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INTRODUCTION

Comparative ethics and the crucible of war

G. Scott Davis

Michael Howard takes the title of his recent essay, *The Invention of Peace*, from the nineteenth-century jurist and historian of comparative law Henry Maine, who wrote that “war appears to be as old as mankind, but peace is a modern invention.”¹ We moderns tend to assume that the great wars of the nineteenth and twentieth centuries were aberrant eruptions marring the peaceful status quo, but the opposite better describes the long view. Outside the Garden of Eden, human communities have always been involved in political conflict and that conflict has regularly escalated to the use of lethal force, both within the community and between communities. The ways in which peoples have both justified and constrained the use of such force are windows into how they see themselves and the other peoples with whom they share, often reluctantly, the world around them. To watch the changes that develop in even a single society’s understanding of war is to watch that society being born and reborn.² To juxtapose different societies and their distinct ways of understanding war, as Clifford Geertz once said of anthropology, is “not to answer our deepest questions, but to make available to us answers that others, guarding other sheep in other valleys, have given, and thus to include them in the consultable record of what man has said.”³ In this introduction I want to do three things. First, I plan to sketch the ways in which the ancient Greeks and their legatees discussed the restraint of war. Second, I will provide a sketch of contemporary just war thinking. Finally, I want to make some suggestions about comparative ethics and the restraint of war.

From Achilles to Jesus

The evidence of classical literature makes it seem like the ancient Greeks and Romans were obsessed with political violence. Yet “despite the massive concern with war in ancient historical writing,” writes M. I. Finley, “it is significant that the analysis of causation failed to progress much. The ‘fruit’, Momigliano wrote, that Thucydides and his followers reaped ‘is not very impressive’ . . . Roman historians were not much better, nor were Plato and Aristotle in their theoretical reflections.”⁴

In large measure, Finley suggests, this results from “the ‘naturalness’ of warfare both as a means of acquisition and as one way of achieving other objectives.”⁵ War in the abstract stood in no more need of explanation than eating and drinking. The shield Hephaestus forges for Achilles in *Iliad* XVIII depicts two cities. The first might seem to be a city at peace, but that is only because there is a procedure for adjudicating “the blood-price for a kinsman just murdered.”⁶ Such procedures are always unstable and that first city may soon resemble the second, circled by “a divided army gleaming in battle-gear, and two plans split their ranks, to plunder the city or share the riches with its people.”⁷ Power and glory are all that matter for real heroes. The poem opens with Achilles disgraced and there is no sense that his initial wrath is misplaced. It is his refusal to accept Agamemnon’s gifts in book IX that leads Patroclus to beg for Achilles’ armor and thus seal both their fates. Sarpedon, son of Zeus yet soon to die by Patroclus’s hand, sums up the situation for his companion Glaucus:

Ah my friend, if you and I could escape this fray and live forever, never a trace of age, immortal, I would never fight on the front lines again or command you to the field where men win fame. But now, as it is, the fates of death await us, thousands poised to strike, and not a man alive can flee them or escape – so in we go for attack! Give our enemy glory or win it for ourselves.⁸

Such is the fate of all warriors. The virtues of Homer’s nobility are pride, strength, and cunning. The proper exercise of those virtues results in riches and glory. Who is the chief commander is a matter of fate. So is the length of a life. To be cut down in battle is not something the warrior can always avoid, but as long as he fights the good fight he has lived the good life.

Homer provides portraits of the despicable on both sides. Thersites is “insubordinate,” the “ugliest man who ever came to Troy . . . taunting the king with strings of cutting insults” and when Odysseus has had enough he whacks him with the speaker’s scepter and Thersites “squatted low, cringing, stunned with pain, blinking like some idiot rubbing his tears off dumbly with a fist. Their morale was low but the men laughed now.”⁹ Even more revolting is the Trojan Dolon, whose fear for his life leads him to betray his own people. Diomedes and Odysseus milk him for as much information as they need, then, “just as Dolon reached up for his chin to cling with a frantic hand and beg for life, Diomedes struck him square across the neck – a flashing hack of the sword – both tendons snapped and the shrieking head went tumbling in the dust.”¹⁰ Better to be Sarpedon dead than Dolon alive.

The moral world of Homer is one where commoners and their worries don’t count for much. If they misbehave, as do the women of Odysseus’ house, they can be disposed of without a second thought.¹¹ But before Odysseus returns to reclaim his house and wife, and to dispatch the suitors and their sluts, he catalogs a set of “alternative life styles,” none of which is worthy of a warrior. It frequently surprises students how little a role Odysseus’ famous wanderings play in Homer’s epic: four

out of 24 books; 75 pages in Fagles's translation, which runs to almost 500. In many ways the Lotus-eaters are the scariest of all:

who had no notion of killing my companions, not at all, they simply gave them the lotus to taste instead . . . Any crewmen who ate the lotus, the honey-sweet fruit, lost all desire to send a message back, much less return, their only wish to linger there with the Lotus-eaters, grazing on lotus, all memory of the journey home dissolved forever.¹²

“Grazing” is the operative word here. Humans eat, drink, and tell tales; livestock grazes. It is the hope of returning to genuinely human life that keeps him going.

From Homer to Thucydides we jump at least 300 years into an entirely different moral world: no more superheroes and demi-gods. What prompts the Peloponnesian War are fears about the balance of power.¹³ But, as Yvon Garlan notes, the wars of the Greeks and Romans, early and late, were hedged round with rules guaranteed by the gods. “The ancients,” he writes, “could not imagine a true war that was not limited in time by declarations, agreements, and symbolic acts.”¹⁴ For Greeks and Romans war displays a “sacral rhythm” which moves from the sacred precincts to the councils of the people to a solemn declaration, all under the aegis of the gods. Wars were interrupted “to observe a sacred truce during the great panhellenic festivals.”¹⁵ Wars were ended by solemn oaths guaranteed by the gods. The political order “was converted into a three-sided contract by the intervention of sacred powers.”¹⁶

The laws of war were also guaranteed by the gods. Anything dedicated to them was absolutely immune for attack. Not only the priests of the temples, but everything “which belonged to the gods (sanctuaries, temples, altars, wealth, flocks and lands) or fell under their protection (tombs, certain types of monuments, sometimes even entire towns)” was out of bounds, at least in theory; “men sometimes forgot the terrible punishment meted out to Ajax by Athena for having brutally torn the prophetess Cassandra from her Trojan temple.”¹⁷ Ambassadors, because they were traditionally priests, were immune. Duty required that battle be followed immediately by the burial of the dead. In early times, according to Garlan, trophies were dedicated to the gods, though by the time of the Empire they had become symbols of personal glory.¹⁸

Such was the situation when the Romans became the lords of the Mediterranean. Even at the time of Jesus the Romans, with their punctilious commitment to the demands of law, couched war in ritual context. A generation or two ago it was common to think that early Christianity “condemned warfare and military service on grounds that were essentially ‘pacifist.’”¹⁹ Hunter surveys a number of volumes that have changed the perspective on military service. John Helgeland’s studies of the Roman army suggest that Christians had been serving in the army since at least the middle of the second century.²⁰ Origen’s apology, while insisting that Christians may not serve, explains this as a function not of a general Christian pacifism, but of their religious vocation. “If Celsus wishes us to be generals,” he

writes, "let him realize that we do this . . . Our prayers are made in secret in the mind itself, and are sent up as from priests on behalf of the people in our country."²¹

Ambrose and Augustine, writing after the conversion of the emperors, theologically ratify a situation that had been uncertain since the persecutions under Diocletian in the late third and early fourth centuries. In letter 189 to Boniface, military governor of Numidia, Augustine exhorts him not to "think that no one who serves as a soldier, using arms for warfare, can be acceptable to God."²² Augustine goes on to enumerate the devout soldiers of the New Testament and to explain that Christian soldiers "don't seek peace in order to stir up war; no – war is waged in order to obtain peace." Furthermore, "it ought to be necessity, and not your will, that destroys an enemy who is fighting you. And just as you use force against the rebel or opponent, so you ought now to use mercy towards the defeated and the captive."²³ Augustine had elaborated his view of war as a tragic necessity, inevitable given human sinfulness, in his *Contra Faustum* of 398. A few years before his death, in the famous book XIX of his *City of God*, he repeats it. The real evils of war are the vices that motivate human beings to anti-social behavior. All that the soldier can do is serve in good conscience, abjuring hate and blood lust, to subdue disturbers of the peace and preserve the fragile order that is all we can manage in our earthly pilgrimage.²⁴ Charlemagne had the works of Augustine read to him at meals.²⁵

The Christian church on peace and war, 975–1274

The legacy of late antiquity and the Patristic age, with regard to war as with so much else, was deeply ambiguous. Priests and monks were themselves understood in military terms. As Richard Southern puts it:

The monks fought battles quite as real, and more important, than the battles of the natural world; they fought to cleanse the land from supernatural enemies. To say that they prayed for the well-being of the king and kingdom is to put the matter altogether too feebly. They fought as a disciplined élite, and the safety of the kingdom depended on their efforts.²⁶

The year 975 is generally taken to mark the opening of the "peace of God" movement in tenth-century France. In part this seems to have been a practical movement to bring sanctions against robbers and thieves who plundered both the church and the common people. At the same time, it was an early step in the emerging reform movement, attempting to establish at least the basic parameters within which citizens of the earthly city could pursue their vocation as "sons of peace."²⁷

The peace of God movement led directly into the "truce of God," which attempted to legislate those days of the week and year during which force of any kind could be employed. Here also, vows were made in public assembly, in the presence of relics of the saints, thereby invoking divine authority and sanction against all who might threaten the truce. There seems to have been widespread popular support for the notion that God and the saints would stand up for the weak against the predations

of the strong. The social consequence of the peace, however, was to protect church land and to place the lesser nobles directly under the authority of the greater. It is not impossible that the result was greater peace, in the sense of order, but this came at the expense of the freedom of the common people.²⁸

On 27 November 1095, at Clermont, Pope Urban II exhorted those who had broken the peace to become soldiers of Christ, pledged to retake the Holy Land from the Turks.²⁹ The various local peaces were extended throughout France, whence the leadership was expected to come, and bands of pilgrim soldiers for God began to move east in the spring of 1096. It is unlikely that there was anything like a theory of crusading at the end of the eleventh century. After the crusaders managed to capture Jerusalem, in July of 1099, many tried to explain, and thereby justify, the success of the First Crusade. The available paradigms for war in the service of God were those of the Hebrew Bible. The crusaders were like the children of Israel, led out of Egypt to establish a holy kingdom and to rid the land of the enemies of God. But unlike the ancient Israelites, the followers of Christ had a duty to protect the land where he died for their salvation, in particular to place the Holy Sepulcher in Jerusalem firmly in the hands of Christ's followers.

The distinction between just war and holy war, of which the crusade is supposedly the prime example, is more trouble than it was ever worth.³⁰ Wars of self-defense, or to recover property, were clearly just. Wars of expansion and enrichment were suspect, though their ends might make them more credible and an upright authority might guarantee their character. To be authorized and guided by God, as the early interpreters of the crusades held those enterprises to be, could not be anything but just. But whether there could be such a war in a post-biblical epoch was another matter. "To Anselm, or to Peter Damian," writes Richard Southern, "the crusade made no appeal." He goes on to cite Anselm's exhortation to "abandon that Jerusalem that is now not a vision of peace but tribulation."³¹ But the contemporary *Song of Roland* portrayed upright churchmen winning personal glory in the fight against the heathens. Clergy carrying arms was dubiously legal, though some did.³² In any event, the clergy on crusade thought their enterprise a just one and prayed God for its success and the success of the various lords they served. This was generally not thought in any way in tension with the demands of Christian vocation.

Since the land was, so to speak, bought and paid for with the blood of the Redeemer, the crusade differed from the wars of the biblical Judges in being a *reassertion* of divine right. Mere possession did not constitute a legitimate holding, despite the long hiatus between Muslim control and the mounting of the crusade. The crusaders's goal was liberation, not only of the Holy Sepulcher, but of those Christians, pilgrims and natives, who had been abused by unbelievers. From the French perspective, the First Crusade stood in the tradition of justice derived from the Roman tradition and the writings of the Latin fathers, notably Augustine.³³

Criticism of the crusades emerged particularly in the wake of the failed Second Crusade, preached by St. Bernard in 1146. But such criticism as there was seems rarely to have been directed against the idea of war itself. Individual failures might

be seen as trials sent from God or as punishments for sin.³⁴ This was the judgment of Bernard himself and became the standard response to setback in the subsequent centuries. Later criticism was directed against particular crusaders or clerics who abused their power for personal gain, but here again, few seemed to impugn the idea.³⁵

In March of 1272, Pope Gregory X called a council at Lyons for May of 1274. He solicited briefs on three issues: the prospects for a renewed crusade, relations with the Greek church, and the need for church reform. Humbert of Romans, past master general of the Dominicans, responded with his *Opera Tripartitum*.³⁶ For Humbert, most of the reasons given for rejecting a crusade stem from sinful self-indulgence or unbelief. Arguments that the crusade is not compatible with Christian peacefulness he meets with what had become standard responses. The Muslims are actively persecuting Christians, some of whom convert to avoid mishap. The land really belongs to Christ and his followers, from whom it was unjustly taken six hundred years earlier. Thus genuine knights of Christ should welcome the opportunity to enter into battle, not only for the sake of Christ, but to accumulate the divine blessing that will open the way to paradise. Not only that, but a Christian defeat of the Muslims might hurry them on the way to conversion, demonstrating that there is no aid to be found in Muhammad. Thus war would be an act of charity directed toward non-believers. Should the crusader be enriched by the way, that was no harm.³⁷

Thomas Aquinas and the just war tradition

All the advocates of crusade, whether it was crusade to the east or against European heretics, perceived the endeavor as just. What we call the just war tradition is an attempt to clarify the conditions which must be met for a war to be fought in good conscience. What makes the achievement of Aquinas so impressive is that his account of war and the use of force generally is informed by a systematic moral psychology and account of the virtues based on the work of Aristotle.

Thomas's older contemporaries tended to rely more on the traditional Augustinian arguments. For Thomas, the human being is born into a social context and dependent on that local community for being trained up into the practical and intellectual virtues. If the individual is lucky enough to be born into a Christian community, the cardinal virtues of prudence, temperance, courage, and justice will be informed by the theological virtues of faith, hope, and charity. The human act moves from the excitation of the appetites by physical stimulus, to the contemplation of an action. If the act in question meets the conditions of virtue, then the inner act of will initiates the outward action in pursuit of the good in question. That external forces or limits may frustrate the act is sometimes fortunate and sometimes tragic, but our judgment of the individual depends on the kinds of acts he or she characteristically wills and pursues.³⁸

This general account becomes specific in the second part of the second part of Thomas's *Summa Theologiae*, which discusses the details of Christian life in

terms of the theological and cardinal virtues. The account of war comes in the discussion of charity, specifically of those vices that are contrary to charity.³⁹ Hatred, apathy, and envy may each, in its way, subvert charity. When concern for self leads to the neglect of the neighbor's good you have discord, and discord gives rise to contentiousness. As sides form there is the prospect of schism, a specific form of prideful contentiousness that puts the spiritual well-being of the community in jeopardy. This leads to the possibility of war.

When Thomas turns to war he presupposes the larger moral theory already laid out, so when he says that war can, in theory, be just he means that it is the sort of action that can be praiseworthy when, to paraphrase Aristotle, it is undertaken by the right people, for the right reasons, and in the right way. This doesn't mean that war is desirable in itself, which would be absurd, or that any war always manages to meet the conditions of justice. In fact, given the perverseness of the fallen human will, it is reasonable to assume that even a war that was in principle just would be fraught with instances of self-serving and vice. The crusader chronicles are awash in murderous bloodletting, not least the accounts of the sack of Constantinople in 1204. Aquinas is not denying or making light of these facts. He is, rather, asking whether and under what conditions sinful humanity can resort to armed force.

The answer is that resort to force is just when it meets three conditions. First, war can only be undertaken as a public act, under the aegis of whatever public authority is duly constituted to provide for the common good. Private use of organized force is always illicit. Mob violence, vigilante "justice," feuds, and the like are inherently vicious and could, in any event, not properly be called war. As always, of course, there are likely to be grey areas, a fact that would have been most clear to medieval people. So, while there might be no properly constituted authority with the power to raise an army, invasion by Viking or Mongol might lead to the spontaneous formation of a militia, a perfectly legitimate move to protect the common good at short notice.

There must, furthermore, be a just cause to enter into war. Thomas explicates this as "those who are attacked are attacked because they deserve it on account of some wrong they have done." This admits of two interpretations, only one of which is consonant with Aquinas's account of political authority. On the one hand, it might appear that anyone who commits a malicious act subjects himself to correction. This would seem to lay a foundation for crusading, given the view that the Muslims of the Holy Land wrested the territory from its previous, Christian, rulers by force. Such a view would seem to be justified when Thomas quotes Augustine's description of "a just war as one that avenges wrongs, that is, when a nation or state has to be punished either for refusing to make amends for outrages done by its subjects, or to restore what it has seized injuriously." Not only that, but Thomas has earlier written, seemingly with approval, that Christians wage war with unbelievers to prevent them from hindering the practice of the faith.⁴⁰

On the other hand, the authority of the ruler derives from human law. The purpose of law is to constrain the wayward and disorderly, essentially a supplement to the

education that the more virtuous received from their parents.⁴¹ This constraint extends only to external acts that threaten the peace and public order. Unlike the natural law, the laws of particular human communities, indeed the communities themselves, are fleeting and changeable. Their authority extends primarily to the acts of their citizens and only secondarily to events removed in time and place. Thus, without saying so directly, Thomas rejects both the original exhortation to crusade put forward by Urban II and the reassertion of those justifications by his brother Humbert.

The third condition for a just war, that “the right intention of those waging war is required, that is, they must intend to promote the good and to avoid evil,”⁴² raises the barrier still higher. Not only must the wrong be one directed at a particular human community, over which the proponent of war has jurisdiction, but the enterprise must be directed toward rectifying a particular evil, without employing any wicked means. Thomas’s justification of crusading, then, only extends to those Christians who are themselves being oppressed for the practice or preaching of their faith.

In context, this was no negligible constraint. There had, through the eleventh century, been a steady stream of pilgrims from Europe to Jerusalem, which flow was only in part curtailed by the crusades. The indigenous Christian communities of the eastern Mediterranean had suffered little at Muslim hands, even after the onset of the crusades. In fact, in the decades just before the arrival of the crusaders, the non-orthodox Christians of Anatolia had backed the emerging Seljuk Turks as a welcome relief from the oppression of the Byzantines.⁴³ In 1229 the aspiring emperor Frederick II negotiated a truce with the sultan, guaranteeing Christian freedom of worship throughout Syria, for which he was roundly excoriated by the Christian patriarch of Jerusalem. After the Mongol conquest of Baghdad in 1258 the Christians were in better shape than the Sunni Muslims, owing to the fact that the new ruler’s wife was a Nestorian Christian. Another Dominican respondent to Gregory X’s call for briefs, William of Tripoli, reported that the indigenous Christians disapproved of the crusades as an impediment to good business.⁴⁴ In short, while war against unbelievers was in theory supportable, the facts argued against it. For Thomas, judgment and action always take place in specific contexts and if all the conditions for right action are not met, the act is defective.⁴⁵

Thomas’s three conditions for *jus ad bellum* (justice in going to war) lie at the heart of subsequent just war thinking. The remaining *ad bellum* criteria – proportionality of war to injury, last resort, and reasonable hope of success – are simply demands of prudence. Anyone who would undertake war in the absence of such conditions would by that very fact convict himself of malicious belligerence. But it remains to consider the restraints that must be observed in prosecuting a war, what came to be called the *jus in bello* criteria for maintaining a just war. Here again it is important to recall that all the conditions must be met for a war to be just and defect at any point renders the enterprise blameworthy. So in considering whether subterfuge and ambush are legitimate tactics in war, Thomas notes that

there is a distinction between lying or promise-breaking and concealment. The first sort of deception requires the deliberate use of wicked means and is never acceptable. Concealment, on the other hand, is a legitimate dictate of prudence.

Wicked means may never be used in any circumstances. This includes targeting the innocent to achieve a military objective. Thomas makes a clear distinction between private and public persons in noting that “if a private person uses the sword by the authority of the sovereign or judge, or if a public person uses it through zeal for justice . . . then he himself does not ‘draw the sword’, but is commissioned by another to use it, and does not deserve punishment.”⁴⁶ The logic of the argument is clear. A sovereign is commissioned by the people to pursue and protect the common good. Those in authority may, in turn, commission previously private individuals to use deadly force on behalf of the public. By being incorporated into a public instrument private persons become part of a whole. So when the soldier attacks another soldier, he acts legitimately and the killing is not malicious. This is true even if the *jus ad bellum* criteria are not met; it does not lie within the authority of the individual soldier to determine whether or not there is just cause, right intent, and the like. Unless an order or tactic is manifestly unjust the soldier may, in good conscience, follow orders. The defect in the action falls on the head of the commander.⁴⁷ Soldiers, then, can only kill other soldiers. The army is the instrument with which the aggressor inflicts his injury and the instrument by which the aggression is repulsed. In later work this will come to be known as the *in bello* criterion of “discrimination,” which condemns any attack on non-combatants.

Of course, it would be absurd to pretend that wars take place without civilian casualties, even in the more restricted context of medieval warfare. In his discussion of self-defense Thomas elaborates what comes to be called the principle of “double effect.” This much misinterpreted principle is not intended by Aquinas as the introduction of some arcane, much less arbitrary, theoretical justification for doing evil. He is, rather, making explicit something that is generally taken for granted when we assign responsibility. “A single act,” he writes, “may have two effects, of which one alone is intended, whilst the other is incidental to that intention.”⁴⁸ Consider, for example, any competition for an academic position. One graduate student may know that a friend is competing for the same job, but as long as she behaves honestly and in good faith, she deserves no blame if she succeeds. By extension, when the private person resists his attacker with reasonable force there is no malice, even if the attacker dies.

Soldiers using otherwise legitimate means, particularly in modern warfare (though even medieval archers often missed the mark), should realize that non-combatants in proximity to the fighting run a risk of injury. Therefore they must use their weapons in ways that discriminate between legitimate objects: combatants, their weapons, and the materials that make aggression possible. When soldiers fire at legitimate targets, with reasonable weapons, and hit civilian bystanders, it is tragic but not culpable.⁴⁹ It is no counter-argument that what is reasonable is often a matter of judgment. We exercise the virtues of prudence, justice, and courage to determine where to draw the line. Thomas’s Aristotelianism is not designed

to eliminate judgment but to clarify it. Nor is it relevant that people lie or dissemble about their real intentions. The fact remains, if known only to God.

Aquinas was on his way to attend Gregory's council at Lyons when he died, in March of 1274. He had apparently intended to address the issue of Latin–Greek relations, since he was travelling with a copy of his *Against the Errors of the Greeks*, composed a decade earlier. There is no way to be sure what he might have said on Gregory's proposed crusade. But his account of the ethics of war rapidly became the benchmark discussion. No previous author so fully integrated the problem of war into a comprehensive moral psychology and political theory. Virtuous people make reasonable laws to facilitate the business of the commonwealth. All are essential, but first among equals is virtue, which is essential to making good laws and pursuing the right sort of business. The account provided by Aquinas remained the standard for the next 300 years.⁵⁰

From the death of Aquinas to the Second Scholastic

The most notable event in the subsequent century was the appearance of the first independent legal treatise on war, that of John of Legnano, who taught both civil and canon law at the University of Bologna from the 1350s until his death in 1383.⁵¹ While students of law had addressed issues of war from Gratian on, the discussions are generally jumbled and philosophically unstructured. Thomas Aquinas was particularly dismissive of the authority of lawyers. But the concerns of lawyers are of necessity the concerns of the society and a look at John of Legnano is an entry into a new vocabulary emerging in the later Middle Ages. The first thing to remark is the very wide scope John gives to the concept of war. There is, to begin, a distinction between spiritual and corporeal war. Spiritual war at the celestial level seems to be the struggle of the individual against the limit placed and judgment passed on human life by God. At the human level, spiritual war reflects the Pauline struggle between the law of God and the law operative in the body.⁵² Corporeal war comprises not only what Thomas means by war – which John calls “universal corporeal war” – but the conflicts of individuals that result in reprisals and duels.

Though John cites Aristotle, Augustine, and Aquinas in those chapters where he talks about virtue, courage, and justice in general, questions of legal authority and obedience dominate the work. Following the discussion of mercenaries, for example, is the question “whether those who die in war are saved?”⁵³ The answer is that those who die in war for the Church are saved, while those who die in another sort of lawful war are saved only on condition that they are without mortal sin. “But if they fall in an unlawful war,” he insists, “though that be their only mortal sin, they perish.” Thus to have a legal obligation to a lord may be morally binding, on pain of loss of livelihood, while to venture forth, if the war is unlawful, may jeopardize eternal life. The disparate legal judgments, from differing times and places, often leave it unclear how to resolve whether or not an action is lawful and who is bound by it, morally or legally. So when John asks “whether a vassal is bound to help his lord against his father, or a father against his son?” several texts

seem to say that the feudal oath takes precedent while another gloss “somewhat inclines to the contrary view.” John concludes, not very helpfully, that “I should think that the quality of the assistance to be rendered should be considered.”⁵⁴

For Thomas, human law should be in the service of the common good, pursued in accord with the virtues. Any obligation must be analyzed in the context of justice and the common good. What the son owes to the father in virtue of his gift of life, nurture, and stewardship can never, for Aquinas, following Aristotle, be repaid. It is only if the father were to become vicious and inimical to the common good that the son could ever be required to take sides against him and then only if the son had a public role like that of a policeman. This should not be taken to imply that all issues can be resolved independent of the law. Any extended human community will require some body of law to negotiate day-to-day existence and some judicial body to consider findings of fact in the light of that law. The point is only that the law does not float free of the community’s pursuit of the common good. When justice seems to be at odds with the letter of the law, the virtuous judge exercises equity to maintain our collective commitment to justice and the common good.⁵⁵

Contrast this with John’s account of dueling. On his usage the duel is a “particular war,” specifically “a corporeal fight between two persons, deliberate on both sides, designed for compurgation, glory, or exaggeration of hatred.”⁵⁶ All such endeavors would clearly violate Thomas’s rejection of brawling and private killing. Even the duel of compurgation, by which John means the *lex duellorum*, a duel to vindicate one’s position before a court of law, is explicitly ruled out. For while it may take place as a public proceeding under the rules of a court of law, it is a form of divination and improperly involves demanding a judgment from God.⁵⁷ Thus the fact that the Lombard law permitted such duels in 20 cases is inconsequential and John’s discussion of champions, the organization of the duel, and who should strike first (cf. chaps. 176–194), for instance, are of merely antiquarian interest.⁵⁸

The rise of the lawyers did not signal the end of theological treatment of war. In the course of the fourteenth and fifteenth centuries Thomas is not the only theological authority invoked in discussing war. In the *Question at Vespers* of 1512, Jacques Almain writes rather baldly that “Scotus’s assertion in question 3 of distinction 15 [of his commentary on Peter Lombard’s *Sentences*] is quite false, that it is not legitimate for anyone whatever to kill by public authority other than in the cases excepted by God from the commandment ‘Thou shalt not kill.’”⁵⁹ The implication is that, at least for the purposes of disputation, there is a tradition of invoking John Duns Scotus against the just war arguments of Aquinas. In his discussion of the Decalogue, Scotus argues that the sixth commandment, along with the rest of the second tablet, is not properly speaking part of the natural law. From this it would seem to follow that once the commandment is issued it must be understood as direct divine legislation, which remains binding unless and until there is a dispensation issued by God. The implication is that this extends to all killing, including wars of self-defense and the execution of criminals.⁶⁰

Against this Almain invokes Aquinas explicitly for the legitimacy of excising the diseased part and thus, by analogy, for the praiseworthiness of killing the dangerous

criminal. Furthermore, the community acts in accord with practical reason when it delegates this authority to the prince, who acts to protect the common good. Almain insists that, while the delegation of authority is positive, Thomas is right to say that it is natural for human beings to form communities and that it accords with practical reason to create things like police forces and armies. Since these various forces are ordered to a specific, communal end, they await no direct command, even that of God, for their reasonable use.

The pre-eminence of St. Thomas in moral theology was an explicit tenet of the movement known as the "Second Scholastic" and associated with a group of Parisian trained Spanish Dominicans a bit younger than Almain. The best known are Francisco de Vitoria and Domingo de Soto. Vitoria and Soto were both active critics of Spanish practice and policy in the recently discovered New World. It is, in fact, for his *Inquiry on the Indians* that Vitoria remains the most widely known and widely read figure of the Second Scholastic. Following Thomas, Vitoria begins by noting that there is some doubt as to the propriety of Spanish conduct in the newly discovered lands and that in such cases neither the royal counsellors nor lawyers are competent to judge a case which rightly falls to the moral theologian.⁶¹ Vitoria reviews the possible titles that Spain might have to dominion in the New World and finds them wanting, concluding that, in the main, Spanish treatment of the New World natives has been illicit and immoral. Neither the king nor the pope is a universal sovereign. Given the existence of recognizable indigenous communities, the representatives of the king had no authority to intervene in their lives or appropriate their properties. Adventurers such as the brothers Pizarro, whose depredations were manifestly vicious, should be strongly sanctioned by the king and his ministers and Vitoria even suggested, though only in oblique terms, that reparations might be in order.⁶²

Vitoria follows Thomas in insisting that, while the Spaniards have in principle a right to preach the Gospel, and that the natives incur mortal sin in failing to believe, this sin is wholly intelligible given the context and does not license any war by the Spaniards. If they must resort to arms in self-defense, that force should extend only to their protection and if they succeed in suppressing an attack they are still not allowed to carry war to the natives. Nor is it just to despoil them or to place them in servitude, even were the intent to make them more receptive to the Gospel. There is no justice in conversion by the sword.⁶³

In the 1540s the humanist and royal chronicler Juan Ginés de Sepúlveda invoked the Aristotelian doctrine of "natural slavery" to claim that the Spanish conquests were just. Sepúlveda argued that the native Americans lived a life so crude and lacking in the basic amenities of civilization that it was an act of Aristotelian justice and Christian charity to subdue them to a higher civilizing force. The Dominican Bartolomé de Las Casas, who had long been active in the native cause, objected strenuously and succeeded in having Sepúlveda's book suppressed in Spain. Soto, who convened the conference on publishing the volume, summarized the competing arguments and shortly thereafter, in his work on justice, not only reiterated the position of Vitoria, but pointed out that even the least sophisticated among

the Indians was no more a natural slave than the peasants and simple-minded of Spain itself, whom nobody thought could rightfully be enslaved.⁶⁴ In their discussions of Spanish injustice in the New World, Vitoria and Soto displayed the practical applicability of just war thinking as formulated by Thomas Aquinas. While recognizing the importance of legal issues, those findings were clearly subordinate to those of moral theology.

The triumph of the lawyers

The legal and moral traditions proceeded in parallel for the next 250 years, but more and more the just war tradition of Aquinas and the Second Scholastic came to be identified with Catholic Orthodoxy and to be replaced, when questions of justice came up at all, by the legal paradigm as developed by the Dutch humanist Hugo Grotius. Grotius dutifully acknowledges the work of Aquinas and Vitoria, but it is a mistake to locate his work in their tradition. First, he reflects the anti-Aristotelian turn of the humanist tradition. Grotius's anti-Aristotelian program comes out clearly in *The Law of War and Peace*, which first appeared in 1625.⁶⁵ There he writes that Aristotle's supremacy in the intellectual world has been so tyrannical "that Truth, to whom Aristotle devoted faithful service, was by no instrumentality more repressed than by Aristotle's name!"⁶⁶ The source of his anti-Aristotelianism is not altogether clear, but the result is the traditional lawyerly goal of reducing the exercise of prudence and equity in favor of a strict deduction of application from law. By eliminating the Aristotelian appeal to the virtues it is much easier to put forward "the humanist tradition, which applauded warfare in the interests of one's *respublica*, and saw a dramatic moral difference between Christian, European civilization and barbarism."⁶⁷

Grotius's earlier volume, *De Jure Praedae*, shows him doing something quite new when compared to Vitoria. He combines the Stoic account of human nature with a lawyerly desire to see ethics in terms of a hierarchy of laws, rules, and principles governing the exchange of goods in an orderly social machine. From the Stoics Grotius takes the notion that God's will is the law and that it is expressed in the design of creation. Central to all animals, including humans, is the urge to self-preservation. Humans are also endowed with reason and an inclination to sociability. "We are born," he writes, "for a life of fellowship."⁶⁸ So we are impelled by nature toward the creation of a social order. At the same time, nature demands that we take whatever means are necessary to maintain our security. The result is that we contract with our fellows to establish a system of laws and the instruments for their enforcement. Grotius elaborates a legal structure of nine rules and 13 laws from which, he maintains, various theses and their corollaries may be shown to follow.⁶⁹

Specifically, Grotius hopes to justify the recent Dutch seizure of a Portuguese vessel. Because evil deeds must be corrected, the good pursued, and the care of the common good maintained by all citizens, "a private war is undertaken justly in so far as judicial recourse is lacking."⁷⁰ Because the Spanish have, for a sustained

period of time, injured the interests of the Dutch generally and because the Spanish cannot be brought to cease from their abuses, it is legitimate that prizes should be taken when possible.⁷¹ Thus, this particular prize is legitimate and the Dutch should “defend the right of commerce against every possible injury.”⁷²

Turning, in his *Law of War and Peace*, to the indigenous peoples of the non-Christian world, Grotius rejects the arguments of Vitoria and Soto:

Regarding such barbarians, wild beasts rather than men, one may rightly say what Aristotle wrongly said of the Persians . . . that war against them was sanctioned by nature; and what Isocrates said, in his *Panathenaic Oration*, that the most just war is against savage beasts, the next against men who are like beasts.

(1925: II, 40)

This is doubly appropriate when such barbarians violate the natural law, for “they [Vitoria *et al.*] claim that the power of punishing is the proper effect of civil jurisdiction while we hold that it also is derived from the law of nature.”⁷³ Grotius may use the language of Aquinas and his Spanish followers, but it is a language that has become vastly more permissive than the older school. And it paves the way for supposedly liberal thinkers such as John Stuart Mill to write as if it were obvious that Africans, Indians east or west, and similarly barbaric peoples must fall under western tutelage before they can enjoy the benefits of liberty. Thus Mill, writing two and a half centuries after Grotius, can take it as “hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties . . . Despotism is a legitimate mode of government in dealing with barbarians.”⁷⁴

The consolidation of the Westphalian system, the expansions of colonial empire, the age of revolution, and the struggle to maintain the balance of power in the seventeenth, eighteenth, and nineteenth centuries left the classic just war tradition in the dust. Questions of law and contract, on the one hand, and liberty and nationalism, on the other, dominate arguments of rhetoric of the late eighteenth and the nineteenth centuries. Serious political thinkers, such as the young Henry Kissinger, take as their ideal the practical political machinators of the post-Napoleonic era. Kissinger’s *A World Restored*, based on his 1954 Harvard dissertation, maintains that “the test of a statesman, then, is his ability to recognize the real relationship of forces and to make this knowledge serve his ends.”⁷⁵ The realism of Kissinger, in the history of political thought, is the flip side of John Dewey’s idealism.

War and justice in twentieth-century thought

In the first half of the twentieth century the natural law approach to the ethics of war was dismissed by most American political thinkers. “During the nineteenth century,” writes John Dewey, “the notion of natural law in morals fell largely into discredit and disuse outside the orthodox moralists of the Catholic church . . .

Even when retained, as in some texts, it was in perfunctory deference to tradition rather than as a living intellectual force.”⁷⁶

The alternative to natural law occupied Dewey for much of his career, particularly after the start of the First World War. His *German Philosophy and Politics* of 1915 is not generally thought one of his most compelling volumes. Nonetheless, Jo Ann Boydston writes that, “although in later years this book has been generally conceded to be among Dewey’s least valuable, reviewers praised it at the time of its publication.”⁷⁷

One who did not, however, was W. E. Hocking. Dewey, as Hocking rightly reads him, sees a direct connection between Kant’s categorical imperative and German militarism. “Can anyone with the slightest historical justice,” asks Hocking rhetorically, “credit the German government of to-day with following *this* Kantian principle?” Hocking closes with the accusation that German behavior is, in fact, “pragmatic, which is what *Realpolitik* essentially means.”⁷⁸ Dewey, rather obviously irked, responds that “Professor Hocking has not grasped my position.”⁷⁹ *German Philosophy and Politics*, while inspired by the European conflict, is a case-study in moral theory, designed to articulate Dewey’s sense “that there are no such things as pure ideas of *pure* reason.”⁸⁰ Ideas are themselves expressions of living individuals and communities coming to grips with a concrete situation. When the social world is orderly it is not necessary, nor are people ordinarily inclined, to reflect in depth on the norms and ideals embodied in social life. In times of flux, however, ordinarily stable beliefs and inferences fall into question. War, thus, opens a window on the relation between ideas and action.

Alan Ryan, a sympathetic reader of *German Philosophy and Politics*, describes it as “one of the most striking (though not strikingly persuasive) books Dewey ever wrote,”⁸¹ and attributes the failure of the argument, at least in part, to the fact that Dewey “relied rather too heavily” on the German military theorist Friedrich von Bernhardi.⁸² But this, I think, misses Dewey’s point. At the turn of the century Bernhardi was in charge of war history for the German General Staff. By 1909 he was commanding general of the Seventh Army. His *On War Today* (of which *Germany and the Next War* is volume two) has been described by Michael Howard as “brilliant and heterodox,” containing “a great deal of shrewd tactical analysis.”⁸³ The text went through nine editions in the two years before the war and shortly after the opening of hostilities the young Walter Lippmann, later to assist in formulating Wilson’s “fourteen points,” wrote that “we were all surprised at the war, stunned at the idea that such things could happen. And then we took to reading Bernhardi . . . and we discovered that this war had been a long time in the minds of the men who know Europe.”⁸⁴ Whatever the actual motives of individual agents in the field, Bernhardi is a Weberian “ideal type,” playing the role of Benjamin Franklin in Dewey’s account of the Kantian ethic and the spirit of militarism.

Dewey argues that interpreting morality on the model of law, whether it be that of the philosopher-king, the Christian god, or the rational intellect, risks turning the strategies of a particular time and place into superhumanly established and maintained norms. When this illusion becomes the norm it stifles our ability to

innovate and experiment with alternative approaches. As in Weber's account of the spirit of capitalism, an all-encompassing idea – here Kant's cosmopolitan vision of perpetual peace – is transformed into its opposite. War, now, "is to national life what the winds are to the sea, 'preserving mankind from the corruption engendered by immobility.'"⁸⁵

Against "*a priori*ism" Dewey advocates "a radically experimental philosophy,"⁸⁶ but he denies the European identification of "Americanism" with "a crude empiricism and a materialistic utilitarianism."⁸⁷ It is closer, surprisingly, to the position of Burke. What inspires Dewey to identify with Burke is the conservative icon's rejection of "metaphysical abstraction" and his insistence on grounding the moral life in the contingencies of shared experience. What distinguishes American liberalism from British conservatism is the fact that "America is too new . . . we have not the requisite background of law, institutions and achieved social organization."⁸⁸ Not only that, "but in our internal constitution we are actually interracial and international."⁸⁹ Only with violent internal upheaval could we attain the sort of cultural and historical homogeneity that renders Burke's conservatism plausible.

The moral life of democracy is one that fosters "the fruitful processes of cooperation in the great experiment of living together . . . a future in which freedom and fullness of human companionship is the aim, and intelligent cooperative experimentation is the method."⁹⁰ Only in the service of these democratic ideals is it legitimate to break the peace; only in furtherance of these ideals, Dewey ultimately wants to say, can a democratic community enter into the present war. His willingness to support the war effort was always predicated on this democratic *jus ad bellum* and he was deeply disappointed with the outcome of the war. Dewey's stance against the League of Nations and his involvement with the "outlawry of war" movement reflect this disappointment.⁹¹ Philosophically, however, it was a descent into nonsense. Dewey writes that:

The Committee for the Outlawry of War had strenuously opposed making a distinction between aggressive and defensive wars, point out that all nations claimed that their own wars were defensive and holding to the idea that it was the institution of war and not particular wars which were to be outlawed.⁹²

At the time he vilified international law as implicated in the "war system."⁹³ Having rejected the just war tradition, Dewey, America's leading public intellectual in the first half of the twentieth century, leaves us with a stark contrast between pacifism and an aggressive Euro-American will to power.

Almost a decade later, Dewey reverted to the position he held prior to his outlawry of war period. "War with a totalitarian power," he insists, "is war against an aggressive way of life that can maintain itself in existence only by constant extension of its sphere of aggression."⁹⁴ This totalitarian challenge is a direct attack on the virtues of democracy. While not to be welcomed, much less sought out, this sort of war is part of our democratic commitment "to unceasing effort to break

down the walls of class, of unequal opportunity, of color, race, sect, and nationality, which estranges human beings from one another.”⁹⁵ When confronted with war the pragmatist swings between democratic, then pacifist, then back to democratic idealism.

Ethics and war in a nuclear age: the return of the just war tradition

If ever a day changed everything, it was 6 August 1945. “Little Boy” and “Fat Man” were astounding in their economy and their aftermath; but for the Japanese, the terror had already become routine. The dropping of the atomic bomb was the culmination of six months of firebombing:

The most careful count, done by the Japanese themselves, produced fewer losses than the Americans estimated, but either number is horrific: 240,000 to 300,000 dead (mostly civilians), approximately 2.5 million homes destroyed, and more than 8 million refugees. Of 71 Japanese cities, only 5 escaped substantial damage – and two of these were Hiroshima and Nagasaki.⁹⁶

The firebombing of Japan brought to the Pacific theater tactics that had already been roundly condemned in the European. In the Catholic world, the American Jesuit John Ford had condemned the firebombing of Germany along lines that continued the analysis of Aquinas and the Second Scholastic. “No proportionate cause,” Ford concluded, “could justify the evil done; and to make it legitimate would soon lead the world to the immoral barbarity of total war.”⁹⁷ A few years later, the British philosopher Elizabeth Anscombe protested giving an Oxford honorary to Harry Truman on the grounds that he was a mass murderer.⁹⁸ In 1961, Anscombe joined with a distinguished group of British Catholics to train the resources of just war thinking on the emerging policy of deterrence by mutually assured destruction.⁹⁹

In the United States, Catholic moral thought was viewed with suspicion by the mostly Protestant mainstream and Dewey’s invocation of democratic values hardly seemed adequate to deal with the situation. So, at least, it seemed to Paul Ramsey. In 1961, he shocked the Protestant establishment by turning away from the pragmatic realism of Reinhold Niebuhr and embracing, with some modifications, the tradition of Vitoria. Ramsey recast the just war theory in an Augustinian mold, insisting on the centrality of *agape*, the other regarding love that demands of public officials a commitment to the welfare of their neighbors, even if it requires the exercise of deadly force. On this version, Aquinas’s Aristotelian moral psychology is relegated to the background and the just war tradition after Augustine becomes a matter of clarifying the principles that inform Christian love of neighbor.¹⁰⁰

As opposition to the war in Vietnam gathered momentum, Ramsey and the just war tradition generally came to be seen as tools of the right wing establishment. In

1977, Michael Walzer published his own reworking of the just war tradition, pitched to the social democratic left. Walzer was reacting to his own sense that the anti-war movement of the mid-1960s did not have an adequate vocabulary to explain what was wrong with the war in Vietnam and what was right about nuclear deterrence. Like Ramsey, Walzer had little use for the Aristotelian background of Aquinas and the Second Scholastic, identifying himself with a legal paradigm grounded in the contractarian tradition of Grotius, Hobbes, and Rousseau. For Walzer, the “war convention” stipulates the intuitive ideals for fighting a just war, and we then elaborate the modifications of that convention forced on us by the necessities of war, culminating in “supreme emergency,” which licenses illegal acts in order to protect our basic values, but only so long as is necessary to put down the threat and restore the rule of law.

However interpreted, the just war criteria have become the starting points, on the left and right, for discussing the ethics of war. Advocates and critics of the American actions in the first Gulf War agreed that the *jus ad bellum* requires:

- 1 right authority
- 2 just cause
- 3 right intention
- 4 last resort
- 5 reasonable hope of success
- 6 proportionality of injury to the consequences of war.¹⁰¹

Both sides also insisted that the just prosecution of a war satisfy the *jus in bello* demands of:

- 1 discrimination, subject to the reasonable allowance of double effect
- 2 proportion, in the sense of limiting damage to the importance of a particular action for securing the ends of war.

These are the minimal conditions for justice. Players on the international stage are always at liberty to hold themselves to a higher standard through signing on to international treaties and joining international organizations, but such alliances are conditional. For just war thinkers, the demands of justice are not.

Ethics, war, and the perils of comparison

The twenty-first-century promises to be more multi-cultural than any since the advent of modernity, with the voices and vocabularies of many traditions demanding to be heard. How these alternative voices shape the thought and practice of the next few decades defies prediction, but making a start on grasping those vocabularies should not be postponed. Based solely on the history of the western just war tradition, the student of comparative ethics ought to recognize that there are at least three models, broadly speaking, for understanding ethics: the legal paradigm; the virtue, or character, paradigm; and the economic paradigm.

The legal paradigm finds it natural to speak of law, a lawgiver, and a community bound to observe the law. In the western tradition, the oldest continuous version of this model is that found in Hebrew Scripture. The creator issues commands, first to Adam and Eve, later to Noah and Abraham, and finally to Moses. God has the authority to issue these laws because, as creator, he is ultimately the owner of his creation. Despite the clear demands of his law, humans continually fail to observe them, which typically leads to some sanction. Thus Adam and Eve are expelled from the Garden, all but Noah and his family are expunged from creation, Abraham is tested and found worthy, and the people of Israel, despite their apostasy at Sinai, receive the 613 commandments of Torah.

The best critic of ethics as law is Aristotle himself. The *Nicomachean Ethics* sees law as a product of individual societies, seeking to formulate a code of public behavior, such as the constitution of Athens, that facilitates the pursuit of what the community cares about. Such constitutions presuppose at least a rudimentary consensus about the kind of people valued, the kind of behavior to be praised and blamed, and the sort of polis that should be fostered. For such communities there is no need to ask about universal reason; what matters is the shared reasons they give each other either for applauding or condemning what goes on among them. The character and virtues of both the individuals and the group as a whole are what give the law meaning.

The “economic paradigm” treats ethics along the lines of contracts and exchanges. We have seen in Grotius that individuals find themselves under the law, but only as a result of an implicit agreement motivated by nature. What the law must acknowledge are the rights, as well as the duties, secured in the initial contract. John Rawls, the most important recent contract theorist, argues that to achieve fairness the contract must be negotiated, conceptually speaking, from an original position where the parties do not know where they will end up in the social order. Once the basic structure of justice is in place, goods are negotiated in the public square on the basis of fairness.¹⁰² When it comes to war, Rawls simply identifies himself with the contractarian approach of Walzer.¹⁰³

While Rawls proposes his theory of justice as an alternative to utilitarianism, utilitarians such as Peter Singer agree that:

an ethical principle cannot be justified in relation to any partial or sectional group . . . Ethics requires us to go beyond ‘I’ and ‘you’ to the universal law, the universalisable judgment, the standpoint of the impartial spectator or ideal observer, or whatever we choose to call it.¹⁰⁴

What leads Singer to utilitarianism is the sense that Rawls does not provide credible guidance in justifying the ways we balance competing interests to satisfy our intuitions about what is best. Utilitarianism, despite its critics, at least gives some direction to what counts as the best consequences. Ultimately, right action is a matter of balancing aggregate goods over individual evils. When we want to draw a line, it becomes, as for Rawls, a matter of negotiating where the attempt to

maximize goods must be limited. So, while Singer follows Seneca in seeing infanticide as the compassionate solution to “the problem posed by sick and deformed babies,” he hastens to add that “killing an infant whose parents do not want it dead is, of course, an utterly different matter.”¹⁰⁵

It would be a mistake to think that comparative ethics is simply a matter of attaching these labels to this or that author in this or that tradition. Most traditions will display features of all three. Classical Judaism, for example, might be thought of as standing foursquare in the legal paradigm, but it is hardly to be divorced from the prophetic tradition, calling Israel to be the sort of people God wants them to be. At the same time, opening the Mishnah at random will likely confirm the importance of rights and fairness in the exercise of the law. For example, at Sanhedrin 3.1: “Cases concerning property are decided by three judges. Each suitor chooses one and together they choose another. So R. Meir. But the Sages say: The two judges choose yet another.”¹⁰⁶ If there is already this mix of paradigms in the foundational text of classical Judaism, we should hardly be surprised if its contemporary branches divide up with even greater complexity. No theory or method can get around the fact that human acts are always performed in a particular time and place and that interpreting those acts requires some entry into language and context.

At the most general level, interpretation is a matter of what Donald Davidson calls “triangulation.” Imagine two individuals who do not as yet share a language encountering each other on the seashore. They may respond to each other in many different ways, putting both in possession of three bits of information: his own response, the response of the other, and the environment that provokes the response. Assuming they have the time and inclination, the two can, by a familiar process of backing and forthing, move closer to getting the responses to match up. By itself, this sort of triangulation may not be sufficient to identify precisely what the other thinks, wants, feels or believes, but it “is necessary if there is to be any answer at all to the question what its concepts are concepts of.”¹⁰⁷ Once their responses are regularly predictable they can undertake cooperative actions together. After that, it’s a gray line where we say the one has learned the other’s language.

Still, as Wittgenstein put it, “one human being can be a complete enigma to another.” But this doesn’t refer to some sort of Cartesian privacy. Rather:

We learn this when we come into a strange country with entirely strange traditions; and, what is more, even given a mastery of the country’s language. We do not *understand* the people. (And not because of not knowing what they are saying to themselves.) We cannot find our feet with them.¹⁰⁸

The source of the problem is not one of radical translation. It lies in the “entirely strange traditions.” R. C. Zaehner, for example, was a prodigious linguist, but he never seems to have felt at home with the rituals of purity and concern for pollution evident in the traditions he studied. In his introduction to Zoroastrianism he:

omits all account of the elaborate system of taboo worked out in the *Videvat* . . . and maintained down to the present day by the orthodox. This I have done because it is of no interest to the general reader and because it is the least attractive and the least worthwhile aspect of an otherwise attractive religion.¹⁰⁹

He says similar things about Hinduism in various places. In his sketch of Hinduism he refers the reader to the Abbe Dubois's *Hindu Manners, Customs, and Ceremonies*, first published in English in 1816, "as still the most exhaustive treatment of a subject scarcely touched on in this book."¹¹⁰ In this Zaehner is simply the heir, perhaps odd for a Catholic convert, to a modern "tendency to suppose that any ritual is empty form."¹¹¹ The result is that Zaehner never learns how the language of pollution, ritual, and sacrifice hang together in the life of his subjects. As far as day-to-day existence goes, he never finds his feet with them.¹¹²

Herbert Fingarette's *Confucius: The Secular as Sacred* transformed the study of Confucianism, and comparative religious ethics, by reading the *Analects* not as the "archaic irrelevance" of a "prosaic and parochial moralizer,"¹¹³ but as the work of a social visionary trying to articulate a way to see Lu and its neighboring principalities as a cultural whole, worthy of preservation in a period of warring states and social turmoil. Of the three ways, generally speaking, that individuals can be brought to cooperate, two – coercion and contract – are inherently unstable. By seeing the practices that secure order as "an inheritance through accepted tradition,"¹¹⁴ Confucius succeeded in persuading subsequent generations that "the dignity peculiar to man and the power associated with this dignity could be characterized in terms of holy rite."¹¹⁵

Fingarette articulates the interrelated vocabulary of ceremony – *li, jen, shu*, etc. – as an alternative to the ethics of law and guilt, or that of utility and contract, prevalent in Anglo-American moral theory. While he is committed to the practices, and some of the positions, of the Anglo-American philosophical tradition,¹¹⁶ Fingarette is profoundly dissatisfied with moral theory done in the:

language of choice and responsibility as these are intimately intertwined with the idea of the ontologically ultimate power of the individual to select from genuine alternatives to create his own spiritual destiny, and with the related ideas of spiritual guilt, and repentance or retribution for such guilt.¹¹⁷

Whether they used a language like ours or not, the people of ancient China faced problems not wholly unlike their contemporaries to the west. "Some men," Fingarette remarks, "were more responsible than others in Confucius's day as in ours. It is also obvious that men made choices in ancient China."¹¹⁸ The point is to see how other people thought about their lives and to see what light that sheds on our ways of thinking about our lives. His Confucius sees "the flowering of humanity in the ceremonial acts of men."¹¹⁹ This is, if you like, a Chinese ethic

of character, for whose adherents it is both a duty and an honor to become the sort of person who wants to continue the way of the ancestors. This sort of person needs no fear of human or superhuman sanction or reward to do what needs to be done.¹²⁰

Fingarette's engaged, sympathetic rereading is only the first step in finding our feet in comparative ethics. In the last century the flowering of social anthropology made it progressively easier to grasp how what might seem entirely alien to the foreign visitor could be second nature to the locals. Ethnographic classics by E. E. Evans-Pritchard, Godfrey Lienhardt, and others allowed the sympathetic reader to feel, if not exactly at home, an honored guest in some very alien environments.¹²¹ But Mary Douglas may have done more than anyone to shake the modern psychologism that makes it easy to think other cultures are undeveloped versions of our own.¹²²

By using her fieldwork among the Lele of the Kasai to generate an alternative reading of the abominations of Leviticus she highlighted the importance of social norms and categories in shaping perception.¹²³ She made it impossible to read cavalier dismissals of ritual practice like those of Zaehner as anything other than the product of blinkered parochialism. Later works trained the anthropological lens on our own classificatory practices, suggesting that what appear to us to be natural and unreflective responses to our environs are themselves products of the languages and habits we're trained into from birth.¹²⁴

At the same time Douglas was developing a nuanced, fieldwork savvy version of Durkheim, Clifford Geertz was doing much the same for Max Weber. In his early essays, Geertz saw himself as working on "a kind of prototheory . . . of a more adequate analytic framework."¹²⁵ By 1967, he had begun to worry less about social theory and more about constructing perspicuous narratives that brought out the workings of the different societies he observed. In his Terry Lectures, Geertz "attempted to lay out a general framework for the comparative analysis of religion and to apply it to a study of the development of a supposedly single creed."¹²⁶ While not averse to the Durkheimian approach of Douglas,¹²⁷ Geertz sees Weber as providing a more subtle entry into the complications introduced by change over time. To take the most famous of Weber's case studies, the Reformed asceticism of Calvin's Geneva was embraced as an ideal by followers in Holland, Scotland, and England. That asceticism was popularized in English by Bunyan's *Pilgrim's Progress*, which Weber describes as "by far the most widely read book of the whole Puritan literature."¹²⁸

In less than a hundred years, Benjamin Franklin, the son of one of Bunyan's Puritan contemporaries, would be perpetrating hoaxes, counselling revolutionaries, and giving canonical expression to an American ethic of capitalist thrift. Nothing, it would seem, could be further from the ethos of *Pilgrim's Progress* than Franklin's utilitarian deism. Yet, Weber argues, the ideas of Calvin and Bunyan held within themselves the seeds of "present-day capitalism . . . into which the individual is born, and which presents itself to him, at least as an individual, as an unalterable order of things in which he must live."¹²⁹ Regardless of its adequacy as history,

what impresses Geertz is Weber's ability to link ideas to social change, which then produces new ideas. Because human beings are constantly attempting to figure out what's going on around them, ideas are constantly being interpreted, invented, and rearranged in response to the "problem of meaning."¹³⁰

The 1970s found Geertz hoping "to draw large conclusions from small, but very densely textured facts; to support broad assertions about the role of culture in the construction of collective life by engaging them exactly with complex specifics."¹³¹ By the time Geertz delivered the Storrs Lectures in 1981, his quick term for these complex specifics had become "local knowledge." "Law," he writes, "is local knowledge; local not just as to place, time, class, and variety of issue, but as to accent – vernacular characterizations of what happens connected to vernacular imaginings of what can."¹³² Learning the language of legal judgment is as much a matter of triangulation as it is for the language of perception. Any theory of law, if meant to account for how people in different times and places go about enforcing their demands on each other and solve, or resolve, matters in dispute, would have to be so general as to be of very little descriptive use. Those trained up in one or more of the schools of Islamic law, Shari'a, may have serious doubts about the procedures of someone trained up in Indic law, with "its animating idea, *dharma*."¹³³ Both could easily be flumoxed by people discussing *adat*, a word of Arabic origins, meaning something like "custom," in an unnamed Balinese village in 1958.¹³⁴

Geertz tells the story of Regreg and his lost wife to put on display the ways that wrinkles in one system cannot easily be ironed out by another. Regreg's kin-group was too weak to force his wife's abductor/boyfriend to return her. When he bucked the system of *adat*, apparently in a fit of peek, Regreg was shunned, left to wander "homeless, about the streets and courtyards of the village like a ghost, or more exactly like a dog."¹³⁵ When "the highest ranking traditional king on Bali, who was also, under the arrangements in effect at the time, the regional head of the new Republican government, came to beg Regreg's case,"¹³⁶ the local council refused to allow Regreg back. The new law was lovely, but not applicable. This local judgment, Geertz wants to insist, reflects its own "legal sensibility: one with form, personality, bite, and, even without the aid of law schools, jurisconsults, restatements, journals, or landmark decisions, a firm, developed, almost willful awareness of itself."¹³⁷ The moral of Geertz's effort "to render anomalous things in not too anomalous words"¹³⁸ is that we have no choice but to locate our own traditions and institutions among the various historically, politically, accidentally shaped alternatives. To attempt to wish this fact away "in a haze of forceless generalities and false comforts" is neither particularly scientific or much help in imagining "principled lives we can practicably lead."¹³⁹

For those of us who stay fairly close to home, Geertz can agree with Fingarette that "precisely because we of the West are so deeply immersed in a world conceived in just such terms" as those found in the tradition that runs from the Greeks, through the Christians, to contemporary moral theory, "it is profitable for us to see the world in quite another way."¹⁴⁰ Geertz's critique of legal, and other, theorists intersects

Fingarette's critique of Anglo-American moral theorists. When, in the essays that make up his most recent collection, Geertz describes himself as an "anti anti-relativist" it is not because he thinks anything goes, but because "looking into dragons, not domesticating or abominating them, nor drowning them in vats of theory, is what anthropology has been all about."¹⁴¹ Translated into ethics and politics, this amounts to an argument:

that political theory is not, or anyway ought not to be, intensely generalized reflection on intensely generalized matters, an imagining of architectures in which no one could live, but should be, rather, an intellectual engagement, mobile, exact, and realistic, with present problems.¹⁴²

This is, in a nutshell, what reflection on the purposes and limits of war has always been, East and West.

Notes

- 1 Howard, Michael (2000) *The Invention of Peace: Reflections on War and International Order*, Oxford: Oxford University Press: 1. Throughout my citations are to authors by date of work and page. In instances where convention dictates, I cite the traditional form, e.g. Aristotle by Bekker number and Aquinas by part, question, article.
- 2 Three authors dominate the current scene in Anglo-American military history. Michael Howard has already been mentioned. His 1976 volume, a brief sketch of the changing face of European war, remains a classic: Howard, Michael (1976) *War in European History*, Oxford: Oxford University Press. John Keegan surveys the entire history of how human beings have made war: Keegan, John (1993) *A History of Warfare*, New York: Alfred A. Knopf. Victor Hanson has not only contributed much to the study of ancient Greek warfare, but his recent volumes on war, society, and democratic values are brilliant if controversial, covering political implications of the history of western war from antiquity to the present: Hanson, Victor Davis (1989) *The Western Way of War: Infantry Battle in Classical Greece*, New York: Knopf and (1999) *The Soul of Battle: From Ancient Times to the Present Day, How Three Great Liberators Vanquished Tyranny*, New York: Free Press.
- 3 Geertz, Clifford (1973) *The Interpretation of Culture*, New York: Basic Books: 30.
- 4 Finley, M. I. (1985) *Ancient History: Evidence and Models*, New York: Viking Penguin: 70.
- 5 *Ibid.*: 71.
- 6 *Iliad* I. 582. Homer, *Iliad*, trans. Robert Fagles, introduction and notes Bernard Knox, New York: Viking, 1990.
- 7 *Iliad* II. 593–595.
- 8 *Iliad* XII, 374–380.
- 9 *Iliad* II, 246–316.
- 10 *Iliad* X, 523–527.
- 11 *Odyssey* XXII, 459–499. Homer, *Odyssey*, trans. Robert Fagles, introduction and notes Bernard Knox, New York: Viking, 1996.
- 12 *Odyssey* IX, 102–110.
- 13 *History of the Peloponnesian War*, I, 23. Thucydides, *The Landmark Thucydides: A Comprehensive Guide to the Peloponnesian War*, ed. Robert Strassler, intro. Victor Davis Hanson, New York: Free Press, 1996.

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- 14 Garlan, Yvon (1975) *War in the Ancient World: A Social History*, trans. Janet Lloyd, New York: W. W. Norton: 41.
- 15 Ibid.: 50.
- 16 Ibid.: 55.
- 17 Ibid.: 58.
- 18 Ibid.: 63.
- 19 Hunter, David G. (1992) "A Decade of Research on Early Christian and Military Service," *Religious Studies Review* 18(3): 87.
- 20 Helgeland, John, with Robert J. Daly, and J. Patout Burns (1985) *Christians and the Military: The Early Experience*, Philadelphia, PA: Fortress Press: 21–34.
- 21 Origen, *Contra Celsum*, ed. and trans. Henry Chadwick, Cambridge: Cambridge University Press, 1953: VIII, 73.
- 22 Augustine of Hippo, *Political Writings*, ed. and trans. by E. M. Atkins and R. J. Dodaro, Cambridge: Cambridge University Press, 2001: 216.
- 23 Ibid.: 217.
- 24 Markus, Robert (1983) "St. Augustine's Views on the 'Just War'" in W. J. Shiels (ed.) *The Church and War*, Oxford: Basil Blackwell: 4–12.
- 25 Becher, Matthias (2003) *Charlemagne*, trans. David S. Bachrach, New Haven, CT: Yale University Press: 5.
- 26 Southern, Richard W. (1953) *The Making of the Middle Ages*, New Haven, CT: Yale University Press: 224.
- 27 Head, Thomas and Richard Landes (eds.) (1992) *Peace of God: Social Violence and Religious Response in France around the Year 1000*, Ithaca, NY: Cornell University Press: 3ff.
- 28 Ibid.: 41–57, 308–326.
- 29 Riley-Smith, Jonathan (1986) *The First Crusade and the Idea of Crusading*, Philadelphia: University of Pennsylvania Press: 13. The literature on the crusades is enormous. Jonathan Riley-Smith (1987) *The Crusades: A Short History*, New Haven, CT: Yale University Press is a survey by the most influential recent student of the crusades. It has a helpful discussion of the literature, including primary sources in translation. His 1999 volume brings together essays on various aspects of the crusades by many of the most important other students of the topic: Riley-Smith, Jonathan (ed.) (1999) *The Oxford History of the Crusades*, Oxford: Oxford University Press.
- 30 The *locus classicus* for this distinction is Bainton, Roland H. (1960) *Christian Attitudes toward War and Peace: A Historical Survey and Critical Re-evaluation*, New York: Abingdon Press. It repeats an argument originally made in 1942 (Johnson, James Turner (1975) *Ideology, Reason, and the Limitation of War*, Princeton, NJ: Princeton University Press: 134–146). James Johnson returns to the problems with Bainton's approach in his 1997 (*The Holy War Idea in Western and Islamic Traditions*, University Park: Pennsylvania State University Press), which also provides a helpful survey of Muslim and Christian sources. H. E. J. Cowdrey makes telling, if philosophically suspect, use of the distinction in Bull, Marcus and Norman Housley (eds.) (2003) *The Experience of Crusading, I: Western Approaches*, Cambridge: Cambridge University Press: chapter 11.
- 31 Southern 1953: 50.
- 32 Brundage, James A. (1969) *Medieval Canon Law and the Crusader*, Madison: University of Wisconsin Press: 28–29, 32; Bull and Housley 2003: 147–156.
- 33 Riley-Smith 1986: 111.
- 34 Ibid.: 133.
- 35 Throop, Palmer A. (1975) *Criticism of the Crusade: A Study of Public Opinion and Crusade Propaganda*, Philadelphia, PA: Porcupine Press, which originally appeared

- in 1940, sees criticism of the crusades as widespread. Riley-Smith and, following him, his student Elizabeth Siberry, reject Throop's argument. See Siberry, Elizabeth (1985) *Criticism of Crusading, 1095–1274*, Oxford: Oxford University Press. They see such criticism as there was as very much a minority position, usually directed toward particular offenses. But all parties agree that it was a particularly heated issue for Dominicans, at home and abroad.
- 36 Throop 1975: 148. Penny Cole has discussed Humbert's earlier compendium *On Preaching the Cross against the Infidel Saracens and the Pagans* in considerable detail (Bull and Housley: chapter 10). She refers to E. T. Brett (1985) *Humbert of Romans: His Life and Views of Thirteenth Century Society*, Toronto: Pontifical Institute of Medieval Studies. I have not yet been able to consult this volume.
- 37 Needless to say, Muslims and other inhabitants of the eastern Mediterranean and Palestine didn't see things quite this way. Francesco Gabrieli presents translations from Muslim historians of the time. See Gabrieli, Francesco (1969) *Arab Historians of the Crusades*, trans. E. J. Costello, Berkeley: University of California Press. Amin Maalouf tells the story as it appears to a Muslim reading those histories in Maalouf, Amin (1985) *The Crusades through Arab Eyes*, trans. Jon Rothschild, New York: Schocken Books. Further technical bibliography may be found in the bibliography of Riley-Smith 1999: 407–408.
- 38 The literature on St. Thomas is vast, even when restricted to English language publications. The standard translation of the *Summa Theologiae* (*ST* from now) is the older one by the English Dominicans, which first appeared between 1913 and 1926 and has been many times reprinted. A new generation of English Dominicans produced a bilingual edition in 60 volumes between 1964 and 1973. This last, often referred to as the Blackfriars edition, is less literal but, given the facing text, is often more helpful for close readings. Many volumes have very useful appendices. Bibliographical details on the primary texts may be found in Weisheipl, James A. (1974) *Friar Thomas D'Aquino: His Life, Thought, and Works*, Garden City, NY: Doubleday and in Torrell, Jean-Pierre (1996) *Saint Thomas Aquinas, Vol. I: The Person and His Work*, trans. Robert Royal, Washington, DC: Catholic University of America Press. As for secondary reading, very little is non-controversial, so I will simply record that my reading leans heavily on Chenu, Marie-Dominique (1964) *Toward Understanding St. Thomas*, trans. A. M. Landry and D. Hughes, Chicago, IL: Henry Regnery. This is supplemented by the self-consciously Aristotelian reading of Ralph McInerny. See McInerny, Ralph (1980) "The Principles of Natural Law," reprinted in Charles E. Curran and Richard A. McCormick (eds.) *Natural Law and Theology*, Mahwah, NJ: Paulist Press, 1991: 139–156. See also McInerny, Ralph (1982) *Ethica Thomistica: The Moral Philosophy of Thomas Aquinas*, Washington, DC: Catholic University of America Press. The most recent edition of McInerny 1982 leaves out the discussion based on his 1980 essay. An important recent volume is Bowlin, John (1999) *Contingency and Fortune in Aquinas's Ethics*, Cambridge: Cambridge University Press. Pope brings together essays by diverse hands to provide a comprehensive and detailed account of Thomas's ethics in Pope, Stephen J. (ed.) (2002) *The Ethics of Aquinas*, Washington, DC: Georgetown University Press.
- 39 Thomas treats homicide generally under the aegis of justice. Sinners may be killed by the public authority if there is a public danger and execution is necessary to preserve the common good. Thomas invokes the medical analogy, arguing that the situation is like that of a rotten or corrupt limb that threatens the whole of the body. Under those conditions it is "praiseworthy and healthy that it be cut off" (*ST* 2a2ae, 64, 2). Still, he insists, even in self-defense it is illicit for a private person to intend to kill his attacker. The innocent are never to be attacked directly, though judges and executioners incur no guilt in the case where an innocent is convicted through due process (*ST*, 2a2ae, 64, 6).

- 40 *ST*, 2a2ae, 10, 8.
- 41 *ST*, 1a2ae, 95, 1.
- 42 *ST* 2a2ae, 40, 1.
- 43 Holt, P. M., A. K. S. Lambton, and Bernard Lewis (eds.) (1970) *The Cambridge History of Islam*, 2 vols, Cambridge: Cambridge University Press: I, 233ff.
- 44 Throop 1974: 120–124; but see Siberry 1985: 208.
- 45 *ST*, 1a2ae, 19–20.
- 46 *ST*, 2a2ae, 40, 1 ad 1.
- 47 Cf. *ST*, 1a2ae, 19, 5–6.
- 48 *ST*, 2a2ae, 64, 7.
- 49 Pillage is a special problem. The pillaging and plunder of non-combatants is clearly wicked but was extremely widespread. As Robert Stacey puts it, “neither soldiers nor the lawyers and judges who adjudicated the resulting disputes over plunder paid the slightest attention to such immunities” (1994) “The Age of Chivalry,” in Howard *et al.* (eds.) *The Laws of War: Constraints on Warfare in the Western World*, New Haven, CT: Yale University Press: 35) Also see Keen, Maurice (1984) *Chivalry*, New Haven, CT: Yale University Press: 227–237.
- 50 For many in the Catholic tradition Aquinas’s moral theology, or some version of it, remains the dominant moral paradigm. There is some irony in the fact that, from his own perspective, Thomas’s *Summa Theologiae* was a failure. Thomas had hoped to provide a comprehensive overview of theology. In the decades after his death, much of the Aristotelian realism that sets the background for Aquinas’s moral theology was rejected. But the second part of the *Summa Theologiae* circulated as a manual for casuistry, bereft of its larger intellectual framework. The works of Leonard Boyle are fundamental to understanding the fate of Thomas’s moral theology, particularly “The Setting of the *Summa Theologiae* of Saint Thomas,” now reprinted, with some slight additions, in Pope 2002: 1–16. Further of Boyle’s articles are collected in Boyle, Leonard E. (1981) *Pastoral Care, Clerical Education and Canon Law, 1200–1400*, London: Variorum Reprints. His “Saint Thomas Aquinas and the Third Millennium” was delivered as a plenary address to an audience of Dominican educators in April 1999, just six months before his death. It is a fine summary statement of the innovative character of the *Summa Theologiae* as a contribution to the “cura animarum” ([http:// www.op.org/DomCentral/trad/boyle3mill.htm](http://www.op.org/DomCentral/trad/boyle3mill.htm)).
- 51 John of Legnano seems little studied beyond the work that went into the Carnegie endowment translation and the article by McCall. See John of Legnano (1917) *De Bello, De Represalis et De Duello*, ed. T. E. Holland, trans. J. L. Brierly, Oxford: Oxford University Press for the Carnegie Endowment for International Peace. See McCall, John (1967) “The Writings of John of Legnano with a List of Manuscripts,” *Traditio* 23: 415–437. Jonathan Barnes mentions him in his essay (1982) “The Just War” in Norman Kretzmann *et al.* (eds.) *The Cambridge History of Later Medieval Philosophy*, Cambridge: Cambridge University Press: 771–784. John provided much of the material for Honoré Bonet’s *Tree of Battles*, for which see Johnson (1975): 57–72. See Contamine, Philippe (1984) *War in the Middle Ages*, trans. Michael Jones, Oxford: Basil Blackwell, chap. 10. Note that, while “Bonet” appears in the notes and bibliography, the body of the text has “Bovet” for reasons I cannot discern.
- 52 Romans 7: 22–23.
- 53 Chap. 65.
- 54 Chap. 35.
- 55 *ST*, 2a2ae, 120, 1–2.
- 56 Chap. 169.
- 57 *ST*, 2a2ae, 95, 8 ad 3.
- 58 That John declines to follow Thomas here may stem from the fact that he seems to have been an avid astrologer. See chaps. 5–6.

- 59 Kraye, Jill (ed.) (1997) *Cambridge Translations of Renaissance Philosophical Texts, Vol. 2: Political Philosophy*, Cambridge: Cambridge University Press: 17.
- 60 This will become a standard move in the anti-Aristotelian approach to ethics known as “voluntarism.” But this is a slippery term and, were it not part of the literature, we would probably be better off without it. Bonnie Kent sketches the spectrum of positions in her (1995) *Virtues of the Will: The Transformation of Ethics in the Late Thirteenth Century*, Washington, DC: Catholic University of America Press. She also provides a helpful introduction to Scotus’s moral thought in Williams, Thomas (ed.) (2003) *Cambridge Companion to Duns Scotus*, Cambridge: Cambridge University Press. The primary locus for Scotus’s moral thought is Wolter, Alan (1997) *Duns Scotus on the Will and Morality: Selected and Translated with an Introduction*, ed. William Frank, Washington, DC: Catholic University of America Press.
- 61 Vitoria, Francisco (1991) *Political Writings*, ed. and trans. Anthony Pagden and Jeremy Lawrence, Cambridge: Cambridge University Press: 234. The translation of Pagden and Lawrence has now become the standard. For a discussion of Vitoria’s text and earlier translations see their introduction, pp. xiii–xxxviii. I do not think they are the most theologically or philosophically sensitive of Vitoria’s readers. For my reasons see (1997) “Conscience and Conquest: Francisco de Vitoria on Justice in the New World,” *Modern Theology* 13(4): 475–500.
- 62 Vitoria 1991: 333.
- 63 *Ibid.*: 286.
- 64 Davis, G. Scott (1999) “Humanist Ethics and Political Justice: Soto, Sepulveda, and the ‘Affair of the Indies,’” *Annual of the Society of Christian Ethics* 19: 193–212.
- 65 Grotius’s works have had a complex publishing history. Richard Tuck argues that the text known as *De Jure Praedae Commentarius*, begun about 1608, was thought of by Grotius as *De Indis* and intended as a response to Vitoria. (Tuck, Richard (1993) *Philosophy and Government, 1572–1651*, Cambridge: Cambridge University Press: 170ff.; Tuck, Richard (1999) *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*, Oxford: Oxford University Press: 80ff.) But more important is Tuck’s argument that *De Indis* lays the foundation for the more famous *De Jure Belli et Pacis*, particularly in its first edition of 1625. The subsequent editions, Tuck suggests, modify the argument to make it “appear more acceptable to the Aristotelian, Calvinist culture of his opponents within the United Provinces.” I cite the Carnegie translation of *De Jure Praedae* by page number and the translation of *De Jure Belli et Pacis* by book and section.
- 66 Grotius, Hugo (1925) *De Jure Belli et Pacis Libri Tres*, vol. 2, trans. Francis W. Kelsey, Oxford: Oxford University Press: Pro., 42.
- 67 Tuck 1999: 78.
- 68 Grotius, Hugo (1950) *De Jurae Praedae*, vol. 1, trans. Gwladys Williams, Oxford: Oxford University Press: 13.
- 69 Grotius 1950, appendix A: 369–370.
- 70 *Ibid.*: 95.
- 71 *Ibid.*: 167.
- 72 *Ibid.*: 365.
- 73 Grotius 1925: II, 40.
- 74 Mill, John Stuart (1989) *On Liberty and Other Writings*, ed. Stefan Collini, Cambridge: Cambridge University Press: 13.
- 75 Kissinger, Henry (1957) *A World Restored: Metternich, Castlereagh, and the Problems of Peace, 1812–1822*, Boston, MA: Houghton Mifflin: 325.
- 76 Dewey, John (1923) “Ethics and International Relations” reprinted in (1929) *Characters and Events: Popular Essays in Social and Political Philosophy*, ed. J. Ratner, New York: Henry Holt: 804–814: 806–807.

- 77 Dewey, John (1979) *The Middle Works, 1899–1924*, vol. 15, ed. J. A. Boydston, Carbondale, IL: Southern Illinois University Press: 486.
- 78 Hocking, William Ernest (1915) “Political Philosophy in Germany,” reprinted in Dewey (1979): 473–477: 475.
- 79 Dewey, John (1915a) “Reply to William Ernest Hocking’s ‘Political Philosophy in Germany,’” reprinted in Dewey (1979): 418–420: 418.
- 80 Dewey, John (1915) *German Philosophy and Politics*, reprinted in Dewey (1979): 134–204: 141.
- 81 Ryan, Alan (1995) *John Dewey and the High Tide of American Liberalism*, New York: W. W. Norton: 169.
- 82 Ibid.: 186.
- 83 Pareto, Peter (1986) *Makers of Modern Strategy: From Machiavelli to the Nuclear Age*, Princeton, NJ: Princeton University Press: 908–909.
- 84 Lippmann, Walter (1970) *Early Writings*, with introduction and annotations by Arthur Schlesinger, Jr., New York: Liveright: 13.
- 85 Dewey 1915: 197.
- 86 Ibid.: 201.
- 87 Ibid.: 200.
- 88 Ibid.: 202.
- 89 Ibid.: 203.
- 90 Ibid.: 203–204.
- 91 Westbrook, Robert B. (1991) *John Dewey and American Democracy*, Ithaca, NY: Cornell University Press: 274.
- 92 Dewey, John (1933) “Outlawry of War” reprinted in (1986) *The Later Works, 1925–1953*, vol. 8, ed. J. A. Boydston, B. Walsh, and H. F. Simon, Carbondale, IL: Southern Illinois University Press: 17.
- 93 Dewey 1923: 655.
- 94 Dewey, John (1942) “The One-World of Hitler’s National Socialism” reprinted in Dewey 1979: 446.
- 95 Ibid.: 446.
- 96 Murray, Williamson and Allan R. Millett (2000) *A War to be Won: Fighting the Second World War*, Cambridge, MA: Harvard University Press: 507.
- 97 Miller, Richard (ed.) (1992) *War in the Twentieth Century: Sources in Theological Ethics*, Louisville, KY: Westminster/John Knox Press: 170.
- 98 Ibid.: 237–246.
- 99 Stein, Walter (ed.) (1961) *Nuclear Ethics and Christian Conscience*, London: The Merlin Press.
- 100 See Davis, G. Scott (1992) *Warcraft and the Fragility of Virtue*, Moscow, ID: University of Idaho Press.
- 101 As I mentioned above, for the Aristotelian tradition only the first three are strictly required. Nonetheless, it is important to keep in mind that other approaches to just war thinking don’t share my Aristotelian commitments. James Childress’s “Just War Criteria” is a well-respected non-Aristotelian approach (Miller 1992: 351–372). For an Aristotelian reading of Childress see Davis 1992: 103–110. What different thinkers list as the *jus ad bellum* criteria is, ultimately, not nearly as important as the distinction between thinkers who think war can be just, and thus on occasion the right and the good thing to do, and those who, as Childress sometimes seems to, think of war as a justifiable evil, which is sometimes necessary to prevent even worse evils. See the exchange that comprises Childress, James (1997) “Nonviolent Resistance, Trust and Risk-Taking Twenty-five Years Later,” *Journal of Religious Ethics* 25(2): 213–222; Johnson, James Turner (1998) “Comment,” *Journal of Religious Ethics* 26(1): 219–222; and Davis, G. Scott (1999a) “Research Note,” *Journal of Religious*

- Ethics* 27(2): 369–374, as well as Ilesanmi, Simeon (2000) “Just War Tradition in Comparative Perspective: A Review Essay,” *Journal of Religious Ethics* 28(1): 139–155.
- 102 Cf. Rawls, John (2001) *Justice as Fairness: A Restatement*, Cambridge, MA: Harvard University Press: 168–176.
- 103 Rawls, John (1999a) *Collected Papers*, ed. Samuel Freeman, Cambridge, MA: Harvard University Press: 95, n. 8.
- 104 Singer, Peter (1993) *Practical Ethics*, second edition, Cambridge: Cambridge University Press: 11–12.
- 105 *Ibid.*: 173–174.
- 106 Danby, Herbert (1933) *The Mishnah, Translated from the Hebrew with Introduction and Brief Explanatory Notes*, Oxford: Oxford University Press: 385.
- 107 Davidson, Donald (2001) *Subjective, Intersubjective, Objective*, Oxford: Oxford University Press: 119.
- 108 Wittgenstein, Ludwig (1958) *Philosophical Investigations*, second edition, ed. R. Rhees and G. E. M. Anscombe, trans. Anscombe, Oxford: Basil Blackwell: II, xi.
- 109 Zaehner, R. C. (1961) *The Dawn and Twilight of Zoroastrianism*, New York: G. P. Putnam’s Sons: 16.
- 110 Zaehner, R. C. (1962) *Hinduism*, Oxford: Oxford University Press: 198.
- 111 Douglas, Mary (1966) *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*, London: Routledge: 62.
- 112 An alternative to Davidson’s treatment of interpretation that is capturing much attention is the “inferentialism” of Robert Brandom. Richard Rorty and Jeffrey Stout deploy Brandom with interesting results in their contributions to Frankenberry, Nancy (ed.) (2002) *Radical Interpretation in Religion*, Cambridge: Cambridge University Press. Stout’s contribution has been integrated into Stout, Jeffrey (2003) *Democracy and Tradition*, Princeton, NJ: Princeton University Press. This can be read as an extended exercise in the inferential analysis of moral traditions.
- 113 Fingarette, Herbert (1972) *Confucius: The Secular as Sacred*, New York: Harper & Row: vii.
- 114 *Ibid.*: 62.
- 115 *Ibid.*: 63.
- 116 *Ibid.*: 11, n. 6.
- 117 *Ibid.*: 18.
- 118 *Ibid.*: 18–19.
- 119 *Ibid.*: 78.
- 120 I am not suggesting that all interpreters of Chinese thought have embraced Fingarette’s reading of Confucius. On the other hand, as preeminent a Sinologist as Angus Graham writes that Fingarette “revitalized all our thinking about the sage” (Graham, A. C. (1989) *Disputers of the Tao: Philosophical Argument in Ancient China*, La Salle, IL: Open Court: 23). Such important interpreters of Chinese thought as Henry Rosemont and Roger Ames reflect on Fingarette’s work in Bockover, Mary (1991) *Rules, Rituals, and Responsibility: Essays Dedicated to Herbert Fingarette*, La Salle, IL: Open Court. Geaney, Jane (2000) “Chinese Cosmology and Recent Studies in Confucian Ethics,” *Journal of Religious Ethics* 28(3): 451–470 is a review of more recent work in Confucian ethics.
- 121 Douglas, Mary (1999) *Implicit Meanings: Selected Essays in Anthropology*, second edition, London: Routledge: 188.
- 122 *Ibid.*: 108–110.
- 123 Douglas 1966: 42–58.
- 124 Douglas, Mary (1996) *Natural Symbols: Explorations in Cosmology*, new edition, London: Routledge: 20–36; Douglas 1999: 231–313; Stout, Jeffrey (2001) *Ethics*

- after *Babel*, with a New Postscript by the Author, Princeton, NJ: Princeton University Press: 145–160, 353–355.
- 125 Geertz, Clifford (1973) *The Interpretation of Culture*, New York: Basic Books: 141.
- 126 Geertz, Clifford (1971) *Islam Observed: Religious Development in Morocco and Indonesia*, Chicago: University of Chicago Press: v.
- 127 See Geertz 1973: 142ff.
- 128 Weber, Max (1992) *The Protestant Ethic and the Spirit of Capitalism*, trans. Talcott Parsons, with intro. by Anthony Giddens, London: Routledge: 63. If anything, Weber underplays the impact of *Pilgrim's Progress*. Until the end of the nineteenth century, Bunyan's allegory was the second most widely read book in English. Roger Sharrock, one of Bunyan's recent editors, writes that "it has penetrated into the non-Christian world; it has been read by cultivated Moslems during the rise of religious individualism within Islam, and at the same time in cheap missionary editions by American Indians and South Sea Islanders. Its uncompromising evangelical Protestantism has not prevented it from exercising an appeal in Catholic countries" (Bunyan, John (1965) *The Pilgrim's Progress*, edited with introduction and notes by Roger Sharrock, Harmondsworth: Penguin Books: 7).
- 129 Weber 1992: 19.
- 130 Geertz 1973: 104.
- 131 Ibid.: 28.
- 132 Geertz, Clifford (1983) *Local Knowledge: Further Essays in Interpretive Anthropology*, New York: Basic Books: 215.
- 133 Ibid.: 195.
- 134 Ibid.: 175–176.
- 135 Ibid.: 177.
- 136 Ibid.: 178.
- 137 Ibid.: 179.
- 138 Ibid.: 225.
- 139 Ibid.: 234.
- 140 Fingarette 1972: 18.
- 141 Geertz, Clifford (2000) *Available Light: Anthropological Reflections on Philosophical Topics*, Princeton, NJ: Princeton University Press: 63–64.
- 142 Ibid.: 259.

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