

# The judgment of war: on the idea of legitimate force in world politics

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The twenty first century has opened, as so many centuries before it, with the drum roll of war depressingly audible. The optimism of the early 1990s that world politics was being remade, and that the threat of serious conflict was receding, vanished along with the twin towers that were so much a symbol of that world, one heart-breakingly beautiful September morning in 2001. And with the return of force and war to the forefront of international politics, so come the inevitable questions; when, under what circumstances, in what manner and with what restraint, may we (whoever the we might be) use force to secure our interests, protect our families, defend our communities or our values?

My aim in this article is to consider the idea of *morally* legitimate force in world politics. That will involve (how could it not?) saying something about the jurisprudential status of certain key contemporary ideas about legitimacy more generally, and especially with the idea of legality, but it is with moral legitimacy, rather than with legitimacy of other kinds, that I am centrally concerned here. This distinction is an important one to make in part (as we shall see in a moment) because a good deal of discussion about the 'legitimacy of the use of force' in the contemporary period elides the distinction or, worse, assumes that there is no distinction at all, but also because I need to stipulate from the beginning that I am concerned with one particular aspect of the understanding of the contemporary use of force (ways of morally justifying it, if one can) without denying that one can approach it from a number of other angles of vision.

I should also make plain that in this article I am going to concentrate on one particular way of thinking about the justification of force, without denying – or really even discussing – the obvious fact that there are other ways of thinking about it. My focus will be on the Just War tradition and aside from a few comments immediately below, and in the opening section, I am not planning to say anything about either claims that there are other, better ways of justifying force or claims that there is no possible way of (morally) justifying it. Both these sets of claims are, of course, important and to fully defend the position I adopt here I need, of course, to show that

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both are mistaken<sup>1</sup>. My reasons for not doing so on this occasion are two-fold. First, simple practicality; I have neither the time nor the space to embark on that task here. Second, the principal aim of this article is to argue for a *different* way of conceptualising the just war tradition and its characteristic modes of argument than the ones that have tended to dominate the field in recent years. Of course, for this argument itself to be fully convincing I would have to show that thinking about the justification of the use of force in other ways is inferior to that offered by and through the just war tradition. But I need first of all to suggest why I think the tradition itself needs rethinking, and that is what I will attempt here.

These concerns shape the structure of what follows. The article is divided into four sections. The opening section takes the recent public discussion of the Bush and Blair government's decision to go to war in Iraq and the controversy surrounding it as a starting point for a discussion of the way in which just war rhetoric (and the language of the tradition in general) is being used by contemporary writers in the world. In particular it will look at the role played in such discussions of certain kinds of juristic reasoning and of the way in which the dominant modes of utterance within the tradition see the relationship between law and morality. The second section then traces these moves back to the revival of just war thinking after the Second World War, and examines in particular the most influential versions of the tradition in that revival. I will say something in brief about the revival of religious theorising but my main target in this section will be Michael Walzer's distinctively secular version,<sup>2</sup> far and away the most influential secular version of the tradition in the postwar period. The argument of this section will be that the way in which Walzer 'revives' or (in his own words) 'recaptures' the just war does violence to some of the central insights of earlier versions of the tradition, insights that might be able to help us to overcome the problems alluded in the opening section. The third section of the article then seeks to suggest what those other, earlier aspects of the tradition are that the dominant modes of thinking about the tradition today have marginalised, and what just war arguments might look like if the tradition was so reconceptualised. Essentially the argument here emphasises the necessity for *good judgment in the context of war*, rather than the language of justice in war per se and examining what this does to the traditional ways of understanding the just war (*jus ad bellum*, *jus in bello* and so on) and I also offer some thought about how such a reconceptualised just war tradition might offer us tools for understanding and reflection, in the context of the relationship between force and legitimacy today, returning to some of the concerns of the opening section. Finally, I say something about a central debate that needs to happen *within* such a reconceptualised just war tradition, and point to its significance both for the just war and for thinking about international politics more generally.

## I

On 28 April 2005, one week before the date of the British general election scheduled for that year, the UK Prime Minister, Tony Blair, ordered the release of the full

<sup>1</sup> In *Dealing in Darkness*, chapters 1 and 2 will be largely taken up with evaluating these sorts of claims.

<sup>2</sup> See, of course, principally *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977; 2nd edn. 1992; 3rd. 2000). But see also Walzer, *Arguing about War* (New Haven, CT: Yale University Press, 2004).

document prepared for him by the Attorney General on the legality of invading Iraq. The Prime Minister had been led to this point after a continuous and damaging dispute between himself and his critics (many of whom were in his own party) as to what advice had actually been received from the Attorney General prior to the British and American invasion of Iraq, and whether any undue pressure had been put on the Attorney General to come up with a view which favoured the legality of an invasion. The Iraq war had become easily the most controversial decision the Blair Government had taken in its second term and was threatening to dominate the last week of the general election campaign. Much, if not most, of the criticism focused on the justifications offered by both the Blair government and the Bush administration for the invasion. But the interesting point – from my point of view here – is the character of the debate both in Britain and – in a rather different way – in the United States.

The Attorney General himself, in an interview with Joshua Rozenberg, *The Daily Telegraph's* legal editor, was unambiguous:

I stand by my conclusion that military action was lawful. That was a judgment I had to reach. I reached it and I stand by it. . . . And I want to reject the suggestions that I was leant on, or that this somehow was not my genuine opinion. These suggestions that this was not genuinely my view – these are fantasies and they need to be seen as such . . . I would not have hesitated to give negative advice if that had been my conclusion . . . I have been a practising lawyer for 30 years. I have been chairman of the Bar. I have chaired international legal organisations. I have been a deputy High Court judge. I was at the height of my profession when I was appointed Attorney General . . . I was not going to change that or throw that away – and I did not.<sup>3</sup>

Of course, in the case of the Attorney General himself, and indeed the British Government which had asked for his advice (in part at the urging, we are told, of senior military officers who were concerned about the possibility of prosecution by the recently created International Criminal Court), it is reasonable enough *at least to begin with* to focus on the question of whether or not a war would be legal. But, there are surely two questions that are prior to any answer that one might give to this question; the first, simply, consists in asking about the character of the ‘law’ in question – in this case the specific set of assumptions and agreements that make up ‘international law’ – in other words it is primarily a jurisprudential question. The second question, however, has to do with the relationship between a legal claim and a moral one.

In the case discussed above what was perhaps oddest, at least to my eye, was that the general discussion both amongst politicians and in the media, and independently of what particular position was taken (pro or con the war, pro or con the Government in general), was almost exclusively focused on whether or not the war was ‘legal’. At no point that I am aware of, did anyone seriously discuss the surely related question that even if it was legal, was it morally justified? Or rather, in as much as they did, the assumption seemed to be that morality and legality were effectively, in this instance at least, one and the same. Yet a moment’s reflection should serve to underline that this could not possibly be the case.

<sup>3</sup> *The Daily Telegraph*, 26 May 2005.

Of course, International Humanitarian law, in particular those parts of it that are known as ‘The Laws of War’ are inextricably bound up with the history and evolution of the just war tradition. But they are also bound up with the history and evolution of the idea of international law itself. The codification of ‘the laws of war’ was part of a much more general phenomenon to do with the gradual ‘legalisation’ of international relations, of international law being, in Martti Koskenniemi’s words ‘the gentle civiliser of nations’<sup>4</sup> and that, of course, is a political project. The laws of war in their current form are, therefore, bound up with the fate – and the debates over the fate – of that wider political project. This was one of things that the political disputes over Iraq partly demonstrated. In the United States, a very strong body of legal opinion had always been – to put it mildly – lukewarm about the idea of the ‘binding’ character of international law, regarding domestic law, rooted in the constitution, as binding but international law (as, obviously, not being so rooted) as being at best advisory.<sup>5</sup>

Such jurisprudential arguments, together with the necessarily interpretative character of legal argument in general, account in part for the variety of legal views on whether or not the invasion of Iraq (or any other possible instance of the use of force) is, or is not, legal. The point, of course, is to suggest that such arguments, far from determining with clarity the position vis-à-vis the rights and wrongs of this or that intervention are simply *part of* such arguments and cannot therefore be appealed to in order to settle them. Whether or not the invasion of Iraq was ‘lawful’, depends upon a particular understanding of law, of its application to the international realm and of what kind of binding force such rules might have, and these are all matters of considerable – and quite genuine – dispute.

But there is more. The question of the ‘legality’ of the Iraqi invasion is not only not separable from wider philosophical and jurisprudential questions to do with the status and character of international law (in particular) and law itself (in general) it is also centrally bound up with the question of the relationship between legal and moral argument. The two claims are normally, of course, seen as being related in that generally speaking in our domestic jurisprudence we think there is a moral requirement to obey the law, even in cases where we think the specific law in question may be wrong. This is in part simply what it is to have a legal *system* – there is a moral requirement to obey the law as such, independently of the moral worth of any individual part of that law.<sup>6</sup> But even in the domestic case, there are occasions when we would wish to set aside the claim that action A, while certainly illegal, is also immoral. It is perfectly easy to conceive of instances where actions we would regard as moral (perhaps even morally required) would also be illegal, and in such cases the general obligation to ‘obey the law’ would not normally be held to trump the obligation to act morally.

<sup>4</sup> See his wonderful book, *The Gentle Civiliser of Nations: The Rise and Fall of International Law 1880–1960* (Cambridge: Cambridge University Press, 2002).

<sup>5</sup> This dispute is manifest in the debates within the US Supreme Court over, for example, the banning of the execution of those under 18, partly on precedent drawn from existing international practice, Justice Antonin Scalia, for example, dissenting emphatically on the grounds that such precedents could not (and should not) count as binding precedents in US law.

<sup>6</sup> There is, of course a large body of philosophical and jurisprudential literature on this issue and those surrounding it. Classic modern statements, with special relevance to the international case, would be H. L. Hart, *The Concept of Law* (Oxford: The Clarendon Press, 1959), Hans Kelsen, *General Theory of Law and the State* (Cambridge, MA: Harvard University Press, 1945).

If this is true in the general realm of domestic jurisprudence, however, then it must be equally (if not more) true in the sphere of international law and this then raises the obvious question, if we cannot determine the specific sense of the legality of any instance of the use of force simply in terms of the internal specifics of international law, then we must surely look to a larger framework in which to embed such judgments. One of the starker messages, I think, of the recent debates over the Iraq invasion (and I have obviously only scratched the surface of them here) is the sense conveyed by many participants in the debate that no such larger framework is available. For many, as I have already suggested, there is a tendency to equate legality and morality. This is perhaps especially so in Europe. But for many others, the *dismissal* of the restrictions – as they are seen – of international law brings with it a belief in *state-led* morality, or perhaps a clear, if not very articulate or convincing attempt to substitute an ethos of ‘pagan virtue’ for the allegedly disabling views of Christian morality which is held to inform the just war tradition, also usually equated with international humanitarian law.<sup>7</sup> In other words, both for the critics of the Iraqi invasion as well as for many of its defenders, the idea that there was a framework of general moral argument one might refer to in order to discuss the moral legitimacy of the use of force was increasingly rejected.<sup>8</sup> And aside from any wider problems this might generate (of which more later) it made the debate over the invasion of Iraq itself increasingly ideological, in one way or another, and therefore also, increasingly strident and necessarily irresolvable.

## II

The framework that most of the above rejects, of course, is usually referred to as the just war and in many respects this tradition is widely seen to be in very good health. In an article published in *International Affairs* in 2002,<sup>9</sup> I rehearsed the point – certainly not original to me – that the revival of the just war tradition in the second half of the twentieth century was one that had been in large part brought about by events in the world. Specifically (for example) the carpet-bombing of German cities (echoing, of course, the Germans’ own practice earlier in the war) which led to the protests of Bishop George Bell, on traditional just war grounds – such bombing could only be the deliberate targeting of the innocent – and most importantly of all, of course, the Holocaust and its aftermath. Added to that were the Nuremberg and Tokyo tribunals and, in due course the creation (and, let us not forget, the use) of

<sup>7</sup> The specific reference to ‘pagan virtue’ is to Robert Kaplan’s *Warrior Politics: Why Leadership Demands a Pagan Ethos* (New York: Random House, 2002) which combines a strong attempt to rubbish the just war, with a not especially nuanced approach to ancient thought. The wider tendencies, however, are visible in many places, from writers like Robert Kagan in *Paradise and Power* (New York: Atlantic Books, 2004) to the statements of many Bush administration officials.

<sup>8</sup> There were obviously a good many other aspects to this debate that I simply do not have time to go into here; that all such general moral arguments are necessarily cultural or religious and therefore bound by history and geography was one of the most common. I shall say something about this later on.

<sup>9</sup> See Nicholas Rengger, ‘On the Just War Tradition in the Twenty First Century’, *International Affairs*, 78:2 (2002), pp. 353–63.

nuclear weapons to end the war against Japan.<sup>10</sup> All of these events were forcing a rethink of the traditional view that states simply had a right to use force in defence of their interests, whatever they took them to be, which had been the standard view of international society at least from Vattel onwards.<sup>11</sup>

Initially, it was largely in the areas of religious thinking on questions of war and peace that the tradition was most obviously and most consciously rethought, perhaps unsurprisingly. Protestant theologians, most notably Paul Ramsey and then later James Turner Johnson, refined the traditional inherited categories and sought to deploy them in modern contexts. But in Catholic social thought too, the tradition was revived and discussed at length.<sup>12</sup> Perhaps the most interesting development, however, was the gradual secularisation of the concepts and categories of the just war tradition and the manner in which this was both attempted and achieved. In the academic world unquestionably the most influential contributor to this development has been Michael Walzer, and for a moment I want both to dwell on the significance of this in general terms and also say something about the specific arguments found in *Just and Unjust Wars*.

Walzer has been, of course, one of the most influential political theorists of the last forty years. He has written across a very wide range of topics in political theory<sup>13</sup> and has also been very active as a public intellectual, co-editing the leading magazine of the American centre left, *Dissent*, for many years. This combination of academic and

<sup>10</sup> This, in fact, led to one of the first sustained deployments of the just war tradition in post-Wittgensteinian Anglophone analytic philosophy, in that Elizabeth Anscombe – student, translator and heir of Wittgenstein – wrote two papers where she excoriated the decision to use atomic weaponry. Anscombe, a deeply devout Catholic, drew in fact on very traditional just war arguments (as had Bell in the controversy over strategic bombing) but her status in the philosophical world made her arguments stand out. It was also helpful that the first of the articles – ‘Mr Truman’s Degree’ – was in fact a response to the proposal that Oxford (where Anscombe taught at the time) award Harry Truman, the President who authorised the dropping of the bombs on Hiroshima and Nagasaki, of course, an honorary degree. The essays are reprinted in vol. 3 of her *Philosophical Papers* (Cambridge: Cambridge University Press, 1981).

<sup>11</sup> For a discussion of the significance of this claim see, inter alia Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order From Grotius to Kant* (Oxford: The Clarendon Press, 1999), Thomas Pangle and Peter Ahrensdoerf, *Justice Among Nations: On the Moral Basis of Power and Peace* (Kansas: University of Kansas Press, 1999), and David Boucher, *Political Theories of International Relations* (Oxford: Oxford University Press, 2000).

<sup>12</sup> See especially Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Scribners, 1968) and also *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (Durham, NC: Duke University Press, 1961). Ramsey’s student, James Turner Johnson, is perhaps the person who has done most to explore the history of the tradition, especially in *Ideology Reason and the Limitation of War* (Princeton, NJ: Princeton University Press, 1975), and *Just War Tradition and the Restraint of War* (Princeton, NJ: Princeton University Press, 1981), but he has also illuminatingly discussed the content of the ideas; see *Can Modern War Be Just?* (New Haven, CT: Yale University Press, 1984) and *Morality and Contemporary Warfare* (New Haven, CT: Yale University Press, 1999).

<sup>13</sup> Aside from *Just and Unjust Wars*, his most influential academic studies have probably been *Spheres of Justice* (Oxford: Blackwell, 1983) and *Interpretation and Social Criticism* (Cambridge, MA: Harvard University Press, 1987), but earlier in his career he wrote on the political thought of the English Civil War [*Revolution of the Saints* (Cambridge, MA: Harvard University Press, 1965)], on the debates surrounding the French Revolution and the execution of Louis XVI [*Regicide and Revolution* (Cambridge: Cambridge University Press, 1974)] and many essays on various aspects of political thought and political thinking. Mostly these have been collected as volumes of essays, see especially, *Obligations: Essays on Disobedience, War and Citizenship* (Cambridge, MA: Harvard University Press, 1970) and *Thick and Thin: Moral Argument at Home and Abroad* (South Bend: Notre Dame University Press, 1994).

political influence is unusual and partly accounts for the influence of many of his writings, including – perhaps especially – his writings on war. In a symposium published to mark the twenty-fifth anniversary of the publication of *Just and Unjust Wars*, Michael Joseph Smith made the point that ‘since its appearance the book has been a standard text at universities throughout the world – as well as at military academies including West Point’ and adds that ‘I would . . . name it without hesitation as the indispensable modern classic in the field. Most of the people I know who teach in this area would agree.’<sup>14</sup>

Indeed. So we can agree, then, that Walzer’s book is certainly amongst the most influential books to have revitalised the just war tradition in the postwar period. It is, as Smith suggests, and as a host of other writers have testified, a magnificent book and contains within it some of the best just war writing of recent decades. In this article, however, I want to concentrate on two aspects of the book that have been both crucial to its success but have also, I think, contributed considerably to the kind of problems when deploying the tradition that I highlighted in the first section above.

The first of these is the way in which Walzer sets up his account of the just war, and this has a good deal to do, both with the origins of the book and Walzer’s more general philosophical assumptions. In the preface to the original edition of *Just and Unjust Wars*, Walzer disarmingly tells us that ‘I did not begin by thinking about war in general, but about particular wars, above all about the American intervention in Vietnam’ and added that ‘in those years of angry controversy, I promised myself that one day I would try to set out the moral argument about war in a quiet and reflective way . . . I want to defend the business of arguing, as we did and as most people do, in moral terms.’ He goes on to say that ‘my starting point is the fact that we do argue, often to different purposes to be sure, but in a mutually comprehensible fashion: else there would be no point in arguing. We justify our conduct; we judge the conduct of others . . . these justifications and judgments . . . are . . . a legitimate subject of study. Upon examination they reveal, I believe, a comprehensive view of war as a human activity and a more or less systematic moral doctrine, which sometimes, but not always, overlaps with established legal doctrine.’<sup>15</sup>

This general argument seems to me to be exactly right. I think it does chime with the way most people think about moral decision-making in general and thinking about war in particular. Walzer is quite right to say that the framework for moral thinking about war overlaps with, but is not reducible to, legal thinking about war and he is also quite right to say, as he does a moment later, that ‘the proper method of practical morality is casuistic in character’.<sup>16</sup> This claim flows from his concern with what he calls ‘the present structure of the moral world’<sup>17</sup> rather than either possible ideal worlds (which are not ours and which, he suggests, are often the focus of philosophical attempts to understand morality) or with the *making* of the moral world, which would involve detailed historical reconstruction of the just war tradition. I also think (as I am sure Walzer does, though he nowhere explicitly makes this point) that this way of reasoning about practical morality is precisely the way in

<sup>14</sup> Michael Joseph Smith, ‘Growing Up with *Just and Unjust Wars*: An Appreciation’ in *Ethics and International Affairs*, 11 (1997), pp. 3–18, at 3–4.

<sup>15</sup> All the above quotations are from *Just and Unjust Wars*, 3rd edn., pp. xvii–xix.

<sup>16</sup> *Ibid.*, p. xxii.

<sup>17</sup> *Ibid.*, p. xix.

which the just war tradition itself reasoned, from Ambrose and Augustine to the neo-Scholastics of the sixteenth century.<sup>18</sup>

The problem is that as Walzer moves into his analysis of just and unjust wars, these claims recede and a rather more programmatic account of the tradition takes their place. Most especially, the way that he sets up the 'legalist paradigm' and the 'domestic analogy' in fact do the opposite of what his opening preface suggests. In the first place he adopts, almost causally, and from the beginning, the assumption that the principal agents of war are states and thus structures the legalist paradigm around his treatment of the rights of political communities. These rights, Walzer tells us, are merely the collective form of individual rights. 'The process of collectivisation is a complex one', he concedes, (but) it is best understood . . . as it has commonly been understood since the seventeenth century, in terms of social contract theory . . . contract is a metaphor for a process of association and mutuality, the ongoing character of which the state claims to protect against external encroachment . . . the moral standing of a particular state (therefore) depends upon the reality of the common life it protects and the extent to which the sacrifices required by that protection are willingly accepted and thought worthwhile.<sup>19</sup> This way of thinking then generates, he argues, what he calls the 'legalist paradigm' which, however it might be slightly modified or reworked in practice (and he accepts that it would be) is the basic way we should ground and frame the just war tradition: 'It is', he tells us, 'our baseline, our model, the fundamental structure for the moral comprehension of war'.<sup>20</sup>

The problem with this claim is that, unavoidably, it sets up the just war as fundamentally state-based and connected with the language of rights as it has evolved and developed within liberal modernity. However one interprets these facts, they incline the tradition to a more juristic and less casuistic reading than Walzer's opening remarks indicated was his intention. They do so for the simple reason that to structure an account of the tradition on the basis of rights language inevitably slots it into the form of modern political vocabulary that engages in 'rights talk' and that, necessarily, in the modern world, pushes the tradition into the arms of legalistic reasoning. Of course, in Walzer's own treatment of the just war as a whole, casuistic elements remain in place (most especially in his discussion of the *jus in bello* in parts three and five of *Just and Unjust Wars*) but they are, I think, to a large extent vitiated by the overall setting of the *jus ad bellum*. And, inasmuch as Walzer's text has been the most influential academic and secular treatment of the tradition, this way of thinking about the tradition has become sedimented more generally in the wider political culture, as we saw above, and accounts in part for the rather strained aspects of a good deal of the discussion of the tradition in connection with contemporary conflict.

<sup>18</sup> This is, obviously, a large claim. And, of course, I am not suggesting that there are no differences between the original formulations of the tradition in Ambrose and Augustine and the 'School of Salamanca' version of it in the sixteenth and early seventeenth centuries. The point is merely to say that, to all intents and purposes, the general cast of the tradition for much of its existence into modern times was as a casuistic tradition of moral reflection not as a juristic one. I have made this point in more detail in 'On the Just War tradition in the Twenty-First Century'. Of course that does not solve – as we shall see – a different problem; which is how Aristotelian the casuistry in question has to be.

<sup>19</sup> Walzer, *Just and Unjust Wars*, pp. 52–4.

<sup>20</sup> *Ibid.*, p. 61.



Of course, it is also true that this aspect of Walzer's book also fits very well with the manner in which war – and indeed politics more generally – has been discussed in the last hundred or so years; it foregrounds the state, it sees legal thought as the baseline, if not the be all and end all of moral thinking in politics, and without denying the powerful claims of morality on politics it also hints at the specific character of political ethics<sup>21</sup> and argues that in the context of war and violence, one should see this in the particular context that international society generates.<sup>22</sup>

There is one final point I want to make in connection with Walzer's 'recapture' of the just war. Whatever might have been the case initially (and it is clear that Walzer's intention had always been, quite rightly, to try and look at the phenomenon of war as a general part of the human moral realm) the events in the world since the publication of Walzer's book have tended to foreground certain issues over others. As Walzer himself notes<sup>23</sup> (and the comment is echoed in Michael Joseph Smith's reconsideration of *Just and Unjust Wars*<sup>24</sup>) the question of intervention – which had occupied only a small part of the original treatment – has become much more important, and in Walzer's treatment of intervention – quite consistently given the premises just mentioned – the state-centric and legalistic character of his account was dramatically obvious. In his recent writing, Walzer has given some ground to his critics on these issues and admitted a right of rescue rather more generous than his initial treatment allowed.<sup>25</sup> Nonetheless, he has retained a firm break on interventionary impulses as, given the initial development of his theory he must. The point I want to make here, however, is that by foregrounding intervention, Walzer's version of the just war has not only reinforced the state-centric and legalistic character of the dominant contemporary forms of the tradition, it has also tended to reinforce the view amongst both supporters and critics, that the purpose of 'just war theory' is to determine, by means of some kind of moral calculus, whether *this* or *that* war was 'just' or 'unjust'. And here, even the title of Walzer's book, unexceptional as it is in other contexts, encouraged this particular view.

These tendencies are, of course, not unique to Walzer. James Turner Johnson, another stalwart of the contemporary just war tradition, whose historical work is a masterpiece of reconstruction and sympathetic interpretation, gives support (perhaps unintentionally) to the same development when, as he does for example in the opening chapter of a recent book, he 'summarises' and lists the central points of the tradition in a set of lists.<sup>26</sup> It is not that Johnson's presentation of the tradition is inaccurate but rather that it encourages the tendency to think of it in terms of a juristically based calculus where certain boxes (just cause, right authority and so on) are ticked or not ticked and in the end one comes out with the view: yes, this was/was not a just war.

<sup>21</sup> A point that Walzer developed in detail in an earlier essay, one that strongly influenced *Just and Unjust Wars*. See Walzer 'Political Action: The Problem of Dirty Hands', in Marshall Cohen, Thomas Nagel and Thomas Scanlon (eds.), *War and Moral Responsibility* (Princeton, NJ: Princeton University Press, 1974).

<sup>22</sup> It is worth noting that, in this respect at least, Walzer's work is very close to the so-called 'English School' of IR scholarship and to certain older versions of realism, especially Hans Morgenthau and Reinhold Niebuhr.

<sup>23</sup> See Walzer, *Just and Unjust Wars*, 3rd edn., new preface, p. xi.

<sup>24</sup> See Smith, 'Growing up with *Just and Unjust Wars*', cf. 'Perhaps no part of *Just and Unjust Wars* has inspired greater debate and controversy than its discussion of intervention', p. 15.

<sup>25</sup> See especially 'The Politics of Rescue', in *Arguing about War*.

<sup>26</sup> See James Turner Johnson, *Morality and Contemporary Warfare* ch. 1, pp. 22–40.

Let me summarise what I have tried to argue here. The dominant approaches in the revival of just war argumentation in the postwar period have all, to a greater or a lesser extent, continued and encouraged the broadly juristic reading of the tradition that, as we saw earlier, has led to the major problems with the tradition that have been exposed by recent controversies about the use of force. In many cases – as with Walzer – there is a recognition of the importance of the casuistical mode of moral argument but a failure to carry it through or to really consider what such a form of moral reasoning means for the tradition and, therefore, for the way in which we can use the resources of the tradition to properly consider instances of the use of force in contemporary world politics. And the failure to think this through properly has allowed many of the now standard criticisms of the tradition to flourish alongside its revival; that it encourages rather than restrains, war; that it is culture or time bound, bound to the ‘West’ or to Christianity; that it is in service to the ‘powers that be’ and allows them to find reasons to justify what they really wish to do for other reasons. And for all the above reasons, it is often said, the tradition – despite its great revival since the end of the Second World War – is now in deep philosophical trouble and in danger of effective collapse. Hence the criticisms that one hears, often from the lips of the powerful, that it is an unnecessary restraint, a relic of a bygone age, to which we no longer need, or should pay attention.<sup>27</sup>

### III

This brings me to the crux of the matter. I strongly believe such views are incorrect, morally damaging and, in any event, unnecessary. I cannot put the matter better than to quote Oliver O’Donovan’s recent statement that the just war tradition ‘is in fact, neither a ‘theory’, nor about ‘just wars’, but ‘*a proposal for doing justice in the theatre of war*’<sup>28</sup> (emphasis in original). It is this claim that I now want to examine and contrast with the manner in which the dominant way of reinterpreting the tradition sees the issue. In doing so, I think, we can find resources to support and sustain the revival of the just war, without falling into any of the traps or temptations I have alluded to above and which helps us to ask important (albeit slightly different) questions than those asked by the dominant modes in the context of something like Iraq. However, such a reworking of the tradition *does* leave us with one profound question unanswered. The implications of that, I shall reflect upon in my final section.

Let me start by picking up the point I made a moment ago. The just war tradition cannot tell us – and is not designed to tell us – whether this or that particular instance of the use of force is ‘just’ or not in the generality. Again to quote O’Donovan;

it is very often supposed that just war theory undertakes *to validate or invalidate particular wars*. That would be an impossible undertaking. History knows of no just wars, as it knows of no just peoples . . . one may justify or criticise acts of statesmen, acts of generals, acts of common soldiers or of civilians, provided one does so from the point of view of those who performed them, i.e. without moralistic hindsight; but wars as such, like most large scale historical phenomena, present only a question mark, a continual invitation to reflect further’.<sup>29</sup>

<sup>27</sup> Consider, for example, the dismissal of the tradition by the likes of Robert Kaplan. See his *Warrior Politics*.

<sup>28</sup> Oliver O’Donovan, *The Just War Revisited* (Cambridge: Cambridge University Press, 2003), p. vii.

<sup>29</sup> O’Donovan, *The Just War Revisited*, p. 15.

What, then, *is* the tradition designed to do? We can grasp something of this, I think, if we reflect for a moment on one aspect of the tradition little considered by moderns: right intention. Johnson, in his account of the tradition cited above, accepts that this aspect of the tradition is ‘not explicitly addressed’ in the modern just war, being subsumed into questions of just cause and right authority.<sup>30</sup> Yet in classic just war writing from Augustine to the sixteenth century, right intention was most emphatically not so subsumed. Partly this was because it cut across the ‘dividing line’ of *jus ad bellum* and *jus in bello* that is in fact absent in Augustine and much less obviously present even in someone like Vitoria.<sup>31</sup> While part of the ‘right intention’ discussion is meant to apply to rulers – they must not have the intention of territorial or personal aggrandisement, intimidation or illegitimate coercion – part of it is also meant to apply to those who do the fighting; the enemy is not to be hated, there must be no desire to dominate or lust for vengeance, and soldiers must always be aware of the corruption that can flow from the *animus dominandi*.

The point here, of course, is that what the tradition – from Augustine onwards – insisted upon, and what right intention’ was meant to gesture towards, was the extension into the realm of war of the normal practices of moral judgment. Of course, classic just war thinkers – Augustine above all – also recognised that war was an extreme realm and so such an extension represents (in O’Donovan’s formulation) ‘an extraordinary extension of ordinary acts of judgment’<sup>32</sup> but an extension of them all the same. This was why the two poles of the classic just war tradition were always authority on the one hand and judgment on the other, and why, when we come to think about judgment, the two central terms of reference were (as they are now known to us) discrimination and proportion. In the classic treatments of the tradition it is *these* distinctions that give rise to discussions about just cause, right authority and right intent (for example) not the later (and much more problematic) tendency to divide questions about war into the *jus ad bellum* and the *jus in bello*. O’Donovan refers to this distinction as a ‘secondary . . . and not a load bearing’<sup>33</sup> distinction, which I think nicely captures how we should view it. It is a useful heuristic, no more. The problem is that the modern revival of the tradition has elevated it into an architectonic.

How does this change the way in which we should approach the tradition from the manner in which (say) Walzer approaches it? In the first place, it does not suppose, as Walzer effectively does, that the moral reality of war (as he puts it) is different from moral reality elsewhere. Although war is a realm of extremes, it is still the general human moral realm not some separate realm, and so the ‘dirty hands argument’ that Walzer develops elsewhere but then applies to much of his discussion of war (for example, and most notoriously, his discussion of ‘supreme emergency’<sup>34</sup>) does not work. Secondly, it makes no assumption about the *moral* primacy of the state. The

<sup>30</sup> Johnson, *Morality and Contemporary Warfare*, p. 30.

<sup>31</sup> For an extremely powerful account of the views on war of the ‘School of Salamanca’ in general, and Vitoria in particular, see the introduction to Anthony Pagden and Jeremy Lawrence (eds.), *Francisco de Vitoria: Political Writings* (Cambridge: Cambridge University Press, 1991). An extremely good account of the background can also be found in Pagden, *Lords Of All the World: Ideologies of Empire in Sapins, Britian and France c. 1500–1800* (New Haven, CT: Yale University Press, 1995).

<sup>32</sup> O’Donovan, *The Just War Revisited*, p. 14., emphasis added.

<sup>33</sup> *Ibid.*, p. 15.

<sup>34</sup> See, for example, ch. 16 of *Just and Unjust Wars*.

question of right authority is as much a source of debate and discussion as anything else in the tradition. It does not deny in principle that the state may be a right authority in any given context, but nor does it assume it. It will be a matter of judgment. States have certain competencies and not others, and other agents may have relevant competence depending on the circumstances. Authority, to be sure, normally flows from well-constituted government but not all such government has 'right authority' in all circumstances. This would need deliberation, and, in a democracy, the deliberation would involve the people, however constituted, not just the government. In other words, the whole framework on which Walzer (and indeed most other contemporary just war theorists) predicate their version of the tradition is thrown into question; not because anyone is denying either the power – either material or moral – of the state as such, but rather by saying that power (even moral power) does not necessarily translate into authority in the context of the use of force. It will depend.

The third difference between this approach and the more dominant one is the refusal to treat the *jus ad bellum* or *jus in bello* as a 'load bearing' distinction, which most contemporary writers do. This has a number of implications. In the first place, it would repudiate suggestions that one should add yet a third category, to be called (as Walzer does in *Arguing about War*) *jus post bellum*.<sup>35</sup> Of course, Walzer is quite correct to say that the issue he is getting at here – justice after war – is a very important one, but if one sees the tradition as I have suggested we see it here, it is already centrally implicit in it. Of course, one needs to deliberate about the problems, methods and issues that thinking about post-conflict situations raise, but these simply become part of the task of extending justice and judgment to the realm of war. And, of course, they should be thought about as part of the deliberation about the use of force in the first instance. This implies a second point, which is simply that many of the categories of the classical just war tradition flow from the twin poles of authority and judgment. In some contexts it will be unquestionably helpful to have a list of categories that we need to think about, but in others it will not and in any event, it is important not to give greater weight than is necessary to the excessively juristic aspects of the contemporary just war tradition. That these are a present and fairly permanent feature of the contemporary scene is true; that they have negative consequences I have tried to show. Nonetheless they are part of the way in which we think about the use of force and it would be foolish (and probably impossible) to ignore them. But we need to put them in context; they are tools, not masters.

So far, however, this has perhaps been a little bloodless. So how, then, might a just war tradition that was constructed on these assumptions make sense of the discussions we looked at earlier on, about Iraq and the decision to invade? What difference would it make? I want to briefly suggest – and, of course, this is the merest gesture towards what a much fuller account would offer – two areas where the way I have read the tradition would offer very different responses both from what governments have said and were saying and what some defenders of what I shall call the 'modern just war' have said as well.

The first such area is the various reasons (various and rapidly changing, one is tempted to say) offered by the Blair and Bush Governments for the invasion. Note, by the way, that in doing this I am not for one moment impugning anyone's sincerity.

<sup>35</sup> See Walzer, *Arguing About War*, p. xiii.

For the purposes of this essay, I will assume that the Bush and Blair governments were completely sincere in all their protestations, at all times. The defences that were offered for the attack on Iraq varied from concern over weapons of mass destruction, the failure of Iraq to comply with its obligations to the United Nations under the ceasefire agreements that ended the 1990–1991 Gulf War, the character and intentions of the regime of Saddam Hussein and the possibility of regime change in Iraq so as to increase the possibility of democratic change elsewhere in the Middle East.<sup>36</sup> Many, of course, have tried to link more than one of these together. The problem is that on no occasion was there an attempt to act in the manner that I have suggested the tradition would require. A discussion about what right authority might mean under these circumstances is not constituted either by constant appeals to the United Nations system nor by an assertion that State A will simply make up its own mind and act accordingly. It is not that in themselves these claims are wrong, it is simply that as such they are not *discussions* of anything, merely assertions. The point of the classical just war thinkers' constant emphasis on the twin poles of authority and judgment is that we need to *weigh* judgments about threat, proportion, and the like against one another.<sup>37</sup> This implies a deliberative posture and, of course, it is open to ask amongst whom the deliberation is supposed to take place. Yet that discussion did not happen either. Inasmuch as it was the governments of Britain and the United States that were *making* the claims – and who were, in slightly differing ways, claiming right authority and just cause (though of course not mentioning right intent) – it would seem to me that it was incumbent upon them both to initiate the dialogue and offer groundings for their judgments, and it is I think a legitimate criticism to say that they did not do so.

Legitimate, that is to say, in the context of the way I have suggested reading the tradition. It is a separate issue (for the moment) what side one takes on the substance. Walzer, in *Arguing about War*, is consistently hostile to the idea of an attack on Iraq in the circumstances of 2003. In his chapter on Iraq (actually five shorter pieces on Iraq put together) he offers an ingenious and subtle analysis that recalls the strongest sections of *Just and Unjust Wars*, and the nub of his argument is that the situation in Iraq in 2003 was no different from 2001, 1998 or at any time since the end of the Gulf war in 1991, but, if so, what had changed? If the threat had not (appreciably) changed then the response did not need to change either. In this context, as he puts it 'Saddam's war is unjust, even though he didn't start the fighting . . . he is defending his regime, which . . . has no moral legitimacy . . . (but also) America's war is unjust . . . at this time, the threat that Iraq posed could have been met with something less than the war we are now fighting. And a war fought before its time is not a just war.'<sup>38</sup> One can see the power in Walzer's arguments, but again, the sense of weighing the alternatives, of looking, not just at the givens – that there is a war here and now – but also at the larger questions of right authority and just cause, to say nothing of proportion and discrimination and how such questions reflect upon the war here and now, is missing.

<sup>36</sup> These are the best-known stated reasons; I do not deny there might have been others.

<sup>37</sup> For the importance of the fact of deliberation, see O'Donovan, *The Just War Revisited*, p. 131, and also Grady Scott Davis, *Warcraft and the Fragility of Virtue* (Idaho: University of Idaho Press, 1992), of which more in a moment.

<sup>38</sup> Walzer, *Arguing about War*, pp. 160–1.

A second area concerns what I will call the imperial temptation in some recent writing and thinking both about the just war and more widely. I should say at once that many just war thinkers have been profoundly opposed to this – Walzer, perhaps especially – so this part of the argument is most certainly not aimed at them. Rather it tends to be focused on those writers and thinkers who take the tradition's quite proper concern with justice and turn it into something other than the kind of concern that is appropriate for the realm of war. Here, I am perhaps especially thinking of writers like Jean Bethke Elshtain, whose support for, and development of, the just war tradition for many years was I think exemplary,<sup>39</sup> but also of some political statements, most interestingly perhaps Tony Blair's 'doctrine of the international community' outlined in the two key foreign policy speeches of his period in office.<sup>40</sup>

In his speech in Chicago in 1999, Blair outlined what he saw as a new approach to international relations as a whole but with very specific implications for the use of force. He predicated it on the operation in Kosovo, of which he had been one of the architects, but then went on to try and articulate a more general case based on that specific one:

The most pressing foreign policy problem we [in the West] face (he argued) is to identify the circumstances in which we should get actively involved in other people's conflicts. Non-interference has long been considered an important principle of international order. And it is not one we would want to jettison too readily . . . But the principle of non-interference must be qualified in important respects. Acts of genocide can never be a purely internal matter. When oppression produces massive flows of refugees which unsettle neighbouring countries then they can properly be described as 'threats to international peace and security'. When regimes are based on minority rule they lose legitimacy – look at South Africa.

Obviously this argument then needs to have a set of considerations of when to intervene. He lists five:

First, are we sure of our case? . . . Second, have we exhausted all diplomatic options? . . . Third, on the basis of a practical assessment of the situation, are there military operations we can sensibly and prudently undertake? Fourth, are we prepared for the long term? . . . And finally, do we have national interests involved? The mass expulsion of ethnic Albanians from Kosovo demanded the notice of the rest of the world. But it does make a difference that this is taking place in such a combustible part of Europe.<sup>41</sup>

There is much, of course, that is unobjectionable in this, but I merely want to point to two things. First, there is an *assumption* of 'international community' (for certain stated reasons) but no *discussion* of right authority. Not only how such a 'community' should be constituted but *what* kind of authority it would require and *how* it might acquire it. Yet for the morally legitimate exercise of force, such right authority must be in place. Secondly, while he is perfectly clear that one could not intervene in all cases of injustice, the prevailing assumption must be that we should seek to find reasons to do so, rather than to seek to find reasons to argue against the prohibition

<sup>39</sup> See perhaps most obviously, Elshtain *Women and War* (Brighton: Harvester, 1987) and Elshtain (ed.), *Just War Theory* (Oxford: Blackwell, 1992). But see, more recently, *Just War Against Terror: The Burden of American Power in A Violent World* (New York: Basic Books, 2003), that marks the change I am referring to here.

<sup>40</sup> See most significantly his speech in Chicago in 1999, which can be found at (<http://www.number-10.gov.uk/output/Page1297.asp>).

<sup>41</sup> Quotations from the above speech.

not to do so. And this, to my mind, is worrying if only because it tends to place the weight of the tradition on the attempt to secure justice rather than to prevent injustice.

This is even clearer if one looks at Jean Elshtain's recent book, *Just War Against Terror*.<sup>42</sup> Although, as always with Elshtain, it is very well written, the most significant part of the argument comes towards the end where she argues for a culture of strong 'rights protecting states' and argues that the only state that can truly perform that task globally is the United States. 'As the world's superpower', she argues, 'America bears the responsibility to help guarantee . . . International stability, whether much of the world wants it or not . . . we, the powerful, must respond to attacks against persons who cannot defend themselves, because they, like us are human beings . . . and because they, like us are members of states or would-be states.'<sup>43</sup>

For someone who has been so sympathetic to an Augustinian reading of politics and war for much of her career, I find this view astonishing, for the real danger of this version of the just war is the opposite of the tendencies of the dominant modes of thinking about it; far from juridicalising it, it runs the risk of turning it into an ideology, and more, a messianic one. Nothing could have been further from the thoughts or the intentions of the classic just war thinkers from Augustine onwards. The version I have briefly outlined here remains, however, true to what I take to be the express intent of the classical just war tradition; to extend into the realm of war, the judgments inherent in, and necessary for, our collective moral life *sui generis*. To do this is neither to 'legalise' it (important though legal and juristic concerns quite properly are) nor to messianise it (great and rightly demanding though the imperatives of justice in the common life must be). Rather, it is to do justice to ourselves and our common moral concerns even at the extremes of human life and conduct. If we wish to realise the proper – and realistic – way of regarding and considering the 'moral reality of war' it is to this that we must pay attention.

#### IV

And that, essentially, is the argument I wanted to make in this article. There is, however, one final point I also want to raise. I say raise, for I shall *merely* raise it and not – at least here – essay any kind of solution to it. Sharp-eyed readers will have noted that despite my criticism of Walzer's way of grounding the tradition, I have not offered an alternative. I have suggested, I hope plausibly, that more classical ways of reading the just war tradition will better serve our needs and are more appropriate for our concerns. And, of course – I hardly need add – the work that Walzer and many others have done on the *specifics* of the tradition – the discussions of the casuistry of the just war, as we might put it – will remain as essential to my reconstruction of the tradition as they are to anyone else's.

Yet the question of foundations remains. The just war tradition, like it or not, originated as a self-conscious tradition out of the Christian Church; its formulations, characteristic modes of discussion and some, at least, of its central concerns were

<sup>42</sup> I have examined this in much greater detail than I will here in 'Just A War Against Terror? Jean Elshtain's Burden and American Power', in *International Affairs*, 80:1 (January 2004).

<sup>43</sup> Elshtain, *Just War Against Terror*, pp. 169–70.

rooted in Christian, and indeed sometimes explicitly ecclesiological, concerns. This has given rise to what, in our own times, is one of the most damaging criticisms of the just war tradition as a whole, that it cannot speak to ‘non-Western’ traditions of thinking about war and peace. There is now a veritable avalanche of books, articles and so on that seek to speak to the allegedly very different ways that communities other than Christian ones have sought to think about war and its provenance and many of these are, indeed, adding a huge amount to what we know about the manner in which various different religious or normative groups see the problems of war and peace.<sup>44</sup> The problem, of course, is that this strategy suggests in general terms that the just war tradition itself is indeed a ‘Western’ (or at least a Christian) tradition and that therefore what we should do – indeed all we can do – is to engage in ‘comparative international political theory’ and see how all communities have understood the problems that the just war tradition understands *like this*. And this, of course, means that the just war tradition is not – and can never be – a universal tradition, which robs it, in a certain sense at least, of its principal *raison d’être*.

The modern just war writers – or at least those who are not themselves Christians<sup>45</sup> – have tried a variety of strategies to rebut this charge. Some, like Walzer, seek to erect the tradition on explicitly non-religious premises and argue that the legalist paradigm and the war convention work because it is manifest that this is how the world is. Others, for example Terry Nardin, suggest that the just war tradition be seen as merely one variant of a universal tradition of moral reasoning which he calls (following Alan Donegan) ‘common morality’ and which can be shared in principle by adherents of all faiths and none.<sup>46</sup> I have already suggested why I find these strategies implausible and so will not say more on this here. But in any case they are strategies chosen by those who already see the just war tradition in the ways that I have suggested are problematic, for all their attendant virtues.

So what about an alternative? The one that seems to be the most popular (outside, of course, of the explicitly religious) is to offer some form of Aristotelian grounding for the tradition. This is in keeping with a good deal of contemporary political theory that has taken Aristotle as a guide for rethinking certain aspects of our ethical and political lives.<sup>47</sup> The advantage, of course, is that Aristotle provides a template for an approach to human ethical and political life that is at once non-relativist and naturalist. Without appealing to the universalism of a Kant or a Bentham, with no overtly transcendentalist or theologically metaphysical presuppositions and yet insisting on our special character as human animals, an Aristotelian approach offers truth without God and universals without specific cultural baggage.<sup>48</sup>

<sup>44</sup> See, for the merest sample, Terry Nardin (ed.), *The Ethics of War and Peace* (Princeton, NJ: Princeton University Press, 1998), Perry Schmidt-Leukel (ed.), *War and Peace in the World Religions* (London: SCM Press, 2004).

<sup>45</sup> Or, at least, Theologians. The two communities are not always, of course, coterminous.

<sup>46</sup> For Nardin’s work on the Just War see, especially, *Law, Morality and the Relations of States* (Princeton, NJ: Princeton University Press, 1983); and Nardin (ed.), *The Ethics of War and Peace*. He has also written many essays on the use of force and military intervention, which flesh out his defence of ‘common morality’, now far more pronounced than it was in the 1983 book.

<sup>47</sup> For three well known examples, see Alasdair MacIntyre, *After Virtue* (London: Duckworth, 1981), Martha Nussbaum, *The Fragility of Goodness* (Cambridge: Cambridge University Press, 1986) and Stephen Toulmin, *Cosmopolis* (Chicago, IL: University of Chicago Press, 1992).

<sup>48</sup> And, for those of a multicultural turn of mind, there are always the narratives of the Aristotelian School’s meetings with other, non Greek, ways of thinking in Persia, India, even – according to some – China as well.



For defenders of the just war tradition, Aristotle offers the additional benefit of having already been hugely influential on the tradition. Not only on Aquinas, but also – and perhaps most importantly of all – on the neo-Scholastics of the sixteenth century, most especially Vitoria and Suarez. So the task for the Aristotelian-minded defender of the just war is to distil the common parts of the tradition, root them in Aristotelian concerns and language, thereby removing the problematic and more obviously ‘Western’, ‘Christian’ elements, and see how the tradition becomes reformulated in the process.

Perhaps the most impressive attempt to ‘Aristoteleanise’, the just war to date, Grady Scott Davis’ *Warcraft and the Fragility of Virtue*,<sup>49</sup> does all of these things and comes up with a version of the just war tradition certainly close to the version I have defended here. And I would agree that an Aristotelian approach does indeed offer a good deal for those of us who have qualms about the way the tradition has evolved over the last few decades.

However, I would add, too, a note of caution. The greatest ‘theorist’ of the just war – if that is quite the word for him – remains, to my mind, Augustine, and this principally for two reasons. The first is simply his abhorrence – that is not too strong a word – of war. He recognises that the requirements of the common life may sometimes require it, but he still laments it; as he has it in the celebrated book XIX of *The City of God*, ‘the wise man they say will wage just wars. Surely if he remembers that he is a human being, he will rather lament the fact that he is faced with the necessity of waging just wars; for if they were not just, he would not have to engage in them, and consequently there would be no wars for a wise man’. The second reason is Augustine’s thoroughgoing scepticism about the claims we make for ourselves, and especially for the claims our rulers make for themselves. This scepticism is the root of Augustine’s rejection of groups such as the Manichees (who had once claimed him) and even more, of course, the Pelagians (who never did). But it affects too his views of force and its legitimacy and also of the constant appeals to peace, while using force, that rulers – and soldiers – habitually make. ‘Peace and war had a competition in cruelty’, Augustine comments acidically during his denunciation of Roman imperial power in *The City of God*, ‘and Peace won’.

In short, my fear about the Aristotelian turn in defending the just war is that it will forget the bracing scepticism and horror of war displayed by the tradition’s first – and greatest – thinker. For all of the power and reach of his moral philosophy, and notwithstanding its ability to speak to many different ways of thinking about politics, Aristotle shares with the advocates of the modern just war a passion for classification and categorisation that was rightly emphasised by classical just war thinkers like Aquinas and the neo-Scholastics but which is very close to the juristic reading of the tradition I have sought to criticise in this article. I suspect that in part that is another reason why Aristotle appeals. If Augustine’s just war is not always entirely clear, messier than its Thomistic or neo-Scholastic descendants and far less sure of itself that most contemporary variants, that does not mean, to my mind, that it is any the worse for all that.

<sup>49</sup> Though there are interesting signs that other scholars are beginning to plough this furrow as well. A Colloquium on *Natural Law and Humanitarian Intervention* held at Durham University in March 2005 at which I was present, contained a superb paper rooting the tradition in Aristotelian philosophy, from Bob Dyson. A harbinger, perhaps, of a (if not the) future.

An Augustinian approach<sup>50</sup> to the question of the legitimacy of force in world politics would preface any claim to justice in its use with the scepticism that is the hallmark of Augustine's thought in general. And Augustine, unlike Aristotle, was as sceptical of 'the powers that be', as he was of the claims of those that would oppose them (as critical of Rome as he was of the Donatists who would break with it). Having good judgment in the context of war is, as Augustine would have been the first to admit, a difficult, messy and always fragile condition which we should approach with great caution and because we should do so, we should put ourselves or others in that position as rarely as possible. In this context, the just war tradition becomes potentially a powerful critic of the tendency of political authority – all political authority, in all contexts<sup>51</sup> – to use force to achieve its aims and does not suppose (as an Aristotelian very well might, and as certain modern Kantians certainly do) that there are forms of political authority (liberal or democratic ones) that are somehow free of this tendency. Yet it allows also that there might be some circumstances where force is the morally appropriate response, notwithstanding all of its dangers and problems, and where this is the case, we need to see the realm of war as an extension of the moral realm more generally.

This view seems to me to recognise the truth in the fundamental realist claim that politics will always be about the use of force in some context or other and that force as such cannot be banished from human affairs (though any particular instance of it might, in the right circumstances, be mitigated or prevented) without claiming that as a result, force is beyond moral judgment. Augustine, and those of his successors who have written on such topics, have never supposed that moral judgment will prevent the use of force or denied that often, perhaps mostly, the force that is used will go beyond what moral judgment would, in fact, permit. Rather it is in the task of continually holding up the mirror of our considered moral judgments in the context of war that the tradition performs its most important role. It does not expect that human relations will 'progress' (or, indeed, regress) for in these respects, there is a certain permanence to them, but rather it offers a way of thinking about, understanding and dealing with the inevitable dissonances of human action and conduct in a particular sphere. In this respect, though I cannot develop this claim in detail here, the just war tradition, like political realism, is a species of modern anti-Pelagianism but one which I think recognises, in ways that most versions of realism do not, the complexity of the relations between the human moral and political realms.<sup>52</sup>

<sup>50</sup> Onora O'Neill, in a telling essay, has pointed out the distinction between Kant's ethics (that is the ethical thought of the historical figure Immanuel Kant), 'Kant's ethics' (the usually erroneous ideas about Kant's ethics that have a good deal of contemporary currency) and Kantian ethics (ideas deriving in some form or other from Kant's ethics, but certainly not coterminous with them). Substituting Augustine for Kant, this essay – and the book of which it is a part – works from a broadly Augustinian position but does not suppose that this would necessarily be seen as in agreement with Augustine's thought.

<sup>51</sup> It is also worth pointing out here that Augustine believed this to be a tendency amongst all forms of political agents, not just 'properly constituted ones' – however we might interpret that condition. In other words, political agents other than the state would fall under Augustine's bracing scepticism as much as the state itself – in any of its forms – would.

<sup>52</sup> I am in the process of trying to think through the way in which what I call 'modern anti-Pelagianism' has manifested itself in general in political thought from the Renaissance onwards. A book on this theme will, I hope, eventually emerge and there I hope to discuss the relations between such ideas as the just war tradition and various versions of realism in more detail.

Of course that raises anew the question of grounding, the question that – I agree with the Aristotelians – is one that needs addressing. But even that, I think, might be possible in Augustinian terms. For now, I simply want to suggest that in questions as stark, and as far reaching, as judging the moral legitimacy of the use of force in contemporary world politics, Augustine’s scepticism will serve us better even than Aristotle’s naturalism. As Hedley Bull once wrote in a different though not unrelated context, ‘it is better to recognize that we are in darkness, than to pretend that we can see the light’.<sup>53</sup>

<sup>53</sup> Bull, *The Anarchical Society* (London: Macmillan, 1977), p. 320.