



The Nation-State as Locus for War-Making Authority

Professor Gregory M. Reichberg

War-making authority is not peripheral to the emergence of the nation-state. In discussing this topic my presentation is mainly historical. It proceeds as follows. *First*, I say a few words about the connection between sovereignty and war-making authority as it was formulated by Thomas Aquinas and his commentator Cajetan. *Second*, I present an objection that has been raised against this conception and indicate how this objection accounts for the reluctance of contemporary popes, from Pius XII onwards, to speak in terms of “just war”. *Third*, I indicate how the objection in question is misplaced. *Fourth*, I wrap up with a comment on aspects of traditional just war theory that stand in need of reformulation.

I

Despite claims that are often made about the originality of Bodin and Hobbes, the establishment of a connection between sovereignty and war-making authority was not an invention of early modernity. Such a connection was asserted as early as the thirteenth century by, inter alia, Thomas Aquinas. Only those princes who have no superior may exercise “full power of coercion” (*plenam potestatem coercendi*), he wrote (ca 1270);[1] it is by their decision alone that war can rightly be waged (*cuius mandato bellum est gerendum*).[2] And lest one think that Aquinas was operating with a feudal conception whereby sovereignty was thought to reside solely in the person of the lord or prince, he makes clear that “having no superior” (within one’s own order) is first and foremost a function of the body politic. Insofar as war touches on the well-being of the whole polity it will be waged solely by “authority of the public power” (*auctoritate publicae potestatis*).[3] On this account, an individual prince declares war insofar as he is a public person (*persona publica*); and in so doing he serves as a vice-regent of the people and in view of the common good.

Some two hundred and fifty years later, commenting ca. 1517 on Aquinas’s account of the authority condition needed for a just war (in *Summa theologiae* II-II, q. 40, a. 1), Cardinal Cajetan reframed this requirement by reference to the Aristotelian notion of a “perfect community”, namely a community that provides for “a complete and self-sufficing life”. [4] A polity would not be “sufficient unto itself”, Cajetan writes, unless it be possessed of the power to declare war, for it is through war that the polity avenges injuries done to itself or its members. War-making authority is thus presented as a necessary trait of the “perfect community”, or, to cite the term employed by Cajetan, “a perfect polity” (*respublica perfecta*). [5] We are here not at all far from the modern notion of sovereignty.

II

It is on this precise point that an objection has been directed against the Catholic tradition of just war that springs from Aquinas (and of course Augustine before him): Insofar as this tradition erects legitimate authority as the primary condition of a just war, and this condition is itself founded on the nation-state as the self-sufficient community, we are led into a blind alley whereby the world will perpetually be the theater of inter-state conflict. Another way to put this point is to say that the cure (eliminate private warfare by establishing a monopoly in matters of war on the part of princes) proposed by Aquinas and other thinkers of the period is in sum worse than the original illness. At first, relatively small groups of individuals were engaged in warfare against each other – vendettas of private lords and the like. To eliminate this condition of endemic warfare, which came to be viewed as standing outside the rule of law, a system was devised whereby war was concentrated among even stronger parties, namely sovereign states. What’s worse, this warfare was rendered lawful, so that even though warfare was narrowed as to its frequency, the scope of its pernicious effects was enormously widened; adding insult to injury, these effects were granted a sheen of legitimacy simply by virtue of their resulting from the action of sovereign states.

Nowadays in Catholic and Protestant circles, this objection is often articulated under the heading of “just peace”. [6] It is presented as an option more in keeping with Christian values, (especially under the conditions of post-Hiroshima modernity) than the alternative tradition of “just war”. To this effect, a gathering was held here at the Vatican in April 2016 on “Non-Violence and Just Peace: Contributing to the Catholic Understanding of and Commitment to Non-Violence”. A press report noted afterwards how “at an unprecedented conference at the Vatican last week attendees urged the pope to issue an encyclical urging non-violence and reject the just war theory”. [7]

It must be said, however, that the conference in question was not entirely unprecedented. A call for revision of the Church's traditional teaching on just war was made some eighty-five years prior when a multi-national group of Catholic theologians assembled in the Swiss city of Fribourg to issue a consensus statement reassessing the legitimacy of war.[8] Published in 1932 under the title "le problème de la moralité de la guerre", the stated goal was to arrive at a "doctrinal position of the problem" as "it is posed today before one's conscience" (Charrière et al., 1932, 33).

The fruit of three years of meetings by French, German, and Swiss Catholic theologians, the impetus for the Fribourg Declaration, as it came to be called, appears to have been twofold. First, there was a perceived need to provide a Catholic endorsement of the "condemnation of war" as had been declared by the Kellogg-Briand Pact (August 27, 1928). Second, one of the eventual signers, the German Dominican Franziskus Stratmann, had created much controversy by his public statements in support of pacifism. In a meeting with the Lyonnaise abbé Laurent Remillieux, Stratmann had asked "to what point am I, a Catholic, entitled to be a pacifist?" This in turn led Remillieux to seek out an answer from the nuncio in Berlin, Eugenio Pacelli (later Pope Pius XII). Responding that it was not the Magisterium's role to decide such a question, Pacelli encouraged Remillieux to create a high-level study group that would examine the question. After further discussion with the nuncio in Paris, it was decided that the group would assemble in Fribourg, with the support of its bishop Marius Besson.[9]

The goal of the Fribourg Declaration was to show how Catholic doctrine should be reformulated, based on the premise that the traditional just war doctrine had been superseded by developments in international law. In so doing its authors drew heavily on the work of the Italian priest-sociologist-politician Luigi Sturzo, who had mounted the argument a few years prior that the just war doctrine, long a mainstay within the Church, had become obsolete. Much like the contemporary proponents of "just peace", Sturzo and the Conventus signers who followed him objected to the supposed centrality of the nation-state within the just war doctrine. In their understanding, just war is part and parcel of a conception whereby each state is supreme in its own order, and in this condition of international anarchy, war becomes a settlement procedure by which to resolve disputes for which no higher, adjudicating authority exists. This is the famous *right of war* of which states can avail themselves when seeking redress for their violated rights.

Thus understood, war is a recognized social institution that confers on states a status akin to that of moral persons; it is a means by which this distinctive sort of moral person is entitled to enforce its rights. The signers of the Fribourg Declaration thus operated with a very precise definition of the right under examination. This right can only be exercised by a particular kind of agent – a sovereign state – within a determinate social context in which the different members of the community reciprocally recognize the sovereignty of the others. Within such a community, resort to war is a socially recognized (hence legitimate) procedure by which disputes are resolved in such fashion that new legal facts are created. War is a dispute-resolution method, akin to the decision of an international adjudicative body. As Joseph Delos (a French Dominican, who, with Albert Valensin, served as co-drafter of the Declaration) later put the point, under conditions of anarchical international society, war serves "a procedure of legislative substitution"[10] by which intractable disagreements between states are resolved. In other words, by virtue of the mutual consent of states, the outcomes of war establish new rights.

Against this conception of war as creative of right, Sturzo and the signers of the Declaration mounted two arguments:

First, they maintained that qua social institution war is not a permanent feature of our human condition; in other words, it does not pertain to *ius naturale*. Rather, it is a tacit convention, a *jus legale* that is characteristic of one phase of historical development. They emphasized that international society need not be organized in this way; states are fully capable of existing without it. Indeed, our natural sociability, by its very telos, moves us toward the renunciation of war. Thus, Sturzo wrote that "War . . . as a legal institution may disappear if the other conditions rendering it still effectual and actual can be changed – that is, if the social environment, by its development in accordance with the historical process, deprives war of its *raison d'être* as a legal institution" (Sturzo 1929, 225).

Second, in alluding to the possibility of achieving a future condition of interstate organization in which the right of war would be eliminated, Sturzo and the signers of the Declaration were not claiming that this condition would be equivalent to the cessation of all interstate violence. Their argumentation was directed rather at showing how the *right* to wage war on the part of individual states, can, and indeed should, be eliminated. In this vision, individual states should eventually renounce their right to resort to war. This would not however be equivalent to pacifism, because in Sturzo's understanding "armed forces will [still] be needed exclusively as police, in particular for work on frontiers, on the sea, and in the air" (Sturzo 1929, 240). In this connection Sturzo advocated for "the internationalization of the use of force for police work" (Sturzo 1929, 240), and to this he added that "the more such functions develop the more the necessity for States to keep their own armaments will diminish, in relation to the lessening probability of war" (Sturzo 1929, 241).

Both Sturzo and the signers of the Conventus took for axiomatic that the juridical outcomes sought by war could *always*, under the international legal regime that was then theirs, be achieved by means other than war. Because these other means also exist, appeals to “necessity” are ultimately baseless, and now that war is banned as a procedure to solve inter-state disputes, such appeals were henceforth morally wrong. The much-vaunted criterion of last resort thereby loses its applicability. Alternatives to war can always be found; none should ever be deemed “last” or “final”.

To wrap up this summary of the Sturzo/Fribourg Declaration objection against state-centric war-making authority, I will note that the objection is reflected in papal statements, from Pius XII onwards, on the permissibility of waging war. For one thing, in line with the Fribourg Declaration, the Roman Magisterium hardly, if ever, speaks of “just war”,^[11] favoring instead the language of “legitimate (or “lawful”) defense”, “armed force” and related terms. The absence of reference to “just war” is far too pervasive to be counted as non-intentional, although to my knowledge no reason for this silence is expressly given in the papal texts. True, the term does appear in the *Catechism of the Catholic Church* (1992), but it is placed in quote marks to describe how the older tradition had framed the conditions of legitimate defense (“the traditional elements enumerated in what is called the ‘just war’ doctrine” – section 2309). In this way it is implied that although the term “just war” no longer reflects the usage of the Magisterium, the substance of the older teaching endures within the current teaching.

I will note parenthetically that popes do not always acknowledge the secondary sources that have been used in preparing their documents; thus, such attributions must ordinarily be made on circumstantial evidence. We have already noted how Pope Pius XII was not unaware of the Fribourg Declaration, as the idea of carrying out a theological consultation on the moral problem of war was due to his earlier intervention as nuncio in Germany. In this connection it can also be noted that from October 1944 to 1968 Joseph Delos resided in Rome, where he served as legal advisor (*conseiller ecclésiastique*) at the French embassy to the Holy See (see Monnet 2016). From this position, he may very well have exerted an influence on papal writing – from Pius XII to Paul VI – on matters relating to war and peace. During these two decades Delos argued for a very restrictive account of armed force as used by individual states. He maintained a version of what today is termed “reductive individualism”, namely the idea that the defensive employment of force by states must be regulated by the same norms as are applicable to private individuals in circumstances of self-defense (Lazar 2018). Only on-the-spot repelling of violence may be allowed; no wider more proactive measures can be admitted. In this respect Delos understood that he was departing from the earlier just war teaching of, for instance, Francisco Suarez.

Returning now to my main line of argumentation, allow me to emphasize how the side-lining of “just war” semantics in papal teaching derives from the special meaning that both Sturzo and the authors of the Fribourg Declaration attached to the word “war”. War, in their understanding, is an institution by which states resort to force for the settlement of their disputes. Such a practice, they had maintained, is longer applicable under international law. Taken as a subjective (“claim”) right of individual states, “war” has thus ceased to enjoy the legitimacy it once had. This contractualist/positivist sense of “war” has been assumed into numerous papal texts. To cite from perhaps the most famous instance, in 1965 Pope Paul VI declared at the United Nations “Never again war, war never again!” As is made clear later in the same speech, he did not mean to say that a time would come when violent strife would entirely cease on the face of the earth: “So long as man remains the weak, changeable, and even wicked being that he often shows himself to be, defensive arms, will, alas! be necessary”. Nor did he mean to say that all resort to force should henceforth be excluded on moral grounds, for in his 1968 World Day of Peace Message he affirmed that “peace is not pacifism”. The sense of his UN declaration was rather to rule out war as a method for resolving disputes. To cite from the 1944 Christmas message of his predecessor Pius XII, “the idea of war as an apt and proportionate means of solving international conflicts is now out of date”.^[12] Implied therein is a rejection of the (positivist or “contractualist”) notion that war can function as a consensual decision-procedure by which a new legal status quo (one assured by military victory) can be established. When “war” is conceived of in this way it is unsurprising that the very notion of “just war” would appear contradictory.

III

The conception of war that I have thus described – war understood as “decisionary mechanism”,^[13] the function of which is to resolve an intractable inter-state dispute – was conflated by Sturzo and later Delos with the traditional just war doctrine of the scholastics. No wonder then that they considered this doctrine as obsolete and in need of replacement. A similar dynamic is operative, I suspect, in our present-day claims made about “just peace” as a needed replacement for just war.

However, in conflating the traditional just war with a decisionary mechanism the authors in question erred.^[14] The theory as it had been developed by Aquinas and his successors was not designed to function in this way. These traditional theorists conceptualized just war as an enforcement mechanism that is employed to support

a pre-existing right. Just war in no way creates a right. Suarez made this abundantly clear (circa 1620) when he argued in a famous passage that

it is impossible that the Author of nature should have left human affairs... in such a critical condition that all disputes between... states should be decided only by war; for such a condition would be... contrary to justice. Furthermore, if this condition prevailed, these persons would as a rule possess the greater rights who were the most powerful; and thus such rights would have to be measured by arms, which is manifestly a barbarous and absurd supposition.[15]

The idea that war is a social arrangement whereby disputes between sovereign states are resolved, derives not from the just war tradition of Aquinas and his successors, but rather from the competing tradition of “regular war” that had been voiced by Raphaël Fulgosius and other medieval civil lawyers. Despairing over the possibility of any objective determination of just cause in concrete cases, Fulgosius had introduced in its place the “war-contract”, namely a consensual agreement between states to settle their differences by dint of arms.[16] This, not the just war theory, was the source of the subjective right of war that led in modernity to the idea that war could serve as a means to adjudicate conflicts.[17] It was this that contemporary popes, from Pius XII onward have sought to reject under the heading of “war”. Speaking of war in this specific sense it is no wonder that they would refrain from reference to just war. In issuing their many condemnations of “war” there is no indication that the popes intended to target the *jus ad bellum* as it had earlier been conceptualized by the scholastics. It was rather “war” in the positivist/contractualist sense of the term that was the target of exclusion. This oscillation between two different senses of “war”, the one as equivalent for a decisionary mechanism (regular war), the other as an enforcement of justice (just war) is visible in Pope Francis’s message to the non-violence and just peace conference that I mentioned at the outset.

[T]he ultimate and most deeply worthy goal of human beings and of the human community is the abolition of war. In this vein, we recall that the only explicit condemnation issued by the Second Vatican Council was against war [*Gaudium et spes*, nn. 77-82] although the Council recognized that, since war has not been eradicated from the human condition, “governments cannot be denied the right to legitimate defense...”.[18]

In this passage, the call for “abolition” signifies “war” in the decisionary sense, while the “right to self-defense” signifies “war” in the just-war sense, although, in keeping with standard papal usage, “war” is omitted to exclude verbal equivocation. In so doing, the goal is, I believe, to track the language of international law, which, at least since the UN Charter of 1945, has assiduously avoided reference to “war”, except in the condemnatory sense (the Preamble thus speaks of saving “succeeding generations from the scourge of war”). Positive affirmations about the use of armed force employ the euphemistic phraseology of “enforcement action”, “exercise of individual and collective self-defense”, “preventive action”, and other such terms that the scholastics would earlier have placed under the *jus ad bellum*. Documents of the Magisterium, similarly, speak of “legitimate defense”, the “strong arm of force”, “the responsibility to protect”, “concrete measures to disarm the aggressor”, etc.[19]

More could be said about other, related, confluences of just war with alien viewpoints. Just peace critics assume, for instance, that from its inception the just war viewpoint was centered on the nation-state, such that the higher good of international community was either neglected or subordinated to the interests of individual states. This too, I believe is a mis-construal that results from conflating the modern regular war doctrines of Wolff and Vattel with the scholastic tradition of Aquinas, who had taken care to prioritize the peace which exists between nations as the horizon for decision-making about war.[20] Another confusion emerges from the claim that the just war tradition takes war to be the default position whenever a serious conflict arises. If all you have is a hammer, every problem will be treated as though it were a nail. But this objection presupposes that just war was, for the scholastics, a freestanding doctrine that was intended to operate independently from wider political and social theory, and the evangelical concerns of the Church. But this too is a misconception, – a straw man – which, as Jacques Maritain showed in a seminal essay from 1933 (“The Purification of Means”, in *Du régime temporel et de la liberté*), explains how just war will have proper application only when it is coordinated with, and indeed subordinated to, non-violent forms of temporal activity.[21]

IV

I shall note, in conclusion, that to my mind not all aspects of the traditional just war doctrine are applicable today. Whether the doctrine was overly permissive is open to debate,[22] but I do think that some of the rationales that were admitted in the past must be excluded in the present age. For instance, one line of just war made much of the Augustinian focus on punishment. Thus, for thinkers such as Cajetan, war itself was viewed as a sanction that should be brought to bear on recalcitrant wrongdoers. Another strand of just war theory, represented by Vitoria and Molina, rejected the penal account of just war and substituted a liability account instead.[23] This is the approach that should be followed today.[24]

Another area in need of reformulation are the specifically religious rationales for war that had been recognized in varying degrees by all just war theorists from Aquinas to Vitoria, Molina and Suarez.

It is sometimes said that just war theory was disentangled from religion during the Second Scholastic of the sixteenth and seventeenth centuries, when writers such as Francisco de Vitoria denied that difference of religion could be a justifiable ground for war. It remains however that assertions such as these were construed by the authors of the period very narrowly, and in principle only excluded force directed at the conversion of pagans. Other religiously inspired employments of force were allowed and often even encouraged. These crystalized around several rationales: (i) the idea of a Catholic polity premised on faith – thereby justifying resort to force against persons (or communities) who imperil that unity by their espousal of a different creed or of atheism; (ii) the configuring of Islam as inherently antagonistic to Catholicism, such that force must be used against Muslims to counter the threat they represent (crusade) (iii) that baptism carries with it a set of obligations that cannot be broken without incurring penalties. All three of these rationales have been operative at different times and places until quite recently. Appeals made by Nationalist theologians during the Spanish Civil War would provide a case in point. For instance, at that time a book was written with the title *Holy War, A Catholic Viewpoint on the Spanish War* (Albarrán 1938); it was prefaced by Cardinal Gomá, the then primate of Spain, who had no difficulty affirming that this war was at bottom about preserving the Catholic identity of the Spanish nation.[25]

It has been argued, convincingly I think, that the nation-state emerged within the late Middle Ages in an explicitly religious context, when national communities formed around vernacular translations of the Bible (Hastings 1997). For these communities, stories about the chosen people of God provided a blueprint of what a nation could be. Far from being an anomaly, religiously-based nationalism provided the seedbed for the modern idea of a nation and we should not be surprised at its revival today.

From affirmations of the nation's religious character to assertions about the holiness of war to protect the nation, there is a short step as numerous examples throughout history, including the Spanish case just mentioned, could attest. Twenty years ago, this point would have seemed of historical significance only. But since then religious forms of nationalism have been on the rise. Within the Catholic orbit, alongside the official channels that discourage nationalistic fervor, other voices have actively encouraged it, with manifestos and related statements being posted on the internet by far-right groups operating in Austria, Bavaria, France, Italy, Poland, the US and elsewhere. Characteristic of these manifestos is a revival of crusading language in discussions about the supposed existential threat posed by Muslim migration to Europe. A literature vilifying Islam as "inherently violent" and thus in need of containment, has proliferated in Catholic settings (e.g., Schall 2018, issued by Ignatius Press, a major US Catholic publisher). In 2014 Steve Bannon gave an address to a group assembled here at the Vatican and among other things he asserted that a "major war is brewing" to defend the "Judeo-Christian West" against Islam (Feder 2016). From the context it is made clear that this is not "war" in a metaphorical sense only. Other writers have similarly proposed that a fifth crusade be initiated in the Middle East to protect Christians from Islamists (Kilpatrick 2014).

These trends are likely to intensify in response to attacks against Christian targets such as the recent suicide bombings in Sri Lanka. Already, for instance, Vice-President Pence has described these as an "attack against Christianity" (Foust 2019). If the logic of history is a guide, it will not be long before a forcible response to these attacks will itself be described in Christian terms, with an attendant revival of crusading and similar tropes. Far be it from me to deny that being targeted with harm by reason of one's faith may have deep religious meaning for the individuals concerned, their families, and indeed the whole Christian community. Martyrdom is still revered within Catholicism and ought to be. But from this it does not follow that a forcible response to such attacks, a response that can indeed be necessary, should itself be described religiously. The religious framing of conflict must be resisted.[26] To that end we need a re-conceptualization of the Catholic tradition of just war so that past associations of faith and violence are critically assessed and purged from our present deliberations about the use of armed force.

References

Albarrán, Aniceto de Castro (1938). *Guerra santa: el sentido católico del Movimiento Nacional Española*, Burgos, Editorial Española.

Bigger, Nigel (2013). *In Defense of War*. Oxford: Oxford University Press.

Charrière, François, Joseph T. Delos, Franz Keller, Joseph Mayer, Constantine Noppel, Bruno de Solages, Franziskus Stratmann, and Albert Valensin (1932). "Le problème de la moralité de la guerre". In *Paix et guerre : La guerre devant la conscience*, 33-47. Juvisy (Seine-et-Oise): Cerf.

Coste, René (1962). *Le problème du droit de guerre dans la pensée de Pie XII*. Paris: Aubier.

Delos, Joseph T. (1953). "Sociologie de la guerre moderne et la théorie de la juste guerre". In *Guerre et paix*, 201-24. Lyon: Chronique Sociale de France.

_____ (1959a) "The Dialectics of War and Peace", [part 1], *The Thomist* 13.3 (July): 305-24.

_____ (1959b) "The Dialectics of War and Peace", [part 2], *The Thomist* 13.4 (October): 528-66.

Droulers, Paul (1981). *Le Père Desbuquois et l'Action Populaire*. Vol. II. Paris: Editions Ouvrières.

Feder, Lester J. (2016). "This is how Steve Bannon sees the entire world", https://www.buzzfeed.com/lesterfeder/this-is-how-steve-bannon-sees-the-entire-world?utm_term=.rtL0DpaeV#.hogNOy9GA

Foust, Michael (2019). "Sri Lanka Bombings 'An Attack on Christianity, Pence says of Blasts that Killed 290". <https://www.christianheadlines.com/contributors/michael-foust/sri-lanka-bombings-an-attack-on-christianity-pence-says-of-blasts-that-killed-290.html>.

Haggenmacher, Peter (1983). *Grotius et la doctrine de la guerre juste*. Paris: PUF.

Hastings, Adrian (1997). *The Construction of Nationhood*. Cambridge: Cambridge University Press.

Kilpatrick, William (2014). "A fifth crusade – Pope Francis calls for an armed crusade against Islam?" <http://theconservativetreehouse.com/2014/08/11/the-fifth-crusade-pope-francis-calls-for-armed-christian-crusades-against-islam>

Lazar, Seth (2018). "Method in the Morality of War", in Seth Lazar and Helen Frowe, eds, *The Oxford Handbook of Ethics of War*. Oxford: Oxford University Press.

Monnet, Marie (2016). "Delos, Joseph Thomas", in *Le Dictionnaire biographique des frères prêcheurs. Dominicains des provinces françaises (XIXe-XXe siècles)*. Available at <https://dominicains.revues.org/1996?lang=en>

Neff, Stephen C. (2005). *War and the Law of Nations*. Cambridge: Cambridge University Press.

Reichberg, Gregory M. (2015). "Jacques Maritain, l'Espagne et la guerre sainte", *Revue thomiste* 115.2: 215-233.

_____ (2017a). *Thomas Aquinas on War and Peace*. Cambridge: Cambridge University Press.

_____ (2017b). "Jacques Maritain – Christian Theorist of Non-Violence and Just War". *Journal of Military Ethics*: 16.3-4: 220-38.

_____ (2018a). "Reframing the Catholic Understanding of Just War: Two Contrasting Approaches in the Inter-War Period", *Journal of Religious Ethics* 46:3 (2018): 570-96.

_____ (2018b). "Historiography of Just War Theory", in Seth Lazar and Helen Frowe, eds, *The Oxford Handbook of Ethics of War*. Oxford: Oxford University Press, pp. 59-79.

_____ (2018c). "Journet and the Impossibility of Christian Holy War", *Nova et Vetera* (English edition) 16.2: 511-541.

Reichberg, Gregory M. and Henrik Syse (2014). *Religion, War, and Ethics: A Sourcebook of Textual Traditions*. Cambridge: Cambridge University Press.

Reichberg, Gregory M., Henrik Syse, and Endre Begby (2006). *The Ethics of War: Classic and Contemporary Readings*. Oxford: Blackwell.

Schall, James V. (2018). *On Islam: A Chronological Method, 2002–2018*. Chicago: Ignatius Press.

Schwartz, Daniel (2019). *The Political Morality of the Late Scholastics*, Cambridge: Cambridge University Press.

Sturzo, Luigi (1929). *The International Community and the Right of War*. Translated by Barbara Barclay Carter. London: George Allen & Unwin.

END NOTES

[1] *Summa Theologiae* II-II, q. 67, a. 1, ad 2.

[2] *Ibid.*, q. 40, a. 1.

[3] *Ibid.*

- [4] Aristotle, *Politics* III, chap. 9, 1280b, 34-35.
- [5] Translation of the relevant passage from Cajetan's commentary may be found in Reichberg, Syse, and Begby 2006, 241-245.
- [6] See Valerie Morkevicius, "A Just Peace Critique of Just War", in *Nova et Vetera* (English edition) 10.4 (2012): 1115-1140.
- [7] See Official CST on Gospel Nonviolence. Indeed, in a statement issued by Pax Christi in the name of the conference attendees, we find it affirmed that "there is no 'just war'. Too often the 'just war theory' has been used to endorse rather than prevent or limit war. Suggesting that a 'just war' is possible also undermines the moral imperative to develop tools and capacities for nonviolent transformation of conflict" <https://www.paxchristi.net/news/appeal-catholic-church-recommit-centrality-gospel-nonviolence/5855#sthash.gBLNmWLZ.zYb0joKY.dpbs>
- [8] This part of my paper draws from Reichberg, 2018a.
- [9] Based on the historical account given in Droulers 1981, 329-31.
- [10] "War . . . is the *ultima ratio* of a legislative procedure. Due to the lack of qualified organs to make law, [in unorganized international society] social need manifests itself in a *conflict* which brings to grips the states most directly interested, and the war which will resolve the conflict is a procedure of legislative substitution" (Delos 1959a, 322); see also Delos 1953.
- [11] "Just war" is employed in the Fribourg Declaration as a label to describe the project that animated the traditional doctrine as was advanced by Vitoria, Suarez, et al. When describing their own account of the justifiable uses and limits of armed force, the term does not appear.
- [12] Reproduction of the full passages and the relevant references to these papal texts may be found in Reichberg and Syse, 2014, chap. 2, "Catholic Christianity, Part II: Contemporary Sources", pp. 103-163.
- [13] Schwartz 2019, 167.
- [14] The conflation of just war with an overly permissive decisionary mechanism derives from Gabriel Vazquez's critique of Vitoria, Molina, and Suarez, a critique later promoted by Alfred Vanderpol. See Haggemacher 1983, 212-221, Schwartz 2019, 170-178, and Reichberg 2018b, 67-70.
- [15] *Disputatio de bello*, section 6, translation in Reichberg, Syse, and Begby 2006, 358.
- [16] For a translation of the relevant text, see "Raphaël Fulgosius (1367-1427): Just War Reduced to Public War", in Reichberg, Syse, and Begby 2006, 227-29.
- [17] Stephen Neff sums up this difference well: "According to just-war theory, there was never any pretense that a war actually *resolved* a legal dispute. A just war was purely a remedial or enforcement measure, which might be successful or not as the material fortunes of the struggle dictated. It did not *create* any legal rights for the winning side that the party had not possessed previously. Only the law itself could create or extinguish rights. The contractual theory of war parted company with just-war theory on this important point. The essence of the war contract was that the winner of the duel would acquire full legal title to the *res* that was being fought over, without regard to how strong or weak its legal claim might have been beforehand. . . . In the strictest sense of the word, then, might made right according to the contractual perspective . . . something that had never been accepted in tradition just-war doctrine" (Neff 2005, 139-40).
- [18] http://w2.vatican.va/content/francesco/en/messages/pont-messages/2016/documents/papa-francesco_20160406_messaggio-non-violenza-pace-giusta.html
- [19] See Reichberg 2017a, 269-70 for reference to specific papal texts.
- [20] See Reichberg 2017a, 4 and 22-27.
- [21] See Reichberg 2017b.
- [22] See Reichberg 2017a, chap. 11, subsection "Balancing Empowerment and Restraint", pp. 273-275.
- [23] See Reichberg 2017a, chap. 7, "War and Punishment", 142-72.
- [24] Nonetheless, among some contemporary Christian just war thinkers, Protestants for the most part, the punitive conception of just war is being revived in line with Romans 13:4. See Bigger 2013 for advocacy of this view.
- [25] See Reichberg 2015.
- [26] See Reichberg 2018c.

