

**TO WAR FOR RIGHTS:
MODERN JUST WAR THEORY
AND
PARADOXES OF LIBERAL JUSTICE**

By Tiago de Almeida Lier,
BAH University of Alberta

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of
Master of Arts

Department of Political Science
Carleton University
Ottawa, Ontario
Canada

© Tiago de Almeida Lier, 2007



Library and
Archives Canada

Bibliothèque et
Archives Canada

Published Heritage
Branch

Direction du
Patrimoine de l'édition

395 Wellington Street
Ottawa ON K1A 0N4
Canada

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file *Votre référence*
ISBN: 978-0-494-26957-2
Our file *Notre référence*
ISBN: 978-0-494-26957-2

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.


Canada

ABSTRACT

Modern just war theory, as characterized by the work of Michael Walzer, distinguishes itself from the just war tradition by virtue of its professed secular morality. This morality, rooted in a human rights argument, proves to be the source for several shortcomings in the theory, such as the paradoxical attribution of obligations to friend and foe alike, and the obfuscation of the plurality of conceptions of justice that exist internationally. A complete understanding of this paradox entails examining the idea of human rights, as it developed from Christian theology into modernity. The metaphysical shift from the idea of the good to the idea of right, as the basis for obligation, necessitates the idea of the social contract. This implies a number of basic principles of justice – freedom, equality, and tolerance – although the universal application of such principles, particularly in the case of war, becomes an endeavor in contradiction.

TABLE OF CONTENTS

| | |
|--|------------|
| INTRODUCTION | 1 |
| CHAPTER 1: THE MODERN JUST WAR | 11 |
| DEVELOPMENT OF A SECULAR THEORY | 12 |
| THE PRINCIPLES OF THE JUST WAR..... | 14 |
| 1. <i>Principles of ius ad bellum</i> | 16 |
| 2. <i>Principles of ius in bello</i> | 20 |
| THEORETICAL FOUNDATIONS | 24 |
| CRITIQUING THE JUST WAR..... | 36 |
| CONCLUSIONS | 49 |
| CHAPTER 2: UNIVERSAL RIGHTS | 52 |
| HUMAN RIGHTS CASUISTRY..... | 53 |
| HUMAN RIGHTS | 58 |
| THE CHRISTIAN INHERITANCE..... | 63 |
| RIGHTS IN CHRISTIANITY | 71 |
| THE PRIORITY OF RIGHT OVER GOOD | 73 |
| THE LIMITING OF THE WILL | 77 |
| CONCLUSIONS | 83 |
| CHAPTER 3: THE UNIVERSAL APPLICATION OF LIBERAL JUSTICE | 87 |
| THE ROOTS OF LIBERAL JUSTICE..... | 88 |
| FREEDOM AS RIGHT | 94 |
| EQUALITY AS RIGHT | 99 |
| TOLERANCE AS OBLIGATION | 103 |
| UNIVERSALIZING LIBERAL JUSTICE | 108 |
| HUMAN RIGHTS AND MODERN JUST WAR THEORY | 118 |
| CONCLUSIONS | 123 |
| CHAPTER 4: THE POSSIBILITY OF A JUST WAR | 125 |
| CONVERSATION BETWEEN TRADITIONS | 127 |
| TRANSLATING THE DIVINE..... | 139 |
| RECAPTURING PHRONESIS IN INTERNATIONAL POLITICS..... | 144 |
| CONCLUSIONS | 155 |
| CONCLUSION | 158 |
| BIBLIOGRAPHY | 167 |

Introduction

On March 16, 1968, an American infantry company, expecting enemy resistance, crept into the My Lai (4) sub-hamlet of Son My hamlet in southern Vietnam. Upon realizing that their quarry had fled, the soldiers proceeded to gather the inhabitants – all unarmed civilians – for execution, on the charge of aiding the Vietcong. Private Paul Meadlo, speaking with journalist Seymour Hersh, describes his part in the slaughter of nearly 500 Vietnamese:

We pushed our seven to eight people in[to the ditch] with the big bunch of them. And so I began shooting them all. So did Mitchell, Calley ... I guess I shot maybe twenty-five or twenty people in the ditch ... men, women, and children. And babies. (Hersh; 63)¹

It is when confronted with such barbaric acts, as well as the immense cost in lives and wealth, that the “problem” of war arises. For whatever reason, a political community chooses to employ means outlawed in daily life, and for some, this apparent suspension of normal and recognized rules of conduct instills the opinion that all morality is likewise suspended, that all is permitted. Yet war is not simply a nihilistic slaughter – it is characterized by causes, ends, and goals, such as that voiced by President Roosevelt in reply to the 1941 Japanese attack on Pearl Harbor: “No matter how long it may take us to overcome this premeditated invasion, the American people, in their righteous might, will win through to absolute victory.” War must have a goal or end – which is necessarily political – if it is to be considered war, and so long as it has an end, there is judgment of

¹ Seymour M. Hersh, *My Lai 4: a report on the massacre and its aftermath* (New York: Random House [1970]).

that end, and of the actions taken to achieve them. It is unquestionable that the revelation of the My Lai massacre had an impact on the American public's opinion on the war, with the eventual conviction of Lt. William Calley being regarded not simply as an indictment of personal negligence and murder, but as an indictment of Army policy and the Vietnam War in general (McCarthy; 82-5).² While war condones acts normally considered immoral, moral judgment and assessment never abates.

The distinction made, for instance by certain scholars of international relations during the Cold War, between strategy and morality, "necessity" and morality, or most basically, the practical and the moral, has been pervasive. Even Michael Walzer, in his famed *Just and Unjust Wars*,³ struggled to overcome arguments of military necessity because he sought to establish principles that served as tenuous thresholds that should not be crossed, and yet the moral nature of those principles was brought into question when they seemed to provide military benefit.⁴ But are strategy and morality necessarily distinct? Is utility necessarily understood as selfish material benefit, and morality a self-forgetting adherence to transcendent laws and commands? Must that which appears useful in defeating the enemy be strictly separated from what is right? Is victory secure only through tactical acumen, or must there not also be a concomitant moral achievement, where the enemy accepts the terms of defeat as just, or a sufficient

² Mary McCarthy, *Medina* (New York: Harcourt Brace Jovanovich [1972]).

³ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books [1977]).

⁴ Some critics even charged that Walzer's argument was made, ultimately, from a position of military utility, as he justified the abrogation of moral principles in times of dire need. His criticisms of "utilitarian" views on war, they argued, amounted to little more than a refinement of utility calculations. This problematic acknowledgment of military necessity will be discussed in more detail in Chapter 1.

approximation of justice?⁵ As such, must not a modicum of justice be achieved if peace is not to descend into war once again? Saint Augustine reminds us that,

even when men wish a present state of peace to be disturbed they do so not because they hate peace, but because they desire the present peace to be exchanged for one that suits their wishes. ... [A] man who has learnt to prefer right to wrong and the rightly ordered to the perverted, sees that the peace of the unjust, compared with the peace of the just, is not worthy even of the name of peace. (*City of God*; XIX.12)⁶

However, once mired in war, what can be termed justice when each side has suspended “normal” avenues for determining justice? How can any consensus be achieved on the basic terms or principles of justice? Although these are only a small range of the questions that can be raised about the role of morality in war, they serve to highlight the complexities that haunt moral reasoning about war. The hurdles are immense, for not only have the warring parties suspended normal relations and rules, but the occurrence of war is itself evidence of irreconcilability on the issue of what is right or just.

To propose a just war theory, then, is an immense challenge, for it aspires to give an account of what is good or right (a distinction that will itself prove to be of great importance), and how it can be found and preserved, in the most trying of circumstances. To even conceive of the possibility of such a theory entails, at least, four basic assumptions: first, that the killing of a human being is not, at all times, unjustifiable; second, that war, despite its gravity, does not suspend all moral considerations; third, that

⁵ In an apparent divergence from his writing in *Just and Unjust Wars*, Walzer argues in “The Triumph of Just War Theory (and the Dangers of Success)” that “[i]n a war for ‘hearts and minds,’ rather than for land and resources, justice turns out to be a key to victory,” and that there must be a uniting of utility and morality, such that “there are now reasons of state for fighting justly. One might say that justice has become a military necessity” (*Social Research*, vol. 69, no. 4, New York: New School for Social Research [Winter 2002]; 930-1).

⁶ Saint Augustine, *City of God* (Bettenson, Henry, transl., London: Penguin Classics [2003]).

justice is possible between political groups at war with one another, or rather, that justice can exist when two groups feel that they must use systematic killing to achieve their ends; and fourth, that justice, in some form, exists or is achievable in international politics (what A.J. Coates labels the “universalist” premise [9])⁷. Still, these assumptions are themselves generalizations, for they do not reveal what the basic premises of justice are, or what, for example, makes killing just in certain circumstances and unjust in others, or what makes any act just or unjust. Does the threat of harm constitute sufficient justification for killing? What constitutes a threat, and what constitutes harm? What is it about an individual human being, and not an animal, that makes such actions wrong? The series of concepts and questions that underlie any just war theory are immense, and necessarily go to the core of how we think about ourselves, our relationships with others, and even our place in the world.

The purpose of this essay is to explore the possibility of achieving justice in war, but given the immensity of such a task, it must be approached in a far more limited way. By taking a single theory and tracing its assumptions about the nature of justice, the state, moral obligations, and the individual, to a more fundamental level, this essay will be able to give a critical assessment of the theory. The general problems confronting any theory of justice and war will only begin to take shape in light of a full account of a particular theory, for the grounds by which that theory is evaluated will itself contain its own account of justice, and thus reveal the seeds of a dialectical conversation. The particular theory to be evaluated in this essay is the “modern just war theory” that has achieved,

⁷ Coates, A.J., *The ethics of war* (Manchester: Manchester University Press [1997]).

particularly in the English-speaking liberal democracies of the West, significant prominence in the past thirty years. The seminal work of this theory is Michael Walzer's *Just and Unjust Wars*, which was published in 1977, towards the end of American involvement in the Vietnam War of which Walzer was a strident critic. Briefly, this theory adopts the framework of the Christian just war theory, but replaces its core assumptions with a secular human rights theory. This modern just war theory, and particularly Walzer's own argument, has been chosen not only because of its impact on public opinion, policy-makers, and academia, but because of its aspiration to reveal a more comprehensive justice that can encompass Christian and non-Christian moral views alike. This implicit criticism of the Christian foundations underlying traditional just war theory speaks to the strong sentiment that the Christian worldview is only one of many possible, and legitimate, understandings of morality.⁸ Modern just war theory both acknowledges this plurality and, at the same time, attempts to provide an account of universal justice; this aspiration to universality is an important theme that will be considered over the course of the essay.

Before outlining the argument made in the paper, a brief justification of the methodology of this evaluation must be given. The approach here is primarily historical, and therefore does not evaluate modern just war theory solely on its own terms. This is because modern just war theory asserts an entirely ahistorical character, where morality transcends time and place by virtue of its supposedly objective nature. In contrast, a

⁸ Alasdair MacIntyre's *Whose justice? Which rationality?* (Notre Dame IN: University of Notre Dame Press [1988]), and Charles Larmore's *The Morals of Modernity* (Cambridge: Cambridge University Press [1996]), give particularly good accounts of the departure from explicitly Christian categories in Western moral philosophy that occurred during the 19th and 20th centuries, and the concomitant rise of philosophy that attempted to accommodate a plurality of moral visions.

basic assumption of the historical approach is that, in fact, a theory cannot be evaluated simply on its own terms, as those terms are products of a long historical process spanning numerous debates, changes of meaning, appropriated and discarded concepts and assumptions. This method entails both the exegesis of texts that treat these concepts, as well as the analysis of incongruities revealed within, and between, those texts. To thus approach modern just war theory with an eye for its historical debts, and its own historicity, might appear counter-intuitive, and will surely impact how morality itself is to be understood. The conclusions drawn from the study of an ahistorical argument with a historical perspective will, to some extent, be prefigured simply by the method. Already, for example, the concrete meaning of a moral principle are not taken as simply timeless and consistent from era to era, tradition to tradition. Even something that is inherently, or by definition, timeless, such as natural law, admits of such numerous historical accounts that its specific content and axioms cannot be simply lifted from the time of its formulation without a defense of that particular account.

The revealing of historical change in political and moral concepts is not a symptom of antiquarianism, where the recognition of what has come before is moved by nostalgia that is itself informed by dissatisfaction with the present. Rather, it is an attempt to gain a fuller account of the present, to discover why certain concepts changed meanings, what arguments and conditions (both intellectual and political) these changes were in response to, and to understand how new conceptions raised new problems. It thus seems difficult to say that any concept or term has meant precisely the same thing for all peoples at all times. For example, in *Natural Rights Theories: their origin and development*, Richard

Tuck writes that “the meaning of a term such as a *right* is theory-dependent, and we have to be sure about what role the term played in the various theories about politics which engage our attention” (2). A historical approach seeks to reveal what was gained and what was lost with each iteration and interpretation of a concept, showing how new concepts build on the perceived shortcomings of previous ones. How we think and conceive of the world is an outcome, a product, of our history, and if we are to presume to understand that world, there must therefore be a confrontation with its history.

The implication for this essay, then, is that while scholars and philosophers may rebuild and address arguments made in the past, or anticipate arguments that will be made in the future, their approach is always inspired or prompted by issues of the present. The historical is necessarily filtered through the lens of the present, whether it is in obvious manifestations, such as by translating old texts into modern languages, or in a more veiled fashion, where the identification, organization, and analysis of significant historical events and objects depends upon hierarchies, categories, and concepts both constructed and embedded in modern culture and scholarship. Indeed, the meaning or essence of a text, from past or present, is only fully grasped once the assumptions of one’s own interpretation are placed historically. To say that this historical approach is fraught with its own paradoxes, limitations, and possible failings, would be an understatement, although they would require a thorough treatment far beyond the scope of this essay. Nevertheless, this essay’s consideration of modern just war theory is girded by just such a method, and its soundness will only be demonstrated over the course of the argument.

In this essay, then, what will begin as the examination of a phenomenon of our own time – just war theory stemming from Walzer’s work – turns to a historical analysis of that theory’s fundamental moral concept. “Universal human rights” are the foundation upon which Walzer constructs principles of justice in war – war and its conduct is both justified and limited by the rights possessed by each and every human being. The general structure of this essay is to move from the theory as presented by Walzer and others, to the nature of the obligations implied by his theory, and then to the particular conception of justice that issues from – and conflicts with – universal rights.

The first chapter will give an account of modern just war theory, particularly as presented by Michael Walzer. This includes summarizing his principles of justice of war (*ius ad bellum*) and justice in war (*ius in bello*), as well as collecting his theoretical arguments concerning the nature of aggression, states, and the international system. The chapter will conclude with a critique of several aspects of Walzer’s theory, namely his reliance on a particular conception of justice that calls for a perplexing dual obligation to both one’s own and the enemy.

The second chapter will investigate the origins and nature of the obligations implied by universal human rights, particularly how they presuppose a number of metaphysical concepts and theories discounted by moral casuistry. Foremost of those is the conception of the free will as articulated by Christian theology, whereby goodness and sin can only be determined through the free choice of one or the other. What is good, however, is revealed through reasoned assent to God’s law as revealed through scripture and the life of Christ. The principle turning point in the Western conception of morality

seems to occur when “right” is asserted to be prior to obligations derived from “good” – what is right is no longer seen as good in itself, and goodness becomes a matter of individual determination. Moral law receives its force from its rightness, from its being willed by autonomous individual wills. In this light, Thomas Hobbes’ conception of the individual and natural right provides an essential account of how moral obligations are derived from universal rights, and necessitate a “social contract” as the basis of civic justice.

The third chapter will attempt to show how the nature of obligations, as derived from universal rights, implies a particular form of justice, that of liberalism. John Locke’s conception of natural right as “life, liberty, and property,” more closely resembles Walzer’s position, and expands the rightful bounds of the individual’s – and therefore the community’s – power and authority. It will be argued that three principles of justice follow from the fundamental priority of “right” (freedom, equality, and tolerance), and while they assert universality, produce a very particular conception of the proper relationship between individuals. When set within the morally plural context of the international system, liberalism appears to appropriate a universality that is at odds with its own particularity – namely, it assumes a hostility towards incongruent (intolerant) conceptions of morality. Carl Schmitt’s polemic against liberalism will be used to highlight liberalism’s contradiction of its own principles of justice, and demonstrate how Michael Walzer’s reliance on a very particular form of justice, as the basis for a universal argument, generates the problems and paradoxes found in the first chapter.

The fourth chapter, in light of the failure of the modern just war theory to provide a necessarily universal conception of justice that at the same time is able to account for the many particular moral visions that exist in the world, will speculate on the possibility of accounting for justice in war through a recapturing of *phronesis* or practical wisdom. Two modern accounts, that of Alasdair MacIntyre's writings on craft-tradition, and Clinton Curle's account of human rights as based on the philosophy of Henri Bergson, will be briefly examined as expressions of this return to *phronesis* in matters of morality. The essay will conclude by examining how Aristotle's own account of *phronesis* (perhaps the first formal account of practical wisdom) might offer a new way for finding, understanding, and articulating, justice in the context of war and international politics in the modern era.

An understanding of justice in war remains a matter of pressing need, for not only must a statesman navigate through the obligations he owes to his people, but every citizen must also account for their own role in such a massive undertaking. This need for the great perils of war to be reconciled with justice underscores King Henry's warning, in Shakespeare's *Henry V*, to the Archbishop of Canterbury, to keep in mind how heavy a burden such decisions place on the soul:

For God doth know how many now in health
 Shall drop their blood in approbation
 Of what your reverence shall incite us to.
 Therefore take heed how you impawn our person,
 How you awake our sleeping sword of war:
 We charge you, in the name of God, take heed ;
 For never two such kingdoms did contend
 Without much fall of blood; whose guiltless drops
 Are every one a woe, a sore complaint
 'Gainst him whose wrong gives edge unto the swords

That make such waste in brief mortality.
Under this conjuration, speak, my lord (18-29)⁹

⁹ William Shakespeare, *Henry V* (in *The Complete Works of William Shakespeare*, Clark, W.G., and Wright, W. Aldis, eds., vol. I, New York: Nelson Doubleday, Inc. [1883, 1950]).

Chapter 1: The Modern Just War

What is “modern” just war theory? Loosely, it could be understood as that substantial body of academic literature that grew out of Michael Walzer’s book, *Just and Unjust Wars*.¹⁰ Walzer’s work drew out the discussion of just war theory from its traditional home in the theological debates of Christian journals, and consequently ushered in something of a new, secular, era for intellectual debate about the role of morality in international politics. However, a more rigorous definition of what constitutes “modern” in reference to this particular theory of just war is required if this thesis is to, as a whole, elucidate and critique the fundamental assumptions about justice and morality that are made by theorists in the vein of Walzer. To this end, this first chapter will address a number of salient questions: how did modern just war theory develop? What are its basic principles and assumptions? Are its theoretical underpinnings consistent and tenable in international society? In investigating these questions, this chapter will briefly discuss the literature concerning modern just war theory, its principles, significant applications of the theory, and the most important criticisms leveled against it. In light of these criticisms, it will be shown that modern just war theory admits of a number of special exceptions, practical impediments, and moral paradoxes that, together, indicate that a fundamental flaw lies in its theoretical foundations.

¹⁰ In *The ethics of war*, A.J. Coates criticizes this association of just war theory with Michael Walzer’s work, finding that Walzer’s “cavalier” approach, particularly his “moral particularism,” do not coincide with mainstream just war thinking (4-5). Although a fair criticism to some extent, Coates’ failure to distinguish between secular and Christian writings – which necessarily admit of different theoretical approaches – would suggest that a critique of Walzer’s theory is, in fact, *very* relevant to the just war tradition as it has developed in secular form over the past decades.

Development of a secular theory

The novelty of *Just and Unjust Wars* was due as much to the introduction of new theoretical foundations as it was to the political context into which the work arrived. At a time when specifically Christian principles were not admitted as legitimate grounds for foreign policy formation, and scholars of international relations were not primarily concerned with moral issues, Walzer's articulate reintroduction of the just war resonated strongly with American laymen and scholars alike whose memories were still marked by the war in Vietnam.¹¹ Although academic debate concerning just war had never abated entirely, with significant works by Paul Ramsey and E.B.F. Midgley preceding *Just and Unjust Wars* by a matter of years, its dominance by Christian thinkers severely limited its acceptance by ostensibly secular government officials and academia.¹² In this context, it was through Walzer's employment of secular moral foundation that his book quickly asserted itself as one of the most prominent texts on international morality. In reviewing *Just and Unjust Wars*, Douglas Lackey claims that it resonated with an intellectual climate where,

¹¹ In *Can modern war be just?*, James Turner Johnson convincingly argues that "the essential concepts of restraint in war have over the centuries become secularized," particularly couched in arguments of "humanity," and that the groundwork for the development a secular theory had been laid by the Renaissance works of Francisco de Vitoria and Hugo Grotius (New Haven: Yale University Press [1984]; 4-7). However, as Walzer recalls, the modern (20th century) study of justice in war rarely departed from Christian academic sources, partly due to public secularization, and the concomitant lack of interest amongst secular scholars of political science and international relations (2002; 927).

¹² Midgley, E.B.F., *The Natural Law Tradition and the Theory of International Relations* (London: Paul Elek [1975]); Ramsey, Paul, *The Just War, force and political responsibility* (New York: Charles Scribner's Sons [1968]).

At least in the United States[,] philosophers have felt that the hard core of moral policy consists in respect for individual rights rather than pursuit of (perhaps indefinable) general interest. (536)¹³

Despite eschewing just war's theological foundations, Walzer appealed to a "moral reality," expressed through a common "moral language," that he claimed to transcend particular cultures and be universally valid (Walzer 1977; 16-20). According to him, given that all mankind partakes in this moral reality, appeals to it are significantly more binding than the international law that apparently failed mankind in Vietnam (ibid.).

In essence, Walzer had constructed a strong moral argument without the authority of either Christianity or international law, and it was because of this secular appeal to a universal justice that numerous other scholars were drawn to just war theory. This scholarship can be divided into three principal categories: further development of the just war theory, employment of the just war criteria in empirical cases, and outright criticism, on pragmatic or theoretical grounds, of the theory. In attempts to further development of Walzer's theory, scholars debated the efficacy of just war principles and attempted to make the theory more robust: they added new principles, removed others, or revised the traditional ones. Significant debates of this nature will be addressed in the following section.

The practical employment of just war theory, whether in use by policy-makers or by applying the theory to empirical cases to ascertain the justice of particular wars, has been the subject of relatively scant scholarship compared to the other two categories. Perhaps stymied by the rigid political allegiances of the Cold War, accentuated by the

¹³ Douglas Lackey, "A Modern Theory of Just War" (*Ethics*. Issue 92. Chicago: The University of Chicago Press [April 1982]; 533-546).

threat of nuclear war, the supposed necessity found in international politics overshadowed the claims for justice made by the theory.¹⁴ Following the collapse of the Soviet Union, and the subsequent rise of “human security” debates and scholarship, there was an increase in academic literature that sought to apply modern just war criteria to various cases, such as the American-led Gulf War in 1990, the American war in Iraq beginning in 2003, and numerous humanitarian interventions.¹⁵ The application of just war theory to humanitarian intervention has been a relatively new source of academic writing on the theory,¹⁶ a curiosity considering Walzer’s own hesitation in allowing intervention as a just cause of war, as will be considered later.

As for the third category of just war literature, the critiques of just war theory, they will be addressed towards the end of this chapter. A complete consideration of those critiques demands a familiarity with the core propositions, arguments, and assumptions made by the modern just war theory.

The principles of the just war

¹⁴ See Coates (5-6).

¹⁵ For an example of the use of just war theory in reference to the 1990 Gulf War, see Jean Bethke Elshtain, et al., *But Was It Just? Reflections on the Morality of the Persian Gulf War* (New York: Doubleday [1992]). Likewise, in reference to the 2003 American invasion of Iraq, see Laurie Calhoun, “Pre-emption and Paradox” (*Global Change, Peace & Security*, vol. 16, no. 3, London: Carfax Publishing [Oct 2004]; 197-210), and Elshtain, “A Just War?” (*Boston Globe*, [Oct 6, 2002]).

¹⁶ One particularly significant example is *The Responsibility to Protect*, prepared by the International Commission on Intervention and State Sovereignty, which posited a moral obligation for humanitarian intervention on the basis of modern just war theory. Also see: Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law* (New York: Oxford University Press [2002]); Mona Fixdal and Dan Smith, “Humanitarian Intervention and Just War” (*Merston International Studies Review*, vol. 42, no.2, Cambridge MA: Blackwell [Nov 1998]; 283-312); and Ian Holliday, “Ethics of Intervention: Just War Theory and the Challenge of the 21st Century” (*International Relations*, Vol. 17, issue 2, London: SAGE Publications [2003]; 115-133).

The modern just war theory culminates in several main principles that must be adhered to for a war to be considered just. Most have been directly inherited from the Christian just war tradition, and the theory adopts the Latin terminology used by early modern jurists, such as Hugo Grotius. There are two basic categories, *ius ad bellum*, or justice of war, and *ius in bello*, or justice in war, which are founded on a distinction between the ends and means of war (Walzer 1977; 21). A further category, *ius post bellum*, or justice after war, has been proposed by a number of scholars, but by virtue of its novelty it is by no means universally accepted.¹⁷ *Ius ad bellum* necessarily looks at the reasons for going to war, such as aggression and self-defense. *Ius in bello* is concerned with how a war is fought, that is the choices made by war planners and individual soldiers about the conduct of violence; medieval chivalry, the “war convention,” or modern “rules of engagement”¹⁸ are all attempts to morally regulate of the conduct of war. These two categories, Walzer maintains, are logically independent, and it is “perfectly possible for a just war to be fought unjustly and for an unjust war to be fought in strict accordance with the rules” (Ibid.). Walzer seems committed to the strict distinction between the two categories so as to facilitate the assignment of responsibility to either statesmen, in the case of violations of *ius ad bellum*, or to military

¹⁷ For proposals concerning *ius post bellum*, see Brian Orend, “Justice after war” (*Ethics & International Affairs*, vol. 16, issue 1, New York: Carnegie Council on Ethics and International Affairs [2004]; 43-56), and Louis V. Iasiello, “*Jus post bellum*: the moral responsibilities of victors in war” (*Naval War College Review*, vol. LVII, no. 3, Newport: Naval War College Press [2004]; 33-52).

¹⁸ The U.S. Department of Defense, for example, sets out that each commander must set out rules of engagement (ROE) that outline when those under their command are to engage or break off combat with enemy forces. Specific ROE vary from mission to mission, and are to allow for the completion of military objectives whilst complying with Standing Rules of Engagement (SROE), and the principles of the “laws of armed conflict” (derived from domestic legislation and treaty obligations) (*Dictionary of Military and Associated Terms*, U.S. Department of Defense [Sept 2002]).

personnel, for violations of *ius in bello*. The determination of a violation is made by the application of several sub-principles within each category.

1. Principles of *ius ad bellum*

Ius ad bellum is traditionally determined according to six principles: just cause; proportionality; right intention; right authority; prospect of success; and last resort. However, not all interpretations of modern just war are in conformity with regards to the significance of each principle, or with regards to their substantive content. In order to present a consistent theory of just war, Michael Walzer's particular just war theory will be employed in this chapter, although the significant departures and disputes that fill the just war literature will be noted.

1) *Just cause*: perhaps the single most important principle of *ius ad bellum*, just cause states that a war may be justly waged only when the state reasonably anticipates a threat to its territorial integrity or political independence by another country, or to punish an aggressor once they have been rebuffed (51-3, 62, 74-5, 80-5, 120-1). Only an enemy's clear intention to begin an aggressive war can justly trigger a response in kind. Other causes, despite their purported "justness," are excluded, such as preventative war, war to overthrow a particular regime, or humanitarian intervention (72-8, 101-2). As will be discussed later, the protection of rights at the core of modern just war theory requires a strong respect for the autonomy of political communities, and thus allows only defensive wars. However, intervention on the grounds of gross violation of human rights, cases which Walzer notes are "very rare" (such as genocide), is excepted on the basis that the

community's claim to self-determination does not, in fact, exist under such extreme oppression (ibid.). Walzer's hesitance on this issue is due to his observation that there have never been – prior to his writing of *Just and Unjust Wars* – any so-called “humanitarian interventions” that could be said to be solely humanitarian in intention, but rather that each was mixed with ulterior motives. Conversely, numerous scholars and commentators have pointed out that it is difficult to think of all humans as rights-bearing while at the same time discounting the obligation to protect them in the worst of circumstances.¹⁹

2) *Proportionality*: war, and the settlement thereof, must be proportionate to the conduct of the aggressor. For example, a limited war (such as over a particular territory) cannot be met with a war of conquest or annihilation. Although the distinction between proportionality in going to war, and proportionality in the means of war, is often blurry, it is useful to think of the principle in the first sense as that concerning the political ends of war (although the use of certain means, such as nuclear weapons, threatens to disrupt proportionality in ends as well).²⁰ Given that “[p]roportionality is a matter of adjusting means to ends,” and that the means in question is war, it follows that the just war is

¹⁹ For instance, in *Military Ethics*, N. Fotion and G. Elfstrom argue that “sometimes nations will have the obligation to initiate war on behalf of these citizens [in grave danger] from other nations,” citing the murderous regimes of dictators such as Cambodia's Pol Pot or Uganda's Idi Amin (Boston: Routledge & Kegan Paul [1986]; 114-5). Also see Holliday.

²⁰ The complications found in the principle of proportionality are revealing of the distinction between *ius ad bellum* and *ius in bello*, as it seems to collapse the two and refute Walzer's basis for the distinction, the so-called “dual nature” of war itself (25). In this sense, political (and moral) considerations encompass war in its entirety, both in ends of war (concerning statesmen) and means of war (concerning generals and soldiers). Perhaps most significantly, this suggests that the distinction between necessity (both political and military) and morality is not as fine as it is assumed to be by scholars of international relations. Brian Orend explores these issues in “Just and lawful conduct in war: reflections on Michael Walzer” (*Law and Philosophy*, no. 20, Netherlands: Kluwer Academic Publishers [2001]; 1-30).

necessarily a limited war, as the principle of just cause limits those ends (120).²¹ The chain of logic extends further, to the principle of right intention, such that proportionality in war-making necessarily depends on those intentions regarding the ends of war remaining just.

3) *Right intention*: the principle of right intention requires that the intent of a war be to remedy an injustice and remove the threat of further injustice, rather than propagate another injustice on that pretext. For Walzer, the difficulty in determining the true intentions of statesmen necessitates that intentions can only be reasonably ascertained in the face of a demonstrable threat (61-2, 80-2). This coincides with what the principle of just cause stipulates regarding aggression, but also limits the purposes of war; as noted earlier, a just war can only serve to rectify an injustice and end the threat of any repetition of it (110-3).²² There is a need, then, to ensure the justice of settlements after war so that a just war will not be subverted by the injustices its conclusion might generate; to reiterate, war does not simply seek peace, but the settlement of injustice (132).

4) *Right authority*: Perhaps one of the most plainly controversial principles, it requires that the party going to war have the legitimate authority to do so. What is contentious is how legitimacy is to be defined; some scholars, like Walzer, put forward a minimal standard, while others propose a stricter definition, whereby right authority is a

²¹ An important exception to the limited means and ends of just war is during what Michael Walzer terms “supreme emergencies.” The exception of certain wars from the limitations set out by the just war principles causes significant problems for just war theory as a whole, which are considered later in this chapter.

²² Although Walzer writes that the “outer limit is the conquest and political reconstruction of the enemy state,” finds such a purpose as legitimate only in regard to regimes on par with Nazi Germany, who pose a constant threat to both its own people as well as neighboring states (113). For Walzer, the overthrow of regimes and the remaking international political order stands on the very edge of what is just, as these actions threaten to descend into religious or ideological crusading.

democratically elected government.²³ However, this latter definition would seem to violate principles of state sovereignty and non-interference, as it precludes undemocratic states from engaging in wars of any sort – even if such governments do seek to benefit society at large. In light of this, Walzer defines a right authority as an authority which takes responsibility to defend the common life developed within a particularly community, and passes the test of “self-help” whereby it has sufficient domestic support that it can maintain its power (54, 98-9). Although this does give moral standing to undemocratic governments, it also requires a basic concern for the common good and the rights of those who may be sacrificed in war (71n).

5) *Prospect of success*: War, given the hardships, violence, and sacrifices it requires, must not be embarked upon if some success is clearly out of reach. Futile sacrifice in a lost cause is neither rational nor moral, and a government cannot justly demand this of its people. Walzer writes,

There must be purposes that are worth dying for, outcomes for which soldiers' lives are not too high a price. ... Soldiers killed beyond [necessity] die needlessly, and to force them to fight and possibly to die is a crime. (110)

This does not, however, preclude the possibility of citizens volunteering to die for the community and way of life they share, only of that sacrifice being decided for them.²⁴

²³ In the sense that a democracy appears to be the closest expression of the principle of self-determination, and that this form of governance most clearly seeks to ensure the rights of its citizens. See, for example, Mark Evans' "In Humanity's Name: Democracy and the Right to Wage War" (in Evans, Mark, ed., *Just War Theory*, New York: Palgrave MacMillan [2005]; 71-92).

²⁴ While A.J. Coates agrees that the prospect of success may fall within the purview of proportionality, he argues that even certain defeat does not preclude just recourse to war. He holds that there is the possibility of “a victory of moral kind ... that transcends military defeat,” such as the refusal to give up a way of life in the face of aggression (179-82). Walzer accords, to some extent, with this sentiment when he observes that in such cases “we not only justify resistance; we call it heroic” (67). However, in keeping with the caveat noted above, such a desire on the part of a people cannot be enforced by government – if the sacrifice is to

The principle is therefore clearly intertwined with that of right authority, as well as proportionality (in that such sacrifice would be disproportionate to any plausible benefits)²⁵.

6) *Last resort*: By virtue of war's extreme violence and potential for death and destruction, because "the logic of war simply is a steady thrust toward moral extremity," it is an activity that must only be embarked upon when other methods of resolution have been exhausted (ibid.; 23). Given the criteria set out by the principles of just cause, proportionality, and prospect of success, last resort appears as something of a redundancy, but it does serve to reinforce that even the threat of aggressive war must first be met with means more limited than war. Furthermore, the requirement of last resort resonates with the principle of proportionality, as it serves to limit the scope of reprisals that might escalate a limited conflict into an all-out war (ibid.; 212-3, 218).

2. Principles of *ius in bello*

A defining characteristic of just war theory is the stipulation that wars be fought not only for the right reasons, but also in a proper manner according to principles of *ius in bello*. The very distinction between *ius ad bellum* and *ius in bello* depends on the existence of a separate realm of justice within war, such that the justice of how war is prosecuted is not precluded by the possible injustice of the war itself. Soldiers and generals are to fight in a manner that is just, regardless of whether their cause is unjust or

be considered to be truly in defense of such a cause, it must be out of a sense of duty freely willed, rather than out of personal necessity in the face of force.

²⁵ See Fotion and Elfstrom (116).

that they are victims of aggression (ibid.; 128, 136). This proper manner of fighting is primarily determined, as will be discussed later, by the ideas of consent and harm, which Walzer postulates are actualized in the “war convention,” a timeless ethos that entails the preservation of the human rights of non-combatants. These rights are articulated in the principles of discrimination and proportionality.²⁶

1) *Discrimination*: Those who are in control of the means of war – generals and soldiers – must be discriminating in whom they harm. Soldiers may freely target each other, having forfeited their right to protection, but non-combatants on either side, that is, those that do not wield weapons or materially assist the enemy’s war effort, are afforded a privileged position (137). The war convention, and the very possibility of justice in war, depends on the supposition that certain people are inviolate. The determination of non-combatant status is therefore of particular import, although this proves to be a difficult process given that war is a collective activity – even though someone might not wield a weapon, they might still be complicit by virtue of their membership in the group.

The process of determining whether a non-combatant’s life can be taken is something of a calculation, weighing the right to life of a prospective target against the threat that target poses to victory. For Walzer, military personnel categorically forfeit that right, leaving only the assessment of threat by probabilistic reasoning and considerations of military necessity. However, this “necessity” is mitigated by its

²⁶ A further principle of “means *mala in se*,” or means evil in themselves, is often suggested, as it seeks to preclude the use of certain weapons, such as chemical and biological weapons, and tactics, such as terror-bombing (see William O’Brien’s *The conduct of just and limited war* [New York: Praeger Publishers (1981); 56-7]; and Orend 2001, 3). However, given that these means are prohibited on the grounds that they indiscriminately harm combatants and non-combatants alike, it is ultimately derivative of the principle of discrimination, and is therefore redundant to the discussion here.

fallacious assumption of only encountering those who no longer possess the right to life, when in fact it is rare, particularly in modern warfare, that only the lives of soldiers are risked (144-5). This requires a further distinction amongst the civilian population, between those who directly aid the military effort, such as those involved in the manufacture of weapons, and those whose work is the same as it is during times of peace – such as the production of medicine, clothing, or foodstuffs, which are required by civilians and soldiers alike. Using this distinction, the former are liable to attack if military necessity demands it and their activities cannot be halted without violence (146). With the protection of innocence being determined somewhere between what is ostensibly required for victory and noncombatants' proximity to the war effort, there is significant scope for improbable and spurious justifications, even outright mendacity. The “doctrine of double effect” is thus adopted to reduce the permissiveness that follows from the ambiguities inherent to the determination of innocence.

The doctrine states that the commission of an unjust act is permissible only *if* that unjust act is incidental to military ends, and not a means to that end (153). That is to say, even if the death of civilians is foreseen, but not intended, an unjust act is permissible. In this light, double effect serves as a technical circumvention of the blanket principle that “noncombatants cannot be attacked at any time. They can never be the objects or targets of military activity” (151). For example, although a group of civilians behind the enemy cannot be targeted to induce panic and confusion for tactical advantage, that same group could be attacked if enemy forces were using them as a sort of shield. Furthermore, proportionality is demanded in that the “cost” of the incidental effects cannot outweigh

the benefit of the act. Although double effect is often the subject of criticism,²⁷ it is necessary for the justification of war as a valid policy option, or for any argument about the possibility of justice in war, given the ambiguities concerning discrimination, the contingencies of war, and the demands of so-called military necessity.

2) *Proportionality*: mirroring the principle of proportionality in *ius ad bellum*, proportionality in the conduct of war requires that the strategic-tactical choices made by generals and soldiers do not exceed what is strictly required to achieve military goals. However, Walzer says there is a need to move beyond simple “economy of force,” because this makes moral limits dependent upon military utility or convenience, and it becomes easy to circumvent those limits with arguments of military “necessity” (130-1). Once moral limits are breached, there is nothing to stop necessity from justifying anything in war, particularly in response to increasing levels of violence, as well as more dangerous weapons and tactics (i.e., such as the use of mustard gas in World War I). Yet Walzer reluctantly accepts the use of reprisals in order to demonstrate resolve and restore the strategic-tactical imbalance that results from refusing to meet force with like force. Reprisals are to be limited, though, as the ends do not justify the means for Walzer – there exist inviolable limits beyond the “economy of force” – such that the moral use of reprisals is to enforce justice, and address a wrong done rather than anticipated suffering (210-1). Probabilistic arguments that would abrogate proportionality in hope of achieving a greater good (such as a quick and decisive victory) are ruled out. Only in the

²⁷ These criticisms will be treated in more detail later in this chapter.

face of the most destructive and self-evident threats can proportionality, and discrimination, be set aside.

Walzer borrows Winston Churchill's term of "supreme emergency" to describe this great exception to the rules of *ius in bello*. In the most dangerous of circumstances, where the threat to the political community is both imminent, and extremely serious (such as conquest, enslavement, or complete extinction), it is justifiable to use unlimited means, including the deliberate targeting of civilians (252-4). For example, according to Walzer, the indiscriminate terror bombing of German cities by British forces during World War II was excusable given the threat posed by Nazi Germany (255-60). These emergencies exist only in the face of the strongest possible threat to the collective right to autonomy (sovereignty), as well as to individual rights to life and liberty. Clearly controversial, many commentators believe Walzer's allowance of supreme emergencies undermines his entire just war theory; these criticisms will be discussed in detail later in the chapter.

Theoretical foundations

The principles of just war theory provide a framework that can be applied to particular empirical cases in order to make judgments of justice – whether it is as a test for going to war, to defend or criticize how a war is being fought, to identify responsibility for particular actions, or even to critique settlements that follow war. Although knowledge of the principles is sufficient for that purpose, this presupposes that its underlying arguments concerning the nature of justice in international politics have been accepted. In the course of substantiating the principles of just war theory, Michael

Walzer powerfully defends a number of theoretical propositions, ranging from arguments concerning moral universalism versus plurality in the international system, to the nature of war, and the protection of basic human rights.

Walzer begins his analysis of justice among nations by adopting the basic framework of what he labels the “legalist paradigm,” albeit with a number of significant revisions. This paradigm is the sum of the international treaties, laws, and norms that have developed over the course of centuries, and enshrines a basic ethos concerning the relations between states. As a useful explanatory tool, the “domestic analogy” is often applied to international politics, characterizing the relations between states as being analogous to the relations between individuals. In keeping with this, war can only be given the moral status of a “crime” in light of such a common understanding of what is moral or immoral, just or unjust (*ibid.*; 19-22). Like physical assault, the criminality of war is rooted in it being an aggressive violation of rights, of which Walzer provides a theory that outlines six premises of the legalist paradigm (61-3):

1. “There exists an international society of independent states.” War can only be understood as a crime on the basis of this proposition, that the basic unit of international politics is the nation-state, and the international society is, as a consequence, made up of states – not people. Although this proposition might be attributed to a simple recognition of “political reality,” that the most significant or powerful actors in international politics are nation-states, the attribution of moral-legal status to nation-states carries a significant implication: a particular understanding of what qualifies as legitimate

authority and legitimate foundations for political communities. Jean Bethke Elshtain concurs, arguing that just war theory is, “in its full elaboration ... a theory of international and domestic politics” (1992; 3).²⁸ This is evident in the second proposition.

2. “International society has a law that establishes the rights of its members – above all, the rights of territorial integrity and political sovereignty.” In what Lackey calls a “radical extension[] of the general theory of rights,” states are understood as being rights-bearers in international society (537). These are themselves abstracted from the fundamental individual rights of which they are a collective expression – the rights of life and liberty, which are concomitant with the right “to build a common life and to risk their individual lives only when they freely choose to do so” (Walzer 1977; 61). The legalist paradigm, and just war theory, as seen earlier in the discussion of “right authority,” therefore implies a theory of the political community, where international “sovereignty” is an expression of the rights of its people, and the community is a necessary end for the protection of individual liberty (108).
3. “Any use of force or imminent threat of force by one state against the political sovereignty or territorial integrity of another constitutes aggression and is a criminal act.” The fundamental proposition of the legalist paradigm, this characterization of aggression rests on an understanding of international morality provided by the two preceding propositions. Aggression is the

²⁸ Jean Bethke Elshtain, *Just War Theory* (Oxford: Blackwell Publishers [1992]).

greatest crime in international politics, as it entails a clear violation of a state's rights. This clarity is demonstrated by evidence of an actual or imminent threat.

4. "Aggression justifies two kinds of violent response: a war of self-defense by the victim and a war of law enforcement by the victim and any other members of international society." The victim of aggression may justifiably use force in order to preserve its own rights. Other states may aid in this, given that the aggressor has violated the basic rights on which international society, and thus their own claim to sovereignty, is founded.
5. "Nothing but aggression can justify war." Walzer qualifies his reliance on Francisco de Vitoria's claim that "there is a single and only just cause for commencing a war, namely, a wrong received," by narrowly defining a "wrong" as only aggression. For example, issues of distributive justice, applied internationally, cannot justify war except in circumstances where a state's basic ability to provide for its people's rights to life and liberty are threatened. Walzer is explicit in ruling out wars based on differences of politics or religion, as these would violate the principle of non-intervention rooted in state sovereignty.
6. "Once the aggressor state has been militarily repulsed, it can also be punished." Walzer is careful to note that although this proposition is not uncommon in "customary or positive international law," its purposes are not always clear, and must be applied very cautiously. Walzer notes two purposes

often suggested in support of the proposition: to deter other possible aggressors; and to restrain or reform the aggressor so as to prevent another war. Like punishing domestic crime to prevent more violence, this proposition argues that it is just to “punish aggression to prevent war” (62-3).

Given this particular set of propositions, this “theory of aggression,” enshrined in the legalist paradigm, clearly “presupposes our commitment to a pluralist world” (72). To some degree, it reinforces the status-quo in terms of extant communities, boundaries, and governments. More fundamentally, it expresses a desire for the world to remain, to some degree, a collection of distinct communities. Although Lackey contends that utilitarian arguments in international politics (which he regards Walzer’s argument as being) must tend towards a global good rather than the good of a particular community, Walzer is in fact attempting to use a universal principle of sovereignty or self-determination in order to defend the particular (Lackey; 542). Whether or not this can be reconciled with a universal human rights foundation is unclear, however, and will be taken up later.

Regardless, Walzer proceeds to revise the legalist paradigm, as it does not sufficiently express the universal principles he believes delimit the boundaries of morality in regards to war. What is just or moral is something greater, and more elusive, than the politically-contingent consensus found in the legalist paradigm. This is the “war convention,” the accumulation of laws, principles, codes, customs, and norms that all vaguely express higher principles of morality used in the judgment of war (44). For Walzer, this convention is evidenced by a consensus in moral opinion that transcends borders and cultures, and not by what is actually done, as we often come short in our

attempts at being moral. Although Walzer claims that these judgments are not “unambiguously collective,” he is also strident in arguing that they are also not relativistic (“idiosyncratic”), as the occurrence of consensus reveals a common ground, a baseline where moral opinions can coincide and agreement can be found (45).

This baseline is established through “plausibility,” where people throughout the world must be able to reach the same conclusions concerning what is right or wrong in war (133). However, what informs plausibility is unclear, and Walzer does not offer an argument as to whether this consensus is based in reason, utility, empathy, natural law, or political compromise, or if it even matters where the consensus comes from. In “The limits of the war convention,” Lionel McPherson argues that Walzer’s position is entirely one of “conventionalism,” or simply popular concordance in moral opinion (149-50).²⁹ Perhaps as a consequence of it being rooted in common opinion, Walzer admits that the war convention is not entirely uniform throughout history, and the substantive content of moral judgments changes as the practice of war changes (particularly through changes in technology).³⁰ For these reasons, the convention is not perfect, and there is always some moral condemnation of the convention, identifying and lamenting its inadequacies. What endures, however, is the desire to act morally in war, to make the convention more just,

²⁹ Lionel K. McPherson, “The limits of the war convention” (*Philosophy & Social Criticism*, vol. 31, issue 2, London: SAGE Publications [2005]; 147-163).

³⁰ Although weapon technology has changed since 1977, Walzer already encountered difficulties in reconciling the categories of just war theory with the deployment of strategic nuclear weapons (“Nuclear weapons explode the theory of just war” [282]). The threat of nuclear war seemed evidence of an ever-present “supreme emergency” that might justify the use of any means (including one’s own nuclear threat) to stop it (269-74). Johnson argues that such weapons must not be targeted at cities, and only used in “counterforce targeting,” although he admits that much of the force of the threat (and the utility of such weapons) might be lost (36-8). Johnson’s subsequent treatment of other technologies, such as the neutron warhead and the cruise missile, is revealing of the concurrence of humanity’s increasing destructive capabilities with the desire for total victory or domination, and the recurring tension between that power and principles of discrimination and proportionality (73-5, 112-27).

and to always judge wars, for the potential horrors of war spurs a moral “indignation” that speaks to the convention’s “reality and strength” (47).

This indignation identifies the central moral problem of Walzer’s just war theory – that, at its core, “war is hell.” War demands that people sacrifice their lives in the killing of others, as well as commit other acts generally deemed unlawful and immoral in civil society. Yet just war theory claims that “within that tyranny [of war] we have carved out a constitutional regime: even the pawns of war have rights and obligations” (40). Walzer accepts Karl von Clausewitz’s characterization of war as an activity that tends towards absolute destruction if left unchecked, as the stakes increase with every battle and more drastic means are required to claim those stakes (22-3). This is the tyranny of war, and is precisely what must be guarded against. The claim that war is hell, that it is always a crime, is based on the “harm principle” – the idea that the greatest good is the limitation of harm to as few people as possible. Harm is understood, in modern just war theory, as the violation of basic human rights such as life and liberty. The basic difficulty in the theory, then, is that it condones, as an act of justice, an action considered to be unequivocally immoral.³¹ In justifying the act of harming that is intrinsic to war, Walzer is lead to absolve military personnel, those actually committing the physical act of harm, when they kill other soldiers – there is a moral equality of soldiers, where, by consenting to the harm of others, each soldier has forfeited their own right to life and therefore possess an “equal right to kill” an enemy (41, 136). Napoleon’s assertion that

³¹ This apparent distinction between justice and morality is a complex issue rooted in a significant philosophical distinction assumed by modern just war theory – that *right* is distinct from *good* – a point that will be addressed in more detail in Chapter 2.

“soldiers are made to be killed” is correct, Walzer claims, as they are acting out of moral obligation to their state, and with a tacit consent implied by their membership in the community (136).³² War is hell because its active participants have consented to give up their rights.

With the theory of aggression being rooted in the criminal act of war, it is therefore based on an extrapolation of the harm principle. The individual’s basic human right to freedom, for example, is violated when their community is infringed upon by aggressive action. Aggression is ultimately an immoral act because it violates the common expression of individuals’ rights to life and liberty; the possibility of a freely chosen life has been interrupted by an aggressive act by outsiders, and “critical values are at stake” (109). It is the claim of just war theory that these “values” (or more accurately, the rights of states and the individuals that compose them) can be justly defended with violence.

Violence in war, as seen in the earlier discussion of *ius in bello*, must be curtailed to avoid the gross violation of rights. How, though, are the boundaries of violence determined? When is the killing of soldiers too much? When, if ever, is the killing of civilians justified? The immediate answer is “when it is necessary,” and it is this response that Walzer must contend against. He must somehow reconcile the utilitarian arguments that soldiers, generals, and statesmen use to justify their actions, with what he

³² In his earlier *Obligations: Essays on Disobedience, War, and Citizenship*, Walzer argues that “the great advantage of liberal society may simply be this: that no one can be asked to die for public reasons or on behalf of the state” (Cambridge MA: Harvard University Press [1970]; 89). Each soldier obligates themselves to die for the state because of the shared moral life they partake in: “no man can be obligated to die unless he admits or has at some time in the past admitted that such moral goods [as found in the community] actually exist. ... [T]he common life must be lived, before it can be said to generate ultimate obligation” (97). Citizens, by choosing to live as citizens, obligate themselves to fight for their community.

believes is a moral reality that all humanity partakes in. Remarkably, Lackey levels the accusation that “Walzer gives the utilitarian philosophy of war remarkably short shrift,” when, in fact, the entirety of Walzer’s discussion of *ius in bello* is preeminently concerned with the moral problems found in utilitarian treatments of war (Lackey; 535).

At the most basic level, Walzer disagrees with what might be termed crass utilitarianism, where utility is understood simply as an egoistic materialism, where the “economy of force” is relied upon to limit a war’s body count, economic loss, and the destruction of materiel. Necessity is here understood as the need to compel the enemy into submission at the lowest cost (144). Even granting the implausible assumption that generals and soldiers can consistently measure the minimal demands of a particular situation, the view that this idea of necessity can serve to limit war cannot be maintained. Given the contingent nature of war, where it is a series of actions and responses, following an unpredictable course, and where what appears necessary at one time will be insufficient at a later time, adherence to “necessity” cannot prevent war from spiraling into egregious violations of *ius in bello*.

In a second formulation of the demands of necessity, necessity more openly takes the form of a moral argument, where the protection of one’s own rights seems to require the violation of another’s; Walzer points to the German invasion of Belgium in 1914 as an example of this argument (239-42). Victory assumes the status of a moral imperative, one which outweighs any other moral concerns. The problem here is that the rights of the other cannot be attributed the same value as the rights of one’s own if the argument is to be maintained, opening the door for a very imbalanced “scale” by which rights are to be

measured, such that the observance of rights once again becomes subject to military expediency rather than abject necessity. Furthermore, Walzer argues that victory can only assume the status of moral imperative if a community's "survival as an independent nation," or the lives of its civilian population, is at stake (241). A demonstrable threat to the survival of the community is then the sole threshold beyond which the rules of *ius in bello* can be violated.

The "supreme emergency," as well as the doctrine of double effect, become Walzer's third formulation of necessity, where he attempts to reconcile these extreme demands of necessity and the observance of rights. Having already introduced the argument of supreme emergency earlier, it is sufficient to remark how this third formulation of necessity moves beyond the utilitarian arguments mentioned above. This exception to the rules of *ius in bello* takes the form of a more broadly defined utilitarianism, one that takes into account a larger range of commitments, beyond protecting lives and property, such as moral "values," quality of life, the possibility of a freely chosen shared life, and so on (262). This is not only in reference to moral commitments to one's own community, but also in reference to the importance of moral commitments to foreigners, to "the other." However, this admits to a conflict of obligations or duties, whether it is to one's own or to humanity as a whole. Statesmen and soldiers, in cases of supreme emergency, become "murderers, though in a good cause" (323).

At this point, it becomes evident that there are some theoretical difficulties and vagaries in Walzer's argument, which he carefully avoids while trying to make the

argument for a common moral thread that transcends relativism and historicity. In “Growing up with *Just and Unjust Wars: An Appreciation*,” Michael Smith commends Walzer’s casuistry, agreeing that any attempt at a more penetrating moral philosophy would lead to unnecessary complication, and that it allows Walzer, “artfully[,] to skate over what he rightly calls the ‘unending controversy’ over the foundations of morality” (5).³³ Although consensus might not be found on the nature of those foundations, Walzer believes there is sufficient consensus at the level of “practical morality” to serve as the basis for his just war theory. For him, practical morality is what everyday decisions and judgments are based on, and that shared opinions regarding war are the most important. As noted earlier, Walzer argues that this practical morality is achieved through a common “moral language,” one that speaks to a basic “moral reality” which all mankind is cognizant of. However, in a review of *Just and Unjust Wars*, Hedley Bull disagrees with Smith’s assessment, and finds that Walzer’s refusal to discuss moral foundations severely weakens the argument:

[Walzer] states that he is engaged in a work of “practical morality”; but “practice” and “theory” do not exist in separate worlds, and it is only at the level of debate about foundations that the most important disagreements about everyday morality of war can be resolved, or at least clarified. ... The basic premises behind his judgments are not defended or even fully set out, and his book does not help us carry the debate to the deepest level. (599)³⁴

In light of Walzer’s hesitance regarding foundations, a theoretical analysis of his just war theory must necessarily infer some of his most basic assumptions, and approach his

³³ Michael Joseph Smith, “Growing up with *Just and Unjust Wars: an appreciation*” (*Ethics & International Affairs*, vol. 11, Oxford: Blackwell Publishers [1997]; 3-18).

³⁴ Hedley Bull, “Recapturing the Just War for Political Theory” (*World Politics*, issue 79, Princeton: Princeton University Press [1979]; 588-99).

human rights “foundation” with care so as not to falsely attribute any arguments without textual support.

What has been discussed of Walzer’s theoretical foundations for the just war has emphasized that they ultimately rest on individual rights, universally held, particularly the rights to life and liberty. These rights, and the implied obligation on the part of others to respect them, speak to the “universal notions of right and wrong,” a “moral language,” and the “war convention,” on which Walzer has grounded his just war theory (Walzer 1977; 34). Although any conception of international justice must necessarily admit of some sort of universality, not all universal ideas are the same, and Walzer’s view of the subject is clearly, as Bull puts it, a “Western, liberal view” (Bull; 597). Throughout the preceding discussion of the principles of *ius ad bellum* and *ius in bello*, as well as the theoretical arguments that support those principles, it has been seen that Walzer’s upholding of “justice” has persistently been the upholding of individual rights. In discussing the premises of the war convention, he gives a basic account of what is considered right, or moral:

[N]o one can be forced to fight or to risk his life, no one can be threatened with war or warred against, unless through some act of his own he has surrendered or lost his rights. (133)

Walzer thus takes a morality based in rights as a given, a common position concerning morality, but does not offer an opinion as to what establishes rights. Although he has ruled out the possibility of law as the basis for rights – having rejected “positive international law” as ineffectual and without authority – it does not follow that the vague idea of universal moral reality expressed through a common moral language necessarily

establish the moral understanding that individuals possess inalienable rights. It is not at all apparent that the language of rights is one that is universally spoken and accepted. This discrepancy contributes to a number of significant problems that are found in modern (and often Christian) just war theory.

Critiquing the just war

The revival of just war theory in what may be called “mainstream” academic debate and public discussion has inevitably inspired strong retorts from scholars, military strategists, and those involved in public policy. As a consequence of the surprisingly large range of issues with which the just war theory must wrestle, criticisms of the theory have likewise come from various bases of argument. Such criticisms include the “practical” difficulties in implementing modern just war theory, claims that Walzer’s recognition of necessity (in the form of the supreme emergency and doctrine of double effect) undermine his argument, and that the codification of a particular conception of justice is irreconcilable with an international plurality of moral thought. Despite this apparently disparate set of arguments, it will be shown that there is a common thread, that modern just war theory, being based on a claim to universal human rights, admits of a critical contradiction in moral obligations that is most sharply felt in the context of war.

Perhaps the most evident of problems that the just war encounters is found in its attempt to proscribe certain means and curtail escalation. For example, Walzer himself notes that weaker sides in a conflict tend to more often abrogate the war convention and other rules of war so that they might redress the strategic or tactical imbalance (143-4).

Guerilla warfare and terrorism are often cited as the result of this discrepancy in military power. Taken in light of Clausewitz's argument that it is the nature of war to tend towards the unlimited use of force – since “there arises a sort of reciprocal action, which in the conception, must lead to an extreme” – there is then a strong tendency to justify the use of weapons or tactics usually considered immoral (1.1.3).³⁵ Anthony Burke, in “Just war or ethical peace? Moral discourses of strategic violence after 9/11,”³⁶ notes how soldiers are taught that victory itself is a moral imperative, where the achievement of that end tends to justify the use of any means (329).³⁷ Asymmetrical warfare, as typified by the Viet Cong, for example, in posing as civilians as a means of ambush, or hiding amongst civilians for support and protection, becomes a means justified both by moral cause and strategic necessity.

Certain ends, even assuming they are just, would therefore seem to require unjust means, thus collapsing the distinction between *ius ad bellum* and *ius in bello*. If justice is taken to operate in these two distinct fields, as just war theory maintains, their collapse into one another poses difficulties for distinguishing ends from means, the assignment of responsibility, and ultimately of even ascertaining the real justice of a war if it requires unjust means. If certain means are to be precluded, it is quite possible that Burke is correct when he claims that “the weak do not get to wage just war. Their ‘innocence’ goes undefended” (348).

³⁵ Karl von Clausewitz, *On War* (transl. and ed. by Howard, Michael, and Paret, Peter, Princeton: Princeton University Press [1976]).

³⁶ Anthony Burke, “Just war or ethical peace? Moral discourses of strategic violence after 9/11” (*International Affairs*, vol. 80, issue 2, London: Cambridge University Press [2004]; 329-53).

³⁷ Hedley Bull also argues that Walzer's adoption of the “legalist paradigm” as his basic framework “weights the whole argument against the position of the revolutionary ... [who] fight[s] for the establishment of a better system” (597).

Conversely, the limitations proposed by just war theory puts “just warriors” at a military disadvantage. In the face of a determined foe, convinced of their cause, and willing to use great means in its achievement, the unwillingness of the just warrior to circumvent rules of proportionality, and discrimination, particularly concerning reprisals, would seem to lead either to a protracted conflict or increased likelihood of defeat (and thus the possibility of invoking the “supreme emergency”). Winston Churchill put it well:

It would not be right or rational that the aggressive Power should gain one set of advantages by tearing up all laws, and another set by sheltering behind the innate respect for law of its opponents. (as quoted in Walzer 1977; 245)

With the high stakes of war – which they must assuredly be when one maintains that “war is hell” and just causes are possible – the temptation to “cheat” will be correspondingly high, for “he who uses force unsparingly, without reference to the quantity of bloodshed, must obtain a superiority if his adversary does not act likewise” (Clausewitz; 1.1.3). The unreasonableness of modern just war theory’s demand that states take risks in war, where its own people’s lives are stake, is most sharply felt in the case of nuclear weapons, which Walzer admits to being “the weakest [section] in the book [*Just and Unjust Wars*]” (1992; 548). Lackey contends that the theory falls apart in this situation, since nuclear war, or even threats, are inherently wrong given that they only serve to indiscriminately annihilate (violating just cause, proportionality, and discrimination), while the presence of such weapons can only be justified on the grounds of constant supreme emergency (545; Walzer 1977, 282-3). Thus, contending nuclear

powers remain in a permanent immoral state, threatening to eradicate the other at all times.

In light of the claims of necessity, particularly in the face of a stronger foe, or existential threat, Walzer's claim that soldiers should risk themselves for the sake of the enemy – even non-combatants – is significantly weakened. Although Burke's claim that the "law of war is flawed and difficult to enforce" might appear self-evident, it is important to recognize that this consequently "throws the focus back on to its voluntary observance" (330). The likelihood of voluntary observance being maintained, when war itself implies incredible stakes, would seem to be minimal.

The commitment of a state to the protection of its own is an important facet of just war theory. The justified abrogation of the rights of others, in the face of necessity, is one of its basic premises. In fact, David Hendrickson argues, in "In Defense of Realism: A Commentary on *Just and Unjust Wars*," that the basic idea of military necessity is really an attempt to hide a normative argument – it is essentially defining "necessity" as that which contributes to the realization of victory, or that which contributes to *one's own* ends, or most basically, that which contributes to the realization of one's will.³⁸ What is deemed "necessary" is really conditional – although when a state is risking limited resources, and the lives of its own people, this conditionality seems to approach necessity (Hendrickson; 24). However, the expansiveness of possible claims to necessity creates difficulties in assessing costs and benefits in war. How valuable is a particular military goal to the war effort? What moral principles are the soldiers, generals, and statesmen,

³⁸ David C. Hendrickson, "In Defense of Realism: A Commentary on *Just and Unjust Wars*" (*Ethics & International Affairs*, vol. 11, Oxford: Blackwell Publishers [1997]; 19-53).

willing to compromise to achieve that goal? Which ends justify the means? What about ends whose value are not determinate, but are themselves matters of conjecture? As Walzer emphasized, these questions point to the possibility that these arguments are really matters of expedience – “abuses” of the appeal to necessity – which Hendrickson says is “not accidental” because self-interested states tend to collapse any distinction between security and survival (24). Policy makers and strategists would rather overestimate a threat than underestimate it, particularly in fear that short-term failure might contribute to certain failure in the long-term. The 1991 Gulf War was an example of this, as American preponderance led to a veritable “turkey shoot” of Iraqi soldiers (Hendrickson; 31). The powerful claim, whether it is rooted in psychology or morality, that the preservation of oneself (and one’s own) is of paramount concern, is conceded by just war theory in the supreme emergency and doctrine of double effect.

Facing the question whether, in the case of a supreme emergency, “soldiers and statesmen [can] override the rights of innocent people for the sake of their own political community?” Walzer replies that he is “inclined to answer this question affirmatively” (254). There is a clear tension between two sets of obligations or duties – to one’s own or to humanity. The question then becomes, on what basis is it *right* to protect one’s own at the expense of the enemy’s innocents? Why does a moral commitment to one’s community trump the commitment to the other? Modern just war theory replies that it is on the basis of the individual’s right to live a life of their own choosing, and that the community to which that individual belongs is necessary for the defense of that right. But can a human rights argument really sustain this tension, and allow the particular

rights of a community to trump universal rights? In the hardest of cases – such as war, and in particular, the supreme emergency – universal human rights dissolve, leaving only the protection of one’s own “rights” understood in the most basic terms of life and liberty, with little to no regard for the rights of others. Furthermore, as implied in the discussion of necessity, the assessment of what qualifies as a supreme emergency, even when seen in Walzer’s criteria of immediate and grave threat, will be very subjective, dependent on available information and purportedly “prudential” judgments, that will often tend towards to the limitation of risk.

In terms of the “right” of the state to self-preservation, Walzer says the domestic analogy fails to work at this point, since,

[I]t is not usually said of individuals in domestic society that they necessarily will or that they morally can strike out at innocent people, even in the supreme emergency of self-defense. (254)³⁹

Lackey argues that the supreme emergency is essentially an attempt by Walzer to append “a consequentialist escape clause to relieve moral agents from paralyzing restrictions and to rescue beleaguered statesmen from prohibitions that threaten the ship of state” (541). Although damning, this charge is not entirely accurate, as Walzer’s supreme emergency is still rooted in the rights of the community, but it does serve to heighten the tension that exists between moral obligations, to one’s own and to the other, such that protection of the community will, in the end, come before preservation of the rights of the other.

³⁹ However, Thomas Hobbes’ conception of rights maintains that man *always* reserves the natural right to self-defense, and that this is the most fundamental of all rights. This conception of rights, and the significance of the idea of rights to modern liberal morality, will be considered in the following chapter.

Similarly, the doctrine of double effect reflects the tendency for states to prefer their own, and quite reasonably so, as Walzer has admitted (Hendrickson, 28; McPherson, 160). Also, as F. M. Kamm argues in “Failures of Just War Theory: Terror, Harm, and Justice,” the doctrine cannot account for the possibility that legitimate targets could be attacked with the intention of causing civilian casualties, in order to instill terror in the civilian population; this suggests that intention (moral or immoral) is actually irrelevant to the demands of “necessity” (653-5).⁴⁰ The large scope of permissiveness provided by arguments of necessity is inherent to both the doctrine of double effect and the supreme emergency,⁴¹ and is even evident in the Geneva Convention, which prohibits,

an attack which may be *expected* to cause *incidental* loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be *excessive* in relation to the concrete and direct military advantage *anticipated*. (Protocol I, Art. 51.5 (b); emphasis added)

Furthermore, as an example of states refusing to forgo their prerogative to privilege their own citizens, Burke points out that the United States refused to place its soldiers under the jurisdiction of the International Criminal Court, and that failures to more firmly enforce order in Afghanistan, following the attacks of September 11, 2001, demonstrates that “The US appears ... to have valued its own security over that of the Afghan people”

⁴⁰ F. M. Kamm, “Failures of Just War Theory” (*Ethics*, vol. 114, Chicago: University of Chicago Press [July 2004]; 650-92).

⁴¹ Just war theorist Jean Bethke Elshtain invoked just war theory’s “supreme emergency” to justify the American invasion of Iraq in 2003, on the grounds that the potential of weapons of mass destruction, particularly nuclear weapons, in the hands of Saddam Hussein would pose an existential threat to the United States. Critics pointed out the permissiveness the theory allows through the concepts of supreme emergency and double effect, and had their argument strengthened when the search for such weapons, or the capability to develop them, ended in failure. See Elshtain, *Just War on Terror* (New York: Basic Books [2004]), and Kevin Schilbrack’s review in *Journal of American Academy of Religion* (Vol. 74, issue 2. London: Oxford University Press [2006]; 539-43).

(342, 345). The very existence of the doctrine of double effect and supreme emergency in modern just war theory is a problematic admission that “moral” limits are *justly* put aside in circumstances adjudged to put the rights of one’s own at too much risk.

The supreme emergency and doctrine of double effect represent attempts by Walzer to account for or protect what might be termed the “particular,” in contrast to the universal moral claims on which his argument is based. Despite this attempt, and the elusive nature of what Walzer calls the “common moral language” of humanity, his just war theory is further hampered by what amounts to a codification of justice, that is to say that the form of justice that it puts forward, namely a body of principles that lends itself to the judgment of particular empirical cases, necessitates a certain rigidity that cannot account for disparate opinions regarding justice. In this regard, modern just war theory ironically admits to the same problems Walzer sought to revise in the “legalist paradigm.” Burke writes that the “formal rigidity of just war theory ... [privileges] procedure over complexity and ‘intentions’ over effects” (352). As noted in the preceding discussions of the doctrine of double effect, the (indemonstrable) intention of doing justice does not imply that justice is done. As a result of sanctioning this disconnect between what is purportedly aimed for and what occurs, just war theory is susceptible to being used as a framework, or “just war rhetoric” as Laurie Calhoun puts it, that legitimizes behavior – a tool for the obfuscation of justice – rather than as a set of criteria that can affect change in behavior (Ibid.; Calhoun 2006, 420).⁴²

⁴² Laurie Calhoun, “Michael Walzer on Just War Theory’s ‘Critical Edge’: More Like a Spoon Than a Knife” (*The Independent Review*, vol. X, issue 3, Oakland: Independent Institute [Winter 2006]); 419-24).

This is not to say that just war theory simply allows statesmen and generals to lie about the justice of their war, as claims to the adherence of just war principles can, potentially, be verified empirically. The codification of justice does imply, however, that modern just war theory can only justify wars to those who agree with its basic moral foundations (Bull; 599). The theory's claim to universality is at times at odds with its own status as a particular conception of justice and morality, particularly as one with a codified set of clear empirical propositions.

Although Walzer postulates a "common moral language" that purportedly transcends history and speaks to a "moral reality" shared by all humans in all times and places, he cannot overcome an inherent degree of historicity. In *Thick and Thin: moral arguments at home and abroad*, Walzer argues that concordance of moral opinion, particularly in regards to human rights, need not rely on a "thick" conception of justice, such as those seen in the social mores and body of laws within particular communities, which can be justified on religious or metaphysical bases (9).⁴³ In regards to war, Walzer believes that his conception of human rights, his "practical morality," is suitably "thin" to account for the innumerable (and potentially irreconcilable) arguments that might ground moral opinions. The pitfalls of just war theory would suggest otherwise, however, particularly in that some may not agree with its propositions, or even subscribe to morality understood as universal human rights.

The reasons *why* certain actions are found to be cruel, horrible, or generally immoral are as important, if not more important, than the fact that those actions are seen

⁴³ Michael Walzer, *Thick and Thin: moral argument at home and abroad* (Notre Dame, IN: University of Notre Dame Press [1994]).

in a negative moral light. While Walzer might observe that two groups at different times or places, such as ancient Athenians and twentieth-century Americans, might come to the same pronouncement regarding similar cases, he does not, and cannot, show that these two groups will accord on other cases (which might also be similar across time and space). This is not for lack of empirical evidence, but rather for the theoretical consideration that it is by virtue of these groups' *particular* moral reasoning – indubitably influenced by political circumstances, moral authorities, and intellectual debate – that they will not regard phenomena in the same way as another group. So when ancient Greeks and modern Americans might both condemn a despot, is it because both of them protest the violation of their human rights? No, because morality in general – and even the protection of the individual – was not understood as the respect for “human rights” until at least the 17th century.⁴⁴ While they might agree in their condemnation, they will not *always* agree because they regard these phenomena differently, such that slaves may be taken by ancient Greeks on the grounds that certain people are by nature lower, and suited for particular work, while most Americans condemn slavery on the grounds of it violating a basic human right to liberty. Therefore, it is to be concluded that universal principles of morality – to be applied in all times and places – cannot simply be the generalization of empirical instances of approbation or condemnation. Without supposing historical moral progress (where ancient Greeks would be morally inferior to modern Americans, in part because they did not recognize human rights), what might be

⁴⁴ The first human rights documents, such as the American Bill of Rights and the French Declaration of the Rights of Man, arose as a consequence of the influential natural right theories advanced by thinkers such as Hugo Grotius (1583-1645), Thomas Hobbes (1588-1679), and particularly John Locke (1632-1704).

“moral” or “just” in a universal sense must necessarily be more abstract than what is proposed by just war. Given its concrete principles, and foundation in a human rights argument that necessarily implies a certain way of understanding one’s experience, just war theory cannot be considered a “thin” conception of morality.

This is not to say that discussion of the justice of war is not always be concerned with the same issues, namely aggression, excessive suffering, cruelty, and unbalanced warfare – in fact, principles dealing with these issues seem to be essential to the form of any just war theory. However, once such a formalistic theory is given content, that is, actual definitions of essential terms – such as “justice,” “cruelty,” “harm,” “suffering,” and so on – that are sufficiently substantive such that particular cases can be judged and compared, it necessarily loses its universality.⁴⁵ For want of an international community that is truly analogous to domestic society, justice among nations cannot approach the concrete form realized in a single nation-state. Even the minimal bounds of justice suggested by Walzer’s criteria are too strong to admit of universal applicability, that is, to be reconcilable with the pluralism inherent to a world characterized by particular claims to justice.

At core, then, modern just war theory cannot be regarded as possessing any real morally binding force, as it demands a contradiction of duties, or moral obligations, in the most trying of times. Although Walzer seeks to defend a plural world, where different

⁴⁵ If, for example, “harm” is narrowly defined as the infliction of physical pain on a person, this precludes the possibility that harm might be inflicted by the threat of pain, or the segregation of a person from the larger community, or verbal disparagement, or the violation of one’s property, and so on. According to Simone Weil, even conceiving of harm as an act against another’s person, is to insult – harm – their divine soul, their intrinsic godliness, the “impersonal” in them; harm is that by which one’s “soul would be lacerated” (see “Human Personality” in *Simone Weil: an anthology*, Miles, Siân, ed., London: Virago Press Limited [1986]; 49-78).

communities can freely develop and mature on their own terms – therefore not forgoing the possibility of war in defense of their way of life – and he sees justice as that which protects this plural international society, the failures of modern just war theory indicate that an entirely plural international society is not coherently sustainable on an argument of universal human rights. The domestic analogy has failed – communities do not possess rights in the same way individuals do, and we can only speak of the “rights” of sovereignty and self-determination as an abstraction of individual rights, as there is no permanent “social compact” between states that obligates them to each other. This is a clash between particular duties and claims to universality. Writing from a position of moral universalism, Burke criticizes Walzer’s attempt at defending those particular duties as ultimately being “moral sleight of hand,” as it demands adherence to universal principles without applying them universally (351). Burke is also critical of the “fiction of the liberal body politic,” and the idea of the social contract, which he believes “divides people from each other through membership in states ... creating a claustrophobic apartheid of moral obligation” (353). Although he is here arguing for a universal moral and political community, it is important to note Burke’s recognition that the obligation to one’s own community, insisted upon by just war theory, is in tension with the universalism it is ostensibly rooted in. As seen earlier, Walzer does actually adhere to universal principles – universal human rights. Yet, in the end, the paradox remains that the application of this principle demands contrary obligations which, in the violence of war, are untenable and psychologically implausible.

This psychological disjunction is captured by Hendrickson's portrayal of Walzer's moral statesman as a tragic figure that "is left agonized by conflicting duties," while the more cynical statesman instead falls back on a prior moral duty such as "save your own first." For Hendrickson, this indicates that the achievement of greater force in moral claims must be "mixed with the stronger alloy of self-interest (33, 35). However, this idea of tragedy in moral and political affairs is one that must be taken seriously, as it implies that only a certain degree of moral coherence can possibly be achieved in an imperfect world. Walzer is, unsurprisingly, given his reluctance to more concretely discuss his theory's moral foundations, skeptical "whether the moral reality of war is wholly coherent," and this informs his reluctant acceptance of the "conflict between national survival and human rights" (1977; 22, 325). A coherent moral system would allow, Walzer argues, the alleviation of guilt on the part of those participating in war, a position that would ignore the "reality of war" – that it is hell (326). This position is remarkably close to the original Christian just war theorists, who emphasized the sinfulness of the earthly city, and the "tears in things" that inevitably accompanies this mortal life.

However, the acceptance of tragedy should not preclude the continued pursuit of coherence, since reconciling oneself to the impossibility of coherence can only be a stagnation of intellectual inquiry into the nature of justice. When Walzer counters the "realism" of amorality in political scholarship with the "moral reality of war," he commits the same intellectual offense as those he criticizes; he tells us that what he has asserted is real, self-evident, and, at bottom, true, implying that this is the point where

inquiry stops. But when moral reasoning's purposes and boundaries are left uncharted, and its foundations left untested, our self-understanding is, as a consequence, left that much more impoverished.

Conclusions

Modern just war theory argues that war is a moral phenomenon that can be judged and criticized according to universally "plausible" principles, and that belligerents ought to adhere to the demands of *ius ad bellum* in going to war, and *ius in bello* in the conduct of war. Just cause, proportionality, right intention, right authority, prospect of success, and last cause, all serve to delimit when a country can justifiably resort to the great measures of war. Discrimination and proportionality then serve to limit how war is fought, protecting the innocent from needless suffering. These principles are themselves grounded in a conception of international justice that is held to be beyond the limits of the international law and the "legalist paradigm." This takes the form of the theory of aggression which asserts the plurality of states and the crime of war. Aggression is morally condemnable because war is hell – it is the widespread, and deliberate, violation of the harm principle which holds that individual rights to life and liberty are inviolable. Necessity in the face of aggression justifies war, but must itself be rigorously delineated, so as to preclude escalations and rights violations that are truly unnecessary to the defense of justice.

Just war theory's defense of both necessity and human rights is problematic, however. The allowance for rights violations through the doctrine of double effect or

supreme emergency stems from the theory's foundation on the idea of justice as the preservation of universal human rights. This effectively attributes moral obligations to both one's own community and to foreigners, and just war theory's insistence that the latter be observed at the expense of the former renders the theory morally confused and psychologically implausible. Furthermore, just war theory admits of a rigidity approaching law that is incompatible with the enormous contingencies of war, and the pluralism inherent to international politics, leaving its adherents militarily disadvantaged or susceptible to charges of injustice at the slightest charges. The possibility that egoistic man will subject morality to his own will cannot be ignored. Finally, the common "moral language" or "conventionalism" which Walzer uses to substantiate his universal human rights argument demonstrates a logical fallacy in its generalization, whereby he fails to take into account the disparate moral reasoning that accompanies humanity's historicity.

The reluctance of Walzer to further extrapolate his moral foundations is somewhat limiting, but the contradiction found in his use of universal human rights is suggestive. An implication suggested by the failure of modern just war theory to achieve a coherent idea of international justice is that it has relied on a flawed conception of the nature of justice or morality, and as such, the nature of a human rights conception of justice must be examined. In this light, just war theory seems only to be the logical consequence of a much deeper problem. Lionel McPherson's frank observation cannot be ignored:

Just war theory, in so far as it is worthy of commanding moral respect, must articulate a deeper, normative foundation that is a source of moral claims on states, groups and persons. (160)

If the foundations of just war theory are to truly be expounded, a number of questions remain to be addressed. Why, precisely, do human rights admit of contradiction when universalized? On what grounds can a human being be said to possess a right? What moral obligations, and political arrangements, proceed from the conception of humans as rights-bearers? Together, these questions form the subject of the following chapters.

Chapter 2: Universal Rights

The previous chapter demonstrated a problematic tension in modern just war theory between its assertion of moral obligations to both the particular state and humanity as a whole. This was found to result from the theory's reliance on a human rights argument that is necessarily universalizing, that is to say, it grants identical moral obligations to everyone, regardless of other, more discriminating, obligations. However, the nature of this universal moral obligation was not clearly evident in Michael Walzer's *Just and Unjust Wars*, and an understanding of this obligation is required in order to arrive at a fuller account of justice as presumed by modern just war theory. Simply put, why are human rights universalizing, or, on what basis are rights attributed to the entire human race? In approaching this question, this chapter will examine the development of the concept of rights, from the inheritance of moral and philosophic concepts from Christianity, the reorientation of these concepts with the decline of the Church's political influence in the sixteenth century, and the subsequent affirmation of the individual as a natural rights-bearer, particularly in the work of Thomas Hobbes. Specifically, it will be shown that the modern turn to natural right was concomitant with the metaphysical separation of the free will and the idea of the good from the Christian God, leaving the idea of right as the fundamental organizing principle for morality. The state, justice, and politics itself, are consequently turned to the protection of the individual as the ultimate source of good, making liberty the fundamental moral object. As such, the universality of rights can be understood as being derived from the potentially all-encompassing nature

of the human will. The plausibility of this argument depends, however, on the consideration of human rights “casuistry,” that is the defense of a moral argument from uncontested principles. The casuistry of Michael Walzer, briefly noted in the previous chapter, is that human rights need not, and perhaps can not, make deeper claims about human nature or metaphysics in order to justify itself.

Human rights casuistry

The argument for casuistry regarding human rights is important and often made, and frequently stipulates that a deeper justification of human rights in fact subverts the human rights movement. Michael Ignatieff’s *Human Rights as Politics and Idolatry* is a particularly articulate expression of casuistry as being a matter of both expedience and logical necessity.⁴⁶ In the two essays contained in the book, Ignatieff treats two dangers – and opportunities – for the human rights movement: that human rights are subject to political forces; and that idolatry, of any sort, is detrimental to the spread of human rights.

Both essays proceed, however, from the premise that human rights embodies moral progress towards the recognition of “humanity” in every individual, and that this progress is informed by a moral intuition (3). For Ignatieff, progress is when an increasing number of differences among people come to be seen as “morally irrelevant;” he does not deny the homogenizing nature of human rights, but rather celebrates it (4). Furthermore, human rights need to be defended because they serve to “protect individual agency,” without which there is abuse and oppression (ibid.). Similarly, but perhaps

⁴⁶ Michael Ignatieff, *Human Rights as Politics and Idolatry* (Gutmann, Amy, ed., Princeton: Princeton University Press [2001]).

more clearly,⁴⁷ Brian Orend argues in *Human Rights* that human rights serve to protect “the basic conditions necessary for a minimally good life” (62-5).⁴⁸ The defense of human rights rests, then, on the claim that freedom or autonomy is itself not a claim to the good life, and yet a necessary component of *any* good life.

This defense of rights thus requires a treatment of the problem that politics, understood as a contest of self-interested groups and individuals, threatens to subvert the project for universal rights, although it is only through politics that human rights can gain real force and affect substantive change. Human rights can only be enforced through the nation-state, but this does not mean, for Ignatieff, that they are entirely dependent on the state, as “international norms” regarding human rights can serve as a check on potential abuses (Ignatieff 2001; 16, 23-4, 35). The assertion of this sort of global moral oversight, however, has troubling consequences, as “the exercise of state sovereignty [becomes] conditional, to some degree, on the observation of proper human rights behavior,” and justifies the violation of sovereignty – even war – in defense of human rights (17).

In light of this, Ignatieff insists that limits must be established for human rights if they are to be accepted universally. Intellectually, there is a need for “logical and formal consistency”; because the purpose of human rights is to protect agency, it must therefore not violate the autonomy of others (18). Also, human rights demands must be applied

⁴⁷ To simply assert that human rights protect agency, and therefore decrease abuse and oppression, is an entirely tautological statement, that is to say, it says nothing in this context. Agency is the freedom to pursue one’s own ends and oppression can only be understood as being oppression in light of that moral assertion. To say that without agency there is oppression is to simply restate the definition of agency. Although Ignatieff’s disinclination to even define his basic moral premises may coincide with his larger argument of human rights casuistry, it often leaves the ultimate question – the goodness of human rights – begging.

⁴⁸ Brian Orend, *Human Rights* (Peterborough, ON: Broadview Press Ltd. [2002]).

equally and consistently – a political matter. The unwillingness of powerful nations to alter their own policies to coincide with their human rights exhortations renders their claims hollow, and gives human rights discourse the tinge of a “language of moral imperialism” (20). Ultimately, this second limit is a practical attempt to achieve the first limit of theoretical consistency. These limits lead Ignatieff to one of his core claims regarding casuistry, that human rights must be thought of as politics, rather than moral universals, and therefore one must accept conflict and compromise in human rights claims. Ignatieff seeks, above all, to dispel “the illusion that human rights is above politics,” and to demonstrate that,

Human rights is nothing other than a politics, one that must reconcile a moral ends to concrete situations and must be prepared to make painful compromises not only between means and ends, but between ends themselves. (21-22)

In this way, the ends of human rights become intertwined with the ends of politics, such that the preservation of the state system and the ends of stability and security become paramount. Here, Ignatieff is shown to be very amiable to Walzer’s conception of morality in international politics.

In “Human Rights as Idolatry,” Ignatieff builds on the conventionalism implicit in his first essay, and his casuistry achieves its full expression: “[Human rights] is not a creed; it is not a metaphysics. To make it so is to turn it into a species of idolatry: humanism worshipping itself” (53). He asserts that metaphysical claims are necessarily specious and controversial, and can therefore only lead to divided political support because they are an “ought,” rather than empirical truth. Regarding these facts, “what history tells us” is that human beings’ lives are at risk “if they lack a basic measure of

free agency,” and that agency requires standards protected by international agreement which can serve as a venue for appeal by the oppressed (54). Since people disagree on what is good, on “values,” the protection of agency entails that a “universal regime of human rights protection ought to be compatible with moral pluralism,” and is necessarily minimal in its claims if it is to have broad appeal (56).

For Ignatieff, the liberal individualism of human rights fits this “thin” conception of justice, as it avoids positive – and possibly oppressive – assertions as to how life should be lived (74). This seems to belie, however, Ignatieff’s subsequent claim that human rights counteract natural human tendencies towards the worst sort of behavior. The only ways of life and forms of governance proscribed by human rights are supposedly those of the most base and dehumanizing sort, and it is this characterization or assumption of the “worst” that forms the only positive teaching of liberal individualism (79-80). As a consequence of this defense of thin morality and negative rights, Ignatieff claims that the sacredness of the human being, integral to humanist justifications of human rights, must be denied. He argues that this “worshipful attitude” reveals an “inability to subject humanist premises to the same critical inquiry to which humanist rationalism subjects religious beliefs. ... [Secular humanism] criticizes all forms of worship, except its own” (83). In order to avoid this “dangerous” idolatry, Ignatieff once again turns to the “necessary” protection of autonomy as demonstrated by history, firmly cementing human rights as politics. The symbol of idolatry is essential, as it allows Ignatieff to warn against an idealistic contempt for the political nature of rights, and by so doing extirpate “foundational” claims (metaphysical, religious, secular

humanism) on the grounds that they needlessly hamper the universalization of rights (cf. 88-9).

To say that human rights are politics is an appeal to self-interest; Ignatieff believes his position is strengthened by its attempt to reconcile disparate parties by appealing to their “interest” in human rights. The assertion of “interests” attempts to ground the value of human rights in “empirical truths,” in facts, and is necessary to the argument, given the assumption that all values are equally arbitrary, and cannot be hierarchically arranged. However, Ignatieff ignores that, beyond basic material needs, the interest of a group is often defined by their own assertions and assumptions as to what is good or right, often in a religious or metaphysical nature.⁴⁹ In so doing, he does not see that his “facts” are inseparable from values. In “The Dependence of Fact Upon ‘Value,’” Martin Diamond argues that the reason people take interest in things is not simply because it is a determined fact (physiologically, economically, socially, and so on), but because they value those things (233).⁵⁰ Particularly with regards to political phenomena, the presentation and organization of facts – and this therefore includes moral and theoretical arguments – depends on the assertion of “value statements.” This evaluation is “inextricably a part of explanation” (234). Only the assertion that the protection of human rights is necessary for living any sort of good life – that it is a “fact” – can justify the assumption of primacy by Ignatieff’s human rights arguments. By obfuscating the dependence of human rights on “values,” he gives human rights a

⁴⁹ The phenomenon of the ascetic even puts to question the necessity of “material needs” for living a life of “value.”

⁵⁰ Martin Diamond, “The dependence of fact upon ‘value,’” (*Interpretation*, vol. 2, issue 3, New York [Spring 1972]; 226-35). See also Charles Taylor, “Neutrality in Political Science” (in *Philosophy, Politics and Society*, Laslett, P., and Runciman, W.G., eds., third edition, Oxford: Blackwell [1967]; 25-57).

position that is paramount and prior to all other values, such that any values seen as contrary are proscribed.

Although the defense of human rights has not always rested on the distinction between facts and values, its amenability to human rights casuistry cannot be denied.⁵¹ Any sort of casuistry regarding universal human rights is, at the bottom of claims about the political nature of human rights and the need to avoid idolatry, a refusal to make substantive arguments defending human rights lest they contradict the premises of human rights. This sort of method begs the question, and leaves the moral concepts upon which human rights rest uncontested and unexamined. Morality is necessarily reduced to a politics understood as the negotiation of, and struggle over, a nearly unlimited variety “interests.” What is good is withdrawn from the realm of contestation, as it is simply seen as derived from the “fact” of autonomy. At its worst, this casuistry is a dogmatism that proceeds from propositions that have not been sincerely reflected upon. In this chapter and the next, it will be argued that what Ignatieff asserts to be a “minimalist conception of shared human capacities – empathy, conscience, and free will,” is in fact not minimal, and that the fundamental concepts assumed by human rights imply a very particular, conception of moral and political life (89).

Human rights

⁵¹ Due to considerations of length, and the risk of detracting from the central argument, a fuller consideration of the fact-value distinction cannot be taken on in the context of this chapter. For the purposes of this chapter, it is sufficient to point out that casuistry about human rights proceeds from unquestioned – and supposedly unquestionable – premises (“values”), an approach that is directly supported by a rigid distinction of fact from value.

What, though, are human rights? A basic or conventional definition should be provided before any attempt is made to identify the development and implications of human rights as such. Brian Orend defines a right as “a justified claim on someone, or on some institution, for something which one is owed” (2002; 17). Rights clearly imply an entitlement, as opposed to an obligation, although certain obligations do proceed from the bearing of rights. This is particularly radical once those rights are understood, as they are by Orend and other human rights proponents, to exist beyond all political boundaries. Furthermore, Orend distinguishes between “moral” and legal rights, the former depending on a “justified morality,” independent of the codification characteristic of the latter (24). Furthermore, for Orend, the real existence of a right (as a claim) depends, however, on the possession of the object that is claimed. A person’s right to freedom of speech does not exist without that person actually being able to speak freely. These objects are delimited by reasoned arguments as to their benefit, those “fundamental benefits that every human being can reasonably claim from other people, and from social institutions, as a matter of justice” (34). Human rights is therefore a claim to not only what is just, but also to what is good and beneficial, and Orend defines the beneficial, as noted earlier, as those conditions necessary for a “minimally good life” – basic equality, personal freedom, and recognition.

As to the question of how human rights can be attributed universally, Orend finds that human rights holders are defined according to: biological humanity; not violating others’ human rights (therefore allowing forfeiture of rights by criminals); and interest in living a life of minimal value (65). Much like Ignatieff and Walzer, Orend eschews the

defense of rights on the basis of metaphysical understandings of humanity and human dignity, and the possession of moral goodness. Perhaps naively, Orend presumes that metaphysical arguments cannot be proven true or false while his own argument that focuses on the “objects” of human rights is objectively true – even though agreement on the importance of those objects does not imply that human rights is the only means of securing of them.⁵² He ultimately rests his defense of human rights on the “fact” that people have an objective interest in these objects because they affect their “well-being,” which in turn includes the freedom “to follow one’s path in life, not subject to coercive interference with one’s critical life choices” (64). Since only the individual can decide for himself what is good, the protection of his or her liberty and life (as being necessary for liberty) are the most fundamental goals of human rights. This echoes the 1949 Universal Declaration of Human Rights, which attributes to every individual many fundamental liberties, such as freedom from slavery, torture, arbitrary arrest and prosecution, freedom of religion, of speech, of peaceful association, and so on.

The Universal Declaration is, in the sense that it is a document widely sanctioned in the international community, the fullest expression of the universalism asserted in the 1789 Declaration of the Rights of Man, and the 1791 American Bill of Rights.⁵³ The Universal Declaration was the consequence of a widespread desire, following the horrors

⁵² Much like Ignatieff, Orend’s derision for metaphysical arguments belies circularity in his reasoning. Arguments on the basis of moral goodness or metaphysics are discounted because they “run[] afoul” when people disagree, particularly about claims concerning religious beliefs; a justification of human rights must be amenable to many and inclusive (45). Thus, when Orend begins his inquiry as to “who holds human rights,” the “necessity” of human rights is already assumed, leaving the question begging. He seeks plausible or practical justification of his moral position, not rigorous analysis. This is casuistry in the fullest sense of the word.

⁵³ For example, in the 1789 Declaration: “1. Men are born and remain free and equal in rights.” In the 1791 Bill of Rights: “Art. IX. The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.”

of the Second World War and the rise of totalitarianism, to provide a counterweight to the seemingly unlimited power of the modern nation-state. For some, such as John Humphrey, one of the principle drafters of the Declaration, it was a step towards a nascent world government, one which could allow for the flourishing of the individual in an international community that was more than a “society of states,” but rather a “society of peoples” (Curle; 121).⁵⁴

Clinton Curle, in his Ph.D. dissertation *The Universality of Rights: John Humphrey, Henri Bergson and the Universal Declaration of Human Rights*, reveals that Humphrey was fundamentally concerned with the collision of the particular and the universal, and sought to affirm, above all, the particularities of languages, cultures, laws, and ultimately individuals themselves, while at the same time affirming a universal ethic that would limit tyranny and allow human particularities to flourish (124). Curle finds that Humphrey, in looking towards this end, consciously avoided the explicit assertion of a philosophy – much like Ignatieff and Orend – in the Declaration itself, and that the document was to be “based on no philosophy whatsoever” (129). In fact, Humphrey found another member of the Declaration’s drafting committee to hold a “very Kantian account of rights [that was] unnecessarily narrow, and so prone to incite debate” (fn. 280; 130-1). The means could not threaten the ends of the human rights project, for, “what we need,” Humphrey wrote, “is something like the Christian morality without the tommyrot” (136). Curle demonstrates, however, that Humphrey recognized the need for a

⁵⁴ Clinton T. Curle. *The Universality of Rights: John Humphrey, Henri Bergson and the Universal Declaration of Human Rights* (Ph.D. dissertation. Ottawa: Carleton University [2005]).

philosophical understanding of human rights, both in its foundation and implications, and that, at bottom, human rights entails a philosophy of nature (141, 156).

Humphrey rooted his conception of human rights in a “dynamic salvation-history” that did not find human laws to be grounded in “eternal, static Truth” (150). Instead, the development of human rights is viewed as an expression of the moral evolution of mankind, on the basis that it is “a movement toward greater and greater freedom and the emancipation of the human mind and will” (149). Curle notes the influence of Lecomte du Noüy’s *Human Destiny* on Humphrey, particularly in the former’s assertion that human dignity is drawn from mankind’s moral evolution, namely in the recognition of the free will (159). Like Ignatieff and Orend (and most other proponents of human rights), the principle task of human rights for du Noüy and Humphrey is to ensure individual autonomy, the freedom of action made possible by what is regarded as the quintessentially human faculty of volition – the free will.

The peculiarity of Humphrey’s own philosophical conception of human rights was his reliance on the works of French philosopher Henri Bergson. Although Bergson’s philosophy offered a strong contrast to the Thomism of many human rights proponents, particularly in its conception of time and the relationship between “spirit and matter,” it nonetheless demonstrated a strong affinity to the Greek, or Eastern, Patristic tradition in Christianity (198-201). Even though Bergson’s work was conceived outside of the theology of the Catholic Church, it relied on, treated, and contested, concepts developed under the auspices of revealed religion. As a product of the Western tradition, the idea of human rights has its moral inspiration and intellectual roots in an unmistakable Christian

inheritance. In particular, the concepts of the free will and history (understood by some as progressive) have been drawn, albeit in a reinterpreted form, from the Christian experience. In light of this, an understanding of the universalizing quality of human rights must be traced to its origins.

The Christian inheritance

Although the Stoics made the so-called discovery of the free will, it is in Christianity that the free will was united with the metaphysics that has served as a background to the liberal morality and philosophy, which in turn informs the human rights movement. The free will, it will be shown, formed an essential component of Christian theology, serving to unite an all-powerful and all-knowing God with a humanity marked by its capacity for reason. This is particularly evident in the work of Saint Augustine, and it is from his works that this account of the free will, as it was adopted in liberal philosophy, will be drawn.

The concept of the free will offers an account of volition that coincides with Scripture's revelation of God as the all-powerful and all-knowing creator. In *On the Free Will*, Augustine discusses the free will in detail, in respect to its nature as well as its relation to Christian theology.⁵⁵ Most basically, the free will is observed in man's interaction with the world, in how he can choose how to act – that is to say, he can act other than his nature, a capacity not found in other beings. Augustine posits three forms of being, at least three that are knowable to reason: simple non-living existence; life

⁵⁵ Saint Augustine, *De Libero Arbitrio Voluntatis* [*On the Free Will*] (Sparrow, Carroll Mason, transl., Richmond: Dietz Press, Inc. [1947]).

governed by nature and necessity (plants and animals); and rational life (mankind). A higher form of being possesses all the properties of lower forms, but is differentiated by a quality beyond the lower forms (i.e., life is higher than non-living matter, and life that *knows* it lives is higher than life simply) (1.17). Humans share, with animals, the faculties of senses by which they perceive the material world, as well as the “interior sense” that distinguishes and orders the data received through the senses in such a way to allow for action (2.2-3). Without reason, however, there is not awareness of the interior sense, and these animal faculties can only allow one to escape physical harm and seek bodily satiation or pleasure.

However, this animal life is not one of evil because animals cannot do otherwise – they are governed by necessity rather than reason and freedom of the will. Evil and sin can only be considered such when it is chosen. Human will is considered free precisely because it cannot be compelled to goodness or evil. Man cannot act, for good or ill, without wanting and willing it, such that “nothing can make the mind the companion of lust but its own will and free choice” (1.11). Although willing does not determine something being good or evil, it is only *through* the free will that either can be done. For Augustine, the will is demonstrated by the simple observation that man constantly desires happiness, for something good (1.12).

The free will is a metaphysical concept essential to explaining evil and sin in a world created by a charitable and loving God. For Augustine, the assertion of the free will is essential in contesting against Manichean dualism, which claimed evil to be a substance or entity, and thus implied a God radically different from that found in

Scripture and church dogma – one that is neither all-powerful or all-knowing, nor the cause of all things (cf. 1.3; *Confessions* 3.6-13, 5.20; *City of God* XI.22-3).⁵⁶ In contrast to the Manicheans, evil is understood by Augustine as one’s distance from God, or lack of goodness. Only when the soul is turned, through the volition of the will and the use of reason, to the eternal and immutably good things, can happiness be achieved. Happiness and goodness is loving, through the free will, that which cannot be taken away. To sin is to “love of those things which a man can lose against his will” (1.3-4). To love mutable things is to love lower things, for that which is most desirable and good is that which cannot be lost and is eternal – which is, in the end, only God. Lusting for honor, wealth, and physical pleasure, are all instances of concupiscence for worldly things, and hence, sins. The highest aspiration of man is to perfectly order himself according to highest parts of his being – mind and spirit – which can only be achieved in sight of God (1.8).

Sin is constant and recurring, however, as “reason itself,” that by which goodness is attained, “now striving to attain the truth and anon not striving, sometimes attaining it and again not attaining it, is clearly shown to be mutable” (2.6). Although true reason is necessarily infallible and is focused upon true, eternal, things, the frailties of body and mind do not allow humans to hold it in their grasp, leaving them perpetually climbing and slipping (cf. *Confessions* 7.19, 10ff.). Only a constant reassertion of the good will, of re-setting one’s spiritual “eye” upon God, can alleviate the unhappiness and suffering of sin. The free will therefore enjoys a privileged, albeit morally ambiguous, place in Augustine’s theology, as it is through this necessary faculty of volition that both

⁵⁶ Saint Augustine, *Confessions* (Chadwick, Henry, transl., Oxford: Oxford University Press [1998]).

goodness and evil can be achieved (because of this, Augustine labels the free will an “intermediate good” [2.19]).

The free will, being a defining characteristic of humanity, provides the universalism of Christianity, linking all to the eternal order, as well as to each other. All humanity need only will goodness to possess something that is immutable and not contingent: “it lies in our own will whether we enjoy or miss a good so great and so real ... so that he who has a good will has surely that which far outweighs all kingdoms and all earthly things or bodily delights” (1.12). Man is tied, via this good will, to a conception of God and divine Providence that is informed by Scripture and pagan philosophy. The influence of neo-Platonism on Augustine is perhaps most evident in the close resemblance of his own metaphysics and those of Plato, as he posits eternal things that are visible only by reason and find ultimate unity in the light of the good (2.9-10).

Augustine’s account of good and evil depends, ultimately, on his conception of God. Envisioned as a metaphysical Father, creator, and source of all goodness, God’s existence is not only a matter of faith, but also of reason. Truth is only possible as something external to us (for otherwise it would be mutable and therefore not truth), and as truth is praiseworthy because it reveals what is good, it must come from some greater good, which must be given by the one God (cf. 2.12-16, 2.18). Thus, all goodness found in the world ultimately points back towards God. Even evils play a role in this, revealing goodness by its lack thereof, and thus allowing man to turn their souls to that which gives goodness (3.9). God, however, is not the author of sins, and evil is not evidence that God is not omnipotent or all-powerful, as the Manicheans supposed.

Providence is the theological consequence of God being all-knowing and all-powerful, and constitutes the effect of the eternal forms on life. Reconciling the free will with God's omnipotence and eternity presents something of a problem for Christian theology – how can man's will be really "free" when his good or sinful acts are already known by God? Does the free will really allow for this separation from necessity and fate? Augustine writes that "all things are governed by Providence" because life, even existence itself, is not possible in absence of the eternal forms. The form of mutable things "is itself their providence," that is to say, it is that which gives shape and purpose to them (2.17). Freedom of the will is maintained, argues Augustine, because God's foreknowledge is of both good and evil, of happiness and unhappiness, such that if we sinned by fate or necessity, we would also enjoy happiness by fate, which would imply, paradoxically, that happiness would be against our will (3.3). The free will is part of the purposeful history of the world, a necessary part of the perfection of man, as a temporal being, in God.

As noted earlier, even evil and sin can point one back to God; this is at least one purpose that sin and evil serve in the perfection of the world. Sin demonstrates the eternity of the divine law that dictates "that souls as souls, which, if they will, sin, and sinning are made unhappy" (3.9). Perfection is thus attained in divine justice being meted out, granting happiness to the good and unhappiness to the sinful. The perfection of the world is characterized in Scripture by the idea of Salvation at the end of history, where the world and the divine law of God reach a convergence such that the world completes its own purpose, achieves its own end, in the purpose of God. In this way,

time as the unfolding of a *history* has its origins in Augustine, where history can only be thought of as such with an end or purpose. Through the eternal forms, the divine law, the perfection of the world is revealed. This must be distinguished from the temporal law that is the consequence of free will, and the imperfect world in which it is grounded.

The existence of both the free will in mankind and divine Providence, of both mortal and immortal things, implies the existence of two types of law for Augustine: the temporal and eternal, or the worldly and the divine. Although both are concerned with justice, temporal law can be justly changed over time, as it is concerned with the relation of mutable things in the world. Temporal law seeks to preserve, maintain, or improve worldly goods found in the body, freedom, family and friends, the state, and property. Order can be maintained precisely because of the transience of these goods, as people's fear of losing these goods inspires a desire to both moderate their use as well as maintain society in order to protect their ability to enjoy them (1.15). Divine law, the "supreme reason" of God, is eternal and immutable – it is that which allows temporal law to change and yet remain just, it is "that law by which it is just that all things be most perfectly ordered" (1.6). As discussed earlier, it is when men cleave to this divine law that they find happiness ("they who serve the temporal law cannot be free from that eternal law"), and it is to the divine law that the temporal law must similarly cleave to in order to be considered just (1.15).

This Christian, particularly Augustinian, account of the free will has, however, very significant implications for the conception of man in nature. Although perhaps more evident in Stoic philosophy, the will is a separation of man himself from nature, for the

essence of *willing* is to decide, to choose, to do something, to not be governed by nature, necessity, or fate. Augustine writes, “you cannot perceive anything else to be in our power, except that which we do when we will. Wherefore nothing is so completely in our power as the will itself” (3.3). That man must choose to do evil demonstrates that nature is good for Augustine, but also that man’s will allows him to separate himself from nature (cf. *City of God* XI.17). In this way, nature itself loses the purposefulness seen in the Greeks – the perfection of man’s nature through attention to the eternal things in nature is lost, such that in Christianity perfection is attained solely through the grace of God. Man can only be reattached to goodness through the revelation of God. The natural theology of ancient Greece is replaced by a distinctly supernatural divinity.

This “free” will, that is, free from nature and necessity, constitutes a potentially radical separation of man from reality, allowing a “self” that is markedly isolated and capable of a grandiose self-justification. Such a will is manifested as the *libido dominandi*, the lust for absolute mastery of a world at odds with man’s individuated will, so that the world itself comes to mirror the will (*Confessions* X.xxxvi).⁵⁷ This “concupiscence” is the universalizing quality, a greedy desire for the whole, of the free will (*On the Free Will* 3.17). In Augustine’s work, the lust for worldly things affirms and feeds this *libido*, and it is only through the experience of the revelation of God through Christ that a path is cleared from this noxious abyss of unguided and meaningless desires (*Confessions* II.iv-v). The “freedom” of the will is thus somewhat misleading, for

⁵⁷ Augustine’s conception of perception, particularly through the five “external” senses, suggests a possible connection with mankind’s free will and the *libido dominandi*. Simply in observing things (but also in hearing, tasting, smelling, and feeling), man attempts to grasp the whole of a thing, although it can only be given to him in various perspectives – indeed the acute particularity of each perspective ensures that no one man can grasp the whole at any single given time (*On the Free Will* 2.7).

although it allows freedom of choice it is certainly *not* true freedom for Augustine: “This is our freedom, when we are submissive to that [supreme] truth; and it itself is our God, who frees us from death, that is from the state of sin” – only those things which can be enjoyed securely, that is, eternal things, allows truly free enjoyment (2.13).

There is then an unmistakable link between the metaphysical and the political for Augustine, as man and his law can only be properly understood when their divinity or relation to divine things is articulated. The political implications of these metaphysics come to the fore in the Christian virtues and the principles of neighbor love. In *On Christian Doctrine*, Augustine writes of the possibility of enjoying the eternal things while in this evanescent world, and how such enjoyment can only come through the exercise of faith, hope, and most importantly, charity.⁵⁸ Being immersed in the earthly city, the will of man is constantly pulled back down to earthly interests, whether it is basic nourishment or more political desires, such as greed and envy. In order for the individual to fix their will on God in such conditions, a very definite code of political behavior is implied – hence the virtues. The man of good will possesses prudence, fortitude, temperance, and justice, and thus cannot wish evil upon anyone, as he gives each his own (cf. *On the Free Will* 1.13). This justice, however, is a pale imitation of the divine justice that is the purview of God, and insofar as other people can possibly partake in the divine, that is to say, insofar as they can reach towards God but *are not* God themselves, people cannot possibly do true justice to another. Furthermore, the very possibility of man reaching towards God – the fact that man is capable of reason – is a

⁵⁸ Saint Augustine, *On Christian Doctrine* (Robertson Jr., D.W., transl., Upper Saddle River NJ: Prentice-Hall Inc. [1997]).

gift, an act of charitable love from God, for he has given that which is low (simple life) the potential to see that which is high (God himself).

Charity between neighbors thus mimics the immense charitable love God has for men, and indeed, for Augustine, the former is ultimately the logical consequence of the latter (*On Christian Doctrine* 1.27). The enjoyment of God, and thus true happiness and freedom, is obtained through the souls (and wills) of man, and it is each person's capacity for loving God that makes each person inviolate and worthy of love. Any non-virtuous or selfish act (in the sense of benefiting one's own immanent place), can only obscure the eternal things from sight and buttress a love for earthly things. In absence of some sort of transcendently powerful reason, common men can move towards God through truly virtuous, particularly charitable, action towards others (1.28-30). As a consequence of the human possibility of transcendence in God, all have a spark of divinity, and "all other men are to be loved equally"; Christian love is to be truly universal (1.30).

Thus the free will assumes an intermediary role between fallen man and the incredible grace of God, allowing man to reach towards that which transcends himself. The free will also accounts for evil, and in this sense it encapsulates the story of the Fall of Man,⁵⁹ for it is by this distinctly human quality that man is both divine and sinful.

Rights in Christianity

In light of Christian metaphysics and its political expression in neighbor love, the idea of rights is entirely derivative of the obligations implied by the Christian virtues. In

⁵⁹ "And the Lord God said, Behold, the man is become as one of us, to know good and evil" (Genesis; 4.22).

contrast to the difficulties that scholars, such as Brian Orend, have in placing or sourcing rights – to “prove” their existence or give reasons for adhering to rights – Christianity understands rights as entirely temporal, and not an indelible part of man. For example, in *Natural Rights Theories: their origin and development*, Richard Tuck recalls the medieval debate whether *dominium* (mastery) and *ius* (law or right) were identical, and argues that Saint Aquinas did not “talk about *iura* [laws] as other than objective moral rules” – a person could only have *dominium* insofar as that mastery was sanctioned by a higher law, whether civic or divine (5-6, 18-19). Thus, for Christians, the question is not “how” humans possess rights, but “why.” Still, the form and idea of human rights is anticipated by the idea of neighbor love – people are to treat each other with respect and are deserving of love not because they possess “rights,” but because each is capable of godliness, of touching the divine.

Human rights, as expressed in the modern context, would thus be more of a political-legal reinforcement of an already present obligation, rather than ends in themselves. In *Shylock’s Rights: A Grammar of Lockian Claims*, Edward Andrew points out the strong tension between justice and Christian charity, where the latter contravenes the former by giving a person more than their due.⁶⁰ Andrew calls this Christian virtue “the spirit of imperial love,” or a “loving compulsion ... to compel people into true religion,” as it induces a debt on the part of the recipient of charity (54). To make a claim on the basis of right, then, to some degree, strips away the possibility of charity (rights “are defensive in relation to imperial love”) – such a claim asserts what one is owed or

⁶⁰ Edward Andrew, *Shylock’s Rights: A Grammar of Lockian Claims* (Toronto: University of Toronto Press [1988]).

due (55). At best, human rights are a reinforcement of man's duty to be charitable, protecting others as fallen man slips away from goodness into sin. Rights are for when humans forget to value one another through reason and faith, and instead regard each other as tools to achieve worldly desires:

[R]eason values things in one way, and use in another ... use generally leans towards habit and convenience, and thus values those things more which truth proves to be less. (Augustine *On the Free Will*; 3.8)

Thus a modern fixation on rights without prior obligation, which neglects the perfection of man in the divine, perverts the Christian teaching. Curle observes this in his account of the modern human rights movement, which radicalizes the Christian teaching by emphasizing a radical individual autonomy:

The Western [Christian] view of the incarnation, which distinguishes between Christ's divine and human natures and affirms that his human nature heroically cooperated with his divine nature, has led to an exaggerated conception of the separation between the Eternal and the temporal. The assertion of this breach made it possible, and perhaps inevitable, to assert two "essentially Christian heresies" which characterized modernity: Deism and the affirmation of individual autonomy as the central legitimizing principle. (110)

The priority of right over good

[Human rights should not] seek its ultimate validation in a particular idea of human good. Human rights is an account of what is right, not an account of what is good. (Ignatieff 2001; 55)

Michael Ignatieff's words capture not just a strand of modern secular writing concerning rights, but also a fundamental point of divergence between classical and Christian accounts of rights on the one hand, and modern liberal accounts on the other. This point is the radical separation of "right," in the sense of doing what is right, correct, or moral,

from “good.” This separation proceeds from the disavowal of consensus or “objectivity” on what constitutes goodness or a good life, and consequently emphasizes the supposedly necessary dependence of any good life on action of the free will. In attacking the justification of human rights on the basis of “moral goodness,” Orend asks, “who is entitled to decide [what is morally good]?” (59). Such questions echo – although in far more explicit terms – the calls of Christian reformers of the 16th century who opposed the role of the Roman Catholic Church as mediator and protector of the faith on earth. To speak generally, goodness could no longer be unequivocally associated with submissive adherence to Church dogma.

A consequence of such a break from a unified Good was that morality became an open question. If there is no consensus on the good life, how can a common morality be maintained? How can society itself be maintained? In “The Primacy of Natural Rights,” Douglas Den Uyl and Douglas Rasmussen identify this as the “liberal problem” of moral philosophy, where the assertion of individual liberty, particularly in deciding what is good or beneficial, is held to be prior to a common good (65-6).⁶¹ The principle concern of moral philosophy becomes, then, not in demonstrating what is good, but in demonstrating what is required to achieve any sort of good (66). The work of Immanuel Kant fell distinctly into this category, as his philosophy epitomized the assertion of the priority of right over good. In the *Groundwork of the Metaphysics of Morals*, Kant posited a “categorical imperative,” a universalized moral principle that claims, in one

⁶¹ Douglas J. Den Uyl and Douglas B. Rasmussen, “The Primacy of Natural Rights” (in *Natural Law and Modern Moral Philosophy*, Paul, Ellen Frankel, et al., eds., Cambridge: Cambridge University Press [2001]).

formulation: “every rational being must act as if he were by his maxims at all times a lawgiving member of the universal kingdom of ends” (45).⁶² For Kant, the very presence of reason in human beings presupposed the free will, which, in its highest form, allows the individual to follow the rules of reason, rather than the irrational desires that are a product of natural necessity and bodily passions – a contrast that Kant described as one of autonomy versus heteronomy (41).

Autonomy, or rational freedom, is being able to give laws to oneself, and thus choose to place oneself under the universal laws of reason:

[F]reedom, although it is not a property of the will in accordance with natural laws, is not for that reason lawless but must instead be a causality in accordance with immutable laws. (52)

Insofar as we are reasonable, willing beings, that is to say, we possess good wills, we will be dutifully bound to obey, *categorically* or without exemption, the moral law. In *The Morals of Modernity*, Charles Larmore points out that this “good will,” as the necessary disposition for acting in concordance with the moral law, depends on placing reason prior to goodness: “it asserts that nothing is morally good unless it accords with the principle of right, which expresses what one ought to do” (26).⁶³ Goodness is ancillary to, and a product of, right as revealed by reason. Unless a person is fully rational, what they take to be good is entirely heterogenous or subjective, that is, it is a product of their own particular, “phenomenal” (i.e., worldly, empirical, or contingent), interests. In fact,

⁶² Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Gregor, Mary, transl. and ed., Cambridge: Cambridge University Press [1997]).

⁶³ Charles Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press [1966]). Larmore also cites a review of Kant’s *Groundwork* by one of the philosopher’s contemporaries, Hermann Andreas Pistorius, who criticized the argument of the book precisely because of its articulation of the priority of right. Kant’s argument was circular and ultimately failed because he refused to articulate a principle of “good” that could allow him to define a will as being a “good will” (Larmore; 25-8).

wanting or desiring something, believing it good for oneself, is entirely opposed to selflessly doing what is right. The implication, then, is that truly moral action can only be that which is universalizable, such that all autonomous persons, freed from their phenomenal selves, would will it.⁶⁴

Ironically, the free will that featured so prominently in Christian thought, as the faculty by which goodness can be chosen, became the very source of goodness itself. Yet if goodness from rightness is revealed through the free will, where is the place of the one Christian God, who is held to be the source of all goodness? “God,” as the fundamental organizing concept of human life, reason, and morality, is obscured, if not suppressed, in a philosophical system such as Kant’s. At some point before Kant, the free will superseded God’s place as the most fundamental organizing principle of morality, and politics, too, came to be understood in terms of what is by *right* of the free will. Although Kant’s work may embody the distinction of right from good that is characteristic of modern liberalism, the political implications of that distinction are perhaps most systematically presented in the work of Thomas Hobbes, whom Leo Strauss characterizes as the father of modern rights theory (1936; viii).⁶⁵ What is modern, though, must be distinguished from what is liberal. While Hobbes certainly displayed a

⁶⁴ This leads to the paradoxical situation where one can never *want* to act morally, since that would admit such an act was not done out of a self-forgetting duty. The categorical imperative, Kant admits, fails to be *interesting* to any real people, given that they are not entirely “rational” beings, and are indelibly part of the phenomenal world (*Groundwork* 34-5).

⁶⁵ Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and its Genesis* (Sinclair, Elsa M., transl., Chicago: The University of Chicago Press [1936]).

political absolutism that is out of step with liberalism, he is truly akin with modern liberalism in his “conception of ‘right’ as the principle of morals and politics” (ibid.).⁶⁶

The limiting of the will

Thomas Hobbes’ masterpiece, *Leviathan*, can be interpreted as an unleashing – and then forceful restraining – of the concept of the free will.⁶⁷ In Hobbes’ work, the *libido dominandi* of the Christian theologians, the will that desires dominion of reality, is untethered from a loving God; for Strauss, this is the defining moment of modern moral philosophy: “Through the shift of emphasis from natural duties or obligations to natural rights, the individual, the ego, had become the center and origin of the moral world, since man ... had become that center or origin” (1953; 248).⁶⁸ Writing in his “Introduction” to *Leviathan*, Michael Oakeshott describes Hobbes’ individual as an “*ens completum*, an absolute will ... absolute because it is not conditioned or limited by any standard, rule or rationality” (56). In the argument of the *Leviathan*, this is first revealed in the discussion of desire. For Hobbes, all voluntary motion is desire that begins in “the imagination” of the individual, which generates motion in response to stimuli (*Leviathan*; vi.1-2). The goodness of things, as with Kant, derives solely from the desires of each man:

[W]hatsoever is the object of any man’s appetite or desire that is it which he for his part calleth *good*; ... these words of good, evil and contemptible are ever used with relation to the person that useth them, there being nothing simply and absolutely so, nor any common rule of good and evil

⁶⁶ Michael Oakeshott concurs: “Indeed, Hobbes, without being himself a liberal, had in him more of the philosophy of liberalism than most of its professed defenders” (*Hobbes on Civil Association*, Oxford: Basil Blackwell & Mott Limited [1975]; 63).

⁶⁷ Thomas Hobbes, *Leviathan* (Curley, Edwin, ed., Indianapolis/Cambridge: Hackett Publishing Company, Inc. [1994]).

⁶⁸ Leo Strauss, *Natural Right and History* (Chicago: The University of Chicago Press [1953]).

to be taken from the nature of the objects themselves, but from the person of the man (vi.7)

Presented with a world of things that are desirable and undesirable – good and evil in the eyes of a particular man – man chooses an action through his will, “[f]or a *voluntary act* is that which proceedeth from the *will*, and no other” (vi.53). Reason can inform deliberations as to the proper course of action, the means of acquiring certain ends, but the appetites ultimately determine the ends of reason (cf. vi.49-52, xxi.4). Consequently, insofar as the world contains obstacles to the continuous satisfaction of man’s desires, he desires to possess the knowledge and power to remove those obstacles (xi.1-2, xii.2-6, xiii.4). This desire for power over an unpredictable nature is potentially unlimited: “*Instrumental* are those powers which, acquired by [natural power] or by fortune, are means and instruments to acquire ... the secret working of God, which men call good luck” (x.2).

Yet the contest of the individual’s will with other individuals and nature is the ultimate foundation for society, for man’s life outside of that society is one of pain and suffering. From a natural equality in bodily powers (for even “the weakest has strength enough to kill the strongest”), there proceeds an equal hope for the satisfaction of desires. The scarcity of the objects of desire, however, leaves man in a “war of every man against every man,” a life that is “solitary, poor, nasty, brutish, and short” (xiii). From this desire for control and dominion springs the primary moral principle of nature, the single “right of nature”:

[T]he liberty each man hath to use his own power, as he will himself, for the preservation of his own nature, that is to say, of his own life, and

consequently of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto. (xiv.1)

Without life, no other desires can be satisfied, no other good can be achieved, and thus anything done in defense of this basic right to self-preservation must be considered “good,” “just,” “right,” or “proper,” and so on. Furthermore, because of the natural state of man is a war of all against all, “in such a condition every man has a right to everything, even to one another’s body” (xiv.4). The fundamental natural right *is* the *libido dominandi*, the completely free will that “finds no stop in doing what he has the will, desire, or inclination to do” (xiv.3). As this right is prior to all law (even natural law), it is necessarily prior to all obligations to others (xxi.2).

Society originates, then, from the fear of others and the condition of life in the state of nature. A rational person forgoes their natural right to everything so that they might enjoy some peace and security, establishing the first natural law – to seek peace (xiv.4). These individual persons come together in the “mutual transferring of right ... which men call CONTRACT” (xiv.9). This social contract entails that each man give up his fundamental natural right, “to everything,” in exchange for a more secure environment – civil society or the commonwealth – in which he can enjoy whichever goods he desires so long as it does not jeopardize the commonwealth.

The priority of the natural right indeed allows for the greatest exercise of the will by everyone, as the theoretical limitations on the will are solely those required for peaceful coexistence. While the transfer of authority to the Sovereign is absolute for Hobbes, with the Leviathan in utter control of all moral laws, institutions, honors, and so

on, it is important to note that the fundamental natural right – of self-preservation – never disappears, regardless of the dictates of the Sovereign. Hobbes writes:

[A] man cannot lay down the right of resisting them that assaulted him by force, to take away his life, because he cannot be understood to aim thereby at any good to himself. (xiv.8)

Although a person may have given up their right to all other things, they can never give up the right to self-preservation, for life is that which is necessary for achieving any good. Thus the purpose of the commonwealth, to preserve the life of all those who contract, is maintained. A significant implication of this is that any obligation to the commonwealth is contingent upon – and thus follows from – the fundamental right of the individual. A person is obligated to others only insofar as those others ensure, and do not threaten, that person's right.

A particularly appropriate example of this is found in Hobbes' account of compassion. "*Grief* for the calamity of another is PITY," Hobbes writes, and exists only insofar as the viewer can picture himself in such a situation (vi.46). Compassion, being self-referential (and most certainly *not* disinterested as true moral action is for Kant), thus serves to reinforce the social contract, as there lingers a fear that should citizens not display pity for one another, the commonwealth might stumble, exposing oneself to the evils that are seen happening to others. In fact, because the purpose of the social contract is to limit the natural right of everyone to everything in order to preserve one's own existence, the whole of civil obedience, of maintaining obligations to the Sovereign and to other citizens, is borne from this very basic self-regard. Sociability or "complaisance" is that,

every man strive to accommodate himself to the rest ... For seeing every man, not only by right, but also by necessity of nature, is supposed to endeavour all he can to obtain that which is necessary for his conservation, he that shall oppose himself against it for things superfluous is guilty of the war that thereupon is to follow. (xv.17)

Those who attempt to forgo that natural right, to risk life for ostensibly greater things such as immortal glory, jeopardize the sturdy foundations of the commonwealth. The priority of the natural right to self-preservation, and that it is *the* basis for society, allows the possibility of two laws acting *justly* in opposition to one another. A person can both rightly defend their life in opposition to the Sovereign whom, also rightly, demands their execution. Both can be considered just because both originate from the person, the latter since the person bound himself through the social contract (xxi.11-13). In fact, as Oakeshott points out, Hobbes' account of obligation is deeply wedded to his conception of the will, such that "for a man to be 'obliged' is for him ... to suffer some specific self-inflicted diminution of his freedom," and that only the individual can ever oblige himself since external restraints are only reductions of his power to act – not impingements on his right or will. People oblige themselves to the Sovereign so that they might have their own natural power protected or even increased (65-6).

The importance of Hobbes' notion of right in relation to modern society cannot be understated. Oakeshott describes Hobbes' argument, that all moral action is rooted in the fear of violent death, as a truly revolutionary moment in the history of political philosophy (144). Furthermore, one finds, precisely in the all-desiring free will and the natural right to everything, the origins of the universal nature of the human rights project. In Augustine, this universality was derived from a neighbor love based on the presence of

godliness qua reason – and thus the free will – in all men; in Hobbes, this universality is seen in the presence of the *libido dominandi* and fear of death in all men. Community, and thus any sort of livable peace, can only be fostered by the brokering of a contract between these various wills, and of each being cognizant that there must be a modicum of tolerance or “sociability” if community is to be maintained. The individual will is limited by the social contract, and it is precisely this limitation that makes obligations to others, and therefore a community, possible. In fact, under the fundamental assumption of liberalism, that society is premised on the freedom of the individual, obligations or duties to others can only exist when limits are (willingly) placed on that freedom.

Human rights are distinguished from the Hobbesian understanding of civil rights because of their universal demand for obligation, as they exist beyond the limits of the state and the social contract. As Ignatieff noted, human rights clearly purport to transcend the state despite, at the same time, depending on the state for their protection. This dual character of human rights, first as being human and thus inherent to every member of the species, and second as being rights, and therefore necessarily dependent on the power of the Sovereign, is problematic and, at times (such as in times of war as argued in Chapter 1), paradoxical. The idea of human rights depends upon a community that encompasses all of humanity, while Hobbes’ natural right leads to a conception of a divided world (“the law of nations and the law of nature is the same thing” [xxx.30]). A social contract is not, and cannot, be made with the entirety of humanity without a surrender of all worldly “power of the sword” to a single sovereign – a global community can only be such insofar as there is a global Leviathan. Where the power that girds

authority cannot be extended, there can be no authority, no law, no Sovereign, and no rights but that which is given by nature.

The temptation to extend the limited commonwealth remains, however, for the *libido dominandi* might strive to extend dominium over the world, and perhaps encompass others in a global commonwealth in the hope of achieving the power necessary for complete security (xi.2, xiii.4). This is the height of folly for Hobbes.⁶⁹ In *Justice Among Nations*, Thomas Pangle and Peter Ahrensdorf argue that the enlargement of the commonwealth is untenable, given that the division of sovereignty (such as by granting sovereignty to a higher government) is strictly prohibited, and that nations do not suffer from an existential threat,⁷⁰ as does an individual person in the state of nature. Independent sovereigns, prudently seeking the preservation of peace, would only engage in war “where collective security is palpably at stake and victory is likely” (152-3). Ultimately, the purpose of the social contract – to remove individuals from the state of nature – is comfortably served by international plurality; to act contrary to this is to threaten chaos and thus endanger the individual right to self-preservation.

Conclusions

The non-plural, universalizing quality recognized in the idea of rights was found to lie in the conception of the free will as a potentially unlimited greed. Absolute

⁶⁹ Wars of conquest are not borne from necessity, but rather from the vanity of statesmen (Strauss 1936; 120).

⁷⁰ Although Walzer points out that the development of an arsenal of nuclear warheads, placed on missiles capable of reaching anywhere on earth, does present the threat of completely annihilating a state, such that mutual fear could prompt the development of a “balance of terror” or even a world social contract (1977; 271-4).

freedom of the will is synonymous with the *libido dominandi*, a desire for control of all that might obstruct one's achievement of good. In the work of Saint Augustine, this greedy aspect of the free will could be ennobled or enlightened by revelation, that is, by focusing one's mind and will on a revealed God who grounded all goodness in the world. The charitable love of one's neighbors, regardless of their sinfulness, and therefore regardless of whether they justly deserved that love, flowed from this metaphysical conception of man and the cosmos, and serves as a backdrop that informs much of the modern idea of universal human rights. The inviolability of the human being was justified on the basis of God's love, however, and not – as is the modern case – on the priority of individual liberty.

The modern view turns on the movement away from a universal conception of goodness, to one that is relative to the individual's desire. Consequently, as Charles Larmore put it, the "idea of right gained priority over the idea of good," such that universal moral principles were justified not on the basis of their inherent "goodness," but on their being "right" or correct for a society of individuals. The right reason necessary to ground these moral principles could be found solely in the "universalizable," in maxims that all persons could agree to. The roots of such a Kantian view can be traced back to Hobbes, where society itself sprang from an individuated conception of good, such that the fundamental natural right to all things gave impetus to the social contract (Oakeshott quips that, for Hobbes, "man is, by nature, the victim of solipsism" [59]). That all men could be relied upon to value their own self-preservation was sufficient grounds to bind them together in society.

Inviolable rights, then, without a metaphysical basis beyond the free will, necessarily precede obligations. Obligations themselves spring from the individual's own desire for freedom, or more precisely, from his desire to ensure the enjoyment of as much freedom as can safely be maintained. A society of rights-bearing individuals is sustained on the premise that each individual consents to limit his own absolute freedom so that he may enjoy some freedom (and thus access some goods) without risking his life. Rights begin at the self-imposed limits of the free will.⁷¹ In this light, the idea of the social contract is of utmost importance – only when individuals consent to the limitation of their will (for only individuals themselves can truly limit what they will) are obligations fostered and thus justice arises. The actualization or real protection of rights are therefore rooted in, and logically depend upon, the social contract and the particular society whom it obligates.

Seeing these roots of moral obligations based upon “rights,” there is an interesting affinity between Michael Walzer's own conception of obligations and that of Hobbes – whom Walzer sees as a “moral relativist” (1977; 10-13, 16). In the introduction to his 1970 *Obligations*, Walzer writes that “obligations derive only from consent” and “can have no other origin,” where “I am bound to perform those future acts to which I have committed myself” (x, xii). Admittedly, Walzer's idea of consent – he simply stipulates that consent cannot entail imposition or coercion, and must be spoken – is far narrower than Hobbes' own view, but both seem to share the view that individual choice precedes

⁷¹ Chapter XVIII of *Leviathan* articulates the rights that follow from the social contract – only the natural right of self-preservation can be said to be prior to that contract. Tellingly, only the Sovereign has contractual rights for Hobbes.

obligations (xiv; cf. *Leviathan* xx.10-13). The essential form of justice is the same as well, for it is found in Walzer, like Hobbes, to be in maintaining those obligations people have placed themselves under. Two differences, however, are important to mention. The first is Walzer's conception of the fundamental rights being to life *and* liberty, which more closely associates him with John Locke and Kant rather than Hobbes. Political liberty is not fundamental for Hobbes, and is given at the discretion of the Sovereign.⁷² The second difference is Walzer's assertion of an international justice, one beyond the strictures of each particular society, and rooted in the assertion of universal human rights. As seen in Chapter 1, these human rights are to govern, to some extent, the conduct of states in their interactions with outsiders and other states.

On the account of rights given here, however, the concept of universal human rights appears to be problematic. The idea of human rights necessarily goes beyond the particular society, beyond the social contract in which justice and political rights are grounded. How is justice, in the form of rights, sustained when applied to the whole of humanity? Can rights truly form a "thin" justice or moral code, a morality that can be held everywhere, regardless of language, custom, and culture? The next chapter will attempt to answer these questions by providing an account of justice as it follows from the assertion of liberty as a fundamental right, and the character of that justice when it is applied beyond the particular society from where it originates.

⁷² To be fair to Hobbes, the Sovereign is to limit his laws solely to that which will assure the preservation of the commonwealth, for the preservation of life is the purpose of the social contract. The "silence of the law" leaves potentially large scope for individual liberty in daily life (cf. *Leviathan* xviii, xxi).

Chapter 3: The Universal Application of Liberal Justice

The previous chapter attempted to show that, contrary to the arguments of human rights advocates, such as Michael Walzer and Michael Ignatieff, holding rights to be primary and universal carries with it a particular set of metaphysical assumptions and political implications. In particular, the sourcing of all good in the individual will (i.e., the “good will”), which is to prioritize the right over the good, implied that obligations could only be derived from fundamental rights, and that therefore consent to a particular community could be the only basis for justice and legitimacy. In this light, modern just war theory is particularly problematic, as it argues for obligations that transcend any particular community. While it would be difficult to ascribe the priority of right over the good to Walzer, given his emphasis on the collective determination of the good, his adherence to universal individual rights makes the possibility of that collective decision problematic. As noted in the first chapter, Walzer argued for two sets of obligations – to one’s own and to humanity in general – although both were rooted in universal human rights. Everyone holds the basic rights of “life and liberty” such that justice is found not only in protecting those rights in domestic society, but also in ensuring that they are not violated abroad. Although there is a “thick” morality at home, all morality partakes in a “thin” universal form that transcends all borders and differences. According to Walzer, although rights discourse may be expressive of thick Western morality, one may “assume that it is translatable,” and that thin morality “provides a critical perspective” that can criticize yet not “suggest an alternative” (1994; 10). However, it is unclear to what extent

a thin morality exists, and whether the similarities that Walzer observes between various thick moralities actually implies obligations *across* those communities.

In light of this objection, when Walzer holds out the possibility of human rights acting as a sort of thin morality, as a common moral language, the character of that morality must be set out. The question must be asked: does the idea of human rights carry with it a particular form of justice, and is that form sustainable when applied universally? Is the idea of human rights sufficiently minimal such that any thick morality can be grounded on it? This chapter will argue that the answer is no, on the basis that the idea of human rights entails a very particular form of justice, and Walzer admits that “[c]ivil liberty of the most extensive sort is ... the necessary condition of political obligation and just government” (1970; xiv). Basic liberal principles of justice, such as freedom, equality, and tolerance, naturally flow from the primacy of rights, and perhaps most significantly in regards to just war theory, naturally apply themselves universally, beyond any particular community. This universalization leads to the contradiction of those principles of justice when real obligations are extended beyond a particular political community.

The roots of liberal justice

Although Thomas Hobbes was portrayed as the father of “natural right” in the previous chapter, the character of that right – the right to self-preservation – is certainly not what is aimed for in human rights discourse. Michael Ignatieff spoke of protecting “autonomy,” Brian Orend of “conditions for a minimally good life,” and Michael

Walzer of “life and liberty.” The contrast between Hobbes and these contemporary accounts is starker than it appears at first glance, as Hobbes’ natural right is not even a right to life, but simply to be free to protect one’s own life. A man could be rendered powerless and then killed, but his natural right would never have been violated.⁷³ The right to “liberty,” however, because it justifies a state of being rather than a potential (i.e., for future action), can be violated and can be lost. When Walzer says that individuals have rights to life and liberty that must not be violated, his account is far closer to that of John Locke. How, though, do these accounts – both proceeding from natural rights – arrive at such different conclusions? What differences in Locke’s account leads him to argue for limited government, and popular legislative authority?

In Locke’s great political essay, the *Second Treatise of the Two Treatises of Government*, he begins his account of civil government by denying the divine right of kings. The right to rule – natural or divine – has not been passed down from Adam, the first man. Locke is equally adamant, however, that political power is not rightly derived from the authority of the strong, for that would only amount to constant tumult as the title of strongest is always contested (§1).⁷⁴ In describing the origins of true political power, he follows Hobbes in articulating a “state of nature,” a “state all men are naturally in,” one that is prior to civil government. As in Hobbes’ state of nature, it is one of “perfect

⁷³ Whether such a murder is itself right or not is entirely contingent upon the laws promulgated by the Sovereign (xxi.7, xxvi). In this sense, laws, obligations, and political rights are generated in the Hobbesian commonwealth, but only within the commonwealth, once the state of nature has been exited by mutual contract. The fearfulness of the state of nature is the ultimate basis for civil society, but it is not the sole impetus for the commonwealth’s maintenance and stability.

⁷⁴ All citations from John Locke’s *Second Treatise* refer to the section numbers contained in the original text, while citations from *A Letter Concerning Toleration* refer to the page numbers in *Two Treatises of Government and a Letter Concerning Toleration*, Shaprio, Ian, ed. (New Haven: Yale University Press [2003]).

freedom,” one where each person can act “as they think fit” without “depending on the will of any other man” (§4). Since all enjoy this freedom, the state of nature is also marked by its equality, with “no one having more [power and jurisdiction] than another” (ibid.). However, Locke’s state of nature appears markedly different than Hobbes’, as it is depicted not as a state of “license,” but rather as governed by “a law of nature” that dictates mutual love amongst individuals (§5-6). Men, when reasonable, seek to protect themselves, their liberty, and their possessions, and because they recognize a like-mindedness in others, restrain themselves from taking that of others (§6-7). When necessary, men will temporarily come together to punish transgressors, whose willingness to violate the natural law reveals them to be “dangerous to mankind” (§8).

Locke’s state of nature, however, is deceptive, as Robert Goldwin points out in the essay “John Locke” (478-81).⁷⁵ This is first hinted at in section 6, where Locke describes the obligations of natural law:

Every one, as he is bound to preserve himself, and not to quit his station willfully, so by the like reason, *when his own preservation comes not in competition*, ought he, *as much as he can*, to preserve the rest of mankind, and may not, *unless it be to do justice to an offender*, take away or impair life, or what tends to the preservation of life, the liberty, health, limb, or goods of another. (Emphasis added)

As noted by the italics, Locke’s natural “obligation” to mankind is riddled with caveats that preserve the “life, the liberty, [and] goods” of the individual prior to those of anyone else. Locke goes further, and seeks to distinguish between the state of war and the state of nature (unlike Hobbes, where they are explicitly one and the same).

⁷⁵ Robert A. Goldwin, “John Locke” (in *The History of Political Philosophy*, Strauss, Leo, and Cropsey, Joseph, eds., 3rd edition, Chicago: The University of Chicago Press [1987]; 476-512).

A state of war ensues when someone “attempts to get another man into his absolute power,” for such a desire for complete power can only be understood to be “a declaration of a design upon his life” (§17). There is, then, a fundamental right to self-preservation, “a right to destroy that which threatens me with destruction” (§16). Although Locke maintains that this conflict does not strictly occur in a state of nature, because any such transgression occurs outside the bounds of reasonableness (where reason is the law of nature), it cannot come from a state of civil society. Only where there is “no common superior on earth,” when there is no common power to which someone can appeal when threatened, can a “right of war” be claimed. Thus, even in civil society, if a man is set upon by a robber he may rightly kill that robber “for having stolen all that [he is] worth,” since “the aggressor allows not time to appeal to our common judge, nor the decision of the law, for remedy in a case where the mischief may be irreparable” (§19). A state of war therefore occurs only at that time where “[w]ant of a common judge with authority puts all men in a state of nature” (ibid.). In contrast to the opening pages of the *Second Treatise*, the state of nature is beginning to look less and less hospitable – indeed, it must be inhospitable if civil society is to be adjudged as worthwhile, for if an individual “be absolute lord of his own person and possessions, equal to the greatest, and subject to nobody, why will he part with his freedom”?

Ultimately, the state of nature is untenable for Locke because – similarly to Hobbes – it is fraught with such dangers that the enjoyment of freedom is very uncertain. There are, specifically, three things left wanting in a state of nature: first, a common law by which people – naturally biased towards themselves – can judge what is right or

wrong; second, an indifferent judge who does not privilege one party's interests over another; and third, power to enforce the law (§124-6). Thus, "mankind, ... being but in an ill condition, while they remain in [the state of nature], are quickly driven into society" (§127). However, government is, for Locke, far more limited than it is for Hobbes, since the ultimate end of civil society and the social compact is "with an intention in every one the better to preserve himself, his liberty and property," whereby the "power of the society ... can never be supposed to extend farther than the common good; but is obliged to secure every one's property" (§131). Writing in *Natural Right and History*, Leo Strauss points out that, at bottom, Locke's disagreement with Hobbes is that self-preservation requires limited, not absolute, government (229). Accordingly, Locke clearly sets out a broader conception of the fundamental rights of the individual, for in addition to the preservation of life, he also demands the protection of liberty and property. For him, simple life is an insufficient basis for civil society – only by possessing the liberty to acquire property can life be sustained and lead to happiness.

The term "property" has a general sense in Locke's writing; he includes "life, liberty, and estate" within that term. All three are regarded as rightful possessions of individuals, whether in nature or civil society, and all are the basic requirements for achieving any happiness. Using the example of consuming a fruit, Locke argues that a thing must become the property of an individual, such that "another can no longer have any right to it," for it to do him any good (§26). A person extends his property through the exertion of his labor, thus joining what is given by nature with what is his own; through labor a person distinguishes what is his own from what is held in common (§27-

8). Like Hobbes, the value of something is not given by nature, but by what is added to it, according to the individual's desire (§40, §42). In the state of nature, the limits of an individual's labor and possible enjoyment of things limited his property; while there was plenty on earth, there was little reason for conflict (§36, §39). However, because of the productive, value-adding, capacity of humans, "land that is left wholly to nature, that hath no improvement of pasturage, tillage, or planting, is called, as indeed it is, waste" (§42).⁷⁶ Civil society is entered into to allow men to make the most of their property, of that given by nature: "the chief and great end, therefore, of men's uniting into commonwealths ... is the preservation of their property" (§124). Strauss describes this (literally "central") teaching of Locke as his most "characteristic," that is to say that all his other political teachings stem from this core argument (1953; 234).

The political ramifications of Locke's concept of property and value are very significant, since a particular form of community is required for the individual, and mankind in general, to make the most of these productive capacities or means for improving "the conveniences of life." Self-preservation is not simply the preservation of life, but ownership of what is required for life, and thus also the liberty necessary for acquiring and developing that property (§23). As a consequence of this expanded conception of what is part of the individual by right, Locke is dedicated, far more than Hobbes, to liberty as a principle of civic justice.

⁷⁶ However, since the improvement of land necessarily gives it more value, and thus more an object of envy for others, it makes the state of nature even more dangerous to "industrious and rational" men (§34, §39-40). Strauss suggests that because of the attachment of value to the acquisition of property, and the "improvement" of land, "men enter society in order not so much to preserve as to enlarge their possessions," and that civil society allows acquisitiveness without obstruction (1953; 245-6).

Freedom as right

In the work of classic liberal thinkers, such as John Locke, a distinction is drawn between natural and civic freedom. Indeed, for freedom in civil society to be considered qua freedom, a state of perfect freedom – such as in nature – must be posited by which the civil version can be contrasted against. In this sense, “natural freedom” is freedom simply. While “natural” or “absolute” freedom is in practice quite different from freedom in civil society, from civic liberty, it is essential to note that the latter takes its bearings from the former. Locke writes of the “natural liberty of man” as one where he is “free from any superior power on earth,” such that he has “only the law of nature for his rule” – that is to say, reason (§22). Once in civil society, however, once man is placed under a “superior power” or “legislative authority,” he is understood to be free insofar as that society is an expression of his will (and of true reason), and thus a product of consent (*ibid.*). Civil freedom acts as a simulacrum of the absolute freedom that exists in a state of nature; it is regarded as a reasonable compromise of natural freedom so that life (and some freedom) can be preserved. Therefore, the social contract – an act of mutual consent – is a necessary fiction if freedom is to be the fundamental principle that governs the possibility of value and goodness in life.

When freedom is asserted as a natural or universal right, that is, prior to society and the foremost motivation for society, a very particular sort of life, civil society, and politics, is implied. As noted in the previous paragraph and in the preceding chapter, consent and contractualism are concomitant with the assertion of the priority of right. If this is the basis of politics – if politics is principally aimed at the protection of a space for

individual liberty – it is difficult, if not impossible, to imagine the justification of any sort of authoritarian rule. Much of the *Second Treatise*, for example, is dedicated to sketching out the basis of all government in the will and mutual consent, and therefore authority, of the people (cf. §134). Monarchy can be legitimate only insofar as it is responsible to the popular legislature, that is to say, government is limited by the will of the people as expressed in some sort of popular body (§149-52). Any sort of action by the executive to shirk this accountability is tantamount to tyranny, and makes the government liable to rebellion, although the legislative itself is restricted – by the social contract or rather the basic natural rights of its citizens – as to what it may rightfully demand (§135-142). Thus, the assertion of freedom as a fundamental principle – a necessity of natural right – clearly tends towards some form of democratic government.

John Stuart Mill, in his famous 1859 essay *On Liberty*, goes further than Locke in drawing out the political implications of the assertion of freedom as a fundamental principle.⁷⁷ In the “Introductory” to the essay, Mill describes a brief history of liberty, from the ancient Greeks to the Enlightenment and the development of nationalism, where “the nation did not need to be protected against its own will” since the interests of government and people coincided (3). This development of nationalism, where the ruler’s power “was but the nation’s own power,” erred, for even in democracies, unlimited nationalism was nothing but tyranny of the majority:

The will of the people ... practically means the will of the most numerous or the most active *part* of the people; the majority ... *may* desire to oppress a part of their number[.] (4)

⁷⁷ John Stuart Mill, *On Liberty* (Castell, Alburey, ed., New York: Appleton-Century-Crofts [1947]).

The freedom of the individual must be protected, Mill argues, not only against “the magistrate,” but also against “the tyranny of the prevailing opinion and feeling,” which prevents the development of the individual. Above all, because “all that makes existence valuable to any one” depends on enforcing restraints on others, there must be strong laws protecting individual freedom, particularly the freedom of thought or opinion. There must be “absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological” (12). Mill focuses on the freedom of opinion and its political correlate – free expression – since he believes them to be necessary conditions for truth and the surety of belief required for living a life that is truly one’s own. Indeed, he echoes Locke when he says that “the only freedom which deserves the name, is that of pursuing our own good in our own way,” although this depends on the assumption of moral progress, such that the good pursued will be amenable to the preservation and betterment of society (*ibid.*).

This conception of individual freedom demands a very particular society, one where any sort of custom or dogma cannot go unchallenged, especially in public, entailing restrictions on any groups (particularly the majority) that may stifle open discussion. In fact, even the education of children as citizens “should not turn on the truth or falsehood of opinions, but on the matter of fact that such and such an opinion is held, on such grounds, by such authors, or schools, or churches,” since “[a]ll attempts by the State to bias the conclusions of its citizens on disputed subjects, are evil” (109). Once again, a society grounded on the principle of freedom, on the inviolability of the rights of the individual, necessarily entails that society and government be at least minimally

arranged so as to avoid any unnecessary impingement on its citizens' freedom. However, it must be noted that while the idea of human rights necessarily implies a politics of freedom, the converse is not necessarily the case, since Mill's focus on political freedom is not wedded to rights; the future author of *Utilitarianism* explicitly eschews the idea of rights so as to make an argument that can stand on utilitarian interests alone (10).⁷⁸

The dedication to freedom seen in the writings of Locke and Mill is also present in Kant's political writings, which highlight the dependence of all civic justice on that fundamental principle. As noted in the previous chapter, Kant's defense of political freedom proceeds from a metaphysical freedom that he believes necessary for the achievement of a coherent moral system. In *The Metaphysics of Morals*, Kant describes this freedom in his account of the autonomy of the will, where the rational will is freed from heteronomy, or conflicting influences such as corporeal desires.⁷⁹ Only an autonomous will can truly will a moral law as a law; that is, a person can only legislate themselves, give themselves moral rules, if those rules are the product of an autonomous – not heterogeneous – will. This leads to the idea of “pure right,” since any appeal to a prior obligation is to corrupt the autonomous will (134-5). More explicitly political, the idea of a state of right is paramount for Kant, since he regards it as that state where pure right can exist and be fostered, where a people can together will a universal maxim that underlies law (136).

⁷⁸ Mill writes: “I forgo any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions” (10).

⁷⁹ *The Metaphysics of Morals in Political Writings* (Reiss, Hans, ed., Nisbet, H.B., transl., second edition, Cambridge: Cambridge University Press [1991]; 131-75).

Politically, Kant closely resembles other liberal natural right theorists. Like Locke, all subsequent right, following the right of freedom, emanates from the legislative branch of government, which is the “united will of the people” (139). The maintenance of a united will, where each citizen can will at once what other citizens will, requires particular protections. Kant describes three specific “attributes which are inseparable from the nature of a citizen,” and are clearly derivable from the fundamental postulate of freedom that he believes necessary for human beings to operate under a moral law. First, a citizen possesses a “lawful freedom to obey no law other than that to which he has given consent.” Second, that citizen has a “civil equality in recognising no-one among the people as superior to himself.” Third, the citizen has a “civil independence,” such that he does not owe his existence or sustenance to another’s “arbitrary will, but purely to his own rights and powers” (139). These “attributes” of the citizen are rights (Kant refers to them as “rightful attributes”), as they are the basic, inviolable, properties required for any sort of legitimate government. While each is different, it is evident that they are all derived from the basic requirement of freedom, and seek to allow for the autonomy of the individual required for moral law. In keeping with the account of rights given in the previous chapter, Kant describes freedom as the sole original right that is therefore the originator of all other rights (136). Kant’s three basic “attributes” or rights will serve to structure the account of justice given here. The first, the requirement of consent, has already been dealt with, while the second and third will be respectively discussed as “equality” and “tolerance.”

Equality as right

Both Hobbes and Locke insisted upon the strict equality of people in the state of nature – by virtue of their natural character, all being physically frail and desiring of “happiness” (or simply physical security), all people are equals. Precisely because of this natural equality, human beings are driven into society, as none have such a clear advantage that they would be disadvantaged by living in civil society. However, as the purpose of the social contract is to ensure a modicum of freedom for each individual, a basic equality in civil society is also asserted. Every citizen must possess the “freedom” necessary for consent if the idea of the social contract is to be plausible.⁸⁰ As such, each person is equal in their right to freedom, and equality is derived from the principle of everyone being free; in *John Locke’s Liberalism*, Ruth Grant writes that liberalism is governed by this relationship between freedom and equality, since “men are equal in the sense that they are by nature free” (1; cf. Locke *Second Treatise*, §4).⁸¹ In this vein, Kant insists that citizenship is concomitant with a “civil equality in recognising no-one among the people as superior to himself.” For him, to claim that there exists a superior in society is to posit that there is someone worthy of being obligated to, which is contrary to the *a priori* freedom (freedom of the will) necessary for adherence to the moral law. Following Kant, H.L.A. Hart argues, in “Are there any natural rights?,” that to posit any right is to posit the natural right – possessed by all – of freedom: “if there are any moral

⁸⁰ For liberal theorists, truly consensual obligation in the form of a contract depends on this equality of freedom, and as such forms the essential basis for an individualistic rights-based society. Edward Andrew writes: “The bond of the rights-based society ... is based not on charitable duties, shared loves, or common attachments but on individuals’ ability to keep promises or to honour their contractual obligations” (1988; 50).

⁸¹ Ruth Grant, *John Locke’s Liberalism* (Chicago: University of Chicago Press [1987]).

rights at all, it follows that there is at least one natural right, the equal right of all men to be free” (175).⁸² The very essence of a right as a claim is to legitimately limit another’s absolute freedom, and thus delimit the bounds of one’s own freedom with regards to the matter of that right (in the sense of Roman *dominium*); it claims that a person has complete freedom that cannot be legitimately interfered with (178, 182, cf. 187-8). All moral rights are “particular exemplifications” of the initial right to freedom, and depend on the equality of the rights-bearers (176n3, 190-1).

The actual character of the equality necessary to preserve (and limit) freedom has been articulated in various ways, such as equality under the law, equal distribution of rights, equality of opportunity, and even equality of property or income.⁸³ Despite these various permutations, where some or all may be demanded in a particular society,⁸⁴ equality nonetheless remains a necessary component of liberal justice. Without balancing the liberties enjoyed by individuals, it is always possible to level accusations of one’s own liberty being impinged by another’s liberty. This problem is the same found in Hobbes’ and Locke’s states of nature, where each person is equal in the sense of their natural powers or capacities, and yet entirely unlimited in their desires, which requires the corrective of civil society if some of these desires are to be enjoyed securely. Indeed, the principle of equality is the limitation of absolute freedom that is necessary for society – without it, the ideal of freedom becomes meaningless, that is to say it degenerates into a

⁸² H.L.A. Hart, “Are there any natural rights?” (*The Philosophical Review*, vol. 64, no. 2, Durham: Duke University Press [April 1955]; 175-191).

⁸³ Locke ruled out the possibility of seizing or equalizing property without consent, since he did not believe that the possession of property could ever encroach on another’s preservation (*Second Treatise* §139).

⁸⁴ See, for example, the debates surrounding freedom, and whether the provision of minimal material equality is necessary to that freedom, in *Liberty, Equality, and Plurality* (May, Larry, et al., eds., Lawrence, Kansas: University Press of Kansas [1997]).

bare contest of wills that threatens the very basis of liberal society. Hart's definition of "the concept of a right" is instructive:

[It] belongs to that branch of morality which is specifically concerned to determine when one person's freedom may be limited by another's and so determine what actions may appropriately be made the subject of coercive legal rules. (177)

Consequently, as Grant points out, equality under the law is a formal necessity for liberalism (although not necessarily the case in practice), since political rule must be made compatible with individual freedom, and "[l]iberalism finds that compatibility in equal subjection to reasonable laws" (5). Indeed, for Locke, equality under the law is the essence of liberal equality – although the law is to be founded on respect for the common good, and may punish those who would seek exception (190).

Furthermore, the principle of equality opens up the possibility of inclusiveness in civil society. As the assertion of natural right is based on the freedom of the will found in every human, which is concomitant with the capacity for reason and rational thought, there are few theoretical barriers to citizenship and free participation in society. Although certainly subject to political contingencies, there is an undeniable movement in liberalism towards the political liberation of various groups. Slavery is abhorred (*Second Treatise* §22-4). Women are seen as equals, as patriarchy is increasingly seen as an impediment on their freedom. Locke argues for the property rights of women, as they have a share in the household (§64, §183). This informs Locke's own conception of the just war, as the prerogative of the conqueror is limited by the natural rights of individuals who have not consented to war – namely the rights of women and children, including the right to property (ibid.). In *The Subjection of Women*, Mill argues for a complete equality

of rights between the sexes, including, but not limited to, the granting of property rights to women.⁸⁵ The most radical of Mill's proposals was the extension of equal rights to women in matters of marriage, particularly in terms of obedience and the control of property (51-4). This serves to highlight the pervasiveness of the ideal of freedom and equality, as it penetrates all aspects of life with a particular effectiveness when it is conceived of as a natural right that is bound up with the capacity for reason. Not just property holding men, but women too, "are free to employ their faculties, and such favorable chances as offer, to achieve the lot which may appear to them most desirable" (22). Reason, claims Mill, must not be a justification of social hierarchy, but evidence of an inherent equality that allows for real emancipation from debilitating conventions (17-19, 23). Equality is necessary to the achievement of freedom and justice.

As intimated, the conception of justice implied by the idea of natural rights is necessarily founded on the right to liberty, which logically implies a basic equality. Thus, justice is the preservation and respect of individual freedom and equality. However, both freedom and equality can only be understood as rights rather than obligations – to assert an obligation or imperative to "be free" or "be equal" would contradict the very primacy of freedom and free choice. What, then, is the form of obligation to others that follows from these rights? Earlier, it was discussed how obligations under the aegis of "right" ultimately stemmed from the individual's self-regard, from their desire to protect life. Yet, if the natural right is to also include liberty,

⁸⁵ John Stuart Mill, *The Subjection of Women* (Buffalo: Prometheus Books [1986]).

as it is with Locke, the preservation of that right requires the toleration of the rights of others.

Tolerance as obligation

Given the principle of freedom that underlies the concept of universal or natural rights, there is an undeniable relation between the derivative principles of equality and tolerance. Toleration is necessary to any society founded on freedom of the individual, which includes any society that admits to human rights of “life and liberty,” as Walzer puts it. In terms of what has been laid out in the preceding pages, the principle of toleration can be seen as the first explicit principle regarding moral behavior in liberalism, the first principle of how an individual is to act in relation to his or her fellows, and thus the first obligation. The toleration of the beliefs of others is the practical actualization of the equal distribution of freedom. As noted in the brief discussions of freedom and equality, the principle of freedom alone cannot sustain a political community, as there must be limitations and a common sense of what is permissible, or at least, of what is condemnable. If the freedom of the individual is to be ensured in society, there must be an overarching toleration of different “life paths,” different assertions of good – yet at the same defining the “good” in terms of maximizing individual freedom.

As a case in point of defining the limits of freedom in liberal society, Locke’s *A Letter Concerning Toleration* highlights a number of particular implications that stem

from the basic principle of toleration.⁸⁶ Principally concerned with religious toleration, Locke sought to allow for the peaceful coexistence of the numerous Protestant churches, as well as level an attack on the religious persecutions undertaken by the Catholic Church (Locke asks “Why then does this burning zeal for God, ... and for the salvation of souls[,] ... pass by those moral vices and wickedness, without any chastisement ...?” [216]). The defense of religious toleration in the *Letter* closely coincides with the arguments of *The Second Treatise*, as the conception of the individual in the latter forms the basis for the political recommendations in the former. John Dunn observes, in “Measuring Locke’s Shadow,” that without an individual responsibility in religious matters, without freedom from the coercion of religious “authorities” (particularly Papal authority), government could not legitimately be founded on consent (275).⁸⁷

The character of such an individualized religious belief and practice is distinctly Protestant, or not Catholic, as the relationship with God is, at core, a personal one, without the necessary mediation of an earthly authority. Ultimately, faith in God and Christ is upheld through the individual will and confirmed by the individual’s reason (219-20). Consequently, the scope for religious practice outside of this personal and theoretical experience is curtailed in order to maintain the freedom of each member of society. Dunn argues that because of Locke’s conception of the individual and the limits of authority, religious beliefs,

[a]s soon as, or insofar as, they merge with practical beliefs, beliefs which clearly do prompt or even require their bearers to act very differently, and

⁸⁶ John Locke, *A Letter Concerning Toleration* (in *Two Treatises of Government and A Letter Concerning Toleration*, Shapiro, Ian, ed., New Haven: Yale University Press [2003]).

⁸⁷ John Dunn, “Measuring Locke’s Shadow” (in *Two Treatises of Government and A Letter Concerning Toleration*; 257-85).

act in ways which do threaten the vital interests of others, that immunity [against civil coercion] lapses. (276)

For Locke, the maintenance of this private sphere mandates a strict division between church and state; if individuals are obligated by coercion, perhaps by fear of persecution, to obey the dictates of law, it cannot be maintained that they freely consent to those laws (217; cf. Dunn 273-4).

This desire to protect the idea of the social contract underlies Locke's suspicion of Catholics, as they are not only guilty of persecuting others for their religious beliefs, but also of pledging obedience to an external political (Papal) authority. Only the laws of a government founded on consent can truly bind its members, while ecclesiastical authority is ultimately in the hands of a God who has a personal relationship with man:

Ecclesiastical authority, whether it be administered by the hands of a single person, or many, is every where the same; and neither has any jurisdiction in things civil, nor any manner of power of compulsion. (249)

In this respect, Locke seems to agree with Hobbes' assessment of the problem of "two sovereigns" (*Leviathan* xix.3, xx.4; cf. xxvi.41). While it appears that Locke is ensuring that the state does not interfere in the freedom of the individual, he is also reducing the possibilities of religious practice to a point where they cannot have any political influence.⁸⁸ By demanding toleration at the individual level, it is the civil magistrate as appointed by consent of citizens that determines the bounds of religion.

Mill's *On Liberty* is also particularly concerned with the toleration of a plurality of religious beliefs, as religion is seen as one of the things an individual perhaps holds on

⁸⁸ Locke writes that any "church can have no right to be tolerated by the magistrate, which is constituted upon such a bottom, that all those who enter into it, do thereby, *ipso facto*, deliver themselves up to the protection and service of another prince" (*Letter* 245).

to most dearly, and is most characteristic of different ways of life. However, the incredible power of religion over “the formation of moral feeling,” and subsequently over “every department of human conduct,” demands that it be reigned in if the liberty of individuals, particularly the freedom of thought that is most akin to true freedom, is to be protected (8, 12-13). Mill, in a way not entirely foreign to Locke, drastically limited the possibility of a religious sect assuming real political power by adhering to a utilitarian principle that only justifies the limitation of another’s freedom when it causes physical harm (9). However, tolerance need not be understood strictly as a principle of utility, and both Locke and Mill understand it as a product of both reasonable citizenship and prudent statecraft. For the purposes of this essay, it must be emphasized that the principle of toleration is necessary to any society founded on the freedom and consent of the individual, and this therefore includes any society that admits to human rights of life and liberty.

The “minimal” nature of human rights therefore appears to include far more than writers such as Ignatieff and Walzer suggest – if human rights are to exist as rights that are truly universal, fundamental, and inviolable, they necessarily carry with them a specific conception of justice as enshrined in principles of freedom, equality, and toleration. This stems from the necessary conception of the natural rights-bearer as the source of any possible goodness in their lives, since “good” must be decided through action of the individual will; any interference with the individual therefore violates the

possibility of them freely, and thus truly, achieving a good life.⁸⁹ Certainly, then, to build a society around, or act upon, the protection of fundamental human rights is to enshrine a very particular relationship between the individual and government, one that strictly delimits the character of political authority and legislation, and is therefore not necessarily held or even accepted by other political communities. Hart points out that the idea of rights exists in a tenuous relationship with non-rights based moral codes (176-7), and indeed, in keeping with the argument of the previous chapter, the idea of rights asserts a place of primacy when it exists in any moral system, for it forms the exception to other obligations (178). Human rights, properly understood as natural rights, dictate the limits of all other moral discourse.

The discussion of religious toleration was particularly relevant in this regard, as the implication of asserting individual freedom in religious matters, such that “the care of souls cannot belong to the civil magistrate,” is a particularly powerful illustration of the potential incommensurability of certain religions and even societies with the concept of human rights (Locke *Letter*; 219). Consequently, there is a significant literature that deals with the possibility of reconciling human rights with the politico-theological demands of “non-secular” or “communitarian” societies, such as those governed by Islam.⁹⁰ The idea of natural rights, of “life and liberty,” underlies human rights, and is

⁸⁹ For instance, Kant argues that for an individual to regard anything as good, he must be capable of freely choosing that thing or course of action – he must have a pure, autonomous will (*Groundwork* 3-4).

⁹⁰ Abdullahi A. An-Na'im identifies the reluctance of human rights groups to openly oppose Shar'ia law and Islamic groups as one of the fundamental obstacles to the growth of the human rights movement in Arabic nations (“Human Rights in the Arab World: A Regional Perspective,” *Human Rights Quarterly*, vol. 23, Baltimore: The John Hopkins University Press [2001]; 729). He concludes that “the present weakness of Arab civil society and the human rights movement is due to deep-rooted and entrenched structural and cultural factors that cannot be changed in the immediate future” (732). More forcefully, Bernard Lewis

inextricably bound up in a liberal political philosophy that, while it may lay claim to universality, is certainly not universally established.

Universalizing liberal justice

One of the principal problems encountered by human rights arguments is the plurality of moral visions, ways of life, that exist in different political communities – the very pluralism those rights seek to protect by extolling the human right to liberty. This speaks to arguments of “moral relativism,” which David Welch notes have a significant role to play in international conflicts, as what is right or just is often understood quite differently across cultures, with dramatic consequences (194-7).⁹¹ “Human rights” is not the “thin” morality it is claimed to be by Walzer – to conceive of individuals as rights-bearers is to draw on a rich history of political thought which depends on the priority of right over good (as a result of the individual’s free will being necessary for the achievement of any goodness), and subsequently implies a society based on the social contract and individual consent, which, in turn, are to protect the individual’s life, liberty, and property. In “Human rights, natural rights, and Europe’s imperial legacy,” Anthony Pagden similarly argues that proponents of human rights, in their deference to “pluralism” and the right to “liberty,” are reluctant to acknowledge the history of the

claims that the unwillingness of Islamic nations to clearly separate civil and theological authorities prevent their full inclusion into, and full benefit from, the liberalization that accompanies globalization (“The Roots of Muslim Rage,” *The Atlantic Monthly*, Washington: The Atlantic Monthly Group [September 1990]; 47-60). See also Ernest Gellner, *Conditions of Liberty* (London: The Penguin Group [1994]), and Omar Siddiqui, “Relativism vs. universalism: Islam and the human rights debate” (*American Journal of Islamic Social Sciences*, vol. 18, no. 1, Herndon, VA [Spring 2002]; 61-78).

⁹¹ David Welch, *Justice and the genesis of war* (Cambridge: Cambridge University Press [1993]).

concept of right, and its place at the core of modern Western culture (171-3).⁹² Human rights are based on a thoroughly liberal political philosophy that, while it claims universality, cannot ultimately *be* universal because it is a “thick” morality which cannot be coherently universalized to all states at all times.

As discussed above, freedom alone cannot be basis of community, as that would lead to tyranny or anarchy – a state of nature and possibly war. Justice, according to a rights-based morality, can only truly arise from the extension of freedom to others, according to the necessity of mutual respect founded in reason (the near-universal fear of violent death). On the premise of a universal right possessed by all, there is an undercurrent that suggests the possibility of the greatest freedom being achieved through the realization of a world state, of a society where all would be obligated to respect the universal rights of all others. Driving such an impetus is the obligation suggested by the principle of tolerance, as it is the principle necessary for the mutual protection of freedom. Interestingly, although tolerance clearly attempts to negotiate between possibly discordant wills and to limit their claims to dominance, such a principle is itself a claim to dominance or ultimacy, assuming a position as the highest principle governing the interaction of individuals. People are tolerated insofar as they do not threaten the freedom of others, where freedom can potentially be defined in a very broad sense.

In this sense, what is classed as intolerant is discriminated against, and because of the possibility of the actual content of “freedom” changing, the limits of toleration can also change. The classical connection between freedom and reason, for example, where

⁹² Anthony Pagden, “Human rights, natural rights, and Europe’s imperial legacy” (*Political Theory*, vol. 31, no. 2, London: Sage Publications [April 2003]; 171-99).

reason was often defined in close association with the capacity for the rational, scientific, procurement of goods and the manipulation of nature, generated a paternalistic intolerance for the “barbaric” cultures of the undeveloped “savages.” Pagden argues that,

Despite the ... insistence [of Hobbesian natural rights theorists] that any peoples could be said to be observing the natural law if they lived in societies which provided the minimum necessary protection, it remained the case that very few societies could, in fact, provide this (184)

Such justifications, in the good conscience that their actions were benefiting mankind, could be seen in cases such as the conquests of the Americas, India, and the 1852 opening up of Japan to international trade by American warships. Certainly the thesis of barbaric irrationality has been discredited over the years, although perhaps out of the closely associated sentiment that that thesis violates the freedom of “undeveloped” peoples. Consequently, the modern human rights movement has been directed against the “oppressive” and “illiberal” nature of various regimes.⁹³ Indeed, liberalism demonstrates a certain antipathy to non-liberal regimes, spurring a strong association of democratization with the human rights movement, and the positing of a “democratic peace theory.”⁹⁴

However, based on the account of natural rights and liberalism presented here, an inconsistency in liberal theory arises due to the limitless universalization of these moral

⁹³ See, for instance, Nazila Ghanea, “Human Rights of Religious Minorities and of Women in the Middle East” (*Human Rights Quarterly*, vol. 26, no.3, Baltimore: The John Hopkins University Press [2004] 705-29).

⁹⁴ Anthony J. Langlois contends that “[d]emocracy should remain on the agenda of human rights proponents the world over, because without it human rights cease to be rights, they become attractive but ultimately optional norms or standards. ... Without democracy, human rights are at the discretion of the sovereign, and thus not rights at all” (“Human Rights without Democracy?” in *Human Rights Quarterly*, vol. 25, Baltimore: The John Hopkins University Press [2003], 1019). For an account of democratic peace theory, see John M. Owen, “How Liberalism Produces Democratic Peace” (*International Security*, vol. 19, no. 2, Cambridge, MA: The MIT Press [Fall 1994]; 87-125).

claims. The civic principle of toleration is just that – civic – since, without a prior obligation in the state of nature, such as through natural or divine law, the idea of toleration operates only under the auspices of the social contract. That is to say, to attribute the possibility of an obligation to another with whom no contract exists is to contradict the premise of pure individual freedom and inviolable right upon which the social contract is grounded. This can also have the effect of absorbing them into the social contract – to take them out of the state of nature and place them in civil relations with oneself – without consent. In relation to the principles of justice in liberalism, this is a form of intolerance towards that person’s chosen way of life. Indeed, the social contract is the only delimiter to the universalization that stems from the premise of natural freedom. Hobbes, Locke, Kant, and Mill all insisted on an international pluralism, where the lack of a common authority prevented tyranny by an authority that had not been consented to. As such, they considered states to exist in a state of nature with one another.⁹⁵ International “justice” thus hinges upon the protection of state sovereignty and self-determination.

While it is tempting, in light of international pluralism, to ascribe a moral conventionalism to liberalism, this is far from being the case. Contrary to the argument of R.E. Ewin in *Liberty, Community, and Justice*, that “all rights are social rights” (Ch. 3), natural rights in liberal thought are universal and possess moral force precisely

⁹⁵ Cf. Hobbes, *Leviathan* (xxx.30); Locke, *Second Treatise* (§145-6, 176); Kant, *Idea for a Universal History with a Cosmopolitan Purpose* in *Political Writings* (47); and Kenneth E. Miller, “John Stuart Mill’s Theory of International Relations (*Journal of the History of Ideas*, vol. 22, no. 4, Pennsylvania: The University of Pennsylvania Press [Oct/Dec 1961], 496-7).

because they are natural and prior to convention.⁹⁶ As seen in the works of Hobbes and Locke, natural rights in the state of nature exist without any concomitant obligations as they do in civil society – the fearfulness of the state of nature is exacerbated precisely because of this, because these natural rights cannot be adequately protected.⁹⁷ To assert that all rights are merely the products of convention and depend on positive law is to lose the essence of rights, for their special power is to exist as a terminus to moral disputation, to draw a precise line of inviolability. Following this, rights qua human or natural rights, must be prior to society and all other obligations;⁹⁸ to argue otherwise is to admit that they can be violated by consent, majority decision, or any other mode of supposedly legitimate action.

Charles Beitz, in “What human rights mean,” is guilty of this mistake when he contends that conceiving of human rights as natural rights should be jettisoned in favor of “the rights of global justice,” where “rights” are empowered by something not innate to the human being. However, at this point, human rights cease to be the highest “normative standards” he envisions them as being.⁹⁹ Ewin also seems to miss the point when he asserts that “[r]ights can operate in this definitive way, when there are disputes between people, only if they are settled and agreed on by the community in which the

⁹⁶ R.E. Ewin, *Liberty, Community, and Justice* (Totowa, NJ: Rowman & Littlefield [1987]).

⁹⁷ Richard Tuck maintains that Hobbes did not conceive of self-preservation as a duty because to do so would admit of a prior obligation (such as on the basis of natural law) that would thus render his state of nature “impossible” – it would not necessarily be a state of war composed of radically solipsistic individuals (130-1).

⁹⁸ For Simone Weil, this is one of the reasons she holds the concept of “rights” in such contempt. People are “obligated” to each other solely on the basis of their own desire for freedom or self-preservation, rather than on the basis of their sacred, “impersonal,” nature (1986; 55-6). See also Edward Andrew, “Simone Weil on the Injustice of Rights-Based Doctrines” (*The Review of Politics*, vol. 48, no. 1, Notre Dame IN: University of Notre Dame Press [Winter 1986]; 60-91), especially 71-5.

⁹⁹ Charles Beitz, “What human rights mean” (*Daedalus*, vol. 132, issue 1, Cambridge MA: The MIT Press [Winter 2003]; 36-47).

dispute occurs” (41). While this is entirely true in the case of civic rights, as guaranteed by law and force, to say that rights only exist insofar as they are protected is to presuppose something prior to rights, an obligation that justifies their protection (i.e., to a civil authority or law, natural law, or divine law).¹⁰⁰ This is why Hobbes, as noted in the previous chapter, insisted on the natural right being inviolable at all times; because a right is a claim, its force does not depend on the actual possession of its object. Contrary to Ewin’s argument, to possess a truly foundational or inviolable right – a human right – cannot be synonymous with its successful “operation,” whether it is by being “allowed” to possess that right, or having the power to protect it (42). Human rights are necessarily natural rights.

As seen earlier, however, the liberalism that follows from the assertion of natural rights stands in a peculiar relationship with international pluralism. Liberalism both affirms and struggles against it, precisely because of the assertion of a natural, universal, right to freedom. When one’s moral obligations are derived from this right and thus involve a commitment to “freedom” generally, there is a clear moral universality that seeks to overcome international pluralism. The Universal Declaration of Human Rights is an affirmation of the universality inherent to liberalism, which becomes problematic when confronted with international pluralism.

In this context, Carl Schmitt’s *The Concept of the Political* provides a useful account of this tension within liberalism, as he saw an inherent problem in any claims to

¹⁰⁰ Tellingly, for Hobbes, it is only the Sovereign’s rights that are limited by power. He has rights over his subjects only so long as he is able to protect them. This is precisely because those rights are derived from convention, from the consent of the subjects, and are therefore not natural or fundamental (*Leviathan* xxi.21).

speak and act on behalf of “humanity.”¹⁰¹ “Humanity as such,” wrote Schmitt, “cannot wage war because it has no enemy,” and any claim to act on behalf of humanity is guilty of trying “to identify itself with humanity in the same way as one can misuse peace, justice, progress and civilization in order to claim these as one’s own and to deny the same to the enemy” – hence, claims to universality are a “useful ideological instrument of imperialistic expansion” (54). Schmitt argues that liberalism is one such claim to universality, where its ulterior, imperialistic motive is to subjugate politics and ethics to the economic field, and serve the bourgeois desire for the peaceful enjoyment of property (61-3). For him, this is contrary to the essence of politics, which is the existential experience of the distinction between friend and enemy; politics is deciding who is one’s enemy, who is to be feared and combated against (26-7). On this basis, he claims that the demand that a citizen sacrifice his life “is in no way justifiable by the individualism of liberal thought” (71). This seems dubious, however, simply in light of the experience of the Second World War, where much was sacrificed in the name of individual freedom. Yet, ironically, this serves to affirm Schmitt’s larger argument that claims to universality, such as the claim to universal freedom and “securing the conditions for liberty,” struggle against an international plurality of states and must fight a war to end all wars (55). This tendency towards some sort of “world state” or a truly universal “league of nations” aspires to take away the right of war from all political communities. To maintain universality, however, Schmitt argues that such a world state could not become a global “Leviathan,” since to assume the right to war itself would be to admit the existence of an

¹⁰¹ Carl Schmitt, *The Concept of the Political* (Strong, Tracy B., ed., Schwab, George, transl., Chicago: The University of Chicago Press [1996]).

enemy, which contradicts the initial claim to universality, to speak on behalf of humanity. Anything else would amount to a world tyranny. This pacifistic world state could only “loosely [be] called a state” according to Schmitt, and would require such a flattening equalization of every individual that it would seem impossible for it not to break apart into a plurality of states (57).

These possible contradictions did not escape the liberal thinkers examined in this essay, as both Locke and Kant also ruled out the possibility of a world state. Kant, perhaps because of his strict conception of freedom (as autonomy of the will), saw this potential contradiction between universality and freedom and insisted, in *Idea for a Universal History with a Cosmopolitan Purpose*, that a world state was unattainable and contrary to freedom. He argued that world peace was achievable only in the form of an international federation, a plurality of republican states that, because of their reasonableness, would band together to punish those states who threatened peace (47-8; cf. *Metaphysics of Morals* 170-1).¹⁰² This does not entirely deflect Schmitt’s criticisms, however, particularly with the possibility of recalcitrant states being punished as enemies to humanity, as criminals are in Locke’s state of nature: “[they are] destroyed as a *Lion or a Tiger*, one of those wild Savage beasts, with whom Men can have no Society nor Security” (*Second Treatise* §11). Schmitt describes such a war as an extermination that is itself an inhuman endeavor, contradicting any pretense to a higher moral position. It is at this very point that liberal justice would refute itself, although war is not required for this self-refutation – the violation of freedom is sufficient.

¹⁰² Cited in *Political Works*.

The process of such a “liberal imperialism,” of establishing a government that rules the world under one set of laws, one idea of “justice,” necessarily involves violating the freedom of other nations should they not consent, and thus engaging in a form of intolerance. The possibility of engaging in a paradoxical “war for rights,” of invading other nations and forcing them to be free, exists by virtue of the universalizing tendency of the ideal of freedom, although this is counter to the political philosophy of liberals such as Locke, Kant, and Mill.¹⁰³ In this way, the practical difficulties of establishing a global human rights regime (such as lack of cooperation by various states) are accompanied by a theoretical contradiction of the essence of liberal justice. It is quite possible that this conception of justice by which liberal Western regimes govern themselves informs their reluctance to force compliance with human rights doctrines.¹⁰⁴ The principle governing foreign affairs for Hobbes, Locke, and Kant, where nations face each other in a state of nature, must always be self-preservation, preferably achieved peacefully – the purpose of state demands it.¹⁰⁵ However, there does remain an

¹⁰³ Michael Ignatieff, in “Human Rights, the Laws of War, and Terrorism,” recognizes that “human rights is inherently a pacifist doctrine,” but agrees with Walzer that human rights can be complemented by laws of war that seek to both allow war and limit human rights abuse therein (*Social Research*, vol. 69, no. 4, New York: New School for Social Research [Winter 2002]; 1137-58). Conversely, Ignatieff also recognizes the possibility of the human right to liberty, as self-determination, being used to justify terrorism. While Ignatieff is clear that terrorism involves conduct beyond the pale of any human rights argument, his argument serves to highlight the paradoxical justification of universality and self-determination: “Terrorism exposes the limitations of human rights as an ethical system” (1155). The darker implication, however, is Ignatieff’s apparent willingness to allow exemption from human rights in the name of freedom: “[a] struggle for freedom, justified by human rights, can only win if it exits from human rights as a moral system” (ibid.).

¹⁰⁴ See David Rieff, “A New Age of Liberal Imperialism?” (*World Policy Journal*, vol. XVI, no. 2, Cambridge, MA: MIT Press [Summer 1999]; 1-10).

¹⁰⁵ See Hobbes, *Leviathan* (xiv.4-5, xviii.8, xxi.21), and Locke, *Second Treatise* (§123-4, 146-9, 228, 231). As a caveat, however, Locke’s conception of property should be mentioned, for, as Strauss argues, Locke ascribes a strong moral impetus – service of the common good of both society and mankind in general – to the “proper” use of land, that it be exploited and “improved” for the benefit of all. Uncultivated land is far less productive (Locke supposed by a ratio of 1:10) than land properly cultivated by the implements

ambiguity concerning war, for in Hobbes “the right of making war and peace” lies with the Sovereign to decide which better protects society (*Leviathan* xvii.12), and in both Locke and Kant there is the possibility of punishing states that do not consent to the liberal order of “pluralism,”¹⁰⁶ which is to encourage commerce and peaceful relations. Conversely, Schmitt’s dedication to the possibility of war is deceptive, as Leo Strauss shows in a review of *The Concept of the Political*,¹⁰⁷ for Schmitt’s position is itself a *moral* one. The understanding of the political as the distinction between friend and enemy is not diametrically opposed to morality in the general sense (as a normative position regarding what is good and evil in social relations), but rather to a morality that is “humanitarian” and eschews war (104).

Strauss shows that Schmitt’s conception of morality as “individualistic-liberal,” that is to say, that morality is founded on individual relativism regarding what is good (a “private matter”), is a presupposition that Schmitt’s own position shares (*ibid.*). Since an “obligation” (such as to one’s state) cannot exist as a duty because of the private nature of “ideals” and morals, the commitment to the political as friend-enemy is regarded as one of necessity. As such, the content of daily life is of no matter for Schmitt – these are private matters, as in liberalism – and entirely tolerable so long as there exists a commitment to pluralism and the possibility of war. Strauss writes that “[Schmitt] is just

developed through human reason. Justice could be had, then, by seizing property in order to make “better” (i.e., generate more useful goods) use of it – hence the supposed “right to vacant lands” that Pagden claims was vital to European imperial expansion (181-4). See Locke, *Second Treatise* (§28-50), Andrew (1988; 58-65), and Strauss (1953; 240-7).

¹⁰⁶ I use quotation marks to highlight the fact that the idea of a liberal world order is paradoxical when asserted with plurality in the fullest sense, for it implies that states can exist as a plurality of states only *insofar* as they are liberal.

¹⁰⁷ Leo Strauss, “Notes on *The Concept of the Political*” (in Schmitt; 81-107).

as *tolerant* as liberals – but with the opposite intention,” that is to say, Schmitt is committed to war, while liberals are committed to peace, such that “the affirmation of the political as [friend-enemy] proves to be a liberalism with the opposite polarity” (105). What Schmitt demonstrates is another path, a supposedly non-liberal one, that flows from Hobbes’ starting point of the incredibly subjective, individualistic conception of the good, which can only understand obligation as derivative of, and therefore never an objection to, the individual’s natural or human right. Strauss’ review of Schmitt’s argument forcefully demonstrates the masked political universalism underlying such individualistic beginnings. Although not necessarily tending to peace or war, the assertion of the individualistic relativism assumed by human rights is sufficient to imply a liberal politics of freedom, equality, and tolerance.

Human rights and modern just war theory

The concept of human rights, as natural rights, has returned back to the question of war, where this essay began. Modern just war theory, if it is to be rooted in human rights as Michael Walzer argues, is an expression of that universalizing tendency found in the premises of natural rights theory, where human nature is characterized by such a radical freedom that the content of goodness is individualized, and right precedes good as the fundamental moral principle.¹⁰⁸ What follows from the assertion of natural right is a

¹⁰⁸ However, Walzer’s reluctant acknowledgement of “necessity” – in the form of the “supreme emergency” and the doctrine of double effect – suggests the converse – that *good*, as determined by collective survival, is privileged over right. This alternation between right and good is a relatively hidden factor complicit in the peculiarity of his just war theory.

community based on social contract, where justice in that community flows from the defense of freedom, equality, and the subsequent promotion of tolerance.

Since this conception of justice exists only in civil society, and is founded on natural rights, it is inapplicable to other communities, as they exist outside of the social contract. Although there may remain a “natural law” or moral obligations to others outside of the community because everyone possesses natural rights, that law – as reason – dictates the reasonableness of self-preservation.¹⁰⁹ In such a state, to assist others at an unreasonable cost to oneself would violate one’s own rights (and therefore the laws of reason and nature) – perhaps the greatest possible injustice. In respect to modern just war theory, this affirms the argument made in Chapter 1, that the understanding of justice in war as the protection of human rights, where soldiers put themselves and their comrades at risk for the sake of their foe, is untenable both practically and theoretically. To claim the existence of an overarching principle of justice that might allow the derivation of principles concerning *ius ad bellum* and *ius in bello*, while at the same time asserting fundamental human rights to life and liberty, is to either admit contradiction or imply the existence of some sort of global hegemony or world state.

However, as Schmitt demonstrated, the existence of a world state does not allow one to speak of war as such (as armed conflict between independent groups): one can only speak of “crime” and civil war, and the latter would thus call into question the real existence of a world state. Even the weaker assertion of a minimal conception of justice

¹⁰⁹ See Locke’s discussion of the rights of the conqueror and conquered in the *Second Treatise*, which is expressed entirely in terms of the basic natural rights of life, liberty, and estate (§177-83, §190-2), and his account of the state of nature in which “natural law” exists as the dictates of reason (§6).

being implied by the existence of an “international community” – that is, a global society rather than an entirely pluralistic state of nature – falls apart when it is confronted with international pluralism. The assertion of a human rights doctrine imposes a very particular conception of the individual, morality, and politics itself, and that imposition thus contradicts the principle of toleration and the other community’s right to live as they choose. The tension between different obligations, articulated in the first chapter of this essay, is contained in the very idea of human rights itself, since “rights” presume a radical individualism and result in an international pluralism, and yet to hold onto human rights as a universal principle is to deny pluralism in its full form. Once human life and human self-development or flourishing is placed in the context of the particular political community within which it exists, such that the community is seen (as it is by Walzer) as the collective expression of a way of life, the idea of human rights does not allow for the flourishing of diverse ways of life. Pagden implores his readers in this vein:

The history of ‘human rights’ may serve to remind us that if we wish to assert any belief in the universal we have to begin by declaring our willingness to assume, and to defend at least some of the values of a highly specific way of life. (173)

In light of this, to assume that the “values” implied by human rights are shared by other communities, and to make this assumption in times of war, seems incredible. For Schmitt, claims of justice concerning war are symptomatic of a “political aspiration” to take the right of war from the state and place the authority of such a decision on norms of justice decided by another party (49). He argues that real justice is only found in the state’s existential confrontation with the enemy, and is therefore a matter of self-evidence when faced with an aggressive or hated foe.

This sentiment exists, although not in such frank terms, in modern just war theory. The defense of the state, or more broadly, the political community, is the sole justification for war. There is a curious affirmation of the primacy of the state in just war theory,¹¹⁰ where the state not only claims “rights” in international politics, but also justifies the sacrifice of its own citizens. The state becomes, in Walzer’s words, “something worth dying for,” and, evidently, something worth killing for (1977; 110). Harming individuals is justified in the name of this collective, since the collective is an expression of its citizens’ own rights and desire for self-preservation, and it is under this rubric that the “doctrine of double effect” is morally plausible to Walzer, and where unlimited war in the face of a “supreme emergency” becomes an act of necessity. Walzer’s strong distinction between moral and utilitarian actions becomes blurred, such that assessments of “utility” in times of war assume an inescapably moral character.

The insistence that statesmen, generals, and soldiers, adhere to the preservation of universal human rights in the face of the obligation to one’s own state and fellow citizens – obligations derived from each individual’s own rights – is complicit in the various “practical” difficulties facing modern just war theory that were attested to in the first chapter. Strict obedience to the constraints of *ius in bello* and *ius ad bellum* appears to be an almost fantastical demand once those rules of war are placed within the specific context, theoretical and political, of human rights, and thus revealed to be a particular instantiation or conception of justice, rather than simply just in itself. As suggested in the

¹¹⁰ The apparent juxtaposition between the power of the modern state and its foundation in the rights of individuals should, perhaps, not be regarded as a contradictory or mutually exclusive, but rather as intimately related. In his study of the thought of Simone Weil, Edward Andrew explores the relation between rights, commercial expansion, and the power of the liberal bourgeois state (Andrew 1986).

first chapter, these practical difficulties can arise in manifold ways and, whether the refusal to act in particular ways encourages a perception of weakness, or whether one's own actions violate the minimal conditions for justice in the eyes of the enemy, and thus instills a resoluteness on their part, it is as likely that adhering to the just war theory would increase the escalation of war as limit it, and leave these "just warriors" at a significant disadvantage. War is unavoidably a clash of opinions on justice, where each side is fighting not simply for victory or the preservation of their lives, but for what they believe to be *right* and *good* – as immoral, impoverished, low, base, or mistaken as their opinions might seem to the other.

The plausibility of Walzer's argument concerning international justice is a result of him taking his mark from the common opinion regarding the extreme, from a state of war. As Hobbes observed, when a violent death stares someone in the face, it is difficult to imagine that they would not willingly agree to a minimal code of conduct – some sort of *ius gentium* that would see their life preserved. However, to extrapolate from this very individual, personal, experience between killer and victim, a set of principles that would see collective military efficacy and utility sacrificed is unreasonable, and contravenes the social contract that fosters community, protects the individual, and also necessarily dictates a "state of nature" between nations. The context of the social contract, for liberal theorists – suspends the radical individuality of the existential experience, it suspends the confrontation with one's own mortality at the hands of another, and should someone have that experience, their social context – as relationships with and obligations to family, friends, community – is invariably at hand to envelop them once again. War between

states is not the same as the natural state of war envisioned by Hobbes, for it is ruled by collective purposes, with ideals (of tribe, nation, religion, and so on) and obligations that require, to some extent, a submission to those purposes and a forgetting of the self that liberal thinkers conceive as being, by nature, radically individuated.¹¹¹

Conclusions

The argument made in this chapter amounted to an attack on the possibility of constructing a just war theory, and of even justifying war at all, on the grounds of human rights. This is not a call to pacifism, which must necessarily be the condition of a truly universal observance of human rights, but rather an argument against the forgetfulness of our particularity, not simply of our existence as individuals, but even of justice as it is claimed in the world, for it stands on our particular conception of the individual as possessing a free will and rights. This is also not to make an argument of moral pluralism or nihilism, that is to say, this argument does not preclude the possibility of authentic truth in moral or political affairs. The claims made here are much more limited, simply that the presuppositions of justice made by claims to natural or human rights logically conclude in a plurality of states; claims to justice as the observance of rights, without making claim to some prior natural (or divine) obligation, cannot obligate individuals beyond their social contract. To act on the presupposition of a global community, to universalize justice as rights, is to violate the principles of freedom, equality, and

¹¹¹ Hence, for Hobbes, there is an insistence on the right of the individual to flee from battle; however dishonorable desertion in the face of death might be, it cannot be considered unjust. For Hobbes, the self is never forgotten or sublimated by the collective, and the fear of violent death remains an impetus to the safety of peace and civil society (*Leviathan* xxi.16).

tolerance, which follow from one's own social contract (and ultimately from one's own claim to possess rights). Liberal justice necessarily resides within the state.

Contrary to Walzer, one cannot conceive of human rights as a minimal or "thin" account of justice even though it is true that only insisting upon the rights of "life and liberty" allows for significantly different communities, as it is inescapable that human rights carries with them a particular conception of the individual, with significant political implications. By making this argument, however, it is implied that any concrete articulation of justice, which is necessary for the governance of any society, admits of historicity. Without the overarching auspices of a central moral authority, is a just war theory possible? This essay has shown that even if an articulation of justice is taken to be true, and universal in nature, it does not necessarily imply that it can be adhered to in the face of dissenting opinions regarding what is right or good. Can a "true" justice be achieved despite the particularities that exist in the world? Can it be achieved through these particularities, that is to say, can the collision or coincidence of these particularities provide the basis for the discovery of something that does justice to each? While these questions are far beyond the scope of what can be addressed here, the next chapter will attempt to indicate a few possible approaches that have arisen in contemporary political thought.

Chapter 4: The Possibility of a Just War

The previous chapter identified several characteristics of justice that follow from the assertion of human rights, all of which brought into question the possibility of truly universalizing liberal justice. On its own terms, liberal justice became paradoxical when obligations were extended beyond the social contract on which it was founded. International “justice,” in the liberal sense, could only be done through intolerance and therefore injustice. These specific problems are peculiar to rights discourse, and liberalism more generally. However, they do point towards the problem of international justice, and raises the question of how justice can be found in the inevitable interactions between various states, cultures, moralities, and philosophies. Two issues are particularly pronounced when speaking of international justice: reification and incommensurability. Reification refers to particular, concrete, conceptions of justice, which must give real content – prescriptions and prohibitions – through shared moral ideas, norms, mores, and laws. The day to day functioning of society requires some sort of concrete guidance, but it is because of this reification and particularity of justice that the problem of incommensurability arises. Particular conceptions of justice not only demand, but also generate different customs, mores, and laws, but also depend on different conceptions of the individual, the good, virtue, moral reasoning, and so on – once reified and particular, justice is in danger of becoming untranslatable.

Given what has been argued, it seems doubtful that a conception of international justice can exist in a fully articulated sense, such that it can denote obligations, virtues,

and otherwise regulate public behavior, without admitting of reification. Indeed, the assertion of “human rights” proved to be one such reified conception of justice once its assumptions and implications were drawn out. This is particularly problematic in the realm of international politics, as there is an interaction of rigid and largely incommensurable conceptions of justice, reasonableness, and goodness. This is even more so in the case of war, as it becomes a conflict between two intractable sides with little hope of reconciliation, potentially pushing the conflict towards disastrous consequences.

How, then, if the idea of human rights is an inadequate basis for just war, as has been argued in the previous chapters, can there be any basis for justice in war? How can justice between warring sides be found? This final chapter will not attempt to find specific answers to these questions, for they are a matter for a much larger work. Instead, this chapter will be speculative, and simply point to a set of particularly interesting proposals that have arisen in response to the apparent incommensurability regarding conceptions of justice found not only between states, but also within them. Two specific proposals will be examined here: Alasdair MacIntyre’s renewal of the idea of a craft-tradition, and Clinton Curle’s suggestion of a more fluid approach to human rights following the dynamic philosophy of Henri Bergson. These are particularly relevant to this essay, as they concur with its underlying sentiment that there is little possibility of forming a unitary body of principles that can do justice to the plurality of fully articulated traditions that exist internationally – a problem violently exposed in the context of war.

Following a brief discussion of these two proposals, particularly in light of their implications for international politics and war, this essay will then suggest that both participate in a more widespread attempt to recapture the fullness of *phronesis*, or “practical wisdom,” as articulated by Aristotle. One instance of this revival of Aristotle is found in the work of Hans J. Morgenthau, a prominent scholar of international relations known for his international “realism.” Like MacIntyre and Curle, Morgenthau found a degree of incommensurability between domestic conceptions of justice, with particularly dangerous implications for international politics. This essay will conclude with a brief consideration of Morgenthau’s attempt to apply Aristotelian *phronesis* to international affairs so as to do justice to each state and promote the cause of peace.

Conversation between traditions

Beginning from a position familiar to liberal theorists, Alasdair MacIntyre observes, in *Whose Justice? Which Rationality?*, that there are numerous intractable disagreements about “human goods” (1988; 1).¹¹² Unlike liberals, however, MacIntyre argues that any apparent overcoming of those disagreements is necessarily bound within a particular tradition, which may itself be irreconcilable with another. There is an inherent division and conflict between and within societies, particularly on the question of justice, which reflects tensions within individuals themselves (2). In *Three Rival Versions of Moral Enquiry*, MacIntyre warns that although “debate between fundamentally opposed standpoints does occur ... [e]ach warring position

¹¹² Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame IN: University of Notre Dame Press [1988]).

characteristically appears irrefutable to its own adherents” (1990; 7).¹¹³ More dishearteningly, “each warring position equally seems to its opponents to be insufficiently warranted by rational argument” (ibid.). Furthermore, the question of justice is the first point of contact between traditions, and each necessarily approaches that question from incredibly different sets of arguments and assumptions regarding rationality, the individual, virtue, the human good, the ends of society, and so on.

Appeals to an objective rationality, where people are to separate themselves from their interests in order to become “neutral” judges, are illusory, for not only does “disinterestedness” presuppose an account of justice, but it also ignores the inescapable historical and social context of the individual (1988; 4). MacIntyre contends that enmity towards tradition threatens to obscure the very assumptions that ground our own tradition, as well as blind us to

a conception of rational enquiry as embodied in a tradition, a conception according to which the standards of rational justification themselves emerge from and are part of a history in which they are vindicated by the way in which they transcend the limitations of and provide remedies for the defects of their predecessors within the history of that same tradition.
(7)

Each tradition has its own conception of rational enquiry that, as a set of assumptions, concepts, and principles, serves to delimit not only what is true or false, but also what is reasonable and good. MacIntyre summarizes this “rationality of traditions” through four considerations: first, a concept of rational enquiry is historically grounded in first principles decided by the rational standards of the time; second, the claims of a moral

¹¹³ Alasdair MacIntyre, *Three Rival Versions of Moral Enquiry* (Notre Dame IN: University of Notre Dame Press [1990]).

doctrine stem from *how* it was advanced, implying the need to consider historical context, but not denying that such doctrines make claims to universality; third, it is possible to resolve radical disagreement, although this depends on understanding the nature of traditions; and fourth, a concept cannot be elucidated “apart from its exemplifications,” that is to say a concept cannot be understood apart from its resolution in real experience (9-10).

In *Three Rival Versions of Moral Enquiry*, MacIntyre articulates his traditionalism as one that seeks to revive the idea of a “craft-tradition,” where the correct approach to a tradition is as a craft or technique. As a craft, the philosophic study of matters such as morality is one that is governed by an end, and a set of principles that guide the fashioning of an objectively “good” product (such as a good argument or a good person) – thus there is mentorship and a dedication to the possibility of determining the truth of a product’s goodness from its appearance of goodness (158-9). Craft-tradition stands in contradistinction to the “genealogists,” personified by Friedrich Nietzsche, who deny the rationality of all traditions, and the “encylopaedists,” those writers of the Ninth (1875) Edition of the *Encyclopaedia Britannica*, who sought to define rationality as a unitary set of standards that lay the ground for the scientific study of their subject matter (including morality) (14, 34-5). For both of MacIntyre’s opponents, tradition is scorned as a source of biases and prejudices, although they disagree radically about the possibility of setting out a true or rational ground for morality. The universality of rational enquiry is sought by the encylopaedists at the expense of the particular, presupposed, body of “theoretical or doctrinal commitment[s],”

while the genealogists eschew the universal for a radical particularity, where claims to universality are a series of illusions or masks that flow from the will to power (17, 35-6). Genealogists radically question the possibility of touching reality, and encyclopaedists take their theoretical conceptions as founded on a body of data that “present themselves and speak for themselves” (16, 36-7). Consideration of both of these views leads MacIntyre to adopt the idea of the craft-tradition that he finds most fully realized in the tradition that followed Thomas Aquinas, particularly as expressed in the modern era by the encyclical letter *Aeterni Patris*, which was published by Pope Leo XIII in 1879.

While MacIntyre’s work is certainly inspired by his Thomism, it is spurred on by his dissatisfaction with the supposedly transcendent, “tradition-independent,” morality he finds in the dominant ideology of the encyclopaedists — liberalism (1988; 333). The critique of liberalism lies at the heart of his argument, for it is a tradition that claims universality and purports to be an “uncontested and incontestable account” of morality, which not only severs morality from its nature as a tradition, but also from the possibility of reconciliation with other traditions. MacIntyre believes that the liberal project, or even that of the Enlightenment itself, is subverted by such claims, and that its aim to allow for the coexistence of many ways of life and conceptions of the good are in fact undermined by the rationality it imposes. “Liberal individualism,” he writes, “does indeed have its own broad conception of the good,” which it imposes in such a way that “its toleration of rival conceptions of the good in the public arena is severely limited” (336). The very idea that liberalism can accommodate and reconcile various conceptions of the good is the source of its own particularity and thickness, its own claim to universality, since it

allows these conceptions to publicly interact only insofar as they can barter; the public manifestation of a conception of the good must be negotiable if it is to be tolerable. Furthermore, this range of “goods” generates the view that there exist relatively autonomous spheres (such as the economic, political, artistic, scientific, and so on) where these goods can legitimately be pursued (337).

This pluralism within the community is not simply a reflection of divergent interests among individuals, but of the pluralistic nature of the individual itself. Within liberalism, according to MacIntyre, people understand each other as pluralistic beings, possessing an “ordered schedule of preferences,” which is ordered and acted upon according to the individual’s own desire. Thus, the public space of bargaining between individuals does not, in fact, constitute a place of public debate between rival conceptions of the good – no one position can be demonstrably better than another, since they are all negotiable products of the individual’s whim. Nothing can be simply good and demand action, and as such, practical reason according to liberalism doesn’t require resolution by action, since that resolution cannot have any bearing on *goodness*, but only on the satisfaction of desire. Practical reasoning consists of three things: first, the ordering of preferences; second, making arguments that justify the translation of those preferences into decisions; and third, the ability to maximize preferences in accordance with their ordering (342).

In keeping with what was argued in the previous chapter, MacIntyre maintains that justice, according to this model of reasoning, is only a set of “regulating principles” that allow for a cooperation by which there is a maximization of as many individual

preferences as possible. Rationality thus has nothing to do with justice; being rationality simply means to maximize preferences within the rules of whatever sphere one is participating in. MacIntyre describes such a debate between individuals as “barren,” as the truth and goodness of these principles of justice is no longer of consequence or interest (344). The highest goods, particularly the freedom to express and implement preferences, are presumed to be universal and therefore uncontestable. The non-negotiable right of every individual is the fundamental good in liberalism. In this light, liberalism is unquestionably a tradition for MacIntyre, as it possesses its own standard of rational justification, built on a set of authoritative texts (particularly constitutional documents), which leads to the social expression of that rationality through a hierarchy – MacIntyre describes lawyers as the “clergy” of liberalism (346). Liberalism, however, is particularly subversive in its assertion of universality, which, when combined with its conception of the good, the individual, and the nature of debate, at the least prevents a different public tradition from gaining hold, and at worst conceals from people any awareness that they are themselves embedded in a tradition.

The apparent incommensurability of traditions is thus heightened in the case of anti-traditionalist liberalism, and calls into question the basic liberal premise of accommodating differing conceptions of the good within a single community. What might allow conversation between traditions, and this is a possibility that liberalism is in danger of disregarding, is that there might exist an impetus within a tradition to listen to the “good reasons” of others in regards to whatever problem is at hand. Conversely, there is “the relativist challenge” which claims that “no one tradition is entitled to

arrogate to itself an exclusive title; no one tradition can deny legitimacy to its rivals” (352). MacIntyre stridently opposes this conception of tradition, and holds out the possibility of some translation, debate, and intellectual victory between traditions – one tradition may, in fact, demonstrate itself superior to another once those two traditions are placed in conversation with one another. He seeks to articulate a conception of tradition that dares to re-examine itself in light of new experiences, rather than strictly in terms of its dogmatic concepts. This argument hinges on the nature of tradition itself, for tradition is itself founded on a certain degree of debate amongst its own adherents; traditions are not spontaneous, and old beliefs are often deemed false according to new principles, categories, and methods (356). A tradition is founded on its retrospective character, where it builds on what has come before.

All tradition is itself rooted in, MacIntyre argues, “the correspondence theory of truth,” that is to say, something is deemed true insofar as it corresponds with practical experience (*ibid.*). A failure in correspondence is the consequence of “a failure of the mind, not of its objects,” such that reality reveals itself to a fallible subject. This is markedly opposed to the individualistic metaphysics of liberalism, which, as noted in the discussion of Hobbes in the second chapter, holds that the individual cannot be fallible insofar as it is free – because of freedom of the will, the individual may determine what is good and true in whichever way they please. In MacIntyre’s view, “truth” is not a matter of solipsism, but rather the product of “sufficient” dialectical questioning, where the limit of sufficiency must also be questioned. The claim of truth only possesses force in light of the possibility of it being false, and is thus strengthened by the test of time, where “only

those whose tradition allows for the possibility of its hegemony being put in question can have rational warrant for asserting such a hegemony” (388). Translation between traditions is theoretically possible, then, since tradition itself implies a constant justification and reconciliation of what is held to be true to practical experience (383).

The possibility of translation is infinitely complicated, however, since it must begin not only with the translation of language, but also from shared experiences that have meaning only through tradition. MacIntyre speaks of the necessity of immersion in another tradition, of learning it as “a second first language,” in order to even begin to grasp the chain of signification and meaning that is carried within a language and its tradition: “understanding requires knowing the culture, so far as is possible, as a native inhabitant knows it” (374). Rarified debates concerning the truth of a set of practices, doctrines, concepts, and so on, are inaccessible and unintelligible without grounding it in the historical, social, and personal contexts that imbue it with significance. The problem of translation is therefore very pronounced when confronting issues of justice and virtue, as their explanation requires a host of presuppositions that, fully laid out, would approach the explication of the entirety of the tradition from which they originate.

For this reason, MacIntyre is particularly scathing in his account of “internationalized languages” (such as English, French, German, and Spanish, in the modern world), as they must necessarily adopt, or attempt to adopt, a stance detached from a particular set of beliefs, and thus detached from substantive criteria and standards of truth and rationality (384). There is a paving over of the variety of traditions, even of that from which those languages originated, a problem MacIntyre sees as particularly

evident when people speak of “Western values” rather than of the “values” of the various traditions obfuscated by the generalization made by “Western.” The attempt at universality, without a recognition of their own tradition, leads to a “rootless cosmopolitanism” amongst globalized, international elites, whose aspirations to “be home anywhere” leave them “citizens of nowhere” (388). At this point it becomes clear that liberalism is not simply self-contradictory or paradoxical on its own terms, but only in light of another tradition – MacIntyre can only demonstrate liberalism’s supposed failures when it is contrasted with his own conception of the good citizen, his own defense of the value of rooted citizenship, and therefore his own tradition.

Since this critique of cosmopolitanism depends on a separate tradition, MacIntyre must return to the question of whether a true account of justice and rationality can be articulated, and whether a tradition can really assert a position of superiority over others. Indeed, answers to questions of justice and what entails proper behavior depend “upon who you are and how you understand yourself,” both of which cannot be understood apart from tradition (393). Problems of justice are therefore not the “same set of problems for all persons” (ibid.). Justice can only really be discussed, and its truth in a particular context revealed, through the recognition that the “self” is embedded in a particular tradition, such that the good itself is debated, rather than bargained with. MacIntyre’s polemic against liberalism is crucial here, for he finds that this tradition is blinded to its own particularity, because it refuses to consider its own goodness: “[t]here is little place in such political systems for the criticism of the system itself, that is, for

putting liberalism in question” (392). Pangle and Ahrens Dorf share this sentiment, claiming that:

nothing so surely breeds unwillingness to bring one’s own prejudices into radical question, nothing so discourages searching self-critique and willingness to learn from the alien, as the conviction there is no possibility of another, alien view being decisively closer to objective truth than is one’s own view. (8)

Insofar as liberalism is guilty of this charge, its claims to universality have become hollow and untenable, where it cannot dialogue with other traditions, since they are regarded as being “a series of falsifying masquerades,” and can only attempt to bargain and treat the world as one composed simply of “pragmatic necessities” (MacIntyre 1988; 395). International “justice” can only be approached through a new openness that is surprisingly uncharacteristic of liberalism, such that its adherents must learn how to “test dialectically the theses proposed to him or her by each competing tradition” (398).

In light of MacIntyre’s argument, justice in relation to war takes a very different approach than that of Walzer. Walzer’s supposition of a “common moral language” is entirely erroneous from MacIntyre’s perspective, for Walzer supposes, from the mutual condemnation of a particular event, that there is a consistency in how that event was interpreted from different traditions. Justice cannot simply exist, in MacIntyre’s view, as a set of concrete and objectively “right” practices; those practices can only be regarded as truly good insofar as they are reconciled to a tradition’s own criteria for truth and virtue – determinations which themselves entail an understanding of the individual, the family, the nature of obligations, and so on. While justice might not be a negotiable set of marketplace items, it is – and must be – open to question.

War is a matter of competing conceptions of justice, of competing traditions, and not simply “a crime” to be rationalized, as Walzer conceives it, for that presupposes a conception of justice that renders opponents clearly as “victims” and “aggressors.” The individual’s life is not sacrosanct in all traditions, for instance, and to assume so is to potentially allow a grave misunderstanding of the enemy, one that might be very dangerous.

According to this theory of tradition, war cannot simply be a contest of material powers and military science, of efficiency in achieving an end, for the decision to go to war is ultimately made from within a tradition that will determine what, precisely, is worth fighting for, how it might be justly fought, how the enemy is conceived, and how the conflict can best be resolved. Walzer’s own position can be described as an expression of the liberal tradition, and symptomatic of the anti-traditionalism that MacIntyre sees as paving over the various conceptions of justice and rationality afforded by the diverse traditions in the world. To believe that there exists only a particular set of reasons for which, and by which, war may be justified, is to engage in a perilous naivety. Walzer’s just war theory can only serve to reiterate what is just within the liberal tradition, and not what is just universally.

The acceptance of MacIntyre’s argument, however, must not be unequivocal. The question must be posed as to whether his traditionalism is entirely reasonable and possible. He concedes that this perspective does require a shift within some cultures, as seen with the case of liberalism. That tradition, and its adherents, must be transformed before justice can be achieved between traditions. Liberals must come to see themselves

as *not* imprisoned by a set of beliefs, and as individuals that are “deprived of what tradition affords” (396). Liberalism is, to a large extent, antithetical to and untenable within MacIntyre’s conception of competing traditions – it is not, or refuses to be, translatable. It might be a tradition, which is the necessary prerequisite for the achievement of real dialogue, but it is, in his opinion, one that is ill and requiring of remedy. That said, it would be absurd to demand complete commensurability and a degree of universality between traditions while at the same time insisting that each tradition be taken ‘as is,’ without any reorientation of their approach to rational argument and justice – they must at least come to see themselves as traditions, and therefore self-correcting.

Furthermore, Clinton Curle has found MacIntyre’s decisive choice of Thomism to be problematic, despite the plausible solution that the idea of craft-tradition provides to the problem of particular rationalities clashing in their aspirations towards universality. Pangle and Ahrsendorf write of a “cosmopolitan ambition ... that aspires to teach the lasting truth to all mankind” being embedded in all great philosophies and traditions, a claim that both MacIntyre and Curle agree with (8). Indeed, both argue that any understanding of rationality must necessarily be universalistic, as reason hinges on a claim of truth that transcends particularities (Curle; 30). What Curle found commendable in MacIntyre’s work was the characterization of the particular-universal not as opposing, irreconcilable poles, but as a dialectic that moves through particulars towards truth, before reinvigorating those particulars with knowledge of the universal. What is problematic, however, is MacIntyre’s championing of a “Thomistic Christianization,”

when, in fact, Thomism does not represent the only articulation of Christianity (46). Curle finds that MacIntyre's neo-Thomism is "difficult to envision in a pluralistic context," as the insights it garnered from "transcendental experience," particularly the metaphysical underpinnings of natural and divine law, are "nothing other than a particularization of the universal" (141, 294-5). Instead, Curle suggests that the Eastern tradition of Christianity provides a far more dynamic philosophy that can more adequately reconcile non-Christian traditions.

Translating the divine

The main thesis of Clinton Curle's dissertation, *The Universality of Rights: John Humphrey, Henri Bergson and the Universal Declaration of Human Rights*, is that John Humphrey, the primary drafter of the Universal Declaration, held an account of human rights that is far more dynamic and accommodating of the various particularities or traditions that exist in the world, while at the same time maintains a universal commitment to the protection of individuals. Curle finds a strong affinity between Humphrey's principal philosophic influence, Henri Bergson, and the "Greek patristic" tradition found in Eastern Christianity, which distanced Humphrey from the rigid Thomism of another drafter of the Declaration, Charles Malik. Ultimately, Curle seeks to affirm international human rights through Bergson's philosophy.

The dynamism of human rights from a Bergsonian reading stems from Bergson's conception of reality as inexpressible in static terms. The fluidity of reality resists any attempts to imagine it, whether it is through pictures, laws, or quantities (168). The

human experience of reality, what Bergson terms “concrete duration,” is in actuality a series of overlaid concepts, such that even physical reality and space is the interaction of concrete duration with the images people hold in their minds. Language functions similarly, using symbols to conjure ideas that are necessarily reifications of reality. This reification is necessary, however, in order to maintain both individual life and sociability – communities cannot possibly accord perfectly with the flux of reality. Conversely, there is a danger by focusing too much on the symbols, potentially confusing them with reality, such that the experience of the “concrete duration” no longer coincides with those symbols (similar to MacIntyre’s “correspondence theory of truth”). Incongruity between symbols and reality leads to too many disagreements, too large a variety of discordant experiences, to sustain a community. Curle notes that there is therefore a need to “step outside of symbols, of language, of space”; the fundamental problem of human existence arises from “the desire to endow duration with the same attributes as extensity, to interpret a succession by a simultaneity” (170). This tension is present within individuals themselves, with the body being turned towards action and existence, and the mind towards images and symbols.

Knowledge for Bergson is categorized according to an object’s relation with the enquirer. One can have knowledge “around” something, that is to say, knowledge of various particular view points – this is necessarily an analytical treatment of symbols. One can also “enter into” something and transcend the sum of particular viewpoints – this mode of knowledge is intuitive and is the domain of metaphysics (175). Intuition entails being “transported into the interior of an object in order to coincide with what there is

unique and consequently inexpressible in it" (176). Taken together with Bergson's dynamic conception of reality, this suggests that no discrete objects exist as such; a person can be "transported" because they too are a part of the reality in which their object of enquiry partakes. The universality of the human being is demonstrated by this holistic conception of reality. In order to make use of the absolute knowledge of things, a translation into language is required, although any concepts cannot possibly capture the movement of reality. As a consequence, metaphysics must move from analysis and the use of concepts towards intuition in order to achieve a true experience of reality.

Bergson's conception of reality and the nature of knowledge have profound political implications, for the mistranslation of reality is an inevitable and interminable consequence of social life, and ultimately of the individual's own particularity. Conflict and war are, Curle writes, attempts to "wear out antagonisms, to eliminate contradictions, to bring about that individual wills should insert themselves in the social will without losing the individual form" (187). In the attempt to minimize conflicts, all societies necessarily have "deeply rooted habits," or particular conceptions of reality in the hope of facilitating relationships and a common understanding (188). Most societies are, for Bergson, "closed," compared to the "open society" of general humanity (189). The former type partake in a "static" morality that adheres to an unchanging set of symbols, rigorously applying them – with both success and failure – to the contingencies of reality. The latter type partakes in a "dynamic" morality that mirrors the dynamism of humanity, and regards all the various particularities (different cultures, traditions, moralities, etc.) as being different manifestations of the universal. The open society is not fixated on the

symbols that characterize any particular manifestation. Furthermore, the distinction between static and dynamic morality leads to a further distinction between ethics of obligation versus ethics of aspiration, where the latter seeks to transcend static moralities and attend to the universal that all particulars participate in. Such a morality is one that is a “truly generous and motivated care” for all expressions of the universal (192).

Curle argues that Bergson is able to justify human rights as an expression of aspiring morality, which seeks to care for the universality of the human race. This is markedly different from the natural rights articulated by Hobbes, which were founded on the greedy desire for domination (versus aspiration for universality) that he found in every person; obligations were generated out of individual desire, particularly for self-preservation and a peaceful life. The idea of universal human rights, on Bergson’s account, is not about making rules, but seeing each individual as an expression of the universal – it is about allowing for aspiration and overcoming a fixation on the need for obligations according to rules. However, if human rights are an expression of universality, they do need to be translated into symbols and laws, and therefore into a “static” morality of social obligations (196). Human rights are thus only one possible permutation of the universal morality, and rather than oblige people without a concomitant desire to aspire, human rights must seek to inspire a dedication to the universal, such that people display a “unity not in their subscription to a formal principle but rather in their participation in the Absolute to which [a] moral [leader] points” (197). The Universal Declaration, Curle argues, has an ambiguous status, as it expresses the universal and open morality, while at the same time partakes in the “closed justice”

which “concerns itself with the practical terms of survival of each nation which is signatory to it” (198). Interestingly, this tentative commitment to human rights is both the strength and weakness of Bergson’s account of justice.

Curle points out that Bergson’s “categories” are susceptible of derailing into subjectivism regarding the experience of the universal, with little common ground for the recognition of the transcendent. Furthermore, it is unclear whether some accounts of theology or philosophy (such as Thomism) can accept such a dynamic account of man and the cosmos. Indeed, the very dynamic character of Bergson’s moral philosophy might amount to little more than the situation MacIntyre finds us in – a plurality of apparently irreconcilable traditions that operate under different moral structures, facing wars that “seek to eliminate contradictions.” By Bergson’s account, there seems little real hope that such contradictions, which arise in various “closed justices,” can be resolved, or that new contradictions can be prevented from arising. Bergson’s account of morality depends heavily on the inspirational force of great moral leaders, veritable saints, who, by sheer force of will, are able to remind general humanity of its universality, its interconnectedness.

Insofar as Bergson’s account of human rights is a sentiment, or orientation to the divine, it is quite different from that envisioned by natural rights theorists and contemporary defenders of human rights, such as Ignatieff and Walzer. Rooted in the revelation of the divine, through a great moral leader (who aspires to the divine), the protection of individual rights would depend on a decidedly “enlightened” or charitable humanity, rather than the lower, sturdier ground of existential fear, which is essential for

building community upon the assertion of natural rights. Indeed, much of the force of natural rights is derived from this very low estimation of the natural moral character of human beings – if humans cannot be relied upon to consistently see the divine in each other, they can be relied on to fear suffering and death. In reference to international politics, the greater promise of Bergson’s moral philosophy is not in offering an inspirational connection to the divine, but in demanding a constant reinterpretation of reality, a translation of truth in accordance with shifting circumstances. If justice is to be a possibility in international affairs and war, there must be a commitment to truth and universality, as both Curle and MacIntyre point out, as well as an understanding of the immense particularities inherent to each moment of confrontation. In their own ways, Curle and MacIntyre both seek to revive a practical wisdom that is more nuanced to these particularities, and allows for a fuller range of human types, than is found in the utilitarianism of modern liberalism.

Recapturing Phronesis in International Politics

Practical wisdom, as Curle and MacIntyre showed, must be able to transcend and at the same time ground the routine judgments and decision-making involved in the determinations of justice that occur in daily political life. Practical wisdom has perhaps been given its fullest account by Aristotle as *phronesis*. Aristotelian *phronesis* has been a source of inspiration for a number of modern scholars, such as Leo Strauss and Hans J. Morgenthau, who sought a way to navigate the apparently irreconcilable plurality of conceptions of goodness that exist both within Western liberal democracies, as well as

amongst nations. In *Natural Right and History*, Leo Strauss argues that “classical natural right,” or “natural justice” for both Plato and Aristotle, was far more dynamic than is commonly believed:

[For both Plato and Aristotle,] there is a universally valid hierarchy of ends, but there are no universally valid rules of action. ... [W]hen deciding what ought to be done, i.e., what ought to be done by this individual (or this individual group) here and now, one has to consider not only which of the various competing objectives is higher in rank but also which is most urgent in the circumstances. ... [But] it is our duty to make the highest activity, as much as we can, the most urgent or the most needful thing. (162-3)

The purpose of Aristotelian *phronesis* is to allow its practitioners to reach a determination of what is just and good in various circumstances.

In the *Nicomachean Ethics*, Aristotle distinguishes between the scientific and calculative parts of the soul, whereby the latter “we contemplate things that are variable” (1139a7).¹¹⁴ The proper attunement of the calculative part requires a commitment to truth, as is the case with the scientific part, but its specific aim is the revealing of right desire and proper choice: “if the choice is to be a good one, both the reasoning must be true and the desire right; and the desire must pursue the same things that the reasoning asserts” (1139a24-5). Proper reasoning involves not only discovering what is good in a particular context, but in desiring that good. Thus practical reasoning originates in the appetitive, particularly the desire to have what is good. However, only through the intellect, via dialectical reasoning, can what is truly good be determined, and thus educate one’s desires.

¹¹⁴ Aristotle, *The Nicomachean Ethics* (Thomson, J.A.K., transl., London: Penguin Books Ltd. [1976]).

For the practice of *phronesis*, prudence is the state or virtue necessary for the attainment of truth in calculative matters. Prudence is not simply being able to calculate the best result in an autonomous moment, such as a game that has no bearing on the rest of life, but rather “what is conducive to life generally” (1140a29). However, prudence does not admit of scientific knowledge, as its object of study is variable – it deals with choice in different contexts – and not eternal or immutable, as is the subject matter of the sciences. At bottom, prudence is a state of being in the individual, a “true state, reasoned, and capable of action with regard to things which are good or bad for man” (1140b5-8). Its end is to “preserve wisdom,” and thus demands a continual awareness that “the originative cause of action is the purpose for which it is done” (1140b16). Prudence is therefore tied to a commitment to the good, which requires reasoning so that a particular decision can be revealed as truly good.

However, it must be reiterated that prudence is concerned with mutable things, and therefore with opinions and not absolute knowledge about eternal things. Prudence must always begin with various opinions regarding a situation and move towards truth and a decision regarding what is the true opinion – it is a decision informed by the transcendence of *mere* opinion. Aristotle writes that “prudence is not concerned with universals only; it must *also* take cognizance of particulars, because it is concerned with conduct, and conduct has its sphere in particular circumstances” (1141b16, emphasis added). As noted by the italics, prudence must be focused on the particulars, but also cognizant of the universal, eternal, things – the most prudent person will also be wise, as they will be able to inform their decision-making with theoretical knowledge. The

prudent person is characterized by resourcefulness, or being able to deliberate well and without error. Yet prudence is greater than deliberation, for it is informed by knowledge of goodness or by being virtuous, while deliberation can be correct and the same time have “secured something very detrimental” (1142b20-1). Such a detrimental result can occur when deliberation has not been in “absolute sense,” with the good in mind, but in “relation to a particular end” (1142b28-9). Once again, true prudence is informed by theoretical knowledge, and will necessarily point to knowledge and wisdom.

Aristotle makes a strong connection between virtue, as defined by mankind’s natural end or telos, and practical reason, such that “one cannot be prudent without being good,” where prudent action makes one morally good (1144b31). As moral virtue is necessarily related to one’s relationship with others, reasoning about matters of justice and politics is ultimately about allowing for the expression or cultivation of good citizens; the justness of a city is ultimately determined by the health of its citizens’ souls, forming a bond between them such that “friendliness is considered to be justice in the fullest sense” (1155a27). As a consequence of this connection between prudence, moral virtue, and justice, the goodness the virtuous man is demonstrated in his interactions with others by his just treatment of them (1130a7-10).

Justice, for Aristotle, is fundamentally concerned with those deliberations of practical reason that aim to ensure that each person gets their due, neither more or less, with the larger aim “to produce or conserve the happiness of a political association” (1129b18-20). Justice, he says, is “the only virtue that is regarded as someone else’s good, because it secures advantage for another person” (1130a4-6). Towards this end,

justice involves a “proportional equality,” where what is due to each person is in relation to their virtue in the given context, and “if the persons are not equal, they will not have equal shares” (1131a23).¹¹⁵ However, justice can only be instantiated through law, and presupposes a shared life between “persons free and equal”; outside of these conditions, there is no political justice, and “only a sort of approximation to justice” (1134a25-30). Aristotle thus harkens to a transcendent standard of justice, and he speaks of a natural justice “which has the same validity everywhere and does not depend upon acceptance,” and is distinct from the legal justice which is of various forms depending on the time and place (1134b18-27). Natural justice must not be considered a body of laws or principles that can be applied to various situations, because “although there is such a thing as natural law, everything is subject to change” (1134b29).

Strauss emphasizes Aristotle’s elusiveness on the question of natural right and natural law, and points out that Aristotle does not give a “single example of what is by nature right,” and suggests that, for Aristotle, the justice found in cities “appears to be perfect justice” such that “there is no dilution of natural right” (1953; 156). The full exposition of natural right is only made manifest in the practical wisdom of citizens of great virtue. All right, including natural right, is thus variable, Strauss says of Aristotle, implying that politics and civil society is “incompatible with any immutable rules, however basic” (158). Unqualified rules are a matter of civic justice, and natural right exists not as “general propositions but rather ... concrete decisions” – the realm of prudence (159). The law of nature is to be attuned to the demands of goodness in

¹¹⁵ This is a marked difference from the strict equality in freedom that is seen in liberalism, which potentially equalizes people without regard to virtue.

concrete circumstances, so as to arrive at “a just decision based on full consideration of all the circumstances (ibid.). Indeed, Aristotle compares justice, established by “convention, and on the ground of expediency,” to standard measures, which are not equal everywhere (1134b36-1135a1). If justice is to be found between cities, states, or peoples, where each has different “standard measures,” then a new dialogue must open up between them, to determine what is right or good in the given circumstances.

Such a dialogue does not need to presume any common beliefs (but does depend on shared experience), and is in fact only activated by disagreement, whether it is about justice in a particular case or the nature of justice itself. Surely, a certain metaphysical conception of the nature of things would result from this dialogue, but it is important to note that this is a consequence, and not a necessary ground for dialogue. The only presuppositions are a commitment to the possibility of truth, to acknowledge that any position depends on that basic assertion that truth exists. If truth, particularly regarding issues such as justice, can only be found at the metaphysical level, that is to say, by transcending particulars, practical reason must be paired with an idea of dialogue and dialectic between opposing opinions. Given the mutability of things, the variability of particulars that Aristotle identified as the object of prudence, this dialogue must be a perpetual conversation. Both MacIntyre and Curle showed that truth is elusive in the sense that it is universal – it cannot be practically touched, and cannot lead to overarching rules which would govern all circumstances equally at all times. To approach international politics in this way would require the realization that truth in political

matters is momentary, and sufficient for a particular time, but always falling away, needing to be recaptured in the next moment.

On this view, war cannot be ruled out entirely when the resolution of a perceived wrong is not achievable, and it always remains a possibility. Strauss noted that for Plato and Aristotle, because justice was ultimately rooted in the individual *polis* or city-state, war could not be conceived as a “crime” at all times; indeed, the acquisition of territory and resources required for a particular way of life would necessitate war. The decision of whether to go to war, and how its conduct is to be regulated, would ultimately be governed by the discussion of what is good for the city, although that good is to be understood not simply as the necessity of survival, but in cultivating virtue – “a decent society will not go to war except for a just cause” (1953; 160). However, “there are no limits which can be defined in advance,” and a society may be forced to do things that are considered “sad exigencies” from the view of the normal, peaceful, state of things (ibid.). Specific battles need to be dealt with on a case-by-case, contextual, basis, although always with an eye towards the “universal” good, for overarching principles and laws cannot accommodate the exigencies of war or the pluralism of international politics. Justice in war, and international affairs generally, must be approached with prudence, so as to arrive at an understanding of what is just for a particular case, at a particular time. Aristotelian *phronesis* holds out the possibility of a much more fluid and dynamic international politics, where agreement is always temporary, awaiting another dialogue, another conversation arising from a different set of circumstances, with different

interests, stakes, and possibilities for justice.¹¹⁶ This justice will not exist in the legal form by which it exists in society, for nations are not human beings, and need not operate under the aegis of a codified set of principles in order to make it possible for human life to flourish. Indeed, much of what was said in this chapter and the previous one implies that the reification of justice – particularly in a setting as diverse and variable as international affairs – can only lead to injustice.

The value of Aristotle's teachings on *phronesis* has not escaped contemporary scholars of international relations. One of the most prominent, Hans J. Morgenthau, acknowledged a significant debt to Aristotle, and taught courses on the Greek's philosophy. *Political Theory and International Affairs* is a collection of transcripts from one such course, and it is revealing of how Morgenthau sought to render Aristotle's thought pertinent to contemporary issues.¹¹⁷ International politics, Morgenthau argues, must be governed by the assumption that each state pursues what is in its national interest (or the common good of its people). However, Morgenthau finds that Aristotle does not, and can not, offer precise guidance about what is good for situations peculiar to modern society, or who should be empowered to decide what is in the national interest (106). The concrete character of the national interest is thus an open question for Morgenthau, where dedication to the common good is dedication to a necessarily content-less idea (108). Politics is "not only a struggle for power, it is also a moral struggle for the

¹¹⁶ Yet at the same time, there is constancy in the *telos* of man, and its achievement through the cultivation of the virtues. Although what is courageous, liberal, magnanimous, and so on, varies according to circumstances, the essence of these virtues is always attached to man's *telos* as a rational being. Prudence acts as the principle governing the moral virtues, instructing a person as to what constitutes courage, for example, in a given situation (cf. 1138b19-36).

¹¹⁷ Hans J. Morgenthau, *Political Theory and International Affairs, Hans J. Morgenthau on Aristotle's The Politics* (Lang, Anthony F., Jr., ed., Westport CT: Praeger Publishers [2004]).

preservation or the extension or the victory of certain moral values” (111). Action in international politics can only be justified, he argues, by appeal to the national interest – whether it is truly in the interest of the nation is a matter for domestic debate or politics.

In discussing Aristotle’s distinction between universal and particular or “partial” justice, Morgenthau notes that self-interest is decidedly in the latter category, and universal justice requires overcoming these particularities such that one’s self-interest encompasses the interests of others as well (122). However, in *Politics Among Nations*, Morgenthau asserts an irreconcilable pluralism in international politics such that there is but “the morality of individual nations” (349).¹¹⁸ Although written in the historical context of the Cold War, he held little hope for the possibility of general reconciliation. Ideology and nationalism work to imbue the international aspirations of states with “a good conscience and a Messianic fervor,” with the unavoidable result of conflict and war (350). Morgenthau identifies such “nationalistic universalism” as perhaps the most dangerous problem in international politics.

This view of foreign policy led Morgenthau to obscure the necessary rivalry between competing visions of justice, by painting international politics with the veneer of power politics, where every state’s moral ends could, and *should*, be readily ignored since each required “power” to achieve those goals (31-2). A more peaceful, and just, international system could be achieved, he thought, if each state understood itself, and all others, as necessarily participants in a “struggle for power” (cf. Ch. 3). Morgenthau’s work actually seeks to limit the possibilities of action in international affairs to basic

¹¹⁸ Hans J. Morgenthau and Kenneth W. Thompson, *Politics Among Nations* (Sixth edition, New York: Alfred A. Knopf, Inc. [1985]).

interests, such that, “if we look at all nations, our own included, as political entities pursuing their respective interests defined in terms of power, we are able to do justice to all of them” (13).¹¹⁹ However, one must be skeptical when Morgenthau speaks of “justice” in international affairs, for what he describes as justice – every state being free to decide their own fate – is in fact a universalized conception that other states have not necessarily decided to operate under. It is quite possible for a state – whether its populace at large or its leaders – to view its duty as being not simply to itself (as is the case with many liberal democracies), although they are certainly constrained by pragmatic concerns (i.e., material power, their neighbors’ opinions of them, and so on), and many foreign policy decisions are made far from the extreme of self-preservation. Morgenthau held the conviction that an international system made up of a multitude of powers, each seeking to limit conflict and take few risks internationally, rather than the quasi-imperialistic concentration of power that existed during the Cold War, would allow for a more fluid balance of power. He argued that the management of large blocs of states, either by the United States or the Soviet Union, could only lead to a dangerous moral dissatisfaction amongst their inferiors, which translated into a distinct sense of oppression (375).

Practical wisdom in international affairs, then, revolved around the correct assessment of the national interest and the distribution of power in a given moment. Wisdom in foreign policy entails preserving one’s “interests,” which includes limiting moral universalism and developing a thorough understanding of other international

¹¹⁹ Pangle and Ahrens Dorf point out that it is because of Morgenthau’s “passionate devotion to the goal of peace that [he] opposes idealism so vehemently” (219).

actors, so as to best be able to exert influence over them. By turning foreign policy to the service of the “national interest,” which always sees war as a “scourge to mankind,” Morgenthau hoped to correct the militarism that lurked in dogmatic moral universalism, and more fundamentally, in “the conditions in the minds of men which make war appear the lesser of two evils” (436). Michael Walzer’s presentation of “realism” as an utter disregard for the role of morality in foreign policy is therefore a caricature – scholars such as Morgenthau sincerely believed that their call to pursue the “national interest” was a moral corrective to the misguided foreign policies that led to two World Wars and the ideological conflicts of the Cold War (cf. Walzer 1977; 3-20). However, Walzer is right in arguing that their conception of international politics, as a necessary struggle for power, leaves little room for true reconciliation between states or for the pursuit of justice in the midst of war (ibid., esp. 18-20). If the nebulous concept of “national interest” is to govern foreign policy and war, there seems little to prevent it from derailing into utilitarian narcissism. Rules of war thus become meaningless fictions in such real-politick – simply moralizing window-dressing that everyone quotes but none believe. In this light, MacIntyre seems entirely correct in his account of internationalized languages, and their conceptions of “justice,” as being little more than expedients for economic exchange, since no standard can be asserted concerning truth and rationality. The language of international justice becomes bargaining, rather than the acknowledgment of the possibility that justice can truly be done in a given conflict. Morgenthau’s modern appropriation of Aristotle seems to suffer, then, from his commitment to peace and

“power” as the twin poles of foreign policy, with little regard – or antipathy – for the disparate conceptions of justice that contend in war, and international politics generally.

Conclusions

If a just war is to be considered a theoretical possibility, there must be some way by which the language of justice can be translated across the particular traditions that exist internationally. Two such proposals were briefly discussed in this chapter. Alasdair MacIntyre argued that conceiving of particular conceptions of justice as partaking in a “craft-tradition” that entails a unique conception of practical reason, virtue, and goodness, allows for a respectful attitude towards other traditions, but also holds out the possibility for dialogue, reconciliation, and even the establishment of one tradition’s superiority over another. Clinton Curle, disagreeing with MacIntyre’s neo-Thomism, believed a solution to the difficulties of the human rights movement could be found (and was found, by John Humphreys) in the philosophy of Henri Bergson, whose dynamic conception of time and space, the individual, objects of enquiry, and the “open society,” allowed for a movement to a universal morality through particular conceptions of morality. However, the constant renewal, or re-translation of “concrete duration,” required by Bergson’s moral philosophy seemed an implausible demand from the necessarily reified traditions that interact in international politics. If most societies are, and need be, “closed,” it seems difficult to ascertain a justice common to them, let alone in the extreme case of war. The proposals of Curle and MacIntyre, however, are stimulating, particularly in their arguments in favor of recapturing a *phronesis*, or practical wisdom, that can begin at the disparate

particularities (different languages, cultures, conceptions of justice and rationality, specific material circumstances, varying international opinion, and so on) which exist in international politics, and move towards the universal.

The brief account of Aristotle's *phronesis* demonstrated that such a possibility existed in the Greek's philosophy, where deliberations on concrete, but varying, circumstances could lead towards "universals." A natural justice, one that transcends those particularities, was not viewed as a body of laws or principles that eternally governed relations between men and states, but rather as a commitment to goodness, virtue, and the possibility of truth. Hans. J. Morgenthau's "Aristotelian" approach to politics was found to be lacking these precise qualities, and as a consequence disregarded the value of seeking justice in war and international politics. To "do justice" to various states, with their disparate conceptions of justice and national interest, Morgenthau promoted a commitment to the struggle for power, and not to goodness itself.

These various attempts at rethinking the nature of justice, particularly internationally, suggest one final consideration. To rethink justice, as it exists internationally, necessarily entails rethinking it at home, and thus contemplating how our domestic conceptions of justice influence, subvert, or are subverted by, our perception of international justice. To overturn the coherence or desirability of "rights," for example, is to overturn the basis for our own liberal society, and if a respect for international pluralism entails a rejection of our own concepts and ideals concerning justice, then we have truly arrived at a moral crisis. A full commitment to pluralism, with every tradition intractable and entirely justified in itself, is to reject the possibility of achieving any rich,

reasoned, dialogue between those traditions, and thus embraces an extreme historicism or relativism. Yet the power of revelation remains real in this world, and its tenuous relationship with reason suggests that pluralism cannot be overcome and must, at least, be the starting point for any discussion of war or international politics. The possibility of a just war must begin with the assumption of international pluralism, as the origins of dialogue, but pluralism itself can never be the objective if justice is to be achieved.

Conclusion

This thesis has attempted a critical analysis of a theory of justice that seeks to limit the recourse to war, and the violence – even sheer brutality or wasteful slaughter – that is implied therein. That theory, what I have termed the modern just war theory, sought to differentiate itself from the overtly Christian underpinnings of traditional just war theory, and find a new, secular, basis by which a universal justice can be articulated. For some theorists, the metaphysical and religious commitments required by traditional just war theory were at odds with the demands of international politics and war, where there could be only division on such abstract matters. Michael Walzer's *Just and Unjust Wars* attempted to cast aside such commitments, and by employing a “human rights argument,” Walzer was able to sketch out a theory of international justice, with rules stipulating when, and how, a war could be fought. Although Walzer's reliance on human rights made his argument cogent and palpable to the Western culture that embodies those principles, it was precisely because he rooted his modern just war theory in human rights that his argument suffered from a number of difficulties and paradoxes.

In the first chapter, I outlined the principles of modern just war theory, particularly as articulated by Walzer. He arrived at various principles of *ius ad bellum* and *ius in bello* on the basis of a “war convention” and legalist paradigm, that were themselves rooted in a human rights theory where individual rights to “life and liberty” were the basis for moral judgments and obligations. However, several difficulties in Walzer's theory presented themselves. Practically, the just war places the just warrior at

a disadvantage insofar as their codes of conduct are not respected or followed by the enemy, opening up the possibility of there being a military incentive to cheat the rules of justice in war. Conversely, Walzer's recognition of necessity, particularly in the exceptions of supreme emergency and doctrine of double effect, undermines the force of the moral limits he presented. These exceptions to the rules place the determination of goodness upon arguments of utility that, as Walzer himself pointed out, can be easily subverted by selfish or untrustworthy statesmen, generals, and soldiers. Furthermore, the codified conception of justice employed by Walzer is at odds with international plurality, with the particularity of nations, states, and individuals – specific events are simply not viewed from a unified moral perspective, where each action is judged in the same manner. I found that these problems were ultimately rooted in Walzer's assertion of human rights, as it presents paradoxical obligations to one's own state and to the enemy. How can one be obliged to preserve the rights of all humanity, and yet at the same time be committed to killing in the name of a particular community? How can one side protect rights when doing so might subvert its own, supposedly just, cause?

In an effort to account for this apparent paradox in obligations, where one can only preserve the rights of the enemy at the risk of one's own, the second chapter investigated the nature of obligations as derived from inviolable rights. The idea of human rights was traced to both the Christian dedication to the individual as an instantiation of the divine, and the concepts necessary for this account of human godliness. Of particular importance was the modern inheritance of the concept of the free will, which was originally seen as that human faculty by which goodness was chosen

over evil, and allowed a person to experience transcendence in God. The idea of right, and rights, was derived, then, from reasoned argument concerning the good; what was right was what was good or proper within a field or particular situation, and rights were a coincidence of the dignity and inviolability of the individual, as revealed by reason and scripture, and legal protection of that individual. This account of rights was radically altered, however, with the privileging of right over good, such that Kant saw rights as prior to obligations in order to preserve the autonomy of the will. Although the privileging of right was most evident in the work of Kant, it could be traced further back in history to Hobbes, whose work provides valuable insight in this modern turn towards rights as *the* basic moral concept. In examining the latter's *Leviathan*, it was shown how the positing of a fundamental natural right, which was founded on a radical individualism and passion for domination, laid the grounds for a society based in consent (and thus a social contract), where obligations are established as a necessary compromise of each individual's natural freedom.

In the third chapter, I outlined the implications of conceiving of obligations as derived from fundamental rights. My contention was that the claim to universal rights implied a specific account of justice that was not necessarily universalizable across all political communities, as Walzer hoped in his just war theory. The *Second Treatise* of John Locke – whose conception of natural right as being to “life, liberty, and property” more closely resembled Walzer's account of rights than Hobbes – provided an archetype of society and justice as implied by fundamental individual rights. Justice founded on rights entailed a commitment to freedom and equality as fundamental rights, and

toleration as the most basic obligation. However, this conception of justice is instantiated only in a particular community, through the social contract, and when it is applied universally it necessarily discriminates against societies structured in a discordant way. Unless there is some sort of world state or global hegemony, Walzer is at fault for ascribing a particular form of justice universally, one that cannot plausibly come to terms with societies that fundamentally disagree on the basic propositions involved in universal human rights. Human rights are not simply about protecting the individual from violence and oppression, but form the core of a much fuller and richer theory of political community. As MacIntyre argues, there exist fundamental differences between a community founded in rights and a community, for example, founded on moral virtues tied to a tribal commitment or a teleological conception of the world. Universal, fundamental human rights are insufficient, then, as a basis for a just war theory, for it cannot take into account, or rather, it cannot support, the disparate conceptions of justice that exist internationally. Although ascribed to all humanity, the protection of human rights is not universal justice, it is not the Truth concerning justice.

The fourth chapter of this thesis tentatively, given the limited scope of the original argument, explored the possibility of attaining any sort of universality in war or international politics in general. Can international justice be considered anything more than negotiations of utility, where each actor comes to the bargaining table with, as MacIntyre put it, an “ordered schedule of preferences”? Two theories concerning the possibility of finding a conception of justice that transcends particularities, those of MacIntyre and Curle, were considered for their divergent approaches to rearticulating

phronesis, where truth concerning justice is revealed only through particular conditions, not by the application of a set of principles to those particulars. Truth on concrete political matters was not granted eternity, but found only as a particular instantiation of universality or the divine – truth for a time and place, for a particular context. Curle's employment of Bergson's philosophy emphasized the distinction between symbols and "concrete duration" (or the ineffable flux of reality), where the danger of reification lay in confusing those symbols with reality. The whole, "universality," is not available to any particular person as something that can be brought to bear on the world in some utopist fashion, but glimpses of the divine are available through interactions between people, which always points towards a higher good. As such, any theory of international justice would demand a certain degree of openness or willingness to debate the nature of the just or the good in particular situations (such as in a fire, a battle, or a war) – an openness that could clearly alter how a tradition views morality and justice. Yet at the same time, this commitment is also interminable, that is to say, it must always seek to reinvigorate or reinstitute the dialogue concerning justice with every new set of particularities that might arise. Any answer about justice in this world is contingent upon those particularities, and therefore provisional.

Methodologically – particularly in its historical approach – this thesis revealed, but certainly did not exhaust, the complexities involved in the evaluation of a moral argument. Such assessment cannot simply take a set of propositions concerning what is "good" or "right," or what is necessary or obligatory, as ahistorical givens – they are assumptions. Morality has not always been understood as Kant understood it, in terms of

self-legislating individuals submitting their judgments to a test of universalizability, where what is right is not necessarily “good.” In many ways, Kant’s work was influenced by and anticipated by Hobbes’ conception of a natural, pre-social individual, who relinquished his right to all and consented to the obligations of civil society. Every term, then, comes loaded with layers of presupposed concepts which themselves carry their own history and logic. The implications of those concepts must be reconciled with how they are employed – this essay has itself attempted to reconcile the concept of universal rights to life and liberty with its implications for how one understands justice, the individual, society, and the interaction with other nations and traditions. A complete reconciliation is not possible, however, as every attempt to understand the world is limited by the experiences one has had, and how those experiences have been interpreted and reinterpreted. This paper has only hinted at the troubling inconsistency that exists between our moral and theoretical conception of the world, and how the world presents itself to us.

Modern just war theory is another iteration of the debate between these particular interpretations of reality, and reality’s universal, but elusive, nature. The theory’s call to respect a pluralist world and the right of self-determination, on the basis of individual rights to life and liberty, while at the same time preserve, as best as one is able, the rights of those with whom one is in conflict with, is ultimately an argument about what constitute the particular (one’s life in the community) and the universal (respect for human rights). However, I argued that the theory’s presentation of the universal as a timeless set of particular regulations and codes of conduct leads to a reification of the

universal, rendering particular and historical that which is not, and thus obscures other particulars that might constitute the universal. As such, Edward Andrew seems correct when he labels rights discourse, as a discourse of claims, as “insignificant speech,” that can only be made significant and real by “translating the language of rights into duties” (1988; 195). There must be a concomitant care, however, to not entirely bifurcate the universal and the particular, for this is to lapse into the opposite sort of error where universality and divinity cannot be found in this world at all, rendering any sort of access to it as incredibly difficult and radically mystical, and possibly devaluing the experiences of this world. Both extremes – the transposition of the particular onto the universal, and the radical separation of the particular from the universal – tend to strip the world of its wonder.

In light of this, this essay might be construed as a polemic against the idea of rights, and therefore against liberalism as expressed by modern just war theory. This, however, is not the case – the argument made here cannot be taken as against the idea of rights simply, but rather an argument that seeks to outline what “rights” entail, and what limits it admits of. Casuistry premised on the simple goodness of rights is entirely misleading, for it not only forgets the historical nature and development of the concepts upon which the idea of individual rights are based, but it also fails to see that rights are not truly universal – they are not timeless “facts” of morality by which one can judge all traditions at all times. The eternal seems far more elusive, and not encapsulated solely by the concept of universal rights. Mankind’s moral progress is not given, and there is no entitlement by which we can make an out of hand condemnation of other accounts of

morality.¹²⁰ Although the protection of individual rights could be the most satisfactory moral foundation yet articulated, or the most suitable for our time and place, it is not an autonomous concept that can be taken out of the context of modern Western culture, politics, and law, for it is inextricably intertwined with how individuals in the West think, act, and govern themselves. Furthermore, its development out of Christianity and natural law philosophy would suggest that problems await the concept of rights when those original foundations are cast aside.

Despite all this, the sentiment of Michael Walzer's *Just and Unjust Wars*, as well as his other works, is indeed noble, for it sought to renew discussion about the nature of international morality and goodness in a world whose increasing interconnection brings contesting conceptions of justice into a sharp contrast ever more needful of mutual understanding. In light of such difficulties in international politics, his attempted casuistry is an understandable response, as it seeks to find those experiences that everyone can agree upon as being wrong. As such, Walzer's writing on war presents an interesting paradox, for war is a state of violence that condones behavior seemingly out of sorts with any political community, and would thus seem to provide exactly the sort of experiences that everyone can agree upon. Most would agree that "war is hell" and is something to be avoided and limited. Yet at the same time, war is the consequence of *not* having a consensus on the demands of justice, of not being able to, or not desiring to,

¹²⁰ In Andrew's words:

With the language of rights ascending to a monopoly position in articulating matters of right and wrong (supplanting the language of classical justice, of Christian charity, of classical, Christian, and renaissance virtues ...), a night of rights-blindness descends, a night without the warmth of divine madness, a night of cool practical reason employing the discarded husks of philosophic words. (1988; 196-7)

address issues of justice without resort to force. To then stipulate rules of war, when war itself seems to be a suspension of rules, presents enormous difficulties. Moral casuistry, however, is insufficient to achieve justice in war, as it ultimately reduces our moral judgments to a conventionalism that is at odds with the possibility of truth and knowledge concerning what is good in life and politics. If the conversation about justice is to have its presuppositions and bounds determined by that which everyone – or even just the majority of people – in all their caprice, can agree upon, “arguing about war,”¹²¹ is only to discuss compromise and forgo the possibility of a richer justice and good that everyone can partake of. As I suggested in the fourth chapter, and have repeated several times in this conclusion, it might prove a better approach to not seek a single body of rules by which one can judge all cases, but rather to take a prudential approach towards justice in each case – finding the universal on the basis of, or through, the particulars of a given moment.

¹²¹ Michael Walzer, *Arguing about war* (New Haven: Yale University Press [2005]).

BIBLIOGRAPHY

- Andrew, Edward. "Simone Weil on the Injustice of Rights-Based Doctrines." *The Review of Politics*. Vol. 48, no. 1. Notre Dame IN: University of Notre Dame Press (Winter 1986); 60-91.
- . *Shylock's Rights: A Grammar of Lockian Claims*. Toronto: University of Toronto Press (1988).
- An-Na'im, Abdullahi A. "Human Rights in the Arab World: A Regional Perspective." *Human Rights Quarterly*. Vol. 23. Baltimore: The John Hopkins University Press (2001); 701-32.
- Aristotle. *The Nicomachean Ethics*. Thomson, J.A.K., transl.. London: Penguin Books Ltd. (1976).
- Augustine, Saint. *City of God*. Bettenson, Henry, transl.. London: Penguin Classics (2003).
- . *Confessions*. Chadwick, Henry, transl.. Oxford: Oxford University Press (1998).
- . *On Christian Doctrine*. Robertson Jr., D.W., transl.. Upper Saddle River NJ: Prentice-Hall Inc. (1997).
- . *De Libero Arbitrio Voluntatis [On the Free Will]*. Sparrow, Carroll Mason, transl.. Richmond: Dietz Press, Inc. (1947).
- Beitz, Charles. "What human rights mean." *Daedalus*. Vol. 132, issue 1. Cambridge MA: The MIT Press (Winter 2003); 36-47.
- Bull, Hedley. "Recapturing the Just War for Political Theory." *World Politics*. Issue 79. Princeton: Princeton University Press (1979); 588-99.
- Burke, Anthony. "Just war or ethical peace? Moral discourses of strategic violence after 9/11." *International Affairs*. Vol. 80, issue 2. London: Cambridge University Press (2004); 329-53.
- Calhoun, Laurie. "Michael Walzer on Just War Theory's 'Critical Edge': More Like a Spoon Than a Knife." *The Independent Review*. Vol. X, issue 3. Oakland: Independent Institute (Winter 2006); 419-24.
- . "Pre-emption and Paradox." *Global Change, Peace & Security*. Vol. 16, no. 3. London: Carfax Publishing (Oct 2004); 197-210.

- Chesterman, Simon. *Just War or Just Peace?: Humanitarian Intervention and International Law*. New York: Oxford University Press (2002).
- Clausewitz, Karl von. *On War*. Transl. and ed. by Howard, Michael, and Paret, Peter. Princeton: Princeton University Press (1976).
- Curle, Clinton T. *The universality of rights: John Humphrey, Henri Bergson and the Universal Declaration of Human Rights*. Ph.D. dissertation. Ottawa: Carleton University (2005).
- Coates, A.J. *The ethics of war*. Manchester: Manchester University Press (1997).
- Den Uyl, Douglas J., and Rasmussen, Douglas B. "The Primacy of Natural Rights" in *Natural Law and Modern Moral Philosophy*. Paul, Ellen Frankel, et al., eds.. Cambridge: Cambridge University Press (2001).
- Diamond, Martin. "The Dependence of Fact Upon 'Value.'" *Interpretation*. Vol. 2. Issue 3. New York (Spring 1972); 226-35.
- Dictionary of Military and Associated Terms*. U.S. Department of Defense (Sept 2002).
- Dunn, John. "Measuring Locke's Shadow" in *Two Treatises of Government and A Letter Concerning Toleration*. Shapiro, Ian, ed.. New Haven: Yale University Press (2003); 257-85.
- Elshtain, Jean Bethke, "A Just War?" *Boston Globe* (October 6, 2002).
- , et al.. *But Was It Just? Reflections on the Morality of the Persian Gulf War*. New York: Doubleday (1992).
- . *Just war on terror*. New York: Basic Books (2004).
- , ed.. *Just war theory*. Oxford: Blackwell Publishers (1992).
- Evans, Mark, ed.. *Just War Theory*. New York: Palgrave MacMillan (2005).
- Ewin, R.E.. *Liberty, Community, and Justice*. Totowa NJ: Rowman & Littlefield (1987).
- Fixdal, Mona, and Smith, Dan. "Humanitarian Intervention and Just War." *Mershon International Studies Review*. Vol. 42, no.2. Cambridge MA: Blackwell (Nov 1998); 283-312.
- Fotion, N., and Elfstrom, G.. *Military Ethics*. Boston: Routledge & Kegan Paul (1986).

- Gellner, Ernest. *Conditions of Liberty*. London: The Penguin Group (1994).
- Geneva Conventions* (1949, 1977, 2005). <www.genevaconventions.org> (29 October 2006).
- Ghanea, Nazila. "Human Rights of Religious Minorities and of Women in the Middle East." *Human Rights Quarterly*. Vol. 26, no.3. Baltimore: The John Hopkins University Press (2004); 705-29.
- Goldwin, Robert A. "John Locke" in *The History of Political Philosophy*. Strauss, Leo, and Cropsey, Joseph, eds.. 3rd edition. Chicago: The University of Chicago Press (1987); 476-512.
- Grant, Ruth W. *John Locke's Liberalism*. Chicago: The University of Chicago Press (1987).
- Hart, H.L.A. "Are there any natural rights?" *The Philosophical Review*. Vol. 64, no. 2. Durham: Duke University Press (April 1955); 175-191.
- Hendrickson, David C.. "In Defense of Realism: A Commentary on *Just and Unjust Wars*." *Ethics & International Affairs*. Vol. 11. Oxford: Blackwell Publishers (1997); 19-53.
- Hersh, Seymour M.. *My Lai 4: a report on the massacre and its aftermath*. New York: Random House (1970).
- Hobbes, Thomas. *Leviathan*. Curley, Edwin, ed.. Indianapolis/Cambridge: Hackett Publishing Company, Inc. (1994).
- Holliday, Ian. "Ethics of Intervention: Just War Theory and the Challenge of the 21st Century." *International Relations*. Vol. 17, issue 2. London: SAGE Publications (2003); 115-133.
- Iasiello, Louis V.. "*Jus post bellum*: the moral responsibilities of victors in war." *Naval War College Review*. Vol. LVII, no. 3. Newport: Naval War College Press (2004); 33-52.
- Ignatieff, Michael. *Human Rights as Politics and Idolatry*. Gutmann, Amy, ed.. Princeton: Princeton University Press (2001).
- . "Human Rights, the Laws of War, and Terrorism." *Social Research*. Vol. 69, no. 4. New York: New School for Social Research (Winter 2002); 1137-58.

- Johnson, James Turner. *Can modern war be just?* New Haven: Yale University Press (1984).
- Kamm, F. M.. "Failures of Just War Theory." *Ethics*. Vol. 114. Chicago: University of Chicago Press (July 2004); 650-92.
- Kant, Immanuel. *Groundwork of the Metaphysics of Morals*. Gregor, Mary, transl. and ed.. Cambridge: Cambridge University Press (1997).
- . *Political Writings*. Reiss, Hans, ed.. Nisbet, H. B., transl. Second edition. Cambridge: Cambridge University Press (1991).
- Lackey, Douglas. "A Modern Theory of Just War." *Ethics*. Issue 92. Chicago: The University of Chicago Press (April 1982); 533-546.
- Langlois, Anthony J. "Human Rights without Democracy? A Critique of the Separationist Thesis." *Human Rights Quarterly*. Vol. 25. Baltimore: The John Hopkins University Press (2003); 990-1019.
- Larmore, Charles. *The Morals of Modernity*. Cambridge: Cambridge University Press (1966).
- Lewis, Bernard. "The Roots of Muslim Rage." *The Atlantic Monthly*. Washington: The Atlantic Monthly Group (September 1990); 47-60.
- Locke, John. *Two Treatises of Government and A Letter Concerning Toleration*. Shapiro, Ian, ed.. New Haven: Yale University Press (2003).
- Louis V. Iasiello's "Jus post bellum: the moral responsibilities of victors in war" in *Naval War College Review* (Vol. LVII, no. 3, Newport: Naval War College Press [2004]; 33-52).
- MacIntyre, Alasdair. *Three Rival Versions of Moral Enquiry*. Notre Dame IN: University of Notre Dame Press (1990).
- . *Whose Justice? Which Rationality?* Notre Dame IN: University of Notre Dame Press (1988).
- May, Larry, et al., eds.. *Liberty, Equality, and Plurality*. Lawrence, Kansas: University Press of Kansas (1997).
- McCarthy, Mary. *Medina*. New York: Harcourt Brace Jovanovich (1972).

- McPherson, Lionel K. "The limits of the war convention." *Philosophy & Social Criticism*. Vol. 31, issue 2. London: SAGE Publications (2005); 147-163.
- Midgley, E.B.F.. *The Natural Law Tradition and the Theory of International Relations*. London: Paul Elek (1975).
- Mill, John Stuart. *On Liberty*. Castell, Alburey, ed.. New York: Appleton-Century-Crofts (1947).
- . *The Subjection of Women*. Buffalo: Prometheus Books (1986).
- Miller, Kenneth E.. "John Stuart Mill's Theory of International Relations." *Journal of the History of Ideas*. Vol. 22, no. 4. Pennsylvania: The University of Pennsylvania Press (Oct/Dec 1961); 493-514.
- Morgenthau, Hans J.. *Political Theory and International Affairs, Hans J. Morgenthau on Aristotle's The Politics*. Lang, Anthony F., Jr., ed.. Westport, CT: Praeger Publishers (2004).
- , and Thompson, Kenneth W.. *Politics Among Nations*. Sixth edition. New York: Alfred A. Knopf, Inc. (1985).
- Oakeshott, Michael. *Hobbes on Civil Association*. Oxford: Basil Blackwell & Mott Limited (1975).
- O'Brien, William Vincent. *The conduct of just and limited war*. New York: Praeger Publishers (1981).
- Orend, Brian. *Human Rights*. Peterborough ON: Broadview Press Ltd. (2002).
- . "Justice after war," in *Ethics & International Affairs*. Vol. 16. Issue 1. New York: Carnegie Council on Ethics and International Affairs (2004); 43-56.
- . "Just and lawful conduct in war: reflections on Michael Walzer." *Law and Philosophy*. No. 20. Netherlands: Kluwer Academic Publishers (2001); 1-30.
- Owen, John M.. "How Liberalism Produces Democratic Peace." *International Security*. Vol. 19, no. 2. Cambridge MA: The MIT Press (Fall 1994); 87-125.
- Pagden, Anthony. "Human rights, natural rights, and Europe's imperial legacy." *Political Theory*. Vol. 31, no. 2. London: Sage Publications (April 2003); 171-99.

- Pangle, Thomas L., and Ahrsendorf, Peter J.. *Justice Among Nations*. Lawrence, Kan: University of Kansas Press (1999).
- Ramsey, Paul. *The Just War, force and political responsibility*. New York: Charles Scribner's Sons (1968).
- Responsibility to Protect*. International Commission on Intervention and State Sovereignty. Ottawa: International Development Research Centre (2001).
- Rieff, David. "A New Age of Liberal Imperialism?" *World Policy Journal*. Vol. XVI, no. 2. Cambridge MA: MIT Press (Summer 1999); 1-10.
- Schmitt, Carl. *The Concept of the Political*. Strong, Tracy B., ed.. Schwab, George, transl.. Chicago: The University of Chicago Press (1996).
- Siddiqui, Omar. "Relativism vs. universalism: Islam and the human rights debate." *American Journal of Islamic Social Sciences*. Vol. 18, no. 1. Herndon VA (Spring 2002); 61-78.
- Shakespeare, William. *Henry V* in *The Complete Works of William Shakespeare*. Clark, W.G., and Wright, W. Aldis, eds.. Vol. I. New York: Nelson Doubleday, Inc. (1883, 1950).
- Smith, Michael Joseph. "Growing up with *Just and Unjust Wars*: an appreciation." *Ethics & International Affairs*. Vol. 11. Oxford: Blackwell Publishers (1997); 3-18.
- Strauss, Leo. *Natural Right and History*. Chicago: The University of Chicago Press (1953).
- . "Notes on *The Concept of the Political*," Lomax, J. Harvey, transl., in *The Concept of the Political*. Strong, Tracy B., ed.. Schwab, George, transl. Chicago: The University of Chicago Press (1996); 81-107.
- . *The Political Philosophy of Hobbes: Its Basis and its Genesis*. Sinclair, Elsa M., transl. Chicago: The University of Chicago Press (1936).
- Taylor, Charles. "Neutrality in Political Science," in *Philosophy, Politics and Society*. Laslett, P., and Runciman, W.G., eds.. Third edition. Oxford: Blackwell Publishing Inc. (1967); 25-57.
- Tuck, Richard. *Natural Rights Theories: their origin and development*. New York: Cambridge University Press (1979).

- Walzer, Michael. *Arguing about war*. New Haven: Yale University Press (2005).
- . *Just and Unjust Wars*. New York: Basic Books (1977).
- . *Obligations: Essays on Disobedience, War, and Citizenship*. Cambridge MA: Harvard University Press (1970).
- . “Response to Lackey.” *Ethics*. Issue 92. Chicago: The University of Chicago Press (April 1982); 547-8.
- . “The Triumph of Just War Theory (and the Dangers of Success).” *Social Research*. Vol. 69, no. 4. New York: New School for Social Research (Winter 2002); 925-44.
- . *Thick and Thin: moral argument at home and abroad*. Notre Dame IN: University of Notre Dame Press (1994).
- Weil, Simone. “Human Personality” in *Simone Weil: an anthology*. Miles, Siân, ed.. London: Virago Press Limited (1986); 49-78.
- Welch, David. *Justice and the genesis of war*. Cambridge: Cambridge University Press (1993).