtain here is more of a Catholic 'Conservative Revolutionary' than her Lutheran references at first suggest. This 19th century strand of Catholicism emphasises the need for religion to maintain social order, a reactive notion of government and an anti-socialist, anti-revolutionary conservatism. As both Richard Faber and John Milbank point out, it is not so much orthodox Catholic, but rather 'secular theology', if not anti-Christian.⁹¹ It is a

⁹⁰ Elshtain wants to understand the Nazi regime as rooted in Hegel's notion of the state. Her analysis lacks, as she admits, the depth of scholarship that would be needed. *Sovereignty*, p. 300, n.27.

⁹¹ Richard Faber, *Politische Dämonologie: Über modernen Marcionismus* (Würzburg: Königshausen und Neumann, 2007), p. 107. See also the early fascist Charles Maurras: 'Je suis athée, mais je suis catholique.', cit. *ibid.*, p. 108. John Milbank, *Theology and Social Theory* (Oxford: Blackwell, 2006), pp. 55-56. Milbank points out that de Maistre's 'mystical materialism' feeds into positivism. This proximity is replicated in Elshtain's seamless movement between Lutheranism, Catholicism and political science.

‘discourse which collapses together empirical discussion of finite realities and invocation of the transcendent’, particularly when it comes to state order. Like the conservative Catholics Donoso Cortés, Louis de Bonald, or Joseph de Maïstre, Elshtain abhors revolution ‘from below’. The idea invokes the chaotic, anarchic and unordered will of the masses in 1789

... who saw their task as dethroning the semisacred body of the one – the king – the living mediator between heaven and earth, the transcendent and the immanent – and rethroning, via a ‘religion of reason’ a collective sacral body, *le peuple* [sic], the people, the general will to which all must pledge ‘Amen’ without reservation. (S, 141-142)

Instead, Elshtain warms herself to Camus’ and Benedict XVI’s anti-revolutionary stance, their Catholic ‘Mediterranean sensibility’ (S, 142). In contrast to populist-sovereign revolutionaries, Elshtain’s revolutionary breaks the law in order to preserve a stable order and indeed with it an eternal order. In America’s case, it is the constitutional order or Hobbesian *tranquillitas ordinis* whose legal principles are violated in the course of securing their continued application. Camus here provides the term ‘the rebel’ for Elshtain. Effectively, the (Bush) government itself becomes ‘the rebel’ driven by ‘love’. Rebellion, or exceptionalist revolution, is in fact a *privilege of the government*.⁹²

In this respect Elshtain’s drawing on Dietrich Bonhoeffer is remarkable. Her quotations do not at all suggest that ‘dissenting’ Christian citizenship in the present City of God may lead a political Christian to overthrow the legal, constitutional order that has become a terror regime in favour of a better one.⁹³ Rather, ‘with Bonhoeffer we get an ethical account of “the exception”’ (S, 117). Whilst Bonhoeffer’s ‘anti-totalitarianism’ serves as an entry badge, Elshtain uses him as a mouthpiece for Machiavellian ‘free responsibility’:

⁹² Hence, Elshtain *nolens volens* reintroduces a deeply Nietzschean conception of political authority. In *Sovereignty* she argues Nietzsche provided the notion of ‘strong sovereignty’ only for the individual. But it is not clear why only the individual’s, but not the state’s ‘strong sovereignty’ should be Nietzschean. *Sovereignty*, p. 196. Cf. Domenico Losurdo, *Nietzsche, il ribelle aristocratico: Biografia intellettuale e bilancio critic* (Turin: Bollati Boringhieri, 2002) Elshtain and Nietzsche concur in their complete rejection of Hegel to the point of ridicule.

⁹³ On the tensions within Luther’s work, see e.g. Peter Blickle, *Der Bauernkrieg: Revolution des Gemeinen Mannes* (München: C. H. Beck, 2006), p. 65f.

In the course of historical life there comes a point where the exact observance of the formal law ... suddenly finds itself in violent conflict with the ineluctable necessities of the lives of men; at this point responsible and pertinent action leaves behind it the domain of principles and convention, the domain of the normal and regular, and is confronted by the extraordinary situation of ultimate necessities, a situation which no law can control. It was for this situation that Machiavelli in his political theory coined the term *necessita* ... [These necessities] appeal directly to the free responsibility of the agent, a responsibility which is bounded by no law.

(cit. in S, 116)

I will return to the content of the ‘free responsibility of the agent’ below. Yet a certain irony of George W. Bush being equated with Bonhoeffer has been noted, even though they share the logic of the interplay between legal, moral normality and illegal exception.⁹⁴ Once this *logical*, though not theological, parallelism is stipulated, ‘tyrannicide’ becomes a synonym for ‘regime change’ and invading Afghanistan and Iraq can be understood as anti-totalitarian ‘resistance’.

At the same time Elshtain argues that the (commissarial-dictatorial) logic of ‘anti-legalistic’ action extends beyond the borders of the sovereign’s homeland, especially in war. Here it is Hannah Arendt who, albeit without reference, is to provide support for ‘Hobbes *Redux*’ and the ‘sovereign prerogative’ of Carl Schmitt. For Arendt, Elshtain claims, ‘internally sovereignty is the power to order a domestic arena’:

externally, sovereign powers function in a system of at least theoretical independence and equality of states whose relations are controlled by principles which are *the reverse* of those that comprise the internal structure of states, at least on the strong construction of sovereignty.

Justice within; force without. (S, 114-115; italics mine)⁹⁵

⁹⁴ Matthew D. Kirkpatrick, *Bonhoeffer’s Ethics: Between Pacifism and Assassination* (Cambridge: Grove Books, 2011), pp. 4-5.

⁹⁵ Schmitt points out that, despite Locke’s domestic precautions against dictatorship, commissarial dictatorship enters as a foreign possibility, apparently without that posing a problem for Locke. Carl Schmitt, *Die Diktatur* (Berlin: Duncker und Humblot, 1994) pp. 40-41; see Locke, *Second Treatise of Government*, § 147.

So whilst the sovereign's use of violent force in an emergency is restrained by no law, Elshtain can idealise it by continuously pointing to its origin in the American 'foundational principle of moral equality' (JWT, 27). This, notably, is understood as a realistic account of political authority, which, at least conceptually, has no moral restraints towards external enemies.

American empire of human rights

If there is a domestic confluence of Is and Ought in the American constitutional state, then Elshtain's notion of 'benevolent empire' stretches this confluence beyond national borders. She is often portrayed as having been rather pacific or even anti-imperialist in *Augustine and the Limits of Politics*. But unlike Augustine she notes a moral backdoor to empire:

One must simply live with this shadow, a penumbra of fear and worry on this earth. But one must not give oneself over to it, not without overweening justification. When one capitulates to this fear, one gets Empire and this in turn has "given rise to wars of a worse kind, namely, social and civic wars, by which mankind is more lamentably disquieted either when fighting is going on in the hope of bringing hostilities eventually to a peaceful end, or when there are fears that hostilities will break out again." (ALP, 108)

Notably, Elshtain again holds two contradictory views: she claims (with 'realists') that one must live within a penumbra of fear, but on the other hand September 11, 2001 was an occasion to 'give oneself over' to fear and worry. Beyond any *libido dominandi*, it 'is the military brass's *reflexive* empire-building that builds an empire.'⁹⁶

If national defence may be understood as a form of large-scale existentialist subjectivism, then it is idealised here in the claim that American self-interest and interest for

⁹⁶ Jonathan Freedland, 'A Black and Disgraceful Site', *The New York Review of Books*, Volume 56, Number 9, May 28, 2009 < <http://www.nybooks.com/articles/22691> > [accessed 15 Oct 2009]; emphasis mine.

the whole world are harmonious at heart. This is based on common principles, like rightly ordered self-love and neighbour-love: ‘The moral imperatives at work here are not pious nostrums that we can ignore when we choose in favour of narrow evocations of national interest. Instead, these ethical considerations are themselves central to our national interest, correctly understood.’ (JWT, 170) Notably, the American empire is not a utopia, since for Elshtain it is the *continuation* of present state praxis. The utopianism to be limited is chiefly that of others:

Endangered people around the globe will be able to count on us when American enlightened self-interest and the universal language of human rights and civil society come together in significant and robust warp ... We cannot follow lines of narrow self-interest to the detriment of global stability. At the same time we must not lose sight of our national interest in favour of a utopian vision of [the] world...’ (JWT, 178)

It would be hard to miss Elshtain’s switch from Augustine’s mocking of imperialist ‘just wars’ in the *City of God*, IV.15 to Eusebian praises of the confluence of Rome and Christianity. She would rather call such a ‘connection between the transcendent and the earthly’ the ‘messy cobbling together of Jerusalem and Athens’ (S, 142).⁹⁷

This conceptual merging of the Is and Ought, of the real and the ideal in the state-become-empire, however, is contrasted by an irreconcilable opposition to its enemies. The state does not take a *Christ-analogous* mediate position above its own interest and the enemy’s ‘evil’ will. Rather, for Elshtain – and with her the Bush government and other apologists – the antagonistic battle line is drawn between ‘us’ and ‘them’. The war on terror is about ‘confronting political evil’ (JWT, 102). As ‘apocalyptic nihilists’ (JWT, 103),

⁹⁷ Wilhelm Blum, *Vermittlung und Politik: Untersuchungen zur politischen Philosophie und politischen Theologie in Antike und Gegenwart* (Waldsassen-Bayern: Stiftland-Verlag, 1982), pp. 50-55. Blum points out that Eusebius lacks a trinitarian understanding of Christ the mediator. The authority of the emperor is based on a strict monotheism. But as analogue to Christ and ‘friend of God’, the emperor *after all* has the role to mediate between God and humankind. See also Jon M. Robertson, *Christ as Mediator: A Study of the Theologies of Eusebius of Caesarea, Marcellus of Ancrya, and Athanasius of Alexandria* (Oxford: Oxford University Press, 2007)

terrorists become the ‘demonic’ harbingers of doom. Congruently Richard Faber says about Schmitt: ‘Political demonology disfigures his talk of “political Christology” back into recognition.’ Whether Elshtain talks of Manichaeic enemies, as Schmitt and the Bush government did, is a matter of degree, ‘but one may or have to talk about a demonization of the enemy.’⁹⁸ The war becomes apocalyptic because the state itself takes on the role of Christ, externally battling the forces of evil.

This idealized (or rather transcendentalized) authority finds its unmediated opposition not only in its enemies, but also in its ‘idealist’ or ‘utopian’ dissenters. Not only terrorists have ‘utopian’ aims. Equally ‘utopian’ agents – socialists, communists and Christians who pronounce the Kingdom of God to be a present reality – emerge as tacit ‘irresponsible’ *collaborators*.⁹⁹ And is this why Elshtain rejects Origen as ‘mainstream’ Christianity – because he argued that their subversive politics do *not* put the empire at risk?¹⁰⁰

Theologically, an irreconcilable Marcionite juxtaposition of the old God of justice and the new God of love underlies Elshtain’s dichotomy of ‘responsible’ and ‘utopian’ politics. In *Political Theology II* Carl Schmitt makes an important point that links her sovereign-realist dynamics to Gnostic dualism:

The structural core problem of gnostic dualism governs not just every religion of salvation and redemption. In every world in need of change and renewal it is immanently given, inescapably and ineradicably. One cannot remove from the world the enmity between human beings by prohibiting inter-state wars of the old style, propagating a world revolution and

⁹⁸ Faber, *Politische Dämonologie*, p. 94; also Michael S. Northcott, *An Angel Directs the Storm: Apocalyptic Religion and American Empire* (London; New York: I. B. Tauris, 2004), pp. 154-155.

⁹⁹ Cf. Brent Adkins, *A Review of Jean Bethke Elshtain’s Just War against Terror: The Burden of American Power in a Violent World*, < <http://www.elca.org/What-We-Believe/Social-Issues/Journal-of-Lutheran-Ethics/Book-Reviews/Just-War-against-Terror-by-Jean-Bethke-Elstain/A-Review-of-Jean-Bethke-Elstains-Just-War-against-Terror-The-Burden-of-American-Power-in-a-Violent-World.aspx> > [accessed 15 March, 2009]

¹⁰⁰ Peter Brock, *The Roots of War Resistance: Pacifism from the Early Church to Tolstoy* (Nyack, N.Y. : Distributed by the Fellowship of Reconciliation, 1981), p. 11.

trying to turn global politics into a global police [*die Welt-Politik in Welt-Polizei zu verwandeln sucht*].¹⁰¹

Similarly, against humanist, internationalist idealists, Elshtain stresses: ‘For Christians living in historic time and before the end of time, the pervasiveness of conflict must be faced’ (JWT, 101). And Schmitt says: ‘The Lord of a world to be changed, i.e. a failed world ... and the liberator, the bringer of a changed, new world cannot be good friends. They are, so to speak, enemies of *their own accord*.’¹⁰²

Elshtain somewhat glosses over this theological dualism between creator and redeemer God by reference to a radically sovereign God, a monistic centre of power.¹⁰³ The transfer of sovereignty is lifted out of Schmitt, whom Elshtain quotes: ‘All significant concepts were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver ... the recognition of which is necessary for a sociological consideration of these concepts’ (S, 30). At the basis of the juristic conception of the ‘strong sovereign state’ lies ‘a monistic conception, i.e., a concentration on a singular, sovereign will [of God]’ which ‘squeezes out more relational and dialogic understandings’ (S, 30). But this stands in contrast to both Christ as mediator between mankind and God as well as between humans. Elshtain’s repeated references to Augustine’s trinitarian theological unfolding remain without analytical effect. In *Sovereignty* it is acknowledged but dropped on historical grounds: ‘This dialogic dimension of God’s sovereign power fades in late medieval nominalist construal’ (S, 35). In short, whilst the utopian, internationalist alternative ‘authorities’ are rejected, the state remains entangled in potentially perpetual antagonism with its fanaticist enemies.

¹⁰¹ Carl Schmitt, *Politische Theologie II* (Berlin: Duncker und Humblot, 1984), p. 120.

¹⁰² Schmitt, *Politische Theologie II*, p. 121. Specifically this enmity is characteristic of (also modern, anti-revolutionary) Marcionism.

¹⁰³ See below, Ch. 2, Reinhold Niebuhr’s ‘radical monotheism’.

The Church as a political counter-society?

From this perspective Elshtain does not *need* to think the political possibility of reconciling realists and utopians in the light of a trinitarian theology.¹⁰⁴ By declaring the God of Old and New Testament identical, albeit by neglecting the salvation-historical unfolding of Creation, Incarnation, Trinity and Resurrection, Elshtain can collapse the salvation-historical moments of BC and AD into one. The Old Testament God of justice is equated with national defence. The notion of neighbour love is then added on to this without any friction, through a simple ‘and’: ‘Because the God of mercy is also a God of judgment, justice and love go together’ (JWT, 109).

In terms of the political agent, the church is always already there in Israel; or rather the church is always already part of America’s political mission.¹⁰⁵ As a Christological body battling the forces of evil externally, the state *reconciles* a plurality of ‘religions’ internally. One result is Elshtain’s claim that every citizen can benefit from Christian arguments without being Christian, indeed even if they disagree with Christianity. (JWT, 121) From a theological perspective, America the nation itself takes the place both of old and new Israel as the Body of the Constitution. As the Hebrew desert morphs into the Western prairies of Liberty Valance, ‘Elshtain’s faith in her own nation marks a shift from the *City of God* to the “city upon a hill”’.¹⁰⁶

Within the ‘earthly city’ or the constitutional order, the church is a supportive and positive institution of ‘civil society’. (JWT, 29) Behind this lies a two-dimensional concept of church as either ‘spiritual’, disembodied dimension or as an institution of power. As a spiritual entity, it is irrelevant for political theory. If the ‘Augustinian’ is ‘always a radical *in*

¹⁰⁴ JWT, p. 120.

¹⁰⁵ Oliver O’Donovan, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1996), p. 162.

¹⁰⁶ Cian O’Driscoll, ‘Jean Bethke Elshtain’s Just War Against Terror: A Tale of Two Cities’, *International Relations*, 21 (2007), 485-492, p. 489.

situ', as Elshtain says in *Augustine and the Limits of Politics*, then she never fleshes out this 'radicalism' as an ecclesiology. Her 'ideal of the Augustinian maverick who lives "the ethic of the pilgrim"' has no concrete collective existence. Like Niebuhr's concentration on the individual soul, Elshtain's Augustine rendered the church politically irrelevant, even invisible.'¹⁰⁷

'The Christian' as an individual is effectively indistinguishable from a liberal citizen. This does not mean Two Kingdoms-theology distinguishing 'private' religious and 'public' secular sphere¹⁰⁸: 'For it is not at all clear that most human beings can seal themselves off into compartments and be believers one moment, good subjects of the king the next'.¹⁰⁹ The 'bleeding in' of private religion and public politics is rather an alignment of the believer with the constitutional order, of 'God, state and self', as the sub-title of *Sovereignty* suggests. As Elshtain says in an earlier article: 'Real [constitutional] pluralism gives all religious believers the space to be both Catholic and American, Jewish and American, evangelical and American, Muslim and American.'¹¹⁰ Again, the state is the external reconciler of divisive truth-claims, the warrantor of religious freedom. Notably, from this perspective a theological dispute will inevitably turn into a discussion of the right interpretation of the Constitution, not the Bible.

In this context Elshtain's use of the word 'sectarian' must again be highlighted. It denotes any specifically *Christian* ethic: 'many contemporary critics' – whom Elshtain wants to counter – argue 'that an ethic derived from Christianity is sectarian or exclusive.' (JWT, 100) Sectarian are those 'theological responses' that are 'available in principle only to the company of believers'. (JWT, 121) 'Sectarian violence' denotes any 'religious war' as

¹⁰⁷ Eugene McCarragher, 'The Enchanted City of Man', in *Augustine and Politics*, ed. by John Doody, Kevin L. Hughes, and Kim Pfaffenroth (Oxford: Lexington Books, 2005), pp. 261-296, p. 265.

¹⁰⁸ Without explanation, Elshtain lays this development at the feet of Kant and Hegel.

¹⁰⁹ Elshtain, 'The Bright Line: Liberalism and Religion', *New Criterion*, 17.7 (Mar 1, 1999); <<http://www.newcriterion.com/articles.cfm/brightline-elshtain-2894>> [accessed 12 July, 2012]

¹¹⁰ Elshtain, 'The Bright Line'; *ibid.*

supposedly witnessed in Europe in the 17th century. Again, a dualism is tangible here: those claiming that they are specifically Christian (and/or critical of the Bush regime's policies) are relegated to the sphere of 'pacifism' and thus 'irresponsible', a term Elshtain applies to dictators, utopians and 'anti-American' authors such as Noam Chomsky alike.¹¹¹

If Elshtain smoothly channels the spiritual church into the fabric and mechanisms of state and civil society, the church as a political institution must stay out of it. In *Just War Against Terror* the church-state separation is praised as an advantage of the American constitutional system, even something that is 'at stake' in the war on terror. As Otto Gierke noted:

It was ... impossible for natural-law theory, if its conception of sovereignty were pushed to a logical conclusion, to recognise associations as able to exist *side by side* with the State. If the *potestas summa et absoluta* ascribed to the State was to be a real fact, all other associations must necessarily be contained in the State, and they must necessarily be subject to its power.¹¹²

Similarly, Elshtain mentions in passing that 'religion's exclusion from a visible public role is required under the terms of strong sovereignty' (S, 130). Historically, the great contender to the state for 'earthly dominion' and 'power' is and remains the papal apparatus.¹¹³ Between the earthly and the spiritual, so Elshtain's interpretation, it tended to traipse onto the earthly governor's 'responsibility' (S, 12). In fact, one must read Elshtain's Gifford Lectures on *Sovereignty* as a genealogical attempt – via the Middle Ages and early modernity – to understand how (American) state sovereignty can be extricated from international, papal, judicial or individual interference. With the Reformation, she notes, 'sovereignty' or the contested ground to 'earthly dominion' irreversibly flows over to states:

¹¹¹ JWT, p. 105, 168, 226n.17.

¹¹² Otto Gierke, *Natural Law Theories*, p. 87.

¹¹³ Cp. again Schmitt, who argued that with Hobbes the Reformation has come to a close. 'Die vollendete Reformation: Bemerkungen und Hinweise zu neuen Leviathan-Interpretationen', *Der Staat*, 4 (1965), 51-69.

The upshot is the creation of the *Volkskirche* or *Landeskirche*, the Churches of a particular people, tied to a particular territory. Denying any form of sovereignty to either papacy or empire, sovereign powers flowed into the reservoirs of particular sovereignties and these became what we call ‘the state’.¹¹⁴

Today’s sovereign state therefore also ‘rebels’ against the crypto-papalist claims of the United Nations to be the final authority on war and peace. In this sense, conceptually this conflict was a renewed flaring up of the Investiture contest. Elshtain idealizes or mythologizes the state, whilst a (humanitarian) papacy instantiates the humanitarian ideal. Both approaches, however, have in common the understanding of either a frictionless continuity between political and spiritual or the absolute separation of the two.

In short, we may again summarise the logic of the politically real and the moral ideal as follows. In Elshtain’s vision the strong sovereign state, specifically the American one, emerges as the point in which realistic human constraints, power, and necessities merge with naturalist moral commands and restraints.¹¹⁵ Whilst the real and the ideal here are congruent, a *genuinely* other, unsettling ‘ideal’ or ‘utopia’ is portrayed as irreconcilably different, indeed possibly the enemy. Theologically, this Other emerges as a ‘revolutionary’ Christ. Hence, following the lead of Richard Faber on modern Marcionism, I have read Elshtain as a Marcionite political Catholic in line with Carl Schmitt and Donoso Cortéz.

¹¹⁴ NB: Elshtain’s synonymic use of *Volkskirche* and *Landeskirche* is misleading. The term *Volkskirche*, now simply meaning the church of the majority in a given country, was first introduced by Friedrich Schleiermacher. A fusion of *Volkskirche* and *Landeskirche* was only attempted by the National Socialists in Germany, as a “germanicised” mass Church to incorporate the NS-ideology.

¹¹⁵ Another result of this is the ‘ethicization of law’, which must be understood as precisely a logical *result* of legal positivism, not merely its historical counter-position (as, for example, between Hans Kelsen and Carl Schmitt).

Moral action

Defence as loving necessity

Elshtain's notion of moral action further reflects this dualistic dynamic of the real and the ideal, in this instance the relationship between defence and love. As already noted, Jesus' ethic 'seems unattainable in principle, save by the few saints among us, and even they are not without sin, as all believers know.' (JWT, 100) However, the 'source' of moral action for Elshtain is not so much Christian faith and worship in-forming action, but the need for rules in 'the earthly city':

Living an earthly life, what rules should one follow? What is one to do? Temporal peace is a good, whether it is the peace of the body (health and soundness), or fellowship with one's own kind, or 'light, speech, air to breathe, water to drink, and whatever is suitable for the feeding and clothing of the body, for the care of the body and the adornment of the person.'

(ALP, 95-96)

In order to answer these questions 'The message of the Christian Savior' then requires '*translation* into an ethic of worldly engagement'. As a result, worldly engagement equals good citizenship in the earthly city or the state. Citizens of God are 'sprinkled throughout the earthly cities within which they should be decent, obedient citizens in full awareness that the earthly kingdom is, like the human beings that populate it, finite, partial, incomplete, estranged'. This even 'lifts up the possibility of a secular faith, appropriately relativized, that *all* citizens may share'. (S, 10) During the *saeculum*, in somewhat of a Schleiermachiian fashion, faith – faith in general, one should add – effects the 'transformation of the self', or of 'feeling' resulting in a general 'community of believers and friends ... united by *caritas*.' (ALP, 11-12) Whilst any specific Christian orientation is renounced, 'secular faith' provides

the grounds for political action. 'Secular faith' as opposed to a specific 'religious faith' is a term Elshtain may well have taken from Jacques Maritain's *Man and State*.¹¹⁶

Under the umbrella of 'secular faith' charity and national defence become one. Charity adds a certain benevolence to the use of force as it turns the potentially sadistic joy about violence into a sense of tragedy. Love, one could say with Herbert Marcuse, marks the difference between necessary and surplus repression:

Politics is erected on the altar of necessity, but not reducible to it. Unfortunately, politics offers a grand canvas on which those who prey on others can paint their gruesome picture. The ruthless leader of the robber band and the avaricious emperor alike need other human beings to work on and to work over. The sin that mars the earthly city is the story of arbitrary power, or the ever-present possibility of such. Within this common mortal life, Augustine offers an understanding of earthly dominion into which love, *caritas*, enters. (S, 9)

At times Elshtain seems to argue that neighbour love provides the 'limits' of violent force; that the love for one's enemy should prevent belligerents from total war but instead strictly observe the principle of discrimination. (JWT, 24) The 'just war tradition ... shares with pacifism a strong presumption against violence and force, all other things being equal.' But Elshtain not once mentions the love of enemy, precisely the implication of Christ's universal mediation. The 'limits' to political authority and violence merely consist in the 'realistic', pragmatic insight that often things will simply not work out the way we want it in a 'fallen world' in which 'perfect justice is not possible'. Elshtain says: 'Augustinian realists are not crusaders, but they do insist that we are called upon to act in a mode of realistic hope with a hardheaded recognition of the limits to action.' (JWT, 70) Force is deployed within 'necessary limits'. (JWT, 57)

¹¹⁶ Jacques Maritain, *Man and State* (Chicago: University of Chicago Press, 1951), p. 110. Notably, Maritain sharply renounces Bodin's political absolutism, Elshtain's 'strong sovereignty'. See p. 29.

If love means free and overflowing naturalistic neighbour love, then here, in the state of emergency, it actually results in the loss of freedom as it sees itself surrounded by an abyss of unlawful necessities. Of course, Elshtain would guard herself against the charge that love is a mere benignity: 'Christianity is not an exalted or mystical form of utilitarianism.' (JWT, 100) And with H. Richard Niebuhr she wants to avoid a Christian flight from the world – evidently against Jesus, who as we heard 'directed [his disciples] away from temporal pursuits.' (JWT, 99) Her kind of believer 'neither despises the world nor retreats from it.' Here flares up a genuine possibility of transformation: 'Rather, this believer engages the world, sustains it, and seeks to transform it – all at the same time.' (JWT, 101)

But Elshtain's dualistic dynamic gains the upper hand: either idealistic flight or realistic assimilation. And assimilation it is. Her appeal to the notion of vocation, in Christianity inseparable from repentance and the service of God, becomes indistinguishable from asking people to simply do their job¹¹⁷: 'Ordinary vocations are the responsibility of believers. They should not shirk their vocations, including political vocations like soldiering or judging. Such vocations are necessary to sustain a common life.' (JWT, 101) The freedom of a Christian, potentially opposed to assimilation, is neutralised and re-issued as the coinage of political 'liberty': 'Christians must understand that their own freedom is entangled with political realities and possibilities. It follows that Christians as citizens have 'an important stake in politics' and in all the institutions that are the warp and woof of a democratic society.' (JWT, 109)¹¹⁸ Love, because it is an 'earthly love' for one's children and neighbours without any tension simply 'goes together' with 'earthly justice': 'As an act of neighbour love and of service, we may at times be obliged to commit ourselves to active intervention in order to prevent evil from having its day, even as we give evil its due.' (JWT,

¹¹⁷ Volker Stümke, *Das Friedensverständnis Martin Luthers: Grundlagen und Anwendungsbereiche seiner politischen Ethik* (Stuttgart: W. Kohlhammer, 2007), p. 158, ff.

¹¹⁸ *Sovereignty*, pp. 80-81; p. 280n.17.

102) Indeed, in national defence humanitarian love is ‘also implicated’, as I showed in the exposition above.

The love added on to consequentialist politics can also be observed in Elshtain’s discussion of torture. Utilitarians like Richard Posner advocate and justify the state’s use of torture as part of the state’s security apparatus. Elshtain is slightly different. First, she justifies torture on utilitarian grounds: ‘...a greater moral guilt falls on a person in authority who permits the deaths of hundreds of innocents rather than choosing to “torture” one guilty or complicit person.’¹¹⁹ But then, since Elshtain wants to protect her own children and grandchildren, she sanctions a ‘limited’ form of torture, or ‘torture lite’.¹²⁰ Her ‘religious input’, as her reviewer Douglas McCready calls it favourably, is that no ‘malice’ is involved and that a politician ‘can stand before God as a guilty person and seek forgiveness’.¹²¹ McCready explains: ‘Forgiveness presupposes the action was wrong, the action transgressed the law, and the action deserves punishment. Moreover, forgiveness can only be granted after the fact’.¹²² What this amounts to is that torture is morally wrong, illegal, unjustified and should never be sanctioned. But with a bold leap into the *coram Deo*, divine forgiveness is held out to torturers, a ‘deferred repentance’. *Sub specie aeternitatis* the difference between torture victim and torturer is blurred.¹²³ The confusion of ethical and juridical categories required to uphold such a view is reflected in Michael Ignatieff’s summary of Elshtain: ‘...good consequences cannot justify bad acts, but bad acts are sometimes tragically necessary. The acts remain bad, and the person must accept the moral opprobrium and not seek to excuse the inexcusable with the justifications of necessity.’¹²⁴ If Elshtain wants to

¹¹⁹ Elshtain, ‘Reflections on the Problem of “Dirty Hands”’, p. 87.

¹²⁰ Ibid.

¹²¹ Ibid., p. 83.

¹²² Douglas McCready, ‘When Is Torture Right?’, *Studies in Christian Ethics*, 20(2007), 383-398, p. 393.

¹²³ See below, Ch. 2.

¹²⁴ Michael Ignatieff, in *Torture: A Human Rights Perspective*, ed. by Kenneth Roth (New York: New Press ; York : Signature Books, 2005), pp. 18-28, 21-22. See also Marnia Lazreg, *Torture and the Twilight of Empire* (Princeton: Princeton University Press, 2008), 245-250. Lazreg’s critique via Hegel seems to me more apt in

neither fall into purely utilitarian realism or deontological idealism (one making torture too easy, the other making it impossible), then indeed this is a ‘messy cobbling together’ of Jerusalem and Athens. (S, 142)

This merging of consequentialist politics and (earthly) love is again sustained by Elshtain’s problematic reading of Augustine’s *City of God*. David Kim here analysed Elshtain’s understanding between making earthly peace and heavenly peace: it is moralism. He first summarizes the meaning of Augustine’s section:

Christians, or the members of the City of God, are called to respond to both [the earthly and the heavenly peace], and not separately, or one at the expense of another. Augustine’s genius lies in holding these two contexts in tandem, so that pursuing after earthly peace is the context and referring it to the heavenly peace is the content.¹²⁵

One could say that making earthly peace, and therefore *potentially* using violent force, can be the beneficial ‘social’ side-effect of worship, of the reference of action to God. This reference (or reverence) may or may not result in conventionally ‘good’ earthly citizenship in the sense that it recognizes and brings out the transcendent, eschatological being and destiny of all social life.¹²⁶

Elshtain, in contrast, sets up an eschatological *gap* between the ‘here and now’ of social strife and the City of God. In the twilight of the ‘here and now’ all cats are grey, all communities stricken by strife. Heavenly peace having been left aside, earthly peace is attained fitfully in the *altera civitas* in its earthly pilgrimage; haphazardly, at best, in all earthly cities; and in its full richness only in the city of God, when the time of pressing for the human race in temporality comes to an end. (ALP, 94)

relation to Elshtain’s notion of ‘right intention’. Criminality, as Hegel points out, lies in objectivising subjective desires. The act of murder therefore is as random as the ‘act of legitimization through declaration’. See Hegel, *Elements of the Philosophy of Right*, § 140.

¹²⁵ David Kim, “City of God”, p. 132.

¹²⁶ In that sense, consensus is contingent, indeed admirable or a *gift* when it happens, yet suspicious if ‘manufactured’.

This eradicates the dimension of Christianity's eschatological *paradox*, the future Kingdom of God already being here as that to refer to. In 19.20, Augustine says: '... if any man uses this life with a reference to that other which he ardently love and confidently hopes for, he may well be called even now blessed...' But Elshtain never states that through faithful worship one makes earthly peace. On the contrary, whilst Christians may go to church without disturbance – making use of their 'right to religious freedom' – she calls them to be good citizens of the (American) pluralistic state. 'On this earth there must be compromises "between human wills" if there is to be anything resembling peace; indeed, the heavenly city on pilgrimage helps to forge peace by calling out "citizens from all nations..." (ALP, 96).

Political resistance in *Augustine and the Limits of Politics* still seems to be an option. Yet it is not a form of reference to a heavenly peace, but born out of a longing for a better earthly peace, an improved liberal *status quo*. As for Reinhold Niebuhr, possibilities and necessities set Elshtain's terms of engagement:

If the Christian is a disturber of a false peace, he or she yearns for a more authentic representation of earthly peace as that which partakes in the *pax aeterna*. One can hope for what is possible to obtain. An imperfect but nonetheless real earthly peace lies within the realm of the possible. (ALP, 105)

Notably, in line with the 'naturalistic morality', the church is not the context for political action, but the 'ties of fellowship, in households, clans, and tribes, in earthly love and its many discontents' (ALP, 49). Love of God and love of neighbour are portrayed as 'equally valid starting points': 'we must love God and love our neighbour, and the one helps to underscore and animate the other' (ALP, 96).¹²⁷ The church is again reduced to its social-institutional presence. Elshtain is aware that 'the life of the saint, the life of the citizen, is a social life', but underplays the church as the *communio sanctorum*, the present spiritual union

¹²⁷ Kim, p. 147.

of the members of the body of Christ (1 Cor 12:13). To be and live accordingly could hardly be understood as ‘earthly work’ separate from divine calling, or a separate ‘secular’ duty.

The specific praxis of Elshtain’s just war theory corresponds neatly to this merging of the real and the ideal in loving national defence. It is ‘not a meta-ethical theory’ but a demonstrative ‘account’ of reason, statecraft and contingent politics.¹²⁸ Just war equally is ‘the belief that universal moral reasoning, or what some would call natural moral law, can and should be applied to the activity of war’ (JWT, 214). Elsewhere she calls Just War ‘interpretive political theory’, thus retrospectively interpreting actual, factual events. Philosophers like herself are ‘just war analysts’. As Elshtain ‘lends the cover of ideational expertise’¹²⁹ to politicians in the cataclysmic and ideal moment of war, the sovereign state and the loving empire, one could say Elshtain’s Just War theory functions as a form of *civic edification*.¹³⁰ In other words, Elshtain offers reassurance that the United States is doing the right thing.

Friends versus enemies

But what about the fundamentally Marcionite, dualistic orientation of Elshtain’s work, which has emerged so far? If civic edification is the inward, domestic task of just war theory as the handmaid of the sovereign, then in relation to dissenters, it is the praxis of *polemics*, verbal antagonism. Indeed Elshtain’s polemic is an ‘unsubtle’ one.¹³¹ As the intellectual version of decisionism it continuously separates between friend and enemy, like the sovereign state. In

¹²⁸ Jean Bethke Elshtain, ‘Response to Reviews of Just War against Terror’ <<http://www.elca.org/What-We-Believe/Social-Issues/Journal-of-Lutheran-Ethics/Book-Reviews/Just-War-against-Terror-by-Jean-Bethke-Elshtain/Response-to-Reviews-of-Just-War-against-Terror.aspx>> [accessed 15 August 2011]

¹²⁹ Lazreg, *Torture and the Twilight of Empire*, p. 250.

¹³⁰ Critical philosophy as edification after the Kantian turn, see Georg Wilhelm Friedrich Hegel, *Phänomenologie des Geistes*, Preface.

¹³¹ Kevin Schilbrack, ‘Review: Just War on Terror. By Jean Bethke Elshtain.’, *Journal of the American Academy of Religion*, 74(2006), 539-543; Brien Hallett also refers to the book as a ‘litmus test’ and essentially a polemic. ‘Review’, *Peace and Change*, 29(2004), 322-324.

fact, the polemic thrust of Elshtain's just war proposal is so overarching that she is willing to sacrifice some portion of coherence for it. The work taken from Augustine is mainly selective, in parts misrepresenting or unreferenced.¹³² Authors she prefers are labelled 'distinguished', others 'irresponsible', not knowing 'what they are talking about', 'balderdash', etc. She contradicts herself when she argues that a glance at history deters from concrete present responsibilities, but herself continuously refers to the Nazi era. Equally, she refers to international law and America's absolute right to national defence, but simultaneously disavows international law and certainly withdraws the right to national defence from America's enemies.

So Elshtain repeats the anti-revolutionary and dualistic polemic of the 'Conservative revolutionaries'. Cortés noted for himself: *Je me trouve constamment entre deux abîmes, je marche toujours entre l'être et le néant.*¹³³ In that sense, Elshtain equally sees no mediating third for Christians as regards their state's politics: 'One way or another, Christians, together with other citizens, face moments when they are asked: Where do we stand? Refusing to answer is itself an answer. But the duty of conscience and of witness demands more from us'. (JWT, 102) In contrast, the notion of reconciliation – the key work of God's dealings with the world – has no effect on waging war: 'The just war tradition does not discourage acts of forgiveness and reconciliation in political life but does recognize their limits in a world of conflicting human wills, in which the ruthless would prevail if they faced neither restraint nor the prospect of punishment' (JWT, 56). Indeed, with Reinhold Niebuhr, reconciliation 'is conceived in terms of pure moral suasion' or 'seeks to avoid conflicts' in inevitably conflictual societies. Again, this is not part of a realistic politics: '... the consequence of such

¹³² See e.g. Eric Gregory, p. 123n.89; *Sovereignty*, p. 12: 'As Augustine had insisted, earthly rule and dominion and spiritual offices had different ends and were directed toward distinctive purposes.'

¹³³ Richard Faber, *Politische Dämonologie*, p. 10.

conceptions is to create moral idealists who imagine that they are changing the world by their moral ideals' (JWT, 109).

Conclusion

This first chapter looked at a 'realist' just war ethic understood as a 'naturalistic morality' that makes 'use of theological categories'—as an 'Augustinian Christian realism'. In the exposition I showed how Elshtain's arguments for the Bush government's wars in response to 9/11 represented a particular, 'realistic' approach to politics which Elshtain argued is in tune with a Christian ethic.

Some of Elshtain's reviewers have argued that *Just War Against Terror* is somewhat incoherent because it deals with issues that seem remotely related to the question at hand, for example America's constitutional separation of state and church. However, these issues are key to understanding the logic and theological architecture of Elshtain's thought. In the analysis I showed how her claims depend on a dualistic theology, which is, notably, dependent on the Enlightenment's division between reason and faith. Despite mentioning it, Elshtain fails to take seriously the very mediating being and event of Christ: as mediator between God and mankind, and as the judge in heaven in the light of whom an unmediated conflict is not possible anymore. Elshtain's rejection of 'sectarian' Christianity then results in a metaphysical over-determination of secular reality. In other words, her theological dualism divides 'realistic' from 'idealistic' so starkly (whilst condemning the latter) that she ends up idealising the real as a categorical continuity. In the 'state of exception' "all bets are off" and neighbour love collapses into the 'demands of necessity'. Conversely, her 'realism' collapses into the idealism of a 'benevolent empire.' It is as 'utopian' as its enemies.

Unlike other commentators, I have argued that Elshtain's version of civil and constitutional religion has much more in common with the Marcionism of 19th century conservative counter-revolutionaries. Instead of Christ, the state becomes the agent ultimately mediating between Is and Ought; Christians are chiefly good liberal citizens. However, the mediation between belligerents is impossible here and in this spirit Elshtain offers a polemical apology of empire. The Christ of cultural Protestantism, as Bonhoeffer says, in this way 'sanctions the factual'.¹³⁴ Where the Christian asks: 'What do I do because God is?', the Marcionite political philosopher asks: 'What can we do for you, Mr. President?'¹³⁵ Just War thinking becomes indistinguishable from ideology, a category that will return in Chapter 5 below.¹³⁶

The next author is in many ways very similar to Elshtain. Indeed some of her phrasings could be lifted right out of Paul Ramsey's books. However, despite an overall similar development, Ramsey rejects a naturalistic morality and provides a 'Christian-ethical' account of neighbour love that transforms 'what Americans ordinarily think of justice in war'. And, unlike Elshtain, he is quite fond of some of Nietzsche's and Hegel's work. Taken all together, I will argue, this provides significant modifications and corrections to Elshtain's just war proposal.

¹³⁴ Bonhoeffer, *Ethik*, p. 244. cit. in Jürgen Weissbach, *Christologie und Ethik bei Dietrich Bonhoeffer* (München: Chr. Kaiser Verlag, 1966), p. 21.

¹³⁵ Jean Bethke Elshtain, 'Religious Leaders Visit the White House' <<http://www.beliefnet.com/News/Politics/2001/10/Religious-Leaders-Visit-The-White-House.aspx?p=3>> [accessed 17 July 2012]

¹³⁶ Cp. Peter Lee, *Blair's Just War: Iraq and the Illusion of Morality* (Basingstoke: Palgrave Macmillan, 2012)

Paul Ramsey – Christian ethics between *agape* and the world of systems

This chapter takes us both forward and backwards. Forwards because it moves on from a civil ethic to an explicitly Christian ethic. The Just War debate shifts to the critical difference between philosophical, secular thought and divine *agape* as the source for Christian neighbour love. It moves backwards because Paul Ramsey (1913-1988) teeters on the edge of being ‘contemporary’. Ramsey’s work remains influential though, directly and indirectly.¹³⁷ The fundamental political constellations have hardly changed since ‘insurgents’ were fought in Vietnam. As the tragedy of Vietnam returns as farce in Afghanistan, the same debates haunt the scene. Ramsey was one of the theologians to uncover the tradition of Christian Just War thinking in the post-war era. So the question is: what does he do differently to the previous author?

If the realist Elshtain was opposed to pacifism and internationalist idealism, then Ramsey moved from one end of that idealism-realism divide to the other, starting off as a

¹³⁷ Adam Edward Hollowell, ‘Revising Basic Christian Ethics: Rethinking Paul Ramsey’s Early Contributions to Moral Theology’, *Studies in Christian Ethics*, 23 (2010), 267–283.

pacifist on the grounds of neighbour love. But then he modified this to an immeasurable concern for the neighbour beyond rules and laws. Here he discovered the genuinely Christian possibility of political action. Roughly in the middle of his career he then suggested what he called ‘transformism’, or the idea that Christian love transforms natural law and the ‘ordinary doctrine of war’. Later on in his life, however, wrestling with various forms of pacifism and liberalism, Ramsey settled on Niebuhrian realist grounds. His advocacy of actual policies was similar in many crucial respects to those policies advocated by Elshtain.

In contrast to Elshtain, who presented a dualism of a ‘secular faith’ and a potentially ‘irresponsible’, sectarian form of Christianity – suggesting a continuous adherence to Kantian dualism – Ramsey aimed straight for that ‘irresponsible’ *agape* as the ground of Christian ethics. In Elshtain’s vision the mediator between political Is and Ought was effectively the state, the result of many influences that were largely dependent on Kantian premises. In contrast, Ramsey remains a philosophical idealist.¹³⁸ The notion of ultimate, divine mediation between God and mankind here is a continuous human affair, as *agape* incarnates itself in various actions, institutions and ‘makes common cause’ with different political philosophies. This Christological or rather anthropological motive remains a constant in Ramsey’s thought. His dictum that ‘*bellum iustum* is democracy’ summarises it in most condensed form. The dimension of *agape*, the ‘strange world of the Bible’ is the motor behind his transformist thinking as well as his robust accounts of political authority and the duties of governments. And in so far as it is effective, Ramsey’s approach corrects several of Elshtain’s key assumptions. Nevertheless, through his teachers Reinhold and H. Richard Niebuhr he was in many ways captured by Christian realism and its dichotomies (not necessarily contrary to philosophical idealism, as he had argued in his doctoral thesis). Later in his life the dimension of *agape* makes way again for the opposition between immanent liberal idealism and a more

¹³⁸ Ramsey’s doctoral dissertation at Yale, entitled ‘The Nature of Man in the Philosophy of Josiah Royce and Bernard Bosanquet’ was a defence of philosophical idealism. See also Gary J. Dorrien, *Kantian Reason and Hegelian Spirit: The Idealistic Logic of Modern Theology* (Oxford: Wiley-Blackwell, 2012)

consequentialist realism. It heeded the wisdom of political and analytical science, supported by the ‘mythopoetic warrants’ of the Old Testament. Theologically, these divisions are due to the post-Enlightenment paradigm to which Elshtain also adhered: the division of faith and reason, of love and legislation, of state and church understood as external institutions, of a political ‘state of nature’ as opposed to governmental, liberal ‘stability’.

I will again first look at Ramsey’s gradual shift from pacifist idealist to Christian realist. In terms of structure, the analytical part is slightly different than previously. Guided by the arc of Ramsey’s development, I analyse each phase of his career in terms of its suggested political action, agent and reality, focusing on how the ideal and the real are related and mediated. The middle sections in that sense are most important: not only does the Christological-anthropological mediation matter most as the meaning of ‘democracy as *iustum bellum*’ becomes intelligible here. Also, Ramsey is most innovative in uncovering the possibility of Christian political ethics.

I. Exposition – From *The Use of Force is Never Justified* to contextualising strategic thinking

From pacifism to a ‘crusade for the neighbour’

In the mid-1930s, whilst at university and seeking to become a pastor, Ramsey was a pacifist. In line with liberal Methodism at the time, he advocated conscientious objection, the abolition of the munitions industry, and the institutions of international law in place of war.

In the attempt to transform a militaristic, warring society, an ethic of Jesus and of neighbour love could only mean non-violence and non-resistance.¹³⁹

However, in Ramsey's first book *Basic Christian Ethics* (1949) the notion of love yields quite different results. Violent force is now a viable possibility.¹⁴⁰ Whilst never resisting an attack on himself and his rights, the Christian may change his 'action to resistance by the most effective possible means, judicial or military, violent or non-violent, when the needs of more than one neighbor come into view' (BCE, 165). If the Good Samaritan had come to the scene of the robbers while they were still at their fell work, then Jesus might have approved of him fighting back. (BCE, 170) Participating in war, Ramsey argues, is a change of Christian *tactics*. But the *strategy*, the first principle, remains the same: loving service for others who suffer injustice or harm. (BCE, 172)

Does that amount to a 'Just War' theory? Different interpretations of Ramsey's work here swing between the interventionist and pragmatist readings.¹⁴¹ Michael McKenzie argues that Ramsey's 'deeply sunk theological foundations' are a constant 'rootage' of his ethics. He then relies on 'love' as described in *Basic Christian Ethics* to explain Ramsey's support for the Vietnam War as a 'humanitarian intervention'.¹⁴² Indeed Ramsey at times repeats his earlier agapist argument that Jesus would have permitted the Good Samaritan to fight the robbers. But the U.S. rationale for Vietnam was a question of national security, the 'business of nation building' within a 'field of forces'. By the 1960s the term *agape* had slipped from his political vocabulary. The love of national-defence has a different *Sitz im Leben* here. In contrast, David Attwood argues that throughout his life Ramsey thought Christian love

¹³⁹ D. Stephen Long, *Tragedy, Tradition, Transformism. The Ethics of Paul Ramsey* (Eugene, Or.: Wipf & Stock Publishers, 2007), pp. 7-23.

¹⁴⁰ Paul Ramsey, *Basic Christian Ethics* (London: SCM Press, 1953). Hereafter BCE.

¹⁴¹ Just war idealism as 'humanitarian intervention' is not opposed to pacifism as 'anti-warism', as I will argue in Ch. 4 below.

¹⁴² Michael C. McKenzie, *Paul Ramsey's Ethics. The Power of 'Agape' in a Postmodern World*, (Westport: Praeger, 2001), p. xxi, pp. 111-115.

should *not* engage in war.¹⁴³ He discerns two kinds of love. One is always self-sacrificial and non-violent. Ramsey upholds the need for it in the personal sphere throughout. The other love made war possible by *limiting* rather than abolishing it. Ramsey was to develop these implications during his subsequent engagement with traditional just war doctrine. Yet Attwood rightly implies that *agape* as described in BCE does not make war according to the Just War tradition.

D. Stephen Long somewhat fuses McKenzie's and Atwood's view: Ramsey, he says, permitted a 'crusade for the neighbour's sake.'¹⁴⁴ Love was so antinomian that a 'just war theory' as a limiting legality was alien to it. In fact, Ramsey was a pragmatist: *whatever* serves the neighbour needs to be done.¹⁴⁵ In this context Long highlights a glaring absence in BCE: Ramsey's failure to discuss the problem of non-combatant immunity.¹⁴⁶ Ramsey goes no further than saying: 'a selfish act is the most unlovely thing, and an unselfish motive may lead the Christian to perform necessary responsibilities which prove not so "nice" in terms of physical contamination.' (BCE, 182) What counted was the individual Christian's intention. Of course this harbours the problem of subjectivism, a problem he would address later.

Throughout *Basic Christian Ethics* Ramsey even criticises the Just War 'excuses'. From Augustine he takes the point that 'generally self-defense is the worst of all possible excuses for war or for any other form of resistance or any sort of preference among other people.' (BCE, 173) But then he criticises him and Ambrose for their 'unqualified acceptance of public protection' as it amounts to *private* self-defence and a lack of impartiality:¹⁴⁷

They tend to understate the danger that in conflict between nations collective egotism will be so aroused that the judgment of any individual member of the group will come rather fully

¹⁴³ David Attwood, *Paul Ramsey's Political Ethics* (Lanham: Rowman & Littlefield, 1992), p. 38.

¹⁴⁴ D. Stephen Long, *Tragedy, Tradition, Transformism*, p. 49.

¹⁴⁵ Robert W. Tuttle, 'All You Need Is Love: Paul Ramsey's "Basic Christian Ethics" and the Dilemma of Protestant Antilegalism', *Journal of Law and Religion*, 18 (2002-2003), 427-457, p. 436.

¹⁴⁶ Long, *Tragedy, Tradition, Transformism*, p. 53.

¹⁴⁷ This Kantian dichotomy of private states as opposed to a public and universal morality will return below in Ch. 4.

under the sway of self-interest. Even in his vocation, where multilateral neighbor-relationships intersect, an individual finds himself drawn not by neighbor-love alone or by considerations of justice alone but by selfish preference or personal affinity for these persons rather than those. (BCE, 175)

Ramsey acknowledges that politicians cannot shy away from making decisions; public protection is their duty. However, the line between neighbour love and selfishness remains theoretically undetermined. From the perspective of love, making war remains ambiguous and dubious, even though ‘military means’, policing and judicial systems for the sake of others are not illegitimate. Equally there is a notable ‘lack of authority calculus’.¹⁴⁸ Who should or may use violent force for public purposes? The concept of the modern state is placed at the end of BCE, where it is merely an order of necessity and restraint of sin (BCE, 327), a figure that appeared also in Elshtain’s suggestions. But this is not congruent with unselfish action for the neighbour, which applies mostly a one-to-one situation.¹⁴⁹

In short, *agape* always remains on the other side of reactive, limiting state-structures which put forth their own “private” or selfish excuses for conflict. Ramey’s early ‘Christian non-pacifism’, as he called it, was somewhat stuck in between the self-sacrificial demands for the neighbour’s sake and the potentially suspicious claims of states. At the same time he was aware that reasonable, realistic decision-making and distinctions between different kinds of warfare needed to be made. (BCE, 68-69) The task of reconciling these incommensurable approaches next resulted in *agape transforming* natural reason and ‘statecraft’.

¹⁴⁸ Stevenson notes the lack of authority calculus in JW, p. 91-139 on Selective Conscientious Objection, p. 92-93, Sit-In 75-98, War and Conscience, xxi. ‘Childress, “Just-War Theories,” 435, in discussing the authority question generally, without specific reference to Augustine, combats the tendency to relegate it to the status of “secondary criterion”.’ William R. Stevenson, Jr., *Christian Love and Just War: Moral Paradox and Political Life in St. Augustine and His Modern Interpreters* (Macon, GA: Mercer University Press, 1987), p. 119 n.11.

¹⁴⁹ David H. Smith, ‘Paul Ramsey, Love and Killing’, in *Love and Society: Essays in the Ethics of Paul Ramsey*, ed. by James Johnson and David Smith (Missoula, Montana: Scholars Press, 1974), pp. 3-18, p. 6.

Transforming the ordinary doctrine of war

In 1953 Ramsey wrote: ‘Of late my thought has been much concerned with the various types which H. R. Niebuhr delineates, and so I would phrase my present point of view as “love transforming justice.”’¹⁵⁰ Since love is always ‘in search of a social policy’ it ‘can adopt a social ethic found in the necessary structure of political existence, re-orient, and transform it.’¹⁵¹ Transformative love became Ramsey’s guiding principle for the next decades.

War and the Christian Conscience (1961) shows how *agape* bears upon warfare.¹⁵² In between nuclear pacifism and ‘those who speak recklessly of “preventive war” and of “massive retaliation”’, and equally Reinhold Niebuhr’s consequentialism, Ramsey injects the ‘just-war doctrine’.¹⁵³ We have come across this middle path before in Elshtain’s arguments. But Ramsey understands it specifically as the result of a transformative Christian *agape*. It is not the case that the Christian ‘adopts (and “seasons” with love) a rigorous alien natural-law principle ... but that he finds himself still required to do only what love requires and permitted to do only what love allows to be right’ (WCC, xx).

If the duty to protect the neighbour justified participation in war, then now severe *limits* have to be placed on war. This limit is the prohibition of indiscriminate killing, a prohibition that is the essence of Christian Just War thinking. The ‘little ones’ must be surrounded with moral immunity from direct killing. (WCC, xx) Ramsey remains somewhat vague: ‘We only have to know *that* there are non-combatants, not exactly *who* or *where* they are, in order to know that warfare should be forces and counter-forces warfare, and attack be limited to legitimate military targets’ (WCC, 68). Yet the point is that once discrimination is

¹⁵⁰ Cit. in Long, *Tragedy, Tradition, Transformism*, p. 54.

¹⁵¹ *Ibid.*, p. 55.

¹⁵² Paul Ramsey, *War and the Christian Conscience: How Shall Modern War be Conducted Justly?* (Durham, N. C.: Duke University Press, 1961); hereafter WCC.

¹⁵³ Foreword by John H. Hallowell, WCC, vii.

actually intended, strategies like deliberate carpet-bombing, ‘counter-population warfare’ or the terrorist targeting of innocents are off the table.¹⁵⁴

The ‘absolutism’ of non-combatant immunity goes hand in hand with a doctrine of double-effect, because it is only something one can *aim* for. For Ramsey the doctrine is a direct result of merging *agape* with the consequentialist pragmatism of his time: ‘The good or the best or the lesser evil among the goals of action is to be chosen, yet by action that is not intrinsically and from the beginning wrong in itself’ (WCC, 4). In order to avoid any subjectivism as regards an individual’s intention, the military act must be objectively proportionate: ‘The evil, secondary effect only allowed must not be out of proportion to the good effect one intends to obtain’ (WCC, 43). And even in war the aim should never be to kill the enemy soldier, but to incapacitate him, to terminate his status as a combatant.

If BCE had focused on individuals’ love, then here the notion of political authority comes into view. The circumstances in which the use of force is morally justified can only be public ones. Only in this role, acting for the common good, a Christian may be permitted to kill an unjust assailant. (WCC, 41) Ramsey injects one further focus here: it is the common good ‘to which one has allegiance more than for the public good of another’ (WCC, 41). In contrast, self-defence: it is never a *moral right* for a Christian. This means two things. First, legally it could never be prohibited. Second, unselfish neighbour love cannot justify killing even a criminal for one’s own sake.

Ramsey connects this with the ‘transformative’ accounts of Augustine and Aquinas. Augustine, who is thinking of ‘justice radically transformed by supernatural charity’, says: ‘But I see not how these men [who defend themselves privately], while not held guilty by law, can be without fault: for the law does not force them to kill, but leaves it in their power’ (WCC, 36). Aquinas, more the natural lawyer, regards self-preservation as a natural impulse.

¹⁵⁴ NB: Ramsey also rejects the almost ridiculous claim that a bomber pilot can press the button to carpet-bomb a city without ‘intending’ to kill indiscriminately. In other words, intention and action a) cannot be clearly isolated from each other and b) one action cannot be analysed in clear isolation from its surrounding actions.

Still, Ramsey says, ‘he thinks about these questions from the point of view of love, or of love-transformed justice’ (WCC, 42). Aquinas’ consequence is a doctrine of double effect: ‘Subjectively, the Christian must never intend to kill a man, since love refuses to allow that motive, and countenances only the intention of saving life, even one’s own’ (WCC, p. 43).¹⁵⁵ Killing the attacker may nevertheless be a side-effect of self-defence.¹⁵⁶ The *duty* is therefore to retreat and avoid killing as far as possible. So Ramsey shows how both authors represent a ‘transformative’ Christian political ethics.

In the same year as WCC Ramsey published ‘What Americans Ordinarily Think about Justice in War’ (1961) (JW, 42-69), in which he critiques the so-called ‘aggressor-defender doctrine’. This is worth a closer look, since it marks Ramsey’s crucial point of departure from Elshtain. This doctrine focuses on the inception of war: initial aggression justifies national defence, because war is always unnecessary and superfluous. This voluntarist conception of politics regards ‘aggression’ as a combination of bad will and miscalculation (or a *libido dominandi*). The ‘aggressor’, the one who shoots first, is therefore always wrong. Since at that point all necessary justification for the war is provided, there are then no principled limitations in the objectives of a war. If the aims are broad enough (“the war to end all wars”, “spreading democracy”, “war against terror”), any kind of warfare, even nuclear, is possible. Only acts of ‘wanton destructiveness’, such as massacres committed by individual soldiers, are exempt. (JW, 58) However, if the war objectives are unlimited, very few instances count as genuinely wanton in the first place. The voluntarism in the run-up to the war in fact continues as determinism in war. The conduct of war is exclusively understood in terms of military necessity. It is regarded as disastrous and tragic, but hardly morally wrong. This logic is acerbated by the idea that war signifies the *breakdown* of all

¹⁵⁵ The right to self-defence is elaborated here, since it will be highly relevant in Part II below on philosophical just war doctrines. The contrast between the *moral freedom* to not kill the enemy and the *legal right* to self-defend is most relevant. The latter is de-absolutised by the duty to retreat from the attacker if possible.

¹⁵⁶ This killing then is excused, rather than justified. See Ch. 4 below.

order and ordered action, Elshtain's 'justice within; force without'. With the realms of war and peace so disjointed, despite 'ethical limitations', a war's objective and conduct are *effectively* unlimited.¹⁵⁷

As a 'transformative' response Ramsey makes non-combatant immunity central to his argument and notes how it coheres with other limitations. Like Elshtain, he objects to the type of humanitarianism that protects inherent rights of individuals *qua* individuals. But non-combatant immunity is also 'the parent of the principle of order'. (JW, 60; 163) Or rather, the 'principle of order' is the corresponding "natural law" to discrimination (JW, 60) or a 'helpful supplement' (JW, 163). Combatants and non-combatants are always members of states. If one discriminates between them, then a form of order should also to be guaranteed for the survivors of attacks. Therefore 'total war', the elimination of states and social orders, is impermissible. (JW, 163) The 'vital interest of states ought not to be at stake in the course or on the outcome of war' (JW, 60-61).

Regarding political action and its subject, Ramsey's transformism came to fruition in the seminal essay 'The Uses of Power' (1964).¹⁵⁸ Here he defines the *esse* of politics as the use of force. Not that 'higher values' are impossible in politics, or that only a positivist 'order' matters. But even the *bene esse* of politics is always related to a *possible* use of force. He emphasises that state as the Lutheran *Notverordnung* ('order of necessity') is currently the only relevant moral subject of political action. For now the state is the 'proximate solution to human sacrifice'. This is again opposed to something vague like 'humanity', as Ramsey's contemporary 'liberals' suggested.

¹⁵⁷ Notably, this critique challenges Ramsey's own and certainly Elshtain's concept of the 'tragedy' of war.

¹⁵⁸ Ramsey, 'The Uses of Power', in Ramsey, *The Just War: Force and Political Responsibility* (Lanham, Md.; Oxford: Rowman & Littlefield, 2002); hereafter JW.

Within political structures the ‘magistrate’ serves the national common good and the preservation and security of the state. (JW, 10)¹⁵⁹ ‘Terminal political values’ for ‘government’ or ‘political agency’ are *ordo*, *iustitia* and *lex*. Appealing to politicians’ reason and wisdom or ‘charitable prudence’ Ramsey says: ‘In politics we are called rather to wisdom in the embodiment of these terminal political values and their preservation by means of the monopoly of physical power that can be exerted by an organized community’ (JW, 506). Whilst aiming to increase these values’ overlap, the magistrate will weigh them one against the other: ‘Whether justice warrants a disordering action or order warrants the permission of some injustice, nobody can say in advance of statesmanship which rules by what it decrees.’ (JW, 11) Notably, since Ramsey regarded justice and love as *already* politically embodied in the United States, the themes of defence and preservation eventually ‘took precedence in his grand concerto of Christian ethics’.¹⁶⁰

At this point, however, he thinks political obligation is located within an area of *incidence* between the national and the international common good. And aiming to enlarge this coincidence, a ‘statesman’ should distinguish what he ‘ought to do’ from ‘all the humanitarian good that needs to be done’:

Of course, a statesman is in danger of serving a too narrow view of the international common good and *thereby* failing to serve the best possible good of his own nation. And of course he may serve a too narrow national interest and *thereby* fail to serve an international common good that was possible. (JW, 10)

This is an important correction to the Elshtain’s understanding, which posited a stark choice between national sovereignty extended into empire or humanist internationalism. Although Ramsey emphasises ‘the state’ here, its ethical essence is the political act in which *lex*, *ordo*

¹⁵⁹ The chapter on ‘Justified Revolution’ in WCC had given an account of how the Reformation brought down the criterion of ‘right authority’ by a notch to ‘magistrates’ in so far as they represent a viable alternative to the existing tyrannical authority. pp. 114-171.

¹⁶⁰ Richard B. Miller, ‘Love, Intention and Proportion: Paul Ramsey on the Morality of Nuclear Deterrence’, *The Journal of Religious Ethics*, 16 (1988), 201-221, p. 206.

and *iustitia* coincide. And although he thought the U.S. have ‘inherited both power and responsibility in imperial proportions’, the ‘charitable use of political wisdom’ stays clear of a ‘neo-imperialist danger’. (JW, 524) In this way Ramsey in fact challenges modern ‘sovereignty’ and its defensive ‘rights’, staying clear of conceptually idealising the state to become a global guarantor of human rights.

So having left behind idealist pacifism and the unclear implications of *agape*, Ramsey’s transformism allowed for a turn to the Just War doctrine itself. Its core was the ‘absolutist’ prohibition to kill non-combatants in connection with a doctrine of double effect. Historically, that Christian core was ‘the parent’ of other ‘natural law’ implications. At the same time, he developed the grounds or rather ‘terminal values’ for political action.

No farewell to Christian realism

Ramsey never completely abandoned the transformist theme, but later in his work the mechanisms, tragedies and sciences of ‘the political world’ became the ground floor from which he gazed at Christian horizons. His ‘realism’ found even Reinhold Niebuhr too optimistic and developed in contrast both to a persistent contemporary idealism and church institutions’ attempts to become the equivalent of ‘think tanks’.

The unique Christian “input” to politics remained the notion of discrimination. In 1966 Ramsey bemoaned the fact that ‘Christian comment upon foreign policy evidences but little concern to press relentlessly the requirements of discrimination as these may be shown ... to bear upon modern warfare’ (JW, 456). In contrast, the ‘common wisdom’ and ‘the principle of proportionality’, which ‘defines right action altogether in terms of consequences’, were quite independent of Christian competency. But ‘the churches are able to predict the good and evil consequences and to propose policies falling under the principle

of proportion about as well as any other group within our society'. Hence, any moral statements along those lines would be a confusion of the realms of church and state, 'of moralist and magistrate' (JW, 456). Although Ramsey seemingly did consider the possibility that Christian instruction could lead to substantive conclusions, the realm of state, technological expertise and consequentialist calculation was sealed off.

In so far as the 'moralist' then watched politics from the sidelines, he would rely on social-scientific assumptions quite different to Christian convictions and find himself in the position to support them. For example, Ramsey's view of the nation-state system acquired a Hobbesian dimension. Largely as a result of 'opposed-systems analysis' he saw the international sphere as 'largely in a "state of nature" (or "state of war," if this means a perpetual inclination thereto, like Hobbes' "bad weather")' (JW, xxiii). There are the inevitable 'facts of power' and perpetual antagonisms. 'The nation-state is surrounded by arbitrariness on all sides: the other is always a stranger and a potential enemy where there are no dependable structures through which identification may pass' (JW, 498). In an *essentially* opposed, or antagonistic system, war is an 'unavoidable tragic arbitrament of arms', even though it makes possible a future peace. (JW, 489) Christian thought is not given any real chance to think about the problem posed by the 'if' and 'when' 'statesmen' go to war. As Charles Curran paraphrases Ramsey:

We cannot put the engine of the Christian religion behind these positions which do not have specifically Christian bases. Different opinions about the war in Vietnam, for example, arise because of different interpretations people have about the domino theory. However, there is nothing the church as such can and should say about the domino theory precisely because such a judgment lies outside its competency.¹⁶¹

¹⁶¹ Charles E. Curran, *Politics, Medicine, and Christian Ethics: A Dialogue with Paul Ramsey* (Philadelphia: Fortress Press, 1973), p. 45. In this regard note also Ramsey's distinction between *in bello* and *ad bellum* thinking.

Whilst Ramsey then argued that Christians can tell politicians *how* to think, but not *what* to think, he allowed for concrete policies to become a question of consequentialist ‘counting the costs’, including literally calculating monetary expenditure. Politicians ‘must order limited means to measurable ends, and determine whether the costs are worth it in a world in which nothing is worth everything’ (JW, 523). On the practical front, both his support for the Vietnam War and his eventual demand that it be ended were an application of these principles. Again, one can see here a rather remarkable shift from his almost wasteful, squandering early agapism.¹⁶²

When analysing the counter-insurgency in Vietnam, he also returned to discrimination. Branching off from his earlier ‘absolutism’, he argues that ‘non-combatancy is a function of how the nations or the forces are organized for war, and of military technology’ (JW, 502). If Vietnamese ‘insurgents’ live amongst the people ‘like fish in the water’, then one ‘needs to withdraw the water’ to see ‘what happens to the fish’ (JW, 481).¹⁶³ If underground strongholds and supply lines are the way insurgents are organised, he thinks airstrikes against villages, fields, etc. cannot be regarded as indiscriminate. After all, they *aim* at military facilities. Guerrillas have ‘deliberately enlarged the extent of foreknowable but collateral civil destruction in the attempt to gain a privileged sanctuary through a military posture that brought more of his own population into range’ (JW, 508). In this way he argues consequentially that the ‘insurgents’ *themselves* have brought the bombing campaigns upon their villagers.

This holds even at the nuclear level, where the enemy has no immunity from nuclear counter-attack just ‘because he had the shrewdness to locate his missile bases in the heart of

¹⁶² Ibid., pp. 40-41.

¹⁶³ This was Ramsey’s preferred phrase around the time that US defence secretary Robert McNamara resigned after he complained that by 1967 the Air Force had dropped more bombs on Vietnam than throughout the whole of World War II – without military effect.

his cities' (Ibid.). The only limitation to this is the proportionality principle: over all, such an attack may cause an overall greater evil than it averts. As Richard B. Miller summarises:

Ramsey's brand of political realism imperils his argument about the morality of nuclear deterrence, for the subordinate, prudential concern for preservation finally prevails in his attempt to conceive of a morally justifiable nuclear deterrent, overriding the implications wrought from the protection paradigm, deontically construed.¹⁶⁴

In somewhat broad strokes I have here sketched out Ramsey's remarkable journey from liberal pacifist to Christian realist. Beginning with the idea that Christians wage peace and transform American society, he moved on to a 'crusade for the neighbour'. His transformism thus marks somewhat of a mediate position between just war idealism and realism.

Eventually he would travel to the realist camp, though not without having questioned and corrected the ethics of modern sovereign states. In order to understand and explain his dichotomous travels, I will now turn to his theology between God's love and the world of systems.

II. Analysis – Moral man between *agape* and the world of systems

It would be beyond the scope of this chapter to fully appreciate Ramsey's work *in toto*, which was the result of a productive career spanning over fifty years. However, here I am chiefly interested in its paradigmatic shifts and the inner theo-logic drive behind them. As I look again at the (not always separable) analytical foci of action, agent and reality, it will become clear that Ramsey relied to a large extent on the same dichotomous utopianism-realism paradigm as his teacher Reinhold Niebuhr and Elshtain. At the same time, and this is his lasting legacy, he discovered an essentially Christian possibility of *agape*, a possibility of action and transformation. And it is here where the question of Christology and mediation

¹⁶⁴ Miller, 'Love, Intention and Proportion', p. 205.

between a divine ‘dimension’ and ‘the world of systems’ comes into focus. It distinguishes Ramsey as a modern Christian theologian, though still connected to idealist philosophy, and partly corrects Elshtain’s dualism.

Pacifist idealism

Action: fideism and imitatio-Christology

What were the grounds for Ramsey’s pacifism? In “The Use of Destructive Force Is Never Justifiable” (1940) he clarified that a Christian ethics is utterly different ‘from what attempts to be a philosophical ethic. By this I mean that it is grounded in an initial assumption which you may call a “faith” and does not attempt to proceed all the way by reason.’¹⁶⁵ Despite sounding perhaps anti-modern, Ramsey here fundamentally relied on an Enlightened epistemology, the unbridgeable dichotomy of faith and reason. As D. Stephen Long points out via Alasdair MacIntyre: Ramsey’s fideism is in fact ‘indebted to the Nietzschean enterprise’. It is voluntaristic and based on the ‘sheer adoption’ (a term he takes from H. Richard Niebuhr) of an ultimate principle: ‘... all rational vindications of morality manifestly fail, and ... therefore belief in the tenets of morality need to be explained in terms of a set of rationalizations which conceal the fundamentally non-rational phenomena of the will.’ Although Ramsey does not want to be wholly ‘irrational’, the grounds of any ‘morality’ lie in a seemingly wholly other realm which remains inaccessible, at least to Kantian reason. But it is after all a conviction a person voluntarily opts into.

Practically, Ramsey’s fideism became indistinguishable from Enlightenment rationalist progressivism. They have, so to speak, the same symptom: faithful action means

¹⁶⁵ Cit. in Long, p. 10.

realising an ideal in history as if manifesting a rational proposition.¹⁶⁶ Informed by the Social Gospel, Ramsey believed the kingdom of God was a recipe for reforming society through love. As he said in a sermon, the Kingdom of God in America is ‘quite possible an impossible possibility’.¹⁶⁷ His essay ‘The Futility of War’ (1935) points at the teaching-ministry and example of Jesus:

Any examination of the teachings of Jesus must reveal that he would not fight in a war today. The burden of his entire message to us was that the best way to better the status of human beings to reform society, to usher in the kingdom of God on earth, that the best way to accomplish good is by a policy of good will to all, love and kind treatment of enemies, non-resistance of evil, and active peace ... To love peace enough to fight for it is useless; to love peace enough to be willing to die for its preservation against the forces which tend to create war is Jesus’ method of projecting his ideal into reality.¹⁶⁸

Despite faithful love’s ‘irrationality’, there is only a difference of degree, not quality, between the Kingdom of God and the existing political sphere. The Kingdom becomes an *immanent* ideal to be actualized within or even instead of current political structures, which Ramsey associates with totalitarian ‘structures of evil’ – ‘[Not] Christianity, but the government has declared Christianity and the U.S. Army incompatible.’¹⁶⁹ Much later Ramey self-diagnosed the problem of his idealist years, which he came to reject as ‘utopianism’.¹⁷⁰ It stems from a flawed eschatology that regards the spiritual and the political as categorically continuous:

¹⁶⁶ In that sense Elshtain’s ‘secular faith’ is its counterpart.

¹⁶⁷ Long, *Tragedy, Tradition, Transformism*, p. 9.

¹⁶⁸ Cit. *ibid.*, p. 7.

¹⁶⁹ Long, p. 8. For all their theological differences, the early Ramsey and John Milbank here sound the same note when Milbank writes: ... the ‘apolitical’ character of the New Testament signals the ultimate replacement of the coercive *polis* and *imperium*, the structures of ancient society, by the persuasive Church, rather than any withdrawing from a realm of self-sufficient political life. John Milbank, *The Word Made Strange*, p. 251. NB: Milbank is not necessarily a pacifist, but rather an ecclesial ‘triumphalist.’ Ben Quash, ‘Radical Orthodoxy’s Critique of Niebuhr’, in *Reinhold Niebuhr and Contemporary Politics: God and Power*, ed. by Richard Harries and Stephen Platten (Oxford: Oxford University Press, 2010), pp. 59-70, 60. Reference to Milbank demonstrates a shared ground that wants to expand the existing, ecclesial moral Ought as a fully-fledged political life.

¹⁷⁰ Cp. above, Ch. 1.

... the 'already' and the 'not yet' of Christ our peace have been leveled into a possible continuity on planet earth. It matters not whether we say that this age in which we live has been *leveled up* to the Kingdom of Heaven, in which our ultimate hope is fixed (or leveled up to the Garden of Eden, whence we came), or whether we say that Kingdom of Heaven has been *leveled down* to the 'heavenly city of the 18th century philosophers,' that is, to some ideal historical time toward which human progress moves.¹⁷¹

So whilst it sounds pacific, even revolutionary, this fideist epistemology in reality implies an essentially immanent continuity between 'the political' and the spiritual, between politics as they happen and Christian morality.

Dogmatically, the focus must be once again on Christology, which is conditioned by the post-Kantian theological *separation* of Jesus-man and God-Christ. Like Elshtain – who marks the counter-position to pacifism – Ramsey nevertheless stays on the same human, historical side of the Christ-event. A discipline dealing with rational laws and rules, 'ethics' skims the bible for the ethic of Jesus as a teacher. Faith here engenders an *imitatio*-Christology. Notably, this approach tied to pacifism still is a common currency. For example, Richard A. Burrige more recently found a 'coherent overall ethical voice of the historical Jesus, stressing a rigorous ethic of lifelong sexual fidelity, poverty, nonviolence and obedience'.¹⁷² Simultaneously, Ramsey's deontological notion of love was rooted in an account of creation that emphasised the goodness of creation. In that sense, the presupposition of Ramsey's idealism is exactly the same as Elshtain's realist one: the first principle of faith states that 'God is good and all the beings whom He has created are good'.

¹⁷¹ Paul Ramsey, *Speak Up for Just War or Pacifism*, p. 28.

¹⁷² Richard A. Burrige, *Imitating Jesus: An Inclusive Approach to New Testament Ethics* (Grand Rapids, Mich.: William B. Eerdmans, 2007), p. 57; also pp. 382-384. NB: Burrige criticises Karl Barth, Michael Banner and Oliver O'Donovan for imposing an alien doctrinal or theological framework on the plurality of biblical writings. But does Burrige not make this exact same error, but more selectively, by postulating a 'unified ethical voice' in the New Testament? See also Richard B. Hays, *The Moral Vision of the New Testament: Community, Cross, New Creation: A Contemporary Introduction to New Testament Ethics* (Edinburgh : T. & T. Clark, 1997)

From this ‘definition of value’, as Ramsey calls it, follow the two Christian obligations to love God and to love the neighbour, who is created by God.¹⁷³

So despite his pacifism Ramsey, like Elshtain, is chiefly wedded to a doctrine of creation as the moral basis of neighbour love, a love command that Jesus of Nazareth reiterated. From this he extracts a single moral command, an operation James Gustafson criticised as ‘love monism’. We may note here already a certain reduction in the conception of God. If faith is set sharply set against the world of modern war, then its inner, biblical economy is astonishingly continuous between B.C. and A.D.; there is a lack of trinitarian reflection as much as the resurrection. Driven by a seemingly alien (fideist) motor of love, the logic of loving action is utterly modern: it is the political implementation or actualisation of a monistic Christian ideal.

Agent: Christian citizens and liberal utopia

This conception, however, implies that the mediator between Is and Ought is effectively immanent. For Ramsey, the political and spiritual nature of humans was united in (American) citizenship, which transforms society through imitating Christ.¹⁷⁴ One important effect must be observed here, which will also return below in Chapter 4. Once this immanent collapse happens, the logic of the opposite returns: the indirect, but unquestionable sustenance of the very system that is opposed. Ramsey’s ecclesial, liberal utopia sustains the state precisely through its absolute opposition to it. He delivered some good punch lines against militarist enthusiasts during the World Wars. Yet Long notes Ramsey’s uncritical acceptance of the system of ‘Caesar’: ‘... throughout [his] discussion one of the most striking things is Ramsey’s complete acceptance of the nation-state system. Even though he challenges current

¹⁷³ “The Use of Destructive Force is Never Justifiable”, cit. Long, p. 12.

¹⁷⁴ In that sense modern pacifism is dependent on Kant’s progressivism as much as Hegel’s philosophical mediation.

manifestations of power within that system, the system itself remains a positive good.’¹⁷⁵ The nation even takes on the role of a ‘salvific institution’ because it is the social *vehicle* to realise the Kingdom of God understood politically. ‘Ramsey presupposes that pacifism is the way, in the end, that democratic values will survive.’¹⁷⁶ On that note, a similar effect can be observed in Burridge’s contemporary pacifism. The ‘obedience’ that Burridge demands for Christians is stated quite unambiguously also as a political obedience (in the sense of unconditional non-violence), which effectively guarantees a static, unquestionable authority to ‘Caesar’. The pacifist thus *reinforces* the claims of given governmental structures.

Reality: Staying in Babylon

Conceptually, Ramsey’s early pacifist idealism is the precise ‘utopian’, politically ‘irresponsible’ counter-position to Elshtain’s realism. But again, despite its fideist epistemology, his vision conceptually betrays an immanent *continuity* between old and new age, between church and state, between the politically real and the moral ideal. In the international sphere, a Kantian progressivism suggested the moral ideal and political reality can be gradually sewn together, the Kingdom of God be established through pacific love and social reform.¹⁷⁷ At the same time, as noted in the previous section, the historical reality clashes with this vision without mediation. The conceptual and potential identity of political and spiritual, however, was significantly challenged once Ramsey read Reinhold Niebuhr. The latter’s Christian realism would eventually replace it with an irreconcilable duality.

¹⁷⁵ Long, *Tragedy, Tradition, Transformism*, p. 18.

¹⁷⁶ *Ibid.*, p. 19.

¹⁷⁷ This exact constellation returns below in Ch. 4 on David Rodin.

Agape, a Nietzschean love and its Hegelian mediation

Action: Love beats the law

However, before this happened, Ramsey opened the space for genuinely evangelical ethics. And this is precisely the opening from which his ‘crusade for the neighbour’ flowed, though in the absence of a ‘Just War’ proposal. In *Basic Christian Ethics* (1949) he seemingly continued expounding the meaning of neighbour love as before. The ‘central ethical notion or “category” continues to be “obedient love” – the sort of love the gospels describe as “love fulfilling the law” and St. Paul designates as “faith that works through love.”’ (BCE, xi)

However, now Ramsey sets an ethic of love *against* the immanent historicism of those who equalled Christianity with social reform. In that vision Jesus’ strenuous teachings would wrongly be ‘a method for making all the world a kingdom of God’. (BCE, 37) Now he thinks this is a misunderstanding of Jesus’ unique apocalypticism: ‘God’s final judgment was expected to separate the sheep from the goats; whereas in the crisis of our time, at Bikini, both sheep and goats were killed.’ (36) And it would be to misunderstand the nature of God’s work:

... the reverse was the case: the kingdom of God was already effective in the present age and for this reason [Jesus] believed the strenuous teachings could be lived out. Since “it is God’s good pleasure to give you the kingdom,” men may now “fear not,” their love and forgiveness be unrestricted, themselves meek. (BCE, 37)

Since for Jesus the Kingdom was already here, Ramsey points out, ‘two directions in which Christian thought and decision may move’ were equally alien to his mind. Both, despite God’s reign, take human initiative too seriously, even though in opposite directions. Either one ‘can say that to love, to suffer and to do good in the face of armed injustice is “God’s method of dealing with evil” in its entirety.’ But if we do that, ‘we say something Jesus

would not have said; he did not attribute such power to love and non-resistance' (BCE, 38). Equally Jesus would have rejected the opposite. And here Ramsey removes the grounds for all Just War thinking:

The other alternative is to justify the employment of force in dealing with tyrannical structures of evil. This involves the substitution of human power-controls for divine power and, it may be, humanly directed violence for the divine violence entailed literally in Jesus' eschatological expectation. God's coercive intervention to deal with general evil may be replaced by concrete legislative measures, governmental institutions, and other responsible human arrangements, which then stand in exactly the same relation to the love-ethic as did the divine intervention which Jesus expected. (BCE, 38)

So what was the third way between these two paths? Here Ramsey points at a truly unsettling possibility. One 'must have the courage to look squarely into the mystery of how ideals were manufactured in this Christian world'. From the Christian mystery, "'the late-Jewish Messianic world-view'" springs the third way of *agape*, a Nietzschean love beyond good and evil, one that could be meek but equally deal with the not-so-meek.¹⁷⁸ It was a love that comprised everything, and was still "primitive", a love much *more* than Jesus' voluntarist interpreters could envision. And here 'we can, after a fashion, watch revelation taking place.' (BCE, 40) It is worth quoting Ramsey at length on the nature of *agape*, since the concept would be relevant throughout his career:

In face of the in breaking kingdom, moral decision was stripped of all prudential considerations, all calculation of what is right in terms of consequences which in this present age normally follow certain lines of action. Not only all prudential calculation of consequences likely to fall upon the agent himself, but likewise all sober regard for the future performance of his responsibility for family or friends, duties to oneself and *fixed* duties to others, both alike were jettisoned from view. Preferential loves, even those justifiable in normal times, were supplanted by entirely non-preferential regard for

¹⁷⁸ As far as I can see only D. Stephen Long has highlighted the influence of Nietzsche on Ramsey.

whomever happened to be standing by, friend or enemy, bullying sergeant or indigent beggar. All that mattered was perfect obedience to God. All that mattered was complete readiness for the kingdom to come. All that mattered was the single individual a man happened to confront. All that mattered was unhesitating, total love. (BCE, 39)

Pointing out that ‘obedient love for neighbor’ had its origin in Jesus’ unique apocalypticism, Ramsey takes the eschatological *paradox* of the kingdom’s ‘already-here’ and ‘not-yet’ seriously. As he refers back to Luther and St. Paul, this is not necessarily innovative. (BCE, 21; 101) But it creates a distinctive ‘perspective’ (BCE) of Christian love, utterly distinct from any naturalistic ethic. The individual’s direct, immediate position vis-à-vis God, a *sola fide* makes a Christ-like, kenotic love for everybody possible. And this is different both to ethical ‘idealism’ and statist realism.

Doing *everything* for the neighbour practically means very little.¹⁷⁹ Ramsey’s further steps were therefore difficult. He had to morally explicate *agape* without marring its purity. And he had to do ethics without losing sight of *agape*.^{180 181} This constantly pulled him in two directions. On the one hand, the Reformation’s de-secularising notion of Christian vocation replaced the Catholic ‘counsels of perfection’ and love as an ‘inner disposition’. Now everyone within their vocation is called to serve God within a particular situation, in line with their gifts and the neighbour’s need. This entailed the operation of *agape* without any gaps and, notably, also re-evangelises Elshstain’s notion of vocation. ‘Every Christian everywhere, no matter what his function in society, is obliged ... to measure his life by non-resisting love, and not only his inner disposition but his outward action as well.’ (BCE, 189)

¹⁷⁹ For a renewed version of Ramsey, see John Milbank, *The Word Made Strange*,

¹⁸⁰ Ramsey corrects Augustine, for whom the neighbour is to be employed to obtain the only proper object of desire, i.e. the union with God: ‘If, then, both a Christian and his God have a love born of plenitude, not out of need, God may love man for his own sake and the Christian love his neighbor for his own sake ... The neighbor is never the ultimate object of aspiring *caritas*-love; he is always the end-term of *agape*-love.’ (BCE, p.124)

¹⁸¹ Robert W. Tuttle, ‘All You Need Is Love: Paul Ramsey’s “Basic Christian Ethics” and the Dilemma of Protestant Antilegalism’, *Journal of Law and Religion*, Vol. 18, No. 2 (2002-2003), 427-457, p. 431.

As politics demanded loving devotion, Shaun O. Casey points out, there is a genuine source for ‘progressivism’ and social improvement in Ramsey’s view.¹⁸²

On the other hand, the work of *agape* was incommensurate with ethics, even anti-legalistic.¹⁸³ The chapter ‘Christian Liberty: An Ethic Without Rules’ suggests a sharp love-law dichotomy typical of neo-Protestantism. According to Ramsey, Jesus’ words that ‘not an iota, not a dot, will pass from the law until all is accomplished’ (Matt. 5:18) ‘are either not the original words of Jesus or else they are sorely in need of a loose interpretation’. He understands the belief that Jesus fulfils the law as ‘completes in such fashion as entirely to annul the law’ (BCE, 54). Jesus’ verdict not only nullifies the Mosaic Code, but ‘any ethic of conventional respectability, any customary code of conduct into which at least every man is born, any more or less philosophic definition of good and evil.’¹⁸⁴ Love is so *alien* that it is incommensurable with any “natural” rules or laws:

Instead of measuring love for God and man against other parts of the code and declaring the love commandments to be more important than all or any one of the remainder, Jesus in effect affirms the love commandments to be *incommensurable* with all the rest and declines to measure their importance by comparison with any other legislation. (BCE, 65)

Love is not without ‘abundant content’, Ramsey says, but it remains without ‘determinate content’ (BCE, 338).¹⁸⁵ Hence also the doctrine of vocation ‘recognizes a large area of relativity in ethics, disclaiming any hard-and-fast absolute principles or rigid laws’ (BCE, 188). In short: ‘Unmediated love demands freedom from the law.’¹⁸⁶

¹⁸² See Shaun A. Casey, ‘Eschatology and Statecraft in Paul Ramsey’, *Studies in Christian Ethics*, 21(2008), 73-193, p. 176.

¹⁸³ From the perspective of love, as Bonhoeffer and Barth note, ethics is always already a *problem*. And although Ramsey cited Niebuhr precisely along those lines during his pacifist phase, this came only to fruition in BCE. See Long, pp. 10-12.

¹⁸⁴ Robert W. Tuttle, ‘All You Need Is Love: Paul Ramsey’s “Basic Christian Ethics” and the Dilemma of Protestant Antilegalism’, *Journal of Law and Religion*, Vol. 18, No. 2 (2002-2003), 427-457, p. 443.

¹⁸⁵ The only scholar to have pointed out Ramsey’s extensive engagement with Nietzsche is D. Stephen Long. Ramsey quotes the Genealogy of Morals: “Will any one look a little into – right into – the mystery of *how ideals are manufactured* in this world? Who has the courage to do it? Come!” Ramsey here tries to rid *agape* of humanly manufactured ideals.

¹⁸⁶ Tuttle, ‘All You Need is Love’, *supra* n. 14, p. 436.

This dichotomy of ‘worldly’ ethics and *agape* must be Christologically contextualised. The ultimate *mediation* of God and mankind in Christ, of law’s fulfilment, is an unsolved problem for Ramsey. On the grounds of Ramsey’s anti-legalism Robert W. Tuttle levels the charge of Gnosticism and Marcionism against him, which utterly spiritualises and disembodies Christ.¹⁸⁷ Simultaneously, however, Ramsey upholds the tradition of philosophical idealism. Mediation as incarnation in this view is a historical, ongoing *human* essence and practice.¹⁸⁸ According to this logic, the Christian always ‘searches for the “best possible social ethic in which Christian love may incarnate itself.”’ Love ‘must take on the flesh of some specific social order.’ Tuttle flags up this problematic Christology:

... the incarnation is not a once-and-for-all event that gives us a specific form for Christ, but rather one among many times in which the universal becomes particularized. The particularizations of the universal are purely contingent, and should not be seen as anything more than temporary resting places for the universal, which is utterly free to leave them behind in search of a better way to ‘become incarnate’.¹⁸⁹

So here the dimension of *agape*, certainly at this point, was a problem for ethics. Eventually, however, it would be the source for a transformed and transformative ‘in-principled love’. And despite correcting some of its logical consequences, Ramsey refused to substantially rewrite *Basic Christian Ethics*.

His philosophical-idealist logic of incarnation went hand in hand with an eschatology that displays the dichotomies of Christian realism. There is an ‘eschatological gulf’ between this present age and the hereafter; and nobody should try to ‘overleap the abyss between the ages.’ (BCE, 133) Whilst *agape* springs from an apocalyptic perspective, this present world of responsibilities ‘must be viewed largely in non-apocalyptic terms.’ (BCE, 42) And: ‘This

¹⁸⁷ Tuttle, ‘All You Need Is Love’, pp. 445-447.

¹⁸⁸ For a juxtaposition of Hegel’s and the orthodox notion of mediation, see Martin Wendte, *Gottmenschliche Einheit bei Hegel: eine logische und theologische Untersuchung* (Berlin, New York: Walter de Gruyter, 2007)

¹⁸⁹ Tuttle, ‘All You Need Is Love’, p. 435, n. 41. See also O’Donovan, RMO on idealism and incarnation.

has to be said, so let it be said forthrightly: few contemporary Christians accept the kind of kingdom-expectation Jesus considered of central importance, and rightly they do not.’ (BCE, 35-36) Whilst settling for humankind’s eschatological *separation* from the Kingdom of God, Ramsey still thinks *agape* can function outside its 1st century apocalyptic context. The aim of emphasising the eschatological gulf is in fact to prevent individuals from divine ‘reward-hunting’ and to encourage each person to love only for Christ’s sake.¹⁹⁰ But it is also clear that, absent Jesus’ paradox eschatological perspective, eventually the difference between *agape* and secular idealism would become hard to tell.¹⁹¹

On the flipside, Ramsey’s combination of a realist eschatology with an anti-legalism or law-gospel dichotomy (adopted from Reinhold Niebuhr and Troeltsch) has the result that he can understand politics in no other terms than the ‘restraint of sin’ (BCE, 327), a concept prone to fall into positivism and the politics of ‘stability’.¹⁹² For if love is forever detached from any social form or policy, such politics cannot be understood *through* Christian love. Hauerwas here claims Ramsey does not ‘accept Reinhold Niebuhr’s separation of love and justice’ whilst equally avoiding their ‘easy [idealist] identification’.¹⁹³ But it escapes Hauerwas that Ramsey declares them congruent (BCE, 9) merely within the ‘strange new world of the Bible’. Ramsey’s third-way of *agape* therefore does not at all repair the great Niebuhrian, indeed the modern, eschatological rift between ‘the strange world of the Bible’ and the ‘world of systems’.¹⁹⁴ For all its concessions to vocation and political institutions, *agape* only deconstructs states, governments, rules and laws through love in a movement of

¹⁹⁰ For the modern difficulty to conceptualise this, see below Ch. 5 on Steinhoff.

¹⁹¹ Ian Markham, ‘Distinguishing Hope from Utopian Aspiration: Revisiting Reinhold Niebuhr’, in *Reinhold Niebuhr and Contemporary Politics: God and Power*, pp. 129-140.

¹⁹² In that sense Ramsey neglected the Lutheran threefold *usus* of the law. See also above Ch. 1.

¹⁹³ Stanley Hauerwas, ‘Preface’ in Paul Ramsey, *Basic Christian Ethics* (new ed.), pp. v-vi.

¹⁹⁴ Alternatively, any politics can claim to be ‘loving’ because no concrete moral principles can be derived from love as a basic principle without rules. Charles E. Harris, ‘Love as the Basic Moral Principle in Paul Ramsey’s Ethics’, *The Journal of Religious Ethics*, 4 (1976), 239-258.

radical scepticism. Unsurprisingly, Ramsey was reluctant to grant to states and governments the possibility of Christian love. This brings us to the notion of the political agent.

Agent: the metaphysics of democracy between faithful individuals and God's covenant

As noted, the paradoxical work of *agape* – everything for the neighbour, even beyond ethics – came with a notable ‘lack of authority calculus’. It also raised the question: who or which institution is morally entitled or obliged to use violent force? The question of moral agency in BCE centres on the Protestant notion of the unmediated relationship between the faithful individual and God. But the pivotal point, indeed the point of political mediation between Is and Ought, between divine love and “the world of systems” was Ramsey’s idealist *anthropology*. In every human, Ramsey argues through Bernard Bosanquet and Josiah Royce, the absolute is incarnate, the infinite in the finite, the divine in the human. ‘The Absolute is a teleological whole that requires individuals be “concrete universals” for the Absolute’s intrinsic purpose.’¹⁹⁵ Ramsey then connected this to Reinhold Niebuhr’s dictum that ‘man’s capacity for justice makes democracy possible; but man’s inclination to injustice makes democracy necessary.’¹⁹⁶ Whilst love pertained to the infinite aspects of individuals, its *social* form and expression had to be democracy:¹⁹⁷

All are but men, apt to make exceptions of themselves if allowed to do so. Sin must be checked in every one, ruler and ruled alike. For this reason, both the external procedures of democracy and the fundamental definition of a just political order should take account of man’s inclination to sin even while building upon man’s capacity for doing right. (BCE, 331)

¹⁹⁵ Long, *Tragedy, Tradition, Transformism*, p. 28.

¹⁹⁶ Paul Ramsey, ‘The Theory of Democracy: Idealistic or Christian?’, *Ethics*, 56 (1946), 251-266, p. 251.

¹⁹⁷ NB: Ramsey’s dissertation had shown that Niebuhr’s realism is not a too far shot from philosophical idealism.

The fact that Christian love ‘made common cause with’ idealism also included a derivation of human rights, because ‘a conception of self-Other relationship is ... essential to idealism’s understanding of mans nature’.¹⁹⁸ This is particularly important since the political agent of contemporary philosophical Just War thinking is constructed around individual rights and contractual authority. But against any understanding of inherent or natural rights as claims and counter-claims, Ramsey derives them from the duty towards the neighbour. (BCE, 353)¹⁹⁹ They ‘arise from the fundamental conditions of good community life’. ‘A man cannot claim a right for himself alone, just because he likes things that way; rather he claims it as a member of society contributing to the general welfare.’ (BCE, 359) In short: ‘Any right is also a duty.’ (361) In this way individual freedom is neither subsumed under the ‘general will’, nor is the common good dissolved into a multitude of subjective claims.

The effect of Ramsey’s idealist anthropology is far-reaching. Despite his ‘formless’ notion of *agape*, he recognized that some communal mediation and contextualisation of love was necessary:

... although their independent reality must be assumed, selves cannot be endowed with such isolation and caprice as to be able to make anarchy out of the ‘City of God.’ ... Finite selves in community are individuated by their purposes and deed, but, in so far as they form a united life, one can more truly affirm ‘Thus the community acts in and through me,’ than he can say, ‘I act thus.’²⁰⁰

Yet although he mentions the City of God, ‘community’ is a generic term. Under the umbrella of ‘civilization’ which unfolds teleologically and under divine providence in history, freedom and morality are equally lived out and embodied in constitutions, churches or empires. In that way, however, ‘the differences between these communities are

¹⁹⁸ Ramsey, cit. in Long, *Tragedy, Tradition, Transformism*, p. 26. This is also pace Elshtain on idealism.

¹⁹⁹ Cp. John Milbank, ‘Against Human Rights: Liberty in the Western Tradition’, *Oxford Journal of Law and Religion*, n. a. (2012), 1-32.

²⁰⁰ Cit. in Long, p. 28.

obliterated.²⁰¹ Ramsey especially brings the notion of a democratic body in conceptual *competition* with the church. Like Elshtain's, Ramsey's ecclesiology reduces the church to either social institution or internal belief. The church as a (problematic) political society or agent has no relevance:

Strictly speaking, the Christian church is not a community of prayer, but a community of memory. When Christians pray they pray 'in Christ's name'; prayer this is set decisively within the contexts of grateful remembrance of the God who put forward Christ. Strictly speaking Christians are not lovers of God; they are *theodidacti*, 'taught of God.' (BCE, 132)

Hence, Tuttle criticises Ramsey's idealist Christology-turned-anthropology where 'both the ordered form of Christian community and the Christian moral life come to be seen as arbitrary, disconnected from the life of the incarnate one whose image they are called to reflect.'²⁰² Rather than ecclesiology and a spiritual-practical community, Ramsey's 'metaphysics of democracy' becomes an alternative, critical political theory.²⁰³ For Ramsey, this poses apparently no problem:

Christianity is not, like Judaism and other forms of religious ethics, a "religious civilization", it is rather a criticism of any civilization, religious or otherwise, and of any customary code of conduct, on behalf of the welfare of the neighbor, which all civilizations and codes of conduct are absolutely bound to serve in obedient love. (BCE, 44)

Moreover:

Christian ethics may claim to be relevant in criticism of every situation precisely because its standard derives from no particular situation and is not accommodated to man's continuing life in normal, historical relationships; ... (BCE, 44)

²⁰¹ Long, *Tragedy*, p. 30.

²⁰² Tuttle, p. 435 n. 41.

²⁰³ Conversely, that means 'social theory' after Hegel has ecclesial dimensions and pretensions, which will become clear in Ch. 5 below. Hollowell similarly sees Ramsey as a 'theoretician'. Adam E. Hollowell, *This Side of the Ploughshares: Concepts of Covenant and Repentance in Paul Ramsey's Political Theology* (PhD thesis, University of Edinburgh, 2009), p. 162.

As a Christian democratic theorist, Ramsey is far from claiming that democracy is realised in the United States. Like Hegel, he provides an alternative, *sittlich* democracy. But since the ‘metaphysics of democracy’ politicise loving individuals (though without manifest institutional form), conversely a form of democratic politics could eventually be seen as embodying love. Ramsey set himself up to reach what McWilliams once said about Reinhold Niebuhr: ‘The Heavenly City of Reinhold Niebuhr retains a distinctly modern form in which to cast its eternal perfections. In fact, the best state in the world – as opposed to the heavenly ultimate – seems strikingly to resemble the United States.’²⁰⁴ Of course the problem is not Ramsey’s idealist democratic theory itself, but rather the fact that once it loses its Christian ecclesial context and source, it can turn into statism in the same way that *agape* turns into an ‘ideal’ once the apocalyptic ‘mystery’ and faith is gone.

Despite these problems, which would fully unfold later in Ramsey’s thought, *Basic Christian Ethics* also clarified the grounds for the free, authoritative political act. Whatever could be extracted from the individual’s love vis-à-vis God in connection with the ‘metaphysics of democracy’, a pre-political, but also political *corpus* comes into view through God’s covenant with Israel:

The covenant, to the Hebrews, served as a kind of charter or national constitution. When the laws are thought of together with the covenant, it is referred to as the “nature of the kingdom” (I Sam. 10:25) ... It may be compared with a basic contract making possible all such specific agreements, a “contract of contracts” logically prior to all law.’ (BCE, 367-368)

The covenant established God’s fidelity and righteous sovereignty. And it established the nation of Israel as a people with a common voice. (BCE, 375) Importantly, Ramsey here provides a bulwark against modern forms of state sovereignty. ‘Beside the covenant there could be none other. It was impossible to conceive of any public contract with other god or rulers that would not be a violation of the first.’ (BCE, 379) This is again an essential

²⁰⁴ Wilson Carey McWilliams on Reinhold Niebuhr, cit. in Eric Gregory, *Politics and the Order of Love*, p. 18.

correction to Elshtain's view of the state. She suggested a 'limited sovereignty' in Bodinian, Schmittian or Hobbesian terms, though these 'limitations' were unhinged *in extremis*. And whatever 'divinity' there was, it proceeded from these states as they embodied it and assimilated Christians into citizenship. Ramsey's anti-legalist agape *does* contain the logic of the exception, though not the sovereign state's exception; Israel's covenant prevented such a notion of sovereignty.

Ramsey does not provide a biblical political theory here. Since *agape* is formless it can 'problematically', as he is aware, only lead to negative insights.²⁰⁵ One cannot derive democracy from Israel's covenant, he says, but 'we would be better advised to confront there the asserted and "ratified" sovereignty of God' (BCE, 384). Nevertheless, he points at a genuine transcendent opening for evangelical political freedom. The divine authority or 'sovereignty' established in this covenant cannot be claimed or 'transferred from God' (again, *pace* Elshtain's and Schmitt's genealogy). And: '[the] justification of earthly authority ... must be reduced to a simple corollary of the idea of "covenant"' (BCE, 386).

By looking at the covenant, Ramsey then carves out a position of true freedom: it is neither an aspect of the 'sovereignty' of liberal, contractarian states nor is it located in a papal apparatus that mediates the divine rule of Christ. Ramsey even regards both these developments as *atheist*:

The biblical covenant stood, and stands, against both politically atheistic worlds, both the modern world of monolithic dictators and omniscient states and the Roman Catholic world in which the pope claims to be, if he does not always act like, Christ's vicar on earth in such fashion as to make Christ his vicar in heaven. (BCE, 385)

In consequence, neither vision is tenable: 'The current conflict between these two politically atheistic worlds is a war of religions which are not ours' (BCE, 385). The agapeic position of

²⁰⁵ See Ch. 3 below, where O'Donovan turns Ramsey's negative conclusions from Israel's politics into a biblical ground for authority.

man before God may not generate an authority calculus. But ‘covenant-obedience holds firmly onto the conviction that man’s ultimate loyalty transcends every earthly system or center of human power’; and this at least ‘gives man whereon to stand in opposing the present shape of the world’ (BCE, 387).

This, then, provided the freedom of the political act as later interpreted by Oliver O’Donovan:

The political act was not bounded by institutions. At home in the city, it could extend itself into open spaces across the boundaries erected by civilized institution-building. It was impossible for Ramsey to conceive politics as an island-kingdom, washed on all sides by the trackless ocean of a state of nature. The Lockean liberalism that conceived it that way had placed the abstract political institution at the core of political theory, in the place where political action belonged.²⁰⁶

In short, drawing on the Protestant notion of individual agency in response to God’s love, Ramsey’s idealist anthropology presents the individual within a Christian critical theory of democracy. Whilst God’s covenant with Israel challenges modern forms of state sovereignty as well as papalist institutionalism, Ramsey opens up the (incarnational) gap for political action on behalf of the neighbour. Whereas in Elshtain’s theology this gap was filled by the liberal constitutional state in a ‘state of exception’, Ramsey here locates the freedom, though not the form, of just political action.

Political reality: An ontology of tragedy and opportunity

Because the pivotal, mediating point in Ramsey’s theology was an anthropology, there remains a theologically unbridged incommensurability between the realm of irredeemably

²⁰⁶ Oliver O’Donovan, ‘Karl Barth and Ramsey’s “Uses of Power”’, *The Journal of Religious Ethics*, 19(1991), 1-30, p. 23.

sinful human creatures and a realm of divine ideals or ‘supernatural standards’. Conceptually, this throws up the question: what is the political reality into which we act? Humans’ ‘capacity to do justice, but their inclination to sin’ shows that there is both an aspect of opportunity, of freedom to do good, but equally the persistent sting of sin and ‘tragedy’.

So on the one hand Ramsey’s anthropology provided the ‘structural’ basis of what D. Stephen Long calls his ‘ontology of tragedy’. It begins with the sheer monstrosity of war, both of what happens to the afflicted, but more importantly the things people *do*. Ramsey says: ‘By faith in God the young man in the service himself may be reconciled to the evil that he suffers and does (not that it is evil but that it has to be done).’ Long relates this to ‘radical monotheism’, which Ramsey had learnt from Niebuhr and which I have noted briefly above: the continuity between B. C. and A. D. in the biblical exegesis of love, the ‘strange world of the Bible’. ‘Radical monotheism’, Long says,

provided a unity to earthly, political existence, which goes beyond making tragedy understandable, it makes tragedy unavoidable. The soldier is reconciled not to the evil he does, but to the fact that given the historical circumstances in which he has been thrown, he must do evil.²⁰⁷

As a result, Long points out, ‘the soldier’s culpability dissipates into the unavoidable structure of tragedy.’²⁰⁸ This tragic element continues to set the political coordinates: ‘... politics can never escape force, violence and coercion. ... While Ramsey may allow for the purpose of political society to be a just order, it could never be a peaceable order.’²⁰⁹ In that sense, the more alien, the more wholly different *agape* is conceived as divine-ethical action, the more *negative* its counterpart, the more ‘human, all too human’, political reality is conceived. And indeed, the ‘unavoidability’ of war remained a recurring theme for Ramsey.

²⁰⁷ Long, *Tragedy, Tradition, Transformism*, p. 47.

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*, p. 146.

At the same time, several scholars have emphasised the notion of freedom inherent in *agape*. Ramsey's lifelong efforts themselves are proof against a quasi-deterministic acceptance of 'the reality of politics' as tragic, antagonistic necessity.²¹⁰ These opposing scholarly positions, however, once understood through Ramsey's idealism, are not contradictory at all. After all, Idealism precisely provided the tools to overcome the Kantian dualism between nature and freedom, between morality and politics. What is therefore fascinating is that the way Ramsey wrote about the possibility of moral action in a fallen world, moral action that could hold the possibility of morality and tragedy together. The facts of tragedy were a category of history: *so far* we have never seen the Kingdom of Heaven established in politics. Nevertheless, Long is correct to point out that in a structural sense the ontology of tragedy has the potential to become fundamental.

To summarise, during Ramsey's agapist phase, love between idealism and realism makes it both ethically effective and ineffective as a 'crusade for the neighbour'. Originally it sprang from an eschatological *paradox*, which gives it its relevance and its work in vocations. Nevertheless, it remains indeterminate and antinomian.²¹¹ A *theological* mediation between love and law, between God and the world of systems, between natural and 'supernatural' is now absent. Instead, Ramsey's philosophical idealism suggests the omnipresent possibility of everyone's faithful action for the sake of the neighbour as a continuous (philosophical) incarnation. In terms of political authority, there is no paradoxical relationship between political institutional forms and the church. The *im-mediacy* of individuals' relationship with God kept them at a critical distance from 'the world of systems', political institutions and laws, including conventions like the Just War theory itself. Apart from the dangers of subjectivism, 'Ramsey saw the problems with love freed from structure; agape became a

²¹⁰ Adam E. Hollowell and James F. Cubie, "'Where Have We Been? Where Are We Going?' – Paul Ramsey, Paul Lehmann, and Karl Barth's Doctrine of God', in *Explorations in Christian Theology and Christian Ethics: Essays in Conversation with Paul L. Lehmann*, ed. by Philip G. Ziegler and Michelle J. Bartel, (Farnham; Burlington: Ashgate, 2009), pp. 79-101, p. 116 n. 56.

²¹¹ This correlates with a theological collapse of B.C. into A.D. in the notion of God's righteousness.

slave to “other than uniquely Christian sources””.²¹² Hence, he had to turn to some form of naturalism.

A Christian Transformation of War

Action: Love transforms the law – or vice versa?

Ramsey did not want to simply turn to ‘natural law’ for a moral Ought. It would have been a move onto Catholic turf and unacceptable to his Methodist leanings. Neither did he want to abandon the notion of a wholly other *agape* as that which distinguishes Christian ethics from other moralities. Having read Niebuhr Ramsey was therefore drawn to ‘transformism’, the idea that ‘natural reason’ must be transformed by *agape*. Uncovering the ‘moral tradition of the Just War’, based on the principle of discrimination, held out a concrete form for the freedom of evangelical political action. And this brings into view precisely the Christian notion of mediation between the political and the spiritual which I mentioned in the Introduction. However, despite his transformative promise, Ramsey at this stage held the two, distinct paradigmatic sources of ethics together side by side. *Agape*, which could become Calvinist enthusiasm (or radical Reformation), was restrained by a ‘natural law’ without denominational ballast.

In *War and the Christian Conscience* (1961) first an unbridgeable difference between political justice and Christian love comes into view through the *City of God*. Augustine’s sceptical, fundamental deconstruction of earthly justice led Ramsey to conclude that Christian faith working through love could never question that city’s ways. According to Augustine, the earthly city can merely offer a *pax-ordo* void of *iustitia*, divine justice. Here Ramsey

²¹² Long, p. 106.

sharply criticises Ernest Barker's reading of Augustine, which is relevant as it reflects Elshtain's view. Barker mistakenly suggests a 'smooth Christianisation of Classical politics' by suggesting there is a 'limited *iustitia*' in the earthly city. But for Augustine, Ramsey says, there is no such thing as earthly 'relative justice'.²¹³ Where there is no true justice (*iustitia*) there can be no right (*ius*); hence Augustine's claim that there was never a 'Roman republic' (WCC, 24) Augustine 'is not calling for a mere religious addendum, or for a State that goes further than its existent, intrinsic justice to become a denominationally Christian State.' Instead: Augustine 'demoralizes *res publica*' (WCC, 25).

Within the earthly city, any "just war" therefore has little to do with Christian love: ,It is a lively sense of man's common plight in wrong-doing and of the judgment of God that overarches the justified war, and not – except perhaps as an incidental implication of what Augustine says – a sense of or clarity about the universal ethical standards that are to be applied.' (WCC, 28; italics mine) Self-love 'may be *absent* when the public good is in question; but whether it is love that is *present*, governing the Christian in what concerns the public good ... may be questioned' (WCC, 38). From the perspective of divine *iustitia* all earthly cities and wars are equally (un)just. (WCC, 28)

But instead of then distinguishing an Augustinian 'conversionism' (or the possible 'transformation' of war) from Barker's ideology of empire, Ramsey then fully compartmentalises 'earthly justice' and *agape*. The latter, now absent the 'mystery' of Jesus' apocalypticism, has become equal to an 'idealism' to be avoided. To make a political point out of love only poses the threat of idealizing the real: 'An unrectified *nisus* toward the eternal disturbs every people's purpose: that is why they see in their good the Good, in the laws of their peace the conditions of universal peace, and are resolved that this too shall not pass away.' (WCC, 31) Ramsey saw his scepticism confirmed by a modern world he saw as a

²¹³ Elshtain on 'relative justice', see *Complete Transcript of Interview with Jean Bethke Elshtain; Interview date: December 8, 2004* <<http://www.onbeing.org/program/moral-man-and-immoral-society-rediscovering-reinhold-niebuhr/extra/complete-transcript-2>> [accessed 04 Feb, 2013]

‘vast concentration camp’ (It was never enough for Ramsey to merely oppose the Nazis; the Allied obliteration bombing was equally totalitarian).²¹⁴

With both sides of a war suspiciously unjust, a Christian cannot add anything meaningful to the (democratic, earthly) *ad bellum* criteria. (WCC, 32) But since Christian ‘participation in war’ (31) may be justified, *agape* enters as it determines the ‘right *conduct* of war.’ (32) And here, Christ’s universal *agape* provided the absolute standard for discrimination. Christ had died for the godly and the ungodly, so that individuals are surrounded by immunity from *direct* killing. (WCC, 55) As the Christian loves God in the neighbour, it is the moral impossibility of ‘killing Christ anew’ that guarantees the inviolability of life from direct attack.²¹⁵

So could *agape transform* a “just” war in the fratricidal city, even though it was merely confined to ‘right conduct’? As I pointed out above, Ramsey showed how discrimination could transform the paradigmatic ‘aggressor-defender doctrine’. But Stephen Long notes that in WWC an unacknowledged ‘epistemological rupture’ occurs, one that pulls Ramsey away from ‘confessional ethics’ to ‘natural law’ and ‘natural rights’.²¹⁶ It was not that the analysis of (indeterminate) love led Ramsey to develop the norm of discrimination. It was Father John C. Ford and the Roman Catholic moral tradition.²¹⁷ And Ford moved the just war tradition into the realm of international law, the law of humanity and natural law; for Ford, discrimination was unrelated to ‘the confessional’ and a matter of natural moral insight. Theologically, however, this shift with Ford in Ramsey’s thought is precisely the alternative to Christological mediation, since it is a *switch* from love to ‘non-confessional’ natural law. In other words, love of neighbour by the standard of Christ determines the absolute duty of discrimination. But that remains confined to the soldier’s vision, whilst its explications (like

²¹⁴ Ramsey, *Nine Modern Moralists* (New York: University Press of America, 1961), p. 19.

²¹⁵ O’Donovan, ‘Karl Barth and Ramsey’s “Uses of Power”’, p. 9.

²¹⁶ Long, *Tragedy, Tradition, Transformism*, p. 77.

²¹⁷ *Ibid.*, p. 75, 77.

the principle of order) and *ad bellum* criteria are derived from natural law.²¹⁸ In short, love was possibly a motive for political action and the origin of discrimination, but natural law gave it its rational form and any *ad bellum* considerations.

Agent: Between the priesthood of all and the 'earthly city'

Basic Christian Ethics had left the individual vis-à-vis God in a critical position towards all institutions and authorities. But how does or can this 'Christian perspective' transform political authority, specifically the 'justice' of the modern sovereign state?

On the one hand Ramsey now develops the grounds for the political act: *lex, ordo* and *iustitia*. If power is of the *esse* of politics, its *bene esse* are these values. They are not only domestic, as O'Donovan points out. Ramsey's *correction* of the Lockean/Hobbesian sovereignty becomes visible as he extends ethical politics to the international sphere. The *lex* of the international legal order; *iustitia*, which is 'the regulative ideal of "humanitarianism" and the 'order of power' – they all overlap and politicians must take them into account, 'but never one or two of them alone or at the expense of the other' (JW, 12). This makes international action possible without being an exceptionalist imperial ideology as the alternative to a 'state of nature'. Precisely this conception of authority is then Ramsey's 'transformist' contribution, despite its lack of dogmatic, biblical cushioning. O'Donovan will later identify the three 'terminal values' as the natural grounds of political authority warranted by God's covenant with Israel.²¹⁹ What Ramsey calls the '*increasing the incidence* between the national and the international common good' will become O'Donovan's reconciling judgment between belligerents 'on the *missiological* frontier.'²²⁰

²¹⁸ WCC is concerned with the genesis of non-combatant immunity, just like BCE was with genesis of agape. But here both are naturalised.

²¹⁹ Oliver O'Donovan, *Ways of Judgment*, p. 142.

²²⁰ See below Ch. 3.

At the same time, however, Ramsey identifies *'bellum iustum'* as democracy' between 'making anarchy out of the City of God' and the (Catholic) institutional restraint of *agape*. The chapter on 'Justified Revolution' in WCC demonstrates this dichotomy. Beginning from Aquinas to Calvin, whatever rung in the ladder of the social hierarchy was permitted to revolt, 'it was not an incitement to riot or to unlimited revolution' (WCC, 122). *Agape* may be a noble motive, but it has to be channelled. The fact that it is limited by a 'theory' is even a *precondition* for Christians to approve of revolution. In other words, for Ramsey it may be an act of Christian conscience (and thus potentially *agape*) to limit popular *agape* in response to social and political injustice. (WCC, 124) What follows is a 'theory of "constitutional" or "official" revolution'.

It means that an abstract and universal justice, or its serious violation within a nation, is never sufficient to warrant an appeal to arms. ... Instead, one must wait - long past the point where simple justice began to be violated - until there arises someone or some group capable of representing a better *pax-ordo*, and capable of bringing this to pass without letting worse befall. (WCC, 124)

Ramsey's revolution or political act here draws on two sources: First, individuals' recognition of God's sovereignty *per vocationem* of magistrate or citizen. Vocation is the *vehicle* for God's 'sway [to] be felt in every crevice of the kingdom.' And: 'consequently, not only inner faith and books but social relationships and social justice are religious matters and just as important as the freedom of faith.' The fact that 'the private consciences of free men become the fundamental source of political authority' is 'the practical extension of the priesthood of all', the sense in which *everyone* is a king. (WCC, 126) In other words, this is the possibility of radical, Christian democracy - spiritual and political are identical; love and law, church and state collapse. But the thing Ramsey precisely does *not* want to make possible is a Calvinist Geneva challenging an Augustinian empire.

The second source therefore, one alien to Ramsey's often vocally anti-Catholic Methodism, provides the external *limitation* of this revolutionary agape: '... the continuing importance of Roman Catholicism is that, with its tradition of natural law still intact, it instructs these new magistrates as it did the old ones in what is just and not alterable merely by their "sovereign" will, and in the law to which their decisions should conform' (WCC, 126).²²¹ Since for Ramsey all political community was deposited within the state, there could never be an alternative political society to challenge it. The key moral-political body, the practical fusion of the priesthood of all and the 'Catholic' limitations of natural law is – democracy. 'What then is democracy but *bellum iustum*?'²²² Here Ramsey's connection of philosophical idealism and Christian *agape* becomes effectively indistinguishable from the modern revolutionary-democratic paradigm. When 'democracy as "regularized struggle" breaks down, then people may need to be "directly coerced."' ²²³

So there are two simultaneous theo-logics at work in Ramsey's transformist period.²²⁴ On the one hand he thinks within the dualist paradigm of a 'realistic' earthly politics as opposed to 'utopianism'. The same fundamental dichotomy was at work in Elshtain and echoes a residual Manichaeism in Augustine. It is expressed in the formula '*bellum iustum* is democracy'. Effectively it is indistinguishable from the democratic-revolutionary paradigm. Nevertheless, Ramsey's 'constitutional revolution', despite similar wordings, must be distinguished from Elshtain's 'rebellion'. The latter is a commissarial-dictatorial 'state of exception' to protect the constitutional state against aggression, whereas the former always subjects any political institution to the charitable political act.

²²¹ Politically, Calvinism and Roman Catholicism are therefore *matching opposites*.

²²² Cp. Daniel M. Bell, *Just War as Christian Discipleship: Recentering the Tradition in the Church Rather Than the State*, p. 238. In a similar way that Hegel regards the state as the ultimate political community, Bell effectively relocates the church in the state through making 'just war' a form of 'Christian discipleship'.

²²³ Cit. in Long, *Tragedy, Tradition, Transformism*, p. 67; WCC, p. 126.

²²⁴ In a letter to James Gustafson Ramsey called this 'thinking in one direction only between altogether separate sources of ethics (a possible reading of my "love transforming natural justice")'. Cit. in Adam Edward Hollowell, 'Revising Basic Christian Ethics: Rethinking Paul Ramsey's Early Contributions to Moral Theology', *Studies in Christian Ethics*, 23(2010), 267-283, p. 277.

On the other hand Ramsey passionately defended the transformationist model, the incidence of the national and international common good and *lex-ordo-iustitia*, against its critics.²²⁵ Stephen Long correctly notes that ‘Ramsey’s use of the transformationist motif neither collapsed the “sphere of the Church” with the “sphere of the state,” nor created a disjunction between them.’²²⁶ And he rightly points out the role of Christology in it, since for Ramsey ‘... it is precisely Jesus Christ through whom we can and may and must act within the world’ (WCC, 113).

However, although the notion of ‘justice’ in the earthly city was deconstructed by Augustine, from the point of view of the *earthly* city it became equal ‘relative’ justice.²²⁷ In so far as modern democracies already *embody* *agape*, the duty of national defence could eventually become prevalent as Ramsey sought to construct a viable ‘realism’.

Political reality: The transformation of Babylon?

Where was the state, *bellum iustum* as democracy located? What is the ground and context for political action? I noted above how Israel’s covenant, but equally Ramsey’s idealist ‘metaphysics of democracy’ provided both the notion of an ‘ontology of tragedy’, but equally of contingency and moral possibility. As Ramsey continued to wrestle with moral idealism and utopianism (a sphere into which *agape* would eventually retreat), however, he became more of a modern Augustinian realist.

Especially in ‘The Uses of Power’ this is developed in contradistinction to Karl Barth, whom Ramsey charges with stipulating a ‘post-evil, Christ-formed man’. As O’Donovan

²²⁵ NB: Ramsey referred to Augustine as a “conversionist”.

²²⁶ Long, *Tragedy, Tradition, Transformism*, p. 81.

²²⁷ William Werpehowski, *American Protestant Ethics and the Legacy of H. Richard Niebuhr* (Washington, D.C.: Georgetown University Press, 2002), pp. 56, 69; Paul Ramsey and Stanley Hauerwas, *Speak Up for Just War or Pacifism: A Critique of the United Methodist Bishops' Pastoral Letter "In Defense of Creation"* (University Park; London: Pennsylvania State University Press, 1988), pp. 89-90.

clarifies, Barth's 'Christological root of the state ... has to do with the proper location of the political order within the covenant of reconciliation between God and man. ... "In this authority we are dealing indirectly, but in reality, with the authority of Jesus Christ.'" Jesus Christ is represented to humanity in state and church, but the church "contains the state in itself".²²⁸ As O'Donovan points out, '[central] to Barth's conception here is the collapse into one theological moment of the traditionally differentiated moments of God's preserving providence and his saving atonement, the collapse of B.C. into A.D.' So Ramsey misread Barth as stipulating a 'post-evil, Christ-formed man'. Yet the collapse of B.C. and A.D. for Ramsey's idealism-realism dichotomy was simply sufficient to locate Barth in the 'idealist camp'. For Barth, the use of violent force was abnormalized, though in a supreme emergency, when the state's 'very existence and autonomy are menaced and attacked'. Then Barth envisions an exceptional war. *Ironically* (though logically), he ends up with a 'zone of politics which can be viewed only "soberly" and not with evangelical faith or hope.'²²⁹

If for Barth politics is summed up in Christ, then for Ramsey politics is summed up in the Old Testament. In response to liberals, idealists and pacifists he stakes out a separate political sphere which is effectively separate from Christ and ends up as a sphere of unmediated conflict. There is no return to Eden, but in the political sphere, there is also no New Creation. Indeed 'Barth situates politics, as it were, in the Gospels, while Ramsey throws it back into the depths of the Old Testament, somewhere in the middle of the Yahwist's primal history: the expulsion from Eden, perhaps, or the city of Cain, or the post-diluvian covenant, or the Tower of Babel.'²³⁰ He effectively accepts the modern 'realist' understanding of an antagonistic nation state system: "nations might better renounce the use

²²⁸ Oliver O'Donovan, Karl Barth and Ramsey's "Uses of Power", p. 5.

²²⁹ Ibid., p. 14; O'Donovan's reading of Barth as a liberal underlines the understanding underlying my analysis that modern Christian ethics, in so far as they rely on Enlightened premises, are either indistinguishable from liberal-revolutionary democracy or confirm it through opposition. See Creston Davis, *Monstrosity of Christ*, p. 6.

²³⁰ Ibid., p. 9.

of war as an instrument of *anything but* national policy” (WCC, 29). Conceptually, a moral ideal merges with the politically real in the limited possibilities of the ‘earthly city’; the opposite of the politically real is then abnormalized. Or rather: for Barth state and church are summed up in Christ; the use of force is abnormalized. For Ramsey state and church are summed up in the Old Testament in the sense that the church must leave the political alone. And if this is ‘the reality of politics’, then *agape* is abnormalized.

Taken altogether, Ramsey held two motives together during his transformist phase, two different sources of political ethics. In itself the ‘transformist’ motive forms his legacy of the theological correction to the idealist-realist dichotomy; this will be further developed in the next chapter. Equally, however, because of Ramsey’s antinomian notion of *agape* and his philosophical idealism’s drift towards political tragedy, it was possible for him settle on the same grounds as Elshtain. This was the dualist constellation of his later years, which I will turn to now.

Realism ‘this side of the ploughshares’

If Ramsey’s early idealism (first phase) had envisioned an immanent continuity between the political and the spiritual, his agapist and transformist periods (second phase) contained the possibility of an evangelical Just War proposal. Towards the end of his career, however, Ramsey presents a renewed continuity, though now with inverted signs (third phase). First, in line with Christian realism, he sharply separates Christian ethics and political prudence, state and church, as well as the Gospel age and the age of Babylon. Then, congruent with Elshtain, he *mythologizes* the politically real. Meanwhile, the transformist motive retreats into the background. Dogmatically, this was possible because of Ramsey’s renewed insistence on the realist eschatological gap: ‘There is more than a slash between the words “already/not yet.”’

There is more than a momentous slash. The slash is *aeonic*.²³¹ Politics once and for all remains in the Old Age of Babylon.

Action: secular expertise and national defence as love

Epistemologically, Ramsey's realist 'magistrates' completed the shift to secular reason. In 1967 he wrote: 'The owl of Minerva (political wisdom), which rested for three decades upon a spokesman of Christian truth ... dwells now with secular analysts, such as Robert E. Osgood and Robert W. Tucker' (JW, 261). The key yardstick for political ethics is prudence *distinct* from Christian faith and, by extension, faith working through love. For Ramsey 'the engine of religion or morality cannot be placed behind any person's prudential political diagnosis, or behind the opposite opinions about Vietnam.' An analysis may be mistaken, but it cannot be a direct implication of Christian faith. (JW, 506) Ramsey sees 'counting the cost' as the politician's proper task. But this remains outside Christian competency (or at least the churches are no better at providing 'policy recommendations'). He then relegates applying the principle of proportion to a war or an act of war to 'statesmen' and citizens. Even 'in connection with the principle of discrimination, members of ecclesiastical councils should listen to experts in the political and military sectors and ... learn to know the meaning of a present application of the principle of discrimination' (JW, 455). As a result, political reason can now make common cause with rationalist analytical paradigms.

One of these is 'opposed-systems analysis' of Albrecht Wohlstetter, whom Ramsey cites in 'Strategic Thinking'.²³² Based on rational choice theory it views the human as essentially and only rational, in possession of all the necessary facts to make preferred choices according to a calculation of cost and benefit. As Angie Keefer points out, rational-

²³¹ Paul Ramsey, *Speak Up*, p. 37.

²³² Hollowell in 'This Side of the Ploughshares' does not mention Wohlstetter at all, though *effectively* he is most important, providing the content of 'political prudence'.

choice is ‘underpinned by models of predictable fundamentally invariable norms of human behaviour unmediated by historical contingencies.’²³³ The theory posits a ‘methodological individualism’ that can hardly explain altruistic ‘choices’ unless they are a form of self-interest. Mutual Assured Destruction, one strategy of rational choice, is based on

a mathematical model of human behaviour that excludes the probability of irrational moves or of cooperation among subjects. Nash equilibrium – the concept underlying MAD – posits players acting in hyper-rational self-interest against entirely hostile opponents. ... The possibility of trust among adversaries is excluded.²³⁴

In this spirit Ramsey emphasises ‘the need for independent analysis’; he even sees a proper ‘collision in interpretations between a trust-system (“the church”) and an opposed-system (of states)’.²³⁵ In the book of Genesis Ramsey then finds ‘mythopoetic warrants’ for the opposed system, a perpetual antagonistic play-off between centres of power.

Effectively the *ad bellum* considerations, the *whether* and *why* of a war remain sealed off from Christian competence. In this context, *pace* O’Donovan, Ramsey’s later ethics were no more about ‘in-principled love’, but the defense and preservation of ‘embodied justice’ or ‘politically-embodied justice’.²³⁶ And is this not another phrasing for sheer ‘antagonism’, the clash of subjective claims? In a letter to James Childress (1977) Ramsey moves away from ‘objective’ claims to justice, i.e. beyond the subjective confines of politicians’ own state. He tried ‘to get away from the “juridical model”, of declaration as a sentence from an impartial court’. He writes: ‘Still one does the *ostensibly* just thing without subjective guilt. So there not only can but must be relative judgments of justice *ad bellum*, without the claim to encompass objective justice.’²³⁷ In the Cold War stand-off between the West and a

²³³ Angie Keefer, ‘The Sky is not the Limit’, *Dot Dot Dot*, 18(2009), 58-67, pp. 64-65.

²³⁴ Keefer, *ibid*.

²³⁵ Ramsey, *Speak Up*, p. 190.

²³⁶ JW, 132, 390, 428, 444, 465, 482.

²³⁷ Hollowell, ‘This Side of the Ploughshares’, pp. 83-84.

communist East, considering Ramsey's 'metaphysics of democracy', the former could claim ostensibly more embodied justice than the latter.

As the very opposite to earthly 'relative justice', the dimension of agape and Christian faith was eclipsed together with the competence of ecclesiastical councils. To merge the two, I indicated above, was always a possibility of an essentially antinomian love. In this context Charles Curran complained that Ramsey's political ethics 'do not connect the redemptive work of God to political activity after Jesus has come into the world and sent his spirit'.²³⁸ Instead, whereas *agape* (at least Jesus') sprung from an apocalyptic age and the meaning of Jesus as messiah, all political action now remains *before* the Christ event.²³⁹

A Christian will think politically in the light of Christ, and he will think politically in the light of the revealing shadow thrown by the cross of Christ over our fallen human existence. This darkness does not envelop that light. Neither does the light diminish, it rather throws, the shadows. So it will be to the end of time. (JW, 529)

Politics remains in the shadow; there is no positive call that lifts it of its preservative, negative function against anarchy. Precisely because 'the king' and 'modern democratic man' are 'there in the shadows' their political offices 'must serve to preserve the world against the destructiveness to which otherwise we all would be driven' (JW, 530).

But more than that, the ethics of national-defence and love cease to be contradictions; the latter is a frictionless *continuation* of the former. This marks the exact reversal of both Ramsey's own idealism and a turn to the same realism as Elshtain's. A passage from 1964 summarizes well the continuity of charity and national-defence:

It was a work of charity for the Good Samaritan to give help to the man who fell among thieves. But one step more, it may have been a work of charity for the inn-keeper to hold himself ready to receive beaten and wounded men, and for him to have conducted his business so that he was solvent enough to extend credit to the Good Samaritan. By another

²³⁸ Curran, p. 14.

²³⁹ See Hollowell, 'This Side of the Ploughshares', p. 280.

step it would have been a work of charity, and not of justice alone, to maintain and serve in a police patrol on the Jericho road to prevent such things from happening. By yet another step, it might well be a work of charity to resist, by force of arms, any external aggression against the social order that maintains the police patrol along the road to Jericho. (JW, 142)

Notably, this is the precise opposite of Ramsey's former Augustinian, agapic suspicion. *Agape* is perhaps part of individual 'consciences', but in this context Ramsey speaks of national-defence as the continuation of charity.²⁴⁰ In his early agapic phase, as noticed in the analysis of BCE, he had approached this view with utmost suspicion – the suspicious separation of national defence and agape turns into a frictionless continuity.

As one aspect of Christian 'action', Just War thinking itself changes its character. Similar to Elshtain's civic edification, Christianity is now a consolation to politicians embroiled in antagonistic struggle: 'There is no reason why Christians should withhold this consoling word from political leaders in all their dealings with "outcomes"' (JW, 529). In *Speak up for Just War or Pacifism* he commends 'espousing the virtues of a *mythopoetic* understanding of the actors and the interactions going on in the international system.' By 'looking at ourselves through the synoptic "pre-historic" culture myths in the first book of the Hebrew Bible named "In the Beginning" (*Genesis*, as the Greeks called it)' one can gain 'a rapid sketch of insights into and perspectives upon mankind's existence in political communities.' (Strategic, 183) Elsewhere Ramsey called himself a 'mythologist'.²⁴¹ But are myth and revelation the same category? And how can it be distinguished from ideology? In short, both a dimension of faith and a critical tradition of Christian faith fall behind Enlightened secular reason, whilst a consoling Christianity aides or even becomes ideological supra-structure.

²⁴⁰ Viz. BCE, p. 124 – The two are not the same: 'The neighbor is never the ultimate object of aspiring caritas-love; he is always the end-term of agape-love.'

²⁴¹ Long, p. 143; also Curran, pp. 44-46.

Agent: the state vs. church politics and idealism

As the idealism-realism dichotomy became his prevalent paradigm, Ramsey also emphasised more sharply the authority and action of the state as opposed to ‘utopian’ or ‘liberal’ alternatives. He wrestled especially with contemporary ‘liberals’ promoting the U.N. as a new international agent, but equally ecclesiastical councils that injected policy recommendations into the public sphere. Seeing the choice between the state’s order over and against anarchy and unrealistic idealism, he turns against the ‘good works’ of institutions that could only lead to a tyranny of world government. But this two-dimensional real-ideal dichotomy lacks precisely the evangelical possibility of the political act:

A man must take care that his zeal and idealism is not a matter of high-minded rebellion against the governor and preserver of the existing world. This means that a political order is worth something only if it is real, and not merely ideal. Any order is better than none at all. Since God in His governance of the fallen creation desires in His mercy to keep at bay chaos and disorganization and the destruction of every human political dwelling place which would be the final consequences of sin, men must preserve politically embodied justice and even a peace of sorts. (JW, 390)

States are ordained as a “garment of skin” (Genesis 3:21) in which human nakedness may be clothed, and in which men may together find a tolerably secure dwelling place.’ (JW, p. 530) The ‘myth’ of the state is provided by Ramsey’s reading of Helmut Thielicke: ‘The Noachian covenant means that, among fallen humanity, “arbitrary and unlimited power is to be restrained and limited by further power” ... That means that power must be limited by further power, else it is bound to become arbitrary and unlimited.’ Ramsey does not think people are *condemned* to set up states, as Thielicke says, but they are ‘condemned to do no more than

govern one another through an opposed-system in which power is restrained by further power.’²⁴²

If for Barth church and state were merged in the *evangelion*, then for Ramsey they eventually collapse into the ‘earthly city’ and remain in the Old Age before the Christ event. Hence he also abnormalized the church as a potentially transformative, though not utopian political society. Any politics beyond a ‘realistic’ account of national defence (especially in the context of his anti-communism) invites Ramsey’s anti-idealist suspicion.

No church of the Reformation, no church coming in the wake of the Reformation, *indeed no church before the Enlightenment*, NONE put its faith and hope or deed of discipleship in context with such *elision* between this world and the next.²⁴³

Ramsey remains suspicious of the Catholic institutional mediation of the universal in the church (‘good works’ of institutions). But because love is the action of individual, immediate obedience to God that can always descend into ‘anarchy’, it is now again *the state* that mediates and embodies neighbour love. Hence William Werpehowski criticises Ramsey’s excessive deference to political authority that ‘may operate to mask or marginalize realities of killing, injury, and human suffering...’ and ‘leaves to the state the embodiment of “Christ”, the highest ideal feasible among the options in political life.’²⁴⁴

Adam Hollowell has recently challenged this critique of Ramsey’s state encroaching on Christ’s singular mediating position. He suggests that ‘Ramsey turns to Thielicke’s covenant theology for an emphasis on the Christological center of political ethics and, simultaneously, an accessible way of characterizing political realism to secular forms of reasoning.’²⁴⁵ According to Hollowell, covenant theology provided the *context* of just war norms, whereas for Ramsey obedience to Christ provided the norms themselves. At the same

²⁴² Ramsey, *Speak Up*, p. 186.

²⁴³ Paul Ramsey, *Speak Up*, p. 37.

²⁴⁴ Werpehowski, p. 62.

²⁴⁵ Hollowell, p. 196.

time he points at the fact that Ramsey came to see Christology as the ‘real issue’. However, Ramsey never fully developed the implications of this ‘real issue’ beyond the limitations of claims to ‘state sovereignty’ expounded earlier. In other words, his own possibly ‘transformist’ notion of political authority after the Christ event contradicts his almost unwavering support of the American ‘garment of skin’ in a Hobbesian ‘bad weather’.

Reality: Babylon versus ‘utopia’

Ramsey’s great shift of perspective, from spiritual *agape* onto ‘realist grounds’ – two matching opposites, it must be emphasised – entails the juxtaposition of the ‘reality of politics’ and utopia already encountered in the previous chapter. In 1973 Ramsey writes: ‘The verdict at Babel only suppressed man’s “vertical” aspiration to high heaven; it did nothing to allay the resulting chaos on the horizontal plane.’²⁴⁶ The transformative force of *agape* reflected by the individual recedes into the background, and ‘the necessary always becomes more basic than the possible.’²⁴⁷ Theologically, Ramsey again rooted opposed-systems in the Old Testament, specifically the contrast between the prophet Isaiah and King Ahaz. For Ramsey Ahaz, in fixing the waterworks to make them withstand Israel’s attack ‘acted responsibly within an opposed-system’. The prophet Isaiah, ‘gave him this sign of the trustworthiness of the action in all the action the king was preparing to face’: the prophecy that a virgin would bear a son and by then Ahaz’ enemies would be gone.²⁴⁸ As power can be limited only by power, there is no bemusement from ‘one or another of the utopianisms or gradualisms of the modern mentality.’²⁴⁹ Of course, Ramsey chides Enlightened political ethics here. But again, fully in line with this paradigm he turns to the very antagonistic

²⁴⁶ Ramsey, *Speak Up*, 185.

²⁴⁷ Long, *Tragedy, Tradition, Transformism*, p. 62.

²⁴⁸ *Ibid.*, p. 190; Isaiah 7:8, 14, 16.

²⁴⁹ Shaun A. Casey, ‘Eschatology and Statecraft’, p. 185.

premise of these utopianisms and gradualisms. His Christology, despite its emblematic presence, was unable to point out that these Wohlstetterian realities are *fictions*.

Ramsey's realism was the final and a logical step in his career, one that made a long journey from one end of the idealism-realism divide to the other, wrestling with the gap between neighbour love and a modern 'world of systems' as well as possibilities to mediate that gap.

Conclusion

Paul Ramsey, the second author investigated here, is important because he suggested that to 'make just war possible' was one aspect of a specifically Christian ethic rooted in love as a work of faith. Over the period of his lifetime Ramsey travelled from his early idealistic and pacifist grounds to a realism that found even Reinhold Niebuhr insufficiently realistic. Between these two "extremes" at the beginning and the end of his career, roughly in the middle, he subscribed to what he called 'transformism'. Here, agape transforms the 'ordinary' doctrine of war, which oscillates between antagonistic, indiscriminate defence and quasi-pacifist indiscriminate humanitarianism. I also pointed out that precisely this doctrine had been at work in Elshtain's thought. However, Ramsey abandoned this transformism. His later writings were chiefly concerned with national security and anti-communism to the point that discrimination took a decisively consequentialist slant.

If Elshtain's dichotomy of idealism vs. realism was sustained by a synchronic theological dualism, then Ramsey's developed throughout a lifetime according to the same paradigm. In my analysis I showed how his movement from one end of Just War's idealism-realism divide to the other presupposed a stark division between Christian faith, the 'strange world of the Bible' and the secular world of systems. This division was an essentially Kantian

presupposition. However, more than that, Ramsey was significantly influenced by Hegelian idealism. Here, the Christian possibility of ultimate, divine mediation between ‘the secular’ and God was now understood as either an immanent, rational continuity brought about by human action; or it was rejected in favour of an unbridgeable ‘eschatological gap’ or ‘rift’.

In contrast to Elshtain, Ramsey hardly suggested a hazy transcendence to a ‘naturalistic ethic’, a constitutionally recognised ‘freedom of religion’ that can accommodate whatever ‘religious pluralism’ is required to sustain the political status quo. As regards ethical action, the agent and the nature of political reality, Ramsey always began from the opposite side of Elshtain. In his early idealist phase, acting as if the Kingdom of God was already here meant to love and live in imitation of Jesus. Under the influence of Niebuhr and Nietzsche, his understanding of love changed. Agape was a genuine breaking-in of the supernatural that could truly shake the foundations of the ‘world of systems’. This became the point of his ethical transformism. However, because of the antinomian nature of love, Ramsey’s philosophical idealism and his Niebuhrian eschatology, the ‘aeonic rift’ at the heart of his theology – always a possibility in an Augustinian dichotomy of the Two Cities – could never be mended. Although Ramsey did come to see Christology as ‘the central issue’, I argued that this had insufficient effect on his political ethics, which remained under the sign of Babylon.

So Ramsey’s legacy regarding the just use of violent force was and remains ambiguous. Between pacifist idealism and a pessimistic, legitimising realism, there was always a genuine possibility to envision a transformative ethics of war. But the Enlightened framework of immanent political mediation underlying his work was insufficiently stable and too divided to do so. It will be the next author, Oliver O’Donovan, who starts off from his teacher Ramsey’s transformism and turns it into an evangelical just war proposal.

An eschatological fusion – Oliver O’Donovan’s evangelical just war proposal

The previous two chapters looked at just war proposals moving within the idealism-realism divide. On the one hand, there was a Christian realism, producing marked idealist, even ideological overtones, on the other, wholly separate, a ‘utopian’ idealism. Nevertheless, I argued, Paul Ramsey in his transformist writings opened up the theological and dogmatic door for a Christian *locus operandi* beyond this impasse. The author of the present chapter, Oliver O’Donovan, now opens that door widely and pulls in an integrated biblical vision. So from the beginning he replaces possible Kantian and Hegelian frameworks of modern theology with a biblical-exegetical one, though one that is still intelligible through them. He thinks that ‘the exploration of Christian moral concepts must always, in the first place, be the work of theology.’²⁵⁰ For O’Donovan, ‘theological ethics is metaethics’, where the church is

²⁵⁰ Oliver O’Donovan, ‘How Can Theology be Moral?’, *The Journal of Religious Ethics*, 17(1989), 81-94.

a ‘metaethical community of discourse’.²⁵¹ Consequently, any political theology must begin from a (political) account and position of the church.²⁵²

Although O’Donovan makes no attempt to ‘translate’ his approach into a non-religious ‘ethic’, he can still be compared to the other authors investigated here. In what follows I will first show that O’Donovan’s evangelical just war proposal integrates and transforms viable elements both of realism and idealism. This approach, I argue then, involves a serious study of the unique and universal mediating role of Christ between God and mankind, between Is and Ought. At the heart of this is the eschatological paradox of the two ages and the two Christological natures. The politico-theological claim that ‘the kingly rule of Christ is God’s own rule exercised over the whole world’ (DN, 146) provides the dogmatic umbrella for this. Ethics itself then discloses, proclaims and responds to the reality of revelation in participatory action. In that regard O’Donovan both practically and dogmatically corrects both Elshtain and Ramsey at key points. But first, I will show how he affirms an ‘evangelical’ Just War thinking and how this transforms the idealism-realism dichotomy.

I. Exposition – *The Just War Revisited*

Evangelical reality and counter-praxis

The Just War Revisited begins with praxis, or ‘evangelical counter-praxis’. God’s will is *peace*, which is an ‘all-determining truth’. (JWR, 1)²⁵³ Three propositions follow from that.

²⁵¹ O’Donovan, *Resurrection and Moral Order: An Outline for Evangelical Ethics*, 2nd ed. (Leicester, England: Apollos ; Grand Rapids, Mich.: William B. Eerdmans, 1994), p. viii. Hereafter RMO.

²⁵² O’Donovan, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1996), p. 159. Hereafter DN.

²⁵³ Oliver O’Donovan, *The Just War Revisited* (Cambridge: Cambridge University Press, 2003), hereafter JWR. Michael Haspel begins with the same statement, but channels it into cosmopolitanism. *Friedensethik und*

Peace is (a) the original ontological truth of creation and (b) the end of history. Thus it is (c) a practical demand.²⁵⁴ From the outset, just war praxis depends on an evangelical reality.²⁵⁵ However, this peace is neither a utopian ‘ideal’, nor does the frequent violation of peace in politics present a ‘challenge’ to it.²⁵⁶ Instead, the peace of creation is a reality that engenders the ‘counter-praxis’ of reconciliation. Reconciliation discerns peace whilst describing and judging crime. This peace, and not merely any kind of ‘political stability’, also generates the *recta intentio*.

Reconciliation is ‘staged missiologically against a backdrop of unbelief and disobedience’. And so it ‘assumes the secular form of judgment’ as ‘the interim provision of God’s common grace, promising the dawning of God’s final peace.’ (JWR, 6) For O’Donovan, politics as ‘the act of judgment’ is the ‘exercise of Gospel faith’ in the ‘theatre of war’. (JWR, 6) It becomes a ‘provisional witness to the unity of God’s rule in the face of the antagonistic praxis of *duellum*.’ (JWR, 7) Judgment is both extraordinary and ordinary. It is extraordinary in its means, using the same weapons as criminals. But it is ordinary in its guiding and limiting principles. So the *No* to war is not a *No* to violent force. O’Donovan has no problem with Clausewitz’s dictum that war is the continuation of policy with other means. The problem with Clausewitz is rather that he assumes that vitality and will are the truest realities. (JWR, 92)

O’Donovan’s notion of reconciling praxis marks a *via media* between idealistic or realistic praxis. Before the Christ-event, he says, war was conceived as a *duellum*, an occurrence separate from times of peace, a crisis to engender heroism and social renewal. The fundamental ‘rejection of war’ only followed from the cross and exaltation of Christ.

Humanitäre Intervention: Der Kosovo-Krieg als Herausforderung evangelischer Friedensethik (Neukirchen-Vluyn: Neukirchener, 2002).

²⁵⁴ Cp. *Aus Gottes Frieden leben – für gerechten Frieden sorgen. Eine Denkschrift des Rates der Evangelischen Kirche in Deutschland*, 2007, p. 11, 28. <http://www.ekd.de/download/ekd_friedensdenkschrift.pdf> [accessed 25 July 2011]

²⁵⁵ Bernd Wannewetsch, ‘Just War’, unpublished manuscript.

²⁵⁶ Bernd Wannewetsch, *Political Worship* (Oxford; New York: Oxford University Press, 2009), p. 26.

(JWR, 5) Since then ‘unmediated conflict’ must be rejected. It would be a ‘crime against peace ... [to make] antagonistic praxis a goal of politics, whether as means or end; that sin consists in cultivating antagonism as a form of self-perfection.’ (JWR, 2) Equally, if survival, national or individual self-defense or even self-aggrandizement at the cost of one’s neighbour has the last word, then ‘paganism is restored.’ (JWR, 9) These are not justified *causae iustae*.

Reconciliatory praxis equally avoids Just War idealism. In its ecclesial form it suggests non-violence as the only viable politics. It is the ‘waging of peace *against* violence’ as a response to God’s will.(JWR, 5) Contemporary Christian pacifism does not so much reify a quasi-Kantian ideal, but ‘limits the range of possible political action’ to imitating the Jesus’ non-violent *exemplum* in the Kingdom already come.²⁵⁷ Patience prevails in the face of conflict. However, O’Donovan says that by waging peace, pacifists indirectly authorise a sphere of violence, and here he rather gestures towards the logic of the excluded Other that returns. They warp the Christian conviction that evil is a form of not-being, *privatio boni*.²⁵⁸ However, the political sphere is not an *a priori* negativity:

A certain ‘statism’ is implied in the pacifist position, which will not contemplate the *improvisation* of judgment where it is not provided for within a state structure, and to that extent cannot treat international politics wholly seriously as politics, a God-given sphere of peaceful interaction. (JWR, 8)

²⁵⁷ O’Donovan notes that the category ‘idealism’ applies to pacifism only as a ‘religious synthesis with idealist rationalism.’ There is a difficulty in associating Hauerwas with moral idealism, since his pacifism focuses on the lived narrative of the church as the very challenge to Enlightened reason. However, one could argue that Hauerwas’ fideism has transported Enlightened progressivism onto a theological and ecclesiological plane. From that perspective James Gustafson’s claim that Hauerwas is a Marcionite may be defensible. Stanley Hauerwas, *The Peacable Kingdom: A Primer in Christian Ehtics* (London: SCM Press, 2003), p. 72 f.; Gary Dorrien, *Social Ethics in the Making: Interpreting an American Tradition* (Malden, MA; Oxford: Blackwell-Wiley, 2009), pp. 481-484; Emmanuel Katongole, *Beyond Universal Reason: The Relation between Religion and Ethics in the Work of Stanley Hauerwas* (Notre Dame, Ind. : University of Notre Dame Press, 2000)

²⁵⁸ Especially with St. Augustine; see also John Milbank, *Theology and Social Theory: Beyond Secular Reason* (Oxford: Blackwell, 2006), p. 317.

Steering between a violent reality and a moral ideal, O'Donovan's political sphere and act are anything but religiously neutral or 'pluralistic'.²⁵⁹ The theologian, out of the church, calls upon states both as political and subject to God.²⁶⁰ In that way the idealist *No* to 'secular politics' is transformed into a provisional, 'cautious' *Yes* under God's reign and law.²⁶¹

Authority – government as judgment

With reference to Suárez and Vitoria, O'Donovan then explains the act of judgment outside a country's borders and outside ordinary judicial procedures. How can the same person be judge and plaintiff in one and the same case? This happens in an emergency, he argues, precisely when an arbitrator is absent. But he is not out to design the institution of a 'legitimate' arbitrator. He does not apply that kind of creativity. Instead he investigates the moral possibility of arbitration precisely when it seems to have run out. With a focus on the flexible *act* of judgment, O'Donovan's concept of 'legitimate authority' stands on the 'realistic' grounds of already existing governmental structures and natural instincts. But it gestures towards an 'ideal judgment'. What he then says about institutional forms remains tenuous, especially in the light of institutions' historical contingency. In that way the political act falls between a realist antagonism and an institutional or individualist idealism.

Meanwhile, his insistence on 'authority' repeats the classical concern about private violence. 'Privacy' is merely a form of *interest* based on factual existence. Sovereign states or

²⁵⁹ Reality does not depend on this recognition, which is what O'Donovan's 'realist principle' amongst other things means.

²⁶⁰ The just war proposal itself is evangelical, pastoral praxis, not distinct from decisional praxis, but located elsewhere, i.e. in the church. In any case, it is not a *theory*.

²⁶¹ Robert Song, *Christianity and Liberal Society* (Oxford: Oxford University Press, 2006), p. 214.

individual persons can be ‘private’.²⁶² In contrast, authority is the *sine qua non* for violent force to be genuinely political, meaning pertaining to the common good:

Only public acts may legitimately call upon the use of force. Only governments may make war, for the same reason that only police and magistrates may arrest and only judges sentence, namely, that they require representative persons, acting for the community, to perform them.
(JWR, 22)

Notably, such representative publicity excludes terrorism, both on the grounds of indiscriminate violent force and as a strategy without politics. In this light, terrorists merely ‘nudge historical necessity’.(JWR, 31) Still, government as public judgment by no means bans ‘ordered’, ‘responsible’ rebellion or revolution. (JWR, 26; 30) On the contrary, I will argue in the light of the philosophical authors that an evangelical proposal makes this genuinely possible. Authoritative institutions here depend on the ‘relations of right’, not the other way around. (23) Those who judge as public representatives *are* ‘the government’. As O’Donovan expresses it, the act of judgment *is authorised* by being representative and acting in defense of the common good. Notably, to a large extent he takes this from Paul Ramsey (DN, 20-21), thus fleshing out the latter’s distinctive agapeic and transformative perspective.

How can there be ‘publicity’ in the international sphere without formal authority? (JWR, 22-23) O’Donovan here first peels away realism, including Elstain’s, which recognizes no authority between sovereign states. ‘Who are you to judge me?’ says one sovereign to another. Notably Kant’s internationalist federalism relies on this very notion of sovereign *raisons d’état* competing in a tense sphere. (JWR, 22)²⁶³ On such grounds, O’Donovan concurs, international publicity is unthinkable. War becomes private, from which ‘arises the modern tendency to reduce the causes of war to the single cause of national self-

²⁶² St. Augustine, *Answer to Faustus*, (New York: New City Press, 2007), p. 49; Aquinas, ST IIaIIae, Qu. 40, Art. 1; Grotius, *De Iure Belli Ac Pacis*, Bk. 1, Ch. 3.

²⁶³ Immanuel Kant, *Zum ewigen Frieden* (Stuttgart: Philipp Reclam Jr., 2008), p. 10: ‘Der Frieden ist kein natürlicher Zustand, er muss gestiftet werden.’ – ‘Peace is not a natural state of affairs; it must be founded.’

defense.’ (JWR, 22) But the survivalist interest of natural entities is not the ground of authoritative judging. And nation-states are not authorities just because they exist.²⁶⁴

An *evangelical* proposal, O’Donovan proposes with Vitoria, is not the enforcement of national interest or human rights in a ‘violent world’, but charitable ‘authorised arbitration.’ (JWR, 22) Such a judicial proposal requires the victor (Vitoria) or all belligerents (O’Donovan) to ‘act [...] as though one is not merely defending one’s own interests but deciding an issue between claimants.’ The belligerent takes the role of a *third party*: ‘Acts of war carry with them the responsibility to care for the right of both parties equally. A belligerent has to act for “the” right, not “our” right.’ (JWR, 25) This right is always already governing the international sphere. Doing justice becomes a re-ordering upon a wrong done. International right-as-order, however, is not a legal or even utopian ideal. It is itself the objective, existing order corresponding to any international judgment which refuses to descend into a ‘private’ antagonism. A multitude of political entities participate in or disobey this order. Hence, ‘the just belligerent is supposed to venture, informally and with extraordinary means, the judgment that *would* be made by a formal court, *if* there were a competent one.’ (23) In this way, O’Donovan argues, international judgment is genuinely *public*.

Here the potential for confusion is great, so he clarifies the notion of ‘ideal judgment’. For once, it is present in public sentiment. Neglecting the public’s loud opposition to recent wars in various contexts, O’Donovan thinks public sentiment ‘sows the dragon’s teeth from which an authorised army springs to life.’ (JWR, 23) Here the first ‘idealistic’ door could open: critique and protest ‘from below’, where every citizen is an authoritative judge on the

²⁶⁴ This I take to be the meaning of the possibility of a government’s self-delusion about its own righteous course of action: ‘... the idea of an ideal judgment which would or would not authorise this act of war must be a coherent moral idea. If the hypothesis of the ideal judge is unthinkable, the self-deception is impossible.’ Only by a standard transcending the judge himself can he judge and be judged. If no such moral reality exists, then an agent is right simply by being, which amounts to a kind of existentialist totalitarianism. Subsuming all morality under a state’s ‘unconditional right to existence’ is an example of this.

war *as a whole*. But he closes this door quickly. He thinks public trains of thought are ‘indefinitely open to contest; and that is why where formally constituted authorities exist, it is they, not the ideal ones, that must be obeyed.’ (JWR, 24) This rejection of ideal authorities explains his distance from pure ‘criticism’ or ‘ressentiment’ which unmask the ‘true reasons for war.’ (JWR, 42-43) Nevertheless, he adds, one may *after all* ask whether a war is just. And public reflection is in fact the very essence of authorisation. (JWR, 25) In any case, there remains room for ‘informal pronouncements which carry moral authority’ (JWR, 24). So the individual’s judgment is never dismissed, but made concrete and explicit in his specific vocational setting. (JWR, 17)

O’Donovan perhaps consciously encourages two interpretations of this section. On the one hand he can be read as empowering citizens to sympathetic, constructive deliberation instead of a constant, though merely intellectual overthrow of the authorities in place. From this angle, he criticises public cacophony that presumes omnipresent popular authority but ignores the real mechanisms of power and remains ineffective.²⁶⁵ On a critical note, his stance against protests and demonstrations may give rise to the suspicion that he is a patrician defender of the *status quo*.²⁶⁶ His scepticism about scepticism makes it impossible to identify and criticise the very antagonistic, national self-interest (he mentions the thirst for oil) which he has renounced himself a few pages earlier.

In a similar way O’Donovan deals with the idealism of international legalists. Part of his critique of the contemporary tendency to reduce wars to their ‘legality’, he deprives international law of its moral ultimateness, though without dismissing it. He recognizes the U.N. as an authority, since its formality is grounded in treaty, invoking the *ius gentium*. A belligerent should defer to it, ‘even if it sometimes rules in a way that a truly impartial and

²⁶⁵ Interview with Slavoj Žižek, *The Believer*, July 2004, <http://www.believmag.com/issues/200407/?read=interview_zizek> [accessed 25 July, 2012]

²⁶⁶ See Ch. 6 below. Interestingly, there is no treatment of tyrannicide here, though this may possibly be grouped under O’Donovan’s treatment of ‘targeted assassination’. Tim Gorringer, ‘Authority, Plebs and Patricians’, *Studies in Christian Ethics*, 11 (1998), 24-29.

well-informed judge would not have ruled, for courts have authority even when they are mistaken in particulars' (JWR, 24). Nevertheless, the U.N. remains flawed, so here too remains room for informal international judgment. (JWR, 25)²⁶⁷

Some specification is also needed for the 'settling of a right'. The duty to act for *the* right rather than one's own right is limited to settling a particular cause. 'Victory is not a title of conquest' (JWR, 25). One may settle a cause, but never rule or govern the other party. Though they are somewhat obscure still, one can discern here how O'Donovan identifies the grounds for government: 'the right to govern depends not solely upon force and the exercise of judgment, but upon the tradition of the governed.' (JWR, 26) More explicitly, an authority must be rooted in the community it claims to represent: power, right, and tradition are what he calls the natural grounds of political authority.

O'Donovan then also heeds the 'natural intuitions about war' and so gives limited recognition to 'realism'. These intuitions are actually antagonistic and hence initially unevangelical. For example, wars of national-defence at first seem more 'common sense' than interventions and 'we instinctively find armed revolutions more difficult to justify than war against external powers.' (JWR, 26) One may debate which convictions are 'instinctive' or what he means by claiming that some wars are 'instinctively' difficult to justify. In any case, for O'Donovan the 'radically evangelical' interpretation of war as judgment concedes a certain legitimacy to 'apparently statist sentiments in favour of existing authorities'. Sharply distinguished from overall antagonistic 'statism', they still guard against idealism or 'enthusiasm':

... the formal authority of political structures, on which the task of judgment depends, must not simply be swept away by an enthusiasm to improvise judgement whenever and however it

²⁶⁷ For Nigel Biggar the informality of judgment is the marker of an evangelical proposal. 'Review Article: The Just War Revisited', *Studies in Christian Ethics*, 19 (2006), 223-232. However, it is the paradoxical recognition of all authorities, both formal and informal. Instead of ideological posture, the evangelical approach requires a discernment of right in actual history.

appears to be needed. Judgment has need of its settles institutions, too, and we must mind that they are properly respected. (JWR, 27)

By generally heeding traditional, institutional settlement, O'Donovan's evangelical proposal keeps faith with St. Paul's limited endorsement of 'authorities that exist'. But his consistent focus on the political act rather than the institution allows for a dynamic history of peoples. As the confluence of power, right and tradition continues, the new must not be a *krisis*-driven overhaul of order, but an ordered taking of responsibility.²⁶⁸ This strongly echoes Ramsey's transformism, especially the notion of 'constitutional revolution'.²⁶⁹

O'Donovan then turns to the representative aspect of international judgment. In 'classical' theory 'the aggressor, by injuring another people, put itself under the jurisdiction of that people's prince' (JWR, 27). Put differently, the government of an injured people 'projects, as it were, its general responsibility for the causes of its people into a situation where the opposing party is a foreign people'. It temporarily extends its own jurisdiction. Hence, such judgment is an 'extraordinary act of love, providing, in the first place, the judgment of which the injured neighbour stands in need, but not excluding love for the injured neighbour's enemy at the same time' (JWR, 28). Judgment 'in the name of the people...' effectively *includes* the Other (*despite* and *in spite of* their crime) into those one represents.²⁷⁰

This raises the question whether an injured people's government is their only legitimate authority. O'Donovan permits 'humanitarian intervention', covering the case when a people's government is the very perpetrator of injustice. Still, this is a far cry from making universal human rights the essence of his proposal. (JWR, 29) International law must never

²⁶⁸ See below Ch. 5. David Rodin subjectivizes these natural inclinations, so that they may be replaced by a subsidiary grid of legal arbitration. See also Michael Walzer, *Arguing about War* (New Haven, Conn.; London: Yale University Press, 2006) If anything, O'Donovan's idea of informal arbitration highlights the legal-positivist incapability to think *legally* outside positive law.

²⁶⁹ See above, Ch. 2.

²⁷⁰ More concisely, the judge also represents the criminal without his crime to the criminal, not merely the victims or 'the families of the victims'. The same goes for the international sphere.

be a 'doctrinaire posture' but appears to be a moral-legal casuistry 'to be developed in relation to cases'. Moreover, the intervening belligerent must be 'a credible representative' and not driven by self-interest. 'Altruistic interest' comes from kinship, neighbourhood, or from cultural ties. 'Regional interests', O'Donovan adds, 'are not to be despised as a ground for moral authorisation' (JWR, 29). Still, it is not clear at what point for O'Donovan 'the cause lies *outside* [a belligerent party's] sphere of authority' (JWR, 21). The fact that he discusses this no further may indicate that the act of judgment has few geographical limitations.

O'Donovan's mention of 'nation-building' is noteworthy here. 'Nation-building' for Elshstain is the prominent moral imperative of internationalist 'mothering', an aspect of 'enlightened self-interest'; similarly, Ramsey regarded it as the 'business' of the U.S. for its own security. O'Donovan re-adjusts this: a law-giving act of judgment merely makes sure the other party is ruled. 'Nobody could undertake to depose the Taliban, in however worthy a cause, without taking serious steps to enable the emergence of a representative government for Afghanistan.' What is required is 'government by law, which is the will of God for both.' This cannot be subsumed under an ulterior, selfish interest on the side of the intervener.

In short, as regards authority, O'Donovan renounces the straightforward realist antagonism and the idealist enthusiasm or institutionalism. Paradoxically he recognizes both formal and informal authorities, be they individual, national or international. What matters is that the act of judgment requires a right, a representative status and the publicity of international law as it gears towards an 'ideal judgment'. This carries the dynamic possibility of taking unexpected forms.

Discrimination

With these basic structures in place, the remainder of O'Donovan's lecture-series deals with the intricacies of the act of judgment.

Judgment itself is discriminating, so one must break with the antagonism of 'our' self-defense against 'their' hostility, or rather: the aggressor-defender doctrine. The discriminative principle 'is the greatest moral safeguard we have against totalitarian claims to loyalty made on behalf of the nation-state or of any other popular formation' (JWR, 33). It is defined by the *intention* to make a distinction between guilt and innocence. But if 'excessive damage may be expected, it may be assumed intended; if intended, then indiscriminate' (JWR, 35).

As to 'guilt' and 'innocence', the wrong that is to be righted (the judgment pronounced) must take into account the opponents' political communality. Corporate responsibility incurred in war is neither personal guilt nor innocence of the soldier as a mere 'tool'.²⁷¹ What Grotius calls *median guilt* lies in between the two. The crime of a *mafioso* is unlike that of a soldier; 'there are different ways of being implicated in a common guilt incurred by the society as a whole.' Grotius' natural law, which includes the ties of birth and civil membership, here trumps Augustine's idealist-sceptical comparison of Rome with a large band of robbers. As a result, the soldier's 'liability arises quite particularly and exclusively while he is *actively engaged* in hostilities' (JWR, 37). The duty to spare the surrendered is one consequence. For Grotius this is also Natural Law; for O'Donovan it is evangelical.²⁷² 'Direct collaboration' also applies to material targets, but essential life sustenance must not be made impossible.

²⁷¹ Moral philosophy at this point cannot imagine a *tertium* between the soldier as criminal or tool, so chooses 'personal guilt' as the basis of discrimination. See Chs. 5 and 6 below.

²⁷² O'Donovan's interpretation of Grotius is unusual compared to the secularist interpretations of e.g. Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999), p. 78f; *Hugo Grotius and International Relations*, ed. by Hedley Bull, Benedict Kingsbury and Adam Roberts (Oxford: Clarendon Press, 1990); Dieter Janssen, 'Bellum iustum und

This does not change logic of conscript armies. Conscription incorporates the understanding that ‘armed forces act *only* as their society’s representatives’. O’Donovan here also echoes Ramsey’s insistence that it must be attempted to incapacitate the soldier, not to eradicate the individual human. Conscription ‘has the socially desirable result that societies must study the price-tag on their policies’ (JWR, 38). In any case, it does not change the balance of median guilt, which reflects the duties and ambiguities of citizenship.

On the individual level, O’Donovan also applies median guilt to ‘targeted killing’. He shows understanding for its impermissibility in the customary law of war. Assassination ‘lacks the degree of public accountability that is present even in a summary trial’ and ‘it attacks leaders as individuals rather than through the militias of which they are the representatives’ (JWR, 74).²⁷³ His diagnosis of the problem here flags up the very antagonistic/idealistic oscillation to be overcome. Without the notion of counter-insurgency as war and median guilt, liberal society (or international law) can only choose between criminal law and downright murder.

On the social level, the median guilt means that righting a wrong does not permit one society to ‘prevent another from existing, nor from engaging in the normal self-sustaining activities of life’ (JWR, 39). One may take offence against the hostilities of military structures, not the other society. The route of total war ‘denies the right of peaceful social existence, a right in which we and our enemy both share.’ (JWR, 40)

Völkerrecht im Werk des Hugo Grotius’, in *Krieg Und Kultur: Die Rezeption Von Krieg Und Frieden in Der Niederländischen Republik Und Im Deutschen Reich 1568-1648*, ed. by Horst Lademacher and Simon Groenveld (Münster: Waxmann Verlag, 1998), pp. 129-156. O’Donovan stresses the relevance of ‘De veritate religionis’. This Augustinian interpretation (and appropriation) of Grotius’ international law is indebted to two fundamental theological decisions: a) to discern God’s will *through* the created order (RMO, 134) because of b) the real presence of the Kingdom of God. *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought*, ed. by Oliver O’Donovan and Joan Lockwood O’Donovan (Grand Rapids, Mich.; Cambridge: William B. Eerdmans Pub. Co.: 1999), p. 789; See also Christoph A. Stumpf, *The Grotian Theology of International Law*, (Berlin: Walter de Gruyter, 2006), pp. 5, 68 f.

²⁷³ Median guilt roughly corresponds to the distinction between the ‘corporate’ persons of soldiers as combatants and their ‘individual’ status as humans in international humanitarian law. Viz. Caroline Kennedy and Nicholas Rengger, ‘The New Assassination Bureau: On the ‘Robotic Turn’ in Contemporary War’, 2012 <http://www.carnegiecouncil.org/publications/ethics_online/0075.html> [accessed 15 January, 2013]; Nils Melzer, *Targeted Killing in International Law* (Oxford: Oxford University Press, 2008)

The intention to distinguish is ‘the only one “just intention” in armed conflict’. This is not moral purism, but implies that all other intentions in war ‘should be subordinated to its demands and restraints.’ It does, however, imply an endorsement of the principle of double-effect, albeit ‘well understood’ (JWR, 44). In short, with the notion of median guilt and a doctrine of double-effect O’Donovan’s steers discriminating judgment between two poles. The antagonistic one makes no distinction at all, setting ‘our right to survival’ against ‘theirs’. The other pole – and here we note they stand on similar grounds – does not discriminate either, but on seemingly unselfish grounds: all individuals have essentially the same, equal worth. (JWR, 47)

Proportion

The contemporary tendency to regard proportion as merely the ordering principle of violent means to any given end actually turns the principle on its head. If the end is broadly defined, then hardly any means are disproportionate. Ramsey pointed out this danger of the ‘ordinary doctrine of war’ in his transformist writings. O’Donovan is equally aware of it. In response he broadens ‘proportion’ to govern the whole act of judgment, without dismissing certain aims as ‘utopian’ or ‘unrealistic’.

Proportion is both forward- and backward-looking. The prudent gaze spans the field of wrong done and right to be restored.²⁷⁴ In ‘retrospective proportion’ judgment looks at the just cause. Does whatever happened warrant the use of violent force? For O’Donovan, a

²⁷⁴ A purely reactive understanding is impossible, since all acts of judgment set the terms of new action: judgment implies new law. Several authors have noted O’Donovan’s reluctance to name positive goods, even if it is prudence, which distinguishes O’Donovan from libertarianism. Nigel Biggar, ‘On Defining Political Authority as an Act of Judgment: A Discussion of Oliver O’Donovan’s Ways of Judgment (Part I)’, *Political Theology*, 9 (2008), 273-293; Jonathan Rist, ‘Judgment, Reaction and the Common Good’, *ibid.*, 363-372; David H. McIlroy ‘The Right Reason for Caesar to Confess Christ as Lord’ (2008), <<http://klice.co.uk/uploads/EST08McIlroy.pdf>> [accessed 15 Jan, 2013]

cause of war must be a *iniuria accepta*, though not an *iniuria perfecta*. ‘Pre-emptive war’ is antagonistic self-defence and hence impermissible. (JWR, 49) With Grotius, the threat must be ‘immediate’. Contesting this, Nigel Biggar distinguishes between an ontological dimension (‘what is the case’) and an epistemological dimension (‘what we have good reason to believe is the case’). He thinks the epistemological dimension is primary in determining whether to go to war:

...what may justify pre-emptive war is a threat that we have good reason to suppose is substantial and serious and that could not be deterred by other means. Whether such a threat is mature or emergent is strictly beside the point.

However, what ‘we have good reason to suppose’ is always dependent on ‘the ontological dimension’. There must be visible, tangible evidence in order for us to have good reason to believe something is the case, which is meant by ‘immediacy’.²⁷⁵ The legal distinction between ‘risk’ and ‘danger’ may be more helpful here. To fight risks engenders a utilitarian chase of counter-factual claims, domino theories and myriad other possible scenarios.²⁷⁶ Pre-emptive antagonism arises when a party chases a fiction, striking the enemy before he can even become a ‘threat’. Grotius at least links the (self-)deceptive moment of pre-emptive war justifications directly to a lack of faith in divine providence. (JWR, 49) O’Donovan’s insistence on *inuria accepta* thus gestures towards a middle path between both utilitarian scenario-fighters and ‘defense-only’ strategists. Both display the same fault with the same logic. Instead of encountering the situation at hand, they oscillate unsteadily between survivalist defense and survivalist prevention. In the end, both positions are indistinguishable.

He then differentiates the single cause, ‘wrong done’ into three elementary aspects.

To only think of attack and defense, associated with the sovereign rights-tradition, just leads

²⁷⁵ Biggar, ‘Review’, p. 226 f. O’Donovan’s and Biggar’s difference is a matter of nuance: ‘An adversary far advanced on the road towards biological weapons is worth a very great deal more loss to stop than one who presents no comparable hazard.’ (JWR, 60) ‘

²⁷⁶ David Rodin, ‘The Problem with Prevention 1’, in *Preemption: Military Action and Moral Justification*, ed. by David Rodin and Henry Shue (Oxford: Oxford University Press, 2007), 140-174; pp. 144-146.

to ‘mortal combat’. But in an ‘international community of right’ the three causes of defense, restoration and punishment come together in order to install the right order between social entities:

We need the idea of *penal* desert to restrict the potentially elastic permissions of defence and reparation. A *defensive* objective is necessary, because without real and pressing danger one cannot justify exposing the world to the dangers that war itself brings with it. A *reparative* objective is necessary, for without actual loss to be redressed the combination of malice and danger does not amount to an actual wrong. (JWR, 53)²⁷⁷

At first sight, of course, ‘retribution’ clashes with an evangelical perspective. But the aim here is only to limit the act of judgment. The tri-partite form of judgment under law fosters the possibility of reconciliation, presenting the possibility of *adequate* settlement: ‘To require a penal objective guards against the resort to war as a response to non-culpable injury, and prevents the subtle expansion of defensive war-aims into further goals, such as colonisation’ (JWR, 58). Hence, ‘readers can glean that evangelical retribution aims at (just and therefore lasting) peace — not an equality of suffering — between victim and wrongdoer.’²⁷⁸

‘Prospective judgment’, finally, concerns the prospect for the settling of the right. This is a difficult task because armed conflict ‘is a venture outside the given sphere of government, and the only means available run the risk of breach in the banks of practical rationality that could release a flood of absolute antagonism.’ Most importantly, the end of war must be peace, rather than victory – only then it is political, and not just military. (JWR, 59, 61) Winning the war is not even the *sine qua non* of peace: ‘whether it is necessary or not

²⁷⁷ Walter Benjamin, ‘Critique of Violence’, in *Continental Ethics Reader* (London: Routledge, 2003), pp. 113-126, p. 119. Punishment is only possible as an infringement of law; otherwise violence is the establishment of new law. In so far as neither Elshtain nor Ramsey conceive of an international, legal order (with a positive moment), their concept of punishment is swallowed up by expansive national-defense. O’Donovan notes this imbalance in the US National Security Strategy, JWR, 132 f.

²⁷⁸ Biggar, ‘Review’, p. 224. There is a marked incapability to distinguish punishment and revenge in current debates. See e.g. David Luban, “War as Punishment” (2011). *Georgetown Law Faculty Working Papers*. Paper 145.

<http://scholarship.law.georgetown.edu/fwps_papers/145> [accessed 25 August 2011]

in any given case depends on whether peace can be made first.’ (JWR, 59) Secondly, there are the criteria of last resort and prospect of success. One weighs up alternative possible actions; the other measures the risk of failure. As such they guard against ‘sins against practical rationality’: ‘a precipitate rush to arms, and a stubborn refusal to count the cost.’ But the criteria should not be used to declare *every* military action disproportionate from the start. ‘Like the stopped clock telling the correct time twice in 24 hours’, it is easy to insist on a war being disproportionate until it becomes true. The specifically practical nature of O’Donovan’s proposal becomes most clear here. Although serving as critical tools, the principles do not make up an impractical counter-position. Equally they genuinely rest on the primacy of politics over the military, of peace over victory. There is an element of risk, ‘hazarded upon God’s providential provision’ at work here. (JWR, 19) Principled venturing of judgment neither proclaims ideological supremacy nor does it recline in critical and loving non-violence.

In short, O’Donovan’s evangelical, practical proposal lies between the premises and proposals of antagonism and idealism. Grounded in the truth and being of a creation ruled by Christ, evangelical counter-praxis is the service of reconciliatory judgment. It must be charitable and refrains from totalising the opposite belligerent, whether positively or negatively. One targets, yet discriminates, one proportions, but adequately. The aim of war is a peaceful order of right.

II. Analysis – Christ as ruler and mediator

So far I have shown how O’Donovan’s evangelical perspective steers between both realist and idealist Just War thinking, or the ‘idealism-realism nexus’, as he calls it. In this way he

continues Paul Ramsey's transformative approach.²⁷⁹ This, I will argue in this section, is the result of systematically unfolding the central Christian understanding that the ruling Jesus Christ is the mediator between God and humankind.²⁸⁰ Beginning at Ramsey's transformative starting point, Jesus' paradoxical apocalypticism, O'Donovan takes the problem of mediation seriously as theological and biblical. He looks for 'an integrally evangelical ethics which rejoices in the heart and gives light to the eyes because it springs from God's gift to mankind in Jesus Christ' (RMO, 12).²⁸¹ This theological view then also transforms and re-integrates the dogmatic presuppositions of the idealism-realism divide.²⁸² The real and ideal find both their meaning and relation through the unique paradoxical mediation in Christ rather than post-Enlightened philosophies. Christ, so O'Donovan's vision, is the *objective* centre of all being and striving, the 'desire of the nations'.²⁸³

From this pivotal point, the paradigmatic history of Israel is the repository of political concepts. The kingly rule of God was first mediated and manifest in Israel. Then it was manifest in the life, death and resurrection of Jesus, and now in the life of the church, the new Israel. The church is the social and political presence of the fulfilment of the promises made to Israel. In the presence of the already-but-not-yet here of the Kingdom, Israel and church *cohere and coexist*. This understanding not only uplifts the stark opposition between the politically real and the moral ideal, but names the content of the mediator as Jesus Christ. In fact, this authoritative, salvation-historical paradox-as-contemporaneity is a central, recurrent

²⁷⁹ O'Donovan himself uses this term in DN, p. 121, also linking it to a Jesuology to the detriment of Christology.

²⁸⁰ The neo-Protestant tradition has mapped the real-ideal onto the dichotomy of inward and outward being; inward faith provides a *motivation* for the outward actions that reason has identified as necessary.

²⁸¹ See e.g. 'Il problema della mediazione' in Carlo Galli, *Genealogia della Politica: Carl Schmitt e la Crisi del Pensiero Politico Moderno* (Bologna: Il Mulino 1996), pp. 3-178.

²⁸² This 'summing up' is comparable to Barth's 'sublation of religion in revelation', though a sustained comparative reading of O'Donovan and Barth is beyond the scope of this chapter. See Karl Barth, *Church Dogmatics*, I/2, paragraph 17.

²⁸³ See also Augustine, *City of God*, Bk. XVIII, Ch. 35; Haggai 2,6.

theme in O'Donovan's work.²⁸⁴ Recovering authority is one of its consequences, but, *pace* the majority of his commentators, not the driving force.²⁸⁵

The prologue and first chapter of O'Donovan's *Desire of the Nations* lend support to this reading. There O'Donovan argues that scepticism is characteristic of modern political theology: the fundamental *separation* of politics from theology – 'morality' being theology's surrogate – as opposed to (divine) mediation and unitary rule. One can find this already in Augustine's more sceptical moments (without Justice, all kingdoms are really bands of robbers). It finds a modern expression in Kant's suspicion of a 'political moralist'. (DN, 7) Elsewhere O'Donovan writes: '... a *cordon sanitaire* between politics and theology, or between politics and philosophy, cannot claim intelligibility to be a *precondition* for thought, but only an *imposition* on it, and therefore has within itself the character of tyranny.'²⁸⁶ (WJ, 237) This *cordon sanitaire* was the precondition both of the Niebuhrian 'realistic politics' as opposed to Christian 'universal niceness' (Elshtain) and the 'world of systems' as opposed to a formless *agape* searching for incarnation (Ramsey). In contrast, speaking about the Christ-event, salvation, the church and the Trinity provides a distinct political grasp on the world. Here, O'Donovan '[reclaims] for faith what scepticism surrendered to mechanistic necessity' (DN, 3) Overcoming this 'necessity' together with its adjacent voluntarism – especially in its post-Kantian dualism – was one of the promises of Ramsey's transformism and the effect of O'Donovan's political theology.²⁸⁷ In terms of the logic between the real and the ideal it warrants neither 'abstract idealism' nor 'colourless assimilation' (DN, 288).

²⁸⁴ Hauerwas notes this unifying moment when discussing O'Donovan's exegesis. Stanley Hauerwas and James Fodor, 'Remaining in Babylon: Oliver O'Donovan's Defense of Christendom', *Studies in Christian Ethics*, 11 (1998), 30-55.

²⁸⁵ E.g. Nicholas Wolterstorff, 'A Discussion of Oliver O'Donovan's *Desire of the Nations*', *Scottish Journal of Theology*, 54 (2001), 87-109; Paul Doerksen, *Beyond Suspicion: Post-Christendom Protestant political theology in John Howard Yoder and Oliver O'Donovan* (Bletchley: Paternoster 2009), p. 31; William Schweiker, 'Freedom and Authority', *Scottish Journal of Theology*, 54 (2001), 110-126.

²⁸⁶ Oliver O'Donovan, *The Ways of Judgment* (Grand Rapids, Mich.; Cambridge: William B. Eerdmans, 2005) Hereafter WJ.

²⁸⁷ Cf. Bernd Wannenwetsch, 'Just War', in *The Cambridge Dictionary of Christian Theology*, ed. by Ian A. McFarland, David A. S. Fergusson, Karen Kilby, Iain R. Torrance (Leiden: Cambridge University Press,

So how does the Christ-event determine the medium-stance between realism and idealism in the three analytical foci of the just war proposal?

Political reality

Evangelical reality

Looking at the dimension of reality, for O'Donovan the first and primary reality is the one that is affirmed in faith: God reigns in Christ. *Tu rex gloriae, Christe* – the *Te Deum* introduces the book *Desire of the Nations*. This conclusion, so to speak, crowns the world as the mediator between God and man. With the divine Kingdom O'Donovan's political theology begins; it is towards this reality (and not some fiction) to which this evangelical just war ethic is oriented. From the outset there is no duality between a utopian or immanent ideal and a naturalistic sphere of politics. These rather come into view before a *unified horizon* that is the history of the people of God with its climax in Jesus' life, death and resurrection. To affirm this is to go through Ramsey's transformist door and make the 'leap of faith'. The 'two kingdoms' of spiritual and political power, paradoxically, are two contemporaneous *ages*:

The doctrine of the Two was, before all else, a doctrine of two ages. The passing age of the principalities and powers has overlapped with the coming age of God's Kingdom. The confrontation of the two societies, the more attenuated balance of the two rules and the inner dynamism of the two persons are all generated by this eschatological fusion. (DN, 211)²⁸⁸

This reality of divine rule shines through and constitutes the very architecture of the world and any ethical proposal; it is not a hazy beyond. Hence, the will of God as peace is both an ontological truth and the end of history (JWR, 3) and the content of moral intention. Christian

2011), pp. 255-257; Alain Badiou, *Ethics: An Essay on the Understanding of Evil* (London; New York: Verso, 2001), esp. 'Ethics as the servant of necessity, pp. 30-34; O'Donovan *pace* Kant and Hume, RMO, 46.

²⁸⁸ Also DN, p. 82, 90-91, 117, 124.

just war thinking is therefore based on the ‘evangelical rejection of war’; war is never a predetermined reality. Unlike Ramsey, O’Donovan does not do away with Jesus’ apocalypticism. It remains the very source of ‘Christian ethics’.

Why should this reality be morally *authoritative*? After all, as Bernard Williams argued, even a believer would be obedient to God for moral reasons. ‘Either one’s motives for following the moral word of God are moral motives, or they are not.’²⁸⁹ Even in arguing for moral commands from God’s goodness, one would apply an *a priori* concept of goodness. Along those lines, Elshtain’s naturalistic ethic also appeals to innate rational presuppositions or intuitions. In response, O’Donovan first presents Jesus as *the* moral teacher and example, ‘where someone exceptional is needed to show people things which, however universally true these may be, they are not capable of recognizing otherwise.’²⁹⁰ But beyond a mere *imitatio-Christology*, in Christ the moral order has also *come to be*.²⁹¹ Whatever is said about morality is said in Christ: ‘... the universal meaning which lies behind all our moral perceptions has been given a concrete and irreplaceable embodiment’. Christ is the one in whom the restored creation ‘is summed up’ (RMO, 150).²⁹² Because of that, the Christ-event as O’Donovan understands it challenges Kantian (or Platonic) moral approaches, which frame the other authors I investigate here.

Of course, everybody is free to renounce belief or to suspend their unbelief. But *if* one believes, O’Donovan argues, one must derive one’s moral concepts from the redeeming reality of Christ’s life and work. Moving from the Kingdom of God to ‘core’ political concepts for him then offers new analogies and the ‘liberation to an imprisoned political culture.’ (DN, 119) Moral thinking is commanded by the Christ-event as in itself

²⁸⁹ Bernard Williams, *Morality: An Introduction to Ethics* (Cambridge: Cambridge University Press, 1972), p. 78f.

²⁹⁰ RMO, 19; 89.

²⁹¹ See John 14:6.

²⁹² Although a comparative reading of O’Donovan and Barth is beyond the scope of this chapter, O’Donovan’s ‘summing up’ echoes Barth’s notion of ‘sublation’ of religion in revelation. Karl Barth, *Church Dogmatics*, I/2, § 17.

authoritative. In this event power and word become one, which O'Donovan argues is the very meaning of authority.²⁹³

The question of moral theology then shifts from a neutral, ethical 'What should we do?' to 'What does one have to do because God *is*?'²⁹⁴ It is neither merely Christianized nor Christian 'realism', but an 'evangelical realism'. Notably, this 'reality principle' of O'Donovan's ethics, which finds a correlation between an 'is' and an 'ought', is possible only together with the 'evangelical principle'. What is true and thus to be done is constituted by what God has done for the world and humankind in Jesus Christ.²⁹⁵ A passage from Bonhoeffer might clarify this determination of any quotidian reality by the ontological-redemptive reality of Christ:

In Jesus Christ the actuality of God has gone down in the actuality of this world. The place in which the question for the actuality of God as well as the actuality of this world finds its answer is signified only by the name: Jesus Christ. In this name God and the world are concluded. In him everything has its continued being (Col 1, 16). From now on neither God nor the world can be spoken of rightly without speaking of Jesus Christ. All concepts of actuality which turn away from him are abstractions.²⁹⁶

Hence, God's *basileia* is not merely a set of commands occasionally flashing into the world like lightning bolts.²⁹⁷ If the kingdom of God was a utopian vision for the end time (as for Elshtain) or an undifferentiated love (Ramsey), then one falls back onto the Gnostic grounds

²⁹³ The variety in morality is a matter of the historical contingency of standpoints, not of the content – the standpoint of 'an obscure Jewish rabbi of the 1st century', 'Response to Peter Scott', in *A Royal Priesthood? The Use of the Bible Ethically and Politically: A Dialogue with Oliver O'Donovan*, ed. by Craig G. Bartholomew (Carlisle : Paternoster Press, 2002), pp. 374-376, p. 375.

²⁹⁴ Karl Barth, *Ethics*, Lectures at Münster (1928) and Bonn (1930), trans. Geoffrey W. Bromiley (Edinburgh: T&T Clark, 1981), p. 25.

²⁹⁵ Cf. COL, p. 10.

²⁹⁶ In Jesus Christus ist die Wirklichkeit Gottes in die Wirklichkeit dieser Welt eingegangen. Der Ort, an dem die Frage nach der Wirklichkeit Gottes wie die nach der Wirklichkeit der Welt zugleich Beantwortung erfährt, ist allein bezeichnet durch den Namen: Jesus Christus. In diesen Namen ist Gott und die Welt beschlossen. In ihm hat alles seinen Bestand (Kol 1, 16). Von nun an kann weder von Gott noch von der Welt recht geredet werden ohne von Jesus Christus zu reden. Alle Wirklichkeitsbegriffe, die von ihm absehen, sind Abstraktionen. (Bonhoeffer, *Ethik*, p. 39)

²⁹⁷ DN, 132; 'Can Theology be Moral?', p. 88.

of a futile creation. A mere ‘vision’ of peace provides no more than a subjective ‘motive’. The mediating presence of Christ would be eclipsed by the antithesis of moral man and immoral society. The evangelical, commanding reality, however, the kingdom of God is *present* as a vindicated creation order.²⁹⁸

Vindicated creation order – integrating “utopia”

This leads to the second, perhaps more tangible aspect of reality. As wholly dependent on the primary evangelical reality, it is the already-realized Ought of all there is. Thus O’Donovan essentially re-defines and goes beyond mere ‘moral ideal’ or ‘utopia’. Again he starts with the eschatological reality of the Kingdom of God. As Christ announces the fulfilment of the time he redeems a previously unfulfilled creation. The *new creation* together with God’s providential action in history becomes the moral horizon for all action – an assumption that continuously challenges an understanding of ‘politics’ wholly ‘under the sign of Babylon’.

The central theological moment that establishes the connection between evangelical reality and created order is the resurrection, both as the backward-looking death and forward-looking triumph of Christ. It is a ‘double event’ rather than a revolutionary watershed between Old and New; it holds both old and new age together in Christ.²⁹⁹ As death and sin are overcome, creation is affirmed both in its created goodness and its *telos*, its destination towards the promised final fulfilment in God’s eternity: ‘all shall be made alive’ (1 Cor. 15:22). Christ is *the* representative

²⁹⁸ See RMO, p. xv on the foundation of ethics in the resurrection ‘embracing the partial truths’ of Kingdom and Creation ethics.

²⁹⁹ RMO 56-7; DN, 128; 130.

expressing a reality which has an independent and prior standing, but in the way that a national leader is representative when he brings about for the whole of his people whatever it is, war or peace, that he effects on their behalf. (RMO, 15)³⁰⁰

So in this ‘double-event’ the reconciliation between creation and kingdom takes place. Hence they cannot be thought apart anymore. This opens up an objective, natural-teleological order, an ordering towards God in which one may freely and creatively participate. This contrast to modern and scholastic epistemology, however, can only be upheld in the light of the evangelical reality.

How does that change the context of political action? On the international level this new ordering takes the form of the *ius gentium* as part of the *ius naturale* ‘revealed in new clarity by the Gospel’ (WJ, 129).³⁰¹ In *Just War Revisited* O’Donovan is less rigid as to the differentiation between evangelical and natural law than in his earlier work (RMO, 85-87). On the one hand the epistemology is the same – all moral knowledge of the created order must flow from the central point of Christ (RMO, 85).³⁰² On the other hand, the *ius naturae* or Natural Right is simply there, even if humanity ignores it.

Equally, together with the ‘metaphysics of difference’ and an essential antagonism O’Donovan rejects the modern human rights paradigm. As subjective rights original to the individual they are an unreconciled plurality of ‘primitive endowment[s] of power’. Instead, he defends an objective order of Right, since rights must have their place ‘within a discourse founded on law’. One might say with Hegel: the ordering performance of justice precisely reconciles subjective and objective perspectives.³⁰³ External order and subjective claims

³⁰⁰ ‘Independent and prior’ does not mean independent of the world, but rather independent of human experience – *pace* e.g. Meillassoux’ ‘correlationism’. Quentin Meillassoux, *After Finitude: An Essay on The Necessity of Contingency* (London: Continuum, 2008)

³⁰¹ *Ius naturale* is not the same as *ius gentium*, the latter having a ‘positive moment’, Dieter Schwab, ‘Der Staat im Naturrecht der Scholastik’, in *Naturrecht und Staat: Politische Funktionen des europäischen Naturrechts*, ed. by Diethelm Klippel (Munich: Oldenbourg, 2006), pp. 1-18; p. 3.

³⁰² Also Aquinas, ST IaIIae, Qu. 107, Art. 1.

³⁰³ See WJ, p. 118-119; RMO, pp. 102-109 on the mediate role of the Spirit. In WJ O’Donovan explicitly heeds Hegel’s notion of punishment as ‘bring[ing] to theoretical completion the scattered insight of patristic

cease to be at odds.³⁰⁴ Incidentally, for O'Donovan judgment also does not fall apart into 'making' and 'enforcing' law.

Not only is God's kingdom linked with the cosmic order, as it says in the Psalms (DN, 34). With *tsedeq*, divine righteousness or justice, 'we are in a fully public realm of a world court' (DN, 37). Creation as an order now discernibly points towards its fulfilment as it is always-already partially fulfilled in the revealed rule of God. This, then allows O'Donovan to connect to Augustine, for whom all natural orders having a pointing character or eidetic character. But it also follows that one cannot really distinguish between an 'earthly' peace or 'stability' in this world and a 'heavenly peace' somewhere in a hazy beyond anymore. Augustine's *tranquilitas ordinis* is one integrated order of Right.³⁰⁵

By focussing on the resurrection event as both elevating and confirming creation, O'Donovan goes between Milbank's evangelical 'counter-ontology' against the Roman Empire, and Grotius' international order of Right *etsi Deus non daretur*.³⁰⁶ He corrects and enriches Milbank by finding the positive in politics as part of God's 'common grace'. He corrects and enriches (the classicist) Grotius by stressing the double event of the resurrection: the new life under Christ must be a service to divine righteousness, participating in the triumph of Christ, which is the 'reign' of grace. (DN, 128)

In the present comparative perspective, this means a shift away from Ramsey's realist 'chaos at the horizontal level' and Elshtain's metaphysics of 'failed states'. For Elshtain, the destruction of (artificial) state structures *after all* meant a descent into a chaotic state of nature, because sociality required the political super-structure of the state to maintain its

Christianity', but bemoans its lack of 'relating penal practice to the wider range of practices that constitute political and social life.' WJ, 321.

³⁰⁴ See below on 'just war action'. RMO, DN 246 f.

³⁰⁵ Augustine, CD, XIX.

³⁰⁶ Cf. DN 128. Grotius partly succumbed to the Western tendency to isolate the death of Christ and 'thereby radically depoliticising the central saving event of the Gospel.'

esse.³⁰⁷ Similarly the realist Ramsey had located government at the border of arbitrary power and anarchy. However, if one approaches politics with an initial emphasis on the Fall and leaves it at that, as these Niebuhrians do, it becomes the cradle of Gnosticism. This was a possibility *before* Christ rose from the dead, O'Donovan points out (RMO, 14); and as I have shown, for those authors the Christ-event had after all no transformative effect.

For O'Donovan, in contrast, it affirms a pre-political society that is also already political. This Augustinian essential created sociality equally embraces Aristotle's ζῶν πολιτικόν. Political authority therefore only marks the movement from society's *esse* to its *bene esse*, not its *fiat*. To say it with one commentator on Aquinas: 'The Fall has not brought about the state, but has changed the form of its appearance.'³⁰⁸ A possible state of chaos – in so far as it ever happens – in a de-politicised society is rather a point of 'midwifery' towards a different order, not foundational (WJ, 135). In *Just War Revisited* O'Donovan therefore talks about 'locating' rather than founding an authority. At the same time, power is only one of authority's components necessary for the effectiveness of its judgments, not the foundational ground of political-social coherence.³⁰⁹

Both Elshtain and Ramsey certainly acknowledged the goodness of creation, but because of their dualistic or (philosophical-)idealist Christology respectively creation's connection to redemption was problematic or merely the future. The pre-Christian futility is a recurring threat, even 'reality', especially in the 'political sphere'. O'Donovan bridges the phases of creation and redemption with a clear outlook on the evangelical reality, the ruling Christ after the resurrection. 'To judge politics in the light of the divine rule is to be assured of its world-affirming and humane character' (DN, 19).³¹⁰ Humankind under God's authority

³⁰⁷ Except in the domestic sphere.

³⁰⁸ 'Der Sündenfall hat nicht den Staat hervorgebracht, aber seine Erscheinungsform verändert.' With reference to Aquinas, Dieter Schwab, 'Der Staat im Naturrecht der Scholastik', p. 7.

³⁰⁹ O'Donovan, 'Judgment, Tradition and Reason: A Response', *Political Theology*, 9 (2008), 395-414, p. 400.

³¹⁰ Oliver O'Donovan and Joan Lockwood O'Donovan, *Bonds of Imperfection: Christian Politics, Past and Present* (Grand Rapids, Mich.; Cambridge : Eerdmans, 2004), p. 2. Hereafter BI.

is now the authorised ‘ruler’ of the ordered creation restored to take its authoritative and beneficent place in this order (RMO, 55). Humans do not have to install or generate ‘new world orders’ of various kinds, nor do they have to ‘warrant’ (Elshtain) the one that exists. (DN, 30) They are ‘free to interpret God’s law in a way that realises God’s purposes for mankind’s welfare’ (DN, 104).

The reality of fallenness – a “violent world”?

So this marks a shift in O’Donovan’s understanding of the post-lapsarian ‘reality’ of politics, which is perhaps more Aristotelian than Augustinian. In contrast to Elshtain and Ramsey, the ‘tragic’ aspect of reality here ceases to be a ‘challenge’ to acting morally: threats, violence and suffering amidst dubious compromises and lies. As part of the vindicated creation order, ‘politics’ is no longer a sphere that stands separately as the summary of negativity that arises in judgment on innocent and guilty.³¹¹ Since rulers are destined to perish before Christ, politics is the ‘sphere’ in which they are summoned to facilitate – by the means available to them – the participation in the restored world order with its distinctly eschatological *finis*.³¹² Political action in its limited form of judgment now means social re-ordering and ordering-towards rather than mere survivalist self-defense and victory.

O’Donovan’s conceptual abandonment of a tragic, at times amoral ‘state of nature’, also does away with the (quasi-)Hobbesian or liberal foundation of politics. *Pace* Elshtain and Carl Schmitt, the historical oscillation between the state’s institutional legality and the revolutionary *voluntas* of the emergency (whether the government’s or the masses’) becomes obsolete. (WJ, 201) In other words, he moves away from the revolutionary-democratic

³¹¹ See WJ, 238 against Hannah Arendt to ‘politics unclouded by philosophy’.

³¹² Bernd Wannewetsch aptly translates the Greek passage: rather than ‘for your good’, suggesting the political self-alienated will of the constituents, ‘for the good’ means the divine good. ‘Soul Citizens: How Christians Understand their Political Role’, *Political Theology*, 9 (2008), 373-394, p. 381.

paradigm's theoretical back and forth between 'the political' and state-positivism.³¹³ The evangelical reality unhinges an unmediated antagonism, itself an after all random friend-enemy distinction. With the recognition of an all-embracing teleology, an ordering towards God, there is no 'fundamental ontology' (of violence), since all difference is subject to the supreme *ens*:³¹⁴

The unification of all rule in [Christ's] rule the subordination of all sovereignty under his sovereignty, forbade [Christians] to think that sheer unmediated antagonism could, in however carefully defined circumstances, be admitted as a possibility. Since every opposition of hostile parties was subject to the throne of God and of his Christ, there could be no outright duality. Antagonistic praxis was superseded by the climax of salvation history. (JWR, 5)

Evil becomes now a form of 'disobedience' to God as a form of (yet) failed vision.³¹⁵ The 'analysis' of evil in terms of scientific models is insufficient as their neutral *epistemes* point to various forms of anthropocentrism. Neither Elshtain's liberal analysis of evil as hurting others (large-scale human rights-violations) nor Ramsey's acceptance of Wohlstetter's game theory and power-politics point towards an adequate understanding and therefore resolution.

Ramsey's realism, like Hauerwas' pacifism, associates politics with the Tower of Babel, the Fall or Cain's fratricide. Frequently he returned to Augustine's *City of God* for that. When O'Donovan argues that 'Ramsey's characteristic appeal to the mythical resonances of the Fall is authorised and necessitated by a different and more fundamental reference [to Christ]', then he underestimates Ramsey's insistence that Jesus' cross does not change anything about the political sphere. What O'Donovan says about Ramsey rings more true of his own work: 'In terms of salvation-history the *esse* may have preceded the *bene esse*, but in the order of theological knowledge we know the *bene esse* first and the *esse*

³¹³ John Milbank, 'Paul against Biopolitics', in: John Milbank, Slavoj Žižek and Creston Davis, *Paul's New Moment* (Grand Rapids, Mich.: Brazos Press, 2010); Giorgio Agamben, *State of Exception*, see Ch. 1 above.

³¹⁴ Milbank, *Theology and Social Theory*, p. 305.

³¹⁵ Viz. RMO, 19.

through its lens.’³¹⁶ The earthly city’s foundational fratricide, in other words, does not generate an ‘ontology of tragedy’ that exculpates those who get ‘dirty hands’ or even makes their deeds both ‘inevitable’ and a moral Ought.

In consequence, O’Donovan evangelical re-location of ‘political reality’ allows no moral *substratum* of war: ‘The term “war” itself, subject to every kind of reification and deconstruction, is hardly usable.’ (JWR, 7) Evangelical ethics do not allow to ‘make an icon out of war’, a ‘sacred *adyton*’.³¹⁷ O’Donovan thinks it ‘better for practical reason, perhaps, not to try to be too clear about precisely where “peace” ends and “war” begins, or to mark where moral rules “towards” war end and moral rules “in” war take over’ (JWR, 16). Certainly this is the threat of realism, which regrets rather than condemns the havoc we associate with a necessitarian, consequentialist political sphere. O’Donovan dismisses as ‘hypocrisy’ the claim that ‘necessity’ forces us to certain things, e.g. carpet-bomb civilian areas. He notes that in war ‘justice often turns into violence’ or realistic pragmatism. But this is a moral *fault* rather than the substratum of the political sphere that ‘Christian ethics’ can condone by pointing at its limited ‘competence’.

Consequentialism is notably absent in O’Donovan’s proposal. This absence is characteristic of ‘scenario’-thinking as cultivated during the Cold War and even more dominant today. If politics were that merely negative order against evil, ‘all necessary means’ can be justified by the ends, which – in a climate of fear rather than the knowledge of divine providence – is defined as preventing complete annihilation and destruction, or defeating evil.³¹⁸ Ramsey recognized this danger when he rallied against the aggressor-defender doctrine in his transformist phase. O’Donovan again connects to this here. Yet unlike Ramsey, who could not theologically sustain this position and drifted towards realism after

³¹⁶ O’Donovan, ‘Karl Barth and Ramsey’s “Uses of Power”’, p. 11.

³¹⁷ Walter Benjamin: violence as a ‘principle’ distinguishable from ends. ‘Critique of Violence’, p. 114.

³¹⁸ E.g. Christopher Hitchens, ‘In Defense of Endless War’, *Slate Magazine*, Sept 19, 2011 <http://www.slate.com/blogs/ behold/2013/03/11/enrique_metinides_101_tragedies_of_enrique_metinides_documents_50_years.html> [accessed 15 September, 2012]

all, O'Donovan sustains it by pointing to a vindicated creation, the possibility to freely do right, in the light of Christ's resurrection and rule.

In this way O'Donovan can effectively challenge the dialectic between idealism and realism. Under the rule of Christ, there is an essential peacefulness of order. The dualism between creation and kingdom is mended. Fallen reality is human disobedience but does not constitute a pre-incarnational Babylonian sphere. The political sphere is not irredeemable. Following the Aristotelian-Thomist tradition, for O'Donovan there is a pre-political society which can do without the liberal-Hobbesian security paradigm. To the new creation corresponds an order of right, part of which is the *ius gentium*. Because the kingdom of God is not a 'utopia', the merely negative-reactive and potentially consequentialist nature of politics is rejected in favour of a forward-looking, peaceful ontology.

The political agent – between Old and new Israel

Some clues about O'Donovan's notion of the political agent have already been given: the subdued sovereignties under Christ's sovereignty, the ruler under Christ's rule, the government as the judge under God's judgment. More than on a 'theory' about legitimate institutions O'Donovan focuses on the political *act*. The 'ruler' is the one who acts politically. Obedient to God's law, the political act may reach out across the borders of normal jurisdiction and gestures towards a right order. 'Government as judgment' stands on the grounds of power, right and tradition.

As with the dimension of political reality, O'Donovan's notion of political authority continues Ramsey's agapist and transformist project. This, I argued, was based on the possibly paradoxical, eschatological mediation between the real and the ideal in Christ. But

whilst Ramsey came to recognize the importance of Christology only late in his life, O'Donovan begins from this pivotal point.

Government-as-judgment, a representative mediator

Theologically, the tension between the politics of the agent and the morality of the agent is crystallized in the analysis of Israel's politics before and after the Christ-event, and effectively in the Old and New Testaments. In that sense, *exegesis* replaces the Kantian and Hegelian presuppositions of much of modern theology and contemporary just war thinking.³¹⁹ For O'Donovan, the appearance of Christ's authority in Jerusalem, and especially when he ascends to the Temple, is a key moment of the eschatological fusion between the old and new age. It

meant the unity of political and religious spheres under the rule of God. Obedience and worship were to be one and the same. But that is to say: the Kingdom was the Lord's! The Two Kingdoms period, in which Temple without power and *praetorium* without worship coexisted in some kind of parallel, was declared closed. (DN, 117)

Beginning from this fusion of the political and the spiritual in the divine Kingdom, O'Donovan's turn to Israel gives theological *content* to Ramsey's agapeic act: 'Failure to attend to Israel is what left Christian political thought oscillating between idealist and realist poles' (DN, 27).³²⁰ Here O'Donovan refers to Wyclif's idealist understanding of both a spiritual church and secular dominion by God's grace. This makes the notion of *natural* political authority inoperable.³²¹ On the other side stands the Salamanca School's search for

³¹⁹ See esp. DN, pp. 9-15; for a sustained engagement with O'Donovan's exegesis, see *A Royal Priesthood?*, above.

³²⁰ O'Donovan emphasises that this is not a negative, or counter-political difference, but a helpful and constructive one. See O'Donovan, 'History and Politics in the Book of Revelation', in *Bonds of Imperfection*, pp. 25-47.

³²¹ NB: theologically qualified idealism refers to what Elshtain called 'utopian' or 'sectarian' versions of Christian politics.

political order in creation and the natural human capacity of justice; ‘a Christian secularism’. Right in between the two O’Donovan discerns ‘a political order which *itself* discloses and reveals the judging presence of God in society.’ From this evangelical starting point a transformed duality between the old structures of power and the new community of faith comes into view, or more abstractly: the real and ideal political agent. At the same time, political authority retains a minimal mediating function vis-à-vis God, partly standing between the people and God. In other words, the ‘disclosive political order’ also stands between real and ideal of the natural, created order and God’s authority. What does that mean?

First, the *realistic* grounds of ‘government-as-judgment’ are the ‘natural authorities’ of power, injured right and tradition. They prevent international judgment from becoming conquest and also provide the grounds for discrimination or median guilt – to be part of a political community is different from individual choice. O’Donovan took this triad from Ramsey’s analysis of authority as *lex, ordo* and *iustitia*, as he realized later (WJ, 142). However, here it is the result of a theological elaboration of Israel’s triadic covenant with God. Yhwh’s authority is, first, established by accomplishing Israel’s victorious deliverance from its enemies, which brings the need for power into focus. Second, the presence of judicial discrimination in Israel sets the doing of justice, the settling of right, as a ground for authority. ‘Right’ here invokes both public representation and a social order rather than individual rights. Third, a possession to be handed down through the generations provides clarity about God’s judgments, which give order and structure to the community ‘and sustain it in being’. O’Donovan then also added faith or ‘recognition’ to these three. Nevertheless, people’s recognition of a government is not constitutive of authority. It is rather

demonstrative: if the people do not recognize someone as an authority, he has merely seized power.³²² (WJ, 128)

The grounds of government – power, right and tradition – persist as the covenantal presuppositions of government-as-judgment. Genuine political authority ‘cannot arise except where one and the same agency can dispose of all three’ (WJ, 142). ‘When one whose possession of *might* is in accord with the *established order* of a society takes responsibility for the *righting of wrongs* within that society’ (RMO, 128). Power without right and tradition is mere violence. Conversely, if one has a right but no power it has no effect. Natural disasters threaten the *polis*; no statesmen can rule without arms or ink in his pen. Equally tradition on its own is not political. So authority is grounded in creation, or three distinct ‘natural authorities’; these are realistic foundations of authority, though without being ‘realist.’ (viz. RMO, 62)

As it stands, political authority under Yhwh could claim transcendent overtones: the Israelites’ battles and wars had a quasi-sacral character.³²³ However, such holy wars are done away with. A Christ-centred political theology radically tones down and recalibrates the mediating function of government in the light of God’s ultimate mediation. With this, O’Donovan challenges both the (historicist) possibility of any present country to be a renewed sacred Israel, as well as the Hobbesian statism seen in Elshtain. How does he do that?

First he points out that the history of God’s chosen people Israel has its climax and fulfilment in Christ’s life: Advent, Passion and Restoration, concluding with the Exaltation. O’Donovan criticises the tendency to dismiss the latter as a purely transcendent event, the clothing of ‘earthly reality’ into ‘religious interpretation’ (DN, 144). In fact, it is the key

³²² This provides effectively a much stronger and continued challenge to governments than one might assume. If recognition or consent is constitutive, as in liberal democracies, *tacit* consent can always be assumed, if not to the government in question, then at least to ‘the system’ that put it in place. If recognition is demonstrative, however, then the *actual* authority of a government can be scrutinized and challenged at any point in time.

³²³ DN, 49, 51-52.

moment in which authorities ‘political and demonic ... have been made subject to God’s sovereignty’. Hauerwas’ and Doerksen’s complaint that O’Donovan’s exegetical framework is too strict might find alleviation in the fact that he switches between the precise ‘moments’ at which the transfer of sovereignty took place – the cross, Christ’s appearance in Jerusalem, exaltation. What matters is that all moments are significant, each one subtly presenting a different political-spiritual constellation. For the present investigation it is relevant that the complete narrative is both transcendent *and* worldly. For example, the cross marks not – *pace* Elshtain – only the humiliating death of Jesus the man at the hands of the empire and his own people.³²⁴ And it does not only cast ‘a shadow’ over Babylon (Ramsey). It marks a political triumph:

In opposition to every politics of identity and self-complacency God has set the cross of Jesus Christ, before which, as the prophet said, “kings shall shut their mouths” (Isa. 52:15). In Christ’s cross he “has disarmed the rules and authorities, and made a triumphant public display of them.” (Col. 2:15) It is a *royal* cross, challenging the conditions of earthly political authority with the coming of the kingdom of God. (WJ, 231)

Christ shifts the weight of political authority to himself, as the king of the faithful. From that perspective the structures of government are radically minimalised, though not dismissed: ‘Jesus’ concern, on that occasion as hitherto, was with the reauthorizing of Israel rather than with the deauthorising of Rome’ (DN, 117).³²⁵ The nature of government as only judgment comes into view:

The reign of Christ in heaven has left *judgment* as the single remaining political need. ...

Paul’s conception stripped government of its representative, identity-conferring functions, and

³²⁴ Left at that, the cross merely inaugurates a new sacrificial religion highly conducive to contemporary capitalism.

³²⁵ Eric Gregory reads this as an indirect authorisation of liberalism. But Gregory conflates the saeculum with the final apocalyptic identification of ancient Israel, the pagan empire and the eschatological church. Gregory, *Politics and the Order of Love*, p. 229.

said nothing about law. He conceded, as it were, the least possible function that would account for its place within God's plan.' (BI, 209)³²⁶

Before Christ, God's rule had been mediated 'through the judicial tasks of angels and kings in all the nations'. But now divine authority 'is irreplaceably immediate in the dying, rising and future disclosing of Jesus' (DN, 124). Christ is the *immediate mediator* of God.

And because of that, government mediates judgments only, discriminating between innocent and guilty. It is forbidden for 'human rule to pretend to sovereignty, the consummation of the community's identity in the power of its ruler' (WJ, 4). With 'Christ's triumph', Israel's military victory is no more sacred, neither is the possession of land and law. Christ marks victory and salvation; *he* is now the possession of Israel. Hence, 'no government has a right to exist, no nation has a right to defend itself. Such claims are overwhelmed by the immediate claim of the Kingdom' (DN, 151). In other words, the task of judgement is what is left of Israel's theocratic structures. And so it persists in the *saeculum*.

Showing some awareness of the libertarian minimalism he might have conjured up (WJ, 4), O'Donovan's theology nevertheless calls government as a mediator between God and society, the locus at which divine and human action meet in the doing of justice. First, for someone to actually hold authority, it is God who confers it. In other words, power, right and tradition require historical luck to come together. This recalibrates contractarian political theory and accounts for the 'alien', 'non-reciprocal' character of political authority as something that is not merely our self-alienated will. In conjunction with human cooperation (viz. Ockham), authority comes to be through the 'providential gift of authority' (WJ, 129). Providence marks the point at which the theory of political authority turns into *actuality*.³²⁷ In other words, the 'dual authorisation' by natural authority and divine energy, the authorisation

³²⁶ The idea of minimal function is also taken from Leo XIII's *Rerum Novarum*. Judgment to particular cases corrects the state's over-reaction as noted in Elshtain. O'Donovan, 'Judgment, Tradition and Reason: A Response', *Political Theology*, 9 (2008), 395-414, pp. 396-397.

³²⁷ Somewhat in that spirit the legal theorist Costas Douzinas said: 'The revolution is like falling in love: it happens to you, it slaps you in the face and sweeps you off your feet.'

both from below and above, avoids overemphasising either.³²⁸ Hence authorities are ‘angelic’ and as mediators even Christological:

The political rulers of the world are angelic and spiritual precisely because they are representative; and they are political rulers precisely because they are angelic and spiritual. In the cross they meet the final representative identity of mankind.’ (WJ, 231 f.)³²⁹

In that sense, despite their ‘angelic’ because representative character, authorities become demonic when they usurp the place of Christ’s present authority, the singular point where political and the transcendent become *identical*: ‘When believers find themselves confronted with an order that, implicitly or explicitly, offers itself as the sufficient and necessary condition of human welfare, they will recognise the beast. When a political structure makes this claim, we call it “totalitarian”.’ (DN, 274) A more subtle form is the proposition of ‘self-interpreting doctrines which define metaphysical parameters for thought and action’, or – this will become most visible in Part II – the complete disavowal of metaphysics.

No political authority, O’Donovan argues, can remain indifferent to God’s work in Christ; it will either affirm or deny it.³³⁰ If the *telos* of humanity is its fulfilment, and its transformation and redemption in the new Jerusalem, no political authority is thinkable outside this order. Christ calls the authorities to obedience, not to an imitation or replacement of God. This is what he means when he says in JWR: ‘The heart of the question, both in antiquity and in modernity, is how these centres of political self-complacency are to be brought to recognise the sovereignty of the reign of God’ (JWR, 12). With goodness defined in God, authorities are called to refer to God’s judgment, and to perform their task

³²⁸ Joan Lockwood O’Donovan, ‘Political Authority and European Community: The Challenge of the Christian Political Tradition’, *Scottish Journal of Theology*, 47 (1994), 1-18.

³²⁹ On O’Donovan’s often idealised reading of the Christian past see Tim Gorringer, ‘Authority, Plebs and Patricians’, p. 27.

³³⁰ McIlroy, ‘The Right Reason for Caesar to Confess Christ as Lord’.

analogically to God's judgment.³³¹ As Garver expresses it, analogical action is 'thinking God's thoughts after him'.³³²

The stakes are high here, but this is not an 'idealist' version of political authority in the sense that authorities have to or ever did reify a moral ideal, as if the Kingdom of God was a category of social ethics. An evangelical reality radically deconstructs the mythical or ideological pretensions of authorities. In doing that it calls political agents beyond mere nation-state 'sovereignty', to something both less and better – judgment only arises in the defense of the common good (which it first has to recognise as good) and disappears afterwards. (WJ, 58; 66-67; 150) In this sense one can understand O'Donovan's notion of judgment to be like a postmodern novel, 'a self-subverting metafiction that destroys its own grounds even as it enacts them.'³³³

O'Donovan's interpretation of Augustine also reflects this notion of active reference to a substantial Good. As Ramsey pointed out in his transformist *War and the Christian Conscience*, Rome's justice is no real justice and virtue no real virtue.³³⁴ O'Donovan reads him in a similar fashion (BI, 60-61), stressing that Augustine does not yield term of 'relative' (earthly) justice as opposed to a 'true justice'. Augustine's justice, O'Donovan maintains, is always the *iustitia Dei, non qua iustus est sed qua iusti sunt homines quos iustificat*.³³⁵ Augustine 'cannot or will not disengage a separate social or political sense of the word from its theological sense. *Iustitia* must include the forgiveness of sins.' (BI, p. 61) Hence – and

³³¹ NB: the difference between the 'domestic analogy' between state and person and the Christ-analogical *act*: like God judged Israel in Christ, so the ruler must judge the guilty.

³³² Stephen Joel Garver . "'There is Another King": Gospel as Politics: Notes Towards a Theology of Community', in *Body Politic*, pp. 13-37; p. 19; O'Donovan, 'Judgment, Tradition and Reason: A Response', p. 396: 'In the pre-scholastic period ... the representative status of the monarch was systematically brought into line with the understanding of representative priesthood derived from Christ's priesthood in the Letter to the Hebrews.'

³³³ Kate Marshall, 'Cyclonopedia as Novel (A Meditation on Complicity as Inauthenticity)', in *Leper Creativity: Cyclonopedia Symposium* (New York: punctum books, 2012), pp. 147-159, p. 148.

³³⁴ Also Milbank, *Theology and Social Theory*, 392, 403-416.

³³⁵ '... the justice of God, not because he is just, but just are those whom he justifies.'

the importance of this difference cannot be overemphasised – unlike Elshtain, O’Donovan never refers to a ‘limited earthly justice’ that serves as a benchmark of political expectations.

In short, political authority in the light of Christ’s immediate rule takes a mediate, though now minimal position between the natural grounds of creation and God’s judging presence. This understanding, stemming from the eschatological paradox of Christ, also provides the exegetical hermeneutic to theologially criticise, integrate and go beyond both ends of the idealism-realism divide.

Against idealism, individual and global

All rule unified in Christ, the eschatological ‘not yet’ effects a ‘transitory duality’ (DN, 93) between the remaining ‘structure of Israel’ and the new Israel of the Church. But that means government-as-judgment is radically re-defined by its ecclesial ‘Do not judge!’ The ‘church’ besides the ‘state’ therefore is neither: a) spiritual acquiescence to any politics, b) the realised ubiquitous natural rights-authority of secular liberalism, nor c) the globalised ideal of a universal state.

The ecclesial locus is where O’Donovan starts from. After the Christ-event, he says, God’s people are gathered in the church.³³⁶ The church is the social and political presence of the fulfilment of the Kingdom of God and the promises made to Israel. It is in itself a political society in which one participates by faith. (DN, 166) The identity of the church and the believer’s identity with Jesus are primary to all other political ones: ‘Identified with him in his baptism, the believer is identified with Israel present in him, and so with the church which is Israel baptised with the Holy Spirit’ (DN, 178). Nevertheless, because of the not-yet of the full Kingdom, the material *polis* cannot be dismissed: ‘The continuing Israel, which does not

³³⁶ On Augustine’s tendency to conflate the ‘ideal with the actual’ church also John M. Rist, *Augustine: Ancient Thought Baptized* (Cambridge: Cambridge University Press, 1996), p. 253.

yet believe ... is not to be dismissed as an irrelevant survival from the past: “God has not rejected the people whom he foreknew!” (Rom 11:2)’ (DN, 131).³³⁷ Israel’s public tradition is not nullified by faith. ‘So until the last reconciliation the two communities must coexist, the one with the witness of its public institutions, the other with a witness founded on and attesting faith, the community of circumcision and the community of baptism’ (DN, 132). In that way political government can never be absorbed into the church.

But this also challenges *political* enthusiasm or idealism; specifically the contemporary, secular-Lockean natural rights-ideal. Here, all become just war authorities. In this form, O’Donovan complains, the liberal idea itself has drifted away from its ecclesial moorings and become utterly politicised. Originally it presupposed the Christian triumph over all kings and authorities: ‘It is a paradigm for the birth of free society, grounded in the recognition of a superior authority which renders all authorities beneath it relative and provisional’ (DN, 252). ‘Where the Spirit of the Lord is, there is liberty’ (2 Cor. 3:18). Here is the political society and fellowship, the ‘free and worshipping embrace of God’s rule’. True political freedom (paradoxically) is that of the believer in Christ. The modern connection between individual reason and ‘totalized politics’ turns this ecclesial principle into ubiquitous judgment, though one that has no power. O’Donovan relates this to a wrapped-up global assent to or dissent from a war:

The worst crimes in war tend to be committed later in its course, when patience and discipline have worn thin. But by the time the leaders of the nations are driven to resort to the worst excesses of wickedness, the public has so exhausted its rhetorical resources that it is liable to let the fact pass without notice. (JWR, 18)

³³⁷ Also DN, 132.

Indeed, a case is to be made that something like this has actually happened in the past decade, a collective, drowsy settling into the ‘militarization of peace’.³³⁸ So the politically realised ideal of individual authority, formerly rooted in the *ecclesia*, is rejected.

The second possibility of idealism is also unacceptable. It consists in realising a universal ideal as a global authority. This can take two forms: accepting the pope as the highest moral arbitrator between states, one that can even step in as a ‘king’.³³⁹ After the age of sovereign nation states and World War II, this place has been claimed by the United Nations. Both, however, run counter to the hiddenness of Christ’s rule, discernible only by faith:

... the temptation besets the church to make its hidden government visible by a representative icon of the ruling Christ. Charged to realise the premonarchical confidence of Israel that it had no king but Yhwh, the church compromises itself which it asserts from its midst a ruling entity to act on Christ’s behalf, matching the claims of secular rulers with counterclaims. If Erastianism is an instance of the first mistake, papalism is a striking example of this one. (DN, 166)

In other words, the global institutional mediation of Christ would alienate the church from its immediate subjection to Christ and set it on the same footing as analogical government-as-judgment. But the representative moment in Christ cannot be duplicated. An immanent world state cannot represent humanity; the papal ministry cannot represent the church.

The United Nations, O’Donovan points out, certainly differs from papal authority. One is secular, the other spiritual; one accepts the givenness of states and is constituted by them, the other pronounces on their legitimacy. That this difference can be drawn so neatly may be contested as an historical matter; the point is that both may claim the same place: the

³³⁸ Reza Negarestani, ‘The Militarization of Peace: Absence of Terror or Terror of Absence?’, *Collapse* 1 (2006), 53-92.

³³⁹ Honorius Augustudunensis, *Summa Gloria de apostolic et augusto* 3 in DN, p. 163; Gierke, *Political Theories of the Middle Age* (Cambridge: Cambridge University Press, 1900), p. 117, n. 32; James of Viterbo, DN, 168.

embodiment of an ideal universal rule transcending the struggles of political sovereigns: ‘The claims of papalism at their best anticipate those which have driven the search for international authority in later times, and, indeed, were the original inspiration for them’ (WJ, 216). From his theological perspective, O’Donovan senses the flicker of conflict as they both have ‘humanity’ as their subject:

The word of God is abroad on the earth; the community of God tastes of the life of heaven on earth. There is no vacancy for a substitute for these, and if there were, it would not take the form of a politically constituted organ with juridical, parliamentary, and administrative organisation. (WJ, 218)

From a practical perspective, the international community remains ‘an abstract universal’ (WJ, 217), not a real community.³⁴⁰ It cannot claim authority and dispose of authority in the same way as a representative government. O’Donovan explicitly criticises the tendency to view the U.N. as ‘a temple enclosed in its sacred *temenos*, kept apart from the profane compromise of political action in order to give voice to a claim that transcends human politics in permanently critical posture’ (WJ, 218). And in this regard he is as Protestant as Kant.

Leaving aside these idealisms, how does O’Donovan integrate old and new Israel, political and spiritual citizenship in the light of Christ’s eschatological paradox? First, the ‘church as *politeia*’ and moral agent embodies and directs to worship God the society that would otherwise atomise into pietist individual particulars. In that sense he fleshes out the ecclesial context that neither Elshtain nor Ramsey formulated. As I pointed out earlier, for Christian realism the church was either an institutional, administrative and hence political entity or a spiritual-individual horizon of subjective moral experience. Christians had to

³⁴⁰ For a juxtaposition of Catholicism as abstract or concrete universality, see Slavoj Žižek, John Milbank and Creston Davis, *The Monstrosity of Christ: Paradox or Dialectic?* (Cambridge, Mass.; London: MIT Press, 2009), p. 294.

choose between church and state or assimilate the two. Both options drew the political sting out of it, hence the state was given the sole political burden.

O'Donovan's ecclesial Other vis-à-vis government, in contrast, is *tri*-partite: a spiritual, a visible (in communion and Spirit) and an institutional entity.³⁴¹ Precisely this triadic understanding challenges the dual possibilities of separation or identity between church and state, and merges the two into a continuous *calling*.³⁴² In that way O'Donovan re-channels moral idealism into an actual alternative community:

Of course, the mere imagination of a universal society, as an ideal or a project, will not suffice for such an ascesis; for it can provide no real social identity, but only entangle us in a contested cause. We must become actual members of a real community constituted by the real and present image of God as uniquely lord, and the real and present image of mankind as subject uniquely to God. Jesus Christ, very God and very man, is the double representative around whom such a community has come into being. (COL, 44)

Conceptually, the church as a political, spiritual and institutional factor preserves the continuous moral challenge to the state. How does this play out?

If for O'Donovan the political act is the act of judgment, then in the church judgment is not. 'Judge not, that you be not judged!' (Matt. 7:1) In that sense can the church be the 'counter-political' source from which all reconciling 'evangelical counter-praxis' springs in its mediate position between antagonistic realism and moral idealism. If the paradox of contemporaneity between old and new Israel was the ground of the political act, there is now room for evangelical citizenship that transforms political citizenship. O'Donovan suggests a conceptually temporal opening, a 'door through which the political can re-enter the counter-political' (WJ, 235), though not the a-political realm of individual spirituality. This door, this transitional place, O'Donovan calls the 'moment of obedience', or the moment of

³⁴¹ I find an interesting echo of this in Karl Popper, 'Three Worlds', Tanner Lecture on Human Values (1978) <<http://tannerlectures.utah.edu/lectures/documents/popper80.pdf>> [accessed March 1, 2012]

³⁴² This brings into view the Pauline ministry and mission.

‘transcendent criticism’ (DN, 13). And here he thinks through the position of immediate connection to the universal, which Ramsey had related to his Nietzschean *agape*.

Beyond criticism, the ‘Judge not!’ and ‘Judge for yourselves!’ together remain paradox. It does not force an exclusivist or even abolitionist wedge of “either-or” between church freedom and state obedience, moral reflection and practical deliberation (DN, 13), or an individual ‘Judge not’ against a political-representative ‘Judge!’ Instead, it holds the two together. (WJ, 157) O’Donovan remains reluctant to form any political programme. In a key passage towards the end of *Ways of Judgment* he articulates the paradoxical nature of freedom and obedience:

When we judge for ourselves, we judge that the good that God by his own judgment has set before us to do is now open for us to do. When we persist in judging when judgment should have been given closure, we impose a division between evil and good that no longer corresponds to God’s own division, and so fails to put before us the good that God has willed for us to do. (WJ, 236)

Here lies the source also for ‘sympathetic deliberation’ on the just war. It is not ‘freedom-as-defiance’ (WJ, 67), but freedom within social structures. The free individual is not suppressed by ‘the authorities that exist’, but a communal being in solidarity. This must be ‘the other side’ of political obedience. (WJ, 54)

Judging for themselves, individuals are both asked to collaborate with authority whilst judging and acting independently. The question; ‘What is my role at this point and in this situation?’ replaces the sentence beginning with ‘If I was the president, I would...’

O’Donovan’s reference to Kierkegaard is no coincidence here, since he – and much so in the spirit of Hegel and after all Luther - noted precisely this paradoxical freedom in obedience and obedience in freedom. Bernd Wannewetsch, stretching the positive, God-praising role of government more than O’Donovan does, calls this ‘soul citizenship’. We are neither completely free, spirited citizens nor mere subject bodies. In this sense every person must

consider his own role and responsibility (JWR, 16). This can be identified as the space for ‘the possibility of informal [judicial] pronouncements which carry moral authority’, similar to what Ramsey in his transformist phase called a ‘constitutional revolution’.³⁴³ Hence, despite the sound of it, the just war proposal is *not* only for kings and queens, whereas subservient citizens quietly refer their judgment or disagreement to private religion, the privacy of the family table, or the digital swarms on Facebook.³⁴⁴ (WJ, 233) Liberal ‘idealism’ is integrated after all, but in both a more active (‘responsible’) and reduced (forgiving) nature.

In the same way O’Donovan’s dismissal of the U.N.’s quasi-theological pretensions and institutional misconceptions does not dismiss the whole concept and entity. It is ‘an international point of reference ... to frame the decisions of national governments’ and ‘a framework of lawfulness within which action may be responsible and coordinated’ (WJ, 218). In this role, as an admonitory, interpretative body, it corresponds to the international order described above. However, the unifying order of the world under Yhwh’s ultimate mediating rule was always *law* – law as God’s history and judgments – not a world government. Yhwh ‘is present in a kind of concealed immediacy in the law’ (DN, 50).

In short, O’Donovan re-locates the political act in its ecclesial context. The church as a tri-partite entity prevents it from becoming a merely spiritual dimension that acquiesces to sovereign, possibly dictatorial politics. Neither is it a fully political, institutional actor in the international sphere. Instead, the freedom and ‘soul citizenship’ of the individual within a peaceful, non-judging community can continuously challenge and redirect the ‘secular’ political act and institution.

³⁴³ NB: O’Donovan drops Ramsey’s constitutionalism on the grounds that it may become ideological; see WJ, 155-156.

³⁴⁴ Certainly Schmitt believed that a completely digitalised notion of democracy is the end of democracy. Norbert Campagna, *Le Droit, le Politique et la Guerre: Deux Chapitres sur la Doctrine de Carl Schmitt* (Saint-Nicolas (Québec): Les Presses de l’Université Laval, 2004), p. 58.

Against realism, individual and global

O'Donovan's rejection of political realism focuses on private, sovereign, antagonistic authority, which can take different forms.³⁴⁵ If idealism treads upon the governance and freedom of Christ and church, 'realism' marks the retreat from these spheres for the sake of an ethical naturalism. That it can then again claim ecclesial and Christ's freedom makes realism the matching opposite of idealism; they are two sides of the same coin – or two forms of 'atheism', as Ramsey had complained.

O'Donovan's critique of political realism is mainly a critique of voluntarism, the centrality of the individual will in connection with reason as the final arbitrator between humans and their surrounding world. This was already indicated in the analysis of 'political reality' above, but here the political subject is the focus. An ethic of successful imposition of will does not presume a peaceful interplay between agent and his surrounding environment, a vision of natural paradise. On the contrary, it presupposes a disjunction between individual will and an external reality, as O'Donovan points out repeatedly (RMO, 18, 131-137). And this is at odds with the 'reality principle' of a vindicated creation order in which humans freely participate.

On the individual level, 'realism' expresses itself as the human real and ideal are declared as identical in human rights. What was said above about the individualist idealism could only be replicated here: O'Donovan's critique of human rights pits individual claim-rights against a notion of justice-as-right order.³⁴⁶ The equation of individual rights and political judgment, he thinks, is incorrect. Private persons, who act on their own behalf

³⁴⁵ Martin Luther, *Lecture on Romans*, ed. Wilhelm Pauck (Louisville: Westminster John Knox Press, 2006), 159-161.

³⁴⁶ For a critique, see Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton; Oxford: Princeton University Press, 2008), pp. 68-75; responses in special issue of *Studies in Christian Ethics*, 23 (2010); in his response O'Donovan notes that Wolterstorff's 'primary justice' of rights ironically is similar to the moral order O'Donovan suggests. 'The Language of Rights and Conceptual History', *Journal of Religious Ethics*, 37 (2009), 193-207, p. 199.

cannot ‘establish a new public context’ and private actions, even if serving the common good, do not do it representatively ‘on behalf’ of the community. (WJ, 23) But the possibility of the political act, ‘the exercise of authority itself’ is the question. (DN, 249) The sole foundation of multiple claim rights leads to an ‘acephalous society’, which makes the political act impossible apart from technocratic forms of controlling and manipulating society. ‘In championing the authority of the political act, however, we champion society itself.’ This is inseparable from questions of *common* goods and the common life, created sociality’s *bene esse*. In that sense, the fact that individuals are wronged is never only an infringement upon their rights, but ‘[flows] from the concept of “a wrong” (the noun), which is an offence against the moral order governing relations among God’s creatures.’³⁴⁷ So if individualist realism champions individual rights as authoritative, the common good gets lost. If it focuses on them as individual victims, the communal, social and indeed *cosmic* repercussions of death and suffering get lost, and can become even acceptable within a utilitarian calculus.

This raises the question whether the common good or the welfare of human beings can be reduced to the well-being of its members, or the humanistic principle at the heart of liberal, pluralistic democracy. Both O’Donovan and Joan Lockwood O’Donovan would modify that.³⁴⁸ The well-being of individuals is essential, but this can only take shape in a social and communal form, certainly also in view of a body like the Church being a communal agent. If an ontological peace is the basic assumption of vindicated creation order, then the fundamental difference and contest between prior, subjective individual rights is untenable. Human nature and created order are different moments, but they are inseparable: ‘Without “nature” around it in which it can take its place, “human nature” can be nothing but an insubstantial phantom, visible only through some ectoplasmic formula such as “radical

³⁴⁷ Ibid.

³⁴⁸ ‘Faith and Globalization’; interview with Joan Lockwood O’Donovan. <<http://www.youtube.com/watch?v=5yV8Qg8wXuQ>> [accessed Oct 7, 2011]

freedom”.’ (RMO, 18) – Looking at the modern state as sovereign rights-holder, the same problems arise.

O’Donovan’s challenge to statism has already been mentioned – the ‘tidy regime of sovereign states’ as the sole legitimate authorities is untenable. However, what about benevolent empire, as suggested by Elshtain? Two analytical approaches are possible. One could either see it as the political institutionalisation and enforcement of a universal ideal. Alternatively it may be understood as the universal, even mythical extension of a defensive-expansive political agent.³⁴⁹ When talking about *Christian* imperialism, O’Donovan highlights the former option and recognizes the theological root, not merely the power-interests of *imperium*.³⁵⁰ He criticises it as Christian moral idealism that praises in empire the *concordia* only God knows. (WJ, 213) The image here is that of Rome and Eusebius’ praise, which reoccurs in Dante’s *De Monarchia*, in which a world-state is to reflect Christ’s rule.³⁵¹ That Dante (sometimes together with Aquinas) is read as a precursor of international ‘idealism’ should not obscure the fact that his world community under Christ’s rule finds expression in a unified *political* rather than supra-political, papal structure. The influence of Aristotelianism explains this

confidence in ‘natural’ political society with a solid and independent structure of its own, a society for which much more in the way of social virtue could be claimed than might be suggested by those who like to recall Augustine’s aphorism about large-scale criminal gangs.

Justice itself was a natural virtue. (DN, 207)³⁵²

O’Donovan himself has come under the suspicion of Constantinianism. But his political conceptuality of Israel in the light of Christ’s triumph explicitly sets it *against* imperial

³⁴⁹ Henri Xavier Arquillière, *L’Augustinisme Politique: Essai sur la Formation des Théories Politiques du Moyen-Age* (Paris : J. Vrin, 1955), p. 54; Milbank, *Theology and Social Theory*, p. 425.

³⁵⁰ O’Donovan’s reading of Marsilius of Padua as an imperialist theologian (DN, 207) is matched by George Garnett’s, *Marsilius of Padua and ‘the Truth of History’* (Oxford: Oxford University Press, 2006)

³⁵¹ Dante Alighieri, *De Monarchia*, Bk. 1, Ch. iv-vi.

³⁵² O’Donovan here reads John of Paris, Dante and Marsilius closely together, see WJ, 60 n. 4.; DN, 207.

pretensions.³⁵³ Yhwh's rule safeguarded his people's welfare and the international order. The king of humanity may only be encountered in Christ now, so that there is no space for humanity as a world community governed by a world-state. The story of Babylon, the separation between peoples through language was 'Yhwh's safeguard against the titanism of imperial pretensions' (DN, 70). And even when God was acting through empires, it was to reign in and guide back on the righteous path his people. (DN, 86) Again a sharp line must be drawn between a realist empire, like that of (secular) neo-conservatism, and what O'Donovan calls the 'idealist imperialism' (WJ, 259) in the wake of the Enlightenment that is the heir of papalism and canon law. From a logical perspective, there is no difference (WJ, 16), and this is because of his focus on the Christian witness to world peace. Nevertheless, the *actual* agents are rather different, indeed opposed parties.³⁵⁴

The difference between a large country and an empire emerges at the point where the latter makes certain transcendent, universalist claims that tread upon the authority of Christ as the world's ruler. To O'Donovan, Kant's 'imperial idealism' is as suspect as is 'imperial democratization' (WJ, 259). These imperial pretensions have been pushed back by Christ and exposed as hubristic.³⁵⁵ So if these sections indicate O'Donovan's distance to any form of (Christian) empire from one end, he reinforces it from an ecclesiological angle, especially the Hauerwasian demand for Israel to remain in Babylon: 'To treat the coexistence of Israel and Babylon as a permanent ordinance was, in effect, to accept the emperor's own assessment of himself, to bow down before his image of gold' (DN, 88).

³⁵³ DN, 72, 122, 130, 140, 147.

³⁵⁴ Mark Mazower, *Governing the World: The History of an Idea* (London: Allen Lane, 2012). See also below, Ch. 4 which juxtaposes Elshtain and Rodin as mirroring opposites.

³⁵⁵ Pace Stephen H. Webb's astonishingly distorting *American Providence: A Nation with a Mission* (New York: Continuum, 2004); see . pp. 104-108. See William T. Cavanaugh, 'Messianic Nation', *University of St. Thomas Law Journal*, (2005), 261-280.

Political action – faith performing reconciling judgment

So it has become clear that for O'Donovan the political *act* constitutes and reinforces institutions, not vice versa. However, how does this political act steer between idealistic and realistic action? How does O'Donovan theologially construct a paradoxical third? The simultaneous 'Judge not!' and 'Judge for yourselves' has already been noted. Here it comes into focus as the unified rule of Christ, recognized in faith, mends the dualism of ideal, universal love and potentially lethal judgment.

Again, the ruling God is the horizon of action eliciting faith or 'recognition'. Broadly speaking, the *sola fide* sets faith-as-worship as the primary *point d'entrée* to evangelical counter-praxis or just war action. O'Donovan's exegesis brings out the connection between worship and political authority:

Yhwh's rule receives its answering recognition in the praises of his people. ... The link which ties the exercise of Yhwh's kingly rule to the praise of his people is that as the people congregate to perform their act of praise, the political reality of Israel is displayed. (DN, 47)

After the Christ-event, political praise is replaced by faith. As judgment itself must be made in obedient faithfulness, it recognizes God's sovereignty. Israel, both old and new is 'God's servant'.

This faithful obedience mends a fundamental disjunction. Following a Platonist-Augustinian instinct, O'Donovan mends the Aristotelian dichotomy between theoretical insight and praxis.³⁵⁶ Not through a *tertium quid*, but 'a union of the two, a *both-and*' as 'affective knowledge'.³⁵⁷ 'We know only as we love', he quotes Augustine. Hence:

³⁵⁶ Oliver O'Donovan, *Common Objects of Love: Moral Reflection and the Shaping of Community* (Grand Rapids, Mich.; Cambridge: William B. Eerdmans, 2002), p. 9. Hereafter COL.

³⁵⁷ Stephen Joel Garver, "'There is Another King': Gospel as Politics – Notes Towards a Theology of Community", in *Christian Body Politic*, ed. by Christian Kim, (Cheltenham: The Hermit Kingdom Press, 2004), pp. 13-52, p. 19.

Knowledge, which participates in the eternal Word of God, is consubstantial and coeternal with the Love that is God's eternal Spirit. All knowledge, then, has an affective aspect, just as all love has a cognitive aspect. Our experience of knowing is that of discerning good and welcoming it *as* good.

Once I know what is right and just and true, O'Donovan says, there is even a '*sovereign uselessness* of moral reflection' (COL, 17). There is no 'theory' and separate 'praxis' of love. 'The object of love is not an act of our own, but simply – to use an Augustinian phrase again – the "enjoyment" of its object, and "enjoyment" is not the name of something we do, but of a relation in which we stand' (COL, 16). The act of love, in other words, in O'Donovan's fusion is not the imposition of will (*pace* the voluntarist tradition), but peaceful relatedness-in-difference. Milbank, whom O'Donovan references in JWR, calls it the 'peaceful transmission of difference'. Harmony is the *telos* of difference, and simultaneously requires difference in a non-violent form.

However, O'Donovan's evangelical short-cut to political action is not merely a way of understanding action as static or unprecedented love, especially in a social context of recollection and response to evil-doing.³⁵⁸ The union of theory and praxis, or faith working through love immediately, also has its 'transitional duality' between judgment or law, and love. The latter takes the divine, universal perspective. But although Just War action means *facing* antagonistic praxis with a different praxis, that cannot be the merely a form of universal, indiscriminate love. Specifically the notion of discrimination brings this into focus:

In the eyes of God the soul of a soldier is of no less value than the soul of a milkman: why hesitate, we may wonder, to kill the milkman, if we do not hesitate to kill the soldier? ... We have a specific human duty laid upon us, which is to distinguish innocence and guilt as far as is given us in the conduct of human affairs, not in order to put in question the equality of all

³⁵⁸ O'Donovan, 'Law, Moderation and Forgiveness', in *Church as Politeia – The Political Self-Understanding of Christianity*, ed. by Christoph Stumpf and Holger Zaborowski (Berlin: Walter de Gruyter, 2004), pp. 1-12.

human person before God, but in order to respect the limits which God sets upon our invasion of other people's lives. (JWR, 47)

Between a static ideal of love and potentially revengeful justice O'Donovan's notion of 'the service of reconciliation' presents a 'third' recognising Christ's lordship. This residual duality or 'third', however, itself results from Christ's being and work, a not-yet fully complete reconciliation of God and humankind.

Once again this brings into focus the relationship between the old and the new aeon, law and the gospel of love. Both Ramsey and Elshtain in their own different ways had favoured a Gnostic version of 'sectarian' Christian love, though Elshtain's natural theology simultaneously saw love as an extension of natural needs and imperial politics. Like Ramsey O'Donovan draws attention to Jesus' saying: 'Do not suppose that I have come to destroy the law and the prophets. I have not come to destroy them but to fulfil them.' (Mt, 5:17) He discerns two interpretations of 'fulfilment': either as fulfilling all the requirements of law, so that the law is needed no more; or as an add-on to the law, an optional extra.³⁵⁹ Both, notably, present a sharp distinction between love and law, both allowing either for the anti-legalism of a state's 'exceptionalism' or the moralising of that state's politics.^{360 361}

O'Donovan again discerns a third possibility: '*expectation* is what Israel has inherited, *fulfilment* is the satisfaction of that expectation' (DN, 109). There is now a responsibility directly to God, the 'obedience within the hidden sphere of attitudes and actions that are open to God's eyes alone.' The inner and the outer man are now public before God, requiring the same seriousness. Elsewhere, O'Donovan relates reconciliation and judgment (i.e. hate the sin, love the sinner) to divine justification in God's act in Christ: 'God's decisive act of justice was a *constitutive* act, just by virtue of the justice it brought about, not solely by its

³⁵⁹ The first version is closer to Milbank, the latter to liberal Christian realism.

³⁶⁰ For O'Donovan's interaction with and parting from Lutheranism, though not necessarily Luther, see RMO, 144 f., 153-155.

³⁶¹ O'Donovan, 'Law, Moderation and Forgiveness', p. 1.

response to obligation, and it took form as an act of forgiveness.³⁶² Judgment, as indicated earlier, is only intelligible from a ‘Judge not!’, the ‘point of transition between the political and the counter-political, the defining limit where closure is imposed upon the act of judgment’. In short, the moral dimension of judgment is both more intense, because it includes the inner attitudes and motivations, and less intense, because it also includes the prospect of reconciliation.

Practically, this requires a perfection and generosity of God’s disciples that does not stay ‘within the limits which public rationality sets on its approval of benevolence.’ It puts loving judgment in the realm of the heart and therefore makes intention morally relevant in the first place. To be content with a public legal framework is ‘hypocrisy’. ‘An extravagant, unmeasured goodness, corresponding to God’s own providential care, defies the logic of public expectation’ (DN, 109). A perfect synonym for generosity and the rejection of hypocrisy is ‘performance’ whilst the analogical act of judgment is limited by a reflective-critical self-transcendence, by ‘judgment on judgment’: ‘Forgiveness corrects the established pattern of justice as the pattern of justice corrects itself by attending to itself and passing judgment on itself.’ – In terms of Just War thinking this point is crucial, because it also relates to the doctrine of double-effect. The Christian approach appeals to agents’ hearts before a divine public court. Hence discrimination has its focus on *intentions* and their objective correlation in proportionality.

So love and justice do not merely collapse into each other, even if the biblical love command initially serves to understand Christian discipleship in war (Augustine) or the virtue of charity provided the starting point (Aquinas). (JWR, 9) Neither do they stand side-by-side, the political act being judgment, whereas love is non-judgment, suspended in a ‘time of war’ or relegated to a private forgiveness, the sphere of internal motive or a prospective ‘after the

³⁶² Ibid., p.5.

war’, as for Elshtain. The dialectic between antinomian or private forward-looking forgiveness and a backward-looking Deist conception of mechanical justice is replaced by truly ‘limited’ judgment. It is limited not by tragic failure (‘Implementing democracy does not work’) in view of an eschatological rift, but limited because forgiveness – even in judgment – ‘assumes a controlling immediacy’ (RMO, 155). Love (or forgiveness) and justice stand in a paradoxical relationship when love ‘can smite, and even slay’ (JWR, 9). Faithful love and lethal judgment are kept distinct yet merge, flowing into analogous performance, the ‘reconciling act of judgment’ in ‘the theatre of war’.

O’Donovan’s correction of the stark Pauline opposition between gospel love and the Mosaic Law also connects action to reality: in the light of the vindicated creation order, an ordered moral response is itself evangelical. First, the act of judgment is ordered by international law and corresponds to the ordered international sphere, a pluralistic set of nations.³⁶³ Second, the law is there and already fulfilled from the point of view of God’s generous love. This makes the analogical performance of judgment *possible* in the first place. The demand that in this vein a warring government must transcend its own interest and judge as between two claimants then entails the varied limitations of the act of judgment: not to aim for a destruction of the neighbour, to discriminate and to proportion one’s action to a good. The median guilt of the soldier that leads to post-war immunity is equally included in this understanding, as is the notion of punishment, even between states. It is not merely reactive, authoritative retribution that presumes a hierarchy of states, even if just a temporary one. O’Donovan especially conceives the notion of punishment as being a notion that has a *limiting* effect on the act of judgment, because it has both the wrong-doing of the other as well as the horizon of settling a right with him in view.

³⁶³ For an integration of O’Donovan into the field of international law and theory see Antony Carty, ‘The Moral Theologian, Oliver O’Donovan and International Law’, *Political Theology*, 9(2008), 339-362.

The fact that O'Donovan's approach is inextricably linked to a confession of Christian faith, and not merely 'compatible' with it, also changes the very nature of the just war proposal, especially in comparison to the previous two chapters. Christian realism could see 'just war' as a 'theory' or 'account of statecraft', thus merely abstracting from 'the reality of the situation' and moralising or idealising it. This, I argued, was the logic of Elshtain's civic edification. In a similar manner, Ramsey's 'mythopoetic' reading signified both the Christian's separation from the political, whilst condoning its determinist reluctance to change. Unless, as in Ramsey's agapeic phase, ethical action springs from a wholly other realm beyond good and evil (possibly 'fundamentalist') Christian ethics in this paradigmatic constellation has to become a discipline of cultural Protestantism.

O'Donovan's 'just-war theory' (he accepts the term only as a misnomer [JWR, vii]) is first of all rooted in a consistent reluctance to separate 'ethics' from Christian theology in general, and his theology specifically. (WJ, ix-xii, RMO, COL) Ethics for him rather emerge as a condensed *extractum* of political theology which responds to 'ethical questions'. As he replaces the Kantian and Hegelian notions of divine dualism or mediation with his own biblical-exegetical framework, both doing Christian theology and 'doing ethics' become a *prophetic* task. – What does this mean? In *Desire of the Nations* locates prophecy in between the divine and the actual situation:

To prophesy is to speak a word from God to the church as it is placed here and now; to declare that the present situation is this, and not that. It is not scriptural exposition: it brings forward something new and of the moment, something not wholly predictable. Yet it is not free and exploratory innovation, but is always predicated upon careful attention to the testimony of Israel's prophets and apostles to the Christ-event. In the light of that testimony, it discovers the present. (DN, 188)

True witness cannot be sublated into philosophy, but understands and acts whilst *pointing at the truth of Christian faith*:

... if God's word of judgment pronounced in Christ is the foundation for a new order of society, the witnesses who challenged the prevailing political order in the name of Christ were not acting anti-politically or purely negatively, but were preparing the way for a new foundation, one constituted by participation in the exercise of the Messiah's authority. (BI, 44)

Hence, all Christian action responds to divine activity in history, in the faithful immediacy of Christ the mediator. 'Doing Christian ethics' is no different from acting ethically in a different vocation. Prophecy, O'Donovan emphasises, is the paradigmatic umbrella of all the church's vocations:

Out of all its vocations the church prophesies: its administration, its charity, its music, its art, its theology, its politics, its religious ecstasy, its preaching. Prophecy is the archetypal charisma, the paradigm of all the others. The church prophesies to the world, discovering the situation of the world and passing judgment on it. (DN, 188)

However, this is not merely a general statement about the church; O'Donovan here carves out the space from which the Christian political ethicist speaks:

But the individual prophet, like all who exercise a charisma, does not address the world immediately, but the church, and, by contributing to the church's prophetic identity, addresses the world through the church. There is no private Christian counsel to be delivered to the principalities and powers, bypassing their need to confront the social reality of the church. A theologian, for example, who is invited to participate in an exercise of secular deliberation about matters of social concern, has no independent standing to give advice. Such a one either speaks for and out of the church (not for its hierarchy or synods, of course, but for its faith and tradition) or is a false prophet. (DN, 188)

In short, not only do prophets make ethical statements, but doing Christian ethics is prophetic itself, in the same way that the act of judgment is prophetic. Both simultaneously point at the triune God revealed in Christ. Thus it facilitates a *metanoia* in secular political authorities, a turning to God, through understanding of what they are at heart.

This has several implications. On the one hand, evangelical political theology is consciously *limited* by the fact that it proclaims the truth as accepted by Christianity and emerges in the discourse of the church. As O'Donovan says in response to the Bishops of the Church of England writing on Iraq:

[The just war theory] makes assumptions about the political leaders it addresses, namely, that they are either part of the Christian community or interested in understanding it, and in either case they need to know how the community of the faithful is to conceive *its* obligations in relation to Iraq. (JWR, 129)

Hence, the task is 'to communicate the *moral posture* of those who recognise their responsibilities for Iraq in Christ Jesus, rather than to dictate concrete policy conclusions, which, a month later, are already beginning to look out of date' (JWR, 129). In so far as 'religion' and 'politics' are seen as separate, or the state relies on its own mythological and/or ideological superstructure (whether liberal or otherwise), this approach may be regarded as 'sectarian'.

The specific purpose of *Just War Revisited*, however, is primarily explanatory: 'The task of political ethics at this point is to provide as full a general account of the reconciling praxis of judgment as may be possible' (JWR, 13). This explanation implies that theology may be 'sectarian' without being cryptic. One reason is that it communicates through and is limited by language, and shares this precondition with other philosophical systems. Hence on the other hand, as O'Donovan indicates, evangelical political theology is *unlimited*. In terms of the content of faith as well as the fact that Christians within the church are to serve the political community, the universality of the gospel message presupposes no intrinsic limitation on its audience.³⁶⁴ Theology as a discipline *of* the church is not exclusively done

³⁶⁴ O'Donovan's dedicatory preface is addressed to Rowan Williams to '[put] a suitable edge on your thoughts for the service of the church and the political community' (JWR, ix). One may argue that there is a 'missionary frontier' to doing Christian ethics as much as there is a missionary frontier to government-as-judgment. It means that neither a congruency nor incongruence between church pronouncements and the political community can be presumed; it has to be tested. 'Simply as a manner of proceeding, the Bishops would have done better to address

for the church and may speak to the state. Beginning with *Desire of the Nations* O'Donovan set out to uncover the possibility of meaningful political action precisely on the mediate borderline between the heavenly and the earthly city.

Does this mean he cannot render verdicts on concrete moral decisions? Yes and no. No, because just war theory does not take the 'judging for yourselves' and therefore also the thinking for themselves away from each person. It has a 'spirituality', 'by which is meant its capacity to make the reflecting subject conscious of his or her own responsible position before God in relation to other members of society who have their own differently responsible positions' (JWR, ix). Moreover, the just-war theory refuses to render wholesale verdicts on whether this or that war is just. '... [It] is very often supposed that just-war theory undertakes *to validate or invalidate particular wars*. That would be an impossible undertaking. History knows of no just wars, as it knows of no just peoples.' (JWR, 13) The reason is that '[major] historical events cannot be justified or criticised in one mouthful; they are concatenations and agglomerations of many separate actions and many varied results' (JWR, 13). Instead, 'practical doctrine offers help ... for those who wish to learn *how to engage in* the praxis of judgment – to engage in it in *these* days and in *these* circumstances, where we actually find ourselves, here and now' (JWR, 13). In other words, outright (pacifist or quasi-pacifist) critiques, as well as the legitimisation of a particular war, both give way to introducing principles guiding each agent's decisions as they actually approach their specific concrete, historical situation. This, again, corrects both Elshstain's and some of Ramsey's use of the Just War tradition and marks the distinct nature of O'Donovan's approach. Yet it equally thinks through Ramsey's saying that the Christian may not tell the politician what to think, but how to think; just-war theory is a 'tool' (JWR, 127).

the question of Iraq on its own terms first, and only then, when they had proposed something, ask to what extent the policies of the US administration were in accord' (JWR, 130).

Although O'Donovan quotes Ramsey there, his practical engagement is much more tentative than Ramsey's side-taking during the Vietnam War and support for the U.S. national security strategy. The last chapter of *Just War Revisited* presents his own practical engagement with the crisis of 2002 that led to the Iraq War. It does – again without providing a concrete *verdict* – at least demonstrate how practical engagement according to O'Donovan's own understanding is possible. It is entitled 'without authority', he says, 'to mark the difference between outlining a principled approach, on which I certainly claim *some* authority, and interpreting actual events, in which I am as open to misjudgements as anyone' (JWR, vii). In this vein he notes that 'practical reasoning towards decisions that others must take can only clear the way for them to understand their responsibilities before God and their neighbours' (JWR, 127). Drawing on the information and discourse presented to the public at the time, he supports the conclusions reached by the Bishops of the Church of England:

... that the policy of disarming Iraq of weapons of mass destruction is right; that the chief issue internationally is the authority of the UN; that this authority must be able to call upon military action in a last resort; but that 'a preventive war against Iraq' would be unacceptable 'at this juncture'; that the 'immense suffering' and 'unpredictable environmental, economic and political consequences' of war must be central to planning; and that the Middle East peace process must be revitalised. (JWR, 128)

At the same time, he criticises the way the Bishops have come to their conclusion, by way of *ex cathedra* recommendations. O'Donovan then argues that the penal, retributive and defensive aspects of the just cause may be employed in the deliberations between the UN and the US in response to 'the question of Iraq' (JWR, 130). Nevertheless, neither predictions nor 'precise recommendations' are possible for O'Donovan as a 'private' contributor to a political debate. (JWR, 127) 'Useful recommendations will tend to be introduced by the

useful word, “if”. That is to say, they will address *hypothetical* practical situations, not basing themselves on a pretended knowledge about what is, or what will be, the case.’ (JWR, 127)

Although he gives to others the tool for deliberation and emphasises the freedom to their own responsible action, this practical vagueness raises a problem. The individual theologian does address the church and through it the world, but there is no distinct ‘church discipline’. O’Donovan – perhaps echoing Ramsey – seems to want to avoid associating the church with a think tank, a political campaign or a party. To the ‘curiously entitled’ section of the Episcopal document ‘The Church of England and Iraq’ organised ‘even more curiously’ under the headings ‘Jus ad bellum’ and ‘Jus in bello’ he cries out: ‘What! Is the *Church of England* planning to make war on Iraq?’ (JWR, 129). In that sense the moral theologian outlines the theological grounds of authority, reality and the political act. But he would regard giving advice in the form of ‘A Christian in this particular situation should do x or y’ (perhaps adding in ‘... in order to be a Christian at all’) as taking away the individual freedom to do the good.

Here some of O’Donovan’s critics have noted a danger that his evangelical ethics may after all collapse into an individualist, possibly pietist, spirituality that renders the church as a political, and politically relevant, society irrelevant.³⁶⁵ O’Donovan would counter this argument by arguing a) that the church is a Eucharistic body (RMO) and b) that the church as a pneumatologically constituted body (?) of mutual recognition can neither be reduced to a monistic corporate agency, nor to a set of individual subjectivities. (RMO)

Somewhat linked to this critique, however, is the more problematic implication that the purely practical proposal limited by a tentative and hypothetical ‘if’, refrains from judgment and decision. It may then lose its critical capacities. It may even fail to identify and allow for the judgment of those guilty of wholesome crimes against humanity committed

³⁶⁵ In a stark contrast to this stands e.g. the Orthodox bishop of Cyprus arguing in early 2013 that Cyprus should leave the Eurozone and offering the Church’s wealth up for a national sovereign fund.

under the ideational and institutional cover of political vocation. Dissolving such crimes into the rather benevolent verdict of ‘failure of practical reason’ makes space for the ‘deferred repentance’ which is characteristic of the moral vacuum some politicians seem keen to occupy.

To summarise this section: the law-abiding act of judgment sits in the medium position between antagonistic praxis of self-defense and pacifism or idealism as well as between theory and praxis on the grounds of the connection wrought between Law and Gospel through expectation and fulfilment. Hence the act of judgment equally balances out the theological oscillation between exceptionally warring justice (or ‘law’) and peaceful, universal love. Pointing to the reality of Christ’s rule it is specifically Christian and prophetic – as is ‘doing ethics’ itself.

Conclusion

This chapter has been the central chapter of the present project for several reasons. First, I showed that O’Donovan presents a practical proposal that moves between Just War realism and idealism, whilst also keeping open the freedom for the continuous practical doing of justice that brings together and actively reconciles the political Is and the Christian moral Ought. His whole proposal centred on the ‘political act’: government-as-judgment and ‘doing justice’.

This, I argued in the analytical section, was the reflection of a fundamental theological shift. O’Donovan shifted from the post-Enlightenment duality of Jesus Christ that splits the ‘ethic of Jesus’ from a remote rule of Christ in a beyond or at the end of times. This dualism was essentially a philosophical, specifically epistemological pre-condition to which modern theology, and to a large extent Christian ethics, remains captive. O’Donovan,

however, began from the insight that the Kantian and Hegelian frameworks are unacceptable, even though they had theological precedents and congruencies. He replaced them with an exegetical, though not a fideist framework. This meant that the heart of the gospel, the mediation between God and humankind in Christ and the present rule of that mediator was taken as a paradoxical unity. It also meant that it could not allow for a theological dualism or immanent, historicist repetitions of that Event. And it was the starting point to which political reality, authority and action was related. Notably, these aspects or analytical foci were difficult to separate when looking at ‘government-as-judgment’, precisely because when judgment was conceived as successful, their distinction is somewhat obsolete: in the practical reconciliation wrought through political judgment, the very separation of action from agent and both from ‘reality’ becomes questionable.

In taking the paradox at the heart of the world seriously, O’Donovan’s notion of the act of judgment was unequivocally evangelical. On the grounds of a *sola fide*, it remains noteworthy for being impossible to ‘pin down’. It is neither statist nor internationalist, neither individualist nor communitarian. Instead – from the perspective of solidarity, brought about by an ecclesial insight into a truthful community – it both recognizes and does not recognize institutional structures, which is based on the fact that authority precedes institutions. In that regard one of the results was also that the revolutionary-democratic paradigm was transcended (though not rejected), in so far it can only shift between individualistic, ultimately private claim rights and an alienating, possibly unquestionable state structure.³⁶⁶ Equally, the theological and ecclesial equivalent of this was resolved in the agency of Israel: between subjectivist *agape* and love mediated in a papal structure, O’Donovan discerned the actual community of the faithful. The nature of the act is primarily grounded in faith and only from here the notion of love and justice – of non-violent, non-discriminate universal love and

³⁶⁶ Whether tyranny is then understood as absolute subjectivism or absolute objectivism makes no difference, since tyranny is marked by the fact that the two collapse into each other.

retributive, defensive justice can come into view as two dimensions that must continuously be done as justice must be done. In terms of the theo-logic, O'Donovan's approach is distinct from the previous ones as the dualism and dialectic of the politically real and the moral ideal here is replaced or rather sublated – integrated and transcended. Whilst his approach is intelligible through this comparative lens, it is nevertheless specifically Christian and tied to a specific, ecclesial praxis of faith.

Interlude

This is now the half-time of the thesis. If the logical movement up to now had to be put into one word, it could perhaps be ‘removal’ – a removal *from* politics, though not *of* politics, a radical decentring and making-paradox of the political agent, action and reality. One could say the three chapters up to now have been a gradual, three-step movement of the gaze towards a specifically Christian vision of *was die Welt im Innersten zusammenhält* – the Christ mediating God’s rule as the deepest peace of a all being.³⁶⁷ This removal meant that ‘the political’, to put my three focal points into one phrase, in its essential being as an immanent, antagonistic sphere with mythical or ideological overtones was gradually and critically readjusted. O’Donovan introduced the possibility of faithfully entering the political through the non-political, through the non-judging.

This also entailed a ‘removal’ in the sense of clarity and decisiveness of Just War thinking. We have moved on from Elshtain’s polemic ‘Yes’ to the ‘War against Terror’ to Ramsey’s grand movement from ‘Never’ to ‘Inevitably’ in regards to Vietnam. In principle, for O’Donovan the fundamental, ontological ‘No’ to war and violence, to sovereignty and judgment resulted in a possible, but always problematic, provisional ‘Yes’. Elshtain used the ‘Just War theory’ to give an ‘account’ of actual statecraft for the sake of edifying all US citizens; Ramsey envisioned a Christian democratic theory, always in danger of being subsumed into the prevalent state’s myth, especially in the case where the enemy was communist. O’Donovan’s perspective of faith both denies and confirms ‘ethical’ claims without necessarily being ‘ethical’, a judicious ‘thou Ought’; his ‘just war proposal’ has been a form of witness, of pointing-at a divine reality of peace. The key aim was to clarify the principles of decision-making for every faithful person.

³⁶⁷ ,... what holds the world together at its core’, Johann Wolfgang von Goethe, *Faust I*, 381-382.

The central pivotal point of each proposal moved as well, from the sovereign state to the faithful individual within the ‘metaphysics of democracy’ and finally the mediating rule of Christ himself. Conceptually, Ramsey was a somewhat transitional thinker between Elshtain and O’Donovan. Elshtain’s interplay between the sovereign state incorporating and warranting human rights abroad, a national subjectivism that was empire, in some parts also framed Ramsey’s development between idealism and realism. However, Ramsey equally uncovered the grounds of evangelical, political freedom and the ‘terminal values’ of political action. This moment of freedom O’Donovan contextualised in a biblical account of political action, which, because it was related to a moral order and divine reality, overcomes the impasse between the positivisms of contractarian state-sovereignty and papalist international legalism.

What lies ahead in Part II? In many ways, this removal is now reversed. The two chapters ahead return to the paradigm and the divisions of the first two chapters on Jean Bethke Elshtain and Paul Ramsey. But whereas Kant’s dualism and Hegel’s philosophical mediation was not always articulated or even denied by these authors, David Rodin and Uwe Steinhoff explicitly champion (Kantian) Enlightenment ethics based on the separation of rational ethics and faith commitments. It will be immediately striking how the very tone changes as they turn to the anthropocentrism of human rights. Such anthropocentrism may be the result of humans, at least since Copernicus, ‘rolling out of the Centre into the x’ (Nietzsche). But then, Eberhard Jüngel asks, how could the human then become the measure of all things? His answer is: *because of that*.³⁶⁸ Moral anthropocentrism after the Enlightenment means the necessary rectification of what these authors think was a pre-

³⁶⁸ Cited in Eberhard Jüngel, *Gott als Geheimnis der Welt: zur Begründung der Theologie des Gekreuzigten im Streit zwischen Theismus u. Atheismus*, 3rd ed. (Tübingen: Mohr, 1978), p. 17. ‘Inwiefern kann man dann aber behaupten, daß der Mensch sich zum Maß aller Dinge mache und die Grundprobleme der Neuzeit allemal anthropologische Probleme seien? Die Antwort muß lauten: gerade deshalb.’

modern de-centring and subjection of the individual to political authorities, supposedly ruling unquestionably and with divine sanction.

This has two results. First, on the level of ‘theology’, anthropocentrism means the real and the ideal, the Is and Ought fall together in the *humanum* itself. For both Rodin and Steinhoff this is a matter both of convention – Who would *dare* to question human rights? – and conviction, albeit one that cannot fully expound its own presuppositions. Does this mark the success or the failure of Christianity? It marks a *success* in that the moral equality and infinite value of the individual is now politically recognised. But it marks a failure in that both authors represent a return to the Old Age of the law. What Nietzsche lauded as the Renaissance’s ‘modern’ choice between sovereign state and supra-political, quasi-papal institution, the death of Christianity, returns.³⁶⁹ This means that the authors of Part II can be directly short-circuited with Elshtain and, to some extent, Ramsey.

Second, on the level of practical Just War ethics, the idealism-realism divide returns, though now in an exclusively immanent fashion. If for Elshtain and Ramsey ‘idealism’ could conceptually still integrate and discuss the dimension of utopian, religious ‘fanaticism’ or the fideism of Barth’s inclusion of the state into Christ, then in the following chapters this dimension seems neither intelligible nor of concern. The poles of the realism-idealism divide takes place within a purely immanent frame. On the one hand, there is the supra-political order – or attempt at ordering – the international sphere through international law and institutions, and on the other hand the revolutionary-democratic paradigm of modern sovereign states. Whereas David Rodin presents an example of the former, Steinhoff, who has also been highly critical of Habermas, presents an example of the latter. In concrete terms, politics oscillates between two options: either Rodin’s legalism, which has no moral political solution to wars as they happen; or Steinhoff’s liberalism of self-defence, which has

³⁶⁹ See Friedrich Nietzsche, *Ecce Homo*, ed. by Giorgio Colli and Mazzino Montinari (Berlin: de Gruyter, 1988), p. 359, ‘Der Fall Wagner’: ‘Luther, dies Verhängnis von Mönch, hat die Kirche, und, was tausend Mal schlimmer ist, das Christentum wiederhergestellt, im Augenblicke, wo es unterlag.’

terrorism, understood as an indiscriminate form of blackmail, as a final horizon. This proposal will then also be short-circuited with Elshtain's.

PART II – Philosophical ethics of war

David Rodin's human rights idealism – the dualism and dialectic of a renewed papacy

David Rodin is a contemporary moral philosopher in Oxford who works on the jurisprudence of international law. His book *Just War and Self-Defense*, published in 2004, has had a fruitful impact on just war ethics and highlighted several contradictions and problems in current scholarship.³⁷⁰ At first sight, the book seems concerned with a niche problem: Rodin argues that the universal right to national-defense as incorporated in current international law is incoherent. It is based on the 'domestic analogy', which understands states as or analogously to persons. However, if one takes individual human rights seriously, Rodin thinks, then the model of regulated war within a cosmopolitan global state is more coherent.

Rodin identifies with the idealist school of contemporary International Relations. He is the only explicitly idealist author I am looking at here, but there are fundamental structural similarities between him and the early Ramsey. Rodin's aim is the effective protection of individual human rights within an international legal framework, an approach geared towards reducing and eventually eliminating war.³⁷¹ He combines influences from Hugo Grotius,

³⁷⁰ David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2004) Hereafter SD.

³⁷¹ Rodin, *How We Can Effectively Reduce or even Eliminate Armed Conflict*, Royal Society Showcase 2010, <http://www.youtube.com/watch?v=tdOtR54dn5c> [accessed November 26, 2012]

Immanuel Kant and the political liberalism associated with John Rawls. Equally he reaches back to Thomas Aquinas for the notion of international punitive war.

The background to understand him in comparison to the authors in Part I must again be understood before a broad Christological shift: Kant's Copernican turn is crucial. As Christian morality falls behind the horizon of Enlightened reason, a fundamental dualism forms the premise of his thought. As a result, every individual human becomes a 'prince of peace'. This is where Rodin sets in. The just war proposal moves from the question 'How should a political authority do justice in response to God's commands and human sins?' to the anthropocentric 'How can each human being's rights best be protected?' 'The reality of politics' and 'morality' become immanent opposites. For Rodin, it is then modern international law that takes up the ultimate mediating position between them, whilst its Christian predecessor remains a mute presence. The political task is to gradually flesh the law out into global institutions. As the separation between morality and politics is to be gradually closed, Rodin's classic form of Enlightenment progressivism sets up a perpetual, immanent eschatological gap.

Taking the supposedly 'utopian' side on the idealism-realism divide, Rodin works on the same logical and theological premises as Christian realism. Just like the state in Elstain's proposal, the law cannot make up for the ultimate mediating event, only encroach upon it. Hence the separation and dialectic between an impractical humanitarian idealism and 'tragic' realism or antagonism returns. Whilst Rodin conceptually represents the polar opposite to Elstain in terms of institutional political authority, they continue on the same logical premises and thus generate problems that are comparable: if Elstain's sovereign, 'Augustinian' realism generated its own (Wilsonian) idealism, Rodin's cosmopolitan idealism has to be politically institutionalised into a body that has 'teeth'. The analytical part

below will therefore again mirror the structural dualisms that were identified in the first chapter above.

At the same time, Rodin's moral Ought of a cosmopolitan peace reaches back more nonchalantly to the pre-modern tradition. His demands for a global state go even beyond Kant's and Rawls' understanding of global justice. In fact he echoes the papalist model of political existence. Contemporary conflicts between 'statist' realism and cosmopolitan idealism are therefore a renewed Investiture, visible for example in the debate over whether the 'right authority' to decide over the Iraq War was the United States or the United Nations. What cannot be envisioned on both sides, however, is a fundamental (Christological) *paradox* between politics and morality that results in the freedom to authoritatively, lawfully and *actually* 'do Right'. But before explicating this in detail, I will first give a short exposition of Rodin's arguments in *War and Self-Defense*.

I. Exposition: *War and Self-Defense*

The right to self-defense

How does Rodin develop his idealist political thought? The first part of *War and Self-Defense* essentially outlines basic implications of his anthropocentric approach. The Is and Ought here collapse in the individual, his protection being the highest command. The right to self-defence forms the central building block of thinking about war.³⁷² But because this is already legally codified, Rodin examines it through the interplay between morality and legality. The first half of the book therefore 'provides a moral grounding of the right'. The question here

³⁷² So for example Cécile Fabre, 'Killing in Humanitarian Intervention', seminar at the Oxford Institute for Ethics, Law and Armed Conflict (ELAC), on May 3, 2011.

is: how far is one permitted to go in defending oneself? What are the moral constraints to the legal right? Later this serves as a model to critique national-defense.

In current law self-defense is not excused, but justified. The defending person can be fully held responsible, and her act is ‘right and proper’ (SD, 30). Self-defense consists in a liberty to harm without any attendant claims against others that they assist. (32) Even if there is a duty for others to help, there can hardly be a *claim* to charity.³⁷³ To understand the right ‘morally’, Rodin breaks it down into four components: the subject (the defender), the object (the attacker), the content (the violent act) and the end to be defended. With these three components the right stands on ‘a justificatory three-legged stool’ (36).

The first leg of the stool is the basic right a person has *to* a particular good: her life and bodily integrity. Notably, Rodin’s *explicatio* is the *explicandum*: initially the ‘right to life’ is taken for granted. Rodin then points out that defensive rights can also stem from a duty of care, e.g. of parents for children, or leaders for subordinates. ‘Duties of rescue’ arise when a person is endangered. But unlike self-defense, a full liberty, these are ‘half-liberties’: a liberty to act combined with a duty to defend someone else. (39) I may be at liberty to sacrifice my own life, but I have a duty to defend others. However, these ‘moral relationships’ remain independent of a *legal* right to national-defense. (130) Unlike Elshstain, Rodin does not see the state as a necessary, singular ‘guarantor’ of individual and communal rights.³⁷⁴

The relationship between defence and the objective of a right comprises the second ‘justificatory’ leg. Here the right is ‘grounded’ in the principles of proportionality, necessity,

³⁷³ Pace Elshstain, see JWT and ‘International Justice as Equal Regard’ (see Ch. 1 above)

³⁷⁴ Elshstain, *Just War against Terror*, pp. 168-169, 173. The point that (international) law requires ‘warranting’ or ‘enforcement’, otherwise it would have no pragmatic value, implies an instrumental, consequentialist mindset already present in Plato. Obedience here is tied to ulterior motives (e.g. fear of punishment, [national] interests, etc.). Both Rodin’s Kantian law and O’Donovan’s Grotian concept of Right regard obedience as an intrinsic end as law flows from Right. At least from this perspective jurisprudence-as-Just-War is no more problematic than purely ‘moral’ just war thinking. Both can claim a degree of tradition as giving them authority; both are contended; and both have at the end positive law.

and imminence. These moral limitations become an essential precondition for the right to be justifiably exercised. Rodin explicitly rejects the Lockean tradition of natural rights in the state of nature. For example, it is disproportionate to kill someone in defence of one's property. Life is of a higher intrinsic value than property, since property is not a *sine qua non* of life.³⁷⁵ One may kill in defense of something life directly depends on (for example one's last food), but nothing replaceable or reconstructible. (44-46) 'Necessity' means self-defence must be indispensable or unavoidable. There is a duty to retreat from an aggressor to avoid any harm. 'Imminence' is a derivative of necessity and 'the application of the necessity requirement subject to epistemic limitations.' – 'The point is that we cannot know with the required degree of certainty that a defensive act is necessary until the infliction of harm is imminent' (41). Later on in the book Rodin tests these limitations to the use of violent force for their applicability to war.

Rodin argues that the third justificatory leg between aggressor and defender, the permission to exercise one's defensive right, depends on the 'moral fault' of the aggressor. Only if a person is attacked *wrongfully*, does she have the liberty to defend herself or another person. Rodin bases this on a conditional Golden Rule, a 'reciprocal duty'. One should not harm others as long as they do the same to us 'or at least remain within the bounds of civility' (SD, 78). Because of his wrongful attack, the aggressor loses his right to life in relation to the defender.³⁷⁶ For example, a robber who resists a policeman is not justified to defend himself.³⁷⁷ At the same time, self-defense is never a 'forced choice': even under duress a defender can choose not to kill. (SD, 59)

³⁷⁵ Locke refers to life as a property. Rodin, less 'materialistic', makes a sharp distinction between the two. John Locke, *Two Treatises*, ed. by Peter Laslett (Cambridge: Cambridge University Press, 1988), p. 350.

³⁷⁶ This essentially liberal and legal principle equates wrongfulness with aggression and vice versa. See above Ramsey on the 'ordinary doctrine of war'.

³⁷⁷ This reciprocity substitutes the idea of self-defense as a forced choice or a lesser evil. If seen as a 'lesser evil', self-defense depends on contingent facts about who is valuable, a calculus that may become elitist. Here Rodin is more convincing than Augustine, who sees self-defense as a lesser evil, arguably because it is unjustified from the perspective of love. See Augustine in Oliver O'Donovan, 'From *On the Free Choice of the Will*, Bk. 1', in *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought*, ed. by Oliver

So the first part of Rodin's book provides the basics. Generally, he takes the individual right to self-defense for granted, both morally and legally. But it is not *sui generis* and absolute; it may be exercised only under certain conditions. Rodin even thinks there are situations when lethal self-defense is not justified at all, for example against attackers incapable of moral fault (insanity or infancy excuse). In that sense, one might note a residual 'transformism' here: lethal self-defence is heavily restricted for the sake of protecting even the attacker. In any case, Rodin next turns to examining the defensive right in the international legal sphere.

National-defense

If one accepts his conceptualisation of individual self-defense, Rodin argues, a national analogous right to self-defense in international law is incoherent. Despite its 'intuitive appeal' he thinks the 'domestic analogy' between individual and national-defense as between humans and states does not hold water.³⁷⁸ It cannot account for the defender, the object and the end of the right at a national level.³⁷⁹ In this way Rodin seeks to dismantle the 'realism' or, more narrowly, 'statism' in current international law.

With David Luban and Thomas Nagel, Rodin suggests a choice between two ways of conceptualising defensive war. The so-called 'reductive strategy' reduces national defence to

O'Donovan and Joan Lockwood O'Donovan (Grand Rapids, Mich.; Cambridge: William B. Eerdmans Pub. Co.: 1999), pp. 113-144, 114.

³⁷⁸ Reichenbach thinks the analogy is Michael Walzer's anachronistic invention. It appears Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), p. 46, 49-51; also Bull, 'Society and Anarchy in international Relations' and 'The Grotian Conception of International Society', in *Diplomatic Investigations: Essays in the Theory of International Politics*, ed. by Butterfield, Herbert and Martin Wright (Cambridge, Mass.: Harvard University Press, 1968); Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p 58 f. Historically, this goes back to the prince being like a *pater familias*, but changes with Machiavelli's notion of *lo stato*. With Hobbes' *Leviathan* the individual gets fully absorbed into the state's authority. Rodin's dual choice between reductive and analogous strategies represents this state-institutionalist orientation.

³⁷⁹ 'Self-defense' refers to the right and act of personal self-defense; 'national-defense' to the right and act of national self-defense. (SD, 13)

a mass movement of individual self-defence.³⁸⁰ But the so-called ‘analogous strategy’ understands states as self-defending persons. Rodin claims that either strategy fails to account for a right to national defence. First, if we follow the reductive strategy, national-defence permits much more than individual self-defence. Soldiers may actively attack enemy forces, defend empty territory or even conquer the adversary’s territory. In domestic individual realm these actions would be vastly disproportionate and criminal. Necessity, proportionality and imminence are neither clearly anchored in international law nor can they be observed in the same way as between individuals, especially if we acknowledge the complex interplay between aggression and defence. (SD, 111-115)

Moreover, Rodin argues, the right does not cover what it promises to cover, at least if judged by the standard of individual human rights. If national-defence were the result of the state’s duty to defend its citizens like parents their children (129), a humanitarian intervention by a foreign force could perhaps protect them more effectively and justifiably. (131) In fact, when citizens are the victims of their own state, their neighbours’ moral responsibility to protect them actually *overrides* that state’s right to national-defence. Moreover, current national-defence allows the defence of uninhabited territory. If there is a ‘bloodless invasion’, the ‘defence of persons is not a necessary condition’ to exercise the right. (132) Hence, Rodin infers, the reductive strategy understanding defensive war as individuals collectively self-defending or being defended, cannot warrant a legal right to national-defence for every state. The personified, but supra-personal entity of the state tied to a distinct territory in this view is only conditionally linked to the protection of its individual citizens.

Also, for Rodin, it is not clear whether defensive war always defends successfully or leads to even more violence and tension. (139) This argument hints at the ‘Responsibility to Protect’ (R2P) beyond borders: the protective moral tenets of current national-defense neither

³⁸⁰ NB: the neo-Kantian concept of personhood is in itself an attempt to save ethics from political scientism or utilitarianism, the reduction of human persons to atoms in a merciless deluge of inevitable events.

stretch beyond national borders nor can they protect citizens from the insecurity of foreign aggression. (146) So for Rodin this Hobbesian reasoning behind the right to national defence fails. Since individuals' protection within an international legal order is the proposal's aim, neither the legitimate subject nor the object can be accounted for.

One could also ground national-defense in the end of the right, which is the survival of the political community. This would be the analogous strategy.³⁸¹ But Rodin points out the mismatch and even antagonism between individuals and states, at least contemporary modern states. Moreover, he argues, international law requires an objectivity of values which cannot have their basis in the diverse 'subjective' values humans place in their (political) communities that stretch 'beyond a broad consensus of diversity' (151). A *legal* right to national-defence indiscriminately covers states whose embodied moral values are either obscure to us or who even 'display a systematic and pervasive level of corruption, brutality, and disregard for human rights' (152).

Only what is objectively and unconditionally acceptable in the first place – for Rodin: the protection of individual humans regardless of their cultural and political contexts – can be the ground for international law. It would defy the very concept of law to assume that only 'good' democratic states get the right. (156)³⁸² Michael Walzer argued in this regard that every political community has the right to self-determination, including the right to national-defense. However, Rodin points out, the outcome of 'working out' who political communities are, is often a result of military, not moral superiority. Political coercion – and again Rodin displays a marked suspicion towards the state – is in fact more likely to distort community

³⁸¹ Rodin notes, albeit without specification, that there are problems with reducing the critique of the analogous strategy to dismantling the state as a good or end in itself.

³⁸² One could argue, as Elshtain does, that the right to national defense is as conditional as the right to self-defense, contingent upon a state's ability to protect human rights. However, Rodin then says this would be 'ad hoc and fails to explain how even consistently aggressive states may have defensive rights if they are the victim of unjustified aggression.' (SD, 148) However, he later argues that there should be principles of subsidiarity and only those states respecting human rights should be regarded as legitimate. Theoretically, this amounts to a conditional right to national-defense after all.

consensus or identities. So rather than grant an unconditional right to national-defence, we need to find another way to ‘deal [...] with the problems of war, conflict, and aggression’ (162).

The responsibility of soldiers

So far Rodin has critically tested the right to national-defense against the essential concern of individual dignity and agency. Now he revises justified ‘military action against an aggressive state’. The international sphere being governed by positive law, he argues, the protection of individuals must be understood as a form of law enforcement. If war is a rights-violating clash between individuals, the moral question is: *How is a defending soldier permitted to kill the soldier of an aggressive state, even though it is states that are engaging in action?* It is ‘a less than intuitive claim’ that soldiers should completely escape responsibility for the unjust wars in which they fight. (166) If a soldier neglects his moral duties towards others by taking part in an unjust, i.e. aggressive war, he loses his right to not being attacked. (165)

The separation between *ius ad bellum* and *ius in bello* is therefore contradictory, Rodin says. If a war is illegal or ‘unjust’, the violent actions performed by the unjust side cannot be lawful. (166)³⁸³ Effectively all military actions on the ‘unjust side’ are crimes. Hence, the ‘moral division of labour’ between governments responsible for deciding and soldiers responsible for fighting should be dropped. There is dependence between *ad bellum* and *in bello* morality (dependence theory). If a government undertakes an unjust war, the participating soldier becomes morally liable to attack. With this, having dismantled the unconditional authority of nation-states, Rodin fully shifts moral agency and the liability to

³⁸³ See also David Rodin, ‘Should We Be Free to Criticize Serving Soldiers?’, BBC Magazine, 14 Jan 2010 <<http://news.bbc.co.uk/1/hi/magazine/8457885.stm>> [accessed 24 Oct 2012]

be attacked onto the participating individual. Soldiers are small-scale sovereign authorities themselves, so they cannot be fully excused.

War as law enforcement in a universal state

So far two things have been established: a) there is a ‘moral asymmetry’ between soldiers on the just and unjust sides; and b) the wrong-doing of soldiers participating in an aggressive war justifies the violence inflicted on them as lawful punishment (dependence theory). (173)

But to administer punishment for severe human rights violations, Rodin argues, we require a superior, neutral and impartial authority. The only reasonable candidate for this would be a universal state. Its contractarian basis should be the *ius cosmopolitanum* of the individual world citizen, which links individuals’ agency to an authority they can submit to. Such a state would be justified to enforce ‘a genuine rule of law against aggressive states and their soldiers’ (181) and use force against ‘aggressive soldiers understood as persons, and not simply their state’ (180). Although in the end the ‘state of nature’ is not decisive for this argument, Rodin uses it to show why the universal state is a reasonable ideal that should appeal to realists:

Put in the language of the state of nature (or the original position), the question we must ask is whether the original contractors have greater reason to place themselves within a sovereign commonwealth existing in an international state of nature, or within a non-sovereign political society which is subject to the law of a universal sovereign. (185)

Finally he sketches out a moral praxis. What should we *do* after this book? First, it would be to work out principles of political subsidiarity that ‘would seek to balance the rights and interests of the diverse interlocking communities – ... nations, states, regions, cities, as well as the global community of mankind’ (SD, 187). Second, for

now we would have to 'mitigate and moderate the evils of war in the world as it currently is' (198). Such a practical just war proposal, however, is not offered.

II. Analysis: Law as mediator and humanity as the ideal *polis*

What are the constitutive elements and the intrinsic logic of Rodin's proposal? And how does it compare to the authors in Part I above? Rodin prefaces his book with two interesting quotes. The first one is from Augustine's *City of God*, Book XIX. Augustine calls the person who thinks of war and its horrors without mental pain an unhappy person, 'because he has lost all human feelings.' From Kant's *Idea for a Universal History from a Cosmopolitan Point of View* he takes this: 'The greatest challenge for the human race, which nature compels it to meet, is to attain a universal civic society based on the rule of law.' Without over-interpreting them, these remarks convey two dimensions standing side by side in Rodin's architecture: one of 'tragedy' and failure, the other of the post-Kantian progressivist idealism.

This dualist framework is already familiar from Chapters 1 and 2 above, even though Rodin, at least in terms of his aspirations, takes the opposite stance to their realist insistence on tragedy. Ramsey's early pacifist 'ethic of Jesus' practically endorsed the progressive creation of international law and institutions. What will be observed here is therefore, first, the parallel to Ramsey, especially the idealist congruency between the moral and the political, though now starting out from a universal, cosmopolitan dimension that Ramsey came to criticise as 'realising the Kingdom of God'. Second, Rodin's idealism indirectly 'authorises', to use O'Donovan's phrase, the very sovereign and violent political realism that international law is supposed to overcome. Moreover, in actual history, the two may very well collaborate. Third, Rodin's logic remains congruent with Elshstain's, although its content is a complete reversal. His international law as the ultimate mediator between morality and politics and her

national sovereignty are matching opposites and indeed opponents. These points must be developed step by step, the first one being the notion that positive, institutionalised law is the depository of political morality as ultimate political mediator.

Political action

Jurisprudence, law, and utopian aspirations

Beginning with the Is-Ought distinction, Rodin suggests that Kant's 'ought implies can' means 'what one has a moral obligation to do is limited by what is possible – and this must include what is politically possible – in the circumstances' (SD, x).³⁸⁴ However: '... what is politically possible in a given circumstance is itself affected by moral considerations.' As a result 'the relationship between moral discourse and politics is complex: one of a dynamic mutual engagement rather than a simple or outright conflict' (SD, x).

Here international law enters as the mediator between politics and morality. As such it is also a proper 'source' of morality. In that sense, international law must be read here as a secular version, a 'simulacrum' of the body and work of Christ.³⁸⁵ Derived from many treaties and forged in political 'horse-trading, and bully-tactics', it is yet 'an effective moral framework'. International law

has acted as a dynamic intermediary between the differing and often conflicting demands of morality and politics. The corpus of international law is a living example of the attempt to forge a working compromise between what is desirable and what is possible, and as such it is an indispensable source for anyone interested in the moral problems of international relations. (SD, xi)

³⁸⁴ NB: this is a common misinterpretation. Kant means that whatever one *ought* to do is something that one *can* do.

³⁸⁵ William T. Cavanaugh, 'Beyond Secular Parodies', in *Radical Orthodoxy: A New Theology*, ed. by John Milbank, Catherine Pickstock and Graham Ward (London; New York: Routledge, 1999), pp. 182-201.

In the domestic sphere this is similar. The right to self-defence is not merely a legal, secondary point of reference, or possibly even opposed to a morality of neighbour love. For Rodin the right is a moral orientation. In line with contemporaries like Nigel Simmonds, the law for him is a ‘moral idea’, the depository of our ‘moral intuitions’ (SD, 4, 5, 17, 20). Indeed the political moral *ideal* is ‘the rule of law’. With this Rodin aligns himself with proponents of a ‘juristocracy’, or the ‘law’s empire’. Here ‘we live by the law’, as Ronald Dworkin says.³⁸⁶ Inevitably, the gateway to a global, immanent ‘utopia’ is the extension and implementation of existing positive law.

The ‘realistic’ and predominantly statist political perspective is deliberately overridden in the course of Rodin’s thought experiments. Moral argumentation ‘need not, and indeed ought not, be constrained by the possibilities imposed by local political conditions. This is what I call “aspirational moral argument”’ (xiii). He sees a clear function for this as part of an immanent teleology.

Indeed, the most significant part of moral advancement often consists not so much in identifying right and wrong acts, or good and bad states of affairs, but in helping to realize the conditions whereby humans are enabled to behave morally and well. (SD, xiii)³⁸⁷

Rodin’s *practical* recommendations thus perpetuate a sceptical dualism. His final chapter entitled ‘Morality and Realism’ does not dissolve the duality of aspiration and ‘realistic politics’, but reinforces it by ‘suggest[ing] a two-tier moral strategy’. The first tier is an Aristotelian *bios theoretikos*. It ‘represents the attempt to develop a measured realistic programme for the achievement of a just system of international relations within which a genuine international rule of law can be realised’ (SD, 198). This tier is Rodin’s main interest, recommending developing principles of subsidiarity which integrate states into a

³⁸⁶ Nigel E. Simmonds, *Law as a Moral Idea* (Oxford : Oxford University Press, 2007); Ronald Dworkin, *Law’s Empire* (Oxford: Hart, 1998); Chibli Mallat on ‘Juristocracy’ at the *Revolution Conference*, Harvard, 14-16 April, 2012 <<http://isites.harvard.edu/icb/icb.do?keyword=revolution2012&pageid=icb.page507214>> [accessed 25 June, 2012]; also Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Cambridge, Mass.: Harvard University Press, 2004)

³⁸⁷ This is very compatible with the manipulation or “nudging” according to ‘liberal paternalism’

global legal order. Against the tradition of modern sovereignty, Rodin refers more generously back to the pre-modern Christian tradition than Enlightened rationality premises might initially suggest: ‘Both Augustine and Aquinas argued that war may have a legitimate punitive function. Grotius argued that the world’s states constitute a society, in which members are collectively responsible for the enforcement of the law’ (SD, 174). Rodin even repeats the medieval conditions for the just war theory’s emergence, though the jurisprudence of canon law has here morphed into the human rights paradigm of the ‘international community’.³⁸⁸

Since good moral behaviour presupposes certain ‘conditions’, one should note how Rodin veers off Kant’s ‘Protestant’ course and replaces it with moral and political legalism. Kant still connects the singular subject’s “private” religion directly and without any institutional mediation to the universal public realm. What is preserved in Kant is a fundamental, individual freedom. This Protestant dimension, understood as a ‘revolutionary’ potential – so much feared by 19th century Catholic conservatives – seems a possibility when Rodin for example mentions ‘mass self-defence’ and resistance against genocide. However, his legalism envisions for violence outside positive law to be seen as morally because legally impermissible. The ‘revolutionary’ potential or social defensive ‘right’ beyond mere self-defence, somewhat analogous to Ramsey’s transformist *agape*, for him is (ideally) alienated from people and channelled into a global legal framework. Indeed, not once does he mention the justifiability of revolution.

Rodin’s ideal military action must be an act of law enforcement against aggressors, rather than mass self-defence outside a legislative framework. This is of course also the

³⁸⁸ Cp. Gerhard Beestermöller, in *From Just War to Peace Ethics*; Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), p. 26, 213. On the modern synthesis of Thomistic subsidiarity and liberal democratic principles, see Joan Lockwood O’Donovan, ‘Subsidiarity and Political Rule in Theological Perspective’, in Oliver O’Donovan and Joan Lockwood O’Donovan, *Bonds of Imperfection: Christian Politics, Past and Present* (Grand Rapids, Mich.; Cambridge: William B. Eerdmans Publishing, 2004), pp. 225-245.

nature of the present U.N. Charter, according to which every act of violent force falls into one of three categories:

... either it is an unlawful use of force, or it is lawful because performed at the request of or with the authorization of the UN, or it is a lawful response to an illegal armed attack and hence an act of legitimate national-defense. (SD, 107)

In line with that Rodin does not want to 'justify war'. 'Regular war' or 'world policing', as it is more commonly referred to, *removes* the antagonistic concept of war, the idea of the contention between sovereign, morally equal contenders ever on the verge of escalation. Rodin's innovation is to transpose the essential regulative, legal framework into a more individualist key. In that sense, he is not 'doing ethics' in the senses noted in Part I above, neither as national edification, prophecy nor an 'account' of statecraft. He claims that contemporary Just War theory – which he reduces to Michael Walzer – has in fact failed. It has, he says, betrayed the promise to 'provide a robust set of principles for effective operation in the political realm' (189). Without any historical and conceptual engagement with the tradition, Rodin's opponent is only conceivable as the present 'sovereign state', the alternative of international law for 'warranting individual rights'. Against this realism, his jurisprudence is a just war strategy with the object to 'flesh out' into law a moral ideal, a legalist 'programme', as he says. The idealist strand of Rodin's moral praxis is therefore the exact opposite of the neo-Protestant antinomianism in national-defence, especially if attached to Elshtain's 'strong sovereign state'. Whereas the latter was premised on the very separation from both the Christian and Kantian *eschaton*, Rodin conveys precisely this vision of an immanent moral *eschaton* to which one progressively moves.

Realistic praxis: damage-control

But here also the excluded Other, or ‘realism’ returns in an unmediated confrontation, though not necessarily in an antagonistic conflict as Elshtain’s apocalyptic terrorists. Choosing between the idealism of a universal rule of law and the unacceptable Lockean antagonism of states that are ‘judges in their own case’, Rodin hardly presents a practical solution. His developmental recommendations are rather helpless in a concrete situation, or as Elshtain would have said: ‘irresponsible’.³⁸⁹ Since Rodin has declared national defence impermissible, ‘[the] need to find an effective moral response to the immediate problem of aggression poses a difficult problem for my position’ (SD, 199). As a result, an uncomfortable realistic underbelly resurfaces here. The other side of ‘Kantian absolutism’ is consequentialism, the possible sacrifice of human rights for the sake of greater social utility. (SD, 9) In some cases, so Rodin’s understanding, national defence may after all be understood as the ‘lesser evil’ and ‘arise from the feeling that to fail to resist aggression is to somehow acquiesce morally to it in an unacceptable way’ (SD, 198). A concrete situation mostly dissolves into ethical dilemmas. (SD, 9,199) Rodin after all lands on the realistic grounds also frequented by Christian realists. The ‘tragedy’ he sees ensuing is reminiscent of their doctrine of the Fall, even in the liberal sense that sin may *teach* us something:

None the less, we must recognize that such a dilemma is not peculiar to my negative account of the ethics of war. It is a very characteristic human problem which arises in many sphere of moral life. Indeed, establishing that the problem of aggression faces us with such a dilemma is itself a useful and important result. For, at the very least, it serves to remind us to maintain a certain moral modesty in our action. (SD, 199)

³⁸⁹ Unfortunately such limited discussions, focusing usually on discrimination or proportionality, can only trail off when the bigger picture of a war is in question. See, e.g. Markus Wagner, ‘The Battlefield from Afar: Independently Operating Weapons Systems and their Compatibility with the Laws of Armed Conflict’, ELAC/CCW Seminar Series, 15 Feb 2011, <<http://www.elac.ox.ac.uk/events/archive.html>> [retrieved 10 March, 2011]

In effect, antagonistic war foreseeably but unfortunately will happen – even if without justification. This is also how Kant understood war:

... war is only the sad emergency measure in the state of nature (where there is no court of justice that could judge with the force of law), in order to claim through violence one's right; where none of the two parties may be declared an unjust enemy (because that presumes a judicial sentence), but the outcome of it (as if before God's judgment) decides on whose side right is.³⁹⁰

Rodin still claims for a congruent 'realistic' tier of moral action to find ways to 'mitigate the evils of war in the world as it currently is'. And certainly the limitations of necessity, imminence and proportionality of violent force emerge indirectly from the level of self-defence. For example, pre-emptive war may be as unjustifiable as pre-emptive self-defense. Nevertheless, because these moral restrictions must be legally coherent and apply to all agents equally, Rodin can only acknowledge a 'significant disanalogy between the application [of these principles] in international and domestic law' (SD, 111). Aware of the technical abilities and dangers and the nature of warfare as 'intrinsically open-ended on both sides and subject to escalation' (SD, 115), Rodin also leaves aside the development of these principles applied to a universal state.³⁹¹ In any case, if the global human rights order could function as the backdrop for a *ius ad bellum* – dealing with 'aggression' – then Rodin's 'realistic tier' presents the possibility of an independent *ius in bello* for the antagonistic clash of still existing and unjustifiably clashing sovereign states. Ironically, therefore, his idealism repeats the medieval inauguration of the very Just War theory he declares overcome.

How does this fit into the overall comparative perspective taken here? Rodin's 'legalism' is the precise opposite of Elshtain's and Ramsey's antinomianism. However, in so far as 'the law' may be recognized as one political mediator and re-contextualised by love,

³⁹⁰ Immanuel Kant, *Zum ewigen Frieden* (Stuttgart: Philipp Reclam jun., 2008), p. 7.

³⁹¹ Rodin does not use the term 'world policing', though this is what it is commonly referred to.

neither O'Donovan nor the mature Ramsey would categorically reject international law and authority. With a view to ancient Israel, O'Donovan writes about God's law: '... Yhwh is immediately present in conquest; his presence is mediated in judgment; and he is present in a kind of concealed immediacy in the law' (DN, 50). Law therefore is the *result* of praxis and remains subject to review, a 'living law'.³⁹² Praxis was the very point of O'Donovan's Just War: 'a proposal for *doing justice* in the theatre of war' (JWR, vii. italics mine).³⁹³ However, for O'Donovan clearly the law is not the only mediator between politics and morality, and certainly not the ultimate one. That space can only be taken by Christ.

What is absent in Rodin – as in Elshtain's national-defence – is the practical notion of *judgment* as distinct from the 'rule of law' or the 'legal enactment of law' (SD, 109); moral judgment as the actual, truthful alignment of a concrete, particular situation with a discerned Right and (a never unambiguous) international law.³⁹⁴ Absent the specific theological horizon as introduced in the previous chapter on O'Donovan, Rodin overtakes this moment of 'the freedom of a Christian', the moment of 'transcendent obedience' (O'Donovan) by a theoretical prolepsis into a future 'just state of affairs'. Bernd Wannewetsch diagnoses the problem in the account of 'justice as rights' itself: 'Will [it] ... not inadvertently gravitate towards 'procedural justice' with its prime interest in *just states of affairs* (to prevail) rather than *just works* (to happen)?' Wannewetsch points explicitly to the difference between a Kantian rule of law and the Hebrew writers' notion of political justice: 'But even with regards to ... "doing" justice by way of "making" just laws, the perspective of the Hebrew writers insists that we do not understand ourselves as "producing" justice.' Producing justice

³⁹² The phrase 'living constitution' appears in *Michael H v Gerald D*, 491 U.S. 110 (1989), Brennan, J., dissenting; p. 141. I am aware of my equivocal use of 'law', referring both to God's law and human written law, the point being that both must be thought and criticized from a completely extra-judicial viewpoint.

³⁹³ See above, Ch. 3.

³⁹⁴ Carl Schmitt best analysed the judicial difference of law and judgment, despite his voluntarist, proto-decisionist overemphasis on their separation rather than interdependence (possibly a trinitarian interdependence of law, judgment and Right). Carl Schmitt, *Gesetz und Urteil: Eine Untersuchung zum Problem der Rechtspraxis* (Berlin: Duncker und Humblot, 1912)

means making laws as ‘setting up procedures that will *then* generate or even guarantee justice as a result.’³⁹⁵ This is precisely Rodin’s aim, following from his logic of immanent, legal(ist) understanding of mediation. Effectively, his legalist development and ‘realistic’ moral praxis can never be in any coherent relationship at all – the ‘dynamic interplay’ is rather a phrase glossing over the essential duality between the two.

In short, partly influenced by Kant, Rodin identifies law as *the* ultimate mediator between politics and morality. This is one implication of universal ‘human rights’ as the ‘dogmatic’ source of the ethics of war. In that sense it is a quasi-Catholic notion of legally and institutionally mediating the universal, but also one that is to be expanded. Since the law is a moral *ideal* of political rule, in the face of the ‘real world’ Rodin’s practical recommendations fall apart into two separate tiers. The aspirational one suggests further jurisprudence in the spirit of Kantian absolutism. The realistic one may limit the excesses of an unleashed antagonism, but mostly forces us to recognise political ambiguity and tragedy; consequentialism takes over. In that sense, Rodin indirectly authorises the very realist ‘political’ – when the absolutism of non-fighting runs out, consequentialism ‘tragically’ takes over. This logic repeats itself more obviously in regards to the political agent.

The political agent

Well rooted in the tradition of individualistic ethics and human rights, Rodin’s concept of the political agent is hardly revolutionary. But in a remarkable way he thinks its political implications through to the end. Building up the notion of political authority between idealism and ‘the real world’, Rodin extends the initially apolitical, ‘meta-judicial or pre-judicial’ notion of human rights to a global and *after all* political level, always against the

³⁹⁵ Bernd Wannewetsch, ‘But to *Do* Right... Why the Language of ‘Rights’ Does Not Do Justice to Justice’, *Studies in Christian Ethics*, 23 (2010), 138–146, p. 143.

positivist account of ‘state sovereignty’.³⁹⁶ Precisely in this way his idealism – defined loosely as the ‘commitment to the existence of objective moral norms and to the possibility of their operation within international relations’ – steps onto previously ecclesial and then, I will argue, papal grounds.³⁹⁷ The Is and the Ought of ‘conventional’ political authority, and thus the heart of traditional Just War thinking, is not really the point of his book:

We need a *framework of international ethics* which gives greater recognition and protection to *the rights of individuals as against states*, which can address the problems of civil war and internal oppression, and which is able to more effectively restrain international aggression.

(SD, 199; italics mine)

In this sense he first establishes the notion of the autonomous, responsible individual as the international framework’s relevant constitutive ‘unit’.

Idealism I: soldiers as moral-political agents

As noted, Rodin sees domestic law as a proper ‘source’ of international law. Like Grotius, he thus understands both kinds of law as non-political, at least not in the sense of sovereign politics.³⁹⁸ This basis allows him to extend the ‘intuitions’ enshrined in domestic law and an *a priori* morality applicable to individuals to a global level. In this vein he argues that a hit-man hired by the mafia is responsible for murder; duress in English law is not a defense

³⁹⁶ Martin Honecker, cit. in Ulrich H. J. Körtner, *Evangelische Sozialethik*, (Göttingen: Vandenhoeck & Ruprecht, 1999), p. 153.

³⁹⁷ Gerhard Beestermöller, ‘Die humanitäre Intervention – Kreuzzug im neuen Gewand? Ein Blick auf die gegenwärtige Diskussion im Spiegel der thomanischen Lehre vom gerechten Krieg’, in *Die humanitäre Intervention, Imperativ der Menschenrechtsidee? Rechtsethische Reflexionen am Beispiel des Kosovo-Krieges*, ed. by Gerhard Beestermöller (Stuttgart: W. Kohlhammer, 2003); see also Ch. 3 above O’Donovan.

³⁹⁸ Hugo Grotius, *De Jure Belli Ac Pacis Libri Tres*, trans. by Francis W. Kelsey, 2 vols (Oxford: Clarendon Press, 1925), I, p. 24: ‘These two kinds of law [natural law and the law of nations] I have always particularly sought to distinguish from each other and from municipal law.’; John Rawls, in *Justice as Fairness*, p. 19, argues for a ‘political’, yet ‘non-moral’ concept of justice: ‘Here it is important to keep in mind that justice as fairness is a political conception of justice: that is, it is designed for the special case of the basic structure of society and is not intended as a comprehensive moral doctrine.’ Rawls, *Justice as Fairness. A Restatement*, ed. by Erin Kelly (Cambridge, Mass.; London: Harvard University Press, 2001) Rodin goes further: his account is legal and moral, but non-political.

against a charge of murder or attempted murder. Therefore, by the same token, an executioner that works for a tyrannous regime, even if under coercion, must know that his killing is wrong; that he is ‘something like a murderer.’ (SD, p. 169)³⁹⁹ By extension the same principle applies to all ‘unjust’ warriors:

Soldiers characteristically fight for a complex set of reasons including duty, peer pressure, and fear of shame, social stigma or punishment. Though these factors clearly bring great pressure to bear on an agent, they are neither singly nor conjointly sufficient to override the duty not to participate in wrongful killing. (171)

So common sense moral knowledge – like the duty not to murder – requires and encompasses the act of discernment in the actual, politically loaded situation of war. This safeguards a moral, international perspective for the individual, constantly critical of political institutions.⁴⁰⁰ Similar to Augustine’s ‘idealist’, sceptical perspective, a state that violates human rights for Rodin is nothing but a great robber band.

The idea that every individual can and should abide by a global criminal law combines several historical and conceptual influences. At least initially it requires a naturalised, Enlightened version of the Reformation’s anthropology, which focuses on the individual *vis-à-vis* God. It stresses the individual’s rational freedom – interpreted as a moral capacity – and conscience as the relevant kernel of moral *and* political agency.⁴⁰¹ The subject is an essentially autonomous originator of his projects, (SD, 59) whereby autonomy is ‘our ability and responsibility to know what morality requires of us and our determination not to act immorally’, as Roger J. Sullivan emphasises Kant’s original meaning.⁴⁰² Notably, in terms of the possibility of *a priori* moral principles, Kantianism may point back to Aquinas’

³⁹⁹ See above, Ch. 3, O’Donovan above on the difference between a criminal and median guilt.

⁴⁰⁰ Cp. Augustine, *City of God*, Bk. IV, Ch. 4. O’Donovan mentions Augustine’s dichotomy of positivism and idealism briefly in *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought*, p. 108.

⁴⁰¹ See also Körtner, p. 154f.

⁴⁰² Roger J. Sullivan, *Immanuel Kant's Moral Theory* (Cambridge: Cambridge University Press, 1989), p. 47; Jochen Bojanowski, *Kants Theorie der Freiheit* (Berlin: Walter de Gruyter, 2006), see below.

natural law, and more so contemporary natural lawyers.⁴⁰³ The individual *qua* reason has direct access to the Absolute, a universal moral imperative. But in Rodin's proposal this is not merely morally relevant, in the sense that no one killing in a war is exactly *innocent*. It has direct political consequences in the form of a moral 'liability' to be attacked, a liability that goes beyond mere material cooperation.⁴⁰⁴

On these universal moral and legal premises the idea that the international sphere should consist of a set of sovereign competing and therefore relative claims to justice makes no sense: 'An objective value is one capable of being recognized as such by all persons universally, irrespective of community membership' (SD, 151). In a concrete conflict, this universalism coincides with Grotius' point that justice in war can only be on one side.⁴⁰⁵ This idea of an objective 'right' in war can claim older theological forefathers like Fulgosi and Aquinas.⁴⁰⁶ For Rodin, there are 'just' and 'unjust' warriors. Gerhard Beestermöller here sees a direct structural congruence between the medieval church's crusades and humanitarian intervention. In the international sphere, he says, neither vision recognizes merely a 'plurality of enforceable claims to power'; the human rights paradigm attempts to subject power both to truth and law.⁴⁰⁷

The basic concern of the Thomist political philosophy consists in the realization of an order which is grounded in an absolute truth that works in all spheres of life, is patterned in itself and permeates the whole world, and to which all power must

⁴⁰³ St. Thomas Aquinas, *Summa Theologica*, IaIIae, Qu. 94, Art. 2.; also John Finnis, *Natural Law and Natural Rights*, 2nd ed. (Oxford: Oxford University Press, 2011)

⁴⁰⁴ Despite his anti-Kantianism, Milbank repeats this idealist universal form. In a society gone wrong, it is still possible to critique and reject the whole system of cultural signifiers as '... limited vision cannot be finally divorced from culpability.' John Milbank, *The Word Made Strange* (Oxford: Blackwell, 1997), p. 238.

⁴⁰⁵ The Two Cities Could be seen as an Augustinian argument for a relative symmetry between soldiers: political justice on one side, whereby the human vision of divine *Iustitia* is clouded, is balanced by associative duties on the other.

⁴⁰⁶ JUW, Introduction, p. 14. Russell, *Just War in the Middle Ages*, pp. 218-219.

⁴⁰⁷ Beestermöller, p. 143.

succumb. The aim of the just war is to make objective claims effective everywhere in the world.⁴⁰⁸

In a similar way, as any absolute truth has now migrated to ‘humanity’ (in the sense that I have said everyone is now a ‘prince of peace’), the visible, large-scale violation of human rights is therefore a universally intelligible ‘right’, a *causa iusta*. There is no essential difference or discontinuity between what each reasonable individual does in a situation of self-defense and what he can and thus should know in a larger political context.⁴⁰⁹ The communal, national and the international spheres merge to become a single universal public legality that identifies private individual, citizen and human being – a phenomenon that can also be observed in the Middle Ages.⁴¹⁰

Rodin’s argument that every soldier may see the rightness or wrongness of his war coincides with an ancient view of moral responsibility.⁴¹¹ He reconstructs it as both culpability and responsibility combined, i.e. being materially and causally imputable: ‘But moral responsibility ... is a plastic attribute operating along the twin paths of causation and intention that can extend, multiply, and infect various persons, in different ways and for differing reasons’ (SD, 63). No sharp distinction is drawn between an action’s intention and the person’s culpability on the one hand, and its consequences and their causation on the other. Rodin widens what Kant calls *Gesinnung* to include consequences, grouping both these aspects under the term ‘responsibility.’⁴¹² One is responsible, i.e. also guilty, because an act of choosing to do evil implies one’s immoral intention. The twin aspects of moral agency in

⁴⁰⁸ Beestermöller, ‘Die humanitäre Intervention’, p. 142.

⁴⁰⁹ Henry Shue, ‘Do we need a “Morality of War”?’ JUW, pp. 87-111.

⁴¹⁰ This amalgamation was a conceptual result of the order in which all participated. Martti Koskeniemi, *From Apology to Utopia. The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2005), p. 76.

⁴¹¹ In domestic law there are no excuses of duress to murder, attempted murder, or some forms of treason: ‘For actions performed under duress, provocation, or necessity are not literally involuntary; it is not literally the case that the agent “has no choice” ...’

⁴¹² Bernard Williams, *Shame and Necessity* (Berkeley; Oxford: University of California Press, 1993), pp. 50-52. For the opposite view, see Nigel Biggar, who distinguishes between the culpability for intended effects and the responsibility for accepted external effects. This is opposed to Jonathan Glover, for whom external effects generate responsibility as culpability. Nigel Biggar, *Aiming to Kill*, (London: Darton, Longman & Todd, 2004), pp. 63-64. Notably, Glover co-supervised Rodin’s D.Phil., out of which *War and Self-Defense* grew.

theology that are the ‘subjective’ soul’s standing before God (intention) and one’s material ‘objective’ causation in the world (consequence) become amalgamated into the *phenomenon*, which is visible material causation. A result is the full personal, moral responsibility and thus liability to be killed in war if one fights an ‘unjust’ war.⁴¹³ Even with good, perhaps misguided intentions or under duress, the very fact that I may know the rightness of a war and objectively choose not to participate determines my liability to be attacked.⁴¹⁴

One contemporary attempt to salvage a form of median guilt has been the insistence on the (antagonistic) symmetry between opposing soldiers by way of excusing soldiers on the grounds of ‘invincible ignorance’.⁴¹⁵ Soldiers in a war are moral equals, because both sides will have been subject to propaganda. As a partial, moral excuse it leaves a space between the subject and the external *Geschehen*, historical events and actions beyond individual control. Rodin certainly recognizes it to a degree. When access to information is limited or censored, then a soldier’s moral liability sinks. But, Rodin stresses, individual responsibility cannot be eradicated. Good and evil cannot be historicised or relativised. Hence, neither can soldiers of warring parties be excused and granted identical rights to kill each other.

This moral anthropology, though it has totalising implications, is necessary to conceptualise war as a mass violation of human rights and the agency of rights-violating individuals. Practically, Rodin’s rejection of excuses for soldiers has a specific thrust, which goes hand in hand with his cosmopolitan aim of ‘regulative war’. If incompetent or in doubt about the justice of a war, – a possibility Rodin concedes to the tradition – the soldier should judge himself in the future. But how does one judge by standards that evidently fail *in medias*

⁴¹³ Cheney Ryan points out that this might actually lead to a ‘more adventurous military’ in ‘Moral Equality, Victimhood, and the Sovereignty Symmetry Problem’, in *Just and Unjust Warriors*, ed. by David Rodin and Henry Shue (Oxford: Oxford University Press, 2008), pp. 131-152, 133. Hereafter JUW.

⁴¹⁴ Ignorance and duress both are traditional excuses for soldiers. Rodin rejects duress very quickly, as it does not alter the fact of choice, which – unlike Hegel – he regards as the fundamental mark of human freedom.

⁴¹⁵ The term is Dan Zupan’s, ‘A Presumption of the Moral Equality of Combatants: A Citizen-Soldier’s Perspective’, in JUW, pp. 214-225, 202. David Rodin, ‘The Moral Inequality of Soldiers: Why Jus in Bello Asymmetry Is Half Right,’ in JUW, pp. 44–68, 52.

res? He introduces a *calculation*: A soldier has a 50% chance that he is in an unjust war. (SD, 169) If he cannot judge for himself and if in doubt about the war, he should not fight at all. With this Rodin fosters quasi-pacifism – or what Soran Reader has called ‘anti-warism’ – in the hope that soldiers’ scepticism may bring the fifty-fifty calculation well below the required certainty that a war is just.⁴¹⁶ In the same vein, his emphasis on individual moral liability functions as a comprehensive deterrent. He thinks the *post bellum* prospect of punishing ‘unjust soldiers’ could stop them from fighting wars they consider unjust themselves. (JUW, 62) Even though a proper punishing authority beyond ‘victor’s justice’ is yet absent in the world, the liability to be punished ‘is real but *latent*’ (JUW, 63). Notably, the possibility of post-war reconciliation *could* come into play at this point, but this dimension of post-war forgiveness and mercy, in other words, remains outside the logic of Rodin’s moral-political proposal.

With Rodin’s concept of ‘cosmopolitan society’ or ‘non-sovereign [global] political society’ resurfaces the ecclesial principle of the peaceful, spiritual community of faithful believers at a distance to the political *polis*; or the Kantian universal ‘ethical community’. As Kant writes:

By the way, because the duties of virtue always concern all of mankind, so the concept of an ethical communal being always refers to the ideal of the whole of all humans, and in this it is distinct from a political one.⁴¹⁷

For Kant the *ius cosmopolitanum* was never a political notion, but a matter of our shared humanity. The right of world citizenship (*Weltbürgerrecht*) was analogous only to international right (*Völkerrecht*).⁴¹⁸ Rodin, in contrast, suggests juridically and therefore politically realising and institutionalising the *cosmopolitanum*. The result is the oscillation

⁴¹⁶ Soran Reader, ‘Cosmopolitan Pacifism’, *Journal of Global Ethics*, 3(2007), 87-103.

⁴¹⁷ Immanuel Kant, *Die Religion innerhalb der Grenzen der bloßen Vernunft* (Stuttgart: Philipp Reclam Jr., 2007), p. 122. In seeing that moral *polis* was the church, Kant is perhaps one of the last to know what the church is.

⁴¹⁸ Kant, *Zum Ewigen Frieden*, p. 54.

between two extremes: realising the idealist version of the moral agent, i.e. the individual soldier subject to international law, would mean the eventual abolition of current forms of war. War, especially as ‘aggression’, is simply not rational in this view. The person lives in *pacific* domesticity, either not fighting or merely functioning as a cosmopolitan police-man. But once this order is violated, through aggression, a total vision of war is unleashed that here knows no forgiveness and closure beyond pragmatic limits.

Idealism II: the universal state as a renewed papacy

So far the decisive moral-political authority is reduced to individual soldiers deserting or refusing to fight ‘unjust wars’. In that regard Rodin politicises both the individualist idealism that O’Donovan had integrated into a specific counter-political *ecclesia*, but equally the Lockean ideal of the individual natural defensive right. However, for Rodin international *Recht* implies an authority to administer force like a judge.⁴¹⁹ Like a state, it should be constituted through individuals contracting and forming an authority. But it should stand above states and polities. Rodin connects it with the tradition of Aquinas and especially Grotius, who, as noted above, equally question the symmetrical antagonism of sovereign states.

For modern state-centred theorists like Michael Walzer or Elshtain, self-authorised national-defense is also a form of ‘law enforcement’. Rodin challenges this Lockean ‘natural right to punish’ in a ‘state of nature’. Self-defense and war as punishment are simply not the same. Unless we have a superior authority, ‘it may not count as punishment at all, for the necessary requirement of impartiality could well be absent.’ This requirement ‘seems to stem

⁴¹⁹ For a constitutional history of the papacy, see Walter Ullmann, *A Short History of the Papacy in the Middle Ages* (London: Methuen, 1972)

directly from the nature of justice itself' (SD, 176). Authority requires initial consensual submission, otherwise it is merely imposed:

But a system of law, if it is to be legitimate, must express a community's conception of justice and the members of that community must recognize the validity of the rule and processes to which they are subject. ... A community's consent is constituted by its recognition of the fairness of the system of law to which it is subject. (177)

States as authorities fighting in a war are not impartial or neutral; neither does their enemy recognize their authority. (SD, 179) For Rodin this could only be guaranteed by a universal state without any national self-interest.

He opposes even more vocally the idea that governments could or should somehow transcend their own national self-interest, and stresses the *distinctiveness* of legal retributive and distributive justice from love and care. The former is based on contractarian submission and public, whereas the latter is 'private' and 'beneficial' to the offender, as between parents and children. (SD, 178) ⁴²⁰ Grotius calls this latter child-parent relationship the 'rectorial law' between unequals. Rodin explicitly rejects such a 'paternalistic' account of justice in which the punishing authority, like a beneficial empire, 'has a natural superiority in knowledge, wisdom, and power as well as having the best interest of the punished at heart'. Because impartiality 'enters only as an instrumental value to [the] broader end' of the child's welfare and development, 'the notion of punishment explicated by the parental model should perhaps not be seen as part of an account of *justice* at all' (SD, 178). Rodin's dismissal is quick: 'The parental model seems to be a non-starter in international relations ... it is difficult to see how the infliction of punishment unto death could ever be justified on a parental model of punishment.' (SD, 179) The reason for this dismissal is again the merely binary choice between either the transcendence of national interest as a form of state mythology, as I argued

⁴²⁰ This sharp distinction between love and justice corresponds to the Weberian, neo-Protestant paradigm that separates 'politics' from 'values'.

it is for Elshtain and Rodin indicates is the case for 'benevolent empires'; or alternatively the transcendence as a supra-national positive authority.

Having this dichotomous choice between the "justice" of national interest and supra-national legal body, Rodin's legalism requires the latter. This is his final idealistic 'transcendence' over realism: '... the development of such a body is a prima facie objective of international justice' (JUW, 68). Certainly this has some theological warrants, not merely predecessors. In the eyes of God, every human is the same, as O'Donovan had pointed out. Historically, the kingdom of God as all of humankind, and under the rule of Christ, provided the initial principle of political and spiritual unity that could fuse with international right and law.⁴²¹ Similarly, Rodin's universal state would directly connect to the equidistant individuals, since each has an equal contractual share in it. In order to theologially understand Rodin within the wider comparative framework, his idealism must be tested on the level of ecclesiology.

Christian idealists like Wyclif had emphasised the spiritual, internal nature of the church and as a result promoted the worldly powers of state rulers. A tendency already in Augustine, it peaks during the Reformation period and leads, finally, to the *Leviathan* as the paradigm of the modern national-defending State-Person. For Hobbes, 'religion' is more or less a mental matter and an extension of sovereign state politics. This logic of spiritual and emotional religiosity could then fit in well with the 'privacy' of love just mentioned. To understand Rodin's secular-idealist model of the political one needs to look at the medieval papal Church as an instantiated moral-political ideal. An institution proper under the principle of the unity of all being, the Pope ultimately held both the temporal and the spiritual swords.

⁴²¹ O'Donovan cites Tertullian's cosmopolitanism in *Ways of Judgment*, p. 121; Otto Gierke, like Beestermöller, points at Aquinas in *Political Theories of the Middle Age* (Cambridge: Cambridge University Press, 1900), p. 107, n. 12.

He stepped in when a ‘lapse’ occurred and ‘it [was] for him to judge and punish Emperors and Kings, to receive complaints against them, to shield the nations from their tyranny.’⁴²²

Congruently, Rodin stresses the auxiliary and ‘ultra-minimal’ role of the universal state, the ‘universal sovereign’ (SD, 185). Like human rights, it is envisioned as supra-political: ‘It may, for instance, consist solely in the establishment of a world monopoly of military force together with a minimal judicial mechanism for the resolution of international and internal disputes.’ It should be without a ‘substantive conception of world government with a broader administrative mandate’ (SD, 187). This minimalism, Rodin believes, would be the warrant against despotism and subsequent anarchy – the end Kant thought such a project would inevitably collapse into. And like the Pope’s claims ‘appeared as logical consequences of a legal principle ordained by God himself’ so the human rights paradigm still connects to the theological *imago Dei*.⁴²³ The Declaration of human rights is the autoenactment and autoverification of the human as a judicial essence.⁴²⁴

As Otto Gierke points out: ‘The subsidiary arguments touching the Pope’s right and title, arguments derived from history and positive law, had no self-sufficient validity, but were regarded as mere outward attestations and examples.’⁴²⁵ Similarly, Rodin’s realised legal ideal comprises interlocking communities – nations, states, cities, ‘as well as the global community of mankind’. They should operate under principles of subsidiarity, which balance their rights and interests. Yet ultimately they are united under one moral-political paradigm: ‘A state only has legitimacy within the international system and therefore a claim to recognition by other states if it protects and does not violate the rights of its citizens.’ (SD,

⁴²² Gierke, *Political Theories*, p. 15.

⁴²³ *Ibid*, p. 15.

⁴²⁴ Werner Hamacher, ‘The Right not to Use Rights. Human Rights and the Structure of Judgments’, in *Political Theologies: Public Religions in a Post-Secular World*, ed. by Hent de Vries and Lawrence Eugene Sullivan (New York: Fordham University Press, 2006), pp. 671–690, 672. NB: Hamacher’s muted ecclesiology, asking for the expansion of non-judicial ‘zones of indecision.’

⁴²⁵ Gierke, *Political Theories*, p. 15.

188) Rodin again *misinterprets* Kant as offering a universal *political* vision, parting with him on the implicit question of whether the government of the world is human or divine:

Indeed, Kant's conception of cosmopolitan right can be understood as a contribution to precisely this project. It is important to realize that for Kant, the final instantiation of international *recht* [sic] is effective at each of the three possible levels of lawful constitution. It establishes a just regime of law, first, between persons considered as citizens within a political community; secondly, between states in an international system; and finally between persons and states co-existing in a cosmopolitan community. (SD, 187)

Thus, an *institutionalised* international law protecting humans qua their humanity conceptually mimics the canons of the medieval Church as 'true Cosmopolis'. Gierke describes it as follows:

And thus [the subjection of every temporal ruler to the Pope] in fact was derived immediately from the *Ius Divinum* an ideal comprehending all Mankind, a Constitution which by the universal Sovereignty of the Church thoroughly satisfied the postulate of Unity above Duality.⁴²⁶

However, should these ontologically harmonious relations be reified into an external institution as the representative of a moral (human rights) order?⁴²⁷ Christian ecclesiology does not ask mankind to *create* a universal state under Christ's rule, even though papalism had the tendency to do so. As a spiritual concept 'the universal church' responds to the work of God, the point where human and divine agencies meet in both event and institution. Grounded in revelation, universality is a gift rather than a political project.⁴²⁸ The universal state, in contrast, is an immanent ideal originating in human beings by virtue of their existence. Unconnected to love and forgiveness, but grounded in self-enacting freedom and

⁴²⁶ Ibid.

⁴²⁷ Gerhard Beestermöller, 'Die humanitäre Intervention', p. 143.

⁴²⁸ Esther D. Reed, *The Ethics of Human Rights. Contested Doctrinal and Moral Issues* (Waco, Texas: Baylor University Press, 2007), p. 119.

fully committed to a judicial *humanum*, Rodin's concept actually holds out the prospect of such a state being *more* violent than a papally sanctioned crusade. Absent a global state Rodin's ideal can not only be harnessed to sovereign doctrines in the sense of an imperial myth, as Elshtain did. Any attempt to actually realise it in history has to collapse into imperialism because its 'realisation' will always be initiated by some actors and find resistance.⁴²⁹

Against statist realism

If internationalist idealism connects the rights of individuals to a universal state, what happens to communal or national politics and their possible use of force? The logic of separation between the politically real and the 'moral ideal' led Elshtain or Ramsey to discard idealist 'utopianism'. Based on the same premise of conceptual *separation*, Rodin's equally unmediated gap and his settlement on the idealist, 'utopian' side shrugs off 'realism'. The potential use of force being deposited in the moral dimension of self-defence and a global legal framework, communal political authority and action loses its relevance. However, just as 'utopia' had remained an unmediated Other, an antagonist, in Elshtain's vision, so Rodin has to effectively sustain present sovereign states and their positivist institutions.

Rodin's scepticism about the state can comfortably point to recent historical experience of nation states as the most monstrous perpetrators of crimes. The supposed German 'nationalism' leading to World War II remains the chief enemy of contemporary international law.⁴³⁰ Rodin reacts against the positivist 'legitimate authority' based on 'sovereignty' and regards existing external or 'objective' state authorities as conditional, legitimate in so far as they stand up to the moral judgment and contractual consensus of their

⁴²⁹ Koskeniemi, *From Apology to Utopia*, pp. 479-480; n.

⁴³⁰ Ian Clark, *Waging War. A Philosophical Introduction* (Oxford: Clarendon Press, 1988), p. 6. One might add that not merely 'nationalism', but imperialism characterized the 3rd Reich.

subjects. In the light of this contractarianism, Rodin explicitly rejects Augustine, shortening him to commanding unconditional obedience to kings supposedly in place by divine right.⁴³¹ For Augustine, Rodin purports, ‘monarchs rule by divine authority, and even if the ruler in question is an “ungodly king”, “the iniquity of giving the orders will make the king guilty while the rank of a servant in the civil order will show the soldier to be innocent”’ (SD, 168). Yet these arguments lose their validity as they are premised on the existence of God. (169)

However, unlike Ramsey or O’Donovan, Rodin does not call political authorities to harness the human rights ideal in a kind of ‘transformist’ way. He rather wholly *discards* four arguments or values that could both legally and morally justify a ‘natural’ right to national defence, arguments on can (theologically) associate with the grounds of creation. He discards a) the defence of political association as such, b) the specific character of a common life, c) communal integrity and self-determination, and finally d) the ‘myth’ of discrete communities. (SD, 141-162). Rodin’s idealist project deposits these premises of political ‘realism’ or even naturalism into three a-political dimensions: the amoral-factual, the subjective and the purely historical and contingent. In that regard, the ‘realistic’ aspect of politics, again in complete reversal to Elshtain, is ‘utopianised’.

First, modern sovereignty as derived from the early modern natural law has morphed into a positivism that grants ‘legitimate authority’ to the holder of the monopoly of force. A state’s sovereignty comprising ‘territorial integrity and political independence’ could be an end of national defense. However, Rodin points out, the state or political authorities have no independent ‘normative foundation’ (SD, 115). They have no ‘inherent right’ (of self-defence) or ‘natural right’, as the French version of the UN Charter still holds. (SD, 116) The notion of ‘sovereignty’, as also invoked by Elshtain and going back to Jean Bodin is

⁴³¹ Von Gierke sees in the ‘medieval husk an “antique-modern” kernel’ that is the basis of ‘a newer edifice which was built upon a foundation of Natural Law.’ Notably, he points out, both divine right and papal absolutism are ‘the first forces to tread the road that leads away from the Middle Age’. *Political Theories*, pp. 4-5.

‘incapable ... of providing a substantive moral grounding for the right [to national-defense].’ The reason, Rodin argues, is that ‘sovereignty is a factual and not a normative concept.’ Why should a state *de facto* capable of asserting independence and control over a territory ‘be seen as possessing the right to them, and, moreover, the right to defend them with lethal force?’ (SD, 119). Rodin is especially critical of contemporary Realist form of International Relations and Military Strategy that ‘views states as centres of power in a dynamic system, continuously asserting and defending themselves against other centres of power.’ (SD, 120) His argument holds water: it is anti-positivist, looking for *normative* grounds. Nevertheless, these grounds must be supra-political or individual. Hence, ‘realism’ altogether must be abandoned.

Rodin goes further eliminating any ‘natural’ grounds for political authority or action as understood by O’Donovan.⁴³² His chapter ‘War and the Common Life’ throws the baby (the non-contractarian grounds of political authority) out with the bathwater of statist legal positivism. The moral opposite of factual sovereignty, the ‘value’ of community, now becomes purely *subjective*. Rodin here repeats rather than challenges the Weberian paradigmatic distinction between factual ‘politics’ and normative values, a (moral) subject-object distinction akin to Realists. Rodin cannot accept that ‘the common life is a source of value independent of its value for individual persons’. Opposed to any form of ‘communitarianism’ he proposes an irreducible ‘methodological individualism’. (SD, 147) The humanistic principle, formulated by Joseph Raz, is defined as ‘the claim that the explanation and justification of the goodness or badness of anything derives ultimately from its contribution, actual or possible, to human life and its quality.’ The principle

serves to remind us that all goods and value in human affairs derive ultimately from persons and the valuations they individually and collectively make. An adequate conception of the

⁴³² Cp. above Ch. 3. O’Donovan’s three ‘natural authorities’ prerequisite for an authorized political act were power, a right and tradition.

common life will see it as something whose value is separate from, and irreducible to, the value of the particular individuals that make it up, yet its worth must be seen as deriving from the value it has for them. (SD, 144)

The importance of this ‘methodological’ move can hardly be overestimated: Rodin’s subjectivisation of value leads to the absence of objective social goods one might be justified to violently defend. And now that the theological *paradox* of individual and community, of moral/spiritual and political loyalty is absent, the secular realm of the political must choose between formal liberal individualism and communitarianism. Such communitarianism, however, a (supposedly Hegelian) ‘organic view of the state’ brings up memories of fascism: ‘... the rights and value of individuals are seen as stemming from their relationship to, or analogy with, the community of which they are part.’ For Rodin this inevitably entails that self-sacrifice for the common good becomes a duty and that the individual life has no prior value. Hence, it is unacceptable. (SD, 143)

Of course, Rodin concedes, one *could* morally value the state as objectively providing a basic good. After all, its provision of security and order protects individuals from the ‘state of nature’. Hence it could have the right to national defence. This was Elstain’s Hobbesian premise for national-defense. However, he points out, the aim of aggression is hardly the destruction of political society as such. The aggressor rather wants to conquer and rule. And since the minimal Hobbesian account does not ask *who* provides rule and order, an act of aggression ‘would seem to generate a duty to capitulate swiftly, so as to usher in the new order quickly and painlessly’ (SD, 147). In short, for Rodin ‘the value of political association *per se* provides no reason for defending a particular common life’.

But could there be an objective, universal value in communal order? In other words, are there ‘realistic’, perhaps natural grounds that could be legally and therefore ‘universally’ recognised? Here Rodin makes concessions again: the intrinsic good of community, societal order and political ‘speak to universal human needs’. Political identity at first is a good

argument for national-defense. ‘Many of the goods which give meaning to our lives are dependent on our participation in a community’ (SD, 149). The common life ‘stems from our need as humans for an ongoing history or “story” within which we can locate our lives and from which they can draw meaning’ (SD, 150). However, even a good argument is not good enough: ‘Why should we feel justified in defending a distinctive form of common life when humans are evidently capable of locating their lives within new and different cultural communities, as immigrants often do?’ (SD, 150). While Rodin here nonchalantly sweeps away objective grounds for the prohibition of forcible displacement (including in subtle forms like the ‘free movement of labour’), he reasserts that the value of a common life is ‘subjective’. It is not necessarily recognizable by someone ‘not a participant in that particular common life’. (SD, 151) Hence:

Seeking to ground an objective right to defense (one purporting to have normative force across cultural boundaries) upon such a subjective value judgment (one which is valid only within a particular culture or common life) is a relativist and illegitimate form of argument. (SD, 153)⁴³³

Effectively, the political community here becomes subjective and private, whilst only the individual’s conscience and the universal is public and objective.

This echoes again an ecclesiological dimension. Should one not give up house, property and country for the Kingdom of God?⁴³⁴ Should not even the family be looked upon with suspicion since it is ‘one of the great sources of idolatry’?⁴³⁵ Rodin’s idealism again *politically* cultivates these grounds over against a possible theological re-justification of material, political goods ‘worth fighting for’. And again, he goes well beyond both Kant and Rawls, who despite a universal moral perspective somewhat integrate the political; both

⁴³³ NB the non-negotiable dichotomy of relativist subjectivism and universalist objectivism.

⁴³⁴ Matthew 19:29.

⁴³⁵ Stanley Hauerwas, *Dispatches from the Front*, cit. in Gary Dorrien, *Social Ethics in the Making: Interpreting an American Tradition*, p. 482.

uphold an objective common good whose worth to the point of defense can be legally recognized.⁴³⁶ For Kant it was certainly possible to regard interpersonal and therefore communal-political relationships as objective as ‘humanity’ itself.⁴³⁷

Another argument for the realism of sovereign defense is Michael Walzer’s: he values communal integrity and thinks every community has a right to self-determination. If that is under attack, they may defend themselves. Citizens have the right to rebel against their government ‘if there is no “fit” between the common life and the state.’ Rodin concedes again that ‘freedom, autonomy and self-determination are objective transcultural goods in this way’ (SD, 155). But again a good argument is not good enough: the ‘working out’ of this self-determination is ‘an eminently political process’ and therefore *intrinsically* problematic: ‘It involves the manoeuvring of interest groups, the mobilizing of social and economic forces, and, in its most extreme form, civil war’ (SD, 157). Rodin implies that the processes of power and violent force undermine a truly moral self-determination; the use of violent force as a continuation of politics itself is suspicious. Complaining that Walzer ‘seems to be reducing collective self-determination ultimately to coercion and the balance of force’ (SD, 157), Rodin rejects the notion that violent force can be tied to communally embodied, but nevertheless objective, transcultural values.

Simultaneously, and this is a result of his overall dualist conception, he repeats the aim of political science and Realist theory, which pre-calculates and wants to guarantee a particular outcome: ‘It seems facile to suppose that a military outcome can serve as an

⁴³⁶ Rawls suggested a metacommunity of love or solidarity rather than pure privacy of values, which Dombrowski notes, is the Kantianism in his *Theory of Justice*. Daniel A. Dombrowski, *Rawls and Religion: The Case for Political Liberalism* (Albany: State University of New York Press, 2001)
Notably, Kant also mentions national defense. Rodin criticises Rawls for having states rather than individuals determine international morality. (SD, p. 185, n. 39)

⁴³⁷ Hollenbach makes this point when reading Kant’s categorical imperative parallel to Maritain. I agree with him, since Kant has the interpersonal relationships in view when talking about humanity rather than individual humans as objective ends. David Hollenbach, *The Common Good and Christian Ethics* (Cambridge; New York: Cambridge University Press, 2002), p. 80.
(Cambridge: Cambridge University Press, 2002), p. 80. Kant, *The Moral law, or, Kant’s Groundwork of the Metaphysic of Morals*, ed. by Herbert James Paton (London: Hutchinson, 1948), pp. 96-97.

accurate proxy for a normative process such as self-determination and normative judgments such as legitimacy' (SD, 158). What he does not consider is the idea that one can venture to defend a communally embodied good and still fail. Just because the morally correct outcome of civil war and a community's self-determination cannot be guaranteed, it is unclear why it should not be justified to *try*.

Finally, Rodin attacks what he calls the 'myth of concrete communities'. He correctly notes that '[social] life is not broken into discrete units which might potentially coincide with the boundaries of states' (SD, 159). So why – of all entities – should it be the state to be given a universal right to defend itself? The individual is tied into several communities ranging from family to country 'and perhaps also the global community of mankind.' There are also other 'horizontally ordered communities', like class, ethnic group, trade unions, etc. Notably Rodin counts the church also into this. This argument, because geared towards positive law, is convincing:

... because the present account located the grounding of the right of national-defense in the existence of a genuine community capable of exercising a form of collective autonomy, it is difficult to see why such groups should be denied an analogous right to defend their integrity with force. (SD, 160)

However, a *moral* account of the Just War would say: yes, indeed, why not? If a particular community of any 'level' or size is under special attack – especially an ethnic group or a class, why should their communal defence be impermissible?

Yet Rodin's logic of moral *and* legal mediation or 'framework', an ethicised law, proves to be problematic here, since he cannot simply say: 'Legally, only some institutional authorities have the right to self-defend. But morally, it might sometimes be right for non-state communities to fight a defensive war, even if illegally.' Since law is the mediator between 'politics' and 'morality', what is moral must become legal and vice versa – an understanding that gears towards its own globalised legal positivism and, as noted above, is

bound to become imperialism.⁴³⁸ Rodin then declares communal ties to be historically contingent and therefore politically, i.e. concerning the use of force, irrelevant. Because ‘[in] different contexts any one of these communal associations may be most important to me and each plays a significant role in defining my identity’ (SD, 159), *none* of them can be ‘objectively’, and therefore legally, recognized. From Linda Colley he takes the historicist point specifically about ‘nationhood’, understood as the nation-state: “Historically speaking, most nations have always been culturally and ethnically diverse, problematic, protean and artificial constructs that take shape very quickly and come apart just as fast.” (SD, 161) Rodin’s normative alternative to a positivist, totalitarian state is therefore not a demand for a more just state in-formed by *iustitia*, but to completely alienate the enforcement of ‘human rights’ to an enlarged positivist supra-state.

The fact that he finds no intrinsic political – and therefore potentially military – connection between the individual person and her various communities has de-politicising effects. Even a justified collective fight for life for Rodin is non-political. He is forced to return to the individualist ‘reductive strategy’ of self-defence he previously rejected:⁴³⁹

Thus, when the Jews of the Warsaw ghetto fought against the assault of the German army, they were quite literally fighting for their lives. In such a case it would indeed be possible to dispense with the vocabulary of national-defense, for it is possible to understand their actions as justified wholly within the conceptual scheme of individual rights. (SD, 139-140)

The previous authors would have regarded this as a political communal act tied to ‘natural ends’. Incidentally it provides precisely the community-shaping events and needs Rodin admits are part of our indispensable communal existence – in this case Israel’s cultural-political self-identification during the 20th century. But Rodin’s idealist, abstract citizenship

⁴³⁸ For particular adherents to ‘Kantianism’, legal positivism becomes possible and necessary since they interpret positive law as merely a regulator of normative disagreement. See e.g. Jeremy Waldron, ‘Kant’s Legal Positivism’, *Harvard Law Review*, 109 (1996), 1535-1566. NB: Joseph Raz bills himself as a legal positivist.

⁴³⁹ Cf. O’Donovan, *Desire of the Nations*, p. 249. The political act is the one ‘which is authorised and carries authority, which can give moral form to a community by defining its commitment to the good in a representative performance.’

cannot account for the historical, political (and narrative) significance of such ‘collective acts of self-defense’. Indeed, any *meaning* of political action in history is wholly absent here.

In the same vein the duties of political citizenship become questionable as the universal, objective ideal and the ‘private’, political, subjective remain unmediated also in this instance. O’Donovan, *d’accord* with Kant, sees essential political belonging, in so far as it is tied to *Iustitia*, as a good reason for conscription. No one may be the mere instrument of the state, Kant said, but thought it good to have a citizens’ army trained for the defense of the state.⁴⁴⁰ Rodin finds the draft simply ‘pernicious’ (SD, 165), having only the purely statist option between moral individualism, everyone fighting a war of choice, and an all-absorbing state machine. In effect there is little space for positive duties related to objective goods: associates, the community, communal property, the country or neighbouring countries. These objective ‘interpretations of a fundamental institutionality’ contain and elicit responsibility or what Seth Lazar calls ‘associative duties’ as the human being is essentially inseparable from them.^{441 442} In terms of discrimination, it is reflected in the Grotian ‘median guilt’ of the soldier; it results in liability for material cooperation only, but none, not even dormant liability to punishment after fighting an ‘unjust’ war. Although Rodin recognises the *zoon politikon* in each human (SD, 144) as much as duties of care, they remain outside any political and public relevance. However, precisely the loss of the category of ‘citizen’ as a mediated political freedom *in between* state instrument and voluntaristic individualism leads to the possibility that the war zone may *extend* to ‘unjust’ civilians, non-combatants and other aiders and abettors on the grounds of their personal ‘moral responsibility’.⁴⁴³

⁴⁴⁰ Immanuel Kant, *Zum ewigen Frieden* (Stuttgart: Philipp Reclam Jr., 2008), p. 5.

⁴⁴¹ Ulrich H. J. Körtner, *Evangelische Sozialethik*, p. 53.

⁴⁴² Seth Lazar, ‘War and Associative Duties’ (unpublished doctoral thesis, University of Oxford, 2009)

⁴⁴³ McMahan, *Killing in War* (Oxford: Clarendon, 2009), p. 204 ff. McMahan claims that ‘moral responsibility for an unjustified threat that one does not oneself pose is sufficient for liability to harm as a means of protecting the person wrongly threatened.’ (207) This is acceptable in so far as he wants to hold military and political superiors responsible. However, in the course of his argument he dissolves the principle of civilian/non-combatant immunity to the point where, civilian deaths may be utilized as acceptable ‘deterrents’. (211)

Meanwhile, the actual political realism of sovereign states remains the unmediated Other to Rodin's idealism not-yet fully realised. In a correspondence with Uwe Steinhoff he argued that states have legitimacy as war-making authorities because they are state institutions: 'The state has an internal set of checks and balances, and in traditional just war theory the authority of the state comes from the fact that it is defending the community and is properly constituted to do so'.⁴⁴⁴ If Elshtain had to accept 'utopia' as an ever-recurring world historical nuisance, then Rodin has to accept the positivist 'legitimate' authority of the state.

In short, Rodin's idealist notion of the political agent begins with the Kantian individual and their moral insight. However, since morality and politics at the international level require the abstraction of a legal framework that 'allows people to behave well', Rodin's places the 'ideal soldier' within a universal state. This, I have shown, is akin to the structure and place of the (medieval) papacy. As supra-political it is yet fully political, representing all of humankind conceived as subject to a formerly divine and now legal principle, which harbours the conceptual problem of increased global violence. The particular 'realistic' dimension of political authority stands against this. As an independent source of a political authority that may justifiably use violent force, Rodin's idealistic-legal logic blankets it out. However, sovereign 'legitimate' states return as the unchallenged realist Other to his idealism as much as his "papacy" can collapse into imperialism.

The 'reality of politics'

In terms of the 'reality of politics' as the context for action, the Kantian turn is determinative again. With Kant, as pointed out, the Christ event that reconciled the grand cleft going through existence, now falls behind the horizon of reason. It is now declared *beyond*

⁴⁴⁴ Uwe Steinhoff, *Ethik des Krieges und des Terrorismus* (Stuttgart: Kohlhammer, 2011), p. 140 n. 35.

morality, beyond good and evil.⁴⁴⁵ The only great fissure *thinkable* is located within each individual's moral reason: between thinking the Ought and seeing the scientific Is.

'Morality', writes Kant,

in so far as it grounded in a concept of the human as a free creature and thus binding itself through its reason to unconditional laws, needs neither the idea of a being above himself in order to recognize his duties nor any other driving force than the law itself in order to observe it.⁴⁴⁶

This dualism between the freedom of rational laws and 'the idea of a being above' oneself separates Rodin from Ramsey and O'Donovan but again connects him back to Elshtain. As their 'evangelical reality' is subtracted from a moral view, political reality and the moral ideal become immanent opposites. Whilst the humanistic ideal is to be imposed over the real, however, they remain unmediated. Hence, Rodin has to reauthorise the factuality of political-scientific realism.

The moral ideal – universal 'value commitments' and the Kingdom of God

Initially in exact opposition to realism, for Rodin the universally moral is the primary point of reflection over against a 'violent world'.⁴⁴⁷ It is the source of *prima facie* obligations towards others for building the future. The moral philosopher's task is to 'introduce and explore alternative visions of moral reality' (SD, xiii). The Kantian 'priority of moral commitment'⁴⁴⁸

⁴⁴⁵ Notably, the meta-ethical or first-order theory that Rodin calls 'Nietzschean immoralism' for Ramsey and Milbank is the locus from which springs a Christian ethic. See above, Ch. 2 Ramsey, *Basic Christian Ethics*; John Milbank, *The Word Made Strange* (Oxford : Blackwell, 1997)

⁴⁴⁶ Immanuel Kant, *Die Religion innerhalb der Grenzen der bloßen Vernunft*, ed. by Rudolf Malter (Stuttgart: Reclam, 2007), p. 3.

⁴⁴⁷ NB again the ecclesial parallel through Milbank: 'And what is different about Christian ethics, and so implies a specific Christian social teaching, is precisely its supernaturalizing of "the good", and its more absolute view of the priority and possibility of goodness.' *Theology and Social Theory*, p. 267.

⁴⁴⁸ *Verpflichtung* means not necessarily an externally imposed 'obligation', but also voluntarily made 'commitment'.

is sharply juxtaposed to the necessities (and therefore all tendencies of natural-determinism) of innate needs, passions or drives presupposed in realism. Jochen Bojanowski explains:

The moral law is the *subsequently* determining conscious ground of freedom. Even though the moral law presupposes the freedom of the will, the latter is, with an Aristotelian turn, only primary in a material sense. The primary thing for us, however, is the consciousness of the moral law. Hence it is the ‘*Sittlichkeit*, which first discovers for us the concept of [absolute] freedom’ and so also practical reason, which ‘sets up’ for speculative reason the problem of the compatibility of freedom and natural determinism.⁴⁴⁹

Rodin’s insistence that even *in medias res* we always have to and can wonder what kind of society we would want to be is congruent with this. It demands a *de facto* and unchanging commitment to existing moral maxims, laws and limits. And precisely this commitment places limits on the means of warfare. It prohibits strategies such as systematic deception, encouragement of fear, indiscriminate bombing of the enemy, the violation of basic human rights, and so on. The Christian realists did not encourage these measures. However, both could make torture (Elshtain) or nuclear strikes (Ramsey in his realist phase) strategies which ‘the enemy’ or ‘a violent reality’ either tragically *imposes* on the political agent or which enemies impose on themselves. For them the ‘realities’ of a fallen world set the moral coordinates for the space within which politics and the military brass react. Idealists cannot accept such ‘necessities’ to impose certain measures on the political agent; national defence cannot be like a ‘flood roaring through a canyon’, giving military action a tinge of inevitability.⁴⁵⁰ A concept of responsibility and risk-taking replaces the necessity of “dirty hands”: ‘...if one can defeat evil only by becoming evil, then it is impossible to defeat evil.’

⁴⁴⁹ Jochen Bojanowski on the ‘priority of moral commitment’, p. 86: ‘Das moralische Gesetz ist der *nachträglich* bestimmende Bewußtseinsgrund der Freiheit. Obgleich das Moralgesetz die Freiheit des Willens voraussetzt, ist sie, aristotelisch gewendet, doch nur das Erste der Sache nach. Das Erste für uns dagegen ist das Bewußtsein des moralischen Gesetzes. Es ist also die „Sittlichkeit, [die] uns zuerst den Begriff der [absoluten] Freiheit entdeckt“ und somit auch praktische Vernunft, die der spekulativen Vernunft das Prblme der Vereinbarkeit von Freiheit und Naturdeterminismus „aufstellt“.’

⁴⁵⁰ See Elshtain, Ch. 1 above.

(SD, 67) Not the intrinsic impracticalities limit war here, but an alternative, cosmopolitan moral vision – notably, again an understanding more in accord with Christian ‘Just War’ thinking than realist pragmatism.

The fact that for Kantians the Christ event falls behind the rationalist horizon of morality does not mean that the form and content of the moral vision ceases to mimic and even intensify its Christian predecessors. As suggested above, a positivised, institutionalised human rights paradigm, the global *cosmopolis* can reclaim the canon law tradition. Equally it echoes its Stoic predecessors, who were divided as to whether a *cosmopolis* is a political or an apolitical notion. The humanistic principle, seeing persons and their valuations as foundational, may draw on the theological motive of the *imago Dei*. But what was previously an eschatological paradox between the spiritual and political Kingdom of God, is now an immanent ‘eschatological gap’, relocated in between immanent moral possibility and historical, practical failure.⁴⁵¹ The horizon of divine providential action also has its secular counterparts. Kant wondered: ‘How can one expect that out of such crooked timber [as human nature] something fully straight can be made?’⁴⁵² Rodin concurrently often notes factual failures or weaknesses in politics, a ‘not yet’. However, ‘occasionally, through a confluence of intellectual, social, and political forces, remarkable things are achieved’; his moral hopes echo the need for circumstance and providence or *Vorsehung*.⁴⁵³

Nevertheless, however casually Rodin’s refers back to Aquinas and Grotius, the Kantian epistemological and ontological shift finalises the modern sceptical distinction between political, factual Is and moral Ought, as the empirical and the rational. Rodin in this respect must be reconnected back to Ramsey’s Enlightened and fideist Social Gospel.

Without invoking an *ecclesia* or the Kingdom of God, both require the political

⁴⁵¹ In that sense Hegel’s ubiquitous mediation is prefigured in Kant.

⁴⁵² Immanuel Kant, *Die Religion innerhalb der Grenzen der bloßen Vernunft* (Stuttgart: Philipp Reclam Jr., 2007), p. 129.

⁴⁵³ Ibid. See also John E. Hare, *The Moral Gap: Kantian Ethics, Human Limits, and God's Assistance* (Oxford : Clarendon Press, 1996)

implementation of an immanent ideal rather than the responsible political entity continuously and justifiably *gesturing towards* it (even with the use of violent force).⁴⁵⁴ Rodin's cosmopolitanism comes with the duty to realise or instantiate it *over against* any 'organic' accounts of communal human nature or even the 'Hegelian' state. A natural law, conceived as an ontological order, becomes obsolete – otherwise Rodin would have to accept the 'realistic grounds' for national-defence and political authority. Any 'moral order' in modernity consists in the 'self-foundation of freedom' (Beestermöller). In the same way that the global state oscillates between non-political utopia and imperialist instantiation in history, Rodin's objective 'moral vision' of the egalitarian, juridical family of humankind after all collapses into the subjectivism of the 'princes of peace', since the source of ethics are 'intuitions' and 'common sense' rooted in a particular Western tradition. The Rawlsian 'original position', far from being original, presumes that all parties have internalized modern capitalist imperatives and a favourable level of prosperity and literacy.⁴⁵⁵

Political realism and tragedy

Rodin's 'reality principle', in contrast, consists in empirical reality which, *nolens volens*, allows for political realism to flourish after all. The factual, like the concept of sovereignty, based on power, has no moral potential. 'Politics' as an empirically observable sphere is the object of description or – perhaps more Kantian – of theoretical reason. Rodin's final chapter is a great example of an analysis of the current state of affairs in international politics. For example brinkmanship presents a set of interactions that cannot be described as just or unjust on either side:

⁴⁵⁴ Cp. Milan Babík, 'In Pursuit of Salvation: Woodrow Wilson and American Liberal Internationalism as Secularized Eschatology' (unpublished D.Phil. thesis, University of Oxford, 2009)

⁴⁵⁵ Perry Anderson, *Spectrum. From Right to Left in the World of Ideas* (London: Verso, 2005), p. 105.

The phenomenon of brinkmanship is most often observed in the relations between great powers, or between states of roughly equal military capability existing in an unstable balance of power. The characteristic pattern of such relations is that, when a dispute arises, each side escalates a series of threatening actions and responses, gambling that the other side will back down before the brink of conflict is reached (which all parties agree would be the worst outcome for all concerned). Often, of course, adversaries who engage in this form of strategy are unable to control the process and, through arrogance, miscalculation, or stupidity, tumble into catastrophic conflicts. (SD, 192)

The non-moral character of the merely empirical, Kant's 'antinaturalistic cognitivism' as Otfried Höffe calls it, should not necessarily be deplored. On the contrary, its precondition of freedom remains the last bastion of 'metaphysics' after Kant's Copernican Turn.⁴⁵⁶ Unless practical freedom is grounded in 'transcendental freedom' and thus fully independent of anything empirical and 'nature' altogether, a person would have no more than 'the freedom of a turnspit, which, once it is wound up, also accomplishes its movements of itself.'⁴⁵⁷ Hence, in this sphere one lives out one's freedoms and applies into it one's moral choices. Moral goodness – by definition – consists in the successful imposition of one's good will. History becomes a screen or material for political 'projects' like a universal state.

However, because the real and the ideal are separate and unmediated in Rodin's account, an after all antagonistic notion of politics returns. Kant's acceptance of Hobbes' *status hominum naturalis est bellum omnium in omnes* here is as exemplary for this logic⁴⁵⁸ as is Tolstoy's oscillation between a 'law of love' and a cataclysmic notion of war.⁴⁵⁹ Well rooted in the Kantian universe in this instance, Rodin shares the antagonistic, essentially

⁴⁵⁶ Otfried Höffe, *Kant's Cosmopolitan Theory of Law and Peace* (Cambridge: Cambridge University Press, 2006). Rodin is like Habermas in that both advocate the juridification of life-world communications; law is the moral mediator. However, Habermas gives facticity its own "normativity", and thus in fact loses all grounds for fundamental critique and alternative praxis. Perry Anderson, *Spectrum: From Right to Left in the World of Ideas* (London: Verso, 2005), p. 127.

⁴⁵⁷ Immanuel Kant, *Kritik der praktischen Vernunft*, AA V, p. 97.

⁴⁵⁸ Georg Geismann even sees Kant as the 'fulfilment' of Hobbes: 'Kant als Vollender von Hobbes und Rousseau', *Der Staat*, 21 (1982), 161-89.

⁴⁵⁹ Tolstoy is listed in Rodin's bibliography, but he does not refer to him anywhere in the book. SD, p. 206.

conflictual notion of the political inaugurated by Hobbes, even though he is a little more ‘optimistic’ about human nature.⁴⁶⁰ ‘Any moral philosophy must take cognizance of the fact that it is promulgated in a political world, and of the possibilities and limitations that this implies’ (SD, 188). For Rodin the continuous ‘failure’ of politics even provides the necessary and continuous *precondition* for a long-term moral transformation:

... there is a deeply moral response to international conflict which does not seek to contradict the Realist perception that the current mechanisms of international politics are irredeemably devoid of morality, but rather grows out of it. The necessity of a moral critique of international relations derives from an appreciation of the inadequacy, ineffectiveness, poverty, and hypocrisy of the standard conceptions of international morality. (SD, 197)⁴⁶¹

Moreover, in the absence of a concrete (non-Walzerian!) Just War proposal, i.e. a practical third way integrating realism and idealism, Rodin is conceptually forced to remain uncritical of existing wars. Not because they are all ‘just’, but because they are all ‘unjust’ by the cosmopolitan standard. Rodin and other humanitarian international lawyers like Hugo Slim or Jennifer Welsh never criticize particular states’ wars from the perspective of these states as representative political authorities, but only the collateral damages, or the damage done to ‘human rights’ either in general or in the very particular.⁴⁶² And since consequentialism may sometimes override individual human rights, and national defense be the ‘lesser evil’, *in practice* idealists can lend vocal moral support to sovereign states that infer the right to

⁴⁶⁰ Rodin identified five ‘descriptive’ and one ‘moral’ element of a definition of war: 1. the use of force, 2. contention, 3. intensity and duration, 4. public agents, 5. teleology or ends fought for and 6. a ‘normative element’. David Rodin, ‘What is War?’, Leverhulme Programme on the Changing Character of War, 27 January 2004; unpublished paper.

⁴⁶¹ This is the danger of the “Christian” hypocrisy against which Blake set his *The Human Abstract*: ‘Pity would be no more/ If we did not make somebody poor./And Mercy no more could be/If all were as happy as we.’

⁴⁶² See Jennifer Welsh, ‘How Iraq Changed How We Think About Human Rights’, 19th March, 2013 <<http://opencanada.org/features/the-think-tank/comments/how-iraq-changed-how-we-think-about-human-rights/>> [accessed 4. April, 2013]; ‘Cécile Fabre on Cosmopolitanism and War’ <<http://philosophybites.com/2011/01/c%C3%A9cile-fabre-on-cosmopolitanism-and-war.html>> [accessed 15 March 2012]

national defence on the grounds of human rights.⁴⁶³ Several liberal human rights theorists like Samantha Power or Michael Ignatieff, both also referenced by Elshtain, painlessly swapped internationalist ‘impartiality’ for the defense of American empire, torture and drone warfare.

Placing this in our overall comparative framework, the logic of Rodin’s anthropocentric human rights account is akin to Elshtain’s, except that the *content* is the exact reversal. Like her, Rodin sees an unmediated duality or a dichotomy of conceptual possibilities: between communitarianism and individualism, between subjectivist particularism and objectivist universalism, between state sovereignty and supra-national authority. Relying on the objectivist ‘rule of law’ instead of subjectivist states as the subject and mediator of international relations, Rodin consistently prioritizes the latter of these pairs. Thus he presents the secularised, now conceptually more violent ‘papacy’ to Elshtain’s ‘sovereign state’. Both have in common a shared logic. They see these options as exclusive of each other; both suggest a fundamental *separation* from the opposite. Elshtain utterly rejects the ‘utopian’ legalism, whereas Rodin neglects the moral grounds of ‘the political’. As a result each strand then *absorbs* its opposite: Elshtain’s state absorbs the juridical ideal of humanity and becomes a mythical ‘benevolent empire’ that ‘guarantees human rights’ over against international law and institutions. Rodin’s juridical ideal of humanity absorbs the state and becomes a ‘global non-sovereign political society’, though – as noted – this concept is inherently imperialist as well once actualised. Both accounts clash as they champion a positivist, political rule. Rodin’s and Elshtain’s difference, which reflects the contention between the U.N. and the U.S. over the authority to enter the Iraq War in 2003, may therefore well be regarded as a renewed Investiture Contest.

⁴⁶³ The collapse of liberalism into empire is historically well documented, see James Tully, *Rethinking Human Rights and Enlightenment. A View from the Twenty-first Century*, Oxford Amnesty Lecture, 10 Feb 2010 <<http://web.uvic.ca/polisci/people/faculty/Tully/publications/Oxford%20Amnesty%20lecture.pdf>> [retrieved 28 August, 2010]; Domenico Losurdo, *Liberalism: A Counter-History* (London; New York : Verso Books, 2011); less explicit perhaps is Karma Nabulsi, *Traditions of War: Occupation, Resistance and The Law* (Oxford: Oxford University Press, 1999), pp. 108 ff.

The logic of separation and absorption is possible because of what Ramsey criticised as the mistaken categorical continuity of the political and the spiritual: the politically real is idealised or the ideal is politically ‘instantiated’. Meanwhile, the foundational, *theological* dualism both of Elshtain’s modern Marcionism and Rodin’s Kantianism remains unbridgeable. Both authors lack the perspective of a *mediating* Third that accounts for the critical political freedom within a political community. With this in mind, one should recall here that Ramsey in his *agapist* phase rejected both the national sovereignty’s and the papalist outlooks as ‘atheist’, because love working through faith is deposited and ossified into legal, positivist, and after all political institutions. Rodin’s idealism certainly echoes Augustine’s scepticism and radically deconstructs the sovereign political from a quasi-ecclesial perspective, including the law and individual moral freedom. However, conceptually, once to be realised, Rodin’s idealism collapses into realist imperialism.

Conclusion

With this chapter the first comparative move has been made across the Christian-philosophical divide. Several interlocking points have been brought together. First, I followed through on the suggestion that modern ethics of war are based on theology-as-anthropology, a quasi-apotheosis of the individual as a ‘prince of peace’. Based on broadly Kantian premises – though, notably, few contemporary ethicists of war actually offer a sustained engagement with Kant – this was grounded on the ‘irrational’ aspects of the Christ-event having fallen outside the bounds of Enlightened reason. In that sense, Rodin operated on the comparable dualistic grounds as Elshtain and Ramsey in his idealist and realist phases.⁴⁶⁴ This meant that the same idealism-realism divide returned in an explicitly immanent mode, but also that an

⁴⁶⁴ Arguably, modern Marcionism becomes possible only after Kant.

alternative mediator to Christ (either the individuals or law), would lead to the dichotomy persisting.

Rodin's conviction that international law is the mediator between politics and morality promised that its continuous expansion and abstract reification would gradually increase the protection of individual human rights by abolishing war. I argued that both from a theological as well as a historical perspective such idealist cosmopolitanism is comparable to a medieval notion of the Catholic Church, which embraced humanity as the true *cosmopolis*. Here the 'law of love' is transformed into a fundamentally juridical essence of each human being, whilst 'religion' is completely internalised. I pointed out with Beestermöller that the 'regular war' of humanitarian interventionism within a global framework is comparable with the crusades, though now rooted in self-foundational rational freedom. In that sense Rodin also went well beyond Kant's cosmopolitanism, because the latter still thought that the principle of an ethical community, a church, was non-political. For Kant, individual conscience connected to the Absolute directly and without institutional mediation, but equally entailed a notion of citizenship and a defensible common good. If Kant is still a political 'Protestant', then Rodin represents a renewed, secularised papalism. His alternative to alienated rights and 'regular war' is not a justified war or even justified revolution, but rather mass self-defense which is incapable of connecting to political, communal life or the common good.⁴⁶⁵

The inner logic of Rodin's proposal is one of a primary theological dualism or separation paired with an essential continuity between the political and the moral-global order. This inner logic of humanitarian idealism, I argued, is congruent with Elshtain's, even though Rodin's developed from a slightly different starting point and lands on the exact opposite position to Elshtain. Rodin's instantiation or realisation of the cosmopolitan ideal

⁴⁶⁵ Possibly connected to this, one should note how the cosmopolitan academia shows extremely limited interest in present popular resistance against austerity programmes and the dissolution of democracy, parliamentarianism and justice in the financial 'state of exception' both in the U.S. and Europe.

was to absorb the independently political; Elshtain's idealising of American empire absorbed humanitarianism and thus became 'benevolent empire'. In both authors one could nevertheless note the unmediated return of the excluded Other. For Elshtain it was 'utopianism' or religious fanaticism; for Rodin, it was positivist state institutions and the antagonism of war. Conceptually, the two authors mirrored each other as opposites: their clash on the question whether the U.S. or the U.N. was the final global authority represents a renewed, immanent Investiture Contest. Nevertheless, although conceptually opposed, Rodin's 'non-sovereign' cosmopolis realised in actual history would collapse into imperialism – in the same way that Elshtain's 'benevolent empire' is after all utopian.

The next and final chapter will introduce a philosopher who equally thinks from the perspective of human rights. However, Uwe Steinhoff, in so far as he demands a 'Machiavellianism for everyone', will be analysed as a realist. Not only will the structural parallels with Christian realism become much more visible - the idealising, even imperialist logic will also return.

Machiavelli for Everyone! – Uwe Steinhoff's individualist realism

The final author in this thesis hails from Hong Kong. Uwe Steinhoff studied philosophy (major), psychology and political sciences (minors) in Frankfurt/Main and received his PhD in philosophy in Würzburg. His essential work on ethics is *Effiziente Ethik* (Efficient Ethics), but he has also written extensively and critically on Jürgen Habermas and Karl-Otto Apel. Together with his book *The Ethics of War and Terrorism* he has produced several articles on just-war related issues.⁴⁶⁶ His secularist, liberal, at times libertarian premises provide fertile grounds for the justification of the rare use of torture, mercenaries, terrorism – in short, a set of proposals that has gained him the reputation of *philosophe provocateur*.

Apart from being interesting in itself, his work indicates another way ahead for the ethics of human rights in a liberal *saeculum*. Johann Gottlieb Fichte could perhaps be seen as predecessor, especially his reflections on the French Revolution, but Steinhoff explicitly draws on John Locke, J. S. Mill, Kant and Max Weber.⁴⁶⁷ Steinhoff starts out from the same 'Marcionite' locus as Rodin (and the less explicit Elshtain). The existence of God or the cosmic-universal revolution in the Christ-event has again fallen behind the horizon of reason

⁴⁶⁶ Uwe Steinhoff, *Zur Ethik des Krieges und des Terrorismus*, rev. ed. (Stuttgart: Kohlhammer, 2011), hereafter EKT. The first English edition, from which some of my translations are taken, was *The Ethics of War and Terrorism* (Oxford: Oxford University Press), 2008, when cited hereafter: EWT; Steinhoff, *Effiziente Ethik*, (Paderborn: mentis Verlag, 2006), hereafter EE; Uwe Steinhoff, 'Ethics and Mercenaries', in *New Wars and New Soldiers: Military Ethics in the Contemporary World* (Ashgate: 2011), pp. 137-151.

⁴⁶⁷ Johann Gottlieb Fichte, *Beitrag zur Berichtigung der Urteile des Publikums über die französische Revolution* (1793), (Hamburg: Felix Meiner Verlag, 1973)

here; the 'source' of morality is common sense and intuitions. But whereas Rodin's idealist vision, based on the mediating role of international law, built a *cosmopolis* from universalised individual citizens, such ideal programmes play no decisive role for Steinhoff and remain unjustifiable. Absent both an absolute (moral) truth or *Sittlichkeit* and a divine mediator, the pivotal point – the mediator between politics and a morality of her choice – remains the rational, autonomous individual herself. Steinhoff begins and ends with the individual's contractual authority and defensive agency. He sees these as the backbone of any serious attempt to think morally about violent force.⁴⁶⁸ Within this paradigm, war revolves around individual-, group- and national defence.

Steinhoff's strategy is critical and analytical. In the light of our common intuitions and individual human rights he analyses claims and concepts for their consistency and inner logic. The 'list of criteria authorising one to enter (or continue) a war' (EKT, 12) provides his material. From a comparative perspective, his analytical philosophy as a 'dialogue of reason' is quite a distant cousin of the dogmatic-practical reflection of faith on the being and work of God.⁴⁶⁹ And arguably Steinhoff's many test cases involving chicken-sacrificing Aztecs, hypothetically exploding cats, and many Wild West scenes are a form of sophistry. Still, the Just War theory as a *list* has recently become another form of positive legality. It claims universality as a formal tool void of 'particularist' content.⁴⁷⁰ An attack on such formalism has Christian echoes, and many of Steinhoff's criticisms are effective and valid. But although he attacks 'the old law' of statist Just War theory, his own transformed vision of ethics, I argue, remains 'in the old age'.

Like the previous chapter on idealism, this analysis will be read for the most part through the prism of the first chapter on Elstain. Steinhoff's proposal is not opposed to

⁴⁶⁸ For example Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012); Jeff McMahan, *Killing in War* (Oxford: Clarendon, 2009)

⁴⁶⁹ L. Jonathan Cohen, *The Dialogue of Reason: An Analysis of Analytical Philosophy* (Oxford: Clarendon Press, 1986)

⁴⁷⁰ *Just War Theory: A Reappraisal*, ed. by Mark Evans (Edinburgh: Edinburgh University Press, 2005)

Elshtain's, but rather works as yet another realism. Where Elshtain infused neoconservative realism with Augustinian piety and saw the U.S. as a global champion of human rights, Steinhoff lacks the 'mythopoietic' *appeal* to religion. But he reaches comparable imperial shores setting out from a decisively secular, individualist starting point. His ethics of individual rights are the contractual basis to Elshtain's sovereign state; the two authors are defenders of the same liberal paradigm. A comparable dualism and dialectic will emerge here as in the first chapter, though with some modifications that result from Steinhoff's individualist perspective.

As in the previous chapters, I will again first look at the concrete 'just war proposal' as it is presented and bring out the realist logic at work. In the analytical section, this logic is explained and contrasted with a theological backdrop of divine mediation.

I. Exposition - A consequently liberal Just War theory

The Ethics of War and Terrorism aims for 'a thoroughgoing application of a perspective which is enlightened, liberal and oriented to individual rights' (EWT, 3). It has a particular strategy to attack the 'traditional' list of just war criteria. *In lieu* of, but analogous to the Christ-event, Steinhoff performs a kind of critical-analytical revolution to existing common sense standards and, rejecting any moral 'romanticism', he explains why controversial practices may be morally legitimate. Here he shows a fine sense for residual Christian traces in the current ethics of war that cannot be accounted for without recurrence these sources. Finally, he readjusts the criteria according to a consequently liberal principle.

'Legitimate authority'

The 'criterion of legitimate authority' easily lends itself to tautologies: a state is a legitimate authority to wage war, because it is the state and therefore legitimate.⁴⁷¹ Such statism invites a critical attack from Steinhoff. Especially if the criterion is 'logically prior' to non-combatant immunity, he notes correctly, then 'the theory of Just War collapses into an Authorisation Act for "legitimate authorities"' (EKT, 16). The mere fact of a 'public monopoly of force' is not a sufficient indicator that a particular state is *good*, even if it formally curbs 'private wars.' 'It may be that the public monopoly of force is a precondition of a "civilised society", but *breaking through* this monopoly is historically and under most circumstances also today an unavoidable precondition for democratisation' (EKT, 17). This already indicates the thrust of Steinhoff's arguments: the end and good of the violent use of force is formal democracy.

It then becomes clear that authors like A.J. Coates *use* the criterion to cement a statist bias against revolutionary movements and formal change. Steinhoff shows that Coates has to admit that a state has legitimacy only when under the law of an international community, and that people do after all have a 'right to resistance' if a government's power is hijacked by private interests.⁴⁷² Once 'state and community stand in opposition to each other', Coates would have to say, 'a revolutionary movement may be a public power legitimised by the community' (EKT, 19). Similarly, Steinhoff leads Janna Thompson's project *ad absurdum*: her enemies' fight (for example Hamas) against 'legitimate states' is in fact justified by

⁴⁷¹ For a similar criticism see also Diana Francis, *Rethinking War and Peace* (London: Pluto Press, 2004), p. 88; Anthony Burke, *Beyond Security, Ethics and Violence* (London: Routledge, 2007), pp. 140-146; Andrew Fiala, *The Just War Myth* (Lanham: Rowman & Littlefield, 2008), pp. vii-xi, 70-71.

⁴⁷² To understand 'private violence' as 'individual' is a mistake arising from a positivist understanding of state legitimacy. Aquinas, thinking in terms of vocations, only opposes public and private *authority* or *knowledge*. ST, IIaIIae, Qu.66, Art. 2 and 8, Qu. 67, Art. 2. See also Kant, for whom publicity is always a transcendental-universal use of reason, so that agents of the state are *per se* acting privately. *Beantwortung der Frage: Was ist Aufklärung?*(1784), AA VIII, pp. 35-42, p. 37.

Thompson's very own standards of legitimacy. Notably, *pace* Steinhoff, this critique does not at all contradict 'the classical' Just War tradition, which is not per se opposed to historical change or disobedience.⁴⁷³

The criterion of legitimate authority formalistically conceived is, in fact, absurd. Yet Steinhoff does not deconstruct its positivism in order to make it dependent on enforcing justice. He rather inflates its currency and extends the (natural) right of private self-defence to a 'right to war'. Everyone naturally *is* an authority for war, as everyone has the right to defend himself against others and a rights-violating state. One equally has the right to punish others. (EKT, 24) This, Steinhoff argues, is also enshrined in the German Basic Law as the 'right to resistance': 'All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available.'⁴⁷⁴

So the crucial critical movement in thinking through liberalism is to set natural individual rights against 'legitimate authority'. In a second step, however, Steinhoff restricts those rights. Firstly, by *Recht*: one can only go to war if one's rights have been violated 'unjustly'. Secondly, at least for 'public wars' only the community members authorised to decide on war can do so. With this restriction Steinhoff reintroduces a formal-democratic criterion of legitimate authority, albeit half-heartedly: '... we don't need a theory of just war for that'. (EKT, 27) Thirdly, with Vitoria, any formal authority still must consult and deliberate carefully.⁴⁷⁵ But what a public authority is good for or why it should not act privately (*eigenmächtig*) and how it should have the welfare of the community in view are

⁴⁷³ Steinhoff refers to James Turner Johnson, who discusses the canon law origins of 'right authority'. But Johnson notes that this legal formalism gave short shrift to the question of what authorities are *good for*. Johnson, *Just War Tradition and The Restraint of War: A Moral and Historical Inquiry* (Princeton : Princeton University Press, 1981), p. 151.

⁴⁷⁴ *Basic Law of the Federal Republic of Germany*, Art. 20, Section 4; *German Penal Code*, Art. 34, 'Justifying Emergency'.

⁴⁷⁵ On these grounds Steinhoff argues George W. Bush was not a 'right authority' for the second Iraq War, since he refused to talk to churchmen critical of the war. One might perhaps wonder: was it really only *that*?

questions that Steinhoff does not answer here. His point is that in principle everyone can defend their rights.⁴⁷⁶

Just cause and right intention

Steinhoff next turns to the criteria dealing with the cause and direction of violent force. *The Challenge of Peace* lists reasons for permissible war: ‘to confront “a real and certain danger”, i.e., to protect innocent life, to preserve conditions necessary for decent human existence and to secure basic human rights’ (EKT, 29). But for Steinhoff, the just war theory is not meant to merely ring-fence the scale of, or restrict the numbers of incidences of contemporary warfare.

What matters morally is the justice in any given case and the adequacy of the means to respond. The adequacy is then expressed in the ‘sub-criteria’ of last resort, reasonable chance of success and proportionality. One could, for example, wage a ‘just’, but non-bloody war to rescue one’s kidnapped pets. As with ‘legitimate authority’, he therefore transforms the criterion of just cause: ‘The only logical and practical thing to do is rather to conceptualise the criterion [of just cause] as a *sufficient* cause and subsume the criterion of last resort, reasonable chance of success and proportionality under it.’ More condensed: a just cause and a proportionate response remain standing as criteria. (EKT, 31) This practical injunction to do justice is strikingly similar to O’Donovan’s in that there is no essential difference between the morality ‘of war’ and ‘of peace’. The formal content, of course, differs, since Steinhoff wants to protect rights.

‘Right intention’ remains an independent criterion, but becomes a quasi-legal externality. Sure, Steinhoff says, if there is a just cause for a war, ‘it must also be waged *for* that reason’ (EKT, 31). If a state intervenes and effectively stops genocide, it would be

⁴⁷⁶ Steinhoff, ‘What is War – And Can A Lone Individual Wage One?’, *International Journal of Applied Philosophy*, 23 (2009), 133-150.

illegitimate, impermissible and unjust if done only to extend the state's sphere of influence. Like O'Donovan, he focuses on the scope of one's action: an agent is allowed to have intentions besides settling the just cause. Both authors point out that we should not be 'too puritanical'. An agent may *also* e.g. extend his sphere of influence, provided 'his warring does not go further than is necessary to reach the aim defined by the *causa iusta*' (EKT, 32). But Steinhoff's significant step consists in now focusing on the permissibility of actions, not 'the moral guilt of the agent' (EKT, 31). The whole conceptuality of war no more depends on the objective content of the 'right intention'. It ceases to be the primary moral principle of a war. If a sadist who enjoys killing takes part only in justified wars, Steinhoff says, 'he respects the rights of others. A liberal cannot ask for more than that.' Anything more would be 'character surveillance', 'sniffing out inclinations and attitudes' (EKT, 33). 'Right intention' consists 'not in acting *for* a particular reason', but in agreeing to '*respect* the criterion of just cause as a moral command' (EKT, 33). In other words, intention becomes the inner, subjective experience of the agent.

The remainder of the section criticises a number of formal just war criteria on which the justice of a war could hardly depend.⁴⁷⁷ War does not have to be the *last resort*, but it must be the last promising resort. This makes sense, since it is hardly useful to carry out peace talks when the other party is already up in arms, starting up the tanks. Going to war might actually be more appropriate than e.g. sanctions, which are of an equal military nature and actually target the weakest. (EKT, 34) Also, the *reasonable chance of success* can hardly indicate the justice of a war. One may be justified in fighting, indeed it can be the 'last flicker of humanity' to carry on fighting a lost cause. (EKT, 35) Steinhoff's example is Native

⁴⁷⁷ Like O'Donovan, Steinhoff understands these criteria as different aspects of proportionality, not negligible items on a list. See above, Ch. 3. One problem of the 'legalism' of current just war thinking, which cannot be developed at length here, is that the *interdependence* of criteria is neglected. For example, if one does not have the 'right intentions', then one simply is not the 'right authority' because one would not be doing the right thing; the action performed is therefore not only disproportionate because not related to a good, but morally wrong.

American tribes fighting colonial extinction. These two criteria therefore become sub-criteria of general proportionality.

So with the Christian just war tradition, Steinhoff somewhat dismantles, or at least re-shuffles the tick-box list of just war criteria. Any justice to be done requires appropriate and proportionate means. Yet against the content of the Christian tradition the ‘right intention’ remains as a criterion to be respected in order to limit the scope, not define the nature of one’s action. The justice to be done is not defined by some supernatural standard, but the protection of the rights and freedoms of all individuals. (EKT, 36) The fact that for Steinhoff sometimes ‘the rights of some can only be protected by violating the rights of others’ entails a substantive analysis of proportionality and the meaning of innocence and guilt.

The innocent, double effect and proportionality

The notion of proportionality is part of the question: ‘Whom, if at all, may one kill (and why)?’ The answer ‘may range between “everyone” and “no one” and thus may either almost always permit war or in fact prohibit war’ (EKT, 36-37). So Steinhoff aims for the traditional Just War mediate position between the two. But can he sustain this position? He can, but not without drifting to the realist, antagonist outskirts of Just War thinking.

In the course of discussing proportionality, he dismisses the doctrine of double-effect. This is unsurprising, since Steinhoff shifts away from judging inclinations and attitudes.⁴⁷⁸ (EKT, 31) The bulk of his discussion deals with certain modern versions of the doctrine. These versions work with a supposedly Christian ‘absolute prohibition to kill innocents’ (EKT, 57), distinguishing between deaths as means or side-effects, or they are disguised

⁴⁷⁸ Uwe Steinhoff, ‘Yet Another Revised DDE? A Note on David K. Chan’s DDED’, *Ethical Theory and Moral Practice*, 9 (2006), 231-236.

consequentialist or even utilitarian calculi.⁴⁷⁹ Steinhoff rightly notes that these modern versions leave behind Aquinas' original focus on the intention of an action. (EKT, 41) But it is not at all his quest to restore the medieval doctrine, 'which cares rather for the salvation of the perpetrator's soul than the physical integrity of the victim' and the 'emotional colouring of intentions and expectations' (EKT, 57). Such 'ideal', moral horizons are not interesting to Steinhoff. He does not quarrel with Aquinas. He talks about something else.

First, following the Hobbesian tradition he is sceptical about whether we can at all discern the intention of an action; others' inner workings are opaque to us. Again he suggests that subjective intention and outward action are fully disjointed: 'One can thus often claim that one *did not* intend the negative consequences—and one is presumed innocent.' And in view of 'military necessity' the proportionality principle – note here the facticity – 'will always tend to be overstretched' (EKT, 42).⁴⁸⁰ Hence the conclusion that says intention should be left out of the morality of war, even though Steinhoff acknowledges the need for judging intentions in domestic law.

Leaving aside these difficulties, Steinhoff turns to the perspective of the *victim*. For the innocent victim, whose 'right to life' is violated, it makes no difference whether they are directly targeted or killed as a side-effect. (EKT, 49, 51, 54, 56) 'What would [they] say to this fascinating distinction? If they haven't lost all humour, which would be understandable, then probably: "Dead is dead."' (EKT, 49).

But to qualify the dismantled criterion of 'right intention' again, Steinhoff responds to 'our intuition' that in a given situation the intention of an attacker after all does matter. The example is a policeman shooting through a person whom a kidnapper of a hundred hostages uses as a human shield. Steinhoff introduces two principles. First, the 'justice' of the action

⁴⁷⁹ On the historical development of the doctrine after Aquinas, see Paul Ramsey, *War and the Christian Conscience*, pp. 46-49.

⁴⁸⁰ See above Ch. 3. O'Donovan argues that when the damage is excessive and gratuitous, we can *see* that there were no good intentions at work; the claim to 'military necessity' is then hypocritical.

matters: this is ‘the (non-absolute) right to defensively attack an unjust aggressor.’ People must *deserve* being attacked, like the kidnapper. (EKT, 51) But this argument – that one may be sacrificed for the survival of many – has a utilitarian drift, indeed tends towards an ‘absolute socialism’ (EKT, 52). It is therefore countered by a second principle: certain rights of some cannot be sacrificed for the mere interests of many.⁴⁸¹ (EKT, 52) With Ronald Dworkin, rights are ‘trumps’; and they are grounded in a person’s ownership of herself. The alternative would be the person as a ‘*socium*’, ‘in the end a slave (even if only on duty call)’ (EKT, 53).

But even the trumps may be trumped. And in a concrete case the proportionality of the action matters. Steinhoff takes the Allied terror-bombing of German citizens in WWII as a critical example. It is simply *disproportionate* to kill so many innocents, he says, even if there is a large good looming as a prize, like ridding the continent of fascism. Our ‘intuitions’ can also be explained with rule-utilitarian thinking. An overall good aim like stopping a dictatorial regime is insufficient to justify huge sacrifices of innocents. In most cases it does not work and ‘any claim to such prescience would be unjustified and irresponsible clairvoyance’.⁴⁸² Moreover, it is absurd to think people would be convinced by bombs to change their own government. (EKT, 55)⁴⁸³

Steinhoff’s combination of just cause, proportionality and innocents’ immunity from attack successfully corrects faulty modern doctrines of double-effect. But without the doctrine, the logic of rights-protection and consequentialism de-absolutises the ‘right’ of innocent non-combatants not to be attacked. It becomes a general, objective ‘immensely

⁴⁸¹ Note that the relationship between guilt and intention has important repercussions in contemporary criminal law. For a critique of the merely functional concept of guilt, see Christoph Johannes Maria Safferling, *Vorsatz und Schuld: Subjektive Täterelemente im deutschen und englischen Strafrecht* (Tübingen: Mohr-Siebeck: 2008), p. 104f.

⁴⁸² The various versions of the ‘Domino Theory’ advanced during the Cold War offer good examples of a situation where moral reasoning is replaced with empiricist clairvoyance.

⁴⁸³ This explains a tendency also apparent in current military strategy: the fact that ‘we cannot know’ whether terrorising the innocent works tempts armies that consider themselves ‘just’ to at least *try* repeatedly and, when failing, try harder – an obvious recipe for escalation. See Carl von Clausewitz, *On War*, transl. by J. J. Graham, 3 vols. (London: Kegan Paul, Trench, Trübner & Co., 1908), vol. 1, pp. 4-5.

valuable good of right' (EKT, 64). It has ceased to be the very essence of Just War.⁴⁸⁴ So Steinhoff's 'clash of rights'-approach, although avoiding the most utilitarian excesses, consciously remains on the realist side of Just War thinking.

Non-combatant immunity and the definition of innocence and guilt

So the traditional 'absolutism' that forbids to ever intentionally target innocent civilians steps to the side. The alternative casuistry aims for the effective protection of human rights, with several moral principles at work. And a key question must still be answered: How to understand and 'legitimise' war? From this question also emerges the status and rights of innocents.

One could argue that the difference between innocent and guilty corresponds to non-combatants and just combatants on one side, with unjust combatants on the other. This is G. E. M. Anscombe's approach (EKT, 65), O'Donovan's and in general also Steinhoff's own. However, war as punishment and thus *aiming* to discriminate between innocent and guilty requires a functioning doctrine of double-effect, which Steinhoff has already rejected. (EKT, 85) Moreover, he points out, (moral) innocence and guilt cannot be equated with combatancy and non-combatancy. A gun-wielding peasant may be deluded or forced to fight, whereas a war-mongering corporate functionary may be guilty without ever holding a gun in his hands. With Mavrodes, Steinhoff *therefore* sees non-combatant immunity as a 'useful convention'. There are utilitarian reasons, the best interests of every party involved, to obey these rules. After all, one would not want to eradicate each other, but guarantee that human, communal

⁴⁸⁴ See Chs. 2 and 3 above.

existence is possible after a war. (EKT, 68-69, 104) In other words, discrimination becomes a convention in a ‘regulated agonistic game’⁴⁸⁵ in Steinhoff’s critique.

Beyond the justification of ‘non-combatant immunity’ as a useful convention – and here Steinhoff makes somewhat of a thematic leap – the immunity may be a result of one’s role as a civilian. Against a surprisingly totalitarian Michael Green, who regards even the old, sick and children as liable to attack, Steinhoff invokes John Locke. Locke says that subjects of an unjust ruler in a war ought ‘not to be charged as guilty ... any farther than they actually abet it’ (EKT, 71).⁴⁸⁶ At the same time, every citizen has ‘a duty to scepticism’ since most wars just serve the rulers themselves. ‘Hence, in a liberal democracy he cannot delegate to a superior his responsibility for supporting an unjust war’ (EKT, 74).

For Steinhoff then, this median guilt, as Grotius would have called it, is apparently insufficient to justify non-combatant immunity. So instead of looking for a justification for discrimination in punishment, he turns to Robert Fullinwider’s approach, which emphasises self-defence. This re-focusing of the notion of war is then more in tune with his liberal rights perspective – rights concern things due to a person, so their violation entails defence. Accordingly, Steinhoff begins with the rule that immediate aggressors may be attacked. Knowledge about the ‘moral guilt’ of the attacker is not presumed. (EKT, 75) This epistemological barrier positively limits the range of attack to those enemy combatants who actually fight, those visibly engaged in an attempt to harm or destroy. For what can one *really* know about the uninformed peasant? (EKT, 77-78) At this point Steinhoff, despite being a ‘realist’, is far from justifying indiscriminate killing for the sake of expediency. Nevertheless, ‘extreme exceptional cases’ (EKT, 69) will be treated later on.

⁴⁸⁵ John Milbank, ‘Paul against Biopolitics’, in: John Milbank, Slavoj Žižek and Creston Davis, *Paul’s New Moment* (Grand Rapids, Mich.: Brazos Press, 2010), p. 22.

⁴⁸⁶ John Locke *Two Treatises*, ed. by Peter Laslett (Cambridge: Cambridge University Press, 1988), 2nd Treatise, §179, p. 406. NB: Locke here talks about the power of the conqueror.

But can individual self-defence, including ‘the defence of others’ (*Fremdverteidigung*) really carry the weight of a whole war? Steinhoff here seems to apply the ‘domestic analogy’ Rodin so vigorously criticises. But since Steinhoff does not require state authority, he needs no domestic analogy. He points out that after all, individuals shoot and fight: ‘The aggressor-soldier shoots the defender-soldier; he shoots back. The aggressor-bomber bombards the fellow citizens of the defender soldier; he shoots him down.’ (EKT, 80)⁴⁸⁷ In a lengthy discussion then, he refutes three major arguments against justifying war as actual self-defence or defence of others. These refutations of what he calls “pacifism” (as if the choice is between pacifism and self-defence) vividly bring out the realist logic of his whole proposal, so I will briefly sketch them out here.

First, one might say that war-as-self-defence often is not worth it. However, Steinhoff argues, if one country invades another for an oil well or a whole desert, then its inhabitants may defend themselves. They *could* let go of these things and avoid the carnage of war. Such an ‘excess of charity’ is always possible. But: ‘Right needs not shy away from wrong. On the other hand, one does not always have to insist on one’s right’ (EKT, 81). Somewhat appealing to Kant, Steinhoff sharply distinguishes between the juridical duty (*Rechtspflicht*) not to violate innocents’ rights and the duty of virtue (*Tugendpflicht*), a ‘general command of humanity, of neighbourliness’ (EKT, 81). But if someone attacks me, I do not violate his rights by insisting on my rights, and hence I do not neglect my juridical duties towards him. (EKT, 81)⁴⁸⁸ This works also beyond a person’s bare life: ‘Why then should an existing person only be allowed to kill in defence of her existence, but not in defence of a basic life-value of her existence?’ (EKT, 86) Here juridical duties (or rights to self-defence) remain

⁴⁸⁷ See above, Ch. 2 on Ramsey.

⁴⁸⁸ For a critical discussion of fully separating juridical and virtue duties, see e.g. John Finnis, *Human Rights and the Common Good: Collected Essays* (Oxford: Oxford University Press 2011), p. 62f; Konstantinos A. Papageorgiou, ‘Kant, ein Rechtsmoralist? Ein Blick auf seine angewandte Ethik’, in *Rechtssystem Und Praktische Vernunft / Legal System and Practical Reason: Verhandlungen Des 15. Weltkongresses für Rechts-Und Sozialphilosophie*, ed. by Ralf Dreier (Stuttgart: Franz Steiner Verlag, 1993), pp. 198-210.

untouched by and prior to the morality of ‘virtue-duties’. Such ‘ideals’ have ceased to transform the morality of war. The right to self-defence in fact *replaces* the ‘duty to do justice’ in that they effectively become congruent. The defensive principle becomes the single focus of the ethics of war.

The second refutation of war as self-defence concerns the problematic status of enemy soldiers. If we regard the soldiers of both sides as innocent, it would be impermissible to defend ourselves against them. But, Steinhoff says, even if we assume aggressive soldiers are morally innocent – because they are indoctrinated – one cannot demand of an innocent defender that he not save his life. (EKT, 83-85) Such self-sacrifice is, again, ‘supererogatory, i.e. it surpasses the fulfilling of one’s moral duties in an angel-like manner’ (EKT, 85). If both aggressor and defender are morally innocent, each has in fact the liberty to fight to the death.⁴⁸⁹ ‘The conflict of two equal, general rights [i.e. right to life/self-defence] in a particular case leads to the mutual limitation of the rights and produces two more particular liberties.’ Steinhoff argues from intuition: ‘... it does not seem *acceptable* to demand of anyone to let himself get killed rather than kill an aggressor or a threat (even if they are innocent)’ (EKT, 85). And later: ‘If [an innocent aggressor] can only be stopped through killing, then his right to life must shy away from [the defender’s] right to self-defence.’ This ‘unmediated antagonism’, a clash of rights, is reined in only by proportionality.⁴⁹⁰

However, in war we hardly have innocents fighting. The justification for fighting back comes surely not from the mere fact of the aggressor’s attack, but from the fact of this aggressor’s *guilt*. ‘The guilt of the aggressor has the consequence that he has no right to defend himself against (proportionate) counter-measures’ (EKT, 88). Steinhoff implies a punitive principle when he notes that the aggression may have taken place in the past. (EKT,

⁴⁸⁹ Steinhoff emphatically distinguishes between liberties and claim rights: the latter entails a claim towards the other that he not attack me; the former entails no duties for others. Uwe Steinhoff, ‘Rights, Liability, and the Moral Equality of Combatants’, unpublished manuscript, 2011.

⁴⁹⁰ Steinhoff made this explicit in a Q&A session in 2011.

89) As in Rodin's proposal there are 'unjust aggressors' and 'just defenders'; both authors therefore effectively unravel Michael Walzer's 'moral equality' of soldiers that excuses the soldiers of both sides. (EKT, 94) Soldiers carry responsibilities that they cannot defer to their superiors. At the same time they are not fully responsible for their government's decisions.

But whereas Rodin wants to put belligerents under an impartial global-judicial umbrella in order to eliminate war in the long run, Steinhoff complicates matters. The unjust aggressor may have no right to defend himself. But he still has a right to proportionately defend the innocents near and dear to him against becoming 'collateral damage', which would violate their right to life. 'All things considered it may be *justified* to kill them, but it is not *just*' (EKT, 96). This lack of justice, though not justification, triggers associative duties, which Rodin's juridical proposal let fall off the political truck:

Imagine the innocent civilians [of the unjust side] are children. Would their parents not be permitted to intervene on their behalf? And why should third parties not be permitted to intervene on behalf of their spouses, loved ones, friends and, most important in this context, fellow citizens? After all, the cooperative protection against external threats is one of the major advantages (and duties) of common citizenship. (EKT, 98)⁴⁹¹

Because such defensive coordination is justified, Steinhoff moves from mere immediate self-defence to a justification of self-defence on a larger in scope, albeit without discussing international law. What matters here is the *actual* exercise of natural defensive rights. In that sense, he is most similar to Elshtain's realist focus on national defence.

Steinhoff then does *not* refute the third argument against war as individual or collective self-defence. It says that most killings in war have nothing to do with just self-defence, not even on the justified side. No army waits until they get attacked. (EKT, 100) He therefore turns to criminal law. The 'justifying emergency' or 'necessity' legally justifies a

⁴⁹¹ For a political-philosophical discussion of associative vs. cosmopolitan duties, see e.g. Jonathan Seglow, 'Associative Duties and Global Justice', *Journal of Moral Philosophy*, 7 (2010), 54-73.

defender to avert a grave danger to 'life, body, freedom, honour, property or another legal good [*Rechtsgut*]' even before an attack has actually taken place. In 'Just War' terms one could perhaps understand Steinhoff as arguing for pre-emptive self-defence.⁴⁹² '[The] exercise of the emergency right against an illegitimate and otherwise not avoidable threat is permitted not only to save oneself, but also others' (EKT, 101). Here he finally adds that in view of the 'unjust side', discrimination is made between combatants and non-combatants. (EKT, 102) Nevertheless, sometimes a danger to life, body or freedom cannot be averted but by attacking non-combatants in so far as they are *guilty* of causing the danger. The question of attacking innocent non-combatants may then also 'cause grave dilemmas' (EKT, 102).

In short, the discrimination between innocent and guilty depends on how one justifies war. For Steinhoff, four theoretical approaches and their inherent principles work together: guilt, convention, self-defence and emergency. First, the innocent are immune from attack. Second, this is a convention for which there are rule-utilitarian reasons. Third, a person may defend herself against illegitimate attack and, finally, a person is justified in attacking in an unjustified emergency. Each principle is intrinsically valid here. They are all interdependent, restraining each other, even when they collide:

... in case of such a collision the "subordinate" principle recedes, gives more space to the other, but at the same time upholds certain limits: up to here and no further! The continuous validity of the guilt- or innocence principle is apparent in so far as the use of violent force is allowed *only to the extent that* is necessary to avert the danger (whilst one could repay the aggression to the aggressor "with interest", that is punish it). (EKT, 103)

The 'guilt-principle' in combination with an emergency principle might be a rephrasing of O'Donovan's proposal. As noted, it works only in connection with a doctrine of double effect. Steinhoff's move towards *effective* rights-protection, however, rather implies the

⁴⁹² The example is that of a father in the woods, who, with five escaped mass murderers, sets out to kill them in order to protect his family.

interplay of several restraining, regulative principles. One inference is that in a supreme emergency of self-defence one may break the convention and attack non-combatants. This amounts to the possible justification of terrorism.

The ethics of terrorism

In the final perhaps most practical section Steinhoff frees the term ‘terrorism’ of its legitimist or ‘double-standard, propagandist’ employment, which uses ‘the concept of “terrorism” preferably for the actions of others, not one’s own’ (EKT, 111). He adequately defines terrorism in order to then enquire where it may be morally permissible. Steinhoff’s critical move is again an analytical readjustment and clarification, a logical testing of our ‘linguistic intuitions’ (EKT, 121) in the light of the liberal paradigm.⁴⁹³

Steinhoff defines terrorism as an action, independent of *who* does it: ‘Whether an act is terrorist is to be determined by the action itself, not the agent’ (EKT, 112).⁴⁹⁴ Following a critical discussion of other definitions, he arrives at his own:

Terrorism is the strategy of influencing the behaviour, perceptions, beliefs or attitudes of others than the immediate victims or targets of its violence by the threat, made credible by a corresponding act or series of acts, of the repeated killing or severe harming of innocents or the repeated destruction or severe harming of their property. *Terrorist acts* are such severe attacks on innocents or their property that are part of such a strategy. (EKT, 123)

But when could such an action be justified? Steinhoff’s preliminary *caveat* is that, according to his definition, many cases commonly labelled terrorism are not that; for example, some cases in which Palestinians target civilian Israelis. The situation for the Palestinians is dire, and a large majority of Israelis have democratically voted for the politicians who are

⁴⁹³ For the Christian, of course, the morally significant “revolution” is the Christ-event. See O’Donovan, RMO, p. 14; John Howard Yoder, *The Original Revolution* (Scottsdale, Pa.: Herald Press, 1977); Creston Davis and Aaron Riches, ‘Metanoia: The Theological Praxis of Revolution’, in *Theology and the Political*, ed. by Creston Davis, John Milbank, Slavoj Žižek (Durham: Duke University Press, 2005), pp. 22-51.

⁴⁹⁴ Cp. Ch. 3 on O’Donovan above.

ultimately responsible for the Palestinian situation. To attack them is not terrorism, since they are not innocent. The term terrorism only applies to *morally* innocent civilians: ‘Direct attacks on school buses, kindergartens and similar targets would of course be terrorist, since those children, of course, have not voted’ (EKT, 132) Certainly there would be genuinely innocent victims when Israeli cafés get bombed, but these would be “collateral damage”, which happen in the course of an attack on an aggressor’ (EKT, 132). Of course, saving innocents still remains prior to the ‘liberal right to punish an aggressor’. The arbiter between non-combatant immunity and punishment therefore is a utilitarian calculus: ‘The Palestinian attacks on Israeli civilians entitled to vote are justified or not depending on the prospects of success one can assume after responsible calculation.’

Now, in a ‘justifying emergency’ or indeed a ‘state of exception also used by the apologists of state emergency’ (EKT, 136), the convention of non-combatant immunity may be breached. For Steinhoff such a case is ‘the arbitrariness and brutality of the stronger one’ (EKT, 134). If a militarily weak small people are repeatedly attacked by an overwhelmingly large and militarily superior aggressor, there may be no other possibility to stop it but to target the aggressor’s innocent civilians. Such attacks do not breach the utilitarian rule-calculus for non-combatant immunity. But it leads to a different ‘emergency rule’, which is valid when aggressors get away with impunity:

If a community can only protect a large number of their innocents from an aggressor by attacking a smaller number of his innocents, this is permissible *unless it can be expected that a number of aggressors sufficient for deterrence will be punished for their attacks.* (EKT, 135)

Even if the prospect of success is low – a point Steinhoff admits – such attacks would still be justified as a form of punishment. In other words, Steinhoff’s logic suggests, if successes do not materialise, because chances are slim, the defendants are allowed to go into terroristic

territories and *keep on trying harder*. Notably, this is the logic of carpet-bombing for the sake of ‘regime-change’, but justified for ‘small peoples’, who have no other tactics available.

In short, terrorism must be carefully justified because of the duty to protect innocents. And unless one has an ‘ethic of conviction’ (which would be ‘absolutist’) as opposed to an ‘ethic of responsibility’, it is impossible to argue that terrorism can never be justified. (EKT, 136) This repeats the distinction Steinhoff drew earlier between duties of right and duties of virtue or supererogation. Again he decidedly casts his lot on the side of law as regulated struggle, individual right and responsibility as opposed to pious ‘convictions’. Finally, however, a cosmopolitan order of sorts appears on the horizon. In order to overcome sub-national terrorism, or the need for it, Steinhoff suggests giving up double-standards and state terrorism, the ‘criminal prosecution of aggressors’ and ‘the inclusion of the excluded’ (EKT, 137).

It might now perhaps be clearer why Steinhoff should be read as a ‘realistic Just War theorist’. He is neither amoral nor outright indiscriminate, as the caricatures of ‘realism’ suggest. On the contrary, he argues fervently against such tendencies in contemporary ‘Just War’ thinking. What signifies ‘realistic’ here is a critical movement away from a realist state-legitimizing Just War theory to an alternative, equally legitimating framework for individuals and oppressed, occupied minorities. It aims to effectively protect their intrinsic, original rights. Instead of a doctrine of double-effect or the moral status of intentions, the proposal safeguards differing interests and immunities through conventions and restraining principles. In the face of annihilation, however, the breach of these conventions is possible.

II. Analysis – Remaining in the Old Age and sovereign individualism

In O'Donovan's theological Just War proposal, the reigning Christ marked the ultimate fusion and *Aufhebung* of an antique-pagan reality as opposed to a merely spiritual God who would otherwise evoke no more than pietism ('western Buddhism', as Slavoj Žižek calls it). This was analogous to a fusion of 'politics' and 'morality' or 'theology'. For Steinhoff, by contrast, these two dimensions fall apart again, just as they did for Rodin in the previous chapter. This dualism presents an irreconcilable gap between the reality of differing interests on the one hand and on the other, (possible) ethical ideals that are confined to a private, voluntary, though substantial *Sittlichkeit*. As a result of this separation, however, the real and an immanent ideal here *fall together* in the liberal 'ethical' paradigm: in scientific reality and history as the opportunity to realise one's projects; as individuals, who are now the princes of peace; in action, as this is recognised in the foundational, moral right to self-defence. Unlike Rodin, however, Steinhoff's realism (at least at first) sharply siphons off any religious or utopian dimension, whether immanent or transcendent. He works along the same line as Elshtain's sovereign realism. Considering Steinhoff's frequent critique of U.S. hegemony, this is striking. The reason, however, is not that he suggests an altogether different ethic, but that he transposes sovereign state politics to the individual level – or as he says: 'Machiavelli for everyone' (EE, 15).

Political reality

Truth – nature – science

To understand Steinhoff's notion of political reality, two steps need to be taken. First, as for Rodin, the Christ-event of faith falls behind the horizon of Enlightened reason. Steinhoff is a dedicated rationalist. Secondly, the object of reason, understood as scientific reason, is nature. It gains a moral status analogous to revelation. In terms of content it suggests a basic, pre-moral order of individuals with interests.

In chapter 3 above O'Donovan argued that all reality, including 'scientific' reality, made sense within an evangelical reality. From that starting point, he argued that the world was ordered by an ontological and teleological peace in which humanity could freely participate. From this sprung the notions of a pre-political social ordering, the 'right intention' as peace – in short, Right or justice-as-right order. But against such ontological presuppositions, which become possible only through revelation, Steinhoff begins from a more immediate epistemological point. 'The truth' is not so much a possibility into which faith leaps, a *tertium* both beyond and holding together empiricism and ideal vision, the truth that 'enlightens reason' (St. Augustine). Steinhoff stays safely within the confines of rationalism: '[since] the mind cannot just produce reality and hence truth, it has to *find* it. ... In rationalism, rational thinking and rational argumentation is the best (although not infallible) method to find out truth understood as the congruence with reality.' (EE, 27)

He elegantly defends this quest for truth also against postmodern rhetoricism, which amalgamates truth with its different cultural and linguistic representations. (EE, 27-48) Reality is independent of human linguistic constructions, because natural entities like snow are simply *there* and can be 'adequately described' (EE, 46). Any truth(quest) emerges and

evolves between scientific hypothesis and empirical verification. There is nothing metaphysical about it, and indeed metaphysics should be critiqued. (EE, 47, 109) Steinhoff's truth is one of facts, and finding it is like uncovering a crime or predicting the weather. Importantly for the present project, this is independent of any moral truths, indeed facticity preconditions morality. Steinhoff emphasises that we need to be aware of the 'facts' in order to make moral decisions. Science supplies data on both the practical feasibility of our projects and the rational ends to be pursued. (EE, 11-15, 49-56, 192-193) What is 'good and what is to be believed to be good for oneself ... depends on the real nature of the world' (EE, 48). Hence one should try to find out about it.

Steinhoff spends a great deal of *Effiziente Ethik* defending the rational-scientific quest, as rational actions must be 'based on information grounded in a rational search for truth' (EE, 49). He is quite upfront about the fact that there is no 'ultimate truth available'. *Wissenschaft* (science broadly understood) justifies its theories and theses by supporting them with facts. In this way the 'belief in these theories and theses becomes rational'. More than that, the truth of science or nature here gains its own quasi-revelatory status. In line with the Enlightened juxtaposition of faith and reason, Steinhoff directly opposes reason to believing in God. (EE, 52)⁴⁹⁵ If the church is the body of Christ witnessing to the truth in God and the locus of 'Christian ethics', Steinhoff's turn to 'the world' as factual nature entails an analogous realisation or positivisation. Scientific 'truth' manifests itself as 'institutionalised *Wissenschaft*'. Institutionalised science, he says, is the 'eminent embodiment of epistemic rationality' (EE, 56). The scientific community then presents an alternative to the church. For Steinhoff it is less dogmatic, more self-critical and more principled in the search for truth: 'The principles of religion and the church ... support, indeed demand uncritical belief, the genesis of dogmatism, wilful ignorance of contradictory evidence' (EE, 56).

⁴⁹⁵ It is beyond the scope of our work here to investigate the premises of this juxtaposition, but one problem may be the analysis of faith as a psychological operation. See, e.g., Robert Audi, *Rationality and Religious Commitment* (Oxford: Oxford University Press, 2011), pp. 248-285.

Steinhoff's promotion of science should be seen as a welcome attack, as he says, on 'para- and pseudo-sciences or New Age belief systems' (EE, 56). It safeguards the value of rationality and prudence, somewhat reminiscent of Machiavelli's *virtù*.⁴⁹⁶ But how is Steinhoff's (scientific) notion of reality and truth constitutive of his just war ethic? First, it is a source of political ethics, even if negatively. Of course, beyond showing what we physically or materially cannot do, natural science can hardly tell us what we should do.⁴⁹⁷ From an 'is' one cannot derive an 'ought', Steinhoff says. But 'certainly one can infer a 'non-ought' from an 'is' (EE, 190). 'Facts (like the empirical fact of a physical or practical impossibility) can prove commands wrong (if one cannot realise heaven on earth, then one has no duty to do it)...' (EE, 191). This echoes Kant's 'ought implies can.' But whereas Kant means to say that an *ought* also means that one *can* do it and relies on the ideals of religion within the bounds of reason, Steinhoff pragmatically makes the factual *can* a litmus test to all *oughts*. And since the scientific paradigm knows no Kingdom of God, there can be no objective, morally commanding reality. When push comes to shove and the origins of a moral judgment are at stake, all scholars can do is chide each other's intuitions (for example, the 'intuition' that intention matters to the morality of an action). In fact, this is how much of the 'ethics of war' are currently debated, as was already seen in Rodin's proposal.

Second, more positively, empirical social science informs Steinhoff's social ontology, feeding into his Just War thinking both as analysis and prediction. For example, he uses the psychological 'Terror Management Theory', which relies on an anthropology of an innate human fear of death and people's innate inclination to obey authorities. If soldiers are constantly reminded of their mortality, as they were in Abu Ghraib, it can be predicted that out of fear they will gradually descend into barbarism. Such social facts then provide the

⁴⁹⁶ Cp. Quentin Skinner, *Machiavelli* (Oxford: Oxford University Press, 1981), pp. 37-40.

⁴⁹⁷ Pretensions to such projects are essentially forms of physical or chemical manipulation of humans as *objects*, as for example in 'Transhumanism' or 'Neuro-Philosophy'.

basis to arrange new social facts: ‘How barbaric a war is depends on how well these basic psychological dynamics are held at bay or even manipulated.’⁴⁹⁸

In terms of political anthropology, there is no pre-conceived political sphere or a given international sphere already ordered by *ius gentium* or natural law. Indeed, any (created) ‘sociality’ is fundamentally questioned and only subsequent to an individual contractual choice.⁴⁹⁹ For example, Article 28 of the Declaration of Human Rights says that every human has a right to a social and international order in order to realise his rights. But for Steinhoff such ‘amassments’ are merely the result of a large human population. Only ‘amassment fanatics’ could demand of people, and thus potentially force them, to live in society. This, Steinhoff claims, would mean violating Article 20 of the same Declaration. (EE, 181)

So Steinhoff continues in the tradition of the ‘state of nature’, as a social ontology, though here with the twist of a rationalist epistemology. It forms the very backbone of his Just War proposal: ‘Following John Locke, in the “state of nature”, that is the before the individual confers certain rights to a community, every individual has the right to punish someone who violates natural law, i.e. every aggressor.’ This right subsists also in the community and resurfaces ‘when the state cannot help an individual up against an aggressor’ (EKT, 55). The great Other to this vision – being any contents of religion or any residual social insights drawn from that tradition – is safely confined to the ‘absolute’ sphere beyond the confines of reason. Left aside Elshtain’s moralizing, Steinhoff stands effectively on the same grounds as her – not only in their vision of the ‘state of nature’, but in rejecting certainly as politically irrelevant what Elshtain called ‘sectarian’ religion.⁵⁰⁰

⁴⁹⁸ Uwe Steinhoff, ‘Why there is no Barbarization but a lot of Barbarity in Warfare’, in *Warrior's Dishonour : Barbarity, Morality and Torture in Modern Warfare*, ed. by George Kassimeris (Aldershot; Burlington: Ashgate, 2006), pp. 101-111, 106.

⁴⁹⁹ Viz. Fichte, *Französische Revolution*, p. 94 f.

⁵⁰⁰ The military-industrial complex marks the marriage of Steinhoff’s ‘embodied rationality’ and Elshtain’s sovereign security, including ‘prophets’ like J. Robert Oppenheimer. Peter Goodchild, *J. Robert Oppenheimer:*

The ethics of expedience

Alan Padgett flags up that ‘the practical-nature bias of the natural sciences ... has nothing in fact to do with a full-blown ontology as a philosophical worldview’ and that ‘it is just too easy to think of methodological naturalism as simply acting in the practice of science as if naturalism (full-blown) were true’.⁵⁰¹ However, in Steinhoff’s case, it appears that the method of enquiry and the basic naturalist assumption about ‘the world’ do go together. As John Milbank argues, especially the social and political sciences *already* embody and impose a certain normative order: the conflicted interplay between individuals and ‘society’ according to gradually unfolding quasi-natural regularities. Scientific and instrumental rationality are intertwined as they become the tools of an individual person’s ‘success.’ ‘Ethics’ is not a reflection on or practical representation of an alternative vision or reality. It is a ‘functional thing’, ‘motivating agents to act morally’ (EE, 91, 180).

The first reflex is to ask: What is the moral standard for ‘acting morally’? Steinhoff remains consistently sceptical. There is no objective moral standard for ‘good’ or ‘good life’: ‘Even if an objective measure [of moral goodness] did actually exist and we somehow discovered it, it may very well be that it supports norms that we reject, like the norm “You should kill at least one person per month!”’ (EE, 92).⁵⁰² Such an objective standard being absent, Steinhoff’s ethics has two aspects. One is the externally-functional aspect already mentioned. As something ‘to propagate’ – the term is to be understood neutrally – ethics functions so as to ‘regulate society’ (EE, 93, *passim*). The other aspect appeals to the

Shatterer of Worlds (London: British Broadcasting Corp, 1980); Lynda Walsh, *Scientists as Prophets: A Rhetorical Genealogy* (New York: Oxford University Press, 2013)

⁵⁰¹ Alan G. Padgett, ‘Practical Objectivity’, in *Blackwell Companion to Science and Christianity* (Oxford: Wiley-Blackwell, 2012), pp. 93-102, p. 96.

⁵⁰² This argument is a *non sequitur*. The moral realist would simply say we recognize an objective measure of moral goodness. Steinhoff himself implies that killing a person a month *cannot* be a moral objective. Paradoxically, whilst this is obviously clear, true morality must remain opaque. Perhaps Steinhoff is aware that it finally requires the same realm of ‘absolute truth’ that is also inaccessible for science.

individual subject. Steinhoff suggests an ‘ethic of the care of oneself as a *praxis* of freedom’ (EE, 164). For example, a serial killer may be reluctant to internalize a liberal ethic, since then he would have to stop killing people, but he may be happy to propagate it to others.⁵⁰³ Others’ well-being, of course, may very well be a part of one’s own interests. This ‘enlightened self-interest’ was already an aspect of Elshtain’s American empire. Here it returns in an individualised version of the realism familiar in International Relations theory of states: the moral aim (and aim of morality) is to successfully safeguard subjective interests.

For Steinhoff a personal cost-benefit-analysis is the criterion for a choice of one’s moral conviction:

As a rational agent I will propagate (internalize) an ethic of which an epistemically rational examination proves that to propagate (internalize) it goes hand in hand with the best possible ratio between the benefits of the expected outcomes of propaganda (i.e. internalisation) on the one hand, and the probability of the result that is to be expected. (EE, 94; also 99)

So one chooses an ethic because it is expedient, because it directly promises the greatest advantage to oneself; indirectly it does so by regulating society. (EE, 14, 90, 94) That Steinhoff’s preferred ethic is liberal or even ‘radically liberal’ is perhaps no surprise, since it doubles and re-affirms the presumed social-liberal paradigm of differing private interests: “‘Is it good for me, is it in my interest to be a liberal?’” Paradoxically, on the one hand the ‘choice’ of ethic presupposes an absolute voluntarist freedom, fusing the human freedom to act well with the choice of an ethic. On the other hand, the fundamental Weberian paradigm with its dualism between a (social-)scientific reality and ‘ideals’ still worthy and valuable (EE, 191) is beyond dispute. A transformative love, as suggested by Paul Ramsey or a revelatory event questioning this ordering of secular reality is impossible. Ethics is identified as social manipulation, even *self*-regulation.

⁵⁰³ Against the claim that one can hardly justify morality through egotistical-prudential reasons, he argues: ‘Although the person has made a moral system her own out of extra-moral reasons, [having internalised a moral system] she then still acts morally (also) out of moral reasons.’ (EE, 100)

Steinhoff's liberalism here should be understood as a naturalised, even realised *ecclesia*, a *polis* in which the infinite value of each individual is recognized. For Steinhoff liberalism has the advantage that it allows for the 'free development' of one's personality and recognising others as such personalities. He also hints at the freedom to change one's morality, conceived as rules or dogmas, if one finds them to be untrue. Moreover, unlike deontological ethics, a liberal ethic emphasises *rights*. (EE, 104)⁵⁰⁴ Notably, Steinhoff is more open about rights being a matter of each person's advantage. His act of generosity in 'rights' is to guarantee to everyone the Machiavellian maxime: *mantener lo stato*. This view may not be ground-breaking and Steinhoff makes no claim to that. What remains to be observed here is merely the connection between the fundamental justifications of a liberal-scientist worldview and a specific ethic of rights that underlies his ethics of war.

Notably, even if one did not believe in human rights as 'moral facts', Steinhoff says, a liberal ethic 'warrants a large part of that freedom, which has always been before the senses as an attractive temptation.' The 'ideal of a liberal ethic' is therefore a rule of compromise. It is a 'Kantian formula of Right, the conceptual sum of conditions under which the arbitrary will of one can be united with that of another according to a general law of freedom.' Whatever people do beyond that is morally irrelevant, 'as long as they agree' (EE, 103), a claim that, as John Finnis shows in detail, is hardly faithful to Kant.⁵⁰⁵ In any case, this formula of Right is the maximum 'moral ideal' Steinhoff can commit to, since any objective moral standard cannot be identified. In practice, the oscillation between interests and formal curbing drives Steinhoff's rejection to question inner attitudes and intentions, whilst making the 'right intention' criterion a function of external 'respect'. This then throws the doctrine of

⁵⁰⁴ On the usefulness of human rights ethics as opposed to their foundationalist grounding, see also Michael Ignatieff, 'Human Rights as Idolatry', in *Human Rights as Politics and Idolatry*, ed. by Amy Gutmann (Princeton: Princeton University Press, 2001), p. 55; *ibid.* Diane F. Orentlicher, 'Relativism and Religion', pp. 141-158.

⁵⁰⁵ On David Richards' (mis-)reading of Kant, see John Finnis, *Human Rights and the Common Good*, pp. 53-60.

double effect into disrepute and subverts all efforts to think war in terms of an agent's moral character. These are simply dimensions that fellow humans cannot adjudicate as they cannot make windows into men's souls. Morality here is already a judicial law, rather than a practical reference to (divine and theologically reflected on) truth.⁵⁰⁶ Both law and morality are assimilated 'by specifying enforceability as their common feature', so that the greatest autonomy is guaranteed to everyone.⁵⁰⁷ And this is also where his just war criteria-as-conventions come in: not as the result of a transformative peacefulness, but as the tentative regulation of fundamentally clashing rights.

Notably, for all his professed atheism Steinhoff also toys with a particular 'theology' or, to re-phrase Wolfhart Pannenberg, an 'a-theology from below'. First, he accords to the Christian God the same kind of voluntarist, univocal being and 'responsibility' as any other person. (EE, 52) In the context of a 'radical liberalism' he debates briefly a theodicy 'after Auschwitz.' That God is almighty and good is pure mockery, he says. Even more so than Holocaust denial: '...with a denial one at least recognizes that something like the Holocaust is *simply incompatible with* the moral imperfection of those responsible – and whoever fails to render assistance, like God, is responsible' (EE, 115). In that way any religion becomes like belief in fairies and spirits as mocked by Hobbes. But whilst Hobbes envisioned religion within the politics of the Leviathan, Steinhoff's understanding of God eradicates any transcendence altogether.⁵⁰⁸

Meanwhile, Steinhoff suggests *using* the New Testament as a tool to promulgate a liberal ethic: '... certainly one can deny the existence of angels, demons, God and his son

⁵⁰⁶ Cp. Luther's reading of the meaning of the law as Adam changes with the Fall: it becomes *alia lex*, a mere letter (*lex litterae*), an external code arbitrarily imposed and therefore a 'merely moral matter' (WA 40/I, 413). The law itself, however, remains the same (WA 42, 82). Bernd Wannewetsch, 'Luther's Moral Theology', in *Cambridge Companion to Martin Luther*, ed. by Donald K. McKim (Cambridge: Cambridge University Press, 2003), pp. 120-135, 125-126.

⁵⁰⁷ John Stuart Mill, *On Liberty and other Essays*, (Oxford: Oxford University Press, 1998), pp. xv, 5.

⁵⁰⁸ Thomas Hobbes, *Leviathan*, ed. by Richard Tuck (Cambridge: Cambridge University Press, 2010), pp. 18-19; 83.

without denying the significance of the New Testament and its moral beliefs and moral standards and without abstaining from drawing on them' (EE, 109). Revelations are not needed as they only 'repeat conventional moral wisdoms with great pomp' (EE, 52). This recalls Kant, for whom scripture falls apart into 'practically' relevant sections and sections that are 'theoretical, proclaimed to be holy, but surmounting the grasp of (even moral) reason'. The latter concern notions like the trinity, incarnation, ascension, etc. Whilst morality remains purely in the hands of the human rational capacity, redemption becomes incomprehensible. So Steinhoff's sceptical-atheist Jesuology guarantees that the universal-transcendent fusion and mediation of the real and the ideal in Christ becomes impossible. Instead, he happily implies that Jesus was a voluntarist proponent of human rights.⁵⁰⁹

In short, Steinhoff's ethic – comparable to Elshtain's – relies on a fundamental Enlightened dualism between the empirical (within the purview of reason) and 'religion' in the concrete sense of faith in Christian revelation. This correlates, as in Chapter 1 and 2 above, with a (impractical) Jesuology. Ecclesiology then collapses into a quasi-ecclesial liberalism, an absolute political egalitarianism geared towards successful rights-enforcement. Like Elshtain, Steinhoff suggests a fundamentally individualist social ontology of rights and interests. However, whilst Elshtain then continues on the Hobbesian path of building a religious ethic of state and constitution upon this, Steinhoff's radically liberal ethic is a conscious re-instatement of his individualist ontology. Leaving aside any truth quest beyond scientism (but equally avoiding any religious moralising), Steinhoff suggests the use of scientific rationality, including its 'embodied' form, in order to identify goals and feasibilities – to each person her maximum freedom as long as they don't hurt that of others.

⁵⁰⁹ Immanuel Kant, 'Der Streit der Fakultäten', in *Kant's Gesammelte Schriften*, vol. VII (Berlin: Georg Reimer, 1917), pp. 38-44. See Steinhoff's own use of Jesus' saying 'thou shalt recognize a tree by its fruit.' (Mt 7:15-20; Lk 6:43-44) NB: the Cartesian separation between inner morality and external causality is now moot before God's public, but Steinhoff cements it with his 'ethics of efficiency'.

The political agent

How is political agency and *authority* constructed on these realist premises? Steinhoff presents the contractarian-constitutional paradigm both as the way things largely are and should be, though certainly to be improved. (EE, 191) Consequently rationalist and liberal, Steinhoff removes all ‘metaphysics of the state’ and traditional ‘ruling ideologies’. However, eventually his naturalist-individualist basis and its ideological aspirations in fact amount to what William T. Cavanaugh has called a ‘simulacrum of the Body of Christ’: as now the individuals are the ‘princes of peace’, the liberal moral-political body (which will after all be the constitutional state) develops its own ideological overtones. In other words, like Elshtain, rejecting all ‘idealism’, Steinhoff idealises the real.

Natural rights – shearing off state metaphysics

At first, against any possibility of political theology Steinhoff rejects ‘the great portion of metaphysics’ required to argue for example that only the community has the right to punish, but not ‘the individual as an individual’ (EKT, 26).⁵¹⁰ This rejection is a consequence of the scientific-sociological paradigm. In so far as it draws on Locke or Hobbes, Steinhoff follows the tracks of realist naturalism, albeit without digging too deeply into the tradition. Whatever rights a communal authority conceived as a positive institution has, it does so by the contractual rights-conferral of its individual, naturally free constituents. Political authority is simply the institutional sum of alienated rights. If it ‘fails’, all authority returns to each citizen.

⁵¹⁰ Brian Rosebury has shown convincingly how a purely retributive notion of justice becomes hard to distinguish from revenge. ‘Private Revenge and its Relation to Punishment’, *Utilitas* 21 (2009), 1-21. See Steinhoff above, EKT, 103; also EE, 125-126.

This implies that there is no categorical change from particle to whole, private to public, or subjective to objective: ‘Contrary to the church fathers it is the view of a *liberal* theorist like Locke that a community can only have the rights that its members confer to it.’ Steinhoff’s mocking is hard to miss: ‘There is no miraculous representative rights-increase’ (EKT, 26). He dismisses the qualitative leap from private to public as ‘obscure metaphysics of numbers’ or ‘metaphysics of collectives’.⁵¹¹ This does not diminish the fact that states and groups *can* authoritatively go to war. If attacked aggressively, they are *at liberty* to respond.

When it comes to a public or communal form worth or even commanding defence, Steinhoff’s individualist differentiation goes further than standard contractarianism. This has partly to do with his moral epistemology, according to which not everything right or rational can be justified to everyone. Contractarianism ‘aims to answer [the] question: “The institutionalisation of which normative system is good for everyone (in a society or a territory)?”’ But it is ‘an idle longing’ to attain a general justification of authority or a public good. It leads to ‘ignoring the differences between individuals, to inadequate idealisations and models that abstract from reality rather than help us to deal with it’ (EE, 94-95). Without qualitative add-ons to these differences but rather in respect of them, political authority becomes a pragmatic and reactive order of restraint and defence.⁵¹² It ceases to be a necessary representative, communal mediation. Indeed, like Rodin, Steinhoff turns away from ‘Just War theory’:

Contrary to Just War theory, individuals—or more or less unorganized groups, for that matter—do not at first need the mediation of a representative (as in Catholicism) in order to attain legitimate authority for waging war; rather, they bear this authority in themselves. If, under certain conditions, a *right to war* comes into operation, it is, or is based upon, an *individual right*. (EKT, 27)

⁵¹¹ Steinhoff, ‘Lone Individual’, pp. 137-138.

⁵¹² For Locke the duty of self-preservation still rests on the divinely created being of the individual, not merely the will to survival. *Second Treatise*, Ch. 2, § 6.

In other words, the defence natural rights and political authority become *identical* by the fact of self-defence. Steinhoff re-doubles the Weberian definition of the state as the factual monopoly of force on an individual level:

... the authority of an individual to wage war ... results from the fact that the individual defends his individuality and his individual rights and is legitimated to do so by those very rights, his rationality and his moral autonomy. (EKT, 140, n. 35)

In *Effiziente Ethik* he appears to be wholly averse to the idea of political representation, an aversion he grounds in ‘representation’ as a mere concept of elitist ruling and empirical findings. Domestically, his alternative is something like Switzerland’s direct democracy:

But a certain part of the elite, for example the governing elite can, as empirical research shows, also be less liberal or democratic than the mass as a whole. Hence representation ... is an insufficient instrument to minimize what [Sartori] calls ‘external costs’ (i.e. oppression), whilst participation, in contrast, does not undermine democracy but ensures it. (EE, 185)

There should of course be formal institutions to decide for the community, Steinhoff amends. But this is merely pragmatic; there is no *moral* reason why it should be wrong for everybody to go to war, since violent force is there to defend individual rights. In short, absent the Other of the ‘metaphysics of the state’ or other ‘miracles’, Steinhoff’s individualist realism becomes idealised as an ‘enthusiasm’ that turns everybody into a would-be politician on the back of their interests. Steinhoff’s view begins to make sense as Cavanaugh’s *simulacrum* of the church: the body politic here is a mass of individuals violently defending their interests.⁵¹³ This is the ‘revolutionary’ underbelly of Elstain’s constitutional state.

Equally, Steinhoff’s emphasis on individual authority, especially the authority to inflict punishment according to Locke, separates him from Rodin, who I argued represents a quasi-Catholic notion of authoritative mediation. Cosmopolitanism, especially Habermas’ version, remains one of Steinhoff’s targets. Habermas founds a ‘critical theory of society’ on

⁵¹³ NB: this is only intelligible through the different question of ‘ethics’ itself, i.e. ‘What to do in response to evangelical reality’ as opposed to ‘How can rights effectively be defended?’

‘discursive’ rationality’ as a form of consensus.⁵¹⁴ The universal moral vision, the ‘world society’ to be politically constituted, then encounters a particular given reality of conflict.⁵¹⁵ Habermas has recently warmed to the possibility that such an ethic could stand on religious foundations, but Steinhoff chides that as ‘regression’.⁵¹⁶ He thinks such a universal ethic ends up being ‘provincial and inefficient’, because ‘internalised conscience controls’ in different societies are *de facto* absent. (EE, 90)⁵¹⁷ Against ‘the powerlessness of the pure “ought”’ Habermas then posits the ‘need for a certain congruency’ between moral universalism and already given political and societal institutions as well as existing ways of conscience formation’ (EE, 88). Steinhoff correctly considers this, if not inconsistent, then at least untrue to the facts and so disposes of Habermas’ ‘utopian’ cosmopolitan ideal.

Steinhoff’s own insistence on Lockean individual rights remains a naturalised ‘priesthood of all’, in the logic of radical Protestantism. The latter’s ecclesial discipline is here fully politicised: the spiritual distrust of external authority becomes a radical individualism; the emphasis on individual faith a radical voluntarism; pacifism is politically realised as the absolute recognition of each individual’s rights. Historically, the ‘radical reformation’ was associated with insurrection – an option Steinhoff defends at least in theory.⁵¹⁸ Nevertheless, both Steinhoff and Habermas avoid the question of a *practical* mediation between the real and the ideal, between politics and morality. Either a problem of impracticability arises (Habermas) or the moral-metaphysical possibilities of public political

⁵¹⁴ For an analysis of the movement from philosophy to social theory specifically in the work of Hegel, see Herbert Marcuse, *Reason and Revolution. Hegel and the Rise of Social Theory* (London: Routledge & Kegan, 1955), 251f.

⁵¹⁵ See e.g. Habermas’ Kantian formula of a ‘world society to be politically constituted’, in e.g. *Europa am Scheideweg*, Handelsblatt, 18.6. 2011, <<http://www.handelsblatt.com/politik/international/essay-europa-am-scheideweg/4298474.html>> [retrieved 12 April, 2012]

⁵¹⁶ Uwe Steinhoff, *The Philosophy of Jürgen Habermas – A Critical Introduction* (Oxford: Oxford University Press, 2009); Jürgen Habermas and Joseph Ratzinger, *Dialectics of Secularization: On Reason and Religion* (San Francisco: Ignatius Press, 2006)

⁵¹⁷ Cp. above Ch. 4 on cosmopolitanism collapsing into subjectivism and empire.

⁵¹⁸ See Alistair McGrath, *Reformation Thought: An Introduction* (Oxford: Basil Blackwell, 1988), p. 10; Huntston Williams, *The Radical Reformation*, 3rd ed. (Kirksville, Mo : Sixteenth Century Journal Publishers, 1992), p. 359 f.

authority shrink away (Steinhoff) and we are left with regulated, potentially indiscriminate self-preservation. The latter, as we will see later, is after all ‘bound’ in the liberal constitutional state. That the two authors then make very good ‘bedfellows’ may not be surprising.⁵¹⁹

In Steinhoff’s scepticism regarding authority one may detect a hint of Pierre-Joseph Proudhon or Louis Althusser wrestling with ideology.⁵²⁰ Not that for him ‘property is theft’ – Steinhoff is after all a Lockean. In the spirit of J. S. Mill, it is something like ‘claims to authority are tyrannical’. This is a radical scepticism, again not quite unfamiliar to Augustine:

That medieval thinkers, for whom a civilised life obviously consisted in an authority [*Obrigkeit*] supposedly appointed by God telling a subservient mass [*Untrigkeit*] what to do, put great emphasis on the principle of legitimate authority is probably owed to their own interests rather than the public interest. (EKT, 26)

Steinhoff’s scepticism against ideology even reverses previous notions of publicity. Not that publicity (in the Kantian, Protestant sense) equals individual conscience with immediate access to a universal public reason, whereas state authorities are ‘private’. Rather: the universality of private authority here claims true publicity. Claims to authority as public *per se* are more likely to be self-interested pretence. Authority is an intellectual faculty grounded in rational capacity and will rather than the point of public communal representation.⁵²¹ On these premises it remains rightly unclear why a state authority or experts, who are also limited, should make any better decisions than individuals. Or indeed how they could be anything else but cunning criminals in tendency. (EKT, 140, n. 35)

⁵¹⁹ Cp. the way that Methodism and Roman Catholicism work together in Ramsey’s *War and the Christian Conscience*.

⁵²⁰ Louis Althusser, ‘Ideology and Ideological State Apparatus (Notes Towards an Investigation)’, in Althusser, *Lenin and Philosophy and Other Essays* (New York: Monthly Review Press, 2001), pp. 85-126, esp. p. 89f. Steinhoff in EE, p. 119. Christianity questions and sublates this dichotomy of external world and ideology.

⁵²¹ This parallels also the Lockean shift from a previous understanding of personhood as ontological to psychological, as ‘consciousness’. John Locke, *Essay Concerning Human Understanding*, Ch. 27, §§ 9 – 12.

Here one should not miss Steinhoff's mention of Catholicism. (EKT, 13, 40; EE, 176-177) The 'metaphysics of the state' as a totalitarian entity and that of the church become indistinguishable if one understands them as equally posited institutional manifestations of an imagined social or communal idea (the Kingdom of God, the mystical body of the *Volk*, etc.). Thus conceived, both Christian universalism and the 'metaphysics of numbers' are indeed ideologies. They are 'imaginary orders' or 'constructed realities', as Althusser would say, with a will-to-power at their root. Steinhoff says this explicitly: in propounding a 'just war theory' instead of its original pacifism, 'historical Christianity' transformed into a 'ruling ideology'.⁵²² The 'metaphysical social visions' of state and church imply a 'bad positivity', to use a Hegelian phrase.⁵²³ They are the harmful, practical manifestations of irrational beliefs, each individual's submission to institutions, obliterating their agency, authority and rationality.⁵²⁴ Hence also his mockery of the 'higher blessing of the U.N.' – Steinhoff's scepticism effectively targets both Elshtain's edifying Just War thinking as well as Rodin's legalism. As for Rodin, political authority can only choose between communitarianism and liberal formalism. Either it devours the individual in the name of a social agency, or it merely formalises the reactive liberal right to resistance. (viz. EE, 180)⁵²⁵ The latter then becomes clearly preferable. The he possibility to think authority and citizenship springing *from a mediate and transcendent* point between individual 'natural right' or liberty and 'ideology' is not possible within this duality.

⁵²² That Christianity *can* become a state-ideology was demonstrated by Eusebius and Elshtain in Ch. 1 above. Oliver O'Donovan, *From Irenaeus to Grotius*, p. 56. Steinhoff's sense is correct here: untied from revelation (and an adequate witness), these things are no more than ideologies. Nevertheless, he suggests the same when 'using' the Bible.

⁵²³ Hans Küng, *Menschwerdung Gottes; Eine Einführung in Hegels theologisches Denken als Prolegomena zu einer künftigen Christologie* (Freiburg i. Br.: Herder, 1970), pp. 123-125.

⁵²⁴ Max Weber, *Wirtschaft und Gesellschaft* (Tübingen: J. C. B. Mohr [P. Siebeck], 1947), pp. 142-148; p. 642: 'It is the fate of charisma throughout to ebb away as it streams into the permanent formations of communal action in favour of the powers either of tradition or rational socialization. Its waning means, all in all, that the significance of individual action is pushed back.'

⁵²⁵ See also Bernd Wannewetsch, *Political Worship*, p. 3.

Nevertheless, a metaphysical, teleological and ‘alien’ moment of political authority remains lingering and dangling.⁵²⁶ Steinhoff leaves open the possibility that direct democratic decisions could be *more* representative and go beyond individual interest by ‘solving the problems of the community’ (EE, 187). Where is this community suddenly coming from? Similarly, an individual going to war to defend his rights, which may include tyrannicide, may very well act representatively, but that is no necessary requirement.⁵²⁷ This dangling question of community and representation becomes problematic. Steinhoff chides a ‘totalitarian democracy à la Rousseau’, in which all adult citizens of an unjustly attacking democratic country are liable to attack, but later himself regards the citizens of an aggressive, yet democratic state like Israel as morally guilty based on the fact that they have voted for the Sharon government. Non-combatant civilians become liable to attack as ‘morally guilty.’ This is an effect of failing to consider what he called the ‘miraculous representative rights-increase’ of political authority, the morally ‘objective’ quality of authority beyond citizens’ subjective ‘choices’.

Other metaphysical questions remain open. Steinhoff requires some normative content for his Kantian formula: ‘The [radically liberal] principle, understood as abstract and “pure”, cannot be realised at all, but only in a form in which substantial pre-decisions about the recognisability [*Anerkennungswürdigkeit*] of certain *façons* have already been made’ (EE, 115). Any given liberal order already embodies an arrangement of substantial normative decisions about the good life. Steinhoff even recognizes that the ‘flame of freedom’ actually *depends* on the decision for substantial goods. (EE, 116) But without debating such contents, Steinhoff cannot go beyond radical suspicion:

⁵²⁶ This is opposed to a (paradoxical) mutual reflection of the individual and the universal to each other.

⁵²⁷ Steinhoff, ‘Lone individual’, p. 138. See Bernd Wannewetsch, ‘Luther’s Moral Theology’, p. 126. The law demands an agent or subject not there anymore, which implies an inherently representative scope. See also the ‘just war’ of Heinrich von Kleist’s *Michael Kohlhaas* (1811).

In [every liberal order] there is always an asymmetry between *façons*, between possibilities of individuals to develop, so that one always has to factor in the possibility that the existing asymmetry is an unjust one. (EE, 116)⁵²⁸

This echoes Augustine's gloomy, but essentially anti-positivist, moment in the *City of God*: a *res publica* without *Iustitia* may as well be a robber band.⁵²⁹

If one exchanged the 'atheist' and 'metaphysical' labels, Steinhoff's radical scepticism for a moment occupies the same spot as Ramsey's (Nietzschean) agapism. Ramsey rejected sovereign states' as well as papalism as 'atheist' and plunged into a critical freedom beyond positive institutions; Steinhoff rejects them both as oppressive institutions based on ideological fictions, whilst he demands the same critical freedom. However, at this juncture the two authors go separate ways. For Ramsey, *agape*'s generous freedom by Christ's kenotic standard could wage a crusade *for* the neighbour. Steinhoff, getting rid of all metaphysical pretences on rationalist grounds, cuts himself short from naming any good *façons*. *Iustitia* has to remain mute.⁵³⁰ What remains is a quasi-ecclesial form of political authority as the universal right to self-defense.⁵³¹

⁵²⁸ The term *façon* echoes Frederick II. of Prussia's proto-liberal dictum that 'Everyone may seek Heaven in his own fashion.'

⁵²⁹ *City of God*, IV, 4, 1; on Augustine as anti-positivist, see e.g. John Milbank, TST; Pope Benedict XVI, *Speech before the Reichstag* (Visit to the German Federal Parliament), 22.09.2011; Emile Perreau-Saussine, 'Heaven as a Political Theme in Augustine's *City of God*', in *Paradise in Antiquity: Jewish and Christian Views*, ed. by Markus Bockmuehl and Guy G. Stroumsa (Leiden: Cambridge University Press, 2009), pp. 179-191, 185.

⁵³⁰ In fact he criticises Jean-François Lyotard's "antagonism", which cannot distinguish between 'women, blacks, native Americans, homosexuals, philosophers and others in themselves acceptable, but more or less marginalised groups' as rightful complainants as opposed to 'child abusers, racists, chauvinists, mass murderers, fascists, etc.' (EE, p. 142). Steinhoff appears to ground the difference between them in common sense.

⁵³¹ Quasi-ecclesial in the sense that each member of the body of Christ is equidistant from God, a true egalitarianism.

So the moment of transcendent freedom collapses into the historical ‘onwards and upwards’ of human rights. Steinhoff suggests furthering liberalism itself as an ideology.⁵³² The neutrality-principle as to normative content, for example, is a basic ‘ideologeme’. Once one has found liberalism to be most advantageous to internalise for oneself, Steinhoff argues, the question of which ethic to propagate arises. (EE, 106) The ‘spreading of liberalism’ may not always be helpful, for example when it effectively threatens the lives of those one wants to liberate. A ‘weighing of goods’, i.e. successful results, is always necessary. (EE, 107) Steinhoff then gives advice that could be taken from a manual for missionaries: when justifying liberalism to others, one must appeal to their “cultural sensitivities”; one must ‘package’ it attractively. Like pagan residues, it remains inevitable that the pure ‘liberal principle’ is ‘tainted by *Sittlichkeit*’, the substantive normative contents mentioned above. Nevertheless, step by step, one should get ‘the liberal train moving’ and politically support other liberal movements, especially dissidents. The strategy needs to be flexible. (EE, 117)

In this voluntarist vein liberalism is not a persuasion to be shared or to grow by itself ‘like a mustard seed’.⁵³³ In its mode as ‘Church-simulacrum’, an ideal juridical system that grows out of natural-individual rights, it has to politically and militarily impose the conditions for its own success. As James Tully has pointed out, a military-expansionist tendency is inherent in the ‘high Enlightenment tradition of human rights’. If legal, political and economic institutions are a *pre-requisite* to the exercise of human rights, as they are here, these institutions must be spread first.⁵³⁴

⁵³² See also Michael Freeden, who argues that ideologies are positive and ‘essential’ to political life. *Ideologies and Political Theory* (Oxford: Oxford University Press, 1998); *Ideology: A Very Short Introduction* (Oxford: Oxford University Press, 2003)

⁵³³ Mark 4:26-29; Cp. O’Donovan, DN, p. 95.

⁵³⁴ James Tully, *Rethinking Human Rights and Enlightenment. A View from the Twenty-first Century*. Amnesty International Lecture, 2010.

The logical, indeed ideological outgrowth of Steinhoff's realism, not dissimilar to Elshtain and effectively Rodin, conjures up yet another version of imperialism. (EE, 119) On its frontiers the spread of liberalism

should be accompanied by flanking measures: to this belongs political pressure (which includes threatening military intervention, to be realised if necessary), economic pressure on dictators and their clientele, as well as economic and developmental support that sidesteps their pockets and actually helps the populace. (EE, 118)

However, Steinhoff explicitly goes down a more Marxist route, and this marks a divergence from Elshtain. For him, liberal freedom requires an equal re-distribution of power to individuals, which goes hand in hand with economic improvement. As a 'Reset'-button on the material conditions of liberty, he suggests an egalitarian 'land reform' and 'popularisation of property'. Steinhoff would have to weather the same criticism as Liberation Theology, to which this logic is perhaps closest. Replacing the (moral) 'freedom of a Christian' to do right with (legal) individualist negative liberty and material claim rights, he actually reproduces the same materialist, interest- and power-focused premises of those whom power and wealth today are to be wrestled from.

The effect of liberal ideology is not a fundamental transformation of the world, the charitable over-fulfilment of the law. It rather guarantees the continuation and survival of a naturalist liberal order. The best institutional basic arrangement to secure this order in domestic and international policies is 'liberal-democratic ... , an institutional order in which the majority principle is reined in by the principle of the state of law (*Rechtsstaatsprinzip*) and especially a catalogue of individual rights, which is protected by an independent constitutional judiciary.' Steinhoff advocates the exchange of 'the *current* liberal-democratic constitutional order for *another* liberal-democratic institutional order'. He neither claims to be conservative, nor progressive nor radical. (EE, 196) Steinhoff's moral 'new age' is the 'old age' of law.

At the same time, *in extremis* the sovereign exception I criticised in Chapter 1 re-enters at an individual level. Perhaps one could call it an inverted ‘metaphysics of numbers’. At the forefront of spreading and protecting liberal rights the Is and Ought collapse into the sovereign agent, since he both factually asserts and re-asserts himself in an emergency. This is the logic at work in Steinhoff’s justification of terrorism, but equally in ‘the right to torture’. We can in fact short-circuit Steinhoff and Elshtain on the grounds of their Enlightened dualism. Their ‘state of exception’ relies on the shared realist and revolutionary-democratic traditions. Here, first a fundamental gap arises between realistic power politics, or the ‘metaphysics of difference’ on the one hand, and the impossible ‘Kingdom of Heaven’ or, for Steinhoff, any ‘objective moral standard’ altogether on the other.⁵³⁵ In this gap the sovereign operates, at times with mythological splendour. In an exceptional political scenario it then oscillates between public law and political fact, breaking the law and creating facts in order to safeguard the law.⁵³⁶ The sovereign merely mediates between criminal facts and the positivist juridical form of the liberal state, which (for Steinhoff) is the highest moral-political “ideal”. Despite Elshtain’s ‘use of theological categories’, her Augustinian sovereign differs from Steinhoff’s Machiavellian individual only in terms of the ‘size’ of the agent. Both are sustained by a liberal ideology.⁵³⁷ Elshtain favourably compares the executive decisions of Abraham Lincoln (“an absolute dictator”⁵³⁸) and the post-9/11 American government which act under the auspices of necessity. For Steinhoff ‘necessity’ is the *Notstand*.⁵³⁹ Absent in

⁵³⁵ The lack of possibilities for understanding ‘naturally’ is equally pointed out by Augustine. Letters 55 and 232. O’Donovan, for example, shows how the *pneuma* precisely knits and redefines this gap between subjective imagination and objective external world. RMO, 102: ‘... the Spirit makes the reality of redemption, distant from us in time, both present and authoritative; secondly, ... he evokes our free response to this reality as moral agents.’ Whereas a theology fuses this very outset, the cleavage between ‘world’ (Jacques Lacan: the Real) and imaginary constitutions of ideology, other philosophers like Judith Butler escalate the scope of linguistic, performative construction to the very subject itself.

⁵³⁶ Giorgio Agamben, *State of Exception* (Chicago; London: University of Chicago Press, 2005), p. 1.

⁵³⁷ On Carl Schmitt’s specifically ideological method, see e.g. Jan Müller, ‘Carl Schmitt’s Method: Between Ideology, Demonology and Myth’, *Journal of Political Ideologies*, 4 (1999), 61-85.

⁵³⁸ Agamben, *State of Exception*, p. 20.

⁵³⁹ This includes a positive right to torture. Uwe Steinhoff, ‘Legalizing Defensive Torture’, *Public Affairs Quarterly*, 26 (2012), 19-32.

both cases is an ‘extrademocratic law of natural justice’ as *Iustitia* is mute.⁵⁴⁰ The only ‘natural law’ inheres in the facts of the emergency itself, the defensive reflex following the aggression. That liberal human rights are therefore compatible with or become the civil religion of a sovereign imperial state, ceases to be contradictory.

Ironically Steinhoff also defends the very liberal-positivist constitutions whose exceptionalist human rights violations during national defense he correctly criticises. Steinhoff is somewhat aware of this tension when it comes to the expansionist wars of the U.S. The US-NATO military alliance fires missiles from far away, risking higher ‘collateral damage’ in order to protect their own soldiers, he points out, and ‘it is unclear how this tribalism squares with the universalist values the USA, Great Britain and other European nations purport to defend.’ But instead of condemning and correcting terrorism and contemporary Western liberal warfare, his complaint then is merely that it is contradictory and hypocritical to call terrorists “barbarians”, but not those states. The same goes for the ‘state of exception’. He claims its policies for individuals to the point of justifiable terrorism, arguing that states *also* invoke the ‘state of exception’. Elshtain’s ‘strong sovereignty’ above was precisely such a case. And Steinhoff has no intrinsic problem with it.⁵⁴¹

To summarise Steinhoff’s moral conception of the political agent: with the decided scientism in the background, the individual natural rights paradigm gains primacy. The notion of political authority oscillates between innate, individual authority as a capacity to decide and enforce one’s rights, and the institutionalised framework of the liberal-democratic state as the maximal moral-political ideal. Whilst normative content, or *Sittlichkeit*, ideally would be left outside a radically liberal order, metaphysical residues and spaces remain, even if unexplored. In fact, our liberty depends on them. But with the closure of the moral-judicial

⁵⁴⁰ Milbank, ‘Paul against Biopolitics’, p. 25.

⁵⁴¹ Steinhoff, ‘Why there is no Barbarization but a Lot of Barbarity in Warfare’, p. 105-106; At the same time, since revolutionary rights are bound into the constitution, Steinhoff’s revolutionary rights merely remain theoretical, analogous to Ramsey’s Methodist *agape* bound by Catholic ‘natural law’.

order, authoritative dimensions of an “ideal” (theological/metaphysical) kind are rejected as incoherent: the ‘metaphysics of state’ and church implies rather oppressive, stopping the individual from breathing freely. Nevertheless, liberalism becomes an ideology in its own right, including a liberal imperialism. *In extremis* and for the sake of self-preservation it allows the autonomous individual to violate Just War conventions analogous to Elshtain’s sovereign state.⁵⁴²

The similarity between these ‘realist’ Just War proposals now becomes intelligible. Both proposals lack the specifically Christological *tertium* that would be politically effective in analogical action, mediating between the ideal and the real.⁵⁴³ There is no ‘referral’ of all earthly action to a ‘substantial’ peace or to the *salus hominum*.⁵⁴⁴ This point, then, leads to the final section on the nature of political action.

Political action

Realistic praxis: self-defence

The basic dualist pattern in Steinhoff’s proposal manifests itself as effective individual rights protection on the one hand, and supererogatory actions on the other. The ‘realistic’ praxis emerges out of his assumptions about natural reality and society. The pre-moral, material order implied here already has a certain practical pattern. It is a strenuous, but possibly balanced difference between individual subjective interests and natural forces. As mentioned

⁵⁴² Agamben, *State of Exception*, pp. 5, 25-26.

⁵⁴³ Analytical moral philosophy as Steinhoff practices it finds such metaphysical enquiries beyond its purview, since it ‘starts from scratch’ by clarifying concepts. See especially Steinhoff, ‘Lone Individual’, p. 134. NB: absent an external truth, this positivist epistemology (“We here believe in human rights”) turns into a renewed authoritarian dogmatism. Cf. Nietzsche above: the truths of the Enlightenment are now *irrefutable*.

⁵⁴⁴ Agamben, p. 25; Augustine, *De Civitate Dei*, Bk. XIX, Ch. 4.

above, these must be fenced and ‘regulated’ through conventions and control – akin to the ‘old law’ that ‘restrains the hand but not the will’.⁵⁴⁵

This is formed in a kind of pre-incarnational secular realm. In Steinhoff’s critical dialogue with the postmoderns, who he thinks are either contradictory or have nothing to add to liberalism, this closeness comes into focus. (EE, 134-136; EE, 214, n. 38) Jean-François Lyotard, for example, is torn between the “pagan” imperative ... to maximize as much as possible the multiplication of small narratives’ or ‘multiple justices’ and a Kantian conception ‘in which the whole of reasonable beings as well as a ‘principle of a multiplicity’ function as regulative ideas.’ Not only does the latter sound like Kant’s concept of Right, Steinhoff thinks. Kantianism *limits* the ‘terroristic maximum demands’ of such multiple justices. As a result there is no contradiction between the two. ‘Instead, [Kantianism] lies in paganism itself’ (EE, 135). Not multiple justices, but the ‘justice of multiplicity.’ Steinhoff’s liberal moral praxis quite consciously springs from a *saeculum* that is not *essentially* different from postmodern paganism. ‘Celebrating otherness’ with J. S. Mill may as well be read as ‘celebrating individuality’ (EE, 128); and Lyotard’s ‘activating of difference’ as a guarantee of freedom Steinhoff thinks is best solved by the non-conformist model of ‘different parties allowing to each other spheres in which one lets the other do what he wants – the liberal concept’ (EE, 145). In this way, through avoiding the *agon* – rather than ‘witnessing to it’, as Lyotard suggests – we can at least guarantee a kind of ‘peaceful coexistence’, or as Fichte would have said, a ‘temporal felicitousness’.

The law of liberal democracy ‘*unites the togetherness of differences with the reduction of injustice*’ (EE, 146). Justice is simply neutral non-interference; injustice is aggression. The law fulfils an *usus politicus*. It is not one *usus* out of two or three, a reflexive turning back against crime in view of the possibility of its over-fulfilment or transformation.

⁵⁴⁵ Aquinas, ST IaIIae, qu. 107, Art. 1, reply to Obj. 2.

As noted, the law itself is ‘the ideal of a liberal ethic’. *Within* its framework we have ‘private freedoms’ to do whatever we want.⁵⁴⁶ Nobody is entitled to interfere with these choices. (EE, 145) Steinhoff’s intention to limit the scope of law through withdrawing certain areas from a public-punitive gaze echoes the Christian move to end judgment.⁵⁴⁷ Here it is not understood as a judgment-on-judgment, but as a separation. Effectively, *sittlich* generosity has to remain confined to a private, a-political sphere or will. The ultimate and political connection or fusion between minimal restraining political action and charitable praxis is torn asunder. Any praxis of religion conceived as private leaves the formal framework of public law untouched. Israel and Babylon once again coexist.⁵⁴⁸

Hence, Steinhoff is quite up front about how liberal moral action is completely distinct from any action grounded in faith:

For liberals it is not important to praise values or to bear witness to God, Providence or the spirit of world history, or to abide by their alleged commands; it is rather important that the rights and liberty of individuals are protected as much as possible. (EKT, 36)

As the moral mind of the agent ceases to be relevant, outward conformity to ‘the law’ matters. Close to Machiavelli and Plato’s Thrasymachus, Steinhoff proposes it is sufficient to resemble a good person. ‘The liberal concept of law leaves the thoughts and feelings untouched. Only the actions of individuals are limited by the freedoms of others.’ (EKT, 56) In this sense God himself is a spy, snooping into people’s convictions. The thought that the quality of an action depends on its objectively right or wrong intentions or that repeated intentions form habits and therefore future actions is ‘relevant for the moral judgment of the agent’. But this is kept distinct from the ‘question whether he violates the rights of those he knowingly kills, hurts or does not so’ (EKT, 57).

⁵⁴⁶ Cp. Immanuel Kant, *Zum Ewigen Frieden* (Stuttgart: Reclam, 2008), p. 31.

⁵⁴⁷ Mt, 6:7.

⁵⁴⁸ See above, Ch. 3 on O’Donovan.

But the effective, visible protection of rights significantly changes the understanding of war and thinking Just War theory itself. In this paradigm, the ‘useful conventions’ like non-combatant immunity are now non-absolute, the ‘Kantian faithfulness to principles’ is weakened. It can be trumped when the will-to-life, the ‘last flicker of humanity’ is at stake against an over-powering aggressor. (EKT, 134) This vision is indeed a return of Achilles’ *agon* as described by Spariosu. Its rules

... are based on mutual agreement, which remains in force only as long as it is perceived as being advantageous to all parties involved. Neither is playing by the rules, or “fair play,” a moral exigency; it is merely the result of cooperation among almost equally powerful contestants, guaranteeing the continuation of the game.⁵⁴⁹

In the clash of rights between the innocent attacked and the innocent non-combatants of an overpowering aggressor, war *is* contention and antagonism. It becomes a phenomenon where people simply shoot at each other, an event never far from pure facticity.

At the same time, Steinhoff allows for the manipulation of others, made possible through in initial disjunction between ‘ethics for myself’ and ‘ethics to propagate to others’. The only response he has to the possibility that his approach ‘may give birth to monsters’ and serial killers is predictive: ‘... a lot of potential avengers (which will in all likelihood be more numerous than the serial killers), because of these thoughts [the liberal proposal] will decide to give to those rapists and serial killers what they probably deserve’ (EE, 126). In short, in comparison to theology, *successful praxis* here is never lawful *poiesis*, never a representation of a moral truth, but only the effective, regulated exercise of one’s free will tied to one’s survivalist interests. As an extension, war is the exercise of a moral and legal right to self-defence against aggression, from which all other principles like punishment may come into view. (EKT, 55) This is congruent also with Elshtain’s vision for war between states.

⁵⁴⁹ Mihai Spariosu, *God of Many Names: Play, Poetry, and Power in Hellenic Thought from Homer to Aristotle* (Durham, N. C.; London: Duke University Press, 1991), p. 8.

Steinhoff's use of the 'just war theory' also becomes similar to Elshtain's. The meaning of the Just War theory is '(or at least today should be) to limit war and not to promote self-righteousness or to give unlimited licence' (EKT, 136). Instead of triumphalism, the fact that war is an evil may 'lead to a more modest and thoughtful attitude towards the tragedy, which may add to more and more limit the evil' (EKT, 63). This repeats the reading of Christian realism's just war tradition, an effect of their comparable vision of the fundamental 'tragedy of politics'. But whilst it is to limit the extent of war, this is highly dependent on the necessities of self-defence. At the same time, Just War theory itself here is legitimising a particular war – Steinhoff defends the Palestinian terrorism against the Israeli occupation in the same way that Elshtain defends the 'war on terror'.

Supererogation?

This does not mean that moral ideals and values disappear. But they become voluntary options, since the question of ethics is 'What kinds of behaviour can people demand of other people?' Morality in itself is *legal*. From this angle it is of course impossible to morally think the law 'from the other side', the point of fulfilment that transforms the law.⁵⁵⁰ *Nolens volens*, Steinhoff repeats pre-Reformation Catholic distinction between *praecepta* and *consilia*.⁵⁵¹ It makes the breaking-in of super-abundant love and lasting social-legal effect of the universal through the individual a higher form of virtue. There may be no *need* to scoff at people or to

⁵⁵⁰ Philosophy here can only identify the locus of the possibility of revelation. For example, Alain Badiou, *Being and Event* (London: Continuum, 2005); Karl Barth's Christological prolepsis identifies in Christ both the possibility of revelation and its fulfilment, thus somewhat collapsing the AD and BC. *CD*, I.2, p. 25f.

⁵⁵¹ A structural parallel between supererogatory actions (*consilia*) and *Tugendpflichten* pushes Kant into a rather Catholic corner. This parallel, which allows us to map Steinhoff on the idealism-realism divide, is also noted by Ulla Wessels, *Die gute Samariterin* (Berlin, New York: De Gruyter, 2002), p. 161. Nevertheless, for Kant only those actions that are done according to duty and out of duty are good. Therefore, there are no actions that are good and *not* a duty. So strictly speaking there are no supererogatory actions as Steinhoff suggests when appealing to Kant's *Tugendpflichten*. Wessels, p. 162. For another example of someone who prefers Kant to modern supererogationism is Marcia Baron, 'Kantian Ethics and Supererogation', *The Journal of Philosophy*, 84 (1987), 237-262.

despise them. All forms of generous charity are virtuous and praiseworthy. But they are ‘supererogatory’, an add-on beyond the moral duty, far from a social praxis effectively informing – dialectically or paradoxically – the law, in this case the law of conflict. Love is, in a sense, a monastic ideal. Nobody has a ‘right not to be scoffed at’ (EE, 114) or a ‘right to emotional minimal regard’ (EKT, 56).

Steinhoff, together with other modern theorists, even implies that supererogation tends towards selfishness, since the agent concerns himself with his own salvation rather than the protection of the victims. This Nietzschean reading allows secular theories of supererogation to present themselves as interested in *true* selflessness.⁵⁵² The *paradox* of gaining all through losing all – for example in martyrdom – would obviously require an explanation of faith, love and hope. Read against himself, Nietzsche precisely talks about this when he says: ‘... harshness and terror in morality can be a consequence of the surplus of life: for in this case much can be ventured, much challenged, much *squandered*, too.’⁵⁵³

Another example for how the moral-legal praxis of choice and rights remains untouched by ‘ideals’ is that of the moral status of mercenaries and citizen soldiers. Tony Coady, for example, rejects mercenaries on the same grounds as prostitution. (viz. EE, 114) It is the external performance of fighting for the sake of money, absent good motives: ‘the solidarity with and stake in the well-being of the community under threat that would provide appropriate motive for killing on its behalf.’ Against this Steinhoff points at the *fact* that paid citizen soldiers often also have purely monetary interests and that mercenaries are in fact freer to choose to fight in just wars only, for example to protect their reputation. And:

Coady’s view of the good sex – the ideal of mutual enjoyment which has the character of a gift – is romanticised; he postulates an ideal case in relation to which prostitution is compared and found wanting, which simply ignores the fact that much, if not most, non-prostitutional

⁵⁵² See also Ulla Wessels, *Die gute Samariterin*, pp. 158-159.

⁵⁵³ Friedrich Nietzsche, *Twilight of the Idols* (Oxford: Oxford University Press, 1998), p. 63.

sexual activity does not live up to this standard. ... A parallel romanticism exists in his analysis of war motives.⁵⁵⁴

In the interplay between facts, legitimacy and contract, there is no space for the ‘romanticism’ of noble motives. Hence Steinhoff finds nothing morally objectionable about private military contractors. Mainly, of course, no one could morally *forbid* the voluntary commercial contract between individual and the hiring party. Again, the possibility that Steinhoff does not consider is that ‘motive’ and ‘action’ are an inseparable unity. Not only can a state turn its citizens into mercenaries (like the U.S. or Germany). One can equally make a prostitute out of one’s wife by ‘using’ her. But if one only looks at their voluntary, contractual engagement and their *de facto* habitual fighting for money without any visible damage being done, the difference between citizen soldiers and mercenaries is moot.⁵⁵⁵

Steinhoff therefore remains, as Milbank argues about Kant, ‘in the Old Testament’: ‘morality is legally “over against” our natural desires’. Unlike St. Paul, Kant cannot envisage ‘a transfigured natural desire for peace and harmony ... which no longer requires either prohibitions or commandments.’^{556 557} An authoritative, ontological transformation of the ‘secular’ praxis of coercion is not possible for Steinhoff, since ‘irrational’ revelation clashes with the epistemic rationality of his analytical philosophy. The freedom of contract and conscience and the freedom of *Sittlichkeit*, however, is safeguarded. In fact, this formal freedom itself becomes a mock-*Sittlichkeit*, all-pervasive but without normative content. This, one might add, reflects again Cavanaugh’s vision of the state as a parody of the Body of Christ.

⁵⁵⁴ Steinhoff, ‘Ethics and Mercenaries’, in *New Wars and New Soldiers: Military Ethics in the Contemporary World*, ed. by Paolo Tripodi and Jessica Wolfendale (Farnham and Burlington: Ashgate, 2011), pp. 137-151, p. 139, n. 1.

⁵⁵⁵ In EKT, notably, Steinhoff uses a much more ‘traditional’ view of citizenship, which is the duty of protection of one’s neighbours.

⁵⁵⁶ Milbank and Žižek, *The Monstrosity of Christ*, p. 121.

⁵⁵⁷ Immanuel Kant, *Metaphysic of Morals*, 2 vols. (London: William Richardson, 1799), xiii.

A difficulty arises however from the delicate separation between ‘rights’ and ‘acts of supererogation’. For example, if Django is threatened with a gun and told to hand over a single dollar, could he defensively shoot-to-kill? Steinhoff wants to have his moral cake and eat it: ‘It seems to me that he [rather] *should* hand over the dollar, but at the same time has the *right* not to do it.’ The duties of right may be legally enforced, he says, but a violation of the duties of virtue may only be answered ‘with rebuke, outrage, rejection and so on’. One could not, he claims, ‘treat Django like a murderer or manslayer’ (EKT, 81). But how can one say someone should do something, whilst already saying he does not need to do it? Steinhoff’s artificial separation therefore has to collapse in favour of an insistence on the duties of law and rights. The duties of virtue are merely *sittlich* liberty. One may give up one’s right to self-defence as much as one may blame and rebuke someone who excessively kills for the sake of a dollar. By the same token, one is at liberty not to defend oneself against an innocent attacker, whilst the right of an innocent to self-defence is inalienable.

Notably, Steinhoff here goes beyond the current legal paradigm. The latter is already (or still?) infused with the duties of virtue: if one unnecessarily kills in self-defence, then legal punishment is in fact mandatory. The public would not merely call Django ‘brutal’ and not treat him as a manslayer. They would punish him, based precisely on the grounds of ‘humanity’ and neighbourliness demanded of the law. In contrast, Rodin, still more deontological and Kantian, sticks to the status quo: the law does and can expect innocent people not to lethally self-defend when it is excessive, as for the single dollar, or against innocent and incapable victims. For Rodin, precisely because morality can eclipse the mere necessities of survival, there are certain actions that we should not perform, even at the risk of death.⁵⁵⁸

⁵⁵⁸ See above, Ch. 4

In short, the unmediated disjunction between the real and the ideal manifests itself as on the one hand a judiciable, legal praxis of rights and restraints which becomes ethicised for a liberal like Steinhoff. The liberal law *is* the moral ideal. On the other hand there is what he labels ‘romanticism’, morally praiseworthy ideals, which may flourish mostly in a private (and thus rather subjective) sphere, as well as actions beyond duty. Max Weber, who informs Steinhoff’s approach, makes this disjunction most explicit (*italics mine*):

But it is *an abysmally deep difference* between acting under a conscious-ethical maxime – religiously said – : ‘A Christian does right and ascribes all success to God’ –, *or* acting responsibly-ethical: that one is liable for the (predictable) consequences of one’s action.⁵⁵⁹

Steinhoff here is in good company with Weber, Fichte and Troeltsch, whose approaches prefigure the complete separation of the inward, spiritual and excessively charitable from the praxis of external law, rights and duties. In this spirit, his realistic, ‘Machiavellian’ praxis weaves an autonomous moral-political social corpus of its own.

Conclusion

Steinhoff has been the final author examined in this thesis. His ethics of war were therefore a consequently liberal and Enlightened enquiry into the possibilities of violent force. The core of it was the unmediated right to self-defence and the defence of others near and dear to oneself; the conventional regulation between equal individual rights, whereby the conventions were subject to be overridden in extreme cases. ‘Conventional war’ was still a possibility for Steinhoff, but he pointed out that if one actually takes human rights seriously, then terrorism may be a possible strategy.

Locating him within the overall project, we saw that he began on the same premises as Rodin: within the post-Kantian paradigm the Christ-event again falls behind the horizon of

⁵⁵⁹ Max Weber, *Politik als Beruf* (München; Leipzig: Duncker & Humblot, 1919), pp. 57-58.

rationalism. The central reference point of recognition was the individual, the point in which the Is and Ought merges; each person is a 'prince of peace', so to speak. Steinhoff's scepticism may bring him close to the absolute freedom of faith, Ramsey's agapism and certainly the critical stance remains a constant. However, turning away from that possibility, he remains a happy citizen in the City of Man.

Hence I have compared him closely to Elshtain and Rodin, arguing that his liberalism was effectively the other 'revolutionary' side to Elshtain's Schmittian state. He is equally as 'anti-Catholic' as he was critical of Rodin's or Habermas' cosmopolitanism. In his Just War thinking he repeated/transferred the sovereign politics of the state on an individualist level. Where Elshtain was a 'governmental rebel', Steinhoff emphasised the residual defensive and revolutionary right enshrined in liberal democracies, so I understood him as secularised 'radical reformer'. This, however, was fenced and 'bound' by the liberal-constitutional state, so had the tendency to be merely theoretical.

The politically real and the moral ideal are not held together in the ultimate paradoxical fusion of Christ now reigning on high, as was suggested by O'Donovan. There is a stark distinction between the world as a natural, even Gnostic materiality and the (im-)possibility of any 'absolute truth'. This distinction then engenders its own immanent logic already noticeable in Elshtain and Rodin; here it returned, as Steinhoff represented the individualist counter-part to Elshtain's sovereign state. Here the moral and the political, the statist and the ecclesial, love and law collapse into immanent unities. Whilst any substantial moral 'idealism', whether Christianity or cosmopolitanism, is rejected, the politically real becomes idealised and turns into its own opposite, the notion that was supposed to be avoided. So whilst a moral substantial *Sittlichkeit* was given up in favour of an ethic of success, that ethic of success collapses into its own opposite and becomes a substantial morality: not pointing at the freedom to do good and figuring out possibilities to safeguard

that freedom, but indicating the possibilities and necessities of manipulation and self-regulation. Ethics, in so far as they are already understood as legality, at several points even clash with *Tugendpflichten*. The values and contents of *Sittlichkeit* still linger around the argument, since Steinhoff takes them for granted: community, representation, love, truth. They are possibly related to the absolute, but they may as well be irrational.

The liberal's 'earthly beatitude' oscillates between innate individual defensive rights and a contractually established institutional state order to enforce these rights. Beyond that, the 'metaphysics of the state' or 'ruling ideologies' are rejected, since they would engender bad positivisations, and would oppress individual flourishing and protection. However, even though radical liberalism promises radical freedom, Steinhoff's liberalism takes on the role of yet another ideology. Not only does this contain its own 'doctrine of sovereignty' and the adjacent politics of the 'state of exception', it also requires an expansive imperialism. In good revolutionary-democratic tradition, the gloves can come off and human rights can be violated in order to protect the rights of others. Absent an order of Right – a transcendent equity, not as an objectivist eradication of individual freedom, but a constant and active mediation between subjective rights and an objective order of mutual recognition – we are left with escalating antagonism.

Concerning political *praxis*, the dualistic dialectic repeats itself. It echoes a historically influential dualistic Lutheranism, which distinguishes between inner spiritual and outer enslaved man as much as it distinguishes between the Two Kingdoms, one political, one spiritual. Absent the unifying orientation of faith, political praxis falls apart into the restrictions and forces of the law, and the voluntary possibilities of love and humanity. However, because morality is seen as something legal and enforceable, to guarantee the legal rights of non-interference trumps our ability to see for *ourselves* how a freedom of love can transform the paradigm of those rights. In short, in the absence of the mediating, ontological-

redemptive revolution in Christ, Steinhoff's proposal presents a critical bump on the secularist road. With analytical, interferential fire, the rationalist author applies the prevailing scientist-individualist perspective more thoroughly. Steinhoff's liberal 'gospel' announces a more polished *agon*.

III. Thesis Conclusion

With the previous chapter the narrative of the thesis has returned full circle to where it started from: the ethics of war based on a separation between ‘politics’ and a ‘sectarian’ account of Christian political morality. So, in conclusion, what difference does Christian thinking make to the ethics of war today? The short and crisp answer is: Christian ethics, at least those along the lines of Elshtain and Ramsey, make no difference at all. The main reason for this conclusion is that they do not take their own theological resources seriously enough. Sustained by a particular appropriation of or tacit dependence on Enlightened frameworks, they prematurely presume a congruence between existing present political paradigms and central tenets of faith. The practical result is either an over-reliance on the necessity of positivist institutions, at times even mythologized institutions, or an antinomian neglect of them. At the same time, I have shown that contemporary philosophical ethics of war based on liberal human rights remain heavily indebted to their Christian heritage. They even re-introduce pre-modern versions of political theology, such as Rodin’s ‘papalism’. But within the modern anthropocentric paradigm and logic of mediation, these versions are intensified in a more violent mode. In this sense, the two traditions at the end meet in the same place. By contrast, I argued that if one looks at parts of Ramsey’s and O’Donovan’s work, then a specifically Christian possibility of ‘Just War’ proposal based on the logic of the singular and ultimate paradoxical Christ event emerges. It envisions the possibility of ‘effectively doing

justice’, whilst at the same time foregoing any conclusions on particular wars. Providing guidance on ‘how to think’, they refrain from predetermining ‘what to think’, i.e. legitimising or condemning a particular war. In terms of the form this third possibility takes, the political itself is introduced as a mediating *tertium* here; or rather, there is a third possible agent, action and notion of political reality between ‘realism’ and ‘idealism’.

In this concluding chapter then, I will once again isolate and emphasise the main practical differences that have emerged between the approaches studied. I will locate them in perhaps more familiar scenarios and finally connect this project to further questions that lie ahead. Three points will be revisited: first, the scope and meaning of political authority, a problem which will also indicate the need to grasp a different politics as such. Here the Christian authors I looked at demonstrated how this works out before a specifically Christian horizon. Second, the question of liability to attack in connection with discrimination brings out the potentially unforgiving nature and elitism of contemporary warfare. Third, the notion of double-effect highlights the mediated relationship between the subjective and the objective as a crucial limiting factor vis-à-vis violence and destruction.

The framework of this recapitulation will be again a product of the contrasts that emerged throughout the chapters. On the one hand we have the essentially anthropocentric approach, which included different versions of the liberal human rights paradigm. Here, I counted Elshtain, Rodin, Steinhoff and Ramsey, in so far as he is an idealist or realist. These thinkers begin from the understanding that humans are ‘princes of peace’, that in the *humanum* (or some form of it) the ultimate mediation takes place between the moral and the political. Looking at Christian realism and throughout Part II, I showed how, independent of the paradoxical Christological mediation, these ethics of war lead to a dialectic of separation and absorption, i.e. of failed mediation and an oscillation between an ideal just state of affairs and antagonistic excess. Either the politically real was idealised or the ideal was to be

realised. Both versions then confronted their conceptual opposite in an unmediated clash, but eventually collapse into this Other themselves. On the other hand I investigated the specific theocentric notion of mediation in the Christ event. It results in the analogous mediation of opposites by bringing them together in a continuous praxis of reconciliation. I explained how O'Donovan was a representative of this option, but I also argued that some elements in Ramsey's transformist phase suggest that he too belongs in this camp.

Authority. How did the notion of authority problematically unfold in the anthropocentric approaches investigated here? Absent a previously divine horizon, political authority was conceived along the liberal-constitutional paradigm, which theologically could be read as a *simulacrum* of the body of Christ. As an essentially juridical paradigm, it is divided between the anarchic rule of everyone in which only defensive rights count (the state of nature), and the rule of state law, a domestic legal system. This dichotomy could also be conceived globally, between the 'realism' of states' defensive rights and the 'idealism' of international law.

Within this paradigm, different emphases and oppositions could be conceived, but I showed how it fostered unmediated conflict in the light of failed mediations. Coming from the realist side, Elshtain regarded the sovereign state as the sole political authority and mediator, one which accepted no restrictions by international law. Claiming to embody and guarantee a global human rights order, it then extended its own national interest. However, by absorbing the global humanitarian perspective, it turned into an agent of internationalist 'idealism' itself, in the form of 'benevolent empire'. The mediation and reconciliation between opposites was then either declared as being accomplished, by purporting 'enlightened self-interest', or mediation and reconciliation was impossible as there was no 'negotiation' with apocalyptic terrorists. In a war of national-defence against aggressors, the

sovereign nation-state clashed with its enemies as much as with its humanitarian-idealist and sectarian dissidents but eventually became both. Similarly, Ramsey's late realism was really a predecessor of Elshtain's statist realism. His 'opposed system' in the international sphere was equally distinct from utopianism and the 'good works' of internationalist legal institutions. The imperial possibility was at times denied. But stemming from a domino theory during the Vietnam War, Ramsey's extension of national interest to a global scale had an obviously imperialist element, though this was more reactive in nature than Elshtain's.

Uwe Steinhoff also represented the realist approach to authority. Less statist than Elshtain, he emphasised individuals as Machiavellian authorities and mediators between Is and any feasible Ought of their desire. From the perspective of defensive revolutionary rights, he questioned the ideology of the sovereign state, particularly U.S. hegemony. However, his liberalism also absorbed its opposite in a practical sense if only because it relied on a radical separation from substantial moral content and various forms of political idealism. It was not only ideological and so a (negative) *Sittlichkeit* in itself, but was also geared towards the sovereign state and liberal empire – a logical effect Steinhoff's emphasis on human rights at first seemed to avoid. Whilst taking the form of its own opponent was always a conceptual possibility here, in the end Steinhoff's belligerent clashes with its aggressive enemies symmetrically and without mediation. The essence of being is an 'opposed system' of individual subjectivities.

Beginning from the idealist perspective, Rodin regarded international human rights law as an authoritative mediator between politics and morality. His legalism demanded that the 'idealist' *ius cosmopolitanum* be realised as a global state above the world's 'non-sovereign' political society. This was starkly opposed to conventional sovereign politics and positive states. However, Rodin's utopian impracticability actually legitimised actual states. Once attempts are made to realise this liberal human rights 'papacy', it is conceptually bound

to collapse into imperialism. The same logic could be observed in the early Ramsey: as the international moral vision of the Kingdom of God was to be politically realised in liberal America, Ramsey never questioned the modern nation state in its essence; it even became an adequate political vehicle for his progressivist Social Gospel.

Notably, within the liberal-constitutional paradigm, the anarchic state of omnipresent defensive rights, an actual ‘state of nature’, is highly undesirable. Since revolution can only be conceived as pre-political anarchy, neither of these authors seriously considers the possibility of revolution, the possibility that their own constitutional system may be subject to a justified political overthrow. This conceptual gap between positive law and actual revolution can already be observed in Kant’s *Streit der Fakultäten*. It is an essential aspect of the Enlightened paradigm, which locates moral energy in the developmental reason of humanity. But in actual history, and in Kant’s own time this was the French Revolution, it finds merely incidences before which humanity’s tendency of moral evolution can prove itself.⁵⁶⁰ Positive, constitutional law – national or global – is the very mechanism of closure to prevent revolutions.⁵⁶¹ The revolutionary right is theoretically guaranteed but impossible to exercise. Positive law declares or enacts peace by making violence tied to other ‘natural’ ends illegal. If the law detects ‘natural’ political ends, they are grasped and dealt with through the extension of the security and surveillance apparatus. In an emergency, especially an emergency conceived as aggressive attack, the legal system altogether obfuscates the very rights it promises to protect, using its own ‘right to self-defence’.

In contrast, the evangelical account offered by O’Donovan pushes back the the horizon of the political to include the metaphysical, which the anthropocentrically oriented

⁵⁶⁰ Hence it is misleading to read Kant as suggesting ‘instantiating’ or ‘realising’ the cosmopolitan ideal in history. See Immanuel Kant, *Der Streit der Fakultäten*, AA VII, pp. 88-89; Michel Foucault’s enthusiasm about the Iranian Revolution in 1979 should be read as a parallel here. Stathis Kouvelakis, *Philosophy and Revolution from Kant to Marx* (London, Verso: 2003), pp. 2-3.

⁵⁶¹ One implication of my analysis of Ramsey’s transformist ‘Just War as democracy’ is the suggestion that he grafts the revolutionary-democratic paradigm back onto his ecclesiology: he upholds potentially anarchic Methodist agapism and Roman Catholic legalism of the ‘Just War criteria’ as two parallel sources of ‘ethics’.

authors had indicated, but which remained either outside the Just War reflection or was absorbed by the political paradigm as separate and self-sufficient. This pushing-back of the horizon, which was derived from and responds to the universal history told in the Bible, constructs a mediate and continuously mediating position of political authority. This approach first lifts the political paradigm explained above out of its immanent moorings by locating political authority on the dividing line between humanity and an ultimately divine horizon of its fulfilment.⁵⁶² However, this does not mean authority becomes a mediator that *replaces* the Christ-mediator. On the contrary, the Christ-event radically strips political authority of its potential to act as such an ultimate mediator. Government, conceived as an act of judgment merely *analogous* to the mediating Christ-event, has to charitably divide innocent and guilty while offering the possibility of a reconciliation of belligerents in the future. It has to do so under the law, an objective order of Right. In the international sphere this order is a pluralism of nations and common goods connected by the *ius gentium*. Law and judgment remain distinct, though not incommensurate (as in the sovereign state of exception described by Carl Schmitt).

This paradigm then continuously both re-integrates and transforms individual subjective rights and an objective (and possibly positive) legal order. Judgment is and has the mediating task of representing individuals or belligerents, while objectivising their claims and thus reconciling them. Political institutions are heeded and preserved, but they remain morally justified only by the task of judgment, not vice versa. The grounds of authorised judgement are objective, though not absolute, forms of communal life. An ‘anarchic’ moment is equally re-included into the political; it is truly realised for the church, which knows no ruling authority except Christ and so is also a political society. Here Steinhoff’s radical individualist scepticism was precisely on the cusp of faith, as in Ramsey’s agapist

⁵⁶² John Milbank has more recently come to similar conclusions as O’Donovan: ‘The Gift of Ruling’

conceptualisation, but he then turned away from it. In O'Donovan's view, this (Christian) political society from which true and radical equality comes into view must be heeded by political authorities. It is the dimension of 'soul citizenship' in the City of God through which citizens can conceive of and cooperate with authority in the first place rather than retreat in sceptical compliance. Moreover, before this specifically Christian interpretation of the metaphysical horizon of the political, and within a person's political vocation understood as the position before God in relation to other members of society, a responsible revolutionary overthrow of a particular régime becomes a moral option in *actual history*.⁵⁶³

In short, whilst an account based on anthropocentric mediation moves between 'the rule of everyone' and the legalist-positivist institution, a theocentric account demands that government-as-judgement strives to unite institutional mechanism, individual claims and an objective, transcendent order. This happens in continuous acts of judgment. In terms of *content*, the act of judgment is confined to the defence of the common good; political authority disappears once judgment is passed on judgment. The latter approach, however, is not merely a new political 'theory' on O'Donovan's part, but unfolds from within the specifically Christian, ecclesial action. Political authority may be the 'common grace' of humanity, but for O'Donovan it comes into view as working properly and publicly in the light of the Christian logic of incarnation, cross and resurrection.

Liability and discrimination. The dialectic or theo-logic of (failed) immanent mediation can also be observed when it comes to the liability to harm or attack in a conflict: Who may be targeted? What is the range of *guilt* implied here?

⁵⁶³ It is beyond the scope of this thesis to discuss the relevance of the philosophy and theology of history for the understanding of the ethics of war, but the political act as understood by O'Donovan requires an intricate, eucharistically informed interplay between the temporal and the eternal, which results in the temporal becoming *possible* through the Christ-event. See RMO, 53-76.

The anthropocentric approach again introduces two diametrically opposed notions of moral-political guilt and therefore liability to attack. Either, as morally free, individual agents, belligerent fighters stand above their political community and institutions. In this case the person is liable to a violation of her rights only on the grounds of her personal wrongdoing. Hence, in the case of a lapse, when someone participates in their country's 'unjust war', he is liable in the same way as a criminal is in the domestic sphere. David Rodin highlighted this, echoing Augustine's sceptical idea an unjust state is nothing but a band of robbers. The alternative vision presented to this individual criminal liability is political collectivism. Here individuals are absorbed into the agency of the state, and in particular into the military hierarchy. Merely tools of their superiors, soldiers are cannon fodder or 'a mere *socium*', as Steinhoff called it. After a cataclysmic war event, however, they can make a Nuremberg excuse: since they were only following orders, they are not liable to punishment or even blame. The criminal and the collectivist paradigms are regarded as dichotomous options, whereby human rights-defenders naturally favour the former.

However, there is no overarching mediate and political position between criminal liability and authoritarian non-liability. Hence, the former understanding again collapses into the latter. And, as employees living in Anglo-American liberal democracies, aren't we 'human resources' already? Rodin's secularised crusading logic was exemplary here. The moral, objective dimension is not the divine *Iustitia* to which every individual has access to. As a politically reified immanent ideal, a juridified global mechanism, the 'moral duty to disobey a king issuing "unrighteous commands"' now carries all possibly lethal sanctions. Here a kind of project totalitarianism looms. If nobody, not even residually, is 'the mere instrument of the state' anymore, then the amalgamation of the citizen-soldier with his war – precisely what Rodin criticizes about Hegel – is inverted and paradoxically becomes complete. After all, it was the individual's own free, moral choice to participate. Their tacit

consent to the whole war is then presumed. All citizens are mercenaries; and mercenaries become tools. ‘Targeted killing’, which notably is easily accommodated in international law, is one corresponding praxis of this globalized domestic criminal liability.⁵⁶⁴ A global ‘criminal prosecution’ cannot distinguish between citizen, soldier and individual. The targeted person is permanently, and in all circumstances liable to attack. Conceived as extra-judicial prosecution, it means effective physical eradication through the means of war.⁵⁶⁵ The liberal ‘assassination bureau’ does not distinguish between human and belligerent – both become ‘bug splat’.⁵⁶⁶

From the realist perspective, agents may equally be stripped of any moral-political status. Elshtain’s ‘unlawful combatants’ were significant here as they fell into the crack between the necessities of America’s national defence and the ‘legalist’ Geneva Conventions.⁵⁶⁷ In Steinhoff’s proposal, an initial criminal liability is equally extended to include non-combatant civilians on the grounds that they have voted for their unjust government. A presumption remains against attacking non-combatants, and this is for epistemological reasons as much as anything else (we cannot know how ‘guilty’ a drafted peasant is). However, the rules of war are conventions which may be justifiably overridden in a supreme emergency, a defensive ‘state of exception’. The epistemological barrier can come down once the situation of a defender reaches exceptionally dire circumstances. If the defender is innocent, then any aggressor is liable to attack, even innocent ones. The initially inviolable rights even of innocent non-combatants (children in school buses) may also be

⁵⁶⁴ See Nils Melzer, *Targeted Killing in International Law* (Oxford: Oxford University Press, 2008); NB: the demand for lower casualties and the consequent popularity of drone-technology also reflects the policing paradigm which avoids military combat. Conversely, the police apparatus is becoming increasingly militarized; see for example the defence contractor Raytheon testing weapons systems on prison inmates in the Pitchess Detention Center, California, in 2010.

⁵⁶⁵ Rodin accepts some limitations to this essentially totalitarian argument, for example the soldier’s ‘invincible ignorance’ and partial duress. However, since this does not have a comprehensive grounding in a political anthropology, it does not change individual criminal liability as such.

⁵⁶⁶ Caroline Kennedy and Nicholas Rengger, ‘The New Assassination Bureau: On the ‘Robotic Turn’ in Contemporary War’ <http://www.carnegiecouncil.org/publications/ethics_online/0075.html> [accessed 15 Jan, 2013]

⁵⁶⁷ These ‘black sites’ are precisely where Christ needs to be discerned – in the *camps*.

overridden in a case when there is no other strategy available for a militarily inferior belligerent who is justifiably defending himself. For Steinhoff, some Palestinian terrorist attacks against Israelis were a case in point here.

The duality and dialectic of absolute as opposed to zero (or strictly criminal) liability may also come together within the military. As an authoritarian, hierarchical apparatus beyond reprove at the top, it may very well be ‘democratic’ and liberal at the bottom.⁵⁶⁸ Domestically, one should add, we have also arrived at the point where a reverse Nuremberg argument has become a permanent norm. It goes something like: ‘I didn’t know any of this was going on. I was only giving directions and meaning well.’ In other words, precisely because those ‘at the bottom’, those following orders are held morally and legally accountable, those ‘higher up’ in the ranks remain outside judicial, political purview. Especially within contemporary liberal-democratic societies, the highest echelons of military, political, financial and business hierarchies have become effectively immune from prosecution, though perhaps subject to para-legal inquiries that lack real executive powers.

In the theocentric approaches of O’Donovan, and to an extent Ramsey, again a third mediate position was conceived as the political was regarded as justified in the light of the divine mediation of opposites. It integrates both the dimension of individual moral freedom as well as the notion of communal existence, loyalty and hierarchy, which it recognizes as tentatively justified. O’Donovan argued that being implicated in political wrong is not the same as organised crime. Expressed differently, the structures of organised crime, especially as criminal *elites*, are completely dispensable; the structures of government, based on every person being a *zoon politicon*, are not. Once a regime changes its character and assumes the characteristics of an organised crime syndicate, political authority has to be re-located.

⁵⁶⁸ See Stjepan Meštrović, *The "Good Soldier" on Trial: a Sociological Study of Misconduct by the U.S. Military Pertaining to Operation Iron Triangle, Iraq* (New York : Algora Pub., 2009); ‘The US Military: A Mindset of Barbarism’, Interview with Stjepan Meštrović, 06 February 2010; < <http://archive.truthout.org/the-us-military-a-mindset-barbarism56706>> [accessed 5 Nov, 2011]; Meštrović also highlights endemic mistreatment of low-rank soldiers at Abu-Ghuraib.

Nevertheless, when the enemy is a fighting citizen, then a ‘median guilt’ applies. Liability remains a ‘liability to attack’ in so far as one is actively engaged in committing injustices, not merely on the grounds of failing to ‘resist’ one’s own unjust regime or whilst eating with one’s family. Since the aim of war is to stop the wrong being done, the intention must be to incapacitate enemy soldiers, and if possible, to be taken prisoners. If this is not observed, war becomes (mass) murder. One could say with Ramsey: missions that consist intentionally and exclusively in ‘shoot-to-kill’ mean to ‘kill Christ anew.’

Double-effect. This brings into focus the moral understanding of ‘collateral damage’. Here the dialectic of failed, immanent mediation is grounded in a sharp separation between an inner, possibly ‘religious’ morality and the external destructive action. These two dimensions have no shared horizon. Notably, this is not observed in the domestic jurisdiction, where the intention of a person of course determines the difference between an accident and murder. Nevertheless, this judicial outlook is largely rejected in anthropocentric ethics of war, despite the difficulties it raises for a domestic legality of a global state.

As a result, the investigated philosophers’ options in this regard are either the absolutist stance on human rights or their all-out negation. On the one hand a person’s human rights must never be violated (unless the person has actively done wrong). In other words, ‘collateral damage’ is never justified.⁵⁶⁹ This repeats the notion of criminal liability. On the other hand, since a person may be absolutely justified to defend their rights, a consequentialist calculus may after all take hold. There are situations when the rights-absolutism collapses and on utilitarian grounds the ‘gloves come off’, as Elshtain euphemised. Rodin mentioned this only in passing when he (re-)admitted national-defense as a lesser evil into his practical horizon. But the restrictions of defensive rights were difficult to

⁵⁶⁹ NB: The occurrence of any death then serves as a convenient pretext and can be presented as the sufficient cause for military intervention in a conflict - without looking at what the conflict is about and what extent it may require.

legislate for and to observe in the international sphere; war became an antagonistic, escalating phenomenon after all. Steinhoff fleshed this out when he discussed the possibility of terrorism.⁵⁷⁰ Here the indefensible killing of innocents eventually collapses into the justified destruction of innocent life. For both these philosophers, death and killing as the visible ‘violation of human rights’ matter morally.⁵⁷¹ Lacking a mediating principle here, the defender’s rights then clash with the right-to-life of the innocent target of terrorist attack. ‘Man-as-Christ’ here must never be murdered – but sometimes it is right to do it after all.

In Elshtain’s case the same basic argument took a slightly different form. She was of course vocally opposed to indiscriminate terrorists as well as the humanitarian complaint about a dead body being a dead body and ‘no matter how it got that way’. However, this changed as regards the war she was justifying. Her argument combined the ‘necessities’ of national defence with the conclusive claim that the U.S. was observing the principles of discrimination. Because from her perspective there was simply no question that the U.S. military possessed good intentions and no question that everything done was necessary, she effectively sanctioned the acts that were committed in the name of her country. Whatever happened in Afghanistan, Iraq or diverse Black Sites was therefore automatically ‘discriminate’.

In contrast, the theocentrically constructed judgment-as-discrimination brings into focus the moral connection between intentions, effectiveness and ‘collateral damage’ by upholding a doctrine of double-effect. Here, in the light of the ultimate mediating Christ-event, the dimension of inner intention and external, objective effect is held together. Intention concerns the individual and connects to the prohibition against ‘murder[ing] Christ anew’ (Ramsey). In other words, the intention to discriminate between innocent and guilty is

⁵⁷⁰ This is a familiar logic also in civilian life: fundamental rights of citizens are overridden for example in the course of industrial building projects (airports, factories, etc.) supposedly for the larger economic gain seen as essential to ‘human rights’, though now understood in purely economic terms.

⁵⁷¹ Rodin’s idealist leaning does emphasise the moral integrity of the agent, but he does not suggest a doctrine of double effect.

the very essence of judgment. This was argued both by O'Donovan and Ramsey in his transformist phase.

Notably, in this respect and aware of the Christian horizon required for the moral effectiveness of intention, Steinhoff argued that the traditional doctrine's emphasis on judging the personal intention of a bomber pilot or soldier is irrelevant. It is even a sign of selfishness, he thought, since they only care for their own salvation. However, as I pointed out, this understanding presupposes a neo-Protestant understanding of faith as merely inner motive or piety and re-introduces the medieval distinction between *consilia* and *praecepta*. At the same time, Steinhoff in fact makes an evangelical demand: what should matter are effects. Hence, the doctrine of double-effect complements the intentional 'inner' aspect with a judgment of the effects. The proportionality of the destruction is the objective correlate to intention. Excessive destruction, as in domestic law, indicates a wrong intention. If the carpet-bombing pilot says he didn't intend to eradicate the whole city's population, he is not only a hypocrite, but a murderer. The concept of guilt in criminal law reflects this mediate position between inner piety and external action in different ways. But it is also indispensable in war in order to blame particular agents, rather than filing strategic indiscriminate killings away under 'miscalculations' or the 'tragedy' of an impersonal war machine. At the same time, adherents to the doctrine believe actions are brought about only by intentions. Only if the person intends to not target innocents, there will be a chance of success. And that, precisely, would mean a more effective protection of human rights, particularly those of innocents.⁵⁷² In other words, even though a doctrine of double-effect does not solve the problem of innocent deaths, it may effectively limit their scope and occurrence.

This recapitulation of the differences between anthropocentric and theocentric approaches again re-adjusts the Enlightened juxtaposition of modern Christian and

⁵⁷² A critical analysis of weapons systems in this regard has been beyond the scope of this work. O'Donovan has a section on 'Immoral Weapons' (JWR, 78-94), which I am not entirely in agreement with, since it insufficiently analyses the philosophy that goes into the devising of weapons systems.

philosophical ethics. Having put the comparative approach to thinking morally about war on a new analytical and dogmatic track, I have shown that the inner logic of thinking morally about war is decisive. I have argued that the difference between authors is to be found in the way they understand the essence and logic of mediation between Is and Ought. What matters are not declarations of faith and good intentions, but how one actually reflects on the specific content of Christian faith – the singular mediating work of Christ as the peaceful reconciliation of opposition and difference.

Without doubt, several fields of enquiry underlying my comparison invite and even demand further investigation. One of them is the understanding of mediating dialectics throughout the Christian political tradition. The most prominent theologian in the present work has been Augustine and he was highly relevant to the authors in Part I.⁵⁷³ An appreciation of his thinking on war through Christ's mediation, especially connected to epistemology and ecclesiology, could enrich and further contextualise the previous chapters. A specifically modern reading of Augustine and Christianity through Hegelian and post-Hegelian dialectics has been undertaken by John Milbank and Slavoj Žižek.⁵⁷⁴ I have also hinted at Ramsey's theological indebtedness to Idealism, which he connected with Reinhold Niebuhr. The latter, it should be added, was formative both for Ramsey and Elshtain and continues to shape Christian politics in the U.S.⁵⁷⁵ Beyond Augustine, I have pointed at several historical and theological references to the papacy, the radical Reformation and figures like Carl Schmitt. Each one of them merits more detailed study and appreciation than my conceptual reading

⁵⁷³ For the role of mediation and ethics in Augustine, see e.g. Robert Dodaro, *Christ and the Just Society in the Thought of Augustine* (Cambridge: Cambridge University Press, 2004); also Theodor W. Adorno, *History and Freedom: Lectures 1964-1965*, ed. by Rolf Tiedemann (Cambridge: Polity, 2006)

⁵⁷⁴ John Milbank and Slavoj Žižek, *The Monstrosity of Christ*, above.

⁵⁷⁵ R. Ward Holder and Peter Josephson, *The Irony of Barack Obama: Barack Obama, Reinhold Niebuhr and the Problem of Christian Statecraft* (Farnham: Ashgate, 2012); Robin W. Lovin, *Reinhold Niebuhr and Christian Realism* (Cambridge: Cambridge University Press, 1995); Paul Rich, 'Reinhold Niebuhr And The Ethics Of Realism in International Relations', *History Of Political Thought*, 13(1992), 281-298.

and appropriation of them has allowed for. At the same time, since this work has concentrated on political possibilities in the Protestant tradition, it is probably more indebted to a Lutheran mindset and its paradoxical ‘freedom of a Christian’ than I am aware of.

In this respect my choice of authors is open to being supplemented. Most visibly, I relegated Christian just war ‘idealism’ to footnotes, one reason being that the place of such ‘idealism’ today has become virtually indistinguishable from cosmopolitanism. Looking at this through David Rodin, I indicated the ecclesiological overtones and problems one encounters here. One of the (admittedly controversial) inferences here should be that in so far as Protestant churches endorse human rights cosmopolitanism, they have successfully been ‘Catholicised’.⁵⁷⁶ The work of Habermas as a cosmopolitan has been orbiting this discussion, at least via Steinhoff’s critical reading. He represents an alternative normative-epistemological approach to cosmopolitanism than contemporary Anglo-American intuitionism.⁵⁷⁷ Notably, at times I have grouped Christian pacifism under the category of Just War idealism. And even though they share a ‘presumption against violence’, this is a simplification that hardly does justice to the pacifist traditions going back to the early Christian communities.

At the same time, my comparative set-up opens out towards an investigation of a secular parallel to evangelical political theology. The philosophy of the revolutionary tradition is an obvious candidate, as seen for example in Georg Lukács. If after Kant and Hegel anthropology sublates theology, then history itself becomes revelation, the revelation also *of* itself. Philosophy then becomes the exegesis of history. Once history’s mode of advancement is revolution, it is not a political response to the singular revolution in Christ, but its parodic re-enactment. As a quasi-revelatory event, revolution then passes ultimate

⁵⁷⁶ Perhaps Michael Klonovsky’s aphorism about Margot Käßmann, former head of the German Evangelical Church, slightly overstates this point: ‘If you put a Habermas speech into sugar water overnight, you get a Käßmann sermon in the morning.’

⁵⁷⁷ See also Habermas, *Glauben und Wissen* (Frankfurt: Suhrkamp, 2001).

judgment between life and death, the only standard of discrimination being the revolution itself, or rather: a person's allegiance or hindrance to the revolution. – At the same time, a deeper scrutiny of Marxist and Hegelian notions of mediation and dialectics could improve the understanding of these ethics. They may equally lead to postmodern ethics and critiques of 'ethics'. Their interactions with theology, their specific deconstructions of the political as well as their critique of Kant and liberalism would make an analysis of their 'just war' thinking a worthwhile project of its own. As regards the French historical background, the Résistance has significant relevance here.⁵⁷⁸ Despite my relatively limited choice of authors, I have tried to bring out the inner logic of their practical proposals in the light of their wider theo-logic. In principle this analysis could be extended to a range of philosophical outlooks.

Finally, and most importantly, since the present work has been a study of contemporary theologies in the light of their practical proposals, the next step would be to extend it into deeper exegetical and biblical study. Oliver O'Donovan's and Paul Ramsey's works in this respect have presented the most sustained engagement.⁵⁷⁹ My own approach to the biblical foundations of 'ethics' has formed the analytical framework for the analysis of each author: the relationship between church and state, between law and love, between God and humankind, each instance analysed through its Christological interpretation.

As this comparative project draws to a close, some may be tempted to fall into a theological triumphalism and say: 'Christianity knew it better. And of course we knew *that* from the

⁵⁷⁸ Alain Badiou, *Metapolitics* (London: Verso, 2005), esp. pp. 1-10 on Georges Canguilhem and the Résistance; Gilles Deleuze, *Spinoza: Practical Philosophy* (San Francisco: City Lights Books, 1988); Judith Butler, *Giving an Account of Oneself* (New York: Fordham University Press, 2005), pp. 46-49; *Frames of War* (London: Verso, 2009); Slavoj Žižek, Eric L. Santner and Kenneth Reinhard, *The Neighbor: Three Inquiries in Political Theology* (Chicago; London: University of Chicago Press, 2005), pp. 158-160.

⁵⁷⁹ *A Royal Priesthood? The Use of the Bible Ethically and Politically: A Dialogue with Oliver O'Donovan*, ed. by Craig G. Bartholomew (Carlisle : Paternoster Press, 2002); Adam E. Hollowell, 'Just War and Statecraft in Paul Ramsey's Reading of Luke 14:28-33', *The Journal of Scriptural Reasoning*, 11(2012); <http://etext.lib.virginia.edu/journals/ssr/issues/volume11/number1/ssr11_01_e07.html> [accessed 15 January, 2012]

start.’ Beyond such triumphalism, which must be subverted by its own pride, but also beyond the arbitrariness of ‘interdisciplinarity’, it is more fruitful to comprehensively investigate the (theo)-logical, historical paradigm we are living in. If the contemporary ethics of war wants to be more than verbal punishment or the justification of our own misery, then ‘ethics’ can only offer profound encouragement. Against imperialist or other totalities, against the dialectics of failed mediation, I have investigated how the Christian horizon uncovers the possibility of acting well in the political sphere, a sphere in which human freedom and common welfare can take shape. In that sense I hope to have shown that the logic of Christianity can be brought to bear on the way we think about war and change for the better how we grasp and make peace.

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