

**A Genealogy of the Ethical Subject in the Just War Tradition**

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## **Abstract**

This thesis draws upon Michel Foucault's understanding of the ethical subject as being at once both code-constituted (in conforming to code-oriented moralities) and creatively self-constituted (in relation to ethics-oriented moralities) to investigate ethical subjectivity in time of war, specifically within just war discourses. The thesis conducts a genealogical search to unravel this dual representation of the ethical subject of war, starting with the writings of Jean Bethke Elshtain and Michael Walzer which, in turn, prompt a re-reading of iconic figures of just war theorizing on whom they rely: Augustine, Thomas Aquinas, Hugo Grotius and Emer de Vattel. In focusing on the formation of ethical subjectivity, this genealogical inquiry is not constrained by normative distinctions within just war – such as the *ad bellum/in bello* dichotomy that frames current debate. The genealogy reveals that contemporary use of historical discourses both includes and, importantly, excludes aspects of subjectivity that have emerged previously in the just war tradition.

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## Chapter 1

### Introduction

This thesis was conceived in April 2003 at a Royal Air Force hospital in Cyprus at the bedsides of wounded and injured soldiers<sup>1</sup>. Only hours earlier they had been either engaged in battle as the US/UK-led coalition stormed into Iraq, or supporting the NATO-led operation in Afghanistan. As part of a wider war on terror(ism) the majority had been deployed with the stated intention of removing the threat of Saddam Hussein's weapons of mass destruction (WMD) from the region and the wider world. Many questions were asked of me by the women and men whose lives were now scarred or maimed, mentally as well as physically: Should I have fought? How do I live with myself? Was it worth it? Have I let anyone down? Will my [partner] still love me [with my injury]? These questions will be re-asked on a daily basis – possibly forever – by those whose limbs are missing, by those whose faces will cause others to turn away in revulsion in the street and by those whose personal relationships have ended or are permanently altered. Two specific questions from those wounded combatants – couched in the language of just war – prompted this author to reflect on how an individual can come to view herself, or himself, as a particular subject of war: Did Blair do the right thing in sending us? Have I been a good soldier? The soldiers did not limit self-reflection to their *in bello* involvement in Afghanistan or Iraq, with the focus of conversations concentrating on the conduct of a number of individuals: Tony Blair, George Bush, Saddam Hussein, Osama Bin Laden and the soldiers themselves. The questions they raised are ethical questions – individualised questions of right or wrong in the context of war – and questions of ‘the relationship of self to self’: to borrow a phrase from Michel Foucault.<sup>2</sup> This constitution of ethical subjectivity in the justification and execution of military intervention represents the *bellum justum* problematic that prompted this thesis.

What gave these questions and conversations their emotional and intellectual force was not just the stark hospital environment in which they were voiced; their force came from the realisation that individual concern with doing ‘the right thing’ was an echo of much broader political and academic debate concerning the state, the individual

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<sup>1</sup> The term ‘soldiers’ is used to denote all combatants from the Army, Navy or Air Force: female or male.  
<sup>2</sup> Foucault, M., *The Hermeneutics of the Subject: Lectures at the Collège de France 1981–1982*, Ed. Gros, F., Trans. Burchell, G. (New York and Basingstoke: Palgrave Macmillan, 2001a) p. 252.

and the morality of war. Such debate had been brought into international focus by a number of military interventions in the 1990s, the events of 11 September 2001 and the desire for a suitable response by American and other governments against Afghanistan and, subsequently, Iraq. On 18 March 2003, only a matter of days before these wounded combatants found themselves in a military hospital, Prime Minister Tony Blair had addressed the UK House of Commons and demanded that the attendant Members of Parliament vote in favour of military action against Iraq: to remove the threat that President Saddam Hussein and his purported WMD posed to his neighbours and the world at large. However, Blair's justification of war was not framed solely in terms of holding the state of Iraq to account under international law for actions and threats, real or perceived. Instead, he framed it as a necessarily individual, ethical choice to be made by his listeners aimed at simply doing, in his words, 'the right thing'.<sup>3</sup> In this circular argument 'the right thing' demanded of the MPs was that they support Blair's position in favour of military action against the 'evil' Saddam Hussein and his brutal dictatorial practices.<sup>4</sup> The emphasis in Blair's discourse was heavily subjectivized as he presented himself as ethical in the very act of opposing Saddam Hussein, the 'tyrant' Other.<sup>5</sup> In addition to the MPs present in the House of Commons, members of the wider UK population observing across multiple media outlets were being invited by Blair to somehow act ethically by supporting his position – by extension, also doing 'the right thing'.

The hospital-bound combatants questioned not only Blair's justification of the Iraq invasion but their own conduct: asking whether they had been good, effective soldiers. This self-questioning took place in one – or both – of two distinct ways. The first can be described as technical or legalistic. Discussions about battlefield experiences often revolved around the use of weapons and Rules of Engagement: concern about whether the individual had been too slow, or too quick, to open fire and concern about who had, or had not, been fired upon. However, besides a concern to conform to rules and laws, individuals questioned themselves in value terms such as courage, loyalty and professional competence. Would different choices, behaviours or attitudes have resulted in different – injury-free – outcomes? These value-based discussions were less

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<sup>3</sup> Blair, A., 'Prime Minister's statement opening Iraq debate', 18 March 2003. Unless specified otherwise all subsequent quotes from Blair's speech transcripts were located at <http://www.pm.gov.uk/output/Page5087.asp>, accessed 19 June 2006.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

concerned with the law of armed conflict than with individuals' concern for their own characters. For example, *The Ethos, Core Values and Standards of the Royal Air Force* incites individuals to develop their own characters in relation to the RAF core values of Respect, Integrity, Service before self and Excellence. Whilst still a serving military chaplain, this author would later explore the significance of these values in service life with officer cadets and new RAF recruits (non-officer *cadre*): encouraging them to develop their own characters in relation to these core values as a work of self on self. These core values are deemed to contain within them elements such as physical and moral courage, loyalty and pride, amongst others.<sup>6</sup> The hospitalised combatants, therefore, assessed whether or not they had been 'good' in two distinct ways: the first was about conforming to specific military codes, while the second was about how they creatively formed their own values and characters in specific actions beyond the limitations of those codes. As a chaplain trying to help these combatants make sense of the circumstances in which they found themselves, my initial recourse was to vaguely-remembered just war arguments steeped in a Christian tradition and expressed in a vocabulary that was shared by few of those who sought my counsel.

Consequently, at the interstice of these two highly subjective concerns with ethical conduct and war – Blair's insistence that 'the right thing' be done by attacking Iraq and the emotional wrangling of numerous wounded soldiers – emerged the first of two questions that shape this thesis: How, in the discourse of just war, can the subject of war come to recognise herself, or himself, as ethical in the context of military intervention?

While Blair was making his justifications for war in the international political arena, many in the academy in the US and UK were urgently rediscovering, reassessing and reapplying moral arguments from what has been known for many centuries, in the West at least, as the just war tradition. Most prominent in this endeavour were Jean Bethke Elshtain and Michael Walzer. Elshtain, in *Just War Against Terror*, sought to reframe just war arguments about military intervention in Afghanistan and Iraq in light of the 11 September 2001 terrorist attacks on the United States. Walzer's *Just and Unjust Wars* had become the dominant just war text in the late twentieth century and he maintained a more cautious attitude to intervention than did Elshtain. What Blair,

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<sup>6</sup> *The Ethos, Core Values and Standards of the Royal Air Force*, Air Publication 1, 2<sup>nd</sup> Edn. (Media Services, RAF High Wycombe, 2008)

Elshtain, and Walzer, among many others, appeared to have in common was a tendency to treat these moral arguments in relation to war as normative, couched in the language of International Relations and shaped by the assumptions and tensions of liberalism/communitarianism or cosmopolitanism/communitarianism.<sup>7</sup> Rather than engage in just war debate within the normative constraints of the discipline, or the broader constraints of normative International Relations, this author came to see more merit in exploring the discourses of the just war tradition and the ways in which the ethical subject is, and has been, constituted: paying particular attention to the overlooked aspect of creative ethical self-formation. Consequently, a second question emerged to help shape this thesis: How has the emergence of the ethical subject in historical just war discourses made it possible for the subject to emerge as ethical, in contemporary debate surrounding military intervention?

### **Aim and Originality**

The aim of this thesis, then, is to add to existing understandings of morality and war by exploring these two questions:

1. How, in the discourse of just war, can the subject of war come to recognise herself, or himself, as ethical in the context of military intervention?
2. How has the emergence of the ethical subject in historical just war discourses made it possible for the subject to emerge as ethical, in contemporary debate surrounding military intervention?

These questions, which are concerned with the formation of ethical subjectivity in war as a particular domain of moral experience, coincided with this author's academic introduction to Foucault's later works and his genealogical exploration of the ethics of self in *The Use of Pleasure* and *The Care of the Self*. In bringing together these two guiding questions and an interest in Foucault's ontology and methods, this thesis began

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<sup>7</sup> Nicholas Rengger provides a succinct overview of the development of the just war tradition, highlighting modern challenges to classical just war such as the recent 'cosmopolitan turn' featuring scholars such as David Rodin and Cécile Fabre and the rights-based discourse of Jeff McMahan. See Rengger, N., 'The Ethics of War: The Just War Tradition', in Bell, D., (Ed.) *Ethics and World Politics* (Oxford: Oxford University Press, 2010) pp. 292-308; Fabre, C., 'Cosmopolitanism, Legitimate Authority and the Just War', *International Affairs*, Vol. 84, No. 5 (2008) pp. 963-976; McMahan, J., 'The Ethics of Killing in War', *Philosophia*, Vol. 34, No. 1 (2006a) pp. 23-41; McMahan, J., *Killing in War* (Oxford: Oxford University Press, 2009); and Rodin, D., *War and Self-Defence* (Oxford: Oxford University Press, 2002).

to take shape. The original contribution made by this thesis to existing just war literature comes from looking beyond the ethical subject's reliance on codes: instead, highlighting and exploring the significance of self-creativity by the ethical subject in just war discourses. This is achieved by applying Foucault's understanding of the ethical subject as being at once both code-constituted (in conforming to code-oriented moralities) and creatively self-constituted (in relation to ethics-oriented moralities) to investigate ethical subjectivity in the military intervention discourses of the 1990s and 2000s. The thesis conducts a genealogical search in order to understand the interplay, over time, of this dual representation of the ethical subject in the just war tradition, highlighting an overlooked aspect of the ethical subjectivity in the domain of war: creative self-formation.

Such an approach rejects any straightforward attempt merely to normatively apply the codified criteria of the just war to the question of ethical subjectivity in relation to the Iraq, Afghanistan, or other interventions. The just war tradition itself becomes a site of inquiry, its unofficial position as the ethical wing of British political/military doctrine no longer taken for granted. Consequently, the thesis problematizes the just war writings of Elshtain and Walzer – seeking out the constitution of the ethical subject in each. This problematization prompts a genealogical re-reading of the discourses of iconic figures in the just war tradition on whom Elshtain and Walzer (and others) rely: seeking out the emergence of the ethical subject of war in the works of Augustine, Thomas Aquinas, Hugo Grotius and Emer de Vattel.<sup>8</sup> The genealogy will show how the formation of the ethical subject of war in the present relies upon – and is continuous with – aspects of subjectivity that emerged in the just war tradition in the past. Equally importantly, the genealogy will show that contemporary constitution and self-constitution of the ethical subject of war *excludes* aspects of ethical subjectivity from the past. The importance of this present inclusion and exclusion of elements of just war discourses from the past will be illustrated – following the genealogy – in the concluding chapter with reference to the *bellum justum* problematic that prompted this thesis – Blair's creative constitution of ethical subjectivity in his justification of military intervention and the ethical self-subjectivation of combatants – and by revisiting the just war discourses of Elshtain and Walzer.

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<sup>8</sup> Justification of the choice of these individuals will follow later.

Foucault argues for a history of the present instead of other, alternative means of approaching philosophical dilemmas or histories such as the problematization of just war theorizing set out above:

experience has taught me that the history of various forms of rationality is sometimes more effective in unsettling our certitudes and dogmatism than is abstract criticism ... Today, our schools of rationality balk at having their history written.<sup>9</sup>

The thesis adopts such a Foucauldian approach in writing a history of present understandings of the ethical subject in recent military interventions, whilst looking to unsettle some of the dogmatic assertions that underpin much of contemporary debate. This means exploring ethical problematizations within just war as they have shaped the practices of the self, as opposed to writing a history of the codes that have been set out, and increasingly refined, by successive just war writers over the centuries. Central to the genealogy to be conducted, therefore, is an analysis of the shifts of emphasis in the moral trajectory of just war between conformity to codes and ethical self-formation: all the while remaining aware that both of these aspects of ethical formation are mutually constitutive and always present. Foucault writes: "'Effective" history differs from traditional history in being without constants'.<sup>10</sup> He goes on to add: 'An entire historical tradition (theological or rationalistic) aims at dissolving the singular event into an ideal continuity – as a teleological movement or an ideal process'.<sup>11</sup> Just war is such an example; a perceived continuity that is referred to in the singular: *the* just war tradition. From both philosophical and historical perspectives, just war is both a unity and an evolution of ideas, truths and knowledges, all focused at the interstice of contending political power where ideology, principles and self-interest are disputed by force.

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<sup>9</sup> Foucault, M., "'*Omnes et Singulatim*": Toward a Critique of Political Reason', in Foucault, M. & Faubion, J.D. (Ed.) *The essential works of Michel Foucault 1954 – 1984 Volume 3: Power* (London: Allen Lane, 2001) p. 323.

<sup>10</sup> Foucault, M., 'Nietzsche, Genealogy, History', in *Language, Counter-memory, Practice: Selected Essays and Interviews*, edited by D.F. Bouchard (Ithaca: Cornell University Press, 1977a) p. 153. Foucault's use of Nietzsche can be found in Foucault, M., *The Order of Things: An Archaeology of the Human Sciences* (Oxon and New York: Routledge, 2002); Foucault, M., 'Nietzsche, Freud, Marx' in Faubion, J. (Ed.) *Aesthetics, method and epistemology*, Trans. Anderson, J. and Hentzi, G. (New York: New Press, 1998), pp. 269-278; Foucault, M., 'On the Genealogy of Ethics', in Foucault, M. and Rabinow, P. (Ed.) *The essential works of Michel Foucault 1954 - 1984 Volume 1: Ethics – Subjectivity and Truth* (New York: The New Press, 1997) pp. 253-280; Foucault, M., 'The return of morality', in Foucault, M. and Kritzman, L.D., *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984* (New York and London: Routledge, 1988) pp. 242-254.

<sup>11</sup> *Ibid.*, p. 154.

It is only by calling into question such long-standing assumptions that an effective history of the ethical subject of the just war can come into view: not a history that endlessly repeats the taken-for-granted or provides an exhaustive but fruitless search for origins but a history that explores the conditions that make it possible for the ethical subject of a just war to emerge in specific discursive practices. Just war will be viewed as a series of discursive singularities, no longer considered to be homogenous and continuous but marked by ontological breaks and discontinuities. Just war, in this understanding, brings together systems of thought and rules of conduct at different times and places, thereby enabling a 'mode of relation between the individual and himself',<sup>12</sup> through which an individual can come to recognise herself, or himself, as an ethical subject of war. It will, necessarily, be an ethical engagement with a politics of war that is not constrained by normative dichotomies such as – for example – just war's *jus ad bellum/jus in bello* or, more broadly, liberalism/communitarianism or cosmopolitanism/communitarianism.

The genealogical method that will shape this history of the present can be observed in Foucault's later writings: where he traced the emergence of the ethical subject in both Classical Greek and early Christian texts.<sup>13</sup> The texts and authors that this thesis will re-read genealogically are those that have not only helped to define and sustain the just war tradition in the past but whose ideas continue to be called upon in debates in International Relations and beyond in the present. Further, they have been chosen because they directly inform aspects of just war debate involving Elstain and Walzer by providing historical discourses that make it possible for the ethical subject of war to be constituted in the present. The authors and principle texts to be examined are Augustine's *City of God*, Aquinas' *Summa Theologica*, Grotius' *De Jure Belli ac Pacis* and Vattel's *The Law of Nations*: supplemented with reference to their broader works. The re-reading of these texts in Chapters 4 to 7 will reveal a clear shift in trajectory of

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<sup>12</sup> Foucault, M., 'Preface to the History of Sexuality, Volume II', in Rabinow, P. (Ed) *The Foucault Reader* (Harmondsworth: Penguin Books Ltd, 1984) p. 334. This expression was used by Foucault in the context of his exploration of subjectivity in relation to human sexuality.

<sup>13</sup> Amongst the authors who use, or critique, Foucault's conception of ethical subjectivity – but who will not be explored further here – are: Burchell, G., 'Liberal government and techniques of the self', in Barry, A., Osborne, T. and Rose, N. (Eds.) *Foucault and Political Reason* (London: UCL Press, 1996); Clifford, M., *Political Genealogy After Foucault* (New York and London: Routledge, 2001); Connolly, W.E., 'Taylor, Foucault, and Otherness', *Political Theory*, Vol. 13, No. 3 (Aug 1985) pp. 365-376; Cordner, C., 'Foucault and Ethical Universality', *Inquiry*, Vol. 47 (2004) pp. 580-596; Foxhall, L., 'Pandora Unbound: A Feminist Critique of Foucault's History of Sexuality', in Larmour, D.H.J., Miller, P.A., and Platter, C., (Eds.) *Rethinking Sexuality: Foucault and Classical Antiquity* (New Jersey: Princeton University Press, 1997) pp. 122-137; Jabri, V., 'Michel Foucault's Analytics of War: The Social, the International, and the Racial', *International Political Sociology*, Vol. 1 (2007) pp. 67-81.

the emergence of the ethical subject of war. Augustine's prioritisation of creative ethical self-formation over conformity to codes gives way to an increased reliance on codes and reduced ethical self-subjectivation in Aquinas: with both authors locating the *telos* of the ethical subject in the Divine. Grotius' *magnum opus*, written in the early-Modern period, provides an extensive codification of just war at the interstice of emerging European notions of sovereignty – and associated legal rights – based increasingly on reason and natural law rather than Divine authority. This tendency towards increased reliance on codes and reduced self-formation in Grotius' subject of war continues in the work of Vattel: whose ethical subject emerges almost entirely – but as will be shown, not exclusively – in relation to codes such as the legal rights of sovereign states and his formalisation of *jus ad bellum* and *jus in bello* as distinct moral categories.

It will be demonstrated in that Walzer locates his just war within a 'legalist paradigm'<sup>14</sup> that draws heavily on the work of Grotius and Vattel, with his ethical subject strongly reliant on conforming to codes. Elshtain, in contrast, draws heavily on Augustine and, to a lesser extent, Aquinas as a means of introducing greater creativity in the formation of the ethical subject of war: in an approach that allows Elshtain to move beyond some of the constraints imposed on just war by the paradigmatic boundaries of liberalism/communitarianism or cosmopolitanism/communitarianism. Rather than examining the ethical subject in the just war writings of Augustine, Aquinas, Grotius and Vattel and attempting to transpose the findings unproblematically into twenty-first century debate, this thesis will ask how the ethical subject relates to the condition of war in the discourses and ontological assumptions of the various authors: noting continuities and discontinuities both between their different approaches, as well as between past and present. This approach will demonstrate that the ethical subject of war does not emerge from a linear just war tradition as a homogenous entity in a conceptual march of progress. Rather the ethical subject of war will be shown to emerge in a heterogeneous manner that reflects the continuities, paradigmatic breaks, discontinuities and incommensurabilities that characterise the tradition.

Having set out the aim of the thesis and identified how it will make an original contribution to existing just war literature by using a Foucauldian understanding of subjectivity to explore the emergence of the ethical subject of war in the just war

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<sup>14</sup> Walzer, M., *Just and Unjust Wars*, 3<sup>rd</sup> Edition (New York: Basic Books, 2000) p. 61.

tradition, the remainder of this chapter will be shaped as follows. An initial reading of Blair's contribution to the *bellum justum* problematic that prompted this thesis will be set out, identifying within his justification of military intervention both code-oriented and creative self-forming aspects of ethical subjectivity. This initial reading will then be revisited in the final chapter, in order to demonstrate how the genealogy to follow in Chapters 4 to 7 informs a detailed analysis of the formation of the ethical subject in Blair's intervention discourses. The Foucauldian method used in this thesis will then be situated in relation to other ethical approaches within International Relations: most notably poststructuralist approaches. The final section of the chapter will go on to discuss Foucault at greater length, in order to appreciate how he can enrich our understanding of the ethical subject in the just war tradition.

### **Blair and the *bellum justum* problematic**

Discussions about Blair's legacy as Prime Minister will probably be dominated by the issue of Iraq and whether or not the 2003 invasion should ever have taken place. The main argument surrounds the highly contested regime of truth constructed to justify the war: in particular, the way that Blair used the knowledge to which he was privileged in the form of secret intelligence material. Popular allegations against Blair range from 'he lied' to 'he was economical with the truth' to 'his information was sexed up'. Against this, he and his defenders claim to have acted in good faith and point to two judicial inquiries by Lords Butler and Hutton – limited though they were in their scope – that found no evidence of wrongdoing. Further, at the time of writing this thesis, the Chilcot Inquiry into the 2003 Iraq War is ongoing, focusing on lessons that can be learned from procedural shortcomings and revisiting earlier arguments in considerable detail.

Blair came to office advocating a form of liberal internationalism and his commitment to it has been demonstrated by the number of foreign military interventions he pursued: in Kosovo, Sierra Leone, Afghanistan and Iraq. Blair explicitly set out his internationalist credentials in April 1999:

Globalisation has transformed our economies and our working practices. But globalisation is not just economic. It is also a political and security phenomenon. We live in a world where isolationism has ceased to have a reason to exist. By

necessity we have to co-operate with each other across nations ... We are all internationalists now, whether we like it or not.<sup>15</sup>

Expanding on his liberal internationalism, Blair revealed the values and ideals that underpinned his approach in April 2002 at a speech in the US, as NATO operations continued in Afghanistan and eleven months before military action commenced against Iraq:

I am arguing that the values we believe in are worth fighting for; they are in the ascendant and we have a common interest in standing up for them. We shouldn't be shy of giving our actions not just the force of self-interest but moral force. And in reality, at a certain point these forces merge. When we defend our countries as you did after September 11, we aren't just defending territory. We are defending what our nations believe in: freedom, democracy, justice, tolerance and respect towards others.<sup>16</sup>

Blair mentions moral force as an extension of self-interest rather than as a replacement for it. His idea that moral force and self-interest can merge is paradoxical: the self-interest of *realpolitik* recognises only the interest of the state, with morality either unnecessary or, at best, a useful, perhaps conscience-easing, sop to the faint-hearted. As a discursive construct or a media sound-bite – and Blair has always been a master of both – this idea of merging self-interest and moral force is indeed powerful. However, consistent with his visionary, almost missionary, declarations, Blair offers little or no detail to explain how the self-interest normally associated with political realism in a communitarian framework can come to merge with a sense of morality that is both idealist and universalist in its leanings. The closest he comes is in discursively co-locating the territorial integrity of the state with the democratic ideals that the US and the UK propound: 'freedom, democracy, justice, tolerance and respect towards others'.<sup>17</sup> The irony of this particular forceful promotion of liberal democratic ideals such as justice, freedom, tolerance and respect towards others is that it took place whilst hundreds of prisoners were being held in a condition of legal non-existence in Guantanamo Bay: an irony probably lost on that occasion.

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<sup>15</sup> Blair, 24 Apr 1999, Speech at the Economic Club, Chicago.

<sup>16</sup> Blair, 7 Apr 2002, Speech at the George Bush Senior Presidential Library, Washington.

<sup>17</sup> *Id.*

This frequent co-location of often contradictory, certainly inconsistent, political discourses is a hallmark of Blair's speeches as Prime Minister. In the time between his justification of military intervention in Kosovo and his justification of military intervention in Iraq Blair's discourse shifted: from a morality that emphasised conformity to international law – working through international institutions – towards an ethics discourse that became increasingly individualised, emphasising creative self-subjectivation based on, for example, a will to liberate, in opposition to Saddam's will to power. This was particularly the case in the weeks leading up to the invasion of Iraq once it had become clear that China, Russia and France would not allow an immediate UN Security Council follow-up resolution to UNSCR 1441, granting explicit authority for military action.

In order to begin tracing the code-conforming/ethical self-forming dynamic in the constitution of subjectivity in Blair's intervention discourse, a number of excerpts from Blair's speeches will be examined here, starting with his speech to the Economic Club in Chicago in 1999:

Many of our domestic problems are caused on the other side of the world...These problems can only be addressed by international co-operation ... We cannot turn our backs on conflicts and the violation of human rights within other countries if we want still to be secure ... We need new rules for international co-operation and new ways of organising our international institutions.<sup>18</sup>

Blair's theme of international co-operation looms large. Yet it is presented in the form of liberalism where human rights are sacrosanct and to be defended, even where those rights are violated behind the distant borders of sovereign states: borders that, according to the United Nations Charter, mark out sovereign territory that should be considered inviolate.<sup>19</sup> Blair offered his own suggestions for the codification of new rules to govern intervention in other states:

So how do we decide when and whether to intervene. I think we need to bear in mind five major considerations: First, are we sure of our case? ... Second, have we exhausted all diplomatic options? ...Third, on the basis of a practical assessment of the situation, are there military operations we can sensibly and

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<sup>18</sup> Blair, speech, 24 April 1999.

<sup>19</sup> 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.' Charter of the United Nations, Art. 2, Para. 4, located <http://www.un.org/aboutun/charter/>, 4 December 2008.

prudently undertake? Fourth, are we prepared for the long term? ... And finally, do we have national interests involved?<sup>20</sup>

These five criteria for military intervention correspond closely to several of the *jus ad bellum* criteria of the just war tradition: just cause, last resort, reasonable chance of success, proportionality and right intention.<sup>21</sup> Blair here maintained a tendency towards the juridicalization of morality when it comes to war – increasingly and politically acceptably referred to as humanitarian intervention. The ethical subject of war in this case is the individual leader who conforms to the demands of the criteria he sets out, working through international institutions such as the UN.

On 18 March 2003 – the eve of the Iraq war – Blair’s speech to the British Parliament did not consist solely of a calm, measured assessment of his case for lawful intervention in Iraq to counter an imminent military threat to UK or its interests. Nor was his argument presented in line with his own five *ad bellum* criteria proposed in April 1999 and listed above. Blair opted instead to emphasise Saddam Hussein's tyrannical conduct against his own people, contrasting the Iraqi leader as Other, in opposition to Blair’s own ethical approach: stressing the importance of individual cases of Iraqi suffering and emphasising support for war as the ethical choice to be made by his listeners. Blair's position as Prime Minister granted him an immediate political platform within the institution of Parliament, enabling him to speak also to a national and international audience when he said: ‘The brutality of the repression – the death and torture camps, the barbaric prisons for political opponents, the routine beatings for anyone or their families suspected of disloyalty are well documented’.<sup>22</sup>

The choice Blair presented to the British MPs can be summarised thus: support my position and you will promote freedom and oppose brutality; oppose my argument and you will be complicit in terrorising the Iraqi people. This is a very different kind of justification of military intervention to that proposed by Blair himself in 1999. This appeal to emotion, an appeal to his listeners to form themselves as ethical by opposing the brutality and evil of Saddam won the House of Commons vote to legitimise a course

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<sup>20</sup> *Op cit.*

<sup>21</sup> For further explication of just war criteria see Norman, R., *Ethics, Killing and War* (Cambridge: Cambridge University Press, 1995) p. 118. For similar summaries see Bellamy, A. J., *Just Wars: From Cicero to Iraq* (Cambridge: Polity Press, 2006) p. 121–3; McMahan, J., 'Just Cause for War', *Ethics & International Affairs*, Volume 19, No. 3 (Fall 2005) p. 5; or Rengger, N., 'The Ethics of War: The Just War Tradition', in Bell, D., (Ed.) *Ethics and World Politics* (Oxford: Oxford University Press, 2010) pp. 296-298.

<sup>22</sup> Blair, Statement to the House of Commons, 18March 2003.

of action Blair was very keen to pursue in support of the US. However, it lacked the clarity and legal force of a careful application of *ad bellum* criteria as framed in international law. On a calmer, more sombre occasion only four months later, in July 2003, Blair changed his emphasis when quizzed by the most powerful House of Commons Committee – the Liaison Committee – about his options for action against Saddam Hussein:

Q169 Mr Beith: You referred to the Saddam Hussein regime as "an appalling regime the world was well rid of", and I doubt if there are many people who would disagree with you about that. Does that mean that we were powerless to do anything about it unless Saddam Hussein persisted in non-compliance?

Mr Blair: That is a very good question. The truth is that to take action we had to have the proper legal basis and that was through the weapons of mass destruction issue and the non-compliance with the UN inspectors. What I have always said is that the relevance of the nature of the regime is that a regime that, say, was otherwise benign but had weapons of mass destruction you might take a different attitude to than a regime that was so savage and repressive and had weapons of mass destruction. *I accept entirely the legal basis for action was through weapons of mass destruction.*<sup>23</sup>

On this occasion Blair avoided the emotionalism of his argument to Parliament on 18 March 2003, delivered with a heavy emphasis on the suffering of individual Iraqis. He opted instead for an appeal to law and the need to address the attendant threat that Saddam's alleged WMD presented to the world. As questioning continued, the MPs were not interested in exploring the nature of Saddam's character. It would be reasonable to assume that no member of the committee viewed him as an upstanding citizen of the world. The committee members wanted to know how great the threat from Saddam could have been given that the threat of his regime's use and development of WMD was being contained.<sup>24</sup> They concentrated on what might be described as codes – substantive, legal issues: the kind of argument Blair had advocated in 1999 but which he increasingly avoided as the invasion of Iraq drew nearer. In 2001 – prior to the Al-Qaeda attacks on the US that year – Elshtain wrote: 'Approaching humanitarian intervention through a just war lens means that [ ] interventions, or their possibility, must be subjected to intense scrutiny and cannot be played out simply by appealing to

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<sup>23</sup> Q. 169, Select Committee on Liaison *Minutes of Evidence*  
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmliaison/334-ii/3070805.htm> Accessed 3 July 2006 (*My italics*).

<sup>24</sup> *Ibid.*, Q. 171.

compassion or to doing the "right thing".<sup>25</sup> Elshtain here advocated conformity to the established codified morality of just war. This warning, if read and applied by Blair, could well have saved him from some uncomfortable questioning by members of the House of Commons Liaison Committee. It may also, of course, have had the effect of preventing him from gaining the parliamentary support necessary for his proposed invasion of Iraq.

This thesis, consequently, takes the view that Blair's Iraq discourse was not simply aimed at helping Parliament and the general public to 'know the truth' about an imminent threat from Saddam, or even just about applying such knowledge of claimed truth to the decision to go to war with Iraq. For Blair, knowing the truth about Iraq – a truth that he constructed using the institutions of government, the Prime Minister's office and the Joint Intelligence Committee – is only the first part of a process in making known to his listeners, both inside and outside of parliament, how they might alter their mode of being in response to such knowledge. Instead of presenting the pros and cons of a legal argument and inviting his listeners to weigh up the relative merits of war and make up their minds, Blair sought to convince his listeners to constitute themselves as ethical subjects of war by modifying their behaviour and supporting his opposition to Saddam Hussein the tyrant: to do the right thing.

A key feature of the *bellum justum* problematic set out previously is therefore seen in Blair's speeches: a discursive shift away from the justification of war through the careful application of *ad bellum* criteria that have emerged over many centuries in Western thought and reinforced in Blair's advocacy of liberal internationalism by his Chicago speech of 1999, towards an individualised justification of war based on creative ethical self-formation. Following the invasion of Iraq, a further change of emphasis in Blair's intervention discourse occurred under questioning by the House of Commons Liaison Committee as he returned to a juridical, code-oriented justification of military action. This thesis will use a genealogy as a means of exploring these issues of ethical formation and self-formation with regard to war – raised by Blair in his justification of military intervention in Iraq – by analysing key episodes from the just war tradition with a view to understanding how ethical subjectivity problematized in the present became discursively possible and comprehensible. Following the genealogy in

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<sup>25</sup> Elshtain, J.B., 'The Third Annual Grotius Lecture: Just War and Humanitarian Intervention', *American University International Law Review*, Vol. 17, No. 1 (2001a) p. 1.

Chapters 4 to 7, the final chapter of the thesis will revisit Blair's intervention discourse to provide a nuanced explication of his constitution of ethical subjectivity: paying particular attention to the use of codes, his reliance on creative ethical self-formation and his incitement of others to similarly, creatively constitute themselves as ethical subjects of war.

## **Foucault, poststructuralism and International Relations**

A number of theoretical discourses in International Relations provide distinctive understandings of the ethical subject: from normative theory<sup>26</sup> and its emphasis on the dualistic ontologies of Kant and Hegel (the universal self *versus* the constituted self), to feminist theory<sup>27</sup> and the subject as gendered, to poststructural theory<sup>28</sup> and the subject

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<sup>26</sup> Some examples from an extensive range of literature include: Brown, C., Nardin, T., and Rengger, N. (Eds.) *International Relations in Political Thought: Texts from the Ancient Greeks to the First World War* (Cambridge: Cambridge University Press, 2002); Burchill, S., Linklater, A., Devetak, R., Donnelly, J., Paterson, M., Reus-Smit, C., and True, J., *Theories of International Relations* 3<sup>rd</sup> Edn. (Basingstoke: Palgrave Macmillan, 2005); Cochran, M., *Normative Theory in International Relations: A Pragmatic Approach* (Cambridge: Cambridge University Press, 1999); Doppelt, G., 'Walzer's Theory of Morality in International Relations' in *Philosophy and Public Affairs*, Vol. 8, No. 1 (1978) pp. 3-26; Frost, M., *Ethics in International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996); Hegel, G.W.F., *Phenomenology of Spirit*, Trans. Terry Pinkard, 2008 (Bamberg and Würzburg, 1807); Hutchings, K., *Kant, Critique and Politics* (London: Routledge, 1996); Kant, I., *Perpetual Peace: A Philosophical Essay* (1795) Trans. M. Campbell Smith (London: George Allen and Unwin Ltd, 1903); Tuck, Richard, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999); Walker, R.B.J., *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993); Walzer, M., 1983, *Spheres of Justice: A Defense of Pluralism and Equality* (United States of America: Basic Books, 1983); Walzer, M., *Thick and Thin* (Notre Dame: University of Notre Dame Press, 1994)

<sup>27</sup> Carver, T., Cochran, M. and Squires, J., 'Gendering Jones: Feminisms, IRs, masculinities', *Review of International Studies* Vol. 24, No. 2 (1998) pp. 283-298; Elshtain, J.B., 'Reflections on War and Political Discourse: Realism, Just War, and Feminism in a Nuclear Age' in Elshtain, J.B. (Ed.) *Just War Theory* (New York & London: New York University Press, 1992) pp. 260-279; Elshtain, J.B., *Women and War* 2<sup>nd</sup> Edn. (Chicago and London: University of Chicago Press, 1995); Elshtain, J.B., *Public Man, Private Woman: Women in Social and Political Thought*, 2<sup>nd</sup> Edn. (Princeton: Princeton University Press, 1993); Grant, R. and Newland, K., *Gender and International Relations* (Bloomington: Indiana University Press, 1991); Hutchings, K., 'Borderline Ethics: Feminist Morality and International Relations', *Paradigms*, Vol. 8, No. 1 (Summer 1994) pp. 23-35; Hutchings, K., *Hegel and Feminist Philosophy* (Cambridge: Polity Press, 2003); Peterson, V.S. (Ed.) *Gendered States: Feminist (Re)Visions of International Relations Theory* (Boulder & London: Lynne Rienner Publishers, 1992); True, J., 'Feminism' in Burchill, S., Linklater, A., Devetak, R., Donnelly, J., Paterson, M., Reus-Smit, C., and True, J., *Theories of International Relations* 3<sup>rd</sup> Edn. (Basingstoke: Palgrave Macmillan, 2005) pp. 213-234; Tickner, J.A., 'You Just Don't Understand: Troubled engagements between feminists and IR theorists', *International Studies Quarterly* Vol. 41, No. 4 (1997) pp. 611-632; Wibben, A.T.R., 'Feminist International Relations: Old Debates and New Directions', *Brown Journal of World Affairs*, Vol. X, Issue 2 (Winter/Spring 2004) pp. 97-114;

<sup>28</sup> Biersteker, T.J., 'Critical Reflections in Post Positivism in International Relations', *International Studies Quarterly*, Vol. 33, No. 3 (1989) pp. 263-267; Casebeer, W.D., 'Knowing Evil When You See It: Uses for the Rhetoric of Evil in International Relations', *International Relations*, Vol. 18, No. 4 (2004) pp. 441-451; Der Derian, J. and Shapiro, M.J., *International/intertextual relations: postmodern readings of world politics* (Lexington, Massachusetts: Lexington Books, 1989); Der Derian, J., 'Post-Theory: The Eternal Return of Ethics in International Relations' in Doyle, M.W. and Ikenberry, G.J. (Eds) *New Thinking in*

as constituted in relation to discursive practices. This thesis fits in the latter, poststructuralist approach. The remainder of the chapter will argue for a Foucauldian re-reading of just war, demonstrating how such a re-reading relates to other poststructuralist approaches and transgresses established dichotomies and paradigmatic boundaries in both just war and, more broadly, International Relations.

Der Derian strongly advocates the use of poststructuralist approaches in International Relations:

Poststructuralism differs from rationalist approaches in that it does not hold that International Relations theorists mirror the reality of world politics through their intellectual analysis. Both use and are used by language: Meaning endlessly defers and is deferred through the interpretive interaction of theorists and text.<sup>29</sup>

Der Derian and other proponents of poststructuralist approaches reject the ontological and epistemological boundaries on which normative International Relations relies. Instead of some always/already reality within which identity, politics and ethics operate as functions of free, or relatively free, rational agents, borders and states are considered to be contingent, discursive structures within which the subject is constructed. Der Derian's ideas can be extended by adding – to these boundaries and assumptions in International Relations – an important distinction used to classify the various criteria of the just war: the *ad bellum/in bello* disjuncture. In Der Derian's summing up of the difference between poststructuralist approaches and normative approaches in contemporary International Relations, the former assumes the transitory and deferred nature of identity and meaning, while the latter sees them as fixed and autonomous, located in some concrete reality. Der Derian's *ethos* here is contiguous with Foucault's, who rejected grand theory in favour of the application of critical thought to specific historical situations, with the intention of testing and reaching

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*International Relations* (Colorado: Westview Press, 1997) pp 54-76; Der Derian, J., 'Virtuous war/virtual theory', *International Affairs*, Vol. 76, No. 4 (2000) pp. 771-789; George, J. 1995, 'Realist 'Ethics', International Relations, and Post-Modernism: Thinking beyond the Egoism-Anarchy Thematic', *Millennium: Journal of International Studies*, Vol. 24, No. 2 (1995) pp. 195-223; Jabri, V., 'Restyling the Subject of Responsibility in International Relations', *Millennium: Journal of International Studies*, Vol. 27, No. 3 (1998) pp. 591-612; Jabri, V., 'Critical Thought and Political Agency in Time of War', *International Relations*, Vol. 19, No. 1 (March 2005) pp. 70-78; Milliken, J. 1999, 'The Study of Discourse in International Relations: A Critique of Research and Methods', *European Journal of International Relations*, Vol. 5, No. 2 (1999) pp. 225-254.

<sup>29</sup> Der Derian, J., 'Post-Theory: The Eternal Return of Ethics in International Relations' in Doyle, M.W. and Ikenberry, G.J. (Eds) *New Thinking in International Relations* (Colorado: Westview Press, 1997) p. 57.

beyond the normative and accepted in social relations to subvert the subject/object dichotomy and provide greater understanding. Foucault observes:

The critical ontology of ourselves must be considered not, certainly, as a theory, a doctrine, nor even as a permanent body of knowledge that is accumulating; it must be conceived as an attitude, an ethos, a philosophical life in which the critique of what we are is at one and the same time the historical analysis of the limits placed upon us and an experiment with the possibility of going beyond them.<sup>30</sup>

To pursue a study that seeks no doctrinal status as permanent knowledge may seem self-defeating. It does, however, practice a particular attitude and approach in a field that normally places little value on the contingent. In adopting a Foucauldian approach in attempting to go beyond the paradigmatic limits that characterize normative International Relations – and within that, the just war – to understand the constitution of ethical subjectivity in recent intervention discourses, this thesis situates itself closely in relation to De Derrida's poststructuralism:

the ethics of poststructuralism is located in and through the construction of subjectivity. It does not reside outside as a set of principles to guide individual behavior, but as a prior and necessary condition for identity formation. Ethics begins with the recognition of the need for the other, of the need for the other's recognition.<sup>31</sup>

David Campbell provides such an example of identity formation in International Relations, attempting to show how violence in the former Yugoslavia emerged in the construction of the relationship to the Other across multiple ethnic and nationalistic fields. He states that his 'project seeks to explore the ethical and political possibilities enabled by poststructuralist thought in the context of the Bosnian war unconstrained by disciplinary concerns'.<sup>32</sup> The poststructuralist thought in question is predominantly that of Derrida and Lévinas, used in combination to explore 'the way the relationship to the other is variously effaced or enacted in ... constitutive practices'.<sup>33</sup> The disciplinary concerns that Campbell mentions, but does not make explicit at this point, are twofold: first, the ontological questions about the nature of the existence of both individual subjects and the nations they comprise, and second, the difficulties of describing a situation when a traditional conception of the state has crumbled along with the state in

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<sup>30</sup> Foucault, M., 'What is Enlightenment?', p. 319 (*Original italics*).

<sup>31</sup> *Ibid.*, p. 58.

<sup>32</sup> Campbell, D., *National Deconstruction: Violence, Identity and Justice in Bosnia* (Minneapolis and London: University of Minnesota Press, 1998) p. 3.

<sup>33</sup> *Ibid.*, p. x.

question. Though still relying on discourses, and effectively contributing to our understanding of the emergence of violence in the Bosnian war, Campbell's approach to the subject of war does not provide the detailed analysis that the application of a Foucauldian conception of subjectivity offers here.

Constructing the subjectivity, particularly the ethical subjectivity, of opponents such as Slobodan Milosevic and Saddam Hussein is at the heart of Blair's war discourse. Der Derian's acknowledgement of 'the need for the other, of the need for the other's recognition,'<sup>34</sup> points to the act of constituting the other as a simultaneous constitution of the self – a dynamic also present in Campbell. While this relationship between self and Other is clearly present in Blair's discourse where he sets himself in opposition to Milosevic or Saddam Hussein, it is only one aspect of his complex construction and use of subjectivity. The conceptions of ethics and subjectivity that characterise Foucault's work provide the means by which greater clarity and detailed analysis can be brought to bear on the self/Other dichotomy identified by Der Derian, exemplified in the work of Campbell and deployed in the war discourses of Blair.

Vivienne Jabri advocates the use of poststructuralist approaches as a means of challenging normative ethical debate in International Relations: arguing that discourses do not describe the reality of a geo-political world and the states that vie for resources and dominance but, instead, constitute them. In 'Restyling the Subject of Responsibility in International Relations', Jabri sets out to develop an understanding of ethics in International Relations, based not on the sovereign state but on the self. Jabri draws upon Foucauldian concepts as she 'articulate[s] an ethical position which takes into account questions of self-constitution and self-transformation as the primary locations of political identities', in order to move debate in International Relations 'beyond the narrow confines of a dualism which places moral agency either within the universal realm of cosmopolitanism or the particularism of communitarian ethics'.<sup>35</sup> Jabri seeks engagement in, and comprehension of, the political sphere of global politics as a mode or dimension of resistance, rather than the prescriptive, generalisable goal of outlining how people ought to live and the means by which they should make their decisions. Jabri recognises and adopts the Foucauldian dual representation of the subject as both

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<sup>34</sup> *Id.*

<sup>35</sup> Jabri, V., 'Restyling the Subject of Responsibility in International Relations', *Millennium: Journal of International Studies*, Vol. 27, No. 3 (1998) p. 592.

constituted and self-constituted, not only within the broader domain of International Relations but more specifically at multiple sites of violence.<sup>36</sup> She examines the discursive regimes that interact to produce both individual and institutional identity, in the context of violent interaction and the legitimization of that violent interaction. A politics of difference is captured in Jabri's reading of discourses of violence:

The discourse of inclusion and exclusion cannot allow uncertainty or doubt, so if such are expressed, they must be represented as irrational or even treacherous. Any representation which blurs the inclusion/exclusion boundary breaks down certainties constructed in the name of war and forms a counter-discourse which deconstructs and delegitimizes war and thereby fragments myths of unity, duty and conformity.<sup>37</sup>

By re-reading key just war texts through the lens of Foucault's ontology and method this thesis builds on Jabri's work by exploring the constitution and self-formation of subjectivity in a particular legitimization of political violence: just war. The genealogy to follow enables a detailed analysis of inclusion/exclusion boundaries identified by Jabri and deployed in Blair's justification of military intervention. This thesis supports Jabri's view that geo-political notions of inclusion/exclusion associated with states, their interactions and associated renderings of the subject – as well as the *ad bellum/in bello* distinctions – are themselves contingent. A Foucauldian exploration of the formation of the subject in contemporary just war debate breaks down distinctions that are frequently accepted as normative.

Crucial to any justification of military intervention or war – and to normative International Relations – and any associated constitution of the subject is the concept of sovereignty as it relates to state interaction. Jens Bartelson does not share with this thesis a concern for ethics and war; rather he seeks the historical conditions of possibility of sovereignty, which in turn facilitates the separation of domestic and international relations around the concept of the state. Bartelson's work is relevant to this thesis because the sovereign state is viewed normatively as the site where the

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<sup>36</sup> A number of other critical voices on the subject and ethics in times of war who cannot be discussed here include: Campbell, K., 'Women, Gender, and Conflict: Reflecting upon the Gendered Harms of War', *ASPASIA: International Yearbook of Central, Eastern, and Southeastern European Women's and Gender History*, Vol. 3 (2009) pp. 213-217; Crawford, N.C., *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention* (Cambridge: Cambridge University Press, 2002); Hutchings, Kimberly (2007) 'Feminist ethics and political violence', *International Politics*, Vol. 44, No. 1, pp. 90-106; Owens, P., 'The Ethics of War: Critical Alternatives' in Bell, D. (Ed.) *Ethics and World Politics* (Oxford: Oxford University Press, 2010), pp.309-323; Zehfuss, M., 'Subjectivity and Vulnerability: On the War with Iraq', *International Politics*, Vol. 44, No. 1 (2007), pp. 58-71.

<sup>37</sup> Jabri, V., *Discourses on violence: Conflict analysis reconsidered*, (Manchester and New York: Manchester University Press, 1996) p. 7.

ethical subject is constituted in relation to war, and he uses a genealogy to trace the historical and philosophical emergence of sovereignty itself – demonstrating elements of both its contingency and continuity. He argues that the state and the consequent division of social relations into inside and outside<sup>38</sup>, same and other, shows that notions of statehood are contingent upon the socio-historical praxis of politics: in opposition to the normative view that politics and international relations are predicated on the prior existence of the state. Central to his approach is the rejection of sovereignty as a fixed concept and a dependence on the constitutive nature of discourse and the transient nature of meaning. He writes: ‘as an essential step in the structurationist endeavour to split the ontological difference between the state and the international system, sovereignty is taken to be constitutive of both spheres, hovering somewhere between them, but residing in neither.’<sup>39</sup> Bartelson not only provides an example of a poststructuralist (genealogical) approach at work in International Relations, by problematizing the notion of sovereignty itself he ‘blurs the inclusion/exclusion boundary’<sup>40</sup> that Jabri refers to, which, in turn, opens up new possibilities for the understanding of subjectivity in time of war – in the past as well as the present.

Having located this thesis in relation to a number of poststructuralist challenges to the assumptions of normative International Relations and just war, further explication of the suitability, and benefits, of using a Foucauldian ontology and methods to investigate the ethical subject in the just war discourses is appropriate. The idea of exploring and critiquing politics is one that appealed to Foucault:

I have especially wanted to question politics, and to bring to light in the political field, as in the field of historical and philosophical interrogation, some problems that had not been recognized there before. I mean that the questions I am trying to ask are not determined by a pre-established political outlook and do not tend toward the realization of some definite political outlook.<sup>41</sup>

One difficulty faced by Foucault with regard to politics was the question of how he could engage with it. His interest in interrogating problematizations does not extend to the pursuit or production of his own systematized political theory or to the enhancement of an existing approach. Despite this, Foucault holds appeal for this

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<sup>38</sup> For an extensive study of the inside/outside dynamic see Walker, R.B.J., *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993)

<sup>39</sup> Bartelson, J., *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995) p. 46.

<sup>40</sup> Jabri, *Op cit.*

<sup>41</sup> Foucault, M., 'Politics and Ethics: An Interview', p. 375.

thesis, specifically because his intent was not the pursuit of ideology but the investigation of particular problematizations as a means of crossing established ontological boundaries such as those found in just war and normative International Relations. The *bellum justum* problematic outlined previously – the use of ethical subjectivity in justifying military intervention – provides a political issue that invites further investigation. The particularity preferred by Foucault – in his study of problematizations, in his interest in ethical subjectivity in his later works, and in his use of historical and philosophical interrogation – all lend themselves to the study undertaken here. Furthermore, Foucault’s emphasis on the mutually constitutive nature of power, knowledge and subjectivity lend themselves to writing a history of the emergence of the ethical subject in recent military intervention discourse – given that war is the most violent expression of relations of power and the use of contested knowledge in the form of secret intelligence on WMD was at the heart of the push to war in Iraq in particular, as well as shaping wider just war debate featuring Elstain and Walzer.

In his later works, Foucault explored the re-creation of the self as ethical subject: a subject that can form herself, or himself, in discourse. Foucault wrote of his work and the place of the subject within his *oeuvre*:

the goal of my work during the last twenty years ... has not been to analyze the phenomena of power, nor to elaborate the foundations of such an analysis. My objective, instead, has been to create a history of the different modes by which, in our culture, human beings are made subjects ... Thus, it is not power, but the subject, that is the general theme of my research.<sup>42</sup>

When Foucault refers here to ‘our culture’, he is referring to liberal culture. Foucault spent considerable time and effort exploring what he refers to as ‘the phenomena of power’<sup>43</sup> within liberal culture, to the extent that towards the end of his life he felt the need to clarify for his readers what he claims as his true goal – the emergence of the subject<sup>44</sup>. In this context Foucault adds: ‘There are two meanings of the word “subject”’: subject to someone else by control and dependence, and tied to his

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<sup>42</sup> Foucault, 'The Subject and Power', p. 326

<sup>43</sup> *Id.*

<sup>44</sup> Challenges to Foucault’s conception of the subject can be found in Connolly, W.E., 'Taylor, Foucault, and Otherness', *Political Theory*, Vol. 13, No. 3 (Aug 1985) pp. 365-376; Shapiro, M.J., 'Charles Taylor's Moral Subject', *Political Theory*, Vol. 14, No. 2 (May 1986) pp. 311-324; Taylor, C., 'Foucault on Freedom and Truth', *Political Theory*, Vol. 12, No. 2, (May 1984) pp. 152-183; Taylor, C., *Sources of the Self* (Cambridge: Cambridge University Press, 1989).

own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to'.<sup>45</sup> If these two dimensions of the subject could be considered separately it might be possible to imagine that the individual subject to the control of another has one level of freedom (largely constrained), while the individual made subject to, or by, his own conscience or self-knowing somehow possesses another level of freedom (less constrained). A more practical reading begins with an acknowledgement that no such splitting of the subject can occur within an individual's lived experience. As this exploration of how humans are made ethical subject of war proceeds, these two strands of Foucault's approach will become apparent: while the soldier, on the one hand, operates under orders and strict military discipline; on the other she, or he, is simultaneously creatively forming her, or his, own subjectivity in relation to multiple discourses such as the brave warrior, familial loyalty, regimental honour, or national pride.

Foucault says more about his subject: '[The subject] is not a substance. It is a form'.<sup>46</sup> In other words, the subject is only a fragment of its full or potential selfhood, constituted in discourse, with ethical subjectivity a constituent part of that potentiality. The specific fragment depends on the orientation of the subject at any particular time. Ethical subjectivity emerges in different forms and trajectories in relation to ethical modes as diverse as sexual responsibility or environmental concern. Foucault goes on to add: 'it is precisely the historical constitution of these various forms of the subject in relation to the games of truth which interests me'.<sup>47</sup> In his final years Foucault's exploration of subjectivity took place across a number of domains, including a focus on the 'desiring subject'.<sup>48</sup>

Foucault sought to understand the constitution and self-constitution the ethical, desiring subject as a means of comprehending the broader emergence of subjectivity. In pursuing the emergence of the ethical subject, Foucault identified systems of morality based on rules, prohibitions and interdictions, which he named the 'moral code',<sup>49</sup>

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<sup>45</sup> *Op cit.*, p. 331.

<sup>46</sup> Foucault, M., 'The Ethics of the Concern for Self as a Practice of Freedom', in Foucault, M. and Rabinow, P. (Ed.) *The essential works of Michel Foucault 1954 - 1984 Volume 1: Ethics – Subjectivity and Truth* (New York: The New Press, 1997) p. 290.

<sup>47</sup> *Ibid.*, p. 291.

<sup>48</sup> Foucault, 1984a, p. 5.

<sup>49</sup> *Ibid.*, p. 25.

juxtaposed with the ‘ethical problematizations based on practices of the self’.<sup>50</sup> Foucault achieved this by recognising that to make sense of any analysis of sexuality from the eighteenth century onwards, he had to conduct a philosophical enquiry spanning a much greater expanse of time, identifying the historical discourses that shaped later formation of the subject. This he did in a genealogy that would demonstrate how from the earliest times ‘individuals were led to practice, on themselves and on others, a hermeneutics of desire, a hermeneutics of which their behaviour was doubtless the occasion, but certainly not the exclusive domain’.<sup>51</sup> It is the extension of this Foucauldian notion of subjectivity beyond the realms of Foucault’s own inquiries into the domain of war in seeking out the emergence of the ethical subject in just war discourse that enables this thesis to add to existing just war literature.

### **A Chapter Outline**

The moral framework created by Foucault for his genealogy of the practices of the ancient Greeks in *The Use of Pleasure* uses the dual representations of code-oriented moralities and ethics-oriented moralities.<sup>52</sup> These representations, which Foucault recognises and describes separately but which are intricately interdependent in his practices of the self, will provide a trajectory for the genealogy conducted in this thesis as it seeks the emergence of the ethical subject in the just war tradition. He writes:

There is no specific moral action that does not refer to a unified moral conduct; no moral conduct that does not call for the forming of oneself as an ethical subject; and no forming of the ethical subject without “modes of subjectivation” and an “ascetics” or “practices of the self” that supports them.<sup>53</sup>

The ‘forming of oneself as an ethical subject’<sup>54</sup> in Blair’s justification of intervention presents the greatest challenge of this thesis to normative assumptions surrounding the subject of just war. The application of these Foucauldian ideas will be described further in Chapter 2, which sets out how a genealogy is to be used to explore the emergence of the ethical subject of just war: not only at the interstice of multiple discourses in the present as described in the *bellum justum* problematic but at the interstice of multiple discourses in historical contexts that Elshtain and Walzer draw

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<sup>50</sup> *Ibid.*, p. 5.

<sup>51</sup> *Id.*

<sup>52</sup> *Ibid.*, p. 30.

<sup>53</sup> *Ibid.*, p. 28.

<sup>54</sup> *Id.*

upon to make present just war debate possible. The merits of this methodological approach will be examined in relation to other approaches to the ethical subject of war. In moving from methodology to method the use of texts and the practicalities of conducting textual analysis within broader discursive formations will be set out and, in so doing, this thesis will extend the application of Foucault in a previously unexplored domain.

Chapter 3 will identify aspects of the constitution of the ethical subject of war in the contemporary just war approaches of Elshtain and Walzer. These will be linked to wider political debate and provide the impetus for the subsequent genealogy. A problematization of some of the taken-for-granted assumptions of Elshtain and Walzer in their just war discourses will prompt an examination of some of the key texts and concepts that they draw upon. For example, Elshtain says in *Just War Against Terror*: ‘Augustine knew that questions concerning the ethics of power and its use or abuse are most exigent when it comes time to debate war and peace. Augustine launched a great tradition of reasoning on the ethics of the use of force called the *just war tradition*’.<sup>55</sup> She credits Augustine with being the originator of the just war tradition in her analysis of the emergence of the concept of sovereignty – an increasingly important factor in weighing up both the legitimacy and causes of war or military/humanitarian intervention. In addition, Elshtain draws upon Aquinas and what she describes as his practical synthesis of Augustinian and Aristotelian thought: ‘With the Thomistic synthesis, earthly rule acquires a new dignity and status ... tracing the vagaries of justifications for, and understandings of, the purpose of earthly kingdoms and empires’.<sup>56</sup> Both Augustine and Aquinas are iconic figures not only in their historical locations in the just war tradition but also in informing Elshtain’s political and just war discourses today. If Elshtain’s ontological foundations are located in the great works of Western political theology and philosophy, Walzer’s, in contrast, are located in what he calls a ‘legalist paradigm’.<sup>57</sup> The roots of this secular paradigm are to be found in Grotius and Vattel and their contributions to the emergent law of nations, which incorporate and redeploy earlier just war tenets. Consequently, the major texts of Augustine, Aquinas, Grotius and Vattel, and the way they shape and inform just war thinking at key points in

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<sup>55</sup> Elshtain, J.B., *Just War Against Terror* (New York: Basic Books, 2004) p. 49 (*Original italics*).

<sup>56</sup> Elshtain, J.B., *Sovereignty: God, State, and Self* (New York: Basic Books, 2008a) p. 40/1.

<sup>57</sup> Walzer, 2000, p. 61.

(Western) history, will provide the sites of analysis of the subsequent genealogy of the ethical subject of war.

The genealogy will take place in Chapters 4 to 7, following Foucault, through close re-readings of Augustine, Aquinas, Grotius and Vattel, asking for each writer: How is the subject constituted or self-constituted? What are the moral codes and ethical sources that shape the ethical subject of war? How does the ethical subject of war emerge in relation to earlier writers and what continuities/discontinuities with the present constitution of the ethical subject of war can be identified? While the authors are viewed as iconic and the texts under consideration seen as totemic in the field of just war, these chapters will delve beyond the more famous passages on war to some of the pages less travelled, where the latter directly inform the problematic of the thesis with regard to the emergence of the ethical subject of war. Chapter 8 will review the key themes of the thesis by revisiting the history of present uses of ethical self-formation in the just war discourses of Elshtain and Walzer. The formation of ethical subjectivity, both in the experience of the soldiers mentioned at the outset of this introductory chapter and in Blair's justification of military intervention, will be further analysed. It will be shown how the genealogy conducted in the thesis provides an original understanding of the means by which Blair and the soldiers could speak of ethical subjectivity in the context of war, paying particular attention to creative self-forming. Chapter 8 will continue by discussing the effectiveness of the Foucauldian approach used throughout in exploring ethical subjectivity in the just war tradition and will conclude by identifying possible trajectories for future research.

## Chapter 2

### A Foucauldian Understanding of the Ethical Subject in Just War Discourse

The previous chapter argued for the use of a Foucauldian genealogical approach in undertaking a history of present understandings of how ethical subjectivity is formed in just war discourse. This will be achieved by exploring the emergence of the ethical subject of war in response to the *bellum justum* problematic previously identified – the constitution and creative self-formation of ethical subjectivity in the justification and execution of military intervention and in concurrent just war academic debate. The proposed Foucauldian approach was located in relation to other ethical approaches: in particular, poststructuralist challenges to long-standing normative assumptions in International Relations. A Foucauldian understanding of the subject was outlined in the process of setting out how this thesis will make an original contribution to current literature: specifically with regard to the emergence of the ethical subject of war in the just war tradition.

This chapter will examine the Foucauldian lens through which important just war texts will be re-read genealogically: both the methodological assumptions that underpin the study and the methods to be used. Both the applicability and efficacy of this approach will be located in relation to critics and advocates alike in existing literature. This will be done by expanding on Foucault's theorizing on genealogy, drawing on a number of his interpreters. Following this explication of Foucauldian genealogy, the chapter will argue for the selection of particular just war texts as the sites to be explored in pursuit of the emergence of the ethical subject of war. These texts themselves emerge from the *bellum justum* problematic and the way they inform aspects of contemporary writing on the just war, specifically Elshtain and Walzer. Lastly, the chapter will look in greater detail at methods that will be utilised in the genealogy. Two crucial aspects of Foucault's genealogical approach will be emphasised, both of which feature his exploration of the ethical subject in his *History of Sexuality* trilogy: the self-formation of ethical subjectivity in relation to the twin representations of ethics-oriented moralities and code-oriented moralities (these will be expanded upon below), and the technologies of the self that he identifies at the heart of this process. Juxtaposed with self-subjectivation through technologies of the self, will be subjectivation in relations of power. Throughout, the discursive terrain surrounding the *bellum justum* problematic

will be viewed as constitutive and contested. The chapter turns now to an examination of a Foucauldian understanding of genealogy: looking at both how he used it and what it offers as a methodology for this thesis.

### **Foucauldian genealogy – a history of the present**

Bartelson describes genealogy as effective history:

insofar as it must start from an analysis of the present, and identify something as problematic in that present in order to write a history of it. As such, genealogy is strategically aimed at that which looks unproblematic and is held to be timeless; its task is to explain how these present traits, in all their vigour and truth, were formed out of the past.<sup>1</sup>

The *bellum justum* problematic is concerned with the moral justification of war exemplified in the political discourse of Blair and the academic discourses of Elshtain and Walzer, and is to be explored by focusing on the place of the ethical subject in those just war discourses. Just war is referred to as a tradition and its vocabulary can be called upon by Elshtain, Walzer, Blair, and others precisely because it is, at least to some extent, part of Western cultural fabric concerning war and morality and is frequently considered to be unproblematic and timeless. Just war might be criticised from other philosophical or epistemological positions such as realism or pacifism but within the just war paradigm its nature and existence is unquestioned, with debates routinely focus on the application of its various *jus ad bellum* and *jus in bello* criteria, and whether these criteria are mutually dependent or independent. The genealogy to be conducted here, however, is interested in how these criteria – and the *ad bellum/in bello* distinction itself – were formed out of the past and how the ethical subject of war emerges *from* them, or in conjunction *with* them. Foucault defines genealogy as:

a form of history that can account for the constitution of knowledges, discourses, domains of objects, and so on, without having to make reference to a subject that is either transcendental in relation to the field of events or runs its empty sameness throughout the course of history.<sup>2</sup>

Foucault is not prescriptive about how a genealogy should be undertaken and leaves open endless possibilities for the researcher. He is very clear that a genealogical

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<sup>1</sup> Bartelson, 1995, p.73.

<sup>2</sup> Foucault, M., 'Truth and Power', 2001, p. 115.

approach to history is not some quest for a mythic source of a particular idea, theory or knowledge:

Genealogy does not oppose itself to history as the lofty and profound gaze of the philosopher might compare to the molelike perspective of the scholar; on the contrary, it rejects the metahistorical deployment of ideal significations and indefinite teleologies. It opposes itself to the search for "origins."<sup>3</sup>

There is an inbuilt tension in Foucault's approach, brought about by his juxtaposition of history and philosophy. By asking philosophical questions from within history – as opposed to attempting to observe history from some imagined transcendental viewing platform – Foucault potentially opens himself up to the criticism from the philosopher that his work is too detailed and mundane to excite, and, from the historian, that his approach does not conform to their paradigmatic expectations. So when Foucault is approached in this way it is important to recognise that his attitude is every bit as important as his method, exemplified by a quotation that encapsulates how Foucault envisaged his work would be utilised – both in the fields he studied and beyond:

I would like my books to be a kind of tool-box which others can rummage through to find a tool which they can use however they wish in their own area ... I would like the little volume that I want to write on disciplinary systems to be useful to an educator, a warden, a magistrate, a conscientious objector. I don't write for an audience, I write for users, not readers.<sup>4</sup>

Foucault is not prescriptive about how his work can be adopted and adapted, he simply challenges the reader-practitioner to engage with his work in order to produce new ways of thinking. Such is the breadth and complexity of Foucault's work, however, that even when one of his many ideas is borrowed – genealogy, in the case of this thesis – there remains the challenge of producing a coherent and sufficiently focused project, with methods that do justice to his methodology. Jean Carabine writes:

Foucault's genealogy is more about methodology than method. We can use it as a lens through which to read discourses ... genealogy is concerned with describing the procedures, practices, apparatuses and institutions involved in the production of discourses and knowledges, and their power effects.<sup>5</sup>

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<sup>3</sup> Foucault, 1977a, p. 140.

<sup>4</sup> Foucault, M., 'Prisons et asiles dans le mécanisme du pouvoir' in *Dits et Ecrits*, t. II (Paris: Gallimard, 1994) pp. 523–4.

<sup>5</sup> Carabine, J., 'Unmarried Motherhood 1830–1990: A Genealogical Analysis', in Wetherell, M., Taylor, S. and Yates, S. (Eds), 2001b, *Discourse as Data*, Sage Publications Ltd, London, pp. 275/6.

In supporting Carabine's position here, this study recognises that the application of this methodology will require creative and original thought since Foucault did not conveniently set aside ready-made methods to suit every purpose.

Mark Bevir is quite explicit in viewing politics as an appropriate site for a Foucauldian genealogy to be conducted and there have been few, if any, bigger international political issues in recent years than that of military intervention, particularly the wars involving British and American forces in Afghanistan and Iraq:

Foucault reconceptualized the state not as a discreet legal institution, but as a space composed of varied relations of power and the mentalities they embody. To study politics becomes to trace the operation of power as it creates subjects, discourses, and institutions through time.<sup>6</sup>

Bevir echoes Foucault in placing genealogy at the heart of the study of government and politics, identifying the creative use of power, that is, within relations of power, in the formation of subjectivity, discourses and the very institutions through which power is wielded. This de-centering of power and power relations in Foucault's approach provides the opportunity to explore the emergence of the ethical subject of war away from the constraints of statehood and the universal idealised autonomous agent.

Hubert Dreyfus and Paul Rabinow describe their own understanding of the functioning of a Foucauldian genealogy as follows: 'Genealogy seeks out discontinuities where others found progress and seriousness. It records the past of mankind to unmask the solemn hymns of progress. Genealogy avoids the search for depth. Instead, it seeks the surfaces of events, small details, minor shifts, and subtle contours'.<sup>7</sup> Certain assumptions are enshrined in such a genealogical approach. The discontinuities mentioned here by Dreyfus and Rabinow indicate Foucault's rejection of natural, or inevitable, development within human experience, or indeed, any notion of an evolution or march of progress of ideas. In order to conduct this genealogy, certain pitfalls must be avoided: for example, taking meanings and understandings of the present situation in world affairs and projecting them back onto the events and discourses surrounding preceding wars, or *vice versa*. Foucault rejects the validity of

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<sup>6</sup> Bevir, M., 'Foucault, Power, and Institutions', *Political Studies*, XLVII (1999) p. 353.

<sup>7</sup> Dreyfus, H.L. and Rabinow, P., *Michel Foucault: Beyond Structuralism and Hermeneutics*, 2<sup>nd</sup> Edn. (Chicago: The University of Chicago Press, 1983) p. 106.

‘writing a history of the past in terms of the present’, seeing relevance instead in ‘writing the history of the present’.<sup>8</sup> He is not looking back through time and asking what happened in the past: he is looking at the present and asking how this particular present became possible. Bartelson explores these historiographical issues in some depth in his *Genealogy of Sovereignty*, rejecting what he calls ‘the twin fallacies of *finalism* and *presentism*’.<sup>9</sup> He describes these approaches as follows:

Typically, a finalist history is a history of the past in terms of an imagined future; a presentist history is a history of the past in terms of the present. A finalist history treats the present as a projection of the past, by projecting a version of that past onto the present, whereas a presentist history regards the past as a projection of the present, by projecting a version of this present onto the past.<sup>10</sup>

Both of these approaches depend on the assumption that knowledge is autonomous and fixed, and capable of being projected – whilst still maintaining its original meaning – through time. Both of these approaches are rejected in favour of a history of the present that rejects causality and pursues the lesser and, in Bartelson's view, more plausible aspiration of seeking the conditions that make the present possible. And it is this history – specifically the history of present just war discourse – that is being undertaken in pursuing the aims of this thesis in response to the *bellum justum* problematic.

Der Derian, in advocating the use of genealogy in International Relations, presents his aspirations for such an approach, describing it as ‘a theoretical intervention into the past that illuminates and seeks to transform present political practices’.<sup>11</sup> However, Der Derian appears to go beyond Foucault himself in assuming a transformational dimension within genealogy. Disagreeing, however, is Bevir who offers this criticism:

Foucault's genealogies rarely ask what reasons people had for adopting new techniques of discipline or new technologies of the self. They are far more likely to explore the ways in which such techniques and technologies were later made authoritative through various social discourses.<sup>12</sup>

Two possible responses to this criticism take Foucauldian study in different directions: firstly, Foucault himself can become the object of study in order to ascertain

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<sup>8</sup> Foucault, M., *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1979) p. 31.

<sup>9</sup> Bartelson, 1996, p. 54 (*Original italics*).

<sup>10</sup> *Ibid.*, p. 55.

<sup>11</sup> Der Derian, J., 'Virtuous war/virtual theory', *International Affairs*, Vol. 76, No. 4 (2000) p. 783.

<sup>12</sup> Bevir, 1999, p. 356, 357.

his reasons for not pursuing the question of *why* people behaved in certain ways; secondly, this criticism can be accepted and set aside (bracketed, in effect) in order to pursue the question of *how* techniques or technologies were made authoritative. This thesis adopts the latter approach, leaving the first, valid, question for another researcher.

Foucault appears to be more circumspect in his expectations than both Der Derian and Bevir. He says of his own work: 'I like to open up a space of research, try it out, and then if it doesn't work, try again somewhere else...My books aren't treatises in philosophy or studies in history; at most, they are philosophical fragments put to work in a historical field of problems'.<sup>13</sup> Foucault not only acknowledges the limitations of his work but imposes some of those limitations of scope and purpose on himself. Perhaps more importantly, in an era when academic research is increasingly regulated and to some extent becoming standardised, Foucault gives himself, and those who would attempt to apply his methods, permission to fail. This study sets its sights on *informing* rather than *transforming* the present, opening up a research space in the just war tradition where Foucauldian ideas will be tried out and the formation of the ethical subject explored, subsequently allowing the reader to decide whether the approach is effective or not.

Dreyfus and Rabinow observe that 'for Foucault power is not strict violence or pure coercion, but the interplay of techniques of discipline and less obvious technologies of the self.'<sup>14</sup> Any attempt to isolate constituent components of either techniques of power or technologies of the self must be acknowledged from the outset as partial and contingent. However, that in itself does not preclude this thesis from enhancing understanding or knowledge as a result. In order for this history of our present understanding of the ethical subject of war to take place, the next consideration is the justification and selection of the just war texts that are to be the sites of genealogical inquiry in the forthcoming chapters.

### **Selection of texts for analysis**

The cross-disciplinary nature of this research means that the text selection should satisfy two broad requirements: first, that the selected texts are appropriate for a

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<sup>13</sup> Foucault, 'Questions of Method', 2001, p. 223.

<sup>14</sup> Dreyfus and Rabinow, 1983, p. 175.

genealogy as it has been presented here (that is, the texts to be subjected to a Foucauldian re-reading consistent with the poststructuralist foundations of this study); and second, that such texts are located generally within the field of International Relations and specifically within just war discourses. In addition, given the limited scope of a doctoral thesis, only iconic just war texts will be chosen for genealogical analysis – texts that have defined the just war tradition and remain formative of the limits of just war discourse.

In *The Archaeology of Knowledge*, Foucault states that discourse can operate on three levels, either ‘the general domain of all statements...[or] an individualizable group of statements...[or] a regulated practice that accounts for a number of statements’.<sup>15</sup> In relation to war, or the justification of war, the general domain of all statements is so vast that even powerful internet search engines would struggle to locate them, never mind allow a lone researcher to read and analyse them. Further, war itself should be considered a political discourse. Even narrowing the focus to the justification of intervention, discursive statements and texts could be as diverse as newspaper items, a protest banner, a television news broadcast or a debate at the United Nations. Take such diversity in every nation where an opinion on intervention has been uttered and the possibility of a realistic, coherent analysis disappears. While acknowledging the potential breadth of discourses that could be considered within a Foucauldian *schema*, this categorisation is rejected as too broad for this study.

The third definition offered here by Foucault suggests a more focused, fine-grained approach to analysing the internal linguistic structure of, or practices within, discourse such as is found in the Critical Discourse Analysis espoused by Norman Fairclough or Teun Van Dijk.<sup>16</sup> However, their approach also contains elements which take the emphasis away from areas this study wishes to focus upon. For example, while Critical Discourse Analysis asks ‘how language fits within social relations of power and domination,’<sup>17</sup> this thesis is more concerned with how issues of power and domination are revealed *in* the language of political discourse with regard to war. Critical Discourse Analysis adopts a more focused, fine-grained approach to analysing the internal linguistic structure of, or practices within, discourse such as can be found in the

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<sup>15</sup> Foucault, M., *The Archaeology of Knowledge*, Trs. A. Sheridan (London: Tavistock, 1972) p. 8.

<sup>16</sup> Fairclough, 2000 and 2001b. Van Dijk, 1997, 1998, and 2001a.

<sup>17</sup> Fairclough, N. ‘The Discourse of New Labour: Critical Discourse Analysis’, p. 230.

international arena. Also, for Van Dijk, power is the property of groups and is operationalized in the relations between groups: reflecting the *reality* that the groups, and power, exist. Whereas for Foucault, power, knowledge and discourse are indivisible and therefore must act collectively in constituting groups or individuals or, importantly for this study, ethical positions and subjectivities. While some analysis of the use of language in the emergence of the ethical subject of war will take place in this thesis, to concentrate purely on narrowly focused linguistic practices will be overly limiting for the aims of this study and is therefore rejected. Consequently, the second level of understanding of discourse in the quotation from Foucault offers the most practical and realistic possibilities for this thesis.

Foucault's definition of discourse as 'an individualizable group of statements',<sup>18</sup> hence offers the best possibility of finding a manageable, meaningful and coherent set of texts – each located within multiple political, social and cultural discourses – to analyse in this study. While Foucault explores different ways of narrowing down discourses for subsequent archaeological analysis, it is in 'Politics and the study of discourse' that Foucault sets himself a refined collection of criteria for the '*individualization* of discourses'.<sup>19</sup> It is this individualization from the generalized group of all statements that facilitates both coherent discourse selection as well as subsequent analysis:

There exist criteria for individualizing discourses which are known and reliable (or almost): the linguistic system to which they belong, the identity of the subject which holds them together...the existence of a set of rules of formation for *all* its objects...*all* its operations... *all* its concepts...*all* its theoretical options.<sup>20</sup>

These various criteria can combine to bring about a major paradigmatic shift, such as the development of a new school of thought at a particular time (Foucault cites psychopathology as an example), or the constitution of a discursive formation that is situated in relation to other formations. Although Foucault frequently rejects the charge that he is a structuralist, there would appear to be structuralist undertones here in his talk of a linguistic system and rules of formation. However, considering Foucault's comments here in the context of a genealogy of the ethical subject in the just war tradition, it is noticeable that a selection of key just war texts covering an extended

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<sup>18</sup> Foucault, 1972, p. 8.

<sup>19</sup> Foucault, 'Politics and the study of discourse', 1991, p. 54 (*Original italics*).

<sup>20</sup> *Id.*

expanse of history would satisfy the need for coherence, relevance and sets of rules for the continual formation of meaning in terms of war, morality and subjectivity; whilst also acknowledging the iconic status of particular discourses within the tradition. Several discourses in the just war tradition are viewed as iconic – for a number of reasons. They defined or redefined key ideas – and limits – in the just war tradition at points in history characterised by diverse – and changing – power structures, from Imperial power to Ecclesiastical authority to the emergence of state-centred sovereign power. Further, these iconic texts were written at times when knowledge itself was legitimated or proscribed in widely contrasting ways: from a reliance on Greek or Roman philosophy to Papal mandate to an Enlightened application of reason. Finally, iconic status is conferred because, despite the ontological and paradigmatic discontinuities between the authors and the contexts in which they wrote, aspects of their just war discourses have survived over time: not only being redeployed by subsequent just war theorists but continuing to be used in just war debate and the constitution of the ethical subject of war today.

Enacting some of the suggestions in the preceding section, the analysis of the selected texts will look for ways in which Elshtain and Walzer each draw on existing, historical just war concepts in forming the ethical subject of war. Bartelson writes: 'in order to be effective history, genealogy must be episodic ... [and] focuses only on those episodes of the past which are crucial to our understanding of what was singled out as problematic in the present'.<sup>21</sup> Consequently, the discursive episodes to be analysed in relation to the *bellum justum* problematic are these key, historical just war texts that continue to contribute to debate – in the West at least. Before examining further the selection of just war texts for the genealogy to be conducted, consider some suggestions from Jennifer Milliken for locating discursive approaches in International Relations:

Since discourses are social systems of signification, it will not do (as sometimes appears to be the case) to base a discursive analysis only on one text, even some 'key' document ... A single text cannot be claimed to support empirically arguments about discourse as a social background, used regularly by different individuals and groups. Instead, if the analysis is to be about social signification, a discourse analysis should be based upon a set of texts by different people

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<sup>21</sup> Bartelson, 1995, p. 8.

presumed (according to the research focus) to be authorized speaker/writers of a dominant discourse or to think and act within alternative discourses.<sup>22</sup>

Milliken's approach to the selection of texts to be re-read in a discourse analysis corresponds with the requirements of this genealogy – and prompted considerable deliberation over the texts to be included. While the study will explore the emergence of the ethical subject of just war discourse surrounding military intervention, consideration was initially given to the possibility of concentrating solely on the period of the build-up to the 2003 Iraq war and investigating the war discourse of multiple actors such as President Bush, President Chirac, President Putin, UN Secretary General Kofi Annan and Prime Minister Tony Blair. This would have been in keeping with Milliken's approach outlined above, with multiple texts under analysis being from a group of authorised speakers who dominated the political and discursive terrain at that time. My aim here, however, is to use a broader historical sweep and focus on 'speakers' who have defined, and continue to define, the discursive formations that inform just war thinking in the present. So with the *bellum justum* problematic starting with Elshtain and Walzer and their positions on interventionism, the discussion now turns to their work in order to understand their dominant positions in contemporary just war, identifying not only the key historical just war discourses that they draw upon but also how they simultaneously constitute these texts as hegemonic. These texts were revealed in the introductory chapter and will be justified further as the chapter proceeds: Augustine's *City of God*, Aquinas' *Summa Theologica*, Grotius' *De Jure Belli ac Pacis* and Vattel's *The Law of Nations*.

Walzer's *Just and Unjust Wars*, written in the years following the Vietnam War – a war against which Walzer had been strongly opposed – was both timely and relevant and became the defining just war text of the late twentieth century: not because it had found new answers to old questions about just war but more likely because he found new questions to which he could apply old answers. Written when the Cold War was at its height, *realpolitik* dominant in International Relations, and the United States still dissecting and reviewing its involvement in Vietnam, Walzer's book, from its publication through four editions, has been viewed as the text against which other just war theorists juxtapose their own arguments.

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<sup>22</sup> Milliken, J. 1999, 'The Study of Discourse in International Relations: A Critique of Research and Methods', *European Journal of International Relations*, Vol. 5, No. 2 (1999) p. 233.

However, it is Elshtain who redefined the parameters of just war debate surrounding military intervention with her *Just War Against Terror*: written as an academic response to the events of 11 September 2001 and a justification of military action in Afghanistan against the Taliban regime and the Al-Qaeda elements that were allowed to operate within Afghan borders. Published as American and British forces were in the process of removing Saddam Hussein, and his regime, in Iraq, Elshtain – already a prominent academic and public intellectual in the United States – captured the prevailing *zeitgeist* and enhanced her public standing even further. After many years as a political theorist who had previously written about war and just war,<sup>23</sup> by the turn of the millennium, responding to global events in the 1990s, Elshtain was focusing her attention on the issue of interventionism.<sup>24</sup> Elshtain, like Walzer in the post-Vietnam years, found new questions about just war to which she could apply old concepts from that ancient tradition. Where Walzer maintained – within his liberal communitarianism – a tendency towards a communitarian reluctance to sanction intervention, in Elshtain's work, a stronger liberal emphasis in her liberal communitarianism fuelled a passionately argued enthusiasm for active military engagement beyond American borders: providing not only the American people with a vocabulary with which a post-9/11 concern with justice could be addressed, but also voicing an academic justification that corresponded with the political and military goals of the Bush administration. And while *Just War Against Terror* was written primarily to justify action against Afghanistan, in response to the Al-Qaeda attacks on New York in 2001, Elshtain subsequently extended that justification to include the invasion of Iraq in the second edition.

In undertaking a genealogy of the ethical subject of war, given the use made of just war concepts in both the political sphere in the intervention discourse of Blair and in the academic sphere in the intervention (or non-intervention) discourses of Elshtain and Walzer, the selection of texts for analysis is therefore attributed to the historical importance of the latter two in the just war tradition and their importance in ongoing debate. Inasmuch as all just war texts were written in order to guide, instruct and provide a focus for deliberation prior to the prosecution of war, their emphasis on the modification of behaviour echoes the choice and purpose of the texts chosen by Foucault in his genealogy of the desiring subject. Foucault says of his choices:

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<sup>23</sup> Elshtain, J.B. (Ed.), *Just War Theory* (New York & London: New York University Press, 1992); Elshtain, J.B., *Women and War* 2<sup>nd</sup> Edn. (Chicago and London: University of Chicago Press, 1995)

<sup>24</sup> Elshtain, J.B., 'Just War and Humanitarian Intervention', *Ideas*, Vol. 8, No. 2 (2001) pp. 1-21.

The domain I will be analyzing is made up of texts written for the purpose of offering rules, opinions, and advice on how to behave as one should: “practical” texts, which are themselves objects of a “practice” in that they were designed to be read, learned, reflected upon, and tested out, and they were intended to constitute the eventual framework of everyday conduct. These texts thus served as functional devices that would enable individuals to question their own conduct, to watch over and give shape to it, and to shape themselves as ethical subjects.<sup>25</sup>

So the texts chosen as a domain of analysis in seeking the emergence of the ethical subject of war are dictated by three elements: their shaping of just war debate at the time they were written; their repeated use by subsequent authors over an extended period of time to the point where they are considered foundational or totemic in the just war tradition; and the ongoing use of aspects of those key texts by Elshtain and Walzer respectively, as two authoritative voices in the discourses of just war.

One theorist that Elshtain repeatedly draws upon in her just war writings, as well as her in broader political theory, is an individual also renowned for his just war writings, the fourth/fifth century priest, bishop and theologian, Augustine of Hippo. Some years before Elshtain wrote *Just War Against Terror*, she described the significance of Augustine on contemporary politics and conceptions of subjectivity as follows: '[Augustine] gives us the great gift of an alternative way of thinking and being in the world, a way that is in many vital respects available to those who are not doctrinally Augustine's brothers and sisters'.<sup>26</sup> And why is this of such importance to Elshtain, and further, to any who seek to analyse or comment upon political violence or just war? Because, she adds: 'In the twentieth century, justification and rationalization of violence as the *modus operandi* of social change introduces an element of remorseless moral absolutism into politics'.<sup>27</sup> Augustine wrote in a context of multiple violences: physical violence used in attacks on, and in defence of, the declining Roman Empire; religious violence as Christianity fought to establish and maintain its religious hegemony; and doctrinal violence as Augustine repelled as heretics, on behalf of Catholic Christianity, those such as the Donatists and Pelagians and others who would seek to undermine it. Augustine is still called upon today in discourses of violence or opposition to violence – his contribution to the just war tradition now part of an assumed moral order for many in the West. Consequently, this genealogy of the ethical

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<sup>25</sup> Foucault, 1984a, p. 12/13.

<sup>26</sup> Elshtain, 1992, p. 114.

<sup>27</sup> *Id.*

subject of war in the just war tradition will begin with Augustine and his *magnum opus*, *City of God*: drawing also on some of his other works as they pertain to his conceptions of subjectivity and just war.

A second key source used in Elshain's just war to be included in this genealogy is Aquinas and his *Summa Theologica* where it relates to war and morality. Aquinas' main Christian source was Augustine, whose largely unstructured observations on war – when and how it should be conducted justly – are taken, added to, and then set out in a structured and codified manner: a codification that is still recognisable in just war discourses today. However, Aquinas does not simply make and pass on small alterations to the Augustinianism he inherited. Rather, his writing on war, as with his wider theology and philosophy, relies on an extensive synthesis of Augustinian and Aristotelean thought that shapes both his moral code and his conception of subjectivity. For example, for Augustine the *telos* of the Christian is to be found in God's eternal presence in the next life: whereas by incorporating Aristotle's ethics into his *schema* Aquinas extends the *telos* of the Christian to include the pursuit of virtue – with a right, or Godly, intention – in this life. This can be seen in Aquinas' just war with his systematic co-location of rightful authority, just cause and right intention<sup>28</sup>, which are, in turn, at the heart of Elshain's argument in favour of military engagement in Afghanistan and Iraq. Further, for Aquinas: 'A tyrannical government is not just, because it is directed, not to the common good, but to the private good of the ruler, as the Philosopher [Aristotle] states (Polit. iii, 5; Ethic. viii, 10)'.<sup>29</sup> Therefore, those who pursue the common good, as Elshain advocates in *Just War Against Terror*, are those who overthrow tyrannical government rather than (with Augustine) enduring and suffering as part of God's design for humanity. Consequently, Aquinas' *Summa Theologica* is chosen as the second key just war text to be re-read in this genealogy.

Walzer, on the other hand, locates his just war writings in a 'legalist paradigm'.<sup>30</sup> Shaped by his communitarian tendencies, Walzer's just war approach draws heavily on the legacies of Grotius and Vattel – from the seventeenth and eighteenth

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<sup>28</sup> Aquinas, Thomas, *Summa Theologica*, Trans. Fathers of the English Dominican Province, Rev. Edn., Benzinger Brothers, 1948 (Reprinted Westminster, MD: Christian Classics, 1981). Question 40 of the second part of the second part, Article 1, p. 1813. Subsequent notation will be given as *ST II-II*, Q. 40, A.1, p. 1813.

<sup>29</sup> *ST II-II*, Q. 42, A. 2, p. 1822.

<sup>30</sup> Walzer, 2000, p. 61.

centuries respectively – whose books *De Jure Belli ac Pacis* and *The Law of Nations* not only address morality and war at length, but introduce to the just war tradition concepts of legality, arguing for laws *between* emerging nations to set alongside existing laws *within* those nations. Further, they introduced and developed concepts of sovereignty, elements of which are still present in relations between states, just war, and international law. The elements Vattel wrestled with – like Grotius before him – are evident in Walzer’s *Just and Unjust Wars*:

The rights of states rest on the consent of their members. But this is consent of a special sort. State rights are not constituted through a series of transfers from individual men and women to the sovereign or through a series of exchanges among individuals.<sup>31</sup>

Sovereignty, and state and individual rights are at the heart of Walzer’s just war discourse and so Grotius and Vattel have been chosen for further analysis in this genealogy of the ethical subject of war that speaks to the research problematic.

To sum up, the key just war writers used by Elshtain and Walzer respectively – as evidenced in their writings – will provide the domain of analysis for the genealogy of the ethical subject of war to be conducted in Chapters 4 to 7, and those are, in the chronological order in which they will be addressed: Augustine, Aquinas, Grotius, and Vattel. The key texts of theirs to be re-read in seeking the emergence of the ethical subject of war are, respectively, *City of God*, *Summa Theologica*, *De Jure Belli ac Pacis*, and *The Law of Nations*, supplemented by other writings of these authors where they are relevant to the aims of this thesis. In viewing them as separate episodes within the just war tradition, this thesis assumes that these texts were created within particular discourses on morality, war and subjectivity that have an internal coherence in their own specific historical, social and political regimes of knowledge. Further, each episode varies from the others in its epistemological and ontological assumptions. Finally, despite the assumed contingency of each episode, there is sufficient continuity amidst the discontinuities to render them intelligible in a just war *tradition* that speaks to the *bellum justum* problematic in the present. Having identified the texts to be subjected to genealogical scrutiny, the chapter now considers in greater depth the methods that will be used in a Foucauldian re-reading.

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<sup>31</sup> *Ibid.*, p. 54.

## Methods – Foucault's technologies

This thesis will apply Foucauldian concepts in a way that is consistent with Foucault's own applications, supported by ontological assumptions that are similarly coherent and with an attitude that seeks to explore the specific and situated rather than formulate some grand meta-narrative. In this section the key methods to be used in the genealogy will be outlined, to show how, in practical terms, the research aims will be achieved. James Keeley writes about the use of Foucault's methods in *International Relations*:

While [Foucault's] works initially seem distant from the study of *International Relations*, their relevance becomes clearer if Foucault is approached as an analyst of orders and communities. But Foucault does not present a theory; instead he provides analytic devices and interpretations.<sup>32</sup>

This approach succinctly summarises what Foucault offers to an analyst within *International Relations* – namely analytic devices and interpretations. The analytic devices will be considered next, but the interpretations mentioned should be used with caution, since they refer to Foucault's own interpretations in his own research, based on his ontology and methods, as opposed to interpretations that can be applied unproblematically across paradigms. It would be more accurate to say that Foucault provides analytic devices to help researchers make their own interpretations across disciplinary boundaries and domains of human experience.

One possible Foucauldian approach in *International Relations* is expounded by Jabri: 'The capacity to critique, in itself constituted within the present historical condition of our subjectivity, is therefore, also the site or location of self renewal, and a reimagining of political space'<sup>33</sup>. This self-renewal, or self-constitution, has to be an ongoing project, given the constant state of flux in human interactions. Further, this thesis seeks to expand upon Jabri's 'reimagining of political space'<sup>34</sup> by similarly going beyond the established conceptual frameworks in *International Relations* to seek out the ethical subject of war at the nodes of multiple competing discourses, rather than in the constraining, normative boundaries of communitarianism and cosmopolitanism. To create or constitute a separate political space, distinct from that recognisable as political

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<sup>32</sup> Keeley, J.F., 'Toward a Foucauldian Analysis of International Regimes', *International Organization*, Vol. 44, No. 1 (Winter 1990) p. 85.

<sup>33</sup> Jabri, 1998, p. 600.

<sup>34</sup> *Ibid.*, p. 598.

space within other ontological paradigms (liberalism, for example), is a markedly different project from recreating the same existing political space in a different way. Examining the emergence of the ethical subject in the just war tradition, in response to the *bellum justum* problematic, is to engage in a political discursive space that is highly contested in relation to questions of morality and war.

Returning to Foucault, in 1981 he gave a talk where he stated: 'If one wants to analyze the genealogy of the subject in Western civilization, one must take into account not only techniques of domination but also techniques of the self. One must show the interaction between these types of technique'.<sup>35</sup> He goes on to acknowledge an over-dependence on techniques of domination in his earlier works on prisons and asylums, before expanding on the need for these techniques to be juxtaposed with techniques of the self. The following year Foucault extended this thought process still further, noting four major techniques or technologies by which people could understand themselves: '(1) technologies of production...(2) technologies of sign systems...(3) technologies of power...(4) technologies of the self'.<sup>36</sup> Without wishing to detract from the significance of the first two technologies listed here and the contribution each makes towards an understanding of human existence, it is the latter two that will inform this study. Technologies of the self – operating within relations of power – will be at the heart of this genealogy. However, while the wielding of extreme political and military power has the potential to lead to some form of domination of one group over another, the accompanying ability of those who utilise technologies of power to impact upon the application of technologies of the self also shape how individuals feel about, and react to, such actions. Technologies of the self enable individuals to constitute themselves as subjects of particular kinds – for example, selfless, happy, moral or gregarious. This study will explore the conditions and discourses that made possible Elstain's and Walzer's ability to form ethical subjectivity in relation to intervention or non-intervention across state borders – as well as Blair's self-formation as an ethical subject of war as he encouraged, or incited, individual listeners to share his position by constituting themselves as ethical.

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<sup>35</sup> Foucault, 'Sexuality and Solitude', 1997, p. 177.

<sup>36</sup> Foucault, "Technologies of the Self", 1997, p. 224/5.

These examples of subjectivation and self-subjectivation occur at the interstice described by Foucault as 'governmentality'<sup>37</sup>, which refers specifically to the conceptual space where his technologies of power and technologies of the self intersect. As he put it in a 1981 lecture at the Collège de France, governmentality is the 'surface of contact on which the way of conducting individuals and the way they conduct themselves are intertwined'.<sup>38</sup> Foucault's technologies do not constitute the subject in a moral vacuum; technologies of power and technologies of the self operate along two trajectories that can never operate autonomously – external moral codes to which the subject is expected to conform and ethical self-subjectivation. Foucault says:

If it is true, in fact that every morality, in the broad sense, comprises ... codes of behavior and forms of subjectivation ... then we should not be surprised to find in certain moralities the main emphasis is placed on the code ... on the other hand it is easy to conceive of moralities in which the strong and dynamic element is to be sought in the forms of subjectivation and the practices of the self.<sup>39</sup>

Of necessity, Foucault sought to separate, at least theoretically, technologies of power and technologies of the self to assist in the analysis of their workings relative to moral codes and self-subjectivation. These two will always be intertwined in their functionality but Foucault identifies the possibility of a shifting of emphasis from codes of behaviour to forms of subjectivation. A key aspect of the genealogy to be conducted here will be to identify shifts in the moral trajectory between an emphasis on conformity to codes and an emphasis on self-subjectivation as the ethical subject of war emerges in the just war tradition. This will be achieved by exploring, firstly, how the writers under consideration present their arguments in the formation, or reinforcement, of codified morality (for example, law, just war, Church doctrine), or incite their readers to act in relation to that moral code. And secondly, to identify how the readers are encouraged to create their own ethical subjectivity in relation to ethical sources that operate – to some extent – independently from the moral code: for example, in pursuit of some greater good such as the upkeep of morale on the battlefield, or in self-sacrifice for a colleague under enemy fire – the uncodified spaces where the subject emerges.

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<sup>37</sup> *Id.*

<sup>38</sup> Foucault, M., *The Hermeneutics of the Subject: Lectures at the Collège de France 1981-1982*, Ed. Gros, F., Trans. Burchell, G. (New York and Basingstoke: Palgrave Macmillan, 2001a) p. 548, n.30.

<sup>39</sup> Foucault, 1984a, p. 28/29.

So, for Foucault, the ethical is associated with creative self-subjectivation on the part of the individual and to help understand the concept in greater detail it will be helpful to clarify here the difference between his use of the terms 'ethical' and 'moral'. In his understanding of the morality of the classical Greeks, the Hellenic Romans and the early Christians, Foucault saw Greek behaviour as oriented towards ethical practice, while the Romans and Christians employed practices that were designed to meet the obligations of a particular moral code: the moral code being the commonly accepted prohibitions, restrictions and interdictions that shape acceptable behaviour within a given culture. That is, *moral* pertains to accepted codes of behaviour, while *ethical* concerns the individual's conduct and self-subjectivation that may or may not relate to that code. This study assumes that the just war is a codified approach to the morality of war that has emerged in the West over many centuries. However, this study also considers that just war goes beyond a straightforward codified morality and includes an element of creativity in relation to the moral code. It is this self-forming creativity in relation to just war that emerges in this investigation of the texts and authors that have been highlighted. Like Foucault, subsequent analysis will:

focus on the instances of authority that enforce the code, that require it to be learned and observed, that penalise infractions ... where the ethical subject refers his conduct to a law, or set of laws to which he must submit at the risk of committing offences that may make him liable to punishment.<sup>40</sup>

This will be seen in the works of Elshtain and Walzer and the subsequent genealogy as Augustine, Aquinas, Grotius and Vattel are, in turn, re-read through a Foucauldian lens.

The relation to oneself is considered by Foucault to be the third of three possible axes of genealogical enquiry<sup>41</sup>, (the first two being constitution as the subject of knowledge and constitution as the subject of power who is acted upon and acts on others) broken down into what he describes as four aspects of subjectivation. In an interview with Rabinow in 1983 Foucault explains these four aspects – utilised in his subsequently published book *The Use of Pleasure* – as follows:

The relationship to oneself has four major aspects. The first aspect answers the question: Which is the part of myself or my behavior which is concerned with moral conduct?...The second aspect is what I call the mode of subjectivation

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<sup>40</sup> *Id.*

<sup>41</sup> Foucault, 'On the Genealogy of Ethics', 1997, p. 262.

[*mode d'assujettissement*], that is, the way in which people are invited or incited to recognize their moral obligations...The third one is: What are the means by which we can change ourselves in order to become ethical subjects?...The fourth aspect is: Which is the kind of being to which we aspire when we behave in a moral way?<sup>42</sup>

These questions were originally raised in relation to the desiring subject within Classical Greek, Greco-Roman and early Christian cultures. However, Foucault's priority is not on an understanding of sex itself but in the broader issue of the self as subject. In the same interview he comments: 'I am much more interested in problems about techniques of the self and things like that than sex ... sex is boring.'<sup>43</sup>

The method adopted in this thesis will facilitate an original understanding of the ethical subject of war in the just war tradition by focusing in detail upon aspects of how the subject is formed in the various texts – already identified – that will be re-read through this Foucauldian lens. This will be done by asking a number of questions of the texts and authors. First, what are the sources that the various writers draw upon in writing about war and constructing their own just war arguments? Why have these sources been chosen in the cultural and social contexts in which the authors are writing? Second, how do the different writers constitute their specific moral codes and what part does just war play therein? Within those moral codes, why would the subject choose to act ethically? That is, given the range of behaviours available to the subject, what motivates the individual to make particular moral choices in relation to war? Third, what are the consequences or rewards for the individual when she or he chooses to act, or not act, ethically in relation to war? Finally, what kind of subject does the individual hope to be in acting in a particular way regarding the justification or execution of war? The Foucauldian framing of these questions can be appreciated more fully if Foucault's four aspects of the relationship to the self are examined in greater detail.

In his first aspect: 'Which is the part of myself or my behavior which is concerned with moral conduct?',<sup>44</sup> Foucault offers examples such as Kant's idealised insistence on right intentions, a contemporary view (from 1983) that feelings guide our moral conduct and a Christian view that desire, or perhaps more accurately the struggle against desire, governs our moral behaviour. For Foucault, these aspects of the self are a manifestation

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<sup>42</sup> *Ibid.*, p. 263–5. (*Original italics*)

<sup>43</sup> *Ibid.*, p. 253.

<sup>44</sup> *Ibid.*, p. 263.

of the individual's 'ethical substance'<sup>45</sup>. This ontological statement assumes that individuals possess a thing called ethical substance. This thesis prefers to take this notion further, not settling for a single ethical substance but ascribing to individuals a range of ethical potentialities within this ethical substance.

For the second aspect Foucault asks how people are 'invited or incited to recognize their moral obligations', in what he calls the 'mode of subjectivation'<sup>46</sup> that acts upon the ethical subject. He cites the example of Nicocles, ruler of Cyprus, whose moral obligation stemmed from his desire to maintain a certain position in society as opposed to his adoption of a certain (in this case Stoic) set of ideological obligations. A key principle of the Foucauldian genealogical approach is a focus on the specific and situated – as seen in this example of King Nicocles. The difficulty with, or weakness in, this approach is found in the essence of society and social life itself: it is not a vacuum or controlled setting where the ethical subject is acted upon by only one variable or one mode of subjectivation at a time. The ethical justification of the 2003 Iraq conflict shows that it is possible for an individual to belong to a particular political party whose self-proclaimed ethical position on Iraq clashed with the approach of that individual's religious leaders. This leaves the subject in tension when confronted by multiple modes of subjectivation. Further, these modes of subjectivation may be promoted by groups or individuals with asymmetric power bases. It is not possible to isolate aspects of the individual's relationship to herself or himself from the societal power dynamics to which she or he is constantly exposed. Foucault's second aspect offers an important analytical tool which is flexible enough to adapt to multiple sites and discourses. If the asymmetric power relation is pursued until one discourse nullifies another, a point is reached where domination must be obeyed and resistance is no longer possible. However, if absolute domination or control arises, the behaviour of the subject cannot be called ethical since there is no creative freedom to choose a mode of resistance. For Foucault: 'Freedom is the ontological condition of ethics'<sup>47</sup>.

Thirdly, Foucault asks: 'What are the means by which we can change ourselves in order to become ethical subjects?'<sup>48</sup> This, for him, is '*asceticism* in a very broad

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<sup>45</sup> *Id.*

<sup>46</sup> *Ibid.*, p. 264.

<sup>47</sup> Foucault, 'The Ethics of the Concern for Self as a Practice of Freedom', 1997, p. 284.

<sup>48</sup> Foucault, M., 'On the Genealogy of Ethics', 1997, p. 265.

sense'<sup>49</sup>. This concerns an individual's choice of actions as she or he constitutes herself or himself as an ethical subject. Such an action goes beyond conforming to a certain law and the corresponding moral code of which it is a part; it is a deliberate choice of action intended to produce behaviour that the individual sees as ethical. For example, if a soldier wishes to form herself or himself as an ethical subject in time of war she or he may opt to comply with the Rules of Engagement set out for that particular theatre of operations. However, in the course of a particular military engagement that soldier may be presented with a situation where in order to save the life of a wounded colleague or civilian noncombatant, she or he must risk her or his own life. This, in turn, might be prompted by some religious experience, or by a response to the familial bonds that are frequently alluded to in close fighting units or as a means of demonstrating goodness in a domain of death and destruction. Foucault uses the phrase 'self-forming',<sup>50</sup> which has a certain ambiguity about it. The phrase could be taken as referring to fundamental changes to an individual's character or, alternatively, to changes in the behaviour that emanates from a character that the individual is in the process of forming. Foucault would appear to be favouring the latter by focusing on actions and rejecting the Kantian notion of ordinary agency: and this paper supports Foucault's position.

Finally, the fourth aspect asks: 'Which is the kind of being to which we aspire when we behave in a moral way?'<sup>51</sup> He expands on this question, offering examples such as a desire to 'become pure, or immortal, or free, or masters of ourselves, and so on ... that's what I call the *telos* [*téléologie*].'<sup>52</sup> Foucault elaborates little on this aspirational aspect of self-constitution as an ethical subject. It may even be a principle that is not accessible to every subject, since some may be constrained by power relations at work, while others may be limited by personal circumstance and actual, or perceived, limitations on choice. To continue the example from the previous paragraph, for the soldier who risks death to save a colleague, the ultimate *telos* of that individual may be to live up to some military code of honour or to know that when faced with death she or he was able to conquer fear in an act of self-mastery, or even care for the Other.

One limitation on the enquiry being pursued here is imposed by Foucault, who does not make clear how much freedom of action, from constraints imposed in relations

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<sup>49</sup> *Id.*

<sup>50</sup> *Ibid.*, p. 264.

<sup>51</sup> *Ibid.*, p. 265.

<sup>52</sup> *Id.*

of power, individuals have in regard to their self-constitution as subjects. Bevir identifies tensions at work:

The subject too, therefore, is produced by the external and internal constraints of regimes of power. External controls preclude certain identities, notably by defining a number of bodily desires as unacceptable. Internal controls provide technologies of the self by which individuals can construct themselves in accord with the ruling configuration of power/knowledge. The self is not a fixed identity, the realization of which constitutes freedom, it is a constructed identity that implicates us in the domination over us of a regime of power.<sup>53</sup>

If a subject is not entirely constituted from outside as an effect of power, and there is indeed a complicity by the subject in the domination that she, or he, is the focus of, neither Bevir or Foucault explain how or why that subject might opt for such complicity. However, if the subject has a self-reflexive capacity that enables her, or him, through the use of technologies, to actively self-constitute, that same subject has the same capacity to refuse to participate in self-constitution as a response within power relations.

Seyla Benhabib is critical of the shortcomings she sees in Foucault, in particular his

methodological framework in viewing the "subject" as self-constituted or constructed by the impact of the various regimes of "power/knowledge." The social-scientific deficit of Foucault's work – his inadequate conceptions of social action and social movements, his inability to explain social change except as the discontinuous displacement of one "power/knowledge" regime by another – and his thin concepts of self and identity-formation are ultimately related.<sup>54</sup>

To some extent, Benhabib seems to have missed an important point with regard to Foucault; he did not set out to theorise the subject in any exhaustive or total manner and he rejected the pre-existent unitary, originary subject with hidden layers of personality. It might even be said that he viewed the subject in such a way as to deliberately reject and confound the imposition of the views of others. While acknowledging, partially at least, some of the shortcomings of Foucault's approach(es) identified above, they do not, in the view of this writer, provide convincing reasons to reject the proposed method or the methodology that supports it. The four aspects of Foucault's technologies of the self will therefore be used to inform the analysis of the formation and creative self-

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<sup>53</sup> Bevir, 1999, p. 349.

<sup>54</sup> Benhabib, S., *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Cambridge: Polity Press, 1992) p. 237.

formation of the ethical subject of war in the texts and discursive episodes to be considered in the coming chapters. In the re-reading of the selected just war writings Foucault's questions – the four aspects – will remain in the background, ready to be used, where appropriate, in an interrogation of the texts: What part of the subject does the writer assume is concerned with moral conduct; for example, a desire for goodness, social conscience, duty? How does the writer invite or incite his listening subjects to recognise their moral obligations? How are the readers/listeners to change themselves in order to become ethical subjects? What kind of being does the author aspire to be, or encourage his readers to be, in acting ethically in relation to war?

Following the analysis of the just war writings in question, the concluding chapter of this thesis will relate the research findings back to the *bellum justum* problematic that prompted the study: asking how the emergence of the ethical subject at key points in the history of the just war tradition enabled Elshtain and Walzer to participate in coherent debates over the issue of morality and intervention; allowed Blair to create his justifications of war in a meaningful way; and enabled injured soldiers to assess their character and conduct in the theatre of war.

## **Conclusion**

Having presented arguments in the preceding chapter outlining *why* a Foucauldian approach in this thesis will make an original contribution to current understandings of the subject, morality and war, this chapter has considered *how* such an approach will work. Beginning with a description of genealogy, and exploring how Foucault used a genealogy of the desiring subject to extend his understanding of subjectivity, this chapter has shown how, by taking such an approach to the discourses of just war, a history of the present can be written in response to the *bellum justum* problematic. Contributions by a number of advocates of such an approach have been considered, acknowledging not only their own efforts but going on to show how a Foucauldian genealogy will be both effective in, and relevant to, this study.

Since a genealogy necessarily relies on the re-reading of discourses – the texts, and political and institutional norms that make the discourses possible and intelligible – consideration has been given to how such an approach might look in this thesis. A key Foucauldian assumption has been adopted, namely that discourses should be read as

transparent, contingent and contested: rejecting the view that they should be searched for hidden meaning or foundational tenets. A case has been made for the selection of key just war works by Augustine, Aquinas, Grotius and Vattel to be re-read in this genealogy, since these authors are used in the discourses of Elshtain and Walzer, whose just war theories represent a starting point for that genealogy. The final section of the chapter set out how Foucault's technologies of the self will inform the genealogy as it provides an original understanding of the ethical subject of war, utilising the twin representations of code-oriented and ethics-oriented moralities.

In Chapter 3, the emergence of the ethical subject in the works of both Elshtain and Walzer will be considered. Since this will be a history of the present, their interpretation and use of historical just war texts and concepts will be problematized. This reading of the ethical subject of war in Elshtain and Walzer will provide a detailed justification for the subsequent genealogical re-readings of the historical just war texts of Augustine, Aquinas, Grotius and Vattel: exploring how their historical concepts and constitution of the ethical subject are used in Elshtain's and Walzer's just war writings.

## Chapter 3

### Elshtain & Walzer: Just War and Intervention

The previous chapter set out a methodology for this thesis based on Foucault's view that the formation of ethical subjectivity is situated and contingent, shifting between an emphasis on conformity to codes of behaviour and forms of creative ethical self-subjectivation. The genealogy to be conducted in the chapters to come will look for shifts in the moral trajectory between conforming to codes and self-subjectivation as the ethical subject emerges in the just war tradition. This will be achieved by exploring how key just war writers form, or reinforce, codified morality and incite their readers to conform their actions to that moral code. In addition, the way that readers are encouraged to create their own ethical subjectivity in relation to ethical sources and uncoded spaces will be identified and analysed. Before the genealogy in Chapters 4 to 7, the respective works of Elshtain and Walzer will be re-read in this chapter, identifying the historical discourses they draw upon in constructing the ethical subject in their writings. In setting out to understand how they use the past to speak about the ethical subject of just war and intervention in the present, both continuities and discontinuities with the discourses they rely upon will be acknowledged.

Elshtain specifically aligns herself with Blair's position on the justification of military action in Afghanistan and Iraq. In 2007 Elshtain reflected that 'JWAT [*Just War Against Terror*] was primarily written as a response to the domestic debate in America, although I think the clearest articulation of the position I endorse or come close to endorsing ... is Prime Minister Tony Blair's'.<sup>1</sup> Giving this comment some wider context, she considers Blair's position to be more cautious, more wary of the use of power – though she 'would put more Augustinian wariness into any final version of that position'<sup>2</sup> – than Bush's. It is this phrase 'Augustinian wariness' that points to the historical locus of Elshtain's arguments in support of forceful intervention. She rationalises her use of Augustine as source of moral authority regarding the use of military force partly because of his desire to limit Imperial use of force in his own day to only the most just of causes whilst still allowing that force is sometimes necessary to avert a greater evil in the world, and partly as a response to the failure of both the modern state system and international institutions to react to the threats and actions

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<sup>1</sup> Elshtain, J.B., 'A Response', *International Relations*, Vol. 21, No. 4 (2007) p. 505.

<sup>2</sup> *Id.*

brought about by the conjunction of terrorism, failed states and rogue states.<sup>3</sup> However, what Elshtain reads as a more wary or comprehensively argued justification of intervention on Blair's part can be read from the British perspective as either exactly that or as the necessarily tentative outworking of the complex political, and party-political, dynamics that Blair had to overcome – both domestically and in Europe – in taking the UK to war. In contrast, Bush enjoyed a huge well of domestic political capital and broad public support for whatever actions he deemed fit in response to the events of 11 September 2001. Contrary to Elshtain's perception of caution in Blair's approach to war and its justification, in the UK Blair has consistently been perceived (assisted by some sections of the media) as fundamentally committed to, and identified with, the Bush position. In the immediate aftermath of the Al-Qaeda attacks on New York and the Pentagon, Blair tethered his political future and the immediate future of the United Kingdom to that of Bush and the United States:

[T]his mass terrorism is the new evil in our world ... This is not a battle between the United States of America and terrorism, but between the free and democratic world and terrorism. We, therefore, here in Britain stand shoulder to shoulder with our American friends in this hour of tragedy, and we, like them, will not rest until this evil is driven from our world.<sup>4</sup>

Like Elshtain, Blair draws on the vocabulary of international politics as well the religious language of 'evil'. The events of the 1990s and 2001, in particular, had a huge impact on international relations – some alliances were strengthened, some broken. Cultural and religious fault lines became magnified as Bush declared a far-reaching war on terror: 'Our war on terror begins with Al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.'<sup>5</sup> In the months and years following the 2001 attacks, Blair faced the increasingly difficult challenge of providing adequate justifications for the military actions into which he was leading the UK: having given the assurance in advance – which he could not renounce without a devastating personal and national loss of face – that the US would be supported. In contrast to Elshtain, Walzer has sought to engage with debates on intervention by remaining more conceptually faithful to his earlier just war theory, the modern state system and the legalist dimension of the just war tradition.<sup>6</sup>

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<sup>3</sup> *Ibid.*, p. 506.

<sup>4</sup> Blair, 11 September 2001, Statement in Response to Terrorist Attacks in the United States.

<sup>5</sup> Bush, G.W., 20 September 2001, Transcript of President Bush's Address to a Joint Session of Congress and the Nation, located at <http://www.state.gov> accessed 30 September 2008.

<sup>6</sup> Walzer, 2000, p. 61.

The respective just war theories of Elshtain and Walzer will be re-read in this chapter, with the aim of identifying historical discourses and concepts that they draw upon to enable them to shape their respective understanding of the just war, paying particular attention to the use of code-oriented moralities and ethics-oriented moralities in their constitution of the ethical subject of war. The discourses of Augustine, Aquinas, Grotius and Vattel will, in turn, be explored genealogically in Chapters 4 – 7 to show how they make possible the emergence of the ethical subject of war in contemporary debates. Further, this exploration will examine how the ethical subject of war emerges in those socially, culturally and historically situated contexts, noting key continuities, breaks, and discontinuities between past and present. The primary just war texts of Elshtain and Walzer to be considered are *Just War Against Terror* and *Just and Unjust Wars* respectively. These will be augmented by references to other texts that further illuminate the ontological foundations of their just war theorizing.

The first half of this chapter will consider how Elshtain forms her just war by drawing on historical discourses and how she locates just war within her wider moral code: noting, in the process, the shift in trajectory of her ethical position on intervention in recent years. This in turn will lead to a consideration of how the ethical subject of war emerges in her writings, highlighting the possibility of creative self-subjection. The second half of the chapter will focus on Walzer's just war and how he uses historical discourses to speak of war and justice in the present, as part of his wider codified morality. Events of the 1990s and the attacks of 2001 caused Walzer to revisit aspects of his own just war theory, in particular, the extent of his commitment to non-interventionism.<sup>7</sup> Any shift in the trajectory of his ethical arguments will, similarly to Elshtain's, be set out and the emergence of the ethical subject of war identified, highlighting his continuing emphasis on codes.

### **Elshtain and just war**

Elshtain locates the just war on an ethical 'continuum' that is bounded by realism at one end and Christian pacifism at the other.<sup>8</sup> She proposes: 'For pacifists, the reigning word is *peace*. For realists the reigning word is *power*. For just war thinkers,

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<sup>7</sup> He addresses this issue by adding an updated preface to each of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> editions of *Just and Unjust Wars*, published in 1992, 2000 and 2006. The remainder of the text remains unchanged in those editions.

<sup>8</sup> Elshtain, J.B., 'Just War and Humanitarian Intervention', *Ideas*, Vol. 8, No. 2 (2001) p. 2.

the reigning word is *justice*'.<sup>9</sup> Further, in one of her earlier books Elstain summarizes a conception of just war that would not separate her from Walzer on a number of points, referring to it as:

an authoritative tradition dotted with its own sacred texts, offering a canonical alternative to realism as received truth. Rather than beginning with Machiavelli (or, reaching further back, Thucydides), just war as continuous narrative starts with Augustine; takes up a smattering of medieval canonists; plunges into the sixteenth century with Luther as the key figure; draws on a few natural/international-law thinkers ... then leapfrogs into the era of modern nation-states – and wars.<sup>10</sup>

The language used here is full of religious imagery and terminology: with references to *sacred texts*, *canonical* and *canonists*, notions of *received truth* and specific mention of Augustine and Luther. For Elstain, just war is a received truth: a truth that has an existence of its own, carried throughout the ages in sacred texts written by authoritative individuals. She then acknowledges the separation of religious and international-law discourses within just war as the tradition approaches the present. It is this, admittedly not absolute, bifurcation within the just war tradition that is represented in microcosm in the discourses of Elstain and Walzer: with Elstain granting increasing importance to the Augustinian and Thomistic Christian discourses and Walzer remaining more firmly within an international law framework. While Elstain's overview of the just war tradition is accurate as far as the sequence of key events and writers go, this thesis seeks to go further by exploring the conditions that have made it possible for certain texts to become 'sacred', and their authors to be spoken of as authoritative. Problematizing Elstain's assumptions leads this genealogy to explore *how* she came to be able to make these claims in the present. By rejecting any notion of a just war 'origin' in Augustine, this thesis will instead ask how his just war writings came to be considered authoritative and canonical, both in his own time and subsequently. This approach is, therefore, a challenge to the 'march-of-history' view so prevalent among contemporary just war theorists: suggested here by Elstain and made explicit by other theorists such as Alex Bellamy who describes setting out 'to map the *evolution* of the Just War tradition'.<sup>11</sup> Going further, rather than attempt to produce a definitive version of just war history or development, this genealogy will explore the emergence of the subject of war in a number of what Elstain calls 'sacred texts';<sup>12</sup> each

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<sup>9</sup> Elstain, 2004, p. 56 (*Original italics*).

<sup>10</sup> Elstain, 1992, p. 323.

<sup>11</sup> Bellamy, Alex J., *Just Wars: From Cicero to Iraq* (Cambridge: Polity Press, 2006) p. 1 (*My italics*).

<sup>12</sup> Elstain, 2004, p. 323.

one socially and historically situated and supported by its own ontological assumptions. *Just War Against Terror* may, or may not, turn out to be one of just war's sacred texts but given its impact on recent debate over military action in Afghanistan and Iraq it is appropriate that it be re-read against the backdrop of her earlier writings on just war and within in the context of the *bellum justum* problematic of this thesis.<sup>13</sup>

In early 2001, Elshtain, in setting the scene for the application of just war arguments to the question of humanitarian intervention, called upon a number of moral sources in constructing just war as a code-oriented morality, expressed in terms of the need for it to govern everyday practice, including that of taking life in war: '[The] denial of humanity is also a denial, or a refusal to recognize, that all cultures, without fail, define and refine moral codes, and that these moral codes invariably set norms for the taking of human life; all have some notion of what counts as a violation of this norm'.<sup>14</sup> She stresses the plurality of human existence and the value, and validity of, such plurality, while also identifying a common thread in the importance placed across cultures in the protecting of human life. However, her starting point is an assumption where she affirms 'solidarity within the particular communities of which we are a part – for every human being is a member of a way of life that embodies itself institutionally as family, tribe, civil society, state. This plurality is a constant feature of human political and moral life'.<sup>15</sup> After setting out this Hegelian position regarding 'family, tribe, civil society, state'<sup>16</sup> as the sites from which ethical subjectivity emerges, she then goes on to add: 'We may launch ourselves into wider or more universalistic possibilities from this particular site, seeking to affirm our common humanity through organizations [and] institutions'.<sup>17</sup> The trajectory is clear: the basis of her moral code is a shared social life, with subordinate universalising tendencies being expressed as circumstances allow. Due recognition and respect are given to other cultures and peoples who form their own moral codes, and to fail to do so would demonstrate, for Elshtain, a lack of humanity towards the Other. However, following the 2001 Al-Qaeda attacks a different emphasis emerges in her moral code.

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<sup>13</sup> Though the book is written in the context of military action against Al-Qaeda in Afghanistan, the timing of publication placed it at the centre of debate concerning military action in Iraq. Consequently, the 2004 edition includes an epilogue that summarizes Elshtain's position in favour of military action against Iraq.

<sup>14</sup> Elshtain, J.B., 'The Third Annual Grotius Lecture: Just War and Humanitarian Intervention', *American University International Law Review*, Vol. 17, No. 1 (2001a) p. 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

In *Just War Against Terror* there is a greater liberal emphasis in Elshtain's use of international agreements and treaties as moral sources that guide how power should be exercised in the current global system. She appeals to the UN's Universal Declaration of Human Rights to underpin her arguments: 'The principle I call "equal regard" underlies the Universal Declaration of Human Rights ... [which] as we are coming to understand, must sometimes be backed up by coercive force'.<sup>18</sup> This equal regard refers to the individual rights enjoyed by people everywhere to life, liberty, and freedom. Elshtain even goes on to ask: '[S]houldn't an international body be its guarantor and enforcer?'<sup>19</sup> This, for her, is a rhetorical question; the UN should enforce the human rights that are codified and enshrined in international law and states and individuals should support such action. At this point, her moral argument is shaped by the codification of rights and the need to ensure that they are guaranteed. However, a tension emerges in her desire to enforce the Universal Declaration of Human Rights that was issued under the auspices of the UN because the rules of the UN also allow other permanent members of the security council to veto any proposed military action to enforce or protect such rights. Here Elshtain moves beyond a desire to settle for the moral arguments that simply require conformity to international law and introduces an ethical dimension to her argument that is particularised and located in the individual subject and the need for that subject to form herself, or himself, as ethical by acting in particular ways. She writes, 'We, the powerful, must respond to attacks against persons who cannot defend themselves because they, like us, are human beings, hence equal in regard to us'.<sup>20</sup> The reference to all human beings being equal can be found in a number of historical locations: from the Christian conceptions of Augustine and Aquinas who – in different ways – would locate any notion of equality among human beings in relation to God, to notions of equality that have emerged in recent centuries in liberal, rights-based political discourses.

By introducing a dimension of ethics-based morality into her just war, Elshtain is able to move away from some of the difficulties in attempting to solely conform to the requirements of law as a moral position; difficulties brought about because the US was an original signatory to the UN Charter and undertook to observe the following: 'All

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<sup>18</sup> Elshtain, 2004, p. 168.

<sup>19</sup> *Id.*

<sup>20</sup> *Ibid.*, p. 170.

Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.<sup>21</sup> Counterpoint to Article 2 is Article 51, which states: 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations'. The context of the article is that of one state defending itself against the attack of another.<sup>22</sup> The United States, having been attacked by Al-Qaeda, held the Taliban regime in Afghanistan collectively responsible with Al-Qaeda for the violence that had taken place, conflating the quite separate degrees of moral and legal responsibility of each group and producing a state target – albeit a failed or failing state – against whom action could be legitimately taken.

By shifting towards a more ethics-oriented moral position Elshtain avoids some of the difficulties raised by appeals to codified morality in the shape of international law. She calls for 'We, the powerful' to heed 'all cries for justice and relief from people who are being preyed upon, whether by nonstate marauders (like terrorists) or by state-sponsored enforcers'.<sup>23</sup> In so doing, Elshtain prioritizes liberal concern for individuals, and their freedoms, above the rights of states to remain immune to external interference. She discursively locates the actions of 'we, the powerful' with notions of 'justice' and 'relief', inviting her readers to form themselves as ethical subjects at different levels of responsibility. The ethical self-subjection of individual political leaders depends on their willingness to pursue the actions against the Other who has done wrong: the 'nonstate marauders (like terrorists)' and 'state-sponsored enforcers'. Similarly, fellow citizens can form themselves as ethical by supporting such action. Further, Elshtain forms herself as ethical in proposing the projection of the liberal democratic values that represents her community, her state, onto others whose moral codes are formed differently to her own: the right to equality as a woman, the right to equality and freedom of religion. However, it should be noted that the bible, on which she relies as a moral source, is replete with numerous examples of women in subordinate social roles. And neither Augustine nor Aquinas, to whom she turns on many occasions as sources of political, religious, and intellectual authority for her own writings, did much to advance the position of women, either inside or outside the Church. With regard to equality of

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<sup>21</sup> Charter of the United Nations, Chapter 1, Article 2, located at <http://www.un.org/aboutun/charter/> 4 December 2008.

<sup>22</sup> *Id.*

<sup>23</sup> Elshtain, 2004, p. 170.

men and women in her moral code, Elshtain adopts the political, egalitarian Enlightenment aspirations of the writers of the American Declaration of Independence: all the while overlooking many of the religion-based commonalities in the treatment of women shared by the Taliban and both the fifth century bishop and thirteenth century monk she frequently cites. Maja Zehfuss reads the situation thus: 'Given that [Elshtain's] praise for American principles, values and identity occurs as part of an argument designed to show that the 'war on terror' is just, war is in effect justified not on the grounds of the stipulated [just war] criteria, but on the moral superiority of US practices'.<sup>24</sup> Zehfuss makes a telling observation here; just war may comprise part of Elshtain's moral code but it appears that Elshtain's moves towards the promotion of liberal values at the expense of at least a dilution of the state-oriented elements of the just war principles she advocates.

Having briefly considered aspects of Elshtain's just war, the moral sources she relies upon and the shift in her arguments post-2001, the chapter moves on to examine in greater detail her framing of ethical subjectivity in the context of sovereignty and war. Despite her promotion of liberal values, Elshtain retains a strong basis for her understanding of subjectivity and war in the context of the sovereign state. Earlier, Elshtain's reliance on notions of protecting the weak drawn from Augustine and Aquinas was pointed out in her words: 'We, the powerful, must respond to attacks against persons who cannot defend themselves because they, like us, are human beings, hence equal in regard to us'.<sup>25</sup> However, she subjects this willingness to use force in the protection of others to the primacy of the state as she goes on to argue: 'because they, like us, are members of states, or would-be states, whose primary obligation is to protect the lives of those citizens who inhabit their polities'.<sup>26</sup> The protection and promotion of strong and competent states held in equal regard is, for Elshtain, the surest way to ensure the enforcement of rights for individuals; even where that means the pursuit of war or intervention.

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<sup>24</sup> Zehfuss, M., 'The Tragedy of Violent Justice: The Danger of Elshtain's Just War Against Terror', *International Relations*, Vol. 21, No. 4 (2007) p. 499.

<sup>25</sup> Elshtain, 2004, p. 170.

<sup>26</sup> *Id.*

## Sovereignty and war

In *Sovereignty: God, State, and Self* Elshtain's approach to the state and the self suggests that the individual is in some way linked to, and dependent upon, the sovereign state as the site of ethical subjectivation. She writes:

A streamlined version of my thesis would go like this: as sovereign state is to sovereign God, so sovereign selves are to sovereign states. Given that sovereignty in the political sense "named" self-determination for a territorial, collective entity, it is altogether unsurprising that the logic of sovereignty came unbound and migrated, becoming attached more and more to notions of the self.<sup>27</sup>

Elshtain's allocation of primacy of sovereignty to God is consistent with her own Christian perspective, demonstrated in her reliance on Augustine, and to a lesser extent Aquinas, in her just war. However, within her ontology the self-determining sovereign state has primacy over individual existence; with subjectivity formed in relationship to the state, as well as the family and broader community. Because of the priority she grants to the state, Elshtain rejects as problematic any notion that the UN provides legitimate authority for military action, observing that 'historically, approval by an international body has not been viewed by just war theorists as a just cause requirement'.<sup>28</sup> Elshtain is accurate in this statement but, with the US having refused to join the League of Nations, it is only with the advent of the UN in 1945 that the US has belonged to an international body with the potential and the mandate to decide on *ad bellum* claims.<sup>29</sup> This is a short period when compared to the 1600 years of the just war tradition since Augustine was writing; though her rejection of the UN as an authoritative body owes more here to her strongly-held commitment to the state than to just war precedent. This, in turn, impacts upon the emergence of the ethical subject of war in a state context. For example, Elshtain refers to the American war for independence and identifies the rebelling colonies as a legitimising authority for their actions against illegitimate authority.<sup>30</sup>

In the gap between the breakdown of the codes imposed by America's British colonial masters to govern the lives of the people and the establishment of new codes to

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<sup>27</sup> Elshtain, J.B., *Sovereignty: God, State, and Self* (New York: Basic Books, 2008a) p. 159.

<sup>28</sup> Elshtain, 2004, p. 214.

<sup>29</sup> 'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken ... to maintain or restore international peace and security.' UN Charter, Article 39, Chapter 7, located at <http://www.un.org/en/documents/charter/index.shtml> , 6 July 2008.

<sup>30</sup> Elshtain, 2004, p. 215.

shape the lives of free Americans – the Declaration of Independence and the US Constitution – those who fought for independence formed their own ethical subjectivity by ‘resisting oppression [and] by seeking to overthrow illegitimate authority’.<sup>31</sup> In the absence of recognised codes to guide the conduct of individuals in the War of Independence – and of the Warsaw Ghetto Uprising of World War II – ethical subjectivity is creatively self-constituted in opposition to ‘oppression’ and ‘illegitimate authority’. When transposed to the intervention in Afghanistan, complications emerge to which Elshtain does not do justice. Accepting, for example, her *prima facie* case that the US acted justly in attacking Afghanistan in 2001 and overthrowing the regime that allowed Al-Qaeda to operate within Afghan borders as an act of self-defence, the question arises as to where moral authority lies almost a decade after the initial invasion? Do ongoing NATO actions retain moral authority from the original wrong of 2001? Alternatively, applying the US War of Independence analogy to Afghanistan: ‘the legitimate authority requirement of just war does not morally invalidate the resort to arms by those resisting oppression by seeking to overthrow illegitimate authority’.<sup>32</sup> Where the 2001 regime may have been legitimately overthrown because of its relationship with Al-Qaeda, it is possible under Elshtain’s arguments for Afghan fighters, who were not part of the previous regime and who reject the government elected during a period of foreign occupation, to emerge as ethical subjects of war: their legitimacy constituted in relationship to the cultural and historical illegitimacy of the current Kabul regime, as well as the aggression of an occupying power.

Throughout her writings Elshtain repeatedly returns to Augustine as a means of challenging modern political practice and assumptions, both for sovereign states and individuals, and moves beyond the confines of a narrow communitarian argument and counter-argument. The emergence of the ethical subject in Elshtain's just war is located at the interstice of her work and Augustine's. She summarises what she sees as Augustine's contribution to contemporary politics and conceptions of subjectivity as follows: '[Augustine] gives us the great gift of an alternative way of thinking and being in the world, a way that is in many vital respects available to those who are not doctrinally Augustine's brothers and sisters.'<sup>33</sup> And why is this of such importance to Elshtain, and further, to any who seek to analyse or comment upon political violence?

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Elshtain, J.B., *Augustine and the Limits of Politics* (Notre Dame: University of Notre Dame Press, 1995) p. 114.

Because, she adds: 'In the twentieth century, justification and rationalization of violence as the *modus operandi* of social change introduces an element of remorseless moral absolutism into politics'.<sup>34</sup> Augustine wrote during a period shaped by different forms of violence: military violence used both to attack and defend the Roman Empire; religious violence as Christianity struggled to sustain its religious authority in the face of resurgent, traditional Roman religious practice; and doctrinal violence against heretics who sought to undermine the Church from within. Augustine was no pacifist, but neither was he permissive towards the unconstrained use or abuse of Imperial military might, limiting his advocacy of violence to only the most important of reasons as legitimised in his just war. Different aspects of Augustine's writings continue to be used to oppose violence today, in particular his just war writings which – for many – are part of the unquestioned moral and cultural fabric of the West.

Having argued that Elshtain introduces an ethics-oriented dimension to her position on intervention, particularly in relation to Afghanistan and Iraq, it seems clear that – away from the difficulties of creating a juridicalised case within the parameters of international law that rests on particular post-Westphalian notions of sovereignty and statehood – her conception of sovereignty is both nuanced and complex: emerging in an interplay of religion, state and the subject. In *Sovereignty: God, State and Self* Elshtain distinguishes between the three sovereignties of the book title: 'personal autonomy (rightly understood) and national sovereignty are achievements rather than suppositions. We presuppose – we believe – that God is sovereign (and this for hundreds of reasons)'.<sup>35</sup> She explores the relationship between the Divine and the earthly, emphasising the importance, for her, of adopting Augustinian concepts in the constitution of the individual and the state. Elshtain argues that 'the Augustinian self offers a powerful corrective to any vision of the self "at one-ness". For Augustine there are intrinsic limits to our capacity to understand fully, and we cannot look to the self for a vision of wholeness'.<sup>36</sup> This Augustinian rejection of 'at one-ness' is not, however, based solely on a capacity for self-knowing, partial or otherwise. Rather it stems from the theological concept of the Fall and the loss of perfection and perfect self-knowing as a consequence of separation from God. This imperfect subject is subsequently constituted in the shared life of the state. With regard to the 'security dilemma' in

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<sup>34</sup> *Id.*

<sup>35</sup> Elshtain, 2008a, p. 228.

<sup>36</sup> *Ibid.*, p. 161.

International Relations, referring to the tension between the justice in the common life of individuals and justice between states, Elshtain draws on Augustine:

People never possess a kingdom “so securely as not to fear subjugation by their enemies; in fact, such is the instability of human affairs that no people has ever been allowed such a degree of tranquillity as to remove all dread of hostile attacks on their life in this world.”<sup>37</sup>

One assumption at the heart of Elshtain’s endeavour is that while notions of state and self are mutually constitutive, they are also contingent, since they are formed in different ways at different times in history according to the political, cultural and religious situations at the time. Regarding the state she goes on to say:

we cannot assume that a nation-state is sovereign until it demonstrates its ability to be independent from the protection of another state, to treat its citizens decently, and to foster a vibrant society: sovereignty as responsibility. This marks a state as a mature member of the international community.<sup>38</sup>

In this statement Elshtain’s position is inseparable from Walzer’s, as will be seen in the second half of this chapter. Elshtain rejects a narrow legalist view of sovereignty that views all states as equal, adding an ethical dimension to the very recognition of sovereignty as a site within which ethical subjectivation becomes possible. For a state to treat its citizens decently, countless, mutually constitutive individual decisions across multiple relations of power and regimes of knowledge must be made. Where this is possible within a state, Elshtain grants the state the anthropocentric description of ‘mature’.<sup>39</sup> The decisions about what it means for a state to treat its citizens fairly, or what aspects of statehood constitute a vibrant society, are themselves ethical judgements: the implication being that such a state will reflect – and project – liberal values. Contrarily, to describe another state as immature is to make an ethical judgement, by implication, from a position of maturity. This rejection of the state and sovereignty as an always/already physical and conceptual existence thereby acknowledges the contingency of statehood and points to the contingency of subjectivities formed or self-formed within that site of contested identity. This attitude towards the state provides a conception that is less rigid and more open to multiple readings than would be granted by a strictly communitarian framework. Elshtain goes further: the state cannot passively enjoy its advantages in an imagined isolationist

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<sup>37</sup> *Ibid.*, p. 10.

<sup>38</sup> *Ibid.*, p. 228.

<sup>39</sup> *Id.*

utopia. Her Augustinianism calls for active engagement between states, regardless of their maturity, whilst within states individual morality is in the process of being formed.

Turning to the individual Elshtain writes: ‘We live in our own heads. We promote disciplinary codes: just consider how excessively legalistic our own society has become. We are moralistic – consider the almost hysterical moralism involved in campaigns against trans fats or God knows what.’<sup>40</sup> Elshtain acknowledges a relationship between the individual and codified morality that emerges on a shared common life – expressed in both legal terms as well as morality that requires conformity to, or avoidance of, particular behaviours. Yet she also goes beyond any straightforward conformity to simple codified morality; her Augustinianism prompting a self-reflexive, self-forming subject to action:

The pilgrim of Augustinian Christianity is one who can challenge the idolatries of his or her day without opting out (as if one could) or fleeing into a realm at least theoretically removed from the vortex of political and social life. The pilgrim of Augustinian Christianity offers up that possibility, as the late antique world makes startling contact with late modernity.<sup>41</sup>

For Elshtain, the ethical subject cannot opt out of engagement with political and social life. This may manifest itself in different ways but this thesis is particularly concerned with military intervention and the ethical subject of war. Elshtain ascribes moral responsibility to both the state and the individual, and places on each a responsibility for active engagement in the world. It is such a sense of responsibility that underpins her *Just War Against Terror* and, in particular, the need for America to act beyond its own borders to exert what she sees as its moral responsibility. This – an America that acts beyond its own borders – becomes a site for the emergence of ethical subjectivity, both of the leaders who take those decisions and of the combatants who will engage an enemy on the field of battle. Individual ethical subjectivity can be seen constituted by Elshtain in relation to both self as self, and self who acts in relation to others: ‘It is unsurprising that we flinch and heartening that so often human beings rise to the occasion as they answer generously and forthrightly not only the question, Who am I? But also, Who is my neighbour?’<sup>42</sup> In terms of the responsibility to act to protect

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<sup>40</sup> *Ibid.*, p. 232.

<sup>41</sup> *Ibid.*, p. 241.

<sup>42</sup> *Id.*

her, or his, neighbour Elshtain interpellates Aquinas' position on protecting the innocent:

During the run-up to the Iraq War ... I reminded those debating the war that St. Thomas Aquinas, among others, insisted that preventing the innocent from certain harm could well be a justified *casus belli* – the innocent being those without the means to defend themselves ... What is the point of bold commitments to universal human rights – the most fundamental of which is a right to life itself – if such rights can be violated systematically and the so-called international community, rather than enforcing those rights, wrings its hands and expresses regrets?<sup>43</sup>

In turning to Aquinas and his arguments about protecting the innocent, Elshtain seeks to add a dimension of historical support for her contemporary position: a position that includes a commitment to liberal values and human rights, and enthusiasm for the use of force to protect them, even though Aquinas would not recognise these values and rights in the terms she sets them out. Elshtain's reliance on the state in her *schema* would lead – as a result of proscriptions set out in the UN Charter – to the rejection of the protection of the innocent as a legitimate *casus belli*. However, Aquinas wrote centuries before the emergence of the state and conceptions of state sovereignty and the use of his ideas enables Elshtain to modify her just war position by transcending the limits of modern understandings of sovereignty in International Law. Her shift away from non-intervention or, at least, reluctant interventionism, parallels – indeed encourages – America's move towards military engagement: not only in self-defence as she argued in the case of Afghanistan, but in forcefully *promoting* liberal, American values in the cases of both Afghanistan and Iraq. However, there remains the issue for Elshtain of how one should act on the battlefield once military intervention has been sanctioned. For the individual combatant this means conforming to the *jus in bello* requirements of just war and, thereby, forming her, or his, ethical subjectivity.

### **The ethical subject of war**

In the case of the soldier, ethical subjectivation, and self-subjectivation, occur in the context of the state's political authority and military apparatus, where she, or he, must conform to military law in military operations directed by the sovereign power. As will be seen, however, the constitution of Elshtain's ethical subject is not limited to conformity to legal codes: leaving open the possibility of creative self-subjectivation in

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<sup>43</sup> Elshtain, 2004, p. 185.

the domain of war. The discussion moves on to consider how the individual emerges as an ethical subject of war in Elshstain's just war discourse, in the act of distinguishing between combatant and noncombatant. Elshstain addresses the relative risk that should be borne by both in the course of military action: 'According to just war thinking, it is better to risk the lives of one's own combatants than those of enemy noncombatants.'<sup>44</sup> In this view she echoes the position set out by Walzer in *Just and Unjust Wars*.<sup>45</sup> If the deliberate targeting of civilians marks one unacceptable limit of the just war criterion of discrimination between legitimate and illegitimate targets, then the other equally unacceptable limit is articulated by Elshstain – the pursuit of zero casualty rates among rightly authorised combatants at a cost to noncombatants. Elshstain writes: 'During the Kosovo war I criticized the Clinton administration for its stated zero-casualty policy. In that conflict, we aimed to sacrifice Serbian civilians rather than risk the life of a single American soldier. Such a policy is not acceptable on just war grounds.'<sup>46</sup> However, US experiences such as the public, televised parading – dragging – through Mogadishu of the body of an American soldier contributed to an unwillingness in the Clinton administration to see American personnel killed in combat. This led to the adoption of a policy centred around the coercive use of 'safe' air power to coerce Milosevic into ceasing activities in Kosovo. It was Clinton's desire for NATO, and particularly the US, not to endure casualties amongst its combatants that inspired Elshstain's criticism of the policy on just war grounds.

A number of just war factors come together here for Elshstain. Firstly, there is her general support for intervention based on Aquinas' *casus belli* of protection of the innocent. And, secondly, there is her criticism of a policy that values the lives of combatants more highly than the lives of innocent noncombatants that may be lost as a result of the choice to make NATO aircraft less accurate in their bombing by keeping them above the range of Serbian ground-to-air defences. There are two ways in which the ethical subject emerges here: the first being the individual who wields (albeit neither fully nor perfectly) sovereign power – in this instance Clinton – and the other is the individual combatant on the battlefield or piloting an aircraft who must decide the relative risk that she, or he, is willing to bear in order to protect noncombatants: crucially, within the parameters set out by the state under the authority of the President.

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<sup>44</sup> *Ibid.*, p. 65.

<sup>45</sup> Walzer, 2000, p. 137ff.

<sup>46</sup> Elshstain, 2004, p. 69.

However, operating as they do in relations of power within the institutions of state, the leader and the combatant in the field have differing levels of freedom within which they can form themselves as ethical. For example, once the US Congress grants special war powers to the President, she, or he, has considerable (but not absolute) freedom within which ethical self-subjection is possible: both in complying with the requirements of law as codified morality, and in creative self-forming in relation to ethics-oriented morality, such as the pursuit of justice or freedom for the oppressed. The pilot – combatant – over Serbia is required to comply with strict Rules of Engagement which are highly codified and legally binding. In this circumstance, even if that individual is *willing* to take on additional risk to herself, or himself, in the protection of noncombatants, while pursuing a military objective, she, or he, may not do so if it contradicts the Rules of Engagement. The combatant as ethical subject of war is, in this instance, the one who conforms to the codified morality expressed in the Rules of Engagement dictated by the civilian or civilians who wield sovereign power: leaving little or no opportunity for ethical self-formation. While a strict separation of *ad bellum* and *in bello* criteria was not fully and formally established until Vattel in the eighteenth century, Aquinas’ setting out of the importance of intention, in relation to ‘double-effect’,<sup>47</sup> and the act of killing in homicidal self-defence, provides sufficient grounds for Elshtain’s criticism of Clinton’s policy. By attempting to use air power to coerce Milosevic to cease his activity against the Kosovars, Clinton could not demonstrate that it was his *intention* to fully protect the innocent – in this case the innocent Serbs, as opposed to the innocent Kosovars, who were his primary focus – when his pursuit of zero allied combatant casualties would result in a much greater risk of ‘collateral damage’ to noncombatants.

While her criticism of the Clinton approach to the bombing of Serbia is unequivocal, Elshtain is more approving of the efforts made by US forces to discriminate between legitimate and illegitimate targets in Afghanistan, where she asks:

‘Have *in bello* criteria been met in the US war on terrorism? On the rule of discrimination, it is clear that every effort is being made to separate combatants from noncombatants, and that targeting civilians has been ruled out as an explicit war-fighting strategy’.<sup>48</sup>

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<sup>47</sup> Aquinas, *Summa Theologica*, II-II, Q. 64, A. 7, p. 1961.

<sup>48</sup> *Op cit.*, p. 67.

Bellamy takes issue with Elshtain here, not on the question of a policy of deliberately targeting civilians, which he is willing to accept the US did not undertake, but on the matter of whether 'the US and its allies made 'every effort' to separate combatants from noncombatants'.<sup>49</sup> Bellamy goes on to discuss the implications of the initial plans by the US and its allies to reduce their potential casualties by not deploying large numbers of ground troops but to forge alliances instead with Afghan Northern Alliance forces. By relying on irregular forces for intelligence when their leader, General Dostrum, may have faced a number of conflicting political agendas, the attention to detail that the US and allied commanders paid, with respect to target selection, could not have been enforced as effectively as it could have been if they had been using their own personnel. Human error alone is likely to have resulted in an increased number of noncombatant casualties: an outcome that could only be made worse if US backing was used surreptitiously to settle old domestic scores or to pursue a secondary domestic agenda by ostensible Afghan allies. By the US choosing the course it did, the latter possibility could not be ruled out or reduced.

In the Afghanistan context, Elshtain identifies a new site of contestation in the emergence of the ethical subject of the increasingly juridicalized and state-centred just war tradition, namely: how does a legitimate, uniformed and authorised combatant engage militarily with what she calls an illegal combatant, that is, someone who fights with no recognised state-backed legitimacy for a non-state actor such as Al-Qaeda or the Taliban (or other insurgent groups in the case of Iraq). She writes:

I agree with Walzer that we need an account of the status of illegal combatants, of captured terrorists. For they too are in an ambiguous zone. They are not legitimate combatants under the just war tradition, universal war codes, various Geneva conventions, etc'.<sup>50</sup>

From Elshtain's description here it seems clear that illegal combatants fall outside of established codes and occupy an ethical non-space when it comes to her application of just war. They cannot emerge as ethical from the axis of code-oriented morality in her just war theory because their lack of state legitimacy exempts them from consideration. And yet, in the discursive act of locating these individuals within her broader arguments in *Just War Against Terror*, she is clearly acknowledging that they belong somewhere (unspecified) in the debate. While this anomaly can be dealt with in

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<sup>49</sup> Bellamy, A.J., 'Is the War on Terror Just?' *International Relations*, Vol. 19, No. 3 (2005) p. 288.

<sup>50</sup> Elshtain, 2007, p. 503.

a number of ways, the most important distinction would seem to be to either permanently exclude such illegitimate combatants from just war, or to somehow broaden the scope of just war and the *jus in bello* criterion of discrimination to include them as combatants, or constitute them as ethical in relation to non-codified ethical sources such as opposing oppression or pursuing freedom. It would be difficult to extend the codes of just war because for discrimination to occur there needs to be some means of identification. Throughout history wars have generally been fought between recognisable combatants, frequently separated from civilian populations. However, such differentiation is all but impossible if an enemy *is* a civilian: in the sense that she, or he, is not part of the military institutions of a particular state, dresses like other civilians, and launches surprise attacks from the deliberate anonymity and relative safety of a shield of other civilian bystanders. The irony here is that a terrorist or insurgent only finds safety behind a shield of innocent bystanders if their targets – uniformed, regular military personnel – form themselves as ethical by exercising discrimination and restraint in their response: taking on greater risk to the self in order to protect the innocent. The nature of asymmetric warfare such as that found in the interventions in Afghanistan and Iraq as part of the war on terror(ism) means that such rudimentary recognitions are no longer available to the soldier who stands guard, or goes on the offensive.

Among the politicians and the political theorists who observe the battle space from afar, familiar *in bello* arguments such as the need for discrimination in the waging of war can no longer be taken for granted. As long as combatants in conventional fielded forces are placed in such situations, current juridicalized just war requirements make it increasingly difficult for them to emerge as ethical subjects of war in conformity to Rules of Engagement as codified morality. Elshtain refers to Al-Qaeda, constituting the ethical subjectivity of individuals therein in relation to ethical sources, referring to a ‘lust to dominate ... [with] violence that recognises no limits’.<sup>51</sup> Given that Al-Qaeda or Taliban combatants fall outside of the rule-governed, code-oriented aspect of her just war, Elshtain is left with little choice but to shift the constitution of their subjectivity away from a dependence on code-oriented moral sources towards such ethics-oriented sources. In contrast, American and other ‘foreign troops and peacekeepers’ emerge as ethical subjects of war in relation to *both* code-oriented morality – since they are legitimate fielded forces of a legitimate state – and ethics-

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<sup>51</sup> Elshtain, 2004, p. 152.

oriented morality, since they oppose the illegitimate 'will to dominate' of the terrorist or insurgent Other.<sup>52</sup>

In setting out to make a case for forceful intervention in Afghanistan Elshtain draws on the key question Augustine faced regarding Christians serving in the Roman Army: whether Christians can take up arms in the pursuit of justice.<sup>53</sup> She interpellates into her own argument Augustine's use of both scripture and the recorded acts of Jesus himself, in considering whether to take up arms in self-defence. She, like Augustine, rejects pacifistic non-violence as a viable response to threat and danger in a violent world, preferring instead to grant the use of force but only in situations where, relative to any alternative, it is the most (relatively) just response. Then, periodically, she brings the ancient Christian arguments into the present:

They knew that in a fallen world, filled with imperfect human beings, we cannot achieve perfection in earthly dominion, in religious life, or in anything else, and that – even more important – we all have responsibility to and for one another to serve and to love our neighbours. If our neighbour is being slaughtered do we stand by and do nothing?<sup>54</sup>

However, the ethical subject of war is ontologically distinct between the historical and modern positions. As this thesis will argue in more detail in Chapter 4, Augustine's ethical subject of war is constituted primarily in relation to the command and teleological morality of God as revealed in Holy Scriptures; whilst Elshtain's neo-Hegelian ethical subject of war is necessarily constituted within a particular political community, ultimately the state. Cian O'Driscoll describes her approach in *Just War Against Terror* as 'a robust and muscular conception of the *jus ad bellum* ... arguably a more robust and muscular *jus ad bellum* than one finds in the writings of Augustine'.<sup>55</sup> O'Driscoll's criticism has some merit, since Elshtain appears to refer to Augustine for a permission to intervene that a modern juridical reading of just war would deny. Rengger's reading, however, is more nuanced in relating Elshtain's more robust applications of just war to her use of post-medieval just war in contrast to her more restrained re-reading and application of Augustine. In his review of *Just War Against Terror* Rengger identifies a shift, even from chapter to chapter, in the just war discourses Elshtain relies upon in framing her argument, moving from a casuist

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<sup>52</sup> *Ibid.*, p. 155.

<sup>53</sup> *Ibid.*, p. 50

<sup>54</sup> *Ibid.*, p. 51.

<sup>55</sup> O'Driscoll, C., 'Jean Bethke Elshtain's *Just War Against Terror*: A Tale of Two Cities', *International Relations*, Vol. 21, No. 4 (2007) p. 489.

Augustinian just war to a juristic approach more usually linked with the early modern and modern periods.<sup>56</sup> It is here that the continuities and discontinuities in Elshtain's use of historical just war discourses start to become apparent.

In setting out an argument in the context of America as a sovereign state that can, and should, defend itself against attack, Elshtain stands in greatest continuity with the early modern and modern just war writers, such as Grotius and Vattel, who frame their just war in terms of law and emerging sovereignty. Vattel's separation of the moral responsibility for *ad bellum* decisions and *in bello* actions in just war is particularly significant and Elshtain uses this bifurcation in framing her justifications for intervention, as well as in addressing the challenges of fighting non-conventional wars in a just manner. Alongside this emerges a key discontinuity for Elshtain, since Grotius and Vattel, amongst others, sought to move their just war arguments away from the Divine or religious towards the secular: emphasising the application of reason in an Enlightenment period increasingly oriented towards scientific method. Elshtain, conversely, interpellates Augustine and Aquinas – with the greater emphasis on Augustine – and deploys concepts such as Augustinian restraint on the use of power and a Thomistic emphasis on intentions with regard to safeguarding the innocent and punishing the wicked. However, in using Augustine and Aquinas in this way, she calls upon their conceptions of ethical substance, such as a self-reflexivity that enables an individual to choose right actions, whilst setting to one side the important matter of the *telos* of both men which finds ultimate expression in God.

Elshtain rejects criticisms from Walker and O'Driscoll that allude to either origins or timelessness in her use of Augustine, for example, describing it instead as 'an act of *ressourcement*, a fresh look at the sources of wisdom and instruction a thinker from our past may offer'.<sup>57</sup> It is possible to see why her focus on Augustine leaves Elshtain open to the charge of seeking just war origins in his work, though her lack of any attempt to demonstrate such Augustinian origins supports her rejection of such criticism. However, her defence against accusations of adopting an attitude of timelessness is not so easy to support, since she regularly shifts between the present and the past and their respective incommensurate ontologies with regard to ethical subjectivity, with little

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<sup>56</sup> Rengger, 2004, p. 113. This particular trajectory can be seen in the movement from Chapter 3 to Chapter 4 of *Just War Against Terror*.

<sup>57</sup> Elshtain, 2007, p. 506.

contextualisation between the two. The next chapter will re-read Augustine and reveal how Elshtain's discourse indicates shifts between a reliance on codes and ethical self-formation.

The re-reading of Elshtain that has been carried out here – beginning with *Just War Against Terror* but going on to draw more widely from her *oeuvre* – reveals more of the nuances of her position on just war, and particularly the ethical subject of war, than would be the case if her work is approached solely through the lens of either Afghanistan or Iraq or the wider war on terror. Elshtain's use of ancient Christian texts in debates that are often secularly defined or driven help the reader to appreciate a *telos* of the subject in her work that goes beyond an instrumental association with, or commitment to, the state in time of war. However, given the religious connotations that are contained in many 'war on terror' discourses, the clear Christian associations in Elshtain's work – historical though they may be – might also prove to be problematic.

Having considered various aspects of Elshtain's just war and the way she deploys earlier just war discourses in creating her own position from whence emerges her ethical subject of war, the argument now turns to Walzer and a firmer emphasis on statehood in just war, seeking the emergence of his ethical subject of war.

### **Walzer and just war**

Walzer describes arriving at the use of just war arguments, almost by default, during the Vietnam War.<sup>58</sup> The dominance of political realism at that time in both the theory and practice of politics, and in wider society, had resulted in a search by critics for a language of morality, and just war is what re-emerged from the theological faculties to be reclaimed by Walzer for International Relations, political theory, military colleges and society at large. Walzer sets out the moral basis of his just war theory, stating: 'The morality I shall expound is in its philosophical form a doctrine of human rights'.<sup>59</sup> That Walzer refers to a *doctrine* of human rights insinuates an innate authority; this is a working, self-evident assumption that he sees no need to justify or defend. That human rights should be a cornerstone of his moral code – of which just war is a part – demonstrates a liberal dimension in an ontology that prioritises the

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<sup>58</sup> Walzer, M., *Arguing About War* (New Haven and London: Yale University Press, 2004) p. 6ff.

<sup>59</sup> Walzer, 2000, p. xxii.

particularity of a shared social existence. He goes on to add: 'I shall say nothing here of the ideas of personality, action and intention that this doctrine probably presupposes'.<sup>60</sup> He acknowledges the likelihood of his having presuppositions, though he has not developed this point further. However, these unspecified presuppositions, along with other aspects of the content of Walzer's just war theory have sparked debate since the publication of *Just and Unjust Wars*.

Rengger sets Walzer's work in its historical context, summarising its significance for the just war tradition:

*Just and Unjust Wars*, unambiguously the most influential academic reconsideration of the tradition in recent times, was – as Walzer tells us in the preface – begun not as a result of any academic interests but as a result of passionate involvement in a key debate, the debate over the Vietnam War, of which Walzer was a leading academic opponent.<sup>61</sup>

Rengger locates Walzer firmly at the apex of modern contributors to the just war tradition, so when the moral justification of military intervention is discussed, it is important to include Walzer in such a debate, given his prominence in the field for almost three decades. Rengger also locates Walzer in relation to twentieth century trends in just war thinking, claiming that 'the tradition had developed *several* faces by the mid-twentieth century, that the increasingly dominant face was secular and at least in broad terms sympathetic to liberal ideas'.<sup>62</sup> It is apparent from Rengger's observations that Walzer's just war arguments are contested from both religious and secular sources. And yet from the time of its publication in 1977 until the present day its use in just war debate has increased, not decreased. Walzer's reputation in the academic world was already established by the time *Just and Unjust Wars* was published. Its timeliness may have struck a chord with a readership increasingly cynical about war in light of the events in Vietnam. His propounding of a secular just war theory moved the debate away from the use of religious texts and Church authority as moral sources at a time when American, and other, Catholic bishops were flexing their ecclesiastical muscle in the debate surrounding nuclear weapons and Mutually Assured Destruction with its apt three-letter acronym – MAD. By removing any explicitly religious dimension of just war, Walzer shifted the debate towards the secular

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<sup>60</sup> *Id.*

<sup>61</sup> Rengger, N., 'On the Just War Tradition in the Twenty-First Century', *International Affairs*, Vol. 78, No. 2 (2002) p. 355.

<sup>62</sup> *Id.*

mainstream and engaged a wider audience. In so doing, his approach paralleled the just war writings of Grotius and Vattel in the seventeenth and eighteenth centuries respectively, who, as incipient notions of sovereignty and statehood emerged in tandem with secularising Enlightenment thought, sought to base their arguments on the achievements of human intellect instead of the Divine moral order that had previously been advocated by a powerful Church.

Walzer's impact is most likely due to a combination of all of these factors, and others as well, that created the conditions for the public and academic interest in *Just and Unjust Wars*. Brian Orend offers a further perspective on recent developments by identifying the various military interventions in Bosnia, Rwanda, Kosovo and Chechnya as providing the impetus for a renewed philosophical interest in the way wars are waged, and hence the re-visiting of Walzer's pivotal text.<sup>63</sup> Regardless of whether Walzer's place in recent just war debate is a legacy of his impact in the 1970s, or a result of recent interventions renewing his relevance, his position as a pre-eminent just war thinker is assured; while the cause of his position will continue to be debated.

Walzer, as with Elshtain and her *Just War Against Terror*, wrote at a time of great tumult in American politics after the Vietnam War, not so much a philosophical enquiry as a practical reflection on war and morality. Hence, *Just and Unjust Wars* is characterised by its reference to practical, historical examples of both just and unjust wars, as well as those wars that do not conveniently, or obviously, fall into one category or another, and the moral conduct of those wars by the combatants involved. Walzer gives his reason for this: 'I was writing *Just and Unjust Wars* in the middle 1970s, and my decision to work the argument through historical examples was in part a reaction against the hypothetical cases of my friends'.<sup>64</sup> He is referring to what he saw as the abstract and theoretical philosophical tendencies of a number of fellow academics at that time and he chose his own path because he felt the alternative approaches were 'too great a distance from the real world'.<sup>65</sup> The outcome is a casuistry – characteristic of Aquinas' approach in the 13<sup>th</sup> century – based on a moral code that includes an emphasis on the state and a reliance on a number of juristic just war concepts that emerged in the West alongside sovereignty itself in the work of Grotius and Vattel. The

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<sup>63</sup> Orend, B., 'Just and Lawful Conduct in War: Reflections on Michael Walzer', *Law and Philosophy*, Vol. 20, No. 1 (Jan. 2001) p. 1.

<sup>64</sup> Walzer, 2003, p. 308.

<sup>65</sup> *Id.*

next section will look further at just war and its relationship with sovereignty in Walzer's work.

### **Just war and sovereignty**

Walzer broadly summarizes the aspect of his moral code that enables the conduct of war to be described, disputed and justified, or otherwise, as the 'war convention', which for him is made up of 'the set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgements of military conduct'.<sup>66</sup> With regard to the relationship between law and morality, Walzer argues: 'Now the lawmakers, since what they are codifying already exists, must represent the people for whom it exists, that is, a group of men and women who share intuitions, who are committed to a particular set of principles, however confused that set may be'.<sup>67</sup> So, inasmuch as laws emerge from previously existing moralities, laws, international conventions and protocols are all discourses that Walzer draws upon in forming his moral code. He makes this clear when he writes:

[T]he legal handbooks are not the only place to find the war convention, and its actual existence is demonstrated not by the existence of the handbooks but by the moral arguments that everywhere accompany the practice of war ... Hence the method of this book: we look to the lawyers for general formulas, but to historical cases and actual debates for those particular judgements that both reflect the war convention and constitute its vital force.<sup>68</sup>

It can be seen from Walzer's comments here that his just war theory is strongly, but not entirely, shaped by the laws of war, which he draws from Grotius, 'who took over the tradition and began to work it into secular form',<sup>69</sup> and Vattel, who a century later continued the formalisation of the laws of war in a that Grotius embarked upon. Walzer turns to Vattel on a number of occasions, for example, on the matter of preventive war. Walzer uses Vattel's reading of the British and Austrian response to the growing power of the French, when it appeared that the Spanish throne might be given to, or fall to, Louis XIV of France, against which to locate his own view. Vattel formulated a balance-of-power argument to justify military action against the French and Spanish, an approach that aimed to preserve the concept of sovereignty and the

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<sup>66</sup> Walzer, 2000, p. 44.

<sup>67</sup> Walzer, M., *Interpretation and Social Criticism* (Cambridge and London: Harvard University Press, 1987) p. 19.

<sup>68</sup> Walzer, 2000, p. 44/45.

<sup>69</sup> *Ibid.*, p. xx.

independence of weaker states in the face of superior powers – an argument that Walzer rejects. Instead of presenting his own argument against preventive action, Walzer strengthens his position by discursively undermining Vattel’s argument. To present his case, Walzer uses Grotius who, a century earlier than Vattel, rejected balance of power as a legitimate *casus belli*. However, Walzer also sets out a list of propositions – all of which are found in Vattel’s *Law of Nations* – that define his own ‘*legalist paradigm*’, which in turn serves as ‘the fundamental structure for the moral comprehension of war’, while maintaining that ‘the justice and injustice of particular wars are not entirely determined by the paradigm’.<sup>70</sup>

Walzer also refers to a legal right to fight that ran ‘roughly from the age of Vattel to that of Oppenheim’.<sup>71</sup> While Walzer does not interpellate all of Vattel’s arguments verbatim, he uses aspects of these early modern conceptions of sovereignty, war and justice in order to constitute his own just war position in a legalist paradigm. To write a history of this present understanding of the relationship between morality, law and war with the aim of understanding how Walzer’s just war became discursively possible, a genealogical re-reading of the influential just war writings of Grotius and Vattel will take place in Chapters 6 and 7 of this thesis. The law can rightly be viewed as one domain within Walzer’s wider moral code. And it is the application of that moral code to particular examples of war that provide the basis of his just war theory.

Moving beyond the war convention, Walzer draws upon both human rights and state rights as sources for his moral code, of which his just war theory is a part. He writes, firstly, of human rights:

Individual rights (to life and liberty) underlie the most important judgements that we make about war. How these rights themselves are founded I cannot try to explain here. It is enough to say that they are somehow entailed by our sense of what it means to be a human being. If they are not natural, then we have invented them, but natural or invented, they are a palpable feature of our moral world. States’ rights are simply their collective form.<sup>72</sup>

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<sup>70</sup> *Ibid.*, p. 61 (*Original italics*).

<sup>71</sup> *Ibid.*, p. 63.

<sup>72</sup> *Ibid.*, p. 54.

Here Walzer calls on Grotius, whose view, at the time when states were coming into existence, was that the rights of states take their authority from the rights of the individuals – within his understanding of natural law at that time – who make up that state. For Grotius this is a response to the particular ontological tensions he faced in the early modern period as he attempted to shift the basis of individual subjectivity and the state away from the Divine to earthbound reason and natural law. If humans were created by God – as Grotius still professed – and states were brought into being by human political action, it would have been politically and religiously problematic for Grotius to give ontological priority to the state. Like Grotius, Walzer is explicit about the primacy of individual rights in his judgements about war, but Walzer breaks from Grotius' Christian doctrinal view that humans are created by, and in the image of, God. Orend is critical of Walzer's lack of detail at this point, noting: 'It is ironic that so much weight is put on human rights in Walzer's just war theory yet so little is said either about their nature or their justification'.<sup>73</sup> Perhaps Orend does not go far enough in his criticism here, given that degree to which Walzer's entire *schema* rests on an assumption he 'cannot try to explain here'.<sup>74</sup> However, this is not to say that Walzer does not have an explanation and he does hint at an unarticulated position when he postulates that rights 'are somehow entailed by our sense of what it means to be a human being'.<sup>75</sup> He suggests at least a minimum capacity for self-sensing or self-reflexivity, whilst leaning somewhat towards a more fully realised agency. Walzer is not committed to a pre-social self, rather he considers that the individual who speaks of the social life is in some way simultaneously spoken by it: 'the central issue ... is not the constitution of the self but the connection of the constituted selves, the pattern of social relations'.<sup>76</sup> In response to four critics of *Just and Unjust Wars*, Walzer clarifies his position further on the relationship between the individual, rights and the state, though he is more concerned with the political communities on which states are based.<sup>77</sup>

Individual rights may well derive, as I am inclined to think, from our ideas about personality and moral agency ... Rights are only enforceable within political communities where they have been collectively recognised, and the process by which they come to be recognized is a political process which requires a political

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<sup>73</sup> Orend, B., 'Michael Walzer on Resorting to Force', *Canadian Journal of Political Science*, Vol. 33, No. 3 (Sep 2000) p. 528.

<sup>74</sup> Walzer, 2000, p. 54.

<sup>75</sup> *Id.*

<sup>76</sup> Walzer, M., 'The Communitarian Critique of Liberalism', *Political Theory*, Vol. 18, No. 1 (Feb 1990) p. 21.

<sup>77</sup> Walzer, 1980, p. 210.

arena ... the only global community is pluralist in character, a community of nations, not of humanity.<sup>78</sup>

While Walzer does not develop his ideas on the relationships between rights, the constitution of the self, and the social life in *Just and Unjust Wars*, by granting priority to individual rights in the way he does, Walzer is operating across ontological boundaries by relying on a universalizing concept that is not, and perhaps cannot be, fully reconciled to his commitment to the particularity of political community set out here. Moving on to consider how moral agency and individual rights operate to form moral codes to guide behaviour within a community – ultimately the state – Walzer describes how tribalism has led and still leads to a ‘thick’ conception of social existence:

Tribalism names the commitment of individuals and groups to their own history, culture, and identity, and this commitment (though not any particular version of it) is a permanent feature of human social life. The parochialism, the moral thickness, that it breeds is similarly permanent. It can’t be overcome; it has to be accommodated.<sup>79</sup>

This ‘moral thickness’ refers to the formal and informal codes that emerge from the social lives of individuals and the common culture and shared identity that they produce. The ethical subject of war, therefore, in Walzer’s understanding is the individual who protects that common social existence – demarcated most commonly by the state in the modern polity – whether it be the leader who exerts sovereign power *ad bellum* to protect the state or the combatant who engages with an enemy on the field of battle. The ethical subject emerges in both *ad bellum* and *in bello* contexts by conforming to a codified morality that is itself the product of shared social existence over time expressed in laws, treaties and Rules of Engagement. Additionally, the ethical subject of war, by means of her, or his, justification of war or conduct in war, simultaneously constitutes the social and moral life of the state she, or he, represents and is a member thereof. This, in turn, directly shapes Walzer’s strongly held non-interventionist views, because those who have constituted a shared common life elsewhere, that has emerged historically as another state, also have a right to share that social life without external interference. So the ethical subject of war protects her, or his, own common life but does not threaten or interfere in anyone else’s. Walzer’s dependence on the relationship between individual and state rights, and his subsequent

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<sup>78</sup> *Ibid.*, p. 226.

<sup>79</sup> Walzer, 1994, p. 81.

ability to constitute the ethical subject of war, reinforces the desire for a genealogical exploration of the just war writings of Grotius and Vattel he draws upon.

Given Walzer's emphasis on political community it is hardly surprising that military intervention across borders is viewed by him with scepticism, and not addressed at great length. While the original 1977 text remains unaltered in the second (1992), third (2000) and fourth (2006) editions of *Just and Unjust Wars*, he adds a new preface to each to address aspects of intervention as a response to global events, and these prefaces are worth considering in turn. Describing the issue as 'peripheral' in his original book, he recognises that from the 1990s onwards the issue of intervention – or the more commonly used humanitarian intervention – has moved 'dramatically into the center'<sup>80</sup> of just war argument. Rengger summarizes Walzer's view of intervention:

Perhaps most notoriously, Walzer concedes only an extremely limited right of intervention in *Just and Unjust Wars* (admitting only three grounds: secession, civil war or genocide); and even though he relaxes this somewhat in a later essay, he has never changed his fundamental view that 'interventions' should be very infrequent affairs.<sup>81</sup>

However, Walzer was to subsequently move further in his advocacy of intervention than was the case when Rengger made these comments. In his 2004 book *Arguing About War* Walzer revisits his just war theory and some of the criticisms and arguments that have surrounded it since *Just and Unjust Wars* first appeared. He gathered together a number of essays spanning a quarter century in an attempt at what he calls: 'theoretical clarification' and political engagement.<sup>82</sup> Acknowledging the limitations of any theory of justice in war he writes: 'The point of seeking justice even under the cloud of war is to avoid disasters'.<sup>83</sup> Walzer has not shifted his position on intervention out of a perceived failure in his theoretical position as much as it is a response to disasters, the horrors of a number of world events, especially in the 1990s. He concedes,

Faced with the sheer number of recent horrors – with massacre and ethnic cleansing in Bosnia and Kosovo; in Rwanda, the Sudan, Sierra Leone, the Congo, and Liberia; in East Timor (and earlier, in Cambodia and Bangladesh) – I have slowly become more willing to call for military intervention. I haven't dropped

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<sup>80</sup> Walzer, 2000, p. xi.

<sup>81</sup> Rengger, 2002, p. 359.

<sup>82</sup> Walzer, 2004, p. xv.

<sup>83</sup> *Id.*

the presumption against intervention that I defended in my book, but I have found it easier and easier to override the presumption.<sup>84</sup>

This shift is significant, not just because of the implications for international relations and the question of sovereignty but also because it extends the domain within which Walzer's subject – and ethical subject of war – emerges. Walzer has changed the conditions in which one state can override the sovereignty of another, moving, even if only slightly, towards the view that intervention can occur as long as his general just war criteria are still met: particularly just cause and right intention. In making this move Walzer goes beyond defence of the inside/outside bifurcation that places a limit on the domain within which the ethical subject of war can be constituted. By transgressing the limits of his own codes in relation to just war Walzer opens up a space within which the ethical subject can be constituted or self-constituted more creatively. Walzer's shift in position moved slightly – but only slightly – towards the Blair doctrine as set down in Blair's speech on liberal internationalism on 24 April 1999 in Chicago: even if Walzer is not as fulsome in his endorsement of the Blair position as Elstain. Walzer states that 'the chief dilemma of international politics is whether people in danger should be rescued by military forces from outside'.<sup>85</sup> However, in making this concession Walzer not only shifts his theoretical position, there is a change of emphasis, albeit a small one, from a focus on a particular shared social existence to a more universal concern for the individual.

Going further, it was not until 2006 and the preface to the 4<sup>th</sup> edition of *Just and Unjust Wars* that Walzer specifically addresses the issue of regime change in the context of his earlier just war theory and the possibility of military intervention. He notes that in World War II: 'regime change was the consequence, not the cause, of the war fought by the allies'.<sup>86</sup> Acknowledging the nature of Saddam Hussein's regime, and its history of violence towards its neighbours and sections of its own population, Walzer could still not accede to what he felt was an attempt by the US government to extend *jus ad bellum* to include the toppling of regimes – even murderous ones like Saddam's. He concluded: 'I do not believe that regime change, by itself, can be a just cause of war'.<sup>87</sup> The furthest Walzer was prepared to go in the direction of preventive intervention is

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<sup>84</sup> *Ibid.*, p. xii/xiii.

<sup>85</sup> Walzer, 2000, p. xi.

<sup>86</sup> Walzer, M., *Just and Unjust Wars*, 4<sup>th</sup> Edition (New York: Basic Books, 2006b) p. ix.

<sup>87</sup> *Ibid.*, p. xiii.

what he describes as 'force-short-of-war'<sup>88</sup>, preferring to go, where possible, no further than 'politics-short-of-force'.<sup>89</sup> His solution to the problems posed by the Iraqi regime included robust containment policies, broad Security Council support and increased engagement with nongovernmental organisations (NGOs) and UN humanitarian agencies. Walzer would prefer to engage with such organisations in a slight shift towards a liberal internationalist position rather than easily relinquish opposition to intervention based on a respect for both Iraqi borders and the imperfect common life of the Iraqi people.

Having considered the relationship between the individual, the state, and morality the chapter continues by examining more specifically his constitution of subjectivity and the emergence of the ethical subject of war.

### **The ethical subject of war**

Walzer's distributive justice discourse reveals some of the means by which his subject is constituted and informs the process of apportioning different levels of moral responsibility to leaders and combatants with regard to war. He argues: 'There cannot be a just society until there is a society ... A given society is just if its substantive life is lived a certain way – that is, in a way faithful to the shared understandings of the members'.<sup>90</sup> When these ideas are extended to the domain of war, Walzer's subject of war emerges as ethical when her, or his, actions are faithful to the shared moral understandings of the state of which they are a part. In achieving these shared moral understandings, as part of broader notions of justice and equality, Walzer recognises 'customary rules' – what this thesis refers to as codified morality – and religious doctrine as constitutive of the moral individual within a particular, shared society.<sup>91</sup> Symbiotically, he goes on to add: 'We are (all of us) culture-producing creatures; we make and inhabit meaningful worlds'.<sup>92</sup> So Walzer's ethical subject of war is not only constituted in relation to codified morality that emerges in a particular, usually state setting, that same subject is also creatively constitutive of the polity she, or he, is defending. So in 2003/4 when a number of US and UK troops were found to have

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<sup>88</sup> *Ibid.*, p. xvii.

<sup>89</sup> *Id.*

<sup>90</sup> Walzer, 1983, p. 313.

<sup>91</sup> *Id.*

<sup>92</sup> *Ibid.*, p. 314.

beaten, abused and even killed Iraqi prisoners and detainees in their charge, the impact went beyond the way they created their own ethical subjectivity; they also impacted on the way that others viewed the US and UK, and how citizens of the US and UK saw themselves being represented or misrepresented through the actions of those soldiers.

This thesis takes the view that ethical subjectivity has both code-oriented as well as ethics-oriented dimensions and, in the case of just war, is constituted in relation to the moral domains of both *jus ad bellum* and *jus in bello*. It is in relation to Walzer's *jus in bello* criteria that the combatant emerges as ethical subject of war in a highly codified just war theory. Walzer's position dominates contemporary just war thinking in viewing enemy combatants, regardless of whether they fight as part of an aggressive army in an unjust war, or as part of an army acting justly in self-defence, as moral equals. This moral equality rests, for Walzer, on the ability to distinguish between categories of people – combatants and noncombatants. For Walzer, noncombatants are part of a broader category he refers to as 'innocent people' who, because they pose no direct threat to their enemies cannot lose their rights (for example, their right to life).<sup>93</sup> In *Spheres of Justice* Walzer draws on equality and rights discourses in order to constitute his subject:

The experience of citizenship requires the prior knowledge that everyone is a citizen – a public form of recognition ... every citizen has the same legal and political rights, everyone's vote is counted in the same way, my word in a court of law has the same weight as yours ... What is necessary is that the idea of citizenship be shared among some group of people who recognize one another's title and provide some social space within which the title can be acted out.<sup>94</sup>

Walzer prioritizes citizenship in a shared social space as the basis of both equality and rights. It is at the intersection of these discourses of rights and equality that his subject emerges, enabling him to go on to constitute his ethical subject of war *in bello*. For example, one of the demands Walzer places upon combatants is that they recognise their opponents as moral equals in war, regardless of the *ad bellum* claims to justice of those on both sides who wield power on behalf of the state and who authorise war. In so doing, to use Foucault's vocabulary, each is acknowledging the ethical substance of the Other. However, the ethical subject does not emerge fully in this act of recognition; the ethical subject of war must also act in an ethical manner towards that enemy in the

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<sup>93</sup> Walzer, 2000, p. 146.

<sup>94</sup> Walzer, 1983, p. 277.

conduct of war. Walzer writes of an Italian soldier, Emilio Lussu, overlooking enemy Austrian trenches in World War I:

Those strongly defended trenches, which we had attacked so many times without success had ended by seeming to us inanimate, like desolate buildings uninhabited by men, the refuge only of the mysterious and terrible beings of whom we knew nothing. Now they were showing themselves to us as they really were, men and soldiers like us, in uniform like us, moving about, talking, and drinking coffee, just as our own comrades were doing at that moment.<sup>95</sup>

The important dynamic in this incident is not a decision against killing the enemy – for that intention is still present – rather it is the recognition of aspects of the self in the Other. The uniforms may have been different in pattern but the important factor is that they were being worn, symbols of citizenry and a shared social life characterized in that moment by the moving, talking and eating of fellow comrades. Further, the uniforms identified friend and foe – legitimizing the killing of one by the other in carrying out legal military orders. This, for Walzer, embodies the ‘thick’ understanding of citizenship shared by members of a single polity that enables the ‘thin’ recognition of the other citizen across or between contesting polities. However, Walzer’s interpretation of this incident points to the inadequacy of strict codification alone in a war setting – friend/ enemy, Same/ Other – to fully capture the subject. Recognition of Walzer’s subject of war is not granted on the basis of being human and therefore endowed with universal rights; rather, the rights are socially constituted within states and mutually recognised even as war is waged between them. Yet Walzer refers to enemy soldiers as moral equals, on the grounds that, in the bearing of arms, they share a common status as representatives of their respective states and shared social life, within which they are constituted and self-constituting, regardless of whether or not they are on the side of the aggressor or whether they are warring defensively.<sup>96</sup> The example from the trenches highlights the difficulty of constituting the subject in relation to codified *in bello* distinctions of combatant/ noncombatant: in the sharing of coffee or the writing of letters these ‘enemy’ soldiers form themselves as friends, absent lovers, caring parents – momentarily, at least, transcending the codes that would classify them in time of war. For Walzer, combatants share rights as members of particular states and the common life those states represent. However, the discourse of war is not the only discourse in relation to which their subjectivity is formed.

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<sup>95</sup> Walzer, 2000, p. 141.

<sup>96</sup> *Ibid.*, p. 36.

Returning to war, combatants on both sides of a conflict share reduced rights to life, and increased rights to take life, based on their specific role of defending the state – rights that are not shared similarly with noncombatants:

the enemy soldier, though his war may well be criminal, is nevertheless as blameless as oneself ... the war isn't a relation between persons but between political entities and their human instruments ... They can try to kill me, and I can try to kill them. But it is wrong to cut the throats of their wounded or to shoot them down when they are trying to surrender.<sup>97</sup>

Walzer's just war is set against the backdrop of both Vietnam and the Cold War, where the regular forces of the US had recently faced North Vietnamese soldiers and Viet Cong insurgents whilst elsewhere they stood ready alongside their NATO allies to repel the regular forces of the Warsaw Pact. The legitimacy of the insurgent or guerrilla fighter, for Walzer, is determined by the level of support they have within a sovereign territory and the degree of common life that the insurgents represent. He describes how in Vietnam rules of engagement were put in place to respond proportionately against a village from whence an attack had come against American forces. Such rules were based around providing ample opportunity for the villagers to leave an area or to hand over Viet Cong or other relevant information.<sup>98</sup> Soldiers are constituted as ethical if they follow the rules set out for them, while the consequences of the rules were, for Walzer, often immoral since they resulted in vast numbers of displaced people – innocents who were victims of both sides in the war. By his own criteria, the Viet Cong are granted legitimacy – or not – by the level of popular support they received for their campaign. On balance, Walzer favours the rights of individuals within states to form their own polity and moral framework, unhindered by external interference, thereby undermining the *ad bellum* justification of the Vietnam intervention whilst leaving open the possibility of combatants emerging as ethical subjects of war according to their individual conduct in using force both discriminately and proportionately.

Continuing with an example from Walzer's own casuist approach, consider the implications of the massacre of hundreds of Vietnamese civilians at My Lai in 1968 by American soldiers. For Walzer: 'Ordinary *moral* sense and understanding rule out killings like those at My Lai'.<sup>99</sup> However, despite Walzer's separation of moral responsibilities, there remains a connection of sorts because the combatants still remain

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<sup>97</sup> *Ibid.*, p. 36.

<sup>98</sup> *Ibid.*, p. 188ff.

<sup>99</sup> *Ibid.*, p. 313.

part of the state they represent on the battlefield, in this case the US, and conduct on the battlefield not only forms the ethical subjectivity of the combatant but also – since they are part of a shared common life – shape the morality of the state and how that state is perceived both by its own citizens and by other states. Contrarily, soldiers who believe that they have been sent to war with insufficient *ad bellum* justification may find it difficult to form themselves as ethical in their *in bello* actions. Such a dynamic was identified in the opening pages of this thesis, where creative ethical self-subjectivation may transcend or subvert the *ad bellum/in bello* distinctions codified in just war.

Beyond the example from My Lai, a soldier's ethical subjectivity is still constituted by Walzer in relation to the right to life, both in the right to preserve her, or his, own life and in the right to take another's life. A soldier who risks life and limb to protect or save the life of an innocent party constitutes herself, or himself, as highly ethical in relation to Walzer's just war. Whilst Walzer is not prescriptive about how such self-forming occurs he does grant that the *telos* of individual combatants may be informed by a number of ethical sources such as religious or philosophical principles: though greater emphasis is placed on moral sources such as professional codes or legal proscriptions.<sup>100</sup> This creative self-forming of the ethical subject of war is reinforced by the valorisation of soldiers by the state who go beyond the demands and proscriptions of military codes and risk their lives to protect other soldiers or to further the course of their battles. This ethical self-formation – achieved by going beyond the demands of code-oriented morality – is 'reclaimed' by the state by way of public medal ceremonies, the parading of the flag-draped coffins of the 'noble' dead, and the annual remembrances that seek to immortalize the self-sacrificial subject of war as virtuous defenders – and promoters – of all that is best in the state: thereby continuing and reconstituting the formation of Walzer's shared moral 'thickness'.

Despite a number of challenges to Walzer's conception of the moral status of combatants, noncombatants and civilians, and the moral responsibilities held by soldiers with regard to the *jus in bello* aspect of his just war, it is apparent that Walzer's ethical subject of war remains little changed from his original formulation of 1977. The soldier predominantly emerges as an ethical subject from Walzer's just war theory if she, or he, conforms to the codified requirements of *jus in bello* – the use of force proportionate to the task she, or he, is set, while exercising discrimination between combatant and non-

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<sup>100</sup> Walzer, 2000, p. 44.

combatant targets. With regard to the emergence of the soldier as an ethical subject of Walzer's just war approach, there are a number of co-existent positions: they are described here as co-existent rather than inconsistent because Walzer's approach is casuistic and arguments tend to be situated and contextual, requiring specific judgements according to the circumstances at any particular time. A Foucauldian reading of Walzer – as demonstrated above – enables this context-bound subject to be apprehended in some detail: looking beyond conformity to codes to the instances where creative ethical self-formation occurs. The soldier emerges as an ethical subject of war when she, or he, fights a just war in a just manner; she also emerges as ethical if she fights an unjust war (for which she is not personally responsible or liable) in a just manner. She, or he, even emerges as ethical in the killing of the innocent, as long as such killing satisfies the exceptional requirements of military necessity, supreme emergency, or the Thomistic notion of double-effect: all of which for Walzer are bound up with the need to protect the common life bound up in the state. However, the combatant cannot emerge as ethical in fighting any war in an unjust manner, since the individual alone carries the moral responsibility for actions on the battlefield, such as the killing of the innocent when it was either not militarily necessary or if insufficient care was taken to avoid the death. Further, fighting in an unjust manner not only constitutes the subject as immoral, because of the communal life that combatant represents and shares in: the state is simultaneously constituted as immoral. All of these positions emerge in conformity to Walzer's emphasis on just war as code-oriented morality, drawing on individual rights as the authority for his statements, rights that are constituted by and constitutive of a shared social existence, notably within the state.

In this re-reading of Walzer's just war with regard to the emergence of the ethical subject, a number of continuities and discontinuities emerge between Walzer and Grotius, and Walzer and Vattel. Walzer operates within a hegemonic legalist paradigm, articulated most coherently in the early modern period by Grotius and reshaped by Vattel, with the latter's stronger secular ontology and associated subject more recognisable to the modern just war practitioner than Grotius' subject who retains clearer traces of the Divine. As will be shown in Chapter 6, Grotius struggles to complete the shift in *telos* of the ethical subject of war from the Divine to the earthbound, in the shape of the state. Walzer's work is secularized and therefore more contiguous with Vattel whose secularisation, though not complete, is much more advanced than that of Grotius. Walzer maintains the separation of *ad bellum* and *in*

*bello* moral responsibilities formalized by Vattel; like Vattel's just war, Walzer's is discontinuous with Grotius in this area since he had not yet made such a formal distinction. The ethical subject of war, therefore, emerges distinctly from these two axes of just war according to the individual's role in either, wielding sovereign power, in sanctioning the pursuit or rejection of war or in defending a shared social life in the form of the state on the field of battle. By considering the multiple sources and concepts Walzer draws upon, a more subtle understanding of his subject emerges in the casuist approach to just war he adopts within a legalist paradigm.

A further discontinuity between past and present in Walzer's theorizing emerges because Grotius and Vattel were writing in a European setting, constituting a European notion of sovereignty and statehood that did not extend to the other continents whose indigenous peoples were considered to be, to varying degrees, uncivilized. Walzer, in contrast, writes in the context of a

global community [that] is pluralist in character, a community of nations, not of humanity, and the rights within it have been minimal and largely negative, designed to protect the integrity of nations and to regulate their commercial and military transactions.<sup>101</sup>

The conceptions of sovereignty emerging in Grotius, and enhanced by Vattel, had not yet acquired Walzer's global application where, by and large, states coexist with equal regard for one another's common life, and the ethical subject of war protects the moral thickness of each shared existence. For Grotius, writing a few years before the Peace of Westphalia was signed to end decades of war in Europe, the ethical subject of war could emerge in relation to emerging states and competing empires. For Vattel, while European statehood had begun to stabilise by the mid-eighteenth century, his home country of Switzerland had not yet fully formed in its modern guise out of the scatter of bishoprics and cantons that had provided the common life that would ultimately make possible the Swiss state. The combination of these continuities and discontinuities with the past in the shape of the just war approaches of Grotius and Vattel point towards a genealogical re-reading of their work in Chapters 6 and 7.

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<sup>101</sup> Walzer, 1980, p. 226.

## Conclusion

The stated motivations of both Elshtain and Walzer are multifarious, informed by a whole range of issues: including ontology, citizenship, security, peace, gender, religious faith, individual rights, communal existence and legitimate use of force. The first area of commonality in the just war texts of Elshtain and Walzer is in their motivation to write about just war. Where Walzer was motivated to provide an intellectual response to the events of Vietnam, Elshtain was prompted by a number of atrocities in the 1990s and, most significantly, the 2001 Al-Qaeda attacks on the US. However, an associated divergence in their positions emerged as Walzer maintained a more non-interventionist approach while Elshtain shifted to a more pro-interventionist just war position. Another area of divergence for Elshtain and Walzer is in their respective willingness to criticise the United States. Walzer more recently applied just war criteria to the US response to terrorism, framing them in relation to Elshtain's *Just War Against Terror*. He notes that 'standard just war theory, which Elshtain expounded and defended, and which fit the Afghan case very neatly, does not always fit the larger 'war against terror' as it has developed since 2002'.<sup>102</sup> Elshtain acknowledges Walzer's questioning of her position on combating terrorism through military intervention, asking whether the US should err 'on the side of caution or the side of what I shall call hyper-vigilance. For Walzer, a democratic people should err on the side of caution'.<sup>103</sup> Walzer views *Just War Against Terror* as taking a rather more robust pursuit of terrorism than his more cautionary position, a position informed by greater emphasis on the rights of states than the rights of individuals. Elshtain appears to accept the point but does not consider his position to be very far removed from her own: 'I suspect that Walzer might suspect that I am willing to extend the vigilance imprimatur further than he, but I think we are very close on that matter'.<sup>104</sup> Having considered both perspectives, this thesis takes the view that in the 1990s there was little to differentiate between the two; however, following the publication of *Just War Against Terror* subsequent divergence is greater than Elshtain confirms in her response to Walzer.

In examining the just war approaches of Elshtain and Walzer and arguing that both have, to varying degrees, shifted their positions on military intervention since the 1990s, this chapter has sought to show how their use of key historical just war

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<sup>102</sup> Walzer, M. 'On Fighting Terrorism Justly', *International Relations*, Vol. 21, No. 4 (2007b), p. 480.

<sup>103</sup> Elshtain, J.B., 'A Response', *International Relations*, Vol. 21, No. 4 (2007) p. 502.

<sup>104</sup> *Ibid.*, p. 503.

discourses combined with their respective understandings of the importance of the relationship between the state and the individual with regard to just war, has led to the emergence of the ethical subject of war in different ways. For Elshtain, this has led to a greater willingness to use just war vocabulary in justifying the use of military force not only to protect America but to promote its, and her own, liberal democratic ideals by means of intervention across state borders. In presenting both her just war and the broader political arguments that constitute her moral code, she constitutes the ethical subject of war as specifically Augustinian: granting greater scope for creative ethical self-formation. She interpellates Augustine's conception of the self-reflective, self-forming individual and his caution in using military force, whilst also appealing to Aquinas' stated need to protect the innocent as part of a shared common life. Consequently, to a greater extent than Walzer, her ethical subjectivation and self-subjectivation occurs in relation to ethical sources as well as in conformity to her codified morality.

Walzer, over a similar period, has demonstrated a shift in his own just war position. However, his reluctance to intervene across borders has shifted only slightly, and the legalist paradigm – for which he draws on the discourses of Grotius and Vattel, among others – on which his just war is based, remains close to that which was first articulated in 1977. Further, with regard to both the state and the individual, ethical subjectivity predominantly emerges in conformity to his codified morality – with less reliance on ethical self-subjectivation: though at the points where he transgresses the limits of his own code he provides the possibility of creative self-formation. The purpose of this chapter has been to identify some of the key historical discourses that Elshtain and Walzer draw upon in constituting the ethical subject of war in their respective just war approaches. Elshtain has placed a priority on the approaches of Augustine and Aquinas in shaping her own just war, whilst Walzer relies heavily on a legalist approach that draws from both Grotius and Vattel. The latter two wrote on just war at times of incipient and increasingly sophisticated notions of state sovereignty, paralleled by an increasing dependence on law in their arguments. In so doing, these two early-Modern just war theorists represent in their work a major bifurcation in Western just war: namely the Christian and secular traditions, with their corresponding emphases on morality and law respectively. These are not, of course, the only sources used by Elshtain and Walzer but, in a thesis of limited scope, are the ones that have been identified for a Foucauldian re-reading.

The Foucauldian re-reading is intended to go beyond a straightforward comparison, or history, of just war codes or ideas to explore the extent to which those codes shape the formation of ethical subjectivity: looking out particularly for the sites of ethical self-formation that are omitted from normative just war debate. Over the next four chapters Augustine, Aquinas, Grotius and Vattel will be re-read, genealogically, in chronological sequence, with the aim of understanding both how the ethical subject of war emerged in their work and how they shaped the discourses that are called upon in contemporary formation of the ethical subject in just war debate surrounding intervention. Further, the genealogy will identify not only how past discourses inform the emergence of the ethical subject of war in the present but will look to point out elements of those discourses that are now excluded from contemporary debate.

## Chapter 4

### Augustine: Church, Empire and Just War

As indicated, Augustine is a formative voice in Elshtain's reflections on the just war. Few historical figures have bequeathed to posterity an *oeuvre* and intellectual legacy to match that of Augustine: rhetorician, philosopher, teacher, monk, priest, theologian and bishop. His inclusion here, however, is a consequence of his legacy to the just war tradition and the resultant impact on contemporary just war debate: such as that discussed in the previous chapter. As this genealogy seeks out the emergence of the ethical subject of war, a number of previously stated assumptions apply. The first is that any truth or knowledge claims pertaining to the ethical subject of war are historically situated, constituted in relations of power within multiple social, cultural, institutional and religious discourses. Second, morality itself – whether in relation to war, sexuality or any other discursive formation – is contingent upon, and subject to, prevailing, transient ontological and epistemological conditions. Third, subjectivity is similarly contingent and non-essential, with subjectivation and self-subjectivation occurring within relations of power, shaped by code-oriented and ethics-oriented moralities. Consequently, as this genealogy searches out the ethical subject of war it will look to the interstice: the non-place between moral order and ethical sensibility where discourse, power relations and self-subjectivation meet with creative force. Michael Clifford's reading of Foucault on genealogy, subjectivity and emergence leads him to write:

Genealogy exposes the nonessentiality of the political subject through a historical analysis of its constitution ... The exposure of political subjectivity is effected by recognizing in it the axial interplay of discursive practices, power relations, and processes of subjectivation. Yet what is exposed in this analysis is not the "origin" of the political subject, understood as the transcendental conditions of its appearance. Rather, what genealogical critique exposes is the *Entstehung* of the political subject, its *emergence* as an event.<sup>1</sup>

The nonessentiality, as well as the contingency, of the ethical subject of war will be demonstrated with its re-articulation in the context of Augustine and the other theorists to follow. This emergence takes place in response to the *bellum justum* problematic, showing how the use of ethical subjectivity in the just war discourses of Blair, Elshtain and Walzer is made possible. Differentiation will be shown to play an

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<sup>1</sup> Clifford, M., *Political Genealogy After Foucault* (New York and London: Routledge, 2001) p. 151.

active role as Augustine, and the others under consideration, sought to establish their own positions of authority which, in turn, validated their discourses. Differentiation also plays a crucial role within their discourses in constituting the emerging subject of war as ethical or otherwise. This chapter will show that the emergent ethical subject of war is not a fixed, or even an evolving entity; rather the subject is continually reproduced, located in a line of situated just war discourses. So, instead of asking who the ethical subject of a just war *is*, as though such a subject could be simply identified, observed, and appropriated unproblematically, this thesis – beginning chronologically with Augustine – will explore *how* such a subject has been spoken of at key points in history.

The first half of the chapter will inform our understanding of the constitution of the Augustinian subject by, firstly, considering the place of Augustine in contemporary debates surrounding war and political theory. This will be followed by an examination of his personal authority and his use of discursive sources in his writings and the construction of his moral code. Contributions from a number of writers will be considered and, from this consideration, the twin conceptions of the code-oriented and ethics-oriented moralities and their role in the constitution of ethical subjectivity will be made clear. This will reflect the Foucauldian ontology of the ethical subject that informs this investigation, while the genealogy provides the possibility of a nuanced understanding of the emerging ethical subject of war: especially the self-formative dimension. Augustine's personal authority enabled him to have an impact on the lives of others, from private citizens and Christians to the Church hierarchy and even the Roman Emperor himself. It will be argued that Augustine's authority grew proportionally as he sought to justify the adoption of specific regimes of truth in an expanding Church and a declining Roman Empire. He sought to define conditions in which an individual – more specifically a Christian – could participate in war, forming or recognising herself, or himself, as ethical in the process. With these elements in place, the chapter will examine Augustine's use of discursive sources, not in a search for the origin of just war concepts but with the aim of showing how he interpellates the authority of key sources such as Plato, Cicero and the Christian bible in support of the constitution of subjectivity and the framing of his moral code: of which just war is a part. This analysis will take into account the political, social and religious context within which Augustine was writing. Neither Augustine's texts nor the discursive sources he draws on will be scrutinized for hidden meaning. A similar attitude to Jens

Bartelson's will be adopted, who says of the texts on sovereignty he analysed: 'I have tried to stay on their surface, and focused on individual texts as both statements in themselves as well as containers of statements'.<sup>2</sup>

The second half of the chapter will focus in on the emergence of the subject of war in a number of his writings on war and peace: in relation to both moral and ethical sources. In the process of seeking out the emergence of the ethical subject of war, continuities and discontinuities with the use of Augustinian concepts in the present will be identified. In turning now to consider the use of Augustine today – relative to the trajectory of this thesis – two related areas will be examined: firstly, the assumption that just war is part of what Connolly calls the 'cultural unconscious of the West'<sup>3</sup>; and secondly, Augustine and his relation to modern conceptions of subjectivity and agency.

### **Augustine today**

Referring to just war as a cultural artefact, or part of a moral code that has evolved since pre-Christian times, gives the impression of an existing tradition of thought that just *is* – present yet undefined, assumed but unstated. Such a view of just war sees it as part of a system of thought that sits in some imagined collective consciousness waiting to be dusted off and applied whenever people need to be convinced that military action is both necessary and just. However, even if just war is taken as an unquestioned part of such a hegemonic system of thought, to approach just war as an object of inquiry creates a disturbance within it; to suggest that it may have become a problem to itself, deeply disquieting. Such an action raises the prospect that 'we', the presumptive inherently just, liberal, democratic, post-Christian West, may provide succour to those who consider 'us' instead to be the Christian, imperial, post-democratic West, whose inherent sense of justice is a mirage.

Joshua Mitchell reflects on the use of Augustine in political theory in the post-Cold War period:

What is remarkable about much of the post-1989 interest in Augustine is that it is predicated, first, on the rejection of the idea that there is a pivot point of history

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<sup>2</sup> Bartelson, 1995, p. 10.

<sup>3</sup> Connolly, W.E., *The Augustinian Imperative* (Oxford: Rowman & Littlefield Publishers, 2002, 2<sup>nd</sup> Edition) p. 3.

around which the whole of the modern world may be generated and, second, on the related recognition that the modern world is not a coherent "project" at all.<sup>4</sup>

There is a certain irony in Mitchell's prescient observation here, given the extent to which Augustine has been viewed for centuries, rather than years, as a pivotal figure in the history of the West: particularly given that all his major works were written in North Africa. However, this author would make a counter-observation to that of Mitchell. It is *because* of Augustine's perceived pivotal role in Western history that he is now being revisited in – amongst others – the fields of International Relations, political theory and, more specifically in the case of this genealogy, just war. If, as Mitchell claims, the modern world cannot be seen as a coherent project, then, by extension, the same can and should be said of all the great eras and empires throughout history. Mitchell subsequently extends his comments into the field of political identity, adding: 'not only has the idea of modernity as a coherent project become suspect, but the autonomous self that is its highest aspiration has fallen on hard times as well'.<sup>5</sup> This field of contestation has been disputed recently by a number of influential figures who have brought different perspectives to the debates.

In *The Augustinian Imperative*, Connolly investigates the possibility of a theme of intrinsic moral order that precedes and succeeds Augustine and which, in Augustine, finds its ultimate expression.<sup>6</sup> That is not to say that a singular static, unchanging moral order exists, only that this theme or assumption can be found at every point in history. Connolly does not seek to endorse or refute this intrinsic moral order but to explore the discursive terrain between that position and its ontological adversary: ethical sensibility. In exploring the discursive terrain between these two positions he demonstrates how cultural icons are maintained and contested, constructed and deconstructed. He does not conduct an assault on one position from the other but encourages 'generous negotiations'<sup>7</sup> between the two. Such an approach will be extended in this study as it seeks to explore the emergence of the subject of war in the discursive terrain between just war as moral order and just war as an ethical perspective that seeks to shape or inform human conduct without recourse to said moral order. According to Connolly: 'These two thematics of moral order have been dominant in Western history. They enter

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<sup>4</sup> Mitchell, J., 'The Use of Augustine, after 1989' *Political Theory*, Vol. 27, No. 5 (Oct 1999) p. 695.

<sup>5</sup> *Ibid.*, p. 696.

<sup>6</sup> Connolly, 2002, p. 34.

<sup>7</sup> *Ibid.*, p. 28.

into relations of interdependence and contention with each other, often jostling one another within the frame of the same doctrine'.<sup>8</sup> The approach of this thesis, with Foucault's 'code-oriented' and 'ethics-oriented moralities'<sup>9</sup> defining the limits of the research, parallels the approach taken by Connolly. Foucault did not set out to write a history of moral codes; he undertook, in relation to sexuality, 'a history of "ethics," understood as the elaboration of a form of relation to self that enables an individual to fashion himself into a subject of ethical conduct'.<sup>10</sup> Similarly, this genealogy explores the emergence of the ethical subject of war in relation to both the moral codes that have been constructed by Augustine, for example, and the ethical sensibilities that operated simultaneously. Connolly outlines how he has used a conception of moral order in pursuing the emergence of identity/other in relation to what he calls the Augustinian imperative. Against this notion, he juxtaposes an ethical sensibility, drawing upon both Nietzsche and Foucault, describing their interaction as follows:

A post-Nietzschean ethical sensibility, then, strives, first, to expose artifice in hegemonic identities and the definitions of otherness (evil) through which they propel their self-certainty; second, to destabilize codes of moral order within which prevailing identities are set, when doing so crystallizes the element of resentment in these constructions of difference; third, to cultivate generosity – that is, a "pathos of distance" – in those indispensable rivalries between alternative moral/ethical perspectives by emphasizing the contestable character of each perspective ... and, fourth – as Foucault eventually endorsed – to contest moral visions that suppress the constructed, contingent, relational character of identity with a positive alternative that goes some distance in specifying the ideal of political life inspiring it.<sup>11</sup>

If Connolly's Augustinian imperative argument is accepted – the view that there is a theme of intrinsic moral order at every point in history – it seems reasonable to this author to extend that imperative to include war and its moral justification. Further, as in this thesis, moral and ethical perspectives impact on the 'relational character of identity' when it comes to the subject of war and subjectivity itself becomes a domain of contestation and analysis.<sup>12</sup>

Taylor places great emphasis on the role of Augustine in establishing the roots of modern subjectivity,<sup>13</sup> stressing the importance of inwardness and self-reflexivity in the

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<sup>8</sup> *Ibid.*, p. 35.

<sup>9</sup> Foucault, *The Use of Pleasure*, p. 30.

<sup>10</sup> *Ibid.*, p. 251.

<sup>11</sup> Connolly, 2002, p. 143/4.

<sup>12</sup> *Id.*

<sup>13</sup> Taylor, 1989, p. 131.

formation of political identity. He claims: 'It is hardly an exaggeration to say that it was Augustine who introduced the inwardness of radical reflexivity and bequeathed it to the Western tradition of thought'.<sup>14</sup> However, in this approach Taylor is being selective about the aspects of Augustinian subjectivity, particularly ethical subjectivity, he incorporates in his own work. He writes: 'We are all universalists now about respect for human life and integrity ... we believe it would be utterly wrong and unfounded to draw the boundaries any narrower than around the whole human race'.<sup>15</sup> Contrarily, this apparently unequivocal approach is subsequently qualified when he notes: 'Underlying our modern talk of identity is the notion that questions of moral orientation cannot all be solved in simply universal terms'.<sup>16</sup> He partially resolves this dilemma by using the concept of moral space: 'To know who you are is to be oriented in moral space, a space in which questions arise about what is good or bad, what is worth doing and what not'.<sup>17</sup> This moral space implies a situated dimension that either contradicts his universalist approach or is in some way subsumed within it. Even in setting his moral boundaries around the whole human race, Taylor is limiting the sweep of an Augustinian canvas: human existence and the moral and ethical choices made therein are not shaped simply in the context of earthly existence. Augustine grants the subject both self-awareness and self-reflexivity and places on the subject the responsibility to develop that self-awareness through self-reflexive action in the context of Christian confession. This cannot be viewed in the same light as 21<sup>st</sup> century self-help, for example, with a focus on the self as self. For Augustine, the self-aware subject reflects on the self through the prism of the Divine. That is, the ethical substance of the individual originates in the Divine and ethical choices are made in pursuit of a *telos* that culminates in a return to the Divine.

Kathleen Skerrett argues that 'Connolly's engagement with Augustine over time has been the crucible of rivalry that pressed Connolly to develop both conceptual and technical resources for realising agonistic respect'.<sup>18</sup> Within this claim, Skerrett notes that 'one of Connolly's major preoccupations has been to *value* the constitutive role of the rival'.<sup>19</sup> This valuing of the rival in Connolly's *Augustinian Imperative* leads to a

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<sup>14</sup> *Id.*

<sup>15</sup> *Ibid.*, p. 6/7.

<sup>16</sup> *Ibid.*, p. 28.

<sup>17</sup> *Id.*

<sup>18</sup> Skerrett, K.R., 'The Indispensible Rival: William Connolly's Engagement with Augustine of Hippo', *Journal of the American Academy of Religion*, Vol. 72, No. 2 (June 2004) p. 489.

<sup>19</sup> *Ibid.*, p. 490.

more nuanced emergence of subjectivity than would be the case if Connolly sought to simply supplant moral order with ethical sensibility in his exemplar readings of Augustine and Herculine Barbin. It is this *valuing* of the constitutive role of the rival, as identified here by Skerrett, that will be incorporated into this genealogy. The valuing of the rival, or Other, is not extrinsic to the formation of identity; on the contrary, the two are mutually implicated. In *Just War Against Terror* Elshtain uses an Augustinian representation of the relationship between men and women in early Christianity as a means of constituting the androcentric regime of the Taliban as Other to Western gender practices.<sup>20</sup> In this regard Elshtain shares common ground with Connolly in valuing the rival in the constitution of ethical subjectivity. Where Connolly explicitly refers to codes and ethical sensibilities on forming the subject, both aspects can also be found – though more implicitly – in Elshtain’s constitution of the subject:

Although pre-Taliban Afghanistan, a Muslim society, had included a significant number of professional women, women were forced under Taliban rule to withdraw from law, government, and teaching. These practices show us that gender practices are not a sidebar to the war on terrorism as a cultural struggle, but a central issue.<sup>21</sup>

In constructing a case for intervening in Afghanistan, Elshtain goes beyond the self-defence argument which is based on a response to the September 2001 attacks on the US. She constitutes the ethical subject of intervention as the one who opposes the maltreatment of women by the Taliban Other.

Elsewhere, Elshtain begins *Augustine and the Limits of Politics* with a stout defence of Augustine, his complexity and enduring significance, against a number of what she calls, '*reductio* hit and runs'.<sup>22</sup> Issues of identity, subjectivity and self-formation are examined alongside the role of political violence in Elshtain's defence of Augustine, drawing upon a number of disputes concerning the struggle to comprehend the nature of the self in his *Confessions*. Her targets include liberal theologians, historians and psychological commentators. Elshtain identifies Augustine's use of spiritual self-formation as a means by which the Church can shape the individual through self-analysis and confession, encouraging a kind of self-policing that follows the example of Augustine. This self-policing in Augustine is based, not on self-knowing, but on self-doubt: 'we know that we exist not because "I think therefore I

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<sup>20</sup> Elshtain, 2004, p. 38ff.

<sup>21</sup> *Ibid.*, p. 39/40.

<sup>22</sup> Elshtain, 1995, p. 12.

am,” but, rather, “I doubt, therefore I know I exist.”<sup>23</sup> Whilst accepting, conditionally, Elshtain’s prescient observation here, it should be borne in mind that the doubt which is captured in Augustine’s self-reflection does not exist in tension with knowledge alone; it also exists in tension with faith – faith in the Christian God – since faith for Augustine is the basis of knowledge. As the chapter turns now to the world of Augustine we begin by considering how his personal authority emerged in relation to the institutions of the Catholic Church and the Roman Empire.

### **Authority, discourse and subjectivity**

History attributes to Napoleon Bonaparte a preference for lucky generals rather than brave or talented generals. While it may be inappropriate to describe Augustine as ‘lucky’, a helpful combination of church and political factors emerged in close proximity during his rise to prominence, giving him a platform from which to address the Roman Emperor as well as help shape the Catholic Church. Augustine's will to doctrinal truth and the Emperor's willingness to exercise his considerable power came together in a radical power/knowledge dynamic that would, where necessary, use force as a political tool to shape the Church. This resulted in a just war framework that would encourage greater participation by Christians as soldiers in the Roman army and shape the direction of the early Church’s belief and practice. Foucault says of the interplay between truth and power:

Truth is a thing of this world: it is produced only by virtue of multiple forms of constraint. And it induces regular effects of power. Each society has its regime of truth, its “general politics” of truth – that is, the types of discourse it accepts and makes function as true; the mechanisms and instances that enable one to distinguish true and false statements; the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true.<sup>24</sup>

So where are the interstices of truth and power that provided Augustine's authority and, thereby, rendered his writings on just war authoritative? In 392 following Augustine’s founding of a monastery in Hippo, Emperor Theodosius I decided to use his imperial power to root out heresy in his religion of empire – Christianity. This policy was to be maintained by his successor Honorius who came to power in 395: the same year that Augustine was consecrated Bishop of Hippo. While

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<sup>23</sup> Elshtain, 2008a, p. 162.

<sup>24</sup> Foucault, ‘Truth and Power’, p. 131.

the Emperor wielded almost unlimited power, for a regime of truth to be enforced he needed someone with the particular institutional authority, doctrinal and rhetorical expertise to constitute the regime of truth within the institution of the Church, then, more broadly, across the empire. Augustine's arguments in the creation of inside/outside, same/other set the parameters for orthodoxy – the beliefs and practices of Catholic Christianity – and heresy. Few in history have opposed heresy as fervently and effectively as Augustine and among the heretics he vanquished were the Manicheans, Pelagians and Donatists, expelled from the Church under the threat of the Emperor's sword.<sup>25</sup>

Control from the centre, either of Church or Empire, can only achieve a certain amount of control over individuals' conduct. Far greater control can be exerted if individuals can be persuaded to police their own thoughts and actions. Augustine's *Confessions*, written in 397, captures his own wrestling with his inner self or, as he puts it, inner selves: the self that desires to obey God and the self that acts against that purity he claims to desire. For Augustine, every individual has, if not *complete* freedom of thought and action, sufficient freedom and autonomy to work on herself, or himself, with the intention of imitating the behaviour of the Christ – God in human form. Augustine's *telos* or ideal subjectivity is a unified whole that reflects the perfection of Christ but, in his *Confessions*, he acknowledges that 'it was I, and it was my impiety that had divided me against myself'.<sup>26</sup> In order to overcome this divided self – part good, part evil – evil actions had to be confessed (to God), 'that thou mightest heal my soul'.<sup>27</sup> The act of confession became part of a process of self-policing and self-subjection that would ultimately – in conjunction with Divine intervention – re-create the subject in the likeness of Christ. Thomas Lynch sums up the relationship between self-knowing and transformation, Christ and confession, as follows: 'For Augustine, the self is incomprehensible apart from a Christology affirming the role of Christ as *exemplum* and *sacramentum*. In short, Christ is both the end and the means'.<sup>28</sup> This reliance on Christ, enacted in self-policing through the act of confession, would continue, according to

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<sup>25</sup> While there is not the scope here to explore in greater detail the machinations of fifth century Christianity, it was Augustine who provided the intellectual framework that set the limits of orthodoxy, supported by an Emperor who was concerned to impose one version of Christianity across the Roman Empire. It was Catholicism that prevailed over other forms of early Christianity.

<sup>26</sup> Augustine, *Confessions and Enchiridion*, (397) Trans. Outler, A.C. (Grand Rapids, MI: Christian Classics Ethereal Library, 2000), p. 70.

<sup>27</sup> *Id.*

<sup>28</sup> Lynch, T., 'Confessions of the Self: Foucault and Augustine', *Telos*, Vol. 146 (Spring 2009) p. 134.

Augustine, when 'thou set a watch upon my mouth and a door around my lips that my heart might not incline to evil speech, to make excuse for sin with men that work iniquity'.<sup>29</sup> Lynch criticises Foucault for separating confessional practices in early Christianity – such as Augustine's – from the theological beliefs and institutional church setting of those engaging in the practices.<sup>30</sup> The result of this separation is a removal, for Lynch, of crucial contextualisation that weakens Foucault's own reading of these early confessional practices.

Augustine's systematic self-policing became a template for the Catholic Church: a process of self-knowing and self-formation adopted by the founders of religious orders that emerged in later centuries. Connolly discusses at length how Augustine uses confession in establishing and maintaining his personal and institutional authority in what he calls the 'confessional complex'.<sup>31</sup> Confession, for Connolly, is a key strategy in defining and sustaining intrinsic moral order. Connolly analyses Augustine's letter to a convent in Hippo in 423, showing how Augustine encourages the Sisters to modify their behaviour through a daily cycle of self-observation, observation of others, obedience and control of the self: all reinforced by a systematic regime of confession. Augustine's personal authority shapes the institutionalisation of these practices using the structures of the religious Orders, leading ultimately to a stable system of hierarchical, self-policed control within the wider Church. Connolly describes the outcome:

In this great chain of being the line of obedience runs up from the sisters through the mother superior, the priests, the Bishop of Hippo, to the lord the bishop confesses. The obligation to obey flows down from the one who confesses his god creatively to those who confess to this same god through a more extensive mediation of earthly rules and injunctions. The creative element in confession declines as you move down the hierarchy of being.<sup>32</sup>

This tendency towards hierarchy can be found in a number of places in Augustine's work, creating systems of control that reflect his understanding of Divine teleological order. Augustine creates a parallel hierarchy, in relation to war, within which the ethical subject of war emerges:

when a soldier kills a man in obedience to the legitimate authority under which he served, he is not chargeable with murder by the laws of his country; in fact he is chargeable with insubordination and mutiny if he refuses. But if he did it of his

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<sup>29</sup> *Id.*

<sup>30</sup> Lynch, 2009, p. 124.

<sup>31</sup> Connolly, 2002, p. 71.

<sup>32</sup> *Ibid.*, p. 71/2.

own accord, on his own authority, he would be liable to a charge of homicide. Thus he is punished if he did it without orders for the same reason that he will be punished if he refuses when ordered....If that is the case when a general gives the order, how much more when the command comes from the Creator!<sup>33</sup>

The hierarchy of authority created by Augustine with regard to war takes the following form: soldier, general, legitimate [political] authority, the Creator [Augustine's God]. Like the parallel hierarchy concerning confession, freedom of self-subjection in thought and action declines as we move down the hierarchy of being. Complicating this hierarchy further – given its context in a Roman Empire where Christianity is the official religion – is the place of the Pagan within it: the Other to the ethical Christian. The place of rulers and soldiers, Christians and Pagans in Augustine's writings on war will be examined in greater detail later in this chapter in relation to the emergence of the ethical subject of war.

In turning now to consider Augustine's writings on the justification and conduct of war, it should be recognised that he did not write about these subjects because they were inherently authoritative and would bestow personal authority upon him. His writings on war became authoritative and influential over the centuries because *he* wrote them. Augustine's personal authority emerged in the roles of rhetorician and teacher of note long before his eventual consecration as Bishop of Hippo. When Augustine, through a politics of inclusion and exclusion, helped establish Catholic Christianity as religious orthodoxy and its challengers as heretics, his personal authority grew further. Those who were excluded remained on the outside unless they chose to constitute themselves as orthodox and, in consequence, ethical by *confessing* the true – Catholic – faith.

In *Democracy and its Demons* Michael Hanby examines Augustine in order to comprehend the roles of love and fear in the exercise of imperial power: these, in turn, demonstrate a vested interest in wars being declared just by the one who wields the imperial power. Ultimately, in Hanby's reading, that power depends on control of the people. He writes:

Augustine's analysis of imperial power thus becomes a critique of the organs of imperial discipline which manufacture and enforce that desire [to constitute the body politic], flowing quite naturally into criticism of Roman civilian religion and

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<sup>33</sup> Augustine, *City of God*, Trans. Henry Bettenson (London: Penguin Classics, 2003) Book I, Ch.26, p. 37. (Hereafter: I. 26, p. 37).

its counterpart, the fabulous theology of the stage. "By this means [the human leaders] bound [people] tighter, as it were, to the citizen community, so that they might bring them under control and keep them there by the same technique."<sup>34</sup>

For Hanby, disciplinary techniques are used to control the citizens of the Roman Empire who, in turn, constitute the body politic. There is a constitutive dimension in both the subjectivity of individuals who make up the Empire and in the Empire itself as a political entity. In identifying the techniques used to control the citizen community, Augustine is undermining those very techniques; this enables the citizen to thereby resist such control, simultaneously increasing her, or his, own authority in relation to the Empire. He treads a dangerous path at this point because his aim in subverting some aspects of political control is not anarchy or revolution but the propagation of his Catholic faith and practice amongst those in the Empire who still clung to the gods and philosophies that held sway before Christianity was made the official religion by Imperial edict. Without the authority to make political or religious pronouncements Augustine's words would have, in all likelihood, had little impact at the time and even less as time passed.

Having explored these interstices of truth, power and institutional practices in which Augustine's authority was constituted, the formation of that authority occurs along two distinct axes. The first axis is defined by the application of institutional power within distinct power relations: Augustine's personal authority grew during his years as a rhetorician and a teacher, only to be significantly enhanced when, defending the institutional interests of the Catholic Church against heretics and, even more importantly, the interests of the Roman Emperor as he argued decisively for a specific regime of truth to be recognised as religious orthodoxy. The second axis is defined by Augustine's popularisation of confession, not only as a means of self-subjection but also as an instrument of institutional – Church – control. As a consequence of these factors working in tandem, Augustine's writings became authoritative, reflecting as well as reinforcing the authority of their author.

As this chapter turns now to examine Augustine's use of existing sources in the construction of his own discourse, it will pay particular attention to how his use of sources reinforces his conception of moral order from which the ethical subject of war

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<sup>34</sup> Hanby, M., 'Democracy and Its Demons' in Doody, J., Hughes, K.L., and Paffenroth, K. (Eds.) *Augustine and Politics* (New York and Oxford: Lexington Books, 2005) p. 119, also quoting Augustine, *City of God*, IV. 32.

emerges. This will be done by continuing the theme of confession, with reference to Foucault's reading of this Augustinian practice. In *Technologies of the Self* Foucault describes practices from both the Hellenistic and Imperial periods whose purpose was to promote the care of the self.<sup>35</sup> He refers to the Stoic injunction to 'retire into the self and stay there', as well as Pliny's advice to a friend to 'set aside a few moments a day ... for a retreat into himself'.<sup>36</sup> The self was an object to creatively reflect upon, master and take care of: a pattern that 'was well established and deeply rooted when Augustine wrote his *Confessions*'.<sup>37</sup> The original contribution of Augustine was to take these self-examining, confessional practices and orient them towards a Christian truth discourse, identifying transgressions of purity in thought, word and deed, in the act of seeking Divine forgiveness and purification. For example, Augustine confesses: 'Thus I carry on a daily war by fasting, constantly "bringing my body into subjection," after which my pains are banished by pleasure. For hunger and thirst are actual pain'.<sup>38</sup> The acts of confession and self-reflective writing were existing practices which Augustine synthesised with biblical injunction, thereby enhancing his approach by interpellating the authority of holy scripture as he formed his own subjectivity and shaped his moral code.

Connolly identifies two aspects of moral order or code: order as verb (to order) and order as noun (structure or design).<sup>39</sup> For Connolly, Augustine is a carrier of the former, passing on the active order that emanates from God, or some other authority such as the law of nature; it is an ultimate, unquestioned and unchallengeable authority. Augustine also expresses aspects of order as Divine design. In light of this positioning, Connolly then sets out his definitions of moral and ethical: 'I will call a conception a *morality* if it corresponds to one or both of these types, an *ethic* if it strives to inform human conduct without drawing on either as so described'.<sup>40</sup> Within this framework, we see in Augustine the 'God of command is given priority' over 'order as intrinsic pattern'.<sup>41</sup> Juxtaposed with these two axes of morality is his notion of ethics. Connolly offers the following definitions of what he sees as moral and ethical sources in a moral order:

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<sup>35</sup> Foucault, 'Technologies of the Self', p. 231/2.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Augustine, *Confessions*, Book X, Ch.XXXI, No. 43, p. 161. Augustine quotes the biblical reference 1 Corinthians 9:27.

<sup>39</sup> Connolly, 2002, p. 35.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

I will call a *moral source* one that offers a (putative) command or design from which interpretation and judgement can proceed, and an *ethical source* one that draws its interpretive inspiration from a nontheistic, nonteleological source such as "will to power" or "life" or "*différance*" or "untruth."<sup>42</sup>

These conceptions of moral and ethical sources are adopted by this study because they not only correspond to Foucault's descriptions of code-oriented and ethics-oriented moralities but also break the Foucauldian notions down into greater detail.<sup>43</sup> This, in turn, provides the possibility of enhancing our understanding of the constitution of the ethical subject of war by providing a more nuanced reading that includes a creative self-forming dimension that goes beyond observation of codes.

The primary and most authoritative source of moral order for Augustine is the Christian bible, which contains not only Divine command but sets out the Divine order intended for humankind. Augustine's work is characterised by the creative use of multiple sources, which he uses to establish his personal authority; construct regimes of truth; define confession as a technology for use in self-formation and to set out his theological arguments. One issue for many scholars of Augustine is the question of what ideas he imported from antecedents such as Cicero, Plato, Ambrose and the authors of the Christian bible, amongst others. In a just war context this usually involves tracing the history, or attempting to find the origin, of specific codes or ideas: such as *jus ad bellum* or *jus in bello* criteria. This study eschews such a pursuit of origins and is interested more in what Augustine incorporated from his intellectual antecedents and how he synthesised them in his own arguments as he constituted the subject of war.

It is made clear in Augustine's writings that he attached great importance to the ideas of Plato: received *via* Neo-Platonic disciples such as Plotinus. Augustine acknowledges this when he writes: 'There are none who come nearer to us than the Platonists'.<sup>44</sup> By 'us' Augustine is referring to Christians. He goes on to insist that the teaching of Roman theologies 'must yield to the doctrine of the Platonists; for the

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<sup>42</sup> *Ibid.*, p. 38.

<sup>43</sup> Connolly does not specifically associate his use of moral and ethical sources with Foucault's explication of code-oriented and ethics-oriented moralities in *The Use of Pleasure* (p. 30) and introduced in Chapters 1 and 2 of this thesis. He does, however, identify the conceptions of moral sources and ethical sources set out here with what he calls, 'Bearers of the ethical tradition', a group that includes Foucault and Nietzsche, among others (2002, p. 38).

<sup>44</sup> Augustine, *City of God*, VIII.5, p. 304.

Platonists assert that the true God is the author of the universe, the source of the light of truth, and the bestower of happiness.<sup>45</sup> These words demonstrate that Augustine prioritises the importance of the different teachings as follows: us (i.e. Christians), then Platonists, then those who expound Roman theologies. With regard to Augustine's writings on war, John Mattox goes as far as to say: 'Augustine did not merely Christianize the theory of just war; he Platonized it as well'.<sup>46</sup> While the use of Plato by Augustine is clear, Mattox's systematising tendencies overstate the extent to which the phrase 'theory of just war' can be applied to Augustine, whose writings were socially, politically and theologically situated in response to specific challenges to either the Roman Empire, the Church, or to Augustine personally.

Augustine reinforces the efficacy of his arguments by incorporating the ideas of Plato and appropriating Plato's authority as his own. In *City of God* – and from his position of power as a bishop – the following pattern emerges in Augustine's discourse regarding Plato, demonstrating a power/knowledge dynamic at work. Augustine describes Plato as superior to other philosophers; he then claims Plato's teaching as close to his own; Augustine thereby increases the impact of the knowledge he presents in his arguments; Augustine's personal authority is consequently increased, and so on. This approach is demonstrated in Augustine's response to an armed attack on Rome.

Book II of *City of God* is written as a response to critics of Christianity enraged by the failure of the Roman Empire's official religion to protect Rome from barbarian aggressors. Augustine attacks the worship of pagan gods and derides the teachings of philosophers as generally ineffectual because they are not sanctioned or authorised by the Christian God.<sup>47</sup> In this context, Augustine praises Plato when he asks rhetorically: 'How much better and more honourable would it be to have a temple to Plato where his books were read, rather than to have temples to demons where Galli [eunuch priests] are mutilated, eunuchs are consecrated ... and every other kind of cruelty or perversion ... is regularly practised'.<sup>48</sup> Augustine subsequently goes further in a debate over the status of

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<sup>45</sup> *Id.*

<sup>46</sup> Mattox, J.M., *Saint Augustine and the Theory of Just War* (London & New York: Continuum, 2006) p. 92.

<sup>47</sup> Augustine, *City of God*, II.6, p. 53/54.

<sup>48</sup> *Ibid.*, II.7, p. 55.

poets, gods and heroes: 'For my part, I have no hesitation about classing Plato, whom Labeo reckons a demi-god, above the gods themselves, to say nothing of heroes'.<sup>49</sup> These words elevate Plato as someone whose existence is somehow super-human to the point, almost, of divinity. To the Christian, even at that time, such a description borders on heretical and Augustine protects himself from such a criticism by adding later: 'We Christians hold Plato to be neither god nor demi-god'.<sup>50</sup> However, to his non-Christian, Roman listener, Augustine has discursively located Plato alongside the pantheon of traditional Roman gods and demi-gods, thereby reinforcing Christianity's ability to defend Rome: through war where necessary.

Similarly, in Augustine's use of Cicero's ideas, especially concerning just war, we see a pattern that mirrors his use of Plato, whereby Cicero is described as authoritative before being discursively co-opted into Augustine's arguments. In Book XXII of *City of God* Augustine argues for the pre-eminence of the City of God over the City of Rome. Even more importantly, he argues for the divinity of Christ and the people's faith in him as the foundation of that city, in contrast to the worship of Romulus who was falsely declared a god out of the misguided love and loyalty of Roman citizens. Despite his position as Bishop of Hippo, Augustine does not launch such an attack merely from his own position of religious authority but seeks to reinforce his position by appealing to Cicero and co-opting the philosophical and intellectual force of Cicero's reputation amongst Romans. Cicero is key to Augustine's argument against the Roman worship of Romulus, demonstrated by the statement that 'Marcus Tullius Cicero was among the most learned and eloquent of all mankind'.<sup>51</sup> Augustine uses his own position to promote Cicero as learned and eloquent; this, in turn, adds discursive weight to Cicero's criticism of the worship of Romulus, who finally is quoted by Augustine. Consequently, Augustine's criticism of Rome and promotion of the City of God is supported not only by his own authority but also by the illocutionary force of Cicero that Augustine has appropriated to himself.

Augustine's point here serves one further, and important, purpose for the development of his ideas on war and when it might be justified. Having described Cicero as knowledgeable and authoritative before arguing for the superiority of the City

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<sup>49</sup> *Ibid.*, II.14, p. 63.

<sup>50</sup> *Ibid.*, p. 64.

<sup>51</sup> *Ibid.*, XXII.6, p. 1030.

of God over the Earthly City, Augustine develops that line of thinking by continuing on to address what we might today call the *jus ad bellum* criteria of just cause in defence of the City. Augustine quotes Cicero: 'the ideal city never takes up arms except in defence of its faith or its safety'.<sup>52</sup> This just cause argument is adopted and augmented by Augustine as part of his just war and his wider moral code. Augustine explains his appropriation of this Ciceronian ideal by quoting Cicero further. He stresses that for Cicero the existence and defence of the city or state takes precedence over the lives of its citizens: 'For a community must be constituted with a view to its eternal continuance. And so death is never natural for a commonwealth as it is to a man'.<sup>53</sup> Cicero's view is that the deaths of individuals are of lesser significance than the preservation of the city/state: the former should be prepared to die for the latter if necessary. However, Augustine, while incorporating the just cause aspect of Cicero's arguments and reworking it as his own, takes issue with Cicero on the question of what takes priority in the relationship between that individual and the city: faith or safety. There is significant tension between the two positions and that tension revolves around the relative importance of the city and the individual subject. In contrast, for Augustine's City of God, faith is necessary to safety: 'the safety of the City of God is such that it can be possessed, or rather acquired, only with faith and through faith'.<sup>54</sup> According to Augustine: 'The reason for Cicero's statement is that, like the Platonists, he held that the world was imperishable' and this would lead to a bias in favour of the earthly city and, if necessary, an abandonment of individual faith.<sup>55</sup> Examining the conception of moral order outlined previously it appears clear that, according to Augustine, individuals should seek the City of God in faith as part of God's design – in the sense of desired moral order – for humanity. This ethical subject, generally speaking, conforms to both God's command and God's design by giving priority to the defence of faith. In contrast, if defence of faith is rooted in God's design as a moral source, Cicero's ethical subject seeks to defend the safety of the city in relation to ethical sources.<sup>56</sup> Cicero's city cannot correspond to the City of God since it is an earthly city. So a desire to protect an ideal,

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<sup>52</sup> Cicero, quoted in Augustine, *City of God*, XXII.6, p. 1031.

<sup>53</sup> *Id.*

<sup>54</sup> *Ibid.*, p. 1032.

<sup>55</sup> *Id.* Augustine draws on Cicero's discourse on the permanence of the earthly city and redeploys it in support of his own prioritisation of the eternal City of God. The sacking of Rome by Alaric had called into question Cicero's ontological view of the permanence of the earthly city. Part of Augustine's response to the sacking of Rome – in conjunction with his wider responsibilities as a bishop and theologian – is to shift the ontological priority from the permanence of the earthly city to the permanent (eternal) salvation of the human soul, ultimately located in the City of God.

<sup>56</sup> Ethical sources – used in the context identified above in Connolly – are inspired by 'nontheistic, nonteleological source[s] such as "will to power" or "life".' (Connolly, 2002, p. 38)

earthly city may be a worthwhile endeavour but it does not have the status of conformity to God's moral order. A crude summation of the differing positions of Augustine and Cicero might be put as follows: For Cicero, individuals must die and faith be lost if necessary for the city – which has ontological priority – to exist eternally; for Augustine, individuals have ontological priority over the Earthly City and they must live eternally through faith for the City of God to exist eternally. Cicero advocates a predominantly ethical pursuit inspired by nontheistic and nonteleological sources in support of his view that ‘a community must be constituted with a view to its eternal continuance’.<sup>57</sup> In contrast, Augustine’s ethical subject is formed – and self-formed – in relation to both Divine command and teleological morality in his moral code. Having examined aspects of Augustine's moral code, how it is used to constitute the ethical subject in relation to his personal authority and his use of discursive sources, this chapter will now consider more specifically the emergence of his ethical subject of war.

### **The ethical subject of war**

Augustine writes: 'I classify the human race into two branches: the one consists of those who live by human standards, the other of those who live according to God's will'.<sup>58</sup> These are the inhabitants of his two cities, the Earthly City and the City of God in his book *City of God*. Dividing the human race in such a way is the first step in Augustine's constitution of the ethical subject. This absolute separation of the human race according to their faith, or lack of faith, in God provides a straightforward, though superficial, designation of the subject as either ethical or not; the ethical subject belongs to the City of God, while the Other belongs to the earthly city. Yet, as will be seen in greater detail later, alongside this absolute differentiation Augustine adopts a utilitarian approach to those who reject God: praising those non-believers who engage in war but seek to do so in as just a manner as possible, while ultimately never being able to attain citizenship in the City of God solely through these actions. In so doing, Augustine relies on both moral and ethical sources as they have been thus far set out in this thesis. Consequently, even if the Other does not conform to Augustine's moral code with its emphasis on Divine command and scriptural authority, an element of ethical subjectivity can still emerge in relation to ethical sources such as the exercise of self-control on the battlefield: where the *telos* of the individual is self-mastery rather than

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<sup>57</sup> Cicero, *Op cit.*, p. 1031.

<sup>58</sup> *Ibid.*, XV.1, p. 595.

obedience to God. This is because, according to Augustine's Christian doctrine, actions, no matter how good they are in themselves, are insufficient to warrant a place in the City of God. Augustine emphasises the importance of Christian morality in the face of Roman depravity:

Yet if the teachings of Christianity on justice and morality had been listened to and practised by...all peoples...the Roman commonwealth would now enrich all the present world with its own happiness, and would ascend to the heights of eternal life to reign in felicity.<sup>59</sup>

For Augustine the purpose of Christian morality is not simply to provide rules that enable the subject to live a good life on earth but to aspire to 'ascend the heights of eternal life' after accepting – in an act of personal faith – Christian teachings. Furthermore, the trajectory of an individual's *telos* does not follow an axis of morality alone, but acknowledges morality as part of the dimensions of limitless time and metaphysical existence at the heart of the Christian faith. This must be understood on the context of Augustine's wider writings – especially *The Confessions* discussed previously – and the role of confession in the subject's self-formation as a Christian: which in turn makes her, or him, a citizen of the City of God. An individual who achieves citizenship in the City of God is considered by Augustine to be wise. And Augustine says of the relationship between the wise man<sup>60</sup> and just wars:

But the wise man, they say, will wage just wars. Surely, if he remembers that he is a human being, he will lament that fact that he is faced with the necessity of waging just wars; for if they were not just, he would not have to engage in them, and consequently there would be no wars for a wise man. For it is the injustice of the opposing side that lays on the wise man the duty of waging wars; and this injustice is assuredly to be deplored by a human being, since it is the injustice of human beings, even though no necessity for war should arise from it.<sup>61</sup>

The wisdom of the wise man, in this example, does not depend on the sum of knowledge he has accumulated but in opposing an unjust enemy by waging a just war. The wise man pursues the just war because he is a citizen of the City of God and by virtue of that citizenship is unable to pursue any other kind of war. The wise man does not simply emerge here as an ethical subject *because* he undertakes a just war; in this

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<sup>59</sup> *Ibid.*, II.19, p. 70

<sup>60</sup> This re-reading will use Augustine's phrase 'wise man', acknowledging the androcentric emphasis in the terminology. A broader study would enable the gender issues in Augustine's work to be explored in greater detail, though even a superficial reading of Augustine's work locates the female in a caring/nurturing/supporting role while the male is responsible for protecting the female.

<sup>61</sup> *Op cit.*, XIX.7, p. 861/2.

example the justice of the war arises from the *a priori* ethical subjectivity of the wise citizen of the City of God who wages war. The wise man acts out of necessity, which, in turn, reinforces his status as an ethical subject of war. Necessity becomes part of Augustine's moral code: an expression of the teleological order that is reinforced by the just war. In this reading, necessity, like the just war itself, emerges from the wise man; ethical subjectivity is prior to the just war, inextricably linked to the City of God. Augustine's just war emerges from the ethical subject; it is not his ethical subject who emerges – at least at this point – from his just war discourse.

The wise man is not the only subject of war to emerge from Augustine's words here. The unjust subject of war also emerges, and in two ways. Firstly, he emerges as Other to the wise man and the moral order the wise man represents. The unjust enemy emerges in contradiction of Augustine's moral order which grants that only one side in a war can be fighting justly; therefore the unjust enemy is Other to the ethical wise man. Secondly, the unjust subject of war also emerges from Augustine's discourse in relation to ethical sources. According to Augustine the Other is able to experience evil 'without heartfelt grief'; he can also endure horror and cruelty without acknowledging the misery of his actions.<sup>62</sup> So, in this example, we see that the wise, ethical (and masculine) subject precedes the codification of just war itself, while simultaneously emerging as ethical subject of war in conformity to Augustine's wider moral code. In turn, the Other emerges, in contravention of Augustine's moral code, in the ethics-oriented capacity for cruelty and evil, as well as an absence of grief and appetite for destruction.

For Augustine, the act of opposing a clearly unjust enemy as a matter of necessity is relatively straightforward and poses few complications as he constructs his just war discourse. Conversely, the matter of expanding the Empire – or any realm – by forceful means is anathema to Augustine and contradicts his just war, which is part of his wider moral code. He says: 'To make war and to extend the realm by crushing other peoples, is good fortune in the eyes of the wicked; to the good it is stern necessity'.<sup>63</sup> Augustine's reticence – or wariness as Elshtain describes it<sup>64</sup> – in pursuing war can be seen as he rejects the possibility that aggression fuelled by greed or ambition can be a just or justifiable basis for empire building: these are the actions of the wicked.

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<sup>62</sup> *Id.*

<sup>63</sup> *Ibid.*, IV.15, p. 154.

<sup>64</sup> Elshtain, 2007, p. 505.

However, he does grant that where war is brought about by 'stern necessity' – or last resort, to use the more recent vocabulary of just war – making war against a belligerent or wicked neighbour in order to create conditions for a lasting peace can be the actions of the good individual, or ethical subject. Where Augustine writes: 'to the good it is stern necessity'<sup>65</sup>, we find an inversion of later, more systematic and codified just war thinking in which the ethical subject of war emerges in conformity to the requirement of military necessity. In this reference, the ethical subject – 'the good' – emerges first and is Augustine's priority here: it is *because* the subject is good he only makes war that is strictly necessary, and then only in the pursuit of a better state of peace. So instead of the ethical subject of war emerging in conformity, or otherwise, to just war as code-oriented morality, we again find the opposite: the ethical subject is prior – as a result of his Christian faith in God – and just war emerges in Augustine's work as an attempt to codify the conditions which will allow the individual to continue to be constituted as ethical in the context of war. Perhaps more importantly, we find that for Augustine *order* – specifically Divine order – precedes justice. That is, an action is just if it defends or promotes the Divine order.

Moving beyond *City of God* the ethical subject of war emerges as an instrument of Divine punishment in the shape of the legitimate ruler who obeys and reinforces God's chastising commands:

The desire for harming, the cruelty of revenge, the restless and implacable mind, the savageness of revolting, the lust for dominating, and similar things – these are what are justly blamed in wars. Often, so that such things might also be justly punished, certain wars that must be waged against the violence of those resisting are commanded by God or some other legitimate ruler and are undertaken by the good.<sup>66</sup>

Augustine describes those who can legitimately be opposed by a just war – in this case perhaps more rightly referred to as just punishment. The subjectivity of those to be punished is formed from ethical sources such as cruelty, vengefulness and savagery. Such subjects are not characterised simply as standing in opposition to his – and therefore God's – order as code-oriented morality. War as punishment is instituted by God against such a subject and is carried out in conjunction with two aspects of Augustine's moral code: order as Divine command and order as God's design. These

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<sup>65</sup> *Op cit.*

<sup>66</sup> Augustine, *Against Faustus the Manichean*, Ch. XXII.74, in Fortin, E.L. and Kries, D. (Eds.) *Augustine: Political Writings*, Trans. Tkacz, M.W. and Kries, D. (Indianapolis: Hackett, 1994) p. 221/2.

are just wars against the violent at the direct command of God, undertaken by the good ruler, or in the vocabulary of this thesis, the ethical subject of war. However, as has been argued previously, the ethical subject is prior, with, in this case, a just, punitive war resulting from that ethical subjectivity. This punitive aspect of Augustine's just war is advocated explicitly as *casus belli* by Elshtain in *Just War Against Terror*, both in the context of Afghanistan involving the need to punish the perpetrators of 9/11, and the need to punish Saddam Hussein and his regime for atrocities committed against the Kurds, Marsh Arabs and Shiite Muslims in the 1980s and 1990s.<sup>67</sup> The legitimate ruler, who is not necessarily 'good' in Augustine's Christianised sense but who nonetheless acts punitively against the violent and cruel Other, thereby forms herself, or himself, at least partially as ethical subjects of war in relation to Augustine's teleological morality. A similar approach can be seen today as Elshtain constitutes Bush positively in relation to the punishment meted out in Afghanistan and Iraq. Elshtain passes a judgement on the current international political system when she writes: 'It is a striking, and saddening, commentary that the emphasis had to be placed on the danger of WMD since Saddam's well-documented mass murder of his own people did not rise to the level of a *casus belli* in and of itself'.<sup>68</sup> Elshtain here draws upon the Augustinian – or what she sometimes refers to as 'classical' – *jus ad bellum* precept of punitive war in support of a liberal view of military intervention because international law, in the shape of the UN Charter, proscribes such action. However, Elshtain's interpellation of Augustine here is only partial. She excludes a key aspect of his discourse and ontology in failing to make clear – in her use of Augustine in *Just War Against Terror* – the purpose of his punitive war: to obey God's commands and maintain God's teleological order. Augustine's punitive war takes place in support of the sovereign God, whilst Elshtain's punitive war transgresses the rights of the sovereign state.<sup>69</sup>

Consequently, Elshtain's appeal to Augustinian just war here fails to capture his reticence regarding the use of force: a reticence based on his valuing of human life because it is has been created by God, in the image of God. She gives the impression

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<sup>67</sup> Elshtain, 2004, p. 108, 186.

<sup>68</sup> *Id.*

<sup>69</sup> Elshtain subsequently provided further clarification of this disjuncture. In *Sovereignty: God, State and Self* she charts the different conceptions of sovereignty in the book title, seeking to understand how the constitution of each conception draws upon its predecessor(s). In a 'history of ideas' (p. xvi) approach she points out that Augustine's 'moral conception of sovereignty was *not* attached to a notion of territory but assigned as one of God's powers, the heart of God's authority over all creation' (2008a, p. 2). Her thesis is that the trajectory of Western notions and prioritisations of sovereignty moved from the Divine to the sovereign state and then to the self.

that the resort to Augustinian just war discourse is a way of subverting or circumventing existing legal proscriptions against war in international law. This section has sought to show the ethical subject of the just war emerging from the two aspects of Augustine's code-oriented morality (morality as Divine command and morality as design or pattern) as well as his ethics-oriented morality. The Other emerges primarily from ethical sources where she, or he, has not subordinated herself, or himself, to the commands, or order, of the Christian God. In so doing, a continuity has been demonstrated between Augustine and Elshtain, with regard to the ethical subject pursuing a punitive war against the immoral and unjust Other. However, there is an important *discontinuity* between the ontological basis of these arguments: Augustine's is based on a moral code defined by Divine command and Divine order, whilst Elshtain's take place in an international system that precludes reference to Divine justice and grants priority to the rights of a state not to be attacked or threatened by another.

Having considered some aspects of how just war emerges as part of Augustine's moral code, the chapter now moves on to explore further some specific examples of the ethical subject of war in Augustine's writings – the ruler, or king, and the soldier. Each plays a part in either the sanctioning of war or in the execution of that war if it is subsequently undertaken. Consequently, the subject of war emerges differently from Augustine's just war writings, depending on the part played in the pursuit of the just war. While *jus ad bellum* and *jus in bello* are considered to be two somewhat independent and essential pillars of the just war tradition by contemporary just war theorists today such as Walzer and Norman and others, Augustine did not use this systematic approach – or terminology – in assessing the justice of a war, or the way it was executed: that would develop in later centuries. Instead, he addresses separately the moral issues that war raises for a ruler who makes the decision to pursue a war and for the soldier who is tasked to carry out the ruler's commands on the battlefield. It can be seen from Augustine's writings how the respective responsibilities of kings and soldiers help create the conditions that made possible the later *jus ad bellum/jus in bello* differentiation within just war. Conversely, any re-reading of Augustine – or modern appropriation of his ideas such as is found in Elshtain – problematizes the *jus ad bellum/jus in bello* distinction and makes it possible, at least to some degree, to transgress the boundaries the distinction creates.

Augustine does not write in a structured and thematic way on the issues of just cause and right authority – that will come later with Aquinas, as the next chapter will show – but in *Against Faustus the Manichean* he writes:

it makes a great difference by which causes and under which authorities men undertake the wars that must be waged. The natural order, which is suited to the peace of mortal things, requires that the authority and deliberation for undertaking war be under the control of a leader, and also that, in the executing of military commands, soldiers serve peace and the common well-being. Moreover, it is wrong to doubt that a war which must be waged, undertaken under the authority of God, whether in order to constrain, crush, or subjugate the pride of mortals, is undertaken rightly.<sup>70</sup>

The issues of cause and authority are significant for Augustine and he takes natural order and the desire for peace as his start-point. The natural order is, for Augustine, part of the Divine order that shapes the world and human existence. In this context, leaders are charged to make decisions as part of a God-ordained social hierarchy, with soldiers serving the natural order and desire for peace in their military duties. Beyond that, the authority of God – moral order as Divine command is Augustine's ultimate authority – cannot be doubted and any resultant war must consequently be just. Rightful authority to wage war comes not from social status in itself but from the place of the ruler in the Divine order; the ruler emerges as ethical when her, or his, actions correspond to God's guidance. Similarly, just cause is here located in the moral code as Divine command. The soldier emerges as ethical in two ways, however: when he executes legitimate commands (an extension downwards through the hierarchy of moral order as Divine command) and when he serves peace and well-being (moral order as design).

What happens when the soldier serves a sacrilegious king? Do orders from a ruler who contradicts Augustine's moral order and conception of just war automatically ensure that the soldier's actions in war are *de facto* immoral? Augustine leaves open the possibility that the self-subjection of a soldier as ethical can occur in pursuit of honour, while obeying a sacrilegious ruler in executing an unjust war. In so doing, Augustine provides a just war discourse that makes it possible for Vattel and Walzer, among others, to treat *jus ad bellum* and *jus in bello* as independent dimensions of just

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<sup>70</sup> Augustine, *Against Faustus the Manichean*, XXII, Ch.74 in Reichberg, G.M., Syse, H. and Begby, E. (Eds) *The Ethics of War* (Oxford: Blackwell Publishing, 2006) p. 81.

war within their respective moral codes. Augustine addresses aspects of this complex moral dilemma:

Therefore, a just man, if he should happen to serve as a soldier under a human king who is sacrilegious, could rightly wage war at the king's command, maintaining the order of civic peace, for what he is commanded to do is not contrary to the sure precepts of God ... perhaps the iniquity of giving the orders will make the king guilty while the rank of servant in the civil order will show the soldier to be innocent.<sup>71</sup>

The king does not emerge here as ethical; this is not necessarily a result of his actions in relation to war but because he is sacrilegious and, by definition, contravenes God's moral order as outlined by Augustine. The soldier who wages the king's unjust war, on the other hand, emerges as ethical, despite involvement in the indirect disobedience of God's order as command. This is a consequence of the soldier's contribution to the maintenance of the order of civic peace, which is part of Augustine's teleological morality. In this example the king emerges as sacrilegious Other to the precepts of God, while the soldier emerges as ethical by striving to maintain Divine order – part of Augustine's code-oriented morality. The separation of the emerging ethical subjectivity of the soldier from that of the sacrilegious king reflects Augustine's Christian views about salvation as individualised rather than a shared communal responsibility. This is reinforced when he writes: '...those people who continue to the end of their lives in the fellowship of the Catholic Church have no reason to feel secure, if their moral behaviour is disreputable and deserving of condemnation'.<sup>72</sup> Augustine takes his authority for this view from the bible, his highest written authority. It contains both direct commands of God and reveals God's design or pattern for living, which he quotes in setting out the fate that will befall immoral individuals – 'Those who behave in this [immoral] way will not inherit the Kingdom of God'.<sup>73</sup> Consequently, it can be seen that that these two subjects of war (the king and the soldier) emerge simultaneously from Augustine's moral code alongside similarly emerging just war discourse: again it can be seen that the ethical subject of war does not simply emerge *from* the just war discourse alone.

In contrast to the soldier who serves a sacrilegious king, consider how the subjectivity of the soldier is formed, with regard to the act of killing, when the act is

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<sup>71</sup> *Ibid.*, p. 82.

<sup>72</sup> *Ibid.*, p. 1009.

<sup>73</sup> Galatians 5:21, quoted in Augustine, *City of God*, XXI.25, p. 1009.

carried out in the line of duty under the legitimate authority of the ruler. Augustine writes:

when a soldier kills a man in obedience to the legitimate authority under which he served, he is not chargeable with murder by the laws of his country; in fact he is chargeable with insubordination and mutiny if he refuses. But if he did it of his own accord, on his own authority, he would be liable to a charge of homicide. Thus he is punished if he did it without orders for the same reason that he will be punished if he refuses when ordered...If that is the case when a general gives the order, how much more when the command comes from the Creator!<sup>74</sup>

Earlier in the chapter these words were considered with reference to Augustine and authority and the hierarchy he sets out within his moral code concerning war: soldier, general, legitimate authority (ruler or king), the Creator [Augustine's God]. A further reading of these words points to an emphasis on the role of legitimate authority in the conduct of war, specifically in support of the soldier's actions in war. For Augustine, authority is located in a Divinely ordained hierarchical structure that supports emerging just war ideas as part of his overall moral code. So the soldier is constituted as ethical if the killing accords with the orders of a general, or other legitimate authority within the Divine order as codified by Augustine. Augustine goes further: the soldier would be rendered unjust in choosing *not* to kill if that choice is made contrary to legitimate commands within the military structure which, in turn, is part of Divine order. Emerging ethical subjectivity in this situation is not dependent on the immediate action of taking another human life but on conforming to the instructions of a legitimate authority within Augustine's moral code.

As the preceding argument has revealed, Augustine's priority is in the formation of the ethical subject – which, for him, means good Christians whose attitudes and behaviours are oriented towards a Divine *telos*. This subject is constituted in two key ways: firstly, in conformity to his moral code which is defined by Divine order: order as command and order as design; and secondly, through creative self-formation – in relation to God – in the acts of self-observation, confession and self-policing. The ethical subject of war is constituted, and self-constitutes, in one additional way: by opposing the Other who is either barbaric in their actions towards Christians, or who does not share Augustine's belief in God. The ethical subject of war does not emerge in conformity to Augustine's just war. On the contrary, Augustine's just war discourse relies on the *a priori* existence of the ethical subject – the 'wise man', who only pursues

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<sup>74</sup> Augustine, *City of God*, I.26, p. 37.

only just wars.<sup>75</sup> Augustine's ethical subject of war emerges in relation to God's teleological order and it is this ordering that constitutes the ruler and the soldier: preceding the formal *ad bellum/in bello* distinction that would follow in later centuries. Lastly, Elshtain – in constituting the ethical subject of war in contemporary just war debate surrounding the Afghanistan intervention – draws upon Augustine's notion of the just, punitive war. However, in so doing she is selective about the aspects of his discourse that she uses in the present. She refers to the 'punishment' aspect of Augustine's discourse, while omitting the 'Divine' origin of, and authority for, that use of just war as punishment.

### **Conclusion**

The chapter began by looking at the relevance of Augustine today in debates surrounding the justification of war, the formation of subjectivity and political theory. Connolly's understanding of moral order and his conception of both moral and ethical sources are reflected in the subsequent exploration of the emergence of Augustine's ethical subject of war and is consistent with the Foucauldian underpinnings of this thesis. An examination of Augustine's personal authority showed how his theological and philosophical arguments were used in conjunction with the Emperor's power in the formation of regimes of truth to create and protect the Church's doctrinal purity in the face of heretical opposition. That same authority enabled Augustine to write authoritatively on the justification of war, with a particular view to allowing Christians to serve as soldiers and wage wars while also forming themselves as ethical in the process. Augustine's use of discursive sources played an important role in support of his own arguments, and in the rebutting of his opponents' arguments, concerning the justification and waging of war. It has been argued – with reference to Augustine's texts – that the ethical subject of war did not emerge from just war principles which were already part of Augustine's moral code. Rather, both the ethical subject of war and his just war principles emerged from the creative application of his moral code to questions of war and Empire. In examples analysed above, it is the just war that emerges from, or at least in conjunction with, the participation in war of the ethical subject – ideally a citizen of the City of God whose subjectivity was formed in relation to both moral and ethical sources.

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<sup>75</sup> *Op cit.*, XIX.7, p. 861/2.

One difficulty in Elshtain's use of Augustine's notion of a just punitive war in *Just War Against Terror* was addressed: the ontological discontinuity between Augustine's desire to obey Divine command and maintain Divine teleological order and Elshtain's proposed transgression of state sovereignty using the language of liberalism. This discontinuity was later addressed by Elshtain in *Sovereignty: God, State, and Self* where she followed, in a history of ideas, a trajectory of Western notions of sovereignty from the Divine to the state to the individual. This led to a further identification in Elshtain of a discontinuity between Augustinian and modern notions of the self: 'Even if one doesn't care about God, the Augustinian self offers a powerful corrective to any vision of self "at one-ness". For Augustine there are intrinsic limits to our capacity to understand fully, and we cannot look to the self for as vision of wholeness'.<sup>76</sup> The use of Augustine in Elshtain's just war discourse opens up a conceptual space in which the ethical subject can creatively self-constitute – in addition to conformity to codes. In this sense she remains a true Augustinian. Furthermore, the emergence of the ethical subject of war in her writings parallels the emergence the ethical subject in Connolly's *The Augustinian Imperative*. Both Elshtain and Connolly deny the existence of some hidden, timeless moral order that shapes human existence and ethical behaviour and merely needs to be uncovered, opting instead for a conception of ethical subjectivity that is contingent, emerges in relation to situated codes and contains a self-forming aspect. While aspects of Elshtain's use of Augustine in *Just War Against Terror* resulted in charges of assuming timelessness in his works, in *Sovereignty: God, State, and Self* she demonstrates in a much more comprehensive manner the contingency of the subject: exploring in great detail the emergence of the modern, sovereign self.

The focus of the genealogy moves on now from Augustine to the emergence of the ethical subject of war in Aquinas' writings: in his *Summa Theologica* in particular. Chapter 5 will explore how Augustine's understanding of the formation of the self is reformulated in Aquinas' thought, examining the discourses that Aquinas draws upon in the process of this reformulation. Breaks and inconsistencies with Augustine's work will be identified, as well as continuities, to demonstrate the contingency of the ethical subject of the just war tradition. The most important continuity to be addressed is the interiority of the self-reflexive subject, while a major discontinuity in the *telos* of the subject – both philosophically and theologically – is brought about when Aquinas eschews Augustine's use of Neo-Platonist ideas in favour of the importation of

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<sup>76</sup> Elshtain, 2008a, p. 161.

Aristotelian ethics into his *schema*: notably, the notion of the common good. One further discontinuity will be examined, namely, Aquinas' codification of just war within his theological and philosophical system: a codification that, as will be shown, is prevalent in contemporary just war writings.

## Chapter 5

### Thomas Aquinas: Just war as codified morality

The focus of the genealogy now shifts from Augustine to Aquinas, the intervening eight centuries having witnessed massive political and religious change across Europe. These changes, in turn, impacted hugely on the associated intellectual landscape, resulting in the emergence of significant differences in conceptions of subjectivity between these two towering figures in the just war tradition. Where Augustine wrote in the context of homogeneous political rule and a Church striving to overcome doctrinal division, Aquinas faced a Europe of emerging states and fiefdoms dominated by warring princes, almost all of whom owed at least some level of religious allegiance to the Pope and a hegemonic Catholic Church.

Aquinas' relationship to the prevailing intellectual and spiritual domination of Augustinian thought in the Catholic Church is complex. The literary and academic conventions adopted by Aquinas in his *Summa Theologica* are radically different to the lengthy and often florid approach used by Augustine: highly stylised and systematic. Nowhere is this more apparent than in Aquinas' succinct summary of the criteria that need to be satisfied for a war to be considered just: namely, that just wars should be legitimately authorised; fought for a just cause and undertaken with the right intention.<sup>1</sup> Although these issues were addressed by Augustine, it is this concise and orderly codification by Aquinas that would be adopted and adapted by subsequent theorists in the just war tradition. However, aspects of Augustinian theology and philosophy informed not only Aquinas' just war but also every other aspect of his life and work. Aquinas' subject, like Augustine's, exhibits an essential interiority that manifests itself in a reflexive capacity. Like Augustine, Aquinas belonged to a monastic order where confession as reflective practice informed both self-knowing, oriented, in the main, towards being aware of one's sinfulness, and self-subjection through spiritual practices aimed at transforming behaviour with the intended *telos* of Godliness. This is set out clearly in the first Article of *Summa Theologica*:

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<sup>1</sup> Aquinas, Thomas, *Summa Theologica*, Trans. Fathers of the English Dominican Province, Rev. Edn., Benzinger Brothers, 1948 (Reprinted Westminster, MD: Christian Classics, 1981), Second Part of the Second Part, Question 40, Article 1, p. 1813/4. Henceforth cited in the format: *Summa*, II-II, Q. 40, A. 1, p. 1813/4.

It was necessary for man's salvation that there should be a knowledge revealed by God besides philosophical science built up by human reason. Firstly, indeed, because man is directed to God, as to an end that surpasses the grasp of his reason ... But the end must first be known by men who are to direct their thoughts and actions to the end.<sup>2</sup>

Aquinas' codification of morality should not be read as a move away from the importance of subjectivity. It should be viewed as an attempt to frame, in a more structured way, the means by which ethical subjectivation and self-subjectivation can occur – through increased conformity to his code-oriented morality.

Aquinas has been chosen for a genealogical re-reading for a number of reasons. Elshtain – in justifying intervention in Afghanistan – based part of her argument on a Thomistic discourse of helping the weak as a legitimate *casus belli*: those 'persons who cannot defend themselves'.<sup>3</sup> This recourse to Aquinas enabled Elshtain to move beyond the codified limitations of International Law and inviolate state borders in framing her case. By moving beyond the constraints of modern codes Elshtain opened up a space for creative ethical self-formation in support of the oppressed and in opposition to the Taliban, oppressive Other: an argument that she extended to Iraq and the need to protect innocent Iraqis from Saddam Hussein.<sup>4</sup> In addition, Elshtain's use of Aquinas highlights an important shift in the trajectory of the ethical subject from the Divine *telos* of Augustine to include a greater emphasis on an earthbound common good: based on Aquinas' interpellation of Aristotelian ethics. Furthermore, Elshtain uses Aquinas' doctrine of double-effect as a means of assessing the legitimacy of particular intentions and actions – in the present – in relation to intervention.<sup>5</sup>

The genealogy therefore continues in this chapter by examining how Aquinas is used in current conceptions of subjectivity through his synthesis of Aristotelian philosophy and Augustinian theology, before going on to consider his enduring impact on just war and wider political theory. Subsequently, Aquinas' choice of discursive sources, and the manner of their deployment in his *Summa Theologica*, will be studied to understand how they, in conjunction with his ontological assumptions, inform and shape his moral code. Finally, the remainder of the chapter will address the creative formation of ethical subjectivity in his work, with a particular emphasis on the

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<sup>2</sup> Aquinas, *Summa*, I, Q. 1, A. 1, p. 2.

<sup>3</sup> Elshtain, 2004, p. 170.

<sup>4</sup> *Ibid.*, p. 185ff.

<sup>5</sup> *Ibid.*, p. 67.

emergence of his ethical subject of war. This will be done by setting out his succinct codification of just war followed by an assessment of how the ruler and the soldier subsequently emerge as ethical in the context of war. In the process, one further contribution of Aquinas to the just war tradition will be examined: the place of his doctrine of double-effect in the constitution of the ethical subject of war.

### **Aquinas Today**

Taylor's exploration of the emergence of the modern subject, and in particular the notion of self-reflexivity, draws on the contrasting approaches to the subject of Augustine and Aquinas. For Taylor, Augustine argues from abstraction as an articulation of human imagining to a reality beyond.<sup>6</sup> This has particular ramifications for the woman or man of faith for whom the reality of the metaphysical – including God – is rooted in the human imaginary and reflective capacity. Augustine's reliance on Plato results in an ultimate reality that exists in the spiritual realm, while the human realm and the practice of reason is but a shadow of that 'reality' beyond. Taylor argues that Descartes – and consequently modern conceptions of subjectivity – later relies on an Augustinian formulation where reality 'out there' somehow starts from within. The evidence of this approach is identified by Taylor in Descartes': 'I think, therefore I am'.<sup>7</sup> In other words, Descartes, following Augustine, 'situates the moral source within us'.<sup>8</sup> Elshtain, in tracing the emergence of what she calls the sovereign self, observes: 'There is a self-controlling project of mastery in Descartes' position ... The heart of the self is an autonomous, rational cogito'.<sup>9</sup> Descartes' project of mastery of the self contrasts with Augustine's self-mastery, which is a response to the Divine. This, in turn, points to a significant difference in the ontological assumptions that underpin the ideas of Descartes and Augustine – a difference to which Aquinas makes a substantial contribution. For Augustine, God is the pre-existing reality that he accepts by faith: his reflections on who or what God is are then rooted in that act of faith. Conversely, Descartes argues for the existence of God as an extension of his own self-awareness:

But now, if just because I can draw the idea of something from my thought, it follows that all which I know clearly and distinctly as pertaining to this object

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<sup>6</sup> Taylor, 1989, p. 140/1.

<sup>7</sup> Descartes, R., 'Principles of Philosophy', in Griffith, T. (Ed.) *Descartes: Key Philosophical Writings*, Trans. by E.S. Haldane and G.R.T. Ross (London: Wordsworth Editions Ltd, 1997) p. 279.

<sup>8</sup> Taylor, 1989, p. 143.

<sup>9</sup> Elshtain, 2008a, p. 174.

does really belong to it, may I not derive from this an argument demonstrating the existence of God?<sup>10</sup>

Augustine and Descartes both rely on reflexive capacity in constituting the subject and establishing a relationship between the subject and the Divine. However, Augustine's ontology argues from the reality of the Divine to shadow reality of earthly existence: whilst Descartes argues from the reality of the human earthly existence to the Divine. Despite the extensive use of Augustinian theology in his work, Aquinas' ontology places great emphasis on Aristotle and the question of how life should be lived with a *telos* in the earthly realm, rather than on Plato's concern with transcendental reality. Consequently, Aquinas 'argue[s] to God from the existence of created reality'.<sup>11</sup> In so doing, Aquinas reveals his interpellation of Aristotle's ideas on the physical, earthly reality from where he sets out to explore – also using the human reflexive capacity – the metaphysical realm. That is not to say that Aquinas' subject is originary and that knowledge and experience flows from her or him; rather it says that he argues *from* that which he deems to be real – that which was created by God – *to* that which is reliant on the physical, reflexive subject: namely, an understanding of the Divine. In arguing for the existence of God Descartes may rely on a conception of self-reflexivity associated with Augustine but the trajectory of his argument – from the earthly to the Divine – has greater commonality with Aquinas.

The centrality of Augustine's and Aquinas' Christian faith on their respective applications of reason are often overlooked in contemporary discussion surrounding the emergence of the Western subject. For Augustine, faith was prior and reason reinforced his declaration of faith. As Etienne Gilson observes of Augustine: 'the only safe plan is to take revelation for our guide and make an effort to understand its contents – and this understanding of the contents of revelation will be philosophy itself.'<sup>12</sup> Contrarily, for Aquinas, it is knowledge and understanding of God that will lead to, or reinforce, faith. Aquinas writes:

there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid

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<sup>10</sup> Descartes, R., 'Meditations on First Philosophy', in Griffith, T. (Ed.) *Descartes: Key Philosophical Writings*, Trans. by E.S. Haldane and G.R.T. Ross (London: Wordsworth Editions Ltd, 1997) p. 171.

<sup>11</sup> Taylor, 1989, p. 141 (*My italics*).

<sup>12</sup> Gilson, E., *The Spirit of Medieval Philosophy* (New York: Charles Scribner's Sons, 1940) p. 5.

offending those among whom one has to live, and other such things regarding the above inclination.<sup>13</sup>

For Aquinas, the good referred to here includes the pursuit of knowledge about God, both of which are related to a rationality rooted in natural law. The first or highest purpose of the good, as an expression of the rationality within natural law that enables the subject to attain it, is the pursuit of further knowledge of God. Aquinas shifts the locus of the self-reflexive subject from the Divine to the human. Therefore, where Cartesian subjectivity is associated – or found to have its origins – with Augustine, the association can only be partial; it is the Thomistic shift giving priority in the application of reason to the subject and away from the Divine, that makes the subsequent Cartesian position possible. This change of emphasis in the application of reason emerges in conjunction with a discontinuity between Augustinian and Thomistic discourses with regard to the *telos* of the subject. For Aquinas, natural law may be conceived separately from God but it contains within it an orientation of the individual towards God. The *telos* of the individual who pursues the good, or the common good within society, remains with the Divine, as it did for Augustine. However, where the *telos* of Augustine's subject is to be fulfilled in the next life in the City of God, the attainment of the *telos* of Aquinas' subject is inaugurated – if not fully achieved – in the society in which the individual lives, applying reason in pursuit of the common good in this life. Achieving the *telos* of his subject begins in this life in anticipation of a completion in the life hereafter. This is the ultimate expression of Aquinas' synthesis of Augustinianism and Aristotelianism: a synthesis that will be explored in greater detail as the chapter progresses.

Elshtain provides further insight into aspects of the self in Aquinas and relates them to wider political conceptions of God and state. More specifically, she takes the Thomistic relationship between self and God and relates it to the political system of the day, before going on to explore the impact of such an approach today. For Aquinas, both God's power and God's capacity to wield that power is limited, bounded by God's revelation in creation. For Aquinas, God is not a metaphysical reality beyond unlimited human imaginings, rather God is bounded by human experience: '[T]he Thomistic God is the apogee of goodness, reason, and love, and the bringing into being of Creation is an act of love ... God's omnipotence remains but he is bound in ways accessible to

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<sup>13</sup> Aquinas, *Summa*, I-II, Q. 94, A. 2, p. 1351.

human reason'.<sup>14</sup> In her reasoning set out here, Elshtain argues that God is limited by the human capacity to rationalise the Divine, as opposed to making a theological point about the claimed omnipotence or otherwise of God. She identifies the political significance of Aquinas' limiting of the power of God – if God's power has a boundary, then so has the power of earthly princes. The result is 'the playing-out of changing configurations of proclaimed power(s) in the late medieval world, the world that gave us political sovereignty'.<sup>15</sup> While Elshtain's reading of Aquinas here is historically located, in *Just War Against Terror* she provides a pragmatic summation of the purposes behind Aquinas' complex and lengthy arguments. She writes: 'For Aquinas, Christianity is, among other things, a structure of practical wisdom ... This kind of believer neither despises the world nor retreats from it. Rather, this believer engages the world, sustains it, and seeks to transform it – all at the same time'.<sup>16</sup> Rob Walker suggests that a less pessimistic reading of international relations theory is possible if Christianity is 'read through the texts of, say, Aquinas rather than Augustine ... it then becomes easier to interpret the spatial resolution of inside and outside without the dubious benefit of a metaphysics of time and eternity or a theology of the saved and damned'.<sup>17</sup> Walker's position can be seen clearly in Aquinas' criteria for a just war where he refers to 'the advancement of good, or the avoidance of evil' in the context of 'the care of the common weal'.<sup>18</sup> The pursuit of the just war is undertaken as a collective endeavour of the spatially distinct 'common weal' against the Other beyond the spatial distinction. This discourse of same/Other and its application in Thomistic theology is drawn upon in justifying contemporary 'liberal' ways of justifying and making war: as was argued in Chapter 3.

The place of Aquinas in contemporary political debates surrounding the formation of the subject could be explored at greater length. However, this thesis will leave that exploration for another researcher and move on to examine the codification of Aquinas' morality and the discourses he draws upon, in order to move subsequently to analyse the constitution of his ethical subject.

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<sup>14</sup> Elshtain, 2008a, p. 22.

<sup>15</sup> *Ibid.*, p. 23.

<sup>16</sup> Elshtain, 2004, p. 101.

<sup>17</sup> Walker, R.B.J., *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993) p. 68.

<sup>18</sup> *Summa*, II-II, Q. 40, A. 1, p. 1814.

## Discourse and morality

James Johnson makes the following observation about Aquinas and his use of available discourses in formulating his ideas on just war:<sup>19</sup>

In building on the canonists' work and their use of Augustine, Thomas helped to embody, rationalize, and extend the developing consensus on moral use of armed force ... Thomas's position is doubly useful, since it is both accessible and at the centre of the development of medieval Christian moral thought on the just war idea.<sup>20</sup>

Johnson recognises that Aquinas plays a pivotal role in the development and codification of just war arguments. This is based on Aquinas' creative reformulation of many existing ideas in a way that would eventually find not only favour but pre-eminence in the Catholic Church and in Western thought. Yet, while identifying that Aquinas built on earlier works, he does not explore in detail *how* Aquinas goes about using the just war discourses available to him.

A glance at areas of contemporary interest in Aquinas' legacy – philosophy, ethics, natural law, politics, morality – gives some idea of the breadth of his work and the rich tapestry of interwoven concepts that it contains. Aquinas draws on a number of diverse – in some cases apparently incommensurable – sources: holy scriptures, the early Church Fathers and Augustine in particular, Greek philosophers and Roman jurists. A superficial summary of his work might assess it as an amalgam of the great theological and philosophical ideas in Western thought during Aquinas' lifetime. Eight centuries after his death Augustine remained the key theological source for Aquinas and the Catholic Church. Within his discourse lay the neo-Platonic philosophical ideas that Augustine had interpellated and redeployed to great effect. However, Aquinas' development as a scholar coincided with a revival of interest in Europe of the ancient writings of Aristotle, translated by Muslim scholars of the near-East and brought to Europe during the Crusades of the previous century.

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<sup>19</sup> In 1879 Pope Leo XIII declared that Aquinas' theology represented official Catholic doctrine. With regard to the issue of just war, inasmuch as his writings represented Catholic doctrine (official teaching), so could his just war writings be considered to be just war *doctrine*, as opposed to just war *theory* – that is, institutionally accepted and enforced. This thesis argues that conceptions of just war are contingent and therefore does not use the term 'doctrine'.

<sup>20</sup> Johnson, J.T., *Morality and Contemporary Warfare* (New Haven & London: Yale University Press, 1999) p. 45.

Frederick Russell groups Aquinas' Christian antecedents together as essentially Augustinian and therefore able to be considered as one discursive bloc which Aquinas juxtaposes with Aristotle's writings in producing his own discourse:

[Aquinas fuses] Aristotelian political theory to the traditional Augustinian outlook of his predecessors. His comprehensive treatment incorporated such Aristotelian tenets as the naturalness of political authority, the teleology of communal life, and the superiority of the common good over the individual ... The assertion of public authority against private right was granted a new theoretical benediction in Aquinas' Aristotelian outlook.<sup>21</sup>

While this thesis supports the broad thrust of Russell's general observation here, Russell does not demonstrate at a textual level how this is done. In contrast, Servais Pinkaers looks in some detail at Aquinas' sources: their use in his discourse, the significance of his choices and their usefulness to the reader in understanding Aquinas. According to Pinkaers:

the "authorities" that [Aquinas] cites do not play a deontological role for him, but an epistemological one. In other words, their *sentences* do not impose an obligation to hold one or another proposition as true, even if not understood; rather, they are seen as sources of light and truths to be understood, even if they are as yet understood only imperfectly.<sup>22</sup>

Pinkaers alludes to the creative use of discourses by Aquinas, in that he does not use authorities such as Augustine, Aristotle or others as the givers of complete truths that need only be passed on to the next generation of the faithful. Rather, Aquinas increases his readers' understanding of these authorities in the way that he uses them in his own writings. This approach is reinforced further when Pinkaers refers to Aquinas' selectivity in the appropriation of the authoritative writings of others. He writes: 'Thomas has the art of choosing, from among the texts he uses, the sentence or the phrase that expresses the essence of the issue and provides the exact argument he needs'.<sup>23</sup> This selectivity reinforces the constitutive nature of Aquinas' discourse in relation to the traditions and institution of the Catholic Church in which he operates.

Aquinas adopts a highly stylized method in order to synthesize multiple discursive sources in his writings. He first sets out a question; specific objections to that question are then presented before he begins to answer by stating his own position; he then

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<sup>21</sup> Russell, F. H., *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975) p. 258

<sup>22</sup> Pinkaers, S-T, 'The Sources of the Ethics of St Thomas Aquinas', Trans. Mary Thomas Noble, in Pope, S.J. (Ed.) *The Ethics of Aquinas* (Washington, D.C.: Georgetown University Press, 2002) p. 20.

<sup>23</sup> Pinkaers, 2002, p. 25.

concludes the section by responding to the specific objections he set out initially.

Overall, this gives the appearance of a balanced argument on each point of contention.

Joan Tooke, however, is critical of the approach:

the conventions of the scholastic method, which, by allowing the expression of a certain number of objections, contrives to give the impression that an open debate is in progress. However, the objections stated could be selected with the greatest care, so that what seems to be a contest of opinions is more like a ventriloquist's performance in so far as the proposer and opposer are in fact one person.<sup>24</sup>

Tooke rightly points out that Aquinas sets the parameters of his own enquiries, states his own objections and concludes, at a point of his own choosing, with no external intellectual challenge. To that end, Aquinas suffers as much from the accusation of selectivity as any other academic in history. As this chapter continues and his work is further analysed with reference to the emergence of the ethical subject of war, the reader should remain aware of these discursive techniques and see the objections raised by Aquinas as *part* of the construction of his arguments, not as genuine objections to his arguments.

Morality as both Divine command and design is seen in a more structured way in Aquinas' moral code than in Augustine's. The crucial factor that accounts for the difference in approaches is found in the application of human reason. Paul Christopher sums up the difference in moral approach between Augustine and Aquinas as follows: 'Augustine holds that revelation is always the foundational source of moral truth; Aquinas contends that humans can discover moral truths through reason'.<sup>25</sup> Christopher may be overstating the extent to which Aquinas applies reason or, at least, the extent to which he applies reason independently of revelation. The methodical codification of morality by Aquinas, and his willingness to use the application of reason to the revelation of scripture, reflects the general systematizing tendencies of the scholars of his age. Aquinas says of natural, human, and Divine law, all of which are aspects of his moral code:

Besides the natural and the human law it was necessary for the directing of human conduct to have a Divine law. And this for four reasons. First, because it is by law that man is directed how to perform his proper acts in view of his last end

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<sup>24</sup> Tooke, J. D., *The Just War in Aquinas and Grotius* (London: SPCK, 1965) p. 28.

<sup>25</sup> Christopher, P., *The Ethics of War and Peace: An Introduction to Legal and Moral Issues*, 3<sup>rd</sup> Edn. (New Jersey: Pearson Prentice Hall, 2004) p. 71, referring to *Summa Theologica*, I-II, Q. 94, A. 2: 'the precepts of the natural law are to the practical reason, what the first principles of demonstrations are to the speculative reason'.

... Secondly ... In order, therefore, that man may know without any doubt what he ought to do and what he ought to avoid, it was necessary for man to be directed in his proper acts by a law given by God, for it is certain that such a law cannot err ... Thirdly ... human law could not sufficiently curb and direct interior acts; and it was necessary for this purpose that a Divine law should supervene ... Fourthly ... In order, therefore, that no evil might remain unforbidden and unpunished, it was necessary for the Divine law to supervene, whereby all sins are forbidden.<sup>26</sup>

Morality as design is seen in natural and human law and accessed through the application of reason, which, in Aquinas' *schema*, was insufficient on its own to guide human conduct. Therefore, the Divine law – the command aspect of moral law – was added. Aquinas gives a number of reasons for its inclusion: to prompt man towards his ultimate *telos* or end (eternity with God); to avoid error in choosing courses of action; to overcome interior, rebellious acts (against God) and to punish sins – which can be interior or exterior acts – not punishable under human or natural law. These aspects of the Divine law can be summarized: 'Do good, avoid evil'. The quotation above captures the dimension of personal responsibility, or self-policing, of the individual in pursuit, or rejection, of morality in obedience to the law set out in Aquinas' extensive moral code. For Aquinas, human law alone cannot bind or dictate human acts. It is in the restraint of self *by* self as interior act that the self-reflective subject promotes her or his own ethical subjectivity in conformity to human law as an external expression of inner compliance. Divine law is viewed differently and can only be acceded to by self-reflection, leading to interior acts of self on self: acts that will also be eventually judged in the metaphysical realm.

Aquinas also wrote about the relationship between the natural and the Divine: 'It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law.'<sup>27</sup> The individual is deemed good or evil, moral or immoral, according to her, or his, deliberate, conscious decisions made with regard to the laws: Divine, natural and human. Frederick Copleston describes his reading of Aquinas on law and morality:

Every man possesses ... the light of reason whereby he can reflect on these fundamental inclinations of his nature and promulgate to himself the natural moral law, which is the totality of the universal precepts or dictates of right reason concerning the good which is to be pursued and the evil which is to be shunned.<sup>28</sup>

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<sup>26</sup> Aquinas, *Summa*, I-II, Q. 91, A. 4, p. 1336.

<sup>27</sup> *Ibid.*, A. 2, p. 1334.

<sup>28</sup> Copleston, 1965, p. 221.

Aquinas' subject exhibits an essential interiority that manifests itself in a reflexive capacity. Aiden Nichols captures the ultimate end to be pursued by such a subject in relation to Aquinas' moral order: 'On Thomas's view, the vision of God in heaven is the unique overarching end of goal of the human person to which all human action – all moral action – needs relating if it is to be accounted, in the last analysis, good for man'.<sup>29</sup> Both Copleston and Nichols refer to the religiously framed vocabulary of good and evil which Pope attributes to Aquinas' religious motivation. According to Stephen Pope: '[Aquinas] was a pious scholar seeking to understand more deeply what he affirmed in faith as a member of the believing Christian community. For this reason his treatment of morality is fundamentally theological'.<sup>30</sup> In other words, he sought to live in a good, Christ-imitating way: the *telos* of the Christian life.

As this author reflects on Aquinas' understanding of law and morality, a common theme emerges: the need for a disciplined life in relation to both human and Divine affairs. Aquinas compares the purposes of human law and Divine law in his moral code:

the end of human law is the temporal tranquility of the state, which end law effects by directing external actions, as regards those evils which might disturb the peaceful condition of the state. On the other hand, the end of the Divine law is to bring man to that end which is everlasting happiness; which end is hindered by any sin, not only of external, but also of internal action.<sup>31</sup>

Although human law and Divine law both support the aim of earthly tranquility or peace by legislating against acts that will disturb that tranquility, they operate in two complementary ways. Aquinas stresses that natural law is subservient to, or sourced within, Divine law: 'natural law is nothing else than the rational creature's participation of the eternal law'.<sup>32</sup> However, Divine law has, for Aquinas, a higher purpose which he describes in the quote above as 'eternal happiness': which is not only a metaphysical experience in the next life but begins during the current earthly existence. This eternal happiness can be obstructed not only by external actions but also by internal actions, such as an ill-directed will. Human law is subsequently extrapolated from natural law in the application of human reason and is part of the teleological morality outlined by

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<sup>29</sup> Nichols, 2002, p. 92.

<sup>30</sup> Pope, S.J., 'Overview of the Ethics of St Thomas' in Pope, S.J. (Ed.) *The Ethics of Aquinas* (Washington, D.C.: Georgetown University Press, 2002) p. 30.

<sup>31</sup> Aquinas, *Summa*, I-II, Q. 98, A. 1, p. 1374.

<sup>32</sup> *Ibid.*, Q. 91, A. 2, p. 1334.

Aquinas. Further, while these laws comprise different elements of his moral code, they remain, at least to some extent, distinct.

Aquinas writes of the relationship between law and morality, drawing on Aristotle in order to present his case that civic law is intended for the common good:

Wherefore the Philosopher, in the above definition of legal matters mentions both happiness and the body politic: for he says (Ethic. v, 1) that we call those legal matters "just, which are adapted to produce and preserve happiness and its parts for the body politic": since the state is a perfect community, as he says in Polit. i, 1 ... every law is ordained to the common good.<sup>33</sup>

Underpinning the law as just in the body politic is the notion that the law serves a common morality that ensures the common good prevails within shared social existence, as opposed to the good of one individual at the cost of another or others. The common good is further characterised by the pursuit of justice, the definition of which Aquinas also attributes in large part to Aristotle:

"justice is a habit whereby a man renders to each one his due by a constant and perpetual will": and this is about the same definition as that given by the Philosopher (Ethic. v, 5) who says that "justice is a habit whereby a man is said to be capable of doing just actions in accordance with his choice."<sup>34</sup>

The difference between Aquinas' and Aristotle's notions of justice is found in the nexus between habit as capacity and habit as action. For Aristotle, justice as habit stems from the *capacity* of an individual to pursue justice, whereas for Aquinas justice is found in the *act* of pursuing justice. Aquinas' definition of justice demonstrates how part of his moral code is formed, thereby enabling him to speak coherently about both justice and morality. Inasmuch as he explicitly bases his own definition of justice on that of Aristotle, the philosophical or natural aspect of justice as teleological morality emerges. However, Aquinas concludes this article by relating this philosophical or natural order of justice to moral order as Divine command, as set out in the bible: 'just as love of God includes love of our neighbor, as stated above (Q[25], A[1]), so too the service of God includes rendering to each one his due'.<sup>35</sup>

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<sup>33</sup> *Ibid.*, Q. 90, A. 2, p. 1330.

<sup>34</sup> *Ibid.*, II-II, Q. 58, A. 1, p. 1911.

<sup>35</sup> *Ibid.*, p. 1912.

If, for Aquinas, justice is found in the action an individual as opposed to simply the capacity or potential of an individual for justice, there remain the related problems of *how* to act and in relation to *what* end:

Again the individual good, the good of the family, and the good of the city and kingdom are different ends. Wherefore there must needs be different species of prudence corresponding to these different ends, so that one is "prudence" simply so called, which is directed to one's own good; another, "domestic prudence" which is directed to the common good of the home; and a third, "political prudence," which is directed to the common good of the state or kingdom.<sup>36</sup>

For Aquinas, pursuing the common good is a matter of prudence – *prudentia*. This prudence can be exercised in relation to the individual, the family or the state/kingdom. Yet Aquinas does not attempt to prescribe – or codify – which end must be pursued in every circumstance. He grants that 'on moral matters ... if one wishes to descend to bringing doctrine to bear on individual cases in specific detail ... judgment concerning individual cases must be left to the *prudentia* of each person'.<sup>37</sup> As Alasdair MacIntyre puts it: 'Every particular practical situation has aspects which fall under rules and others which do not ... Knowing which is which and how to act is the work of *prudentia*'.<sup>38</sup> For Aquinas, acts of *prudentia* in relation to moral matters – many of which are codified and some are not – are located where the individual creatively forms her or his own ethical subjectivity. The earthly 'end' of that self-formation can be the pursuit of the good for the individual, the family or the state/kingdom. Further, the individual can pursue any or all of these ends in seeking her or his *telos*. This provides a nuanced background to the emergence of Aquinas' ethical subject of war because his just war should only be undertaken in pursuit of the common good. When a ruler exercises *prudentia* with regard to war it can be for the common good of the state or kingdom whilst, simultaneously, forming the ethical subjectivity of the ruler as an individual. For the soldier, the pursuit of the common good by the exercise of *prudentia* can be for the individual good, the protection of the family, or for the good of the state or kingdom in which individuals and families live. Because *prudentia* is exercised in pursuit of an individual's *telos* there must therefore be both an earthly dimension – in pursuit of the common good – and a Divine element, since the *telos* of the Christian for whom Aquinas is writing is ultimately located with the Divine.

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<sup>36</sup> *Ibid.*, Q. 47, A. 11, p. 860.

<sup>37</sup> Aquinas, *Commentary on the Ethics* II, lect. 2, quoted in MacIntyre 1988, p. 195/6.

<sup>38</sup> MacIntyre, A., *Whose Justice? Which Rationality?* (Notre Dame: Notre Dame Press, 1988) p. 196 (*Original italics*).

Having examined Aquinas' use of discourse in the construction of his moral code, the final section of this chapter will examine in more detail at the emergence of the ethical subject of war in his writings.

### **The ethical subject of war**

Ongoing crusades by Catholic rulers in Europe – encouraged by different Popes – against perceived challenges emanating from Muslims in the Holy Lands provided a crucial dimension of the political, religious and military backdrop to Aquinas' life and writings:

Christ's faithful often wage war with unbelievers, not indeed for the purpose of forcing them to believe, because even if they were to conquer them, and take them prisoners, they should still leave them free to believe, if they will, but in order to prevent them from hindering the faith of Christ.<sup>39</sup>

As part of his *Summa Theologica* – designed to instruct Christians in the way that they should live – it was important for Aquinas to set out the conditions that must be satisfied in order for a war to be deemed just. Such guidance was essential for the spiritual health of the Christian combatant on an individual level and for the Church collectively. In addition, war against Muslim enemies was seen as a means of protecting the spiritual purity and political strength of the Church. Aquinas sets out the conditions for a just war:

In order for a war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged ... Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault ... Thirdly, it is necessary that the belligerents should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil.<sup>40</sup>

To understand the relationship between these words and the emergence of the ethical subject of war it is helpful to appreciate the place of Aquinas' writings on war within his overall theological *schema*. Aquinas identifies two broad categories of virtues: cardinal virtues and theological virtues.<sup>41</sup> The former – prudence, justice, fortitude and temperance – are revealed in nature, are binding on all of humanity, and can be accessed and understood by everyone through the right application of reason.

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<sup>39</sup> *Op cit.*, II-II, Q. 10, A. 8, p. 1621.

<sup>40</sup> *Ibid.*, II-II, Q. 40, A. 1, p. 1813/14.

<sup>41</sup> *Ibid.*, Qs. 1-189.

The latter – faith, hope and charity – are supernatural, revealed by God and exercised through the application of both faith and reason. He addresses the question of war as part of a broad examination of the theological virtue of charity, which in turn sets out the means by which the subject can achieve an eternal future with God: ‘In charity, people attain the end for which they exist; in this virtue, the human desire for happiness is satisfied completely; it alone, among the theological virtues, is retained in eternal life’.<sup>42</sup> Although Aquinas draws extensively on both Augustine and Aristotle across his numerous works, with respect to the question, *On War*, he draws only on Augustine and Holy Scripture as authorities to reinforce his position. This is consistent with his addressing war in the context of theological virtues and it means that the ethical subject of war who emerges from Aquinas’ *schema* does so by exercising both faith and reason with a *telos* that finds completion in God. Further, war is addressed in a sequence of questions that make up a wider examination of vices that are opposed to peace – discord, contention, schism, war, strife, sedition – and which are potentially problematic for the individual who wants to constitute herself or himself as ethical in relation to Aquinas’ moral code.<sup>43</sup> While Aquinas addresses what might be classed as political or politico-legal issues surrounding war, he does so by locating them, not in relation to political theory as an expression of Aristotelian virtue, but primarily within theological precepts infused with Aristotelian philosophy: where a desire to pursue the common good is characteristic of the quest for individual salvation. Aquinas’ incorporation of the practicalities of a shared social life in pursuit of the common good within his theology and philosophy is seized upon by Elshtain in her justification of military intervention:

For Aquinas, Christianity is, among other things, a structure of practical wisdom ... This kind of believer neither despises the world nor retreats from it. Rather, this believer engages the world, sustains it, and seeks to transform it – all at the same time. They should not shirk their vocations, including political vocations like soldiering or judging. Such vocations are necessary to the common life.<sup>44</sup>

Elshtain’s use of Aquinas here is more subtle than a simple appeal to his codification of just war and the criteria involved. Rather, Elshtain interpellates his attitude – his understanding of the relationship between faith and social action – to justify expressing a contemporary Christian concern for the world being manifested in the activities of soldiering, war and intervention. However, Aquinas retains a stronger

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<sup>42</sup> Pope, 2002, p. 38.

<sup>43</sup> *Op cit.*, II-II, Qs. 37-42 respectively.

<sup>44</sup> Elshtain, 2004, p. 101.

emphasis on theological precepts in his engagement with war than Elshtain acknowledges in her use of his ideas in the present. Aquinas approaches questions of war from the perspective of the subject or, at least, with a view to enabling the subject to emerge as ethical from potentially difficult circumstances. Aquinas poses the question: ‘Whether we ought to pray for our enemies?’<sup>45</sup> Here he is interested not only in the act of prayer but the more important issue of charity and how the Christian should act towards an enemy. Foucault identified a shift in the manner of self-constitution of the sexual subject between the Classical Greeks and the early Christians – from self-subjection in relation to ethics-oriented morality towards self-subjection through conformity to moral codes. What this chapter seeks to highlight here is that Aquinas reveals a parallel shift from an Augustinian emphasis on creative self-forming towards a greater emphasis on conforming to a codified morality. In doing so, Aquinas refers to his highest authority – biblical injunction that conveys Divine command. He states: ‘It is written (Mat. 5:44): “Pray for them that persecute and calumniate you”’.<sup>46</sup> To reinforce his appeal to scripture, Aquinas also invokes Augustine. To achieve consistency between prayer and action, Aquinas discursively links Jesus’ command to pray *for* an enemy to Augustine’s desire for action *against* an enemy. Aquinas’ synthesis of these two positions emerges as follows:

It is lawful to attack one’s enemies, that they may be restrained from sin: and this is for their own good and for the good of others. Consequently it is even lawful in praying to ask that temporal evils be inflicted on our enemies in order that they may mend their ways. Thus prayer and deed will not be contrary to one another.<sup>47</sup>

Aquinas’ subject of war emerges here as ethical in a number of ways. Firstly, there is a legal dimension and the obligation to conform to the requirements of the law – an important part of his moral code. Yet this adherence to the law is not an end in itself; the law must be obeyed and this obedience must be for a higher purpose: in this case for the good of the individual being attacked and for the wider good of society. This pursuit of the good in both of these senses reinforces his use of Aristotelian philosophy in relation to the quest for a virtuous life. Praying for one’s enemies is also an act of charity: the highest moral obligation for the Christian who is instructed to love God and love his neighbours. This synthesis of Aristotelian and Christian morality is then extended when Aquinas, in Objection 3 to the issue of praying for one’s enemies, places

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<sup>45</sup> *Op cit.*, Q. 83, A. 8, p. 2059.

<sup>46</sup> *Id.*

<sup>47</sup> *Ibid.* p. 2060.

the question in the broader context of war in pursuit of the common good and not simply in relation to individual acts of violence: ‘Now sometimes men lawfully attack their enemies, else all *wars* would be unlawful’.<sup>48</sup> So Christians should conform to his codified morality in its entirety: that fusion of both theological and philosophical demands and interdictions.

The discussion now moves on to consider aspects of the ethical subject of war in Aquinas’ just war writings and the emergence of specific categories of subject – namely rulers and soldiers. When the reader considers the themes that precede and succeed the question, ‘Of War’, and the importance Aquinas places on authority as an expression of Divine ordering within his moral code, Aquinas is being entirely consistent by placing significant moral responsibility on the ruler: ‘In order for a war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged’.<sup>49</sup> Aquinas supports this position with reference to the bible and the precedent of Augustine. Aquinas refers to the right of ‘God’s servant’ to ‘bear the sword against wrongdoers’.<sup>50</sup> However, to fully understand Aquinas’ comments and the basis on which he grants priority to earthly rulers in his codification of just war, his preceding words provide a broader context:

Everyone must submit himself to the governing authorities, for *there is no authority except that which God has established*. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment upon themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you.<sup>51</sup>

With Divine command as the backbone of Aquinas’ moral code, and the scriptures his most important written source of those Divine commands, obedience to the authority of the sovereign – in this case with regard to war – is, for Aquinas, synonymous with obedience of God. Like Augustine before him, and acknowledging an unchanging emphasis on the importance of hierarchical authority within wider society as well as the Catholic Church, Aquinas accepts that God’s will is found in, and expressed by, those in authority. However, in a crucial break with Augustine, the relationship between secular and religious authority has shifted, giving priority to the

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<sup>48</sup> *Ibid.* p. 2059 (*My italics*).

<sup>49</sup> *Ibid.*, II-II, Q. 40, p. 1813.

<sup>50</sup> *Id.*, quoting Romans 13:4.

<sup>51</sup> Romans 13:1-3 (*My italics*).

latter over the former: 'The secular power is subject to the spiritual, even as the body is subject to the soul'.<sup>52</sup> MacIntyre sums up Aquinas' position succinctly: 'the Pope has legitimate authority over secular rulers'.<sup>53</sup> This is a reversal of the situation faced by Augustine when Emperor Theodosius demanded that heresy be rooted out of the Church and insisted that only one form of Christianity should be practiced across the empire.

Aquinas reinforces his position further by drawing on the personal authority of Augustine and his teaching, noting: 'for this reason Augustine says (*Contra Faust.* xxii, 75): "The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority."<sup>54</sup> So it would appear that for Aquinas the right to govern has been divinely instituted and this provides the moral authority for the ruler to make decisions about war, in line with God's will (however that is discerned), as part of his moral code. Correspondingly, in order to emerge as ethical in conformity to Aquinas' moral code it is the duty of those under the ruler or sovereign to obey that ruler. The moral authority does not reside in the person on the throne but in the Divine order that ruler represents – no matter how well or poorly the ruler conducts herself or himself. Here, Aquinas appears to be consistent with the traditional church teaching from, at least, the time of Augustine – eight centuries earlier. However, Aquinas does not entirely defer to Augustine on this point and departs from the latter's insistence on the need to obey, without question, those earthly rulers and authorities. Aquinas refers to rule and oppression by a tyrant who may, for example, pursue an unjust war that might bring great suffering to her or his people:

A tyrannical government is not just, because it is directed, not to the common good, but to the private good of the ruler, as the Philosopher states (*Polit.* iii, 5; *Ethic.* viii, 10). Consequently there is no sedition in disturbing a government of this kind, unless indeed the tyrant's rule be disturbed so inordinately, that his subjects suffer greater harm from the consequent disturbance than from the tyrant's government. Indeed it is the tyrant rather that is guilty of sedition, since he encourages discord and sedition among his subjects, that he may lord over them more securely; for this is tyranny, being conducive to the private good of the ruler, and to the injury of the multitude.<sup>55</sup>

Here, the common good takes priority over the private good of the ruler when it is manifested in incitement to sedition. Aquinas' position stems from his synthesis of the

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<sup>52</sup> *Op cit.*, II-II, Q. 60, A. 6, p. 1934.

<sup>53</sup> MacIntyre, 1988, p. 201.

<sup>54</sup> *Op cit.*, II-II, Q. 40, A. 1, p. 1813.

<sup>55</sup> *Ibid.*, Q. 42, A. 2, p. 1822.

orthodox Augustinian Christian tradition and the teaching of Aristotle. This is a significant departure from the position of Augustine, for whom the soldier as ethical subject of war obeyed the ruler in executing a war, even when the ruler acted immorally and the war was unjust. In a radical move, Aquinas is here placing the philosophical view of Aristotle's common good above, or at least alongside, the well established and accepted position of Augustine. However, beyond simply reading Aristotle's common good into the Thomistic system regarding the ruler, another theological shift from Augustine is identified here by Elshtain. Aquinas' considers God to be 'bounded' in a way that Augustine did not: a binding that subsequently places greater limits on the exercising of temporal power than Augustine would admit.<sup>56</sup> Consequently, the ethical subject is the individual who seeks the common good, even to the extent of disobeying the rightful, if immoral, private good of the ruler, both in peace and war. Given the importance of Augustinian thought in the Catholic Church in Aquinas' lifetime, it would appear to be entirely logical that such views expressed by Aquinas' would result in controversy.

In more recent debate, related to the justification of military intervention in Iraq, Elshtain writes: 'St. Thomas Aquinas, among others, insisted that preventing the innocent from certain harm could well be a justified *casus belli* – the innocent being those without the means to defend themselves'.<sup>57</sup> However, this thesis challenges Elshtain's argument which is based on Aquinas' position in *Summa Theologica*. On one reading of Aquinas, Elshtain's position appears irrefutable: 'it is said to those who are in authority (Ps. 81:4): "Rescue the poor: and deliver the needy out of the hand of the sinner."' <sup>58</sup> When this is read in conjunction with Aquinas' guidance on just cause for war, Elshtain's argument seems stronger still: 'a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault'.<sup>59</sup> However, when this quotation from Aquinas' is extended, Elshtain's argument begins to weaken. Aquinas' calls on the authority of Augustine to reinforce his position:

Wherefore Augustine says (QQ. in Hept., qu. x, super Jos.): "A just war is wont to be described as one that avenges wrongs, when a nation or state has to be

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<sup>56</sup> Elshtain, 2008a, p. 20ff.

<sup>57</sup> Elshtain, 2004, p. 185.

<sup>58</sup> *Op cit.*, II-II, Q. 40, A. 1, p. 1814.

<sup>59</sup> *Id.*

punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly."<sup>60</sup>

The first and most crucial aspect of Aquinas' position – into which he also interpellates Augustine – is that the wrongs which can be avenged in a just war, and which would rightly see a nation or state punished, are those wrongs done *by* a state, not the wrongs done *to* the subjects of that state. This should be viewed in light of Aquinas' broader teleological morality – the second relevant aspect of Aquinas' position – which, combined with the previous point, undermines Elshtain. Aquinas writes:

the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances ... so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies.<sup>61</sup>

Aquinas limits the authority of rulers to the city, kingdom or province which is subject to them. Alongside that limited authority, he also outlines two specific responsibilities of the ruler: the first is to protect those under their authority from 'internal disturbances', while the second is to protect the common weal against external enemies who would attack them. Each ruler is charged with protecting the innocent *within* her, or his, own domain. It would defy Aquinas' natural law, or Divine ordering, for one ruler to seek to protect the innocent in the domain of another ruler. Aquinas' ruler emerges as ethical only if she, or he, protects the innocent within her, or his, own domain from those who would cause internal strife, as well as from external enemies. Therefore, it is the contention of this thesis that Elshtain's argument – based on her reading of Aquinas – that protecting the innocent '*could well be* a justified *casus belli*'<sup>62</sup>, is extending the application of Aquinas beyond that which his original text supports. Furthermore, there is another aspect of Aquinas' discourse that Elshtain does not use in the present: the Divine teleology that underpins his position.

Having explored some of the religious and political contexts in which the ethical subjectivity of the ruler is established in Aquinas' writings with regard to when a war might be justly undertaken, this section moves on to explore the emergence of the soldier as ethical subject in the question: 'Whether it is lawful to lay ambushes in

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Elshtain, 2004, p. 185 (*My italics*).

war?’<sup>63</sup> This question does not address the issue of whether or not a war is justified – the *jus ad bellum* requirement as we might label it today – but the more narrow – *in bello* – issue of the soldier behaving ethically in one aspect of executing the ruler’s war. Aquinas, in the style of the day, begins to answer his own question by stating that it ‘would seem that it is unlawful to lay ambushes in war’.<sup>64</sup> This initial assumption is supported by a biblical reference that incites the reader to ‘follow justly after that which is just’.<sup>65</sup> Aquinas continues by emphasizing individual honesty and reinforces this position further by referring to Augustine’s comments on the importance of keeping faith, even with an enemy. He goes on, still further, in this vein in a third objection, referring once more to scripture and the need to do to others what you would have them do to you – the Golden Rule.<sup>66</sup> However, to some extent, this presentation is an artifice because the stylisation of the systematic approach used by Aquinas inevitably seeks to nullify this argument before setting out his actual position. This he does in a counter-argument based on Augustine’s words: ‘Provided the war be just, it is no concern of justice whether it be carried on openly or by ambushes’.<sup>67</sup> Aquinas demonstrates a move towards further codification of the rules of war. He could have set out this position to begin with but discursive solidity is created in refuting what he presents as key counter-arguments in the process. Ultimately, Aquinas concludes that ambushes can be laid in war and that, consequently, the soldier can emerge as ethical, as long as Aquinas’ written precepts are observed. More specifically, the soldier emerges as ethical by conforming his behavior to the moral code set out by Aquinas: a moral code that does not display the neat *ad bellum/in bello* bifurcation that would come in later centuries.

Aquinas addresses the question of a soldier risking his life for others, again incorporating both Augustinian and Aristotelian concepts in the process:

The common good of many is more Godlike than the good of an individual. Wherefore it is a virtuous action for a man to endanger even his own life, either for the spiritual or for the temporal common good of his country. Since therefore men engage together in warlike acts in order to safeguard the common weal, the soldier who with this in view succors his comrade, succors him not as a private individual, but with a view to the welfare of his country as a whole: wherefore it is not a matter for wonder if a stranger be preferred to one who is a blood

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<sup>63</sup> *Ibid.*, Q. 40, A. 3, p. 1816.

<sup>64</sup> *Ibid.* p. 1817.

<sup>65</sup> Deuteronomy 16:20, quoted in *Id.*

<sup>66</sup> Matthew 7:12, quoted in *Id.*

<sup>67</sup> Augustine, quoted in *Id.*

relation.<sup>68</sup>

Aquinas is addressing the issue of whether or not we should prioritise those closest to us when doing good to others, as part of a broader question about outward acts of Christian charity. Again, he gives the Aristotelian notion of the common good a specifically Christian reading in the opening sentence, when he states that the pursuit of good for the many is more Godlike than the pursuit of good for an individual. The soldier emerges as ethical in an argument that suggests it should not be seen as unusual to help strangers for the good of the common weal. The soldier emerges as ethical in the act of providing succour for a colleague, motivated by a desire to safeguard the common weal. Aquinas' position with regard to the individual, the family and the state/kingdom was set out earlier, making clear that their relative importance follows the same sequence and that they are each different ends in themselves.<sup>69</sup> However, when a soldier's subjectivity is formed, or creatively self-formed, as ethical in relation to any of these ends, it contributes to the attainment of the soldier's *telos*. This argument is constructed centuries before a Grotian or Vattelien concept of statehood emerges; Aquinas' motivation is the promotion of Christian charity as an expression of Christian ethical subjectivity. The unique role of the soldier, particularly the soldier as ethical subject, is therefore used to encourage other readers to form themselves as ethical subjects by adopting similar attitudes and behaviour in the interest of the common good – which is given ontological priority by Aquinas.

In a later question, Aquinas refers to another aspect of the soldier's conduct in war, in an article discussing whether robbery on the battlefield is always sinful: 'if they who take spoils from the enemy, are waging a just war, such things as they seize in the war become their own property. This is no robbery, so that they are not bound to restitution'.<sup>70</sup> He goes on to point out that spoils seized in an unjust war *are* subject to restitution and that seizing spoils in a just war, while motivated by an evil intention, is also a sinful act. He quotes Augustine in support of his position: 'Augustine says (De Verb. Dom. xix; Serm. lxxxii) that "it is a sin to fight for booty"'.<sup>71</sup> Someone guilty of robbery is constituted as sinful by contravening the commands of God and the legal requirements of war. As these examples demonstrate, the soldier emerges as ethical in war primarily by conforming to the requirements of the comprehensive, codified

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<sup>68</sup> *Ibid.*, II-II, Q. 31, A. 3, p. 1762.

<sup>69</sup> *Ibid.*, Q. 47, A. 11, p. 860.

<sup>70</sup> *Ibid.*, Q. 66, A. 8, p. 1975.

<sup>71</sup> *Id.*

arguments Aquinas sets out. That is not to deny the soldier's right and responsibility to choose a particular course of action but to acknowledge Aquinas' view that the individual must freely choose a course of action based on the immediate ends to be achieved, in light of the *telos* that prompts the actions.

The final part of this section will consider emerging ethical subjectivity in relation to Aquinas' concept of double-effect: an aspect of his moral code which has remained a crucial part of just war – as well as wider ethical debate – from that time until the present. Double-effect, or the doctrine of double-effect as it is often called, is regularly cited today in defence of, or in criticism of, collateral damage in war. However, Aquinas is primarily concerned with conditions in which the subject can emerge as ethical in the context of violent, or even homicidal, individual self-defence, not with double-effect as part of his codification of wider *ad bellum* just war principles: a discursive shift undertaken by later just war writers. However, it is considered here because Aquinas illustrates the concept with specific reference to the soldier on the battlefield.

Intention as interior act plays an important role for Aquinas' ethical subject, emanating from practiced self-reflection. He says of the two possible effects of violent self-defence, and it is worth quoting at length:

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intention, since this is accidental as explained [previously] ... Accordingly the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful, seeing that it is natural to everything to keep itself in "being," as far as possible. And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end. Wherefore if a man, in self-defense, uses more than necessary violence, it will be unlawful: whereas if he repel force with moderation his defense will be lawful, because according to the jurists ... "it is lawful to repel force by force, provided one does not exceed the limits of a blameless defense."<sup>72</sup>

Aquinas addresses here the right of the individual to defend herself, or himself, with deadly force and, in so doing, to emerge as ethical. Nowhere in this question does Aquinas attempt to generalize his theorising to the defence of a state or empire. He refers to the authority of the bible in support of his argument, quoting: 'If a thief is

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<sup>72</sup> *Ibid.*, Q. 64, A. 7, p. 1961.

caught breaking in and is struck so that he dies, the defender is not guilty of bloodshed'.<sup>73</sup> The moral status of this act hinges on the intention of the person who seeks to repel an attack, which is problematic in that intention is impossible or, at least very difficult, to assess. The religious answer for both Augustine and Aquinas is that the all-knowing God will judge that intention in the next life. Aquinas' reference to 'the jurists' indicates the place of legal discourses in his moral code and also allows the possibility that, in light of all the evidence, judgements can and will be made on the legitimacy of violent self-defence, in the same manner that a court will weigh up evidence. The Thomistic subject is not automatically moved to violence as an act of necessity when life is endangered; the Augustinian notion of the will – to defend another, for example – is extended to the realm of violence by Aquinas, who explicitly attributes control of the will to the intellect.<sup>74</sup>

Tooke acknowledges Aquinas' assertion of the right to kill in certain circumstances, but detects a certain reticence:

Aquinas was obviously reluctant to justify the right of an individual to kill even in self-defence, partly no doubt because there is obvious danger that such killing might, in the urgency of the situation, be too hastily done, and partly because he felt that the act is wrong in itself.<sup>75</sup>

If, indeed, there is a reluctance, as Tooke claims, it might explain the importance of proportionality in Aquinas' writing on double-effect. Regardless of the relative proportionality used in mitigation of the violence applied in self-defence, if violence results in killing, questions of intention and right authority come into play for his ethical subject. Aquinas, in considering the place of proper authority in the question of whether or not it is lawful to kill in self-defence, says:

as it is unlawful to take a man's life, except for the public authority acting for the common good, as stated above (A[3]), it is not lawful for a man to intend killing a man in self-defence, except for such as have public authority, who while intending to kill a man in self-defence, refer this to the public good, as in the case of a soldier fighting against the foe, and in the minister of the judge struggling with robbers, although even these sin if they be moved by private animosity.<sup>76</sup>

As Aquinas addresses the issue of double-effect here, there is further evidence of his codifying approach in his provision of a framework to help understand the intent of

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<sup>73</sup> Exodus 22:2 quoted in *Summa*, II-II, Q. 64, A. 7, p. 1961.

<sup>74</sup> *Op cit.*, I-II, Q. 10, A. 2, p. 848.

<sup>75</sup> Tooke, 1965, p. 111.

<sup>76</sup> *Op cit.*, II-II, Q. 64, A. 7, p. 1961.

the perpetrator. It also throws further light on his ethical subject of war who, with appropriate backing from public authority, is allowed to fight and kill an enemy as long as it is in support of the common good. Thomas Cavanaugh points out that double effect is not a major theme in Aquinas' corpus. He goes as far as to say that 'Aquinas holds an inchoate form of double effect in a miniscule portion of his work'.<sup>77</sup> Although Cavanaugh's position is supported by this thesis in terms of how Aquinas himself viewed just war and the place of double-effect in his *corpus*, double-effect has become a major corollary to just war criteria in contemporary theorising, and its significance for the ethical subject of war today should not be understated, even if its original impact in Aquinas' own work appears minimal.

In the course of examining the emergence of the ethical subject of war in Aquinas' writings in this chapter a number of continuities and discontinuities between Aquinas and Augustine, as well as between Aquinas and contemporary use of his ideas, become apparent. On a doctrinal level, Aquinas breaks from Augustine by emphasizing the earthly context of the common good – the family and the state/kingdom – as the settings within which ethical subjectivity is constituted. He also moves away from Augustine in the much greater extent to which he codifies the moral framework to which the good Christian – the ethical subject – is expected to conform. However, like Augustine, he still relies on a dimension of creative self-subjection by individuals because his code-oriented morality is not exhaustive. Individuals are required to decide whether or not they need to conform to code-oriented morality in a particular situation, or whether – and how – they should form their own subjectivity in relation to ethics-oriented moralities, some of which are identified with Aristotle's virtues.

Despite the incorporation of Aristotelian virtues in his *schema*, Aquinas still locates the *telos* of the subject in the Divine – as did Augustine before him – and, therefore, retains a dimension of faith in the emergence of the ethical subject. This is despite his increased emphasis on the individual application of reason. However, discontinuities with the present emerge when contemporary application of Thomistic concepts is compared to his own original formulations in the political, military and religious context in which he wrote. For example, the original understanding of his notion of protecting the innocent is more specific and limited than Elshtain suggests in her justification of military action against Iraq. Further, Elshtain cites Aquinas'

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<sup>77</sup> Cavanaugh, T.A., *Double-Effect Reasoning* (Oxford: Clarendon Press, 2006) p. 2.

engagement with the world as a means of discursively linking Christian faith with the transformation of the world today: even using war and intervention in the promotion of liberal values.<sup>78</sup> However, Elshtain later appears to backtrack somewhat on the stridency of that position by incorporating what she calls ‘Augustinian wariness’ into the use of force.<sup>79</sup> What she does not do in the application of both of these examples is include the Divine *telos* of the ethical subject that Augustine and Aquinas both stress in different ways.

In a pre-Westphalian polity Aquinas grants both authority and responsibility to rulers or kings for specific, and limited, domains. That authority is not extended to the domain of another ruler or king, regardless of how the innocent are treated within the neighbouring domain: because such intervention would contradict the Divine order. Most importantly, contemporary applications of his contribution to both just war and the constitution of subjectivity do not acknowledge the extent to which – despite his incorporation of Aristotelian philosophical concepts – Aquinas is still primarily concerned with the theological question of how the good Christian should live. For him, applying just war principles is not merely about justice, there remains a transcendent, supernatural motivation in the *telos* of his ethical subject of war.

## **Conclusion**

This chapter examined Aquinas’ use of the major philosophical and theological discursive sources available to him and considered the way he interpellates those sources and deploys them in his own arguments. Such examination highlighted how the synthesis of Augustinian theology and Aristotelian philosophy represents his most significant and original contribution to Western thought in relation to just war, the formation of subjectivity and beyond. Analysis of Aquinas’ moral code reveals a systematic construction that relies on moral sources such as scripture, the teachings of Augustine and other Church Fathers, Aristotelian philosophy, and law in its various dimensions – natural, Divine and human. Study of his moral code points towards the emergence of his ethical subject as a good Christian before, finally, the ethical subject of war was considered in relation to just war as codified morality. The emergence of the ethical subject of war occurs primarily in conformity to Aquinas’ code-oriented morality and, to a lesser extent, in relation to ethics-oriented morality and self-forming

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<sup>78</sup> Elshtain, 2004, p. 101.

<sup>79</sup> Elshtain, 2007, p. 505.

as seen in the writings of Augustine: thereby demonstrating a shift in the trajectory of the formation of the subject. This reflects the degree to which Aquinas' *Summa Theologica* is both highly systematised and totalising in its codifying approach.

In Aquinas' ontology God is pre-existent and God's order – both command and design – is the foundation of his moral code, to which the subject must conform if she, or he, is to emerge as ethical. For that ethical subjectivity to be maintained in the arena of war, Aquinas further sets out the conditions under which a war may be rightly undertaken. The ethical subject of war emerges in conformity to this further synthesising and codification of existing but disparate just war discourses. While the ruler may be given pre-eminence in a social hierarchy, that individual is still bound by Aquinas' just war and must conform to the requirements of just cause and right intention when undertaking war. In his argument surrounding the moral responsibilities of the ruler a significant, and original, discursive repositioning occurs – Aquinas gives priority to the Aristotelian notion of the common good over the private good of the unethical ruler. In her recent rendition of sovereignty Elshtain acknowledges some of the theological and philosophical shifts between Augustine and Aquinas, arguing that Aquinas binds, or places limits upon, Augustine's earlier understanding of the sovereign God.<sup>80</sup> Consequently, Aquinas' theological notion of the bounded God (that is, bounded by the limitations of human reason) is extended to the bounded prince or ruler who can rule on war only within a specific earthly domain. Augustine had allowed for the possibility that a soldier could emerge as ethical through his actions alone, independently of the moral status of the ruler or general, or the war that was being executed. Aquinas, however, insists that the ethical subject of war has to conform to the requirements of his moral code in all its parts – from its declaration by a legitimate ruler for a good cause motivated by a right intention, through to the conduct of the soldier on the battlefield. War as a moral domain is therefore portrayed as a bounded whole.

The purpose of Aquinas' *Summa Theologica* is to set out in a coherent, structured manner a comprehensive explication of God's revelation in order to guide the ways that Christians should both believe and conduct themselves. The relative freedom of Augustine's self-reflective, creatively self-forming subject gives way in Aquinas to a subject who is required to conform much more to established codes, with a corresponding diminution of self-creativity. That is not to say that creativity is not

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<sup>80</sup> Elshtain, 2008a, p. 22.

present in the Thomistic subject: rather, Aquinas' extensive codifying tendencies demonstrate the trajectory of the ethical subject in the just war tradition: from ethical self-formation to conformity to codes. Where Aquinas' codification of just war precepts occupied only a tiny part of his *magnum opus*, the genealogy now progresses to the emergence of the subject of war in Grotius and his even more extensive codification of just war in *De Jure Belli ac Pacis*.

The next chapter will also look at the ways in which Aquinas' formation of the self in relation to war is reformulated in a manner that moves away from his reliance on God. This will be done by showing how Grotius shifts his discourse away from an ontological basis in the Divine by extending the role of intellect and the application of human reason – in pursuit of individual *telos* – seen previously in Aquinas. Continuities and discontinuities with Aquinas' work will be set out, further reinforcing the contingency of the ethical subject of the just war tradition. Grotius' increasing emphasis on human reason in a way that is moved away from a basis in God will provide one major discontinuity with Aquinas. So too will the emergence of an ethical subject who must conform to just war as codified morality within an increasingly secular, legally-oriented polity: shaped by incipient early-Modern notions of statehood and relations between states. A significant continuity with Aquinas' approach will also be examined: namely the extensive codifying tendencies of Grotius with regard to the just war. This codifying, juridicalizing tendency of Grotius will be shown to be of particular importance in the contemporary just war writings of Walzer.

## Chapter 6

### Grotius: Just war and the emergence of the state

The previous two chapters have focused on the ethical subject of war in social and political contexts that were dominated by the Catholic Church. Augustine constituted regimes of truth that helped define both doctrinal orthodoxy and religious practice within the Church, and ethical practice in relation to war, across the Roman Empire. The result was a self-reflexive ethical subject whose creative self-forming took place in relation to both ethical sources and a moral code shaped by Divine command and teleology: in pursuit of a *telos* located in an afterlife with God. Aquinas wrote at a time of Christian religious hegemony across Europe when the ‘faith *versus* reason’ dynamic progressively emphasised the latter as Church doctrine and Canon law became increasingly codified. Further, within both Church doctrine and beyond, the works of Aristotle were used to determine how the virtuous life should be lived which, in turn, helped shape Aquinas’ moral code and his ethical subject of war.

The genealogy of the ethical subject in the just war tradition now approaches the early Modern period and finds Grotius addressing the challenge of shifting the *telos* of moral action found in Aquinas from heaven to earth: from the Divine to the human. This is not simply an abstract choice for Grotius but the necessary outworking of his moral and legal approaches to war and peace in the context of emerging sovereignty and statehood: with the attendant shift in sovereign power and intellectual authority from the transcendent to the earthbound. In the course of the chapter the trajectory of Grotius’ conceptualizing will be analysed, with a number of continuities and discontinuities in the emergence of subjectivity – relative to Aquinas – becoming apparent. Most notably – almost unexpectedly – he continues to ascribe considerable authority to Christian doctrine and the Divine. Conversely, his conception of sovereignty enables him to write of the relations between nations in a way that would not be possible in the earlier Thomistic ontology. This chapter will explore how these, and other, similarities and breaks become relevant in contemporary conceptions of ethical subjectivity in time of war, particularly in relation to Elshtain’s and Walzer’s arguments surrounding intervention.

Grotius’ *De Jure Belli ac Pacis* introduces to European thought and the just war tradition two interrelated ideas that shape just war in the present legal paradigm,

particularly the work of Walzer: the nascent sovereign state and the law that governs relations between states (or nations) with regard to war. Grotius' conception of the state also sets ontological parameters within which his ethical subject of war is constituted. This chapter will argue that because modern debate surrounding Grotius is often focused on locating him within international law and international politics discourses, the place of the subject in Grotius' writings has been largely overlooked. This genealogy will therefore extend current understandings of Grotius' place in the just war tradition by exploring how his conception of the ethical subject in the domain of war is used in contemporary interventionist discourses: with Elshtain and Blair, among others, deploying aspects of his Eurocentric dichotomies of Same/Other, civilized/barbarian in their arguments. Such an approach will have the added benefit of transversing the ontological constraints placed upon Grotius by many of his modern interlocutors in International Relations.

Like the previous chapters, this chapter continues the assumption that just war writings are situated in the moral order of the day and do not exist in isolation from society, politics or culture. Grotius' writings were shaped by the religious, political and military machinations of emerging states seeking to exert their power both within Europe and, through their colonising and Imperial activities, on other continents. The opening part of the chapter will address the following: first, the ongoing use of Grotius' ideas in contemporary debates in International Relations and beyond; second, the original contribution he makes in his rise to prominence within the just war tradition; and third, his use of multiple religious and non-religious sources in the construction of his moral code and the attendant constitution of his subject. The chapter will show how – in the formation of the ethical subject of war – Grotius' greatest contribution to the just war tradition comes not in his originality of thought but in his capacity to synthesise in a coherent way so many of the numerous and disparate ideas he inherited and apply that synthesis to relations between emerging states in the context of war. It is this systematisation that has secured Grotius' iconic status in the just war tradition: in codifying discursive formations that remain constitutive of just war today. Furthermore, an analysis of his moral code will focus on the interrelatedness of morality and law rather than viewing them as separate facets of his work.

Having set Grotius in a broader context, the second half of the chapter will then explore further the means by which he constitutes his ethical subject in relations

between emerging states, before subsequently focusing more narrowly on the emergence of the ethical subject of war: specifically, the ruler and the soldier. In the course of the chapter a number of continuities and discontinuities will be identified in relation to both the antecedents he draws upon in forming his own just war discourse and with the way that his concepts are applied in contemporary just war debate involving Elshtain and Walzer. It is to a brief overview of contemporary debates that draw upon Grotius that this chapter first turns.

### **Grotius today**

Grotius is claimed today by a number of schools of thought where his works are considered to provide the basis of a Grotian tradition. Such are the numerous competing claims on Grotius that Renée Jeffery describes them as ‘the abundance of “Grotian” traditions on offer’.<sup>1</sup> This section will consider three strands of thought that depend on Grotius’ work. The first strand interrogates his importance within international law, with its subsequent impact upon international politics and relations between independent states. The second strand emphasises Grotius’ writings on natural law as the basis of his wider moral arguments; while the third is characterised as Bull’s *via media* reading. In the process of identifying important features of current debate, it will be shown that emphasis is placed variously on legal and moral codes, sovereignty and the state. As a result, the place of the subject in Grotius writings – particularly with regard to war – is overlooked. It will be further argued that by seeking out the subject in Grotius’ works as part of this genealogy of the ethical subject of war, a hitherto unexplored aspect of his writings will be brought to the fore. Approaching Grotius *via* his subject will throw new light on his re-conceptualisation of natural law, as well as showing how his historical understanding of the subject is used in both Elshtain’s and Walzer’s constitution of ethical subjectivity in the present: with Elshtain drawing primarily upon his moral arguments and Walzer relying on his legal codes.

Martin Wight refers to Grotius as ‘the acknowledged father of International Law’<sup>2</sup>, a view echoed by Kingsbury and Roberts.<sup>3</sup> However, Edward Keene is

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<sup>1</sup> Jeffery, R., *Hugo Grotius in International Thought* (New York and Basingstoke: Palgrave MacMillan, 2006) p. 16.

<sup>2</sup> Wight, M., *Four Seminal Thinkers in International Theory* (Oxford: Oxford University Press, 2003-2007) printed from [www.oxfordscholarship.com](http://www.oxfordscholarship.com), accessed 3 January 2008, p. 31.

unwilling to accept at face value what he describes as 'the traditional story' of Grotius' significance and intellectual heritage and sets out to explore how Grotius came to enjoy 'the central position he occupies in the history of international political and legal thought'.<sup>4</sup> Many of the factors associated with a genealogical approach are present in Keene's history of ideas: taking a 'given' – Grotius' accepted position in legal and political thought – and turning it into a question: 'If Grotius' contemporaries thought of him primarily as a 'moral scientist', whence did the belief that he was the 'father of modern international law' originate?'<sup>5</sup>. Keene takes into account the political and ideological situation at that time and looks to a number of lesser known early texts to throw light on the establishing of Grotius' reputation in the field of international law. The result is an intelligent and intelligible argument that identifies ways in which some of Grotius' ideas on law were subsequently used while, equally importantly, some of his ideas and ambiguities in *De Jure Belli ac Pacis* were overlooked. Ultimately, for Keene, the modern conception of Grotius as the father of international law is based more on eighteenth and nineteenth century interpretations of Grotius' work than on his original texts in their original context. Furthermore, these later understandings of Grotius are located historically in a period where law and morality were increasingly separate fields of inquiry with their own ontological foundations. For example, Vattel refers to the 'celebrated Grotius' and his attempts to determine 'that system of right and justice which ought to prevail between nations or sovereign states', drawing on an eclectic combination of morality, natural law and the law of nations.<sup>6</sup> For Vattel, Grotius snatched only 'a glimpse of the truth' about the law of nations, describing Grotius' efforts as 'extracting [the law of nations] from the rude ore': ore where law, natural law and morality were bound up together.<sup>7</sup> Keene's genealogical reading of Grotius' place in international law helps his reader to understand how the 'international law' strand developed from Grotius' writings, selectively drawing on aspects of his *oeuvre*. However, it is a reading of Grotius that focuses on legal codes and overlooks the place of the subject in Grotius' writings.

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<sup>3</sup> 'Subsequent generations have seen Grotius' main contribution to the theory and practice of international relations as lying in his impact on international law. Among scholars of international relations, it is lawyers above all who have been interested in Grotius and claimed him as their own'. Kingsbury and Roberts in Bull *et al*, 1990, p. 1.

<sup>4</sup> Keene, E., 'Images of Grotius', *Cambridge Studies in International Relations*, Vol. 103, (2006) p. 234-6.

<sup>5</sup> *Ibid.*, p. 239.

<sup>6</sup> Vattel, *The Law of Nations*, Preface, p. 7.

<sup>7</sup> *Id.*

Martti Koskenniemi takes a different approach to Grotius to that taken by Keene. Though also concerned with international law, Koskenniemi explores the relationship between morality and law in Grotius' writings:

Where law might be lacking, unclear, contradictory, or unjust – and it was often precisely that – morality came to the rescue, ensuring the law's completeness and acceptability, sometimes in the guise of general principles, sometimes as domestic law analogy, always through the mediation of judicial practice.<sup>8</sup>

Koskenniemi argues that Grotius' conception of law is most fully understood when a moral dimension to the law is acknowledged. Koskenniemi sets out to write a history of the present that outlines the conditions that enabled modern international law to take the form it has, examining the way in which law – as the title of his book suggests – was used to 'civilize' uncivilized nations in the image of Western Imperial powers from the late nineteenth century onwards. Where Keene seeks to identify how strands of Grotius' thought became separated, Koskenniemi tries to avoid reading Grotius through the lenses of distinct fields of law and morality, instead wrestling with Grotius' context and the difficulties in ascribing meaning to terms that had been used and re-used for centuries. Where Keene and Koskenniemi explore Grotius within the domain of international law – while this genealogy is concerned with his contribution to the just war tradition – their distinct approaches are helpful to this thesis in two ways. First, they both demonstrate the effectiveness of applying a genealogical approach to Grotius' work. And second, they both identify different features of the emergence of a legalist paradigm in International Relations within which Walzer locates his just war. Consequently, by confining their analysis to the codes that emerge in, and from, Grotius' writings – legal, moral or a combination of both – in the context of the sovereign state, they leave scope for a complementary exploration of the emergence of subjectivity in his work: enabling this thesis, in turn, to more fully comprehend just war in the present. For example, to illustrate his position on pre-emptive attack, Walzer appeals to Grotius:

The danger ... must be immediate and imminent in point of time. I admit, to be sure, that if the assailant seizes weapons in such a way that his intention to kill is manifest, the crime can be forestalled; for in morals as in material things a point is not to be found which does not have a certain breadth.<sup>9</sup>

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<sup>8</sup> Koskenniemi, M., *The Gentle Civilizer Of Nations* (Cambridge: Cambridge University Press, 2001) p. 408.

<sup>9</sup> Grotius, *DJB* II.I.V, quoted in Walzer, 2000, p. 340.

Walzer does not acknowledge, however, that Grotius' argument relies upon an appeal to Aquinas as authority in the preceding paragraph: specifically, Aquinas' justification of homicidal self-defence using the principle of double-effect.<sup>10</sup> This point is crucial, genealogically, for Walzer's interpretation of just war because it is where Grotius takes Aquinas' ethical argument for individual homicidal self-defence and extends it to collective anticipatory self-defence in the law of war. The implications of this relationship between morality and law for Grotius' ethical subject of war will be discussed later in the chapter, while this section moves on now to examine a second strand of modern thought on Grotius: looking at his writings on natural law as the basis of his wider moral arguments.

Richard Tuck concentrates on the moral, rather than juridical, aspects of Grotius' writings on war and peace, identifying two strands of thought that were brought together in *De Jure Belli ac Pacis* in 'a new science of morality': first, a continuation of Thomistic scholasticism within the just war tradition; and second, a 'humanist tradition, which ... saw a dramatic moral difference between Christian, European civilization and barbarism'.<sup>11</sup> This 'science of morality' was based on Grotius' understanding of the source, and use, of natural law. According to Grotius, the law of nature 'is the rule and dictate of right reason, showing the moral deformity or moral necessity there is in any act, according to its suitability or unsuitability to a reasonable nature'.<sup>12</sup> In *De Jure Praedae* Grotius sets out the origins of human reason: '[Humans are] peculiarly endowed not only with the affections shared in common with other creatures but also with the sovereign attribute of reason: that is to say, as in a being derived from God himself, who imprinted upon man the image of his own mind'.<sup>13</sup> For Grotius, reason is not an inherent characteristic, it has Divine origins: it is this God-given reason that Grotius brings to bear on natural law. Further, natural law is dependent not only on an individual's application of reason to particular moral dilemmas, it is situated in the 'sociable nature' and action of the reasoning, self-reflexive individual.<sup>14</sup> He goes on to add – with regard to the social existence of humans – that such an understanding of the law of nature 'is generally believed to be so

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<sup>10</sup> Aquinas, *Summa Theologica*, II-II, Q. 64, A. 7, p. 1961.

<sup>11</sup> Tuck, R., *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999) p. 78.

<sup>12</sup> Grotius, *DJB*, Book I, Chapter I, Paragraph X, Section I, p. 150/1, original spelling (hereafter *DJB*, I.I.X.I, p. 150/1).

<sup>13</sup> Grotius, H., *De Jure Praedae Commentarius: Commentary on the Law of Prize and Booty*, (hereafter *DJP*) Trans. Gwladys L. Williams (Oxford: Clarendon Press, 1950) p. 11/12.

<sup>14</sup> *Ibid.*, I.I.XII, p. 159.

by all, or at least, the most civilised, nations'.<sup>15</sup> This identification of natural law with civilized, European nations not only morally justified much of the colonial and Imperial expansion into extra-European lands, it laid upon the colonists and *obligation* to civilise the barbarians. Keene identifies the enduring legacy of this aspect of Grotius' writings:

The more lasting significance of Grotius' work, however, lies in its relevance to people who wanted to justify colonialism on the basis of individuals' rights in the law of nations to appropriate unoccupied or uncultivated lands, and to people who wanted to justify the assertion of public authority by European states in the extra-European world.<sup>16</sup>

Siba Grovogui – focusing on subjectivity rather than law – identifies how an 'ontology of difference due to race' was brought into international relations and political theory in the works of Grotius, Vattel and others in their 'justifications for rival political and commercial claims in Europe and elsewhere'.<sup>17</sup> Grovogui goes further than Keene by also asserting that this ontology of difference has survived from the Renaissance to the present.<sup>18</sup> The identification of civilization in regions where the Western powers seek to justify '*mission civilizatrice* ... would alter the meaning of the acts committed in actualizing the mission. [They] would cease to be *necessary* violence and become crimes committed through policies easily identifiable as thuggery, barbarism, and worse.'<sup>19</sup> While Grovogui's arguments are primarily concerned with Africa and Haiti, the discursive dynamic he describes can be seen in the 'civilising' discourse of Elstain, for example, in relation to Afghanistan.<sup>20</sup>

Elstain uses Grotius in a number of ways, the first of which has resonances with his view of European moral superiority in relationship to non-Europeans. She writes of her motivation for justifying intervention in Afghanistan: 'because I am a woman who believes women must have the scope to exercise their educated powers to the fullest ... because I am a believer who believes that other believers have the same rights that I do because we are all equal before God'.<sup>21</sup> Elstain echoes the assertion of public and

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<sup>15</sup> *Id.*

<sup>16</sup> Keene, E., *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002) p. 60.

<sup>17</sup> Grovogui, S. N., 'Come to Africa: A Hermeneutics of Race in International Theory', *Alternatives*, Vol. 26 (2001) p. 431.

<sup>18</sup> *Ibid.*, p. 429.

<sup>19</sup> *Ibid.*, p. 439.

<sup>20</sup> That is not to claim that Elstain's aim is racially motivated but merely to observe that in her justification of intervention she draws on long-standing discourses of civilised/uncivilised that can be clearly seen in Grotius.

<sup>21</sup> Elstain, 2004, p. 7.

moral authority found in Grotius' comments on the barbarian: her position is based on a particular reading of universal rights and a particular – Christian – conception of God, which plays a part in prompting her support for intervention across state borders.

While this discussion links Grotius' understanding of civilised/uncivilised, European/Barbarian to intervention discourse in the present, it is genealogically interesting to acknowledge a Grotian reading that has not survived as strongly through history – co-operation and co-existence with the Other:

Do we perhaps believe that we have nothing in common with persons who have not accepted the Christian faith? ... not only is it universally admitted that the protection of infidels from injury (even from injury from Christians) is never unjust, but ... alliances and treaties with infidels may in any cases be justly contracted for the purpose of defending one's own rights, too.<sup>22</sup>

Tuck attributes the withering of this particular Grotian discourse to a combination of the changing political situation across Europe between the major powers; a corresponding change in attitude towards the extra-European nations with which they traded; and the rise in colonial and Imperial expansionism. Whilst this example will not be explored further in this thesis, it serves as a reminder of the marginalisation of politically undesirable discourses in the nexus of power/knowledge.

Elsewhere, Elshtain identifies a tension in Grotius work between the religious antecedents he draws upon and his desire to produce a secular, legal basis for relations between sovereign states, between Christians of different traditions and between Europeans and non-Europeans. She observes that for Grotius: 'natural law is accessible to human reason, not exclusively to the reason of those who are Christian believers. Natural law is not reducible to God's will but may exist independently of God – thus locating Grotius both in, and in tension with, classic Thomistic theology'.<sup>23</sup> Elshtain's use of Grotius here is significant because it points to his understanding and application of natural law as playing a key role in moving away from the relationship between the Divine and natural law in Aquinas. This ontological break plays an important role in Elshtain's historical analysis of the trajectory of sovereignty from God to the state and subsequently to the individual. As well as identifying the nexus between the religious and secular in Grotius, Elshtain elsewhere calls upon the legal strand of Grotian thought

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<sup>22</sup> Grotius, *De Jure Praedae Commentarius*, I, p. 315, cited in Tuck, 1999, p. 94.

<sup>23</sup> Elshtain, 2008a, p. 150.

as part of her justification of military action in Afghanistan: moving beyond self-defence to just punishment.<sup>24</sup> Although she appeals to what she calls settled standards of international law and centuries of practice, her argument is framed in terms of the ethical subject: rejecting the parallel between the United States and the ‘trigger happy cowboy’ of American folklore.<sup>25</sup> In summary, at different times Elstain draws on Grotius’ conception of international law, echoes his sense of European moral and political authority over non-Europeans and acknowledges his attempts to shift the basis of the law of nations from the religious to the secular.

The third strand of Grotian thought in contemporary debate to be considered is Hedley Bull’s reading of Grotius’ international society. Bull writes of his relationship with Grotian international theory:

Grotius and other exponents of the natural law theory certainly did have 'confidence in human reason'. But the Grotian idea of international society later came to rest on the element of consensus in the actual practices of states, and it is on this rather than on 'human reason' that (in common with other contemporary 'Grotians') I rest the case for taking international society seriously.<sup>26</sup>

Bull relies heavily on Grotius’ conception of international society in preference to the notion of an international system. In these very terms, ‘international society’ and ‘international system’ the anthropocentrism of the former shines through – a society depends on subjects co-existing with all the complications that entails, while a system speaks of machinery or processes. For Bull:

The work of Grotius is cardinal because it states one of the classic paradigms that have since determined both our understanding of the facts of inter-state relations and our ideas as to what constitutes right conduct therein. This is the idea of international society: the notion that states and rulers of states are bound by rules and form a society or community with one another, of however rudimentary a kind.<sup>27</sup>

Keene observes that Bull’s view of Grotius shapes his famous *via media* between two contending approaches within International Relations: ‘Machiavellian or Hobbesian realism, and Kantian cosmopolitanism’.<sup>28</sup> However, in his understanding of

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<sup>24</sup> Elstain, 2004, p. 78, referring to Grotius, *DJB*, II.II.II. p. 395/6.

<sup>25</sup> *Id.*

<sup>26</sup> Bull, quoted by Hurrell in the foreword to Bull, H., *The Anarchical Society: A Study of Order in World Politics*, 3rd Edn. (Basingstoke and New York: Palgrave, 2002) p. x.

<sup>27</sup> Bull, H., 'The Importance of Grotius in the Study of International Relations', in Bull, H., Kingsbury, B., and Roberts, A., (Eds.) *Hugo Grotius and International Relations* (Oxford: Oxford University Press, 1992) Oxford Scholarship Online. Oxford University Press. 16 December 2008, p. 70.

<sup>28</sup> Keene, 2002, p. 40/1.

international society Bull provides a history *from* the present rather than a history *of* the present: he draws links and distinctions in the present between different schools of thought that were not originally contemporaneous without exploring in depth the context in which each came about. The notion of international society is crucial to Walzer's just war, as is the right of punishment against an aggressor:

There exists an international society of independent states. States are the members of this society, not private men and women ... Though states are founded for the sake of life and liberty, they cannot be challenged in the name of life and liberty by any other states. Hence the principle of non-intervention ... if states are members of international society, the subjects of rights, they must also be (somehow) the objects of punishment.<sup>29</sup>

Walzer includes Grotius' notion of just punishment within his *schema* – as well as Bull's explication of Grotius' international society – as did Elshtain above. However, Walzer applies the notion solely to states whilst Elshtain is willing to extend the application of just punishment to include non-state actors such as Osama bin Laden and the Taliban.<sup>30</sup>

The foregoing discussion of three strands of Grotius' contribution to current legal and moral debate within international relations points to his continuing relevance. While this genealogy is located in the domain of just war and concerned with how Grotius is used in present debate concerning the ethical subject and military intervention, commonalities as well as disparities in Elshtain's and Walzer's use of Grotian principles have been identified. Broadly speaking, Elshtain is most closely associated with what Tuck identifies as the 'moral' strand in Grotian thought – though she also appeals to aspects of his conception of law – while Walzer can be more clearly identified with aspects of both the 'legal' strand of Grotian thought and Bull's reading of Grotian international society. Aspects of the foregoing discussion will be revisited as the chapter moves on to examine the complex interplay of natural law, Divine law and the role of the scriptures in Grotius' work: providing the basis of Grotius' moral code and shaping the emergence of the ethical subject of war in his writings.

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<sup>29</sup> Walzer, 2000, p. 61.

<sup>30</sup> Elshtain, 2004, p. 78.

## Discourse, codified morality and subjectivity

In the opening paragraph of the *Prolegomena*, Grotius sets out the scope of *De Jure Belli ac Pacis*:

Many people have undertaken commentaries and digests of civil laws ... but few people have tackled the law which mediates between different countries, or between their rulers (whether that law stems from nature itself or from custom and tacit agreement), and so far no one at all has dealt with it comprehensively and methodically, though such a thing would benefit the human race.<sup>31</sup>

The scale of Grotius' endeavour, the complexity of the political, religious and military environment surrounding him and the vast array of discursive resources available to him underpin the challenges he faced and emphasise the importance of his use of discursive sources. For Tanaka Tadashi, Grotius here 'formulates his basic task' in setting out to 'regulate and restrain war by rules based on reason'.<sup>32</sup> Whilst supporting Tadashi's observation, it is only a partial summary of Grotius' opening sentences. Grotius is also setting out the limits, or boundaries, of the work that is to follow in his codification of moral and legal arguments. He mentions the law and the purpose to which he will put it in mediating between countries and their respective rulers, before going on to list the sources of that law – nature, custom and tacit agreement.

In pursuing his aim, Grotius specifies the sources he will use, even ranking them according to the relative authority he accords them in supporting his own arguments. He writes:

I intend to set great value on Aristotle, but to treat him with the same freedom with which he treated his teachers in his zeal for truth. Works of history are useful for my argument in two ways, for they provide both examples of conduct, and moral judgements upon them ... I have selected those from the Ancient Greeks and Romans in preference to any others ... The remarks of poets and orators have less weight ... I have often deferred to the authority of the books which men wrote (or received) under the inspiration of God.<sup>33</sup>

Grotius' prioritising of his sources highlights both the constitutive nature of his own discourse and the weight to be attached to the supporting evidence in his arguments. His deference to Christian texts is mentioned, although he gives different

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<sup>31</sup> Grotius, *DJB, Prolegomena* to the First Edn., p. 1745.

<sup>32</sup> Tadashi, in Yasuaki, O. (Ed.) *A Normative Approach to War: Peace, War and Justice in Hugo Grotius* (Oxford: Clarendon Press, 1993) p. 12.

<sup>33</sup> *Op cit.*, p. 1758/9.

weight to those in relation to his non-Christian sources. In order of priority he lists his sources as: new covenant (New Testament); old covenant (Old Testament or Jewish Scriptures); the law of nature; canons of authoritative Church Councils; customs of early Christians; Christians of great reputation (e.g. Aquinas) and the scholastics.<sup>34</sup> What Grotius does not make clear is where the higher authority lies when these non-Christian and Christian sources overlap. For example, do the Canons of the authoritative Christian councils outrank the ancient Greeks in importance? In practical terms, as will be demonstrated later in this chapter, Grotius prioritises his sources according to the argument he is making at any specific time. Grotius' approach is not, however, without critics. According to Charles Butler:

Three important objections have been made to this celebrated work,- one, that the author defers in it, too little, to principle, too much to authority;-another, that the work is written in a very desultory manner, with small attention to order, or classification;- a third, that his authorities are often feeble, and sometimes whimsical.<sup>35</sup>

Butler is most critical of Grotius' extensive, sometimes intemperate, use of others' texts in supporting his own views. This criticism is reinforced with reference to, in Butler's view, a corresponding lack of principle and confidence in Grotius' own position. This criticism appears harsh but, when set in the context of Grotius' political vulnerability and his enforced exile from his homeland at the time of writing *De Jure Belli ac Pacis*, it is perhaps not surprising that a well-publicised desire to return to his native Holland should impact upon his writings. Wight is more specific: 'One of the main difficulties in studying Grotius is his ambiguity ... Grotius avoided contemporary political examples so as not to give offence and because ancient ones were deemed better'.<sup>36</sup> Whilst accurate to some extent, this assessment of Wight's does insufficient justice to the complexities of the situation facing Grotius in terms of politics, law, war and religion. Contemporary religious or theological arguments were of little or no use in providing authoritative reinforcement of Grotius' arguments, since many issues were not only disputed between Catholics and Protestants but even between rival Protestant factions. On such issues, Grotius could not seek authority for his arguments amongst his contemporaries because ongoing political and religious power struggles were accompanied by, and sometimes at the heart of, disputes over what counted as

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<sup>34</sup> *Ibid.*, p. 1759/60.

<sup>35</sup> Butler, C., *The Life of Hugo Grotius*, Reprint of 1826 original (The Echo Library: Teddington, 2007) p. 72.

<sup>36</sup> Wight, 2003 p. 31/2.

knowledge or truth, especially of a religious nature, or in relation to war. Given the diversity of Grotius' potential audience – rulers and subjects of European states, many of whom were still at war – his ambiguity on occasion is understandable because explicit judgements passed on sovereigns or states could have the effect of worsening relations – and his personal standing and hopes for a return to his homeland – rather than promoting ways of peaceful interaction.

Grotius therefore appeals to the authority of classical Greek and Roman writers, Christian scriptures and the writings of pivotal pre-Reformation theologians such as Augustine and Aquinas: whose work at that time, as now, held iconic status across the competing Christian traditions. However, he does not always use his sources in a consistent manner and the ethical subject of war emerges from a confusing amalgam of sources with their occasional incommensurate ontologies. This is demonstrated when Grotius addresses the question of obeying orders in an unlawful war:

But if they have orders given them to take up arms, as is usual, then if it plainly appears that the war is unlawful, it is their duty not to meddle in it. It is the doctrine not only of the apostles, but of Socrates also, that we should obey God rather than man, Acts v. 29 ... It was Polycarp's saying a little before his death, *We have learnt to pay to governments, to the powers ordained by God, all due honour, provided that honour does not obstruct or hazard our eternal salvation.*<sup>37</sup>

Grotius also seeks discursive support for this particular argument in writings from authors as diverse as Josephus, St Paul, Sylvanus and Quintilian, among others. Grotius is seeking to establish the relationship between the state and the combatant as ethical subject of war, yet he encourages the soldier's self-subjection in relation to God and eternal salvation. Complicating his position further is a co-location of Christian and Socratic notions of God which are ontologically incommensurate and render his argument incoherent upon close inspection. If the example considered here does not sufficiently warn the reader of the difficulty of making sense of Grotius' use of sources, an additional note of caution is offered by Oliver O'Donovan: 'Only on closer examination do we find that they are quite careless and often do not support the case Grotius himself intends to make, but merely illustrate the vast range of commonplace and philosophical opinion through which an encyclopaedic discussion has to pick its way'.<sup>38</sup> Grotius' eclecticism is recognised by, but not fully captured in, some of the

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<sup>37</sup> *Op cit.*, II.XXVI.III.I, p. 1167/8. (*Original italics*)

<sup>38</sup> O'Donovan, O. and O'Donovan, J.L. (Eds.) *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought* (Michigan and Cambridge: William B. Eerdmans Publishing Company, 1999) p. 788.

works that subsequently relied upon his arguments, with writers drawing on specific aspects of Grotius' writings and, further, taking a narrow view of Grotius' sources that support a particular position. For example, Elshtain – writing in the Christian ethical tradition – draws connections between Grotius' and Aquinas.<sup>39</sup> Bull, in contrast, relies on a different aspect of Grotius' eclecticism and views him through the prism of law: 'It is this also that leads to the complaint that Grotius, while he expounds all the laws [from competing and numerous sources] that bear upon a particular subject, fails to tell us what is *the law*'.<sup>40</sup> Drawing on narrow aspects of Grotius' eclecticism – be it his Christian or juristic emphases, as in these examples – and redeploing these narrow elements of Grotian thought gives an increased sense of certainty about his arguments that is not always present in his original work. So having examined how Grotius uses, and synthesises, multiple existing sources in the formation of aspects of his own just war discourse, this section continues by exploring how he constitutes his moral code order from the moral and ethical sources available to him.

Wight describes the mutual interdependence of law and morality in Grotius' work: 'the Grotian tends to moralize law, to assert that law is morally binding'.<sup>41</sup> As with Wight's assertion – and Koskeniemi's earlier in the chapter – this re-reading of Grotius acknowledges the interdependence of law and morality in his writings. This thesis views his different aspects of law – natural, Divine, volitional, Canon, Roman or Mosaic law – as moral sources within his wider moral code, to be called upon as a particular argument demands. For Kingsbury and Roberts:

This may indeed have been the greatest direct contribution of *De Jure Belli ac Pacis*: the systematic reassembling of practice and authorities on the traditional but fundamental subject of the *jus belli*, organized for the first time around a body of principles rooted in the law of nature.<sup>42</sup>

The two notable aspects of the interpretation of Grotius' contribution to the just war tradition expounded by Kingsbury and Roberts are firstly, the 'systematic reassembly' of existing work in the field, and secondly, the rooting of this work in the law of nature. The first of these is perhaps of lesser significance, being determined by the methodology used and the sheer number of the supporting sources drawn upon. However, the second contribution by Grotius is of paradigmatic importance in

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<sup>39</sup> Elshtain, 2008a, p. 150.

<sup>40</sup> Bull, 1992, p. 80. (*Original italics*)

<sup>41</sup> Wight, 2003, p. 53.

<sup>42</sup> Bull *et al*, 1990, p. 3/4.

identifying the basis of just war in natural law rather than Divine revelation or Church doctrine.

Draper offers a different perspective, asserting: 'In much of the treatise it is uncertain whether Grotius is concerned with law or morals. His part in reducing the dependence of the doctrine of the 'just war' on theology had not yet enabled him to make law and morality distinct'.<sup>43</sup> The uncertainty that Draper identifies is not captured by Walzer, who observes: 'Writers like Grotius ... incorporated just war theory into international law, but the rise of the modern state and the legal (and philosophical) acceptance of state sovereignty pushed the theory into the background'.<sup>44</sup> Furthermore, Walzer's appeals to Grotius' authority on the matters of neutrality and pre-emptive strike similarly fail to capture the latter's ambiguity in the relationship between law and morality.<sup>45</sup> Perhaps this is not surprising given that Walzer writes about the morality of war in the context of an established legal paradigm that governs international relations.

A separation of law and morality does not appear to have been Grotius' aim. It is those who would subsequently draw upon Grotius in framing their own legal or moral arguments that would frequently focus on one or other aspect of his writings. Further, in seeking to remove God as the primary source and sustainer of natural law, in a break from Aquinas' position, Grotius made it possible for subsequent theorists – such as Vattel, who will be examined in the next chapter – to more fully separate legal from moral arguments in relation to war. Draper is making an observation from the perspective of the late twentieth century when law and morality have acquired their own ontological foundations and epistemological frameworks; it seems inconceivable that a strict separation of law and morality would even have occurred to Grotius. Grotius' use of diverse sources to bolster the authority of his arguments mitigates against the possibility of separating his moral and legal arguments. His synthesis of such disparate arguments could only result in a moral code that fuses both morality and law. Consequently, a balanced understanding of Grotius will be achieved by exploring his conception of law as part of his wider moral code.

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<sup>43</sup> Draper in Bull *et al*, 1990, p. 193.

<sup>44</sup> Walzer, M., 2002, 'The Triumph of Just War Theory (And the Dangers of Success)' in Walzer, M., *Arguing About War* (New Haven and London: Yale University Press, 2004) p. 5.

<sup>45</sup> Walzer, 2000, p. 246 and 340.

Grotius writes: ‘The Divine voluntary Law (as may be understood from the very name) is that which is derived only from the will of God himself; whereby it is distinguished from the Natural Law, which in some sense, as we have said above, may be called Divine also’.<sup>46</sup> A certain ambiguity is found throughout Grotius’ work in his relationship between natural and volitional law, since nature and hence natural law are – for him, as a Christian who engaged in serious theological dispute – both created by God. However, Grotius generally gives greater moral authority to natural law than he does to the stated will of God as revealed in scripture. This should be seen as a key secularising dynamic in the history of the just war tradition: shifting from a Thomistic ontology based on an application of reason that remains subordinate to Divine command to an ontology that prioritises human reason and seeks to distance it (though no full separation occurs at this stage) from the Divine. Tadashi writes of Grotius’ ontology: ‘[Grotius] does not rely on the just-war doctrine of European medieval theologians, but re-examines the just war doctrine from the viewpoint of natural law based solely on reason’.<sup>47</sup> However, this author would seek to qualify this position, since Grotius takes his authority from wherever he needs to, in order to best support whatever case he is arguing at the time. It is, therefore, more accurate to speak of a shift in emphasis in his work away from religious revelation towards the use of reason in a secular context, rather than an abandoning of the former for the latter. Systematisation is not an end in itself for Grotius – moderating war and its effects are at the heart of his endeavour. If Grotius needs to move around an eclectic discursive landscape in pursuit of his aim then that is what he does, uncomfortable though it may be to the modern reader.

Having examined aspects of Grotius’ moral code and the complexity of his understanding of law within it, the second half of the chapter moves on to focus more specifically on aspects of his codification of just war and the emergence of his ethical subject of war.

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<sup>46</sup> *Op cit.*, I.I.XV, p. 164.

<sup>47</sup> Tadashi, T., ‘Occupying Armies and Civil Populations in Nineteenth-Century Europe’ in Yasuaki, O. (Ed.) *A Normative Approach to War: Peace, War and Justice in Hugo Grotius* (Oxford: Clarendon Press, 1993) p. 32.

## Just war codified

If Aquinas made a decisive step in the codification of just war in his succinct elucidation of the importance of the need for legitimate authority, just cause and right intention in addressing his question, *Of War*<sup>48</sup>, it is worth noting that this contribution to the just war tradition adds up to only several hundred words. In contrast, Grotius' writings on war, law and morality run to many hundreds of pages. In *De Jure Belli ac Pacis* the scale of the task he sets himself is huge and his approach lacks the neat and incisive ordering that characterises Aquinas' work. Grotius sets out to cover an extensive discursive terrain that cannot be succinctly summarized and only limited aspects of which can be addressed in this thesis or any other single work. In the *Prolegomena* Grotius sets out the structure of the whole project: Book I examines whether or not there can be such a thing as a just war, exploring also the differences between public and private wars; Book II sets out the various causes from which war can rightly arise; Book III considers the question of what is lawful conduct in war and examines the associated kinds of peace that can be achieved.<sup>49</sup> These various elements, and the moral and legal arguments therein, make up the just war aspect of Grotius' moral code. The emergence of Grotius' ethical subject continues the trajectory previously identified in the relationship between the just war writings of Augustine and Aquinas: his extensive codification of just war demanding conformity from the ethical subject whilst, correspondingly, reducing the opportunity for ethical self-formation. The trajectory of his *magnum opus* is, in turn, dictated by his reasons for writing it. Grotius, at the outset, bases one motivation for writing about war on a binary opposition of the Christian and the barbarian: the Christian who should know how to conduct himself as ethical in time of war and the barbarian who does not. In addition, the practice of war between Christian peoples vexes and inspires Grotius in equal measure:

I am in no doubt that there is some common law [*ius commune*] among nations which applies to war and its conduct; so there are many urgent issues leading me to take up my pen. I have seen a wantonness in warfare among Christians which would be shameful even among barbarians; I have seen men run to arms for frivolous or nonexistent reasons, and having taken them up, show no reverence for human or divine law, as if at a word their fury had been unleashed and they were capable of any crime.<sup>50</sup>

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<sup>48</sup> Aquinas *Summa*, II-II, Q. 40, A. 1, p. 1813.

<sup>49</sup> *Op cit.*, p. 108.

<sup>50</sup> *Ibid.*, p. 1753.

Grotius identifies two levels of acceptable ethical conduct here: that of the Christian who should be aware of, and conform to, both human and Divine law and the barbarian who is exempted from these high expectations. Further, he identifies here two aspects of a common law among nations: the first concerns the decision to go to war, while the second concerns the way in which that war is pursued. He has not at this stage, however, formally separated *jus in bello* from *jus ad bellum*, which – as will be seen in the next chapter – would emerge in something like its modern form with Vattel, a century later. Grotius is responding to, and seeking to restrain, those who would rush to arms: especially Christians, since biblically-based arguments were being used to justify war between rival Christian nations, often emphasising differences between pro-Catholic and pro-Reformation interpretations of scripture and Church authority. To this end – and demonstrating a limited measure of continuity with Aquinas – he retains a desire for his ethical subject of war to form herself or himself as a good Christian, particularly when opposed in war by other Christians.

Grotius' systematization of just war takes the form of legal and moral arguments that were intended to be weighed up objectively to the benefit of all peoples: or at least all European peoples. Bull states: 'The system of rules which Grotius devised was intended to assist the triumph in any war of the party or parties whose cause was just, and who therefore were acting on behalf of the community as a whole'.<sup>51</sup> The ethical subject of war is constituted in relation to that community: the leader who decides for or against war and the soldier who fights the war to protect or to seek justice for the community on the battlefield. In Book II of *De Jure Belli ac Pacis* – where Grotius explores the causes that would enable a war to be described as just – we find the zenith of Grotius' codifying tendencies in his presentation of just war arguments. This is achieved by moving the conditions for a just war firmly towards, although not exclusively, a legal footing. This is not the highly developed legal paradigm that Walzer, for example, refers to in his own just war writings at the end of the twentieth century.<sup>52</sup> However, Grotius makes a key contribution to a tradition of thought that helps create the conditions in which Walzer can make his own moral claims with regard to war. Hence we see Grotius' just war being constituted as part of his wider moral code, increasingly characterised as legal argument.

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<sup>51</sup> Bull, *The Anarchical Society*, p. 239, quoted in Bull *et al*, 1990, p. 15.

<sup>52</sup> Walzer, 2000, p. 86.

According to Grotius: 'Most men assign three just causes of war, defence, the recovery of what's our own, and punishment'.<sup>53</sup> Charles Edwards describes this statement by Grotius as a summary of 'the thought of his predecessors'.<sup>54</sup> The three causes for war are set out in terms of violations of the law of nations for actions that have been, or are being, committed. However, Edwards does not attach any significance to Grotius' selectivity in his use of sources and neglects to point out that, by Grotius' own admission, this formulation is not even his own. The quotation about the three just causes continues: 'Which three you have in Camillus's declaration against the Gauls ... Whatever may be defended, recovered or revenged'.<sup>55</sup> Grotius then reinforces his selection with reference to Plato, Seneca, Salust and St Augustine. As is his wont, when Grotius seeks to add the maximum authority of his antecedents to important arguments he includes what may be termed the full set: Greek, Roman and Christian precedent. This has the advantage of providing broad discursive support for his position and has the secondary effect of preventing Grotius from being attached to any one ideological or theological school of thought. Grotius remains remarkably close to Aquinas on the matter of just cause for war, who in turn remained Augustinian in his outlook: 'Wherefore Augustine says: "A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly."'<sup>56</sup> Where Grotius adds to Aquinas and Augustine is in the need for defence of the state within his early-Modern understanding of sovereignty.

To the three just causes for war specified above – for previous or ongoing transgressions of law – Grotius adds a fourth, which we might call either pre-emptive or preventive: 'it is sufficient that I am not obliged to suffer the wrong that [an aggressor] threatens to do to me'.<sup>57</sup> However, this fourth just cause for war is constituted differently from the three previously mentioned. The legal paradigm that provides the foundation for the first three of Grotius' stated just causes cannot support the fourth because a crime has not yet been committed for which restitution or punishment is due. At this point the ethical subject of war plays an important role for Grotius. The ethical subject does not fight here for a just cause in response to a crime that has been

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<sup>53</sup> *Ibid.*, II.I.II.II, p. 395.

<sup>54</sup> Edwards, C.S., *Hugo Grotius: Miracle of Holland - A Study in Political and Legal Thought* (Chicago: Nelson-Hall, 1981) p. 121.

<sup>55</sup> *Op cit.*

<sup>56</sup> Aquinas *Summa*, II-II, Q. 40, A. 1, p. 1814.

<sup>57</sup> *Op cit.*, II.I.III, p. 397.

committed; the subject of war is constituted as ethical in the act of opposing an aggressor who would inflict a future crime. This would-be aggressor is constituted as the Other who must be opposed by the ethical subject: 'a man's beast that came to set upon me'.<sup>58</sup> Consider the ethical sources (sources that fall outside of Grotius' codified morality) being used here: the potential attacker is described as 'a man's beast', animal-like and incapable of restraint or judgement. The potential victim forms herself or himself as ethical by the act of opposing the beastly, would-be aggressor, not by conforming to the law in response to a grievance that contradicts Grotius' codified morality. So we see that whilst the trajectory of the emergence of Grotius' ethical subject of war is predominantly code-oriented with the ethical subject of war conforming to an emerging legal paradigm in his moral order, it is possible to identify occasions such as this when Grotius constitutes the ethical subject of war in opposition to the aggressor as Other. As a result, Grotius' just war as code-oriented morality is never totalising and he continues to allow the possibility that his subject of war can still creatively self-form, partially or occasionally, in relation to ethics-oriented morality.

Grotius goes beyond permitting pre-emptive attack in his just war to opening up the possibility that one ruler might intervene to protect the subjects of another ruler:

But if the injustice [of a ruler against that ruler's subjects] be visible ... such tyrannies over subjects as no good man living can approve of, the right of human society shall not therefore be excluded ... And indeed tho' it were granted that subjects ought not, even in the most pressing necessity, to take up arms against their Prince ... we should not yet be able to conclude from thence, that others might not do it for them.<sup>59</sup>

Grotius does not develop this point at great length but the basis of the argument is that in some circumstances – when the offence or crime committed is serious enough – the rights of 'human society' (the European, civilized human society) and a desire to protect the innocent should outweigh the rights of the Prince in whose domain injury is being caused. The good – or ethical – Prince is the one who is prepared, at great cost, to intervene on behalf of others. The subject who does not resist a tyrannical Prince and the Prince who intervenes across borders on behalf of the innocent are prompted 'from the quality and circumstance of the person, which quality does not pass to others'.<sup>60</sup> In this instance ethical subjectivity in relation to war is not achieved by pursuing a

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<sup>58</sup> *Id.*

<sup>59</sup> *Ibid.*, II.XXV.VIII, p. 1161/2.

<sup>60</sup> *Id.*

particular course of action. Rather, the ruler or Prince who *already* has a character of high quality – the ethical subject – goes to war as an outward manifestation of that character. In this particular argument Grotius echoes Augustine for whom the ethical subjectivity of the individual – the good Christian – was prior to the just war.

Grotius' notion of pre-empting the attack of a beast that would do harm as just cause for war, as well as his argument in favour of one ruler protecting the subjects of another brutal ruler is captured by Elshtain in her justification of the 2003 Iraq invasion. Elshtain argues: 'There was massive and, to my mind, sufficient evidence of the threat [from WMD] before the war'.<sup>61</sup> She continues:

Even more important – or at least as important – were the well-documented and continuing crimes against humanity perpetrated on the bodies of the Iraqi people by the Saddam regime. I concluded before the Iraq war, and I continue to believe, that the first criterion [just cause] of a just war was met ... A world with one fewer brutal "disturbers of the peace" would, by definition, be a more peaceful world over the long-haul.<sup>62</sup>

Elshtain's just cause argument comprises two elements. The first is that Saddam Hussein posed a threat to wider humanity – a globalised version Grotius' Euro-centric notion of human society – rather than the United States necessarily, through his acquisition (*sic.*) of WMD. In the second element she constitutes Saddam Hussein as Other: brutal and a disturber of the peace, based on actions against his own populace which Elshtain describes as crimes against humanity. These, she contends, are deserving of military action against him and his regime, even though no external attack against a neighbour was imminent. The latter argument corresponds closely to Grotius' description of 'a man's beast that came to set upon me'.<sup>63</sup> Saddam's brutality is the ethical source by which he is constituted as Other and deserving of attack, despite brutality in a state leader having never been, in itself, contrary to International Law. Elshtain necessarily relies on ethical self-formation of the subject of war at this point in opposition to Saddam Hussein as Other because he has – at this point – committed no new crime for which he is liable to be punished under the codes of International Law.

While Walzer adopts a more sceptical position than Elshtain regarding the justification of the 2003 invasion of Iraq, and about intervention more generally, his just

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<sup>61</sup> Elshtain, 2004, p. 189.

<sup>62</sup> *Id.*

<sup>63</sup> *Op cit.*, II.I.III, p. 397.

war does employ a Grotian approach to humanitarian intervention in some circumstances: 'Humanitarian intervention is justified when it is a response ... to acts "that shock the moral conscience of mankind"'.<sup>64</sup> And these acts, for Walzer, involve 'enslavement or massacre' on a huge scale.<sup>65</sup> Such actions would meet Grotius' description of 'such tyrannies over subjects as no good man living can approve of'.<sup>66</sup> However, whilst Grotius' just war here makes it possible for Elshtain and Walzer to construct their own positions on intervention, the degree of tyranny required to justify intervention remains open to dispute. Walzer sets a higher threshold of tyranny than Elshtain, while Elshtain buttresses her argument by adding external perceived threat to internal tyranny. Furthermore, Walzer's communitarian emphasis is maintained and it is only with great reluctance that he would consider transgressing sovereign borders and the codes that govern international relations.

Bull acknowledges the complexity – and lack of clear definition – of the relationship between the individual and the state in Grotius' system: 'It is true that Grotius does give an especially prominent place to states as opposed to individual persons and non-state entities in his exposition of rights and duties, especially when he is discussing the voluntary or positive law of nations'.<sup>67</sup> The consequence of this lack of clarity in a work with the sweep of *De Jure Belli ac Pacis* is a casuistic dependence on particular examples rather than a straightforward systematisation. The remainder of this chapter will look further at the emergence of the ethical subject of war in Grotius' work – particularly the ruler and the combatant – with reference to specific examples. Christopher points out: 'Even though abstract entities are the subjects of international law, the responsibility for compliance, as well as the culpability for infractions, always rests with individuals'.<sup>68</sup> What is demonstrated here in Grotius, and in Christopher's interpretation of Grotius' legal position, is that there is a limit on the extent to which just war as moral code (which incorporates the legal dimension) can operate objectively. Both in Christopher's legal framework and the moral framework of this thesis, the nature of the state as it emerged in the seventeenth century ensures that conformity to just war as moral code always retains an element of dependence on the self-forming

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<sup>64</sup> Walzer, 2000, p. 107.

<sup>65</sup> *Ibid.*, p. 101.

<sup>66</sup> *Op cit.*, II.XXV.VIII, p. 1161.

<sup>67</sup> Bull *et al.*, 1990, p. 84.

<sup>68</sup> Christopher, 2004, p. 76.

ethical subject who wields sovereign power through the institutions of state, as well as the ethical combatant in the field.

### **The ethical subject of war**

In his overall assessment of war, Grotius is adamant: 'War cannot be just on both sides'.<sup>69</sup> In referring to 'just' in this instance its meaning is heavily weighted towards legality, using a courtroom analogy that the verdict must come down on one side or the other. To that end, the ethical subject of war is the one whose cause is just when tested against a legal dimension of the moral order – natural, volitional, common or international law. However, he does allow the possibility that 'neither of the parties in war acts unjustly'.<sup>70</sup> In this particular case, the constitution of the ethical subject takes on a different dynamic when considered in light of ethics-oriented and code-oriented moralities available. Chapters 2, 3 and 4 set out the differences between the two aspects of morality used in a Foucauldian sense in this genealogy. Ethical sources such as a hunger for power or a religiously-inspired desire to live a virtuous life are distinct from sources of codified morality such as law (natural, volitional or Divine), religious doctrine and Canon law, or specific cultural proscriptions – or prohibitions – on behaviour. Ethical subjectivity is formed in relation to the latter through conformity to the codes, whilst self-subjection in relation to ethical sources requires a greater degree of creative self-forming. Consequently, where Grotius allows the possibility that both parties in a war are acting justly this can be either because they conform to moral sources such as law, or in relation to ethical sources such as desire for honour or glory. Overall, Grotius' code-oriented morality takes priority over ethics-oriented morality and the ethical subject of war emerges primarily but not – as the previous section has demonstrated – exclusively from his codified morality. This codification is at the heart of Walzer's just war, located as it is in a legal paradigm and acknowledged as part of his 'war convention': which comprises 'the set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgements of military conduct'.<sup>71</sup>

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<sup>69</sup> *Op cit.*, II.XXIII.XIII.II, p. 1130.

<sup>70</sup> *Id.*

<sup>71</sup> Walzer, 2000, p. 44.

On the question of participating in an unjust war Grotius makes it clear that the subject must refuse: 'But if they have orders given them to take up arms, as is usual, then if it plainly appears that the war is unlawful [unjust], it is their duty not to meddle in it'.<sup>72</sup> The illegality of the war carries greater moral weight than the legitimacy of the military command. In constructing his argument Grotius interpellates the authority of a considerable variety of sources – the Apostles, Socrates, Hebrew Rabbis, Saints Polycarp, Paul and Jerome, Gellius, Quintilian, Pliny and others. Further, Grotius quotes the biblical injunction that 'we should obey God rather than man, Acts v. 29'.<sup>73</sup> Additionally, he quotes the classical Greek writings of Euripides in which Creon the ruler demands: 'It is not fit my orders be obey'd'.<sup>74</sup> This is answered by Antigone: 'No; if you order what's unjust and cruel'.<sup>75</sup> The seemingly random choice of sources in support of his argument share no common ontological basis and need only a passing relevance to the point at hand to be included. Furthermore, Grotius does not seek discursive support from either Augustine or Aquinas (despite seeking their discursive support with regard to the just causes for war), for whom a soldier's disobedience of an order from a superior would undermine the Divine order of their teleological morality. The lack any unity of purpose amongst his sources undermine, rather than strengthen, Grotius' argument here because his attempted codification of this aspect of just war points instead to ontological incoherence in his argument.

Grotius, in a significant departure from Aquinas, rejects the need for right intention in the pursuit of a just war. He writes:

It often comes to pass, that tho' there be a just cause for war, yet some fault may accompany the action from the disposition of the agent, as when something else, not of itself unlawful, does more powerfully incite us, than the right we have to do it, as the desire for glory ... or when some unlawful passion arises in us, as taking a satisfaction in another's suffering ... yet when the war is grounded on a justifiable reason they do not render it unjust.<sup>76</sup>

There are two aspects to the point made here by Grotius. The first refers to individual intentions, such as the pursuit of glory or a satisfaction in relieving or compounding the suffering of another. The pursuit of glory might be referred to here as an ethical source in relation to which the individual creatively self-forms her, or his,

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<sup>72</sup> *Ibid.*, II.XXVI.III, p. 1167/8.

<sup>73</sup> *Ibid.*, p. 1168.

<sup>74</sup> *Ibid.*, p. 1169.

<sup>75</sup> *Id.*

<sup>76</sup> *Ibid.*, II.XXII.XVII, p. 1113/4.

subjectivity. The second aspect of the argument is concerned with just war as codified morality: specifically, just cause. As set out earlier in this chapter, Grotius – in codifying his just war – identifies three just causes: ‘defence, the recovery of what's our own, and punishment’.<sup>77</sup> In comparing the two aspects of Grotius’ approach to the matter of intention, with regard to war, it becomes clear that he prioritises conformity to just war as codified morality (in pursuing a just cause) above self-subjection in relation to an ethical source, such as the pursuit of glory. For Grotius the attitude or intention of the ruler or soldier is of little consequence in comparison to the legal argument about whether one state is pursuing a just cause against another. This stresses the importance of the state in Grotius’ legal arguments. Johnson observes: ‘[Grotius] thus emphasized the rights of the state as a sovereign entity, narrowed the cause of justice to the purpose of self-defense, and recast the whole notion of justification of recourse to arms in terms of law, rather than morality’.<sup>78</sup> While partially supporting Johnson’s reading of Grotius here regarding Grotius’ emphasis on states’ rights in relation to just cause and self-defence, his reading is not nuanced enough. Grotius’ subject of war emerges in relation to both ethical sources (for example, the pursuit of glory) and codified moral sources (for example, law), with priority given to the latter. This is characteristic of an overall move towards a legal paradigm in the trajectory of just war arguments and away from earlier Christian concern – such as that found in Augustine and Aquinas – for care of the individual’s soul in the context of war.

Grotius specifies a number of individual subjects and groups against whom war can legitimately be waged, on the basis of their character and actions, rather than in contravention of his fledgling law of nations. In *De Jure Praedae* Grotius states:

factual evidence clearly shows that there are in existence many men of a bloodthirsty, rapacious, unjust, and nefarious disposition, traitors to their native lands and disparagers of sovereign power – men who are strong, too, and equipped with weapons – who must be conquered in battle ... in order that they may be brought to book as criminals.<sup>79</sup>

In the same vein he writes in *De Jure Belli ac Pacis*: ‘those who are inhuman to their Parents...those who eat human flesh...those who practice Piracy...War is lawful

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<sup>77</sup> *Ibid.*, II.I.II.II, p. 395.

<sup>78</sup> Johnson, J.T., *Morality and Contemporary Warfare* (New Haven and London: Yale University Press, 1999) p. 54.

<sup>79</sup> Grotius, *DJP*, p. 32.

against those who offend against Nature'.<sup>80</sup> By 'Nature' Grotius is referring to his conception of natural law where rational humans – at least those in civilised nations – share an understanding of what is, or is not, a moral act. By justifying war against those who offend against Nature, Grotius goes beyond the legal requirement for a particular wrong to have been done to a state. In his discourse, the subjectivity of those who offend against nature – such as pirates and those who eat human flesh – is formed in relation to ethical sources such as avarice and lust<sup>81</sup> and not just in relation to just war expressed in terms of law. Here, subjectivity is constituted by Grotius in a number of ways, according to the acts of the individual and the ethical sources he draws upon. He goes out of his way to deny the more strictly legal positions of several theorists ('Victoria, Vasquez, Azorius, Molina, and others'<sup>82</sup>) for whom a just war can only be declared by an injured party or an individual holding authority over the one against whom war is declared. Consequently, we have an instance where the subject of war emerges as ethical by waging war against the Other who offends against (a European conception of) nature: as opposed to merely conforming to Grotius' moral order and his emerging rules for conduct between states. This reading of Grotius adds to Bull's state-centric, juristic reading of Grotius: 'The work of Grotius is cardinal because it states one of the classic paradigms that have since determined both our understanding of the facts of inter-state relations and our ideas as to what constitutes right conduct therein'.<sup>83</sup> Bull is accurate in pointing out that Grotius is concerned with conduct between states, especially with regard to war. However, his approach is incomplete and Grotius forms the ethical subject of war – as shown here – from sources more diverse than conceptions of law and statehood.

Where Grotius writes of conduct against enemies in war, he draws on both moral and ethical sources in constituting the ethical subject. For Tooke, after Grotius' chief aim of limiting warfare: 'The legitimate methods of warfare were his next concern, and he made a distinction between legal requirements and *temperamenta*'.<sup>84</sup> The notion of *temperamenta* – or moderation – is used specifically in limiting acts of violence in war in Chapters 12-16 of Book III and from this the ethical subjectivity of the combatant emerges. Where the actions of a large number in war are deserving of death, Grotius

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<sup>80</sup> *Op cit.*, II.XX.XL, p. 1022-4.

<sup>81</sup> *Ibid.*, p. 121.

<sup>82</sup> *Ibid.*, II.XX.XL, p. 1024.

<sup>83</sup> Bull, 1992, p. 70.

<sup>84</sup> Tooke, 1965, p. 219 (*Original italics*).

writes: ‘yet the greatness of a multitude may be some plea to mitigate the severity of the punishment; a pattern of which forbearing mercy we have from God himself’.<sup>85</sup> In this instance, even when the law stipulates that the enemy deserves the punishment of death, Grotius gives greater authority to an ethical source: a specifically Christian application of mercy as a reflection of God’s actions. Further, when a soldier kills in a just war to secure both lives and estates that belong to the state he is defending, such action ‘is not repugnant to justice strictly taken, yet it is far wide from the law of charity’.<sup>86</sup> Killing in accordance with Grotius’ just war in conformity to his code-oriented morality is the minimum standard of moral behaviour he demands. However, a higher standard of behaviour is available to the ethical subject of war: conformity to God’s law of charity. Conformity to this Divine command is only open to, or expected from, the Christian who would show mercy and moderation. Again, Grotius allows the subject of war to self-create in relation to ethical sources – mercy and moderation – as well as in conformity to the requirements of his moral code.

This re-reading of Grotius has highlighted an increased reliance on codes in shaping just war than was the case with Aquinas. The chapter began by considering contemporary readings of Grotius by Keene, Koskenniemi, Tuck and others. Whether their interests lie in the legal aspects of Grotius’ writings, the moral dimension or both, the focus remains on Grotius’ construction of codes – legal and moral – and excludes self-formative aspects of his discourse. This emphasis on codes is similarly found in Walzer’s just war, situated as it is in a ‘legalist paradigm’, thereby relegating ethical self-formation to the periphery. In contrast, though she also retains a reliance on codes Elshtain allows for greater self-creativity in her constitution of the ethical subject of war: for example, in drawing on Grotius’ ‘intervention’ discourse she allows ethical self-formation in opposition to the oppressive, brutal Other. This use of the creative forming of the subject by Elshtain is achieved partly by maintaining a link from Grotius to Aquinas in the Christian tradition – and the self-forming it affords – while Walzer’s just war is marked by a secular emphasis on law. The next chapter will show how Vattel draws on Grotius’ codes, extending their application in his *Law of Nations*. However, Chapter 7 will also show that an element of creative ethical self-subjection remains in the margins of Vattel’s work, alongside a continued, though

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<sup>85</sup> *Op cit.*, III.XI.XVII, p. 1454.

<sup>86</sup> *Ibid.*, III.XI.II, p. 1422.

minimal, reliance on Christian concepts: an reliance that is not included in Walzer's use of Vattelian war discourse.

## **Conclusion**

Grotius, in setting out to base his just war, and his wider moral code, on a conception of natural law that emphasised the application of human reason maintained a measure of continuity with the approach of Aquinas before him. However, in seeking to distance his natural law from a Divine origin, Grotius went a considerable way in removing the religious dimension from his just war. Yet he was never fully able to secularize his just war and, as has been demonstrated in a number of discussions throughout this chapter, he regularly included aspects of the Divine in his *schema*. The ethical subject of war – both the ruler and the soldier – emerges in his writings primarily in relation to his codified morality in pursuit of an earth-bound *telos* while, occasionally, his ethical subject is formed, or self-formed, in relation to ethical sources and a *telos* located with, or shaped by, the Divine. In these instances that form a small part of his overall just war, Grotius stands contiguous with Augustine and Aquinas: whilst the majority of his work seeks to move away from such an approach. However, this tension in his writings is inevitable for two reasons. The first is the number and variety of sources – Christian and non-Christian – he interpellates, regardless of whether their underlying ontologies are commensurable, or not. The second is that religious belief and practice still permeated social and political life across Europe in that period and there was a limit in the extent to which Grotius could break from the use of Christian discourses in the way that Enlightenment writers would later claim.

Grotius' just war moved decisively – though not absolutely – towards a legal paradigm that attempted to set out objective parameters for the legitimate pursuit of war between emerging states. His position on when it is just to intervene across state borders, on behalf of oppressed and brutalised people, provides a vocabulary and conceptual framework that continues to inform debate about humanitarian or military intervention, exemplified in the discourses of Elshtain and Walzer. However, a number of subtleties should be borne in mind. While Elshtain and Walzer both draw upon Grotian concepts, Elshtain tends to link Grotius to the Christian moral tradition of Aquinas and Augustine, while Walzer draws upon Grotius' contribution to the legalist approach to war – while omitting the Christian emphasis that Grotius retains in his discourse. In their use of

Grotius, Elshtain and Walzer allow for differing degrees of self-subjectivation in their writings: with Elshtain granting greater freedom and Walzer continuing to place greater onus on conformity to codes. This is exemplified in Elshtain's use of 'civilising' discourses found in Grotius – a finding that will be revisited in Chapter 8. Elshtain and Walzer, to different degrees, use Grotian arguments in the context of intervention based on a conception of human society that, *in extremis*, transcends his conception of statehood and relations between states: though it should be noted that Grotius' conception of human society encompassed *European* society, whilst current conceptions are global in scope. Furthermore, In Grotius' writings just war is increasingly code-oriented in a nascent legal paradigm, while still maintaining an element of creative self-subjectivation. As the genealogy continues in Chapter 7, Vattel's more fully developed legal paradigm marks another shift in the trajectory of both just war and the conditions from which the ethical subject emerges, with even greater emphasis on codes. Significantly, the separation of *jus ad bellum* and *jus in bello* into two distinct moral domains is formalised by Vattel, thereby further refining the codes to which the ethical subject of war is expected to conform.

## Chapter 7

### Vattel: Sovereignty, law and just war

Grotius made an important contribution to the just war tradition by extensively setting out the reasons that would justify war between states. He continued the trajectory of a shift in the constitution of the ethical subject from the primarily Divine, theological sources of Augustine and, to a slightly lesser extent, Aquinas, towards an earth-bound application of human reason in natural law. The secularization of just war in the writings of Grotius was not complete, however, as he could not fully separate his conception of natural law – and hence other aspects of law derived from it – from Divine origin. Consistent with this wider approach, Grotius’ ethical subject of war emerged predominantly in relation to his code-oriented morality, which still retained an element of Divine origin and continued to rely on Canon law and other Christian sources of authority. In conjunction with this reliance on code-oriented morality, Grotius’ ethical subject was, in part, also constituted in relation to ethical sources, such as the pursuit of mercy or opposition to brutality. As the genealogy now progresses from Grotius in the early Modern period to Vattel and the height of the European Enlightenment, Grotius’ incipient notion of sovereignty gives way to more fully developed conceptions of sovereignty and statehood. Where Grotius’ law and morality were mutually reinforcing, Vattel’s emphasis – as the title of his major work *The Law of Nations*<sup>1</sup> indicates – is more specifically on law. It is in this context that the emergence of the ethical subject of war will be examined in this chapter.

At a time when the dynamics of European politics were increasingly driven by economic factors – both geographically within Europe, and in the colonising and Imperial aggrandisement of European powers – Vattel produced a body of law that would shape relations between states without inhibiting European interests outside the geographical confines of Europe. Further, this chapter will argue that the European is constituted as ethical in the act of enforcing Vattel’s ‘laws of humanity’<sup>2</sup> upon barbarians and uncivilized peoples beyond Europe: noting, also, how aspects of this discourse are found in current debate on military intervention. It will be demonstrated that Vattel went much further than Grotius in constituting the subject in relation to the

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<sup>1</sup> Vattel, E. de, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, 1797 Edn., Trans. T. Nugent (Indianapolis: Liberty Fund Inc., 2008)

<sup>2</sup> *Ibid.*, Book III, Chapter VIII, Para. 141, p. 544 (hereafter III.VIII.141, p. 544).

sovereign state rather than the sovereign God. It will also be shown how Vattel – building on the work of Grotius and others – shaped the conditions by which Walzer could later locate just war in his legalist paradigm.<sup>3</sup> Consequently, Vattel’s ethical subject of war will be seen to emerge in a manner that breaks from Grotius and helps make possible Walzer’s (and to a lesser extent Elshtain’s) constitution of the ethical subject of war in the present. The chapter will explore how ontological continuities and discontinuities with Grotius emerged, as well as identifying elements of Vattel’s legalist discourse that are viewed as authoritative ‘truth’ and which continue to be used in intervention debate. Of further significance to this genealogy is the place of the subject in Vattel’s writings – relegated to the margins or used selectively in contemporary normative debate where the justification of war is predominantly defined in terms of international law. This re-reading of Vattel will show how aspects of his ethical subject of war continues to be used, though not acknowledged, in the justification of intervention today.

The chapter will proceed by firstly setting out Vattel’s notion of sovereignty and then examining how it is used in current debate, particularly by Elshtain and Walzer among others, in both wider theorising and in the justification of military intervention. Further, limitations in Vattel’s Eurocentric conception of sovereignty will be identified, showing how unacknowledged traces of his civilised/uncivilised discourse continue to be used in the formation of ethical subjectivity in present intervention discourses. The subsequent section will further examine the construction of Vattel’s moral code: his use of existing discourses in setting out the relationship between morality and law – particularly natural law – in his ontology. Thereafter, aspects of Vattel’s just war will be analysed: especially his formal separation of *jus ad bellum* and *jus in bello* into two distinct moral domains within just war. This separation results in greater moral significance being attached to the individual soldier: a development that will be addressed more fully in the second half of the chapter.

Having set the broader context in the first half of the chapter, the second half will start by examining Vattel’s constitution of ethical subjectivity in relation to code-oriented and ethics-oriented moralities, including ‘the necessary, internal, and consciential law’.<sup>4</sup> As with the previous three chapters, the focus of the analysis will

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<sup>3</sup> Walzer, 2000, p. 86.

<sup>4</sup> Vattel, *The Law of Nations*, Preface, p. 16.

then narrow to provide a reading of the emergence of his ethical subject of war – the sovereign ruler, the general and the soldier – noting the ongoing use of his ideas in the present. Throughout, a number of breaks and continuities will be identified, both with Vattel’s forerunners in the just war tradition, as well as with those who incorporate his ideas in just war theory today. The chapter begins now by briefly outlining aspects of Vattel’s conception of sovereignty.

### **Vattel today**

Vattel’s starting point in his explication of sovereignty is his concept of a universal society: 'The universal society of the human race being an institution of nature herself, that is to say, a necessary consequence of the nature of man,- all men, in whatever stations they are placed, are bound to cultivate it, and to discharge its duties'.<sup>5</sup> On the surface it would appear that Vattel is setting out the basis of a cosmopolitan society in line with Grotius’ position a century earlier and with Wolff’s *civitas maxima*. Vattel’s ethical subject, at this point, is the individual who works towards the betterment of the universal society of the human race. However, it is important to note that Vattel’s so-called ‘universal society’ refers not to the totality of humans on Earth but is more properly limited by European notions of sovereign statehood (which will be explored later in the chapter). Further, his cultivation of universal society has a literal dimension: cultivation of the land is viewed as an indicator of European civilisation. Absence of such an indicator (such as he attributed to the indigenous peoples of North America) constitutes an absence of civilisation and therefore an absence of rights to the land. Beate Jahn similarly points out that Vattel’s sovereignty is based on a European notion of the state and that within this particular conception of sovereignty the subject is constituted as either civilised (Europeans, for example) or uncivilized (Amerindians, for example): with the former enjoying rights to property and the latter having no rights.<sup>6</sup> Hence: ‘barbaric peoples have to be considered the enemies of mankind and states, therefore, have the right to lead wars against them without being provoked in any way’.<sup>7</sup> Furthermore:

the *jus in bello* does not apply in wars with barbarians, that is, it must be the goal of a civilised state to destroy the country of the barbarians in war, and a civilised state can catch and punish every member of a barbaric nation without

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<sup>5</sup> *Ibid.*, Preliminaries, p. 72.

<sup>6</sup> Jahn, B., ‘One Step Forward, Two Steps Back: Critical Theory as the Latest Edition of Liberal Idealism’, *Millennium: Journal of International Studies*, Vol. 27, No. 3 (1998) p. 630/1.

<sup>7</sup> *Id.*

distinguishing between combatants and non-combatants because, by definition, they are all guilty.<sup>8</sup>

Jahn argues that, rather than developing 'universal ideas', Vattel provides a universal yardstick that is used to provide 'a justification *not* to extend equal rights to others'.<sup>9</sup> Consequently, Jahn argues that aspects of modern liberal idealism that rely upon Vattel (and others) are not, in fact, universal but local and situated. This thesis supports Jahn's position, focused as it is on the interstice between ideology and polity. However, this thesis goes further for this interstice is also the site of governmentality: the site where subjectivity is constituted in the relations of power Jahn identifies between the civilised and uncivilised. The subject of difference in Vattel serves the same function as it does in Grotius: acting as the locus around which the law of nations operates with an inbuilt advantage (or right) given to the European over the extra-European.

For Vattel, the betterment of the human race would occur, initially, with the betterment of Europeans, who would then project their values abroad. Over two centuries later this 'betterment of the universal society' discourse can be found at the heart of the justification of intervention. Elshtain, in justifying intervention in Iraq, presents NATO's intervention in Kosovo as a moral precedent in what is clearly a 'betterment of universal society' discourse, going on to express regret that no such intervention took place to prevent the atrocities in Rwanda in 1994.<sup>10</sup> This Vattelian moral dynamic is identified by Zehfuss in Elshtain's *Just War Against Terror*: 'Given that [her] praise for American principles, values and identity occurs as part of an argument designed to show that the 'war on terror' is just, war is in effect justified not on the grounds of the stipulated [just war] criteria, but on the moral superiority of US practices'.<sup>11</sup>

Having started with a notion of universal society, Vattel goes on to make the independent nation (or state) the primary vehicle for achieving the betterment of the human race, observing that the intervention of one nation in the affairs of another is 'contrary to the law of nature, which declares every nation free and independent of all

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Elshtain, 2004, p. 184/5.

<sup>11</sup> Zehfuss, M., 'The Tragedy of Violent Justice: The Danger of Elshtain's Just War Against Terror', *International Relations*, Vol. 21, No. 4 (2007) p. 499.

the others'.<sup>12</sup> The independence of the nation set out here provides an ontological building-block that would be used in later communitarian arguments, a position that is reinforced when he expands upon the obligations of the independent nation: 'a nation owes herself in the first instance, and in preference to all other nations, to do everything she can to promote her own happiness and perfection'.<sup>13</sup> This has two immediate consequences for Vattel's ethical subject. The nation must actively and positively seek to improve the happiness and perfection of the subjects thereof. Contrarily, one nation must not try to promote or impose happiness and perfection on another. This position can only make sense if the principle non-intervention applies in Europe and the promotion of civilisation beyond Europe is not seen as intervention in sovereign territory. Koskenniemi sums up the situation for Vattel: 'Unlike the cosmopolitanism of Grotius, this view did not presume that anybody could intervene wherever violations of natural law were apparently being committed. Among free and equal nations, no-one may set himself up as a judge'.<sup>14</sup> The nation becomes the domain in which individual happiness and perfection is constituted, with part of that perfection manifesting itself in the individual's (and the nation's) willingness to allow a neighbour to constitute a differing – even contradictory – understanding of that perfection. Vattel reinforces this point when he writes: 'Since nations are free, independent, and equal...the effect of the whole is, to produce, at least externally and in the eyes of mankind, a perfect equality of rights between nations'.<sup>15</sup> So whatever responsibilities are held by individuals towards the universal human society, they are manifested within the vehicle of the (European) independent, equal and sovereign nation or state.

Walzer draws upon the principle of mutual independence of states as he wrestles with an appropriate response to the challenge of international terrorism:

Right now, in the world as we know it, the state is the crucial agent of security and justice. One day it may be replaced, but that day has not arrived. It is when states fail, when they lose control of parts of their country or are wracked by civil war, that terrorists find their opportunity. These failures open up the crucial in-between spaces.<sup>16</sup>

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<sup>12</sup> *Ibid.*, p. 71.

<sup>13</sup> *Ibid.*, p. 73.

<sup>14</sup> Koskenniemi, M., "International Community" from Dante to Vattel', Draft version, from <http://helsinki.fi/eci/Publications/MKINTERNATIONAL%20COMMUNITY-08I.pdf> accessed 21 May 2009, p. 24.

<sup>15</sup> *Op cit.*, p. 75.

<sup>16</sup> Walzer, M. 'On Fighting Terrorism Justly', *International Relations*, Vol. 21, No. 4 (2007b) p. 482.

The 'in-between spaces' described by Walzer are located at the interstice between internal/external and national/international. Any externalisation of sovereignty relies upon a state's ability to sustain internal security and justice and, thereby, the advancement of its people. To this extent, Walzer's position demonstrates his reliance on – and continuity with – Vattel. Beyond this measure of continuity, Walzer extends Vattel's notion of sovereignty and independence – which is strongly Eurocentric – in order to address issues of war, terrorism and politics on a wider canvas that includes Afghanistan. Moreover, Vattel does not provide a neat conceptual framework for relations between states where one party's institutions of state have ceased to function, as happened in the aftermath of the 2001 invasion and the toppling of the Taliban regime. He writes: 'Every nation that governs itself, under what form soever, without dependence on any foreign power, is a sovereign state'.<sup>17</sup> He goes on to grant that a weak state can submit itself to the protection of one more powerful.<sup>18</sup> However, where the instruments of state that he recognises amongst European nations are absent, Vattel resorts to the term 'barbarian': usually in the context of an individual or people who must be shown how to live properly.<sup>19</sup> Consequently, for Walzer, when a state, such as Afghanistan, descends into internal chaos and relinquishes or abandons the institutions and practices of state, it becomes difficult to respond to the terrorism that originates therein in ways that accord with just war within a Vattelian, or legalist, paradigm. As Walzer acknowledges: 'We are extraordinarily dependent on the victim/victimizer, good guys/bad guys model'.<sup>20</sup> He writes of the difficulty in the 1990s of identifying the good guys and bad guys in Bosnia: defining friends and foes to an intervening force. As was pointed out in Chapter 1, Jabri examines the discursive regimes that interact to produce such individual and institutional identity, violent interaction and the legitimization of that violent interaction. A politics of difference is captured in Jabri's reading of discourses of violence:

The discourse of inclusion and exclusion cannot allow uncertainty or doubt, so if such are expressed, they must be represented as irrational or even treacherous. Any representation which blurs the inclusion/exclusion boundary breaks down certainties constructed in the name of war and forms a counter-discourse which deconstructs and delegitimizes war and thereby fragments myths of unity, duty and conformity.<sup>21</sup>

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<sup>17</sup> *Op cit.*, Book I, Ch. I, Para. 4, p. 83 (hereafter I.I.4 p. 83).

<sup>18</sup> *Ibid.*, I.I.5., p. 83.

<sup>19</sup> *Ibid.*, IV.VII.103, p. 721.

<sup>20</sup> Walzer, 2004, p. 71.

<sup>21</sup> Jabri, V., *Discourses on violence: Conflict analysis reconsidered*, (Manchester and New York: Manchester University Press, 1996) p. 7.

Grovogui argues that aspects of race and politics of difference played a crucial role in Vattel's (among other theorists) justification of European political and commercial activities beyond the geographical confines of the 'civilised' European states.<sup>22</sup> This difference was formalised in the law of nations so that land and other rights granted to Europeans were not similarly extended to extra-Europeans, which would have curtailed or restricted the colonial or Imperial ambitions of European states. Grovogui writes: 'The centrality of race and the supposed accomplishments of the races increased in direct proportion with the capacity and willingness of Europe to colonize and build empires'.<sup>23</sup> Yet while race is not mentioned in any current justification of intervention the politics of difference remains, as do traces of the moral prerogative and responsibility of Vattel's 'superior' European states.

The just war discourses of Elshtain and Walzer contribute to the legitimization of violent intervention, in turn drawing upon discourses of inclusion/exclusion – of the sort Jabri<sup>24</sup> and Grovogui<sup>25</sup> identify – within the just war tradition such as Vattel's in order to produce their own moral justifications. Walzer concludes: 'Yes, the norm is not to intervene in other people's countries; the norm is self-determination. But not for *these* people, the victims of tyranny, ideological zeal, ethnic hatred, who are not determining anything for themselves, who urgently need help from outside'.<sup>26</sup> It is difficult to avoid the echo of Vattel's civilized/uncivilized binary in Walzer's justification of forceful intervention, even as the exception to his principle of non-intervention: 'Whenever the filthy work can be stopped, it should be stopped. And if not by us, the supposedly decent people of this world, then by whom?'<sup>27</sup>

In *Just War Against Terror* Elshtain addresses the challenge facing the US regarding Afghanistan in two ways: the first is to argue that the US somehow holds a special responsibility in the world because of its military might and its liberal values; the second is to attempt a systematic application of just war criteria to the situation post-9/11. Focusing on the second aspect here, Elshtain justifies a military response to the Al-Qaeda attacks of 11 September 2001 by conflating the Afghan regime at the time

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<sup>22</sup> Grovogui, 2001, p. 431ff.

<sup>23</sup> *Ibid.*, p. 432.

<sup>24</sup> Jabri, 1996, p. 7.

<sup>25</sup> *Op cit.*

<sup>26</sup> Walzer, 2004, p. 81 (*Original italics*).

<sup>27</sup> *Id.*

with the Al-Qaeda elements operating freely within the borders of Afghanistan. In applying just war arguments she adopts the Vattelian approach that places responsibility for security and justice within a state with those that wield sovereign power: in this case the Taliban regime. On the one hand Elshtain uses an aspect of Vattel's conception of statehood to provide the basis of a retributive attack on Afghanistan; while on the other she contradicts Vattel in arguing for the projection of American power and values abroad: by definition across state borders. Rengger views Elshtain's just war arguments more favourably than her claims of 'special responsibility' for America in the international arena in 2002.<sup>28</sup> However, he is careful to distinguish between her arguments in favour of war in Afghanistan against Al-Qaeda and the Taliban, and the broader notion her book title indicates:

even if one accepts that there is such a thing as a just use of force and that the general tenor of the campaign against Al-Qaeda and the Taliban is an example of it, that does not commit one in general terms to accepting the 'war on terror' as such (as opposed to specific parts of it) as just.<sup>29</sup>

This thesis supports Rengger's interpretation, but would point to a difficulty for Elshtain that this genealogy illuminates: namely, the ontological assumptions that underpin her arguments and her paradigmatic approach. In an international system that still relies heavily on a Vattelian-based conception of sovereignty as inviolable and independent, modern applications of just war are still dependent on the existence of the internal/external interstice as both the locus of contestation and the authority to take action. So, the United States sought to respond in self-defence as an expression of its duties and responsibilities to its own people against a Taliban regime in Afghanistan that was held responsible for the actions of Al-Qaeda emanating from its territory. Further, if the US response rested upon the internal/external nexus of sovereign responsibility as the authority for its actions, it is not possible to conceive of a wider, or special, burden of responsibility. America's approach is self-limiting through its own claim to sovereignty and emphasis on the need to protect that sovereignty.

In the preceding discussion it is clear that ethical subjectivity continues to play an important role in the justification of intervention and continues to draw upon historical discourses such as Vattel's. Where Walzer maintains a Vattelian presumption against

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<sup>28</sup> Rengger, N., 'Just a war against terror? Jean Bethke Elshtain's burden and American power', *International Affairs*, Vol. 80, No. 1 (2004) p. 113.

<sup>29</sup> *Id.*

intervention – granting exception *in extremis* – Elshtain deploys Vattel’s position on helping the abused against tyranny as part of her overall *ad bellum* justification. In both cases, power is exercised by the intervening party (the US, UK and Coalition of the Willing in the case of Iraq; NATO in the case of Kosovo) as an expression of virtue and justice by the ‘supposedly decent people of this world’<sup>30</sup> in the act of opposing the tyrant.

Having considered how aspects of Vattel’s conception of sovereignty continue to impact on the emergence of the ethical subject in contemporary just war debate involving Elshtain and Walzer, the next section will look more widely at the construction of Vattel’s moral code. Attention will be paid to the way he used existing discourses in setting out his understanding of natural law, and hence the relationship between morality, law and the subject in his ontology. This will then lead subsequently to a more detailed analysis of Vattel’s contribution to the just war tradition. Particular attention will be paid to his separation of *jus ad bellum* and *jus in bello* in his just war and the moral significance of this move for the combatant as creatively self-forming ethical subject of war: both at the time of Vattel’s writing and in intervention discourse today.

### **Discourse, moral code and subjectivity**

Vattel’s writings mark a definitive turn to the secular in the just war tradition: his ontology shaped by a wider Enlightenment emphasis on scientific method and a diminution of the role of religion in public intellectual life. In order to understand how the ethical subject emerges from Vattel’s just war it is essential to grasp how Vattel forms his wider moral code from discourses available to him: discourses such as natural and jurisprudential law, as well as the writings of his antecedents and contemporaries. Vattel’s *Essay on the Foundation of Natural Law and on the First Principle of the Obligation Men Find Themselves Under to Observe Laws* provides a helpful starting point in this endeavour.<sup>31</sup> For Vattel to achieve a major paradigmatic, ontological shift in just war from a basis in God and Divine revelation and order, he has to go further than Grotius whose conception of natural law still depended on a Divine creator. Bela

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<sup>30</sup> Walzer, 2004, p. 81.

<sup>31</sup> Vattel, *Essay on the Foundation of Natural Law and on the First Principle of the Obligation Men Find Themselves Under to Observe Laws*, Trans. T.J. Hochstrasser, in Vattel, E. de, *The Law of Nations*, 1797 Edn., Trans. T. Nugent (Indianapolis: Liberty Fund Inc., 2008) p. 747-772.

Kapossy and Richard Whatmore describe how, in this essay, Vattel ‘sought to explain how humans could be under an obligation to natural law even in the absence of punitive superior [God]’.<sup>32</sup> This ‘absence’ is crucial in the Vattel’s conceptual shift away from Grotius in the just war tradition. Kapossy and Whatmore describe Vattel’s need to ‘derive obligation not from any external source such as God in the Christian understanding of the divine, but from what he claimed was man’s most basic motive, namely self-love and a desire for the happiness of a perfect soul’.<sup>33</sup> Vattel’s self-forming subject is obligated by self-love to act in the world in pursuit of the *telos* of a perfect soul: a perfect soul which, unlike that of Augustine, Aquinas or Grotius is not necessarily located in the Divine or notions of eternal life. Vattel goes further than Grotius had previously gone in separating natural law from any roots in God or revelation, claiming: ‘men would be obliged to follow natural laws even by setting aside the will of God, because they are praiseworthy and useful’.<sup>34</sup> Not only are natural laws useful for Vattel, they are also thoroughly grounded in an earthly domain:

natural law is founded on the essence and nature of things and of men in particular ... We attain knowledge of these laws *through reason*. This faculty of the soul teaches us what is the essence and nature of man and of things in general, and makes us see the aptness or inappropriateness of actions in relation to this essence and nature: from this we derive general rules or laws which constitute the body of natural jurisprudence.<sup>35</sup>

Two factors are brought together in this statement that shape Vattel’s conception of subjectivity in relation to natural law: reason – a faculty of the soul – and the essence and nature of man. For Augustine, reason and understanding were subordinated to – and followed from – faith in God. Aquinas retained Divine command and Divine order at the core of his moral code but granted that individuals could more fully conform to them and live a virtuous life through the disciplined application of reason. Grotius’ moral code and legalising tendencies placed even greater emphasis on reason but still retained a reduced place for the Divine. Vattel’s ontology completes the trajectory that shifts the basis for natural law and subjectivity from the heavenly to the earthly, replacing Divine authority with authority based on human nature and reason. Even when he writes on matters of religion<sup>36</sup> he does so with reference back to the authority

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<sup>32</sup> Kapossy, B. And Whatmore, R., Introduction (2008) to Vattel, E. de, *The Law of Nations*, 1797 Edn., Trans. T. Nugent, (Indianapolis: Liberty Fund Inc., 2008) p. ix-xx.

<sup>33</sup> *Ibid.*, p. xvi.

<sup>34</sup> Vattel, *Foundation of Natural Law*, XXIX, p. 760.

<sup>35</sup> *Ibid.*, VIII and IX, p. 749/50 (*My italics*).

<sup>36</sup> Vattel, *Law of Nations*, I.XII, p. 155ff.

of nature and reason and not to any inherent authority in Divine revelation: '[E]cclesiastics, magistrates, and commanders of the troops, are all officers of the republic, each in his own department; and all are equally accountable to the sovereign'.<sup>37</sup> The authority of Ecclesiastics is subordinated to the sovereign within Vattel's system, where for Augustine and Aquinas the sovereign is accountable to God. This reflects Vattel's wider view that natural law is founded on humans rather than God and, as a consequence, on human order rather than Divine order.

For Vattel, the essence and nature of man – on which natural law is founded – contains within it the ethical potential that individuals should strive to realise in themselves, for themselves:

We do not need a long period of reflection to convince us that there is no inclination, desire, or affection more essential to us, or more basic and general, than *self-love*, which causes us to desire and seek for our happiness or the perfection of our condition, whether external or internal, i.e., the perfection of our soul, the well-being of our body, and the prosperity of our fortune.<sup>38</sup>

Vattel attributes to the individual not only the capacity but also the desire for creative self-subjection, as an expression of self-love. The ultimate expression of this self-love is the perfection of the soul, followed by a care for the well-being of the body and, finally, a concern for material wealth. This desire to care for the self – to borrow Foucault's term – emanates *from* the self and does not originate with God or the Divine as it did, for example, for Augustine. He grants that 'obedience owed to a being such as God' *may* motivate a desire 'for perfection or peace and the pleasure of our soul', but does not make it necessary.<sup>39</sup> Additionally, he grants that motivation for self-perfection can emanate from the pursuit of 'beauty and virtue'.<sup>40</sup> Consequently, Vattel, in his constitution of subjectivity, acknowledges a place for creative self-forming in relation to ethical sources. Further, he constitutes the pursuit of prosperity as a virtuous obligation: a significant point given that European prosperity was being enhanced not only through trade but also through colonising and empire building. However, Vattel does not grant to the individual the kind of ideal self-originating agency that would later be ascribed by Kant. Vattel's creative subject is also a social being and must also seek to perfect the soul while conforming to the laws that make social life possible:

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<sup>37</sup> *Ibid.*, Para.141, p. 166.

<sup>38</sup> Vattel, *Foundation of Natural Law*, XX, p. 753,

<sup>39</sup> *Ibid.*, XXI, p. 754.

<sup>40</sup> *Id.*

But if society is useful and even necessary to him, and this society is unable to subsist without laws or general rules observed by all its members, he is obliged, by virtue of his own expediency, to follow them ... because they are what guarantee him peaceful enjoyment of all his other goods.<sup>41</sup>

Vattel's notion of society and the obligation of the individual to share in the common life therein is, for him, the basis of civil law.<sup>42</sup> His ethical subject conforms to the civil, and other, laws that together help make up his moral code: in the setting of a shared social life. His subject therefore emerges in relation to both ethics-oriented morality and code-oriented morality, with a greater emphasis being placed on the latter: 'Everyone felt that these laws, if they were to achieve the desired effect, must be observed religiously; that exceptions could not be made from them without weakening or destroying them'.<sup>43</sup> Vattel takes this certitude regarding natural and civil law in his moral code and emergent ethical subjectivity then extends it to relations between states.

To see how Vattel achieves this aim, consider the sources he uses in formulating *The Law of Nations*, or, to give the book its full title, *Law of Nations or the Principles of Natural Law Applied to the Conduct and Affairs of Nations and Sovereigns*. As Chris Brown *et al* point out with regard to this title, Vattel 'treats international law as a branch of natural law',<sup>44</sup> and his sources correspond to this emergent legal paradigm in the just war tradition. His principle sources are Wolff, Cicero, Grotius, Livy, and Tacitus: and these are representative of a huge bibliographical collection that reflects his predilection for philosophers and historians with political or juristic tendencies. In contrast, the names of key Christian contributors to the just war tradition – Augustine, Aquinas, Vitoria and Suarez – are conspicuous by their absence. This move from the theological to the legal is reflected in Vattel's moral code, which comprises three broad elements: natural laws, natural jurisprudence and moral science: '[A]ll three have the same object: to know how to order the customs and conduct of men'.<sup>45</sup> He describes these elements as follows:

A law is in general a rule by which we are obliged to determine our actions; and *natural laws*, in particular, are those that we derive from nature, or whose rationale is found in the essence and nature of man, and of things in

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<sup>41</sup> *Ibid.*, Para. XXIV, p. 754/5.

<sup>42</sup> *Ibid.*, Para XXV, p. 755.

<sup>43</sup> *Id.*

<sup>44</sup> Brown, C., Nardin, T., and Rengger, N. (Eds.) *International Relations in Political Thought* (Cambridge: Cambridge University Press, 2002) p. 322.

<sup>45</sup> *Op cit.*, I, p. 747.

general....*Natural jurisprudence*...teaches us what is *naturally good* or *bad* in man, what he must or must not do....Moral science or *ethics* is a practical science, which teaches us how we should direct our faculties to practice what is *good*, and avoid what is *bad*.<sup>46</sup>

Vattel sets out here the relationship between law and natural law, and the imperative to do good, avoiding that which is bad. In addition, he relates the law of nations to the law of nature in the following way: 'Since therefore the necessary law of nations consists in the application of the law of nature to states,- which law is immutable, as being founded on the nature of things, and particularly on the nature of man,- it follows, that the necessary law of nations is immutable'.<sup>47</sup> He, therefore, constitutes the efficacy of the law of nations from its foundation in natural law, which itself rests upon the nature of man. This relationship between the state and its individual members is crucial if the constitution of subjectivity is to be recognised in his writings on war. Further explication of this point is presented in the footnote, and states, '[The laws of nature] are necessary to the general happiness of mankind... Nature herself, therefore, has established [ ] society, whose great end is the common advantage of all its members'.<sup>48</sup> When these segments are juxtaposed, what seems initially like a linear argument for the basis of the law of nations becomes instead a circular argument, where the law of nations is based on the law of nature: founded on the nature of man, whose happiness, in turn, is dependent on the laws of nature and the social stability provided by the law of nations. Natural law, the individual subject and the nations are therefore mutually constitutive, creating an ontological foundation for the law that operates between nations. Such a foundation for Vattel's *Law of Nations* is necessary since his secular approach has rejected the notion of man's origins in the Divine and the concomitant Divine origins of the structure of society, both domestically and between nations.

Having explored some of Vattel's use of existing discourses, the relationship between natural law and other forms of law in his moral code, and aspects of the constitution of subjectivity and ethical subjectivity in his *schema*, the next section will look more closely at his just war. In particular, Vattel's formal separation and categorisation of *jus in bello* from *jus ad bellum* will be examined, concentrating on the implications this holds for the formation, and self-formation, of his ethical subject. This

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<sup>46</sup> *Ibid.*, I-III, p. 747/8.

<sup>47</sup> Vattel, *Law of Nations*, Preliminaries, p. 70.

<sup>48</sup> *Id.*

begins with Vattel's view that war cannot be just on both sides and therefore a means of making moral distinctions is required.

### ***Jus in bello* and the ethical subject of war**

Vattel says of the respective moral claims of protagonists in war:

War cannot be just on both sides. One party claims a right; the other disputes it: the one complains of an injury: the other denies having done it. They may be considered as two individuals disputing on the truth of a proposition; and it is impossible that two contrary sentiments should be true at the same time....It may however happen that both the contending parties are candid and sincere in their intentions; and, in a doubtful cause, it is still uncertain which side is in the right. Wherefore, since nations are equal and independent (Book II. § 36, and Prelim. §§ 18, 19), and cannot claim a right of judgment over each other, it follows, that in every case susceptible of doubt, the arms of the two parties at war are to be accounted equally lawful, at least as to external effects, and until the decision of the cause.<sup>49</sup>

In stating that war cannot be just on both sides, Vattel is reiterating a view commonly held by earlier just war proponents. However, Vattel's approach is novel, in that it treats the justice of the cause and the legality of the nations' actions as separate – at least until a cause enables the parties, or the observing nations, to pass a more informed judgement. On this view, therefore, while one of the parties will, or should, in due course be shown to act unjustly, both enter a war legally because of the status of the nations as legal subjects. François Bugnion, similarly, reads Vattel's position thus: 'As States are sovereign and cannot be judged without their consent, he concludes that it is rarely possible to decide which of the two belligerents is defending a just cause'.<sup>50</sup>

To develop his argument Vattel moves away from the meta-narrative of state relations and uses the analogy of a civil dispute: 'They may be considered as two individuals disputing on the truth of a proposition; and it is impossible that two contrary sentiments should be true at the same time'.<sup>51</sup> This seems at the outset to be a clear and unambiguous statement of his position, but difficulties emerge almost straight away. While domestic law, using the machinery of courts and judges or magistrates, can make a judgement between two parties, no such machinery existed to judge rival claims

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<sup>49</sup> *Ibid.*, III.III.39 and 40, p. 489.

<sup>50</sup> Bugnion, F., 'Just wars, wars of aggression and international humanitarian law', *International Review of the Red Cross*, No. 847, Vol. 84 (Sep 2002) p. 528.

<sup>51</sup> *Op cit.*

between nations. So, from an original clear and specific statement Vattel goes on to explore the complexities that can emerge with claim and counter-claim for justice and, in doing so, seeks to differentiate between that which is lawful and the broader concept of that which is just. The equality and independence of nations in his overall *schema* does not allow one side to make a judgement over another, nor even allow a third party to make such a judgement, especially in a doubtful case. So Vattel grants that, 'in every case susceptible of doubt, the arms of the two parties at war are to be counted equally lawful, at least as to external effects, and until the decision of the cause'.<sup>52</sup> So within Vattel's codification of the laws of nations with respect to war, in an unclear case he grants the legal right to make war to both sides (as long as it is rightly declared and properly authorised by the sovereign), while accepting that one of the protagonists has no *moral* right to do so. Consequently, a situation can arise whereby the state or sovereign can act *legally*, while their morality is open to question.

In order to solve the difficulty in both his just war and law of nations in identifying the side whose actions are just, Vattel looks to *jus in bello* – the just conduct of combatants in war – as the distinguishing feature that separates the just from unjust state. That is, the state whose cause is just will demonstrate this by pursuing its military ends in a just manner. Vattel's use of *jus in bello* brings battlefield conduct into his judgement on the justice of a war, making the deciding factor – in times of dispute – 'the legality of the means in themselves'.<sup>53</sup> Vattel says that 'the law of nations is originally no more than the law of nature applied to nations', and he clearly distinguishes between the two orders of existence, acknowledging that, 'A state or civil society is a subject very different from an individual of the human race ... a particular rule which is perfectly just with respect to one subject, is not applicable to another subject of a quite different nature'.<sup>54</sup> This is the basis on which Vattel builds his case for clearly separating responsibility for *jus ad bellum* and *jus in bello* in the moral, and legal, justification of war – states and human beings are of a different order of subject and therefore cannot have the same rights and obligations placed upon them. Individual combatants shape their own ethical subjectivity by their conduct in the field in conformity to Vattel's moral code and the laws of war; their actions are also observed by third-party states in determining the justice of a disputed war.

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<sup>52</sup> *Id.*

<sup>53</sup> *Ibid.*, III.XII.190, p. 591.

<sup>54</sup> *Ibid.*, Preliminaries, p. 68/69.

Vattel, therefore, sets out strict parameters for the soldiers charged with executing a war on the sovereign's behalf. In a war where justice is claimed by both sides, though the claims cannot yet be externally judged or verified, what is allowed to one side to do in war is also allowed to the other, and what is forbidden for one is, likewise, forbidden to the other: 'The justice of the cause being reputed equal between two enemies, whatever is permitted to the one in virtue of the state of war, is also permitted to the other'.<sup>55</sup> Walzer refers to this relationship between enemy combatants as 'The moral equality of soldiers'.<sup>56</sup> Vattel's aim is to reduce overall the amount of unnecessary bloodshed that will occur in war, regardless of the moral justification of a particular war. Soldiers who go beyond that which is permitted by the voluntary law of nations in a just war do not merely break the law, they emerge as Other to Vattel's ethical subject, in light of excesses that are 'imputable to a deprivation of manners, which produces an unjust and barbarous custom'.<sup>57</sup> Such 'deprivation of manners' contrasts with the ideal conduct of Vattel's ethical subject who seeks 'the perfection of our soul, the well-being of our body, and the prosperity of our fortune'.<sup>58</sup> The ethical subjectivity of soldiers emerges partly from their conformity, or otherwise, to the law of nations as codified morality and partly through creative self-forming in opposition to 'barbarous custom'.<sup>59</sup> Even though any excesses on the battlefield may result in the deaths of innocent civilians or in the particularly cruel death of an enemy soldier, because of the lack of superior power to judge the conduct of nations, there is little chance of barbaric conduct by a soldier being punished. The only possibility of punishment stems from a state's military officers or from a sovereign in defence of their reputations: not from a supra-national court. The emergence of the ethical subjectivity of a number of actors in Vattel's writings will be examined further in the remainder of the chapter.

Vattel writes about the need for both the nation, or state, and the individual citizen thereof, to seek after perfection, a perfection of the moral person:

Here the entire body of a nation, and each individual citizen, are bound by a double obligation, the one immediately proceeding from nature, and the other resulting from their reciprocal engagements. Nature lays an obligation upon each

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<sup>55</sup> *Ibid.*, III.XII.191, p. 591.

<sup>56</sup> Walzer, 2000, p. 34ff.

<sup>57</sup> *Op cit.*

<sup>58</sup> Vattel, *Foundation of Natural Law*, XX, p. 753,

<sup>59</sup> *Op cit.*

man to labour after his own perfection... he is doubtless obliged to contribute all in his power to render that society more perfect.<sup>60</sup>

Ian Hunter summarizes this as the need for individuals 'to cultivate their own virtues and the corporate virtues and welfare of the nation to which they belong'.<sup>61</sup> While Vattel includes a number of facets of both individual and corporate life in this injunction, such as cultivation of the soil, commerce, care of the public ways (roads), money, justice and fortification against external attack, here it is the latter that is of interest, in the context of war.<sup>62</sup> So this section of the chapter will consider specific individuals – the ruler, the general and the soldier – and how Vattel constitutes them, in relation to both moral and ethical sources, as ethical subjects of war. This, in turn, produces a society that is more perfect, as a result of the ethical formation of the subjects within it. If the morality of the state is partially characterised by conformity to the *in bello* law of nations as set out by Vattel, the latter refers to conduct on the field of battle, where the individual is 'perfecting his own nature'<sup>63</sup>: ethical self-forming in the course of self-controlled and disciplined actions towards an enemy. Further, the collective pursuit of self-perfection by the individuals that comprise a nation is itself constitutive of the perfection of that nation.

Vattel provides the example of one state undertaking war against another. In order for such a war to be considered just, Vattel insists that it must be properly declared and made known to the state against whom the war will be conducted – a condition that is attached to legitimate *offensive* war.<sup>64</sup> He takes for granted that most European powers will conduct themselves in an appropriate manner in their preparations for war. He says, 'The humanity with which most nations in Europe carry on their wars at present, cannot be too much commended'.<sup>65</sup> Vattel's attitude to the morality of nations and the morality of actions between nations is consistently Euro-centric. Hunter concentrates on this aspect of Vattel's writings in a reading of early-Modern European history that concentrates on the particular and situated aspects of nationhood, which are frequently presented as general and universal. One helpful

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<sup>60</sup> *Ibid.*, I.II.21, p. 88/9.

<sup>61</sup> Hunter, I., 'Spatialisations of Justice in the Law of Nature and Nations: Pufendorf, Vattel, and Kant', Draft version, University of Queensland, <http://www.ched.uq.edu.au/Transitions/Hunter.PratoPaper.pdf> accessed 26 May 2009, p. 28.

<sup>62</sup> *Op cit.*, I.VII to XIV.

<sup>63</sup> *Ibid.*, I.II.14, p. 86.

<sup>64</sup> *Ibid.*, III.IV.55/57, p. 502/3.

<sup>65</sup> *Ibid.*, III.VIII.140, p. 543.

aspect of Hunter's work for this thesis is his exploration of religious, cultural and religious factors at work at that time. He argues that the law of nature and the law of nations 'were not only regional *to* Europe but were regional *within* Europe, as they assumed different and often opposed forms in regions divided along religious, cultural and political lines'.<sup>66</sup> This view of eighteenth century Europe accords with Vattel's notion of sovereignty that facilitates the development of diverse religious, cultural and political approaches within inviolate borders. Vattel recognises that his Swiss origins and its associated political neutrality is advantageous in presenting his *Law of Nations*: 'I was born in a country of which liberty is the soul, the treasure, and the fundamental law; and my birth qualifies me to be the friend of all nations'.<sup>67</sup> As Hunter rightly points out, Vattel's notion of 'all nations' here refers to all European nations. Vattel's political and geographical situatedness runs through his work, for example, in the responsibility of each nation or Canton to 'establish its own public religion, leaving dissenters with the option of emigrating'.<sup>68</sup> In this instance, public religion and associated disputes refer to differences between Catholic and Protestant Christians rather than, say, disputes between Christians and Muslims on the periphery of Europe or on European land that Muslims had conquered.

In contrast to Vattel's equanimous attitude towards Europeans and European nations he writes: 'When we are at war with a savage nation, who observe no rules, and never give quarter, we may punish them ... to force them to respect the laws of humanity'.<sup>69</sup> This sums up his approach to the Turks, whose Ottoman Empire had controlled varying amounts of European lands in the preceding centuries. He sees no need to send a minister, herald or ambassador to declare intentions to the Turks, not simply on the grounds that such envoys might be maltreated, but that the threat of such maltreatment is based on the Turks' 'savage disposition'.<sup>70</sup> The Turks are thus constituted as immoral and untrustworthy, a condition considered so grave by Vattel that European enemies of the Turks are exempted from any requirement to conform to his moral code as encapsulated in the law of nations: they emerge as ethical simply in their opposition to the savage Turks. At this juncture the ethical subject of war does not have to conform to Vattel's codified morality: since the Turks stand outside the group

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<sup>66</sup> Hunter, 2009, p. 3.

<sup>67</sup> *Op cit.*, Preface, p. 20.

<sup>68</sup> *Ibid.*, p. 29. For wider context see I.19.225, p. 224/5.

<sup>69</sup> *Ibid.*, III.VIII.141, p. 544.

<sup>70</sup> *Ibid.*, III.IV.58, p. 503.

of civilized peoples to whom Vattel's *Law of Nations* applies, ethical subjectivity is self-constituted in opposition to the Turk as Other. Further, in claiming that Turks, and other non-Europeans, observe no rules when it comes to war or relations with civilised (*sic*) nations Vattel does not consider that the Other could possibly have developed its own sophisticated codified morality. Instead, the Other is to be forced to conform to Vattel's European conception of morality, which he projects onto the Other in the guise of 'laws of humanity'.<sup>71</sup> Accordingly, the European is constituted as ethical in the act of enforcing these laws of humanity upon those who, in Vattel's view, need them because of their current lack thereof.

Vattel grants that, in certain circumstances, one sovereign power may intervene in the affairs of another:

But if the prince, by violating the fundamental laws, gives his subjects a legal right to resist him, - if tyranny becoming insupportable obliges the nation to rise in their own defence, - every sovereign power has a right to succour an oppressed people who implore their assistance ... But we ought not to abuse this maxim, and make a handle of it to authorise machinations against the internal tranquillity of states ... As to those monsters who, under the title of sovereigns, render themselves the scourges and horror of the human race, they are savage beasts, whom every brave man may justly exterminate from the face of the earth.<sup>72</sup>

Two aspects of Vattel's position here are relevant to this genealogy of the ethical subject of war: particularly in relation to the 2003 intervention in Iraq. First, Vattel grants a limited right of intervention on the condition that abused subjects implore the assistance of a foreign power and. In this regard, the foreign power may intervene to 'assist that party which appears to them to have justice on its side'.<sup>73</sup> Elshtain, in justifying military action against Iraq, specifically invokes the 'attempted genocide against the Kurds; his destruction of the entire way of life of the Marsh Arabs; and his mass murders against the Shiite Muslims in the aftermath of the 1991 Gulf War'.<sup>74</sup> In each case these peoples of different areas of Iraq pleaded for external help at the height of the atrocities committed against them and in each case the international response left Saddam Hussein in power. The degree of suffering endured by the Kurdish Iraqis in the 1988 chemical weapon attacks may well have reached Vattel's threshold for an exemption to his normally strict observance of sovereignty and associated right to non-

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<sup>71</sup> *Ibid.*, III.VIII.141, p. 544.

<sup>72</sup> Vattel, *Law of Nations*, II.IV.56, p. 290/1.

<sup>73</sup> *Id.*

<sup>74</sup> Elshtain, 2004, p. 186.

intervention. However, such an exemption does not exist today in a strict reading of the UN Charter. Walzer's tendency to non-intervention eventually came to draw very closely on aspects of Vattel's position on (or exception to) intervention described above:

Faced with the sheer number of recent horrors – with massacre and ethnic cleansing in Bosnia and Kosovo; in Rwanda, the Sudan, Sierra Leone, the Congo, and Liberia; in East Timor (and earlier, in Cambodia and Bangladesh) – I have slowly become more willing to call for military intervention. I haven't dropped the presumption against intervention that I defended in my book, but I have found it easier and easier to override the presumption.<sup>75</sup>

The second aspect of Vattel's position on intervention that is relevant to this genealogy is the place of the ethical subject in the Vattelian discourse. Vattel does not just frame his argument in terms of international law and his conception of sovereignty: the subjectivity of the tyrannical prince or sovereign plays a key role. Tyrannical sovereigns are constituted as 'monsters ... scourges and horror of the human race, they are savage beasts'.<sup>76</sup> The ethical subject of war – 'the brave man' – is the sovereign who intervenes in such a situation to 'justly exterminate [the tyrant] from the face of the earth'.<sup>77</sup> When he says, 'Let us congratulate our age on the superior gentleness of its manners', it is not just because of any intrinsic value in the ethical subjectivity of political leaders, rather it is 'productive of real and substantial effects'.<sup>78</sup> These substantial and real effects include the defeat and subjugation of the tyrant. So alongside the need for the sovereign to conform to his codified prescriptions and proscriptions regarding just war, Vattel also allows for a dimension of self-creation.

Having looked at aspects of the emergence of the sovereign or ruler as ethical in Vattel's writings, the discussion now turns to the battlefield and the roles of the general and the soldier. Vattel sets out the responsibilities of the general as the one who 'enjoys the rights and authority assigned him by the sovereign'.<sup>79</sup> The general is commissioned to carry out the requirements laid upon him by the sovereign but Vattel grants the general freedom to decide how to achieve the required ends: 'Thus the commission of a commander in chief, when it is simple and unlimited, gives him an absolute power over the army, a right to march it whither he thinks proper, to undertake such operations as

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<sup>75</sup> *Ibid.*, p. xii/xiii.

<sup>76</sup> *Op cit.*, p.290/1.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Ibid.*, III.II.19, p. 480.

he finds conducive to the service of the state'.<sup>80</sup> So the general finds himself in a position where he remains under the *political* direction of the sovereign and, in that respect, subject to the law of nations; but at the same time he retains an element of creative authority to conduct *military* matters as he sees fit. We therefore see a continuation of the separation of moral responsibilities that was discussed earlier in this chapter: the sovereign having the moral responsibility for any decision to go to war, while the moral responsibility for how that war is fought falling to the general and his officers and soldiers.

Vattel describes the circumstances, and manner, in which booty can be seized from a defeated enemy. His legal position is that all booty legitimately seized in war belongs to the just sovereign who defeats an aggressor enemy and he sets out two reasons for the capture of booty. He maintains: 'A state taking up arms in a *just cause* has a double right against her enemy'.<sup>81</sup> The first is a legal right to reclaim any property held, and not yet returned, by the enemy. Added to this are expenses incurred in undertaking the war and reparations of damages done by the unjust aggressor. That right is presented as a request for 'contributions', to replace the open pillaging and ransacking of a country:

But a general who wishes to enjoy an unsullied reputation, must be moderate in his demand of contributions, and proportion them to the abilities of those on whom they are imposed. An excess in this point does not escape the reproach of cruelty and inhumanity: although there is not so great an appearance of ferocity in it as in ravage and destruction, it displays a greater degree of avarice or greediness.<sup>82</sup>

As with the previous example of the sovereign, the general is constituted as ethical in two ways. Primarily, the general emerges here as ethical by conforming to Vattel's law of nations and punishing a defeated enemy through the collection of booty or 'contributions'. Additionally, however, the general is invited to form himself as ethical in the exercise of moderation. The degree of moderation is not prescribed by Vattel and left to the creative response of the general in pursuit of Vattel's wider 'perfection of [the] soul'.<sup>83</sup> After framing the right to booty in legal terms, Vattel leaves open a considerable degree of self-creativity available to the general relating to conduct with regard to the accumulation of booty.

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<sup>80</sup> *Id.*

<sup>81</sup> *Ibid.*, III.IX.160, p. 566 (*My italics*).

<sup>82</sup> *Ibid.*, III.IX.165, p. 569.

<sup>83</sup> Vattel, *Foundation of Natural Law*, XX, p. 753.

The second right is 'to weaken her enemy, in order to render him incapable of supporting his unjust violence'.<sup>84</sup> The latter of these two rights can be described as preventive – ensuring that an enemy will remain weak for a considerable time and therefore pose no threat in the future. In advocating prevention and promoting a 'balance of power' across Europe, Vattel broke from Grotius who granted no such action by a sovereign.<sup>85</sup> Vattel has also provided a discourse that is present in intervention debate today. Kegley and Raymond quote President Bush in their discussion of American attempts to conflate pre-emptive self-defence with preventive intervention in seeking to justify military action in Iraq: 'We have every reason to assume the worst, and we have an urgent duty to prevent the worst from happening'.<sup>86</sup> Ethical subjectivity is at the core of the discussion, framed as it is in terms of the character of Saddam Hussein, constituted in relation to his previous actions at home and abroad: the solution to which is regime change and 'removing the Iraqi leader from office'.<sup>87</sup>

The analysis turns now to focus on the soldier as ethical subject. Vattel's just war appears to concede to soldiers the right to take *any* action against an enemy as long as they are fighting for a just cause: 'in a just war: for, when the end is lawful, he who has the right to pursue that end, has, of course, a right to employ *all the means which are necessary* for its attainment'.<sup>88</sup> However, reference to 'all means necessary' does not absolve Vattel's soldiers, or generals, from moral responsibility for their actions. It is the law of nature encapsulated in Vattel's law of nations that sets the limits on what might be done to an enemy and excludes torture and cruelty. So on this broad point, soldiers emerge as ethical if they 'conform to general rules' in the treatment of an enemy within Vattel's codified morality: which in turn receives its authority from the law of nature.<sup>89</sup> Vattel goes on: the soldier will therefore take such actions as are necessary without engaging in military acts 'of an odious kind...unjustifiable in themselves, and prohibited by the law of nature'.<sup>90</sup> However, because the law of nations acknowledges that there is no higher temporal authority to which an appeal or complaint

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<sup>84</sup> *Id.*

<sup>85</sup> For more on 'balance of power' see Vattel's *Law of Nations*, II.XII on Treaties of Alliance, and other public Treaties.

<sup>86</sup> Bush, Speaking in Cincinnati, 7 October 2002, quoted in Kegley and Raymond, 2003, p. 386.

<sup>87</sup> *Id.*

<sup>88</sup> *Op cit.*, III.VIII.136, p. 541/2 (*My italics*).

<sup>89</sup> *Id.*

<sup>90</sup> *Ibid.*, III.VIII.138, p. 543.

can be lodged, the consequences for a soldier exceeding that force which is necessary to the end of achieving justice for his nation appear limited. Consider the following extract from *The Law of Nations*:

Women, children, feeble old men, and sick persons...are enemies who make no resistance; and consequently we have no right to maltreat their persons or use any violence against them, much less to take away their lives. This is so plain a maxim of justice and humanity, that at present every nation in the least degree civilized, acquiesces in it. If, sometimes, the furious and ungovernable soldier carries his brutality so far as to violate female chastity, or to massacre women, children, and old men, the officers lament those excesses; they exert their utmost efforts to put a stop to them; and a prudent and humane general even punishes them whenever he can.<sup>91</sup>

None of the individuals mentioned here at the outset carry any special claim to inviolability. It is their non-participation in war that bestows on women, children, old men and the sick, immunity from attack. Vattel makes no explicit mention of the soldier who acts correctly towards these noncombatant individuals. However, 'the furious and ungovernable soldier'<sup>92</sup> who demonstrates his brutality in the sexual maltreatment of women, or the killing of these noncombatants, cannot emerge as ethical. That soldier's subjectivity is formed in transgressing Vattel's code-oriented morality and the restrictions it places on conduct in war. This is in contravention of not only Vattel's just war but his wider conception of justice and humanity in civilized (European) nations. The general emerges as ethical if he punishes brutal behaviour by the soldier and reinforces the law set out by Vattel. The ultimate authority to which these various actors are answerable is just war expressed as international positive law, based on Vattel's reading and application of the law of nature. This is in marked contrast to the subjects of Divine approval or disapproval found earlier in Augustine or Aquinas, or to a much lesser extent in Grotius.

Vattel's guidance on 'what we have a right to do against the person of the enemy' demands a degree of creative self-subjection by the soldier.<sup>93</sup> The soldier's behaviour, in cases where it is not clear to third-party nations which side has the just cause for war, consequently plays an important role in convincing those third parties that justice is on a particular country's side. Vattel writes: 'We shall courageously defend our country's rights without violating those of human nature. Let our valour

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<sup>91</sup> *Ibid.*, III.VIII.145, p. 549.

<sup>92</sup> *Id.*

<sup>93</sup> *Ibid.*, III.VIII.158, p. 563.

preserve itself from every stain of cruelty, and the lustre of victory will not be tarnished by inhuman and brutal actions.’<sup>94</sup> Not only does Vattel expect the laws of war to be obeyed; he expects the soldier to conform to the much more encompassing moral demands of the law of nature and the need to avoid unnecessary death and/or suffering. British Law of Armed Conflict captures this Vattelian demand: ‘It is forbidden to use poison or to alter weapons or ammunition for the purposes of increasing injury or damage’.<sup>95</sup> This applies regardless of any orders that may be given to the contrary. Walzer writes of the need for the soldier to go beyond blind obedience to orders and the constraints of military law to exercise individual ethical judgement, if atrocities are to be avoided:

Soldiers can never be transformed into mere instruments of war ... Trained to obey “without hesitation,” they remain nevertheless capable of hesitating ... Indeed, the state of positive law is not very good, especially where it relates to the exigencies of combat.<sup>96</sup>

Vattel goes beyond the prohibition of immoral acts on the battlefield to encourage and incite those soldiers fighting in war to act courageously and with valour: characteristics that are set in opposition to cruelty and ‘inhuman and brutal actions’.<sup>97</sup> He adds, ‘Moderation and generosity rebound more to the glory of a victor, than his courage; they are more certain marks of an exalted soul’.<sup>98</sup> The ‘exalted soul’ is clearly given a higher priority and greater desirability in Vattel’s writings than simple conformity to the laws of war. However, conforming to the law comes first, to which ethical self-subjection in pursuit of the perfection of the soul can be added. He permits degrees of ethical subjectivity in relation to the conduct of war: the minimum of which is conformity to law as code-oriented morality, with the ultimate *telos* of the ‘exalted soul’ achieved through self-formation in the application of self-control in the face of the enemy, and manifested in moderation and generosity.

The ethical subject has been shown to emerge in a number of ways in Vattel’s contribution to the just war tradition, depending on the individual’s role in either deciding to undertake a war or in the manner that they execute that war on the battlefield. Vattel’s just war is expressed primarily as law and it is to this key aspect of

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<sup>94</sup> *Ibid.*, p. 564.

<sup>95</sup> *Aide Memoire on the Law of Armed Conflict*, 2005, p. 2. Ethical self-subjection of the British soldier today will be discussed more fully in the final chapter of the thesis.

<sup>96</sup> Walzer, 2000, p. 311/3.

<sup>97</sup> *Op cit.*, III.VIII.158, p. 563/4.

<sup>98</sup> *Id.*

his codified morality that the ethical subject must conform. This ‘voluntary law of nations [exists] in contradistinction to the necessary, internal, and consciential law ... [which] sovereigns are bound to respect and follow in all their actions’.<sup>99</sup> This necessary, internal and consciential law includes a self-creative aspect where the individual is concerned with ‘perfecting his own nature’<sup>100</sup> in a manner that goes beyond conformity to codes. This ethical self-subjection is typically subordinated to the law and cannot morally legitimise a war that is pursued for an unjust cause, or an illegal action on the battlefield. The exception – a limited exception – is found in Vattel’s ‘civilizing’ discourse where his law as codified morality does not extend to the barbarian Other; his ethical subject self-forms in opposition to this Other rather than in conformity to wider codes such as just war or law of nations. This ‘civilizing’ discourse stands in continuity with Grotius and is also found in Elshtain’s just war discourse and to a much lesser extent in Walzer’s intervention discourse. Furthermore, on the field of battle the combatant must conform not only to legal and moral *jus in bello* requirements: the ethical subject emerges as ethical in creatively exercising moderation<sup>101</sup> and generosity in pursuit of ‘perfection of [the] soul’.<sup>102</sup> The creative aspect of subjectivation found in Vattel has been largely excluded in contemporary just war discourse involving Elshtain and Walzer, with the latter prioritising law and codes, and the former relying to a greater extent on the earlier discourses of Augustine and Aquinas for a creative aspect in her formation of the subject.

## Conclusion

Vattel’s understanding of universal society is, in practice, strongly Euro-centric and reliant upon separate, sovereign nations, or states, to provide the physical security and justice necessary for humans to develop and thrive, both individually and collectively. His *Law of Nations* provides a legal framework for the co-existence of sovereign nations in terms of trade and the mutual advancement of European nations in their colonising and Imperial expansions, whilst also setting out the circumstances in which war might be justly – and legally – undertaken. Vattel provides a key conceptual building block that makes possible the subsequent, and separate, trajectories of both international law and the just war tradition. Further, in this re-reading of Vattel, the

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<sup>99</sup> *Ibid.*, Preface, p. 16.

<sup>100</sup> *Ibid.*, I.II.14, p. 86.

<sup>101</sup> *Ibid.*, III.IX.165, p. 569.

<sup>102</sup> Vattel, *Foundation of Natural Law*, XX, p. 753.

chapter has demonstrated how aspects of his ethical subject of war continue to be deployed in contemporary just intervention discourse. In Chapter 6 it was observed that Grotius inaugurated a form of law that would shape relations between nations in times of both war and peace. In the process, he sought to remove the Divine from his *schema* and emphasise the application of reason. Grotius was partially successful and greatly reduced the reliance on God that was characteristic of earlier just war writers, such as Augustine and Aquinas. In the just war tradition, however, it was Vattel who made the decisive break from the use of the Divine as an authoritative moral – or legal – source. So, while a superficial reading of just war texts would identify that both Aquinas and Vattel, for example, stressed the primacy of the legitimate authorisation of a just war, what this means in practical terms is hugely different. For Vattel it reinforces the authority of the sovereign and the sovereign state – entities recognised by other sovereigns and states – to legally declare war. In contrast, for Aquinas, the need for the legitimate authorisation of war reflects his Christian view of the world as created and Divinely ordered, and what he saw as God’s authority delegated to earthly princes and rulers.

This chapter looked at how current debate surrounding just war and intervention continues to draw upon Vattelian concepts: the inviolability of state sovereignty and the place of the ethical subject in an interventionist exception to that inviolability; plus, his formal categorisation of *jus ad bellum* and *jus in bello* into separate moral and legal domains and the emergence of the ethical subject of war within these domains. Both Elshtain and Walzer – and many other contemporary just war theorists – continue to frame their contributions to just war and intervention debate in terms of distinct *ad bellum* and *in bello* criteria. This reading of Vattel has also shown how aspects of his civilized/uncivilized binary continue to be used in current justification of military intervention. Where Elshtain’s ethical subject of war relies most heavily upon Augustine and Aquinas, traces of Vattel (and Grotius) are still present in her writings. In contrast, Walzer’s ethical subject is constituted primarily in the just war legal paradigm that Vattel provides. Notably, and to differing degrees, both Elshtain’s and Walzer’s justification of intervention draw upon Vattel’s exception to his own account of sovereign inviolability: where the ethical subject of just intervention opposes a tyrant’s abuse of his own people. For Vattel’s subject of war to emerge as ethical she, or he, must conform to the laws of war set down in the *Law of Nations*. However, once legal obligations have been met, Vattel allows a measure of creative self-forming by his

subject in relation to ethical sources such as moderation, mercy and opposition to barbarians and tyrants. His emphasis, though, remains on law.

## Chapter 8

### Conclusion

This thesis has sought to add to existing just war literature by extending our understanding of the constitution of the ethical subject of war: looking beyond the ethical subject's formation in relation to the codes and normative dichotomies that shape the tradition today. Foucault's understanding of the ethical subject as being at once both code-constituted and creatively self-constituted has been used as a lens through which both present and historical just war discourses have been re-read in a genealogy of the ethical subject of war. By unravelling this dual representation of the subject the preceding chapters have highlighted an overlooked dimension of just war discourse: the creative, self-forming aspect of the ethical subject of war.

Two questions were set out in Chapter 1 that provided the impetus and direction of this thesis: how can the subject of war come to recognise herself, or himself, as ethical in the context of military intervention? And, what are the conditions that make it possible, in the just war tradition, for the subject to emerge as ethical from war as a moral domain? These questions were a response to the *bellum justum* problematic that prompted the thesis – the constitution of ethical subjectivity in the justification and execution of military intervention: Blair's justification of military intervention in the political domain and Elshtain's and Walzer's contribution to just war debate in the academy.

By revisiting the intervention discourses of Elshtain and Walzer, this concluding chapter will point out how Elshtain, in particular, includes a clear emphasis on creative ethical self-subjectivation alongside the need for the subject to conform to codes, in contrast to Walzer's heavily code-oriented approach. The self-formative aspect of Elshtain's just war enables her to transcend a normative liberal/communitarian duality in her intervention discourse. Elshtain draws upon Augustine and Aquinas in the Christian tradition as a means of providing the discursive space for the self-creating ethical subject. Walzer, in contrast, maintains a stronger communitarian emphasis in his work, relying more on codes and indebted to the just war legalist paradigm inaugurated and reinforced by Grotius and Vattel. However, as Chapters 6 and 7 have identified, both Grotius and Vattel retained, albeit minor, creative elements in their constitution of

the ethical subject of war: creativity that is excluded from modern readings of their work that focus on the legal and moral codes they set out.

In an examination of the emergence of the ethical subject of war, this thesis has argued that Augustine stressed the importance of self-reflection and creative self-forming for the Christian subject of war, with just war as codified morality emerging from, or at least in conjunction with, the emergent ethical Christian subject. Over time, as the subsequent re-reading of the works of Aquinas, Grotius and Vattel has shown, the just war tradition became increasingly codified with a growing emphasis on conforming to law and a corresponding decrease in the importance of ethical self-subjectivation. Further, the *telos* of that ethical self-forming has shifted from the Divine to the secular. In addition, it has been argued that numerous, and ontologically diverse, aspects of the emergence of the ethical subject in the just war tradition continue to be used, or excluded – with the inclusion or exclusion frequently not acknowledged – in the justification and conduct of military intervention in the present. However, as this chapter will argue later, Blair’s use of creative ethical self-formation in his justification of the 2003 Iraq intervention reversed the trajectory of the increasingly code-oriented, secularised, ethical subjectivation identified in the genealogy.<sup>1</sup> It will also be argued that any advantage gained by adopting a self-formative approach in garnering support for the UK’s involvement in the 2003 Iraq invasion was short-lived: with subsequent reassessment of the decision concentrating on codes such as UK governmental procedures and international law. This unravelling of the dual representation of code-oriented and ethics-oriented morality in Blair’s intervention discourse explains the paradox between his continued ethical satisfaction with his decision<sup>2</sup>, in contradistinction to opponents who hold the (code-oriented) view that he acted illegally

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<sup>1</sup> Sergei Prozorov provides a reading of Foucault’s ethical subject that is incongruous with the reading in this thesis. Prozorov relies on the constitutive dualities of same/other, good/bad in the context of a Schmittian political order to transgress the spatial limits of sovereignty in International Relations. Consequently there appears to be an element of commonality in the approaches adopted. However, one reason Prozorov’s reading of Foucault’s ethical subject differs from the reading in this thesis is because he relies on a conception of the political that ‘can exist theoretically and practically, without having simultaneously to draw upon all those moral, aesthetic, economic or other distinctions’ (p. 2). For Foucault, the ethical subject emerges in discourses of power and knowledge which are both constitutive of, and constituted by, the political and ethical. There is a significant ontological disparity here: Prozorov – relying on Schmitt – grants *a priori* existence to the political as a domain within which the ethical subject is constituted, while this thesis would prefer to ask the more distinctly Foucauldian question – What are the means by which it is possible to speak or write of the political as a domain in which the ethical subject is constituted? To explore Prozorov’s reading of the Foucauldian ethical subject in more detail see Prozorov, S., ‘The Ethos of Insecure Life: Schmitt, Foucault, Kunders and the Point of the Political’, Paper presented at the 5<sup>th</sup> Pan-European IR Conference, the Hague, the Netherlands, September 9-11, 2004.

<sup>2</sup> Blair, Evidence to the Chilcot Inquiry, 29 January 2010, p. 246/7.

in a polity that prioritises law as the defining element of just war today: with both positions based on the same evidence. The thesis will conclude that it is only through the recovery of the creative, ethical self-forming aspect of Blair's intervention discourse that his moral justification of the 2003 Iraq invasion can be fully understood.

In addressing these issues, the first half of the chapter will be structured as follows. A history of the ethical subject in the just war discourses of Elshtain and Walzer in the present will be set out in relation to both conformity to codes and self-subjectivation. This history of the present will be illustrated by concentrating on intervention discourses, including the matter of 'civilising' discourses: noting how the present was made possible by the inclusion – and exclusion – of discourses from the past. The second half of the chapter will examine two sites of ethical formation and self-formation in relation to recent interventions: the first revisits the discourse and ethical subjectivation of the wounded soldiers who contributed to the *bellum justum* problematic that prompted this thesis; the second returns to Blair's intervention discourse and his shift from a reliance on codes to an emphasis on ethical self-forming. The chapter then reflects on the suitability of the Foucauldian genealogy used in this study, before closing by suggesting potential avenues for further research that build upon the findings of the thesis.

### **Elshtain and Walzer – forming the subject of just intervention**

The constitution of the ethical subject in just war debate today – exemplified in the writings of Elshtain and Walzer – is situated within normative tensions between the rights of states and the rights of individuals and established codes such as the UN Charter. The genealogical approach of this thesis has enabled an understanding of the ethical subject in the just war tradition that is not constrained by these normative assumptions in what is widely perceived to be – in the West at least – a hegemonic discourse. Consequently the genealogy has shown how the ethical subject of war is constituted in relation to codes – such as existing moralities, laws, international conventions and protocols – and creatively self-constituted in relation to ethical sources such as the will to power or the pursuit of moderation.

Elshtain sees military intervention as means of *enforcing* human rights and juxtaposes the abuse of human rights in Rwanda and Iraq, asking:

What is the point of bold commitments to universal human rights – the most fundamental of which is a right to life itself – if such rights can be violated systematically and the so-called international community, rather than enforcing those rights, wrings its hands and expresses regrets?<sup>3</sup>

Elshtain – reflecting on a failure to stop the Rwandan atrocities – views military intervention as the means by which universal human rights can be enforced in both Afghanistan and Iraq. She points to the need to protect women’s rights in Afghanistan as part of her justification of intervention there, while in the context of Iraq Elshtain identifies the right to life that was removed by Saddam Hussein’s attacks on the Kurds, Shiite Muslims and Marsh Arabs.<sup>4</sup> Elshtain draws upon historical just war discourses in order to support her own arguments and form her ethical subject of war. For her, the ethical subject of war is the individual who intervenes, forcefully, to protect the rights of women in Afghanistan, or the lives of those threatened by Saddam Hussein in Iraq. As a way of transgressing the tension between the universal rights of individuals captured in the UN Declaration<sup>5</sup> – a reading of rights that draws heavily on a liberal, Western conception of rights – and the rights of states to non-interference captured in the UN Charter<sup>6</sup>, Elshtain interpellates a justification of intervention that predates not only the UN but modern conceptions of statehood and sovereignty.

Elshtain appeals to Aquinas’ notion of the protection of the innocent as part of her *casus belli* for intervention in Afghanistan and her constitution of the ethical subject of war.<sup>7</sup> However, as was explored in greater detail in Chapter 5, Elshtain is only able to constitute the subject of war in this way by being selective about the aspects of Thomistic discourse that she brings into the present and the aspects that she excludes from current debate. Regarding her own ethical substance and the *telos* that motivates her work, Elshtain acknowledges a role for religion and Christian faith in her personal life and professional endeavour.<sup>8</sup> In these aspects of the technologies of the self set out by Foucault, Elshtain exhibits a strong degree of continuity with Aquinas. In addition, she enables her subject of war to constitute herself, or himself, as ethical by changing her, or his, behaviour and intervening to help the innocent who are unable to help

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<sup>3</sup> Elshtain, 2004, p. 185/6.

<sup>4</sup> *Ibid.*, p. 38-44; 186.

<sup>5</sup> United Nations' Universal Declaration of Human Rights, 1948, located at <http://www.un.org/Overview/rights.html> accessed 17 Oct 2008.

<sup>6</sup> Charter of the United Nations, 1945, Chapter 1, Article 2.

<sup>7</sup> *Op cit.*, p. 185.

<sup>8</sup> *Ibid.*, p. 112ff.

themselves. However, she also writes of the training of American soldiers to avoid both intentional and unintentional killing of the innocent: ‘No one is encouraged, or even allowed, to call the killing of civilians “God’s will” or, even worse, an act carried out in God’s name’.<sup>9</sup> Elshtain shares a measure of commonality with Aquinas regarding her own ethical substance and personal, Divine *telos* as a Christian, and her subject of war can constitute herself, or himself, as ethical by changing behaviour to intervene on behalf of the innocent – even if this contradicts the codes set out in international law such as the UN Charter. However, Elshtain excludes the ‘Christian’ dimension from her self-forming ethical subject of war. This she explicitly contrasts with appeals to Divine authority in the training materials of Islamist radicals, quoting: “You have to kill in the name of Allah until you are killed ... Our enemies are fighting in the name of Satan. You are fighting in the name of God.”<sup>10</sup> The terrorist fighting in the name of Allah is thereby constituted as the radical, violent Other, opposed by her ethical subject of who creatively self-constitutes by exercising restraint in seeking to protect the innocent in war. While Elshtain acknowledges her own Christian leanings she is careful not to impute these to her ethical subject, subsequently avoiding any appeal to religious war.

In contrast to this ‘selective’ use of Aquinas, however, Elshtain later addresses this issue of interpellating the ideas of the great Christian theologians into contemporary debate:

we have tried to import great Christian theologians, like Augustine, but have stripped them down to avoid many of their central theological categories. It is all well and good to discuss Augustine on the necessarily tragic vocation of the judge, or the misery of war ‘even when just’, or the dangers of imperial triumphalism, but what makes all this work is his theological framework.<sup>11</sup>

Elshtain sets out here – four years after the publication of *Just War Against Terror* – the importance of acknowledging the theological frameworks of theologians like Augustine and Aquinas, whilst using their more explicitly political ideas on war. This aspect of Elshtain’s thinking is brought to fruition in *Sovereignty: God, State, and Self* (2008), which adds further clarity and substance to the ontology that underpins her previous writings on intervention and the use of military force. This later subtlety is

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<sup>9</sup> *Ibid.*, p. 21.

<sup>10</sup> *Ibid.*, p. 21/2.

<sup>11</sup> Elshtain, J.B., ‘On Never Reaching the Coast of Utopia’, *International Relations*, Vol. 22, No. 2 (2008) p. 167.

not, though, captured in *Just War Against Terror* and her constitution of the ethical subject therein.

In contrast to Elshtain's use of Augustine and Aquinas in providing the discursive space in which creative ethical self-subjectivation can occur in the present, Walzer's ethical subject is constituted primarily in conformity to codes in his 'war convention': 'the set of articulated norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgements of military conduct'.<sup>12</sup> His approach to just war is highly casuistic, located in a legalist paradigm that relies to a considerable extent on notions of statehood, sovereignty and non-intervention found in the formative discourses of Grotius and Vattel. Walzer's just war also relies heavily on the separation of *jus ad bellum* and *jus in bello* into two distinct moral domains: a distinction to which Vattel made a significant contribution. The ethical subject of war therefore emerges in relation to these two discursive formations. The individual bearing responsibility for justifying war is constituted as ethical if she, or he, satisfies the various *ad bellum* criteria Walzer sets out, whilst the combatant is constituted as ethical by conforming to the *in bello* requirements of proportionality and discrimination between combatant and non-combatant.

The legalist paradigm in which Walzer locates his just war – together with his communitarian leanings – make it difficult for him to advocate military intervention, even for what might be described as humanitarian reasons. Although Walzer bases his just war discourse on both human rights and state rights, he grants priority to the latter over the former.<sup>13</sup> A strict application of this principle would constitute the ethical subject as the individual who would not participate in intervention across state borders – either its justification or execution. It was the United States' intervention in Vietnam – both its justification and execution – that spurred Walzer to engage seriously with just war in the 1970s. His inclination against intervention was subsequently challenged by a number of atrocities and genocides, especially in the 1990s, leading him to announce: 'I haven't dropped the presumption against intervention that I defended in [*Just and Unjust Wars*], but I have found it easier and easier to override the presumption.'<sup>14</sup> In taking this step – beyond the strict observance of the codes that constitute his ethical

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<sup>12</sup> Walzer, 2000, p. 44.

<sup>13</sup> *Ibid.*, p. 54.

<sup>14</sup> *Ibid.*, p. xii/xiii.

subject of war – Walzer opened up a small space where the ethical subject could self-form more creatively.

Walzer writes: ‘Yes, the norm is not to intervene in other people’s countries,’ but modifies his earlier position by removing the principle of non-interference from states where the people are brutalized to the point where they cannot determine – collectively – their own future<sup>15</sup> and need external help. He would later refer to the ‘crucial in-between spaces’<sup>16</sup> brought about by the failure of states to function effectively to maintain the inside/outside distinction. These ‘in-between spaces’ refer to the discursive landscape where the limits of existing codes are surpassed, leaving scope for ethical self-forming. Intervention in this domain is carried out by the ‘decent people of this world’<sup>17</sup> who form themselves as ethical by swapping a non-interventionist stance for active opposition to the terrorists and unjust fighters: the Other who operates in the shadowy spaces. The ethical subject of intervention self-forms, not by conforming to codes that have at this point broken down but, in opposition to the Other’s will to dominate and in support of the innocent who cannot help themselves – thereby forming herself, or himself, as ‘decent’.<sup>18</sup> Perhaps a more accurate description of the dynamic at work would be to say that the individual who intervenes *confirms* her, or his, *prior* ethical subjectivity: subjectivity constituted within the ‘moral thickness’ that Walzer identifies as ‘a permanent feature of human social life’.<sup>19</sup> This action by ontologically prior ‘decent people’ in intervening justly to help others also contains shades of Augustine’s discourse: the ‘wise man [who] will wage just wars ... For it is the injustice of the opposing side that lays on the wise man the duty of waging wars.’<sup>20</sup> Going further, the idea of projecting wisdom or decency in a just war or intervention against the unjust also contains elements of civilising discourses that were more prevalent in previous centuries but which Grovogui, as set out in Chapter 6, argues is still at work in the international political arena. In addition, where Walzer’s ethical subject of war self-forms by going beyond the codes on which his just war is based, the institutions of the state within which shared moral thickness is mutually constituted reclaims the subject through official valorisation: ceremonies to acknowledge and decorate the ‘unusually

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<sup>15</sup> Walzer, 2004, p. 81 (*Original italics*).

<sup>16</sup> Walzer, M. ‘On Fighting Terrorism Justly’, *International Relations*, Vol. 21, No. 4 (2007b) p. 482.

<sup>17</sup> Walzer, 2004, p. 81.

<sup>18</sup> *Id.*

<sup>19</sup> Walzer, 1994, p. 81.

<sup>20</sup> Augustine, *City of God*, XIX.7, p. 861/2.

brave’; and state funerals to acknowledge individual sacrifice of those who are constituted as representative of, as well as constitutive of, that shared moral thickness.

Grovogui warns against intervening on the basis of civilised/uncivilised judgements on the basis that any hint of ‘*mission civilizatrice* ... would alter the meaning of the acts committed in actualizing the mission. [They] would cease to be *necessary* violence and become crimes committed through policies easily identifiable as thuggery, barbarism, and worse.’<sup>21</sup> A desire by the ‘decent’ people of the world to intervene and impose that ‘decency’ on others would not be welcomed either by Afghans, Iraqis or any other people groups whose own concept of civilization does not fully coincide with a liberal-Western perspective. Civilising discourses in the writings of Grotius and Vattel were explored in previous chapters, with elements of these discourses found in Elshtain’s constitution of the subject of intervention. Though it would be wrong to accuse Elshtain of cultural or any other form of imperialism, traces of the Grotian and Vattelien civilising discourses remain: ‘These Afghani girls and women can go to school and teach because of the use of force by America and its allies to roll back the Taliban and rout Al-Qaeda from its hiding places’.<sup>22</sup> Elshtain’s ethical subject self-forms by changing her, or his, behaviour in relation to a civilising discourse that would, through military force, promote gender equality in teaching and learning.

Walzer, though more strongly committed to communitarianism and the rights of states than Elshtain, also includes traces of the civilizing discourses found in Grotius and Vattel as the two historical writers wrestled with the desire to help the innocent neighbour in the context of incipient, later established, sovereignty. Walzer draws upon a discourse found in Vattel – but usually neglected – that allowed for creative ethical self-subjectivation in the process of opposing the neighbouring sovereign to prevent barbarous treatment of her, or his, subjects: ‘those monsters who, under the title of sovereigns, render themselves the scourges and horror of the human race, they are savage beasts, whom every brave man may justly exterminate from the face of the earth’.<sup>23</sup> These self-formative discursive spaces opened up by Elshtain and Walzer are not their own, *ex nihilo*, inventions. They are drawing on existing, though frequently overlooked or forgotten self-formative discourses in the just war tradition. The

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<sup>21</sup> Grovogui, 2001, p. 439.

<sup>22</sup> Elshtain, 2004, p.42.

<sup>23</sup> Vattel, *Law of Nations*, II.IV.56, p. 290/1.

challenge in adopting ethical self-subjectivation in the context of present-day just war and intervention is to make clear how the technologies of the self are being applied. Elshtain, writing from a Christian tradition, views the ethical substance of the subject in different terms to Walzer's largely secular approach. They may incite their respective ethical subjects to similar actions in defending the innocent from genocide or disaster, but the *telos* of their subjects may be either Divinely focused or centred on human moral attainment. Either way, Elshtain and Walzer, to differing degrees, show that a self-formative aspect of the ethical subject of war remains in intervention discourses today. That they can constitute the subject with different emphases, and provide the discursive space for ethical self-forming in diverse ways, demonstrates the non-essentiality of their respective moral orders. Though Elshtain's approach may be more obviously in keeping with Connolly's with regard to the rejection of some timeless, hidden intrinsic moral order<sup>24</sup> that only needs to be somehow uncovered or revealed, Walzer also illustrates the point by acknowledging the limits of the codes within which his ethical subject of war is constituted.

Having examined the emergence of the ethical subject in the intervention discourses of Elshtain and Walzer and the ways in which they have included and excluded historical just war discourses in their writings, the chapter moves on now to examine two sites of ethical formation and self-formation in relation to intervention. The first site is the ethical subjectivation and self-subjectivation of British military personnel involved in intervention: the wounded soldiers who contributed to the *bellum justum* problematic that prompted this thesis. The second site is Blair's war discourse and his shift from a reliance on codes to a reliance on ethical self-forming in justifying military intervention.

### **The soldier as ethical subject of intervention**

In the course of the genealogy it has been shown how – in the just war tradition – the ethical subject has been constituted in the interplay of disciplined conformity to moral codes and creative self-formation. Furthermore, it has been argued that just war is not a timeless tradition within which the ethical subject has been – and continues to be – formed in a unitary, unchanging manner. Rather, within the just war tradition the relation of self to self has been shaped in different ways at different times, with varying

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<sup>24</sup> Connolly, 2002, p. 34.

emphases on code-oriented and ethics-oriented moralities. In order to understand the formation of the ethical subject of war in the present, the trajectories of ethical subjectivation and self-subjectivation have been traced through the just war writings of Augustine, Aquinas, Grotius and Vattel. These dual representations have both shaped, and continue to shape, the ethical subject of war in 'competitive relations of agonistic respect'.<sup>25</sup> For example, Augustine's primary concern was for the soul of the soldier – and the souls of everyone else as well – and he encouraged disciplined self-reflection, confession and action, in light of the commands of God revealed in Holy Scriptures and enforced by Canon law. However, this religious self-forming did not exempt the soldier from conforming to the codes and disciplines of the Roman Army, even though these were of secondary importance to Augustine in relation to a *telos* of eternal salvation. By the time of Vattel just war had become largely codified and juridicalized with *ad bellum* justification of war and *in bello* conduct categorised as distinct moral domains. In the latter, the conduct of soldiers in war had become increasingly codified, with soldiers required to conform to the proscriptions and interdictions set down in the *Law of Nations*. However, Vattel still granted to the soldiers a dimension of self-forming in the pursuit of moderation and the exercise of restraint on, and around, the battlefield.

Foucault wrote of his exploration of ethical subjectivity in the conduct of the Classical Greeks:

The domain I will be analyzing is made up of texts written for the purpose of offering rules, opinions, and advice on how to behave as one should: “practical” texts, which are themselves objects of a “practice” in that they were designed to be read, learned, reflected upon, and tested out, and they were intended to constitute the eventual framework of everyday conduct. These texts thus served as functional devices that would enable individuals to question their own conduct, to watch over and give shape to it, and to shape themselves as ethical subjects.<sup>26</sup>

As this chapter continues to discuss the ethical subject of war in light of the genealogy that has taken place, a similar recourse to practical texts will take place. The two texts are: *Aide Memoire on the Law of Armed Conflict* and *The Ethos, Core Values and Standards of the Royal Air Force*.<sup>27</sup> To see how the sensibilities of code-oriented and ethics-oriented moralities are captured in the discourses in which the modern

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<sup>25</sup> *Ibid.*, p. 142.

<sup>26</sup> Foucault, 1984a, p. 12/13.

<sup>27</sup> Similar texts on ethos and core values exist for each branch of the armed forces and the content is broadly similar. This RAF text has been chosen because this author has taught it to RAF recruits and officer cadets.

subject of war can form herself, or himself, as ethical, this discussion will briefly consider these two military texts in light of the *Queen's Regulations* (military law governing the conduct of individuals):

Every officer is to make himself acquainted with, obey, and, so far as he is able, enforce, the Air Force Act, the Queen's Regulations for the RAF, and all other regulations, instructions and orders that may from time to time be issued. He is also to conform to the established customs and practices of the Service.<sup>28</sup>

This excerpt from *Queen's Regulations* illustrates the extent to which the lives and conduct of military personnel are regulated in terms of both military law and unwritten customs and practices. The former is enforced by military police and judicial processes and, depending upon the severity of the transgression, punished at either Orderly Room or Courts Martial: both in peace-time and during war. The latter are enforced through administrative action or the opprobrium of peers or superior ranks.

In times of war, every combatant is issued with guidance on the law of armed conflict, which specifies:

All personnel must be aware of the basic rules of the law of armed conflict, including the practical application of the principles of military necessity, proportionality, distinction and humanity ... [And] Comply with the law of armed conflict and with Service law.<sup>29</sup>

These instructions provide explicit guidance on how combatants are constituted as ethical in war: 'Comply with the law of armed conflict'.<sup>30</sup> Such law includes the responsibilities of combatants under the Geneva Conventions: to which the UK is a signatory. There are two aspects of this instruction to consider genealogically: the means by which such compliance is achieved and the just war discourses that this instruction draws upon. The Geneva Conventions stipulate that combatants should be taught compliance with the law of armed conflict as part of international humanitarian law. Such compliance should be enforced through military instruction based on military manuals and informed by 'military pedagogy': 'in exactly the same way as the

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<sup>28</sup> *The Queen's Regulations for the Royal Air Force*, Para. 989, Parts 1 and 4, p. 15-1.

<sup>29</sup> *Aide Memoire on the Law of Armed Conflict*, JSP 381, Revised February 2005, Ministry of Defence, located at <http://www.mod.uk/NR/rdonlyres/749088E6-E50A-470E-938D-459A74481E88/0/jsp381.pdf> , Para. 4, accessed 10 January 2009.

<sup>30</sup> *Id.*

preparation for combat'.<sup>31</sup> A number of supplementary instructional methods are specified: 'lectures, films, slides, audio-visual methods, war games including questions and answers etc'.<sup>32</sup> The British armed forces – like many other armed forces around the world – use such techniques to ensure that their combatants are familiar with the law and know how to act in conformity to it. As a result, the soldier constitutes herself, or himself, as ethical by conforming to law as codified morality: conformity reinforced by disciplined repetition and training.

The aspects of law with which combatants must be concerned include: 'the practical application of the principles of military necessity, proportionality, distinction and humanity'.<sup>33</sup> These principles are set out in a manner that suggests their use is unproblematic, yet a closer genealogical examination of 'military necessity' will show that this is not the case. For Augustine, the ethical subject of war will only carry out such actions on the battlefield as are required by 'stern necessity'.<sup>34</sup> However, it is not the execution of 'necessary' actions in war that constitute Augustine's soldier as ethical. Augustine's primary concern is to ensure that the Christian lives a good life, in pursuit of a *telos* that will be attained in the next life, in the heavenly City of God. It is a *result* of the individual's wider ethical self-subjection that prompts him only to necessary actions on the battlefield. Contrast Augustine's view of necessary actions in war with Vattel's: 'in a just war ... when the end is lawful, he who has the right to pursue that end, has, of course, a right to employ all the means which are necessary for its attainment'.<sup>35</sup> The legitimacy of a soldier's conduct in war appears to stem from the overall *ad bellum* justification of the war, expressed in terms of law. However, Vattel limits the actions undertaken by a combatant in the guise of military necessity by placing specific limitations on conduct in war. He prohibits military acts 'of an odious kind ... unjustifiable in themselves, and prohibited by the law of nature'.<sup>36</sup> Vattel's position is not shaped by notions of how a soldier should relate to Divine command. He is concerned that soldiers should conform to the law of nations – at least, the soldiers of all civilized (European) nations – and its codified prescriptions and proscriptions

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<sup>31</sup> Programmes of military instruction, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Part 5, Section 1, Article 83, Para. 3376, located at <http://cicr.org/ihl.nsf/COM/470-750108?OpenDocument>, accessed 15 January 2010.

<sup>32</sup> *Id.*

<sup>33</sup> *Aide Memoire, op cit.*

<sup>34</sup> *Id.*

<sup>35</sup> *Op cit.*, III.VIII.136, p. 541/2.

<sup>36</sup> *Ibid.*, III.VIII.138, p. 543.

regarding conduct in war. Consequently, the principle of military necessity in the modern soldier's written guidance on conduct in war owes considerably more to Vattel's notion of necessity than to Augustine's. However, even Vattel does not provide a full understanding of military necessity because he framed his just war and law of nations in the context of European – civilised – states, while modern British combatants are obliged by the Geneva Conventions to apply the principle universally: regardless of the nature of the enemy or where in the world that enemy is located.

The ethical subjectivity of combatants is constituted not only by conforming to the laws of war but also through creative self-subjection. This process begins as soon as individuals commence military training, through instruction in, and personal exploration of, the core values of her, or his, respective branch of the armed forces. This author will reflect upon his own experience in promoting the core values of the RAF in the delivery of The Beliefs and Values Programme (BVP), reinforcing the text of *The Ethos, Core Values and Standards of the Royal Air Force* that every member of the Royal Air Force receives upon commencement of training. It says:

Core values are those values by which we lead our lives and which we aspire to develop in others. The Royal Air Force core values are: Respect, Integrity, Service and Excellence, nurtured by effective and consistent leadership ... Every member of the Royal Air Force has the duty and ability to lead and the moral responsibility to live by our core values.<sup>37</sup>

Military instructors issue this text to new members of the RAF and order that it should be read and the RAF core values adhered to. However, it falls to the (Christian) chaplains – over four sessions spaced throughout initial training – to reinforce these core values by exploring their significance with classes of recruits or officer cadets: in the process encouraging creative self-formation. Each core value is approached thematically (Respect, for example) in a separate session using a methodology called Dilemma Intervention. Hypothetical incidents are outlined and the recruits invited to imagine themselves located in the scenario as, say, the perpetrator, or the victim of bullying, or as an armed combatant in time of war. Self-reflection is then encouraged, using questions such as: How do you think you would feel [in such a situation]? What do you think of your colleague's response? How does such a reaction reflect the core value of, for example, respect or integrity? Such sessions progress in what might be termed a 'confessional' dynamic: individuals (including myself as chaplain at that time)

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<sup>37</sup> *The Ethos, Core Values and Standards of the Royal Air Force*, p. 7.

publicly describing how a particular action could result in either a positive or a negative outcome, as well as making known the feelings that such hypothetical actions engender. These ‘confessions’, or descriptions, would, in turn, be discussed by the group. Following these elements of self-reflection and ‘confession’, the final part of a session would then encourage or incite further self-forming in relation to the RAF core (and other) values. Each session would conclude with the recruits being encouraged to continue to apply the core values to their current and future actions. Overall, the process might be more accurately described as encouraging, or inciting, critical self-reflection, self-policing of attitudes and actions, and creative ethical self-forming.

Recalling this process in light of the genealogy of the ethical subject of war undertaken here, two related issues should be highlighted: first, these sessions were (and are) delivered by Christian chaplains;<sup>38</sup> and second, the close parallels between the contemporary ethical self-subjection of military personnel and Augustinian confessional practices. None of the Beliefs and Values Programme sessions were presented by this author to military recruits in terms of Christian church teaching or Canon law, religious doctrine or biblical injunction. Sessions were inclusive and incorporated individuals of different faith – or no faith – backgrounds. However, it is also clear upon reflection that this author drew upon Christian discourses in framing questions, discussion and argument. The most important of these discourses being what is often referred to as the Golden Rule: ‘Do to others as you would have them do to you’.<sup>39</sup> Compare and contrast this individual application of the Golden Rule to two exemplar applications from Aquinas and Grotius. For Aquinas, ‘love of one's neighbour includes love of God, when we love our neighbour for God's sake’.<sup>40</sup> For Aquinas, as with Augustine before him, the Golden Rule is expressed and applied in the context of an individual Christian in pursuit of a *telos* located, to some degree, in the Divine. Grotius on the other hand uses the Golden Rule, not with regard to individual conduct but in setting out how nations should react to threats or attacks from other nations: ‘we are commanded in the Gospel to love our Neighbours as ourselves, not before ourselves; nay, when an equal Danger threatens us, we are not forbid to take care

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<sup>38</sup> At the time when this author delivered The Beliefs and Values Programme all British uniformed, military chaplains belonged to Christian denominations such as the Church of England, Roman Catholic Church, Methodist Church, among others. However, the Ministry of Defence had recently introduced Muslim, Sikh, Buddhist and Hindu Civilian Chaplains to the Military to provide wider support to particular faith groups represented in the armed forces.

<sup>39</sup> Quoted here from Luke 6:31, the New International Version of the bible. Further statements of this principle include: ‘Love your neighbour as yourself.’ (Mark 12:31).

<sup>40</sup> Aquinas, *Summa*, I-II, Q. 99, A. 1, p. 1382.

of ourselves before others'.<sup>41</sup> Grotius uses this Christian discourse but redeploys it in support of his right of nations to self-defence. In a chapter entitled: 'The Division of War into Public[] and Private'<sup>42</sup>, Grotius takes a concern to treat neighbours as individuals would wish to be treated – to 'love our neighbours as ourselves' – from its original context in the private domain and extends it to nations in the public domain. Consequently, returning to the individual ethical self-formation of RAF recruits, it can be seen that the contemporary application of the Golden Rule under discussion with military cadets lacks the *telos* of earlier applications such as those in the bible, or in the works of Augustine or Aquinas. In that regard, the contemporary application of the Golden Rule in the training of military personnel is more akin to the secularising tendencies of Grotius and Vattel..

Juxtaposing the ethical self-forming of current military personnel with Augustine's encouragement of ethical self-forming in a convent draws out some interesting genealogical comparisons: the practices of the self on the self appear very similar, whilst the respective *telos* of present day combatants and the Sisters of fourth/fifth century Hippo are very different. In the military recruits' practices of self-reflection, confession, self-forming and obedience of strict authority we can see a number of aspects of ethical self-forming in common with those found in Augustine's writings. Chapter 4 detailed how Augustine incites the Sisters at a convent in Hippo to constitute their own subjectivity in a confessional regime that includes a daily cycle of self-observation, observation of others, obedience of authority and control of the self. Augustine is concerned with producing good Christians whose *telos* will be achieved in the next life with God. In contrast, the purpose of the Beliefs and Values Programme, in reinforcing the ethos and core values of the RAF, is to provide a 'unifying function'<sup>43</sup> that manifests itself in the effective delivery of Air Power in support of strategic aims: a distinctly earthbound, politically directed *telos*. However, the wounded soldiers with whom this author discussed combat experiences in Afghanistan and Iraq did not limit their ethical concern to the *in bello* moral domain within just war: most, if not all, of them were concerned with the *ad bellum* justification of intervention – especially in Iraq. Their ethical self-formation was not bounded by *ad bellum/in bello* distinctions. Further, the individuals were content that they had conformed to all of the codified

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<sup>41</sup> Grotius, *DJB*, I, III, III, p. 243/4.

<sup>42</sup> *Ibid.*, p. 240ff. (Original spelling).

<sup>43</sup> *The Ethos, Core Values and Standards of the Royal Air Force*, p. 7.

obligations laid upon them to guide their conduct in the field. However, in their creative self-forming as subjects of intervention the soldiers frequently morally implicated themselves in some of what they saw as questionable *ad bellum* justification for their invasion of Iraq.

This recovery of creative, ethical self-constitution by combatants who had participated on the battlefield during recent military interventions has implications for both the current and future moral formation of soldiers as part of the training regimen that they undertake. The trend in both the UK and US armed forces in recent years has been towards an increasing emphasis on the codification of ethical conduct. The most severe sanction carried out against soldiers of both the UK and US for transgressions of military codes during military intervention has been imprisonment: notably for the torture and abuse of Iraqi prisoners. This trend towards the increased codification of acceptable and unacceptable behaviour by military personnel shows no sign of abating. For example, a forthcoming (at time of writing) joint military/ academic conference at US Army Fort Leavenworth in November 2010 is scheduled to explore the theme of the 'Professional Military Ethic'. This thesis, and in particular the reclamation of a creative, ethical self-forming dimension in the constitution of the ethical subject of war, will provide a challenge to those who would advocate increased codification of a professional military ethic as a panacea for misconduct by combatants in the field. Contrarily, this author will argue that the expansion of military codes is, in itself, likely to be limited in its efficacy: arguing instead that further exploration – in the military training cycle – of the creative aspects of ethical self-forming will enrich the combatant's understanding of what it means to be an ethical subject of war. This, in turn, will be achieved by exploring the kind of questions that have been addressed in this thesis: What part of the soldier is concerned with moral conduct; for example, a desire for goodness, social conscience, duty, religious belief? How can a soldier be invited or incited to recognise her, or his, moral obligations in the context of war or intervention? How is the soldier to change herself, or himself, in order to become an ethical subject? What kind of being does a soldier aspire to be in acting ethically in relation to war?

Having discussed the constitution and self-constitution of the combatant as ethical subject of war in light of the genealogy, this concluding chapter now revisits Blair's use of ethical self-forming in his justification of military intervention.

## Blair and the ethical subject of intervention

This thesis has used the twin representations of ethics-oriented morality and code-oriented morality as the means by which the trajectory of the emergence of the subject of war can be observed and analysed. Different emphasis has been placed on the importance of each element according to the purposes of specific authors and the political, social and cultural discourses within which the ethical subject of war has been constituted.

Blair relies on a complex interplay of conformity to codes and creative ethical self-formation in his intervention discourse. Not only does ethical self-subjectivation play an important part in Blair's arguments, he similarly incites his listeners to form themselves – at different times – as ethical by modifying their behaviour in specific ways. Where critics – including his interlocutors on the panel of the 2010 Chilcot Inquiry into the Iraq War – have focused on codes and the legal basis for the invasion of Iraq, for example, Blair has consistently approached the legal dimension of his justification as only part of a broader moral argument that includes creatively forming himself as ethical in opposition to his subjectivation of Saddam Hussein as the threatening Other. The genealogy in Chapters 4 to 7 has highlighted how the trajectory of the emergence of the ethical subject of war has shifted: from Augustine's prioritisation of self-creativity with conformity to codes remaining in the background, to Vattel's emphasis on conformity to codes with creative self-formation being relegated to the margins of his discourse. In 1999, Blair prioritised codes as he drew upon established *ad bellum* just war criteria as the basis for a new international approach to intervention: 'We cannot turn our backs on conflicts and the violation of human rights within other countries if we want still to be secure ... *We need new rules for international co-operation* and new ways of organising our international institutions.<sup>44</sup> However, by 2002 and his justification of intervention in Iraq, Blair reversed the trend towards conformity to codes in the just war tradition: opting instead to place much greater emphasis on creative subjectivation and self-subjectivation in relation to ethical sources. To demonstrate how Blair used historical, creative aspects of just war in his justification of intervention, this section – focusing on Iraq – will look at how Saddam Hussein's ethical subjectivity emerges from Blair's discourse as a threat, before going on to examine the constitution of 'the innocent' as part of Blair's *casus belli* arguments.

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<sup>44</sup> Blair, Speech at the Chicago Club, 24 April 1999. (*My italics*)

In January 2010, Blair spoke of Saddam Hussein in presenting his evidence to the Chilcot Iraq Inquiry:

I think that he was a monster, I believe he threatened, not just the region but the world, and in the circumstances that we faced then, but I think even if you look back now, it was better to deal with this threat, to deal with it, to remove him from office, and I do genuinely believe that the world is safer as a result.<sup>45</sup>

Saddam is constituted here as a monster in the same terms that Blair used on numerous occasions in the build-up to the 2003 invasion of Iraq. Blair consistently sought to creatively form Saddam's subjectivity rather than focus solely on Saddam's contravention of codes such as international law and UN Security Council Resolutions. In 2002 Blair said the following:

The regime of Saddam is detestable. Brutal, repressive, political opponents routinely tortured and executed: it is a regime without a qualm in sacrificing the lives of its citizens to preserve itself, or starting wars with neighbouring states and it has used chemical weapons against its own people.<sup>46</sup>

Blair outlines the ways in which Saddam is subjectivised as an oppressor: internal repression and murder of innocent Iraqis and political opponents; and aggression against neighbouring states. Further, Blair points to an increased threat brought about by Saddam's pursuit of WMD, which is discursively associated with the September 2001 Al-Qaeda attack on the US: 'to allow WMD to be developed by a state like Iraq without let or hindrance would be grossly to ignore the lessons of September 11 and we will not do it'.<sup>47</sup> However, Blair also suggests a way in which Saddam can begin to form himself as ethical by changing his conduct: 'let the inspectors back in, anyone, any time, any place that the international community demands'.<sup>48</sup>

Blair's view of Saddam at that time, despite his constitution of Saddam as a threat based primarily on a disparate collection of previous actions rather than firm evidence of a credible threat to the region and the wider world, is shared by Elshtain:

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<sup>45</sup> Blair, Evidence to the Chilcot Inquiry, 29 January 2010, p. 246/7.

<sup>46</sup> Blair, Speech at the George Bush Senior Presidential Library, 7 April 2002.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

There was massive, and to my mind, sufficient evidence of the threat before the war ... A world with one fewer brutal “disturbers of the peace” would, by definition be a more peaceful world over the long haul.<sup>49</sup>

The difficulty facing Blair – and Elshstain – was the lack of evidence that Saddam was threatening another neighbouring state. International law as codified in the UN Charter proscribes both aggression and threats against other states. It does not, however, set out a minimum morally or legally acceptable level of conduct by a ruler or regime, let alone threaten intervention if such a hypothetical standard is not met. The only code that Saddam consistently defied was his refusal to allow access to UN weapons inspectors – which in itself could not be viewed as an act of aggression *against* anyone. And if Saddam was not transgressing international codes to such a degree that prompted a military response, Blair’s main option in making a case against Saddam was creative ethical formation in relation to ethical sources as opposed to moral codes.<sup>50</sup>

In setting out his case for action against Saddam Hussein, Blair (like Elshstain) – intentionally or otherwise – drew upon earlier just war discourses whose use had been discontinued with the advent of international law in its current form. Grotius advocated pre-emptive – whilst keeping open the matter of preventive – attack against the threatening Other: ‘I am not obliged to suffer the wrong that [an aggressor] threatens to do to me’.<sup>51</sup> Where Grotius’ other just *casus belli* – such as self-defence or the pursuit of restitution – were based upon the pursuit of justice in response to a crime *already committed*, this pre-emptive action against a would-be aggressor relies on the subjectivation of the threatening individual as the Other who must be opposed: ‘a man’s beast that came to set upon me’.<sup>52</sup> Walzer, on the other hand, places a much stronger emphasis on the legal paradigm within which contemporary just war operates and his default position states: ‘Nothing but aggression can justify war’.<sup>53</sup> Walzer goes further than Blair or Elshstain in seeking to maintain the inviolability of sovereignty, enshrined in the UN Charter. However, like Vattel who grants a very limited right of intervention in the most extreme circumstances,<sup>54</sup> Walzer is willing to override his presumption of the inviolability of sovereignty when extreme atrocities are being committed.<sup>55</sup> The

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<sup>49</sup> Elshstain, 2004, p. 189.

<sup>50</sup> Bush chose a third option, which was to pursue regime change and disregard the prohibitions against such action in international law.

<sup>51</sup> Grotius, *DJB*, II.I.III, p. 397.

<sup>52</sup> *Id.*

<sup>53</sup> *Ibid.*, p. 61/2.

<sup>54</sup> Vattel, *Law of Nations*, II.IV.56, p. 290/1.

<sup>55</sup> Walzer, 2004, p. xii/xiii.

difficulty facing Blair in constructing a case against Saddam in 2002/3 is that there was no evidence of ongoing or impending atrocities: the most serious examples cited by Blair referred to incidents that occurred ten, or more, years earlier. Furthermore, the no-fly zones that had been maintained over northern and southern Iraq since 1991 had already reduced the possibility of such atrocities reoccurring.

Blair further constituted Saddam as barbaric: 'The brutality of the repression – the death and torture camps, the barbaric prisons for political opponents, the routine beatings for anyone or their families suspected of disloyalty are well documented'.<sup>56</sup> The ethical substance of Saddam's subjectivity was identified by Blair as 'evil'<sup>57</sup> – evidenced by the acts perpetrated upon his own people. Having constituted Saddam as threatening, repressive and barbaric, Blair set out the means by which he could change his own behaviour and form himself as ethical: by acting 'with a clear conscience and strong heart'<sup>58</sup> and intervening on behalf of the 'Iraqi people, whose only true hope of liberation lies in the removal of Saddam'.<sup>59</sup>

The ethical substance on which Blair's ethical self-formation was based is not set out explicitly in his discourse. He stated, in the context of a speech on Iraq: 'The only purpose of being in politics is to strive for the values and ideals we believe in: freedom, justice, what we Europeans call solidarity but you might call respect for and help for others'.<sup>60</sup> Whether, for Blair, this desire to help others could be associated with the Christian, biblical injunction, 'Love your neighbour',<sup>61</sup> is not entirely clear. During his period in office, Blair regularly denied a religious dimension to his political decision-making. Subsequently, he has been less consistent in his proclamations regarding the role of religious faith in his life:

I believe, as someone of Faith that religious faith has a great role to play in an individual's life.<sup>62</sup>

When it comes to a decision [to go to war], I think it is important that you take that decision, as it were, on the basis of what you think is right – because that is

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<sup>56</sup> Blair, Statement opening Iraq debate, 18 March 2003.

<sup>57</sup> *Id.* and Blair, Interview with British Forces Broadcasting Service, 23 March 2003.

<sup>58</sup> Blair, 18 March 2003

<sup>59</sup> *Id.*

<sup>60</sup> Blair, 7 April 2002.

<sup>61</sup> Matthew 5:43

<sup>62</sup> Blair, Speech to launch the Faith Foundation, 30 May 2008, from: <http://tonyblairoffice.org/speeches/entry/tony-blairs-speech-to-launch-the-faith-foundation/> accessed 10 December 2009.

the only way to do it. And, I think people sometimes think that my religious faith played a direct part in some of these decisions – it really didn't.<sup>63</sup>

Despite acknowledging religious faith as being very important to him – even going so far as to launch a Faith Foundation – Blair explicitly sought to disassociate this aspect of his subjectivity from any decision to go to war. Contrarily, both before, during and after the period of the build-up to the Iraq invasion, Blair attended church regularly, had his own military (Roman Catholic) chaplain during his time at Chequers (the Prime Minister's weekend country retreat), had an audience with the Pope as part of his 'farewell tour' of foreign states as Prime Minister and converted to Roman Catholicism shortly after leaving office. Furthermore, Blair does not exclude the possibility, or likelihood, that his religious faith played an *indirect* role in his decision-making regarding war. For this author the evidence points to religious faith being a significant aspect of the ethical substance that underpinned his self-subjectivation with regard to the Iraq intervention: even accepting that he did not perceive his actions in terms of obedience to Divine command.

Central to Blair's constitution of ethical subjectivity – across multiple fields – is the disarming Iraq of WMD. Two issues dominated Blair's discourse at the start of 2003: first, the continued construction of a regime of truth that Saddam possessed WMD, despite the UN weapons inspectors – led by Hans Blix – not finding the physical evidence to support that claim. And second, demanding a change in behaviour in light of this regime of truth. Consider one aspect of the construction of a regime of truth surrounding the threat Saddam posed. On 24 September 2002 Blair presented the UK parliament with a dossier entitled: *Iraq's Weapons of Mass Destruction: The Assessment of the British Government*. In his statement to Parliament, Blair's central claim – supported by the dossier – suggested that not only did Saddam possess WMD but that the threat they posed was imminent – available within forty-five minutes:

It concludes that Iraq has chemical and biological weapons, that Saddam has continued to produce them, that he has existing and active military plans for the use of chemical and biological weapons, which could be activated within 45 minutes, including against his own Shia population; and that he is actively trying to acquire nuclear weapons capability.<sup>64</sup>

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<sup>63</sup> Blair, TV interview with Fern Brittan, broadcast Sunday 13 December 2009, BBC 1 TV.

<sup>64</sup> Blair, Iraq Statement to Parliament, 24 September 2002.

In the days that followed the UK media highlighted the forty-five minute threat, going along with Blair's inference that the threat was both serious and imminent. However, what was not made known at that time, and was only released to the general public in February 2008 was that a provisional conclusion to the Iraq dossier had been dropped prior to publication. Of chemical and biological weapons this draft conclusion states:

In breach of UNSCR 687. Chemical and biological agents stocks retained. Production has continued. Weapons available include bombs, airborne sprayer, artillery shells and rockets and ballistic missile warheads. *Some weapons* could be deployed within 45 minutes of an order.<sup>65</sup>

Four days before publication of the dossier, John Scarlett, chairman of the Joint Intelligence Committee, wrote to Alastair Campbell, Blair's Private Press Secretary: 'The conclusion has been dropped'.<sup>66</sup> Blair's regime of truth surrounding Saddam Hussein rested on his constitution of Saddam as a threat. Had the original conclusion to the September 2002 dossier been published the immediate and obvious question to ask would have been: Which weapons could be deployed in forty-five minutes? Ballistic missiles? Or short range artillery shells? That such uncertainty was withheld from Parliament and the British people suggests that the regime of truth about Saddam Hussein and the degree of threat he posed was not substantiated by the available evidence at the time. Following the invasion no WMD were found.

It was on the basis of the regime of truth surrounding Saddam's alleged possession of WMD that Blair's constitution of ethical subjectivity in relation to the Iraq intervention rested.

On Iraq, the choice is Saddam's. No-one wants a military confrontation with Iraq. But Iraq must be disarmed of WMD. By going down the UN route, the international community has given Saddam the chance for peaceful disarmament. If he does not seize it, he will have to be disarmed by force.<sup>67</sup>

Saddam could form himself as ethical by opting for peaceful disarmament of WMD. In the event that Saddam refused to disarm peacefully, Blair, his allies and his readers/listeners could form themselves as ethical by disarming – or supporting the

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<sup>65</sup> Draft conclusion to dossier: *Iraq's Weapons of Mass Destruction: The Assessment of the British Government*. Downloaded from <http://news.bbc.co.uk/>, 18 February 2008. (*My italics*)

<sup>66</sup> Scarlett, J., 20 September 2002, Confidential and Personal Memorandum to Alastair Campbell entitled 'Iraqi WMD: Public Presentation of Intelligence Material', Downloaded from <http://news.bbc.co.uk/>, 18 February 2008.

<sup>67</sup> Blair, New Year Message, 1 January 2003.

disarming – him by force. If this forceful intervention against the tyrannical, threatening Other is the means by which Blair could form himself as ethical – despite being unable to conform to the requirements of the UN Charter – then the *telos* consistently pursued by Blair is that of the liberator who would bring about freedom for the Iraqis in the same way that he previously presented himself as helping bring about freedom in Kosovo, Afghanistan and Sierra Leone.<sup>68</sup>

We acted with care ... The Taliban are gone as a government. Al Qaida's network has been destroyed in Afghanistan, though without doubt a residual capability remains and we should still be immensely vigilant. The Afghan people feel liberated not oppressed and have at least a chance of a better future.<sup>69</sup>

I'll always remember driving through the villages near Freetown in Sierra Leone seeing the people rejoicing – many of them amputees through the brutality from which they had been liberated – and their joy at being free to debate, argue and vote as they wished.<sup>70</sup>

It is also important to realise that when we are acting, whether it is in Kosovo or Afghanistan, or Sierra Leone, or here in Iraq, the first beneficiaries of the action are the people that we are liberating, usually from brutal and dictatorial rule.<sup>71</sup>

Just intervention would be the means by which Iraqis could enjoy liberation, freedom and rights like the Afghans, and Sierra Leoneans and Kosovars before them. Blair argued for the removal of a threat, resulting in the protection of the innocent (in Iraq and beyond) as his just *casus belli* in support of his liberal internationalist principles. He thereby adopted a Grotian view of 'human society', set out in Chapter 6, that grants the right – *in extremis* – for one (ethical) ruler to interfere across borders in the affairs of another.<sup>72</sup> He also interpellates Aquinas' desire to help the innocent – also a major element of Elstain's intervention discourse – while excluding the explicitly Christian elements of that discourse.<sup>73</sup>

Even if the UK and US had demonstrated that Saddam Hussein and his Iraqi regime *did* possess WMD, the UN Charter precludes military action unless Saddam deployed or threatened the use of those weapons against another state. Blair could not conform his, or the UK's, actions to the codes that govern international relations and recourse to war. Therefore, his creative use of subjectivation and self-subjectivation

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<sup>68</sup> This author first made a similar observation in an essay entitled: 'Fighting Talk', February 2005.

<sup>69</sup> Blair, Speech at the George Bush Senior Presidential Library, 7 April 2002.

<sup>70</sup> *Id.*

<sup>71</sup> Blair, Interview with British Forces Broadcasting Service, 23 March 2003.

<sup>72</sup> Grotius, *DJB*, II.XXV.VIII, p. 1161/2.

<sup>73</sup> Elstain, 2004, p. 185.

enabled Blair to build a moral argument and garner support for his position. Despite his inability to adhere to the letter of international law, Blair's arguments gained some support – both within parliament and across the UK – as he interpellated familiar discourses that his listeners/readers could engage with: protection of self and others; intervening to help the weak and vulnerable; opposing bullies; doing the right thing. Blair constructed his intervention discourse by drawing on different parts of the just war tradition, creatively, and selectively, redeploying aspects of moral code and ethical subjectivation as a means of transversing boundaries imposed by state sovereignty and international law.

This recovery of the creative, self-forming ethical aspect of Blair's intervention discourse in this thesis provides a challenge to those who would seek to understand – and learn lessons from – his justification of the 2003 invasion of Iraq. The terms of reference of the (currently ongoing) Iraq Inquiry were set out by Sir John Chilcot, stating: 'We will therefore be considering the UK's involvement in Iraq, including the way decisions were made and actions taken, to establish, as accurately as possible, what happened and to identify the lessons that can be learned.'<sup>74</sup> The inquiry is exploring a number of aspects of the military action in Iraq, including: issues of disputed legality; guidelines that govern the collection, analysis and use of secret intelligence; and House of Commons and government departmental procedures. As part of the inquiry Blair was questioned on these issues<sup>75</sup> which, to use the vocabulary of this thesis, focus on what can be termed the code-oriented aspect of his justification of the UK's involvement in the US-led invasion. As a result, the inquiry will only achieve, at best, a partial understanding of the way in which Blair sought to justify military intervention in Iraq.

To fully understand Blair's arguments, and in particular the moral dimension, both the code-oriented and the creative self-forming aspects of his discourse need to be considered as a whole in the terms set out above. For example, the notion of intervening in the street when an individual is under attack is part of a wider hegemonic moral discourse found in many, if not most, societies. To gain support for his pro-interventionist position Blair took this discourse and applied it to the collective protection of the people of Iraq who, he argued, had to be protected from being abused

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<sup>74</sup> The Iraq Inquiry Terms of Reference, located at <http://www.iraqinquiry.org.uk/>, accessed 16 July 2010.

<sup>75</sup> Blair gave evidence to the inquiry on 29 January 2010.

by Saddam Hussein. However, this principle has no substance in international law and, consequently, this and other aspects of Blair's intervention discourse has not been, and will not be, explored by the Iraq inquiry. Without a comprehensive understanding of Blair's arguments – in particular the self-forming ethical dimension that he relies upon – any lessons learned about his justification of the 2003 Iraq invasion can only ever be partial. Consequently, such lessons will be limited in their usefulness as a means of understanding – or constraining – the justification made by any future Prime Minister who might seek to similarly intervene militarily across state borders.

### **Foucault, subjectivity and just war**

By focusing on the emergence of the ethical subject in the just war tradition, this thesis has shown how a largely-ignored self-formative aspect of subjectivity has been used in recent intervention discourses. However, three potential limitations of the Foucauldian approach used will be acknowledged and discussed: first, the narrow focus on one aspect of subjectivity in the context of war – the ethical subject of the just war; second, the issue of emancipatory or transformational intent inherent in a Foucauldian approach; and third, the dangers of viewing code-oriented and ethics-oriented moralities as independent – rather than conjoined – moral domains in the constitution of ethical subjectivity.

The genealogy in the preceding chapters has sought out the emergence of the ethical subject of war in the just war tradition: a narrow moral domain characterised by a substantial Christian heritage in a European, or Western, setting. The Foucauldian subject can never be grasped in her, or his, entirety, and is glimpsed at the interstice of multiple shifting discourses and cultural contexts. Consequently, the subject of just intervention could be viewed from a number of perspectives that have not been considered in the space available. For example, Blair's subjectivity as a war leader could be explored from the perspective of the political or military strategist, or from his relationship to other leaders such as President Bush or President Chirac. The formation of the subjectivity of combatants in Iraq or Afghanistan could be analysed in the context of peer relationships or relationships between subordinate and superior ranks. Further, the formation of ethical subjectivity of combatants in the role of nation-building could be examined in their interaction with local supporters and opponents with regard to the construction of schools, medical treatment or other civic projects: as opposed to the

war-fighting role. Foucault faced this challenge of selectivity in exploring the behaviour of Greek men in an ethical domain concerned with sexual pleasure. Foucault concentrated on three aspects of sexual conduct: ‘regimen, household management, the “courting” of young men’.<sup>76</sup> He acknowledged, however: ‘This does not mean that the Greeks in general only concerned themselves with sexual pleasure only from these three points of view’.<sup>77</sup> Because of Foucault’s overarching concern with the exploration of subjectivity – rather than, say, a desire to understand everything about the entire spectrum of Greek sexual and other practices – the aspects that he fixed upon were sufficient to support the arguments and points he sought to make about the shifting focus of ethical problematizations over time. In keeping with Foucault, the approach of this thesis to the question of subjectivity and just war has managed to illustrate the changing trajectory of the emergence of the ethical subject over many centuries and the way in which historical discourses are deployed selectively in the present. Furthermore, it has furthered current understandings of the way in which self-formative aspects of subjectivity continue to inform debate surrounding just war and military intervention.

A further restriction of the exploration of subjectivity in this thesis stems from the number of texts and sources that have been examined and the narrow focus on just war. The texts that have been analysed have been either written by iconic figures in the just war tradition or published as official military manuals. The limited scope of the genealogy means that texts written by combatants in the course of war and intervention have not been explored. Already a considerable, and increasing, number of texts written in Afghanistan and Iraq are becoming available: these include books, articles and electronic ‘blogs’. As time passes, it is likely that further texts will be available to researchers: personal journals (in paper as well as electronic form), diaries, letters and television and radio interviews. All of these will provide the means by which researchers can explore further facets of the formation of subjectivity in the domain of war and intervention in the 1990s and 2000s.

A second potential limitation associated with a Foucauldian genealogical exploration of subjectivity such as that carried out in this thesis concerns the tension between *informing* or *transforming* the present. As discussed in Chapter 2, Der Derian’s advocacy, and understanding, of genealogy points to a potential shortcoming

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<sup>76</sup> Foucault, 1984a, p. 249.

<sup>77</sup> *Id.*

in using this Foucauldian approach in relation to just war. Der Derian describes genealogy as 'a theoretical intervention into the past that illuminates and seeks to transform present political practices'.<sup>78</sup> For Foucault, genealogy examines the past in order to understand the discourses and conditions that have made the present possible. He describes genealogy as:

a form of history that can account for the constitution of knowledges, discourses, domains of objects, and so on, without having to make reference to a subject that is either transcendental in relation to the field of events or runs its empty sameness throughout the course of history.<sup>79</sup>

There appears to be a disparity between Der Derian and Foucault over the extent of the transformational or emancipatory capacity provided by a genealogical re-reading of the past. Where Foucault's genealogy seeks understanding Der Derian wants to go one step further and change political practices. This disparity may simply be a matter of personal intent rather than methodological inconsistency. However, this thesis has sought to employ the more limited aspirations of a Foucauldian genealogy than the more politically transformative attitude of Der Derian. This author does not close off the possibility that future research may take the ideas contained in this thesis as a starting-point from which to go on to devise policy that shapes the way in which ethical subjectivity is constituted in future military or political settings. However, that would be a different project entirely.

The final comment on the Foucauldian approach used in this thesis provides a note of caution concerning the extent to which code-oriented and ethics-oriented moralities can, or should, be viewed as distinct in the constitution of ethical subjectivity. Foucault made this distinction in facilitating his genealogy of the ethical subject.<sup>80</sup> Code-oriented and ethics-oriented moralities are mutually constituting and do not operate independently upon the subject – a point reinforced in the course of this thesis. Foucault describes the relationship between the two types of morality: 'Between the two types there have been, at different times, juxtapositions, rivalries and conflicts, and compromises'.<sup>81</sup> The relationship between the two is always dynamic and changes in response to the discourses and settings within which subjectivity is being constituted at a particular time. Though this separation of modes of subjectivation may be an artificial

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<sup>78</sup> Der Derian, 2000, p. 783 (*My italics*).

<sup>79</sup> Foucault, 'Truth and Power', 2001, p. 115.

<sup>80</sup> Foucault, 1984a, p. 28ff.

<sup>81</sup> *Ibid.*, p. 30.

distinction, it does have the positive effect of enabling the analyst to apprehend subtle changes in emphasis over time. This thesis has shown how Foucault's method – even with its limitations – has added a further dimension to current understandings of the ethical formation and self-formation of the subject in the domain of war and military intervention.

### **Future research**

The necessarily limited scope of a project such as this means that whilst research questions are explored and arguments are presented in response, a number of questions also emerge that are left unanswered. This final section of the chapter will propose ways of building upon the findings of this thesis by identifying potential avenues for further research. Different trajectories of possible future research include: first, further exploration of Foucauldian subjectivity in the domain of war, looking beyond the Western-centric focus of the just war tradition to see how the ethical subject of war emerges in other ethical traditions and cultural settings; and second, moving away from Foucault and the individual as subject of war to consider other conceptions of subjectivity: such as the natural environment as subject of war.

This thesis has explored the emergence of the ethical subject in the context of a particular, British and Western understanding of military intervention. Opposing NATO forces in Afghanistan are numerous tribal, Taliban and Al Qaeda combatants whose subjectivity is constituted in the Western press as Other to the 'force for good' that claims to be trying to stabilise and democratise the country. Another avenue of future research could explore a number of questions: How do these enemy combatants form their own subjectivity? What cultural and religious discourses are drawn upon in making it possible for an Al Qaeda or Taliban fighter to emerge as ethical? Where do these discourses coincide with, or contrast with, Western discourses? Alternative perspectives on emerging subjectivity in the context of war or intervention to be explored include the constitution of the victim – the anonymous 'collateral damage' whose names shall not be heard. Further, what are the different ways and means by which subject emerges from conflicting perspectives on the discourses of liberation and domination?

Vattel wrote: 'The law of nations is the law of sovereigns: free and independent states are moral persons, whose rights and obligations we are to establish in this treatise'.<sup>82</sup> He assigns a form of moral subjectivity – not in the Foucauldian sense – to the sovereign state, on the grounds that it is both free and independent. This is the basis of the juridicalization of international relations and the just war tradition. In recent years there has been growing international concern for the natural environment and the damage it sustains in war – damage that can last for generations. One additional area of possible future exploration is the potential for just war arguments to be extended beyond the specific domains of the state and the individual to focus on the environment. For example, rather than continue the anthropocentric focus of the *in bello* criteria of proportionality and discrimination, all such considerations could be located within the broader context of the environment: within which individuals live and states exist. Such an approach, in turn, would present a number of challenges to existing assumptions in the communitarian/cosmopolitan debate in just war and International Relations.

Regardless of whether these – or other – avenues for future research are pursued, this thesis has demonstrated that there is there is considerable scope to increase understanding of the formation of subjectivity. Further, it is clear that the just war tradition has been continuously formed and re-formed in light of changing political, military, social and cultural challenges over many centuries. Given the contingency of just war arguments at any given point in history that has been demonstrated in this thesis with regard to the code-oriented and self-forming subject, and the propensity of just war theory to adapt to new challenges, it is likely that just war will continue as an influential ethical tradition in the domain of war for many years to come.

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<sup>82</sup> Vattel, 1797, Book I, Chapter I, Para.12, p. 85.

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