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EARLY MODERN THOUGHT MEETS CURRENT AFFAIRS

*Edited by Thomas Maissen
and Fania Oz-Salzberger*

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Old and New Justifications for War: Just Wars and Humanitarian Interventions

MARCO GEUNA

1. Introduction

Can early modern concepts address current affairs? This was the question put forward by the organisers of the conference on which this book is based. I would like to answer this question by examining the way in which two modern concepts—the concept of just war and the concept of human rights—have been reformulated and used over the last two decades to justify armed conflicts, and to legitimate wars in the most diverse geopolitical contexts.

I therefore choose to concentrate on two key concepts which can be traced back to the wide tradition of natural law, and not on concepts belonging to the republican tradition. The historiographical rediscovery of the republican tradition has undoubtedly offered many starting points for reconsidering contemporary problems. Many scholars have reformulated concepts from that tradition to address current problems. It is sufficient to mention the names of Quentin Skinner and Philip Pettit, in the Anglo-Saxon world, or of Claude Lefort, in France. But the concepts which have been re-examined and reformulated have been mainly concepts—such as freedom and citizenship—which referred to internal politics, to politics within the borders of the *respublica*.¹ From Machiavelli to Harrington, classical republicans referred to the Roman model, to the republic which expands and which builds an empire. Change occurred when the generation of Commonwealth-men, at the end of the seventeenth century, radically challenged the Roman model. In its place this generation put forward the ideal of a small republic, which involved a clear critique of large empires.² For a variety of reasons, neither of these models seems to

1 For a recent assessment of the republican revival in political theory, see Frank Lovett and Philip Pettit, “Neorepublicanism: A Normative and Institutional Research Program,” *Annual Review of Political Science* 12 (2009): 11-29.

2 See Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press 1998), 65-66; David Armitage, “Empire and Liberty: A Republican Dilemma,” in *Republicanism: A Shared*

have attracted the interest of contemporary commentators.³

In order to face contemporary challenges, scholars have chosen instead to reconsider and reformulate late medieval and early modern ideas about war and the theorizations of human rights developed in the context of the tradition of natural law. These contemporary reformulations will be the focus of my paper, in which I will try to stress the limitations and the questionable aspects of these approaches.

2. Wars and Their Justifications in Our Time

2.1. In the last decades, globalization has come together with war. As many others, I take 1989—the withdrawal of the Soviet army from Afghanistan and the fall of the Berlin wall—as a turning point.⁴ With the end of the Cold War and the collapse of the bipolar structure in international relations, a new type of war has emerged and imposed itself. It is definitely a conventional war—it is neither an atomic war, nor the threat of it—but a war of a new kind. To refer to this unprecedented form of conventional war, some scholars, following Mary Kaldor, use the expression “new wars,”⁵ others prefer to speak of “global war.”⁶ The

European Heritage, ed. Martin van Gelderen and Quentin Skinner (Cambridge: Cambridge University Press 2002), 29-46; Guido Abbattista, “Imperium e libertas. Republicanesimo e ideologia imperiale all'alba dell'espansione europea in Asia (1650-1780),” in *Ideali repubblicani in età moderna*, ed. Fiorella De Michelis Pintacuda and Gianni Francioni (Pisa: ETS, 2002), 193-234.

- 3 For contemporary attempts to apply republican concepts to issues of international politics and global justice, see, for example, Mortimer N.S. Sellers, “The Republican Foundations of International Law,” in *Legal Republicanism: National and International Perspectives*, ed. Samantha Besson and José L. Martí, (Oxford: Oxford University Press, 2009), 187-204, and Samantha Besson, “*Ubi Ius, Ibi Civitas*: A Republican Account of the International Community,” *ibid.*, 205-237. See also the proceedings of the Symposium on “Republicanism and Global Justice,” in particular Philip Pettit, “A Republican Law of Peoples,” *European Journal of Political Theory*, 9, no.1 (2010): 70-94 and C. Laborde, “Republicanism and Global Justice. A Sketch,” *ibid.*, 49-69.
- 4 Among recent studies on 1989, see: Mary E. Sarotte, 1989: *The Struggle to Create Post-Cold War Europe*, (Princeton: Princeton University Press, 2009); Jeffrey A. Engel, ed., *The Fall of The Berlin Wall: The Revolutionary Legacy of 1989* (Oxford: Oxford University Press, 2009).
- 5 See Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Cambridge: Polity Press, 1999). Mary Kaldor points out that most of these new wars originate in contexts which are characterized by a crisis of the state and that in most cases these new wars are waged neither by public nor institutional subjects. In this paper, I will focus exclusively on one specific category of the new wars: the asymmetric wars waged by western countries against the so called rogue states. On new wars, see also, for example: Herfried Münkler, *Die neuen Kriege* (Hamburg: Rowohlt, 2002); Mark Duffield, *Global Governance and the New Wars* (London: Zed Books, 2002); Marco Deriu, *Dizionario critico delle nuove guerre* (Bologna: EMI, 2005).
- 6 The expression was introduced by William R. Thompson, *On Global War. Historical-structural Approaches to World Politics* (Columbia: University of South Carolina Press, 1988). Among Italian

main feature of these new wars is their radically asymmetric nature: they are fought by the United States and by some other western countries against single states, each time defined for different reasons as “rogue states.”⁷ What characterises these new wars is a radical disproportion between the military forces of the subjects engaged in the conflict, and, therefore, a radical disproportion in terms of human losses as well. Western states fight these new wars with the aim of not suffering any loss, or a negligible number of losses.⁸

Thus, after 1989, at the historical and political level we witness a return of war, in new forms. At the philosophical and ideological level, we observe a return of the legitimisation of war, as well. What are the philosophical-political legitimisations of these new wars? It is possible to distinguish two types of justifications: (a) First, new wars are justified by reshaping ancient theories. Basically, by selectively re-proposing the fundamental notions of the tradition of just war. Many European and American intellectuals presented the first Iraq war in 1991 as a just war par excellence. b) Second, these new wars are justified by resorting, more and more over the last few years, to new theories and new forms of rhetoric: scholars have dealt with the notions of “humanitarian interventions,” wars to defend human rights, wars to export democracy.

Let us return for a moment to the Cold War years, that is, to a period characterised by the confrontation between nuclear superpowers. During the 1950s and 1960s, debates about war were essentially about nuclear war. Conventional and atomic war were situated on a continuum: the threat that a conventional war may give way to an escalation by degenerating into an atomic war was apparent. Superpowers would engage in conventional wars through intermediaries—the so-called

scholars, see: C. Galli, *Guerra globale* (Rome, Bari: Laterza, 2002), Angelo A. D’Orsi, ed., *Guerre globali. Capire i conflitti del XXI secolo* (Rome: Carocci, 2003).

7 Anthony Lake introduced the expression “rogue states” in the international debate; see Anthony Lake, “Confronting Backlash States,” *Foreign Affairs* (March-April 1994): 45; for a political science approach, see Robert S. Litwak, *Rogue States and U.S. Foreign Policy* (Washington: Woodrow Wilson Center Press, 2000); for a philosophical approach, see Jacques Derrida, *Voyous: deux essais sur la raison* (Paris: Galilée, 2003), eng. trans. *Rogues: Two Essays on Reason* (Stanford: Stanford University Press, 2005).

8 On the asymmetric character of the new wars, see Josef Schröfl et al., ed., *Asymmetrische Kriegführung—ein neues Phänomen der internationalen Politik?* (Baden-Baden: Nomos, 2004); Herfried Münckler, *Der Wandel des Krieges: von der Symmetrie zur Asymmetrie* (Weilerswist: Velbrück, 2006). Among Italian scholars, see Alessandro Colombo, *La guerra ineguale. Pace e violenza nel tramonto della società internazionale* (Bologna: Il Mulino, 2006).

“proxy wars”—from Korea to Vietnam. But the atomic war remained the center of the debates in moral and political philosophy. The atomic war appeared to most scholars as a dead-end, as a war without any legitimacy whatsoever, as a fundamentally unjustifiable war.⁹ This scenario radically changes with 1989 and the end of the Cold War. War is re-legitimised on a large scale. Initially, in 1991, during the first Iraq war, such re-legitimation took place through the reformulation of the criteria of the just war tradition, within a universalistic context that recognized the importance of the International Law as stated in the UN Charter, in the UN Declarations and later resolutions. It was this universalistic context that allowed many western authoritative intellectuals, from Habermas to Dahrendorf, from Lyotard to Bobbio, to argue that the Gulf war was a “just” war or, at least, a “justified” war.¹⁰ Subsequently, the re-legitimation of war took place under new terms, and within a context which seriously challenged the role of the UN and of classic international law. This happened for the first time when the NATO intervened in Kosovo, in spring 1999, and it was fully deployed as a justification of the 2003 Iraq war. Formulas such as “humanitarian intervention,” “war promoting human rights,” “war exporting democracy” attest that war has been re-legitimised by resorting to “high” terms and concepts of the European and Western tradition, such as humanity, rights, and democracy. Thus, creating what many recognize properly speaking as a series of oxymora. I am convinced that these restatements of ancient theories and new justifications of war should be accurately reconstructed, and their conceptual structures and premises criticised, and not simply denounced for their rhetorical effects.

2.2. Before taking a closer look at these strategies of re-legitimation of war, I would like to add a remark concerning the global post-1989 his-

9 See, for example, Norberto Bobbio, “Il problema della guerra e le vie della pace,” *Nuovi argomenti* (1966): 29-90, later in Norberto Bobbio, *Il problema della guerra e le vie della pace* (Bologna: Il Mulino, 1979), 21-96, in particular 60.

10 Among others, see J. Habermas, *Vergangenheit als Zukunft* (Munich: Piper, 1991); N. Bobbio, *Una guerra giusta? Sul conflitto del Golfo* (Venezia: Marsilio, 1991). Among Anglo-Saxon scholars who interpreted and discussed the Gulf war in the perspective of the just war tradition, see James T. Johnson and George Weigel, *Just War and the Gulf War*, (Washington: Ethics and Public Policy Center, 1991); David E. DeCosse, ed., *But Was It Just? Reflections on the Morality of the Persian Gulf War* (New York: Doubleday, 1992).

torical-political situation, namely, the one brought about by the fall of the Berlin wall. An indubitable ambiguity characterised that situation, which was read and interpreted, at the time and later on, from two extremely different perspectives. (i) On the one hand, many philosophers, including Jürgen Habermas, conceived it as a first step toward the creation of a cosmopolitan order, in some way carrying out the Kantian project of perpetual peace; (ii) on the other hand, it was considered as the first step toward the realisation of a political order dominated by a single superpower, acting unilaterally, and as the beginning of the unilateral hegemony of the United States. Many scholars embracing this second perspective, whether they are political experts, internationalists, or experts in strategy, have brought into light how such hegemony or unilateral imperial power has been carefully conceived and planned. They have pointed out that, behind the political choices which lead to this new type of war, there is a whole new culture, mainly the Neo-conservative culture, aiming at subverting many of the prevalent political principles, as well as the fundamental assumptions of classical international law.

3. Contemporary Reformulations of Just War Theory

There have been a variety of reformulations of just war theory over the last two decades, which may be situated at different levels of discourse.¹¹ We can distinguish at least two levels: (i) a strictly philosophical one; (ii) a level of discourse more directly engaged in actual questions, what we may address as a political-ideological level.

From a strictly philosophical point of view, if we start from the Anglo-Saxon debate, we may refer to the most influential and debated political philosophers of the last decades, John Rawls. In essays such as *Fifty Years after Hiroshima* (1995),¹² and especially in the book *The Law of Peoples*,¹³ he takes over and reformulates some of the key notions of

11 See Richard Falk, "Legality to Legitimacy: The Revival of the Just War Framework," *Harvard International Review* 26 (2004): 40-44.

12 John Rawls, "Fifty Years after Hiroshima," *Dissent* (Summer 1995): 323-327, now in John Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge: Harvard University Press, 1999), 565-572.

13 John Rawls, *The Law of Peoples with "The Idea of Public Reason Revisited"* (Cambridge: Harvard University Press, 1999), 89-105. For a discussion of the conceptual tensions in Rawls' book, see Rex Martin and David A. Reidy, ed., *Rawls's Law of Peoples: A Realistic Utopia?* (Oxford: Blackwell, 2006). Among the vast number of critical studies, see for example: Rex Martin, "The Just War

the just war tradition. In the first essay, Rawls sets out six principles and assumptions which govern the conduct of war, the *jus in bello*, for democratic peoples. He can therefore claim, in a classic mode of expression, that “the norms of the conduct of war set up certain lines that bound just action. War plans and strategies, and the conduct of battles, must lie within their limits (The only exception [...] is in times of extreme crisis).”¹⁴ From these premises, Rawls has no difficulties in reaching the conclusion that both the firebombing of Japanese cities in spring 1945 and the subsequent dropping of atomic bombs on Hiroshima and Nagasaki were “great evils.”¹⁵

These principles, which refer to the *jus in bello*, are reworked and put forward in *The Law of Peoples* as part of an attempt to extend the principles of justice from the national to the international context; therefore, as part of a theory of international justice. The theory of just war reappears in Rawls’ work when he must examine, in the context of what he calls “the non-ideal theory,” the possibility that “liberal and decent peoples” are forced into war against those he calls “outlaw states” or “outlaw regimes.”

We cannot follow here the details of the ways in which he works out his theories. I only want to mention a significant change of wording, related to what he previously defined as situations of extreme crisis, in which it is possible to violate the constraints set down by the principles and norms of the *jus in bello*. These are now defined, following the terms used by Michael Walzer, as situations of supreme emergency. In these cases, civilians are no longer protected by a rigorous status of immunity and they may be subject to military attacks. We are not going to pursue any further the discussion of Rawls’ project. Suffice it to be said that it has been the object of many discussions and criticisms, and that in the last decade literature on international justice, cosmopolitan justice, and global justice has vastly grown, following paths quite different from those proposed by Rawls.¹⁶

Theory of Walzer and Rawls,” *Southwest Philosophy Review* 19 (2003): 135-146; Perry Anderson, “Arms and Rights. Rawls, Habermas and Bobbio in the Age of War,” *New Left Review* 31 (2005): 5-40.

14 Rawls, “Fifty Years,” 567.

15 Ibid., 570.

16 See for example Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Politiy Press, 2002); Thomas Nagel, “The Problem of Global Justice,” *Philosophy and Public Affairs* 33 (2005): 113-147; Joshua Cohen and Charles Sabel, “Extra

On the political-ideological level, a series of reformulations of the theory of just war has come to the fore over the last two decades, among which the most famous and well-constructed are probably those proposed by Michael Walzer in *Just and Unjust Wars*¹⁷ and, more recently, in *Arguing about War*.¹⁸ Walzer opposes political realism, according to which *inter arma silent leges*, and argues persuasively that the reality of war is not beyond any moral judgement. He describes just war theory as an intermediate theory which avoids both the assumptions of the realists, and those of the pacifists (which were formulated in the paradigmatic manner by early Christians). In his renewal of the *jus belli*, Walzer starts from the assertion of the existence of moral laws, of “those general principles that we commonly acknowledge, even when we can’t or won’t live up to them.”¹⁹ He does not, however, move on to clarify the foundations of these principles or of these moral laws. Indeed, he argues that in a first moment we may consider “practical morality detached from its foundations.” Moving from these premises, followed by a complex discussion of historical cases, he illustrates the conditions of legitimacy and legality of armed conflicts. He then examines what he calls “the dilemmas of war,” and especially the issue of supreme emergency situations, in which in the face of an absolute necessity one may not follow the rules of war.

The renewal and reformulation of just war theory which Walzer has carried out has enjoyed a wide success over the past several decades. A cursory glance at the titles of essays and books published in the last few years enable us to see how well-established this approach is in the Anglo-Saxon world and elsewhere.²⁰ We take as instances the issues published over the last few years by two important and internationally reputable journals: *Ethics* and *Philosophy and Public Affairs*.²¹ Furthermore, we have

Rempubliam Nulla Iustitia?” *Philosophy and Public Affairs* 34 (2006): 147-175; Thomas Pogge and Darrel Moellendorf, ed., *Global Justice: Seminal Essays* (St. Paul: Paragon House, 2008).

17 M. Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977). On Walzer’s just war theory, see, for example, Brian Orend, *Michael Walzer on War and Justice* (Montreal, Ithaca: McGill-Queen’s University Press, 2000); Kimberly A. Hudson, *Justice, Intervention and Force in International Relations: Reassessing Just War Theory in the 21st Century* (London: Routledge, 2009).

18 M. Walzer, *Arguing about War* (New Haven: Yale University Press, 2004).

19 M. Walzer, *Just and Unjust Wars*, xiii and xv, for the following quotation.

20 Among recent French studies which follow an approach similar to Walzer’s, see Monique Canto-Sperber, *Le bien, la guerre & la terre. Pour une morale internationale* (Paris: Plon, 2005) especially part III “La morale et la guerre,” 249-346; Christian Nadeau and Julie Saada, *Guerre juste, guerre injuste. Histoire, théories et critiques* (Paris: PUF, 2009).

21 Jeff McMahan, “The Ethics of Killing in War,” *Ethics* 114 (2004): 693-733; Daniel Statman,

to recognize that books centred on these themes published over the past five years are countless. One could only mention the volumes written and edited by Larry May,²² an American-based scholar interested in the philosophical foundations of international penal law, and a couple of important collections of studies, such as *Intervention, Terrorism and Torture: Contemporary Challenges to Just War Theory* (2007)²³ and *The Price of Peace: Just War in the Twenty-First Century* (2007).²⁴

Why reformulate the main assumptions of this important tradition of western political philosophy? Why this tradition rather than others? I would reply in the following way: because this tradition offered precise standards for judging war. Moreover, because this tradition offered the possibility to think in a more articulate way about the relation among morals, law and politics, besides and beyond the tradition of political realism, which does not thematize the relation between morals and politics. One should also not forget that in the decades following World War Two political realism, in its various—systemic and non-systemic—formulations, was the common denominator of the different approaches to the relations between states, to international politics.

At this stage, we should look at some of the main characters of the just war tradition and on its conceptualisations, in order to better investigate the way in which these conceptualisations have been retrieved and reformulated during the last decades. This would allow us to single out and to bring the distortions and reductions of such reformulations into full focus.

"Supreme Emergencies Revisited," *Ethics* 117 (2006): 58-79; Allen Buchanan, "Institutionalizing the Just War," *Philosophy and Public Affairs* 34 (2006): 2-38. Jeff McMahan's recent publications include *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002); Allen Buchanan's include *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), and *Human Rights, Legitimacy and the Use of Force* (Oxford: Oxford University Press, 2010).

22 Larry May, *War Crimes and Just War* (New York: Cambridge University Press, 2007); Larry May, *Aggression and Crimes against Peace* (Cambridge: Cambridge University Press, 2008); Larry May, ed., *War: Essays in Political Philosophy* (New York: Cambridge University Press, 2008).

23 Steven P. Lee, ed., *Intervention, Terrorism and Torture: Contemporary Challenges to Just War Theory* (Dordrecht: Springer, 2007). This collection of essays includes Rex Martin, "Walzer and Rawls on Just Wars and Humanitarian Interventions," 75-88.

24 Charles Reed and David Ryall, ed., *The Price of Peace: Just War in the Twenty-First Century* (Cambridge: Cambridge University Press, 2007). See also, for example, Mark Evans, ed., *Just War Theory: A Reappraisal* (Edinburgh: Edinburgh University Press, 2005); Michael W. Brough, John W. Lango, Harry van der Linden, ed., *Rethinking the Just War Tradition* (Albany: SUNY Press, 2007); David Rodin and Henry Shue, ed., *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (Oxford: Oxford University Press 2008).

The tradition of just war has a complex conceptual architecture. As it is well known, first of all it distinguished and tackled the questions of the legitimacy of war, which fell within the category of the *jus ad bellum*: in this way it focused on the just causes of war, the right authority and right intent of the subjects which wage war. It then conceptualised the problems of the legality of war, which fell within the category of the *jus in bello*, formulating, in particular, the criteria of discrimination and proportionality. Finally, it examined the close relation between legitimacy and legality, setting down the thesis according to which a legitimate war, that could only be fought illegally, was to be considered unlawful, thus the war was not to be fought.²⁵ Therefore, by putting legitimacy and legality in relation, and individuating a sort of retroactivity of legality on legitimacy, the tradition of just war set precise standards or criteria to determine the overall lawfulness of war.

Let me add a remark: I think that the complex conceptual structure of the just war tradition, from Aquinas to Vitoria, Suárez and the other authors of the second Scholasticism, should be taken seriously. That is to say, it deserves, in my view, that we move beyond those representations, which, following Carl Schmitt's interpretation in *Nomos der Erde*, conceive it as an exclusively medieval or pre-modern tradition.²⁶

It is barely necessary to remind ourselves that just war theory has a long history in the Christian world.²⁷ The concept of "bellum iustum"

25 Francisco de Vitoria, for example, argued that this kind of war was a "bellum [...] iustum per se et illicitum et iniustum per accidens." See Francisco de Vitoria, *Relectio de iure belli o paz dinamica*, ed. L. Pereña et al. (Madrid: Consejo Superior de Investigaciones Científicas, 1981), 160; eng. trans. in Francisco de Vitoria, *Political Writings*, ed. A. Pagden and J. Lawrence (Cambridge: Cambridge University Press, 1991), 314.

26 For a reconsideration and critique of Schmitt's interpretation, see for example Enrico Berti, "Francisco de Vitoria nell'interpretazione di Carl Schmitt," in *L'universalità dei diritti umani e il pensiero cristiano del '500*, ed. S. Biolo (Turin: Rosenberg & Sellier, 1995), 139-147; Nestor Capdevila, "L'impérialisme entre inclusion exclusive and exclusion inclusive: Schmitt lecteur de Vitoria," in *Reconnaissance, identité et intégration sociale*, ed. Christian Lazzeri and Soraya Nour (Paris: Presses Universitaires de Paris Ouest, 2009), 339-359. See also Martti Koskeniemi, "International Law as Political Theology: How to Read *Nomos der Erde*?" *Constellations* 11 (2004): 492-511; Louiza Odysseos and Fabio Petito, ed., *The International Political Thought of Carl Schmitt* (London: Routledge, 2007).

27 The standard history of the just war tradition in the Christian world is presented by Robert H.W. Regout, *La doctrine de la guerre juste de Saint Augustin à nos jours d'après les théologiens et les canonistes catholiques* (Paris: Pedone 1934). For more recent studies, see for example James T. Johnson, *Ideology, Reason, and the Limitations of War: Religious and Secular Concepts. 1200-1740* (Princeton: Princeton University Press, 1975); James T. Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton: Princeton University Press, 1981); Guillaume Bacot, *La doctrine de la guerre juste* (Paris: Economica, 1989); G. M. Reichberg, "Jus ad

was formulated by Roman jurists,²⁸ and it was put forward again by Cicero both in Book III of *De Re Publica*—where the “bellum iustum” was defined as that which was fought “pro fide aut pro salute”²⁹—and in Book I of *De Officiis*.³⁰ Augustine of Hippo introduced the term and the concept to the Christian world in *De Civitate Dei* by recapitulating Cicero’s remarks and arguing for the possibility that Christians could fight just wars. Augustine had already argued that Christians could fight wars *quae ulciscuntur iniurias*, wars in vengeance and punishment of injustices which had been perpetrated against them, in *Contra Faustum* and in the *Quaestiones in Heptateuchum*, and he was going to repeat these arguments elsewhere.³¹ He was therefore shedding the radical pacifist and non-violent approach of the early Church Fathers, from Tertullian to Origen, to Lactantius. Following Augustine, many canonists and many theologians put forward and elaborated the concept of “bellum justum.” We can mention the canonist Gratian, who in his *Decretum*—also known as *Concordia Discordantium Canonum*—addressed the issue of “quid sit bellum iustum.” He had argued that war needed to be declared by a legitimate authority, that it must have its “causae” or reasons—to be identified in the repelling an enemy aggression (“propulsandorum hostium causa”) or in the recover of stolen goods (“de rebus repetendis”)—and lastly that it must not involve clerics and that it must exclude all uncontrolled violence, since it must be carried out as “bellum pacatum ex animo”.³² The most authoritative theological systematization of the

Bellum,” in *War: Essays in Political Philosophy*, ed. L. May, 11-29; N. Rengger, “The Jus in Bello in Historical and Philosophical Perspective,” in *War: Essays in Political Philosophy*, ed. L. May, 30-48.

- 28 Among recent studies, see Antonello Calore, ed., “Guerra giusta?” *Le metamorfosi di un concetto antico* (Milan: Giuffrè, 2003); in particular Francesco Sini, “*Ut iustum conciperetur bellum*: guerra ‘giusta’ e sistema giuridico-religioso romano,” 31-76; Alfredo Valvo, “*Il bellum iustum* e i generali romani nel III e II secolo a.C.,” 77-100; Aldo A. Cassi, “Dalla santità alla criminalità della guerra. Morfologie storico-giuridiche del *bellum iustum*,” 101-158.
- 29 Marcus Tullius Cicero, *De Republica*, III, 23, 34; see also II, 17, 31 and III, 23, 35.
- 30 See Marcus Tullius Cicero, *De Officiis*, I, 11, 34 and I, 13, 41.
- 31 See Regout, *La doctrine de la guerre juste*, 39-44; Anna Morisi, *La guerra nel pensiero cristiano dalle origini alle crociate* (Florence: Sansoni, 1963), 95-120; Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), 16-39. For recent discussions, see Robert L. Holmes, “St. Augustine and the Just War Theory,” in *The Augustinian Tradition*, ed. Gareth B. Matthews (Berkeley: University of California Press, 1999), 323-344; John M. Mattox, *Saint Augustine and the Theory of Just War* (New York: Continuum, 2006).
- 32 See *Decretum Magistri Gratiani*, p. II, c. XXIII, q. 2, c. 1-2, in *Corpus Iuris Canonici*, ed. E.L. Richter and E. Friedberg, (Leipzig: B. Tauchnitz, 1879), vol. 1, coll. 889-895. On Gratian’s contribution, see R.H.W. Regout, *La doctrine de la guerre juste*, 61-66; F.H. Russell, *The Just War in the Middle Ages*, 55-85.

concept was undoubtedly the one proposed by Thomas Aquinas, in the fortieth *quaestio* of the “*Secunda Secundae*” of the *Summa Theologiae*, therefore in the context of the discussion of the sins which are opposed to the theological virtue of charity.³³ In the first article of that *quaestio*, in asking himself “*utrum bellum semper sit peccatum*,” Aquinas had defined the conditions of legitimacy of any possible war fought by Christians. He had argued that one could speak of a just war when three conditions were simultaneously present: (i) that the war was declared by public authority, and not by private persons; (ii) that it was undertaken for *iustae causae*, first and foremost for self-defence, and (iii) that war was fought with *recta intentio*, with the objective of peace and not for more contingent material benefits—e.g., the enlargement of territories or of the domains of the political community.

The modern formulation of just war theory is usually traced back to Francisco de Vitoria and to his *relectiones* of 1539: *De Indis* and *De Iure Belli*.³⁴ In these solemn lectures, held in the presence of the entire academic body of the University of Salamanca, Vitoria reinterpreted the key concepts of the tradition of the just war and proposed a philosophical and juridical legitimation of war basically in terms of the notion of natural Law, understanding natural law as the expression of natural justice.³⁵ The two *relectiones* enjoyed an extraordinary success in European culture, both Roman Catholic and Protestant. These lectures offered intellectuals of the second half of the sixteenth century and of the first half of the seventeenth century an overall picture of the problems which needed to be covered when one was dealing with the topic *de iure belli*, together with a series of categorizations which oriented and structured discourse. The model was somehow defined and the tradition could now be developed.

33 See Thomas Aquinas, *Summa theologiae*, IIa, IIae, *quaest.* 40. Among recent studies, see John Finnis, *Aquinas. Moral, Political, and Legal Theory* (Oxford: Oxford University Press 1998), in particular 275-293; Giuseppe Pirola, “La teologia della guerra di Tommaso d’Aquino,” in *Figure della guerra. La riflessione su pace, conflitto e giustizia tra Medioevo e prima età moderna*, ed. Merio Scattola (Milan: Franco Angeli, 2003), 43-62.

34 See Francisco de Vitoria, *Relectio de Indis o Libertad de los Indios*, edición crítica bilingüe por L. Pereña y J.M. Pérez Prendes (Madrid: Consejo Superior de Investigaciones Científicas, 1967); Francisco de Vitoria, *Relectio de iure belli o paz dinámica*; eng. trans. in Francisco de Vitoria, *Political Writings*.

35 See for example Daniel Deckers, *Gerechtigkeit und Recht: Eine historisch-kritische Untersuchung des Gerechtigkeitslehre des Francisco de Vitoria* (Fribourg: Universitätsverlag, 1991); Giuseppe Tosi, “La teoria della guerra giusta in Francisco de Vitoria,” in *Figure della guerra*, ed. Merio Scattola (Milan: Franco Angeli, 2003), 63-87.

In Roman Catholic culture, the *relectiones* were decisive for a succession of thinkers, first Dominicans and then Jesuits: from Domingo de Soto and Melchior Cano, from Luis de Molina to Francisco Suárez. In sixteenth and seventeenth century Protestant culture, Vitoria's *relectiones* were destined to have an equally significant impact. It is sufficient to recall two names: Alberico Gentili and Hugo Grotius.

We cannot pursue any further the topic of Vitoria's presence, and more generally the theme of just war, in modern culture, up to the French Revolution. I will simply mention that even after Grotius, between the end of the seventeenth century and the first half of the eighteenth century—at the heart of what many scholars consider the season of the *jus publicum europeum*, during which the category of “just war” was supposedly superseded by that of “regular war”—we can still find thinkers, such as John Locke and Christian Wolff, who refer to many of the categorizations of the just war tradition.³⁶

Two approaches to the tradition of just war and its contemporary reformulations are possible, which lead to two different kinds of criticism: (i) On the one hand, there is a radical criticism, which I would define as an *external* criticism. This form of criticism rejects this tradition as a whole, by arguing that between the sixteenth and seventeenth centuries it was an instrument of legitimisation of European wars, especially against the Turks and the inhabitants of the New World. It argues that its contemporary reformulations are sheer rhetorical instruments in order to legitimize the unilateral interventions of the United States and the Western countries.³⁷ (ii) On the other hand, an *internal* criticism argues that the conceptual structures of the just war tradition deserve to be taken into serious examination, for they aimed not only at allowing, but at strictly limiting war as well. Thus, its elaborations cannot be reduced to the sheer rhetoric of legitimisation. Modern assumptions of just war should be taken seriously in order to evaluate whether their contemporary reformulations are faithful and persuasive or distort and reduce their significance.

36 For an interesting critique of the historiographical interpretations based on Carl Schmitt's periodization, see Gabriella Silvestrini, “Diritti naturali e diritto di uccidere: Teorie moderne della guerra fra modelli teorici e tradizioni di pensiero,” *Filosofia politica* 21 (2007): 425–452; Gabriella Silvestrini, “Justice, War and Inequality: The Unjust Aggressor and the Enemy of the Human Race in Vattel's Theory of the Law of Nations,” *Grotiana* 31 (2010): 44–68.

37 See for example, Danilo Zolo, *Cosmopolis. La prospettiva del governo mondiale* (Milan: Feltrinelli, 1995) in particular 82–116; eng. trans. *Cosmopolis: Prospects for World Government* (Cambridge: Polity Press, 1997).

In this paper, I intend to develop this second approach. Thus, I will examine the contemporary reformulations on the backdrop of the classical conceptual architectures of the just war tradition. To begin with, it is important to point out that, in contemporary discussions, the questions of legitimacy and legality often are separate. The emphasis is put entirely on the conditions of the legitimacy of war, that is to say, whether the *iustae causae* exist or not, as if their existence allowed a nation to fight a war without asking further moral questions. The problems of the legality of war and of the retroactivity of legality over legitimacy have been superseded, or even disappeared in many elaborations. In short, the overall lawfulness of war too often is reduced to its legitimacy, to the existence of the *iustae causae*.

Such reduction and simplification of the tradition's demanding conceptual framework is apparent in several thinkers, who invoke the "logical priority" of legitimacy over legality, of the *jus ad bellum* over the *jus in bello*. These authors maintain that "the question whether to use force takes logical priority over the question of what force to use and conditions of it," thus transforming such logical priority into a moral priority: "the justice of the cause was allowed to override the justice of the particular means used to serve the cause."³⁸

By focusing their attention exclusively on legitimacy, on the *jus ad bellum*, some thinkers have forced, or even twisted, the strict criteria of legitimacy set by the tradition. In the whole tradition, and in the most different formulations of the just war theory, a just war has always and exclusively been a war responding to a previous offence or a previous wrong. Recently, thinkers such as Jeff McMahan have drawn this strict principle into question in order to provide a moral justification of unilateral policies. They asked themselves whether an aggressive war may be permissible: diverging from the standards of the just war tradition, McMahan argued that aggressive and punitive wars can be just.³⁹

38 James T. Johnson, *Can Modern War Be Just?* (New Haven: Yale University Press, 1984), 30. Johnson was arguing against Michael Walzer and the argument of supreme emergency. Among more recent studies, see for example Brian Orend, "Is There a Supreme Emergency Exemption," in *Just War Theory: A Reappraisal*, ed. Mark Evans, 134-153; David Duquette, "From Rights to Realism: Incoherence in Walzer's Conception of *Jus in bello*," in *Intervention, Terrorism and Torture: Contemporary Challenges to Just War Theory*, ed. Steven P. Lee, 41-57.

39 See J. McMahan, "Aggression and Punishment," in *War: Essays in Political Philosophy*, ed. L. May, 67-84, in particular 74-84. McMahan has the legitimization of unilateral humanitarian interventions in mind: see 78.

The fact of focusing the attention on the legitimacy of war, and not at the same time on its legality, on the way in which the war may be carried on as well, has allowed, almost without problems, to judge a series of wars, waged by the US and their European allies, as just wars.

Now, let us consider the *jus in bello*. The *jus in bello* set the criteria of discrimination and proportionality, which were to be respected under conditions of warfare. First of all, the principle of discrimination, distinguishing between *innocentes* and *nocentes*, the innocent and the guilty persons, essentially between civilians and soldiers. Then, the principle of proportionality of the military intervention compared with the offence, or wrong, which originated the just war. It is important to point out that in their reformulations of just war theories, contemporary thinkers have not dwelled on these criteria as deeply as their early modern predecessors, for instance Vitoria. A series of questions have not been sufficiently investigated, and too many answers have been taken for granted. For instance: in contemporary conventional wars, who are the innocents? Should the soldiers of the armies of authoritarian or totalitarian countries be considered innocent or guilty? Referring to a recent historical case, were the tens of thousands of Iraqi soldiers, killed around Basra in 1991 during the retreat from Kuwait, to be considered guilty or innocent? Were they to be deemed responsible for the application and the execution of Saddam's orders? Were they morally responsible for the war? Too many thinkers who have re-proposed a theory of just war over the last few years have failed to elaborate a theory of collective responsibility, most likely taking it for granted.⁴⁰

Moreover, I am convinced that many contemporary philosophers have not investigated the distinctive characters, the peculiarities of the new wars in depth: first of all, the fact that they are fundamentally asymmetric wars. This asymmetry—the fact that these wars rely upon a massive use of technological information; that they are predominantly air wars, in which the western countries that wage them do not want to suffer losses—has not been dwelled upon enough. In the light of these remarks, in my view, the slaughters of civilians, the so-called “collateral damage” of air bombings, cannot not be conceived as unintentional and

40 On the problem of collective responsibility, see the recent interesting essay by Philip Pettit, “Responsibility Incorporated,” *Ethics* 117 (2007): 171-201.

cannot be justifiable through some version of the “double effect”⁴¹ doctrine any longer.⁴²

Many scholars failed to ask themselves the radical question of whether contemporary wars—the new or asymmetric wars—may actually be limited, or whether they should be included in the twentieth century war trend, in which civilians are the increasingly larger and most significant part of the victims.⁴³

In short, it is possible to point out two elements in many of the contemporary reformulations of the just war theory. (i) A significant reduction of the restrictive claim of the traditional just war theory. Such theory was elaborated, on the one hand, to provide, in certain cases, moral justification for the recourse to war; on the other, to strictly limit it as well. In more recent formulations, these limits have been significantly weakened, or made less restrictive. (ii) A significant lack of investigation into the structural characters of the new wars. Philosophers have kept reading philosophers, and have not paid sufficient attention to other social sciences, nor read enough works (if any) in the fields of strategy, international relations, history and sociology. The question of whether the theory of just war is adequate to address the challenges issued by the new scenario of unilateral interventions, ethnic cleansing and international terrorism, the scenario of the new wars, seldom has been raised.⁴⁴

41 For a first introduction to the principle of double effect, see P.E. Devine, “Principle of Double Effect,” in *The Cambridge Dictionary of Philosophy*, ed. R. Audi (Cambridge: Cambridge University Press, 1995), 644-645 and Alison McIntyre, *Doctrine of Double Effect*, 2009, <http://plato.stanford.edu/entries/double-effect/>. For a justification of the killing of non-combatants in war through the principle of double effect, see Walzer, *Just and Unjust Wars*, 151-159. Among recent discussions, see Alex Bellamy, “Supreme Emergencies and the Protection of Noncombatants in War,” *International Affairs* 80 (2004): 829-850; David Lefkowitz, “Collateral Damage,” in *War: Essays in Political Philosophy*, ed. Larry May, 145-164, in particular 147-154.

42 For a critique of the justifications of the killing of innocent civilians that have recourse to the principle of double effect, see for example Giuliano Pontara, “Il ‘vicolo cieco’ della guerra e le difficili vie della pace,” in *Lezioni Bobbio: Sette interventi su etica e politica*, with a preface by Marco Revelli (Torino: Einaudi, 2006), 121-144, in particular 127-134; Uwe Steinhoff, *On the Ethics of War and Terrorism* (Oxford: Oxford University Press, 2007), 33-60.

43 Some contemporary philosophers, starting from different theoretical premises, have argued that contemporary wars—the new wars included—could not be limited and therefore could not find a moral justification. See for example, Peter Sloterdijk, *Luftbeben. An den Quellen des Terrors* (Frankfurt a.M.: Suhrkamp 2002), eng. trans. *Terror from the Air* (Cambridge, MA: MIT Press, 2009); Luigi Ferrajoli, *Principia iuris. Teoria del diritto e della democrazia. 2. Teoria della democrazia* 2nd ed. (Rome, Bari: Laterza, 2009), 501-503.

44 But now see the remarkable exception: Steven P. Lee, ed., *Intervention, Terrorism and Torture: Contemporary Challenges to Just War Theory*.

4. Humanitarian Wars to Promote Human Rights

In modern just war tradition, pre-emptive strikes and pre-emptive wars were altogether excluded from the definition of a lawful war. Only a war, which answered to a wrong previously committed by others, could be a just war. It aimed at re-establishing the law of nature (*lex naturae*) or the international law (*jus gentium*) which had been violated.

In the last decade, starting with the Nato intervention in Kosovo, as I have already pointed out, the United States and other Western countries have presented their armed interventions in other countries as “humanitarian interventions,” as armed interventions directed at the protection and the promotion of human rights. These states have argued that current international law, with its precise restrictions on the use of force, must be superseded by appealing to the principles of international ethics and centred on the protection of human rights.⁴⁵

Over the same years, and in relation to these international events, there has been a wide-ranging debate among jurists on the possibility and desirability to substitute the current positive international law—which refers to the United Nations Charter, and which was centred on the idea that the only exception to the prohibition of the use of force was represented by legitimate defence⁴⁶—with new international humanitarian law, which would allow the use of force, even in the absence of authorization or a mandate from the Security Council. The vast number of contributions to this debate ranged from open support of the new humanitarian law, as expressed by the U.S.-based jurist Michael Glennon and by the Italian Antonio Cassese,⁴⁷ to a firm criticism of uni-

45 The 1991 Gulf War was legitimated in terms of law—as a sanction and as a redress of the invasion of a sovereign state by Iraq—with the authorization of the Security Council of the United Nations. In the case of NATO intervention in the Kosovo conflict in 1999, NATO governments involved were well aware of the impossibility of arguing the legitimacy of their intervention in terms of international law. They therefore appealed to an immediately moral justification for the intervention, which could avoid the questionable legality of the intervention.

46 See for example Olivier Corten, *Le droit contre la force: L'interdiction du recours à la force en droit international contemporain* (Paris: Pedone, 2008).

47 See Michael J. Glennon, “The New Interventionism: The Search for a Just International Law,” *Foreign Affairs* 78, no. 2 (1999): 7-21; Michael J. Glennon, *Limits of Law, Prerogatives of Power: Interventionism after Kosovo* (New York: Palgrave 2001); Antonio Cassese, “Ex iniuria ius oritur”: Are We Moving towards International Legitimation of Forcible Humanitarian Countermeasures in the World Community? *European Journal of International Law* 10 (1999): 23-30. See also the collections of essays: J. Gardam, ed., *Humanitarian Law* (Brookfield: Ashgate 1999); J.L. Holzgrefe and Robert O. Keohane, ed., *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003); Gilles Andréani and Pierre Hassner, ed., *Justifier*

lateral interventions, as expressed by the German Bruno Simma and the Italian Luigi Ferrajoli.⁴⁸

Philosophers, and Anglo-Saxon scholars in particular, have provided arguments in favour of this new approach, to this new legitimization of war. Thus, a large number of theories of humanitarian intervention have been developed, from extremely different metaphysical and epistemological premises. One finds a justification of humanitarian military interventions even in the subtle and abstract pages of John Rawls, especially in those of *The Law of Peoples*.⁴⁹ Moreover, it is not difficult for philosophers of Kantian inspiration to found human rights deontologically, hence proceeding to the justification of humanitarian interventions. For instance, Carla Bagnoli argued that a humanitarian intervention must be thought as a perfect duty: it has to be conceived “as a duty rather than permission, and as a perfect duty than an imperfect one—a duty that proceeds from the respect of humanity rather than from charity.”⁵⁰ Philosophers far more sceptical about the possibility of founding the universality of human rights from a transcendental viewpoint, philosophers who took the lesson of Isaiah Berlin over, such as Michael Ignatieff, come, in a similar way, although from different paths, to the point of defending the use of force. Both in the pages of *Human Rights as Politics and Idolatry* and in those of *The Lesser Evil. Political Ethics in an Age of Terror*, Ignatieff argues in favour of humanitarian military interventions and considers the military interventions of the United States and their European allies in Iraq and Kosovo perfectly legitimate.⁵¹ Some scholars, such as Fernando Teson, proceed to justify

la guerre? De l'humanitarisme au contre-terrorisme (Paris: Les Presses de Science Po, 2005); Herfried Münkler and Karsten Malowitz, ed., *Humanitäre Intervention. Ein Instrument außenpolitischer Konfliktbearbeitung: Grundlagen und Diskussion* (Wiesbaden: VS Verlag, 2008).

48 B. Simma, “Nato, the UN and the Use of Force: Legal Aspects,” *European Journal of International Law* 10 (1999): 1-22; L. Ferrajoli, “Guerra, ‘etica’ e diritto,” *Ragion pratica* 7, no. 13 (1999): 117-128.

49 See John Rawls, *The Law of Peoples*, 94, footnote 6: “Is there ever a time when forceful intervention might be called for? If the offenses against human rights are egregious and the society does not respond to the imposition of sanctions, such intervention in the defense of human rights would be acceptable and would be called for.”

50 C. Bagnoli, “Humanitarian Intervention as a Perfect Duty: a Kantian Approach,” in *Humanitarian Intervention. Nomos XLVII*, ed. Terry Nardin and Melissa S. Williams (New York: New York University Press, 2005), 117-141.

51 See Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001) and idem, *The Lesser Evil: Political Ethics in the Age of Terror* (Princeton: Princeton University Press, 2004). For a philosophical critique of the intervention in Kosovo, see Danilo Zolo, *Chi dice*

humanitarian interventions by showing that the rights of the individuals have priority over the rights of the states, and by arguing “that sovereignty is contingent because the rights of a state are derivative of the rights of the individuals who constitute them.”⁵² Others, such as Mona Fixdal or Joseph Boyle, are convinced that it is possible to justify humanitarian armed interventions on the grounds of a radical reformulation of some of the key-notions of the just war tradition. Others resort to more controversial notions: Nancy Sherman, for instance, grounds our duties to ensure the protection of human rights for those outside our borders in our supposed common membership in a “global moral commonwealth.”⁵³

It is not possible to examine here the various attempts to justify the so-called “humanitarian” armed interventions on the grounds of the different theories of human rights, and of different philosophical principles. I would rather mention the fact that two types of criticism can be, and have been, addressed to this kind of theories. The first type is an *external* criticism, which questions the actual universal character of human rights. It argues that the theory of human rights lacks both analytical rigour and philosophical foundation. In particular, it argues that the human rights enumerated in the various Bills of Rights, and discussed in the works of the philosophers, have an extremely heterogeneous nature and are characterised by deontic antinomies, which frustrate any attempt to provide them with a coherent and unitary foundation. The thesis of the normative universality of human rights appears to these critics as the dogmatic postulate of ethic rationalism and of old and new forms of the doctrine of natural law. In their view, such a thesis is not confirmed theoretically, and is denied with convincing arguments both by western philosophies of historicist and realist orientation, and by various expressions of non-western cultures. It is often pointed out that members of these cultures reproach western theories of human rights for their claim to universality and, particularly, their strictly individualistic character; and that they oppose to them other ideals and

umanità. *Guerra, diritto e ordine globale* (Torino: Einaudi, 2000), eng. trans. *Invoking Humanity. War, Law and Global Order* (New York: Continuum, 2002).

52 See Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, 3rd ed. (Ardsey: Transnational Publishers, 2005).

53 See Nancy Sherman, “Empathy, Respect, and Humanitarian Intervention,” *Ethics and International Affairs* 12 (1998): 103-119.

values—which include, recently, the so-called “Asian values.” According to these arguments, the so-called “humanitarian interventions” are conceived to be devoid of real justification, and simply the expression of the unilateral and imperial policies of the only superpower left on the international scene.

Another type of criticism, an *internal* one, may be addressed to those theories which justify military interventions in the name of a humanitarian ideology. For the sake of discussion, one can accept the claim of the universality of human rights, and investigate the way in which these human rights are promoted or implemented instead. Thus, it is possible to draw the attention to the end-means relationship. That is to say, it is possible to ask the question of whether an asymmetric war is an adequate means for achieving the end of human rights. It is awkward to observe how most reflections concerning the so-called “humanitarian interventions” are reflections on their possible legitimacy. Seldom are they reflections on the effective course of action or on the methods of their realisation, and on the problems inevitably raised by such methods.

Against these simplifications, and the disquieting blindness of an important part of the Anglo-Saxon moral philosophy, a serious ethical reflection, up to the present situation, should at least: (i) take the critical contributions of the pacifist tradition into account, even though without choosing to adopt its assumptions. And, especially, two of its contributions: the constant problematization of the end-means relation, and a deep analysis of the unintended consequences implicit in the recourse to violence.⁵⁴ (ii) It should also take Weber’s lesson into account, according to whom, when thematizing the relation between ethics and politics, ethics should not be understood exclusively in terms of an ethics of conviction, but should incorporate some form of ethics of responsibility.

Due to space limits, these remarks are inevitably schematic. But I don’t want to give the impression of discrediting the entire Anglo-Saxon moral reflection. I would like to remind the admirers of Anglo-Saxon philosophy that one of its most important representatives, and one of

54 For interesting discussions of these issues, from a pacifist point of view, see for example, Giuliano Pontara, *Se il fine giustifichi i mezzi* (Bologna: Il Mulino, 1974), Giuliano Pontara, *L’antibarbarie: La concezione etico-politica di Gandhi e il XXI secolo* (Turin: EGA, 2006).

the most subtle interpreters of the contemporary ethical debate, Bernard Williams, in his posthumous book *At the Beginning was the Deed* denounced and distanced himself from what he called “moralism in political theory.” Without suggesting a relation of direct subordination, he proposed a more problematic relationship between ethics and politics, raising more than one doubt on the so-called “humanitarian interventions,” on their justifications and possibilities of realisation.⁵⁵

5. Some Concluding Remarks

In this essay I attempted to show how widely two late medieval and early modern concepts—the concept of just war and the concept of human rights—have been reconsidered and reformulated over the last decades. I also tried to criticise some of these philosophical and political positions from within, taking the arguments of those who reformulated the fundamental notions of the just war tradition and of the theorists of humanitarian interventions seriously.

Nonetheless, I do not want to suggest that it is impossible to think in a fruitful philosophical way about violence and war. In these concluding lines, I would like to draw attention to a way of philosophizing over the problems of contemporary war, which has emerged over the last ten years, and which I consider more congenial. It does not aim at justifying military interventions, but to investigate terrorism and state-sponsored violence, its ultimate roots and ways of reacting against it. Taking over some of Lévinas’s suggestions, it has its starting point in an anthropology developed around the notion of vulnerability. In short, I have two works in mind, which are, in my view, exemplary: the first one is Judith Butler’s *Precarious Life. The Power of Mourning and Violence* (2004).⁵⁶ The second is Adriana Cavarero’s 2007 book, *Horrorism: Naming Contemporary Violence*.⁵⁷ Unfortunately, it is not possible

55 See the two papers written in the last years of his life: “Realism and Moralism in Political Theory” and “Humanitarianism and the Right to Intervene,” published in Bernard Williams, *In the Beginning Was the Deed: Realism and Moralism in Political Argument*, ed. Geoffrey Hawthorn (Princeton: Princeton University Press, 2005), 1-17, and 145-153.

56 Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004). See also Judith Butler, *Frames of War: When is Life Grievable?* (London: Verso 2010).

57 A. Cavarero, *Orrorismo, ovvero della violenza sull’inerte* (Milan: Feltrinelli, 2007), eng. trans. *Horrorism: Naming Contemporary Violence* (New York: Columbia University Press 2009). See also L. Bernini and O. Guaraldo, ed., *Differenza e relazione. L’ontologia dell’umano nel pensiero di Judith*

for me to develop these thoughts here.

Let me add one remark. In this paper I attempted to highlight some of the conceptual inconsistencies and the risks of those philosophical perspectives which reformulate the theory of just war or thematize the legitimacy of humanitarian interventions on the grounds of the normative theories of human rights. I tried to show how, through elaborate conceptual architectures of a normative type, these perspectives often ended up legitimizing western military interventions, rather than providing elements of criticism. In the first pages of this essay, I mentioned the fact that many philosophers saw in the fall of the Berlin wall the possibility of—and had hope for—of the creation of a just cosmopolitan order. And I pointed out how many of them have often been self-referential, failing to examine the more critical contributions of other social sciences. As a result, they brought arguments in favour of the powers that are legitimising their unilateral choices, instead of bringing their dark side into full light. Let me say, to conclude, that I feel the need for, and that I would recommend a philosophical work that focuses on criticism, rather than foundation, on deconstruction and demystification, rather than legitimisation. “To understand the world through suffering: that is the tragic,” it’s often recalled on the paths of Nietzsche.⁵⁸ I would prefer a philosophy, or an intellectual work, which keeps alive, in its conceptual structures and in its practice of writing as well, the sense of the endless tragedies around us.

Butler e Adriana Cavarero. *Con un dialogo tra le due filosofe* (Verona: Ombre corte, 2009).

58 See for example Reiner Schürmann, *Des hégémonies brisées* (Mauvezin: Trans-Europ-Repress, 1996), 7.