

## *SOCIETAS ETHICA*

European society for research in ethics

Europäische Forschungsgesellschaft für Ethik

Société européenne de recherche en éthique

## POLITICAL ETHICS AND INTERNATIONAL ORDER

## POLITISCHE ETHIK UND INTERNATIONALE ORDNUNG

JAHRESBERICHT/ANNUAL REPORT

43. JAHRESTAGUNG IN OXFORD

23. – 27. AUGUST 2006

ISSN 1814 - 8204

Herausgeber/Publisher: Societas Ethica  
Europäische Forschungsgesellschaft für Ethik  
European Society for Research in Ethics  
Société européenne en éthique

ISSN: 1814 - 8204

Präsidium 2003-2007  
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Acc. No. 19008; BLZ 76350000  
BIC: BYLADEM1ERH; IBAN DE54 7635 0000 0000 0190 08

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## Programm der Jahrestagung 2006 in Oxford

### Wednesday 23 August

- 14.00-16.00 Pre-conference Postgraduate Forum; Chair: David Clough
- 16.00 -19.00 Arrival. Registration
- 16.00 Board meeting (of each Society)
- 18.00 Dinner
- 19.30 Welcome by the presidents of SSCE and Societas Ethica at the conference venue
- 20.00 Introduction: Robert Cooper (Director General for External and Politico-Military Affairs, former foreign policy advisor to the UK Prime Minister); Chair: Nigel Biggar, Discussion
- 21.30 Social Evening

### Thursday 24 August - Order and institutions in international politics

- 7.15 Morning prayer
- 7.45 Breakfast
- 9.00-10.30 Keynote: Svend Andersen (Professor of Ethics and Philosophy of Religion, Aarhus University): "On Kant, Kissinger and Other Lutherans" Comment: Ville Päivänsalo  
Chair: Hans G. Ulrich, Discussion
- 10.30 Coffee Break
- 11.00-11.50 5 concurrent sessions with chairs:
  - Dietmar von der Pfordten: „The Structure of general Justice and its application" (invited paper); Chair: Stefan Heuser
  - Philippe Crignon: Au-delà des états: ce que Hobbes et Levinas nous enseignent de la justice internationale, Chair: Hugues Poltier
  - Elisabeth Gerle: Nationalism, Reformation and The Other- Scandinavian History of Ideas in relation to Contemporary Multicultural Challenges and Global Migration;

- Chair: David Clough
- Frederic Gandus: International order, nationhood: how their ethical and religious heritages come back to current political issues; Chair: Piotr Mazurkiewicz
  - Benedict Hung-biu Kwok: Reflections on the Global Ethics from a Chinese Christian Perspective; Chair: Hans G. Ulrich
- 12.00-12.50 5 concurrent sessions with chairs:
- Michael Northcott: The Weakness of Power and the Power of Weakness: The Ethics of War in a Time of Terror (invited paper); Chair: Luke Bretherton
  - Esther D. Reed: Christian Ethics and Violation of Human Rights at Guantánamo Bay; Chair: David Cunningham
  - Tisha M. Rajendra: Sovereignty as Responsibility: A Model for Confronting the Problems Of Irregular Migration; Chair: Pauline Everett
  - Corinna Mieth: World Poverty as a Problem of Justice: Subsistence rights and the stituionalization of corresponding duties; Chair: Regina Wolfe
  - Stefan Heuser: Towards a subjective right of asylum for political refugees; Chair: Hugues Poltier
- 13.00 Lunch/Mittagsmahlzeit
- 14.30-15.20 5 concurrent sessions with chairs:
- Rainer Schmidt: "Order, international politics and constitution" (invited paper); Chair: Stefan Heuser
  - Norbert Campagna: Equality and the law of nations; Chair: Dave Leal
  - Göran Collste: "...punishing the children for the sin of the fathers to the third and fourth generation..." An argument for Global Rectificatory Justice; Chair: Susan Parsons
  - Ville Päivänsalo: National Justice and Global Extensions John Rawls's Model and Alternatives; Chair: Piotr Mazurkiewicz

- Otto Spijkers: Two Futures of Cosmopolitanism;  
Chair: Simon Robinson
- 15.30-16.00 Tea Break
- 16.00-16.50 5 concurrent sessions with chairs:
  - Gilles Bauer: Justice in the Institutionalised International Economic Order? The case of International Trade and the WTO with a perspective on World Poverty and Human Rights; Chair: Philip Ziegler
  - Joe Pettit: Democracy and the Evolution of Global Capitalism: An Interdisciplinary Analysis of the Common Good; Chair: Bernd Wannenwetsch
  - Jonathan Rothchild: Accountability, Atrocity, and Peremptory Norms: Defending The Moral Authority of the International Criminal Court; Chair: Angela Roothaan
  - Govert Buijs : The Ethics of International Development Cooperation: Can We Do Without Caritas?;  
Chair: David Clough
  - Donald Loose: Interkulturalität und Völkerstaatsrecht Ein Plädoyer für Kants Auffassung des Weltbürgerrechts als eine aufhebbare Dialektik von Universalität und Partikularität; Chair: Marianne Heimbach-Steins
- 17.00-17.50 5 concurrent sessions with chairs:
  - David Lea: The Expansion and Restructuring of Intellectual Property and Its Implications for the Developing World; Chair: David Cunningham
  - Luke Bretherton: Consumerism, political witness and the churches involvement in the Fair Trade movement;  
Chair: Pauline Everett
  - Lubomira Radoilska: Global Justice and Corporate Global Citizenship; Chair: Susan Parsons
  - Frank Haldemann: Another Kind of Justice: Transitional Justice as Recognition; Chair: Bernd Wannenwetsch
  - Ronnie Hjorth: The Equality of States in International Society; Chair: Dave Leal
- 18.00 Dinner

- 19.30 5 concurrent interest groups:
- Global health care and international order (Amy Laura Hall, Arne Manzeschke)
  - Justice in the Global Economy and International Order (Erwin Bader)
  - Ridiculing Religion? A controversy and its implications for how to ethically assess symbolic acts in international relations. Lars Reuter)
  - Morality and Politics in Nigeria from the First Republic to the Present Administration (1960-2006): The Consequences of the Machiavellian Credo (Ukachukwu Chris Manus)
  - "Biopolitics and ecological ethics in international relations." Mette Ebbesen: "Ethical and Legal Perspectives of Stem Cell Research - a European Perspective"; Katharina Kochetkova-Meira: Transatlantic debate on biotechnology: International legal order and justice; David Wellman: The Case for Ecological Realism: Grounding the Practice of Diplomacy in an Eco-Centric Worldview)
- 21.30 Social evening

Friday 25 August - Power in contemporary international order and politics

7.15 Morning prayer

7.45 Breakfast

9.00-10.30 Keynote: Edmund Wnuk-Lipinski (Professor of Sociology at the Polish Academy of Sciences, Warsaw): Vicissitudes of ethical civil society in Central and Eastern Europe, Chair: Piotr Mazurkiewicz

10.30 Coffee Break

11.00-11.50 5 concurrent sessions with chairs:

- Robin W. Lovin: Christian Realism and the Successful Modern State (invited paper); Chair: Hans G. Ulrich
- Oliver Hidalgo: Tocqueville und das American Empire; Chair: Norbert Campagna
- Christof Mandry: Die zweideutige Rede von "Werten" in der Politik – eine Herausforderung für die Ethik;

- Chair: Karl-Wilhelm Merks  
 - Thomas Brudholm: Alchemies of Reconciliation;  
 Chair: Brian Brock  
 - Jan van der Stoep: National communities, globalisation and existential insecurity; Chair: Angela Roothaan
- 12.00-12.50 5 concurrent sessions with chairs:  
 - Thomas Hoppe: Gerechter Friede als Leitperspektive. Zu Konzept und Aufgabenprofil einer Ethik der internationalen Politik (invited paper) Chair: Stefan Heuser  
 - Anton Vedder: Legitimacy of non-state actors; Chair: Hugues Poltier  
 - Jos Kole: A good professional has ideals. Philosophical explorations into the aspirational dimension of professional morality; Chair: Simon Robinson  
 - Werner Wolbert: „Es hat nichts zu tun mit...“ Über fragwürdige apologetische Strategien in Sachen Religion; Chair: Marianne Heimbach-Steins  
 - Katarzyna Kornacka: Politics and Religion. State Autonomy in Relation to Church in Ockham's "Dialogue"; Chair: Nigel Biggar
- 13.00 Lunch
- 14.00-14.50 5 concurrent sessions with chairs:  
 - Tobias Winright: Undertaking an Evaluation of War with an Entirely New Attitude? Just-War Theory & Global Policing; Chair: Luke Bretherton  
 - Zbigniew Sarello: Conversion. L. Kolakowski's solution to our civilization crisis; Chair: David Clough  
 - Christoph Baumgartner: Religious identities in liberal societies – are they to be protected against "offensive speech"?; Chair: David Cunningham  
 - Gotlind Ulshöfer: Power as an ethical issue in the context of international economic relations; Chair: Pauline Everett

	- Alain Tschudin: Cross-purposes of conflict resolution: microcosmos as macrocosmos?; Chair: Dave Leal
15.00-15.50	Presentation of work-in-progress: 5 concurrent sessions with chairs: <ul style="list-style-type: none"> <li>- Aimee Burant: The Weight of History: Ernst Troeltsch and the Theological Ethics of International Order; Chair: Susan Parsons</li> <li>- Philip G. Ziegler: Dietrich Bonhoeffer—The Ethics of God's Apocalypse?; Chair: Bernd Wannenwetsch</li> <li>- Jan-Christoph Heilinger: Neue erfügun gsmöglichkeiten über die menschliche Natur als ethische und politische Herausforderungen; Chair: Karl-Wilhelm Merks</li> <li>- Simone Magalhaes Brito: "There is Nothing innocuous left": The problem of morality in Adorno; Chair: Norbert Campagna</li> <li>- Martin Blaakman: Who Pulled the Trigger? Political Responsibility of State Leaders; Chair: Stefan Heuser</li> </ul>
16.00-19.00	Social Programme: Tour of Oriel College with Nigel Biggar departure at 16.00, finish by 17.30; leisure time
19.00	Dinner
20.30	Round table: "International order and human rights"; Chair: Norbert Campagna
Saturday	26 August - Violence and peace in international order and politics
7.15	Morning prayer
7.45	Breakfast
9.00-10.30	Keynote: Scott M. Thomas: How Shall We Then Live? Rethinking Religion, Politics, and Communities in an Age of Global Terrorism, Comment: Gilles Bauer, Chair: Nigel Biggar
10.30-11.00	Coffee Break
11.00-11.50	5 concurrent sessions with chairs:

- Wolfgang Lienemann: "The ethics of peace and justice in international order" (invited paper)

Chair: Norbert Campagna

- David Clough: Understanding Christian Pacifisms: A Typology; Chair: Piotr Mazurkiewicz

- Dan Malotky: Fundamentalism Violence and Despair: A Response; Chair: Hugues Poltier

- Knut Berner: Tödliche Tugend: Terror und Moral; Chair: Marianne Heimbach-Steins

- Kjetil Fretheim: Acclaimed and undefined. Rights and responsibility in the Norwegian aid discourse;

Chair: Brian Brock

12.00-12.50 5 concurrent sessions with chairs:

- Michael Haspel: Justification of Force. Recent Issues in the Trans-Atlantic Debate (invited paper) Chair: Luke Bretherton

- Justin Andersen: Nonviolent Solutions to U.S. National Security Challenges: American Peace Church Advocates address American Foreign Policy and the 'War on Terror'; Chair: David Cunningham

- Elke Schwinger: Die Politisierung kultureller Differenz: Voraussetzung oder Konsequenz des transnationalen Terrorismus?; Chair: Karl-Wilhelm Merks

- Josef Bordat: Interventionspflicht und Strafrecht in Zeiten globaler Gewalt. Zwei Aspekte einer Reform der Vereinten Nationen; Chair: Stefan Heuser

- David Moszkowicz: Michael Walzer and Humanitarian Intervention: Thirty Years of Thoughts; Chair: Simon Robinson

13.00 Lunch

14.00-14.50 5 concurrent sessions with chairs:

- Karl Golser: Gewaltfreiheit im Kontext des konziliaren Prozesses für Gerechtigkeit, Frieden und Bewahrung der Schöpfung; Chair: Karl-Wilhelm Merks

- Rico Sneller: Violence as a political 'means'; Chair: Dave Leal

- Ayeray Mirta Medina Bustos: Seeking Justice after a Dictatorship: Punishment or Reconciliation?;  
Chair: Pauline Everett
- Alexander Filipovic: Die Macht der Blogger; Chair:
- Jean-Baptiste Vilmer: Armed Humanitarian  
Intervention: How Disinterested Should the Intervening State Be?;  
Chair: Susan Parsons
- 15.00-15.50 5 concurrent sessions with chairs:
  - Wim Smit: Balancing Security and Rights? An Ethical Reflection on American Security Politics in a Post-9/11 Era;  
Chair: Bernd Wannenwetsch
  - Scott Kline: The "Responsibility to Protect" as a New Doctrine of Intervention for the Ecumenical Movement?;  
Chair: Simon Robinson
  - Mihai Grigore: "...ante omnia pacem et justitiam observari monebant." Überlegungen über die erste paneuropäische Friedensbewegung und ihre Wirksamkeit zur Bildung vorstaatlicher Ordnungsstrukturen;  
Chair: Marianne Heimbach-Steins
  - Johannes Adamsen: Law, authority and spirituality;  
Chair: Luke Bretherton
  - Katharina Westerhorstmann: Wege zum Aufbau einer Kultur des Friedens. Ein ethischer Versuch;  
Chair: Hans G. Ulrich
- 15.50-16.00 Short Tea break
- 16.00-16.50 4 concurrent sessions with chairs:
  - Kung Lap Yan: The Civilized and the Barbarians: The Interaction Between Religious Fundamentalism and Global Civil Society, with Reference to Global Ethics;  
Chair: Piotr Mazurkiewicz
  - Jan Jans: Politics and/or Ethics? Same-sex unions as a case study for intercultural political ethics; Chair: Jaqui Stewart

- Angela Roothaan: Social memory and shared identities A foundation for a political ethics in a changing international order; Chair: Nigel Biggar
- Felix Birchler: Sind humanitäre Interventionen gerechte Kriege? Chair: Karl-Wilhelm Merks

17.00-18.30 Annual General Meeting (of each society)

19.00-20.30 Dinner

21.00 Social evening

Sunday 27 August

7.45 Breakfast

9.30 Religious Service

11.00 Board Meeting of Societas Ethica

## Teilnehmerinnen und Teilnehmer der Jahrestagung 2006

	<b>Vornamen</b>	<b>Namen</b>	<b>Society</b>
1	Johannes	Adamsen	SE
2	Bernard	Adeney-Risakotta	SSCE
3	Emmanuel	Agius	SE
4	Brenda	Almond	SE
5	Svend	Andersen	SE
6	Justin	Anderson	SSCE
7	Pamela Sue	Anderson	SSCE
8	Markus	Arnold	SE
9	Heinrich	Assel	SE
10	Victor	Austin	SSCE
11	Antonio	Autiero	SE
12	Erwin	Bader	SE
13	Barbara	Bader-Kafal	SE
14	Jeffrey	Bailey	SSCE
15	Gunther	Barth	SE
16	Gilles	Bauer	SE
17	Christoph	Baumgartner	SE
18	Isabell	Berner	SE
19	Knut	Berner	SE
20	Nigel	Biggar	SSCE
21	Felix	Birchler	SE
22	Martin	Blaakman	SE
23	Alberto	Bondolfi	SE
24	Josef	Bordat	SE
25	Franz-Josef	Bormann	SE
26	Luke	Bretherton	SSCE
27	Brian	Brock	SSCE
28	Thomas	Brudholm	SE
29	Govert J.	Buijs	SE
30	Aimee	Burant	SE
31	Ayeray Mirta	Medina-Bustos	SE
32	Norbert	Campagna	SE
33	Björn	Cedersjö	SSCE
34	David	Clough	SSCE
35	Göran	Collste	SE
36	Robert	Cooper	SE

37	Philippe	Crignon	SE
38	David	Cunningham	SSCE
39	Karl-Willhelm	Dahm	SE
40	Hans-Ulrich	Dallmann	SE
41	Dominic	Doyle	SSCE
42	Andy	Draycott	SSCE
43	Mette	Ebbesen	SE
44	Horst	Echternach	SE
45	Linda	Eromosele	SSCE
46	Pauline	Everett	SSCE
47	Gavin	Fairbairn	SSCE
48	Alexander	Filipovic	SE
49	Helen	Flood	SSCE
50	Öyvind	Foss	SE
51	Kjetil	Fretheim	SSCE
52	Colin	Gale	SSCE
53	Frederic	Gandus	SSCE
54	Elisabeth	Gerle	SE
55	Christof	Gestrich	SE
56	Robin	Gill	SSCE
57	Karl	Golser	SE
58	Nazario	Gonzalez	SE
59	George	Grima	SE
60	Stefan	Grotefeld	SE
61	Frank	Haldemann	SE
62	Amy Laura	Hall	SE
63	Colin	Hart	SSCE
64	Peter	Harvey	SSCE
65	Michael	Haspel	SE
66	Jan-Christoph	Heilinger	SE
67	Georg	Steins	SE
68	Marianne	Heimbach-Steins	SE
69	Stefan	Heuser	SE
70	Oliver	Hidalgo	SE
71	Martin	Honecker	SE
72	Ute	Honecker	SE
73	Thomas	Hoppe	SE
74	Gottfried	Hütter	SE
75	Eleanor	Jackson	SSCE
76	Jan	Jans	SE

77	Scott	Kline	SE
78	Douglas	Knight	SSCE
79	Daniel	Koh	SSCE
80	J.J.	Kole	SE
81	Katarzyna	Kornacka	SE
82	Thomas	Kraft	SSCE
83	G.G.	Kruijf de	SE
84	Lap-Yan	Kung	SSCE
85	Hung-Biu	Kwok	SE
86	David	Lea	SSCE
87	Dave	Leal	SSCE
88	Martin	Leiner	SE
89	Wolfgang	Lienemann	SE
90	Elisabeth	Lochner von	SE
91	Suzanne	Long	SSCE
92	Donald	Loose	SE
93	Robin	Lovin	SSCE
94	Margot	Lunnon	SE
95	Simone	Magalhaes Brito	SE
96	Ming-yee	Mak	SSCE
97	Daniel James	Malotky	SE
98	Christof	Mandry	SE
99	Chris	Manus Ukachukwu	SE
100	Arne	Manzeschke	SE
101	Tatjana	Meira (Kochetkova)	SE
102	Karl-Wilhelm	Merks	SE
103	Corinna	Mieth	SE
104	Carys	Moseley	SSCE
105	David	Moszkowicz	SE
106	Hans-Jürgen	Münk	SE
107	A.W.	Musschenga	SE
108	Ulrik B.	Nissen	SE
109	Michael	Northcott	SE
110	Lars	Østnor	SE
111	Ville	Päivänsalo	SE
112	Susan	Parsons	SSCE
113	Bo	Petersson	SE
114	Joe	Pettit	SE
115	Dietmar	Pfordten von der	SE
116	Elizabeth	Phillips	SSCE

117	Jeff	Phillips	SSCE
118	Hugues	Poltier	SE
119	Anna	Poulson	SSCE
120	Ben	Quash	SSCE
121	Lubomira	Radoilska	SE
122	Tisha	Rajendra	SSCE
123	Tisha M.	Rajendra	SSCE
124	Esther	Reed	SSCE
125	Lars	Reuter	SE
126	Andrew	Robinson	SSCE
127	Simon	Robinson	SSCE
128	Angela	Roothaan	SE
129	Jonathan	Rothchild	SE
130	Zbigniew	Sarelo	SE
131	Rainer	Schmidt	SE
132	Elke	Schwinger	SE
133	Wietze	Smid	SE
134	Wim	Smit	SE
135	H.W.	Sneller	SE
136	Robert	Song	SSCE
137	Otto	Spijkers	SE
138	Jacqui	Stewart	SSCE
139	Jan	Stoep van der	SE
140	Alexandra	Stuart-Lee	SSCE
141	Alan	Suggate	SSCE
142	Dénes	Székely	SE
143	Scott M.	Thomas	SE
144	Nicholas	Townsend	SSCE
145	Alain	Tschudin	SSCE
146	Hans G.	Ulrich	SE
147	Karin	Ulrich-Eschemann	SE
148	Gotlind	Ulshöfer	SE
149	Paul	Valadier SJ	SE
150	Anton	Vedder	SE
151	Jean-Baptiste	Vilmer	SE
152	Fritz-Rüdiger	Volz	SE
153	Paula	Vredenburg	SE
154	Anna	Walsma	SE
155	Bernd	Wannenwetsch	SSCE
156	David	Wellman	SSCE

157	Daniel	Westberg	SSCE
158	Katharina	Westerhorstmann	SE
159	Yahya	Wijaya	SSCE
160	Tobias	Winright	SSCE
161	Edmund	Wnuk-Lipinski	SE
162	Werner	Wolbert	SE
163	Gina	Wolfe	SSCE
164	Philip	Ziegler	SSCE

## 1. Einleitung

### *Zum Geleit*

Mit diesem Jahresbericht dokumentieren wir die Vorträge der Jahrestagung 2006 der Societas Ethica zum Thema „Political Ethics and International Order“/„Politische Ethik und Internationale Ordnung“ in Oxford.

Der Abdruck der Vorträge (Keynotes, Invited Papers und Call for papers) erfolgt wie gewohnt in der Reihenfolge des Tagungsprogramms. Die drei Unterthemen des Tagungsthemas („Order and institutions in international politics“, „Power in contemporary international order and politics“, „Violence and peace in international order and politics“) geben die Gliederung vor.

Wir danken allen Autoren, die ihr Manuskript nach der Oxforder Tagung ausgearbeitet und uns zur Dokumentation überlassen haben! Leider war der Rücklauf von Manuskripten unvollständig. Vor allem bedauern wir, dass uns der Einführungsvortrag von Robert Cooper sowie einige andere Hauptvorträge nicht zum Abdruck vorlagen. Dennoch ist der Jahresbericht wegen der Vielzahl von Vorträgen auf dieser gemeinsam mit der Britischen SSCE (Society for the Study of Christian Ethics) veranstalteten Tagung zu einem voluminösen Band angewachsen. Um die erheblichen Herstellungskosten nicht noch weiter steigen zu lassen, haben wir anders als sonst üblich darauf verzichtet, die schon vor der Tagung auf der Website der Societas Ethica zugänglichen Kurzfassungen der fehlenden Manuskripte zu dokumentieren.

Wegen der Höhe der Druck- und Versandkosten hat der Vorstand auf seiner letzten Sitzung entschieden, dass die Vorträge der Jahrestagungen vom nächsten Jahresbericht an in einem öffentlich zugänglichen Bereich unserer Website online dokumentiert und publiziert werden. Interna werden aber auch in Zukunft in einem Mitgliederbrief gesondert verschickt.

Erlangen, im April 2007

Hans G. Ulrich, Praeses

Stefan Heuser, Scriba

*Hans G. Ulrich:*  
*The president's welcome*

Dear members of the Societas Ethica and the Society for the Study of Christian Ethics -  
 Dear participants to our annual conference on "Political Ethics and International Order",  
 (for a German version, please view below)

Our common work in ethics will fulfil an evident task when we turn at this conference to the field of political ethics. Political ethics has to be seen not only as one particular theme but as the framework and implication of any ethical topic and praxis. Ethics is about – as we have already learned from Aristotle – our living together in peace and justice as human beings and citizens, and this and the ethical reflection on it is a political task. The Societas Ethica has been in its conferences already explicitly working on political issues. I may remind you of two of our conferences: 1994 (in Berekfürdő) on "Nation State, and the Coexistence of communities" and 2004 (Ljubljana) on "Pluralism in Europe?". Other themes on the agenda of our conferences had of course also important political implications (1983 Conference in Canterbury: "Legal enforcement of morals"), but nevertheless it is time to work more explicitly on political ethics. The theme "political ethics and international order" has anyway become since some years a main issue in a worldwide discourse, which is in itself so complex and controversial that it is necessary at least to look for some leading perspectives. It is self-evident that political ethics has to consider the global world as a specific political context not only because of all the various phenomena and discourses of globalization and internationalization but also – and first of all – because of the political even institutionalized form of a living together in a global world which is already there and a different one we are looking for. Why to look for a global political order from an ethical perspective? It will be not sufficient to point to morality in its universal character or to a universal human condition in order to show how politics is shaped or grounded by that kind of universality. And again it will be not sufficient to point to any kind of universalism without reflecting different forms of political communication and living together. Here we are confronted with one of the key questions: how universalities (like a universal morality in its various meanings) and different kinds of (institutional) generalities and ethically mediated forms of our living together are related. Looking for such forms we have to deal with specific issues which have to be treated in an ethical way of discourse and negotiation. In this ethical respect we have to consider the diverse topoi within which the field of political ethics has to be explored – and which are at the same time the very urgent issues of our political and global agenda. This includes topoi as we find them in our program:

Justice, human rights, peace and war, cosmopolitanism, the importance of nations, the importance of institutions and communities, the relation of politics and religion. So we have a thick spectrum of issues, and we have to ask what this spectrum is about, how it is connected and in what sense it is indispensable on the agenda of any political ethics which is related to the wider political community of the globe – if the globe can be grasped in a real political, ethically reflected perspective and if the political global community must not

remain an un-political vague idea of a different world. In the papers we have received for this conference there are already articulated perspectives and focuses, which will surely help us to find a common focus and perspective for our conference.

At this point I want to thank all of you who will present a paper – those who have responded to our call for papers. It is great to have got so many interesting papers – more than ever before. Thank you for engaging in this conference. And also I have to thank all of you who have accepted our invitation to present a paper on specific issues which we found to be indispensable for our purpose as a whole. And then, last but not least, it is my great pleasure to thank our key-note presenters for their contribution: Robert Cooper, Svend Andersen, Edmund Wnuk-Lipinski and Scott M. Thomas. Jean Bethke Elstain who has been asked to deliver a key-note had to revoke her given promise to come because of personal reasons. It is a great honour for us that you, our speakers for this conference will lead us into our difficult topics – thank you for coming – and hopefully this will be for you a good experience with our societies. If we look at the list of themes as we find them in the program we can be sure that there will be a very good chance to get a dense discourse on our theme. Our result will depend on how we all together will set the agenda. There should be some hope, that this agenda is not only the program of an academic conference but belongs to the political agenda of our global political living together. Because we have to ask what our academic Societies, the SE (Societas Ethica) and the SSCE (Society for the Study of Christian Ethics) and SCE (Society for Christian Ethics) have to contribute to the political agenda. What will be the ethical agenda for this world-society – and what then will be our very specific task? We will have to articulate this during our conference and it would be a good result if we are able to do that. This will hopefully be a contribution to the political agenda in which we are involved. We may ask for the specific political task of our societies in this respect. What have we as we participate on different discourses to contribute to the political agenda? In order to do ethics we need discourses, then we need traditions, as we need stories (narratives), institutions and a common praxis and – of course – human beings, who engage in this ethical political praxis, human beings in the shape of a specific kind of citizens. To do ethics that way is a political praxis. An old tradition says: to do justice means not to confuse things, but to differentiate, and to judge on the basis of distinctions. It would be great, if we could find in this conference “ways of judgment”. Again welcome to all of you. I wish this for our common work within the next days and I wish you a fruitful conference within the horizon of that hope.

(Deutsche Fassung:)

Unsere gemeinsame Arbeit – unter solchen besonderen Bedingungen – tut nicht nur gut daran, sich auf die politische Ethik zu besinnen, diese ist vielmehr das unerlässliche Implikat jeder Ethik und ethischen Praxis: alle Ethik ist politisch, sofern Ethik fragt, wie wir Menschen in Frieden und Gerechtigkeit zusammenleben und was die Bedingungen und Voraussetzungen sind, um zusammen zu leben. Die Societas Ethica hat auch auf ihren Tagungen in der Vergangenheit direkt die politische Ethik thematisiert – dennoch ist das Thema wieder einmal fällig gewesen: Zwei der Jahrestagungen waren bisher ausdrücklich der politischen Ethik und ihren Implikationen gewidmet – das ist 1994 Berekfürdö gewesen mit dem Thema „Nation State, and the Coexistence of Communities“ und 2004 Ljubljana: „Pluralism in Europe?“. Andere Themen haben implizit politische Ethik enthalten.

Ich erinnere hier vor allem 1983 an Canterbury: Legal Enforcement of Morals (die andere Tagung in England war 1989 in Durham: Begründung und faktische Geltung von Normen). Es versteht sich von selbst, dass eine politische Ethik global und auch „international“ sein muss, nicht nur wegen der vielfältigen Phänomene, Dramatiken und Diskurse zur „Globalisierung“ oder „Internationalisierung“, oder wie das zu nennen ist, sondern - ja warum und in welchem Sinn ist die politische Ethik auf den Globus gerichtet? Das werden wir zu fragen haben. Wir werden nicht die Antwort darin schon haben, dass wir auf den universalen Charakter dessen, was wir „Moral“ nennen, hinweisen oder auf die Universalität dessen, was unser menschliches Leben ausmacht. Denn ob diese Universalität einer *conditio humana* politische Konturen, institutionelle Konturen, ethische Konturen hat oder finden kann, ist zu diskutieren. Ebenso wenig wird es genügen, auf die Zwänge und Faktizitäten des globalen Zusammenlebens zu verweisen – sondern die Perspektiven einer politischen Ethik sind hier zu erkunden. Hier liegen spannende und höchst kontroverse Momente und Fragen:

- Wie verhält sich eine universale Moral (vielleicht die universale Moral von Gerechtigkeit) zu dem verhält, was ethisch in Bezug auf das vielfältige, plurale und gemeinschaftliche Zusammenleben zu betrachten, zu reflektieren und zu erkunden?

- Wie stellt sich die Differenz zwischen Einheit und Vielheit als politische Ordnung und in der politischen Ordnung dar und worauf können wir setzen, wenn wir an eine politische Welt-Ordnung denken?

Wir müssen in der Ethik immer schon mit der mehrfach spannungsvollen Differenz zwischen Universalität, Allgemeinheit und einer kommunikativen Ethik der gelebten Verständigung über das Gute und Gerechte arbeiten. In Bezug darauf sind die vielfältigen Topoi wahrzunehmen, in denen dies erschlossen wird. Wir sind bei dieser Konferenz in der sehr guten Situation, dass wir tatsächlich die wichtigsten Topoi im Programm haben. Wir werden am Ende sehen, ob es alle wichtigen und notwendigen sind - Das betrifft Begriffe und Theorien der Gerechtigkeit, der Menschen-Rechte, des Friedens, der Bedeutung von Kriegen und Gewalt, des Weltbürgertums, der Staatenwelt, der Bedeutung von Gemeinschaft der Bedeutung von Religion, und auch die entsprechenden Topoi ethischer Theoriebildung, auch die Auseinandersetzung mit den Deutungszusammenhängen und Geschichten, in denen wir uns aufhalten. Es ist ein dichtes Spektrum. Es wird darauf ankommen, dieses im einzelnen auszuleuchten und zu fragen, was dieses Spektrum ausmacht, was auf die Tagesordnung gehört und was sie zusammenhält und was unser Zugang und unsere Perspektiven am Ende sein werden. Einige Perspektiven zeichnen sich in den Papieren in einer durchaus auch kontroversen Form schon ab und wir können sicher sein, dass sich einige auch bündeln, vielleicht sogar brennpunktartig, und nicht in einem uferlosen Diskurs verlorengehen. Ich möchte daher schon im voraus Ihnen allen danken, die hierzu etwas beitragen, indem Sie auf unserer Ausschreibung hin einen Vortrag anbieten. Die Resonanz auf unseren Call for papers war exzellent und wir können alle auf die Vorträge gespannt sein. Herzlich willkommen und danke für dieses Engagement! Ebenso ganz besonderer Dank denen, die unserer Bitte um einen Vortrag nachgekommen sind. Wir sprechen solche Einladungen aus, um sicher zu gehen, dass das Programm mit den notwendigen Topoi versehen ist. Schließlich wiederum ein ganz besonderer Dank an diejenigen, die bereit waren uns einen Hauptvortrag zu halten: ich darf hier insbesondere Robert Cooper begrüßen, ebenso wie Svend Anderson von der Universität Aarhus, und

Edmund Wnuk-Lipinski von Warsaw. Besonderen Dank auch an Scott M. Thomas (University Bath), der bereit war, eine Keynote zu übernehmen, nachdem sehr kurzfristig, vor einigen Tagen, Jean Bethke Elsthain – aus persönlichen Gründen – hat absagen müssen. Wenn man die Liste der Topoi betrachtet, die sich – nicht zuletzt mit den Hauptvorträgen – abzeichnet, so können wir jetzt schon sicher sein, dass wir eine sehr gute Chance haben, einen dichten Diskurs zur Thematik führen zu können. Es wird entscheidend sein, wie wir selbst die Tagesordnung gemeinsam hervorbringen. Es ist am Ende, wenn es gut geht, nicht die Tagesordnung nur einer akademischen Konferenz, sondern eben eine, die das erschließt, was auf die Tagesordnung unseres globalen, politischen Zusammenlebens wirklich auch gehört. Denn wir dürfen fragen, was denn nun im Blick auf diese politische, globale Tagesordnung unsere Ethik-Gesellschaften vielleicht in einem spezifischen, aber doch für eben diese politische Tagesordnung auch notwendigen Sinn beizutragen haben: Ethik in der Weltpolitik, Ethik in der Weltgesellschaft, Ethik für die Weltpolitik – was ist unsere Aufgabe in diesem Zusammenhang, was werden wir zeigen können? Wir werden dies im Laufe der Tagung zu artikulieren haben, und das wird die Frage betreffen, was wir auf die Tagesordnung bringen und was wir auch für diese tun können. Das betrifft auch alles, was man braucht, um Ethik zu treiben und dies wird es sein, was wir zur politischen und ethischen Tagesordnung beitragen:

- man braucht Diskurse (und Theorien) - an denen werden wir arbeiten;
- man braucht Traditionen (und Texte), - wir werden davon einiges hören;
- man braucht wohl Geschichten, narratives, um die man streiten muss, um sich darüber zu verständigen, in welcher Wirklichkeit wir uns gemeinsam bewegen;
- man braucht Institutionen (und Prozeduren und Praktiken) - wir werden besonders dazu manches erfahren von denen, die in solchen Institutionen arbeiten
- und eine gemeinsame Praxis, auch eine gemeinsame Praxis der Ethik, und dazu man braucht man schließlich Menschen, die sich auf dieses alles ein-lassen.

Ethik als diese so komplexe Praxis zu betreiben, können wir selbst als eine politische Aufgabe verstehen. Diese politische Aufgabe besteht nicht zuletzt darin, dass die Phänomene, Geschichten und Reden nicht auseinanderfallen, aber auch nicht vermischt und verwechselt werden, sondern die Unterscheidungen gewonnen werden, die zum Urteilen nötig sind. Eine alte Tradition sagt: Gerechtigkeit üben heißt, unterscheiden und mit Hilfe solcher Unterscheidungen urteilen. „Ways of judgment“ hat Oliver O'Donovan seine politische Ethik betitelt. Das scheint mir ein guter Hinweis zu sein für das, was wir hier suchen: »Ways of judgment«. Es heißt, eine Praxis gemeinsam auszuüben. Wege des gemeinsamen Urteilens zu finden wünsche ich dieser Konferenz – mit nochmaligem Dank, dass Sie gekommen sind und mit dem Wunsch für Sie alle, dass es eine auch im politischen Sinne gute und fruchtbare Konferenz sein kann und dass wir zu dem großen Thema „Ethics and International Order“ unseren besonderen Beitrag leisten können.

Herzlich Willkommen und meine besten Wünsche für eine für jeden fruchtbare Konferenz.

## 2. Political Ethics and International Order

### 2.1 Order and Institutions in International Politics

*Dietmar von der Pfordten:*

*On the structure of general justice and its application to global justice*

#### I. Introduction

We believe that human beings and their actions and institutions are „just“ or “unjust“. Justice is therefore a property of the human character (a virtue) and of human actions and institutions (collective actions and rules). But what distinguishes justice from other properties of the human character, like prudence, modesty or bravery, and other properties of human actions and institutions, like rationality? The main distinguishing feature seems to be this: These other properties could be understood entirely without relation to others. In situations which concern only oneself, e. g. in handling one's own pain we can be modest, prudent and brave, but not just. One can be modest, prudent or brave facing an avalanche, a big flood or another natural danger. And we can act rational in fixing a broken tool.

On the contrary, justice is in the ordinary sense of the concept – Platon, Aristoteles and Thomas Aquinas had already stated this<sup>1</sup> – always in relation to others – a virtue or an action in relation to others. Institutions as collective actions or rules always per se imply acting towards others.

If this property of including a relation towards others is specific for justice, in order to understand justice it seems to be necessary to inquire its basic relations. In a first step I will do this for justice in general. We then get four types of relations (II). In a second step I will widen this picture to include structures of global justice (III). And in a third step I will give a hint to the application of different material principles to these different formal relations of justice (IV). But my aim in this essay is not to discuss all the material proposals to principles of justice but link this discussion to the more basic of structures of justice.

#### II. The basic structure of justice

Relations are characterized essentially by their relata. So for the relation of justice it is essential to inquire into its possible relata. If we omit for reasons of simplification God and

<sup>1</sup> Platon, Gorgias 507a10; Aristoteles, Nikomachische Ethik V 3, 112925ff; V, 15, 1138a4ff., Thomas Aquinas, Summa Theologiae. II-II, qu. 58, 2

nonhuman beings, only human beings remain as possible relata. The most basic relation of justice is therefore the relation between human being A and human being B.

A  $\longleftrightarrow$  B

The question of justice is equivalent to the question of general ethics then – but with one decisive distinction. Justice does definitely not comprise duties against oneself.<sup>2</sup> These duties are heavily disputed nowadays. While general ethics must take them into consideration or at least discuss them, a theory of justice can omit this discussion totally, because even if these duties would exist, they would definitely not be duties of justice.

Similar to ethics in general we have already at this level of the basic justice-relation negative duties to avoid harm towards others (negative justice) and positive duties to help them (positive justice). Both duties are combined in a special case: If unjust harm is done or allowed we have a duty of reparation (justice of reparation), first in the form of natural restitution and second – if that is impossible – in the form of compensation.

This picture does not change fundamentally, if we have a multitude of human beings on one side or both sides of this relation. We can analyze the collective action. And we can analyze the multiple effects of an action on a multitude of human beings. If a gang robs a group of travellers we have a multitude of justice relations between every member of the gang and every member of the group of travellers.

But we face a fundamental change and therefore a decisive complication of the picture if the multitude develops from mere coordination, interaction or cooperation towards a community. A community is conceptually necessary understood to be a single actor and a single affected entity with its own interests. A community can be analyzed into its members but there remains a non-analyzable rest, which can be characterized as “representation”.<sup>3</sup> The community is understood to represent the individuals in certain respects: It spends a budget, it collects taxes, it wages war etc. The distinction between a mere coordination, interaction or cooperation and a community is a matter of the common understanding of the participants or members, not a matter of external facts like common history, language, nationality, identity etc., as Communitarians hold. These facts are empirically necessary in reality to build up a community but they are not conceptually necessary. Marriage as the paradigm case of a community does not presuppose that the fiancés are linked by a common history, language, nationality or identity. A necessary condition for the existence of a community seems to be the avoidance of war and violent force.

We can distinguish the following cascade of strengthening ties between the actions of individuals: Coordination requires the shaping of one's action in relation to others and their action, e. g. when we reduce our speed in reaction to the speed reduction of the car in front of us. In an interaction the actions are mutually dependent on each other, e. g. the offer and the acceptance of the offer are mutually dependent on each other to result in a valid contract. Cooperation takes place if the actions are united to achieve the same goal,

<sup>2</sup> In German exists the notion of „Selbstgerechtigkeit“. But this is only a transferred meaning and does not mean “justice” in a genuine sense. The English equivalent “self-righteous” is a better word.

<sup>3</sup> Dietmar von der Pfordten, *Politik und Recht als Repräsentation*, in: *Recht und Politik*, hg. von Jan C. Joerden und Roland Wittmann, Stuttgart 2002, S. 51-73.

but every participant still acts mainly in its own interest and at its own risk. In a community a mutual sense of dependence has evolved, so that a significant part of the actions is primarily in the interest of the community and the risk is one of the community. Even the language shows the difference: Cooperation has participants, a community has members.

- 1) Isolation: acting independently of others
- 2) Coordination: shaping ones action in relation to others and their actions
- 3) Interaction: actions are mutually dependent on each other: e. g. contract
- 4) Cooperation: actions are united to achieve the same goal, but the actions are conceived mainly in the individuals interest and at their risk, e.g. several enterprises build a house, buy a thing in order to distribute it among them
- 5) Community: a sense of mutual dependence, of common interest beyond the individual interests, of sharing and taking up risks together

Already the development from isolation to coordination, interaction and cooperation leads to a strengthening of our negative and positive duties of justice. We have to help our partners in cooperation in more respects than a stranger. But the strengthening is only a gradual one. The basic justice-relation is not changed fundamentally.<sup>4</sup> There is then a threshold with respect to which we can speak of a community which changes the justice relations fundamentally because it introduces a new type of relatum. And beyond this threshold there is also a gradual deepening of the sense of community with a change of the strength of the justice relations. Families are for example normally much closer communities than states.

The result of the introduction of communities as different types of entities into the simple justice-relation is a split into four different relations of justice:

(1) the basic relation between the individuals which is not extinguished by the creation of the community (*iustitia universalis*).

(2) the relation of the single members of the community towards this community. This relation was named „*iustitia legalis*“ in the middle ages. More appropriate would be instead „*iustitia individualis*“. Not only obedience towards laws is subject of this relation but also the deliverance of contributions and acts of legitimisation of the community. So this relation comprises also what was named “political justice” by some.

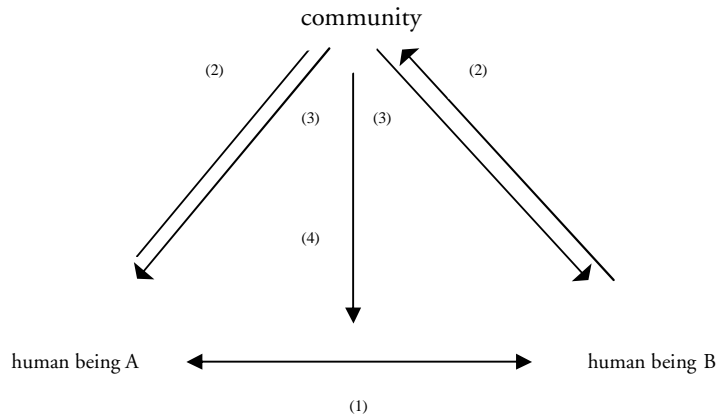
(3) the relation of the community towards the single members. This relation is traditionally named „*iustitia distributiva*“. But this naming is also too narrow. Not only the distribution of goods is in the range of this type of justice but also the acknowledgment of pre-collective human rights and the opening of possibilities for participation in the community. Therefore „*iustitia societalis*“ might be a more appropriate name. Notice that the acknowledgement of this relation of distributive

justice within a community has to be carefully distinguished from several proposals for material principles of distributive justice like the principle of equality or Rawls’ difference principle.

<sup>4</sup> A different view can be found in Carola von Villiez, *Grenzen der Rechtfertigung? Internationale Gerechtigkeit durch transnationale Legitimation?*, Paderborn 2005, S.181: „Explizite Kooperationsverhältnisse sind solche, in denen die Verteilung von Lasten und Vorteilen vertraglich geregelt ist.“

(4) the relation of the community towards the interactions of the individuals, which are already subject to the pre-community relation of justice (1) (*iustitia correctiva vel commutativa*). The wider description „*iustitia correctiva*“ is preferable because an exchange does not always take place. This relation comprises the correction of every form of unjust relations, e. g. in civil law and penal law. It comprises also the correction of historical injustice, e. g. through slavery or suppression.

The four basic relations of justice within a community can be depicted like this:



Name	actor-patient	first mentioned by
(1) intersubjective justice ( <i>iustitia universalis</i> )	human being – human being	Anaximander, Sokrates, Platon
(2) individual justice ( <i>iustitia individualis</i> ), (classical: <i>iustitia legalis</i> )	human being – community	Platon, (Aristoteles), Thomas v. Aquin
(3) communal justice ( <i>iustitia societalis</i> ), (classical: <i>iustitia distributiva</i> )	community – human being	(Platon), Aristoteles
(4) corrective justice towards relation (1) ( <i>iustitia correctiva</i> ), (classical also: <i>iustitia commutativa</i> )	community – human being- human being-relation	(Platon), Aristoteles

If a community exists, the degree to which questions of justice are transferred from the intersubjective relation (1) towards the community-relations (2-4) depends on the relative depth of the community.

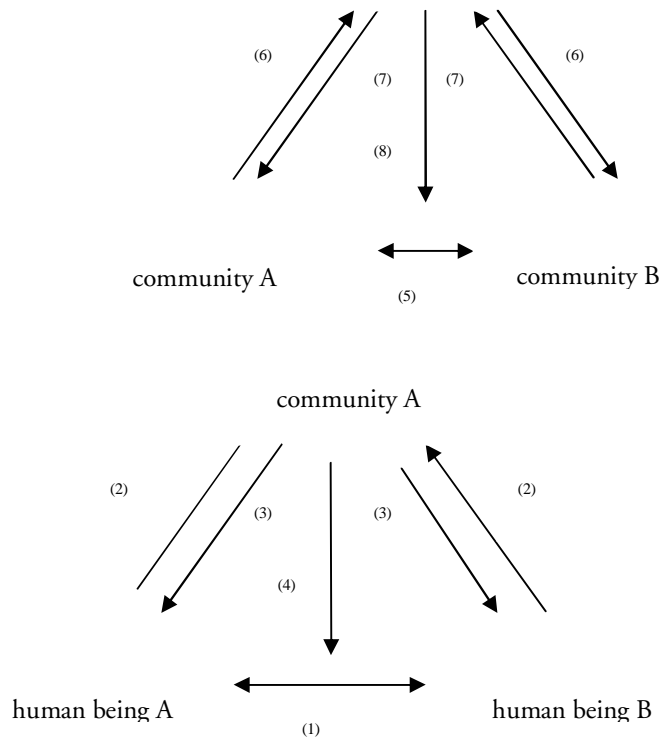
### III. The extension towards second order communities

In reality we do not only have one but a multitude of communities. These communities can be related to each other in two fundamentally different ways: 1) in simple relations like

individuals or 2) they can be part of a greater community. The difference leads to the iterative application of either the justice relation (1) between mere individuals (relation 5) or the justice relations (1)-(4) between individuals and communities (relations 6-8).

Extended model

2. order community



Name	actor-patient	first mentioned by
(1) intersubjective justice ( <i>iustitia universalis</i> )	human being – human being	Anaximander, Sokrates, Platon
(2) individual justice ( <i>iustitia individualis</i> ), (classical: <i>iustitia legalis</i> )	human being – community	Platon, (Aristoteles), Thomas v. Aquin
(3) communal justice ( <i>iustitia socialis</i> ), (classical: <i>iustitia distributiva</i> )	community – human being	(Platon), Aristoteles
(4) corrective justice towards relation (1) ( <i>iustitia correctiva</i> ), (classical also: <i>iustitia commutativa</i> )	community – human being- human being-relation	(Platon), Aristoteles
(5) justice between communities	community – community	(Grotius, Kant), Rawls
(6) justice of a community towards the 2. order community	community – 2. order community	
(7) justice of the 2. order community towards the singular communities	2. order community – community	
(8) corrective justice of the 2. order community towards relation (5) between the first order communities	2. order community – community-community-relation	Beitz, Pogge, Höffe

The justice relation (5) between communities resembles the simple justice-relation (1) between individuals. We also have negative duties, positive duties and duties of reparation. Already this justice-relation for some is the basis for heavy moral duties. Thomas Pogge argued that the Western societies have done much harm during the process of colonisation and still do it by upholding an extremely unjust global economic order with an unjustifiable borrowing and resource privilege even for criminal regimes, so that we have strong negative duties to abandon global poverty.<sup>5</sup>

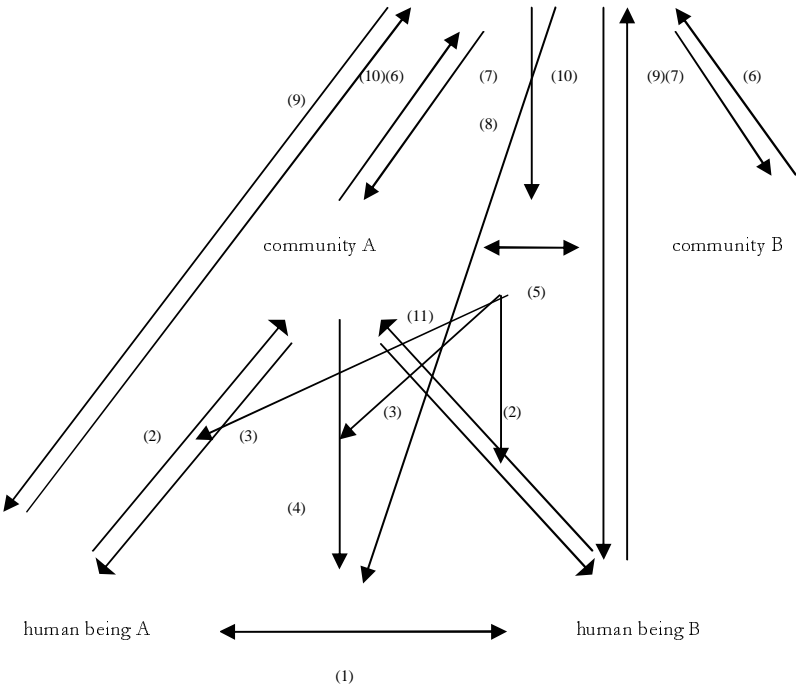
The iteration of communities can certainly be repeated without limitation. So we get a cascade of communities. This already takes place in singular political communities. We see a multilayered system of private communities (clubs, enterprises), municipalities, regional and federal governments. And it also takes place on the international and global level.

This picture is already quite complicated. But it is becoming even more complicated because the different levels are not impermeable. The individuals can be in direct relation to the first order community as well as to the 2. or higher order communities. And the same is true for communities in relation to higher order communities. For only two levels we get a picture like this:

<sup>5</sup> Thomas Pogge, Priorities of Global Justice, in: Thomas W. Pogge (ed.), Global Justice, p. 6-23, p. 22.

Further extended model

2. order community



Name	actor-patient	first mentioned by
(1) intersubjective justice ( <i>iustitia universalis</i> )	human being – human being	Anaximander, Sokrates, Platon
(2) individual justice ( <i>iustitia individualis</i> ), (classical: <i>iustitia legalis</i> )	human being – community	Platon, (Aristoteles), Thomas v. Aquin
(3) communal justice ( <i>iustitia societatis</i> ), (classical: <i>iustitia distributiva</i> )	community – human being	(Platon), Aristoteles
(4) corrective justice towards relation (1) ( <i>iustitia correctiva</i> ), (classical also: <i>iustitia commutativa</i> )	community – human being- human being-relation	(Platon), Aristoteles
(5) justice between communities	community – community	(Grotius, Kant), Rawls
(6) justice of a community towards the 2. order community	community – 2. order community	
(7) justice of the 2. order community towards the singular communities	2. order community – community	
(8) corrective justice of the 2. order community towards relation (5) between the first order communities	2. order community – community-community-relation	Beitz, Pogge, Höffe
(9) justice of the individuals towards the 2. order community	individual – 2. order community	
(10) justice of the 2. order community towards the individuals	2. order community – individual	
(11) corrective justice of the 2. order community towards relations (1-4).	2. order community – community-individual, individual-community and individual-individual-relation	

The 2.order community can correct all first order justice-relations (relation 11).

Both possible phenomena – iteration and permeability – lead to an important consequence for the material question of justice: The material question has a second and higher order dimension: We not only have to question if we should and how to build up the first order relations (1) to (4), but also if we should and how to institutionalize iteration and permeability on the second and higher levels.

If we apply this thought to the question of global justice, we get three main alternatives:

1) pluralism of the national states (Hobbes, Hegel, Morgenthau, so called “Realism”), relation (5).

2) developing the UN and other global institutions to become effective institutions, that means 2. order-communities, which also include relations (6-8).

3) developing the UN and other global institutions towards an extended 2. order-community, which does not only rule inter-state relations, but is also a community of the individuals and does rule intra-state relations between the state and its individuals and non-state communities (relations 9-11).

On the global level we now face some aspects of level 2) and also first symptoms of level 3), e. g. humanitarian intervention to protect the human rights of individuals and the institutionalization of the international penal court in Den Haag. The USA – at least under the Bush-Administration – is trying to prevent a transition from level 1) to levels 2) and 3) because they would loose their dominant position as world power on level 1) if this transition were to take place.

#### IV. Material justice

Every one of these formal relations of justice can now be made concrete by different material principles of justice. But one can also search for an all-encompassing principle. I think the all-encompassing principle of justice and ethics in general is that of normative individualism. I have defended this principle elsewhere extensively and can not do more here than referring to this defence.<sup>6</sup> Normative Individualism comprises two parts:

- (1) Only individuals can be the last source of normative justifications
- (2) All individuals concerned have to be taken into account in these justifications.

Some main resulting aims of individual political interests are: Liberty, equality, solidarity, rights, efficiency (public good).

In the different justice-relations these aims seem to have different weight:

Relation (1): Liberty, equality as bargaining equivalence, do ut des, prevention of harm, duty to help and reparation

Relation (2): Liberty, equality, solidarity, efficiency, everyone should do its part (Jeder das Seine!)

Relation (3): Equality, efficiency, solidarity, to each its own (Jedem das Seine!)

Relation (4): conditions of community-actions, material equality, fairness, rights,

Relation (5): Liberty, equality as bargaining equivalence, do ut des, prevention of harm, duty to help and reparation

Relation (6): Liberty, equality, solidarity, efficiency, everyone should do its part

Relation (7): Equality, efficiency, solidarity, to each its own

Relation (8): conditions of community-actions, material equality, fairness, rights,

On the global scale when international relations move from level 1) of pure state-interaction (justice relation 5) to levels 2) (justice relations 6-8) and 3) (justice relations 9-11) we face a similar change in the material principles of justice governing the relations. We see for example a change from the aims of liberty and equality as bargaining equivalence with the duties to avoid harm, to help and to give reparation if harm has occurred to the protection of material equality, fairness, and rights. This change comprises not only

<sup>6</sup> Dietmar von der Pfordten, Normativer Individualismus, in: Zeitschrift für philosophische Forschung, 58 (3/2004), S. 321-346; ders. Rechtsethik, München 2001, S. 244ff.

communities but also individuals if we reach level 3. The main material question concerning the development from level 2 towards level 3 is in the perspective of normative individualism: Are individual interests better preserved by changing decision competences from the state levels to the global level? This question cannot be answered uniformly. We must instead inquire into every area of politics separately. Environmental questions are for example in many respects global questions while cultural questions are still domestic questions and should remain so if we don't want to face a shallow cultural uniformity.

In the current debate on global justice we face approaches which

- 1) remain on level (5) globally with only positive duties of help (Rawls)
- 2) remain on level (5) with the addition of negative duties and duties of reparation on this level (Pogge)
- 3) operate also on level (6-8) or even (9-11) with duties of distributive and corrective justice (Beitz, Hinsch, Villiez).

I think positive duties of help on level 5 are unquestionable. They require a massive increase of efforts to fight hunger and poverty by the affluent countries. Negative duties and duties of reparation must also be accepted, if there is actual harm or was former harm which still has significant harmful consequences. This is an empirical question which needs much detailed debate and exceeds the aim of this essay.<sup>7</sup>

Global distributive and corrective justice on the levels 6-11 depends on the reality of a global community. The question of a global community is first a threshold question and then a matter of degree (see above under II). The decisive question regarding global justice then seems to be: Does there exist already a global community in the narrower sense mentioned above? I think the European Union is already a community in this sense – although it is only a community which does not reach far beyond the basic threshold.

In the global perspective we have trade and international production structures by private corporations. We have with the UN an institution of global conflict management and with the WTO a free trade organization to which not all states belong. And we have many other institutions like the World Bank, the IMF etc. But we do not have in the perspective of the states and the individuals a sense of mutual dependence, of common interest beyond the individual interests, of sharing and taking up risks together. And we still face wars and violent force which excludes communities. Even proponents of global distributive justice like Hinsch do not speak of a global community but of "dense economic cooperation".<sup>8</sup> So my conclusion is: We have strong duties to increase help massively and avoid and correct global harm, but there doesn't yet exist a global community in a substantive sense to justify a global collective system of distributive justice like in the singular states or – in rudiments – in the European Union. So Rawls was right to reject such a global system of distributive justice for the present time.<sup>9</sup> We can predict that this world community will evolve. But nobody knows if this will happen in 30 or 200 years. One necessary condition seems to be the extinction of war and violent force.

<sup>7</sup> See Thomas Pogge, *World Poverty and Human Rights*, Oxford 2002, pp. 112, 199.

<sup>8</sup> Wilfried Hinsch, *Global Distributive Justice*, in: *Global Justice*, ed. by Thomas W. Pogge, Oxford 2001, p. 71.

<sup>9</sup> John Rawls, *The Law of Peoples*, Cambridge/London 1999. Similar, Leif Wenar, *Contractualism and Global Economic Justice*, in: Thomas Pogge (ed.), *Global Justice*, Oxford 2001, p. 89.

*Philippe Crignon:*

*Au-delà des États. Ce que Hobbes et Levinas nous enseignent de la justice internationale*

#### Introduction

On reconnaîtra sans difficulté que le rapprochement de Hobbes et Levinas est on ne peut plus improbable. Le projet de les associer à une même réflexion a de quoi surprendre sinon rebuter. Une distance considérable éloigne les deux penseurs, qui appartiennent à des paysages intellectuels étrangers l'un à l'autre. Quoi de commun entre un auteur classique qui écrit au cœur de la guerre civile anglaise et un philosophe contemporain chez qui pensée juive et tradition métaphysique se conjuguent, après la commotion heideggerienne ? Les doctrines s'opposent au moins autant que les protagonistes. Une philosophie de la souveraineté et de l'État absolu contre une critique de la totalité politique. Un réductionnisme qui voit l'idée de justice absorbée par la loi positive contre une éthique irréductible à toute loi (politique ou morale). L'idée que les hommes ont besoin d'une institution pour avoir des rapports sociaux contre la thèse radicale d'une socialité pré-politique et d'avant toute constitution. Et enfin, une doctrine de la représentation comme condition de possibilité de l'être ensemble contre une tentative de penser la proximité d'autrui « par-delà la représentation ».

Pourtant, quelques voies timides s'offrent à nous qui esquisseraient, peut-être, une rencontre. Dans son rejet de l'État total, Levinas n'a jamais mentionné Hobbes, mais bien plutôt Hegel, contre lequel il ne cesse de s'expliquer souterrainement, et pas seulement sur les questions politiques. Le nom de Hobbes, en revanche, est cité une fois par Levinas (la seule, à ce qu'il nous semble) et sans aménité, sous la forme, au contraire, d'une reconnaissance, et comme un hommage de l'éthique au politique : « déjà la Cité, quel qu'en soit l'ordre, assure le droit des humains contre leurs semblables, supposés à l'état de nature, loups pour les humains, comme l'aura voulu Hobbes. Bien qu'Israël se veuille issu d'une fraternité irréductible, il n'ignore pas, en lui-même ou autour de lui, la tentation de la guerre de tous contre tous »<sup>1</sup>. Peut-on tirer de ce salut, l'idée qu'une entente, lointaine mais profonde, réunirait l'extrême politisme de Hobbes et l'extrême éthicisme de Levinas ?

Il ne s'agira certainement pas de s'engager dans une convergence forcée, à l'évidence dépourvue de pertinence, mais d'essayer de penser leur enseignement successif et se gardant de les juger, par anticipation, incompatibles. Quant au terrain où nous pourrions discuter de la politique et de la justice, avec Hobbes et avec Levinas, il devra quitter aussi bien les frontières de l'État que l'espace sans horizon où Autrui m'apparaît, n'appartenir ni au lieu constitué de la polis ni à l'utopie inconstituable de la proximité éthique. C'est pourquoi c'est au niveau de l'espace international, qui n'est ni tout à fait réglé, ni dépourvu d'exigence de justice qu'il est possible de les faire dialoguer. Là se frottent, de manière originale, dans leur différence et leur mutuelle appartenance, la politique et l'éthique.

1 « L'État de César et l'État de David », *L'au-delà du verset*, Paris, Minuit, 1982, p. 216

### I. Souveraineté et absence de relations juridiques entre les États

Notre point de départ est le conflit classique qui oppose le principe de souveraineté et l'existence de rapports juridiques réglés entre les États. Malgré certaines récriminations actuelles ou propositions de dépassement, il n'est pas inutile de rappeler que nous vivons toujours sur la base de ce principe de souveraineté. Cela signifie que l'existence politique n'est pensable que dans la mesure où, dans un territoire donné, une autorité centrale monopolise le droit à la force, en étant indépendante de toute entité extérieure. Nous jugeons le degré de maturité d'un État à l'aune de cette souveraineté. Il vaut alors de revenir à l'origine de ce principe afin d'en élucider les présupposés et de préciser sa portée et ses limites. Or si l'on reprend à nouveaux frais la question de la souveraineté, en ayant pour objectif de circonscrire ses incidences sur le terrain international, il faut aussi retourner vers celui qui, le premier, l'a explicité, à savoir Hobbes. Suivant sa doctrine, l'idée de souveraineté est incompatible avec toute espèce de droit international parce que la souveraineté est, par définition, absolue et indivisible. Commencer à introduire des conditions à la souveraineté, c'est la nier en bloc sur le champ. La souveraineté ne désigne pas, en effet, un pouvoir (la charge suprême) mais une origine et une puissance formatrice :

1. Elle est en effet l'origine de toute décision politique et en conséquence de toutes les lois. L'indépendance du souverain à l'égard de la loi et de toute constitution est principielle. Un souverain n'est limité par rien, à défaut de quoi l'instance qui le limite s'approprierait la souveraineté. Le constitutionalisme repose sur le refus de penser que toute constitution est dérivée : elle a été instituée un jour, elle peut être modifiée et le sera nécessairement à l'avenir. Il n'est nulle loi, si fondamentale qu'on la conçoive, qui ne puisse être abrogée : est souverain celui qui en a le pouvoir.

On accordera que la souveraineté doit être exercée pour le « bien commun », mais ce n'est pas là une borne qu'elle rencontre. Il n'existe pas de Bien, de justice qui soit à la fois extérieure à la politique et qui s'impose à elle. C'est la différence qui existe entre Hobbes et Bodin, pour qui il existe des lois naturelles normatives qui encadrent l'action du magistrat. L'objection de Hobbes ne peut être ignorée : s'il existait une morale au-dessus du politique, il existerait une morale avant le politique. L'état de nature prouve le contraire : il n'y a aucune place pour l'altruisme et la seule chose qui vaille est, pour chacun, sa propre survie. L'État advient pour mettre fin à la précarité que connaissent les hommes dès lors qu'ils se trouvent ensemble mais dépourvus de garantie capable de structurer leurs relations. Il n'intègre ainsi aucune morale extérieure : le souverain détient le monopole du jugement sur ce qui est juste ou injuste et l'État se présente effectivement, comme le reprochera Levinas (en le confirmant), comme une totalité fermée.

2. La souveraineté est également une puissance formatrice en ce sens que, en l'absence d'une telle institution, les hommes ne sont qu'une multitude sans unité ni cohérence. Ils ne deviennent un peuple et une entité capable d'agir collectivement que grâce au souverain qui les représente et à travers lui. Un peuple n'existe pas par lui-même ni de lui-même : pour être, il suppose la médiation d'une instance distincte qui lui octroie rétroactivement cette unité grâce à laquelle il peut émettre des jugements, avoir une voix, s'exprimer et prendre des décisions. Ce n'est donc pas le peuple qui fait le souverain mais l'inverse. La conclusion s'impose, difficile à penser de nos jours, que l'idée d'un « peuple souverain » est une contradiction dans les termes. Ce dogme de la modernité occulte la question prin-

cipielle de savoir d'où vient que tels hommes (par différence avec d'autres hommes) forment un peuple. Cette question, qui reste impensée, est le lieu de toutes les prises de positions obscures, sur le droit à la citoyenneté, sur la nationalité, sur les droits des étrangers et sur l'identité politique qui constitue une communauté. La philosophie de Hobbes a l'avantage considérable de ne pas éluder le problème et d'y répondre de manière intelligible : une société d'hommes est un artifice politique qui tire son unité d'un souverain qui la représente mais avec lequel elle ne saurait se confondre. Ajoutons que la thèse de Hobbes réfuterait également ce qui, dans le cadre international, est apparu dans la Charte des Nations Unies en 1945 comme un « droit des peuples à l'autodétermination ». Il s'agit là encore d'un concept confus, qui a pu être stratégiquement utile pour corroborer la légitimité de la décolonisation mais qui supposerait que l'on puisse déterminer ce qui fait un peuple indépendamment de l'autorité politique. La récupération nationaliste, régionaliste voire ethniciste de ce droit est aujourd'hui source d'embarras, mais il n'y a là rien qui n'ait pu être prévisible.

Cela étant rappelé, la souveraineté a aussi des conséquences sur le terrain international : si le souverain est absolu chez lui, il est aussi indépendant à l'extérieur. Aucun lien, aucune obligation, aucune règle impérieuse ne peut venir limiter l'action du souverain, ni à l'intérieur, ni hors des frontières. Pour préciser cette conséquence, il est bon de partir de l'affirmation de Hobbes selon laquelle les États sont entre eux comme dans un état de nature. La comparaison entre l'état de nature prépolitique, pour les individus, et l'état de nature interétatique doit être étudiée avec attention. Elle repose sur une condition commune d'hostilité latente et d'absence de règles juridiques. Mais les différences l'emportent clairement. L'état de nature individuel n'a sans doute jamais existé parce qu'il est ontologiquement impossible. Il désigne l'extrémité d'une désagrégation à laquelle notre être ne peut que résister. Nous connaissons des situations proches (Hobbes pense à la guerre civile) mais jamais identique parce qu'il existe toujours, chez les hommes un minimum d'efforts pour en sortir. Le contraire signifierait que les hommes peuvent vouloir un tel état, ce que Hobbes exclut absolument comme contradictoire. Il s'agit d'un « état d'hostilité et de guerre [...] tel que la nature elle-même, par lui, est détruite » : la nature, laissée à elle-même, s'autodétruit. La sortie est donc à la fois moralement obligatoire et inévitable ; les hommes ne régressent jamais complètement au niveau d'une telle misère, proprement invivable. Au contraire, la situation entre États est à la fois parfaitement vivable et définitive. Elle est vivable parce que chaque État dispose d'une position de retrait et de conditions d'existence effectives. Même s'il n'y a pas de garantie contre la guerre entre États, Hobbes n'est pas loin de croire qu'il n'y a pas davantage d'occasion d'entrer en guerre, pour peu que les États soient correctement institués<sup>2</sup>. Mais le même principe de souveraineté qui est censé tarir les causes de la guerre et aussi celui qui interdit de penser une juridiction internationale. La paix s'établira de facto, jamais de jure. Face à ces conclusions, la situation du monde tel qu'il s'est formé au XX<sup>e</sup> siècle doit étonner : la multiplication des institutions internationales, la formalisation des rapports entre États – UE, ONU, alliances, traités, accords, protocoles, etc. – paraissent en contradiction flagrante avec les

2 « Les hommes jouiraient d'une paix si constante qu'il ne semble pas qu'ils dussent jamais se quereller », De Cive, préface.

thèses de Hobbes. La question se pose alors : est-ce Hobbes, c'est-à-dire et le principe de souveraineté, qui est obsolète, ou est-ce nous qui entretenons un malentendu sur la réalité de ce « droit international » ?

## II. L'espace entre les États est-il un espace politique ?

Pour autant que nous assumons le principe de souveraineté – et ce sera notre parti pris ici, toute critique ayant la charge d'expliquer ce qui aurait supplanté la souveraineté comme origine et puissance formatrice des peuples – nous devons admettre l'absence de pouvoir coercitif supérieur aux États, et donc l'absence de « droit » international. Pareille condition n'engendre pas nécessairement de conflit ouvert, mais ne l'exclut pas non plus. En rester là n'est pourtant pas suffisant. Il existe trois possibilités théoriques de remplir cet espace entre les États et de ne pas le livrer au désert et à la sauvagerie :

1. Une première option est d'absorber plusieurs États en un seul, et ultimement, en un État mondial. Outre son impossibilité pratique, cette option souffre de ne résoudre le problème des relations interétatiques qu'en les faisant disparaître. L'idée de fédération ou de confédération appartient à ce choix-là.

2. Une deuxième option est de remplir cet espace de tractations diplomatiques, de négociations, de miser sur le rôle de l'économie dans l'émergence d'intérêts communs. Contrairement à une opinion reçue, Hobbes n'ignore pas cette forme de relations (il cite les ambassadeurs par exemple), mais il insiste sur la différence qu'il y a entre un simple accord (qui dure aussi longtemps que chacun y trouve son compte mais qui est dépourvu de garanties) et une union (qui a une force coercitive).

3. Une troisième option consisterait à partager la souveraineté, c'est-à-dire à renoncer à son principe. Cela revient à dépasser les catégories qui ont prévalu jusqu'au XX<sup>e</sup> siècle. C'est peut-être cette option qui se dessine en Europe, dans une voie aussi éloignée des États souverains que d'une grande entité politique qui les engloberait. Il n'est pas question d'un changement d'échelle mais d'un changement de projet que l'on pourrait formuler ainsi : une convergence politique illimitée. Cette convergence n'est plus pensée comme le moyen en vue d'une fin (une fédération) mais en elle-même, comme un dynamisme qui renoue incessamment la politique intérieure à la politique extérieure. La mention de « lois européennes » dans le projet du TCE allaient bien évidemment dans ce sens.

## III. Thèses hobbesiennes sur les rapports internationaux

Il est patent que la grande majorité des relations internationales suivent la deuxième option, diplomatique. Il devient possible d'énoncer trois thèses hobbesiennes à leur propos :

1. Il n'existe aucun caractère contraignant aux accords passés entre les États. Seul l'intérêt stratégique commande, pour chacun, l'attitude à adopter. Les organisations internationales, comme leur noms l'indiquent sont « entre » les États, non pas au-dessus. Il n'y a donc aucun pouvoir supérieur dont les décisions aient force de loi. Les États suivent leur intérêt bien compris, et peuvent se retrouver dans une coopération fructueuse, mais rien ne les oblige à respecter un traité. Il faut assumer cette conséquence qu'ils ont non seulement la possibilité mais aussi le droit de rompre les engagements pris à l'égard des autres nations. Les faits (la non-ratification du protocole de Tokyo par les États-Unis par exemple) ne démentent pas les principes mais les confirment.

2. La condition internationale usurpant le terme de « droit », il n'existe aucune mesure du juste et de l'injuste à ce niveau. Il ne saurait donc y avoir d'États-voyous ou d'États délinquants. Rien ne peut être illégal ou immoral, la politique étrangère d'un pays peut, tout au plus, être nuisible ou dangereuse pour d'autres.

3. La pensée de la souveraineté hobbesienne a aussi pour conséquence de refuser l'idée qu'un État incarne des valeurs à prétention universelle. Ce point décisif dérive de la définition du souverain comme représentant du peuple. Hobbes substitue très clairement un modèle de représentation à un modèle d'incarnation. Il met ce faisant un terme à l'idée de « corps politique », qui trouve sa source dans la théologie politique médiévale depuis Jean de Salisbury, et selon lequel la communauté des hommes est conçue selon les schéma paulinien (Rom 12, 4-5) de l'inclusion réciproque : la tête est dans le corps comme le corps est « récapitulé » dans la tête, tandis que les individus sont tous « membres les uns des autres ». Dans cette conception de la politique, l'autorité se noue à une justice divine qui vient s'incarner pour diriger les hommes vers le salut. Les normes incarnées ont alors vocation à traverser les frontières et à chercher à s'imposer, non aux autres États, mais aux autres hommes, dans un projet de conversion universelle (conformément à l'universalisme paulinien, cette fois encore). Hobbes rejette cette idée d'une valeur portée par l'autorité politique ; même lorsqu'un peuple partage, de fait, un certain nombre de valeurs morales ou religieuses, ce ne sont pas elles qui forment le peuple, mais l'institution souveraine. En conséquence, aucun système normatif n'est valable au-delà des frontières ; un système normatif en rencontre, voire en suscite, toujours un autre. En conséquence, la décision d'agir contre un État au nom des droits de l'homme, ou au nom de la démocratie, est à la fois impertinent et inefficace ; on peut s'en offusquer, mais l'expérience, de nouveau, le vérifie (conflit russo-tchétchène, Chine, Irak, Iran, etc.). Il est certes possible de faire pression, mais la bonne foi oblige alors à reconnaître que l'on s'engage dans un rapport de forces, non dans une guerre juste. Nous devons être clair : il ne s'agit pas tant de relativiser les droits de l'homme ou la démocratie que de prendre en compte la spécificité de l'espace interétatique où la question des valeurs n'est pas légitime.

#### IV. L'État comme universel

Il existe pourtant pour Hobbes un universel, c'est l'État lui-même. Il ne se présente pas comme une valeur mais comme l'essence du politique, et il faut espérer que toutes les nations s'y convertissent. Il est possible d'avancer dans les relations internationales sans grande difficulté tant que des États ont affaire à d'autres États dûment constitués. Les vrais problèmes apparaissent lorsque des populations désynchronisées de l'institution politique entrent en jeu, qu'elles soient actrices (conflits entre ethnies, attaques provenant d'un groupe terroriste, tel le Hezbollah) ou victimes (Bosniaques, Darfour, réfugiés, opprimés, etc.). Encore une fois, s'il n'y avait que des États correctement établis, leurs rapports seraient aisés, mais l'international ne se réduit précisément pas à l'interétatique. Ces difficultés spécifiques sortent du cadre hobbesien, elles exigent que l'on repense le rapport politique-justice. C'est ici que Levinas pourrait être utile. À l'évidence, il accorderait tout à Hobbes, à l'exception d'une seule chose : que la justice se résorbe dans la loi. Or s'il existe quelque chose à faire qui ne se réduise pas aux devoirs civils ou à l'intérêt stratégique, alors une éthique internationale (mais non pas interétatique) devient possible. Elle ne l'est que

parce que la situation internationale a aussi pour protagonistes des populations, des groupes, des foules, des masses, et non pas seulement des États.

#### V. L'éthique contre la politique formelle

L'éthique de Levinas a la radicalité de n'être pas une morale. Tout repose sur cette exigence. Malgré les rapports tendus entre la morale et la politique, il n'est pas abusif d'affirmer que la morale a toujours épousé la forme législatrice du politique. Elle pose une autorité – Dieu ou la raison – qui énonce des lois morales, qui obligent. À la différence des lois politiques, celles de la morale n'ont pas de pouvoir coercitif parce qu'elles obligent en conscience. Mais la morale est une forme de politique nouménale ou idéale, comme le rappelle l'impératif catégorique de Kant : « agis uniquement d'après la maxime qui fait que tu peux vouloir en même temps qu'elle devienne une loi universelle ». La morale est une formalisation du rapport aux autres, où l'autre est universel, donc anonyme, et où je me représente une loi de la raison au nom de laquelle je vais agir. Pour des raisons différentes de celles de Hobbes, Levinas émet une pensée qui exclurait aussi l'idée de « droits de l'homme », au motif, cette fois, qu'ils visent l'homme abstrait et formel, comme un objet doté d'une liberté qu'il faudrait universellement respecter. Dans un très beau mais très dur texte où il relate sa sortie effarante hors des camps, à la fin de la guerre, avec un groupe de prisonniers, il rapporte que les gens qu'ils croisaient se détournaient d'eux et que seul un chien les avait pris d'affection, seul un chien les avait reconnus comme des êtres humains<sup>3</sup>. La faiblesse de la morale est qu'elle suppose un acte réfléchi, une démarche de la raison, qu'elle ne pense pas autrui spontanément, qu'elle se donne précisément les moyens d'éviter de le rencontrer. Elle ne le pense que pour mieux l'ignorer. Pour Levinas, la défaite de la morale exige que l'on assume la présence d'autrui à partir de la perturbation qu'elle introduit dans mon monde. L'éthique ne consiste pas à se mettre à la place de l'autre, et à le penser en terme des réciprocité (« ne fais pas à autrui ce que tu ne voudrais pas qu'on te fit »), mais de l'approcher en se soumettant à l'appel sans nuance et sans réserve qu'il émet à mon endroit, en une totale asymétrie. L'éthique ne trouve donc sa place, fragile, qu'en deçà de l'institutionnalisation de l'homme par la politique. Les identités publiques nous recouvrent – citoyen, fonctionnaire, professeur – et tendent à dénier l'altérité qui advient entre moi et l'autre. Levinas oppose ainsi la politique et l'éthique, comme la totalité qui rend anonyme et qui formalise les relations et la socialité immédiate. Telle est aussi la complicité de la raison et de la politique, éminemment hobbesienne, qui, avec l'histoire, transforme les hommes en personnages d'un récit.

#### VI. L'affirmation éthique de la politique

Le fond commun de Hobbes et de Levinas est donc d'exclure l'idée d'une morale formelle autonome. L'un comme l'autre prennent la politique au sérieux, élève la loi au statut métaphysique qui est le sien. Et la morale, avec ses règles, est un avatar de la politique, elle n'en est pas l'instance régulatrice. L'accord est tellement parfait entre les deux penseurs qu'ils ne se séparent, au fond, que sur un point. Hobbes ne pense pas qu'il puisse y avoir une socialité préinstitutionnelle (politico-morale) et prend donc le parti de l'État et de la

3 « Nom d'un chien ou le droit naturel », *Difficile liberté*, Paris, Albin-Michel, 1976, p. 213-216.

souveraineté. Levinas a l'idée d'une éthique d'avant toute institution (politico-morale), et prend donc le parti d'autrui, envers et contre tout édifice juridique. Il est pourtant possible d'aller encore plus loin, car Levinas ne s'en tient pas à une expérience pathétique de l'altérité, et cela pour deux raisons. La première est que l'appel de l'autre appelle une réponse, donc une action, une responsabilité, non un apitoiement. Il faut pouvoir trancher et s'en donner les moyens, il faut donc devenir politique. D'autre part, tout ne se réduit pas à la proximité de l'autre : derrière lui, d'autres existent et exigent aussi leur part de justice. Il faut dès lors considérer les hommes et « comparer les incomparables », remettre une symétrie là où elle avait basculé. L'État devient l'instrument de l'éthique. Poursuivant dans cette direction, Levinas va jusqu'à dire que la politique est la question éthique. Dans le face à face, en effet, il n'y a pas de question, mais un appel. Nul besoin de réfléchir, il faut agir. Lorsque je considère les autres, le « Tiers », il me faut au contraire penser : la naissance de la question est conjointement celle de la philosophie et celle de la politique<sup>4</sup>. L'éthique a ainsi la responsabilité de se faire politique et s'éloigne d'une morale zélée, de type franciscain, qui exclurait par principe d'entrer dans le monde des affaires. Inversement, il ne revient pas à la politique de renoncer à ce qu'elle est, de céder à la commisération devant le visage d'autrui, c'est-à-dire de faire acception de personne. Au nom de l'éthique, la politique a le devoir de résister à la fragilité éthique.

#### VII. Au-delà de l'État et au-delà des États

L'éthique anime donc la politique sans s'y laisser absorber, une tension les tient ensemble mais à distance. Mais pour Levinas, il existe aussi un au-delà de l'État, c'est le cas particulier du sionisme, dont on sait qu'il lui a consacré de nombreux textes. Le mouvement sioniste se distingue de la problématique commune du rapport entre politique et éthique en ce qu'il ne se réduit pas à un nationalisme. Il a une signification spirituelle qui exprime moins la volonté d'un peuple singulier qu'une « possibilité extrême de l'humain ». La politique s'y donne une tâche et une vocation extra-ordinaires. Enfin, Levinas permet de penser également un au-delà des États, c'est-à-dire un principe d'action entre les peuples. Cet enseignement est gros des analyses précédentes. L'éthique n'intervient certes pas entre les États – il n'en est nul besoin – mais là où des populations, des hommes, des femmes et des enfants sont acteurs ou victimes des faillites de l'État. C'est dans ces cas que les frontières, si peu protectrices à l'intérieur, n'ont plus lieu d'être à l'extérieur, et que les États ont le devoir de prendre la décision politique d'intervenir. Deux exigences doivent alors être remplies. L'espace international, qui résiste à toute forme de juridicisation, appelle pourtant à s'ériger en politique, parce que seule la politique a la puissance nécessaire de servir la justice. Et, bien qu'elle soit appelée par des visages singuliers, la décision politique s'oblige à comparer et à ne pas céder à la compassion, toujours partielle et partielle. En somme, la justice internationale n'est pas entre les États mais entre, d'une part, des États, et d'autre part, des populations que l'État ne protège ou ne contrôle plus, et elle ne saurait avoir une signification simplement humanitaire. Telle est la rigueur de la politique, qui l'ajuste finalement à l'impératif éthique le plus urgent.

4 Autrement qu'être ou au-delà de l'essence, Paris, Livre de Poche, 1978, p. 245.

*Elisabeth Gerle:*

*Nationalism, Reformation and The Other- Scandinavian History of Thought  
in relation to Contemporary Multicultural Challenges and Global Migration*

Discussion and legislation on immigration policies are somewhat different in the two Scandinavian countries Denmark and Sweden that have been Evangelical-Lutheran since the Age of Reformation in the early 1520's and 30's. Especially in the late 19<sup>th</sup> and early 20<sup>th</sup> century both countries emphasised the connection between culture, language and Christian Lutheran faith. Despite a shared history where Lutheranism was a big factor in shaping a monolithic national identity, developments towards greater pluralism emerged from different actors and arenas in the two countries. In Denmark Lutheran ministers and theologians are often quite active in the political debate, but then as citizens, not as representatives of the evangelical-Lutheran church. Yet, their points of view are shaped in close relationship to their theology. Sören Krarup is one interesting example. He is a vicar who is very active in the public debate, well known for xenophobic argumentation and critique of all influences from the international human rights agenda. As a contrast, the Swedish Christian council has rallied for a more humane policy for refugees. The Swedish Lutheran Archbishop K.G. Hammar took the initiative. A so called Easter call was available in all Swedish churches before the Easter 2005, advocating asylum and amnesty for all hidden refugees in Sweden. 27 Christian denominations collected 157 251 names on this appeal.<sup>5</sup>

These are two contradictory examples from Denmark and Sweden. Also in Denmark, however, ministers and representatives of the Danish folk church have made public appeals in favour of a more humane policy for refugees. There are various voices in the debate on immigration in both countries. From a Scandinavian perspective it is, however, interesting to ask why the discussions on human rights are so different in Denmark and Sweden. The Jyllandspost's publication of Mohammed caricatures is one example of a different cultural climate in Denmark. A more strict legislation relating to immigrants in Denmark is another. My hypothesis is that this partly has to do with how the Reformation was received and developed in the two countries. Hence, I want to analyse different histories of thought and some actors to see how they have interacted with the Lutheran churches in these two countries. I want to show how various social actors and movement have been shaping a cultural climate where the politics of semantics is quite different in the two countries. If this has a direct impact on actual politics is another question. Following Raymond Williams and his work on keywords and inspired by Nancy Fraser and Linda Gordon I assume that the "terms that are being used to describe social life are also active forces shaping it".<sup>6</sup> Particular words and terms become crucial in creating a "taken-for granted common sense belief that escapes critical scrutiny".<sup>7</sup> This article tries to analyse some of the historical

<sup>5</sup> See Year book for Sveriges Kristna Råd (2006)

<sup>6</sup> Fraser (1997:122)

<sup>7</sup> Ibid:122

background of ideas and how key words from this background is being used in Denmark and in Sweden today. This is an attempt to defamiliarize taken-for granted beliefs in order to illuminate present-day conflicts.

#### Theory

What is called “post colonial theory” emerged within the study of literature. Thinkers such as Edward Said, Homi Bhaba and Gayatri Chakravorty Spivak develop some important features of post modern theory such as the critique against the ideal of sameness that creates the Western subject as the dominant that violate differences and hence appropriates or annihilates the Other.

The inter-disciplinary approaches within post-colonial theory problematize cultural, linguistic, historical and psychological borders that have been created through Western colonialism. I have three reasons for using this theory here. First, as I want to analyse if the Reformation heritage has any role in relation to non-European immigrants this theory gives tools to investigate some taken for granted divisions between us and them. Secondly, I think that one can talk of the Lutheran heritage in Scandinavia as a kind of colonialism of mind and territory that once created a homogenous Lutheran same versus other traditions, countries and peoples. Thirdly, post-colonial theory emphasises ambivalence and claims that the past, including the colonial past, as well as the present contain both good and bad features. Further, the term hybridity used by post colonial theory implies something more than pluralism. Hybridity emerges when people, cultures and movements meet. Something new is being created.

Hence, my point of departure in comparing Denmark and Sweden is that the Lutheran heritage has made both positive and negative contributions. A variety of social factors and special features have interacted with life of the church and influenced how the evangelical-Lutheran faith was formed in each country. The Lutheran heritage is today challenged and marginalised. The dominant ideology in contemporary liberal societies wants to see faith and religion as a private matter. Public space is permeated with consumption rather than with reflection. Yet, the evangelical-Lutheran heritage still fulfils several functions, social, political and religious. Our time is shaped by globalisation, cultural exchange and encounters that create new hybridities. What happens if the evangelical-Lutheran faith becomes a decisive factor of national identity? Historically the evangelical-Lutheran confession in Denmark and Sweden has been strongly tied to the national projects. Does that mean that it today without reflection may be used to draw borders in relation to “the Other”? Can it rather be an inspiration and a support for a view on humans that emphasize equal value of everyone?

As a case study for reflecting on these issues I choose to analyse some statements from the Danish Lutheran minister Søren Krarup. He is an active spokes person for the nationalist Dansk Folkeparti. The views he expresses is quite different from those expressed by the Lutheran World Federation, LWF, that considers the protection of human rights to be a basic Christian concern.<sup>8</sup> Several Danish theologians e.g Niels Henric Gregersen, holds that classic Lutheran theology today needs reconstructing. The fundamental polarity be-

8 <http://www.lwf-assembly.org/aboutlwf.html> (050919)

tween “us” and “them”, between Christians and non-Christians that Martin Luther took for granted has to be questioned.<sup>9</sup> Krarup, on the other side, describes human rights as the destructive force of our time, the devil disguised and dressed as a humanitarian angel of light that want to mix God and the human being, heaven and earth.<sup>10</sup> Against this background, where I also try to indicate how some ideas and key words from the poet, theologian, pedagogue, politician and priest N.F.S. Grundtvig (1783-1872) is being used by Krarup in a new context, I compare the situation in Denmark with the Swedish situation, which maybe has just as big difficulties to accept a people constituted by the multitude.<sup>11</sup>

#### Reformation as unifier

The Reformation movement in Scandinavia led to a break with Rome. This new direction of the Christian faith gave legitimacy to new unified nations that nationalist kings wanted. For the religious movement, on the other side, royal powers gave protection and monopoly to the evangelical-Lutheran faith.<sup>12</sup> For centuries to come the Lutheran churches became tightly connected to state power and national identity. Both countries have been trying to create homogenous cultures. How much they succeeded is, however, debated today.<sup>13</sup> The evangelical-Lutheran faith can be understood in many ways. One religious leader that became very important in Denmark during the 19<sup>th</sup> century was the poet, theologian, pedagogue, politician and priest N.F.S. Grundtvig (1783-1872).

#### Ideological heritage from Grundtvig

N.S.F. Grundtvig (1783-1872) was active in a time where the religious, historic-philosophical worldview was quite different from the modern, secular.<sup>14</sup> During the 19<sup>th</sup> century democracy developed. It was also the century of nationalism. 1848 the Danish autocracy fell and the first steps toward the new constitution 1849 was taken. He read the Biblical story about the tower in Babel as a story about how God founded the different peoples, each people with their language. One language, one people, and one history was for him part of the created order. A people was a cultural community. It was organically grown like a family or a tribe. A people is something one is born into. He connects here to the German philosophers Herder (1744-1803) and Fichte (1762-1814) with national-romantic features rather than to French Enlightenment tradition, highlighting universal, human rights, parliamentary democracy and the right to vote for everyone. Within this French tradition a people is constituted by citizens participating in a national project within a political frame. Danish nationalism, popular culture and church were all created around the romantic and religious worldview rather than based on the ideas of the Enlightenment or Social Democracy.<sup>15</sup> This explains why contemporary “neo-nationalistic forces against a multi-ethnic society” in Denmark can refer to features in Grundtvig’s

9 Gregersen 2005:1-3

10 Krarup in Tidehverv 2/74:22

11 The tern multitude is made in reference to Michael Hardt and Antonio Negri, (2005)

12 Rasmussen (1990:29)

13 Svanber&Tydén (1999) shows that e.g. Sweden never was as homogenous as it has been described to be.

14 Sanders (2003: 9)

15 Sanders (2003:9), Vind (2003:222)

thoughts.<sup>16</sup> The movement called grundtvigianism can during 1860-1940 be characterized as a movement that constructed the national, the popular and the church as three sides of the same token.<sup>17</sup> The so called folkekirke, folk church, became a part of the nation building in Denmark while the Swedish identity during this time rather was built outside of the church around the workers movement. In Denmark the people was seen as an active subject in the church while the people in Sweden was seen as something to relate to.<sup>18</sup>

Whether one follows the so called German or French way of understanding citizenship has, of course, great importance for the possibility to belong or not. For the German understanding only those that are born into a people are able to really belong. However, if the notion of a people is not interpreted biological or connected to blood or tribal belonging, one can see also newcomers as part of the people. Just as children born into a people become part of a culture, a language, and a history also immigrants can become members of a new history. With such logic, however, the thought that the receiving culture could learn anything from the immigrants, becomes alien. They are seen as children to care for but also to teach. Those to assimilate are the new ones. Those are the ones to learn the language of the new country, their history and culture. In Denmark this assimilationist policy has been expressed in legislation on language capacity as a condition for citizenship and with a development of a "Danish canon" at Danish schools and universities.<sup>19</sup> One may have different views on developing a national cohesion by protecting Danish as the shared language and by highlighting especially Danish writers, artists, musicians, designers, film producers etc. However, when democratic values that are shared by most liberal welfare states are being described as "Danish", then it is more questionable. Democratic principles and human rights are then tied to an ethnic identity. Through such use of key notions, such politics of semantic, the distance to the others are upheld. What is normative is Danish. Danish values in this way become superior.

For Grundtvig the soul of the people, the father country and the mother tongue were key notions. They were tied to his thoughts about the "living word". This view was crucial for the pedagogue Grundtvig who emphasised personal experience and life. His pedagogy was against mere literal knowledge. Instead he argued in favour of "life understanding". Common people was the source of enlightenment rather than the learned people. In contrast to the French revolution he, however, did not want to destroy power structures with violence. He wanted a peaceful transformation of all elements in society based on mutual recognition of the right of everybody to exist.

The emphasis on language in contemporary Danish debate gives an opportunity to read Grundtvig in a nationalist way. Especially his ideas about one people, one language, one history may be used ethnocentric. Today the Danish people's party, Dansk folkeparti, connects to his ideas on cultural and political unity rather than to his thoughts on the right of everybody to exist, something that just as well could be a basis for mutual respect in a multi-ethnic society. Grundtvig also talks about becoming a member of a people through participation, a view that is closer to the French understanding of citizenship. The devel-

16 Sanders (2003:11)

17 Vind (2003:15);Balling (1998)

18 Claesson (2003:75-76)

19 Söderberg (2006)b

opment in Denmark was different from Sweden, where the revival movements created their own independent so called free churches. Grundtvigs thoughts about enlightenment for life built on personal experiences are still radical, pedagogical ideas. His front seems to follow the classic contradiction between country and city, between Jylland and Sjælland, between a popular and academic knowledge in Denmark. That these thoughts today are being used by the Danish majority against the new Danes, especially against Muslims, is contradictory to his ideas about connecting to experiences. On the other side, xenophobia may be nurtured by his ideas on the special mission of the Danes and the Nordic region in the world.

There is ambivalence in the use of Grundtvig and his ideas. His texts can be read in different ways. In the new intersectionality where Muslims and Christians meet he is used to uphold the difference and to uphold the cultural, economic, and religious superiority of the Danes. Sören Krarup considers islamisation of Denmark and of Europe as a real threat. In contrast to Gregersen that have a critical approach to Luther's way of drawing borders between Christians and non-Christians in his time, this polarised world view seems to be an inspiration to Sören Krarup. In his rethoric and as spokes person for Dansk Folkeparti the Reformation heritage as well as thoughts from Grundtvig become tools to mark a border against the others, especially against non-European immigrants. Hence, we now turn to Sören Krarup as a special case with strong influence in Danish politics.

#### Krarup - a Danish case study

The Danish vicar Sören Krarup is since the year 2000 a representative of Dansk Folkeparti that for a long time has challenged immigration in Denmark and run something of a hate campaign against human rights. Drawing on Martin Luther's text *Bondage of the Will* Krarup claims that it is impossible for human beings to be good and to realise what is right.<sup>20</sup> He argues that the discourse of human rights is a modern idol that binds and makes people into slaves. In a chronicle 2005 he writes:

The holy intention or the good idealism replaces the role of law in the human rights society. It creates a marked difference between good and evil, white and black. The good and the white are actually right forehand. While the evil ones are labelled and hunted as peace less.<sup>21</sup>

He claims that our time is driven by a psykosis of goodness and that the legal state is threatened by the negative fanaticism that emerged as critique against Nazism. Krarup instead fights for a Danish legislation and for the right to be different and special. These rights seem to include the right to view women and immigrants as inferior.

When absolute goodness is at stake only absolute and all compassing rules of behaviour are possible. If the good thought is dependent on the evil ones being dismantled, then a world dominated by human rights cannot be content with allowing existing law to be speaking. Therefore, witch hunt is one of the features of our time and that is why the

20 Luther (1525)

21 Krarup (2005) my translation

values of human rights so much remind the world about those societies that one thinks are behind with the Soviet Union of Stalin and the Third Reich of Hitler.<sup>22</sup>

Paul Sander Olsen makes a positive review of Kraup's book *Dansen om mennsekeret-tighederna* (Dancing around Human Rights) 2000. He deduces the thinking on human rights to the renaissance and its extreme faith in the human being. In the 18<sup>th</sup> century one started to worship creation and nature rather than the Creator. Next step is to attach natural rights to one self. But he claims that what the American Declaration of Independence holds for self evident, that all human beings are created equal is in conflict with reality. It is obvious that human beings are not equal or similar but different.

Even a child can see that there are not two human beings that are similar. Even if you do not count such things as the fact that some are born as women, others as men; some white, others black or yellow with all its consequences.

No we human beings are equal only in relation to God. First of all this means that we are all sinners in the light of law. But it also means that the grace of the gospel of Christ is for all human beings, i.e. all sinners.

Trying to implement or impose full equality between humans is both a tyranny and hypocrisy. It is telling that the men formulating these great words extinguished the Indians and held slaves.<sup>23</sup>

Yet, this faith on human's complete freedom and equality is the constitution of our time, Sander Olsen claims in line with Krarup. The declaration on human rights from 1948 is described as the post war creed that shaped the development and created the world after its ideological vision.<sup>24</sup>

Sander Olsen quotes Kraup and holds that the ambition to create an earthly paradise always leads to the opposite:

And always happens the same: When human beings decide that they want to save the world and to create a paradise on earth the result is always the opposite. For the only tool to achieve this paradise is power...Humanism, that is faith in the human being instead of God, leads to idolatry and therefore to misuse of power and injustice, for the self righteous human being does not want to see itself limited by existing law. When one is righteous! When one has a will that is absolutely good and wants to save the world and humanity! So it is not only unnecessary but pointless, yes annoying to be bound by the words of the law.

The adoration of human rights emerges where humanism is repressing Christianity (s. 53-54).<sup>25</sup>

Humanism, that according to this view has replaced God with the human, is the main enemy.

Martin Luther was elaborating the distinction *coram Deo* and *coram hominibus*. In relation to God, *coram Deo*, the human being is declared righteous. She is forgiven. In relation to other humans, however, she remains a sinner that often needs to be forced by the law to do the right thing. Hence, conservative Lutheran theologians like e.g. Althaus and Hirsch, have in earlier periods warned against mixing thoughts on equality in the cohabita-

22 Ibid, my translation

23 Sander Olsen (2000) my translation

24 Krarup (2000:135)

25 Sander Olsen (2000) my translation

tion of humans.<sup>26</sup> In relation to God we are equal, sinners but saved. Equality is a feature of the coming kingdom of God. Here and now and in relation to other humans we are not equal.

The discussion about what in the king/queendom that can be a living, present reality and what ought to be seen as part of a future to come has continued throughout the history of Christianity. Is the example of Jesus and the eschatological hope with justice, peace, love, equality and dignity for all something that may permeate the here and now or is that something to be postponed for the future? A sharp distinction between what counts in relation to God *coram Deo* and what counts in relation to other co-humans, *coram hominibus*, may within the Lutheran tradition become an argument claiming that even if everybody is created as an icon of God and therefore equal in dignity this is not supposed to affect the structures of contemporary society. Then, restoration, salvation and the liberation of the gospel do not influence society.

Krarp and Sander Olsen seem to be close to such an interpretation of the Lutheran heritage. All challenges from the life of Jesus are then disappearing from politics and projected into the future. Against universal claims of human rights they are defending the special, particular features of Danish, Christian culture. Their argumentation also associates to the now established critique of Modernity. Equality is being criticised for having become equated with sameness. As Sander Olsen points out, even the smallest child can see that people are different; black and white, women and men. What is interesting is what is not being articulated. Is difference supposed to lead to separation, different roles and tasks, to inferior or superior positioning? Within Dansk Folkeparti the Danish has been given precedence. That all human beings in a country ought to be treated in a similar way and have the same rights as citizens independent of ethnic or religious origin then becomes a threat against Danishness.

As the quotes from the Lutheran World Federation, Niels Gregersen, as well as from Sören Krarp from Dansk Folkeparti show, the Christian, Lutheran tradition may be read in two completely different ways. One reading sees strong connections between a Christian creation creed and a Christian humanism with human rights, one reading that considers the Enlightenment tradition with its emphasis on reason, autonomy and free choices to be in opposition to a Christian view on the human being as described in the Bondage of the will.

For Sören Krarp and his followers in Dansk Folkeparti the antagonism seems to be between humanism and Christianity, between an international universalist rights culture and particular Danish law. In the background one can hear Grundtvig's word on one people that ought to create their own legislation. Hauge claims that Krarp foremost is a patriot and an étatist. The border between peoples and states ought to be the same. Hu-

26 Martin Lind (1975) quotes what Hirsch has written on private ownership: "So möchte ich das Eigentum mit seinem Ungleichheiten zu den Geschenken der göttlichen Schöpfungsordnung rechnen, die der Mensch nicht ungestraft zerstören darf." Emmanuel Hirsch, *Deutschlands Schicksal. Statt, Volk und Menschheit im Lichte einer ethischen Gesichtansicht*, 2., durchsehene und um ein Nachwort vermehrte. Aufl. Göttingen, 1922, s. 122. Althaus has similar arguments. The unity in Christ between Jew and Greek, slave and free, man and woman is nothing that is annihilating the inequality that is decided by biology and society. A human being can at the same time live in spiritual equality in Christ and in the inequality of society. Lind (1975: 182, f)

man rights and cosmopolitan values are undermining the nation state as it was formed after the Westphalian peace 1648. An independent territory and a state that is able to defend its territory is a condition for sovereignty. Hence, a deterritorialisation is the ultimate threat.<sup>27</sup>

A conservative Lutheran interpretation that emphasises the sinfulness of man is easily directed towards demands for safe borders and state sovereignty. Then it is also reasonable to criticise an optimistic, almost fundamentalist faith in human rights. If the so called two reign regime of Martin Luther is interpreted in a way where the church ought to care only for spiritual matters a dualism emerge. Such a dualism distinguish inner and outer, spiritual and worldly and may lead to a lack of interest for human rights. A Christian ethic that emphasises the task to protect ones neighbour does not construct such a conflict. One does not build on an atomistic, contract ethics where every human being is seen as an island, independent of others. Quite contrary biblical motives on the role of community and solidarity become important sources of inspiration for a work to defend human dignity and life opportunities for everyone. Such a humanism that may be Christian understands that equality does not mean that everybody ought to be similar but equal in worth. The thought that every human being is created as an icon of God leads to a challenge of all theories of subordination.

#### Creation of Swedish Nationality

The Swedish national state use to be connected with Gustav Vasa (1496-1560). Gustav Eriksson Vasa that ruled until his death in 1560 welcomed the Swedish priest Olaus Petri (1493-1552). Petri had studied in Wittenberg in Germany where Martin Luther and Philip Melancthon were professors and brought these influences back to Sweden. Through the Reformation Sweden got a unifying theology. If the unity of the country used to rely on how far the king's army reached it now had a unifying ideology through Martin Luther's small cathekismus. Now, only people belonging to the Evangelical-Lutheran faith could be entrusted positions as civil servants. The king was supposed to be the guardian of the independence of the church. His role was to be *custos ecclesiae*.

Thus the Swedish national state, like the Danish, after the Peace of Westphalia in 1648 came to emphasise the unity between people, language and religion. The sentence from the Peace of Religions in Augsburg in 1555 *cuius region, eius religio*, i.e. the one who rules also decides religion, became the norm.<sup>28</sup>

Why then, has a notion such as human rights a more positive ring in Sweden than in Denmark? Hans Hauge, claims in a provocative analysis that is has to do with the time when Sweden was a regional super power. Since then Sweden has more imperial tendencies. While the national state cherishes the idea of one language, one people, one religion and one culture, the Empire instead cherishes unity through diversity.<sup>29</sup>

27 Ibid:188 f Hauge himself means that the nation state already is undermined from the inside by globalization and, therefore, just functions as a mask Ibid:192

28 Liedman 1997:419

29 Hauge 2003:186. Hauge also claims that those that hold that the nation state can survive the double movement of integration are lying. With double movement he means partly that the countries of the European

Urban Claesson, argues that the creation of a Swedish identity was shaped by other movements than the Danish national identity. He claims that Grundtvig was able to “formulate the early farmer’s movement in relation to an emerging society of organisations and media”.<sup>30</sup> A Swedish parallel is the religious revival of the West coast. In other parts of the country the revival movements, were organised as social movements and so called free churches without any special ties to the farmer’s revival movements.

Claesson further claims that independent Swedish farmers had a longer history than the Danish. They had not been dominated by the nobility or had to live under feudal conditions in the same way as the Danish. Hence, they had “maintained a farmer representation both locally in the parishes and nationally as one of the four groups in the parliament”.<sup>31</sup> They did not, therefore, have the same need for a national freedom ideology as their Danish equivalents. They were possibly more content with their political situation that allowed political expressions and ambitions within the old system. It may even have given the monolithic society and church greater legitimacy within the Swedish farmer’s movement.<sup>32</sup> In Denmark the “danishness” was tied to the people’s church while the “swedishness” since the end of the 19<sup>th</sup> century was not so closely connected to the Swedish church. During the nationalism that emerged during the 19<sup>th</sup> century led to a “redefinition of the people from a worshipping people to a cultural, linguistic and geographically delimited group”. In this “modern ethnic-national notion of a people” it was no longer the relationship to God that created community but “an eternal connection through involvement with the same ethnic people”.<sup>33</sup> The connection between citizenship and belonging to the Swedish church gradually became weaker. Today there are no such requests. Nevertheless, demands for “swedishness” have not disappeared. The Lutheran hegemony was superseded by the Swedish folk home and the Swedish model in social democratic version. This model was not especially interested in genuine pluralism and freedom of thought either. Now the homogeneity, however, was formulated as a common value basis with respect for equality and democracy.

#### Citizenship and ethnic identity-different politics of semantics

Is Sweden less xenophobic Denmark than Denmark? It is questionable if the difference is as big as it seems. Denmark has the last few years sharpened their conditions for citizenship and family reunions. You cannot apply for citizenship in Denmark until you have had the right to live in the country for ten years while five years is enough in Sweden. You are also supposed to pass a Danish language test on a fairly high level.<sup>34</sup> Most immigrants in Sweden have come to be unified with family already there, while such family reunions are not a reason for immigration in Denmark. Denmark has also recently introduced legislation to protect Danish language and Danish culture expressed in literature, film, art and

Union are integrated economically and political-culturally, partly that people from other cultures are integrated in Denmark.

30 Claesson 2003:76

31 Ibid:77

32 Ibid:77

33 Ibid:55 (my translation)

34 Söderberg 2006 b

design. At the end of January 2006 minister of culture Brian Mikkelsen announced a Danish cultural canon encompassing seven forms of art. This list has now been presented to all that want to call themselves “culturally Danish”.<sup>35</sup> This may be compared with how the Swedish young church movement in the early 20<sup>th</sup> century wanted to connect church and culture through engagement in literature, art, architecture and music.<sup>36</sup> However, while that initiative was an attempt to bring church and culture closer together the Danish cultural canon seems to have an ambition to draw ethnic borders around culture. The debate has thus been intense, partly about forming a Danish canon at all, partly about whether the suggestions really are the best ones.

The minister of education sees the canon as an invitation to get onboard the Danish culture. The invitation is, however, conditioned. Accept Danish values and style of life. The publication in the *Jyllandspost* of Muhammad caricatures last September 2005 and the discussion afterwards speak a similar language. This politics of semantics is described as a conflict between freedom of expression and fear of totalitarian threats from Islamists. It may, however, also be seen as sharpened xenophobia in Denmark or as unawareness. In the West there are no taboos to make jokes about God or Jesus or to show lack of respect for church hierarchies. Why not do the same in relation to Islam? It is, however, interesting to find out that the Sunday editor of the *Jyllandspost*, Jens Kaiser, a few years ago turned down an offer to publish five caricatures on Christ’s resurrection. His motivation was that he did not think that his readers would be amused, quite the contrary.<sup>37</sup>

In Denmark there is freedom of religion. Yet the neo-national rhetoric has not only associated itself with an ethnic Danish identity and with the Danish language and culture but also with the “*folkekirke*”, the folk church. One may speculate over if the next step then is easier to take. To be Danish is to be Christian. To be a secularised Christian Dane also seems to be okay, maybe even better. To be Muslim is, on the contrary, suspicious, especially if you are a practising, religious Muslim. However, even secularised Muslims become principally alien to what is Danish. Real citizenship for Muslims is thus made more difficult. In this situation the Danish vicar Sören Krarup seems to be attuned to ordinary secularised politicians as the Prime minister Fogh Rasmussen. Muslim feelings are not necessary to respect while some respect for the Danish folk church and its members seem to be part of being Danish. That the Prime minister refused to receive 11 ambassadors from Muslims countries thus seemed natural and unproblematic for the Danish government, while this refusal from the other side was seen as an insult.<sup>38</sup>

People in the West often have an assumption that they live in the best of worlds. In Denmark Grundtvig may provide the arguments and in Sweden one refers to the Swedish model. Sweden has for a long time thought of itself as a moral superpower and as one of the best in receiving and integrating refugees. The statistics on unemployment for espe-

35 April 2005 Mikkelsen asked 35 cultural personalities to choose twelve of the most important Danish expressions within seven categories, literature, film, architecture, design handicraft, drama and music. It has since then been expanded to include also popular music and children’s culture. August 15 a book with the selection was presented at Politikens hus in Copenhagen. (Brunner 2006)

36 Brohed 2006

37 Söderberg 2006 a

38 Hjärpe 2006

cially non-European immigrants speak another language. Employment of people born outside Sweden is 15% less than for those born in Sweden. Sweden is not very welcoming to newcomers as refugees, asylum seekers or as working immigrants.<sup>39</sup> Also in Sweden newcomers are judged in relation to their ethnic, linguistic or cultural closeness. Sweden closed labour immigration in 1972 at the initiative of the Labour organisation. This kind of immigration also ended in Denmark at the end of 1970.<sup>40</sup>

The conception that people have roots and belong to a special territory is an important feature connected to nationalism. Theories on nationalism also underline that these assumptions are taken for granted.<sup>41</sup> Benedict Anderson has focused on the imagined community. Everybody in a nation does not know each other. Yet the community is real in the sense that it has great importance for people's experience. For this experience to be meaningful it, however, constantly needs to be reconstructed. This is being done through ideologies that create patterns of convictions and practises that make existing social arrangement seem natural and unavoidable. The common sense of the nation state takes the connection between nationality, people and homeland for granted in a way that presuppose a whole set up of the surrounding world.<sup>42</sup> In such set ups there are often thoughts about a shared origin. The historic myth becomes important. Not only shared memories and metaphors such as belonging to a native country but also amnesia are important. Some features of history are highlighted and affirmed. Others are denied and forgotten.

As I have tried to show above this is an important ingredient in how Dansk Folkeparti connects to Grundtvig to confirm ideas on a connection between one people, one country and one culture. Is then the ambition to create homogeneity less strong in Sweden? Maybe not. But as I have pointed out above a Swedish homogeneity during the 20<sup>th</sup> century has not been so strongly tied to the language of Sweden being a Christian country. A usual assumption is that Sweden no longer is nationalist. Social democrats claimed to have challenged nationalist rhetoric from the 19<sup>th</sup> century by focusing on modernism, internationalism, and class struggle. A researcher as Henrik Berggren, however, contains that the worker's movement has had a tendency to exaggerate this challenge and make it too one dimensional. He rather holds that there is continuity between some features of the 19<sup>th</sup> century nationalism, the folk home creation of the 1930's and the welfare state after WWII.<sup>43</sup> The notion of folk home is in itself an attempt to capture the conception of a people "folk" from the social conservatives. By connecting people and a common home two important ingredients of nationalism are brought together. The folk home ideology meant that the social democrats did not speak so much about class struggle as about things of interest for the whole nation. The Swedish self image had to do with a modern, neutral welfare state that was a model for others in technology, design, science, social engineering, development aid, environmental care, equality etc. In this folk home there were strong homogenising tendencies. This had the effect that some groups of immigrants were resisted but also, for instance, that the state enforced sterilisation of some people. The Swed-

39 Johansson 2005

40 Ibid:30

41 Ibid:34

42 Ibid:35, see also Michael Billing (1995:61) *Banal Nationalism*, London, Sage

43 Berggren 2001:84

ish development was idealised and labelled “the third path”, so called “welfare nationalism”.<sup>44</sup> If Sweden had had a kind of elite nationalism during the 19<sup>th</sup> century it was superseded by “welfare nationalism” during the 19<sup>th</sup> century.

In this process the church and its activities was more and more pushed into the private. The church and its work was welcomed in connection with national catastrophes and in social care for exposed groups but the state did not want any prophetic critique against the Swedish reception of refugees and asylum seekers or against the weapon export. The value basis of democracy and human rights was not supposed to be applied by the church in such contexts.

The difference between Sweden and Denmark and their ambitions for homogeneity is, in my view, not quite as big as many Swedes want to believe. Denmark has, however, connected Danish identity more with the church. People, church and nation have gone hand in hand. This might be one reason to the inflamed resistance to Muslims, something that is different from Sweden. Citizenship for Muslims has thus become even more difficult in Denmark. The leadership of the Swedish church often connects to international conventions and the language of human rights in its critique against state authority or in relation to international politics. The contradiction between the Danish and human rights that Dansk Folkeparti has been part of constructing probably makes it difficult to appeal to human rights even for voices of social criticism in Denmark. Christians in Denmark wanting to challenge Danish refugee politics are thus not appealing to human rights but to biblical texts. One example is the group of priest that before Christmas 2005 initiated a protest against the Danish reception of refugees under the slogan “There are still no room in the shelter”.<sup>45</sup> The priest are arguing out of the nativity story in the Bible that Jesus Christ was in need of charity already at birth and had to fly as a refugee as an infant.

It seems, however, as if references to “the Danish” have greater weight than references to what is Christian or international, cosmopolitan. Everything international, whether from the United Nations or the European Union, in this neo-nationalist rhetoric becomes something that stands against the Danish. Sören Krarup seems to have been successful politically in this regard. For Krarup Danish legislation is decisive, not any Christian compassion that he rejects as idealism and ideology. Liberals and conservatives seem to be united here that love and compassion is not supposed to influence politics. What the periodical *Tidehverv* early argued, namely that Christian faith does not have anything to say in politics seem to have strong influence in Denmark while the Swedish church takes for granted that a Christian engagement for vulnerable human beings necessarily will affect political attitudes. Krarup as a contradiction claims that it is for the Pharisees and the self righteous to quote the words of Jesus in Mattiew 25:40 that “anything you did for one of my brothers here, however humble, you did for me”. In this way Krarup denounces everybody that is criticising politics for lack of compassion.<sup>46</sup>

In public debates in Denmark during the last few years it has been more and more allowed to criticise and provoke Muslims. Krarup describes them as Pharisees, whom for

<sup>44</sup> Johansson 2005:46

<sup>45</sup> <http://nyhederne.tv2.dk/article.php?id=3400716> 051224

<sup>46</sup> Krarup 2006:21-23

him are the very opposite to Christians in their believe that one can be righteous through fulfilling the law:

The Pharisees and Islam have many things in common, righteousness through law, sanctification through morality and good deeds, the demand for punishment and judgement for unbelievers and tactless. Such law righteousness has in reality surrendered to Islam. All the different demands to make excuses to Islam for the notorious Muhammad- paintings, the holy critique from ambassadors and priest and teachers against the Jylland post and the tone and the rate- it is nothing but surrender in relation to the totalitarian ideology and moralizing that through Islam is invading Denmark to decide appearance and stile of living. Capitulation in forehand. Capitulation in heart.<sup>47</sup> Krarup sees Islam as an ideology that as the human rights regime is about to conquer Europe and Denmark. Parts of his proclamations seem to be well received by many Danes. Jokes, caricatures and disparaging treatment go hand in hand with stricter rules and legislation for immigrants. Sweden shows a somewhat more cautious attitude in relation to Muslims and non-European immigrants. The UN-legislation banning persecution and agitation against any group of people also has a stronger position. Many participating in the debate argue that freedom of expression must be weighed in relation to freedom of religion. Freedom of the press is a tool, not an end in itself. The Swedish constitution aims to secure a free exchange of ideas and comprehensive enlightenment. Obvious lies and insults betray this aim.<sup>48</sup> Swedish legislation in relation to refugees has not been as drastically sharpened as in Denmark. The tendency, however, leads in a similar direction. The Swedish identity is, however, more connected with the welfare state and to the Swedish model than to the Swedish folk church.

To summarize, in Sweden the development toward a Swedish modern identity was rather shaped around revivalist movements with strong Calvinist influence that created independent so called, free churches, and around the workers movement. While the reformation heritage in Denmark is being used to draw a line between Danish people and the Others, such a line is rather drawn by other constructions of national identity in Sweden. My Danish case study, the Lutheran vicar Sören Krarup, leading spokesperson for Dansk Folkeparti has been analysed. He has been arguing against immigration and integration of especially Muslims. His language is created around we and them. We are for him the Danish people. According to Krarup, the Danish people are Lutherans, sinners with nothing to be proud of except the reception of grace and forgiveness of sins. The Others are all Pharisees, trying to be justified through good deeds. Especially Muslims, are legalistic Pharisees trying to be righteous through law. But also advocates of international law and human rights are legalistic Pharisees with an effort to undermine Danish sovereignty by endorsing legislation from the United Nations or from the European Union. In Krarup's rather etatist view, only the Danish people, which has lived in this country for centuries and share a common language, history, faith and not least the land, has the right to create legislation

47 Ibid (my translation)

48 Daniel Sandström, Cultural editor of *Sydsvenska Dagbladet* argues in favour of such a position in an editorial called *Freedom under responsibility*, *Trust the laws and keep the head cold in the storm around the Prophet*, "Frihet under ansvar, Lita på lagarna och håll huvudet kallt när det stormar kring profeten" *Sydsvenska Dagbladet* 4 februari 2006, B4

for themselves. With such a politics of semantics, where Krarup draws on Grundtvig's connection between history, language, folk spirit, faith and territory, he reinforces an understanding of citizenship that has resemblances with the German tradition and Fichte rather than with more French, republican ideals. Thus, the divide is drawn between Danes that have lived in this land with a shared history, language and faith for generations and the Others, foreigners but also human rights advocates and cosmopolitans. This politics of semantics has then been compared with a Swedish politics of semantics that seems more welcoming in its attitude to a multicultural society and to the International regime of human rights. Human rights, democracy and participation are key words often invoked in the official political language, while a shared Lutheran heritage or the land is seldom referred to. Democracy, equality, solidarity and human rights are invoked as a value basis. Nevertheless, Swedish language capacity is increasingly being suggested as a condition for access to work and citizenship. A Swedish national identity, however, seems to be created around other key words than in Denmark. These divergences seem to be connected with slightly different histories of ideas and with other actors in Denmark and Sweden. More important however, seem to be how the terms and key words from these various histories are being used in contemporary politics of semantics in the two countries. The crucial questions in relation to such semantic constructions of identities are, with Fraser's formulations to distinguish between identities that are "rooted in the defence of social relations of inequality and domination" and which are "rooted in a challenge to such relations? Which identity claims carry the potential to expand actually existing democracy? And which, in contrast work against democratization? Which differences, finally should a democratic society seek to foster, and which, on the contrary should it aim to abolish".<sup>49</sup>

Also in Sweden there are, however, strong connections between Swedishness as an ethnic marker and the Swedish church, despite the fact that the leadership of the church for a long time has been trying to work against this and to broaden the perspective. The inheritance of history, where the evangelical-Lutheran in both countries became part of national cohesion and identity, is still there as an undercurrent. This may explain why the Scandinavian countries diverge from other Lutheran countries where the church never got into a majority position living in a symbiosis with the nation state. Due to international collaboration between churches, thoughts on human rights as a Christian responsibility has gained ever-greater influence in the Swedish church. To understand every human being as created as an image of God has given inspiration to work for the dignity of all and for human rights. Today it may be time to continue and to search new theological metaphors and sources of inspiration for a democratic citizenship that is not tied to ethnicity or homogeneity. Grundtvig read the myth of Babel to confirm the difference between peoples and languages. All peoples were to him particular with their own special mission in the world. The narrative of Pentecost has been read as a story about the reversal of Babel. Now everyone could hear his or her own mother tongue spoken. However, Luke's story in Acts is not about talking the same language but about hearing one's own language and thus being able to understand. Instead of a universalism based on similarity and homogeneity eradicating diversity among human beings and people the narrative of Pentecost is about

49 Fraser 1995:184

collaboration and understanding combined with diversity and multitude. A similar vision is painted in the seventh chapter of the Book of Revelation speaking of "a great multitude that nobody could count of all people, tribes, countries and languages".

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*Benedict Hung-biu Kwok:*  
*Reflections on the Global Ethics from a Chinese Christian Perspective*

Introduction

In view of the change of Japan's Prime-minister in the coming September, political observers call this period as "post- Junichiro Koizumi period". As the change of the international political order after the cold-war period, the political relationship amount nations in Asia becomes more complicated. The development of nuclear weapon in North Korea is a threat to the stability in this region. It is understandable that the surrounding countries will increase the expanses in military development. The expanse in military development by Chinese government in 2004 was 256 billion U.S. dollars; while Japan spend 1,62% more than Chinese.<sup>1</sup> However, the number of soldiers of South and North Korea is 10 times of Japan. Actually, the 40-50% of Japan's military expanse is the salary for the 240,000 self-defense soldiers. In facing the possibility of the reconciliation between North and South Korea and the reunification of China and Taiwan, it is natural for Japan to search for her new identity in Asia. According to the interpretation of the Ministry of Foreign Affairs of Japan, the hindrance of the mutual relation was the patrolling of Chinese marine ships in Japan zone without Japanese permission in 2004.<sup>2</sup> The conflicting relationship between Japan and China has historical reasons and also current reasons. The recent conflict is the competition of energy. Japan depends 90% of her energy from import. The local oil product in China is insufficient for her industrial growth. Therefore both of them want to have the right to develop the "potential" oil in east sea region.<sup>3</sup> Although China and Japan has conflict in the line of separation in the East Sea, they are still discussing the possibility of developing that region together.<sup>4</sup> China and Japan are the second and third oil users in the world. Both leaders try to strengthen their relationship with Africa, in order to stabilize the import of oil. Africa is one of the eight oil-producing regions in the world and has 11.6% oil sources of the world. It is the third big oil source area other than Middle East and former Soviet Union.<sup>5</sup>

As Christian theologians in Hong Kong, how do we interpret the conflicting relationship between China and Japan? How could we avoid the nationalism mentality and apply the Christian values in the religious pluralistic Asia? The "Public Theology" is highly developed in the western countries, but it is only being developed in Asian. The understanding of religion in China is more or less a "private affair", which serves as a harmonizing element in the society. The secular society would define the social and political values;

1 "Shun Post", 7th February, 2006, p.18.

2 "Recent Political, Economic and Social Developments", The Ministry of Foreign Affairs of Japan [http://www.infojapan.org/policy/oda/region/e\\_asia/china-2.html](http://www.infojapan.org/policy/oda/region/e_asia/china-2.html)

3 "Shun Post", 13th June 2006, p.11.

4 "Shun Post", 16th May, 2006, p.10. "Chinese government offers 2 proposals. The first is to work together in the southern part of the central line in the East Sea near Japan. The second is to work together in the northern part of the central line in the East Sea near China. However, there is no consensus between the two countries."

5 "Ming Post", 28th April 2006, A35.

within such values can the religious values contribute the theoretical construction and practices. Under such religious policy can we interpret Christian values for public implication? In this paper, I would use Hans Küng's concept of Global Ethics as a model of Christian Public Theology, to seek for a possible solution to the conflicting relationship between China and Japan. The original design of the Global Ethics Project is respond to the European situation. We could not demand the Global Ethics Project to give solution to what it was not intended to solve. However, the application of the Global Ethics Project to solve the political conflict between China and Japan, would enrich the theoretical construction of Christian social ethics in Asia. It is also a testing filed of the universality and applicability of the Global Ethics Project outside European context. Despite the contribution of the Global Ethics Project for the ideal for peaceful relation between conflicting countries, it has some limitations: (1) the cultural difference issue, (2) the rational definition issue, (3) the transcendent God issue, and (4) the moral energy issue. In conclusion, Global Ethics Project is a good starting point for promoting peace, but the importance of God-centered reconciliation is not being discussed.

## 2. The Conflicting Areas between China and Japan

The diplomatic relationship between China and Japan was normalized in 1972. The "Japan-China Peace and Friendship Treaty" was signed in 1978. When Premier Jiang Zemin visited Japan in 1998, he promised to build a friendly and cooperative partnership for peace and development. During 1972, U.S., Japan and China linked together to counter the power of the former Soviet Union. Japan and China did not treat each other as the major enemy. After the June 4 event, the Japanese government was the only pro-western countries supporting Chinese government. Due to the change of the international political order after the collapse of the Eastern Communist parties and the disintegration of the former Soviet Union, U.S. defines the development as a threat to her world leadership role. Under the new world Strategy, Japan becomes a balancing power to China. Within the Japanese government, there is a tendency of the dominance by the right-wing politicians. The expression of "the success of Taiwan was the result of the colonization of Japan" by the Foreign Minister Taro Aso, is being interpreted as a right-wing tendency in Japanese cabinet. The Chief Cabinet Secretary, Shinzo Abe visited the Yasukuni Shrine on 14<sup>th</sup> April 2006. He insists that the Cabinet members visit the Yasukuni Shrine personally is their personal freedom, even when they visit as official Cabinet members, there is no violation of the separation of religion and politics instruction.<sup>6</sup>

Generally speaking, there are two major conflicting areas. The first area is the disagreement of the content of the high school's textbook. There is a conflict of historical interpretation of the Second World War. The Japanese education minister Nariaki Nakayama said that it was incorrect to call the women forced into sexual slavery as "comfort women", he agrees with the saying that "the victimized women in Asia should be proud of being comfort women". The educational department of Japan changed the description of "invading into China" as "entering in China" and the "Nanjing massacre" as "Nanjing event". In 29 March 2006, the educational department of Japan finished the review of textbook for high

6 "Ming Post", 5th August 2006, A18.

school. The original wording of "...those treated as "comfort women" by Japanese soldiers" is changed into "those were being seen as "comfort women" by Japanese soldiers". "There was evidence for 20,000 peoples died in Nanjing massacre, the Chinese counted as 30,000", is changed into "there was different opinion for the number of peoples died in Nanjing event, a more convincing number is 20,000, but the Chinese counts 30,000."<sup>7</sup> In 22<sup>nd</sup> June 2006, the Japanese Cabinet meeting admitted that the Japanese soldiers had killed people and committed violence, but there was no any evidence for massacre. In comparison to the conflict of the interpretation of the Nanjing massacre, the conflicting claim of the sovereignty of Senkaku Island is becoming a secondary issue. The Chinese official protested against Japanese position in 31<sup>st</sup> March 2006. The newly revived Textbook claimed that the "Liancourt Rocks" island is Japan's territory. However, the South Korea government calls this island "Dokdo", but the Japanese call it "Takeshima".<sup>8</sup> The South Korean have a strong reaction towards this issue and the Korean government called the Japanese diplomat in 30<sup>th</sup> March 2006. It seems that the Chinese official reaction to the Textbook issue is much gentle than the visit of Yasukuni Shrine.

The second is the visit of Yasukuni Shrine. The Prime Minister of Japan Junichiro Koizumi insists that the worship of the second-world war criminals is a patriotic act. Such continual practices cause the reaction from the Chinese and the south Korean government. The high level governmental dialogue was proponed. In the 60<sup>th</sup> anniversary of the world Anti-Fascist War in 2005, Chinese government expressed the concern of Junichiro Koizumi visited Yasukuni Shrine for 5 times and the change of the record about Nanjing Massacre in Japanese history text book. In the past five rounds of strategic dialogue between the governments, the Prime Minister of Japan Junichiro Koizumi's visit of Yasukuni Shrine was an issue of discussion. In the third round of the bilateral dialogue, both representatives talked about the possibility of higher official meeting. The Japanese government would like to talk about the possibility of her joining of the Security Council in United Nation besides the East Sea oil field issue. The Foreign Minister Taro Aso apologized for his saying, that the success of Taiwan was the result of the colonization of Japan in 7<sup>th</sup> February 2006, just three days before the 4 round meeting.<sup>9</sup> The visit of Yasukuni Shrine is not only a private religious practice, but also a national religious practice. The Yasukuni Shrine is a place worshipping more than 2,466,000 souls of Japanese soldiers died outside Japan, including those top class military prisoners for the Second World War.<sup>10</sup> The visit of Yasukuni Shrine is a hindrance of the Sino-Japanese and Korean-Japanese relationship. The U.S. government would like to strengthen the relationship with Japan in order to counter the influence of China. The former Deputy secretary of State of U.S., Robert B. Zoellick gave the message of unwilling to see the continuing broken relationships of Korea--Japan and the Sino-Japanese on 31<sup>st</sup> January 2006.<sup>11</sup> Mr. Henry J. Hyde, the chairman of the committee on international relations of the U.S. House of Representatives, expressed his concern for Junichiro Koizumi's visit of Yasukuni Shrine on 15<sup>th</sup> August, the

7 "Ming Post", 31st March 2006, p.A32.

8 "Shun Post", 24th February 2006, p.21.

9 "Ming Post", 8th February 2006, A26.

10 "Ming Post", 1st February 2006, A21.

11 "Ming Post", 16th February 2006, A28.

day of surrender of Japan. Those old American soldiers participating in the Pacific war, would regard the worship of the top class military prisoners in Yasukuni Shrine as a sign of military expansion mentality.<sup>12</sup>

### 3. The Common Interest between China and Japan

From 1993-2003, Japan was the first trade partner of China. After the Junichiro Koizumi's fourth visit to Yasukuni Shrine, the mutual visit of Sino-Japanese leaders have been stopped. Under the cold relationship between the two countries, EU became the first trade partner of China starting from May 2003.<sup>13</sup> The development of the Japanese companies in China suffered under the Anti-Japanese sentiment. Sony dropped her ranking from 11 in 2003 to 17 in 2004. Panasonic dropped from 23 in 2003 to 32 in 2004. The Japanese investment in China has also slowed down in 2004. Korea's investment in China reached 5.2 billion U.S. dollars during the first nine months in 2004 increasing by 70%. Japan's investment was 4.2 billion U.S. dollars during the same period increasing by only 1.1%.<sup>14</sup> Besides the national and political concern, the Chinese government considers the economic interest and seeks for solution from diplomatic dimension. In 2005, Foreign Press Center Japan released an article mentioning that China is an important market for Japan, rather than a threat. In 2004, Japan's export to China counted 112.6 billion U.S. dollars, and imports from China counted 98.8 billion U.S. dollars.<sup>15</sup> During the Japanese economic decay period around 2001, many Japanese investments came to China and the Chinese's export to Japan was high. This reinforced the collapse of Japanese industry and the rate of unemployment was increased. However, the rapid economic growth in China benefits the economy in Japan from 2001 onwards. Most of the imports from China are the Japanese's investment.<sup>16</sup>

From the Chinese economic point of view, the increase of the Sino-Japanese commerce in 2005 was 9.9%, lower than Sino-EU and Sino-U.S. commerce development. The increase of Sino-Japanese commerce in 2004 marked 25.7%.<sup>17</sup> There was a drastic drop in 2005. The Sino-Japanese commerce marked 20% of the whole country's foreign trade in 1994, but it was 13% in 2005.<sup>18</sup> From 1979, the Japanese government has supported the modernization of China more than 280 billions U.S. dollars.<sup>19</sup> China is the third commerce partner of Japan after U.S. and EU. The percentage of the commerce between Japan and China decreased 9% in 2005.<sup>20</sup> Premier Wen Jiabao made three points for Sino-Japanese relationship. Firstly, the governmental strategic dialogue is important for counter-

12 "Ming Post", 29th June 2006, A33.

13 "On the Sino-Japanese Relation at Present", People's Daily Online.  
<http://english.people.com.cn/200412/21/eng20041221.168089.html>.

14 "Article alerts China-Japan Relations to Changes", People's Daily Online.  
<http://english.people.com.cn/200412/24/eng20041224.168531.html>

15 "China becomes Japan's Largest Trading Partner, Replacing the U.S., Implications are not Limited to Economics", Foreign Press Center Japan. [http://www.fpcj.jple/mres/japanbrief/jb\\_23.html](http://www.fpcj.jple/mres/japanbrief/jb_23.html).

16 "Ming Post", 3rd February 2006, A21.

17 "Shun Post", 1st June 2006, p.7.

18 "Ming Post", 1st June 2006, A21.

19 "Ming Post", 2nd February 2006, A21.

20 "Ming Post", 2nd February 2006, A21.

ing the hindrance. Secondly, the civil exchange is a way to build up understanding. Thirdly, the development of mutual economic relationship could contribute the Win-Win cooperation.<sup>21</sup> 7 Japanese groups visited China and met the President Hu Jintao in 31<sup>st</sup> March 2006.<sup>22</sup> As the result, the Japanese government agrees to give China a loan of 7 billion U.S dollars. But it was frozen in 2005.<sup>23</sup> The Japanese government has set up "The Sino-Japanese Exchange Foundation" for 0.8 billions U.S. dollars. They would invite 1000 secondary students to stay in Japan for a duration of 2 months to 1 year.

Both China and Japan are influencing countries in Asia and even in the global family. They would try their best to develop strong economy and also strengthen their international influence. It is understandable that every political leader would feel honor when his countrymen have contribution in the world. After the cold war period, the international order is changing. Germany and France are becoming the leaders in Europe. There is no such international organization like EU in Asia. China and Japan are the two influencing countries. If Japan could join the security council of United Nations, her international status and image will be strengthened. If Japan and China take rational step to deal with their historical and political conflict, it could be a positive stimulation for the future economic development.

#### 4. A Theological Reflection of Asian Culture

As a Christian theologian, I would raise a question. Is material and economic progress the only goal of a society. Philosophically speaking, the searching for common good and common interest is a social value. Even the growth of political influence and power is a good way of self-protection. However, when we think about the calling of seeking for the Kingdom of God, we have to think critically the mentality of nationalism. When we think about the issue of peace, we always get the negative answer from our living experience, for example the 9/11 events and the conflict in Middle East. We found that it is hard for a country to survive without strong military power. But it is also true that it is hard for a country to control herself not to misuse the weapon. When we want to build up relevant international and political ethics, it is unavoidable to go back to human history to learn how our ancestors understood political ethics. The issue of Sino-Japanese relation is rooted in the way of interpreting history. In comparison to the Germany government, the Japanese government did not express deep apology, but only uses a word for ordinary sorry in the 50<sup>th</sup> anniversary after the second world war. The Japanese government avoids expressing apology directly to Chinese people in these 60 years. But, instead they tried to change the historical record in school curriculum. From the cultural analytical point of view, Japanese culture is typical eastern "shame culture" which did not share the Christian value. However, Germany has a long Christian culture and the "guilt culture". After the Second World War, Germany started the cross-nation history project, which is "The France-Germany Textbook Project"<sup>24</sup> The French and German high-school final year class stu-

21 "Ming Post", 15th March 2006, A23.

22 "Shun Post", 31st March 2006, p.11.

23 "Ming Post", 24th June 2006, B19.

24 [http://www.economist.com/displayStory.cfm?story\\_id=7141381](http://www.economist.com/displayStory.cfm?story_id=7141381). See A Franco-German Textbook. History Lessons. Berlin: Economist, 2006.

dents use the same history textbook covering from 1945 to present, starting from the 2007 academic year. Two other books are planned for 2008-2009 school year for upper and lower sixth-form classes, covering from Ancient period to 1945.<sup>25</sup> Such project has deep meaning for the two nations. Both countries have the courage to face the history and search a common understanding of history through dialogue. The political leaders want to let the coming generation to understand the historical facts and try their best to avoid mistakes in history. Without such critical reflection of history, we could not build up mutual trust and confidence. Without mutual trust we could not expect reconciliation. A compromise based on economic consideration will not bring long-term influence. Even political alliance without mutual trust will not last long. However, our political and international ethics is always confined in secular estimation of common good, without serious consideration of justice. As a Christian theologian, my concern is to translate Christian faith into Christian values in public sector. Phenomenologically speaking, Christian social ethics is only a voice in the pluralistic society. Especially there is big challenge of the particularity of Christianity in western theology. As an Asian Christian living in a pluralistic religious society, I would treasure the particularity of Christian faith. In this sense, I would not reduce Christian faith into a form of religious phenomenon. I would emphasize the theological ground of social ethics. Such theological construction is not only an anthropological construction, but also a formulation of our understanding of the revelation of God.

### 5. The Contribution of Global Ethics for China and Japan Dialogue

Due to the influence of the postmodernism, deconstruction thinking shakes the rational justification of value system. The loss of value and norm causes direction crisis in the western society and even in the eastern society. Although we have learnt the lesson of the two World wars in the last century and are so called more civilized people than our forefathers, there are still much religious conflicts happening elsewhere. After the 9/11 events, the theory of cultural conflict between Christianity and Muslim by Samuel Huntington was wide spreading. In response to Huntington's theory, Hans Küng's proposal of "Global Ethics" is worth studying.<sup>26</sup> The contribution of the Global Ethics project is searching for a common platform for inter-religious dialogue. The 4 basic presuppositions are: (1) no peace among the nations without peace among the religions, (2) no peace among the religions without dialogue among the religions, (3) no dialogue among the religions without a consensus on shared values, (4) no new world order without a global ethic.<sup>27</sup> In 1993, the council for a Parliament of the World's Religions in Chicago published a Declaration of the Religions for a Global Ethic. Hans Küng summarized 5 basic maxims as the consensus

25 France diplomatie.

[http://www.diplomatie.gouv.fr/en/france\\_159/label-france\\_2554/label-france-issues\\_2555/label-france-no.-60\\_3469/seen-from-europe\\_3529/france-and-germany-make-history-together\\_4573.html](http://www.diplomatie.gouv.fr/en/france_159/label-france_2554/label-france-issues_2555/label-france-no.-60_3469/seen-from-europe_3529/france-and-germany-make-history-together_4573.html). For more information see <http://www.klett.de>-Ernst Klett Verlag-Editions Nathan-Histoire Geschichte-Microsoft Internet Explorer.

26 Hans Küng, "Auf der Suche nach einem universalen Grundethos der Weltreligionen", *Concilium* 26 (1990), 154-164.

27 Günther Gebhardt, "Towards a Global Ethic", *Ecumenical Review* 52 (2000) 4, 504.

among the great religions.<sup>28</sup> The aim of the inter-religious dialogue is to promote peace among the religions. This Declaration does not aim to invent a new standard of ethics nor impose something new on world religions, but it serves as a new vision for searching world peace. The Declaration identifies 4 "irrevocable directives": (1) non-violence and respect for life, (2) solidarity and a just economic order, (3) tolerance and a life in truthfulness, and (4) equal rights, and partnership between men and women.<sup>29</sup> In studying the Torah, Quran, the Bhagavad-Gita, Sermon on the Mount, the sayings of Buddha, Confucius, Küng found 4 golden rules: (1) not to murder, (2) not to lie, (3) not to steal, (4) not to abuse sexuality.<sup>30</sup> The ground of Global Ethics is not religious, but anthropological. Its major concern is to promote humanity and emphasizes, "Every human being must be treated humanely".<sup>31</sup> The development of the Global Ethics Project found her way in world politics. The InterAction Council(IAC) of former heads of government invited Hans Küng to draft a Declaration of Human Responsibilities, elaborating the principles and "irrevocable directives" into responsibilities of individual and communities.<sup>32</sup> The Third Parliament of the World's Religions in Cape Town 1999 followed the Declaration and invited the social institutions to apply the Global Ethics principles and directives to concrete issues. In my opinion, the ideal of the Global Ethics is important for Japan and China. It is the blessing of the people's in Japan and China, when both governments are willing to solve the conflict through dialogue. The value of common good and mutual respect is meaningful for both parties. Besides the starting point of common interest, Global Ethics promotes the realization of authentic humanity. We could not ignore human right question. We could not ignore the tragedy of war. Those who start a war, should be responsible for the consequences of the tragedy. When we could learn from the history, we could alter the consciousness of humanity.

#### 6. The Limitation of Global Ethics for China and Japan Dialogue

According to one of the Asian representative of the Global Ethics Project, Prof. Liu Shu-hsien, he points out that the issue of cultural difference is a big problem. The original draft of the Universal Declaration of Human Responsibility did not mention the Buddhist tradition, did not distinguish the Confucius idea and her politicized expression, and did not pay enough attention to the Asian understanding of human right.<sup>33</sup> In facing the cul-

28 Hans Küng, "Nicht gutgemeint – deshalb ein Fehlschlag. Zu Michael Welkers Reaktion auf › Projekt Weltethos ‹", *EvKomm* 8(1993), 488. „Die grossen Religionen stimmen schon jetzt überein in 5 Maximen elementarer Menschlichkeit : (1) nicht töten(anderen Schaden zufügen); (2) nicht lügen(betrügen, Verträge brechen); (3) nicht stehlen (Rechte anderer verletzen); (4) nicht Unzucht treiben(ehebrechen); (5) die Eltern achten(Kindern, Bedürftigen und Schwachen helfen).

29 Gerhold K. Becker, „In Search of a Global Ethic: Hans Küng at CAE", *Ethics and Society Newsletter*. Centre for Applied Ethics Hong Kong Baptist University 8(2000)2, 16.

30 Patricia Lefevere, "Hopeful Realist Hans Küng points pathway to Global Ethic", *National Catholic Reporter* 3rd September 2004, 10.

31 Gerhold K. Becker, „In Search of a Global Ethic: Hans Küng at CAE", *Ethics and Society Newsletter*. Centre for Applied Ethics Hong Kong Baptist University 8(2000)2, 15.

32 Günther Gebhardt, "Towards a Global Ethic", *Ecumenical Review* 52 (2000) 4, 507.

33 Liu Shu-hsien, „Global Ethics and Cultural Difference(Chinese)", *Philosophical Magazine(Chinese)* 23 (1998), 52.

tural and religious differences, Küng puts the “humanum” as the common denominator of world religions. From the practical point of view, the emphasis on the search for authentic humanity is the goal of religions; the inter-religious dialogue is the share of the realization of humanity from different ways. Such dialogue is important for mutual understanding and building up of relation. However, there is some limitation of the Global Ethics Project. Firstly, there is still a gap between the acceptance of the minimal consensus of Global Ethics and the commitment to one’s own religious tradition. From Küng’s point of view, “God” is not the core concept of religion, while Buddhism does not have the concept of God. It is understandable that Küng’s anthropological concern dominates his understanding of religion. However, the question is still remain, when someone commits to his religion, it is natural for him to put his religious values into all aspects of life. The Golden Rule of Global Ethics is only the minimal consensus, but not necessary a ground for the ethical commitment. Besides the difference between eastern and western culture,<sup>34</sup> there is question of reductionism excluding the complicated value system in different religions.<sup>35</sup>

Secondly, another limitation of Hans Küng’s “Global Ethics Project” is the definition of ethics from rational term. Ethics is not only a set of moral reasoning or estimation, but also a kind of commitment. In responding the universal moral rationality of Kantianism and Liberalism, the narrative approach to Ethics from Aristotelian and Thomistic understanding shows a different way of doing ethics.<sup>36</sup> Regardless of that criticism, Küng’s Global Ethic project insists on the role of religion as the basis for unconditional moral obligation.<sup>37</sup> However, he tries to use anthropological criteria to re-define religion. When applying the ideal of Global Ethics in Sino-Japanese relationship, both Japanese and Chinese government would claim that they respect the right of others and the value of life. They would agree the basic principles of Küng’s global ethics, however they could not get a real consensus on such political issue.

Thirdly, from a Chinese Christian point of view, I would question whether a minimal approach to social ethic could handle complicated political and national conflict. Christianity, Judaism, Muslim have the root in Abrahamic faith and a transcendent God, they have personal, national and international conflict among them. The ground of Monotheistic ethics is the transcendence God. Without an outside independent mediator could we give a fair judgment? Without a transcendent and absolute frame of reference, could we establish an absolute and universal value system? At this point, I would suggest the theology of the cross as a possible theological response to this situation. The suffering of Christ is the center of the Gospel and consolation to the suffering peoples. The faith in Christ persuades us to repent and accept God’s grace. Especially for the Asian’s shame culture, it is important for us to deepen our guilty feeling. When we do not touch the dark side of

34 Michael Welker, “Gutgemeint-aber ein Fehlschlag Hans Küngs › Projekt Weltethos ‹”, *EvKomm* 6(1993), 354.

35 Michael Welker, “Autoritäre Religion. Replik auf Hans Küng”, *EvKomm* 6(1993), 528.

36 Lisa Sowle Cahill, “Toward Global Ethics”, *Theological Studies* 63 (2002), 331.

37 Jean Porter, “The Search for a Global Ethic”, *Theological Studies* 62 (2001), 117. Jean Porter points out that current philosophical thinking does not take religion as the basis for absolute moral obligation. However, I would defend for the theistic ground for ethic and regard Thomistic understanding of practical reason as another option for Kantian understanding of practical reason.

our history and national history, how could we avoid being the one who start an aggressive war in the name of patriotism? What a pity that the doctrine of Sin is being neglected in the current western theology. The anthropological interpretation replaces the theological presupposition.

Fourthly, although Küng has passion for promoting an authentic humanity, he knows the important of moral energy for the politicians and statemen.<sup>38</sup> However, how could the Global Ethics empowers our will to practice the golden rule. What a ridiculous phenomenon is that the churches in Northern Hemisphere are declining, but the churches in Southern Hemisphere are growing. The secular post-Christian world causes the disintegration of Christian faith and life. On the one hand, the translation of theology in social values in society implies the grounding of root of faith in culture. However, we have to ask a fundamental question. Does the translation process itself losses the characteristics of Christian faith and turns Christian faith as one of the religious choice in the religions supermarket. In my opinion, Hans Küng's "Global Ethics Project" has some contribution for promoting ethical dialogue among the world religions. But, such kind of dialogue does not have the power to persuade people to become an ethical being. If the "Global Ethics Project" does not take Sin as a serious issue and ground in the theology of the cross, such translation of Christian theological terms into non-religious language is not a fruitful way. From the Christian point of view, we could give up hatred and revenge and love cross-culturally by the grace of God.

#### 7. Without Reconciliation there is no forgiveness

In 1997 the Japan Prime Minister Ryutaro Hashimoto gave a speech on Japan's new foreign policy toward China, he pointed out 4 important steps for achieving stability and peace in Asia: awareness of diversity, the need for more dialogue, promotion of cooperation, and the formation of common order.<sup>39</sup> From 1979 onward, Japan has implemented approximately 3.1331 trillion yen in load aid; 145.7billion yen in grant aid, and 144.6billion yen in technical cooperation to China.<sup>40</sup> Until 2003 Japan was China's first trade partner for 11 consecutive years. In 2004 Japan 's trade with China totaled 22,200billion, up 17% over the past years. Despite the political tension between both governments, the leaders keep a rational attitude dealing with the differences. However, this author would argue that there would be no genuine reconciliation based only on financial consideration. After the high official meeting on 24<sup>th</sup> July, the Chinese government invited the Japanese high official representative to visit China on 7<sup>th</sup> August. At the same time, Chinese government expressed that there is difference between Chinese and North Korean government on the North Korean missile issue.<sup>41</sup> In Chinese word, "there is no eternal friend nor eternal enemy". It could be a clear description of political relationship.

38 Patricia Lefevere, "Human Responsibility the Basis for Human Rights, Kung says", National Catholic Reporter 12th November, 1998, 15.

39 "Speech by Prime Minister Ryutaro Hashimoto—Seeking a New Foreign Policy Toward China", The Ministry of Foreign Affairs of Japan <http://www.mofa.go.jp/region/asia-paci/china/seeking.html>.

40 "Overview of Official Development Assistance(ODA) to China", The Ministry of Foreign Affairs of Japan [http://www.mofa.go.jp/policy/oda/region/e\\_asia/china/index.html](http://www.mofa.go.jp/policy/oda/region/e_asia/china/index.html)

41 "Ming Post", 8th August 2006, A25.

Under such circumstance, how could we expect mutual trust and genuine friendship? In my opinion, K  ng's Global Ethics Project could show us the ideal of universal values, but could not mobilize human moral affection to forgive each other. Pure rational estimation without love could not change our heart. In this sense, we have to ask the question how to bridge the ethical consideration and action. From my Chinese theological point of view, K  ng's Global Ethics Project needs clarification on how the moral agent applies the universal ethical principle and how could the conflicting parties experience forgiveness and reconciliation. In time of paradigm shift of the international order, we need a new mind and new heart to do reorientation and reorganization work. We need spiritual renewed political leaders who have the vision to be reformer of international order, peacemaker of local region, enabler for economic cooperation, and promoter of diversity of cultures.<sup>42</sup> We need Hans K  ng's Global Ethics Project to lay a foundation for inter-religious, or international dialogue, and we need spiritual renewed people to be "Servant Leader". Such "Servant Leader" has vision and mission to practice love and justice. After the Japanese 's rejection of unconditional surrender, the first atomic bomb was dropped in Hiroshima on 6<sup>th</sup> August 1945. After 61<sup>st</sup> years, could we learn from history to avoid aggression and war and promote peace and friendship in cross-cultural dimension?

#### 8. Theological Reflection from a Chinese Christian Perspective

As a theologian in seminary and pastor in congregation, I would concern how to build up the relation between Christian faith and ethical implication for the public sphere. K  ng's Global Ethics Project presupposes a universal anthropological approach of religion. The function of religion is to actualize the humanum and universal ethical demand for promoting peace and tolerance among different cultures and races. However, the question of the essence of religion and the comparison of religions is important in Chinese context. Christian in China is minority and do not share the history of Christentum in Europe. The challenge of the post-Christianity and the pluralistic understanding of religious truth needs not be the starting point of Chinese Christian theological construction. From my point of view, we have to deal with the issues of the integration of Global Ethics and Virtue Ethics, the integration of propositional and narrative approaches, the role of character formation, and the role of religious affection and the role of spiritual formation. Without a solid theoretical foundation, it is hard to expect the Global Ethic project could soften the religious and political conflict. Despite such difficulties, we could hope for the better future for Christ has reconciled the world with God.

42 I get idea from <http://theory.people.com.cn/Big5/41038/3805906.html>

*Michael Northcott:*

*The Weakness of Power and the Power of Weakness: The Ethics of War in a Time of Terror*

Under the guise of the linguistic device of the 'war on terror' America and Britain reinvented the Cold War rhetoric of endless war and reoccupied Afghanistan and Iraq. In 2002 a significant number of American theologians declared that the 'war on terror' was a just war. But the indiscriminate strategies and weapons deployed in these new imperial wars, and in the subsequent occupations, fall short of the traditional just war standards of discrimination between combatants and non-combatants, and proportionate response. The concept of just war remains a significant element of the moral legacy of the historic contingency of Christianity and empire in modern international relations but its practice implies a standard of virtue in war which is increasingly marginalised by modern technology and by the amorality of the last superpower. There is no courage involved in dropping Moab bombs from 43,000 feet over a densely populated city. The violent power represented by the technology of total war generates an asymmetry of weakness in those subjected to these techniques of terror. But those who draw inspiration and legitimacy from this weakness in their struggle with the West also reject virtue in war. In a time of terror the theological vocation is to speak peace and to recall the terms in which the peace of God was achieved by way of the cross.

In the days prior to the triumphant removal of the statue of Saddam Hussein from the central square in Baghdad, Sky News, BBC News 24, CNN and Fox News broadcast video from 'embedded' journalists of British and American tanks and armoured personnel characters rolling through the palm fringed streets of Baghdad and Basra. But the true extent of the carnage of Iraqi civilians that preceded this pyrrhic victory was hidden from public view in Britain and America. On Monday and Tuesday of the second week of the invasion American planes dropped cluster bombs in a poor and closely populated region of the town of Al-Hilla, 80 kilometres south of Baghdad, killing 61 and inflicting horrendous injuries on 460. Most of the injured were children. The tally of dead and injured was from the International Committee of the Red Cross (ICRC) in Iraq whose spokesman Roland Huguenin-Benjamin, reported that most of those he saw arriving at the large teaching hospital in Al-Hilla 'were in a serious condition, and they also witnessed a scene which made us use the word horror. It's that of several dozens of bodies which were completely blown to pieces.'<sup>1</sup>

Unlike British and American television, Al Jazeera showed pictures from non-embedded Arab cameramen employed by Reuters and Associated Press of babies cut to pieces in Al-Hilla, of childrens' faces pock marked with shrapnel, and of two trucks filled with the bodies of women and children outside the local hospital. Dr Hussein Ghazay at the hospi-

1 Paul Reynolds, 'Analysis: Risk to Civilians Mounts', BBC News Online, April 4, 2003, [http://news.bbc.co.uk/1/hi/world/middle\\_east/2909589.stm](http://news.bbc.co.uk/1/hi/world/middle_east/2909589.stm).

tal said that 'all the injuries were either from cluster bombing or from bomblets that exploded afterwards when people stepped on them or children picked them up by mistake.'<sup>2</sup> After visiting the hospital Robert Fisk wrote 'the wounds are vicious and deep, a rash of scarlet spots on the back and thighs or face, the shards of shrapnel from the cluster bombs buried an inch or more in the flesh. The wards of the Hilla teaching hospital are proof that something illegal—something quite outside the Geneva Conventions—occurred in the villages around the city once known as Babylon.'<sup>3</sup> An Agence France Presse correspondent Nayla Razzouk reported seeing the telltale small parachutes that are attached to each tiny cluster bomblet in the streets of Al-Hilla.<sup>4</sup> The type of bomb deployed there, and throughout Iraq, is known as BLU97 A/B. Canisters the size of a Coke can are delivered by high flying B52s, and from tanks. The cluster bomb is technologically highly sophisticated and is designed so that around 50 metres above the ground it breaks open. Hundreds of tiny yellow bomblets are released and float down on parachutes; they are designed to explode before they reach the ground so that shards of steel are spread over an area equivalent to two football fields. The power of these multiple explosions can destroy a tank or it can rain death and injury on a hundred houses and their occupants. Residents of Al-Hilla described how the bomblets seemed to fill the air with a 'voice of explosions'; it was as if the sky were 'raining fire.' Around 5 per cent of the bomblets usually fail to explode, and so they become devastating but miniscule anti-personnel mines. Al-Hilla residents saw many such bomblets in and around their houses, turning whole streets into killing zones long after the bombers had gone.

In the fog of war the phrase 'weapons of mass destruction', the ostensible reason America and Britain launched the war in Iraq, receded into the background. The media discourse was of 'Brits' and Americans 'liberating the Iraqis' from Saddam Hussein and his reign of terror. Terrible physical evidence of the wickedness of his regime was soon uncovered in Basra by British troops. But the only weapons of mass destruction – that is anti-personnel weapons which inflict indiscriminate death and injury by technical means contrary to the Geneva Conventions – seen in Iraq during the invasion and occupation were the cluster bombs, depleted uranium shells, and Moab bombs of American and British forces. The use of such indiscriminate technology is indicative of the psychology of what Samuel Huntington has called the 'lonely superpower' of the United States which is willing arbitrarily to impose its will on the rest of the world by all means available, regardless of international law or basic human morality. When American generals were asked why they made initial forays into Baghdad even before the war was 'won' they said 'we did it to show that we can'. The rain of fire falling on the people of Iraq was a terrible portent in the skies of the technological prowess and the arbitrary amoral fiat of American empire.

The indiscriminate nature of the weapons of mass destruction used by American and British troops in the invasion and occupation of Iraq has not prevented a number of moral theologians from suggesting that the Iraq war was and remains a just war within the terms

2 Pepe Escobar, 'Cluster bombs liberate Iraqi children', Asia Times Online, April 4, 2003, [http://www.atimes.com/atimes/Middle\\_East/ED04Ak07.html](http://www.atimes.com/atimes/Middle_East/ED04Ak07.html).

3 Robert Fisk, 'Wailing Children, the Wounded, the Dead', The Independent, April 3, 2003.

4 'Over 60 people dead after US bombs impoverished Iraqi neighbourhood', Democracy Now, April 3, 2003, <http://www.democracynow.org/article.pl?sid=03/04/16/2156248>.

of just war first enunciated by Augustine and subsequently elaborated by Aquinas, Grotius and others. Prominent among these theological advocates is George Weigel who suggested that the use of 'proportionate and discriminate force' for political ends lies at the heart of the just war tradition of statecraft and that it is just such a use which is involved in the pre-emptive invasion of Iraq and of other 'rogue states'.<sup>5</sup> Weigel argues that the invasion is morally justified either because these states possess weapons of mass destruction or because they harbour terrorists. And whereas the ownership and use of weapons of mass destruction by states such as Great Britain and the United States is legitimate because these are 'stable, law-abiding states', the ownership of such weapons by 'outlaw' or 'rogue' states constitutes a right of defence against aggression in just war reasoning since such states cannot be trusted not to use such weapons.

This claim is remarkable in its amnesia. Weigel neglects to mention that the United States is the only nation to have deployed both nuclear weapons and chemical weapons against military and civilian targets in the last fifty years. As is well known, the United States dropped nuclear bombs on Hiroshima and Nagasaki in 1945. It also used chemical weapons, such as the defoliant Agent Orange and napalm, in Vietnam, Cambodia and Laos, and its forces continue to use them in Columbia – in the so-called 'war on drugs' – and in Iraq. The United States has also used irradiated weapons containing depleted uranium in all combat zones since this material was first used in the Gulf War in 1991, despite concerns at its carcinogenic effects on civilians as well as on the military.<sup>6</sup> The United States has also used conventional weapons of mass destruction such as the Moab bomb – whose destructive force is ten times greater than the thermonuclear devices exploded over Japan in 1945 – and cluster bombs. Both kinds of ordinance are indiscriminate in the manner of their operation between civilian and military targets because of the large area these weapons are designed to destroy.

Weigel does not discuss the specifics of the tactics or weaponry of the United States forces. His concern is solely with the moral legitimacy of the declaration of the 'war on terror' and the subsequent actions of the United States government against 'rogue states' which are creators of 'lethal disorder' in a world of internationally agreed legal and moral norms in which the United States is a beacon of light. The accomplices of rogue states in creating lethal disorder are terrorist organisations such as al Qaeda which are 'parasite states' whose only function is 'the slaughter of innocents for ignoble political ends' and against which the declaration of the 'war on terror' is even more unambiguously justified than war against rogue states.<sup>7</sup> His argument presumes that there is no need to address *ius in bellum* issues in laying out the case for *ius ad bellum* because the just war tradition makes a careful distinction between the legitimacy of going to war and conduct in war. However, since the invention and widespread use of indiscriminate aerial bombing, this is a distinction whose moral legitimacy is now in doubt.

Weigel is not alone in providing moral and theological arguments for both the discourses and strategic decisions involved in the construction and conduct of the 'war on

5 George Weigel, 'Moral Clarity in a Time of War', *First Things* 128 (January 2003), 20 – 27.

6 M. A. McDiarmid, J. P. Keogh, F. J. Hooper et. al., 'Health Effects of Depleted Uranium on Exposed Gulf War Veterans', *Environmental Research*,

7 Weigel, 'Moral Clarity', 23 – 4.

terror'. A number of other prominent American Catholic academics including Jean Bethke Elshtain, Robert P. George, Richard Neuhaus, and Michael Novak present related arguments. Robert George argues that pre-emptive action against rogue states to remove their capacity to deploy weapons of mass destruction is legitimated by medieval elaborations of just war theory which argued that past aggression could constitute just cause.<sup>8</sup> Michael Novak argues that a crucial adaptation of just war thinking is required by the invention of what he believes is a new strategy of 'asymmetrical warfare' by terrorist cells and organisations which though dependent on 'clandestine assistance willing to help them secretly, are not responsible to any public authority'.<sup>9</sup> Asymmetrical warfare involves 'dramatic and murderous attacks' by these cells and organisations on innocent people with no other aim than that of shaking 'legitimate elected governments to their foundations'. The jihad declared by Islamic terrorists against the West requires that 'a war to prevent this new type of terrorism is not only just but morally obligatory' and 'no major moral authority had any difficulty in recognizing this'.

There are a number of problems with Novak's position, and with any attempt to defend the rhetoric of a 'war on terror' using traditional just war criteria. His portrayal of asymmetrical warfare as presenting a novel moral problem is historically inaccurate given its widespread use in attempts to resist the British empire in the nineteenth and twentieth centuries. And his claim that the terrorists have no ends in view other than the ending of innocent life and the undermining of democracy is also specious. The first declared aim of Osama bin Laden was to remove what he regarded as the infidel troops of the United States from the holy land of the prophet, and with the establishment of major military bases in Iraq in 2003 the United States has now closed its military bases in Saudi Arabia Muslims.

Just as there is a strange contiguity between American strategy in the Middle East and bin Laden's own declared aims, so there is a rhetorical mirroring between bin Laden's language of a holy war against the West and the rhetorical association of the Christian language of 'just war' and a 'war on terror'. As President Bush inadvertently intimated in the initial announcement of the new strategy, the war on terror is in reality a 'crusade' against those many Muslims, and other disaffected peoples, whose lands have been subjected to the imperial ideology of neoliberalism and the standard operating procedures of American foreign policy, which include financial and military aid to governments which terrorise their own people, and efforts to destabilise or overthrow Third World governments who insist on putting the interests of their citizens before those of American corporations and bankers.<sup>10</sup>

Those who argue that the 'war on terror' falls within the conventional logic of just war reasoning neglect the fact that it was declared against all those who resist the agents of

8 Robert P. George, 'Just War in Iraq', Institute for American Values, (December 2002) at [http://www.americanvalues.org/html/1b\\_\\_\\_robert\\_george.html](http://www.americanvalues.org/html/1b___robert_george.html).

9 Michael Novak, 'Asymmetrical Warfare and Just War: A Moral Obligation', National Review Online (February 2003) at <http://www.nationalreview.com/novak/novak021003.asp>.

10 For a detailed and well documented account of the American orchestrated overthrow of the government of President Aristide in Haiti in 1991 see Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (Berkeley: California University Press, 2003), 51 – 90.

American imperial hegemony, and in this sense is no more a war than the 'war on drugs' or the 'war on crime'. The language of the war on terror is also analogous to the language of the 'Cold War'. In neither case can traditional just war reasoning apply since there is no proper limit to the declared aims of such 'wars'. The defence of the rhetoric and strategy of a 'war on terror' by prominent American Catholic theologians is in marked contrast to the stance of Pope John Paul II on recent international conflicts, and to that of his successor, Pope Benedict XVI. In an address to diplomats in the Vatican in January 2003 John Paul II first cites the declaratory words of John XXIII to the United Nations General Assembly in 1962 'no to war!', and continues

War is not always inevitable. It is always a defeat for humanity. International law, honest dialogue, solidarity between States, the noble exercise of diplomacy: these are methods worthy of individuals and nations in resolving their differences. I say this as I think of those who still place their trust in nuclear weapons and of the all-too-numerous conflicts which continue to hold hostage our brothers and sisters in humanity. At Christmas, Bethlehem reminded us of the unresolved crisis in the Middle East, where two peoples, Israeli and Palestinian, are called to live side-by-side, equally free and sovereign, in mutual respect. Without needing to repeat what I said to you last year on this occasion, I will simply add today, faced with the constant degeneration of the crisis in the Middle East, that the solution will never be imposed by recourse to terrorism or armed conflict, as if military victories could be the solution. And what are we to say of the threat of a war which could strike the people of Iraq, the land of the Prophets, a people already sorely tried by more than twelve years of embargo? War is never just another means that one can choose to employ for settling differences between nations. As the Charter of the United Nations Organization and international law itself remind us, war cannot be decided upon, even when it is a matter of ensuring the common good, except as the very last option and in accordance with very strict conditions, without ignoring the consequences for the civilian population both during and after the military operations.<sup>11</sup>

The consequences for the civilian population of Iraq have been terrible, as the Pope foresaw. The medical journal *The Lancet* estimated the number killed in the first two years of the conflict at 100,000 and with the scale of present deaths in Baghdad and elsewhere this number is now much exceeded. Iraq is now one of the most lawless and terrorised places on earth where few can go about their daily lives free from fear of death, kidnapping or violence. In Baghdad alone body counts at local morgues indicate that 1000 civilians are dying every week in violent deaths as I write this in 2006. Philosopher Simon Scheffler suggests that it is the defining quality of terrorism to spread such a degree of fear in a civilian population as to lead to a breakdown in the stability of daily life.<sup>12</sup> But on this definition American forces have also been terroristic in their provocation of a state of lawlessness and violence throughout Iraq, and in their use of extreme and indiscriminate force. In the brutal siege and destruction of the city of Falluja, in the frequent use of rocket attacks on neighbourhoods thought to house insurgents, and in the frequent night-time raids on

11 John Paul II, 'State of the World According to John Paul II: Address to the Diplomatic Corps Accredited to the Vatican', Vatican City, January 13, 2003 at [zenit.org](http://zenit.org).

12 Simon Scheffler, 'Is Terrorism Morally Distinctive?', *The Journal of Political Philosophy*, 14 (2006), 1 – 17.

houses by occupying troops occupying forces have played a definitive role in the creation of a destabilising climate of fear in Iraq. Counter-insurgency operations are the legacy of imperial wars; their aim is so to disrupt and destabilise normal civilian life that it becomes difficult for insurgents to hide. The most extreme form of counter-insurgency is to lock up the population behind barbed wire, as the British did in the Chinese 'new villages' in Malaya in the 1950s.<sup>13</sup> But if counter-insurgency spreads as much fear and instability as terrorism, and is as indiscriminate between insurgents and civilians, then it is hard to claim a clear moral dividing line between terrorism and counter-terrorism, insurgency and counter-insurgency under just war reasoning.

The indiscriminate effects of modern warfare have occasioned a consistent and revolutionary turn in Catholic just war thinking which, while it is resisted by Weigel and Novak as 'pacifistic', has seen the Popes consistently arguing against the use of war to resolve international disputes in the past forty years. The first clear and unambiguous Vatican turn against war as a means of resolving international disputes may be discerned in the speeches and encyclicals of Pope John XXIII who argued that the core of the church's opposition to coercion and war was connected with the doctrine of liberty, including religious freedom. Thus in his 'message of peace' in September 1961 John XXIII declares,

It is truly upon wise men that the issue depends: that force shall not prevail, but right, through free and sincere negotiations; that truth and justice shall be vindicated by safeguarding the essential liberties and the insuppressible values of every nation and of every human person.<sup>14</sup>

Coming as he did from behind the Soviet Iron Curtain, Pope John Paul II knew at first hand the significance of this relation between liberty and peace, and he turned the emergent anti-war stance of Pope John XXIII in the 1960s into consistent Papal opposition to war in the last two decades in his opposition to the first Gulf War, to military actions in Chechnya, Bosnia-Herzegovina and Kosovo, and to the present wars in Afghanistan and Iraq. His stance against war was built on his experience and analysis of the coercive violence of communism, which also occasioned his momentous support for the non-violent resistance movement in Poland, and which ultimately led to the peaceable 'velvet revolution' throughout the Soviet Block countries. Against those who suggest that the eschatological preference of the Christian moral tradition for non-violence in human affairs lacks efficacy in the 'real world' the events of Eastern Europe in 1989, and the crucial role of a peaceable Pope, stand as a powerful counter-witness.

Recognition of the connection between communism and militarism is made explicit in the encyclical *Centesimus Annus* in which John Paul II suggests that the doctrine of 'total war' that arose out of the struggle between the West and totalitarianism in the Cold War had infected international relations in general:

As a result of this doctrine, the search for a proper balance between the interests of the various nations was replaced by attempts to impose the absolute domination of one's own

13 A. J. Stockwell, 'Southeast Asia in War and Peace: The End of European Colonial Empires', in Nicholas Tarling (ed.), *The Cambridge of History of Southeast Asia - Vol. 2: The Nineteenth and Twentieth Centuries*, (Cambridge: Cambridge University Press, 1992), 374 – 80.

14 John XXIII, 'Message for Peace', September 8, 1961 at <http://www.catholicpeacefellowship.org/nextpage.asp?m=2036>.

side through the destruction of the other side's capacity to resist, using every possible means, not excluding the use of lies, terror tactics against citizens, and weapons of utter destruction.<sup>15</sup>

James Carroll perhaps claims too much when he suggests that the consistent rejection of war as a legitimate means of resolving conflict by the Roman Catholic Church under John Paul II reverses more than 1000 years of church history. After all many of the Popes in the twentieth century were critical of the resort to war, as well as of the methods of modern warfare. But Carroll is surely correct in suggesting that the consistency of John Paul II's opposition to war represents an important revision of the Catholic tradition of just war teaching.<sup>16</sup>

This revision finds its origin in Catholic moral deliberation after the Second World War which was provoked by the dropping of the nuclear bombs on Japan, and by the obliteration or fire bombing first of English and then of German and Japanese cities.<sup>17</sup> The fruit of this deliberation was made explicit in the Vatican II document *Gaudium et Spes* which, referring to prior Papal denunciations of 'total war', condemned 'any act of war aimed indiscriminately at the destruction of entire cities or extensive areas' as a crime against God and humanity.<sup>18</sup> It is because modern weapons can inflict such 'immense and indiscriminate havoc which goes far beyond the bounds of legitimate defence' that Vatican teaching now more strongly affirms the traditional presumption against violence.<sup>19</sup> The implication is not, as Weigel suggests, that this terminates the effectiveness of just war thinking in the contemporary Church but on the contrary that the new evils of modern warfare demand significant adaptation of the tradition.

Pope Benedict XVI has also strongly associated himself with the tilt of Catholic social teaching against modern technological warfare. In his first world day of peace message he reveals that his choice of the name Benedict was a consequence of his own commitment to peace:

The very name Benedict, which I chose on the day of my election to the Chair of Peter, is a sign of my personal commitment to peace. In taking this name, I wanted to evoke both the Patron Saint of Europe, who inspired a civilization of peace on the whole continent, and Pope Benedict XV, who condemned the First World War as a 'useless slaughter' and worked for a universal acknowledgment of the lofty demands of peace.<sup>20</sup>

The title of this message, 'The Problem of Truth and Untruth' takes up John Paul II's linkage of lies and coercion, propaganda and war, truth telling and peace. Benedict XVI suggests that 'whenever men and women are enlightened by the splendor of truth, they

15 John Paul II, *Centesimus Annus* (Vatican City: 1991), para. 14.

16 James Carroll, 'The Pope's True Revolution', *Time Magazine*, (April 3, 2005), <http://www.time.com/time/covers/1101050411/obessay.html>.

17 John C. Ford, 'The morality of obliteration bombing', *Theological Studies* 5, (1944), 261 – 273.

18 Pastoral Constitution of the Church in the Modern World: *Gaudium et Spes* Promulgated by his Holiness Pope Paul VI on December 7, 1965, paragraph 80, at [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_cons\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html).

19 'Gaudium et Spes' quote in <http://www.monksfordoration.org/justwar.html> p. 5

20 Pope Benedict XVI, Message for 2006 World Day of Peace 'The Problem of Truth and Untruth Is Concern of Every Man and Woman', Vatican City, December 13, 2006, para 3.

naturally set out on the path of peace', and that true peace therefore involves truthful perception of the divine order of being and not simply the absence of war:

peace cannot be reduced to the simple absence of armed conflict, but needs to be understood as "the fruit of an order which has been planted in human society by its divine Founder," an order "which must be brought about by humanity in its thirst for ever more perfect justice." As the result of an order planned and willed by the love of God, peace has an intrinsic and invincible truth of its own, and corresponds "to an irrepressible yearning and hope dwelling within us."

In a clear reference to Augustine, Benedict XVI describes peace as a 'divine grace' whose reception requires 'conforming human history – in truth, justice, freedom and love – to the divine order'.<sup>21</sup> Benedict XVI quotes John Paul II's strong critique of fundamentalist inspired terrorism and of the attempts of those who oppose it 'to try to impose on others by violent means what we consider to be the truth' since this also 'is an offence against the dignity of the human being, and ultimately an offence against God in whose image we are made.' But this does not lead to any condoning of an indiscriminate reaction. Like John Paul II, Benedict XVI is concerned about the lack of discrimination between the military and civilians in modern warfare and suggests that international humanitarian legislation needs to be updated in order to relate to 'newer and more sophisticated weapons.' He also laments the disruptions to peace represented by terrorism, by nuclear weapons, and by the 'continuing growth in military expenditure and the flourishing arms trade'.<sup>22</sup>

Pope Benedict XVI does not however join John Paul II in an analysis of the causes of terrorism. After the terrorist attack on the American Eastern seaboard Pope John Paul II had suggested that 'history, in fact, shows that the recruitment of terrorists is more easily achieved in areas where human rights are trampled upon and where injustice is a part of daily life'.<sup>23</sup> In this account he is close to those liberation theologians whom Cardinal Ratzinger had frequently condemned when they argued that American foreign policy in Central and Latin America represented a form of 'structural violence'. George Weigel is critical of religious leaders who allow any linkage between the injustices perpetrated by American foreign policy, the extreme inequality fostered by neoliberalism, and the efforts of non-state actors violently to resist America. But the evidence of a close association between American economic and militaristic strategies and the growth of terrorism is powerfully exposed by recent events in Iraq. Despite the frequent claims of the Bush administration, there was no collusion between the Iraqi State or non-state actors and the loose affiliation of Islamist cells known as al Qaeda before the American invasion of Iraq. However since the invasion Iraq has become al Qaeda's principal theatre of operation and primary recruiting ground. In resisting the clear linkage between American support for regimes which regularly kidnap, torture and kill their own citizens and the growth of terrorism, Weigel resists not only the Pope's position but the evidence of the present Iraq conflict.

Weigel is also highly critical of what he calls the new Catholic default position on the injustice of modern warfare. He complains that Catholics and their leaders have become

21 Benedict XVI, 'The Problem of Truth and Untruth', para. 4.

22 Benedict XVI, 'The Problem of Truth and Untruth', para. 14.

23 John Paul II, 'To fight terrorism go to its root causes', Vatican City, 8 September 2002.

over-focused on principles of discrimination and non-combatant immunity and that this has produced a blanket disapproval of war in general and the effective termination of the just war tradition in the Church.<sup>24</sup> But Weigel nowhere considers the fact that the indiscriminate nature of modern military technologies has produced a terrifying increase in civilian casualties and deaths in warfare in the last sixty years. As Oliver O'Donovan acknowledges aerial warfare represents a major challenge to the just war tradition and it was for this reason that indiscriminate aerial bombing in the Second World War was denounced by a number of clerics, including Bishop Bell of Chichester, while most people, who had little knowledge of the just war tradition, did not regard it as morally problematic.<sup>25</sup> Catholic Bishops in the United States were also highly critical of the extensive use of aerial bombing, chemical weapons and other indiscriminate tactics in Vietnam, Cambodia and Laos, although these only received wide public approbation in the later stages of the conflict when newspapers began to publish photographs of their horrific effects on women and children.<sup>26</sup>

The careful and nuanced Papal position on war witnesses not to the termination of the just war tradition, which originated as an attempt by Augustine of Hippo to limit the evils of imperial Roman warfare, but to its continuing value as a form of Christian moral deliberation on violence in the context of the rise of another empire with military power millions of times more powerful in its death-dealing capacity than that of the Roman empire. The Papal objection is not to war as such but to 'total war' by which is indicated the indiscriminate and disproportionate nature of modern technologically enhanced warfare. As John Howard Yoder argues it is crucial to the credibility of the just war tradition that when *jus in bellum* criteria indicate that a particular war will not be fought by just means, then this ought to influence judgement about *jus ad bello* such that 'an intrinsically just cause would have to be forsaken'.<sup>27</sup>

Those who argue that the 'war on terror' and the invasions of Afghanistan and Iraq fall within the terms of the just war doctrine fail to address the justice or otherwise of the means used, or denounce those who do. Thus Jean Bethke Elshtain criticises Edward Said and other intellectuals who use what she suggests are exaggerated estimates of war deaths and injuries in the last Gulf War in opposing the second Iraq war.<sup>28</sup> But Elshtain does not consider the injustice, and illegality, of the strategies of United States forces in that conflict including as they did the destruction of essential infrastructure such as running water and power lines as well as the use of aerial bombing and cruise missiles in civilian areas. Neither does Elshtain discuss the tragic legacy of genetic deformities to Iraqi children and Gulf War veterans, and the slow deaths from cancer and other ailments, caused by the use of

24 George Weigel, 'The Just War Tradition and the World After September 11', *Logos*, 5 (Summer 2002), 13–44.

25 Oliver O'Donovan, *The Just War Revisited* (Cambridge: Cambridge University Press, 2003), 33. See also Andrew Chandler, 'The Church of England and the Obliteration Bombing of Germany in the Second World War', *The English Historical Review*, 108, (October 1993), 920–946.

26 On the implications for just war arguments of American tactics in Vietnam see D. Thomas O'Connor, 'A Reappraisal of the Just-War Tradition', *Ethics*, 84 (January 1974), 167–173.

27 John Howard Yoder, *Being Honest in Just-War Thinking* (Eugene, OR: Wipf and Stock, 2001), 71.

28 Jean Bethke Elshtain, *Just War Against Terror: The Burden of American Power in a Violent World* (New York: Basic Books, 2003), 87–8.

more than 300 tons of depleted uranium in the novel munitions deployed by the United States in that conflict.<sup>29</sup>

The principle of discrimination, and the associated humanitarian treatment of prisoners of war, is not an arcane aspect of traditional just war teaching as Elshtain and others intimate but goes to the roots of the present problem of Islamic terrorism. Many of those attracted to the terrorist spectrum of the worldwide Islamist movement, including some of those who attacked America in 2001, have been subjected to torture in countries such as Egypt and Syria. Similarly of those involved in resistance to the American and British occupation of Iraq a number of prominent individuals, including Abu Musab al-Zarqawi, the Jordanian-born and recently assassinated Iraqi insurgent, have also been tortured by Middle Eastern governments friendly to Western interests. The terror occasioned by torture, and the other brutal tactics deployed in the 'war on terror', such as the killing of more than 3000 civilians in the first eight weeks of the invasion of Afghanistan, far from justly removing or resolving the threat of terrorism, turns more Islamists toward support for violent means.<sup>30</sup>

In addition to proper public deliberation on just means in considering the case for a particular military intervention, Yoder suggests that the credibility of the just war tradition requires that those engaged in what they initially believed to be a justly engaged military conflict who find themselves required to engage in tactics, or to use weaponry, which are unjust, because they are disproportionate or indiscriminate in their effects, ought to have the opportunity to refuse to obey orders.<sup>31</sup> As it happens a number of individuals in both British and American forces have formally refused to return to duty in Iraq because of they have come to believe in the course of the war that it is being fought unjustly. Most such individuals have been subjected to court martial proceedings where the injustice or otherwise of the means used in Iraq has not been open to contestation. This is hardly evidence, as Weigel claims, that the only place where just war reasoning is still alive is in the military.

Part of the problem, as Yoder intimates, is that the Church has not put much effort into educating Christian people, and especially Christians in the armed forces, about the nature and significance of just war limitations.<sup>32</sup> Another difficulty is that war, once engaged in, produces its own dynamic of loyalty and patriotism in which moral discrimination of the kind commended by the just war tradition falls to the wayside. But if, as just war advocates contend, the military are now the people who are most serious in their practice of the kinds of moral deliberation mandated by the just war tradition,<sup>33</sup> then we ought to find procedures within the military for recognising occasions when it is legitimate for service-

29 The Royal Society, *The Health Effects of Depleted Uranium Munitions* (London: Royal Society, 2001). See also

Malcolm Aitken, 'Gulf war leaves legacy of cancer', *British Medical Journal*, 319 (August 14, 1999), 401; Helen Caldicott, Michio Kaku, Jay Gould, and Ramsey Clark, *Metal of Dishonor: How Depleted Uranium Penetrates Steel, Radiates People and Contaminates the Environment* (New York: International Action Center, 1997).

30 Elshtain, *Just War Against Terror*, 82 – 3. See also Marc W. Herold, 'A Dossier on Civilian Victims of United States' Aerial Bombing of Afghanistan: A Comprehensive Accounting', *Znet Magazine* (2005) at [http://www.cursor.org/stories/civilian\\_deaths.htm](http://www.cursor.org/stories/civilian_deaths.htm).

31 Yoder, *When War is Unjust*, 78.

32 Yoder, *When War is Unjust*, 78.

33 Weigel, 'Moral Clarity in a Time of War', 22.

men or women to refuse to obey orders or to continue to engage in a conflict on just war grounds.

Despite Weigel's claim that the present war reveals the continued influence of just war arguments as a 'tradition of statecraft', the growing and indiscriminate nature of the weapons used by US servicemen has been married not with a revival of just war thinking but, on the contrary, with an emergent pagan 'warrior ethos', and a related set of battlefield procedures which are far from just or discriminate with respect to non-combatants in the field of conflict.<sup>34</sup> Deliberate massacres of civilians in Iraq, such as those at Falluja and Haditha, provide well-documented evidence that the indiscriminate nature of US weaponry is accompanied by neglect of non-combatant immunity at close quarters.<sup>35</sup> It is then reasonable to trace a connection between the technological distancing of combatants from civilian deaths and injuries resulting from the use of indiscriminate weapons such as cluster bombs, depleted uranium ordinance and Moab bombs, and a more systematic desensitisation to civilian casualties on the battlefield. It is well established in technology studies that technologies shape the behaviours of their users. Thus the capacity of cars to shape the consciousness of their drivers, for example by desensitising them to the dangerous effects of speed on other road users, and on mammals and the environment, is attested by studies of automobile cultures.<sup>36</sup> It is well known that servicemen in Vietnam and Cambodia, and presently in Afghanistan and Iraq, regularly use heavy rock music and mind altering drugs while controlling battlefield devices such as Abram tanks. Combatants pumped up on such devices in command of powerful mobile killing machines, whose devastating effects on civilians and civilian infrastructure are viewed on video monitors in air-conditioned cockpits, are at a significant sensory distance to the effects of their actions. Neither are they in a condition likely to foster moral deliberation on the proper limits of their use of weaponry.

Albert Borgmann suggests that what he calls the 'device paradigm' is crucially implicated in a loss of traditional virtues in technological cultures. Machines such as cars, electronic recording devices and video monitors provide their users with entertainment and mobility in ways which reduce the need to learn embodied skills which involve sensory engagement with the environment and other beings and persons.<sup>37</sup> The short cuts machines provide to embodied human effort reduce the formative character of certain kinds of human physical activity, including those associated with traditional forms of combat. Consequently individuals who rely on the device paradigm have fewer occasions in which to learn the value of traditional moral virtues such as courage, justice and temperance. While courage was a central virtue in the traditional military ethos, it does not take courage to press a button on an aerial bomber though this action may slaughter thousands of people. This is indicative of the moral weakness of technological power. Against it the sacrificial weapon of the weak

34 Weigel 'Moral Clarity in a Time of War'. See also Michael Northcott, *An Angel Directs the Storm: Apocalyptic Religion and American Empire* (London: I B Tauris, 2004).

35 Ellen Knickmeyer, 'In Haditha: Memories of a Massacre', *Washington Post*, May 27, 2006; Omar Khan and Dahr Jamail, 'Remembering the first siege of Fallujah: Excerpts from Testimony Submitted to the World Tribunal on Iraq', *ZNet Magazine*, February 14, 2005 at [http://www.zmag.org/content/print\\_article.cfm?itemID=7246&sectionID=1](http://www.zmag.org/content/print_article.cfm?itemID=7246&sectionID=1).

36 Mimi Sheller, 'Automotive Emotions: Feeling the Car', *Theory, Culture and Society*, 21 (2004), 221 – 242.

37 Albert Borgmann, *Technology and the Character of Modern Life* (Chicago: Chicago University Press, 1989), 15 – 23.

– in which the body of the combatant is part of the suicide bomb – acquires a sheen of moral virtue which in part explains the support such actions garner among disaffected Muslims, even though it cannot excuse the indiscriminate effects of the tactic.

The tradition of Christian moral deliberation on just and unjust wars is closely connected with the Christian account of the moral virtues. Augustine regards the duty of the Emperor to defend imperial subjects from military attack as an aspect of love of neighbour, while Thomas Aquinas places his essay *De Bello* in the section of the *Summa Theologiae* which considers the virtue of charity.<sup>38</sup> The principle of discrimination, or non-combatant immunity, which is now so widely neglected both by State and non-state actors, also has its roots in this linkage between virtue and war. In 1140 Gratian's *Decretum*, a compilation of cannon law, drew up a list of those to be protected from war; a mixture of the weak or inherently peaceful – such as peasants cultivating their land and the poor – and those whose profession forbade them from fighting including clerics of the church. Honore Bonet appealed for mercy towards those who were too powerless to take arms. His work became something of a chivalric code, urging the protection of the weak against the ravages of war.<sup>39</sup> It was in these attempts of the church in the Middle Ages to regulate war through virtue that the modern principle of non-combatant immunity had its origin. This principle reaches a fuller elaboration in the writings of Francisco de Vitoria who was persuaded of its importance on observing the callous treatment of natives by the Spanish in South America.<sup>40</sup> While Vitoria allowed that 'in war everything is lawful which the defence of the common weal requires' he introduced limitations to what was deemed justifiable, in particular insisting that the innocent must not be the prime object of attack. Furthermore soldiers who have surrendered and hence no longer constitute a threat are not viable targets of violence. In essence his teaching is that 'war must not be waged to the ruin of the enemy, and when victory has been won it must be utilised with moderation and to the least degree of calamity for the offending state, bearing in mind that the fault is likely to be that of the rulers, not the people.'<sup>41</sup>

While Paul Ramsey argues that the principle of non-combatant immunity is implicit in the Augustinian logic of the just war tradition, there is a significant difference in tone between Vitoria's denunciation of the viciousness of Spanish imperial tactics and Augustine's discussion of the imperial violence of Rome.<sup>42</sup> The principle of non-combatant immunity represents a significant moment in the recovery of the kenotic Christian 'ethics of weakness' which had prevented the early Christians from sanctifying violence of any kind before the conversion of Constantine. And it is surely no coincidence that this important innovation in the just war tradition emanates from reflection on the brutality and force majeure of the transworld imperialism first pioneered by the Spanish, and later taken up by the British, and now by the United States. Just war rhetoric in the imperial homeland has been incorporated into the neoconservative discourse of power and empire, as is evident in the repetition by its advocates of key phrases from this discourse including

38 O'Donovan, *Just War Revisited*, 9.

39 Harris, *Christianity and War in a Nuclear Age*, p. 81

40 Harris, *Christianity and War in a Nuclear Age*, p. 76

41 Harris, *Christianity and War in a Nuclear age*, p. 77

42 Johnson, *Just War Tradition and the Restraint of War*, p.197

'rogue states' and 'asymmetric power'. In the process a tradition which had restrained war by its moral foregrounding of the protection of the weak even in combat, and from which emerged the modern legal restraints on war of the Geneva Conventions, has become part of the pathology, and moral weakness, of American power.<sup>43</sup>

Medical anthropologist Paul Farmer charts the brutal effects of what he calls the 'pathologies of power' on the health and welfare of peoples in Haiti and Mexico, and argues that 'a rising tide of inequality breeds violence.'<sup>44</sup> The neoliberal form of empire is so invasive that its colonising mechanisms no longer require a formal imperial structure or legal substructure. Instead it operates within the postcolonial social structures of economically colonised regions such as Central and South America, extracting natural resources and the labour of the poor, forcing the poor into debt bondage while the incomes of the small numbers of the rich who collaborate with and sustain the new colonial mechanisms increase. The same strategy is being pursued in Iraq. Iraq had the largest middle class, the most extensive infrastructure of electricity, mains water and drains, schools and colleges, public health and roads, and the most advanced governmental and technocratic bureaucracies of any country in the Middle East. The United States' strategic aerial attack on this infrastructure, and its refusal to prevent further destruction and looting after victory was declared, are not only indicative of a strategy of total war. They represent an attack on the State of Iraq and its people, the brutal intents of which have been more fully revealed in the subsequent occupation. Neoliberal ideology has driven every aspect of the putative reconstruction of Iraq by the Halliburton Corporation, once presided over by Vice President Cheney, and still part-owned by him. The clear and declared aim, other than to secure access to Iraq's oil, was to plant in Iraq a neoliberal model of a corporately constrained democracy where people have the right to vote while the resources of their own land and newly privatised public services and infrastructure are in the hands of transnational corporations over which they have no control.

The true brutality of the neoconservative imperial project is revealed in the extent to which it became standard practice in Iraq to dehumanise prisoners of war by hooding them on arrest, so removing their ability to resist even by their demeanour the powers of their captors, and by the systematic use of torture in Afghanistan and Iraq. The attempts of American Catholic theologians to cover this brutal war with a skein of just war rhetoric represent an effort to sacralise United States imperial power. They also sustain the violence of the universal truth claims of the West in the face of the postcolonial struggles of Muslims and others for emancipation from its brutal and oppressive gaze. In their texts the just war tradition is translated into a metaphysical gloss on the claimed sovereignty of American empire, which asserts the rule of liberty and democracy through total war while destroying the conditions for the genuine realisation of either.

The metaphysics of just war parallels the metaphysics of the invisible hand of the market which, as Gianni Vattimo suggests, has become the last redoubt of those who resist the

43 The Geneva Conventions were described by American Attorney General Gonzalez as a 'quaint' legacy of an earlier era whose proscriptions against torture and other kinds of brutality could be put aside in the 'war on terror'.

44 Paul Farmer, *Pathologies of Power: Health, Human Rights, and the New War on the Poor* (Berkeley: California University Press, 2003), xxvii.

inevitable decline of the centrality of the West.<sup>45</sup> For Vattimo the demise of the putatively universal and rational foundations of Western philosophy parallels the demise of the moral authority of European imperial hegemony. A post-metaphysical and antifoundationalist philosophy consequently requires an 'ontology of weakness' which mirrors the ontology of the founder of Christianity who did not oppose imperial brutality with force but sought to subvert it with a different scale of values. The fostering of such an ontology requires 'a weakening of strong structures' and a recognition that

in all fields truth is becoming an affair of consensus, listening, participation in a shared enterprise, rather than one-to-one correspondence with the pure hard objectivity of things: this objectivity is only conceivable as the outcome of a social labour that binds humans to one another rather than to the "reality" of objects.<sup>46</sup>

Vattimo's account of the consensual and dialogical character of 'weak thought' is intentionally reminiscent of the teaching of the Apostle Paul who suggested that there is no other foundation that can be laid for true being than the cross of Christ, and that consequently 'when I am weak then I am strong.' Pauline thought is kenotic, modelled as it is on the self-emptying of God in the Incarnation of Christ.

Victory in Iraq was declared a week before Palm Sunday in 2003 as American Abram tanks rolled into the central square of Baghdad. Christ chose a donkey and not a chariot to mark his entry into Jerusalem for his own final confrontation with the forces of evil. Pilgrims from Judea marked his path not with swords but palm branches as he rode towards the temple. At his trial and in his preparedness to go the way of the cross, Christ called the bluff of the reigning powers, not appeasing but resisting their claims to dominion through the ultimate weapon of the weak, his preparedness 'to lay down his life for his friends'. For St Paul, who wrote many of his letters from an imperial jail, the cross of Christ becomes 'the power of God' (Rom. 1. 16) which delivers Gentile and Jew alike from the 'power of sin and death' (Rom. 3.9). Liberation from the fallen powers comes not through the Son of God reigning from the skies but through the humility of the crucified Lord who 'gave himself for our sins to set us free from the present evil age.' (Gal. 1. 4). As millions of Christians outside the United States united in opposing the war in Iraq they discovered, as did Pope John Paul II, that the cross can be reclaimed from its misappropriation by Crusaders and warring Christian emperors. When Christians process with palm branches and crosses on Palm Sunday, and sing Hosanna to the Son of David, when they go in the Spirit of Jesus along the Stations of the Cross on Good Friday, they recall that 'God's weakness is stronger than human strength' (1 Cor. 1. 25).

As this foundational narrative of the Christian West affirms, kenotic or weak thought is the only way to resist and reveal the ultimate weakness of power. The asymmetric violence of the terrorist also requires resistance. But only those who refuse the truth of the Christian mythos, and fall instead for pagan wisdom, can imagine that this can be achieved through further displays of indiscriminate violence. Against the Presidential hubris of a vengeful 'war on terror', and its sacralisation by American just warriors, the Papal humility of John

45 Gianni Vattimo, 'Philosophy and the Decline of the West' in Vattimo, *Nihilism and Emancipation: Ethics, Politics, and Law* (New York: Columbia University Press, 2003), edited by Santiago Zabala, translated by William McCuaig, 36.

46 Vattimo, 'Decline of the West', 35.

Paul II in commending disarmament, dialogue and diplomacy as the means to resolve international conflicts indicates that the Vatican, despite its adherence to traditional metaphysics, nonetheless recovered under the Polish Pope the kenotic conscience and weak thought of the founders of Christianity. Instead of decrying European weakness, as Robert Kagan and other neoconservatives do,<sup>47</sup> Europeans would do well, with Vattimo, to embrace it as a sign of virtue, for only the power of weakness can redeem a post-colonial world from terror and violence.

<sup>47</sup> Robert Kagan, *Paradise and Power: America and Europe in the New World Order* (London: Atlantic Books, 2003), p. 100.

*Tisha M. Rajendra:*

*Sovereignty as Responsibility: A Model for Confronting the Problems of Irregular Migration*

The right of a state to control the ingress of aliens has long been regarded as a central aspect of state sovereignty. In international law, states have had virtually unlimited power to control their borders and set immigration policy. While states legally have this right, the presence of millions of unauthorized migrants in the United States and Europe shows that the legal right to control the ingress of aliens is not matched by an actual political capacity.<sup>48</sup> Migration is not the criminal activity of individuals, but rather a response to powerful economic and political forces that are beyond the control of one government. While circumstances in sending countries such as poverty, political instability, and low employment opportunities contribute to migration, the demand for unskilled labour in receiving countries is also a factor. Facing labour shortages as birth rates fall and populations age, receiving countries often provide ample employment opportunities for migrants regardless of their immigration status. When these factors are combined with limited opportunities for migration through legal channels, the result is a rise in unauthorized migration. Even though sovereign states have the right to close their borders, their borders are proving impossible to close.

Unauthorized migration is a breeding ground for human rights abuses. An estimated 2000 people die each year trying to cross the Mediterranean Sea to reach Europe. Hundreds die in attempts to cross the southern border of the United States from Mexico.<sup>49</sup> If they reach their destination, unauthorized migrants are notoriously vulnerable to exploitation both in the workplace and in the housing market.<sup>50</sup> Having no legal status in their new homes, they do not have access to many of the legal and social protections available to citizens and legal residents. Afraid of arrest and deportation, unauthorized migrants often do not claim access to the protection of law even when it is available to them. For example, although many countries offer emergency health care services to anyone who is in need, unauthorized migrants are less likely to seek care for fear of detection. The political will to alleviate the situation of unauthorized migrants is lacking because having crossed borders in defiance of law, the migrants are often viewed, in the words of Linda Bosniak, as “symbols of the state’s violated sovereignty.”<sup>51</sup>

Unauthorized migrants are caught in the tension between universal human rights claims and state sovereignty. While human rights claims are universal and extend to all regardless of citizenship or migration status, in practice, the enforcement of these rights is left to the

<sup>48</sup> {Bosniak, 1992 #60}

<sup>49</sup> Global Commission on International Migration, “Migration in an Interconnected World: New Directions for Action,” (Geneva: Global Commission on International Migration, 2005), 34.

<sup>50</sup> Ibid.

<sup>51</sup> Linda S. Bosniak, quoted in Susan Martin, “The Legal and Normative Framework of International Migration,” (Global Commission on International Migration, 2005).

sovereign state. Once a migrant has crossed a border in violation of the law, it becomes extremely difficult to protect her rights. At the same time, the right of control of borders and ingress of aliens is an essential part of state sovereignty, and indispensable to guaranteeing the safety and security of those within the territory.

This paper seeks to resolve this tension between state sovereignty and human rights as it relates to the issue of unauthorized migration by turning to the model of sovereignty as responsibility. I begin by describing the relationship between state sovereignty and immigration as it is conceived in traditional notions of sovereignty. I then examine the conflict between human rights and state sovereignty in the context of interventions in the name of human rights. I argue that the model of sovereignty as responsibility should be applied to the issue of unauthorized migration, with the result that the state's right to control of borders is circumscribed by the human rights of migrants.

#### Sovereignty and the Ingress of Aliens

State sovereignty has generally been thought to have two applications: internal and external. Internal sovereignty consists of domestic jurisdiction in the territory, including the power to determine the institutional arrangement of government and laws, as well as coercive power to maintain the peace in a territory and punish wrongdoers. The internal authority of the sovereign state ends at its borders; thus state sovereignty is always linked to a specific piece or pieces of land. Domestic jurisdiction also includes the negative ability to exclude foreigners from the state by controlling the borders and the positive ability to set admissions policy for potential new members of the state.

Internal sovereignty in the domestic affairs of the state is accompanied by external sovereignty, which governs relations between states. Externally, sovereignty means that the state is recognized in the international community of other sovereign states, and that the state has a right to non-intervention, the right to be free from external actors in its internal affairs.

In one sense, control of borders is a necessary part of state sovereignty for both practical reasons and philosophical reasons. Practically, if a state cannot decide who will enter its territory, it would be impossible for the state to govern the territory in question.<sup>52</sup> Philosophically, the ability of the state to determine the composition of the political community has been linked to the self-determination of a people. In the thought of political philosopher Michael Walzer, the state is an expression of the collective self-determination of a people. He writes, "[C]ommunal integrity derives its moral and political force from the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out among themselves."<sup>53</sup> The right to non-intervention is necessary to protect this common life of a people from the interference of outsiders. This relationship between sovereignty and collective self-determination is found in the documents of the United Nations as well. The 1945 United Nations Charter affirms the right of peoples to self-determination (Article 55); the govern-

<sup>52</sup> Gerassimos Fourlanos, *Sovereignty and the Ingress of Aliens* (Stockholm: Almqvist and Wiksell, International, 1987), 57.

<sup>53</sup> Michael Walzer, "The Moral Standing of States: A Response to Four Critics," *Philosophy and Public Affairs* 9, no. 3 (1980): 211.

ance of “territories” (i.e. colonies) by other powers is permissible only if the governing power is helping the territory towards self-governance (Article 76).<sup>54</sup> Less than twenty years later, there was a consensus that colonialism was incompatible with the right to self-determination. The 1960 UN Declaration on the Granting of Independence to Colonial Peoples and Countries states, “All peoples have the right to self-determination...Inadequacy of political, economic, social and educational preparedness should never serve as a pretext for delaying independence.”<sup>55</sup> Thus, the sovereignty is linked to the collective right of self-determination.

In the thought of Michael Walzer, the ability to choose and shape one’s own population by controlling admissions policies is a feature of communal self-determination, an expression of a group’s particular self-understanding and shared meanings. Choosing new members through admissions policies is the way that communities protect and continue their common life. Walzer writes, “What kind of community do the citizens want to create? With what other men and women do they want to share and exchange goods?”<sup>56</sup> Like the right to non-interference, the right to control borders and determine the composition of the political community is an expression of a people’s right, against strangers, to have a political community. Walzer writes, “No one on the outside has a right to be inside. The members decide freely on their future associates, and the decisions they make are authoritative and final.”<sup>57</sup> Although Walzer strongly affirms the freedom of the political community to set the admissions policy it chooses, this freedom is not absolute. In cases where the need of the stranger is so extreme that a denial of membership would lead to the death of the stranger, the moral claim of the stranger outweighs the right of the state to exclude.

While Walzer also limits the freedom of states to exclude in his discussion of metics and guestworkers, his basic point, which is implicitly expressed in most discussions of immigration policy in the developed world, is that communal self-determination as expressed in state sovereignty must include the ability to determine the composition of the political community. I now turn to sovereignty as responsibility, an alternative of the sovereignty as self-determination model, which has emerged from the tension between human rights and state sovereignty in the context of state violations of human rights.

#### Sovereignty as Responsibility

Since the end of the Cold War, there have been a number of what can only be termed violations of state sovereignty in the name of the protection of human rights in places such as Bosnia, Kosovo, Somalia and Rwanda. This trend began as early as 1948, when the international community expressed concern over apartheid in South Africa.<sup>58</sup> Whether the

<sup>54</sup> United Nations, Charter of the United Nations (1945 [cited May 15 2006]); available from [www.un.org/aboutun/charter](http://www.un.org/aboutun/charter).

<sup>55</sup> Quoted in Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001), 35.

<sup>56</sup> Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 40.

<sup>57</sup> *Ibid.*, 41.

<sup>58</sup> Kofi A. Annan, “Peacekeeping, Military Intervention, and National Sovereignty in Internal Armed Conflict,” in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, ed. Jonathan Moore (Lanham, MD: Rowman and Littlefield, 1998), 57.

interventions are economic, social, political, or military, there is a general consensus in the international community that a state may not invoke a right to non-interference when the state is persecuting its own citizens. Daniel Philpott calls this phenomenon a revisioning of state sovereignty of historic proportions—a revolution in sovereignty.<sup>59</sup>

Even Michael Walzer, who has a fairly strong conception of state sovereignty writes, "The moral standing of any particular state depends upon the reality of the common life it protects and the extent to which the sacrifices required by that protection are willingly accepted and thought worthwhile. If no common life exists, or if the state doesn't defend the common life that does exist, its own defense may have no moral justification."<sup>60</sup>

If the rights of states derive from the collective rights of individuals who make up that state, then a state that does not defend these rights has lost its own legitimacy.

The authority for the state to run its domestic affairs without outside interference comes into conflict with a commitment to the dignity of the human person when the states themselves are responsible for violations or neglect of human rights. On one hand, the autonomy of the state must be respected, on the other hand, the state is abusing its autonomy.

Rather than seeing these interventions in the name of human rights as violations of state sovereignty, the Report of the International Commission on Intervention and State Sovereignty reconfigures sovereignty itself.<sup>61</sup> Formed in response to the failure of the international community during the Rwandan genocide, the Commission was originally intended to address the questions about the permissibility of interventions for the protection of human rights. In researching this question, the Commission realized that what was needed was a new way of looking at the meaning and purpose of state sovereignty. The Report of the Commission concretizes the movement in international relations to put sovereignty at the service of human rights. The Report adds a third dimension of sovereignty to the traditional perspectives of external and internal dimensions of sovereignty: sovereignty as responsibility.

Sovereignty as responsibility means that states are responsible to their citizens for meeting their basic needs and demands. Rather than being merely an expression of the self-determination of a people, the very purpose of the state is to safeguard human rights. The Report of the Commission draws heavily on the work of Francis M. Deng, et al., who developed the notion of sovereignty as responsibility in the context of case studies of internal conflict in Africa. Deng et al. write, "Sovereignty carries with it responsibilities for the population. It is from acceptance of this responsibility that the legitimacy of the government derives. Sovereignty should ensure that highest standards of human dignity are met,

<sup>59</sup> Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*, 40.

<sup>60</sup> Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustration*, 3rd ed. (New York: Basic Books, 2000), 54.

<sup>61</sup> International Commission on Intervention and State Sovereignty, "The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty," (Ottawa: International Development Research Centre, 2001).

or at least basic needs.”<sup>62</sup> Deng et al go on to say that if the state is failing to meet its responsibilities to its citizens, then the legitimacy of the state is suspect. They write: “The validity of sovereignty must be judged by reasonable standards of how much of the population is represented, marginalized or excluded.”<sup>63</sup> Moreover, it is not the individual state which is the ultimate guarantor of human rights, but the international community.<sup>64</sup> If states are not able to protect the human rights of their people, and if the people have no power to hold the states accountable, then they are accountable to the international community.<sup>65</sup>

This recharacterization of sovereignty from sovereignty as self-determination to sovereignty as responsibility circumscribes sovereignty by the norms of human dignity and human rights. It places states at the service of individuals and dethrones the state as the highest authority. The architects of the sovereignty as responsibility model maintain the model of sovereignty as self-determination, but hold sovereignty as responsibility in tension with traditional perspectives on sovereignty. They use the principles of self-determination as expressed through internal and external sovereignty for the benefit of the human rights of individuals within the state. It is only when human rights and human dignity are at risk due to the neglect or even willful behavior of the state that the right to non-intervention may be violated. Although the model of sovereignty as responsibility was developed as a new way to think about state sovereignty and human rights in the context of internal conflict and state violations of human rights, I argue that this model can well be applied to questions about border control and immigration policy because it shows the limits of the “sovereignty as self-determination” model.

#### Sovereignty as Responsibility and Immigration Policy

If sovereignty as responsibility means that states are responsible for the human rights, then states are limited in the exercise of authority to that which will protect human dignity. Does this mean that states are limited in the type of alien admission policy they chose? The answer to this question hinges on whether the responsibility of the state is for the protection only of its citizens, or of anyone who happens to be within the territory. If the responsibility to protect is limited to the citizens of the political community that the government represents, then the government may set an admissions policy that serves national interest exclusively. If however, the state has a responsibility to protect all within its borders regardless of citizenship status, then the ability of the state to set immigration policy may have to be limited by considerations of human rights. I argue that the responsibility of the state does extend to all within the territory regardless of citizenship status.

Francis Deng et al, and the authors of the Report of the International Commission on Intervention and State Sovereignty do not address the question of whether the state is

<sup>62</sup> Francis M. et al. Deng, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: The Brookings Institution, 1996), 32-33.

<sup>63</sup> *Ibid.*, 33.

<sup>64</sup> *Ibid.*, xv.

<sup>65</sup> Francis M. Deng, “Trapped within Hostile Borders: The Plight of Internally Displaced Persons,” in *Human Security for All: A Tribute to Sergio Vieira De Mello*, ed. Kevin M. Cahill (New York: Fordham University Press and The Center for International Health and Cooperation, 2004), 48.

responsible for the human rights of aliens and residents as well as citizens. Most of their formulations of sovereignty as responsibility use the words citizen and resident interchangeably. Even though this distinction between citizen and resident is not directly addressed, there are several indications within the literature itself that suggest that the responsibility of the state to protect human dignity should be extended to all within the borders of the state regardless of citizenship status. Deng et al. cite three premises that assess the responsibilities of sovereignty.<sup>66</sup> 1) Humanity is the *raison d'être* of the state, 2) The Westphalian system has largely failed to protect and develop the human dignity of the individual, and 3) Benefits should be maximized for individuals, and not states. These premises together suggest that in this model, the dignity of the human person is more important than any communal self-determination. The human person as person, not as citizen is at the center of the notion of sovereignty as responsibility. Thus, although some formulations of sovereignty as responsibility describe responsibility to citizens of the state, this is not because human rights are limited to citizens. Rather, the state has the authority to protect the people in its territory who are usually its citizens. In the event that the state fails to uphold its responsibility, it is accountable both to its own citizens and to the international community, thus emphasizing the moral neutrality of citizenship regarding human rights claims.

The internal applications of sovereignty are to be used in the service of the protection of human rights and human dignity. The state has the responsibility to protect human rights because within the boundaries of its territory, the state alone has authority to establish policies and institutions that protect human rights and promote full flourishing. Although the international community is the ultimate guarantor of human rights, sovereign states have the primary responsibility of protecting the human rights and human dignity of those within their borders. For example, while the Mexican president can regularly advocate for the humane treatment of undocumented Mexicans who work in the United States, because of the norm of non-intervention, he cannot prevent passage of laws in the United States that further serve to criminalize undocumented workers in the United States. Nor can he ensure access to medical care for undocumented workers, nor enforce U.S. labor laws. Ultimately, the territorial dimension of sovereignty ensures that in the absence of a world state with the coercive power to protect human rights, it is the decision of the states to set border control and immigration policies that respect the full dignity of all within the borders, both citizens and non-citizens. Sovereignty as Responsibility means that the sovereignty of the state and its right to non-intervention are not absolute, but limited by the responsibility the state has toward the human rights of those within its territory, regardless of their citizenship status. When setting immigration and border control policy, the guiding factor is not exclusively the will of the political community. The contemporary realities of migration and globalization suggest that the more the state limits opportunities for legal migration, the more migrants will arrive through extra-legal channels. Immigration policy that ignores global economic realities results in a blindness to the desperation of migrants who are forced to leave their homes to survive. Sovereignty as Responsibility for the protection of human rights suggests that the state has responsibility not only to its citizens and

<sup>66</sup> Lillich, Richard B. quoted in *Ibid.*, 4-5.

legal residents, but to all those who may be affected by its immigration policies. The state's responsibility to potential migrants outside of their borders is twofold. The state, as a part of the international community has a responsibility to do what it can to ensure that the tragedy of migration is avoided: for example, pursuing economic justice for developing countries. However, even with such measures, migration will continue. In this case, the sovereign state must set immigration and border control policies that take account of the transnational economic realities that cause migration, and also of the need for migrant labor in the host country. To ignore these factors when setting immigration and border control policy is to create conditions that give rise to human rights violations. Sovereignty as self-determination is circumscribed by sovereignty as responsibility for human rights and human dignity; a state cannot affirm its right to collective self-determination if the result is the violation of the human rights of others.

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*Corinna Mieth:*

*World Poverty as a Problem of Justice? A critical comparison of three approaches*

In this paper, I want to critically examine the idea that some forms of world poverty can be considered as outcomes of structural injustice that consists in a violation of subsistence rights, which should be guaranteed by institutions. In the first part of my paper I will present the crucial points of this discussion by introducing two alternative approaches: a) radical liberalism with the idea of corrective justice and b) utilitarianism with the idea of individual Samaritan duties. In the second part, I will examine the proposition of Henry Shue to (a) give up the classical distinction between positive rights and negative rights in order to consider subsistence rights as basic rights and to (b) establish three kinds of duties in order to make it possible to enjoy the substance of those rights. In the third part, I will discuss two objections to Shue's theory.

I. Two approaches to world poverty

I will now introduce two approaches to the problem of world poverty that follow two different but significant moral intuitions. The first one: the corrective-justice-intuition, follows the principle of responsibility. He or she who causes an evil to someone else has to be called to account for it. The second one: the Samaritan-intuition follows the idea that we should prevent evil if we can. We should help others above all in emergencies that are life-threatening.

I.1. World poverty as a problem of corrective justice?

Let us start with classical liberalism as an illustration of the first intuition. In the philosophical discussion about world poverty we can make a distinction between two questions. Firstly: who or what caused it and secondly: how can it be reduced or who is obliged to solve the problem. Now some theories that consider world poverty to be a matter of justice see a combination of the two questions: the persons or nations that caused world poverty in an unjust way are responsible for its emergence and therefore obliged to solve this problem. Here we are talking of corrective justice. This position implies that poverty is only a problem if it was caused by unjust actions as colonialism, enslavement, exploiting etc. (p.e. Hoeffe 1999, 418, for a critique see Mieth 2005) The duty to help the deprived only refers to those deprived as a result of unjust acts on the one hand and to those having committed unjust acts on the other.

This concept is inadequate because it is too narrow. When talking of the violations of rights, it concentrates on classical negative rights such as property, security or integrity of life and body. This position not only asks an almost unsolvable empirical question as to how to ascribe responsibility in the case of injustices that happened a long time ago, but is also confronted with the ascription of responsibility in the case of injustices that are not clearly the only causes of current poverty. Above all, corrective justice-theory treats poverty as a side-effect of right-violations not as a problem in itself: there is no such thing as a direct duty to reduce poverty or to help the poor. And there is no right to receive help

because you are poor. In short, we can say that this approach is confronted with two main problems: First, poverty is not seen as a problem in itself. It is only unjust if it results indirectly from former violations of negative rights. Second, even if it were true that all poverty results from former violations of negative rights, the only duty that exists is for the violators to stop it and to compensate for their injustice. On the other hand – and this result is very important – corrective-justice-theory tells us that the compensation for violations of rights which are required by corrective justice do not have anything to do with help. And this point is of course correct. If someone has been robbed of all his fortune and some of his bones have been broken, he may be in a helpless state. However, if the person who has done this to him is obligated to pay for his recovery and to return all the stolen goods, we would not refer to these actions in terms of “helping” but as the least she could do to compensate for the right-violations she committed.

### 1.2. Samaritan-duties as an answer to world poverty?

While corrective-justice-theory concentrates on the first question, theories of help concentrate on the second question. They ask how world poverty – taken as a severe moral problem – could be reduced. This doesn't lead to the question of who caused it but who could efficiently do something about it. Especially Peter Singer (1980) and Peter Unger (1996) emphasized from an utilitarian point of view that every individual who has the capacity to save others from dangers to their lives like absolute poverty is obliged to do so no matter how or by whom the poverty was caused. They point out that the fulfilment of our duties does not only consist in refraining from hurting others actively (injuring their negative rights) but also consists in helping others if we can.

An omission of help can, so Peter Singer's (1980, Chap.8) position, cause as severe damage to the helpless person as an active violation would. The duty to help the poor arises from the life-threatening emergency of the needy on the one hand and the ability to help on the other. I will use Singer's own example to point out the differences between the two positions mentioned by now. Imagine you are on your way to work. You notice that there is a small child drowning in the nearby lake. There is no one else around. If you refrain from intervening, the child will die. Are you obliged to help? From the viewpoint of corrective-justice-theory there is no reason from a standpoint of justice why you should be obliged to intervene because you have not unjustly caused this danger to the child. There might be a weak moral duty to help, helping may be nice but if you do not help there is nothing legally wrong. Maybe there is not even a weak moral duty but helping is an arbitrary act beyond duty. Above all, the child has no right to receive help. Singer might reply that you must help, otherwise your behaviour will be one of the factors that caused the death of the child. (For the causal efficiency of omissions see also Birnbacher 1995, chapter 3) Singer might still say this even if mom and dad who should care for the child are busy watching TV instead. Maybe Singer would even say that you ought to help each time mom and dad are not caring and the child is in danger. More than that: you should help all human beings who are in danger, including all the millions of them who are suffering from severe poverty. If we do not help as much as we can (and this would be, following Unger, up to the point where we ourselves would be no more helpful) we cause world-poverty to exist further. I will call this the evil-by-omission-thesis.

### I.3. Two kinds of emergencies

Singer's and Unger's position is partly based on the second of our basic intuitions: the Samaritan intuition that we should help when there is an emergency. Now why would almost everybody say that it was absolutely unacceptable not to help the child but permissible not to help the needy in the third world?

The answer I want to propose is that we are dealing with two different kinds of emergencies. Let us start from the two different definitions of emergencies that the Oxford dictionary provides us with: emergency is "1. a sudden state of danger, conflict etc. requiring immediate action". Here we can think of a state of danger that results from accidents or assaults that are – at least in "industrialized") countries with functioning institutions and some welfare-system – exceptional cases. Victims require help in the sense of "immediate action" but not in the sense of permanent care. For the needy person, a temporary deprivation of security or food exists and for the helper there is a temporary action that will lead back to the previous (unproblematic) status quo of the person being helped. Let us call this emergency one: a sudden state of danger requires (1) immediate action that will (2) almost surely lead to a re-establishment of the status quo (3) without bringing with it high costs to the helper.

So at least it is true for emergencies of this first kind that we do not have to seriously change our lifestyle in order to help. Emergencies of second kind are comparable to the first insofar as the life of a person is threatened. However, this threat does not occur exceptionally but permanently. Emergency is "2. a medical condition or patient requiring immediate treatment." Now the patient requires "immediate treatment" but he might be in a condition that calls for structural changes of his situation. Poor people are "in a medical condition" of malnutrition or disease caused by poverty that requires "immediate treatment" but they are not in "a sudden state of danger." The condition they are in has been life-threatening all the time, as opposed to suddenly becoming dangerous. To save people from permanent emergencies entails much higher costs to the helper in terms of time, money or competence. Let us call this kind of emergency emergency two: a permanent state of danger that requires (1) immediate treatment of diseases and (2) the improvement of the conditions that lead to the state of danger in order to establish a status quo without danger. This might (3) lead to higher costs for the helpers. And – that is why I used the term "helper" in the plural here – the improvement of the conditions might not be achieved by one person but only by a collective effort.

So of course there is the objection to Ungers position that those individuals who could help in the case of world poverty would be completely overloaded. To consider individual helping as the only cure for world poverty would be a.) unrealistic, because the people who could help will not agree to dedicate their life to helping. It would be b.) unfair to those who help arbitrarily as long as there are no institutions in place to provide for a fair distribution of the burdens of helping. It would be c.) ineffective as long as the causes of poverty were not examined and reduced and it would be d.) unfair to those whose help was a compensation of injustice committed by others. To sum up, the most serious shortcoming of the application of the intuition of the Samaritan as an individual helper as regards to the problem of world poverty is that it tries to cure only a symptom, without reflecting its causes.

## II. Subsistence rights as an answer?

### II.1. Positive implications of security rights

Now let me propose a solution to the problems mentioned above in the form of Henry Shue's theory.

Shue's main idea:

A moral right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats. (Shue <sup>2</sup>1996, 13)

His first task is to show that even if the substance is security (a classical negative right), its enjoyment implies negative and positive duties:

I. (Negative) duties to avoid depriving. (Every individual and every institution)

II. (Positive) duties to protect from deprivation. (Institutions)

III. (Positive) duties to aid the deprived. (Institutions or individuals)

(Shue <sup>2</sup>1996, 52)

I will apply this theory to the classical Samaritan-Case as an example for what I called our Samaritarian intuitions above.

A man was going down from Jerusalem to Jericho, when he fell into the hands of robbers. They stripped him of his clothes, beat him and went away, leaving him half dead. A priest happened to be going down the same road, and when he saw the man, he passed by on the other side. So too, a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he traveled, came where the man was; and when he saw him, he took pity on him. He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, took him to an inn and took care of him. The next day he took out two silver coins and gave them to the innkeeper. 'Look after him,' he said, 'and when I return, I will reimburse you for any extra expense you may have. (Lk: 10:30-35)

Henry Shue's conception provides us with a model that makes it possible to reinterpret the story in terms of rights and duties. If the man who fell under the robbers has a right to physical security, every one else is obliged not to hurt him: all of them have the negative duty to avoid depriving him of his security. But our case shows that "the actual enjoyment of a substance": security cannot be provided by the classical concept of negative rights. Because once the man is deprived of security the protection of security as a substance of a right implies that he gets help in order to reestablish his physical integrity. So from this point of view, helping compensates for a violation of rights in a double sense: first, it compensates for the actual violation of the man's right to security by the robbers and secondly it compensates for the lack of the implication (3) that in order to enjoy the substance of a right there should be institutions that efficiently protect against standard threats such as robbery. So in Shue's theory, there are duties to help but their status is only a secondary or tertiary one. It would have been better to do more in order to prevent assaults than to cure their outcomes by helping. A right implies three kinds of duties: duties to avoid (in our case hurting the man) that apply to anyone. Duties to protect (in our case: to make the streets secure, to prevent robberies, to find criminals and to punish them) that apply to institutions and their special representatives, e.g. policemen. And duties to aid compensate for violations on level I and II.

So we can retell the story as follows: the robbers did violate their duty to avoid deprivation of security. (violation 1) The institutions of the Roman province Judea did not protect the man from deprivation (violation 2). Everyone involved did not protect the man from deprivation by neglecting to create adequate institutions. (violation 3) The Priest and the Levite did violate their duties to help the man. (violation 4 and 5) The only chance for the man to enjoy the substance of his right was the Samaritan who fulfilled his duty as a compensation for the former violations. If it is true that classical negative rights like security imply positive actions on level II and III, Shue has successfully shown that negative rights imply positive actions like building institutions, paying taxes, etc. or eventually helping on a third level if the two other levels fail to protect the substance of a right.

## II.2. The right to subsistence

Shue's second task is to show that there is a right to subsistence that it has the same structure as the right to security. First, there is the duty to avoid depriving others of subsistence that refers to anyone. Secondly there is the duty to protect people against deprivation by third parties and thirdly there are "duties to provide for the subsistence of those unable to provide for their own – duties to aid the deprived." (Shue <sup>2</sup>1996, 53)

So subsistence rights are not only positive and security rights are not only negative. Shue draws the conclusion that "the distinction between positive rights and negative rights" is not significant.

Basic rights "specify the line beneath which no one is to be allowed to sink." (Shue <sup>2</sup>1996, 18) They "are everyone's minimum reasonable demands upon the rest of humanity" because the "enjoyment of them is essential to the enjoyment of all other rights." (Shue <sup>2</sup>1996, 19) Shue mentions three interconnected basic rights: security, subsistence, and liberty, including political participation. Treating world poverty as a question of justice then leaves the opportunity for us to examine the two questions: what caused it and who can solve it as combined emphasizing that there is a duty to protect the other's right to subsistence. So an injustice could from this point of view either consist in an active violation of this right to subsistence (violation 1) or in the (passive) failure of individuals or institutions to protect this right to subsistence (violation 2).

From this point of view, the first question is relevant insofar as it allows us to view practices that lead to poverty as unjust. But how can one be deprived of subsistence without being deprived of security as in the case of colonialism, enslavement or unjust warfare? Shue provides us with the "flower contract" as an example of structural economic injustice that leads to a deprivation of subsistence.

Imagine a village with a peasant, six workers and 10 other families. They all live from growing black beans. While the six workers have to buy part of their beans, the others work for themselves. Now the peasant makes a deal with a man from the capital of the country who guarantees him a salary for growing flowers for export instead of growing beans. The equipment he is provided with from the capital enables him to hire only two men. Since every landowner in the region is offered a similar contract, black beans are short in supply and grow extremely expensive. The four workers that are left unemployed will no longer be able to provide for themselves and their families. All of them will be threatened with death from malnutrition.

Shue comes to the conclusion that “the parties to the contract partly cause the malnutrition.” (Shue <sup>2</sup>1996, 44) So the deprivation of subsistence goes back to “the absence of the appropriate social guarantees”: “Such contracts could, for example, have already been made illegal. Or they could have been managed or taxed in order to compensate those who would otherwise predictably be damaged by them.” (Shue <sup>2</sup>1996, 44f.) Therefore, to Shue it is clear that “the honoring of subsistence rights may often in no way involve transferring commodities to people, but may instead involve preventing people as being deprived of the commodities or the means to grow, make, or buy the commodities.” (Shue <sup>2</sup>1996, 51) But is this concept of subsistence-protection convincing?

### III. Two dissimilarities in the analogy between security rights and subsistence rights

#### III.1. The causation of deprivation dissimilarity

In a classical liberal understanding, rights should protect us from unjust, endangering acts of others. Rights to security do plausibly illustrate this basic intuition. But what about rights to subsistence? Does its loss really go back to violations of subsistence one by others? Shue is not as sure on this as it seemed on first sight: In a later chapter of his book, he lists the three corresponding duties to a right of subsistence as follows:

- I. To avoid depriving.
- II. To protect from deprivation
  - II.1. By enforcing duty (I)
  - II.2. By designing institutions that avoid the creation of strong incentives to violate duty (I)
- III. To aid the deprived
  - III.1. Who are one's special responsibility
  - III.2. Who are victims of social failures in the performance of duties (I), (II-1), (II-2) and
  - III.3. Who are victims of natural disasters.” (Shue <sup>2</sup>1996, 60)

So only duty III.2. corresponds to a former violation of a subsistence right. III.1. could refer to one's own children or compatriots whereas case III.3. refers to natural disasters as a different cause of deprivation. But the demarcation between what is the outcome of a natural disaster and what is the outcome of a lack of protection may be very thin: When people are dying of a famine while their government could force their wealthy compatriots to provide them with food, is this a natural disaster or a case parallel to the structural injustice of the flower contract? What if the government decide not to buy a warning system against tsunami and thousands of people are killed? Here we find the evil-by-omission-thesis again.

#### III.2. The compensation dissimilarity

Is it true that “duties to aid become relevant only after failures to perform the first two general kinds of duty”? (Shue <sup>2</sup>1996, 159) Here we find the same problem as in the discussion of classical liberalism and its corrective-justice-intuition. We will only get an answer to question two (how to stop poverty) if we can show that (1) its causes are injustices: right violations and (2) that those who committed them will be called to account for them. Or we will have to say that to keep someone under a certain level of subsistence while one could help is itself a violation of a right to subsistence. This would be an evil-by-omission-

thesis. Now there seem to be two kinds of subsistence: subsistence one, that should be protected against others, means the power to control the means of one's own ability to exist. Subsistence two, that should be provided by others, means the transfer of money or goods in order to compensate for deprivation of subsistence one. But is the loss of subsistence one always due to a violation of rights? If there is a violation of rights in our example it seems to refer to the loss of subsistence two respective to the failure of the government to take the right to subsistence seriously by providing people with the means to subsist. This latter duty seems far more positive than the duty to build institutions that prevent a loss of security. It seems that it is easier to compensate for the deprivation of security (at least if the duties are institutionalised) than it is to compensate for the deprivation of subsistence. The Samaritan could have brought the man to a hospital and our health system would have provided for the costs by taxes. After having been cured, the man would have gone back to his normal life and job and ceased to lack the means for subsistence. Only severe violations of security that produce handicapped people or helpless remaining families produce a lack of subsistence as a result of a violation of security. Now either Shue wants to show us, analogous to radical liberalism, that the responsible violators must provide for the subsistence for their victims or that institutionalised assistance should play this role. The lack of subsistence seems to produce permanent emergencies kind two. But this is also true for a lack of subsistence that does not go back to a violation of security nor to a former violation of subsistence like being handicapped from birth, being a small child whose parents died in an accident or are not able to care for it, or even being unemployed for a long time. But even if we drop this last point and concentrate on the idea that institutions should generally provide people with subsistence two, there is one other serious shortcoming left.

The most serious challenge to Shue's position seems to be that a violation of rights might be committed by people who are neither willing to take on the costs of the curing of their victims nor of the implementation of an effective protection from rights-violations. From this results a dialectic of deprivation.

In ideal theory it might be possible to reduce duties to aid to a minimum by avoiding deprivation through protection. However, in a non-ideal theory or in ethical practice, there is a cruel dialectic between those who are not only deprived of their subsistence but also of their rights to subsistence, liberty, and security by their own governments (that do nothing to protect their rights but on the opposite contribute to their deprivation) and those who are willing to help them while not being responsible for any former violation of rights. So in this scenario the highest costs arise for the less responsible. This is the case when help comes from parties who neither violated duties to avoid nor duties to protect but have secondary duties to help because those who violated the first two duties are not willing to help. But if we still want to speak of a right to security or subsistence we must maintain that even the least responsible party has a corresponding duty to provide for the substance of the right. But that might be unfair and therefore unjust to the helper: "expecting some individuals endlessly to be willing to step into the breaches left by the failures of others to do their prior duties is wildly unfair. These lives would simply be consumed by (default) duties – this is precisely to ignore that for duty-bearers too, as much as for victims of rights violations, this is the only life they will have." (Shue<sup>2</sup> 1996, 172)

To conclude we can say that Shue, on the one hand, is overestimating the possibilities of institutions: they will not make all Samaritans superfluous in their quest to protect basic rights. We need Samaritans in order to react to sudden emergencies of kind one that cannot be institutionalised and we need Samaritans to compensate for the right violations of others that might produce emergencies of kind two. On the other hand, Shue does not tell us very clearly what subsistence means. If we interpret it in the sense of subsistence two, in other words, the right to be provided with the means to subsist independently of how it came to the deprivation, there are a lot of positive duties which result that are not as strongly analogous to the positive duties resulting from security rights as Shue suggests. What becomes clear is that if we are seriously speaking of a right to subsistence as a basic right, there must be duties to provide for subsistence two even if the responsibility of the agent is very low. As long as we have no better institutions and as long as there are accidents and other contingencies we have no better helping model than the Samaritan with all its shortcomings. But this does not entail the conclusion that world poverty is only a problem of help. If there are basic rights that are not adequately protected, we also have a duty to build better institutions or to reform the old ones. And in Shue's model, this duty is a stronger duty than a duty to help.

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*Stefan Heuser:*  
*Towards a subjective right of asylum for political refugees*

In the light of the discussion about the end of the nation-state, Seyla Benhabib observes that transformations in the institution of citizenship emerge to the effect of what she calls a “disaggregation of citizenship.”<sup>1</sup> Benhabib pleads for porous borders, and advocates both admission rights of refugees and the right of democracies to control admission. While such a balanced position is widely acclaimed among political theorists, Benhabib does not give details of how a positive right of refugees to attain political membership rights should look like in a given legal context. The question remains to be answered how porous borders of democracies should be, or as Michael Walzer responds to Benhabib: “How far [does] she really want to go, how far should any of us want to go.”<sup>2</sup> This indeed seems to be the question at stake when it comes to discussing admission procedures for migrants to given legal communities. In this essay I will ask, however, whether there is a category of migrants in whose case it seems less adequate for democracies to ask how far they want to go, but how far they should go. This is not just a difference in terms of a moral point of view, as if the question at stake was that of mutuality, but of the self-understanding of politics in liberal democracies, and of the relationship between procedural and substantive accounts of justice. I will discuss whether political refugees can be seen as a category of migrants who challenge democratic states firstly with the question of how far it belongs to their *res publica* to grant a subjective right to citizenship for those who are persecuted for political reasons in their countries of origin, and secondly how far it belongs to democratic institutions to host a shared life with the other. This will adopt a “strong” understanding of democratic institutions as places in which people are invited to turn towards each other to find out what they share in the political sense, to cooperate, but also to articulate their experiences and their hopes.<sup>3</sup> At the same time, no duty for any particular state to take up refugees can be derived from a right to have rights. But mere spontaneous acts of humanitarianism will not suffice to define the institutional commitments of liberal democracies in refugee policy. Raising the question under which political conditions asylum can be a subjective right for political refugees can be helpful both to find institutional solutions for a timely migration policy - especially when it comes to find joint European asylum procedures – and to enhance the discourses on the self-understanding of liberal democracies.

Michael Walzer argues that “the fundamental human right of refugees is not to be admitted here or there but simply to be helped.”<sup>4</sup> Although Walzer has a point in the simple fact that refugees need help, he seemingly underestimates how far help depends on legal procedures. Help should not only depend on spontaneous acts of mercy, but must at the

<sup>1</sup> Benhabib (2004, p. 154 and 171f).

<sup>2</sup> Walzer (2001).

<sup>3</sup> See Barber (1984).

<sup>4</sup> Walzer (2001).

same time be located in an institutional setting. As Seyla Benhabib has claimed: "Certainly, identification and solidarity are not unimportant, but they need to be leavened through democratic attachments and constitutional norms."<sup>5</sup> The state of limbo between national law and international order in which contemporary policy finds itself actually calls for a right of asylum in the sense that Hannah Arendt has attributed to the only (remaining) human right: the right to have rights.<sup>6</sup> However, Arendt's observation remains important that the right of asylum a nation-state may offer collapses in the very moment that whole populations of people are excluded from citizenship.<sup>7</sup> Similarly, she did not believe that the international legal order would ever be able to guarantee the right to have rights. Does this well-founded scepticism mean that there is no way to conceive of any legal codification of a right to have rights? If we accept one of the central postulates of universalism, and bind politics to the principle that every human being shall have the right to be a citizen, we may come to interpret the right of asylum as a conditional right to have rights. For a subjective right of asylum to work, there need to be criteria in order to differentiate between categories of refugees. Hannah Arendt was right that the number of political refugees is crucial for any understanding of a right to have rights. Understood as a subjective right of political refugees, the right of asylum aims at reinstating civil rights on individuals or smaller social groups of persons who have lost citizenship in their countries of origin. It can thus be understood as a legal institution that serves to integrate persons who have lost their rights as citizens into political communities: a specific human right to have civil rights, not just anywhere, but in the given political body that grants this right for political refugees.

However, all attempts of human rights policy to work towards codifying the right of asylum as a subjective right in international and national law have failed, and for good reasons.<sup>8</sup> The question of how far human rights can be interpreted as subjective positive rights must always be accompanied by a discussion about the conditions under which liberal democracies can guarantee such rights. Despite the plurality of legal traditions in Western democracies, it can be regarded as consensus that negative rights have priority over positive rights, even if only for the simple reason that humane states would otherwise probably become overwhelmed by refugees and could no longer guarantee the rights of their citizens. Negative rights therefore constitute the legal setting to which any right of asylum must adapt. Regarding the need created by political persecution today, and the challenges posed by migration, a public commitment to a subjective right of asylum in national and international law seems nonetheless indispensable. In order not to be rendered utopian and unrealistic, it needs to rest on a clear definition of political persecution to become distinguished from migration legislation as it may apply to labor-migration or to family unification. The question is whether a subjective right of asylum can be an instrument of articulate justice for the other without exceeding the responsibility that any community or state can bear. This is not simply an economic or cultural question, as seen in African countries that take up enormous amounts of political refugees. The reach of responsibility for politi-

<sup>5</sup> Benhabib (2004, p. 220).

<sup>6</sup> See Arendt (2003, p. 614).

<sup>7</sup> See Arendt (2003, pp. 583f).

<sup>8</sup> See Kimminich (1983, pp. 57-94).

cal refugees is foremost a political question. It needs to be discussed in relation to the main tasks and individual interests of liberal democracies: to grant and protect political rights, to find and regain the *res publica* by means of open discourses, and to initiate different forms of justice. With regard to the needs of political refugees, the legal certainty that comes from the just procedure of a subjective right of asylum brings an unsurpassable promise, for refugees as well as for the self-understanding, the constitutional commitments, and the political practices of democracies. It helps to base the right of political refugees to have rights on a more reliable foundation than, say, on humanitarianism,<sup>9</sup> and could at the same time enhance the discourse on the tasks and practices of liberal democracies. Admission policy directly touches upon the shape of any given political community. It provokes the question: "What, and who, belong to our political life?" This question is not sufficiently answered by leaving the fate of political refugees entirely to spontaneous humanitarian acts. At the same time, it cannot amount to an unconditional understanding of the right of asylum as a subjective human right. Liberal democracies that concern themselves with substantial questions about their *res publica* must find a middle ground between those extremes.

A subjective right of asylum cannot be unconditional like negative rights, and requires clear admittance categories. These categories need to be defined on a political basis, and to be distinguished from economic and cultural conditions. Is it possible to draw such a distinction? I suggest that the right of asylum must be defined in relation to the first dimension of human rights (civil and political human rights), and removed from the discourse of immigration legislation, as this concerns itself primarily with rights related to the second dimension (economic, social and cultural human rights).<sup>10</sup> This does not mean that I think this understanding of law should or could be extended to all possible legislative tasks of refugee-related legislation. Asylum issues touch questions that concern the practices and the self-understanding of political communities: What does it mean and what does it take for a society and its members to welcome political refugees and to live with them? Which kind of justice is required and practiced vis-à-vis the stranger? The focus on formal concepts of justice must be accompanied by an attentiveness to particular communities and human beings. Fair procedures enable questions of shared life and articulate justice – they do not necessarily exclude them. The legitimacy of laws, norms and regulations ultimately depends on whether they do justice to specific persons and groups in all their distinctiveness, both for legal communities as well as for political refugees.<sup>11</sup>

These questions presuppose that those who seek asylum on grounds of the violation of their political rights are actually permitted to enter a country and to participate in political procedures. The acceptance of political refugees is a political question, a vital question for democracies that understand themselves as strong political entities, and one that should

<sup>9</sup> For a "humanitarian approach" to the right of asylum, see Gibney (2004). Gibney believes that "the principle of humanitarianism" is "that states have an obligation to assist refugees when the costs of doing so are low" (p. 231).

<sup>10</sup> For this distinction see Riedel (1986).

<sup>11</sup> The question of how to interpret the right of asylum can thus be understood as a variation of the general discourse on the relation of justice vis-à-vis the other to proceduralized forms of justice. For explorations along and across the borders of procedural justice, see Honneth (2000).

largely be freed from cultural and financial issues. The ethical situation of living with strangers interrelates with and is safeguarded by legal procedures of equality and participation.<sup>12</sup> Just legal institutions transcend those inclinations that societies or communities might or might not have in the face of strangers and may serve as a nucleus around which a life with strangers can crystallize. Without human-rights informed asylum procedures, issues of vis-à-vis justice remain out of play, and with them the question of the acceptance and integration of political refugees.<sup>13</sup> Benhabib has pointed towards this by raising the issue of the decriminalization of border crossings.<sup>14</sup> The right of asylum could serve to at least partially decriminalize border movements by restricting it to political refugees whose civil and political human rights have been or are threatened to be violated. Thus the political need of the refugees and the political motivation of the persecuting state come into view.<sup>15</sup> This will render the right of asylum one instrument among others, entailing the policy of acceptance and of care.<sup>16</sup> Today, the right of asylum amounts to a paper tiger in national legal codifications, while proclaimed at the same time as an individual human right by the UN-declaration. If it were to be understood as a conditional admittance right of political refugees to temporary but full citizenship,<sup>17</sup> political persecution would need to be defined with reference to civil law. I suggest a definition of political persecution as a breach of the rule of civil law that sends persons into the state of exception.<sup>18</sup> This includes that a person qualifies as a political refugee not only when his or her government has actually violated his or her political rights (single out criterion), but also when the political rights of the group to which the asylum seeker belongs are generally violated. This inner-law definition of political persecution remains formal, and will not suffice in drawing a systematic line between economic and political reasons for migration. But it helps to establish categories for refugee legislation that would otherwise not do justice to the individual case. With a view to the interrelatedness of political and social human rights, the right of asylum aims to protect the political and civil rights of persons, which entails but does not presuppose legally softer economic, social and cultural rights. The borders of liberal democracies should be as open as possible for those who have lost their civil rights in their countries of origin. This postulate does not exclude prudence from asylum policy. Democracies have a genuine task and interest in granting citizenship to political refugees. This does not mean that democracies have no obligations to those whose economical or cultural rights are violated in their countries of origin and who need specific political measures other than the right of asylum. In the case of guest workers and resident aliens, procedures should be found that put them on the road to full citizenship as quickly as possible, as

<sup>12</sup> For the complex interdependencies of social work for the integration of migrants in Nürnberg with formal legal procedures, see the report of Kühl (2004).

<sup>13</sup> See Charles Taylor (1992) for his description of the interrelationship between solidarity-based social politics and the acceptance of strangers and their life forms.

<sup>14</sup> See Benhabib (2003, 71f).

<sup>15</sup> See Randelzhofer in: Maunz/Dürig, Komm. z. GG, Art. 16, Rdn. 21f. See also Marx (1980).

<sup>16</sup> For the interrelation of an ethics of care and a Kantian ethics see Honneth (2000, pp. 171-192).

<sup>17</sup> For the roots and implications of such an interpretation of the right of asylum, see Kimminich (1983).

<sup>18</sup> For a similar interpretation see Reuter (1996, p.199): „Das Asylrecht ist ein Notrecht zum Schutz des Basisrechts auf politische Gemeinschaft.“ (italics original) On the state of exception, see Agamben (2005).

Michael Walzer has argued.<sup>19</sup> The case of political refugees who apply for asylum is different. They should be admitted to full citizenship on a temporary basis during the time political persecution in their countries of origin persists. The right of asylum can be regarded as a special example of the general principle of human rights policy that there shall be no human being who is not the subject of civil rights. In that sense the right of asylum can be understood as an exemplary human right insofar as it bridges the gap between human rights and civil rights. At the same time, its civil rights dimension rests on the presupposition of whether a state or community can grant such a right in the light of its imminent duties towards its citizens. Thus understood, the right of asylum can be an integral part of a global political practice with the objective that nobody shall live in the state of exception. It focusses on the political refugee who actually makes it to a given state's border. In the case of internally displaced people, as in Sudan, the principle that nobody shall live in the state of exception calls for other legal measures, though still aimed at helping people acquire civil rights. In the context of human rights policy, the right of asylum assumes a key position, if understood as a conditional subjective right of political refugees to be reinstated into a political community.

The example of the right of asylum in Germany has proven Hannah Arendt right that the right of asylum collapses if the number of asylum seekers becomes too large. Until 1992, Germany's basic law granted a subjective right of asylum for everybody who claimed to be persecuted for political reasons. Article 16,2.2 of German Basic Law simply read: "Persons persecuted for political reasons enjoy the right of asylum." At the same time, the long term lack of any immigration legislation has caused the right of asylum to be used as the only steering instrument for immigration policy.<sup>20</sup> After the fall of the Iron Curtain, there were 438,000 applications for asylum for political persecution in 1992, leaving the federal office for the recognition of foreign refugees (BAFI) completely overtaxed. That year, only 4.25% of all applications for asylum were deemed legitimate on grounds of persecution for political reasons.<sup>21</sup> The problem was not, as many have claimed, that these numbers of refugees could not have been absorbed, but that the asylum procedures could no longer bear these numbers of applicants, most of whom applied for economic reasons. They could only have been handled by some kind of immigration law. The specific – and limited – function of the right of asylum had been lost. But instead of establishing an immigration law, the growing need to cope with immigration issues led to an amendment of the right of asylum in 1993, almost amounting to its abrogation. The new article 16a (1) of the Basic Law grants asylum from political persecution in the old form of a subjective basic right. However, the constitution adds extremely restrictive exceptions that define under which circumstances political refugees are excluded from the right of asylum. One of those exceptions is the so-called "safe third country ruling", which has become a paradigm for European asylum legislation, particularly as it tries to relate to the "non-refoulment principle" (Geneva Convention, article 33). The ruling says that refugees who

<sup>19</sup> See Walzer (1983), 60.

<sup>20</sup> See Bosswick (1997).

<sup>21</sup> For these and all following figures see the website of the "Federal Office for Migration and Refugees": <http://www.bamf.de/>.

reach Germany via a third state where, in compliance with the Geneva Convention, they are supposed to be safe from political persecution, are not permitted to appeal for asylum, no matter whether or not the refugee would be entitled to enjoy asylum in Germany. Given that Germany is surrounded by countries that are all defined as safe third countries it has become almost impossible to be entitled to asylum when entering Germany other than by plane.<sup>22</sup> The amendment does not clarify what legislation regards as “political reasons” for persecution, but concerns itself with the migration route of asylum seekers. What has become decisive to gain asylum is no longer the actual loss or violation of political rights but the way refugees approach German borders. The third country ruling has introduced a non-political element into the right of asylum, namely the assumed situation of refugee protection in third countries. The amendment did not answer the question that was at stake: what does political persecution mean, and which legal conditions can respond to it? It has been noted that the third country ruling in many cases violates the non-refoulement principle of the Geneva convention.<sup>23</sup> The deportation of asylum seekers to third states will take place regardless of the question of whether the third country has itself a third country ruling that will lead to a chain deportation and eventually to the return of the refugee to his country of origin. These changes have led to a reduction of the number of asylum-seekers in Germany to a level of 50,500 in the year 2003. In 2002, only 1.83% of all applications for asylum were accepted.

Regarding immigration policy, few would dispute that political communities like nation-states have the privilege to decide which and how many immigrants may enter their territory, e.g. when responding to the requirements of the national job market.<sup>24</sup> This applies to decisions on economic and cultural issues touched upon by immigration.<sup>25</sup> Even in the process of European unification, the nation states will for some time to come remain the subjects of rights related to these issues.<sup>26</sup> However, the occurrence of extremely large groups, even whole populations of refugees, make the need for a joint international asylum and human rights policy evident. At the same time, greater severity in the field of immigration policy has tended to immediately affect the right of asylum, both in the German and in the European context. The Amsterdam treaty of 1999 also follows a third country ruling.<sup>27</sup> What has been regarded as growing immigration pressure has caused European governments to gradually tighten their immigration policies.<sup>28</sup> The right of asylum, which has widely been subsumed amongst the tools for controlling immigration, has suffered from this development.<sup>29</sup> This tendency has increased in the wake of September 11<sup>th</sup>, 2001. Today, European right of asylum policy is far from an efficient legal instrument for the

<sup>22</sup> See Bosswick (1997, p. 66) and Renner (1994b, p. 211).

<sup>23</sup> See Zimmermann (1994) and Renner (1994a).

<sup>24</sup> For a different opinion see Joseph Carens, *Immigration and the Welfare state*, in: Amy Gutmann (ed.): *Democracy and the Welfare State*, Princeton University Press 1988. Also: J. Carens: *Culture, Citizenship and Community*, Oxford University Press 2000.

<sup>25</sup> See Hailbronner (1980).

<sup>26</sup> See Beckmann (2001).

<sup>27</sup> See Hailbronner, et al. (1998).

<sup>28</sup> See Groenendijk (1994).

<sup>29</sup> See Wollenschläger (1994). See also Santel (1995, pp. 78ff and 173ff). See also the report by Groß (2005).

protection of political refugees, nor does it foster discourse about Europe's political integration.

The interpretation of the right of asylum as subjective right, however desirable it may be for political refugees who could become citizens elsewhere, and however small the steps are that may be taken in its direction, is questioned by many factors. The foremost of these is that there is no international (or even national) consensus about the understanding of politics, power, and the concept of sovereignty that would support such an interpretation of the right of asylum. How far asylum policy depends on the sovereignty of nation states remains a controversial question.<sup>30</sup> Does the codification of a conditional subjective right of asylum reduce or enhance the sovereignty of the nation state? On the basis of a Weberian paradigm of politics, most would hold that such a positive right undermines the sovereign decision of communities whom they want to grant admission. Understood as the right to have civil rights, the right of asylum originates in a universal human right beyond any given constitutional law.<sup>31</sup> However, if we understand power in the sense of cooperation, participation, and the protection of equal rights, a state that grants a subjective right of asylum to political refugees follows its genuine political mandate. A politics bound to the principle that every human being shall have the right to have rights, which keeps up a subjective right of asylum and fosters human rights policy as well as efficient immigration policy, is based on a concept of power that does not draw on property, assets and unilateral abilities, but on multilateral political cooperation. In this sense of politics, the constitutional state would not lose but gain sovereignty by granting a subjective right of asylum to political refugees. The right of asylum thereby becomes a test case for whether politics follows Kant or Carl Schmitt, as Habermas has put it.<sup>32</sup> Granting political asylum can hence be understood as a part of what it takes for a state to be a modern liberal democracy at all – to be a political body and not just a unit of economic interests or cultural conformities. Codified as a conditional, subjective right of political refugees, the right of asylum confronts political communities with the question of whether they keep track of justice for the other, thereby fulfilling a genuine mandate of “strong” democracies. The definition of “political persecution” remains crucial to any such understanding of the right of asylum. It can best be defined by reference to the democratic state as it is bound to the standards of civil and political human rights. The legal question concerning political persecution is whether the refugee's country of origin has followed the rule of law in his case – a law formed and challenged by contextual legal traditions and by the universalism of international human rights conventions. The right of asylum should hence be codified as a subjective right to citizenship for every person whose civil rights are lost or violated, and for every person who is not granted equal civil rights in his or her country of origin. I propose that within the civil human rights dimension, a definition of “political persecution” should be qualified in relation to the following international conventions, that together form a legal horizon of international civil and political human rights.

<sup>30</sup> See Heckmann, et al. (1999).

<sup>31</sup> See Marx (1984, pp. 151ff).

<sup>32</sup> See Habermas (2004, pp. 187ff).

Firstly, article 1 of the 1951 Geneva Convention on Refugees defines the term “refugee” as follows: “The term ‘refugee’ shall apply to any person who...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>33</sup> A broad and appropriate interpretation of Art.1 A No.2 of the Geneva Convention on Refugees may cover all possible cases of political persecution.<sup>34</sup> In order to reach an appropriate and applicable interpretation beyond national constitutional law, however, and with regard to the open ratification of a judicable European constitution, the definition of the Geneva convention should be interpreted, secondly, with a view to the 1948 Universal Declaration of Human Rights, and thirdly, with a view to the 1966 International Covenant of Civil and Political Rights, and fourthly, with a view to the 1950 European Convention on Human Rights.<sup>35</sup> From these conventions, we can identify a number of civil and political human rights, the violation of which defines the term “political persecution.” These are, with no claim to exhaustiveness: the right to citizenship; the right to life and physical integrity; the right to liberty and security of the person; the right to equal protection before the law; the right to freedom of assembly and association; the rights to be free from torture; the right to freedom of expression; occupational freedom; freedom from discrimination; access to the judicial system; participation in political life; freedom of religion, faith and conscience; access to information; property rights; and freedom of movement. Thus, in accordance with the Geneva Convention on Refugees, the term “political persecution” is bound to the violation of civil rights of an individual or of groups of people. Somebody can be regarded as a political refugee whose state of origin expels or excludes him or her from civil rights, or, as in the case of persecution by other individuals, tolerates such persecution. If we accept that citizenship cannot be divided,<sup>36</sup> it follows that refugees who are permitted asylum from political persecution should be entitled to enjoy full civil and political rights in their host country until the objective legal element of persecution and the subjective fear of persecution come to an end.<sup>37</sup> Such an interpretation of political persecution remains highly controversial. In Germany, both the Federal Constitutional Court and the Federal Administrative Court have tended towards a broad definition of political persecution, especially with regard to the right to life, physical integrity, and liberty of the person.<sup>38</sup> For all other fundamental rights that can be included in a broad definition of personal freedom, such as freedom of faith and of conscience or of occupational freedom, legal practice has focussed on the intensity and duration of the violation of civil rights,

<sup>33</sup> For the full text of the convention see the website of the UNHCR: [http://www.unhcr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhcr.ch/html/menu3/b/o_c_ref.htm).

<sup>34</sup> See the jurisdiction of the German Federal Administrative Court as reported by Randelzhofer (1999, Rdn. 21-23).

<sup>35</sup> It signifies the controversial character of the right of asylum that it is not mentioned in both the 1966 International covenant of civil and political rights and the 1950 European convention on human rights.

<sup>36</sup> See Walzer (1983), p. 61f.

<sup>37</sup> See Marx (1980, p.197f).

<sup>38</sup> For references see Marx (1980, 195-199).

especially with regard to the principle of human dignity.<sup>39</sup> However, a controversial issue in the current discourse on the right of asylum is to what extent the criterion of violation of civil rights should not only entail negative rights such as the right to physical integrity, but also positive civil rights such as freedom of expression. It can be said, though, that both types of rights interrelate strongly,<sup>40</sup> and that negative rights are the *conditio sine qua non* for the existence and legal practice of positive rights.<sup>41</sup> In relation to all negative civil rights, the definition of political persecution is rendered extremely broad. The pragmatics of asylum policy can only be safeguarded, then, if civil rights can be sufficiently distinguished from cultural, social and economic rights. This distinction lies at the core of any contemporary right of asylum discourse. It will be the task of any European right of asylum to define “political persecution” in relation to law, to the violation of law, and to the equal rights of citizens, in order to keep the right of asylum both limited and an effective instrument for the protection of political refugees.

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<sup>39</sup> For an overview on the discussion in German jurisdiction and legal publications see von Pollern (1980, pp. 200-217).

<sup>40</sup> See Herzog in Maunz/Dürig, Komm. z. GG., Art. 5, Rdn. 10a.

<sup>41</sup> See Pogge (2002).

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*Norbert Campagna:*

*Gibt es ein gleiches Recht auf den Besitz von Nuklearwaffen?*<sup>1</sup>

Eine der zentralen Fragen die sich heute im Kontext der zwischenstaatlichen Beziehungen stellen, betrifft den Besitz von Nuklearwaffen - oder, allgemeiner noch, von sogenannten Massenvernichtungswaffen, zu denen sowohl die Nuklear-, wie auch die biologischen und die chemischen Waffen gehören. Während einige Länder schon seit einigen Jahrzehnten Nuklearwaffen besitzen und solche Waffen auch schon getestet, wenn nicht sogar, wie im Falle der Vereinigten Staaten von Amerika, in einem bewaffneten Konflikt eingesetzt haben, versuchen andere Länder solche Waffen zu produzieren oder sich doch zumindest die Technologie anzueignen, die eine solche Produktion erlauben würde - für die große Mehrheit der Länder ist der Besitz solcher Waffen im Augenblick allerdings keine Priorität.

Was nun allerdings auffällt, ist, dass bestimmte Länder der ersten Gruppen, also derjenigen Gruppe, die schon im Besitz von Nuklearwaffen ist, bestimmten Ländern der zweiten Gruppe verbieten wollen, auch Nuklearwaffen zu produzieren oder sich auch nur in den Stand zu versetzen, in dem sie solche Waffen produzieren können. Man will also den anderen verbieten, wozu man sich selbst das Recht genommen hat. Auch wenn die Realpolitik diesbezüglich keine Bedenken hat, sollte doch eine philosophische Perspektive auf die internationalen Beziehungen die Frage aufwerfen, ob eine solche Situation den elementaren Prinzipien der Gerechtigkeit entspricht.

Das jüngste Beispiel für einen solchen Konflikt um den Besitz von Nuklearwaffen ist der sogenannte Atomwaffenstreit, der zwischen dem Iran einerseits, und allen voran den Vereinigten Staaten von Amerika andererseits tobt - wobei zu bemerken ist, dass die Vereinigten Staaten auf die mehr oder weniger große Unterstützung anderer Staaten zählen können<sup>2</sup>. Es geht dabei nicht so sehr darum, dem Iran den Weg zur zivilen Nutzung der Atomkraft zu versperren, sondern es soll verhindert werden, dass die zivile Nutzung der Atomkraft zu einer bloßen Tarnkappe wird, um ein militärisches Programm in die Wege zu leiten, durch das letzten Endes der Iran die Fähigkeit erlangen würde, nukleare Sprengköpfe zu entwickeln, die es dann gegebenenfalls in einem militärischen Konflikt einsetzen könnte.

Vom philosophischen Standpunkt stellt sich hier die Frage, mit welchem Recht eine Nation einer anderen Nation unter Sanktionsandrohung - die Androhung militärischer Sanktionen inbegriffen - verbieten darf, Waffen herzustellen, die sie, die verbietende Nation, selbst besitzt und deren Perfektionierung sie selbst voran treibt. Die Tatsache, dass man selbst die Waffen schon besitzt, rechtfertigt weder ihren weiteren Besitz, noch ein an ein anderes Land gerichtetes Verbot, solche Waffen zu besitzen.

<sup>1</sup> Es handelt sich bei diesem Text um eine deutsche Fassung des zweiten Teils meines in Oxford gehaltenen Vortrags. Der gesamte Vortrag soll in englischer Fassung in der von der Societas Ethica herausgegebenen Reihe beim LIT-Verlag (Münster) erscheinen.

<sup>2</sup> Kurz nach der endgültigen Fertigstellung dieses Beitrags, führte Nordkorea einen Atomwaffentest durch.

Wenn wir das Prinzip der Gleichheit zwischen den Nationen ernst nehmen, dann scheint es der Fall sein zu müssen, dass keine Nation einer anderen Nation ein Recht absprechen darf, das sie selbst in Anspruch nimmt. Denn warum sollte einer Nation A etwas erlaubt sein, was einer Nation B verboten ist? Entweder hat keine Nation das Recht, Nuklearwaffen zu besitzen, oder jede Nation besitzt ein solches Recht. Wenn die Gleichheit nicht nur zwischen den einzelnen Menschen, sondern auch zwischen den einzelnen Nationen gilt, dann darf es, so wird man zunächst einmal vermuten, keine Diskriminierung zwischen Staaten geben. Somit müsste dem Iran auch das Recht zugestanden werden, Waffen zu besitzen, die im Besitz einiger anderer Staaten sind.

Hier könnte man einwenden können, dass bestimmte Staaten sich durch einen internationalen Vertrag dazu verpflichtet haben, keine Nuklearwaffen zu entwickeln und zu besitzen. Dies gilt in unserem Fall für den Iran, der den Atomwaffensperrvertrag unterschrieben hat<sup>3</sup>. Da nun die Regel gilt "pacta sunt servanda", bleibt dem Iran anscheinend nichts anderes übrig, als sich an seine vertraglichen Verpflichtungen zu halten. Der Atomwaffensperrvertrag verbietet es ihm zwar nicht, ein ziviles Nuklearprogramm zu entwickeln, aber er verpflichtet ihn in einem solchen Fall dazu, internationale Kontrollen zuzulassen, durch die sicher gestellt werden soll, dass die zivile Nutzung nicht unter der Hand zu einer militärischen wird.

Um diesen Hinweis auf die Vertragspflicht angemessen beurteilen zu können, muss auf ein Prinzip hingewiesen werden, das ein unerschütterliches Fundament des Völkerrechts bildet, nämlich das Prinzip, das es jeder Nation erlaubt, sich gegen einen Angriff zu verteidigen. Genauso wie die einzelnen Individuen, besitzen auch die Nationen ein Recht auf Selbsterhaltung. Dabei muss die Nation nicht als ein metaphysisches Gebilde konzipiert werden, das eine Existenz jenseits der Individuen hat, die sie konstituieren. Die Nation, so wie wir sie hier verstehen - und wir verstehen sie im politischen Sinn -, ist lediglich ein rechtliches Gebilde, zu deren wesentlichen Elementen oder Charakteristiken die Souveränität zählt, definiert als das Recht, über ihr eigenes Schicksal zu entscheiden, und vor allem darüber, ob sie dieses Recht, über ihr eigenes Schicksal zu entscheiden, weiter behalten soll oder nicht.

Wo eine vertragliche Verpflichtung und das Selbsterhaltungsprinzip miteinander in Konflikt treten, hat die Selbsterhaltung den Vorrang. Mit anderen Worten: Sollte der Iran zum Schluss kommen, dass er sich nur dann erhalten kann, wenn er Nuklearwaffen besitzt, dann hat er ein Recht, seine vertragliche Verpflichtung zwischen Klammern zu setzen, da diese niemals so weit geht, dass sie einen Staat dazu verdammt, sich zerstören zu lassen. Hier gilt das schon von den Römern formulierte Prinzip: *Salus populi suprema lex esto*.

Im Falle der einzelnen Individuen, die einen Staat bilden, ist die Ausübung des Selbstverteidigungsrecht zur Ausnahme geworden - zumindest in den relativ wohlgeordneten Staaten der westlichen Hemisphäre. Nur ganz selten müssen wir unsere eigenen physischen Kräfte einsetzen, um einen Angriff abzuwehren. Im Normalfall sorgt die Polizei für öffentliche Ordnung und Sicherheit und bewahrt uns somit - wenn auch nicht absolut - vor Angriffen.

<sup>3</sup> Ich danke Professor Wolfgang Lienemann für diesen Einwand.

Im Falle der Staaten gibt es keine solche Polizei. Auch wenn man genau genommen nicht behaupten kann, die Staaten befänden sich noch immer in einem Hobbeschen Naturzustand, so trägt der internationale Zustand doch Züge, die eine große Ähnlichkeit mit dem Hobbeschen Naturzustand erkennen lassen. Im Falle des irakischen Angriffs auf Kuwait wurde zwar so etwas wie eine internationale Polizeiaktion in die Wege geleitet, durch die u.a. gezeigt werden sollte, dass die internationale Gemeinschaft gewillt ist, auf krasse Verletzungen des Völkerrechts, und vornehmlich solche Verletzungen, die die nationale Souveränität tangieren, zu reagieren. Nur sollte nie vergessen werden, dass die internationale Gemeinschaft, wie sie sich in der UNO inkarniert, nur dann reagieren kann, wenn sich eine Mehrheit im UN-Sicherheitsrat bildet und wenn keines der fünf permanenten Mitglieder des UN-Sicherheitsrats sein Veto einlegt. Wären alle Länder sicher, dass die UNO sie gegen äussere Angriffe schützen wird, dann könnte davon ausgegangen werden, dass der Verzicht auf ihre Selbstverteidigungsrecht - und vor allem auf die Mittel zu einer solchen Selbstverteidigung - ihnen zugemutet werden kann<sup>4</sup>.

In unseren Überlegungen müssen wir davon ausgehen, dass der Iran ein Recht hat, sich gegen äussere militärische Angriffe zu verteidigen und dass er im Augenblick keine genügend große Gewähr hat, dass die UNO ihn vor einem solchen Angriff bewahren wird. Dieses Recht spricht ihm übrigens keine Nation ab, ansonsten nicht erst bei dem iranischen Atomwaffenprogramm protestiert worden wäre, sondern schon vorher im Kontext der Herstellung oder des Ankaufs konventioneller Waffen. Heute akzeptiert man gewöhnlich, dass jeder Staat ein bewaffnetes Heer unterhalten darf. Auch über die Grösse dieses Heeres - die absolute Grösse oder die Grösse relativ zur Bevölkerung - wird nicht weiter diskutiert. Keine Nation verbietet es einer anderen Nation, einen obligatorischen Militärdienst zu haben und ihre Bürger jedes Jahr oder alle paar Jahre für einige Tage oder Wochen an militärischen Übungen teilnehmen zu lassen. Was auch nicht in Diskussion steht, ist die Quantität von konventionellen Waffen. Es ist kaum anzunehmen, dass der UN-Sicherheitsrat oder Amerika intervenieren würden, wenn der Iran sich dazu entschlösse, hundert Millionen Maschinengewehre für das eigene Heer herzustellen. Soweit mir bekannt ist, besteht kein internationaler Vertrag, der den Besitz konventioneller Waffen einschränken würde - von bestimmten Waffenarten einmal abgesehen. Selbst ein Land wie Japan, das nach dem Zweiten Weltkrieg entmilitarisiert wurde, besitzt heute wieder ein bewaffnetes Heer.

Das Problem sind somit nicht die Waffen oder das Heer als solche, sondern ganz bestimmte Waffen, nämlich Nuklearwaffen. Diese Waffen zeichnen sich durch ihr hohes Zerstörungspotential aus. Mit einem einzigen Nuklearsprengkopf kann man prinzipiell soviel Schaden anrichten wie mit mehreren tausend Tonnen konventioneller Bomben. Und dank der Entwicklungen auf dem Gebiet der Raketentechnologie, kann man innerhalb weniger Minuten eine Zielscheibe treffen, die mehrere tausend Kilometer entfernt liegt. Nuklearraketen kennen somit keine Grenzen und können nur ganz schwer aufgefangen und in der Luft zerstört werden - nicht zu sprechen von den Risiken die man bei einer solchen Zerstörung in der Luft eingeht.

<sup>4</sup> So wird uns Europäern zugemutet, ohne Waffen zu leben. In Amerika ist die Situation natürlich etwas anders.

Bei der Kontroverse um den Besitz von Nuklearwaffen geht es also letzten Endes darum, einen riesigen Vorsprung hinsichtlich der Zerstörungskraft zu zementieren. Solange der Staat A, nicht aber der Staat B Nuklearwaffen besitzt, kann der Staat A die wichtigsten Städte und Infrastrukturen des Staates B innerhalb von wenigen Minuten in Schutt und Asche legen, ohne selbst größeren Schaden zu erleiden. Hier herrscht also ein Ungleichgewicht des Schreckens, das die Nuklearmacht leicht ausnutzen kann, um dem anderen Staat ihren Willen aufzudrängen. Den besten Beweis hierfür haben Hiroshima und Nagasaki geliefert.

Unter diesen Umständen wird man geneigt sein zu sagen, dass die Macht, die noch nicht über Nuklearwaffen verfügt, sich auch solche Waffen aneignen darf, um das Ungleichgewicht des Schreckens durch ein Gleichgewicht des Schreckens zu ersetzen, ein Gleichgewicht das die Garantie dafür zu sein scheint, dass kein Staat dem anderen seinen Willen aufzwingen will. Zu erwägen wäre auch der Fall, in dem ein Land über ein riesiges konventionelles Arsenal verfügt und darüber hinaus auch über ein riesiges Truppenpotential, während ein anderes Land, wegen seiner geringen Bevölkerung, nur ein kleines Heer hat. In einem solchen Fall wäre zu fragen, ob das kleine Land nicht dazu berechtigt sein sollte, seine konventionelle Schwäche durch den Besitz von nuklearen Waffen auszugleichen. Wenn Luxemburg 1940 über Nuklearwaffen verfügt hätte, Deutschland aber nicht, dann hätte Hitler sicherlich nicht das kleine Großherzogtum überfallen und dem Reich integriert.

Wenn man das Recht eines Landes sich gegen äussere Angriffe nicht bloß als formales Recht betrachtet, sondern wenn dieses Recht etwas in der wirklichen Welt bewirken soll, dann muss jedes Land prinzipiell auch die Möglichkeit haben, sich gegen äussere Angriffe zu verteidigen. Und das setzt natürlich voraus, dass die militärische Ungleichheit zwischen zwei Staaten nicht derart groß ist, dass der schwächere Staat keine wirkliche Möglichkeit hat, sich gegen einen Angriff zu verteidigen. Das Luxemburger Heer hätte im Mai 1940 militärischen Widerstand leisten können, es hätte damit aber nur die Besetzung der Landes durch die deutschen Truppen um einige Tage hinaus gezögert.

Das Recht auf den Besitz von Nuklearwaffen könnte somit in zwei Fällen als gerechtfertigt erscheinen. Beim ersten Fall würde man von einem erheblichen konventionellen militärischen Ungleichgewicht ausgehen. Um dieses Ungleichgewicht auszugleichen, würde der konventionell Unterlegene das Recht haben, Nuklearwaffen zu besitzen, um seinem Verteidigungsrecht somit Substanz zu geben. Beim zweiten Fall würde man davon ausgehen, dass der eine Staat über Nuklearwaffen verfügt, der andere nicht. Das heisst, der zweite Fall stellt nicht anderes als die Konsequenz dar, die aus dem ersten gezogen wurde. Der Besitz von Nuklearwaffen schafft ein neues erhebliches Ungleichgewicht, das nur dadurch ins Lot zu bringen ist, dass beide Seiten über solche Waffen verfügen. Damit scheint es nur zwei mögliche Szenarien zu geben. Entweder kein Staat verfügt über Nuklearwaffen - aber dann sind die konventionell Schwächeren den konventionell Stärkeren ausgeliefert -, oder alle Staaten verfügen über Nuklearwaffen, wobei voraus gesetzt werden muss, dass jeder Staat auch über genügend Nuklearwaffen verfügt bzw. über Nuklearwaffen mit einem genügend großen Zerstörungspotential.

Bei der Diskussion des Atomwaffenstreits mit dem Iran, darf die Tatsache nicht unerwähnt bleiben, dass das Problem nicht so sehr darin besteht, dass ein Iran genannter Staat Atomwaffen entwickeln will - vom Atomwaffensperrvertrag einmal abgesehen. Wäre in

Teheran eine Regierung, die den Vereinigten Staaten von Amerika wohl gesinnt wäre und herrschte auch im Land eine amerikafreundliche Atmosphäre, wäre die amerikanische Abneigung gegenüber dem iranischen Atomwaffenprogramm wesentlich schwächer. Es geht also letzten Endes nicht so sehr darum, einem bestimmten Land als solchen den Besitz von Atomwaffen streitig zu machen, sondern einem bestimmten politischen Regime in diesem Land.

Man wird in diesem Zusammenhang zwischen dem abstrakten Recht eines Staates und der konkreten Ausübung dieses Rechts durch den betreffenden Staat unterscheiden müssen. So wird man auf der abstrakten Ebene einräumen können, dass zwar jeder Staat das Recht hat, Atomwaffen zu besitzen, gleichzeitig aber bestimmten Staaten das Recht absprechen, unter bestimmten Bedingungen von diesem Recht Gebrauch zu machen. Bestimmte Staaten, so wird man behaupten können, bieten nicht die nötige Gewähr dafür, dass sie Nuklearwaffen nur zu Verteidigungszwecken einsetzen werden, also mit ihnen nur den Zweck der Abschreckung verfolgen werden. Dieser Gedanke spielt sicherlich im Fall des Irans eine große Rolle. Es ist bekannt, dass der Iran den Staat Israel nicht anerkennt und ihn am liebsten von der Weltlandkarte streichen möchte. Es ist somit nicht auszuschließen, dass der Iran seine Atomwaffen einsetzen könnte, um Israel anzugreifen.

Sieht man also einmal von der ganz abstrakten Frage ab, ob ein Staat überhaupt Atomwaffen besitzen darf, eine Frage, welche die Atommächte schon de facto positiv beantwortet haben, stellt sich die konkretere Frage, unter welchen Bedingungen einem Staat die Ausübung des abstrakten Rechtes erlaubt werden sollte. Diese Bedingungen müssen prinzipiell dieselben sein, die für die schon bestehenden Nuklearnationen gelten, und sie müssen darüber hinaus erfüllbar sein. Es ist nämlich nicht ersichtlich, warum für bestimmte Staaten strengere Bedingungen gelten sollten als für andere Staaten.

Sieht man sich aber die schon bestehenden Nuklearnationen an, so wird man schnell feststellen, dass es nicht möglich ist zu sagen, welche normativ relevanten Bedingungen sie alle erfüllen. Dass die Vereinigten Staaten von Amerika, Russland, China, Frankreich, England, Indien, Pakistan und Israel, um nur sie zu nennen, über Atomwaffen verfügen, hat nichts damit zu tun, dass sie bestimmte normativ relevante Bedingungen erfüllen, sondern ist einfach ein historisches Faktum, bedingt durch allerlei kontingente Faktoren. Zu einem bestimmten Zeitpunkt verfügten diese Länder über das notwendige Wissen und das notwendige Material, um Nuklearwaffen herzustellen, und keines von ihnen hat sich die Frage gestellt, ob es überhaupt ein Recht hat, solche Waffen herzustellen und zu besitzen. Dieses Recht wurde gewissermaßen voraus gesetzt, wobei zu sagen ist, dass das zweite Land sein Recht gewissermaßen aus dem Faktum des Besitzes von Nuklearwaffen durch das erste Land ableitete. Insofern die Vereinigten Staaten von Amerika die Möglichkeit hatten, die Sowjetunion - oder doch zumindest die großen Städte der Sowjetunion - mittels Nuklearwaffen in Schutt und Asche zu bombardieren, beanspruchte die Sowjetunion das Recht, auch Nuklearwaffen zu besitzen, um dadurch mit den Vereinigten Staaten gleichzuziehen.

Heute beansprucht auch der Iran ein solches Recht für sich, während andere Länder für sich das Recht beanspruchen, ihm zumindest die Ausübung dieses Rechts streitig zu machen, gegebenenfalls mit Militärgewalt, wenn es anders nicht möglich sein sollte. Damit stellt sich die Frage, welcher dieser Ansprüche gerechtfertigt ist. Rein abstrakt gesehen, kann der Iran sicherlich ein Recht geltend machen, sich gegen mögliche Angriffe so effi-

ziert wie nur möglich zu verteidigen, und d.h. dann, dass er ein Recht auf den Besitz von Nuklearwaffen geltend machen kann, wenn die Welt so gestaltet ist, dass ihm nur solche Waffen die Möglichkeit bieten, sich wirksam zu verteidigen. Verlässt man aber die abstrakte Ebene um den konkreten Gegebenheiten Rechnung zu tragen, allen voran die politische Situation im Iran, so wird man dazu geneigt sein, dem Iran unter den jetzigen Umständen die Ausübung des eben genannten Rechts zu verweigern. Aus einer ganzen Reihe von Gründen bietet das jetzige politische Regime im Iran nicht die Gewähr, dass die Nuklearwaffen nur als ultima ratio im Falle eines ungerechten Angriffs von aussen und zum bloßen Zweck der Verteidigung eingesetzt werden. Hinzu kommt, dass der Iran alles andere als ein Staat ist, der die Bedingungen des Kantischen Republikanismus erfüllt. Somit ist die Gewähr nicht gegeben, dass ein angemessen informiertes und aufgeklärtes Volk von sich aus über den möglichen Einsatz von Nuklearwaffen bestimmt. Die Entscheidung über den Einsatz solcher Waffen liegt vielmehr in den Händen der höchsten religiös-politischen Autoritäten, deren demokratische Legitimierung alles andere als evident ist. Und ein weiteres Element das man in diesem Zusammenhang berücksichtigen sollte, ist der religiöse Fanatismus, der das Menschenleben insofern als gering achtet, als die Gläubigen sowieso, glaubt man dem Koran, direkt ins Paradies kommen, wenn sie im Kampf für den Islam gestorben sind.

Ein wichtiges Element ist also das Vertrauen. Insofern und solange man der iranischen Führung nicht trauen kann, dass sie die Nuklearwaffen zu bloßen Verteidigungszwecken gegen einen ungerechten Angriff einsetzt, scheint es berechtigt, ihr die Ausübung ihres Rechts auf den Besitz von Nuklearwaffen zu verweigern. Allerdings wird der Iran auch das fehlende Vertrauen anführen können, um sein Recht auf den Besitz von Nuklearwaffen zu rechtfertigen. Insofern und solange nämlich der Iran nicht sicher sein kann, dass bestimmte Staaten, wie etwa die Vereinigten Staaten von Amerika, ihn nicht angreifen werden, sollte er sich die Möglichkeit geben können, einen möglichen Angriff abzuwehren.

Wir hatten vorhin darauf aufmerksam gemacht, dass die internationale Ordnung zwar nicht ganz mit dem Hobbeschen Naturzustand überein stimmte, dass es aber gewisse Ähnlichkeiten zwischen ihnen gibt. Eine solche Ähnlichkeit ist das eben angesprochene Misstrauen. Wo ein Ungleichgewicht des Schreckens besteht, besteht größeres Misstrauen als wo ein Gleichgewicht des Schreckens besteht. Und auch wo bestimmte Staaten bereit sind, sich selbst zu opfern, um einer bestimmten Religion oder Ideologie zum Sieg zu verhelfen, besteht größeres Misstrauen als wo jeder Staat in erster Linie darum Sorge trägt, dass es den eigenen Bürgern gut geht.

Vergleicht man den Iran und die Vereinigten Staaten von Amerika, so scheint es sicherlich ganz plausibel zu behaupten, dass man Amerika mehr vertrauen kann, dass es die Nuklearwaffe nicht zu offensiven Zwecken einsetzt, als man dies dem Iran zutrauen kann. Zwar haben die Amerikaner bislang zweimal in ihrer Geschichte die Nuklearwaffe eingesetzt, nämlich in Hiroshima und Nagasaki, aber diese Bereitschaft zum Einsatz in der Vergangenheit sollte nicht als sicherer Beweis angeführt werden, dass sie eine solche Bereitschaft auch in der Zukunft zeigen werden. Allerdings sind bestimmte Aussagen des amerikanischen Präsidenten nicht dazu angetan, die Gemüter zu beruhigen. Amerika sieht sich im Augenblick als eine Art von Weltgendarm, und beansprucht somit ein Recht für sich, das es anderen Staaten abspricht. Wenn überhaupt, dann kann ein solches Recht aber nur dem UN-Sicherheitsrat zukommen, wobei man sich auch ernsthafte Gedanken über die

Zusammensetzung dieses Gremiums und über das Vetorecht der fünf permanenten Mitglieder machen sollte.

Die Frage der Gleichheit zwischen den Staaten stellt sich nämlich schon gleich auf der Ebene des UN-Sicherheitsrats. Wenn ein einziges Land durch sein Veto verhindern kann, dass es selbst zur Rechenschaft gezogen wird, dann kann man es andern Ländern nur bedingt übel nehmen, wenn sie sich über die Entscheidungen des UN-Sicherheitsrats hinwegsetzen. Im Augenblick sind nicht alle Staaten gleich wenn es darum geht zu bestimmen, welche Ausübung von Rechten man anderen Staaten verbietet und welche man ihnen gewährt. Durch ihr Vetorecht, sind fünf Staaten einfach gleicher als andere. Die Abschaffung des Vetorechts der fünf permanenten Mitglieder des UN-Sicherheitsrats wäre somit eine Etappe zu mehr Gleichheit zwischen den Staaten. Dabei ist zu erwähnen, dass dieses Vetorecht im Augenblick nicht die schwächsten Staaten gegen die stärksten schützt, sondern die stärksten gegen die schwächsten. Dadurch dient das Vetorecht eigentlich nur der Zementierung der schon existierenden Macht und steht somit potentiell einer Demokratisierung der internationalen Beziehungen im Wege.

Doch genügt es nicht mit der Abschaffung des Vetorechts. Es ist gewusst, dass manchmal bestimmte Staaten bei der Abstimmung im UN-Sicherheitsrat die Stimmen anderer Staaten kaufen. Die ökonomische Ungleichheit, und vor allem die ökonomische Abhängigkeit bestimmter Staaten von anderen Staaten sind ein großes Hindernis für die demokratische Umgestaltung der internationalen Verhältnisse.

In diesem Beitrag habe ich auf ein Problem aufmerksam gemacht, nämlich auf das Problem der Ungleichheit in zwischenstaatlichen Beziehungen. Verdeutlicht wurde dieses Problem durch den Hinweis auf den Atomwaffenstreit, bei dem einige Staaten dem Iran verbieten wollen, jene Waffen zu besitzen, die sie selbst besitzen. Auch wenn es stimmen mag, dass der Iran sich als Unterzeichner des Atomwaffensperrvertrags dazu verpflichtet hat, keine Atomwaffen zu entwickeln, kann man die philosophische Überlegungen nicht an diesem Faktum zum Stillstand kommen lassen. Denn erstens gibt es Normen, die über internationalen Verträgen stehen und die es erlauben, vertragliche Verpflichtungen gegebenenfalls zwischen Klammern zu setzen, und andererseits ging es uns hier um ein prinzipielles Problem. Es besteht kein Zweifel, dass die Vereinigten Staaten von Amerika und einige anderen Staaten ihre Bedenken auch dann angemeldet hätten, wenn der Iran den Atomwaffensperrvertrag nicht unterzeichnet und ratifiziert hätte. Die prinzipielle Frage lautet, ob ein Staat einem anderen Staat die Ausübung eines Rechtes verweigern darf, das er selbst in Anspruch genommen hat. Dass er über die faktische Möglichkeit verfügt, diese Ausübung gegebenenfalls mit militärischen Mitteln zu verweigern, gibt ihm kein Recht zu einer solchen Verweigerung, denn Macht allein schafft noch kein Recht.

*Göran Collste:*

*...punishing the children for the sin of the fathers to the third and fourth generation ... "An argument for Global Rectificatory Justice*

With the publication of Rawls's work *A Theory of Justice* in 1971, justice became a main issue in political philosophy and ethics. (Rawls, 1971, Kymlicka 2002) Already in the 1970<sup>th</sup> did Charles Beitz argue for a global application of Rawls's theory of distributive justice. (Beitz 1979). Thomas Pogge developed the argument in *Realizing Rawls* in the 1980<sup>th</sup>. (Pogge, 1989). As a consequence of Rawls's own contribution to the discussion about international justice in *The Law of Peoples* (Rawls 1993, 1999) the discussion was intensified. Rawls's limitation of his theory to international political justice – which means that he excluded the difference principle from his theory of international justice - has been questioned by many (Tan, 2000, 2004, Pogge 2001, Buchanan, 2000). In light of global inequality and wide spread poverty in the Third world this limitation is indeed questionable. However, what is striking with the present discussion on global justice is that it is solely focused on global distributive justice.

The present borders between the global rich and poor coincide with the historical borders between former colonial powers and colonies. Is this fact a coincidence or is there a connection between the history of colonialism and the present global inequalities? During colonial times the economies of the colonies in Asia, Africa and Latin America were adjusted in the interests of the colonial powers. As a consequence of the Spanish and Portuguese exploitation of Latin America, the British, Belgian, Portuguese and French of Africa, British, Portuguese and Dutch of Asia, the slave trade etc, Europe and North America prospered while many colonies sank in despair. What happened during this period in history is well captured in the title of Brazilian author Eduardo Galeano's book *Las venas abiertas de América Latina* (*Open Veins of Latin America*) (Galeano, 2005)

How, then, can the history of colonialism have implications for a present theory of global justice? In his discussion on justice, Aristotle distinguishes between distributive and rectificatory justice. Distributive justice focuses on distribution of scarce resources and goods. Rectificatory justice, on the other hand, is backward looking and focuses on correction for past deeds. In explaining rectificatory justice Aristotle writes:

"...for in the case also in which one has received and the other has inflicted a wound, or one has slain and the other been slain, the suffering and the action has been unequally distributed: but the judge tries to equalize things by means of the penalty, taking away from the gain of the assailant herefore corrective justice will be the intermediate between the loss and gain" (Aristotle, V:4)

If the history of colonialism implied – in Aristotle's words – inflicting wounds, there is an argument for global rectificatory justice.

A theory of global rectificatory justice can also draw from more recent work in ethics. Robert Nozick's entitlement theory is an example of a historical, backward-looking theory of justice. According to Nozick, a person is entitled to his or her property provided that it is acquired in a just way. Hence, property rights depend on justice in acquisition and justice in transfer. (Nozick 1974, p. 150f) Nozick's theory is a philosophical justification of libertarianism. However, with some factual assumptions, the theory can justify a demand

for global rectificatory justice. If we assume that the present concentration of property and wealth in the rich part of the world at least partly is the result of unjust historical acquisitions, i.e. plunder, theft and war, one could, also in line with Nozick's entitlement theory, argue for a global "...rectification of injustice in holdings" (ibid., p.152). Historical injustices thus beg for rectifying actions.

It seems to me that the idea of rectificatory global justice has some moral force. Let me illustrate the argument: Assume that I live a life in prosperity and welfare. My next door neighbour, on the other hand, lives in poverty and misery. Let us also assume that many years ago my grandparents stole the land from my present neighbour's grandparents and our present difference in welfare is the result of this historical fact. Then, it seems that my neighbour with good reasons could demand to get a part of my land or income, and thus, that I have some moral obligations to my neighbour. And these obligations are generated by the acts of my forefather.

The ideas of rectificatory justice and historical obligations are not new in political ethics. They have been practised in other historical instances of oppression and exploitation. One example is the compensation given by Germany to Israel since the Second World War because of the Holocaust and another is the policy of affirmative action in favour of the black people and former slaves in the US. (Thompson, 2002)

In this article I argue for a theory of global rectificatory justice. The theory is based on two pillars: the meaning of justice and some factual assumptions about the connection between colonialism and present global inequality. Colonialism implied political, cultural and economical domination. Hence a theory of rectificatory justice must take into account political, cultural and economical demands for rectification. (A similar argument could be applied to other similar cases, for example the exploitation of the Baltic states by Soviet Union after World War II.)

However, there are a number of possible objections to a theory of rectificatory global justice that must be addressed.

(1) A theory of global rectificatory justice presupposes the possibility of historical and collective responsibility. Is it reasonable that the fact that some of our forefathers acted wrongly towards the forefathers of Africans, Asians or Latin-Americans implies that we who live today have a responsibility towards, and are obliged to compensate, present Africans, Asians and Latin-Americans, i.e. that moral responsibility can be trans-generational? From the point of view of ethical presentism this seems doubtful. One could argue that the oppressor owe something to the oppressed at the time of colonialism, but not that individuals living later, i.e. the grandsons and granddaughters, who themselves neither acted as oppressor nor oppressed owe anything to each other.

A theory of ethical presentism is developed by Jon Elster. According to ethical presentism, for purposes of justice only the living individuals matter. Injustices done in the past have no relevance for the present. However, Elster accepts one limitation to ethical presentism. He writes:

"Injustice done to individuals who are no longer alive may constrain present distributions only if it has left morally relevant traces in the present." (Elster, 1993)

According to the argument for global rectificatory justice, Elster's condition is fulfilled. What makes the historical injustices of colonialism relevant for the present discussion on justice is precisely the fact that "it has left morally relevant traces in the present": prosperity

...punishing the children for the sin of the fathers to the third and fourth generation ... "An argument for Global Rectificatory Justice

in the former colonial powers and poverty in the former colonies. But does that not imply that we have to do with a theory of distributive justice, rather than of rectificatory justice? No, because the reason for reparation is the historical wrongs committed. When there are no traces left, there is no reason to repair. This does of course not exclude that there are other relevant "justice-arguments", for example arguments for redistribution.

Elster's condition also provides us with a criterion of which historical injustices are relevant in the present discussion and which are not. For example, would a principle of global rectificatory justice imply that the Scandinavian countries should compensate England and France for what the Vikings did towards their ancestors in the 9<sup>th</sup> and 10<sup>th</sup> centuries? The answer is no. But not because the harms inflicted by the Vikings took place long time ago but because – as far as one can notice – the Viking's ravaging has not left any morally relevant traces in the present.

(2) A theory of global rectificatory justice depends on some controversial factual assumptions:

First, it assumes that colonialism implied that injustices were made against the colonies.

Secondly, it assumes that this historical injustice has left morally relevant traces in the present, i.e. the present poverty in the Third world, and

Thirdly, it presupposes the contra factual assumption that the former colonies would be better off without colonialism.

It is not possible to extensively support these assumptions in an article of this kind. The first assumption implies a problematic generalisation. It might be the case that for some colonies at some particular time, colonialism was beneficial. However, the general picture of the consequences of colonialism is formulated by Thomas Pogge:

"The present world is characterised not only by radical inequality...but also by the fact that 'the social starting positions of the worse-off and the better-off have emerged from a single historical process that were pervaded by massive grievous wrongs...most of the existing international inequality in standards of living was built up in the colonial period when today's affluent countries ruled today's poor regions of the world: trading their people like cattle, destroying their political institutions and cultures, and taking their natural resources. In 1960, when the colonizers finally left, taking what they could and destroying much else, the inequality in per capita income between Europe and Africa had grown to 30:1'..."(quoted in Sigurthorsson, 2006, 23)

Let me just mention two historical examples of the economic implications of colonialism that illustrate Pogge's general picture:

When Latin America was colonised, the economies of the colonies were adjusted to the needs of the colonial powers. The economic history of Brazil since the 16<sup>th</sup> century is a history of dependence. Lacking gold and silver, the Portuguese started to grow sugar on huge haciendas in the north eastern part of the country. While the native Indians could not adjust to the plantation work, slaves from the Portuguese colonies in West Africa were imported. The slaves had an average useful life of seven years. (Frank, 1967, p. 155). In the 19<sup>th</sup> century sugar plantations were replaced by cotton and coffee now in the hands of British landowners. However, neither product gave a lasting economic stability to the region. When the markets declined, so did the North-eastern part of Brazil:

"The formation of the North-eastern population and its precarious subsistence economy - basic elements of the Brazilian economic problems in later epochs – are thus linked to

this slow process of decadence of the large sugar enterprise..” economic-historian Celso Furtado writes. (Furtado, 1959, p.s 80).The economic history of dependence, resulting in one of the most poverty stricken regions of the world, has been called “the generation of underdevelopment” (Frank, 1967, p.154).

An example from another part of the world. In *Late Victorian Holocausts: El Nino famines and the making of the third world*, (2001) Mike Davis argues that the Victorian policy to integrate the economies of India and China into the world market, at the time dominated by the British, led to famines and mass starvation. Two severe famines hit India and China in the 19<sup>th</sup> Century. The first took place 1876-1879 and the second 1896-1902. In India between 12,2 – 29, 3 million people, and in China between 19,5-30 million people died during these famines. The famines struck the populations in an earlier unknown way. Why? Because, according to Davis, the integration of Indian and Chinese economies in the world market implied that the stock of crops that in the pre-colonial society was stored in case of famines had been sold out and when needed it no longer existed. Instead, in the middle of the famines, huge amount of wheat was exported to Great Britain!

Davis refers to the following table showing the history of different region’s amount of the world GNP (%):

	1700	1820	1890	1952
China	23,1	32,4	13,2	5,2
India	22,6	15,7	11,0	3,8
Europe	23,3	26,6	40,3	29,7

Table 1

(Davis, 2001 p.293)

The economic history of Brazil, India and China – as well as of Africa and other former colonies - illustrates the thesis that colonialism led to economic dependence and underdevelopment.

Colonialism implied political, economic, social and cultural domination. The political supremacy of the colonial powers implied oppression – more or less harsh - and humiliation of the colonised peoples. The slave trade – 30 millions Africans deported to America of whom half the numbers died during convey - is perhaps the most appalling example of the politics of humiliation.

Would then the peoples of the colonies have been better off without colonialism? The question is anachronistic and seemingly very difficult to answer. The answer depends also on what we mean by “better off”. Is a native, traditional tribal life better than a life in a suburban Latin American “favela”? Table I above indicates that the economic situation in both China and India deteriorated as a consequence of colonialism. As regards America, the answer to the question is quite simple. Due to deceases, starvation and inhuman working conditions a “demographic catastrophe” followed in the footsteps of colonialism. There are different estimations of the numbers of native Indians at the time of the conquest. (Mörner, 1960. Bethell, 1984, p.145f) However, a large proportion of the native population died. According to one estimation, the number of Indians in Mexico decreased from 25 millions in 1519 to 1,9 million 1580. (Wachtel, 1984, 212)The colonisation of

Latin America meant death for a majority of native Indians. Historian Nathan Wachtel comments: "Even if it is accepted that these epidemics were the main cause of the demographic decline, it cannot be denied the Spanish conquest was itself a period of murderous oppressions" (ibid, 213)

When the British colonised Bengal in the middle of the 18<sup>th</sup> century, the region was prosperous. British conqueror Robert Clive described the capital Dacca as a paradise, saying it's "just like London". At the time of de-colonialisation, the region had become one of the poorest regions in the world, and it still is (Sigurthorsson, 2006 23-24).

Colonialism lasted from the 16<sup>th</sup> century to the middle of the 20<sup>th</sup> century – a period of 400 years! Colonialism shaped the economical and political relations between the colonial powers and the Third world countries. All in all, although impossible to establish in this article, colonial dependence seems to be a main cause of present underdevelopment in the Third world. As a consequence, there is a case for rectificatory justice.<sup>5</sup>

(3) If we in line with the previous argument for global rectificatory justice can assume a trans-generational responsibility, which is in this case the moral agent, and as a consequence, who has the obligation to rectify?

In her book *Taking Responsibility for the Past* (2002) Janna Thompson discusses the problem of trans-generational commitments. In particular she refers to historical obligations that follow from treaties. Treaties can be considered as promises by nations that should not be broken. Hence, violations of treaties are violations of promises which undermine mutual trust. Accepting such trans-generational commitments is "intrinsic to the practice of making agreements", Thompson argues (Thompson, 2002, 27).

If we accept the moral requirements for treaties, we get obligations to make reparations for violations of commitments, Thompson argues. In failing to make reparations one undermines the "entitlement to make a commitment" (ibid).

The history of colonialism includes many cases of broken treaties. However, colonial powers treated colonies also in other morally blameworthy ways. Besides violations of treaties, the history of colonialism is a history of economic exploitation, military aggression, enslavement and genocide. The obligation to repair for violations of treaties is one instance of a more general category of obligations to repair for past wrongs. We have a basic obligation to treat other peoples with respect and acts of disrespect beg for rectification.

But, perhaps, what we today consider blameworthy was at an earlier time considered fair? For example, the colonial masters may have thought they had a mission to cultivate the indigenous peoples and thus they were obliged to treat them paternalistic. Is it then reasonable to use present day moral criteria when assessing their actions? When we judge the morality of past actions - and reflect upon the moral implications of these actions for the present - we do it from our present idea of justice. There could be a case for rectificatory justice even for well intended acts by our forefathers. As Aristotle points out, it is not the intentions behind the past acts but their consequences that generate a demand for rectification.

<sup>5</sup> Of the 26 countries out of 133 with a human life expectancy figure below 50 years, 25 are former colonies (UNDP, 2003)

In the framework of colonialism there were different agents involved. There were individuals, for example conquistadors, there were companies like the East Indian Companies, and there were representatives of the colonial powers. Which agent has an obligation to repair for past injustices? The view of rectificatory justice so far developed implies that each agent is responsible and has a duty to repair. But it may be difficult to trace the ancestors to the conquistadors and companies active during the colonial epoch may no longer be in existence. Hence, we face practical problems in implementing rectification. A possible solution to the practical problem is to assign responsibility to the colonial powers involved. While the colonial nations both acted themselves and provided the legal framework for individuals and companies involved, responsibility falls back on them. However, there are at least two possible objections to assigning responsibility for past wrongs to nations. One is that the nation may no longer exist. This objection has relevance in a discussion about rectification for the wrongs done by the Soviet Union to Baltic States. Does the responsibility for past wrongs fall back on present Russia? But the former Soviet Union also included other nations, as for example the Baltic States themselves! However, this objection is not relevant in our case. The former colonial powers still exist, and they even still benefit from the earlier period. But assume that the colonial power at the time of colonialism was a totalitarian state and that the colonial politics lacked popular support? Then the policy was not morally legitimate and the democratic successors need not take responsibility for the acts of their totalitarian forefathers. There are two possible answers to this objection against rectificatory justice. The first is that there is a “transgenerational continuum” of responsibility. (Thompson, p 74) One can in line with Thompson argue that obligations and agreements remain over time. The same goes for responsibility for past wrongs. This is illustrated by a personal experience I had some years ago. Together with some British friends I went to a conference in Beijing. In Beijing, on many old castles and mansions there was a sign saying “This house was burnt down by the British in 18...” My British friends were not unaffected by this. On the contrary, they felt ashamed.

The second response to the objection that there is no case for rectification because the democratic successors need not take responsibility for the acts of their totalitarian forefathers is based on the fact that the peoples of former colonial powers still benefit from colonialism. Their economic welfare was generated by colonialism and as long as they take advantage of this, they also have a responsibility to repair for past injustices. Not all nations in the nowadays wealthy part of the world had colonies. For example, Sweden had only the tiny colony New Sweden in Delaware for less than twenty years in the 17<sup>th</sup> century. Does the obligation to rectify only apply to those nations in the, so called, First world that also once were colonial powers? While responsibility falls back on past acts one could argue that it is only the former colonial powers that have obligations to rectify. On the other hand, even nations like Sweden that did not have their own colonies, benefited economically from colonialism. Hence, at least if they did not actively fight against colonialism, they can also be considered as part of the colonial structure. When discussing whether former colonial and non-colonial developed nations have the same obligations to rectify or not, one can make a distinction between stronger and weaker obligations. The formerly colonial powers have primary obligations of rectification towards their former colonies, and those non-colonial powers that benefited from the system have secondary obligations to rectify for the consequences of colonialism. Primary obligations imply not only eco-

nomic compensation but also political and cultural acts of rectification. Secondary obligations imply only economic compensation. The reason for this distinction is that the colonial powers in different ways influenced the economy, politics and culture of the colonies, while the First world non-colonial powers only participated in – and gained from – the economical side of colonialism.

(4) In support of a theory of global rectificatory justice I referred above to Robert Nozick's entitlement theory. If global rectificatory justice is based on Nozick's entitlement theory, it will focus on past acts of appropriation and violations of individual property rights. But, is it really illegitimate property rights that are the core of the historical injustices? Even if the history of colonialism witnessed many cases of unfair acts of appropriation, and hence, present property rights could be questioned, it is indeed questionable if it is illegitimate property rights that are the core of the historical injustices. What is important with Nozick's theory is its emphasis on what has happened in the past and its insistence on the need for rectification for past wrongs. However, as I have already argued, in the case of colonialism these past wrongs include many other violations of rights than violations of property rights.

(5) What – if anything – are the practical implications of a theory of global rectificatory justice? Does it add anything substantial to a theory of global distributive justice?

First, the two theories are not unrelated. It seems strange that a former colony that prospers today could demand economical compensation for past wrongs from a present day poorer former colonial power. Hence, a demand for economical rectification for past wrongs can only be justified when the past wrongs leave traces in the present in the form of persistent inequality. In this case principles of distributive justice influence the implications of rectificatory justice. However, the former colony may with good reasons demand other kinds of rectification. For example, it may have been humiliated because its sovereignty was violated at the time of colonisation. For this the former colonial power should request for forgiveness. According theories of global distributive justice (Beitz, 1979, Pogge 1989, Tan, 2000) there is a need for global redistribution in favour of the poor in the underdeveloped countries. A theory of global rectificatory justice has similar implications. However, even though the economical implications are similar, the reasons behind are different. Furthermore, rectification may take other forms, like apologies. As Aristotle points out, distribution is only one aspects of justice. Rectification for past wrongs is another. Hence, a theory of global rectificatory justice is complementary to a theory of global distributive justice and it will enable us to entail a more comprehensive understanding of the meaning of global justice.

But, lastly, one may ask: Should we not rather strive for reconciliation than for rectification of past wrongs? These acts are not unrelated. Reconciliation without rectification is empty. Reconciliation will only be possible if the part that has inflicted past wrongs is willing to repair. It is impossible to repair for 400 years of colonialism. However, from the theory of global rectificatory justice follows that the former colonial powers (and the other nations that benefited from colonialism) have an obligation to do what they can to repair for past wrongs. In present global politics this would, for example, imply a fair trade beneficial to the poor nations, cancellations of their debts, transfer of resources from the rich to the poor nations for health care, education and economic development etc, in ways far more ambitious than the UN Millennium Goals. Not until this happens, the question of

reconciliation can be put on the agenda. The implications of the argument for global rectificatory justice are utopian and over-demanding. How could they be related to the real world? This challenging question may be addressed in two ways. First, there are in fact historical examples of parallel “utopian” demands that nevertheless have been realised. Reconciliation after apartheid in South Africa is perhaps the most telling example. Secondly, it might be an undertaking of normative ethics to point at even seemingly unrealistic moral demands and obligations - assuming of course that there are good reasons for them. Even if we are unable to live up to the demands and obligations, they may at least inspire us to realise approximations of them.

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*Ville Päävänsalo:*

*National Justice and Global Extensions. John Rawls's Model and Alternatives*

### 1. Introduction: Internationalism in Rawls' The Law of Peoples

John Rawls' (1921-2002) long-awaited book on international justice, *The Law of Peoples*, was published in 1999. Rawls based his classification of international actors on distinctions between (1) liberal democratic peoples, (2) decent hierarchical peoples, (3) burdened peoples, (4) benevolent absolutisms, and (5) outlaw states. Rawls' law of peoples has been widely criticized for an exaggerated reliance on state borders and national cultures. In particular, Thomas Pogge and Brian Barry have argued for a more straightforward conception of cosmopolitan distributive justice.<sup>6</sup>

In defence of Rawls, it can be said that, since both states and national cultures may well remain influential for a long time, corresponding conceptions of international justice are needed along with conceptions of justice that do not build on an international scheme of cooperation. Furthermore, it is possible to advance a relatively egalitarian account of distributive justice quite efficiently through international cooperation.

In this paper I defend the claim that relatively egalitarian, distributive justice at the global level can be supported by reasonable national cultures if there are vital conceptions of justice and benevolence embedded in the national cultures in question. My preferred conception is relatively egalitarian in this sense. Compared to Rawls' account, it is also more sensitive to "focal group plasticity," to use Amartya Sen's term, without rejecting the international cooperative scheme as the backbone of the model.

I develop Rawls' account by distinguishing among three types of democracies and two types of benevolent absolutisms, as follows: (1a) inclusive procedural democracies, (1b) reasonably liberal democracies, and (1c) sustainable welfare democracies (my preferred political conception), and (4a) benevolent culturalism and (4b) benevolent neo-liberalism. From Rawls' fivefold classification, (4) benevolent absolutism has so far drawn much less attention than the others. The argument proceeds with references to Amartya Sen, Daniel Little, David Miller, and some others. My contextual example is based on a Lutheran World Federation report, *The Role of the Church in Nation Building: Report of an International Consultation Held at the Njube Youth Center, Bulawayo, Zimbabwe, September 2-7, 1982*.

### 2. National, International, and Open Impartiality

Rawls' *A Theory of Justice* (1971)<sup>7</sup> and *Political Liberalism* (1993)<sup>8</sup> focus on justice in the context of one society. While the relatively short account of international justice in

<sup>6</sup> POGGE (2002); BARRY (2001).

<sup>7</sup> A revised edition of the book was published in 1999 (RAWLS 1999).

<sup>8</sup> The book was reprinted with a new introduction and the "Reply to Habermas" in 1996 (RAWLS 1996).

The Law of Peoples (1999) can be regarded as an extension of his national conception of justice, it is important to begin with certain aspects of his national conception.

In *A Theory of Justice*, Rawls presented his famous concept of the “original position” in which hypothetical persons choose the principles of justice for the basic structure of a single society. Since these persons would not know what positions they themselves would occupy in the society, their choices would be unaffected by any particular class, race, sex, or conception of good. In *Political Liberalism*, Rawls restricted his theory to certain basic questions of political justice so that it would be compatible with a wide range of reasonable, comprehensive doctrines, religious as well as non-religious.

In *The Law of Peoples*, Rawls introduced the second original position, which pertain to multiple societies or nations. In this hypothetical construct, reasonable representatives of well-ordered peoples, without knowing which people they actually represent, choose the principles of the law of peoples. Eight principles would arguably be chosen, including a principle of peoples’ freedom and independence, keeping treaties, just war, honoring human rights, and assisting burdened peoples to establish a well-ordered society. The representatives of liberal democratic peoples would endorse the principles first. Then decent hierarchical peoples would presumably endorse them.<sup>9</sup>

Amartya Sen has recently criticized Rawls’ conception in “Open and Closed Impartiality” (2002), starting with Rawls’ national conception of justice. Sen points out that Rawls applies impartiality only to a certain group of people, a focal group, and fails to be impartial in cases in which non-nationals are involved. In contrast, in Sen’s open impartiality, “making impartial judgments can (and in some cases must) invoke judgments *inter alia* from outside of the focal group.”<sup>10</sup>

Sen remarks that Rawls’ second original position enables him to address issues of international justice. Nevertheless, it neglects the significance of “focal group plasticity,” namely, that people’s moral identities are often tied to a variety of focal groups.<sup>11</sup> According to Sen, not even a gigantic version of the global original position is likely to deal with focal group plasticity adequately. Yet he contends that human rights with a universal scope can be advocated without an all-embracing scheme of global contractualism.<sup>12</sup>

In defence of Rawls’ approach, it can be said first, that his argument sets no obstacles to further moral conceptions that concentrate on focal groups other than national ones. Second, it can be asked whether impartiality is a meaningfully applicable concept at all to an open focal group. Assume that a scheme of cooperation *S* is impartial when its rules, *R*, are equally applied to persons *A* and *B* who are the two members of *S*. If the rules *R* are applied equally to the non-members of *S* as well, such as persons *C* and *D*, the result would be a closed system (albeit a global one in the world of *A*, *B*, *C*, and *D*). It is not at all clear what impartiality would mean if the focal group is not closed at one level or another. Probably moral concepts other than impartiality, such as solidarity or benevolence, could be better invoked in open focal groups.

<sup>9</sup> RAWLS (1999, pp. 30-42).

<sup>10</sup> SEN (2002, p. 446).

<sup>11</sup> SEN (2002, p. 461).

<sup>12</sup> SEN (2002, pp. 462, 467-469).

Despite Sen's criticism, two-staged, closed impartiality can form the backbone of the basic structure of the world while allowing flexible schemes at intermediate levels. Rawls' law of peoples is a candidate for this role, and we might be able to elaborate on it in a way that its defects do not make us blind to its strengths.

### 3. Substantive Democracies, Nationally Specific Welfare, and Benevolence

For the purposes of this article, democracies from inclusive procedural ones to sustainable welfare democracies can be distinguished from each other as follows. Inclusive procedural democracy (1a) affirms the basics of democratic and communicative procedures and their binding natures, but does not affirm the construction of substantive moral conceptions. Reasonably liberal democracy (1b) approximates Rawls' model: certain liberal and reasonable criteria are used to construct a relatively substantive content for democratic justice. Sustainable welfare democracy (1c) adds substantive and democratically legitimate content to the former—perhaps on a non-contractualist basis, for example, on the basis of an Aristotelian or Natural Law theory.

Daniel Little's theory can serve as an example of how a Rawlsian approach can be extended in terms of substance as well as scope. Little's hypothetical person resembles Rawls' while being more substantive. Reflecting, for instance, Sen's and Martha Nussbaum's Aristotelian aspirations, such a person possesses (1) physical, mental, and emotional capabilities, (2) rights and liberties, (3) needs, (4) a "conception of good for himself or herself" with (5) related preferences, and (6) a life plan.<sup>13</sup>

Little's theory also contains a more substantive principle of global distributive justice than Rawls' corresponding principle of assistance. Little's "putting the poor first" principle states: "Economic development policies, both domestic and international, should be structured in such a way as to give highest priority to improving the well-being of the poor in developing countries."<sup>14</sup>

Does Little, however, presume an overtly rich cultural cohesion related to his global conception of person? Should he have recognized more clearly, as Rawls did, that in different societies—in liberal as well as decent—people rely on different underlying cultures and different conceptions of person and that an inevitable consequence of this is that credible normative accounts at the global level cannot be very substantive? Let us consider in what sense well-being, first of persons, then of nations, might be a globally recognized good in the world in which national communities and their related cultures remain influential.

According to David Miller (1995), a national community is "(1) constituted by shared beliefs and mutual commitment, (2) extension in history, (3) active in character, (4) connected to a particular territory, and (5) marked off from other communities by its distinctive public culture."<sup>15</sup> Such a general account of national community can be developed for purposes of normative theorizing by assuming that positive emotions are often connected to these aspects. For example, reading mythical stories from the history of one's nation and viewing a nationally significant landscape generate personal well-being. Miller's account

<sup>13</sup> LITTLE (2003, pp. 28-29).

<sup>14</sup> LITTLE (2003, p. 30).

<sup>15</sup> MILLER (1995, p. 27).

can thus be connected to a concept of welfare democracy: if well-being belongs among the goods for people everywhere (*prima facie*), then positive national feelings within reasonable limits are (*prima facie*) good as well. Hence, well-being could be regarded as a global good of a particular kind: it would include nationally-specific well-being as its component.

Would such a turn in normative theory risk being disadvantageous for the minorities within the nation at stake? If the answer is yes, one can further argue as follows. First, in any democracy the majority gives the crucial guidelines as to which cultural sources are supported most. This follows even from a quite modest inclusion of the majority rule in the concept of democracy. Second, minorities in one nation or cultural area are often majorities in another nation or cultural area. A multilevel conception of culturally-specific well-being allows flexible adjustment at each level, and different areas and levels counter-balance each other. Third, one can complement an account of culturally-specific well-being with the principle of minority-friendly culturalism: the well-being of the minorities at each level should be given relatively more positive attention than what their number at that level suggests.

The last principle would require a certain degree of benevolence from the representatives of the majority. Hence, the benevolent components in the nationally dominant culture could complement the democratic rights of the minorities.

It is possible that national cultures also provide resources for ethical reforms beyond national borders. Rawls did not develop his notion of benevolent absolutism in this direction, but there appear to be no conceptual obstacles to such an attempt. Indeed, such an extension is worth trying, at least in theory, for the simple reason that many persons, including religious ones, have supported it.

Rawls defines benevolent absolutism in such a way that it is incompatible with democracy while being compatible with most human rights.<sup>16</sup> Let us use the concept of benevolent absolutism, however, in a way that it is not necessarily incompatible with democracy, but only in the cases of fundamental controversy. Such a concept helps us to relate recent accounts of cultural and neo-liberal benevolence to Rawls' overall framework, for many defenders of benevolent policies actually support democratic procedures.

Let us say that benevolent culturalists advocate the traditionally common culture and the virtues of benevolence this culture presumably inspires. They advocate democracy on the grounds that democracy is regarded as good for the people, yet they are fundamentally motivated by ideals, narratives, and principles of benevolence, often including some form of the commandment of love, rather than by the idea of democracy in its own right.

#### 4. Nation Building in Zimbabwe: Lutheran Perspectives

Let us consider how benevolent culturalism might support reasonable nationalism in the era of intensified globalization in light of the nation building program of the Lutheran World Federation (LWF) as represented in the report of the consultation at Bulawayo, Zimbabwe, 2-7 September 1982. Zimbabwe received its independence on 18 April 1980, and thus it provided the consultation with a stimulating context, although many other nations were studied in the program as well.

<sup>16</sup> RAWLS (1999, pp. 4, 63, 92).

According to Béla Harmati, the coordinator of the program, which was entitled *The Role of the Church in Nation Building*, nation building is “the process of reinforcing the common bonds among the people of a nation state to the end that there may be general stability and prosperity so that the nation may participate usefully in the community of nations.”<sup>17</sup> As important priorities in the program Harmati mentions political, economic, and cultural independence of a nation; as examples of “moral and ethical values,” he cites rectitude, honesty, love, tolerance, joy, reconciliation, forgiveness, righteousness, and self criticism.<sup>18</sup> Jonas Ch. Shiri, Bishop of the Evangelical Lutheran Church in Zimbabwe, clarified what this means in practice. He reported that the churches in Zimbabwe have identified themselves with the poor and the oppressed, built schools and hospitals, and protested against oppressive governments.<sup>19</sup>

Sibusiso M. Bengu from the LWF World Service distinguished between “[n]ationality in the legal or administrative sense” and “[n]ationality operating on a psychological level.”<sup>20</sup> He maintained that several kinds of cohesion, including religious, social, and economic, can strengthen the psychological nationality in the direction of administrative stability and peace. Bengu remarked that colonialism tended to support tribalism.<sup>21</sup> In the prevailing situation, he called particular attention to hunger and the widening gap between rich and poor world-wide as serious obstacles to stable and just nation building in Africa.<sup>22</sup>

The overall tone of these articles exemplifies the kind of approach I have called benevolent culturalism. Benevolence, which in this case is seen as rooted in the Christian religion, would be encouraged in the culture of a nation—and this culture is then supposed to support both the nation’s democratic development and the welfare of its people. On the one hand, the development would not be directed toward a fully Rawlsian liberal democracy in which social cohesion would not be based on religious cohesion. On the other hand, the culturally benevolent approach would be more egalitarian than that of Rawls in the sphere of economic justice at the national as well as at the global level.

Unfortunately, instead of a democracy, Zimbabwe became a dictatorship under the rule of Robert Mugabe (prime minister in 1980-1987 and president since 1987). David Blair reports how the hopeful birth of the new nation soon turned into disaster from the viewpoint of Mugabe’s opponents as well as of many bystanders.<sup>23</sup> Although Mugabe rejected the promising start for benevolent nation-building within reasonable limits, the first few years of independent Zimbabwe kept alive a vision of a non-dictatorial Zimbabwe: even the socialist and nationalist tendencies of the regime would have worked in tandem with the requirements of basic rights and global justice. The report from the LWF consultation tells about authentic theological reflections of the situation in 1982 along these lines—reflections that regrettably were too hopeful.

<sup>17</sup> HARMATI (1983, p. 8).

<sup>18</sup> HARMATI (1983, p. 9).

<sup>19</sup> SHIRI (1983, pp. 11-17).

<sup>20</sup> BENGU (1983, p. 30).

<sup>21</sup> BENGU (1983, pp. 28-30).

<sup>22</sup> BENGU (pp. 31-34).

<sup>23</sup> BLAIR (2003, pp. 9-17, 29-26).

### 5. Benevolent Neo-Liberalism

For purposes of this article, we may regard the basic features of neo-liberalism to include favouring opportunities for all, allowing significant economic inequalities, arguing for the advantages of privatization for all, and operating mainly on a conception of person as self-interested. From the viewpoint of institutional design, however, we can properly speak of benevolent neo-liberalism. The presumably sincere belief in question would be that neo-liberal arrangements are in the best interests of all concerned.

Rawls' model can be thought of as neo-liberal in certain respects. While its difference principle focuses on the basic structure of a society and requires social and economic inequalities to be for the best of the least advantaged, it simultaneously allows a range of political interpretations from right to left. However, Rawls' conception of person as a reasonable and rational citizen of a democratic society, with a sense of justice and a concept of good, implies that the difference principle also should be interpreted in the spirit of reasonableness. His model includes too many egalitarian features to be fully neo-liberal. Yet egalitarian principles and procedures are absent in his law of peoples—to the disappointment of Thomas Pogge, Brian Barry, and other left-wing Rawlsians.

Unholy Trinity: The IMF, World Bank, and WTO (2003) by Richard Peet et al. helps to connect recent theories of justice to recent discussion of economic world governance. The authors explain, for example, how the International Monetary Fund (IMF) came to lend huge amounts of money to Third World countries after the oil crisis of 1973, thereby implementing “a means of First World control over Third World Economic policy.”<sup>24</sup> The so-called Baker Plan in the mid-1980s advocated more loans from private banks to heavily indebted countries, accompanied by requirements to make structural changes, including “tax reduction, privatization of state-owned enterprises, reduction of trade barriers and investment liberalization.”<sup>25</sup> Peet et al. note that Friedrich Hayek's and Milton Freeman's neo-liberal, or virtually libertarian, economic theories were broadly influential in the United States during Ronald Reagan's presidency (1981-1989) and affected the global plans that were adopted. At the same time the irony in global neo-liberalism was striking: those who believed in unregulated markets had to use heavy regulation to force Third World countries to open their markets.

Peet et al. remark that the World Bank especially began to show more respect for the national policies of developing countries after the heyday of structural adjustment programs in the 1980s. Indeed, World Bank president James Wolfensohn (1995-2005) said in 2001 that the bank no longer focused “on itemizing what steps a government [of a low-income country] must take to reach” the defined objectives of development, including strengthening the legal system, fostering gender equality, and constructing social safety nets, for “no list of conditions can replace domestic commitment to reform.”<sup>26</sup> It is difficult to say how much national sovereignty this actually allows. Nevertheless, Wolfensohn's position delineates one kind of balanced position between global economic governance and national sovereignty.

<sup>24</sup> PEET et al. (2003, p. 71).

<sup>25</sup> PEET et al. (2003, pp. 77-78). The Baker Plan also advocated a more prominent role for the World Bank as a modernizer of Third World economies.

<sup>26</sup> WOLFENSOHN (2005, pp. 282-283).

## 6. Sustainability and the Cultural Sources of Welfare

A full account of the difference principle in Rawls' *A Theory of Justice* (1971) required that its application be "consistent with the just savings principle."<sup>27</sup> The following quote probably captures best what Rawls meant by the just savings principle: "Each age is to do its fair share in achieving the conditions necessary for just institutions and the fair value of liberty; but beyond this more cannot be required."<sup>28</sup> In *The Law of Peoples*, Rawls returned to the theme, stating: "Thus, the savings rate as a constraint on current consumption is to be expressed in terms of aggregate capital accumulated, resource use forgone, and technology developed to conserve and regenerate the capacity of the natural world to sustain its human population."<sup>29</sup>

In his more extensive discussion on sustainability, Daniel Little pointed out that environmental goods and bads are typically public: they are difficult to achieve, especially because of the free-rider challenge, and public regulation is needed to regulate the free markets. Little's favored principle resembles that of Rawls: "Modes of material activity should be constrained in such a way as to assure (1) that the current use of resources and production of waste can be continued indefinitely, or (2) that new technologies and materials can be envisioned to take the place of resources and assets that are developed through the activity."<sup>30</sup>

Little suggests that the United Nations Earth Summit in Rio de Janeiro in 1992 was perhaps too pessimistic about the possibilities of technology.<sup>31</sup> He provides a constructive model that is relatively hopeful. In that model the population size of the world will stabilize at nine million around 2050, global minimum income will increase 700 per cent, the (gini coefficient) inequalities will be reduced by 29 per cent, agricultural efficiency will greatly increase, and (despite the dramatically increased meat production) vegetarian diets will remarkably advance sustainability.<sup>32</sup>

If Little's tone is too optimistic, then clearly the issues of sustainability should be regarded as public issues. An explicit model of resources also challenges the traditional arguments for inclusive procedural democracy, reasonable liberal democracy, and benevolence-based accounts. To begin with, democratic institutions and communicative practices need a share of the material resources in order to be maintained. For purposes of further balancing, the requirements of sustainability encourage us to build constructive models of a just world. Such a model enables us to determine whether the principles discussed are demanding enough in light of realistic factual assumptions about sustainability.

One of these assumptions is that we are not running out of cultural resources for welfare in the same sense that we seem to be running out of material resources. This assumption calls our attention back to cultures as resources of welfare and encourages us to think of

<sup>27</sup> RAWLS (1971, p. 302).

<sup>28</sup> RAWLS (1971, p. 298).

<sup>29</sup> RAWLS (1999, p. 107).

<sup>30</sup> LITTLE (2003, p. 206).

<sup>31</sup> LITTLE (2003, pp. 205-206).

<sup>32</sup> LITTLE (2003, pp. 207-217).

such questions as how people representing different nations and cultures might live justly and happily under the conditions of scarce material resources.

It can be difficult to live out ideals of modestly consuming happiness, but even those of us who mostly fail to do so can publicly recognize the value of well-intentioned attempts. We may usefully recall what Thomas Pogge emphasized in his *World Poverty and Human Rights* (2002): even minor changes in attitudes of affluent people can advance global justice significantly.<sup>33</sup>

### 7. Concluding Remarks

If we were to recognize that our global conceptions of justice are characteristically extensions of local conceptions of justice, we would probably consider carefully which of their aspects we really want to advocate globally. Then, assuming that some of these aspects are worthy of global extension, we could promote them courageously.

Some requirements could be recommended to the representatives of other nations and cultures, some are likely to challenge our own policies and ways of life, and some can be endorsed as part of the normative consensus for further international and intercultural cooperation. The challenges of sustainability seem to push the discussion in the direction of strengthening the normative consensus at various levels.

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<sup>33</sup> POGGE (2002, pp. 7-8).

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*Otto Spijkers:  
Two Futures of Cosmopolitanism*

Abstract

What is the future of cosmopolitan ideas? The aim of this paper is to find out what happened to two different variations of cosmopolitan thinking over the course of history. Following the thinking of stoic cosmopolitanism, which went from the Stoics, through Kant, to Secretary-General Kofi Annan, one can say that a global community is both possible and emerging. At the same time, following the thinking of cynic cosmopolitanism, which went from Diogenes, through Fougeret de Montbron, to the French writer Michel Houellebecq, one can say that cosmopolitanism takes away our roots and leaves us helpless as an uprooted tree.<sup>34</sup>

Introduction

A cosmopolite is someone who regards or treats the whole world as his or her country, and/or someone who has no national attachments or prejudices. So what does a world of cosmopolites look like? Depending on the version of cosmopolitanism one prefers, it can be a solid world community, or a world of individuals without any detachment to a specific local community. Both scenarios can be related to a specific version of cosmopolitanism. Following Professor Pauline Kleingeld of Leiden University, I will label the version of cosmopolitanism which calls for a common order based on global solidarity 'stoic cosmopolitanism'; the version of cosmopolitanism which preaches detachment and complete freedom of individuals I will label 'cynic cosmopolitanism'.<sup>35</sup> As will be explained below, these labels refer to different schools of ancient Greek philosophy, which is the origin of cosmopolitan thinking.

However, cosmopolitan thinking does not end in ancient Greece. It also existed in the age of enlightenment (eighteenth century), and it still exists today. In enlightened times, Kant and others have developed the ideas of stoic cosmopolitanism into a comprehensive theory of political philosophy and law. At the same time, cynic cosmopolitanism has continued to influence artists and world travelers.

Cosmopolitanism, in both forms, can still be found today. A world organization, similar to the one prescribed by Kant, actually exists at the moment: the United Nations, with Kofi Annan as its Secretary-General. Our Secretary-General often makes statements of a stoic cosmopolitan character. At the same time the popularity of the French writer Michel

<sup>34</sup> Inspired by George Eliot's *Silas Marner*, a book about a linen-weaver who loses trust in men, in God, and fails to get in touch with his own community. In Part 1, chapter 3, she (George Eliot was a pseudonym used by Mary Ann Evans) writes: "The disinherited son of a small squire, equally disinclined to dig and to beg, was almost as helpless as an uprooted tree, which, by the favour of earth and sky, has grown to a handsome bulk on the spot where it first shot upward."

<sup>35</sup> See Pauline Kleingeld, 'Wereldburgers in eigen land: Over kosmopolitisme en patriottisme', inaugural lecture delivered on 30<sup>th</sup> of September 2005 at Leiden. This lecture has been the inspiration for many of the ideas presented in this paper. See: <http://www.filosofie.leidenuniv.nl/index.php3?c=179>.

Houellebecq, among others, may show that the way of life of the cynic cosmopolitan is increasing in popularity.

As this brief outline of the argument shows, the question is not whether we live in either a cynic or a stoic cosmopolitan world. It is possible that we do not live in a cosmopolitan world at all. In order to prevent this paper from becoming a purely academic exercise, I will say something about the reality of cosmopolitanism and about a third member of the cosmopolitan family, realist cosmopolitanism. However, what this paper aims to show is not to describe our world as it looks today, but to show how the cosmopolitan idea evolved over the course of history.

In order to make that ambitious project achievable, this paper's scope is limited in various ways. Stoic cosmopolitanism has many realizations, and so does – to a limited extent – cynic cosmopolitanism. The choice to focus on the political outcome of stoic cosmopolitanism and the artistic influence of cynic cosmopolitanism should not be interpreted in the sense that these are the only realizations of stoic and cynic cosmopolitanism. They are, in my view, the most important ones, but there are many other forms, focusing on different aspects of (social) life.<sup>36</sup> Also, the focus on ancient Greek philosophy, enlightenment, and the present-day, is in no way intended to give the suggestion that no interesting cosmopolitan views were expressed in other periods in history.

#### Two Ancient Theories of Cosmopolitanism

In the introduction, I have referred to two classic theories of cosmopolitanism: cynic and stoic cosmopolitanism. I will briefly introduce these two theories in this section, by depicting their birth in ancient Greece.<sup>37</sup>

#### Stoic Cosmopolitanism

One version of cosmopolitanism is stoic cosmopolitanism. According to this version, all people of the world share a common rationality, common values, and a common fate – despite their different cultural backgrounds, and this formally binds them, or ought to do so. The ideas of Zeno, “the founder of the Stoic sect”, are summarized as follows by Plutarch:

[A]ll the inhabitants of this world of ours should not live differentiated by their respective rules of justice into separate cities and communities, but [...] we should consider

<sup>36</sup> In late eighteenth-century Germany alone, many thinkers have expressed many different (stoic) cosmopolitan views. For an overview, see Kleingeld, ‘Six Varieties of Cosmopolitanism in Late Eighteenth-Century Germany’, in *Journal of the History of Ideas* 60.3 (1999), p. 505-524. In this paper, the different cosmopolitan positions are summarized as follows:

The central aim of this paper is to show that in late eighteenth-century Germany cosmopolitanism was not a single encompassing idea but rather came in at least six different varieties: moral cosmopolitanism; proposals for reform of the international political and legal order; cultural cosmopolitanism, which emphasizes the value of global cultural pluralism; economic cosmopolitanism, which aims at establishing a global free market where all humans are equal potential trading partners; and the romantic cosmopolitan ideal of humanity as united by faith and love. (p. 506.)

<sup>37</sup> These very brief descriptions will undoubtedly not do justice to the thinking of both schools. For more detailed information, see the work of Martha Nussbaum, among others. Or even better: read the original writings of the stoics and cynics of ancient Greece.

all men to be of one community and one polity, and [...] we should have a common life and an order common to us all, as a herd that feeds together and shares the pasturage of a common field.<sup>38</sup>

This version of cosmopolitanism sounds very positive: it asks of all women and men to do something, namely to create and sustain a common life and order. The stoics of ancient Greece did not work out the details of this common order, unfortunately. They left that part to the modern stoic cosmopolites. However, what the ancient stoics already did make clear, is that stoic cosmopolitanism does not (necessarily) require all men and women to abandon their own particular community: since one cannot care for all human beings equally well, it is out of practical necessity that various local communities are formed. Many centuries later, this idea was neatly summarized by René Dubos (1901–1982) in the following maxim: “think globally, act locally”.

### Cynic Cosmopolitanism

How can you be a cosmopolite and still deny that all women and men should have what Zeno called “a common life and an order common to us all”? The cynics, chief among them Diogenes of Sinope, may have held such a position.<sup>39</sup> When asked what polis he came from, Diogenes replied: “kosmopolitès” (citizen of the cosmos); thereby not only denying his ties to his hometown Sinope - from where he was banished, by the way -, but at the same time emphasizing his ties to the universe.<sup>40</sup> This makes Diogenes a (self acclaimed) cosmopolitan. However, Diogenes’ lifestyle and aphorisms do not show that he believed being a cosmopolitan involved globally shared responsibility, at least not in the institutionalized sense.<sup>41</sup> His idea of cosmopolitanism focused more on the negative part: a cosmopolite is someone who has no national attachments or prejudices. This is why Diogenes can be called a cynic cosmopolite. According to this version of cosmopolitanism, being a citizen of the world means being free and (formally) unbound. And if we look at the life of Diogenes, being a cynic cosmopolite can be a lonely business.<sup>42</sup> The following

<sup>38</sup> Plutarch, *De Fortuna Alexandri*, First Oration, Paragraph 6. See :

[http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Moralia/Fortuna\\_Alexandri\\*/1.html](http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Moralia/Fortuna_Alexandri*/1.html).

<sup>39</sup> As most cynics, Diogenes of Sinope did not write much. What constitutes his philosophy is his life style and the short aphorisms, described by others, especially by Diogenes Laertius in his book *The Lives and Opinions of Eminent Philosophers*.

<sup>40</sup> Diogenes Laertius, *The Lives and Opinions of Eminent Philosophers*, Book VI: Life of Diogenes.

<sup>41</sup> Diogenes shows a complete disregard for official ties, such as taxes, respect for authority, etc. However, he shows a genuine concern for the fate of other human beings, especially (fellow) outsiders, regardless of their position etc. This is what makes him a cosmopolitan. See also Kleingeld, *Cosmopolitanism*, entry for the Internet Stanford Encyclopedia of Philosophy (<http://plato.stanford.edu/entries/cosmopolitanism/>).

<sup>42</sup> Some argue that even *stoic* cosmopolitanism cannot escape this feeling of loneliness, because it is based on rather abstract bonds (*i.e.* reason, and love of humanity). As Martha Nussbaum remarks in her article *Patriotism and Cosmopolitanism*, first published in the *Boston Review*, Vol. XIX No. 5 (October/November 1994):

Becoming a citizen of the world is often a lonely business. It is, in effect, as Diogenes said, a kind of exile -- from the comfort of local truths, from the warm nestling feeling of patriotism, from the absorbing drama of pride in oneself and one's own. In the writings of Marcus Aurelius (as in those of his American followers Emerson and Thoreau) one sometimes feels a boundless loneliness, as if the removal of the props of habit and local boundaries had left life bereft of a certain sort of warmth and security. If one begins life as a child who loves and trusts its parents, it is tempting to want to reconstruct citizenship along the same lines, finding in an idealized image of a

anecdote may serve as an example of this: once Diogenes of Sinope was going into a theatre while every one else was coming out of it; and when asked why he did so, he said: "It is what I have been doing all my life."<sup>43</sup>

### Conclusion

The main difference between cynic and stoic cosmopolitanism is the following: stoics focus on the positive part of being cosmopolitan, i.e. they focus on the duty to care for all other human beings, and therefore to strive for the establishment of a common order. At the same time, cynics focus on the negative part: the lack of national attachments or prejudices makes the cosmopolitan free and unbound. In fact, in their daily life, cynic cosmopolites may act even more cosmopolitan than their stoic counterparts, since the cynics reject all possible bonds to local community life, while the stoics usually do not go that far and live a regular life within their own particular community (while looking for ways to do their global duties).

### Enlightened Theories of Cosmopolitanism

Cynic and stoic cosmopolitanism have taken very different paths. In enlightened times, stoic cosmopolitanism has morphed into a theory of political philosophy, and in a later stage into a theory of international law.<sup>44</sup> Meanwhile, cynic cosmopolitanism has mainly become an inspiration for isolated world travelers, restless writers and unsatisfied poets.

#### The Cosmopolitan Ideas of Immanuel Kant

Immanuel Kant (1724 – 1804), a German philosopher from Königsberg, has written on many topics, and cosmopolitanism is one of these. In his lectures on anthropology, Kant writes the following:

[T]he character of the [human] species, as it is indicated by the experience of all ages and of all peoples, is this: that, taken collectively (the human race as one whole), it is a multitude of persons, existing successively and side by side, who cannot do without associating peacefully and yet cannot avoid constantly offending one another. Hence they feel destined by nature to [form], through mutual compulsion under laws that proceed from

nation a surrogate parent who will do one's thinking for one. Cosmopolitanism offers no such refuge; it offers only reason and the love of humanity, which may seem at times less colorful than other sources of belonging.

<sup>43</sup> Diogenes Laertius, *The Lives and Opinions of Eminent Philosophers*, Book VI: Life of Diogenes. A similar combination of melancholy and endless travels one can find in the letters of Petrarch.

<sup>44</sup> In my paper, I will focus on Immanuel Kant. But many other enlightened thinkers have expressed cosmopolitan views. For an overview, see Kleingeld, 'Six Varieties of Cosmopolitanism in Late Eighteenth-Century Germany', in *Journal of the History of Ideas* 60.3 (1999), p. 505-524. In this paper, the different cosmopolitan positions are summarized as follows:

The central aim of this paper is to show that in late eighteenth-century Germany cosmopolitanism was not a single encompassing idea but rather came in at least six different varieties: moral cosmopolitanism; proposals for reform of the international political and legal order; cultural cosmopolitanism, which emphasizes the value of global cultural pluralism; economic cosmopolitanism, which aims at establishing a global free market where all humans are equal potential trading partners; and the romantic cosmopolitan ideal of humanity as united by faith and love. (p. 506.)

themselves, a coalition in a cosmopolitan society – a coalition which, though constantly threatened by dissension, makes progress on the whole.<sup>45</sup>

Contrary to the stoic cosmopolitans of ancient Greece, Kant develops his ideas on what this cosmopolitan society should look like to some detail. According to Kant in *Perpetual Peace*, this cosmopolitan society should consist of a voluntary league of sovereign, republican states,<sup>46</sup> something he later calls a permanent congress of states (“permanenter Staatenkongreß”).<sup>47</sup> In *Perpetual Peace*, Kant explains that “in [nature’s] mechanical course we see that [nature’s] aim is to produce a harmony among men, against their will and indeed through their discord.”<sup>48</sup> Although nature’s ways may seem incomprehensible, a perpetual peace between states, based on a harmony among men, is indeed what will happen in the end.<sup>49</sup>

What kind of a cosmopolitan is Immanuel Kant? Kant believes in the natural harmony among men; he also believes in the necessity to form some kind of global cooperative scheme (a league of nations) to act out this harmony. However, Kant also believes people are first of all citizens of their own particular state.<sup>50</sup> All this makes Kant a true successor of the stoic version of cosmopolitanism.

By preaching a conditional form of universal hospitality as the central principle of the law of world citizenship (“Weltbürgerrecht”), Kant also gives some room to the cynic cos-

<sup>45</sup> Immanuel Kant, *Anthropology from a Pragmatic Point of View*, Para. 331. Original Title: *Anthropologie in pragmatischer Hinsicht*, published in 1798. Translated by Mary J. Gregor. The Hague: Martinus Nijhoff, 1974 (see p. 191). Kant hastens to add that the idea of a cosmopolitan society is “unattainable”, but that it is an ideal that can guide us.

<sup>46</sup> Kant, *Perpetual Peace: A Philosophical Sketch*. Original title: *Zum Ewigen Frieden: Ein philosophischer Entwurf*. Published in Königsberg, in 1795. On the interpretation of this treatise (*Perpetual Peace* mainly consists of a number of articles), much has been written. See e.g., Kleingeld, ‘Approaching Perpetual Peace: Kant’s Defence of a League of States and his Ideal of a World Federation’, in *European Journal of Philosophy*, 12:3 (2004), pp. 304-325. See also, James Bohman, Matthias Lutz-Bachmann (editors), *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal* (Studies in Contemporary German Social Thought). Massachusetts Institute of Technology, 1997.

<sup>47</sup> Kant, *Die Metaphysik der Sitten*, Part II (*Die Metaphysischen Anfangsgründe der Rechtslehre*), published in 1797, para. 61.

<sup>48</sup> In the First Supplement to *Perpetual Peace*, Kant explains how this process works exactly when he describes the preparatory arrangements of nature:  
Ihre provisorische Veranstaltung besteht darin : daß sie 1) für die Menschen in allen Erdgegenden gesorgt hat, daselbst leben zu können; - 2) sie durch Krieg allerwärts hin, selbst in die unwirthbarsten Gegenden, getrieben hat, um sie zu bevölkern; - 3) durch eben denselben sie in mehr oder weniger gesetzliche Verhältnisse zu treten genöthigt hat.

Translation: 1. In all regions of the world nature has made it possible for men to live. 2. By war nature has driven men even into the most inhospitable regions, to populate them. 3. By the same means, she has forced them into more or less lawful relations with each other.

<sup>49</sup> Apart from *Perpetual Peace*, see also, Kant, *Idea for a Universal History from a Cosmopolitan Point of View*, in which Kant also describes this natural process to perpetual peace. And Kant, *Die Metaphysik der Sitten*, Part II (*Die Metaphysischen Anfangsgründe der Rechtslehre*), published in 1797, paras. 53-62, especially para. 61. In the latter treatise, Kant refers to the idea of a perpetual peace as “eine unausführbare Idee” (para. 61).

<sup>50</sup> See the second part of Pauline Kleingeld, ‘Wereldburgers in eigen land: Over kosmopolitisme en patriottisme’.

mopolitan to wander around the globe and to exercise his right to visit ("Besuchsrecht") any place on this planet, although this room is limited.<sup>51</sup>

Realist Cosmopolitanism and the search for Eighteenth-Century Cynic Cosmopolites

It is not difficult to find philosophers criticizing Kant's cosmopolitan ideas in Perpetual Peace. Hegel, for example, believed Kant's voluntary league of nations would be too fragile since it would ultimately rest on agreements between all state's "own particular will". And thus, "if no agreement can be reached between particular wills, conflicts between states can be settled only by war."<sup>52</sup> To the present-day reader, this may sound like the usual realist critique of international law. Hegel did give the cosmopolitans some hope: according to Hegel, cooperation within a state is so successful because it is based on both common laws and a common culture (based upon family, civil society and the nation-state). Together these constitute a shared ethical life ("Sittlichkeit").<sup>53</sup> Without a shared culture, international legal obligations remain too abstract to form the basis of a world community.<sup>54</sup> And therefore, according to Hegel, only when all states develop a similar ethical life – and Hegel saw the German Sittlichkeit as the ideal –, from within, can a world league be successful.<sup>55</sup> The question, even today, is whether this shared ethical life is actually possible

<sup>51</sup> Kant, Perpetual Peace, Third Definitive Article for a Perpetual Peace:

Hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another. One may refuse to receive him when this can be done without causing his destruction; but, so long as he peacefully occupies his place, one may not treat him with hostility. It is not the right to be a permanent visitor that one may demand. A special beneficent agreement would be needed in order to give an outsider a right to become a fellow inhabitant for a certain length of time. It is only a right of temporary sojourn, a right to associate, which all men have. They have it by virtue of their common possession of the surface of the earth, where, as a globe, they cannot infinitely disperse and hence must finally tolerate the presence of each other. Originally, no one had more right than another to a particular part of the earth.

On this principle, see Kleingeld, Kant's Cosmopolitan Law: World Citizenship for a Global Order, in *Kantian Review*, Volume 2 (1998), pp. 72-90.

<sup>52</sup> See Hegel, Elements of the philosophy of right, para. 333-334 (emphasis in the original). Original Title: *Grundlinien der Philosophie des Rechts*, published in 1821. Translation: Hegel, Elements of the philosophy of right (Cambridge texts in the history of political thought). Allen Wood (editor), H.B. Nisbet (translation). Cambridge: Cambridge University Press, 1991.

<sup>53</sup> See paras. 330-360 of Elements of the philosophy of right. One could specifically refer to the last sentence in Hegel's Philosophy of Right: "In the state, the self-consciousness finds the actuality of its substantial knowledge and volition in organic development" (para. 360, emphasis in the original).

<sup>54</sup> Hegel did believe that all human beings are identical as human beings, but he also believed that this idea needed the concretization in the state. See Hegel, Elements of the philosophy of right, para. 209:

It is part of education, of thinking as consciousness of the individual in the form of universality, that I am apprehended as a universal person, in which all are identical. A human being counts as such because he is a human being, not because he is a Jew, Catholic, Protestant, German, Italian, etc. This consciousness, which is the aim of thought, is of infinite importance, and it is inadequate only if it adopts a fixed position – for example, as cosmopolitanism – in opposition to the concrete life of the state.

<sup>55</sup> Hegel, *Encyclopaedia of the Philosophical Sciences*, Book 3, Para. 548. See also Hegel, Elements of the philosophy of right, para. 340 (emphases in original), where he says:

It is through this dialectic [of deeds and destinies of states in their mutual relations] that the *universal* spirit, the spirit of the world, produces itself in its freedom from all limits, and it is this spirit which exercises its right – which is the highest right of all – over finite spirits in world history as the world's court of judgement.

On Hegel and cosmopolitanism, see also Steven V. Hicks, *International Law and the Possibility of a Just World Order*. Amsterdam: Rodopi, 1999, esp. pp.21-26, and Chapter Four: Hegel and Cosmopolitanism.

and emerging.<sup>56</sup> According to some of the stoic cosmopolitans, the fact that we are all (rational) human beings is enough to bind us together.

But even if this fact alone would bind us, it seems unlikely that a world state can be based solely on that. Even Kant says that the world can only get as far as a permanent congress of states, and this is mainly because it is impossible to point out or create a global central authority, without risking the danger of global despotism.<sup>57</sup> This danger may be the least problematic for what could be called realist cosmopolitanism, i.e. the belief that there is one superior community that can dominate the world for its own good. Hegel is not a realist cosmopolitan, because, although he was convinced that “das Germanische Reich” was the ideal society, he nonetheless believed societies should change from within, not by outside force or pressure.<sup>58</sup> I have not considered realist cosmopolitanism as a third form of cosmopolitanism (next to stoic and cynic cosmopolitanism), because if it can be considered as a version of cosmopolitanism at all, it can at best be considered a form of the stoic version, since the idea is to create a world community (although based on the values, laws, and culture of a particular community).<sup>59</sup>

So far I have discussed criticism to cosmopolitanism; Hegel was clearly not a cynic cosmopolitan.<sup>60</sup> It is hard to find modern cynic cosmopolitan thinkers. This is most of all because cynic cosmopolitanism is more a life style than a complete theoretical philosophy. You'll find cynic cosmopolitanism with world travelers and poets, rather than philosophers. An illustrative example is Jean-Louis Fougeret de Montbron (1706-1760).<sup>61</sup> The first lines of his book *Le Cosmopolite ou Le Citoyen du Monde* are as follows:

L'univers est une espèce de livre dont on n'a lu que la première page, quand on n'a vu que son pays. J'en ai feuilleté un assez grand nombre que j'ai trouvées presque également mauvaises.

Although cynic cosmopolitanism did not lead to sophisticated theories, definitions of cosmopolitanism in those times often focused solely on the negative, or cynic, aspect. For example, in the *Dictionnaire de L'Académie française*, 4th Edition (1762), one can find the following definition of ‘cosmopolite’:

Celui qui n'adopte point de patrie. Un Cosmopolite n'est pas un bon citoyen.<sup>62</sup>

<sup>56</sup> Habermas has some doubts. See Habermas, *The Postnational Constellation: Political Essays*, translated, edited, and with an introduction by Max Pensky. MIT Press, 2001. See especially Chapter 4: *The Postnational Constellation and the Future of Democracy*, pp. 58-112.

<sup>57</sup> Kant, *Die Metaphysik der Sitten*, Part II (*Die Metaphysischen Anfangsgründe der Rechtslehre*), published in 1797, para. 61.

<sup>58</sup> Hegel, *Elements of the philosophy of right*, para. 358.

<sup>59</sup> Perhaps most Stoic cosmopolites were realist cosmopolites. I have not discussed this in my paper, but many cosmopolites, in ancient Greece (Zeno), in Rome (Cicero) and also religious cosmopolites (Augustine), in fact had requirements for universal citizenship which reflected a certain preference of one society or ethical theory over the other.

<sup>60</sup> His emphasis on nationhood as character builder shows this. See the above quoted sections, and para. 209 of *Philosophy of Right*.

<sup>61</sup> I borrowed Fougeret de Montbron as an example of cynic cosmopolitanism from Kleingeld, *Cosmopolitanism*, entry for the Internet Stanford Encyclopedia of Philosophy (<http://plato.stanford.edu/entries/cosmopolitanism/>).

<sup>62</sup> Kleingeld, *Wereldburgers in Eigen Land*, p. 4 quotes the French philosopher Jean-Jacques Rousseau and the Dictionary of the Académie Française as examples of negative attitudes towards cosmopolitanism.

In this definition, there is no reference to the positive, or stoic, aspect of cosmopolitanism, nor does it show much appreciation for the cosmopolite. One may conclude from this, that the cynic version has been more successful than its more sophisticated stoic counterpart, in creating a (stereotyped) image of the typical cosmopolite.

#### Conclusion

What happened to cynic and stoic cosmopolitanism as the world moved on from Ancient Greece to (German) Enlightenment? During enlightened times, stoic cosmopolitanism continues to develop into a comprehensive theory, including politics, philosophy and law. Kant's cosmopolitan ideas, especially those of Perpetual Peace, have been very influential. In the debate between Kant and Hegel, as briefly summarized above, one can already see the general contours of the debate between realists and idealists in international public law of today.

At the same time, cynic cosmopolitanism serves as basis for the common perception of the typical cosmopolite, and becomes an inspiration for artists as a certain attitude or way of life. However, it seems these artists do not always derive much pleasure from being cynic cosmopolite.

#### Two present-day Theories of Cosmopolitanism

What happened to cosmopolitanism in the globalizing world of today? One could argue that stoic cosmopolitanism has simply become reality: we live in a heavily interlinked world, and a voluntary league of nations, as Kant had wished it, is actually in existence: first the League of Nations, now the United Nations. Moreover, few people doubt the usefulness of an organization like the UN nowadays. The second Secretary-General of the United Nations, Dag Hammarskjöld, once said of the UN: "if the UN did not exist, it would have been invented." But one can also point out that the United Nations is not always equally effective, and that our 'global village' is very small and exclusive, and that many people in this world cannot join.<sup>63</sup>

I will refer to the current Secretary-General of the United Nations, Mr. Kofi Annan from Ghana, as the spokesperson of modern stoic cosmopolitanism. When the General Assembly of the United Nations reappointed Mr. Annan for a second term as Secretary-General in 2001, Inacio Arias, representing Western Europe, said: "If Mr. Annan did not exist, somebody would have to invent him."<sup>64</sup>

At the same time, especially now that more and more people have the opportunity to actually live the cosmopolitan life style, i.e. travel all over the world, cynic cosmopolitanism has remained an inspiration. Michel Houellebecq may be an example of a modern cynic cosmopolitan; he wrote about cosmopolitan traveling and detachment from local life. The popularity of his books, and the sensitive spot in the modern man's soul he presumable touched and uncovered, are good reasons to discuss his work here.

<sup>63</sup> The term 'global village' is used by Kofi Annan in the Q&A Session following his Singapore lecture of 2000. See: Kofi Annan, *Global Values: The United Nations and the Rule of Law in the 21<sup>st</sup> Century*. Singapore: Institute of South-East Asian Studies, 2000. p. 27. I will discuss these realist concerns in a separate paragraph in this section.

<sup>64</sup> Fifty-fifth General Assembly Plenary, 29 June 2001. UN Doc. GA/9889.

I will also devote one paragraph to describing the world as it is, or in other words: whether cosmopolitan ideas are actually practiced and reflect the facts.

The Cosmopolitan Ideas of the United Nations Secretary-General Kofi Annan

In the present-day, the world is much more connected than it was in the times of ancient Greece or throughout the eighteenth century. Perhaps the world has become a kosmopolis already, although with somewhat restricted citizenship,<sup>65</sup> and that for some people becoming cosmopolitan is a necessity, not something one can choose to become.

The current Secretary-General of the United Nations, Kofi Annan, is the present day champion of cosmopolitan thinking. He continuously calls on all nations of the world to realize their common fate and values, and to act upon them. In the words of Annan:

Today, as globalisation brings us all closer together, and our lives are affected almost instantly by things that people say and do on the far side of the world, we also feel the need to live as a global community.<sup>66</sup>

In a lecture given by Annan in Singapore, Annan elaborates a bit more on this idea. He describes the global economy as a 24-hour trading universe, in which the markets never close, somewhat according to what the traditional hymn says: "The sun that bids us rest is waking our brethren 'neath the western sky".<sup>67</sup> But this economic globalization has to be accompanied by a globalization of values. Annan: "In the last resort it is common values that hold every society together, and what we are talking about is really a global society. Moreover, every society must have a language; the language of global society is international law."<sup>68</sup> Our global values are expressed in this global language of international law. Various international instruments that safeguard human freedom "define the ground rules of a global civilization within which there will still be room for the human spirit to express itself in many, many rich and diverse forms."<sup>69</sup>

Early June 2006, Annan wrote a somewhat unusual article in *Bild am Sonntag*, in which he compared the United Nations to the World Cup soccer, which was about to start at the time. The Secretary-General wrote: "the World Cup is an event in which we actually see goals being reached. I'm not talking only about the goals a country scores; I also mean the most important goal of all — being there, part of the family of nations and peoples, cele-

<sup>65</sup> More on the reality of cosmopolitanism in the following paragraph.

<sup>66</sup> Kofi Annan, "Do we still have Universal Values?", Third Global Ethic Lecture delivered at Tübingen University, Germany, 12 December 2003. See [http://www.weltethos.org/st\\_9\\_xx/9\\_151e.htm](http://www.weltethos.org/st_9_xx/9_151e.htm). In his Nobel Lecture delivered in 2001 (see below), Kofi Annan calls this close interrelatedness the "Butterfly Effect": just as a butterfly flapping its wings in the Amazon rainforest can generate a violent storm on the other side of the earth, so can a humanitarian or human rights crisis in one part of the world generate a national security crisis in another.

<sup>67</sup> Kofi Annan, *Global Values: The United Nations and the Rule of Law in the 21<sup>st</sup> Century*. Singapore: Institute of South-East Asian Studies, 2000. p. 6.

<sup>68</sup> Kofi Annan, *Global Values*, p. 11.

<sup>69</sup> Kofi Annan, *Global Values*, p. 13. The international instruments Kofi Annan explicitly refers to in his lecture are: the Universal Declaration of Human Rights, the Convention against Genocide, the Convention against Torture, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child.

brating our common humanity.”<sup>70</sup> Perhaps most supporters – and most players – do not agree with the Secretary-General that ‘being there’ is enough; above all, they want their own team to win. In any case, the idea of a ‘common humanity’ is at the essence of cosmopolitanism.

It can come as no surprise that Annan sees the UN as the chief institution in what Zeno called the “order common to us all”, i.e. the forum to dispose of our global duties as cosmopolites. Annan explains:

A forum was created – the United Nations – where all nations could join forces to affirm the dignity and worth of every person, and to secure peace and development for all peoples. Here States could unite to strengthen the rule of law, recognize and address the needs of the poor, restrain man’s brutality and greed, conserve the resources and beauty of nature, sustain the equal rights of men and women, and provide for the safety of future generations.<sup>71</sup>

Although the United Nations is in essence a voluntary association of states, as Kant prescribed, its Secretary-General Kofi Annan does not see the United Nations merely as an organization to keep the peace between otherwise unrelated states. The UN is there for individuals, not states; Annan continuously stresses the importance of universal human rights in this world.<sup>72</sup> In the Universal Declaration of Human Rights, the General Assembly of the United Nations proclaims that “[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”<sup>73</sup> This idea is essential for cosmopolitanism: it shows that in fact all people are treated as equals, wherever they are.

As noted above, Kant did recognize the rights of aliens in his Perpetual Peace (see the principle of universal hospitality), albeit limited rights. The universal human rights recognized today form a body of rights much more comprehensive than Kant’s right to universal hospitality. Moreover, Annan recently embraced a rather new concept called the Responsibility to Protect: if national authorities are unable or unwilling to protect their citizens, the responsibility to protect then shifts to the international community.<sup>74</sup> In essence, this means that the rights of all individuals are ultimately protected by the global common order. That would be the actualization of the central idea of stoic cosmopolitanism. Cur-

<sup>70</sup> Kofi A. Annan, ‘How We Envy the World Cup’, *Bild am Sonntag*, 04 June 2006. See also: <http://www.un.org/News/press/docs/2006/sgsm5555.doc.htm>.

<sup>71</sup> See: Kofi Annan, Nobel Lecture, Oslo, December 10, 2001

([http://nobelprize.org/nobel\\_prizes/peace/laureates/2001/annan-lecture.html](http://nobelprize.org/nobel_prizes/peace/laureates/2001/annan-lecture.html)).

<sup>72</sup> In an article in the *New York Times* of 19 January 1999, ‘Walking the International Tightrope’, Kofi Annan says that the role of the UN Secretary-General is to “place the United Nations at the service of the universal values of the charter, without the constraints of ideology or particular interests”. He has done so, first of all, by “speak[ing] out in favor of universal human rights and in defense of the victims of aggression or abuse, wherever they may be.”

<sup>73</sup> UN Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. See also the Preamble and Articles 55, 56 of the UN Charter.

<sup>74</sup> The Secretary-General’s Statement to the General Assembly, New York, 21 March 2005. See: <http://www.un.org/largerfreedom/>. The concept finds its origin in a Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*. See: <http://www.iciss.ca/pdf/Commission-Report.pdf>.

rently, the responsibility to protect is restricted to protection against “genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>75</sup>

Some somber Reflections on the Reality of Cosmopolitanism and Realist Cosmopolites

It would seem as if the kind of stoic cosmopolitanism which includes positive obligations, as proclaimed by Kofi Annan, does not have any serious contenders. But that conclusion overlooks the emergence of realist cosmopolites and the absence of cosmopolitan reality.

There are realists who argue that the United Nations, even though it has an office in New York, does not exist. The current US Permanent Representative to the United Nations, John Bolton, has made this argument most explicitly:

[T]here is no United Nations. There is an international community that occasionally can be led by the only real power left in the world, and that's the United States, when it suits our interest, and when we can get others to go along, and I think it would be a real mistake to count on the United Nations as if it's some disembodied entity out there that can function on its own. When the United States leads, the United Nations will follow. When it suits our interest to do so, we will lead. When it does not suit our interest to do so, we will not, and I think that is the most important thing to carry away tonight.<sup>76</sup>

And if what is good for the United States is also good for the rest of the international community, we can have a functioning cosmopolitan order, with the US as the central authority. Bolton may focus on using the UN to secure particular interests, but others, in particular Tony Blair, see the fight over global values as the most important task on the international plane, also as a way to secure specific interests and fight terrorism. In a recent series of speeches, Tony Blair explained his intentions. This is his own summary of these speeches:

In the first [speech], I argued that the global terrorism that menaces us, can only be defeated through pulling it up by its roots. We have to attack not just its methods but its ideas, its presumed and false sense of grievance against the West, its attempt to persuade us that it is we and not they who are responsible for its violence. In doing so, we should stand up for our own values, asserting that they are not Western but global values, whose spread is the surest guarantee of our future security. In the second speech, I argued that such values would only succeed, however, if they were seen to be fairly and even-handedly implemented; that this required a unifying agenda for global action, which was about more than the immediate security threat but was also about justice and opportunity for all.<sup>77</sup>

Depending on whether you agree with the universality claim of values sometimes perceived as Western, Blair is either a realist cosmopolitan (spreading his own values across the world), or a stoic cosmopolitan. But it needs to be recalled that the idea to accompany

<sup>75</sup> See UN General Assembly Resolution, 2005 World Summit Outcome Document, paras. 138-140. Un Doc. A/RES/60/1.

<sup>76</sup> John Bolton, the current US ambassador to the United Nations. The quote is from a speech held at the Global Structures Convocation, on the 3<sup>rd</sup> of February, 1994, in New York.

<sup>77</sup> Tony Blair, PM's foreign policy speech - third in a series of three, held on the 26<sup>th</sup> of May 2006. Available online: <http://www.number-10.gov.uk/output/Page9549.asp>.

economic globalization with a globalization of values is an idea shared by Tony Blair and Kofi Annan, and both lists are based on a similar basic idea: human freedom. Blair lists the global values as “liberty, democracy, tolerance, justice”, Kofi Annan as “peace, freedom, social progress, equal rights and human dignity”.<sup>78</sup> A similar list, based on the same essential idea (human freedom), can be found in the Millennium Declaration, adopted by all member-states of the United Nations in the year 2000. In this declaration, the following list of global values can be found: “freedom, equality, solidarity, tolerance, respect for nature, shared responsibility”.<sup>79</sup>

At the same time as people, for various reasons, stress that we are all free human beings with similar values and interests, it seems cosmopolitanism is very much distanced from actual practice, especially when it comes to helping our fellow human beings escape from extreme poverty.<sup>80</sup> In some regions of the world (esp. Sub-Saharan Africa), poverty is growing,<sup>81</sup> and so is the gap between the rich and the poor;<sup>82</sup> while at the same time very limited resources are spent globally on poverty reduction.<sup>83</sup> Kant’s principle of universal hospitality

<sup>78</sup> In PM’s foreign policy speech - third in a series of three, Mr. Blair lists the following global values: “liberty, democracy, tolerance, justice. These are the values we believe in. These are the values universally accepted across all nations, faiths and races, though not by all elements within them. These are values that can inspire and unify”. In a lecture entitled “Do We Still Have Universal Values?”, Secretary-General of the United Nations Kofi Annan refers to the global values enlisted in the Millennium Declaration (see below), and to the “values of peace, freedom, social progress, equal rights and human dignity, enshrined in the Charter of the United Nations and in the Universal Declaration of Human Rights”

<sup>79</sup> See para. 6, United Nations Millennium Declaration, resolution adopted by the United Nations General Assembly, 18 September 2000. UN Doc. A/RES/55/2.

<sup>80</sup> See e.g. Thomas Pogge (editor), *Global Justice*. Oxford: Blackwell Publishers, 2001. For data (and a discussion on the controversies regarding the data), see the Website of the World Bank: [www.worldbank.org/poverty](http://www.worldbank.org/poverty), and <http://iresearch.worldbank.org/PovcalNet/jsp/index.jsp>.

<sup>81</sup> In 2001, 46.4 percent of the people in sub-Saharan Africa had to live on less than one dollar a day, as opposed to 44.6 in 1990. An opposite trend is visible in Eastern Asia, where 16.6 percent lived on one dollar a day in 2001, as opposed to 33.0 percent in 1990. Source: <http://ddp-ext.worldbank.org>.

<sup>82</sup> Inequality has increased since the 1820’s, and possibly before. The current ratio of income of the poorest 10% of the world’s population to the richest 10% is 1 to 103. On the history of global inequality, see Richard Jolly, ‘Inequality in Historical Perspective’, UNU-WIDER Research Paper No. 2006/32, March 2006. On today’s figures, see World Bank, *World Development Report 2006 Overview: Equity and Development*. Washington: World Bank, 2005, *Human Development Report 2005: International Cooperation at a Crossroads; Aid, Trade and Security in an Unequal World*. New York: United Nations Development Programme, 2005, and the already mentioned websites on the Millennium Development Goals.

<sup>83</sup> The self-imposed obligation of the rich nations to spend 0.7 per cent of gross national product for official development assistance is currently respected by only five countries in the world (Denmark (0.84%), Luxembourg (0.81%), Netherlands (0.80%), Norway (0.92%), and Sweden (0.79%)), although the obligation already exists for more than 35 years.

The *idea* that 1 percent of the gross national product of rich countries should be reserved for official development assistance can first be found in UN General Assembly Resolution 1524(XV), 15 December 1960. However, the obligation can be found in UN General Assembly Resolution 2626(XXV), 24 October 1970. Here one reads:

In recognition of the special importance of the role that can be fulfilled only by official development assistance, a major part of financial resource transfers to the developing countries should be provided in the form of official development assistance. Each economically advanced country will progressively increase its official development assistance to the developing countries and will exert its best efforts to reach a minimum net amount of 0.7 percent of its gross national product at market prices by the middle of the decade.

The obligation was last reiterated in the 2005 World Summit Outcome document, para. 23. See: <http://www.unmillenniumproject.org/involved/action07.htm#01>.

is nowadays applied with great caution and compromise.<sup>84</sup> Moreover, the responsibility to protect principle is not (yet) applied effectively to the situation in Darfur, Sudan, where serious crimes (genocide?) are continuously being committed since early 2003.

I don't know whether this gap between theory and practice should have any theoretical consequences. According to Thomas Pogge, this gap leads philosophers to discuss their cosmopolitan idea(l)s amongst one another; after all, says Pogge, attempts to convince the policymakers will be in vain.<sup>85</sup> If this is true, it will not help bridge the gap between theory and practice. Perhaps we should have followed Kant and implement a variant of Kant's Secret Article for Perpetual Peace into the UN Charter, which reads: "The opinions of philosophers on the conditions of the possibility of public peace shall be consulted by those states armed for war."<sup>86</sup>

Michel Houellebecq

As the sections above have shown, today's stoic cosmopolitanism is alive and kicking in words and ideas, but significantly lagging behind in action. What about cynic cosmopolitanism? Michel Houellebecq deserves the label 'cynic cosmopolitan', in my opinion, although he is sometimes accused of making discriminatory comments in his work (and discrimination is anti-cosmopolitan, of course).<sup>87</sup>

Who is Michel Houellebecq? He was born in 1958 on the French island Réunion, in East-Africa.<sup>88</sup> His parents soon lost interest in him, and thus he was raised by his grandmother who lived near Paris; Houellebecq now lives in Ireland.<sup>89</sup> Houellebecq reached world fame when he published *Les Particules élémentaires* ("Atomized", published in 1998), a novel about two half-brothers who are detached from society in two different ways. This book was followed by *Plateforme: au milieu du monde* ("Platform", 2001), about international tourism (more on this book below), and most recently *La Possibilité d'une île* ("Possibility of an island", 2005), in which Houellebecq paints a picture of the future.<sup>90</sup>

Like other contemporary writers,<sup>91</sup> Houellebecq describes the detachment and lack of belonging often associated with present day life. In *Plateforme*, Houellebecq writes:

<sup>84</sup> One may refer here to the tragedy of the dangerous crossings of the part of the Mediterranean Sea and Atlantic Ocean below Spain, attempted by the poor to reach the European Union. See New York Times of July 31, 2006, '200 Migrants Reach Canary Islands by Boat'. See also Volkskrant (Dutch Newspaper) of 4 August 2006, front page, for a picture that says it all.

<sup>85</sup> Thomas Pogge, 'Global Justice', p.3. In: Thomas Pogge (editor), *Global Justice*.

<sup>86</sup> Kant, *Perpetual Peace*, Second Supplement. The article must remain secret because, according to Kant, "it appears humiliating to the legislative authority of a state, to whom we must naturally attribute the utmost wisdom, to seek instruction from subjects (the philosophers) on principles of conduct toward other states" (*Perpetual Peace*, Second Supplement).

<sup>87</sup> See an article by Gwladys Fouché in the Guardian (British newspaper) on Thursday September 6, 2001, 'Houellebecq in hot water over Islam comments'.

<sup>88</sup> <http://www.la-reunion-tourisme.com/entree.htm>.

<sup>89</sup> <http://www.houellebecq.info/>.

<sup>90</sup> This is a selection of his most important books. Houellebecq already published *Extension du domaine de la lutte* (1994) and some poetry and essays and short stories before *Les Particules élémentaires* appeared.

<sup>91</sup> I could refer to the Dutch writer Gerard Reve. In 'Op Weg naar het Einde' (a collection of letters written from various parts of Europe), he writes:

Qu'avais-je, pour ma part, à reprocher à l'Occident ? Pas grand-chose, mais je n'y étais pas spécialement attaché (et j'arrivais de moins en moins à comprendre qu'on soit attaché à une idée, un pays, à autre chose en général qu'à un individu). [...] Je pris soudain conscience avec gêne que je considérais la société où je vivais à peu près comme un milieu naturel – disons une savane, ou un jungle – aux lois duquel j'aurais dû m'adapter. L'idée que j'étais solidaire de ce milieu ne m'avait jamais effleuré ; c'était comme une atrophie chez moi, une absence.<sup>92</sup>

And thus, since there is no compelling reason for loyalty and attachment to one's own country, modern individuals attempt to escape. Plateforme is really about people's desire to flee their own community whenever they can:

Dès qu'ils ont quelques jours de liberté, les habitants d'Europe occidentale se précipitent à l'autre bout du monde, ils traversent la moitié du monde en avion, ils se comportent littéralement comme des évadés de prison.<sup>93</sup>

What these travelers are looking for is unclear; in any case it is not a new community to replace their own, since the idea that one should find a country and be loyal to it has been rejected in the absolute. And therefore, tourists always desire to keep a certain distance between themselves and the country they are visiting;<sup>94</sup> moreover, tourists only show a distant interest in the struggles and difficulties of local life.<sup>95</sup> This is no different when they return home (and that is exactly what makes these individuals cynic cosmopolites).<sup>96</sup> In the end, says Houellebecq, humans can only be attached to one other individual (partner), or a dog.<sup>97</sup> His latest book, *La Possibilité d'une île*, ends with the description of a journey,

Ziehier, om bij het begin te beginnen, de waarheid die mij misschien wel vrij, maar geenszins gelukkig maakt. Ik heb het al heel lang vermoed, maar nu weet ik het zeker: dat ik nooit, waar ook ter wereld, en hoe oud ik ook zal worden, vrede zal vinden, alsook, dat ik nimmer enige streek of stad zal zien, die niet vermoeiend zal zijn van bekendheid, omdat ik alles, zonder uitzondering, reeds gezien zal hebben [...] Het zijn de verschrikkingen, die het leven zijn inhoud geven, waar of niet, of liever gezegd: zo is het. (Verlaat mij toch niet, o Geest.)

Translation (my own):

See here, to start at the beginning, the truth that made me free, but not at all contented. I suspected it for a long time, but now I know for certain: that I will never, no matter where, no matter how old I have become, find peace, and that I shall never see a region or city, which is not exhaustive because of its familiarity, since I will have seen everything, without exception, once before. [...] It is the horrors, that give life its meaning, true or not?, or more accurately put: so it is. (Do not desert me, o Holy Spirit.)

It is the sort of desperation that Jean-Louis Fougeret de Montbron (1706-1760) expressed, in his book *Le Cosmopolite ou Le Citoyen du Monde*.

<sup>92</sup> Houellebecq, *Plateforme* : au milieu du monde, Flammarion, 2001 ('Plateforme'), p. 339.

<sup>93</sup> *Plateforme*, p. 34.

<sup>94</sup> Tourism is a way to escape the inconveniences of life, one could say. Houellebecq writes:

Comme tous les habitants d'Europe occidentale, je souhaite voyager. Enfin il y a les difficultés, la barrière de la langue, la mauvaise organisation des transports en commun, les risques de vol ou d'arnaque : pour dire les choses plus crûment, ce que je souhaite au fond, c'est pratiquer le tourisme. (*Plateforme*, p. 34.)

<sup>95</sup> *Plateforme*, p. 84.

<sup>96</sup> In *Les Particules élémentaires*, this is described by one of the main characters as follows : "Il se sentait séparé du monde par quelques centimètres de vide, formant autour de lui comme une carapace ou une armure." (Houellebecq, *Les Particules élémentaires*, Flammarion, 1998, p. 109.)

<sup>97</sup> *Plateforme*, p. 339 (Main character realizes he can survive with his partner besides him, and then moments later a bomb explodes and his partner is taken away from him); and *La Possibilité d'une île* (where a future human being is attached only to his little dog, Fox).

undertaken by a future man together with his cloned dog, named Fox, to escape his detached existence and become a community-man again. He fails.

#### Conclusion

What to conclude from all this? The two theories of cosmopolitanism are alive and well in the present-day. Globalization has made stoic cosmopolitanism, the ideas of the stoics and Immanuel Kant, a reality, at least for some. The United Nations did not create perpetual peace, but that does not make it a complete failure. In fact, Kant's description of how he envisaged international cooperation seems pretty accurate as a description of what actually happens at the United Nations today. Kant wrote that humans cannot do without associating peacefully and yet they cannot avoid constantly offending one another. And thus they form a coalition which, though constantly threatened by dissension, makes progress on the whole.<sup>98</sup> Shashi Tharoor, an Indian national and one of the main candidates to succeed Kofi Annan as UN Secretary-General, quotes Hammarskjöld, who succinctly described the intentions of the UN: "the UN was not created to take humanity to heaven, but to save it from hell."<sup>99</sup>

What about the cynic ideas of Diogenes of Sinope? The increased possibility to travel has given many people the chance to become the cosmopolitan traveler Diogenes could only have dreamed about; an increased popularity of cynic cosmopolitan thinking is one of the results. The popularity of Houellebecq's books indicates that many people find something familiar in his writings, that the French writer uncovered a sensitive spot in the modern man's soul; in other words: that they too are as helpless as an uprooted tree, floating in mid-air, looking for new roots to settle.

<sup>98</sup> Immanuel Kant, *Anthropology from a Pragmatic Point of View*, Para. 331. Translated by Mary J. Gregor. The Hague: Martinus Nijhoff, 1974 (see p. 191). Kant hastens to add that the idea of a cosmopolitan society is "unattainable", but that it is an ideal that can guide us.

<sup>99</sup> Shashi Tharoor, 'Saving humanity from hell', *New Internationalist*, No. 375, Jan-Feb, 2005. See: <http://www.newint.org/issue375/saving-humanity.htm>.

*Gilles Bauer:*

*Global Justice and International Economic Institutions - The case of the WTO*

This paper addresses the general question what principles of justice the WTO should embody as a unique quasi-universal interstate global governance institution regulating the international trading system in the absence of a coercive global basic structure. This problem is raised in the context of heterogeneous outcomes of trade liberalisation for the standard of living of affected citizens in different states. By integrating the dynamics of economic mechanisms and the particular institutional nature of the WTO, the discussion draws on the distribution of responsibility for poverty causation and reduction between the global economic order (GEO), the WTO and states. Normative international political theory is linked to trade theory, political economy and empirical analyses in order to evaluate the possibility of transnational normative claims in trade and to extend thereby theories of justice to the international economic order in general and the trading order in particular.

The first section will evaluate the normative consequences in the analysis of the causes of wealth of poverty in general and the role of trade therein in particular. This evaluation will be complemented in the second part by the use of empirical material on the outcomes of trade liberalisation. The integration of individual-based notions of welfare in the third section will allow us to criticise the analysis of trade agreements in terms of interstate procedural justice. The fourth section finally argues for a two-levelled principle of justice that derives from the WTO's limited current mandate and organisation.

Section 1

In several regions and countries of the world massive severe poverty deprives individuals from adequate health, nutrition, or education. Such circumstances not only affect their socioeconomic level of well-being, but reduce as well their ability to enjoy civil and political rights. In other regions however, people do not live under conditions of poverty. Models of social justice in a national economy may allow for redistribution between the rich and the poor members of a society. A classical example in line would be Rawls's maximin principle according to which social inequalities are justified only up to the extent they contribute to the improvement of the circumstances of the worst-off within a society. Such a principle is bound to the realm of a single national household.

Various international organisations and economists have in several estimations considered the entire world as a counterfactual<sup>100</sup> unique household. If all of the world's national economies are cumulated, the richest quintile of the world's population holds three-quarters of world income, the poorest two quintiles hold 5% of world income and the

<sup>100</sup> The calculations are based on the fiction of a global common household. Although some of the existing international organisations have, to a less or larger extent, distributive functions (such as the WHO, cf. the analysis in Roemer, 2003. There are as well World Bank or IMF interventions that are not based on loans), this world is politically still characterised by the absence of an overarching global basic structure with fully distributive functions. This paper's aim is to highlight the limits of the WTO as an international organisation as such in this context.

poorest quintile just holds 1.5%. These poorest 40% roughly correspond to the 2 billion people living on less than \$2 a day (purchasing power parity). Although such calculations of a global income distribution model acknowledge a global inequality<sup>101</sup> between rich and poor, and despite the indubitable and recognized harmfulness of extreme poverty, these mere facts do not suffice to establish normative judgments: indeed, they do not integrate the causes of poverty. However, the views on the causation differ and entail different normative judgments concerning the responsibility and the remedial action to be taken against severe poverty in the relation between affluent and developing countries.

As Rawls considered the causes of poverty to be entirely domestic, he rejected international distributive justice, i.e. the transfer of economic resources from rich to poor countries. However, despite the importance of a country's geographic or institutional circumstances, the integration into the world economy – and especially trade openness – plays an important role in the level of growth and development, be it in positive (wealth) or negative (poverty) terms. Thomas Pogge for instance turns to an analysis that emphasizes the genealogy of poor countries' economic integration into the global economic order (GEO) as it is shaped by international economic institutions and the action of rich and powerful states therein.

Opposed to Rawls, Pogge is favourable to international distributive justice. Relying on UNHCR §§25 and 28<sup>102</sup>, he defends a minimal human rights standard that requires any international institutional order imposed on human beings to fulfil human rights as far as reasonably possible. He holds that massive severe poverty constitutes a violation of a negative duty not to impose a harmful institutional order on people<sup>103</sup>. However, one of the shortcomings of Pogge's evaluations is that his general focus lies on the GEO, which means a lack of focus on the principles of the specific international institutions).

It is indeed an essential methodological problem – to which we are lead from Pogge's severe violation criterion – to determine whether the WTO's main mandate, trade liberalisation (i.e. the reduction of direct and indirect barriers to trade), can be singled out as a harmful factor. Although Pogge criticises the WTO-treaty with inter alia its asymmetric market access rules and trade-related intellectual property rights agreements (TRIPs) that have precluded HIV/Aids infected patients in developing countries from access to cheap medical drugs as obstructive to development and poverty-reduction, he fails to develop specific principles of justice applicable to the WTO<sup>104</sup>. This paper tries to do so in taking

<sup>101</sup> For these statistics, cf. UNDP, 2005: 36. For various measures of inequalities beyond borders (global, international, and country), cf. World Bank, 2006: 57.

<sup>102</sup> UNHCR §25 defends an individual's rights "to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care". §28 holds that everyone is entitled "to a social and international order in which the rights and freedoms set forth [in the UNHCR] can be fully realised".

<sup>103</sup> Cf. Pogge, 2005a and 2005b.

<sup>104</sup> "Millions who would have lived had the old regime continued have in fact died from poverty-related causes. These people were killed, and others harmed in other ways, by the change-over to the new regime. Perhaps even more millions who would have died from poverty-related causes had the old regime continued have in fact survived. But our governments cannot use this benefit to justify the harm they caused, because they could have avoided most of this harm, without losing the benefit, by making the WTO Treaty less burdensome on the developing countries. They did not do this because they sought to maximize our gains from the agreement. But our material gains cannot justify the harm either." (Pogge, 2002: 18-19).

account of the particular institutional organisation of the WTO and in applying the debates on Global justice and International distributive justice to the WTO.

Before we can address the delicate question in which respect the WTO is harmful and how the WTO matters normatively especially by its multilateral character, a few general basics about trade should be presented, in order to define the normative scope of the WTO accurately.

## Section 2

Trade liberalisation is generally justified on the grounds that free trade enhances the welfare of the trading countries. If they have a comparative advantage in the production of a traded good, trade permits lower production costs through specialisation. How then could free trade be harmful if economic theory predicts mutual benefits for both sides? Trade does actually not benefit everyone to the same extent, and much depends on what are the entities between which we are comparing the respective advantages (countries, producers, consumers, high-skilled or low-skilled workers, companies or individuals, home or foreign) and which goods are traded (e.g. non-manufactured products such as cotton or agricultural products can be a vital component for countries with little to no industrial development level).

To illustrate a simple case where the gains from trade liberalisation within one single country depend on whether you are a producer or a consumer of a certain good, one might consider the example of US sugar<sup>105</sup>. Liberalised sugar trade might be advantageous for American consumers as imported sugar might be cheaper than domestic sugar because the sugar production in, say, Costa Rica, is cheaper than in the US. However, low tariff barriers on imported sugar put the American sugar producer worse off because he cannot compete with this cheaper imported sugar. Therefore, the US government may subsidise US sugar producers<sup>106</sup> in order to keep them in business. Such a protectionist trade policy is justified in the domestic context because the additional cost created by a higher sugar price (imported sugar is more expensive through tariffs and US sugar is more expensive anyways) is marginal and negligible for the domestic consumer – but it creates a significant benefit for the domestic producer. This simple case of a developed country should allow us to see that there can be winners and losers from trade liberalisation, and that governments can adopt various tariffs in order to defend the interests of their society or of certain groups therein. In general, a developed country is able to maintain a social system where the losses of the losers might be justified by the overall gains for society created by the gains earned by the winners and where adjusting or restructuring policies might accommodate the losers from trade. Such considerations however are still domestic and apply to a developed country. Let us now turn to the case of developing countries, and attempt to extend the winner-loser categories beyond state-borders.

What should interest us now is the complex relation in which trade stands to poverty and poverty reduction. In general, it is argued that increased and liberalised trade is a

<sup>105</sup> This is the basic example taken from Krugman/Obstfeld, 2006, who provides an synthesised introduction to trade theory and policy.

<sup>106</sup> The US sugar industry counts only a few producers and thus is very well organised and has strong lobbying in the Congress.

means to development, because trade promotes growth (trading countries are supposed to obtain mutual gains from trade that let their economies grow), and growth sustains development as it provides the means to increased economic activity from which members of a society can raise their income and increase their individual well-being. However, it is only broadly true that trade openness necessarily leads to growth and thereby raises the standards of living for all affected.

Recent data from UNDP, UNCTAD and World Bank<sup>107</sup> underlines that the outcomes from trade liberalisation may be very harmful for poor people if their country lacks distribution neutrality among the winners and losers from trade. Increasing trade openness may generally lead to aggregate growth<sup>108</sup> (expressed in GDP/capita), but especially poor might be excluded from these gains and suffer from low development indexes depending on the particular economic, social, or political organisation of a country. In Brazil for instance agricultural exports benefit a handful of large producers and leave out millions of small-holders in the rural regions. Mexico's export growth is restricted to a very small high-technology sector which does not reach the low-skilled manufacturing labour craft that cannot keep up with Chinese competition. Existing inequalities within a society might even increase if trade-led growth is not poverty-inclusive, and poverty-struck people might even be put worse-off as in Guatemala where the human development index (HDI) remains very low despite considerable overall growth rates. That the old arguments for export-led growth and development that gained so much support by the successful evolution of the manufacturing and exporting economies of East Asia do not apply in all circumstances becomes very clear through the falling trade shares of Africa. The Washington Consensus<sup>109</sup> structural adjustment policies promoted by the Washington-based World Bank and IMF throughout the 1980s not only were unsuccessful for most of the African countries, but became a drawback for them. The trade shares of Africa as a whole dropped despite an overall increase in world trade. Not only did growth and development not take off, but development levels actually fell. There was no stagnation instead of development, but mere regression.

Depending on the social structure of a country, trade liberalisation may be beneficial by and large if governments are able to compensate those harmed by new trade flows. However, as poor countries might not be able to undertake compensatory or restructuring policies and because it is rarely entirely determinable whether domestic or global factors have a stronger causal relation to poverty, neither of the two levels can be acquitted from responsibility. Indeed, the effects of trade agreements on poverty causation or reduction are more than just a question of domestic distributive justice, once the genealogy of the WTO agreements is considered.

It is widely agreed (even among free trade defenders and liberal economic observers) that the obstructive implications of the trade agreements result from strong economic and political power asymmetries between the negotiating states in the WTO. In the beginning, developing countries' small delegations simply did not have the size and qualification to

<sup>107</sup> This short paper does not leave much space for detailed examples. The reader is advised to refer to UNDP, 2005: ch. 4, UNCTAD, 2004, 2006, and World Bank, 2006.

<sup>108</sup> This corresponds to Ricardo's theory of the gains from trade due to a country's comparative advantage.

<sup>109</sup> Cf. Stiglitz for a severe critique.

handle ten thousands of pages of trade agreements as the large trade delegations from the main trading powers in Geneva were able to<sup>110</sup>. But, although lacking the negotiation capacities, staying out of the WTO was not an option either for the developing countries. Despite the interstate nature of the WTO, its member-driven functioning, and voluntary accession membership, developing countries did not have much of a choice of belonging to the WTO or not: if they did not join the multilateral liberalising trading regime, they would have fared even worse than they did by joining. Nonetheless, being better off by joining the WTO does not make the agreement a fair agreement. It is not exaggerated to consider as coercion this unbalanced deal offered to developing countries where they gain almost nothing instead of absolutely nothing<sup>111</sup>.

Therefore, to analyse the genealogy of WTO agreements in terms of interstate equality<sup>112</sup> does certainly not seem inappropriate, but one may wonder if it is sufficient from a normative point of view. Indeed, depending on their state's negotiating power, not all individual citizens from different states are equally represented in international organisations. Especially with regards to development, Amartya Sen's capability approach has allowed for much headway both in development policies and in normative thinking<sup>113</sup>. But if one comes to evaluate a person's standard of living in terms of Sen's capability notion, one misses out the dimension of extra-societal factors such as international institutions that beyond personal characteristics and social or national circumstances may affect a person's capability, *i.e.* the set of functionings (the beings and doings a person values or has good reasons to value) available to her. The case of the WTO shows that a person's capability is thus not only dependent of her own personal characteristics and her social environment as it has been conceptualised by Sen, but as well of her society's standing in the international order (which adds a third layer to Sen's two-level conception of a person's capability). This is a consequence of the assessment of trade liberalisation in light of the foreseeable impact it has beyond the aggregate level for an economy on particularly poor individuals.

### Section 3

With a particular regard to poverty and poverty reduction, purely interstate principles are not sufficient because of the particular mechanisms in economics in general and in trade in particular, which are characterised by the many asymmetrical effects decisions at home might have abroad. Export subsidies might be the best illustrating case in line. The US or the EU can support domestic producers with subsidies that enable them to sell their products with lower prices on the world market. Consumers in net-importing countries might benefit from these lower prices. Consumers in the US or the EU however will have

<sup>110</sup> A theoretical analysis of the various dimensions through which power may be exercised in a global governance institution, cf. Barnett/Duvall, 2005.

<sup>111</sup> Authors as Shaffer, 2005 or Barnett/Duvall, 2005 do not refrain from using such strong terms as 'coercion'. In a purely rational approach, a distribution of 100 items between A and B that follows a 99-1 scheme is better for B than a 100-0 distribution (B gets 1 out of 100 instead of 0 out of 100), yet it is obvious that this is far from an equitable distribution as 60-40 would be. This example derives from fairness economics, and is presented by Kapstein, 2005 who shows the inappropriateness of expected utility approaches to include equity considerations in game theory, and his suggestion to analyse distributions by ultimatum gains.

<sup>112</sup> As Narlikar, 2005a and Brown/Stern, 2006 have done.

<sup>113</sup> Cf. Sen, 1992.

to face higher prices, because producers have to be kept in business. Producers in developing countries however lose what is often their only source of income. This is very much a problem of coordination and balancing of interests between specific parts of different societies. For virtually every trade policy, there are winners and losers, not only at home, but as well abroad, and the problem is not exactly who loses most, but which losers' country is best able to implement compensating policies (*i.e.* restructuring of the market).

If 'fair' trade rules are only considered as 'one vote per member' rules or the ruling out of 'green room' negotiations, such interstatal conceptions of procedural justice do not allow for satisfactory conclusions for a poverty-inclusive theory of global justice because individuals' minimal standards of living may not be maintained or attained in the follow-up of a trade agreement. Some states provide a more equitable distribution of the benefits and burdens of trade outcomes among their citizens than others (due to a lack of information or unbalanced socioeconomic systems). Thus a formally fair interstatal negotiation is not sufficient to allow every poverty-struck individual to benefit from gains that his country obtains on the aggregate. Moreover, his situation might get worsened unnecessarily and he may be put or kept below a minimal socioeconomic level.

Institutional power asymmetries thus matter not only as inequality among states, but as well as inequalities among people belonging to different states where some are living below minimal human rights levels. Individuals need to be integrated as a normative unit in order to include poverty and development into the normative account of the WTO (through HDI, international poverty lines or alternative measures). WTO agreements should not be assessed only in terms of equality of opportunity or outcome between states, but additionally in terms of socioeconomic human rights satisfactory outcomes for individuals.

The normative challenge is the conceptualisation of claims that are both transnational and interindividual in an interstatal order that lacks a global distributive system and has a non-distributive WTO whose member states are characterised by wide economic and political inequalities. Given both the regulating and interstatal (*i.e.* the member-driven character) nature of the WTO, notions of international distributive justice are problematic. For Rawls, justice is the prime virtue of a domestic social basic structure. In the context of a regulating global governance institution, international distributive justice needs to be reformulated in a secondary meaning. Through agreements and negotiations, the gains from trade should be distributed among states in a way that citizens in each country get not affected in a way that harms them according to a minimal human rights level. States should not be considered as 'closed' distributive systems, but as distributive systems that are connected at their edges via trade. Minimal socioeconomic human rights allow for intersocietal claims on trade shares in the context of the existing severe global inequalities (*i.e.* comparisons between rich from developed countries and extremely poor from the developing world). Thus trade acquires a specific normative standing within the set of sources available to a national economy for distribution.

The notion of global distribution is problematic as there is no encompassing global distributive system. Blake<sup>114</sup> for instance has argued that a distributive system requires a coer-

<sup>114</sup> Blake, 2002.

cive structure. Following this reasoning, as there is no global coercive structure, there would be no possibility for a global distributive system. So does it make sense to speak of global distributive justice in the absence of global distributive system? One can make the attempt to argue for a normative notion of global distributive justice that is construed negatively: the possibility to maintain or attain minimal standards of living that are considered as minimal socioeconomic human rights through various conventions is obstructed by an international economic system whose existing (implicit) distribution (of the benefits and burdens resulting from trade) could not be tolerated under a counterfactual global distributive system.

Indeed, there is an implicit or indirect global distribution of economic resources that partly goes through WTO agreements and trade (other channels would be capital and financial markets). Although one might agree that there is no explicit distribution of the resources generated by trade as, say, a social health system would provide in a welfare state, one cannot deny that the implicit consequences of trade flows can become so strong that they deprive individuals from minimal socioeconomic human rights in various countries who cannot provide compensating measures for the losers from trade. And this does not necessarily concern income, but rather notions of well-being focussing on deprivations of health or nutrition, which may acutely emerge in cases of extreme poverty.

The sharing of the benefits and burdens of free trade as conceptualised in the economics of free trade foresees the possibility of benefits for both trading countries. If some countries take advantage more than others, we can say that the distribution of those benefits was unbalanced. We can say, counterfactually, that distributive justice has not been respected. In other words: as there was no foreseen explicit distribution, the effects of the implicit distribution had such a negative (i.e. human rights violating) effect, that trade becomes a matter of distributive justice not per se, but per originem (unbalanced negotiations) and per consequentiam (domestic systems incapable of fair distributions or economies whose productive capacities have no realistic chance to compete with foreign producers). Several unfavourable local or national circumstances are in some places so incapable of allowing for fair domestic distribution that external factors (in our case the WTO) can gain a normative stance. It is in these terms that it becomes conceivable to argue for the need of distributive justice even in the absence of an existing international distributive system. Our last section will now analyse what consequences we can draw from the limits of the WTO's present mandate and structure.

#### Section 4

The GEO as a whole is imperfect. The WTO as an element of this whole is so, too. But only little change can be expected from within the WTO as an organisation, given that it is member driven and that decision-making lastly remains at the interstatal level, which always is dependent up to a certain extent of economic and political power balances.

The channels through which distributive justice is to be reached within a GEO that as a whole is a non-distributive system are, as much as the effects of this non-distributive system, implicit or indirect changes. We considered the world as a system of interconnected individual domestic distributive systems which have both explicit redistributive systems (though few and little they are, *e.g.* WHO) and implicit distributive economic flows (trade, capital, finance). The means to correct the inefficiencies and to limit and eliminate the

harmfulness of these implicit distributions can – in realistic terms – only come through regulating measures that are elaborated in the awareness of extreme poverty and the potential trade has to reduce it and the moral illegitimacy of the initial trade agreements of the WTO. In the last few years this awareness has risen even among Western or Northern policy-makers. The EU for instance has launched Aid for Trade programs, agreed to the reduction and partial elimination of its export subsidies and market access restrictions that prevent for instance African producers to sell in particular their competitive agricultural products in the European market.

What principle of equality can a theory of global justice applicable to the WTO order defend finally? A top-down cosmopolitan principle (from the WTO directly to the individual)<sup>115</sup> would fail the ‘realistic utopia’ criterion because benefits and burdens of trade are not distributed from the WTO to the individuals (as with distributive agencies such as the WHO), but between states in an international negotiation forum. Instead, one can defend a two-level minimal intersocietal principle of justice applicable in trade rules: (a) equality of outcome for each negotiating state to secure (b) equality of outcome for each citizen to attain and maintain minimal human rights independently of belonging to a specific society or country. Such a principle is more comprehensive than for instance conceptions of equality of opportunity for access to markets. Equal access to markets is of course a positive criterion (A gets as much access to B’s market as B gets to A’s). But it does not include the outcome of minimal human rights.

This focus on outcome results from the fact that mere opportunity to human rights cannot be judged sufficient. It is a negative criterion. It does not say that the WTO necessarily needs to be embedded within a human rights legal framework. But, given present domestic and international institutional setups, trade liberalisation in itself can have critical adverse effects. If there is any substance given to socioeconomic human rights and Pogge’s negative duties not to harm people foreseeably through institutional orders, even the WTO treaty’s lack of a development mandate or the absence of a reference to human rights treaties cannot be brought forward as an argument not to need to respect human rights in the WTO-order.

#### Conclusion

The WTO is neither the “site of distributive justice”<sup>116</sup> responsible to provide human rights, nor is it a development agency given its present structure and mandate. However, in times of lacking international policy coherence between development aid and trade policy, there is a moral and legal transnational obligation for WTO member states deriving from UNDHR §§25 and 28 and the ICESCR to abstain from WTO agreements that foreseeably put minimal standards of living at risk or worsen them abroad or at home, even though one may consider that the fulfilment of socioeconomic human rights depends on a state’s own capabilities or that the causes for poverty are mainly domestic. Present econometric and statistical evaluations assessing the impacts of trade policies may have epistemological limits, but these cannot abolish the normative claim not to harm people in other states

<sup>115</sup> As suggested in Pogge, 2002, ch. 7.

<sup>116</sup> Cf. the use of this notion in Pogge, 2000.

through trade agreements, unless fully compensating forms of development aid (e.g. through trade or negotiation capacity-building) are implemented. Therefore, the distribution of the benefits and burdens from trade is a matter of justice not only within societies, but as well among societies.

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*Jonathan Rothchild:*

*Atrocities, Accountability and Peremptory Norms: Defending The Moral Authority of the International Criminal Court*

The formation of the International Criminal Court responds to a century of mass atrocities and impunity by implementing a culture of accountability and shared responsibility. Confronting these atrocities presents new challenges to traditional geopolitical structures and compels a re-imagining of basic values, goods, and duties in ways that embrace individual human dignity and collective responsibility. At the Rome conference in 1998, the United States joined China, Iraq, Israel, Libya, Qatar, and Yemen as the only countries to vote against the Rome Statute instituting such a court. The United States signed the statute, but President Bush informed the United Nations in May, 2002 that the United States will never ratify the Statute and therefore has no legal obligations. Despite these objections, the Statute entered the force on July 1, 2002 (after the requisite sixty countries ratified it), and one hundred countries have now ratified it.<sup>117</sup> The permanent Court has begun to launch criminal investigations against those individuals<sup>118</sup> abusing human rights. Critics continue to scrutinize and censure the Court, but even critics of the Court recognize the task of confronting the twentieth century's tragic and confounding legacy: "The brute fact is that despite hundreds of thousands of deaths caused by human rights abuses during the past decade and despite millions of such deaths in the last century, no well-spring for intervention has developed in the industrialized democracies that possess the military muscle to intervene and stop the abuses."<sup>119</sup>

In addressing both deontological concerns regarding crimes that "shock the conscience of humanity"<sup>120</sup> and teleological appeals to the "the peace, security and well-being of the world,"<sup>121</sup> the International Criminal Court offers a crucial mechanism for intervening and stopping these abuses. This paper has two interrelated purposes: to examine the content of the International Criminal Court and its legal, moral, and political dimensions and to discuss the perspective of the United States and its repudiation of the court. My thesis holds that the International Criminal Court does possess legal and moral authority, the grounds of which lie in legal precedence and customary international law, preemptory jus cogens norms, and deliberative democratic principles. I therefore advocate that the interna-

<sup>117</sup> Mexico was the one hundredth country to ratify the Rome Statute in October, 2005. For comparison, the Geneva Conventions have been ratified by all 192 members of the United Nations, the Genocide Convention by 112 countries, and the Torture Convention by 79 countries.

<sup>118</sup> The first person to stand trial before the Court is Thomas Lubanga, a former Congolese warlord. See Marlise Simons, "Congo Warlord Faces Hague Court." *The New York Times*. March 21, 2006, A6.

<sup>119</sup> Jack Goldsmith, "The Self-Defeating International Criminal Court." *The University of Chicago Law Review* 70:1 (2003): 93.

<sup>120</sup> Rome Statute of the International Criminal Court, Preamble. Appendix 1 in *An Introduction to the International Criminal Court*, edited by William Schabas, Second Edition, Cambridge: Cambridge University Press, 1995.

<sup>121</sup> Ibid.

tional community—as it evolves from a Westphalian, state sovereignty-based system to a globalized, interdependent society—should continue to develop the court's mechanisms and that the United States should ratify the Rome Statute. To achieve justice—justice in the form of retribution for harms done and reconciliation for post-conflict order and international peace—the international community must commit itself to the ICC, the cooperation of national courts, enhanced rights and duties secured through treaties and conventions, and models of restorative justice. I argue that theologically and philosophically informed notions of hospitality and democratically developed ideas of accountability are consistent with the ICC's objectives as well as a robust vision of justice.

There are three principal sections of the paper: a conceptual/historical overview, theoretical analysis, and a constructive proposal. The first section highlights key aspects of the Rome Statute and the fundamental objections of the United States. It reviews the historical trajectories preceding the Rome Statute, and it also considers recent ICC counter-measures by the United States.

The penultimate section undertakes a more theoretical reflection on the meaning of an international criminal court. In particular, I identify *jus cogens* peremptory norms as a definitive framework supporting the existence of the ICC. Integrating concerns for human rights, state sovereignty, international peace and order, and moral accountability and appealing to the work of Immanuel Kant and Jürgen Habermas, I hold that the role of such a court can be justified on philosophical and moral grounds.

The final section functions as a constructive conclusion whereby I sketch a model of accountability constituted by prosecution, codification, and restorative justice centered on hospitality. I appeal to notions of hospitality developed by Miroslav Volf and Paul Ricoeur and apply them to models of retributive and restorative justice to argue that a hybrid approach offers the most efficacious model of justice.

#### Section I: The Rome Statute: Its Antecedents, Its Jurisdiction, and Its Detractors

The locus of the Rome Statute of the International Criminal Court is its "power to exercise its jurisdiction over the persons for the most serious crimes of international concern"<sup>122</sup>: genocide, crimes against humanity, war crimes, and crimes of aggression. (Article 5). The codification of the Court's jurisdiction over these crimes and their definitions derive in large measure from previous international conventions, thereby attesting to the importance of custom in international law. Article 6 on genocide draws considerably from the definition of genocide articulated in the 1948 United Nations Treaty Series Convention on the Prevention and Punishment of the Crime of Genocide and the 1984 United Nations Convention on Torture. Article 7's provision on crimes against humanity appeals to the language of the Nuremberg Charter, and Article 8's discussion of war crimes incorporates Common Article Three of the 1949 Geneva Conventions. Yet, the Rome statute also builds on tradition to accommodate the awareness of new atrocities. For example, in describing potential widespread and systematic attacks directed against any civilian population as crimes against humanity, Article 7(g) lists "[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other forms of sexual violence of

<sup>122</sup> Ibid., Article 1, 196.

comparable gravity.<sup>123</sup> The unprecedented inclusion of these sexual crimes in an international treaty reflects both the influence of one of Rome's predecessors (the 1993 International Criminal Tribunal for former Yugoslavia) and the work of NGOs at the Rome Conference (particularly the work of the Women's Caucus for Gender Justice<sup>124</sup>). Crimes of aggression, in symmetry with Nuremberg's crimes of peace and intensely debated during the Rome Conference, are left undefined but subject to the provisions for amendments (Article 121) and review<sup>125</sup> (Article 123) seven years after the Statute goes into effect. In establishing these basic parameters, the overarching objective of the Court is to eviscerate the culture of impunity.

In terms of the means used to carry out the rule of law, the determination of the Court's jurisdiction within the international community has led to considerable disagreement. After much contestation and negotiation during the Preparatory Commission's sessions, Article 12 on the precondition for jurisdiction stipulates that the Court has jurisdiction when the crime occurs within a state that is a party to the Statute or when the person accused of the crime is a national of state that is a party to the Statute. Article 13 on the exercise of jurisdiction identifies three acceptable sources of referral: a state party, the Security Council, and the prosecutor. Through these mechanisms, these articles secure universal jurisdiction for the court over the aforementioned crimes that are universally experienced in that they shock the conscience of humanity.<sup>126</sup> Though Ian Brownlie notes that universal jurisdiction is increasingly recognized as viable for crimes within international law,<sup>127</sup> the United States has argued that such jurisdiction usurps the sovereign rights of the nation-state, particularly a nation-state that is a non-party to the Rome Statute.<sup>128</sup>

John Bolton, now Permanent U.S. Ambassador to the United Nations, has offered several polemical reservations against the court on sovereignty concerns. Envisioning overly-politicized actions of the ICC, he asserts that the court's "components do not fit into a

<sup>123</sup> Ibid., Article 7, 198.

<sup>124</sup> Marlies Glasius, for example, notes: "Largely as a result of the advocacy of a very large, active and expert civil society Women's Caucus, the Statute of the Court marks a great advance in the gender sensitiveness of international law." Glasius, *The International Criminal Court: A Global Civil Society Achievement*, Routledge Advances in International Relations and Global Politics. New York: Routledge, 2006, 112. On the broader contributions of the Women's Caucus, please see Pam Spees, "Women's Advocacy in the Creation of the International Criminal Court: Changing the Landscapes of Justice and Power." *Signs* 28:4 (2003): 1233-1253. Additionally, Fleming Terrell discusses the prospects for a permanent women's tribunal for sexual violence in "Unofficial Accountability: A Proposal for the Permanent Women's Tribunal on Sexual Violence in Armed Conflict." *Texas Journal of Women and the Law* 15:1 (2005): 107-145.

<sup>125</sup> Some argue that the provisions for review are at odds with Article 120's prohibitions against reservations. The United States repudiates Article 120, but such language is consistent with multilateral agreements such as the Convention on the Law of the Sea and the World Trade Organization Agreement.

<sup>126</sup> Michael Scharf envisages universal jurisdiction as equivalent to universal concern, where "the universality principles assumes that every state has a sufficient interest in exercising jurisdiction to combat egregious offenses that states universally have condemned." Scharf, "The ICC's Jurisdiction Over Nationals of Non-Party States: A Critique of the U.S. Position." *Law and Contemporary Problems* 64:1 (2001): 76.

<sup>127</sup> Ian Brownlie, *Principles of Public International Law*, Sixth Edition. Oxford: Oxford University Press, 2003, 565.

<sup>128</sup> These include crimes subsumed within treaties to which the United States is a party, including the 1958 Law of the Sea Convention, the 1970 Hijacking Convention, the 1979 Hostage Taking Convention, and the 1988 Maritime Terrorism Convention.

coherent 'constitutional' designed that delineates clearly how laws are made, adjudicated, and enforced, subject to popular accountability and structured to protect liberty."<sup>129</sup> We have already observed that the roots of the ICC lay in international conventions and treaties and therefore are not a legal creatio ex nihilo. Another objection articulated by the United States concerns the power of the prosecutor and the probability of prosecutorial abuses.<sup>130</sup> Within the Rome Statute, Article 15(1) stipulates that the prosecutor may initiate investigations *proprio motu*. However, investigations remain subject to a system of checks and balances ensured by Article 15(4)'s Pre-Trial Chamber,<sup>131</sup> which, upon review of the supporting material and jurisdiction issues, must authorize the commencement of the investigation. Other articles describe additional measures such as the election of prosecutors by secret ballot by an absolute majority of state parties (Article 42(4)), the removal of the prosecutor from office by vote of an absolute majority of states (Article 46(2)), and the duties and powers of the prosecutor with respect to investigations (Article 54). The principal American objection pertains to the basic exercise of power. Fearing that its peacekeeping soldiers would be subject to the ICC, the United States spearheaded U.N. Security Council Resolution 1422 that exempted all U.N. peacekeepers from the ICC's jurisdiction for a year. The United States achieved renewal in 2003, but, owing to mounting resistance, not in 2004. Not sanguine with the prospects of this temporary measure, the United States passed its own legislation, the American Servicemembers Protection Act (ASPA) in July, 2003. Dubbed the "Hague invasion act," the ASPA prohibits cooperation with ICC with respect to requests for cooperation, extradition, or funding (Section 2004), prohibits U.S. military assistance to parties of the ICC (Section 2007), and authorizes the President to utilize all necessary means to secure release of United States persons detained through the ICC.<sup>132</sup> This Act helped facilitate the United States' pursuit of diplomatic partners in its bi-lateral, non-surrender Article 98 Agreements, wherein the other party agrees, either reciprocally or non-reciprocally, to surrender United States persons to the ICC. The United States has signed Article 98 Agreements with nearly one-hundred countries, many of which are state parties to the ICC. The European Union attempted to dis-

<sup>129</sup> John Bolton, "The Risks and Weaknesses of the International Criminal Court from America's Perspective." *Law and Contemporary Problems* 64:1 (2001): 169.

<sup>130</sup> See, for example, Alfred Rubin, "The International Criminal Court: Possibilities for Prosecutorial Abuse." *Law and Contemporary Problems* 64:1 (2001): 154-164.

<sup>131</sup> According to *The International Criminal Court Monitor*, Issue 32, May 2006, 13, the Pre-Trial Chamber (configured at March 11, 2006 plenary sessions) currently consists of seven judges, four of which have established competence in criminal law and procedure, and three of which have established competence in relevant areas of international law. For further discussion of the functions and powers of the Pre-Trial Chamber, please see Article 56-58, particularly Article 57. The integration of these competencies in the disparate, but interrelated fields of international law and criminal law should help mitigate concerns about tensions between them. Steven Ratner, for example, notes several dichotomies between them: "international law's focus upon the obligations of states versus criminal law's concerns with the obligations of individuals, and international law's general lack of vertical prescription and enforcement processes versus criminal law's assumption of both." Steven Ratner, "The Schizophrenia of International Criminal Law." *Texas International Law Journal* 33:2 (1998): 251.

<sup>132</sup> For the full statement of the Act, please see [www.state.gov/t/pm/rls/othr/misc/23425.htm](http://www.state.gov/t/pm/rls/othr/misc/23425.htm) (visited August 1, 2006).

suade such agreements by calling such agreements violations of the Rome Statute and by refusing to grant blanket immunities from ICC prosecution.<sup>133</sup>

## Section II: Peremptory Norms: The Groundwork for Accountability

Though the origins of *jus cogens* peremptory norms in international law trace back to Grotius, modern international law has understood gross violations of human rights to be transgressions of such norms. The Geneva Conventions (1949) sanctioned various actions that constituted 'grave breaches' (e.g., willful killing, torture, etc.) and imposed a duty to prosecute or extradite persons responsible for such breaches. The Vienna Convention on the Law of Treaties (1969) significantly placed *jus cogens* norms within the rubric of modern international law. Article 53 specifies that "[a] treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law...[—]a norm from which no derogation is permitted."<sup>134</sup> *Jus cogens* therefore trump individual state interests and treaty obligations because of their absolute humanitarian character that pertains to the basic values of the community and the rights of the individual. In this way, the core crimes identified by the ICC—all of which violate *jus cogens* norms—should be viewed as empowering states and stabilizing international order and security. Defense of *jus cogens* norms refutes positivism's separating law and morality<sup>135</sup> as well as *realpolitik*'s mitigating norms for military or political exigencies. Reflection on these rights and duties raises broader philosophical questions about the relationship between law and morality, which will help shed light on analysis of *jus cogens* norms. I argue that the ICC comports with a middle ground between a Kantian and Habermasian universalism. In *On Perpetual Peace: A Philosophical Sketch*, Kant lays out a vision of international order based on cosmopolitanism and a formally instituted federation of peace where individuals "may be regarded as citizens of a universal state of mankind (*ius cosmopoliticum*)."<sup>136</sup> One must be careful not to misinterpret Kant's notion of "a universal state of mankind;" he seeks to preserve the autonomy of states (as well as the autonomy of persons) and disavows conflating a federation of peoples and an international state. Autonomy and collective responsibility, an integration achieved by the ICC through mechanisms such as complementarity, are not mutually exclusive. Kant worries that each remains unfulfilled in the Hobbesian state of nature fettered by violence; it is only through the formal structure of cosmopolitanism

<sup>133</sup> See Judy Dempsey, "E.U. Ministers Back off Over Criminal Court." *Financial Times*. October 1, 2002, 12 and Judy Dempsey, "E.U.'s Deal on International Court Leaves U.S. Unsatisfied." *Financial Times*. October 3, 2002, 10.

<sup>134</sup> Vienna Convention on the Law of Treaties, Article 53.  
[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf). Visited August 1, 2006.

<sup>135</sup> Many commentators have pointed to the shortcomings of a positivist perspective on international rights. For example, Geoffrey Robertson writes: "The reason why international law has made so little contribution to the reduction of ethnic strife is because of its positivist composition: it constructs its rules as a synthesis of what states in fact do, rather than by reference to what they should do according to principles of fairness and justice." Robertson, *op. cit.*, 155. For a positivist's perspective on international law, see H.L.A. Hart's classic, *The Concept of Law*. Second Edition. With a Postscript edited by Penelope A. Bulloch and Joseph Raz. Oxford: Oxford University Press, 1994, particularly 213-237.

<sup>136</sup> Immanuel Kant. *Perpetual Peace: A Philosophical Sketch*, in Kant: *Political Writings*, edited with an Introduction and Notes by Hans Reiss. Translated by H.B. Nisbet. Second Edition. Cambridge Texts in the History of Political Thought. Cambridge: Cambridge University Press, 1991, 98-99.

that peace can perdure and protect autonomy and moral responsibility. Kant's sketch further resonates with the principles informing the ICC, for Kant too reckons that a pacific federation is necessitated by peace for the universal community. This peace requires universal hospitality and a universal solidarity, namely, "where a violation of rights in one part of the world is felt everywhere. The idea of cosmopolitan right is therefore not fantastic and overstrained; it is a necessary complement to the unwritten code of political and international right, transforming it into a universal right of humanity."<sup>137</sup> States remain duty-bound to uphold the universal right of humanity and *jus cogens* norms and not, as one critic of the court puts it, "to resolve their disputes by such mechanisms as they find most suitable, limited by such obligations as they have agreed to by treaty or become bound to by custom."<sup>138</sup> Habermas appropriates a Kantian deontological approach, but his critical theory and discourse ethics informed approach seeks to reconcile Hegelian *Sittlichkeit* with the Kantian *Moralität*.<sup>139</sup> Lest we lose sight of the social contexts of law and morality, Habermas suggests that "we must not follow [Kant] in conceiving the aspects of legality as limitations of morality"<sup>140</sup> because "[t]he project of realizing the system of rights—a project specifically designed for the conditions of our society, and hence for a particular, historically emergent society—cannot be merely formal."<sup>141</sup> Habermas therefore pursues a complementary relation between law and morality, though—if Kant leans toward morality—he privileges law.<sup>142</sup> I held earlier that the ICC brings together deontological and teleological concerns, and Habermas affirms that discourse theory helps establish both by means of rational consensus achieved through intersubjective argumentation and the socially integrating force of solidarity. In similar ways to the concerns for norms and values of the ICC established through the formal structures of the Rome Conference, Habermas writes: "Principles or higher-level norms, in the light of which other norms can

<sup>137</sup> Ibid., 107-108 (original emphasis). Similar claims about the particular-universal dynamic of justice have been articulated by Christian theologians from Martin Luther King, Jr., to Pope John Paul II.

<sup>138</sup> Madeline Morris, "High Crimes and Misconceptions: The ICC and Non-Party States." *Law and Contemporary Problems* 64:1 (2001): 66.

<sup>139</sup> For a Hegelian critique of Kantian cosmopolitanism, please see Robert Fine, "Kant's Theory of Cosmopolitanism and Hegel's Critique." *Philosophy and Social Criticism* 29:6 (2003): 609-630. Fine argues that Hegel's idea of cosmopolitan right is preferable to Kant's more abstract understanding because "it indicates not only the formation of new laws and institutions—be they the United Nations or the legal prosecution of crimes against humanity—but also the establishment of new standards of judgment and categories of understanding which confront the violence of 'what is' in a way that accepts the messiness and risk of political action." Ibid., 622-623.

<sup>140</sup> Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Translated by William Rehg. Cambridge: The MIT Press, 1996, 113.

<sup>141</sup> Ibid., 445.

<sup>142</sup> Habermas explains the meaning of this complementarity between law and morality, where law is to be privileged (but not absolutely) because morality is a necessary, but not sufficient element of discourse theory: "Law, as it were, compensates for the functional weaknesses of a morality that, from the observer perspective, frequently delivers cognitively indeterminate and motivationally unstable results. This complementary relation, however, by no means implies that law enjoys moral neutrality. Indeed, moral reasons enter into law by way of the legislative process. Even if moral considerations are not selective enough for the legitimization of legal programs, politics and law are still supposed to be compatible with morality—on a common postmetaphysical basis of justification." Ibid., 452-453 (original emphasis).

be justified, have a deontological sense, whereas values are teleological."<sup>143</sup> Habermas does not refute the possibility of universal norms, but he argues that the society as a whole must arrive at assent whereby public argumentation "recommends itself for such a universalized ideal role taking practiced in common."<sup>144</sup> One may retort: Would states, as in the case of the delegations at the Rome Conference, naturally adopt this "universalized ideal role"? That is, does Habermas adopt the same presumptions about the formal character of law and morality as which he accuses Kant? Put differently, as Paul Ricoeur observes, "the question is whether an ethics of communication entirely succeeds in safeguarding its dialogical vocation from slipping back into the solitude of monologue."<sup>145</sup> Habermas remains susceptible to these criticisms, but he can partially defend his position by affirming that "[l]aw is not a narcissistically self-enclosed system, but is nourished by the 'democratic Sittlichkeit' of enfranchised citizens and a liberal political culture that meets it halfway."<sup>146</sup> The "democratic Sittlichkeit" for the ICC is manifested in both its form (e.g., the ratification of at least sixty countries) and content (e.g., the constructive debates of Rome's Preparatory Commission). Law and morality translate into rights and justice when sensibilities and mechanisms—such as the post-Westphalian ICC—converge in a democratic crucible of accountability.

### Section III: Hospitality: Retributive and Restorative Accountability

If we have advocated for the relevance and authority of the ICC, we now conclude through a constructive proposal that presents a counter-model of accountability to the United States skepticism about the ICC. The model of hospitality may seem equally misplaced in a conversation about criminal justice or international law or a discussion of the moral authority of the ICC. Yet, as evidenced in ethnic and religious clashes in Rwanda, Bosnia, Darfur and elsewhere, there is a critical importance in retrieving hospitality as a model for accountability. Otherness and mass atrocities seem unfortunately to be inexorably linked: the visceral otherness of the ethnic stranger results in genocidal cleansing and other crimes against humanity; or, the otherness of the war crimes victim cannot motivate moral compassion and legal recourse and thus perpetuates the culture of impunity. Hospitality explodes the old dualisms (e.g., "us/them") that precipitate mass atrocities. Theological and philosophical resources can help establish the connections between hospitality and the current ICC debates. The Judeo-Christian understanding of hospitality derives from Biblical tropes, illuminated, for example, in Abraham's repeated response to God's call with "Here I am" (Genesis 22:1; Genesis 22:11), in God's covenant to welcome the neighbor, (Exodus 23:9 "You not oppress a resident alien; you know the heart of an alien, for you were aliens in the land of Egypt") and in Jesus' parables that extend moral boundaries to all neighbors (the parable of the good Samaritan of Matthew 22:34-40, Mark 12:28-34, and Luke 10:25-37). For both the Hebrew Scriptures and the New Testament,

<sup>143</sup> Ibid., 255.

<sup>144</sup> Ibid., 228.

<sup>145</sup> Paul Ricoeur. "Theonomy and/or Autonomy." In *The Future of Theology: Essays in Honor of Jürgen Moltmann*, edited by Miroslav Volf, Carmen Kreig, and Thomas Kucharz. Grand Rapids, MI: William B. Eerdmans Publishing Company, 1996, 295.

<sup>146</sup> Habermas, op. cit., 461.

it is precisely when questions about strangers, pariahs, difference/otherness, or boundaries arise that hospitality—attention to and care of the individual neighbor regardless of the neighbor's identity—becomes most relevant. Hospitality fulfills the demands of reciprocal justice in that it does not differentiate between persons, and, in this way, promotes equality; however, hospitality also transcends reciprocity in that it requires one to go beyond mere equality. This dialectical character to hospitality, which must be preserved, can be transmuted into a coherent strategy of accountability—one that incorporates both retributive justice and restorative justice. I argue that the hospitality provides the most appropriate response to the legally complex, but profoundly human questions raised by mass atrocities. Miroslav Volf and Paul Ricoeur discuss the intersubjective dimensions of hospitality. Volf construes the hospitality in terms of the embrace that overcomes exclusion, or "the violence of expulsion, assimilation, or subjugation and the indifference of abandonment."<sup>147</sup> These forms of exclusion manifest desires to control, subjugate, and eviscerate the other; exclusion "names an objective evil"<sup>148</sup> and corresponds to the crimes against humanity probed by the ICC. By contrast, the embrace reaches out to and welcomes alterity because "[i]n an embrace a host is a guest and a guest is a host"<sup>149</sup> and "a genuine embrace cannot leave both or either completely unchanged."<sup>150</sup> Embrace disavows hierarchy or compartmentalization, for it engenders self-reflexive awareness of the dignity and uniqueness of the other. Paul Ricoeur similarly appreciates hospitality as a means to foster this appreciation on an individual and institutional level. He describes hospitality as the solution for addressing Europe's—though we may add the ICC's—"unprecedented problem of how to get beyond the form of the nation-state at the institutional level, without repeating its well-known structures at a higher level of 'supranationality.'"<sup>151</sup> He proposes three models of hospitality for the integration of identity and alterity: translation, the exchange of memories, and forgiveness. The imaginative and sympathetic responsibility of the first two functions as a precondition for the third type of hospitality, the model of forgiveness. In similar ways to Volf's claim that forgiveness is "the boundary between exclusion and embrace,"<sup>152</sup> Ricoeur asserts that forgiveness "falls within the scope of an economy of the gift whose logic of superabundance exceeds the logic of reciprocity."<sup>153</sup> The logic of superabundance does not negate justice; rather, as Volf puts it, "forgiveness provides a framework in which the quest for properly understood justice can be fruitfully pursued."<sup>154</sup> In this way, neither thinker believes that forgiveness equates to forgetting, but rather each characterizes hospitality as a re-membering with others "lifting the burden of guilt which paralyses the

<sup>147</sup> Miroslav Volf, *Exclusion and Embrace: A Theological Exploration of Identity, Otherness, and Reconciliation*. Nashville: Abingdon Press, 1996, 67.

<sup>148</sup> *Ibid.*, 68.

<sup>149</sup> *Ibid.*, 143.

<sup>150</sup> *Ibid.*, 147.

<sup>151</sup> Paul Ricoeur, "Reflections on a New Ethos for Europe." *Philosophy and Social Criticism* 21:5/6 (1995): 3.

<sup>152</sup> Volf, *op. cit.*, 125. Volf explains the interstitial character of forgiveness: "It heals the wounds that the power-acts of exclusion have inflicted and breaks down the dividing wall of hostility. Yet it leaves a distance between people, an empty space of neutrality, that allows them either to go their separate ways in what is sometimes called 'peace' or to fall into each other's arms and restore broken communion." *Ibid.*, 125-126.

<sup>153</sup> Ricoeur, *op. cit.*, 10.

<sup>154</sup> Volf, *op. cit.*, 123.

relations between individuals" without "abolish[ing] the debt insofar as we and remain the inheritors of the past."<sup>155</sup> Hospitality becomes crucial in communities of post-conflict justice who have inherited the debt of an immediate violent past. Hospitality, exemplified by Ricoeur's logic of superabundance, can and should transcend justice understood as strict equality or fairness, and it is the intent of hospitality to heal, reconcile, and embrace the wrongdoer.<sup>156</sup> Consequently, I argue that hospitality can coincide with the law, and hence with the ICC, because it promotes accountability. We have argued that *jus cogens* norms impose both moral and legal duties; legal mechanisms such as the ICC can complement hospitality because, as Habermas notes, "in complex societies, law is the only medium in which it is possible reliably to establish morally obligated relationships of mutual respect even among strangers."<sup>157</sup> Do we, one may object, lose the "hospitable" nature of these relationships if they are imposed or coerced by law?<sup>158</sup> What are the limits and function of law, then, in shaping these "morally obligated relationships" vis-à-vis hospitality and accountability? Jacques Derrida obviates claims that hospitality can be reduced to law, but he also acknowledges that hospitality and law cannot be severed. Thus, he characterizes their relationship as an aporia or "a non-dialectizable antinomy between, on the one hand, The law of unlimited hospitality...and...the laws (in the plural), those rights and duties that are always conditioned and conditional."<sup>159</sup> The ICC provides one crucial mechanism for accountability that integrates The law of *jus cogens* norms and the laws of international custom, but hospitality necessitates that it is not the only model. The aporia of hospitality helps us to navigate between, on the one hand, impunity, and, on the other, vengeance. I concur with those who advocate for a cautious approach to amnesties. Michael Scharf and Nigel Rodley worry that injudiciously applied amnesties promote impunity by inviting rouge regimes to wreak human rights havoc without fear of recourse. Furthermore, blanket amnesties violate the integrity of the human victim, the peremptory character of *jus cogens* norms, and the concomitant duties to prosecute and punish offenders.<sup>160</sup> Amnesties, also, may not enable victims to participate, for they are principally a political apparatus and legal designation.<sup>161</sup> Hence, the duty to prosecute remains. With

<sup>155</sup> Ricoeur, op. cit., 10; Ibid., 10.

<sup>156</sup> For an attempt to retrieve these rehabilitative objectives within the United States criminal justice system, please see Jonathan Rothchild, "Recapturing the Good, Not Merely Measuring Harms: Rehabilitation, Restoration, and the Federal Sentencing Guidelines" in *Doing Justice to Mercy: Religion, Law, and Criminal Justice*. Edited by Matthew Myer Boulton, Kevin Jung, and Jonathan Rothchild (forthcoming 2007, the University of Virginia Press).

<sup>157</sup> Habermas, op. cit., 460.

<sup>158</sup> Jacques Derrida critiques Kant on this point: "And this is due to the juridicality of [Kant's] discourse, to the inscription in a law of this principle of hospitality whose infinite idea should resist the law itself—or at any rate go beyond it at the point where it governs it." Derrida. *Of Hospitality: Anne DuFourmantelle Invited Jacques Derrida to Respond*. Translated by Rachel Bowlby. *Cultural Memory in the Present*. Stanford: Stanford University Press, 2000, 71.

<sup>159</sup> Ibid., 77.

<sup>160</sup> For further comments on this point, please see Anja Matwijkiw, "A Philosophical Perspective on Rights, Accountability and Post-Conflict Justice: Setting Up the Premises," in *Post-Conflict Justice*. Edited by M. Cherif Bassiouni. Ardsley, New York: Transnational Publishers, Inc. 2002, 155-199.

<sup>161</sup> M. Cherif Bassiouni differentiates between amnesty ("But amnesty is essentially a form of forgiveness, granted by governments, for crimes committed against a public interest") and forgiveness ("The power to forgive,

respect to the latter worry about vengeance, thinkers such as Martha Minow have argued that truth commissions can be preferable to trials and prosecutions. Minow submits that truth commissions might better achieve "the goal of healing individuals and society after the trauma of mass atrocity...although limitations in the therapeutic value of commissions for individuals and limitations in our knowledge of societal healing make this a line of future inquiry rather than a current conclusion."<sup>162</sup> Minow posits that truth commissions heal because they focus on the (forgotten) victims, the truth, and individual, social, and political transformations. Hence, "[m]oving beyond statistics to real people of blood, flesh, and tears, a commission that gathers individual testimony can present human consequences of atrocities that are otherwise unfathomable and overwhelming."<sup>163</sup> Truth commissions such as the South African Truth and Reconciliation Commission established mechanisms for reparations for survivors. However, just as international courts and tribunals are not sufficient by themselves, Minow recognizes the limits of truth commissions: "Yet ambitious claims that a truth commission can help a nation reconcile and heal after widespread practices of torture, murder, and terror are likely to invite disappointment."<sup>164</sup> I therefore follow thinkers such as Donald Shriver who are proponents of both truth commissions and reparations and the ICC.<sup>165</sup> Parsing out different variables (e.g., the status and role of the offender, the context of the offense) is necessary for achieving justice and perhaps need to be considered more carefully by the ICC. Yet, one cannot also predict the potential benefits achieved through prosecution. Collective memory is a potent force for evaluating the context of the atrocities. As William Schabas notes, the memories of violence and conflict were catalysts for some countries' unexpectedly ratifying the Rome Statute, including Fiji, Sierra Leone, Cambodia, Macedonia, Democratic Republic of Congo, Bosnia and Herzegovina, Yugoslavia, and Croatia.<sup>166</sup> Accountability means that we cannot forget violations of jus cogens norms, but that we must re-member in ways consistent with justice. In order to achieve this goal, we must resist any temptations to collapse moral and legal duties to confront crimes against humanity with political interests. States must continue to codify the rules of law to avoid arbitrary exercises of justice and, when necessitated by mass atrocities, undertake hospitality to punish and to rehabilitate the offender. The Westphalian system of independent nation-states must be re-imagined into a community of interdependent nations who, despite an inevitable alterity, share universal interests in order, peace, and accountability. The future of the ICC depends on such interests.

forget, or overlook in the cases of genocide, crimes against humanity, war crimes, and torture is not that of the governments but of the victims"). Bassiouni, "Searching for Peace and Achieving Justice: The Need for Accountability," *Law and Contemporary Problems* 59:4 (1996): 19.

<sup>162</sup> Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Foreword by Judge Richard Goldstone. Boston: Beacon Press, 1998, 57.

<sup>163</sup> *Ibid.*, 76.

<sup>164</sup> *Ibid.*, 128.

<sup>165</sup> Donald W. Shriver, Jr. "The International Criminal Court: Its Moral Urgency." *The International Criminal Court Monitor*. February, 1998, 10.

<sup>166</sup> William Schabas. "International Criminal Court: The Secret of Its Success." *Criminal Law Forum* 12:4 (2001), 417.

*Donald Loose:*

*The intercultural Right of all Nations. The Kantian idea of Cosmopolotanism*

In § 43 of The Doctrine of Right (Rechtslehre),<sup>1</sup> Kant introduces the cosmopolitan right (Weltbürgerrecht, ius cosmopoliticum) as "Völkerstaatsrecht"<sup>2</sup> interpreted as a right of the state, which is at the same time a right of the people (ius gentium). Cosmopolitan right is, indeed, not primarily considered here as a personal right of cosmopolitan citizens but as the ultimate goal of the whole right of all nations and as perpetual peace.<sup>3</sup> The general concept of public right (öffentliches Recht) not only leads us to think the right of a state (Staatsrecht), but also the right of nations (Völkerrecht, ius gentium). Given that the earth's surface is limited, the concepts of right of a state and right of nations lead inevitably to the idea of a right for all nations (Völkerstaatsrecht) or a cosmopolitan right (Weltbürgerrecht, ius cosmopoliticum).

Kant immediately adds to these considerations that if the principle of outer freedom limited by law (the concept of right) is lacking in any one of the three possible forms of rightful condition – right of the citizens in a state, right of the states, and right of peoples – the framework of the other forms is unavoidably undermined and, in the end, must collapse. The dialectics of these three forms of right cannot and should not be neutralised. An individual can consider him- or herself rightly as the citizen of a particular nation and, at the same time, as a full participant in the cosmopolitan community. This is the most sublime idea individuals can have of their destination.

An everlasting tension in the concept of right itself seems to be the ultimate and, therefore, sublime perspective of a cosmopolitan world-order. Perpetual peace, the ultimate goal of the whole right of nations, is, indeed, an unachievable idea of practical reason (eine unausführbare Idee der praktischen Vernunft).<sup>4</sup> Nothing can be metaphysically more sublime than this very idea, it is said in the Conclusion of The Doctrine of Right. Therefore, it cannot as such be represented (dargestellt) in experience and it cannot be realised as a factually organised reign or empire. I consider these remarks to be of the greatest importance for actual considerations on a roadmap to peace in the multicultural setting of a future cosmopolitanism. I will develop them in the following way.

As a law of all people, a cosmopolitan constitution supposes – similar to any constitution in which power belongs not to men but to the laws<sup>5</sup> – a fully reciprocal use of coercion.

1 I refer to Die Metaphysik der Sitten, Rechtslehre – Akademieausgabe, VI, 311 ff. I also make use of The Metaphysics of Morals, translated and edited by Mary Gregor, Cambridge University Press, 1996.

2 The term "Völkerstaat" is a quasi-hapax. It is also mentioned in Theorie und Praxis (VIII, 312) and in the Second Definitive Article of Zum ewigen Frieden (VIII, 354) where it is interpreted as "Federalismus freier Staaten." The English translation Theory and Praxis in H. S. Reiss (Ed.) Kant. Political Writings, Cambridge University Press, 1970, p. 92 reads "universal federation" whereas the translation of the same term in Perpetual Peace, ibidem, p. 102, reads "international state."

3 VI, 350-1, § 61.

4 VI, 350-1, § 61.

5 Beschluß Rechtslehre, VI, 355.

Habermas' amendments to the Kantian project confirm the thesis of an everlasting dialectics on all levels of legal organisation of freedom and the enduring interwoven character of the right of the citizens in a state, the right of the states, and the cosmopolitan right of peoples. On the contrary, John Rawls' *The Law of Peoples* claims, perhaps, both too much and too little.<sup>6</sup>

The sublime character of the idea of everlasting cosmopolitan peace implies the realism of an everlasting effort in favour of this unachievable ideal. Only the realistic pragmatism of the political praxis itself can avoid the illusions of an economic or purely juridical, or even ethical, factual unification of mankind in an era where trade, law, and morals are emancipated more and more from the political scene in a so-called global civil society.

#### 1. The construction of the concept of right: the law of reciprocal coercion

Kant stresses that the rule for a global constitution "cannot be derived from the facts and the experience of those who hitherto found it most to their advantage". It cannot be imposed as a norm for others on that account. "[I]t must, rather, be derived a priori by reason from the unique ideal of a rightful association of human beings under public laws as such."<sup>7</sup> Such a rightful association is an association under the "fully reciprocal use of coercion that is consistent with everyone's freedom in accordance with universal laws." This is, indeed, the definition of strict right in § E of the Introduction to *The Doctrine of Right*<sup>8</sup> and it also functions on the level of international right of states.

Concepts of practical reason and its noumenal ideas, such as freedom itself, can only correspond to empirical facts in an indirect way. According to Kant, the intuition of freedom can only be given through an analogy with the concept of law and lawful behaviour. The representation of the moral law itself needs the representation of the typology (*Typos*) of law as we know it from the law of nature. In the same way, the concept of right, which also belongs to practical reason, needs a construction of its concept by analogy. This is based on the concept of reciprocal physical force and the implied law of action and reaction. "The law of reciprocal coercion necessarily in accord with the freedom of everyone under the principle of universal freedom is, as it were, the construction of [the concept of right]." "[The law of reciprocal coercion is] the presentation of [the concept of right] in pure intuition a priori, by analogy with presenting the possibility of bodies moving freely under the law of the equality of action and reaction."<sup>9</sup>

In the Fourth and Fifth Theses in *The Idea for a Universal History with a Cosmopolitan Purpose*, the main productive and general mechanism of culture is the antagonism of forces and the logic of unsocial sociability (*ungesellige Geselligkeit*). This opens our eyes to the recapitulation of this same logic on a higher level: the principle of right. This same principle gives us the hope that the ultimate aim of nature itself may be realised in history as a cosmopolitan world order.<sup>10</sup> This order is a rather unstable equilibrium of states although it is dominated on a higher level by the same principle of equilibrium: everyone's

6 John Rawls, *The Law of Peoples*, Cambridge-London: Harvard U.P., 1999.

7 VI, 355.

8 VI, 232.

9 VI, 232; cfr *Critique of Judgement* § 91, V, 464-5.

10 *Idea*, Proposition 8, VIII, 28-29; in H.S. Reiss, o.c., p. 41 ff.

freedom in accordance with universal laws. A purely contingent equilibrium of the factual power of states is a mere chimera. Kant considered the idea of a permanent universal peace by means of a so-called "European balance of power," a contingent factual equilibrium of power, a fiction, "like Swift's house that the builder had constructed in such perfect accord with all the laws of equilibrium that it collapsed as soon as a sparrow alighted on it".<sup>11</sup> Nowadays, we could, of course, say the same about a so-called global balance of power. Only under the condition of international right (*ius gentium*), based upon enforceable reciprocal public laws to which each state must submit (analogous to a state of civil or political right among individual men) can such power succeed.<sup>12</sup>

The suggestion of one universal state of all nations (*Völkerstaat*) is another illusion. We can only have a great federation of states in prospect.<sup>13</sup> According to Kant, such a hegemonic imperialistic state, imposing the rules of universal peace according to its own concept of right and culture, is even more dangerous to freedom, for it may lead to the most fearful despotism, as has occurred more than once with states that have become too large. Not a cosmopolitan commonwealth under a single ruler, but a lawful federation under a commonly accepted international right (*Völkerrecht*) is the ideal.<sup>14</sup> Therefore, an equilibrium or balance of power has to remain, which should not be forced due to the supremacy of one nation.

We do not have to expect a peaceful end of history dominated by one state, one ideology – be it the so-called liberal one – one culture, language, or religion. The morally normative requirement of respect for all citizens in the world as individuals having their own aims and longings imposes the way peace for one, as well as a culturally-divided world, is possible. Peace is possible based on a cosmopolitan right of citizens in autonomous nation-states, respected for their own culture, religion, language, and way of life, in so far as they respect this principle of right and reciprocal freedom. This means that they subscribe to the association under the fully reciprocal use of coercion that is consistent with everyone's freedom in accordance with universal laws.

## 2. Inescapable dialectics

In a comment on Kant's project of international right, Habermas intends to amend the Kantian reticence to an undivided institution as a guarantee of a legal world order.<sup>15</sup> Kant seems to resign himself to what he himself calls the surrogate or substitute of a free federation of states and peoples as an alternative to one international state. Habermas rectifies the argumentation mainly on two grounds.

First of all, he imputes Kant for not conceiving the evolution of the right of nations and peoples (*Völkerrecht*) towards the cosmopolitan right (*Weltbürgerrecht*) in a sufficiently

11 Theorie und Praxis, VIII, 312. "On the Common Saying: That May Be True in Theory, But It Is of No Use in Practice," translated by Mary J. Gregor in *Practical Philosophy*, Cambridge University Press, 1996, p. 309.

12 Theorie und Praxis, VIII, 312.

13 Cfr Idea, Thesis 7, VIII, 26.

14 Idea, Thesis 7, VIII, 26; Theorie und Praxis, III, VIII, 311.

15 J. Habermas, "Das Kantische Projekt und der gespaltenen Westen. Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?" in *Der gesplattene Westen. Kleine Politische Schriften X*, Frankfurt am Main: Suhrkamp, 2004, p. 113-193.

abstract way. Kant is said to have identified the idea of a cosmopolitan world order too easily with the concrete concept of one world republic or one international state, which is indeed not a real option given the multicultural background and the asymmetric balance of power of his and our actual world. He, therefore, seems to abandon any idea of centralisation altogether.<sup>16</sup> Habermas opposes the position that sovereignty of the people always supposes, as it does in one single state, a separation of power, a mediated legitimisation by different instances, elections, and many representative institutions. In this way, the legitimacy of one international state could be grounded in the many states of the federation. A parallel setting of processes of legitimisation, now organised by the sovereigns of the participating states in the perspective of the federation, should not be incompatible with the conservation of the cultural identity and differentiation of the participating states.<sup>17</sup>

This remark leads immediately to the second argument. Habermas seems to evoke, in this first criticism, an analogy he then rejects in his second argument. He finally denies the parallelism between the representative sovereignty of a national state and that of the confederation of states. National states do not come together in a federation in the same way people come from the state of nature by means of social contract to be united in a state. Citizens of different states already enjoy a legally organised life, the guarantee of rights based on their own constitution. Therefore, the transition of the right of states and their citizens to a cosmopolitan right cannot be seen as an analogy with the transition out of the state of nature. Rather, it must be seen as complementarily.<sup>18</sup> This is exactly Kant's main point. Kant says:

While natural right (*Naturrecht*) allows us to say of men living in a lawless (*gesetzlose*) condition that they ought to (*sollen*) abandon it, the right of nations (*Völkerrecht*) does not allow us to say the same of states. For as states, they already have a lawful internal constitution (*rechtliche Verfassung*), and have thus outgrown the coercive right of others (*dem Zwange anderer*) to subject them to a wider legal constitution (*gesetzliche Verfassung*) in accordance with their conception of right.<sup>19</sup>

Only freedom can engage itself in a more complex organisation of freedom. The federation does not aim to acquire power like that of a state, but merely to preserve and secure the freedom of each state in itself, along with that of other confederated states.<sup>20</sup> Habermas has indeed good reasons for a further development of the idea of cosmopolitan right beyond the Kantian fear of one international state. A conceptual alternative may be found in world organisations like the United Nations and its Security Council, the International Atomic Energy Commission, the International War Crimes Tribunal, international environmental groups, etc. A world republic or one international state are not the only institutions that could incorporate or represent the idea of the Kantian project beyond the surrogate of a free federation.<sup>21</sup> But Habermas also draws attention to the fact that it is precisely

16 VIII, 354. Cfr. *Perpetual Peace*, p. 102. Habermas, p. 125 ff.

17 Habermas, 127.

18 Habermas, 129.

19 VIII, 355-356; *Perpetual Peace*, p. 104.

20 VIII, 356; *Perpetual Peace*, p. 104.

21 Habermas, 135.

these institutions that are confronted with a lack of legitimisation if they do not have the backing of the free engagement of democratic regimes and states and their citizens.

Kant, himself, was aware of the circular causality of the organisation of republican regimes and a peaceful world order. In the "First Definitive Article for Perpetual Peace," he states that as under a republican constitution, the consent of the citizens is required to decide whether or not war is to be declared, it is very natural that they will have great hesitation in embarking on such a dangerous enterprise.<sup>22</sup> Of course, this also supposes a correct functioning of all democratic institutions and, in our information age, further certainty that there is not merely a monopolised manipulation of public opinion. Put the other way round, as he develops in the Seventh Thesis of The Idea for Universal History, Kant is also convinced of the fact that "the problem of establishing a perfect civil constitution for national states is subordinate to the problem of a law governed external relationship with other states, and cannot be solved unless the latter is also solved."<sup>23</sup> This reminds us of his remark in The Doctrine of Right that if the principle of outer freedom limited by law (the concept of right) is lacking in any one of the three possible forms of rightful condition – right of the citizens in a state, right of the states, and right of peoples – the framework of the other forms is unavoidably undermined and, in the end, must collapse. The everlasting dialectics of these three forms of right is, indeed, unavoidable. And, this implies that the regulative idea of cosmopolitan world organisation endures the political reality of different cultures, laws of people, and contesting regimes. The civil right of citizens in a state (*ius civitatis*, *Staatsbürgerrecht*, *Staatsrecht*), the international right of peoples and cultures (*Ius gentium*, *Völkerrecht*), and the cosmopolitan right of citizens of the world (*ius cosmopoliticum*, *Weltbürgerrecht*) have to be organised in such a way that none of them is destroyed by one of the other levels. Therefore, Kant respects the law of peoples as organised in the right of states and he respects the reciprocal juridical independence of these states. The evolution from an inter-national organisation towards a federation of states can only be conceived as a free engagement of the states themselves, not only while people are attached to their national culture and way of live, but also while the ultimate aim of the cosmopolitan world order is not an undifferentiated empire (*Universalmonarchie*, *Weltstaat*) but a conglomeration of different cultures and states. People meet each other as belonging to states and particular cultures, but their legal status is never reducible to that, although this status does not disappear and must be respected at its appropriate level.<sup>24</sup>

Therefore, it seems to me that John Rawls' The Law of Peoples claims both too much and too little. Rawls claims too much from an empirical perspective in so far as he is looking for a consistent political consensus of all people and the acceptance of a unique political liberal doctrine, similar to the way Fukuyama dreamed – and some still do dream – of such an end of history. On the other hand, Rawls claims too little on the level of the foundation of this political doctrine by only expecting a factual consensus, without an a priori legitimacy of the coercive character of international right by a specific comprehensive

22 VIII, 351; Perpetual Peace, p. 100.

23 VIII, 24; Idea, p. 47.

24 Jean-Marc Ferry, *Europe la Voie kantienne, Essai sur l'identité postnationale*, Paris: Cerf, 2005, 121-132.

doctrine. This coercive character of all right, including international right, can only be based on a unique and specific comprehensive doctrine of freedom, which I consider to be the only candidate for such legitimisation.

Rawls has always defended his political concept of reasonable pluralism and publicity as a political value, grounded in an overlapping consensus of different comprehensive doctrines. The overlapping consensus is a freestanding view, which is reasonably defensible independently from religious or moral doctrines. Although the justificatory neutrality on the political level always implies values and moral conceptions of different comprehensive doctrines,<sup>25</sup> they cannot and do not have to be introduced in the deliberative political debate. Reasonable comprehensive doctrines, religious or non-religious, may be introduced in public political discussion at any time, provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support. This injunction to present proper political reasons is formulated as the proviso, and it specifies proper political culture as distinct from any background culture.<sup>26</sup> Representatives of liberal peoples ignore any knowledge of the people's comprehensive conception of the good. A liberal society with a constitutional regime does not, as a liberal society, have a comprehensive conception of the good. Only the citizens and associations within the civic society in the domestic case have such conceptions.<sup>27</sup> On the other hand, he easily gives to peoples the status of moral actors.<sup>28</sup>

Rawls seems to expect too much here as he supposes all cultures and religions might recognise this freestanding view, or what he calls, “a neutral political liberal doctrine,” as, in fact, neutral and, therefore, as the global standard for a cosmopolitan world order. Politics are never reducible to justice, fairness, and right. Claims of identity, poisoned by the unresolved heritage of colonialism and suppression, the feelings of humiliation – real or fictitious – will always overrule. Rawls qualifies his own construction as an ideal normative conception and an idea<sup>29</sup> but supposes moral motives in people. Kant, in comparison, had a much more Machiavellian view on empirical politics as such. He did not claim too much regarding the moral motives and even the legal organisation of mankind. Therefore, he was convinced of the need of an always external critical point of view, first of all by counterbalancing any factual political power and, secondly, by the consciousness of the noumenal character of the idea of perpetual peace and the highest political good in the world, thereby conserving the dichotomy of empirical historical politics and the ultimate moral end of history. The force of institutions is always needed. Therefore, conflicts and differentiation should not be banned from the public political scene of the world, either in the national information media or on the level of the legal institutions. The Kantian idea of the discor-

25 John Rawls, *Political Liberalism*, New-York: Columbia University Press, 1993, p. 126, 146.

26 John Rawls, “The Idea of Public Reason Revisited” in *The Law of Peoples*, Cambridge-London: Harvard U.P., 1999, p. 152; cfr. *Political Liberalism*, p. 13-14.

27 Rawls, *The Law of Peoples*, p. 34.

28 *Ibidem*, p. 17, 23, 44, 82.

29 *Ibidem*, p. 35, 131, 135.

dia concors,<sup>30</sup> a consensus by confrontation and contest, not only on the level of comprehensive doctrines but also of political strategies, is a much better alternative to the so-called neutral and formally constructed consensus where all real arguments have to be banned from the public sphere. The idea of reason completely free of prejudices and historic contingency, as well as the hope that strictly personal and reasonable, but not publicly uttered, moral motivations can be sufficient to adhere to public norms seems to be an illusion.<sup>31</sup>

Rawls, himself, qualified his evolution from *A Theory of Justice* (1971)<sup>32</sup> to *Political Liberalism* (1993) as a move to political neutrality. In *A Theory of Justice*, justice as fairness was presented as a comprehensive liberal doctrine; but *Political Liberalism* considers a different question, namely: How is it possible for those affirming a comprehensive doctrine, religious or non-religious, and, in particular, doctrines based on religious authority, such as the Church or the Bible, also to be able to hold a reasonable political conception of justice that supports a constitutional democratic society? The political conceptions are seen as political and self-standing and not infected by comprehensive doctrines, although they are always grounded in such doctrines.<sup>33</sup> Expecting a factual political consensus without sharing and arguing the moral and legal arguments that lie behind, and failing to reckon, in earnest, with the differentiation of values and cultures thus proves too little and asks too much.<sup>34</sup>

### 3. The sublime character of an everlasting peace

What Kant calls the sublime dimension of the idea of perpetual peace implies its inconceivable aspect and the unachievable empirical character of its ideal. How could we imagine a cosmopolitan right of cosmopolitan citizens of one, undivided world, without any differentiation or outside perspective? This would imply the elimination of the concept of right as such. How could such an empire avoid the uncontested despotism of its system of so-called universal rights, of its particular culture, religion, and ethics? Only a reign of exclusively morally-intended people – a Kingdom of God on earth – something we cannot and may not imagine as a politically realisable ideal, could bring about such an idea. A juridical cosmopolitan regime can only be imagined as a permanent evolutionary regime, which is without a fixed historical terminus, just as it is without a fixed historical beginning.<sup>35</sup> As Kant suggested, the most sublime idea mankind can have of its destination is that one consider himself a citizen of a nation and at the same time a full participant of the

30 Der Streit der Fakultäten, VII, 35; *The Conflict of the Faculties*, translated by M. J. Gregor, Lincoln and London: University of Nebraska Press, 1979.

31 Jean-Marc Ferry, o.c., 81-86.

32 John Rawls, *A Theory of Justice*, Cambridge (Mass.) : Harvard UP, 1971.

33 Rawls, "The Idea of Public Reason Revisited," p. 179; *The Law of Peoples*, p. 34, 68, 125.

34 Karl-Otto Apel comments that Rawls obviously considers such conditions like 'fairness' and 'reasonableness' as obvious and, therefore, only supposes his political concept of universal right as freestanding without any further moral legitimisation because he has his own moral doctrine to support that idea. Karl-Otto Apel, "Ethnoethik und universalistische makroethik," in Wilhelm Lütterfelds und Thomas Mohrs (Hg.), *Eine Welt - Eine Moral. Eine kontroverse Debatte*, Darmstadt: W.B.G., 1997, p. 60- 76, see p. 73.

35 Heiner Bielefeldt, *Kants Symbolik. Ein Schlüssel zur kritischen Freiheitphilosophie*, Freiburg - München: Verlag Karl Alber, 2001, p. 201 (cfr. *Symbolic Representation in Kant's Practical Philosophy*, Cambridge University Press, 2003).

cosmopolitan community.<sup>36</sup> Political thinkers like Machiavelli and Carl Schmitt may warn us that politics is always and always will be characterised by conflict and dissensus, although Kant ultimately subscribes to a logic of *discordia concors* and unsociable sociability. History gives us good reasons to consider why an everlasting pacific world order could remain an illusion. Nevertheless, such an ideal has a real impact on the organisation of a cosmopolitan world order in terms of right, which means mutual coercion. As Habermas developed in his loyal comment on the Kantian project, this means a repudiation of conflict of cultures and world regions, defended by Carl Schmitt and Huntington, as well as a repudiation of the hegemonic imperialism of one culture. As to the last alternative, it should be mentioned that the evolution from national states to selective market regions and from legally organised territories to export and production zones, disconnected from juridical entities and no longer embedded in cultural identities and the framework of the law of people, are a dangerous move to greater economic and social inequality and thus a more fertile breeding ground, as opposed to a solution for world terrorism. On the other hand, the Schmittian alternative seems to be altogether indefensible in the context of globalisation and the increasing impact of the modern paradigm of autonomous intercultural self-determination of citizens all over the world.

We may be reminded then of the realistic valuation of politics in Kantian philosophy. In complete disagreement with Robert Kagan's rather disgraceful pamphlet *Of Paradise and Power*,<sup>37</sup> I do not consider Kant as living on Venus - the planet of love and peace - but just as well living on Mars - the planet of war - just like Thomas Hobbes. He clearly repudiates the illusion of an empirical eternal peace. He is not so naive to expect it as the exported product of one culture or state. He does not expect to realise heaven on earth. We nowadays have to be careful not to allow ourselves to become the victims of other illusory alternatives such as an economic or ethically global civil society. Politics is, and will remain, the management of conflicts by means of legal procedures. Kant counted on the proliferation of democratic regimes as well as the logic of world trade and global network information as the dynamics of the process.

To bring about his awareness of the sublime character of the ideal, it may suffice to quote the final remark on the conflict between the faculty of law and the faculty of philosophy:

"[F]or that which can be expected and exacted from men in this area toward the advancement of this aim, we can anticipate only a negative wisdom, namely, that they will see themselves compelled to render the greatest obstacle to morality – that is to say war, which constantly retards this advancement – firstly by degrees more humane and then rarer, and finally to renounce offensive war altogether, in order to enter upon a constitution which by its nature and without loss of power is founded on general principles of right, and which can persistently progress towards the better."<sup>38</sup>

36 "Der Mensch kann sich zu Recht als Bürger einer Nation und zugleich als volwertiges Mitglied der Weltbürgergemeinschaft denken und das ist die sublimste Idee, die der Mensch von seiner Bestimmung haben kann" (Reflexionen, 8077).

37 R. Kagan, *Of Paradise and Power*, New York: A. Knopf, 2003.

38 *Der Streit der Fakultäten*, VII, 93; *The Conflict of the Faculties*, p. 169.

A further warning against the pride and arrogance of the mighty is the Conclusion of The End of All Things (Das Ende aller Dinge). Kant concludes:

"The end of all things which go through the hands of human beings, even when their purposes are good, is folly, i.e. the use of means to their ends which are directly opposed to these ends. Wisdom dwells in God alone; But this assurance against folly, which the human being may hope to attain only through attempts and frequent

alteration of his plans, is rather a "gem which the best person can only follow after, even though he may never apprehend it"; but he may never let the self-indulgent persuasion befall him – still less may he proceed according to it – that he has grasped it."<sup>39</sup>

These are words one might qualify as Socratic but Christian as well. As we gathered in Oxford as the Societas Ethica, together with The Society for the Study of Christian Ethics, I will not deprive the reader of that common wisdom. Paulus wrote Ad Philippenses, 3:12: "Not as though I had already attained, either were already perfect, but I follow after, if that I may apprehend that for which I also am apprehended of Christ Jesus."

39 Das Ende aller Dinge, VIII, 336; The End of All Things, by Allen Wood & George Di Giovanni in Religion within the Boundaries of Mere Reason and Other Writings, Cambridge University Press, 1998, p. 202.

*David Lea:*

*The Expansion and Restructuring of Intellectual Property and Its Implications for the Developing World*

In this paper we begin with a reference to the work of Hernando de Soto and his characterization of the Western institution of formal property. We note the linkages that he sees between the institution and successful capitalist enterprise. Therefore, given the appropriateness of his analysis, it would appear to be worthwhile for developing and less developed countries to adjust their systems of ownership to conform more closely to the Western system of formal property. However, we go on to point out that property relationships within the Western system have become subject to redefinition through the expansion of Intellectual Property (IP) rights in ways that ultimately work to the disadvantage of the developing and less developed countries.

Western Formal Property

In the year 2000, the Peruvian economist, Hernando De Soto published a hugely influential book, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, that linked the success of modern capitalism with the institution of ownership that is prevalent in Western capitalist economies.<sup>1</sup> De Soto made the point that non-western forms of ownership have remained fixated on the material substrate and have been unable to appreciate the economic and transactional aspects of property interests. The latter are said to be the intellectual qualities of property interests associated with commercial potential. According to de Soto, one of the central aspects of the Western ownership system is the 'fungible' character of the property interest.<sup>2</sup> De Soto speaks of the uncoupling of the economic factors from the rigid physical state that makes the asset fungible - able to be fashioned to suit almost any transaction. However, an aspect of ownership that de Soto does not mention is the distinction between property rights that are "control rights" and those that are said to be "income rights". We will proceed to argue that one also needs to understand the success of Western formal property in terms of its emphasis on the development of the latter category of rights. Control rights consist of the rights to use, possess, manage, alienate, consume (destroy), and modify the owned asset. The income right refers to the rights to transfer and gain income from goods.<sup>3</sup>

One can say that a central feature of Western forms of ownership are focused on so called income rights, the economic and commercial potential of assets. Non-western sys-

<sup>1</sup> HERNANDO DE SOTO (2000) *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Sydney: Random House); See also THOMAS BETHEL (1998) *The Noblest Triumph: Poverty and Prosperity through the Ages* (New York, St Martin's Griffin).

<sup>2</sup> Ibid., DE SOTO, 56.

<sup>3</sup> JOHN CHRISTMAN (Summer 1994) 'Distributive Justice and the Complex Structure of Ownership,' *Philosophy and Public Affairs*, Vol. 23, Iss. 3: pp. 225-250 at 231; see also JOHN CHRISTMAN (1994) *The Myth of Property* (New York, Oxford University Press), p. 13.

tems are far less developed in this respect and focus on simple control rights. Income rights are the designated intellectual qualities of property as opposed to the tangible physical characteristics that are the subject of control rights. In contrast to the more tangible aspects of physical property, income, as John Christman has pointed out, is indeterminate and depends upon a variety of variables and so cannot be given a precise value. Future income is always a prediction or a calculation based on multifaceted evidence, current patterns of behaviour, and relevant statistics subjected to mathematical application. This is also an essential aspect of the fungible character of modern Western ownership to which de Soto refers. Because income can be assigned a potential numerical value it can be divided, subdivided and efficiently traded and substituted. For example, one buys shares in a company that produces widgets, the value of the shares is a calculation based on the projected future earning capacity of the company, although there is always a significant element of uncertainty. But in any case the shares can then be traded and sold for shares in other companies or other forms of more tangible property, real estate for example.

Equally important is the fact that there exist forms of ownership that do not include control rights and extend only to the category of income rights. This is an aspect of Western ownership that we don't find in the institutions that govern property in traditional cultures. Because this form of ownership does not invest an actual right of physical control, it allows for a multiplicity of owners who can transact and convey their various interests without the possibility of creating conflicting control rights. This development of forms of ownership, which separate control and income rights, is equally significant in the liberation of capital from its material substrate, allowing it to move swiftly and unimpeded through world markets to finance a multiplicity of projects, developments, enterprises and undertakings to satisfy a world wide demand for a variety of commodities, products and services. This is indeed an important and special feature of Western ownership that has been crucial to the success of modern capitalism.

It would follow, having characterized the system in these terms, that if the non-developed world and the pockets of indigenous peoples within the developed world (in the US, Canada, Australia etc) are to participate in these wealth generating activities associated with global capitalism, they must modernize their systems of ownership to harmonize with the Western institution.<sup>4</sup> Given financial wellbeing is not unrelated to the autonomy and independence to which these groups aspire, the adoption of the Western forms of property ownership should be seriously considered. At face value it would appear the under developed countries and indigenous people have nothing to lose by joining the system and participating in the benefits of global capitalism. However, one needs to proceed with care in making the recommendation.<sup>5</sup>

<sup>4</sup> Some, notably JAMES TULLY (1996) *Strange Multiplicity: Constitutionalism in the Age of Diversity* (New York, Cambridge University Press) take an opposing view and argues that indigenous societies need to maintain their traditional institutions if they are to maintain their cultural identity. See also DAVID LEA (2002) 'Tully and de Soto on Uniformity and Diversity,' *Journal of Applied Ethics* 19, 1:pp. 55-68.

<sup>5</sup> We proceed to argue that income rights are being restructured in a manner that works to the disadvantage of the non-Western world. However, even if this were not occurring it is not actually the case that Western interests allow capital to flow unimpeded through global markets. The rejection of Dubai Ports takeover of six US port facilities by US political interests in 2006 indicates that on occasion the rules of the game will be

### IP as Income Rights

Christman explains that the shaping of income rights serves as a mechanism by which economic rent and other unproduced surpluses are distributed to the population.<sup>6</sup> (Christman defines economic rent in these terms: “Economic rent is any income from the trade of some good (factor) which is over and above the amount necessary to motivate the person controlling the factor to trade where the surplus is due to fixed supply of the factor (its scarcity).”<sup>7</sup>) Societies structure income rights in different ways to reflect foreseeable distribution consequences – full income rights amount to allowing bilateral trades without regulation or taxation for purposes of directing the distribution of goods, says Christman. Alternatives to full income rights would involve price regulation, wage controls, capital gains and income taxation. Taxation is therefore a government imposed configuration of income rights that results in a distribution of revenue to the government. We will subsequently argue that multinational companies with first world locations are endeavoring to structure income rights on a global basis to realize a distributional pattern of favorable returns from an analogous form of taxation.

We argue that the IP right is primarily an income right because the purpose is not to exercise control over a particular original expression of creativity that has been translated into a tangible medium or a composition of matter but to control the reproduction and sale of reproductions. In fact revenue rather than reproduction is the central interest. For example, Bill Gates’ primary concern when you use a copy of Microsoft Windows is that you have paid the licensing fee. In other words, the copyright that attaches to Microsoft windows functions not so much to control distribution but rather as a mechanism to ensure that revenue is returned to the Microsoft corporation every time one acquires a copy of the software. The idea of control implies a power to limit but indeed in most cases the IP right holder has no desire to restrict dissemination and rationally desires the widest possible dissemination in order to augment potential revenue. In point of fact limiting and controlling distribution is entirely irrelevant for the patent or copyright holder so long as each recipient pays the licensing fee.

The expansion of IP rights, which are claim rights to future income, is a more recent development and moreover an extension and re-interpretation of income rights. It is true that trademarks existed in Ancient Rome and the laws of heraldry that control insignia have a Medieval origin, and grants of patents can be traced to 16<sup>th</sup> century England. However, the various controls over cultural products were not considered property. In this sense we can say that to equate these controls with personal property is a more recent development. Moreover what is especially alarming is the diversity of phenomena that is now claimed as intellectual property together with the astoundingly incremental number of patents and copyrights that is being issued.

suspended, nor, post the Iraq invasion, can one discount the possibility that on occasion economic agreements will be forced through military intervention.

<sup>6</sup> JOHN CHRISTMAN, op cit ‘Distributive Justice and the Complex Structure of Ownership,’ p. 249; JOHN CHRISTMAN, *The Myth of Property*, p. 13.

<sup>7</sup> Ibid., *The Myth of Property*: 31.

IP rights, as we said, now primarily exist to impose legal claims on the future earnings from the sale of a specific product (invention or artistic work) regardless of whether the owner of the IP rights (individual or corporate body) actually produces the product. This is an important difference between IP rights and ownership of shares in a corporation, for example. In the latter instance, the claim to future income from the sales of the product or service is contingent upon the acquisition of a financial interest in the company that actually produces a product or provides a service. In the former case, the IP right holder, the holder of a copyright or patent, doesn't need a financial commitment that represents a property interest in the producer or manufacturer of the product in order to have a financial claim on the income.

One begins to see why IP rights can be extremely lucrative; they can act as both a source of control and a tax upon other agents in the market. While shareholders (in bricks and mortar industries) can also make spectacular profits, they can only claim income rights from organizations in which they have a financial commitment. Holders of IP rights can derive income and assert rights to earnings (through licenses and royalties) from companies without financial, or any other form of participatory investment in these companies. If the holder of an IP right so desires, he or she can avoid the production process and allow or license other companies or individuals to produce their products while sharing income from sales and avoiding operational costs. One appreciates why IP rights have become strongly defended within certain circles in the business community. IP rights when coupled with a successful innovative product realize a form of capitalist nirvana, in which the mere act of licensing other producers realizes a source of unlimited revenue without assuming any share of the operating costs necessary to generate the revenue. In other words, revenue equals profit without the troublesome necessity to deduct any costs.

Let us at this point consider some concrete examples that exhibit the application of these principles. In the early 1990s IBM discovered the financial importance of exploiting patent licensing and deriving revenue through a near costless exercise. In doing so they set an industry standard. At a time when IBM was in a steep decline, veteran employee and lawyer Marshall Phelps convinced the company to raise the fees it charged others for piggy-backing on its ubiquitous technology. Newsweek reports that a few years later, after forcing licensing agreements on hardware companies IBM was earning an additional \$2 billion a year of almost pure profit from licensing revenue.<sup>8</sup> Licenses are often charged as a cost per unit sold or at a few percent of gross sales (not profit), and this license "tax" can become a major burden when several different organizations claim patent violations. Significantly the famously litigious Microsoft hired pioneer Phelps after he retired from IBM. In recent years Phelps has accelerated the number of patent applications at Microsoft and played a key role in three massive cross-licensing deals with Sun, Siemens and SAP. In 2004 Bill Gates told Wall Street analysts that patents are "a very important part" of the innovation that will fuel the company's future growth, and predicted it would file 3,000 patent applications next year, up from 1,000 several years ago.

Not surprisingly a new line of business has emerged within the software industry that focuses on obtaining and enforcing software patent rights rather than building and market-

<sup>8</sup> BRAD STONE (Aug. 2, 2004) Newsweek.

ing usable software systems. Some companies have the backing of large corporations while others are independently enforcing patents.

Having seen IP rights function as effective income rights that need not represent a financial commitment to the productive process, we also need to note the unparalleled expansion of these rights in recent years. For example, in the field of bio-technology, we observe that in October 1992, the U.S. Patent and Trademark Office awarded to a single company, Agracetus Inc., of Middleton, Wisconsin, a patent for rights to all forms of genetically engineered cotton—no matter what techniques or genes are used to create them—prompting the following comment from an industry executive: “It was as if the inventor of the assembly line had won property rights to all mass produced goods, from automobiles to washing machines.”<sup>9</sup>

Other disturbing extensions of IP rights have occurred in the field of medicine. Recently researchers from Columbia University and the University of Colorado Health Sciences Center developed a test to measure the level of homocysteine, an amino acid. In research on thousands of people, the investigators learned that a high level of homocysteine is correlated with a vitamin deficiency: low levels of cobalamin or folate. Other tests for homocysteine already existed and were used for a variety of medical disorders. But claiming theirs to be an improvement, the researchers applied for a patent. In their application, they argued that because they were the first to recognize that a high level of homocysteine is connected to a vitamin deficiency, they should be allowed to patent that basic physiological fact. Thus they would be owed a royalty anytime anyone used any test for homocysteine and concluded that an elevated level signified a vitamin deficiency. They received U.S. Patent No. 4,940,658 — known as the ‘658 patent — and later licensed it to a third party Metabolite Laboratories. Another company published the biological fact that high homocysteine levels indicate vitamin deficiency. Metabolite sued for patent infringement. The Federal Circuit court, which heard the case, ruled that the company had induced doctors to infringe the patent by publishing the biological fact that high homocysteine levels indicate vitamin deficiency. The court also ruled that the doctors had directly infringed the patent by merely thinking about the physiological relationship. It follows that considering publishing and thinking about a law of nature is actionable under patent law contrary to academic freedom, among other things. The decision has set off a rush to the patent office to assert ownership over other scientific facts and methods of scientific and medical inquiry.<sup>10</sup>

The above developments signal the broadening of the application of intellectual property rights beyond the traditional accepted restraints. In the first example we drew attention to IBM and Microsoft and their vigorous use IP rights to enforce income rights and implement favorable agreements with other companies. This needs to be placed in context. The initial interpretation of software as a proper subject for copyright was sufficiently controversial. However the decision of US authorities to extend patents to cover software is an

<sup>9</sup> JULIO H. COLE (Fall 2001) ‘Patents and Copyrights: do the Benefits exceed the Costs?’ *Journal of Libertarian Studies* Volume 15, 4 pp. 79–105 at 92–93.

<sup>10</sup> *The Chronicle of Higher Education: The Chronicle Review*, (February 17, 2006) Volume 52, Issue 24, p. B20.

even bolder move. In part this is because it is impossible to distinguish between software and pure mathematics.<sup>11</sup> Thus, US intellectual property law that grants patents to software contradicts the fundamental accepted principle that mathematical formulae and algorithms are not patentable. Moreover, because so many patents have been granted it is doubtful whether many of them really satisfy the non-obvious condition. For example, there are more than 170,000 software patents registered with the U.S. Patent and Trademark Office.<sup>12</sup> Moreover, because programmers use similar, if not identical, software and hardware to deal with common needs, certain ideas are independently conceived over and over again. Many of these ideas are patented and so regardless of independent invention, a programmer anywhere can unknowingly be in violation of an existing patent. (Unlike copyright, independent invention is not a valid defense against claims of patent infringement.) It is universally accepted that defending oneself against a claim of patent infringement can cost millions; it is easier just to pay the royalty so that the claimant will go away. It does not take much imagination to realize the implications of this system of IP rights when given global application. Start up companies and programmers in the developed world and elsewhere are exposed to the threat of being closed down if they fail to pay licensing fees.

Our second example, a patent for rights to all forms of genetically engineered cotton, indicates a tendency to grant IP rights with broad scope rather than specific application. In the past authorities have tended to narrow the scope to limit the obvious monopolistic rights and to avoid placing too great a constraint on other researchers. For example, Samuel Morse, the inventor we associate with the Morse code, was granted a patent that gave him the exclusive right to the use of electromagnetic power for communications at a distance. The US Supreme court sensibly decided that a legal claim that preempted electromagnetic power for communications at a distance was too broad, and was not enabled by the specification.<sup>13</sup> It is clear that the modern courts are turning their back on this precedent. As in other fields such as information technology and medicine, biotechnology is also experiencing the extension of patent coverage to subject matter previously regarded as unpatentable. In 2001 the United States Supreme Court decided that sexually reproduced plants are statutorily proper subject matter for full utility patents.<sup>14</sup> This decision created full utility patents, which were previously unavailable, for sexually reproduced plants, including basic food stuffs. The decision means that the plant patent holder has the exclusive right to reproduce the plant sexually, i.e., the right to reproduce through seeds. Reproducing a plant by seed (i.e. sexually) can now be a violation of plant patent. Previous US legislation on Plant patents provided limited protection and the exclusive right only applied to asexually reproducing the plant.<sup>15</sup> In 2004 the Supreme Court of Canada the

<sup>11</sup> See BEN KLEMENS (July 2005) 'Software Patents don't Compute,' IEEE Spectrum, pp. 49-50.

<sup>12</sup> BEN KLEMENS (August 2005) 'New Legal code: Copyrights should Replace Software Patents,' IEEE Spectrum, pp.52-53, at 53.

<sup>13</sup> GREGORY A. STOBBS (July 2000) 'Patenting Propagated Data Signals: What Hath God Wrought?' IEEE Communications Magazine..

<sup>14</sup> J.E.M A.G. Supply, Inc. v. Pioneer Hi-Bred Int'l Inc. 534 U.S. 124 (2001).

<sup>15</sup> MALLA POLLACK (2004) 'Originalism, J.E.M., and the Food Supply or Will the Real Decision Maker Please Stand Up?' Journal of Environmental Law and Litigation, 19, 2: pp. 500-538.

held that a farmer had infringed a Monsanto patent on a gene by harvesting plants containing the same gene, even though he claimed the seeds had accidentally blown onto his farm. There now exists the justifiable fear that the manipulation of the patent system by Monsanto and few other giant agribusinesses, if not checked, will result in their increasing control of the world's food supply.<sup>16</sup> It is already the case that the newly acquired utility patents have been used to close down experimental farms.<sup>17</sup>

In the final example, drawn from medical research, we observe the extension of patents to cover laws of nature, which previously had been regarded as un-patentable. Again, traditionally it has been felt that patenting laws of nature would have unfavorable consequences in terms of the potentially extensive monopolistic powers and the limitations this would impose on other researchers. However, the legal system is now indicating that it is abandoning these sensible constraints. The above examples are significant because they indicate a disturbing trend in which the number of patents and other forms of IP are accelerating with the objective of extracting income from other producers, researchers and practitioners. Moreover not only has there been a tendency towards broadly defined IP rights but the subject matter is also expanding with intellectual property rights now applied to: laws of nature and mathematical formulae; processes that are not necessarily non-obvious; and techniques that are already in the public domain. As IP rights extend their application into areas hitherto untouched, they are creating income rights over areas of productive activity and research that have been traditionally immune to this form of interference.

Nevertheless, some argue that with both copyrights and patents, the monopoly is considered acceptable on the basis that it extends only for a limited time. However, one also needs to recognize that a combination of legalistic maneuvering together with the exercise of ingenuity on part of patent holders has realized ways to extend the life of patents beyond originally accepted limits. For example the TRIPS agreement (of which we will speak in more detail later) requires WTO member states to grant patents on all classes of products (including medicines), to provide protections for a minimum of 20 years. Thus a product, which has been patented in one member state gains an additional 20 years of patent life within another member state, when granted a patent in that state. Also with respect to pharmaceuticals, the patent system often generously allows new patent rights to certain new uses, formulations, delivery systems, combinations of existing products, and minor variations of existing chemical entities.<sup>18</sup> Also given the rapidity of technological change, a twenty year patent proves much more than sufficient to for the life of an effective monopoly.

#### Global Implications

Significantly the US, Europe and Japan have been the leaders in patenting and copyrighting within the information technology, electronic, pharmaceutical, entertainment, medical and bio-technology industries. These are also areas in which these countries have been leading innovators and producers. Contemporaneously these countries especially the

<sup>16</sup> Ibid., p. 500.

<sup>17</sup> Ibid.

<sup>18</sup> BROOK K. BAKER, India's 2005 Patent Act: Death by Patent or Universal Access to Second – and Future – Generation ARVS? Health Gap Global Access Project, Sept 19, 2005 ([www.healthgag.org](http://www.healthgag.org).)

US have been pushing for the international recognition of their IP rights and global agreements that sanction countries that do not enforce these rights.

Because world wide enforcement from the centres of technological innovation is impossible, there has been movement to manipulate international bodies and agreements between nations to realize the effective enforcement mechanism. Accordingly we have seen the implementation of the TRIPS (Trade Related Aspects of Intellectual Property Agreement) agreement by the World Trade Organization that requires member states to enforce IP rights under the threat of sanctions. Moreover governments are prohibited from ignoring IP rights even in cases in which the welfare of the country is an issue.

It is worthwhile replaying the political and intellectual history that led to the implementation of the TRIPS agreement. As summarized by Prof. A.S Oddi, industry groups (lobbyists) in developed countries, particularly in the United States, persuaded a receptive government that their intellectual property was being "stolen", "pirated" "counterfeited" and "infringed" by unscrupulous people in certain countries and this was to the detriment of intellectual property exporting countries.<sup>19</sup> These industry interests argued that the problem stemmed from inadequate intellectual property protection in these foreign countries. Although the World Intellectual Property Organization presumably had jurisdiction over international intellectual property matters, these interests had become dissatisfied with the WIPO's failure to act on their concerns. Evidently the developing countries within the WIPO did not share the same sense of urgency. GATT, which has since morphed into the WTO, provided a much more satisfactory venue because the leverage of trade and access to markets could be used against developing countries to enforce compliance. The developed countries strategically shifted the issue from the WIPO to the more accommodating GATT with intellectual property now fundamentally acquiring trade-related aspects. In fact, they argued, these aspects were of such importance they could not be left to the domestic policy of individual countries but must be imposed as international minimum standards.

Intellectual property is a relatively new notion and IP rights are a relatively recent extension of our notion of income rights, i.e., rights to income that flow to the individual in virtue of the fact that one holds a property interest. In the near past, and perhaps still in the East, knowledge or the fruits of creativity (art, design) were and are not regarded as someone's "property". The inventive, creative individual or artist was merely a conduit through which the muse of inspiration or even divine grace flowed. Discoveries, inventions, texts, works of art and music, designs etc., belonged to the community and could usually be replicated freely. Although one must recognize that controls were not entirely absent, since the origins of copyright are in censorship, and the control of dangerous books and heresy. However, what is new is the utilization of the IP as an income generating mechanism which imposes claims on the revenue of other agents.

Recent scholarship also recognizes the anomaly that IP rights represent. Even the most innovative break-throughs depend ineluctably on knowledge and information contributed

<sup>19</sup> A.S. ODDI (1996) 'Nature and Scope of the Agreement: Article: TRIPS \_ Natural Rights and a Polite Form of Economic Imperialism,' *Vanderbilt Journal of Transnational Law* 29: p. 415.

over centuries by other human researchers and developers.<sup>20</sup> In other words the technological advance is never *sui generis*. It is part of a chain of technological advances that reach back in time to the works of countless other inventors and creative individuals. In this sense every innovative contribution belongs to a collective human endeavor in which many individuals have played their part, including support groups, institutions, donors, volunteer subjects etc. For example, the discovery of DNA required centuries of research to become a possibility, it did not simply emerge full blown from the minds of Watson and Crick, without antecedents. The discovery of DNA and years of subsequent research were then necessary to realize the various human genome projects. It makes little sense to regard the latest scientific or technological achievement as exclusively belonging to the efforts of a single individual or particular corporate team of individuals. Without exception every significant intellectual discovery or creation has many ancestral “owners”. But it is this erroneous idea of sole responsibility that has been implicitly promoted as the basis of an exclusive entitlement to the income that flows from any productive process that relies on information or knowledge subject to IP rights.

Although, we are arguing that innovation needs to be seen in context and thus requires that we also recognize earlier contributions and therefore contributors other than the patent holder it is still the case that the patent holder, in many cases, has done research and work, which has realized a significant advance. If IP rights were not available others would simply free ride on this research and benefit without recognizing or compensating the innovator or inventor. The problem with this argument is that sets up a false dilemma. In other words if we don’t have strong IP rights, and a strong patent system for example, then innovators will unfairly be denied their compensation. However, as Richard Stallman has pointed out with respect to software, software programmers can be compensated for the work in a number of ways without having to resort to IP protection.

The reality is that Western forms of property have played a key role in revolution of wealth generation that people such as de Soto regard as the “triumph” of modern capitalism. The less developed world would do well to adopt the system if it wishes to participate. However, at the same time, one needs to be aware that the system is also being tilted in favour of the Western enterprises at the expense of the developing and the undeveloped world. The promotion of intellectual property rights through the push to acquire ever more patents and other instruments of IP coupled with the broadening of these rights to cover areas previously untouched is designed to create an income imbalance in which wealth will continue to drain from the poorer countries to Western localities. These developments are empowering first world organizations to impose intellectual property taxes on entities in the third world that are seeking to become productive and participate in this revolution in wealth generation. In these circumstances, third world companies have few options. If they refuse to pay these taxes, and utilize technology, ideas or procedures now subject to IP rights, the countries in which they operate will be heavily sanctioned by the World Trade Organization and excluded from the networks of trade and commerce that that are the source of this global prosperity.

<sup>20</sup> P.H. WERHANE and MICHAEL GORMAN (2005) ‘Intellectual Property Rights, Moral Imagination and Access to Life-Enhancing Drugs,’ *Business Ethics Quarterly* 15, 4: pp. 595-614.

Nevertheless article seven of TRIPS declares that the protection and enforcement of intellectual property rights should contribute to promotion of technological innovation and the dissemination of technology to the mutual advantage of the users of technological knowledge. Defenders of intellectual property rights and in particular the patent system argue that the granting of a patent represents the outcome of a bargain between the inventor and society by which society grants the inventor certain rights with respect to his/her invention in return for disclosure of whatever he or she has invented. Thus the patent's ideas can be spread for use by all through the publication of details of the invention. In this way, patents provide an alternative to people protecting useful ideas through secrecy. But as one researcher has pointed out, only in theory does the patentee provide society with information concerning the invention. In practice he or she discloses the information required by the patent system, not the information required by society to replicate or develop his/her invention.<sup>21</sup> Ultimately as he says the patent specification is a legal document not a source of information for innovation. For example, statistical evidence indicates that small firms for a variety of reasons find patent specification too limited and of little use as a source of information.<sup>22</sup> The view that patents benefit small firms through the publication of innovation by means of the patent system is illusory. The author states that the same reasoning applies to underdeveloped countries which are supposed to benefit from the TRIPS agreement.

Throughout the text we have discussed the link between inventiveness, economic prosperity and patents. There is therefore no question that the system provides benefits but the issue is who benefits. Often those who reap the benefits from the IP system are not those who incur most costs. Benefits one can say are closely focused and costs are widely distributed. Possession of significant wealth is a pre-requisite for benefit because of the expense and legal fees that must be covered in order to gain a patent. Moreover, the patent system offers protection for the patentee only when the patentee can afford to enforce his/her rights. This means those who can benefit from the system are those possessing exceptional wealth. For those who do not already possess sufficient resources a patent is of little use. For example, under resourced small firms acquire unwanted costs through the system because they find it necessary to conduct a significant percentage of patent searches simply to check for possible patent infringement. It is very much the case that the extension of this system through the mechanism of TRIPS works to the disadvantage of the of the underdeveloped and less wealthy countries in a manner very similar to the way in which it disadvantages small firms within a national economy.

Having stated that promotion of IP rights with universal application adversely affects the non-Western world we should consider the impact in more specific terms. Professor Oddi, writing on the impact of TRIPS, which has transformed patents from domestic privileges to universal entitlements, argues that the greatest effect will be on the newly industrialized countries (NICs).<sup>23</sup> The NICs are said to include countries such as: Brazil, India, Malaysia, Mexico, Singapore, the Republic of Korea and Taiwan for example. He argues that these

<sup>21</sup> MACDONALD. *op. cit.*, 15.

<sup>22</sup> *Ibid.*, 17

<sup>23</sup> Oddi, *op. cit.*

countries were the basic targets of TRIPS because they had the industrial capacity of replicating foreign technology and were evidently competing effectively with the creators of this technology. The TRIPS agreement reduces access to technology and thus seriously weakens the ability to compete (for NICs) because they are prohibited from replicating products subject to IP rights. Moreover reduced access also prevents them from mastering the technological expertise thus blocking future ability to compete in the area of research and technological innovation. The technological hegemony of the West is thus protected and can be extended indefinitely through the ability to limit access to the latest technology and techniques. Ultimately the implementation of the dubious IP rights with universal application is implicitly designed to secure the future for Western companies. One foresees that Western multinational corporations will continue to strive to appropriate the world's intellectual heritage in order to secure a continuous flow of potentially cost free revenue.

### Conclusion

One might ask, however, what path should be taken to resolve many of the issues we have mentioned. In other words how can the IP system be changed or restructured to meet present and future challenges. As is obvious from our earlier analysis, there must be a reversal of the tendency towards granting broadly defined IP rights. Also the subject matter needs to be restricted rather than expanded. Intellectual property rights should not be applied to: laws of nature and mathematical formulae; processes that are not necessarily non-obvious; and techniques that are already in the public domain. Finally one needs to recognize that a one shoe fits all system which is being imposed through globalized IP rights must be rejected. In other words, different industries may well require different solutions. The following are just a few suggestions. In some industries IP rights should be abolished altogether. Given the recognized dangers to the world's food supply through patents held by giant agribusinesses, the patenting of life forms and biological processes should be abolished. The Chair of the African Group in the Negotiations Surrounding the Convention of Biodiversity (CBA) sensibly argues that inappropriateness of the patent system with respect to biological processes is due to the fact that living things are not invented, or inventions.<sup>24</sup>

With respect to software it may also be advisable to undercut the overly commercial character of software engineering through abolition of intellectual property rights as applied to software. Richard Stallman, the principal proponent of "free software" believes software innovators would continue to invest their creative energies in the production of software, even if the possibilities for profits were vastly reduced, simply because of the desire and commitment to exercise their creative talents.<sup>25</sup> In point of fact he sees copyright and patent law as constraints on the exercise of creative talent, because software engineers are precluded from redeveloping, improving, disseminating, or sharing software that has been copyrighted or patented. Stallman advocates that publicly funded research institutes

<sup>24</sup> MARTIN KHOR, "Rethinking Intellectual Property Rights and TRIPS," in *Global Intellectual Property Rights: Knowledge Access and Development*: 201-214, at 207.

<sup>25</sup> R. M. STALLMAN, 'GNU manifesto,' in M. D. Ermann & M. S. Shauf (eds) *Computers, Ethics and Society* (Oxford: Oxford University Press, 2003): 153-161.

be created to provide the necessary software innovation, which the public can access freely or at far less cost.

In other areas, such as pharmaceuticals there may be a need to maintain some aspects of the IP system. Empirical studies have been seen to support the notion that strong intellectual property rights have a positive relation to innovation in the pharmaceutical industry, which is not the case in the software industry. In such industries spillovers, the capture of intellectual property value by competing firms due to imperfect appropriability would lead to R&D disincentives.<sup>26</sup> However at the same time it has to be recognized that these monopolistic powers are only justified to support research and development, not to amass spectacular profits at all costs. The right to health or the right to health care should trump the monopolistic powers granted to the pharmaceuticals through the relevant administrative, legislative and international bodies. Individuals and companies have an obligation to help those in need in circumstances in which the effort does not entail a great expense to themselves, and clearly, a heavy responsibility falls on the pharmaceutical companies. These responsibilities would entail that pharmaceutical companies in appropriate circumstances must be forced to relax their rights held through patents in order to allow those in need to access medicines necessary to sustain health.

<sup>26</sup> RICHARD C. LEVIN, "Appropriability, R&D Spending and Technological Performance," 78 *American Economic Review* (May 1988) at 427.

*Luke Bretherton:*

*Consumerism, globalisation and the conditions and possibilities of Christian political witness: the telling case of fair trade*

#### Introduction

There is a wide-ranging debate about the health and vibrancy of democratic life and patterns of civic association in Western liberal democracies. Some argue that what is seen is decline in political participation and the deracination of existing forms of solidarity that are central to maintaining social cohesion and political stability. Others argue that far from decline, what is occurring is the emergence of new forms of political participation and ways of acting together for the common good, ways that are more appropriate to contemporary political problems and patterns of life. Political consumerism is seen as one of the most significant examples of these emergent forms of political action.

Political consumerism involves the intentional pursuit of political ends through patterns of consumption and market based transactions. According to Jørgen Goul Andersen and Mette Tobiasen, 'A political consumer is usually defined as a person who makes value considerations when buying or refraining from buying certain goods and products, in order to promote a political goal.'<sup>1</sup>

The question arises as to why Christians should be concerned with a debate about the changing fortunes of political participation in the West and the value or otherwise of emergent forms of political action. At an empirical level this debate should concern Christians because, on the one hand, Christians are and have been historically deeply immersed in the kinds of political association that are said to be declining. In addition, churches, in and of themselves, constitute an example of the kind of institution that is said to be under threat. On the other hand, churches are key catalysts and sponsors of emergent forms of political association, most notably political consumerism. The fair trade movement is but one of the most prominent examples of this.

Theologically the above debate should be of concern because it directly relates to the conditions and possibilities of Christian political witness in the contemporary context. However, there is little engagement by contemporary political theology with the relationship between consumerism and Christian witness. What analysis there is tends to be wholly negative. However, the negative construal of the relationship between consumerism and Christian witness occludes the need for analysis of the relationship between political agency, patterns of consumption and, more specifically, Christian involvement in consumer modes of political action.

<sup>1</sup> Jørgen Goul Andersen and Mette Tobiasen, 'Who Are These Political Consumers Anyway? Survey Evidence from Denmark,' in *Politics, Products, Markets: Exploring Political Consumerism Past and Present*, eds. Michele Micheletti, Andreas Follesdal, & Dietlind Stolle (New Brunswick, NJ: Transaction Publishers, 2004), p. 203.

- The first section of this essay summarizes the debate within political theology about consumerism and argues for envisaging political consumerism as a legitimate form of prudential politics within the contemporary context.
- The second part of the essay sets out why political consumerism should be considered a necessary and legitimate response to the contemporary context. This is done by assessing debates about the current state of political engagement in the West and how, within conditions of globalisation, political consumerism enables ordinary political actors to express solidarity, pursue the common, global good, and be schooled in civic virtues.
- The last section analyzes how political consumerism constitutes a form of penultimate politics.

#### 1. Political theology and the delegitimization of penultimate politics

Contemporary political theologies are, for the most part, negative or dismissive about consumerism. For example, William Cavanaugh sees global consumerism as a false form or parody of the catholicity embodied in the Eucharist.<sup>2</sup> Across the spectrum of political theology we find parallel negative treatments of consumerism. Yet this negative appraisal indicates a lack of consideration of what is a central phenomenon within contemporary political and economic life. The neglect of consumerism as a contested political arena in which the churches and Christians as consumers have a key role is part of a deeper malaise in much contemporary political theology: that is, the implicit delegitimization of prudential or penultimate politics. In the mid-twentieth century, Christian political theology tended to obscure the riches of ecclesial practice in its development of 'public' theologies that argued for the coherence between Christianity and liberal democracy. Reinhold Niebuhr, Jacques Maritain and John Courtney Murray are paradigmatic of such an approach. However, these theologies often seemed more about sustaining particular political regimes than being Christian in public. In the late twentieth century, many theologians, for example, Stanley Hauerwas, John Milbank and Oliver O'Donovan, reacted against such an accommodation, arguing that the Church must recover its integrity by appreciating that the ecclesial performance of Christian faith provides its own distinctive way of being political in the world. Yet what we might call the ecclesial turn has tended to downplay or ignore the significance of pursuing and maintaining the shadow of the peace of the City of God found in the earthly city. What follows is an assessment of political consumerism as just such a means of pursuing this more shadowy, but no less legitimate peace.

#### 2. Globalization, solidarity and the emergence of political consumerism

##### 2.1 Evaluating political participation: decline and fall or rise and renewal?

Numerous political scientists, sociologists and philosophers lament a decline in social cohesion and political participation in Western societies. This lament forms part of a wider debate about the conditions and possibilities of political and moral agency in late or post modernity. Among sociologists this debate is framed in terms of decline or changes in

<sup>2</sup> William Cavanaugh, *Theopolitical Imagination: Discovering the Liturgy as a Political Act in an Age of Global Consumerism*. (Edinburgh: T&T Clark, 2002), pp. 97-122.

social capital, in political philosophy it is part of the liberal-communitarian debate.<sup>3</sup> A key issue in these debates is whether what we are seeing is decline in patterns of association or a process of de-institutionalisation and the emergence of more voluntaristic and volatile patterns of association that may be different in form but are no less political in content.

Dietland Stolle and Marc Hooghe identify four common characteristic features of these emergent forms of political association and action.<sup>4</sup> First, in contrast to modern means of effecting political change that have, in the main, involved mobilizing people via formal membership of an organisation or institution, these emergent forms abandon formal and bureaucratic modes of organization turning to more informal, network-like models. Second, such patterns of association are less focused on institutional maintenance and organisational processes as is the case in, for example, party politics. Third, these new forms are more irregular and spontaneous than prior forms of participation and tend to have low thresholds of entry and exit. Finally, emergent forms represent what I call a form of coordinated individual political action as distinct from more collectivist forms of action such as, for example, a strike organised by a trade union. The 2005 The Make Poverty History campaign exemplifies emergent forms of political association and action. Coordinated individual political action represents an emphasis on the individual taking responsibility for their political judgements and actions and a movement away from decisions being taken simply by dint of membership of a pre-existing form of collective political identity, for example, class or nation. The role of coalitions like Make Poverty History or single organisations like Greenpeace is to broker, network and aggregate individuals so as to add direction and weight to what would otherwise be their disparate actions.<sup>5</sup>

Of these emergent patterns of political action a primary one is political consumerism. Political consumerism itself is an umbrella term for a range of activities that need further delineation. Political consumerism assumes a turn to the economy as an arena for effecting political change and has three, inter-related foci it addresses in order to effect change. First, there is the attempt to change the structure, priorities and organisation of a particular arena of the market or of the global economy as a whole. Examples of where this foci is the primary emphasis are ethical investment schemes, subscription farming or community supported agriculture and farmers markets. Second, there is a focus on production and the adaptation or invention of new ways of producing goods in a more just and environmentally responsible way. This is seen most clearly in organic farming and the development of

<sup>3</sup> See for example, Robert Neelly Bellah, *Habits of the Heart: Individualism and Commitment in American Life* (Berkeley: University of California Press, 1985); and, Robert Putnam, *Bowling Alone: the Collapse and Revival of American Community* (New York: Simon & Schuster, 2000); for a summary of the liberal-communitarian debate see Stephen Mulhall and Adam Swift, *Liberals and Communitarians*, 2<sup>nd</sup> edn (Oxford: Blackwell, 1996).

<sup>4</sup> Stolle and Hooghe, 'Consumers as Political Participants? Shifts in Political Action Repertoires in Western Societies,' in *Politics, Products and Markets*, pp. 271-73.

<sup>5</sup> In her assessment of political consumerism Micheletti identifies the primary characteristics of these aggregating organisations as first, brokering relationship between different stakeholders so as to develop common ground for shared voluntary action; and second, what she calls 'mainstreaming'; that is integrating a particular issue or campaign into a political discourse by both raising awareness and generating possibilities for action. Micheletti, *Political Virtue and Shopping: Individuals, Consumerism, and Collective Action* (New York, NY: Palgrave MacMillan, 2003), p. 107-117.

technologies to produce energy by wind or solar power. Third, there is a focus on changing patterns of consumption: for example, labeling schemes (e.g. Soil Association).

Fair trade illustrates how each of these foci are integrated in a particular form of political consumerism: in relation to the first focus, fair trade seeks to establish a more equitable and direct relationship between consumers and producers, thereby contesting the dominant neo-liberal logic of global capitalism that says market competition rather than a prior set of values should determine economic transactions. In relation to the second focus, fair trade organizations work with producers to establish environmentally sustainable means of production and cooperative ways of organizing themselves. In relation to the last focus, fair trade goods are a form of 'boycott' that are marketed both as a means to change what products are consumed and to affect how consumers think about their patterns of consumption.<sup>6</sup>

In the full length version of this paper I outline four basic approaches to the question of whether solidarity and political participation in the West is declining or just adapting. These range from the positive to the negative. The characterisation of the four accounts is inevitably truncated. However, all four accounts fail for two key reasons. First, there is much evidence to suggest that political consumerism, as but one example of emergent forms of political association both feeds off and renews long established patterns of political life. Second, the historical development of patterns of political association is far less disjunctive than any of the accounts allow. We are neither falling from a golden age nor are we locked into a historically deterministic process of inevitable change in one direction. The history of political consumerism and bureaucratically mediated forms of association such as trade unions interweave each other, while at the same time creating space for and mediating non-instrumental, supposedly 'traditional' forms of solidarity.

Hence, what follows is an attempt to develop the following thesis using political consumerism as a test case. First, that there is a symbiotic relationship between what we might call traditional, modern and emergent patterns of political association in the contemporary context. Second, that in certain contexts a particular pattern of association may come to the fore while at the same time creating space for and mediating other forms of association.

## 2.2 The symbiosis between political consumerism and other forms of political life

A number of studies suggest that political consumerism acts neither in parallel to, nor in conflict with, nor as a replacement for existing political systems and modes of political participation. Rather, it feeds off and extends them in ways that are particular to different contexts.<sup>7</sup> How political consumerism complements other forms of political life is in large part shaped by existing traditions and patterns of political life. Given the inter-relationship

<sup>6</sup> For an overview of how fair trade works see Alex Nicholls and Charlotte Opal, *Fair Trade: Market-Driven Ethical Consumption* (London: Sage, 2004).

<sup>7</sup> The inter-relationship between political consumerism and antecedent patterns of political life are echoed more broadly as well. For example, a number of studies of the relationship between internet use and political participation suggest that high levels of internet use is associated with high levels of participation in voluntary organisations and political associations. Field, *Social Capital*, p. 102-103. See also, for example, Putnam's assessment of new social movements: *Bowling Alone*, p. 161-162.

between political consumerism and other forms of political life we should not be surprised that political consumerism takes different forms in different contexts.

Political consumerism as a phenomenon contests homogenizing accounts of globalisation that want to make everything conform to a single pattern of development and coheres with Roland Robertson's account of 'glocalisation' wherein the local and the global interact in particular ways.<sup>8</sup> Equally, political consumerism needs to be situated in an account of how the processes of modernization have different results in different contexts resulting in what Shmuel Eisenstadt calls 'multiple modernities'.<sup>9</sup> As Patricia Maclachlan and Frank Trentmann argue:

Far from being new or surprising reactions to globalisation, the current wave of international consumer protests need to be reconnected to the historical evolution of national specific forms of consumer movements and ideas about the rightful place of the consumer in relation to the state, civil society, and the market.<sup>10</sup>

### 2.3 Political consumerism and the pursuit of collective interests

The history of political consumerism suggests that the interests of consumers is not intrinsically narcissistic but can be identified with pursuit of the common good. Trentmann develops two examples of this: contests over access to water and other utilities which led to the formation of consumer cooperatives throughout Europe; and the link between pursuing the national interest and patterns of consumption. Trentmann sets out how consumer cooperatives developed throughout Europe in the 1840s, building on and feeding into different political traditions.<sup>11</sup> Trentmann states:

Instead of picturing a natural synergy between the consumer, individualism, and neo-classical economics, as has become frequent since the mid-twentieth century, it is vital to retrieve [an] earlier moment of civil society, and, more generally, to appreciate the collective social and political dimensions of the consumer.<sup>12</sup> Contemporary political consumerism harks back to and reiterates this earlier moment in the history of the consumer, a reiteration that the churches have been key in enabling. From boycotts of corporations like Nestle, to the initiation of the fair trade movement, to the development of ethical investment schemes we find that churches are key catalysts for and sponsors of political consumerism and the identification of patterns of consumption with pursuit of the common good. Given that political consumerism, in various forms, is not new, we must ask why it is gaining such prominence in the contemporary context? The short answer is that political consumerism is one of the few viable means of widespread political participation under the

<sup>8</sup> Roland Robertson, *Globalization: Social Theory and Global Culture* (London: Sage, 1992); and 'Glocalization: Time-Space and Heterogeneity-Homogeneity,' in *Global Modernities*, eds, Mike Featherstone, Scott Lash and Roland Robertson (London: Sage, 1995), pp. 25-44.

<sup>9</sup> S. N. Eisenstadt, 'The Reconstruction of Religious Arenas in the Framework of "Multiple Modernities"', *Millennium: Journal of International Studies* 29:3 (2000), p. 591-611.

<sup>10</sup> Patricia Maclachlan and Frank Trentmann, 'Civilizing Markets: Traditions of Consumer Politics in Twentieth-Century Britain, Japan, and the United States,' in *Markets in Historical Contexts: Ideas and Politics in the Modern World*, eds, Mark Bevir and Frank Trentmann (Cambridge: Cambridge University Press, 2003).

<sup>11</sup> Trentmann, 'The Modern Evolution of the Consumer,' p., 19.

<sup>12</sup> Trentmann, 'The Modern Evolution of the Consumer,' p., 33.

impact of economic globalisation and in the context of weak supra-national and international political structures. In the paper, I develop a full account of why this is the case.

#### 2.4 Political consumerism as a response to globalization

Political action, in the context of globalization, necessarily takes the form of acting as consumer-producers via consumer mediated modes of action and cultural production for three reasons. First, modes of political consumerism are constructive attempts to relate our local social and political identity to a global horizon of concern and recognise we all exist within a single economic and social system. We are all both locally employed producers, subject to local political conditions and consumers of global products, subject to the vagaries of global capitalism. To act as political animals we must act in our capacity as consumers because the global market is just, if not more determinative of political life than the local political institutions of a particular state. Second, the market is the primary and most readily available mode of mediation for ordinary political actors who seek to express solidarity with others living thousands of miles away and yet whose lives are intimately bound up with their everyday patterns of consumption. Finally, echoing the history of political consumerism, the weakness and nascent character of the international political system and the fact that national governments are often unwilling to act on issues of global concern – for example, climate change – means political consumerism is one of the few avenues available for popular political agency. However, the above justification for the merits of political consumerism in the context of globalisation begs the following question: can capitalism and consumerism really be a conduit for non-instrumental and charitable kinds of political relationship and formation in the virtues?<sup>13</sup>

#### Capitalism, consumerism and neighbour love

At first glance, locating political agency within modes of consumerism seems to compromise the charitable, self-limiting and sacrificial dimensions of political life. In short, politics as the pursuit of the common good is at some level about being for others. By contrast, consumerism seems, by definition, to be about pursuing one's self-interest. However, there are a number of problematic assumptions at work in this reading. The first of these is that there is a necessary conflict between an economy of gift and a market economy; and second, it ignores how pursuit of one's individual good is bound up with pursuit of the common good. By assessing these two assumptions we can analyze how consumerism can be a conduit for non-instrumental kinds of political relationship and a means of forming Christians in the virtues required for a penultimate politics.

In the full-length version of this paper I do this by:

- first analyzing how capitalism combines an economy of gift with a market economy and

<sup>13</sup> In addition to a consideration of whether consumerism can be the bearer of neighbour love, the other aspect of the justification for political consumerism as a prudential means of acting politically under conditions of globalisation is whether time and space affects moral relationships; that is, does geography matter morally? For the beginnings of my response to this question see Luke Bretherton, 'The Duty of Care to Refugees, Christian Cosmopolitanism, and the Hallowing of Bare Life' in *Studies in Christian Ethics* 19:1 (2006): 39-61.

- second setting out why consumption is better understood as practice directed rather than choice directed.

Conclusion: political consumerism, penultimate politics and the reformation of desire

The argument I set out is that political consumerism is a prudential means, available to Christians, to extend civic virtues by ordinary political actors in a context of global political relationships and economic inter-dependence. As a mode of political engagement, in its contemporary forms, it is initiated, generated and sustained primarily or solely by patterns of consumption. It is this use of the market as an arena of political action that distinguishes it from other forms of political action. I argue that political consumerism should be considered a form of solidarity, albeit a weak one. Solidarity involves the pursuit of the common good by mutually dependent individuals. Pace Durkheim, it necessarily involves an element of voluntarism: interdependence requires a certain level of individuation if it is to be distinguished from collectivism on the one hand and individualism on the other. Solidarity, on a theological account, involves relating the one with the many in interdependent relations.<sup>14</sup> The good of each is best found in the common good. The church as the paradigm of solidarity stands between the dependent and non-voluntary relations of kith and kin and various coercive forms of political association. The church is the originator and paradigm of civil society conceived as that realm of genuinely free relations. The history of the church is in some respects the history of contesting its patterns of solidarity being collapsed into either familial or political relations, of it becoming synonymous with either the *oikos* or the *polis* and thereby ceasing to be their hybrid, the *ekklesia*.<sup>15</sup> One of the problems of twentieth century political ideologies and political identities, whether they be nationalist, Marxist or liberal is that, rather than seeing political life as merely an echo or shadow of the City of God, they tended to become ersatz congregations practicing a form of surrogate catholicity and mistaking political association for true communion. Political consumerism, by contrast, is a form of political association that makes no claim to replace the communion of the church but does attempt to humanize the dominant political, economic and social conditions. Thus, as a form of political action it represents a modest, penultimate form of political association, one that is both dependent on and complements other forms of solidarity.

Political consumerism could be interpreted as a form of what Michel de Certeau calls *bricolage*: the creative use of the prevailing hegemony in order to change and adapt it.<sup>16</sup> Such an interpretation directly intersects with Stanley Hauerwas' conception of how to work within the given constraints of the dominant political order. Hauerwas calls for discriminating engagement rather than either complete withdrawal or general involvement.<sup>17</sup>

<sup>14</sup> See Colin Gunton, *The One, The Three and The Many: God, Creation and the Culture of Modernity* (Cambridge: Cambridge University Press, 1993).

<sup>15</sup> On this see Bernd Wannenwetsch, 'The Political Worship of the Church: A Critical and Empowering Practice,' *Modern Theology* 12, no. 3 (1996): 269-99.

<sup>16</sup> Michel de Certeau, *The Practice of Everyday Life*, trans. Steven Rendall (Berkeley: University of California Press, 1988), pp. 29-39.

<sup>17</sup> Arne Rasmussen, *The Church as Polis: From Political Theology to Theological Politics as Exemplified by Jürgen Moltmann and Stanley Hauerwas* (Notre Dame: University of Notre Dame Press, 1995), p. 227.

Following de Certeau, Hauerwas uses the term 'tactic' to describe how the church is to operate in public life. A tactic makes no attempt to control a situation or claim a social space as its own, nor does it attempt to define the rules of engagement or develop a general strategy. Instead, it is an ad hoc circumstantial engagement that makes use of what is there.<sup>18</sup> For Hauerwas, the church should always be a dissident community within the wider society.<sup>19</sup> It is from this position as a dissident or contrast society that the church has the critical distance both to say 'no' to the prevailing ideological legitimations of injustice, violence and oppression but also to imagine and develop new ways of doing things. It is the ability of the church to open new horizons, provide new languages of description and embody alternative practices that constitutes its contribution to the common good.<sup>20</sup> However, against de Certeau and Hauerwas, political consumerism, as a form of penultimate politics, is not simply a form of tactical subcultural resistance. It can create opportunities for strategic change: the examples of the civil rights movement and the 'Good Environmental Choice' labelling scheme illustrating exactly this.<sup>21</sup> To view either penultimate politics or political consumerism strictly in terms of de Certeau's account of bricolage is to reduce it to a form of 'making do' when nothing else can be done. Instead, it should be seen as a constructive preparation for and outworking of the life of the ekklesia. As Vincent Miller points out, crucial to effecting real change is engagement with particular places and constellations of power rather than sporadic and unsustained acts of culture jamming or boycotting.<sup>22</sup> Hence, for Christians, the role of the church as an institutional formation that incorporates both political consumerism and other forms of political action is reinforced, for churches can be a conduit for the kind of symbiosis between emergent and antecedent forms of political participation and action outlined in the paper.

We can conclude that contrary to the negative portrayals of consumerism that predominate in political theology and theological critiques of late modernity, a closer analysis of consumerism unveils a more complex and ambiguous picture of the patterns of relationship and moral formation possible within it. Analysis of the phenomenon of political consumerism unveils the constructive possibilities available for sustaining and forming solidarity under condition of global capitalism. Political consumerism is both a conduit for articulating and forging forms of global solidarity and a means of pursuing and enacting the global common good. For Christians political consumerism constitutes both a form of legitimate penultimate political engagement and a means of forming persons in civic virtues that find their fulfilment in the ekklesia.

<sup>18</sup> On this see Stanley Hauerwas, *After Christendom?: How the Church Is To Behave If Freedom, Justice, and a Christian Nation Are Bad Ideas* (Nashville: Abingdon Press, 1991), pp. 16-18.

<sup>19</sup> Rasmuson, 'The Church as Polis', pp. 225-26.

<sup>20</sup> *Ibid.*, 229.

<sup>21</sup> Miller, *Consuming Religion: Christian Faith and Practice in a Consumer Culture* (Continuum, 2004), pp. 158-160.

<sup>22</sup> *Ibid.*, p. 161-162.

*Erwin Bader:*

*Sustainability for surviving of manhood in time of globalization*

Economy has a long development before it came to the globalization of today. In former ages of manhood economy preceded two stages of market function before globalization came out as a third stage. At first, in times of Adam Smith, employers produced under certain conditions and the market laws brought out fair prizes and somehow equal prizes for similar products, because each producer was in competition with the other. The consumer compared the articles and recognized if a product was too expensive, compared with similar products of other producers, and they claimed the cheaper one with the same quality. So the market brought the producers up to sell their products to fair prices, that means the market had an influence to economy in favour of more fairness.

It is difficult for economy to run in a sustainable way today.

Then came the stage of industrialization. The market laws now rewarded investment for technical innovations, because so the producers could bring more products with lower costs and his products were cheaper products. The consumers used to choose the cheaper products, so it worked out advantageously for employers with technical innovations, compared with traditional producers. This was the time of upcoming of the working class with its social problem, until some solution of the problem was found by welfare state.

Now the third stage of market came to light, namely the global market. Economy is producing all over the world, and spreading production places in different states with different standards of welfare laws and environment laws. Who helps to spread industrial production all over the world, will succeed on market, but the lower the standards are the better is the profit. But before all it arises the problem if the nature will be able to bear all the pollution of an increasing manhood with worldwide increasing industry.

Economy produces for human being that means it produces for transitoriness, not forever. It is clear that transitoriness means something other than sustainability.

Nature, if vivid or not, what not as yet was consumed by man, or rather its components or products, by and by get transformed in economic processes by means of technical methods to make them useful for manhood. The cycle of nature, taking care of sustainability, gets interrupted deliberately and transitoriness takes place; By-products are coming out, bringing a lot of damages to nature. The only long-term existing things that were produced by man until now are plutonium and radioactive waste, and manhood does not know where to put them because they are so dangerous.

Compared with it, how sustainable is life? Each human being what is living today has its vivid cells from parents and forefather back inconceivably long to the first primates that can be seen as human beings and furthermore back to the first vertebrates, yes, of course still furthermore back to the protozoa at the very beginning of life. Life really is arranged most sustainable: Since these primeval times when life began, life goes on reproducing itself and never was interrupted until now and is still living in us, the human beings of today, but also is living in every creature within our environment.

The first protozoa organized themselves in associations, becoming new living beings, more and more complex, at long last human beings. In the same way the human beings are

organizing themselves in various associations, as religions, economies and states. Economy itself seems to be most innovative: Most of the changes we can experience have its origin in economy. It is the main engine of globalisation, and by this procedure of globalisation mankind first in history can grow to a unity.

Because economy for the first does not know what people want to have, there exists the system of free market: Goods and services were offered and advertised, and the products, what are accepted, turn out as these, what men do need apparently.

This system admittedly has its disadvantages.

A gap is coming up between two extremes: At the one hand all goods of supply exist in abundance if demanded by customers and it is possible to make a good deal. But there is an economic doctrine that economic good are scarce. At the other hand there is a shortage where the old economic doctrine speaks of non-economic and free goods, assuming them to exist in abundance. This are the natural goods like water, air and soil or land.

The new shortage is concerning not only some poor people, what once was seen by economists as an advantage for getting cheap working men, but the new shortage is concerning the heart of natural life in general and all human being are depending on natural life. Alarmingly it is a deteriorate situation of earth in general.

I suggest imagining the earth as living being, in accordance with the theory of James Lovelock, who calls the earth with the name of the ancient Greek goddess Gaia. So you can imagine a colourful picture and you may comprehend, that there were made changes to this living being, after a long term of good health. The rivers, comparable with blood vessels of an animal, get spoiled, forests and trees, the pulmonary alveoli of Gaia or the earth, are vanishing within a short time. The soil or surface of earth, comparable with the skin of a living being, partially gets extremely dry and brittle and other parts of it get moist, like a too rough and also too sweaty skin. Also the rhythms of life, the climate, are unusual. What would we see if we are confronted with such a sight? Lovelock said, maybe mankind will be dying soon but Gaia the earth will survive. But I am not sure, if such living being will survive. Maybe natural life by and by will extinguish at all, possibly Gaia is not an immortal goddess and will die.

Mankind seems to me like an alcoholic to whom the doctor said he should change his life or he will die soon, but the alcoholic cannot change the way he is used live.

Philosophy is the era where all necessary thinking of mankind is bundled up. If this sentence is true, you have to draw the conclusion from all this, that the most important part of philosophy is ethics, and all sciences should be seen depending on ethical measures. Especially economy depends on ethics, because it is the most important science of acting. Economy is the most considerable case of applied ethics. It's a great pity that economy mostly is thought to be a science that is independent from ethics.

Ethics is the science of the rules of just doing by men, similar to logics that are the science of the rules of just thinking. Immanuel Kant and his *Metaphysics of Morals* and his *Critique of Practical Reason* show the importance of ethics. Aristotle said one of the main regions of science is practical philosophy, that means ethics, and economy is a part of it.

It is clear that men are tending to illogical thoughts as well as to unethical actions. Ethics are necessary as well as logics. Infringement of ethics rules is as bad as infringement of logical rules. The term sustainability is rising from the practical experience of human be-

ings that acting right is worthwhile in the long term and acting wrong bears bad consequences.

If we go to treat practical questions it is necessary to empirical facts, too, and the empirical facts are changing. We see that resources are decreasing. But yet the supply of economic goods is increasing. It seems, that economics as a science did not note this fact. If it would have noted this fact, the paradigms should have been changed. Economics calculates as if nothing would have changed.

The new term that shows how responsibility has to be it times of growing lack of natural resources is sustainability. But the consequences in practical life are not yet developed. You should produce only in a way that serves the earth for coming generations. Earth must not perish. Modern men often are thinking not to be responsible to god; therefore it seems to be more convincing to say that we are responsible for our own descendants. Former generations have said they are doing all for their descendants and they transformed blooming meadows to flourishing but sterile factory landscapes. If we comprehend that, we have to ask the question if it is enough for us, to think only to be responsible for coming generations. Many modern people say they are responsible for the coming generation and they avoid getting children because it is not responsible to let children live in this awful world our generation is leaving back. The children will get the task to cure the illness of ecology, that our generation is going to produce. May be it is a reason why more and more people prefer to have no partner or a partner of the same sex. People don't like to leave their own children in this more and more spoiled earth. But really all human beings are bound to get more responsibility for the future and for the natural life in general.

But the question is not how to save the earth only for the coming generation. The question is how to save the life of nature at all. The future will turn out how much we are willing and able to show sincere responsibility to god, to nature and simultaneously to the coming generations.

A philosopher has to see all questions from different points. But not every question is worth to be asked. Some people ask, but we shouldn't really think in the sarcastic way to ask the question: Why did god or the nature make me able to do what I am doing – why should I be responsible as long as I don't have made me able to produce damages on earth? I am a bad construction but I am not responsible to be such a bad construction; it's not my fault.

Some people have the opinion that life is only worth when all is best, but if it is not more to prefer suicide. This is second point. Some people make suicide in a hidden way, by car racing, by drinking a lot of whisky and so on. May be that people who have such a way of thinking get the chief position on earth and they are leading us furtively or unconsciously to a collective suicide of manhood. May be the consumism is leading us to such an unconscious collective suicide of manhood. In German it is used often the word 'suicide by knife and fork'. Is this not a collective attitude of our time?

Philosophy has the task to combine aspects from different disciplines, but also to propose different and new points of view. I appeal to see economy from this point of view. We should not fall into resignation but we should improve our thoughts about our responsibility. He has to think in a collective way because economy also is running in a collective way.

We have to ask the most important question in life: What do we want really? Do we want the earth to be wasted? Is it really so important to have this or that if the existence of earth is in question? What about our climate? Is it really a minor matter if storms and fire and floods and so on are going to damage our earth?

Manhood is standing before a great decision today, the greatest decision within all history. This decision is more important than the other ones, that are important, too, like terrorism and war and all simple economy questions.

Economy and manhood in general is standing before the great decision for or against sustainability. Today nowhere we can see a really sufficient model, but we see some models, organisations and ideas like Global Ethos, Corporate Social Responsibility (SCR), Eco-social Economy, Global Marshall Plan and so on, going the right way. There is a bit of hope for the future, but it will not succeed before ethics and philosophy can give reasons for it and have shown the deeper sense of it. The future should bring out the best way to live in accordance with the nature, but we must not wait, we have to do all what is in our hand to change the way we are going now when treating the world, because definitely we don't have any second world after we would destroy the one where we are living today.

*Ukachukwu Chris Manus:*

*The separation of Morality from Politics: The Consequences of the Machiavel-  
lian Credo in Nigeria (1960 – 2006)*

The paper examines how the separation between morality and politics has been driven in the Nigerian polity since the inception of Western-type democracy from the First Republic to date. As a paper that had kicked off discussion on the floor of the interest group on Ethics in International Relations from the African Perspective”, at the Oxford conference, it attempted to underline the fact that the separation of morality from politics as has been the case in Nigeria offered the group the opportunity to appraise how political corruption, namely the misuse of public power and status subvert the equilibrium of the international moral order. This is because such an order is predicated on a rational understanding of a corpus of recognized and accepted moral standards or codes that ought to govern the interactions between peoples of all sovereign nations.

#### Methodology

A nation-state whose political class still operates with the “the mentality of winner takes all, of going to politics to make money, not to serve the people”<sup>1</sup> requires to be submitted to a critical review of its peoples’ moral location. The purpose is to proffer ways and means to re-position the polity so that a liberative option for the masses can be brokered. This cannot be achieved without recourse to the moral analysis method; one deeply rooted in the normative and value-judgment approach that calls for scrutiny of all the components of the nation’s state system and its democratic institutions viz. political parties, electoral system, representative bodies and such other significant values like the rule of law, due process and accountability. The approach will help raise crucial ethical questions on Nigerian politics and the conduct of its politicians; namely how public office-bearers have managed with responsibility the Nigeria statecraft and sovereignty to serve the basic rights and needs of Nigerians and how they have promoted Nigerian peoples’ chances to live a life of dignity as bearers of the imago Dei in conditions of justice, well-being, freedom and peace. And most importantly the question: to what extent has Nigeria obliged itself to conduct its political business in accordance with moral principles that ought to govern relations between Nigeria and among other nations requires serious moral reflections. By this way, the method offers a determined effort to investigate and evaluate the political history and economic order in Nigeria. It examines the immoral conduct of past political scoundrels and serial abuses of high public officers in order to lay it open for transformation in the light of God’s liberating sense of justice as has been enunciated in Christian morality and amplified in the Social Justice pronouncements of the Christian Churches. The paper concludes, among other things, that transformative moral actions inspired by Christian faith and morals should be let to address the social political conditions from which politi-

<sup>1</sup> Onaiyekan, 2005, “We Need a Change to Move Forward”, TELL No. 6, February 7, p. 30.

cal ineptitude, corruption, graft and bad governance have held sway in Nigeria. I agree that faith and good intentions alone are not enough in the struggle towards the re-creation of the Nigerian polity into a better and just society. My adoption of the moral analysis in this paper is predicated on the fact that for now, we live in a state which many media critics describe as a “post Christian era”. In other words, Nigeria is a country where the social political culture appears to be founded on the slogan “the end justifies the means” in its hard core Machiavellian principle.

#### The Machiavellian Credo

It was Nicolò Machiavelli (1459-1527), the Italian political thinker, “theorist and an artist of war”<sup>2</sup> who originated the idea of the separation of morality from politics against Western philosophical tradition and culture in which politics and morality had long been held inseparable. Not only did Machiavelli make a distinction between morality and politics, he actually propounded the bizarre theory of the removal of morality from all political practices. Machiavelli had advised rulers of his time to disregard morality if they wanted to be successful politicians or rulers. His book, *Il Principe* (The Prince, 1513-1514), a treatise in 26 chapters, is, according to Christian Gauss, “a concise manual, and a handbook for those who would acquire or increase their political power”<sup>3</sup>. Machiavelli portrays “with artistic power” the figure of the prince, resolved without any scruple whatever to attain his end. Thus the book is laced with the theory that the essential objective of politics is the will to achieve power that has success as its ultimate goal. For him, the ruler must try to grab power by all means, fair or foul and when power is thus achieved, every means both hook and crook must be used to retain it in order to attain success. According to him, Therefore it is necessary for a prince, who wishes to maintain himself, (in power) to learn how not to be good, and to use this knowledge and not to use it, according to the necessity of the case. It is well that when the act accuses him, the result should excuse him; and when the result is good, it will always absolve him from blame. Nor need he care about incurring censure for such vices, without which the preservation of his State may be difficult.<sup>4</sup> To keep to this ambition, all moral and religious considerations must be jettisoned from the polity because men are wicked and corrupt. In other words, the ruler must simply ignore morality and use immoral means to ensure that she/he succeeds in the end. For, if he commits himself to moral principles, the principles may lead him to ruin. In its most offending terms, he advises: And yet he must not mind incurring the scandal of those vices, without which it would be difficult to save the state, for if one considers well, it would be found that some things which seem virtues would, if followed, lead to one’s ruin, and some others which appear vices result in one’s greater security and well-being.<sup>5</sup>

For Machiavelli, politics is therefore the body of practical rules and immutable laws that have to be applied coldly in order to obtain and to consolidate power to affirm one’s own

<sup>2</sup> Sciacca, M.F. 1967, “Machiavelli, Niccolò”, in *New Catholic Encyclopedia*, Vol. IX, Washington, The Catholic University of America Press, p. 31-32.

<sup>3</sup> Niccolò Machiavelli, 1952, *The Prince: The Famous Analysis of Statesmanship and Power*, New York, Mentor Books, ET. by The New American Library of World Literature, p. 8.

<sup>4</sup> Machiavelli, *The Prince*, Chap. 15, p. 84.

<sup>5</sup> Machiavelli, *The Prince*, Chap 15, p. 85.

will when in power.<sup>6</sup> It is in this light that a Nigerian philosopher, Prof. Joseph Omogbe opines that, for Machiavelli, the ultimate goal of politics is to grab power for “once one has succeeded in doing this, any means used to achieve it is justified, and all men will praise and hail” the grabber.<sup>7</sup> Archbishop Oneiyan alerts us that in Nigeria, “People do all they can to capture power so that they can have access to money”.<sup>8</sup> The power-grabber must ensure that he succeeds as success is very crucial and the standard with which every political programme is judged. In sum, I dare say that what the Italian political theorist had opined, was that the political candidate should be very shrewd, extra prudent, practical and swift in decision taking. Machiavelli advised that the ruler could go violent and brutal but must carry out such actions in a fast and shrewd manner in order to achieve his aim. A ruler does not need to be a morally upright person and does not need to be honest or even to be humane, talk of being religious, compassionate and accountable to any body. He must however display all moral qualities as pretence to realize his ambitions.<sup>9</sup>

#### Nigeria as the Context of Discussion

After ninety-nine years of colonial rule (1861-1960), Nigeria gained independence from Britain.<sup>10</sup> The Founding Fathers of the nation had put up a gallant struggle to decolonize, organize and to weld Nigeria’s multi-ethnic peoples and their desperate aspirations into a politically viable nation. The scenario of Nigeria’s chequered political history is portrayable like this: 1963 – 1966 - The First Republic under Tafawa Balewa of the NPC Party. In 1964, Nigeria conducted her First General Elections, four years after the exit of colonial rule. Then came politics of bitterness. Protests and violence trailed the election results. The opposition was intimidated and threatened. Serious political unrest in the Western part of Nigeria instigated by the insensibility, silence and immoral actions of the national leaders and barefaced rigging of the 1965 Western Region Elections promoted chaos (operation wetie).<sup>11</sup> This imbroglio led to the 15<sup>th</sup> January 1966 coup d’etat.<sup>12</sup> From this time, the military held on to power for thirteen solid years: from January to July 1966, the First Military ruler, Gen. Johnson Aguiyi Ironsi.<sup>13</sup> was ensconced into the Office of the Head of State. In 1966 – 1975, Gen. Yakubu Gowon. In 1975 – 1976, Gen. Muritala Mohammed and in 1976 – 1979, Gen. Olusegun Obasanjo. After the 1983 elections, there occurred widespread protests, counter accusations and attacks of the opposition. Much instability was generated across the country. In spite of the electoral flaws, the so-called election victors claimed that it was a landslide win for the ruling party, the National Party of Nigeria

<sup>6</sup> Sciacca, art.cit., p. 33.

<sup>7</sup> Omogbe, op.cit., p. 128.

<sup>8</sup> Onaiyekan, “The Church and the State”, p.27.

<sup>9</sup> While J. - M. Okpalaonwuka, 1997, *Morality and Politics in Nigeria: Moral Integration in Nigeria as a Way Out*, European University Studies XXIII, Frankfurt/Main, Peter Lang, p. 94, believes that “Corruption derives from and has its existence in our socio-political and economic system”, my current research reveals that the root cause of corruption is due to the faulty conception of political power à la Machiavellian principle, whether known or not, by Nigerian public officer holders.

<sup>10</sup> Ibid. pp. 21-25.

<sup>11</sup> E. Otoghagua, 1960-2003: *Profile of Nigeria Heads of State, Achievements and Failures*, 1999. p.31.

<sup>12</sup> Akinola, R. 2000, *Fellow Countrymen: The Story of Coup d’etat in Nigeria*, p. 17.

(NPN) for Alhaji Shehu Shagari (NPN). From December 31, 1983, again, the military struck against the Shagari government and held on to power for another 16 years. From 1983 – 1985: Gen. Muhammadu Buhari, 1985-1993, Gen Ibrahim Babaginda, 1993-1998, Gen Sani Abacha, and 1998-1999, Gen Abdulsalam Abubakar. In 1993, the Third Republic came on board with civilian governors and a democratically elected members of the National Assembly at both the States and Federal levels under the SDP. This government was so quickly aborted that in fact one say that there was no civilian President. Chief Moshood Abiola had struggled to invest himself after a clearly fair and free election of June 12. The events of that year were tragic. Interim Government led by Chief Ernest Shonekan was foisted on the people. In 1999, Chief Olusegun Obasanjo again came on board from prison (under the PDP) as a civilian Head of State amidst a legal context between him and Chief Olu Falae, the compromise candidate of the All Peoples Party (APP) and the Alliance for democracy AD at the appellate court before Chief Olu Falae could concede defeat on persuasion rather than on legal compulsion. In 2003, there had occurred another volatile period in the history of Nigeria as the political gladiators and aspirants to second term in office had unleashed violence on the polity. The Independent National Electoral Commission (INEC) could not institute due process to help it manage the situation effectively and could not conduct any serious elections in many areas of the country. There were known evidence of multiple voting, rigging people in and out. Consequently fraud permeated the entire electoral process. Chief Obasanjo's victory was challenged by three prominent candidates: Chief Emeka Odumegwu Ojukwu, Alhaji Mamman Yusuf and Muhammadu Buhari. Chief Olusegun Obasanjo was proclaimed winner, his second term in office under the banner of the PDP. In May, 2006, the PDP schemed to foist on the polity a "tenure elongation" from 2007 election year, alias the "Third Term Agenda" which foundered on the rock of Nigerian peoples' public opinion and patriotism. In all these, there occurred ruthless elimination and intimidation of political opponents. The associated violence became a national pastime. Events of this nature since the post-independence years indicate that the Nigerian political system both republican and militaristic had no doubt been grounded on and backed up by the Machiavellian principle of the grab power "by fair or by foul means", hence politics with bitterness. Our political class had, by their lifestyles, created the impression that politics and morality are not good bed-fellows. They have continued to perpetuate the erroneous belief that politics is a "dirty game", and by their actions suggest that political activities involve immoral actions. The political elites of our nation believe that by removing morality from politics they can freely resort to immoral means to achieve their ends. They have inherited,<sup>14</sup> defend and apply to themselves "a constitutional license called immunity clause for executive office holders to commit serious crimes and then walk away".<sup>15</sup> Their immature and unscrupulous political advisers have fed them with a warped perception of the Machiavellian idea that the ulti-

<sup>14</sup> As far back as 1960, the year of our political independence, the Nigerian Roman Catholic Hierarchy essentially made up of foreign missionary Bishops and clerics had, in a joint pastoral letter, warned the new leaders of the evils of bribery, nepotism and corruption. Cf. The Catholic Church in an Independent Nigeria: A Joint Pastoral Letter of the Nigerian Hierarchy, October 1<sup>st</sup>, 1960, p. 11 for the text quoted by Okpalaonwuka, *Morality and Politics in Nigeria*, and p. 95.

<sup>15</sup> Nosa Igiebor, 2006, "Ending the Gravy Train", TELL, March 6, p. 5.

mate goal in playing politics is to grab power and keep it by all means fair and foul. The political culture in Nigeria has been patterned along the thinking that a good end justifies an evil means and most political aspirants believe that there is nothing wrong in using immoral means to grab political power and to hold fast to it. These principles explain to a large extent what I have elsewhere argued as the reason for Nigerian leaders' inveterate belief in brute force, mudslinging and character assignments as well as internecine struggle for power.<sup>16</sup> Oftentimes their conduct have culminated into the wanton disregard for human life or had always resulted in the recurrent military coup d' etats and extra judicial killings during electoral campaigns across the country.

#### Governance in Contemporary Nigeria

It has been observed that Nigeria, the largest and most populous nation in black Africa and the world is "the most corrupt and possibly the crown sultan of mismanagement and of accountability".<sup>17</sup> In a recent OPINION Column, the TELL Magazine corroborates this situation: In Nigeria, corruption walks on multiple legs, and has become the notorious prefix for the country's name. You can literally sniff it in the air and see it anywhere you look. It is the new religion, our national spiritual obsession. In our warped perception of celestial hierarchy, we place it high even above God. This is why we mock the Almighty when we thank him for 'granting us the opportunity to loot'. But we don't call it loot; it is 'God's abundant blessings upon us'. Such moral dissembling reflects our special genius to always square the palpably wrong with what is right.<sup>18</sup> Added to corruption, Nigerians who have secured electoral offices at both the local government, state and the Federal levels of government have not impressed the public from whom they derive their power with a good sense of accountability. Instead they pretend to be honest, humane and philanthropic. They make use of pretence to achieve their aim of self-aggrandizement at the expense of the electorate and their constituents. In tune with Western democracy, the Constitution of the Federal Republic of Nigeria prescribes that Nigeria is a state based on the principles of democracy and social justice which implies that: (a) sovereignty belongs to the people of Nigeria from whom government through the constitution derives all its powers, (b) the security and welfare of the people is the primary purpose of government and (c) the participation by the people in their government is to be ensured in accordance with the provision of the constitution.<sup>19</sup> Apart from (a), official corruption has continued to hinder the practice of (b) and (c). I wish to agree with Bruce Baker that when the African officials are elected into office, the task of "ensuring their accountability to citizens once in office is another thing".<sup>20</sup> On this evil, Professor Claude Ake, had, by 2001, lamented: "accountability to the governed is weak and the rule of law is sometimes nominal.

<sup>16</sup> C.U. Manus, 1989, "New Testament Theological Foundations for Christian Contribution to Politics in Nigeria", Bulletin of Ecumenical Theology, Vol. 2, Enugu, Nigeria, pp. 7-30.

<sup>17</sup> No Author, 2005, "The African Community in the US and Around the World" in Transatlantic Times, January/February, p. 23.

<sup>18</sup> Igiebor, art.cit.

<sup>19</sup> Section 14 of the 1999 Constitution, Decree No. 24 of the 1999, section 6 (6).

<sup>20</sup> Baker B. 2002, "The Unaccountable State", in Tunde Zack Williams, (ed.), Africa in Crisis, Pluto Press, London, p. 82.

More often than not, people are voting without choosing”.<sup>21</sup> According to two British political theorists, it is known that in the United Kingdom, “the Government is accountable to parliament and could in theory be ejected at any time if it oversteps or abuses its powers”.<sup>22</sup> Like St. Augustine’s pristine declaration on justice, if morality, honesty, and public accountability are removed from politics, government would be nothing but a gang of thieves and treasury looters. Once again, J.I. Omoregbe deposes, “any government made up of dishonest and fraudulent people whose main purpose of coming to government is to enrich themselves is not a government but a gang of thieves and treasury looters”.<sup>23</sup> But in Nigeria, ethnic loyalties, party loyalties, in short, varying degrees of primordial and semi autonomous groups, who generally hold themselves out as ‘ethnic militias’ would readily provide protective shields to officials and politicians from their regions or villages accused of fraudulent behavior. Even though Nigeria is practicing a multiparty democracy in form but in substance, its successive leadership has haughtily been dictatorial.<sup>24</sup> Rightly put, Archbishop Onaiyekan states “ what obtains today is nothing more than dictatorial rule dressed in the elegant plumage of democracy”<sup>25</sup> According to Professor Osita Eze, “opposition parties are a luxury African countries cannot afford”<sup>26</sup>; indeed, one the ruling party in Nigeria can ill afford to tolerate. The members of the Association of Anti-Third Term legislators who uncovered the grand plan by the Pro-Third Term legislators to scuttle “the Standing Rule of the Senate to pave the way for the inclusion of tenure extension in the proposed constitution” amendment bid in Nigeria in mid May 2006 have still not found grace with the current polity.<sup>27</sup> Political persecution is a ready-at-hand weapon often fashioned against the opposition.

#### Consequences on the Nigerian Polity

The monumental effect of the experiment with the Machiavellian principle by the political elites since independence in Nigeria has been far-reaching. In the belief that the end justifies the means, key players at our electoral processes have never allowed it be free and fair except that which Chief Moshood Abiola claimed in 1993. Massive rigging and various electoral malpractices and manipulations have bedeviled all elections in Nigeria. As known elsewhere in Africa, “elections have mainly been a farce and blatant manipulation of votes has been the major event”.<sup>28</sup> Real grassroots democracy has eluded Nigerians for much too long. The commitment of the political class and their godfathers to the Machiavellian principle has stunted democratic space and development. Those who have grabbed power talk glibly of ‘dividends of democracy’ but all that is mere rhetoric as the people still

<sup>21</sup> Ake, C. 2001, *Democracy and Development in Africa*, Spectrum Books, Ibadan, p. 137.

<sup>22</sup> See, Shorts, E. & de Than, C. 1998, *Civil Liberties, Legal Principles of Individual Freedom*, London, Sweet/Maxwell, and p. 197.

<sup>23</sup> Omoregbe, op.cit. p. 127.

<sup>24</sup> Note that Nigeria is one of the 15 African nations that are ruled by a former military general. See, BBC NEWS, Friday, 30 June 2006.

<sup>25</sup> Onaiyekan, *The Church and the State*, p. 27.

<sup>26</sup> Osita Eze, 1984, *Human Rights*, Macmillan, Lagos, p. 57.

<sup>27</sup> S. J. Murray, S. Akpe & J. Alechenu, 2006, “Lawmakers uncover plan to change Senate rules”, *The Punch*, Tuesday, May 16, Vol. 17, No. 19, p. 1.

<sup>28</sup> Baker, “The Unaccountable State”, p. 81.

wallow in abject poverty, suffer decimating diseases, ruined by pitiable unemployment and regrettable illiteracy in the midst of plenty of natural and abundant human resources. The notion that the end justifies the means had, since 1966, destroyed the credibility of constitutional democracy among Nigerians and has lured the military into politics through coups and counter-coups. All claim to have taken over government to “salvage” the nation but end up salvaging their own pockets and those of their cronies. That their presence still lives with us has poignantly been penned down by G. A. Akinola: “The country is still controlled by the same ex-military elite and their civilian associates, now fused into a neo-class of rapacious and power-hungry plutocrats”.<sup>29</sup> The sum total of the result of the experiment with the Machiavellian principle is the culture of the ubiquitous political corruption by both the civilian and military politicians and by extension the civil service. It is their sole aim to grabbing power by fair and foul means in order to accumulate wealth for themselves.<sup>30</sup> To conclude this section, I wish to argue that it has become obvious that the removal of morality from politics had expunged with it honesty and accountability. Joseph Omoregbe auspiciously amplifies this situation when he attests that “ Our governments have been made up of national treasury looters, men who came to politics primarily, or even solely, to enrich themselves by looting the national treasury without qualm of conscience”<sup>31</sup>. This cankerworm has continued to thrive as the ambition of most Nigerian rulers. What Omoregbe had voiced out in 1993, Nosa Igiebor still re-iterates as happening in 2006:

most of the governors have converted their state treasuries into their private accounts, which they can raid at, will anytime. They have shown total disdain for accountability because virtually all of them won election illegitimately. So, why bother about the people who didn’t vote for them in the first place.<sup>32</sup>

Does the scenario not accord with the Augustinian credo on justice so that *mutatis mutandis*, one can agree that in Nigeria, “remove morality from politics, and what is government but a gang of thieves and treasury looters on a large scale”.

### Conclusion

The thoughts passionately articulated and expressed in this paper continue to live with us to this day in Nigeria. It is still true that honesty and accountability are thrown out with morality from politics. The net result is that Nigeria remains a beggar nation. In view of the agonizing frustration of failed expectations, the question that challenges a moral theologian from Nigeria or any one who knows well the Nigerian political landscape is to recourse to a liberative theology of non-violence – *ahimsa* – in its genuine Jainism’s practical ethos that has helped the world bodies enunciate their many non-violent and peace policies. Here, I agree with Charles Davis that Christian ethics, as “religion’s social action must

<sup>29</sup> G.A. Akinola, 2006, “Towards a post-Obasanjo Democratic Nigeria”, *The Guardian*, Monday, July 24, p. 65.

<sup>30</sup> Omoregbe, p. 132.

<sup>31</sup> *Ibid.*

<sup>32</sup> Igiebor, *art.cit.*

find expression in non-violent forms”.<sup>33</sup> Anti-graft war must be fought seriously at all levels because corruption has, in the present time, changed directions, shapes and colors. The existing instrument re-enforced by the Obasanjo administration,<sup>34</sup> the Economic and Financial Crimes Commission (EFCC) under Mallam Nuhu Ribadu<sup>35</sup> must be given every moral support to continue to fight corruption in the nation instead of allowing public office holders to consolidate the evil. Nigerians want free and fair elections, come 2007. Our primaries should no longer be determined by how much political muscle-flexing and who and who political aspirants know or how much volumes of “Ghana Must Go” bags of cash their cronies can expend on the nights before the primaries. Political ethicists, if we are people to be seriously reckoned with, must advocate the emergence of an electoral revolution to guarantee the survival of democracy in its original definition by Abraham Lincoln as ‘the government of the people for the people by the people’.<sup>36</sup> We must redirect the populace to exercise their franchise so that by popular consensus the cancer of ‘widespread organized rigging of elections’ and other fraudulent electoral practices can be excised from the polity.<sup>37</sup> Political ethics cannot but be used to instill in the electorate the awareness of the transparent process of fighting the evil of rigged elections and the attendant corruption which, had for long been the bane of the Nigerian society. Fundamental political ethics should educate the populace that what counts is not the nativity of aspirants to political office but persons who have the qualities of good leadership and who have stood the test of time and have proven themselves in their various endeavors.

<sup>33</sup> Davis, Religion and the Making of Society, p- 47; also see, TELL, No 6, February 7, 2005, p. 26 where Wilson Uwujaren in an a Cover Interview:” The Church and the Sate” with the Catholic Archbishop of Abuja, His Grace, John Olorunfemi Onaiyekan have spoken of the “the social reformatory power of religion” from the pulpit to decry the corrupt “process of social and political engineering” in Nigeria.

<sup>34</sup> For how an Act signed into Law on 13 June, 2000, see, Ocheje, P. 2000, “Law and Social Change: A Socio-legal analysis of Nigeria’s Corrupt Practices and other Related Offences Act”, Journal of African Law, Vol 45, No. 23, pp. 173-195.

<sup>35</sup> It is noteworthy that the EFCC Act of 2002 was re-enacted in 2004.

<sup>36</sup> Odenigbo, E. 2003, “Peoples Destruction Party and Corrupt Democracy”, THE LEADER, CHRISTMAS EDITION, p. 8.

<sup>37</sup> A discussant at the Conference, Dr. Angela Roothaan of the University of Amsterdam, The Netherlands, asked if, in the midst of these unwholesome political ills and disregard for accountability that arise from practicing unworkable Western type democracy, could Nigerians not institute an original African art of governance where the common good could be respected? My response was that such an arrangement would amount to nothing but potentocracy as pre-colonial Africa was, except the Igbo and some few others who practiced a type of communitarian republicanism; nearly the rest of African ethnic peoples were ruled by kings and chiefs (the Obas – the Yoruba, Nigeria, the Kabaka – the Ganda, part of modern Uganda, the Reth - the Shilluk, part of modern Sudan and the Nkosi - Zulu in South Africa who were more often than not considered “the next after the gods” and thus were revered with awe, fear and such unquestionable obedience that denigrated the subject’s civility and rights. Cf. my 1993, Christ, the African King: New Testament Christology, Frankfurt/Main, Peter Lang.

*Mette Ebbesen,*

*Ethical and Legal Aspects of Embryonic Stem Cell Research – a European Perspective*

Introduction

The ethical issues in stem cell research depend on the source of the stem cells. Somatic stem cells originate from the umbilical cord or the spinal cord. The use of somatic stem cell for therapy raises the very same ethical issues as the other somatic medical interventions as for instance gene therapy and organ transplantation. Simplified, these ethical issues include informed consent (the principle of respect for autonomy), risk analysis (the principles of beneficence and nonmaleficence) and the question of who should be offered the treatment (the principle of justice). But the use of embryonic stem cells for tissue engineering and therapeutic cloning also raises some specific ethical issues. Embryonic stem cells are the first cell stages of a fertilised egg, which are harvested the first four to six days after the fertilisation. In most cases, human embryonic stem cell lines are derived from a culture of a pre-implantation embryo produced by in vitro fertilisation (IVF). These are mostly embryos in excess of those required for reproduction and donated by couples who have undergone IVF treatment. These embryos probably have the potential to develop into human beings. It is this developmental potentiality that marks them out as different from other cellular donations and which lies at the heart of the ethical sensitivities involved in embryonic stem cell research [1].

This paper aims to balance clear ethical discussion and sound science, therefore it takes its point of departure in a concrete example of embryonic stem cell research – tissue engineering. Next, the paper presents different answers to the question of what kind of protection embryonic stem cells deserve and it explores to what extent these answers are secular or religious. Furthermore, the paper describes how these arguments are reflected in the legislation of embryonic stem cell research in Europe. Lastly, this paper explores whether it is in accordance with the principles of a democratic society to base legislation on religious arguments.

Tissue Engineering – an example of embryonic stem cell research

Historically, synthetic materials have not served as adequate implants. For example, the current average lifetime of an orthopaedic implant, such as a hip, knee, ankle, etc., is only 15 years. Conventional materials, i.e. materials with constituent dimensions greater than 1 micron, do not invoke the proper cellular responses to regenerate tissue that would allow these devices to be successful for long periods of time. In contrast, nanophase materials may be a successful alternative, thanks to their ability to mimic the dimensions of the constituent components of natural tissues like proteins. Nanophase materials are defined as materials with constituent dimension less than 100 nm in at least one dimension. Materials investigated to date include nanophase ceramics, metals, polymers and composites. Data has also emerged suggesting that nanophase materials may be optimal materials for tissue engineering applications. This is not only due to their ability to simulate the dimen-

sions of the proteins that make up tissues, but also because of their higher reactivity to the protein interactions that control cell adhesion and, thereby, the ability to regenerate tissues [2].

Strategies in tissue engineering may be divided into the following two categories: 1) In vivo tissue engineering by cell injection and 2) Ex vivo tissue engineering by cell expansion on supporting material. Tissue engineering in vivo by cell transplantation is typically performed by intravenous administration of cells in suspension. The vision is that these cells will engraft in the organ (e.g. spleen or liver), proliferate extensively and reconstitute organ function [3]. If tissues are engineered ex vivo, cells are expanded in vitro on a supporting material that acts as a template for growth [4]. Autologous cells are preferred as source material for tissue engineering, since they will not evoke an immunologic response. These cells are often found within the organ itself, isolated, expanded in vitro and transplanted (injected) back into the patient. Limited cell engraftment and limited cell survival remain major problems with these techniques [3]. Furthermore, many patients with end-stage organ disease are unable to yield sufficient cells for expansion and transplantation. Since stem cells are pluripotent (they have the ability to differentiate into several cell types) and able to replicate indefinitely, they may be an alternate source of cells from which the desired organ can be derived. However, if the stem cells are allogeneic, their clinical application may be limited because they can be rejected by the patient's immune system. Therapeutic cloning may represent a way of producing cells which can differentiate into all cell types and replicate indefinitely while not being rejected by the immune system. Therapeutic cloning entails the isolation of embryonic stem cells from an embryo created by transplantation of a nucleus from a somatic cell to an enucleated egg. The resulting *in vitro* expanded stem cells are perfectly matched to the patient's immune system. But obtaining, purifying and expanding stem cell cultures and the control of permanent differentiation processes are issues that still need to be worked out [5, 6].

Many parenchymal cells are anchorage-dependent and require specific environments that often include the presence of a supporting material to act as a template for growth. Therefore both in vitro expansions of cells for cell injection and ex vivo tissue engineering need suitable substrates for adhesion and proliferation. These scaffolds require mechanical strength, interconnected channels and controlled porosity or pore distribution to allow diffusion of nutrients to the transplanted cells [4]. For ex vivo tissue engineering, cells may be seeded on to polymer matrices, expanded in vitro and then implanted. Ultimately, the cells become incorporated into the tissue or organ of implantation as the polymer biodegrades. The polymer serves as a scaffold or a template to guide cell organisation and growth. Some of the materials used as scaffolds are synthetic polymers (polymers of glycolic acid) or natural material such as collagen [6].

Experimental efforts are currently underway for tissue engineering involving virtually every type of tissue and every organ of the human body. Various tissues are at different stages of development [5]. For instance, in the field of liver therapies, hepatocytes have been incorporated into biocompatible support materials to make an implantable device which has been tested in rat models. The biocompatible material promotes the cell attachment, survival and function of the transplanted hepatocytes. Furthermore, initial studies in animal models have demonstrated the feasibility of the survival of dissociated cells delivered by vein injection or directly injected into the spleen and liver. However, cell

engraftment and survival are limited [3]. So, at present, cell transplantation and implantable constructs have only limited clinical use [3, 6, 7]. An ethical analysis of tissue engineering in general requires a risk analysis and that informed consent should be obtained from both the cell-donor and the participant in the clinical trial [8]. But the use of embryonic stem cells for tissue engineering and therapeutic cloning also raises some specific ethical issues.

#### Ethical issues in embryonic stem cell research

As indicated previously, in most cases, human embryonic stem cell lines are derived from a culture of a pre-implantation embryo produced by in vitro fertilisation (IVF). These are mostly embryos in excess of those required for reproduction and donated by couples who have undergone IVF treatment. These embryos probably have the potential to develop into human beings. It is this developmental potentiality that marks them out as different from other cellular donations [9]. The main issue of an ethical analysis of embryonic stem cell research is what status human embryonic stem cells deserve compared to new-born children. This question arises from the fact that development from embryo (fertilisation) to human being is a continuous process.

#### Conservative position

Some would say that human life has the status of a potential person from conception. This means that embryonic stem cells have moral status or dignity and that they should not be destroyed in research for the sake of basic science or for the sake of developing new therapies. Hence, according to the conservative view, human life has an inherent absolute value from the fertilisation and embryonic stem cells deserve absolute protection.

#### Liberal position

A more liberal view would say that human embryos have an important moral status or dignity only after their biological individuality has been established and only after the completion of implantation. On this view, we can defend research into embryonic stem cells, which offers great promise for basic science in the short term and may help to provide new approaches to therapy in the long term. The liberal position justifies human worth in the personality and claims that human worth must be graduated in accordance with the development of the embryo from potential human being to actual human being. Hence, the protection of human life is relative.

These two positions represent different interpretations of human life. The conservative position justifies human worth in God and claims that human life must be protected from its beginning, meaning the time of the fertilisation. Hence, human life has an inherent absolute value and deserves absolute protection. The liberal position justifies human worth in the personality and claims that human worth must be graduated in accordance with the development of the embryo from potential human being to actual human being. Hence, the protection of human life is relative. This means that embryonic stem cell research as a means of developing treatments for serious diseases can be valued higher than the value of the incipient human life. Below the conservative and the liberal positions are exemplified by a Christian and a humanistic interpretation of human life, respectively.

#### The status of the embryo – a Christian view

It is not easy to make a clear and distinct definition of a specific Christian interpretation of human life. However, according to bioethicist Kees van Kooten Niekerk, it is “impor-

tant for every Christian worldview that world and human being are seen in relation to God as Creator and Redeemer, and that Jesus is seen as God's central or decisive revelation or manifestation" [10]. It is part of creation that the human being is created in the image of God [11]. As the human being is created in God's image it has a special position. This special position is emphasised in the statement that the human being should rule the earth [12]. From the perspective of the human being as created in the image of God follows that humans have absolute worth. According to Christianity, the human being has a fundamental dignity given with its proper existence. Thus, the dignity of the human being is independent of specific qualities and a graduation of human worth in relation to qualities like e.g. reason is excluded [13]. Therefore, the majority of Christian arguing bioethicists in the Nordic countries reject a graduation of the human worth in relation to the developing embryo. They claim that the embryo has an intrinsic human worth, since human life begins at the conception. From human worth it is inferred that the human being has a right to life [14]. Thus, the Christian position embeds human worth in God and asserts that embryonic stem cells deserve absolute protection.

It seems difficult to put forward non-religious arguments supporting the absolute protection of human life. Bioethicist Svend Andersen emphasises that "It may be that the acknowledgement of the principle of the equal worth of all human beings is in fact one of the main things that clearly distinguishes a religious, i.e. Christian ethics from a secular ethics. However, many non-Christians are likely to find the principle convincing based on an intuitive opinion that there are certain things that 'cannot be done to a human being', disregarding its qualities, its condition. But it may not be possible to back this intuition-based opinion up by a generally convincing argument" [15].

The status of the embryo – a humanistic view

As is the case for a Christian view of humanity, it is also difficult to define a specific definition of a humanistic view of human life. However, often a humanistic view of humanity perceives reason as the unique quality of the human being by which it is capable of forming its life and its environment. Freedom is a central concept and the human being is considered free since it can induce norms and laws upon itself [16]. The humanistic view of humanity sees the human being as a person or independent individual and justifies human worth in these qualities. Self-consciousness and independence are emphasised as specific human qualities. In bioethics discussions, the question remains whether the humanistic view of human worth can be applied to unborn children, as these cannot be considered individual persons. The concern is here the worth of the human embryo or the foetus in so far as it is considered as a potential person and to the extent that there is a continuum from the potential person to the actual person. The point is that the potential person is not the actual person and therefore it does not possess an equal amount of dignity. Hence, the humanistic view of humanity explains human worth by personality and claims on this basis that the human worth must be graduated in relation to the development of the foetus [17]. According to a humanistic view of humanity, embryonic stem cells demand relative protection and embryonic stem cell research as a potential means of developing new treatments of serious diseases may in special cases be valued higher than the human worth of the beginning life.

Some European countries base their legislation on religious arguments

Firstly, this section describes how the two different views of humanity described above are reflected in the legislation of embryonic stem cell research in Europe. Lastly, the section investigates whether it is in accordance with the fundamental principles of a democratic society to base legislation on religious arguments.

The conservative view, which holds that human life should be protected from conception, i.e. the protection is absolute, is represented in the regulation of embryonic stem cell research in the following countries: Ireland, Italy, Norway and Austria. In these countries, research into embryonic stem cells is not allowed [18]. Since the conservative position justifies human worth in God and claims that human life must be protected from its beginning, these countries base their legislation on religious arguments.

The liberal view which holds that human worth must be graduated in accordance with the development of the foetus, i.e. protection of human life is relative, is represented in the regulation of embryonic stem cell research in the following countries: Belgium, Great Britain and Sweden. In these countries research is allowed into embryonic stem cells left over from IVF and embryonic stem cells derived for research. Denmark, Finland, Greece, Holland, Spain and Hungary represent a middle position; in these countries research is only allowed into embryonic stem cells left over from IVF [18]. Since the liberal position justifies human worth in the personality and claims that human worth must be graduated in accordance with the development of the embryo from potential human being to actual human being, which is in accordance with a humanistic interpretation of life, these countries do not base their legislation on religious arguments.

When discussing the legislation of bioethical issues, it is important to distinguish between personal ethics and ethics of society. Ethics of society has to do with the fundamental ethical principles that we find reasonable as the foundation of legislation. In contrast personal ethics has to do with personal decisions about personal life matters. The ethical principles that the legislation of society is based on may be different from the ethical principles that we defend in our personal life. For instance, a person may regard abortion as ethical wrong in her/his own life while at the same time accepting abortion to be every women's right. If we view embryonic stem cell research from the perspective of society, then legislation should be based on ethical principles consistent with the basic principles of a democratic society such as freedom of speech and freedom of beliefs (for instance freedom of religion). Therefore, it is not in accordance with the basic principles of a democratic society to base legislation upon a specific religious belief. Hence prohibition of embryonic stem cell research justified by a specific religious interpretation of human life is not acceptable in a democratic society since the state or a majority then imposes a minority a specific religious interpretation of human life.

#### Closing remarks

Given that ethical problems of embryonic stem cell research centre around the status of the embryo, there is a need to investigate whether there are ways of getting around the embryo. According to Evans [19] cells for transplantation therapies, as well as for in vitro studies, can be isolated from aborted fetuses, and embryonic germ cell lines (pluripotent stem cell cultures that are closely related to embryonic cell lines) can be isolated from 5-9-week-old foetal gonads. In these cases there is no potential for development at the time when the cells are derived.

One large paradox remains, however. Why have ethical issues in connection with embryonic stem cell research received so much attention compared to the ethics of discarded blastocysts left from IVF? We need to be consistent in these two cases. If embryonic stem cell research is ethically problematic because of the moral status of the embryo, then it is equally problematic to discard blastocysts left over from IVF.

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*Tatjana Kochetkova-Meira:*

*The Transatlantic Debate on Biotechnology: International legal order and justice*

### 1. Introduction

During the last two decades, an unexpected conflict over the use of biotechnology arose with strong transatlantic consequences. Both defenders and opponents of GM food are found on both sides of the Atlantic, however the defenders are prevalent on the American side, while the opponents have more success in Europe. In this conflict, the two world powers – the US and the EU – oppose each other in a debate about trade law, with each party claiming morality to be on its side.

The most obvious expression of this disagreement is the WTO debate on the use of genetically modified crops. This paper explores the relation between the legal and the ethical dimension in these debates, i. e. the tension between the international law and the justice. It contrasts the power dimension of the debate to its ethical implications.

The question is whether the WTO prefers formal law or actual justice (morality). Has a national culture a moral right to hinder certain technological development? Alternatively, has the country to obey international legal treaties even at costs to local values? Shall the national priorities (environmental and health) or international (developing countries) prevail? The analysis of GM dispute will be applied to the characteristics of the WTO itself as to what extent it is an impartial international legal body and to what extent it submits to the balance of power. When different interests pit parties against each other in heated polemics, one misses an impartial view that traces the motives, interests, and ethical stances of both sides. This paper aims to fill this gap.

### 2. The WTO dispute

The market potential of GM crops has caused strong disagreements between the US and the EU and put a strain on their trade. The official story opposes the US concern for the WTO agreement and 'fair trade rules' to the EU concern for the perils of GM crops. Many ecologist organisations claim that the US uses the WTO to defend its own economic interests (which is quite legitimate) and also that the US has oversimplified the matter by ignoring the many risks of genetic modification technology merely for the sake of economic influence (which can be ethically criticized).

On the other hand, the gentech business accuses the EU of hindering the progress of gentech in Europe: the US is getting ahead of the EU in this technology. The proponents of genmodification see it as a new technological revolution that can restructure society from top to bottom. They predict that genmodification, if allowed on a full scale, will cause a massive restructuring of major industries, health care, insurance, pharmaceuticals, as well as the energy, chemical business, and national defence (Kleinman D. L. and Kloppenburg, 1991). To evaluate these opposing claims (ecologists vs. gentech business), we will first consider the debate, and then we look at the relation between the political, the legal, and the ethical.

### 2.1 The complaint to the WTO

The World Trade Organisation (WTO) dispute started in May 2003, when the US, Canada and Argentina rose a complaint against the EU's *de facto* moratorium on genetically modified crops, which has, in the opinion of the three countries, violated the WTO agreements. The complaint against the EU includes three points:

The EU 'failed' to consider applications for approval of GM products, creating a '*de facto* moratorium' on GM crops.

This '*de facto* moratorium' violated WTO rules.

This 'moratorium' negatively affected GM technology.

In response, the WTO appointed a panel of trade experts to evaluate the complaint. The two public groups also took place in the debate, in the form of *Amicus curiae* ('friend of the court') briefs. One is a trans-Atlantic group of expert academics and the other is an international coalition of 15 public interest groups worldwide. Both groups support the EU and argue that each country has the right to establish its own standard assessment procedures for the hazards of GM crops.

### 2.2 The stages of the debate

The story of the GM debate up until today can be divided into three periods: the pre-moratorium (1996-1998); the moratorium (1998-2003), and the post-moratorium (from 2003 till today). In the pre-moratorium period (from 1996 to 1998), the first commercial releases of GM products in European supermarkets took place. They provoked strong public opposition, which led European governments to ban GM products. Since 1998, the major European countries have stopped importing GM crops. This five-year moratorium period was characterized by negotiations on traceability and labelling rules, tensions between the US and the European public, the situation being clearly unstable. The post-moratorium period began in 2003. By May 2003, the US administration under the guidance of George W. Bush made a complaint to the WTO, accompanied by Argentina and Canada. It was followed by a EU reaction, regretting the US decision to complain as unnecessary. This started a new stage: the dispute at the WTO that goes on until today.

On June 23, 2003, Bush criticized the EU moratorium on GM crops at a biotechnology conference in Washington: "Because of these artificial obstacles, many African nations avoid investing in biotechnology, worried that their products will be shut out of important European markets. For the sake of a continent threatened by famine, I urge the European governments to end their opposition to biotechnology" (2003). The anti-moratorium initiative belongs to the US government.

Against the background of the acute debate, the actual moratorium on GM crops in Europe was ended. According to Gene Watch, "the EU commission bowed to the pressure from the US" by authorising the import of Syngenta's GM maize line BT on May 19, 2004. Two months later the EC authorized the import of Monsanto's NK603.

### 2.3 The Interpretation of GM crops by the US and EC

The two opposing parties in this dispute are the Complainants (US, Canada, Argentina), and the Accused (the EC). The disagreement is presented in their written statements (US Submission, 2004; EU Submission, 2004). The two sides disagree on virtually everything, including terminology. The accusing side claims that the EC hindered safe and beneficial genetically modified crops out of irrational considerations or hostility to foreign trade. The EC rejects the entire accusation as based on misinterpretations, oversimplifications, and

the desire to impose American values to the rest of the world. Before we proceed to the legal side, let us consider the factual disagreements:

US interpretation	EU interpretation
Terminology: the products of recombinant DNA technology shall be called “biotech products”.	The products of recombinant DNA technology shall be called “genetically modified products” or “GM products”.
There is no difference between biotech products and their conventional counterparts in terms of risks to human health and environment.	There is an essential difference between GM products and their conventional counterparts in terms of their influence on environment and human health, with reference to the Cartagena Biosafety Protocol.
Biotech crops have only benefits (increased productivity, less pesticides, more nutrients in food).	GM products have benefits and risks, with the dangers being also demonstrated on farm trials.
The safety of biotech crops is scientifically proven and empirically verified.	There is no sufficient evidence of the safety of GM crops, but some negative effects are documented (biodiversity, i.e. monarch butterfly, allergic corn). There is scientific uncertainty about the safety of GM crops.

The disagreement about the terms for the products of recombinant DNA technology concerns their conceptualisation. The US “biotechnology products” is a general term for the products of recombinant DNA technology (in which genes from other species have been inserted) as well as for products that contain no alien DNA, like animals grown with food additives or plants grown with fertilisers. Since the dispute is specifically about the products of recombinant DNA technology, the EC insists on the term “genetically modified products” (GM products) or “genetically modified organisms” (GMO’s) to discriminate them from others.

Behind this terminological difference lies a disagreement on the nature of GMO’s. The US claims products of recombinant DNA technology to be identical to their conventional counterparts (equivalence). Contrary to this, the EC claims the GMO’s to be considered by the general public as potentially harmful to human health and the environment, which implies that they cannot be immediately treated as “like or equivalent” to their non-GMO counterparts (precautionary principle). The reason for this is that genetic modification,

contrary to conventional breeding practices, crosses the barriers between species, and transfers single or few genes instead of whole genomes. This qualitative difference was recognised in the Biosafety Protocol, stating, "The inherent characteristics of GMOs require them to be subject to rigorous scientific scrutiny so as to insure that they do not cause harm to the environment or human health, or cause socio-economic disruptions" (2000, 9).

#### 2.4 The views on the regulatory arrangements on GMs

The US submission argued that the EU has violated its own procedures for placing GM products on the market when it stopped approving new biotech products in October 1998. The US claims that this *de facto* moratorium has no legal or scientific justification. Apart from this general moratorium, the US mentioned member states' marketing bans (Austria, France, Germany, Italy, and Luxemburg) and the import ban issued by Greece. Moreover, it is claimed that bans have blocked exports from US and developing countries, and poor farmers did not get access to GM seed.

The argument implies that GM technology offers a possibility of safe and cheap agriculture, which would meet current world needs, and that EU's moratorium has hindered its application. In response, the EC argues that there was no general moratorium, but rather a process of creating new legislation with regard to the GM products. It shows also that the precautionary approach of the EC is consistent with the Biosafety Protocol as well as the standards of various international organisations.

The EC mentions that the US *laissez-faire* approach is only one among many options, such as the regulatory approach or complete ban on GM products, issued in some countries, like Tasmania or Australia. It presents the Biosafety Protocol as the major international convention with regard to GM products. Referring to the standards of treating GM products by Codex Alimentarius, World Health Organisation, and UN, EC follows the letter spirit of international agreements, which insist on GM being different from their conventional counterparts.

#### 2.5 The legal complaint of US and the response by the EU

The US presented a legal statement claiming that the EU 'moratorium' violated international law. In particular, it states that 'the general moratorium' as well as product-specific measures, marketing and import bans are all inconsistent with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and with the General Agreement on Tariffs and Trade 1994 (GATT 1994). Even though the EU measures with respect to GM crops fall under the SPS subject area — measures for protecting life or health from risks of pests, and diseases as well as risks arising from foods — they do not satisfy its requirements.

The EC's rebuttal of this complaint can be summarised as follows:

US Complaint	EC Rebuttal
The legal matter around GMOs has to be considered under SPS Agreement, and if the EC policy towards GMOs does not comply with SPS, it is illegal.	The measures of EC fall largely outside the scope of SPS Agreement. The legal matter around the GMOs has to be considered under Cartagena Protocol.
The accusation of a de facto moratorium and an undue delay 1998-2003.	There was no moratorium. Instead, a large number of regulatory steps were taken in 1998-2003.
The EU has to obey the WTO agreement with respect to GM crops.	The US cannot impose its values on other groups through the WTO.
The EU discriminated against foreign products.	The EU applied the same rules and criteria for foreign and domestic GM products.

The EU perspective on GMOs questions the assumptions that are taken for granted in the US submission – that the effects of GMOs are already known, and there is a single justified treatment for them. The EU counterargues that firstly, the health effects and long term consequences of GM products are only beginning to be known. Secondly, in the view of yet unclear perils and benefits of GM crops, each group may choose its own approach to them. The Complaint appears to be an attempt at imposing the US approach, and this power claim is rejected. As the EU submission states, “it is not the function of the WTO Agreement to allow one group of countries to impose its values on another group. Nor it is the function of the WTO Agreement to trump the other relevant rules of international law which permit — or even require — a precautionary approach” (EU Submission, 2004, 4).

The EU measures toward GMOs and GM food fall outside the scope of SPS agreement, because it does not cover environmental risks from GMOs, and it uses too limited notion of disease to cover risks from GMOs. Consequently, the SPS Agreement is not applicable to these measures and they cannot violate it.

Although the WTO debate started as intergovernmental, the world public have insisted on participating in the form of *Amicus Curiae* (a friend of the court) briefs. These briefs reflect the public concern in the outcome of the debate. They are submitted by parties that

have no financial or official engagement with any one of the parties of the debate – really independent third parties.

Two public groups made the Amicus Curiae Submissions to the WTO panel – a transatlantic group of expert academics and an international coalition of public interest groups. Both groups argue on behalf of the EC measures and against the Complaint, demanding that WTO rejects the Complaint in order to support the right of countries to establish their own environmental, social and health standards, and risk assessments.

### 3. Interpreting the WTO debate: politics and global power

The debate is involved with power, both economic and political. The US formal position in the current debate is not explicitly anti-labelling, but if the US wins the debate, the next step might be an attack on European labelling system. The US position is simple: it denies the risks of GM products, claiming that they are to be judged by the same criteria as conventional food, and implying that other countries must admit this opinion as objective, scientific truth. In other words, it takes the GM crops as something declared safe by scientists rather than a disputable matter in which public opinion must be also involved.

The position of the EU is more complex. It is not against genmodification as such; rather favouring strict safety controls, producer transparency, and consumer's choice. The EU also defends the legality of a plurality of approaches to GM crops: from laissez faire to complete bans, including the intermediary option of regulatory and pre-market assessment, the EU choice. The US assumes the question to be purely scientific, and that enough scientific evidence has already been presented for GM foods to be considered safe. The EU, on the contrary, stresses the scientific uncertainty concerning the GM foods and suggests the need for a broader consensus, including extra-scientific social actors, like the governments, the public, and business.

Nowadays the US, as well as EU, share the political doctrine of liberalism and the principle of liberal neutrality. A policy based on liberal neutrality requires not to favour any particular position and to remain neutral between those who support and those who oppose GM crops. However, contrary to Sterriffer and Heidemann, one has to agree with of Pascalev that political liberalism is not an adequate framework for decisions concerning GM crops because political neutrality cannot protect adequately the interests, rights and values of those who oppose GM crops on religious, moral and metaphysical grounds (Pascalev, 2003, 583-594). The contemporary European regulations on preliminary safety assessment and labelling are insufficient. They don't provide an equal choice – the majority of processed foods contain GM ingredients, and the choice for low and middle class is between avoiding all processed foods or switching to more expensive and much smaller organic food market. Given the specific circumstances in the West characterised by mass proliferation of GMF, even the presence of mandatory labelling alone cannot adequately protect the rights and values of citizens who oppose GMF on various grounds. Such individuals have to pay high price to live in conformity with their values.

Liberal neutrality ultimately values the status quo, which erodes the personal integrity and freedom of choice of those who oppose GM foods. Justice would require from policy makers a positive action to protect those who object GMF. This is grounded in the values of personal integrity, freedom of choice and autonomy. They provide normative justification for rejecting GMF and minimally, for positive societal actions and policy measures

including not only mandatory labelling but also subsidies for organic farming and non-GMF. To allow a genuine co-existence of diverse views and ways of life, policies should be set to guarantee that those opposing GMF have access to non-GMF (Pasclev, 2003).

#### 4. Ethics and worldviews

The question of rights of those individuals who are opposed to GM food, however important, covers only the top of the iceberg. There are more issues which underlie the current transatlantic debate than only pragmatic issues such as the safety of GMO's, their environmental impact, the traceability of GMO's, and rights and obligations of different countries with respect of GMO's trade. Concerns of the opponents of GMO's can be briefly summarised:

Health	Allergies, bacterial resistance to antibiotics, unpredictable effects
Ethical & metaphysical	The commodification of life (rejection of the ownership over living organisms and life-process) The unnatural character of genetic engineering, in which the genetic material crosses the species boundaries.
Economic justice:	The GM foods are profit driven rather than need-based, herbicide-tolerance or insect resistance favour producers but not consumers. Most profit goes to the major biotech corporations, instead of small-scale farmers.
Environmental:	The gene flow between GMOs and wild plants may result in insect becoming resistant to Bt crops and harm agriculture.

The origin of the disagreement, according to various actions groups, as Green Peace, or Dutch society for the protection of animals, lies in the values and world-visions. These more fundamental levels of disagreements are frequently not vocalised in the debate, because the founding values are believed to be subjective. This feature constitutes a limitation of the current debate on genetic modification, and bringing forward questions of values and world-views would make it possible to improve understanding between the opponents, as well as, hopefully reaching a shared policy approach that could satisfy different sides (Bovenkerk, 2006, 97-103). According to Bovenkerk, there are six sources of disagreement: facts, scientific interpretations, definitions ('substantial equivalence' versus precautionary attitude), divergent interests, values (in relation to animal experiments), and worldviews (anthropocentrism vs. ecocentrism). The importance of value disagreements can be demonstrated by the case, when, the proponents of biotechnology tend to be optimistic about techno-scientific progress, while its opponents frequently hold reservations about it. We suppose that one's position in the genetic modification debate is interconnected with one's world-view.

## 5. Conclusion

The controversy around GM food continues worldwide, and the WTO dispute may be seen as questioning the legitimacy of the WTO itself. This dispute is the most important and provocative in the nine years of the existence of the WTO; its outcome will have significant material (economic) and symbolic consequences worldwide.

Politically, the principle of 'neutrality of intent' is insufficient in relation to GM crops, because mandatory labelling, required but it, can offer important information but is of little value if the individual has no access to GMF. In the actual contemporary context, liberal neutrality would de fact support the status quo and thus favour those who support GMF. Therefore, not neutrality, but a positive action protecting the rights of those who reject GMF is required from policy makers.

With respect to values, the frequent scientific criticism of the public reaction to genetic modification, which is described as irrational, emotional, or exaggerated, can be seen as based on misunderstanding. Indeed, if public reactions to GM can be better understood as religious ad world-view based answers, rather than an expression of pragmatic interests. Public reaction to new technologies can be also determined by convictions, and values that form basis for these technologies as such (Szerszynski, 2006). The whole range of opinions as well as political debate about genetic modification is based on the assumptions about human nature, as well as about the world. The intensity of the conflicts about genetic modification suggests them being religiously significant.

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*David Wellman:*

*The Case for Ecological Realism: Grounding the Practice of Diplomacy in an Eco-Centric Worldview*

Among policy makers and scholars of foreign affairs, the predominant form of analyzing relations between nation-states has long been through the lens of a Realist or Realpolitik worldview. An approach that views all nation-states' political interactions as being motivated by the desire to acquire, retain and project power, the Realist view of international relations is based on a broad set of secularist-materialist assumptions regarding human exchanges. While a Realist analysis can provide many remarkable insights as to the motivations of nation-states in the context of economic and military competition, it is less capable of anticipating, and less inclined to privilege, the impact of individual human motivations, religious and social movements, ecological realities and identity-based politics on the conduct of international relations.

A ecological and religious analysis of international relations widens the origins of nation-state behavior to include not only policy formation based on economic and geostrategic considerations, but also other critical factors. Such factors are found within a nation's modern religious culture, its spiritual history, and the structure of belief of the people, and not simply the institutions, which make up a country's leadership as well as its constituency.

An eco-religious analysis of foreign relations must be informed by the understanding that many of the theo-ethical norms which affect and guide the life of a nation's people (including its leaders) can be identified through observing a nation-state's religious traditions through the hermeneutic of the land it occupies. To accomplish this task, the modern analyst of international affairs would do well to examine the "Ecological Location" of the nation's population as well as its "Ecological Footprint."

A creation of the Christian ethicist Daniel Spencer, "Ecological Location" is a means of examining the human relationship with the greater creation, including the human's relationship with the land he or she inhabits and/or controls. By illuminating the human relationship to the ecosphere, Ecological Location provides other insights into the norms guiding human conduct. These insights include new approaches to understanding community formation, relationships with those identified as "other," and the words and phrases people use to describe how human relationships with human and non-human members of the ecosphere are established, understood and maintained. Such social and linguistic phenomena not only describe what a people need and do in order to survive, but also what the religious culture in their respective countries has taught them to believe about the origin, purpose and value of the human and non-human world. By identifying and understanding the Ecological Location of one's own nation, as well as in the country or countries with which it is in dialogue, a diplomat comes into possession of an important means of communication and bridge-building. For by determining the common points of agreement within the Ecological Locations of two different nation-states, one may identify common ground for cooperation that translates across differences of nationality, race,

religion, ethnicity and culture. Simultaneously, Ecological Location can be a highly insightful means of beginning to expose the roots of conflict and the nature of inequalities that exist within and between communities.

An equally important tool to analyze the relationship a nation-state and its population have with the land is found in Mathis Wackernagel and William Rees' "Ecological Footprint." Wackernagel and Rees have created a way to measure the impact of an individual, a community, or even a nation upon Earth's biosphere. By determining the amount of hectares of land a nation uses in generating the amount of natural resources it consumes, Wackernagel and Rees' analysis calculates how far beyond its borders a nation must go in order to sustain its levels of production, consumption and pollution.

While one nation might live within the means of its own frontiers, another may have an Ecological Footprint that stretches around the globe. The use of the Ecological Footprint in gauging the relationship between two neighboring nation-states or bioregions is invaluable, as it demonstrates not only each nation or region's level of dependency upon the other, but also the degree to which their existing ecological relationship provides an avenue for conflict resolution and cooperation.

In light of considering the religious dimension of international affairs, Ecological Location, and the Ecological Footprint analysis, classic Realism demands to be seen in a different light. The work of Spencer, Wackernagel and Rees challenges a variety of Realism's steadfast assumptions. Together, they define a new Realism, one that is eco-centric rather than anthropocentric and challenges the viability of classic Realism's understanding of the nature of power. In our new understanding, power itself has changed in character completely, and is no longer an entity to be projected in a self-serving manner. Rather, power is found in a nation-state's ability to protect, cultivate and efficiently utilize domestically held natural capital, living out a type of sustainability that does not rely primarily on trade in order to insure survival. Thus, while classical Realism's old paradigm of power may well have involved the cultivation of the ability of one or more nation-states to manipulate others through economic or military means, the new paradigm I propose defines power as the ability to control one's own consumption and pollution patterns and to impart the knowledge required to those who have yet to reach a point of ecological equilibrium. Likewise, while Realism speaks of nation-states' responsibility to acquire, retain and project power while acting out of their own specific self-interest, an ecological view of international affairs views the borrowing or theft of another nation's sustainability as a very short-sighted and ultimately destructive accomplishment.

Under the construct of what I propose to call Ecological Realism, classical Realism's call to distinguish between the desirable and the possible is replaced with the distinction between the sustainable and the unsustainable. For this reason, a new definition of balance of power is in order – one which defines balance as ecological equilibrium, first within the borders of the nation-state, and then moving into ecological balance with one's regional neighbors. Thus while for classical Realism national survival is paramount, the principles of Ecological Realism claim that in fact it is global survival that is the real goal. For this reason, Ecological Realism holds that true self-interest must always be grounded in mutual interest. Thus, we must reject classic Realism's view that the balance of power must be seen as temporary and even unnatural. A new Realism is necessary, because diminishing re-

sources and shrinking earth shares demand that nation-states cooperate on a permanent basis at a level of intimacy not previously conceived.

Classic Realism holds that the capacity to know what is good and evil in the realm of international relations is impossible. Ecological Realism directly counters such a notion by arguing that what is good promotes the sustainability of the human and non-human members of the biosphere, and what is evil is whatever undermines the capacity for building, sharing and maintaining sustainability. In this regard, the moral dimension of international relations can no longer be dictated by interest defined as power.

Rather, Ecological Realism invites its practitioners to see that sustainability which is built mutually across nation-state and, ultimately, hemispheric borders is an unmitigated good. Power, by the standards of Ecological Realism, is no longer found primarily in high-priced commodities trading but rather located in the ability to engage in low priced or even free tech transfer between the North and the South.

While a classic Realist would label the above notions as highly unrealistic proposals that go against nearly every law that governs the conduct of the nation-state, Ecological Realism argues to the contrary. Twentieth century forms of classic Realism emerged in an era that was only beginning to consider the phenomenon of resource scarcity and the potential ensuing conflicts it could engender. Unequal distribution of raw materials for survival was seen as a matter to be resolved in the realm of bi-lateral and multi-lateral nation-state trade and inter-state armed conflict. The thinking of the time was highly regionalized, most often focusing on the east-west conflict. Purely regional thinking, however, is a luxury the modern analyst can no longer afford. Ecological Realism is one attempt to describe what such global thinking might look like, and to guide a paradigm shift which demands not only a rethinking of our definition of power, but also of accountability, responsibility and diplomacy.

From the perspective of Ecological Realism, a nation-state's ability to strike an equilibrium in its use of natural capital and disposal of waste is the primary means by which a nation's power is measured. Dependency on buying, borrowing or stealing the sustainability of other nations will be a sign of tacit weakness and vulnerability. Further, the mere capacity to acquire raw materials from far-flung regions will no longer be seen as a right, privilege, or valued ability. Such a transformation will require a new understanding of accountability that has yet to be seen in the international commons.

Ecological Realism rejects the anthropocentric thinking of classical Realism that holds that nearly all power worthy of the name has been designed, controlled and propagated by human beings. Ecological Realism holds that the power of the biosphere is in many ways greater than the power any group of humans can muster. No missile or commodities exchange is capable of replacing the ozone or generating accessible fresh water. Classic Realism is convinced that the human is the pinnacle of the power chain. We now know that this is not so. In the biosphere's own changing patterns, the capacity for human adaptability comprises a critical type of power which cannot be matched or ignored. The biosphere, with its capacity for regeneration and its limited supply of materials for human exploits, demands a new level of human respect, accountability and material simplicity. As Spencer, Wackernagel and Rees have noted, the human is embedded within the biosphere and, therefore, can never claim outside observer status. Until now, many have seen human dependence upon the non-human members of the biosphere as an explicit sign of weak-

ness. The time has now come to view such a relationship both as an advantage and as a primary source for lessons about future human eco-centric conduct. Human accountability must now embody, as the Christian ethicist Larry Rasmussen has written, “a turning to Earth.”

Seeing the religious dimension of accountability requires answers to the following questions: How could knowledge of different religious traditions be an impetus for conflict resolution rather than a source of conflict? How could different faith traditions become the builders of bridges as tangible and binding as the land itself? And how could the land and the human relationship to it be re-interpreted as a means of constructing a new approach to conducting diplomacy? Part of the answer to these questions lies in looking at how religions interpret the land, how humanity is connected to it, and how humans define their attendant responsibilities to ensure that the ecosphere becomes and remains sustainable. We must begin this work by reading creation narratives from different religious traditions. As we examine these creation stories, we must endeavor to listen carefully to the stories of people, how they draw their living from the land, what they value, and how they express their own definitions of hope, connection, and fear in relationship to their own communities, their neighbors, and those they perceive as “other.”

The construction of a sustainable type of diplomacy becomes impossible without the perspectives of these people on the ground. By examining the human relationship to the greater ecosphere, we are provided with critical insights into the norms that guide human conduct. These insights include new approaches to understanding community formation, relationships with those viewed as outsiders, and the language people use to describe how human relationships among human and non-human members of the biosphere are established, understood and maintained. Such social and linguistic phenomena not only describe what a people need and do in order to survive, but also what the religious culture in their respective countries has taught them to believe about the origin, purpose and value of the human and non-human world. Understanding this eco-religious dimension of a people is thus a priceless piece of information for many disciplines. For in determining the common points of agreement within the eco-religious perceptions of two different peoples in conflict, one may identify common ground for cooperation that translates across differences of nationality, religion, ethnicity and culture.

What I speak of may be more tangible than one might first imagine. For example, it can be argued that in the industrialized economic north, our interpretations of creation stories have often given us permission to destroy the ecosphere. Long before the first European ship headed for Africa or the Americas, the popular belief that the human was the first among God’s creation led particular human groups to argue that non-human creation (and a good deal of humanity) was theirs to use as they pleased. Today, it can be argued that many people still share this belief, and its justifications for over consumption and ecological destruction. Interestingly, while many no longer believe in the creation stories they were taught as young people, they retain a strong belief in the ethical (or unethical) lessons that were long ago drawn from them. It is these beliefs which often help to explain the form and content of what I would call modern religious culture, which contains the residue of those beliefs which we have chosen to hold onto, be it consciously or unconsciously. Sometimes such stories help to guide us to live more within the limited means of the earth, while for others, these same stories serve as justification for acts of selfishness and destruc-

tion. But if some dominant cultures' past interpretations of creation stories have resulted in so much destruction, how can they be a healing force today? To this question, my answer is direct: it depends on who you are reading the stories with, and whether or not you and your neighbors are open to hearing new interpretations. I believe that we need to listen to voices at the center and on the periphery if we are to understand the legacy of creation stories which dominate modern worldviews. In entering into this examination, we can begin to see how stories of creation are embedded in popular culture, from conversations in cafes to music and painting and political discourse. In addition, these conversations are not the exclusive territory of elites: be they government officials, business leaders or academics. Some of the richest insights into a religious culture come from people on the ground. From housewives and fishermen, from farmers and wedding musicians, from students and the unemployed.

Ecological Realism requires that foreign policy be approached in a more holistic manner, one which recognizes religious distinctiveness, while acknowledging that our increasing ecological imbalance may in fact hold the key to a far deeper level of understanding and cooperation. This is in part due to the fact that many things we collectively require for our survival cannot be bought or divided. For example, there is only one o-zone, portions of which cannot be purchased by any one nation. The o-zone will either retain its integrity through international cooperation or be destroyed by collective human ignorance. The wise use of fresh water and the oceans' resources, the diminishment of airborne pollutants, or the effort to halt desertification are all challenges that require sustained transnational cooperation. The practice of Ecological Realism requires a new definition of diplomacy, one distinguished by its eco-centric nature, the need to move beyond a focus on individual nation-states, and a willingness to learn from non-elites.

At the same time, an eco-centric diplomacy must ultimately strive to de-emphasize state-to-state relations in favor of promoting and maintaining relations between bioregions, in a process of building relations that go well beyond contacts among government representatives. Diplomacy informed by Ecological Realism must therefore place a high value on understanding the lives of the populations it is affecting.

In order to develop such an understanding, we must begin by mapping the terrain which links religion, land and power in both human and non-human populations, in order to obtain a more profound understanding of the lives of those living "on the ground." Thus, when a nation sends a representative who lacks knowledge of another state's religious culture, it must be seen as the equivalent of sending an individual who is unable to speak the language of those with whom she or he hopes to communicate.

Ecological Realism acknowledges that the land shapes the perceptions, languages and beliefs of those who inhabit it. Therefore, diplomats of the future should place a great emphasis on learning how the land feeds or does not feed a regional or national population, both literally and spiritually. Acquiring such information will require an intimate knowledge of regional farming techniques, religious practices and beliefs, consumption patterns, ecological histories and waste disposal methods. This is not to say that current methods of projecting power are going to disappear overnight. The use or threat of armed force, economic pressure and other strategic uses of coercion will no doubt remain with us far into the future. The task of Ecological Realism is not to dwell exclusively on these traditional

projections of power, but rather to help cultivate other existing sources of power and influence that might initially accompany and eventually re-shape current approaches.

A sustainable future will require thinking further outside of the box than ever before. While we live in a post-colonial world in the traditional sense of the world “colonial,” we now confront the new colonialisms that often travel under the banner of our “inevitably and fully globalized” economies. Often these are ecological colonialisms grounded in a world of tremendous ecological illiteracy – among the colonizers as well as the colonized.

For this reason, current and future discourses in diplomacy should grapple with the successes and failures of those who seek independence from this cycle. All of us must open our eyes to the tools that the ecosphere itself has provided for the task of promoting cooperation across borders. Those who seek change must enter into a deep willingness to learn from unconventional sources – from the land, and from people who do not share their faith, their race, their economic or political status or even their hemisphere. The evolution of Ecological Realism requires the willingness to turn our approach to the world as we know it on its head, and coming to realize that comprehensive changes are not to be feared, but in fact embraced.

## 2.2 Power in contemporary international order and politics

*Edmund Wnuk-Lipinski:*

*Vicissitudes of Ethical Civil Society in Central and Eastern Europe*

### Abstract

The article focuses on the role of civil society in the aggregate of causes that eventually brought about the collapse of the communist block and – in consequence – changed the global balance of power. The concept of “ethical civil society” is introduced in explaining the path to democracy of former Soviet block countries. The article also explores cultural determinants of democratization in Central and Eastern Europe after 1989; especially the relation between religious confession and likelihood of democratic outcome of post-communist transformation is examined.

Key words: ethical civil society, post-communist transformation, Solidarity, world order, transition to democracy, dissident movements, John Paul II.

### Introduction

The 1989 developments in Central and Eastern Europe, having stunned many students of Communist social order and international relations in the bygone bi-polar world, are an intellectual puzzle that is now much less a mystery but is still far from a comprehensive solution. In the world literature there is a number of ex-post explanations of the phenomenon which brought about the revolution in the global balance of power and, in consequence, reduced Russia to a merely regional superpower. Systematic review of these interpretations goes beyond the scope of this article. Therefore, let me just mention a few theses as an illustration of a theoretical confusion that was produced by quite a sudden collapse of the world Communist system.

The first thesis may be called ‘post-Tocquevillean’: the system collapses when it is not able to satisfy hopes and aspirations incited by limited reforms of the rigid system<sup>1</sup>. The second thesis, originating in the optimistic spirit of the Enlightenment era with history viewed as a perpetual process in various areas of societal life, directs our attention to social progress or modernization: systems collapse when they are not able to secure progress. Next, the ‘rational choice’ thesis, is based on the assumption that both individuals and institutions created by individuals are guided by rational actions with regard to particular targets and rationality is defined as the optimization of relations between outlays and profits<sup>2</sup>— systems collapse when micro-rationalities are dysfunctional to overall macro-rationality. Then, the ‘domination thesis’ saying that there are a few competing global

<sup>1</sup> W. Adamski (ed.), *Societal Conflict and Systemic Change; the Case of Poland 1980 – 1992*, (Warsaw: IFiS Publishers, 1993).

<sup>2</sup> See, for example: J.S. Coleman, T.J. Fararo (eds.), *Choice Theory. Advocacy and Critique*. Newbury Park – London – New Delhi: SAGE, 1992).

centers of political, cultural and economic domination over peripheries: systems collapse when the center is not able to reproduce its domination and effective control over peripheries, where the cessation of the system comes from. And finally, the 'legitimacy thesis', originating in the works of Max Weber, claims that systems collapse if the legitimization deficiency drops below a certain (differently defined) critical point. Each of these may only grasp a certain aspect of the discussed phenomenon as the collapse of the world Communism not only sequenced spectacular and surprising events but, most and for all, climaxed a highly complex process that had been initiated long before 1989 (especially in Poland).

This article develops a thesis that focuses on the role of civil society in the aggregate of causes that eventually brought about this event with global consequences. And it is not just any civil society but its peculiar version that usually does not last long and emerges under exceptional historical circumstances; namely – ethical civil society. The general hypothesis is as follows: ethical civil society emerges, usually on a very limited scale, predominantly in non-democratic context, and particularly within a monocentric system which derives its legitimacy from the predominant ideology of public discourse. That ideology commands the public discourse not so much because it is genuinely shared by the masses, but because the public space – including the public discourse – is tightly controlled by the ruling elite (and that was the case in all the Communist countries). Under such circumstances, civic initiatives that are alternative to the omnipotent state, seek for the legitimacy in axiological sphere (moral norms) rather than in the area of group interests. The reason is simple: independent civic initiatives are hazardous (in terms of job security, and even personal freedom or life) and to take this risk one needs to have a firm belief in certain values (human dignity or freedom, for example) and equally a strong conviction that his or her attitude is morally superior to the attitude of the oppressors. This is a unique set of beliefs that may convert ordinary 'bread-eaters' into risk-taking actors that challenge the system. However, when a non-democratic system collapses and general moral values (that were the main driving force of opposition to monocentric system) are preserved and even protected in public life, they come to be taken for granted. Public space, now open for free expression and institutionalization of various social forces is more and more differentiated. Here, differentiation refers not only to multiplicity of axiological options that may be revealed but also to heterogeneous and sometimes contradictory interests of the societal segments that are promoted in public sphere. This is what leads to erosion of ethical civil society. In short, being a powerful tool for challenging an oppressive social system, ethical civil society can hardly survive its collapse as the struggle for values is extensively replaced by the struggle for group interests.

In order to explore this hypothesis I shall first discuss the relation between civil society and a non-democratic state. This relation determines the nature of civil society and the size of public space which is open for autonomous civic initiatives. The relation between civility and a Communist state proves vital and its analysis enables us to visualize the power of ethical civil society in introducing a radical social change on a local scale as well as in the international power balance.

The case of Poland will serve as an illustration of domino-effect democratization of the whole Region. Why Poland, then? There are at least two reasons that make the Polish case particularly interesting; firstly: the erosion of world Communist system began in Poland, and secondly: Poland is, generally speaking, a Roman Catholic country and confession – as

we shall see later – matters in transition from Communist system to some other type of social order.

The last question discussed in the article concerns geo-political consequences of successful introduction of grass-rooted radical social change in Poland, and later – in many other Central and East European countries. The dissolution of the Soviet bloc resulted in a thorough changeover on the political map, both in Europe and in the world. Several national states came into existence, nevertheless not each of them pathed its way to democracy. The question to be posed is: Can we render a reason or a plexus of reasons which have been conducive to democracy in the post-Communist countries? In this article I am making an attempt to emphasize the cultural factors, or more precisely – the prevalence of a certain religious creed which has set the course for the system to reshuffle after the collapse of Communism.

#### Civil society and a Communist state

Many authors correlate the collapse of Communism in Eastern and Central Europe with the observed reinvigoration of interest in civil society in Western social thought. Indeed, this correlation is a fact, not a coincidence. The defeat of Communism occurred in a spectacular and for the most part bloodless fashion, and – what is probably even more important – has produced a major change in the world balance of power. The sprouting civil society was instrumental in the process. In some countries (e.g. Poland) civil society was decisive in defeating Communism<sup>3</sup>, in some other (e.g. Hungary, the Czech Republic or Baltic States) civil society re-emerged upon the collapse of the Communist system, that is when the public space eventually became available to independent civic initiatives<sup>4</sup>. Civil society in Eastern and Central Europe evolved in the opposition to the Communist state and was charged with moral objectives, particularly during the initial phases of its development. The Communism-opposed particularity impacted its shape and its relation to the state, characterized by mutual distrust rather than by harmonious cooperation. This reverberates until today. The second ingredient, a spectacular success of a nonviolent social movement created the pattern – or at least a point of reference – for the formation of similar social movements in other countries, located in the European peripheries of the Soviet empire (Sajudis in Lithuania, the Czech Civic Forum, or Public Against Violence in Slovakia).

In Poland, the formation of civil society began a decade earlier than in the other countries of Eastern and Central Europe. Furthermore, the initial experiences of the sprouting civil society impacted the framework of its functions and, above all, its relation to the state apparatus. Assuming that civil society in the countries of the former Eastern bloc was initiated by the rise of dissident movements, its roots can be traced back to the early 1970s

<sup>3</sup> J.J. Linz & A. Stepan, *Problems of Democratic Transition and Consolidation. Southern Europe, South America, and Post-Communist Europe*, (Baltimore and London: The Johns Hopkins University Press, 1996), p. 255.

<sup>4</sup> Z. Hegedus, 'Social Movements and Social Change in Self-Creating Society: New Civil Initiatives in the International Arena', in M. Albrow & E. King (eds.), *Globalization, Knowledge and Society*, (London: Sage Publications, 1990).

when informal dissident movements appeared at the periphery of the Soviet empire and later contributed to the erosion of the entire Communist system. Indeed, the downfall of the Soviet system started at its periphery, particularly in Poland, the then Czechoslovakia and Hungary. Although dissident movements also came into existence in the Soviet Union, they (1) had limited social appeal, (2) were unable to create the kind of counter-elites that galvanize mass social protest, (3) were eventually suppressed by the Brezhnev's Russia as early as in the 1970s. Similarly, in Hungary and Czechoslovakia where the Charter 77 movement was established, dissident movements, although managed to endure, were unable to garner broader social support. They were thus too weak to initiate the process of transition to democracy without external environment alterations. However, in Poland the events unfolded quite differently.

The formative phases of civil society in Poland merit closer attention because – as it has been already mentioned – it became a model which was subsequently followed by the other countries of the Region, especially by Hungary, the Czech Republic and Slovakia. To a large extent this model determined both how the functions of civil society came to be defined (i.e. largely in the opposition to the state) and how the process of democratization and the awakening of civil society unfolded.

The first phase was confined to small elites and consisted in a moral rejection of 'the system', especially in the moral outrage against the Communist system's violations of its own rules. The so-called revisionism, the search for 'socialism with a human face', was thus born. In Poland revisionism had led to a definite closure of Stalinism in October of 1956. In Hungary, strongly influenced by the events in Poland, revisionism led to a national uprising, brutally crushed by a Soviet military intervention. In Czechoslovakia revisionism of the Communist Party reformers under the leadership of Alexander Dubcek resulted in the 'Prague Spring'. This uprising was also quelled by a military intervention of the Warsaw Pact armies operating under the so-called Brezhnev's doctrine<sup>5</sup>. In Poland, intelligentsia and university students' revolt in 1968 and the seaboard workers' rebellion in 1970 had both led to a palace revolution at the top of the Party's elite and to liberalization, certainly very limited in its scale. However, the workers' protest that followed in 1976 contributed to the establishment of overt dissident movements, particularly the Committee for Workers' Defense, which, along with other social groupings, had formed the sprouts of civil movements. Around the same time, in Czechoslovakia a dissident grouping emerged under the name of Charter 77. Although these developments did not necessarily signify the beginning of the democratization process of the Communist system, they certainly marked the discovery of the moral dimension of citizenship. Eventually, they set the ground for the 'ethical model of civil society' coalescing around the primarily moral reaction of intellectual elites to the abuses of the system.

<sup>5</sup> The doctrine of Leonid Brezhnev (1906 – 1982), formulated in 1968 after the USSR's intervention in Czechoslovakia posited that the Soviet Union has the right to intervene militarily in every country of the Soviet bloc whenever the Communist system is threatened from without or from within. This doctrine sanctioned the limited sovereignty of the member countries of the Bloc. In practice, this doctrine was abolished by M.S. Gorbachev in the mid-1980s during the period of perestroika (rebuilding) and glasnost (openness) which liberalized the Soviet version of the Communist system.

However, the key impulse for the rise of civil society in the Soviet bloc was provided in 1979 by the first visit of John Paul II in Poland. Putting the religious aspects of the visit aside, the event had shaken two pillars of the Communist system: (1) social isolation and (2) the state control of the public discourse. Additionally, this visit became the key experience in grass root social self-organization shared by several thousand people. Police and secret service predominantly focused on another objective, i.e. to eliminate public expressions of political dissatisfaction of Poles<sup>6</sup>.

Isolation of individual members of the society was effectively maintained under Communism because the intermediate level between elemental primary groups and the state level was entirely subordinated to the state. Thus, social dialogue exceeding the microstructure level could have been possible only via state-controlled institutions. Psychologically, it created a universal impression that 'everyone', and certainly everyone with whom an individual communicated at the intermediate level, represented the attitudes and behavior compatible with the official ideology of the state. This impression was deepened by preventive censorship which excluded certain themes (i.e. freedom, rights of citizenship, plurality of opinions) from the public discourse. Henceforth, the social space that was not controlled by the state and available to the individual was restricted to the family, the circle of close friends and, for some, to the parish communities. This was the space of private life which was only loosely related to the public life controlled by the Communist state<sup>7</sup>.

The social reality was then divided into two dichotomous categories: the 'us' and 'them'. The 'us' category existed in the private sphere, comprised trustworthy people and relationships that were personal, cooperative and reciprocal. The latter referred to the entire public sphere and comprised the people to whom one related through the state-controlled institutions and did so in a manner that was antagonistic, routinized in accordance with the official ideology, based on low trust and the absence of reciprocity.

The first visit of John Paul II had shattered these constructs. It turned out that the space not controlled by the Communist state suddenly enlarged and comprised vast masses. Those 'thinking alike' who met during Papal religious events and meetings took a quick head count and, to their amazement, discovered an army of people. The 'us' was thus stunningly enlarged while the 'them' category shrank proportionally and ceased to be as frightening as before. Furthermore, the fresh and consoling message of the Pope that would not have been tolerated earlier in the public sphere became the ready-made model of social communication for the initial phase of democratization. This model could eventually replace the earlier type of public discourse.

And finally, the Papal visit was a huge organizational undertaking which succeeded largely due to the effort of eager volunteers. This army of volunteers was a resource which less than a year later was utilized by the elites and by the masses to create Solidarity. This nearly ten-million-strong social movement was born as a result of a grass root effort and evolved institutional forms within several weeks. Thus, the initial phase of democratization, which, as it turned out in Poland was to last about ten years, had begun. During this

<sup>6</sup> M. Lasota, *Donos na Wojtyła* [Denounce on Wojtyła], (Kraków: Znak, 2006).

<sup>7</sup> E. Wnuk-Lipinski, 'Social Dimorphism', in I. Białecki, J. Koralewicz & M. Watson (eds.), *Society in Transition*, (London: Berg Publishers, 1987).

phase a proto-civil society appeared; it evolved into a massive educational institution 'teaching' democracy and citizenship. Horizontal relationships prevailed; social communication, no longer bound by pre-emptive censorship, radically enriched the public discourse with previously nonexistent themes. Furthermore, it bridged class differences. The stage was set for the civil society to emerge.

In consequence, a gradual evolution of public sphere attitudes could be observed: from clientist, (typical for the previous system and for command economies generally), to civic ones. The process could be observed not only among the intelligentsia but also among blue-collar workers and peasants.

After the Martial Law was introduced on the 13<sup>th</sup> of December 1981, conceptions of civil society evolved markedly from the ethical to the parallel model. Solidarity, though outlawed and pushed out of the public sphere, survived – in part as an underground movement and in part under the protective umbrella of the Roman Catholic Church which then functionally substituted civil society.

Certainly, the vision of a 'parallel society' was utopian but the experience of regaining the capacity for social self-determination and the ethical model of civil society were well alive. Further sustained by the social teachings of John Paul II and the Catholic Church, vividness of this experience made it impossible for the Communist government to implement the so-called 'normalization' procedure resembling the Prague Spring after-treatment organized by Husak. That was the case even though the means utilized by the regime of Wojciech Jaruzelski were even more drastic and based upon militarization of firms, mass internments, criminal warrants issued to hunt Solidarity leaders and secret murders. The metamorphosis of clients of an omnipotent state into citizens valuing social sovereignty in public life was not reversed, but merely decelerated.

The Communist government, unable to mobilize the society through undemocratic means, faced an extremely feeble economy and oversaw the evolution of an acute crisis into a chronic state. On the other hand, the rise of civil society had indeed been decelerated (although not ceased) by the introduction of the Martial Law. In the meantime the era of Gorbachev ascended. This created an environment that was conducive to the emergence of reform-oriented groups in the Communist Party. In the late 1980s, particularly in Poland and Hungary, the reform-oriented groups were stronger than the Communist hardliners and the Gorbachev's new perestroika policy was one of the decisive factors that shaped balance of power within the Communist power elite in these two subordinated countries.

At that historical moment Poland was exceptional with its robust counter-elite grouped around outlawed Solidarity leaders, whereas in the remaining countries of the Region only small-scale dissident groups formed elites which were alternative to the Communist power. Moreover, the popular support for those elites was quite unknown, whereas in Poland the Solidarity counter-elite was backed up by a continuous flow of massive support, though much weaker than back in the early 1980s. The path to the Round Table, confronting representatives of the Communist rule with the democratic opposition, was thus open.

The Round Table, gathering the Solidarity counter-elites and the Communist rulers between February and April of 1989, climaxed the initial phase of the transition to democracy. The agreement negotiated between the plenipotentiaries of the old-regime and Solidarity set in motion a process which accelerated liberalization coupled with democratiza-

tion. At that point, Poland entered its transition to democracy and became a trend-setter for the other countries of the Region.

Domino-effect for the geo-political region and the world: the case of Poland

The developments in Poland throughout the 1980s may have been different without the major shift in external conditioning. That is, they may have been different if the third wave of democracy had not been circulating the world since 1974<sup>8</sup>, if the world had been less globalized, if Gorbachev had not proclaimed the Perestroika, aimed at the adaptation of the Soviet system to the changing world, not at its subversion and, last but certainly not least, without the Papacy of a Pole. These external factors amounted to a propitious international context, which we may regard as a juncture of prerequisites, but certainly not the necessary conditioning complex for a radical change to take place in Poland. The same plexus of external factors led to multifarious outcomes in different countries, ranging from the formation of the consolidated Baltic democracies, which had been completely deprived of sovereignty as an integral part of the USSR state organism, to – its antithesis – an authoritarian system in Belarus. The conclusion to be drawn is: a radical social change may take place while favorable external conditioning coexists with internal factors, allowing the change to be initiated and these shape both the system transition and the subsequent sociopolitical order.

Beneficial external factors, especially the visit of John Paul II and his vivacious dialogue with millions of worshipers, had catalized the change in Poland and ushered in the collapse of the USSR. It would not have been feasible without the formidable internal social forces. The external factors had only been the half-backs in the search for the common vector and the moral frame for collective action, particularly for the repulse of violence in the pursuit toward democratic values.

Certainly, all throughout the 1980s the Polish developments were closely monitored in the neighbouring countries. As the documents disclose<sup>9</sup>, the Kremlin government was aware what consequences the toleration for 'the Solidarity apostasy' from the Soviet model may have had both for the Bloc integrity and for the position of the USSR in Europe. For that reason Kremlin seriously considered whether to re-enact the 1968 scene, when the Warsaw Pact armies had invaded Czechoslovakia and suppressed the Prague Spring.

However, the entanglement in the military intervention in Afghanistan coupled with the political cost of the military intervention in Poland<sup>10</sup> resulted in a forbearance of the idea. It was substituted with an attempt to suppress Solidarity using internal forces which was given a decisive consent by General Jaruzelski. The imposition of the Martial Law on the 13th December 1981 impaired the Solidarity movement but it failed to meet its strategic

<sup>8</sup> S.P. Huntington, *The Third Wave. Democratization in the late Twentieth Century* (Norman and London: University of Oklahoma Press, 1991).

<sup>9</sup> A. Paczkowski, *Pol wieku dziejow Polski* [Half-century of Polish History], (Warszawa: Wydawnictwo Naukowe PWN, 1995).

<sup>10</sup> Z. Brzezinski, *Cztery lata w Białym Domu* [Four Years in the White Mouse], (London: Polonia Book Found, 1986).

objective, i.e. it failed to reconstitute the Communist party total control over the public sphere of social life.

The restitution thereof proved impossible, opposed by the seeds of civil society with the Solidarity converging point. Not only did they not forfeit the moral grounds of the civil claims, having been subjected to sheer violence they even intensified those claims. As Solidarity was a decentralized, poorly institutionalized movement which had been breeding upward, the isolation of the leading elites by the Martial Law authorities did not actually shut off the protest. A stalemate cropped up: the Communist government – despite its Draconian measures – was unable to impose Husak-style ‘normalization’ and Solidarity – pushed to the underground – was too weak even to consider the authority takeover.

The Polish case must have been analyzed with great care in Moscow. No evidence confirms that the election of a reform-oriented Gorbachev for the office of The First Secretary of the Soviet Communist Party was directly related to the protracted crisis in Poland and the unfading ethical resistance of civil society. Without much risk, though, we may assert that this factor, among others, was not of little impact on this election.

The outcome of the 1989 Round-table talks induced similar processes in Hungary. Composed mostly of intellectual dissidents, the Hungarian counter-elite went even further than its Polish counterpart in the so-called ‘negotiated revolution’ (e.g. free elections). Not much later Czechoslovakia experienced its ‘velvet revolution’ (popular unrest that abolished tough Communist rule) following the Polish and Hungarian line and soon the club was joined by the other countries of the Region. It is worthwhile to emphasize that only in Lithuania, Romania and eventually – Russia the exit from Communism was violent, although with rather limited bloodshed. In consequence, the Communist system caved in and the balance of power in Europe shifted, sealed with the collapse of the Berlin Wall. On a global scale, the Cold War ended spectacularly and the bi-polar division of the world was over.

#### Religion and civil society

As far back as in the early 1990s Huntington<sup>11</sup> appreciated the significance of religion in the third wave of democratization process. First and foremost, he argues that there is a strong correlation between Western Christianity and democracy. Thus, Christianity forms a cultural fulcrum that increases the likelihood of transition to democracy upon the collapse of a non-democratic system, instead of transition to a new variant of a non-democratic system. Second, while analyzing transitions to democracy on a global scale, he states that “Catholicism was second only to economic development as a pervasive force making for democratization in the 1970s and 1980s.”<sup>12</sup> All in all, liberal democracy is a product of the Western culture, as he argues<sup>13</sup>. And if its global spreading process is under way, it rather refers to the procedures than to the values – these are taken for granted within the Western civilization, whereas in the rest of the globe they are imbued with the local culture. What is more, the core Western values such as equality, technological pro-

<sup>11</sup> Huntington, *The Third Wave. Democratization in the late Twentieth Century*, p. 73.

<sup>12</sup> Huntington, *The Third Wave. Democratization in the late Twentieth Century*, p. 85.

<sup>13</sup> See also: B. Parekh, ‘The Cultural Particularity of Liberal Democracy’, *Political Studies – Special Issue*, XL B (1992).

gress, human dignity, social empowerment or identity<sup>14</sup> are tightly interrelated with Western Christianity, either directly or as a reference point to formulate alternative values.

The impetus of the third wave of democracy with its effervescent phase in the last decade of the twentieth century, upon the collapse of the world Communist system<sup>15</sup>, was clearly diversified depending on the local culture ground-work and the denomination which prevailed in a given national state. The figures in Table 1 confirm a general assertion that democracy took root mainly in national states with the dominant Christianity. If one takes this specific point of view, the cultural foundation of national states with the dominant Islam proved the least propitious. According to the Freedom House<sup>16</sup> estimate, more than 70 per cent of the Christian countries may be regarded as liberal democracies, whilst in the Islamic countries democracies amount for a mere 4 per cent (two African Islamic countries meet the democratic criteria, namely Mali where Muslims amount for 90 per cent of the population and Senegal with 94 per cent of Muslims).

Table 1. Nation states according to dominant confession and degree of democracy/freedom

Country with dominant religion		World total	Free	Partly free	Not free
Christian	N	112	81	23	8
Muslim	N	49	2	19	28
Other	N	30	11	9	10
Christian	%	100.0	72.3	20.5	7.2
Muslim	%	100.0	4.1	38.8	57.1
Other	%	100.0	36.7	30.0	33.3

Source: own calculation on the basis of Freedom House 2005 global survey that covered 191 countries

The dissolution of the Soviet empire yielded a crop of new states and the recuperation of sovereignty by the countries which had happened to find themselves within the Soviet power range by virtue of the Jalta Treaties. In effect, twenty independent states loomed up from the Soviet bloc, having gained the authority over their own destiny and – what is crucial – whether to be democratic or authoritarian.

<sup>14</sup> P. Beyer, *Religion and Globalization* (London: Sage Publications, 1994).

<sup>15</sup> R. Doorenspleet, 'Reassessing Three Waves of Democratization', *World Politics*, 52 (2000).

<sup>16</sup> Freedom House 2005 Survey ([www.freedomhouse.org](http://www.freedomhouse.org)).

Table 2. Democracy in former Soviet bloc countries according to dominant confession

Number of countries	Total	Catholics + Protestants	Orthodox	Muslim
Total	21	8	8	5
Free	10	8	2	0
Partly free	4	0	4	0
Not free	7	0	2	5

Source: own calculation on the basis of Freedom House 2005 global survey that covered 191 countries

As Table 2 shows, not all the countries which broke free from the Soviet bloc chose democracy as the system of their destination; what is more, the prevailing denomination proved to be a crucial democracy-correlated factor. Today, all the Catholic and Protestant countries of the Region (that is the countries located within the orbit of Western Christianity) are democracies. The countries where the Orthodox Church prevails have shifted apart: merely two of them are democratic, another two are authoritarian, and the remaining four, defined by Freedom House as being 'partly free', are either non-consolidated democracies or systemic hybrids blending certain elements of democracy with authoritarian rule. The above data confirm the hypothesis set forth by Huntington, that is: there is a positive correlation between the culture that evolves within Western Christianity and democracy.

This is surely not a direct relationship. A phenomenon named 'ethical civil society', which rendered, particularly in Poland, an extraordinarily efficacious tool of social emancipation from the Communist regime, forces researchers of democracy to pay attention to the cultural determinants thereof. We may advance a hypothesis that Western Christianity is the cultural context which particularly promotes civil society, bred upwards and basing its subjectivity claims on the moral norms anchored in Christianity. By being conducive to the formation of ethical civil society in non-democratic environment, Western Christianity legitimizes the upward-bred human crave to be a subject not an object of political power; neither the Russian Orthodox Church liaising with political authorities, nor even much less the Islam where political rule tends to draw its legitimacy directly from religion do not foster civil attitudes, which in the name of ethical principles may question a non-democratic system.

An example of the Philippines, an Asian Catholic country, demonstrates that the discussed mechanism may function beyond the limits of the Euroatlantic culture. As we know, in the Philippines – and by analogy to Poland – a social movement, bred upwards by the masses and advanced by Cardinal Sin, was a pivotal factor in the overthrow of the authoritarian regime of Marcos in the year 1986, and then in the successful retention of democracy despite a few anti-democratic attempts of coup d'état<sup>17</sup>.

<sup>17</sup> G. Weigel, *Świadek nadziei. Biografia Papieża Jana Pawła II* [Witness to Hope. The Biography of Pope John Paul II], (Krakow: Znak, 2005), p. 642 passim.

### Conclusions

The discussion over the presented hypothesis induces us to conclude the following: while analyzing the sources of power make-up dynamics which influence the global political arena we ought to pay more attention to cultural factors. In particular, local moral norms are to be scrutinized, as they are the prism we use to evaluate a local as well as the global world order. Thus, if the world order is to ignore those local-grounded variants of axiological outlook on social reality, its social legitimacy and – in consequence – stability may be questioned by the communities which perceive the world order as alien and discordant with what they consider just and legitimate. This world order is imposed by the potent centers of culture.

In the ideal model, which is probably unfeasible in the heterogeneous culture of our globe, the stable world order should sprout upon vivacious local civil societies that appeal to a certain common axiological modicum. In reality, the world order is founded upon the potency of national state authorities and political stipulations thereof; solely democratic rule may be considered as the representation of local civil society. Thus, the first step towards the world order etched in the mosaic of local demos is to proceed with the democratization process. For the present, as the Freedom House Survey<sup>18</sup> exhibits, less than a half (88 countries) in a total of 192 countries that were put upon examination in 2005 – are democratic. What is more, their population amounts for less than a half (44.1 per cent) of the global population. As long as the world is split into democracies and non-democracies (which is not only a fact but also a likely forecast for the years to come) the formation of the world order with a more direct grounding in local civil societies remains a utopian postulate, but still does not retract its status as an attractive target in the long run.

Nevertheless, as I have been attempting to argue in this article, even in the partitioned world of today, while analyzing international relations it makes sense for us to take into more profound consideration the notion of ethical civil society, the chances it has to be bred on a local foundation provided by the culture and religion, as well as its power to evoke social subjectivity in non-democratic conditions. The dissolution of the world Communist system, which was bred upwards and, generally speaking, proceeded on a peace footing, introduced a primordial changeover in the global power make-up. For us, the researchers, it is a vital argument for the necessity to scrutinize the chances for an ethical democratic civil society to emerge in a context provided by the political conditions and the culture beyond Central and Eastern Europe.

<sup>18</sup> Freedom House 2005 Survey ([www.freedomhouse.org](http://www.freedomhouse.org)).

*Robin W. Lovin:*

*Christian Realism and the Successful Modern State*

When North American theologians and ethicists think about political ethics and international order, we think especially about the complex of ideas and strategies known as “Christian realism,” developed by Reinhold Niebuhr. Christian realism provided a credible defense of democratic politics during the Second World War, and it dominated much American thinking, secular and religious, about international order during the Cold War years that followed.

We live today in a very different world, and there is some tendency today to regard Christian realism as an artifact of its historical period, rather than a constructive position in contemporary theology and political ethics. In part, that reflects the way that Niebuhr himself thought and wrote. Nevertheless, it is true that for the Christian realist, as Edmund Santurri puts it, “political life displays in a peculiarly transparent way the fallen condition of the world.” What I want to do today is to identify some key ideas regarding that fallen condition that we can learn from the Christian realists, and then I want to ask how we might apply those ideas in the world we live in today.

As his starting point for political ethics, Niebuhr insisted that “there is no level of human moral or social achievement in which there is not some corruption of inordinate self-love.” (Niebuhr 1944, p. 17). The Christian realist, therefore, expects that what people say about morality will be shaped by their interests, and by what they perceive they have the power to accomplish, and by what countervailing powers they see arrayed against them. Equally important, these limitations apply to everyone, including Christian realists.

The best we can accomplish is a rough approximation of justice, appropriate to our situation, corrective of the most recent injustices, and stable enough to provide a basis for planning for the future. And precisely because political wisdom is always distorted by self-interest, our approximations of justice are better when they emerge from conflict between roughly equal opponents, rather than from the ideals of one of the parties.

The way that principle played out in Niebuhr’s time became apparent in the late 1940’s, as the realities of the Cold War took shape. Reinhold Niebuhr was an ardent anti-Communist, but he was a Christian realist first. Even in the superpower rivalry with the Soviet Union, it was a good thing for the Western democracies to be opposed and limited by another, roughly equal power.

In fact, Niebuhr thought it might be especially important for democracies to be opposed in this way. Democracies have a flexibility that their totalitarian opponents lack. They are able to change leaders, change direction, and learn from experience. But they tend to lose that democratic edge when their aims go unopposed and their virtues go unquestioned. A powerful democracy without effective rivals may feel secure, but it is a state at risk. It is apt to overestimate its power, as well as its virtue. So from a realist’s point of view, the Cold War rivalry between the United States and the Soviet Union was a good thing.

Superpower rivalry as a source of global stability is not likely to return any time soon, and its drawbacks were sufficiently serious that there is no reason to work toward that return, as though it were itself some sort of an ideal world order. But there were two politi-

cal principles behind that order that seem to have continuing relevance: First, we achieve approximate justice by balancing power. Second, democracies, especially, will find that it is in their self-interest to accept the limitations on self-interest that this balancing act imposes.

Understanding those two principles is a dialectical process. We figure out what they mean for us today by asking how they work in today's circumstances. The most important change in this respect has to do with exactly what powers have to be balanced to create the approximate justice and interim order that we seek. For well over a century, from the Congress of Vienna to the end of the Cold War, the most important balance of power had to do with the relative balance of power between states, especially the most powerful states, with imperial ambitions—the “superpowers,” if you will (Niebuhr, 1959). But the last two decades have seen important changes in the role of the state.

Beginning some years before the end of the Cold War and accelerating with the pace of global commerce and cultural connections since then, we have watched a relative decline in the power of states as shapers of global reality. I emphasize that this is a relative decline. States are still extremely powerful. But they do not have the unique capacity to dictate global realities that they had at the end of World War II, and they are not likely to get it back. Multi-national corporations dictate the terms of commerce, often more effectively than the national governments in the places where they do commerce. De-centralized communications allow ideas and cultures and even fads to sweep the world faster than police can control them. The rewards of entrepreneurship and the exploitation of labor are both harder to control, because both are no longer effectively limited by distance. The alternative to this is not the kind of isolated independence and cultural unity that, say, Japan tried to exercise until the middle of the 19<sup>th</sup> century. The alternative is to be North Korea or Belarus, or the kind of Serbia that Slobodan Milosevic used to imagine. The inevitability of globalization can be measured by the desperation of those who are trying to keep it from happening where they are.

But globalization does not limit only failed states, or failing states that try to carve out dictatorships on the margins of the global system. It affects also, and especially, those successful modern states at the center of the global system. History is not following the simple arithmetic that some of America's global strategists expected after the end of the Cold War. They reasoned that if the world is divided between two superpowers and you take away one of them, then you've got one superpower left, and it is the United States.

Reinhold Niebuhr, of course, would remind us that unchallenged dominance is always dangerous, for the dominant as well as the subordinate. It encourages illusions, first about your virtue, and then about your power. So the first lesson of Christian realism for the world that we are now in, I think, is a lesson about how pride blinds the leaders of nations to alternative forms of power that are always developing within and across the borders of the modern state, waiting for the opportunity to develop their own forms of control over events. Alternative centers of power, located in religions, and cultures, and economic institutions, now begin to exercise their own influences. No single state can control them, even within its own borders, without dropping out of the modern world. Even if there is one state that is more powerful than others, it cannot set the terms for these other centers of power.

Because there was only one superpower left at the end of the Cold War era, there are now *no* superpowers – if we mean “superpowers” in the conventional sense of states with the military, diplomatic, or economic means to impose their will on large swathes of the globe. Or if there are new superpowers, they bear the names of institutions and systems, not nations. The new superpowers are commerce, culture, and somewhat surprisingly, religion—set alongside the enduring, but now more limited, power of government.

From the perspective of a simple political realism that is used to seeing the world divided between powerful states, that looks like anarchy. But a Christian realist will take a longer view of the problem. Christians have been thinking about politics and power since before the modern state itself came into being, so we, of all people, should have the imagination to see that there are other ways to maintain order besides setting up a powerful government. Commerce, culture, and religion operate today with a high degree of independence from government. Probably the last time they enjoyed that much freedom in the Western world was during the Middle Ages. But the Middle Ages was not anarchy. It was an order, though a very different one from the order of the modern nation state.

The modern state began as an instrument of peace. At first, that was quite enough for people who had lived through Europe’s wars after the Protestant Reformation; just as it would be quite enough for most people in Afghanistan or Iraq, if they could get that kind of state today. But once the state had provided peace and security, all kinds of other things became possible. The successful modern state became not only a place of peace and order. It became a place where the institutions of commerce, culture, and religion flourished in ways that no one had previously imagined. For several centuries, and most notably during the nineteenth and twentieth centuries, economic prosperity and cultural vitality continued, as long as the state was able to maintain the balance of power that prevented war with other states. Peace, security, and prosperity were threatened only when the balance of power between states failed. Successful states kept other kinds of powers in check.

What has happened with the end of the superpower era, however, is that the power of the modern state is challenged, not by other states, but by those two competing forces that successful modern states have until recently kept firmly under control: commerce and religion.

For purposes of this presentation, I’m going to focus on the relations between commerce, religion, and the state, and ignore the role of culture—the varied mix of educational, journalistic, artistic, and recreational institutions that are in some ways the most characteristic development within the successful modern state. I do this partly for simplicity, because the problems posed by commerce and religion seem to be more focused in recent years, and also—noting that this is an academic society gathered at Oxford University—because the fish is not always in the best position to know what is happening to the water. Keep in mind, then, that the role of culture is always also part of this interaction between commerce, government, and religion, but I don’t find its impact as unified or as uniform across the globe as the powerful movements at work today in commerce and religion.

Commerce does have a kind of global unity, enforced by the structures of the market. The market is a powerful force that was unleashed by modernity, which destroyed the regulated economic order of feudalism and the constraints of religious prohibitions and let the market impose its own rewards and punishments. The problem, of course, is that mar-

kets left to their own devices have little regard for those who have nothing to sell there. They tend to exploit unowned resources like the environment without regard for future needs, and they generate capital and profits in highly mobile forms that can be transferred far away from the places where they were created. Most of those market effects were brought under some degree of control within successful modern states by the mid-20<sup>th</sup> century, but the globalization of commerce raises all of the same questions again on a larger scale, and it is not clear that the governments of those states have the power to repeat their previous successes under these new conditions.

Religion, by contrast, is a force that had supposedly been subdued by the modern secular state. What we find, however, is that the need for unity, order, and discipline in personal life is undiminished by material prosperity and political freedom. Religion remains a powerful personal motivation, even in the most developed societies. Likewise, the sense of identity and dignity that religion provides often seems more promising to the disenfranchised and marginalized than the prospect of joining the affluent in pursuit of a Western, consumer-oriented lifestyle. The result is that fundamentalist movements and counter-cultural religious communities are growing rapidly in both the most and the least developed societies.

None of this is quite what the long experience of secularization in the modern West would lead us to expect, and there has been some tendency to suppose that this disruption of historical expectations must be a sign of a massive threat emerging from somewhere beyond the horizon of our experience. Serious scholars and television news reporters alike have begun to talk about a “clash of civilizations.” The democratic, open, market-oriented, and – some would add – Christian West has suddenly been challenged by a traditionalist, authoritarian, and – some would add – Islamic vision of how the world ought to be, and there’s just no way to conduct negotiations across a cultural and historical gulf that wide. These are two different civilizations that are going to have to struggle with each other for control of the planet.

But it seems to me that this “clash of civilizations” model is not quite right. Both of these “civilizations” have for some time been living fully in the modern world. They have, in fact, jointly created a single, modern, global civilization that runs on cheap, abundant fossil fuel. This is not a clash of civilizations, but a competition between two institutional systems that have taken form within the modern world, under the protection of the modern nation state. The leaders of both of those systems know their way around this modern world very well, and what they are engaged in is a very serious competition, in which we all have a stake, to determine which system, commerce or religion, will replace the modern state as the leading power in the new global order that now begins to take shape before our eyes.

Christian realism, let me say clearly at the outset, does not side with religion in this contest. Nor does it side with commerce. In some of its versions, it seems to long for the good old days of strong states, but what the principles of Christian realism truly suggest for today’s world is a different kind of order for the emerging global realities. Though we all have a stake in the competition between government, commerce, and religion, we may not have to make a choice to let one of the three determine all of the conditions of modern life. The future of human freedom may, in fact, depend on continuing the competition between them. And just as the competition between superpowers gave us a surprising

degree of order in an age of conflicts between governments, it may turn out that maintaining this new kind of competition is the key to order, as well as freedom.

Order, in this understanding of the new global realities, is not maintained by sovereign governments that have the last word over everything that happens in their territory. Order is maintained by a system of checks and balances and countervailing powers in which government, commerce, and religion each has enough power to maintain its interests while none has ultimate control.

In this balance, government still has the essential role of maintaining peace and security within its territory, but that is less and less a function of power that can be mobilized against other states. Security now requires governments to act as agents for the rights and interests of their people in global forums, whether these are formal tribunals like the European Human Rights Court or the International Criminal Court, or informal negotiations about trade policy, wages, and working conditions. What endangers this emerging order is not that governments pursue their own interests. What endangers it are governments which approach the task with universal aspirations, as though they were speaking for human rights in general, instead of representing the rights that are valued and needed by Americans, or Germans, or Indians, or Iraqis. In this new reality, we will have more order and more freedom in the world if all governments see peace and security as a local task and no one of them sees it as its global mission.

What I'm suggesting, then, is that there is an emerging global order which depends on a balance of power between the forces of religion, commerce, and government in the same way that the previous order depended on balance of power between nations. Christian realism suggests that this sort of political order is also the best approximation we are likely to get to moral order on a global scale. Order, freedom, and justice are more likely to result from the conflict between balanced powers than from a single political ideal. The practical task for Christian realist, then, is to work in whatever contexts we have available to make sure that all of the basic institutions of government, commerce, religion, and culture are healthy and powerful, but also to make sure that no one of them is powerful enough to set the terms for all the rest. We might call this idea "pluralistic Christian realism," to distinguish it from the original version that concentrated chiefly on the peace and order that states can create.

Pluralistic Christian realism, in fact, raises quite a different question about the role of the state in this emerging global order. Christian realists like Reinhold Niebuhr believed that the modern state was by far the strongest political reality in the global system of their day, and they worried only that it might become too strong, so powerful that even in its democratic form, it would pose a threat to human freedom. As a result, Christian realists spoke out against totalitarianism, but they also took on the unwelcome task of reminding the Western democracies that their governments, too, could claim too much for their own righteousness and wield power with too little self-restraint. They were right to do this, of course, and we have to continue to issue the same warning.

But perhaps in light of the emerging global order, we should be asking a new question, which would have been almost unthinkable to the twentieth century Christian realists. Given the growth of religion and commerce as global powers, perhaps we now have to ask whether the modern state is powerful enough to perform its function in the emerging global order. In a world where commerce crosses borders, religion defies armies, and cul-

ture moves with lightning speed across the internet, can the modern state still provide security and do its part in the approximation of justice that holds every society together?

New realities may be casting the Christian realist in the unlikely role of defender of sovereignty and state power. But who can deny that the people of Afghanistan or Lebanon would have been better off if they had stronger governments and weaker religious movements over the past couple of decades? Or that the citizens of many developing countries might have better lives and a better future if they had governments capable of making and enforcing labor and environmental laws?

The Christian realist, applying Niebuhrian principles of balance and mutual restraint, should today be calling for stronger states in many places. But the ironic reversals do not end there. The further irony, from a Christian realist point of view, is that in order to make such states stronger, the realist about state power needs now to be the apologist for an increasingly vigorous international regime of labor standards, human rights law, and humanitarian intervention in political crises. Weakened states—and their numbers will increase as the global forces of religion, commerce, and culture grow stronger—will tend to become authoritarian and isolationist unless they can connect to a larger system of regulation that rewards their cooperation with a larger measure of political control over events in their own territory.

This is a real change of priorities. Powerful states have always resisted these international regimes, and political realists have tended to accept that the scope and usefulness of international organization is severely limited, as a matter of practical fact, by the assertion of sovereignty.

The realities of globalization, however, have made international organization an assist to sovereignty rather than a threat to it. Think of the regimes of international law, humanitarian intervention, and human rights adjudication as a sort of mutual assistance pact by which states join together to assert their sovereign authority over, or provide their citizens with security against, global forces which they would be unable individually to resist. For a weak state, the alternatives to cooperation are authoritarianism, which imposes severe economic costs even when it is politically successful, or vulnerability to intervention by major powers, because major powers, for good reasons related to their own security, will not tolerate a failed state. Weak or reluctant states are increasingly finding that international cooperation reinforces their sovereignty, rather than diminishing it, and the most successful modern states are proving most successful at the legal and political adaptations this new global order requires.

Pluralistic Christian realism thus has different expectations and advocates different policies from the Christian realism of ideological politics and Cold War confrontations, but it derives these new positions from the same theological principles, which suggest that political wisdom consists in allowing no power to become confused with God, and warn that the danger of this confusion is greatest where we ourselves are closely involved. Reinhold Niebuhr's Christian realism cautioned about idolatry directed toward state, and nation, and political leaders. Now we must add that this caution includes idolatry of corporations, and cultures, of entrepreneurial messiahs and religious monopolies.

New realities are perhaps not as durable now as they once were. The international order built on balance of power between states lasted not quite two centuries, from the Congress of Vienna to the end of the Cold War. The version of that order built on ideological ri-

valry between superpowers, which elicited Niebuhr's version of Christian realism, lasted only a little more than four decades. But the changes which are happening today seem to reach much farther back into history, undoing some assumptions about political reality that have prevailed since the Renaissance and Reformation. If the changes go that much deeper, this new reality may last longer, too. But the important question for pluralistic Christian realists is not how long the changes will last, but whether we understand them well enough to begin new thinking about our enduring principles on the basis of this new experience.

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*Oliver Hidalgo:*

*Tocqueville, the Neocons and American Empire – Political Practice against a  
Violent Expansion of the Democratic Gospel*

According to a popular prejudice within the history of political ideas Alexis de Tocqueville was the lawyer of the United States who predicted the decline of “Old” Europe because of its decadence and effeminateness. In contrast to this the article wants to show that Tocqueville belongs to the thinkers who would have opposed the global dominance of an American superpower. Particularly the neoconservative claim for a globalization of democracy supported by military forces, preemptive strikes and regime change politics is totally against Tocquevillean arguments what has to be stressed the more because of the Neocons’ ordinary use and abuse of his works. Instead of this Tocqueville’s conception of foreign policy and international order provides rather a return to the classical model of a balance of power.

Today the question about an international order which is due to political ethics is frequently discussed in context with Pax Americana, the United States’ claim to create the global system in accordance with its own interests. The debates about the military, economic, political and cultural dominance of the United States are often concerned with the ideas of global hegemony and unilateralism, but the most provocative expression for this phenomenon is of course the American Empire. Since the collapse of the Soviet Union the USA found itself the only remaining superpower. And after 9/11/2001 when the military mobilisation reached an exceptional scale many Americans have been openly affirmed and paraded their nation’s imperial role. Some authors even talk about a “New Rome”<sup>1</sup> which disposes over the historical progress at the beginning of the 21<sup>st</sup> century. At the same time it has been stressed that the Imperium Americanum is able to rule the world without the burden of direct administration and the risk of usual state control which led Michael Ignatieff to the well-known statement of the “Empire lite”.<sup>2</sup> Moreover, Lothar Rühl designates the American superpower as “Reich des Guten” because of connecting its foreign policy with the expansion of freedom, market economy and democracy.<sup>3</sup> However, the critics of that kind of rhetoric rather assume a concealing of imperialistic desires and call on resistance against Pax Americana. But this just also shows that the application of the term “empire” to the United States of today might be quite justified.<sup>4</sup>

<sup>1</sup> Cf. Peter Bender, *Weltmacht USA: Das Neue Rom* (Stuttgart: Klett-Cotta, 2003).

<sup>2</sup> Cf. Michael Ignatieff, *Empire Lite: Die amerikanische Mission und die Grenzen der Macht* (Hamburg: Europäische Verlagsanstalt, 2003).

<sup>3</sup> Lothar Rühl, *Das Reich des Guten: Machtpolitik und globale Strategie Amerikas* (Stuttgart: Klett-Cotta, 2005).

<sup>4</sup> For this see also Herfried Münkler, *Imperien: Die Logik der Weltherrschaft: Vom alten Rom bis zu den Vereinigten Staaten* (Berlin: Rowohlt, 2005).

Alexis de Tocqueville was among the first authors who expected the USA to become a political, economic and cultural superpower. In his work *De la démocratie en Amérique* (1835/1840) he changed the map of the history of the political ideas. Before him, French liberals like Montesquieu, Voltaire, Constant or Guizot rather looked over to England for studying the *Constitution de l'Angleterre* as a model for the modern republic. In America they just discovered the Old World's state of nature, the continent on which you can observe the European past. Not so Tocqueville: For him America was not the past of Europe but its future. Instead of repeating the stages of European history of civilization the USA become the pacemaker for the Western world. Beyond the Atlantic the "spirit" of modernity did not need to break the opposition of old elites and hierarchies. Here civil society and democracy were able to develop naturally. Thus Tocqueville predicted the forthcoming supremacy of the New World on the last pages of his book's first volume which should become a kind of a *topos* soon.

### 1. Was Alexis de Tocqueville the Thinker of an American Empire?

Nevertheless there are obviously some serious problems to treat Tocqueville as preacher of an U.S. Empire. As it is well-known it was not America's global supremacy which he had in focus but the bipolarity between the USA and Russia.<sup>5</sup> Furthermore his prognosis was a widespread opinion during the July monarchy<sup>6</sup> that was due to the crisis of revolutionary Europe in 19th century.<sup>7</sup> So Tocqueville may not claim any originality for this remark. On the other hand it was certainly an omission that most theorists of international relations wanted to reduce the Frenchman to his forecast of the bipolarity between the two superpowers so far. Only on a surface Tocqueville must be ignored in order to get an adequate comprehension of contemporary world politics like the former president Nixon did when he wrote: "With the fall of the Soviet Union history apparently advanced beyond Tocqueville's prescience."<sup>8</sup>

That is definitely not true. Instead of this we may not overlook that Tocqueville uses his forecast concerning foreign policy as a metaphor for the two options modern democracies have in domestic politics: freedom or despotism. So his thesis in respect of the "providence" of democracy (which has a lot in common with Francis Fukuyama's speech of a democratic "end of history"), becomes even more relevant since the ideological controversy between East and West is over. At the present time Western democracy is without a real

<sup>5</sup> "There are two great peoples on the earth today who, starting from different points, seem to advance toward the same goal: these are the Russians and the Anglo-Americans [...] All other peoples appear to have nearly reached the limits that nature has drawn [...] but these are growing: all of the others have halted or advance only with a thousand efforts; these alone march ahead at an easy and rapid pace on a course whose bounds the eye cannot yet perceive [...] The one [America] has freedom for his principal means of action; the other [Russia] servitude. Their point of departure is different, their ways are diverse; nonetheless, each of them seems called a secret design of Providence to hold the destinies of half the world in its hands one day." See Alexis de Tocqueville, *Democracy in America* (Chicago/London: Chicago University Press, 2000), 395f.

<sup>6</sup> Cf. René Rémond, *Les États-Unis devant l'opinion française 1815-1852* (Paris: Armand Colin, 1962), 387f., n. 19.

<sup>7</sup> Cf. Umberto Coldagelli, *Tocqueville e la crisi europea* (Napoli: Istituto Suor Orsola Benincasa, 1994), 14ff.

<sup>8</sup> Richard Nixon, *Seize the Moment: America's Challenge in a One-Superpower World* (New York: Simon & Schuster, 1992), 111.

alternative but this fact does not cause too much optimism any more. So it is just Tocqueville who reminds us that the servitude of the future may be less a kind of hard repression like communism in Eastern Europe was but more a lack of freedom in order to maintain prosperity and stability. He spoke about a soft despotism which bases on the anxiety of people who desire a strong state and bureaucracy in favour of their security instead of practicing self-government and social engagement. In America the young Tocqueville has found an example how freedom, virtue and decentralization could be connected with the demands of democratic equality of conditions and the insecurity of one's social position. Later in his life he believed more and more that England is on the best way in this respect. In contrast to this he estimated Russia or also France to become probably despotically because of missing a kind of political culture that he observed in the Anglo-American area.

This "Anglophilie" of Tocqueville is the main argument of thinkers who suggest he had supported an imperial role of the United States. There is a long tradition to use his description of the New World to strengthen America's self-confidence. For instance, the broadminded conservative historians of the Consensus School saw in Tocqueville a witness for America's exceptionality in order to stress the national uniqueness of the United States as well as America's power and superiority respective its difference to Europe.<sup>9</sup> Today Neocons like Michael Ledeen, Richard Perle, David Frum, Lawrence F. Kaplan or Paul Wolfowitz want to find in Tocqueville an inspiration for their conviction that a global, if necessary violent expansion of the "democratic gospel" might be the best representation of American interests.<sup>10</sup> And is it not obvious that Tocqueville who associated America with freedom and prosperity and Russia with despotism had the imagination of an American Empire which appears as enforcer of free democracy and human rights? Could he really have spoken against the benedictions of Pax Americana? In addition to the fact that his works and letters show a sometimes rude imperialistic perspective which based on the faith in the superiority of the Western world? Despite of this a more precise lecture of Tocqueville's works can prove that he would not belong to the contemporary advocates of American Empire. For this there are four arguments which are supposed to show the inadequacy of the Neocons' re-reading of Democracy in America: first Tocqueville's ambivalent position towards the American grounding (2), second the necessity of a balance of power within the international system (3), third the impossibility to export a free political

<sup>9</sup> Cf. Henry Steele Commager, *The American Mind: An Interpretation of American Thought and Character Since the 1880's* (New Haven: Yale University Press, 1950); Louis Hartz, *The Liberal Tradition in America: An Interpretation of American Thought Since the Revolution* (New York: Harcourt, Brace & Company, 1955); and Seymour M. Lipset, *American Exceptionalism: A Double-Edged Sword* (New York/London: Norton, 1996).

<sup>10</sup> Cf. Michael Ledeen, *Rediscovering American Character*, National Review Online (<http://nationalreview.com/contributors/ledeenprint101001.html>); David Frum/Richard Perle, *An End to Evil: How to Win the War on Terror* (New York: Random House, 2003), 175; David Ignatius, *A War of Choice, and One Who Chose it*, Washington Post (2.11.2003) (<http://www.washingtonpost.com/wp-dyn/articles/A49310-2003Oct31.html>); Lawrence F. Kaplan, *American Idle: Four Years After September 11, We're Still Bowling Alone*, The New Republic (9.9.2005) (<http://www.tnr.com/doc.mhtml?i=20050912&cs=kaplan091205>). For the Neocons' general invoking on Tocquevillean ideas see first of all Irving Kristol, *Reflections of a Neoconservative* (New York: Basic Books, 1983); Adam Wolfson, "Conservatives and Neoconservatives", in Irwin Stelzer (Ed.), *Neoconservatism* (London: Atlantic Books, 2004), 213-231; and Bernard-Henri Lévy, *American Vertigo: Traveling America in the Footsteps of Tocqueville* (New York: Random House, 2006).

culture (4), and finally an advanced discussion of Tocqueville's own imperialistic ambitions (5).

## 2. Tocqueville's Critical Distance to the New World

In America Tocqueville observed a society that was separated from the conflicts forming the democratization of Europe. Because there were no traditional structures to deflect his view from the essentials of democracy he was sure to be able to conclude from his experiences in the United States to the advantages and handicaps, chances and risks of modern society.<sup>11</sup> Hence the aristocrat's ambivalent description of the democratic system and its customs reflected also his critical distance to the American character. It is much more than a coincidence that some of the most negative tendencies of democratic equality – the dictate of the public opinion, the material greed, the religious hypocrisy and above all the mediocrity of culture – were exactly the phenomenon he was confronted with during his journey through the United States. The one-sided, very positive self-portrait many Americans want to find in Tocqueville's book is not appropriate to conceive his aims. Therefore James Kloppenberg has criticized that the deep interest Tocqueville gets in American public life today, the omnipresence of his name, "owe more to Americans' irresistible urge to simplify Tocqueville's ideas than to a willingness to acknowledge his ambivalence or to keep in focus the multiple dimensions of his complex analysis of American democracy".<sup>12</sup> On the other hand the Neocons themselves show a kind of "Tocquevillean" distance to democratic culture, individualism and capitalism in the United States.<sup>13</sup> By "paraphrasing Tocqueville" they just demonstrate their elitist belief "that we should aim at educating and directing democracy, rather than seeking to overcome it".<sup>14</sup> But according to this the Neocons were also supposed to define a rather defensive role of American power concerning the international order.

## 3. The Balance of Power and International Order

As a disciple of Charles de Montesquieu (to whom law and freedom were only guaranteed if political forces control themselves mutually – *Le pouvoir arrête le pouvoir*), Tocqueville discussed power just under the condition of its limitation. Hence he was quite worried about the modern state's increasing sphere of influence which smashes the *pouvoirs intermédiaires* and rules the people with uniformed and abstract regulations. So he always sought for some counterweights to the centralized state. In this respect it is up to the political associations, the local and regional institutions of self-government, the two-stage election of the president, the bicameralism, the free press, justice and finally the authority of church and religion to prevent an unlimited intervention of the state against

<sup>11</sup> Cf. Seymour Drescher, "More than America: Comparison and Synthesis in Democracy in America", in Abraham S. Eisenstadt (Ed.), *Reconsidering Tocqueville's Democracy in America* (New Brunswick: Rutgers University Press, 1988), 77-93.

<sup>12</sup> James T. Kloppenberg, "Life Everlasting: Tocqueville in America", in *The Virtues of Liberalism* (New York/London: Oxford University Press, 1998), 81.

<sup>13</sup> See for instance Irving Kristol, *Reflections*, 76, 161, respective Irving Kristol, *The Neoconservatism: The Autobiography of an Idea* (New York: Basic Books, 1995), 219, 282, 322.

<sup>14</sup> Wolfson, *Conservatives and Neoconservatives*, 222.

individuals. And there are not any indications in Tocqueville's works which would suggest that the principle of a balance of power is not valid for international relations. As a foreign politician in the French monarchy as well as in his period as foreign minister of the Second republic Tocqueville wanted to establish France in the concert of European powers. During the crisis in the Middle-East in 1840 his main goal was to prevent the supremacy of Great Britain if necessary by a war. Then, in the troubled years after the revolution of 1848, he was rather keen on the stability of foreign affairs because of domestic challenges bounding French capabilities.<sup>15</sup> So despite of his prevailing positive description of American democracy, a global hegemony of the United States would have been against his political principles. A superpower which can make unilateral decisions without being controlled by checks and balances will become a danger for freedom although it might be basically a part of a free system. This shows Tocqueville to be very close to the theorists of political realism like Paul Kennedy or John Mearsheimer who predicted the loss of U.S. supremacy in order to avoid a kind of "imperial overstretch".<sup>16</sup> Instead of this they favour the balance of power model because only the rivalry between political actors obligates to the practice of international order.

#### 4. Freedom and Political Culture

For Tocqueville the pseudo-democratic systems that he called "soft despotism" do not miss necessary free institutions but above all a political culture. "Les lois d'ailleurs sont filles des habitudes",<sup>17</sup> the laws are children of the habits, which means that a free order could only be achieved if political institutions are completed with a certain spirit.<sup>18</sup> The laws and the constitution must be founded and completed by special customs, manners and practice. To become efficacious, the institutions must be internalized by citizens as their habits of the heart. This focus on practice and culture gets so far that Tocqueville said the right to vote remains only a simulation of freedom if the spirit of freedom is missed. An acclamation of the people to its rulers is not enough to overcome servitude. This thesis is expressed quite clearly in the Old Regime:

"Almost all the rulers who have tried to destroy freedom have at first attempted to preserve its forms. This has been seen from Augustus down to our own day. Rulers flatter themselves that they can combine the moral strength given by public consent with the

<sup>15</sup> For a comprehensive study of Tocqueville's role as foreign politician e.g. Edward T. Gargan, *Alexis de Tocqueville: The Critical Years 1848-51* (Washington: Catholic University Press of America, 1955); Susanne Gervers, *Tocqueville als Politiker: Die Probleme seines neuen Liberalismus in der Praxis* (Lüneburg: University Press, 1995); Sharon B. Watkins, *Alexis De Tocqueville and the Second Republic 1848-1852: A Study in Political Practice and Principles* (Lanham: University Press of America, 2003); and Karlfriedrich Herb/Oliver Hidalgo, *Alexis de Tocqueville* (Frankfurt/New York: Campus, 2005), 81-97.

<sup>16</sup> Cf. Paul Kennedy, *The Rise and the Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Random House, 1987); and John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York/London: Norton, 2001).

<sup>17</sup> Alexis de Tocqueville, *Œuvres complètes*, Vol. 1.1, (Paris: Gallimard, 1951ff.), 78.

<sup>18</sup> Cf. Dorrit Freund, *Alexis de Tocqueville und die politische Kultur der Demokratie* (Bern/Stuttgart: Haupt, 1974), 63; Roger Boesche, *The Strange Liberalism of Alexis de Tocqueville* (Ithaca/London: Cornell University Press, 1987), 182; James T. Schleifer, *The Making of Tocqueville's Democracy in America* (Indianapolis: Liberty Fund, 2<sup>nd</sup> ed, 2000), 286ff.

advantages that only absolute power can give. Almost all have failed in the enterprise, and have soon discovered that it is impossible to make the appearance of freedom last where it is no longer reality.”<sup>19</sup>

The meaning Tocqueville attributes to the habits of the heart contradicts the superficial idea that free elections already consolidate a democracy. The need of political culture and practice that acknowledges the vote of majority as well as the minority’s right, is particularly against the logic of the Bush-Doctrine which eventually intends to support the global process of democratization by military interventions. Culture and practice never can be prescribed or forced but have to grow up and evolve step by step. What you can export seems to be only the despotic alternative of democracy: an inhibited system which is covered up and even legitimized by people’s voting without exhibiting a profound democratic practice. However, it belongs to the very inconvenient implications of Tocqueville’s political theory that he reduced the option to get a free democratic culture only to the Christian world,<sup>20</sup> because only the Christian nations with their idea of human dignity, the equality of all people in the eyes of god and the commandment of charity would have the conditions to develop the main democratic values – political liberty, equality and solidarity. In this respect Tocqueville was obviously quite close to Samuel P. Huntington’s thesis of a Clash of Civilizations.

### 5. Tocquevillean Imperialism

It is certainly no coincidence that in the era of American Empire Tocqueville’s treatment of the colonization of Algeria, his own imperialistic ambitions, and the problem of violent subjection of different civilizations are in focus of American scholars today.<sup>21</sup> Here I can only draw a brief sketch of his position.<sup>22</sup> His recommendation of colonial policy was most of all the result of his conviction that France has to stand the competition with the British Empire.<sup>23</sup> That is why he demanded to take part on the conquest of Asia. When many of his compatriots still dreamt of Napoleon’s continental empire Tocqueville recognized the control of North Africa to be necessary for the support of French ambitions in the Middle East. So for him, the rule over Algeria became the most important goal of contemporary foreign policy.<sup>24</sup> As already mentioned Tocqueville followed the concept of a Balance of Power instead of believing in an imperial world order. On the other hand there is also an ethnocentric prospect beyond the geopolitical considerations and this might be a real scandal in our present view. Tocqueville was convinced about the superiority of Christian culture and religion comparing to Hindus or Muslims, so he idealized the conquest of Asia

<sup>19</sup> Alexis de Tocqueville, *The Old Regime and the Revolution* (Chicago/London: Chicago University Press, 1998), 125.

<sup>20</sup> Cf. Tocqueville, *Democracy in America*, 6f.

<sup>21</sup> Cf. Jennifer Pitts: *Empire and Democracy: Tocqueville and the Algeria Question*, *Journal of Political Philosophy* 8 (2000), 295-318; Cheryl B. Welch, *Colonial Violence and the Rhetoric of Evasion: Tocqueville on Algeria*, *Political Theory* 31 (2003), 235-264.

<sup>22</sup> For a comprehensive view on the topic see *Tocqueville’s Writings on Empire and Slavery*, edited and translated by Jennifer Pitts (Baltimore/London: John Hopkins University Press, 2001).

<sup>23</sup> Cf. Tocqueville, *Œuvres complètes*, Vol. 6.1, 334.

<sup>24</sup> Cf. Tocqueville, *Œuvres complètes*, Vol. 3.1, 214.

and Africa to be the moral mission of Europe. In contrast to the many liberal thinkers of the 19<sup>th</sup> century who executed a very doubtful Turn to Empire<sup>25</sup> Tocqueville just had no economic interests in mind. His special treatment of the Algeria problem means even no contradiction to his democratic theory.<sup>26</sup> This will become evident when we take a look on the reciprocal relationship Tocqueville assumed between foreign and domestic politics.<sup>27</sup> With his offensive military policy he opposed against the lack of public life during the July Monarchy. Following the republican tradition of Machiavelli and again of Montesquieu he thought that war was sometimes a important medium for freedom.<sup>28</sup> By a martial education he wanted to change the conformist and greedy bourgeoisie into a political class. With the conquest and colonization of Algeria he was sure to have discovered a therapy against the dangers and negative tendencies caused by the irresistible process of Western democratization. After 1848, when the Second Republic had to fight against its domestic enemies, Tocqueville showed much more reserve concerning colonialism. Then his main goal was to consolidate the inner state.

Tocqueville's chauvinism, his ignorance of brutal crimes the French military committed against Algerian civilians, the usual racism which influenced the war in North Africa, are of course neuralgic points which damage his reputation as a clairvoyant analyst of modern democracy. But even these seamy sides in his political theory may not be abused by the exhibitors of American Empire. It is true that the neoconservative Think Tanks who emphasize the moral mission of Pax American in a sometimes extreme manner<sup>29</sup> want to rely also on Tocquevillean arguments, but in this respect we have to tell two things very carefully: The address of Tocqueville's educational project of imperialism was the French classe moyenne whose decadence and effeminateness should be compensated by the experience of war, whereas a "proselytizing" of foreign civilizations in order to get a free democracy contradicts the crucial role of traditional culture and practice. Maybe this was also the reason why Tocqueville agreed with the violent subjection of the indigenous population in Algeria: because a proselytism to democracy would not have been available. The Neocons, however, understand Pax Americana exactly in terms of messianism, as a divine instruction to support a democratic end of history if necessary by war and aggression. Also in this respect Tocqueville was a too good disciple of Montesquieu that he could have forgotten that a project ignoring moral, cultural and religious peculiarities of nations is condemned to fail.

<sup>25</sup> Cf. Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton/Oxford: Princeton University Press, 2005).

<sup>26</sup> Cf. Oliver Hidalgo, *Unbehagliche Moderne: Tocqueville und die Frage der Religion in der Politik* (Frankfurt/New York: Campus, 2006), 154ff.

<sup>27</sup> See David W. Clinton, *Tocqueville on Democracy, Obligation, and the International System*, *Review of International Studies* 19 (1993), 227-243.

<sup>28</sup> For this see a particular passage in *Democracy in America*: "I do not wish to speak ill of war; war almost always enlarges the thought of a people and elevates its heart. There are cases where only it can arrest the excessive development of certain penchants that equality naturally gives rise to, and where, for certain deep-seated maladies to which democratic societies are subject, it must be considered almost necessary. War has great advantages." (Tocqueville, *Democracy in America*, 620)

<sup>29</sup> Cf. Alexandra Homolar-Riechmann, *Pax Americana und gewaltsame Demokratisierung: Zu den politischen Vorstellungen neokonservativer Think Tanks*, *Aus Politik und Zeitgeschichte*, B 46 (2003), 33-40.

### 6. A Global Expansion of Democracy?

It has been demonstrated that Tocqueville's own imperialism is due to his program to educate democracy. Like Michael Hardt and Antonio Negri have emphasized the imperial spirit might always be a sign of a crisis or a decline – in case of Tocqueville it was the sign of democracy's tendency to decadence.<sup>30</sup> But what could be then his position concerning the option of a global democratization? Did he think that a worldwide expansion of democracy was due to a Christianizing of the world? And was this a realistic or rather a desirable option?

First of all we have to say that Tocqueville's assumption of the superiority of Christianity against other religions and cultures – how wrong this might be at all – definitely suggested that world history could go this way. According to a more secular view there are also links between Tocqueville's prospects and the theory of modernization.<sup>31</sup> Because of defining democracy as a synonym of modern society which characteristics are above all the equality of conditions, economic growth and technical progress, it is quite clear why modernization theorists like Seymour M. Lipset, Shmuel N. Eisenstadt or Daniel Bell relied on the works of the French aristocrat. However, Tocqueville distrusted the logic of democratic peace. He strictly disapproved an "end of history" which was paid by the political apathy of people. The bourgeois class' interest in security may not undermine the nation's higher interest in freedom.

On the other hand the first principle of democracy – equality – is not necessary a Christian one. Tocqueville was very aware of the fact that the Islam has an egalitarian character as well<sup>32</sup> and even more than Catholicism, whereas in Hinduism, for example, he could only recognize a strict aristocratic dogma. Anyway – the "democratic" character of Islam suggested him that the expansion of democracy could take place outside the Christian world. Moreover, equality itself has the impact of a very expansive character of democracy. For Tocqueville, it was just democratic equality which causes the trust in a possible "prose-lytizing" of nations to democracy. If all people are equal the logical consequence is to share the same system. Otherwise you had to accept that there is no way for finding a uniform way of life. But this issue definitely has to be separated from the fact that according to Tocqueville there was no possibility to export a free and democratic political culture by subjecting other civilizations. We just have to keep in mind that democracy was a very ambivalent phenomenon for him which included also some very despotic tendencies. And the danger to get only inhibited democracies by violent extension might have been one of these tendencies. On the other hand we have to stress once again that in the eyes of Tocqueville a free democracy was reserved for the Christian world anyway. Only Christian nations at least got the chance to connect democratic equality with freedom whereas Islamic fatalism just required an illiberal system. Therefore Tocqueville could connect his understanding of relations between Christian European settlers and pagan Amerindians in

<sup>30</sup> Michael Hardt/Antonio Negri, *Empire: Die neue Weltordnung* (Frankfurt/New York: Campus, 2002), 381f.

<sup>31</sup> Cf. Seymour Drescher, *Why Great Revolutions Will Become Rare: Tocqueville's Most Neglected Prognosis*, *Journal of Modern History*, 64,3 (1992), 429-454.

<sup>32</sup> For this see above all the *Note sur le Coran* (*Œuvres complètes* 3.1, 154-162).

the New World with his analysis of French imperial policy in North Africa: In his view Algeria was supposed to become a kind of “laboratory” for the municipal self-government he had admired in America, but for French settlers and not for the Muslim population. This is also the reason why Samuel Huntington’s third wave of democracies is so close to some of Tocqueville’s insights because of emphasizing the religious grounds of democracy and particularly the deep connection between liberal democracy and Christianity. But a last time we have to recognize here the trench between Tocqueville and the Neocons: Although his has something in common with Fukuyama as well as with Huntington he is far away from the inconsistent combination of both thinkers the Neocons make: To fight the clash of civilizations in order to reach the democratic end of history is against the essence of Tocqueville’s metaphysics of history that treats democracy as a framework whose negative impact has to be prevented by the acting and the responsibility of human beings instead of even bringing on a democratic despotism by preaching a violent expansion of democracy. So finally we can only come to the conclusion that the Neocons’ use of Tocquevillean ideas is based on a completely misleading interpretation.

#### 7. Tocqueville and Political Practice in Contemporary America and Europe

To achieve a new world order nowadays the majority of Europeans sets its hope on multilateralism and international law, whereas Americans predominantly grasp the stability of the international system as a question of capabilities and power. That was also the reason why the outlines of an imperial order stressing the American claim for world leadership have been encumbered the transatlantic relations since a few years.<sup>33</sup> After the moral and political disaster in Iraq the sceptic views from Europe criticizing the danger of American imperialism and predicting the decline of American Empire because of its anti-democratic hubris<sup>34</sup> may be receive more attention again.

Nevertheless the American political scientist Robert Kagan has interpreted the controversy between Europe and the United States concerning war in Iraq only as a symptom that there are really worlds between them. In his book *Of Paradise and Power*<sup>35</sup> Kagan stylizes the Europeans to be some naive idealists who deny the Americans’ realistic perception that Western societies are threatened in a massive way. According to this the Europeans were unable to accomplish their contribution in favour of an international order. While Americans come from Mars, Europeans are from Venus,<sup>36</sup> when the American

<sup>33</sup> Cf. Andrew J. Bacevich, *American Empire: The Realities and Consequences of U.S. Diplomacy* (Cambridge/Mass.: Harvard University Press, 2002); Andrew J. Bacevich (Ed.), *The Imperial Tense: Prospects and Problems of American Empire* (Chicago: Ivan R. Dee, 2003); Ulrich Speck/Natan Sznaider (Eds.), *Empire Amerika: Perspektiven einer neuen Weltordnung* (München: DVA, 2003).

<sup>34</sup> Cf. Hardt/Negri, *Empire*; Emmanuel Todd, *Weltmacht USA* (München: Piper, 2003); Zvetan Todorov, *Die verhinderte Weltmacht* (München: Goldmann, 2003). On the other hand there are also European contributions voting in favour of an U.S. Empire. Cf. Niall Ferguson, *Das verleugnerte Imperium: Chancen und Risiken amerikanischer Macht* (Berlin: Propyläen, 2004).

<sup>35</sup> Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order* (New York: Knopf, 2003).

<sup>36</sup> For this discussion see the edition by Rudolf von Thadden/Alexandre Escudier, *Amerika und Europa: Mars und Venus?* (Göttingen: Wallstein, 2004).

superpower only trusts in the theory of Hobbes, Old Europe rather refers to the peace illusions of Kant.

Perhaps the Europeans really demand too strictly that America is not allowed to fight against its enemies in the same uncompromising way it is threatened. Many Americans do not understand that Europeans have not learnt anything from the wrong appeasement politics before World War II. But the more important it is to stress that also the Europeans have good arguments to doubt on the American way of "self defence". As we have seen, even the icon of the U.S. democracy, Alexis de Tocqueville, would have resisted against American Empire. And the Frenchman's voice is much more significant for American debates than the works of Kant, of course. Furthermore the moral and political insights of Tocqueville are neither under suspicion to imply a naive prospect of world politics nor to argue in a manner of Anti-Americanism. So his relevance for a theory of the international relations does not end with the fall of Socialism in Eastern Europe. Instead of this a deeper look on his works might be able to change the fact that in the United States the requirement of a return to multilateralism is just the exclusive domain of the Left.<sup>37</sup> Hence it really has to be stressed that also Tocqueville who is very popular within conservative and neoconservative circles can be seen as a reference to blame the Bush-Administration for having wasted much of the USA's moral capital and therefore the claim to solve international conflicts in accordance with unilateralism.

In his reply to Kagan Paul Berman recognized behind the Europeans' belief in international law even a sort of "Tocquevillean spirit".<sup>38</sup> However, apart from Tocqueville's belief in the balance of power and a rather general idea of international relations based on the Rule of Law we are not able to draw an elaborated concept for international order from his works. In this respect the theories of Immanuel Kant seem to be much more progressive and typical for the European way of supranationalism. On the other hand, Tocqueville's assumption of a reciprocal relationship between foreign and domestic politics leads us to some interesting insights concerning the topic of American empire as well: The moral arguments which dominate his view on domestic democracy must be bounded in the more pragmatic sphere of international relations – paradoxically just in order to be able to maintain an international system due to political ethics and practice. With Tocqueville we can only just warn against a confusion of domestic and foreign domains which caused not coincidentally the trouble of his own (Christian) imperialism and which is simulated now in terms of aiming at a violent expansion of the secularized democratic gospel. This dangerous mixing of moral and strategic categories is most of all characteristic for the Neo-

<sup>37</sup> Cf. Chalmers Johnson, *Blowback: The Costs and Consequences of American Empire* (New York: Metropolitan Books, 2000); Michael Mann, *Incoherent Empire* (London: Verso, 2003); Benjamin B. Barber, *Fear's Empire: War, Terrorism, and Democracy* (New York: Norton, 2003); Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance* (New York: Metropolitan Books, 2003); Chalmers Johnson, *The Sorrows of an Empire: Militarism, Secrecy, and the End of the Republic* (New York: Metropolitan Books, 2004); Noam Chomsky/David Barsamian, *Imperial Ambitions: Conversations with Noam Chomsky on the Post-9/11 World* (New York: Metropolitan Books, 2005); Chalmers Johnson, *Nemesis: The Last Days of the American Republic* (New York: Metropolitan Books, 2007).

<sup>38</sup> Cf. Paul Berman, *What Lincoln Knew About War*, in: *The New Republic*, 03.03.2003 (<http://www.tnr.com/doc.mhtml?i=20030303&cs=berman030303>).

cons' perspective on international relations, but we could already observe a special influence on some scholars of political realism.<sup>39</sup>

Tocqueville, at least, was not the mastermind of contemporary democratic imperialism.<sup>40</sup> Although he stands for imperial extension, conquest and subjection, his faith in democracies' potential for freedom (which developed during his journey through the United States) did not make him a preacher of an Imperium Americanum because empire would operate against freedom. What we can rather find in his works are some indications that he was among the thinkers who combined the success of Western world's democratization with the persistence of Christian values and the political engagement of citizens. And a bit similar to Timothy Garton Ash who identified the transatlantic alliance to be the upholder of a free and democratic world,<sup>41</sup> Tocqueville argued for harmony between America and Europe.<sup>42</sup> Despite of being competitors in the economic and also in the political domain they are condemned to stand together against the dangers of the common future. Therefore the unilateral aspiration for American Empire must be counterproductive in any sense because it produces distrust and resistance even between natural partners. That is also why the neoconservative claim for a globalization of democracy supported by military forces, preemptive strikes and regime change does not convince the majority of Europeans although the Neocons' doctrine even include an attempt to replace the pejorative concept of empire by the idea of the United States' "benevolent hegemony":<sup>43</sup> While empire ever bases on its threat to force its interests if necessary by military power, hegemony needs allies who follow the leader voluntarily.<sup>44</sup> So Tocqueville's main problem how

<sup>39</sup> As an example see Josef Joffe, *Macht der Moral: Warum die Verbreitung der Demokratie die beste Realpolitik ist*, DIE ZEIT, 24.11.2005.

<sup>40</sup> For a different view see Matthias Bohlender, *Demokratie und Imperium: Tocqueville in Amerika und Algerien*, *Berliner Journal für Soziologie*, 15.4 (2005), 523-540.

<sup>41</sup> Cf. Timothy Garton Ash: *Freie Welt: Europa, Amerika und die Chance der Krise* (München: Hanser, 2004).

<sup>42</sup> In 1857, when the Coming of the American Civil War became obvious, Tocqueville wrote to Edward Childe that he desires that "the great experiment of *Self Government* made in [Christian] America shall not fail. If it does, it will be the end of political liberty on earth" (*Œuvres complètes* 6.3, 193). Moreover, in an earlier letter to Childe he had called himself to be "half a yankee" (*Œuvres complètes* 6.3, 185). See also Hugh Brogan, "Tocqueville and the Coming of the American Civil War", in Brian Holden Reid and John White (Ed.), *American Studies: Essays in Honour of Marcus Cunliffe* (New York: St. Martin's Press, 1991), 83-104. Converging with Tocqueville's position might be also the idea of an American *Soft Power* (cf. Joseph S. Nye, *Bound to Lead: The Changing Nature of American Power* (New York: Basic Books, 1990), and Nye, *Soft Power: The Means to Success in World Politics* (New York: Public Affairs Ltd., 2004) which provides a global democratization by its economical, cultural and political attraction, secured by multilateral institutions (cf. Nye, *The Paradox of American Power: Why the World's only Superpower Cant' Go it Alone*, Oxford/London: Oxford University Press, 2003).

<sup>43</sup> See William Kristol/Robert Kagan, *Toward a Neo-Reaganite Foreign Policy*, in *Foreign Affairs*, 75.4 (1996), 18-32; Robert Kagan: *The Benevolent Empire*, in *Foreign Policy* 111 (1998), 24-35, Michael Ledeen: *It's not About Imperium*, *FrontPageMagazin.com*, 21.10.2002 (<http://frontpagemag.com/Articles/Printable.asp?ID=4044>), and Lawrence F. Kaplan/William Kristol, *The War Over Iraq* (San Francisco: Encounter Books, 2003).

<sup>44</sup> See Michael Mastanduno, *Incomplete Hegemony and Security Order in the Asia Pacific*, in John Ikenberry (Ed.), *America Unrivaled: The Future of the Balance of Power* (Ithaca/London: Cornell University Press, 2002),

to maintain freedom under the conditions of modernity finally might also turn the scale concerning international politics and policy: Against the will of the rest of the (Western) world and without the political practice of multilateralism even the American superpower will not be able to guarantee international order.

181-212; and Carlo Masala, *Gütiger Imperator: Hegemonialmacht oder Imperium – Die amerikanische Empire-Debatte*, *Internationale Politik* 10 (2004), 64f.

*Jan van der Stoep:*  
*Globalisation, existential insecurity and the nation state*

1. Introduction

Security and safety are key political issues at the beginning of the 21st century. One of the most obvious reasons is of course the recent outburst of terrorist attacks. Confronted with the awful consequences of the attacks in New York, Madrid and London citizens are often willing to exchange their freedom and privacy for a more secure political environment. But in order to understand the new interest in security in a more profound way, one also needs to point to processes of globalisation and the crisis of the ideal of the nation state. In this paper I will examine how globalisation changes the role of the state by studying the objective of the European Union to create an area of freedom, security and justice. As we will see, the EU wants to stimulate the free movement of citizens within its region, but at the same time stresses that this freedom may only be enjoyed within a secure area without crime and with strict external border controls. How to judge such a policy? Should we from a cosmopolitan perspective welcome the blurring of boundaries between states and warn against new forms of protectionism? Or should we from a communitarian perspective stress that citizens need a secure home and that the blurring of boundaries only will lead to alienation and existential insecurity? In what follows I will defend a moderate cosmopolitanism which is aware of its own social and cultural situatedness and therefore acknowledges the need for boundaries.

2. An area of freedom, security and justice

On 7 February 1992 the former members of the European Community signed the so-called Maastricht Treaty, which not only led to the creation of the Euro, but also to the transformation of the European Community into the European Union. Characteristic for the new European Union is its three-pillar structure. The first pillar, the Economic and Social Policy pillar is largely an extension of the policy of the former European Community dealing mainly with economic and trade matters. The other two pillars, the Common Foreign and Security pillar and the Justice and Home Affairs pillar deal with foreign policy, military and juridical matters and asylum and immigration policy. Important for the members of the new European Union, however, was that those last two pillars were sharply demarcated from the first pillar, that is the Economic and Social policy pillar. While economic policy and trade policy are delegated to the supranational institutions of the EU, the policy of the other pillars still has an intergovernmental character, which means that it is still a matter of negotiation between the various states. The issues dealt with were considered too sensitive to delegate to supranational bodies. This is especially the case for immigration and asylum politics. Even today it is almost impossible to develop a coherent communal policy on this matter. Important reason of course is that in several countries feelings are running high when topics like immigration and border control are discussed.

In this paper I especially concentrate myself on the pillar of Justice and Home Affairs. The main objective of this pillar is 'to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member

States in the field of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia' (European Union 1999: art. 29). The EU wants to achieve this objective by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in person and offences against children, illicit drug trafficking and illicit arm trafficking, corruption and fraud through close cooperation between police forces, close cooperation between judicial and other competent authorities and approximation of rules on criminal matters. In its preamble the Maastricht Treaty presents the objective to create an area of freedom, safety and security as integral part of a policy in which it facilitates the free movement of persons. One may also say that according to the EU safety and security are precondition for the freedom of movement. Freedom and the right to move can only be enjoyed in conditions of security and justice accessible for all (Tampere European Council 1999: art. 2). That those conditions must be guaranteed on an European level is just a direct consequence of the freedom of movement which blurs the boundaries between the various states. The member states are not able any longer to control their territory on their own and therefore they need the help and the cooperation of the other member states.

It is important to recognise that the policy of the EU concerning Justice and Home Affairs already recognises the need for a safe and secure environment long before the terrorist attacks were turning the world upside down. The policy to create an area of freedom, safety and security was also not primarily meant to meet the wishes of nationalist or communitarian movements who want to protect the national identity of the member states or a communal European culture. It only holds that European integration is firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law (Tampere European Council 1999: art. 1). A strict external border control and a coordinated asylum and immigration policy was considered necessary because of the abolition of internal border controls which makes it not only easy for law-abiding citizens to move around freely in Europe, but also for criminals and terrorists. Besides that, the increased flow of people seeking protection in the EU and the misuse of the system by illegal immigration and trafficking in human beings calls for a more integrated and transparent asylum policy. The consequence of such a policy however is that it gives rise to discrepancies between those who are foreign nationals but EU-members and those who are foreigners and third world nationals (Benhabib 2004: p. 153). Thus, whereas for example Polish labourers get better opportunities to work in other member states, people from Africa, Latin America or Asia are confronted with stricter external border controls.

### 3. Globalisation and the ideal of the nation state

In the introduction I already mentioned that the new interest in safety and security issues is strongly related to processes of globalisation and the crisis of the ideal of the nation state. The blurring of the boundaries within the EU is itself already a symptom of those developments. Because citizens are allowed to move freely between the various member states and may also claim social rights in other member states, e.g. the right to work, a further disentangling of 'ethnos' and 'demos', of nationality and citizenship is taking place as well as a decentralization of political power. One may also describe this process as an unbounding of market, government and civil society (Beck 2002: p. 16-17). This means that the state can not define, protect and regulate its internal national domain as it did

before. It is not seen any longer as the central organ guaranteeing the income, labour and well being of its citizens, but must share its power with other actors in the global space and must search for creative alliances with other states, as well as non-governmental organisations and multinationals. Given this changed political landscape one may wonder whether the influential modern ideal of the nation state, which assumes a strong link between nation and state and regards the state as a closed system is still tenable. Note that I am speaking about the modern ideal of the nation state and not about the nation state itself. In most of the countries, and even in a lot of countries within the EU, the process of nation building is never fully realised. Many state are in fact multinational states in which a variety of nations are living together, for better or for worse. Take for example Belgium (Flanders, Wallonia), Spain (Basque Provinces, Catalonia), England (Northern Ireland) and the countries of East Europe. Besides that the concept of the nation state is a highly controversial concept because it is often used by the ruling elite to impose the standards of their own group on the other groups within the country. Even in a nowadays homogeneous country as France nation building went along with the dominance of one regional group, the Parisian bourgeoisie, over other groups within the country. When the Parisian language for example became the official language, the other regional languages turned into dialects, that means into deviations from the rule (Bourdieu 1991: pp. 46-49). The concept of nation is thus not only an analytical instrument meant to describe a political reality, but also a practical tool, used to generate and sustain such a reality (Brubaker 1996: pp. 7, 15-16). Assuming that the ideal of the nation state is not only empirically wrong, but also normatively indefensible, the blurring of boundaries between the member states of the EU and the accompanying disconnection between 'nation' and 'state' may only be acclaimed. In spite of this, however, many social scientists still stick to a methodological nationalism. And also many political philosophers like for example John Rawls make a sharp distinction between national and international politics and assume that international law is a law of peoples, that is a law of unities of state, territory, morality and history (Beck 2002: p. 50, nt. 11). Ulrich Beck holds that such nation state philosophies make an unjustified distinction between 'inside' and 'outside', 'us' and the 'other'. They do not allow in their theories the option that persons may be citizen of varying, mutually interconnecting communities and therefore also have various interacting loyalties. One may identify oneself for example with the country in which one is living, but at the same time also with one's native country. Or one may be loyal to one's country, but at the same time also to one's city, province, region or continent, as well as to the world in general. That such mixed loyalties also weaken the position of the nation states is evident. In Catalonia as well as in other parts of the EU local and regional identities are proliferating and cities and regions often do have direct alliances with Brussels thereby bypassing national governments (Castells 2004: pp. 332-337). If one wants to do justice to the otherness of the other, however, one must accept as well that people may identify themselves with a variety of often interrelated repertoires.

#### 4. Protectionism and existential insecurity

Now that we have seen that the blurring of boundaries between the member states of the EU leads to a disconnection between 'nation' and 'state' as well as a decentralisation of political power, it is time to take a closer look to the policy of the EU to guarantee the

safety and security of its citizens. Without a safe and secure environment, so the argument goes, the citizens of the EU are not able to enjoy their shared commitment to freedom, based on human rights, democratic institutions and the rule of law. From a cosmopolitan point of view one may doubt, however, if such a policy to create an area of freedom, safety and justice is not just a new form of protectionism, but then on a continental level. It seems that it does not fully dare to accept the consequences of a world without borders and state regulations. Although the EU acknowledges the inevitability of transnational politics it is not really open to the world, one may say, and risks to become a closed fortress. It focuses its politics on the small inequalities within the borders of its own territory and overlooks the big inequalities between rich and small countries, between the North and the South (Beck 2002: pp. 64-65).

I wonder, however, if such a cosmopolitan view does not push out too easily the widespread feelings of existential insecurity. It is even intelligible and highly plausible that such feelings of anxiety may arise as a result of globalisation. For with the collapse of the nation state citizens also lose a collective and nationwide insurance against individual and local misfortune and may feel themselves the plaything of shifting and restless global powers (Bauman 2002: pp. 172-173). One of the main functions of the modern welfare state was indeed to protect the legal and social security of its citizens against the violence and oppression of others as well as against misfortunes caused by sickness, invalidity, unemployment etc. (Castel 2003: 5). There are good reasons not to take the feelings of existential insecurity or anxiety for granted or to take advantage of those feelings as populists often do. But that does not mean that one must not take them very seriously. Existential insecurity as such is always related to a lack of social or moral orientation which makes it impossible to act or to project one's future. One may relate this disorientation and lack of security not only to the physical well being of people, that is to the basic living conditions and vulnerability to risks (Norris and Inglehart 2004: p. 4-5), but also to the mental well-being, that is to the search for a meaningful life. In this last case existential insecurity is a kind of spiritual disorientation, a loss of meaning, or a loss of horizon (Taylor 1989: p. 17-19).

The EU policy to create an area of freedom, security and justice especially addresses the legal security of its citizens. It provides a stable legal order which also clearly demarcates what is inside and outside. In order to defend such a policy one may point to the normative principle that a public legal order must always be based on the common consent of its citizens. As Seyla Benhabib (2004: pp. 201-202) already has demonstrated that inevitably requires a closure, because each community may only authorise its own laws and not that of others. Besides that, the more extensive the territory the less the sense of ownership of the citizens. Although one may doubt the way in which the EU interprets its task to create an area of freedom, security and justice (e.g. because of its strict immigration politics), the fact that it protects the legal selfdetermination of its citizens is commendable. One may even go a step further and may wonder if the member states of the EU not also have a duty to protect the social security of their citizens. The French sociologist Pierre Bourdieu (2001) for example calls the construction of the European Union a social disaster and incites the national organised labour movements to reorganise themselves on an European level. Although the ideal of a social Europe does not at all exclude a solidarity with immigrants coming from abroad (see e.g. Bourdieu 2001: 19-20), it at least presupposes again

the demarcation of a territory in order to define a common goal and develop an ethos of solidarity.

##### 5. A moderate cosmopolitanism

Although I like the concern of the cosmopolitans to be open to the world and avoid protectionism, they are missing the point when they reject any kind of boundary or closure, thereby ignoring the feelings of despair and anxiety of ordinary citizens. I agree with Ulrich Beck (2002: 407) that we need a selfcritical cosmopolitanism, but I doubt if his version of it is really critical enough. Is he indeed sufficiently aware of the social and cultural situatedness of his own position as an academic whose life is secure enough to cope with the social, economic and legal disorder of a world without fixed boundaries? It is at least striking that his whole argument, despite his rejection of a thinking in terms of 'us' and the 'other', is driven by a rejection of nationalist and protectionist politics as being reactionary and out of date. In this way he create his own demarcation between inside and outside, right and wrong. Besides that he ignores that his individual and intellectual freedom highly depends upon social and institutional arrangements which gives him a secure home. As a well-paid intellectual, he is not only an individual *de jure*, but also *de facto* (Bauman 2005: p. 23 ff.). That means, he has the instruments and social contacts to shape for himself a secure environment in which he may freely move around. It is especially this lack of reflectivity which gives his cosmopolitan view an elitist character, despite his obvious concern for the huge gap between people from the North and people from the South.

In order to develop a more moderate cosmopolitanism the work of the French philosopher Blaise Pascal, source of inspiration for Pierre Bourdieu as well as Michael Walzer, may be helpful. Pascal (2000: *pensées* 124 and 134) makes a distinction between ordinary people, *demi-habile* or semi wise men, and real wise men. The ordinary people are guided by a sense of urgency and just follow their intuitions and feelings of anxiety and hope. The *demi-habile* or semi wise men, on the contrary, know that the ordinary people are often mistaken and guided by delusions and mock them for their impulsiveness and lack of insight. The real wise men, however, also are aware of their own place and know that they are as mortal as any other creature. They are open to the possibility that ordinary people, often intuitively, know exactly what is the case and what is important, although they are not able to articulate it in proper terms. Translated to the topic of this paper one may say that the cosmopolitans rightly dispute the reactionary attitude of ordinary people, but at the same time do not consider that those ordinary people also have good reasons to feel insecure. They do not take into consideration that citizens need a stable social and legal order which gives them enough security to look to the future.

That Blaise Pascal was aware of the inevitability of such a social and legal order, becomes evident when we study his thoughts on tyranny (Pascal 2000: *pensées* 91 and 92). According to Pascal each social sphere has its own standards of excellence, and therefore also its own limited authority. That first of all means that the state is just one social sphere among the others and is also not allowed to interfere into the other spheres. Secondly, however, it means that the state has its own logic that may not be reduced to the logic of the market or the logic of civil society. The state is not just one player among other players in the social field, but has its own competence and therefore also its own task. That task is to balance the interests of the various social spheres and to look after the various spheres that they do

not dominate each other. Such an institutional pluralism on the one hand rejects the ideal of the nation state as an encompassing whole, incorporating its own national market and national civil society. In this regard it subscribes to the cosmopolitan agenda to move beyond the ideal of the nation state. On other hand, however, it also acknowledges is that the state has the task and authority to create an environment of order and security for its citizens so that they may live a relative autonomous and peaceful life. The task of the state is to keep order and to watch over the boundaries between the various spheres within the borders of its own territory. It does not have the competence to provide unlimited safety and security, but neither may accept the boundless world of cosmopolitanism.

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*Thomas Hoppe:*

*Just peace as leading perspective. Towards the concept and task profile of an ethics of international politics*

Abstract:

In the course of history, the doctrine of just war has proven to be susceptible to political misuse. Furthermore, it features a number of conceptual deficiencies. In the leading perspective of “just peace”, peace ethics primarily emphasises the task of violence prevention, for which the realisation and protection of human rights gain central importance. Even the traditional term „common good“ can be reformulated in this context. The concept of “just peace” critically confronts the discussion on the legitimacy of pre-emptive wars. With regard to „humanitarian interventions“, it calls for a sophisticated catalogue of criteria that helps to define the presuppositions under which such interventions can be deemed legitimate.

For twenty years the topic “just peace” has increasingly become a common ground for the Christian Churches in the field of peace ethics. It has unleashed a considerable dynamic to develop traditional positions in this field by now. Of central importance were those discussions about the conceptual approach to key issues of peace ethics and their relevance for today that took place in the course of the ecumenical assemblies in both German states at the end of the 1980s. The ecumenical assembly of the former German Democratic Republic added a “theological foundation” to its comprehensive resolutions on questions of political ethics, saying, among other things: „The necessity to overcome the institution of war also puts an end to the doctrine of just war by means of which the Churches hoped to humanise war. Therefore, a doctrine of just peace has yet to be developed, which is at the same time theologically founded and open for the dialogue with universal human values. “ (No. 36).

The concept of „just peace“ answers to a core problem of ethics, which entails the question of an accountable dealing with the problem of organised violence. This problem remained concealed in the framework of just war-theory which served as the stance for philosophers and theologians to take a stand on the question of violence for centuries. However, even within the context of the doctrine of bellum iustum, the critique of forms of the use of violence in war and of its often all too careless iustification never ceased. The rise of modern international peace law – but also of the humanitarian law of peoples, that takes up demands which had originally been raised in the context of the ethical reflection on the problem of organised violence and its limitation – cannot be sufficiently explained without reference to the older doctrine of just war.

Sure enough, the theory of bellum iustum led to fatal results where a selective reference to this doctrine made it an instrument for the extension instead of the limitation of violence. The theological tradition struggled to protect single arguments of the doctrine of bellum iustum from political interests in the justification of the use of violence, and to insist on the critical and corrective function of this concept. Francisco de Vitoria, a promi-

ment author of Spanish late-scholasticism, held that among the few reasons that justify the use of violence is an emergency law for people who are threatened to be sacrificed to pagan gods. De Vitoria thereby elaborated the quintessence of a humanitarian right of intervention. The experiences of the 19th century and maybe also of today show how problematic this line of argument is when used to make power struggles appear in a moral light. The hesitance of the authors of the UN charter to grant concessions to its member states, and their insistence on a comprehensive prohibition of intervention is not least a reaction to the abuse of humanitarian reasons for the interventionist interest politics of 19<sup>th</sup> century nation states. The just war paradigm got into a crisis when facing new weapon and transport technologies that wore away the ethical limitations for the use of force. This applies to the conditions of World War I and II, and can all the more easily be seen with the rise of the nuclear age. The second Vatican Council – in many respects a milestone for the development of doctrinal positions of the Catholic Church, not the least in the field of political ethics – condemned any warfare that is prone to slip out of control and amounts to indiscriminate destruction. It was Carl von Clausewitz who had already warned in his standard work on military theory “On War” that every war has the tendency to increase its intensity to the utmost forms of violence. The use of collective force can rarely be processed according to original plans – which renders its limitation along the lines of ethical criteria so difficult. This serves as the central argument for the pacifist critique on the paradigm of “just war” which can refer to ever new experiences of the expansion of violence. The counter-argument is well-known: Should one surrender to alien, unjust violence – even when it affects defenceless third persons that could be defended? This is a serious moral argument and should not hastily and untestedly be denounced as a veiling of dishonest intentions. Both positions – the abandonment of any use of violence just as the conditional “yes” to violence on grounds of strict pre-suppositions – cannot convince beyond a clearly namable point. The respective objection indeed hits the weakest point of the opposite position.

In this we find the systematic point of contact for the demand of the ecumenical assemblies to elaborate a doctrine of just peace in view of today’s situation. The wording of the doctrine, that “just war” is “put to an end”, proves to be remarkably accurate: It is advisable to use the doctrine of *bellum iustum* in a “post-idealistic” way that accounts for the specific difficulties of norm-conformist action in this field and tries to draw adequate ethical consequences. Because of the aporia of any use of force, the concept of just peace puts the work on processes of accountable violence prevention in the first place. This change of perspective uncovers the original ethical intention of the traditional position: not primarily to serve as an instruction for the use of force, but to inculcate that violence has to be avoided if possible. Violence prevention is imperative in order to prevent situations which only offer the choice between unacceptable alternatives. Other considerations, such as the question how political institutions and organisations can be advanced under changing general parameters, must be included in this leading perspective of peace ethics.

## II.

The use of the word just in “just peace” is not arbitrary. It serves to measure the ethical quality and stability of every political order, e.g., how far it aims at the production and maintenance of life conditions in which basic demands of justice are realised. The call for justice does not add to the demand that conditions of violence must be overcome, but the endeavour for justice is itself a necessary step on the way to a less violent world. Peace and

justice are mutually interrelated. Peace is put at risk where justice is violated – and where peace is lost, conditions of deep injustice will soon prevail. Therefore, the necessity to realize a better justice will become plausible just by means of appealing to the well-conceived self-interest of all concerned. In order permanently to abolish the reasons for injustice and to establish enduring peace structures, an orientation is required that exceeds mere benefit analyses. In regard to the practices of peace, the setup of just economic and social conditions and the sustenance of natural resources, we are dealing with “collective goods” which can both be protected and endangered by nation states. Quite fatally, only those nation states tend towards a worldwide political perspective that gain their orientation from their self-interests. Different characteristics of such particular interests are liable to threaten the common, supranational interest. The idea of the “common good” requires some clarification. In modern society, the moral contents of this term can no longer be regarded as an all-encompassing normative idea for all members of a society, as was the case in earlier centuries. This poses the question, whether the reference to the category of “*bonum commune*” has become obsolete, or whether it can be specified to gain a significant heuristic function.

In regard of this question it can be shown why human rights acquire such a central importance within the concept of just peace. The demand for human rights has been accruing from concrete experiences of harm and injustice. They started as an ethical, and later also a legal dimension that proclaims and ensures personal freedom and minimal social standards in order to prevent such negative experiences. One could also say: human rights standards search for institutional solutions, drawing on moral categories and legal instruments in order to solve the age-old problem of how to diminish the omnipresent violence of men against men. Wherever the rights of the human person are reliably protected, and their warrant remains independent from the political discretion of authoritarian potentates, many incentives to use violence become obsolete. Human rights formulate minimal conditions for a human life in dignity. They shall guarantee that people do not get or remain in dependencies of all sorts that render them defenceless when facing the arbitrariness of others. There are many, brutal and subtle forms of such modern slavery, such as forced labour and liabilities for the payment of debts, or methods of political repression and the social ostracism of dissidents. In this point of view, the advocacy for human rights is in itself a method of violence prevention: It impedes the violence that all of those experience whose elementary rights are violated. This insight is of universal relevance. It does not stop at political, cultural or geographical borders. The relativisation of human rights by reference to cultural differences soon proves to be unsustainable when we listen to the victims of the violations of human rights. They witness that such actions are tantamount to deep humiliation and that the mental wounds do not heal as quickly as physical damage.

To interpret world wide justice in the sense of justice of the common good, and to take it as a reference point of orientation, means to evaluate a given political structure in terms of the protection of - and access to - elementary human rights for each person. Once the term “supranational common good” is explained by reference to the universal realisation of human rights, it not only wins contours of the contents, but also avoids the danger of being constricted to matters of distribution, however important they are. At the same time, this highlights the systematic category by which the concept of the common good, commonly restricted to nation states, is opened for the perspective of a global common good.

For social ethics, human rights build a bridge to development politics as well as to the complex questions of peace-keeping in the international system. It must be shown that matters that require the critique of social ethics and political corrections can in most cases be sufficiently debunked by virtue of arguments *ex negativo*. It is not only hardly possible but also not necessary to conceptualise a detailed vision of a situation that can rightly be called “universal common good” (“Weltgemeinwohl”). The measure for the legitimacy of political action is therefore its concrete effect on the minimal condition of humane existence for all members of the human family. The decision-making of nation states in the context of international structures that is to serve the prevention and containment of violence should no longer work pragmatically, but must be geared to the realisation of human rights. Under these circumstances, the credibility and the political weight of legitimate institutions of the international community of states could be increased when it comes to engage in concrete conflicts. Not only instruments and mechanisms of early warning but also of timely crisis management could be upvalued and enforced with higher efficiency. The orientation towards the requirements of a supranational common good cannot be confined, however, to policy-making in international committees. It is of central importance to conceive nation state politics in line with this approach, too, and especially to keep an eye on the coherency of other areas of politics such as economic policy with foreign policy objectives.

### III.

Two problems mainly challenge the hope that the leading perspective of just peace will suffice to dry up the swamp of violence. One of them refers to the rising attention to the possibility of pre-emptive military strikes, especially against the proliferation of weapons of mass destruction, as in international terrorism. The other asserts that the political events in many parts of the world after the end of the Cold War quite pressingly posed the question of humanitarian intervention. Do these developments induce a return to classical, military based foreign policy, whose deficiencies the concept of “just peace” originally intended to unveil? A fuller awareness of the interdependencies between worldwide conflicts and the security of states may bring the military option, instead of becoming marginal, back to the centre of attention. One may become successively used to the “return of war”.

As for the problem of preemptive war: General caveats against the organised use of force have been developed above and do not need to be repeated, here. In the perspective of “just peace”, measures have to be taken to prevent the use of force, because of the danger of uncontrollable escalation and other counterproductive effects with which war is inescapably intertwined. Furthermore, a specific objection is raised against pre-emptive strikes, which is sketched in a US security strategy of 2002: The authors warn other states not to abuse the concept of pre-emptive strikes by making aggressive military actions seem justified by international law. Even apart from the danger of misuse, considerations about pre-emptive action are yet another variant of the ways to the expansion of violence: Where well-founded assumptions about adverse intentions and potentials are sufficient to justify one’s own use of force, situations will inescapably increase in which one seems to have the right to use pre-emptive force even out of defensive motives.

After a series of precedents the hitherto existing peace protection system of international law with its universally binding prohibition of violence now runs the risk of collapsing.

The containment of war by means of law seems widely outdated. It can be presumed, too, that decisions can be made with much less knowledge than was required in regard of dramatic effects. In the Cuba crisis of 1962, an interpretation of article 51 of the UN charter that had deemed pre-emptive actions legitimate, would have thwarted the intentions of political crisis management. The same applies to the phase of the nuclear armament race in Europe at the beginning of the 1980s. The risk of military confrontations rises, while it should actually have been countered by an interpretation of article 51 in terms of pre-emptive strikes. In times of intensive military-political tensions, interests in pre-emptive action, which are declared legitimate before international law, may lead to the failure of mutual deterrence between heavily armed powers. This is all the more true when the risk of misinterpretations of the intention of the other side is taken into account. What has furthermore to be taken into account is the context of the present discussions about a larger clearance for military pre-emptive actions. Central is the concern for the effects of an unhampered spread of nuclear weapons, and even the access of terrorists to such weapons. As far as can be seen today, armed pre-emptive actions would at best help to gain time, but not solve the political problem of how to reduce the attraction of the possession of nuclear weapons. Probably it would even increase the danger of proliferation, because many states might draw the conclusion that only the possession of such weapons protects from pre-emptive wars. The procrastination of the proliferation by single military strikes is foiled by the politically stimulated dynamics of proliferation – which is counterproductive to the intention to contain proliferation.

In order to prevent such developments, it is not only necessary to point out these dangers but also to point to alternatives. The danger of proliferation is to be reduced by decelerating this process. Every political reason that could stimulate proliferation needs to be avoided. Dangers result from insufficient control over large assets of weapons and sensitive material. Concrete steps to contain such risks must be directed towards an encompassing surveillance system for such weapons, their components and technology. Undesired proliferation incentives could furthermore arise from the miniaturisation of nuclear weapons or the inclusion of such weapons in realistic mission scenarios. Proliferation can be countered through establishing regional security structures that invalidate the arms race with such weapons. Both in regard to the precarious development in the Middle East and to the wider context of the fight against terrorism, intensive efforts are required in order to prevent conflicts from becoming misinterpreted as a confirmation of Samuel Huntington's "clash of cultures" thesis. Often predominant interpretations, not necessarily checkable facts, govern the course of political decision-making. They establish new realities that diminish the chance of terminating violent conflicts. It is therefore necessary to enquire about the deeper-lying reasons that make many muslims feel humiliated by Western behaviour. Also those analyses that aimed at short-termed measures now emphasise that it is of growing importance to abolish precisely namable political and social grievances: The insight into the limited effects of short-term measures leads to a growing awareness of "indirect" strategies.

Some remarks about the problem of humanitarian intervention: In my point of view, this clearly reveals the basic ethical conflict of goals: to avoid violence, and to protect persecuted people from systematic and severe violations of human rights at the same time. Almost one million people fell prey to the genocide in Rwanda, because of the late intervention of the international community of states.

Where intervention become inevitable for humanitarian reasons, the protection of the civil population must be imperative from the start. Indispensable requirements for the success of an intervention are:

- a clear and adequate mandate for the intervening forces
- sufficient personal and material equipment
- and adequate rules of engagement.

They are at the same time the indispensable presupposition to limit damage for the civil population. Specifically, the members of the security council of the UN must care for ample financing and practicable mandates.

Should interventions serve the global protection of human rights, the way of their accomplishment should not wear away the foundations of international law. Even in cases of severe violations of human rights, the UN security council must remain in charge of decisions on interventions. At the same time international law must be advanced to ensure that decisions on armed interventions rest on acclaimed standards of law, and that they are as free as possible from political opportunism. The procedures of international committees have to be reformed so that they enhance the making of proper decisions. Those persons who are assigned to intervention missions must be sensitised to the ethical consequences of single decisions, explicitly to the ethical and legal limits of commands and obedience. To prevent violations of these limits, a systematic creation of awareness is needed, e.g. through programmatic training during the preparation of a mission. In regard to the shocking reports about Abu Ghraib, this must include systematic anti-torture training. The development of awareness of the momentum of violence itself and the establishing of effective control mechanisms during each mission may help to prevent members of intervention troupes themselves from committing severe violations of human rights and of norms of the international humanitarian law. What is more, well from the start of an intervention, the community of states needs to be prepared for a long-term responsibility for the development of an intervention area in order to support the necessary structural transformation processes. The catalogue of tasks that have to be met in this respect is too thick to be discussed here. It has to be stated, however, that a deficient willingness to meet these tasks puts the ethical legitimacy of humanitarian action into twilight if it does not make them untrustworthy altogether. In view of this challenging task profile of peace ethics, it is necessary to caution strongly against a change of paradigm in security policy which could lead to an interpretation of military interventions as a normal means of foreign policy. This does not mean to deny that the instrument of humanitarian intervention must be available under the above-mentioned, narrowly defined parameters, albeit embedded in an international legal order in which the protection of human rights gains higher importance than the particular interest of any nation state. In the best of cases, this could render the use of humanitarian military interventions obsolete – and would finally help to meet the demand of the ecumenical assemblies that it is necessary to “overcome of the institution of war”.

(Translation: Stefan Heuser, Erlangen)

*Jos Kole:*

*A good professional has ideals. Philosophical explorations into the aspirational dimension of professional morality*

Introduction

To start with...

Let's start with a typical joke:

"A lawyer and a doctor are at a party. A woman approaches the doctor and asks him how she should treat a particular ailment. The doctor offers an opinion. After the lady walks away the doctor asks the lawyer, "do you think I should send her an account?" "Of course," says the lawyer. "She asked for your advise and no doubt will act on it." On Monday morning, the doctor arrives at his surgery and issues the lady a \$50.00 account. That afternoon, he receives a \$100.00 account from the lawyer."<sup>1</sup>

Like this joke, my paper will concern professionals, their characteristics, and the moral quality of their character and behaviour. The topic of discussion will be professional morality, the role morality that guides the practice of professions and individual professionals. Perhaps you wonder about the relation of my paper to the main theme of this conference, that is, "Political ethics and international order." In that case, I should tell you in advance that there is no relation, at least, not intentionally. My paper was accepted for this conference as one of those to be located in the lucky bag of papers about ethical issues not related to the conference theme.

Central claim and main question

Thus, we will embark for a short excursion into the field of professional ethics. Although case-studies are important in professional-ethics, my approach today, will be of a more ethical-theoretical kind. Those of you who have read the abstract of my paper, will have noticed that I will focus on the diverse dimensions and building blocks of professional morality. More specifically, I want to draw attention to, what may be called, the aspirational dimension of professional moral practice. This dimension has significantly returned into professional ethical view since the revival of virtue-ethics.<sup>2</sup> Usually the dimension is brought into vision in terms of virtues and values but, today, I want to play the searchlight on the still somewhat neglected but nevertheless important ethical notion of ideals. My central claim, indicated by the title of my presentation, is that good professionals have ideals; that they cannot be really good professionals if they do not have high moral aspirations. In other words, professionals' moral practice would be articulated insufficiently if there wasn't a role to play for ideals in addition to and in close relation to the other ingre-

<sup>1</sup> Joke found on <http://www.angelfire.com/biz/nationalteencourts/ntcaJokes1.html>, visited at 17 July 2006. See also <http://www.workjoke.com/projoke40.htm> for a slightly different version.

<sup>2</sup> Virtue-ethics is only one way to (re)discover or articulate the multi-dimensionality of morality. But more on that below.

dients of professional's moral practice. Ingredients such as moral duties and obligations, rules and principles, virtues and values should be supplemented by the ideals.<sup>3</sup>

Given this claim, the two main questions that I will answer are – you can find them on the hand-out:

1. How are virtues, values and ideals related to each other in the aspirational dimension of professional moral practice?
2. Which roles do ideals play in the moral practice of professionals?

In order to answer these questions, I will proceed as indicated on the hand-out (see end of paper)

### 1. Professionalism and professional morality/ ethical reflection

#### Features of Professionalism

Discussing professional morality, we should at least have an idea what we mean with professionalism and professionals. The joke I started with mentions lawyers and doctors. Law and medicine are traditionally reckoned to the professions.<sup>4</sup>

I will use the term profession and professional here in a narrow sense<sup>5</sup> that is still reminiscent of the classical professions. In this sense, professionals are those people that obviously earn their living with their work. But, in addition, they have, at least from an ideal-typical viewpoint, several of the following interrelated characteristics:<sup>6</sup>

Firstly, They have specialised knowledge, skills and training.<sup>7</sup> Secondly, as occupational group, they share certain standards of excellence, concerning both the technical and moral quality of their practice and person. These standards include what may be called intrinsic altruism, a commitment to social valuable goods and a dedication to serve others (clients and society as a whole) for other than just self-interested reasons. Thirdly, Professionals often have a high social status, prestige and privileges, linked to their unique expertise and

<sup>3</sup> I will provide some arguments for this claim although I do not pretend, at this stage, that my arguments will be sufficient to justify it. But we can discuss that later.

<sup>4</sup> Together with the clergy they make up the traditionally called 'learned', 'liberal' or 'free professions' (Freidson, 1986:32). Historically, professionalism is linked to the preindustrial medieval guilding system, at least in Europe. In the United States, professionalism is particularly related to "newly formed middle class occupations" in the rising capitalist industrialism of the 19<sup>th</sup> century (Freidson, 1986:32).

<sup>5</sup> Nowadays the term 'professional' is used widely and with very diverse meanings. Defining professionalism and demarcating it from non-professionalism has become a major problem in the so-called sociology of professions, one of the main academic disciplines that studies professionalism. In a broad sense, profession refers "to all occupations in which people work for a living and in which they develop proficiency and skill" (Freidson, 1986:25). To professionalise in this *broad sense*, means to do your work as good as possible in terms of skills, efficiency and quality, often but not necessarily by invoking standards, procedures and protocols.

<sup>6</sup> The common sociological use of ideal types and their purported value-neutrality is disputable, not the least from an ethical perspective. One may reasonably suspect that sociological ideal-types of professions are influenced by value-laden assumptions. Kultgen, 1988: Part II (57-153) offers a thorough and useful discussion of two main sociological approaches to professionalism – functionalism and conflict theory – and their normative assumptions. From a sociological perspective, Macdonald, 1995 provides an extensive analysis of the diverse schools of sociology of the professions. Examples of other important sociological literature on professionalism: Larson, 1977 Freidson, 2001 and Abbott, 1988.

<sup>7</sup> They have received higher or academic education. And, regularly, a long and intensive training.

capacity to provide highly valuable social goods.<sup>8</sup> Fourthly, professionals make a community of colleagues and are often organised in associations with their own institutions, professional schools, codes of behaviour and so.<sup>9</sup> Fifthly, professionals have, both collectively and individually, a special autonomy that expresses itself in extensive power and sometimes even monopolistic control concerning their specialised knowledge, the division of labour and labour market, education and training (credentialism) and so on.<sup>10</sup> On an individual level, professional autonomy expresses itself for example in discretionary judgement.<sup>11</sup> Sixthly and finally, professionals are assumed to have a vocation and a strong commitment to their practice and its goals. Professionalism is closely linked to personal identity and a life-long career.<sup>12 13</sup>

#### The importance of professions

My description of professionalism already indicates why professionalism and/or professional work might be considered very important and deserve the attention we give them here and in professional ethics. Professionals are generally considered to provide highly valuable social goods<sup>14</sup> without which a stable society and constitutional state could not exist and without which the lives of individual members of society would deteriorate.<sup>15</sup> For example, doctors provide health, legal professionals offer justice.<sup>16</sup>

<sup>8</sup> Often this status and prestige is expressed in higher earnings. The social status and prestige are sometimes considered as the reward for the non-self-interested service-orientation.

<sup>9</sup> As a social institution, professionalism implies both social inclusion (of those admitted to the profession) and social exclusion (of those not allowed to the occupational group)

<sup>10</sup> On a collective level this autonomy is referred to as self-regulation,

<sup>11</sup> Professional autonomy is regularly justified by reference to the unique ability of professions (based on their expertise) to provide particular highly valuable social goods.

<sup>12</sup> You do not have job as a minister, for example, you *are* a minister, and you are a minister not just for a short term, but for a longer time or even for a lifetime. Being a professional is an important part of the self-fulfilment of professionals.

<sup>13</sup> Terms like professionalism, profession and professional are obviously related but there may be significant differences between for example the (collective) morality of a profession and the morality of an individual professional. I will most of the time ignore these differences here but they should be taken account of in more comprehensive professional ethical reflection.

<sup>14</sup> The goods provided by professionals are important either because they refer to basic biological needs (for example, health, provided by the medical profession) or because they refer to other values necessary for society and its members to, minimally, survive or, optimally, to live a good life (for example, justice provided by the legal profession, education provided by the teaching profession).

<sup>15</sup> This would be a legitimate claim from a functionalist sociological perspective.

<sup>16</sup> The importance of professionalism is reinforced if the view is accepted that these social goods cannot be attained in any another way, that is by other institutional arrangements of work and labour, than through professional practice

Cf. Kultgen, 1988:73 "The importance of professional practice are the application of some branch of science or systematic knowledge to the solution of important human problems. (...). The importance of the professions turns on the relevance of their work to basic biological needs – food, shelter, health, disposal of the dead, etc. – and basic instrumental needs generated by modern society – education, transportation, sanity, order, legal counsel, energy, disposal of wastes etc. The importance of the needs they meet distinguishes professional work from other highly skilled activities."

Note that this quote is from Kultgen's description of the functionalist model of professionalism. This model takes a so-called ideology of professionalism, put forward by those who aim to justify and defend professionalism, largely for granted whereas the opposite sociological theory, so called conflict theory, exposes this view as mere ideology of advocates in the pejorative sense.

### The importance of professional morality and ethical reflection

Assumed, then, that professions are of the utmost importance to society and the wellbeing of its members, it is imperative that professionals, as professionals, do what they should do, and that they are, as professionals, who they should be in order to safeguard vital social goods. Professional morality may be generally considered as the body of normative judgments (and the like) that guide, obligate, and inspire professionals to good professionalism and the attainment of their goals. Professional morality is, thereby, one of the most important sources of professionalism and professional provision of vital social goods. A basic assumption of my argument is that professional morality will only flourish (and thereby support good professionalism and, ultimately, a flourishing society) if it is taken seriously in all its dimensions, and if all factors of those dimensions are taken seriously in their mutual dependence.

### 2. Two dimensions of professional moral practice

For some decades, ethical reflection on professional morality has shown a certain one-sidedness. There was a tendency to focus on the formulation of the principles and rules that specify the duties of obligations of professionals. Now, such duties and obligations are, to be sure, an essential part of the lived morality of professions. It has been and still is a widespread feature of occupational groups as professions to explicate their implicit professional morality in 'codes of behaviour' or 'ethical codes'.<sup>17</sup> However, these codes often one-sidedly concentrate on the articulation of rules and principles that guide professional acting by way of duties and obligations. Yet, a cornerstone of professionalism is also that professionals should always aim for the highest quality of their work and service. In other words, professionalism includes so-called standards of excellence. This striving for excellence does not seem to be articulated properly and completely in the duties and obligations that often figure in professional codes of ethics. Duty is one thing, but aspiration is quite another and both belong to morality in general and professional moral practice specifically. We come across what may be called a difference between two dimensions of morality. Let us elaborate this difference a little bit further.

#### Dimensions of morality: duty and aspiration

The two moral dimensions I am referring to have been articulated in ethical literature in diverse ways.<sup>18</sup> The distinction between them is best mapped by introduction of some other connected distinctions. I have put some of them in a table that you can find on the backside of the handout (see end of paper).

<sup>17</sup> Occupations that aim to professionalise, regularly consider the explication and codification of their internal implicit moral practice as an important step on the path to professionalism ("You can only be taken seriously as a serious profession, if you have your own code of conduct."). The goals and effectiveness of coding professional morality are a returning topic of discussion in professional ethics. One of the ethical-theoretical insights from this discussion has been the following claim.

<sup>18</sup> Nothing much hinges on the term 'dimensions' here. Sometimes the distinction is made in terms of two kinds of normative moral judgements (e.g. Frankena, 1973:9), or two kinds of ethical theory (e.g. Heyd, 2004). We may even ask whether we should talk about two distinctive spheres of morality. Perhaps it is best to consider both as extremes on the continuum or sliding scale of morality's normativity that can be expressed in diverse ways.

The duty dimension is commonly articulated in so called deontic judgements or judgements of obligation whereas the aspirational dimension is expressed in so called aretaic or axiological judgements. A. Deontic judgments refer to acts or kinds of acts. Principles and rules may be considered as general deontic judgements. Like all deontic judgements, they state whether such actions are obliged, required or forbidden. Judgements of duty and obligations relate, in the main, to the minimal conditions that secure the survival of and the basic prerequisites of social life. Professionals duties and obligations keep professionals on the track, so to say. They demarcate the road like mile stones and reflecting side posts do. They keep you between the lines, and in this way, they constrain your freedom to go anywhere where you want. Metaphorically speaking, duties and obligations referring to a moral minimum have a kind of closing effect. They have a kind of objective normative force: whatever the subjective goals of your drive, whatever the direction you want to go, ones on the road everybody should keep the track demarcated by the duties and obligations as side constraints.<sup>19</sup> The motivations for compliance with duties and obligations seems to come 'from the outside'.<sup>20</sup> B. Aretaic judgements, articulating the second, aspirational dimension of morality, are not primarily about acts or kinds of acts.<sup>21</sup> They concern, first and foremost, persons (agents), their character-traits and dispositions, their feelings and emotions, their career and life plans. Most well known types of aretaic judgements are judgements expressing virtues and values, and, as I would like to stress, ideals. Whereas deontic judgements have a fixed and closing character, aretaic judgements tend to have an open-ended texture; they are susceptible to multiple interpretations and hard to codify. They open up possibilities, create room to move. Whereas deontic judgements concern rightness, aretaic judgements involve goodness and excellence. Aretaic judgements point to a moral maximum, or more adequately, to a moral optimum. Virtues, values and ideals may have a strong normative binding and motivating force on persons but you may not always expect universal compliance. Deontic judgements function as side posts that keep you on the track and constrain your movements. Yet, they do not tell you where you could or should go. Aretaic judgements just do that. They offer you goals and destinies. They determine direction and help you to orient yourself in the moral landscape, they give your moral practice perspective and horizon.

Professional morality as a moral practice

The revival of virtue ethics in general ethics reinforced attention to the aspirational dimension (although it has never been away from ethical reflection). Now, the focus of vir-

<sup>19</sup> The term 'side-constraint' was introduced by Robert Nozick in his conception of rights as side-constraints in opposite to rights as goals in the context of a minimal state (Nozick, 1974:26-53).

<sup>20</sup> Bernard Williams famously delineated the dimension of duty and obligation with the term 'morality' and denounced the one-sided focus of many moral philosophers on that "peculiar institution called morality," an institution that was usually expressed in thin ethical concepts like 'good' and 'bad', 'right' and 'wrong', 'ought' and 'should'. See Williams, 1993.

<sup>21</sup> Note that recent virtue-ethical theorists emphasise (contra a widely heard criticism) that virtue-ethics has as much action-guiding capacity as deontological and utilitarianist theories of duty and obligation (see e.g. Hursthouse, 2003). Thus, the idea that virtue ethics should be characterised for having a person-orientation in opposite to a the characteristic act-orientation of deontic theories is wrong, according to those theorists.

tue ethics is, obviously, on virtues. And less attention has been paid to the other elements of the aspirational dimension, values and ideals, and to their relation to virtue.<sup>22</sup>

MacIntyre, one of the philosophers that contributed to the revival of virtue theory, developed the well known notion of practice as the contemporary context in which virtues can have their natural place.<sup>23</sup> I will focus here on his notion of practice to get the aspirational dimension of professional morality into view (1), to describe what virtues, values and ideals are (2a) and how they relate to each other (2b). Let us recall the MacIntyre's mostly quoted definition of practice (you can find it on the handout):

"By a 'practice' I am going to mean

- (1) any coherent and complex form of socially established cooperative human activity
- (2) through which goods internal to that form of activity are realized
- (3) in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity,
- (4) with the result that human powers to achieve excellence,
- (5) and human conceptions of the ends and goods involved, are systematically extended."

(MacIntyre, 1985:187)

The first and third factor in this description correspond well with the features of professionalism listed before. It suits to consider professionalism as a socially established coherent, complex cooperative human activity.<sup>24</sup> This activity, on its turn, is governed by standards of excellence, which match perfectly the implicit morality of professions, its intrinsic altruism, its drive to excel, the aspect of vocation. Those who enter a professional practice submit themselves to these standards and accept that their activities, character and so on are judged in accordance with them.<sup>25</sup> Now, let us take a closer look how virtues, values and ideals, the main building blocks of the aspirational dimension have their place in this framework of the professional practice.

### 3. Building blocks of the aspirational dimension of professional moral practice

#### Virtues

According to MacIntyre, virtues are those acquired human qualities (1) "the possession of which tends to enable us to achieve those goods internal to practices (2) and the lack of

<sup>22</sup> See Oakley & Cocking, 2001 for a thorough exposition of a professional virtue-ethical approach.

<sup>23</sup> It is remarkable how popular and widespread MacIntyre's notion has become in professional ethics. A quick Google search action – not a check according to standards of academic research, I admit – of keywords 'professional ethics', 'practice', and 'MacIntyre' already shows how fruitful the notion apparently has been for ethical reflection with respect to all kinds of profession, from journalism to education, from nursing to engineering. It is an interesting question why the practice notion suits professional ethics so well, or at least, seems to do that. Here, I will skip the issue whether and how the practice-notion may justifiably be implemented in professional ethics.

<sup>24</sup> Professionals as colleagues work – their main activity – together in a profession that is socially established in professional societies, organisations, and the like. Each profession has its own practice. Individual professionals participate in this cooperative activity.

<sup>25</sup> See MacIntyre, 1985:190 "A practice involves standards of excellence and obedience to rules as well as the achievements of goods. To enter into a practice is to accept the authority of those standards and the inadequacy of my own performance as judged by them. It is to subject my own attitudes, choices, preferences and tastes to the standards which currently and partially define the practice."

which effectively prevents us from achieving such goods.”<sup>26</sup> In other words, virtues are the dispositions necessary to realise internal goods of a professional practice. Or, in the wording of MacIntyre’s own practice-definition (especially, its 4<sup>th</sup> part), virtues are those “human powers” that enable professionals “to achieve excellence.” Without the virtues of the medical professional practice, a doctor would not be able to provide healthcare according to the standards of excellence. By providing healthcare in accordance with these standards, he or she would provide important social goods that sustain and support the good and flourishing life of others (besides professionals themselves) in society.<sup>27</sup> In terms of the travel-on-the-road metaphor used before in relation to duties and obligations as side posts on the track, virtues might be considered at least as those capacities and qualities that you acquire during your road trip while, at the same time, they are just the competences without which you could not even drive and make your way to your destination. They provide you with the power, energy and motivation necessary to move and make progress. Apart from that, the journey to that destination is valuable in itself if you travel in a way that aims to meet certain standards of excellence. An excellent drive is valuable apart from helping you to arrive at your destination. You do not just travel to arrive somewhere, the travel itself may be worthwhile if you travel virtuously.<sup>28</sup> So much (and, too little) for virtues as one of the ingredients of the aspirational dimension of professional morality, besides values and ideals. Of course, much more can (and should be) be said about the concept of virtue and professional virtue, but for my purposes here, this perhaps suffices.

#### Values and their relation to virtues

Now, what about the second ingredient of the aspirational dimension, values? They seem to correspond easily with the ‘internal goods’ mentioned in the second part of MacIntyre’s practice-definition. Internal goods are the values that are constitutive of and provided by virtuous practices. Values and internal goods may, at first sight, be considered synonyms. A flourishing and good life is a valuable life, a life in which values are realised by oneself, for oneself, and for others. Considering the relation between virtue and value, as two important ingredients of the aspirational dimension of professional morality, we might, then, at least at first sight, simply say that virtues are the dispositions that enable the realisation of values as internal goods (and on top of that, virtues are internal goods themselves). Without values virtues would be pointless. Thus, values provide virtuous

<sup>26</sup> For MacIntyre’s (first) definition of virtue, related to practice and internal goods, see MacIntyre, 1985:191: (1) “A virtue is an acquired human quality (2) the possession of which tends to enable us to achieve those goods which are internal to practices (3) and the lack of which effectively prevents us from achieving such goods.” (numbers JJK)

<sup>27</sup> Professional virtues may seem purely instrumental in this respect. They could appear to be just means to ends, dispositions instrumentally necessary to realise important goods and to strive for the realisation of ideals. Yet, it is a well known characteristic of the virtue-ethical approach to consider the virtues themselves as goods that have intrinsic value. Thus, the good and flourishing life is not just a life in which important values such as health or justice are realised and enjoyed. A life can only be a good life if these goods are realised virtuously, in the right manner, with the proper dispositions and character-traits. Thus, not only that they are realised but also how they are realised is intrinsically important to the good life of both professionals and those who are served by them (clients and patients).

<sup>28</sup> The context of a practice is not the only context MacIntyre proposes as the background of a revitalised concept of virtue. The other two contexts are the narrative (of a man’s unified good life) and tradition (see MacIntyre, 1985:187. The journey metaphor, or, in MacIntyre’s terms, quest, relates to the narrative-context.

practices with a telos (or perhaps we would use the plural, and talk of teloi), the essential constituent of moral life from a virtue-ethical perspective.

Yet, values relevant to virtues are, according to MacIntyre values as internal goods and this specifies but also complicates them considerably. Briefly, internal goods are those values whose existence and realisation depends entirely on a practice, they are values internal to practice. Besides, one cannot enjoy them or judge them without participating in the practice of which they are constitutive.<sup>29</sup> Now, the notion of internal good, introduced in *After Virtue* is much discussed and MacIntyre himself developed the notion further in later publications. One of the issues with internal goods is that they are considered as realisable values. Thus, it is in fact the case that professionals realise certain goods in their professional practice, for example, patients are cured and justice is done in court. Yet, this does not seem to match the idea of the never ending teleological quest for the good life, for a good professional practice, and the achievement of excellence. If internal values were the ultimate goals of the professional practice, professionals could arrive at an endpoint in their practice. They could arrive at a point where no more development of skills and knowledge, no more improvement of service to patients and clients was possible. Yet, it is characteristic for professionalism and for a virtue-ethical approach of the good life that such a point will never be reached. The strive to excel is endless. And a good professional will never stop trying to improve his practice because it is never perfect. A good professional will never be fully content, will never be fully satisfied with his or her achievements. There is always one more patient who should be taken care of, there are still patients who can't be cured, there are still treatments that need to be improved, and so on. We may, then, consider, values as internal goods the values that the professional is able to realise during his professional

29 See MacIntyre, 1985:188 and 190 for a description of the difference between internal and external goods. At o.c. 188, "taking chess as an example of a practice with internal and external goods:

"There are thus two kinds of goods possibly to be gained by playing chess. On the one hand there are these goods externally and contingently attached to chess-playing and to other practices by the accidents of social circumstance - in the case of the imaginary child candy, in the case of real adults such goods as prestige, status and money. There are always alternative ways for achieving such goods, and their achievement is never to be had only by engaging in particular kind of practice.

On the other hand there are the goods internal to the practice of chess which cannot be had in any way but by playing chess or some other game of that specific kind. We call them internal for two reasons: first, as I have already suggested, because we can only specify them in terms of chess or some other game of that specific kind and by means of examples from such games (otherwise the meagerness of our vocabulary for speaking of such goods forces us into such devices as my own resort to writing of 'a certain highly particular kind of'; and secondly, because they can only be identified and recognized by the experience of participating in the practice in question. Those who lack the relevant experience are incompetent thereby as judges of internal goods."

The idea of values as internal goods provides us, by the way, with one reason why MacIntyre's concept of practice has become so popular in professional ethics that follows a virtue ethical approach. The notion of values that can only be realised in relation to a certain practice corresponds nicely with the popular view that professional practices are uniquely able to provide society with certain important social goods. These important social goods can, then, be considered as internal goods of the relevant professional practice. Thus, only the professional practice of physicians can safeguard health, only jurists can safeguard legal justice, only teachers can provide good teaching and education. And so on, goods internal to a professional practice are, from this perspective, the unique 'selling points' of a profession. They enable a profession to justify its existence, its influence and its power.

quest. Yet, they are not the final destination of his journey, they are not the ultimate goal of the profession.<sup>30</sup> And this is the point where the notion of ideals may enter the stage.

#### 4. The necessity of ideals for good professionals and their practice

##### Ideals

We may consider ideals as a special kind of values, a subclass with specific features that distinguish them from other non-ideal values. Ideal values or, briefly, ideals are excellent values that are very hard or never fully realisable. It is characteristic for ideal values that people always strive for them and try to realise them; they are by definition desirable and that makes them dynamic sources of strong and persistent motivation. People attach to ideals, strongly identify with them, consider them characteristic for who they are and who they want they want to be.<sup>31</sup> Because they are difficult to realise, ideals are open to the future. Ideals are visions, visualisations and imaginations of a perfect state of affairs in which excellent values have become reality. Their content is rather vague and abstract, especially compared to act- or act-type specific duties and obligations. The content and meaning of ideals is never fully caught in our interpretations of them because our finity, fallibility, and imperfectness. They are always open to renewed interpretation. We may perhaps summarize these features of ideals, as a special kind of values, by pointing out that most of these features express a kind of transcendence. Ideals are transcendent values, articulations of the transcendent Good (with a capital G). The Kingdom of Heaven may be considered as a good example of an ideal (depending on your interpretation), perhaps not a strictly moral one although it has, of course, strong moral implications.

##### Ideals and their function in moral practice

Now, how do these ideals relate to MacIntyre's practice and the practice of professionals? And how do they relate to virtues and values as internal goods? What is the function of ideals in the interplay with the other ingredients of professional morality's aspirational dimension? In terms of our journey metaphor, we may conceive ideals as the unreachable stars in the sky at night that help us to orient ourselves in the moral landscape and that give us a direction to go, like they do to seamen who navigate by them. Or, perhaps ideals should be considered the lighthouses whose light at the horizon helps us to find our way when we are at sea. Both metaphors catch the feature of ideals that they will never be reached (and that it is also better not to think that you should or can reach them). Whereas values as internal goods are realised or at least realisable during the journey, values as ideals give the traveller points of orientation at the skyline. The virtuous practioners' ultimate aim is a set of ideals at the ever receding horizon. During their imperfect endeavour to reach these ideals, practioners realise many goods that make life better or even good but never perfect. Virtues are the qualities that enable practioners to make their journey in the direction of ideals. They enable men to realise goods during the journey.

<sup>30</sup> See Higgins, 2003 for an excellent exploration of MacIntyre's view of internal goods, telos, and ideals in relation to professional virtue-ethics.

<sup>31</sup> Relevant literature about ideals in professionalism: van der Burg et al., 1994; 1999; 1997; 1994 Flores, 1988; Martin, 2000. For ideals in general, see Rescher, 1987; Rescher, 1993.

### Ideals in professional moral practice

What counts for ideals, values and virtues in general, counts also and perhaps paradigmatically for professional moral practice. Professionalism has an intrinsic ideal-character. Firstly, because professionalism itself is an ideal – it is one of the defining features of professionalism to honour a standard of excellence. Secondly, because the values that professionals try to realise in their particular practice are never perfectly realised. They are ideal values. Without them, professionals would lose their drive to excel, they would allow themselves to arrive somewhere and stay there, content that they have reached their destination. Yet, it is essential to professionalism that it never stops improving its practice in service of others. At least, it is essential to the ideal of professionalism. Actual professionalism incorporates this ideal to some extent, should try to live up to its intrinsic standards of excellence but, of course, often fails to do so and the lawyer joke I started with illustrates that. The considerations I have put forward may lead to an argument for the claim that ideals are necessary for professionalism and professional morality. Without them professionalism would lose one of its defining features and professionals couldn't be good professionals. Ideals are an important part of the aspirational dimension of morality, together with virtues and values as internal goods.

Professional duties and obligations, keep professionals on the track. Virtues make the professional move to ideals at the horizon. During this journey, goods are realised that make life better but not perfect. But without the ideals at the horizon, professional practice would lose its direction, its orientation, its point. For professionals the limit is the sky.

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TABLE: MAPPING MORALITY'S DIMENSIONS

	<b>A</b> Duty dimension	<b>B</b> Aspirational dimension
kinds of normative moral judgements	- deontic judgements judgements of obligation	- aretaic / axiological judgements judgements of value ...
	- particular judgements - general judgements expressing norms, like principles and rules	- judgements expressing virtues, values and/or ideals
object of judgement	- actions (particular judg.) kinds of actions (general judg.)	- persons (agents), motives, character-traits, dispositions, careers, life-plans, ... - state of affairs
degree of specificity	- relatively fixed description, well-defined  - codifiable	open-ended texture ambiguous, vague, open to multiple interpretations - uncodifiable
	clear criteria for compliance and violation	open-ended, never ending excellence
mode of normativity	obligatory, forbidden, required	recommended, advisable, optional, praiseworthy,
normative ethical theory	- deontological theory - act- and rule consequentialism utilitarianism	- teleological theory
	rightness/correctness	goodness/excellence meaning of life
scope	minimum minimal conditions of morality aiming at survival of society and securing just society	maximum/optimum aiming at optimum of the good, flourishing life
effect	'closing' effect: constraining freedom of action side-constraints	'opening' effect: creating room for orientation opening possibilities
normative binding force	- 'objectively' binding - universal application compliance expected of everyone	- 'subjectively' binding - particular application no justified expectance of universal compliance
motivating force	- external source  - weak - "ought implies can"	- internal source "from within" (vocation, calling), closely linked to personal identity - strong - no strict "ought implies can" restriction
normative ethical theory	- deontological theory - act- and rule consequentialism utilitarianism	- teleological theory
Bernard Williams' distinction	- morality - thin ethical concepts	- ethics - thick ethical concepts

*Katarzyna Kornacka:*

*Politics and Religion. State Autonomy in Relation to Church in Ockham's  
"Dialogue"*

In the contemporary world the issue of the Church involvement in state and public life is discussed and debated by lots of thinkers. Philosophers, theologians and politicians are still been trying to define the morally and socially acceptable limits of the Church participation in state matters. Nevertheless, it can seem quite surprising that the preeminent Franciscan thinker of the fourteenth century, William of Ockham – called in his times Doctor Invincibilis or Venerabilis Inceptor – was also dealing with the state autonomy problem in a very active way, and argued openly against political ambitions of the papacy. He presented his views in many polemic writings, especially in the „Dialogue”, one of the largest political work of the philosopher, where he fought bravely in defense of state autonomy in the times of cruel Inquisition. The considerations and arguments of Ockham seem to be important and interesting both for discussions being held nowadays and for modern philosophical and political thought, as well. The necessity of the autonomy of the Church in relation to state is largely discussed by Ockham in the second tract of the third book of his „Dialogue”, where the philosopher clearly states his opinion that what is spiritual belongs to the clergy and what is temporal remains within the realm of the power of lay rulers: *sicut spiritualia per clericos ita temporalia per laicos disponenda*<sup>1</sup>.

While justifying his view, Ockham tries to consider attentively all of the issues connected with law, which was created and established just to protect a social order, to restrain audacity of the evil, and to allow the morally good to live in safety. Thus, he says: *Leges factae sunt ut malorum coerceatur audacia et boni tute vivant*<sup>2</sup>. The philosopher from Oxford pays especially much attention to natural law. In his opinion natural law (*ius naturale*) can be identified directly with divine law (*lex divina*), since it was God Himself who created all of the laws of nature<sup>3</sup>. When defining the essence of natural law Ockham repeats Gratian's words and says that this law obliges a man to do what God wills and forbids what is forbidden by God<sup>4</sup>. The philosopher also emphasizes that nobody is able and nobody is allowed to change the principles of natural law, unless it is willed by God<sup>5</sup>. In another context, while discussing the most favourable political system, he presents the opinion that there are both believers and unbelievers who – consciously – want to live their

<sup>1</sup> 3.2 Dial. 1. 1.

As for the reference system of the "Dialogue's" text, please, see: <http://www.britac.ac.uk/pubs/dialogus/ref.html>.

<sup>2</sup> 3. 2 Dial. 1, 1.

<sup>3</sup> 1 Dial. 1. 9. Cf. also 3. 2 Dial. 3. 6.

<sup>4</sup> „Cum ergo in naturali iure nihil aliud praecipitur quam quod Deus vult fieri nihilque vetetur quam quod Deus prohibet fieri.” (1 Dial. 1.9).

<sup>5</sup> „Si enim sint simpliciter precepta iuris naturalis, nullus casus excipi debet propter quamcumque necessitatem vel utilitatem, nisi Deus specialiter aliquem exciperet (quemadmodum, non obstante precepto iuris meri naturalis de nullo innocente scienter interficiendo, Deus precipiendo Abrahe ut immolaret filium suum speciale exceptionem fecit)”. (3. 1 Dial. 2. 24).

lives in accordance with the principles dictated by their right reason<sup>6</sup>. Therefore, it can be drawn as a logical conclusion that all the people are somehow bound by natural law, regardless of the fact whether they belong to the Church or they are not its members. The obedience to natural law means to live in accordance with the dictate of human right reason, in Ockham's thought.

The Franciscan thinker gives us some examples of such principles, among which he quotes quite often the Ten Commandments of the Decalogue<sup>7</sup>, and he also seems to propagate the golden rule: "Do unto others as you would have them do unto you"<sup>8</sup>. Thus, the Ten Commandments and the golden rule are the foundation of the life of individuals, societies and states. They regulate a social and political order. Therefore, according to Ockham, natural law seems to be superior to positive law and legislation, both civil and canonical one. For Ockham it also seems quite clear and obvious that divine law should be regarded as more binding one than any human law<sup>9</sup>. And divine law is the Christian law, which obliges all of those who believe in Christ. The Christian law can also be called the law of liberty, because, thanks to this law, Christians were liberated from sin and from the law of Moses, which – thanks to Jesus – lost its binding force. Liberty is contrary to slavery of every kind, and nobody is obliged to become a slave of someone else in Ockham's opinion. In consequence, any Christian does not have to be obedient to an order of the pope who – by this very order – would violate Christian law. The laws established by rulers (*leges positivae*) must remain, as Ockham says, in accordance with natural law and – what is significant – in conformity with the dictate of right reason, which is a tool that enables people to recognize and to understand natural law. Besides, human laws should be clear and obvious, and must not be ambiguous. As a result, one is not obliged to respect a civil or ecclesiastical law, if it is contrary to divine law – which is understood here as natural law – or if it is contrary to the right reason's dictate.<sup>10</sup>

Punishments based on positive law should be, in the philosopher's opinion, restricted.<sup>11</sup> What is more, the ecclesiastical law which orders to punish heretics in a cruel way is contrary to the moral orders of Sacred Scripture regarded by Ockham as the highest, or just absolute, authority<sup>12</sup>. For, a man is allowed to doubt about a certain doctrine of the Church, because, at the same time, he can and he must to search for the truth or only try to get to know the truth.<sup>13</sup> A man is also allowed to err, and he can be considered a heretic only when he errs pertinaciously, even though he did get to know the truth. "But errants

<sup>6</sup> 3. 2 Dial. 3. 18.

<sup>7</sup> 3.2 Dial. 3. 5- 7; 3. 2 Dial. 1. 6 – 17.

<sup>8</sup> Mat. 7: 12.

<sup>9</sup> „Quilibet capax est rationis scire tenetur quod magis favendum est legi divinae quam cuicunque mortali, et ideo occurrendum est magis ubi imminet periculum legi divinae quam ubi imminet periculum cuiuscunque mortalis.” (1 Dial. 6. 47).

<sup>10</sup> 1 Dial. 6. 100.

<sup>11</sup> „Pene autem iuris positivi sunt restringende et nullatenus ampliande.” (1 Dial. 6. 44).

<sup>12</sup> Cf. 1 Dial. 4. 9 – 13.

<sup>13</sup> „Ex quibus verbis datur intelligi quod quamdiu errantes, in suo sensu abundantes, quaerunt veritatem, praetendentes se velle corrigi si veritatem invenerint, non sunt a catholicis repellendi. Et per consequens quicunque non sunt pertinaces non sunt a catholicis repellendi, quia quicunque non est pertinax quaerit veritatem pro loco et tempore quibus tenetur quaerere veritatem” (1 Dial. 3. 8).

who are not pertinacious should not be rejected by catholics. Therefore, those who are not pertinacious should not be counted among the heretics"<sup>14</sup>, he says. Thus, pertinacity, not freedom of thought, is, according to Ockham, a distinctive feature of heresy. For the same reason Venerabilis Inceptor resists some penalization of the faith and he criticizes inquisitors who are called in his work ecclesiastical judges. Usually, they are incompetent and badly educated: when accusing somebody of heresy, they, paradoxically, become heretics themselves.<sup>15</sup> The philosopher criticizes also those who pretend to know ecclesiastical law – canonists. According to Ockham, they are not competent enough to judge human faith and morality and to reveal the truths connected with both the Christian faith and the conscience of the people who confess the faith. The ignorance of the truth and of law is not an excuse for anybody. On the contrary, such ignorance is a moral fault.<sup>16</sup> Therefore, all the superiors, bishops and other hierarchs of the Church should get to know the truth, and it must be their ultimate goal. That is why they should not divulge any doctrine, if they are not certain about its conformity with the Catholic truth. Contrary to inquisitors and canonists, philosophers, moralists and scientists are allowed, in Ockham's opinion, to judge a possible heresy. For, these people are characterized by the love of knowledge and the love of the truth. This fact implies, in consequence, some certain duties: a scientist is not allowed to lie about the matters he knew. He is also obliged to reveal lies and liars, to be always objective and he must resist external influences. Philosophers and scientists, as Ockham writes, should play a role of "the eyes of the Church"<sup>17</sup>. Thus, they have to distinguish what is evil from what is good, to show others an objective moral value of attitudes, habits and acts, and construct a proper social order.

The motif of the duty to be objective and to resist the pressure exerted by the superiors comes back – directly – in the second part of the second tract of the "Dialogue". Ockham states here his opinion that simple, uneducated people should not be obedient to those who do not try to get to know the truth but they try to know what is favourable for their superiors. What is more one must fight against such opportunists, because they somehow betray the truth and the faith<sup>18</sup>. Therefore, if philosophers and scientists are able to find and reveal the truth, they are the only ones who can correctly analyze, create and establish laws and moral rules that must be based on the truth<sup>19</sup>. The truth is, in Ockham's thought, a virtue, significantly important for the lives of states and societies, regardless of the faith confessed by them. This very desire to announce the truth, motivated by the dictate of right reason and by an internal moral attitude, can just be considered a real virtue. That is why many pagan philosophers could act virtuously. For, in accordance with the dictate of right reason, they tried and they wanted consciously to get to know the truth. They were characterized by a political and social equity<sup>20</sup>. The social equity, understood in here as

<sup>14</sup> "Sed errantes et non pertinaciter non sunt a catholicis repellendi. Ergo qui non sunt pertinaces non sunt inter haereticos computandi." (1 Dial. 3. 8.)

<sup>15</sup> 1 Dial. 4. 20.

<sup>16</sup> 1 Dial. 7.34.

<sup>17</sup> 1 Dial. 7. 46.

<sup>18</sup> 2.2 Dial. 10.

<sup>19</sup> 1 Dial. 1.8.

<sup>20</sup> 1 Dial. 6. 77.

Aristotelian ἐπιείκεια (epieikeia) that obliges people to defend those members of the society, who are in danger, who are weak and surrendered. This moral obligation is also motivated by the evangelical principle of the love of one's neighbour<sup>21</sup>.

Although Ockham undoubtedly negates the value of any institutional authority, he appreciates, at the same time, the moral responsibility of the Church hierarchs for all the believers. In the first sentence of the second tract of the second part of the "Dialogue" the philosopher states that those who are subordinated become similar to their rulers, in a natural way: *Qualis est rector civitatis, tales sunt inhabitantes in ea. Quia subiectis extitit quodammodo naturale (...) suis se rectoribus conformare*<sup>22</sup>. And, even though this thought refers namely to the Church hierarchs, it seems that it can also refer to lay rulers. The Franciscan thinker, does not present himself as an anarchist. He does not negate the importance of any governors, but he only appeals to the rulers and postulates that their rulership, they reign, should be based on the highest value, which is, certainly, the truth.

The consequence of such a view must be the statement that every Christian should have a right to appeal against the pope's sentence. The possibility of such an appeal results from natural law, known by the people thanks to their right reason<sup>23</sup>. If such an appeal was not possible, both a social order and all the Christian faith would be in danger. The pope, what is emphasized by Ockham several times, is not allowed to go unpunished, because he does not have any superiority over the orders of natural law. Besides, he must be obedient to positive law established by the common Church, general councils and by the congregations of bishops.

In the "Dialogue" we can also find some other Ockham's remarks connected with the ruler's ideal and with the ideal of a social system. Referring to "Politics" and "Nicomachean Ethics" by Aristotle, and to the tradition of the Stoics, as well, the philosopher pays our attention to the fact that some moral values or goods are necessary to govern a certain group, a society or the state. Thus, the rulers should be morally excellent and faithful. They are not allowed to be prone to any desires or affectations. They must be characterized by virtue and wisdom, and by humility, as well<sup>24</sup>. The highest and the most important goal of the rulers should be neither their personal ambitions nor their lust for glory, resulting from some mental emptiness, but the common good.

Next, when defining the Church as the State of God, *Civitas Dei*, Ockham presents his view that the best political system of the Church would be aristocratic rulership, not papal tyranny<sup>25</sup>. Therefore, ecclesiastical law should be changed, so that more people could govern the community of believers, if the chosen pope did not have the required moral attitude<sup>26</sup>.

Since the above postulates could seem to be rather shocking for the people living in Ockham's time, as they just negate the Church tradition, their author – using the arguments from the *Defensor Pacis* by Marsilius of Padua, tries to provide evidence for the

<sup>21</sup> Mat. 22.

<sup>22</sup> 2.2 Dial. 1.

<sup>23</sup> 1 Dial., 6. 48.

<sup>24</sup> 3. 1 Dial. 4. 7.

<sup>25</sup> 3. 1 Dial. 4. 7.

<sup>26</sup> 3.1 Dial. 2. 21-22.

thesis that Christ did not choose St. Peter as the head of His Church, but He committed the government to all of the apostles. To justify his view, Ockham refers also to the words by Jesus Himself, cited in the Gospel according to St. Matthew: Vos autem nolite vocari rabbi. Unus enim magister vester, vos autem fratres estis omnes<sup>27</sup>.

So, the Christians somehow of their own accord, subordinated themselves to papal government, because, thanks to this form of rulership, it was easier in some circumstances to perform the principle of the primacy of the common good. On the contrary, in another time and place, and in some other conditions and circumstances, in another political context, the government of one man can place the Church in danger. The pope, as Ockham says, is able to err, his authority is not an absolute one, and even some popes were conscious of this fact, the philosopher argues<sup>28</sup>. The errors of the pope can also refer to the questions of the faith and morality. In this very context Ockham tries to emphasize the necessity of separation the coercive powers of the Church and state. The pope's task is, what is obvious, presenting the truth through the authority of the Holy Bible. As a result, the pope is allowed to teach and instruct lay judges, but they are not subordinated to the pope<sup>29</sup>.

Totally differently – what shows some inconsistency as far as Ockham's views are concerned - he reports the problem of lay rulers. For, the Franciscan philosopher, clearly claims that, in relation to temporal matters, it is just one ruler, the Emperor of Rome, who should maintain an absolute supremacy over other rulers, because the whole world is one kingdom, and it was created by God as one empire<sup>30</sup>. There will be concordance, peace and equity in the society, if its ruler knows the principles resulting from natural law and if he observes them. The Emperor, as Ockham writes, is not subordinated to the pope, and this principle refers even to some other pagan rulers, since their power comes from God Himself, regardless of fact if they believe in God or they do not<sup>31</sup>. Thus, the rulers are subordinated exclusively to God, and the pope is not their sovereign. Here, Ockham gives us as an example of Julian Apostate who was treated in such a way, i. e. with great respect and reverence, by St. Paul and St. John<sup>32</sup>. The empire and all kinds of lay rulership come from God only, the philosopher repeats: non est potestas nisi a Deo. For, lay rulership existed before the papacy was established. The Emperor Constantine, for example, did not ever claim that he was not an Emperor before he was baptized. It is even possible, according to Ockham, that it is Roman Emperor and "Romans" who will make decisions connected with the pope's choice, and it will be justified by both *ius gentium*, i.e. international law, and by natural law of the third kind, which is called in Ockham's writings natural law *ex suppositione*, if the meanings of divine law and natural law are mutually identified one with other<sup>33</sup>. For, having supposed that there always should be a ruler as a head of a given

<sup>27</sup> Mat. 23:8.

<sup>28</sup> 3.2 Dial. 2.8.

<sup>29</sup> 3.2 Dial. 2.15.

<sup>30</sup> "(...) tamen totus mundus unum regnum est; quare quo ad temporalia unum principem secularem debet habere." (3.2 Dial. 1.1)

<sup>31</sup> 3.2 Dial. 1.24-26.

<sup>32</sup> 3.2 Dial. 1.25.

<sup>33</sup> Cf. 3.2 Dial. 3.6.

community, the conclusion that is assumed from that premise seems to be quite clear and obvious, and it is as follows: the community's members are allowed to choose their ruler. Thus, it was Jesus Christ Himself only, and it was not any pope, who could deprive "Romans" – the empire's members – of their privilege of choosing their spiritual sovereign, and of their right to choose the pope<sup>34</sup>. Although, when talking about the forms of rulership within the Church, Ockham clearly favours and promotes the aristocratic system, he changes his mind while discussing lay rulership and he claims that, in this case, the monarchy, *principatus regalis*, is the best way to govern states. For, if there is not a special, extraordinary necessity or need, the philosopher argues, plurality should be avoided – *est pluralitas fugienda*, because the rulership of one man – especially in the coercive power's context – is far more effective than the rulership that would belong to more people<sup>35</sup>. A large number of judges, as Ockham says, leads to discord, disagreements and conflicts, which is implied by human nature and by every man's inborn desire for domination. In the last passages of his work Ockham definitely promotes the monarchy, which is understood by him as the government of one honest and, what is important, lay ruler. Where is not unity, there is not harmony, the philosopher argues. It results, implicitly, from natural law. For, all of those who wanted to live in accordance with natural law and with the dictate of right reason, thanks to which they are able to recognize this law, used to establish one ruler and they were obedient to him. Even Christ, being humble, of His own accord, decided to subordinate Himself to law. Then, the Franciscan thinker, is quoting one of St. Peter's letters, where the apostle asks believers to accept and respect the authority of each institution established by people and to be humble towards their rulers, regardless of the faith confessed by the rulers. Also the pope, as Ockham claims, is the Emperor's vassal, because he was subordinated to the Emperor, before he was elected as the pope, and the only limits for "the fullness of power" of the Emperor are natural law, identified with divine law, and the order to honour the primacy of "the common good"<sup>36</sup>.

To sum up, the ultimate criteria of moral judgment are, according to Ockham, the criteria of truth, justice and law, both natural and positive one. It is nothing else but human reason which is able to recognize the truth and the justice. People who live in a country, society or community can establish their laws by themselves, thanks to their own right reason. The binding force of this law is so strong that Ockham regarded this law as a type of natural law, and he called it the natural law of the third kind. Therefore, as we read in the "Dialogue", the life of states and societies must depend on the law which is created by people and for people, who are able to recognize the truth and enact customary rules and regulations. They do that somehow autonomically and they do not need – in the process of enacting laws – any institutional authority.

<sup>34</sup> „Et ideo Christus, et non papa, poterat privare Romanos iure eligendi summum pontificem.” (3.2 Dial. 3.6.)

<sup>35</sup> Cf. 3.2 Dial. 3.17.

<sup>36</sup> Cf. 3.2 Dial. 3.23.

*Tobias Winright:*

*Undertaking an Evaluation of War with an Entirely New Attitude? Just-War Theory & Global Policing*

I. Introduction

In August 2006 a major terrorist plot to blow up airlines bound for the U.S. from England was foiled.

In the eyes of many, this case demonstrated how an intelligence and law enforcement rather than a war and military approach is more appropriate for dealing with the threat of terrorism. For example, an editorial in *The Seattle Times* attributed the stopping of this latest scheme primarily to smart and tenacious police work. This law enforcement approach, in their view, 'stymies terrorism' more effectively than the route taken immediately after 11 September 2001 by the Bush administration, namely, 'to declare war on terrorism, putting an emphasis on the military and the Pentagon'.<sup>1</sup> Of course, similar criticism of the invocation of the war metaphor surfaced soon after those dramatic terrorist attacks. In their coauthored chapter, 'Envisioning a Global Rule of Law', which is included in the book *Terrorism and International Justice*, Daniele Archibugi, who is director of the Italian National Research Council, and political scientist Iris Marion Young observed: 'The attacks on the World Trade Center and the Pentagon in September 2001 can appear within two different frames of interpretation. The first sees them as attacks on the United States as a state and its people. The second views them as crimes against humanity. The difference in interpretation is not technical, but political, and each implies different strategies of reaction'.<sup>2</sup> Archibugi and Young, as promoters of cosmopolitan democracy, support the second frame which sees terrorism through the lens of crime and as therefore requiring in part a coordinated, global intelligence and law enforcement effort. However, in the wake of 11 September, the U.S. instead pursued the first frame with a military campaign against and subsequent occupation of Afghanistan, followed in 2003 with a basically unilateral invasion and occupation of Iraq by the U.S. and the U.K. In each of these instances, though, the jury is out on whether the world is safer or if the hornets' nest of terrorists has instead been agitated, therefore making the threat more aggravated.

Indeed, in a November 2003 piece in *The Tablet*, Clifford Longley criticized British Prime Minister Tony Blair for 'by lending his weight to the prevailing American rhetoric about a "war on terrorism"' and forgetting that a military approach did not succeed against

<sup>1</sup> Editorial, 'Smart police work grounds terrorism,' *The Seattle Times*, 11 August 2006; accessed on 15 August 2006 at

[http://seattletimes.nwsources.com/html/editorialsopinion/2003190219\\_ploted11.html?syndication=rss](http://seattletimes.nwsources.com/html/editorialsopinion/2003190219_ploted11.html?syndication=rss). A recent opinion piece, 'Drop "war on terror" imagery,' by Richard N. Hass, president of the Council on Foreign Relations and former director of policy planning at the State Department, expresses similar views in *The Philadelphia Inquirer* on 15 August 2006; accessed on 15 August 2006 at

<http://www.philly.com/mld/inquirer/news/editorial/15274505.htm>.

<sup>2</sup> Daniele Archibugi and Iris Marion Young, 'Envisioning a Global Rule of Law,' in *Terrorism and International Justice*, ed. James P. Sterba (New York & Oxford: Oxford University Press, 2003), 158.

terrorism in Northern Ireland.<sup>3</sup> Along the same lines, William Pfaff, in an April 2004 article appearing in *Commonweal*, wrote, 'The dramatic events of the past month in Spain and Iraq show the difference between two approaches to terrorism. The first is the police-and-intelligence response. The second, the American, is the military reaction'.<sup>4</sup> In Pfaff's view, the police approach taken by Spain, Germany, Britain and France – with which many terrorism suspects have been identified and apprehended – has been more effective than the war approach taken by the United States.

Christian ethicists have not been silent on this subject either. Although many moral theologians of course continue to draw from the well either of pacifism or just-war theory, the two traditional Christian ethical perspectives on political violence, in order to think about how to respond to the terrorist threat, a number of them have, like the above examples, criticized the war and suggested a policing model as a more effective and ethical approach. As a Christian ethicist who is also a former law enforcement officer, I find this recent enthusiasm for policing interesting for a number of reasons, including the fact that a number of these calls for a global police approach come from prominent Christian ethicists among both the pacifist and the just-war camps. For instance, in an exchange between just-war ethicist Lisa Sowle Cahill of Boston College and pacifist Michael Baxter of the University of Notre Dame, both scholars referred to proposals for seeing a response to terrorism as more of a police action against criminals who have committed crimes against humanity as most 'interesting'.<sup>5</sup> How can this be? Might policing be a fruitful convergence point for pacifists and just-war proponents?<sup>6</sup>

Because I have examined this development elsewhere<sup>7</sup>, in this essay I wish instead to use as a point of entry 'An Appeal to Abolish War to Christian Leaders and Theologians', which was coauthored and issued at a conference at the University of Notre Dame in September 2002 by the Irish Roman Catholic moral theologian, Enda McDonagh, who over the years has been identified with the just-war tradition, and the American Methodist Christian ethicist, Stanley Hauerwas, who is well known for his espousal of Christian pacifism. Their aim was to 'invite dialogue and promote serious conversation and analysis'

<sup>3</sup> Clifford Longley, 'How to Stop Al-Qaida,' *The Tablet* (29 November 2003): 2.

<sup>4</sup> William Pfaff, 'Good Cop, Bad Cop: Two Approaches to Terrorism,' *Commonweal* 131/8 (23 April 2004): 8. For an insightful critique from an international law perspective of the war approach to dealing with terrorism, see Mary Ellen O'Connell, 'When Is a War Not a War? The Myth of the Global War on Terror,' *ILSA Journal of International and Comparative Law* 12/2 (2005): 1-5; accessed on 16 August 2006 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=893822](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=893822).

<sup>5</sup> Lisa Sowle Cahill and Michael Baxter, C.S.C., 'Is This Just War?' in *Moral Issues and Christian Responses*, 7<sup>th</sup> ed., eds. Patricia Beattie Jung and Shannon Jung (Belmont, CA: Wadsworth/Thomson, 2003), 355-361. This article originally appeared in the December 2001 issue of *U.S. Catholic*.

<sup>6</sup> Gerald Schlabach believes this possible point of convergence as an ecumenical opportunity. See Gerald Schlabach, 'Just Policing, Not War', *America* 189/1 (7-14 July 2003): 19-21; 'Just Policing: How War Could Cease to be a Church-Dividing Issue', in *Just Policing: Mennonite-Catholic Theological Colloquium*, 2002, ed. Ivan J. Kaufman (Kitchener, Ontario: Pandora Press, 2004), 19-75; and Gerald Schlabach, ed., *Just Policing: Proposal for a Divided Church in a Violent World* (Collegeville, MN: The Liturgical Press, 2007).

<sup>7</sup> Tobias Winright, 'What Might a Policing Approach Contribute to the Pacifist/Just-War Debate on Dealing with Terrorism?' in *Religion and the Politics of Peace and Conflict*, ed. Jason Daverth (Dublin, Ireland: Columba Press, 2007); and 'Just Cause and Preemptive Strikes in the War on Terrorism: Insights from a Just-Policing Perspective,' *The Journal of the Society of Christian Ethics* 26/2 (Fall/Winter 2006).

among Christians across the pacifist and just war spectrum 'in examining the case for the abolition of war' and developing 'alternatives to protect the innocent, to restrain aggressors and to overcome injustice'.<sup>8</sup> This appeal reminds me of the Second Vatican Council's call just over forty years ago in *Gaudium et Spes* for the entire Church to 'undertake an evaluation of war with an entirely new attitude' (par. 80) and to 'strain every muscle as we work for the time when all war can be completely outlawed by international consent' (par. 82).<sup>9</sup> Each of these appeals would appear to entail not only international laws and courts, but also, one would expect, policing.

However, another reason I find all of this interesting is that very little serious attention has been given to the ethics of policing, especially with regard to the use of lethal force, within the discipline of Christian ethics until fairly recently. Indeed, Christian ethicist Edward LeRoy Long, Jr. has recently noted, 'One can go through the indices of book after book in the field and find no entries for either law enforcement or police work. In comparison with the immense amount of thinking about the problem of war and the moral issues surrounding military service, this lacuna is telling'.<sup>10</sup> Interestingly, over thirty years ago in his classic work on just-war theory, Harvard ethicist Ralph Potter observed, 'Seldom have American Christian scholars addressed themselves seriously to the task of helping public officers reflect upon the mode of reasoning appropriate to their office that would guide them in determining when they should act, how they should act, and why'.<sup>11</sup> This vacuum continues to be curious given that there are many Christian police officers, just as there are many Christian soldiers, who must make difficult decisions, including about the possible use of lethal force, in the course of their duties.

<sup>8</sup> This document is available in a few places, including Stanley Hauerwas and Enda McDonagh, 'Abolishing War? An Appeal to Christian Leaders and Theologians', *Quaker Theology* 7 (Autumn 2002): available at <http://www.quaker.org/quest/issue7-1-hauerwas.htm>; Stanley Hauerwas, 'Reflections on the "Appeal to Abolish War" or What Being a Friend of Enda's Got Me Into', in *Between Poetry and Politics: Essays in Honor of Enda McDonagh*, ed. Linda Hogan and Barbara Fitzgerald (Dublin, Ireland: Columba Press, 2003), 135-147; and Stanley Hauerwas, Linda Hogan, and Enda McDonagh, 'The Case for Abolition of War in the Twenty-First Century', *Journal of the Society of Christian Ethics* 25/2 (Fall/Winter 2005): 17-35. I am using the version found in *Between Poetry and Politics*, at 139-141.

<sup>9</sup> *Gaudium et Spes*, in *The Documents of Vatican II*, ed. Walter M. Abbott, S.J. (Piscataway, NJ: New Century Publishers, 1966). References to this document will be included parenthetically in the text and refer to paragraph rather than page numbers.

<sup>10</sup> Edward LeRoy Long, Jr., *Facing Terrorism: Responding as Christians* (Louisville, KY & London, UK: Westminster John Knox Press, 2004), 50-54, 81-85, at 83. Given my experience in law enforcement and the absence of any substantial treatment of this topic in Christian ethics, the use of force in policing became the subject of my doctoral dissertation. See Tobias Winright, 'The Challenge of Policing: An Analysis in Christian Social Ethics' (Ph.D. diss., University of Notre Dame, 2002). One slim book that devotes a chapter to ethics and police use of force, and which served as a springboard for my own work, is Edward A. Malloy, C.S.C.'s *The Ethics of Law Enforcement and Criminal Punishment* (Lanham, MD: University Press of America, 1982). Also see Tobias Winright, 'The Perpetrator as Person: Theological Reflections on the Just War Tradition and the Use of Force by Police', *Criminal Justice Ethics* 14 (Summer/Fall 1995): 37-56; 'Two Rival Versions of Just War Theory and the Presumption Against Harm in Policing', *The Annual of the Society of Christian Ethics* 18 (1998): 221-239; and 'From Police Officers to Peace Officers', in *The Wisdom of the Cross: Essays in Honor of John Howard Yoder*, eds. Stanley Hauerwas, Mark Nation, and Harry Huebner (Grand Rapids, MI: William B. Eerdmans Publishing Co., 1999), 84-114.

<sup>11</sup> Ralph B. Potter, *War and Moral Discourse* (Richmond, VA: John Knox Press, 1973), 60.

Moreover, simply calling for a police approach is insufficient, for not all policing and not all police use of force is moral. Surely no Christian ethicist would defend a police state. Nor would we support excessive force or police brutality. As the Rodney King beating by Los Angeles police officers in 1991, the bombing of the radical African-American group MOVE by Philadelphia police in 1985, and last year's lethal shooting of the twenty-seven-year-old Brazilian Jean Charles de Menezes aboard a subway train when officers mistook him for a suicide bomber demonstrate, not all policing necessarily is just policing. These cannot be what Christian ethicists have in mind when suggesting the extension of a police approach from the domestic to the international sphere.

Therefore, in what follows I wish to further explore the recent calls by Christian ethicists for a global police. First, I will focus attention on how international policing is implied in the appeals by Vatican II and by McDonagh and Hauerwas for abolishing war. Second, because there are rival versions of policing, I will consider which model of policing in the criminological literature seems most promising ethically for extension to the international sphere. Third, given the ongoing possible need for the use of lethal force by global police, I will examine how the rules governing such use of force resemble criteria associated with the just war tradition. Fourth, I will offer some concluding reflections on ways that a global policing approach constitutes the advent of a new attitude for evaluating war.

## II. The Abolition of War

In their coauthored 'An Appeal to Abolish War to Christian Leaders and Theologians', Hauerwas and McDonagh call on Christians to 'join a campaign to abolish war as a legitimate means of resolving political conflict between states and within them'. Just as slavery was once assumed to be part of 'the natural order' and has subsequently been abolished, so too war. However, Hauerwas and McDonagh are not being utopian or unrealistic in their appeal, for they recognize that this would, of course, require 'the examination and development of alternatives to war' which would enable us 'to protect the innocent, to restrain aggressors and to overcome injustice'.

Theologically, Hauerwas and McDonagh believe that war is contrary to the Kingdom of Peace for which God has created the human race, and they 'believe war has been abolished through the triumph of the resurrection of Jesus Christ'.<sup>12</sup> They also refer to the early Church theologian Tertullian and quote Pope John Paul II, who in *Centesimus Annus* declared, 'Never again war!'<sup>13</sup> In addition, Hauerwas and McDonagh express their skepticism about the satisfaction of the traditional criteria of the *jus ad bellum* and *jus in bello* historically, and they moreover note the increasing recognition among Christian leaders about the difficulty of applying and meeting the criteria of the just war tradition nowadays. For all of these reasons they make their appeal to Christian leaders and theologians to a 'serious conversation' toward the abolition of war.

<sup>12</sup> Hauerwas, 'Reflections on the "Appeal to Abolish War"', 146.

<sup>13</sup> Pope John Paul II, *Centesimus Annus: On the Hundredth Anniversary of Rerum Novarum* (1991), in *Catholic Social Thought: The Documentary Heritage*, eds. David J. O'Brien and Thomas A. Shannon (Maryknoll, NY: Orbis Books, 1992), par. 52. Pope John Paul II also said that 'war is always a defeat for humanity' in a couple of places, including his Message for the World Day of Peace, 1 January 2000.

There are a few items to note for further probing. I assume that their appeal for abolishing war would involve outlawing war, which would require some sort of institution to enforce that law; however, Hauerwas and McDonagh do not go into this kind of detail since they are attempting to invite others to examine and develop alternatives to war. Also, while Hauerwas and McDonagh recognize the ongoing need this side of the Kingdom's fully coming for protecting the innocent, restraining aggressors, and overcoming injustice, they do not say whether the alternatives to war for which they are calling must be nonviolent or non-lethal. Would, for example, lethal police use of force be permitted in their judgment?

The Second Vatican Council's *Gaudium et Spes* in its final section addressed 'The Fostering of Peace and the Promotion of a Community of Nations'. Among its most often-quoted lines is the one that called upon the entire Church to 'undertake an evaluation of war with an entirely new attitude' (par. 80). The Council's main reason for suggesting this was, in the wake of two catastrophic world wars, the development of 'scientific weapons' during the arms race of the Cold War that 'can inflict massive and indiscriminate destruction far exceeding the bounds of legitimate defense' (par. 80). Total warfare, which by its very nature encompasses and indiscriminately harms civilian population centers, was condemned unequivocally by the bishops as a crime against God and humanity. Moreover, the Council presciently warned about terrorism as a new way of waging such warfare.

At this point in the document, however, no new approach for evaluating war really has been offered, for the criticism about indiscriminate destruction is based on the traditional just-war criterion of discrimination, which is also known as non-combatant immunity. Accordingly, citizens are not supposed to be directly and intentional targeted. The Council's use of this principle therefore is not evidence of the outright rejection of the just-war tradition, even though its serious application would evaluate much of modern warfare as immoral. Perhaps taking these principles more seriously is what the Council meant by calling for a new attitude rather than ethical approach or method.

Accordingly, given that the danger of war remains, due to the continued presence of sin in the world, the Council did not revoke the traditional right of national self-defense: 'As long as the danger of war remains and there is no competent and sufficiently powerful authority at the international level, governments cannot be denied the right to legitimate defense once every means of peaceful settlement has been exhausted' (par. 79). Here the Council was invoking the traditional just-war criteria of just cause (i.e., defense) and last resort. Again, it does not appear that a new approach for evaluating war was being offered or employed. Nevertheless, the Council cleared away some new ground by strongly emphasizing that all Christians work toward the establishment of peace. In an unexpected departure from previous official Catholic teachings, the Council praised those who renounce the use of violence and who employ nonviolent methods in seeking justice and peace. Related to this, the Council added that governments should make laws that recognize conscientious objection. Moreover, the bishops declared, 'It is our clear duty, then, to strain every muscle as we work for the time when all war can be completely outlawed by international consent' (par. 82). Here the Council went a step further than Hauerwas and McDonagh when it also proposed 'the establishment of some universal public authority acknowledged as such by all, and endowed with effective power to safeguard, on the behalf of all, security, regard for justice, and respect for rights' (par. 82).

Subsequent official statements of the Roman Catholic Church, including the Catechism of the Catholic Church and the Compendium of the Social Doctrine of the Church, continue to echo and expand on these themes. According to Drew Christiansen, S.J., official Catholic teaching on war and peace has accordingly 'evolved as a composite of nonviolent and just-war elements'.<sup>14</sup> He interprets the current position of the Church as based on the fundamental 'premise that everyone is responsible to resist public evil, by nonviolence if at all possible, by state use of force if necessary', and I would add, preferably by global police use of force if necessary.<sup>15</sup> In this way, the Church has both expected a more stringent approach to the application of just war principles and accepted the viability of nonviolent alternatives to dealing with conflict. Humanitarian crises over the last decade have also contributed to the Church's focus on defense of the innocent and not only self-defense in its developing theory of armed intervention.

Still, although the Catechism does not deny governments 'the right of lawful self-defense' (par. 2308), as William L. Portier has pointed out, it is worth noting the way that it delineates the 'strict conditions for legitimate defense by military force [that] require rigorous consideration' (par. 2309).<sup>16</sup> More specifically, Portier observes:

that its 'strict conditions' are not explained with reference to 'just war', as one might expect. In fact, the Catechism never uses the word war for the armed defense whose legitimacy it recognizes. The word war is reserved for that from which the Catechism teaches us to pray for deliverance. The phrase just war does appear once in the text at the end of n. 2309. But it is set off in quotation marks in small print and seems to be part of a supplementary observation. Recent papal statements suggest that this usage of the word war may be significant.<sup>17</sup>

In Portier's view, our moral discourse about war and peace has been reoriented, and these statements reflect this shift. Though the traditional right to self-defense has not been abandoned, 'what we have called "war" or "just war" is pushed to the edges of the moral conversation where it can survive only in the form of what the Catechism calls "legitimate defense by military force" (n. 2309).'<sup>18</sup>

This line of thinking seems evident in recent statements by Pope Benedict XVI. For example, in accordance with a tradition, begun by Pope Paul VI on December 8, 1967, of observing a World Day of Peace each year on January 1<sup>st</sup>, Benedict has issued his second World Day of Peace message in which he devotes attention to 'certain recent situations of war' (par. 14).<sup>19</sup> While Benedict affirms that 'In Christ we can find the ultimate reason for becoming staunch champions of human dignity and courageous builders of peace' (par. 16), he has not entirely jettisoned the Church's traditional position that sometimes force is

<sup>14</sup> Drew Christiansen, S.J., 'Whither the "Just War"?' *America* 188/10 (24 March 2003): 7-11, at 8.

<sup>15</sup> Drew Christiansen, S.J., 'After Sept. 11: Catholic Teaching on Peace and War', *Origins* 32/3 (30 May 2002): 33, 35-40, at 35, 36 and 38.

<sup>16</sup> William L. Portier, 'Are We Really Serious When We Ask God to Deliver Us from War? The Catechism and the Challenge of Pope John Paul II', *Communio* 23 (Spring 1996): 47-63, at 48.

<sup>17</sup> *Ibid.*, 49.

<sup>18</sup> *Ibid.*, 55.

<sup>19</sup> Pope Benedict XVI, 'The Human Person, the Heart of Peace', World Day of Peace Message 2007; available at [http://www.vatican.va/holy\\_father/benedict\\_xvi/messages/peace/documents/hf\\_ben-xvi\\_mes\\_20061208\\_xl-world-day-peace\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/messages/peace/documents/hf_ben-xvi_mes_20061208_xl-world-day-peace_en.html).

justified to defend the innocent. Indeed, he calls on 'the international community [to] reaffirm international humanitarian law, and apply it to all present-day situations of armed conflict, including those not currently provided for by international law. Moreover, the scourge of terrorism demands a profound reflection on the ethical limits restricting the use of modern methods of guaranteeing internal security' (par. 16). He calls upon nations to establish 'clearer rules' and 'norms of conduct' for defending the innocent and limiting 'the damage as far as possible', while concurrently he repeats the refrain that 'war always represents a failure for the international community and a grave loss for humanity' (par. 16). What might these 'clearer rules' or 'norms of conduct' look like? Here Benedict footnotes the section of the Catechism of the Catholic Church (par. 2307-2317) that lists, as the Catechism puts it, 'the traditional elements enumerated in what is called the "just war" doctrine' (par. 2309), and that the pope regards in his message as offering 'strict and precise criteria' (ibid., endnote 7).

Whether we call these criteria 'just war' criteria, criteria for 'legitimate defense', 'violence-reduction criteria'<sup>20</sup>, or 'just policing' criteria, Pope Benedict XVI apparently is not abandoning altogether the mode of moral reasoning, which involves these several criteria, to be employed for considering when and how force may be used to defend innocent persons. As Cardinal Ratzinger he may have noted, 'given the new weapons that make possible destructions that go beyond the combatant groups, today we should be asking ourselves if it is still licit to admit the very existence of a "just war"'<sup>21</sup>; yet, even if he doubts whether it is still possible to have a just war in today's world, as pope he retains room for the possibility of limited forceful actions, conducted presumably by some sort of global police force, that still require the sort of moral reasoning and criteria that the just war tradition provided traditionally.

### III. Rival Versions of Policing

Calls such as these by Hauerwas, McDonagh, and the Vatican for the outlawing of war and proposals for establishing a global police are not new. There were similar appeals during the earlier half of the twentieth century, including from Catholic Christians, especially in connection with the League of Nations and the United Nations. A number of these works also included the need for some sort of global police institution that would possess 'the coercive power necessary to enforce the law'.<sup>22</sup>

Over sixty years ago, in the beginning days of World War II, the eminent scholar of police history and principles, Charles Reith, in his book, *Police Principles and the Problem of*

<sup>20</sup> Walter Wink, *Engaging the Powers: Discernment & Resistance in a World of Domination* (Minneapolis, MN: Fortress Press, 1992), 220-227.

<sup>21</sup> <http://www.zenit.org/english/visualizza.phtml?sid=34882>.

<sup>22</sup> Jacques Maritain, *Man and the State* (Chicago, IL: The University of Chicago Press, 1951), 188-216, at 199. Also, A. Muller, S.J. devoted attention to this in 'The Organization of International Society', included in John A. Ryan and Francis J. Boland, C.S.C., *Catholic Principles of Politics* (NY: The Macmillan Company, 1958), 230-243. He similarly observes, 'No authority of any kind will be respected if it has no means of enforcing obedience. He who refuses to submit to the force of law must submit to the compulsion of force' (240). In addition, see Mortimer J. Adler, *How to Think About War and Peace* (NY: Fordham University Press, 1995; originally published by Simon and Schuster in 1944); and *Haves Without Have-Nots: Essays for the 21<sup>st</sup> Century on Democracy and Socialism* (NY: Macmillan Publishing Company, 1991), 249-266.

War, called for an extension of policing principles to the international level as a move toward the abolition of war.<sup>23</sup> Reith retrieves two major prongs emphasized by Sir Robert Peel who founded the modern institution of policing in London in 1829: the preventive principle of policing and the capacity to enforce the law. More recently, criminologists have identified several models of policing.<sup>24</sup> Policing in the U.S. especially has focused more on crime fighting since the early twentieth century, which sees the use of force as the *raison d'être* of policing. This crime fighting model is also referred to as the 'military model' of policing and it is often associated with martial metaphors and practices (e.g., 'war on crime', sergeants, lieutenants, uniforms, helmets, semi-automatic rifles, tear gas, flash grenades, etc.). This model might encourage an 'us versus them' attitude, which is why a growing number of criminologists warn that the crime fighter model of policing may lead to police brutality and excessive force.<sup>25</sup> Everyone is viewed as a potential 'enemy', which makes it easier, according to criminologist Paul Chevigny, for police 'to abuse those who are the enemy, easier even to kill or torture them'.<sup>26</sup> I find it hard to imagine support for this model of policing either domestically or internationally by Hauerwas, McDonagh, and the Vatican. However, in recent decades the community policing model or what John Kleinig calls the 'social peacekeeper' model has made some inroads. This approach is more congruent with Peel's police, especially with its emphasis on preventing crime at its roots. Nevertheless, this model still makes room for the use of force, including lethal force, under certain conditions. The use of force in this model, however, is instrumental rather than central, and it is governed stringently by criteria for when and how to employ it. Indeed, Kleinig suggests that had the Los Angeles police officers who participated in the beating of Rodney King understood themselves 'primarily as social peacekeepers, for whom recourse to force constituted a last and regrettable option, events would almost certainly have turned out very differently'.<sup>27</sup>

#### IV. Criteria for Just Police Use of Force and for Just War

Kleinig provides a number of ethical criteria for the just use of force by police, and he shows how these correspond with developments in U.S. law.<sup>28</sup> These criteria bear a remarkable resemblance to the principles of the just war tradition, as a number of Christian ethicists have observed but not devoted serious study to over the years. For example, some years before his joint appeal with Hauerwas, McDonagh wrote, 'Accepting, in common

<sup>23</sup> Charles Reith, *Police Principles and the Problem of War* (London: Oxford University Press, 1940), viii. For more on what extending this model of policing to the international sphere might look like and entail, see Tobias Winright, 'Community Policing as a Paradigm for International Order', in *Just Policing: Proposal for a Divided Church in a Violent World*, ed. Gerald W. Schlabach (Collegeville, MN: The Liturgical Press, 2007).

<sup>24</sup> John Kleinig, *The Ethics of Policing* (Cambridge and New York: Cambridge University Press, 1996).

<sup>25</sup> Victor Kappeler, Mark Blumberg, and Gary Potter, *The Mythology of Crime and Criminal Justice* (Prospect Heights, IL: Waveland Press, 1993), 131.

<sup>26</sup> Paul Chevigny, *Edge of the Knife: Police Violence in the Americas* (NY: The New Press, 1995), 255-256.

<sup>27</sup> Kleinig, 96.

<sup>28</sup> For more on the jurisprudential and departmental policies on police use of force, see Winright, 'The Challenge of Policing', 71-103. For a departmental policy, see Los Angeles Police Department, *Manual of the Los Angeles Police Department* (Los Angeles: Los Angeles Police Department, 1991), in *Morality in Criminal Justice: An Introduction to Ethics*, eds. Daryl Close and Nicholas Meier (Belmont, CA: Wadsworth Publishing Company, 1995), 414-416.

with the majority of Christians past and present, the need for the violence of restraint in society, one is operating with criteria similar to those of the just war'.<sup>29</sup> The use of force in just policing, as in just war, must be proportionate, must have a just cause (defense of the innocent), must be discriminating, must be a last resort, etc. Therefore, while I acknowledge the differences between policing and warfare, it is my view that these are mainly differences in degree rather than in kind. Though the beating of Rodney King and the bombing of MOVE were both police actions, they are considered unjust morally for a number of reasons that echo criteria associated with the just-war tradition. Thus, even if war were to be banned by international law, if a rogue nation or terrorist group breaks this law and commits an act of aggression, there would need to be a global police force that can hopefully prevent such an act from happening in the first place or can respond to the crime and apprehend the perpetrator(s). Given that the use of force may be necessary by such an international police institution, moral (and legal, because in this hypothetical situation an international institution exists) criteria for when and how such force is employed justly would also be needed. In this scenario, though war has been abandoned as a method of conflict resolution, the just-war mode of reasoning has not necessarily been set aside even if we instead are referring to just policing.

#### V. Conclusion: A New Attitude for Evaluating War?

Does global policing constitute a new attitude for evaluating war? It does appear to represent a new attitude toward war, which regards or evaluates war as evil and ultimately contrary to God's will for the world. But it does not seem to introduce an altogether new approach for evaluating the use of force that traditionally governed war. That is, the basic mode of moral reasoning, and the criteria associated with it, is more or less the same, whether we are referring to the use of force in just policing or in just war. While war in general will be seen as wrong and thus outlawed, the legitimate defense of the innocent remains viewed as morally right. Whether we call it legitimate defense (or intervention), just policing, or just war, the principles and kind of moral reasoning required for the use of lethal force to be just are not entirely new. There may be more accountability, the criteria may be more easily applied and adhered to, and there may therefore be less violence and loss of innocent human lives. I thus support these calls for global policing. As an ethicist, however, I wish to point out that when we get around to thinking about rules of engagement for such an entity, we do not have to start with an ethical blank slate.

<sup>29</sup> Enda McDonagh, *Church and Politics: From Theology to a Case History of Zimbabwe* (Notre Dame, IN: University of Notre Dame Press, 1980; published in Ireland as *The Demands of Simple Justice*), 71. See also the aforementioned chapter by Malloy, as well as Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Charles Scribner's Sons, 1968), 144; Potter, 49-50; Joseph Capizzi, 'War Remains Church Dividing', in *Just Policing: Mennonite-Catholic Theological Colloquium*, 2002, ed. Ivan J. Kaufman (Kitchener, Ontario: Pandora Press, 2004), 76-77; and John Howard Yoder, *The Christian Witness to the State* (Newton, KS: Faith and Life Press, 1964), 36-37; *The Politics of Jesus*, 2<sup>nd</sup> ed. (Grand Rapids, MI: William B. Eerdmans, 1994), 203-204; *The Priestly Kingdom: Social Ethics as Gospel* (Notre Dame, IN: University of Notre Dame Press, 1984), 75.

*Zbigniew Sarello:*

*Conversion. L. Kołakowski's solution to our civilization crisis*

In philosophy, the critique of rationality has been gaining deeper and deeper reception since the second half of the 20<sup>th</sup> century. Leszek Kołakowski, the preeminent Polish philosopher, involved himself in the stream of this common critique. However, there is something that distinguishes him from other philosophers: he sees a religious conversion as the only remedy which is somehow able to cure all the illnesses of modern civilization. In this paper I would like to look attentively at the idea of Kołakowski and I will try to criticize his belief in this therapeutic power of Christianity.

First, I want to say what is, according to Kołakowski, the very source or the cause of our civilization crisis. Thus, in his opinion, the cause of the current crisis is the Enlightenment overvaluation of the abilities of the human mind, which gained the right to penetrate everything. In the Enlightenment period, thinkers accepted that it is only the human mind that can judge "the rightness of all the questions and of all the answers"<sup>1</sup>. Therefore, it was accepted that the human mind is able to recognize the truth about everything that can become the subject of its investigations. The aspiration to get to know the truth and the rejection of all the convictions coming from extra-mind sources became the Enlightenment programme. This programme, however, turned against itself, because, in the 18<sup>th</sup> century, it gave birth to epistemological nihilism, empiricism and pragmatism. At the same time, the enlightening ideal of the truth was rejected and regarded as a completely useless concept, and it was replaced with some utilitarian criteria. Although the enlightening ideal of mind as a tool that is always able to recognize the truth was soon rejected, the critical attitude against religious convictions, created for the sake of this ideal, not only survived, but also became stronger. In utilitarian and pragmatic streams all the convictions that come from religious beliefs, from tradition or history are rejected with even stronger determination than in the times of the Enlightenment, because they are regarded as useless for a good and happy life in both individual and social dimensions.

However, according to Kołakowski, we do need myths and taboos that could create some sacral space. The space is necessary for a man, as it is a *sine qua non* condition to find the hidden sense of the universe, and, in consequence, to feel secure. These convictions - concerning the sense of the universe - allow the man to face his life with all its difficulties, obstacles, tragic experiences and failures. They are the basis of the hope for the future, which is always seen as uncertain. The desire for certainty and security is natural<sup>2</sup>. The lost of what is the foundation of certainty and security feeling becomes something unbearable, it has to give birth to fears, and that is why a person will always remain "superstitious", regardless of his or her social circumstances or educational background. "We are all striving for a comprehensive explanation of live and we need certainty that we are living

1 Cf. L. KOŁAKOWSKI, *Moje słuszne poglądy na wszystko*, Kraków: Znak, 1999, p.45.

2 Cf. L. KOLAKOWSKI, *Modernity on Endless Trial*, Chicago: University of Chicago Press, 1990, p.125.

in reality"<sup>3</sup>. The sacral space is also, in Kołakowski's opinion, the condition to see the order concerning some basic life principles as the laws inserted in the very essence of being"<sup>4</sup>. As a result, the sacral space is necessary for relationships between people, which is the basis of a social order. This social order demands from people their acceptance of the rules regarded as absolute ones, which means such rules that come from some authority other than a man. In case of rejecting those rules every human condition and behavior can be justified, since, in such circumstances, the man creates his own rules for himself. And these rules will become the most profitable ones from his own point of view<sup>5</sup>. Finally, the rejection of sacral space, created by myths and taboos, leads to a situation where the social order can only be controlled by fear and avarice<sup>6</sup>. From the critique of the Enlightenment, which is accused by the philosopher of the overvaluation of human mind abilities, Kołakowski reaches conclusions referring to our chance to overwhelm the civilization crisis. In his opinion, usefulness and rightness of myths and taboos must be accepted, but he does not believe that it could be possible thanks to rational techniques. Nevertheless, he hopes that myths and taboos will be saved by a social instinct of self-preservation, which will not be revealed in any barbarian forms (200), but it will be revealed through a religious conversion. When a significant part of the society is converted in "a good religion", the situation all over the world will be changed in a very short time, he claims. Believing strongly in the society's inborn instinct of survival, which can be revealed through such a religious conversion, Kołakowski emphasizes that different religions do not have the same rights or status. He clearly presents the conditions that must be met by faith and religion to cause such a positive conversion and save our civilization. Thus, it must be some good religion, which is able "to induce within ourselves some love energy and to weaken or just eliminate germs of hatred".

Which religion complies with the criteria of a good religion? Kołakowski does not answer explicitly this question. On the contrary, the philosopher declares that he does not want to become a propagator of any definite religious faith. Nevertheless, this declaration seems to be rather apparent but not necessarily real, because we can find many statements of the same philosopher, in which, though indirectly, he proclaims himself in favor of Christianity or – to be more precise – in favor of its Roman Catholic version. And it is just the conversion in the Roman Catholic religion which would be desirable and needed. This religious sympathy we can find, for example, in Kołakowski's article entitled *On Collective Identity*, where he tried to show that "the continuous identity is the best and the most strongly founded in the Roman Catholic Church"<sup>7</sup>. The Catholic Church would have this identity, as Kołakowski says, thanks to dogmas – the unchangeable contents of faith. What is more, Kołakowski tries to show clearly that only in the Catholic Church the dogmas did not become the subject of the process of rationalizing, and it is Reformation which is

3 Ibid.

4 Cf. L. KOŁAKOWSKI, *Moje słuszne poglądy*, Op.cit., p.44.

5 Cf. *ibid.*, p.207.

6 Cf. L. KOŁAKOWSKI, *Modernity*, Op. cit., p.13.

7 Cf. L. KOŁAKOWSKI, *Moje słuszne poglądy*, Op. cit., p.163.

charged by the philosopher with “a monstrous idea of rational religion”<sup>8</sup>. In this statement we are able to find an implied idea that Protestantism does not meet the conditions of the religion which could cause the world’s renewal. In Protestantism the myths and taboos realm has been rationalized. The proper task of myths is not to explain anything conceptually. Thus, any attempt to rationalize them is not needed. To rationalize myths means to weaken their power. Rationalized, demythologized religion does not function properly. It does not offer any tools – which are just myths and taboos – to create the sacral space as the source of finding the sense of the universe. On the other hand the myths’ content is not translatable to the language of metaphysics. Thus, the attempt to save the faith by demythologizing it – which means its assimilation with the critical thought of the Enlightenment – cannot be successful.

Christianity in its Catholic version repelled demythologization and rationalization, and that is why the conversion in this religion Kołakowski sees as a way to save our civilization.

Leszek Kołakowski’s views on our civilization crisis, on its possible sources and on possible ways of saving the civilization, presented above, can give rise to doubts and objections. I do not intend to criticize his ideas thoroughly. I just want to consider the last element of his conception: the usefulness of the Catholic religion for the realization of social renewal. I am going to deconstruct this thesis, because I will try to find some tools in Kołakowski’s theory itself to analyze it, taking into consideration his diagnosis of modern world and his claim that the source of modern dangers is rationalism born in the Enlightenment times. Thus, what I intend to do with his theory is a form of bricolage, in the meaning which J. Derrida gave to this notion.

In the statements of Kołakowski himself I can find the opinion that the Enlightenment ideas are, historically, of Christian origin. Therefore, one can ask at once, whether something that is derived from something else can be radically different from the source of its origin. Something derived from something else can only develop what was given to it in its sources. So, one can ask justly, if we really do not find the roots of scientific rationalism in Christianity itself. A lot of Kołakowski’s statements – perhaps against his intentions – imply a positive answer to this question. Such implications we will find in his claim that the key-condition of modern science was a movement driving at the liberation of the secular mind, and the fight for the independence of secular departments from theology at medieval universities. The conceptual basis of this fight was the separation of natural science from the knowledge revealed by God. This separation, which had been formed gradually in Christian philosophy since the 11<sup>th</sup> century, was an important part of this process<sup>9</sup>. Thus, according to Kołakowski, it is Christian philosophy of the 11<sup>th</sup> century which may be regarded as the source of rationalism. We can add here that also theology of that time became a predecessor of modern scientific rationalism: scholastics created systems, in which philosophical thought was firmly connected to theological one. As far as these systems are concerned it is extremely difficult to notice some demarcation lines between theology and philosophy. *Fides quaerens intellectum* expressed the intention of

8 Cf. *ibid.*, p.240.

9 Cf. L. KOLAKOWSKI, *Modernity*, Op. cit., p.7.

deepening the faith in a speculative way, which meant rationalizing of the both: the faith itself and the God's idea, as well.

The thesis that the Catholic religion repelled demythologization and rationalization is negated by Kołakowski himself in the question "why did the civilization - which emerged from the joined Greek, Jewish and Christian sources - present itself so brave while inducing and propagating changes in science, technology, art and social institutions"<sup>10</sup>? This question implies such an answer which is, besides, suggested by Kołakowski himself. He quotes a statement, dating back to the 4<sup>th</sup> century, that Greeks, in opposition to barbarians, love everything what is new<sup>11</sup>. Later on, he suggests that our civilization inherits from Greeks an inner urge to everything what is new. The urge is based on the belief that what is new is good.

Kołakowski does not explain in which way the belief in "what is new" was inherited by our civilization. Towards the close of antiquity Latin and Greek culture was repelled by barbarians who appreciated tradition. Thus, how did it happen that in philosophical thought of the 11<sup>th</sup> century we can see - as already rooted - a permanent search for what is new, a desire to explain mysteries and even God himself? Was not it Christianity itself that transferred the Greek love of what is new? Since the 2<sup>nd</sup> century Christianity have started quickly to adopt Greek philosophy and - thanks to it - it started to explain the contents of the Christian faith. But did not it adopt unconsciously the love of what is new on this occasion? Such a possibility seems to be explained and confirmed by intellectual renewal in scholasticism since the 10<sup>th</sup> century. For, since the 10<sup>th</sup> century, Christianity have not only been quite widespread in Europe, but also firmly rooted. So, it seems understandable that the spirit of Greek culture together with Christianity used to repel more and more effectively a static attitude of pagan nations, and the same spirit propagated the love of what is new.

Now, we will leave the texts by Kołakowski for a while and we will try to show at least a few examples of how the Greek thought contributed to formulating the Christian truths of faith in a speculative way. In the 2<sup>nd</sup> century not only Christian works written in Greek and apologies formulated in a Hellenic spirit were published, but also doctrinal disputes appeared. The latter influenced Christian world more and more widely and deeply in next centuries, inducing lots of divisions and even schisms. In the same period, the first attempts to dogmatize the truths of faith take place. As the reason for dogmatizing the faith we can see the need for speculative explaining all of the matters that remained a mystery for Jesus and His Apostles. In the course of centuries these mysteries were formulated more and more speculatively with the use of terminology drawn from Greek philosophy, but also some new notions were introduced to explain something inexplicable.

In the process of revealing the truths of the Christian faith and in their dogmatizing it is easy to notice that those truths were described more and more precisely and were formulated in detail. Thus, the already precise and detailed statement of the Ephesian Council (431), concerning the unity of divinity and humanity in Christ, was significantly widened with new contents by the Council in Chalcedon (451). The Council stated, for example,

10 Cf. *ibid.*, p.4-5.

11 Cf. *ibid.*, p.5.

that there were two natures in Jesus “which undergo no confusion, no change, no division, no separation; at no point was the difference between the natures taken away through the union, but rather the property of both natures is preserved and comes together into a single person and a single subsistent being; he is not parted or divided into two persons, but is one and the only-begotten Son (...)”. The process of formulating the truth of faith referring to the unity of divinity and humanity in Christ was not finished in antiquity, but it has remained alive up to the present.

Another example of the process of explaining mysteries of the Christian faith are discussions on the Trinity. Here, I would like to present a passage from the Toledo Symbol of Faith (the eleventh Council of Toledo, 675). The Council stated that there is one substance of God and there are three Persons. “For the Father is Father not with respect to Himself but to the Son, and the Son is Son not to Himself but in relation to the Father; and likewise the Holy Spirit is not referred to Himself but is related to the Father and the Son, inasmuch as He is called the Spirit of the Father and the Son. So when we say 'God', this does not express a relationship to another, as of the Father to the Son or of the Son to the Father or of the Holy Spirit to the Father and the Son, but 'God' refers to Himself only.”

The attempts to define the truths of the faith speculatively used to give rise to disagreements and schisms. The disagreements referred sometimes to some particular problems, just to mention a famous dispute concerning Filioque in the same dogma of the Trinity. (The question was if the Holy Spirit comes from the Father or from the Father and the Son.) Therefore, Christianity – and also the Roman Catholic Church – is rationalized to a great extent. The tendency of liberating the mind from all dependences started to emerge gradually from the spirit of Christian rationalism. This process had to reach the point in which a full emancipation of the mind took place and in which “a monopoly of deciding about the rightness of all questions and of all answers” was given to the human mind”. As a result, since the Enlightenment, intellectual tendencies have been coming into conflict with Christianity. In spite of this conflict – which used to become stronger and stronger during years – between modernity and Christianity, the process of rationalizing has been still present in the Christian thought. Even nowadays, although some objections towards the mind are noticeable in the culture, the Catholic Church defends the mind abilities, which is, for example, expressed, in the encyclical *Fides et ratio* by John Paul II. In this document the pope – resisting the tendencies of modern philosophy – defends the mind capacity to establish and determine the essence of reality<sup>12</sup>.

Therefore, the rationalism criticized by Kołakowski, is still penetrating Catholic mentality. On its basis, for the whole modernity and up to these days - the Church have not wanted to contrast science with faith, and have been trying to point out that science explains and confirms the faith.

Christianity, despite its conflicts with intellectual movements in successive epochs, shares its fortune with the whole culture. Christians are spread throughout the culture, but they are also influenced by it. Two parallel civilizations do not exist. Christians, similarly to others, are „polluted” with the same civilization illnesses. There is no Christianity as a

12 Cf. John Paul II, Encyclical Letter "Fides et Ratio", 84f.

petrified religion. It is living inside its members and it is being announced, preached and handed on by them. In the light of the observations and remarks made on Christian rationalism and its influence on the rationalism of modernity, Kołakowski's thesis that it is possible to save our civilization thanks to a religious conversion does not seem to be credible. Conversion in a rationalized religion does not make possible to overwhelm scientific rationalism. Such a conversion would only mean "to patch" the civilization, similarly to the efforts made by intellectuals<sup>13</sup>. The thesis of Kołakowski could be internally coherent (though not necessarily right), if we supposed that people would convert in Christianity not rationalized yet, which means Christianity not contaminated with the Hellenic thought mentioned above. However, the question is arising at the moment: we do not know, if Christianity is able to transform itself in such a way.

History shows that all the attempts aiming at the religion renewal have been somehow limited to structural changes in the Church. To such structural changes Reformation was limited, and, as Kołakowski noticed, although the Reformation intended "to cancel fatal results of theology development that had lasted for lots of centuries, to eliminate institutional forms of Christianity and to restore the original faith purity dating back to the times of Apostles (...), it liberated, in fact, the spirit of rational investigation in religious matters"<sup>14</sup>. In other words, the Reformation did not stop the process of rationalizing the faith, but, contrary to its intention, caused a further emancipation of the mind.

Structural changes were also the only effect of the Church renewal at which the second Vatican Council aimed. In both cases, the renewal did not touch hearts and minds of Christians. In these attempts there was no will to change the way of thinking radically, to leave thinking patterns that have their origin in ancient Greek philosophy or in Roman culture. These patterns, which can be called thinking matrices, have still been the basis of formulating the faith principles, and, as a result, they have been influencing the life practice and the way of hierarchizing of values.

It seems that Kołakowski himself is not convinced about his thesis rightness. In the article entitled *Amateurish Sermon on Christian values* he says: "Christianity is now put to the test due to its own incapacity to preach the Word in such a way that the preaching could make this Word alive, could reach one's conscience, could open the conscience through example and faith, especially among young and educated people"<sup>15</sup>. But what is the reason for this incapacity? Isn't it some overintellectualization of the faith contents? On the grounds of some other Kołakowski's statements, in the same text of his, we may assume that at the incapacity to preach the Word has got its source in scientific rationalism of the institutionalized Church. Thus, Kołakowski hopes that Christianity "will be saved, but it will be saved by saints, not by bureaucrats, by good people, not by those who are conceived and full of hatred. Christianity will be saved by different groups of believers on the peripheries of the Church or even outside its peripheries, but not too far"<sup>16</sup>.

13 Cf. L. KOLAKOWSKI, *Modernity*, Op. cit., p.9-10.

14 Cf. *ibid.*, p.10.

15 Cf. L. KOLAKOWSKI, *Moje słuszne poglądy*, Op. cit., p.63.

16 Cf. *ibid.*, p.63.

Why does Kołakowski think that Christianity - together with our civilization - will be saved by saints? Does he really believe in a social inborn instinct of survival? However, it would be a baseless, naïve belief. The history of humankind shows that different civilizations used to be born, to get older and to fall. Sometimes, they used to be destroyed by unfriendly external conditions. So the question is arising at the moment, why does our civilization have to last forever?

*Christoph Baumgartner:*  
*Religious identities in liberal societies – to be protected against “offensive speech”?*

1. Introduction

On September 30, 2005 the Danish newspaper Jyllands-Posten published twelve cartoons depicting the Islamic prophet Mohammed which gave rise to widespread public protest by Muslims in many countries. Although many of these protests were strongly politically influenced, many Muslims felt profoundly offended and considered the cartoons an outrage upon religious beliefs, symbols and values that are essential to their religious identities (cf. e.g. Reuter 2006; Shearmur 2006).

This event is but one example among many that demonstrates the challenges the right to freedom of expression presents to members of particular religions.<sup>1</sup> In the following I am going to address the question of how these challenges and tensions are to be understood and ethically evaluated. What are the deeper reasons that motivate protests against particular expressions of somebody's opinions, works of art and so on? Should the right to freedom of expression be limited for the sake of a better protection of religious identities? I am focusing the scope of my investigation on the context of western liberal-democratic and pluralistic societies, where freedom of expression is considered to be a basic right. The terms ‘act of expression’ and ‘speech’ will be used synonymously, meaning acts that are intended by the agent “to communicate to one or more persons some proposition or attitude” (Scanlon 1972: 206). This broad definition comprises not only spoken or written words, but also such expressions as the exhibition of works of art, the publication of drawings, the showing of films, and both displays and destructions of symbols and flags. ‘Offensive speech’ is also to be understood broadly as to cause somebody by means of an act of expression to experience a mental state of a universally disliked kind, for example disgust or shame (cf. Feinberg 1985: 2). Thus, ‘religiously offensive speech’ denotes offensive speech on religious beliefs, symbols, traditions, and practices.

2. Interpreting protests against religiously offensive speech

2.1. Rejecting freedom of expression by protesting against religiously offensive speech?

It is not easy to understand and explain the precise reasons for protests against religiously offensive speech. One interpretation understands protests – like those against the above-mentioned Mohammed cartoons – against a background which is often characterized by keywords like ‘Clash of Civilizations’, ‘Islamism’ or even ‘Religious Totalitarianism’ (cf. e.g. Hirsi Ali et al. 2006). To provide an example, on February 9, 2006 the (now former)

<sup>1</sup> Other examples are related to Salman Rushdie's novel *The Satanic Verses* (published first in 1988), the Islam-critical film *Submission*, directed by the Dutch journalist and film director Theo van Gogh and written by Ayaan Hirsi Ali (van Gogh was assassinated by a radicalized Muslim in November 2004 and Hirsi Ali was forced to go into hiding for several weeks), and the broadcasting of the satirical TV-series *Popetown* in Great Britain and Germany 2006.

Dutch member of parliament Ayaan Hirsi Ali pointed out, that in her view the reactions to the publication of the Mohammed cartoons “has revealed the presence of a considerable minority in Europe who do not understand or will not accept the workings of liberal democracy” (Hirsi Ali 2006). According to this interpretation, the protestors obviously are not willing to take up fundamental values of modern Western liberal-democratic societies, like the right to freedom of expression including an (by Hirsi Ali) asserted ‘right to offend’.

The Dutch philosopher Herman Philipse offers a theory for this situation of non-acceptance.<sup>2</sup> In 2003 and thus prior to both the assassination of Theo van Gogh in Amsterdam and the Mohammed cartoon row, Philipse outlined an imminent ‘tribalization’ of the Netherlands, resulting from an increasing number of immigrants living in the Netherlands. According to Philipse, the identities of people from countries like Afghanistan, Morocco, Somalia or Sudan are formed by cultures which are to a significant extent in conflict with ‘the’ Western culture. Philipse points to such cultural tendencies like the lack of trust for people who are not members of their own (relatively small) groups, the inequality between men and women, the dominance of an ‘ethos of honor’ in tribal cultures, and – resulting from this – a certain inability to engage in public self-critique. The implications of this for the interpretation of conflicts related to freedom of expression are evident: According to Philipse, “most Muslims are offended by any critique on Islam, no matter how reasonable and justified it may be.” Consequently, conflicts like the above-mentioned are predictable and are almost inevitable results of a politics of multiculturalism, aiming at people living together with significantly different and partly conflicting (religious) identities without requiring immigrants to adopt certain fundamental values of liberal-democratic societies and integrate them into their own identity.

However, an interpretation of protests against religiously offensive speech that explains the protests just as rejections of freedom of expression is not satisfactory. It does not take the perspective of the believers who feel profoundly insulted seriously enough. Besides this, the scope of this explanation is very limited. Protest by believers whose identities have not been formed under the influence of tribal cultures and an ‘ethos of honor’ and who explicitly take a very positive view of Western liberal democracy and the basic rights and values that are connected with it cannot be explained by this interpretation. For example, controversies like those surrounding Andres Serrano’s *Piss Christ* (a work of art produced by immersing a photograph of a crucifix in the artist’s urine), over broadcasting the cartoon film *Popetown* in Germany 2006, or over the pop singer Madonna’s ‘crucifixion scene’ in shows of her *Confessions Tour* in 2006 indicate that certain religiously sensitive acts of expression are experienced as burdensome challenges for religious identities – not at all only by Muslim immigrants and their descendants.

In the following I am going to outline a different interpretation of protests against religiously offensive speech which analyses and understands the protests in question by analogy with ‘struggles for recognition’. The resulting sketch will not claim to be extensive or exclusive, but rather an attempt to point out anthropological, religious and social dimensions of the protests. Such consideration is necessary for a deeper understanding of protests against religiously offensive speech in liberal-democratic and pluralistic societies.

<sup>2</sup> Cf. Philipse 2003.

## 2.2. ‘Struggles for recognition’ and protests against religiously offensive speech<sup>3</sup>

Axel Honneth develops his theory of ‘struggles for recognition’ against the background of an intersubjective or relational anthropology, going back to the younger Hegel and the social psychology of George Herbert Mead. The process of individuation and of the formation of the identity of a person is seen as being dependant on experiences of mutual recognition. “[T]he human form of life as a whole is marked by the fact that individuals can gain social membership and thus a positive relation-to-self only via mutual recognition” (Honneth 2002: 501). More precisely, Honneth distinguishes three different forms of recognition:<sup>4</sup> 1) recognition in primary relationships (parent-child relationships, friendship and erotic love), resulting in self confidence; 2) legal recognition, resulting in self-respect; and, finally, 3) social esteem which is directed, “at the particular qualities that characterize people in their personal difference” (Honneth 1995: 122) and results in self-esteem. In order to acquire and maintain an undistorted relation-to-self, and to be able to relate positively to one’s own concrete traits and abilities, a person always needs experiences of recognition comprising all of the three different modes of recognition (cf. Honneth 1995: 122). The “specific vulnerability of humans resulting from the internal interdependence of individualization and recognition” (Honneth 1995: 131) has important implications for the vulnerability of identities of human beings by experiences of disrespect. Human beings can be injured not only in their bodily integrity, but they are also highly vulnerable in their positive relations-to-self. Since the maintenance of a positive self-understanding is dependant on experiences of recognition, experiences of disrespect can result in serious injuries to the identities of human beings. Again, Honneth distinguishes between three different forms of disrespect. Practical maltreatment that affects the physical integrity of a person is the most fundamental and most drastic form of personal degradation, resulting in a loss of basic confidence and the “loss of trust in oneself and the world, and this affects all practical dealings with other subjects, even at a physical level” (Honneth 1995: 132f.). Experiences of the denial of rights and social exclusion are the second form of disrespect. They injure the moral self-respect of a person since it is no longer possible for her to experience herself as enjoying “the status of a full-fledged partner to interaction, equally endowed with moral rights.” (Honneth 1995: 133f.). For the issue of this paper the most important form of disrespect is the third: the “denigration of individual or collective ways of life.” Honneth explains,

[A] person’s [...] ‘status’ refers to the degree of social esteem accorded to his or her manner of self-realization within a society’s inherited cultural horizon. If this hierarchy of values is so constituted as to downgrade individual forms of life and manners of belief as inferior or deficient, then it robs the subjects in question of every opportunity to attribute social value to their own abilities. For those engaged in them, the result of the evaluative degradation of certain patterns of self-realization is that they cannot relate to their mode of life as something of positive significance within their community. For individuals, therefore, the experience of this social devaluation typically brings with it a loss of personal self-

<sup>3</sup> Honneth 1995.

<sup>4</sup> Cf. Honneth 1995: 92-130.

esteem, of the opportunity to regard themselves as beings whose traits and abilities are esteemed. (Honneth 1995: 134).

Struggles for recognition result from experiences of disrespect and the feeling “that others unjustly fail to recognize certain aspects of who one is” (Honneth 2002: 504). They challenge established forms of mutual recognition and aim at their rearrangement. Thus, in struggles for recognition persons or groups articulate a claim to be recognized in their own particular identity. This requires a reorganization of social institutions, like the law. And therefore, struggles for recognition can be seen as critical social movements.

Interpreted against this background, an explanation of protests, like the Mohammed cartoon controversy, in terms of a flat-out rejection of liberal democracy and freedom of expression cannot be considered satisfactory. Rather protests against particular instances of religiously offensive speech reveal that for the protestors there is an essential part of their identity at stake. In protests the believers articulate their experience of being denigrated and degraded in their way of life and their particular (religious) identity. Accordingly, the protests could be understood as critical movements that aim at the development – not the abolition – of a liberal-democratic society towards the normative ideal of a “well ordered society,”<sup>5</sup> a society where the believers in question are able to maintain their religious identity without having to face the threat of a loss of the opportunity to regard themselves as persons “whose traits and abilities are esteemed” by the fellow members of their society. Legal restrictions of freedom of expression in the field of religiously offensive speech, e.g. by means of laws on blasphemy or group libel (cf. Parekh 2006; Shearmur 2006), could be considered possible means to realize the aimed at rearrangement of established forms of mutual recognition.

An interpretation of protests against particular instances of religiously offensive speech by analogy with ‘struggles of recognition’ opens up new perspectives that make an understanding of the backgrounds and the deeper reasons of the protests easier. However, an explanation of protests against religiously offensive speech within the hermeneutical framework of ‘struggles for recognition’ does not settle the question of how to evaluate both religiously offensive speech and public protests against it. If we assume that the protests in question here are brought about by experiences of being unjustly disrespected in important elements of the self-understanding of the protestors, it has to be evaluated whether their claim for protection against at least particular forms of religiously offensive speech is warranted.

### 3. Evaluating possible restrictions of freedom of expression ethically

In the following I am going to first sketch an argument for restrictions of freedom of expression in the field of religiously offensive speech. This argument refers to the vulnerability of (religious) identities by particular acts of expression. Subsequently this argument will be analysed critically in view of its persuasiveness in the context of pluralistic societies.

#### 3.1. An argument for restrictions of freedom of expression

<sup>5</sup> I am taking the concept of a “well-ordered society” from John Rawls’ Theory of Justice. Rawls characterizes a “well-ordered society” as a society “designed to advance the good of its members and effectively ruled by a public conception of justice” (Rawls 1971: 397).

The argument in question takes the abovementioned intersubjective or relational anthropology as a starting point. Here, the process of individuation takes place within a network of relations, both intersubjective relations and relations to symbols, narratives, traditions, practices, values and so on, that form a ‘matrix’ in which a person relates herself in the formation, maintenance and articulation of her identity.<sup>6</sup> For many persons this ‘matrix’ is characterized by explicitly religious elements like symbols, practices, traditions etc. These elements are essential for the self-understanding and the identity of these persons. Against this background it is possible to understand the purpose of both the freedom to practice one’s religion and of cultural rights, as Jürgen Habermas points out. These rights, in the words of Habermas, serve “the purpose of guaranteeing all citizens equal access to those associations, communication patterns, traditions and practices, which they respectively deem important in order to develop and maintain their personal identities” (Habermas 2004: 16). It is important to see that according to Habermas cultural rights and the right to practice one’s religion are individual rights in the first place. Their purpose is the protection of the integrity of individuals in a particular society. They are “‘subjective rights’, designed for the purpose of granting full inclusion.”<sup>7</sup>

Against the background of these considerations on subjective rights which guarantee access to a ‘matrix’ of relations, symbols, traditions, and practices within which individuals form and maintain their particular identities, an argument for the justification of restrictions on freedom of expression in the field of religion can be brought to the fore that takes up considerations of Anthony Fisher and Hayden Ramsay.<sup>8</sup> In their ethical analysis “Art and Blasphemy,” Fisher and Ramsey point out “that free speech is only one of a package of natural and positive rights which also includes freedom of religion” (Fisher and Ramsay 2000: 163). These rights sometimes conflict with each other and therefore must “be appropriately balanced.” Taking the considerations above as a point of departure, an argument for the justification of restrictions on freedom of expression could run as follows. Religious symbols, traditions etc. are essential for the identity of many human beings. Elements which are essential for the identity of human beings are to be protected, to guarantee access to them is the purpose of ‘subjective rights’ (see above). Particular acts of expression (particular instances of religiously offensive speech) can injure self-respect and self-esteem – the identity of persons significantly by degrading, denigrating, insulting or vilifying elements that are essential for the maintenance and articulation of the identity of the persons in question. These acts of expression violate subjective rights; therefore they are to be excluded from the scope of freedom of expression.

It strikes me as important to see that this argument is dependant on a particular concept of the right to freedom of religion. This right has to be interpreted broadly, and not only as a right by which persons are allowed to practice their religion or that prohibits actions

<sup>6</sup> For the following see Habermas 2004 and Habermas 2005.

<sup>7</sup> Habermas 2004: 17. Inclusion presupposes that the person in question does not experience “disregard, marginalization or exclusion depending on membership in a group, considered as ‘inferior’ according to prevailing standards.” (Habermas 2004: 16).

<sup>8</sup> For the following see Fisher and Ramsey 2000. I want to point out explicitly that the following argument is not brought to the fore or discussed by Jürgen Habermas. Rather his considerations on ‘subjective rights’ serve as background to the following argument.

which make it impossible to practice a religion. This is evident in a statement of Michael Hains, an Australian human rights lawyer, who participated in the 1997 debate on the public display of Andres Serrano's *Piss Christ* in the National Gallery of Victoria in Australia. Hains asserted "that the right to freedom of religion is not merely the positive freedom to practice one's religious beliefs, but includes 'the right to be protected from discrimination, vilification, violence, unfounded and unwarranted ridicule and the like.'"<sup>9</sup>

### 3.2. Problems of the argument for restrictions of freedom of expression

In the light of the argument sketched above, restrictions on freedom of expression at first glance seem to be analogous to certain 'religious accommodations' – exemptions from otherwise valid rules or laws. Well-known examples of exemption include the right of Amish parents to withdraw their children from public school before the 'usual' minimum age (in order to avoid children becoming acquainted with knowledge considered incompatible with Amish way of life), the permission for Sikhs to wear turbans instead of crash helmets on motorbikes, or the permission of ritual slaughter of poultry and cattle by Jewish butchers.<sup>10</sup> This view however is wrong since it fails to recognize that the abovementioned examples result from the priority of a basic right against 'ordinary' laws and safety regulations<sup>11</sup> while the right to freedom of expression is a basic human right which is essential for the functioning of democratic societies. The justification of restrictions of freedom of expression has to be very 'strong', therefore. Under circumstances of pluralistic societies a reference to religious beliefs cannot provide a satisfying criterion for such restrictions. For if one would refer to particular religious beliefs in order to justify exclusions of particular instances of religiously offensive speech from freedom of expression, one would almost necessarily privilege particular religious views against others. What is considered offensive is strongly dependant on a certain historical and social situation of prevailing beliefs and values, and therefore on the views of the 'victors of the history of religion'. This is illustrated quite clearly by the following example.<sup>12</sup> In the 1980s, the Scottish National Opera performed Wagner's opera *Rheingold* in which the god Wotan was played by a black singer. This production roused worshippers of Wotan, who demanded that the production should be abandoned as religiously offensive since it is part of their belief that their gods are white. It is obvious that the demand of the Wotan-worshippers violated the right not to be discriminated against on the basis of race or colour and must be rejected therefore. But Fisher and Ramsay refer to a different criterion in their discussion of this case and that is the concept of religion:

Certainly it would be wrong to assume that the members of this 'cult' were not genuinely searching for some transcendent source of meaning or did not have real religious beliefs and feelings, but it does not follow from this that they had a religion. [...] The ancient Norse gods have not for many centuries sustained a culture, a body of moral teaching, a way of life, 'food for the soul' .... [W]hatever Wotan offers his [...] devotees, the

<sup>9</sup> Fisher and Ramsay 2000: 163.

<sup>10</sup> Cf. Habermas 2005: 302, 309.

<sup>11</sup> Cf. Habermas 2005: 302.

<sup>12</sup> The following is described in Sprigge 1990 and discussed in Fisher and Ramsay 2000.

contribution of such cults to the wider community is usually and often deliberately negligible.<sup>13</sup>

The criteria Fisher and Ramsay refer to in their ‘justification’ of the rejection of the demand to cancel this Rheingold-performance reveal precisely the problem: a world-view obviously has to be culturally and historically ‘effective’ so that its followers may hope to get protected against acts of expression they experience profoundly offensive. But does this mean that the claim of the Wotan-devotees was justified if their belief met Fisher’s and Ramsay criteria for being a religion – in spite of the violation of the right not to be discriminated against? Does the right to practice one’s religion always take precedence over other basic rights?

The problems resulting from referring to particular religious convictions by justifying restrictions on freedom of expression are not only relevant in ‘exotic’ cases like this. This is illustrated by the unequal treatment of different world religions in the blasphemy law of the United Kingdom. In 1977 the magazine *Gay News* and its editor Denis Lemon were fined because the magazine published a poem which depicted Jesus as a homosexual who engaged in sex with a Roman centurion after his crucifixion (cf. Richards 1999: 214-217). In light of this ruling, British Muslims tried to achieve a ban on Salman Rushdie’s *The Satanic Verses* which contained ostensibly derogatory and blasphemous views. The Muslims, however, didn’t succeed: “British courts affirmed that British law applied only to blasphemy against Christianity” (Richards 1999: 215). While it may be possible to explain the one-sidedness and partiality of the United Kingdom’s blasphemy laws by historical reasons, from the point of view of a universalistic ethics of moral rights, however, such a biased application of a previous ruling has to be considered unjust.

Beliefs that are dependant on a particular religion cannot be considered valid criteria for the justification of restrictions on freedom of expression against this background. The facts, that somebody portrays Mohammed as a terrorist despite the Islamic prohibition of visual depictions of the prophet, or that Jesus is characterized as homosexual in a poem cannot therefore be part of a valid argument. However, this does not mean that freedom of expression is entirely boundless; the question of how to identify and justify the limits of the right to freedom of expression is just not settled yet. Here, I cannot answer this question satisfactorily. But in the following I want to outline two theses which contain some insights that are in my view relevant elements of a promising answer. The two theses partly summarize the considerations above.

#### 4. Concluding theses

Thesis 1: The right to freedom of expression comprises acts of expression which can be experienced as denigrating, ridiculing or vilifying religious beliefs.

Both freedom of expression and freedom of religion are important rights in situations which are characterized by disagreement and a pluralism of different worldviews. Following Peter Jones one could call these circumstances “circumstances of tolerance” (Jones 2006). According recognition to somebody under circumstances of tolerance does not require that the person who recognizes the other holds the values, traditions and beliefs

<sup>13</sup> Fisher and Ramsay 2000: 162-163.

which are precious or even sacred to the recognized person in high regard. It is consistent to recognize an individual – e.g. as free and equal person – but reject his religious or non-religious worldview, to take exception to it or to criticize it sharply. Consider the following example.<sup>14</sup> What is essential to Peter's identity is morally relevant to Mary not 'as such', but 'only' with regard to its significance of Peter's identity to himself. Identities and the values, traditions, practices etc. that are essential for their formation and maintenance are not beyond any criticism. If Mary criticises 'what is important' for Peter nothing seems to be wrong with this. If the form of Mary's criticism is mordant or even profoundly offensive, Mary may act indecently, but not necessarily unjustly. Against this background one could agree with Ayaan Hirsi Ali in claiming a 'right to offend'. However, the term 'right to offend' is misleading since there is not an independent moral right to offend, but the term expresses that acts of expression that are experienced offensive are not excluded from freedom of expression in principle. But on the other hand freedom of expression is not entirely boundless, also not in the field of religion. My second thesis refers to this.

Thesis 2: Restrictions on freedom of expression concerning religiously offensive speech have to be justified independently of concrete religious doctrines or beliefs.

Against the background of the considerations above, it is clear that criteria for ethically legitimate restrictions on freedom of expression must not be dependent on the views of particular religions like Judaism, Christianity and Islam or the different denominations within these religions. Issues of orthodoxy should be kept out of the discourse on the limits of freedom of expression in the field of religion. Nevertheless religion has to be taken into consideration – not the content of the doctrines of particular religions, but the fact that religion and religious symbols, traditions, practices etc. are essential for the formation, maintenance and articulation of the identity of many people. Hence acts of expression that degrade and denigrate what is essential for the identity of believers in such a way that the persons affected are deprived from the possibility to maintain a positive relation-to-self in their particular identity and to feel self-respect and self-esteem could be considered ethically problematic. Such acts of expression are well known in the contexts of minorities or socially marginalized groups: homophobia, racism and sexism are important keywords, here. But such profound forms of degradation by speech have to be distinguished from acts of expression that challenge or irritate a person in her particular identity by contradicting or criticizing it sharply-worded. Under conditions of pluralistic societies – in circumstances of tolerance – it is unavoidable that both religious and non-religious people get confronted with publicly expressed opinions they experience as offensive, insulting, or degrading. There are e.g. many homosexuals who feel profoundly insulted by positions on homosexual morality taken and pronounced by the Holy See. They experience these positions as denigrations of their personal way of living; as "evaluative degradation of certain patterns of self-realization" (Honneth 1995: 134) which characterize their own identity. But it does not follow from this, that public advocacy of these positions have to be excluded from freedom of expression. Membership and participation in societies that are characterized by circumstances of tolerance presuppose particular cognitive and emotional competencies like the capacity to cope with challenges and strains resulting from opinions that conflict

<sup>14</sup> The examples refer to Jones 2006: 134.

with one's own identity in a non-violent and possibly constructive way. With regard to the topic of this paper these competencies are even to be considered necessary presuppositions, meaning that whenever these cognitive and emotional competencies are not fulfilled, a demand for restrictions on free speech cannot get the status of a promising candidate for a warranted claim in circumstances of tolerance. Therefore, the fact that somebody experiences an act of expression as a denigration of elements that are essential for the identity of his or her identity cannot be a sufficient ground for restricting freedom of expression. If the named cognitive and emotional competencies are realized, confronting acts of expression and even religiously offensive speech can have a positive effect on religious identities. These acts of expression can provoke strong emotions that 'irritate' the person affected and 'shake' them, setting the acquired values and beliefs as it were in motion. By this the person is forced both to reflect on the beliefs, symbols, values and so forth that are important for her self-understanding critically and additionally to grapple with conflicting beliefs, values, etcetera. Such a process of a “reflexively broken acquisition of tradition” prevents that believers “acquire passed on beliefs and practices just unconsciously.”<sup>15</sup> An important aspect of the constructive effect of a reflexively broken acquisition of religious belief – constructive for religious identities! – is expressed in the second part of John Stuart Mill's famous argument for freedom of speech. Any belief, religious as well as non-religious, has to be “fully, frequently, and fearlessly discussed” – otherwise they are threatened to decay and to “be held as a dead dogma, not a living truth.”<sup>16</sup>

However, one could ask if insulting vituperations like those read in columns written by Theo van Gogh<sup>17</sup> contribute in any way to a process of 'reflexively broken acquisition of tradition'. Non-violent protests against such acts of expression strike me as expressing legitimate moral indignation. Nevertheless the question of whether restrictions on freedom of expression as a legitimate means for the protection of (religious) identities against insult and degradation can be answered positively is plausible only in regard to a very few number of extreme cases. It strikes me to be clear that none of the controversial instances mentioned in this text meets the criteria legitimating restrictions on freedom of expression. But the language of morality includes a much more detailed terminology than the black-and-white painting 'permitted or forbidden'. Acts of expression can be judged disrespectful, outrageous, indecent or just rude. These qualifications are accompanied by social sanctions that could be made explicit (e.g. in public discourse). The abuse of the right to freedom of expression does not justify restrictions of this fundamental right. In pluralistic societies, the formation, maintenance and articulation of religious identities does not require restrictions of freedom of expression; they are highly dependant on freedom of expression. It is true that freedom of expression sometimes can result in “experiences of mental states of a universally disliked kind” (cf. Joel Feinberg's definition of offensive speech quoted in the beginning of this text). But it provides also the space to point out and react to offense and

<sup>15</sup> Habermas 2005: 315. Translation CB.

<sup>16</sup> Mill 2003: 114.

<sup>17</sup> Van Gogh attacked members of all of the three Abrahamic world religions. He called Christians “the fan club of that rotting fish in Nazareth”, attacked Muslim immigrants over and over again as *geitenneukers* (goat-fuckers), and his anti-Semitic vilifications go beyond what I consider quotable.

denigration publicly. By this, a critical counter-public can form itself (and can be fostered), that names the reasons of a 'struggle for recognition' – for example of a religious minority – and that strives for the aims of this 'struggle' in solidarity without calling the fundamental principles and moral rights into question which characterize liberal-democratic societies and which make living together in pluralistic societies possible at all.

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*Aimee Burant:*

*The Weight of History: Ernst Troeltsch and the Theological Ethics of International Order*

At the end of the First World War, Europe endured the chaos of international disorder. Defeat and national humiliation in Germany, power struggles between France and England, and revolution in Russia generated political instability which the Paris peace conferences were scarcely able to counteract. Many, including many Germans, had pinned their hopes for international order on Woodrow Wilson's proposal for a League of Nations. One of the League's strongest German supporters was the prominent Protestant theologian Ernst Troeltsch. Troeltsch had come to prominence through his 1912 work, *The Social Teachings of the Christian Churches*.<sup>1</sup> Yet during and after the war, Troeltsch seemed to speak primarily not in a theological but in a political voice. Between 1918 and 1922, he published regular political columns in the journal *Kunstwart*, in which he provided commentary and critique of current domestic and international affairs. He also served in the Prussian parliament and state government. As a political commentator, Troeltsch spoke strongly against the injustices inflicted on Germany by the victorious Entente and argued for a democratic political order as the only guarantor of peace in postwar Europe. However, despite this turn to politics, Troeltsch should not be seen as having abandoned his theological project. In addition to writing political columns, Troeltsch continued to work on the philosophy and theology of history until his death in 1923. More importantly, however, Troeltsch's philosophical and theological work in this period did not simply proceed parallel to his political writings. These two projects should be understood not as two separate endeavors but rather as two elements of one overarching effort to create a critical synthesis of religious and philosophical thought with the social and political facts of past and present aimed at creating a viable way forward for society and culture. In what follows, I will argue that in advocating a democratic international order, Troeltsch's political writings contribute to a theological ethics of international order based on his theology of history, a theology which values the past as a source for moral and religious values to guide the present and future.

Let me begin with an example from Troeltsch's political writings, setting it in its historical context. In the autumn of 1918, the German military washed its hands of responsibility for Germany's impending defeat. As a new parliamentary government began to establish itself, German workers and soldiers sparked revolutionary uprisings throughout the country. On November 11, the armistice was signed while Germany hovered in a state of political uncertainty. Troeltsch addressed these domestic and international concerns in his first column, written under the pseudonym "Spectator." Responding to the conditions of the armistice, he writes of his hope that what he called the "spirit of revenge" which these

<sup>1</sup> Ernst Troeltsch, *Die Soziallehren der Christlichen Kirchen und Gruppen*, *Gesammelte Schriften* Bd. 1 (Aalen: Scientia, 1965).

conditions expressed might, as he put it, “give way to a more farsighted politics of international reconciliation.”<sup>2</sup> Yet Troeltsch does not defend the German military actions which provoked the harsh cease-fire conditions, writing instead that the Allies had been correct, if also propagandistic, in pointing out that German militarism was not only a wartime exigency but in fact central to German political life. German militarism, Troeltsch writes, is now at an end. To what should the German people turn instead as the principle of their political life? Troeltsch answers: “the only salvation lies in the principles of pure democracy.”<sup>3</sup>

Similar themes of international reconciliation and domestic democratization persist in Troeltsch’s political writings through the founding of the Weimar Republic in 1919, the signing of the Versailles Peace Treaty that same year, and the worsening economic conditions in Germany in the early ‘20s. To understand how the political positions Troeltsch elaborates in these writings are linked to his theology requires a reading of Troeltsch that recognizes the centrality of ethics to his theology. In one of his final writings, which he was to have delivered in London in March 1923, Troeltsch made this succinct statement of his metaphysics in relation to his theology: “In the last resort, life itself, both purely animal existence and our human life, a dualism of body and spirit, consists in a constant, precarious compromise between its respective constituent elements. And it is from out of this dual human life and out of its compromise that the highest heights of religious personality and of religious interdependence arise and grow.”<sup>4</sup> Life itself, for Troeltsch, consists of compromise between nature and spirit, and this compromise is a fruitful one, resulting ultimately in religion, our means of relating to the Divine. The significance of the concept of compromise cannot be overestimated in the later Troeltsch. As we see in his statement, nature, the finite, is not to be transcended but rather to be combined with, shaped by, spirit. This productive compromise exemplifies what the British theologian Mark Chapman calls “one of the most persistent themes in Troeltsch’s theology,” namely the “reconciliation between the absolute and the relative.”<sup>5</sup> This reconciliation takes place for Troeltsch in the realm of ethics.

Troeltsch gives a clear statement of his theological ethics in the 1902 essay, *Basic Problems of Ethics*.<sup>6</sup> He writes that for Christians, although God is the highest end, or the religious good, this fact “cannot simply mean the replacement and marginalization of innerworldly goods, which indeed stem from [God] and his life, and which therefore must be able to be taken up into this highest good.”<sup>7</sup> Christian ethics, as Troeltsch defines it, is thus “the creative submission of the will to a living God who carries positive world-ends in

<sup>2</sup> Ernst Troeltsch, “Das Ende des Militarismus,” in *Kritische Gesamtausgabe* Bd. 14 (Berlin: Walter de Gruyter, preprint), 9. Thanks to Prof. Friedrich Wilhelm Graf for providing a copy of this manuscript.

<sup>3</sup> *Ibid.*, 16.

<sup>4</sup> Ernst Troeltsch, “Politics, Patriotism, Religion,” in *Christian Thought: Its History and Application*, ed. Baron von Hügel, Living Age Books (New York: Meridian Books, 1957), 177.

<sup>5</sup> Mark D. Chapman, *Ernst Troeltsch and Liberal Theology: Religion and Cultural Synthesis in Wilhelmine Germany* (Oxford: Oxford University Press, 2001), 66.

<sup>6</sup> Ernst Troeltsch, “Grundprobleme der Ethik,” in *Gesammelte Schriften* Bd. 2 (Aalen: Scientia Verlag, 1962). Translations from this text are my own.

<sup>7</sup> *Ibid.*, 659.

himself and who opens up an immeasurable movement.”<sup>8</sup> I read this definition of Christian ethics as providing a crucial clue for understanding the relation of Troeltsch’s theology and his politics. The clue lies in Troeltsch’s description of the living God as one who “opens up an immeasurable movement.” This immeasurable movement opened up by God can be seen in the movement of history. Moreover, the ethical submission of the will is, as Troeltsch puts it in the phrase I just quoted, “creative”; it is the chance movement of history, I believe, that Troeltsch sees as requiring such flexibility on the part of the moral agent. In this brief overview, we see the theological basis of Troeltsch’s ethics, and in particular the theological value he places on history.

Because Troeltsch’s ethics are not only theological but also historical, they provide the link between Troeltsch’s theology and the particularly historicist politics he endorsed. This can be made clearer by examining what exactly Troeltsch meant by calling his philosophy of history “historicism.” Although historicism is a broad term, encompassing competing definitions, we can say that for Troeltsch, historicism constitutes the particularly modern mode of viewing the world as historically contingent. That history is contingent, following no universal path of development, means for Troeltsch that history is made up of what he calls “individuals,” or historical entities that arise and subside over time as a result of an incalculably complex set of contingent social, cultural, political, even geographical variables. For instance, he considers ancient Israelite society, classical Greece, ancient Rome, and the European middle ages all to be historical individuals.

Although historical entities are individuals, according to Troeltsch, this does not mean that they are isolated from each other. Rather, over the course of time, one fading historical individual will influence the next, passing on to it ideas, social structures, forms of governance, and so on. In the case of modern Europe, the four individuals I just named – ancient Israel, Greece, Rome, and medieval Europe – are, for Troeltsch, the influential historical forebears. How exactly they combine to influence modern Europe is beyond the scope of this paper, but it is important to emphasize two points that Troeltsch makes with regard to the impact of past historical individuals on the present. First, the present is not determined by its predecessors. Rather, ideas and structures inherited from the past combine in novel ways with the political, cultural, and material conditions of the present to create a new synthesis. For Troeltsch, as the social theorist Austin Harrington puts it, historicism is “the task of releasing the ‘individuality’ of all cultural phenomena by means of generalizing critical constructions that possessed normative ethical significance for the present but that remained open to constant revision.”<sup>9</sup> Thus, for instance, Troeltsch sought to address the tensions on the continent following 1918 by studying the history of revolutions, in order to apply these insights both to domestic politics following the German revolution as well as to a better understanding of the two victorious European powers, France and England, themselves heirs, albeit in very different ways, to the experience of revolution.

<sup>8</sup> Ibid., 637.

<sup>9</sup> Austin Harrington, “Ernst Troeltsch’s Concept of Europe,” *European Journal of Social Theory* 7, no. 4 (2004): 484.

The “normative ethical significance” of the past for the present in Troeltsch brings us to the second point that it is important to emphasize regarding his historicism. Although it is true that historical individuals are formed contingently, this does not mean for Troeltsch that the moral values which they develop and express are meaningless for people in any other historical time and place. Moral skepticism is, Troeltsch admits, one of historicism’s dangers, but it is not, he argues, an inevitable outcome of historicism. Rather, the antidote to moral skepticism lies in creative engagement with the resources we find in the past for the sake of overcoming the obstacles of the present. Such creative engagement finds its motivation, according to Troeltsch, in the awareness that each historical individual is grounded in the absolute, in God. This is an ethics of responsibility, one which sees the active synthesis of past and present, itself a never-ending task, as the moral imperative. It is also a deeply theological ethics, since its motive for moral optimism is the foundation of all finite beings, including finite states and cultures, in God.

Thus far, we have reviewed three central concepts in Troeltsch’s thought: theology, ethics, and history, and have noted both the centrality of ethics to his theology as well as the impact of historicism on his ethics. It is only a small step from ethics to politics for Troeltsch. Put in other words, politics for Troeltsch contains a strong normative element. In his second column as the pseudonymous “Spectator,” he includes a catalog of desiderata for the new German state. “Civil and earnestly industrious morality, true national feeling, a complete ethical renewal, more faith, fear of God and love of neighbor, and greater political understanding; these are the things that one must wish for our people today. What is required is renewal out of the inmost depths, a renewal that taps afresh the truest and most noble sources of our national spirit, where that spirit is still in communion with humanity and love of neighbor.”<sup>10</sup> Such moral renewal is, Troeltsch believes, the only foundation on which a politics of humanity, or what we might call human rights, can be built. Thus, in a political column from 1920, in the midst of political disunity within Germany and conflict on the international level over the conditions of the peace, he demands “coordination and unification of patriots from all parties in recognizing the new state of affairs and in creating an acceptable government which can attain the necessities of existence for the German people on the basis of human rights and moral principles.”<sup>11</sup>

The urgency in Troeltsch’s moral appeals is motivated by the dire economic and political situation of Germany after its defeat. Disappointed by the failure of the League of Nations to establish what he hoped would be a just peace, Troeltsch understood that the political instability created in Germany by conflicts between left and right was both exacerbated by the reparations exacted by the Entente, and encouraged by France, which feared any reemergence of German power. Yet Troeltsch also knew that the political instability within Germany endangered the young Weimar democracy and boded ill for continuing peace in Europe. The only path he saw to lasting peace and stability was an international democratic order. The problem in establishing such an order however was, to put it bluntly, history. The idiosyncratic historical development of the various European nations,

<sup>10</sup> Ernst Troeltsch, “Links und Rechts,” in *Kritische Gesamtausgabe* Bd. 14 (Berlin: Walter de Gruyter, preprint), 29.

<sup>11</sup> Ernst Troeltsch, “Äußere und Innere Politik,” in *Kritische Gesamtausgabe* Bd. 14 (Berlin: Walter de Gruyter, preprint), 173–74.

and more significantly, the differences between what Troeltsch saw as the 'German spirit' and the "spirit of Western Europe" had led to divergent value systems which could not simply be replaced by one-size-fits-all universalism. More specifically, the western European nations had developed a system of justice based on the universal validity of natural law, whereas German political philosophy had evolved an emphasis on national individuality and cultural difference.

Troeltsch's response to this narrative of the history of politics in Germany and western Europe was to take a second look, to study history more carefully in an attempt to overcome the obstacles it seemed to present. As he puts it, "In order to free ourselves from history and to gain sovereign lordship over it, we dive into the ocean of historical criticism and reconstruction."<sup>12</sup> In the 1922 essay *Natural Law and Humanity in World Politics*, he concludes that in fact the concepts of natural law and human rights are to be found not only in western European thought, but also in German philosophy.<sup>13</sup> This reexamination of history in light of contemporary political challenges is precisely the work Troeltsch sees as demanded by political ethics. The past cannot be changed, but history is ongoing, and the moral imperative issued to us as historical beings is to integrate the past with the present in such a way as to work towards political and cultural mediation without sacrificing historical specificity.

In Europe in particular, the possibility of such mediation is found primarily in the history of Christianity, Troeltsch argues. The shared Christian heritage of the European nations provides a shared moral vocabulary, one that includes the respect for individual persons that undergirds the democracy which Troeltsch advocated for Germany and for Europe as a whole. Troeltsch named this focus on Europe's shared culture "Europeanism," and saw in it the possibility of shared moral and political values. The concept of Europeanism allows Troeltsch to argue against German conservatives that democracy is appropriate not only for England and France but for Germany as well. It also allows him to argue that a German democracy need not take the same form as English or French or American democracy. Indeed, German historicism's attention to historical individuality can improve upon the universalism of western democracies, Troeltsch argues, by resisting the uniformity of rationalism through "new seeds of irrationalism and living community."<sup>14</sup>

Several problems arise at this point in Troeltsch's thought. The first, which has been remarked upon by many commentators, is his restriction of shared values to Europe. Is Troeltsch suggesting that democracy is limited to Europe and to nations like the U.S. which he considered to be part of European culture? Although many of his comments seem to support such a reading, I would argue that Troeltsch's own historicism rules out such an interpretation. In his unfinished work *Historicism and its Problems*, he writes cautiously that we can't know whether the future will bring "a culture common to human-

<sup>12</sup> Ernst Troeltsch, *Der Historismus und seine Probleme*, Gesammelte Schriften Bd. 3 (Aalen: Scientia Verlag, 1977), 723.

<sup>13</sup> Ernst Troeltsch, "Naturrecht und Humanität in der Weltpolitik," in *Kritische Gesamtausgabe* Bd. 15, ed. Gangolf Hübinger (Berlin: Walter de Gruyter, 2002).

<sup>14</sup> Ernst Troeltsch, "Die Zufälligkeit der Geschichtswahrheiten," in *Kritische Gesamtausgabe* Bd. 15, ed. Gangolf Hübinger (Berlin: Walter de Gruyter, 2002), 569.

ity.”<sup>15</sup> Although the historian Joanne Cho calls Troeltsch’s position “isolationist” and argues that this isolationism “contradicted his historicist category of continuity (or development),” I would counter that Troeltsch’s historicism makes any of his concrete judgments about the exclusivity of, for instance, European culture, provisional and necessarily open to revision.<sup>16</sup> A parallel argument can be made against those who protest against Troeltsch’s restriction of democratic values to Christian cultures. Although Troeltsch, writing almost a century ago, did link Europeanness and Christianity tightly together, he also freely admitted that we cannot know the future of the Christian religion. Such an admission implies that as history moves onward – as, for instance, Christianity becomes global and Europe increasingly secular – the moral values that originated in Christian Europe need not have their fate tied to that of European Christianity.

The second problem, however, and the more thorny one, in my view, is linked to the first. Democracy may be in principle available as a political value to any nation, but this does not mean that it is available to every nation in fact. As the history of the Weimar Republic itself shows us, democracy does not flourish wherever it is planted. Troeltsch’s response to this might be found in a closing comment in the essay *The Contingency of Historical Truths* in which he writes: “That we are left with a plurality of communities, and that the attempt intellectually to unify these diverse communities and their values into a spiritual whole always results in a splintering into multiple spheres of belief – that is the fate of our time.”<sup>17</sup>

It was certainly the fate of Troeltsch’s time, and it seems to be the fate of our own. But this *de facto* situation of conflict and disunity did not lead Troeltsch to believe in an intractable and interminable clash of civilizations. Rather, he held that the only moral response to such a historical state of affairs was the repeated effort at the rethinking and reworking of historical resources for the sake of the present and the future. His optimism on this score depended on his view that “above the sphere of politics and the natural man’s gamble for power, there rises a realm of the spirit, of religion, which unites individuals belonging to different nations by forces and motives of an entirely different order.”<sup>18</sup>

One could, as some commentators have, criticize this view for its Christian overtones. Or one could argue that, given the unavoidable weight of history in the political sphere, the only acceptable defense of such values as democracy and human rights is one which acknowledges their historical roots but also points out that because history is an ongoing process, we cannot predict the future and thus have no other choice than to argue for what we believe to be right and to advocate, as Troeltsch did, something that might seem to be paradoxical: namely, a passionate commitment to compromise. As I noted at the beginning of this paper, Troeltsch saw compromise as a feature not only of the political sphere but indeed of all life itself, which is, in his words, “a constant, persistently precarious compromise between its respective constituent elements.”<sup>19</sup> Troeltsch’s commitment to com-

<sup>15</sup> Troeltsch, *Der Historismus und seine Probleme*, 706.

<sup>16</sup> Joanne Cho, “The Crisis of Historicism and Troeltsch’s Europeanism,” *History of European Ideas* 21, no. 2 (1995): 195.

<sup>17</sup> Troeltsch, “Die Zufälligkeit der Geschichtswahrheiten,” 569.

<sup>18</sup> Troeltsch, “Politics, Patriotism, Religion,” 173.

<sup>19</sup> *Ibid.*, 177.

promise spans his theology and his politics, and is the hallmark of an ethics that recognizes the extent to which history bears down upon us as well as the extent to which we can act as subjects within history, for better or for worse.

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*Philip G. Ziegler:*  
*Dietrich Bonhoeffer – An Ethics of God's Apocalypse?*

Abstract

Bonhoeffer's theology generally and his Ethics in particular have not commonly been thought to be 'apocalyptic'. Indeed, many have adjudged him to be "almost immunized" against such eschatology. Yet, close reading Bonhoeffer's Ethics shows unmistakable resonances between the themes, tasks and argumentative forms of his theological ethics and the contours of pauline apocalyptic as set forth recently in the world of J. Louis Martyn and others. In this text, Bonhoeffer confronts the question 'What has paraenesis to do with apocalypsis?' and experiments with answers which acknowledge that 'the incursion of a new world' in Christ 'renders ancient good uncouth.' Seeing this illumines several aspects of Bonhoeffer's theological ethics, clarifies the importance of the doctrine of justification therein, and clarifies its dynamic, dialectical and reformational character.

Keywords: Dietrich Bonhoeffer, theological ethics, pauline apocalyptic; J.Louis Martyn; justification; revelation

1. Introduction

'The suspension of all things human within an unqualified apocalyptic—  
 a suspension which is unqualified because it is apocalyptic—is perhaps  
 the possibility glimpsed by the Theology of Crisis.'<sup>1</sup>

Are Bonhoeffer's theological ethics apocalyptic? This question is unsettled from front to back. The texts that constitute Bonhoeffer's Ethics<sup>2</sup> are but well-worked fragments of the ethics he hoped to write. More unsettled still is the meaning of 'apocalyptic,' whose popular and scholarly valences are as many as they are divergent. Even if one could steady the question, prospects for a positive answer appear poor from the outset. Readers of the Ethics have not been led to the idea of 'apocalyptic,' quite the opposite. One possible exception here is Larry Rasmussen, who does associate Bonhoeffer with 'apocalyptic eschatology.'<sup>3</sup> Yet even he considers the association forced: turning to apocalyptic means diverging from Bonhoeffer who, Rasmussen says, was 'almost immunized' against such an eschatological perspective by Lutheran confessional and German academic traditions.<sup>4</sup> Reviewing Rasmussen's work, Charles West critically concurred that,

. . . this is not Bonhoeffer's eschatology or social ethic. Rasmussen realizes this, although he finds some quotations that could be stretched in this direction. . . . Rasmussen's thrusts

<sup>1</sup> Walter Lowe, 'Prospects for a Postmodern Christian Theology: Apocalyptic Without Reserve,' *Modern Theology* 15:1 (1999), p. 23

<sup>2</sup> Dietrich Bonhoeffer, *Ethics*. Translated by Ilse Tödt et. al. Dietrich Bonhoeffer Works, volume 6 (Minneapolis: Fortress Press, 2005).

<sup>3</sup> Larry Rasmussen, *Dietrich Bonhoeffer: His Significance for North Americans* (Minneapolis: Fortress, 1990), pp. 75-88.

<sup>4</sup> Rasmussen, *Dietrich Bonhoeffer*, pp. 75-6.

in the direction of a revolutionary eschatology and an Anabaptist ecclesiology are ones Bonhoeffer could not have followed.<sup>5</sup>

If as able a commentator as Rasmussen has gone looking for apocalyptic in Bonhoeffer and come up short, why return to the question again? Because as I hope to show, when Bonhoeffer's *Ethics* is read in light of recent studies of 'pauline apocalyptic' it becomes clear that such judgments need to be revised. In fact, in key sections of his *Ethics* Bonhoeffer was pushing against the ecclesial and academic conventions of German neo-Lutheranism which obscured the apocalyptic cast of Paul's discursive world.<sup>6</sup> My thesis is that, in draft upon draft of that manuscript, Bonhoeffer is working out a theological ethic whose intent is to conform to the contours of Paul's apocalyptic gospel.

Recent reconsideration of Pauline apocalyptic by scholars such as J. Louis Martyn, J. Christiaan Beker, Martinus de Boer and others has discerned with renewed clarity that in Paul's gospel 'revelation' (apocalypsis) denotes God's redemptive invasion of the fallen order of things such that reality itself is decisively re-made in the event. God's advent in Christ utterly disrupts and displaces previous patterns of thought and action and gives rise to new ones that better comport with the reality of a world actively reconciled to God. This is particularly true of theological and ethical discourses and their interconnection. The gospel of inescapable judgment and inordinate forgiveness constitutes the world anew, and so new, apocalyptic antinomies displace those antinomies which have previously structured theological and ethical reflection and judgment. Apocalyptic, on this view, is more than mere rhetoric: it is a mode of discourse fit to give voice to the radical ontological and epistemological consequences of the gospel, consequences intensely relevant to the doing of Christian ethics. The basic moral question that Paul's apocalyptic gospel demands be asked and answered is this: 'What has paraenesis to do with apocalypsis?'<sup>7</sup>

In his work of the 1930s and 40s including the *Ethics*, it seems to me plain that Bonhoeffer is labouring to ask and to answer just this question. The ethical works from this period can and should be read, I think, as a series of experimental attempts to orient Christian morals in face of the evangelical fact that 'the incursion of a new world' in Christ 'renders ancient good uncouth'.<sup>8</sup> What shape can theological ethics take once one acknowledges that keeping abreast of the devastatingly gracious and dynamic character of God's reworked reality demands that Christian theology 'attack the underlying assumptions' of all other ethics in order to 'over-reach' them, to the point of making it questionable that one should still speak of 'ethics' at all?<sup>9</sup> How can ethics reflect the real and relentless criticism that befalls the Christian community—together with all humanity—from the gracious incursion of the Word of God, recognition of which is the hallmark of all truly

<sup>5</sup> Charles C. West, review of Dietrich Bonhoeffer: His Significance for North Americans, *Theology Today* 47:4 (1991), pp. 471-2.

<sup>6</sup> See the characterisation of neo-Lutheranism provided by the German editors' in their 'Afterword,'—Bonhoeffer, *Ethics*, pp. 417-18.

<sup>7</sup> This phrasing is that of Wayne Meeks, 'Apocalyptic Discourse and Strategies of Goodness,' *Journal of Religion* 80:3 (2000), p. 462.

<sup>8</sup> Meeks, 'Apocalyptic Discourse,' p. 462.

<sup>9</sup> Bonhoeffer, *Ethics*, p. 299.

reformational thinking:<sup>10</sup> In Christian life and thought, just what exactly does penultimate worldly justice have to do with the ultimate justification of sinners which comes from above?

Substantiating the claim that Bonhoeffer is preoccupied with just this line of questioning, and exploring its significance requires that we, first, sketch the lineaments of this apocalyptic gospel of the apostle Paul; second, that we examine those aspects of Bonhoeffer's Ethics which correspond to this peculiar evangelical apocalyptic; and finally, third, that we think upon the possible consequences of such a correspondence for understanding both Bonhoeffer, and the discipline of theological ethics as whole.

## 2. The Marks of Pauline Apocalyptic

A pauline doctrinal text is not expounded correctly if it is handed on as a piece of true theology, *pura doctrina*; this theology must first be made comprehensible as witness to the living Christ.<sup>11</sup> Reading J. Louis Martyn's account of Paul's 'apocalyptic gospel',<sup>12</sup> one of the first things we discover is that 'apocalyptic' as used here designates neither a literary genre nor a class of speculative or visionary imaginings regarding 'how it all ends'.<sup>13</sup> Rather, it denotes an understanding of Christ as 'the effective and definitive disclosure of God's rectifying action' whereby the old 'world or age is destroyed and brought to an end'.<sup>14</sup> Indeed, apocalypse is shorthand for a distinctive acknowledgment of the identity and importance of Jesus Christ.<sup>15</sup> Paul's witness is that what takes place in Christ is the incursion of God's power into the world with effect. Revelation is 'no mere disclosure of previously hidden secrets, nor it is simply information about future events.' For revelation itself is an event that initiates, even as it discloses, a new state of affairs; not simply 'a making known' revelation is also 'a making way for,' involving God's conclusive 'activity and movement, an invasion of the world below from heaven above.'<sup>16</sup> The event in which God is made known as Saviour—the coming of the Christ—is the very event that saves. Revelation thus is reconciliation.

<sup>10</sup> See Bonhoeffer's essay entitled 'Protestantism without Reformation': 'God has granted American Christianity no Reformation. . . American theology and the American church as a whole have never been able to understand the meaning of "criticism" by the Word of God and all that signifies. Right to the last they do not understand that God's "criticism" touches even religion, the Christianity of the churches and the sanctification of Christians, and that God has founded his church beyond religion and beyond ethics.'—Dietrich Bonhoeffer, *No Rusty Swords*. Translated by E. Robertson and J. Bowden (London: Collins, 1965), p.177.

<sup>11</sup> Dietrich Bonhoeffer, *No Rusty Swords*, p. 318.

<sup>12</sup> For a much more detailed discussion see J. Louis Martyn, 'The Apocalyptic Gospel in Galatians,' *Interpretation* 54:3 (2000), pp. 246-266.

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<sup>13</sup> Paul's apocalyptic gospel is constituted by certain apocalyptic components that he derives from his Jewish apocalyptic world and that he radically modifies because of his encounter with Christ and the Christian tradition that he inherits.—J. Christiaan Beker, *Paul's Apocalyptic Gospel: The Coming Triumph of God* (Philadelphia: Fortress Press, 1982), p. 30. Beker's dense summary of the marks of Paul's apocalyptic thought follows on pages 30-53.

<sup>14</sup> Martinus C. de Boer, 'Paul, Theologian of God's Apocalypse,' *Interpretation* 56:1 (2002), p. 25.

<sup>15</sup> Doug Harink, *Paul Among the Postliberals* (Grand Rapids: Brazos, 2003), p. 68.

<sup>16</sup> de Boer, 'Paul, Theologian of God's Apocalypse,' p. 25. Cf. Christopher Morse, *Not Every Spirit: A Dogmatics of Christian Disbelief* (Valley Forge: Trinity Press International, 1994), pp. 243-44.

As such, revelation is not chiefly a cognitive affair, a matter of teaching believers to 'consider the world differently.' For the achievement of reconciliation is the inauguration of a wholly new human situation. Paul's talk of the human situation set to rights as 'new creation' (Gal 6:14; 2 Cor 5:17) signals the radical discontinuity between human captivity to sin and the gift of a restored relationship with God, something manifest in the 'apocalyptic antinomies' of spirit and flesh, light and dark, old and new that populate the New Testament.<sup>17</sup>

As an advocate for this new creation, the gospel is not mere reportage, but brings to bear 'the power of God for salvation' (Rom 1:18; 1 Cor 1:18). Yet, it is testimony; a telling of the 'good news' that human captivity to sin is ended by God's graciously powerful rescue; the declaration that God has vindicated his name since 'all the promises of God find their 'Yes' in [Christ]' (2 Cor 1:20). As such, the gospel involves knowledge of God's self-disclosure in Christ, albeit knowledge made strange by its being implicated in salvation. As Paul says he no longer knows of Christ in terms of the old situation ('according to the flesh') but only in light of the new ('according to the cross').<sup>18</sup> Yet he does know. Reconciliation thus is revelation.

If the identification of revelation and reconciliation in this way is a first hallmark of Paul's apocalyptic discourse, a second is its claim that evangelical talk is talk of reality. The gospel speaks of what has taken place, and of the state of affairs that God's 'incursion' for sinners' sake has actually brought about.<sup>19</sup> We have already noted that what matters supremely in this gospel is 'God's decision and deed in Jesus Christ,' the uncontingent gift of the new creation (Gal 6:15). Now we are alerted to the fact that those who hear its message are always already implicated in that of which it speaks. The logic of the apocalyptic gospel is thus never one of possibility—neither of 'if. . . then', nor of an offer to be realized only upon its acceptance.<sup>20</sup> Nor is it an idea in need of embodiment in the world. Even when put in the mode of promise, accent falls upon the reality of God's saving activity deciding the day (cf. Phil 1:6). So, e.g., Martyn's reading the primary message of Galatians is simply this: "God has done it!," to which there are two echoes: "You are to live it out!" and "You are to live it out because God has done it and because God will do it!"<sup>21</sup> Such a gospel, as Martinus de Boer says, 'has little or nothing to do with a decision human beings must make, but everything to do with a decision God has already made on their behalf', and identified with God's enactment of salvation in Christ.<sup>22</sup> Reconciliation is real, and so God's gracious justification establishes our 'true position in the world' without awaiting

<sup>17</sup> On this see David N. Scholer, "The God of Peace will Shortly Crush Satan Under Your Feet" (Romans 16:20a): The Function of Apocalyptic Eschatology in Paul,' *Ex Audito* 6 (1990), p.57.

<sup>18</sup> On this see J.L. Martyn, 'Epistemology at the Turn of the Ages,' in *Theological Issues in the Letters of Paul* (Nashville: Abingdon, 1997), p.107f.

<sup>19</sup> J.L. Martyn, 'The Apocalyptic Gospel in Galatians,' p. 260.

<sup>20</sup> As in the 'Two ways' of the *Didache*—Kurt Niederwimmer, *The Didache*. Translated by L.M. Maloney, edited by H.W. Attridge (Minneapolis: Fortress Press, 1998). Cf. both J.L. Martyn, 'The Apocalyptic Gospel in Galatians,' p. 247f. as well as Nancy Duff, 'The Significance of Pauline Apocalyptic for Ethics,' in *Apocalyptic and the New Testament*, edited by M. Joel and M.L. Soards (Sheffield: JSOT Press, 1989), p. 279f. Both Martyn and Duff speak of this as a 'the two-step dance.'

<sup>21</sup> J.L. Martyn, *Galatians*, p. 103.

<sup>22</sup> de Boer, 'Paul, Theologian of God's Apocalypse,' p. 33.

our permission.<sup>23</sup> The Christian community together with the world as a whole is set in the time between God's 'having done' and 'will do,' between apocalypse and parousia.

In sum, Paul's apocalyptic gospel announces the vindication of God in the wayward world by the decisive incursion of his gracious and powerful presence to judge and so to save. Jesus Christ *is* this act of God. The scope of this act encompasses all things: there is 'no reserve of space or time or concept or aspect of creation outside of, beyond or undetermined by the critical, decisive and final action of God in Jesus Christ.'<sup>24</sup> Christian life and thought take place firmly in the wake of 'God's crisis which has overtaken and overturned the world as it is.'<sup>25</sup>

### 3. The Apocalyptic Shape of Bonhoeffer's Ethics of Justification

'It has to make itself distinct and to be a community which hears the apocalypse.'<sup>26</sup>

The intrinsic interest and importance of some of Bonhoeffer's distinctive ethical categories—responsibility, deputyship, the penultimate, worldliness etc.—can and does readily eclipse the fact that Bonhoeffer's work is essentially a series of 'beautiful iterations of doctrine'<sup>27</sup> written in close proximity to the Scriptures, and consistently concerned to orient a peculiarly Christian life in the modern world. And his ethics, as Paul Lehmann contends, 'can only be understood when it is recognized to be a new interpretation of the doctrine of justification.'<sup>28</sup> Interestingly, when Bonhoeffer wrote to Karl Barth in 1936 that Discipleship was basically an 'exposition of the Pauline doctrine of justification and sanctification' worked out in 'a constant, silent conversation' with his work,<sup>29</sup> Barth replied that while he was 'all agog for [the] results,' he was 'not without concern.' What worried him was the ease with which those who work on these doctrines resign 'the original Christological-eschatological beginning in favour of some kind of [abstract] realization in [the] human sphere.'<sup>30</sup> It seems to me that Bonhoeffer took Barth's cautionary word to heart, and that the apocalyptic character of his thought shows his deep concern for the integrity of the 'christological-eschatological beginning' of the Christian life. As such it is close to the heart of Bonhoeffer's extended effort to 'divest [justification] of cheap verbalism and [to] restore to it its full value.'<sup>31</sup>

What Bonhoeffer said of Discipleship is no less true of the Ethics that followed it. Here too justification shows itself to be central to the proceedings. Bonhoeffer distinctly ex-

<sup>23</sup> Paul L. Lehmann, 'Toward a Protestant Analysis of the Ethical Problem,' *Journal of Religion* 24:1 (1944), p. 3. Cf. J. Calvin, *Institutes of the Christian Religion*, III, vi, 7.

<sup>24</sup> Harink, *Paul among the Postliberals*, p. 69.

<sup>25</sup> James Kay, 'The Word of the Cross at the Turn of the Ages,' *Interpretation* 53:1 (1999), p. 55.

<sup>26</sup> Bonhoeffer, *No Rusty Swords*, p. 324.

<sup>27</sup> Marilynne Robinson, 'Dietrich Bonhoeffer,' in *The Death of Adam: Essays on Modern Thought* (Boston: Houghton Mifflin, 1998), p. 115. Cf. the remarks of the editors of the German edition of the Ethics—see in the 'Afterword' in Bonhoeffer, *Ethics*, p. 431.

<sup>28</sup> Hans Pfeifer, 'Die Gestalten der Rechtfertigung: Zur Frage nach der Struktur der Theologie Dietrich Bonhoeffers,' *Keygma und Dogma* 18 (1972), p. 178.

<sup>29</sup> Bonhoeffer in a letter to Barth dated 19 September 1936—Dietrich Bonhoeffer, *The Way to Freedom*. Translated by E. Robertson and J. Bowden (London: Collins, 1966), p. 116 (translation altered).

<sup>30</sup> Bonhoeffer, letter of 19 September 1936, *The Way to Freedom*, p. 120.

<sup>31</sup> E. Bethge, *Dietrich Bonhoeffer: Theologian, Christian, Contemporary*. Translated by E. Mosbacher et. al. (London: Collins, 1970), p. 372.

pounds the doctrine through the dynamic interplay of three central categories—revelation, reconciliation and reality.<sup>32</sup> And these categories are freighted with the logic of pauline apocalyptic. The congruence can be seen most sharply by considering two claims that structure all of Bonhoeffer's theological ethics: first, that revelation is reconciliation; and second, that the event of reconciliation in Jesus Christ is constitutive of reality.

### 3.1 Revelation is Reconciliation

What takes place in the self-disclosure of God in Jesus Christ, Bonhoeffer says, is nothing less than an eruption of 'the reality of God. into the reality of this world'<sup>33</sup> for the sake of its salvation. Bonhoeffer's God comes to the world freely and martially to secure a 'victory over [human] unrighteousness' on the cross.<sup>34</sup> If this gospel is not mere folly then it is the humane incursion of God's power.<sup>35</sup> As God's revelation, Christ is 'the address of forgiveness'; and 'forgiveness [actually] takes place' in this world solely because it is Christ, God's Word made flesh, that declares it.<sup>36</sup>

Bonhoeffer's talk of the 'Word of God' abides by an apocalyptic grammar that identifies God's self-disclosure and its saving effect. For example, we read that when 'the ultimate word' of grace is spoken God's judgment effectively befalls men and women.<sup>37</sup> Or again that 'the event of justification of a sinner is something ultimate. There is no word of God that goes beyond God's grace.'<sup>38</sup> God's Word is a conclusive act that saves (reconciliation) and the disclosure of this act as God's own (revelation). For Bonhoeffer, the Word of God is always a kind of 'performative utterance' whose saying, as it were, 'makes it so'.

Further, in keeping with the apocalyptic Pauline gospel, Bonhoeffer stresses that God's humble advent to set things right in Christ is entirely uncontingent, even a kind a 'gracious violence'<sup>39</sup> upon the precincts of human sin. Unexpected and unbidden, God's sovereign entry onto the field of human affairs questions—nay, assails—the putative rule of human reasoning, ways and means. The Word of God 'bursts in' upon women and men, and their situation is 'powerfully torn open' as 'the labyrinth of their lives collapses.'<sup>40</sup> As Bonhoeffer explained to an American audience in 1932,

<sup>32</sup> Clifford Green, editor of the critical English edition of the Ethics, confirms this when he writes, '... in Jesus Christ God creates a new reality in Christ; it is a reality, not merely a potentiality. ... This reconciliation functions as an axiom in the Ethics.' and 'From the perspective of God, so to speak, the reconciliation of God and world, God and humanity, is in Jesus Christ, an ontological reality. At the same time the reconciliation of God and the world is a reality by which human beings are transformed; they are con-formed to this reconciliation, and it thereby forms them.' (Bonhoeffer, Ethics, pp.9, 7)

<sup>33</sup> Bonhoeffer, Ethics, pp. 49, 54.

<sup>34</sup> Dietrich Bonhoeffer, Discipleship. Translated by B. Green and R. Krause. Dietrich Bonhoeffer Works, volume 4 (Minneapolis: Fortress Press, 200), p. 257.

<sup>35</sup> 'Der "Torheit" gegenüber steht die "Kraft" und nicht die Erkenntnis oder Weisheit.' —Dietrich Bonhoeffer, 'Über die Prädestination,' Gesammelte Schriften IV (Munich: Chr. Kaiser Verlag, 1961), p. 205.

<sup>36</sup> Dietrich Bonhoeffer, Christology. Translated by J. Bowden (London: Collins, 1966), p. 52.

<sup>37</sup> Bonhoeffer, Ethics, p. 146.

<sup>38</sup> Bonhoeffer, Ethics, p. 149.

<sup>39</sup> Martyn, in relation to the novels of Flannery O'Connor, speaks of the 'violent action of grace invading territory largely held by the devil' and of 'gracious violence'—See J.L. Martyn, 'The Apocalyptic Gospel in Galatians,' p.262, especially n.43.

<sup>40</sup> Bonhoeffer, Ethics, 146.

In Christ all men are respectively condemned or resuscitated. Justification is pure self-revelation, pure way of God to man. No religion, no ethics, no metaphysical knowledge may serve man to approach God. They are all under the judgment of God, they are works of man. Only the acknowledgment that God's word alone helps and that every other attempt is and remains sinful, only this acknowledgment receives God.<sup>41</sup>

Hence human reasons and God's reasons, human ways and God's ways come to blows, first in conversation and then in act. "Who are you?" asks Pilate. Jesus is silent. [But] Man cannot wait for the dangerous answer. . [so]. The Logos of God incarnate must be crucified by man's Logos.<sup>42</sup> Yet the resurrection, for Bonhoeffer, is a profound rejoinder rooted in God's unshakable will to save, wherein God, having accomplished human salvation on the cross, makes it known that his mercy is sovereign, asking the human creature, in a manner akin to Job's God: 'Who are you, who can still only inquire after me when I restore you, justify you and give you my grace?'<sup>43</sup>

The world is a different place as a result of the Word that justifies the ungodly, and in this new world nothing is as it once was thought to be. 'Knowing Jesus Christ as the reconciler,' Bonhoeffer writes, Christians find that they are 'chosen, and thus no longer able to choose at all' and so 'are thus filled with a new knowledge in which the knowledge of good and evil has been overcome.'<sup>44</sup> Because this is so, Bonhoeffer can only take up the question of ethics Christianly by admitting a vertiginous disorientation. He says:

Those who wish to focus on the problem of a Christian ethics are faced with an outrageous demand—from the outset they must give up as inappropriate to this topic, the very two questions that led them to deal with the ethical problem: 'How can I be good?' and 'How can I do something good?' Instead they must ask the wholly other, completely different question: what is the will of God?<sup>45</sup>

Or, again he observes even more starkly:

The knowledge of good and evil appears to be the goal of all ethical reflection. The first task of Christian ethics is to supersede that knowledge. This attack on the presuppositions of all other ethics is so unique that it is questionable whether it even makes sense to speak of Christian ethics at all.<sup>46</sup>

An apocalyptic sensibility is to the fore in passages like this, the very ones Bonhoeffer intended to stage his theological ethics as a whole. The onset of salvation unsettles the most settled of schemes (like that of 'good and evil,' 'sacred and secular') and gives rise to 'wholly other' and 'completely different questions' because of the 'act of God which tears man out of reflection.'<sup>47</sup> The utter dissolution and remaking of their situation strips believers of a whole world of discourse. J.L. Martyn points to just such an 'epistemic crisis' in

<sup>41</sup> Dietrich Bonhoeffer, 'Concerning the Christian Idea of God,' *Journal of Religion* 12:2 (1932), p. 185.

<sup>42</sup> Bonhoeffer, *Christology*, pp. 33-34. The that reconciliation is achieved via the most intense conflict is made clear in Bonhoeffer's description of this event as the salutary clash of the human logos and, what he calls the divine anti-logos (pp. 29-31).

<sup>43</sup> Bonhoeffer, *Christology*, p. 34.

<sup>44</sup> Bonhoeffer, *Ethics*, pp. 316-17.

<sup>45</sup> Bonhoeffer, *Ethics*, p. 47.

<sup>46</sup> Bonhoeffer, *Ethics*, p. 299.

<sup>47</sup> Dietrich Bonhoeffer, 'The Theology of Crisis and its Attitude Toward Philosophy and Science,' *Gesammelte Schriften III* (Munich: Chr. Kaiser Verlag, 1960), p. 124.

Paul's apocalyptic gospel: God's saving act 'crucifies the world' to the believer (Gal 6:14); God's world-dissolving judgment and world-constituting forgiveness result in a 'loss of cosmos,' a shattering of the whole world of discourse, dissolving fixed antinomies and throwing hitherto meaningful construals of reality into 'new and confusing patterns' (as evidenced in Gal 3:27-28).<sup>48</sup> This is exactly what Bonhoeffer holds takes place when language and thought suffer 'participation in the encounter of Christ with the world.'<sup>49</sup>

### 3.2 Reconciliation in Jesus Christ is Constitutive of Reality

Bonhoeffer's theology wears a further apocalyptic mark on its sleeve. Certainly God's reconciling act is constitutive of the reality of the Christian life. Of this he writes,

The origin and essence of all Christian life are consummated in the one event that the Reformation has called the justification of the sinner by grace alone. It is not what a person is *per se*, but what a person is in this event, that gives us insight into the Christian life. Here the length and breadth of human life are concentrated in one moment, one point;<sup>50</sup>

But this is not all, because for Bonhoeffer Christian talk of salvation, '... functions not as ornament but as ontology. mak[ing] the most essential account that can be made of Being itself.'<sup>51</sup> So, he declares:

In Jesus Christ the reality of God has entered into the reality of the this world. The place where the questions about the reality of God and about the reality of the world are answered at the same time is characterized solely by the name: Jesus Christ. God and the world are enclosed in this name. In Christ all things exist (Col 1:17). From now on we cannot speak rightly of either God or the world without speaking of Jesus Christ. All concepts of reality that ignore Jesus Christ are abstractions.<sup>52</sup>

From here Bonhoeffer goes on to reject any notion that the world can be thought of as an 'autonomous sector' in relation to God because such a view 'denies the fact of the world's being accepted in Christ, the grounding of the reality of the world in revelational reality. . . .'<sup>53</sup> Rather, Christians must think differently of the world as justified by God since, as he explains:

... this very world that has been condemned in Jesus Christ is, in Christ, also accepted and loved and is promised a new heaven and a new earth. The world that is passing away has been claimed by God. We must therefore continue to reckon with the world's worldliness but at the same time reckon with God's rule over it.<sup>54</sup>

God's ultimate act, the sovereign act of reconciliation, is 'truth and reality' in Christ (and not mere possibility or idea). It is simply a transcendent and irrefragable fact that 'constitute(s) the real outside of man'.<sup>55</sup>

It was claims like these that led Jürgen Moltmann in his 1959 study of Bonhoeffer's Ethics to characterise his ethical thought as 'theocratic' or 'christocratic'.<sup>56</sup> With this perhaps

<sup>48</sup> J.L. Martyn, 'The Apocalyptic Gospel in Galatians,' p. 256.

<sup>49</sup> Bethge, Dietrich Bonhoeffer, p. 623.

<sup>50</sup> Bonhoeffer, Ethics, p. 146.

<sup>51</sup> Robinson, The Death of Adam, p. 118.

<sup>52</sup> Bonhoeffer, Ethics, p. 54.

<sup>53</sup> Bonhoeffer, Ethics, p. 60 (emphasis added).

<sup>54</sup> Bonhoeffer, Ethics, p. 224.

<sup>55</sup> Bonhoeffer, Ethics, p. 149; Bonhoeffer, 'The Theology of Crisis,' 116.

rather rough characterisation, Moltmann rightly stressed Bonhoeffer's unbending assertion of the cosmic scope of the significance of God's saving action in Christ. As Bonhoeffer himself contends, both Christ's 'exclusive claim' (i.e., 'Whoever is not for me is against me' (Mt 12:30)) and his 'all-encompassing claim' ('Whoever is not against us is for us' (Mk 9:40)) must be upheld together:

The more exclusive, the more free and open. Isolated from each other, however, the exclusive claim leads to fanaticism and sectarianism, the all-encompassing claim to the secularization and capitulation of the church. The more exclusively we recognize and confess Christ as our Lord, the more will be disclosed to us the breadth of Christ's lordship.<sup>57</sup>

Acknowledging that the sovereign apocalypse of God in Christ re-makes reality as a whole demands that Bonhoeffer forswear both sectarian and volkskirchliche ecclesiologies. Neither pietism ('a last effort to maintain Protestant Christianity as a religion') nor the civil religion of the established church as an 'institution of salvation' comport with this gospel.<sup>58</sup>

This emphasis on the exclusive and encompassing nature of God's claim in Christ is not particularly novel to Bonhoeffer's late writing. Lecturing in Potsdam-Hermannswerder in the autumn of 1932, Bonhoeffer took as his theme the congregation's prayer that God's Reign should come on earth, and began accusingly:<sup>59</sup>

We are otherworldly or we are secularists; and this means that we no longer believe in God's reign. We are strangers to the earth, because we want to be better than it, or we are strangers to God because he robs us of the earth, our mother. . . . But whether its otherworldliness or secularism, both alternatives amount to the same thing—namely, that God's reign is not believed.<sup>60</sup>

Religious flight from the world is robbed of its future as God 'wades in for human beings' in Christ and 'gives them back the earth.'<sup>61</sup> So too our varied secular self-assertions are brought to nought, as we never 'escape God' who ever 'draws men and women back into his lordship.'<sup>62</sup> This exercise of lordship is rooted in the apocalyptic vindication of the Son—'The reign of God is the reign of the Resurrection on earth'<sup>63</sup>—and once again is strictly a matter of reality. As Bonhoeffer concludes, it is 'not what God could do and what

<sup>56</sup> Jürgen Moltmann, *Herrschaft Christi und soziale Wirklichkeit nach Dietrich Bonhoeffer*. Theologische Existenz heute 71 (München: Chr. Kaiser Verlag, 1959), p.34ff.

<sup>57</sup> Bonhoeffer, *Ethics*, p. 344.

<sup>58</sup> Dietrich Bonhoeffer, *True Patriotism*. Translated by E. Robertson and J. Bowden (London: Collins, 1973), p. 14; Bonhoeffer, *No Rusty Swords*, p. 324. Cf. also J. Christiaan Beker, *Paul's Apocalyptic Gospel* (Philadelphia: Fortress Press, 1982), p. 41, where writing of Paul's gospel, he explains that 'the church, then, lives in continuous tension between being against the world and being for the world. If it emphasizes too strongly withdrawal from the world in a dualistic fashion, it threatens to become a purely sectarian apocalyptic movement that betrays the death and resurrection of Christ as God's redemptive plan for the world; but if it exclusively emphasizes participation in the world, it threatens to become another "worldly" phenomenon, accommodating itself to whatever the world will buy and so becoming part of the world.'

<sup>59</sup> Dietrich Bonhoeffer, 'Dein Reich komme! Das Gebet der Gemeinde um Gottes Reich auf Erden,' *Gesammelte Schriften III* (Munich: Chr. Kaiser Verlag, 1960), pp. 270-285.

<sup>60</sup> Bonhoeffer, 'Dein Reich komme!,' pp. 270, 273.

<sup>61</sup> Bonhoeffer, 'Dein Reich komme!,' p. 271.

<sup>62</sup> Bonhoeffer, 'Dein Reich komme!,' pp.272-73.

<sup>63</sup> Bonhoeffer, 'Dein Reich komme!,' p. 277.

we could do, but rather what God does to us and always wills to do, establishes prayer for the coming of his Kingdom.<sup>64</sup>

As Bonhoeffer argues, only trust that reality has in fact been decisively constituted by God's apocalypse in Christ underwrites 'serious' grappling with moral life in the world. Against abstract 'sectarian' and 'compromise' postures towards the world, he says this:

Neither the idea of a pure Christianity as such nor the idea of the human being as such is serious, but only God's reality and human reality as they have become one in Jesus Christ. What is serious is not some kind of Christianity, but Jesus Christ himself. In Jesus Christ God's reality and human reality take the place of radicalism and compromise. There is no Christianity as such; if there were, it would destroy the world. There is no human being as such; if there were, God would be excluded. Both are ideas. There is only the God-man Jesus Christ who is real, through whom the world will be preserved until it is ripe for its end.<sup>65</sup>

The realism with which Bonhoeffer resists idealism in church and theology is thus an apocalyptic one. Given that 'revelation gives itself without precondition and is alone able to place one into reality,' he says, serious theological ethics, no less than dogmatics must struggle for forms of thinking appropriate to God's apocalypse in Christ Jesus.<sup>66</sup> The ages having turned, Christians knowingly stand together with all others in a world whose reality has been both taken apart and put back together with effect by God's redemptive triumph through the cross.

#### 4. Consequences and Conclusions

Is it possible then, that pauline apocalyptic affords us with an important interpretative key to Bonhoeffer's theological ethics? And if so, just how and in what respects are they illumined? To conclude, let me venture some remarks on these and related questions.

##### 4.1 An Ethic of God's Apocalypse?

Charles West argued that Bonhoeffer's theological ethics could never be thought of as apocalyptic because, as he wrote,

The difference lies between the words "ultimate" and "new." There is much language in Bonhoeffer, as there is in the Bible, about conversion, from Pharisaism to Christ, from law to gospel, from bondage to freedom. There is in this sense a new creation. But for Bonhoeffer the ultimate is the origin as well as the end of human life. Grace is not new. It has accompanied the history of the world from the participation, preservation, and building of structures of relative justice in a sinful world are also part of it.<sup>67</sup>

But West misjudged Bonhoeffer's understanding of God's salutary advent and its effects. Nothing in the Ethics rescinds Bonhoeffer's earlier judgment that 'man's continuity is always continuity in sin' such that 'God's first word is the radical breaking of all continuity with man in His radical judgment upon man as sinner, and His act of grace is the creation

<sup>64</sup> Bonhoeffer, 'Dein Reich komme!,' p. 277.

<sup>65</sup> Bonhoeffer, Ethics, p.155.

<sup>66</sup> Dietrich Bonhoeffer, Act and Being. Translated by H.M. Rumscheidt, Dietrich Bonhoeffer Works, volume 2 (Minneapolis: Fortress Press, 1996), p. 89. See also the editors' remarks on p. 162.

<sup>67</sup> West, review of Dietrich Bonhoeffer: His Significance for North Americans, pp. 472-3.

of a new man.<sup>68</sup> Bonhoeffer's own idiom consistently stresses the disjunction between old and new, the crisis in all registers of creaturely existence (moral, epistemic, ontological) brought about by God in Christ, even as it also emphasises the incursion of God's new creation as the establishment of the total relevant and crucially dynamic context for human life and thought. What we find then in Bonhoeffer's work, including the *Ethics*, are not merely 'some quotations that could be stretched' (as West said) in the direction of apocalyptic, but rather a way of thinking whose organizing logic is very closely aligned with that of Paul's apocalyptic gospel.<sup>69</sup>

The cardinal importance of the doctrine of justification for Bonhoeffer's theological ethic is further indication of all this. For in Bonhoeffer's hands, this doctrine does bespeak 'the onset of something radically new' rather than offer mere consolation and 'rescue in the face of recurring failure.'<sup>70</sup> Its role in Bonhoeffer's theological ethics is to republish with dogmatic density the form and force of Paul's apocalyptic gospel.<sup>71</sup>

If this is so, then some of Bonhoeffer's distinctive themes receive a new and different cast. Take, for example, the promeity of God in Christ. Promeity is a term by which Bonhoeffer records that for God to exist and to exist to save are inseparable<sup>72</sup> in keeping with the identity of revelation and reconciliation. This identity in fact makes it 'godless' (he says) to think of God's presence apart from the divine saving activity 'for me' in Christ.<sup>73</sup> Inflected apocalyptically, 'promeity' expresses not so much a static disposition of God, as can often be thought, as it does the relentless dynamism of God's unbidden saving agency. It reiterates that God's apocalypse in Christ is, like the hound of heaven, a 'force of forgiveness [humans] cannot weary, or diminish or evade.'<sup>74</sup> There is movement and scope in

<sup>68</sup> Bonhoeffer, 'The Theology of Crisis,' pp. 115-16.

<sup>69</sup> The significance of eschatology in Bonhoeffer's theology has not gone unnoticed of course, and one very recent work in particular offers a detailed appreciation of this aspect of his ethics. See Gunter M. Prüller-Jagenteufel, *Befreit zur Verantwortung. Sünde und Versöhnung in der Ethik Dietrich Bonhoeffers* (Münster: LIT Verlag, 2004), pp. 277, 280-81, 282ff.). The author rightly contends that Bonhoeffer upholds an 'eschatological dynamic' by which he means that Bonhoeffer 'does not hold the thesis that God *is* the Lord of the world, but rather that he becomes such; not that the reality of God's revelation is real in the world, but rather that it becomes such. Responsible actions thus means nothing more, but also nothing less, than having a hand in Christ becoming in the penultimate what he already *is* in the ultimate—Redeemer and Lord of all human beings and the whole world.' (pp. 391-2). This eschatological dynamic can best and most tellingly be described as apocalyptic in the sense this has in Paul as has been expounded above.

<sup>70</sup> Rasmussen, *Dietrich Bonhoeffer: His Significance for North Americans*, p. 78. Whereas, Bonhoeffer says 'justification is the new creation of new human being.'—Bonhoeffer, *Discipleship*, p. 260. Cf. also Prüller-Jagenteufel, *Befreit zur Verantwortung*, p. 280.

<sup>71</sup> Recently, Bruce McCormack reminded recalcitrant Protestant theology of precisely this same claim. The doctrine of justification is 'deeply ontological' because at its root 'lies recognition that human being' is a function of God's decisive act in Jesus Christ to justify the ungodly.—Bruce L. McCormack, 'What's at Stake in Current Debates Over Justification: The Crisis of Protestantism in the West,' in *Justification: What's at Stake in the Current Debates?* Edited by M. Husbands and D. Trier (Downers' Grove, IN: InterVarsity Press, 2004), p.115.

<sup>72</sup> Bonhoeffer, *Christology*, p.47: 'His being Christ is his being pro me. . . . That Christ is pro me is not an historical or an ontical statement, but an ontological one. That is, Christ can never be thought of in his being in himself, but only in his relationship to me.'

<sup>73</sup> Bonhoeffer, *Christology*, p. 48.

<sup>74</sup> Robinson, *The Death of Adam*, p. 110.

Bonhoeffer's concept of promise.<sup>75</sup> Where God is, God is actively intruding to judge and so to save. And where is God not?

Bonhoeffer's sense that Christian engagement with the world should be shot through with confident hope and not the anxiety ingredient in missionary logics of 'if/then' or 'offer/realization', flows from the fact that these contingent possibilities have already been surpassed by the uncontingent reality of reconciliation. Pauline apocalyptic locates the life and service of the Christian community firmly within the widest possible view of God's agency and endeavour. Engaging the world in this way within the exclusive and encompassing work of Christ testifies to both their common reality and dynamic difference-in-unity. There is freedom to be about the penultimate and worldly things of human life, not in spite of what is ultimate, but because of it and for its sake.<sup>76</sup> As Ernst Wolf rightly observed at an early stage in the Ethics' reception, we must not overlook the fact that, 'for Bonhoeffer, 'worldly ethics' is possible finally only as 'Christian ethics' in which apprehension of the 'penultimate' is only made possible by that which is 'ultimate'. For him what was at issue throughout was life in 'the ultimate', the self-evident character of such a life.'<sup>77</sup> The 'church for others' then, denotes a church whose existence comports with the encompassing and exclusive truth of God's saving apocalypse in Christ.

All this also re-directs understanding of the remarks in the late prison writing about 'the world come of age,' 'religionless Christianity' and 'non-religious interpretation of biblical concepts.' Bonhoeffer's turn to these ideas can be seen as a provocative if staccato reiteration of the theme of the ultimate and penultimate developed at some length in the Ethics. Since, 'the achieved rescue of creation brings the whole of it under grace' whatever these phrases mean in detail, their responsible interpretation will always honour Bonhoeffer's denial of autonomy to the 'secular'.<sup>78</sup> It is the advent of the reality of reconciliation—much more than the simple advance of secularisation—that has dissolved, for Bonhoeffer, the old antinomy of religious and secular. In the wake of God's epoch making incursion in Christ, the categories 'religious' and 'secular' no longer map onto reality as it has been remade. Genuine worldliness is creaturely life unhinged and re-hinged by the grace that invades the fallen world in Christ so as to slay and only so to make alive. Bonhoeffer's critique of religion has under it still in the 1940s largely apocalyptic mainsprings: the Christian way for-

<sup>75</sup> Those who miss the "movement" and the "life" [in the Barmen articles] are dangerous reactionaries; they are reactionary because they go right back behind the approach of the theology of revelation and seek for 'religious' renewal. They simply haven't understood the problem at all yet. . . —Dietrich Bonhoeffer, *Letters and Papers from Prison*. Enlarged Edition. Edited by E. Bethge and translated by R. Fuller et. al. (London: SCM, 1971), p. 328.

<sup>76</sup> God's justification by grace makes the Christian's way in the world strange: it is shaped by the fact that the penultimate things of world are 'completely superseded by the ultimate and. . . no longer in force' so that 'we must also speak of penultimate things, not as if they had some value of their own, but so as to make clear their relation to the ultimate. For the sake of the ultimate we must speak of the penultimate.'—Bonhoeffer, *Ethics*, p.151.

<sup>77</sup> Ernst Wolf, 'Das Letzte und das Vorletzte. Zum theologischen Denken von Dietrich Bonhoeffer,' *Die Mündige Welt IV* (Munich: Chr. Kaiser Verlag, 1963), p. 32.

<sup>78</sup> Robinson, *The Death of Adam*, p. 122. Indicative of this are claims made in the prison writing that we do not meet Christ 'at the margins' but 'at the centre of life'—*Letters and Papers from Prison*, pp. 282, 337. Even more stringently denied is any reading that takes these categories as attempts to jostle for the relevance of faith and theology in a modern world—see Bonhoeffer, *No Rusty Swords*, pp. 310-11.

ward in a 'world come of age' reflects first and foremost the relentless and decisively formative pressure of the 'world to come.' As Bonhoeffer remarked in 1935 in a slightly different idiom, 'the concept of the present age is determined not by a temporal definition but by the Word of Christ as the Word of God. . . The present is primarily defined not by the past, but by the future, and this future is Christ, it is the Holy Ghost. . . The criterion of the true present lies outside itself, it lies in the future, it lies in Scripture and in the word of Christ witnessed in it.'<sup>79</sup> It is possible for Christians to embracing the dissolution of religion as a historical development finally because human religion has already been abolished prospectively but ultimately in God's act of justifying the ungodly.

#### 4.2 Pauline Apocalyptic and the Continuity of Bonhoeffer's Corpus

Discerning the formative power of pauline apocalyptic upon Bonhoeffer's theological ethics

may also cast some light on the perennial question of the continuity of Bonhoeffer's corpus. How significant is recognition of the prominence of pauline apocalyptic thought forms in texts from across the 1930s as well as so clearly in the Ethics? It would seem to call into question any notion that the later work in ethics and the prison writings represent a marked departure from what has gone before. Further, if this biblical Denkform is an important aspect of Bonhoeffer's own theological constitution, then can the question of continuity and development be properly assessed without attending in particular to the array of scriptural expositions authored as sermons, letters, lectures etc. during these years?<sup>80</sup> And what if texts such as these, rather than say the earlier dissertations or the final Letters and Papers from Prison, were taken to be the centre of gravity in the whole corpus, how would our understanding of the whole be affected?

The presence of pauline apocalyptic forms of thought in Bonhoeffer's Ethics also raises afresh the question of Bonhoeffer's abiding relation to the dialectical theology. Perhaps we are able to see something that can readily be elided by intense focus upon the philosophical entanglements Bonhoeffer's earliest work, and the geistwissenschaftliche valences of themes in the prison correspondence:<sup>81</sup> namely, that in the whole of his theological existence 'Bonhoeffer showed himself to be a decisive adherent of the new theology of the Word of God.'<sup>82</sup> Ought we not to take seriously the claim of the author of the Ethics that he expressly desires to 'stand in the tradition of Paul, Luther, Kierkegaard, in the tradition of genuine Christian thinking'?<sup>83</sup> Are the thought forms of pauline apocalyptic perhaps those

<sup>79</sup> Bonhoeffer, 'The Interpretation of the New Testament,' *No Rusty Swords*, pp. 311-12.

<sup>80</sup> On the significance of straightforward biblical exposition in Bonhoeffer's corpus, see J. Webster, 'In the Shadow of Biblical Work': Barth and Bonhoeffer on Reading the Bible,' *Toronto Journal of Theology* 17:1 (2001), pp. 82-87.

<sup>81</sup> See, e.g., Charles Marsh, *Reclaiming Dietrich Bonhoeffer: The Promise of his Theology* (Oxford: Oxford University Press, 1994) for the former, and Ralf Wurstenberg, 'Bonhoeffer Revisited,' *Theologische Literaturzeitung* 131:2 (February 2006), pp. 129-140, as indicative of the later. Wurstenberg argues that the thought of Ortega y Gasset and Dilthey, rather than the 'theology of crisis' provides the decisive context within which to understand the provocative themes of the prison letters like non-religious interpretation and Christian worldliness.

<sup>82</sup> Editor's 'Afterword,' Bonhoeffer, *Act and Being*, p. 163.

<sup>83</sup> Bonhoeffer, 'The Theology of Crisis,' p. 111.

which Bonhoeffer believed would lead beyond 'revelatory positivism' and to make good on the promise of the theology of the Word under which he himself laboured?

#### 4.3 Bonhoeffer—Theologian of the Word of God

There is, of course, a great deal else to be said, both about the apocalyptic account of the gospel and about its capacity to illumine further both these and other aspects of Bonhoeffer's work. A longer study will need to go on to explore in detail the place of both the cross and the social and political forms brought about by the incursion of grace onto the human scene in both Paul's apocalyptic gospel and Bonhoeffer's theological ethics. The theme of representative suffering, for instance, as well as Bonhoeffer's ecclesiology and the significance of his ecumenical engagement, will undoubtedly have further light shed on them by careful consideration of their apocalyptic valences.<sup>84</sup> So too, perhaps the way we ought to understand within the Ethics the dual account of ethics as obedience to the concrete divine command and as formation. Let me say at this point only that this interpretive direction looks to be fruitful both in disclosing how much more dynamic, more dialectical and more immediately pauline Bonhoeffer's theological ethics may be, and in shifting our appreciation of some of its most interesting and important themes.

The permanently revolutionary character of Bonhoeffer's thought is less a reflection of his theological genius (which was real) than it is of his saturation in the 'strange new world of the Bible.' What the prominence of pauline apocalyptic in Bonhoeffer's Ethics certainly makes plain is his abiding commitment to orient not only dogmatics but also ethics so as to 'yield some place to the World of God,' a Word faith knows to be rampant in the world for whose sake the church exists.<sup>85</sup> And perhaps the compelling power of the *Ethics* flows from Bonhoeffer's own firm grasp of the uncontingent, prevenient, invading and humanising power of God's grace and his keen discernment, together with Paul, that 'to speak of a course of ethical action on the basis of a flawed perception of the cosmos, and of the human being's place in it, is to court disaster.'<sup>86</sup>

<sup>84</sup> Reconciliation as an act of divine power and 'gracious violence' finds concrete form in the cross of Christ, since it is "the world of the cross that is the power of God" (1 Cor 1:18); the notion of the formative reality of the new creation finds concrete human expression in the life of the Christian community, where there arise forms of human life that honour that breach which God has opened between the old and new worlds, and bear witness to the uncontingent grace of God in its disciplines (arcane as they may be) as well as in 'prayer and righteous action.' On both these themes, see Bonhoeffer, *Letters and Papers from Prison*, pp. 281, 286, 300, 361f.

<sup>85</sup> The phrase is John Calvin's—*Institutes of the Christian Religion*, 2 Vols (1559 edition), edited by J.T. McNeil and translated by F. Lewis Battles (Philadelphia: Westminster Press, 1960), III.iv.29 (p. 657).

<sup>86</sup> J.L. Martyn, 'De-apocalypticizing Paul: An Essay Focussed on Paul and the Stoics by Troels Engberg-Pedersen,' *Journal of New Testament Studies* 86 (2002), p. 102. Martyn continues, 'For a primary focus of Paul's apocalyptic theology lies in the Lord Christ's delivering us from all illusion, not least the illusion that human beings are capable of self-governance. . . the assertion of human autonomy is so fundamentally false as to endanger the future of the human race.'

*Simone Magalhaes Brito:*

*"There is nothing innocuous Left": Adorno's Negative Morality<sup>1</sup>.*

#### Introduction

First of all, I'd like to describe the kind of work that has been done in Sociology on the problem of Morality.

"As long as sociologist interprets their tasks in moral terms, they must renounce the analysis of social reality; as soon as they strive for scientific insight, they must forgo their moral concern with the individual and his liberty".<sup>2</sup>

Sociology, in its way to construct itself as a science, fought against some sacred ideas: subject, human, freedom, among others. Its own necessity only appeared as it intended to show that what was considered some kind of untouchable principles were, always, a contingent social construction permeated by interests not always so sacred. The above quotation by Dahrendorf synthesizes the foundation of sociological approach: the refusal of moral concerns. One could even try a history of sociological discipline based on this problem: on the praxis problem, the rules of sociological method or axiological neutrality, always the questions raised, the disturbing point, is the question of values. What are the best values, how to achieve or how to avoid them are fundamental problems for the construction of the discipline. Despite disaccorded approaches, Dahrendorf's idea seems to be a very good description of the development of Sociology. The question, however, remains: are these values, or the moral itself, only social constructions that should be avoided for the benefit of a sociological truth? If one says "yes" to these questions, as most of sociologists usually do, a problem appears. If Morality and Ethics have no other foundation than the contingent social construction, all values are "relative". The assumption that all values are relative has immediate moral consequences: it is not possible to say anything about good and evil. This has direct relations with the work of social scientists, especially one that intends to be among the critical social scientists.

Zygmunt Bauman is the contemporary sociologist that has tried to interpret this problem. His start point is one of the most dramatic moments of western history: the Holocaust. Through analysing Holocaust, he detected a fundamental problem in Sociology. Since the founding fathers of Sociology as Durkheim, any kind of value has been understood as a social construction; a value is what a group consider is to be a value, in this way making explicitly how values are permeated by power and interest. There is no room to any sort of transcendence- except the transcendence of the society- society is before and beyond our existence. Morality is "rule-governed" and socially produced.

Sociology and some sociologists have a particular way of understanding morality and its genesis: society is the source and the cause of morality. In other words, "any moral system

<sup>1</sup> Paper presented on Societas Ethica Conference: Political Ethics and International Order/Politische Ethik und Internationale Ordnung, Oxford, 23-27 August 2006

<sup>2</sup> DAHRENDORF, R. in: "Homo Sociologicus". Essays in the Theory of Society

is destined to serve the continuous existence, and the preservation of the identity, of the society which supports its binding force through socialization and punitive sanctions".

If one accepts this claim, will have to face in a certain level some "moral" problems. Some societies our social groups may use pogroms, death camps or ethnic cleansing as means to their "social" ends. The central question is: the social support will make this kind of act acceptable to Sociology and sociologists? Or rather, "how are we to make sense of the other, less attractive face of morality, exemplified by moral indifference and/or immoral behaviour? How are we to account for the absence, suppression or silencing of moral responsibility?"<sup>4</sup> When the sociological framework is brought to analyse the problem of Holocaust, the deficiencies of Sociology become evident. If anti-Semitic behaviour is social behaviour, it is normal. Obviously, no sociologist has ever reached this conclusion, but Bauman just used the Holocaust as a good example of the weaknesses of Sociology. Why should the Holocaust to have some importance to sociologist? Isn't it "just" one more possible tragedy that happens when the social organization is not working? Bauman's attempt is to argue that there is much more related to the Holocaust than a malfunction of social regulation, and if we realize this, the Holocaust will be seen clearly in its relation to Modernity. Bauman will try to present the Holocaust neither as unique, nor as common, but 'just' as possible. This possibility means: Holocaust was a modern result. And this "possibility" among a lot of modern possibilities is the main focus of all the Baumanian approach. The Holocaust is "the other" of the civilization process, the dramatic side that modern mind tries to repress: "The essence and historical tendency of modernity, the logic of the civilizing process, the prospects and hindrances of progressive rationalization of social life are often discussed as if the Holocaust did not happen, as if it was not true and even worth serious consideration that the Holocaust 'bears witness to the advance of civilization', or that 'civilization now includes death camps and Muselmanner among its material and and spiritual products'"<sup>5</sup>.

Second, the Holocaust hides the weakness of Sociology in explaining Morality. How to explain evil deeds? How to explain that most part of the SS soldiers when arrived at home were not sanguinary monsters, were normal people with "wives they loved, children they cosseted, friends they helped and comforted in case of distress"<sup>6</sup>? If one continues working with the idea of "malfunction"- the idea that some social problem occurred as for example the socialization, will continue inside the sociological orthodoxy that cannot find consistent explanations or correlations to the phenomenon. Bauman presents two sociological works on the Holocaust<sup>7</sup> and according his ideas, both works suffer the same problem: they cannot find social determinants to explain either the Nazi behaviour or the existence of rescuers- people that tried to avoid the suffering of others. These pieces of work were developed in the more strict patterns of social sciences, but they did not establish any kind of significant relationship between social factors and moral behaviour.

<sup>3</sup> BAUMAN, Z. (1989). P.172.

<sup>4</sup> SMART, B. P. 511.

<sup>5</sup> BAUMAN, Z. (1989), p. 176.

<sup>6</sup> BAUMAN, Z. (1989), p. 151.

<sup>7</sup> FEIN, Helen (1979). *Accounting for genocide: National response and Jewish victimization during the holocaust*. NY: Free Press. And TEC, Nechama. (1986) *When Light pierced the Darkness*. Oxford.

Particularly, the second piece of work analysed: *When Light pierced the Darkness* by Nechama Tec pointed the most problematic question: how to explain why some people remained moral under immoral conditions?<sup>8</sup> This author tried to find some correlations among this moral behaviour and some social factors like class, education, and political allegiance<sup>9</sup>. But, the result was none: no significant correlation. If its possible to find social answers to immoral behaviour, on the contrary, it is not possible to indicate social reasons to moral behaviour. In Bauman's words: "the rescuers were willing to rescue because this was their nature. They came from all corners and sectors of social structure, thereby calling the bluff of there being 'social determinants' of moral behaviour"<sup>10</sup>. In my opinion, the problematic aspect with Bauman's interpretation is that despite pointing the fundamental problem of moral to Sociology, he does not trace the constitution of a Sociology of Moral. His approach refers to the origin of morality in Levinasian terms, to the origin of morality, but we cannot say there is a developing of this problematization.

Well, that is why my work on Adorno is an attempt of giving answers to the problem posed by Bauman. In other words, I am claiming that a "negative morality" (or Adorno's moral thinking) is an adequate form of interpreting the moral problem for Sociology since in it the nature of values is not subsumed by social and cultural aspects, but kept in a permanent tension. It is important to add that I don't consider this attempt a sort of criticism directed to Bauman's work. Simply put, I would say that it is not his "objective" to establish a form of critical thinking that can be systematically read. And particularly in this case, it is also not his project to connect critical and moral thinking. In this way, Adorno's negative morality and its approach to social structure and action can be useful to understand moral values without undermining their characteristics and at the same time stressing their socio-historical elements. I don't believe that it is possible to find a very satisfactory way between Sociology and ethics, but my idea is that the sort of approach present on a negative Morality can keep us aware of the nature of their tensions.

#### Negative Morality

For Adorno the structures of thinking and acting developed through "instrumental reason" or the most specific forms of Capitalism "restrict" our moral capacity. Our society is based on principles of "avoiding the face of the other", refusing her demands. He will also point that individuals under capitalism have a very peculiar constitution:

they are on need (and this need is not only material) and exposed to all sort of promises and the most unattainable expectations (it is impossible to feel satisfies and satiated with life).

Since it is impossible to be happy and satisfied under capitalistic conditions, individuals are always frustrated. Following a Simmelian and Freudian economy of emotions, Adorno believes that the only way/reaction possible to help with the pain caused by this principal frustration is to become "cold". Coldness is the principia of living under capitalism. The one that does not become cold risk his/her own ego's constitution.

<sup>8</sup> BAUMAN, op. cit. p. 5.

<sup>9</sup> BAUMAN.

<sup>10</sup> BAUMAN, op. cit. p. 5

The problem of being moral in Adorno's thinking arises from a particular and dramatic sociological perspective: modern society is not able to provide individuals with guidance to act rightly. It is not only the State as a possible motor of injustice but the very societal tissue refrains moral acting since the logic of production entered into the spheres of life. Production's logic, or capitalism, is annihilating: through reification and utilitarianism the subject of morality becomes a mean –the very death of morality. The first problem an Adornian moral theory needs to confront is the source of Morality. Capitalistic societies are so highly differentiated and permeated by processes like alienation/reification, instrumentalization that it is not possible to say that society is able to provide general moral rules. What he described as an "authoritarian personality", the typical personality developed under capitalism values and an ideal-type of socio-psychological development, is embedded in the infantile fear of difference. The weakness of their "ego constitution" becomes resented of any change in what is supposed to be the "normal", the "usual" or the "the social convention". In fact, what is considered to be the normal is assumed as part of the ego. The sight of differences endangers his/her world. That is why their disenchantment turns into an affirmation of the violent and frustrating world. In this way, the main problem to Adorno is that our society is organized based on values that avoid morality. That is why he calls our life a "damaged life". Society is evil. And this evil is found in the minimal things since those minimal things will reproduce the existence of the System. (From this comes the title of this presentation) That is why he says: "there is no right life in the wrong". Adorno has a particular notion of evil. It is not deep problematized for a pre-established reason: we know what it is, we can say what is evil, discuss it, define it can only make it look banal. He accepts partially some of Arendt's insights on evil, but he will invert the main motto the banality of evil into the "Evil of Banality". To resist this evil he will introduce a new categorical imperative: "a new categorical imperative has been imposed by Hitler upon unfree mankind: to arrange their thoughts and action so that Auschwitz will not repeat itself, so that nothing similar will happen." This aspects would need to be constructed in details but here I will only make reference to them. They are:

The place of victims

The body

Redemption of suffering

Adorno's idea is that the forms of remaining moral or resisting to evil resides on a sort of "economy of the suffering body" and particularly on our necessity of avoiding the pain of the suffering bodies. At the same time, the "not yet", the redemptive moment is also related to the politics of the body, in its attempt of "liberating" what is human (despite Adorno's struggle with this term) that could be defined as sensuality or solidarity.

My main problem now resides in the necessity of understanding how this utopia and critique based on the body can resist the fact that what we understand as "body" is permeated by the demands and simulacra of culture industry.

*Martin Blaakman:*

*Who Pulled the Trigger? The Political Responsibility of State Leaders*

Introduction

Had Dante Alighieri lived in our times, he might have told us about his encounter with Slobodan Milošević, who in the last years of his life was charged with crimes against humanity. Perhaps Dante would have met him in the Inferno, in that place where dictators are up to their eyebrows in red boiling floods. He might have asked Virgil: 'Maestro, who is he that is talking in an angry and loud voice while only bullets come from his mouth?' And his guide would have answered: 'It is Milošević, former head of state of Yugoslavia and Serbia, who is being punished for crimes his earthly judges were too late to find out.' Dante believed that state leaders who abuse their political power will suffer personal consequences for it in hell. But on earth their prosecutors are faced with the difficult task of proving that state leaders did abuse their political power. At the International Criminal Tribunal for the former Yugoslavia, for example, they showed a tape of an incident in 1995 when Serbian paramilitaries executed six Bosnian Muslims caught in the village Trnovo near Sarajevo. This tape may suffice to prove the liability of the shooters. But is it enough to prove the liability of their state leader if he did not pull the trigger and was not even present at the place of the incident? To deal with the question of how to prove that crimes against humanity were committed by state leaders two legal doctrines have been developed. Liability can be proved by showing that these crimes were committed either by (1) a 'joint criminal enterprise' in which the accused participated, or by (2) subordinates over which the accused had 'superior responsibility'. The doctrine of joint criminal enterprise neglects the idea that state leaders represent a state. As the doctrine of superior responsibility offers a conceptual frame work in which this idea does fit, I believe this doctrine to be the more suited candidate for charges against state leaders. Both doctrines are usually based on the concept of moral responsibility. However in the case of the doctrine of superior responsibility this leads to a considerable onus of proof in showing that state leaders are liable for crimes against humanity. My purpose is to argue that the underlying normative concept should not be moral responsibility, but political responsibility. My argument will be as follows. I will begin to show how moral responsibility starts from the idea that responsibility is a matter of understanding the factual chain of orders which connects a state leader and his subordinates. This provides the basis for two legal strategies to ascribe liability to state leaders. Next I will argue how these strategies fail because the concept of moral responsibility does not recognise that political power can be used to obfuscate the facts of the chain of orders. I will then argue that political responsibility starts from the idea of political power as a representative and public power. Finally on the basis of this concept I will propose a new legal strategy.

### Moral Responsibility

From literature on moral responsibility two criterions can be derived to determine whether someone can be held morally responsible.<sup>1</sup> First: can someone be said to be causally responsible? In other words: did he pull the trigger? Second: if so, can he nonetheless be excused from blame for it? I will briefly reflect on both criteria.

The first criterion has its origin in the idea that an individual may be punished only for conduct for which he is personally responsible.<sup>2</sup> This is the principle of personal culpability. It means to say that an individual can be held responsible only if he is, by his own will, causally connected to a blameworthy event. Several writers on moral responsibility, like Dennis Thompson and John Casey, usually present this causality as a mere relationship between cause and effect.<sup>3</sup> This type of causality I will call factual connection. It expresses the idea that an individual is connected to an event by a chain of physical or factual events. The actions of subordinates for example cannot be ascribed to a state leader unless they are based on a decision by that state leader. If a state leader gives an order which is then passed on in the chain of command structure, he is factually connected to the actions of his subordinates.

The second criterion concerns excusability. A person may either have been ignorant, or been compelled to perform a certain action. For reasons of time I will focus on ignorance only as an excuse from blame. To determine whether an individual is personally responsible, an important criterion is the knowledge an individual had about what would happen in a certain situation. If he knew his actions would lead to a blameworthy event, he is responsible. But he can be excused from blame if he lacked knowledge about the harmful consequences of his actions. What matters is what factual knowledge someone had about his actions or certain events. If a state leader knew about a group of soldiers committing crimes against humanity, he would have had the duty to punish them. Not doing this would make him also responsible for these crimes.<sup>4</sup> On the basis of moral responsibility we can now formulate two different strategies to determine the liability of a state leader for crimes against humanity. He is liable for crimes against humanity if it is proved (1) that he gave the order that ultimately made it possible for subordinates to commit these crimes, or (2) that he knew that his subordinates committed these crimes on their own initiative, but failed to prevent or punish them.<sup>5</sup> In international law the first is called 'direct responsibility', the second 'indirect responsibility'.<sup>6</sup>

### Political power

I now want to consider moral responsibility in relation to political power. Being responsible implies having the power to act. The concept of moral responsibility does not distinguish between different kinds of power and even seems to be indifferent to the origin and

<sup>1</sup> Smiley (1992).

<sup>2</sup> Danner and Martinez (2005).

<sup>3</sup> Smiley (1992, pp. 179-185).

<sup>4</sup> Danner and Martinez (2005).

<sup>5</sup> This almost corresponds with article 7(3) of the Statutes of the International Criminal Tribunal for the former Yugoslavia.

<sup>6</sup> Danner and Martinez (2005, p. 120).

nature of someone's power, because all that is important is a factual connection between the actor and some blameworthy event. Political power is therefore not recognised as a special kind of power. I will argue that the criterion of a factual connection does not suffice to ascribe responsibility to state leaders because political power may be used in such a way that the causal chain of actions is kept unclear, hidden or unobservable.

According to moral responsibility the state leader is supposed to have the power (1) to make his subordinates commit crimes against humanity, (2) to prevent his subordinates from committing them or (3) to punish his subordinates for committing them. In the first case – making subordinates do so – his responsibility is due to the orders he gave to his subordinates and which create a factual connection between himself and the crimes against humanity. In this view political power is essentially the power to take formal decisions about which policy rules should be enforced (what taxes will be raised? what ethnic cleansing will take place? et cetera). In the second and third case – preventing or punishing subordinates – responsibility is due to the factual knowledge the state leader has at a certain time of what his subordinates have done or were doing.

Several political theorists, like Steven Lukes or Alan Carter, have shown that political power is not necessarily restricted to formal decisions. Politicians may want to prevent formal decisions being taken on certain issues. This is called agenda-control which is also a form of political power.<sup>7</sup> Political power may also involve ensuring that certain groups within society want or do not want something, believe or do not believe something.<sup>8</sup> In this way political power may be used to reproduce patterns of social and political inequality.<sup>9</sup> Milošević too has used his political power in this way.<sup>10</sup> Furthermore political power may even be used to obscure the fact that it was used for a certain reason.

State leaders appear to have more power and more knowledge than the concept of moral responsibility suggests. They do not usually pull the trigger personally, but they have numerous ways of making others do so. Afterwards they may use their political power to obfuscate any connection between themselves and the crimes of which they are accused. Although their political power allows them to have access to a lot of information, they may easily deny they had at some point factual knowledge about certain events. From this we can conclude that a strict application of the two legal strategies for ascribing moral responsibility will make it very hard to prove that state leaders either gave orders in a strict sense, or knew about the deeds of their subordinates. The reason for this is that the underlying notion of power, based on formal decision power and factual knowledge, is too simple. As a consequence it is possible that state leaders are in some way responsible for crimes against humanity without ever being held liable for it.

The practice of international criminal prosecution confirms that ascribing responsibility to state leaders is problematical. The strategy to prove direct responsibility is not often used because 'direct proof that a commander actually ordered his troops to commit crimes is not always forthcoming'.<sup>11</sup> But even the strategy to prove indirect responsibility seems to

<sup>7</sup> Lukes (2005).

<sup>8</sup> Carter (1992).

<sup>9</sup> Williams (1998, pp. 15-18).

<sup>10</sup> Gordy (1999).

<sup>11</sup> Danner and Martinez (2005, p. 120).

lose ground in favour of the doctrine of joint criminal enterprise. Van Sliedregt suggests that this might be due to the fact that the knowledge requirement 'provides the prosecutor with evidentiary problems and poses a risk in prosecuting a superior for superior responsibility'.<sup>12</sup> And she goes on to quote a remark by Wu and Kang: 'the further away a superior is from the actual "smoking gun" the more difficult he is to prosecute'.<sup>13</sup> This is probably why the prosecutor of Milošević chose to base the charge on the doctrine of joint criminal enterprise, rather than superior responsibility.

#### Political Responsibility

Here I would like to introduce the concept of political responsibility. It is not, as moral responsibility is, based on a general idea of power, but on the idea of political power. I will argue that political power is both a representative power and a public power.

I start with political power as a public power. Historically political power was considered to be the personal property of state leaders. Nowadays, at least in democracies, state leaders are considered to be simply holders of offices.<sup>14</sup> Political power is not their personal property but belongs to the state. This view is grounded in a normative notion of political power as public power. If someone's power is effective enough to realise public tasks, to rule a country, to make laws, et cetera, then it becomes public power and may not be considered as a personal power to be used at will but instead is tied to certain legal and ethical boundaries. Political power as representative power is partly grounded in the relation between the state and its leader. The nature of the state or of its agency has been the subject of many disputes.<sup>15</sup> But if we accept the state as a being of its own, a fictional person, as one tradition of legal and political theory has it, we still face the problem that states cannot act for themselves. They have political power, but cannot use it. That is why David Runciman has argued that 'states need representatives to act for them'.<sup>16</sup> Political power is therefore representative. It can only be exerted if state leaders act as representatives. In the same way states are responsible but only state leaders can take responsibility for states. Therefore the difference between state and state leader is not one between two separate actors who have two kinds of responsibilities, but between two perspectives deriving from one kind of responsibility which is political responsibility.

Political power as representative power is also grounded in the relation between the state leader and his subordinates, whether they be officials or soldiers. Because it is physically impossible for a state leader to personally execute all of his decisions he is himself represented by his subordinates. As they represent their state leader their actions can be ascribed to their state leader.

Representative and public power has two implications for understanding political responsibility which also mark important differences with the concept of moral responsibility. In the first place political responsibility does not need the idea of a factual connection. Acknowledging the representative nature of political power makes it redundant to establish

<sup>12</sup> Van Sliedregt (2003, p. 181).

<sup>13</sup> Id.

<sup>14</sup> Skinner (1995).

<sup>15</sup> Cf. French (1984).

<sup>16</sup> Runciman (2003, p. 41).

afterwards in what way the state leader was factually connected to whatever his subordinates did. This connection can simply be assumed. If a subordinate pulls the trigger, no further proof is needed to claim that the state leader bears responsibility for it. His subordinates cannot share this responsibility as they are not representatives of the state, but represent him. As the state leader represents the state and takes responsibility for it, he is ultimately responsible. Putting so much weight on the shoulders of state leaders seems to conflict with the principle of criminal law that one is innocent until proved otherwise. But ignoring the representative and public nature of political power would fail to recognise that state leaders who abuse their political power cannot be considered as normal criminals. As state leaders hold their power within an institutionalised context it is reasonable to assume that their power is effective until they have proved otherwise. Only when effective control is missing, can the state leader be excused from blame.

A second implication of representative and public power concerns the criterion of knowledge. What counts is not factual knowledge, but what I call 'institutional knowledge'. This is what a state leader on the basis of his political power is able to know. The notion of institutional knowledge implies the duty for a state leader to inform himself about what falls within the ambit of his powers. He can be expected to know more than he may factually know.

Political responsibility does not necessarily imply that political leaders should suffer personal consequences from the responsibility they take. When a state leader in the name of the state has increased state debts this does not mean that he should pay from his own money even if he could. Crucial is whether a state leader has respected the legal and ethical boundaries of public power. In democracies this is usually judged by parliament. But when these boundaries are crossed excessively in a way that violates international norms, a state leader may suffer personal consequences.

To determine the liability of a state leader for crimes against humanity a new legal strategy can be formulated. His liability can be assumed if his subordinates have committed crimes against humanity, regardless of orders or personal knowledge. A state leader may be excused from blame if he can prove he did not have effective control over his subordinates.

### Conclusion

We can now conclude that the normative concept underlying charges against state leaders should not be moral responsibility, but political responsibility. While the strategies for ascribing liability based on moral responsibility put a heavy burden of proof on prosecutors, in the case of political responsibility the burden of proof is reversed. It rests mainly with the accused. Accepting the notion of political responsibility in international criminal law would therefore put a considerable constraint on the uses and abuses of political power.

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## 2.3 Violence and peace in international order and politics

*Dan Malotky:*

*Fundamentalist Violence and Despair: A Response*

Though a great deal of insightful scholarly work has been done to identify the characteristics of religious fundamentalism, the most difficult features of its public face to comprehend are the most familiar. Only exhibited by a small minority of fundamentalists, but found in all religious contexts, these expressions are too frequently splashed across the front page of the newspaper. They suggest a ruthless amorality that is at odds with the picture that fundamentalists project about themselves.

Charges of inconsistency or hypocrisy may not be inappropriate, but we can establish a richer account of these tendencies with the use of Reinhold Niebuhr's conception of sin. The intent, in the first place, is not to accuse certain fundamentalists of sin or to claim that fundamentalists are more prone to sin than the rest of us. Rather, a better grasp of the most troubling fundamentalist beliefs and behaviors can prompt needed adjustments in our response, adjustments that hold out hope for mitigating the damage they cause on the national and international stage.

Of course, the damage has a range of destructiveness; but it is nearly always accompanied by a moral and intellectual dissonance that screams for attention, but balks at resolution. A couple of years ago, for instance, the church-affiliated, liberal arts college where I worked received some unwelcome publicity. A local pundit was enlisted by an ultra-conservative religious organization to write damning commentary on the opinion page of the local newspaper; and letter after letter to the editor, in a well-coordinated attack, denounced the intolerance of our institution for our refusal to rent space to the organization. The organization had hoped to play host, using our school's facilities, to a speaker who associated homosexuality with demon possession.

When they seek to undermine the credibility of our schools or the news media with accusations of bias or intolerance, we are, at best, confronted with the pot calling the kettle black. How can the poster children for bias and intolerance paint themselves as victims of the same? The question is especially perplexing in view of the fundamentalist's response: establishing or turning to media outlets that are patently stilted, just as they have established colleges and universities where students will not be confronted with disquieting ideas.<sup>1</sup> At the very least, religious fundamentalists appear to lack the bone that makes the rest of us sensitive to irony.

<sup>1</sup> American soil also affords us with plenty of individual instances fundamentalist behavior that gives us pause. Former congressman Tom DeLay of Texas, who faces three indictments and has had to resign under an unrelated cloud of suspicion because of his close connection to a confessed influence peddler, recently opined, on the occasion of his mug shot, that he hoped people might see Christ through him. Since when did imitatio Christi include political corruption?

It is tempting to be dismissive, but their success gives us reason to pause. The most arresting examples of the internal dissonance, of course, involve the turn to violent means. A pro-life follower of Christ murders a doctor who performs abortions, a pious Jewish settler opens fire on a crowded mosque, a group of middle-class men of Pakistani descent plot to blow up multiple transatlantic passenger flights: all hail from groups whose religiosity is expressed primarily through scrupulous attention to a strict moral code.<sup>2</sup> How can such self-consciously righteous people become murderers, even murderers on a massive scale?

Those who reject the notion that religious belief is inherently exclusionary and violent usually highlight the particular flaws of the fundamentalists. We like to paint fundamentalists as obstinate, illiterate types, who would like to remain in the comforting womb of medieval certainty. One can hardly miss the disdain and condescension with which liberals typically treat fundamentalism. New York Times columnist Thomas Friedman, for instance, frequently declares that the Middle East is essentially pre-modern. He found justification for the war in Iraq in the hope that the modern ideals of freedom and democracy would sweep through the entire region as a result. He has recently given up that hope, though not his assessment of the needs of the Middle East.<sup>3</sup>

For many, the ignorance of fundamentalists is only matched by their pride. We are bewildered by their suspicion, or outright rejection, of the separation of church and state and alarmed at their apparent eagerness to impose their perspective on others. Charles Kimball is one among a chorus of voices that trace this brashness to a kind of epistemological pride. Fundamentalists assert that they have access to the absolute truth in the form of their sacred scripture, and there is also a tendency among members of this set to act on direct revelations from God. Former President Jimmy Carter is representative of a growing number in the US, and seemingly the whole of Europe (except Prime Minister Tony Blair), who see this pride reflected in the policies of the current administration of the United States<sup>4</sup>

This leads to a frequent refrain in connection with fundamentalist violence. Religious pride, finding a home in ignorance, enables the 'othering' and dehumanization that lays the groundwork for moral atrocity. If one shares the absolute truth with others and they refuse to acknowledge it, they are not benighted but evil.<sup>5</sup> The self-righteousness of ultra-conservatives deludes them into thinking that their violent behavior is warranted, even demanded, because the object of their violence is "The Great Satan" or (what amounts to the same thing) secular humanists.

This is, in fact, a presentation of the problem that Niebuhr would have liked, and it is not my purpose to suggest that it is entirely wrong; but it typically leads to a response that has proven to be less than helpful. We denounce the arrogance of those who claim to have exclusive access to the mind of God. We fulminate about the insularity and the narrow stubbornness of our President. We despair over school boards that seek to undermine the teaching of evolution and madrases that teach only the Qu'ran and hatred of the West.

<sup>2</sup> See Armstrong, Marty

<sup>3</sup> Friedman

<sup>4</sup> Jimmy Carter

<sup>5</sup> Quote Jimmy?

Our assumption, and often our explicit proposal, is that proper education is the answer. Pride cannot survive without ignorance. If we could only manage to dislodge these poor souls from their pre-modern absolutism, if we could open their eyes to the historicity of ideas, to the moral and social complexity of the world, and to their own inconsistencies, fundamentalism would go away.<sup>6</sup>

The wrench in the works is that they do not seem to be accepting the lesson we so graciously bestow upon them. This surely is due in part to the paternalism that often marks the arguments, but scholarship over the past few decades points to deeper reason. One that clouds our picture of fundamentalist motivations, yet ultimately enables us to understand why our efforts fail. Karen Armstrong, among others, has noted that while fundamentalist movements represent a rejection of modernity, they are themselves modern movements that bear little resemblance to the religiosity of earlier times. She and others have also pointed out that their rejection of modernity is selective, focusing their ire only on the perceived Godlessness and moral relativism of modern culture.

Numerous scholars have also drawn a strong connection between fundamentalism and fear. Fear of modern uncertainties, fear of plurality: the essential movement of fundamentalist groups is one of retreat. Ultra-conservative groups have a penchant for forming enclaves, cocoons that minimize the contact between the believer and the outside world. Fox News, talk radio, "Christian rock", Bible colleges and a burgeoning fundamentalist presence on the web represent a selective appropriation of the contemporary scene in order to carve out a space that is free from its evils. Individual conservative churches have been instrumental in constructing this protective layer at the community level by becoming more involved in the lives of their parishioners, providing everything from recreational league sports for the kids to continuing education and professional counseling for the adults.<sup>7</sup>

Even the power-hungry tendencies that we usually associate with pride can be seen as a kind of rear-guard action. Fundamentalist political activism, a relatively recent phenomenon, is a response to the intrusive nature of social pressures that no longer reflect a conservative Christian worldview, like the teaching of evolution in the public schools, Supreme Court rulings that demark a strict separation of church and state, or the lax morality displayed on the internet and television. Fundamentalists in the US have sought to gain political control, not to force others to believe as they do, but to protect their communities from a world that they believe threatens their destruction.<sup>8</sup>

Niebuhr would hear an echo of his own arguments here as well, and his conception of sin enables us to hold the apparently contradictory trends together. Niebuhr appropriates the traditional Christian categories of sin as pride or despair and argues that they exist as ironic manifestations of each other. Those who are guilty of pride, he points out, are never simply, "ignorant of their own ignorance".<sup>9</sup> Their certainty and self-righteousness is always

<sup>6</sup> We often fail to recognize the tautological nature of our response: if we convince fundamentalists to think like liberals, their ranks will obviously dissipate.

<sup>7</sup> For every Bible college, of course, there is a madras. It is not difficult to see this trend manifested in religious contexts other than the US.

<sup>8</sup> Fundamentalist Phenomena, p.216.

<sup>9</sup> Get it...

an attempt to cover, for themselves as much as anyone else, their anxiety about their own limitations.

Those who despair, on the other hand, bear the telltale marks of pride. In the face of the same anxiety, they retreat to the apparent safety of a smaller world, denying their responsibility to the world as a whole. The retreat represents an attempt to maintain control, albeit in a circumscribed context, and it implies an indictment of the world's chaos. The desire for control and protection against a "world gone mad" can be turned inside out, morphing into imperialism; but even the traditional sins of despair harbor pride, since sensualists are not simply weak, but wallow in their imperfection. Lying in the gutter, the individual implicitly demands that God should have done better, like Kierkegaard's famous typo that refuses to be erased as a testament to the poor skills of the typist.<sup>10</sup>

On this account, sin nearly always involves some form of self-deception; and it is dissociated from any particular set of actions. Any act could be sinful if it is an expression of the individual's rebellion against the unavoidable realities of human existence. We claim either too much or too little for ourselves, but our claims are never completely naïve. Confounding convictions lie at the bottom of our outward claims, and these cannot help but be manifest, as an undercurrent, in our thoughts and actions.

Niebuhr's framework should not be seen as a hammer with which to bludgeon fundamentalists into intellectual and spiritual submission. We need not charge them with sin, if that seems impolite or counterproductive, but the framework strongly hints at the possibility that despair lies at the heart of fundamentalism. Pride and despair may comprise the light and dark side of the fundamentalist moon. If so, we might find a more constructive response to its disturbing Machiavellian tendencies.

Fundamentalists may fear modern uncertainty and denounce moral relativism, for instance, not because a group of elitist intellectuals is trying to undermine the moral order, but because they believe that relativism is true. Their ability to abide with moral and intellectual dissonance may be the result of a loss of faith in harmony. Of course, there is little chance of convincing bin Laden or Pat Robertson to come out of their relativist closets. The claim is counter-intuitive (at the very least!).

Their absolutism, however, is turned inward. Their easy assumptions about bias in the classroom and the media might be something along the lines of a Freudian projection. That is, they see liberal bias everywhere because at the deepest level, they believe bias is unavoidable. The retreat to the enclave is expressive of a worldview that finds no room for cross-cultural dialogue or understanding. What they reject in moral relativism is not its central premise: that we live on cultural islands with wide seas between us. They object to the failure of liberal society to be properly alarmed.

Perhaps more accurately, they reject the tendencies within modern society that try to bridge the gaps of culture and understanding. Targets of fundamentalist ire, as Jeffrey Stout points out, tend to be those aspects of the mainstream culture that attempt to speak to everyone, to be a voice for all – like PBS, the New York Times or the modern university. Targets of fundamentalist violence tend to be things that literally or symbolically tie the world together: planes, trains, government buildings or the World Trade Center.

<sup>10</sup> SK, *Sickness unto Death*

Even within the enclave, fundamentalists have largely abandoned anything resembling apologia. Wayne Booth describes the extent to which conversion narrative takes the place of argument within fundamentalist communities. Articles of faith are not defended – the theology is remarkably thin. Difficult questions of faith are “answered” by constant retelling of the stories of heroes and heroines who have overcome similar obstacles.<sup>11</sup> Thought religious and moral truths are regarded as absolute, they are not defended.

They are bracketed by the broader context of the movement’s confrontation with the outside world, in which success is measured by the acquisition and application of power. They see a world marked by ideological war, by jihad, by competing and ultimately incommensurate ideas and practices.<sup>12</sup> Patrick Buchanan captured this sense of a cultural free-for-all nearly two decades ago, arguing not only that conservative Christians face a cultural war, but that they should turn a necessity into an opportunity. “Someone’s values”, he declares, “are going to prevail. Why not ours?”<sup>13</sup>

This helps explain characters like Tom DeLay, the powerful former congressman from Texas. He famously claimed that he wanted people to recognize Christ through him on the occasion of his mug shot.<sup>14</sup> His forceful and creative manipulation of the levers of power, apparently beyond the standards of legal acceptability, reveals that in the battle against secularism, he recognizes winners and losers but few, if any, rules of engagement. Many would call his imitatio Christi into question simply on the basis of his capitol hill nickname, “The Hammer”, but he surely thinks of himself as the hammer of God.

The debates in with the scientific community also hint at relativism. The aim of the creationists, in their attempts to influence teaching in the public schools, is rarely a positive attempt to persuade others to believe in the six day creation. They only hope to cast doubt on the theory of evolution, often using the debates that exist on the frontiers of scientific discovery as reason to reject evolution as a whole. Georgia science textbooks are required to carry a sticker proclaiming that evolution is “only a theory”. Creationists and their cousins, the proponents of intelligent design, do not ask for the exclusion of evolution from the classroom. They push only for the inclusion of creationist ideas, under the presupposition that all ideas have the same epistemological standing, due simply to the fact, it would seem, that somebody has them.<sup>15</sup>

What liberals naively take as a creed for tolerance easily leads to frightening practical conclusions in the hands of cultural warriors. Violence may grow from pride and ignorance, but in this case, it is at least as likely to stem from desperation, from the sense that in the battle with a Godless world, there is no other path to take. The community of believers must chart its own course. Ideas and practices must be promoted by coercion and violence, not by the compelling qualities of truth and justice, because the survival of the

<sup>11</sup> Booth, *Fundamentalism Comprehended*, p.367.

<sup>12</sup> Buchanan and America: Come back to God

<sup>13</sup> Buchanan

<sup>14</sup> Get it...

<sup>15</sup> The Bush administration seems to follow a similar strategy in relation to global warming. Speak to the controversy. The fact that anyone might disagree with the overwhelming consensus of the scientists is reason enough to doubt their conclusions.

community itself is at stake. The arena mentality, in which Armageddon forms the archetype of all cultural interaction, reaches its terrifying limit.

Perhaps pride and despair simultaneously contribute to violence, with pride providing the outward justification and despair providing the deeper drive; but it is no more important to hang the label of “relativist” around fundamentalists’ necks than it is to call them sinners. It is enough to show that the nihilism that fundamentalists occasionally display are not inexplicable aberrations. It is enough to show that their fear is not a moment that is quickly overcome through their embrace of an authoritarian revelation. It is an abiding despair that they must constantly paper over. To try to dismantle their absolutes with condescending lessons about relativity, therefore, is to teach them what that they already know.

If we would like to provide a viable alternative, Niebuhr’s framework is evocative, for it would have us steer a path between the extremes of moral relativism and moral absolutism. Niebuhr, and more recently thinkers like Hilary Putnam and Jeffery Stout, point to the self-contradictions of either extreme. The relativist cannot help but assume that there is some still point in ocean of history upon which she can rest her theory, an assumption without which she is ultimately rendered mute. The absolutist, on the other hand, is forced to define Truth and Justice with historically conditioned language – a fact that necessarily undermines the absoluteness of any of her claims.

A positive response to fundamentalism will require that we cast off the unhealthy and false choice between relativist and absolutist approaches to knowledge. We can join them in their fight against relativism, show ourselves to be comrades in the pursuit of truth, but caution them against claims to the absolute. We can acknowledge that what makes an idea true is not simply that it happens to reflect the historical and cultural milieu in which it arises, even though we must also admit that our sharing in this context has nearly everything to do with our acceptance of the idea’s truth. This is an indication of what Putnam means when he argues that we should strive to be realists with a small ‘r’.

Although the truth and goodness are elusive, we are destined to try to define them. The sin lies not in the attempt to reach beyond ourselves, nor does it lie in our positive claims to have knowledge. The sin lies in forgoing the quest, either because of its supposed impossibility or because we claim that our constructions are, for whatever reason, beyond critique. We dare not abandon the search. We need only to be open to revising what we find according to the best justificatory arguments we can muster.

This middle path also implies that we must push ourselves to develop substantive notions of the good. Too often, this field is ceded to the right, who are not shy about defining the good life. If we would present a persuasive alternative to fundamentalism, we must move beyond the liberal contentment with definitions of the necessary procedural virtues for living in a pluralistic society. I am preaching to the choir at a conference like this, but we must work to bridge the gaps between our various communities, to define justice in the concrete fashion needed for individuals to be able to identify with the social whole. Or perhaps, as Stout tries to do in his most recent book, we must work to make the substantive implications for justice in a liberal society more explicit.

At least part of this effort will involve what Stout has called “immanent criticism”: seeking the necessary common ground with others to exchange meaningful criticism about the limitations (and strengths) of our positions. This is the outward thrust of the critique

above. The charges of sinfulness and latent relativism are not the typical idiomatic liberal declarations that fundamentalists have long rejected. If we join them in their denunciations, but also display the ways in which relativism informs their ideas and actions nevertheless, we have a chance of reaching them. Though talk of sin has faded from polite society, as I have already acknowledged, this paper represents a humble argument for its relevance. Those of us who are still willing and able might find fundamentalists to be most open to an authentic attempt to expose the nature of their sin.<sup>16</sup>

As important as all of this intellectual positioning might be, we must use our power, or push the powerful, to turn our substantive truths into concrete justice. Injustice is as important a factor in the fundamentalist equation as existential angst. We must pursue our best conceptions of the common good, neither in surrender to terrorist demands nor as an attempt to impose our sense of order on others. We must take the risk of trying to help, but do so with a humility that enables us to hear the concerns of those we are helping. We cannot hope to resolve all of our differences. We cannot hope to avoid all violent conflict, but we can begin to bind the bloody wounds that serve to heighten the temptation of fundamentalist remedies. Even an honest attempt on the part of the powers of this world would do a great deal to decrease the appeal of the extremists.

While this framework has a disconcertingly wide applicability beyond our current subject matter, it draws the popular and scholarly depictions of fundamentalism together, with pride and despair comprising the light and dark side of the fundamentalist moon.

Calling someone a sinner, however, is not usually the best way to begin a constructive dialogue. Niebuhr's framework should not be seen, in the first place, as a hammer with which to bludgeon fundamentalists into intellectual and spiritual submission, but as an interpretive tool that provides a means for retooling our approach to the far right.

<sup>16</sup> This paper obviously constitutes a humble argument for the relevance of the categories of sin, as Niebuhr describes them, for understanding human behavior.

*Knut Berner:*  
*Tödliche Tugend: Terror und Moral*

I. ‚Tötbare‘ Wesen

Mythologisch gesprochen ist der Tod ökumenisch, anarchisch und amoralisch. Irgendwann vernichtet er jeden Menschen und fragt dabei nicht nach der günstigen Stunde. Gilt für den modernen Terrorismus, dass er – mit den Worten von Jürgen Habermas – „eine Identifizierung des Gegners und eine realistische Einschätzung des Risikos unmöglich macht“<sup>1</sup>, so ist der Tod seit jeher der Topterrorist schlechthin. Seiner Unberechenbarkeit suchen Menschen durch Verdrängung oder verharmlosende Umdeutungen<sup>2</sup> zu begegnen, aber auch durch Konstruktionen scheinbar katastrophenresistenter und sinnstiftender Ordnungen wie z.B. Lebensversicherungen. Generell suggeriert die Existenz einer moralischen und einer rechtlichen Matrix den Mitgliedern moderner Gesellschaften Sicherheit, Stabilität und die Möglichkeit einer guten Lebensführung. Der Tod hingegen ist schrecklich ungerecht, weil er diese Ordnungen und ihre Maßstäbe verhöhnt, alle zu Verlierern macht und sich ignorant gegenüber Unterschieden in der Lebensführung zeigt. Das ist empörend und weckt das Verlangen nach Bekräftigung der fundamental in Frage gestellten Maßstäbe. Psychologische Experimente<sup>3</sup> zur Stützung der Terror-Management-Theorie haben gezeigt, dass eine künstlich erzeugte Konfrontation mit der eigenen Sterblichkeit bei Probanden zu verschärften Reaktionen auf die Verletzung moralischer Standards führt. Als ein beachtlicher Effekt ergibt sich die Tendenz zur rigideren Rechtsauffassung, die sich im Wunsch nach härteren Strafen gegenüber Normbrechern äußert. Meine These angesichts dieses Befundes lautet: Traditionell erkennbare Zusammenhänge von Sterbensangst, Moralapplikation und Rechtsauslegung radikalisieren und verändern sich in Situationen, wo Menschen gezwungen werden, sich nicht nur gelegentlich mit ihrer kreatürlichen Endlichkeit auseinanderzusetzen, sondern auf Dauer Szenarien drohender Vernichtung ausgesetzt sind.

Moderner Terrorismus schafft solche Situationen. Er bedroht jeden zu jeder Zeit und an jedem Ort mit Vernichtung und bewahrheitet auf seine Weise die Diagnose von Günther Anders, der zufolge die Mitglieder der Weltgesellschaft „heute primär nicht ‚sterbliche‘, sondern ‚tötbare‘ Wesen“<sup>4</sup> sind. Dies hat mehrere gravierende Folgen: Erstens scheint sich die anthropologische Diagnose, der zufolge der Tod zugleich das Ureigenste und das Fremdeste<sup>5</sup> jedes Menschen ist, in einen irreduziblen Hiatus zu verwandeln: Terroristen reklamierten nach dem Madrider Anschlag 2004 für sich eine ureigene Affinität zum Tod:

<sup>1</sup> J. Habermas/ J. Derrida, Philosophie in Zeiten des Terrors, Wien 2004, 53.

<sup>2</sup> Vgl. dazu K. Berner, Todesdeutungen im Konflikt. Dogmatische und ethische Überlegungen zum Umgang mit dem Lebensende. In: NZStH 47. Bd., 2005, 306-322.

<sup>3</sup> Vgl. R. Ochsmann, Angst vor Tod und Sterben. Beiträge zur Thanato-Psychologie, Göttingen 1993, 150 ff..

<sup>4</sup> G. Anders, Die Antiquiertheit des Menschen, Bd.2:Über die Zerstörung des Lebens im Zeitalter der dritten industriellen Revolution, München 1986, 405.

<sup>5</sup> Vgl. zu dieser wegweisenden Definition E. Jünger, Tod, Stuttgart (2. Aufl.) 1983, 12ff.

„Ihr liebt das Leben, wir lieben den Tod und deshalb werden wir siegen“.<sup>6</sup> Die um ihr Recht auf einen würdigen und individuell zu gestaltenden Sterbensprozess gebrachten Opfer und ihre Angehörigen hingegen wurden genötigt, die ihnen widerfahrende Vernichtung als das ihnen Fremdeste zu erfahren. Zweitens begünstigt die Hilflosigkeit von Individuen und Staatengemeinschaften gegenüber ihrer beständigen und kaum verdrängbaren Attackierbarkeit eine oberflächliche, aber politisch effektvolle, Moralisierung. Sie führt dazu, jetzt nicht mehr im Einzelfall die Verletzung moralischer Standards – z. B. das Tötungsverbot – mit verschärften Reaktionen zu ahnden, sondern prophylaktisch Amoralität zu unterstellen und apodiktisch zwischen Guten und Bösen zu unterscheiden: „Die Unrasierten mit einem Küchentuch auf dem Kopf sind alle gleich“.<sup>7</sup> Der Gesichtslosigkeit des modernen Terrors korrespondiert eine extensive Verortung potentieller Täter in ‚Schurkenstaaten‘, die sich vom eigenen politischen System sauber abgrenzen lassen. Unterlassen wird bei solchen Stereotypisierungen die kritische Reflexion systemimmanenter Schattenseiten, der vielleicht dezenteren Mechanismen der Angsterzeugung und Verwobenheiten in Vernichtungsszenarien. Deshalb fragt Derrida zu Recht: „Wirkt der Terrorismus nur durch den Tod? Kann man nicht terrorisieren, ohne zu töten? Und heißt töten notwendigerweise: umbringen? Nicht auch ‚sterben lassen‘? Kann ‚sterben lassen‘, ‚nicht wissen wollen, daß man sterben läßt‘ (Hunderte Millionen menschlicher Wesen, vor Hunger, an Aids, wegen mangelnder medizinischer Versorgung usw.) nicht Teil einer ‚mehr oder weniger‘ bewußten und ausdrücklichen terroristischen Strategie sein?“<sup>8</sup>

Die moralisch-mentale Einebnung des Unterschiedes zwischen konkreten Aggressoren und potentiellen Feinden tendiert drittens nicht nur zur verschärften Rechtsauslegung im Einzelfall, sondern zur generellen Suspendierung etablierter Rechtsnormen. Diese soll nach zugrunde gelegter utilitaristischer und altruistischer Rhetorik selbstverständlich nicht nur einem Staatengebilde wie den USA, sondern der ganzen ‚freien Welt‘ zugute kommen. Guantánamo ist längst Chiffre des rechtsfreien Raumes, „der sich öffnet, wenn der Ausnahmezustand zur Regel zu werden beginnt“<sup>9</sup> Um ein solches Gebilde dauerhaft legitimieren zu können, wird von der souveränen Macht auf eine funktionalisierte Moral zurückgegriffen und gleichzeitig den jahrelang ohne Prozessverfahren Internierten prinzipielle Amoralität bescheinigt. Aufschlussreich ist hierfür der Umgang mit den Suiziden dreier Inhaftierter im Juni 2006, die offenbar die extremen Lagerbedingungen in Guantánamo nicht ertrugen. Denn „während George W. Bush verspricht, die Toten ‚human‘ zu behandeln, legt sein Militär noch nach. ‚Diese Selbstmörder‘, so behauptet Lagerkommandant Harry Harris, ‚sind gerissen, erfinderisch und von ihrer Sache überzeugt‘. Die Inhaftierten hätten ‚keine Achtung vor dem Leben‘“.<sup>10</sup> Achtung vor dem Leben ist eine ethische Grundforderung. Wie wenig sie aber in der politischen Ordnung derzeit zählt, zeigt besonders die gezielte Tötung des Terroristen Abu Musab al Zarqawi. Sie ist von prinzipieller Bedeutung. Denn während das Völkerrecht zwar weit reichende Schutzvorkehrungen zur Ab-

<sup>6</sup> Zitiert nach H.M. Enzensberger, SchreckensMänner. Versuch über den radikalen Verlierer, Frankfurt a.M. 2006, 48.

<sup>7</sup> Dieses Diktum wird zitiert bei A. Primor, Terror als Vorwand, Düsseldorf (2. Aufl.) 2004, 15.

<sup>8</sup> J. Habermas/J. Derrida (s. Anmk. 1), 144.

<sup>9</sup> G. Agamben, Homo sacer. Die souveräne Macht und das nackte Leben, Frankfurt a. M. 2002, 177.

<sup>10</sup> F. Klenk, Martyrium im Käfig. In: Die ZEIT vom 14. Juni 2006, 6.

wehr terroristischer Anschläge vorsieht, „ist die Ermordung, unmenschliche Behandlung oder Folterung von Terroristen unter keinen Umständen zulässig“.<sup>11</sup> Das Bemerkenswerte an der dennoch erfolgten und zuvor sorgfältig geplanten Liquidierung ist nicht nur die Suspendierung des Rechtes, sondern die gleichzeitige Deklaration des Gewaltaktes als sittliches Ereignis, das die Moral der irakischen und amerikanischen Sicherheitskräfte stärken soll. Und obwohl etwa in Israel-Palästina solche gezielten Tötungen durch Staatsorgane kein Einzelfall sind, so ist die kritiklose Hinnahme, ja erleichterte Zustimmung der internationalen Staatengemeinschaft zur hinterhältigen Tötung eines Verbrechers, dem nie der Prozess gemacht wurde, ein Novum. „Er habe beim Nato-Verteidigungsministertreffen in Brüssel Rumsfeld zu dem Schlag gratuliert, sagte Jung. Die Nato-Minister hätten die Eliminierung Zarquawis ‚generell positiv bewertet‘“.<sup>12</sup> Nicht einmal die Kirchen protestieren gegen diese Positivsanktionierung der Heckenschützenmentalität, obwohl im Zentrum des christlichen Glaubens die Rechtfertigungslehre steht, der zufolge auch der übelste Mensch nicht in seinen Taten<sup>13</sup> aufgeht. Angesichts der aufwändigen Diskussionen, die in der Vergangenheit dem ethischen Problem des Tyrannenmordes gewidmet waren und angesichts der quasi einhelligen Ablehnung der Todesstrafe in der neueren Theologie, kann das Schweigen zu einem Tötungsakt, der gravierender ist als die Todesstrafe, weil er nicht einmal auf einer gerichtlichen Verurteilung gründete, nur befremden. Insbesondere vor dem Hintergrund, dass kirchliche Institutionen gegenwärtig ihr Wächteramt in allen möglichen Wertedebatten gerne unterstreichen.

## II. Terrormentalität

Die Etablierung des Ausnahmezustandes, seine moralische Legitimation unter gleichzeitiger Missachtung elementarer Rechtsgrundsätze, ist nicht nur deshalb problematisch, weil sie auf Angst vor unberechenbaren Gefahren beruht, sondern weil damit ein Denkschema kopiert wird, das dem Terrorismus<sup>14</sup> selber inhäriert. Dieser versteht sich keineswegs als amoralisch, sondern als tugendhaft und zielt auf die moralische Diskreditierung derer ab, die er provoziert. Gruppenloyalität, bedingungsloser Gehorsam und traditionelle Ehrenkodices fördern die Bereitschaft, zum Suizidattentäter<sup>15</sup> zu werden. Altruistische Motive klingen an, wenn Osama Bin Laden in seiner ‚Botschaft an das amerikanische Volk‘ beteuert, „daß wir niemals daran gedacht hätten, die Türme zu zerstören, wenn wir nicht solche Ungerechtigkeit und Unterdrückung von dem amerikanisch-israelischen Bündnis gegen die Unsrigen [...] erlebt hätten, so daß wir, als das Maß voll war, daran gedacht haben“.<sup>16</sup> Ayman al Zawahiri wird nicht müde, in deontologischer Manier die Pflicht zum Dschihad<sup>17</sup> zu erläutern und zugleich die Unmoral seiner Gegner anzuprangern. Denn die „

<sup>11</sup> H.-J. Heintze, Ächtung des Terrorismus durch das Völkerrecht. In: H. Frank/K. Hirschmann (Hg.): Die weltweite Gefahr. Terrorismus als internationale Herausforderung, Berlin 2002, 95.

<sup>12</sup> Zitiert nach tagesanzeiger.ch online vom 9. Juni 2006.

<sup>13</sup> Vgl. aber auch aus philosophischer Perspektive die entsprechenden Hinweis bei P. Ricoeur, Gedächtnis, Geschichte, Vergessen, München 2004, 759.

<sup>14</sup> Vgl. P. Waldmann, Terrorismus. Provokation der Macht, München 1998, 33.

<sup>15</sup> Vgl. J. Croitoru, Der Märtyrer als Waffe. Die historischen Wurzeln des Selbstmordattentats, Wien 2003, 225.

<sup>16</sup> Zitiert nach G. Kepel/J.-P. Milelli (Hg.): Al-Qaida. Texte des Terrors, München 2006, 130.

<sup>17</sup> Vgl. a. a. O., 355ff.

haben vor keinem Schamgefühl, keinen Sitten, keiner Familie und keinen Verträgen Achtung“.<sup>18</sup> Ist der Tod amoralisch, so kommt das Töten offenbar ohne moralische Legitimation nicht aus. Und angesichts der markierten hermeneutischen Parallelen, die Liquidierungsverfahren flankieren, scheint es fragwürdig, ob künftig noch im Anschluss an Kurt Bayertz<sup>19</sup> allein dem Fanatiker attestiert werden kann, ein Hypermoralist zu sein, der seine partikuläre Moral als einzig wahre behauptet und universell gültige Normen missachtet. Universalisierung aber braucht den zumindest perspektivierten herrschaftsfreien Diskurs aller Beteiligten und der wird in der gegenwärtigen von Angst und Selbstrechtfertigung dominierten Terrorismedebatte nirgendwo als realistisch erkannt. Es herrscht bei allen Akteuren nicht zuletzt aufgrund moralischer Überlegungen das Verlangen zur Ausschaltung der Gegner und damit die epistemologische Antithese zu folgendem Grundsatz: „Du sollst moralisch sein, weil du damit Schädigungen anderer vermeidest und auf diese Weise zum Wohl aller beiträgst!“<sup>20</sup>

Diese anscheinend irreduzible Verwobenheit von Terror und Moral ist auch historisch gut belegt. Spanier haben im 16. Jahrhundert Indianer aus der Menschheit herausdefiniert<sup>21</sup>, damit die Conquistadores sie besser liquidieren konnten. Himmler attestierte den SS-Schergen, die den Anblick der von ihnen produzierten Leichenberge ‚ausgehalten‘ haben, Anständigkeit. Und die Wirksamkeit dieses Konstruktes zeigt sich noch daran, dass viele KZ-Überlebende später in Prozessen einzelne Lagerkommandanten ebenfalls als ‚anständig‘ und ‚korrekt‘ bezeichneten<sup>22</sup> – einen Nachhall finden solche moralischen Einschätzungen gegenwärtig in Aussagen befreiter Geiseln, die die Erfahrung des Terrors durch den Hinweis relativieren, sie seien gut behandelt worden. Wenngleich es also immer schon die Faszination eines ‚gerechten Terrors‘ und Formen seiner moralischen Bewertung gegeben hat, ist nun ein neues Paradigma im Entstehen, das zu einer dauerhaften Unterhöhlung des Rechts aufgrund instrumentalisierter Moralapplikation führen kann. Dies bedeutet zum einen für die Angehörigen der internationalen Staatengemeinschaft eine schleichende Minderung ihrer Bürgerrechte, insofern die Angst vor Terror zu verstärkten Eingriffen in die Privatsphäre führt. Die Lockerung des Datenschutzes durch die Einfügung biometrischer Merkmale im Personalausweis und das Abhören von Telefongesprächen sind Beispiele dafür, „daß es Leute gibt, denen diese Folgen des Terrors durchaus willkommen sind. Es geht nichts über einen Außenfeind, auf dessen Existenz die Apparate der Überwachung und der Repression sich berufen können [...] Die gefährlichste aller Auswirkungen des Terrors ist die Infektion am Gegner“.<sup>23</sup>

Zum anderen etabliert das zunehmende Desinteresse an der internationalen Einhaltung rechtsstaatlicher Grundsätze eine brüchige Legitimationsgrundlage für zwischenstaatliches Konfliktmanagement, die sich zudem nicht eindeutig von terroristischer Wirklichkeitsdeutung und Verhaltensstrategie abgrenzen lässt: „Der neue Typus von Moralität hat ein

<sup>18</sup> Vgl. a. a. O., 414.

<sup>19</sup> K. Bayertz, *Warum überhaupt moralisch sein?*, München 2004, 31f.

<sup>20</sup> A. a. O., 246.

<sup>21</sup> Vgl. Chr. Frey, *Theologische Ethik*, Neukirchen-Vluyn 1990, 175.

<sup>22</sup> Nachweise und Analysen bei K. Orth, *Die Konzentrationslager –SS. Sozialstrukturelle Analysen und biographische Studien*, Göttingen 2000, 250ff..

<sup>23</sup> H.M. Enzensberger, (s. Anmk 6), 52.

Janusgesicht. Er zwingt die demokratische Staatengemeinschaft dazu, selber Gewalt anzuwenden, um den Ausbruch unkontrollierter, durch Verhandlungen nicht beeinflussbarer Gewalt gegen Völker oder Minderheiten zu beenden [...] Indem die Politik ihr Handeln moralisch statt völkerrechtlich begründet, ist sie verletzbar, ja letztlich manipulierbar“.<sup>24</sup>

### III. Politische Ethik in Zeiten des Terrors

Politische Ethik wird angesichts dieser Entwicklungen darauf hinzuwirken haben, dass vom Terror bedrohte Gesellschaften nicht ihre Errungenschaften im Rechtswesen dadurch aufs Spiel setzen, dass sie sich aus Angst die gleichen moralischen Denkschemata und Gewalt legitimierenden Mittel zunutze machen, die der Terrorismus selber verwendet. Es ist nicht zu vergessen, „daß mit der Aufwertung, die Terroristen dadurch erfahren, deren Selbstverständnis als außerordentliche Bedrohung des Staatswesens bestätigt und noch zusätzlich gesteigert wird“.<sup>25</sup>

Indem die Ethik darauf hinwirkt, dass Moral nicht gegen Recht ausgespielt wird, muss sie zugleich an der Verbesserung der Rechtsordnung mitwirken. So ist die bisherige Nichtexistenz<sup>26</sup> eines für internationale terroristische Delikte zuständigen Gerichtshofes und verbindlicher Richtlinien für die Auslieferung von Terroristen und für die Gestaltung ihrer Prozesse ein Desiderat des gegenwärtigen Völkerrechtes und trägt zu seiner begrenzten Wirksamkeit bei. Diese Schwächung ist aber nicht grundsätzlicher Art wie die von Kant hervorgehobene Beschränktheit jeglicher Rechtssysteme, die darin besteht, dass das Recht den richtigen Gebrauch der Freiheit lediglich im äußeren Verhältnis der Menschen zueinander regelt und nicht mit der inneren Freiheit identisch ist. In dieser nicht zu leugnenden Beschränkung liegen aber zugleich Chancen wie etwa die Möglichkeiten von Kontrollen. Und die Rechtsorientierung bietet damit eine verlässlichere Grundlage für die Gestaltung von Lebensverhältnissen als die selektiv-willkürlichen Berufungen auf solche moralischen Grundsätze, die einer universalistischen Überprüfung nicht standhalten und das Niveau bereits erreichter und kodifizierter normativer Übereinkünfte zu unterschreiten drohen. Moral anstelle des Rechtes ist vor allem deshalb gefährlich, weil ihre politische Applikation suggeriert, eine komplexe und nicht greifbare Bedrohung mental klassifizieren und durch einfache Verhaltensschemata bewältigen zu können. Sofern dabei Einsicht in das Gute und Richtige für alle behauptet wird, gerät leicht die These von Jean-Claude Wolf<sup>27</sup> in Vergessenheit, dass nämlich Paternalismus eine ausgezeichnete Quelle des Bösen darstellt. Das ist zu bedenken, wenn sich irrationale Hoffnungen an die Potenz des Staates zur Vermeidung terroristischer Anschläge knüpfen und normativ eingefordert wird: „Renationalisierung, die Besinnung auf den Staat mit seinen Schutzfunktionen, ist vorrangig geworden. Die Terrorangriffe haben das Sicherheitsbedürfnis der Menschen drastisch vergrößert, so dass ein grundsätzlicher Einstellungswandel gegenüber dem Staat zu beobachten ist: Statt mehr Distanz und Maximierung der individuellen Einzelinteressen erkennen die Menschen unter dem Eindruck des 11. September, dass allein der Staat ihnen Sicherheit geben

<sup>24</sup> A. Grunenberg, Das Scheitern der Moralisierung. In: K.M. Michel u. a. (Hg): Kursbuch 136: Schluß mit der Moral, Berlin 1999, 23.

<sup>25</sup> P. Waldmann, (s. Anmk 14), 190.

<sup>26</sup> Vgl. dazu a. a. O., 199.

<sup>27</sup> Vgl. J.-C. Wolf, Das Böse als ethische Kategorie, Wien 2002, 116.

kann...“.<sup>28</sup> Evident ist aber nicht die Notwendigkeit zur Staatsüberhöhung, sondern die Einsicht, dass das physische Zwangsmonopol angesichts des Terrorismus an seine Grenzen stößt, da kein Staat bislang terroristische Anschläge verhindern konnte. Es ist ein ethisches Erfordernis, dieses Nicht-gewährleisten- können absoluter Sicherheit gegenüber den Bürgerinnen und Bürgern zuzugeben und einzugestehen, dass mit terroristischer Gefahr dauerhaft gelebt werden muss. Theologische Ethik, die um die Ambivalenz der Tugendhaftigkeit weiß und der von der Moral in Anspruch genommenen Kompetenz zur Unterscheidung von Gut und Böse einen illusionären Charakter attestieren muss, wird darüber hinaus von staatlichen Akteuren wie von jeglichem Individuum einfordern, sich niemals selber vorschnell auf der Seite des Guten und Gerechten zu wähnen. Wie gesehen, hat der Terror jeglicher Couleur hierin seine tiefste Wurzel. Diese seine Logik zu verstehen, ist ein erster Schritt zu seiner Bekämpfung. Ein weiterer wäre die Suche nach Zukunftsperspektiven, die dem stets auf Vergeltung vergangenen Unrechts fixierten Terrorismus künftig den Boden entziehen und weltweit ein Klima seiner Nichtakzeptanz erzeugen. Denn die Stimmungslage ist für terroristische Erfolgsaussichten ausschlaggebend und sie kann sich nur verändern, wenn die konzeptionelle Unproduktivität des Terrorismus einsichtig wird. Dies aber kann ansatzweise nur geschehen, wenn die internationale Staatengemeinschaft Abschied von ihrer moralistischen Autoimmunisierung nimmt. Sie muss bereit sein, diejenigen in ihre Zukunftskonzepte als Gleichwertige mit einzubeziehen, die nicht den harten Kern, sondern das Unterstützerpotential des Terrorismus bilden. Die Erfolgsaussichten dafür sind so ungewiss wie die Beantwortung der Frage, ob die stets im Kommen<sup>29</sup> befindliche Gerechtigkeit bei der notwendigen Umgestaltung politischer Verhältnisse Ereignis werden kann. Moral ist gefährlich, sofern sie das Gute und Gerechte bereits als feststehend ansieht. „Angesichts dieser Sachlage ist es die vielleicht vordringlichste Aufgabe der Ethik, vor Moral zu warnen“.<sup>30</sup>

<sup>28</sup> Chr. Hacke, Die amerikanische Außenpolitik nach dem 11. September. In: H. Frank/K. Hirschmann (s. Anmk 11), 354.:

<sup>29</sup> Vgl. dazu J. Derrida, Gesetzeskraft. Der ‚mystische Grund der Autorität‘, Frankfurt a. M. 1991, 55ff.

<sup>30</sup> N. Luhmann, Paradigm lost: Über die ethische Reflexion der Moral, Frankfurt a. M. 1990, 41.

*Kjetil Fretheim:*

*Acclaimed and undefined. Rights and responsibilities in the Norwegian Development Aid Discourse*<sup>1</sup>

The language of human rights seems to have become part of the political rhetoric not only on the domestic and the international scenes, but also in government and non-government circles. In the field of development aid most international aid agencies today see themselves committed to human rights, label their aid efforts as human rights-based and say they adopt a human rights approach in their work. However, this shared language has not silenced the at times heated debates on development in general and on development aid in particular. As Tomasevski points out: "The never-ending debate about the end and means of development and the role of aid is by no means simplified by the introduction of human rights."<sup>2</sup>

In this paper I depart from the assumption that there might be different interpretations of the concept of human rights in the aid community, as the term is used and understood in different ways by the various actors. Accordingly, the question I raise in this paper is this: What characterizes the use and understanding of human rights and related responsibilities in the contemporary Norwegian development aid discourse? Discussing this question I will draw on findings from an ongoing PhD-project on the moral discourse of Norwegian development aid. The project is based on an analysis of key policy documents as well as on interviews with expatriate development workers.<sup>3</sup>

To explore the use and interpretation of the rights language I identify how it is understood in relation to competing concepts and discourses. Important among these are not least the charity and needs discourses. I will in this paper focus on the latter. Related to the rights discourse there is also a discourse of responsibility. While the recipients of Norwegian aid are said to have rights (as well as responsibilities), the aid donor – either conceived as the Norwegian state, people or individuals – is said to have a responsibility. I will discuss how this concept of donor responsibility is interpreted in the contemporary Norwegian aid discourse and to what extent or in what way any notion of moral duty on part of the donor is included in the understanding of rights-based aid.

<sup>1</sup> Drafts to this paper were presented at Societas Ethica/Society for the Study of Christian Ethics' annual conference in Oxford August 2006 and at the annual conference of the Norwegian Association for Development Research in Oslo September 2006. The author wants to thank the participants at the relevant workshops for their critical and constructive comments.

<sup>2</sup> Tomasevski, 1989:205

<sup>3</sup> A total of 23 semi-structured in-depth interviews with Norwegian expatriates working with the administration and implementation of Norwegian development aid were conducted in 2004 and 2005. The interviewees were staff members either at Norwegian embassies or regional/country representations for Norwegian Church Aid, Save the Children Norway or Norwegian People's Aid. A more thorough discussion of the methodological issues and more comprehensive presentation of the informants will be provided in the forthcoming PhD-dissertation presenting the research on which this paper relies.

As the Norwegian government is the main back donor for Norwegian development aid, I discuss in the first part of the paper how the concept of human rights is conceptualized in *Fighting Poverty Together. A Comprehensive Development Policy*, Report No. 35 to the Storting<sup>4</sup> (2003-2004). I will also briefly compare the rhetoric of this report with that of policy papers from some of the key Norwegian non-governmental organisations (NGOs) committed to development aid. In the second and main part I discuss expatriate aid workers' conceptions of human rights and rights-based aid.

I will argue that an important strand in the Norwegian aid discourse relates human rights to the concept of human dignity, understands it as referring to political, economic, social and cultural rights, and includes a conception of corresponding responsibilities, on occasion moral duties. Another strand within this discourse, however, seems to have only a vague notion of the concept of human rights and what a human rights-based approach in development aid implies. The meaning – as well as the practical and moral implications – of aid understood as rights-based seem unclear to some of the informants. Thus, though the concepts of rights and responsibility appear acclaimed, the implications of having a rights-based approach in development aid remain unclear.

#### Fighting poverty together

The Norwegian Ministry of Foreign Affairs released *Fighting Poverty Together* in April 2004. Reporting from the release and quoting Prime Minister Kjell Magne Bondevik *Aftenposten*, one of the leading Norwegian newspapers, wrote:

"The Prime Minister says the maybe most important element in the Report to the Storting is that the rationale for giving development aid has been changed: - Until now the prevailing opinion has been that aid is given on the basis of charity. The Government wants to change this, and to state the reasons for providing aid in terms of human rights. It is a human right not to live in extreme poverty. Norwegian aid will not be that we sacrifice a part of our wealth, but rather that those who receive it have a right to receive, says the Prime Minister." (Mathismoen 2004 in *Aftenposten*, 30.04.2004)<sup>5</sup>

The opening chapter of the report, Introduction and Summary, begins with the two paragraphs Human dignity for all and Norway's responsibility (Ministry of Foreign Affairs 2004a:5f). The former paragraph elaborates a rationale for aid that can be characterised as cosmopolitan and idealistic. "Human dignity is inviolable. The work for human rights is a natural consequence of this." (Ministry of Foreign Affairs 2004a:5). Or, as put in the English summary of the report: "We only have one world. The dignity of every individual is universal and indivisible. This conviction underlies our common struggle for human rights." (Ministry of Foreign Affairs 2004)<sup>6</sup>

Thus, the dignity of all human beings and their human rights derived from this dignity become the core of the argument for Norwegian aid. The universal scope of these rights is also underlined. "Through the UN's Declaration of Human Rights and conventions on civil and political, as well as economic, social and cultural human rights, it is made clear

<sup>4</sup> The Norwegian Parliament

<sup>5</sup> This quote and all of the following where the original is in Norwegian have been translated by the author.

<sup>6</sup> The English summary is published as an unpaginated pdf-file on:  
<http://odin.dep.no/filarkiv/208967/stprp35.pdf> (accessed August 10 2006)

how human rights apply to all and that all have the same rights.” (Ministry of Foreign Affairs 2004a:5). And in line with the prime minister’s statement, the report also programmatically states: “Development policy is not charity” (Ministry of Foreign Affairs 2004a:5)

The role and importance of human rights as the basis for development policy is articulated on several occasions in the document – most explicitly in a separate section titled A rights-based development policy. Here the rights-based approach to development is explicated. It is seen to be in line with other key Norwegian governmental policy papers<sup>7</sup>, the normative framework provided by the United Nations<sup>8</sup> and the policies of other bilateral donors and non-governmental organizations.<sup>9</sup> Further, the close relationship between human rights and development is stressed, and following a historical review of how this relationship has been understood, the report summarizes that:

“Gradually one has increasingly experienced that there is no contradiction between promoting economic and social development, and strengthening the legal system and the human rights. Rather, the latter are often important prerequisites for economic and social development, and integrated elements in a result oriented development policy”. (Ministry of Foreign Affairs 2004a:10)

Accordingly, the report also points to the clear connection between democracy and development.

Elaborating on the concept of rights-based development, the report further underlines the individual character of human rights, and how the adoption of individual rights constitutes a “core element in the understanding of what the path out of poverty consists of” (Ministry of Foreign Affairs 2004a:11). The rights of women, the disabled and children are mentioned specifically. Further, the report makes the point that the human rights mode of thought also constitutes the basis for a more comprehensive understanding of starvation, and can be expressed as freedom to make real choices. Accordingly, “this perspective implies [...] a challenge to include the human rights mode of thought both in analyses of poverty and in the shaping of development programmes.” (Ministry of Foreign Affairs 2004a:12). The rights-based approach is therefore not a framework that focuses exclusively on specific target groups. Rather, it “broadens the question of realizing rights to include a range of elements that together contribute to ensuring the rights of the individual”. (Ministry of Foreign Affairs 2004a:12).

<sup>7</sup> “Report No. 21 to the Storting (1999-2000) “Focus on Human Dignity” marks human rights as the foundation in Norwegian development policy. This was followed up in the same governments Action Plan “Fight Against Poverty”, where it is stated that “civil, political, economic, social and cultural rights will be central in the dialogue with countries with whom Norway cooperates.” (Ministry of Foreign Affairs, 2004a:10)

<sup>8</sup> “The point of departure is the UN’s Declaration on Human Rights from 1948 which asserts that everyone has the right to a decent standard of living, inter alia to food, clothes, housing, medical treatment and necessary social services. It is especially the United Nations, with its global norm-setting function, that has been at the centre of the debate on deciding on individual rights as the key element in the understanding of what the way out of poverty consists of: women’s rights, the right to food, the right to water.” (Ibid.:11)

<sup>9</sup> “Today, a range of UN organisations, bilateral donors and non-governmental organisations increasingly adopt the rights perspective in their strategies and programs, and work to develop methodologies for integrating the rights perspective better in their development programs.” (Ibid.:13)

Thus, at this stated policy level, the ideas of human dignity and universal human rights constitute the fundamental building stones of the rationale for Norwegian development aid policy. Human rights are at the core of the policy described in the report, and with this broad conception of the rights-based approach, it is – as signalled in the report's subtitle – a comprehensive development policy the government calls for. Along with human rights as a key concept in Norwegian development aid policy and in the government's stated moral rationale for international aid, the report also discusses Norway's responsibility in this regard:

"As one of the world's richest countries, Norway has a special responsibility. We are faced with an ethical demand to do something about injustice, and to influence the development in a positive direction when we have the possibility to do so." (Ministry of Foreign Affairs 2004a:6)

Here, the case for Norwegian development aid is explicitly made a moral concern, as an ethical demand (No.: *krav*) is said to drive this political commitment. In the English summary, this special responsibility is referred to as a "moral responsibility". It is, however, worth noting how this ethical demand or moral responsibility in both cases is related, in both cases, to the relative wealth of Norway, and the corresponding ability to provide aid. As it is put, this implies that those who do not have similar means do not have the same special responsibility, although a general obligation might still be valid. It is also worth noting how this acknowledged moral responsibility is not expressed in terms of a moral duty derived from the human rights of the recipients. And further, what kind of "injustice" the quoted statement refers to is not explained. Thus, although the report is saturated with human rights rhetoric, the role human rights play in regard to any moral responsibility to assist is not explicitly addressed. Further, and as noted above, the report explicitly distances itself from the notion of development policy as charity. However, the report itself actually tones down the discontinuity which the rights language represents. "A rights-based development does not imply a radically new way of understanding development cooperation." (Ministry of Foreign Affairs 2004a:12). Some commentators have even argued that the report actually does not represent a move away from the charity conception of aid. "The report is marked by development optimism without a sense of history. Thus, aid becomes characterised by charity, although the government tries to stress the opposite," one commentator says (Halle Jørn Hansen, cited by Hofsvang 2004 in *Bistandsaktuelt* 04/2004). While charity often refers to supererogatory actions that are praiseworthy, but not morally required, I would claim that the human rights rhetoric begs the question of what moral duties might correspond to these rights. However, in *Fighting poverty together* the question of the duties of the rich or fortunate is not elaborated on. As noted above, Norway's responsibility is acknowledged, but neither 'duties' nor 'obligations' are included in the context. Accordingly, it seems reasonable to ask if one should not expect more from a rights-based and justice concerned approach. As another commentator writes: "... such an approach is more challenging than what is put forward in the report" (McNeill 2004:19).

#### NGOs' policy papers

Just as the government expresses and explains its policies in documents such as the one discussed above, non-governmental organisations do the same in their policy papers. Regarding human rights, even a superficial reading of key policy documents of Norwegian

non-governmental development aid actors will confirm the impression of human rights as a nodal point in the Norwegian development aid discourse. In the case of Norwegian Church Aid (NCA) "to promote basic rights for the needy, poor and oppressed" (Norwegian Church Aid 1999:3) is stated as part of the organization's mission in its main policy paper. The rights language is also widely used in other policy documents, such as the Strategic Plan 2005-2009 (Norwegian Church Aid 2005), as well as in its self-presentation (Norwegian Church Aid 200?, not paginated).

Save the Children Norway (SCN) presents itself as "a brave and pronounced advocate for children's rights locally, nationally and internationally." (Save the Children Norway : [www.reddbarna.no](http://www.reddbarna.no) - accessed 10.08.2006). In its strategy for 2006-2009 the organisation states: "The basis for the work of Save the Children Norway is the UN Convention on the Rights of the Child" (Save the Children Norway 2005). And finally Norwegian People's Aid (NPA) defines itself as a "rights-based organisation" (Norwegian People's Aid 2003:6).

Regarding the concept of donor responsibility Norwegian Church Aid stands out as different from the others. While it is not entirely absent in the policy papers of the other organizations, the issue of duties, obligations or responsibility on part of the rich (individual, peoples or states) is much more explicit in the case of NCA. In its mission statement "improving the living conditions of the poor" goes hand in hand with "changing the attitudes of the rich" (Norwegian Church Aid 1999:3) In the presentation of the organisation rights and duties are seen as a pair: "We believe that all humans are born with certain fundamental rights and duties. To create a fairer world, poor people must be empowered and privileged people must be challenged to take responsibility." (Norwegian Church Aid 200?, not paginated). And in NCA's strategy the concept of right-holders is followed by the concept of duty-bearers.

Why rights? What kind of responsibility?

The extensive use of the terms 'human rights' and 'rights-based' indicates that the notion of human rights is a key feature of how the development aid organisations understand the moral and/or political rationale for their aid commitment. Although the formulation and widespread recognition of human rights must be considered one of the main developments on the international scene in the post World War II period, I still find this situation puzzling in at least two ways.

First, and departing from an intuition that both charity and human rights are positive terms and phenomena we would like to protect and promote, this concern for international aid to be rights-based and not charity-based is not altogether self-explaining. Why is this, as it seems, so important? Why is the concept of 'human rights' so popular, while the notion of charity is disliked? What does aid being human rights-based imply? What is gained (or lost) by making international aid rights-based and not charity-based?

Second, what is the implication of international aid being rights-based with regard to the question of our responsibility to support other people? While Fighting Poverty Together frequently makes use of a rights and responsibilities language, it hardly mentions the concept of moral duty or moral obligation. How should this be understood? To what extent and in what way is the notion of helping other people part of the moral discourse of Norwegian development aid?

These questions can of course be approached in different ways. In the following I choose the empirical path. Through interviews with expatriate development workers I have sought to explore the Norwegian development aid discourse from another and supplementing perspective. At times the reflections the informants make and the language they use is different from that of the policy documents. Still, my analysis indicates that several of the characteristics noted regarding Fighting Poverty Together and other policy papers also hold for many of the statements made by the informants. Clearly the concept of human rights is a key concept also when the development workers interviewed reflect on their professional work and on development aid as an institution. And further, here too rights-based aid is understood in contrast to the notion of charity or aid as charitable acts. However, several of the informants indicate an uncertainty about what a rights-based approach actually implies. As one informant employed by Norwegian Church Aid (NCA) puts it when asked if there are any problems with the human rights-based approach:

"Yes, there are problems. There are problems in terms of learning it. Because, often it becomes rhetoric and often it becomes only words that one only uses in academic contexts. So it is about taking it down to the operational level and that is really, really difficult."

This informant seems to find it hard to grasp what the human rights approach actually implies, and perhaps primarily in operational terms. It seems the human rights-based approach in her view is under risk of becoming rhetoric without practical implications, and thus "mere" rhetoric. Another NCA informant similarly questions the practical impact of adopting the human rights approach. When she explains how she understands human rights-based aid, she says:

"We are still at a stage where we work very traditionally. On paper we have come a long way, I think [...] with a relatively progressive thinking about how development work should be done. But after I came here I was quite surprised to find how traditionally we are still working."

Note the distinction this informant makes between the traditional approach and the rights approach. How far the movement from the traditional to the new has come, however, she seems to question. On the one hand she evaluates positively the changes taking place, but she is still "surprised how traditionally we are still working". Just as in Fighting Poverty Together these informants seem to downplay the novelty of the human rights approach, at least in any practical terms.

#### Rights and needs – continuum and contrast

Despite examples indicating a relatively vague understanding of rights-based aid, most informants are clearly enthusiastic about the human rights approach. This enthusiasm cannot, however, be taken as an expression of shared understanding. Further, some of the informants are very concerned about problematic or challenging aspects of the approach, and in this connection differences in interpretation are also articulated. Such differences come to the fore as the informants contrast the rights-based approach with various alternatives.

As noted above, one of the NCA informants makes a distinction between the "traditional approach" and the more recent "rights approach". Explaining how she understands the difference between the traditional and the new rights-based approach, she says:

"I think it has a lot to do with the thinking and the focus. It's not for certain that it becomes very different in practice. But I think it is about, that one has to view the recipients of our help as people who have rights, to clean water, to health, to education. In this context it is about basic needs. Instead of thinking: poor people, they do not have what they need. They are actually people who have claims to something, the right to something. And that implies that there also is someone who has the responsibility to provide water and health services and schools. That is what I believe is the difference between this approach and the more traditional approach, that one actually makes someone responsible for the situation as it is."

The new "rights approach" is here conceptualized in terms of the right people have to receive "our help". In this informant's view this leads or should lead to a different way of viewing them as recipients. Further, making someone "responsible" seems to be a distinctive characteristic of the new approach. Rights and responsibilities, here on part of the recipients, seem to go hand in hand.

Rights are here understood as rights to have basic needs fulfilled. The reference to needs echoes many of the concerns and characteristics of the so-called needs-based approach. While modernization theory dominated in the early phases of the development aid era, relying on an optimistic trust in industrialization and the so-called trickle down effect<sup>10</sup>, critical voices to this approach were raised in the early 1970s.<sup>11</sup> These critics attacked the very logic of the trickle-down theory and claimed that the poorest of the poor did not benefit from industrialization, and if any trickle down was taking place it was at a far too slow pace. Rather than poverty reduction the result was increased differences between groups of people, and continued destitution for the poor.

Thus, and important with regard to the present discussion, the normative thrust of the needs-based approach is different compared to that of modernization theory. In the former, the perspective is on the individual and local levels, rather than on the macro level. It is the well-being of families and villages that is emphasized, and not least, the acuteness in addressing their needs. This perspective led in the 1970s and 80s to a change in development policies with a stronger emphasis on targeting the poor either directly or indirectly through a focus on the informal sector, integrated village development projects and agriculture. This came to be known as the basic needs strategy, or needs-based approach. When the informant above makes a discursive link between rights and needs these connotations follow.

Several other informants, however, emphasise a stark contrast between needs and rights-based aid. The contrast which this informant describes between the traditional and the rights approach seems to be expressed in terms of precisely the same distinction between rights and needs by several other informants. Three informants may provide examples of different ways of understanding the human rights approach through such a contrast with the needs-based approach.

<sup>10</sup> One of the most cited works providing support for this approach is Walter Rostow's *Stages of Economic Growth* from 1960. (Rostow, 1960).

<sup>11</sup> One of the key publications was *Limits to growth*, published by The Club of Rome (Meadows and Club of Rome, 1972).

Like many others the first, a SCN staff member, expresses a positive evaluation of the rights approach, but then goes on articulating a difficulty in understanding what “human rights-based” actually means compared to needs-based approaches. This informant says:

“We understand what it means – what rights mean, but how do we make a project and ensure that it is actually rights-based... The distinction between needs and rights, it isn’t... When one is running a practical project it is not easy to distinguish between the two, and to be entirely sure that what we do is rights-based and not... That is, rights-based and needs-based. Because, it is the needs we try to meet. This is something we are working on. Nobody has found the perfect way of doing rights-based aid work.”

This informant refers to and makes use of the contrast between rights and needs, but it appears that she finds it difficult to apply the difference in practice.<sup>12</sup> And, although she prefers the human rights approach, it is still “the needs we try to accommodate”. Again, the novelty of the rights-based approach is toned down.

Elaborating further on the difference between the two approaches, the same informant says:

“If I think about needs-based, then I think about these children. They do not have enough food and they don’t get any education. So I will help them so that they can get it. And then I am kind, so I can help them. But I do not necessarily have to help all, because I should really be satisfied if I manage to help some of them, because I do not have to help all of them, because I am doing as much as I can. So if I have a project... [...] and I manage to help the children in that project, then I am pleased. But if I think rights, then I think that all the children [...] have a right to this. And that is my responsibility, and others’ responsibility, to ensure that they get these things. And then I can’t work only with some children, I could do that, but I must also do something to influence the system that causes these children to not have their rights fulfilled. So then I have a greater responsibility, and I have to think differently about how I develop the project.”

Maybe the most explicit difference between the needs-based and the rights-based approach in development aid expressed here is indicated by “I do not have to help all” and “helping some of them” on the one hand, and “all children [...] have a right to this” and “not working only with a few children” on the other. It seems that universality in the case of needs-based aid lies in the notion that all could be helped, but that needs-based aid still will be marked by a degree of selectivity. Not so in the case of rights-based aid.

Note also how this informant speaks in different ways about the two approaches. In the context of the needs-based approach she finds that the aid worker can regard herself satisfied if she has assisted some, not necessarily all. Within the framework of rights, however, this option is not there, she must also do “something to influence the system”. This macro-political aspect then comes across as an important feature of the rights-based approach that distinguishes it from a needs-based approach. Further, there is a change in terminology worth noting. Explaining her understanding of the needs-based approach, she uses the verb “to help” in the first person singular repeatedly. She says “so that I can help them”, “I

12 This is also commented on by several authors. Hamm writes: “The basic needs orientation refers to the fulfilment of basic economic and social rights, especially the right to food, health and education. The main change brought about by a human rights approach to development is less in content than in understanding that to meet one’s basic needs is a claim and not a matter of charity.” (Hamm, 2001:1026)

am kind, so I can help them” and “I do not necessarily have to help all”. In contrast, when explaining the rights-based approach, she does not use this term, but seems to prefer the term “responsibility”. And when using this term, she underlines that this is not only her (first person singular) responsibility, but rather a shared one: “my responsibility, and others’ responsibility”. Again, however, the issue of responsibility is clearly perceived as an important aspect of the rights-based approach.

When asked in what way she regards the distinction between needs and rights as a contrast one of the NCA informants says: “not contrast, but maybe rather a development of the way we work”, indicating a continuum between the needs-based and rights-based approaches. Still, she too makes the same distinction between the “old way” and the present rights-based approach. Encouraged to describe the “old way of working” she replies:

“Yes, the old way was much more sort of need based, so we came and built schools, not that that isn’t something that also should be done, but that is really something the local government should do. And we as NGOs should not take over the job of the local government. So it is sort of in that direction, that you make the local government take on the responsibility that it has. And that one could also... I mean, you can not deny it.... I have worked so many years in this, that when you work the way you have, and maybe before that, you create sort of an oasis, a small oasis, small local communities around where you work, and they benefit from it. But then there are local communities a bit further away, so there are great differences, and you create differences.”

Using the example of building schools this informant implicitly articulates a continuum between the old and the new way, in the sense that education not only has been, but still is a key priority in Norwegian development aid. Just as the previous informant this one also underlines how the work done in the framework of a needs-based approach is not wrong in itself. Her critical remark, however, goes in a somewhat different direction. While the former was concerned about the satisfaction achieved when having assisted some, this one points to the role of the local government. Within the needs-based approach the aid agencies risk taking the role she claims the government should have. By contrast, in the framework of the new approach “you make the authorities take the responsibility that they have”. In this case then the notion of responsibility primarily refers to the responsibility of the recipient government, with the implications this might have for (possibly weakening) the understanding of donor responsibility.

Yet another NCA informant provides a third example of an informant who explains the human rights-based approach by reference to the needs-based approach. Elaborating on the contrast between a rights-based and a needs-based approach, she says:

“Yes, there has been the traditional, where you say that there is need for food, so give food. There is a need for education, provide education. And it is a matter of how many and where etc. But there is no sustainability in it, because you define things departing from need, and for instance not departing from what resources actually are there and what potential is there. You focus on the need, and not on the resources and obligations that are implicit in the systems.”

This informant too points to the selective feature of a needs-based approach. But while the informants above were concerned about “helping all” and the risk of downplaying the responsibility of the government, this informant’s criticism of the needs-based approach points to its lack of sustainability. And in her explanation of this lack of sustainability, a

criticism of the implicit understanding of the recipients of the aid in question also seems to be indicated. Her argument is that with the emphasis on needs, the issues of resources, potential and obligation fall out of focus.

It seems reasonable to interpret this statement in light of the discussions on how the recipients of international development aid are perceived, or put differently, donors' conceptions of "the other". If a focus on needs leads to a disregard for the resources and potential of the individual recipients, in the local communities or on part of the recipient side in the aid relation in general, this has implications for how the recipient is understood by the donor side. Having needs is then interpreted as being in need of help, and not having the resources or potential to help oneself. This leads to a lack of agency on part of the recipient.

The comment that not only the resources and potential, but also the "obligations that lie in the systems" are disregarded in the needs-based approach is worth noting. The implication seems to be that the needs-based approach does not take obligations (sufficiently) into account, although this informant does not state how or to what extent this aspect is taken into account in the rights-based approach. Again, it seems that donor responsibility is something regarded as an important element of rights-based aid.

#### Rights and duties

The emphasis on donor responsibility as an aspect of rights-based aid is something articulate quite clearly by other informants as well. When asked what she thinks about aid being described as rights-based one informant, she too employed by NCA, says:

"I reflect a lot on that. I think it is really smart. Because it is about what I have already talked about. By talking about human rights one can take the dignity of every individual human being as the starting point. Human dignity is the starting point. We all have a dignity given by nature or by God, etc. And further regarding human dignity and the human rights perspective, you have social rights, economic rights and cultural rights etc., and in that way you can make this more concrete. Which areas should we move into? As I already mentioned, I think that we should be much more political, and I think we should engage ourselves much more in the economy of the country etc. The other thing that is good about the rights approach is that by having that as the starting point, and then there are also expectations and demands there suddenly. That is, this thing about stakeholders and... What is the other? Right bearers and duty holders. That is some kind of version of that way of thinking. That there is someone who has responsibility for others, and then one also has claims on something, as a function of the value you have as a human being. Not that you are a citizen of this or that country, but that you are a human being. Then you can claim it, and if you don't get it from your state, then you can claim it in terms of the rights you have as a human being. I think that is a nice development in the ideology of international aid, and something I feel that I can approach."

Her introductory comment – "I reflect a lot on that." – seems to indicate that the issue of human rights in development aid, and/or aid being human rights-based, is something she was familiar with ahead of and independently of the interview. This confirms the assumption that the concept of human rights functions as a nodal point in the Norwegian development discourse. Further, this statement is framed by the informant's positive ap-

proval of development aid being based on human rights. She says it is “really smart” and she finds it to be an “ideology” that she can “approach”.

This informant clearly relates human rights to human dignity. This corresponds as noted above to the language in *Fighting Poverty Together* and of course to the UN Declaration of Human Rights. Her emphasis on the value of every individual human being can also be seen as echoing this human rights discourse. However, and important to note in light of the discussion on the relationship between political rights on the one hand and social, economic and cultural rights on the other, she explicitly includes the latter in her explication of the human rights-based approach in development aid. In this connection she also makes a normative remark, claiming the political and (macro-) economic aspects should be much more emphasized in aid work. Implicitly she then criticizes those development aid efforts that do not take these societal issues sufficiently into consideration.

The introduction of expectations and demands constitutes another highlight of this informant's contribution. Or, as she also puts it: there are not only “right-bearers” but also “duty-holders”. This was not articulated in *Fighting Poverty Together*, but it corresponds to an important, although debated, moral philosophical insight that rights are “empty” if there are no corresponding duties. Note also how she relates human rights to the matter of being human, this time in contrast to a distinction based on national citizenship. This is a viewpoint she also returns to later, saying:

“Accordingly, from a human rights perspective, if one really is to adopt the core of human rights, then one can forget about these state things. Because then you only have the human being, and it doesn't matter at all where you were born. That is something we can't control ourselves. It is entirely coincidental where we were born.”

According to this informant's understanding then, the human rights perspective leads to cosmopolitanism, and deprives citizenship of any moral relevance. Thus she also says that in cases where the state fails to meet the claims of a citizen of that state, then that person can still make a claim. However, to whom these claims can be made is not explicated, and thus this issue is not fully accounted for. Still, it is worth noting how her understanding of the human rights of individuals leads to legitimate claims on states, and when these are not fulfilled or protected by the state in question, the issue is not exhausted.

To sum up, this latter informant seems to understand human rights-based aid through its positive relation to human dignity, referring to both political, economic social and cultural rights and corresponding duties. This leads her to a cosmopolitan position in terms of international moral obligations.

#### “Our responsibility, not my duty”

Nearly all the informants endorse human rights as a key element in the moral rationale for international aid, but as we have seen their understanding of rights and rights-based aid differs. One further difference is the degree to which, or in what way donor responsibility is seen as an integral part of the rights approach. As we have seen, the latter informant regards donor responsibility as a moral duty. However, when the informants are asked directly if they think Norway as a state or Norwegians as individuals have a duty to provide or support development aid, they give different answers. One NCA informant responds in this way: “Yes, I believe that Norway as one of the richest countries in the world has an obligation to assist countries that are at the other end of the scale.” And when asked

directly if she thinks Norway or Norwegians have a duty to give international aid, an informant from Norwegian People's Aid says:

"We do have a duty. We have been given a resource to share, and a gift from the side of nature and our own cultural heritage, the puritan heritage that we have, have in many ways contributed to our industrialization. And that is something that gives us an obligation. Absolutely, an obligation."

Here, this informant emphasizes the issue of ability, as discussed above with regards to Fighting Poverty Together. The argument is that if you are in a position to help people living in poverty, you should do so. And Norway can be said to have a special ability, and corresponding, greater responsibility, because of the country's financial strength. In addition, this informant articulates a cultural argument for Norwegian aid.

However, the notion that providing aid is a duty on part of the donor side is not evident to many of the informants. One embassy informant comments on this issue in this way:

"That is a difficult question, but I think I will answer it with a yes and no. Yes, meaning that we must be involved internationally. Contribute in developing and maybe implementing good principles when it comes to human co-existence, human rights. So that is the yes. No, it is not because of... it is not a function of the human rights perspective that Norway has a duty to give 15 billion Norwegian kroner. I don't think so. I don't think so. Then it is maybe more morally a function of a equality... that the one who has a lot should give to others. But that is a somewhat different dimension than the human rights dimension."

This informant, who elsewhere emphatically emphasises human rights as universal and thus adopts a cosmopolitan perspective on the moral aspects of international aid, is ambiguous to the idea of a moral duty. To her the duty is to "be involved internationally", but she refrains from making this duty a corollary of human rights. Repeating "I don't think so" she distances herself explicitly from this idea.

Several of the informants similarly dismiss the idea that providing aid is a moral duty, at least in any strict sense. This is expressed through the way they stress the voluntary aspect of giving aid. When asked whether Norwegian international aid in her mind is or should be motivated out of a moral duty to share, another informant, also embassy staff, answers: "Maybe more a wish than a duty...". And when asked to explain this difference, she says:

"Duty is maybe something I feel is somewhat burdening, something that weighs heavily on you. Something you have to do. A wish is something ... because it is a desire to contribute or help others. And it has a more positive value, compared to duty. ... Because this is not something we have to do. It is something, as part of Norwegian foreign policy; one has chosen to do, and something one still finds support for. And... in part increasing support in the population, as far as I can remember from surveys and opinion polls that I know have been undertaken."

The idea that the Norwegian state or the Norwegian people have a positive duty to provide international aid is dismissed in this statement. To the contrary, aid is a responsibility one assumes quite voluntarily. While aid in her understanding of it might be rights-based, it is not duty based. Thus, this informant draws on elements in the libertarian conception of the relationship between rights and duties in her rationale for development aid. The position taken seems to be that there are only negative duties and no positive duty to assist the distant poor, hungry or needy. Providing aid to the needy in far away countries amounts to something which is praiseworthy, but not required.

One of the SCN informants comments on this issue in this way:

"But I can't say that it is a moral obligation for all to do it. It has to be up to each individual to decide. But it is up to us to explain this in a proper way so that they at least see what can be done. The morality to us, I think, is to show that the money that is given to us, that it helps, that it makes a difference and that we can report back on it in a cheap and sensible way, so that they can see that the help they give makes a difference... But to try to promote at home that it is a moral obligation for all Norwegians... It has to be an appeal, rather than something one should say that everyone must take part in."

This informant is clearly reluctant to make any moral prescription for others. To support aid or not is described as an individual question, and any moral demands she is willing to make, concerns herself (to do a better job). Any statement directed to others must be in the form of an appeal. Note also how the issue is discussed in terms of marketing. This becomes even more evident when she is asked more specifically about the voluntary element. This informant then says:

"Yes, in a way. If not it is coercion, and then it will certainly not work. But it is our task to show how good we are. And when one does that, then people will want to join in."

To sum up, several informants seem to reject the idea that Norwegians have a strict duty to provide development aid. Instead they stress its voluntary aspect.

#### State duty

While there seems to be a relatively strong tendency in the material that the informants argue against any moral duty on part of the individual, several of them express themselves differently regarding the state's duty. As one informant from Save the Children says about the duty to assist, "I wouldn't say that everyone has a duty to do something, but I would say that as a nation Norway has a duty to do something." She adds:

"An individual might just as well decide to do something else in Norway in order to... Because, there are needs there too. An individual has the right to decide for herself what she wants to do with her own life and her own resources. And she does not have a responsibility to the same degree as a nation, meaning a state, has. It depends on the resources of the individual, her opportunities and interests. I don't think we can say that everyone in Norway has a duty to donate money to Save the Children, for instance."

Here the notion of individual freedom seems to be fundamental. Note, however, the relative term when this informant points out that the individual "does not have a responsibility to the same degree as a nation, meaning a state". Thus, while dismissing the notion of individual duty, this informant seems to imply that a residual of responsibility on part of the individual might still be there. Her emphasis is, however, clearly on ascribing responsibility to the state, not the individual.

Similar viewpoints are articulated also by other informants. One NPA informant puts it like this:

"So I would like to see more individuals, and see a true commitment and an interest in what is going on outside Norway, what is going on outside our own wage settlements, in the individual. While I believe the state must assume the economic responsibility for development."

However, many of the informants see the Norwegian state's duty to provide international aid as depending on commitments made by the Norwegian government. Three

informants exemplify this in different ways. In response to the issue of having a moral duty to assist, one SCN informant says:

"We are obliged to participate in the UN and in various... We have signed various conventions. We have joined international... We have committed ourselves to be in on these things and we have signed these things. So at least in relation to the things Norway has developed and signed in the form of international agreements, and then we have an obligation to follow up on these."

Here the duties Norway might have are made dependent on Norway's signing of various conventions and on participation in the UN. Thus, the state's duty to assist is expressed in the form of a contractarian argument. The moral duty to assist is determined by what treaties and/or conventions Norway has ratified. Or put differently, the duty is made dependent on the voluntary commitment already made. Second, one of the embassy informants relates this duty to rights, which in turn are based on an "international understanding". She says: "The right is to have the basic needs covered. And this is regulated through an international understanding that there are certain rights human beings should have." Interestingly, the extent to which human rights are disputed is toned down in this statement. It is assumed that these are globally shared concerns. Third, a NCA informant refers to the UN, but seems to put more emphasis on societal interconnectedness and on UN membership rather than the signing of conventions:

"But I think it is also a purely, let us say a nation to nation, society to society, there is something that ties us together with an obligation. There are some binding relations between different societies in the world."

### Conclusion

This paper has focussed on how the concepts human rights and donor responsibility are conceptualized within the Norwegian development aid community and in the framework of the Norwegian development aid discourse. Concluding I will argue that there is an important strand in the Norwegian aid discourse that relates human rights to the concept of human dignity, understanding them as referring to both political, economic, social and cultural rights, and in some cases also to corresponding duties. Another and perhaps a more dominating strand within this discourse seems, however, to have only a vague notion of human rights and what a human rights-based approach in development aid implies. Especially the meaning of aid understood as human rights-based, and practical and moral implications thereof, seem to be unclear to some of the informants. Thus, though the concept of human rights seems widely acclaimed, the implications of adopting a rights-based approach in development aid remains unclear.

Regarding donor responsibility, the moral reflections of these informants are marked an emphasis on individual freedom combined with the idea that the state takes the burden. Although most of the informants embrace the rights language, several seem very reluctant to voice moral prescriptions. Many are more inclined to express a duty to provide aid on part of the state than on part of individuals. And although a responsibility to provide development aid is widely acknowledged, the duty to assist is given a rather "weak" interpretation, leading (at best) in the direction of imperfect duty. Several voices in this material actually express an understanding of this duty that corresponds to the kind of voluntary,

supererogatory action often associated with the charity approach, although that approach (or terminology) is explicitly dismissed by most of them.

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*Michael Haspel:*

*Justification of Force in the Trans-Atlantic Debate. Towards a Moderate Institutional Cosmopolitanism*

1. Trans-Atlantic Differences

Since the attacks of 9/11 it became obvious that there is a trans-Atlantic divide regarding the (justification of the) use of force. While US-American intellectuals were justifying the attacks on Taliban-Afghanistan in Just War-terms, their European, especially German, counterparts not only preferred other political options, but were not even able to accept the framework of the argument provided by prominent Americans from different political camps in the 2002 manifesto 'What we're fighting for'.<sup>1</sup> When it comes to the justification of the use of force four main aspects are at stake in this debate:

1.1 The Status of Just War-Theory

While in the Anglo-American<sup>2</sup> reasoning on the justification of force the Just War-paradigm was resurgent since the Vietnam war, in Continental Europe a kind of nuclear pacifism prevailed, which rendered any reasoning on the justification of the use of military force, even conventional, obsolete, since any armed conflict seemed to be in danger to escalate into a nuclear catastrophe. In the current situation this makes the discourse between academics in the field of peace and conflict research on the continent and political philosophers in the Anglo-American sphere rather complicated. Many Anglo-American scholars see the Just War Tradition covering the middle ground between (absolute) pacifism on the one hand side and realism/bellicism on the other. For them Just War theories do provide criteria by which the evaluation of whether it is necessary or justified to take up arms to defend justice respectively liberty can be guided. For many central Europeans especially German authors in the field, however, Just War theory is seen as an outdated pre-modern religiously impregnated construct, which was regularly abused rather to justify than to limit the use of force in the political realm and therefore should be abandoned for good. Instead of the moral concept of the Just War Tradition they rather see the legal framework of international law as sufficient for guiding the normative reasoning on the use of force.<sup>3</sup> Which leads us to the next issue: the status of international law.

<sup>1</sup> <http://www.americanvalues.org/html/wwff.html>. See also the evolving discussion documented on this website. Cf. Michael Haspel, 'What we're fighting for' Die deutsch-amerikanische Debatte über die Lehre vom gerechten Krieg und die Probleme einer normativen Theorie der internationalen Beziehungen, in: Jörg Calließ, Christoph Weller (Hg.), 'Chancen für den Frieden. Theoretische Orientierungen für Friedenspolitik und Friedensarbeit'. Loccum Protokolle 76/03 (Rehburg-Loccum 2006), pp. 303-329.

<sup>2</sup> The terms 'Anglo-American' and 'European' are used as 'ideal types' referring to the respective mainstream opinion. It is obvious that there are on both sides of the Atlantic respectively Channel a variety of differing opinions.

<sup>3</sup> Cf. Michael Haspel, *Friedensethik und Humanitäre Intervention. Der Kosovo-Krieg als Herausforderung evangelischer Friedensethik* (Neukirchen-Vluyn 2002); idem: 'Foundations of Protestant Peace Ethics in the German Context', *Kirchenamt der EKD* (Hg.): *How the Churches in Germany and England Contribute to*

### 1.2 The Status of International Law especially the Charter of the United Nations

Many scholars of international law in the Anglo-American world hold, backed by the common law tradition, the opinion that traditional customary law in the international field was not consumed by the Charter of the United Nations and in turn they see the regulations of the Charter as subject to customary law. The customary law concept in international relations states that the sovereign nation states still hold the right to self defence, the right to intervene in internal and international conflicts based on humanitarian grounds and the right to employ coercive means if an other party breaches truce regulations.<sup>4</sup>

In this perspective international law is not seen as categorically binding. It rather is perceived as a set of recommendations which help to regulate international relations, if and only if the parties involved actually agree on respecting them. Thus, the state parties which are perceived as having the right to use force in cases as mentioned above derived from their sovereignty as independent nation states are in need of normative guidelines according to which the use of force can be evaluated. Here traditional Just War concepts come into play, since they are compatible with international customary law and very well fitting with the concept of sovereign nation states. This position could be summarized as follows: Since there is no binding international law in place and since sovereign states might come in situations when they have to make normative decisions whether they should use force, something like a Just War theory is necessary instead of international law, since Just War reasoning provides the guidelines international law does not yet provide. Some would even hold that international law should not provide such guidelines since this is totally up to the sovereign nation states.

In difference from this point of view, most continental European international law experts see the black letter law of the Charter of the United Nations as binding law (*ius cogens*). They would argue that the international community gave itself a basic law prohibiting use of force in general (art 2 (4)) and only allowed for two narrowly defined exceptions namely self defence (art. 51) and the threat to or breach of the international peace and security (art. 39;42). In both cases the authorisation of the use of force is finally reserved to the Security Council. Thus from this perspective any use of force which is not endorsed by the Security Council is seen as illegal and illegitimate. This argument implies, whether justified or not, that black letter international law provides enough normative orientation with regard to the legal and legitimate use of force that an extra-judicial set of

Ethical Decision-making. Illustrated by Recent Statements on Military Intervention and Peace Keeping, (Hannover, 2003), pp. 6-18; Mark Evans (ed.): *Just War Theory. A Reappraisal*, (Edinburgh: Edinburgh University Press, 2005); Hajo Schmidt: 'Die Lehre vom gerechten Krieg im Kontext der deutschsprachigen Friedensforschung', in: G. Beestermöller, M. Haspel; U. Trittman (Hg.): *What we're fighting for...* (Stuttgart: Kohlhammer, 2006), pp. 38-51.

<sup>4</sup> Cf. inter alia James T. Johnson: 'Framing a Debate: Authority to Use Force in Just War Reasoning and International Law', in: G. Beestermöller; M. Haspel; U. Trittman (Hg.): *What we're fighting for...*, (Stuttgart: Kohlhammer, 2006), pp. 52-70 who gives an excellent summary of the debate. From a juridical point of view with regard to the Afghanistan war cf. Stefan Talmon: 'Die Grenzen der "Grenzenlosen Gerechtigkeit". Die völkerrechtlichen Grenzen der Bekämpfung des internationalen Terrorismus nach dem 11. September 2001', in: Wolfgang Maerz (Hg.): *An den Grenzen des Rechts* (Berlin: Duncker&Humboldt, 2003), pp. 101-183.

rules is superfluous.<sup>5</sup> It is obvious that these different opinions lead to many conflicts, especially regarding the *ius ad bellum*, the prohibition of force, the authority of the Security Council etc.

### 1.3 The Authority of the United Nations and the Security Council

In the wake of the argument in section 1.2, many Europeans regard the resolutions of the Security Council as absolutely binding comparable to norms handed down by national legislature or government. In turn, when it comes to the question of justification of force, the (Security Council of the) United Nations is perceived as legitimate authority. However, scholars and political actors in the Anglo-American tradition hold, that the sovereignty of national governments can only be limited by a supra-national entity when sovereign governments decide to conform to such a multilateral agreement. The authority lies, in this perspective, not in the authority formally attributed to such an entity, but in the actual acceptance of and compliance with its decisions on the side of sovereign states. This argument adds up with the following, in the Anglo-American discourse prominent argument, when it comes to the justification of force: Since the United Nations don't command over own troops, they can't be the authority taking responsibility for the use of force. It must be the national governments who are responsible to their constituencies that are finally responsible for the justification of the use of force. Only they can be in this perspective legitimate authority or rather sovereign authority.<sup>6</sup> This opposes the view of many Europeans who claim that for the justification of the use of military force not only a decision of the Security Council is mandatory, but also that the control and command should be in multinational hands if not in those of the UNO.<sup>7</sup>

### 1.4 The Use of Background Theories

It is most interesting that the argument of many Anglo-American scholars roughly lined out above, borrows the authority of ancient and medieval classic writers of political philosophy such as Aristotle, Augustine and Aquinas.<sup>8</sup> More often than not it seems that their arguments are more or less taken from antiquity respectively the middle-ages and are applied to the modern world without reflecting on the problems stemming from the paramount structural differences between pre-modern and modern society. Thus a very actor-oriented perspective is prominent be it the one of 'the soldier' or of 'the politician'.<sup>9</sup> In

<sup>5</sup> A paradigmatic account of this position is provided by Sabine von Schorlemer: 'The Responsibility to Protect: Kriterien für militärische Zwangsmaßnahmen im Völkerrecht', in: G. Beestermöller; M. Haspel U. Trittman (Hg.): *What we're fighting for...*, (Stuttgart: Kohlhammer, 2006), pp. 81-112.

<sup>6</sup> Cf. James T. Johnson: 'Framing a Debate', op. cit.; idem: 'Aquinas and Luther on War and Peace. Sovereign Authority and the Use of Armed Force', in: JRE 31 (H.1, 2003) pp. 3-20. Jean Bethke Elshtain: 'International Justice as Equal Regard and the Use of Force', in: *Ethics & International Affairs* 17 (No 2, 2003) pp. 63-75. idem: *Just War Against Terror. The Burden of American Power in a Violent World* (New York: Basic Books, 2003). idem: 'International Justice as Equal Regard and the Use of Force', in: G. Beestermöller; M. Haspel; U. Trittman (Hg.): *What we're fighting for...* (Stuttgart: Kohlhammer, 2006) pp. 22-37.

<sup>7</sup> Cf. inter alia Lothar Brock: 'Frieden durch Recht. Zur Verteidigung einer Idee gegen "die harten Tatsachen" der internationalen Politik', in: HSFK-Standpunkte (No. 3, 2004).

<sup>8</sup> See as examples the cited works of Elshtain and Johnson.

<sup>9</sup> Cf. Michael Haspel: *Elemente einer Theorie der (protestantischen) Sozialethik in der modernen Gesellschaft: Gesellschaftliche Modernisierung als Bezugsproblem philosophischer und theologischer (Sozial-*

difference from this approach most European arguments don't draw so much on the authority of ancient and medieval writers, but on Immanuel Kant. He definitely is the theoretical point of reference especially for most German scholars. But also the insights of recent research in the field of Peace and Conflict Studies is mostly incorporated in the European discourse. It is obvious that these different theoretical starting points are related to the conceptual and material differences outlined above.<sup>10</sup>

## 2. Moderate Institutional Cosmopolitanism as Paradigm for an Ethical Theory of International Relations<sup>11</sup>

In the following sections I want to outline a theoretical approach which seems from my point of view apt to overcome the above mentioned problems in the trans-Atlantic discourse as well as the problem of how to develop traditional Just War theory in order to fit the current political context. My assumption is that the differences regarding the justification of the use of force between Anglo-American and central European thinkers to a certain degree are due to the limitations of the concepts used on either side. On the one hand traditional Just War thinking has to be developed in the context of a globalising world, in which the nation state is not the one and only reference point in international politics. On the other a mere legal institutionalism conceptualized in the ideal world falls short to guarantee the enforcement of international order and cosmopolitan human rights in the real world. The decisive point is what concept of justice is presupposed for any Just War theory. Only if we can spell out the concept of justice which is the basic ethical category we subscribe to, we can define which violations of this justice should be answered by the threat or the use of force. And in turn we can determine which institution is the legitimate authority to actually decide about the justification of force. In the following sections I will outline what I coined Moderate Institutional Cosmopolitanism, of which I think that it is a rather good option to serve this task to re-conceptualize international justice and thus the justification of the use of force by employing a modified Just War theory. It is my claim, that by employing a transformed framework for both, the gap between Anglo-American type of reasoning and central European concepts could be bridged. This suggested concept is institutionalist since national and international institutions are seen as paramount for the realisation of this cosmopolitan values, though the sovereignty of the nation state is not seen as the holy cow of the international system (2.1). It is cosmopolitan in the sense that to every human being the same moral status is ascribed.<sup>12</sup> This is most important with regard to the prohibition of killing, as well as the ascription of Basic Hu-

)Ethik, in: Nissen, Ulrik u.a. (Hg.): *The Sources of Public Morality – On the Ethics and Religion Debate* (Societas Ethica, Bd. 2), Münster 2003, pp. 139-151.

<sup>10</sup> Cf. Michael Haspel; Uwe Trittman: 'Einleitung: "What we're fighting for". Gerechter Krieg – Gerechter Frieden. Ein vernachlässigtes Thema im deutsch-amerikanischen Dialog', in: G. Beestermöller; M. Haspel; U. Trittman (Hg.): *What we're fighting for...* (Stuttgart: Kohlhammer, 2006), pp. 9-21.

<sup>11</sup> For the following argument see also my *Ethics of international relations and the legitimate use of military force*, in: Margit Sutrop; Kadri Simm (eds): *Ethics. Interdisciplinary Approaches* (Tartu University Centre for Ethics 2001-2006) (Tallinn: 2006), pp. 388-424.

<sup>12</sup> For cosmopolitan approaches in the context of the issue of justification of force cf. Iain Atack: *The Ethics of Peace and War. From State Security to World Community* (Edinburgh/New York: University Press/Palgrave Macmillan, 2005), pp. 40-58.

man Rights to every human being (2.2) and by this token the quest for international justice in the economic and social realm (2.3). I call the concept moderate because on the one hand the suggested cosmopolitan concept is not absolutely egalitarian with regard to the outcome: there is no necessity that every human being commands over basically the same resources, but that the basic requirements for a decent life are met for everybody. On the other hand it also suggests a moderate institutionalism, accepting that for the time being in the real world the legal and political international institutions will remain highly imperfect. Thus the enforcement of basic human rights and fundamental norms of international law have sometimes to be defended and enforced in a absence of respective regulations in international law. Here Just War theory comes into play, which can supplement (nota bene: not substitute!) in those instances International Law.

### 2.1 Institutionalized Peaceful Conflict Resolution

Starting from the widely shared (cosmopolitan) ethical insight that killing is in principle a moral evil, ethical reflection of international relations at least after World War II starts from a strong presumption against the use of military force.<sup>13</sup> The use of military force is always in need of special justification. According to moral and legal standards beginning a war unjustifiedly is a crime.<sup>14</sup> This negative consequence is necessary but not sufficient to adequately implement the ethical principle to avoid killing and thus to prohibit war. The positive consequence of this principle is to establish other forms of conflict resolution in order to avoid the resort to military force in international conflict. This includes preventive measures which shall help to deal with conflicts at a very early stage in order to resolve them peacefully or even to clear away causes of conflicts before their outbreak. Since many conflicts are about resources, especially in the so-called developing countries, it is obvious that conflict prevention must first and foremost include perspectives for development, be they based on aid or even more favourable on fair access to the world market by altering the terms of trade. We will deal with the question of international distributive justice later (in section 2.3), but it is important to note, that the avoidance of war starts with the provision of fair chances for a decent life for the two thirds of the world population who are so far deprived of it. Where conflicts are manifest, institutions for non-violent conflict resolution are necessary. These may vary in form and scope. On the local and regional level task forces for mediation might be helpful, on the international level institutions to regulate conflicts through negotiation respectively diplomatic means would be the adequate form. In regions where violence is on the outbreak or has already emerged neutral observers and even robust peace keepers can be the best solution.<sup>15</sup> In order to inhibit the resort to the use of force the instruments of deterrence and punishment might be as useful as in the

<sup>13</sup> Cf. the chapter 'The wrongness of killing' in Richard Norman: *Ethics, Killing & War* (Cambridge: Cambridge University Press, 1995), pp. 36-72.

<sup>14</sup> Cf. the section 'The Crime of War' in Walzer: *Just and Unjust Wars* (New York: Basic Books, 2000, 3rd ed.), pp. 21-33.

<sup>15</sup> For different theories and methods of conflict resolution cf. Berthold Meyer: *Formen der Konfliktregulierung. Eine Einführung mit Quellen*, (Friedens- und Konfliktforschung 3) (Opladen: Leske & Budrich 1997) Nick Lewer; Oliver Ramsbotham: 'Something must be done': Towards an Ethical Framework for Humanitarian Intervention in International Social Conflict, (Peace Research Report Number 33), (Bradford: University of Bradford, Dept. of Peace Studies, 1993), pp. 29-43.

domestic sphere. This implies that it is desirable that on the international level there is an authority which is able to deter the use of force by threatening a potential aggressor with an international co-ordinated force stopping the breach of peace if necessary with internationally legitimated use of military force as ultima ratio and judge and punish the responsible authorities. All of these instruments require that they are institutionalized multilaterally on the international level, that they are legitimated by international law, and that they have the necessary resources (organisational staff, operative personnel, equipment, finances) at their (permanent) disposition. This, in the long run, would make it necessary to establish on an international level in some form a permanent military force for peace enforcement and peace keeping as well as a kind of permanent peace corps, trained and equipped for conflict prevention and non-violent conflict resolution.<sup>16</sup> So far I developed the ethical consequences of the prohibition of killing transferred to the international realm. If international law and the structure of international organisations are consonant with these principles, they on the one hand transmit ethical principles (of the ideal world) in political currency (of the real world). On the other hand, if institutions like international law and international organisations are consonant with ethical principles they themselves become goods with an ethical quality. To preserve them, to follow their guidelines and to contribute to their further development is thus a moral obligation. It is obvious that such an institutionalist framework modifies traditional Just War thinking. It follows that Just War theory can only be sustained if it is related to the framework of existing international law and organisations. This has direct consequences for the question of legitimate authority but also for the overall proportionality of goods, insofar as the rule of law in the international sphere is an end in itself. If Just War thinking is modified in this way and will become consonant with international law and organisations traditional institutionalists of Kantian origin should be able to accept this approach more easily.<sup>17</sup>

## 2.2 Promotion of a Comprehensive System of Human Rights

If we accept that the principle of human dignity can be ethically grounded though may be from diverse cultural, religious and theoretical background in different ways,<sup>18</sup> it can be concluded that human dignity implies certain characteristics which have to be protected

<sup>16</sup> Cf. for the importance of institutionalisation Christine Chwaszcza: 'Politische Ethik II: Ethik der Internationalen Beziehungen' in: Julian Nida-Rümelin (Hg.): *Angewandte Ethik. Die Bereichsethiken und ihre theoretische Fundierung. Ein Handbuch* (Stuttgart: Kröner, 1996), pp. 154-198.

<sup>17</sup> For the compatibility of the United Nations framework of international law and Just War thinking see still Inis L. Claude, Jr.: 'Just Wars. Doctrines and Institutions', in: *Political Science Quarterly* 95 (1980), pp. 83-96; for a more recent analysis see Atack: *The Ethics of Peace and War*, pp. 40-75; Oliver Ramsbotham: 'Cicero's Challenge: From Just War to Just Intervention. Subsuming Criteria for Just War under Framework Principles for Just Intervention in Peace Support Operations', in: G. Beestermöller; M. Haspel; U. Trittman (Hg.): *What we're fighting for...* (Stuttgart: Kohlhammer, 2006), pp. 113-137.

<sup>18</sup> For the discussion about the justification of human rights in different cultures cf. inter alia Heiner Bielefeldt: *Philosophie der Menschenrechte. Grundlagen eines weltweiten Freiheitsethos* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1998), For the different influences on the International Human Rights Bill from diverse backgrounds cf. Matthias Koenig: *Menschenrechte, (Campus Einführungen)* (Frankfurt a.M./New York: Campus Verlag, 2005). For the argument of the following section cf. Michael Haspel: 'Menschenrechte in Geschichte und Gegenwart', in: Siegfried Frech, Michael Haspel (Hg.): *Menschenrechte* (Schwalbach/Ts: Wochenschau-Verlag, 2005), pp. 15-40.

respectively promoted. The means to do so is to implement these principles in the system of law, by formulating fundamental principles of law which have to be respected by the regulations of positive law and in relevant social and political action. This is put into action through a system of human rights, which on the one hand binds the activities of states and regulates the development of international law as well as the political activities of the international community and on the other compels national legislature to implement human rights standards directly or indirectly into national law as *ius cogens* (peremptory law).<sup>19</sup> So far we have developed the function of a system of human rights for international and national law. Now, we have to turn to the question of the substance of human rights. There are (at least) two ways to address this question. The first would be quantitative. One could enumerate all single rights which seem necessary to protect and foster human dignity. The shape of human rights documents resembles this approach. This seems to be necessary since –if human rights documents shall be perceived and put in effect as legal texts– they have to provide specific norms. For an ethical approach however it seems more helpful, as a first step, to identify the fundamental aspects of human rights which are necessary to fulfil their function. In line with these principles specific rights could be derived which might have different emphases and wording depending on different contexts.

In order to protect and foster human dignity, human rights must guarantee freedom of the individual person. Freedom is necessary for a person to be and act as a person. Freedom correlates with fundamental civil rights such as freedom of speech, freedom of religion etc. but also requires freedom from social exploitation and deprivation. In this more comprehensive sense freedom is a decisive guiding principle for a system of human rights. Not less is equality. Equality is fundamental in overcoming unjustified privileges and respective deprivations along the lines of class, sex, race etc. The principle of equality is eminent for the political system: with regard to the instruments of legitimising the use of political power it correlates with the principle of democracy, with regard to the legal system it correlates with the rule of law applied to all in the same way not based on privileges of birth, money etc. But equality in the formal political-legal sense might not be enough to ensure that people also have the means to use the equal rights which are endowed on them. Thus the principle of participation is necessary to secure, that the system of rights safeguards social and economic structures which enable people to exercise their freedom and equal rights. These three guiding substantial principles of freedom, equality and participation are inherent in each of the human rights, but there are obviously different emphases in different kind of rights. They constitute in their relatedness a guideline for the interpretation and further development of the system of human rights as a whole. They represent the fundamental substantial criteria of the understanding of human rights. These substantial principles correspond with the formal principles of universality, interrelatedness, interdependence and indivisibility of human rights.<sup>20</sup> Together they function as hermeneutical key for the systematic interpretation of the existing human rights, and by the same token they are guidelines for the further development for the body of human rights and imple-

<sup>19</sup> For the connection of ethical orientation and legal-political implementation cf. Bielefeldt: *Philosophie der Menschenrechte*, pp. 25f.

<sup>20</sup> Cf. art. 5, Vienna Declaration and Programme of Action of the World Conference on Human Rights from 25 June 1993.

mentation regimes.<sup>21</sup> From this angle we gain a certain perspective on the institutionalized International Bill of Human Rights based on the Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly of 10 December 1948. All three aspects are present in the fundamental human rights document. It comprises rights which primarily shall protect and promote freedom, such as 'the right to life, liberty and security of person' (art. 1), the right to fair trial (art. 10), the protection against interference in someone's privacy (art. 12), the right to freedom of movement (art. 13) and the right to own property (art. 17) as well as the right to freedom of thought, conscience, religion, opinion and expression (artt. 18; 19). The rights to be recognized as a person before the law (art. 6), equality and non-discrimination before the law (art. 7), explicate the fundamental principles of equality which are expressed in artt. 1 and 2 of the Declaration.

But the UDHR also includes rights, which primarily focus on social and economic aspects, which are prerequisite that people can exercise those rights focusing on freedom and (political and legal) equality. In art. 22 it is made clear, that everybody is entitled with the 'economic, social and cultural rights indispensable for his dignity and the free development of his personality'. This is explicated more detailed in art. 25(1): 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.' While it is obvious that these rights are primarily directed towards national governments the UDHR also makes clear, that in an increasingly interdependent world national governments can not provide for these rights if the international framework is not supportive for it. Art. 22 states this relation clearly, when it identifies a combination of 'national effort and international co-operation' as the key to the realisation of these rights. Art. 28 is even more explicit: 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.' Thus the UDHR emphasizes on the one hand that there is a need for social rights in order to guarantee the presuppositions for participation in the social body and for exercising the rights endowed to all people. Social rights have to be protected and promoted in order to prevent the social exclusion of persons from society. On the other hand it is also explicated, that this is an objective, which can not be fully achieved by nation states and their respective governments but can only be realized if the international political, economic and social order provides for it. One could say that the insight is present in the UDHR that the principle of social justice transcends national boundaries.

This interpretation is consonant with the fundamental criteria for human rights. The UDHR holds that human rights are universal. They can not be made dependent on the contingent place of birth of somebody. Human rights are indivisible. It is not possible to realize political rights without protecting economic, social and cultural rights, and vice versa. In this sense they are interdependent and interrelated. The one kind only works in relation with the other and they are dependent on this relation. This understanding of

<sup>21</sup> Cf. Wolfgang Huber; Heinz Eduard Tödt: *Menschenrechte. Perspektiven einer menschlichen Welt* (München: Guetersloher Verlagshaus, 3rd edn., 1988 [1977]), pp. 80-96.

human rights is located in the very core of the institutionalisation of human rights in international law, though these systematic claims are not always fully achieved in the later human rights corpora.

Though human rights are by definition universal, indivisible, interdependent and inter-related, the level of legal implementation varies significantly in relation to different aspects of human rights. Civil and political rights (the aspects of freedom and political and legal equality) are equipped with rather strong regimes, economic, social and cultural rights (the aspects of social equality and participation) are legally codified but lack adequate enforcement regimes. Yet, seen systematically, they are no less important. Thus it is not appropriate to talk of different "generations" of human rights, evoking the impression as there is something as the first generation, which is the most legitimate and then there follow other generations of less seniority. This genealogical imagery is in danger to be paralleled with the concept, that there are some primary fundamental types of human rights –equated normally only with civic and political rights– and others, which are supposedly only derived and secondary, such as social and collective rights. However, this view is wrong, as we have seen in the analysis of the UDHR, where all three aspects are included.<sup>22</sup> Thus it seems more adequate rather speaking of three dimensions of human rights than of generations.<sup>23</sup> These dimensions are rather structural than systematic, in the sense that they relate to and structure the actual human rights bodies, whereas the above mentioned substantial and formal principles systematically ground and unfold the human rights architecture. Thus, though somehow related, the three substantial principles/aspects and the three dimensions can not simply be equated.

The third dimension of human rights which was already included in the UDHR, points to the fundamental insight that human rights in general can according to their indivisibility, interdependence and interrelatedness only be realized if all aspects of human rights are promoted. This includes that at least certain standards of a decent living ought to be provided for all human beings. Thus the aspect of equality has to be applied also to the social and economic sphere. This insight lies behind the 'Covenant on Economic, Social and Cultural Rights'. Though this Covenant incorporates in art. 11 (referring to art. 25 UDHR) the 'right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions', it is still assumed that it is mainly the obligation of the nation states towards their individual citizens to secure this goal, even if 'international co-operation based on free consent' might be used as a means.

In an increasingly interdependent world economy this seems however not to be sufficient and art. 28 UDHR already acknowledged this by claiming 'a social and international order in which the rights and freedoms' can be fully realized. To achieve this goal it is therefore not only necessary to provide an institutional order within nation states, which guarantees freedom and equality, but to establish an international order which supports in the international arena beyond state boundaries not only the political but also the eco-

<sup>22</sup> This should not be confused with the concept of 'basic rights' which will be introduced later in this section.

<sup>23</sup> Cf. Eibe Riedel: 'Der internationale Menschenrechtsschutz. Eine Einführung' in: Bundeszentrale für politische Bildung (ed.): *Menschenrechte. Dokumente und Deklarationen* (Bonn, 3. rev. edn., 1999), pp. 11-36. Eibe Riedel: 'Menschenrechte der dritten Dimension', in: *EuGRZ* 16 (1989), pp. 9-21.

nomic and social prerequisites for full participation. With the 'Vienna Declaration' of the 'World Conference on Human Rights' in 1993<sup>24</sup> not only the right of development<sup>25</sup> was confirmed as an important aspect of the international human rights systems, but it was repeatedly stressed, that the different aspects and dimensions of human rights, though they are codified on varying levels of legal accountability, are systematically (and not less practically) equally important. 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis' (art. 5).

We have seen that from an ethical perspective a system of rights which protects human worth and dignity is an important and ethically justified institution. Three aspects of rights were important: the aspects of freedom, equality and participation. They have to be incorporated by a system of rights in order to be consonant with ethical criteria for its justification. The analysis of the current international human rights system is conducive for the conclusion that all three aspects and dimensions are systematically inherent in the human rights concept. However, their legal codification reveals significant differences. This lends support to the conclusion, that for an ethics of international relations a comprehensive system of human rights is a major concern. On the one hand it includes the respect for and protection of the already established human rights regimes, on the other it urges for a further development of the human rights system which then is enabled to more fully live up to the systematic comprehensiveness inherent in the concept of human rights. For the further development of a normative theory of international relations and especially for its application it will be decisive, not to argue on the basis of an hierarchical understanding of human rights, but from a comprehensive one. The concept of basic human rights might be helpful in this regard. The concept of basic rights does not give priority to a certain group/dimension of human rights, but refers to all those rights, which are basic for survival. These include security rights as well as subsistence rights. The concept of basic human rights explicates that there are different rights belonging to different groups/dimensions of human rights, yet which are equally important and basic for the satisfaction for all other rights.<sup>26</sup> In this sense the argument for a comprehensive understanding of human rights can be complemented by the differentiation of basic and non-basic human rights. When we discussed the so-called third dimension of human rights, we already saw, that a comprehensive understanding of human rights necessitates to think not only of national governments as responsible for the provision of rights for citizens respectively populations. But in a situation of growing interdependence and economic globalisa-

<sup>24</sup> A/CONF/157/23, 12 July 1993.

<sup>25</sup> For the discussion on the right to development see Sabine von Schorlemer: 'Das Recht auf Entwicklung als kollektives Menschenrecht und seine Bedeutung gegenüber den individuellen, wirtschaftlichen, sozialen und kulturellen Rechten', in: Loccumer Protokolle 11/95 (1996) pp. 71-84.

<sup>26</sup> For the concept of basic human rights in the context of Just War thinking cf. David Luban: 'Just War and Human Rights' (1980), in: Charles Beitz et al. (eds.): *International Ethics* (Princeton: Princeton University Press, 1985), pp. 195-216, here pp. 208-211. Luban is drawing here on Henry Shue: *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press, 1980) chapter 1. Cf. now Henry Shue: *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton: Princeton University Press, 2nd edn., 1996 [1980]).

tion human rights have to be protected and promoted trans-nationally.<sup>27</sup> This bears direct consequences for the justification of force. If this understanding of comprehensive basic human rights is presupposed as an important feature of justice, the just cause criterion in Just War reasoning has to be modified. This has two consequences. First, all gross violations of every basic human right can constitute in principle a just cause for the use of force, if the other criteria are also fulfilled. Second, if human rights are understood comprehensively violations of the right to food for example have to be seen as equally severe as other human rights violations which threaten the lives of human beings. The result may be that the threshold for the use of force might be increased in order to avoid an inflation of uses of force justified on humanitarian grounds. As a result of this argument we would also see a modification of Just War thinking which would incorporate important arguments of its cosmopolitan critics.<sup>28</sup>

### 2.3 The Call for International Distributive Justice

By international sceptics international relations are seen as a Hobbesian kind of state of nature, where normative standards which are accepted in the domestic arena can not or should not be applied. Though there might be some truth in the analytical and heuristic potential of realism which warns of naively and simplistically applying domestic moral principles in the international arena,<sup>29</sup> the fundamental assumption about the nature of international affairs is meanwhile doomed if it ever was true. Through the process of globalisation international relations became so tight in basically every field of life and have emerged as an institutionalized structure which is in turn influencing national as well as trans- and international actors that we hardly can conceive of them as a state of nature. Though they can not be paralleled with domestic structures where a monopoly of power is supposed to guarantee law enforcement international relations are highly regulated through law (of different kind and status) and organisations (on various subjects and levels).<sup>30</sup> If this is true on the empirical level we can no longer model nation states as autarkic entities which only get in touch with each other occasionally and then only act according to their own national interest. If we then further can assume that in the domestic sphere principles of justice are necessary to organize the basic societal institutions in a justifiable way the question arises whether those principles can be confined to national boundaries if the social co-operation does no longer stop at national borders. If there is decisive social and economic co-operation across state boundaries, the profit stemming from these co-operations should be dealt with in analogy to principles of social and economic justice as they are justifiably applied in domestic society.<sup>31</sup> This is not yet to say which kind of prin-

<sup>27</sup> Cf. Schorlemer: *Das Recht auf Entwicklung*, pp. 80-82; Pogge, Thomas W.: *World Poverty and Human Rights. Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press 2002)

<sup>28</sup> For the whole section see also Michael Haspel; Gert Sommer: 'Menschenrechte und Friedensethik', in: Albert Fuchs; Gert Sommer (Hg.): *Krieg und Frieden. Handbuch der Konflikt- und Friedenspsychologie* (Weinheim/Basel/Berlin: Beltz, 2004), pp. 57-75.

<sup>29</sup> Cf. Beitz, Charles R.: *Political Theory and International Relations* (Princeton: Princeton University Press, revised ed. 1999 [1979]), pp. 186f.

<sup>30</sup> Cf. Held, David et al.: *Global Transformations. Politics, Economics and Culture*, (Stanford, CA: Stanford University Press, 1999).

<sup>31</sup> Cf. Beitz: *Political Theory and International Relations*, pp. 143-153.

ciples of justice in substance should be applied. This argument does not even claim, that it has to be the same principles as in domestic society.

What we have said so far is, that if social co-operation is not confined to national boundaries and if this social co-operation produces benefits to which people from more than one nation have contributed, the benefits should be distributed according to certain principles of social justice which guarantee that the share of the profit is not solely determined by the contingent and morally arbitrary aspects like place (and time) of birth etc. This argument lends support to the conclusion that contributing to international social justice is thus not adequately perceived if it is seen as charity, to the contrary, it is a duty.<sup>32</sup>

The next presupposition which I will introduce is "empirical" with normative implications. It claims that the current institutions of global social and economic distribution are unjust<sup>33</sup> in the sense, that though over all wealth is increasing, the gap between rich and poor in the world is widening and the situation of the least well-off is worsening.<sup>34</sup> *Nota bene*: I am not saying here that all globalisation is bad; I am only saying that the economic structures, especially the terms of trade, of neo-liberal globalisation produces morally unacceptable and devastating effects for the poorest people at least in non-oil producing developing countries.

The consequence of these two empirical and one theoretical-ethical assumption is clearly, that the international institutional structure should guarantee some kind of principle of social justice with regard to the profits of international social co-operation<sup>35</sup>. This is consonant with what we found in regard to the third dimension of human rights, especially the right to development. But both arguments not necessarily are coextensive. It is possible that the principles of social justice which should be embedded in fundamental international structures might produce even a greater benefit for the poorest than fundamental rights would guarantee.<sup>36</sup> It is important to note that both the argument based on social respective distributive justice as well as the argument based on human rights provide justifying ground for the claim to international distributive justice which should be achieved by implementing principles of social justice in the respective institutional structure. Irrespective of which path we follow and independent from the substantial formulation of these principles it seems to be clear that this claim will fundamentally call into question the current institutions of international social and economic co-operation. The consequence would be dramatic for the fundamental international relations and would

<sup>32</sup> Cf. for this aspect the still illuminating, if though maybe not in all aspects convincing essay by Peter Singer: 'Famine, Affluence, and Morality', in: *Philosophy and Public Affairs* 1 (1972), pp. 229-243; based on different argumentation Rawls comes also to this conclusion. Cf. *The Law of Peoples*, (Cambridge, MA: Harvard University Press, 1999), pp. 105ff.

<sup>33</sup> This normative claim is based on minimal standards of fairness, which we can assume as plausible as soon as one accepts the necessity of principles of international distributive justice. By doing so, we still do not rely on specific substantial principle of international social justice.

<sup>34</sup> Cf. Beitz: op. cit. pp. 161-176; Held et al.: *Global Transformations*; Edward Goldsmith; Jerry Mander (eds): *The Case Against the Global Economy. And for a Turn Towards Localization* (London: Earthscan Publications, 2001). Rawls seems to miss the effect of global political economy nearly entirely and thus his critique of Beitz appears not to be very striking: Rawls: *The Law of Peoples*, pp. 116-120.

<sup>35</sup> For the sake of clarity and due to the limitations of space I do not address the question of (re-)distribution of natural resources here. Cf. Beitz: op. cit., pp. 136-143.

<sup>36</sup> Cf. Rawls: *The Law of Peoples*, pp. 113-115.

urge people living in countries of the Northern hemisphere to change their way of life drastically.<sup>37</sup> The consequences for Just War Theory would be obviously to implement a strong institutionalist component which aims on transforming the given international order and to prevent violent conflict. In addition the same consequences as for the comprehensive basic rights concepts apply. Thus also this aspect should be a further element in overcoming the conceptual divisions which were the starting point of this paper.

Summary:

Starting from the trans-Atlantic divide on the issue of justification of force which became obvious after 9/11 it is argued that the differences between the Anglo-American and Continental-European standard arguments can be overcome by a Moderate Institutional Cosmopolitanism. It combines a moderate institutionalist approach with a comprehensive concept of human rights and a moderate cosmopolitan stand on the issue of international distributive justice. If all three aspects are taken into account adequately in an Ethical Theory of International Relations both the Anglo-American traditions of Just War theory and a radical Kantian legalism must be revised and common ground could be revealed.

<sup>37</sup> Cf. for the whole section also Chris Brown: *International Relations Theory. New Normative Approaches* (New York: Columbia University Press, 1992).

*Justin Andersen:*

*Nonviolent Solutions to U.S. National Security Challenges: American Peace Church Advocates address American Foreign Policy and the 'War on Terror'*

Introduction:

In an article published shortly after the September 11, 2001 ('9/11') terrorist attacks, Michael Kelly, editor of the prestigious monthly magazine *The National Journal*, wrote a scathing criticism of American pacifists. Kelly charged that anyone who would not directly fight the terrorists was "on the side of future mass murders of Americans" and labelled pacifists as "objectively pro-terrorist" (Kelly 2001).

This outlook is a direct challenge to America's peace churches, whose faith beliefs and traditions embrace pacifism and explore alternatives to the use of violence as a means to settle disputes. The American peace churches remain steadfast in the belief that their Christian faith challenges them to seek non-violent alternatives to the use of lethal force as a tool of state policy. This essay is a discussion of how America's peace churches interpret and apply their faith beliefs and traditions to American foreign policy during the era of the 'war on terror', presenting an analysis of the work of interest groups that represent the views of Quakers, Mennonites and Brethren to the U.S. government.

Peace and the Peace Churches: Christians as Peacebuilders

The contemporary peace churches employ a thick description of peace as a condition emerging from constructive actions and processes ('peacebuilding') that arises directly out of their understanding of Christianity. The Mennonite Confession of Faith's commentary on "Peace, Justice and Nonresistance" provides a definition that broadly captures the peace churches' understanding of peace:

"The biblical concept of peace embraces personal peace with God, peace in human relations, peace among nations, and peace with God's creation. The Old Testament word for peace (shalom) includes healing, reconciliation, and well-being. Peace is more than the absence of war; it includes the restoration of right relationship" (Mennonite Church General Assembly 2005). The use of shalom in the Old Testament denotes not simply the absence of violence but the perfect concord realized on earth when humankind completely follows the ways of God (Birch 1985, p. 1115). To convey the idea that peace requires more than the cessation of hostilities, the peace churches sometimes employ the term shalom to refer to a holistic vision of peace.

Unfortunately, shalom clearly does not exist on earth. The peace churches believe God calls upon humanity to restore relationships – with God, with each other, and with creation – to their right and peaceful state. God took the initiative to repair these relationships through Jesus Christ: "We find in Jesus' life the wholeness and fulfillment of the shalom God promised from the beginning" (Church of the Brethren Conference 1991). Through his life, death and resurrection, Jesus restored a peaceful 'right relationship' between humanity and God.

Furthermore, the peace churches also believe that Christ sought to bring about shalom on earth by teaching the restoration of right relationships, both individual and corporate, between human beings. As such, Christ set a normative example for building peace here on earth for his followers. For the peace churches, the Biblical narrative of Jesus' life supplies examples of peacemaking that continue to inform and guide their work today. Episodes from the Gospels which are frequently used in peace church explanations of peacemaking include Jesus' rejection of the use of force to prevent his arrest, the Sermon on the Mount and Jesus' first preaching at the synagogue.

Immediately prior to his trial and crucifixion, Jesus faces arrest by the temple authorities. Peter draws his sword to defend Jesus, but Jesus commands him to put down his weapon, saying in Matthew 26:52 "all who live by the sword, die by the sword".

Jesus' criticism of Peter is a favourite Biblical passage often cited in peace church literature addressing the use of lethal force. The American Friends Service Committee Peace-building Office Director explains that, for Quakers, killing verges on deicide: "God is in every person, so using violence against someone is like using violence against God" (Lord 2006). Similarly, the Church of the Brethren argues that killing, even in self defence or to defend others, is always contrary to Christianity: "Moving against the life of another human being is never in harmony with what God has revealed in Jesus. Even when terrible inhumanities are being threatened or perpetrated [we] refuse to become agents or advocates of violence" (Church of the Brethren Conference 1996).

Jesus' refusal to consider the threat or use of violence is interpreted as an injunction against the use of deadly force in all circumstances, including the use of lethal military force by states. The peace churches have a strong tradition of conscientious objection, refusing to bear arms for national wars. For the peace churches, war is always unjust and needlessly wasteful of human life. As a result, peace church organizations believe that the pursuit and realization of peace "can be achieved only by peaceful means" (Friends Committee on National Legislation 2003). The restoration of right relationships between human parties cannot be achieved through lethal violence. Importantly, however, the peace churches do not completely rule out the use of force. Non-lethal force, such as that employed by law enforcement agencies during the conduct of most of their duties, is considered acceptable and necessary. The peace churches draw clear distinctions between force used within the framework of law and order – which is often non-lethal, limited and restricted to what is necessary to enforce the law and maintain social peace – versus the use of force during times of war – lethal, unlimited and destructive of innocent life.

The peace churches also view several of the most important peace teachings of Jesus as coming out of his Sermon on the Mount recorded in the Gospel of Matthew, which provides "remarkable and radical prescriptions for living" (Lord 2006).

The first is Jesus' direct blessing of peacemakers, indicating that Christ views peace as something more than a passive state or condition. The followers of Christ are directed to 'make' peace. Peace requires action, and Christ goes on to provide guidelines later in the sermon. The second is Jesus' re-interpretation in Matthew 5:38–42 of an important passage concerning justice in the Old Testament:

"You have heard that it was said, 'Eye for eye, and tooth for tooth'. But I tell you, do not resist an evil person if someone wants to sue you and take your tunic, let him have your cloak as well. If someone forces you to go one mile, go with him two miles".

The concept of 'eye for eye' comes from the Old Testament, and was an important early example of law balancing the needs of social justice and peace by limiting the punishment and vengeance allowed to aggrieved parties. However, rather than turning to righteous vengeance, Jesus recommends exploring more peaceful alternatives. Instead of violence, oppression and injury are countered with non-violent resistance, a response that represents superior moral force and is more likely to lead to a peaceful outcome of the dispute.

Third, closely related to this principle of responding to injustice with benevolent action, Jesus continues with a call for his followers to "love their enemies". Some commentators (such as Reinhold Niebuhr) interpret this command as representing a divine ideal unattainable for mortals, particularly as Jesus follows this instruction with the seemingly impossible injunction in Matthew 5:48 to "be perfect, as your Heavenly Father is perfect" (Brown 1986, pp. 117-118). However, for the peace churches, the calls to love enemies and engage in non-violent resistance embody more than requests to reflect the perfection of God. They represent critical first steps in attempts to promote peace and establish right relationships between human beings. The peace churches believe that loving and blessing enemies can disarm them, both literally and figuratively, as these actions break mutually acrimonious cycles of violence between warring parties. Furthermore, it may shame a perpetrator of violence into changing their belligerent behaviour. In short, the peace churches deny that Christ's words in the Sermon on the Mount are irrelevant to addressing political problems or resolving conflicts, pointing to the example of Martin Luther King Jr., Gandhi and others as successful leaders who employed strategies of non-violence. For the peace churches, the Sermon on the Mount is both a commission, and an affirmation, of the non-violent pursuit of peace. Another important Gospel episode for the peace churches is Luke 4:16-19. Jesus preaches for the first time in the synagogue, declaring that he has been sent to "bring good news to the poor and] proclaim release to the captives". The peace churches take the text as indicating that economic and political injustices represent broken covenants within human society. As such, shalom will be absent wherever there are severe economic inequalities and individuals or groups are denied basic political rights. Injustice and deprivation are seen as root causes of many of the world's conflicts by the peace churches, and they include historical, social and economic dimensions to their understanding of peace.

The peace churches believe that peace, properly understood, should permeate all aspects of human life and human relationships. They view Christ's peacemaking as anything but passive. A representative of a Quaker interest group explained in an interview that their work is guided by the idea that peacemaking involves continuous activity: "peace is a process not a destination it is an engaging active process" (Moix 2006). The principle that peace requires determined engagement with the outside world ultimately brought representatives of the peace churches to Washington D.C.

#### The Peace Church Policy Framework

The American political system is particularly amenable to the activities of advocacy groups (also called interest groups or lobbies). Advocacy groups are organizations established by groups of like-minded individuals who wish to influence the political process. While their shape and structure can vary widely, in functional terms a group seeking to promote its 'interests' to the U.S. government will often establish an advocacy office that

will monitor the political process in Washington and communicate the policy views of its constituents to policymakers. Quakers, Brethren and Mennonites are all represented by advocacy offices in Washington D.C. While these offices are not 'high church' representatives – because no such concept exists in the peace churches – they represent, and are accountable to, large groups of peace church members and congregations.<sup>1</sup> As such, they will be referred to in this essay as 'peace church advocacy offices'. Here are four advocacy offices representing peace church views in Washington D.C.: Quakers are represented by the Friends Committee on National Legislation (FCNL) and the American Friends Service Committee (AFSC), Mennonites by the Mennonite Central Committee (MCC) Washington Office and the Church of the Brethren by the Church of the Brethren (CoB) Witness Washington Office.

As organizations devoted to building peace and seeking non-violent alternatives to lethal force, the peace church advocacy offices address issues of foreign policy and national security from a fundamentally different perspective than other groups in Washington.

For the peace churches, security ultimately rests with faith in God. The MCC Washington office quotes Psalm 56:4 in a paper outlining its vision of 'alternative security': "In God, whose word I praise, in God I trust; I will not be afraid. What can mortal man do to me?" (Schirch and Byler). As such, 'true' national security is found through the pursuit of shalom and not by relying on national military strength.

Most people, however, have neither the tradition nor experience of peacemaking, and while many American policymakers have some kind of faith background, only basing arguments on religious language may not always be timely or appropriate when addressing matters of foreign policy. While remaining firmly grounded in their faith understanding, the advocates of the peace church interest groups readily employ the 'language' of policymakers, arguing that their policies are also in the best interests of the United States. The head of the MCC Washington Office explained that after 9/11 his organization quickly recognized the increased importance of communicating their policy views in terms of national security: "We became quite aware as an office that the buzzword security was almost an obsession to Americans [currently] policymakers -- they think in terms of security -- and you have to be able to say, we believe these [policy] approaches, which we saw as rooted in our faith understanding, would have more likelihood of bringing security than the approaches we have seen since September 11<sup>th</sup>" (Byler 2006). Following 9/11, the peace church advocacy offices faced the challenge of widespread popular and political support for the use of U.S. lethal military force as the principle instrument of U.S. foreign policy in response to the threat posed by international terrorism. Importantly, however, the peace church advocacy offices do not lobby on foreign and security policy issues from an ad hoc basis. They are not new to discussions of national security. Established during the era of the World Wars, they have a long legacy of work on the relationship between peace and security, and draw on this experience in addressing U.S. foreign policy during the continuing 'war on terror'. There is a coherent framework, firmly founded on their faith under-

<sup>1</sup> For example, many American Mennonite church conferences supply representatives to the board of the Mennonite Central Committee, a body created by Mennonite churches to conduct 'relief, development and peace' work. The Mennonite Central Committee Washington Office is one of several MCC peace offices and serves as the organization's interest group to Congress and the U.S. government.

standing of peace, underlying their advocacy work. This framework for an 'alternative' vision of U.S. foreign policy is shaped by the following concepts:

- 1) Opposition to unilateral foreign policies; support for international institutions and multilateral diplomacy.
- 2) Opposition to wars and the coercive use of national military force; support for initiatives within the framework of international law.
- 3) Opposition to increased military spending; support for diverting resources currently spent on military initiatives to national and international social aid programs.
- 4) Opposition to new weapons development, support for multilateral arms control and disarmament initiatives.

By reducing costly violence and building peaceful 'right relationships', the peace church advocacy offices believe a foreign policy guided by these principles would both advance U.S. national security and improve global cooperation on many issues important to American interests. While some parts of this vision are more nascent than others, this framework guides both their contemporary criticism of U.S. foreign policy and their suggestions for alternatives to the continuing 'war on terror'.

#### If not War, then What? Alternatives to Lethal Military Force

While opposing the use of military force in Afghanistan and Iraq, the peace churches unanimously agree that the problem of international terrorism demands a response. As the head of the MCC Washington office pointed out in a January 2006 interview, the anti-war chant of "war is not the answer" begs the question "what is the answer?" (Byler 2006). In keeping with their vision of national security, they suggest non-violent alternatives to the use of lethal military force. To counter the terrorists, they advocate establishing peaceful relationships through better international cooperation, encouraging a more just international order by strengthening and embellishing existing institutions of international law and shifting resources away from military force and weapons manufacture to aid and development programs.

#### Paradigm Shift: From a Strategy of Total War to Law Enforcement

The peace churches propose a dramatic shift in U.S. strategy aimed at combating international terrorism. They recommend addressing terrorism as a problem of international law enforcement. Instead of a 'war on terror', they envision the United States and its allies employing global dragnets to apprehend, convict and jail terrorists as international criminals. They argue that addressing terrorism through the vehicle of international law would greatly benefit U.S. national security, increasing the international legitimacy of U.S. anti-terror efforts and improving co-operation on a problem that affects many countries. Furthermore, they believe this change in strategy could greatly reduce the human and material costs of the current 'war on terror'.

The peace churches suggest several steps the United States could take to establish an effective mechanism of international law enforcement. The United States could ratify the Rome Statute of the International Criminal Court and become fully involved with the work of this international tribunal. The peace churches are working with other interested groups to overcome the Bush administration's opposition to American participation in the ICC (Stowe 2002 and Winter 2002).

They also propose the development of an international police force authorized to apprehend groups identified as threats to international peace, and they suggest this force can be trained to carry out its duties in a non-lethal manner (Mennonite Central Committee Washington Office 2005). The United States may soon possess some of the tools necessary to equip such a force. The U.S. Department of Defence is currently investigating a range of non-lethal and less-than-lethal weapons systems and technologies (Bedard 2002).

The peace churches also support boosting statutes of international law to better deal with terrorism. The FCNL suggested that the U.S. Senate immediately ratify international agreements such as the 1998 International Convention for the Suppression of Terrorist Bombing to provide an international legal framework to assist multilateral efforts to counter terror networks (Friends Committee on National Legislation October 2001).<sup>2</sup>

Taken together, these actions would provide an international legal framework – law courts, law officers and international legal statutes – for tackling international terrorism. The peace church offices noted with approval early U.S. measures to combat al-Qaeda using methods employed by law enforcement agencies attempting to dismantle criminal syndicates: cooperating with other countries to cut off funding to the group, sharing information and requesting the detention and extradition of suspects. They criticize both the failure to connect these early initiatives with existing international law and the decision to quickly follow these early measures with military action.

At the conceptual level of grand strategy, this paradigm shift from total war to law enforcement represents the peace church advocacy offices' key recommendation for a non-violent alternative to the current 'war on terror'.

#### "Swords to Ploughshares": Change Budget Priorities from Military to Aid and Development Programs

In addition to proposing a significant shift in U.S. strategy in the 'war on terror', the peace church advocacy offices also propose major changes to the government budget. With annual government appropriations supplying the funding necessary to actually implement policy proposals, they fully engage in the important business of lobbying on budgetary decisions. The peace churches consistently oppose military spending increases. They advance a 'guns or butter' theory of government budgets, asserting that spending state resources on the military directly takes dollars away from programs addressing socioeconomic needs. They argue that security needs would be better served by diverting funds currently earmarked for the military to both international economic aid and domestic social programs: "The cause of true global security is better served by investing in human needs rather than military might" (Friends Committee on National Legislation November/December 2002).

All the peace church interest offices reference the large size of the U.S. military budget in comparison both to other budget items and foreign country military expenditures. A 2002 MCC Washington Memo article titled "Never Enough", accompanied by a bar graph of U.S. actual and projected military spending increases, noted that the president's military

<sup>2</sup> Among other things, the Convention requires state parties to criminalize all aspects of the planning and preparation of terrorist bomb attacks and apprehend suspected terrorists fleeing to, or hiding on, their territory.

budget request of \$396 billion represented "11 times the total U.S. spending on domestic food and housing programs ... [and] 39 times the amount ... [of spending on] international development and humanitarian assistance" (Byler 2002, p.1). A related article in the same issue made a case for strengthening national security by substantially increasing U.S. foreign aid, asserting that "economic aid is one of several tools for bringing a more just and secure world" and quoting Jesus' command in Luke 6:38 "Give, and it will be given to you. For with the measure you use, it will be measured to you" (Shupack 2002, p. 4).

The FCNL annually distributes a pamphlet stating that "the federal budget is a statement of our country's moral values" and showing a graph consisting of piles of 'coins' (representing portions of the proposed discretionary federal budget) stacked next to one another, with the largest stack in 2005 representing funds "for war [and] preparing for war" and the smallest stack representing funds "for diplomacy [and] international cooperation" (Friends Committee on National Legislation 2006). Another table of information in the same pamphlet describes "Unmet Human Needs at Home and Abroad", including homelessness in the United States and the impoverished conditions experienced by one billion children around the world. While leaving people to make their own conclusions, the dramatic discrepancy between the two stacks of 'coins' strongly implies that the United States should consider using dollars currently devoted to military spending on aid programs.

The peace church advocacy offices also lobby for re-apportioning existing U.S. foreign aid currently designated for foreign militaries. The FCNL supported efforts by a House Representative to transfer funds earmarked for South American military counter drug initiatives to international health programs (Friends Committee on National Legislation Winter 2002).

In addition to setting aside money for international poverty reduction, the peace church advocacy offices also urge the United States to use its leverage with international financial institutions to forgive the foreign debts of poor nations. The AFSC, MCC Washington Office and CoB Witness Washington Office are all members of the umbrella group Jubilee USA, which lobbies for debt forgiveness as both a moral imperative and a means to increase global security by stabilizing countries whose governments are too crippled by debt to address basic social needs (Kapoor 2005).

The peace churches find Biblical support for reducing military expenditures in favour of domestic and international aid programs in several places. A Psalm asking God to ensure rulers "defend the afflicted among the people and save the children of the needy" (Psalm 72:1-4) led the MCC Washington office to argue that caring for the poor is a "national defence" responsibility of the government. (Mennonite Central Committee Washington Office 2005). Perhaps the most directly illustrative 'guns or butter' text found by the peace churches is the "prophetic scriptural vision of righteousness, justice, and mercy" recounted in Micah 4:3-4, where disarmament leads to peace and prosperity (Church of the Brethren October 2001):

"They will beat their swords into ploughshares and their spears into pruning hooks. Nation will not take up sword against nation. Every man will sit under his own vine and under his own fig tree, and no one will make them afraid."

The peace churches assert that economic inequalities fuel resentment, mistrust and ultimately war between communities and states (Church of the Brethren 1991). Micah's vi-

sion of peace is not an eschatological one for the peace churches. It serves as a guiding light for an agenda that will improve U.S. national security by using debt cancellation and major funding of foreign programs (for food, education and housing programs) to remove key economic causes of conflict (Schirch and Byler).

*'Woe to those ... Who Rely on Horses': Opposing New Weapons Development*

Soon after 9/11, U.S. policymakers voiced concerns about underground weapons of mass destruction (WMD) production facilities and stockpiles. With Iraq, Iran and North Korea all suspected of possessing these facilities, and with the United States increasingly worried that terrorist groups might seek to buy or steal WMD, the U.S. nuclear laboratories suggested moving forward research on a nuclear weapon designed specifically to destroy underground bunkers. The proposed weapon, officially called the Robust Nuclear Earth Penetrator (RNEP), but often referred to simply as the 'bunker buster', would burrow deeply into the earth before detonation in order to eliminate buried, hardened targets. The peace churches consistently refute the idea that armaments or military allies can contribute to national or international security, asserting that "more weapons do not provide enduring security nations must move towards comprehensive disarmament" (Friends Committee on National Legislation 2003). They find Biblical support for these ideas, including from passages such as Isaiah 31:1:

"Woe to those who go down to Egypt for help, who rely on horses, who trust in the multitude of their chariots and in the great strength of their horsemen, but do not ... seek help from the Lord" (Church of the Brethren Conference 1996 and Mennonite Church General Assembly 1995).

They interpret these calls to ancient Israel to trust God over the heavy weaponry and the major military powers of their day as equally applicable to the United States. Rather than attempting to ensure national security through weapons or military alliances, the United States should secure stable, peaceful relationships with other countries by encouraging arms control and disarmament.

The peace churches strongly opposed the potential development of the 'bunker buster' as both immoral and inexpedient. The construction by the United States of a new nuclear weapon was immoral due to its massive destructive power and consistent efforts by the U.S. government to halt the development of nuclear weapons by other countries. The MCC Washington Office pointed out that the 'bunker buster' possessed seventy times the destructive force of the first-generation nuclear weapons that destroyed Hiroshima and Nagasaki (Byler August 2005). The FCNL Executive Secretary asserted in a 2004 speech that the use, or threat of use of nuclear weapons, is inherently unholy:

"All of God's creation – the earth and the fullness thereof – is itself a sacred site. Human beings who would risk destroying the earth with nuclear weapons desecrate God's creation" (Volk 2004).

The MCC Washington Office also argued that the 'bunker buster' made the United States appear "duplicitous" in seeking the elimination of nuclear weapons programs by other countries while developing new nuclear weapons of its own (Schirch and Byler). In addition, a review of the 'bunker buster' design by a physicist at the Federation of American Scientists raised serious questions about the utility of the weapon (Nelson 2001). Furthermore, the 'bunker buster' could undermine U.S. national security by prompting other

countries to build more nuclear weapons or speed up existing development programs (Church of the Brethren Witness Washington Office 2003). Instead of developing new weapons, they recommend the United States initiate confidence-building measures (such as taking its nuclear arsenal off hair-trigger alert) as first steps towards jump-starting stalled multilateral initiatives aimed at reducing WMD (Edgar et al 2001). The peace church advocacy offices argue that weapons, particularly WMD, are inherently destabilizing. Building national stockpiles of weapons provokes suspicion in other countries, and cannot create the conditions for peace. For the peace church advocacy offices, it is clear that new weapons are far less likely to eliminate the threat posed by WMD than multilateral diplomacy and arms control agreements.

#### Conclusion

The peace church advocacy offices are outside of the American mainstream in both their religious and political views. However, they cannot be faulted for failing to bind their faith and politics together. There is a clear, coherent logical framework connecting their faith beliefs on peace with their proposals for non-violent alternatives to foreign policy problems. This puts the question of the relevancy of their views in the proper light. If American religious groups are welcomed to political debates because they provide authentic moral views which have a place in the public square, their ideas on foreign policy can be judged on the grounds of effectiveness but cannot be wholly dismissed as irrational or irrelevant. The peace church advocacy groups welcome evaluations of their policy proposals in terms of their efficacy. Taking note of criticisms such as those levelled by Kelly in the opinion editorial cited in the introduction of this essay, the head of the Brethren office in Washington responds: "Some people would say it's an idealistic way to look at foreign policy or international war issues -- but I can't say it's idealistic or unrealistic until it has been tried" (Jones 2006). With their proposals yet to be tried, they continue to believe that the peacemaking and non-violent resistance taught by Jesus Christ two millennia ago suggest practical policy alternatives to a 'war on terror' marked by strained diplomatic relationships, costly military operations and fading prospects for peace in Afghanistan or Iraq.

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*Elke Schwinger:*

*Die Politisierung kultureller Differenz: Voraussetzung oder Konsequenz des transnationalen Terrorismus?*

Einleitung

Das Thema des Vortrages besitzt durch die 2006 in Deutschland und Großbritannien vereitelten Sprengstoffanschläge und die dadurch verdeutlichte Situation der ständigen Bedrohung durch den Terrorismus eine aktuell hohe Relevanz für die Orientierungssuche der Sicherheitspolitik moderner demokratischer Staaten in Europa. Spätestens seit dem 11. September 2001 hat sich die scheinbar unüberwindbare Sicherheitsgarantie einer Weltmacht, der USA, für die Bevölkerung im eigenen Land als eine Farce erwiesen. Gewalttätige terroristische Anschläge auf Lebensmittelpunkte in städtischen Ballungszentren und auf alle, von den Bürgern genutzten Massenverkehrsmittel sind auch in Westeuropa seit dem militärischen Gegenschlag der USA zum beliebten Ziel für Terroranschläge geworden. Das Resultat ist eine große Verunsicherung der Zivilbevölkerung, die politisch zunächst mit einer Rückkehr von simplifizierenden Feindbildern, einer wachsenden Moralisierung der Politik und einer Neuorientierung sicherheitspolitischer Maßnahmen beantwortet wurde.

Das Ziel des modernen transnationalen Terrorismus ist es, Angst und Schrecken zu verbreiten. Es ist ein Angriff auf die (...) psychische Infrastruktur ganzer Gesellschaften (...)<sup>1</sup>. Dieses Ziel wurde sicherlich erreicht und dies ist auch der Fall, wenn, wie bei den jüngsten Ereignissen in Europa, die Anschläge noch rechtzeitig gestoppt werden konnten. Sicherheitspolitisch vermag man der Irrationalität und Unberechenbarkeit der terroristischen Anschläge offenbar nur ein immer dichteres Netz von Überwachungssystemen, die drohende Verschmelzung von polizeilichen und geheimdienstlichen Sicherheitskräften und deren Befugnisse entgegensetzen – mit dem Gefühl der wachsenden Bedrohung wächst auch die Bereitschaft der Bevölkerung moderner westeuropäischer Demokratien diese Maßnahmen für legitim zu halten. Doch mit der präventiv operierenden Strategie eines flächendeckenden Überwachungssystems gerät die Freiheit der Bürger selbst, sogar gesetzlich abgesichert, in Gefahr und die klassische Gewaltenteilung moderner Demokratien, die nicht zuletzt vor einem Rückfall in totalitäre Regime zu verhindern vermag, wird ins Wanken gebracht.

Es heißt, der „Krieg“ ist nach Europa zurückgekehrt und er fordert von uns allen seinen Preis. Er kommt jedoch in neuer Gestalt und mit neuen Fronten, die nicht an nationalstaatlichen Grenzen festzumachen sind, sondern vor allem in der Politisierung kultureller Differenz innerhalb der modernen Demokratien ihren Ort gefunden haben.

Mit einem sehr weiten Begriff der Kultur fasse ich dabei in Anschluß an Shweder „(...) die für eine Gemeinschaft typischen Ideen darüber, was wahr, gut, schön und effizient ist; Diese „Ideen über Wahrheit, Güte, Schönheit und Effizienz (müssen) sozial ererbt und gewohnheitsmäßig sein, und sie müssen tatsächlich konstitutiv für verschiedene Lebens-

<sup>1</sup> Münkler, Herfried „Der Wandel des Krieges“ Göttingen/2006, S.226.

weisen sein.“<sup>2</sup> Sie beinhalten die in der Philosophie klassisch als Konzeptionen des „guten Lebens“ bezeichneten Handlungsorientierungen. Die politische Ursachenanalyse deutete die Terroranschläge als religiös motivierte Taten einer fundamentalistischen Gruppierung des Islam gegen den Herrschaftsanspruch der sog. westliche Kultur, insbesondere auch des darin verankerten modernen Liberalismus und der weltweit erstarkten ökonomischen Kraft des Systems der freien Marktwirtschaft. Diese Deutung wurde zwar zunächst in bipolarer Perspektive als gewaltsamer „Konflikt der Kulturen“ von Seiten der USA für die Legitimation eines militärischen „Kreuzzuges gegen den Terrorismus“ und die „Achsen des Bösen“, d.h. für einen Angriffskrieg auf Afghanistan und Irak missbraucht. Zugleich aber konnte durch diese verkürzte kulturelle Deutung in den modernen westeuropäischen Gesellschaften eine Haltung der selbstkritischen Reflexivität im Hinblick auf die historisch-kulturelle Prägung der eigenen politischen Überzeugungen und Weltdeutung in Gang gesetzt werden, um tieferen Ursachen des Konfliktes auf die Spur zu kommen.

Die geistesgeschichtlichen und christlichen Wurzeln der Grundwerte der rechtsstaatlich organisierten Demokratie in öffentlicher Diskussion reflexiv zu erfassen und zu verdeutlichen, befördert aktuell die interkulturelle Diskursfähigkeit und politische Mündigkeit der Bürger moderner westeuropäischer Staaten, die bislang meist selbstzufrieden und pragmatisch orientiert lediglich auf die Leistungen des rechtsstaatlichen Demokratie, d.h. den allgemeinen Wohlstand, die Chancen der pluralistischen Meinungsbildung, die Freiheit des Privaten sowie die langjährige Friedenssicherung in Europa als Erfolge des Systems verwiesen hatten. Ausgelöst durch starke Immigrationswellen und einen fortschreitenden Globalisierungsprozeß wird hingegen in der politischen Wissenschaft bereits seit einem Jahrzehnt die Frage nach den Möglichkeiten einer friedlichen Integration von kulturellen Differenzen unter den Stichworten „Sonderechte für kulturelle Minderheiten“, „Kampf um Anerkennung“, sowie als Frage von „Identitätspolitik“ diskutiert. Die Theoretiker Jürgen Habermas, Charles Taylor, Will Kymlicka, und Seylah Benhabib u.a. erörtern jedoch vor allem in innenpolitischer Perspektive den Einsatz juristischer Instrumente zugunsten von Gleichstellungsmaßnahmen von diskriminierten Bevölkerungsgruppen und Kulturen und thematisieren dabei vor allem auch die Grenzen liberaler Rechtsstaatlichkeit wie z.B. im Falle staatlich legitimer Schutzmaßnahmen zugunsten kulturell spezifischer Konzeptionen des „guten Lebens“. Doch mit der, zu diesem politiktheoretischen und innerstaatlichen Diskurs quer verlaufenden Prozeß einer offensiv gewalttätigen Politisierung kultureller Differenz von Seiten fundamentalistischer Bewegungen und terroristischer Anschläge erwächst die Frage der friedlichen Integration, d.h. der politischen Relevanz bzw. Politisierung von kultureller Differenz in aktueller Konsequenz ebenfalls zu einer Frage von sicherheitspolitischer Dimension. Eine Politisierung kultureller Differenz im Sinne kritischer Selbstreflexivität und selbstbewusst getragener Ansprüche eigener kultureller Überzeugungen und Werte muß deshalb auch im Bezug auf eine transkulturell tragfähige Legitimationsbasis der Menschenrechte in Rechnung gestellt werden.

Als Voraussetzung erscheint dafür zunächst ein grundlegender Umbruch in der Weltpolitik, der neben Nationalstaaten und internationalen Organisationen neue Akteure ins

<sup>2</sup> R. Shweder, „Kulturelle Landkarten...“ in Harrison, L. ed. „Streit um Werte“ Hamburg/2000

Spiel gebracht hat. Im Mittelpunkt der Betrachtung steht hier vornehmlich der Ansatz von Ernst-Otto Czempiel, der die Schwächung des Nationalstaates in außenpolitischer Perspektive thematisiert. Seine These von einer Multipolarität autonomer Akteure in der aktuellen Phase der Weltpolitik soll nach einer Analyse des Phänomens des transnationalen Terrorismus unter dem Aspekt der Politisierung von Religion kritisch betrachtet werden. Den Abschluß der Untersuchung bildet der Ausblick in die Debatte zur Frage nach Anspruch und Weiterentwicklung der von europäischer Kultur geprägten Menschenrechtspolitik, die als Lernprozess offen für einen transkulturellen Dialog betrachtet wird.

#### 1. Aktuelle Herausforderungen der Sicherheitspolitik: Neue Akteure der Weltpolitik

Der Politikwissenschaftler Ernst-Otto Czempiel spricht angesichts der Entwicklungen in der internationalen Politik im letzten Jahrzehnt von einem grundlegenden Umbruch in der Weltpolitik, dessen Beginn sich mit dem Ende des Ost-West-Konflikts fassen lässt. Nach seinem Urteil lässt sich seit dieser Phase der grundlegenden Veränderungen im politischen Weltsystem allgemein ein zunehmender Verlust des Außenpolitik-Monopols der Regierungen moderner Staaten diagnostizieren: Ein gesteigerter Kontrollanspruch von Gesellschaften gegenüber den eigenen Regierungen bildete den Anfang dieses Prozesses, der letztendlich dazu geführt hat, dass gesellschaftliche Akteure ihre eigenen Interaktionen im internationalen System aufbauen konnten und schließlich bis zum heutigen Zeitpunkt zu autonomen Mitspielern der Weltpolitik erwachsen sind: Dieser Umbruch von der „Staatenwelt zur Gesellschaftswelt“, wie Czempiel es bezeichnet, vollzog sich damit durch die Entwicklungsdynamik in den modernen demokratischen Staaten selbst und entsprang letztendlich einem deutlich veränderten Machtverhältnis zwischen Gesellschaft und Regierung. Im rasend voranschreitenden Prozess der Globalisierung emanzipieren sich die Bürger auf der Basis von verbesserter Lebensqualität, gewachsenem Wohlstand, erhöhtem Bildungsdurchschnitt und immensen Möglichkeiten weltweiter Informations- und Kommunikationssysteme zu aktiven Mitspielern in der Weltpolitik. Davon zeugen nicht nur die wachsenden Zahlen von transnationalen Korporationen und Nicht-Regierungsorganisationen, sondern auch die sog. entgrenzte Macht des Kapitalismus und multinationaler Unternehmen, die nach den Worten von Habermas „eine disparitäre Entwicklungsdynamik der Weltwirtschaft“ in Gang gesetzt hat. Die Verelendung ganzer Regionen und Kontinente, sowie die wirtschaftspolitische Ohnmacht der nationalstaatlichen Regierungen im Rahmen des Globalisierungsprozesses sind eine Folge dieser Entwicklungstendenz und rufen den verschärften Protest von Nichtregierungsorganisationen auf den Plan. Hatten zudem in der sog. Staatenwelt lediglich Eliten durch die Exklusivität politisch relevante Informationen einen entscheidenden Wissensvorsprung im Fragen internationaler Politik und Wirtschaftsprozesse verfügen können, so ist dieses Wissen durch neue Kommunikationstechnologien in den modernen demokratischen Staaten in großem Maße auch der Gesellschaft, bzw. den Bürger selbst zugänglich geworden. Sicherheitspolitische Entscheidungen, Prozesse der Weltwirtschaft und kulturelle Konflikte werden nach Czempiel unter diesen Voraussetzungen für eine große Mehrheit der Gesellschaftsmitglieder durchschaubar, d.h. können von engagierten Bürgern weitestgehend erfaßt und kritisch in Frage gestellt werden. Der Globalisierungsprozess, der sich durch eine zunehmende Vernetzung gesellschaftlicher Akteure, ein weltweites Angebot global agierender Medien und vor allem auch die Ausbreitung des liberal-kapitalistischen Wirt-

schaftssystems auszeichnet, wirkt dabei zusätzlich wie ein Katalysator dieser Entwicklung: Er fördert zum einen lokalisierenden Trends zivilgesellschaftlicher Selbstbestimmung und ermöglicht bzw. vertieft zum anderen die internationale Zusammenarbeit der Gesellschaftswelt.

- „Jenseits der Staatenwelt, innerhalb der sich die Internationale Politik abzuspielen pflegt, entsteht eine Welt, deren Interaktionen von gesellschaftlichen Akteuren geprägt und bestimmt werden.“ (S.21) Mit Hilfe des Internets erschafft sich die Gesellschaftswelt ihre eigene Öffentlichkeit und setzt ihre eigenen Regeln internationaler Zusammenarbeit.
- „Gesellschaftliche Einflüsse und Anforderungen bestimmen nicht nur die Außenpolitik der Staaten mit; sie werden im internationalen System von gesellschaftlichen Akteuren eigenständig artikuliert und in autonome Handlungen übersetzt, die sich, wie der Terrorismus zeigt, sogar des Mittels quasi-militärischer Gewalt bedienen.“ (S.22)

Gemäß Czempels Analyse, die durch die Überzeichnung der Allgemeinheit der genannten Phänomene auch als Ansatz zur Entwicklung einer „Weltgesellschaft“ interpretiert werden könnte, ist der Kampf um die ökonomische und politische Herrschaft im System der Weltpolitik, in das die neuen Akteure eingedrungen sind, noch nicht entschieden und kann sich sogar noch zugunsten einer Vielfalt von Kulturen und einer Ausweitung gesellschaftlicher Mitbestimmung in weltweiter Dimension entwickeln. D.h. Der Globalisierungsprozeß hat aus dieser Perspektive die Welt noch „(...) nicht vereinheitlicht, sondern diversifiziert. Sie ist nicht unipolar, sondern multipolar. (...). Das Verlangen nach Partizipation ist der stärkste Trend in der Gesellschaftswelt. Erfolgreich kann in dieser Lage nur eine Politik sein, die dieser Multipolarisierung Rechnung trägt.“ (S.38). Auf der anderen Seite aber bildet der Globalisierungsprozess mit seinen Möglichkeiten der weltweiten Vernetzung und Selbstorganisation von nichtstaatlichen Akteuren, sowie der beschleunigten Durchsetzung des westlich geprägten Systems des Kapitalismus gerade auch die Voraussetzungen einer neuen Gestalt eines international agierenden Terrorismus: Czempel spricht hier von einem internationalen, gewaltsamen Angriff gesellschaftlicher Akteure auf die Mächte des Westens. Herfried Münkler fasst den weltweit agierenden Terrorismus, der mit einer Vielzahl von Anschlägen in den letzten Jahren ganz Europa und die USA in Angst und Schrecken versetzt, sogar als eine neue Form des Krieges. Ein Blick auf die Besonderheiten des transnationalen Terrorismus vermag eine Erweiterung der Sicherheitspolitik auf die bewusste Politisierung kultureller Differenz zu begründen, einer Politisierung also, die sich der politisch-normativen Implikationen des europäischen Weltbildes und seiner Grundlagen bewusst ist. Durch die Bereitschaft, diese in ihren Begründungen selbstreflexiv zu überprüfen und ihre Perspektiven diskursiv zu verteidigen, heißt dies, sich angesichts der neuen weltpolitischen Herausforderung einem interkulturellen Lernprozeß zugunsten der Friedenssicherung zu stellen.

## 2. Das Phänomen des „Transnationalen Terrorismus“

Spätestens mit dem 11. September 2001 betrat für alle erkennbar die neue Gestalt einer sicherheitspolitischen Herausforderung der modernen Staatenwelt, der sog. „Transnationale Terrorismus“, die Bühne internationaler Politik: Mit dem 11. September war schlagartig, so Charles Townshend, „(...) die Möglichkeit einer Massenvernichtung sichtbar gewor-

den, die vorher einer bestimmten Art von Waffen nur weniger Großmächte vorbehalten war.“<sup>3</sup> Doch der Anschlag stellte die moderne Sicherheitspolitik nicht nur durch sein immenses Zerstörungspotential vor völlig neue Probleme. Elementar für seine Wirkung war auch die neue Dimension des medial gesteigerten Schockeffektes, den die komplexe, äußerst medienwirksame Inszenierung des Terroraktes weltweit hervorgerufen hatte und die Bevölkerung der westlichen Welt in Angst und Schrecken versetzte. Die steigende Komplexität der Operation verdeutlichte zudem, dass man es mit einem Angreifer von hoher Intelligenz, Bildung und bester technischer bzw. finanzieller Ausstattung zu tun hatte. Die auf den Irakkrieg folgenden Anschläge in Westeuropa bekräftigten zudem die Vermutung, dass die gesamte westliche Welt und nicht nur die USA allein das Ziel dieser neuen Form des Terrorismus geworden war. Im Gegensatz zu seinen Vorgängern, dem nationalen und dem international agierenden Terrorismus, besitzt dieser Erfahrung nach, die auch durch die jüngsten Ereignisse in London und Köln bestätigt werden kann, der transnationale Terrorismus keinen spezifischen lokalen Bezugspunkt mehr, durch den seine Anschlagziele berechenbar sein könnten. Auch beschränkt er seine Aggressionen nicht auf politische Repräsentanten oder Symbole des verhassten westlichen Systems, sondern weitet seine terroristischen Angriffe auch gnadenlos auf Zivilisten, auf die Metropolen öffentlichen Lebens der modernen Demokratien aus. Seine Akteure scheinen weltweit, ohne zentrale Steuerung zu operieren, um in den Lebenszentren westlicher Staaten unvorhersehbar und eigenständig zuzuschlagen. Diese Eigenschaften des transnationalen Terrorismus verstärken das asymmetrische Verhältnis von Terrorgruppen und staatlichen Sicherheitskräften, das im Allgemeinen schon immer typisch für Terrorakte ist, um einen weiteren Grad. Dieser läßt effektive Schutzvorkehrungen des klassischen innenpolitischen Arsenal und des hochgerüsteten militärischen Apparates fast unmöglich werden: Sind die terroristischen Akteure den Polizei- und Sicherheitskräften derjenigen modernen Staaten, in denen sie ihr Ziel verorten, auch ganz offensichtlich in starkem Maße unterlegen, so haben sie doch das Überraschungsmoment der Anonymität der Täter, des Zieles und des Zeitpunktes des Anschlags auf ihrer Seite. Durch die weltweite Vernetzung und eigenständige Planung von Attentäter, die oftmals zuvor nie als straffällig in den Dateien der Sicherheitskräfte aufgetaucht sind, steigert sich in der aktuellen Situation die Unberechenbarkeit terroristischer Anschläge ins Bodenlose. Entscheidend für die neue Problemlage ist, daß der transnationale Terrorismus, wie Ulrich Schneckener, der dieses Phänomen in der Berliner Stiftung für Wissenschaft und Politik systematisch untersucht hat, „letztlich heimatlos und ein moderner Nomade“ geworden ist. D.h.:

Der sog. „(...) transnationale Terrorist ist eben nicht darauf angewiesen, in einem bestimmten Staat X seine Kommandozentrale zu haben oder aber in einem Land Y Anschläge zu verüben, da er keinen ‚nationalen Kampf‘ im engeren Sinne führt. An die Stelle von Lokalität und nationaler Mitgliedschaft treten transnationale Netzwerke und Beziehungen, das heißt soziale und symbolische Bindungen an ‚Gleichgesinnte‘ die in anderen Teilen der Welt aktiv sind“<sup>4</sup>.

<sup>3</sup> Townshend, Charles „Terrorismus“ Stuttgart/2005, S.10

<sup>4</sup> Schneckener, Ulrich „Der transnationale Terrorismus“ S.50, Frankfurt a. M. 2006

Der transnationale Terrorismus lebt dabei scheinbar vom weltweiten Aufbau von Netzwerkstrukturen, die in der medialen Öffentlichkeit dem sog. „Al-Qaida-Netzwerk“ zugeordnet werden. Dieses Phänomen, das eine völlige Neuorientierung der klassischen Außenpolitik und nationalen Sicherheitspolitik erforderlich macht, führt aktuell zu einer Verdichtung und Intensivierung von unterschiedslos auf alle Bürger angewandter Überwachungsmethoden in den modernen europäischen Staaten. Sie stellen durch den sukzessiven Aufbau eines polizeilich gesteuerten Überwachungsstaates die bürgerlichen Freiheitsrechte der zu schützenden Bevölkerung scheinbar mehr zur Disposition als dass sie die Wahrscheinlichkeit eines terroristischen Anschlags effektiv vermindern könnten. Die neuen Täter sind als gut integrierte Mitglieder der Gesellschaft unauffällig und scheinen inmitten ihrer künftigen Opfer ein friedliches Leben zu führen. So liegt die Vermutung nahe, dass gerade die ideologisch missbrauchte Politisierung von kultureller Differenz im Namen eines religiös begründeten Fundamentalismus die entscheidende Macht besitzt, immer wieder neue Anhänger des transnationalen Terrorismus aus der Mitte der Bürgerschaft selbst zu rekrutieren. Ihre Sogkraft lässt den Kampf gegen den modernen Terrorismus bislang als aussichtslosen Kampf gegen eine Hydra nachwachsender Feinde demokratischer Freiheiten und Sicherheiten erscheinen. Die Auseinandersetzung mit dem ideologischen Hintergrund der terroristischen Anschläge, der Politisierung kultureller Differenz erwächst deshalb zu einem wichtigen Ansatzpunkt moderner Sicherheitspolitik, auf den sich die vorliegende Ausführung nun im Folgenden konzentrieren wird.

### 3. Politisierte Religion und Autonomie der Akteure internationaler Politik

Sicherheitspolitik ist angesichts des anfangs grob skizzierten Umbruchs der Weltpolitik nicht mehr gleichzusetzen mit der militärischen Sicherung der äußeren Grenzen von Nationalstaaten allein. Sie betrifft Fragen der ökonomischen Gerechtigkeit und der politischen Demokratisierung der Struktur unseres internationalen Staatensystems, die von Globalisierungsgegnern aufgeworfen werden, ebenso wie die ethisch-politische Problemstellung der friedlichen Integration kultureller Differenzen innerhalb der modernen Staaten Westeuropas selbst. Im Unterschied zu den neuen Mitspielern der Weltpolitik in Gestalt der NGOs, die ihre Anliegen in der Form demonstrativer politischer Aktionen oder in kritischen Statements im Rahmen einer Gegenöffentlichkeit artikulieren, ist die Verständigung und politischen Verhandlung mit Akteuren des transnationalen Terrorismus bis heute ohne eine tragfähige Basis geblieben. Von besonderer Bedeutung dabei ist, dass die plakative, menschenverachtende Botschaft der Terrorakte selbst durch die Anonymität der Täter meist auf die medial vermittelten Bilder des Massenmords an Zivilisten, sowie die Verbreitung der Reaktionen von Angst und Schrecken in der Bevölkerung reduziert geblieben ist: Die moderne Medien- und Informationswelt, deren Eigenlogik der dramatischen Inszenierung von Informationen bewusst von Seiten des Terrorismus als zusätzliche Waffe eingesetzt wird, vermittelt auf diese Weise ein Gefühl der permanenten Bedrohung. Die Verweigerung der kommentierenden Erklärung oder Rechtfertigung der Taten von Seiten der Täter schließt jedoch vorneherein eine Auseinandersetzung mit den widerstrebenden Interessen und Absichten von Tätern und Opfern aus<sup>5</sup>.

<sup>5</sup> Vergleiche dazu Münkler, Herfried „Die neuen Kriege“ Reinbek b. Hamburg/2003. S.196

Zugleich eröffnet die Kommunikationsverweigerung anonymer Täter die Möglichkeit, eine Deutung der Ereignisse und Ursachen von Seiten der nationalstaatlichen Regierungen derjenigen Staaten, die angegriffen wurden, jeweils für eigene politisch-ökonomische Zwecke zu instrumentalisieren,- wie es beispielsweise auch den USA von Czempel, Schneckener und vielen anderen Politikwissenschaftlern explizit vorgeworfen wird. Die psychischen und moralischen Voraussetzungen der terroristischen Strategie begünstigen zudem auch auf der Seite der potentiellen Akteure des transnationalen Terrorismus, für die Selbstrekrutierung neuer Anhänger und Akteure eine vereinfachende Polarisierung der Kulturen als Motiv der künftigen Tat und machen die Aufnahme eines interkulturellen Dialogs in den modernen Gesellschaften zu einem wichtigen Instrument struktureller Präventionsmaßnahmen. Jürgen Habermas diagnostiziert die Anziehungskraft politisierter Religion mit folgender Vermutung: „Der wütende fundamentalistische Rückgriff auf eine Glaubenseinstellung, der die Moderne noch keinen selbstreflexiven Lernprozess, keine Ausdifferenzierung einer von der Politik getrennten Weltdeutung abgenötigt hat, zieht seine Plausibilität eben aus dem Umstand, dass er von einer Substanz zehrt, die dem Westen zu fehlen scheint.“<sup>6</sup> Die Täter, die oftmals als gut integrierte Bürger in Westeuropa bereits lange Jahre friedlich und unauffällig unter uns leben, profitieren von ihrem Anschluß an fundamentalistische Strömungen des Terrorismus nicht nur dadurch, dass sie in eigenständig geplanten Terrorakten eine revolutionäre Tat von größter medialer und politischer Effizienz vollbringen könnten. In den verunsichernden Zeiten der Globalisierung, dem starken Herrschaftsanspruch ökonomisch-kalkulierender Vernunft und der zunehmenden Brüchigkeit sozialer Identitäten in den modernen Gesellschaften bietet politisierte Religion in Gestalt des islamischen Fundamentalismus das in der Moderne seltene Angebot für sie, mit radikaler Konsequenz eine klare Zugehörigkeit, eine neue Heimat und kulturelle Identifikation für sich selbst zu finden. Zygmunt Baumann formuliert die in Zeiten der Globalisierung erschwerte Aufgabe der Konstituierung einer personalen und sozialen Identität in der Moderne, der wir alle in zunehmenden Maße ausgesetzt sind mit folgenden Worten:

In our times of ‚liquid modernity‘ when not just the individual placements in society, but the places to which the individuals may gain access and in which they may wish to settle are melting fast and can hardly serve as targets for ‚life projects‘. This new restless and fragility of goals affects us all (...). There is little or nothing we can do to ‚bind the future‘.<sup>7</sup>

Die Politisierung von Religion, speziell die fundamentalistische Interpretation religiöser Offenbarung, bietet für diese Problemstellung eine einfache Antwort, und sie bildet scheinbar auch den entscheidenden Baustein, der das transnationale Terrornetz zumindest in der Selbstwahrnehmung der Akteure zu einer Gemeinschaft von Revolutionären zu verbinden vermag. Kritisch im Hinblick auf die vorschnelle Verurteilung des Islamismus für diese identitätsstabilisierende Funktion von politisierter Religion ist dazu jedoch noch zu bemerken: „Fundamentalismus als politische Ideologie kennzeichnet nicht etwa ein spezifischer (...) Inhalt grundlegender Gewissheitsansprüche, Ethik- und Rechtsvorstel-

<sup>6</sup> Habermas, Jürgen „Der gespaltene Westen“ Frankfurt a.M./2004, 19

<sup>7</sup> Baumann, Zygmunt „Identity in the Globalizing World“ 2003

lungen und Ordnungsentwürfe, (...) sondern die Form und Konsequenz ihrer Handhabung, und als allem Zweifel entzogen (...) außerhalb des offenen Dialogs und der Infragestellung angesiedelt.“<sup>8</sup> Eine unmittelbare, verbindliche Ableitung politischer Direktiven aus religiöser Offenbarung negiert nicht nur die säkulare Rechtsordnung, sondern bedroht in akuter Weise den Frieden innerhalb der modernen Rechtsstaaten Westeuropas. Der Islam als Glaubensrichtung und Religion, der die meisten Attentäter angehören, lässt sich deshalb nicht für die neue Attraktivität seiner fundamentalistischen Instrumentalisierung durch gewaltbereite Gruppierungen haftbar machen, da sich auch andere Weltreligionen als durchaus anschlussfähig für fundamentalistische Ansprüche in Politik und Gesellschaft erwiesen haben und immer erweisen werden.

Gemäß dem Urteil von Czempel und Schneckener handelt sich bei der Entwicklung und den Motiven der ideologischen Begründung des transnationalen Terrorismus um eine äußerst komplexe Konstellation von macht-politischen, ökonomischen, sowie kulturellen Problemlagen im System der internationalen Politik, die auch nicht für eine Missdeutung von Kulturen als monolithische Blöcke und deren Konflikt als „Krieg der Kulturen“, d.h. als eine Selbstreflexivität verweigernde Politisierung von kultureller Differenz, missbraucht werden sollte. So spricht auch Martin Riesebrodt in seiner Abhandlung zur „Rückkehr der Religionen“ in die Welt der Politik treffend davon, dass niemand „Religion an sich“ praktizieren oder glauben, sondern sich lediglich kulturell, sozial und historisch vermittelten Praktiken und (...) Glaubensvorstellungen“ anschließen kann. Die Einsicht in den historischen Entwicklungsprozess von religiösen Interpretationen und kulturellen Traditionen verdeutlicht zudem den Umstand, dass jede Kultur rückblickend stets auch als eine Mischkultur verstanden werden kann und ihre Rezeption bzw. Praxis in der Gegenwart wiederum als offener und verantwortungsvoller Lernprozeß zu begreifen ist. In diesem Sinne ist auch der Analyse von Jürgen Habermas zuzustimmen, der davon ausgeht, dass sich mit der Änderung der Grundgesamtheit der Bürger einer politischen Gemeinschaft, zugleich „der Horizont von intersubjektiv geteilten Erfahrungen und Kulturen als die entscheidende Basis ethisch-politischer Selbstverständigungsdiskurse“ verändern wird. Die Mitglieder des transnationalen Terrorismus disqualifizieren sich aus dieser Perspektive politischer Ethik jedoch klar als „autonome Akteure“ aufgrund ihrer mangelnden Bereitschaft oder Fähigkeit zur selbstreflexiven Teilnahme an einem, nicht nur auf politisch-rechtlicher Ebene anzusiedelnden Diskurs zu den normativen Grundlagen einer künftigen Weltgesellschaft.

#### Schlußbemerkung

Diese Herausforderung einer selbstreflexiven Politisierung von kultureller Differenz und Identität besteht für alle Staatsbürger in der zwischenmenschlichen Begegnung des alltäglichen Lebens in der Gegenwart ebenso wie als Thematik rechtstaatlich vermittelter Auseinandersetzungen, welche Grundsatzentscheidungen für die politische Steuerung prägen. Die Aufgabenstellung der Verständigung zwischen verschiedenen Kulturen und der kulturellen Integration von Immigranten betrifft demgemäß als Konsequenz der zunehmenden Globalisierung nicht nur die Verbesserung sozialer Integration kultureller Minderheiten in den Nationalstaaten selbst. Es stellt sich insbesondere auf der internationalen Ebene politischer

<sup>8</sup> Meyer, Thomas „Die Politisierung kultureller Differenz“ in Bielfeldt, H. ed. „Politiisierte Religion“ S.37ff

Ethik die grundlegende Frage nach den Möglichkeiten und Bedingungen für die Entstehung einer Weltgesellschaft, in der auch die Menschenrechte als transkulturell<sup>9</sup> zustimmungsfähige Basis, als „overlapping consensus“<sup>10</sup> weltweit eine tragende Rolle spielen könnten. So spricht beispielsweise Heiner Bielefeldt die Hoffnung aus, dass mit „(...) dem Verzicht auf kulturesentialistische Vereinnahmungen der Menschenrechtsidee (...) sich der Raum dafür (öffnet, i.E.), Menschenrechte als Kern eines ‚overlapping consensus‘ zu verstehen“<sup>11</sup>.

Als klare Problemlage zeichnet sich bei dieser Vision einer Weltgesellschaft jedoch der historisch-kulturelle Hintergrund der Entwicklung der Menschenrechte ab. Der Universalismus der Menschenrechte, der sich vor allem der Philosophie der Aufklärung, insbesondere der kantischen Philosophie verdankt, löst zunächst „(...) die Menschen geistig aus ihren Kollektiven, er hat individualisierenden und gleichzeitig nivellierenden Charakter. Er macht den Einzelmenschen als ens rationale zum Ausgangspunkt aller Betrachtung. (...) Auf dieser Grundlage des abstrakten Individuums basiert sein Anspruch, Geltung ‚für alle‘ zu haben, Aussagen über das zu machen, ‚quod semper, quod ubique, quod omnibus‘“.<sup>12</sup> Erscheint der Katalog der Menschenrechte mit diesem Anspruch zunächst als kulturindifferent, bzw. - neutral, so spricht er doch in seinem Menschenbild deutlich die Sprache der westlichen Kultur und ihrer geistesgeschichtlichen Grundlagen. Die Legitimität der Menschenrechte wird durch diese Begrenzung<sup>13</sup> als brüchig erfahren, eine transkulturelle Bindungsfähigkeit kann die Idee der Menschenrechte in Zeiten der Globalisierung ihre Kraft demgemäß nur aus der Fähigkeit zu selbstkritischer Reflexion und der Bereitschaft zu transkulturellen Lernprozessen gewinnen. Der Historiker Rösen präzisiert die sich daraus ergebende Aufgabenstellung der Vermittlung von kultureller Vielfalt und Demokratie mit den treffenden Worten:

<sup>9</sup> Im Unterschied zum Begriff der Interkulturalität, der Tendenzen der Abgrenzungen, Irritationen bzw. Missverständnisse in der Verständigung zwischen Angehörigen verschiedener Kulturen zugesteht (siehe dazu G. Maletzke *Interkulturelle Kommunikation* Opladen/1996) beinhaltet der Begriff der Transkulturalität die Vorstellung von Differenzierungen und Widersprüchen innerhalb von Kulturen selbst und von einem Prozess des gelingenden Austauschs zwischen Kulturen im Sinne von Neubildung kultureller Deutungen, der Verständigung im Sinne von ausgeglichener Wechselwirkung in sehr starkem Maße zu idealisieren droht.

<sup>10</sup> Begriffsdefinition des „overlapping consensus“ durch John Rawls *Political Liberalism*, New York 1993, S.133ff) im Sinne einer liberalen politischen Gerechtigkeitsvorstellung, die es ermöglicht selbst einander widersprechende Weltanschauungen in einer Gesellschaft friedlich zu integrieren.

<sup>11</sup> Heiner Bielefeldt *Philosophie der Menschenrechte*, S.145, Darmstadt 1998. Bielefeldt führt seine Thesen explizit in Anschluß an Rawls Ansatz aus und spricht von der Zielsetzung einer Vermittlung der Menschenrechte mit unterschiedlichen kulturellen Traditionen im Sinne eines interkulturellen Lernprozesses (S.145ff), die allerdings durch seine starke Anknüpfung an den Individualismus fragwürdig erscheint.

<sup>12</sup> Tönnies, Sybille *Der westliche Universalismus*, S.43, Opladen 2001

<sup>13</sup> Vgl. Otfried Höffe (*Transzendente Interessen: Zur Anthropologie der Menschenrechte*, S.15ff): „Dort (...), wo man, was der Mensch ist, durch ein Menschenbild qualifiziert, bindet man die rechte, die der Mensch bloß deshalb hat, weil er Mensch ist, an eine Interpretation von begrenzter Gültigkeit. Man setzt, freilich auf subtile Weise, die ‚Idee‘ des Menschen sans phrase aufs Spiel, mithin auch den Gedanken, der Mensch habe unabhängig von allen Interpretationskontroversen unveräußerliche Rechte.“ (S.18) in: Kerber, Walter (u.a.eds.) *Menschenrechte und kulturelle Identität*, München 1991

“The problem of how to reconcile the universal validity of human and civil rights with their cultural specificity, indeed with the uniqueness of the situation, in which they arose, has yet to be resolved. On the one hand, there are numerous constitutions that incorporate human rights – not just in Western cultures but all around the globe. And these principles (...) have a universal validity claim. On the other hand, these principles have their historical origins in occidental culture and it is only with great difficulty that they take root outside it. Universal validity and historical specificity would thus appear to contradict one another”<sup>14</sup>

Besondere Bedeutung erhalten für die Bestärkung von sozialer Solidarität, und den Prozess der interkulturellen Verständigung diejenigen Kräfte und Bewegungen, die sich aktuell in Gestalt von nichtstaatlichen Organisationen (NGOs) und lokal gegründeten Selbsthilfeinitiativen auch über die Grenzen von Nationalstaaten hinweg als internationales Sprachrohr für ökonomische Problemlagen und Fragen kultureller Identität etablieren. Diese Protestbewegungen, die Czempel als neue Akteure der Weltpolitik benennt, zeichnen zwar mit gutem Grund den Prozess der Globalisierung selbst als dafür verantwortlich, daß der Siegeszug des Kapitalismus die Kluft zwischen Arm und Reich immer weiter zu vergrößern scheint anstatt größeren Wohlstand für alle zu bewirken. Dafür, dass die kulturelle Identität der Völker durch die weltweite Verbreitung der amerikanischen Konsumkultur überfremdet werde und die Freiheit der Selbstbestimmung für ärmere Länder durch ökonomische Abhängigkeiten und Ausbeutung in immer weitere Ferne rückt<sup>15</sup>. Doch es ist überdeutlich, dass gerade auch diese Gestalt der Gegen-Öffentlichkeit der NGOs wie z.B. von Attac, Human Rights Watch und Amnesty International, selbst vom Phänomen einer mittlerweile weltweiten kommunikativen Verflechtung profitiert und ihre eigene Effektivität diesem Element des Globalisierungsprozesses zu verdanken hat<sup>16</sup>. Mit dieser offensichtlichen Ambivalenz der aktuellen Entwicklung einer Global Society belegt der Nobelpreisträger Joseph Stieglitz die grundlegende These: „Globalisierung an sich ist weder gut noch schlecht“<sup>17</sup>, der sich der vorliegende Ansatz auch im Hinblick auf die Entwicklung einer Weltgesellschaft und die friedliche Vermittlung und Koexistenz kultureller Vielfalt anschließen möchte. Der Globalisierungsprozess beinhaltet in diesem Sinne das Potenzial zur Entwicklung einer kritischen Weltöffentlichkeit, die neue Partizipationschancen auch für die Interpretation der Menschenrechte und einen transkulturellen Lernprozess von Seiten der Bevölkerung eröffnet. Hauke Brunkhorst thematisiert dieses Phänomen des Globalisierungsprozesses z.B. als „längst überfällige Entwicklung einer Legitimationsbasis der internationalen Menschenrechtskonventionen, die bislang nur durch staatliche Organe verfasst und in Kraft gesetzt worden waren“. Unter dem Stichwort einer „starken Öffentlichkeit im Werden“ zählt er auf das Entwicklungspotenzial dieser Gegenöffentlichkeit zu einer Öffentlichkeit mit anerkannter politischer Macht oder administrativer Macht. Diesem ä-

<sup>14</sup> Rüsen, J. Human Right from the Perspective of a Universal History, S.28 in: Schmale, Wolfgang (u.a.eds.) Human Rights and Cultural Diversity, Goldbach 1993

<sup>15</sup> Siehe dazu z.B. : Attac Deutschland (ed.) Alles über Attac Frankfurt a.M. 2004, insb. T.I und II

<sup>16</sup> Vgl. Joseph Stieglitz Die Schatten der Globalisierung, S.18, Berlin 2002

<sup>17</sup> Joseph Stieglitz Die Schatten der Globalisierung, S.35, Berlin 2002

ßerst positiv gestimmten Blick in die Zukunft, der auch für die kulturellen Aspekte der Menschenrechtspraxis Relevanz besitzt“<sup>18</sup>, schließt sich der vorliegende Aufsatz zum einen in bewusster Abgrenzung zu einer Selbstreflexivität verweigernden Polarisierung von kulturellen Differenzen, die auf der Ebene der institutionalisierten Politik oftmals die Vorherrschaft gewinnen, und zum anderen im Vertrauen auf den aktiven Eigensinn der Nichtregierungsorganisationen gerne an.

<sup>18</sup> Hauke Brunkhorst Politik der Menschenrechte – Zur Verfassung der Weltgesellschaft in: Armin Nassehi (u.a.eds.) Der Begriff des Politischen, Baden-Baden 2003, S.71ff: Vom Gesichtspunkt der Problemstellung der Vermittlung von kultureller Vielfalt und Demokratie aus gesehen erweist sich gerade „die Offenheit der Menschenrechte für arbiträre, moralische Deutungen und Besetzungen, die vom Standpunkt des Rule of Law ein Desaster ist, (...) als Vorteil und Gewinn: als Chance, stärker zu werden und Einfluß Zug um Zug in Macht zu verwandeln.“ (S.81)

*Josef Bordat:*

*Interventionspflicht und Strafrecht in Zeiten globaler Gewalt. Zwei Aspekte einer Reform der Vereinten Nationen*

1. Einleitung

Nach dem Zusammenbruch der bipolaren Weltordnung (Mauerfall 1989, Ende der Sowjetunion 1991) hat sich der Begriff des Krieges gewandelt, von der gewaltsamen Auseinandersetzung souveräner Staaten hin zur Gewalt, die von nicht-staatlichen Gruppen bzw. gegen diese ausgeübt wird. Eine besondere Rolle spielen dabei ethnische Konflikte, die etwa in Ruanda (1994) und im Kosovo (1999) zu Völkermord und Vertreibung führten.

Ethnische Konflikte können dabei nur dort gewaltsam ausgetragen werden, wo der Staat nicht mehr als Ordnungsmacht präsent ist, weil er dies nicht mehr kann (failed state) oder will (rogue state). Trotz der Tatsache, dass „[s]olche machtlosen, zerfallenden Staaten [...] der Nährboden für chaotische Kriege, Genozid und Bandenherrschaft [sind]“<sup>1</sup>, gibt es keine Regelung in der Charta für Fälle dieser Art, geht diese doch – immer noch – von souveränen Staaten aus, die nicht nur willens, sondern auch in der Lage sind, selbstbestimmt die Staatsgeschäfte zu verrichten. Nichtsdestotrotz weisen die Resolutionen der Zeit nach 1989/91 darauf hin, dass der Sicherheitsrat eine Bedrohung des Weltfriedens auch in Menschenrechtsverletzungen durch Staaten (besser: durch das Versagen von Staaten) erkennt und nicht nur in Kriegen zwischen zwei souveränen Staaten.<sup>2</sup>

Das klassische Verständnis der Aggression als „Krieg“ im herkömmlichen Sinne schwindet in dem Maße, in dem die Souveränität als völkerrechtliches Paradigma in Frage steht. Nur wenn der „neue Krieg“ bereits im frühen Stadium ernst genommen wird als Bedrohung für den Weltfrieden, können massive Menschenrechtsverletzungen unterbunden werden.

Interventionen in eindeutigen Fällen von gerechtfertigtem Eingriff, also bei ethnischen Säuberungen und Völkermord, brauchen eine entsprechend unzweideutige Rechtsgrundlage.

Bei allen skeptischen Vorbehalten gegen einen „Weltstaat“ und eine „Weltregierung“ denke ich an eine verbindliche Pflicht der Weltgemeinschaft, über den Sicherheitsrat klare Kriterien für Gründe, Verlauf, Ziel und Nachbereitung einer Intervention zu erarbeiten und in geeignete Rechtsform zu bringen, die auch zu Verfahrensfragen Regelungen trifft, damit die Graubereiche klarere Konturen bekommen und Unilateralismen wie die Nationale Sicherheitsstrategie der USA (2002) obsolet werden. Hier ist der Reformbedarf unverkennbar. Ein Vorschlag aus dem Jahre 2001, das Gutachten The Responsibility To

<sup>1</sup> Laubach, B. (2004) (Hrsg.): Die Rolle des Völkerrechts in einer globalisierten Welt. Sicherheitspolitische Herausforderungen an die Internationale Ordnung zu Beginn des 21. Jahrhunderts. Berlin, S. 27.

<sup>2</sup> Beispiele sind der Schutz der Kurdengebiete nach dem Zweiten Golfkrieg (1991) und die Intervention in Haiti (1994), die ebenfalls nicht zur Beendigung eines Krieg geschah, sondern „in order to assist the legitimate government of Haiti in the maintenance of the public order“ (Res. SR 940, zit. nach Doebling (2004): S. 445, Anm. 81).

Protect der International Commission on Intervention and State Sovereignty (ICISS), trägt dem Rechnung. Hinzu kommt das Römische Statut des Internationalen Strafgerichtshofs (IStGH) von 1998, das den bisher jüngsten institutionellen Schritt einer grundlegenden Transformation des modernen Völkerrechts im 21. Jahrhundert darstellt. Mit der individual-strafrechtlichen Verantwortlichkeit natürlicher Personen und der – wenn auch zögerlichen – tatbestandlichen Berücksichtigung innerstaatlicher Konflikte wird an einem grundlegenden Prinzip des Völkerrechts gerüttelt: einer ausschließlich auf Nationalstaaten als souveränen Völkerrechtssubjekten basierenden Weltordnung, zugunsten eines klaren Bekenntnisses zum Schutz der Menschenrechte.<sup>3</sup> Diese beachtliche Entwicklung möchte ich nun nachzeichnen.

## 2. Die Reform des Völkerrechts als Reaktion auf gewaltsam ausgetragene ethnische Konflikte

### 2.1 Interventionismus

Gleich zu Beginn des Gutachtens *The Responsibility To Protect* der kanadischen Regierung vom Dezember 2001, das von der International Commission on Intervention and State Sovereignty (ICISS)<sup>4</sup> erarbeitet und vom International Development Research Centre (IDRC) herausgegeben wurde, zeigt sich sowohl der Bezug zum aktuellen Schrecken des Terrors, als auch zugleich die abwägend-distanzierte Grundhaltung, die den ganzen Bericht prägt: „This report is about the so-called ‚right of humanitarian intervention‘: the question of when, if ever, it is appropriate for states to take coercive – and in particular military – action, against another state for the purpose of protecting people at risk in that other state. At least until the horrifying events of 11 September 2001 brought to center stage the international response to terrorism, the issue of intervention for human protection purposes has been seen as one of the most controversial and difficult of all international relations questions.“<sup>5</sup> Es folgt eine weitere historische Motivierung und die Konkretisierung der Aufgabenstellung: „With the end of the Cold War, it became a live issue as never before. Many calls for intervention have been made over the last decade – some of them answered and some of them ignored. But there continues to be disagreement as to whether, if there is a right of intervention, how and when it should be exercised, and under whose authority.“<sup>6</sup> Die Frage lautet also: Sind militärische Interventionen erlaubt, und wenn ja: wann, wie und unter wessen Führung? Damit wird ganz in Kontinuität des tradi-

<sup>3</sup> Es ist kein Zufall, dass die Koalition für den Internationalen Strafgerichtshof, die nicht nur bei der UN-Bevollmächtigtenkonferenz in Rom eine wesentliche Rolle bei der Unterstützung der Befürworterstaaten und in der Mobilisierung der Öffentlichkeit gespielt hat, gemeinsam mit führenden Menschenrechtsorganisationen vom World Federalist Movement gegründet wurde, einer Organisation, die sich seit über fünfzig Jahren mit der Frage beschäftigt, wie eine Weltordnung geschaffen werden kann, in der Menschenrechtsschutz als Aufgabe der „Weltföderation“ besteht. Das Römische Statut für einen Internationalen Strafgerichtshof ist zweifellos ein Teil der Antwort.

<sup>4</sup> Mitglieder der Kommission waren Gareth Evans und Mohamed Sahnoun als Vorsitzende sowie Gisèle Côté-Harper, Lee Hamilton, Michael Ignatieff, Vladimir Lukin, Klaus Naumann, Cyril Ramaphosa, Fidel Ramos, Cornelio Sommaruga, Eduardo Stein und Ramesh Thakur als einfache Mitglieder.

<sup>5</sup> IDRC (2001) (Hrsg.): *The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty*. Ottawa, S. VII.

<sup>6</sup> Ebd.

tionellen *bellum iustum*-Topos vorgegangen, indem zunächst die Frage des *ius ad bellum* und dann die des *ius in bello* adressiert wird.

In Anlehnung an die historische *recta intentio* fasst der Bericht die „right intention“ in folgendem Leitsatz zusammen: „The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.“<sup>7</sup>

Nur für den Fall von „serious and irreparable harm occurring to human beings, or imminently likely to occur“, einhergehend mit „large scale loss of life, actual or apprehended, with genocidal intent or not“ sind militärische Interventionen gerechtfertigt.<sup>8</sup> Dann allerdings folgt aus diesem „just cause“ die Pflicht zum Eingriff, die sich – gegen geltendes Völkerrecht – über Souveränität, Nichteinmischung und Gewaltverbot erhebt: „The principle of non-intervention yields to the international responsibility to protect.“<sup>9</sup> Von „responsibility“ (Verantwortung) ist die Rede, nicht etwa von „possibility“ (Möglichkeit). In der Praxis kann daraus nur eine „duty“, eine Pflicht, werden, die eigentlich dem Staat obliegt, in Fällen des Staatsversagens aber auf die Weltgemeinschaft übergeht. Grundsätzlich bleibt also die Zuständigkeit und Verantwortung beim Staat. Erst wenn sich zeigt, dass dieser nicht in der Lage oder nicht willens ist, dieser Verantwortung gerecht zu werden, ist die Weltgemeinschaft am Zug. Entscheidend ist der Wandel des Souveränitätsbegriffs, der dem zugrunde liegt: Wenn überhaupt noch von staatlicher Souveränität gesprochen werden kann, dann nur im Sinne von Verantwortung für die Menschen.

An dieser Stelle besteht sicherlich Bedarf zur Reform des Völkerrechts. Ferner sollten die im Zusammenhang mit gewaltsamen ethnischen Konflikten auftretenden Verletzungen elementare Menschenrechte juristisch verfolgt werden. Damit komme ich zum zweiten Punkt, zur Justitiabilität von „Verbrechen gegen die Menschlichkeit“.

## 2.2 Justitiabilität

Dieser Gedanke findet seinen Ausdruck im Internationalen Strafgerichtshof (International Criminal Court), mit dem der Mangel der Allgemeinen Erklärung der Menschenrechte (AEMR, 1948), die fehlende Einklagbarkeit, zu heilen versucht wird. Das Römische Statut (1998) des IStGH schließt eine offenkundige Lücke zur Erfassung von „Verbrechen gegen die Menschlichkeit“<sup>10</sup>, kann also wirksam zum Tragen kommen bei der juristischen Erfassung und Verfolgung von Verbrechen, die im Graubereich zwischen völkerrechtswidrigen Kriegsverbrechen und solchen „gewöhnlichen“ Verbrechen liegen, die dem jeweiligen nationalen Strafrecht zuwiderlaufen. Dies ist besonders wichtig, weil das nationale Strafrecht häufig gerade dann bestimmte Verbrechen straffrei lässt, wenn sie politisch gewollt sind, etwa Gewalt gegen ethnische oder religiöse Minderheiten, die auch von Staats wegen diskriminiert werden.<sup>11</sup> Und essentiell wird es dann, wenn der Staat in Gestalt von Militär

<sup>7</sup> IDRC: A. a. O., S. XII.

<sup>8</sup> Ebd.

<sup>9</sup> IDRC: A. a. O., S. XI.

<sup>10</sup> Ein Terminus, der vom Nürnberger Kriegsverbrechertribunal geprägt wurde, um auch die Verbrechen anklagen zu können, die vor dem 1.9.1939 stattfanden und damit keine Kriegsverbrechen waren.

<sup>11</sup> So wurden nicht etwa die Täter des Pogroms gegen die jüdische Bevölkerung in Deutschland am 9.11.1938 zur Rechenschaft gezogen, sondern die Opfer, die sogar für die Sachschäden aufzukommen hatten.

und Polizei auf seinem Gebiet selbst zum Täter wird. Mit dem Statut des IStGH lassen sich Menschenrechtsverletzungen immer und überall und auch in Friedenszeiten ahnden.

Das Problem ist jedoch, dass diese Rechtsinstanz nicht von allen gleichermaßen erwünscht ist, d. h. es mangelt an der nötigen Universalität. 139 Staaten haben zwar das Statut unterschrieben, aber erst 98<sup>12</sup> haben es ratifiziert<sup>13</sup>, d. h. weniger als die Hälfte aller UNO-Mitglieder. Zu den Gegnern des IStGH gehören auch die USA, auf deren Gründe ich weiter unten eingehen werde.

Dennoch konnte das Statut am 1.7.2002 in Kraft treten, denn dafür war die Ratifizierung von mindestens 60 Staaten nötig.<sup>14</sup> Die feierliche Vereidigung der ersten 18 Richter fand am 11.3.2003 statt<sup>15</sup>, so dass das Gremium seine Arbeit aufnehmen konnte.<sup>16</sup>

In der Praxis bedeutet die fehlende Universalität jedoch trotzdem eine erhebliche Einschränkung, denn zur Rechenschaft gezogen werden kann ein Täter grundsätzlich nur dann, wenn er einem Staat angehört, der das IStGH-Statut ratifiziert hat bzw. wenn das Verbrechen auf dem Territorium eines solchen Vertragsstaates begangen wurde (Nationalitäts- und Territorialprinzip).<sup>17</sup> Die grundsätzliche Zuständigkeit für „schwerste Verbrechen, welche die internationale Gemeinschaft als Ganzes berühren“, wird dem Gericht damit zwar nicht genommen, aber die Justiziabilität dieser Verbrechen doch erheblich in Frage gestellt.

Die formale Zuständigkeit des IStGH ist komplementär, d. h. in Ergänzung zu den nationalen Gerichten, angelegt.<sup>18</sup> Grundsätzlich gilt dabei der Vorrang der nationalen Gerichtsbarkeit. Voraussetzungen für ein Tätigwerden des IStGH ist ein mangelnder Strafverfolgungswille oder die mangelnde Verfügbarkeit eines innerstaatlichen Justizsystems „unter Berücksichtigung der völkerrechtlich anerkannten Grundsätze eines ordnungsgemäßen Verfahrens“<sup>19</sup>, was bedeutet, dass bei Vorhandensein einer innerstaatlichen Gerichtsbarkeit

<sup>12</sup> Stand: 31.3.2005. Zuletzt ratifizierte Kenia das Statut.

<sup>13</sup> Darunter die Bundesrepublik Deutschland, die am 10.12.2000, dem internationalen Tag der Menschenrechte, als 25. Staat das Statut des Internationalen Strafgerichtshofes ratifizierte. Dazu musste der Bundestag zunächst Art. 16 des Grundgesetzes ändern. Danach war es nämlich bisher untersagt, dass ein deutscher Staatsbürger an das Ausland ausgeliefert werden darf (Art. 16 Abs. 2 GG). Nach der Verfassungsänderung – sie wurde am 27.10.2000 fast einstimmig angenommen – kann ein Deutscher, „soweit rechtsstaatliche Grundsätze gewahrt sind“, ausgeliefert werden, allerdings nur an ein anderes EU-Mitgliedsland oder an den IStGH.

<sup>14</sup> Inkrafttreten sollte es am 60. Tag nach der Unterzeichnung des 60. Staates. Dies war der 1.7.2002, da durch die gleichzeitige Ratifikation durch zehn Staaten am 11.4.2002 die Voraussetzung der 60 Ratifikationen erfüllt wurde.

<sup>15</sup> Gem. Art. 36 des Statuts von Rom für eine Amtszeit von neun Jahren, also bis 2012.

<sup>16</sup> Bislang erschöpft sich die Arbeit des IStGH im Sichten von eingereichtem Material. Zwei Ermittlungsverfahren wurden vom verantwortlichen Ermittler Luis Moreno-Ocampo eröffnet: eines gegen die Demokratische Republik Kongo (23.6.2004) und ein weiteres gegen Uganda (29.7.2004). Beide befinden sich noch im Vorverfahren.

<sup>17</sup> Art. 12 des Statuts von Rom. Wobei sich hier zwei praxisrelevante Lücken auftun, zum einen insofern, als Täter, die nicht Angehörige eines Vertragsstaates des IStGH sind und auf dem Territorium eines Vertragsstaates eine Straftat im Sinne des Statuts von Rom begangen haben, nur in ein Nicht-Vertragsgebiet zu fliehen brauchen, um sich der Strafverfolgung zu entziehen, zum anderen für den Fall eines Bürgerkrieges in einem Nicht-Vertragsstaat, an dem ja in der Regel vornehmlich dessen „Bürger“ teilnehmen, die damit Angehörige eines Nicht-Vertragsstaats sind, also in jedem Fall vom Ankläger des IStGH unbehelligt bleiben.

<sup>18</sup> Art. 1 des Statuts von Rom.

<sup>19</sup> Art. 17 des Statuts von Rom.

zu prüfen ist, ob ein nationales Verfahren eventuell nur dazu dient, den Täter vor strafrechtlicher Verantwortlichkeit vor dem IStGH zu schützen, ob es in dem Verfahren eine „nicht gerechtfertigte Verzögerung“ gibt und / oder ob das Verfahren „nicht unabhängig oder unparteiisch“ und „in einer Weise geführt wird, die unter den gegebenen Umständen mit der Absicht unvereinbar ist, die betreffende Person vor Gericht zu stellen“.<sup>20</sup>

Die inhaltliche Zuständigkeit erstreckt sich auf das Verbrechen des Völkermords, auf Verbrechen gegen die Menschlichkeit, Kriegsverbrechen und das Verbrechen der Aggression (Angriffskrieg).<sup>21</sup> Die Aufnahme der Aggression ist nur durch eine Kompromisslösung gelungen: Während der IStGH nach dem Statut für das Verbrechen der Aggression zuständig ist, darf er seine Gerichtsbarkeit erst ausüben, wenn die Überprüfungskonferenz eine Verbrechensdefinition der Aggression vorgenommen hat, über die 1998 in Rom noch keine Einigung erzielt werden konnte.<sup>22</sup> Für die Verbrechen Völkermord, Verbrechen gegen die Menschlichkeit und Kriegsverbrechen enthält das Statut präzise umschriebene Straftatbestände, die sich in nahezu 70 Einzeltatbestände aufgliedern.<sup>23</sup>

Die Definition des Völkermords entspricht den Regelungen des Art. 2 der Genozid-Konvention von 1948, d. h. aus den Beweisschwierigkeiten, die sich bei den subjektiven Tatbestandsvoraussetzungen in der Praxis der ad hoc-Strafgerichte für Ex-Jugoslawien und für Ruanda ergeben haben, wurden im Statut des IStGH keine Folgerungen gezogen. Das Verbrechen des Völkermords kann – ebenso wie Verbrechen gegen die Menschlichkeit – auch dann verfolgt werden, wenn es außerhalb eines bewaffneten Konflikts begangen wurde.<sup>24</sup> Kriegsverbrechen werden auch dann erfasst, wenn sie im Rahmen eines nicht-zwischenstaatlichen bewaffneten Konflikts begangen wurden, selbst wenn hoheitliche Streitkräfte nicht direkt beteiligt waren, also etwa in Bürgerkriegen.<sup>25</sup> Damit sind in der Tatbestandsgruppe der Kriegsverbrechen „erstmalig alle völkergewohnheitsrechtlichen Straftatbestände für internationale Konflikte aufgeführt worden“.<sup>26</sup>

Ein Verfahren vor dem IStGH kann auf zweierlei Weise eingeleitet werden: Zum einen durch Überweisung eines Anfangsverdachts („situation“) an den Ankläger des IStGH zur Untersuchung; dieser Mechanismus kann von einem Vertragsstaat<sup>27</sup> oder dem UN-Sicherheitsrat<sup>28</sup> ausgelöst werden. Zum anderen – und hier offenbaren sich die Möglichkeiten des IStGH – kann der Ankläger von Amts wegen ein Ermittlungsverfahren einleiten.<sup>29</sup> Dabei ist es jedoch auf die Mithilfe der Vertragsstaaten angewiesen, denn über eigene

<sup>20</sup> Art. 17 Abs. 2 des Statuts von Rom. Die Entscheidungsbefugnis liegt in diesen Fällen beim IStGH selbst.

<sup>21</sup> Vgl. Art. 5 des Statuts von Rom.

<sup>22</sup> Vor 2009 ist mit einer Einigung nicht zu rechnen.

<sup>23</sup> Vgl. Art. 6 (Völkermord), Art. 7 (Verbrechen gegen die Menschlichkeit) und Art. 8 (Kriegsverbrechen) des Statuts von Rom.

<sup>24</sup> Hierin ist der entscheidende völkerrechtliche Fortschritt im Rahmen des Menschenrechtsschutzes zu sehen.

<sup>25</sup> Mit der Einschränkung, dass ein Bürgerkrieg in einem Nicht-Vertragsstaat nicht in den Zuständigkeitsbereich des IStGH fällt.

<sup>26</sup> Ahlbrecht, H. (1999): Geschichte der völkerrechtlichen Strafgerichtsbarkeit im 20. Jahrhundert unter besonderer Berücksichtigung der völkerrechtlichen Straftatbestände und der Bemühungen um einen Ständigen Internationalen Strafgerichtshof. Baden-Baden, S. 381.

<sup>27</sup> Art. 13 (a) i. V. m. Art. 14 des Statuts von Rom.

<sup>28</sup> Art. 13 (b) des Statuts von Rom.

<sup>29</sup> Art. 13 (c) i. V. m. Art. 15 des Statuts von Rom.

Ermittlungskräfte – vergleichbar der Polizei im innerstaatlichen Rechtsrahmen – verfügt der IStGH nicht.<sup>30</sup>

Das IStGH-Statut enthält – i. Ggs. etwa zum deutschen StGB – keine mit einzelnen Tatbeständen verknüpften Strafandrohungen. Der Gerichtshof kann über eine Person, die wegen eines im Statut genannten Verbrechens verurteilt worden ist, folgende Strafen verhängen: eine zeitlich begrenzte Freiheitsstrafe bis zu einer Höchstdauer von 30 Jahren, eine lebenslange Freiheitsstrafe, eine Geldstrafe und die Einziehung von Erlösen, Eigentum und Vermögensgegenständen, die aus dem Verbrechen stammen.<sup>31</sup> Hierbei prüft die Hauptverfahungskammer im Fall einer Verurteilung „die zu verhängende angemessene Strafe und berücksichtigt dabei die während der Verhandlung eingebrachten Beweismittel und die Anträge, die für den Strafausspruch von Bedeutung sind“<sup>32</sup>. Entscheidend ist ferner, dass es für aktive Amts- oder Mandatsträger, also Staats- oder Regierungschefs, Mitglieder einer Regierung oder eines Parlaments, keine strafhemmenden Ausnahmeregelungen gibt: „Immunitäten oder Verfahrensregeln, die nach innerstaatlichem Recht oder nach dem Völkerrecht mit der amtlichen Eigenschaft einer Person verbunden sind, hindern den Gerichtshof nicht an der Ausübung seiner Gerichtsbarkeit über eine solche Person.“<sup>33</sup>

Weitere wichtige Punkte des Statuts sind die individualstrafrechtliche Verantwortlichkeit natürlicher Personen, unabhängig eines von ihnen bekleideten, offiziellen Amtes, die prinzipielle Möglichkeit zur Annahme freiwilliger, finanzieller Beiträge von natürlichen und juristischen Personen<sup>34</sup> und schließlich die Konstituierung als ständige Einrichtung, im Unterschied zu den fallbezogen eingerichteten Strafgerichten für Ex-Jugoslawien und für Ruanda sowie zu dem historischen Vorbild, dem Nürnberger Kriegsverbrechertribunal.

Von Rom ist ein klares Signal ausgegangen: Im 21. Jahrhundert soll die Straflosigkeit von schwersten Menschenrechtsverletzungen weltweit ein Ende haben. Der Einsicht, dass der IStGH in einer nicht lückenlosen, aber dennoch effektiven Konstitution eine historisch einmalige Chance darstellt, steht eine Reihe von Bedenken der Staaten gegenüber, die den IStGH ablehnen und entsprechend das Statut noch nicht ratifiziert haben. Unter diesen befinden sich – ich erwähnte es bereits – auch die USA. Was sind nun die Gründe für die ablehnende Haltung? Die Bedenken liegen nicht allein in der Angst vor politisch motivierten „Willkürklagen“, die Kritik geht tiefer. Es wird seitens der USA u. a. bemängelt: 1. das Fehlen eines Normenkontrollverfahrens, 2. der Verstoß gegen das Wiener Übereinkommen über diplomatische Beziehungen<sup>35</sup>, 3. das Fehlen einer allgemein anerkannten Definition des Tatbestandes der Aggression, 4. die bis auf wenige Ausnahmen der Partizipationsmöglichkeit erfolgende Beschneidung der Kompetenzen des Sicherheitsrates,

<sup>30</sup> Eine eigene „Polizei“ wird von Carla del Ponte, Anklägerin des Strafgerichts für Ex-Jugoslawien, gefordert, weil die Zusammenarbeit mit den Strafverfolgungsbehörden in den Staaten des ehemaligen Jugoslawien sich schwierig gestaltet und auch nicht alle angeklagten Personen bereit sind, sich freiwillig zu stellen.

<sup>31</sup> Die Todesstrafe war während der Rom-Konferenz in der Diskussion, ist aber nicht in das Statut aufgenommen worden.

<sup>32</sup> Art. 76 des Statuts von Rom.

<sup>33</sup> Art. 27 Abs. 2 des Statuts von Rom.

<sup>34</sup> Art. 116 des Statuts von Rom. Diese Regelung erscheint vor dem Hintergrund der mangelnden Zahlungsmoral einiger Mitglieder der Vereinten Nationen besonders erwähnenswert.

<sup>35</sup> In dieser Konvention von 1962 ist u. a. die Immunität der Diplomaten geregelt, die in Art. 27 Abs. 2 des Statuts von Rom für den Fall eines Verstoßes gegen die Normen des Statuts aufgehoben wird.

5. die Möglichkeit des IStGH, im Rahmen des Komplementaritätsvorbehalts eine Beurteilung des Willens und der Fähigkeit der Strafverfolgungsorgane des betroffenen Staates selbst und abschließend vorzunehmen, 6. die fehlende demokratische Legitimation der Vereinten Nationen, die sich mehrheitlich aus totalitär geführten Staaten zusammensetze, deren Regierungsmitglieder ohne freie, geheime und gleiche Wahlen an die Macht gekommen seien<sup>36</sup> und denen man keine Einflussmöglichkeiten auf die eigene Justiz gewähren dürfe und 7. Verfahrensfragen wie (a) das Fehlen einer Geschworenen-Jury, deren prozessuale Mitwirkung ein elementarer Grundsatz des US-amerikanischen Rechtsverständnisses und eines der obersten Prinzipien der US-Verfassung ist<sup>37</sup>, (b) der weitreichende Opferschutz, nach dem das Opfer einer Straftat nicht in der Gerichtsverhandlung präsent sein muss<sup>38</sup> und (c) die Gefährdung militärischer und geheimdienstlicher Geheimnisse durch die Unabhängigkeit der Ankläger beim IStGH<sup>39</sup>.

In einer Art Doppelstrategie versuchen die USA, sich hinsichtlich des IStGH aus der Affäre zu ziehen: Zum einen schließen sie bilaterale Abkommen mit einzelnen Staaten, die dem IStGH beigetreten sind oder noch beitreten wollen, des Inhalts, dass US-Soldaten und andere US-Bürger wegen Vergehen, die unter das Statut des IStGH fallen, in dem betreffenden Land nicht behelligt und auch nicht an den IStGH ausgeliefert werden, zum anderen versuchen sie, die Immunität ihrer Soldaten über Resolutionen des Sicherheitsrats

<sup>36</sup> Diese Generalkritik an den Vereinten Nationen wird in der jüngsten Vergangenheit des öfteren laut. Sie reicht unterdessen weiter als bloß bis zum Statut des IStGH, stellt sie doch die UNO als solche grundsätzlich in Frage.

<sup>37</sup> Es wird zudem darauf hingewiesen, dass wegen international sehr unterschiedlicher Rechtssysteme internationale Gerichtshöfe zwangsläufig Kompromisse bezüglich nationaler Präferenzen erfordern. Dies ist auch bei langjährig etablierten und auch von den USA im allgemeinen anerkannten Gerichtshöfen der Fall, so etwa beim Internationalen Gerichtshof oder beim Streitschlichtungsverfahren der Welthandelsorganisation, bei denen es ebenfalls weder Geschworene noch Kreuzverhöre noch weitreichendere demokratische Legitimation noch Weisungsbefugnisse von Einzelregierungen gibt. Die von den USA bisher anerkannten internationalen Gerichtshöfe sind allerdings Systeme der politischen Streitentscheidung von komplexen politischen oder ökonomischen Sachverhalten mit entsprechenden Ergebnissen. Die Urteile dieser Gerichtshöfe gelten zwar, können jedoch durch parallel laufende politische Aktionen in ihrer Bedeutung abgeschwächt werden. In einem Strafprozess vor dem IStGH wäre die Sachlage anders, weil Strafurteile die Erforschung einzelner Lebenssachverhalte aus dem vorher durchgeführten Erkenntnisprozess der Hauptverhandlung beinhalten. Das Urteil im Anschluss an ein Strafprozess hat einen absoluten Charakter, Schuld oder Unschuld der Angeklagten werden festgestellt. Daher ist der IStGH nicht mit den anderen – von den USA anerkannten – internationalen Gerichten oder Schiedsstellen vergleichbar.

<sup>38</sup> Nach amerikanischem Rechtsverständnis ist die mündliche Durchführung der Verhandlung, bei der die Zeugen dem Verteidiger zum Kreuzverhör bereit stehen müssen, oberstes Verfassungsprinzip. Dem Verteidiger werde mit der Opferschutzregelung des IStGH-Statuts die Möglichkeit zur Verteidigung seines Mandanten genommen, die er in einem US-amerikanischen Prozess hat.

<sup>39</sup> In einem Rechtsstaat liege das Anklagemonopol bei der Staatsanwaltschaft. Diese werde i. d. R. durch die Regierung kontrolliert. Gegen eine Weisung der Regierung könne die Staatsanwaltschaft nicht aktiv werden. Die Sicherung militärischer Geheimnisse werde durch diese Kontrolle gewährleistet. Der Vertreter der Anklage beim IStGH ist einer solchen Kontrolle jedoch nicht unterworfen. Es wäre dem Ankläger somit möglich, an Informationen zu gelangen, die auf Grund ihrer Brisanz in einer repräsentativen Demokratie den parlamentarischen Untersuchungsausschüssen vorbehalten blieben, da dort Vertraulichkeit und die Wahrung nationaler Interessen gewährleistet sind.

zu erreichen, was zweimal gelang (2002<sup>40</sup> und 2003<sup>41</sup>), zuletzt jedoch scheiterte (2004), weil die Verlängerung der „Straffreiheits-Resolution“ keine ausreichende Unterstützung im Sicherheitsrat hatte.<sup>42</sup>

Trotz dieser Bedenken ist es m. M. n. an der Zeit, dass die USA das Römische Statut des Internationalen Strafgerichtshofs ratifizieren und damit dem Gericht zu der Bedeutung verhelfen, die ihm gebührt, steht doch keine andere Entwicklung im Rahmen des Menschenrechtsschutzes so sehr im Zusammenhang mit dem Paradigmenwechsel im Völkerrecht von der Souveränitäts- zur Humanitätsorientierung wie das IStGH-Statut, das damit den jüngsten institutionellen Schritt einer grundlegenden Transformation des Völkerrechts manifestiert und die Menschenrechte durch Gewährleistung der geregelten Justitiabilität von „Verbrechen gegen die Menschlichkeit“ weiter stärkt.

Ein kurzes Fazit: Gewaltsam ausgetragenen ethnischen Konflikten kann nur mit einem reformierten Völkerrecht begegnet werden. Die Lücken im globalen Rechtssystem sind zu schließen, dazu sind notwendig: 1. eine weltweit anerkannte Strafgerichtsbarkeit und 2. ein effizienter Interventionsmechanismus, der auch nicht-militärische Prävention, also ökonomische, sozialpolitische und edukative Maßnahmen, sowie eine wirksame Nachbereitung berücksichtigt.

<sup>40</sup> Am 13.7.2002 verabschiedete der Sicherheitsrat die Resolution 1422, wonach UN-Truppen aus Ländern, die dem Internationalen Strafgerichtshof nicht beitreten, bei UNO-Einsätzen zunächst ein Jahr lang Schutz vor Strafverfolgung durch den IStGH erhalten.

<sup>41</sup> Am 12.6.2003 hat der UN-Sicherheitsrat die Immunitätsklärung um ein weiteres Jahr – bis zum 1.7.2004 – verlängert.

<sup>42</sup> Die USA haben ihren Resolutionsentwurf zurückgezogen, als sich in den Verhandlungen ein entsprechendes Meinungsbild abzeichnete.

*David Moskowitz:*

*Michael Walzer's Justification of Armed Humanitarian Intervention. Communitarian? Cosmopolitan? Adequate?*

When, if ever, is it justified to militarily intervene in a sovereign state's internal affairs, for humanitarian purposes? Which human rights violations constitute a *justa causa* for war? Can 'humanitarian intervention' be legitimized in an impartial manner? The current debate over the desirable international response to the crisis in Darfur once more indicates the immense importance of formulating answers to these fundamental questions. This paper contains a critical analysis of the thoughts of Michael Walzer regarding the ethics of humanitarian intervention. More specifically, his arguments will be evaluated in light of the debate in political philosophy and international relations theory between (liberal) cosmopolitans and so-called 'communitarians'.<sup>1</sup>

#### 1. The Political Philosophy of Michael Walzer: Difference and Thin Universalism

Due to his emphasis on collective self-determination, shared social understandings and cultural pluralism, Walzer is often considered a communitarist, a conservative or a relativist, as opposed to a liberal. Nonetheless, some authors argue that it is rather shortsighted to simply categorize Walzer's moral convictions in this manner.<sup>2</sup> To some extent Walzer precisely attempts to reconcile respect for communities and liberal individual rights.

The communitarianism in Walzer's work becomes most evident through his meta-ethical objection against theories of justice with universalistic pretensions. Applying a

<sup>1</sup> Since the 1980's the liberal-communitarian debate has attracted considerable attention in the literature. See among others: Mulhall & Swift, *Liberals & Communitarians* (2<sup>nd</sup> ed. Blackwell: Oxford 1996); Bell, *Communitarianism and its Critics*, (Clarendon Press: Oxford 1993); Kymlicka, *Contemporary Political Philosophy*, (2<sup>nd</sup> ed. OUP: Oxford 2002), p.208-283. Although this debate is rather complex and the dichotomy between the opposing views has regularly been denied, it is possible to indicate some general characteristics of both strands of political philosophy. John Rawls's epoch-making *A Theory of Justice* (1971) is usually considered as the paradigmatic expression of contemporary liberalism. This political philosophy emphasizes the value of individual autonomy and rights. Therefore, the political community should be neutral in order to enable individuals to pursue their own conceptions of the good life. Besides, liberals seek an objective justification of universally valid principles. Communitarians (such as Alasdair MacIntyre, Charles Taylor, Michael Sandel and Michael Walzer) on the other hand, have criticized liberalism in a number of ways. Their claims have been summarized as the descriptive claim that an individual's identity is constituted by the community he or she takes part in, the normative claim that individualism is harmful to social cohesion and solidarity, and the meta-ethical claim that political principles should be justified by reference to the shared values of a community, instead of neutral universal principles that do not exist. See: Caney, "Liberalism and Communitarianism: a Misconceived Debate", in *Political Studies* 40 (1992), p.273-289; Morrice, "The liberal-communitarian debate in contemporary philosophy and its significance for international relations", in *Review of International Studies* (2000), 26, p.233-251.

<sup>2</sup> Orend, *Michael Walzer on war and justice*, (University of Wales Press: Cardiff 2000), p.180-188; Galston, "Community, Democracy, Philosophy: The Political Thought of Michael Walzer", in 17 (1) *Political Theory*, p.119-130; Mulhall & Swift, *Liberals & Communitarians*, p.155; Thigpen and Downing, "Liberalism and the Communitarian Critique", in *American journal of Political Science* 31 (3), 1987, p.646-651.

'particularistic methodology', Walzer insists that 'an appreciation of cultural particularity is central to a proper understanding of how a community should arrange itself politically (...)'<sup>3</sup> While in Rawls's thought-experiment, persons' contingent circumstances (talents, characteristics, relationships) are considered morally arbitrary, Walzer, on the other hand, stresses the importance of these circumstances, arguing that it is people's historical attachment to a particular society that shapes their identity in the real world. Thus, according to Walzer, the preferable way to dispute moral and political matters is to critically reflect on actually existing convictions.<sup>4</sup>

Concerning the subject matter, Walzer's fame as a contemporary political philosopher is largely based on his contributions to the international ethical debate regarding the morality of war on the one side, and the debate on national distributive justice on the other side: respectively his 'just war theory' in his famous *Just and Unjust Wars* (1977) and his 'theory of complex equality' in *Spheres of Justice* (1983).<sup>5</sup> In *Thick and Thin* (1994) both theories are set in a wider perspective. In his attempt to defend both 'a certain sort of universalism' and 'the politics of difference', Walzer postulates that there exist two different, but related types of moral argument: 'a way of talking among ourselves, here at home, about the thickness of our own history and culture (...) and a way of talking to people abroad, across different cultures, about the thinner life we have in common.'<sup>6</sup> The arguments for justice 'abroad' and between different societies are (almost) universal, intense and part of 'minimalist morality'. Nota bene: this type of morality is not universal in the sense of 'the objective truth', but consists of the fundamental moral principles that can be found in all 'thick maximalist moralities'. According to Walzer, this 'common core' probably consists of negative rights protecting life and liberty: 'rules against murder, deceit, torture, oppression and tyranny.'<sup>7</sup>

## 2. War, Human Rights and the Justice of Humanitarian Intervention

For this paper's concern, the focus will be on the international relations theory of Walzer, more specifically his just war theory. There are obvious parallels between the liberal-communitarian debate in political philosophy and the (liberal) cosmopolitan-communitarian debate in international relations theory.<sup>8</sup> Cosmopolitan theory emphasizes that we live in a global community of all humans and is concerned with the justification of

<sup>3</sup> Mulhall & Swift, *Liberals & Communitarians*, p.19. See also Chapter 4.

<sup>4</sup> These convictions will, of course, largely depend on the specific concrete and historical circumstances in which the cultural community finds itself. However, Walzer maintains that his hermeneutic method does not have to exclude criticism to the social structure of the community. First, one has to search for the 'best interpretation' of the underlying values the community has embraced. Next, the status quo can be criticized by showing that persons or institutions are apparently no longer faithful to these values or act hypocritically. See: Walzer, *Interpretation and Social Criticism*, (1987), available at: <http://www.tannerlectures.utah.edu/lectures/walzer88.pdf>.

<sup>5</sup> Walzer, *Just and Unjust Wars*, (Third ed. Basic Books: New York 2000). Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, (Basic Books: New York 1983).

<sup>6</sup> Walzer, *Thick and Thin: Moral Argument at Home and Abroad*, (University of Notre Dame Press: Notre Dame 1994), p.x.xi.

<sup>7</sup> *Ibid.*, p.10.

<sup>8</sup> See: Morrice, "The liberal-communitarian debate in contemporary philosophy and its significance for international relations".

universal principles, such as human rights. Communitarian international theory focuses on the value of the state as a political community and is rather skeptical on the possibility of trans-cultural justification of moral principles. Central to Walzer's theory of the justice of humanitarian intervention is the right of self-determination of a historic community. However, besides this more or less communitarian argument, it seems possible to interpret Walzer as offering a more or less (liberal) cosmopolitan justification of humanitarian intervention as well.

Walzer's contribution to the influential 'just war tradition' - formed by authors such as Augustine, Aquinas, Vitoria, Grotius, Pufendorf and Vattel - can be seen as part of his moral minimalism. Since Walzer assumes the existence of collectively shared meanings of notions as 'aggression', 'self-defense' and 'mass murder', it is at least possible to argue about the (in)justice of concrete wars or acts of war. According to Walzer, moral arguments concerning warfare are best interpreted as 'efforts to recognize and respect the rights of individuals and associated men and women.'<sup>9</sup> In this sense, his theory seems at least compatible to the liberal human rights discourse. Below, the interesting relationship between individual rights and collective rights in Walzer's theory, will come to the fore in the critical analysis of his theory of the (in)justice of humanitarian intervention.

Traditional just war theory distinguishes between the question of under which circumstances it is legitimate to use force and the question of how force should be used, respectively the *ius ad bellum* and the *ius in bello*.<sup>10</sup> From the Middle Ages, just war theorists have established a moral vocabulary concerning warfare, consisting of concepts as 'proportionality', 'right intention', 'last resort', 'legitimate authority', 'probability of success' and 'just cause'. This paper is concerned with the justice of humanitarian intervention in principle.<sup>11</sup> In other words, with the question: when, if ever, does the value of human rights prevail over the value of state sovereignty? Is human rights protection a *just casus belli*? Nota bene: since this question should be answered before other important considerations, such as the proportionality requirement come into play, the focus will be on the *ius ad bellum*, and more specifically on the issue of *iusta causa*.

### 3. Self-Determination of the Community and Non-Intervention

Central to Walzer's *ius ad bellum* is the so-called 'legalist paradigm'; a collection of - according to Walzer - generally accepted principles, based on the 'domestic analogy'<sup>12</sup>, that can be summarized as stating that aggression against a historical and political community

<sup>9</sup> Walzer, *Just and Unjust Wars*, p.xxi.

<sup>10</sup> Walzer, *Just and Unjust Wars*, p.21, 22.

<sup>11</sup> To clarify on this distinction: military intervention can be justified in principle, as a response to certain human rights violations, but not in the concrete, since this would for example be disproportionate in a specific situation.

<sup>12</sup> Walzer's moral approach of international issues is often called a 'morality of states', since the analogy, which it is based on, extends the intuitions and arguments concerning the relations between individuals in a domestic society to the relations between states in the international society. See: Beitz, *Political Theory and International Relations*, (Princeton: New Jersey 1999), part two. 'Aggression', 'country' and 'political independence' are the international equivalents of 'armed robbery or murder', 'home' and 'personal liberty'. Based on the domestic analogy, the political independence and territorial integrity of states should be respected likewise, as the autonomy of individual persons. See: Walzer, *Just and Unjust Wars*, p.54.

(or a state) is an international crime and that the only justification of war is individual or collective defense against aggression. International lawyers and practitioners from the international environment will not be surprised that one of Walzer's central principles is a state's right to political sovereignty and territorial integrity, since this principle is of course a fundamental constituent of the UN Charter as well. Notwithstanding the strong basis in practice of these rights, how can they be justified theoretically?

Although the rights to territorial integrity and political sovereignty appertain to the state, according to Walzer they nevertheless derive from the rights of individuals. Ultimately, moral judgments about war derive from the individual rights to life and liberty: 'when states are attacked, it is their members who are challenged, not only in their lives, but also in the sum of things they value most, including the political association they have made.'<sup>13</sup> In order to defend the community that gives meaning to their existence, people will be prepared to risk their lives. After all, in the absence of world government, the state remains the main instrument for the realization and protection of people's individual and collective rights. In other words, the rights of states are the collective form of individual rights. For Walzer, the real rationale behind a state's rights are 'the rights of contemporary men and women to live as members of a historic community and to express their inherited culture through political forms worked out among themselves.'<sup>14</sup>

An obvious result from the legalist paradigm and states' rights to political sovereignty and territorial integrity is the non-intervention principle - the ground rule that states ought not to interfere in the internal affairs of other states. In his elaboration on the right to self-determination, Walzer builds on the thoughts of John Stuart Mill in his "A Few Words on Non-Intervention" (1859).<sup>15</sup> According to Mill, states ought to be seen as self-determining communities, even if they do not enable their citizens to partake in the process of political decision-making. Like an autonomous individual will not become virtuous through outside interference, historical communities need to have struggled themselves in order to develop the virtues that are necessary to maintain free institutions.

<sup>13</sup> Ibid., p.53.

<sup>14</sup> Walzer, "The Moral Standing of States: A Response to Four Critics", in Beitz, Cohen, Scanlon and Simmons (Eds.), *International Ethics*, (Princeton University Press: Princeton 1985), p.217-237, p.219. The process of collectivization should be seen in light of some form of social contract theory. 'The rights of states rest on the consent of their members (...) of a special sort', Walzer says. Following Burke, this 'contract' should be understood as a metaphor, 'a process of association and mutuality' among 'the living, the dead and those who are yet to be born.' Ibid.; Walzer, *Just and Unjust Wars*, p.54. Apart from Walzer's idea that a state's right derives from its individual members' rights to shape their own cultural community, it is rather complicated to assess how individual persons' rights are related to the collective rights of the community. On the one hand, Walzer maintains that his just war theory is based on the individual rights to life and liberty; on the other hand some statements suggest that the interests of the community take precedence over the rights of individuals. This seems to be the case, for example, when he contends that the protection of states against outside infringement 'extends not only to the lives and liberties of individuals but also to their shared life and liberty, the independent community they have made, for which individuals are sometimes sacrificed.' Walzer, *Just and Unjust Wars*, p.54. The problematic consequences of this 'communitarian' viewpoint will be addressed below, in connection with the (in)justice of humanitarian intervention in the event of a 'majority tyranny'.

<sup>15</sup> J.S. Mill, "A Few Words on Non-Intervention", in *Disserations and Discussions* III, (New York, 1873), III, p.238-263. For a different reading of Mill that is more permissive to humanitarian intervention, see: Begby, "Liberty, Statehood and Sovereignty: Walzer on Mill on Non-intervention" in *Journal of Military Ethics* (2003) 2(1), p.46-62.

As a result of this strong doctrine of self-help, citizens are not protected against violent governmental repression of resistance, and revolutionaries with justified goals will find their demands for external support unanswered. Walzer has been heavily criticized for his unresponsiveness concerning military intervention against tyrannical governments.<sup>16</sup> Why should a state that represses its citizens deserve to be protected from external intervention? Would it not be better to relate the entitlement to sovereignty of a state to the issue of whether it respects the rights to life and liberty of its citizens?

Walzer's main response to his critics is the statement that they confuse two different types of legitimacy: internal and external legitimacy. There is a difference between stating that a tyrannical regime is legitimate on the one hand, and stating that other states should act as if the regime is legitimate on the other hand. For Walzer, the moral standing of a state depends on the question whether a 'fit' between the government and the state exists - in other words, whether the government protects the common life. If there is such a 'fit', foreigners should respect the state, despite the fact that it might not be a democratic or a liberal government.

Walzer argues that outsiders are not in a good position to judge whether the government and the community are congruent with each other, since '[t]hey don't know enough about its history, (...) the conflicts and harmonies, the historical choices, and cultural affinities, the loyalties and resentments that underlie it.'<sup>17</sup> Therefore, foreign states should presume that the community is being ruled in accordance with its own culture and traditions and respect its right to shape its own collective life.

Consequently, it is possible that a government is, at the same time, internally illegitimate and externally legitimate. Even if a government de facto impedes rather than stimulates the self-determination of the community, the rights of political sovereignty and territorial integrity will save it from outside interference. If the government is not representative of the culture and traditions of the historic community - in other words when a 'fit' is lacking - the citizens are fully justified to rise in rebellion. However, they are equally free to refuse to do so. Perhaps they doubt if an insurrection will succeed or they prefer to be loyal to their leaders. Whatever the reasons behind their refusal, they might feel 'slowness and aversion ... to quit their old Constitutions', as Walzer cites Locke.<sup>18</sup>

But how is it possible to violate the rights of citizens by attacking their repressive regime? Walzer's answer expands on the idea of self-determination. Each citizen has an individual right - and together they have a collective right - to resist a tyrannical government. When other states use force in order to overthrow the government, the citizens' rights are being violated, even if revolution is justified. Outside interference, based on a foreign state's idea of justice and prudence, will be inconsistent to the right to self-determination of the community, since '[t]heir 'slowness has been artificially speeded up, their "aversion" has been

<sup>16</sup> Doppelt, "Walzer's Theory of Morality in International Relations", in *Philosophy & Public Affairs* 8 (1), 1978, p.3-26; Luban, "Just War and Human Rights", in *Philosophy & Public Affairs* 9 (2), 1980, p.161-181; Beitz, "Bounded Morality: Justice and the State in World Politics", in *International Organization* 33 (3), 1979, p.405-424; Wasserstrom, Book Review, in *Harvard Law Review* 92, 1978, p.536-545.

<sup>17</sup> Walzer, "The Moral Standing of States", p.220.

<sup>18</sup> Ibid., p.222.

repudiated, their loyalties have been ignored, their prudential calculations have been rejected'.<sup>19</sup>

#### 4. The 'Communitarian' Justification of Humanitarian Intervention

Walzer realises that the legalist paradigm - granting states the rights to political sovereignty and territorial integrity and hence establishing a duty for other states not to intervene - should be revised in a number of ways. With regard to the domestic analogy the paradigm is based on, he says: '[t]hough [it] is an intellectual tool of critical importance, it doesn't offer an entirely accurate picture of international society. States are not in fact like individuals (because they are collections of individuals) (...)'<sup>20</sup> Even in international society, a state might be illegitimate and as a result of the external illegitimacy of a state, it might forfeit its right to sovereignty and foreign intervention in its internal affairs might be justified.

An inversion of the presumption of legitimacy of the state only occurs if 'the absence of fit' between the government and the community is radically apparent.<sup>21</sup> (italics mine) When will this be the case according to Walzer? The circumstances under which departure from the paradigm and intervention can be justified, Walzer calls the 'rules of disregard'. He specifies three cases where non-intervention would be contrary to the paradigm's purpose, namely the collective self-determination of a community. While under normal circumstances the autonomy of the community is best guaranteed by the non-intervention principle, in these cases it is precisely the value of collective self-determination that is in danger.

By the third rule of disregard, which is most important for this paper's concern, Walzer justifies intervention 'when the violation of human rights within a set of boundaries is so terrible that it makes talk of community or self-determination or "arduous struggle" seem cynical and irrelevant (...)'.<sup>22</sup> The extreme circumstances Walzer refers to are specified as: 'massacre', 'ethnic cleansing', 'enslavement' and 'the expulsion of very large numbers of people'.<sup>23</sup> With regard to these extreme occasions, intervention should not be seen as a violation of citizens' rights or their collective right to self-determination. On the contrary, precisely the dramatic impossibility of the victims to defend themselves against these massive and extreme violations of human rights opens the way for foreign military intervention. Intervention might be a violation of the paradigmatic right to state sovereignty, Walzer argues, it is nevertheless not incompatible to the fundamental values underlying the paradigm, namely the individual and collective rights to life and liberty.

The collective right of the individuals to shape their own lives, the right to self-determination of a historical community, can even be seen as the rationale behind an intervention. When a government is involved in, or does not prevent, extreme human rights

<sup>19</sup> Ibid., p.223.

<sup>20</sup> Walzer, *Just and Unjust Wars*, p.72.

<sup>21</sup> Walzer, "The Moral Standing of States", p.222.

<sup>22</sup> Walzer, *Just and Unjust Wars*, p.90. The first rule of disregard justifies intervention in favour of a sub-community that strives for secession. The second rule of disregard justifies counter-intervention in a civil war.

<sup>23</sup> See Walzer, *Just and Unjust Wars*, p.101-108, Walzer, "The Moral Standing of States", p.225-226 and Walzer, "The Argument about Humanitarian Intervention" in *Dissent Magazine* (Winter 2002), p.29-37, p.30.

violations as those mentioned above, there seems no 'fit' between the rulers and the community or there is simply no community left. 'If no common life exists, or if the state doesn't defend the common life that does exist, its own defense may have no moral justification.'<sup>24</sup> Since it can be argued that under these circumstances foreign intervention is a prerequisite for rather than an infringement of the right to self-determination, the presumption of 'fit' should be turned around.<sup>25</sup>

The possible danger of a 'majority tyranny'

However, what are the possible consequences of the importance Walzer attaches to the value of collective self-determination? Among others, Nardin and Slater have convincingly shown that Walzer's justification of humanitarian intervention seems to imply a necessary relationship between extreme and massive human rights violations on the one hand and the absence of a 'fit' between the government and its community on the other hand.<sup>26</sup> By emphasizing this relationship, Walzer seems capable of offering a justification of humanitarian intervention that is still consistent with the central value of collective self-determination for a particular historic community. However, is this more or less communitarian justification adequate? If extreme and massive human rights violations occur, it should be assumed, according to Walzer, that there is no 'fit' between government and community; and vice versa, if such violations of genocidal proportions do not occur, it should be assumed that the government and the community correspond to each other. However, it is unfortunately not implausible that terrible and extreme human rights violations are committed by a government that represents the convictions of the majority or the dominant culture of the community. An important example hereof is a majority tyranny that considers certain minority groups as inferior. As a result, even the most serious human rights violations can occur, while at the same time there exists a 'fit' between the government and (the majority of) the community. Nardin and Slater illustrate this by stating that 'the extermination of Jewry, as well as the willing cooperation of the Vichy French government with the final Nazi solution, reflected an entrenched anti-Semitism in those societies.'<sup>27</sup> It is unclear if in this situation the right to self-determination of the community takes priority over fundamental human rights. It is hard to imagine that Walzer would be comfortable with non-intervention as the outcome in this particular situation. The question is whether Walzer's theory is sufficiently adequate to withstand the objection raised by the possible occurrence of a majority tyranny.

<sup>24</sup> Walzer, *Just and Unjust Wars*, p.54.

<sup>25</sup> In fact, Walzer seems even to consider the existence of a duty to intervene: '[p]eople who initiate massacres lose their right to participate in the normal (even in the normally violent) processes of domestic self-determination. Their military defeat is morally necessary.' Walzer, *Just and Unjust Wars*, p.54, (emphasis added).

<sup>26</sup> Slater and Nardin, "Nonintervention and Human Rights" in *The Journal of Politics*, Vol. 48, No.1 (Feb., 1986), p.86-96. See also: Laberge, "Humanitarian Intervention: Three Ethical Positions" in *Ethics & International Affairs*, (Vol. 9; 1995), p.15-35; Mapel, "Military Intervention and Rights" in *Millennium* 20 (1991), p.41-55; Janse, "De legitimiteit van humanitaire interventies" (Preadvies Vereniging voor Wijsbegeerte van het Recht, vergadering van 18 juni 2004) in *Nederlands Tijdschrift voor Rechtsfilosofie & Rechtstheorie* 2004 / 2, p.141-142; Doppelt, "Statism without Foundations" in *Philosophy & Public Affairs* Vol. 9, No. 4 (Summer 1980), p.402-403.

<sup>27</sup> Slater and Nardin, "Nonintervention and Human Rights", p.90.

An interesting suggestion in this respect has been made by Laberge, who asks himself the question of whether the discriminated minority can be seen as a sub-community. In that case, intervention could nevertheless be justified under the first rule of disregard, in similar fashion as in the case of 'national liberation'.<sup>28</sup> However, complicated new questions would have to be answered then, for example with regard to Walzer's prerequisite of self-help. In sum: notwithstanding possible amendments to Walzer's theory that might meet the above-mentioned objection, currently Walzer's communitarian justification of humanitarian intervention seems inadequate to defend the use of force in cases where extreme human rights violations are perpetrated by a tyrannical government that is supported by a majority of the community. A possible solution to the complication of a tyrannical government with majority support can be found in a second, more 'cosmopolitan' justification of humanitarian intervention that Walzer brings forth. In the next section, this second line of Walzer's arguing will be examined.

#### The 'Cosmopolitan' Justification of Humanitarian Intervention

In addition to Walzer's primary justification of humanitarian intervention, based on a collective right to self-determination of a particular historic or political community, Walzer seems to present a second justification, rather based on 'the moral conscience of mankind' or in other words, on the universal community of human beings. 'Humanitarian intervention is justified', Walzer argues, 'when it is a response (with reasonable expectations of success) to acts "that shock the moral conscience of mankind."' <sup>29</sup> Since this aspect of Walzer's theory seems to be based on the value of human rights 'an sich' rather than the existence of a 'fit' between the government and the community, it can be called a liberal or cosmopolitan justification of humanitarian intervention. Governments violating their citizens' rights so terribly that they shock the moral conscience of mankind forfeit their rights to sovereignty and lose their right to be free from outside military intervention. However, Walzer remains ambiguous on the issue of whether the gravity of the mankind shocking human rights violations might call for intervention, independent of the legitimacy of the government or the absence of a 'fit'.

#### The Lack of Distinguishing Criteria

A certain application of Walzer's second, so-called cosmopolitan justification of humanitarian intervention might prove to be more adequate to withstand certain objections against his primary, so-called communitarian justification. However, at the same time new objections will emerge and some important questions still need to be answered. One of those fundamental questions is: which human rights violations constitute a just cause for war? Should humanitarian intervention only be justified in case of extreme and massive human rights violations such as massacre, or should it as well be possible to justify intervention, in principle, when, for instance, a government gradually terrorizes (part of) the

<sup>28</sup> Laberge, "Humanitarian Intervention: Three Ethical Positions", p.29, footnote 54.

<sup>29</sup> *Just and Unjust Wars*, p.107. With this latter justification Walzer seems to refer to what he calls in *Thick and Thin* 'a certain sort of universalism' or thin or minimalist morality. That is, basic moral principles that can be found in all thick, particular moralities, mostly consisting of negative rights protecting life and liberty. These fundamental principles constrain the admissible content of the diverse culture-specific moral convictions.

community by means of torturing, or even killing a couple of political opponents each year? According to Nardin and Slater, Walzer's second justification should be seen in the light of his resistance to exclude the possibility of foreign intervention in the case of a so-called majority tyranny. Interpreting Walzer, they argue that 'the prohibition against intervention may be overridden - in effect regardless of 'fit' - when the violation of crimes so terrible in nature and carried out on such a scale as to "shock the moral conscience of mankind" (...)'<sup>30</sup> By legitimizing intervention on this additional ground, Walzer is able to meet the objection mentioned in the former section.

However, what are the consequences of this justification for the circumstances under which humanitarian intervention is permissible in principle? If the shocking character of a violation constitutes the decisive factor for the judgment on the permissibility of intervention, not only violations of genocidal proportions seem to constitute a just cause for war, but as well the gradual terrorization of a society. Moreover, does it make sense to talk of a 'fit' between the government and the community, when the acts and convictions of the community are being governed by fear?<sup>31</sup> To cite Luban on this: '[s]urely all those strapped to the torture table are not misfits in their own culture. (...) The government fits the people the way the sole of a boot fits a human face: after a while the patterns of indentation match with uncanny precision.'<sup>32</sup>

Walzer on the other hand takes great care in distinguishing between extreme and massive human rights violations such as massacre, ethnic cleansing, enslavement and the expulsion of very large numbers of people on the one side, and occasions of 'normal repression' on the other side. The presumption of 'fit' and non-intervention remains the norm in these latter occasions. Walzer argues that, according to democratic norms, most states would be repressive and illegitimate, but nevertheless their citizens do not see it in that way. Violations of religious rights, systematic discrimination of women or ethnic groups or the lack of political participation rights - however grave these might be and national and international protest is justified - do not constitute a just cause for foreign military intervention.

In short, Walzer aims to prevent the frequent usage of military force, emphasizes the value of respect for diversity and is skeptical of a 'one size fits all' way of thinking. Only in the above-mentioned occasions of extreme and massive violations, the absence of 'fit' can be assumed and intervention considered, says Walzer, since 'we can always assume that murder, slavery and mass expulsion are condemned, at least by their victims.'<sup>33</sup> (emphasis added)

Yet, as Nardin and Slater rightly stress, this argument is not convincing. If the condemnation by the victims is to present the criteria for this distinction, Walzer's theory does not

<sup>30</sup> Slater and Nardin, "Nonintervention and Human Rights", p.90.

<sup>31</sup> See Luban's description of a 'medium-size dictatorship' in "The Romance of the Nation-State", p.241: '[e]ach year there are a few score executions, a few hundred tortures, a few thousand political imprisonments, a few million people behaving cautiously because they know that a single slip will bring the police. The police and army think that if the government falls they are dead men; it is the bargain they accepted to escape the poverty of their villages.'

<sup>32</sup> Ibid., p.241-242.

<sup>33</sup> "The Moral Standing of States", p.226.

seem adequate to justify interventions only in the occasion of the special class of violations he mentions. After all, why would the victims of political terror, torture and systematic discrimination not condemn these acts and even welcome foreign intervention? In sum, Walzer's cosmopolitan justification seems inadequate to present distinguishing criteria for the just cause for the use of force.

#### The Lack of Foundation and the Problem of 'Shock' as a Criterion

In addition to the difficult issue of distinguishing between different classes of human rights violations, Walzer's cosmopolitan justification seems to encounter some more interesting challenges. His 'acts that shock the conscience of mankind' argument raises issues regarding the adequacy of this criterion, its foundation and the possibility of trans-cultural judgment.

Justifications of humanitarian intervention have often been criticized for being biased or dogmatic, since they are founded on a Western, liberal, ethnocentric view of individual human rights. After all, cosmopolitan international relations theory, represented by thinkers such as Beitz, Pogge, Teson or even - according to some - a moderate cosmopolitan - Rawls, is evidently based on the value of human rights. Walzer on the other hand, rather emphasizes the value of cultural pluralism and respect for diversity. At the heart of both Walzer's starting-point of non-intervention and his rules of disregard, including his justification of humanitarian intervention, is the value of self-determination of a historic community. Ergo, at first, Walzer's justification seems far less vulnerable to the criticism that it is biased, dogmatic or liberal-individualistic.

However, Walzer's second, so-called cosmopolitan justification of humanitarian intervention seems to refer to the value of human rights *an sich*, regardless of the value of self-determination of the community. Thus, if Walzer justifies intervention as a response to acts that shock humanity, an inquiry should be made about the foundation of these universal moral values. Even though Walzer employs a minimal notion of human rights - namely negative rights for the protection of life and liberty - if these rights are to constrain the content of diverse cultural moral convictions, their universal pretensions should be grounded.

Again, according to Walzer, the individual rights to life and liberty are at the basis of his just war theory. Remarkably, Walzer does not go into the issue of the source of these individual rights. His analysis is confined to the statement that these rights are 'somehow entailed by our sense of what it means to be a human being.'<sup>34</sup> Walzer seems not to be worried by this incertitude regarding the moral foundation of his theory, rather he is interested in practical morality. Since it is currently impossible to reach agreement on the most fundamental moral questions, Walzer argues in his preface to *Just and Unjust Wars*, practical moral judgments should guide people facing hard choices. However, it is questionable whether these statements are adequate in order to convince adherents of a more collectivist way of live or to cultural relativists who argue that it is impossible to find any universal standard for evaluating cultural practices.

<sup>34</sup> *Just and Unjust Wars*, p.54.

Clarification concerning the role and philosophical justification of Walzer's minimal universal human rights seems even more important, since some of his more recent publications appear to indicate that he increasingly justifies humanitarian intervention on the basis of the conscience of humanity that is shocked, or to put it differently, on the basis of a universal moral standard. In the introduction to *Arguing about war* (2004), Walzer states: '[f]aced with the sheer number of recent horrors (...) I have slowly become more willing to call for military intervention. I haven't dropped the presumption against intervention in [Just and Unjust Wars], but I have found it easier and easier to override the presumption.'<sup>35</sup> It is hard to assess the exact meaning of this statement for his justification of humanitarian intervention, but it at least raises the question whether Walzer - since he increasingly tends to deviate from the starting point of non-intervention - defends intervention on other grounds than the lack of 'fit' between the government and the community. Moreover, Walzer seems to assume a relationship between the increase of information concerning foreign societies, as a result of an increase in means of communication on the one hand, and the justification of humanitarian intervention on the other hand. The restrictive doctrine of humanitarian intervention should be reconsidered nowadays, Walzer argues, since '[t]he "acts that shock the conscience of humankind" (...) are probably no more frequent these days than they were in the past, but they are more shocking, because we are more intimately engaged by them and with them.'<sup>36</sup> This statement as well raises some questions: should Walzer not be more concerned with acts that *ought* to shock the conscience of humanity, instead of acts that in fact do so? 'To have put it this way', Hendrickson argues, 'would have attested to several unpleasant facts about human beings: that we are most shocked when such acts are infrequent, and most inured to shock when they become typical.'<sup>37</sup>

Besides, should Walzer not distinguish more adequately between the quantitative increase of information on foreign societies on the one hand, and a qualitative increase, meaning the possibility of trans-cultural understanding on the other hand? In other words, how can Walzer defend the possibility of trans-cultural judgment? One of the arguments Walzer puts forward concerns the attitude of the perpetrators of extreme human rights violations. Since the killers simply deny their acts of massacre, instead of referring to their own norms in order to justify them, it is not about a conflict of different cultural values in these extreme cases.<sup>38</sup>

Related to the issue of trans-culturalism or universalism, is the question of whether Walzer's justification of humanitarian intervention, as a response to 'acts that shock the conscience of mankind', is rightly interpreted as referring to the existence of universal moral norms; in other words: norms that are valid, irrespective of their embracement by the diverse culture-specific communities. After all, instead of arguing that this is a normative argument, an universal argument in the sense of referring to the independent existence of universally applicable principles or universal human rights, it is possible to argue that this

<sup>35</sup> "Introduction", in *Arguing about war*, p.xii-xiii.

<sup>36</sup> "The Argument about Humanitarian Intervention", p.29.

<sup>37</sup> Hendrickson, "In Defense of Realism: A Commentary on Just and Unjust Wars", in *Ethics & International Affairs*, (Vol. 11; 1997), p.19-53.

<sup>38</sup> "The Argument about Humanitarian Intervention", p.36.

justification should be interpreted as a conventionalist argument, merely referring to a reality of commonly shared convictions. Walzer's reference to the conscience of ordinary people, not the conscience of politicians or philosophers, makes this interpretation seem even more plausible, since it is compatible with his emphasis on shared social understandings of the (global) community. However, following this latter interpretation, the above-mentioned issue of the difference between acts that in fact shock the conscience of mankind and acts that ought to do so, comes to the fore again. Human psychology, media attention and special ties for instance, all seem to play a role in the constitution of a 'shock of the conscience of mankind'. As a result, - similar to the truth that even if all agree, all can be wrong - the factual shock of the conscience of mankind, or in other words the fact that (nearly) all communities are shocked as a result of certain acts - but not as a result of other act - will according to some still not necessarily have to do anything with justice.

## 6. Conclusion

Walzer's justification of humanitarian intervention, consisting of an interesting and subtle mix of both (liberal) 'cosmopolitan' individual rights and collective 'communitarian' rights, is - although sophisticated - not yet wholly adequate. First, his emphasis on the value of collective self-determination gives rise to ambiguity in the case of a 'majority tyranny'. Second, Walzer's reference to 'acts that shock the conscience of mankind' -although a possible solution to the problem just mentioned - does not provide the criteria that are necessary to distinguish between different extreme human rights violations. Third, the universal individual rights to life and liberty Walzer seems to refer to in his second justification lack a philosophical foundation. Fourth, the 'shock' of mankind is heavily influenced by factors that do not necessarily result from considerations of justice, such as media attention. However, thirty years after Walzer's first formulation of his theory, it is still an inspiring illustration of the dilemmas surrounding the (in)justice of humanitarian intervention and an excellent starting point for further discussion.

*Karl Golser:*

*Gewaltfreiheit im Kontext des „konziliaren Prozesses für Gerechtigkeit, Frieden und Bewahrung der Schöpfung“*

Um unter christlich-ethischer Rücksicht von Gewaltfreiheit zu sprechen, müsste man eine Analyse der Schriftstellen zum Umgang mit der Gewalt machen<sup>1</sup>, vor allem der Aussagen der Bergpredigt zur Gewaltfreiheit (Mt 5, 38-52), ebenso Bezug nehmen auf die inzwischen erarbeiteten Strategien zum gewaltfreien Widerstand<sup>2</sup>. Ich möchte mich aber hier auf eine Darstellung der geschichtlichen Entwicklung des ökumenischen Bemühens beschränken, in Zusammenhang mit dem so genannten konziliaren Prozess für Gerechtigkeit, Frieden und Bewahrung der Schöpfung<sup>3</sup>.

Die achtziger Jahre des vorigen Jahrhunderts

Am 12. Dezember 1979 hatten die Außen- und Verteidigungsminister der NATO-Mitgliedsstaaten den so genannten NATO-Doppelbeschluss<sup>3</sup> verabschiedet. Er besagt, nachdem der Warschauer Pakt in letzter Zeit sein Potential von Nuklearwaffen ausgebaut und seine auf Westeuropa gerichteten Mittelstreckenraketen durch moderne SS-20-Raketen mit größerer Sprengkraft ersetzt hat, wolle man mit der Sowietunion Verhandlungen über den Abbau dieser Raketen aufnehmen; falls diese scheiterten, würden innerhalb von vier Jahren auch in den Ländern Westeuropas atomare Mittelstreckenraketen stationiert. Dieser Beschluss löste bei der Bevölkerung eine enorme Angst atomarer Bedrohung aus und hatte an vielen Orten große Friedensmärsche zur Folge. Die Kirchen Europas, aber auch der USA und Japans sahen sich so veranlasst, auf diese als vordringlich empfundene Herausforderung mit Tagungen und Dokumenten zu reagieren. Als Abschluss dieser Bemühungen kann man die sechste Vollversammlung des Ökumenischen Rats der Kirchen (World Council of Churches) ansehen, die vom 24. Juli bis 10. August 1983 in Vancouver (Kanada) tagte und die den Beschluss gefasst hat, allen christlichen Kirchen ein Konzil für den Frieden vorzuschlagen.

Der konziliare Prozess für Frieden, Gerechtigkeit und Bewahrung der Schöpfung

Die Idee eines Friedenskonzils für alle Christen hat eine lange Vorgeschichte. Schon im Jahre 1934 hat der evangelische Theologe Dietrich Bonhoeffer bei einer ökumenischen Konferenz in Fanö angesichts des sich für ihn abzeichnenden Konflikts mit dem national-

<sup>1</sup> Eine differenzierte Darstellung der Entwicklung innerhalb der Hl. Schrift bietet z.B. das umfangreiche Dokument der Deutschen Bischofskonferenz „Gerechter Friede“ aus dem Jahre 2000 (Reihe Reihe: Die Deutschen Bischöfe Nr. 66, hrsg. vom Sekretariat der Deutschen Bischofskonferenz, Bonn 2220, ebenso in [http://dbk.de/schriften/fs\\_schriften.html](http://dbk.de/schriften/fs_schriften.html)).

<sup>2</sup> Für mich ist immer noch sehr instruktiv H.Goss-Mayr, *Der Mensch vor dem Unrecht. Spiritualität und Praxis gewaltloser Befreiung*, Europa-Verlag Wien 1976.

<sup>3</sup> Das entsprechende Kommuniqué ist abgedruckt im Bulletin des Presse- und Informationsamtes der (deutschen) Bundesregierung vom 18. Dezember 1979, Nr. 154, 1409-1410, ebenso im Internet unter [http://www.dhm.de/lemo/html/dokumente/NeueHerausforderungen\\_vertragNATODoppelbeschluss/index.html](http://www.dhm.de/lemo/html/dokumente/NeueHerausforderungen_vertragNATODoppelbeschluss/index.html)

sozialistischen Deutschland vorgeschlagen, sich für ein Konzil des Friedens einzusetzen<sup>4</sup>. Auch der katholische Theologe Max Joseph Metzger, der sich Zeit seines Lebens für die Einheit unter den Christen und den Frieden eingesetzt hat, schrieb im Advent 1939 aus dem Gefängnis der Gestapo einen bewegenden Brief an Papst Pius XII. und bat ihn, ein Friedenskonzil in Assisi einzuberufen<sup>5</sup>. Jedenfalls wurden beide Vorkämpfer für Frieden für ihren Einsatz von den Nationalsozialisten hingerichtet. Nun, nach Vancouver hatte man sich in Gesprächen mit der römisch-katholischen und der orthodoxen Kirche, bei denen „Konzil“ die präzise Bedeutung einer Bischofsversammlung hat, geeinigt, einen „konziliaren Prozess“ einzuleiten, der zu Ökumenischen Versammlungen auf Europa- bzw. auf Weltebene führen sollte. Spätestens ab 1986, nach dem Atomreaktorunglück von Tschernobyl und durch den Einsatz von Carl Friedrich von Weizsäcker<sup>6</sup>, wurde zum Binom Gerechtigkeit und Frieden auch noch die Bewahrung der Schöpfung hinzugefügt.<sup>7</sup> Auf europäischer Ebene im Jahre 1989 kam es so zur Ersten Europäischen Ökumenischen Versammlung in Basel zum Thema „Frieden in Gerechtigkeit“, auf Weltebene im Jahr 1990 zur Ökumenischen Weltversammlung von Seoul zum Thema „Gerechtigkeit, Frieden und Bewahrung der Schöpfung“, wiederum auf europäischer Ebene im Jahre 1997 zur Zweiten Europäischen Ökumenischen Versammlung von Graz zum Thema „Versöhnung. Gabe Gottes und Quelle neuen Lebens“ und wird im Jahr 2007 in Sibiu (Rumänien) zur Dritten Europäischen Ökumenischen Versammlung führen.

#### Die Erste Europäische Ökumenische Versammlung von Basel

Die erste Europäische Ökumenische Versammlung fand also in Basel vom 15. bis 21. Mai 1989 statt, sie bestand aus 700 Delegierten aus den 120 Mitgliedskirchen der Konferenz Europäischen Kirchen (KEK) und den 27 Bischofskonferenzen des Rates der Europäischen Bischofskonferenzen (CCEE). Die verabschiedeten Texte bestehen aus einer kurzen Botschaft an alle Christen Europas und aus einem ausführlichen 100 Nummern starken Schlussdokument, das nach einer Analyse der Probleme im Punkt 6 mit Verpflichtungen und Empfehlungen schließt. In Bezug auf den Frieden heißt es in der Nr. 75: „Wir betrachten es als lebenswichtig für die Menschheit, den Krieg als Institution abzuschaffen und die auf die Massenvernichtungswaffen gestützte Abschreckung zu überwinden. Wir empfinden es als eine Notwendigkeit, die Welt fortschreitend von allen Massenvernichtungswaffen zu befreien. Wir verpflichten zu einer gewaltfreien Beilegung von Konflikten in der ganzen Welt. Wir wollen zum Aufbau einer internationalen Friedensordnung beitragen. Insbesondere müssen wir gemeinsam konkrete Abkommen eingehen, welche die

<sup>4</sup> Bonhoeffer, Dietrich, Morgenandacht am 28. August 1934 anlässlich der gemeinsamen Tagung der ökumenischen Bewegung für praktisches Christentum und des ökumenischen Jugendsekretariats in Fanö, Dänemark, in: Wilfried Warneck, Friedenskirkliche Existenz im Konziliaren Prozeß [Anstöße zur Friedensarbeit, 5], Hildesheim 1990, S. 210-213.

<sup>5</sup> Vgl. die Schriften von Max Joseph METZGER: Für Frieden und Einheit. Briefe aus der Gefangenschaft, eingeleitet u. hrsg. Meitinger Christkönigsschwestern, Meitingen 1964<sup>3</sup>; Gefangenschaftsbrieft, eingeleitet u. hrsg. H. BÄCKER, Meitingen 1948<sup>2</sup>; Die Aufgabe der Christen für den Frieden, 1987 - Auf dem Weg zu einem Friedenskonzil, hrsg. R. v. FEUERBERG/R. ÖHLSCHLÄGER, 1987.

<sup>6</sup> Vgl. C. F. von WEIZÄCKER, Die Zeit drängt: eine Weltversammlung der Christen für Gerechtigkeit, Frieden und Bewahrung der Schöpfung, München: Hanser V., 1986.

<sup>7</sup> A.a.O. S. 49.

Grundlage für eine internationale Friedensordnung bilden“. Bei den Empfehlungen heißt es dann in der Nr. 79: „Wir halten es für wesentlich, dass die lebenswichtigen Anliegen von Gerechtigkeit, Frieden und der Bewahrung der Schöpfung nicht vom Auftrag der Kirche zur Verkündigung des Evangeliums getrennt werden.“

Diese Erste Europäische Ökumenische Versammlung hat ein großes Echo gehabt, ihre Dokumente wurden vielfach veröffentlicht und kommentiert.<sup>8</sup> Ab Herbst wurde in Europa die Aufmerksamkeit allerdings von den Ereignissen des progressiven Zusammenbruchs der kommunistischen Systeme in den osteuropäischen Ländern in Anspruch genommen.

Die Versammlung von Basel sollte den Auftakt für eine Weltversammlung bilden. Diese fand dann in Seoul vom 5. bis zum 12. März 1990 statt, und zwar genau zur Trias des konziliaren Prozesses „Gerechtigkeit, Friede und Bewahrung der Schöpfung. Interessant ist der Aufbau des Schlussdokuments<sup>9</sup>: Es besteht aus 10 „Affirmations“ (Grundüberzeugungen, grundlegende Aussagen) und vier „Alliances“ (Alleanze, Bundesschlüsse) mit entsprechenden Verpflichtungen. So geht die Sechste „Grundüberzeugung“ auf die biblischen Grundlagen des Friedens Jesu Christi ein, formuliert den Widerstand gegen die Doktrin und die Systeme der Abschreckung und verpflichtet sich zur Gewaltfreiheit in allen Beziehungen. Das Zweite „Bündnis“ für „authentische Sicherheit für alle Nationen und Völker“ spricht sich für die Entmilitarisierung und gegen Systeme der nationalen Sicherheit aus und verlangt eine Kultur der aktiven Gewaltfreiheit als Kraft zur Veränderung und Befreiung, zu der sich die Kirchen verpflichten wollen.

Die Zweite Europäische Ökumenische Versammlung von Graz (1997) und die Nachfolgezeit

Man hatte nach Basel und nach dem größtenteils gewaltfreien Zusammenbruch der kommunistischen Regimes in Osteuropa (mit Ausnahme Rumäniens) auf ein Europa gehofft, das nun in Frieden zusammenwachsen und einer besseren Zukunft entgegengehen würde. Nachdem die totalitäre Klammer des Kommunismus entfernt worden war, zerfiel aber der Vielvölkerstaat Jugoslawien ab dem Jahre 1991 in seine Teile, leider durch immer gewaltsamer werdende Kriege. Sollte in Europa nun der konziliare Prozess für Gerechtigkeit, Frieden und Bewahrung der Schöpfung weiter gehen, dann war es nahe liegend, dass eine Zweite Europäische Versammlung sich dem Hauptthema der Versöhnung widmete. Sie hat nach einer Vorbereitungszeit von drei Jahren<sup>10</sup> in Graz vom 23. bis 29. Juni 1997 stattgefunden zum Generalthema „Versöhnung. Gabe Gottes und Quelle neuen Lebens“.

Die offiziellen Dokumente von Graz bestehen aus einer kurzen, nur 8 Nummern enthaltenden „Botschaft“<sup>11</sup>, aus einem so genannten „Basistext“ mit dem Titel „Das christliche

<sup>8</sup> Vgl. für Italien A. FILIPPI (a cura di), Basilea: giustizia e pace, Bologna: EDB, 1989.

<sup>9</sup> Verso la solidarietà dell'alleanza per la Giustizia, la Pace e la Salvaguardia del Creato, in: Il Regno Documenti XXXV (1990) 365-376.

<sup>10</sup> Über die Vorbereitungszeit berichtet der von der KEK ernannte Versammlungssekretär Rüdiger NOLL in seinem Beitrag „Von Basel nach Graz“ im offiziellen Dokumentationsband, in: Rat der Europäischen Bischofskonferenzen (CCEE) und Konferenz Europäischer Kirchen (hrsg. durch R. Noll und St. Vesper), Versöhnung. Gabe Gottes und Quelle neuen Lebens. Dokumente der Zweiten Europäischen Ökumenischen Versammlung in Graz, Graz-Wien-Köln: Styria Verlag 1998, 13-23 – künftig zitiert „Dokumente von Graz“

<sup>11</sup> Dokumente von Graz, S. 33-37.

Zeugnis für die Versöhnung. Versöhnung – Gabe Gottes und Quelle neuen Lebens“<sup>12</sup> und schließlich aus „Handlungsempfehlungen“ zu den sechs großen Themenfeldern der Versammlung, diese Empfehlungen wurden durch ein umfangreiches „Hintergrundmaterial“ begründet.<sup>13</sup> Ich möchte die vier Handlungsempfehlungen zum Themenbereich 4 „Versöhnung zwischen den Völkern und Nationen und Stärkung gewaltfreier Formen der Konfliktbewältigung“ anführen:

„4.1 Wir empfehlen den Kirchen, sich an der Debatte über europapolitische Entwicklungsprozesse intensiv zu beteiligen, sich dazu Instrumente für ein gemeinsames Handeln zu schaffen und die vorhandenen Institutionen zu stärken.

4.2 Wir möchten die Kirchen bitten, eine aktive und nachhaltige Rolle bei der friedlichen Transformation von Konflikten (z. B. Nordirland, Zypern) und in Friedens- und Versöhnungsprozessen nach kriegesischen Auseinandersetzungen (wie in Bosnien, Kroatien, Serbien, Tschetschenien u. a.) zu übernehmen.

4.3 Wir empfehlen KEK und CCEE mit ihren Mitgliedskirchen, den Austausch von Erfahrungen von Initiativen, Institutionen, Laien- und Bildungszentren und Gemeinden in Friedens- und Versöhnungsprozessen zu fördern.

4.4 Wir empfehlen KEK und CCEE, ein ständiges Komitee für Konfliktanalyse und -bearbeitung einzurichten. Es soll Versöhnungsprozesse anregen und die Möglichkeiten untersuchen, die Ausbildung von Fachkräften zur zivilen Konfliktbearbeitung auf europäischer Ebene zu institutionalisieren.

Aus dem „Hintergrundmaterial“ möchte ich sodann einige Passagen anführen, die sehr erhellend sind für die Aufgabe der Kirchen für die gewaltfreie Lösung von Konflikten:

„Versöhnung, Dialog und Gewaltverzicht.

(B32) Im Abschlussdokument der Ökumenischen Versammlung von Basel nahmen die Überlegungen zur Friedens- und Sicherheitspolitik breiten Raum ein. Sie drückten den wachsenden Wunsch aus, die Trennungen in Europa zu überwinden. „Die Vision demokratischer und gewaltloser Transformation wurde als Hoffnung für die Zukunft formuliert. ... Als entscheidende Voraussetzung für Dialog und Versöhnung wurde der grundsätzliche Verzicht auf Gewalt gefordert. Denn: In unseren Ländern oder auf unserem Kontinent gibt es keine Situation, die einen Einsatz von Gewalt verlangen oder rechtfertigen würde (Nr. 61).

Erfahrungen nach 1989

(B33) Der große Weltkrieg blieb aus, allerdings auch der große Friede. Die Gründe für die Angst, dass Europa sich in ein atomares Inferno verwandeln könne, haben sich verringert. Stattdessen aber kehrte der konventionelle Krieg nach Europa zurück, begleitet von unvorstellbarer Brutalität, von Raub, Vergewaltigung, Vertreibung und "ethnischen Säuberungen"..... Viele Christinnen und Christen fragen sich, was angesichts dessen die vorrangige Option für die Gewaltfreiheit bedeutet. Unser Glaube erlaubt jedoch weder Resignation noch Zynismus. Deshalb bekräftigen wir im Anschluss an Basel, dass wir in unseren Ländern und auf unserem Kontinent daran mitwirken müssen, keine Situationen zuzulassen, die einen Einsatz von Gewalt verlangen oder rechtfertigen könnten. Deshalb ist vor allem eine kohärente und konsequente Friedenspolitik notwendig. Friedenspolitik verlangt heute darüber hinaus

<sup>12</sup> Dokumente von Graz, S. 37-52.

<sup>13</sup> Dokumente von Graz, S. 52-89.

die Vorbeugung gegen Konflikte und die Förderung einer vertrauensvollen Kultur der Verständigung. Dabei können insbesondere zivile Organisationen, Friedensdienste und auch die Kirchen einen entscheidenden Beitrag leisten.

#### Rolle der Kirchen in Konflikten

(B34) In einer Vielzahl von gewaltsamen Konflikten spielen neben ökonomischen, sozialen und politischen Ursachen ethnische und religiöse Faktoren eine Hauptrolle, und zwar in jeder Phase des Konfliktverlaufs. So werden Religionen und Kirchen zum Teil des Problems. Umso wichtiger ist es, die oft ungeklärten Verhältnisse von Religion, Kirche, Volk und Nation zum Thema zu machen und besonders die Beziehung zwischen religiöser und ethnischer Identität zu reflektieren sowie aus den gewonnenen Einsichten praktische Konsequenzen zu ziehen. Religionen und Kirchen werden in ihrer Glaubwürdigkeit an dem gemessen, was sie im Vorfeld von Konflikten zur Problemlösung beitragen. Ihre Aufgabe zur Versöhnung beginnt hier und nicht erst, wenn die militärische bzw. gewalttätige Phase des Konfliktes beendet ist.

#### Der Einsatz der Kirchen für die Opfer der Barbarei

(B38) Nationale und ethnische Konflikte haben zumeist einen wirtschaftlichen oder politischen Hintergrund, sind aber ihrer Eigenart nach vor allem Identitätskonflikte. In der Friedensforschung heißt es, sie seien deshalb besonders schwer unter Kontrolle zu bringen und beizulegen, weil sich über Identität nicht oder kaum verhandeln lässt. Ökonomische oder politische Interessensgegensätze können erfahrungsgemäß leichter durch Konsens und Kompromiss aufgelöst oder ausgeglichen werden. Bei der Angst vor dem Verlust der eigenen Identität spielen meist geschichtliche Erinnerungen, kollektive Traumata und nationale Mythen eine zentrale Rolle und verleihen Identitätskonflikten eine über das Politische weit hinausreichende kulturelle Dimension. Gewalt, die sich gegen die Identität von Personen und Gruppen richtet, nimmt fast zwangsläufig barbarische Formen an. Ritualisierte Akte der Demütigung, vor allem die Schandtat organisierter Vergewaltigung, aber auch die gezielte Zerstörung von Gottesdienststätten, Bibliotheken, Denkmälern oder anderen Symbolen einer ethnischen, nationalen oder religiösen Kultur etc. dienen dazu, die betroffenen Menschen ihrer menschlichen Würde zu berauben. Wo das geschieht oder geschehen ist, müssen sich die Kirchen unzweideutig auf die Seite der Opfer stellen, um ihre Würde zu verteidigen oder ihnen zu helfen, ihre Würde wieder zu gewinnen. Kirchen müssen im wörtlichen und übertragenen Sinn des Wortes Räume schaffen für die Opfer, in denen sie ihr Leid still, schreiend oder klagend vor Gott bringen oder anderen Menschen erzählen können. Den Opfern gebührt immer das erste Wort, erst dann können auch die Täter erwarten, Gehör zu finden. Auch das muss allerdings sein. Denn niemand verliert jemals den Anspruch, gerecht behandelt zu werden. Die Kirchen können kein Recht sprechen und darum weder Kriegsverbrechen ahnden noch andere Verbrechen, die etwa während einer Diktatur verübt wurden. Sie können aber neben der Seelsorge an Opfern und Tätern mithelfen, die rechtliche Behandlung von Verbrechen durch die nationale und internationale Gerichtsbarkeit zu erreichen. Die Kirchen sollten sich dafür einsetzen, Wahrheits- und Versöhnungskommissionen auf den nationalen wie lokalen Ebenen zu initiieren und mitzutragen, und für ihre Arbeit den institutionell notwendigen Rahmen zu schaffen“.Aus diesem Text möchte ich die für die Friedensforschung

wichtige Unterscheidung zwischen Identitäts- und Interessenskonflikten herausgreifen<sup>14</sup>. Identitätskonflikte sind prinzipiell nicht lösbar, denn wenn man in der eigenen Identität bedroht ist, dann kann man sich nur wehren. Die Identität steht für die eigene Existenz. Wenn andere mich in meiner Existenz bedrohen, weil ich nicht da sein soll, weil mein Dasein als Unwert empfunden wird, dann führt dies zum Kampf bzw. zur Unterdrückung des Schwächeren durch den Stärkeren. So hat man es in der Geschichte mit Minderheiten gemacht – entweder wurden sie ausgerottet (Genozid<sup>15</sup>) oder vertrieben („ethnische Säuberung“) oder es wurde versucht, sie zu assimilieren. Erst wenn durch verschiedene vertrauensbildende Maßnahmen die eigene Existenz bzw. die Existenz der eigenen Volksgruppe gesichert ist, dann kann es zum Dialog kommen.

Ich komme aus Südtirol, das seit dem Mittelalter zu Österreich-Ungarn gehörte und nach dem ersten Weltkrieg als vollständig deutschsprachiges Gebiet an Italien angegliedert wurde. In der Zeit des Faschismus zwischen den beiden Weltkriegen hatte man versucht, durch Methoden der gewaltsamen Assimilation das Deutsche zu unterdrücken; nach dem Zweiten Weltkrieg war durch das sogenannte Pariserabkommen zwischen Italien und Österreich eine Autonomie eingeführt worden, aber zusammen mit der italienischsprachigen Nachbarprovinz von Trento, sodass die deutschsprachigen Südtiroler wieder in der Minderheit waren, eine Situation, die sich sogar wegen der starken Immigration aus den anderen italienischen Provinzen und einer entsprechenden Wohnungspolitik noch verschlechtert hatte. Deshalb kam es um 1960 herum zu Bombenanschlägen, so dass Österreich die Südtirolfrage 1960 und 1961 vor den Sicherheitsrat der Vereinigten Nationen gebracht hat. Italien hat daraufhin ein verbessertes Autonomiestatut in Südtirol eingeführt, das schrittweise durch verschiedene Maßnahmen umgesetzt wurde. Es wurden so im Knäuel des noch vorhandenen Identitätskonflikts, zumindest einer latent wahrgenommenen Bedrohung, eine Reihe von Interessen ausgemacht, wie die Frage der Arbeit in staatlichen Strukturen, der Schule und Bildung, des Gebrauchs der Muttersprache vor Gericht und in allen öffentlichen Belangen; für diese Interessen konnte man dann Kompromisse ausarbeiten zwischen den verschiedenen Sprachgruppen. Damit diese Kompromisse auch akzeptiert werden konnten, war flankierend auch eine Aufklärungs- und Erziehungsarbeit notwendig, damit die Anwesenheit einer anderen Sprachgruppe als Reichtum empfunden werden konnte, als Chance auch, um so eine Brücke zwischen verschiedenen Kulturräumen zu bilden. Die Durchführung des Autonomiestatuts fiel in einer Zeit des wirtschaftlichen Aufschwungs, so dass immer genügend Mittel da waren, die durch eine korrekte Verwaltung auch verteilt werden konnten. Dennoch zeigt sich immer mehr, dass eine rein

<sup>14</sup> Auf diese Unterscheidung hatte mich in den neunziger Jahren Thomas Hoppe aufmerksam gemacht, damals Mitarbeiter des Instituts für Theologie und Frieden in Hamburg, jetzt Professor an der Helmut-Schmidt-Universität der Bundeswehr in Hamburg, vgl. seine Bibliographie in: <http://www2.hsu-hh.de/thekat/index.html>; vgl. z.B. Th. HOPPE, Möglichkeiten und Probleme des Minderheitenschutzes im Rahmen einer europäischen Friedensordnung, in: J. JANS (Hrsg.): Für die Freiheit verantwortlich. Festschrift für Karl-Wilhelm Merks zum 65. Geburtstag, Studien zur theologischen Ethik Nr. 107, Academic Press Fribourg -Verlag Herder Freiburg, 2004, 170-182.

<sup>15</sup> Der Präsident des Parlaments der Serben in Pale M. Krajisnik hatte nach den Genoziden von Srebrenica und Zepa, gesagt: „Continueremo ad uccidervi, finché penserete che possiamo vivere insieme“, so zitiert bei G. BRUNELLI, Il seme avvelenato del nazionalismo etnico, in: *Il Regno attualità* 40 n. 755 (15/9/1995) 454.

technische und verwaltungsmäßige Lösung der Probleme nicht genügt, wenn nicht an der Basis ein nachbarschaftliches Zusammenleben praktiziert wird und dann konkrete Bildungsarbeit geschieht im Sinne des Zieles eines friedlichen Zusammenlebens einer „versöhnten Gemeinschaft von Völkern und Sprachen“<sup>16</sup>. Die Medien spielen hier eine wichtige Rolle<sup>17</sup>.

Der Ausblick: Die „Charta Oecumenica“ (2001) und die Dritte Europäische Ökumenische Versammlung von Sibiu/Hermannstadt (2007)

Um in unsere Zeit zu kommen möchte ich die am 22. April 2001 in Strassburg verabschiedete „Charta Oecumenica“ erwähnen, wo im dritten Teil die gemeinsame Verantwortung für Europa beschrieben wird, die durch den Satz der Bergpredigt eingeleitet wird: „Selig, die Frieden stiften, denn sie werden Kinder Gottes genannt werden“ (Mt 5, 9). Die Nr. 8 ist der Friedensarbeit gewidmet und steht unter dem Titel „Völker und Kulturen versöhnen“. Es heißt da:

„Die Vielfalt der regionalen, nationalen, kulturellen und religiösen Traditionen betrachten wir als Reichtum Europas. Angesichts zahlreicher Konflikte ist es Aufgabe der Kirchen, miteinander den Dienst der Versöhnung auch für Völker und Kulturen wahrzunehmen....

Unsere gemeinsamen Bemühungen richten sich auf die Beurteilung und Lösung politischer und sozialer Fragen im Geist des Evangeliums. Weil wir die Person und Würde jedes Menschen als Ebenbild Gottes werten, treten wir für die absolute Gleichwertigkeit aller Menschen ein. Als Kirchen wollen wir gemeinsam den Prozess der Demokratisierung in Europa fördern. Wir engagieren uns für eine Friedensordnung auf der Grundlage gewaltfreier Konfliktlösungen. Wir verurteilen jede Form von Gewalt gegen Menschen, besonders gegen Frauen und Kinder.

... Wir verpflichten uns,

- jeder Form von Nationalismus entgegenzutreten, die zur Unterdrückung anderer Völker und nationaler Minderheiten führt und uns für gewaltfreie Lösungen einzusetzen;
- die Stellung und Gleichberechtigung der Frauen in allen Lebensbereichen zu stärken sowie die gerechte Gemeinschaft von Frauen und Männern in Kirche und Gesellschaft zu fördern.“

Dieser Text bildet nun die Grundlage für die Vorbereitung der Dritten Europäischen Ökumenischen Versammlung, die ihren Abschluss vom 4. bis 9. September 2007 in Sibiu/Hermannstadt in Rumänien unter Teilnahme von voraussichtlich 2.100-2.500 Delegierten aller europäischen Kirchen finden wird und die unter dem Leitwort steht: „Das Licht Christi scheint auf alle. Hoffnung für Erneuerung und Einheit in Europa“. Auch

<sup>16</sup> So lautete der Titel eines Symposiums, das 1993 von den Europäischen Bischofskonferenzen in Brixen für Bischöfe aus europäischen Ländern, in denen sprachliche und ethnische Minderheiten vorhanden sind, durchgeführt wurde, vgl. dann den Dokumentationsband K. EGGER Hrsg., Kirche in Europa. Versöhnte Gemeinschaft von Völkern und Sprachen. Brixen, Weger 1996.

<sup>17</sup> Z.B. ist es sehr wichtig, dass man auch die eigene Geschichte aufarbeitet, dass gemeinsame Geschichtsbücher erstellt werden, dass die zugewanderte Volksgruppe sich immer mehr die Geschichte des Landes zu eigen macht und so auch eine besondere lokale kulturelle Identität entstehen kann.

diese Ökumenische Versammlung ist als Prozess gedacht. Sie hat mit einem ersten ökumenischen Treffen (110 Delegierte von CCEE und KEK) vom 24. bis 27. Januar 2006 in Rom begonnen. Es sollen dann regionale und nationale Treffen in der Zeit von Pfingsten 2006 bis zur Gebetswoche für die Einheit unter den Christen im Januar 2007 folgen, dann wird es ein zweites ökumenisches Treffen vom 15.-18. Februar in der Martin-Luther-Stadt Wittenberg geben und schließlich die abschließende Generalversammlung von Rumänien. Die Modalitäten dieses Prozesses sind noch nicht im Einzelnen festgelegt. Jedenfalls soll es in Rumänien dann neun Dialogforen geben, darunter eben auch eine zur Thematik des Friedens. In dem Dokument „Study Guide“<sup>18</sup> für die Vorbereitung der Dritten Europäischen Versammlung gibt es einen Text, in dem Rüdiger Noll zuerst Bezug nimmt auf das im Jahre 2003 von der Europäischen Union angenommene Sicherheitskonzept und dann fragt, was die Kirchen unter Sicherheit verstehen. Dürfen unter dem Vorwand der Sicherheit und der Bekämpfung des Terrorismus die Standards der Menschenrechte verletzt werden? In Zeiten der Krise braucht es neue Visionen. Damals in Basel, angesichts des noch bestehenden eisernen Vorhangs hat man vom „gemeinsamen Haus Europa“ gesprochen und von der zu erstellenden Hausordnung. Ist diese Vision von einem gemeinsamen Haus Europas noch durchsetzbar, oder hat sich der Gesamtkontext geändert? Besteht ein Bedarf, dass die Kirchen in Europa eine neue Vision für den Frieden vorlegen?

Ich glaube schon. Die christliche Botschaft von der Gewaltfreiheit, von der Überwindung des Bösen durch eine größere Kraft der Liebe behält ihre Aktualität, besonders auch angesichts eines Terrorismus, der sich auf Religion bezieht, aber ein Missbrauch der Religion ist. Hier scheint mir eine Passage wichtig in dem Interview, das Papst Benedikt XVI. am 5.8.2006 verschiedenen deutschen Fernsehanstalten gegeben hat. Er meint: „Für unsere laizistische Welt ist es wichtig zu sehen, dass für den Dialog mit den anderen Welten gerade auch der christliche Glaube nicht ein Hindernis, sondern eine Brücke ist. Man darf nicht meinen, die rein rationale Kultur, die hätte es aufgrund ihrer Toleranz leichter, mit den anderen Religionen zu Rande zu kommen. Ihr fehlt weitgehend das religiöse Organ und gerade damit eigentlich der Bezugspunkt, auf den hin die anderen ansprechen und angesprochen werden wollen. Insofern müssen wir zeigen, können wir zeigen, dass gerade für die neue Interkulturalität, in der wir leben, die pure, von Gott losgelöste Rationalität nicht genügt, sondern eine weite Rationalität nötig ist, die Gott in der Einheit mit der Vernunft sieht, und dass unser christlicher Glaube, der sich in Europa entwickelt hat, auch ein Mittel ist, um Vernunft und Kultur zueinander zu bringen und in einer verständnisvollen Einheit auch des Handelns miteinander zu halten“<sup>19</sup>.

<sup>18</sup> Zu finden in der offiziellen Homepage der Dritten Europäischen Versammlung: <http://www.eea3.org/>

<sup>19</sup> Text entnommen aus der Homepage der Sala Stampa Vaticana vom 13.8.2006, vgl. [www.vatican.va; http://212.77.1.245/news\\_services/bulletin/news/18681.php?index=18681&tpo\\_date=13.08.2006&lang=it](http://www.vatican.va/news_services/bulletin/news/18681.php?index=18681&tpo_date=13.08.2006&lang=it)

*Rico Sneller:*  
*Violence as a political 'means'*

On peut se demander s'il n'y a pas quelque peu de niaiserie dans l'admiration que nos contemporains ont pour la douceur; je vois, en effet, quelques auteurs, remarquables par leur perspicacité et leurs hautes préoccupations morales, ne semblent pas autant redouter la violence que nos professeurs officiels."

Georges Sorel<sup>1</sup>

Introduction

Can violence be accepted as a means to implement political measures or actions? Is not violence ultimately rejectable just because it is violent? These are the questions I am dealing with in this contribution. We should admit that 'violence' as a concept always already implies some kind of negative judgment passed on it. If we speak about 'violence', we thereby necessarily imply that something supposedly pure is 'violated'. If there were no unimpacted purity, there would be no violence. 'To violate' – just like the German *vergewaltigen* – also means 'to rape', and raping always implies infringing, breaking some (virginal) intactness. In my view there are two conditions for there to be violence. First, as I have just suggested, some anterior, unimpacted purity must be violated, for instance a body, a life, an organic whole.<sup>2</sup> Secondly, and more particularly, some excessive measure must be taken or an excessive action practised, a measure or an action violating beyond what is accepted as reasonable, for instance sentencing someone to death for having stolen an apple; militarism is also usually treated as an exaggeration of violent enactment of the laws. On the contrary, in ordinary human intercourse the act of defloration is not considered as a violation, for a lack of excess in it, although there *is* an 'impact' upon some anterior 'purity'. But the purity implied by the concept of violence cannot be reduced to mere physical terms; it should rather be held to display 'meta-physical' features.

Later in this article, the term 'violence' will also be used in the derivative sense of being 'ultimately irrational', 'finally unfounded'. This use of the term is very frequent in contemporary philosophy. It is inspired, I assume, by philosophers such as Levinas and Derrida, who recur to the concept of violence to explain the phenomenological entanglement of the face of the Other within the realm of the Same.<sup>3</sup> There is much confusion about the concept of violence. Therefore, a careful distinction seems requisite to avoid this confusion. It remains likely, however, that both uses of the term are co-implicative. In my discussion of violence as a political means I will restrict myself, as Walter Benjamin does in his 1921 essay 'Critique of Violence', to violence entering into moral relations. I will pay

<sup>1</sup> Georges Sorel, *Réflexions sur la violence*, Paris, Marcel Rivière, 1930 (1906), p.270. Trans. *Reflections on Violence*, Cambridge, CUP, 1999.

<sup>2</sup> I borrow this expression from G.E. Moore's *Principia Ethica*, Ch. VI.

<sup>3</sup> Cf. for example J. Derrida, 'Violence et métaphysique. Essai sur la pensée d'Emmanuel Levinas', in *l'Écriture et la différence*, Paris, Seuil, 1967.

no attention to so-called 'natural' violence (earthquakes, tsunamis etc) or to violence in social human intercourse (violence against women, children; senseless violence etc.) I will start shedding some light on the widespread social and juridical repugnance against violence. Then, I will insist on the philosophical acknowledgment of the inevitability of violence that is found in some philosophers who have inspired me writing this text: Georges Sorel and his *Réflexions sur la violence*, Walter Benjamin's 'Zur Kritik der Gewalt'<sup>4</sup>, Carl Schmitt's *Politische Theologie*<sup>5</sup> and his *Begriff des Politischen*<sup>6</sup>, and Jacques Derrida's *Force de loi*<sup>7</sup>.

#### Repugnance against violence

Our contemporary world, as it is widely dominated by western 'civilization' and by ideals expressed in humanistic, Judaeo-Christian values, seems to be permeated more or less by an abhorrence of violence as a political means. This abhorrence may be hypocritical, as many western countries are directly or indirectly involved in exporting violence to foreign countries, for example in supporting oppositional movements abroad or in permitting arms traffic. Nevertheless, as a general rule, they tend to be unfavourably disposed towards violent political measures and only accept them if there are no alternatives. One could think of international UN interventions being preferably peacekeeping forces (in Sudan, Afghanistan, Eastern-Timor etc.). One could also think of the police who are restricted in their law-preserving authority and to whom torture as a means of interrogation is in principle refused. Thirdly, the progressive mitigation of penalties, the invention of alternative punishments and the abrogation of death penalty in many countries could be referred to. I would already like to draw here attention to a possible inconsequence presenting itself in this progressive mitigation of penalties, at least according to Benjamin. In his essay 'Critique of Violence' Benjamin considers capital punishment as the utter consequence of any legal system. The "attack on capital punishment", he states, "assails not legal measure, not laws, but law itself in its origin."<sup>8</sup> For capital punishment shows the violent nature of any legal system most clearly; it finally shows the deterrent nature of any legal system as such. Capital punishment, one could say, is only honest or fair, it does not throw dust in our eyes as other kinds of infliction do. In an attempt to explain the aforementioned repugnance against violence Georges Sorel, in his 1906 essay *Reflections on Violence*, observes three societal currents. There has been a gradual change in our educational systems, he says (abrogation of corporal punishment: the *ferula*); a growing equalization and democratization of educational system is taking place. And one cannot ignore that what Sorel observed

<sup>4</sup> 'Zur Kritik der Gewalt', in *Gesammelte Schriften II/1*, Frankfurt, Suhrkamp, 1999 (1977), trans. 'Critique of violence', in Walter Benjamin, *Selected Writings Vol. 1, 1913-1926*, Cambridge (Ma)/London, HUP, 2000 (1996).

<sup>5</sup> Carl Schmitt, *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität*, Berlin, Duncker & Humblot, 1996 (1922) (a). Trans. *Political Theology. Four Chapters on the Concept of Sovereignty*, Chicago, UCP, 2006.

<sup>6</sup> *Der Begriff des Politischen. Text von 1932 mit einem Vorwort und drei Corollarien*, Berlin, Dunkler & Humblot, 1996 (b). Trans. *The Concept of the Political*, Chicago, UCP, 1996.

<sup>7</sup> Paris, Galilée, 1994. Trans. 'Force of Law: The Mystical Foundation of Authority.' *Cardozo Law Review: Deconstruction and the Possibility of Justice*. 11:5-6 (1990): 920-1045.

<sup>8</sup> 'Zur Kritik der Gewalt', 42f, trans. 242.

here has not but continued in the 20<sup>th</sup> Century. Next, Sorel draws attention to the exclusion of "dangerous [i.e. rebellious, socially deprived] classes" from the leading bourgeois conscience. Perhaps we could think today of child negligence or deviating educational practices in underclasses. Michel Foucault has investigated the Modern strategies of exclusion and domestication of what can be called 'unreason' (*déraison*). Thirdly, Sorel says, the modern state is not so much overtly violent (as it was for example in the ancient Roman Republic) as it is violent moreover in a concealed way. Here we might think of connections between state employees with criminal associations such as the mafia in Italy or with drug cartels in Latin America.<sup>9</sup> These explanations by Sorel, however, are not really explanations but moreover descriptions of symptoms. Perhaps a deeper influence of contemporary repugnancy against violence can be traced within Enlightenment (Voltaire) and Romantic (Rousseau) thought. This has contributed to a growing awareness of what it means to be a human being, to have a body of one's own, to have a 'unique' self (be the latter an illusion or not). It also has created an enlarged notion of the other as an other self; it has distinguished in man a faculty of what was called sympathy or empathy (cf. Smith, Hume, Hutcheson, Rousseau etc.) Charles Taylor, in his famous *Sources of the Self*, has pointed out that modern society is highly influenced by Enlightened traditions proclaiming human dignity and still even more by Romanticism stressing human interiority and individual uniqueness. In the heart of these Romantic traditions one can find Augustinian reminiscences referring to the psycho-theological importance of inwardness. It seems very likely, then, that a growing repugnancy towards violence at least since the Age of Enlightenment has created the contemporary concept of violence, together with its pejorative content. It remains a matter of dispute whether or not the apparent Greek equivalent *bia* – or even the Latin *violentia* – can be rightfully translated with 'violence' without unduly introducing a negative, 'ethical' element in it. The 'original' meaning of *bia* seems related to force, for example of an army or a man. The adverb *biai*, usually translated with 'violently', is perhaps better understood if taken as 'by force', 'per force', if not 'perforce'; for *bia* can also mean, in Attic, 'rape', just as the German *Gewalt* can be tracked in *vergewaltigen* ('to rape'). *Gewalt* in German contains the idiomatic ambiguity of expressing both 'force', 'violence', and 'legal force', 'authority'. Jacques Derrida, in his reading of Benjamin's 'Critique of violence', observed this felicitous, because revealing, ambiguity.<sup>10</sup> But he notes, as we shall see shortly, that this ambiguity not only expresses the problematic character of any legal authority (in line with Benjamin), but also the inevitability of force (violence) for justice to be enforced at all. A justice without force, violent though this force might be, is gainsaid.

#### Acknowledgment of violence

The question then becomes urgent if violence – as a political means – is inevitable. It may be useful here to remind my initial definition of violence: excessive violation of some anterior purity. By contrast, the previously mentioned derivative use of the term 'violence', not to be confused with the former, refers to a determination of some foundation as 'ulti-

<sup>9</sup> Cf. Sorel, *Réflexions sur la violence*, p.283ff.

<sup>10</sup> Derrida, 1994, p.19, 74.

mately irrational', 'finally unfounded'. Both Sorel and Derrida refer to the following famous passage in Pascal's *Pensées*:

"Justice, might [force]. – It is right [juste] that what is just [juste] should be obeyed; it is necessary that what is strongest [le plus fort] should be obeyed. Justice without might [force] is helpless; might without justice is tyrannical. Justice without might is gainsaid, because there are always offenders; might without justice is condemned. We must [Il faut] then combine justice and might and, for this end, make what is just strong, or what is strong just [faire que ce qui est juste soit fort, et que ce qui est fort soit juste]. – Justice is subject to dispute; might is easily recognised and is not disputed. So we cannot give might to justice, because might has gainsaid justice and has declared that it is she herself who is just. And thus, being unable to make what is just strong, we have made what is strong just."<sup>11</sup>

Derrida concludes that perhaps one cannot decide or conclude here as to the word 'should' (il faut): "We must [Il faut] then combine justice and might". Is this 'should', he asks, prescribed by justice or by necessity? To put this in different, non-Derridean terms, is it a matter of *sollen* (ought) or *müssen* (must)? Derrida then subtly suggests that this undecidability is perhaps superficial as soon as an even more profound 'should' (il faut) is taken into account. For justice, he says, as justice, requires a recourse towards force or might. "The necessity of force is thus implied in the just of justice", Derrida adds.<sup>12</sup>

What does Derrida mean by this? Which of the two concepts of violence is here at stake? Both, I think. Not only is the force inherent to justice ultimately irrational or unfounded (as there are always alternative ways of enforcing justice), it also seems to imply its excessive character in that it violates some integrity of the transgressor (his or her body, liberty, health etc.). His or her 'purity' is punished – not only in the sense of it being submitted to a penalty but also in the sense of it being touched or encroached upon, as we say that a fighter 'punishes' his opponent or that a bottle of wine is 'punished'. If a purity is violated, such a violence cannot but be excessive. However, the first sense of 'violence' (ultimate irrationality, unfoundedness etc.) is the one that seems to be most pregnant in Derrida's commentary. The second one is implied by the first one. An acknowledgment of violence as a necessary evil can be found in the thinkers I have referred to in the beginning of this article: Sorel, Benjamin, Schmitt and Derrida. Let us have a short look at them.

#### Sorel

In his *Reflections on violence*, Sorel ends up with what he does not hesitate to call an 'apology of violence'. Sorel situates himself within the Marxist tradition, in which violence is accepted as a historical necessity. But the violence that is at stake here is not exclusively the violence inherent to the enforcement of the law subjecting the underclasses. It is also the kind of violence that is exercised by the underclasses themselves to liberate themselves from bondage. When Sorel pleads the case of violence, he particularly refers to the political violence of the latter, in the form of a general revolutionary strike. "Nothing", he says, "can be done except by violence. It is only necessary that it no longer be exercised from the

<sup>11</sup> Section V, 298. Trans. W.F. Trotter.

<sup>12</sup> Derrida, 1994, p.28.

top down, as formerly, but from below upward.”<sup>13</sup> This syndicalist apology of violence exercised through general revolutionary strikes, however, is backed up in Sorel by more austere metaphysical statements as to the indispensability of myths, myths introducing the notion of some final, inevitable struggle between good and evil.<sup>14</sup> All throughout his *Reflections*, a contemporary lack of common myths inspiring a sense of moral urgency is deplored. The importance of mythic imagery to human agency, in Sorel, reappears in philosophical strategies as divergent as Husserl’s phenomenology and Taylor’s studies of human moral behaviour. But this analogy only pertains to the necessity of giving a full account of human behaviour and to the avoidance of a purely naturalistic description. It does not hold for the formal content of mythic imagination according to Sorel, i.e. a radical struggle between evil and good; the acknowledgment of this struggle is only characteristic of Sorel himself. Sorel admits to be largely indebted to Durkheim here, as Durkheim is supposed to have said that “one cannot suppress the sacred within the moral, and what characterises the sacred is that it is incommensurable with the other human values.”<sup>15</sup> Myths sketching reality as a fundamental opposition between those advocating the Good and the disciples of Satan are indispensable according to Sorel. The waning away of such inspiring myths lies at the basis of the decline of morality as such. In his fascinating Chapter VI on ‘The Ethics of Violence’, Sorel goes as far as speaking of “high moral convictions” that “do not depend upon reasoning or on an education of individual will; they depend upon a state of war in which men accept participating and which is conveyed by precise myths.”<sup>16</sup> Christian morality for example, so he argues, should be divided into a popular type on the one hand, which is practised by the vast majority of Christians and comes down to magical thinking or probabilism, and a more spiritual one on the other, which is much more secluding and ascetic.<sup>17</sup> In this dualistic conception, true Christianity (i.e. not its popular, low-brow versions) is not unique, for the same tendency can be distinguished in Marxism or in Anarchism (Proudhon). This radical dualism which is so important to Sorel immediately derives from Marxist theories about class struggle which, Hegelian though the latter may originally be, could perhaps be traced back to some version of ancient Gnosticism or Manichaeism. Violence tends to be an indispensable ingredient here.

#### Schmitt

The same kind of dualistic Hegelian Gnosticism or Gnostic Hegelianism can also be found in Carl Schmitt, although he does not always expressly refer to this metaphysical background. Whereas Schmitt is well known for his dualistic conception of politics – the concept of the political presupposes an irreducible enmity between people –, the theo-

<sup>13</sup> Sorel, 1930, p.438; trans. p.303.

<sup>14</sup> Cf.: “les hommes qui participent aux grands mouvements sociaux, se représentent leur action prochaine sous forme d’images de batailles assurant le triomphe de leur cause. Je propose de nommer mythes ces constructions dont la connaissance offre tant d’importance pour l’historien: la grève général des syndicalistes et la révolution catastrophique de Marx sont des mythes.” Sorel, 1930, Introduction III, p.32

<sup>15</sup> Sorel, 1930, p.315.

<sup>16</sup> Sorel, 1930, 319.

<sup>17</sup> Sorel, 1930, 318.

mythological background of his thinking is less salient. “Adam and Eve”, he says almost at the end of his prison diary *Ex captivitate salus*, “had two sons, Cain and Abel. Thus starts the history of mankind. Thus looks the father of all things. That is the dialectical tension that keeps world history in movement, and world history is not over, yet.”<sup>18</sup>

In his *Political Theology* Schmitt denounces the evasion of the “core of the political idea” (*der Kern der politischen Idee*), viz. “the strenuous moral decision” (*anspruchsvolle moralische Entscheidung*) by the modern state.<sup>19</sup> With obvious assent he reminds the counterrevolutionary (De Maistre, Bonald, Donoso Cortes) revalorisation of this moment of sovereign decision. De Maistre, he says, rightly “reduces the state to a moment of decision”, “a pure, absolute decision that does not reason nor discuss, nor legitimise itself.”<sup>20</sup> So, I would add, such a decision cannot but violate, what Schmitt himself calls the “immanence of life” in its immediacy. Anarchism, Schmitt affirms in conclusion, naively believes this immanence of life to generate justice automatically (*von selbst*), if one simply does not disturb life with such presumptuous decisions. However, Schmitt replies, in so doing anarchism only resolutely – decisively – decides against decision (*sich selbst entschieden gegen die Deziision zu entscheiden*). Wholly in line with this, Schmitt continues, Bakunin became the theologian of anti-theology and the dictator of antidictatorship.<sup>21</sup> In *The Concept of the Political* Schmitt pursues his previous line of thinking. The ‘political’ he defines here as “the utmost degree of intensity (*Intensitätsgrad*) of an association or a dissociation of people”.<sup>22</sup> Any human association – for it to be political – will always be an association opposed to another one. Such an oppositional association will always be inimical and threatening to it, though it need not necessarily be a bad or an unjust one. The dialectics of the political is entirely beyond good and bad. Whereas in his former text Schmitt was mostly oriented towards the sovereignty of the state regarding its subjects, in *The Concept of the Political* he concentrates more on its sovereignty with respect to other states: there is no super-national law, he claims, to which individual states might appeal. There mutual, eventually violent, tension is irreducible. Cf.:

“To the state as an essential political unity belongs the *jus belli*, i.e. the real possibility of determining and combating the enemy in a given situation in virtue of this state’s own decision. The technical means [*mit welchen technischen Mitteln*] with which the battle is conducted, the organisation of the army, the prospect of winning the war, are irrelevant [*gleichgültig*] here, as long as the politically united people are prepared to combat for their existence and their independence, while they determine in virtue of their own decision of what their very independence and liberty consist.”<sup>23</sup> The technical and organisational means are irrelevant, the extremity of violence is of no concern. It is clear that Schmitt implies here a concept of violence that comes down to excessive violation of some unimpacted purity. Which purity? The purity, I would say, of the inimical combatants’ “physi-

<sup>18</sup> *Ex Captivitate Salus. Erfahrungen der Zeit 1945/47*, Berlin, Duncker & Humblot, 2002, p.89f.

<sup>19</sup> Schmitt, 1996 (a), p.69.

<sup>20</sup> *Ib.*

<sup>21</sup> *Ib.*, p.70.

<sup>22</sup> Schmitt, 1996 (b), p.27.

<sup>23</sup> *Ib.*, p.45f.

cal life". The foreign soldiers need not necessarily be abhorred, as they are no personal enemies, only enemies of the state's own "form of existence". Cf.:

"But no programme, no ideal, no norm and no finality grants a dispositional right to other people's physical life [Verfügungsrecht über das physische Leben anderer Menschen]. To demand seriously from people that they kill people and are prepared to die, in order that the survivor's trade and industry flourish or the grandchildren's consumptive power thrive, is horrible and crazy. [...] War, the preparedness of the combatants to die, the physical killing of other people who are on the enemy's side, all these things have no normative but only an existential sense [...]. There is no rational end, no norm however just, no programme however exemplary, no ideal however beautiful and social, no legitimacy nor legality, that could justify people killing each other. If such a physical destruction of human life does not occur out of an essential assertion [seinsmässigen Behauptung] of one's own form of existence facing an equally existential negation of this form, it will not be justified at all. Even with ethical or juridical norms one cannot give a solid basis for a war [kann man keinen Krieg begründen]. If there are really enemies in the essential meaning which is at stake here, it will be sensible, but only politically, to ward them off if need be, and to fight with them."<sup>24</sup> Excess is part and parcel of belligerence, i.e. 'excess' in a moral or juridical sense, to be sure. What is exceeded is the boundary of the law, of morality, eventually of religion, a boundary protecting, in a way, the purity of the individual human subject. Sovereign exercise of power, according to Schmitt, is also practised within the state and its territory. Civil war is the worst situation one can have. The state has to guarantee law and order and has to create a "normal situation". "This necessity of peacekeeping within the state [innerstaatlicher Befriedung]", he says, "will in critical situations also result in the determination of the «interior enemy» by the state as a political unity, as long as it exists."<sup>25</sup> This 'peacekeeping' does not obey general rules, as these rules always presuppose a reliable peace to be kept. So violence in the sense of (moral, juridical, religious, etc.) 'excess' is inscribed within the very institution of sovereign power. As this sovereign power is not founded upon some universal morality but rests upon a sole sovereign decision, one could also say that violence in the (second) sense of 'ultimate irrationality' is inevitable, according to Schmitt. The sovereign instance is the intermediary between the judicial order and the extralegal sphere surrounding this order. It can be seen as a temporary incarnation of the ultimate. As the sphere of law and order, on the one hand, and of the extralegal, the ultimate, on the other, cannot be dialectically mediated, let alone transcended, violence – in both senses – remains an indispensable ingredient of the political system. The sovereignty upon which it rests cannot dispense with violence.

Walter Benjamin

Walter Benjamin's 'Critique of Violence' preceded Schmitt's Political Theology by a year. Although as a whole this essay is much shorter than Schmitt's texts, it is far more critical in virtue of its introducing a category of 'divine violence'. This category Benjamin opposes to 'mythic violence', i.e. the type of violence inherent to any legal system and

<sup>24</sup> Ib., p.49f.

<sup>25</sup> Ib., p.46.

concealing itself in either lawmaking (*rechtsetzende*) or law-preserving (*rechtserhaltende*) violence. The former type of violence – inaugurating a new legal system – corresponds to what I have taken to be the derivative sense of violence (ultimate unfoundedness), the latter type of violence – exercised by the police or the judicial system – to the first sense (excessive violation of an anterior purity). Throughout the larger part of his essay, Benjamin seems to make a favourable case for (mythic) violence. For instance, he seems to reproach the Weimar Republic to “have not remained conscious of the revolutionary forces to which they owe existence. [...] They lack the sense that they represent a lawmaking violence; no wonder they cannot achieve decrees worthy of this violence, but cultivate in compromise a supposedly non-violent [*vermeintlich gewaltlose*] manner of dealing with political affairs.”<sup>26</sup> The “decay of parliaments”, he says, “has perhaps alienated as many minds from the ideal of a nonviolent resolution of political conflicts as were attracted to it by the war.”<sup>27</sup> So a neglect of (revolutionary) violence probably leads to war, Benjamin suggests. Benjamin also problematises the “attack on capital punishment”. Such an attack “assails not legal measure, not laws, but law itself in its origin”.<sup>28</sup>

However, Benjamin cannot at all be taken as Schmitt’s immediate predecessor. We should just read his final condemnation, at the end of his essay, of any mythic violence, i.e. both lawmaking and law-preserving violence. “But all mythic, lawmaking violence, which we may call «executive» [*die schaltende*], is pernicious [*Verwerflich*]. Pernicious, too, is the law-preserving, «administrative» violence [*verwaltete Gewalt*] that serves it. Divine violence [*göttliche Gewalt*], which is the sign and seal but never the means of sacred dispatch, may be called «sovereign» violence [*mag die waltende heissen*].”<sup>29</sup>

Benjamin’s position is highly ambiguous. We cannot dispense with violence, he admits, and trying to neglect it probably produces even more violence (war). On the other hand, violence as such, i.e. human violence meant to make or preserve the law, is “pernicious”, “rejectable” (*verwerflich*). In the name of what? Mythic violence, either lawmaking or law-preserving, is to be rejected in the name of divine violence. Such a divine violence Benjamin introduces as a critical category that cannot, however, be disposed of. One can never be sure, nor is it urgent for man to know “when unalloyed violence [*reine Gewalt*] has been realized in particular cases”<sup>30</sup>. Its ‘epistemological’ status rests on a philosophy of the history of violence. Only “the idea of its development [*Ausgang*: ‘end’, ‘outcome’] makes possible a critical, discriminating, and decisive approach to its temporal data”.<sup>31</sup> One could perhaps think here of what is sometimes called ‘the rise and decline of powers’ in human history. It may be asked how Benjamin can introduce the category of something divine at all. I have the impression that its status is more or less phenomenological, be it in a complex way: there is no adequate, present-tense self-manifestation of divine violence. Its presence, or rather its having-been-present is to be surmised without it ever being wholly assured. Perhaps we can think here of Plato’s idea of the Good: as this idea is beyond essence

<sup>26</sup> Benjamin, 1999, p.190f., trans. p.244.

<sup>27</sup> *Ib.*

<sup>28</sup> *Ib.*, p.188, trans. p.242.

<sup>29</sup> *Ib.*, p.203, trans. p.252.

<sup>30</sup> *Ib.*

<sup>31</sup> *Ib.*, p.202, trans. p.251.

(epekeina tès ousias, Pol. 509b) and as it first enables us 'grasping' phenomena, it can never be adequately grasped in itself. One might also question the adequacy of the very term 'violence' to express divine agency. To be sure, as opposed to mythic violence, which aims at establishing power, divine violence aims at justice, i.e. at doing justice to the individual or the singular. Divine violence "constitutes its antithesis in all respects".

"If mythic violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythic violence brings at once guilt and retribution [verschuldend und sühnend], divine power only expiates [entsühnend]; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood."<sup>32</sup> What, then, is the analogy between mythic and divine violence if they are so 'antithetical'? They both destroy, although for different reasons. Some anterior purity is destroyed: in the case of mythic violence the purity of the individual human being who is subjected to (mythic) law, in the case of divine violence the purity of an 'impurity': the impurity of a "pernicious", "ambiguous" legal system.

In which of the two distinguished senses is divine violence in Benjamin 'violent'? It is violent, one could say, as it exceeds boundaries (first sense). It is also violent, one might add, in that seems entirely irrational and unfounded (second sense). But the exceeded boundaries are themselves wholly impure, and divine violence's basis is justice – we might perhaps even say, echoing Plato: some idea of the Good. It does not spill blood, so that life, symbolised by 'blood', is the final aim of its exercise. One might ask if divine violence, destructive though it may be, really is as violent as its name suggests! Violence cannot really criticise violence, and if divine violence is to criticise mythic violence, it is perhaps not violent at all, neither in the former nor in the latter sense. Divine violence, Benjamin suggests, amounts to the destruction of all (mythic) violence.

#### Conclusion

We have discovered several affirmative attitudes towards violence as a means. In Sorel, violence has to be accepted as a necessary tool in the hands of the suppressed working classes. The type of violence Sorel had in mind amounted to the general revolutionary strike. Schmitt acknowledged sovereign violence as a necessary ingredient of the human condition, which is, according to him, essentially political. Violent 'means' are to be used if the entire national order is threatened. The bigger the threat, the more severe the political measures will have to be, both outwardly and inwardly. Ultimately, there is no universal moral order to be discovered by man. A sovereign decision has to meet the requirements of human dissension and (inter)national discord. Benjamin made a distinction between mythic and divine violence, the latter of which, undetectable though it may be, attesting to the former's reprehensibility. One might say that, in Benjamin, violence can be discerned at all in virtue of divine 'violence', the question being whether divine violence, be it destructive, is to be seen as true violence. Divine violence brings to the fore the voidness of myth-based violence and of any legal system as such.

What seems convincing to me in Benjamin is that for violence to be discerned as violence, there needs to be a mirror in which it appears as such. Without such a mirror re-

<sup>32</sup> Ib., p.199, trans. p.249f.

flecting or evoking an unimpacted purity, there would be no question of violence. Schmitt does insufficiently justice to this, as he does not seem to be prepared to submit sovereign decision to any further inquiry. "Dictatorship is the opposition to discussion", he claims almost at the end of his *Political Theology*.

One question remains still to be discussed. How to determine if a violent measure is 'too' excessive? If violence is always 'too much', how to differentiate between its various modes of application? It is obvious that, if violence always implies an excess, a violation of an anterior purity, there is no absolute criterion to be fixed here. It will always be a matter of dispute. But perhaps there is a phenomenological solution. According to Benjamin, the essence of law-preserving violence is threat (*Drohung*), and not, as we usually take it, deterrence. How to interpret this? When something threatens, it attempts to hide something. In fairy tales, the dragon threatens unwelcome visitors as it does not want them to get hold of its treasure. The dragon does not so much want the treasure itself, it wants the mere possession of the treasure. One could perhaps say, in line with Benjamin, that the threatening character of the law-preserving violence tries to hide the utter unfoundedness of the latter. This violence does not 'want' its secret – it existing merely for its own sake, for the sake of its own power – to be divulged. It is my hypothesis that, the more violently a state behaves, the harsher the measures it takes, the more it fears its own ultimate unfoundedness to be revealed. Keeping a monopoly of violence matters very much to the state, as any serious counter-violence always elicits the state's most supreme exercise of suppressive violence. Violence elicits violence. On the international level one may think here of warfare: a state becomes more cruel the more the abyss underlying a particular (national) legal system of a nation is revealed. There are too many examples of this, unfortunately (First and Second World war, Vietnam, former Yugoslavia). One may also think of international interventions. Rebellious groups in Iraq put the legitimacy of American interference to the test and they provoke violent measures. On the level of internal politics, one may think of police interventions becoming more severe as riots become more violent (cf. French suburban riots, Revolutions in Eastern Europe, Zimbabwe etc.).

I have the idea that we should avoid reducing political problems to simplistic Gnostic dualisms (a struggle between Good and Evil), as Sorel seemed to imply. If violence is always on both sides, there are no absolute goods and bads at our disposal, only relative ones. The presence of evil in the world cannot be denied, but the presence of such evil (for example al-Qaeda) is revelatory of blind spots ('violence') in the heart of the so-called 'civilized world' itself. It elicits them. 'Violence' in the (first) sense of unfounded morality/legality is omnipresent. If so, 'violence' in the (second) sense of 'extreme' measures will also be inevitable. But as there cannot be a question here of absolutes (a worst violence, an absolute nonviolence), only an increase or a decrease of violence could be detected. Does not an increase of political violence always testify to its abyss being unveiled? Cannot the apparent inevitability of violence elicited by different persons or parties in a given society urge a state to continuous self-reflection and self-improvement?

*Ayeray Mirta Medina Bustos:*  
*Seeking Justice after a Dictatorship: Punishment or Reconciliation?*

The aim of this paper is to try to find out what are the conditions or requirements to achieve justice in a society that went through a conflict, i.e. a dictatorship. To do that, I will utilize different ideas, such as retribution, reparation and reconciliation. These are seen as different means for some countries when trying to tackle to the matter of how to reach justice, regarding the individual and the collective levels.

In this paper I will consider the case of the last dictatorship suffered by Argentina in the beginning of 1976, which is a clear example of injustice, violence and human rights violations. The way Argentina attempted to achieve a just society after its last dictatorship can be connected with both its particular political development and cultural shared values.

I would say that in Argentina there has been an attempt from the current government to tackle the issue of justice and bring it back to society again. The harmony and respect of human rights is one of the goals to reach as well. I aim to answer why it is not good to forget such conflicts and why the “memory” is important as well.

During the last dictatorship in Argentina, all human rights and principles of justice were violated. Dictatorships appear in general after a period of chaos, depression and governmental collapse, in which economic insecurity, class conflict and uncertainty, institutional disorganization, and loss of confidence in current governmental agencies prevails. During this period of commotion and confusion, people look for order, prosperity, stability, and hope<sup>1</sup>.

Military governments ruled from time to time in Argentina since 1930. Between 1930 and 1990 six coups d' état or de facto governments, by the armed forces took place against governments elected by the people and resulted in 21 years of military dictatorships<sup>2</sup>.

The death of Peron and then, his last wife Isabel, as the new president leads the country to its destruction. In 1975, the guerrillas continued their attacks on the police and military. There were terrorists from the right and from the left. Hence, the military felt forced to interfere. But instead of peace and stability, the military process brought political and economic instability and war that led to a process of national destruction<sup>3</sup>.

Between March 1976 and the end of 1978, the Military Process was responsible for some 30,000 “disappearances” and many cases of torture, kidnapping and murders of thousands of educated middle-class men and women and also working-class people from factories, offices and farms. The detentions were carried out in a slipshod way without due process and several hundred clandestine detention centers were enlarged<sup>4</sup>.

They did not only violate human rights but also infringed on property rights, as there was an allowance to rob as well as to kill. A system of state terror and violence was put into

<sup>1</sup> Hertzler, J.O., 1939, pp.303-304

<sup>2</sup> Bartolomei, Maria Luisa, 1991, p.28

<sup>3</sup> Hodges, D., 1988, p.199

<sup>4</sup> Bartolomei, Maria Luisa, 1991, p.26

practice. This was called: "Proceso de Reorganizacion Nacional" (Process of National Reorganization). By doing this, they gained control of the parliament and the court system, and they were able to appropriate the treasury and control the taxation system as well as all important economical processes, relations and institutions. Among other things, they took over and reconstructed the army and eliminated all opposition individuals or groups that might interfere in their action by imprisonment, torture, exile and execution.

One characteristic was that the longer the military existed as a political force, the longer their privileges grew: such as only being tried by military courts, no matter what crime they had committed<sup>5</sup>.

However, the country was very different before the military juntas. It could be pictured as stylish, with an affluent middle class that supported the arts, music, theaters and cinemas. But all this changed dramatically after the coup when all were limited by political and moral censorship. The harassment of journalists, the use of terror to silence writers, musicians and teachers, and the well-known black-listing of people was a similar experience to what happened in Nazi Germany in the Thirties<sup>6</sup>.

In Argentina, people were terrorized and became a skeptical public, who stated that "for sure people were disappearing" and that (por algo sera), "there must be a reason", "they did something"<sup>7</sup>.

There was a group of women aged between forty and sixty added against the military regime. They were the mothers of the "disappeared". They pressured the government to investigate the thousands of cases of disappearances and to liberate those who were illegally detained without charges. The Mothers had the support of human rights groups in their call for their sons' and daughters' reappearance. Their protest was based on their condition as suffering mothers, and therefore it was not easy for the military government to repress them. Thus, with the purpose of rejecting the legitimacy of The Mother's claims, military officers called them *las locas* (the madwomen).

After President Raul Alfonsin was elected in 1983, world public opinion focused on his efforts to reveal the hidden story of the crimes of the so-called "dirty war." Alfonsin created the CONADEP (Argentina's National Commission on Disappeared People), in defence of human rights. But after that, in response to energetic military protests, a general amnesty was adopted regarding accountability for the military for their past crimes. He promulgated the Laws of "Due Obedience" (*Obediencia Debida*) and "Full Stop" (*Punto Final*), which was like retracting what he did before. When those laws were promulgated, they were incompatible with Argentina's obligation to bring justice and to punish the perpetrators of gross violations of human rights. The Argentinean need to see justice was frustrated, as these laws have been used to impede the investigation of thousands of cases of 'disappearances', torture and death committed between 1976 and 1983 when the military government was in power.

Amnesty International has continually expressed its worry about the incompatibility of those laws with international law and, in particular, with Argentina's obligation to bring to

<sup>5</sup> Bartolomei, Maria Luisa, 1991, p.28

<sup>6</sup> Ibid., p.24

<sup>7</sup> Ibid., pp.26- 27-28

justice and punish the perpetrators of gross violations of human rights. Hence, the effect of the law was to grant amnesty from prosecution to 300 military officers. This fact caused negative reactions among most parts of the Argentinean society.

Those laws were repealed in March 1998. However, their abolishment was interpreted as not having a retrospective effect and cases of human rights violations committed under the military governments therefore continue to be covered by them<sup>8</sup>.

But afterwards, President Carlos Menem, in 1989, granted a Pardon to members of the military who were involved in human rights violations, as well as to those involved in military revolts and mutinies during Alfonsín's term. Menem justified his action by saying that there was a need to "heal the wounds of the past" and to create a sense of "national reconciliation". However, the Armed Forces, far from showing any signs of repentance or recognition of wrongdoing, "have interpreted these de facto amnesties as a vindication of their role in the anti-subversion campaign in which 20- 30,000 people were killed or "disappeared"."<sup>9</sup>

Definitely, these laws are the evidence that the search for truth and justice must continue in Argentina.

In the meantime of the 'Proceso', (military dictatorship), there was no investigation of the disappearances. On the contrary, each instance was denied by the authorities alleging that no kidnap had occurred, and they certainly did not investigate the cases. Moreover, torturers or killers were allowed to continue in public office and then the process of democratizing state institutions may be put at risk.

To sum up, I would say that consequently, general amnesty, as had occurred in many Latin American cases (like Argentina, for instance), can be considered dangerous.

The search for peace and justice is quite uncertain and discouraging in Argentina. Therefore, there was urgency for the claim of truth and justice that was and is seeing through punishing the guilty.

The *Nunca Mas* (Never Again) projects in Brazil, Argentina, Chile and Uruguay, seek to register into documentation and reports as an official memory of events and atrocities that occurred in those countries. In Argentina the truth commission report *Nunca Mas* (Never Again) intended to be a public memory as well as the starting point for prosecution of the leaders of the Argentine junta<sup>10</sup>. In *Nunca Mas* (Never Again), there is a detailed description by some survivors about what they lived through during their torture and/or imprisonment. Their narrations clearly show human rights abuses from the authorities at that time. To name the types of violations of human rights: kidnap, kidnap in front of children, torture in the victim's home, generally in front of the children as well.

The investigation of the TRC permits the possibility to emphasize the memory of the victims, initiating a politics of reparation of the harm, preventing those who participated in the human rights violations from continuing to carry out public functions, for example.

<sup>8</sup> [http://web.amnesty.org/library/pdf/AMR130042003ENGLISH/\\$File/AMR1300403.pdf](http://web.amnesty.org/library/pdf/AMR130042003ENGLISH/$File/AMR1300403.pdf) (accessed 2006-04-10)

<sup>9</sup> See Argentina: pardoning the Military, Commission on United States-Latin American Relations, Summer 1990, Forward, In: Bartolomei, Maria Luisa, 1991, pp.307-308

<sup>10</sup> CONADEP (Argentina's National Commission on Disappeared People) (1986) *Nunca Mas* (Never Again) London: Faber. In: Humphrey, Michael, 2002, pp.108-109

Every perpetrator would have to be identified individually, and would have to admit his or her guilt before receiving amnesty from legal prosecution. Justice for the victim would be restorative: acknowledgments would be followed by reparations.

To sum up, individual amnesty for the perpetrator, truth for the society, and acknowledgments and reparations for the victims was the pact built into the legislation that set up the TRC.

Victims share the thought that peace, reconciliation and justice cannot be constructed under the basis of silence. Even though in the CONADEP report, justice was seen as recognition of the truth, all accepted that reconciliation is not possible unless the perpetrators recognize and accept their responsibilities and are repentant for what they did. This is one of the main causes why reconciliation has not been possible to achieve yet in Argentina. However, the investigations made by CONADEP are not in vain, and will help to continue elucidating the truth of what happened in Argentina and give some proposals to achieve justice and lead, finally to reconciliation.

However, in Argentina this did not happen. On the contrary, no respect and rejection of responsibility were shown by the wrongdoers. Only one acknowledged that he was wrong and showed repentance. This occurred in year 1995 when Captain Scilingo explained how political convicts were thrown into the sea from planes. He was the only one who surprised the country by showing solidarity with the victims, stating that the dictatorship had violated military norms<sup>11</sup>.

However, an adequate degree of shared moral values also needs to be established in order to reach a sense of justice. Hugo van der Merwe pointed out at the importance of shared values or a "moral community" in order to achieve restorative justice:

"A fundamental condition for restorative justice is the existence of some common basis agreement regarding human values and unacceptable behaviour, i.e. what is a crime in the moral sense of the word. A restorative justice process requires that the perpetrator is able to comprehend that they did something wrong when they committed the offence, or that the justice process is able to give them this understanding of their own actions. The offenders must have the internal framework (and recognition of the humanity of the victim) to evoke a sense of shame. In a society where the conflict was largely between two sides who did not share the same culture, who have different understandings of justice, and a different vision of the future society that they want to build together, the prospects for restorative justice would appear quite slim."<sup>12</sup>

Experiences are different in each society and the same event can also differ from every person's perspective. But what is shared, as a basis of a moral system of values is what makes a society stronger and creates solidarity among individuals. This is what Argentina lacks, this is what the country needs to reflect upon and develop further. How is justice valued? The response might be in finding shared conceptions of ethical norms and a legitimized traditional concept of justice, in connection to a cultural identity and community. Hence, to acknowledge the wrongs of the past leads to acceptance, toleration and

<sup>11</sup> Gerez Czitrom, Claudia, 2002, p.15

<sup>12</sup> Van der Merwe, Hugo, 1999, p.121. In: Ericson Maria, 2001, p.30

finally to reconciliation. Learning through the past makes it possible for citizens to move forward towards the future.

The process of reconciliation is not simple, but it is possible. How? Only if the truth about past violations becomes public and acknowledged. As Hamber and Wilson put it:

“Thus a national process of uncovering and remembering the past is said to allow the country to develop a common and shared memory, and in so doing create a sense of unity and reconciliation for its people. By having this shared memory of the past, and a common identity as traumatized people, the country can, at least theoretically, move on to a future in which the same mistakes will not be repeated.”<sup>13</sup>

Punishment or reconciliation?

But what is essential in order to finally attain reconciliation as an alternative?

Victims' responses to the harm done may be very different, from the desire of revenge, resentment and anger on one side, to forgiveness on the other. Others can also talk about the possibility of reconciliation.

The retributive theory of punishment is a legal one. It claims that the wrongdoer must pay a debt to the society, restoring a balance or re-establishing some kind of reciprocity. Besides that, punishment should go along with the wrongdoer's reflection and understanding of what he did wrong and that it must not be repeated. In addition, it should provide the chance to remorse and repent<sup>14</sup>.

There is a fundamental moral belief that to deliberately impose suffering on another person is wrong, but this does not mean that the punishment should be proportional to what was done by the wrongdoer. Otherwise, we are talking about ancient claims of *lex talionis* “an eye for an eye, a tooth for a tooth”. When the equilibrium between members of a community is broken, some people claim that punishment can restore that lost equilibrium that existed before in the community.

What is Reconciliation? Basically, it is when two people, countries, etc., were in opposition with each other and can, after that, have a peaceful relationship again. “The English word reconciliation has its etymological roots in the Latin *reconciliare*: re-, “again” and “*conciliare*”, “making friendly”<sup>15</sup>.

The term reconciliation has also religious implications. In The Bible, Reconciliation is used to describe the “broken relationship between God and humankind due to sin, with Jesus reestablishing conciliation between them through the sacrifice of his life”<sup>16</sup>.

Hence, reconciliation is related with “peace building”, but additionally has different meanings regarding different people and societies. However, if we will take into account the enormous suffering of so many people during and in the upshot of war and genocide, it can feel inappropriate and even insulting to the victim to talk about reconciliation in a first instance<sup>17</sup>.

<sup>13</sup> Hamber, Brandon and Richard Wilson, 2004. In: Gibson, James, 2004, p.202

<sup>14</sup> Ibid. p. 18

<sup>15</sup> Barnhart, R. K., *The Barnhart Dictionary of Etymology* (1988), article “*reconciliare*”. In :Lundwall, Karen, 2001, p.22

<sup>16</sup> Lundwall, Karen, 2001, p.21

<sup>17</sup> Ibid. p.21

I would say that reconciliation does not hold the same meaning when we refer to society and when we refer to the individual victims. Priscilla Hayner suggests that the purpose of a truth commission is to encourage reconciliation on a national level through speaking plainly of a silenced and conflictive past. She stated that at the individual level topics such as healing and reconciliation are totally personal processes. Thus the two levels involve different processes but they struggle towards a common purpose: “to facilitate coexistence (in society as well as inter and intra personally)” by “verbalizing and acknowledging a violent, conflictive past”<sup>18</sup>.

However reconciliation and forgiveness sometimes do not go together. For instance if offenders, as I stated above, do not feel remorse for what they did and also do not acknowledge that what they did was wrong, then victims may forgive but cannot reconcile with them. This is because reconciliation entails more than a non-violent co-existence. This attainment is based on recognition of the harm done, which might be expressed in public confessions, followed by repentance, restitution, forgiveness by victims, and possibly attitudes of warm acceptance<sup>19</sup>. Recently there has been a growing discourse about the idea that reconciliation concerns the prevention of further conflicts. Some studies demonstrate that societies that have undergone war build up something like a war-spiral (As we saw earlier, in the case of Argentina, for instance, there was a repeating cycle of coups), “while countries that resolve conflicts peacefully are inclined to continue living in peace”<sup>20</sup>. How can these “cycles” of repeating conflict be broken? Investigating crimes against human rights would be an essential first step to take, then, allowing victims to tell and share their stories and experiences can be considered as helpful for them and to the whole society.

#### The Memory

The claims of the victims include not forgetting and to keep the historical and collective memory of what had happened alive. There, there was a promotion in different ways to symbolize and preserve in a vivid memory the traumatic experience. The common slogan in Argentina was: “Ni olvido ni perdon” (Neither oblivion, nor pardon):

“If the second part of this slogan implied an ultimately lost battle against the state apparatus, which eventually pardoned the guilty and stopped the continuation of trials; the first part implied a social and cultural operation involving a symbolic power struggle of considerable magnitude. The moving idea is that only through remembering can avoidance of such violations be ensured-as “if never again” could only be guaranteed by the constant remembrance of the terror experienced during the dictatorship”<sup>21</sup>.

A common mistake is to directly relate to forgive with to forget, as if to forgive involves forgetting the offense. Why should severe wrongs not be forgotten? Because to do so is to deny what has happened. Moreover, it is disrespectful of the victims’ suffering and of their memories. To forgive is to remember in a constructive way. One clear example of forgiveness in that way is Nelson Mandela. He had the capacity to expand forgiveness to the South African whites who were responsible for his 28 years in prison. He expressed no unkindness or desire of revenge. He is seen as a model of forward-looking forgiveness. This

<sup>18</sup> Hayner, 2001, p.155. In: Lundwall, K., 2001, p.25

<sup>19</sup> Govier Trudy, 2002, p.144

<sup>20</sup> Lundwall, Karen, 2001, p.21

<sup>21</sup> Jelin, Elizabeth, 1994, p.39

does not mean that he forget what he had lived, though. Forgiving is compatible with remembering, but not with continuing anger and resentment. When we forgive we gain a new perspective that liberates us from unhealthy resentment that ties us to the past<sup>22</sup>. Memory is essential for the development of identities. How to reconstruct the past within historical memory involves a deep analysis of the process of remembering and forgetting in the society as well, the construction of the search for meanings of what happened and of the significance it has nowadays. For some activists in Argentina, the slogan was: "Remember! So as not to repeat! It is good to recognize that there are several versions of what had happened, thus it is not easy to describe the "truth". The symbolic inauguration of the "Nunca Mas" Museum of Memory marks a milestone in Argentina's history. Another way of maintaining the memory was done by former President Nestor Kichner, who succeeding in making March 24 a permanent holiday to be called the National Day of Memory for Truth and Justice<sup>23</sup>.

All those matters are referring to a collective memory. This means the socially accepted understanding of the past. Thus, when a collective memory is established, it becomes difficult for people to reject what happened in the past. There is afterwards the transmission of the memory that also allows creating new readings of the past. Therefore, to legitimize the discourse leads to establish new shared values and new identities in the community, and this is undoubtedly a new starting point. One way to keep a memory alive is to let survivors, narrate what they have lived through; telling stories also creates a new space to share with others their experiences, revealing their fears and emotions. The individual truth telling that the Truth Commissions highlight is seen as a medium to "cure" or heal a nation. This truth of individual suffering is proposed as a starting place for rewriting national history and bringing back a moral community. Furthermore, the narrative testimony entails individual recovery of memory about the past that helps to re-establish self-identity, to give it a new significance, becoming in this way socially embedded<sup>24</sup>. Thus, we can say the TRC helps individuals in their psychological recovery after a conflict. The idea of reconciliation is also politically focused on the social recovery of the victim with the intention of the whole national reconstitution. A duty of reparations has two dimensions: a material that is principally symbolic and scarcely compensate for loss and injury, and a psychological dimension. Both are important, but I wish to explore why reparations are very important and necessary. When a wrongdoer shows that he or she can be made aware of the consequences of his wrongdoing, this helps to make reconciliation possible. According to Thompson, "there are two discourses regarding responses to wrongdoing". The first is about rights, duties and reparation. The second is concerned with forgiveness and reconciliation. Both discourses are concerned with past injustices, but the first one, reparation as restoration, would be seen as "backward-looking" in the sense that only looks for reparation to restore the victim to his previous position. On the contrary, reconciliatory reparation is "forward-looking", because it aim is to achieve a good result now or in the future<sup>25</sup>.

<sup>22</sup> Govier Trudy, 2002, p.60

<sup>23</sup> Rohter, Larry, The New York Times. March 26, 2006

<sup>24</sup> Humphrey, Michael, 2002, p.111-112

<sup>25</sup> Thompson, J., 2002, pp., 47-48

Concerning this, restorative reparation is comparable to the retributive theory of punishment, which says that offenders should be punished according to the nature and cruelty of their crime, while reconciliatory reparation holds that punishment's endeavor should generate good effects in the society. Restoration simply provides the victim with property, money or new opportunities, but it does not restore the moral equilibrium. Reconciliation, as we saw above, requires that the wrongdoer will be willing and able to the act of reconciliation. To do that, he or she must acknowledge and make public that he or she did wrong<sup>26</sup>. Thus, restoration in itself is not enough to achieve reparation, because if the parties remain unreconciled, the process is not complete.

I argue throughout the paper that in a just society, all citizens have equal (fundamental) rights and that human rights are such fundamental rights. We saw that the military regime in Argentina violated human rights and that by violating rights and also allowing such violations they made the society unjust. Argentina after the dictatorship (or any other country after a conflict), needs to re-establish justice. Although my analysis focuses mainly on Argentina, I do not disregard the option of doing the same analysis in other countries. Consequently, what to do about the injustices in the shape of human rights violations that took place during the dictatorship/conflict? We noticed that to simply try to forget, evidently, does not work. What we have as alternatives are the following: retribution, reparation and reconciliation, and it seems that while they are not the same thing, they do go together. Forgiving is not the same as forgetting, and it is necessary to remember in order to forgive. I also highlight that shared values can result from a process of reconciliation and that these can be considered as the building blocks for restoring justice. To a great extent, the wars have demonstrated to us the immense cruelty that can occur between people. The human rights violations and the utilizations of amnesties, demonstrate that trying to forget is not a viable alternative that also lacks the previous moral steps (public recognition of the harm done, remorse, for instance) that are necessary to start talking about reconciliation. We saw that the case of Argentina has a long way to go before talking about reaching justice through reconciliation, and we compared it with South Africa which has had further achievements regarding moral values consensus and reconciliation. Furthermore, all the societies are committed to work for justice in the best way.

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*Jean Baptiste Vilmer:*

*Armed Humanitarian Intervention: How Disinterested Should the Intervening State Be?*

Defining Humanitarian Intervention is not an easy task, but a consensus seems to emerge a decade. Most of the authors converge to the following model: Humanitarian Intervention is the use of force by a state or a group of states military intervening in a foreign territory with the aim to prevent or stop grave and widespread violations of the most fundamental human rights on individuals who are not citizens of the intervening state and without the consent of the target state. One should notice that humanitarian intervention is defined according to its goal. It is humanitarian because it has a humanitarian goal. This aspect is common to all definitions. Humanitarian intervention is always the one conducted in order to, aiming to prevent or stop certain actions. It seems to be nothing but an intervention which the intention is humanitarian, that is to say a disinterested intervention. This aspect is very problematic because, from a realist point of view, we cannot rely on the good intention of the intervening state. From a realist point of view, the unique goal of the state is to maintain and extend its own power. Therefore, it has no reason to intervene except if it has an interest in doing so. In such a context, the intervention is never purely humanitarian: preventing or ending widespread and grave violations of the fundamental human rights is not the only motivation of the intervening state. Nevertheless, there is a strong consensus on the fact that one of the most important criteria of humanitarian intervention is the requirement of disinterestedness of the intervening state. This is a serious problem: how can we appreciate the disinterestedness of a state which is, by definition, always interested? How disinterested should the intervening state be ?

I. The problem: the disinterestedness of the intervening state

The solution of the doctrine is to distinguish between complete and relative disinterestedness: the intervening state cannot be completely disinterested, but in order to qualify its action as « humanitarian » it has to be at least relatively disinterested. To admit that the disinterestedness of the intervening state cannot be nothing but relative, is to admit the presence of self-interest and non-humanitarian motives in every humanitarian intervention. Then the question is: are these non-humanitarian motives disqualifying the legitimacy of the humanitarian intervention? Here, the doctrine and the authors who require the relative disinterestedness use an argument which could be called the “hierarchy of motives” criterion. It says that the presence of political, economic and egoistic motives wouldn't be prejudicial as long as the humanitarian aspect stays the « primary goal » or the « overriding motive ». From a pragmatic point of view, this criterion is easy to refute. It is impossible to know with certainty if an intervention is majority humanitarian, if the humanitarian intention is actually primary and overriding the non-humanitarian concerns. It is impossible to check with certainty the hierarchy of the intervening state real motives. How could we measure the relativity of the disinterestedness? How could we disentangle the humanitarian intentions from the political motives? How could we establish the prior-

ity of one on the other? History will help, with the benefit of hindsight and an exhaustive use of archives. But when it's time to intervene or not, when it's time to decide, there's no sense of talking about a "hierarchy of motives" because we don't have any access to the real intentions of the intervening state. Therefore, the "hierarchy of motives" criterion relies only on the good faith of the intervening state, which exposes in his rhetoric the official reasons to intervene. If the humanitarian argument can be a pretext to hide some strategic and geopolitical choices, as history shows, why should we believe a state which doesn't deny its self-interest motives but which pretends that its humanitarian intention comes first? Let's take an example. You're in a difficult situation. Someone offers to help you. You discover that he has also a personal interest in doing so. He admits it, but he insists that he came first of all in order to help you. How much credibility do you give to this "hierarchy of motives"? Conscious of the weakness of this "right intention" criterion, some authors work on the different ways to satisfy this criterion, that is to say to constrain the intervening state to have good intentions, or at least to limit its bad ones. One find a good example of such tentative in the famous report of the International Commission on Intervention and State Sovereignty (ICISS), entitled *The Responsibility to protect*: 4.34 One way of helping ensure that the "right intention" criterion is satisfied is to have military intervention always take place on a collective or multilateral rather than singlecountry basis. Another is to look to whether, and to what extent, the intervention is actually supported by the people for whose benefit the intervention is intended. Another is to look to whether, and to what extent, the opinion of other countries in the region has been taken into account and is supportive. In some discussions these considerations are identified as separate criteria in their own right, but the Commission's view is that they should be regarded as sub-components of the larger element of right intention. The problem is that none of these criteria resists to reality.

#### 1. The "collective or multilateral" dimension

There is a widespread agreement that the "collective or multilateral" requirement appears like an adequate solution to the right intention problem. That's why today the legalists require that the humanitarian intervention must be approved by the UN, while others prefer the community of the democratic states, because of the deficit of moral legitimacy which affects the Security Council (poor representation and the fact that some of its permanent members, for instance China, do not meet the standard requirement of political legitimacy). From a realist point of view, what to think about that? One should notice that the unanimity of the Security Council doesn't mean the defense of a common standard of moral principles but the identity of their interests. Multilateralism doesn't exclude egoism and self-interest, if the states have a converging common interest. And that's exactly what happens in the case of a coalition of intervening states. Take the "coalition of the willing" gathered around the United States for the war in Irak in 2003. The US proudly presents a list of 48 states publicly engaged, from all continents, all races, religions and ethnic groups, which represents 1.23 billion of people. This kind of rhetoric is based on the fact that multilateralism is supposed to bring more representation, legitimacy, credibility. But in reality, can we say that this coalition, which was ironically called "coalition of the Billing", is susceptible to limit the self-interest of its main component, the US? Not at all. It's precisely the self-interest which gathered 47 states around the US, the self-interest to win

some political, strategic or economical benefit in this collaboration. The collective or multilateral requirement is often an illusion which doesn't guarantee that the intervention is right intended, but only that the intervening states, may they be 30, 40 or 50, have some converging self-interests. And it's easy for the only superpower on earth to drive the interests of others in one common direction.

#### 2. the consent of victims

The ICISS, but also a number of authors, like Teson and Miller, require the consent of victims, as a good criterion to guarantee the right intention of the intervening state. What to think about it? Firstly, it's not a limitation of the egoism of the intervening state. There's no link between the consent of victims and the right intention of the intervening state. Victims can consent to an intervention which is decided for self-interest reasons. Therefore, this is an independent argument, which doesn't help to guarantee the disinterestedness of the intervening state. Secondly, in the real world, measuring the consent of victims is an illusion. Who does it? The intervening state itself? He could decide to count or not to count certain categories of people. How do you do it? How do you proceed to measure the consent of a population in a country where the freedom of expression doesn't exist? How do you show your support to a foreign intervention in a place where you risk torture or death if you're suspected to betray a tyrannical regime? And how many testimonies do you need? 10, 100, 1000, 10000, a certain percentage of the total number of victims? The victims' objective opinion is not accessible. One can even say that it doesn't exist. Victims opinion, their support or their opposition to the intervention, is nothing but the interpretation of this supposed opinion by the intervening state itself. It is an illusion which is established without them.

#### 3. the consent of the region

The third criterion is not better than the others. The opinion of the other countries in the region, may it be supportive, doesn't limit the self-interest of the intervening state. It's according to its own self-interest that the neighbour will consent or not to the intervention. And his interest is not necessarily concordant with the one of the victims of the target state. Firstly, it can be in the self-interest of the neighbouring state that the target state population kills each other or that a certain ethnic group disappear. Secondly, it can be in the self-interest of the neighbouring state to take his decision not according to the interests of the region but according to foreign pressures. For instance, the US could propose to the neighbouring state some economic or military advantages for a vote in favour of or against an intervention. Conclusion: none of these three traditional criteria resists to the reality of international relations. Therefore, it seems that there's no way to guarantee the right intention of the intervening state, and the "hierarchy of motives" approach, which relies only on the good faith of the intervening state, should be abandoned. But the question persists: Is the presence of self-interest and non-humanitarian motives disqualifying the legitimacy of the humanitarian intervention?

#### II. An «outcomes oriented» solution

One criterion seems more adequate to the reality of international relations: the one of consistancy, or no-contradiction. Political motives and the humanitarian goal become

contradictory when the self-interest of the intervening state opposes the one of the population it's supposed to save. Therefore, the principle is the following: self-interest motivations or non-humanitarian concerns of any sort are acceptable if and only if they're not contradictory with the humanitarian goal. As long as the self-interests of the intervening state coincide with the humanitarian goal of the intervention, that is to say with the interests of the victims, the presence of political motives or non-humanitarian concerns is not a problem. Therefore, we don't need to require the disinterestedness of the intervening state, which is an impossible and idealistic requirement. All we need is to be sure that the political motives of the intervening state, which is always and by definition self-interested, are not contradictory with the interests of the victims. If both coincide, and as long as the humanitarian goal is satisfied, the intervention is legitimate. The essential question seems to be: is it possible to be both realist and interventionist? In other words, to admit that humanitarian intervention is always tarnished with self-interest motives and, notwithstanding, to defend it? Yes, because it is as naive to believe that a purely humanitarian intervention is possible in the reality of international relations as to believe that an intervention which is not at first motivated by humanitarian goals cannot have, in fact, a humanitarian effect. Effects of a non-humanitarian motivated intervention can be themselves humanitarian. Let's take an example. A state can intervene only for self-defence reasons and, by the way, as a result, as a side effect, stop some widespread and grave violations of human rights. That's what happened when Vietnam intervened in Cambodia and Tanzania in Uganda in 1979. The reason is simple: killer regimes are often very bad neighbours. Those who tyrannize their people threaten often the regional security and maintain border conflicts with the states around. What does it show? In both cases, we have interventions which are considered as humanitarian because they had positive humanitarian consequences, independently of the initial motivations of the intervening states. It shows that the humanitarian character of an intervention depends less on the intervening state motives than on the outcome.

One should distinguish two schools. On one hand, the « motives-first » or « motives matter » perspective, which evaluate the legitimacy of a supposed humanitarian intervention in examining at first the intervening state motives. It says that an intervention is humanitarian if and only if its goal – some would say its only goal – is to help the victims. It's the perspective of those who require the disinterestedness, complete or relative, of the intervening state. It's the traditional, standard approach. On the other hand, the « outcomes oriented » perspective, starts not from the motives, but from the outcomes, the consequences of the intervention. In this family of thought we find Fernando Teson, but also Nicholas Wheeler, who think that motives are not important, except if we establish that they're contradictory with a humanitarian result, as we saw with the consistency criterion. I defend such an « outcomes oriented » perspective, for methodological reasons: from a realist and empiricist point of view, the fact that the intervening state's real motives are not accessible is a sufficient reason to reject the motives-first perspective and to judge an intervention on what we can experience by ourselves: the results.

But this consequentialist approach is obviously limited, because before the intervention, and even during it, these results, outcomes, consequences, are inaccessible: we cannot know with an absolute certainty what the future will be. Therefore, the decision to intervene relies on a system which is only probabilist. This is one of the traditional criterion: the

positive effect should be « highly probable ». One also speak about a « reasonable prospect for success ».

Because of this difficulty, the solution cannot be purely consequentialist. It should be a mixt combination of *ex ante* and *ex post* mechanisms.

Firstly, *Ex ante* mechanisms are the means of an *a priori* evaluation. Its criterion are the four traditional ones: positive effect (or reasonable prospect for success), last resort, proportionality and, first of all, a just cause – what Walzer call a « supreme emergency » and Pogge a « massive human rights problem ». One should notice that none of these criteria of the *a priori* evaluation is based on the intervening state motives. The requirement of disinterestedness, complete or relative, have been purely and simply eliminated.

Secondly, from the time when the intervention is launched, we can do an *a posteriori* evaluation, which will become more and more precise with the hindsight of history. Therefore, it's only after months and even years that we'll be able to tell if the intervention was or wasn't humanitarian. It's all the paradoxe and the difficulty of the evaluation: when it's the most useful, before the intervention, at the time to take a decision, evaluation is also the less reliable, because it's based on a probabilist criterion (the reasonable prospect for success). And it's when it's too late, when the intervention already happened, that history will be able to give a more reliable evaluation.

The first criterion of the *a posteriori* evaluation is of course the positive effect, which will appear, or not, as and when time passes. But during the intervention, we can already pay attention to the importance given by the intervening state to the consequences of the armed intervention on the civil population. The way to intervene often reveals the motives. The evaluation will examine the priority in the operations (securizing population before oil wells for example), weapons used (no fragmentation or uranium bombs, no napalm, yellow phosphorus or all weapons targeting large surfaces) and the way to use them. It will also ask, with Teson, « Did troops occupy the territory longer than necessary ? Has the intervenor demanded advantages or favors from the new governments ? Did the intervenor seek to dominate the target state in some way unrelated to humanitarian concern ? »<sup>1</sup>

Is this examination useful ? Because the intervention is already passed, isn't vain and useless to give a judgment on its humanitarian character ? Actually, it won't correct or cancel past abuses and mistakes. But it will help to refine the definition of humanitarian intervention, which becomes always more precise. And it will allow, hopefully, to grant the humanitarian label thriftilly in the future.

<sup>1</sup> Fernando Teson, *Humanitarian Intervention: An Inquiry into Law and Morality*, Second Edition, Irvington-on-Hudson: Transnational Publishers, 1997, p. 122.

*Wim Smit:*

*The Priority of Security? Ethical Lessons from the American Security Politics in a Post-9/11 Era*

Since the approval of the USA Patriot Act in October 2001 a protracted debate has emerged over the legal and ethical limits of protection in the aftermath of 9/11. At issue are the American government's for far-reaching security measures, violating civil and human rights. This is not the first time Americans have seen their rights and liberties reduced. The second President John Adams, eager to eliminate every possible enemy of the state, restricted the freedom of speech and press. Throughout the Civil War, the First and Second World Wars, and the Cold War, many rights were variously abridged for the sake of security. In the fight against terrorism, it seems civil rights have been once again offered up in sacrifice to security, this time in a more permanent fashion.<sup>1</sup>

In my paper I will give a short overview about the different positions and players in the debate about the so-called balance between rights and security. This will lead us to a critique on the balance metaphor and my personal conviction that the terrorist threat, though utterly real, has been badly misunderstood. Lastly, I will offer a different view of security politics in an era of terrorism.

I. More secure, less free? An introduction in the recent debate

With the first proposal for new counter-terrorist measures, a debate had raged over the limit of state power and acceptable security measures. At issue is the loss of hard won rights and liberties for the promise of higher levels of security.

1.1. The priority of security

Shortly after the attacks Attorney-General John Ashcroft stated the official strategy of the American Government: "The fight against terrorism is now the highest priority of the Department of Justice. As we do in each and every law enforcement mission we undertake, we are conducting this effort with a total commitment to protect the rights and privacy of all Americans and the constitutional protections we hold dear."<sup>2</sup> But in reality the Patriot Act, the increased power of the President in security decisions, racial profiling and other measures, leaving civil rights little chance against the security concerns. As we will see later, there were serious misgivings about this approach, though the priority for security had also advocates. Richard Posner, former chief judge of the US Court of Appeals, thinks it wrong to put freedom and rights over security. In his opinion, America is in great jeopardy, so 'it stands to reason' that liberties should be curtailed. Law is not dogmatic or absolute, but pragmatic. Posner writes: "The law is a human creation (...), an instrument for promoting

1 J. Lobel, *The War on Terrorism and Civil Liberties*, in T.E. Baker & J.F. Stack, Jr. (eds.), *At War with Civil Rights and Civil Liberties*, Lanham, Rowan & Littlefield Publishers, 2006, p. 25-27.

2 J.D. Ashcroft, *A Clear and Present Danger*, in A. Etzioni & J.H. Marsh (eds.), *Rights vs. Public Safety after 9/11? America in the Age of Terrorism*, Lanham, Rowman & Littlefield Publishers, 2003, p. 4-5.

social welfare, and as the conditions essential to that welfare change, so must it change.”<sup>3</sup> His economic-consequentialist view is even more apparent when he says rights should be curtailed to the extent that the benefits in greater security outweigh the costs in reduced liberty. Posner is supported by a range of experts (legal specialists like Douglas Kmiec<sup>4</sup>, political scientists such as Alan Wolfe<sup>5</sup> and historians like Jay Winik<sup>6</sup>) who adhere to the motto ‘the Constitution is not a suicide pact’.

The priority of rights and liberties

#### 1.2.1. The rights organizations

This approach has been much criticized. Rights organizations speak of “new civil liberties crises” arising almost daily the counterterrorist measures<sup>7</sup>. These organizations immediately sensed this in the Patriot Act of October 2001. The American Civil Liberties Union spoke of a missed chance to maximize security while minimizing adverse effects on freedom<sup>8</sup>, warning of possible infringements on American Arabs and Moslems<sup>9</sup>. One of the strongest voices in this fray was the Human Rights Watch Director Kenneth Roth whose article in *The Boston Globe* warned that “sacrificing rights for ‘security’ may seem tough and pragmatic, but it is fraught with peril. By breeding new resentments, foreclosing avenues of peaceful dissent, and undermining the international standards that help explain why terrorism is wrong, it risks exposing us to still greater dangers. It is time for the right kind of sensitivity.”<sup>10</sup> For Roth and others, rights and security reinforce one another. From a similar point of view Amnesty International<sup>11</sup> and the Lawyers Committee for Human Rights<sup>12</sup> published documents attracting broader public attention. Yet these have been dismissed as ‘absolutist’ despite the fact that many who agree with these organizations also accept the infringement of certain rights in extraordinary situations. So, the ‘absolutist’ label obscures the more nuanced position of these organizations.

3 R.A. Posner, *The Truth about Our Liberties*, in A. Etzioni & J.H. Marsh (eds.), *Rights vs. Public Safety after 9/11? America in the Age of Terrorism*, Lanham, Rowman & Littlefield Publishers, 2003, p. 26-27.

4 D.W. Kmiec, *Confusing Freedom with License – Licenses Terrorism, Not Freedom*, in A. Etzioni & J.H. Marsh (eds.), *Rights vs. Public Safety after 9/11? America in the Age of Terrorism*, Lanham, Rowman & Littlefield Publishers, 2003, p. 43-50.

5 A. Wolfe, *A Stronger Nation*, in A. Etzioni & J.H. Marsh (eds.), *Rights vs. Public Safety after 9/11? America in the Age of Terrorism*, Lanham, Rowman & Littlefield Publishers, 2003, p. 150;154;156.

6 J. Winik, *Security Before Liberty*. Today’s curbs on freedom are nothing compared with earlier wars, see: <http://www.opinionjournal.com/forms/printThis.html?id=95001363>, p. 3.

7 A. Beeson, *On the Home Front: A Lawyer’s Struggle to Defend Rights After 9/11*, in R.C. Leone & G. Anrig, Jr. (eds.), *The War on Our Freedoms. Civil Liberties in an Age of Terrorism*, New York, Public Affairs, 2003, p. 295.

8 <http://www.aclu.org/natsec/gen/14388prs20011012.html>, p. 1.

9 <http://www.aclunc.org/aclunews/news011106/war.html>, p. 3.

10 See: K. Roth, *Human Rights in the War on Terror*, in *The Boston Globe* (September 22, 2004). Also: [http://www.boston.com/news/globe/editorial\\_opinion/oped/articles/2004/09/22/human\\_rights\\_in\\_the\\_war\\_on\\_terror/](http://www.boston.com/news/globe/editorial_opinion/oped/articles/2004/09/22/human_rights_in_the_war_on_terror/)

11 I. Khan, *Security for Whom? A Human Rights Response*, in Amnesty International Report 2003, p. 1. See: [http://web.amnesty.org/web/web.nsf/report2003/message-eng/\\$FILE/messagefrommsg.pdf](http://web.amnesty.org/web/web.nsf/report2003/message-eng/$FILE/messagefrommsg.pdf).

12 Lawyers Committee for Human Rights, *Assessing the New Normal. Liberty and Security for the Post-September 11 United States*, see:

<http://www.humanrightsfirst.org/pubs/descriptions/Assessing/AssessingtheNewNormal.pdf>.

### 1.2.2. Political opponents

Remarkably, there was little opposition from politicians to the scope of the security measures brought in after 9/11. The Patriot Act was approved with only one dissenting vote in the Senate, from Russ Feingold who, in his speech the day before its approval “preserving our freedom is one of the main reasons that we are now engaged in this new war on terrorism. We will lose that war without firing a shot if we sacrifice the liberties of the American people.”<sup>13</sup> A few others, like the Senator Dennis Kucinich<sup>14</sup>, also complained of gaining more security while putting the Bill of Rights aside. But these were sparse protests. The real objections began in 2002 when the new security measures had their impact; and when secret plans for a so-called Patriot Act II were revealed in 2003.<sup>15</sup> Even so, politicians have been unable to summon the courage to defend anything but the priority of security. The biggest counter to the administration’s policy was the Security and Freedom Enhancement Act of 2005 or Safe Act in April 2005<sup>16</sup> which tried to put reasonable limits on certain sections of the Patriot Act. This measure failed in Congress, though it did force some (minor) changes to the original Patriot Act. The weakness of the political opposition became quite obvious in March of this year, when after a debate of three months, Congress allowed temporary measures<sup>17</sup> scheduled to be abolish at the end of 2005 to become permanent (except for one, that was expanded till 2009).

### 1.2.3. Lawyers and philosophers in a nuanced debate

The prevailing attitude among lawyers, political scientists and philosophers is that security measures do not necessarily imperil the Constitution.<sup>18</sup> Even cost-benefit advocates admit that attenuating rights is a risky business; the trade-offs are seldom clear cut. Harvard Law Professor Philip Heymann notes that such decisions are liable to endless questioning.<sup>19</sup> It is no surprise that rights advocates would quote Justice Louis Brandeis’s famous 1927 ruling “that fear breeds repression; that repression breeds hate; and that hate menaces stable government.”<sup>20</sup>

13 See: <http://www.feingold.senate.gov/speeches/01/10/102501at.html>

14 <http://archives.cnn.com/2001/US/11/16/inv.tribunals/index.html>

15 E. Cassel, *The War on Civil Liberties. How Bush and Ashcroft Have Dismantled the Bill of Rights*, Chicago, Lawrence Hill Books, 2004, p. 20.

16 For the full text of the Safe Act, see: <http://www.govtrack.us/data/us/bills.text/109/s737.pdf>. For a summary, see: <http://www.senate.gov/~craig/safe109sum.pdf>.

17 The concerning sections from the Patriot Act: 201, 202, 203(b) and (d), 204, 206, 207, 209, 212, 214, 215, 217, 218, 220, 223 and 225.

18 A. Etzioni, Introduction: Rights and Responsibilities, post 9/11, in Id. & J.H. Marsh (eds.), *Rights vs. Public Safety after 9/11? America in the Age of Terrorism*, Lanham, Rowman & Littlefield Publishers, 2003, p. xii.

19 P.B. Heymann, *Terrorism, Freedom and Security. Winning Without War*, Cambridge, The MIT Press, 2003, p. 98.

20 D. Cole, Let’s Fight Terrorism, not the Constitution, in A. Etzioni & J.H. Marsh (eds.), *Rights vs. Public Safety after 9/11? America in the Age of Terrorism*, Lanham, Rowman & Littlefield Publishers, 2003, p. 42. Statement of Louis Brandeis in the case *Whitney v. California*, 274 U.S. 357 (1927).

Two of the most remarkable figures in this debate are the political scientist Bruce Ackerman and the philosopher Michael Ignatieff. In an extensive article<sup>21</sup> Ackerman has tried to conciliate civil rights protection and repressive laws with his idea of an 'emergency constitution' containing his so-called supermajoritarian escalator, a clause which demands that each extension of emergency laws be approved by an increasing majority. This assent is supposed to prevent a regime from permanently violating civil and human rights. In his book *The Lesser Evil* Ignatieff reacts against the primacy of security, and any kind of absolute law. "Democratic constitutions", he writes at the first pages of his book, "do allow some suspension of rights in states of emergency. Thus rights are not always trumps. But neither is necessity. Even in times of real danger, political authorities have to probe the case that abridgments of rights are justified."<sup>22</sup> Though emergencies call for quick action, and parliamentary consultation is not always possible, the interests of majorities, and the freedoms of individuals should be guaranteed. Ignatieff condemns any deliberately and permanent escape from democratic controls since these alone can challenge real and potential violations of rights.

## 2. An ethical reflection

I will now advance two criticisms on this debate, and then proceed to briefly reflect on the ethics of 'political promise' and the necessity of striving for the common good.

### 2.1. The actual terrorist threat: an emergency?

First, virtually everyone in this dispute adopts the prejudice that terrorism has put the West in a state of emergency. It is clear that terrorism attacks the political legitimacy of the state<sup>23</sup>, but it does not threaten the fundamentals of democracy. Thus the term 'emergency situation' addresses actual security realities while necessarily altering political realities – silencing opposition, and giving carte blanche to pragmatic measures that curtail citizen rights. The economists Alan Krueger and Jitka Malecková have found a correlation between the appearance of terrorist actions and the presence of civil and human rights. Based on empirical findings, they concluded that "[c]ountries with more freedom were less likely to be the birthplace of international terrorists"<sup>24</sup>. If this is true – and there is little doubt about that – then those states confronting terrorism with a priority of security stand to achieve just the opposite of what they intend. Their measures will have an undermining effect. I agree with the former director of the Center for National Security Studies, Kate Martin, who says the promotion of democracy, justice and human rights, on the long term, will prove to be a more powerful weapon against terrorism.<sup>25</sup>

21 B. Ackerman, *The Emergency Constitution*, in *The Yale Law Journal* 113 (5) (2004), p. 1029-1091.

22 M. Ignatieff, *The Lesser Evil. Political Ethics in an Age of Terror*, Princeton/Oxford, Princeton University Press, 2004, p. 2.

23 L.K. Donohue, *In the Name of National Security: US Counterterrorist Measures, 1960-2000*, in *Terrorism and Political Violence* 13 (3) (2001), p. 47.

24 A.B. Krueger & J. Malecková, *Seeking the Roots of Terrorism*, in *The Chronicle Review* 49 (39) (2003). See also: <http://chronicle.com/free/v49/i39/i39b01001.htm>.

25 K. Martin, *Secret Arrests and Preventive Detention*, in C. Brown (ed.), *Lost Liberties. Ashcroft and the Assault on Personal Freedom*, New York, The New York Press, 2003, p. 90.

## 2.2. Balancing security and rights? A critic on the metaphor

Secondly, though it dates from Hobbes and Machiavelli<sup>26</sup>, the metaphor of a balance between security and rights and liberties is deceptive. It promotes a false conflict between the terms: advancing security automatically means reducing rights and liberties, and vice versa. But this is hardly an iron law. An inquiry into racial profiling in the US, for example, showed that that practice does not improve police performance, but makes it less effective<sup>27</sup>. The metaphor fails in at least three other ways: 1) In reality what is balanced is not liberties and security but the liberties of others for the sake of everyone's security. The security element is not the primary issue, as it is made out to be. 2) The metaphor obscures the question of long and short term security goals. Security measures that are effective on the short term, can appear to be counterproductive on the long term. 3) It supposes that after an emergency "society will revert back to normalcy"<sup>28</sup>. But in Philip Thomas's view – and I agree –, trading freedom for safety is a "scientific chimera"<sup>29</sup>. Therefore, the metaphor of a balance is unhelpful for an open and realistic security politics.

## 2.3. The 'political promise' and an ethics of responsibility

Finally, every election of a politician – if he or she declared it before or not – brings what I would call a 'political promise', a promise that is inherent to the profession. This promise is strongly connected with the 'common good', and by extension the constitutional fabric. The framers of the US Constitution set out to achieve the common good and simultaneously protect individual rights. This experiment has proven its worth by enduring so long. To tamper with this formula for the sake of increasing security is a thoughtless move, even though these are times of crises. It makes our future much more uncertain. Striving for the common good, a politician's most fundamental task, should never lead to an extreme and selfish individualism (which threatens the lives of others), or a communitarianism that destroys the individual. There should not be a radical separation between the good of the singular person and good in common. Neither an absolutism of rights nor a sacrificing of individual rights can serve the common good. The American rush to security has been unwise on this point, and short sighted about the level of protection to be gained. My fear is that the West's counter-terrorism will continue on this path and be unable to return to a moderate conception of human rights, one that the American Jesuit David Hollenbach has aptly called a moral claim of persons to be treated "as participants in the shared life of the human community."<sup>30</sup> Treating the rights of persons with care even in times of emergency is an ethical requirement of the 'political promise'.

26 L.K. Donohue, *Security and Freedom on the Fulcrum*, in *Terrorism and Political Violence* 17 (1-2) (2005), p. 69.

27 D.A. Harris, *Racial Profiling Revisited*. "Just Common Sense" in the Fight against Terror?, in M.K.B. Darmer, R.M. Baird & S.E. Rosenbaum (eds.), *Civil Liberties vs. National Security in a Post-9/11 World*, New York, Prometheus Books, 2004, p. 166.

28 J. Lobel, a.c., p. 27-28.

29 P.A. Thomas, *Emergency and Anti-Terrorist Powers 9/11: USA and UK*, in *Fordham International Law Journal* 26 (2003), p. 1208.

30 D. Hollenbach, S.J., *The Common Good and Christian Ethics*, Cambridge, Cambridge University Press, 2002, p. 159.

### 3. Conclusion

Given the pitfalls of the metaphor of balancing rights and security, and how security measures tend to distort our view of individuals and the common good, it appears the American security posture has produced results that are harder on and more harmful to its own citizens than on the terrorism it is designed to stop. The pragmatism of security tells us this is necessary. I believe the tradition of rights tells us otherwise. Good political advice in the post-9/11 era will do well to pay attention to that tradition.

*Scott Kline:*

*The "Responsibility to Protect" as a New Doctrine of Intervention for the Ecumenical Movement?*

UN Secretary General Kofi Annan, in his Millennium Report *We, the Peoples: The Role of the United Nations in the 21<sup>st</sup> Century* (2000), challenged the UN general assembly to establish basic guidelines for future interventions into countries and regions where defenceless populations have become the targets of gross human rights violations or, as in the case of Rwanda in 1994, a genocide. Acting on that challenge, the Canadian government, with the support of several major foundations,<sup>1</sup> launched The International Commission on Intervention and State Sovereignty (ICISS). Between January and June 2001, the Commission held a series of consultations around the globe in an attempt to "forge consensus" around the dilemma of breaching the sovereign borders of a state to protect a vulnerable population. In December 2001, ICISS released its report, entitled *The Responsibility to Protect (R2P)*. As its foreword indicates, one impetus behind R2P was to provide an alternative to the popular, though highly ambiguous idea of "humanitarian intervention." At the core of the ICISS report is a new framework and vocabulary for addressing the moral, legal, and political questions surrounding intervention and the problem of state sovereignty. It concludes that states, including their agents, are responsible for the welfare of their citizens and for their actions, both within their borders (to protect their own citizens) and beyond (to protect others in the international community) through the mechanisms of the UN. Although many of the proposals in and discussions surrounding R2P were put on hold in the wake of the 9/11 attacks and the ensuing declaration of the "war on terror," a number of humanitarian aid organizations, policy think tanks, and faith-based relief organizations joined most of the UN diplomatic corps in advocating the acceptance of R2P in international law. One of the leading advocates of R2P was the then-General Secretary of the World Council of Churches (WCC), Konrad Raiser. In 1999, Annan had invited Raiser to take part in a UN discussion about the problems of "humanitarian intervention" and possible alternative strategies for delivering humanitarian assistance (see Raiser, 2003). Under Raiser's leadership, the World Council of Churches (WCC) adopted a resolution in September 2003 that affirmed the basic principles found in *The Responsibility to Protect* (2003).

These principles provided the foundation for subsequent WCC statements and initiatives regarding small arms trade, the intervention in the Solomon Islands, and the emergent tensions in central Africa. Along with Raiser and the WCC, Project Ploughshares, an ecumenical agency of the Canadian Council of Churches devoted to policy analysis and the promotion of nonviolent conflict resolution, has been a driving force behind recent theological reflection on R2P. Since 2003, Ploughshares has conducted three consultations

<sup>1</sup> For a complete list of participating organizations, see the Responsibility to Protect website: <http://www.iciss.ca/report2-en.asp> (accessed 20 August 2006).

with representatives from the various member churches on the Canadian Council of Churches and has commissioned theological responses from each of the traditions represented on the Council. Moreover, Ploughshares has expanded the discussion of R2P and humanitarian aid in Africa by partnering with the Africa Peace Forum, African Women's Development and Communication Network (Femnet), and the Africa Institute of South Africa. The initial results of this ongoing discussion were published in a working paper entitled "The Responsibility to Protect: East, West, and South African Perspectives on Preventing and Responding to the Humanitarian Crises."<sup>2</sup> The former director of Project Ploughshares, Ernie Regehr, a Mennonite, was an influential figure in drafting a WCC Public Interest Committee document entitled "Vulnerable Populations at Risk: Statement on the Responsibility to Protect," which was adopted by the WCC General Assembly in their 2006 meeting in Porto Alegre, Brazil. This decision by the WCC General Assembly came on the heels of the World Summit on UN Reform in September 2005, which saw the UN General Assembly adopting specific elements of R2P (UN 60/par. 138-40). In the remainder of my time here, I want to examine R2P and what promise and problems it holds for the ecumenical movement. I will start by highlighting the key features of the R2P. I will then suggest reasons why R2P has become an acceptable doctrine of intervention for much of the ecumenical movement. I will close with an invitation to join me in thinking through some of the ethical, political and legal ramifications of R2P.

#### Key Elements of R2P

Ramesh Thakur, an ICISS Commissioner and one of the principal authors of *The Responsibility to Protect*, argues in his recent book *The United Nations, Peace and Security* (2006) that R2P has three core objectives: (1) to change the conceptual language from "humanitarian intervention" to the "responsibility to protect"; (2) to pin the responsibility on state authorities at the national level and the United Nations Security Council (UNSC) at the international level; and (3) to ensure that interventions are "done properly."<sup>3</sup> As Thakur notes, ICISS did not think of R2P as an "interveners' charter" or as a checklist that ensures legitimacy if an intervener meets specific conditions. Rather, the Commission wanted to identify certain "conscience-shocking situations"<sup>4</sup> that provide a compelling case for international intervention and, at the same time, propose international protocols that "enhance the prospects of such interventions."<sup>5</sup>

#### From Humanitarian Intervention to the Responsibility to Protect

The first and most radical change proposed by ICISS is the change in the conceptual framework and language, from the right and duty of "humanitarian intervention," which is

<sup>2</sup> The paper is available online at the Ploughshares website:

<http://www.ploughshares.ca/libraries/WorkingPapers/wp055.pdf> (accessed 20 August 2006).

<sup>3</sup> Ramesh Thakur, *The United Nations, Peace and Security* (Cambridge: Cambridge University Press, 2006), 247.

<sup>4</sup> In the mid-1990s, the language of "conscience shocking" became the preferred manner of speaking about crimes against humanity, genocide, and other gross violence on a population. For example, see the Rome Conference (1995), which established the International Criminal Court.

<sup>5</sup> Ibid.

associated with the work of the International Committee of the Red Cross, the UN High Commission on Refugees, and other international aid organizations, to the "responsibility to protect." This shift addresses a central concern of humanitarian organizations and some military experts who maintain that armed military personnel are ill suited to supply humanitarian assistance. At the mission training level, few, if any, militaries provide a robust training regime for soldiers who are tasked with both military as well as humanitarian assistance duties. At the level of mission objectives, the conflation of humanitarian and military interventions creates confusion in the theatre. In his discussion of this issue, Thakur cites the example of the NATO intervention in Kosovo in 1999. Despite being framed mainly through a discourse of humanitarian intervention, the intervention consisted primarily of three months of bombing. "If that was humanitarian intervention," Thakur concludes, "then it must necessarily have been humanitarian bombing."<sup>6</sup> The language of "responsibility to protect" is also supposed to address the concerns of critics, particularly in the global South, who charge that the language of "humanitarian intervention" functions as a mask for commercial and geopolitical interests among the powerful states. As Thakur rightly notes, "humanitarian intervention" is a discourse that assumes a moral ground so high that it can easily be used to trump state sovereignty and to de-legitimize dissent by labelling it "anti-humanitarian." As a political tool, the language of "humanitarian intervention" can easily become a mobilizing discourse that provides moral legitimacy to an armed intervention, even when the intervention is more about power politics, economics, and state interest than the protection of vulnerable populations. Proponents of R2P argue in turn that interventions should not be based on moral and political sophistry or state interest—which often results in a "coalition of the willing"—but on a legal obligation that members of the international community share as signatories to the UN.

#### State and International Authority: A Question of Sovereignty

To be sure, the shift from the right to intervene to the responsibility to protect requires a reconceptualization of state sovereignty; that is, a concept of sovereignty that is not reducible to absolute authority. Following the work of Francis M. Deng, the former representative of the UN Secretary-General on internally displaced persons and the current director of the Center for Displaced Persons at Johns Hopkins University, the Commission sought to define sovereignty in terms of a state's responsibility to protect the people within its borders. Consistent with post-Westphalian conceptions of sovereignty, R2P holds that a state is primarily responsible for the protection of its own citizens (a sticking point remains whether a state must also be responsible for illegal inhabitants within its borders). The radical proposal of R2P is that "where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect."<sup>7</sup> Sovereignty thus implies a two-fold responsibility—a primary responsibility for the protection of a state's own population and an international responsi-

<sup>6</sup> Ibid., 250.

<sup>7</sup> This phrase appears in the synopsis of R2P, under Basic Principles. See the Report at <http://www.iciss.ca/report2-en.asp>.

bility to intervene when a state fails on a massive scale to protect its inhabitants. In effect, R2P operates with a contingent and limited concept of sovereignty. Sovereignty is maintained only insofar as a state is acknowledged by the international community—primarily through the mechanism of the UN General Assembly and the UN Security Council—as being willing and able to protect its population from extreme violence. Based on the principles of R2P, then, when a state fails to meet its protective obligations, member states of the UN have a legal responsibility to intervene for the protection of human life. Moreover, in cases where a state and its agents are complicit in serious crimes against humanity, member states have a responsibility to hold specific parties accountable for their actions or inactions (e.g. through the International Criminal Court).

As a matter of international relations, the R2P framework involves three specific responsibilities:

1. The responsibility to prevent: to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.
2. The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.
3. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert. [Included here is the close communication with humanitarian organizations.]<sup>8</sup>

Among these three, the responsibility to prevent is given the highest priority, even while recognizing that international buy-in on prevention has been a tough sell.

#### Principles of Military Intervention

Assuming that prevention fails, R2P identifies a two-pronged “Just Cause Threshold.”

1. large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or
2. large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

This threshold is complimented by what ICISS calls “precautionary principles,” which we will recognize as criteria of the traditional just war doctrine with slightly nuanced definitions.

1. Right intention: The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.
2. Last resort: Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.

<sup>8</sup> This is from the R2P summary. See <http://www.iciss.ca/report2-en.asp>.

3. Proportional means: The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective. [Including a principle of incrementalism and gradualism in the use of force, the objective being the protection of a population, not the defeat of a state]

4. Reasonable prospects: There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

In addition to these four principles, R2P spells out in some detail the principle of right authority. To nobody's surprise, R2P locates the authority to mount a military intervention for human protection in the Security Council, largely under the conditions that currently exist, including the possibility of having the Secretary General seeking authorization under Article 99 of the UN Charter. The radical proposal in R2P concerns the role of the Permanent Five (P5) members of the Security Council when hearing a case for intervention. The text reads: "The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support." In cases where the UNSC rejects a proposal or fails to deal with it in a reasonable time, the options remaining are those that currently exist under UN protocols; that is, making an appeal for an Emergency Special Session of the General Assembly or—and this is truly the last resort—mounting an action with regional or sub-regional organizations under Chapter VIII of the Charter, and with authorization of the UNSC after the fact.

#### Ecumenical Movement's Embrace of R2P

As a way to promote a discussion, and to think constructively, I want suggest four inter-related reasons why R2P is so attractive to the ecumenical movement. First, R2P avoids the language of war, in particular the language of "just war." This is not just an issue of semantics. To many, the discourse of war, even within the context of the just war tradition, suggests conflicts between empires of the 19<sup>th</sup> century and the Great Powers of the 20<sup>th</sup> century. War evokes certain weaponry, with certain rules of engagement that privilege advancement as well as containment. Due to the changing nature of war in the late 20<sup>th</sup> century, a number of churches in the just war tradition—Lutheran, Reformed, Presbyterian, Anglican, and even Catholic—have displayed the tendency to reject the ethics and politics of war (e.g., *Pacem in terris*, O'Donovan's response to Anglican hierarchy in *Just War Revisited*). Moreover, by using the language of responsibility to protect, peace churches can remain partners in conversations about human security and protection, since the protection of a population does not necessarily mean the use of a military force in a state of war. In short, what R2P does is promote the idea of a just intervention for human protection, which the ecumenical movement accepts as part of protecting the dignity of the individual.

Second, because R2P does not assume military intervention or advocate standing military forces in the rebuilding phase, the ecumenical movement sees space for alternative intervention strategies, namely policing and peacekeeping. This issue has been raised by a number of bodies in the World Council of Churches, most notably the Church of Norway. At the Canadian Council of Churches, the Mennonites have been actively promoting

the prevention and policing model (in response to the Canadian doctrine of the 3Ds—diplomacy, defence, and development). As a quick note, ecumenical organizations have been highly critical of the cautionary principles—i.e., veiled just war criteria—out of fear that a state may appeal to them as a basis for intervening. (The focus must instead be on civilian protection first—and always for the protection of civilians in any case.)

Third, the ecumenical movement has shown widespread support for the prevention framework contained in R2P. Historically, the church and faith-based relief organizations have played a primary role in the prevention and rebuilding phases of conflict. Because prevention has been given such short shrift in international law and relations, organizations such as Development and Peace, World Vision, Catholic Relief, and other faith-based NGOs have often conducted their work in relative isolation. The promise that R2P holds is that, with the aid of relief organizations and local NGOs, international governance structures will become more immediately and actively aware of conditions on the ground, thereby providing necessary support to stem further escalation of violence. (Indeed, there's also an economic issue here: it's cheaper to prevent crimes against humanity than to intervene and rebuild a country!)

And fourth, the ecumenical movement is drawn to the minimalist principle of intervention contained in the responsibility to protect. For the most part, the WCC has affirmed the principles of incrementalism and gradualism. However, the most important principle concerning crisis-meeting resources is the prioritization of local and regional bodies. In theory, at least, R2P operates with a bottom-up approach to intervention. For example, in the case of Darfur, the Canadian Council of Churches has clearly stated that the primary body that should be handling the crisis is the African Union (AU), albeit with international support. Should the AU mission in Sudan fail, the next level of international governance and security must step in. At the moment, in the face of further attacks on IDPs, there are discussions that it is time for the UN to take a more active role (even though two members of the P5 will veto an intervention).

### Conclusion

As a Catholic who has been influenced by the Christian realism of Niebuhr, Tillich, and Bonhoeffer, and with a Doktorvater who was a former Augustinian priest, I am probably predisposed to remain suspicious of any international regime that attempts to provide governance on a global scale. Indeed, there are problems with R2P. However, as Robin Lovin argued earlier in this conference, Christian realism cannot remain rooted in the “good ole days” of the Cold War superpowers and the discourse of post-Westphalian state sovereignty. And though I have a tremendous amount of sympathy with the pacifist tradition, I am unconvinced by the pacifist argument that uniformly rules out military force.

The reality is that non-state actors, from multi-national corporations to local warlords, have amassed enough “violence”—I’m thinking of Arendt here<sup>9</sup>—to destabilize many states, putting innocent populations at risk. Moreover, the reality is that certain states have turned on their populations, and then sought the protection of sovereignty and the principle of non-intervention. In effect, R2P has provided the ecumenical movement with an

<sup>9</sup> See Hannah Arendt, *On Violence* (New York: Harcourt, Brace & World, 1970).

alternative, one rooted in law, that recognizes the responsibility of sovereignty and the real need for innocent populations to be protected. And while "the responsibility to protect" is still quite new and largely untested on an operational level, it is clear that, at least among the leadership, the ecumenical movement has embraced R2P as its new doctrine of intervention.

*Mihai Grigore:*

*...ante omnia pacem et justitiam observari monebant. Überlegungen über die erste paneuropäische Friedensbewegung und ihre Wirksamkeit zur Bildung vorstaatlicher Ordnungsstrukturen*

I. Captatio benevolentiae. Wenn ich die Überschrift dieses Papers betrachte, muss ich feststellen, dass der Begriff „Ordnungsstrukturen“ ein problematischer ist: Es gibt keine Strukturen von Ordnung, die Ordnung ist eine Struktur an sich, ein Konnex, der beansprucht, das Miteinander eines Sozialorganismus' zu regeln und zu funktionalisieren. Wie kann dies aber ohne jene Kategorie geschehen, die in der heutigen politisch-sozialen Sprache als „Macht“, „Gewalt“ bzw. „Herrschaft“ auftaucht? Im Mittelalter wurden diese Formen meistens als potestas bezeichnet. Die Frage, die sich ergibt, ist inwiefern das heutige Verständnis von Macht bzw. Gewalt mit der mittelalterlichen Auffassung noch übereinstimmt.

II. Machtsemantik im späten Frühmittelalter. Im Mittelalter ist Macht weder im politischen Sinne der antiken konsensual-demokratischen Polis – etwa wie Hannah Arendt in ihrem Buch „Macht und Gewalt“ annahm –, noch als Resultat des Gewaltmonopols eines überpersonellen Verbandes, des Staates, zu betrachten (wie bei Max Weber in seiner „Staatssoziologie“). Die mittelalterliche potestas hieß eher die Befugnis und gleichzeitig die Verheißung, in einem höheren Namen Dinge bestimmen zu dürfen und ließe sich als „in der Lage sein“, „befähigt sein“, ja sogar „Verwaltung“ verstehen. Die mittelalterliche Dimension der Herrschaftsausübung ist kein Staat, sondern ein potestas-Bund des Königs, das eine große familia darstellen sollte. So ist die Macht kein äußerer Vorgang, sondern gewissermaßen Selbstbestimmung familiärer bzw. konsensualer Natur, indem man die hierarchischen Strukturen als väterliche, karitative und verantwortungstragende Instanzen empfindet. Sie finden ihre ideale Zuspitzung in dem König als pater patriae. Daher, wenn man über die Macht z.B. des Königs spricht, meint man letztlich den Versuch einer Mit-einbeziehung des gesamten sozialen Korpus in eine familia mit all ihren Regeln. So ist in unserem Fall die pax-Bewegung die Bemühung der mittelalterlichen Kirche, jene Aufgabe tatsächlich zu übernehmen, die ihr von Christus selbst übertragen wurde. Die potestas ist die Verheißung, die Schöpfung Gottes zu verwalten und gleichzeitig Verantwortung dafür zu tragen.

Im Mittelalter liegt das „Gewaltmonopol“ bei Gott, wie es die Kirche immer wieder erneut betonte. Ich nehme mich aber in Acht über ein Monopol solcher Art in Bezug auf Gott zu reden. Jegliches Monopol setzt einen Monopolisierungsvorgang – und logischerweise einen ursprünglichen monopollosen Zustand – voraus. Bei Gott ist dies aber nicht der Fall; er hat Macht durch sein einfaches Existieren inne. So kommt der Papst Gregor der VII. dazu, die Gewalt den irdischen Königen streitig zu machen und sie allein für die kirchliche Autorität, als Vertreter Gottes auf Erden, in Anspruch zu nehmen. Der gesamte Investiturstreit gründet auf jene Behauptung aus dem Dictatus Papae (1075), wo gesagt

...ante omnia pacem et justitiam observari monebant. Überlegungen über die erste paneuropäische Friedensbewegung und ihre Wirksamkeit zur Bildung vorstaatlicher Ordnungsstrukturen wird: „Die römische Kirche ist allein von dem Herrn gegründet“, also der alleinige Vertreter seiner Macht. In diesem Sinne behauptet der Canossapapst:

Unsere Aufgabe ist: (...) die heilige Kirche Christi von allen Seiten gegen den Ansturm der Heiden und vor der Verwüstung der Ungläubigen durch Waffen nach außen zu verteidigen und im Inneren durch die Erkenntnis des katholischen Glaubens zu sichern.

Diesem Machtverständnis zufolge konnte es dazu kommen, dass Papst Gregor VII. in demselben Investiturstreit den König Heinrich den IV. ausdrücklich dämonisiert und die säkulare Macht als teuflisch einstuft. So schreibt der Papst den königlichen Untertanen einen Brief, mit der Bitte zu versuchen, den König zur Buße umzustimmen:

...mit der Ermächtigung des Seligen Petrus, des Fürsten der Apostel, fordern wir Euch auf und bitten Euch, viel geliebte Brüder: Bemüht Euch mit allen Mitteln, diesen (Heinrich IV. – M.G.) aus der Hand des Teufels zu befreien und ihn zur wahren Buße zu bewegen, so dass wir ihn – mit Gottes Gnade und aus brüderlicher Nächstenliebe – in den Schoß unserer gemeinsamen Mutter bringen können, welche er zu spalten versuchte...

Diese mittelalterliche Anschauung der Kirche über Gewalt und Macht stützt sich folglich auf ihren Repräsentationscharakter. Die Kirche waltet über die Schöpfung anstatt und im Namen des Schöpfers; sie trägt damit die Verantwortung für den gesamten Kosmos. Auf der Vertretungsqualität beruhen folglich die kosmokratischen Gewaltansprüche der mittelalterlichen Geistlichkeit.

In einem Brief Ende des 11. Jahrhunderts sagt man:

die unverbrüchlichen Frieden und Treuga Gottes sind Euch überlassen, nicht von einem irdischen König, einem Markgrafen, einem Herzog, einem Grafen, oder von einer anderen Person, sondern von Gott und allen Heiligen, Engeln und Erzengeln, sowie von allen himmlischen Mächten, von allen Patriarchen und Propheten, von den Aposteln und Märtyrern, von den Bekennern, ebenso von den Jungfrauen und von allen auserwählten Gottes Heiligen.

Im Mittelalter gibt es keine transpersonelle Autoritätsdurchsetzung und deshalb bildet sich die Herrschaft als konsensuale Instanz. Dies im Unterschied zu den modernen, staatlich regierten Gesellschaften, wo der Sozialkorpus von der „Materialität der Macht über den Körper der Individuen“ (M. Foucault) gegeben wird. Die *pax Dei* versucht im Endeffekt die Wiederherstellung der konsensualen Herrschaft nach frühmittelalterlichem Muster, diesmal aber unter kirchlicher Kontrolle. Dafür spricht, dass die Pax-Ordnungen Frucht der sozialen Verhandlungen und des konsensualen Abkommens der Kirche, der Magnaten und – passiverweise – des Volkes waren. In der Zeit der Friedensbewegung aber (10.-11. Jahrhundert) wohnen wir zum ersten Mal einer Bildung der *familia Dei* unter der unmittelbaren Beobachtung und Beschirmung der kirchlichen Institution bei, die alle Schichten funktionell miteinbeziehen mochte.

III. These. Aus dieser Raison verstehen wir, warum nicht nur die kirchlichen, sondern auch die säkularen Instanzen Interesse an einer „Harmonisierung“ des Sozialkorpus' aufgrund einheitlicher Gesetzlichkeit hatten, was allerdings ebenso zu einer Festigung der politischen Entitäten führen sollte.

Man wohnt im Gottesfrieden (*pax Dei*) den Versuchen des französischen Diözesans bei, eine neue privilegierte Stellung im schwach regierten Frankreich des 10.-11. Jahrhunderts zu erreichen und sie vor lokalen Seigneurs und milites zu bewahren. Die *pax* ist keine Ursache, sondern Erscheinung neuer Umbildung und Ethisierung der Kirche, sowie dieser

Situation entsprechender Herrschaftsbestrebungen. Historisch handelt es sich bei dem Gottesfrieden um mehrere Konzilien der pax bzw. treuga Dei, wo mehrere Bischöfe Friedensverträge mit ihren mächtigen Diözesanen (milites, potentiores, optimates, magnates) zugunsten waffenloser und daher schutzloser Kategorien (wie Kleriker, Pilger, Bauern, Frauen, Kaufleute) schließen, deren Güter, Tiere und Gebäude (z.B. Häuser, Kirchen und Klöster) miteinbezogen waren. Die Bewegung erscheint als erstes in Süd-Frankreich (in der Provinz Aquitanien im Kloster Charroux 989, sowie in Auvergne in der Stadt Le Puy um ca. 990), verbreitet sich nach Norden bis Flandern, bekommt ab Mitte des 11. Jahrhunderts eine neue Form – der Treuga – und taucht dann auch in Italien, Spanien, England sowie im Deutschen Reich auf.

IV. Frieden und politisch-soziale Ordnung. Das Europa des 9.-11. Jahrhunderts erlebte einen anachronischen Zustand. Das gesellschaftliche Wertungssystem stand unter dem Zeichen der kriegerischen Vorgänge, obwohl die große „Kriegsära“ weit zurück lag: Die barbarischen Königreiche, die gewaltsam die römische Staatlichkeit ersetzten, wurden von Karl dem Großen „befriedet“ und politisch integriert; die neuen Migrationen, die Araber, die Ungaren und die Normannen, wurden ebenfalls gezähmt und durch Christianisierung assimiliert. Daher ergab es keinen Sinn mehr, warum die Krieger und ihr Wertungssystem weiterhin in der Gesellschaft vorherrschend sein sollten, solange ihre funktionale Notwendigkeit gewissermaßen überholt war. Die innere „gesunde“ Entfaltung der Gesellschaft wurde von der aggressiven gewaltsamen Haltung der in Kleinherrschaften atomisierten Seigneurs bedroht und behindert. Im Mittelalter haben manche elitäre Kategorien – Bischöfe, lokale Seigneurs usw. – die Möglichkeit, sich von der „Allgemeinheit“ – die es eigentlich außerhalb des Konsensus' nicht gibt – abzutrennen. Das Mittelalter kennt kein internationales Recht und auch keine universell geltenden Menschenrechte; deswegen ist jede Gewalt und jeder Raptus gerechtfertigt, solange sie im Interesse der eigenen „Allgemeinheit“ geschehen. Die geographischen Grenzen sind im Mittelalter durch eine gewaltige Mobilität überflüssig gemacht worden und daher bestanden nur Handlungs- und Herrschaftsräume, die wohl behauptet werden mussten. Über diese Verselbstständigung der kleinen Seigneurien spricht man als über eine *révolution féodale* (der Franzose G. Duby), die mit einem *l'enchâtellement* einhergeht, d.h., mit einem Boom der Burgen, was wohl zu einer unkontrollierbaren Atomisierung der königlichen und gräflichen Herrschaft beitrug. Z.B. in der Region Charente (südlich von Poitiers und westlich von Limousin) steigt zwischen 1000 und 1050 die Anzahl befestigter Burgen um das Siebenfache.

In diesem Kontext und unter dem Zeichen einer ekklesiastischen, auf dem Vertretungsbewusstsein beruhenden Ethosbildung wohnt man einem allgemeinen sozialen bzw. politischen Erneuerungszug bei, indem – aufgrund einer mangelnden zentralen königlichen Autorität – die Befriedung der Gesellschaft von der Kirche in die Hand genommen wird. Durch eine starke Propaganda, die von inhaltsvollen symbolischen Handlungen wie das Anathem und die Exkommunikation unterstützt wurde, versuchte die Kirche des 10.-11. Jahrhunderts, das kriegerische Ethos zu zähmen und zu entwerten. Ein Beispiel von einer solchen symbolisch-ritualischen Abwertung des gewaltgeprägten Kriegerethos' erhalten wir aus den Protokollen des zweiten Friedenskonzils von Limoges (A.D. 1031):

Wir – die im Namen Gottes speziell versammelten Bischöfe (...) – exkommunizieren jene milites dieser Diözese von Limoges, die Frieden und Gerechtigkeit ihrem Bischof (...)

...ante omnia pacem et justitiam observari monebant. Überlegungen über die erste paneuropäische Friedensbewegung und ihre Wirksamkeit zur Bildung vorstaatlicher Ordnungsstrukturen nicht schwören wollen. Verflucht sollen sie und ihre zum Bösen Helfenden sein; verflucht ihre Waffen und ihre Pferde (...). Und wie diese Kerzen vor euch ausgelöscht werden, so wird ihr Schwert im Gesichtskreis der Heiligen Engel vernichtet werden...

Alle Bischöfe und Priester, die Kerzen in den Händen hielten, warfen diese sofort zu Boden und löschten sie somit aus. In diesem Moment wurde das Gemüt des Volkes stark beeindruckt und alle schrien: „So soll Gott die Freude jener auslöschen, die Frieden und Gerechtigkeit nicht annehmen wollen!“.

Man sieht, dass die Bischöfe ihre Malediktion auf wichtige Symbole der Kriegerklasse werfen: auf die Pferde, auf die Waffen und auf die Waffenbruderschaften.

So taucht im kirchlichen Pax-Diskurs – der allerdings unter der Führung der Diözesanbischöfe ganze Regionen von den lokalen Fehden und Gewaltsamkeiten zu befreien versuchte – eine Bewertung des Arbeiter- und Arbeitsethos auf: Eine Befürwortung also der Bauern, Kaufleute und Handwerker, die eigentlich am stärksten unter dieser Gewaltsamkeit und Willkür zu leiden hatten. Im symbolischen und mentalen Bereich sowie im Gesellschaftsdiskurs bemerkt man einen Wandel von den bislang vorherrschenden Kriegersymbolen und -wertungen zu jenen des dritten arbeitenden Standes: Sicherheit der Arbeit, Recht auf die Früchte der Arbeit, Schutz vor der Willkür, Gleichheit vor dem Gesetz. Ich ziehe hier als Beispiel ein Poem über den Frieden von Fulbert von Chartres heran, einem kirchlichen Autor am Anfang des 11. Jahrhunderts:

Der Plünderer hält seine Hand zurück, mit dem Gedanken an die Mistgabel/  
und vor dem Diebe/  
anderes hebt der waffenlose Reisende seine Stimme,/   
Mit dem Winzermesser wird/  
der sich ausbreitende Weinberg bezähmt/  
und durch Ackerbau wird der struppige Boden gepflegt./   
Jubelt die Lanze zu Sense und das Schwert/  
zu Pflugschar zu werden;/   
der Frieden bereichert die Kleinen und macht die Hochmütigen elend...

Mit der Gottesfriedensbewegung entstehen die ersten „staatlichen“ Strukturen auf dem Kontinent: Eine Polizei – durch die bekannten *militiae pacis* – sowie rechtlich befriedete Räume als Sphären der Gerechtigkeit (*justitia*) und des Friedens (*pax*), Räume, die günstige Bedingungen einer sozialen, wirtschaftlichen und politischen Renaissance anbieten, auf deren Basis das Stadtwesen des 12.-14. Jahrhunderts aufblühen und der Zentralisierungsprozess der Monarchien in Gang treten wird. Die Quellen der Pax-Bewegung zeigen, wie die Desiderate der gesellschaftlichen Harmonisierung und Befriedung von den zentralistischen Faktoren – dem König bzw. den Herzögen – übernommen und im Dienste der eigenen Herrschaftsbildung eingesetzt wurden. Ich denke hier an die Beispiele Wilhelms, des Herzogs von Aquitanien, und des Königs Robert des II., die mehrere Pax-Konzile mitorganisierten. Die *Treuga von Caen* (ca. 1042) verbot den *milites* vom Mittwochabend bis Montag Waffen zu tragen und Fehden zu führen: Interessanterweise wurden zugunsten des allgemeinen Wohle von diesem Kriegsverbot ausgerechnet der König und der Herzog von Normandie ausgenommen, als „staatliche“, mit polizeilichen Befugnissen ausgestattete Organe.

V. Schlussbetrachtung. Das Hauptziel des Vortrags ist zu zeigen, wie die ersten Zeichen einer Modernität (!) auf europäischem Boden aufgrund der Bewertung der arbeitenden Schicht, aufgrund einer gewissen politischen Klarheit und stärkeren Gesetzlichkeit, also auf einem Friedens- und Funktionalisierungshintergrund, entstehen. Das Kriegsethos wird nun zum allgemeinen Wohle eingesetzt und die bekanntesten Beispiele sind dabei die Kreuzzüge. Dies zeigt die Rolle einer selbstbewussten politischen Theologie zur Bildung der zuerst protostaatlichen und dann staatlichen Dimension.

Die erste einigermaßen kohärente politische Ordnung Europas taucht als Ergebnis einer reformierten Ekklesiologie und Kosmologie auf, die sich politisch niederschlagen. Es ist ebenso interessant zu beobachten, wie die politische Artikulierung einer Gesellschaft einerseits auf Friedensvorgängen entsteht und andererseits dieser innere Frieden durch die Kanalisierung der Konflikttendenzen nach Außen bewahrt wird. Der Diskurs wandelt von den *inimici pacis* (also inneren Destabilisierungsfaktoren) zu den *inimici fidei* (also äußeren Organen, solange zu der Zeit der Friedensbewegung und der Kreuzzüge das Westeuropa bereits christianisiert wurde).

Der sozial-politische und religiöse Friedensgedanke ist wahrscheinlich nach dem Christentum selbst das erste gemeinsame programmatische Gut des europäischen mittelalterlichen Denkens. Z.B. schrieben 1041 die französischen Bischöfe ihren italienischen Amtskollegen mit der ausdrücklichen Bitte, ihr Beispiel zu übernehmen und in Italien, so wie bereits längst in Frankreich, eine *treuga Dei* einzuführen.

Empfangt und bewahrt also den Frieden Gottes, welchen, vom Himmel zu uns herabgesandt, auch wir auf Eingebung des barmherzigen Gottes bereits angenommen haben und unverbrüchlich halten...

Ebenso führte der Bischof Gerhard von Cambrai (ein Reichsbischof also!) ca. 1033 auf Bitte seiner französischen Kollegen eine Pax in seine Diözese ein. Die katalonische Pax-Bewegung wurde ebenfalls aus Frankreich „importiert“. Über die politischen Grenzen hinweg munterte man sich gegenseitig auf, die Pax-Beschlüsse von einer Region zu der anderen zu übernehmen und sie zum gemeinsamen Wohle mit allen ihren Vorteilen einzuführen. Dies macht die Friedensbewegung zu einem pan-europäischen Phänomen.

*Johannes Adamsen:*  
*Law, authority and spirituality*

Let me take a clear stance on a very complex and difficult matter, namely the reason for the ending of the Cold War: My point is that the Helsinki Final Act from 1975 helped to terminate the Cold War, much more than most would care to recognise, by introducing human rights as an agreed ideal, however fraudulently conceived from the USSR and Eastern European leaders.

But of course it is at least a topic of discussion in the debate among scholars, though I guess most of the otherwise informed public is unacquainted with the subject, and a good part may pose the question "What is the Helsinki Final Act?" And this question may be the reason for the more common opinion that the Cold War ended either due to strong Western opposition or because of economic breakdown. If I am right in saying this, the reason for this conventional wisdom might point to the main categories for political discussion in the West generally: military and/or economic power.

In spite of this most people in Western civilisation adhere to the law, though I think a split could be identified according to the law, on the one hand, we think it is fundamentally a democratic conviction to make and live according to the law, and on the other hand, we tend to think that law is just paper. After all, in a lot of countries the law is not worth the paper it is written on. So why be law-abiding? What gives the law its lasting and ultimate authority?

One might describe the essence of political modernity, i.e. democracy, as a shift of sovereignty from the executive to the legislative branch of government, a shift which is intimately connected with the rule of the people. But even though justice should be inherent in the law due to its (supposed) origin in the people, it is not quite clear why the law is considered authoritative. After all, many citizens could understand the law as a – perhaps subtle – expression of the majority's dictatorship.

This shift of sovereignty from the executive to the legislative branch of government (and thereby implying the division of power) is after all only to be applied to domestic politics. This implies of course that what has been called the Great Divide occurred during the period from the beginning of democracy at least until after the First World War. The Great Divide is the divide between domestic and international politics. Whereas it is possible to create democracy in domestic politics, international relations have to be at best in a state of periodic peaceful competition. But usually one tends to think more of Hobbes' description of the state of nature as a war of all against all.

The Great Divide began to be in a sense permeable after The Great War with the establishing of the League of Nations and the Kellogg-Briant Pact. Furthermore, the United Nations could be seen as the first major change making the Great Divide less significant. But the Cold War and its implicit nihilism, a nihilism built into the uncontrolled arms race and the mutually assured destruction (precise acronym: MAD), obscured underlying changes, including transnational movements and their significance. The abrupt end of the Cold War has made it conventional wisdom that democracy has won, and that democracy might be the result of power. Especially in the US it is evident that the present administra-

tion tends to see democracy as the one and only option, democracy equals American democracy, and therefore anyone who turns against the United States turns against democracy, and normally allies itself with terrorism.

So nowadays international order is split between a wide acceptance of democracy and human rights on the one side, and a dangerous erosion of the same principles in order to fight terrorism. This split is not a parallel with the older Great Divide. As a matter of fact I think that the new divide reinforces the old one. It might be best interpreted as an admission that the principles of democracy in domestic politics are exactly not to be transferred onto the international level. Notwithstanding the sheer necessity of the UN, the institution has quite often shown its powerlessness, from the ongoing Russian state terrorism in Chechnya via the atrocities in Darfur to the build up to the Iraq invasion. More often than not, the UN – in cases that really matter – has given in to egoistic state interests; and in circumstances where the UN bravely has withstood pressure, it has been incapable to enforce its resolutions. The reason for this is clear enough: The institution simply has no means to do it, i.e. the means are always provided by other institutions, namely member states. In order to see this as analogous to domestic politics, one must imagine a parliament, or perhaps a judiciary, making a resolution, but the executive branch has no law enforcing police, so in order to execute the decision the executive begins by calling in the police from the very often implied groups. And more of the groups will deny the impartiality of the parliament and maintain the flaws and bias of the decision while invoking the specific or unique circumstances of exactly this situation.

To put it otherwise, it has been largely in vain to transfer the idea of democracy from domestic to international politics. At least one can say that the UN has oscillated between real weakness (nowhere so painfully felt as by the bombing of the UN headquarter in Baghdad in August 2003) and all too high expectations. The UN is an instance which power is considerably less than the sum of all its members.

Leaving the UN aside, I would like to focus not on more or less established international order, however fragile, but on the relationship between declared democracies and authoritarian and dictatorial states. My reason for this is to focus on the hasty deterioration of an ordered international society, a deterioration which as far as I can judge is intimately connected with the behaviour of democratic states.

Today, democracy is characterised by rule of law, and rule by the law might otherwise be described as the authority of the law. But apart from the rhetoric of principles, authority of the law is not inherent in the law itself, but has to be invested. From this investment the problem arises that has plagued democracy since its inception: Why be law-abiding? To modify my statement, I could say that the authority of the law is bound up with the principles and practices deeply embedded in democratic culture: The authority as such understood stems from well-functioning institutions, the consciousness of the sovereignty of the people and a sense of justice. But these factors tend to obscure the fact that most people do not encounter the law as principles but as enacted through living persons. In well-established democracies, we normally neglect this side of the matter, perhaps due to complacency, though the widespread individualism might be a better explanation. Modern individualism cannot easily comprehend just how much must people actually sense more than articulate this, simply due to our ideology of individual autonomy. Though it may be pointed out that almost all types of mass media (especially TV) focuses on persons and

avoid principles and other abstract entities (incl. statistics); and amid the democratic institutions themselves, I think that the almost inevitable shift of popular interest from the legislative body to the executive can also be taken as support to my argument. (According to the American Founding Fathers, the opening of the new elected Congress should be ground for a feast, not the inauguration of the president!)

Of course, democratic people in democratic societies should be acquainted with the law, but we cannot see that the general understanding of the impartiality of the law is formed in a complex web where taxation, police behaviour, good government etc. act together. Take a young outcast for instance in the Parisian suburb. He might have heard about law and democracy in his badly attended schooldays, he might have heard about the influence and the will of the people, but his normal day is boredom, aggressive police behaviour, unemployment, broken family house facilities, and a general feeling of indecency, suspicion, and desperation. He had heard about equality for the law, but he had experienced the suspicion and the humiliation, and perhaps he had also heard about general corruption in the French top political and economic circles. (France is only given as an example because of the suburban riots a year ago). My point is not to postulate that French democracy is undemocratic but to show the close knit – and inevitable – connection between law and people who in practice embody the law. And I especially want to point out that this embodiment of the law implies a kind of spirituality because it is bound up with the integrity of people in office, both as executive and legislative power.

And furthermore I wish to argue that this integrity of persons is neglected both in theory and in practice, partly due to a modernistic ideology which both deny the importance of politicians as persons and have difficulty with the concept of authority.

Modernity surely has its advantages. And it also has its negative sides. Although non-democratic societies can be ruled by law also, the difference in democracy is the equality for the law. Not only is there no privileges to various groups, but even the head of government is bound by law. Or in principle: The law binds everybody equally, not least the people encumbered with power; it is not something with which only binds and contains one's opponent or the common man. Perhaps this is a banal point to make, but in international relations it is far from common knowledge. Just consider the international affairs of today. The mightiest democratic powers practice torture, illegal detainment, pre-emptive war while pleading non-responsibility to international courts and treaties, including actively undermining the Non-Proliferation Treaty due to eager work on one's own weapons while bullying Iran for trying to do exactly what Israel, Pakistan and India did almost without consequences.

I turn once more to domestic politics to illuminate my argument. We rightly consider democracy as an open society, and in political philosophy the dominance of Karl Popper actually amounts to sheer hegemony on one main point: Democracy and the open society is based on ongoing, perpetual doubt, so to say pure negativity. This goes along with the general reluctance against authority, through the presence of modernity, i.e. anti-metaphysical thinking and (Freudian) psychology aggressively attacking every morality and every ideal. Freedom is reduced to freedom from restraints; and the freedom to do something of conviction (inner necessity), which of course is exactly the whole idea of ethics and morality, which has lost its meaning together with the language capable of articulation and discussing the ideals and duties. In this connection it might be useful to remember

that the concept of the open society is not Karl Popper's, and originally it was not attached to doubt and negation. The open society is articulated first by Henri Bergson (*La société ouverte*) and was bounded to the universal idea of humanity. Henri Bergson thus avoided a modernistic ideology where freedom was purely negative and individualistic. In opposition hereto, he reopened, or kept alive, the old political philosophical questions connected to the republican tradition: what is the appropriate political virtue demanded from democracy? Montesquieu thought of democracy was upheld by a passion for equality, Kant and Madison independent of each other thought of justice as a fundamental requirement.

Let me sum all this in one sentence: The authority of the law comes not from the law itself, but it springs first from an understanding of its principles and from justice; next in order to be authoritative it needs the integrity of the persons embodying the law – in spite of, indeed exactly in spite of, the disadvantage and the loss of personal gain.

Integrity as a vector for the phenomenon of authority might involve some spiritual, or theological, considerations.

Modernity is intimately tied to one basic enlightenment principle, namely the denial of original sin. This denial curiously enough did not further a tendency to moral perfectionism, even though it would have been a logical step. It did not imply a new moral perfectionism, but instead it opened a new understanding of human beings as inherently involved with incongruent, sometimes even conflicting, motives. This understanding could and should have been widened with a more thorough probing of the relation of motives to ideals, but the opposite happened: a general suspicion of ethics was paired with utopian political goals and totalitarian tendencies which again opened up to Poppers critique. Instead of clear ideals for democracy, democracy all too often was identified with the avoidance of every ideal, apart from pure structures and basic institutions. As long as they could survive without the sheer institutionalisation, void of every ethos.

What was lost was the ideal of (ethical) maturity, or character formation. The understanding of human life as intricately involved with personally ethical development seemed to be lost with the Christian tradition. The ethical striving gave way to abstract ideals, and political freedom was identified with utilitarian or hedonistic wishes, quite often equalled with instant gratification and an aversion to responsibility and commitment.

As I mentioned above, the basic components creating the authority of the law are understanding and personal integrity. Both, I think, are dependent on a basic humanity, where the other person as human being is present. To see the other – opponent, citizen or perhaps enemy – as a human being is to understand and recognise him/her in his/her own right, as suffering, striving, thinking, which necessarily involves a relational self-understanding. Understanding therefore is always historical and processional, it hinders demonisation and presupposes an acceptance of a common world with equal human rights.

Integrity is a phenomenon fundamentally dependent on the understanding of and commitment to humanity, and an understanding that precisely makes it clear that humanity as an ideal is something to strive for, because actualisation always is concrete and partly and as a totality is beyond reach, simple due to time and history.

Is it possible to understand spirit as an aid to take this as a departure point while striving for – and in the striving for – integrity?

The importance of this integrity both in relation to security politics and democracy might be clear. The hypocrisy by politicians speaking great words on democracy human rights while – for instance – allowing torture tarnishes authority, and the strength of people showing great courage in order to defend human rights and decency sometimes creates invincible authority (Vaclav Havel, Adam Michnik, Andrei Sakharov). Perhaps one of the main reasons, as indicated above, is that the idea of democracy is combined with a strong positivistic and anti-metaphysical outlook. This implies that the unhistorical self-deception of democracy amounts to personal (and instant) gratification and casts a veil over its essence: civic courage, justice, humanity and critique of power. The widely received idea that democracy and economic progress are interdependent thereby seems logical, and every reaction to democracy is denounced as barbarian backwardness.

On the contrary, to ask for the above mentioned ideals, justice and humanity, and to ask for them in connection to the authority of the law – opens up to authority as a phenomenon closely linked to integrity: This requires for an understanding of oneself so as to make it possible to live for forever unfulfilled ideals even when facing struggle, humiliation and defeat. To phrase it shortly: The authority of the law is a spiritual or theological question, it involves an understanding of human beings as part of humanity – consequently making humanity not a sociological entity, but an ideal. From here follows a rule of thumb: democracy can never be exported, always only imported! While the essential humanity involves understanding, it also defies pressure, compulsion and force.

*Katharina Westerhorstmann:*

*Wege zum Aufbau einer „Kultur des Friedens“ - Ein ethischer Versuch*

Man mag ein wenig Scheu empfinden, ein so großes Thema wie „Frieden“ im Ganzen anzusprechen. Ist es doch ein Menschheitsthema wie Armut oder Hunger. Dennoch scheint es, dass die manchmal als entmutigend empfundenen Erfahrungen der Geschichte uns nicht davon abhalten sollten, immer wieder ethische Ansätze zu entwickeln, um konkrete Schritte auf dem Weg zum Frieden letztlich auch tun zu können.

Der fundamentale Aspekt der Gerechtigkeit soll hier nicht eingehend behandelt werden, da er an anderer Stelle der Konferenz bereits ausführlich zur Sprache gekommen ist.

Wenn man in diesen Tagen über den Frieden spricht, vor allem hier in Westeuropa, so geht der Blick beinahe unwillkürlich in den Nahen Osten, nach Israel, zum Libanon und in die anderen arabischen Länder der Region. Man wagt es kaum vom Frieden zu sprechen – zu unsicher sind in den vergangenen Jahren die Ergebnisse der Verhandlungen gewesen – und manche zarte Pflanze des Friedens ist schnell wieder eingegangen, als dass man ehrlichen Herzens auf den Frieden hoffen könnte, der eben mehr ist als ein bloßer Waffenstillstand. Sicher lässt sich hier in einem kurzen Statement das Problem der Friedlosigkeit weder im Ganzen noch in dem besonderen Fall vom Staat Israel und seinen Nachbarn lösen. Viel zu kompliziert und differenziert sind die Probleme zwischen den Menschen und Staaten in dieser Region der Welt. Die diplomatischen Bemühungen, mit denen seit mittlerweile Jahrzehnten versucht wird, das Miteinander der verschiedenen Völker zu stabilisieren, verdienen Respekt und Anerkennung. Zu einem dauerhaften Frieden haben sie jedoch bisher nicht geführt.<sup>1</sup>

Die zahlreichen Friedensbewegungen, z.B. in Israel, brachten ebenfalls noch nicht den gewünschten Erfolg.<sup>2</sup> Zu sporadisch war ihr politisches Auftreten und zu gering der Rückhalt in der Bevölkerung. Inzwischen jedoch melden auch sie sich erneut zu Wort und fordern die echte Bereitschaft und konkrete Schritte zum Frieden. Für Israel und die umliegenden arabischen Staaten spielt sicherlich das Flüchtlingsproblem eine nicht zu unterschätzende Rolle, das seit mehr als 3 Jahrzehnten ungelöst ist und die Konfliktbereitschaft wachhält.<sup>3</sup>

<sup>1</sup> Margret Johannsen meint sogar absehen zu können, dass ein wirklicher und dauerhafter Friede, der auf beiderseitigem Einverständnis beruht, für Israel/Palästina spätestens seit der Wahl der Hamas in die Regierung letztlich unerreichbar geworden sei: „Mit einer Wiederaufnahme des Friedensprozesses ist ohnehin nicht zu rechnen, wenn man darunter das Bemühen um eine vereinbarte Beilegung des Konflikts versteht.“ Johannsen, Margret: Frieden durch Diktat? Der lange Abschied von einer Verhandlungslösung im Palästina-Konflikt, in: Mutz, Reinhard/Schoch, Bruno u.a.: Friedensgutachten 2006, Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg (IFSH), Münster 2006, 131-140, 138.

<sup>2</sup> „Seit fast 30 Jahren gibt es eine israelisch-jüdische Friedensbewegung. Trotz ihrer Vielfalt ist ihr politischer Stellenwert gering.“ Schneider, Ursula: Friedensinitiativen und Friedenspotentiale in Israel/Palästina, in: StZ 224 (2006), 706-710, 707.

<sup>3</sup> „Die wichtigsten offenen Fragen auf dem Weg zur Verwirklichung der Vision einer stabilen Zwei-Staaten-Lösung betreffen ... [u.a.] die Zukunft jener großen Gruppe von Palästinensern, die bis heute in den Flüchtlingslagern leben.“ Hoppe, Thomas: Wie die Gewalt überwinden? Perspektiven einer Friedensregelung für

Das Miteinander steht heute wegen der ungelösten Fragen und Probleme zumeist unter dem Vorzeichen der Konfrontation.<sup>4</sup>

So könnte es hilfreich sein, den Blick auf Möglichkeiten eines dauerhaften Friedens, einer Kultur des Friedens, zu richten – das Englische ist da eindeutiger und spricht von „peacemaking“; im Deutschen fehlt uns ein solcher Begriff, der besagt, dass Frieden nicht einfach eine Realität ist, die irgendwann und irgendwie entsteht, sich einfachhin einstellt, sondern eine Aufgabe, eine Pflicht ist, die es umzusetzen gilt. Frieden stiften, das – nach biblischem Zeugnis – zu den seligzupreisenden Eigenschaften der Menschen gehört<sup>5</sup>, die am Aufbau des Reiches Gottes mithelfen wollen, hat sich in unserem Sprachgebrauch lediglich für kleine zwischenmenschliche Konflikte und Streitigkeiten durchgesetzt. Das eine Wort für Frieden-machen<sup>6</sup> oder Frieden-schaffen gibt es vielleicht auch deshalb nicht, weil uns das Projekt des Friedens als so komplex erscheint, dass ein einfacher Begriff als negativ vereinfachend und somit als unzutreffend verstanden werden könnte. Dennoch soll es hier um das Schaffen des Friedens, um das Herbeiführen einer Realität gehen, die sowohl den politischen als auch den kleineren zwischenmenschlichen Bereich unmittelbar betrifft. Denn beide gehören untrennbar zusammen. Wer den Frieden im eigenen Herz nicht zu einer Wirklichkeit werden lässt, kann nicht zu einem glaubwürdigen Arbeiter für den Frieden werden.<sup>7</sup> Es geht um ein „bottom-up-Programm“, um den „Frieden von unten“.

Israel und Palästina, in: HerKorr 59 (2005), 633-637, 635. Ariel Scharon selbst hatte 2005 betont, dass die unerträglichen Lebensbedingungen der Palästinenser in den Flüchtlingslagern zur erhöhten Gewaltbereitschaft beitragen. Vgl. ebd. 634. „Die Anwerbung von Terroristen wird in einem sozialen Umfeld erleichtert, wo Rechte verletzt und Ungerechtigkeiten allzu lange geduldet werden.“ Johannes Paul II.: Botschaft zur Feier des Weltfriedenstag 2002, 5; AAS 94 (2002), 134. „Der Kampf gegen den Terrorismus setzt die moralische Verpflichtung voraus, einen Beitrag zur Schaffung von Bedingungen zu leisten, in denen dieser nicht entstehen oder sich entfalten kann.“ Päpstlicher Rat für Gerechtigkeit und Frieden: Kompendium der Soziallehre der Kirche, Freiburg i.Br. 2006, Kap 11, Nr. 513, S. 364f.

<sup>4</sup> Aus diesem Grund, plädierte der ehemalige Weltbank-Päsident James D. Wolfensohn, für die Überwindung von typischen Konfrontationsmustern zwischen z.B. den verschiedenen NGOs, christlichen (bzw. religiös-motivierten) wie nicht-christlichen, damit Hilfe und Unterstützung wirksamer sein können. Vgl. Wolfensohn, James D.: Die Herausforderungen der Menschheit, in: Pontificium Consilium „Cor Unum“: Deus Caritas est. Dokumentation des Internationalen Kongresses über die christliche Liebe. Neue Synodenaula Vatikan 2006, 21-26, 24.

<sup>5</sup> Vgl. Mt 5,9

<sup>6</sup> „Frieden machen besitzt ... als Aufgabenstellung eine weit höhere Komplexität als früher und bedarf deshalb auch eines erweiterten Friedensbegriffs ... In ihm geht es darum, durch Verständigungen und Kompromisse solche Bedingungen des Zusammenlebens ... von Staaten und Völkern zu schaffen, die nicht ihre Existenz gefährden und die nicht das Gerechtigkeitsempfinden oder die Lebensinteressen einzelner oder mehrerer von ihnen so schwerwiegend verletzen, dass sie nach Erschöpfung aller friedlichen Abhilfemaßnahmen Gewalt anwenden zu müssen glauben. Frieden machen, so verstanden, ist also eine Aufgabe.“ Senghaas, Dieter: Vorwort, in: Ders. (Hg.): Frieden machen, Frankfurt a.M. 1997, 12f..

<sup>7</sup> „Um Konflikten und Gewalt vorzubeugen, ist es unbedingt notwendig, dass man beginnt, den Frieden als tiefen Wert im Innern einer jeden Person zu leben: Auf diese Weise kann er sich in den Familien und in den verschiedenen Formen der gesellschaftlichen Vereinigungen ausbreiten, bis er die gesamte politische Gemeinschaft erfasst.“ Päpstlicher Rat, Kompendium, Kap 11, Nr. 495, S. 351f.

Anhand von vier Aspekten möchte ich nun ein Konzept zum Aufbau einer Kultur des Friedens<sup>8</sup> vorstellen: Bildung, Begegnung, Wertschätzung (d.h. vor allem Achtung der gemeinsamen Menschenwürde), Gebet.

### 1. Bildung

Es ist offenkundig, dass die Vernunft Erkenntnisse und das von Kant geforderte „Heraustrreten des Menschen aus seiner selbst verschuldeten Unmündigkeit“ allein der Welt den Frieden – vielleicht erstaunlicherweise – nicht gebracht hat. Sicherlich konnte Immanuel Kant, der bekanntermaßen die Aufklärung so beschrieben hat, erwarten, dass mit dem Rückgriff auf die Vernunft, und zwar auf die allen gemeinsame Vernunft, die sich im einzelnen Menschen nur jeweils unterschiedlich ausprägt, eine Welt möglich sei, in der Gewalt und Krieg gerade nicht die „ultima ratio“ sein müssen, sondern Dialog, Selbstbindung und Verständigung.

Nun ist es aber anders gekommen. Das 20. Jahrhundert gehörte durch die neuen Erfindungen und technischen Möglichkeiten zu den blutigsten der Geschichte, denn die Menschheit hat die Errungenschaften, die ihr mit Hilfe der Vernunft gelungen waren, nicht – oder nicht nur – zum Wohl des Menschen eingesetzt. Vielfach war es eher so, dass der Mensch die „Geister, die er rief“, so schnell nicht mehr loswurde.

Dass dieses Konzept seinen Ansatzpunkt dennoch gerade bei der Bildung des Einzelnen im Hinblick auf Gewaltvermeidung und damit auch auf Kriegsprävention wählt, mag daher auf den ersten Blick erstaunen. Es scheint jedoch so zu sein, dass die Menschen vor allem in der westlichen Welt inzwischen zwar ein hohes Maß an technischem Know-How besitzen, dass es jedoch an entsprechendem spezifisch menschlichem Wissen mangelt, sozusagen am gebildeten Wirklich-Mensch-Sein des Menschen. In der Antike unterschied man zwischen technischer Tüchtigkeit und dem, was man „Tugend“ nannte, der Tüchtigkeit des Herzens, d.h. die sittliche Formung des Menschen, die die habituelle Verwirklichung seiner spezifisch menschlichen Möglichkeiten einschließt.<sup>9</sup> Nun, dies könnte ein erster Ansatz sein: In den Bildungseinrichtungen muss neben Wissensvermittlung auch die wirkliche Bildung stattfinden, die dem Menschen erst sein Menschsein im vollen Sinne verwirklichen lässt. Dazu gehört jedoch die Forderung, dass alle – vor allem alle Kinder – Zugang haben zu den entsprechenden Bildungsmöglichkeiten.<sup>10</sup> Das muss politisch eingeklagt und durchgesetzt werden.<sup>11</sup> Hinzu kommt, dass das, was z.B. über die Schulbücher

<sup>8</sup> Päpstlicher Rat, Kompendium, 2006, Kap 11, Nr. 495, 352.

<sup>9</sup> Vgl. Aristoteles: Nikomachische Ethik II, 1, 1103af.

<sup>10</sup> Johannes Paul II. hat die fehlenden Bildungsmöglichkeiten bei seinem Besuch im Hl. Land 2000 besonders in Bezug auf die palästinensischen Flüchtlinge verurteilt: „Euch werden viele Dinge vorenthalten, die eigentlich grundlegende Bedürfnisse des Menschen sind: angemessene Unterkunft, Gesundheitsfürsorge, Ausbildung und Arbeit.“ Grußworte von Johannes Paul II. bei seinem Besuch im Flüchtlingslager von Dheisheh auf den palästinensischen Autonomiegebieten, Mittwoch, 22. März 2000, in: Jubiläumspilgerreise zu den Heiligen Stätten Predigten und Ansprachen von Papst Johannes Paul II. bei der Feier zum Gedenken an Abraham und bei seinen Pilgerfahrten zum Berg Sinai in Ägypten und ins Heilige Land im Jubiläumsjahr 2000, Bonn 2000, 44. (VApS 145)

<sup>11</sup> Ein besonderer Einsatz ist zudem auch ‚auf der ... pädagogischen Ebene‘ erforderlich, um die Probleme, die in manchen dramatischen Situationen dem Terrorismus Nahrung geben können, mit Mut und Entschlossenheit zu lösen“. Päpstlicher Rat, Kompendium, 2006, Kap 11, Nr. 514, S. 365.

vermittelt wird, einem Standard menschlichen Wissens entsprechen müsste, der möglichst universale Geltung beanspruchen kann.<sup>12</sup>

Diese Form der umfassenden Bildung – man könnte auch von Herzensbildung sprechen als einem Ziel von Bildung und Ausbildung – ist sicher kein Rezept zur Soforthheilung von Konflikten; es wirkt sich jedoch sicher effektiver und auch nachhaltiger in den Strukturen und in der Kultur eines Landes aus als Ansätze, die ausschließlich kurzfristige politische Lösungen anstreben, die natürlich auch ihren Wert haben. – Das lässt sich am gerade erreichten Waffenstillstand im Libanon nur zu gut beobachten.

## 2. Begegnung

Der zweite Begriff, der für eine langfristige Befriedung einer Region, wie wir sie beispielsweise im Nahen Osten haben, von großer Bedeutung ist, ist „Begegnung“. Zunächst erscheint das möglicherweise banal. Dennoch birgt die Begegnung als Prinzip weitreichende Möglichkeiten.<sup>13</sup> Ich möchte hierzu ein Beispiel anführen. Im vergangenen Jahr besuchte ich mit einer Gruppe (meine Mutter und ich organisieren seit Jahren Friedens-Pilgerreisen ins Heilige Land: Israel und Palästina) das bekannte und bereits mit Preisen bedachte Friedensdorf Wahat al Salam/Neve Shalom.<sup>14</sup> Bekanntermaßen leben dort Juden, Christen und Muslime gemeinsam in einem Dorf, die Kinder spielen zusammen, gehen in den gleichen Kindergarten und – das scheint von besonderer Bedeutung zu sein-, lernen beide Sprachen: Hebräisch und Arabisch. Es wird zusammen gelebt und gearbeitet.<sup>15</sup> Es handelt sich hierbei nicht nur um ein Vorzeigeeobjekt, vielmehr ist dieses Friedensdorf eine wirkliche Friedensinitiative. Die Tatsache, dass sich dort die verschiedenen Religionen und damit auch die verschiedenen Kulturen treffen und sich die Menschen, die sie repräsentieren, begegnen, schafft eine erlebbare Atmosphäre des Friedens, die von echter gegenseitiger Annahme geprägt ist.

Das liegt wohl daran, dass für einen Juden, der einen Araber dort im Alltag erlebt, der möglicherweise die gleichen Probleme hat, wie er selbst, nicht mehr nur Vertreter einer anderen Volks-Gruppe ist, sondern ein Jemand, der einen Namen und eine Familie hat.

<sup>12</sup> So auch bei: Meyer, Rainer: Ein Friedensprozeß ohne Versöhnung. Der Israelisch-palästinensische Konflikt und die Osloer Verhandlungen als Beispiel für die Probleme des Konfliktmanagements, Frankfurt a.M. 2004, 179.

<sup>13</sup> Es ist sicherlich auch vertretbar, gerade den umgekehrten Ansatz einer Separation der Konfliktparteien für eine längere Zeit zu vertreten, um das jeweils neue Aufleben des Konfliktes zu unterbinden und so erst langfristig eine gewaltlose Koexistenz zu erreichen. Vgl. Meyer, Berthold: Frieden – eine Fata Morgana. Lässt sich der Teufelskreis der Gewalt im Nahen Osten noch durchbrechen? In: HSFK Sandpunkte. Beiträge zum demokratischen Frieden 2/2006, 1-12, 11.

<sup>14</sup> Das Friedensdorf Neve Shalom/Wahat al-Salam, the „Oasis of Peace“, „is a cooperative village of Jews and Palestinian Arabs of Israeli citizenship. The village is situated equidistant from Jerusalem and Tel Aviv-Jaffa“. Das Zusammenleben von Palästinensern und Juden steht nach eigenem Bekunden unter dem Motto, das dem Buch Jesaja entnommen ist: „Mein Volk wird an einer Stätte des Friedens wohnen“. Jes 32,18. Vgl. im Internet unter: <http://nswas.org/rubrique22.html>. Neve Shalom/Wahat al-Salam wurde von der Deutsch-Israelischen Gesellschaft e.V. (DIG) mit dem seit 2001 alle zwei Jahre verliehenen „DIG-Friedenspreis“ ausgezeichnet.

<sup>15</sup> „Als Beitrag zu einem friedlichen Miteinander zwischen beiden Bevölkerungsgruppen innerhalb und außerhalb Israels verstehen sich unter anderem Leben und Arbeit von ‚Neve Shalom/Wahat as-Salam‘ ... Diese Art von Zusammenarbeit stellt ein neues Charakteristikum des zivilen Widerstands in Israel dar.“ Schneider, Friedensinitiativen und Friedenspotentiale in Israel/Palästina, 2006, 708.

Die empfundene Bedrohung durch den, der anders ist, schwindet, wenn der jeweils andere ein Gesicht hat, wenn er der konkrete Andere, der Nachbar oder der Arbeitskollege ist. Diese Orte der Begegnung entstehen jedoch in einer Gesellschaft, die durch ethnische und religiöse Unterschiede geprägt ist, nicht von allein. Sie müssen zunächst geschaffen, politisch und finanziell gefördert und schließlich auf Dauer abgesichert werden. Nur solche Personen und Organisationen können Orte der Begegnung schaffen, die sich nicht mit einer der Konfliktparteien identifizieren, sondern sich sozusagen „zwischen den Stühlen“ befinden.<sup>16</sup> Nur so können sie glaubwürdige Vermittler und Helfer im Prozess des Friedens sein. So wird Begegnung zum entscheidenden Ansatz, der jedoch noch Weiteres verlangt, das zu Bildung und Begegnung hinzukommen muss: Annahme und Wertschätzung des anderen als Person.

### 3.: Wertschätzung der Person als Ausdruck der Achtung der gemeinsamen Menschenwürde

Das scheint eine besonders schwierig zu verwirklichende Größe in diesem Konzept zu sein. Natürlicherweise richtet sich die Wertschätzung auf diejenigen, die zu dem gehören, was der Mensch als das Seinige empfindet: seine Familie, seine Verwandtschaft, seine Stadt oder Gegend, seine Nationalität. Das, was Menschen gemeinsam haben, schätzen sie meistens auch aneinander. Diese Wertschätzung ist zunächst eine als emotional empfundene vorhanden, die sich an bestimmten Maßstäben und Erfahrungen entlang gebildet hat.

Es besteht nun offensichtlich die Notwendigkeit, diese Wertschätzung auch demjenigen zuteil werden zu lassen, der nicht dem zugehört, was ich unmittelbar als das Meine empfinde. Das bedeutet, dass eine grundlegende, allgemein gehaltene Toleranzbereitschaft noch einmal durch spezifische Inhalte ergänzt wird.<sup>17</sup> Und diese Inhalte bietet uns die Auffassung vom Menschen als Person, der unhintergehbare Rechte allein dadurch besitzt, dass er Mensch ist.<sup>18</sup> Im jüdisch-christlichen Bereich spielt der Begriff der Person dabei ebenso eine entscheidende Rolle wie die Anerkennung des Anderen als eines Du. Dabei ist der Andere mir vorgegeben und fordert einfach dadurch, dass er Person ist, Rechte für sich

<sup>16</sup> Vgl. dazu: Westerhorstmann, Katharina: Shalom – Frieden – Salam, in: DerDOM Nr. 22 vom 29. Mai 2005, 11. „Ein substantieller Beitrag von Zivilgesellschaft und Kirchen in Deutschland zu einer friedensfähigen Veränderung der Konfrontationssituation im Nahen Osten würde vor allem darin bestehen, ihre Solidaritätsverpflichtungen nicht in de facto einseitiger Parteinahme zu definieren. Gegenüber ihren Partnern, in den Autonomiegebieten wie in Israel selbst, könnten sie sich womöglich mehr als andere Akteure für eine Förderung des gegenseitigen Verständnisses, für eine Erschließung der Perspektive der jeweils Anderen, engagieren und Projekte vor Ort mit entsprechender Ausrichtung unterstützen.“ Hoppe, Wie die Gewalt überwinden, 2006, 637.

<sup>17</sup> „Friedenspolitik kann ... nur erfolgreich betrieben werden, sofern sie Möglichkeiten dazu eröffnet, Empathie für die Sichtweisen der jeweils Anderen zu entwickeln und Lösungen auszuarbeiten, die auf real wirksame Sorgen und Ängste vor künftigen Eskalationsgefahren Antworten geben, die beiden Seiten überzeugend erscheinen.“ Hoppe, Wie Gewalt überwinden?, 2005, 633.

<sup>18</sup> „Ein junger arabischer Musiker sagte: »1999 war ich hier [im israelisch-palästinensischen West-Eastern-Divian-Orchester] der Jüngste und noch ziemlich naiv. Israelis waren für mich noch nicht einmal Menschen. So habe ich das als kleiner Junge gesehen: Mit denen befasst man sich nicht, die müssen ausgeschlossen werden. ... Und hier traf ich Leute, die dieselben Interessen hatten wie ich und ein relativ ähnliches Leben führten. Das veränderte meine Vorstellung davon, was einen Menschen ausmacht.«“ Wolfram, Gernot: Offen für den anderen. Ein Rückgriff auf die kulturellen Wurzeln des Zionismus kann zur Versöhnung beitragen, in: zeitzeichen 7 (2006), 58-60, 60.

ein, die aus seiner Würde als Mensch unmittelbar hervorgehen. Wenn der andere Geschöpf Gottes ist, wie es alle drei der monotheistischen Religionen bekennen, ist – auch über die Grenzen einer philosophischen Grundüberzeugung hinaus-, Verständigung möglich und die gegenseitige Annahme und Wertschätzung ist hier bereits gefordert, damit der Mensch dem anderen das gleiche Seins- und Lebensrecht zubilligt, wie er es für sich beansprucht.

#### 4. Gebet

Das Kompendium der Soziallehre der Kirche, das in diesem Jahr in deutscher Sprache erschienen ist, zeigt im Einsatz der Kirche für den Frieden, der „ein wesentlicher Bestandteil [ihrer] Sendung“<sup>19</sup> ist, mehrere Wege auf. Zum einen betont der Text das notwendige Eintreten für Versöhnung und Vergebung, das jedoch gleichzeitig die Forderungen der Gerechtigkeit nicht aufheben darf.<sup>20</sup> Ebenso „kämpft die Kirche“, so heißt es dort, „mit dem Gebet für den Frieden“. Denn, und das scheint an dieser Stelle zentral zu sein, das Gebet eröffnet nicht nur die Perspektive auf den göttlichen Beistand, sondern gleichzeitig „öffnet“ das Gebet „das Herz ... auch für die Begegnung mit dem Nächsten im Zeichen von Respekt, Vertrauen, Verständnis, Wertschätzung und Liebe.“<sup>21</sup> Dadurch also, dass sich der Mensch aus den Grenzen seines Daseins erhebt und sich die Beziehung zu Gott, seinem Schöpfer vergegenwärtigt, wird der Mensch selbst verändert und wird, so kann man sagen, zum „Werkzeug des Friedens“. Diese innere Umgestaltung bewirkt zugleich die Öffnung des Betenden für die Versöhnung, die er seinerseits als Mensch wiederum von Gott empfängt. Die Fähigkeit zur Versöhnung befreit von der unmittelbaren Re-Aktion des Hasses und der Vergeltung, und der Mensch wird fähig, selbst nach gravierendem ertragenen Leid, Vergebung und Verzeihung zu gewähren. Dazu heißt es weiter im Kompendium: „Menschen, die von der Liebe Gottes neu geschaffen wurden, sind in der Lage, die Regeln und die Qualität der Beziehungen und sogar die gesellschaftlichen Strukturen zu verändern: es sind Personen, die Frieden bringen können, wo Konflikte bestehen, die brüderliche Bindungen schaffen und aufrechterhalten können, wo Hass herrscht, die die Gerechtigkeit suchen, wo die Ausbeutung des Menschen durch den Menschen überwiegt.“<sup>22</sup>

Es lassen sich somit Wege aufzeigen, in denen die Religion nicht nur als Inhalt und Gegenstand des Konflikts und der Konfrontation fungiert, sondern der Glauben als positiv verändernde Kraft im Prozess des Friedens eingesetzt werden kann.<sup>23</sup>

<sup>19</sup> Päpstlicher Rat, Kompendium, 2006, Kap 11, Nr. 516, S. 366.

<sup>20</sup> Vgl. Päpstlicher Rat, Kompendium, Kap 11, Nr. 518, S. 367. „Die Suche nach »reconciliation« ist ein angemessener Weg, um die unterschiedliche Wahrnehmung von Gerechtigkeit zu berücksichtigen. Dazu bedarf es der gegenseitigen Wahrnehmung und des Dialogs ... Die unterschiedlichen Identitäten müssen bedacht werden und die Fähigkeit zu Selbstkritik als auch zur Selbsttransformation existieren.“ Meyer, Ein Friedensprozeß ohne Versöhnung, 2004, 179.

<sup>21</sup> Päpstlicher Rat, Kompendium, Kap 11, Nr. 519, S. 368.

<sup>22</sup> Päpstlicher Rat, Kompendium, Einleitung, Nr. 4, S. 28.

<sup>23</sup> „Die religiösen Unterschiede können und dürfen keine Konfliktursache sein: Das gemeinsame Friedensstreben aller Gläubigen ist im Gegenteil ein starker Faktor der Einheit zwischen den Völkern.“ Kompendium Kap 11, Nr. 516, S. 367. Johannes Paul II. betont, dass die gemeinsamen Wurzeln „eine dringende Aufforderung zum Dialog unter den Anhängern der großen monotheistischen Religionen in ihrem

Wenn Immanuel Kant in seiner 1795 veröffentlichten Schrift vom „ewigen Frieden“ spricht, so ist das ein ironischer oder satirisch gemeinter Begriff, wie er selbst gleich zu Beginn seiner Ausführungen anmerkt.<sup>24</sup> Und nicht „Frieden“ ist nach Kant der Urzustand des menschlichen Miteinanders, auch nicht der realistische Jetzt- oder Überhaupt-Zustand, sondern der Krieg.<sup>25</sup> Wahrer Frieden, so Kant, sei nicht nur die Abwesenheit von Krieg und gewaltsamen Handlungen im innerstaatlichen Bereich, sondern ein friedvolles Miteinander, in dem keine „geheimen Vorbehalte“ den Willen zum Frieden untergraben.<sup>26</sup> Es gehe um einen Frieden, der von innerer Redlichkeit der Konfliktparteien abgedeckt ist und nicht nur eine Übergangszeit beschreibt, in der neue Waffen gegeneinander geschmiedet und Pläne zu Bekämpfung des anderen wiederum im Verborgenen erarbeitet würden.

Diesen wirklichen Frieden, der seinen Namen verdiente, gibt es nach Kant unter den Menschen lediglich als ein Übereinkommen. Als Zustand, der die Menschen miteinander verbindet, kann er nicht verwirklicht werden wegen der „Bösartigkeit der menschlichen Natur“<sup>27</sup>. Kants Vorstellung vom Frieden beruht nicht auf der dauerhaften inneren Versöhnung und Verständigung unter den Menschen verschiedener Herkunft, Volksgruppe und Religion, sondern auf der Vereinbarung der Völker, wechselseitig Recht und Territorium zu respektieren. Eine innere Veränderung erscheint dafür nicht zwingend notwendig. Eine Vorstellung der Aufgabe des Peacemaking nach Kant heißt dann, dass Staaten untereinander vereinbaren, dem Wunsch nach Erweiterung des eigenen Territoriums sowie der Neigung zum Krieg nicht zu folgen, sondern sich einem gemeinsamen Völkerrecht unterzuordnen, das das Miteinander der Staaten regelt. Wenn sich möglichst alle Staaten daran halten, könnte daraus ein völkerrechtlicher Friedenszustand erreicht werden, der zwar noch manche Ursachen von Konflikten unberührt lässt, jedoch Frieden-bewahrend wirken könnte.

Ein solch allgemeines Völkerrecht ist inzwischen in weiterem Sinne Wirklichkeit geworden, sodass sich die UNO beispielsweise mit Hilfe von Resolutionen in den Fällen zu Wort meldet, wenn der Frieden bedroht oder Kampfhandlungen bereits begonnen haben. Die reine Selbstbindung der Staaten scheint ein probates Mittel zur Friedenssicherung, solange keine komplizierteren Konflikte entstehen und die Erfahrungen von Leid und Unterdrückung bereits vor und während des Krieges das *staatliche* Nebeneinander bzw. die friedliche Koexistenz der Völker in einem Staat nicht gänzlich verunmöglicht haben.

Dienst an der Menschheitsfamilie mit sich“ bringen. Johannes Paul II.: Wortgottesdienst am Katharinenkloster auf dem Berg Sinai, 26. Februar 2000, Nr. 3,3; Jubiläumspilgerreise, VApS 145, 23. Für einen Geist der Umkehr des Herzens in allen christlichen Konfessionen plädiert P. Paul Rouhana, um, entgegen dem ausgeprägten Konfessionalismus, das gemeinsame christliche Zeugnis im Nahen Osten zu stärken. Vgl. Rouhana, Paul: „Geistlicher Ökumenismus“ im Dienst der christlichen Präsenz im Nahen Osten, in: ÖR 54 (2005) 314-327.

<sup>24</sup> Kant, Immanuel: Zum ewigen Frieden. Ein philosophischer Entwurf (1795), in: Ders.: Schriften zur Anthropologie, Geschichtsphilosophie, Politik und Pädagogik, Immanuel Kant, Werke in sechs Bänden, Bd. VI, Wiesbaden 2005, 194-259, B 3.

<sup>25</sup> Kant, Zum ewigen Frieden, B 57f.

<sup>26</sup> Vgl. Kant, Zum ewigen Frieden, B 5.

<sup>27</sup> Kant, Zum ewigen Frieden, B 33. „Der Friede ist bloß eine regulative Idee. Man kommt ihm näher, wenn man handelt, als wäre er möglich.“ Safranski, Rüdiger: Das Böse oder Das Drama der Freiheit, Frankfurt 2004, 141.

Im letzteren Fall müsste tiefer angesetzt werden, damit der Frieden nachhaltig sein und auch die Menschen verändern kann. Die Entwicklungsfähigkeit des Menschen sowie die Möglichkeit von Entscheidungen zur Versöhnung und zum schlechthin Guten vorausgesetzt, können Bildung, Begegnung, Wertschätzung und das Gebet ein Weg des Friedens sein, auf dem die Christen ihren Teil wirkungsvoll einbringen können.

*Jan Jans:*

*Information Technology and Responsibility. 'Dealing with Virtual Janus'*

Janus: 1° ancient Italian/Roman deity, guardian of doorways, gates and beginnings (and protector of the state in time of war), usually represented with two faces, one at the front and one at the back of his head so that he looks both forwards and backwards; 2° someone/something with two faces (ambiguous, double-faced, insincere).

Introduction: (In Search of) A Space Between White or Black

To mention the words internet and ethics in one and the same sentence – cf. neologisms such as 'internethics' and 'nethics'<sup>1</sup> – might spark some reactions of surprise. For, although it is understandable that ethicists have to make a living too, and that therefore they try to be present in the various new areas of applied science such as medicine or high tech weapon systems, the question might surface if their interference with the use of computers isn't really superfluous. Haven't we been assured by the experts in the field that next to some easy to solve technological problems (faster processors, bigger hard disks, more network bandwidth, etc.) a 'new age' dawns in which unlimited information and communication will be within the reach of whoever logs on to the World Wide Web? From my perspective – being a catholic Christian theologian reflecting on ethical issues in the context of the Judeo-Christian traditions – I am struck by this kind of optimism that sounds as if a new Gospel is revealed and has to be preached:<sup>2</sup> when in former times it was stated that there was no salvation possible except for those who believe in the name of Jesus the Christ (cf. Acts of the Apostles 3-4: in nomine Iesu Christi),<sup>3</sup> now these initials *I & C* stand for *Information and Communication* – a Holy Grail no longer reserved for some happy few but within the reach of everybody thanks to the ever unfolding miracles of *Technology*. During a conference in November 1998 at Tilburg University (then still named Katholieke Universiteit Brabant) one of the techno-prophets ended his PowerPoint-supported lecture From global village to global mind with the confident statement: "*ICT* leads us to a whole new type of global responsibility".<sup>4</sup>

<sup>1</sup> Cf. the series Internet-Ethik edited by Anton Kolb and published by LIT-Verlag and Eric Borgman, Stephan van Erp, Hille Haker (eds.), Cyberspace - Cyberethics - Cybertheology, = Concilium 2005/1.

<sup>2</sup> One might remember Guy Kawasaki, who – no pun intended – described himself proudly to be the 'evangelist' of the Apple MacIntosh, a personal computer that was launched by a (in)famous ad during the Super Bowl of January 22, 1984, as a technological breakthrough 'liberating' humankind from an obsolete blue slavery (<http://www.apple-history.com/movies/1984.mov>). For a brief analysis and some suggestions, cf. Jan Jans, E-vangelization. A theological reflection on the relation between the internet and Christian Faith, in: Bulletin ET 13 (2002) pp. 59-65; republished in St Augustine Papers [St Augustine College of South Africa] 2 (2001/1) pp. 25-32.

<sup>3</sup> Cf. Jan Jans, Nulla salus extra ICT?, in: Tijdschrift voor Geestelijk Leven 54 (1998/6) pp. 653-663.

<sup>4</sup> [Cf. [http://www.kub.nl/toekomstbeelden/index-en.htm#27\\_november/b](http://www.kub.nl/toekomstbeelden/index-en.htm#27_november/b)] Currently, this page is not available due to storage and backup policies.

To be sure, the opposite assessment can be as outspoken: instead of picturing a (near) future of innovation equated with progress, these critics of technology in general turn into real doomsayers with regard to ICT by outlining features such as the disorienting information-overload, the anonymity of e-communication, the new social gap between the 'cyber-nauts' and the 'digital illiterates', the disappearance of time and space into the realm of the virtual, and the manipulation by the omni-present urge to 'upgrade' next to all other kinds of ICT-driven advertisements. As a result, the World Wide Web should according to them be properly described as the World Wild Web or even as the Wild West Web: anything goes and 'time and space' for reflection on the dis/values at stake - this means: ethics - becomes a disposable luxury. To be sure, such criticism may sound (a bit) over the hill, but the fear that ICT is or turns into another slippery slope because of lack of attention for detrimental (side-)effects, is certainly also fuelled by the - literally - marginal room assigned by the techno-prophets to some distance and ethical reflection.

Returning to the opening remarks about the peculiarity of internethics, I would like to suggest that such contrary interpretations are the sign that the 'presence' of ethics is really not being imposed from the outside, but that it is due to a characteristic feature of any of our human activities. For, isn't it time and again our experience that 'white' nor 'black' are appropriate valuations of our acts, but that instead we find ourselves mostly in multi-shaded grey - or multi-coloured - areas which puzzle us and invite us to the question how to deal with them?<sup>5</sup> Therefore, I would defend the thesis that as long as we concentrate on outspoken positive or negative valuations, the practical ethical question remains marginalized and hardly stands any chance of entering onto the scene. The reason seems to be that 'centre-stage' is already under the command of technology over against which ethics and ethicists appear to be a challenge in rejecting their 'being-in-the-margin' by claiming centre-stage instead. However, to put the alternative to the technological imperative in such terms and promote an 'ethical take-over', grants too much of the spotlights to technology and thereby obscures what - from the ethical perspective - should really be the alpha and omega of any kind of technology assessment: human persons and their acts. By this approach, which contains the refusal of 'taking side', mixed feelings and the experience of confusion is granted room whereby the real and practical ambiguity of technological change can be addressed for what it is: an upsetting mixture of 'benefits & problems' challenging us to deal with them.<sup>6</sup>

<sup>5</sup> Some examples include Gordon Graham, *The Internet: A Philosophical Inquiry*, London: Routledge, 1999; Board for Social Responsibility of the Church of England, *Cyber-nauts Awake! Ethical and Spiritual Implications of Computers, Information Technology and the Internet*, London: Church House Publishing, 1999; Roger J. Busch, *Schöne neue Digitale Welt? Mensch, Computer und Informationsgesellschaft [Mensch-Natur-Technik: Beiträge aus christlicher Perspektive, Band 9]*, Hannover: LVH, 1999; David Pullinger, *Information Technology and Cyberspace. Extra-connected Living*, London: Darton, Longman, Todd, 2001.

<sup>6</sup> Cf. the lecture of Manuel Castells, author of the impressive three-part study *The Information Age: Economy, Society and Culture*, Blackwell: Cambridge, 1996-1998, and *The Internet Galaxy. Reflections on the Internet, Business and Society*, Oxford: Oxford University Press, 2001 at the already mentioned congress in Tilburg: "Internet has become a medium where all kinds of things happen. On the one hand, I have contact with my daughter through e-mail; on the other hand there are also evil things to see such as child-pornography. Internet, that is us; and we are not always nice human beings" [Dutch original at: <http://www.kub.nl/festival/infoage/verslag.htm#castells> - Currently, this page is not available due to storage and backup policies].

In this paper I will now discuss three such 'grey areas' that could be stumbling blocks for us in our dealing with virtual Janus. The first of these is the differentiation between data and information and the second a parallel differentiation between contact and communication. In the third, I will tackle the problematic of 'access' and advance some thesis by commenting on the various stages of the "Action Plan on promoting safer use of the Internet", an initiative of the European Commission since 1999.

#### Data & Information

Among the buzzwords used to characterize our late-modernity,<sup>7</sup> an important place is occupied by terms such as 'information society' or 'knowledge society'.<sup>8</sup> I will not discuss here the correctness of such designations, but only draw attention to the fact that to the extent these terms are appropriate, their very *conditio sine qua non* consists in the technology of the new electronic media. When in 1986 I had to look up articles published in medical journals on the ethics of human tissue transplantation, it took a specialised librarian and an expensive mainframe link to the database of MedLine in Cologne (Germany) in order to get at a couple of appropriate references. Today, the internet is not only making a search like that a real possibility for all who are on-line, but at the same time one can hardly imagine a subject that is not dealt with on the internet. The point I want to make here, however, is not about the ever-increasing amount of data that is available - an amount that can be managed to an increasing degree by sophisticated search-engines (again with their side-effects in the realm of data-mining and privacy<sup>9</sup>). My point concerns the crucial difference between data and information, between knowledge and insight. I would like to recall that the 'wonders' of the so-called information technology are really but a medium - a means - for retrieving data to a degree never seen before, but as means they do not dispense from the crucial processing - a verb, and therefore requiring a human subject to 'do the job' - of data in order to reach knowledge or insight. No matter what the amount of data is, it still takes a human mind to do the interpretation that results in what we want: information.<sup>10</sup> Let me illustrate this point with a recent example. Just a couple of weeks ago (August 7, 2005), the Vatican decreed that at the occasion of the 20<sup>th</sup> World Youth Day in Cologne, it was possible to obtain a so-called 'plenary indulgence' if some conditions were met. Being asked about this by a Dutch journalist, it quickly became clear that she had been reading the same data as I had, but that she could not turn them into a sensible article for her newspaper, because she had no idea what these 'usual conditions' mentioned stood for: "Sacramental Confession, Eucharistic Communion and prayers for the Supreme Pontiff's intentions". It would not have helped her to feed her more data,

<sup>7</sup> A profound analysis of the connections between the contemporary postmodern situation and normative ethics in the realm of communication is giving by Walter Lesch, *Media Ethics As a Cultural Diagnosis of the Times*, in Bart Pattyn (ed.), *Media Ethics. Opening Social Dialogue* [European Ethics Network Core Materials for the Development of Courses in Professional Ethics], Leuven: Peeters, 2000, pp. 179-197.

<sup>8</sup> Cf. Paul Levinson, *Digital McLuhan: a guide to the information millennium*, London and New York: Routledge, 2001.

<sup>9</sup> Cf. Bart Custers, *Data Mining and Group Profiling on the Internet*, in: Anton Vedder (ed.), *Ethics and the Internet*, Antwerpen-Groningen-Oxford: Intersentia, 2001, pp. 87-104.

<sup>10</sup> Cf. the interesting 'old' study of Theodore Roszak, *The Cult of Information. The Folklore of Computers and the True Art of Thinking*, New York: Pantheon Books, 1986.

such as the background texts issued by the Apostolic Penitentiary, readily available at the Vatican website. You can be as good an internaut as the next best whiz kid and be able to surf to whatever relevant data, you still need a framework that provides the 'ordering' that characterizes the transition towards information and knowledge.<sup>11</sup> Furthermore, one should not lose sight of the fact that the real understanding of most information requires to some degree an involvement with that information. To simply 'have information at one's disposal' without some involvement in its retrieval and/or processing does hardly lead to insight (as everybody from experience knows the difference between photocopying notes from a missed class or a lecture at a conference over against handwriting a copy). By the way: the - literally - very informative conversation with the journalist mentioned above ended with her decision not to write the article and to look into the possibilities of studying some theology! Of course, this observation about the 'distance' between data and information applies to whatever means of receiving data, spanning the range from pictograms over spoken words to the computer screen. My second observation therefore deals specifically with this last type of 'inter-face'. It seems to me that we have to be aware that the technology-driven presentation of data - in their full diversity of text, image and sound offered by multi-media - carries with it or induces some kind of proper credibility. Because data are coming to us by means of the superhighway of information technology, these data radiate an assumption of quality.<sup>12</sup> A classical example I like to refer to is the case of a student who was really proud of some background material that he had found in the internet-edition of *The Catholic Encyclopaedia*.<sup>13</sup> He was so impressed by this that he neglected the rather strange content of the positions he defended 'with the screen in his hand'. The technological means concealed to him what might not have happened with the same text in its original medium, the printed page: the material was dated 1913 and although this was not really hidden by the internet version, the user stayed unaware of this because he simply assumed that material on the internet is always up to date. My conclusion from this would be that we should realize ourselves that not only the transition from (lots of) data towards information cannot be automated, but also that the medium by the very technicality of its 'look-and-feel' - its own kind of 'ritual' [or: *ex opere operante*] - can obscure the quality of the data used. The internet therefore knows its own incarnation of the mixing up of medium and message and I think that we can learn a lot here from the way we came to terms with this distortion through television by the so-called media literacy.<sup>14</sup>

However, the direct access to an ever-growing amount of data and the so-called 'information-explosion' also shows another side. The practical material conditions structuring classical media like for example printed newspapers and television carry with them some

<sup>11</sup> An example that illustrates this to a degree never seen before, is the seemingly incomprehensible amount of data resulting from the human genome project, in which the people who are trying to 'patent' genetic sequences admit that they really 'don't know' what they have at their disposal.

<sup>12</sup> This is also the context for a fundamental problem with regard to the reliability of the content of the information as explained by Anton Vedder, *Misinformation Through the Internet: Epistemology and Ethics*, in: Anton Vedder (ed.), *Ethics and the Internet*, pp. 125-132.

<sup>13</sup> <http://www.knight.org/advent/cathen/>

<sup>14</sup> An example can be assessed at <http://justthink.org/newindex.asp>; see also: <http://interact.uoregon.edu/MediaLit/HomePage#childmedia> and <http://www.aber.ac.uk/~dgc/mcs.html>

inherent limitations. Of course, their presentation of data always includes selections and summaries and to the degree one puts trust into the journalist and/or the redaction, the already described transition from data to information is prepared and pre-formed. But, if I am not overly optimistic, IT is opening up here a whole field of possibilities for both precision and deepening. Let me again illustrate this with some examples. In the year 2000, the Flemish-Dutch journal *Tijdschrift voor Geestelijk Leven* (Journal for Spiritual Life) published a very readable and accessible book review of Manuel Castell's three volume massive masterpiece *The Information Age: Economy, Society and Culture*. At the same time, the website of this journal offered the possibility to download the more extended and annotated version of this review, including the occasion to react and enter into discussion with the author or with other readers.<sup>15</sup> To me, this is a perfect example of surplus value in which the new media are not only not a substitute but also an extension. A second example illustrates the capabilities of 'follow up' on issues. In what is now called the "European Constitutional Treaty", the issue of an *Invocatio Dei* and the precise way 'Christianity' should be mentioned in the texts, has given rise to serious debate and a broad variety of positions. Both through the official documentation provided at the website of the European Convention (and later the Inter Governmental Conference) and some particular initiatives - such as the campaign to collect a million signatures supporting the explicit reference to Christianity - one can really follow the winding roads travelled up to the present day.<sup>16</sup> These few examples lead me to what I consider to be one of the most intriguing features of information technology. It is exactly on the basis of its own technical singularity that IT really is an 'open network'. I think this point was very well made by a person with the experience of its importance, the contested French bishop mgr. Jacques Gaillot: "The central notion in the modern world is network, communication in networks. There, one can find a suppleness that opens up well-known forms. Those networks are also international and that is also necessary in the contemporary times. One can also define the church as a network. The diocese of Partenia is itself present on the internet and from there I learned that the connections are horizontal, that there is no centre. In this way, a church is growing beyond the borders of parishes and dioceses and this will only continue".<sup>17</sup> In a subsequent conversation that I had with him, Gaillot was also very much aware of the risks of such open networks without any central control, but these should not lead us to ignore the multiple possibilities and chances that go hand in hand with the open structure of the network. In fact, it is this very technology that brings us beyond the assessment of 'information' because it also allows establishing contact.

#### Contact & Communication

My most important observation with regard to the C of ICT runs parallel to what I did in the former part: through its various applications, the internet is really a medium to

<sup>15</sup> Cf. <http://www.tgl.be>

<sup>16</sup> <http://www.ibeurope.com/Records/8000/8012.htm>

<sup>17</sup> Bishop Jacques Gaillot, former bishop of Evreux in France and now bishop of the multi-lingual virtual diocese of Partenia (<http://www.partenia.org/>) at the meeting of the Dutch Acht-Mei-Beweging on May 3, 1997 [(cf. <http://www.acht-mei.nl/>)].

establish and maintain contacts on a global scale, but this should not bring us to loose sight of the difference between contact and communication. My point is certainly not to play down applications like e-mail, IRC (internet relay chat), ICQ (I seek you) and MSN (Microsoft Messenger) that function quite well because the very technology that allows me to become a 'user' of the electronic highway also offers me the possibility of becoming an interactive 'participant'. My point here would be to pay attention to the content of such participation/interaction and to critically examine the 'virtual communities' that are euphorically supposed to be liberated from the restraints of time and space and therefore really appropriate for cyber/wo/men.<sup>18</sup> A first element of this critical examination is the awareness of ICT's one-dimensionality, an awareness that is quite present in cyberspace itself and that drives the development of - precisely - multi-media. However, if one compares whatever interactive combination of text, image and sound transmitted at a speed that suggests its im-media-cy with communication in which all of our human sense organs play a part, the difference is as immediately clear. One could compare the experience of a live video conference with a working lunch: the attractiveness of the first in terms of efficiency is hard to measure up against those elements present in the other that make up for the 'chemistry' of communication and it seems to me that exactly this leads many participants of virtual communities to arrange for 'real' meetings.

The second element of this critical examination is related to the first but runs in part counter to it and deals with the paradoxes of virtual identity.<sup>19</sup> In general, our human self-consciousness comprises the question of identity: who am I? In the context of education in the widest sense, media of all kinds - comic strips, newspapers, novels, etc... - contribute to the material that human beings are exposed to and adopt in this process of identity formation. Now, to a degree, we are well aware of the difference between the identity of persons and their so-called image. In some cases, this is explicitly so as for example in commercial or political image-building. However, ICT seems to open up for every user/participant these possibilities of image-construction because the very interface that allows to establish the connection also allows every partner in the conversation to build an identity and through this image engage in on-line 'communication'. After all, to the degree that the 'inter-face' shields the participants of sensory information that might make the image of this on-line identity problematic, this very technology can lure its users to become creative in designing an image to one's likeness. The resulting communication becomes - again to a degree that for exactly the same reasons is impossible to pinpoint! - 'virtual'; a kind of play-acting in which the contributors might even go to great lengths exploring and discussing the most 'personal/intimate' themes. Of course, some of this simply belongs to the games we all play in our ever-ongoing development of identity, but I also discern here a more worrisome technological return of the age-old antagonistic dualism between body and mind. On-line contact allows to modify and adapt the factual characteristics of one's

<sup>18</sup> For a critical analysis, cf. Hubert L. Dreyfus, *On the Internet*, London/New York: Routledge, 2001, p. 92: "We may lament the risks endemic to an embodied world where we are embedded with objects and others in local situations, but the idea of living in boundless Cyberia, where everyone is telepresent to everyone and everything, makes no sense".

<sup>19</sup> Cf. Rob Shields, *The Virtual*, London/New York: Routledge, 2003; Jacob van Kokswijk, *Hum@n. Telecoms and Internet as Interface to Interreality*, [www.bergboek.nl](http://www.bergboek.nl), 2003.

body in function of the image chosen, and I have some suspicion that this kind of virtual communication runs parallel with the ideology of the feasible and functional body to be reached and maintained by techniques of 'fitness & diet'.

Let me conclude this section with an intuition on the connection between virtual bodies and identity. At the end of the nineties, the effort was made to 'launch' a virtual idol named Kyoko Date whose image of pop singer was supported by all kinds of details about her identity such as age, friends, hobbies and favourite dishes, including the colour of her eyes and her size of clothes - but without lasting success.<sup>20</sup> More interesting is what happens at the intersection of computer games and the internet, wherein characters that started as stereotyped caricatures develop through the input of all kinds of software plug-ins and the conversation about them engenders a kind of 'biography' not unlike that of characters in a novel. An obvious example is the game *Tomb Raider* featuring the heroine Lara Croft<sup>21</sup> for whom the internet not only turned out to be the medium through which she 'comes alive' - extending to look-a-likes in the real world - and grows up, but where the same medium that allows for this commercial success also turns out to be the means for spreading a feminist gender analysis of game and character.<sup>22</sup> The bottom line is: if you have access to the one, you also have access to the other.

#### Access: All or Nothing?

From the very moment that the internet became a kind of areopagus or 'public market/domain' and thereby a means of both downloading and uploading all kinds of digitised data, the very systemic openness and its concomitant lack of control has been the source of great joy and hope but also of grief and anxiety.<sup>23</sup> Some chant 'Freedom of Speech', others warn about 'Illegal and Harmful' material. As far as I can see, the obvious problem is not so much that indeed lots of illegal content (e.g. software, music files) or harmful content (e.g. pornography, hate speech) is being distributed and consumed, because cyberspace here just mimics the 'real world'. The obvious problem might be much more the fact that although the internet is only the carrier of what humans - and we are not always nice - use it for, this very carrier allows its users quasi-unrestricted access. In reaction to this, two main strategies are being proposed: to restrict uploading and to restrict downloading. The first might look feasible for data that are clearly illegal, but the problem with the world wide web is that legal standards - next to the technical difficulties that might be much more easily to overcome - applying on a global scale are rare.<sup>24</sup>

Therefore, the alternative gets most of the attention and aims at restricting access by some technical intervention. Of course, the most drastic of these consists in the electronic

<sup>20</sup> 'Her' homepage is not longer supported by 'her' company Digital Hollywood, but 'she' lives on in cyberspace supported by all kinds of 'fan clubs' (e.g. <http://kop.fact.co.uk/KOP/A2/work/bottle4.htm>)

<sup>21</sup> Although in this case a lot of available plug-ins and patches seem to exist for the purpose of undressing the heroine, it is also note worthily that many of the players involved advertise their sites as 'Guaranteed NudeRaider Free'.

<sup>22</sup> Cf. Anne-Marie Schleiner, Does Lara Croft Wear Fake Polygons at <http://switch.sjsu.edu/web/v4n1/annmarie.html>

<sup>23</sup> Cf. Pekka Himanen, *The Hacker Ethic and the Spirit of the Information Age*, London: Vintage, 2001.

<sup>24</sup> Cf. Huub Evers, *Internet journalistiek. Nieuwe ethische vragen?*, Amsterdam: Aksa nt, 2002.

variety of plain censorship, whereby the provider does not act as a gateway to the internet, but as a filter that allows access only to those sites screened and approved.<sup>25</sup> Less drastic and much more in line with the philosophy of 'free speech' and 'autonomous decisions by users' are the multiple software-based approaches, usually described as filtering and blocking devices.

A first type of these devices functions according to a list of key words: if one of these is present in the requested website, the software will prevent this page from being accessed by the user. However, these programmes - with prosaic names such as Cybersitter, Cyber Patrol, Net Nanny, Net Shepherd - go not undisputed because they seem to 'err on the safe side', preventing not only access to for example known pornography but also to a lot of educational and even religious material, including the Bible. To some extent, the manufacturers claim to overcome this by downloadable upgrades of their software.<sup>26</sup> The second type relies for its filtering on descriptions or 'labels' added by the publishers themselves to their sites, which allow the user to block pages that exceed a certain preset level. It is an interesting development demonstrating the concern of the makers of internet browsers and search-engines, that they now include in their programmes options like Adult Content Filter (Ask Jeeves), Family Filter (AltaVista), SafeSearch (Google; Yahoo), etc. The filters themselves are based on PICS, the (voluntary) Platform for Internet Content Selection;<sup>27</sup> the actual labels attached classify on a scale of 0 to 4 material on violence, nudity, sex and language (Internet Content Rating Association - ICRA)<sup>28</sup> or on a scale of 1 to 9 material on profanity, heterosexuality, homosexuality, nudity, violence, sex-violence-profanity, intolerance of another person's racial, religious or gender background, glorifying drug use, other adult themes, gambling (SafeSurf). Next to this 'negative' approach of preventing or limiting access - please note: after enabling, the default for any website without a rating is simply to be denied access - efforts are also made to guide surfers to appropriate material, although the follow up seems to be rather minimal.<sup>29</sup>

Finally, an interesting development aiming to combine these approaches is the initiative of the European Commission under the heading "Promoting best use, preventing misuse" in which ways are sought to make rating systems obligatory but which next to software filters also wants to promote 'safe portals'.<sup>30</sup> It is a critical scrutiny of this programme that will lead me in the final part to some fundamental comments on internethics.

<sup>25</sup> In the Netherlands, some teachers of the Dutch Reformed Church proposed such an approach in the fall of 1999 in case their schools would get connected to the internet. The criteria they suggested to focus upon included blasphemy, Sunday's rest, television and advertisements. In the beginning of 2000, the Dutch television station De Evangelische Omroep (The Evangelical Broadcasting Corporation) investigated to what degree their members would be willing to subscribe to this kind of restricted gate-way, followed by Filternet which is an ISP filtering content falling under the heading of pornography, discrimination and violence - adding that this does not apply to sites containing information about such topics. Cf. <http://www.eo.nl/portals/filternethome.jsp>

<sup>26</sup> Under the heading "Open Access for the Net Generation", the performance and especially the mistakes of these filtering devices are closely monitored by Peacefire, cf. <http://www.peacefire.org/>

<sup>27</sup> Cf. <http://www.w3.org/PICS/>

<sup>28</sup> Cf. <http://www.icra.org>

<sup>29</sup> Cf. <http://www.netparents.org/> More up-to-date seems to be <http://www.cyberangels.org/>

<sup>30</sup> Cf. [http://www.europa.eu.int/iap/index\\_en.htm](http://www.europa.eu.int/iap/index_en.htm)

### Facing Virtual Janus

The European Commission's "Safer Internet Action Plan" announced itself on the 2001 website as "a coherent set of policies at European Union level to deal with illegal and harmful content on the Internet". Just as with the original approach<sup>31</sup> in 1999 under the title "Promoting best use, preventing misuse", I am intrigued by this multimillion Euro programme (38,3 million Euro for the period 1999-2004 and 45 million Euro for 2005-2008) because it seemed to approach both the problems of 'illegal' and 'harmful' content, and I was especially eager to see how 'harmful' would be defined and what strategies would be proposed to deal with it. As can be learned from the various websites, the first 20 projects that were selected for funding are classified under the headings of creating a European network of hotlines (6); of developing rating and filtering systems for Internet content (5); and of raising awareness of safer use of the internet (9). In the next round of funding decided upon in November 2000, 10 projects remained in the categories 'hotlines' and 'raising awareness', all of them continuations of formerly approved projects. And again in the next round and in the accepted follow-up of the Action Plan for 2002-2004, the same pattern remained.

Two things were catching my attention here: on the one hand there seems to be hardly any reporting on the progress of these projects (nor on those not continued), on the other hand the issue of rating and filtering got most of the attention in both the turnout of various reports (such as INCORE and IDATE) and through the new detailed call for proposals to demonstrate filtering software and services. However, during the last couple of years (which also saw a change in the name from 'Safer Internet Action Plan' to 'Safer Internet Programme' and recently 'Safer Internet Plus Programme'), it seems that the focus is changing and the most recent reporting reflect to a large degree this change of emphasis by the order of the projects listed: hotlines, self-regulation, filtering & rating, awareness, hotlines & filtering. A first conclusion that I draw from this is that the Safer Internet Action Plan / (Plus) Programme in its effort to deal with illegal and harmful content during its initial faze focused on a technology driven approach but that this is now no longer the case. In the early years, even in the concise outline of most of the awareness projects, reference to rating and filtering software was never far away, to a degree that one of the projects warned again a false sense of security by solely relying on such tools.<sup>32</sup> I am convinced that this 'rating & filtering remains worthwhile and might even be mandatory from both the legal and the common sense point of view in public areas such as libraries and schools in order to guard users from – especially inadvertent – exposure. However, the reason for my criticism on its one-sidedness is not a technological one, like in referring to the loopholes

<sup>31</sup> Cf. the archived website [http://europa.eu.int/ISPO/legal/en/best\\_use/best\\_use.html](http://europa.eu.int/ISPO/legal/en/best_use/best_use.html) that still retains the text of the original mission statement: "To prevent illegal and harmful content being distributed on the Internet the European Commission is promoting initiatives which are aimed at increasing the general awareness among parents, teachers, public sector and the information industry about how to deal with the issue in practical terms". The current website can be found at [http://www.europa.eu.int/information\\_society/activities/sip/index\\_en.htm](http://www.europa.eu.int/information_society/activities/sip/index_en.htm)

<sup>32</sup> Cf. EDUCAUNET (Education program for a critical approach of the risks linked to the use of the Internet), <http://europa.eu.int/ISPO/iap/projects/educaunet.html>: "implementing security tools may induce a so-called 'airbag effect'. In this instance, a false sense of security puts the user, his family and the school environment off their guard. Educating people to the Internet media, on the contrary, aims at helping users develop the competencies necessary to maintain a permanent critical watch".

and the inadequacy of the labels used and the degrees attributed. The criticism that I would like to present for reflection rests on a more fundamental basis: illegal and harmful content is neither uploaded nor downloaded by technology, but by human beings using technology. Therefore, any approach that frames the ambiguity of open access to the internet only or mainly as a technological problem that has to be countered by (more) technology is ignoring or missing the key issue. In other words: the current availability of for example a wide range of pornography<sup>33</sup> – on which there seems to be consensus that it is harmful – is in a real sense the effect of technology which enables its distribution, but we must resist the simplification of mixing up or substituting effect and cause (especially to the degree this is a common trait of mainstream applied ethics). The root, therefore, of a responsible dealing with 'virtual Janus' will be to turn our gaze away from the computer and its programmes and towards ourselves.

The second conclusion from my review and follow up of the Safer Internet Action Plan / (Plus) Programme is perhaps more tentative but starts anyway from the observation that a discussion and reflection on the content of what is to be labelled as 'harmful' is hardly if at all taken hold of.<sup>34</sup> The various approaches simply seem to rely on some sort of consensus with regard to violence, sex, nudity, language, etc. without even attempting to go into reasoning as to exactly why they are detrimental and therefore ought to be banned. I would like to suggest that this reticence is not caused by a conscious decision to abstain from moralising or patronising, but by an intuitive awareness that the effort to delve into the matter will soon show itself to be something like trying to walk on quicksand. For, a reasoning – especially with those under 'legal age'<sup>35</sup> – on for example the harmfulness of pornography invoking arguments such as the submission of females to males, the degradation of the (female) human body and the sexual encounter of human beings to objects of gratification and/or economical exploitation, will be countered by the factual and/or cynical observation that all of this is going on with only a difference of degree in the real world outside of cyberspace.<sup>36</sup> Arguing a case about the harmfulness of easy access to (sexual) violence, to racism and hate-speech, to pornography, to gambling, etc. will soon reveal the embarrassing presence of these evils in for example marital relations, nationalism and political parlance, advertisements for about any merchandise under the sun, trading at the stock market, etc. -- a presence that we ignore, take for granted or even rely on in ordinary

<sup>33</sup> The topics listed by AltaVista Image Search with 'family filter' off using the term "sex", include: ages, amateurs, anime, ethnic, fetishes, gay, hair color, hardcore, sizes, softcore, other, celebrities.

<sup>34</sup> The closest definition one gets from the 2002 follow-up proposal is: "*Harmful* content may either be content which is defined as such by law and so made subject to measures intended to restrict access by minors, or quite simply content which individual parents do not wish their child to see." Cf. COM 2002 152, p. 8.

<sup>35</sup> For many adolescents in this situation, 'legal age' sounds like an arbitrary boundary, especially if they know through the internet of worldwide differences that apply. Cf. the legal notice at many x-rated websites making the user responsible for complying with the 'legal age' of their place of access (although an increasing number of these sites not only skip the exit button, but actually 'highjack' the browser by manipulating the close button to become a further hyperlink, displaying more of the same).

<sup>36</sup> A textbook example is the British legal policy on female nudity in printed media: journals can display at their cover up to full frontal pictures of naked women as long as their 'private parts' are covered by whatever means, a policy not only used by obvious pornographical publications, but also employed more often by mainstream journals (aka as 'pornographication').

life. Indeed, their presence in cyberspace first of all testifies to the insight that really the internet is but a – sometimes enlarged – representation of ourselves.

Therefore, virtual Janus takes on a new shape and meaning: we are no longer challenged just to deal with technological Janus of ICT through its concomitant differentiations and shortcuts with regard to information and communication. Groping deeper and wrestling with the global proliferation of illegal and harmful content, our screens turn into mirrors confronting us with ‘the other face of ourselves’.<sup>37</sup> As long and to the degree internethics isn’t taking up this socially and culturally mediated side of reality, most of our efforts to urge responsibility will continue to sound unconvincing and hollow, echoing Janus as being double-faced and therefore insincere.<sup>38</sup>

<sup>37</sup> In the collection *Media Ethics. Opening Social Dialogue* already mentioned, it is remarkable that the section on “Ethics of Media Users” is at the very end of the volume and only consists of two articles. Cf. Cees J. Hamelink, *Ethics for Media Users* (pp. 393-401) and Rüdiger Funiok, *Fundamental Questions of Audience Ethics* (pp. 403-422).

<sup>38</sup> As an example of such a social and cultural critical assessment, see Marcella Althaus-Reid, *Becoming Queens: Bending Gender and Poverty on the Websites of the Excluded*, in: *Concilium* 2005/1, pp. 99-108.

*Jan Jans:*

*Politics and/or Ethics? Same sex unions as a case study for intercultural political ethics*

Introduction: the case of Belgium

By way of introduction and as the first part of this paper, I present some data from Belgium - the country of my nationality - and a few comments.

First of all, since June 1, 2003, Belgium has had legislation in force permitting civil marriage for two persons of the same registered sex.<sup>1</sup> Such couples, sometimes indicated by the neologism "holebi-couples" (holebi being the abbreviation of homosexual, lesbian, bisexual and transsexual) have thereby the same rights and obligations as all married people, except - until the Spring of 2006, when these rights were also extended to same sex married couples - the right to adopt a child as a couple and the presumption that the partner of a biological parent is also the legal parent. Next, and also since June 1, 2003, Belgian law permitted any couple to enter into a civil partnership ("samenlevingscontract" - literally: contract of living together), the terms of which can be negotiated and which is to be registered by a notary. As to numbers:<sup>2</sup> in 2003 there were 41,777 marriages in Belgium, 1,708 of which were between couples of the same sex (and 31,355 cases of divorce). In 2004 there were 43,326 marriages of which 2,207 were between couples of the same sex (and 31,418 case of divorce). In 2005, there were 2,132 same-sex marriages, on a total of approximately 40,900. Roughly speaking, this means that about 5% of marriages in Belgium are between two persons of the same registered sex. For civil partnerships, the number for 2004 totals 17,641 between persons of different sex and 954 between persons of the same sex. In 2005, the number for contracts between persons of different sex increased to 29,507 while the number between partners of the same sex was 1,170. In general, about a quarter of these contracts are terminated, but the specific numbers for same-sex partnerships are nearly half, being 425 in 2004 and 435 in 2005.

At the same time, the public display of marriage and civil partnership between women and women and men and men has become a daily issue in the popular press. The August 2005 wedding of a Flemish pop singer named Tina Bride (what's in a name) with her friend Barbara was extensively reported in *Dag Allemaal* - a 'royalty & celebrity' weekly one finds in the waiting room of the doctor or the hairdresser - in the same way as weddings - and divorces - of comparable celebrities<sup>3</sup>. Together with the numbers I cited above,

<sup>1</sup> The law was published in: *Moniteur Belge* – *Belgisch Staatsblad* 173/N.66 of February 28, 2003, Third Edition, pp. 9980-9983 (cf. <http://www.staatsblad.be> – text in French and Dutch).

<sup>2</sup> The data provided come from various sources, including newspaper articles and the website of the Holebi-federation. Cf. <http://www.holebifederatie.be/dossiers/huwelijk/index.php> (pages in Dutch).

<sup>3</sup> Cf. the website of *weljongnniethetero* (reallyoungbutnothetero): <http://www.weljongniethetero.be/viewtelex.asp?id=1308&anch=4> (pages in Dutch).

I suggest this shows that the same-sex issue is neither marginal nor that it is marginalized. However, this does not mean that various kinds of discrimination and stigma do not occur. One recent example of the first is a judge who started to scold at a homosexual during a court case on the validity of his deceased partner's mortgage insurance and who was not reprimanded for doing so by his direct superior; the complainant has now taken this to appeal, with the support of the Belgian Centre for Equal Opportunities and the Fight Against Racism.<sup>4</sup> And the risk of stigma was recently strongly visualized by an advertisement of the Holebi-federation on July 28, 2006 in the biggest Flemish quality newspaper *De Standaard*, showing a row of funeral cars superscripted with the title "Gay Parade" and with a short text pointing out that 1 out of every 3 young holebis considers suicide because they experience a threatening lack of support and understanding for their emerging sexual orientation. The ad ends with the appeal: "Bury your prejudices and open yourself for dialogue because the support of family, friends and colleagues is badly needed in order to cope with the rest of the world".<sup>5</sup> And as to the political scene, with the exception of the right wing party *Vlaams Belang* which is always an outspoken critic of any change in legislation or public recognition with regard to any same-sex issue, the various parties in Belgium practice a closeted or open tolerance and this explains the lack of serious political controversy in the debate leading to the current legislation. It remains to be seen if this will be repeated at the various institutional levels of the European Union, given the very vocal opposition of the governments of some of the member states with Poland taking a lead. Obviously, an assessment of this needs to take a closer look at the other European countries where legislation has been changed, like the Netherlands or Spain, or is in the process of being changed like is the case in Italy. As to the influence of the Christian churches in Belgium, I think it is safe to say that although the majority Catholic Church is used to voicing its opinion on ethical issues it considers to be of public importance - as it did during the political debate with regard to the legislation on euthanasia<sup>6</sup> - its influence in the matter of same-sex unions remained marginal and in its own terms surely 'ineffective'. The tradition of the small Protestant Church, through its platform called *The United Protestant Church of Belgium*, is to offer the "active pluralism" it tries to foster among its own members as a contribution to ethical disputes in society without expecting political influence.

#### The case of South Africa

The original reason for looking into the whole issue of same-sex unions was the unanimous ruling of the eight judges of the South African Constitutional Court in their decision of December 1, 2005,<sup>7</sup> requiring Parliament to revise the existing Marriage Act in such a way - and within one year - that it conforms with the equality clause of the Constitution's

<sup>4</sup> Cf. <http://www.standaard.be/Artikel/Detail.aspx?artikelId=G8RUT98U> (page in Dutch).

<sup>5</sup> Cf. <http://www.standaard.be/Archief/Dossiers/Index.aspx?dossierId=7220> (pages in Dutch).

<sup>6</sup> Cf. Jan Jans, *Churches in the Low Countries on Euthanasia. Background, Argumentation and Commentary*, in: Paul Schotsmans & Tom Meulenbergs (Eds.), *Euthanasia and Palliative Care in the Low Countries* [Ethical Perspectives Monograph Series 3], Leuven-Paris-Dudley, MA : Peeters, 2005, pp. 175-204.

<sup>7</sup> Cf. <http://www.constitutionalcourt.org.za/site/gaylesb.htm>

Bill of Rights ("The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth." Article 9, section 3). The ruling also stipulated that if Parliament failed in this revision, the current Marriage Act as it stands would become applicable for same-sex civil unions thereby effectively legalizing them as marriages. It was this ruling which propelled 'same-sex unions' to the foreground of political and societal controversy and as such became a topic I was asked to address during my lectures in South Africa in March and April of 2006. By the way: the current Marriage Act did not define marriage in any precise terms, because as I was informed by a South African lawyer, "it was assumed by long tradition and probably Romeins-Hollandse gesag, that the two persons would be of opposite sexes".<sup>8</sup> The Marriage Act, in its wording of 1961, does contain categories of prohibited marriages where it states: "Certain categories of persons may not marry, namely: ... Persons of the same sex ...". Furthermore, the common law definition of marriage states that "marriage in South Africa is a union of one man with one woman, to the exclusion, while it lasts, of all others". Also, to comply with the Marriage Act, marriage officers must put to each of the parties the following question: "Do you, -name- call all here present to witness that you take -name- as your lawful wife/lawful husband?". The ruling of the Constitutional Court stipulated that in the revised Marriage Act, this formula had to include next to the categories 'wife/husband', also 'spouse'.

This ruling to bring same-sex couples in from the legal cold and provide an institutional imprimatur for their union was met with very mixed reactions. For the purpose of this paper, I can be rather brief.<sup>9</sup> As expected, the governing African National Congress that was then and now holding the parliamentary majority, supported the decision of the Constitutional Court. Also the Democratic Alliance, the main opposition party, responded by a statement that they would respect the ruling but added that individual members of the DA kept their free vote since this was a matter of conscience. As also expected, the small African Christian Democratic Party, who a decade earlier voted against the Constitution, rejected the ruling because it would support and encourage a homosexual lifestyle deemed to be unbiblical and therefore unethical.

As to the Churches, most vocal in supporting the Constitutional Court was the Anglican archbishop of Cape Town Njongonkulu Ndungane,<sup>10</sup> who greeted the ruling as "a carefully considered judgment weighing up competing rights in the light of the South African Constitution". At the same time, he pointed out that the Anglican Communion kept to its stance that a marriage is only between a man and a woman and that his Church would therefore not get involved in weddings of gay or lesbian couples, a position explicitly recognized by the Constitutional Court by a kind of 'conscience clause' allowing marriage

<sup>8</sup> Mike Pothier, email of August 8, 2006.

<sup>9</sup> Cf. <http://www.afrol.com/articles/17515> and various other South African sources, including the newspaper Mail&Guardian (<http://www.mg.co.za>) and Independent OnLine (<http://www.iol.co.za>).

<sup>10</sup> Njongonkulu Ndungane is the successor of the well known anti-apartheid activist and human rights advocate Desmond Tutu, who wrote a very supportive foreword in the booklet by bishop David Russell, *The Bible and Homosexuality. What is the Spirit saying to the Churches?*, Cape Town: Church of the Province of Southern Africa Publishing Dept., 2004.

officers to invoke the “principle of reasonable accommodation”, meaning that those who have sincere religious objections to officiate at same-sex marriages are not under an obligation to do so if this would result in a violation of their conscience. More mixed but with an overtone towards appreciation were the reactions of the Dutch Reformed Church and the South African Council of Churches, who voiced their support for the room left for public debate while at the same time continuing to look for ways to deal with their internal confusion and struggle on the proper approach towards homosexuality. Outspoken and negative was the response of the Catholic Church of South Africa, whose spokesperson declared that no gay or lesbian marriage would ever be recognized.

Let me add that these positive or mixed political positions in the widest sense of the word are (according to various surveys) hardly shared by South African popular views on homosexuality in general and same-sex unions, partnerships or marriages in particular. It seems that terms such as ‘frown upon’, ‘uncomfortable with’ and ‘skeptical towards’ adequately express the largely negative feelings of many South Africans with regard to homosexuality. An explicit position with intercultural implications is voiced by the traditional leader Zulu King Goodwill Zwelithini, who repeatedly and flatly declared homosexuality to be “un-African”. In general this is also the position taken by The National House of Traditional Leaders.

#### A multicultural social cohesion deficit?

Compared with Belgium, the political and societal tensions evoked in South Africa by the legalizing of same-sex marriage are much more complex and there is some fear that the issue may lead to the polarization of society. According to Johnny de Lange, deputy minister of Justice, South Africa is faced with “a social cohesion deficit” and the current task of the government is to remain sensitive to the variety of opinions while at the same time meeting both the content of the ruling and the imposed deadline. Again, compared with Belgium - and probably most of the other European countries with similar legislation - where the political agenda was not really disturbed because to the degree normative issues or morals played a role, this was muted by ‘politically correct’ notions of tolerance and/or indifference, the much more outspoken moral positions in South Africa are to a large extent the result of the differences between the various cultures, customs and traditions present in the country, each with their own understanding of the morality of sex and marriage. An example of this diversity reflected in legislation is the recognition of some forms of “Customary Marriages”, including what a material description may refer to as polygamy. However, in the current debate the risk of polarization results from the effort of one particular group named the Marriage Alliance of South Africa (principal members being the Evangelical Alliance of South Africa and the Southern Africa Catholic Bishops’ Conference) to block the ruling of the Constitutional Court by their Constitutional Marriage Amendment Campaign<sup>11</sup> aiming at nothing less than a change of the Constitution by inserting a clear-cut definition of marriage as “the voluntary union of a man and a woman”.

<sup>11</sup> Cf. <http://www.defendmarriage.co.za>

In order to make an analysis of the moral spectrum underlying the current tensions, I propose to use the “Five moral positions regarding homosexuality” as outlined by Patricia Beattie Jung and Ralph F. Smith in their groundbreaking book *Heterosexism: An Ethical Challenge*<sup>12</sup>, p. 23.

**Table 1.1** Analogies for Moral Positions on Homosexuality

	<i>P</i> <sub>1</sub> : Immorality	<i>P</i> <sub>2</sub> : Alcoholism	<i>P</i> <sub>3</sub> : Blindness	<i>P</i> <sub>4</sub> : Color Blindness	<i>P</i> <sub>5</sub> : Left-handedness
Theological Axiom	A paradigmatic sign of the brokenness of the world	A greater sign of the brokenness of the world	A lesser sign of the brokenness of the world	Not quite the fullness of God's original blessing	Part of God's original blessing
Anthropological Axiom	Evil	Disease	Defect	Imperfection	Variation
Personal Culpability	Lots	Little	None	None	None and irrelevant
Primary Moral Judgment	Just, loving, and faithful homosexual unions are evil; sexual reorientation required	Just, loving, and faithful homosexual unions are more evil than lifelong and total abstinence	Just, loving, and faithful homosexual unions are less evil than lifelong and total abstinence	Just, loving, and faithful homosexual unions and lifelong and total abstinence both fall short	Just, loving, and faithful homosexual unions are good
Derivative Moral Rules	No Blessing of unions; no ordaining of any gay person	No blessing of unions; ordain only closeted gay people committed to lifelong and total sexual abstinence	May or may not bless unions; may or may not ordain chaste, closeted gay people	Bless unions privately; ordain chaste, closeted gay people	Publicly bless unions; ordain chaste, uncloseted gay people

Time and space do not permit any extensive discussion of these positions, but next to the food-for-thought they offer by the analogies, my point would be that they allow an insight into the way theological and anthropological axioms form the backbone for the assessment of personal culpability, primary moral judgments and derivative moral rules. Ordering the various South African standpoints leads to the following: *P*<sub>1</sub> and to a degree *P*<sub>2</sub> are positions taken by the Marriage Alliance (and maybe the Traditional Leaders); *P*<sub>5</sub> is the position of the Constitutional Court and of the political majority; hovering between *P*<sub>2</sub> and *P*<sub>4</sub> and especially between *P*<sub>3</sub> and *P*<sub>4</sub> are most of the ‘nuanced’ responses such as of the Anglican Community and the SACC. Now it may not come as a surprise that those following *P*<sub>4</sub> and *P*<sub>5</sub> make room for the other positions, as is clear from the ‘conscience clause’ being the effort to deal with the social cohesion deficit. More surprising is the political position taken by those following *P*<sub>1</sub> and *P*<sub>2</sub>, because in addition to its Constitutional Marriage Amendment Campaign, the Marriage Alliance also favors that Parliament should write a new law, separate from the Marriage Act, a law which would provide a statutory framework for the regulation of civil or same-sex partnerships. Obviously, one could judge such kinds of accommodation with positions different from one’s own as exemplifying a lack of consistency within the layers of one’s preferred position. On the

<sup>12</sup> Patricia Beattie Jung and Ralph F. Smith, *Heterosexism: An Ethical Challenge*, State University of New York Press, 1993.

other hand, (and this would be my own assessment), even if this accommodation goes hardly beyond political correctness, is nothing but 'real politik' or shows tolerance and even respect, it still means that from a practical-political point of view, all parties - with the exception of those flatly denying homosexuality - converge towards the intercultural effort to regulate in the public realm and via the law of the land the bandwidth of human/e sexuality.

Conclusion: the need and plausibility of political ethics

It remains an open question - but I would count myself among the optimists - to what degree the lived reality of any-sex/gender couples exemplifying the full set of entitlements and responsibilities attached to the status of marriage will promote the values and goods associated with faithful erotic love, commitment and reciprocity. At least, and for the moment prescinding from the much more radical implications of the work on sex and gender by scholars such as Anne Fausto-Sterling<sup>13</sup> and Joan Roughgarden,<sup>14</sup> the dynamics of equality, dignity, justice and recognition operative in the legislative process with regard to any-sex/gender couples might strengthen the idea that especially under the conditions of cultural pluralism, the need but also the plausibility of political ethics is on the rise again.

Postscript

By the end of August 2006, the South African government in the person of its Minister of Home Affairs, tabled the "Civil Union Bill"<sup>15</sup> in the National Assembly. From this, it could be learned that the Bill proposed to create a separate institution for same-sex couples under the title of "Civil Union" defined as "the voluntary union between two adult persons of the same sex to the exclusion, while it lasts, of all others". This proposal met with forceful resistance by those who saw it as introducing a second-class form of legal recognition and from various sides, including to a degree the Dutch Reformed Church and the Anglican Communion, protest was mounted. The most forceful protest came from Human Rights Watch arguing that separate is still unequal but especially from the secretary general of the South African Council of Churches, Eddie Makue, who called for an amendment of the Marriage Act to govern all kinds of marriage, including same-sex unions. And although it became clear that Makue was not really speaking with the full authority of this position within the SACC, his reference to the time and the ideology of apartheid struck an open nerve: "Our national history illustrates all too painfully the folly and injustice of creating multiple legal and administrative mechanisms to perform essentially the same functions for different categories of people. Separate institutions are rarely, if ever, equal. Their chances of achieving equal impact are further reduced if they are embedded in a society that remains afflicted by prejudice and discrimination. Consequently,

<sup>13</sup> Anne Fausto-Sterling, *Sexing the Body. Gender Politics and the Construction of Sexuality*, New York: Basic Books, 2000.

<sup>14</sup> Joan Roughgarden, *Evolution's Rainbow. Diversity, Gender, and Sexuality in Nature and People*, Berkeley/Los Angeles/London: University of California Press, 2004.

<sup>15</sup> Cf. <http://www.info.gov.za/gazette/bills/2006/b26-06.pdf>

we believe that the State should craft a single legal framework capable of recognizing and protecting the legal rights of all partners who wish to declare their commitment to each other, irrespective of their gender or the faith or cultural tradition in which their partnership is recognized or validated".<sup>16</sup>

Whatever the impact of these reactions may have been, in combination with the public hearings on the matter, the text<sup>17</sup> of the Civil Union Bill as approved on November 14, 2006 by a majority of 230 votes in favor against 41 votes (and 3 abstentions) contained a major change which in fact allowed for any-sex couples to solemnize and register a voluntary union either by marriage or by civil partnership.<sup>18</sup> By defining that "a civil union partner means a spouse in a marriage or a partner in a civil partnership", the Bill made provision for any(-sex) couple to decide whether to refer to their union as a civil partnership or a marriage. By this change and to the degree I see things right, the Civil Union Bill has thereby answered the demand of the Constitutional Court while at the same time outlining an inclusive pluralism which offers the hope of contributing to the common good.<sup>19</sup>

<sup>16</sup> Cf. <http://www.sacc.org.za/news06/marriage.html>

<sup>17</sup> Cf. <http://www.pmg.org.za/bills/061109B26b-06.pdf>

<sup>18</sup> Due to the fact that the also controversial issue of 'Domestic Partnerships' was dropped from the amended Bill, it was reduced from 18 to 8 pages.

<sup>19</sup> For an attempt to develop this theme within the Roman Catholic setting, cf. Frans Vosman, Can the Church Recognize Homosexual Couples in the Public Sphere?, in: INTAMS Review 12 (2006) 26-38.

*Felix Birchler:*

*Sind humanitäre Interventionen gerechte Kriege?*

Sind humanitäre Interventionen gerechte Kriege?

Dieser Beitrag stellt die grundsätzliche Frage, ob die Diskussionen um die so genannten „humanitären Interventionen“ nicht ziemlich genau den Leitlinien folgen, die bereits vor längerer Zeit von der Theorie des gerechten Krieges im wissenschaftlichen und öffentlichen Diskurs vorgespurt worden sind. Nach der notwendigen Klärung dessen, was im Folgenden unter dem Begriff „humanitäre Intervention“ verstanden werden soll, unternehmen wir den Versuch, den Bericht „The Responsibility to Protect“ der „International Commission on Intervention and State Sovereignty“ (ICISS) in einen typischen Kriterienkatalog der Theorie des gerechten Krieges einzufüllen.

Abschliessend soll die Frage nach der Bedeutung einer theoretischen Nähe der beiden Konzepte gestellt werden.

Was sind eigentlich „Humanitäre Interventionen“?

Die Diskussionen um die Rechtmässigkeit humanitärer Interventionen seit den 1990er Jahren, zeichnet unter anderem aus, dass schon über ihre Definition kontrovers debattiert wird. Leichte Unterschiede in der Bestimmung dessen, was eigentlich humanitäre Interventionen sind, können zu radikal verschiedenen Urteilen hinsichtlich ihrer Rechtmässigkeit führen. Die Klärung dessen, was ein Autor unter humanitären Interventionen versteht, lässt häufig schon erahnen, ob er solche generell ausschliessen möchte oder ob er gewisse Situationen sieht, in denen sie zulässig sind.

Ein deutlicher Ausdruck dieses Streites um Begrifflichkeiten lässt sich beispielsweise im Schlussbericht der „International Commission on Intervention and State Sovereignty“ (ICISS) finden. In ihrem ursprünglichen Mandat wird der ICISS der Auftrag erteilt, zu versuchen, das Spannungsverhältnis zwischen staatlicher Souveränität und Interventionen zum Schutz von Menschenrechten aufzulösen. Gleich zu Beginn ihres Schlussdokumentes, das die Resultate und Positionen der ICISS wiedergeben soll, wird der Ausdruck „Humanitäre Intervention“ dann aber über Bord geworfen und durch „The Responsibility to Protect“ ersetzt, das gleichsam zum Titel des ganzen Dokumentes erhoben wird. Es wird erläutert, dass der Begriff „Humanitäre Intervention“ zu umstritten war und dass deshalb auf eine Kompromissformulierung ausgewichen werden musste. (ICISS, 2001, S.9)

Die gewählte Ersatzformulierung verdeutlicht dann aber auch gleich die inhaltliche Stossrichtung der Kommission. Denn, dass eine Abhandlung des Themas unter dem Titel „The Responsibility to Protect“ nicht auf eine grundsätzliche Ablehnung humanitärer Interventionen herauslaufen kann, ist offensichtlich.

Die Zwistigkeiten um eine Definition machen es auch für uns unabdingbar, dass zunächst geklärt wird, mit welchem Verständnis von humanitären Interventionen wir eigentlich operieren. Wir übernehmen zu diesem Zwecke die folgende Definition des Danish Institute of International Affairs, die, unserer Meinung nach, noch immer die sinnvollste und präziseste ist:

„Humanitarian intervention is defined as coercive action by States involving the use of armed force in another State without the consent of its government, with or without authorisation from the United Nations Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law.” (Danish Institute of International Affairs, 1999, S.11)

An dieser Stelle sollen einige Elemente der Definition des Danish Institute of International Affairs erläutert werden, um noch deutlicher zu machen, von welcher Art von Intervention in diesem Beitrag die Rede sein wird.

- „Involving the use of armed force“: Humanitäre Interventionen beinhalten notwendigerweise die Androhung oder Anwendung militärischer Gewalt gegen den fehlbaren Staat (siehe etwa Kolb, 2003). Diplomatische, wirtschaftliche und gewaltlose politische Einmischung in die inneren Belange eines Staates können hingegen noch nicht als humanitäre Intervention im engeren Sinne verstanden werden. Eine Definition, die militärische Gewaltanwendung und diplomatischen Druck als verschiedene Formen eines Prozesses zusammenfasst, wäre zu weitläufig. Die Anwendung militärischer Gewalt stellt eine dermassen bedeutende Schwelle dar, dass es sinnvoll erscheint, deren Übertretung zum konstitutiven Merkmal humanitärer Interventionen zu erheben.
- “Without the consent of its government”: Humanitäre Interventionen geschehen gegen den Willen des intervenierten Staates. Sie unterscheiden sich dadurch von den klassischen Formen des UN-Peacekeepings. Dieses beruht auf dem Grundsatz, dass Truppen nur dann in ein Land entsandt werden, wenn dieses ausdrücklich darum ersucht. Humanitäre Interventionen hingegen werden vom betroffenen Staat als Verletzung seiner Souveränitätsrechte verstanden und müssen aus diesem Grund auch mit militärischen Zwangsmitteln durchgesetzt werden.
- “With or without authorisation from the United Nations Security Council”: Kolb (2003) vertritt die Meinung, dass unter humanitären Interventionen nur solcherlei Aktionen zu verstehen seien, die nicht vom UN-Sicherheitsrat abgesegnet worden sind. Denn wenn der UN-Sicherheitsrat eine Intervention gutheisse, so die Argumentation, handle es sich um einen völkerrechtlich abgesicherten Vorgang innerhalb des UN-Systems kollektiver Sicherheit. Es sei daher nicht notwendig, für eine solche Intervention die umstrittenere Kategorie „humanitäre Intervention“ zu bemühen.

Uns erscheint eine solche Unterteilung der Interventionen jedoch wenig sinnvoll. Denn in Politik und Wissenschaft wird anderweitig häufig die Meinung vertreten, dass Interventionen zum Schutz der Menschenrechte nur dann erlaubt sein sollen, wenn sie vom UN-Sicherheitsrat autorisiert werden. Dieser zweiten Einschränkung folgend, könnte es nur illegitime humanitäre Interventionen geben, da die potentiellen legitimen, vom Sicherheitsrat abgesegneten, ja wiederum aus der Definition fallen würden.

Ausserdem ist die Zustimmung oder Ablehnung durch den UN-Sicherheitsrat nicht immer eindeutig feststellbar, wie etwa die Resolutionen zur NATO-Intervention im Kosovo gezeigt haben. Aus diesen Gründen kann die Zustimmung oder Ablehnung des UN-Sicherheitsrates kein Definitionsmerkmal von humanitären Interventionen sein, wenn man den Begriff operabel halten will.

Bevor wir uns der Frage zuwenden, ob humanitäre Interventionen gerechte Kriege sind, ist es angebracht zunächst einmal die Frage anzugehen, ob humanitäre Interventionen überhaupt als Kriege zu verstehen sind. Mit dem viel älteren Konzept des Krieges sind bestimmte Bilder und Vorstellungen verbunden, welche die Befürworter humanitärer Interventionen gerne vermeiden. Inwiefern lassen sich aber die beiden Formen militärischer Gewaltanwendung überhaupt als zwei verschiedene Konzepte darstellen? Sind humanitäre Interventionen von ihrer negativen Konnotation des Krieges möglicherweise gar nicht zu trennen?

Sind humanitäre Interventionen überhaupt Kriege?

Die prinzipiellen Kritiker von humanitären Interventionen (etwa Cady, 1996; Henkin, 1999; Johansen, 1996; Lutz, 2003; McMahan, 1996; Merkel, 2003; Momtaz, 2000) betonen in ihrer Argumentation, dass es sich bei diesem Instrument letztlich doch immer um „Kriege“ handelt. Humanitäre Interventionen verletzen zwei der fundamentalsten Grundprinzipien der internationalen Rechtsordnung, nämlich das Gewaltverbot in den zwischenstaatlichen Beziehungen und die Norm der gegenseitigen Nichteinmischung in die inneren Angelegenheiten.

Die Kritiker von humanitären Interventionen leiten ihr Verständnis dieser Aktionen hauptsächlich aus diesem doppelten Rechtsbruch ab. Sie sehen darin primär die Anwendung militärischer Gewalt, mit der ein Staat einem anderen seinen Willen aufzuzwingen versucht. In diesem Verständnis sind humanitäre Interventionen schlicht und einfach Kriege, die aus propagandatechnischen Gründen nicht mehr so genannt werden können.

Die Befürworter humanitärer Interventionen (etwa Abiew, 1999; Cassese, 1999; Falk, 1999; Ignatieff, 2000; Ladwig, 2000; Phillips, 1996; Roberts, 1999; Teson, 2005) legen den Akzent anders. Für sie steht weniger der Charakter der Aktion selber im Vordergrund, als vielmehr deren Motive und deren Konsequenzen. Eine humanitäre Intervention zeichnet sich für sie dadurch aus, dass die militärische Aktion mit der Absicht durchgeführt wird, massive Menschenrechtsverletzungen in einem Drittstaat zu beenden oder dass sie diese positiven Folgen nach sich zieht.

In diesem Verständnis ist es nicht entscheidend, dass die Massnahmen, die im Rahmen einer humanitären Intervention gegen einen Staat und seine Einwohner ergriffen werden, diejenigen sind, die auch im Kriegsfall ergriffen würden. Das der Intervention zugrunde liegende humanitäre Motiv verleiht den militärischen Massnahmen einen besonderen Charakter, so dass es sich trotz des Anscheins eben doch um keinen Krieg handelt, sondern um eine humanitäre Intervention. Die Absicht, die hinter einer militärischen Gewaltanwendung steckt, entscheidet folglich, ob es sich dabei um einen Krieg oder eine humanitäre Intervention handelt.

Letztlich können sich aber auch die entschiedensten Befürworter humanitärer Interventionen nicht der Tatsache entziehen, dass trotz all der hehren Motive, Mittel angewendet werden, die im allgemeinen Verständnis als kriegsähnliche Mittel gelten. So kann die Trennung zwischen humanitären Interventionen und Krieg nie vollständig gelingen. Die Taktik der Befürworter humanitärer Interventionen muss aber sicherlich sein, ihre Argumentation so aufzustellen, dass der kriegsähnliche Aspekt dieser Aktionen möglichst im Verborgenen bleibt. Die kriegsähnlichen Handlungen sollen möglichst wenig thematisiert werden, indem die humanitären Motive stark in den Vordergrund gedrängt werden.

### Sind humanitäre Interventionen gerechte Kriege?

Interessanterweise suchen einige Befürworter humanitärer Interventionen dennoch die Nähe des Konzeptes „Krieg“, nämlich dann, wenn sie versuchen die humanitären Interventionen in eine Theorie des gerechten Krieges einzupassen. Sie bewegen sich dabei auf einem sehr schmalen Pfad. Einerseits versuchen sie die humanitären Interventionen an das positiv gewertete Bild des gerechten Krieges anzupassen, andererseits müssen sie verhindern, dass die humanitären Interventionen durch die negativen Schreckensbilder des Krieges ganz allgemein, delegitimiert werden. Eine Rechtfertigung von humanitären Interventionen muss möglichst viel von der Theorie des gerechten Krieges übernehmen, ohne dabei aber allzu explizit zu machen, dass es sich auch bei gerechten Kriegen um Kriege handelt.

Theorien des gerechten Krieges basieren auf der Prämisse, dass Krieg prinzipiell abzulehnen ist. Krieg an sich ist etwas Schlechtes und alle Anstrengungen sollten daraufhin ausgerichtet sein, Krieg zu verhindern und auszurotten. In einem zweiten Schritt ist die Theorie des gerechten Krieges dann aber doch dazu bereit einzugestehen, dass es ausnahmsweise Situationen gibt, in denen das Führen eines Krieges gerechtfertigt sein kann. Wird eine Reihe von vordefinierten Kriterien erfüllt, so kann ein Krieg als „gerechter Krieg“ verstanden werden. Im Folgenden wollen wir näher betrachten, welches die üblichen Kriterien der traditionellen Theorie des gerechten Krieges sind und wie in jüngster Zeit versucht wurde, die humanitären Interventionen in diesen Kriterienkatalog einzupassen.

Der Kriterienkatalog, den ein Krieg zu erfüllen hat, damit er als ein gerechter gelten kann, den wir hier vorstellen möchten, stammt aus einem Aufsatz von James F. Childress aus dem Jahre 1978. Natürlich gibt es eine Reihe von mehr oder weniger ähnlich lautenden Kriterienkatalogen, die hier genauso gut zitiert werden könnten (beispielsweise O'Connor, 1974; Johnson, 1984; Schmücker, 2000; Douglas 2002). Schliesslich ist gerade die Tatsache, dass es keine gefestigte Doktrin des gerechten Krieges gibt, sondern eine Unzahl von verschiedenen und dennoch ähnlich gearteten Ansätzen, ein Hauptmerkmal der Theorie des gerechten Krieges. Mit dem Rückgriff auf einen Text von 1978 soll insbesondere vermieden werden, dass eine Theorievariante als Ausgangslage genommen wird, die bereits stark von den humanitären Interventionen der 1990er Jahre beeinflusst wurde. Die jüngsten Texte zur Theorie des gerechten Krieges sind stark geprägt worden von den Ereignissen in Srebrenica, Ruanda, oder Kosovo. Deshalb der Rückgriff auf diesen älteren Kriterienkatalog.

1. Das erste Kriterium eines gerechten Krieges ist, dass er von einer dazu legitimierten Autorität beschlossen wird. Die legitimierte Autorität entscheidet, ob die anderen Kriterien des gerechten Krieges erfüllt sind und ein solcher folglich gestartet werden kann.

2. Der gerechte Krieg setzt einen gerechten Grund voraus, aufgrund dessen der Krieg begonnen wird. Die Übertretung des allgemeinen Gewaltverbotes bedingt es, dass dieser Grund von ausserordentlich hohem Gewicht ist.

3. Krieg darf immer nur das letzte Mittel (ultima ratio) zur Erreichung eines Zieles sein. Krieg darf nur begonnen werden, wenn alle andern verfügbaren Mitteln keine ausreichende Aussicht auf Erfolg versprechen.

4. Die Kriegsgründe müssen offen gelegt werden. Wenn es auch nicht so ist, dass eine formelle Kriegserklärung im engeren Sinne vorgelegt werden muss, so müssen die Beweg-

gründe für den Kriegseintritt doch explizit gemacht werden. Wer das internationale Gewaltverbot bricht, muss seine Beweggründe dem Gegner, der eigenen Bevölkerung und der Weltöffentlichkeit deutlich verkünden.

5. Ein weiteres Kriterium des gerechten Krieges ist die vernünftige Aussicht auf Erfolg und Proportionalität der Gewaltanwendung. Aussichtslose Kriege können ebenso wenig gerechte Kriege sein, wie solche, in denen die Kriegsziele nur mit der Verursachung von unterverhältnismässig viel Schaden und Leid erreicht werden können.

6. Der gerechte Krieg wird mit einer reinen Absicht geführt. Krieg darf nicht aus Machtgelüsten oder aus Hass dem Feinde gegenüber geführt werden, sondern nur des gerechten Grundes wegen. Die Verletzung des Gewaltverbotes wird bedauert und der Krieg als ein notwendiges Übel verstanden.

7. Das oberste Ziel des gerechten Krieges ist die Schaffung eines gerechten Friedens. Der Kriegszustand soll so schnell wie möglich in einen dauerhaften und gerechten Frieden überführt werden.

8. Ein gerechter Krieg definiert sich auch über die Mittel die eine Kriegspartei anwendet (*jus in bello*). Zum einen ist es verboten Nicht-Kombattanten direkt anzugreifen. Zum andern muss versucht werden, das Leid zu minimieren, das durch den nötig gewordenen Kampfeinsatz verursacht wird.

Im Folgenden soll gezeigt werden, dass der Schlussbericht der ICISS ziemlich genau und explizit zu ebendiesen Kriterien Stellung nimmt. Die Legitimierung der humanitären Intervention scheint ähnlichen Leitplanken zu folgen wie die Rede vom gerechten Krieg.

1. Die Frage nach der legitimierten Autorität, also die Frage, wer denn überhaupt das Recht haben könnte, eine humanitäre Intervention durchzuführen, wird im Bericht der ICISS besonders intensiv diskutiert. Er widmet diesem umstrittenen Thema ein Kapitel mit der Überschrift „The Question of Authority“. (ICISS, 2001, S.47-55) Der Bericht hält fest, dass nur kollektive Interventionen als legitim betrachtet werden können, die mit der Zustimmung der UNO durchgeführt werden. Diese Interventionen werden mit dem Einverständnis der internationalen Gemeinschaft durchgeführt, während unilaterale Interventionen als illegitim verurteilt werden müssen. Unilateralen Interventionen haftet der Verdacht an, dass der sie durchführende Staat hauptsächlich von seinen Eigeninteressen geleitet ist und die humanitären Motive als Vorwand missbraucht. Eine kollektive Intervention bietet hingegen eine gewisse Absicherung gegen Missbrauch, da nicht anzunehmen ist, dass alle teilnehmenden Staaten dieselben Eigeninteressen haben. Der Bericht der ICISS gesteht zu, dass der UN-Sicherheitsrat in den letzten Jahren auf humanitäre Katastrophen nicht immer angemessen reagierte, was zur Folge hatte, dass bei einigen Mitgliedsstaaten der Wunsch aufkam, humanitäre Interventionen auch ohne Zustimmung des UN-Sicherheitsrates durchführen zu können. Die ICISS lehnt dieses Ansinnen ab und besteht auf der exklusiven Zuständigkeit des UN-Sicherheitsrates für alle Fragen betreffend internationaler Frieden und Sicherheit. Es könne nicht darum gehen den UN-Sicherheitsrat zu umgehen, sondern es müsse darum gehen, dessen Funktionieren zu optimieren. So schlägt die ICISS insbesondere einen „code of conduct“ für die Vetomächte vor. Diese sollten sich des Vetos gegen eine humanitäre Intervention enthalten, wenn nicht direkt eigene grundlegende Sicherheitsinteressen davon betroffen sind.

2. Hinsichtlich des Kriteriums des gerechten Grundes hält die ICISS fest, dass ein gewisses Ausmass an menschlichem Leid überschritten worden sein muss, damit das generelle

zwischenstaatliche Gewaltverbot aufgehoben werden kann. Diese Bedingung sieht sie dann als erfüllt an, wenn es im Zielstaat zu folgenden Ereignissen kommt:

„[...] large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation;” (ICISS, 2001, S.32)

“[...] large scale “ethnic cleansing”, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.” (ICISS, 2001, S.32)

Für die Kommission spielt es keine Rolle, ob die Massaker von staatlichen Organen selber verübt werden, oder ob diese nicht in der Lage sind, sie zu verhindern. Beiderlei Situationen gelten als Grund, der zu einer humanitären Intervention berechtigt.

3. Eine humanitäre Intervention darf, laut der ICISS, nur als ultima ratio in Betracht gezogen werden, nämlich dann wenn klar ist, dass alternative, gewaltlose Mittel, in der verfügbaren Zeit keine Aussicht auf Erfolg haben. Dies bedeutet, dass es nicht unbedingt erforderlich ist, dass in einer Krisensituation alle denkbaren, nichtmilitärischen Mittel und Strategien effektiv versucht und durchgespielt werden. Häufig ist es gerade ein Mangel an verfügbarer Zeit für die Lösungssuche, der die humanitäre Katastrophensituation kennzeichnet. Daher gelten humanitäre Interventionen bereits dann als ultima ratio, wenn es zum Zeitpunkt der Entscheidung keine *vernünftige* Aussicht auf eine nichtmilitärische Lösung gibt, die sich rasch und effizient umsetzen lässt. (ICISS, 2001, S.36)

4. Auch auf das Kriterium der Offenlegung der Kriegsgründe geht die Kommission ein, wenn auch auf eine besondere Weise. Sie thematisiert die deutliche Benennung der Kriegsgründe nämlich hauptsächlich im Zusammenhang mit einem Hauptproblem der UNO in den letzten Jahren. Humanitäre Interventionen, die unter der Führung der UNO durchgeführt werden, kämpfen permanent mit der Schwierigkeit aktive Unterstützung (finanzielle, wie truppenmässige) von Seiten der Mitgliedsstaaten zu bekommen. Teilweise aus mangelndem politischen Willen seitens der Regierungen, teilweise wegen der öffentlichen Ablehnung einer humanitären Intervention, werden der UNO die Mittel vorenthalten, die sie dringend benötigen würde, um eine humanitäre Intervention in ihrem Sinne durchführen zu können. Um dieser Tendenz entgegenzuwirken, empfiehlt der ICISS-Bericht, dass die Argumente für die Intervention auf den verschiedensten Ebenen gleichzeitig vorgebracht werden (moralischer Diskurs, Politik, Medien, NGO's). Die Unterstützung für humanitäre Interventionen solle bewusst und aktiv gesucht werden; auch mittels deutlicher Offenlegung und Benennung der Kriegsgründe. (ICISS, 2001, S.69-75)

5. Das Kriterium der ausreichenden Aussicht auf Erfolg und der Proportionalität der Mittel wird vom ICISS-Bericht ebenfalls angesprochen. Die Kommission verlangt, dass eine militärische Aktion nur dann gestartet wird, wenn eine vernünftige Aussicht besteht, dass die humanitäre Katastrophe im Zielstaat damit auch gestoppt werden kann. Die Gewaltanwendung soll sich auf das Minimum beschränken, das effektiv notwendig ist, um die humanitären Motive der Intervention damit zu erreichen. Zudem muss darauf geachtet werden, dass die humanitäre Intervention nicht zu einer Eskalation eines bestehenden regionalen Konfliktes führt. (ICISS, 2001, S.37)

6. Humanitäre Interventionen müssen in reiner Absicht durchgeführt werden. Dies bedeutet, dass das primäre Motiv der Intervenierenden sein muss, das menschliche Leiden zu beenden. Egoistische wirtschaftliche Motive oder der beabsichtigte Sturz eines Regimes sind keine Grundlagen für eine humanitäre Intervention im Sinne der Kommission. Sie

gesteht hingegen zu, dass Interventionen nie in einer rein humanitären Absicht durchgeführt werden, sondern die intervenierenden Mächte immer gemischte Motive haben. Sie verlangt daher lediglich, dass multilaterale Interventionen in ausreichend reiner Absicht durchgeführt werden. (ICISS, 2001, S.35-36)

7. Der ICISS-Bericht weist dem Thema „Schaffung eines gerechten Friedens“ ein ganzes Kapitel zu, das mit „The Responsibility to Rebuild“ betitelt wurde. (ICISS, 2001, S.39-45) Damit soll betont werden, dass die humanitäre Intervention mit dem Ende der Kampfhandlungen keinesfalls schon abgeschlossen ist. Es ist die Aufgabe der Interventionsmächte zu einem stabilen und dauerhaften Frieden beizutragen. Dies soll insbesondere durch die folgenden Bemühungen erreicht werden:

- Bereitschaft einige Zeit im Land zu bleiben
- Schaffung und Stärkung nationaler Institutionen
- Überwachung von Wahlen
- Förderung der Menschenrechte vor Ort
- Reintegrationsprojekte für ehemalige Kämpfer
- Repatriierung und Wiederansiedlung von Flüchtlingen
- Wirtschaftlicher und gesellschaftlicher Wiederaufbau

8. Das Thema *ius in bello* wird vom ICISS-Bericht in Zusammenhang mit den operationellen Aspekten der humanitären Interventionen behandelt. (ICISS, 2001, S.57-67) Das *ius in bello* wird kaum vertieft diskutiert. Betont wird vor allem die Selbstverständlichkeit, dass alle geltenden Regeln des humanitären Völkerrechts eingehalten werden müssen. Zudem wird Wert darauf gelegt, dass die zur Erreichung der humanitären Ziele notwendige Gewaltanwendung in ihrem Ausmass, in ihrer Dauer und ihrer Intensität minimiert wird. Ansonsten hält sich die ICISS aber auffällig bedeckt zu Fragen des *ius in bello*.

#### Fazit

An der UN-Vollversammlung im September 2005 hat Generalsekretär Kofi Annan erneut bestätigt, dass „The Responsibility to Protect“, der Schlussbericht der ICISS, die offizielle Position der UN zur Frage der Rechtmässigkeit humanitärer Interventionen wiedergibt. Nicht nur aus diesem Grund ist klar, dass der ICISS-Bericht eines der wichtigsten Dokumente in Bezug auf die Rechtfertigungsstrategie von humanitären Interventionen ist. Wer sich wissenschaftlich mit dem Thema humanitäre Interventionen beschäftigt, kommt um den Bericht nicht herum.

Für diesen Beitrag wurde der ICISS-Bericht stellvertretend untersucht, für eine ganze Reihe philosophischer, politologischer und völkerrechtlicher Literatur, die sich in den letzten Jahren um das Thema humanitäre Interventionen herum entwickelte. In dieser Literatur sind die Kriterien der Theorie des gerechten Krieges omnipräsent. Dies sollte anhand des Beispiels ICISS gezeigt werden.

Die Parallelen zwischen den Kriterien des gerechten Krieges und denen einer rechtmässigen humanitären Intervention sind ausserordentlich gross. Doch was bedeutet das nun, wenn die Theorie des gerechten Krieges und die Theorie der gerechten humanitären Intervention fast deckungsgleich sind? Und die zweite Frage: muss uns das überraschen?

Die zweite Frage soll gleich vorweg beantwortet werden: es kann uns nicht überraschen. Denn es ist offensichtlich so, dass sich die Befürworter des Prinzips der humanitären Inter-

vention, beim Verfassen ihrer theoretischen Texte, sehr stark an der Theorie des gerechten Krieges orientieren. Es reicht ein Blick in die Bibliographie des ICISS-Berichtes um zur Überzeugung zu kommen, dass sich der Bericht ganz bewusst an die Theorie des gerechten Krieges angelehnt hat. Die humanitäre Intervention sollte gewissermassen als der gerechte Krieg des 21. Jahrhunderts positioniert werden. Da ist es auch nicht weiter verwunderlich, dass die Fragen, welche die Theorie des gerechten Krieges beantwortet, auch die Fragen sind, zu denen die prinzipiellen Befürworter humanitärer Interventionen Stellung nehmen.

Auf theoretisch-konzeptioneller Ebene ist die Antwort also klar und eindeutig: humanitäre Interventionen sind gerechte Kriege.

Die Antwort auf realpolitischer Ebene hingegen lässt sich gerade aufgrund dieser theoretisch-konzeptionellen Nähe zwischen humanitären Interventionen und gerechten Kriegen nicht so einfach geben. Die Beurteilung humanitärer Interventionen ist mit denselben Problemen belastet, mit denen auch die Beurteilung von Kriegen nach ihrer Rechtmässigkeit belastet ist. Wie soll das Problem der verschiedenen Perspektiven der Kriegsparteien angegangen werden? Wie dasjenige des Mangels an verfügbaren Informationen? Wie soll die reine Absicht einer Kriegspartei gemessen werden können?

Solange diese (und viele weitere) Fragen nicht geklärt sind, macht eine Beantwortung der Frage, ob eine bestimmte humanitäre Intervention, die effektiv stattfand oder stattfinden soll, nun als gerechter Krieg gilt oder nicht, kaum Sinn.

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### 3. Protokoll der Mitgliederversammlung 26. August 2006

#### Begrüßung/Welcome

17.10h Der Präsident Hans G. Ulrich (HU) begrüßt die Mitgliederversammlung (MV).

#### Tagesordnung/Agenda

Die MV genehmigt die Tagesordnung.

Genehmigung des Protokolls von Salzburg 2005; Approval of the minutes of the general meeting at Salzburg 2005

Die MV genehmigt das Protokoll der MV von Salzburg bei 7 Enthaltungen.

#### Bericht des Präsidenten/The President's report

HU berichtet, dass das Präsidium seine Arbeit nach der Jahrestagung wie immer aufgenommen und auf dem jährlichen Treffen des Vorstands im Dezember in Erlangen die Tagung in Oxford und die Tagung in Lausanne vorbereitet hat. Zur Unterstützung jüngerer Ethiker wurde ein Fond eingerichtet, in den Herr Schleicher, ein bayrischer Unternehmer, einen monatlichen Betrag einzahlt und aus dem bereits ein jüngerer Kollege gefördert wird. HU zeigt sich erfreut über die zahlreichen Bewerbungen junger Ethiker für den Call for Papers in Oxford. HU wirbt dafür, dass jüngere Kollegen mit auf die Tagungen genommen werden. Nachdem von der Jahrestagung in Salzburg kein Bericht in der ZEE erschienen ist, wird jetzt wieder angestrebt, einen Bericht über die diesjährige Jahrestagung zu veröffentlichen. Ausgewählte Vorträge der Tagung von Ljubljana sind jetzt unter dem „Pluralism in Europe – One Law, One Market, One Culture?“ im Lit Verlag erschienen. Der Scriba (SH) und Lars Reuter (LR) berichten über die geplante Neukonstituierung des EEN, das entweder eine Ethik-Plattform bleiben soll (dann aber ohne eigene Zeitschrift „Ethical Perspectives“) oder zu einer Ethik-Gesellschaft (mit eigener Zeitschrift „Ethical Perspectives“) mit einzelnen Mitgliedern (zu denen dann auch die Societas Ethica gehören könnte) umgestaltet werden soll. LR berichtet, dass ein Komitee gebildet wurde, dass neue Statuten für das EEN erarbeitet, die den bisherigen Mitgliedern zur Anhörung, Diskussion und Kritik vorgelegt werden sollen. Nach einem solchen Konsultationsprozess sollen die Statuten auf einer Vollversammlung aller bisheriger Mitgliedsgesellschaften vorgelegt, diskutiert und zur Beschlussreife gebracht werden. Jan Jans und Svend Andersen weisen auf die Kooperationsbereitschaft der SCE und Kooperationsmöglichkeiten mit der Society of Jewish Ethics hin. K.-W. Dahm fragt nach der Zusammenarbeit mit EBEN. Er regt an, die Zusammenarbeit zu intensivieren und Jahresberichte auszutauschen. Bert Musschenga fragt nach der Zusammenarbeit mit Britischen Ethik-Gesellschaften. SH berichtet von seiner PR-Arbeit und Kontakten mit verschiedenen europäischen Ethik-Gesellschaften im Vorfeld der Konferenz von Oxford.

#### Bericht des Scriba/The Scriba's Report

- Mitgliederstand/Membership 10.8.2006: 212 (Same time 2005/Selber Zeitraum 2005: 212)
- Herkunftsländer der Mitglieder/Members country of origin: (absteigend nach Anzahl, last year in parenthesis)  
 Deutschland 49 (49); Niederlande 26 (26); Schweiz 22 (24); Polen 21 (20); Schweden 15 (15); Österreich: 8 (8); USA 8 (8); Italien 4 (7); Norwegen 7 (7); Dänemark 7 (6); Ungarn 6 (6); Großbritannien 6 (6); Frankreich 4 (4); Finland 4 (3); Belgien 3 (3); Spanien 3 (3); Kroatien 2 (2); Luxemburg 2 (2); Rumänien 2 (2); Slowakien 2 (2); Ser-

- bien und Montenegro 2 (2); Bulgarien 1 (1); Tschechien 1 (1); Estland 1 (1); Griechenland 1 (1); Irland 1 (1); Island 1 (1); Libanon 1 (1); Malta 1 (1); Slowenien 1 (1).
- Geschlecht der Mitglieder: 32 Frauen, 180 Männer
- Neue Mitglieder seit letzter Jahrestagung: 7 (Christoph Baumgartner, Mette Ebbesen, Erny Gillen, Karsten Lehmkuehler, Elke Mack, Tatjana Meira-Kochetkova, Ville Päivänsalo)
- Laufende Anträge auf Mitgliedschaft: 8
- Ausgetreten seit Sept 05 sind: 5 (Prof. Dr. Roland Campiche, Prof. Dr. Paolo Carlotti, Prof. Dr. Francesco Compagnoni, Prof. Dr. Hugues Puel, Prof. Dr. Franz Josef Stegmann)
- gestorben: 2 Prof. Dr. Leo C. Fretz, Prof. Dr. Dietrich von Oppen
- Konferenz in Oxford:
  - Teilnehmerzahl/participants: 169 (SE 113: SSCE: 56) Salzburg: 78, Ljubljana 2004: 85; Sigtuna 2003: 94; Brüssel 2002: 73; Berlin 2001: 100; Padova 1999: 123
  - Herkunftsländer der Teilnehmer/countries of origin (Societas Ethica only): Germany: 39; Netherlands: 16; Switzerland: 8; England: 8; Denmark: 6; USA: 6; Sweden: 5; Poland: 4; Austria: 3; Norway: 2; Belgium: 2; France: 2; Romania: 2; Canada: 2; China: 1; Nigeria: 1; Italy: 1; Spain: 1; Luxemburg: 1; Malta: 1; Finland: 1; Scotland: 1
  - Tagungsprogramm: 4 keynote lectures, 7 invited papers, 5 interest groups with 8 speakers
  - Call for papers: 61, 79 applied; (Salzburg 14; Ljubljana 27)
  - Lecturers origin: Germany: 18; Netherlands: 12; England: 12; USA: 11; Denmark: 4; Sweden: 4; Switzerland: 3; Poland: 3; France: 2; Austria: 2; China: 2; Scotland: 2; Luxemburg: 1; Nigeria: 1; Finland: 1; Norway: 1; Canada: 1; Belgium: 1; Italy: 1.
  - 64 male und 16 female lecturers
- Konferenz 2007 in Leysin
  - Zeit: 22-26 August 2007
  - Thema: Philosophische Zugänge zur Ethik - Methoden und Grundlagen  
Philosophical Approaches to Ethics - Methods and Foundations
  - Gastgeber: Alberto Bondolfi, Denis Müller, Hugues Poltier
  - Tagungshaus: Hotelschule der SEG (Swiss Education Group) in Leysin (in der Nähe des Genver Sees)

#### Finanzbericht des Quaestors/The Quaestor's financial report

GB berichtet von der positiven Vermögensentwicklung der Societas Ethica im Jahr 2005. Das sei im wesentlichen auf die erfolgreiche Konferenz in Salzburg zurückzuführen. Die Versammlung dankt Werner Wolbert für sein umfassendes Engagement. GB weist darauf hin, dass die Versammlung in Oxford einen Verlust von über 15.000 EUR erwarten lässt. Trotz vielversprechender Bemühungen sei es nicht gelungen, Sponsoren für diese Tagung zu gewinnen. Zu den Details des Finanzberichtes vgl. die Anlage im Jahresbericht. Martin Honecker fordert, den Tagungsbeitrag bei etwas über 400 Euro stabil zu halten. Alberto Bondolfi weist auf die Abwesenheit der Osteuropäer hin und darauf, dass die Societas Ethica die Zusammenarbeit verbessert sollte. Es folgt eine Diskussion über die Höhe der Tagungskosten.

#### Bericht der Kassenprüfer/The accountants' report

Karl Golser (KG) und Ulrik Nissen (UN) berichten, dass sie die Kontoführung geprüft und in Ordnung befunden haben. KG und UN weisen darauf hin, dass das Geld auf dem Schweizer Konto noch effektiver angelegt werden könnte. Darüberhinaus seien die Einzugsgebühren der Kreditkarten hoch und sollten durch Banküberweisungen ersetzt werden. KG und UN sprechen sich dafür aus,

die Kooperation mit ETMP wegen geringer Abonnentenzahlen zu überdenken. Sie schlagen den Vorstand zur Entlastung vor.

Die MV entlastet den Vorstand einstimmig.

#### Wahl der Kassenprüfer/Election of accountants

Hans Ulrich schlägt Karl Golser und Ulrik Nissen vor. Die MV stimmt diesem Vorschlag per Akklamation zu. KG und UN willigen in die Wahl ein.

#### Wahlen zum Vorstand/Election of board members

Verschiedene Mitglieder sprechen sich dafür aus, dass das Präsidium den Mitgliedern eine aktuelle Liste mit Boardmitgliedern und Wahlperioden zukommen lassen soll. HU berichtet, dass NBs erste Wahlperiode 2006 endet und dass das Board ihn der MV zur Wiederwahl vorschlägt. Die MV bestimmt Markus Arnold (MA) auf Vorschlag von HU einstimmig zum Wahlleiter. MA führt die Wahl auf Antrag von Martin Honecker durch. MA verliest das Wahlreglement und stellt fest, dass im Raum 37 Stimmberechtigte sind. Wahlergebnis: 36 Stimmzettel abgegeben, 1 Stimmzettel leer, 1 ungültig. Nigel Biggar wird mit 35 Stimmen für eine zweite Amtsperiode gewählt.

#### Folgende Jahrestagungen/Subsequent annual meetings

Lars Reuter fordert, dass der Tagungsbeitrag im Hinblick auf Zusammensetzung und Verwendungszweck in Zukunft für die Mitglieder transparenter gemacht wird.

#### Varia

HU berichtet, dass 2007 ein neues Präsidium und drei neue Vorstandsmitglieder zur Wahl stehen. HU teilt der MV mit, dass das Board Hugues Poltier als nächsten Präsident vorschlägt. Alberto Bondolfi stellt Hugues Poltier vor: HP ist akademischer Oberat für Philosophie und verantwortet gemeinsam mit Bondolfi und Denis Müller den Ethikunterricht an der Technischen Fakultät Lausanne. HP nennt die Namen seines Team zur Präsidentschaftskandidatur: Celine Ehrwein (Scriba), Simone Romagnoli (Quaestor).

Ende: 18.49h

## 4. Satzung/Statutes

### Societas Ethica - Satzung<sup>1</sup>

#### § 1 Name

Die Forschungsgesellschaft trägt den Namen Societas Ethica. Sie ist ein Verein gemäß dem Schweizerischen Zivilgesetzbuch, Art. 60ff.

#### § 2 Zweck

Die Forschungsgesellschaft hat die Aufgabe, regelmäßige Zusammenkünfte der Dozentinnen und Dozenten sowie der Forscherinnen und Forscher an Universitäten und Hochschulen zur Diskussion aktueller Fragen der Ethik herbeizuführen. Die Diskussion soll sich sowohl grundlegenden Problemen der philosophischen und theologischen Ethik als auch Fragen der angewandten Ethik zuwenden.

#### § 3 Sitz

Sitz der Forschungsgesellschaft ist Basel/Schweiz.

#### § 4 Mitgliedschaft

Mitglieder können Dozenten/innen und Forscher/innen für Ethik und verwandte Disziplinen werden. Über die Aufnahme entscheidet der Vorstand im Einvernehmen mit dem Praeses.

Die Mitgliedschaft kann unter Einhaltung einer sechsmonatigen Frist jeweils zum Ende des laufenden Kalenderjahres gekündigt werden.

Mitglieder, die drei Jahre ihren Beitrag trotz wiederholter Mahnung nicht entrichtet haben, können ausgeschlossen werden.

#### § 5 Organisation

Die Organe des Vereines sind:

1. Die Mitgliederversammlung
2. Der Vorstand
3. Das Präsidium

#### § 6. Mitgliederversammlung

Oberstes Organ des Vereins ist die Mitgliederversammlung.

Die Mitgliederversammlung wird in der Regel jährlich zusammengerufen sowie dann, wenn mindestens ein Fünftel der Mitglieder es verlangt.

Die Mitgliederversammlung genehmigt den Jahresbericht und die Jahresrechnung, entscheidet über Satzungsänderungen sowie über Anträge des Vorstandes und einzelner Mitglieder und setzt den Jahresbeitrag fest.

Die Mitgliederversammlung wählt den Vorstand und die Rechnungsprüfer/innen.

<sup>1</sup> Revidiert bei den Jahrestagungen 1976 (Balatonfüred), 1995 (Brixen), 1997 (Gdansk-Oliwa), 2004 (Ljubljana).

Jedes Mitglied ist berechtigt, Mitglieder zur Wahl in den Vorstand vorzuschlagen. Die Begründung der Vorschläge soll das Kriterium der »angemessenen Repräsentation der Mitgliedschaft« im Vorstand (§7) berücksichtigen.

Die Vorschläge sind dem Vorstand schriftlich (bis spätestens 48 Stunden vor der Mitgliederversammlung) vorzulegen und vom Vorstand (spätestens 24 Stunden) vor der Mitgliederversammlung den Mitgliedern am jeweiligen Ort der Mitgliederversammlung durch Aushang bekanntzugeben.

In der Mitgliederversammlung entscheidet die einfache Mehrheit der gültig abgegebenen Stimmen. Wahlen regelt das Wahlreglement. Satzungsänderungen können nur mit einer Zweidrittel-Mehrheit der anwesenden Stimmberechtigten beschlossen werden.

#### *§ 7 Vorstand*

Der Vorstand besteht aus mindestens fünf und höchstens neun Mitgliedern. Bei der Wahl sollte auf eine angemessene Repräsentation der Mitgliedschaft, insbesondere der verschiedenen Regionen und der verschiedenen fachlichen Kompetenzen, geachtet werden. Die Vorstandsmitglieder werden für die Dauer von vier Jahren gewählt. Sie sind nur einmal wiederwählbar.

Den Vorsitz führt der Praeses.

#### *§ 8 Präsidium*

Der Praeses wird für die Dauer von vier Jahren gewählt. Er ist in der unmittelbar darauf folgenden Periode als Praeses nicht wiederwählbar.

Der Praeses und der Vorstand können gemeinsam einen Vicarius aus ihrer Mitte benennen.

Der Praeses führt die laufenden Geschäfte der Societas Ethica mit Hilfe des Scriba und des Quaestors, die auf Vorschlag des Praeses von der Mitgliederversammlung bestätigt werden.

Die drei bzw. vier bilden das Präsidium des Vereins.

#### *§ 9 Finanzen*

Die Einnahmen des Vereins bestehen aus Mitgliederbeiträgen, Subventionen und Spenden.

Das Rechnungsjahr ist das Kalenderjahr.

Eine Haftung der Mitglieder für Verbindlichkeiten des Vereins bleibt auf beschlossene, aber noch nicht eingezogene Mitgliedsbeiträge beschränkt.

#### *§ 10 Archiv*

Das Archiv des Vereins befindet sich im Staatsarchiv Basel. Zugang haben das Präsidium und mit einer Bewilligung des Praeses ausgestattete Personen.

#### *§ 11 Auflösung des Vereins*

Die Auflösung des Vereins kann nur mit Zweidrittel-Mehrheit aller anwesenden Stimmberechtigten beschlossen werden. Der Antrag auf Auflösung muss den Mitgliedern sechs Monate vorher zugegangen sein. Im Falle der Auflösung des Vereins soll das Vereinsvermögen der Studienabteilung des Ökumenischen Rates der Kirchen in Genf zufallen.

## 5. Wahlreglement/Election Rules

### Reglement für die Wahlen von Präsident und Vorstandsmitgliedern<sup>1</sup>

1. Vorschläge der Kandidierenden sind dem Vorstand schriftlich bis spätestens 48 Stunden vor der Mitgliederversammlung vorzulegen und vom Vorstand spätestens 24 Stunden vor der Mitgliederversammlung an deren jeweiligem Ort durch Aushang bekannt zu machen. (vgl. §7 Satzung).

2. Für die Wahl zum Präsidenten oder zum Vorstandsmitglied ist eine qualifizierte (absolute) Mehrheit von mehr als 50% der abgegebenen gültigen Stimmen erforderlich.

3. Als gültig abgegebene Stimmen gelten „ja“, „nein“ („yes“, „no“), bzw. die Nennung von Namen von Kandidierenden, sowie mit „Enthaltung“ („abstention“) gekennzeichnete Stimmzettel.

4. Infolge des Erfordernisses der absoluten Mehrheit (vgl. Nr.2 und Nr. 3) zählen Enthaltungen wie Nein-Stimmen.

5. Auf den Wahlzetteln dürfen maximal so viele Kandidierende vermerkt werden, wie Sitze zu vergeben sind. Das Kumulieren von Stimmen ist nicht statthaft.

6. Leere Stimmzettel, Stimmzettel mit mehr Namen als zu besetzenden Sitzen, ferner Stimmzettel mit Namen von Nichtkandidierenden gelten als ungültig und zählen bei der Feststellung der erforderlichen Mehrheiten nicht mit.

7. Erreichen mehr Kandidierende, als Sitze zu vergeben sind, die absolute Mehrheit, scheiden diejenigen mit der geringsten Stimmenzahl als überzählig aus.

8. Werden in einem Wahlgang nicht alle Sitze besetzt, sind weitere Wahlgänge nach demselben Verfahren vorgesehen. Erreicht hierbei keine/r der Kandidierenden die vorgesehene absolute Mehrheit, scheidet bei jedem weiteren Wahlgang der/die Kandidierende mit den geringsten Stimmen aus.

Kommentar:

Damit ist folgendes klargestellt:

1. Kandidieren kann nur, wer 24 Stunden vor der Mitgliederversammlung als Kandidat/in bekannt ist.
2. Das Aufstellen neuer Kandidierender während der Mitgliederversammlung ist nicht statthaft. Dies verunmöglicht es allerdings, dass bei einer Nichtwahl bei derselben Mitgliederversammlung neue Kandidaten aufgestellt werden. Würde das Minimum von 5 Vorstandsmitgliedern nicht erreicht, müssten/könnten, falls mehrheitlich gewünscht, weitere Wahlgänge mit denselben Kandidaten erfolgen. Dieser Fall scheint jedoch eher hypothetisch zu sein.
3. Vor dem Austeilen der Stimmzettel muss die Anzahl der Stimmberechtigten ermittelt werden. Wer nicht mit abstimmt, gilt als nicht anwesend. Damit steht immer das Maximum, nicht aber das Minimum der abgegebenen gültigen Stimmen fest.
4. Gewählt ist nur, wer mindestens eine Stimme mehr (bei einer geraden Zahl von Stimmberechtigten) oder eine halbe Stimme mehr (bei einer ungeraden Zahl Stimmberechtigten) erreicht.
5. Erreichen zu viele Kandidierende diese Stimmenzahl, scheiden die mit der geringsten Stimmenzahl als überzählig aus.

<sup>1</sup> Verabschiedet auf der Mitgliederversammlung der Jahrestagung in Salzburg vom 27.08.2005.

## 6. Finanzbericht des Quaestors zum 31.12.2005

## Gewinn- und Verlustrechnung in Euro

	<i>Bargeld Erlangen</i>	<i>Bank Erlangen</i>	<i>Konto Basel</i>
<b>Vermögen am 1.1.2005</b>	<b>Euro 872,99</b>	<b>Euro 15.938,24</b>	<b>Euro 29.141,00</b> CHF 44.982,00
<i>Wertpapiere Basel</i>			<i>Euro 12.672,93</i> <i>CHF 19.567,00</i>
<b>Gesamtvermögen 1.1.2005</b>	<b>Euro 58.625,16</b>		
<b><u>Einnahmen</u></b>	<b>Euro 4.926,00</b>	<b>Euro 42.464,25</b>	<b>Euro 470,89</b>
Jahresbeiträge	Euro 720,00	Euro 5.436,00	Euro 22,46
Tagungsbeiträge 2005	Euro 4.090,00	Euro 21.840,00	
Sponsoren Salzburg		Euro 14.850,00	
ETMP Abo	Euro 100,00	Euro 240,00	
Zinsen und Erstattungen		Euro 98,25	Euro 448,43
Sonstige	Euro 16,00		
<i>Interne Einnahmen</i>	<i>Euro 3.409,74</i>	<i>Euro 4.658,56</i>	
<b>SUMME</b>	<b>Euro 8.335,74</b>	<b>Euro 47.122,81</b>	<b>Euro 470,89</b> <b>CHF 733,75</b>
<b><u>Ausgaben</u></b>	<b>Euro 3.733,22</b>	<b>Euro 36.749,64</b>	<b>Euro 165,96</b>
Konferenz 2005	Euro 1.206,83	Euro 28.140,40	
Konferenzkosten 2004 + 2006		Euro 3.101,45	
Jahresbericht 2004	Euro 65,00	Euro 1.727,00	
Vorstand / Präsidium	Euro 2.461,39	Euro 3.104,19	
ETMP Kosten		Euro 238,50	
Gebühren + Steuern		Euro 438,10	Euro 165,96
<i>Interne Ausgaben</i>	<i>Euro 4.658,56</i>	<i>Euro 3.409,74</i>	
<i>Kursverlust</i>			<i>Euro 273,26</i>
<b>SUMME</b>	<b>Euro 8.391,78</b>	<b>Euro 40.159,38</b>	<b>Euro 165,96</b> <b>CHF 258,60</b>
<b>Stand am 31.12.2005</b>	<b>Euro 816,95</b>	<b>Euro 22.901,67</b>	<b>Euro 29.172,67</b> <b>CHF 45.457,15</b>
<i>Wertpapiere Basel</i>	<i>Kursverlust: Euro 247,13</i> <i>Euro 12.425,80</i> <i>CHF 19.362,00</i>		
<b>Gesamtvermögen 31.12.2005</b>	<b>Euro 65.317,09</b>		

Wechselkurs am 1.1.2005: 1 Euro = 1,54400 SFr.

Wechselkurs am 31.12.2005: 1 Euro = 1,55821 SFr.

## 7. Bisherige Jahrestagungen der Societas Ethica

2006	Oxford	Political ethics and International order
2005	Salzburg	Research and Responsibility – Forschung und Verantwortung
2004	Ljubljana	Pluralismus in Europa?
2003	Sigtuna	Economics, Justice and Welfare – Wirtschaft, Gerechtigkeit und Gemeinwohl
2002	Bruxelles	Humanität über den Humanismus hinaus erhalten
2001	Berlin	Quellen Öffentlicher Moral – Zum Streit um Religion und Ethik
2000	Askov	Vergangenes Unrecht vergeben?
1999	Padua	Ethik und Gefühle
1998	Turku	Ethik und Gesetzgebung
1997	Gdansk/Oliwa	Solidarität und Sozialstaat
1996	Luzern	Ethik, Vernunft und Rationalität
1995	Bressanone	Moralische Erziehung im neuen Europa
1994	Bereksfürdő	Nation State, and the Coexistence of Different Communities
1993	Acireale	Ethik des Lebens in kulturellen Kontexten. Auf dem Weg zu einem neuen Verständnis von Bioethik
1992	Woudschoten/Utrecht	Die Wendung zur konkreten Ethik. Praktische Folgen für Forschung, Ausbildung und die gesellschaftliche Rolle der Ethiker
1991	Århus	Die Rückfragen nach den Grundlagen der Ethik und die Entwicklung der konkreten Ethik
1990	Walberberg	Fundamentalismus
1989	Durham	Begründung und faktische Geltung von Normen
1988	Montreux	Ethische Implikationen im Arbeitsverständnis
1987	Debrecen	Die Bedeutung der ethischen Theorien für die Praxis
1986	Tutzing	Macht und Widerstand
1985	Palermo	Problems in Bioethics. The Paradigm of In vitro fertilisation
1984	Båstad	Ist der ethische Pluralismus ein Problem?

1983	Canterbury	Legal Enforcement of Morals
1982	Dubrovnik	Das Menschenbild in der Ethik – verbindend oder trennend
1981	Salzburg	Gerechtigkeit und Strafe
1980	Warschau	Ökonomische Theorie und ökonomische Entscheidung
1979	Liebfrauenberg	Die ethische Theorie sittlicher Urteile
1978	Goslar	Recht und Würde des Menschen
1977	Noordwijk	Der Begriff Gerechtigkeit
1976	Balatonfüred	Ökologische Verantwortung
1975	Bad Leonfelden	Das Humanum als Problem der Ökologie
1974	Tutzing	Die Rechtfertigung ethischer Urteile
1973	Wien	Ansätze ethischen Denkens in Osteuropa
1972	Chur	Die Interdependenz von Mensch und Gesellschaft
1971	Båstad	Die ethischen Implikationen biologischer und medizinischer Erkenntnisse
1970	Hofgeismar	Formen der Gewalt in Staat und Gesellschaft heute und ihre Kritik
1969	Strasbourg	Was heißt heute „Du sollst nicht stehen“ im Blick auf das Verhältnis zwischen reichen und armen Nationen?
1968	Amsterdam	Die Bedeutung des Dekalogs, theologisch und geschichtlich
1967	Münster	Die Manipulierbarkeit des Menschen
1966	Lund	Das Proprium der christlichen Ethik
1965	Basel	Die Monogamie in ethnologischer und theologischer Sicht
1964	Basel	Die theologische Begründung der Ethik angesichts der modernen Forderung einer „new morality“

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