

De Ethica

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The Ethics of War and Peace

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DE ETHICA

A JOURNAL OF PHILOSOPHICAL, THEOLOGICAL AND APPLIED ETHICS

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From the Editors

Last August, Societas Ethica organized its 51st annual conference in Maribor, on the topic of 'The Ethics of War and Peace'. Both the time and the place for the conference were historically significant: Slovenia saw frontline fighting and atrocities in both World Wars, and the conference date, in August 2014, marked the centenary of the outbreak of the First World War, the great war that was, according to deluded nationalist rhetoric, supposed to end all wars.

One hundred years later, philosophical and theological reflection on war and peace is more important than ever. Both the end of the Second World War and the end of the Cold War fueled hopes for the establishment of a permanent and peaceful international order. But such hopes have been dashed again and again. While the sheer number and the intensity of armed conflicts have decreased over the previous decades, the specter of war continues to haunt us. Violent conflicts – many of them forgotten or barely noticed in the West – continue to rage on, for instance in the Congo or in Myanmar.

The civil war in Syria has turned out to be one of the worst failures of the international community in terms of containing and restraining violence. Arms continue to flood into the country, while eleven million refugees are still trapped inside it and there are not enough funds to support the four million who were able to flee.

Europe feels once again threatened by an expanding Russia. The War against Terror is being conducted on a global scale, with new and ever more comprehensive surveillance technology and an American president who has assumed the right to order the remote killing of anyone, anywhere on Earth. Meanwhile, a terror organization like IS is assuming the habits of the nation-state, but continues to draw recruits from various affluent countries in Europe and other parts of the world and vows a return to medieval forms of governance and law.

War is still with us, but its face is continually changing. In order to understand this change, we need to be aware and wary of its history. The articles assembled in this special issue are in various ways cognizant of the history of warfare and the special issues they illuminate. Nigel Biggar, in an article that builds on the keynote lecture he delivered at the Societas Ethica conference last year, draws upon historical and theological scholarship to sketch a Christian theory of Just War. And Jasna Nimac reminds us of the reconstructive nature of memory, and the special ethical responsibilities that this entails for remembering violence – or acts that can lead to violence through the ways in which they are remembered.

Ronnie Hjorth provides us with a secular take on the right to armed interventions for humanitarian reasons, building on the work of P. F. Strawson – and like Biggar's, his article is steeped in historical awareness. And finally, Werner Wolbert offers

a take on one of the newest topics of the ethics of war and peace: targeted killings. He reflects on what targeted killings actually are: acts of warfare, of punishment, or of police action.

These papers span a broad range of topics and of argumentative styles, and we are very glad to present them together in this special issue. The publication of this issue coincides with another anniversary - it has been seventy years since the end of the Second World War and the Nazi reign of terror. To hope for eternal peace in light of this anniversary would be presumptuous. But perhaps what we can hope for is clearer thinking around questions of war and peace, and for these articles to make a contribution in that direction.

From the Editors

Im letzten August organisierte die Societas Ethica ihre 51. jährliche Konferenz in Maribor, zum Thema 'Ethik in Krieg und Frieden'. Sowohl der Zeitpunkt als auch der Veranstaltungsort waren historisch bedeutsam: Slowenien war in beiden Weltkriegen Schauplatz von Frontkämpfen und Kriegsverbrechen, und das Datum der Konferenz, im August 2014, markierte den hundertsten Jahrestag des Ausbruchs des Ersten Weltkrieges – jener Krieg der in verblendeter nationalistischer Rhetorik zum Krieg, der alle Kriege beenden würde, stilisiert wurde.

Hundert Jahre später ist philosophische und theologische Reflektion über das Thema Krieg und Frieden wichtiger denn je. Sowohl das Ende des Zweiten Weltkrieges wie auch das Ende des Kalten Krieges nährten Hoffnungen auf die Erschaffung einer dauerhaften und friedlichen politischen Ordnung in der Welt. Aber diese Hoffnungen sind ein ums andere Mal enttäuscht worden. Wenngleich die reine Anzahl und die Intensität bewaffneter Konflikte in den letzten Jahrzehnten abgenommen haben, so verfolgt uns das Gespenst des Krieges doch weiterhin. Gewalttätige Auseinandersetzungen – viele davon vom 'Westen' kaum wahrgenommen oder ganz vergessen – setzen sich mit kaum verminderter Schärfe fort, so etwa im Kongo oder in Myanmar.

Der syrische Bürgerkrieg hat sich zu einer der schlimmsten Misserfolge der internationalen Gemeinschaft in ihrem Bemühen zur Eindämmung und Verhinderung von Waffengewalt entwickelt. Während elf Millionen Flüchtlinge in Syrien gefangen sind, und für weitere vier Millionen, die ins Ausland fliehen konnten, nicht genügend Hilfsgelder bereitstehen, strömen weiter Waffen in das Land.

Europa fühlt sich wieder von einem expandierenden Russland bedroht. Der Krieg gegen den Terror wird global geführt, ohne Grenzen, mit immer leistungsfähigerer Überwachungstechnologie und einem amerikanischen Präsidenten, der sich das Recht genommen hat, jeden Menschen auf der Erde ferngesteuert töten zu lassen. Derweil geriert sich die Terrororganisation IS wie ein Nationalstaat, zieht weiter Rekruten aus wohlhabenden Ländern in Europa und anderen Teilen der Welt an, und beschwört gleichzeitig eine Rückkehr zu mittelalterlichen Formen von Regierung und Rechtsprechung.

Der Krieg begleitet uns weiter, aber sein Gesicht verändert sich ständig. Um diese Veränderung zu verstehen, müssen wir uns seiner Geschichte mahnend bewusst machen. Die Artikel in dieser Ausgabe von *De Ethica* kommen dieser Aufgabe auf je eigene Weise nach. Nigel Biggar, dessen Artikel auf seinem Hauptvortrag bei der Konferenz der Societas im letzten Jahr aufbaut, bedient sich historischer und theologischer Einsichten, um eine christliche Theorie des gerechten Krieges zu skizzieren. Jasna Nimac betont die rekonstruktive Funktion des Erinnerens und die besondere ethische Verantwortung, die

daraus für das Erinnern von Gewalt erwächst – und für das Erinnern, dass durch seinen Inhalt Gewalt befördern kann.

Ronnie Hjorth entwickelt eine säkulare Theorie bewaffneter, humanitärer Interventionen, die auf dem Werk P. F. Strawsons aufbaut – wie auch Biggars Artikel gekennzeichnet durch besondere historische Sensibilität. Werner Wolbert schliesslich beschäftigt sich mit einem der neuesten Themen der Kriegs- und Friedensethik: gezielten, ferngesteuerten Tötungen. Er geht der begriffsanalytischen Frage nach, was diese Tötungen eigentlich sind: kriegerische Handlungen, Strafaktionen, oder polizeiliche Gewalt.

Die hier versammelten Artikel decken eine Reihe unterschiedlicher Themen und argumentativer Stile ab, und wir sind stolz, sie hier zusammen in dieser Ausgabe präsentieren zu können. Die Veröffentlichung dieser Ausgabe fällt zusammen mit einem anderen Jahrestag – vor siebzig Jahren näherte sich der Zweite Weltkrieg seinem Ende und der Naziterror wurde endgültig besiegt. Im Sinne dieses Jahrestages auf ewigen Frieden hoffen zu wollen, wäre vermessen. Aber vielleicht dürfen wir darauf hoffen, durch die hier versammelten Arbeiten zu klarerem Denken in Fragen von Krieg und Frieden beitragen zu können.

The Ethics of War and Peace: Introductory Essay

In Defence of Just War: Christian Tradition, Controversies, and Cases

Nigel Biggar

*This article presents four controversial issues that are raised by the articulation of just war thinking in my book, *In Defence of War* (2013, 2014): the conception of just war as punitive, the penultimate nature of the authority of international law, the morality of national interest, and the elasticity of the requirement of proportionality. It then proceeds to illustrate the interpretation of some of the criteria of just war in terms of three topical cases: Britain's belligerency against Germany in 1914, the Syrian rebellion against the Assad regime in 2011, and Israel's Operation Protective Edge against Hamas in Gaza in 2013.*

It is often claimed that just war thinking has been rendered obsolete by novel phenomena such as nuclear weapons, wars 'among the people', war-by-remote-control, and cyber-aggression. The presentation of issues and cases in this article, notwithstanding its brevity, is sufficient to show that just war thinking continues to develop by wrestling with controversial conceptual problems and thinking its way through novel sets of circumstances.

The purpose of this article is to show that the just war tradition remains very much alive, continuing to develop as it wrestles with conceptual problems and thinks its way through novel cases. It begins by presenting and briefly discussing four controversial issues that are raised by the articulation of just war thinking in my book, *In Defence of War*:¹ the conception of just war as punitive, the penultimate nature of the authority of international law, the morality of national interest, and the elasticity of the requirement of proportionality. In order to illustrate the interpretation of some of the criteria of just war, and to show how these develop upon encounter with particular circumstances, I then proceed to consider three topical cases: Britain's belligerency against Germany in 1914, the Syrian rebellion against the Assad regime in 2011, and Israel's Operation Protective Edge against Hamas in Gaza in 2013.

¹ Nigel Biggar, *In Defence of War* (Oxford: Oxford University Press, 2013; second, paperback edition, 2014).

Just War Thinking: Why Christian?

The account of just war thinking that I am going to present will operate primarily in terms of the Christian tradition. Why? Will this not limit its appeal, attracting only the interest of Christians and excluding others? Why does it not proceed in secular terms, which are universally intelligible and accessible? Why must it be religious, confessional, sectarian?

There are two reasons. First, I do not believe in the possibility of secular language. That is to say, I do not believe that there is a set of terms that is neutral between rival worldviews, which members of a plural society should adopt when communicating with each other about public affairs. Nor do I believe that religious worldviews are irrational *per se*, and that public discourse must be non-religious in order to be rational. There is no view from nowhere; there are only diverse confessions. What is more, non-religious views—Aristotelian, Hobbesian, Kantian, Marxist, Nietzschean, etc.—are quite as plural and quite as conflicting as religious ones.

How, then, can we communicate, perchance agree? By setting out as candidly and clearly what we think and why; by inviting others to do the same; by engaging in the give-and-take of conversation; by identifying points of agreement; by reasoning together about points of disagreement; and by learning from one another.² I do not doubt that non-Christians will be puzzled by some things that I say, and that they will disagree with others. But I am equally confident that many of them will find much to which they can consent. After all, the common world that we inhabit does rein in the divergence of our construals. What is more, different traditions are seldom *absolutely* strange to one another: certain strands of Christianity and Islam incorporate Aristotle, for example, and both Locke and Kant are more theological than atheist moral philosophers usually care to remember.

In brief, my view of secularity is not that of Jürgen Habermas or John Rawls; it is that of Augustine. In this Augustinian view, secularity is the public space where plural voices put their differences on the table, negotiate, and compromise. That is my first reason for specifying my view of just war thinking as Christian.

My second reason is that there is a variety of ways of construing the justification of war, and some are better than others. It might be assumed that Christian thought is *passé* and that it has been surpassed by modern philosophical versions. In fact, however, I think that David Rodin's critique of the just war thinking stemming from Michael Walzer is pretty damning and that, ironically, it inadvertently illuminates the strengths of the Christian tradition.³

Further, Christian thinking differs from contemporary moral philosophy on just war in one fundamental respect: it conceives of just war as basically punitive in form. This brings us to the first of the controversies that I have chosen to discuss.

² I have written about this at some length in *Behaving in Public: How to Do Christian Ethics* (Grand Rapids: Eerdmans, 2011) and in Chapter 7 and the Conclusion of *Religious Voices in Public Places*, co-edited with Linda Hogan (Oxford: Oxford University Press, 2009).

³ In *War and Self-Defense* (Oxford: Clarendon Press, 2001) David Rodin offers a critique of Michael Walzer's account of the just war, mainly as expressed in his modern classic, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (London: Allen Lane, 1977). In Chapter 5 of *In Defence of War* I argue that Rodin inadvertently vindicates the early Christian tradition of just war thinking.

Controversies

1. *Just War as Punitive*

As I see it, one respect in which Christian thinking about just war is ethically superior to Michael Walzer's moral philosophy – at least, as represented by David Rodin – is that it does not take national self-defence as its paradigm.⁴ To make national self-defence *simply* the model of justified war issues in some counter-intuitive judgements: for example, that as soon as the Allies invaded the borders of Nazi Germany, Hitler's belligerency became self-defensive and so justified and the Allies' war-making became aggressive and so unjustified. This conclusion reveals, I think, that to identify justified war with national self-defence is morally simplistic, ignoring questions of motive, intention, cause, and proportion. In contrast, Christian thinking holds that justified war is always a response to a grave injustice that aims to rectify it. This response may take defensive *or* aggressive forms. It may move seamlessly from defence to aggression or it may begin with aggression. Justified aggression is what so-called 'humanitarian intervention' is about. The doctrine of the Responsibility to Protect is, in effect, a reassertion of the classic Christian paradigm of justified war.

This paradigm involves a claim about justified war that is very controversial and arouses quite some alarm: namely, the claim that the basic form of justified war is punitive – even, I would say, retributive. This view is characteristic of Christian thinking at least up to Grotius in the 17th century, and since then in the cases of Jean Bethke Elshtain and Oliver O'Donovan.⁵ Therefore, it is also a major reason why many believe that just war thinking should cut itself loose from its Christian moorings. Why is this? Two main reasons are given. First, that to allow just warriors to think of themselves as punishing the enemy is to encourage them to loosen the constraints on how they wage war. And second, that many, perhaps most, fighting on the unjustified side will not be morally culpable and will therefore not be liable for punishment.

My response to the first objection is this. If justified defence is only and always defence against an injustice, it necessarily has the form of retribution. Let me make clear that by 'retribution' I do not mean 'retributivism': I do not mean the ethic that prescribes an eye for an eye, a wasteland of equal suffering. Rather, my meaning derives from the etymology of the Latin verb *retribuere*, that is, a handing or paying back of what is due. So by 'retribution' I mean simply a hostile reaction to an injustice. All punishment has this basically retributive form.

The question of what purposes one wants to achieve through one's hostile, retributive reaction remains open and is yet to be determined. It could be one or more of several ends: defence, deterrence, or ultimately reform and reconciliation. In Christian eyes, the end or goal of punishment should never be the suffering of the unjust perpetrator *for its own sake*. Justified war, therefore, is retributive in its basic form, but not retributivist in substance. It is a hostile reaction to injustice, but it does not aim simply to make the perpetrator suffer for its own sake.

⁴ Rodin, p. 108: 'Michael Walzer calls the analogical argument from self-defence to national-defence the "domestic analogy", and places it [at] the centre of his theory of *ius ad bellum*'. In particular, Rodin refers the reader to Walzer, p. 58.

⁵ See Biggar, *In Defence of War*, pp. 163-164, including note 82.

The difficulty that many people have in describing justified war as retributive is, I think, an expression of a general cultural tendency to equate punishment and retribution with retributivism, and to see it therefore as a form of vengeance meted out by the self-righteous. In Christian eyes, however, punishment and retribution should only ever be meted out by one group of self-conscious sinners upon another, and if it is to be just punishment, it cannot be vengefully retributivist but must aim at defence, deterrence, and eventual reconciliation. Accordingly, it *must* be proportioned to those ends, and it *must* suffer such constraints as that proportion imposes.

What about the issue raised by the second objection, namely, the liability of soldiers fighting in an unjust cause? The first thing I want to say is that, while an element of tragic fate often characterises the predicament of a soldier fighting in an unjust cause, that does not relieve him of responsibility or excuse him from culpability. Take this example. At the *Deutscher Soldatenfriedhof* at Maleme in Crete there is a permanent exhibition (or at least there was ten years ago). This tells the story of the three von Bluecher brothers, the youngest still in his teens, who were all killed in the same place on the same day in May 1941. How did they all end up there? The two younger ones hero-worshipped the oldest—as younger brothers often do—and when he joined the parachute regiment, they followed. In the past I have used this to illustrate the element of tragedy that attends even the actions of unjust warriors, in the course of arguing that we should regard them with a measure of sympathy. One does not have to agree with what these three young men were doing falling out of the sky onto Crete in May 1941, in order to share a sense of sadness at their untimely deaths and a sense of common human fatedness. Nevertheless, an acquaintance who fought with the Royal Ulster Constabulary against the I.R.A. during the most violent phase of the ‘Troubles’ in Northern Ireland, and who is less inclined to be sentimental, has challenged me not to assume the three brothers’ innocence. It is, after all, quite possible that they were convinced Nazis and that they had participated in atrocities elsewhere in Europe. Certainly, after landing on Crete the *Fallschirmjaeger* were involved in some brutal reprisals against civilians.

My second comment on the issue of the liability of unjust soldiers is to say that, in the absence of the possibility of more precise discrimination, it seems to me reasonable for the just warrior not to give benefit of doubt and to presume guilt. The reasons for this are threefold: first, unjust soldiers sometimes do actively support the cause for which they fight; second, unjust soldiers who do not support it always have the option, albeit costly, of refusing to fight; and third, to require just soldiers to make very discriminate moral judgements on the battlefield would be to render the waging of just war practically impossible. For sure, this does make war *rough* justice—but even civil courts have been known to punish the innocent.

Third, I am not convinced that someone has to know subjectively that they have done wrong to be liable for punishment. Indeed, many of those who are rightly punished refuse to accept that they are guilty.

And fourth, the fact that just warriors understand themselves to be punishing unjust warriors does not mean that just warriors cannot submit themselves to *in bello* conventions that bind just and unjust alike, for the pragmatic purpose of limiting violence.

2. *International Law as Penultimate Authority*

On the one hand, respect for the authority of international law is important. In the opening pages of the chapter on law and morality in *In Defence of War*,⁶ I quote with explicit approval a passage from Robert Bolt's play, *A Man for all Seasons*, where Sir Thomas More presents a powerful argument for affording the benefit of law even to the Devil himself—in other words, that the good of political order is often worth the toleration of a measure of injustice. The dramatic context is that More is urged by his daughter, Margaret, and his future son-in-law, Nicholas Roper, to arrest Richard Rich, an informer. The subsequent argument rises to this climax:

Margaret (exasperated, pointing to Rich): While you talk, he's gone!

More: And go he should if he was the Devil himself until he broke the law!

Roper: So now you'd give the Devil benefit of law!

More: Yes. What would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that!

More: Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast—Man's law's, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.⁷

I do think, then, that sometimes one should tolerate a measure of injustice out of respect for the law. I also think that respect for the authority of law is very important for international trust, and that any state proposing to bend (or, less likely, break) the law should still show it the respect of making a case before the U.N. For that reason, I think that the Blair government's attempt to secure a second U.N. Resolution on Iraq in March 2003 was absolutely right, and far better than the Bush government's barely concealed contempt for the U.N. So in the absence (probably fortunate) of a global state, and in order to stave off international anarchy, I certainly and explicitly affirm the authority of international law.

Notwithstanding that, the question of what actually *constitutes* international law is a controversial one. Is it simply what is written in treaties or does it also embrace customary law as expressed in state-practice? And how should different bodies of law relate to one another? Should the battlefield be governed by the Laws of War or by International Humanitarian Law? When lawyers pronounce, 'International law says this' or 'Under international law that is illegal', we ought not to be over-impressed. They are behaving as advocates, behaving politically, pushing a particular point of view. If they were more honest and less political—or more academic and less lawyerly—they would claim, 'International law says this or that, *according to my interpretation of it*'. There is more than one reasonable view of what international law is and what it says.

What is more, a Christian monotheist is bound to acknowledge that positive international law, whatever it is, cannot have the last word. This is because, like any moral realist, he assumes that there is a universal moral order that transcends national legal systems and applies to international relations even in the absence of positive

⁶ Biggar, *In Defence of War*, pp. 216-217.

⁷ Robert Bolt, *A Man for All Seasons* (London: Heinemann, 1960), pp. 38-39.

international law. He believes that there are human goods and moral obligations that exist in and with the nature of things, and which exercise a guiding and constraining moral authority long before human beings articulate them in statutes or treaties. He holds that the principles of moral law are given or created before positive laws are made. Legal statutes and social contracts are therefore not crafted in a primordial moral vacuum. They are born accountable to a higher, natural law, and their word is neither first nor last. If that were not so, then Nuremberg was nothing but victors' vengeance dressed up in a fiction of 'justice', and today's high-blown rhetoric of universal human rights is just so much wind.

One thing that this implies is that military action can sometimes be morally justified in the absence of, and even in spite of, positive international law. Therefore, Christian just warriors cannot join those who believe that the 'legitimacy' of military intervention to prevent or halt grave injustice is decided simply by the presence or absence of authorisation by the United Nations Security Council. Loath though lawyers are to admit the penultimate nature of the authority of positive law, they do, when pressed. Writing of NATO's 1999 intervention in Kosovo, Martti Koskenniemi has admitted that 'most lawyers – including myself – have taken the ambivalent position that it was both formally illegal and morally necessary'.⁸

It seems to me that it is possible to break the treaty-letter of international law, while making a serious case that one is acting within its spirit; and that, insofar as other nations are persuaded, the authority of the law will not be damaged. What is vital is to assure the international community that one remains bound by common norms, even when one's reading of them is controversial. If the manner of literal transgression is respectful, the law's authority can be saved and international trust maintained.

3. The Morality of National Interest

In the popular Kantian view of ethics, self-interest is regarded as an immoral motive.⁹ According to this view, therefore, where national interests motivate military intervention, they vitiate it. There is, however, an alternative and, I think, superior eudaemonist tradition, which found classic expression in Thomas Aquinas. Combining the Book of Genesis' affirmation of the goodness of creation with Aristotle, Thomist thought does not view all self-interest as selfish and immoral. Indeed, it holds that there is such a thing as morally obligatory self-love. The human individual has a duty to care for himself properly, to seek what is genuinely his own good. As with an individual, so with a national community and the organ of its cohesion and decision, namely, its government: a national government has a moral duty to look after the well-being of its own people – and in that sense to advance its genuine interests. As Yves Simon wrote, 'What should we think, truly, about a government that would leave out of its preoccupations the interests

⁸ Martti Koskenniemi, "'The Lady Doth Protest Too Much': Kosovo and the Turn to Ethics in International Law', *The Modern Law Review*, 65:2 (2002), pp. 159-175, at. p. 162.

⁹ The ethics of Immanuel Kant are usually held to be simply 'deontological', viewing the only truly moral act as one that is done out of a pure sense of duty or reverence for the moral law. So conceived, the truly moral act stands in stark contrast to a merely prudential one, which seeks to promote the agent's interests. Whether this common, deontological view of Kant fully captures his thought I doubt. I think that a better reading has him argue that truly moral acts are those where the duty of justice as fairness disciplines – rather than excludes – the pursuit of interest.

of the nation that it governs?¹⁰ This duty is not unlimited, of course. There cannot be a moral obligation to pursue the interests of one's own nation by riding roughshod over the rights of others. Still, not every pursuit of national interest does involve the committing of injustice; so the fact that national interests are among the motives for military intervention does not by itself vitiate the latter's moral justification.

This is politically important, because some kind of national interest needs to be involved if military intervention is to attract popular support; and because without such support intervention is hard, eventually impossible, to sustain. One such interest can be moral integrity. Nations usually care about more than just being safe and fat. Usually they want to believe that they are doing the right or the noble thing, and they will tolerate the costs of war—up to a point—in a just cause that looks set to succeed. I have yet to meet a Briton who is not proud of what British troops achieved in Sierra Leone in the year 2000, even though Britain had no material stake in the outcome of that country's civil war, and even though intervention there cost British taxpayers money and British families casualties.¹¹ Citizens care that their country should do the right thing.

The nation's interest in its own moral integrity and nobility alone, however, will probably not underwrite military intervention that incurs very heavy costs. So other interests—such as national security—are needed to stiffen popular support for a major intervention. But even a nation's interest in its own security is not simply selfish. After all, it amounts to a national government's concern for the security of millions of fellow-countrymen. Nor need it be private; for one nation's security is often bound up with others'. As Gareth Evans puts it: 'these days, good international citizenship is a matter of national self-interest'.¹²

So national interest need not vitiate the motivation for military intervention. Indeed, some kind of interest will be necessary to make it politically possible and sustainable. It is not unreasonable for a national people to ask why they should bear the burdens of military intervention, especially in remote parts of the world. It is not unreasonable for them to ask why *they* should bear the burdens *rather than* others. It is not unreasonable for them to ask why *their* sons and daughters should suffer and die. And the answer to those reasonable questions will have to present itself in terms of the nation's own interests. And it could and ought to present itself in terms of the nation's own morally legitimate interests.

4. *The Elasticity of Proportionality*

One of the most controversial features of my version of Christian just war thinking is my understanding of the proportionality of military action. This is the requirement that war, to be justified, must be 'proportionate'—both before it is launched and in the waging of it. The best sense that I can make of proportionality is elastic and permissive. This permissiveness troubles me, but I can see no rational way of tightening it. One conceivable way of tightening it is to think of proportionality as a state of affairs that can

¹⁰ Yves R. Simon, *The Ethiopian Campaign and French Political Thought*, edited Anthony O. Simon, translated by Robert Royal (Notre Dame: University of Notre Dame, 2009), p. 55.

¹¹ The British casualties were very light: one dead, one seriously injured, and twelve wounded (see <http://www.eliteukforces.info/special-air-service/sas-operations/operation-barras/> (accessed 2009-11-24)).

¹² Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, DC: Brookings Institute, 2008), p. 144.

be seen to obtain when a cost-benefit analysis shows an excess of goods over evils. My problem with this is that, while it may be conceivable, it is not possible. This is because such cost-benefit analysis falls prey to the incommensurability of the relevant goods and evils. That is, the relevant goods and evils are so radically different in kind that there is no common currency in which to measure them: they are *incommensurable*. So, for example, how does one weigh against each other, on the one hand, the goods of regime-change in Berlin in 1945, the liberation of Europe from fascism, and the ending of the Final Solution against, on the other hand, the evils of 60-80 million dead and the surrender of eastern Europe to the tender mercies of Stalin? In a nutshell, bare human life and political justice are not the same kinds of thing: so how many instances of the former are worth sacrificing to achieve the latter? If there is an answer to this question, it cannot come in the form of a numerical calculation.

Take another example. Some years ago, the B.B.C. dramatised the memoirs of a Battle of Britain pilot, Geoffrey Wellum. At the end of the dramatisation, the real, ninety-year old Wellum appeared, looking out over the iconic white cliffs of the southern English coastline. And as he gazed out to sea, he said, 'Was it worth it? Was it worth it? All those young men I fought and flew with? All those chaps who are no longer with us? I suppose it must have been. I am still struggling with that'.¹³ Now, did Wellum mean that he doubted that Britain should have fought against Hitler in 1940? I do not think so. Rather, I think he was giving voice to the truth that the loss of each life is an absolute loss, for which there is no compensation. I think that 'Was it worth it?' is the wrong question, because there is no sensible way of answering it. Such a 'weighing up' of goods and evils cannot be done. Were it possible, proportionality could be determined with some precision. Since it is not possible, proportionality is more elastic.

Nevertheless, there are other concepts of proportionality that do make sense to me. One such concept is the aptness of means to ends—or, in the case of disproportion, the inaptness. Thus for NATO to have gone to war against Russia in 1956 to save the Hungarians, or in 1968 to save the Czechs, or even in 2014 to save the Ukrainians, and to risk world-destroying nuclear war, would have been to undercut its goal—a free and flourishing Hungary, Czechoslovakia, or Ukraine. Thus, too, to engage in military operations that result in large-scale civilian deaths, when a vital part of the counter-insurgency strategy is to win civilian hearts and minds, would be self-subverting and in *that* sense disproportionate.

In addition to the aptness of means to ends, there is also the concept of proportionality as the efficiency of means to ends. Thus, Field-Marshal Douglas Haig's over-ambitious strategy at the Somme in 1916 was more expensive of his own troops' lives than a less ambitious strategy would have been. In that sense, British casualties on the Somme were disproportionate, because inefficient.

Finally, proportionality makes sense in terms of sufficient resources of men, materiel, and political support to sustain successful belligerency: when one ceases to have sufficient of these to wage war successfully, to persist is disproportionate.

¹³ Matthew Whiteman, director, 'First Light' (London: B.B.C., 2010). This film was based on Geoffrey Wellum's memoir, *First Light* (London: Viking, 2002).

Cases

From discussing some of the controversial issues raised by my understanding of just war I move now to present some topical and illustrative instances of its application, which involve two of the six criteria of *ius ad bellum* (just cause and last resort) and one of the two criteria of *ius in bello* (proportionality). These instances do not pretend to be comprehensive: they are snapshots, not panoramas.

1. *Britain's Belligerency against Germany, 1914: Just Cause and the Injustice of Preventative War*
Anyone reading British newspapers in 2014, the centennial anniversary of the outbreak of the First World War, will have picked up that historians disagree about who to blame most for the escalation of war from its Balkan beginnings into a continental and then global conflagration. Until very recently, a dominant consensus endorsed the thesis of Fritz Fischer that Berlin was primarily responsible. This view prevailed, I believe, even among German historians. In the past two years, however, Christopher Clark's *The Sleepwalkers* has challenged this consensus. Clark concludes his account of the outbreak and escalation of the war by saying that '[t]here is no smoking gun in this story; or, rather, there is one in the hand of every major character.... the outbreak of war was a tragedy, not a crime'.¹⁴ 'The crisis that brought war in 1914', he tells us, 'was the fruit of a shared political culture', which rendered Europe's leaders 'sleepwalkers, watchful but unseeing, haunted by dreams, yet blind to the reality of the horror they were about to bring into the world'.¹⁵

I am not persuaded by Clark's argument, not because of its history, but because of its ethics. I think he draws too sharp a distinction between tragedy and crime, as if they are always mutually exclusive alternatives. Crime often has a tragic dimension. Human beings do make free moral choices, but our freedom is often somewhat fated by forces beyond our control. In addition, Clark assumes that because blame was widespread, it was shared equally. I disagree. The fact that blame's spread is wide does not make it even.

With regard to the particular issue of whether Britain's entry into the war on 4 August 1914 had just cause, which is the most basic of the justifying criteria, a moral judgement has to be made about Germany's decision to invade Belgium, Luxembourg, and France, because without that invasion Britain would not have fought.

So why did Germany invade? She invaded because she feared that France would attack in support of Russia. According to just war reasoning, however, the mere threat of attack is no just cause for war. Only if there is substantial evidence that a threat is *actually in the process of being realised* would the launching of *pre-emptive* war be justified. It is not justified to launch a *preventative* war simply because one fears that an enemy *might* attack. In August 1914 France was not intending to attack Germany (and nor, of course, was Belgium). Indeed, France deliberately kept one step behind Germany in her military preparations so as to make her defensive posture unmistakable, and as late as 1 August she reaffirmed the order for her troops to stay ten kilometres back from the Franco-

¹⁴ Christopher Clark, *Sleepwalkers: How Europe Went to War in 1914* (London: Penguin, 2013), p. 561.

¹⁵ *Ibid.*, p. 562.

Belgian border.¹⁶ Notwithstanding this, Germany declared war on France on 3 August on the trumped-up pretext that French troops had crossed the border and French aircraft had bombed Nuremberg.

It was the German government, dominated by its military leadership, that launched a preventative war against France and Belgium in August 1914. Why did they do it? Because, as social Darwinists they took it for granted that war is the natural way of deciding the balance of international power; because they foresaw that the longer the next war was delayed, the longer would be the odds against Germany's victory; and because (to quote David Stevenson) 'the memory of 1870 [the Franco-Prussian War], still nurtured through annual commemorations and the cult of Bismarck, had addicted the German leaders to sabre-rattling and to military gambles, which had paid off before and might do so again'.¹⁷

Clark's metaphor of the 'sleepwalker' is a powerful one, which picks out important features of the situation in the run-up to the outbreak of world war. But a metaphor is, by definition, always both like and unlike the reality it depicts, and should not be taken literally. Germany's leaders were not actually sleepwalkers, but fully conscious moral agents, making decisions according to their best lights in a volatile situation of limited visibility. In such circumstances, which are not at all unusual, error was forgivable. Not so forgivable, however, was their subscription to the creed of a Darwinist *Realpolitik*, whose cynicism about human motives owes more to Thomas Hobbes's anthropology than to Charles Darwin's science, and which robbed their political and military calculating of any moral bottom line beyond that of national survival through dominance.

It is perfectly natural for a nation not to want to see diminished its power to realize its intentions in the world. But if social Darwinism thinks it natural for a nation to launch a preventative war simply to forestall the loss of its dominance, just war reasoning does not think it right. Just cause must consist of an injury, be it actualised or actualising, and Germany had suffered none.¹⁸

2. *Rebellion in Syria, 2011: From Just Cause via the Systemic Character of Injustice to Last Resort* Under Bashar al-Assad's father, Hafiz, the Syrian regime was populated largely by members of the Alawite minority, was dominated by the military and security forces, and secured and enriched itself through the patronage of business. It was also fiercely repressive of dissent, holding that it alone stood between peaceful order and anarchy – not least that which would ensue, if Islamists such as the Muslim Brotherhood were ever to get their hands on the levers of power. Upon Hafiz al-Assad's death and his son's election to the presidency in 2000, there was some hope that Bashar would pioneer both economic and political reform, and indeed he gave some early signals that these hopes would be met.

¹⁶ Hew Strachan, *The First World War, Vol. 1: To Arms* (Oxford: Oxford University Press, 2001), p. 91. See also David Stevenson, *1914-1918: The History of the First World War* (London: Penguin, 2004), p. 30.

¹⁷ Stevenson, p. 596.

¹⁸ The full version of my analysis of Britain's belligerency in the First World War can be found in Chapter 4 of *In Defence of War*.

However, when in 2011 symptoms of the 'Arab Spring' began to blossom in Syria, the regime reflexively reverted to its customary, repressive mode. In the first week of March 2011 ten children in Deraa, aged between nine and fifteen, wrote an anti-regime slogan (probably more anti-corruption than pro-democracy) on the wall of their school. For this misdemeanour the Syrian authorities had them arrested, sent to Damascus, interrogated, and apparently even tortured.¹⁹ On 15 March a few hundred protesters, many of them relatives of the detained children, began protesting in downtown Deraa. Their ranks swelled to several thousand. Syrian security forces, attempting to disperse the crowd, opened fire and killed four people. The next day the crowd ballooned to about 20,000. On 23 March, according to reports, the security forces killed at least a further fifteen civilians and wounded hundreds of others. President Assad subsequently refused to punish the governor of Deraa, his cousin.

I have described the evolution of events in some detail, in order to make clear that the Syrian rebellion was originally an act of non-violent protest against arbitrary and ruthless state coercion. Only when it became clear that the state was unrepentant, and that its very centre was prepared to *own* the arbitrary repression by refusing to repudiate it, did peaceful protest develop into armed rebellion. David Lesch reports that 'most opposition elements, if convinced that Bashar was serious about reform, would have been willing to give him one more chance'.²⁰ As it was, Assad's refusal to dismiss the governor of Deraa and his blaming the unrest on external interference, meant that the '[t]he reckless nature of this act [of arresting the Deraa children] became a potent symbol of the decades of arbitrary oppression'.²¹ It also made it clear that this oppression was essential, not accidental, to the regime. Since March 2011, of course, the regime has confirmed and deepened the indiscriminate ruthlessness of its determination to eliminate opposition by the probable use of chemical weapons against rebels in the Ghouta suburb of Damascus on 21 August 2013, and possibly on several earlier occasions.²²

Given this history, it seems to me that the armed uprising in Syria did have just cause as an act of self-defence against injustice that was not merely grave, but systemic and persistent. Why is this significant? Because the systemic commitment of the regime to

¹⁹ David W. Lesch, *Syria: The Fall of the House of Assad* (New Haven, CT: Yale, 2013), pp. 55-56. Most of what I know about the modern history of Syria and its current politics I owe to Lesch's book. Is Lesch a reliable guide? Judging by the plaudits extracted from reviews in the *Financial Times*, *International Affairs*, and the *Times Literary Supplement*, it would seem so. By his own account he met regularly with Bashar al-Assad from 2004-2008 and had meetings with high-level Syrian officials until well into 2013 (p. vii).

²⁰ Lesch, p. 85.

²¹ *Ibid.*, p. 93.

²² The Assad regime, backed by its ally, Russia, did not deny that chemical weapons were used, but pinned culpability on the rebels. At the time of writing (September 2013) there was no proof positive either way. Nevertheless, there were strong circumstantial reasons for attributing the use to the state—including the requisite delivery systems. Indeed, according to the London *Times* (13 September 2013), United Nations inspectors were expected to report that munitions casings found at the scene of the crime pointed to an origin in the state's forces. Moreover, notwithstanding his manifest reluctance to intervene in Syria, and his consequent interest in giving Assad benefit of whatever plausible doubt, President Obama appeared quite convinced that the regime is responsible. So was the French government, which is not famous for being Washington's poodle. For a summary of earlier occasions of the use of chemical weapons, in which the Syrian regime might be implicated, see www.bbc.co.uk/news/world-middle-east-22557347 (accessed 2015-04-13).

the grave injustice implies the improbability of peaceful, political reform and confers on the resort to armed rebellion the status of 'last resort'.²³

3. Israel's Operation 'Protective Edge' against Hamas in Gaza: The Political Dimension of Military Proportionality

It is clear, both in morality and in international law, that Israel had a right to defend her citizens against indiscriminate killing by Hamas's rockets in July-August 2014. It is not so clear that her self-defence was proportionate, either in the sense of 'strictly necessary' or in the sense of 'instrumentally apt to the end'.

Provided that Israel targeted enemy combatants and that such targeting was necessary, there was no upper limit to the number of civilian casualties that may have been incurred, tragically, as 'collateral damage'. Let me make the point by reference to another case. When the Allies invaded Normandy seventy years ago, their bombers killed 35,000 French civilians. This was undoubtedly terrible and tragic. But if we think that Allied success was worth 35,000 civilian deaths, can we say that it wouldn't have been worth 50,000 or 100,000? If we are judging simply by numbers, I do not think that we can. Provided that the military means chosen are necessary, there is no absolute maximum to the collateral damage that may be incurred.

However, we should interrogate the claim of necessity by asking about its end: To what end are the chosen military means necessary? If in July-August 2014 it was to fend off of harm to Israeli civilians, then it seems that Israel's 'Iron Dome' missile system already achieved that with, according to her own officials, ninety per cent efficiency. It is arguable, of course, that complete defence must extend beyond deflecting the harmful effects to uprooting their cause. This would have justified military action against Hamas.

Still, if the end was to uproot the cause of attacks on Israel, then military means alone did not suffice. Military means alone, then, were not apt. While the bombardment of Gaza weakened Hamas's military power, it did not uproot it. Without a political solution, it will simply revive to fight again.

It was within Israel's power to take diplomatic, confidence-building initiatives without waiting for reliable Palestinian interlocutors. Unilaterally, she could have ended the illegal settlements in the West Bank. Since she did not do so, her military assaults on Gaza were inapt and therefore disproportionate. (It goes without saying that this moral analysis depends on a certain reading of the political and diplomatic facts, which is controversial. Were this reading shown to be considerably mistaken, the moral analysis would have to change accordingly.)

Conclusion

It is often claimed that just war thinking has been overtaken by events – that it has been rendered obsolete by novel phenomena such as nuclear weapons, wars 'among the people', war-by-remote-control, and cyber-aggression. The presentation of issues and cases in this paper, notwithstanding its brevity, is sufficient to show that just war

²³ A fuller version of my just war analysis of the Syrian rebellion can be found in Nigel Biggar, 'Christian "Just War" Reasoning and Two Cases of Rebellion: Ireland, 1916-21, and Syria, 2011-present', *Ethics and International Affairs*, 27:4 (2013), pp. 393-400.

thinking continues to develop, as it always has, by wrestling with controversial conceptual problems and thinking its way through novel sets of circumstances. The tradition of just war thinking is very much alive, and with regard to the discriminate moral assessment of war it has no rival.

Nigel Biggar, Oxford University
nigel.biggar@chch.ox.ac.uk

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Humanitarian Intervention and Moral Responsibility

Ronnie Hjorth

This essay investigates the moral aspects of humanitarian intervention. Humanitarian intervention involves the balancing of at least three sometimes contradictory principles – the autonomy of states, the prohibition of war and the reduction of harm and human suffering – and hence requires not merely a legal and political approach to the matter but renders a moral viewpoint necessary. It is argued that P.F. Strawson's concept Moral Reactive Attitudes (MRA) contributes to analysing the moral dilemmas and priorities involved. First, MRA underlines the moral aspects of international society that are essential for dealing with the moral conflict inherent in international society. Secondly, MRA helps to balance between competing claims of justification and legitimacy in cases of humanitarian intervention.

Introduction

This essay is about the moral aspects of humanitarian intervention. Throughout the history of international society intervention has been a contested practice.¹ A permissive attitude to intervention has nearly always been met with scepticism because intervention breaks with at least two central principles: the autonomy of states and the prohibition of war. While the purpose of humanitarian intervention is to reduce human suffering, the harm that usually follows from a military intervention evokes considerations not just about states but also about individuals and peoples. Balancing at least three sometimes contradictory principles – the autonomy of states, the prohibition of war and the reduction of harm and human suffering – requires not merely a legal and political approach to the matter but renders a moral viewpoint necessary. This is so even if the humanitarian purpose of a military intervention is not clearly stated. Accordingly, in order to be legitimate and morally credible interventions should be justified on an account of a global ethics of responsibility. An ethics of responsibility involves taking into account both of the intentions and the consequences of intervention as well as the moral

¹ Hedley Bull defines international society in the following way: 'A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions' (Hedley Bull, *The Anarchical Society: A Study of Order* (London: Macmillan, 1977), p. 13).

reactions to intervention.² An international ethics of responsibility not only has a place alongside politics and law but also helps to balance different claims; political, legal and ethical. The essay outlines such an ethics of responsibility elaborating on P.F. Strawson's seminal article *Freedom and Resentment*.³ It is argued that this account of morality, focusing on so-called Moral Reactive Attitudes (MRA), is applicable in this case, adding a different moral viewpoint to the issue.

Two claims are central: First, that the debate on justification and legitimacy of humanitarian intervention often has failed to deal adequately with the ethical implications of interventions when either toning down the ethical aspect in comparison to political or legal considerations, or when relying on a fairly simplistic consequentialist approach to international ethics. Second, that Strawson's theory of Moral Reactive Attitudes when applied to international society vindicates an ethics of responsibility in international relations treating international society as a moral association. The first section deals with intervention in relation to the autonomy of states and the prohibition of war, defending the moral point of view. Next, humanitarian intervention is discussed in relation to the commitment to reduce human suffering leading to the standpoint that all states have a moral obligation, extending beyond boundaries, to reduce harm. The third section reviews some problems to justify humanitarian intervention. The final two sections present and discuss the concept of MRA looking first at the moral reactions to intervention by individual moral persons, and second, applying MRA to the society of states.

Intervention, the Autonomy of States and the Prohibition of War

The modern states system gradually evolved out of the medieval order of multi-layered political authority in Europe. The state was eventually understood as an autonomous community governed by a sovereign power. This state conception was usually conceived within a non-territorial political and moral association, involving the cosmopolitan notion of world society as well as agreed upon international rules and codes of conduct among sovereigns.⁴ For example, the notion of equilibrium that is central to the balance of power doctrine was not limited to the idea of the balancing of scales but was looked upon as the balancing of a variety of moral principles and norms.⁵

² See Daniel Warner, *An Ethic of Responsibility in International Relations* (Boulder and London: Lynne Rienner, 1991).

³ Peter F. Strawson, 'Freedom and Resentment', in *Analytic Philosophy: An Anthology*, 2nd Edition, edited by Al P. Martinich and David Sousa (Chichester: Wiley-Blackell, 2012), pp. 372-385; first published in 1962. For an update and criticism see Michael McKenna and Paul Russell (Eds.), *Free Will and Reactive Attitudes* (Farnhem: Ashgate, 2012).

⁴ See Richard Tuck, *The Rights of War and Peace. Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999); David Boucher, *The Limits of Ethics in International Relations. Natural Law, Natural Rights and Human Rights in Transition* (Oxford: Oxford University Press, 2009); Annabel Brett, *Changes of State. Nature and the Limits of the City in Early Modern International Law* (Princeton: Princeton University Press, 2011); Ronnie Hjorth, *Equality in International Society. A Reappraisal* (Houndmills Basingstoke: Palgrave Macmillan, 2014).

⁵ Paul W. Schroeder, 'Did the Vienna Settlement Rest on a Balance of Power?', *American Historical Review*, 97:4 (1992), pp. 694-695.

The formation of the European international society in Münster, Osnabruck, Utrecht and Vienna, led on to a political and moral order in which non-intervention became one of several central principles. Non-intervention was viewed as instrumental for securing not only peace among states but also the autonomy of states, i.e., the standpoint that states can be viewed as 'autonomous sources of ends' and as free agents.⁶ The crux is that an international society of independent states risks being unstable unless an element of hierarchy is accepted. The hierarchical element in international society was based on a collective hegemony or Great Power dominance.⁷ International stability was viewed as conditional not only for order but instrumental for the development of justice, liberty and equality among the citizens of bounded communities.⁸ International stability was secured by the balance of power and at least sometimes upheld by means of intervention.⁹ Before World War I intervention was generally viewed as legitimate conduct as long as it was carried out by the Great Powers for the preservation of international order and stability. The problem was to combine two contradictory principles, non-intervention and intervention for the management of the balance. On the one hand proponents of the balance of power claimed the constitutional status of the balance of power and viewed the doctrine as instrumental to the liberty and independence of nations. On the other hand the critics regarded the practice of intervention unacceptable and against reason and hence rejected the balance of power.¹⁰ Their argument is straightforward:

- (1) Non-intervention is essential to international society.
- (2) Intervention cannot be accepted as a norm in international society.
- (3) The balance of power requires intervention.

Therefore:

- (4) The balance of power has to be rejected.

Thus, intervention seems impossible to defend if non-intervention is a fundamental principle. Unwilling to renounce the conception of the balance of power as an institution within international society, this caused Hedley Bull to write about a paradox of the

⁶ Charles Beitz, *Political Theory and International Relations*, 2nd edition (Princeton: Princeton University Press, 1999), p. 66.

⁷ Andreas Osiander, *The States System of Europe 1640-1990: Peacemaking and the Conditions of International Stability* (Oxford: Oxford University Press); Ian Clark, *Hegemony in International Society* (Oxford: Oxford University Press, 2011).

⁸ Robert Jackson, *The Global Covenant: Human Conduct in a World of States* (Oxford: Oxford University Press, 2000), pp. 13-14.

⁹ Herbert Butterfield, 'The Balance of Power', in *Diplomatic Investigations: Essays in the Theory of International Politics* (London: George Allen & Unwin, 1966); Martin Wight, 'The Balance of Power and International Order', in *The Bases of International Order: Essays in Honour of C. A. W. Manning*, edited by Alan James. London: Oxford University Press, 1973, pp. 85-115; Moorhead Wright, *The Theory and Practice of the Balance of Power: Selected European Writings* (London: Dent, 1975).

¹⁰ Wright, *Theory and Practice*, pp. 72, 94, 113; R. J. Vincent, *Non-intervention and International Order* (Princeton: Princeton University Press, 1974), p. 56.

balance of power suggesting an insoluble dilemma.¹¹ However, this is a misunderstanding. The perceived paradox can be solved when dealt with as a normative problem so that interventions should only be permitted in situations where other principles override non-intervention.¹² The question is of course which principles. J.S. Mill advocated such a normative principle of intervention, a principle of 'intervention to enforce non-intervention'.¹³ In a sense, he offered a solution to the problem of intervention when claiming that at least some interventions could be justified. R.J. Vincent has later recognised this claiming that the important question is not if intervention should be accepted in general but when it is justifiable.¹⁴ Thus, this way at least moral anarchy can be avoided since only particular interventions are permitted.

War was prohibited in the 1928 Kellogg-Briand pact and later in the UN Charter Article 2(4) leaving only options for waging war in self-defence (Article 51) and as the result of sanctions issued by the Security Council (Article 42).¹⁵ The prohibition of war has certainly made the practice of intervention even more complicated. However, in practice the UN Security Council, having to determine the occurrence of a breach of the peace or an act of aggression (Article 39), has handled the matter largely by leaving it in the hands of its permanent members. Thus, great power politics prevails regardless of the prohibition of war. The normative dilemma of combining intervention and non-intervention within international society remains a challenge to the UN but is rendered more complex when humanitarian concerns are involved. There is also the issue to what extent interventions can be launched by other organisations than the UN. The prominent example is the NATO bombing of Kosovo in 1999 that was deemed both illegal and legitimate.¹⁶ An alternative way to think of the problem of combining intervention and non-intervention is to treat this as an essentially political problem to which there is only a political solution, i.e., to regard the politics of power as something that goes on outside of international society. This solution, sometimes suggested by critical security analysts, reveals the element of conflict often underlying social orders.¹⁷ But the fact that political conflict is involved does not eliminate the reasons for approaching political issues from a moral point of view. As is claimed by John Rawls, political philosophy 'sets limits to the reasonable exercise of power' because if not 'power itself determines what the compromise should be'.¹⁸

¹¹ Hedley Bull, *Anarchical Society*, p. 8.

¹² Ronnie Hjorth, 'Hedley Bull's Paradox of the Balance of Power: A Philosophical Inquiry', *Review of International Studies*, 33 (2007), p. 611.

¹³ Vincent, *Nonintervention*, p. 56.

¹⁴ *Ibid.*, pp. 388-389.

¹⁵ See Christine Gray, *International Law and the Use of Force*, 3rd Edition (Oxford: Oxford University Press, 2008).

¹⁶ Anne-Marie Slaughter, 'Security, Solidarity and Sovereignty: The Grand Themes of UN Reform', *The American Journal of International Law*, 74 (2005), pp. 2961-2970.

¹⁷ See David Chandler, 'The Revival of Carl Schmitt in International Relations: The Last Refuge of Critical Theorists?' *Millennium: Journal of International Studies* 37:1 (2008); Ronnie Hjorth, 'The Poverty of Exceptionalism in International Theory', *Journal of International Political Theory*, 10:2 (2014).

¹⁸ John Rawls, *The Law of Peoples* (Cambridge Mass.: Harvard University Press, 1999), p. 6.

Humanitarian Intervention and the Reduction of Harm

After the end of the Cold War the debate on humanitarian intervention called attention to the tensions inherent in the UN Charter between the autonomy of states and humanitarian concern. Terry Nardin shows how this tension originates in early modern international thought as a conflict between two principles, political independence and the moral duty to protect innocent humans. He claims that the 'tension between them raises the question of how we can reconcile the complex institutional duties prescribed by international law with the more primitive, noninstitutional, duties of common morality'.¹⁹ In practice humanitarian interventions took place during as well as after the Cold War in, for instance, Cambodia, Uganda, Somalia, Rwanda, Bosnia and Kosovo.²⁰ Moreover, the emerging norm of Responsibility to Protect (R2P) motivated interventions in Libya and has been repeatedly discussed in relation to Syria.²¹

As has been pointed out by Vincent, the adoption of a universal human right standard, such as the 1948 Universal Declaration of Human Rights, means (i) 'adding the needs and interests of individuals and groups other than states to their traditional preoccupation with peace and security among themselves' and (ii) that 'in taking on these purposes, states have dissolved international society into a world society in which groups and individuals have equal standing with states'.²² While it is possible to interpret the Declaration as a commitment for each government to comply with within each territorial jurisdiction there is a cosmopolitan vision involved in the conception. Because, having once accepted that human rights ought to be secured on a universal basis, one should not be content with securing such rights only for citizens of particular bounded communities but to promote human rights for all humans. International human rights evoke the question of what kind of moral and political implication that should flow from the distinction between men and citizens.²³ The concern with human rights covers different rights, as is indicated by the UN Declaration, but the most critical is the reduction of harm and suffering for peoples throughout the globe. The degree to which a state can realistically assist and to what extent there is a duty to assist of course varies, but the general commitment is the same for all.

¹⁹ Terry Nardin, 'The Moral Basis of Humanitarian Intervention', *Ethics and International Affairs*, 16:1 (2002), pp. 57-70, at p. 70.

²⁰ See James Mayall, *The New Interventionism 1991-1994: United Nations Experience in Cambodia, former Yugoslavia and Somalia* (Cambridge: Cambridge University Press, 1996); Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 1999); Adrian Treacher, *French Interventionism: Europe's Last Global Player?* (Aldershot: Ashgate, 2003).

²¹ See Alex Bellamy, *Responsibility to Protect: The Global Efforts to End Mass Atrocities* (Cambridge: Cambridge University Press, 2009); Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press, 2011); Kjell Engelbrekt 'Why Libya? Security Council Resolution 1973 and the Politics of Justification', in *The Nato Intervention in Libya: Lessons Learned from the Campaign*, edited by Kjell Engelbrekt, Marcus Mohlin and Charlotte Wagnsson (London: Routledge), pp. 41-62; Justin Morris 'Libya and Syria: R2P and the Spectre of the Swinging Pendulum', *International Affairs*, 89:5, 2013, pp. 1268-1283.

²² R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. 93.

²³ See Andrew Linklater, *Men and Citizens in Theory of International Relations*, 2nd Edition (Houndmills Basingstoke: Macmillan, 1990).

Dilemmas of Justification

The proponents of humanitarian intervention and R2P are inspired by liberal political theory, essentially derived from the work of Hobbes and Locke, from which to deduce that the primary objective of political association is to secure life, freedom and property. In the case of humanitarian intervention and R2P the commitment to act does not stop at the border. Or in other words, if the primary purpose of a political association – a state or international society – is viewed as the prevention of harm and human suffering, international society should not as a general rule give priority to the autonomy of states or procedural rules of inter-state relations. Accordingly, Jennifer Welsh defines humanitarian intervention as a ‘*coercive interference in the internal affairs of a state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering*’.²⁴ However, military interventions are almost always bound to lead to suffering even if the intention behind is to achieve the opposite. There is consensus in the literature that military intervention should be considered a last resort but also that other means or doing nothing may often be even worse alternatives. Hence, it is not only the intent behind or the outcome that is interesting to evaluate, but the conduct of intervention. A great deal of the literature on humanitarian interventions centres around the problem of justification of force in a way resembling Just War theory.²⁵ Humanitarian intervention resonates on Just War theory not just for the justification of the use of force against sovereign states (*Jus ad Bellum*) but also for the conduct of the military intervention according to humanitarian principles (*Jus in Bello*).²⁶

A main task in the literature on humanitarian intervention has been to outline a number of criteria for the justification of humanitarian intervention. One such rather detailed attempt was formulated by the International Law Association (ILA) in order to defend the autonomy of states and to make sure that a humanitarian intervention does not disguise attempts to overthrow or undermine governments.²⁷ A problem with this approach is of course that bad government is protected perhaps even in cases where the misery of humans depend on the misconduct of the government. For Wheeler, human rights are the priority, not governments. He specifies four criteria for humanitarian intervention: (1) Supreme Emergency, (2) Intervention as the Last Resort, (3) Proportionality and (4) Humanitarian Outcome.²⁸ The fourth criterion is explicitly consequentialist and particularly serviceable for judging the legitimacy of the intervention. Accordingly, Welsh claims that the ‘legitimacy of an intervention is often judged with reference to its consequences rather than its intentions’. However, she shows that one of the problems of consequentialist justification is that in practice ‘there is nothing like success to silence one’s critics’.²⁹ One recalls Machiavelli’s key phrase in *The*

²⁴ Jennifer Welsh (Ed.), *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), p. 3, italics in original.

²⁵ David Fisher, *Morality and War: Can War Be Just in the Twenty-First Century?* (Oxford: Oxford University Press, 2011); David Fisher and Nigel Biggar, ‘Was Iraq and Unjust War? A Debate on the Iraq War and Reflections on Libya’, *International Affairs*, 87:3 (2011), pp. 687-707.

²⁶ In recent years a third and contested category, *Jus post Bellum*, has been discussed dealing with justice after war not to be further discussed hereinafter.

²⁷ Wheeler, pp. 42-43.

²⁸ *Ibid.*, pp. 34-37.

²⁹ Welsh, p. 7.

Prince that 'in the actions of all men, and especially of princes, which is not prudent to challenge, one judges by the result'.³⁰ The political lesson taught by Machiavelli is not necessarily to achieve the results one wants to achieve but to be successfully convincing. It may be difficult to discern the one from the other in a concrete situation where the judgement of action is always a matter not only of justification but also of practical judgement and the interpretation of social facts.

There are two well-known arguments against accepting the kind of conduct suggested by Wheeler. First, that there may be mixed motives so that interventions will mainly be carried out only when in the interest of the intervening party. Second, there is the argument of inconsequence according to which practices of humanitarian intervention for much the same reason would be selective. Both arguments can be rejected. Against the first argument it can be argued that the presence of mixed motives is not important as long as the humanitarian goals are in fact achieved. Thus, there may be other motives but as long as there is a good humanitarian outcome this overrides other concerns. Another way to think of this is to conceive of a distinction between intention and motive so that it is the intention to promote human rights or reducing harm that is decisive for the moral evaluation of the action rather than the political motive that might have spurred the action.³¹ In any case, the worry of mixed motives seems to be appeased. Against the problem of inconsequence one can argue that the absence of a general rule should not preclude the actual attempt to assist particular peoples. The fact that one cannot assist all that are suffering should not preclude the assistance of a few.

But this defence of humanitarian intervention is perhaps not convincing after all. The acceptance of mixed motives allows for interventions when there is an illegitimate motive behind even if there is a right intent. Or it could be that the intervention is successful when judging by the consequences but not when considering the intentions of the intervener. Or the intervention is carried out in a manner that discredits both the intent and the perceived outcome. Michael Walzer's famous account of Just War Theory makes clear the separation of *Jus ad Bellum* and *Jus in Bello*, claiming that the issue of just cause has nothing to do with just conduct and vice versa.³² But when dealing with humanitarian intervention this position is hard to maintain because humanitarian intervention is both about communities and individuals. Approaching global ethics or world ethics implies including and balancing a variety of ethical claims.³³ A global ethics of responsibility should be able to handle the conflict between different claims to legitimacy and different accounts of justification. What now follows is an attempt to present such an approach to ethics applying P. F. Strawson's concept of Moral Reactive Attitudes (MRA). MRA is argued to be one way of approaching an ethics of responsibility in world politics adding an important perspective to the question of legitimacy and justification of humanitarian interventions.

³⁰ Niccolò Machiavelli, *The Prince* (Ware: Wordsworth Reference, 1993), p. 140.

³¹ I owe this point to an anonymous reviewer.

³² Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 2nd ed. (New York: Basic Books, 1992).

³³ See Nigel Dower, *World Ethics: The New Agenda* (Edinburgh: Edinburgh University Press, 1998).

Humanitarian Intervention and Moral Reactive Attitudes

Interventions involve individual persons acting in different capacities, presumably sharing at least some capacity for ethical reflection, but almost certainly sharing in the capacity to experience what is labelled by P. F. Strawson in *Freedom and Resentment* as a Moral Reactive Attitude (MRA). An MRA may include attitudes such as gratitude, resentment, and hurt feelings, all which according to Strawson are analogues to attitudes about moral obligation and moral responsibility, as well moral condemnation, blame, approval, and so on. One of Strawson's central claims is that such reactions belong to the facts of human nature and hence, he argues, need not be justified. An attempt to seek justification risks reducing the complexity of the issue confining morality to false objectivism; that is, when claiming that moral norms can be explained functionally on account of their effects upon human interaction in society.³⁴ Thus, Strawson contends that while an MRA originates in expectations and in sharing a moral community, the reaction is a natural human reaction. Hence, it is reasonable to assume that the actions of states in international society cause moral reactions, whether positive (such as gratitude) or negative (such as resentment, condemnation or disapproval) because as Strawson argues, moral intuitions appear in social relations within a moral community. The crux is what kind of a moral community that can reasonably be conceived of in this case. There are at least two options. One is to assume, in accordance with Strawson's theory, that moral reactions appear among individual persons, the other to assume that states at least sometimes act as moral actors and hence share certain moral norms. In that case MRA may sometimes appear among international actors such as states. The rest of this section is concerned with the moral reaction involving individual persons while the next section looks at MRA at level of states in international society.

As is shown above, Just War theory is a natural starting point when studying the justification of humanitarian intervention because it deals with both the decision to intervene and the conduct of interventions. However, Just War theory is traditionally conceived of as a theory of states or communities primarily and not as a theory of individual moral persons. At least this was previously the case. Cecile Fabre has recently formulated a cosmopolitan Just War theory that brings to the fore some central aspects for considering MRA in the case of intervention. She argues that from a moral viewpoint war is not fought primarily between communities or states but essentially between individual moral persons. Certainly, individual persons may appear in different capacities but in the end of the day they are all individual persons. A cosmopolitan approach, she argues, 'must ascribe pre-eminence to individuals and not conceive of groups as having independent moral status' and 'must not make individuals' basic entitlements dependent on their membership in a political community'.³⁵ Moreover, she claims that it matters whether a justly waged war is also justly fought. Fabre's contention makes sense when dealing with humanitarian interventions. For if the cause of intervention is a humanitarian one, the conduct ought to be humanitarian too.

Looking at humanitarian intervention from the viewpoint of MRA it can reasonably be assumed that if an intervention flows from illegitimate motives, the wrong intentions, or just comes about arbitrarily, the reactions are likely to be more negative

³⁴ Strawson, pp. 374-376.

³⁵ Cecile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), p. 8.

than when legitimate and morally responsible motives are presented. For the persons actually involved in interventions it may mean a great deal if there are mixed motives so that the reasons for coming to assistance are not really about helping out. The reaction of the strangers saved may be different when it is clear that other than humanitarian concerns have had priority. The reaction of the individuals carrying out the intervention is likely to be negative if they sense that the intervention is unjust. This does not merely include those directly affected but there is also the element of third-party 'vicarious' attitudes. Thus, the approach envisaged here focuses on the extent to which the actions are understood among the parties concerned and expressed in terms of MRA. It is in this sense the conduct of intervention has to be morally responsible. Responsibility may even override other principles. As Nigel Biggar claims, 'it is better to be inconsistently responsible than consistently irresponsible'.³⁶ Thus, moral responsibility overrides consistency in application. This argument is similar to Wheeler's argument discussed above but transcends consequentialism. The problem of mixed motives or inconsistency in application is not only the undermining of international order or the weakening of the authority of international law but the negative moral reactions that follow. This in turn may severely affect both the effectiveness and legitimacy of the operations in question. Moreover, when judging the legitimacy of a humanitarian intervention the humanitarian outcome is certainly important. But, as argued by Christian Reus-Smit, 'no action can be coherently described as legitimate if it is not socially recognized as such'.³⁷ It is reasonable to assume that social recognition hinges on a lot more than the consequences of actions.

In practice it is of course hard to judge the moral reactions of those affected. It is not the purpose of this essay to suggest how to go about identifying MRA in empirical research but merely to defend the approach as possible and fruitful. However, when judging such attitudes one might take into account the conditions within which the attitudes are expressed. An open society with free media is likely to be more reliable than views of peoples living under oppressive conditions. Dissident views may of course be important but are sometimes difficult to judge. Cultural differences also make it more difficult to interpret moral reactions. These problems are all matters to be handled within the realm of the empirical.

International Society and Moral Reactive Attitudes

The application of MRA on a society requires that there is moral community involved, or at the least a set of widely shared moral norms around which 'expectations converge' and from which moral reactions may follow.³⁸ This is often questioned when dealing with international relations. Certainly, the concept of international society can be reduced to a *modus vivendi* and little more, but the challenge of theorising international society in

³⁶ Nigel Biggar, *In Defence of War* (Oxford: Oxford University Press, 2013), p. 233.

³⁷ Christian Reus-Smit, 'International Crisis of Legitimacy', *International Politics*, 44 (2007), pp. 157-174, at p. 160.

³⁸ The standard definition of an international regime is that it consists of 'sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations' (Stephen Krasner (Ed.), *International Regimes* (Ithaca, NY: Cornell University Press, 1983), p. 2).

international political theory is to conceive of international society as a moral as well as a political association. The parties in the debate on intervention in international society clearly regard international society as a moral association but nevertheless neglect to elaborate the potential of such a conception. Generally, 'pluralists' identify international society with the principle of autonomy of states and the prohibition of war while 'solidarists' view international society as progressive and as supporting particular notions of a humanitarian order.³⁹

If international society is understood as a moral association it makes sense to think that just like individual moral persons are able to cultivate their moral conceptions when interacting with one another, communities may enhance their moral personality through their relations with other communities. Certainly, there are difficulties involved in using concepts of moral and political relations among individuals as an analogy to the moral and political relations among communities. However, the only thing assumed here is that communities of individuals are able to develop moral and political relations that are akin to what individuals and groups are capable of within a bounded territory. The point of attempting the analogy is merely to suggest that within a moral community certain norms, beliefs and attitudes are likely to develop and hence may create expectations of certain behaviour on the part of those involved. This in turn gives rise to a range of MRA. Moreover, organisations are composed of individual persons who are capable of reacting and responding in this way. There is no reason to assume that the reaction is essentially different when appearing in the context of international political relations. For example, the resentment felt by a member of parliament when disappointed by the action of a fellow MP is not fundamentally different from a similar reaction among representatives to the UN. Insofar as MRA are triggered by behavioural expectations related to norm-governed conduct there is no reason to assume *a priori* that such reactions are impossible in the realm of the international.⁴⁰

When dealing with moral attitudes in international society there is probably a greater propensity for objectification of reactions because of the mediation of reactive attitudes through institutions. But assuming that international society is at least partly a moral association there is no reason to assume that reactions of government leaders generally are instrumental or merely reflect state interests. Yet, the two reasons offered by Strawson for not feeling resentment are possibly relevant when considering international society.⁴¹ The first of those, the extenuation of circumstances, may at first not seem to be particularly relevant since it seems hard to claim that a government 'didn't mean to' or 'couldn't help it' or 'hadn't realised'. However, one could perhaps claim that a government 'was pushed' to act in a certain way or perceived no alternatives to the action pursued. This type of reaction, were the feeling of resentment is modified, point towards the circumstances of the action in question. This involves looking at the conditions, the choices available to a government, the role of other powers involved and

³⁹ The distinction between 'pluralism' and 'solidarism' was originally presented by Hedley Bull in 1966 in his 'The Grotian Conception of International Society', in *Diplomatic Investigations*, edited by Herbert Butterfield and Martin Wight (London: George Allen & Unwin, 1966), pp. 35-50. The distinction has ever since played a central role in the English School literature on humanitarian intervention.

⁴⁰ See Mervyn Frost, *Ethics in International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996).

⁴¹ Strawson, p. 376.

the consequences of the rules and institutions of international society. The other reason for modifying a sense of resentment points to the deficiency in the agent so that the behaviour therefore is abnormal, schizophrenic or perverted. As a result one would adopt 'the objective attitude' and look for methods of treatment or just seek to avoid the actor. Bearing in mind the notion of international society as a moral association, the objective attitude rather infers exclusion. Thus, the government that acts in an abnormal way may not be accepted on an equal standard and treated accordingly. This suggests a deprivation of the government in question although not necessarily of the people.⁴²

These situations relate to intervention in several possible ways. A government that acts in an abnormal way in relation to the individual persons and groups inhabiting it should not, it seems, enjoy an equal standing to other states. This means that the government has put itself outside of the society of responsible governments, permanently or temporarily. Adopting the objective attitude involves mollifying the resentment in view of the deficiency of the government. There is no point in expressing resentment and no point in conceiving of the government in question as an insider and a member of the international society. Hence, respecting the autonomy of state is no longer important in this case. This is however not related to the internal sovereignty of the government in question. But the exercise of sovereignty is in this case irresponsible and breaks with the norms a sovereign should live up to in order to receive external recognition from other sovereigns. This does of course not necessitate an intervention but at least the principle of autonomy of state is no longer a hindrance.

A different problem concerns the moral character of the intervening party. A regime that does not live up to adequate humanitarian standards and consequently is not accepted as a responsible government may nevertheless carry out a successful humanitarian intervention if one judges by the consequences of it. The prominent example is Vietnam's intervention in Cambodia leading to the fall of Pol Pot in 1979. This case is a challenge when conceiving of states according to a concept of moral hierarchy, such as Rawls does. Similarly, the central idea of R2P is that a morally responsible sovereign state looks after both the good governance of the peoples living on the territory and cares for the protection of peoples outside of it. However, from a consequentialist perspective the character of the intervening party is not important, provided that the intervention is successful from a humanitarian point of view. Accordingly, Nardin claims that a 'murderer is not forbidden to save a drowning child'⁴³ While this essay does not set out to solve this problem the application of MRA may at least appease our concerns since revealed MRA may prove helpful when judging which argument that should be given priority. The moral reactions to an intervention are in this case central, particularly the effort to discriminate moral reactions from other kind of reactions. The reactions to the Vietnamese intervention were mainly political calling attention to a perceived strive for regional hegemony, to Cold-War power politics, or more generally was condemned for violating the principle of non-intervention.⁴⁴ It does not follow from a successful intervention, when judging by the consequences, that the intent is the right or that the intervening government manages to reduce harm and suffering within its territorial

⁴² Think of Rawls' distinction between an 'outlaw state' and the individual persons governed by it (Rawls, pp. 94-95).

⁴³ Nardin, p. 68.

⁴⁴ Wheeler, pp. 89-100.

jurisdiction. Hence, it does not follow from a successful intervention that the government is a responsible government and should be treated as such. MRA help to judge the moral standing and legitimacy of the intervener.

Furthermore, another issue, notoriously hard to tackle, is what to think about humanitarian interventions in cases where states are morally obliged to act yet remain inactive. Realists may be in the right when suggesting an interest-based approach but in the wrong as far as understanding the political and moral complexity involved. Interests cannot override rights or be used as a justification of failing to act according to moral obligations. However, the moral reactions involved may bring to the surface the moral dilemmas involved, such the balancing of obligations towards citizens, humanity, other actors or international rules. Focusing on MRA is a means to approaching the specific contextual element always involved in particular situations. Instead of lamenting the lack of action or the failure to comply with particular principles MRA throw light on the moral-political dilemma faced and the options and priorities involved.

In practice an MRA may not be 'pure' at least not when political strategies and tactics are at play. It is not difficult to find examples of when moral reactions are communicated in connection with international responses to events. But such reactions are often contested and implicated in political considerations. Such is the case with the reactions to the intervention in Libya and the discussions about a humanitarian intervention in Syria. Nevertheless, these reactions reflect different points of view concerning both the standing of states and how to conceive of human rights.⁴⁵ The reactions to the Russian annexation of Crimea make a different case since the annexation was rejected by nearly all members of the UN General Assembly.⁴⁶ These examples show the difficulty of ascertaining to what extent reactions by governments are expressions of MRA. However, if similar MRA are discernible simultaneously among a wide range of states and perhaps across the globe without any prior organisation or co-ordination, this would indicate some element of international morality on a broader and perhaps even global level. Even if it is possible to explain that international responses are spurred by state interests or other explanations, the expression of MRA is nevertheless an indicator that there is after all such a thing as international morality, and that moral concerns are indeed expressed by states. That a moral reaction can be explained, referring to a variety of explanatory frameworks or theories, does not eliminate the moral point of view.

Conclusions

John Finnis argues that in a global polity 'the good of individuals can only be fully secured and realized in the context of international community'.⁴⁷ This calls attention to the principles – moral and political – of international society. Moving in this direction is a way to address the problem of harm in different ways, focusing on how international

⁴⁵ For instance, see Morris, 'Libya and Syria'.

⁴⁶ A/68/262 March 27, 2014. Only eleven states did not condemn the annexation.

⁴⁷ John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 1980), p. 150.

society not only reduces harm, but also how it inflicts harm.⁴⁸ While most observers are likely to contend that humanitarian interventions are defensible when honestly waged and when carried out in just ways, there are different opinions of how to go about securing this, what aspects that ought to be taken into account and what priorities to make. The autonomy of states, the prohibition of war and the reduction of human suffering are three main competing priorities. This essay argues that intervention should be analysed against the backdrop of a moral conception of international society. MRA is suggested as a way to inquire the moral element of international society. The presence of MRA is a proof that international society is a moral association in which moral arguments may be used when balancing different and sometimes contradictory principles and when considering the legitimacy of a particular conduct among nations. Thus, the considerations behind humanitarian intervention as well as the actual conduct of interventions benefits from an outlook allowing moral considerations to override the procedural principles of the international society of states.

From a political viewpoint this conclusion is controversial. First, it is likely in international political relations to rely great deal on the principle of autonomy of states since the constitutional principles of international society are often viewed to secure the 'sovereign equality' of states. The whole literature on humanitarian intervention has questioned this contention searching for a way to moving the cut-off point for moral consideration and legitimate conduct beyond the realm of the states. This can be achieved when broadening the 'realm of consideration' and widening the 'sphere of deliberation' reinventing a concept of equality in international society that transcends 'sovereign equality'.⁴⁹ Second, the way policy issues are linked and motives and alliances work in international affairs impede independent moral judgement but does not for that matter render international ethics redundant. This essay suggests that much more can be done to study and understand international society as a moral community as much as a political association. Unless one is willing to rest content with merely political discretion the adoption of a moral point of view is more appealing than the absence of it, both from the perspective of the individual persons concerned and on the level of international society. When urging governments to take on a humanitarian commitment and consider taking part in a humanitarian intervention a moral viewpoint and considerations about legitimacy ought to be included, reaching beyond consequentialism.⁵⁰

Ronnie Hjorth, Swedish Defence University
ronnie.hjorth@fhs.se

⁴⁸ See Ian Clark, *The Vulnerable in International Society* (Oxford: Oxford University Press, 2013), and Andrew Linklater, *The Problem of Harm in World Politics: Citizenship, Sovereignty and Humanity* (London: Routledge, 2011).

⁴⁹ For the concepts 'realm of consideration' and 'sphere of deliberation' see Hjorth, *Equality*, Chapter 8.

⁵⁰ An earlier version of this essay was presented at the 51st *Societas Ethica* annual conference on *The Ethics of War and Peace*, 21-24 August, 2014, Maribor, Slovenia, and at the annual conference of the Swedish Political Science Association, 8-10 October, 2014, Lund, Sweden. I am grateful for comments and suggestions received at those occasions, particularly to Jörgen Ödalen and Edward Page, and to the anonymous reviewers of *De Ethica*.

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An Ethical Outlook on The Influence of Memory on Violence

Jasna Ćurković Nimac

As we witness the growing popularity of what is referred to as memory discourse within the fields of historical and cultural studies, it becomes apparent that there is a lack of systematic insight into the ethical dimension of this subject. This paper attempts to alleviate this imbalance. In the first section, the author scrutinizes the relationship between memory and violence. This has appeared in human history as a very real and multifaceted issue but remains under-explored in philosophy and theology. Given the vibrant nature and moral fickleness of memory, in the second section the author outlines some ethical requirements that should regulate the use of memory. Epistemological, pedagogical and practical aspects of memory are taken into consideration within a comprehensive, broader social context, as well as individual demands. Presuming that memory can be a valuable ingredient of a good life, the author reconsiders the ethical criteria for memory, which should not just prevent violence but also stimulate tolerance and peaceful co-existence.

Although the subject of memory has a long philosophical and theological tradition (e.g. Plato, Aristotle, Augustine, Locke, etc.), it appears that the *memory discourse* or *memory boom* that had emerged in the 1980s largely bypassed the normative approach. Considering that memory has been the subject of much literature over the last three decades, it is surprising that only a few analytic philosophers have discussed the critical role of memory in coping with the aftermath of the Holocaust. The topic of coping with memory has been primarily left to historians or social scientists, and philosophy and theology have remained largely silent. However, this omission of the normative significance of memory has recently been mitigated by a few outstanding works in the fields of both philosophy and theology; works by, for instance, Avishai Margalit, Jeffrey Blustein, Paul Ricoeur, and Miroslav Volf. This paper takes its starting point in these theories.

The importance of the normative approach to how we use past experiences is paramount when observing the large number of conflicts caused by repressed historical traumas that have later surfaced through transgenerational transmission and instilled mutual misunderstandings between ethnic groups. It follows that a memory, as one of the effective tools of managing the past (other tools, for instance, are history, myth and tradition), is very powerful and hence challenging from an ethical point of view. To overcome the conflicts and violence caused by often-manipulated memories, it is not

sufficient merely to scrutinize their origins, but it is indispensable; it is also crucial to 'reign in' or regulate these memories through a normative framework. Therefore the morally significant question concerns not only whether, and what, we must remember, but also the role that memory should play in the lives of individuals and societies, as well as what the right modalities of the use of past experiences should entail.

Confusing Memory and Its Influence on Violence

Memory is constitutive to the human condition and crucial in our daily lives, due to the many benefits it provides, such as healing, empathy, solidarity and protection. Much of the contemporary literature on memory, therefore, focuses on the therapeutic or protective role of memory, and sometimes maintains an uncritical approach to memory and creates the memory surfeit, as Nietzsche believed. This trend, however, overlooks the fact that memory is not a benign phenomenon, given that it is a (re)constructive and not a reproductive phenomenon - as pointed out by Maurice Halbwachs - which means that the same event can be interpreted in different ways and in accordance with the interests of the present context.¹

The misuse of memory, which recurrently took place in the last century, is based on this interpretive dimension of memory resulting from its limited epistemological structure. Because past events do not all have the same meaning in our lives, we constantly decide what has to be remembered as more valuable, and hence, it becomes crucial to choose among the different information sets we receive. But how can we distinguish beforehand which information to give predominance, or what constitutes a good use of memory in contrast to a bad one? What are the criteria that assure a good use of memory? Before we tackle these questions, let us first discuss the propensity of memory to cause violence.

The connection between memory and violence is twofold: The claim to possess memory might produce violence, but once committed, violence also becomes an object of memory, and how we remember past violence can also perpetuate new violence. It is a fairly widespread opinion that the more a past event is emotionally charged, the more it will be remembered. Along the same lines, Avishai Margalit argues that events of violence and wrongdoing are more suitable to be remembered because they are imbued with negative emotions; they leave deeper scars on us and therefore have a greater importance in motivating us toward action.² Given that the person has to penetrate deeper into complex events than simple ones, these events look for a way out and seek a solution, whereas happier events often lack a strong cognitive engagement. This is why a person might better recall events in which he or she put in more effort or struggled harder. For this reason, very often in our lives memories of pain or suffering attain a privileged position. What is problematic about that is that the memory of suffering, as is

¹ Maurice Halbwachs, *La memoria collettiva* (Milano: Unicopli, 1987), pp. 79-122; also, see Teresa Grande, *Il passato come rappresentazione. Riflessioni sulle nozioni di memoria e rappresentazione sociale* (Messina: Rubbettino Editore, 1997), pp. 18-23; Paul Connerton, *Come le società ricordano* (Roma: Armando Editore, 1999), pp. 43-47.

² Avishai Margalit, *The Ethics of Memory* (Cambridge-London: Harvard University Press, 2004), p. 111.

sometimes believed, does not necessarily prevent people from inflicting suffering. Those who have suffered may even become explicitly inclined to hurt others, i.e., the victims become the perpetrators based on their memories. Because they endured violence, they feel empowered and justified to inflict it upon others due to their past sufferings. Other times, people are even motivated to commit acts of violence in order to be remembered.³ The moral ambiguity of memory means that memory can operate in completely divergent directions; in some cases, memory can prevent violence, whereas it can breed violence in others.

It is not uncommon for individual or collective memory to exist in a discordant relationship with identity. Whether consciously or unconsciously, we re-examine our past and come across confusing or sometimes even threatening parts of it, as we try to fit it into a meaningful and coherent image of ourselves. At the collective level, this nexus appears to be even more prominent and vulnerable. This is because institutions and communities do not have individual memories, since they lack what corresponds to the biological foundation and anthropological disposal of memory. The difference lies in the fact that institutions and entities do not possess memory, but instead build one for themselves.⁴ Therefore, unlike the mechanism of remembering that takes place spontaneously and in accordance with the general laws of psychology, at a collective and institutional level this process is driven by a deliberate policy of memory and targeted policies.⁵ One may reflect upon the Rwandan genocide which, according to some authors, was fueled by European colonialism and its political and ideological constructions.⁶ Anthropologists and historians agree that descriptions of the Hutu and Tutsi as two separate tribes or two different ethnic groups are entirely implausible, and that European colonizers, by overemphasizing the legends regarding the origins of the Tutsi, had an important role in producing narratives and stratifying memories of the Tutsi and Hutu, consequently laying the foundation for future hatred and conflicts.⁷

In our contemporary world, ethnic conflicts between groups are often motivated by the sort of history that is supplanted by political myths. Given the power of the socio-psychological conditions that fuel conflicts, policies that rely on such myths initially strive to create a kind of common victim identity which ensures that all those who belong to the same group feel that aggressive behavior towards another group is justified (e.g. others are to blame for our unsuccessful past, they represent an enemy to the future of our group, etc.). Therefore, to achieve certain political aims, memory is used to mimic past examples of greatness or defeat and to uphold a destructive relationship with the past. The explosion of anti-Semitism by the Nazis, or the ethnic cleansing in the Balkans carried out by the Serbs, can be interpreted in this same vein, because these examples rely

³ Miroslav Volf, *The End of Memory. Remembering Rightly in a Violent World* (Michigan-Cambridge: W.B. Eerdmans Publishing Company, 2006), p. 32.

⁴ Aleida Assmann, 'Memoria collettiva', in *Dizionario della memoria e del ricordo*, edited by Nicholas Pethes and Jens Ruchatz (Milano: Bruno Mondadori, 2002), pp. 314-316, at p. 315.

⁵ Aleida Assmann, *Ricordare, Forme e mutamenti della memoria culturale* (Bologna: Il Mulino, 2002), p. 15.

⁶ Ugo Fabietti and Vincenzo Matera, *Memorie e identità, Simboli e strategie del ricordo* (Roma: Maltemi, Gli Argonauti, 2000), p. 165.

⁷ Claudine Vidal, 'Il genocidio dei Ruandesi tutsi: Crudeltà voluta e logiche di odio', in *Sulla violenza*, edited by Françoise H. Héritier (Roma: Maltemi, 1997), pp. 232-238.

on the type of relationship with the past in which the emulation of our forebears is removed from a socio-historical context.⁸

Totalitarian regimes definitely conceal memories in a more obvious way. Given the constitutively selective nature of memory, what we should blame totalitarian regimes for is not that they retain only certain elements of the past and let others fall into oblivion since they cannot act otherwise, but rather that they claim the right to control what they want to retain.⁹ It is precisely because they want to legitimize their power or their ideology that these regimes often seek to radically change the references to the past by resorting to various means - from physical to psychological coercion. In this way, totalitarianism denies free access to a plurality of collective memories and tries to establish a single one which is fully the function of the dominant power.¹⁰ When the externalized forms of memory, or so-called 'prosthetic' memory, are destroyed and their traces fade, the group risks collective amnesia, and the collective identity suffers setbacks.

Although domination over memory promises victories, only rarely can the winners' memory completely abolish that of the losers. The latter remain hidden in tacit knowledge, beyond the subjective awareness, and remain present in action, narratives and unconscious practices. Hence, the memory of the oppressed persists, placed in the background, ready to be rediscovered, to return to the stage and re-emerge when the initial conditions that had side-lined it change. It is on the trail of the past, forgotten and denied by those in power, that revolutionary processes emerge. Given its latent power to resurrect aversions and desires that were buried, memory is very valuable to opponents of totalitarian regimes, because every act of reminiscence, even the most humble, can be likened to anti-totalitarian resistance.¹¹ Consequently, dictatorship is threatened when a society is divided into a plurality of groups, each of which has developed a representation of the past, or a memory that is useful to their own interests and their own vision of the world.

Toward the Ethics of Memory

The redemptive or healing power of memory and the political use of memory are quite widespread phenomena today. These two different uses of memory suggest that memory, from a moral standpoint, is dangerously ambiguous. Considering that our past is a succession of many important and less important events, what types of selection should we make? To which events should we give predominance? And what, precisely, are we obliged to remember?

Are We Obligated to Remember? Why and What Are We Obligated to Remember?

We always remember partially, and we do not have complete control over our memories. Sometimes, they just pop into our mind without our involvement, i.e., involuntary memories, and other times, we deliberately decide to remember, i.e., voluntary

⁸ Jeffrey Blustein, *The Moral Demands of Memory* (Cambridge: Cambridge University Press, 2008), p. 8.

⁹ Tzvetan Todorov, *Gli abusi della memoria* (Napoli: Ipermedium Libri, 2001), p. 33.

¹⁰ Paolo Montesperelli, *Sociologia della memoria* (Roma-Bari: Editori Laterza, 2003), p. 45.

¹¹ Todorov, *Gli abusi della memoria*, p. 31.

memories. Thus a question arises: Is it possible that an ethics or morality of memory exists? I deem it possible, for a few, main reasons. First, we refer to the type of memory that is conscious and voluntary (intentional calling to mind). That is to say, we do not bear responsibility for events that slip from our mind because we cannot remember or forget on demand (ought implies can); but we can do something to prevent oblivion and therefore bear responsibility for not having prevented oblivion. The same applies to thoughts, because we do not know why, at any given time, we think of one thing rather than another; but if we wish, we can also choose to think of certain things at a precise moment. Although we cannot voluntarily produce memories, thoughts or emotions, and we lack direct control over them, we can do a lot to control them - perhaps not directly, but we can be responsible for a prior action linked to that memory, thought or emotion. We may use helpful, indirect methods of remembering, thinking or feeling. This process is similar to what Justin Oakley, in his book *Morality and Emotions*, calls 'learned spontaneity'.¹²

Although memory provides many benefits, it is not beneficial in all circumstances; rather, 'within limits and under certain condition remembrance is an indispensable ingredient of a good life and civic health'.¹³ However, we must make a distinction concerning the asymmetry, as noted by Margalit, between protecting morality and promoting it. Promoting is extremely desirable and valuable. Protecting is a must. The source of the obligation to remember stems from the effort of radical evil to undermine morality itself by, among other means, rewriting the past and twisting the truth.¹⁴ Furthermore, we have an obligation not only to avoid harming people but also to improve our relationship with them: We must remember to forgive and reconcile. Because we have an obligation to forgive and reconcile, we have an obligation to remember. The imperative to remember refers, above all, to salient examples of radical evil and crimes against humanity and involves collective efforts to redress the harm suffered by victims of past injustices. Public remembering is an act of acknowledgment towards the victims of wrongs and is therefore an act of justice. 'Extracting the exemplary value from traumatic memories, it is justice that turns memory into a project; and it is this same project of justice that gives the form of the future and of the imperative to the duty of memory'.¹⁵

However, even when acts of remembrance are not obligatory, they may be valuable due to the attitudes and emotions they express. Memory shapes and is shaped by identity, and identity is internally associated to values and obligations (memory is not only a descriptive category but also a normative category). How and what we remember partly establish our identity, and our identity becomes normative for us; that is, a framework of various values and obligations. We can reproach ourselves not only for the wrongs we have committed but also for not developing our talents, for personal shortcomings, for failures of character, for evil thoughts, and for cruel desires; in other

¹² Justin Oakley, *Morality and Emotions* (London-New York: Routledge, 1992), pp. 139-140.

¹³ Blustein, p. 2.

¹⁴ Margalit, p. 83.

¹⁵ Paul Ricoeur, *Memory, History, Forgetting* (Chicago-London: University of Chicago Press, 2004), p. 88.

words, being too easy on oneself is as morally objectionable as being too hard on oneself.¹⁶

How Should We Remember?

So far, it is clear that instead of deleting the past, we have to manage its influence. How can memory become a bridge between adversaries, or a path to the avoidance of violence? In the second chapter of his *Unfashionable Observations*, titled 'On the Utility and Liability of History for Life', Nietzsche highlights the uses of remembering and of forgetting to a greater extent than anyone before him. He portrays various types of relations to the past (monumental, antiquarian and critical history) to articulate a 'virtue of remembrance', in which one remembers neither too much nor too little, also known as the Nietzschean challenge. For him, the question is not whether we should remember, since remembering is part of our human condition, but how; that is, how memory should be included into, and function within, the lives of individuals and groups. In his view, happiness and a successful life call for a large capacity to forget the past. Therefore, he advocates the value of forgetting, because man's energies and attention are then turned away from the past and centered on an object in the present; or at the least, he suggests that we should remember or forget 'at [the] right time'.

While recognizing the merits of Nietzsche for noting that memory can serve life instead of being merely a gathering of information, Volf is right to criticize Nietzsche for ignoring the social context in which, and for which, the use of memory occurs.¹⁷ With this in mind, I believe that three main ethical demands - truthfulness, exemplarity or integration, public or personal good - that pertain to the ways of remembering suggested here are attentive to both the individual and collective memory.

Truthfulness and Epistemic Aspect of Memory

Skepticism of the accuracy of memory has preoccupied much of the literature on memory, given that all our memories are notoriously fallible and epistemologically limited.¹⁸ However, despite the scepticism that arises from the fact that memories are particularly vulnerable to distortion, we are nonetheless responsible for remembering correctly (even though we are not to blame should we unintentionally fail to remember). In essence, when we claim to remember, we are asserting that, to the best of our knowledge, our memory is true in the sense that it corresponds to events as they occurred. The expressivist standpoint noted by Blustein goes even further: According to this stance, we ought to remember even if no good or some bad is promoted.¹⁹

This last statement seems overly rigid, a meticulous prescription that is far from the real world and human good. Along similar lines is the widespread postmodern idea that negates any objective truth, or considers it dangerous, and hence absolves people of

¹⁶ Blustein, p. 94.

¹⁷ *Ibid.*, p. 165.

¹⁸ There has been much talk about the conflict between the historical truth and the personal testimonies that often do not coincide. The good intentions of historians must consider witness accounts to find a middle ground between the objectivity of science and the subjectivity of the testimony, because a community in the construction of its collective memory uses both (for instance, see Tzvetan Todorov, *Memoria del male. Tentazione del bene, Inchiesta su un secolo tragico* (Milano: Garzanti, 2001), p. 157).

¹⁹ Blustein, p. 35.

the moral obligation to remember truthfully.²⁰ However, regardless of how dangerous the truth may be, we cannot create a stable society by bypassing that truth and picking only the elements that seem innocuous, because the dangerous truth will, sooner or later, catch up with us. This is the first lesson of psychoanalysis, but also the logical conclusion derived from our ordinary experiences. The danger is when we try to possess the truth instead of searching for it, so that 'the conflict is deepened not because truth matters too much to both parties, but because it matters too little (...) It is dangerous to claim to possess the truth, but it is even more dangerous to claim that all memories are equally valid in terms of their correspondence to actual events'.²¹

More than epistemological errors and unhealthy repression, untruthful memories also often injure those involved in the remembered activity because the obligation for truthfulness in remembering lies at the root of the obligation to do justice. Thus, although we can blame memory for lacking reliability, it is our only and unique resource to access what we claim to remember of the past. This, for example, is not the case for imagination, which refers to what is unreal and made up. Memory's claim to truth is thus a crucial trait of the concept of memory, its constitutive part: 'And yet, we have nothing better than memory to guarantee that something has taken place before we call to mind a memory of it'.²² As we shall see in the following, a completely different question arises, which concerns whether, and how, this memory should be interpreted or related to other duties. So far, we can conclude that the truth of memory continues to say little or nothing about its use.

Exemplarity, Integration and Pedagogic Aspects of Memory

Remembering appropriately, particularly in cases of abuse, is not a private affair, even though the remembering takes place in the isolation of our own minds. Because others are always implicated (individual and collective memory are intertwined), remembering is always of public significance. How we manage our memories not only shapes our identity and our relationships with others but also affects our relationships in every social setting of which we are a part. A single memory of abuse affects the wider society and becomes an *example* of the uses of memory; thus, we have a moral responsibility to distinguish good use from bad.

From this perspective, Tzvetan Todorov bases his critique of the uses of memory by making a distinction between different modalities of remembering. In his view, there are two distinct ways of giving meaning to, or interpreting, the past: *Literal memory*, which focuses exclusively on our own well-being and tries to replicate the original event, returning tit for tat, and *exemplar memory*, which corresponds to a model for understanding new situations with different agents. An illustration of literal memory, which subordinates the present to the past, can be found in the impossibility of reaching reconciliation and agreement between Palestinians and Israelis, or in conflicts in Northern Ireland. In contrast, Todorov suggests, we should use memories in the

²⁰ Miroslav Volf, *Isključenje i zagrljaj. Teološko promišljanje identiteta, drugosti i pomirenja* (Zagreb: Steppress, 1998), pp. 258-267.

²¹ Volf, *The End of Memory*, pp. 57-58.

²² Ricoeur, *Memory, History, Forgetting*, p. 7.

exemplar way. This means that we should interpret an event in such a way that is representative of a more general category, i.e. as a model to understand new situations with different agents (without threatening its singularity and uniqueness). The past event becomes an example which is comparable and a source of meaning for other analogous situations, and thus we can extract a lesson from it, making the past a principle of action for the present.²³ Todorov's exemplar memory is a very helpful notion for understanding different modalities of the use of memory, and is widely discussed in philosophy, theology and anthropology.²⁴ One of the most interesting issues to arise in these discussions, and which furthermore is useful for our analysis, is the question of whether exemplar memory can in practice fulfill its protective function. Given that in the real world people sometimes draw very different lessons even from more simple events, it is certainly difficult to identify correct analogies to past situations. Even when these analogies appear straightforward, history shows us that they are often misleading (the pledge 'never again' after the experience of the Holocaust did not hinder the atrocities committed in Rwanda or Srebrenica). Volf is right in suggesting that the major problem is the difficulty in identifying which current situation matches the past one, since the distinction between victims and perpetrators is often blurred as yesterday's victims sometimes become tomorrow's victimizers (Croats, Muslims and Serbs in ex-Yugoslavia; Catholics and Protestants in Northern Ireland; Jew and Palestinians in Israel).²⁵ The other problem with Todorov's exemplar memory is that not all people share the same view of justice and real possibilities for justice in this world, since the memory of injustice can strengthen our belief in injustice.²⁶ In Todorov's exemplar memory Volf highlights one

²³ Todorov, *Gli abuse della memoria*, pp. 48-57.

²⁴ For instance, Ugo Fabietti and Vincenzo Matera in their book *Memorie e identità* employ Todorov's distinction in their anthropological study, and attempt to attach this concept to the distinction made by Edouard Glissant about unique and relational identity in his book *Introduction à une poétique du divers* (Paris: Gallimard, 1996). Presuming that isolation and immobility of a collective group and the strength of the bond that holds together the individuals belonging to it are most probably directly proportional, they examine the role of memory in consolidating the link between a given populace and its identity (they presume that the passage from the mythical toward the historical conscience has its counterpoint in the idea of the potential to enlarge the territorial domain proper, i.e. temporal and spatial dimensions are interrelated). For that purpose they employ the above-mentioned distinction made by Glissant. Glissant assumes that foundational myths have a role in sanctifying the presence of one community on its territory, and that when it comes to the historical conscience the community tries to expand its boundaries by making contact with other populations. In his view, this enlargement occurs in two different modes. One mode corresponds to Western societies and ancestral cultures, when encountering other cultures, expanding their boundaries by excluding the identity of others. Thereby, the group seeks to strengthen their perceived identity (unique identity). The other mode corresponds to more complex societies that adopted creolisation (the process by which long-term contact between different cultural influences and traditions creates a new entity) and allows for the intersection of different identities (relational identity). Fabietti and Matera find a connection between Todorov's exemplar use of memory, which gains knowledge of the past in order to improve present conditions, and relational identity that rejects isolative behavior by the group. They also perceive a strong bond between literal memory and unique identity or closure, intolerance and aggression. (Fabietti and Matera, pp. 28-32, 182).

²⁵ Volf, *The End of Memory*, p. 90.

²⁶ *Ibid.*, p. 91.

very important aspect: That we should treat memories as examples, but we should do so in a correct manner. This aspect, to me, however, seems to be contained in Todorov's notion because he also stresses that not all lessons from the past are good, and that we need the help of universal rational criteria to sustain human dialogue in distinguishing good use from bad.

However, Todorov reminds us that truthfulness does not prevent us from giving the past new significance or interpretation. In fact, the capacity for effective reparative agency hinges on what Blustein calls 'the retrospective construction of meaning', i.e. one makes sense of the past by fitting it into a narrative structure that links it to the present and transforming it (he also suggests appropriation and thematization as ways of taking responsibility for the past).²⁷ Furthermore, the unique truth of memory and its historical singularity are not betrayed by its new interpretation, universalization and comparison. On the contrary, memory can provide us with a critical message from a pedagogical point of view. In its comparative dimension, and extrapolating its exemplary value, memory serves to illuminate the object of further research, and imparts a greater understanding to other similar events.

Practical Aspect of Memory and Human Good

Rather than its epistemic value, the ethics of memory should be concerned with their practical dimension, which primarily concerns implementation in our social settings. Let us take Volf's example of a case of wrongdoing: We could separate wrongdoing from a person's overall character and deeds. Such remembering would be truthful, although only in part, but it certainly would be unloving. It could transmute that person into a very different one, attributing to his or her identity only bad qualities. However, we could also remember that person in the context of his or her entire life, which might exhibit a good deal of virtue.²⁸ This attitude is in the essence of the Christian view, which assumes love as a fundamental concept that governs the ambiguous power of memory.

Although we must remember to reconcile, sometimes, reconciliation also requires the restraint of memory for a certain period.²⁹ Given that memory is not an unqualified or absolute good (because it is also a function of something, hence an instrument), the proper use of memory as a balance between remembering and forgetting is dynamic in the sense that 'what is an appropriate balance under some historical or psychological conditions might not be appropriate under others'.³⁰ As Blustein stresses, the duties associated with memory are not independent of their social and historical settings and other values and commitments we may have (conflicts between competing social

²⁷ Blustein, pp. 66-76.

²⁸ Volf, *The End of Memory*, p.15.

²⁹ Amnesty, for example, has the purpose of putting an end to the serious political conflicts (civil wars, revolutions, violent changes of political regimes) for the purpose of reconciliation between citizens and bringing civil peace. The ancient Greeks provided an example of not only therapeutic oblivion but precisely 'political' oblivion, which is similar to today's amnesty (see Maurizio Bettini, 'Sul perdono storico. Dono, identità, memoria e oblio', in *Storia, verità, giustizia. I crimini del XX secolo*, edited by Marcello Flores (Milano: Bruno Mondadori, 2001), pp. 20-43, at p. 38).

³⁰ Blustein, p. 3.

projects).³¹ Therefore, in suggesting ethical criteria we must be mindful of our other duties, values and commitments and the effects that our coping with memory will have on other important dimensions of our personal life (e.g., our mental health and stability, empathy, moral development, and obligations as citizens) or the social community in which we live (peace, solidarity, democracy, economic recovery). We could say that there is

(...) a surfeit of memory if there is a kind of collective paralysis induced by shame and guilt over past wrongdoing that prevents progressive political change (...) Or there might be a surfeit of memory insofar as dwelling on the past prevents the realization of various social and political goods (...) a group dwells on its past out of proportion to the severity of the wrongdoing for which it is responsible or which it suffered, or out of proportion to its degree of responsibility for it.³²

Memory - truthful memory, that is - may be in competition with social and political goods and projects of different sorts that devour social resources, and sometimes it is these that should give way to memory. Certainly, the historical truth is not an absolute good (in Christian ethics, love is definitely the greater good), and sometimes we have to give predominance to a person or to the common good instead of to historical truth.

Relationship between Criteria

Having emphasized some ethical criteria that should govern the use of memory in the light of broader social contexts, we have to discuss in greater depth whether there is a tension or competition between these criteria that somehow call for further ethical analysis. What I have in mind is a situation where we have to decide which ethical duty to give priority. Given that the second criterion - integration or exemplarity - is determined by the well-balanced use of epistemological and practical aspects and presupposes the incorporation of memories in the whole of someone's life (similar to virtue ethics when the agent works on his own character), this criterion is not at odds with other criteria but, rather, brings them together. In view of the fact that when we dealing with memories, human life or communities are always entangled, this balance is not a mathematic equation but rather a delicate and dynamic relationship of deontological (always be truthful) and consequentialist principles (what good will come from this truth?) What does this mean when discussing memory?

Needless to say, the truth is a constitutional part of memory and is 'implied in the intending of the past 'thing', of what was formerly seen, heard, experienced, learned.'³³ If we don't remember truthfully, we don't remember at all but, rather, substitute an account of what really happened for our imagination. Nevertheless, the relationship between truth and memory, or truth in memory, is not as straightforward because, very often, especially when complex and distant past events are at issue, memory becomes a sort of fusion of truthful narrative and imagined construction. Still, this awkward epistemological structure of memory does not deprive us of the moral obligation 'to

³¹ *Ibid.*

³² *Ibid.*, pp. 17, 23.

³³ Ricouer, *Memory, History, Forgetting*, p. 55.

render the past event truthfully to the best of our knowledge',³⁴ or as Ricoeur states, 'we bear the moral obligation to pay to others the debt of giving their 'due' by remembering them truthfully.'³⁵

How, then, can the first criterion – truthfulness – possibly be called into question? Firstly, even though the presupposed 'unsteady truthfulness' of memory does not dispossess us from searching for a more detailed representation of the past, it makes room for errors or misinterpretations and hence points towards a more elastic way of managing memories. In short, it means that instead of claiming to possess the truth of the past and absolutizing our views, we should employ a more humble and unpretentious attitude with regard to past issues. Secondly, and more importantly, adhering blindly to the truth (which is, in some respects, relative because it is always in danger of what historians call 'presentism') cannot bring reconciliation or guarantee social cohesion. Without taking anything away from the moral obligation to remember truthfully, often when managing memories we should call attention to the importance of appropriate use rather than truthfulness of memory. Too much truth (especially if lethal) in one particular situation can fuel violence, whereas portioning the truth or revealing it in a pedagogical way attentive to the socio-cultural context can bring people closer.

According to Margalit, giving predominance to truth over other criteria when regulating memories is an empirical assumption based on the memory-prison metaphor.³⁶ But what Margalit has in mind regarding memory prison differs slightly from what I intend by memory prison, and my view is more similar to Todorov's literal memory. Margalit's idea about memory prison is based on Freud's account of repressed memories as subversive agents that cause dysfunctional conduct. Psychoanalytical healing, hence, indicates releasing the strangulation effect and removing the affective force of memory, so that people no longer 'cling to these memories emotionally'.³⁷

By prison Margalit means repression that influences present actions or, in Freud's terms, 'repetition compulsion', i.e. when a person repeats or re-lives a traumatic event over and over by re-enacting the event, or putting themselves in situations where the event is likely to occur again. Even though Margalit is very much concerned with making the traumatic, repressed individual or communal memories open and explicit, in order to obtain the cure he is also suspicious of truth about the past bringing reconciliation by being revealed. 'Still memory breathes revenge as often as it breathes reconciliation and hope of reaching catharsis through liberated memories might turn out to be an illusion'.³⁸ Thus, in his account, the memory prison metaphor refers to freedom from repression and to the importance that truth has in our normal functioning in society, although he is ultimately very skeptical that liberation from the prison of memory and pointing instead exclusively at the truth, which is isolated from the wider socio-cultural context, will address the social and moral dimensions of past experience.

I believe, however, that the 'memory prison' metaphor can be applied in an even broader sense, not only in the case of repressed traumatic memories but also when a

³⁴ Volf, *The End of Memory*, p. 53.

³⁵ Paul Ricoeur, *The reality of the Historical Past*, (Milwaukee: Marquette University Press, 1984), pp. 25-27.

³⁶ Margalit, p. 6.

³⁷ Sigmund Freud, 'Remembering, Repeating and Working Through', in *The Standard Edition of Complete Works of Sigmund Freud*, vol. 12 (London: Hogarth, 1958), p. 152.

³⁸ Margalit, p. 5.

person constantly relives the past (not only the repressed but also the conscious past), without taking the opportunity to open up to new experiences. People trapped in a memory, be it their own or inherited, rely on the past for an alibi that frees them from responsibility for the present and have less of a chance to build an autonomous identity; thus their moral judgment of the past and present is highly determined by this imprisonment.³⁹ It has been claimed that the same happens at a collective level through the promotion of a cult of memory that recalls injuries suffered in the past, on the basis of which its practitioners ensure certain privileges in society. In these cases, the matter wholly concerns the desire for a utilitarian gathering of not only moral and symbolic but also material benefits. Any chance of escaping the agonizing story is rejected, because this 'special' status gives one the right to avoid moral and social standards. As Todorov puts it:

Candidates for victim status are many, because, having been the victim gives you the right to complain, to protest and to moan. (...) It is more beneficial to remain in the role of the victim to receive compensation for the offense: instead of a temporary satisfaction, it retains a permanent privilege attention (...)⁴⁰

Thus, the memory prison metaphor can be understood in both senses, i.e. when we are the victims of repressed memories, or the victims of our underdeveloped moral standards. Consequently, the truth of memory seems to be an essential but nonetheless qualified aspect of how we deal with our individual or collective memories and should not be exercised without considering other personal or social benefits.

Conclusion

This paper has suggested some ethical guidelines for governing the use of memory. The concepts and themes considered represent some central ideas discussed in a few rare works on ethics of memory. Bearing in mind these ethical demands of memory, I believe that, despite all of its limits, memory can function as an ingredient of a good life. This can be accomplished at two levels - both ethical, but to varying degrees: Sometimes, there is an imperative to remember every time human lives are jeopardized or that we owe justice to the victims of the past who run the risk of being forgotten, silenced or marginalized; other times it is valuable to remember, because we can add quality to our lives, increase our effective agency, or improve the level of our personal development or social conditions, etc. As stated, ethics has to do with both protecting and promoting. Consequently, by pointing to the 'demands or tasks of memory', an ethical dimension can

³⁹ An individual can be imprisoned by the past in two ways: in the past of his or her predecessors and in his or her own past. The first is known as the psychological phenomenon of second-generation syndrome and this phenomenon is closely related to the concept of transgenerational transmission. The identity of people locked in the past always searches for a balance between remembering and forgetting; remembering because it seeks to ensure continuity and avoid inner fragmentation, and forgetting since it seeks to adapt to the new world and function properly within it, repressing or deleting all distressing memories (cf. Dina Wardi, *Le candele della memoria. I figli dei sopravvissuti dell'Olocausto: traumi, angosce, terapia* (Firenze: Sansoni, 1993), p. 139).

⁴⁰ Todorov, *Gli abusi della memoria*, p. 64, my translation.

eventually transmute even the most appalling past into new life possibilities. Regardless of what has happened in the past, we still can make good use of the past because we are much more than our memories (our identity also incorporates elements of other people's experiences, our present and our anticipating the future), although we are profoundly influenced by them.

Jasna Ćurković Nimac, Institute of Social Sciences Ivo Pilar
jasna.nimac@pilar.hr

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sufficient merely to scrutinize their origins, but it is indispensable; it is also crucial to 'reign in' or regulate these memories through a normative framework. Therefore the morally significant question concerns not only whether, and what, we must remember, but also the role that memory should play in the lives of individuals and societies, as well as what the right modalities of the use of past experiences should entail.

Confusing Memory and Its Influence on Violence

Memory is constitutive to the human condition and crucial in our daily lives, due to the many benefits it provides, such as healing, empathy, solidarity and protection. Much of the contemporary literature on memory, therefore, focuses on the therapeutic or protective role of memory, and sometimes maintains an uncritical approach to memory and creates the memory surfeit, as Nietzsche believed. This trend, however, overlooks the fact that memory is not a benign phenomenon, given that it is a (re)constructive and not a reproductive phenomenon - as pointed out by Maurice Halbwachs - which means that the same event can be interpreted in different ways and in accordance with the interests of the present context.¹

The misuse of memory, which recurrently took place in the last century, is based on this interpretive dimension of memory resulting from its limited epistemological structure. Because past events do not all have the same meaning in our lives, we constantly decide what has to be remembered as more valuable, and hence, it becomes crucial to choose among the different information sets we receive. But how can we distinguish beforehand which information to give predominance, or what constitutes a good use of memory in contrast to a bad one? What are the criteria that assure a good use of memory? Before we tackle these questions, let us first discuss the propensity of memory to cause violence.

The connection between memory and violence is twofold: The claim to possess memory might produce violence, but once committed, violence also becomes an object of memory, and how we remember past violence can also perpetuate new violence. It is a fairly widespread opinion that the more a past event is emotionally charged, the more it will be remembered. Along the same lines, Avishai Margalit argues that events of violence and wrongdoing are more suitable to be remembered because they are imbued with negative emotions; they leave deeper scars on us and therefore have a greater importance in motivating us toward action.² Given that the person has to penetrate deeper into complex events than simple ones, these events look for a way out and seek a solution, whereas happier events often lack a strong cognitive engagement. This is why a person might better recall events in which he or she put in more effort or struggled harder. For this reason, very often in our lives memories of pain or suffering attain a privileged position. What is problematic about that is that the memory of suffering, as is

¹ Maurice Halbwachs, *La memoria collettiva* (Milano: Unicopli, 1987), pp. 79-122; also, see Teresa Grande, *Il passato come rappresentazione. Riflessioni sulle nozioni di memoria e rappresentazione sociale* (Messina: Rubbettino Editore, 1997), pp. 18-23; Paul Connerton, *Come le società ricordano* (Roma: Armando Editore, 1999), pp. 43-47.

² Avishai Margalit, *The Ethics of Memory* (Cambridge-London: Harvard University Press, 2004), p. 111.

sometimes believed, does not necessarily prevent people from inflicting suffering. Those who have suffered may even become explicitly inclined to hurt others, i.e., the victims become the perpetrators based on their memories. Because they endured violence, they feel empowered and justified to inflict it upon others due to their past sufferings. Other times, people are even motivated to commit acts of violence in order to be remembered.³ The moral ambiguity of memory means that memory can operate in completely divergent directions; in some cases, memory can prevent violence, whereas it can breed violence in others.

It is not uncommon for individual or collective memory to exist in a discordant relationship with identity. Whether consciously or unconsciously, we re-examine our past and come across confusing or sometimes even threatening parts of it, as we try to fit it into a meaningful and coherent image of ourselves. At the collective level, this nexus appears to be even more prominent and vulnerable. This is because institutions and communities do not have individual memories, since they lack what corresponds to the biological foundation and anthropological disposal of memory. The difference lies in the fact that institutions and entities do not possess memory, but instead build one for themselves.⁴ Therefore, unlike the mechanism of remembering that takes place spontaneously and in accordance with the general laws of psychology, at a collective and institutional level this process is driven by a deliberate policy of memory and targeted policies.⁵ One may reflect upon the Rwandan genocide which, according to some authors, was fueled by European colonialism and its political and ideological constructions.⁶ Anthropologists and historians agree that descriptions of the Hutu and Tutsi as two separate tribes or two different ethnic groups are entirely implausible, and that European colonizers, by overemphasizing the legends regarding the origins of the Tutsi, had an important role in producing narratives and stratifying memories of the Tutsi and Hutu, consequently laying the foundation for future hatred and conflicts.⁷

In our contemporary world, ethnic conflicts between groups are often motivated by the sort of history that is supplanted by political myths. Given the power of the socio-psychological conditions that fuel conflicts, policies that rely on such myths initially strive to create a kind of common victim identity which ensures that all those who belong to the same group feel that aggressive behavior towards another group is justified (e.g. others are to blame for our unsuccessful past, they represent an enemy to the future of our group, etc.). Therefore, to achieve certain political aims, memory is used to mimic past examples of greatness or defeat and to uphold a destructive relationship with the past. The explosion of anti-Semitism by the Nazis, or the ethnic cleansing in the Balkans carried out by the Serbs, can be interpreted in this same vein, because these examples rely

³ Miroslav Volf, *The End of Memory. Remembering Rightly in a Violent World* (Michigan-Cambridge: W.B. Eerdmans Publishing Company, 2006), p. 32.

⁴ Aleida Assmann, 'Memoria collettiva', in *Dizionario della memoria e del ricordo*, edited by Nicholas Pethes and Jens Ruchatz (Milano: Bruno Mondadori, 2002), pp. 314-316, at p. 315.

⁵ Aleida Assmann, *Ricordare, Forme e mutamenti della memoria culturale* (Bologna: Il Mulino, 2002), p. 15.

⁶ Ugo Fabietti and Vincenzo Matera, *Memorie e identità, Simboli e strategie del ricordo* (Roma: Maltemi, Gli Argonauti, 2000), p. 165.

⁷ Claudine Vidal, 'Il genocidio dei Ruandesi tutsi: Crudeltà voluta e logiche di odio', in *Sulla violenza*, edited by Françoise H. Héritier (Roma: Maltemi, 1997), pp. 232-238.

on the type of relationship with the past in which the emulation of our forebears is removed from a socio-historical context.⁸

Totalitarian regimes definitely conceal memories in a more obvious way. Given the constitutively selective nature of memory, what we should blame totalitarian regimes for is not that they retain only certain elements of the past and let others fall into oblivion since they cannot act otherwise, but rather that they claim the right to control what they want to retain.⁹ It is precisely because they want to legitimize their power or their ideology that these regimes often seek to radically change the references to the past by resorting to various means - from physical to psychological coercion. In this way, totalitarianism denies free access to a plurality of collective memories and tries to establish a single one which is fully the function of the dominant power.¹⁰ When the externalized forms of memory, or so-called 'prosthetic' memory, are destroyed and their traces fade, the group risks collective amnesia, and the collective identity suffers setbacks.

Although domination over memory promises victories, only rarely can the winners' memory completely abolish that of the losers. The latter remain hidden in tacit knowledge, beyond the subjective awareness, and remain present in action, narratives and unconscious practices. Hence, the memory of the oppressed persists, placed in the background, ready to be rediscovered, to return to the stage and re-emerge when the initial conditions that had side-lined it change. It is on the trail of the past, forgotten and denied by those in power, that revolutionary processes emerge. Given its latent power to resurrect aversions and desires that were buried, memory is very valuable to opponents of totalitarian regimes, because every act of reminiscence, even the most humble, can be likened to anti-totalitarian resistance.¹¹ Consequently, dictatorship is threatened when a society is divided into a plurality of groups, each of which has developed a representation of the past, or a memory that is useful to their own interests and their own vision of the world.

Toward the Ethics of Memory

The redemptive or healing power of memory and the political use of memory are quite widespread phenomena today. These two different uses of memory suggest that memory, from a moral standpoint, is dangerously ambiguous. Considering that our past is a succession of many important and less important events, what types of selection should we make? To which events should we give predominance? And what, precisely, are we obliged to remember?

Are We Obligated to Remember? Why and What Are We Obligated to Remember?

We always remember partially, and we do not have complete control over our memories. Sometimes, they just pop into our mind without our involvement, i.e., involuntary memories, and other times, we deliberately decide to remember, i.e., voluntary

⁸ Jeffrey Blustein, *The Moral Demands of Memory* (Cambridge: Cambridge University Press, 2008), p. 8.

⁹ Tzvetan Todorov, *Gli abusi della memoria* (Napoli: Ipermedium Libri, 2001), p. 33.

¹⁰ Paolo Montesperelli, *Sociologia della memoria* (Roma-Bari: Editori Laterza, 2003), p. 45.

¹¹ Todorov, *Gli abusi della memoria*, p. 31.

memories. Thus a question arises: Is it possible that an ethics or morality of memory exists? I deem it possible, for a few, main reasons. First, we refer to the type of memory that is conscious and voluntary (intentional calling to mind). That is to say, we do not bear responsibility for events that slip from our mind because we cannot remember or forget on demand (ought implies can); but we can do something to prevent oblivion and therefore bear responsibility for not having prevented oblivion. The same applies to thoughts, because we do not know why, at any given time, we think of one thing rather than another; but if we wish, we can also choose to think of certain things at a precise moment. Although we cannot voluntarily produce memories, thoughts or emotions, and we lack direct control over them, we can do a lot to control them - perhaps not directly, but we can be responsible for a prior action linked to that memory, thought or emotion. We may use helpful, indirect methods of remembering, thinking or feeling. This process is similar to what Justin Oakley, in his book *Morality and Emotions*, calls 'learned spontaneity'.¹²

Although memory provides many benefits, it is not beneficial in all circumstances; rather, 'within limits and under certain condition remembrance is an indispensable ingredient of a good life and civic health'.¹³ However, we must make a distinction concerning the asymmetry, as noted by Margalit, between protecting morality and promoting it. Promoting is extremely desirable and valuable. Protecting is a must. The source of the obligation to remember stems from the effort of radical evil to undermine morality itself by, among other means, rewriting the past and twisting the truth.¹⁴ Furthermore, we have an obligation not only to avoid harming people but also to improve our relationship with them: We must remember to forgive and reconcile. Because we have an obligation to forgive and reconcile, we have an obligation to remember. The imperative to remember refers, above all, to salient examples of radical evil and crimes against humanity and involves collective efforts to redress the harm suffered by victims of past injustices. Public remembering is an act of acknowledgment towards the victims of wrongs and is therefore an act of justice. 'Extracting the exemplary value from traumatic memories, it is justice that turns memory into a project; and it is this same project of justice that gives the form of the future and of the imperative to the duty of memory'.¹⁵

However, even when acts of remembrance are not obligatory, they may be valuable due to the attitudes and emotions they express. Memory shapes and is shaped by identity, and identity is internally associated to values and obligations (memory is not only a descriptive category but also a normative category). How and what we remember partly establish our identity, and our identity becomes normative for us; that is, a framework of various values and obligations. We can reproach ourselves not only for the wrongs we have committed but also for not developing our talents, for personal shortcomings, for failures of character, for evil thoughts, and for cruel desires; in other

¹² Justin Oakley, *Morality and Emotions* (London-New York: Routledge, 1992), pp. 139-140.

¹³ Blustein, p. 2.

¹⁴ Margalit, p. 83.

¹⁵ Paul Ricoeur, *Memory, History, Forgetting* (Chicago-London: University of Chicago Press, 2004), p. 88.

words, being too easy on oneself is as morally objectionable as being too hard on oneself.¹⁶

How Should We Remember?

So far, it is clear that instead of deleting the past, we have to manage its influence. How can memory become a bridge between adversaries, or a path to the avoidance of violence? In the second chapter of his *Unfashionable Observations*, titled 'On the Utility and Liability of History for Life', Nietzsche highlights the uses of remembering and of forgetting to a greater extent than anyone before him. He portrays various types of relations to the past (monumental, antiquarian and critical history) to articulate a 'virtue of remembrance', in which one remembers neither too much nor too little, also known as the Nietzschean challenge. For him, the question is not whether we should remember, since remembering is part of our human condition, but how; that is, how memory should be included into, and function within, the lives of individuals and groups. In his view, happiness and a successful life call for a large capacity to forget the past. Therefore, he advocates the value of forgetting, because man's energies and attention are then turned away from the past and centered on an object in the present; or at the least, he suggests that we should remember or forget 'at [the] right time'.

While recognizing the merits of Nietzsche for noting that memory can serve life instead of being merely a gathering of information, Volf is right to criticize Nietzsche for ignoring the social context in which, and for which, the use of memory occurs.¹⁷ With this in mind, I believe that three main ethical demands - truthfulness, exemplarity or integration, public or personal good - that pertain to the ways of remembering suggested here are attentive to both the individual and collective memory.

Truthfulness and Epistemic Aspect of Memory

Skepticism of the accuracy of memory has preoccupied much of the literature on memory, given that all our memories are notoriously fallible and epistemologically limited.¹⁸ However, despite the scepticism that arises from the fact that memories are particularly vulnerable to distortion, we are nonetheless responsible for remembering correctly (even though we are not to blame should we unintentionally fail to remember). In essence, when we claim to remember, we are asserting that, to the best of our knowledge, our memory is true in the sense that it corresponds to events as they occurred. The expressivist standpoint noted by Blustein goes even further: According to this stance, we ought to remember even if no good or some bad is promoted.¹⁹

This last statement seems overly rigid, a meticulous prescription that is far from the real world and human good. Along similar lines is the widespread postmodern idea that negates any objective truth, or considers it dangerous, and hence absolves people of

¹⁶ Blustein, p. 94.

¹⁷ *Ibid.*, p. 165.

¹⁸ There has been much talk about the conflict between the historical truth and the personal testimonies that often do not coincide. The good intentions of historians must consider witness accounts to find a middle ground between the objectivity of science and the subjectivity of the testimony, because a community in the construction of its collective memory uses both (for instance, see Tzvetan Todorov, *Memoria del male. Tentazione del bene, Inchiesta su un secolo tragico* (Milano: Garzanti, 2001), p. 157).

¹⁹ Blustein, p. 35.

the moral obligation to remember truthfully.²⁰ However, regardless of how dangerous the truth may be, we cannot create a stable society by bypassing that truth and picking only the elements that seem innocuous, because the dangerous truth will, sooner or later, catch up with us. This is the first lesson of psychoanalysis, but also the logical conclusion derived from our ordinary experiences. The danger is when we try to possess the truth instead of searching for it, so that 'the conflict is deepened not because truth matters too much to both parties, but because it matters too little (...) It is dangerous to claim to possess the truth, but it is even more dangerous to claim that all memories are equally valid in terms of their correspondence to actual events'.²¹

More than epistemological errors and unhealthy repression, untruthful memories also often injure those involved in the remembered activity because the obligation for truthfulness in remembering lies at the root of the obligation to do justice. Thus, although we can blame memory for lacking reliability, it is our only and unique resource to access what we claim to remember of the past. This, for example, is not the case for imagination, which refers to what is unreal and made up. Memory's claim to truth is thus a crucial trait of the concept of memory, its constitutive part: 'And yet, we have nothing better than memory to guarantee that something has taken place before we call to mind a memory of it'.²² As we shall see in the following, a completely different question arises, which concerns whether, and how, this memory should be interpreted or related to other duties. So far, we can conclude that the truth of memory continues to say little or nothing about its use.

Exemplarity, Integration and Pedagogic Aspects of Memory

Remembering appropriately, particularly in cases of abuse, is not a private affair, even though the remembering takes place in the isolation of our own minds. Because others are always implicated (individual and collective memory are intertwined), remembering is always of public significance. How we manage our memories not only shapes our identity and our relationships with others but also affects our relationships in every social setting of which we are a part. A single memory of abuse affects the wider society and becomes an *example* of the uses of memory; thus, we have a moral responsibility to distinguish good use from bad.

From this perspective, Tzvetan Todorov bases his critique of the uses of memory by making a distinction between different modalities of remembering. In his view, there are two distinct ways of giving meaning to, or interpreting, the past: *Literal memory*, which focuses exclusively on our own well-being and tries to replicate the original event, returning tit for tat, and *exemplar memory*, which corresponds to a model for understanding new situations with different agents. An illustration of literal memory, which subordinates the present to the past, can be found in the impossibility of reaching reconciliation and agreement between Palestinians and Israelis, or in conflicts in Northern Ireland. In contrast, Todorov suggests, we should use memories in the

²⁰ Miroslav Volf, *Isključenje i zagrljaj. Teološko promišljanje identiteta, drugosti i pomirenja* (Zagreb: Steppress, 1998), pp. 258-267.

²¹ Volf, *The End of Memory*, pp. 57-58.

²² Ricoeur, *Memory, History, Forgetting*, p. 7.

exemplar way. This means that we should interpret an event in such a way that is representative of a more general category, i.e. as a model to understand new situations with different agents (without threatening its singularity and uniqueness). The past event becomes an example which is comparable and a source of meaning for other analogous situations, and thus we can extract a lesson from it, making the past a principle of action for the present.²³ Todorov's exemplar memory is a very helpful notion for understanding different modalities of the use of memory, and is widely discussed in philosophy, theology and anthropology.²⁴ One of the most interesting issues to arise in these discussions, and which furthermore is useful for our analysis, is the question of whether exemplar memory can in practice fulfill its protective function. Given that in the real world people sometimes draw very different lessons even from more simple events, it is certainly difficult to identify correct analogies to past situations. Even when these analogies appear straightforward, history shows us that they are often misleading (the pledge 'never again' after the experience of the Holocaust did not hinder the atrocities committed in Rwanda or Srebrenica). Volf is right in suggesting that the major problem is the difficulty in identifying which current situation matches the past one, since the distinction between victims and perpetrators is often blurred as yesterday's victims sometimes become tomorrow's victimizers (Croats, Muslims and Serbs in ex-Yugoslavia; Catholics and Protestants in Northern Ireland; Jew and Palestinians in Israel).²⁵ The other problem with Todorov's exemplar memory is that not all people share the same view of justice and real possibilities for justice in this world, since the memory of injustice can strengthen our belief in injustice.²⁶ In Todorov's exemplar memory Volf highlights one

²³ Todorov, *Gli abuse della memoria*, pp. 48-57.

²⁴ For instance, Ugo Fabietti and Vincenzo Matera in their book *Memorie e identità* employ Todorov's distinction in their anthropological study, and attempt to attach this concept to the distinction made by Edouard Glissant about unique and relational identity in his book *Introduction à une poétique du divers* (Paris: Gallimard, 1996). Presuming that isolation and immobility of a collective group and the strength of the bond that holds together the individuals belonging to it are most probably directly proportional, they examine the role of memory in consolidating the link between a given populace and its identity (they presume that the passage from the mythical toward the historical conscience has its counterpoint in the idea of the potential to enlarge the territorial domain proper, i.e. temporal and spatial dimensions are interrelated). For that purpose they employ the above-mentioned distinction made by Glissant. Glissant assumes that foundational myths have a role in sanctifying the presence of one community on its territory, and that when it comes to the historical conscience the community tries to expand its boundaries by making contact with other populations. In his view, this enlargement occurs in two different modes. One mode corresponds to Western societies and ancestral cultures, when encountering other cultures, expanding their boundaries by excluding the identity of others. Thereby, the group seeks to strengthen their perceived identity (unique identity). The other mode corresponds to more complex societies that adopted creolisation (the process by which long-term contact between different cultural influences and traditions creates a new entity) and allows for the intersection of different identities (relational identity). Fabietti and Matera find a connection between Todorov's exemplar use of memory, which gains knowledge of the past in order to improve present conditions, and relational identity that rejects isolative behavior by the group. They also perceive a strong bond between literal memory and unique identity or closure, intolerance and aggression. (Fabietti and Matera, pp. 28-32, 182).

²⁵ Volf, *The End of Memory*, p. 90.

²⁶ *Ibid.*, p. 91.

very important aspect: That we should treat memories as examples, but we should do so in a correct manner. This aspect, to me, however, seems to be contained in Todorov's notion because he also stresses that not all lessons from the past are good, and that we need the help of universal rational criteria to sustain human dialogue in distinguishing good use from bad.

However, Todorov reminds us that truthfulness does not prevent us from giving the past new significance or interpretation. In fact, the capacity for effective reparative agency hinges on what Blustein calls 'the retrospective construction of meaning', i.e. one makes sense of the past by fitting it into a narrative structure that links it to the present and transforming it (he also suggests appropriation and thematization as ways of taking responsibility for the past).²⁷ Furthermore, the unique truth of memory and its historical singularity are not betrayed by its new interpretation, universalization and comparison. On the contrary, memory can provide us with a critical message from a pedagogical point of view. In its comparative dimension, and extrapolating its exemplary value, memory serves to illuminate the object of further research, and imparts a greater understanding to other similar events.

Practical Aspect of Memory and Human Good

Rather than its epistemic value, the ethics of memory should be concerned with their practical dimension, which primarily concerns implementation in our social settings. Let us take Volf's example of a case of wrongdoing: We could separate wrongdoing from a person's overall character and deeds. Such remembering would be truthful, although only in part, but it certainly would be unloving. It could transmute that person into a very different one, attributing to his or her identity only bad qualities. However, we could also remember that person in the context of his or her entire life, which might exhibit a good deal of virtue.²⁸ This attitude is in the essence of the Christian view, which assumes love as a fundamental concept that governs the ambiguous power of memory.

Although we must remember to reconcile, sometimes, reconciliation also requires the restraint of memory for a certain period.²⁹ Given that memory is not an unqualified or absolute good (because it is also a function of something, hence an instrument), the proper use of memory as a balance between remembering and forgetting is dynamic in the sense that 'what is an appropriate balance under some historical or psychological conditions might not be appropriate under others'.³⁰ As Blustein stresses, the duties associated with memory are not independent of their social and historical settings and other values and commitments we may have (conflicts between competing social

²⁷ Blustein, pp. 66-76.

²⁸ Volf, *The End of Memory*, p.15.

²⁹ Amnesty, for example, has the purpose of putting an end to the serious political conflicts (civil wars, revolutions, violent changes of political regimes) for the purpose of reconciliation between citizens and bringing civil peace. The ancient Greeks provided an example of not only therapeutic oblivion but precisely 'political' oblivion, which is similar to today's amnesty (see Maurizio Bettini, 'Sul perdono storico. Dono, identità, memoria e oblio', in *Storia, verità, giustizia. I crimini del XX secolo*, edited by Marcello Flores (Milano: Bruno Mondadori, 2001), pp. 20-43, at p. 38).

³⁰ Blustein, p. 3.

projects).³¹ Therefore, in suggesting ethical criteria we must be mindful of our other duties, values and commitments and the effects that our coping with memory will have on other important dimensions of our personal life (e.g., our mental health and stability, empathy, moral development, and obligations as citizens) or the social community in which we live (peace, solidarity, democracy, economic recovery). We could say that there is

(...) a surfeit of memory if there is a kind of collective paralysis induced by shame and guilt over past wrongdoing that prevents progressive political change (...) Or there might be a surfeit of memory insofar as dwelling on the past prevents the realization of various social and political goods (...) a group dwells on its past out of proportion to the severity of the wrongdoing for which it is responsible or which it suffered, or out of proportion to its degree of responsibility for it.³²

Memory - truthful memory, that is - may be in competition with social and political goods and projects of different sorts that devour social resources, and sometimes it is these that should give way to memory. Certainly, the historical truth is not an absolute good (in Christian ethics, love is definitely the greater good), and sometimes we have to give predominance to a person or to the common good instead of to historical truth.

Relationship between Criteria

Having emphasized some ethical criteria that should govern the use of memory in the light of broader social contexts, we have to discuss in greater depth whether there is a tension or competition between these criteria that somehow call for further ethical analysis. What I have in mind is a situation where we have to decide which ethical duty to give priority. Given that the second criterion - integration or exemplarity - is determined by the well-balanced use of epistemological and practical aspects and presupposes the incorporation of memories in the whole of someone's life (similar to virtue ethics when the agent works on his own character), this criterion is not at odds with other criteria but, rather, brings them together. In view of the fact that when we dealing with memories, human life or communities are always entangled, this balance is not a mathematic equation but rather a delicate and dynamic relationship of deontological (always be truthful) and consequentialist principles (what good will come from this truth?) What does this mean when discussing memory?

Needless to say, the truth is a constitutional part of memory and is 'implied in the intending of the past 'thing', of what was formerly seen, heard, experienced, learned.'³³ If we don't remember truthfully, we don't remember at all but, rather, substitute an account of what really happened for our imagination. Nevertheless, the relationship between truth and memory, or truth in memory, is not as straightforward because, very often, especially when complex and distant past events are at issue, memory becomes a sort of fusion of truthful narrative and imagined construction. Still, this awkward epistemological structure of memory does not deprive us of the moral obligation 'to

³¹ *Ibid.*

³² *Ibid.*, pp. 17, 23.

³³ Ricouer, *Memory, History, Forgetting*, p. 55.

render the past event truthfully to the best of our knowledge',³⁴ or as Ricoeur states, 'we bear the moral obligation to pay to others the debt of giving their 'due' by remembering them truthfully.'³⁵

How, then, can the first criterion – truthfulness – possibly be called into question? Firstly, even though the presupposed 'unsteady truthfulness' of memory does not dispossess us from searching for a more detailed representation of the past, it makes room for errors or misinterpretations and hence points towards a more elastic way of managing memories. In short, it means that instead of claiming to possess the truth of the past and absolutizing our views, we should employ a more humble and unpretentious attitude with regard to past issues. Secondly, and more importantly, adhering blindly to the truth (which is, in some respects, relative because it is always in danger of what historians call 'presentism') cannot bring reconciliation or guarantee social cohesion. Without taking anything away from the moral obligation to remember truthfully, often when managing memories we should call attention to the importance of appropriate use rather than truthfulness of memory. Too much truth (especially if lethal) in one particular situation can fuel violence, whereas portioning the truth or revealing it in a pedagogical way attentive to the socio-cultural context can bring people closer.

According to Margalit, giving predominance to truth over other criteria when regulating memories is an empirical assumption based on the memory-prison metaphor.³⁶ But what Margalit has in mind regarding memory prison differs slightly from what I intend by memory prison, and my view is more similar to Todorov's literal memory. Margalit's idea about memory prison is based on Freud's account of repressed memories as subversive agents that cause dysfunctional conduct. Psychoanalytical healing, hence, indicates releasing the strangulation effect and removing the affective force of memory, so that people no longer 'cling to these memories emotionally'.³⁷

By prison Margalit means repression that influences present actions or, in Freud's terms, 'repetition compulsion', i.e. when a person repeats or re-lives a traumatic event over and over by re-enacting the event, or putting themselves in situations where the event is likely to occur again. Even though Margalit is very much concerned with making the traumatic, repressed individual or communal memories open and explicit, in order to obtain the cure he is also suspicious of truth about the past bringing reconciliation by being revealed. 'Still memory breathes revenge as often as it breathes reconciliation and hope of reaching catharsis through liberated memories might turn out to be an illusion'.³⁸ Thus, in his account, the memory prison metaphor refers to freedom from repression and to the importance that truth has in our normal functioning in society, although he is ultimately very skeptical that liberation from the prison of memory and pointing instead exclusively at the truth, which is isolated from the wider socio-cultural context, will address the social and moral dimensions of past experience.

I believe, however, that the 'memory prison' metaphor can be applied in an even broader sense, not only in the case of repressed traumatic memories but also when a

³⁴ Volf, *The End of Memory*, p. 53.

³⁵ Paul Ricoeur, *The reality of the Historical Past*, (Milwaukee: Marquette University Press, 1984), pp. 25-27.

³⁶ Margalit, p. 6.

³⁷ Sigmund Freud, 'Remembering, Repeating and Working Through', in *The Standard Edition of Complete Works of Sigmund Freud*, vol. 12 (London: Hogarth, 1958), p. 152.

³⁸ Margalit, p. 5.

person constantly relives the past (not only the repressed but also the conscious past), without taking the opportunity to open up to new experiences. People trapped in a memory, be it their own or inherited, rely on the past for an alibi that frees them from responsibility for the present and have less of a chance to build an autonomous identity; thus their moral judgment of the past and present is highly determined by this imprisonment.³⁹ It has been claimed that the same happens at a collective level through the promotion of a cult of memory that recalls injuries suffered in the past, on the basis of which its practitioners ensure certain privileges in society. In these cases, the matter wholly concerns the desire for a utilitarian gathering of not only moral and symbolic but also material benefits. Any chance of escaping the agonizing story is rejected, because this 'special' status gives one the right to avoid moral and social standards. As Todorov puts it:

Candidates for victim status are many, because, having been the victim gives you the right to complain, to protest and to moan. (...) It is more beneficial to remain in the role of the victim to receive compensation for the offense: instead of a temporary satisfaction, it retains a permanent privilege attention (...)⁴⁰

Thus, the memory prison metaphor can be understood in both senses, i.e. when we are the victims of repressed memories, or the victims of our underdeveloped moral standards. Consequently, the truth of memory seems to be an essential but nonetheless qualified aspect of how we deal with our individual or collective memories and should not be exercised without considering other personal or social benefits.

Conclusion

This paper has suggested some ethical guidelines for governing the use of memory. The concepts and themes considered represent some central ideas discussed in a few rare works on ethics of memory. Bearing in mind these ethical demands of memory, I believe that, despite all of its limits, memory can function as an ingredient of a good life. This can be accomplished at two levels - both ethical, but to varying degrees: Sometimes, there is an imperative to remember every time human lives are jeopardized or that we owe justice to the victims of the past who run the risk of being forgotten, silenced or marginalized; other times it is valuable to remember, because we can add quality to our lives, increase our effective agency, or improve the level of our personal development or social conditions, etc. As stated, ethics has to do with both protecting and promoting. Consequently, by pointing to the 'demands or tasks of memory', an ethical dimension can

³⁹ An individual can be imprisoned by the past in two ways: in the past of his or her predecessors and in his or her own past. The first is known as the psychological phenomenon of second-generation syndrome and this phenomenon is closely related to the concept of transgenerational transmission. The identity of people locked in the past always searches for a balance between remembering and forgetting; remembering because it seeks to ensure continuity and avoid inner fragmentation, and forgetting since it seeks to adapt to the new world and function properly within it, repressing or deleting all distressing memories (cf. Dina Wardi, *Le candele della memoria. I figli dei sopravvissuti dell'Olocausto: traumi, angosce, terapia* (Firenze: Sansoni, 1993), p. 139).

⁴⁰ Todorov, *Gli abusi della memoria*, p. 64, my translation.

eventually transmute even the most appalling past into new life possibilities. Regardless of what has happened in the past, we still can make good use of the past because we are much more than our memories (our identity also incorporates elements of other people's experiences, our present and our anticipating the future), although we are profoundly influenced by them.

Jasna Ćurković Nimac, Institute of Social Sciences Ivo Pilar
jasna.nimac@pilar.hr

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Targeted and Non-targeted Killing

Werner Wolbert

After some historical remarks about former examples of Targeted killing the paper asks about the paradigm in which targeted killing could fit: punishment, police action, war of which the latter one seems to be the most promising. In this context, the problem of Immunity of non-combatants and who is to be counted as such becomes relevant.

The killing of Osama bin Laden was only the most spectacular of a series of similar actions as they were practiced by, for instance, the USA, Israel, Russia, and Britain in the last years. The reactions differ from condemnation to relief to (at least) sympathy. Church authorities and moral theologians (at least in the German language area) were remarkably silent as can be observed of the subject of terrorism in general and related problems, such as that of torture.¹ One reason may be that the traditional deontological prohibition of killing, according to which you are never allowed to kill an innocent person directly, is of little help here, because it is a matter of debate whether bin Laden is to be regarded as innocent or non-innocent in those circumstances. My main aim is to propose a possible solution to the problem of what paradigm targeted killing is to be classified under; the paradigm of war seems to be the most promising one. I point out that the problem of targeted killing is not totally new. The ethical problems associated with earlier examples are, in some respects, similar, and in other respects different from those of today.

¹ Cf., however, Katharina Klöcker, *Zur Moral der Terrorbekämpfung. Eine theologisch-ethische Kritik* (Mainz: Matthias Grünewald, 2009), and Jeremy Waldron, 'What Can Christian Teaching Add to the Debate about Torture?', in Jeremy Waldron, *Torture, Terror and Trade-offs. Philosophy for the White House* (Oxford: Oxford University Press 2010), pp. 261-275. On page 261, Waldron remarks: 'Those of us who were actively engaged in the debate listened for – yearned for and strained to hear – a contribution by the churches, and our impression (as least as late as 2006) was that interventions by church leaders were late and hesitant, at best.' Also, cf. Bernhard Koch, 'Ein Beigeschmack von Selbstjustiz. Lässt sich das gezielte Töten von Terroristen rechtfertigen?', *Herder Korrespondenz* 65 (2011), pp. 352-356; Elisabeth Strüwer, *Zum Zusammenspiel von humanitärem Völkerrecht und den Menschenrechten am Beispiel des Targeted Killing* (Frankfurt/Main: Peter Lang, 2010); Dirk Ansoerge (Ed.) *Der Nahostkonflikt. Politische, religiöse und theologische Dimensionen* (Stuttgart: Kohlhammer, 2010).

Former Examples of Targeted Killing

In Germany (and Switzerland), there were debates regarding the 'finalen Rettungsschuss' (the final and fatal shot fired by the police to save lives)² and the shooting down of a civilian plane (changed into a weapon) first permitted by the 'Luftsicherheitsgesetz' and later forbidden by the German Federal Constitutional Court.³ In the first case, hostages are endangered and the captor could be regarded as guilty. However, this kind of killing is not an execution but a police action. In the second case, the passengers are also taken hostages, but the question is whether or not they may be killed together with their captors in order to save the many lives of the people on the ground. Last but not least one may remember the conviction of the GDR-'Mauerschützen' who killed those trying to escape from the territory of the GDR; their victims were guilty according to GDR-law, but not to international law, and they did not endanger other lives. Therefore, the action of the 'Mauerschützen' was clearly wrong.

The Old Testament

History, of course, can tell us of even more examples of targeted killings as, for instance, political murders of rivals for power or succession. However, in this context, we are not interested in killings which are most definitely to be condemned, but in cases of killing where the moral judgment is, at least, doubtful, the first examples of which I take from the Bible. The Greek Old Testament offers the prominent example of Judith cutting off the head of Holofernes: 'Twice she struck at his neck with all her might, and cut off his head.' (Judith 13:8) Unlike the first mentioned examples the killing here is done by the weaker part and upon private initiative. Two other examples can be found in the Book of Judges. Ehud contends to have a secret message to King Eglon of Moab:

Ehud went up to him; he was sitting in his private room upstairs, where it was cool. Ehud said to him 'I have a message from God for you, O king.' The latter immediately rose from his seat. Then Ehud, reaching with his left hand, drew the dagger he was carrying on his right thigh and thrust it into the king's belly. The hilt too went in after the blade, and the fat closed over the blade, since Ehud did not pull the dagger out of his belly again. (Judges 3:20)

Ehud, like Judith, acts on his own initiative; he is one of the charismatic judges,⁴ who wants to liberate Israel from an oppressor. The other figure is, again, a woman; Jael kills Sisera, the military commander of Jabin, king of Canaan:

But Jael the wife of Heber took a tent-peg and picked up a mallet; she crept up softly to him and drove the peg into his temple right through to the ground. He was lying fast asleep, worn out; and so he died (Judges 4:21).

The victim in these biblical examples is always an enemy of Israel. Holofernes besieges Betulia; Eglon has subjugated Israel. Sisera is already beaten, but his killing means a

² Cf. Anton Georg Schuster, *Finaler Rettungsschuß?* (Frankfurt am Main: Peter Lang, 1996).

³ Cf. Werner Wolbert. *Du sollst nicht töten. Systematische Überlegungen zum Tötungsverbot* (Freiburg i.Ue.: Academic Press/Freiburg i.Br.: Herder, 2008).

⁴ Cf. Max Weber, *Die drei reinen Typen der legitimen Herrschaft*, in Max Weber, *Soziologie. Universalgeschichtliche Analysen* (Stuttgart: Kröner, 1973), pp. 151-166.

humiliation of King Jabin and may deter him from further attacks (Judges 4:22). Those killings, however, could not be justified by traditional rules of just war, because the victim (at least in the first two cases) is, at that moment, not a combatant and is, in this technical sense, not guilty. The problem may be illustrated by a remarkable counterexample mentioned by Cicero: the Roman Consul Fabricius.⁵ During the war against King Pyrrhus a deserter offers to poison his commander. Fabricius does not accept the offer and sends him back to Pyrrhus. Fabricius is then praised for his honesty by the Roman Senate. Ambrose praises Fabricius for preferring honesty to victory: 'Non in victoria honestatem ponebat, sed ipsam, nisi honestate quaesitam, victoriam turpem pronuntiabat.' Fabricius acts 'honestly' by sticking to the rules of the game. From a teleological point of view, however, one could ask whether or not the preventing or ending of a war or a siege at the price of only one human life (especially that of the person responsible) should be preferred to the death of many lives.⁶ The moral-theological tradition would, probably, have justified those killings assuming there was a special permission given by God as a moral legislator, which was assumed, traditionally, only in cases of war and capital punishment.⁷ Unlike the examples mentioned so far, the targeted killings of today are practiced by subjects of international law, normally states, but possibly also non-state-actors, as in the following case from history.

The Assassins

The Assassins, a Shiite sect whose followers lived in nearly inaccessible fortresses in today's Syria and Iran, may serve as an interesting example from the Islamic world.⁸ They are the predecessors of the (absolutely peaceful) Ismaelites (under Aga Khan). Shiites and their imams were often victims of the Sunni caliphs. The Assassins turned the tables by killing Sunni rulers and scholars for their part. Here we find, in contrast to the biblical singular cases, a common practice intended to spread a climate of terror, the method of which is remarkable. They did not choose a safe method of killing, such as from a distance by an arrow or by poison. Instead, they killed their victims using a dagger. Hence they were certain (and wanted to be certain) of being caught and condemned to death and, thus, die as martyrs.⁹ Unlike the suicide attackers of today they killed rulers and persons of influence, not people uninvolved in the oppression of their fellow believers. Nevertheless, the terrorists of today, though normally Sunnites, got some of their inspiration from the assassins for their non-targeted killings.¹⁰ Bernard Lewis speaks of a 'sleeping tradition' awakened by today terrorists. What they have in common with the Assassins is the spreading of terror (among the Sunni rulers and also

⁵ Cicero, *De officiis* III 22, 86s; cf. I 13, 40; III 3, 16, and Ambrosius, *de officiis ministrorum* III 15,91.

⁶ One could be reminded of the words of Cajaphas: 'that it is expedient for you that one man should die for the people, and that the whole nation should not perish' (John 11:50, 18:14); cf. Werner Wolbert, *Vom Nutzen der Gerechtigkeit. Zur Diskussion um Utilitarismus und teleologische Theorie* (Freiburg i.Ue.: Academic Press/Freiburg i.Br.: Herder, 1992), pp. 119-138. For a different position, cf. John Taurek, 'Should the numbers count?', *Philosophy and Public Affairs*, 6 (1977), pp. 293-316.

⁷ I do not know of those considerations. The Book of Judges was not the focus of later theological attention, and Judith is more popular as a typos for Mary.

⁸ Cf. Bernard Lewis, *The Assassins. A Radical Sect in Islam* (London: Weidenfeld & Nicholson, 1967).

⁹ Different from the case of Ehud, who was alone with the king (Judges 3:19).

¹⁰ Cf. Faisal Devji, *Landscapes of the Jihad* (Ithaka, New York: Cornell University Press, 2005).

the Crusaders) as well as their yearning for the pleasures of paradise. The Assassins were indoctrinated in that way and, probably, also put on drugs. Their acts of killing had a quasi-sacramental quality and their daggers were quasi consecrated.¹¹ In spite of their terrorizing potential, in the end their activities were a failure. The nightmare ended with the conquest of their fortresses by the Mongolians. The attitude of the Crusaders, by the way, was ambivalent. In spite of their fear of the Assassins, they admired their unconditional loyalty to their master. Such ambivalence is often typical for the appreciation of acts of killing.¹² At first, the Assassins stood for faith and sacrifice, later for murder, as it is signified by the verbs derived from their name (*assassinate*, *assassiner*, *assassinare*), which denote the killing (murder) of an important person for political or religious reasons, in a devious manner. The use of the verb already implies a negative ethical evaluation. Like Muslim terrorists of today, the Assassins used to kill out of a religious motivation and in order to seek martyrdom; in their case, however, they could try to justify their actions as the killings of guilty persons.¹³

Unlike the biblical examples, those killings did not happen in the context of war. Or could their actions be regarded as another kind of war? But it might be more convincing to regard them as examples of 'extrajudicial execution', as the targeted killings of today are sometimes qualified. In that case, the actions of the Assassins would perhaps be, in some way, more similar to the killings by state agents of today than to the killings done by today's terrorists. That leads us to the question of the paradigm under which those killing can be categorized and, possibly, justified. Needless to say, the qualification of the victims as guilty or innocent is dependent upon the respective paradigm.¹⁴

Which Paradigm?

Speaking of extrajudicial execution, extrajudicial killing, or extrajudicial punishment presupposes the paradigm of criminal law.¹⁵ There is, however, one grave difficulty for putting targeted killing under that heading: the targeted person has no possibility of defending him or herself in a courtroom. Therefore President Obama's statement about the killing of Osama bin Laden – 'Justice has been done' – has to be received with caution; the victim did not have the possibilities of a defendant. Legal or moral guilt of people like bin Laden is arguably not a sufficient justification for capital punishment; the defendant must be found guilty in a trial according to the law of evidence. At least, however, targeted killings of today are practiced not by individuals but by executive bodies of the

¹¹ Lewis, p. 127.

¹² Cf. Chris Hedges, *War Is a Force that Gives Us Meaning* (New York: Anchor, 2002).

¹³ Cf. Hermann Lübbe about the 'Triumph der Gesinnung über die Urteilskraft' (Hermann Lübbe, *Politischer Moralismus. Der Triumph der Gesinnung über die Urteilskraft* (Berlin: Siedler, 1987).

¹⁴ Here could be mentioned also the targeted killings by French Anarchists in the 19th century; cf. Barbara Tuchman, *The Proud Tower. A Portrait of the World Before the War 1890-1914* (New York: Macmillan, 1966), pp. 63-113.

¹⁵ Cf. Nils Melzer, *Targeted Killing in International Law* (Oxford: Oxford University Press, 2009), pp. 3-5. According to Melzer, there are several characteristics of targeted killing: use of lethal force, intent, deliberation and premeditation to kill, targeting of individually selected persons, lack of physical custody, attributability to a subject of international law.

state, hence by subjects of international law, which might be legitimized to punish terrorists. But the persons to be punished are not in their custody (as in the case of capital punishment).

Other possible paradigms, apart from criminal law (law enforcement), are self-defence, war (hostilities), and international deployment of police. Unlike self-defence (and capital punishment), the danger coming from the person wanted is not immediate. In the situation of self-defence, error is practically excluded ('guilt' consists in the immediate threat coming from the attacker). However, errors have occurred in several cases of targeted killing. In the case of self-defence, an immediate threat for one's life is eliminated; targeted killing, however, tries to prevent future threats, but may also generate new threats.

The paradigm of war (hostilities) seems to be more promising,¹⁶ because war allows killing of adversaries without trial. A soldier who kills an enemy combatant acts legally and will not be punished. The decisive question is whether the possible objects of targeted killings can be counted as combatants. Unlike soldiers, however, the 'candidates' of targeted killing do not have the possibility of surrender. In categorizing those people as 'unlawful combatants', the US government uses the paradigm of war. But as the paradigm of punishment shows, even persons acting unlawfully have not lost all their rights as citizens or human beings. Another objection against the paradigm of war is that war is fought between states bound by rules of international law, which recognize each other as warring parties and potential partners after a peace treaty.¹⁷ But there are other kinds of war different from the typical wars fought in Europe after the Westphalian peace. Herfried Münkler refers to the wars of devastation as they were fought by nomadic people, such as the Mongolians.¹⁸ Like the terrorists of today the Mongolians wanted to create a climate of terror. A common feature between this kind of war and the terrorism of today (and other forms of war; for instance, guerrilla wars) is their asymmetric character. The Nomads did not fight face-to-face like the knights, but relied on their horses and on bow and arrow, a method against which the knights had no recipe. In a war without common rules there are also no common criteria for distinguishing guilty persons from innocents which, on the one hand, are supposed to limit the harms caused by every war, but, on the other hand, may also entice a more frequent use of those means of solving quarrels. The consent regarding the rules is shaken where one party does not stick to the rules or uses weapons which the other side does not have or regards as impermissible (as the crossbow was for the knights).¹⁹ The "war on terrorism", likewise, does not know common rules.

¹⁶ Cf. Melzer, p 34, about the Supreme Court of Israel: 'the Court presumes without further explanation that targeted killing constitutes a method of warfare and, consequently, limits its analysis to IHL regulating the conduct of hostilities.'

¹⁷ Klöcker, p. 34.

¹⁸ Herfried Münkler, *Der Wandel des Krieges: von der Symmetrie zur Asymmetrie* (Weilerswist: Velbrück, 2006), pp. 148-150.

¹⁹ Cf. James T. Johnson, 'Historical Roots and Sources of the Just War Tradition in Western Culture', in *Just War and Jihad. Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions*, edited by John Kelsay and James T. Johnson (New York: Greenwood Press, 1991), pp. 3-30, at p. 4; James T. Johnson, *The Quest for Peace* (Princeton: Princeton University Press, 1987), pp. 133-172.

According to the paradigm of International Law Enforcement, targeted killing by state agents would be a kind of police action. The police have to maintain public tranquility and law and order, as well as to detect, prevent, and combat crime. By enforcing the law, the state exercises power or authority over individuals, normally within the limits of its own territory. But it might be exercised extraterritorially in certain circumstances; for instance, in the protection of wounded, sick, shipwrecked or in fighting pirates on the high sea. In those and other circumstances a state would claim jurisdiction outside its territory. But this might imply a violation of the sovereignty of another state or, if the state consents or tolerates the action, giving up part of its sovereignty and, possibly, losing the trust of its citizens, especially when they do not know why a fellow-citizen has become a target. Transparency in the choice of targets, on the other hand, may be an obstacle for the success of the operation. Finally, killing would be allowed only where the suspect tries to escape the arrest or attacks the enforcers of law. This was asserted by the US in the case of Osama Bin Laden, but did, undoubtedly, not happen in other cases where an arrest was, probably, not an option.

But does the impossibility of apprehending persons whose arrest would normally be permitted entail that their killing becomes lawful especially when they do not pose an immediate threat?²⁰ Preventive or pre-emptive actions can be justified only within the paradigm of war. But there is still one feature of the practice of targeted killing which seems not to fit to the paradigm of war. The targets are individual persons posing a certain threat. No soldier, however, is killed as an individual (as in the case of capital punishment: an individual person due to a particular deed). He (or she) is killed because his affiliation is indicated by the uniform. In this sense, killing in war could be classified as non-targeted killing in a certain sense: the soldier is not killed because he is *nomen nescio*.²¹ Having taken off his uniform, the individual is no longer acting as combatant, but as a civilian. He may go home after the end of the war. The fight of guerrilleros and terrorists, however, goes on. They can always change their role; something that is called the revolving door effect in order to characterize the mere exterior change of roles.²² For those reasons, Michael Gross interprets targeted killing as 'an adaptation of the war convention that permits soldiers to kill one another in the absence of uniforms'.²³ Choosing somebody as object of targeted killing means symbolically putting a uniform on him: 'names on a list serve the same function as a uniform: they determine affiliation.'²⁴ But there may be ethical reservations to modify the traditional distinction between combatants and civilians in that way. Therefore, we have to reflect on the origin

²⁰ Cf. Melzer, pp. 58-60. In that case the operation changes into war as in the case of Pompeius in ancient Rome, who fought a war against the pirates.

²¹ Rarely were there ever attempts to kill military commanders, as Nelson was killed by the French in the battle of Trafalgar, or the Japanese admiral Yamamoto by the Americans (cf. Michael. L. Gross, *Moral Dilemmas of Modern War*. Cambridge: Cambridge University Press 2010, p. 104).

²² The Supreme Court of Israel stated (14 December, 2006; cf. Melzer, *Targeted Killing*, p. 33): 'Members of a terrorist organization whose function is to commit a chain of hostile acts also remain civilians [like those participating in hostilities on a merely sporadic basis], but lose their protection for as long as they assume that function, and may therefore be directly attacked even between specific hostile acts.'

²³ Gross, p. 107.

²⁴ *Ibid.*

of the distinction between combatants and non-combatants and the prohibition to kill civilians.

Innocents and Non-Innocents

One conception of war presupposes the symmetry-thesis according to which the same rights and duties apply for both sides in the *ius in bello* or the independence-thesis according to which the *ius in bello* is independent from the *ius ad bellum*.²⁵ In this sense, Michael Walzer states:

The moral reality of war is divided into two parts. War is always judged twice, first with reference to the reasons states have for fighting, secondly with the reference to the means they adopt. (...) The two sorts of judgment are logically independent. (...) But this independence, (...) is nevertheless puzzling.²⁶

This has something to do with Walzer's deontological understanding of the *ius in bello* which he exempts from any weighing up of values, except in extreme cases when acting with 'dirty hands' is allowed, as in the case of the obliterate bombing of German cities during the first phase of the Second World War.²⁷ Now, as the title 'Just and Unjust Warriors'²⁸ (alluding to Walzer's *Just and Unjust Wars*) may indicate, there has been a shift in the debate from *ius ad bellum* to *ius in bello*, namely the possibility that some combatants (though not *innocentes*, because they do harm) could be counted as innocents, and, vice versa, some non-combatants (supporting an unjust war in some way) could be counted as non-innocents. We could find some reasons for such a revision by looking back on two different sources for the tradition of non-combatant immunity: the Augustinian-Thomsonian tradition, which understands 'innocent' in the subjective sense, and the ethos of the knights, later embraced by the church in the *Pax Dei* movement, which understands 'innocent' in the objective sense of non-combatant. Gradually, this category included 'all sorts of secular persons who were noncombatants by virtue of their not being knights (...) or not being physically able to bear arms'.²⁹ Vitoria is said to have combined these two branches:

²⁵ For the difference, cf. David Rodin, 'The Moral Inequality of Soldiers. Why *ius in bello* Asymmetry is Half Right', in *Just and Unjust Warriors*, edited by David Rodin and Henry Shue (Oxford: Oxford University Press, [2008] 2010), pp. 44-68, at p. 44.

²⁶ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Harmondsworth: Penguin, 1977), p. 20.

²⁷ Cf. Michael Walzer. 'Political Action. The Problem of Dirty Hands', *Philosophy and Public Affairs* 2 (1973), pp. 160-180. This was condemned, however, by G. E. M. Anscombe, 'War and Murder', in G. E. M. Anscombe, *Collected Papers III. Ethics, Religion and Politics* (Oxford: Oxford University Press, 1981), pp. 51-61; cf. also John C. Ford, 'The Morality of Obliteration Bombing', *Theological Studies* 5 (1944) 261-309. Her deontological position is also expressed in her statement on pacifism: 'Pacifism teaches people to make no distinction between the shedding of any human blood. And in this way pacifism has corrupted enormous numbers of people who will not act according to its tenets ... seeing no way of avoiding wickedness, they set no limits to it.' ('War and Murder', p. 57)

²⁸ David Rodin and Henry Shue (Eds.), *Just and Unjust Warriors* (Oxford: Oxford University Press, [2008] 2010).

²⁹ Johnson, *Quest for Peace*, p. 81.

At this time an identification of moral innocence and material noncombatency could be made, because those persons whom custom had designed as immune could also be typed as those among an enemy population whose innocence might be presumed.³⁰

There can, however, be no presumption of innocence when civilians take part in hostilities. The question is, then, whether in the light of altered circumstances the principle of noncombatency should be re-examined:

Instead of enshrining this relative and expeditious norm with an absoluteness that does not and never intended to possess, it may be recognized for what it is: a juridical determination that has its roots in customary development and expression and that in a past age was easily identifiable with an accepted ethical norm.³¹

The identification of moral innocence and material noncombatency makes sense within the framework of the traditional *ius in bello* which, according to Gregory Reichberg presupposes a system of equal sovereign states, who may fight wars at their own discretion.³² Since the guilt in this system will be rarely only on one side, the suspension of the question of guilt seems to suggest itself.

War is different from penal law. The Lieber Code says: 'The law of war does not allow proclaiming an individual belonging to the hostile army an outlaw, who may be slain without trial by any captor.'³³ Within this paradigm of *regular war*, war is comparable to a duel, by which two persons agree to solve a dispute.³⁴ The opponents (enemies) are not criminalized. Paradoxically, the uniform grants soldiers a presumption of innocence (in the subjective sense).

Regular war is to be distinguished from *just war* in the tradition of Aquinas.³⁵ The respective criteria condemn private feuds whose arbitration is within the competence of the superior authority which, however, does not exist between two kingdoms or two *res publicae*. War replaces a trial and can only be fought as a reaction to injustice, as an act of

³⁰ Richard S. Hartigan, 'Noncombatant Immunity: Reflections on Its Origins and Present Status', *The Review of Politics*, 29 (1967), pp. 204-220, at p. 218.

³¹ Hartigan, p. 218.

³² That was the presupposition of Klöcker; cf. note 17.

³³ Quoted from Gross, p. 100. For Lieber's considerations on irregular wars, cf. Courtney S. Campbell, *Moral Responsibility and Irregular War*, in Cross, *Crescent and Sword. The Justification and Limitation of War in Western and Islamic Tradition*, edited by John Kelsay and James T. Johnson (New York: Greenwood, 1990), pp. 103-128. For a 'contractual utilitarian view' of *ius in bello*, cf. Richard B. Brandt, 'Utilitarianism and the Rules of War', in Richard B. Brandt., *Morality, Utilitarianism and Rights* (Cambridge: Cambridge University Press 1995), pp. 336-353.

³⁴ This analogy does, however, no longer apply, when technological superiority is decisive for victory.

³⁵ Cf. Gregory Reichberg, 'Just War and Regular War. Competing Paradigms', in *Just and Unjust Warriors*, edited by David Rodin and Henry Shue (Oxford: Oxford University Press, [2008] 2010), pp. 193-213; cf. Gerhard Beestermöller, *Thomas von Aquin und der gerechte Krieg* (Köln: Bachem, 1990), p. 155: 'Das typisch neuzeitliche Problem stellt sich in der mittelalterlichen Ordnung nicht, daß nämlich keineswegs entschieden ist, wer im Recht oder Unrecht ist, weil es keinen übergeordneten Richter mehr gibt. Es kann zumindest in der politischen Theologie der Summa ausgeschlossen werden, daß jemand objektiv einen ungerechten Krieg führt, aber subjektiv schuldlos ist.'

iustitia vindicativa. It is then at least doubtful whether the combatants of both sides have equal rights.³⁶ After the outlawing of offensive war in the last century both paradigms no longer seem to apply in the pure sense.

In reading recent contributions on this question one gets the impression that the arguments for revising the symmetry thesis do not lack plausibility, but that the consequences seem to be counterintuitive. Jeff McMahan may serve as an example.³⁷ His basic criterion is the 'liability to attack'. A person is

morally liable to attack in war by virtue of being morally responsible for a wrong that is sufficiently serious to constitute a just cause for war, or by being morally responsible for an unjust threat in the context of war.³⁸

According to this criterion, the responsibility of civilians (e.g. politicians or people participating in a rally supporting the unjust war) is often greater than the responsibility of the combatants.³⁹ McMahan, however, also lists pragmatic reasons for a symmetrical *ius in bello*: Insight into the (in-) justice of one's own cause is limited. Punishment could delay surrender and lengthen the war. Victor's justice can be partial. Therefore McMahan resumes:

With all this complexity and epistemic uncertainty, it may not be possible, in many cases, to distinguish cleanly between just and unjust combatants. In such a situation, the legal equality of combatants seems to be the necessary and inevitable default position.⁴⁰

And about prisoners of war:

In the long term, it would be better for all, and more just, to uphold a neutral legal rule that guarantees to all prisoners of war as many of the protections that are owed to captured just

³⁶ Cf. Thomas Aquinas, *S Th* q 40 a 1: 'Ut scilicet illi, qui impugnantur, propter aliquam culpam impugnationem mereantur.' Thomas quotes Augustine: 'Justa bella solent definiri, quae ulciscuntur injurias.'

³⁷ I refer to Jeff McMahan, 'The Morality of War and the Law of War', in *Just and Unjust Warriors*, edited by David Rodin and Henry Shue (Oxford: Oxford University Press, [2008] 2010), pp. 19-43; cf. also Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009) and Bernhard Koch, 'Neuere Diskussionen um das *ius in bello* in ethischer Perspektive', in *Gerechter Krieg – gerechter Frieden. Religionen und friedensethische Legitimation in aktuellen militärischen Konflikten*, edited by Ines-J. Werkner (Wiesbaden: VS Verlag für Sozialwissenschaften, 2009), pp. 109-131; Jeremy Waldron, 'Civilians, Terrorists, and Deadly Serious Conventions', in Jeremy Waldron, *Torture, Terror and Trade-offs. Philosophy for the White House* (Oxford: Oxford University Press, 2010), pp. 80-110; Uwe Steinhoff, *Zur Ethik des Krieges und des Terrorismus* (Stuttgart: Kohlhammer, 2011), pp. 65-109, and the contributions in *Ethics* 114:4 (2004)..

³⁸ McMahan, 'The Morality of War', p. 22.

³⁹ Cf. Walzer: 'when combatants fight freely, choosing one another as enemies and designing their own battles, their war is not a crime; when they fight without freedom, their war is not their crime. In both cases, military conduct is governed by rules; but in the first the rules rest on mutuality and consent, in the second on a shared servitude.' (quoted in McMahan, 'The Morality of War', p. 24.)

⁴⁰ McMahan, 'The Morality of War', p. 32

combatants as a matter of moral right as it is reasonable to expect that unjust combatants could grant them.⁴¹

But do those pragmatic reasons apply to the war on terror, which can never be a kind of regular war? There is no fictitious consent to be presupposed to certain rules of the game. It seems that reasoning on the war on terror has to orient itself on the just war paradigm. One might object that sometimes the terrorists of the one side are the other side's freedom fighters and that would be a reason to suspend judgments about guilt and innocence. But we do not need such a judgment in the moral sense. The actual threat coming from the respective person(s) is a sufficient criterion, especially in the case of terror groups as Boko Haram or Al Qaida (ISIS is clearly fighting a war) causing terrible harm. They could indeed be regarded as soldiers without uniform, even when they do not fight. So long as they have not ended their war, they cannot claim the rights of immunity of a civilian person. The question remains whether the rules for the treatment of prisoners of war apply to this kind of soldiers?

There is a difference between ordinary combatants, who may go home when the war is over, and war criminals. Michael Gross regards terrorists like other war criminals as 'combatants first and criminals second':⁴² 'When they pose a deadly threat, they are subject to lethal force; when they have laid down their arms, they face arrest, trial and incarceration.'⁴³ That means that when terrorists have become prisoners, or the threat is removed, war is over and law enforcement has to be practiced. However, justice in this case, should not be done without taking into consideration justified concerns of the defendants, and the social evils or the deficiencies that gave rise to terrorist activities.

Conclusion

Gross' proposal offers a possible solution for the problem of the fitting paradigm and the adaptation of the distinction of combatants and non-combatants in the context of terrorism. There may also be serious arguments against this proposal but, in any case, it will sharpen the debate. The proposal, however, offers only a first step for the ethical evaluation of operations against terrorists and does not offer orientation for individual cases. Regarding the usefulness of the practice as a whole for Israel, Gross is rather sceptical; he believes that only in Iraq was the security significantly improved by those measures. Some serious problems, listed by Gross, are possible errors, notwithstanding thorough intelligence efforts;⁴⁴ the dependency for the latter on local collaborators, a practice that may poison the atmosphere of a local community; the (sometimes considerable) collateral damage by the drones (the 'targeting' is not as precise as one

⁴¹ *Ibid.* This statement is not to be understood simply as the argument of the lesser evil. McMahan distinguishes between 'morality of war' and 'law of war' (*ibid.*, p. 35). The demands of the first are 'categorical', those of the second 'conventional'. For criticism of this 'two tiered morality', see Henry Shue, 'Do we need a "Morality of War"?' in *Just and Unjust Warriors*, edited by David Rodin and Henry Shue (Oxford: Oxford University Press, [2008] 2010), pp. 87-111, at pp. 88-91.

⁴² Gross, p. 107; *cf.* also p. 47.

⁴³ *Ibid.*

⁴⁴ In the case of Osama bin Laden, President Obama decided for himself that the probability was 50 per cent.

would like and may create terror for a whole region like Waziristan); and the violation of the sovereignty of a foreign country. I would like to add two other problems: the sheer amount of targeted killings in the last years and the problem of the agents which are for the most part not members of the military, but personnel of secret services not bound by any ethical code or code of honour.

Werner Wolbert, University of Salzburg
werner.wolbert@sbg.ac.at

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