Ideology and the Jus Ad Bellum: Justice in the Initiation of War

JAMES T. JOHNSON

A
morally and politically adequate position on when it is allowable, in the
final analysis, for a nation to resort to war does not exist today in
either international law or authoritative religious teaching. In the first
part of this paper I wish to demonstrate this point. In the second part I shall
explore the nature of this problem and its historical and theoretical roots. In
the final section I shall propose a way to a position on the right of resort to war
more adequate than that which now obtains.

I

A contemporary French analyst, Henri Meyrowitz, has complained that in
twentieth-century international law the concept of justice has been lost from the
jus ad bellum.1 According to his charge, when two or more nations today stand
face-to-face in a dispute serious enough that all concerned are ready to fight over
it, international law does not admit as a relevant consideration the justice or in-
justice of the claims of the disputants. If they do at last end up in a military
contest to decide their quarrel, international law—expressed in the Kellogg-
Briand Pact and the United Nations Charter—focuses only on the question of
who first resorted to military force. That is, in international law as it exists
today only the order of use of force in disputes between nations is relevant in
deciding which party is in the right (or in traditional language, which side has
a jus ad bellum, a right to make war). First resort to force is always denied;
second use always is permitted. First use is always aggression, second use always
defense. This, argues Meyrowitz, amounts to denial of the claims of justice in
deciding whether a nation has a right to use military force against another.

JAMES T. JOHNSON (Ph.D., Princeton) is Assistant Professor of Religion at Douglass
College, Rutgers University. He is author of A Society Ordained by God (Abingdon,
1970), a study of English Puritan marriage doctrine, and several articles in learned journals.
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1 Henri Meyrowitz, Le Principe de l'égalité des belligérants devant le droit de la guerre

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The conclusions Meyrowitz reaches do not, of course, stand without challenge. It must certainly be admitted that some controversy exists as to whether nations today consider themselves bound by a proscription of (aggressive) first strike and acceptance of (defensive) second strike, no matter what the legal documents cited seem literally to say. Everyone knows that wars are still being fought in the world, and no effective sanctions seem to be employed against those who are by the first-strike criterion "aggressors." To cite two recent examples, why has Israel not been made to pay somehow for her preemptive strike against the Arab countries in the Six-Day War? Again, why has India not been called before the bar of international justice for invading Bangla Desh late in 1971? Julius Stone, an Australian analyst of international law, argues from such example as these that de facto the first strike/second strike dichotomy is not today recognized by nations as imposing binding criteria on their use of military force. But, interestingly enough, this writer does not explicitly deny that the letter of the Kellogg-Briand Pact and the Charter seek to impose these criteria; rather, he argues that these documents cannot seriously mean what they appear to say. If, Stone reasons, these two international agreements really are intended to outlaw first resort to force in all cases while accepting second use in defense against attack, it would be analogous to a domestic legal system including only laws against murder and trespass. This is palpably absurd; so international law on the resort to war cannot be understood simply in terms of the distinction between first resort to force and second, whatever the agreements in question seem literally to say.2

The debate in juristic circles, that is, revolves about whether international agreements now in force mean what they say or mean something else because what they say is somehow absurd. I would like to suggest a third option: that they mean what they say, and that what they say is inadequate both politically and morally. The reason on both fronts is, to use the phrase of the French commentator cited earlier, that justice has been left out of account in framing the jus ad bellum. To restore considerations of justice to deliberation about the right of resort to war in defense of national claims is, then, a problem which ought to command attention from theorists in international relations in the future.

But is this problem with the conception of the right of resort to war one which also appears in practical statecraft, and is it one, to speak to our most immediate concerns, which arises in contemporary religious thought on war as well? The answer to both these questions is yes, and to explore how the problem shows itself in the two cases will take us further in understanding just what it means to say there is no justice in the contemporary jus ad bellum.

In the first place, what about practical statecraft? The first-strike/second-strike dichotomy which first appears in the Kellogg-Briand Pact and is further

2 Julius Stone, Aggression and World Order (Berkeley and Los Angeles: University of California Press, 1958), p. 71. In this locus Stone is criticizing a Soviet draft definition of "aggression" which states essentially the narrow, literal reading of the contemporary jus ad bellum.
elaborated in the United Nations Charter forms the bedrock on which much American policy since World War II rests. One of the most thorough and persuasive statements of this American "just war doctrine" (in his phrase) is Robert Tucker's book, The Just War.\(^8\) Tucker cites as examples of such policy President Eisenhower's condemnation of the use of force by Great Britain, France and Israel against Egypt in the 1956 Suez Canal crisis and, further, the explicit repudiation of preventive nuclear war by two Secretaries of State in different Administrations, Dean Acheson under Truman and John Foster Dulles under Eisenhower. Reinhold Niebuhr, in The Structure of Nations and Empires, also comments critically upon the American posture during the Suez crisis and we might profitably dwell on this incident for a moment. Niebuhr notes that the President "paid tribute" to France and Britain for heeding the UN resolution calling on them to get out of Egypt "forthwith." Still, Niebuhr continues, Eisenhower "failed to record" that it was American and Russian power aligned against them which forced them out, not their concern for "world order." But "world order," as narrowly conceived by the President, was his motive for acting as he did. In Eisenhower's words,

If the United Nations once admits that international disputes can be settled by force then we will have destroyed the very foundation of the organization and our best hope of establishing a world order.\(^4\)

In Eisenhower's mind only the fact that Britain, France and Israel had initiated armed action against Egypt mattered. What claims they had to protect, whatever rights they might have needed to hold fast, what these nations did in resorting to force was wrong per se. Here is the condemnation of first use of force in a nutshell.

As for the second example mentioned above, repudiation of nuclear first strike, there are without doubt many reasons why nuclear war should not be initiated. But the per se evil of first use of force is not one of them. The moral problem which arises when nuclear deterrence is built on a policy of condemnation of the first strike and acceptance of second can be judged by the tone of the apologetic, much heard a decade ago, for massive nuclear retaliation: anything goes, once the first enemy missile is in the air; when wronged, hit back with everything available; the wrongful first use of force has set us free to fight total war in retaliation. This is the essence of what Tucker describes as the peculiarly American "just war doctrine."

That such policy is not simply a relic of the Eisenhower age ought to be apparent. Nuclear deterrence policy is still based, not only here but in the USSR as well, on the capacity to deliver a massive second strike. The SALT agreements make the policy mutual, if somewhat macabre, by ruling out all but a few defen-

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sive armaments. Again, when India rolled into Bangla Desh a voice from the White House was heard to complain that this first starting of tanks and firing of guns, this penetration of the Bengali frontier showed India to be the aggressor. The inconsistency between this complaint and general support of Israel for her presumptive strike in the Six-Day War is notable, for it shows that at least in some instances the United States can officially act as if contemporary international law on the right to resort to war is as unworkable as many theorists have argued. But the support of Israel is exceptional. The general United States policy, in Administration after Administration, has been that first use of force constitutes aggression. Finally, that it is not merely an American aberration generally to construe the *jus ad bellum* so narrowly is illustrated by French President de Gaulle's condemnation of what he called "the opening of hostilities by Israel" in the Six-Day War, a condemnation backed up by the subsequent French arms embargo toward Israel. Here the firing of the first shot became the criterion, as it was, at least ostensibly, for Eisenhower in 1956-57 and for the unnamed White House spokesman in 1971.

But where, someone may ask, is the *problem*? It is precisely in the tunnel vision imposed by the first-strike/second strike dichotomy. When first use of force is repudiated *per se* and second use embraced equally *per se*, no other factors are deemed relevant. Were the Arab States preparing for war against Israel? No matter; Israel struck first. Had Pakistani forces been firing across the border into India, and were Bengali refugees causing disorder, suffering and expense to India? No matter, India first crossed the frontier with her forces. When it is the use of force which is repugnant, a definite advantage is given to nations which are able to assert their will against others by means other than military attack—by means such as subversion, propaganda, economic arm-twisting, or support of insurgents. *This* is what is meant by the absence of justice in the contemporary *jus ad bellum*.

Once again, though, is this a problem in theological ethics as well? There is not time here to document fully how widespread among religionists who write on war is the same narrow—and unjust—construal of the *jus ad bellum* found in international law. I wish instead to demonstrate this point by reference to Catholic doctrine on war as it has developed since 1870. This is, after all, a source which might confidently be expected to hold tightly to *all* the criteria for just resort to war given in classic just war doctrine, and not simply reduce the criterion of just cause to a question of first use of force *vs.* second. I wish briefly to treat two "landmark" documents, then the positions of the last three popes.

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*They Didn't Want This Tragic War," *The New York Times*, December 12, 1971, sect. 4, p. 1. Similarly, George Bush, United States Ambassador to the United Nations, spoke there of India's "aggression." This term was later disowned by a White House spokesman as "not . . . authorized for official use." Still there remained no doubt as to the *unofficial* view of the Administration.

*Noted by Meyrowitz, p. 148, n. 10, who comments, "General de Gaulle chose . . . the grossest criterion for the illicit use of force: the first cannon shot."
Catholic preoccupation with the inherent evil of "modern war" begins not with the atomic age but with the rise of large standing armies composed of conscripts and armed with improved "conventional" weapons (such as rifled hand guns and artillery of great accuracy and far higher destructive potential than old-style muskets and cannon). This was, in the late nineteenth century, "modern" war. Our own Civil War and the Franco-Prussian war exemplify such conflict. Revulsion at the very nature of such war sets a tone which Catholic teaching maintains right up to the present. Even the Postulata on war presented to Vatican I in 1870 (the year of the Franco-Prussian War) sounds remarkably up-to-date, though it is a hundred years old:

The present condition of the world has assuredly become intolerable on account of huge standing and conscript armies. The nations groan under the burden of the expense of maintaining them. The spirit of irreligion and forgetfulness of law in international affairs open an altogether readier way for the beginning of illegal and unjust wars, or rather hideous massacres spreading far and wide.\(^7\)

The bishops who signed this document suggest that the very size of national military establishments, not excluding, of course, the propensity to make them "pay" for themselves through conquest, leads to wars which the Church cannot treat as just. Such "hideous massacres" as these forces make possible would be, in the opinion of these bishops, out of all proportion to the good which might be expected from them. If the presuppositions of this Postulata are correct, under modern conditions—meaning here only large conventional forces—no jus ad bellum can exist.

I wish next to draw attention to the conclusions of the Conventus of Fribourg, in 1931. In the intervening period both Hague arms-limitations conferences have been held, World War I has been fought, the League of Nations formed, and the Kellogg-Briand Pact signed. It is the consensus of the Fribourg theologians that the very existence of an international order, even though a most imperfect one, strictly limits the right of individual states to make war. Since the League of Nations exists, they reason,

... a war declared by a State on its own authority without previous recourse to the international institutions which exist cannot be a lawful social process. It would be repugnant to the dictates both of public law and of conscience. ... A fortiori, modern war, that is war as understood and waged nowadays, could not be a legitimate social process.\(^8\)

They continue by condemning such war as necessarily disproportionate.

The right of self-defense is not taken away by the Fribourg theologians, though they do distinguish between "lawful defense" and "necessity". This latter concept, which they condemn, encompasses war for the "so-called vital interests of


\(^8\) \textit{Ibid.}, p. 140.
the country” and “implies an unlimited expansion of sovereignty [and] all the enterprises of exaggerated nationalism, which lusts for conquest and glory.”9 In sum, the theologians of the Conventus of Fribourg reassert the uneasiness expressed in the 1870 Postulata with modern war as such, terming it inconceivable as a lawful social process, but they qualify the right of resort to war along the lines taken three years earlier in the Kellogg-Briand Pact: permitting self-defense while outlawing all offense.

The Postulata presented to Vatican I a century ago and the conclusions reached at Fribourg four decades ago are significant not because they state official Catholic doctrine but because between them they state the terms in which the last three Popes, Pius XII, John XXIII and Paul VI, express themselves on war.

John Courtney Murray, summarizing (in 1959) the teaching of Pius XII on war, reduced it to two general propositions: First, “all wars of aggression, whether just or unjust, fall under the ban of moral proscription,” and second, “a defensive war to repress injustice is morally admissible both in principle and in fact.”10 Here a war of self-defense is understood simply as the opposite of a “war of aggression.” A “war of aggression” is, in turn, equated by the Pope with any offensive use of force. Only self-defense is a moral possibility. This is, as Murray notes, a considerable modification of the classic just war doctrine.11 The flavor of Pius’ position can be judged by this excerpt from his 1956 Christmas message:

There is no further room for doubt about the purposes and the methods that lie behind tanks when they crash resoundingly across frontiers. . . . When all possible stages of negotiation and mediation are by-passed, and when the threat is made to use atomic arms to obtain concrete demands, whether these are justified or not, it becomes clear that, in present circumstances, there may come into existence in a nation a situation in which all hope of averting war becomes vain. In this situation a war of efficacious self-defense against unjust attacks, which is undertaken with hope of success, cannot be considered illicit.12

Though in this statement Pius severely limits even the right of self-defense by use of force, he rules out all first use of force, whether the ends sought are justified or not. This not only echoes the 1870 Postulata and the Fribourg Conventus; it makes into official Catholic teaching the dichotomy contained in the Kellogg-Briand Pact between first and second resort to force in international disputes. When tanks “crash resoundingly across frontiers,” that is wrong in itself.

Moving on to the next pope, the essence of the position taken by John XXIII on war is contained in a pregnant sentence from Pacem in Terris: “Thus, in this

9 Ibid.
11 Ibid., p. 9.
12 Ibid., p. 11.
age which boasts of its atomic power, it no longer makes sense to maintain that war is a fit instrument with which to repair the violation of justice.” Modern-war pacifists, Catholic and otherwise, found in this sentence support for their contention that all war today is immoral. But Paul Ramsey has convincingly argued for a different interpretation, one which closely corresponds to that of John’s predecessor Pius.\(^{18}\) Classic just war doctrine had named three just causes for war: to gain vindication against an offense, to retake something unjustly taken, and to repel injury, \(i.e.,\) resist an armed aggression. Ramsey notes that Murray, in the same article I have cited, shows that Pius rejected the first two of these reasons, leaving only self-defense against attack as a just cause for resorting to military force. The same thing is true of John, Ramsey argues. Careful attention to his words in the sentence in question shows that John (as Ramsey put it) “left open the possibility that war might well be an instrument for repelling an injustice that is being perpetrated but is not yet accomplished.”\(^{14}\) Reading John in this way, and not as a modern-war pacifist would read him, puts him in agreement not only with his predecessor on the papal throne but also with contemporary international law.

The significance of this agreement grows when Paul VI’s position is added to those of Pius and John. With Paul even more than with John there is present a strong repudiation of war for the present and future age. Addressing the UN General Assembly in 1965, Paul declared:

> Suffice it to recall that the blood of millions of men, that countless and unheard-of sufferings, that useless massacres and fearful ruins have sealed the pact uniting you, with a vow which must change the future history of the world: never again war, war never again!\(^{16}\)

In this Paul implicitly made his own a somewhat utopian statement on war promulgated by Vatican II: “It is our clear duty . . . to work for the time when all war can be completely outlawed by international consent.”\(^{16}\) But more directly he recalled his own earlier plea, given in Bombay some months before, for universal disarmament, with the money to be saved to be spent for improving the lot of the world’s poor. But at the United Nations Paul clarified that earlier plea by admitting that he meant to refer to offensive arms: “So long as man remains the weak, changeable and even wicked being that he often shows himself to be, defensive arms will, alas! be necessary.”\(^{17}\)

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\(^{14}\) Ibid., p. 204.


\(^{17}\) Never Again War!, pp. 38-39.
It is, of course, not at all remarkable that a Pope should exhort the nations to peace. But Paul went beyond the content of the traditional Christian message of reconciliation, proclaiming that the very existence of the UN makes war unnecessary, and making his own the words of John F. Kennedy: "Mankind must put an end to war, or war will put an end to mankind." Here the Christian call to reconciliation appears to have been overtaken by a secular utopian hope for a world without war.

Like his immediate predecessors on the papal throne, and like contemporary international law as well, Paul refuses to admit that any nation ever has the right to initiate war for whatever cause, while he nevertheless allows for self-defense. If the very existence of the United Nations proscribes the first, the wickedness of men necessitates the second. In Paul's doctrine the *jus ad bellum* requires the same thing as does contemporary international law: no first use of force, though second use is permitted. The problems with this form of *jus ad bellum* thus beset Christian as well as secular thought on war.

II

Granted that such problems do exist, and granted that they may fairly be summed up in Meyrowitz's phrase, the absence of justice from the *jus ad bellum*, we need to turn the problem of how to solve these problems or, in a phrase, restore justice to the *jus ad bellum*.

The first step in this enterprise is to understand how the *jus ad bellum* came to be so narrowly construed. The roots are not in the twentieth century or even the nineteenth century; they are in the response to classic just war doctrine as formulated in the late sixteenth and early seventeenth centuries by such theologians as Victoria, Molina, and Suarez and such secular theorists as Gentili and Grotius. The former spell out the early modern scholastic doctrine on war, unifying, clarifying, and even amplifying it beyond what was achieved in the Middle Ages; the latter transform this Neo-Scholastic doctrine into a secular discipline, international law, by basing it in an autonomous nature and the agreements among men, not in the will of a divine ruler of the universe. In spite of their difference in value base, these five theorists agree more than they differ, and in them the serious attempt to make war conformable to standards of justice reaches a zenith. But it is the *response* to this attempt which is of interest here, not the theories set forth by these men in themselves. I wish to note two kinds of response: immediate and long-term. Both have to do with the use of *ideology* of the *bellum jusum*.

First, as to immediate responses: Though the theorists wrote in good faith, aiming at *limiting* war, the sovereigns who read them often used their thought to provide an ideology for justifying resort to war for their own selfish ends. One case in point is the requirement of proper authority to wage war, which Gentili and Grotius transform into the requirement that war be a public contest,

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18 Ibid., p. 37.
solemnly declared. So long as this aided sovereigns to suppress civil wars and engage in wars of conquest against lesser lords; that is, until the absolutist state was firmly established, this requirement could be conveniently cited to prove the justice of this particular use of force, the injustice of that. With the absolutist state firmly established, however, other considerations induced sovereigns to forget about the requirement of a solemn declaration of war, and it fell into general disuse. To take another case in point: Victoria expressly forbids a state to make war to spread religion. Yet the Spanish colonizers of the New World evaded this point by looking to another one: the insistence, on Victoria's part, that peaceful missionaries and traders be given free passage wherever they went. If the Indians resisted the missionaries and the traders and soldiers who accompanied them, force could justly be used—not to spread religion, indeed, but to insure the right of free passage. A third case is provided by the idea of simultaneous ostensible justice. Beginning with Victoria the possibility is admitted that, while one side may actually be in the right in a given war, the other side may, because of invincible ignorance, believe itself to be in the right also. In such cases only God could know who really was fighting justly. As for the belligerents, they should be chastened by this realization that both sides might seem equally to be in the right, and so they should be especially scrupulous in observing the jus in bello, the rules of war. The doctrine of simultaneous ostensible justice thus was intended to affect the conduct of war, not the resort to war. But princes who had read Machiavelli as well as Victoria and Grotius applied this doctrine another way. Any resort to war could be justified, they argued, because invincible ignorance clouded men's minds and made all concerned in a dispute think they were right. This is the root of the doctrine of compétence de guerre, which says that every sovereign has the power to make war on his judgment that his nation's interests require it.

What these three cases show is that sovereigns were all too ready to use classic just war doctrine to provide an ideology to excuse their resorting to war, not, as was intended, as a set of moral limits on the use of war. Perhaps the most important phenomenon exhibiting this tendency was the hundred years of war for religion that followed on the Reformation, including the German civil war between Protestant and Catholic leagues, the French Wars of Religion, the first English Civil War, and the Thirty Years' War. In all these conflicts holy war advocates on either side sprayed streams of invective against their opponents as being in league with the devil—and therefore without a just cause for fighting—while they cast themselves as children of righteousness—and thus implicitly the possessors of true justice. Here, in a curious twist, the doctrine of invincible ignorance is used to prove the injustice of the other side (the ignorant, anti-Christ side). This tendency was even more pernicious than the one which ended in the idea of compétence de guerre, for holy war advocates turned just war doctrine—a body of thought aimed at limiting war—into a justification of their own side to do whatever it could to win, sure that justice was on its side. Just war doctrine was thus turned into an apologetic for unlimited ideological war.
There were, besides these reactions, of course other immediate reactions of a more positive sort—those which took the doctrine as it was intended, as an attempt to subject war to the rule of law and morality. But in the end this latter type of response was deeply conditioned by the kind of reaction we have been discussing. In the long run the excesses of those who had used just war doctrine as an ideology for their own purposes led theorists of international law to attempt to purge from war doctrine those elements which were most amenable to ideological misuse. The concept of just cause was foremost among these. In an effort to avoid ideological rationalizing of war, the concept of justice was removed from the *jus ad bellum*.

This metamorphosis did not, of course, happen overnight. But between Grotius, writing in the early seventeenth century, and the so-called "traditionalist" international lawyers, writing mostly in the last half of the nineteenth century, the change has taken place. There is in international law no longer a "just war doctrine," in the classic sense, by the time of the Franco-Prussian War of 1870.

I have claimed that, in large part, the attempt to avert possible ideological use of just war doctrine was the cause for the demise of the classic doctrine. But just war doctrine had always, throughout its development, had this ideological component which modern theorists have sought to expunge. Therefore we need to back off from the immediate responses of sovereigns who used just war doctrine to provide justification for serving their own ends. We need to ask the far broader question of the *nature* of the ideological component of the just war doctrine, and particularly of the *jus ad bellum*, before it became a sticking point. This in turn raises the question of the nature of international law and the ways in which just war doctrine has been and is now binding. Finally, this will enable us to address the fundamental problem raised earlier in this paper: how can the contemporary *jus ad bellum* be reformed so as to include the elements of justice presently lacking in it?

In the first place, classic just war doctrine is inherently ideological. I have been using this term *ideology* in its negative sense only thus far: as applying to beliefs or behavior of a partisan nature and with which we do not agree. In this sense we who are not John Birchers or Communists speak, critically, of John Birch Society ideology or Communist ideology. But there is also a neutral sense to the term *ideology*. This sense is the one intended when we use this term to denote belief structures which are discretely based and different from each other. This usage might also be called the "relativistic" sense of the term *ideology*. It is in this sense in which I wish now to speak of just war doctrine as inherently ideological.

We must not forget that classic just war doctrine developed within the ideological limits set by Christendom. Two main factors defined these limits. The first was theological: Christian doctrine as it took shape in the West. The second was geographical: the boundaries of Europe. Within these two sets of limits Christendom came into being—a community diverse in languages, physi-
cal types, local customs, and many other respects, but united in belief, in moral code, in scholarship, and in certain larger customs which affected the well-being of Christendom as a whole—among them the mode of waging war. We may speak of an ideological unity within this community; indeed, the ideological unity made community possible. When just war doctrine developed within this community it incorporated the values resident in the common ideology—not Christian ideology but Christendom ideology. Because it developed out of the community as a whole and not merely out of Christian theology or canon law this war doctrine had a relevance and an adequacy, both moral and political, it could not have had otherwise. There is considerable evidence that so long as Christendom existed the then-developing just war doctrine did effectively limit conflicts within the community. Here the ideological nature of just war doctrine worked in its favor. This doctrine then expressed “community law”: the law of coordination.

Sociologists of law define three basic types of law, of which this is one. Its most salient characteristic is given by the nature of community itself: a grouping of people sharing a common end who all are internally driven to seek that end and help one another to do so. The family, especially in its classic Greek and Roman form, is often cited as a nearly pure type of community; the medieval monastery is another example. In community the co-ordination of effort is the primary function of the law; since everyone agrees as to the ends to be sought, law co-ordinates their activities so as to maximize attainment of those ends.

At the opposite extreme from community law, the law of co-ordination, stands the law of power, or “society law.” The outstanding characteristic of this kind of law is the use of power—usually military force—by an elite to subjugate the other members of the society and ensure that they will co-operate in producing the ends the elite wish for themselves. Here “might makes right” is a truisrn. A slave-holding aristocracy is one example of this; Hitler’s “New Order” is another.

Between these two extremes set by the law of co-ordination and the law of power stands a third kind of law, that of hybrid groups: the law of reciprocity. Consider the case of a society in which there exists two groups (two communities) of equal strength. Neither has the power to impose its will upon the other. Within each group community law has sway, but in the society as a whole the law of reciprocity, not either of the two extreme forms, must obtain. A state of affairs in which equilibrium of power makes it possible for power to be ignored is thus the most outstanding characteristic of hybrid groups (or to use the usual American term, a “pluralistic society”). Contemporary American society is an example of hybrid grouping, and much of American law is recip-

\footnote{For fuller discussion of this perspective see Georg Schwarzenberger, \textit{The Frontiers of International Law} (London: Stevens and Sons Ltd., 1962), chap. I, “The Three Types of Law.”}
rocal in nature, with everyone content so long as he believes he has received at least as much as he has given.

What is the place of ideology vis-à-vis each of these types of human grouping, with their corresponding kinds of law? In communities the same ideology is shared by all; this is what is meant by all wanting the same ends. In "societies" the ideology of the elite is imposed upon those subjugated. Thus Hitler imposed Nazism upon the conquered peoples of Europe, whatever their own preferences might have been. In hybrid groups there co-exist simultaneously a plurality of ideologies, with one for each community participating in the grouping. Here the imposition of ideology is frustrated by a balance of power, and community ideology tends, in the group as a whole, to take a back seat to those needs and desires amenable to satisfaction by bartering. Of course, even in hybrid groups there are some ends held in common (hence the grouping); these tend to produce a group ideology in which elements of particular community ideologies may find expression.

Returning now to the question of just war doctrine as a manifestation of community law in Christendom, the peculiarly ideological component of this doctrine is its notion of justice, conditioned both by theological and philosophical heritage and by common custom. The destruction of classic just war doctrine—the removal of the component of justice—moves through two stages, which transform the community of Christendom into the hybrid grouping which is international society today.

The first stage was the destruction of the theological, and to a lesser extent, the philosophical unity which characterized Christendom. The immediate results of this have already been discussed: the creation of two "communities," Catholic and Protestant, with conflicting beliefs which were taken to be mutually exclusive. The concept of just cause was made over into that of holy cause (for, as one Puritan preacher put it, Whose cause is juster than God's?20), and just war doctrine became an ideological weapon to be used for partisan purposes. Here the ideological character of the doctrine shifts when the unified community splits into two mutually antipathetic communities—each with, however, the same heritage in Christendom. With this split Europe ceased to be a community and became a hybrid group, and law of co-ordination had to give way to law of reciprocity. Secular naturalist international lawyers effected this change, and they did so by eliminating the concept of just cause which had so easily been made to serve narrow, partisan ends. The jus ad bellum conceived as compétence de guerre was one result; balance-of-power politics (reciprocity in action) was another.

The second stage in the destruction of classic just war doctrine is reached when the geographical boundaries of Christendom ceased to contain all relevant international intercourse. I wish here to skip over a stage in which the law of power obtained in European relations with her colonies and consider what has

happened with the end of the colonial era (the beginning of this end comes when Japan begins to emerge as a world power). This is the stage brought mainly by the twentieth century. The standard of "civilization," which had replaced "justice" in traditionalist international law as the main limiting principle on war, ceased to obtain when "uncivilized" nations were admitted to full status in the world. But because many of the new nations were, in regard to power, hopelessly inferior to the "great powers" of Europe, the United States, Japan and China, the doctrine of compétence de guerre no longer sufficed as an adequate statement of reciprocal law on war. This doctrine had, after all, made colonialism possible by permitting strong states to subjugate weak ones in the name of over-riding national interest. The twentieth century has thus seen a cumulative attempt to restate the law of reciprocity on the right of resort to war, moving through the League of Nations Covenant, the Kellogg-Briand Pact, and the United Nations Charter, with mutual nonaggression treaties and mutual defense alliances springing up in train. The outlawing of first use of force and allowing of second use per se has been, as I have already noted, the result.

A certain irony exists with regard to Christian doctrine on war during this period of dissolution of classic just war doctrine. There is no discrete and recognizable Protestant war doctrine, except among the pacifist sects, after the Reformation. In a masterpiece of syncretism, the state — and through the state, international law — is allowed to speak for Protestants. On the other hand, by holding themselves aloof from the modern secular state Roman Catholicism maintained a just war doctrine fundamentally the same as that of the sixteenth-century Neo-Scholastics. But in a hybrid-group world this doctrine was but one ideology's expression on how to conduct war and was not accepted as binding by members of other groups. When, in the late nineteenth and early twentieth centuries, the Roman Church began to come outside its cloisters to meet the world, it began to abandon its classic war doctrine and to speak in the language of international law — which, no doubt, it saw as the "community law" of the world. The language of recent popes makes this last abundantly clear. But this world is not a community, and it is the law of reciprocity which holds foremost place in international law, not the law of co-ordination. Thus the Church made a fundamental mistake, and her war doctrine was weakened to conform to contemporary international law.

III

But are these the only possible alternatives: a community law which those professing other ideologies regard as irrelevant for them, or a law of reciprocity which is so narrowly construed that it has an altogether arbitrary concept of right and is both morally and politically inadequate? I would like to suggest a third alternative: a jus ad bellum of a reciprocal nature which, instead of being reductionist, positively seeks to incorporate elements of diverse community laws which are in agreement. That is, you will recall, one of the functions of reciprocal
law in a hybrid grouping: to foster the achievement of ends on the desirability of which the diverse communities in the grouping agree. A *jus ad bellum* would result which would contain a positive concept of justice and which would be insured by the same principle as that which underlies barter, the most primitive form of reciprocity: all parties get at least as much value as they give.

Now, granted that such a *jus ad bellum* is a formal possibility, is it actually possible also? I will answer this in two ways.

First, the contemporary *jus in bello*, so far as it functions to limit the conduct of war, is a prime example of reciprocal international law in action. This reciprocity has both positive and negative effects, however: If use of nuclear weapons or poison gases or germ warfare is avoided because the other side would retaliate in kind, so also certain kinds of acts by one's enemy are taken as giving permission to strike back in the same way. This latter is the oft-invoked criterion of "military necessity." But so far as the law works positively to limit war, it suggests that a *jus ad bellum* could also be framed incorporating a positive, that is mutually beneficial and not mutually detrimental, reciprocity.

Second, some work has already been done in this direction. I could here develop examples of attempts to link together the nations of the world with ties of trade and mutual dependence. These are certainly one way of creating a *de facto* recognition of common interest even among diverse communities of men. But I wish to point more emphatically to a *theoretical* attempt in this direction, because it strikes closer to the heart of the matter, in its effort to find elements which transcend the ideological schisms that beset international relations. I am speaking of Reinhold Niebuhr's *The Structure of Nations and Empires*, subtitled *A Study of the Recurring Patterns and Problems of the Political Order in Relation to the Unique Problems of the Nuclear Age*. Here Niebuhr investigated, both in history and in the contemporary world, the anatomy of empire, the nature of political authority and dominion, the expression of community in different political forms, and the place of universalism and utopianism in relation to world order. In the end he sought to transcend the dichotomies he had noted in the world by rising to a discussion of the possibilities of human freedom. Niebuhr's intent in *The Structure of Nations and Empires* is one extremely congenial to the intent I have tried to express in this paper. But still, Niebuhr overlooked the factor of reciprocity and ultimately left it behind entirely, ending up caught on a dichotomy typical of his mode of thought: The dichotomy between the "creative" and the "destructive" possibilities of freedom. This conclusion was pressed in his earlier distinction between "community" and "dominion," as he defines them. These terms, in Niebuhr's usage, correspond broadly to the distinction made in sociology of law between community law, the law of co-ordination, and society law, the law of power. Such a distinction also corresponds closely to the assumptions of the Cold War period, out of which this book of Niebuhr's comes. By these assumptions the Western and Eastern blocs could have nothing in common except perpetual mutual hostility; so far as each side embodied "community," it nevertheless excluded the other side thereby.
Thus, the true ideal of community to which Niebuhr points, embodied in the City of God, is never reached by either of the two great Cold War powers or their associated blocs; rather each defines its own "community" by an ideology which rules out intercourse with the other bloc. With no transcendent community encompassing both blocs and uniting them, Niebuhr—along with Cold War theorists generally—is driven to questions of what he calls "dominion," which are fundamentally those of power politics.

But Niebuhr does not treat the intermediate reality which describes most human interrelations: the fact of hybrid grouping, with its corresponding form of law, the law of reciprocity. The very mindset of the Cold War era, in which Niebuhr like other brilliant figures participated, closes out the possibility of recognizing this third state. But because he does not recognize the possibility of the existence of hybrid groupings in international relations, Niebuhr's conclusions in The Structure of Nations and Empires remain in the form of opposites—"creative" vs. "destructive" freedom—instead of pointing a way to synthesizing the opposites into some sort of greater unity. The same can be said of the state in which he leaves the opposition between United States and USSR in this book; having disposed of "the myth of world government" years before, he does not offer here any order which would overreach and diminish the divisions perpetuated by the Cold War mindset. Indeed, the practical politics associated with Christian realism have no reason in theory to go beyond the interests and goals of the individual state and every reason to disregard those of other states toward which one's own nation is hostile, even when a community of interests and goals obtains. The outcome of the argument in The Structure of Nations and Empires thus is rooted deeply in Niebuhr's theory of statecraft. Since Niebuhr avoids treatment of hybrid grouping as a possibility in international relations, his conclusion cannot be used to further a search for a reciprocity of interaction among nations based on common—or at least non-contradictory—national interests and policy goals. This does not, however, remove the value of this book. Rather it argues that some attempt needs to be made to retrace Niebuhr's steps with the nature of reciprocal interaction in mind and with the goal of reciprocity among nations a realistic end short of, though productive of, greater community.

This suggests one line of attack on the problem of restoring justice to the jus ad bellum. Another method, not out of harmony with this one, is to investigate the nature of the justice contained in the classic Christian just war doctrine and attempt to rephrase it in such a way as to state a universal morality so that differing national communities will recognize it as expressing their own respective interests and ends. Something of this sort I take to be Paul Ramsey's method in his thought on war. One drawback of this procedure is obvious: the possibility of appearing not to take sufficiently into account contemporary national values but seeming to remain bound to a tradition alien to most of the people of the world. There are two reasons why such a possibility is not a necessary obstacle to a procedure like Ramsey's. First, so far as the tradition
embodies real justice, it ought to be expressible in ways agreeable to all. Second, contemporary international law is importantly rooted in just war tradition. Unless international law is itself alien to the non-western peoples of the world, any search into the meaning of the justice contained in classic Christian just war doctrine can only further the cause of a just international legal order. But there is good reason also for combining this line of attack with that suggested by Niebuhr's argument. If we were to limit ourselves to the search for reciprocity only, there is every possibility that the threshold of justice reached would not be particularly high. Attention to the level of justice expected in classic just war theory would imply that efforts be continuously made to raise that threshold to the maximum possible through reciprocal interaction, while it would not imply denial that what is present at the lower threshold is in fact justice, however limited. To take an example from the *jus in bello*, the non-use of poison gases in war is grounded in the idea of reciprocity. It does not state all that must be said about the just conduct of war. But what it *does* say is, so far as it goes, just.

What sort of *jus ad bellum* would result from the application of these two harmonious methodologies to which I have pointed? The most fundamental thing to say is that such a *jus ad bellum* could not be limited to the first strike/second strike dichotomy, prohibiting the former and permitting the latter. A doctrine based in reciprocity must, on the contrary, give more weight to the question of vital national interest. Such interests, as perceived by sovereigns, have universally been taken to give cause for war. But to avoid return to the days of compétence de guerre a reconstructed doctrine must state these interests in ways which link each individual nation to all the others in the world. There may indeed be occasions when it is proper for two nations to go to war. But these ought not to depend on national interest narrowly construed. The recognition of reciprocity of interests requires that one's own concerns be placed in the balance of those of other affected parties. To go further, if the per se use of force ceases to be what is outlawed, the way is opened for legitimate use of force to support interests less than vital. A reconstructed *jus ad bellum* must limit and channel such uses. Though this might seem retrogression to some, lacking as it does a clear moral commitment to the outlawry of force, it represents in fact an advance from the present status of the *jus ad bellum*, which is so out of touch with both political reality and moral imperative as to be both no brake on uses of force short of declared "war" and no guarantee of justice in the international order. Such a reconstruction would place the focus where it should be: not on the use of force, which is but a means, but rather on policy decisions themselves, which express ends. The character of these latter is the basic issue the *jus ad bellum* ought to address, with questions of forceful means—whether to use force, how much force to use, where, and how long and at what cost—vital but secondary.

These last paragraphs have been necessarily programmatic and suggestive rather than comprehensive and conclusive. No single person could author such a revised *jus ad bellum* as I am here proposing; it must be the product of negotia-
tion and interaction. My main concern here has not been to short-circuit that process but instead to perform two tasks necessary to begin the process: to show the shortcomings of the existing doctrine of *jus ad bellum* in international law and authoritative religious teaching, and to indicate some steps pointing in a direction which, if followed carefully, would lead to a reconstructed concept of the right to use force in international disputes, a concept at once juster and politically more adequate.\textsuperscript{21}

\textsuperscript{21} For a fuller critique of the contemporary status of the *jus ad bellum* see my article, “Toward Reconstructing the *Jus Ad Bellum*,” in the forthcoming *Monist* number on the subject, “The Philosophy of War” (C57/4 [Oct., 1973]).