

UNIVERSITÀ DEGLI STUDI DI MILANO
NASP Graduate School - Ph.D. POLS
[*International Studies, XXXIV cohort*]
Department of Political Science

TESI DI DOTTORATO DI RICERCA

***The Concept of Regular Enemy Amidst the Contemporary
Project of Individualized War***

Continuities, Transformations, and Contradictions

SPS/04

Candidato: Martino Tognocchi

Relatore: Prof. Alessandro Colombo

Coordinatore del dottorato: Prof. Matteo Jessoula

A.A.
(ANNO ACCADEMICO 2021/2022)

The Concept of Regular Enemy Amidst the Contemporary Project of *Individualized War*: Continuities, Transformations, and Contradictions

Martino Tognocchi¹

Abstract

Across the last three decades war has shown signs of turning more and more into a form of uneven struggle; a struggle between powerful states and small groups or single individuals. This research employs the concept of enemy to critically look at the increasing *individualization of war*. Throughout the thesis it is questioned what does remain of the modern concept of regular enemy in the post-Cold War era, when the way of war is characterized by an apparently incontrovertible tendency to focus on single human subjects. To do so, the thesis in a first part traces in a genealogical way how the concept of regular enemy is crafted by some key modern political thinkers, whose thought is analyzed in three different streams: the ethical, the legal, and the strategic. In the second part, while keeping as the analytical frame the distinction between the three streams, the thesis analyzes three contemporary modes of conceptualizing the enemy peculiar to *individualized war*: an ethical, a legal, and a strategic mode. Such modes of argumentation are crafted by experts and authoritative speakers as philosophers, lawyers, policymakers, and military strategists committed to rethink the concept of regular enemy in war under the light of the project of *individualization of war*. The thesis contends that the modern concept of regular enemy does not disappear altogether in the aftermath of the Cold War and after the terrorist attacks of 9/11, but it is substantially redefined by a tendency to projecting hostility towards the single individual.

<i>The concept of regular enemy amidst the contemporary project of individualized war: continuities, transformations, and contradictions</i>	0
Abstract.....	2
Introduction	6
<i>FIRST PART</i>	12
<i>Chapter 1 – Mapping the problems. The transformation of war and the concept of enemy</i>	13

¹ Martino Tognocchi, Ph.D. Candidate, Department of International, Legal, Historical and Political Studies, University of Milan, Italy. E-mail: martino.tognocchi@unimi.it <https://orcid.org/0000-0003-2112-4670>

1. The re-emergence of the individualization of war and the concept of regular enemy: a map of the problems	14
2. Enmity, war, and political order: the spatio-temporal character of the concept of enemy	16
2.1 <i>The concept of enemy from the inside perspective: anthropology, theology, and political order</i>	18
2.2 <i>The concept of enemy from the outside perspective: international relations as a pluriverse</i>	19
2.3 <i>The regular enemy in modern European political thought: between rule and exception</i>	20
2.4 <i>Thinking the enemy after the end of the Cold War: regularity, disappearance, ubiquity</i>	22
3. The plight of the enemy in contemporary literature on war	23
3.1 <i>Irregular enemies and the literature on the transformation of war</i>	24
4. Framing the research question: the regular enemy in contemporary war	27
5. Some nods on epistemological assumptions and methodological criteria	29
5.1 <i>History, theory, and war</i>	29
5.2 <i>Concepts, contexts, and powers</i>	32
Chapter 2 - The crafting of the modern concept of regular enemy in the ethico-political, juridical, and strategic reflections on war	36
1. Introduction: chapter's aims	37
2. The concept of regular enemy in the ethico-political reflection on war: Hugo Grotius and Thomas Hobbes	39
2.1 <i>Situating Grotius and Hobbes in the context of early modern theories of war</i>	42
2.1.1 Late Middle Ages theories on war and the concept of regular enemy.....	43
2.1.2 Second Scholastics on war and on the concept of regular enemy	49
2.1.4 The contribution of humanist jurists on war and on the concept of enemy	54
2.2 <i>Thinkers of the transition: Grotius and Hobbes on the concept of regular enemy</i>	60
2.2.1 What connections and what differences between Grotius and Hobbes.....	62
2.3 <i>Grotius normative system: natural law, history, and the concept of war</i>	65
2.4.1 Grotius milieu. The seventeenth century outset: trade, violence, ideologies	66
2.4.2 Intellectual standing and polemical aims: between Humanism and Roman natural law.....	68
2.4.4 Ius and force: Grotius law of nations and concept of war	71
2.5 <i>Grotius concept of regular enemy</i>	73
2.5.1 The Individual as a minimal condition	74
2.5.2 State-Individual analogy: the invention of the persona publica and its fictional space.....	75
2.5.3 Space, time, and the concept of enemy	77
2.6 <i>Hobbes geometrical theory of politics and the concept of war</i>	79
2.6.1 Hobbes context: internecine violence and political theory	80
2.6.2 The place of war in Hobbes theory of the Commonwealth.....	81
2.7 <i>Hobbes concept of regular enemy</i>	83
2.7.1 Hobbes regular enemy: the creation of a fictional defensive space	84
3. The concept of regular enemy in the juridical reflection on war: Emer de Vattel	86
3.1 <i>Vattel's international legal reflection and the place of war</i>	88
3.1.1 Vattel in context: the École Romande du droit naturel, metaphysics, and the use of history	89
3.1.2 The law of nations and the paradigm of the guerre en forme.....	90
3.2 <i>The fictional space of formal war and the concept of regular enemy</i>	92
3.2.1 Unjust enemies and Monsters: Vattel's opaque exceptions to the concept of regular enemy.....	94
3.2.2 Vattel in the Hague: the regular enemy, civilization, and the laws of war.....	96
4. The concept of regular enemy in the strategic thought on war: Carl von Clausewitz	99
4.1 <i>Clausewitz philosophy of war: the enemy between enlightenment and revolution</i>	100
4.1.1 The concept of regular enemy and the clockwork war	100
4.1.2 The concept of regular enemy and the possibility of the extremes	102
5. Conclusion. A backlight glimpse of the concept of regular enemy	103
Interlude. The end of the Cold War, international relations, and political concepts	104

1. Introduction: a leap into the present. The concept of regular enemy in contemporary thought on war.....	105
1.1 Continuity and transformation: international relations concepts and the end of the Cold War	105
1.2 The concept of war in the post-Cold War era	106
2. Individualization of war in the debate on the transformation of war.....	108
2.1 Individualization of war and international ethics	109
2.2 Individualization of war and legal arguments	112
2.3 Individualization of war and the power of technique	114
3. The concept of regular enemy and the individualization of war	115
SECOND PART.....	117
Chapter 3 – The ethico-political paradigm: Revisionist positions in just war theory and the “unjust combatant”	118
1. Introduction.....	118
2. The twentieth century revival of just war tradition and its repercussions	119
2.1 Early twentieth century appeal to just war thinkers against power politics.....	121
2.2 The experience of abyss and the appeal to conscience: just war theory after the Second World War	125
2.2.1 Walzer and the milestone ideas of Just and Unjust Wars: moral criteria for thinking war	127
3. Just war again: the arguments of revisionist thinkers in the twenty-first century.....	132
3.1 Revisionists’ epistemology and definition of war.....	132
3.1.1 The concept of “unjust combatant”: end of symmetry and individualization of war.....	134
3.2 The concept of regular enemy in the path towards the individualization of war	135
3.2.1 “Just and unjust combatant” and the remaining frames of regularity	136
3.2.2 “Just and unjust combatant” and the fading of regular enemy	136
4. Conclusion. The political implications of revisionists’ concept of “unjust combatant”	137
Chapter 4 – The legal paradigm: the emergence of the “unlawful enemy combatant”	139
1. Introduction	139
2. The genesis of the “unlawful enemy combatant” category: a brief historical appraisal.....	140
2.1 In the interstices of the legal distinction between “combatants” and “non-combatants”	142
2.2 International criminal law: juridification of the enemy in the second half of the twentieth century.....	144
2.3 The “enemy criminal law” theory: domestic criminal law facing international enemies.....	146
2.4 The deployment of the “unlawful enemy combatant” category in the wake of the global war on terror..	146
2.4.1 “Unlawful combatant” in the United States and Israeli Supreme Courts case law	148
3. “Unlawful enemy combatant”, the concept of regular enemy, and individualization of war ...	150
3.1 What remains of the regular enemy concept	151
3.2 What falls of the concept of regular enemy	151
4. Conclusion. A legal artifact for the individualization of war.....	152
Chapter 5 - The strategic paradigm in the contemporary reflection on war: the regular enemy as “target”	154
1. Introduction	154
2. Verticality: atomization of the enemy’s body politic and the invention of aerial target	155
2.1 Bombing from above: the implications of attacking the enemy from a vertical perspective	156
2.1.1 Airpower and the colonial enemy: verticality in “air policing control”	156
2.1.2 Airpower and the ideological enemy: visions of universal peace in European air bombing.....	158
2.2 Theorists of airpower and the changing face of enmity from above: the invention of the target	160
2.2.1 Douhet, Trenchard, and Mitchell: strategic bombing in the first Western air power doctrines	160
2.3 The enemy as a collection of strategic targets	163
3. Panoptic visibility: the re-discovery of airpower after the end of the Cold War	164

3.1 <i>Air power and the enemy as a system: targeting the leadership</i>	166
4. Autonomy: from <i>Shock and Awe</i> to drone warfare. Western airpower doctrine in the twenty-first century	167
4.1 <i>The individual as “target”: the regular enemy in drone warfare</i>	169
4.2 <i>Projection of power, depth of action and reduction of costs and risks: towards the individualization of war</i>	169
5. Conclusion	170
Chapter 6 - Concluding remarks	172
Bibliography	174

Introduction

This thesis is about the metamorphosis of the meanings of the enemy concept in contemporary international relations. The concept of enemy is often considered as a purely rhetorical or ideological tool and it is associated with morally disqualifying, paranoid and almost pathological attitudes.² Yet, the historical recursiveness of the concept of enemy in political discourses and especially in international politics language is something hard to disregard.³ The concept of enemy indeed tells a lot about those who employ it, about those against whom it is employed, and about the context in which it is employed.

As in any post war era, even after the end of Cold War, the definition of the enemy has become a pressing issue for the victors, committed to imagine and to conceptualize a new international order. Several heterogeneous definitions of the enemy have emerged in the years following the end of the Cold War and with more intensity and frenzy after the terrorist attacks of September 11. Philosophers, legal experts, strategists, policymakers, state officials, and practitioners have all conceptualized the figure of the enemy with forms of specialistic, technical language. “Terrorist”, “unlawful combatant”, “adversary target”, “unjust combatant”, are just few among the many definitions of the enemy appeared in the last three decades in Western public discourses.

However, such definitions have not been strong enough to supplant and detach from the modern idea of regular enemy, intended as a collective entity endowed with political authority and legal personality.⁴ In other words, such definitions appeared after the Cold War have not conceptualized a benchmark idea of the enemy as it did the modern concept of regular enemy; a definition valid for all the actors of international politics, “which made possible the metaphor of war as a duel between *magni homines*.”⁵

Rather, such new definitions have tended to emphasize the individual nature of enmity, though still keeping in the backdrop the intellectual *nucleus* of the modern concept of regular enemy. They have tended to *individualize* the enemy and justify, legalize, and make practically possible *individualized* forms of war.⁶ This has led to think the enemy as a single individual, as an independent

² Rodney S Barker, *Making Enemies* (Basingstoke [England]; New York: Palgrave Macmillan, 2007), 3, <http://site.ebrary.com/id/10487616>.

³ Jean-Claude Monod, *Penser l'ennemi, affronter l'exception* (Paris: La Découverte, 2016), 12.

⁴ The International Legal Dictionary defines the enemy as the whole body of a nation at war with another. It also signifies a citizen or subject of such a nation, as when we say an alien enemy. In a still more extended sense, the word includes any of the subjects or citizens of a state in amity with the United States, who, have commenced, or have made preparations for commencing hostilities against the United States; and also the citizens or subjects of a state in amity with the United States, who are in the service of a state at war with the.” See also Andrew Clapham, *War*, First edition, Clarendon Law Series (Oxford: Oxford University Press, 2021), 199; 352; Clive Parry, “The Trading With The Enemy Act and The Definition of an Enemy,” *The Modern Law Review* 4, no. 3 (January 1940): 161–82, <https://doi.org/10.1111/j.1468-2230.1940.tb00769.x>.

⁵ Wouter G. Werner, “From Justus Hostis to Rogue State the Concept of the Enemy in International Legal Thinking,” *International Journal for the Semiotics of Law Revue Internationale de Sémiotique Juridique* 17, no. 2 (2004): 155–68, <https://doi.org/10.1023/B:SELA.0000033619.30374.15>.

⁶ The idea of *individualization of war*, in its essence, spells out that some forms of contemporary war challenge the modern war archetype intended as a military confrontation between collective entities. An archetype accurately portrayed, for example, by Rousseau in a famous passage of the *Social Contract*, where war is described as “not a relation between man and man, but a relation between State and State, in which individuals are enemies only by accident, not as men, nor even as citizens.” Jean-Jacques Rousseau, Susan Dunn, and Gita May, *The Social Contract: And, The First and Second Discourses*, Rethinking the Western Tradition (New Haven: Yale University Press, 2002), 160. Stanley Hoffmann, “Rousseau on War and Peace,” *American Political Science Review* 57, no. 2 (June 1963): 317–33, <https://doi.org/10.2307/1952825>.

entity against whom can be undertaken war without any form of political mediation as the state, the nation, the class, or the tribe.⁷ The thesis questions what does remain of the modern concept of regular enemy after the end of the Cold War and what do the transformations, continuities, and contradictions present in the post-Cold War concept(s) of enemy tell us about war, its actors, its justifications, its stakes, and its character.

As a matter of fact, the thesis is also, and probably above all, an occasion to dig from a distinctive analytical angle, into the transformations that have invested war across the last three decades. In fact, the concept of enemy is a mirror, a catalyzer of the manifold vectors operating in war. The ways of categorizing the enemy illuminate the way war is morally and politically legitimized, legally justified, and strategically conducted.⁸ War is determined, beyond the historical-concrete circumstances of a specific epoch in which it is fought (as weapons, distribution of power, economic factors, demographics, etc.), by the intellectual categories through which it is explained and comprehended. Intellectual categories qualify the *spatio*-temporal coordinates within which different subjects are enabled to or prevented from using violence. In this respect, the concept of enemy and the possibility of representing it shape the form of war with which the enemy is opposed. It can be claimed that, historically, on the variation of the forms of war have depended the variations in the representation of the enemy and vice-versa.⁹ The two concepts stand in a relation of mutual constitution: so much the form of war depends on the representation of the enemy, as much as the representation of the enemy is a by-product of the kind of war it is projected against the enemy. The concept of enemy thus is a crystal through which looking in backlight at the characters of war.

With the aim of looking at the transformation of war through the lens of the concept of enemy, this thesis employs the modern concept of regular enemy as its analytical benchmark and as its startingpoint. This should not be taken as a simplistic mythology of a long and complex time frame that often referred to as “modernity.” On the contrary, assuming this starting point allows to look at the historical exception that the modern interstate system represents. Indeed, as evidenced by Bartelson, “notions of human hostility and war appears to be as the crucial explanation and justification of international legal order as they were to understanding of the origins of the sovereign state and the international system.”¹⁰

Following the footsteps of such an interpretation, the thesis claims that European modern thinkers, by inventing the concept of regular enemy, have crafted a universal language, indispensable to think and imagine international relations. Such a language has allowed to recognize the other party

⁷ Van Creveld, “The Persian Gulf Crisis of 1990-91 and the Future of Morally Constrained War,” *Parameters* 22.2, no. 21 (1992); Jennifer M. Welsh, “The Individualisation of War: Defining a Research Programme,” *Annals of the Fondazione Luigi Einaudi: An Interdisciplinary Journal of Economics, History and Political Science: LIII, 1, 2019*, no. LIII (2019), <https://doi.org/10.26331/1067>.

⁸ Carlo Galli, Amanda Minervini, and Adam Sitze, “On War and on the Enemy,” *CR: The New Centennial Review* 9, no. 2 (2009): 195–219.

⁹ This association between the figure of the enemy and the form of war is a typical suggestion of the interwar period in the twentieth century. The intellectual association between the concept of enemy and the form of war derives, as held by Pankakoski, from a polemical (and nostalgic) reading of modern thinkers on war as Vattel and Clausewitz. Examples are Morgenthau insights on the figure of the enemy as an indicator of political intensity or Schmitt’s famous statement “a declaration of war is always a declaration of enemy.” Hans J. Morgenthau et al., *The Concept of the Political* (New York: Palgrave Macmillan, 2012), 12; Carl Schmitt, *Theory of the Partisan: Intermediate Commentary on the Concept of the Political* (New York: Telos Press Pub, 2007); Timo Pankakoski, “Containment and Intensification in Political War: Carl Schmitt and the Clausewitzian Heritage,” *History of European Ideas* 43, no. 6 (August 18, 2017): 649–73, <https://doi.org/10.1080/01916599.2016.1234967>.

¹⁰ Jens Bartelson, “War in International Thought,” Cambridge Core, November 2017, 129, <https://doi.org/10.1017/9781108297707>.

in war as legitimate and as a consequence to limit the violence used in war by establishing a fictional *spatio*-temporal dimension in which individuals acquire a status of *killability*. The fictional space accordingly is a collective dimension in which the single individual is qualified as part of a collective political entity and acquires a moral, legal, and strategic value exactly on the basis of such a collective qualification. Individuals are *killable* only as part of collective systems of meaning in which violence can be qualified with specific intellectual categories. The regular enemy is one of them.

Notwithstanding its ambition to look at the problem in historical perspective, this research has a privileged eye on the recent past and on the present. It starts from the paradox that the concept of regular enemy is still the pivotal frame of reference in the contemporary modes of argumentation about war, but its spatiality and its temporality are substantially redefined. The moral, the legal, and the strategic vocabularies of contemporary war are still permeated by the idea of regular enemy as a recognized political entity endowed with rights to use force under specific temporal and spatial conditions. But at the same time, the *spatio*-temporal condition of the enemy is intentionally shifted from the state to the individual and all the intensity of war is conveyed on the single human being.¹¹ The non-mediated presence of the individual enemy in war poses serious puzzles for our understanding of war. As Finkelstein puts it, “the most serious conceptual difficulties the new style of warfare faces is that in a war waged against terrorists and civilian militants, it is not clear who, if anyone, should count as a combatant.”¹² This shifting from the fictional collective space of hostility to the individual enemy is the premise and is the substantial part of the legitimation of what can be called the *individualization of war* project. The *individualization of war* aims exactly at creating spaces of hostility wherever and whenever the individual enemy is located, breaking the boundaries between what counts as war and what as peace.

As proved in the final three chapters of this thesis, the modes of argumentations that tend to *individualize* enemy are neither marginal in international relations debate nor simply theoretical and thus distant from public debates. They are forms of argumentation having important practical and political implications, being crafted by experts and authoritative speakers as philosophers, lawyers, policymakers, and military strategists. Such experts have been committed to rethink war under the light of the project of shrinking the costs, the stakes, and the effects of war. A material and rhetorical project that, first and foremost, aims at representing war to Western public opinions as a light, cheap, and highly moral endeavor. The rhetorical and practical project of the *individualization of war* to which the West has committed itself after the end of the Cold War signals exactly a re-conceptualization of the *spatio*-temporal conditions that define the concept of regular enemy. The issue of defining who the other party in war is does not simply amount to a formal or technical requirement. Rather it means establishing who is entitled to use violence, in which legal framework, and under what *spatio*-temporal conditions. The intellectual problem of defining the status of the other party in war is the inherent problem of any possible project of regulation of war, of

¹¹ It is a point of convergence between Wight and Aron who insist on the analytical significance of the relationship between modes of warfare and forms of social organization, see Martin Wight, Gabriele Wight, and Brian Porter, *International Theory: The Three Traditions*, Reprint (London: Leicester University Press for the Royal Institute of International Affairs, 1996), 367; Raymond Aron, *Clausewitz*, trans. R. Falcioni (Il Mulino, 1991), 70–75.

¹² Claire Finkelstein, Jens David Ohlin, and Andrew Altman, eds., *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford University Press, 2012), 158, <https://doi.org/10.1093/acprof:oso/9780199646470.001.0001>.

differentiation of the latter from other states (as peace) and, consequently, of any possible international order.¹³

To put forward such an argument the thesis is divided in two parts: a reconstructive, historical part devoted to gather the most remarkable features of the modern concept of regular enemy; and an analytical part, devoted to analyze the post-Cold War era meaning of the concept of enemy.

In the first part it is traced in a genealogical way, attentive to the context of the sources, how the concept of regular enemy has been crafted by modern political thinkers, since the seventeenth century. In the first chapter it is briefly discussed the concept of enemy in international relations and its value for the understanding of war. While in the second chapter it is synchronically reconstructed the intellectual history of the modern concept of regular enemy. Looking at history from a contemporary puzzle means first interrogating why certain historical narratives still have authority in the present yet highlighting the contradictions that characterize such narratives in the present. Using a concept as the driver allows to move nimbly in that *foreign country* that is the past. In order to tackle the monumental task of analyzing the many political thinkers who have contributed to craft the modern concept of regular enemy, the thesis establishes a model of conceptual analysis that takes into consideration three distinct intellectual paradigms of political thought on war: an *ethico-political* paradigm, a legal paradigm, and a strategic paradigm. Following such a distinction, the reflections of Grotius and Hobbes are analyzed as part of the *ethico-political* paradigm. The two thinkers are selected as their intellectual contribution to the conceptualization and limitation of regular war is foundational and enduring. They are considered *ethico-political* thinkers because the *nucleus* of their normative argumentations is not legal, while springs from ethical sources as human nature and human conscience. Though divergent in the conclusions they reach, in the sources they employ, and in their intentions, Grotius and Hobbes are united by the power that their vocabularies acquire through time and still exercise in the present. Both engage with the concept of enemy in several passages of their work, and both question the meaning of the concept of regular enemy as foundational to the regulation of war. The second one is the paradigm of law, the concept of conventional enemy can be inscribed into legal doctrines where its character is not simply *ethico-political*, but also juridical in the sense that it belongs to a system of self-standing norms (as custom, positive laws, etc.). Here the research focuses on the Emer de Vattel's thought and connects the Swiss jurist's ideas on the regular enemy to the birth of international law and the formulation of the laws of war. Finally, the third paradigm of the analytical model is that of strategy, intended as the outcome of human intellectual impact on reality by the study of force; or, in other words, as the effects of the transformation that human will and human reason can import on material world by the use of different forces. In this section it is considered the notable work of Carl von Clausewitz on war. Clausewitz is studied as a philosopher of war, whose ideas can be situated in-between enlightenment and revolution. Clausewitz's understanding and representation of the regular enemy paves the way for the late-modern logic of symmetry in war, based on the potential equilibrium and on the continuous exchange of forces between enemies in war. The logic of symmetry between regular enemies that Clausewitz constructs is only an intellectual ideal type of strategic thinking, whose fragility Clausewitz is aware. Strategic thinking is intrinsically projected to the extremes and the twentieth century will be witness of it.

¹³ Lothar Brock and Hendrik Simon, eds., *The Justification of War and International Order: From Past to Present*, History & Theory of International Law - Cloth (New York: Oxford University Press, 2020), 13.

In the second part the thesis examines the three relevant modes of conceiving the enemy crafted by Western scholars, experts, and policymakers during the post-Cold War era. The post-Cold War is not assumed as a moment of sharp *caesura* with the past, but as a moment in which the karstic tendencies already *on-the-move* during the twentieth century can finally liberate and manifest in tangible fashions. The end of Cold War, of course, is many different things and is a fluid moment that cannot be encapsulated in a single representation. In this thesis it is assumed only as a privileged standpoint to look at contemporary international relations, without losing sight of event of twentieth century.

Keeping the distinction of the three paradigms as its analytical frame, the thesis analyzes three contemporary modes of conceptualizing the enemy peculiar to *individualized war*: an *ethico-political* paradigm, a legal paradigm, and a strategic paradigm. In the *ethico-political* paradigm is reconstructed the concept of enemy as “unjust enemy”, put forward by *revisionists* philosophers of just war theory. Then, in the legal paradigm, the concept of enemy as “unlawful enemy combatant”, manufactured by Israeli and United States courts and then deployed by legal scholars and policymakers. And, finally, the concept of enemy as “target” elaborated and advanced in the strategic domain by air power theorists, terrorism experts, and military practitioners.

In this second part it is questioned how specific intellectual shifts have undermined the concept of collective enemy to justify and render feasible what appears to be a form of *individualized war*. In *individualized war* the individual is targeted as an independent enemy, no more mediated by collective political forms as the tribe, the class, the nation, or the state. This, of course, does not imply understating the fact that the enemy as a single individual has always been within the horizons of the modern moral, juridical, and strategic reflections on war. Rather, it suggests considering something deeper, namely that *individualized war* detaches from the modern war archetype of the duel on a large scale and approaches other archetypical forms as vengeance, criminal punishment, or hunt.¹⁴

The epistemological assumption behind the interrogative that guides this research is that thoughts, ideas, and concepts have a considerable impact on and an explanatory power of social action. Political concepts are linguistic devices that dramatically change over time and across languages in their usage and in their meaning, however volatile and contingent as they are, concepts can talk about an epoch by making *speakable* and intelligible political experience, political perception, and political expectation.¹⁵ The enemy is not simply a concept. The enemy is also an analytical posture, a perspective to read the logic of events from the side of the Other than me. It implies decentring the sight of the narration. Thinking about the enemy and war, however, may easily be considered as a form of veiled nostalgia and may be associated to militarist and jingoistic intellectual inclinations. Here the enemy is seen as a productive encounter, because it recalls the intrinsic relationality of international relations and of its most intense manifestation, war. If the premise of international relations is the existence of *relations*, then that with the enemy is the most intense and most concrete of all possible relations, the relation of potential violence. In this research the violence associated with war is neither celebrated, nor justified as a natural or anthropological feature of politics. Violence, on the contrary, is taken as a historical reality that politics must confront

¹⁴ Alessandro Colombo, *La Grande Trasformazione della guerra contemporanea*, Quaderni (Milano: Fondazione Giangiacomo Feltrinelli, 2015), 9, <http://fondazionefeltrinelli.it/schede/la-grande-trasformazione-della-guerra-contemporanea/>; Bartelson, “War in International Thought,” 12.

¹⁵ Reinhart Koselleck and Michaela Richter, “Basic Concepts in History: A Historical Dictionary of Political and Social Language in Germany,” *Contributions to the History of Concepts* 6, no. 1 (January 1, 2011): 1–37, <https://doi.org/10.3167/choc.2011.060102>.

and understand to handle and hopefully extinguish. In this respect, thinking through the enemy is a move to analytically deconstruct the relationship of the Self (in this case the so-called West) with it and to shed some light on the obscurities of such a relationship that often progressivist and liberal narratives tend to leave unspoken.

The idea that modern concepts are still relevant in our cognitive appraisal of reality may be seen as a hypostatization of modernity and its intellectual constructions. One may reasonably dispute the existence of a continuous time as modernity and question “what is the criterion for a concept to be counted as modern.”¹⁶ Here, though, modernity is seen not as a monolithic coherent span of time, but as a process of sedimentation, critique, and negotiation of the meanings of concepts, always tied to actual power structures and never weak enough to disappear. Trying to avoid the anachronistic search for a precedent in history, the thesis looks back to the *foreign country* of the past to interrogate the solutions attempted by past thinkers to problems that are still relevant in the present. Certainly, the choice of studying concepts formed, sedimented, and re-worked in Europe (and in the West more broadly) may reasonably be subject to critique of excessive Eurocentrism; however, the argument here holds that it would be epistemologically unproductive to dismiss European context as to appease a more inclusive and comprehensive history. What is called European modernity must be taken as a reference context in its ideologized centrality and in its universalist aspirations, to unravel European self-representation within and in relation with the outside. Centrality here is explored both as a historical exception and as problematic *datum* often taken for granted, still determining in the study of international relations.¹⁷ Working on the European intellectual context does not necessarily exclude the possibility of indirectly bringing into this story perspectives from outside,¹⁸ and this is the very intention of the research: reflecting on the concept of regular enemy as a polemical concept, as a concept that entails power relations, of making but also of un-making, or excluding.¹⁹ Power is not always transparent at the first glance. Therefore, the present research is placed, so to speak, a few steps beyond the history of concepts, making use of the precious interpretative insights that the deconstructive critique of modern ideas makes available.²⁰

¹⁶ Sandro Chignola and Giuseppe Duso, *Storia dei concetti e filosofia politica*, Per la storia della filosofia politica 22 (Milano: F. Angeli, 2008), 4–12.

¹⁷ Martti Koskenniemi, “Histories of International Law: Dealing with Eurocentrism,” *Rechtsgeschichte - Legal History* 2011, no. 19 (2011): 152–76, <https://doi.org/10.12946/rg19/152-176>.

¹⁸ Koskenniemi.

¹⁹ David Armitage, “Fighting Words? A Reply to My Critics,” *Global Intellectual History* 4, no. 3 (July 3, 2019): 334–46, <https://doi.org/10.1080/23801883.2019.1641958>.

²⁰ Michel Foucault, “The Subject and Power,” *Critical Inquiry* 8, no. 4 (1982): 777–95.

FIRST PART

Chapter 1 – Mapping the problems. The transformation of war and the concept of enemy

1. The re-emergence of the individualization of war and the concept of regular enemy: a map of the problems

Among the different and heterogenous phenomena of political violence occurred at the international level since the end of the Cold War, it has been possible to observe the emergence of a persistent and quantitatively growing mode of using force, identified as the *individualization of war* or “war ad hominem.”²¹

The expression *individualization of war*, though controversial due to the diverse phenomena that are conflated in it, tries to make sense of Western states’ material and rhetorical project to conceive the human individual as the paramount threat to fight. *Individualization of war* is a paradoxical expression because war and the individual are somehow opposite to each other. The term tries to express the West propensity to use complex military apparatuses to target individuals or small groups anywhere and at any time. Unlike the secret spy killings of the Cold War or the many forms of individual assassination that haunt the history of political violence,²² in *individualized war* all the traditional (modern) prerogatives owned by states to wage war as moral discourses, legal vocabularies, and strategic technologies, are massively mobilized. *Individualized war* is the combination of individual assassination and the use of war discourses and practices.

Examples are copious: from the Gulf War begun with an intimating statement by the United States that “if a war broke out, Saddam Hussain would be among the first target” to NATO operations in the Balkans conducted with the solemn promise of “surgically targeting only the barbarous leadership by clean bombing without touching any civilian life;”²³ up to the so-called AUMF²⁴ accompanied by the unequivocal words of George W. Bush “we’re on international manhunt,” which inaugurated the *global war on terror*. *Individualized war* is among the manyfold forms of war metamorphosis and can be inscribed in the overarching process of transformation of war taking place since the last three decades.

The idea of *individualization of war*, in its essence, spells out that some forms of contemporary war challenge the modern war archetype intended as a military confrontation between collective entities. An archetype accurately portrayed, for example, by Rousseau in a famous passage of the *Social Contract*, where war is described as “not a relation between man and man, but a relation between State and State, in which individuals are enemies only by accident, not as men, nor even as citizens.”²⁵ In *individualized war* the individual is targeted as an independent agent in war, no more mediated by collective political forms as the tribe, the class, the nation, or the state. This, of course, does not imply understating the fact that the single individual has always been situated within the horizons of the modern moral, juridical, and strategic reflections on war. Rather, it suggests considering something deeper, namely that *individualized war* detaches from the modern war

²¹ Van Creveld, “The Persian Gulf Crisis of 1990-91 and the Future of Morally Constrained War”; Welsh, “The Individualisation of War.”

²² Georges Minois, *Le Couteau et Le Poison: L’assassinat Politique En Europe (1400-1800)*, Nouvelles Études Historiques (Paris: Fayard, 1997), 20–33.

²³ Daniel L. Byman and Matthew C. Waxman, “Kosovo and the Great Air Power Debate,” *International Security* 24, no. 4 (April 2000): 5–38, <https://doi.org/10.1162/016228800560291>.

²⁴ “Presidential authorization to kill single individuals”

²⁵ Rousseau, Dunn, and May, *The Social Contract*, 160. Hoffmann, “Rousseau on War and Peace.”

archetype of the duel on a large scale and approaches other archetypal forms of political violence as vengeance, criminal punishment, or hunt.²⁶

The non-mediated presence of the individual in war poses serious puzzles for our understanding of this form of political violence. As Finkelstein puts it, “the most serious conceptual difficulties the new style of warfare faces is that in a war waged against terrorists and civilian militants, it is not clear who, if anyone, should count as a combatant.”²⁷ Who is the other party, then, in this kind of war? What political, legal, and strategic status has the other party? Is it enemy, criminal or both? Where and when is it possible to kill a person? Does political authority still matter to engage in war?

The question of the individual other party is probably the most nebulous and pressing in the contemporary transformation of war. Defining who the other party is amounts not simply to a formal requirement. Rather it means defining who is entitled to use violence, in which legal frame, and under what *spatio-temporal* conditions. The traditional regular enemy or “*iustus hostis*” was based on the idea of the state as an independent person; an idea which made possible the metaphor of war as a duel between *magni homines*.²⁸ The intellectual problem of defining the status of the other party in war is the inherent problem of any possible project of regulation of war and, consequently, of any possible international order.²⁹

This research starts from the paradox that the modern concept of regular enemy is still the frame of reference in our understanding of war, even in phenomena that can fall under the category of *individualized war*. The moral, the legal and the strategic vocabularies of contemporary war are still permeated by the idea of regular enemy as a recognized political entity endowed with rights to use force under specific temporal and spatial conditions. But at the same time the meanings of that concept are somehow reformulated. Hence, by looking at the *individualization of war* through the lens of the concept of regular enemy intended as a collective singular, this thesis interrogates whether this concept can still concretely spell out the encounter of maximum intensity between two political entities that is war.³⁰ Looking at history from a contemporary puzzle means first interrogating why certain concepts still have authority in the present yet highlighting the contradictions that characterize the usage and reformulation of such concepts in the present.

The discourses and practices that can be described as *individualization of war* do not distance altogether from the modern idea of regular enemy; rather they rework the concept of enemy by inscribing it into a different *spatio-temporal*. This means shifting from that fictional *spatio-temporal* dimension in which individuals acquire a status of *killability* and are allowed themselves to kill others as enemies. Such a space, crafted by modern thinkers committed to regulate war by employing *ethico-political*, legal, and strategic argumentations, attributes the enemy a regularity and implies the existence of common rules. The fictional *spatio-temporal* dimension of hostility is a collective space in which the individual acquires a fully political identity for a certain time and in which its participants share rules and logics that mediate their use of violence.

Yet, before proceeding with the research on the fate of the concept of regular enemy at the time of *individualized war*, it is important to briefly discuss the concept of enemy in broader terms.

²⁶ Colombo, *La Grande Trasformazione della guerra contemporanea*, 9; Bartelson, “War in International Thought,” 12.

²⁷ Finkelstein, Ohlin, and Altman, *Targeted Killings*, 158.

²⁸ Werner, “From Justus Hostis to Rogue State the Concept of the Enemy in International Legal Thinking.”

²⁹ Brock and Simon, *The Justification of War and International Order*, 13.

³⁰ It is a point of convergence between Wight and Aron who insist on the analytical significance of the relationship between modes of warfare and forms of social organization, see Wight, Wight, and Porter, *International Theory*, 367; Aron, *Clausewitz*, 70–75.

What the next paragraph indeed does is to shed light on the basic character of the concept of enemy to reflect on its significance for social theory, on the meanings attributed to it by political theory and by international relations, on its relationship with the concept of war.

2. Enmity, war, and political order: the *spatio-temporal* character of the concept of enemy

The concept of “enemy” is an artificial construction: no enemy ever existed ontologically as such. Everyone can be designated as enemy at a time and then renamed differently afterwards. The concept of enemy, as a variable and instable intellectual category, is a linguistic act, a form of argumentation. Though, its historical recurrence is illustrative of its social functions.

The concept of enemy is a collective singular that represents and solidifies a specific condition of demarcation, a “here” and “there”.³¹ It is a synecdoche for a more ample and fundamental object: the boundary, intended as gateway of access or rejection into and from a definite space. In its Indo-European variant, the concept of enemy indeed has a double meaning: host and stranger. It reminds immediately a condition of encounter with alterity that, though, has the potential for negation, be it in the form compromise or conflict, contact or contrast, opposition or accommodation.³² The concept of enemy performs the function of demarcation as it bisects a particular-universal (as for example the universal of “Self”, “Family”, “group” or “humanity”) in two mutually exclusive groups: “us” against “everyone else”, a positive concept (“us”) against a negative one (“non-us” or “everyone else”). “Enemy” is the idea that describes sharply the symbolic boundaries of that which is alien, that which is other, diverse; but, as highlighted by Simmel, enemy is that kind of otherness that can still be imagined, can still be portrayed and thought. A form of alterity that to some extent is familiar. Consequently, by defining what is different, such a concept is fundamental for defining both the trait of identity and closeness, and, by contrast, the traits of what is distant and foreign. The basic social scope of the concept of enemy is to give a knowable face to difference, to categorize difference into a stable entity visible in an intersubjective image-idea. The concept, once become part of the language of a social aggregate, reifies the demarcation lines into *spatio-temporal* units, by drawing on the continuous exchange between inside representations and outside realities. The concept is the very tool which can bring our representation of reality to be really real, in other words “more than anything else it [the enemy] is he who governs what is real, effective in reality, in the conception of how to grasp it.” This is why the concept of enemy, by demarcating the inside and outside, has necessarily a relation with the categories of space and time.

Its meaning is strictly continuous with that of the stranger, a similar-different, but the concept of enemy somehow exceeds the concept of “stranger”, as it includes in its representation also a moral standing that affects and orientates the modes of interaction with strangeness and includes and justifies resistance to alterity due to its potential negation of identity.

³¹ Reinhart Koselleck, Stefan-Ludwig Hoffmann, and Sean Franzel, *Sediments of Time: On Possible Histories*, Cultural Memory in the Present (Stanford, California: Stanford University Press, 2018), 198.

³² A comprehensive outline on the historical semantics of the noun “enemy” is provided by the accurate linguistics study of the emergence of the term in *Indo-European* languages by Morani Gianfranco Miglio et al., eds., *Amicus (Inimicus) Hostis: Le Radici Concettuali Della Conflittualità “Privata” e Della Conflittualità “Politica,”* Arcana Imperii 25 (Milano: Giuffrè, 1992), 39–43. Also, Benveniste (2001, pp. 66–69) gives an account on the double-edge origin of “enemy” in his chapter about “hospitality”, emphasizing the hospes/hostis.

The enemy connects the self to the external world by degree, in the sense that the more the enemy approaches the essence of the Self, the more the Self feels justified to organize a resistance in order not to fuse into the enemy, even by violent means. As pointed out by James Aho, in his study devoted to sociological phenomenology of the enemy, “one of the pivotal dimensions of any human world is the enemy, that which is held responsible for the bad things in life. “And” continues Aho, “notwithstanding as factual and natural as the enemy appears, in reality it is (at least in part) our own very creation; the enemy is a joint production; socially constructed and re-constructed”. The risk of a contamination with difference and a consequent destruction of identity can be controlled through specific forms of social action: violence is chief among them.³³ Of the violent option against the enemy, two main mechanisms of reaction that social aggregates used in history can be identified. These mechanisms are expulsion or incorporation. This is why the enemy is the conceptual tool through which the possibilities of denying difference by means of violence can eloquently be spelled out. As a matter of fact, according to Aho the relationship between the concept of enemy and the possibility of violence is epitomized in three ways: the first one is to make violence morally and existentially justified by “making the Self feel viscerally victimized” against the potential evil the enemy is capable of. The second function the concept of enemy accomplishes is to delimit the social body contours by an “inverse operation”, something which resonates the role of the double-edge Greek concept of *Pharmakos*, dwelled on by Girard.³⁴ The enemy indeed has the power of delimiting and unifying a social aggregate by paradoxically rendering internal peace, solidarity and harmony the latent function of external fight and violence, something that Romans call the *metus hostilis*.³⁵ The third function is that of making visible a fetish of the fear of death and turn it into its opposite, life. By playing a profound and at the same time totally fictitious role, the enemy represents the metaphor for the final purpose of social aggregation that is life against death, survival against destructive violence. The face of the enemy, accordingly, can legitimize the existence of a social body by addressing its irresistible quest for eternity and immortality.

The enemy thus incarnates a totalized and reified version of the fear of death and is brought back from oblivion whenever necessary to remind that death can be defeated: “if the enemy represents evil; and the ultimate evil is death. Ergo to expulse the enemy is to “kill death.”³⁶ The concept of enemy then, sociologically, rests on a liminal dimension between on the one hand the illusion by the Self of “killing death”, of “being beyond the *telos* of life”, and on the other hand the force of reality, the impendency of death, violence, and destruction represented by the Otherness of the enemy.

Violence then is coextensive with the concept of enemy in a circular motion, as both bring back to the center-stage the presence of evil in social life: violence recalls the possibility of an enemy to be found and expelled violently and the enemy reminds the enduring possibility of violence impending on society. Originally, violence against the enemy becomes a ritual moment for a social body, a moment in which evil is believed to exit from society alongside with figure of the enemy, though always potentially coming again. Therefore, the position of the enemy is liminal in a social body, in-between the inside and the outside, eventually only effective forms of violence can assure the expulsion of the enemy. It is the act of expulsion of guilt from the inside (and the Self) to the

³³ James Alfred Aho, *This Thing of Darkness: A Sociology of the Enemy* (Seattle: University of Washington Press, 1994), 4–18.

³⁴ René Girard, *Violence and the Sacred*, John Hopkins paperbacks ed., [Nachdr.] (Baltimore: Hopkins Univ. Press, 1979), 70.

³⁵ Miglio et al., *Amicus (Inimicus) Hostis*.

³⁶ Aho, *This Thing of Darkness*, 4.

outside (the Other). The stability of the concept of enemy is challenged by the instability produced by the outcome of violence: so that the enemy is cyclically the problem and the solution, a *Janus-faced* concept of social life and its enduring conflicts.

This inextricable relationship between the constructed figure of the enemy, its conceptualization and the possibility of violence has led to associate the enemy with different objects: for example the guilty individual with a criminal conduct; or the harmony disturber, the holder of subversive ideas and ideologies, the artificial entity as a divine abstract creature, as an object or a concept; or eventually the intimate member of the group, the family relative who turns into a traitor, the brother bearer of animality, the “double monstrous”, up to the paradoxical condition where everything else outside the Self is inimical, clearly conceptualized by Hobbes as the natural condition of hostility or *bellum omnium contra omnes*. This exchange between representation and reality, between an image of the enemy and the potential cycle of violence to fight it, brings the enemy incessantly in and out the social order, challenging order from the inside and from the outside, pushing on the border trying to penetrate and emerging from the Self as a disturbing double. This is the reason why the enemy is an illuminating element of a form of organized, social violence as the phenomenon of war.

2.1 The concept of enemy from the inside perspective: anthropology, theology, and political order

In political theory, in facts, it is not infrequent to encounter statements about the role of the enemy as functional to the construction of political order.³⁷ Such theoretical positions can be reconnected to two basic ontological *nuclei*: on the one hand the *nucleus* of those who ground political order in man’s negative anthropology; on the other hand, those who locate the origin of political order in the problematic relationship of man with the sacred and the theological. Those starting from man’s negative anthropology intended as a natural *animus dominandi*, argue that due to man aggressive propensity in social relations, political order is the only way out from a situation of inter-individual enmity by a process of externalization of enmity. The fear of an enemy and the choice for security, they claim, is the “regularity of political experience.”³⁸ From this derives that the problem of enemy is immanent to any thinkable construction of political order.³⁹ In this respect, the impending presence of an enemy and the consequent readiness to react to such an enemy by violent means appears to be the basic *formula* for constructing and consolidating a political order. Politics, given its intrinsic conflictive nature, cannot be grounded otherwise than in the recognition of a common enemy. Therefore, the preparation for war against the enemy is the very nature of political relations. The concept of enemy and the concept of war are naturally linked as the basis of political order and the mechanism of its potential dissolution.

Starting from different assumptions, on the other hand, those who can be connected to the *nucleus* of political theology think that the only possible justification for political order is the

³⁷ Ioannis D. Evrigenis, *Fear of Enemies and Collective Action* (Cambridge: Cambridge University Press, 2007), 3–7, <https://doi.org/10.1017/CBO9780511509636>.

³⁸ Julien Freund, Alain de Benoist, and Pierre Bérard, *Le Politique, Ou, L’art de Désigner l’ennemi*, Éternel Retour (Paris: La Nouvelle Librairie éditions, 2020), 149–50.

³⁹ Emanuele Castrucci, *Le Radici Antropologiche Del “Politico”*: *Lezioni Di Antropologia Politica*, Saggi 352 (Soveria Mannelli: Rubbettino, 2015), 5–9; Heinrich Meier and J. Harvey Lomax, *Carl Schmitt and Leo Strauss: The Hidden Dialogue*. (Chicago: University of Chicago Press, 2012), <http://public.eblib.com/choice/publicfullrecord.aspx?p=2130113>; Merio Scattola, *Teologia Politica*, Lessico Della Politica 15 (Bologna: Il mulino, 2007), 120–28; Evrigenis, *Fear of Enemies and Collective Action*, 12–19.

confrontation with the original sin. Human original sin is the reason to follow God's commandment to order and therefore stands at the root of the politics. It is by the disproportionate confrontation with his original sin, thus with figure of God, that man can see his limits. The enemy is simply an interposition between God and man.⁴⁰ The enemy is a constrain to the Promethean tendencies of human nature. As Meier writes "man's life gains 'its specifically political tension' from the potential for war, from the 'dire emergency,' from the 'most extreme possibility' But the possibility of war does not merely constitute the political as such;⁴¹ war is not merely 'the most extreme political measure"; war is the dire emergency not merely within an 'autonomous' region – the region of the political – but for man simply, because war has and retains a 'relationship to the real possibility of physical killing." The political is the domain in which man can accomplish his existential task, namely preserving life from death, by subduing to the authority that promises to fight the enemy.

Such theoretical positions, which naturalize the existence enmity in any social aggregate that has political ambitions, contend that thinking the enemy is the inescapable essence of politics.⁴² The social is equated to the political and the existence of social conflict is Therefore, the nexus enemy-violence, its productivity, and its potential destructiveness lead straight to the nucleus of what a political order is. For political theology and political anthropology making a political order is matter of deciding whom the enemy is, how to cope with it and how to keep safe a political order from the impending presence of the enemy.

2.2 The concept of enemy from the outside perspective: international relations as a pluriverse

From the political theory perspective on the role of the enemy as a consolidator of political order, some international relations scholars, mainly belonging to what could be simplistically named the Realist school, attribute to the concept of enemy a critical role also in defining the boundaries of the international system. Their conclusion is derived from the extension of the individual-state analogy to the state-international system analogy. If the enemy is the element that consolidates internal political order, it should certainly consolidate also an international political order. The argument for the concept of enemy is first and foremost an argument in defense of international relations pluralist nature and an argument that tries to undermine the liberal utopias of perpetual peace.

In the opening of the *Nomos of the earth*, for instance, Carl Schmitt naturalizes the role of the concept of enemy as a historical criterion for the existence of an international order. Schmitt writes that "the ability to recognize a just enemy is the beginning of all international law."⁴³ A vision, that of the role of enmity for the constitution of any international order, shared by other international relations theorists that conclude, despite with different nuances, that international politics is inescapably plural. Morgenthau, following the *Schmittian* intellectual nucleus, argues that the concept

⁴⁰ Meier and Lomax, *Carl Schmitt and Leo Strauss*, 120.

⁴¹ Heinrich Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy*, Expanded ed (Chicago: The University of Chicago Press, 2011), 75–77.

⁴² Julien Freund and Alessandro Campi, *Il terzo, il nemico, il conflitto: materiali per una teoria del politico*, Arcana imperii 33 (Milano: Giuffrè, 1995), 9.

⁴³ Carl Schmitt and G. L Ulmen, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, 2006, 51–52.

of enemy defines the concrete political encounter at the international level: the encounter intense enough to be decisive on life and death of a political order.⁴⁴

Similarly, Wight and Aron note that each international system in history which, notwithstanding its anarchical nature, had the aspiration to some sort of minimal condition of order, possessed a stable notion of enmity. This notion, explains Aron, qualified the type of use of force available between the members of the system. This is the very linkage between the concept of enemy and war. In history, indeed, reminds Wight, different political orders have had quite stable representations of the opponent; it is enough to recall the Peloponnesian city-state society which possessed a concept of enemy valid only within Greece, namely, *polemos* and a concept to designate relations with outside populations as the Medians, which was the concept of *barbaros*. The Romans concept of *iustus hostis* to refer to people with whom war was legal, or to the Warring States period in China and its definition of otherness.⁴⁵ Every international system which possessed in history a concept of enemy had to qualify it in *spatio*-temporal terms, attributing to the concept the task of differentiating between inside and outside, before and after, and therefore of legitimizing the existence of different autonomous political units in the same system.

Despite their idiosyncrasies, Schmitt, Morgenthau, Wight and Aron all converge (with their common *decadent* tone) to the conclusion that that the modern international order based on the interstate system of relations in order to exist had to possess a concept of regular enemy. This concept of regular enemy was incompatible with cosmopolitan ideas, because it was the very mark of the intrinsically pluralist nature of international relations.⁴⁶

However, *pace* the Realist school of international relations and its various exponents, it can be claimed that the modern concept of regular enemy, which still haunts our political practices and discourses, is neither a waning concept nor a natural, inescapable element for international relations; rather it is a contingent exception which still emanates meaning. This exception is the by-product of specific historical and intellectual conditions that underpin the development of rationalist political theorists between the end of the Middle Ages and early modernity, approximately around the end of the sixteenth century and the beginning of seventeenth. Rationalist political thought creates the intellectual toolkit for crafting a precise and definite intellectual category that designates the regular enemy. The exceptional character of the modern concept of regular enmity can be encapsulated in the peculiar qualification of space and time on which the existence of such a category is based.

2.3 The regular enemy in modern European political thought: between rule and exception

As it will be explained in the second chapter, modern political rationalism, and in particular its intellectual thrust to secularizing the Christian institutional fabric, leads to recognize the necessity to have a concept which is valid for all the actors involved in international politics. Thinking, representing, and portraying the figure of the regular enemy becomes essential in the early modern project of collective order that tries to resist the internecine violence engendered by European religious wars and the universalists projects of hegemonic powers. Indeed, rationalist thinkers attempt to achieve a conceptual clarification and stabilization of the concept of the regular enemy with the

⁴⁴ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*, 1st ed. (Cambridge University Press, 2001), 442–44, <https://doi.org/10.1017/CBO9780511494222>; Morgenthau et al., *The Concept of the Political*, 120.

⁴⁵ Adam Watson, “Systems of States,” *Review of International Studies* 16, no. 2 (1990): 99–109.

⁴⁶ Wight, Wight, and Porter, *International Theory*, 32–39.

aim of differentiating it from other irregular figures and from religious conceptuality. The linkage between the interstate political form and the form of the regular enemy is the resultant of the attempt by modern political thinkers to escape the high political volatility seen during the wars of religion and the conquest of new spaces throughout the globe. In the words of Gianfranco Miglio “simple as it is, the term-concept of enemy is the building-block of modernity both as ideology and as an institutional arrangement.”⁴⁷ While the Middle Ages political landscape knows a complex ladder of different small and large scale enmities and corresponding forms of organized violence, early modern Europe, torn by internal strife, witnesses “instable” manifestations of enmity and the rapid entrance of new political figures in the cultural horizons of politics. On the one, the re-appearance of the worst and uncontrollable manifestation of enmity, the internal one, that of civil war, hidden inside any social aggregate and specifically in the city, as the events of St. Bartholomew’s Day massacre illustrate, leads to a quest for a forceful externalization of enmity. On the other hand, the discoveries of the “New World” and the opening of new spaces of trade, conquest, and violence render visible unknown forms of otherness and call for an institutional differentiation between individuals, individuals possessing a political status, and collective political entities.

The capacity of modern political thinkers to reflect and look for stable distinctions of regular enmity is a mark exactly in such a dwindling political landscape: the end of the medieval world and its collapsing religious order under the thrust of the Reform and the unprecedented expansion of the European geographical *compass*.

It is absolutely misleading to think that at this point in history enmity is a settled issue due to the emergence of a clear and distinct concept of regular enemy in a brief span of time. Seventeenth century political thinkers, jurists, theologians, and statesman are far from envisaging a clear and stable concept of regular enemy; it is rather a process of enduring constructions, oppositions, and sedimentations of the concept. Enmity remains a contested, variable, evolving, and fluid term. The regular enemy is mostly an artificial idea, at any time punctuated by exceptions, justified by the recourse to disparate set of argumentations. Above all, the figure of the “New World” inhabitant, the Indio, and the figure of the pirate, both are relevant figures in the constellation of European irregular enmities. Shaped by mutating political conditions, by the changing technologies and weapons, by the significant discoveries of new lands and new forms of otherness, and most of all by the coexistence of different languages in a relatively small area as Europe: the ancient languages as Latin and Greek, chiefly used in cultivated circles and by intellectuals, and new emerging national languages as Romance French, German, Vulgar Italian.⁴⁸ However, rationalists thinkers as Grotius and Hobbes conceptualize an idea of hostility which keeps together in a coherent political form the single individual, cornerstone of their intellectual effort, and the political community, crucial *telos* of their political theory. The concept of regular enemy emerges after a long process of negotiation and exchange with other (some older, other newer) concepts of enmity only in the nineteenth century with the codification of the laws of war and the emergence of national state armies. It is at this time, at the closing of the nineteenth century that the modern idea of a fictional *spatio*-temporal dimension of collective *killability* assumes a tangible form. Its form is first and foremost a legal form, because the concept of enemy becomes foundational in the codification of international law and the laws of war. Its form acquires then also strategic crucial meanings because the nation-state and its institutional

⁴⁷ Miglio et al., *Amicus (Inimicus) Hostis*, 3.

⁴⁸ A nutshell conceptual history of the semantics of “enemy” is provided by the accurate linguistics study of the emergence of the term in Indo-European languages by Morani Miglio et al., 39–43.. Also Benveniste (2001, pp. 66–69) gives an account on the semantic origin of “enemy” in his chapter about “hospitality”.

outset become the very model of war making where the individual and the collective political body can coexist productively.

In the nation-state organization the enemy is the reference point for the construction of the internal and external political agendas. The concept of the regular enemy defines the vectors of political commitment and the constraints of political action. The idea of enemy becomes central in the study of international relations in the twentieth century.

The First World War proves that the idea of enemy has integrated the concept of regular enemy to such an extent that the enemy has become almost an equal, a brother with whom sharing the tragic fate of the grip of power politics and industrial warfare. The images of war as an *automaton* in which soldiers are crushed at an incessant pace are the perfect trope of the catastrophic reciprocity reached by industrial nation-states at war as regular enemies.⁴⁹

The First World War is the premise for the conceptualization of some of the most radical, abyssal forms of enmity, derived and indirectly inspired by the idea of regular enemy. The dehumanized representations of the regular enemy, both on the internal and on the external fronts, that follow the end of First World War prove to be the most efficient justification for slaughter in history. From Europe to the colonies, from China to South Africa, the concept of regular enemy becomes a void frame to justify the use of chemical weapons, civilian mutilations and mass killings, concentration camps, incendiary and atomic bombings on cities, and many other forms of unlimited violence.

After the intermingling between the concept of regular enemy and the most irregular practices of war, it is then the Cold War to bring the idea of regular enmity to an almost paradoxical extent. The Mutual Assured Destruction policy with which the two superpowers threaten each other's (and the entire world) is a state of military reciprocity that implies the possibility to accept a total destruction between the enemies. It is a form of extreme regularity that denies itself in principle due to its intrinsic irregularity. It is no more the state to use war as an instrument, but it is war, moved by other powerful forces (as the class, the ideology, the ethnic group, technologies) that uses the state to serve its scope. The concept of enemy is no more the defining element of the kind of war to undertake, but it is the concept of enemy itself to be traversed and shaped by war as a totalizing element.

2.4 Thinking the enemy after the end of the Cold War: regularity, disappearance, ubiquity

After a century of abyssal forms of violence and of consequent radical forms of enmity, the concept of enemy is an intellectual category to be reimagined. The arguments about who should be identified as the enemy in the aftermath of the Cold War are innumerable and, in particular, scholars of international relations consistently reflect about the future of enmity and its role in the post-war organization of international relations. Liberals and institutionalists confidently claim that, apart from few exceptional cases, the enemy had finally disappeared giving way to another figure, the "competitor." Realists and neo-realists, on the contrary, warn that the alleged enemy's disappearance is a dangerous illusion in an irremediably anarchical system.⁵⁰ Some of them, go so far as to claim that enmity is turning from the modern interstate dimension to a post-modern inter-civilizational

⁴⁹ Daniel Pick, *War Machine: The Rationalisation of Slaughter in the Modern Age* (New Haven, Conn: Yale University Press, 1993), 9–12.

⁵⁰ Francis Fukuyama, "Reflections on the End of History, Five Years Later," *History and Theory* 34, no. 2 (May 1995): 27, <https://doi.org/10.2307/2505433>; Kenneth N. Waltz, "Structural Realism after the Cold War," *International Security* 25, no. 1 (July 2000): 5–41, <https://doi.org/10.1162/016228800560372>.

dimension.⁵¹ Conventional constructivists instead reassure liberals' and institutionalists' optimism, arguing that the idea of enmity is a function of a social process of identity construction.⁵² While post-structuralists of various sorts converge all in contending that the enemy is by now a ubiquitous, spectral figure haunting society from inside.⁵³ Though, contrary to other marking post-wars of the past, under the auspices of an ever more vigorous liberal paradigm in the West, the end of the Cold war witnesses the establishment of a project in which the place for a concept of regular enemy shrinks significantly.

On the one hand, the dissolution of the USSR is taken as part of a process of disappearance of the enemy, which is left undressed and conceptually indetermined. The Russian Federation is neither integrated as a friend or ally in the project of the new international liberal order, nor completely excluded as an enemy. The radical hostility of the USSR, represented in the most plastic form by the Mutual Assured Destruction logic, wanes away, juridically unaddressed and politically indetermined. While, on the other hand, the radical asymmetry that characterizes the relations between the West and the so-called *third world* seems to produce a multiplication of enmity. The West, especially the United States and Europe, but with a full-fledged commitment also the West represented in the international institutions which function as the scaffolding of post-1945 order, as the United Nations, react to this tendency of enmity multiplication with the project of creating an international security. It is exactly at this time that the concept of regular enemy is reformulated and the project of *individualization of war* finds its *ratio* for existing. The concept of enemy undergoes a significant metamorphosis and the literature on war is oftentimes ambiguous in dealing with it. This ambiguity can be perceived by having a glimpse on the literature of international relations. In particular, among the scholars writing on war and on its latest transformation, the concept of enemy in general and the modern concept of regular enemy specifically, remain often in shadow.

3. The plight of the enemy in contemporary literature on war

In the contemporary literature of international relations on war the concept of enemy is hardly discussed in a systematic and analytical fashion.⁵⁴ In the manifold branches of the literature on war, it seems scholars are not sufficiently attentive to the problem of how the other party in war is defined. The analytical significance of the other party in war is flawed by presentism and teleology. Presentism leads to consider the Other either in humanitarian terms with paternalist tones, or in strategic terms with a slightly narcissist attitude.⁵⁵ Teleology instead leads to understand the asymmetric position of the Other as the by-product of historical forces that tend to unity and identity of all humanity. The Other has neither history nor space, it is just passively embedded in an already existing structure. As

⁵¹ Samuel P. Huntington, "The Clash of Civilizations?," *Foreign Affairs* 72, no. 3 (1993): 22, <https://doi.org/10.2307/20045621>.

⁵² Ted Hopf, "The Promise of Constructivism in International Relations Theory," *International Security* 23, no. 1 (July 1998): 171–200, <https://doi.org/10.1162/isec.23.1.171>.

⁵³ An argument discussed among the others by Slavoj Žižek, "Are We in a War? Do We Have an Enemy?," *London Review of Books*, May 23, 2002, Vol. 24 edition, sec. n. 10; Galli, Minervini, and Sitze, "On War and on the Enemy"; Tiziana Villani, Pierre Dalla Vigna, and Mario Perniola, *Guerra virtuale e guerra reale: riflessioni sul conflitto del Golfo* (Milano: Mimesis, 1991), 70; Michael Hardt and Antonio Negri, *Empire*, 1. Harvard Univ. Press paperback ed., [Nachdr.] (Cambridge, Mass.: Harvard Univ. Press, 2003), 189.

⁵⁴ Iver B. Neumann, "Self and Other in International Relations," *European Journal of International Relations* 2, no. 2 (June 1996): 139–74, <https://doi.org/10.1177/1354066196002002001>.

⁵⁵ Naeem Inayatullah and David L. Blaney, *International Relations and the Problem of Difference*, Global Horizons, v. 1 (New York: Routledge, 2004), 8.

remarked by Odysseos, this is not new in the discipline of international relations. Indeed, the intellectual passage from the assumption of the world as made of states to a world made of individuals has been done with the same blindness to Otherness.⁵⁶ The literature on individualization of war shares exactly the deficiency noted by Odysseos. It does not seriously engage with the Other as an alterity articulated in its own space and time. The representations of the Other are typified, there is no questioning about who concretely the Other is, whether it is equal, different, enemy, or friend. A problem that haunts the discipline at its ontological core. As Prozorov diagnoses it, “contemporary international relations discourse takes the relationship of enmity as an object of discourse only to the effect of its eventual effacement – enmity is something that ought to be transformed into friendship through a host of political, economic, social and cultural relationship.”⁵⁷

In a nutshell, it seems a large part of the academic studies on contemporary war do not problematize in depth the controversial status of the other party in war beyond a stereotypical image of the other party as a deviant version of the Self. And precisely failing to problematize and contextualize the uneven position of the other party, amounts to the greatest flaw of the ethical, legal, and material accounts that try to make sense of contemporary war phenomenon. The intellectual category of the other party is not simply a formal requirement to have a full picture of who are the actors in war, but—as emphasized in the introduction—it also and more fundamentally serves the scope of defining the boundaries of what is legitimate violence and what is not.

3.1 Irregular enemies and the literature on the transformation of war

In this respect, only a few scholars have questioned the quandaries of contemporary war by framing the issue of status of the other party in war, engaging seriously with historical and philosophical controversies.⁵⁸ Given the opaque nature of the concept of terrorism and the irreducibility of individualized war to it, such scholars have tried to trace parallels between historical categories of killable individuals in the *international* and the present way of war.⁵⁹ Three historical categories of liminal alterity, often deployed as a rhetorical instrument to legitimize the use of force, have been identified in this strand: the partisan, the uncivilized, and the enemy of all.

The first concept—the partisan—is closely connected to the imaginaries of the end of political order, as the eruption of civil strife or other forms of extreme challenge to political authority.⁶⁰ In its historical variants—revolutionary, anarchist, national liberator, or insurgent are just few examples—the partisan is an ideological figure that breaks old political ties and fights to build new ones: it chooses to take *part*. It is neither *part* of a regular institution as the army nor part of system of rules, it

⁵⁶ In particular, Odysseos claims that “Fukuyama’s proposition about the end of history, and the prevalence of liberalism more generally, illustrates the acceptance of the modern subject at the center of the political ontology of IR.” See Louiza Odysseos, *The Subject of Coexistence: Otherness in International Relations*, Borderlines, v. 28 (Minneapolis: University of Minnesota Press, 2007), xi–xx.

⁵⁷ Sergei Prozorov, “Liberal Enmity: The Figure of the Foe in the Political Ontology of Liberalism,” *Millennium*, June 24, 2016, <https://doi.org/10.1177/03058298060350010801>.

⁵⁸ Matthew C. R. Craven, Malgosia Fitzmaurice, and Maria Vogiatzi, eds., *Time, History and International Law*, Developments in International Law, v. 58 (Leiden ; Boston: M. Nijhoff, 2007), 4.

⁵⁹ Sonja Schillings, *Enemies of All Humankind: Fictions of Legitimate Violence*, Re-Mapping the Transnational: A Dartmouth Series in American Studies (Hanover, New Hampshire: Dartmouth College Press, 2017), 2–3.

⁶⁰ Mikkel Thorup, “The Anarchist and the Partisan—Two Types of Terror in the History of Irregular Warfare,” *Terrorism and Political Violence* 20, no. 3 (July 2008): 333–55, <https://doi.org/10.1080/09546550802073300>; Francesco Benigno, *Terrere e Terrorismo: Saggio Storico Sulla Violenza Politica*, Einaudi Storia 81 (Torino: Giulio Einaudi editore, 2018), 11-270–79.

challenges regular institutions and their legal systems. To take *part*, given its weaker position, it needs deploying irregular means, thus it needs breaching custom and law to change them.⁶¹ “The partisan wants to change the law, the criminal break it,”⁶² once was famously asserted. In facts, the partisan characteristically stands between the military and the civilian domains, blending and camouflaging in-between the two. The partisan has never been a truly independent subject in war as it has often been part of strategic networks; however, due to its irregularity, it incarnates the armed individual because its tactics are eventually individualist, and it is prosecuted individually with raids, torture, arrests, and targeted killings. Despite the concept of partisan conveys also positive meanings as the romantic heroism of liberation struggle, it remains a mobilizing concept to violently address the Other, due to the fear that its unpredictability instills. For instance, in contemporary individualized war policymaker and practitioners have resorted to the partisan category to qualify *al-Qaeda* or *Hamas* members unpredictable and indiscriminate violence.⁶³ Others, as the *Pentagon* military strategist Kilcullen, have used the partisan category to identify Afghan and Iraqi insurgents.⁶⁴ While strategic studies scholars have seen in the *Jihad* a form of global partisanship aimed at subverting the “international liberal order.”⁶⁵

The second category used to identify the individuals deemed killable is the uncivilized. Historically individuals have been identified as uncivilized not on the basis of their ideology or their acts,⁶⁶ rather on the basis of their alleged *natural* condition, be it race, religion, or language.⁶⁷ The uncivilized lies outside political order and breaches law because it cannot understand it; he cannot attain any distinction between good and wrong.⁶⁸ Given the teleological connotation of civilization, the term uncivilized has very loose boundaries and it potentially leads everywhere. The presence of the uncivilized opens a void in political orders which can be filled with any sort of legitimate violence.⁶⁹ Historical examples of uncivilized are those of people outside specific *spatio-temporal* international orders, as the Hellenic *poleis* system, the *Respublica Christiana*, or the *Family* of European Nations. Individuals deemed outside such orders of civilization could be targeted with no restraint. Some scholars have tried to trace parallels between the intellectual categories deployed to justify contemporary wars and the uncivilized. The term appears as a powerful justification for regime change policies and humanitarian interventions against those individuals outside civilization as Serbian leader Milosevich, Saddam Hussein or the *Talibans*. Fareed Zakaria once wrote “the United

⁶¹ David Galula and John A. Nagl, *Counterinsurgency Warfare: Theory and Practice*, PSI Classics of the Counterinsurgency Era (Westport, Conn.: Praeger Security International, 2006), 3–30.

⁶² Ernst Jünger, Joachim Neugroschel, and Russell A. Berman, *Eumeswil* (Candor, NY: Telos Press Publishing, 2015), 146.

⁶³ Stathis N. Kalyvas, “The Paradox of Terrorism in Civil War,” *The Journal of Ethics* 8, no. 1 (2004): 97–138, <https://doi.org/10.1023/B:JOET.0000012254.69088.41>.

⁶⁴ David J. Kilcullen, “Countering Global Insurgency,” *Journal of Strategic Studies* 28, no. 4 (August 2005): 597–617, <https://doi.org/10.1080/01402390500300956>.

⁶⁵ Daniel Byman and Jennifer Williams, “Jihadism’s Global Civil War,” *Center for the National Interest*, no. No. 136 (April 2015): 10–18.

⁶⁶ The “uncivilized” breaches customs since he is capable of “cannibalism, sodomy, and the enslavement of their women”, see Schillings, *Enemies of All Humankind*, 15.

⁶⁷ Anne Orford, ed., *International Law and Its Others* (Cambridge; New York: Cambridge University Press, 2006), 271; But, also, from a philosophical standpoint, the reading of Gregory through Agamben recalls some legal arguments, see Derek Gregory, “The Black Flag: Guantánamo Bay and the Space of Exception,” *Geografiska Annaler: Series B, Human Geography* 88, no. 4 (December 2006): 405–27, <https://doi.org/10.1111/j.0435-3684.2006.00230.x>.

⁶⁸ Anthony Pagden, “The ‘defence of Civilization’ in Eighteenth-Century Social Theory,” *History of the Human Sciences* 1, no. 1 (May 1988): 33–45, <https://doi.org/10.1177/095269518800100104>.

⁶⁹ Antony Anghie, “The Evolution of International Law: Colonial and Postcolonial Realities,” *Third World Quarterly* 27, no. 5 (July 2006): 739–53, <https://doi.org/10.1080/01436590600780011>.

States is properly opposed to al-Qaeda because its *raison d'être* is to inflict brutality on the civilized world".⁷⁰ By quoting Stuart Mills words, namely "a savage tribe consists of a handful of individuals scattered," it has been contended that "terrorist are something akin to modern-day savages."⁷¹ Locating the Other into the "uncivilized" box implies making our own war effort rational and just as part of a civilizational mission. On the matter, the legal scholar Mégret expounds that "international humanitarian law has always had an 'other' – an 'other' that is both a figure excluded from the various categories of protection. It is their dark alter ego, the 'uncivilized,' 'barbarian,' 'savage' from which the laws seek to distance themselves."⁷² As Barkawi persuasively puts it, "the public discourses of the War on Terror are suffused with orientalism. Law abiding, Christian and Western civilization is threatened by 'mad mullahs' who hail from an East ever-resistant to modernity and who use violence in ways that violate the most fundamental ethical protocols of armed conflict. The idea of a West at war with an East conceived as radically other is pervasive and longstanding."⁷³

The third category, the enemy of all, is semantically the most intense and expresses a pattern of extreme hostility. The enemy of all, "lying beyond the line of duty" due to the heinous nature of its acts, is a plastic notion employed to address an array of different individuals, from tyrants to pirates, from slave traders to genocidaires.⁷⁴ Enemy of all derives from Latin *communis hostis omnium* and it was coined by Cicero (then turned into *hostis humani generis* by High Middle Ages translators) to address those lying beyond any custom of war.⁷⁵ Enemy of all makes the Other spoiled of any possible protection and legitimizes immediate violent reaction against him: capture, torture, killing or any other form of coercion. As claimed, the term remains even nowadays a productive concept because it allows situating guilty individuals within a universal jurisdiction in which states can enforce universal law in the name of all humanity.⁷⁶ The usage of the enemy of all concept has recently re-emerged to address the phenomenon of terrorism⁷⁷ through the piracy-terrorism analogy.⁷⁸ Anne-Marie Slaughter in 2001 commented that "Al-Qaeda members are international outlaws, like

⁷⁰ Fareed Zakaria, "Wanted—A New Global Strategy," *Newsweek*, November 28, 2008, World edition.

⁷¹ Brett Bowden, "Civilization and Savagery in the Crucible of War I," *Global Change, Peace & Security* 19, no. 1 (February 2007): 3–16, <https://doi.org/10.1080/14781150601137937>.

⁷² Orford, *International Law and Its Others*, 2006, 266.

⁷³ Tarak Barkawi and Ketih Stanski, eds., *Orientalism and War* (Oxford University Press, 2013), 2, <https://doi.org/10.1093/acprof:oso/9780199327782.001.0001>.

⁷⁴ Daniel Heller-Roazen, *The Enemy of All: Piracy and the Law of Nations* (New York : Cambridge, Mass: Zone Books ; Distributed by The MIT Press, 2009).

⁷⁵ As explained by Ruschi the attribution of *hostis humani generis* variant to Bartolus de Saxoferrato seems to be incorrect, as it was Alessandro Tartagni, a XVth century jurist, writing a commentary to Bartolus *Digest* turned 'all' into 'humanity', see Filippo Ruschi, *Il mare, il pirata, il diritto: una ricerca di filosofia del diritto internazionale*, Quaderni de L'altro diritto 7 (Pisa: Pacini giuridica, 2020), 58; even Rubin observes that the origin of the concept is uncertain, see Alfred P. Rubin, "The Law of Piracy," *Denver Journal of International Law and Policy* 15, no. 2 & 3 (Winter/Spring 1987): 173–234. The variant enemy of humanity however is already used in the High Middle-Ages, for instance John of Salisbury uses the concept *hostis humani generis* to address Tyrants in his *Policraticus*, directly quoting Cicero, see Berardo Pio, "«In superbos reges»: il tirannicidio in Boccaccio e nel pensiero politico del Trecento," *Studi storici*, no. 3 (2017): 693–718, <https://doi.org/10.7375/89301>.

⁷⁶ Douglas Richard Burgess, "Hostis Humanis Generis: Piracy, Terrorism and a New International Law," 2003, <https://doi.org/10.14288/1.0077587>.

⁷⁷ David Luban, "The Enemy of All Humanity," *Netherlands Journal of Legal Philosophy* 47, no. 2 (December 2018): 112–37, <https://doi.org/10.5553/NJLP/221307132018047002002>; Shalev Ginossar, "Outlawing Terrorism," *Israel Law Review* 13, no. 2 (April 1978): 150–59, <https://doi.org/10.1017/S002122370000621X>.

⁷⁸ Mikkel Thorup, "Enemy of Humanity: The Anti-Piracy Discourse in Present-Day Anti-Terrorism," *Terrorism and Political Violence* 21, no. 3 (June 29, 2009): 401–11, <https://doi.org/10.1080/09546550902950282>; Also mentioned within the N.S.S. 2002 U.S., "UNITED STATES The National Security Strategy of the United States of America. [Washington], President of the U.S." (The White House, 2002).

pirates, slave traders or torturers.”⁷⁹ Analyzing this new analogy, fine-grained genealogies have shown that the enemy of all is not at all incompatible with modern international law as claimed by some jurists,⁸⁰ rather the enemy of all is historically and ontologically structural to international law and its spatio-temporal articulation.⁸¹ To some extent “pirates as out-laws cannot be understood in any other way but as legal creatures.”⁸² For this reason, Ruschi claims that the analogy between pirate and terrorist is possible because of a comfortable and superficial association that insists on two weaving elements that compose pirate radical hostility: “a thalassic anomic space of action and an eccentric anthropology characterized by a non-political *animus furandi*.”⁸³ As a matter of fact, it can be stated that the concept has never disappeared from legal and political imaginaries because it is an instrument to address exceptional circumstances in the *international* by mobilizing natural law principles superseding “the voluntary law of nations.” As explained by the legal philosopher Walter Rech in his investigation of Vattel’s thought, the Swiss jurist deploys the enemy of mankind in different contexts. In facts, Rech shows that “in a state of international emergency provoked by an enemy of mankind trampling upon the voluntary law of nations, the recourse to natural law eliciting all nation’s right to collective self-defense became imperative to obtain a minimum level of international security.”⁸⁴ Individual categories as the “enemy of all,” prove that even within coherent political and legal constructions as the Westphalian system or international law, exception is structural rather than antithetical.

4. Framing the research question: the regular enemy in contemporary war

The literature dealing with the exceptional categories of contemporary war provides a rich and satisfactory mapping of the recurrence of these three concepts through time. These scholars prove how surprisingly these exceptional categories continue to haunt international practices and discourses and how at times policymakers, lawyers, and strategists resort to historical cases to articulate their narratives. It is shown how, despite “such figures might appear to be marginal to mainstream political discourse,” the partisan, the uncivilized, and the enemy of all are “figures around which law and violence coalesce, drawing lines across which norms are policed and the war power exercised.”⁸⁵ The discourses on the individualization of war have strongly relied on these liminal categories of alterity, by tropes as analogy, metaphor, and hyperbole.

Yet, what remains not thoroughly addressed in such a scholarship is how in the discourses on individualization of war the so-called normal categories of enmity have been used and deployed. This research tries to shed further light exactly on what can be conceived as the normal concept of enemy

⁷⁹ Anne-Marie Slaughter, “Al Qaeda Should Be Tried Before the World,” *New York Times*, November 17, 2001, Opinion edition.

⁸⁰ Marc de Wilde, “Enemy of All Humanity: The Dehumanizing Effects of a Dangerous Concept,” *Netherlands Journal of Legal Philosophy* 47, no. 2 (December 2018): 158–75, <https://doi.org/10.5553/NJLP/221307132018047002005>.

⁸¹ Martti Koskenniemi, Walter Rech, and Manuel Jiménez Fonseca, eds., *International Law and Empire: Historical Explorations*, First edition, History and Theory of International Law (Oxford, United Kingdom: Oxford University Press, 2017), 3–14 and 158–67.

⁸² Amedeo Policante, *The Pirate Myth: Genealogies of an Imperial Concept*, Law and the Postcolonial: Ethics, Politics, & Economy (Milton Park, Abingdon, Oxon [UK]; New York, NY: Routledge, 2015), 6.

⁸³ Ruschi, *Il mare, il pirata, il diritto*, 34.

⁸⁴ Walter Rech, *Enemies of Mankind: Vattel’s Theory of Collective Security*, The Erik Castrén Institute Monographs on International Law and Human Rights, volume 18 (Leiden: Martinus Nijhoff Publishers, 2013), 224.

⁸⁵ Mark Neocleous, *The Universal Adversary: Security, Capital and “the Enemies of All Mankind”* (Abingdon, Oxon; New York, NY: Routledge, 2016), 9.

in war: the regular enemy. The concept of conventional enemy is often taken for granted and self-explaining in the literature on contemporary war.⁸⁶ This thesis tries to question how the conventional concept of enemy is affected and how is it used in discourses on individualized war. It seems that in the triumphalist discourses legitimating the New World Order in the late nineties, and in the hysteric and often chaotic reaction to transnational terrorism since 2001, some *international* categories have fallen without much attention by commentators and experts. The polarizing and meaningful sentence pronounced before the Congress by George W. Bush at the opening of the *war on terror*, “either you are with us, or you are with terrorist,” talks much about the frenzy with which normal categories have been cast aside in political discourses.⁸⁷ At the time of individualized war, the normal category⁸⁸ of conventional enemy appears as less important, or, at least, not so much crucial in international politics. But the concept of conventional enemy is still there, defining languages, imaginaries, and relations at the *international*.

Except for some thematic studies devoted to hostility as a metaphysical issue in international relations,⁸⁹ no thorough discussion of the concept of conventional enemy has been so far conducted. What seems to lack in the literature is a thorough appraisal of the intellectual foundations that underpin the concept of conventional enemy and its reverberation on international politics today. And, more specifically, what seems to remain vague and unaddressed is the relationship that the conventional enemy has with the categories of time and space in our understanding of the international. Indeed, as succinctly put by Prozorov “the oblivion of enmity necessarily comes at the price of destabilizing the very foundations of IR discipline – the concept of the *international*.”⁹⁰

Rather than asking how the concept of conventional enemy changes in the face of the emergence individualized war, a question that would shy away from dealing with an essential element of political concepts,⁹¹ namely their contingency according to the historical-cultural context from which they are generated. This research tries starting from the specular opposite question. The thesis questions what remains and what falls of the concept of conventional enemy in individualized war ethical, legal, and strategic narratives? What remains and how is deployed today the concept that from Gentili through Grotius and Hobbes, to Vattel and Clausewitz up to the Geneva Conventions, defined the conditions for thinking war and peace?

⁸⁶ Most likely, the reason why the concept of conventional enmity is often neglected in historical dimension is that Carl Schmitt treatment of the concept is both exhaustive and intimidating at the same time. On the issue, Freund for instance argues that after Schmitt there is only space for anthropological enquiries on the concept.

⁸⁷ Voice of America, “Bush: ‘You Are Either With Us, Or With the Terrorists,’” *Voice of America*, September 21, 2001, News edition, <https://www.voanews.com/a/a-13-a-2001-09-21-14-bush-66411197/549664.html>.

⁸⁸ “Normal” may sound an ambiguous and unpleasant adjective. It may mean for some “the existing status quo” of the rule or custom and thus can be interpreted as conservatism, while for others it can simply amount to what is “certain and predictable”, thus meaning the “rational.” Here “normal” is used in a simpler way; it is used only as the contrary to the “exceptional” intended as a borderless, uncertain form of power management.

⁸⁹ Gabriella Slomp, *Carl Schmitt and the Politics of Hostility, Violence and Terror* (Basingstoke: Palgrave Macmillan, 2009); Ioannis D. Evrigenis, *Fear of Enemies and Collective Action* (Cambridge: Cambridge University Press, 2007), <https://doi.org/10.1017/CBO9780511509636>. To some extent important insights on the theme of hostility in international relations can be found even in Evgeny Roshchin, “The Concept of Friendship: From Princes to States,” *European Journal of International Relations* 12, no. 4 (December 2006): 599–624, <https://doi.org/10.1177/1354066106069325>.

⁹⁰ Prozorov, “Liberal Enmity.”

⁹¹ Timo Pankakoski, ‘Conflict, Context, Concreteness: Koselleck and Schmitt on Concepts’, *Political Theory*, 38.6 (2010), 749–79 <<https://doi.org/10.1177/0090591710378572>>; Even Ish-Shalom holds a similar position towards the concreteness of concepts in specific historical contexts in Piki Ish-Shalom, ‘Conceptual Relics, Mutual Assured Evilness and the Struggle over Israeli Public Commonsense’, *International Politics*, 51.4 (2014), 543–60 <<https://doi.org/10.1057/ip.2014.24>>.

This question allows, in a first part of the thesis, to take an in-depth sight on what has been the intellectual crafting of conventional enemy concept. The goal is not just to excavate the history of conventional enemy, but to highlight its significance in shaping how we think about the *international* and war. To call someone enemy is to acknowledge its autonomy, its collective nature and some sort of familiarity and shared custom. Here are considered the key authors dealing with war and the concept of enemy, their intellectual context, and their sources.⁹² While in a second part the question allows highlighting different patterns of rupture and continuity to challenge the mainstream postulation, too often taken for granted in international relations, that “before there was the *justus hostis*, now there is no more *justus hostis*.” This simplistic and determinist naturalization of the historicity of the conventional enemy can be deconstructed by overcoming “the faux dilemma which pits continuity against rupture, permanence against innovation.”⁹³ The research question tries to shed light on the fact that the concept of conventional enemy does not disappear in contemporary discourses and practices of individualized war, rather it is often deployed as an authoritative source of legitimacy. Through this research questions the thesis contends that the concept as deployed in individualized war is part of a different intellectual project irreconcilable with the *international*. As a matter of fact, when the individual is juxtaposed to the category of conventional enemy as in the cases examined in the thesis (*unjust* enemy, unlawful combatant, and target in drone warfare), there is a substantial re-interpretation of the *spatio-temporal* logics that underpin the concept of *iustus hostis* as intended in the project of the *international*.

5. Some nods on epistemological assumptions and methodological criteria

The research question is built on epistemological assumptions that, being debatable, need to be clarified before proceeding. In the following lines are elucidated in detail the fundamental epistemological assumptions behind this research question and the methodological criteria adopted to respond to such a research question. The first paragraph deals with the relationship between history, theory, and the phenomenon of war. While the second paragraph addresses the “why” and the “how” to study a concept by clarifying the relevance of concepts to the understanding of international relations.

5.1 History, theory, and war

The first assumption is that war is hardly tractable as an object of research. Despite several attempts to theorize war in a systematic way, there have rarely been commonalities between wars in history so evident to come up with a convincing theory of war. War is hardly tractable for three reasons. First, war and violence. Due to its violent character war is an event in constant becoming, a “generative, productive force” always exceeding the boundaries of the expected and the rational.⁹⁴ Second, war as an institution. War is yes an institution because it owns a symbolic significance, as

⁹² The collective character of the concept of conventional enemy in Schmitt happens to remain in shadow and could certainly be explored. See Carl Schmitt, *The Concept of the Political* (Chicago: University of Chicago Press, 1996), 46.

⁹³ Reinhart Koselleck and Michaela Richter, “Basic Concepts in History: A Historical Dictionary of Political and Social Language in Germany,” *Contributions to the History of Concepts* 6, no. 1 (January 1, 2011): 1–37, <https://doi.org/10.3167/choc.2011.060102>.

⁹⁴ Here it is referred, among the others, to some of the arguments raised by Antoine Bousquet, Jairus Grove, and Nisha Shah, “Becoming War: Towards a Martial Empiricism,” *Security Dialogue* 51, no. 2–3 (April 1, 2020): 99–118, <https://doi.org/10.1177/0967010619895660>.

rightly acknowledged by Bull, but nonetheless it is never the same. The heterogeneity of actors, times, stakes, places between wars makes war every time a different institution. Third, war is not simply a violent act whose ontology rests in the material accomplishment of such violence. War is a “maker, breaker, and transformer of politics, society, economy and culture” and “knowledge about war is caught up in these transformations”.⁹⁵ Knowledge about war happens at different levels, at different times and is the product of exchanges between different levels of understanding: from the individual experience to collective narratives. War indeed is determined, beyond the historical-concrete circumstances of a specific epoch in which it is fought (as weapons, distribution of power, economic factors, demographics, etc.), by intellectual categories through which it is comprehended, represented, and justified. War is a continuous exchange between theoretical structures and historical narratives, each feeding the other.⁹⁶ Events of war are shaped by the vocabularies through which they are represented and at the same time the vocabularies are shaped by the course of events. To grasp such a continuous exchange, it is necessary to focus on paradigms of war, on archetypical forms that survive through time as modes to represent the unrepresentable. As explained by Hillman, the meaning of war transcends the *ensemble* of data that compose it and its causes. To study war, it should be taken in a paradigmatic form, the form that feeds narratives and imaginaries. The paradigm is our imaginative possibility of thinking and studying war, but also our limit. Using the paradigm means being able to handle and treat war as an object of study, but also being aware that that paradigm is just fiction, or more simply, an imaginative tool that limits our thinking. Indeed, war in its exceedingly character can be understood intersubjectively only through a paradigm: we can make sense of it if we have a shared paradigmatic idea of it. Hillman has indeed claimed that war can be comprehended only through mythical and archetypical forms, these forms narrated and imagined through time, which however cannot exhaust the multiple meanings of war.⁹⁷ Taking the paradigmatic, archetypical form allows to discover and interpret the continuous interplay between facts and representations, events and vocabularies, history, and theory of war.⁹⁸

In this thesis the focus is on one of those ideas that compose the archetype of war: the idea of enemy. Ideas are immaterial objects that have made war understandable through paradigms. Ideas travel around as engines for action but also as limits to imagination. In this sense ideas have a considerable impact on and an explanatory power of social and political action, even at the international level where different languages and diverse cultural layers may render more complex the frame.⁹⁹ But not all ideas are the same. Ideas on which authoritative speakers have devoted effort and attention are more significant and have more explanatory power to the end of grasping archetypes. For such a reason, this research situates along the path already traced by those *internationalists* attentive to intellectual dimension of the making of international relations.¹⁰⁰ These scholars have

⁹⁵ Tarak Barkawi and Shane Brighton, “Powers of War: Fighting, Knowledge, and Critique,” *International Political Sociology* 5, no. 2 (June 1, 2011): 126–43, <https://doi.org/10.1111/j.1749-5687.2011.00125.x>.

⁹⁶ Bartelson, “War in International Thought,” 8.

⁹⁷ James Hillman, *A Terrible Love of War*, [2nd ed.], first published, New York (N.Y.), the Penguin press, 2004 (New York (N.Y.): Penguin books, 2005), 22–26.

⁹⁸ A similar point is raised in Peter Paret, *Clausewitz and the State: The Man, His Theories, and His Times* (Princeton, N.J: Princeton University Press, 2007), 354.

⁹⁹ Edward Keene, “International Intellectual History and International Relations: Contexts, Canons and Mediocrities,” *International Relations* 31, no. 3 (September 2017): 341–56, <https://doi.org/10.1177/0047117817723068>; Armitage, “Fighting Words?” Also, a clear account on how IR and intellectual history can encounter is addressed by Claire Vergerio, “Context, Reception, and the Study of Great Thinkers in International Relations,” *International Theory* 11, no. 1 (March 2019): 110–37, <https://doi.org/10.1017/S1752971918000192>.

¹⁰⁰ Duncan S. A. Bell, “History and Globalization: Reflections on Temporality,” *International Affairs* 79, no. 4 (July 1, 2003): 801–14, <https://doi.org/10.1111/1468-2346.00337>; Ian Hall and Mark Bevir, “Traditions of British International

argued that by a serious engagement with the history of political *thinking* (here preferred to *thought*), its actors and its audiences, the intellectual structures that we take for natural can be deconstructed.¹⁰¹ Of course not all forms of theorization on war and the enemy are equivalent and can be taken into consideration. History is a form of narrative and can perform different functions, it “acts as a conservative force and sometimes as an instrument of critique.”¹⁰² Some thinkers, due to their social position (powerful or marginal), due to their polemical objective (apology or critique) are more relevant than others because of their capacity to influence the flow of historical narrative, to orient its reasons and its logics, and to resist change. Reflecting on war in its intellectual articulation is not mere semantical speculation, it amounts to interrogating the concrete modes through which we represent, justify, regulate, and finally use organized violence in our present time.¹⁰³ And, more broadly, studying the way we conceptualize war defines also the degree of intelligibility of international relations in a specific epoch, being war, as reminded by Martin Wight, the “ultimate feature, the extreme moment” in quality, intensity, and depth of international relations.¹⁰⁴

The second assumption is that among the ideas that help to understand wars archetypes the idea of representing the enemy is certainly a significant one. The idea of enemy is structural to our imagination of the idea of war. Only that kind of organized violence that is able to represent an enemy can be called war. The two entertain a relationship of mutual intellectual co-constitution.¹⁰⁵ Indeed, it has been claimed that “a declaration of war is always a declaration of enemy.”¹⁰⁶ The representation of the enemy is a vector of political intensity and is instrumental to the rational logic of war as a political, legal and strategic act.¹⁰⁷ Defining someone or something as enemy is not a neutral act; rather it is a polemical and mobilizing choice which transcends the pure linguistic dimension. In particular, among the different declination of the enemy representation, the concept of conventional enemy or *iustus hostis* marks a substantial difference for the understanding of war. Conventional enemy is a precise representation of the other party in war which involves specific political, legal and strategic features and produces specific imaginaries for those using the concept. Of course, nothing as *iustus hostis* ever existed as a tangible matter. Enemies changed their face depending on the way they were seen from outside at given moments, in specific historical contexts. No war is recorded to be ended without cruelties to the other party forbidden between conventional enemies.

Nonetheless, it can be claimed that a concept of *iustus hostis* existed in the imaginations of those thinking about war as a benchmark. Conventional enemies were considered, for examples, those political entities that could be defined as sovereign states in the Westphalian system, approximately in the eighteenth century. Conventional enemies were the other party in war as codified in the laws

Thought,” *The International History Review* 36, no. 5 (October 20, 2014): 823–34, <https://doi.org/10.1080/07075332.2014.951951>.

¹⁰¹ Keene, “International Intellectual History and International Relations”; Bell, “History and Globalization”; Armitage, “Fighting Words?”

¹⁰² Annabel S. Brett, Megan Donaldson, and Martti Koskenniemi, eds., *History, Politics, Law: Thinking Internationally* (Cambridge, United Kingdom; New York, NY: Cambridge University Press, 2021), 4.

¹⁰³ As held by Kosselleck «Begriffe als solche haben keine Geschichte. Sie enthalten Geschichte, haben aber keine» in Giuseppe Duso, *La Logica Del Potere: Storia Concettuale Come Filosofia Politica*, Collana Di Filosofia Politica (Monza (Milano): Polimetrica, 2007), 22.

¹⁰⁴ John Keegan, *A History of Warfare*, 1. ed (New York: Vintage books, 1994), p. 12; Martin Wight, Gabriele Wight, and Brian Porter, *International Theory: The Three Traditions*, Reprint (London: Leicester University Press for the Royal Institute of International Affairs, 1996), p. 206.

¹⁰⁵ Galli, Minervini, and Sitze, “On War and on the Enemy.”

¹⁰⁶ Schmitt, *Theory of the Partisan*, 85.

¹⁰⁷ Morgenthau et al., *The Concept of the Political*, 88–92.

of war. Or, conventional enemy was the opponent in the philosophical imagination on war of Clausewitz. Thus, the concept of conventional enemy can be used as an intellectual device to read the complexity of war in its historical and theoretical forms. The concept of conventional enemy in this thesis is a lens, an imaginative picklock, deployed to have a sight on a complex *cosmos* of contemporary war, made from different sedimented histories.¹⁰⁸ To avoid the reification of the concept of regular enemy and to eschew risks of ideologization of the past as something better or less chaotic than the present, some methodological criteria used here must be explained in detail.

5.2 Concepts, contexts, and powers

Concepts are among the most powerful intellectual devices used to articulate and make sense of the real. However, some concepts are more relevant than others. There are indeed basic concepts, which are fundamental in sustaining structures of meaning, that rather than having a history, convey themselves histories because change less frequently. The concept of enemy is certainly among them. To study a concept is to some extent to reify something that exists only in language. Yet, the study of concepts can be undertaken by considering that the meaning of a concept is itself the product of historical change. Concepts are enduring not simply because of their validity in the real, but also and mostly because they are places of encounter and contestation. They are the terrain where battles of legitimacy between authoritative actors occur. This research resorts to the core criteria of the history of concepts methodology.¹⁰⁹ History of concept starts from conceptions of time and temporality more scrupulous than the traditional canon of the history of ideas, both in its (relativist) historicist version and its (anachronistic) transhistorical version. Compared to the methodological criteria of the history of ideas, historians of concepts set the objective, more modest and more effective, of looking at those basic intellectual categories of political discourse which in certain epochs have produced and indicated change. The history of concepts suggests engaging with the past critically taking history not as a neutral span of time where facts and ideas disclose, but as a *medium*. History is understood as field of interaction between actors that define and articulate the past, the present and the future. The history of concepts therefore assumes temporality as an indispensable analytical field. Every concept is endowed with a contingent but also lasting temporality, which makes it belonging to a period that cannot be defined as closed until its philosophical presuppositions are no longer able to connote horizons of meaning.

On the one hand, attention to temporality means considering processes of change and rupture of meaning beyond apparent continuity in usage.¹¹⁰ Studying concepts is a matter of noticing the transformations that concepts undergo and carry themselves.¹¹¹ In other words, “to detect change in meaning against a background of stability or identity” of the word.¹¹² On the other hand, history of

¹⁰⁸ Reinhart Koselleck, Stefan-Ludwig Hoffmann, and Sean Franzel, *Sediments of Time: On Possible Histories*, Cultural Memory in the Present (Stanford, California: Stanford University Press, 2018), 111.

¹⁰⁹ Reinhart Koselleck and Michaela Richter, “Basic Concepts in History: A Historical Dictionary of Political and Social Language in Germany,” *Contributions to the History of Concepts* 6, no. 1 (January 1, 2011): 1–37, <https://doi.org/10.3167/choc.2011.060102>.

¹¹⁰ Reinhart Koselleck, “Begriffsgeschichte and Social History,” *Economy and Society* 11, no. 4 (November 1982): 409–27, <https://doi.org/10.1080/03085148200000015>.

¹¹¹ José María Rosales and Rosario López, “Introduction: Exploring Methodological Pluralism in Intellectual and Conceptual History,” *Global Intellectual History* 6, no. 1 (January 2, 2021): 1–4, <https://doi.org/10.1080/23801883.2019.1657635>.

¹¹² Jan Ifversen, “About Key Concepts and How to Study Them,” *Contributions to the History of Concepts* 6, no. 1 (January 1, 2011), <https://doi.org/10.3167/choc.2011.060104>.

concepts suggests cautiousness with traditional periodization of social history. Traditional historical periodization must be deconstructed, exactly by looking at the survival of a concept through different epochs and contexts. Concepts often last longer than social phenomena and carry their meaning even through and beyond epochs.¹¹³ A fundamental concept, as Armitage has argued, “accumulates meanings over time without ever quite casting off its earlier connotations, rather like ancient Rome in Freud’s famous metaphor, in which ‘all the earlier phases of development continue to exist alongside the latest one.’”¹¹⁴

Hence, concepts are linguistic devices that change over time and across space in usage and meaning;¹¹⁵ but it is precisely their volatile and contingent nature that renders concepts both indicators and factors of historical change.¹¹⁶ Concepts are to some extent richer than other intellectual paradigms as the study of a specific author, a canon, or a tradition. Concepts indeed convey different perspectives on reality and are the byproduct of layers of usage, sedimented through time. The historical timeframe considered in this thesis may reasonably look excessive to the readership, and in this sense the use of history to read the present may reasonably seem aggressive and disrespectful of the precision that historical methodologies devote to contingencies, details, and nexuses. Looking for intellectual consistency in such a long timeframe may be naïve and misleading. However, by using a concept as a heuristic device that historical period may acquire a meaning that allows to draw some meaningful conclusions in light of present concerns and bring back contemporary predicaments to historical roots so to denaturalize what today seems carved in stone.

In the study of concepts, alongside temporality, two more elements must be considered for a productive enquiry into the history of the concept. The first element is the *milieu* or context wherein a concept is used. The second is the distribution and the articulation of power that a concept can highlight between those who use it and those who are subject to it.

Context is the “space where a concept is used for a communicative action.”¹¹⁷ Context to be meaningful is always plural, there exist indeed multiple contexts that coexist and overlap. Thus, to study a concept it is essential to acknowledge the relevance of contexts wherein the concept acquires a specific meaning due to conditions that enable such a meaning to perform communication. Context is an intersubjective condition where actors, historical perception, institutional arrangement, and geographical projections are recognized to mark a distinction. Specific terms in different contexts may acquire radically different meaning and their communicative performance may be greater or weaker. One may simply think for instance to the performative action that the concept of enemy plays in the context of the second World War when used by Churchill, and the different performance of the same concept in Sun Tzu’s *Art of war*. Hence, continuities in the history of a concept are to be contingently balanced and constantly compared with transformations in context. As suggested by Skinner, this methodological caution allows grasping and considering rhetorical re-elaborations of the concept by main political actors in given contexts in order to disclose power relations that

¹¹³ Giuseppe Duso and Stephen Marth, “Thinking about Politics beyond Modern Concepts,” *CR: The New Centennial Review* 10, no. 2 (2010): 73–97, <https://doi.org/10.1353/ncr.2010.0029>.

¹¹⁴ Armitage, “Fighting Words?”

¹¹⁵ Reinhart Koselleck and Michaela Richter, “Basic Concepts in History: A Historical Dictionary of Political and Social Language in Germany,” *Contributions to the History of Concepts* 6, no. 1 (January 1, 2011): 1–37, <https://doi.org/10.3167/choc.2011.060102>.

¹¹⁶ Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*, Reprint, Studies in Contemporary German Social Thought (Cambridge, Massachusetts: The MIT Press, 2015), 14.

¹¹⁷ Quentin Skinner, “Meaning and Understanding in the History of Ideas,” *History and Theory* 8, no. 1 (1969): 3, <https://doi.org/10.2307/2504188>.

withstand political discourses. In sum, attention to context prevents anachronistic assumptions. Concepts also affect the context and make the context an evanescent boundary, which cannot be traced in a clear-cut way. Thus, even the context has to be framed cautiously as a boundless space and should not be essentialized. The aim of the research is to start the enquiry from a crucial period, the end of the Cold War. The end of the Cold War is here assumed as an *in concreto* historical context in which different patterns of struggles have taken place. In Koselleck terms the end of the Cold War is a timeframe in which both the notion of time and the notion of space, especially in the West, are subject to considerable processes of transformation. Indeed, both spatial and temporal practices, discourses, and experiences are radically shaken by the systemic events and equally the system is interpreted and represented with new parameters of time and space. In this context, the echo of modernity is not only significant as an experience, but it is significant because it is still able to give meaning to the present and expectations for the future.¹¹⁸

The choice of studying concepts formed, sedimented and re-worked in Europe (and in the West more broadly) may reasonably be subject to critique of excessive Eurocentrism; however, the argument here holds that it would be epistemologically unproductive and anachronistic to dismiss European context as to appease a more inclusive and comprehensive history. What is called European modernity has to be taken as a reference context in its ideologized centrality and in its universalist aspiration in order to unravel European self-representation within and in relation with the outside. Centrality has to be explored both as a historical exception and as problematic *datum* taken for granted and still determining in the study of international relations. European centrality in this sense can be deconstructed as “to make that which presents itself as timeless and universal as contextually bound to particular projects or interests.”¹¹⁹ Further, detaching the concept of enemy from its social, cultural and political context, that is indeed Europe and modernity in Europe, would likely produce inconsistencies.¹²⁰ Working on European context does not necessarily exclude the possibility of indirectly bringing into the history perspectives from outside, and this is the very intention of the research: reflecting on the concept of conventional enemy as a polemical concept, that entails power relations, often hidden in its usage.

The second issue regards power. The need to delve into the history of a concept cannot be satisfied with a reconstruction indifferent to the question of the localization of power and its articulations. Conceptual history has the interpretative and critical task to engage with the rhetorical aims that the concept carries. Power is not always transparent at the first glance. Therefore, the present research is placed, so to speak, a few steps beyond the history of concepts, making use of the precious interpretative insights that the deconstructive critique of modern ideas makes available.¹²¹ There is no given or self-evident knowledge, no given datum, no given subject to study. Knowledge itself is part of historical processes as a power resource. History and theory are articulations of different forms of power and must be contextualized and understood as fields of interaction between actors seeking to use powers.

¹¹⁸ Bo Stråth and Peter Wagner, *European Modernity: A Global Approach*, Europe's Legacy in the Modern World 6 (London ; Oxford ; New York: Bloomsbury Academic, an imprint of Bloomsbury Publishing Plc, 2017), 12–14.

¹¹⁹ Koskenniemi, “Histories of International Law.”

¹²⁰ Koskenniemi.

¹²¹ Foucault, “The Subject and Power.”

**Chapter 2 - The crafting of the modern concept of regular enemy in
the *ethico*-political, juridical, and strategic reflections on war**

1. Introduction: chapter's aims

The modern concept of regular enemy and what remains of it in the contemporary conceptual architecture of our international relations has a long, almost millenary history. It is a history made of crafting, disappearances, recoveries, and long processes of sedimentation. Layers of doctrines, reflections, and customs on war, which from Greek and Roman philosophy and legal theory have travelled through the Christian Middle Ages to early modern and modern secularized political theory. Our idea of regular enemy is entirely tied to the political vicissitude of Western (Euro-Mediterranean) societies, a vicissitude conceptualized by what we used to identify as Western political thought traditions. However, assuming as it is usually done that the concept of regular enemy belongs to the Western political thought tradition is certainly not unproblematic and runs the concrete risks of being simplistic. It is problematic and simplistic for two main reasons.

First, the idea of a unitary and monolithic Western political thought is debatable. There is a contiguity between what are conventionally defined as ancient political thought traditions and its modern counterpart as, however, there is a substantial discontinuity. If the Greek historiography and philosophy and the Roman legal tradition represent the conceptual backbone of early-modern and modern political thought, modern vocabularies speak of a different world. Indeed, both the Greek the historical-philosophical and Roman legal culture relied, respectively, express but it is not a purely political concept in the modern sense. The Greek political culture, as illustrated by historiographers as Thucydides, knows during the *poleis* system the concept of *polemios*, which conflates the meanings of a regular, conventional adversary with whom a specific *ethos* of war is shared. The term *polemios* is contentiously opposed to that of *barbaros*, the barbarian, whose incapacity to understand and familiarize with Greek *ethos* has often been stigmatized as a justification for unrestricted warfare.¹²² The concept of *polemios* does not possess the political significance of its modern counterpart. Similarly, Roman political culture, less keen to philosophical subtleties, not simply produces a historical category charged with a normative meaning, but more specifically crafts a formalized legal category which substitutes¹²³ the general term *perduellis*: the *iustus hostis*.¹²⁴ The two terms, *polemios* and *iustus hostis*, though being intellectual benchmarks for the centuries ahead and foundational for modern thinkers, differ substantially from the modern concept of regular enemy. They differ because they refer to very different *spatio-temporal* organizations of politics.¹²⁵ Therefore, the starting-point assumed in this genealogical reconstruction, though arguably artificial, is the end of the Middle Ages and early modernity.

Second, the assumption is problematic and simplistic because, despite the evident fact considerable traces of Greco-Roman political philosophy and legal theory can be searched out in the

¹²² Miglio et al., *Amicus (Inimicus) Hostis*, 13.

¹²³ *Bullettino dell'Istituto di Diritto romano "Vittorio Scialoja"*. Vol. 2. (Milano: Giuffrè, 2013).

¹²⁴ As noted by Calore "*hostis*" is an ambiguous term before becoming a legal-military concept. *Bullettino dell'Istituto di Diritto romano "Vittorio Scialoja"*. Vol. 2., 107; Umberto Curi, ed., *Xenos: filosofia dello straniero*, Paradosso 2002 (Padova: Poligrafo, 2002), 15–19.

¹²⁵ In particular, Ulpian calls "*hostes* those against which Rome had publicly declared war or who had declared war on Roman people. Other enemies he termed *latruncoli* and *pradeones*, not enjoying rights accorded public enemies, beyond the pale of Roman law." While another *topical* quotation is from Cicero "there are laws of war, and it often happens that faith given to the enemy must be kept" which traces a distinctive line between an enemy who is lawful and the pirate who is not lawful. See Marcus Tullius Cicero, Miriam T. Griffin, and E. M. Atkins, *On Duties*, Cambridge Texts in the History of Political Thought (Cambridge [England]; New York: Cambridge University Press, 1991), 16–18 and 141.

modern political theory, other political cultures than the so-called Western ones have critically influenced the construction of international relations in early and late modernity as we know them. Non-European political cultures have produced concepts of regular enmity of equivalent character to the Western one and this has certainly not gone unnoticed in Europe. Such non-European concepts, as for example the Chinese Mohist concept of adversary¹²⁶ or the Islamic enemy elaborated during Abbasid Caliphate,¹²⁷ have had an impact on the modern imaginary of regular enemy, though the force of such impact is hard to trace in the context of this thesis.

Given this premise, in the following pages it will be provided a brief reconstruction of genetical moments of the modern concept of regular enemy through three different forms of argumentation on war.

The first one is the *ethico*-political argumentation which aims at constructing a fictional dimension in which the contending parties can regard each others as morally and politically peers. The second one is an argumentation which aims at constructing a juridical space of regularity where the two parties, under certain conditions, can define each others as lawful enemies. While the third one is an argumentation on war through the lens of *force*, intended as material and moral, that constructs a strategic fictional dimension in which the enemy is a specular figure to the Self, engaged in the same strategic space. Therefore, the two parties can see each others strategically as enemies. The protagonists of such argumentations on war are, respectively, Grotius and Hobbes on the ethico-political definition of the enemy, Vattel on the legal one, and Clausewitz on the strategic one.¹²⁸

It will be discussed how the construction of the individual subject as a political actor, which is something not fully addressed in political theory until the seventeenth century, is kept together with the construction of the state as a political form through which individual actions in war can be mediated.¹²⁹ It will be noted that the principle of authority is the very cornerstone that holds any possible scaffolding of regularity in war. Without authority war cannot take a regular form.¹³⁰ In the theories discussed here, authority is not simply a word that resonates theological vocabularies of Christianity; authority is a principle that qualifies new configurations of space and time and that breaks ultimately with the Christian world. In such a qualification the single individual and the community are kept (partially and temporarily) together through a fictional dimension where the individual assumes a different form and thus different rights and duties. Almost all the “theorists of

¹²⁶ Bingxiang Luo and Sumner B. Twiss, eds., *Chinese Just War Ethics: Origin, Development, and Dissent*, War, Conflict and Ethics (London: Routledge/Taylor & Francis Group, 2015), 3-5;226; Karen Turner, “War, Punishment, and The Law of Nature in Early Chinese Concepts of The State,” *Harvard Journal of Asiatic Studies* 53, no. 2 (December 1993): 285, <https://doi.org/10.2307/2719452>.

¹²⁷ Sadia Tabassum, “Combatants, Not Bandits: The Status of Rebels in Islamic Law,” *International Review of the Red Cross* 93, no. 881 (March 2011): 121–39, <https://doi.org/10.1017/S1816383111000117>; Khaled Ramadan Bashir, *Islamic International Law: Historical Foundations and Al-Shaybani’s Siyar* (Cheltenham, UK: Edward Elgar Publishing, 2018), 86–100.

¹²⁸ The appeal to historical figures does not respond to the mere necessity to bring history in as a source of undisputable authority on how things were in the past and how should be understood in the present. Reconstructing the history of specific vocabularies (be them political, legal, or strategic) and assuming such an authority runs the risk of downplaying the nuances that constitute history’s histories. Indeed, the theory of regular war is not a continuous and independent theory which stands alone in history of political thought. It is rather a theory compenetrated by other bodies of doctrine. Regular war is not opposite to just war, but it shares with it vocabularies, logics, and intellectual figures. See Anne Orford, *International Law and the Politics of History* (Cambridge: Cambridge university press, 2021), 3–9.

¹²⁹ Carlo Galli, *Spazi politici: l’età moderna e l’età globale*, Saggi 540 (Bologna: Il Mulino, 2001), 27.

¹³⁰ Pablo Kalmanovitz, *The Laws of War in International Thought*, First edition, The History and Theory of International Law (Oxford ; New York, NY: Oxford University Press, 2020), 17.

regular war emphasize the fact that wars necessarily involve political associations—typically sovereign states—that pursue clashing collective interests in weakly institutionalized contexts.”¹³¹

As recalls Carlo Galli, “autonomy and relationship are the two poles of an always open question in political theory.”¹³² Grotius and Hobbes, similarly Vattel, and then with unique power Clausewitz, all try to answer this open question on autonomy and relationship, emphasizing how such linkage between autonomy and relationship becomes even more problematic in the realm of organized violence. In their answer the qualification of who is a regular enemy, who can bear arms legitimately, and who can kill and then be killed, finds a structured response by locating the individual into a fictional space where it can acquire the qualification of regular enemy. In this respect, the notions of space and time are not studied so much as categories of the real, rather they are studied as a production of and at the same time as an appropriation by political, legal, and strategic discourses on war.¹³³

Yet, as it will be shown in different passages along this chapter, the concept of regular enemy is not a monolithic, coherent intellectual construction. The concept of regular enemy in political, legal, and strategic discourses on war is constantly punctuated by exceptions. The argumentation about regular enmity is never a closed one. It always implies shadowy circumstances or events, in which the regular enemy can be straightly turned into other forms of hostility, as the irregular enemy, the evil, the infidel, the monster, etc. Even in modern conceptuality, within the definition of the other party in war, the difference between what is considered rule and what is instead considered exception is instable and thin. If the regular enemy is theoretically rule, historically the designation of the other party in war as irregular is incessantly impending on the idea of regular enemy. The concept of regular enemy itself, in its conceptual *nucleus*, implies by definition other forms of non-regular enmity.

Finally, giving a justification for recurring to such a long history other than the simply search for authority is hard. Though, here the recourse to history is also part of an attempt to rediscovery and re-interpretation of modern thinkers as open sources, still helpful to interrogate and solve present quandaries.

The questions and predicaments emerged out of the transformative events that impacted European intellectual imaginaries in the sixteenth and in the seventeenth centuries can, to some extent and with cautiousness, be regarded under a common lens with the processes taking place in the so-called “late globalization.”¹³⁴ As succinctly put by Schroeder and Olaf, who bring us back and forth from Grotius times to ours with agile temporal leaps, “the emergence of the modern state system in the seventeenth century throws up the fundamental questions of war and peace, of international relations, international law and the rules of war, with a radicality comparable to our own day.”¹³⁵

2. The concept of regular enemy in the *ethico*-political reflection on war: Hugo Grotius and Thomas Hobbes

In this section it will be seen how the concept of regular enemy is the by-product of normative theories on politics which deal, first of all, with the position of the individual in a web of relations

¹³¹ Pablo Kalmanovitz, *Early Modern Sources of the Regular War Tradition*, ed. Seth Lazar and Helen Frowe, vol. 1 (Oxford University Press, 2015).

¹³² Galli, *Spazi politici*, 31.

¹³³ Here it is adopted a similar approach to Galli in his theory of political spaces, “the objective is not to study the thought of space, or geopolitical thought, but space in thought; precisely, in the history of political thought.”Galli, 14–16.

¹³⁴ Galli, 10.

¹³⁵ Olaf Asbach and Peter Schröder, eds., *War, the State, and International Law in Seventeenth-Century Europe* (Farnham, Surrey, England ; Burlington, VT: Ashgate, 2010), 7.

that eventually lead him into a political sociality and which devote attention to the issue of war.¹³⁶ Before looking at how the two thinkers conceptualize the enemy in war, it is paid attention to the context that influences Grotius and Hobbes and to the divergences and convergences of the two philosophers. Grotius and Hobbes argumentation is *ethico*-political to the extent that it attaches a meaning to law that can eventually be reconducted either to something called *nature* or to human conscience.¹³⁷ As it will be demonstrated, the effort of the two thinkers hereinafter considered is exactly to ground their theory of politics into normative assumptions that do not pre-exist in a systematic way but must be assembled through a *bricolage* of scattered sources and kept together through a strong, rational argumentation.

Both the thinkers engage seriously with the issue of war within their political theory and show how the managements, regulation, production, and expulsion of violence is foundational of and co-constitutive to the discourses of political theory. In the context of their political theories, war is seen as inextricably linked to politics, it is the double-side of politics. It is for this reason they both seek to provide credible answers on how to limit war's destructiveness and to preserve war's political productiveness. If they decisively reject Erasmine pacifism which sees every war as unjust, the context of internecine violence that characterizes their human and intellectual experience is a fundamental reason to imagine political limits to violence.

Grotius and Hobbes both questions how the right to wage war that is attributed to certain subjects and not to others, in which spaces and which times such right may be executed, and which consequences arise from the right to wage war. They hence create in their political theory a condition of legitimate war, an enclosed state of war, which is compatible with ethics and politics. This operation does not depend on objective conditions of justice, as for instance argued by Christian theologians, but on subjective conditions that are attributed to the individual and by analogy to the collective political body. Either the individual or the state are *absoluti* from objective conditions of just and unjust, they have subjective rights.

Accordingly, Grotius and Hobbes are compared because they meet exactly at the crossroad in which the life of single individuals is interdependent with that of collective political bodies and the model of relationship between individuals can be extended by analogy to the model of relationship between communities. Both the thinkers by starting from the individual and arriving at the political collective body (the *civitas*) image and pose the ground for thinking that space that could be called, anachronistically, the "international." In this space justice is more than a legal concept for both: if for Grotius it can be assimilated to happy and sociable life (*eudaimonia*), for Hobbes it is the minimal condition of survival or, in more essential terms, of life.¹³⁸ They both try to match an ethical thinking with a political construction: Grotius starting point is ethical and the consequences of his thinking are political, while Hobbes' starting point is political and the consequences are ethical. The means they both use to escape the anomic character of life is human reason, which gives "epistemic access" to natural law and makes natural law an effective, predictable, and certain normative source. As

¹³⁶ Benjamin Straumann, "The Rule of Law: Sociology or Normative Theory? An Afterword to Martti Koskenniemi's Foreword," *European Journal of International Law* 30, no. 4 (December 31, 2019): 1121–27, <https://doi.org/10.1093/ejil/chz069>.

¹³⁷ As remarked by Kalmanovitz, "the concept of regular war belongs to an ethical tradition of international law", here it is extended the same assumption to the concept of regular enemy; see Kalmanovitz, *Early Modern Sources of the Regular War Tradition*.

¹³⁸ Hans W. Blom, "Sociability and Hugo Grotius," *History of European Ideas* 41, no. 5 (July 4, 2015): 589–604, <https://doi.org/10.1080/01916599.2014.987558>; Carlo Galli, *Contingenza e Necessità Nella Ragione Politica Moderna*, 1. ed, Sagittari Laterza 165 (Roma: Laterza, 2009), 45.

maintained by Straumann “on the view defended by Grotius – and, one might add, by Hobbes – it is only natural law that can formulate these necessary conditions for peace. Justice, has to be expressed in the form of law.”¹³⁹ Before than a juridical concept, the concept of regular enemy is indeed ethical and political in the sense that both Grotius theory of war and Hobbes theory of war have to be grounded in rules that do not concern the legality of war but rather its moral and political legitimacy. It is undeniable that Grotius is a “thinker committed to the rule of law”¹⁴⁰ and his vocabulary and logic of argumentation comes closely and overlaps with what we call “legal reasoning.”¹⁴¹ He indeed thinks of natural law “as a [true] juridical system of legal norms.”¹⁴² However, Grotius’ objective and thus Grotius’ intellectual task is more demanding than that. He seeks to establish a self-standing normative system and as such he is firstly a “moral realist trying to put forward an argument about justice” to ground justice in the ethical sphere.¹⁴³ His attempt is to construct a theory of normative order that can exist beyond the state but also that can implicate and imbricate the state. Law is a formal requirement, an instrument to attain minimal levels of justice, but it is not the starting point of Grotius theory of politics. The very starting point is the single human individual, endowed with reason and *ethico*-political position in the world. To a similar extent, Hobbes may be considered solely a thinker of sheer power, but his political theory presents normative stances that hold his entire political construction by limiting and addressing the shape of power.¹⁴⁴ In this respect, Hobbes can be regarded as a thinker interested *ethico*-political questions.

Along the analysis of the context of the two thinkers it will be addressed the problematic issue of the single thinker. If one expects to find analytical coherence and a unitary theory in one thinker is most likely disappointed. Thinkers as Grotius and Hobbes are characterized by a nuances and a polyphony of different ideas and sources.

Often, Grotius and Hobbes share the appellative of “noble fathers” of the fundamental political theories of the modern international. Grotius is considered among the precursors of the legalization of international relations, while Hobbes as the progenitor of the theorization of international anarchy. Being “fathers” of such ideas situate them at the beginning of something that some define modernity, other civilizations, and others with a critical vein European centrality. Such “beginning” however is a risky and misleading assumption. It is risky of overemphasizing the role of theory over reality and of mythologizing individual thinkers.

To avoid such risks, here it is adopted a nuanced and historically situated perspective on the works of Grotius and Hobbes. Rather than “noble fathers”, these two authors are taken authors of the transition. Their analogy between individual and state has shaped the way of thinking about war until the present and to some extent it is an unavoidable cognitive step for those willing to think about war in the discipline of International Relations. Grotius and Hobbes are not simply writers, their writings, their books, their figures have performed and perform actions beyond the content of their texts. Already their names are performative. In the discipline of international relations and more broadly when debating about the international, the adjective Grotian or Hobbesian may represent a specific

¹³⁹ Straumann, “The Rule of Law.”

¹⁴⁰ Martti Koskenniemi, “Imagining the Rule of Law: Rereading the Grotian ‘Tradition,’” *European Journal of International Law* 30, no. 1 (May 24, 2019): 17–52, <https://doi.org/10.1093/ejil/chz017>.

¹⁴¹ Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870*, 1st ed. (Cambridge University Press, 2021), 311–12, <https://doi.org/10.1017/9781139019774>.

¹⁴² Straumann, “The Rule of Law.”

¹⁴³ Straumann.

¹⁴⁴ Noel Malcolm, “Thomas Hobbes: Liberal Illiberal,” *Journal of the British Academy* 4 (August 31, 2016): 113–36, <https://doi.org/10.5871/jba/004.113>.

(ideological) stance with specific intellectual boundaries and intellectual ends. Rather than for their performative role, Grotius and Hobbes are studied here as they open “the possibility of a language, and what would eventually become an entire philosophical-legal genre, summed up in phrase ‘the law of nature and of nations,’ in which to recast what had really become a new global order.”¹⁴⁵ Their vocabularies indeed are characterized by an all-embracing, pervasive cogency that makes concepts and ideas not timid in front of the universalist aspirations of their crafters, who envision the world as a unitary whole, in which the same rules and languages can apply everywhere.

2.1 Situating Grotius and Hobbes in the context of early modern theories of war

The concept of regular enemy has already an almost self-standing meaning in European languages when elaborated by Grotius and Hobbes, due to the weighty influence that Roman sources play on the theories of war during the Middle Ages and in early modernity. The main actors on the political scene as the Church, the empire, and the independent reigns, share a common idea of what a regular enemy is, at least because they differentiate it from other forms of hostility as brigands, pirates, or criminals. Such a distinction is a direct heritage of the Roman legal and political culture of the *iustus hostis*. The Medieval reception and re-elaboration of Roman concepts is the result of the immense work of classical sources retrieval that literates, jurists, and especially theologians and clergymen undertake in Europe between the seventh and fifteenth centuries. Roman concepts define the boundaries of the thinkable and play a stabilizing role in the many intellectual quarrels that characterize the Middle Ages.

Yet, during the Middle Ages the Roman conceptual heritage appears time after time as fragile in the face of the profound morphological transformations of society. On this fragile but still authoritative legacy of Roman sources, develops the miscellaneous Medieval conceptualization of war vocabularies. War shifts from being a political issue, to be either a matter of religious conscience or a matter of civil law. Christian theological thought and civil jurists contribute to adapt the Roman conceptuality to the new political landscape and to craft new vocabularies on the ashes of the Roman legacy. Especially from the thirteenth to the fifteenth century, political theory is traversed by a multiplication of approaches to the legitimacy of the use of force and to the phenomenon of war. The Middle Ages are a fragmented and fertile period for the regulation of violence and the conceptualization of what is legitimate and what is not in war. The regulation of war is a terrain of juridical, theological, and (less frequently) political debate that involves the entire European continent. The scattered theories on war can be reconducted either to the *nucleus* Christian theology, or to Roman legal schools, or to the encounter between the two.

This is the complex intellectual *milieu* in which Grotius and Hobbes craft their political theories. If Grotius is a collector of the diverse sources available at his time, in an almost open polemic with Christian theology, whose merit is proposing a holistic, yet often flat, picture of the phenomenon of war that detaches from the Middle Ages fragmentary understanding of war. On the contrary, Hobbes is a groundbreaker in that he divorces from theological positions in virtue of a geometric scientism applied to politics and gives war a stylized form. While Grotius strives to use religion as an intellectual picklock to justify and ground his theory in natural law, Hobbes restarts from the

¹⁴⁵ José María Beneyto and Justo Corti Varela, eds., *At the Origins of Modernity*, vol. 10, Studies in the History of Law and Justice (Cham: Springer International Publishing, 2017), <https://doi.org/10.1007/978-3-319-62998-8>.

foundations the traditional tension between religion and politics on the definition of justice, in favor of the latter.

It is evident that Grotius and Hobbes do not float in a vacuum, and they do not invent anything anew about politics, war, and the enemy. Indeed, neither there is a neat *caesura* between what we are used to identify as medieval thought on war and early modern political theory; nor are the Middle Ages a unitary time, dominated by private and holy wars where the enemy is qualified as infidel or as a personal adversary, as often assumed in coarse historical reconstructions. It is exactly from the theological *nucleus* of Christianity that Grotius and Hobbes depart and look at politics and at the problem of war.

2.1.1 Late Middle Ages theories on war and the concept of regular enemy

Notwithstanding the fact that the Roman footprint idea of *iustus hostis* survives as an authoritative source of difference, especially through the works of glossators and commentators, the concept is by now almost an empty label. Indeed, the Medieval institutional organization leads to a fragmentation and transformation of war vocabularies and thus of the intellectual representations of the enemy. The term war itself intended as public war, inherited from the Latin *bellum*, is object of profound transformations in the encounter with Germanic *Guerra* and with feudal institutions. In late Medieval Europe, as emphasized by Scattola, the idea of war as a distinct dimension of social and political life is essentially unconceivable.¹⁴⁶ The struggle between temporal and spiritual powers, the consolidation of militarily powerful city-republics, and the rise of feudalism as an economic-political arrangement, challenge at its roots the existence of a unitary concept of war. There is no systematic theory of war and no established vocabulary on war as a distinct domain of the social: war is integrated in other social realms, in particular in legal battles, in economic disputes, and religious quarrels.

The concept of war is bifurcated in at least two large semantic categories: on the one hand *bellum* (echoing Roman public war, itself divided in *bellum romanum* and *bellum iudiciale*) fought against a foreign enemy and generally intended as an act of jurisdiction.¹⁴⁷ And on the other hand, *guerra* (the private, feudal form of organized violence) in which the enemy is a private adversary of the lord, most likely located within the same political organization.¹⁴⁸ *Bellum* is mainly the ambit of theologians among which Peter Lombard's *Sententiae* and Thomas Aquinas' *Summa Theologiae De Quaestio Bello* represent the most influential references, while forms of private or intra-territorial *guerrae* are mostly treated by law doctors among which the most recurrent source is the *Digest*. A third miscellaneous and comprehensive body of rules on violent conflict falls under the name *ius commune* and is composed by consultations (*consilia*) of civil law of Roman origin, religious canon law (biblical interpretations), and feudal legal customs.¹⁴⁹

The Roman *iustus hostis* is therefore disaggregated in its meaning by the emergence of different spatial orders and jurisdictions in which the concept of enemy has different connotations.

¹⁴⁶ Merio Scattola, ed., *Figure Della Guerra: La Riflessione Su Pace, Conflitto e Giustizia Tra Medioevo e Prima Età Moderna*, Per La Storia Della Filosofia Politica 14 (Milano: FrancoAngeli, 2003), 12–14.

¹⁴⁷ Peter Haggemacher, *Grotius et La Doctrine de La Guerre Juste* (Graduate Institute Publications.), 80–83.

¹⁴⁸ Though Brunner's ideological agenda in *Land and Lordship* must be weighed with his contemporary history it must be acknowledged that his reconstruction of the feud is illuminating, see Otto Brunner, *Land and Lordship: Structures of Governance in Medieval Austria*, Middle Ages Series (Philadelphia: University of Pennsylvania Press, 1992), 9–11.

¹⁴⁹ Alexander Orakhelashvili, ed., *Research Handbook on the Theory and History of International Law*, Second edition, Research Handbooks in International Law (Cheltenham, UK; Northampton, MA, USA: Edward Elgar Publishing, 2020), 19.

The idea of an enemy external to the empire is no more applicable in a spatial order where actors capable to use force are differently positioned in the social ladder and thus have different rights and duties in the *ius militare*. For instance, the lord and his subjects stand in profoundly unequal positions of hostility when engaged in war against another lord and his subjects. What for someone is an enemy, for others located in the same spatial order is friend or an actor with a completely different social status. Relations of friendship, neutrality and enmity are extremely variable and depend on a number of subjective factors as familial ties, religious confession, economic status, which make them volatile. Hence, the concept of enemy is not always coextensive with that of war. There are different levels and different intensities of hostility, and the binomial individual-collective is not conceptually kept together in a distinctive form as done by Cicero through collective concepts designating those lying within and those outside the boundaries of Roman empire.

Competing theories and doctrines of war coexist and confront each other's in the heterogenous European political landscape; but there is no proper political theory of war.¹⁵⁰ War is not a clear-cut condition and as a consequence the enemy is a volatile figure, it can be a single individual as a lord, a nobleman, a tyrant or a collective entity as a league, a urban clan, a family, an entire people.¹⁵¹ There is no reciprocal idea of enmity. In the realm of organized violence, the individual and the collective body are not two poles of a relation, rather they have different significance depending on the hierarchical structure of society. In this profoundly unequal social structure, defining hostility becomes more often than not a divisive dynamic. The enemy is radically different from the self and the concept of enemy detaches from any reciprocal meaning it had previously with the term *iustus hostis*.

As masterfully described by Moudarres, the European Middle Ages know the emergence at the centerstage of figures of radical hostility that haunt social orders both from inside and from outside. Such figures of radical hostility can be described as lying in three concentric circles. The first circle is characterized by enmity "within the self as individual" in the typical forms of "madness, intended mainly as heresy, and tyranny." The second circle is characterized by enmity within the polity, where betrayal and sedition represent the typical forms of radical hostility between families and social groups. And, finally, the third circle is characterized by universal forms of enmity within the world, encapsulated by the stereotypical figure of the infidel.¹⁵² Radical hostility is the result of the coexistence between a universalist religious order and highly asymmetrical arrangement of power relations within society.¹⁵³

However, in the interstices of such radical forms of hostility, survive at least three forms of enmity that conserve traits of nuanced regularity. The first one is represented by the *feud* enemy. When specific class of individuals, generally lords and nobles, fall victim of a wrong by individuals with a similar status they can regard each other's as regular enemies. To sanction the official act of hostility in the *feud*, feudal custom requires the *diffidatio*. In this case the institution of the *feud* allows the individual to gather his familiar allies to use violence against a person or a group who legitimately respond with violence. The *feud*, "at least theoretically restricts to particular times, spaces and targets"

¹⁵⁰ Scattola, *Figure Della Guerra*, 14.

¹⁵¹ As remarked by Keen "wars tended constantly to spread outwards from their epicenters as well as inwards towards them. This made it very hard to delimit and control their scale, impact, and duration, let alone their 'level' in terms of categorization." Maurice Keen, ed., *Medieval Warfare: A History* (Oxford; New York: Oxford University Press, 1999), 5–35 & passim.

¹⁵² Andrea Moudarres, *The Enemy in Italian Renaissance Epic: Images of Hostility from Dante to Tasso*, Early Modern Exchange (Newark: The University of Delaware Press, 2019), 43.

¹⁵³ Galli, *Contingenza e Necessità Nella Ragione Politica Moderna*, 40–41.

the outburst of violence, which generally consists in plunder and arson aimed at redressing the wrong.¹⁵⁴ The concept of “enmity [is] the negation of its opposite, of ‘peace’ or of ‘friendship; it [is] ‘un-friendship’ (*Unfreundschaft*). Peace, friendship, [is] a positive state, the negation of which [is] feud, enmity.”¹⁵⁵ Enmity is thus a condition in which justice is not absent, but rather, being violated, must be executed through an institutionalized use of violence as punishment. Far from the “right of the might”, the *feud* is a process of juridical retribution, heritage of the central Middle Ages and destined to remain as a tool to preserve political order on the small scale. The *feud* is an open-ended and loose institution which in practice lets people use violence with no defined boundaries. It is in this context that jurist Paulus de Castro (ca. 1360-1441) can claim that “each individual [is] effectively sovereign: if access to a magistrate is lacking, because it is not enough that laws were created, where there is no one to safeguard them...[in that case] we return to our primeval rights, by which it is licit for us by every law to pursue our own right on our own authority (*propria auctoritate*).”¹⁵⁶ This seems echoing the Scotian principle of *haecceity* matched with a naturalized and individualized idea of self-defense.¹⁵⁷ The *feud* is also the institution in which a so-called “law of arms”, a general code of military conduct of Roman origins and mainly addressed to knights, applies to bind combatants to honorable behaviors in battle.¹⁵⁸ The *feud* is characterized by a nuanced trait of regularity and mutual recognition between the parties, though it belongs more openly to the semantical field of Roman private enmity (*inimicus*), rather than to the field of public hostility (*hostis*).¹⁵⁹

The second one relates to regularization of hostility between city republics and kingdoms, especially those outside the authority of the Roman Sacred Empire but within the Christendom. Since Christendom and Empire are not coterminous, in the absence of papal authorization, there may arise relevant questions of war legitimacy between independent kingdoms. In the late Middle Ages whether city-republics or small kingdoms could regard each others as regular enemies is a matter of extreme relevance, due to the consequences that it has on private and public territorial property (*dominium* and *imperium*) and on the application of the right of *postliminium*.¹⁶⁰ There emerge two contrasting views, a more conservative one, which tends to preserve exclusive papal and imperial authority on war, and a more reformist one, which attaches to independent cities and kingdoms the power to wage war independently. Proponent of the former is for instance Accursius (1183-1263),¹⁶¹ a late glossator and disciple of Bologna *juris* doctors, who writes Italian cities are not to be considered “legitimate

¹⁵⁴ Matthew Gordon, Richard Kaeuper, and Harriet Zurndorfer, eds., *The Cambridge World History of Violence*, 1st ed. (Cambridge University Press, 2020), 260, <https://doi.org/10.1017/9781316661291>.

¹⁵⁵ Brunner, *Land and Lordship*, 17–21.

¹⁵⁶ Rayan Greenwood, “War and Sovereignty in Medieval Roman Law,” *Law and History Review* 32, no. 1 (2014):31–63.

¹⁵⁷ Galli, *Contingenza e Necessità Nella Ragione Politica Moderna*, 28.

¹⁵⁸ Maurice Hugh Keen, *The Laws of War in the Late Middle Ages*, This edition first published, Routledge Library Editions Military and Naval History, Volume 16 (London New York: Routledge, 2016), 5–12.

¹⁵⁹ Michel Senellart, “La Qualification de l’ennemi Chez Emer de Vattel,” *Astérian*, no. 2 (July 1, 2004), <https://doi.org/10.4000/asterion.82>.

¹⁶⁰ Frederick H. Russell, *The Just War in the Middle Ages*, Cambridge Studies in Medieval Life and Thought, 3d ser., v. 8 (Cambridge ; New York: Cambridge University Press, 1975), 51.

¹⁶¹ Accursius is often quoted more than other *juris doctores* as being a collector and reorganizer of the overwhelming amount of glosses in the body known as *corpus iuris civilis*, see Peter Haggemacher, *Grotius et La Doctrine de La Guerre Juste*, 120–31; Wilfried Hartmann and Kenneth Pennington, eds., *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, History of Medieval Canon Law (Washington, D.C: Catholic University of America Press, 2008).

hostes” when fighting, “as they ha[ve] a common superior in the emperor.”¹⁶² Proponent of the latter view, opposing that of Accursius, are instead the theses advanced by the canonists. The canonists tackle the issue of legitimacy and claim that “any war on the authority of a prince is a war in the true sense of the word. At least, it alone [is] a *‘bellum hostile’*, a war in which the adversaries could regard one another as lawful enemies.”¹⁶³ Following the canonists, theologians and jurists as Fulgosius (1367-1427), acknowledge that as long as political authority subsists, “a war could be just on both sides so that all belligerents could benefit indiscriminately from the *iura belli*.”¹⁶⁴

Conveying all these views and advancing a reformist idea on kingdoms’ authority to wage war is the *Bartolist* Giovanni da Legnano (ca. 1320-1383). Giovanni sees the concept of *hostes* applicable even to princes within the boundaries of the empire.¹⁶⁵ In particular, Giovanni, whose views on war and hostility are more systematic than other jurists of his time, argues that when there arises a situation of conflict between kingdoms, a prince is legitimated to use force even if before that quarrel he had no *de jure* faculty. It is the quarrel itself that makes arising the right to wage war. The prince has legitimacy *de facto* once he must fight. He acquires *de facto* authority in accordance to a sort of *ius naturale* that gives right to search in combat for equity and justice in absence of superior authority.¹⁶⁶ With a pessimist, yet practical approach, Giovanni da Legnano in his *Tractatus de bello, de represaliis et de duello* goes so far as to claim that a sovereign people in a state is a legitimate enemy as long as it is independent and it declares war publicly. Giovanni indeed writes that when a state has a territorial dimension and hence authority, it is entitled to wage public war:

Today, however, because there are peoples who do not recognize a superior in fact, the authority of a superior is not required, since they do not recognize one. Every day wars are declared by one people against another, without asking the leave of anyone [So] When one state makes war against another, can men be called ‘enemies’ in the sense that if captured they will become slaves, and ownership over them be acquired? It appears not at the end. On the contrary, a state of itself makes a people, and so it appears that they are ‘enemies.’¹⁶⁷

Giovanni da Legnano allows *de facto* for independent kingdoms and princes to regard each other’s as regular enemies whenever necessary to solve their quarrels by arms.¹⁶⁸ Especially considering the business that war represents for city-republics and in light of the territorial interests that war can serve, the intellectual move by Giovanni is extremely significant. According the *ius belli* to independent sovereign regardless imperial or papal authorization is not merely a legal issue, but is also and above all a political one.

The third form of nuanced regular hostility is the external, foreign enmity, incarnated by all those peoples laying outside the Christian world. Indeed, not all kinds of war undertaken by Christians

¹⁶² Rayan Greenwood, “War and Sovereignty in Medieval Roman Law,” *Law and History Review* 32, no. 1 (2014):31–63.

¹⁶³ Keen, *The Laws of War in the Late Middle Ages*, 68.

¹⁶⁴ Orakhelashvili, *Research Handbook on the Theory and History of International Law*, 441.

¹⁶⁵ Another important fifteenth century figure in this stream of jurists dealing with war is the canonist Martinus Garatus Laudensis (d. 1453), see Lesaffer, “The Medieval Canon Law of Contract and Early Modern Treaty Law,” *Journal of the History of International Law / Revue d’histoire Du Droit International* 2, no. 2 (2000): 178–98, <https://doi.org/10.1163/15718050020956821>.

¹⁶⁶ Keen, *The Laws of War in the Late Middle Ages*, 15.

¹⁶⁷ T.E. Holland and J.L. Brierly, *Iohannis de Lignano De Bello, de Represaliis Et de Duello*, Classics of International Law (Carnegie Institution of Washington at the Oxford University Press, 1917), 279.

¹⁶⁸ Hartmann and Pennington, *The History of Medieval Canon Law in the Classical Period, 1140-1234*, 1–10.

outside Christendom boundaries can be labelled as holy wars against radical, absolute enemies as the infidels. There exist some mundane wars for purposes of territory, property, redress, or commercial rights that fall under the category of public wars, assimilated to Roman *bella*.¹⁶⁹ To address the issue of public war outside the Christian borders, Scholastics theologians resort to the doctrine of just war, namely the ensemble of principles that govern the behavior of a Christian when faced with public violence. A just war is an acceptable instrument of policy as far as it is an instrument to higher ends: peace and justice. The precepts to conduct just war against non-Christians rest essentially on Ambrosian and Augustinian accounts on war, in which the enemy, though being depicted as a sinner, an evildoer and a disturber of peace, still retains the possibility of being recognized with some sort of regularity.¹⁷⁰ The enemy in Ambrosian, Augustinian and then in Thomist just war doctrines is not simply a passive subject against which punishment is inflicted. As a matter of course, in just war the enemy preserves a space of reciprocity given by the political character that both the contenders should have in a just war. The first requirement for a just war indeed is political authority, first for Augustine and then for Aquinas. Political authority is the *sine qua non* some *temperamenta belli* can take place in war, as for example distinction of innocents, avoidance of lust for domination, and restraint from cruelty.¹⁷¹ Political authority creates the conditions for a form of recognition. Aquinas on the issue writes that:

For it is not the business of the private individual to declare war [*bellum*], because he can seek for redress of his rights from the tribunal of his superior. Moreover, it is not the business of a private individual to summon together the people, which has to be done in wartime [...]. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evil doers, according to the words of the Apostle (Rom. xiii. 4): *He beareth not the sword in vain: for he is God's minister, an avenger to execute wrath upon him that doth evil*; so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies.¹⁷²

As noted by Johnson, in this passage by Aquinas “two things stand out: the sharp distinction between the rights of the sovereign and those of private persons relating to war and the strong connection between the sovereign’s right to wage war and his positive responsibilities as the one given charge for the common weal.”¹⁷³ Eventually, Aquinas intention is to provide the Christian ordinary man with an explanation of war and the Christian political authority with rules to follow. The logic of empire as a *spatio-temporal* dimension in which justice is accomplished is still the defining feature in just war doctrine, but the role of the public political authority assumes ever more significance, creating the conditions for a reciprocal recognition between all those powers which have authority.¹⁷⁴

In general, the boundaries between these three forms are not clear-cut and often overlap and intermingle each other. The rapid territorial changes render such distinctions frequently obsolete and

¹⁶⁹ Russell, *The Just War in the Middle Ages*, 8–9.

¹⁷⁰ Russell, 21.

¹⁷¹ James Turner Johnson, “Aquinas and Luther on War and Peace: Sovereign Authority and the Use of Armed Force,” *Journal of Religious Ethics* 31, no. 1 (March 2003): 3–20, <https://doi.org/10.1111/1467-9795.00120>.

¹⁷² Such issues emerge with evidence in Aquinas short treatise on prince rules of government, the *De regimine principum*, see Thomas and R. W. Dyson, *Political Writings*, Cambridge Texts in the History of Political Thought (Cambridge, UK; New York: Cambridge University Press, 2002), 11–45; Johnson, “Aquinas and Luther on War and Peace.”

¹⁷³ Johnson, “Aquinas and Luther on War and Peace.”

¹⁷⁴ J. M. Wallace-Hadrill, “War and Peace in the Earlier Middle Ages,” *Transactions of the Royal Historical Society* 25 (December 1975): 157–74, <https://doi.org/10.2307/3679091>.

eventually inapplicable. Despite some traits of nuanced regularity, war is mostly conceived in the sphere of law enforcement against evildoers and the enemy cannot be qualified otherwise than as guilty and morally inferior. The Hundred Years War between French realms and English duchies is exemplary in this sense as it “is not a war of nation-states where the boundaries of aggression are clearly marked, but a feudal and familial one where the two sides are tightly bound by lengthy and intimate identifications, through marriage and territorial possession.”¹⁷⁵ Thus, in intra-European relations there is no shared and stable notion of regular enemy for the entire late Middle Ages, since the quality of the enemy depends on the geographical context, on the legal reasons of the fight and on the social qualification of the contenders in the fight.

Accordingly, around the end of sixteenth century and the beginning of the seventeenth, the body of rules known as *ius commune* prove to be ineffective, incoherent, and highly fragile to the magnitude of political events unleashing at that time in Europe and beyond.¹⁷⁶ As Lesaffer notes, the disruptive effects of such events “meant that concepts and rules of private law, which before were applied directly to international relations, now needed to be transferred from the domain of private law to that of the law of nations through a conscious process of analogy or adaptation.”¹⁷⁷

Grotius and Hobbes think and write exactly on the critical fault-line where the late Medieval political organization is reshaped by the emergence of independent, bureaucratic, and centralized political entities that embed the city and unyoke independent princes from papal and imperial authority.¹⁷⁸ The tentative overcoming of the general body of rules on war known under the name of *ius commune* is thrust by two distinct, yet communicating, streams of thought on war. On the one hand the Christian theological tradition, which knows a strong revival with the second scholastics; and, on the other hand, the legal tradition of *jurisconsults*, pushed by protestant thought and capitalizing ancient history knowledge revitalized by the endeavor of humanism.¹⁷⁹ Broadly speaking, the two streams, though with their idiosyncrasies, tend to distance from theocentric views on the organization of social life typical of the Middle Ages to embrace the anthropocentric gaze on social life of modern political theory.¹⁸⁰ The normative position of the individual human being (in fact, the European man) and its relationship to the collective political body (the *civitas* or state) is

¹⁷⁵ Ardis Butterfield, *The Familiar Enemy: Chaucer, Language, and Nation in the Hundred Years War* (Oxford ; New York: Oxford University Press, 2009), xx; Keen, *The Laws of War in the Late Middle Ages*, 3–5.

¹⁷⁶ Keen, *The Laws of War in the Late Middle Ages*, 16.

¹⁷⁷ Orakhelashvili, *Research Handbook on the Theory and History of International Law*, 416.

¹⁷⁸ Lesaffer synthesizes efficiently this transformative process as: “between 1450 and 1550, three major changes brought the medieval legal order of Europe down. First, the decades before and after 1500 were marked by the rise of some major dynastic power complexes, foremost among which were Valois France and Habsburg Spain, and Ottoman expansion. Second, there was the Reformation. By the second half of the 16th century, the unity of the Latin Church was lost. Third, the discoveries by the Spanish and the Portuguese and their conquest of territories in the East Indies and in the Americas put new challenges in the field of international relations.” See, Lesaffer, “The Medieval Canon Law of Contract and Early Modern Treaty Law”; Orakhelashvili, *Research Handbook on the Theory and History of International Law*, 28.

¹⁷⁹ Here rather than the neat distinction identified by Tuck as between the “humanist school” and the “scholastics school” is adopted Haggemacher’s and Skinner’s distinction between the communicating fields of “theologians” and “jurists,” see Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*, (Oxford: Oxford Univ. Press, 2009); Peter Haggemacher, *Grotius et La Doctrine de La Guerre Juste* (Graduate Institute Publications.); Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge ; New York: Cambridge University Press, 1978).

¹⁸⁰ Franco Todescan, “Dalla ‘persona ficta’ alla ‘persona moralis’ - Individualismo e matematismo nelle teorie della persona giuridica del secolo XVII,” *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno* 11 (1982): 59-.

among the central concerns of both the streams.¹⁸¹ The individual is recognized as subject, recipient of specific rights and thus as an independent political actor, even in the realm of violence. Equally the *civitas*, on the basis of a sort of anthropomorphic analogy, is conceptualized as absolute, independent, and animate. This is the consequence of the deep crisis of authority that invests the Sacred Roman Empire first and the Roman Church then. The pretense of authority that the Empire and the Church have over individuals is challenged by the political theories that ascribe authority over the individual to himself (*auctoritate propria*).¹⁸² This poses enormous concerns on the normative position of the individual with respect to the collective body in the realm of violence and these concerns are pressing questions that thinkers of the early modern time strive to address.

2.1.2 Second Scholastics on war and on the concept of regular enemy

On the one hand, religious and theological ideas on war are revived by a second generation of Scholastics theologians based in Spain who, by relying on Thomist natural law and using nominalist epistemology absorbed in Paris humanist circles,¹⁸³ address the compelling issue of how, when and in what circumstances a Christian ruler can resort to war. Scholastic theologians are not simply clergyman committed, they are embedded in political power and their intellectual work is highly influential on political decision. Indeed, the Second Scholastic interest for war is chiefly shaped by the changing political conditions of the sixteenth century and in particular by the necessity for the Spanish crown to settle the issue of war legitimacy in the face of a number of convoluted events: internal disturbances,¹⁸⁴ the expulsion from and the conversion of Muslim in the Iberic peninsula (known as the late stage of the *Reconquista*)¹⁸⁵ and then the Spanish decision to effectively conquest the New World after its discovery at the end of the fifteenth century.¹⁸⁶ These facts pressingly require some sorts of *iura* that could make sense of such *spatio-temporal* and political disruptions. The difference between the war against what are called endless enemies (*hostes perpetui*) as the infidels outside Christianity, and the violent conquest of natives' lands in America is not indifferent to Spanish theologians. The discovery of the New World is “not only province of the lawyer” theologians think, and it calls for new languages, concepts and theories that speak straight to the conscience of the Christian ruler, addressing how and under what circumstances using force is morally acceptable.¹⁸⁷

If on the one hand the *irenist* theories spreading in Europe at the time, emerged from Reformation intellectual circles, cannot accommodate the needs of Iberic political power; on the other hand, the theses of Christians natural superiority based on scriptural morality provided by the early apologists of the conquests are not sufficient to dissimulate what in the eyes of many Christians seems

¹⁸¹ Panizza explains the difference between theologians and jurists thoughts on war and their preoccupation, see Pierre-Marie Dupuy and Vincent Chetail, *The Roots of International Law / Les Fondements Du Droit International: Liber Amicorum Peter Haggemacher* (Brill | Nijhoff, 2014), 213, <https://doi.org/10.1163/9789004261655>.

¹⁸² Preterossi calls this process, located between the Middle Ages and modernity, the release of the concept of authority (derived from “*augeo*”, i.e. “to grow”) from transcendence; see Geminello Preterossi, *Autorità*, *Lessico della politica* 9 (Bologna: Il Mulino, 2002), 13.

¹⁸³ Skinner, *The Foundations of Modern Political Thought*, 134–49.

¹⁸⁴ Martti Koskenniemi, “Vitoria and Us: Thoughts on Critical Histories of International Law,” *Rechtsgeschichte - Legal History* 2014, no. 22 (2014): 119–38, <https://doi.org/10.12946/rg22/119-138>.

¹⁸⁵ Aldo Andrea Cassi, ed., *Dalla civitas maxima al totus orbis: diritto comune europeo e ordo iuris “globale” tra età moderna e contemporanea*, Jus (Soveria Mannelli: Rubbettino, 2007), 57.c

¹⁸⁶ Harald E. Braun, Erik de Bom, and Paolo Astorri, eds., *A Companion to the Spanish Scholastics*, Brill’s Companions to the Christian Tradition, volume 102 (Leiden Boston: Brill, 2022), 36.

¹⁸⁷ Martti Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power, 1300-1870* (Cambridge, United Kingdom ; New York, NY: Cambridge University Press, 2021), 117.

a *latrocinium* on a large scale.¹⁸⁸ Thus, one of the most eminent representatives of the second Scholastics, the Dominican Francisco de Vitoria (ca.1485-1546) tries to trace a *via media* between such two positions on the permissibility of war. In a series of university lectures, commenting on Aquinas *quaestio de bello*, Vitoria gives a response to the pressing issue of whether Christians can wage war and under what conditions it morally licit in the New World.¹⁸⁹ Vitoria argumentation on war substantially follows the Augustinian tradition on the admissibility of war as an *extrema ratio* under specific conditions of objective justice, but more precisely develops through a revival of Thomism and combines with other normative sources as Scotism.¹⁹⁰ It is too simplistic to situate the horizons of theologians of the Second Scholastics on war within the universalism of the *respublica Christiana* in the same logic of the crusades or the fight against heresy. The whole Second Scholastics contribution on war is complex and controversial with the respect to same tradition it is anchored to; it is controversial especially in its relationship of critique and complicity with political and spiritual powers. And, mostly, it is controversial in its use of Aquinas rationalism and in the combination of the latter with individualism and pragmatism.¹⁹¹

For the concept of the enemy and its moral status is a recurring theme in the second scholastics reflection on war. Clarifying whether the two parties in a war can be is a matter of logic and morality that sustains the entire scholastics intellectual edifice on war.¹⁹² In Vitoria it is possible to note that the concept of enemy assumes clear traits and a structuring role for the definition of war. Vitoria traces an important difference between the commonwealth and the private person: the single person has no such “right to avenge an injury” as the commonwealth.¹⁹³ Broadly speaking, the subjects of the *ius* to avenge an injury which is grounded in nature are all the collective peoples of the world, as argued in the *relectio de indiis*, and those who can avenge an injury are only political authorities. Vitoria denies papal *plenitudo potestatis* on the entire world while considers the world divided in legitimate and independent commonwealths, a division he defines *divisio rerum*. Princes cannot be judged by the pope on civil matters occurring within jurisdictions as they possess the authority to wage war.

To govern a plural world there is need of a set of rights, the *ius gentium*, and for Vitoria such set of rights derives its substance from natural law system. Such natural law system is intelligible

¹⁸⁸ Among the apologists of the conquest stands out the Spanish humanist Juan Ginés de Sepúlveda arguing against the Dominican positions on war, see Cassi, *Dalla civitas maxima al totus orbis*, 59; Daniel R. Brunstetter and Dana Zartner, “Just War against Barbarians: Revisiting the Valladolid Debates between Sepúlveda and Las Casas,” *Political Studies* 59, no. 3 (October 2011): 733–52, <https://doi.org/10.1111/j.1467-9248.2010.00857.x>.

¹⁸⁹ Skinner, *The Foundations of Modern Political Thought*, 135–43.

¹⁹⁰ War is considered part of natural order as a way to redress a wrong, see Cassi, *Dalla civitas maxima al totus orbis*, 57; Skinner, *The Foundations of Modern Political Thought*, 145.

¹⁹¹ Koskenniemi, *To the Uttermost Parts of the Earth*, 2021, 122.

¹⁹² As Scattola emphasizes, numerous Spanish theologians devoted attention to the status of the enemy: “Soto paid even more attention to the situation of fighting subjects. He repeated the theory of Vitoria that only one side in a war may be right recognized the possibility of invincible ignorance, but posed a new question, peculiar to subjects, whether it is possible that two innocents fight each other. So he posed the traditional question of the two rightful enemies, but in the form of a double negation, since an innocent is a person who is not wrong. In a battlefield – he argued – offenders and innocents face each other and they are not able to understand – which might be possible in a duel – who among the enemies is really guilty, and who is not.” H. W. Blom, ed., *Property, Piracy and Punishment: Hugo Grotius on War and Booty in De Iure Praedae: Concepts and Contexts* (Leiden ; Boston: Brill, 2009), 88.

¹⁹³ Francisco de Vitoria, *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance, 1st ed. (Cambridge University Press, 1991), 300, <https://doi.org/10.1017/CBO9780511840944>.

through reason (*ratio*) every human being is endowed with.¹⁹⁴ And the basis of this system of right is the right to property (*dominium*) that each reason-endowed individual possesses as right to dispose of the body, of land, of family, etc.¹⁹⁵ This theorization of right of property is the intellectual move that sustains Vitoria's argumentation on war and allows him also to combine into the same frame of *ius gentium* the rights of war, property, and commerce.¹⁹⁶ War is the pursuit of justice against an armed enemy guilty of a wrong and ready to oppose violent resistance. It emerges that war is legitimate as a response to a received wrong, an "*iniura accepta*."¹⁹⁷ War is simply an instrument used and directed towards peace. All communities are entitled to wage war, given that such decision is taken by a legitimate authority and their use of force is aimed at a higher good. In sum, in Vitoria system what matters for waging a just war are the possession of a natural right and the intention to use war only as a means to a higher end.

In this respect, the *relectione de iure belli* delivered in 1539 is informed by an idea of enemy intended almost as a peer in a relationship of violence; a relationship that according to Vitoria can and must be mediated by specific criteria and principles. Of course, the enemy is guilty and thus to some extent it is morally inferior, but it is designated as enemy exactly because it is guilty of an offense, which means the enemy is such only in case of offence. This recognition of the enemy allows Vitoria to insist on specific criteria as forms of restraint in the conduct of war. It should be noted that Vitoria emphasizes that not all members of the enemy are qualified as guilty. It is indeed "not permissible to kill innocent members of the enemy population as children, women, [...] peaceful peasants, travelers, monks, literate people."¹⁹⁸ This implicates that for Vitoria exists something that amounts to a form of regular hostility, namely the idea that only those guilty of committing a wrong can be killed. By this move, Vitoria can construct a *spatio-temporal* condition of war where some combatants are entitled to kill each other's. Vitoria indeed seems to speak to the Christian prince and to the Christian soldier, whose main preoccupation is avoiding to sin by participating in a war that is unjust. Therefore, the enemy is entitled to have specific rights due to its collective nature, made of subjects (soldiers and innocents) and authorities (princes). The Vitorian just war doctrine reassures the Christian soldier that "none can sin by following the authority of the law."¹⁹⁹ As Vitoria explicitly says "in the actual conflict of battle, or during the storming or defense of a city, it is lawful to kill indiscriminately all those who fight against us."²⁰⁰ The state is punished through the killing of its individual subjects who can perform the evil that the state is guilty of. By constructing this theoretical space of reciprocity, Vitoria goes so far to recognize that in certain cases, due to invincible ignorance of princes in the causes of war, "wars may be just on both sides."²⁰¹ It can be claimed that traces of

¹⁹⁴ Giovanna Daverio Rocchi and Nikos Birgalias, eds., *Dalla concordia dei Greci al bellum iustum dei moderni*, San Marino University press 1 (*Dalla concordia dei Greci al bellum iustum dei moderati* (Conference), Milano, Italy : [San Marino]: FrancoAngeli ; San Marino University Press, 2013), 145.

¹⁹⁵ A. Wagner, "Francisco de Vitoria and Alberico Gentili on the Legal Character of the Global Commonwealth," *Oxford Journal of Legal Studies* 31, no. 3 (September 1, 2011): 565–82, <https://doi.org/10.1093/ojls/gqr008>.

¹⁹⁶ On the double-edged and ambiguous nature of this intellectual move and on its consequences for the rise of capitalism and its justifications see Martti Koskenniemi, "Empire and International Law: The Real Spanish Contribution," *University of Toronto Law Journal* 61, no. 1 (January 2011): 1–36, <https://doi.org/10.3138/utlj.61.1.001>.

¹⁹⁷ Peter Haggenmacher, "Guerre Juste et Guerre Régulière Dans La Doctrine Espagnole Du XVI^e Siècle," *Revue Internationale de La Croix-Rouge* 74, no. 797 (October 1992): 450–62, <https://doi.org/10.1017/S0035336100088274>.

¹⁹⁸ A difference which comes more from Canon Law, i.e. the *Decretum Gratiani*, than from Thomism, see Keen, *The Laws of War in the Late Middle Ages*, 190. Vitoria, *Vitoria*, 314–17.

¹⁹⁹ Benedict Kingsbury and Benjamin Straumann, eds., *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire* (Oxford ; New York: Oxford University Press, 2010), 170; Vitoria, *Vitoria*, 300.

²⁰⁰ Vitoria, *Vitoria*, 319.

²⁰¹ Vitoria, 307.

the idea of regular enemy are already evident in Vitoria. And such a distinction is destined to substantially influence the regulation of war in the centuries to come.

However, there are two reasons that keep Vitoria distant from later formulations as those of Grotius and Hobbes on enmity and anchor his theory still strongly to Thomist tradition of just war. The first one is that in Vitoria, the concept of war does not separate from that of law enforcement and therefore the concept of enemy depends strictly on that sense of justice included in war. The spatial frame of reference, as observed by Schmitt in the *Nomos* chapter devoted to it, is still the “Christian Commonwealth”, as Vitoria defines it in the first *relectione On the Power of the Church*.²⁰² Therefore, there remain often in the shadow other figures, as the infidel (Saracens and Turks for examples) and their sons, quoted here and there, as perpetual enemies, whose right in war cannot be recognized and who can be killed in order to prevent future injustices by their side. Of course, as Vitoria claims, a different religious faith is not a just cause for war, anyway such figures remain as types of enemies incorrigible by nature. But the second reason, which is deeper in meaning and more significant, is that Vitoria’s theory of war is permeated by a specific physics of justice, that eventually allows killing all enemy individuals if required by needs of security and peace. This leads straight to the non-reciprocal essence of the theory of just war, in which justice is depicted as an objective condition. The prince in this logic assumes the role of judge and exacts from enemies, defined by Vitoria intrinsically guilty (*hostes obnoxii*), what the prince deems right. This physic of justice gives the “world *respublica* [...] the form of a single legal person” and if such legal person is threatened then the slaughter and terrorization of enemy is permissible.²⁰³ The idea of justice is spatially and temporally linked to the form of the *respublica Christiana*, as he reminds “wars should only be waged for common good.”²⁰⁴ As brightly noted by Panizza, in the Second Scholastics normative system, the possibility of thinking a bilateral justice between the two parties in war is a logical contradiction.²⁰⁵ The horizon of the *respublica Christiana* peaceful ordering is the ultimate *spatio-temporal* extent that Vitoria can conceive. Such *spatio-temporal* image of the world has loose boundaries: the image of the entire earth, the *terra*, proposed by Vitoria is indeed “the territorial limits of the jurisdiction of Christendom.”²⁰⁶ As Brett states on this point, “the boundary between the sovereign state and the broader human community is not the same as the boundary between the state and nature. It is on precisely this distinction that the cosmopolitanism of Francisco de Vitoria and his colleagues rests.”²⁰⁷ Therefore, war is not a confined *spatio-temporal* dimension, but in some cases it can remain an open-ended status that lasts up to the re-consolidation of peace and justice.²⁰⁸

Vitoria, by taking some ontological insights from the Stoic tradition, theorizes the existence of a true *communitas orbis* embedding all the human beings as citizens of the same *respublica*.²⁰⁹ So the concept of enemy cannot be divorced from that of a wrong committed in an open-ended jurisdiction and cannot be self-standing without the presence of a wrong. Enemy is the one who has

²⁰² Vitoria, 50.

²⁰³ Beneyto and Corti Varela, *At the Origins of Modernity*, 10:6.

²⁰⁴ Vitoria, *Vitoria*, 314.

²⁰⁵ Dupuy and Chetail, *The Roots of International Law / Les Fondements Du Droit International*, 218.

²⁰⁶ Allen E. Buchanan, ed., *States, Nations, and Borders: The Ethics of Making Boundaries*, 1. publ, The Ethikon Series in Comparative Ethics (Cambridge: Cambridge University Pr, 2003), 112.

²⁰⁷ Annabel S. Brett, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton, N.J: Princeton University Press, 2011), 6.

²⁰⁸ And in this respect, Vitoria indeterminate normative structure is eminently modern. Kingsbury and Straumann, *The Roman Foundations of the Law of Nations*, 171.

²⁰⁹ Luca Scuccimarra, *Proteggere l’umanità: Sovranità e Diritti Umani Nell’epoca Globale*, Studi e Ricerche 713 (Bologna: Il mulino, 2016), 200–203.

violated a right and cannot be innocent unless such wrong is vindicated: the enemy is, by definition, morally guilty. Conceptually, enmity and moral culpability cannot be severed in the whole Scholastics system.²¹⁰ Such guiltiness is aspatial and atemporal, it is infinite, as said by Vitoria, the one responsible of an *inuria* cannot remain without vindication, “*ad vindicandam iniuriam.*”²¹¹ Indeed, he claims that “if the commonwealth has the power to punish against its members that aim harming, there can be no doubt that the whole world has the same powers against any harmful and evil man.” And Vitoria goes on, claiming that “princes have the power to punish enemies who have done harm to the commonwealth; after war conclusion, these enemies remain as hateful to the prince as they would be to a proper judge.”²¹²

It will be then the third generation of the Salamanca School theologians, and in particular Francisco Suarez and Gabriel Vazquez, to grasp the legacy of Vitoria law of war and push to consider valid the idea, at least as an hypothesis, that a war can be just on both sides.²¹³ Suarez claims that “while enemy combatants were personally culpable because they had taken up arms in pursuit of an unjust war, they were subject to punitive killing not personally (because of their individual contribution to the war effort or war crimes committed) but as part of proportionate punishment of the enemy state.”²¹⁴ While Vazquez, going extremely close to Grotius argumentation by using moral probabilism, maintains that when a ruler has a probable reason, the subjects should fight following the probable reason.²¹⁵ Other later theologians following Vitoria and his fellows, as Molina for instance, instead, will then retrace such passage holding that “every enemy soldier [is] individually culpable and punishable by death. Killing all enemy soldiers would be uncharitable, but not disproportionate or unjust.”²¹⁶ As claimed by Schwartz, late second scholastic just war theory does not easily lend itself to a purely individualist presentation”, as some of contemporary reinterpretation of just war theory audaciously purport. Rather, argues Schwarz, the third generation of scholastic theologians remains in the watercourse traced by Vitoria and “combines elements of individualism, collectivism, and statism.”²¹⁷ As summed up by Galli, war for Vitoria and more broadly for the whole second Scholastics is:

[...] a relationship between political entities, not between religions: the just war is not a holy war, nor an ideological war. And, despite its harshness, it does not aim to destroy the enemy’s society, to eliminate certain peoples [...], or to increase the power of the victors. Even if we consider war as intrinsic – *ratione peccati* – to the condition of humanity, we must not, in its commencement, continuation and completion, rely on blind natural high- lights, mechanisms of games of power, a simple utilitarian evaluation, or the harsh tragedy of the exception. Also war must be placed within civilization that has evolved through religion, the idea of justice, rational morality, the law of people and politics concerned with the welfare of each state and

²¹⁰ Vitoria yields that in some cases the enemy can be unaware of its guilt and in good faith due to “invincible ignorance”, see Beneyto and Corti Varela, *At the Origins of Modernity*, 10:131.

²¹¹ Vitoria, *Vitoria*, 320.

²¹² Vitoria, 306.

²¹³ Pietro Costa and al., *I diritti dei nemici*, vol. 38, Quaderni fiorentini per la storia del pensiero giuridico moderno (Milano: Giuffrè, 2009), 1156; Aldo Andrea Cassi, *Santa, Giusta, Umanitaria: La Guerra Nella Civiltà Occidentale*, Piccoli Saggi 56 (Roma: Salerno editrice, 2015), 78.

²¹⁴ Braun, Bom, and Astorri, *A Companion to the Spanish Scholastics*, 19.

²¹⁵ Hans Blom, *Property, Piracy and Punishment: Hugo Grotius on War and Booty in De Iure Praedae: Concepts and Contexts* (BRILL, 2009), 87, <https://doi.org/10.1163/ej.9789004175136.i-422>.

²¹⁶ Braun, Bom, and Astorri, *A Companion to the Spanish Scholastics*, 18–19; 365.

²¹⁷ Braun, Bom, and Astorri, 392.

the whole of mankind - namely a policy that wants peace, even if sometimes it has to go through a just war.²¹⁸

2.1.4 The contribution of humanist jurisconsults on war and on the concept of regular enemy

On the other front, in that which can be defined strictly speaking a tradition of legal thought, law scholars and law doctors engage with fine-grained reflections on the position of individuals and collective entities in war and on the political significance of war.²¹⁹ While the Medieval territorial fragmentation slowly wanes away before the emancipation of autonomous and powerful polities, civil jurists and jurisconsults face the reality that the medieval erratic bodies of rules on war become obsolete. Far from the Christian categories that bind theologians thought, legal scholars are ready to give politics a larger space of autonomy from religion and a more power for maneuvering in matters of war.

Two different approaches on the issue of regular war and regular enmity are more notable among the productions of jurisconsults. On the one side, an approach reconnected with *Bartolism* but integrated with Renaissance spirit, which simply retraces the Roman difference between public enemy and private enemy. Andrea Alciato (1492-1550) is among the most prominent exponents of such an approach. On the other side, a more articulated thought is expressed by the school of jurists trained in canon and civil law who rely on the Roman tradition of *ius militare* as a technical body of rules that address directly to man of arms and statesman.

In the Humanist Renaissance legal tradition Alciato stigmatizes the possibility of defining the other party in war as a lawful enemy upon the condition of sovereign authority. Alciato follows substantially the typical debate of the late Middle Ages, showing more inclination towards the idea that each collective body endowed with enough authority to declare war can be regard the other party a regular enemy. In the *De Verborum significatione*, under the entry “*hostes*”, Alciato defines the enemy as “public enemies or enemies in public war, they which have equal rights to the nations as a cause for war.”²²⁰

In the *ius militare* tradition, instead, the name of Pierino Belli (1502-1575), initiator of an almost self-standing study on the rules of war, stands out as one among the earliest thinkers of *ius in bello*. For Belli, the word war is intended solely as *bellum*, which itself marks a semantical difference as it comes from “*duellum* - not implying activity of two individuals, but of two parties; hence enemies.”²²¹ As explained by Belli, war is a closed social condition on which political and legal rules may be applied by the contenders. In defining war and the enemy Belli main polemical objective is the way Baldus and his followers deal with war as a matter eminently of Pope’s and Emperor’s competence.²²² Notwithstanding his training as *iuris utriusque doctor* and his Christian faith, Belli argumentation contrasts that of glossators, relying largely on Classical historical sources as Livy and

²¹⁸ Beneyto and Corti Varela, *At the Origins of Modernity*, 10:132; Francisco de Vitoria and Carlo Galli, *De iure belli*, 1. ed, Universale Laterza 852 (Roma: Laterza, 2005), xxiv.

²¹⁹ Kalmanovitz, *Early Modern Sources of the Regular War Tradition*.

²²⁰ The original entry reports “Quos nos hostes appellamus eos veteres perduelles appellabant per eande adiectione indicantes cu quibus bellu esset. Hostis apud antiquos [...] Deinde coepta est haec vox in alium sensum accipi, ut videlicet perduellem significare; nam et illi iure gentium aequali causa ad bellum”, self-translated from A. Alciati, *De Verborum Significatione: Libri Quatuor* (Gryphius, 1530), 260–61; Rech, *Enemies of Mankind*, 62.

²²¹ P. Belli and A. Cavaglieri, *De Re Militari et Bello Tractatus*, Classics of International Law, No. 18, v. 2 (Clarendon Press, 1936), 4.

²²² Dante Fedele, *The Medieval Foundations of International Law: Baldus de Ubaldis (1327–1400), Doctrine and Practice of the Ius Gentium* (Brill | Nijhoff, 2021), <https://doi.org/10.1163/9789004447127>.

Plutarch so to ground his theory in solid idea of public war between peers in arms. His *spatio*-temporal reference is the fragmented world of lords, kingdoms and city-republics, and his political logics is still under the shadow of Roman empire as an ideal enclosed unity. However, his legal-strategic argumentation displays pioneering insights on the rules of war between autonomous armies which fight in the name of autonomous political bodies. Belli, as Alciato, has no difficulty in acknowledging rights of war to those outside Christianity as the Turks and he insists, *contra* Baldus and canon law in general, that each independent kingdom endowed with proper authority and a regular army can declare war and regard the other party as lawful enemy.

More briefly, it is my view that any people or nation living under its own laws and at its own charges, and any king or other ruler who is fully independent, may declare war at will and when occasion arises. on three grounds going to war without the knowledge or consent of the lord is not permissible: (1) because the use of arms is forbidden by the laws; (2) because wars are contrary to natural right, unless there is need for defence; and (3) because territory is ravaged which belongs to the lord by right of immediate (4) control. So, says Baldus, if the vassal does not consult the lord, he loses his fief. For 'enemy and 'rebel' are two very different things, according to the laws cited' and I do not understand how the rights of enslavement and postliminy could here apply.²²³

Given that war is by now becoming a structured and organized business, Belli is aware of the necessity to keep the individual and the collective entity together in a space of war which is a specific delimited condition of hostility.²²⁴ Though being a lawyer and despite his numerous quotations of the work of glossators and commentators, his style is far from the unsystematic treatment of war offered by Medieval *doctors* and has a historical, almost sociological, flavor. Belli devotes two long and detailed chapters to discuss rights and duties of enemy combatants in war, making a clear distinction between combatants and non-combatants.²²⁵ Grotius, despite not quoting him directly, most likely benefits from the clarity and technicality of argumentation that characterizes Belli and from the depiction of war as collective, symmetrical state of affairs.²²⁶

Before reaching Grotius, the influence of Belli is certainly perceived in France, where a fervent philosophical and juridical debate keeps engaged scholars to think how to rule the state independently from religious power. The humanist tradition of legal thought (those adherents to the *mos Gallicus*) draws on Roman sources as well as on humanist scholars as well as on polyhedral authors as Belli. The intellectual objective of this philosophical-legal debate is the consolidation of an image of political power as sovereign, absolute, and autonomous from other powers, capable of governing threats from inside as from outside. This creates a concrete distinction between inside and outside but, most importantly, it also establishes a tie of interdependence between what happens inside a state and what happens outside it. As explained by Panizza, there is conceptually a “clear

²²³ Belli and Cavaglieri, *De Re Militari et Bello Tractatus*, 8–11.

²²⁴ Belli and Cavaglieri, 2–9.

²²⁵ In the section devoted to the privileges and duties of soldiers in war Belli makes the following statements and evidently links the concept of enemy with those of space and time “Baldus, however, seems to have missed the point here in interpreting ‘in the enemy’s country’ (in *hostico*) to mean ‘in the hands of the enemy for a person in such a plight would be a slave of the enemy and incapacitated for making a will, whether he was a soldier, or anything else you please. [...] it is a soldier’s privilege that all the while he may be in captivity and in the hands of the enemy, his time is counted just as if he were serving.” Belli and Cavaglieri, 170–81.

²²⁶ Alberto Del Vecchio, “Di Alcune Recenti Opere Italiane, Intorno Ad Alberigo Gentili Ed a Pierino Belli, Precursori Di Grozio,” *Archivio Storico Italiano* 3, no. 109 (1879): 63–79.

vision of the dichotomy “internal”-“external”, which is the basic presupposition of the emergence of the modern concept of an order of things distinctly “international.”²²⁷ War and enmity are relevant concepts to the scaffolding of the French debate. Author of this main *spatio-temporal* externalization and stabilization of enmity is Jean Bodin (1529-1596), who makes a first and crucial connection in the first lines of his most important oeuvre on government: that between sovereignty (*souzeraineté*) and the concept of “external enemy.” Indeed, at the beginning of the *Six Livres De La République* (1576) the reader encounters the following passage:

The law has always distinguished robbers and pirates from those who are recognized to be enemies legitimately at war, in that they are members of some commonwealth founded upon that principle of justice that brigands and pirates seek to subvert. For this reason, brigands cannot claim that the conventions of war, recognized by all peoples, should be observed in their case, nor are they entitled to those guarantees that the victors normally accord to the vanquished [...] [otherwise] we can make no distinction between rights of war against an enemy and theft, between the just prince and the brigand, between a war justly undertaken and a mere exercise of violence.²²⁸

The distinction traced by Bodin is certainly foundational, if anything for the sharpness of concepts he employs. In his strong interest for distinguishing what is private and what is public as part of an effort to strengthen monarchical power and at the same time enhance individual rights and religious toleration, Bodin writes that all those internal disturbers to sovereign entities are but “rebels or criminals.”²²⁹ While those lying outside the commonwealth can be named “enemies” and, as a consequence, have different political and normative standing than “rebels.” This distinction between enemies and internal disturbers, already intelligible in Machiavelli’s *Prince*,²³⁰ can be seen as the intellectual fabrication of the internal pacification and neutralization of civil war through the externalization of hostility.

What is not part of Bodin’s intellectual and political agenda and thus can be seen as a limit in his view is the relationship between such sovereign entities capable to externalize enmity. In other words, Bodin is not really interested in undertaking an inter-sovereign theory of politics. Sovereignty, after all, as explained by Scattola, in Bodin is an “internal concept.”²³¹ When confronted inter-sovereign relations, Bodin limits his theory of sovereignty to the use of history as an authoritative source: he recommends the use of Roman institutions, mostly *ius feciale*, in case of clash between sovereigns. But he does not go further than that.

²²⁷ Diego Panizza, “Political Theory and Jurisprudence in Gentili’s De Iure Belli: The Great Debate between ‘Theological’ and ‘Humanist’ Perspectives from Vitoria to Grotius,” *SSRN Electronic Journal*, 2005, <https://doi.org/10.2139/ssrn.871754>.

²²⁸ Jean Bodin and Michael Tooley, *Six Books of the Commonwealth* (Lexington, Kentucky: Seven Treasures Publications, 2009), 21–58.

²²⁹ Stephen Holmes, “Jean Bodin: The Paradox of Sovereignty and the Privatization of Religion,” *Nomos* 30 (1988): 5–45.

²³⁰ Pier Paolo Portinaro, *Il realismo politico*, 1. ed, Biblioteca essenziale Laterza 28 (Roma: GLF Ed. Laterza, 1999), 27.

²³¹ Stefan Kadelbach, Thomas Kleinlein, and David Roth-Isigkeit, eds., *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel*, First edition, The History and Theory of International Law (New York, NY: Oxford University Press, 2017), 81.

Trying to find a *via media* between his *Bartolist* training (known as *mos italicus*)²³² and the then consolidating legal Humanist tradition of which Bodin was a fellow (known as *mos gallicus*),²³³ the Oxford jurist Alberico Gentili (1552-1608) sketches an inter-sovereign normative system in which war is exclusively competence of sovereign entities states, namely those “*qui iudicem non habent et superiorem*.”²³⁴ As synthesized by Panizza the contribution of Gentili marks the beginning of “the vision of international law as a law among polities rather than individuals.”²³⁵ The *ratio civilis* of civil law indeed seems to be insufficient to deal with independent political bodies claiming their own authority. Gentili is certainly aware of the normative quandaries that Bodinian absolute sovereignty poses once applied to the relations between sovereign entities and starting from that predicament establishes his normative system. Influenced by the emergence of *reason of state* doctrines, Gentili attempts to combine it with the powerful metaphysical device of natural law and with *corpus iuris civilis* of Roman origin.²³⁶ The intellectual outcome is a progression of works on diplomacy, republicanism, juridical interpretation, culminating with a treatise on war, *De iure belli libri tres* (1598). In his treatise on war, whose systematic character, use of sources and exposition style remind that of Grotius, Gentili expounds the underlying idea that inter-sovereign relations, to be bound by law, must be founded on the premise of juridical equality between its main actors. Juridical equality, insists Gentili, can be attained if all those belonging to the “society of sovereign entities” resort to the same juridical sources and juridical reasoning.

In the first chapters of the treatise, the Oxford jurists puts forwards his idea of “perfect war,” namely a public regular war between sovereign entities that “exclude[s] brigandage, piracy, and civil wars from its purview.”²³⁷ This does not mean giving away completely with just war, but it means lifting war from the semantics of law enforcement and attaching to specific actors the power to make just war. In this sense, by shrinking the number of subjects entitled to wage war Gentili’s rational scope is to shrink the possibility for war to occur overall.²³⁸ It is here that Gentili can trace a

²³² Diego Quaglioni, “Pour Une Histoire Du Droit de Guerre Au Début de l’âge Moderne. Bodin, Gentili, Grotius,” *Laboratoire Italien*, no. 10 (December 31, 2010), <https://doi.org/10.4000/laboratoireitalien.498>; Howell A. Lloyd, ed., *The Reception of Bodin*, Brill’s Studies in Intellectual History, volume 223 (Leiden ; Boston: Brill, 2013), 375.

²³³ Claire Vergerio, “Alberico Gentili’s De Iure Belli: An Absolutist’s Attempt to Reconcile the Jus Gentium and the Reason of State Tradition,” *Journal of the History of International Law* 19, no. 4 (October 21, 2017): 429–66, <https://doi.org/10.1163/15718050-19041006>.

²³⁴ Alberico Gentili, *Alberico Gentili: il diritto di guerra; (de iure belli libri III, 1598)*, ed. Giuliano Marchetto, 2008, xxv.

²³⁵ Dupuy and Chetail, *The Roots of International Law / Les Fondements Du Droit International*, 215.

²³⁶ What Burke calls the idiosyncratic encounter between Tacitism, Scepticism and reason of state, J. H Burns and Mark Goldie, *The Cambridge History of Political Thought, 1450-1700* (Cambridge: Cambridge University Press, 2008), 479, http://histories.cambridge.org/book?id=chol9780521247160_CHOL9780521247160.

²³⁷ As for Gentili war is a just conflict fought through public arms “*Bellum est publicorum armorum iusta contentio*.” The influence by the Reformation cannot be downplayed here. Gentili seems to follow that stream of thought whose idea on just war depends on the subjugation of the single individual to the sovereign power. Indeed, Luther in *On war against the Turks* cannot be more explicit on the matter: “If worldly rulers call on them to fight, then they ought to and must fight, and be obedient, not as Christians but as members of the state and obedient subjects, as regards the body and temporal possessions. Therefore, when they fight, they do it not for themselves or on their own account, but as a service and act of obedience to the rulers under whom they are, as St. Paul writes to Titus, “They shall obey the rulers.”” See, Martin Luther et al., *Luther’s Works* (Saint-Louis (Mo.): Concordia publishing house, 1968), 28; Harro Höpfl, Martin Luther, and Jean Calvin, eds., *Luther and Calvin on Secular Authority*, Cambridge Texts in the History of Political Thought (Cambridge ; New York: Cambridge University Press, 1991), 30–31; Valentina Vadi, “Perfect War: Alberico Gentili on the Use of Force and the Early Modern Law of Nations,” *Grotiana* 41, no. 2 (December 17, 2020): 263–81, <https://doi.org/10.1163/18760759-41020002>.

²³⁸ Gentili as showed by Haggemacher equates lawful war to public war, delegitimizing all the other categories so to shrink the circle of those entitled to wage war. See Peter Haggemacher, ed., *Il Diritto Della Guerra e Della Pace Di*

substantial difference between those who can be regarded as regular enemies and those who do not enjoy this status. In the words of Schröder, Gentili is the first who “breaks new ground through a juridical and political approach which eliminates the medieval notion of *bellum iustum* and instead introduces the concept of a *iustus hostis*.”²³⁹ In the *De iure belli* the idea of enemy is not simply an echo his humanist inclination, but the regular enemy is an organizational concept of the system of the law of nations: for Gentili the laws of war are “laws which we have in common with our enemies and with foreigners.”²⁴⁰

Accepting the definition of *iusti hostes* given by Pomponius and Ulpian then elaborated by Cicero, Gentili translates the Roman concept into his normative system of inter-sovereign relations.²⁴¹ In such a system, sovereign republics need to communicate, thus the insistence on ambassadorial rights and duties and on war declaration. Just war for Gentili is not attainable by individuals because justice is a higher matter, therefore it needs creating an artificial system of inter-sovereign relations to bind princes. Gentili intellectual operation revolves around the impossibility “to know who was in the right,” so he solves it by claiming that “it had to be accepted that both sides had a right to wage war.”²⁴² The presence of a distinctive insistence on the will of the prince is the very political trait of Gentili. Such a trait seems to be directly reconnected to the *nucleus* of Machiavelli thought. This trait is combined with Gentili’s pragmatic Protestantism and Romanist legal training. The outcome is an apology of *ragion di stato* balanced with a universalist ethical understanding of politics.²⁴³

It is in this occasion that Gentili can deploy his powerful argumentation about distinction, claiming that enemy non-combatants may not be killed unless they participate in war or unless military necessity requires it. In this sense, following Belli, Gentili deems “combatants to be in a symmetrical relationship of equality.”²⁴⁴ Gentili’s perspective on war seems to be distant from the univocal character of theologians committed to theorize just war and he recognizes the likely case that war can be just on both sides. He insists on the collective character of the opposing belligerents and, following the Ciceronian tradition of dual enmity, he disqualifies in rough tones other stereotypical categories of armed men as pirates, brigands, robbers. For Gentili all such figures fall under the Roman category of enemies of mankind.²⁴⁵ The *spatio-temporal* dimension in which Gentili locates war seems to be a fuzzy society of civilized states, characterized by a sort of lay universalism, in which relations are regulated by a strict idea of law as custom.

However, this symmetrical construction between the sovereign republics has its limits and the concept of regular enemy can easily be turned towards its opposite, to address these “uncivilized behaviors that stand outside humanity”, that Gentili deems to be corrected and re-inserted in civilization.²⁴⁶ The imperial *spatio-temporal* dimension of Gentili, though not comparable to

Alberico Gentili: *Atti Del Convegno, Quarta Giornata Gentiliana, 21 Settembre 1991*, Centro internazionale di studi gentiliani (Giornata gentiliana, Milano: A. Giuffrè, 1995), 26–27.

²³⁹ Kingsbury and Straumann, *The Roman Foundations of the Law of Nations*, 165.

²⁴⁰ Alberico Gentili and John Carew Rolfe, *De Iure Belli Libri Tres. 2: The Translation of the Edition of 1612*, Reprint der Ausg. Oxford, 1933, The Classics of International Law 16 (Buffalo, NY: Hein, 1995), 3.

²⁴¹ Gentili and Rolfe, 15.

²⁴² Orakhelashvili, *Research Handbook on the Theory and History of International Law*, 437.

²⁴³ Diego Panizza, ed., *Alberico Gentili, Politica e Religione: Nell'età Delle Guerre Di Religione*, Centro Internazionale Di Studi Gentiliani (Series) (Giornata gentiliana, Milano: A. Giuffrè, 2002), 12-19–44.

²⁴⁴ I consider adventurous and even slightly anachronistic claiming, as done by Vadi following Meron, that Gentili with this move was promoter of an unprecedented “humanization” of war; I would rather stick to the rationalizing impact that Gentili move had on the regulation of war. See Vadi, “Perfect War”; Gentili and Rolfe, *De Iure Belli Libri Tres. 2*, 23.

²⁴⁵ Rech, *Enemies of Mankind*, 64–65.

²⁴⁶ Diego Panizza, “The ‘Freedom of the Sea’ and the ‘Modern Cosmopolis’ in Alberico Gentili’s *De Iure Belli*,” *Grotiana* 30, no. 1 (2009): 88–106, <https://doi.org/10.1163/016738309X12537002674321>.

Medieval theocentric universalism, is a comprehensive space in which together “the tension between sovereignty as an international legal status and liberty as a local or domestic political demand” are kept together.²⁴⁷ In fact, in the *De armis romanis* (1599) Gentili states:

There will be no condemnation of an empire gained through just wars, an empire extended through the lands and of which it may be said: ‘For other peoples the land has been given with a fixed limit; the space of the Roman city is at the same time the world.’²⁴⁸

What lacks in Gentili’s idea of political order from a modern perspective is a deeper sight on the relationship between individuals and collective entities in war. His definition of the enemy thus does not go further than a technical and objective notion, adopted from antiquity and adapted to a theoretical construction where the core actors are sovereign entities. Sovereign entities are sketched political bodies, modelled on the pattern of England and inspired by the idea of the Roman empire. Gentili does not dwell sufficiently into the origin of political order and political authority. Broadly speaking, he takes it for granted. And, he does not provide explanation on the role of the individual within the political body. Internal political orders and the resultant international political order are historicized and substantiated through the *exempla* of history but are not constructed as dynamic orders through a speculative political theory.

Therefore, the concept of regular enemy, though groundbreaking in Gentili usage because of its bilateral character (the enemy can be just on both sides), can only be a technical, at most historical notion, which is not articulated in a productive dimension. Koskeniemi dissects in the following manner the logic of argumentation that characterizes seventeenth century international political thought, with a striking critical juxtaposition between Gentilian Reformation humanism and Vitoria and Suarez Neo-Scholasticism:

The natural law idiom and even more the *ius gentium* that focused the attention of the ruler on the good of the community in a world where there were many communities struggling over the same resources was not an instrument of cosmopolitan creation but a language of power and rivalry. While Gentili was still captured in the old Machiavellian prejudice of seeing only state power as ‘real’, the Spanish had already taken decisive steps to include in their vision a formidable type of universal power that was emerging in their midst, namely that of trade and private ownership.²⁴⁹

Gentili system in terms of vocabulary, structure of argumentation, and aims is not markedly distant from that Grotius. Gentili offers crucial ideas that Grotius and Hobbes gather in their works. Grotius’ theory on war is located exactly in the ambivalent horizon where private individuals and sovereign bodies are entitled to wage war, though under different conditions, and where the horizon of Roman empire fades, at least in theory, away, while European states imperial ambitions grow. Hobbes receives from Gentili

For Grotius this is a serious conundrum out of which he elaborates a detailed theory that tries to keep systematically together the individual, his rights, and his commitment to the collective political body. The fact that some individuals and some political bodies are entitled to wage war and

²⁴⁷ Annabel Brett, “Roman Law and Roman Ideology in Alberico Gentili,” *Huntington Library Quarterly* 83, no. 3 (2020): 499–517, <https://doi.org/10.1353/hlq.2020.0016>.

²⁴⁸ Alberico Gentili et al., *The Wars of the Romans: A Critical Edition and Translation of De Armis Romanis* (Oxford; New York: Oxford University Press, 2011), xxi.

²⁴⁹ Kadelbach, Kleinlein, and Roth-Isigkeit, *System, Order, and International Law*, 305.

can be called *hostes* is a *topos* that develops all along his writings on war and represents the structure of his entire argument on war. Grotius, and to a similar extent Hobbes, capitalize the intellectual efforts of their predecessors as Gentili, Ayala, and Bodin to situate war outside the law enforcement semantics.²⁵⁰ At the same time, the secularizing polemics (mainly addressed against the Spanish theologians) that animate the works of Grotius and to a similar extent the political works of Hobbes bring to the attention of the Dutch jurist the subtleties that scholars as Vitoria and his followers are capable of. In sum, the influential work of the theologians on the one hand and the humanist and Romanist legal scholars on the other hand, constitute the poles of an ongoing intellectual engagement.

It is on this intellectual rift that Grotius advances his theories on war, and it is here that the concept of enemy assumes traits of regularity that look familiar to the modern idea of regular enemy. On the same intellectual rift, Hobbes' theory of politics assumes its *raison d'être* as a challenging and groundbreaking intellectual move. Hobbes amply draws on the humanist and on the scholastics traditions, but at the same time breaks with them and attempts to establish a new paradigm. Grotius' and Hobbes' works are located on the rift between the languages of the medieval world and the languages of that we are used to calling the modern world.

2.2 Thinkers of the transition: Grotius and Hobbes on the concept of regular enemy

There can be identified at least four reasons that may justify why dealing with Grotius and Hobbes to have a glimpse on very crafting of the modern concept of regular enemy. First, the two authors share a remarkable interest for the limitation of war and they both attach relevance, yet more visible in Hobbes, to space and time in their theoretical constructions on war and on enmity, more than the thinkers who precede them. This can be also read as part of their pluralist view of social and political life and as part of their belief in the inextricable presence of conflict in social and political life. Their two political constructions represent a significant break with the *respublica Christiana* frame and with other forms of *spatio-temporal* universalism, as for example the recursive idea of Roman empire seen in Gentili.²⁵¹

Second, and in slight opposition to the first point, the two authors despite showing a pluralist understanding of social and thus of political life, share the confidence that their theoretical constructions can be turned into universalist models and can be easily applied in all Europe and far beyond Europe. By relying on the argumentative device of natural law (which implies a subject and a set of rights)²⁵² both theories have evident universalist aspirations and propose a normative solution that, effectively, can be applied to the individuals living in the regions of the whole globe. It is exactly the starting point they share, the individual, that makes their theories modern and relevant to the scope of the present research. Both Grotius and Hobbes write on the edge of the great land discoveries and at the time of imperial land appropriations of the sixteenth and seventeenth century, and such a contextual feature is visible in their imaginative force and in their transformative goal. The world's cognitive representations for a European erudite man of the Seventeenth Century is different from the Middle Ages static and theocentric images of the earth. The world appears in its complex yet unitary

²⁵⁰ Haggemacher, "Guerre Juste et Guerre Régulière Dans La Doctrine Espagnole Du XVI^e Siècle."

²⁵¹ Koskenniemi, "Vitoria and Us."

²⁵² Scattola situates the breaking between medieval and early modern natural law exactly at Grotius time. See Tim J. Hochstrasser and Peter Schröder, *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment*, Archives Internationales d'histoire Des Idées 186 (Dordrecht: Kluwer academic, 2003), 4–29.

shape. And the intellectual tools that early modern theorists (Descartes for example)²⁵³ make available to thinkers as Grotius and Hobbes, change not only the image, but also the methodologies of enquiring and knowing the earth as a unitary form.

Third, it can be said that the two are thinkers of the transition and exactly within the dynamic dimension of the transition their theories acquire a definite groundbreaking character. As aptly summarized by Todescan, an author of the transition may be interpreted as one “who lives at a time of transition from one paradigm to another, from a political concept to another. An author of the transition uses the old language, in an apparent loyalty to tradition, in order to solve new problems; this represents the ambivalence of his thought, which leads to multiple interpretations.”²⁵⁴ In this sense they also shoulder the burden of the dilemmas and the unsettled interrogatives of epochal transformations and, above all, the dramatic (often cruel) power shifts peculiar to transition periods. Therefore, both the thinkers, their intellectual objectives, and chiefly the implications of their theories should be read precisely in the context of the experiences of seventeenth century European men. Neither simply opportunistic nor entirely humanitarian or philanthropic in their aims, Grotius and Hobbes use their argumentative capacity to speak sometimes on behalf of established interests and powers, while other times to give voice to some forms of power resistance. They are anchored to and embedded in solid intellectual traditions, which (often) shield them from critiques, as the classical humanist education and the Reformation thought. But this does not prevent them from confronting opposing opinions, as the Catholic church and the second scholastics, certainly among the most significant targets of their critiques.

Fourth and last, though not less important, despite being evidently somehow trapped in their context and in the power structures of their time, they are, beyond any counterproof, imaginative thinkers.²⁵⁵ Besides the sheer linguistic tool they introduce in political and legal theory, the images they produce through a very effective writing style are efficient intellectual devices, destined to last for a long time. Images that often need no vocabulary to be spelled out, as the Grotian idea of “*bellum solemne*” or the Hobbesian image of the “Leviathan”. Such images are powerful cultural devices because they are transposable in the mind of the uncultivated or in the mind of the ordinary man, producing a significant cognitive effect that supplants discourse and language. It is not disputed here that both do not invent political and legal theory anew: they quote a massive number of sources to substantiate their argumentations and they often deploy images taken from previous thinkers and from established traditions. They indeed draw from different intellectual clusters as ancient and modern philosophy, classical poetry, theology, physics, medicine, and many others. What is claimed here is that Grotius and Hobbes share the capacity to produce powerful images; even if simplistic and stereotypical, such images can feed imagination and contribute to reify the whole intellectual constructions they bring about. They both make their intellectual images alive and operative for political actors to such an extent that these images become indissociable from modern political theory and resonate even in political reality.

Despite the many *Grotiuses* and *Hobbesses* emerged since the eighteenth century from the secondary literature, as with the case of Pufendorf and many others,²⁵⁶ the two thinkers present ideas

²⁵³ Gilles Olivo, *Descartes et l'essence de La Vérité*, 1re éd, Epiméthée (Paris: Presses universitaires de France, 2005), 3–5.

²⁵⁴ Todescan, “Dalla ‘persona ficta’ alla ‘persona moralis’ - Individualismo e matematicismo nelle teorie della persona giuridica del secolo XVII.”

²⁵⁵ Koskenniemi, “Imagining the Rule of Law.”

²⁵⁶ It is risky and debatable to see Grotius and Hobbes as, respectively, the father of modern international law and the father of modern political theory; in particular, on the controversial figure of Grotius, here it is assumed a moderate

capable to enact, to enforce an organization and a rationalization of reality. Their ideas possess the power to suggest possible, alternative ways of organization of social and political life. They use a system of linguistic devices and a sound argumentation impacting on “how certain worlds [are] constructed, how certain practices [are] named and renamed, how certain possibilities [are] closed.”²⁵⁷ Grotius and, from a negative yet specular position Hobbes, do not, as explained by Tuck, “promulgate[d] a new, post-skeptical science of morality as a pioneer of a new method,”²⁵⁸ rather they are able to “effectively carve out ‘a novel [autonomous] space’ for international law between theology and *raison d'état* politics” posing the intellectual conditions for thinking in politics not only within the state but also beyond, namely at the international level.²⁵⁹ It is at the international level that their new conceptual vocabulary is capable to address the issue of war and, hence, of enmity, contributing substantially to shape the form(s) of the international realm.

2.2.1 Connections and differences between Grotius and Hobbes

Grotius and Hobbes contribution to thinking the international, its most relevant activity, namely war, and its dynamic relationships, namely enmity, converge on three main points. Such three main points reconnect all in the critical, yet extremely productive relationship between Christian theology and the attempts to deconstruct and secularize it.

First, the two thinkers express similar preoccupations about the moral position of the individual within the world, the coexistence of his right claims in comparison to others' claims, and the construction of enclosed political communities. As put by Haakonssen “we find attempts at this argument in Grotius and Hobbes and in parts of covenant theology. For these thinkers the moral life [is] - eschatology apart - an open-ended series of contractual adaptations among individuals.”²⁶⁰ Of course, their respective starting points are radically opposed. Grotius *appetitus societatis* diverges from Hobbes anti-organicist social theory. They are indeed grounded in different ontological perspectives, respectively an Arminian theology Grotius (of Aristotelian derivations) and a negative anthropology Hobbes.²⁶¹ Nonetheless, though they both aspire to provide universal political forms capable to moderate violence and to shape war. They share the matrix of the collective political body formed by the agreement of single individuals. Grotius by natural society, Hobbes by natural necessity. That political body is intended as a close and autonomous space of political production: the *civitas*, then translated as state. Both the authors converge, at least partially, in the matrix of the state as an artificial product of natural, individual forces. The state emerges as the construction through which the individual can become political, therefore acquiring the status of citizen, and

position, remarked in the expression “figure of the transition”. For instance, Bull’s claim that Grotius importn on modern organization of politics is fundamental is accepted as convincing, though under the light of the studies conducted by Hagenmacher on the scholastics connection with Grotius and by Tuck on natural law. See Cornelis G. Roelofsen, “Grotius and the Development of International Relations Theory The ‘Long Seventeenth Century’ and the Elaboration of a European States System,” *Grotiana* 18, no. 1 (1997): 97–120, <https://doi.org/10.1163/187607597X00073>.

²⁵⁷ Brett, Donaldson, and Koskenniemi, *History, Politics, Law*, 117.

²⁵⁸ Richard Tuck, “Grotius and Selden,” in *The Cambridge History of Political Thought 1450–1700*, by Mark Goldie, ed. J. H. Burns, 1st ed. (Cambridge University Press, 1991), 502, <https://doi.org/10.1017/CHOL9780521247160.019>.

²⁵⁹ Janne E Nijman, “Grotius’ ‘Rule of Law’ and the Human Sense of Justice: An Afterword to Martti Koskenniemi’s Foreword,” *European Journal of International Law* 30, no. 4 (December 31, 2019): 1105–14, <https://doi.org/10.1093/ejil/chz068>.

²⁶⁰ Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*, 1st ed. (Cambridge University Press, 1996), 6, <https://doi.org/10.1017/CBO9781139172905>.

²⁶¹ Janne E. Nijman, *Grotius’ Imago Dei Anthropology*, vol. 1 (Oxford University Press, 2017), 99, <https://doi.org/10.1093/oso/9780198805878.003.0005>.

fulfilling its natural inclinations (society or necessity to survival). The state is indispensable as much as the individual in the theories of both Grotius and Hobbes, exactly in its role of managing violence and relating to what stands outside the internal political space, namely the enemies. This leads, as a consequence, to another point of convergence: they both construct a pluralist *spatio-temporal* dimension where different *civitates* coexist and interact. They construct it through the analogy state-individual, which is not universal and in principle is indeterminate. But its utmost quality is that it can become universal, it can be borrowed to universal projects. Thus, accepting at least partially the ironical and critical juxtaposition between Grotius and Hobbes made by Rousseau,²⁶² it is here claimed that the two thinkers do not express a similar concept, but the structure and the elements of their argumentations can be inscribed in a comparable logic which starts from the individual sociality (or antisociality in Hobbes) and produces the construction of the *civitas* and ends up in the conceptualization of the plural space in which different *civitates* can interact.

Second, both pay significant attention to the dimension of language as an essential means to the construction of political forms. Hobbes nominalism makes language foundational of that void that underlies politics and is the basis of the contract that allows individuals to escape the *state of nature*. Language is for Hobbes a way of sensing and categorizing reality so to make sense, in a rational-scientific manner, of its functioning. In the *Elements of Law* he states “A NAME or APPELLATION therefore is the voice of a man, arbitrarily imposed, for a mark to bring to his mind some conception concerning the thing on which it is imposed. By the advantage of names it is that we are capable of science, which beasts, for want of them, are not.”²⁶³ While in the *De iure Praedae* Grotius declares that language is a gift to human kind, stating that “God granted to man alone the medium of speech” and that only through language men can keep good faith and thus pacts, which for Grotius are the “foundation of justice.”²⁶⁴ By paying attention to language their idea of law is different, yet converging on the idea that law must be filled with meaning. For Grotius law is the *ensemble* of all rules of moral and juridical derivation; while for Hobbes it is the sovereign decision.

Third, both authors reconnect to the tradition of natural law, but at the same time they both provide important revisions of medieval natural law and institute a new canon.²⁶⁵ If their natural law assumes as a starting point the preeminence of individual reason opposed to faith (*ratio* against *fides*)²⁶⁶ as done by the second Scholastics, their natural law has a different endpoint than the Scholastics one. Grotius and Hobbes natural law shifts its *telos* almost completely to earthly matter from supernatural ones: survival, good life, and society are the very endpoints. On the one hand

²⁶² “Rousseau was remark sardonically that Grotius’s use of quotations concealed the fundamental similarity between Grotius and Hobbes: “The truth is that their principles are exactly the same: they only differ in their expression. They also differ in their method. Hobbes relies on sophisms, and Grotius on the poets; all the rest is the same.” See Hugo Grotius and Richard Tuck, *The Rights of War and Peace*, Natural Law and Enlightenment Classics (Indianapolis, Ind: Liberty Fund, 2005), xvi.

²⁶³ Thomas Hobbes, *The Elements of Law: Natural and Politic*, Second edition, Routledge Revivals (Abingdon, Oxon New York, NY: Routledge, Taylor & Francis Group, 2018), 14.

²⁶⁴ Hugo Grotius and Martine Julia Van Ittersum, *Commentary on the Law of Prize and Booty*, Natural Law and Enlightenment Classics (Indianapolis: Liberty Fund, 2006), 34.

²⁶⁵ Stolleis sees in Grotius combination of theology, natural law, and legal thinking an important refinement of natural law theory and the very first traits of modernity. Similarly, claims Stolleis, “even for Hobbes, who did not give up the concept of natural law. Lorraine Daston and Michael Stolleis, eds., *Natural Law and Laws of Nature in Early Modern Europe: Jurisprudence, Theology, Moral and Natural Philosophy* (Farnham, England ; Burlington, VT: Ashgate Pub. Company, 2008), 47.

²⁶⁶ Franco Todescan, *Le radici teologiche del giusnaturalismo laico* (Giuffrè, 1983), 57; Michel Villey, Stéphane Rialls, and Éric Desmons, *La formation de la pensée juridique moderne*, 2. éd, Quadrige manuels (Paris: PUF, 2013), 549–53.

Hobbes natural law is thin as a system and based essentially on the natural right of survival; on the other hand Grotius “draws the first two applicable laws from the primary law of nature: ‘*It shall be permissible to defend [one’s own] life and to shun that which threatens to prove injurious; secondly, that It shall be permissible to acquire for oneself, and to retain, those things which are useful for life.*”²⁶⁷ The natural law in Grotius is based on the first principle of natural order, (*ordo naturalis*) which consists in self-love or more roughly “self-preservation” as defense from injury and acquisition and protection of necessary goods for survival. All this is not unlimited, but being created in God’s image, it has a duty to moderation enabled by reason.²⁶⁸ Grotius subjective natural law and then Hobbes minimalist idea of natural rights are able, according to the analysis of Villey, to make “une *conjonction* d’une théorie des sources du droit et des finalités pratique qui sont celles de son époque.”²⁶⁹ This is also cause of suspicion of heresy by ecclesiastical powers against the major works of the two thinkers.²⁷⁰

In a nutshell, the two authors, despite having different cultural backgrounds and different intellectual objectives contribute to shape “thinking the international” by constructing and substantiating the analogy between individuals and states. The binomial individual-state is for Grotius a basic dyad to think and explain what is *ius* and what are subjective rights; while for Hobbes the analogy is part of a geometrical representation of politics where different forms are reducible to similar anthropologies: states behave like individuals. In sum, the two thinkers are not taken as sources of exact knowledge to study a definite object as the regular enemy. Rather, the position of Grotius and Hobbes on war and hostility is meaningful because both are confronted with the pressing question of who the legitimate subjects to use force are. They both offer minimalist solutions, either resorting to life as a minimum condition or to a basic theory of subjective rights.

It is a fair to recall that looking for similarities between Grotius and Hobbes may be an artificial and constrained theoretical endeavor.²⁷¹ However, as noted by Todescan when we are faced with the origins of modern political thought, Grotius and Hobbes accounts cannot be toughly divorced because, despite the differences, they belong to the same intellectual fabric. As highlighted above, the two authors share an important as much as controversial standing in the discipline of political theory and in its international declinations. They also and most importantly share, at least in a very wide manner, the context of their writing. They both share a matrix of tentative secularization of political and legal vocabularies. The famous “*etsiamsi daremus*” by Grotius and the problematic use of the gospel in the *De iure preadae* are signs of the controversial relationship with the theological tradition.²⁷² Equally Hobbes, despite the continuous reference to religion and the dedication to religion of a substantial part of the Leviathan, the role of religious authority is displaced and radically challenged as a source of authority in his political theory. They represent, in the words of Quaglioni, a “problematic node about the symbiotic relationship between law and theology” in the vicissitude of Western modern rationalism and its strong impulse to order.²⁷³

²⁶⁷ Nijman, *Grotius’ Imago Dei Anthropology*.

²⁶⁸ Nijman.

²⁶⁹ Villey, Rialls, and Desmons, *La formation de la pensée juridique moderne*, 546.

²⁷⁰ Grotius in particular is accused of Socinianism in his writings, an accusation of serious character in the provinces of Holland at the outset of the Seventeenth Century due to rationalist interpretations of Christianity by Socinians. See Todescan, *Le radici teologiche del giusnaturalismo laico*, 61.

²⁷¹ Perez Zagorin, “Hobbes without Grotius,” *History of Political Thought* 21, no. 1 (2000): 16–40.

²⁷² The argument about Grotius polemical use of Christian sources is addressed by Somos in differne places, see especially Mark Somos, *Secularisation and the Leiden Circle* (Leiden ; Boston: Brill, 2011), 389.

²⁷³ Quaglioni, “Pour Une Histoire Du Droit de Guerre Au Début de l’âge Moderne. Bodin, Gentili, Grotius.”

Grotius main intellectual horizon is to give a normative frame to violence outside the *civitas*. While similarly but more inward oriented than Grotius, Hobbes provides the elements for normatively neutralizing violence within the *civitas* and creating the conditions for a plural space of pacified *civitates*. Grotius international dimension is thus a system of regulated relations between sovereign entities; Hobbes international dimension is a sketched derivation of its geometrical theory of internal sovereignty that first and foremost is an outcome of what goes on in the *foro interno*. The term war used in both the systems resonates the medieval understating of war and still includes in its semantic field the idea of punishment and sanction. It includes private actors as legitimate subjects in Grotius, and it includes a thin difference between inside and outside the *civitas* in Hobbes.

2.3 Grotius normative system: natural law, history, and the concept of war

Neither is Grotius an innovator in terms of the vocabulary he brings in for the study of war, nor he is a groundbreaker in terms of the theory he deploys. The intellectual context and the ongoing debates briefly illustrated above are essential to the composition of Grotius main oeuvre on war, the *De iure belli ac pacis* (1625), as he himself acknowledges in the *prolegomena*.²⁷⁴ He indeed is a careful and cultivated man of letters, who shows a comprehensive knowledge of European religious, legal, literary, and political cultures.²⁷⁵ It is from this immense knowledge that he draws the guidance to construct his theory, but it is also the impending complexity of this monumental knowledge that stimulates Grotius to imagine new theoretical alternatives. His main intellectual sources prove that he is anchored to a stable intellectual tradition, humanism, that he does not want to sever; but at the same time the dialogical and polemical engagement with the theologians of the second scholastics as Vitoria, Covarrubias, Vazquez, shows that he aims to integrate and systematize humanist approaches with the other theoretical positions of his time.²⁷⁶ Grotius work is a holistic picture of the ideas on war circulating in Europe between antiquity and the Middle Ages, assembled through a careful *bricolage* of historical sources and through an attentive eye to the weight that certain authors and schools should play in the economy of his intellectual project. His work is a re-composition of the scattered ideas on war of the Middle Ages and at the same time a powerful challenge to the existing theories based on new actors: individuals and *civitates* (states).

However, the cultivated man is not simply a theoretician and a man of letter. Grotius is also a man tied to power structures (as private companies, governmental institutions, and religious élites) and immersed in the transformative socio-political and economic fabric of his native country and of the European context in general.²⁷⁷ Indeed, Grotius tries to address, with outstanding sensitiveness, how a *civitas* should be governed and how relations between *civitates* should be organized, who has the faculty to wage war in Europe, in the new lands of the *Indies* and on the high seas, under what conditions, what rights and what duties those using force must observe. His work on war deals with the compelling necessity of giving sturdy constraints and a specific form to the *belli gerendi potestas*.

²⁷⁴ Grotius and Tuck, *The Rights of War and Peace*, 110.

²⁷⁵ Henk J. M. Nellen and J. C. Grayson, *Hugo Grotius: A Lifelong Struggle for Peace in Church and State, 1583-1645* (Leiden : Boston: Brill, 2014), 5–22.

²⁷⁶ Martine Julia van Ittersum, “Hugo Grotius in Context: Van Heemskerck’s Capture of the ‘Santa Catarina’ and Its Justification in ‘De Jure Praedae’ (1604—1606),” *Asian Journal of Social Science* 31, no. 3 (2003): 511–48.

²⁷⁷ Jean Lévesque de Burigny, *The Life of the Truly Eminent and Learned Hugo Grotius: Containing a Copious and Circumstantial History of the Several Important and Honourable Negotiations in Which He Was Employed : Together with a Critical Account of His Works* (Charleston: Bibliobazaar, 2007), 17–38.

In this respect, Grotius appeal to history seems to respond to the urgent necessity to look at the fundamentals of *belli gerendi potestas* and circumvent the fragmented discussions of the Middle Ages. Grotius looks back at history to find an authoritative source to bind the use of such a *potestas* in specific contexts and circumstances and by determined actors.²⁷⁸ At this time, intellectuals as Grotius are called to reflect and to use history in their reflection to end the bloody religious clashes tearing apart cities and regions in Europe and to solve conflictive dynamics arising in commercial areas outside Europe. Therefore, overall, the theoretical construction on war and consequently on the enemy that Grotius offers is decidedly tied to context of his time, to the role that Grotius has in the context, and to the effect the context has on Grotius himself. The *milieu*, as it will be seen also in the case of Hobbes, extraordinarily influences the way Grotius defines and thinks about war and about the enemy and its conceptualization. Grotius is a cultivated *bricoleur* who, by being fully embedded in the transformative social processes of the seventeenth century, uses history and philosophy to provide credible responses to the predicament of his time in the realm of war.²⁷⁹ His use of history is instrumental, polemic, and oriented to the present.

2.4.1 Grotius milieu. The seventeenth century outset: trade, violence, ideologies

The writings of Grotius are relevant to the study of war because they reflect, to some extent, the attempt to cope with the transformations of social organization patterns undergoing at the outset of the seventeenth century. The necessity to give a normative form to organized violence firstly between individuals and then between political communities responds to the changing conditions of politics at his time.²⁸⁰ The *cosmos* organized violence, still bound to the Medieval logics and languages, is invested by the pressure of three different forces: an economic force, nurtured by the burgeoning of trade and manufacture which call for a reorganization of labor, transport, and exchange. A technological force, expressed in the evolution of weapons, leading to a new distribution of power and new levels of war destructiveness. And the strong ideological force of the Reformation, fracturing irreparably the unity of the Christendom. Such forces cause what in the crystalline words of Immanuel Wallerstein is an “epochal and systemic expansion of European power.” Indeed, as Wallerstein goes on to explain, “alongside the economic dilemmas, occurred a technological shift in the art of war. All this meant that the cost of war increased, the number of men required rose, and the desirability of a standing army over ad hoc formations became ever clearer. Given the new requirements neither feudal lords individually nor the city-state could really foot the bill or recruit the manpower.”²⁸¹ The outcomes is that economic, military, and religious boundaries that used to overlap in the Middle Ages

²⁷⁸ Peter Hagenmacher, *Grotius et La Doctrine de La Guerre Juste*, 143.

²⁷⁹ Grotius time is a world *in-between*. Most notably, characterized by the geopolitical side-effects of the Thirty Years War, the “persistence of feudal property regimes” and dynastical conflicts, as well as the Peace of treaties signed in Osnabrück and Münster (1648) which gave the birth to the Westphalian system of relations. See Nellen and Grayson, *Hugo Grotius*, 206–9; Benno Teschke, *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations* (London ; New York: Verso, 2003), 4–5.

²⁸⁰ Peter Paret, Gordon Alexander Craig, and Felix Gilbert, eds., *Makers of Modern Strategy: From Machiavelli to the Nuclear Age*, Princeton Paperbacks (Princeton, N.J: Princeton University Press, 1986), 37; Geoffrey Parker, “The Limits to Revolutions in Military Affairs: Maurice of Nassau, the Battle of Nieuwpoort (1600), and the Legacy,” *The Journal of Military History* 71, no. 2 (2007): 331–72, <https://doi.org/10.1353/jmh.2007.0142>.

²⁸¹ Immanuel Maurice Wallerstein, *The Modern World System. 1: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century: With a New Prologue / Immanuel Wallerstein*, Studies in Social Discontinuity (Berkeley, Calif.: Univ. of California Press, 2011), 28–29.

do not overlap anymore and often clash each other's creating new spaces for political action and calling for new rules to give a normative shape to such spaces.²⁸²

Different scale actors inhabit the *cosmos* of violence, and this requires rules, vocabularies, and techniques to constrain violence. Alongside crown-sponsored missions as the Portuguese and Spanish ones, brand-new actors as the Dutch private companies start to operate on commercial routes and to establish ports and colonies.²⁸³ Empires, *civitates*, lords, public and private commercial companies, merchants, mercenaries, and pirates are all actors embedded in a set of relations in which trade and conquest are the determinant modes of action.²⁸⁴ This makes the frame of relations fragmented and therefore the existing set of rules ill-suited for the political configurations taking place.²⁸⁵ The encounter and the terms of the encounter (legal, military, ideological) with other forms of alterity require certainly to interrogate about the concept of enemy, its rights, its duties, and its conditions of possibility.

It is in the context of one of such commercial missions that it is possible to appreciate Grotius first intellectual contribution on war and on the enemy. Grotius is called by the owner of a leading Dutch commercial company, the Dutch East India Company, to write a legal *memoria* to defend against the accusation of robbery and piracy by the Portuguese. The Dutch company defends itself before the Dutch Admiralty Court from the accusation of unjust capture of the Portuguese carrack *Santa Chatarina*.²⁸⁶ The work in its entirety will then take the name *De iure Praede Commentarius* because the very subject matter of the *memoria* is the definition of the boundaries of the law of prize in high seas. Though, Grotius' legal *memoria* is far from a scanty litigation defense. It is a complex work enriched with references to Roman law, to Stoa philosophy, and to Christian theology where the author expounds the logic of the laws of war by turning to natural law as a universal normative system and by rooting the logic of the laws of war into individual subjective rights.

The scaffolding of the *oeuvre* is constituted by the enumeration and respective explanation of the rules that are supposed to regulate violent engagements between individuals as well as between political communities.²⁸⁷ In seventeenth century terms, it is a work devoted to contradicting the idea that the "Pope is master of the sea" and it is an occasion to enquiring the rules regulating what can be called a "just war."²⁸⁸ But the work is intended also as an intellectual endeavor to challenge on a legal

²⁸² Being Antwerp and Amsterdam among the unchallenged money-markets center and trade hub in Europe the Low Countries are epicenter of profound economic transformations, see Wallerstein, 177.

²⁸³ Adam Clulow et al., eds., *The Dutch and English East India Companies: Diplomacy, Trade and Violence in Early Modern Asia*, Asian History (Amsterdam: Amsterdam University Press, 2018), 154.

²⁸⁴ They are oftentimes engaged in violent confrontations, especially in the in the high seas, or in the areas of trade as Molucca, India, and China. See van Ittersum, "Hugo Grotius in Context: Van Heemskerck's Capture of the 'Santa Catarina' and Its Justification in 'De Jure Praedae' (1604—1606)."

²⁸⁵ Oscar Gelderblom, Abe de Jong, and Joost Jonker, "The Formative Years of the Modern Corporation: The Dutch East India Company VOC, 1602–1623," *The Journal of Economic History* 73, no. 4 (December 2013): 1050–76, <https://doi.org/10.1017/S0022050713000879>.

²⁸⁶ Grotius *Memoria*, officially published only in 1864, called *De iurae praedae commentarius*, is a long treatise on law and custom in that still undefined space that we are used to calling the "international." See Grotius and Van Ittersum, *Commentary on the Law of Prize and Booty*, 15.

²⁸⁷ The verdict by the Amsterdam Admiralty Court is positive and the chief of the Dutch East India company (VOC) is assigned the carrack Santa Catharina and its prize. Grotius and Van Ittersum, xv–xxii; Martine Julia van Ittersum, "The Wise Man Is Never Merely a Private Citizen: The Roman Stoa in Hugo Grotius' *De Jure Praedae* (1604–1608)," *History of European Ideas* 36, no. 1 (March 2010): 1–18, <https://doi.org/10.1016/j.histeuroideas.2009.10.005>.

²⁸⁸ Lévesque de Burigny, *The Life of the Truly Eminent and Learned Hugo Grotius*, 31.

basis the Iberic monopoly on trade routes in East Asia and to dwell on the rules that should apply between individuals and political communities in case of war.²⁸⁹

The only chapter published at Grotius' time, though anonymously, is the twelfth, under the name *Mare liberum* (1609).²⁹⁰ Here Grotius, besides his "defense of free navigation as a principle of the law of nations,"²⁹¹ proves a remarkable consideration of the role of space in the organization of politics and shows for the first time the importance that subjective rights play in his political theory. He argues that none can be prevented from exercising right to trade and to movement. *Mare Liberum* indeed immediately after its publication provokes positive reactions by the European public and intellectual circles and brings reputation to his author.

Most of the philosophical assumptions present in *Mare Liberum* and more broadly in *De iure Praede* are revived and systematized in the great oeuvre that few years later, during his French exile, Grotius consecrates specifically to the regulation of war: the *De iure belli ac pacis* (1625). It is in the *De iure belli ac pacis* that Grotius expounds his theory on war comprehensively. Different from the legal *memoria* format, the book seems suitable to statesmen and politicians as a coherent and accessible guide in the complex domain of organized violence. Grotius employs the tool of law as a rational mediation not as a negation to violence and makes it operate in a system in which war and peace are two poles of a dynamic political relationship. Of course, in the *De iure belli ac pacis* system Grotius attaches more weight to war and its justifications than to peace as it poses more complex questions, while peace can be addressed by means of civil law (peace is essentially a concept of Augustine derivation in both in the *De iure Praede* and in *De iure belli ac Pacis* that Grotius takes from the Scholastics; the modern concept of "peace" will get a concrete shape later).²⁹² Dedicated initially only to the French King and to a narrow audience, it is immediately clear that the *De iure belli ac pacis* intellectual breath is larger and will determine its author's fame as an eclectic scholar in the centuries ahead.²⁹³ The book speaks a new language, highly informed by stances of the Reformation and by the socio-economic fabric of European powers expanding in the *Indies* through the high seas. Such a new language challenges both the idea of the unity of Christendom and the logic of the empire. It is a language permeated by a new ideology, at the root of which stand the individual subject as an economic actor and the independent *civitas*, the state, as a security provider.²⁹⁴

2.4.2 Intellectual standing, method, and polemical aims: between humanism and theology

Grotius receives an eclectic education made of religious and classical lay doctrines and pursues different intellectual interests throughout his career. He begins very young with a comprehensive humanist training at Leiden University under Scaliger's guidance studying philology,

²⁸⁹ Cicero is the most cited Roman source in the work. In particular, Cicero's arguments against Carneades and in favor of Roman imperialism are deployed by Grotius as a way to justify Dutch imperial policies in the Indies. See Ittersum, "The Wise Man Is Never Merely a Private Citizen."

²⁹⁰ Martine Julia van Ittersum, "Mare Liberum Versus the Propriety of the Seas? The Debate between Hugo Grotius (1583–1645) and William Welwood (1552–1624) and Its Impact on Anglo-Scottish-Dutch Fishery Disputes in the Second Decade of the Seventeenth Century," *Edinburgh Law Review* 10, no. 2 (May 2006): 239–76, <https://doi.org/10.3366/elr.2006.10.2.239>.

²⁹¹ Hugo Grotius et al., *The Free Sea*, Natural Law and Enlightenment Classics (Indianapolis, Ind: Liberty Fund, 2004), 11.

²⁹² See for instance Thomas Hippler and Miloš Vec, eds., *Paradoxes of Peace in Nineteenth Century Europe* (Oxford University Press, 2015), 7, <https://doi.org/10.1093/acprof:oso/9780198727996.001.0001>.

²⁹³ Todescan, *Le radici teologiche del giusnaturalismo laico*, 35.

²⁹⁴ Todescan, 35.

history and philosophy. He then turns to law, first as Advocate General of the Fisc for Holland and Zeland and afterwards by completing a *iuris* doctoral degree at Orléans University in 1598.²⁹⁵ Above all, Grotius is a “child” of the Reformation, and in particular of the Holland Reformation and of its multiple debates, strongly revived by the humanist movements. Grotius synthesizes the Reformation call for *ratio* and humanist recourse to *traditio* (or *consensus*) based on the knowledge of ancient customs. His Protestantism stands in between a rationalist stance, due to his ambition of mathematizing normative issues already visible for example in the *De iure praede*,²⁹⁶ and voluntarist stance, due to his Arminian faith (Calvinist) which rejects the ontological pre-existence of the state to the individual. His rationalism swings between reason and revelation, *intellectus* and *voluntas*.²⁹⁷ Mathematics is used as a form of demonstrative argumentation, while in a mirrorlike opposition, his Arminian faith leads him to assume the individual and its will as dogmatic starting points from which building his normative system.²⁹⁸ Rationalism “posits that reason is the measure of truth, not the other way around.”²⁹⁹ While the attention for the dimension of speech and rhetoric peculiar to humanism, and the interest for the customs of the ancient distinctive of humanist scholars, represent an endless source of authority. The echo of Grotius attention towards mathematical methods is seen in the idea of regular enemy he advances in his theory of war, a regular enemy whose moral standing can be geometrically symmetrical with that of the self.³⁰⁰

The sources on which Grotius draws to deal with the issue war can be divided in three main blocks: classical *literae*, the Christian theological thought on war and its interpreters, and the Romanist legal canon. Among these three pillars, the underlying intellectual tool is the complex idea of natural law. Natural law in Grotius is neither the same of the Stoa nor a mere recovery of Middle Ages Christian natural law. The Grotian idea of natural law is closer to a secularized version of the second scholastics, characterized by a robust insistence on the relationship between the individual and his natural rights.³⁰¹ Grotius, however, goes further than the second scholastics as he combines a theological ontology with a political and legal pragmatism. As pointed out by Quaglioni the use of natural law “a pour résultat la fondation d’un nouveau paradigme du « droit des gens », c’est-à-dire de ce que on appellera le « droit international ». Un système de rapports de type contractuel, fondé sur le principe jus-naturaliste de la nécessité de l’obéissance aux pactes (*pacta sunt servanda*).”³⁰² Grotius, especially in the *De iure praedae*, oscillates between pragmatic and apologetic argumentations and a moral theoretical positions, in which natural law performs the underlying argument that bridges the two.³⁰³ And for this reason, he is anchored to just war vocabulary and his argumentation has room for private war, though often delegitimized throughout the narration as a

²⁹⁵ Lévesque de Burigny, *The Life of the Truly Eminent and Learned Hugo Grotius*, 25–44.

²⁹⁶ Todescan, “Dalla ‘persona ficta’ alla ‘persona moralis’ - Individualismo e matematicismo nelle teorie della persona giuridica del secolo XVII.”

²⁹⁷ Todescan, *Le radici teologiche del giusnaturalismo laico*, 40.

²⁹⁸ Haakonssen states that “For Protestant thinkers the starting point was the complete discontinuity between God and man, a discontinuity which made it impossible to give a rational account of human morality by reference to God and his eternal law. See Haakonssen, *Natural Law and Moral Philosophy*, 27.

²⁹⁹ Beneyto and Corti Varela, *At the Origins of Modernity*, 10:24.

³⁰⁰ Alfred Dufour, “L’influence de La Méthodologie Des Sciences Physiques et Mathématiques Sur Les Fondateurs de l’Ecole Du Droit Naturel Moderne (Grotius, Hobbes, Pufendorf),” *Grotiana* 1, no. 1 (1980): 33–52, <https://doi.org/10.1163/187607580X00053>.

³⁰¹ Todescan, *Le radici teologiche del giusnaturalismo laico*, 9–13.

³⁰² Quaglioni, “Pour Une Histoire Du Droit de Guerre Au Début de l’âge Moderne. Bodin, Gentili, Grotius.”

³⁰³ Brett, *Changes of State*, 70.

“form of primitive war.”³⁰⁴ The Dutch jurist tries to combine the practical political predicaments of his time with a feasible ethical mediation. He shows a unique attention for the other party in war, as he considers war a means of communication rather than simply a passage to reach peace. In this sense Grotius is different from Gentili as he does not deploy sovereignty dogmatically and as a motionless concept. And, at the same time, he departs from Vitoria main interlocutor, namely the soul of Christian man, as the basis of his reasoning on war. Grotius speaks to a broader public, to the individual human being, to the subject, and to the citizen, but also to the ruler. In this respect, Grotius’ Arminianism and more broadly his Christian faith are the very basis of his individualist epistemology. It is indeed evident that his starting point is the idea that “God wants his law and promulgates it by writing it in the hearts of all human beings during the creation”;³⁰⁵ an idea consistently expressed by Grotius in a conciliatory work on the interpretation of the scriptures called *The Truth of Christian Religion* (1627). In this work, almost parallel to the *De iure belli ac Pacis*, Grotius shows the fusion between rationalism and theology and provides a philological reading of the scriptures that ends more in political than in religious considerations.³⁰⁶ Indeed, Grotius in *The Truth of Christian Religion* writes:

Everything that is derives its Existence from God; For we conclude that there is but One necessary self-existent being; For if we take a Survey of the admirable Structure of a Human Body, both within and without and see how every, even the most minute Part hath its proper use.³⁰⁷

The individual endowed with reason and, as a consequence with natural rights which can be understood through reason is the very mirror of God. As such, the individual, by having access to knowledge of his rights, can enter into sociality and create a political space (that Grotius calls *foro interno*) of action and production where civil law applies. The same kind of rules may be extended by analogy to the relationship between different political associations of individuals. This is the place where Grotius moves from the tenets of civil law to those of the law of peoples, *ius gentium*. The space in which natural law principles are applied through a specular system suitable specifically for political communities is the *foro externo*. For Grotius the *foro externo* is fluid space of conversation, confrontation, and exchange where entities of different scale come to socialize for different purposes (trade, religion, conquest, etc.). The Grotian *foro externo* is a sketched picture of what we know as the “international”: a plural dimension, and for such a reason not endowed with a peculiar normative order, but nonetheless filled with relations and thus not completely anomic. War is a form of relation that can take place in such a space whenever no court is available to solve the issue.

By conceptualizing this space Grotius touches inescapably upon the issue of alterity and, in particular, of enmity in the case of organize violence. As remarked by Brett, “alterity (what would in the seventeenth century come to be theorized, and problematized, as “sociability”) is the dominant mood of the humanist and Protestant handling of natural law. It is there even in Thomas Hobbes,

³⁰⁴ van Ittersum, “Hugo Grotius in Context: Van Heemskerck’s Capture of the ‘Santa Catarina’ and Its Justification in ‘De Jure Praedae’ (1604—1606).”

³⁰⁵ Blom, *Property, Piracy and Punishment*, 2009, 97.

³⁰⁶ As remarked by Todescan *The Truth of Christian Religion* can be taken as an introductory reading to the *De iure belli* in terms of method, themes and structure. See Todescan, *Le radici teologiche del giusnaturalismo laico*, 31–32.

³⁰⁷ Hugo Grotius, John Clarke, and Maria Rosa Antognazza, *The Truth of the Christian Religion*, Natural Law and Enlightenment Classics (Indianapolis, [Ind.]: Liberty Fund, 2012), 35.

whose natural law, like that of Melanchthon, coincides with moral philosophy and concerns the sphere of our actions in respect of others: the conversation, and Society of man-kind.”³⁰⁸

2.4.4 *Ius and force: Grotius law of nations and concept of war*

One of the first and most pressing preoccupations for Grotius is the relationship between law and violence in the *extra-civil* dimension, in the *foro externo*.³⁰⁹ It is starting with a sort of non-explicated *state of nature* where individuals are prior to *civitates* that Grotius construction takes its first steps. This leads to build a system of rights and duties, which initially are peculiar to individuals, but then can be extended through the individual-state analogy to the *civitates*, hence creating a fictional inter-*civitates* *ethico-political* space. Starting from the natural sociability premise, the first instances of Grotius system can be traced with full breadth in the *De iure praedae* where it is defined what natural reasons dictates: “it is wrong to inflict injury, but it is also wrong to endure injury.”³¹⁰

According to Grotius law and war are not neatly opposite concepts. If on the one hand he harshly counters skeptics who think that law is merely a function of interest, on the other he defines ignorant those who think that war has nothing to do with *ius*.³¹¹ *Ius* is a means, comparable to the use of force, to regulate human natural tendency to sociability and therefore to conflict. *Ius* mediates social relations in different ways than force. The two are not necessarily detached but are certainly different. If applied properly, *ius* can embed violence in its system and limit it, avoiding what the skeptics think of *ius*, namely that it is nothing but an instrument of power. *Ius* is defined in a negative sense, as all that is not unjust. By this minimalist operation, Grotius does not simply counter theological views on justice as a physical status and skepticism deconstructions of law, but also in the same move he attributes to the individual the possession of justice by attaching him a subjective *ius*. Therefore, the true definition of *ius* is what belongs to someone and should not be violated by others. *Ius* is a subjective condition.³¹²

In this respect, the right to wage war is not left to the arbitral power of the sovereign as in Gentili, it is immersed in a system of different *iura* all traceable back to nature, which is a mediation first among individuals and then among states. Indeed, as Grotius makes clear, there is nothing against war in *ius*, because if a subjective *ius* is violated as in the case of a threat to life or property, then war is a reasonable response.³¹³ As Grotius write:

Among the first Impressions of Nature there is nothing repugnant to War; nay, all Things rather favour it: For both the End of War (being the Preservation of Life or Limbs, and either the securing or getting Things useful to Life) is very agreeable to those first Motions of Nature; and to make use of Force, in case of Necessity, is in no wise disagreeable thereunto; since Nature has given to every Animal Strength to defend and help itself.³¹⁴

³⁰⁸ Brett, *Changes of State*, 71.

³⁰⁹ Gabriella Silvestrini, “Diritti naturali e diritto di uccidere. Teorie moderne della guerra fra modelli teorici e tradizioni di pensiero,” *Filosofia politica*, no. 3 (2007): 425–52, <https://doi.org/10.1416/25452>.

³¹⁰ Grotius and Van Ittersum, *Commentary on the Law of Prize and Booty*, 12.

³¹¹ Grotius and Tuck, *The Rights of War and Peace*, 85–99.

³¹² Peter Haggemacher, *Grotius et La Doctrine de La Guerre Juste*, 60.

³¹³ Annabel Brett, “The Space of Politics and the Space of War in Hugo Grotius’s *De Iure Belli Ac Pacis*,” *Global Intellectual History* 1, no. 1 (September 2016): 33–60, <https://doi.org/10.1080/23801883.2016.1228175>.

³¹⁴ Grotius and Tuck, *The Rights of War and Peace*, 182–83.

Human sociability requires *ius* as much as the sociability between *civitates* requires a system of *ius* to subsume the use of force.³¹⁵ If civil law has little to say about use of force between political entities, Grotius believes there are laws that regulate the use of force between political entities, laws to which force is internal and from which force can be limited.³¹⁶ These laws are either natural laws or the *law of nations* of a fortiori derivation,³¹⁷ which nations have agreed upon, and which ultimately derive from natural law principles.³¹⁸ By combining *ius* and force, the Dutch can come to define war as a specific *spatio-temporal* state, detaching it, at least partially, from the *iusta causa* system.³¹⁹ Grotius accords the right to war to individuals as a presupposition to yield the right to war to public authorities.

It is pertinent to recall that Grotius' vocabulary of war is again juxtaposed to that of judicial execution. In this perspective, war is conceived as another form of judicial process, by means of arms. In this system the cause to wage a war that falls under the auspices of law is again the presence of a wrong, an *iniuria*. The subjects of this system are single individuals as well as states and other political forms.

Contrary to what assumed by many contemporary theorists,³²⁰ the presence of private war in the normative system is not simply a minor issue, echo of some Medieval thinking and it is not simply relevant to the apology of the Dutch East India Company; rather it is an intellectual passage fundamental to explain the logic of his normative system and its foundations. Considering private war is a move to ground the logic of *ius belli* which will be then extended to *civitates*. As remarked by Lesaffer, "the interplay between just and regular war and between public and private war opened a mental space wherein categories of use of force could emerge that did not amount to full regular war, but were nevertheless just."³²¹ Here is how Grotius comes to the definition of war in the *De iure belli ac pacis*:

Cicero defines War a Dispute by force. But Custom has so prevailed, that not the Act of Hostility, but the State and Situation of the contending Parties, now goes by that Name; so that War is the State or Situation of those (considered in that Respect) who dispute by Force of Arms.³²²

It is by employing this definition that Grotius can introduce the concept of right and prepare the ground for his normative system. In a first instance the right to punish, namely to react after a wrong is accorded to the individual, then it is accorded almost exclusively to public authorities. As made clear in the first Book, the etymology of war comes from *duellum*, this implies that war, on the contrary of peace which represents unity, is a plural, relational concept. From this definition Grotius

³¹⁵ Blom, "Sociability and Hugo Grotius."

³¹⁶ Brett, "The Space of Politics and the Space of War in Hugo Grotius's *De Iure Belli Ac Pacis*."

³¹⁷ Grotius conceives *ius gentium* as a set of rules derived from natural law, but essentially as an international civil law based on the tacit consent of nations and, above all, on a less defined idea of "custom." See Peter Haggemacher, "Genèse et Signification Du Concept de 'Ius Gentium' Chez Grotius," *Grotiana* 2, no. 1 (1981): 44–102, <https://doi.org/10.1163/187607581X00043>.

³¹⁸ As noted by Haggemacher "le litige qui l'occupe déborde le cadre de la Cité [*civitas*] si bien qu'il est vain de vouloir lui appliquer le droit des codes. C'est à un droit non écrit qu'il faut en appeler, tel que nous l'indiquent les *mores* concordantes des peuples et qui ne font en réalité que manifester la *ratio naturalis*." See Peter Haggemacher, *Grotius et La Doctrine de La Guerre Juste*, 56.

³¹⁹ Grotius and Van Ittersum, *Commentary on the Law of Prize and Booty*, 91.

³²⁰ Camilla Boisen, "Hugo Grotius, Declaration of War, and the International Moral Order," *Grotiana* 41, no. 2 (December 17, 2020): 282–303.

³²¹ Randall Lesaffer, "Grotius on the Use of Force: Perfect, Imperfect and Civil Wars. An Introduction," *Grotiana* 41, no. 2 (December 17, 2020): 255–62, <https://doi.org/10.1163/18760759-41020001>.

³²² Grotius and Tuck, *The Rights of War and Peace*, 134.

can come to define what he retains to be just in the state of war, namely what is not unjust to do to the other party, the enemy. As Grotius remarks, *ius* and force stand together in a plural and relational system:

There are Laws of War, as there are of Peace. Another admires Fabricius for a very great Man, and remarkable for a Virtue which is extremely difficult, Innocence in War, and who believed that there are some Things, which it would be unlawful to practise even against an Enemy.³²³

War and the regulation of war are part of the *ius gentium*, a system of rules of natural derivation. Grotius constructs *ius gentium* as a set of rules that apply beyond the boundaries of the *civitas* and constitute a system that embraces all human beings. These rules must be applicable also to the enemy because war justness in Grotius system of *ius* is by now an external attribute. The kind of subject waging war is a determinant feature for the theory of war, therefore the concept of enemy is structural to the idea of war as a just state of affairs.

2.5 Grotius concept of regular enemy

If Grotius is not the first to think about the regular enemy, however, he is certainly the first to assemble the fragments that compose the concept of war into a systematic way and the first to derive a concept of enemy which resembles reciprocal in its meaning. Hagenmayer claims Grotius is the first one to pave the way for a reciprocal idea of war and of enmity because he: “*est le premier, nous semble-t-il, à considérer [avec] sa méthode « galiléenne » consistant à décomposer en éléments simples ce qui chez ses prédécesseurs était demeuré confondu [...] car les éléments isolés de la sorte n’ont pas d’existence autonome, ils ne se comprennent qu’en fonction de l’ensemble du phénomène.*”³²⁴

With the aim of defining the concept of war as an enclosed state of affairs, Grotius needs specific boundaries wherein the individual stays and wherein violence can be regularly used. To do so Grotius needs to start from two premises: the normative position of the individual and the position of the community derived from the analogy with that of the individual. The concept of enemy in Grotius is not simply an accessorial concept to that of war and it is not simply a technical device to label the participants to the conflict. In the two works devoted to war Grotius preserves the Roman notion of *iustus hostis* and does not set aside the traditional *topos* of opposing *iusti hostes* to pirates, brigands and other figures of radical hostility. It is “part of Grotius style to reflect on the law starting from its violation” and the figure of the pirate as opposed to *iustus hostis* is a powerful rhetorical stratagem to show who is a lawful bearer of arms. But Grotius adds something meaningful to construct the difference between regular enemies and pirates or robbers. He relates to spatial qualification: pirates and sea-robbers have no property to protect, have no possession since they attack in the high seas or in space wherein they have no jurisdiction.³²⁵ In the inter-individual web of *iura* pirates cannot exchange anything because they own nothing, therefore they cannot enter into a state of war, they can also make unjust wars as *latrocinia*. Grotius writes on the issue:

³²³ Grotius and Tuck, 102.

³²⁴ Peter Hagenmayer, *Grotius et La Doctrine de La Guerre Juste*, 183.

³²⁵ Michael Kempe, “Beyond the Law. The Image of Piracy in the Legal Writings of Hugo Grotius,” *Grotiana* 26–28, no. 1 (2007): 379–95, <https://doi.org/10.1163/187607508X366472>.

It is lawful for one enemy to injure another in both his person and his property; lawful that is not only for the one who fights in a just cause, and who confines his injuries within the limits allowed by the law of nature, but for both sides and without distinction. [...] Laws connive at Sin, and that is esteemed lawful, which is authorized by the State.³²⁶

Here comes a substantial difference both with the second scholastics and with Gentili. The enemy is not a derivation of the concept of war. Rather, it is the opposite. By defining war as a state of affairs Grotius is forced to recognize the enemy as a standing element in his normative system, and it is this necessity to make the concept of enemy a structuring one for war. The enemy becomes part of a universal language: those fighting must regard one another as enemies. The enemy is a foundational concept because it is the one who bears with us the application of specific *iura* peculiar to war:

Let it be granted then, that Laws must be silent in the midst of Arms, provided they are only those Laws that are Civil and Judicial, and proper for Times of Peace; but not those that are of perpetual Obligation, and are equally suited to all Times. For it was very well said of Dion Prusaecensis, That between Enemies, Written, that is, Civil Laws, are of no Force, but Unwritten are, that is, those which Nature dictates, or the Consent of Nations has instituted. The same ancient Romans, as Varro observed, were very slow and far from all Licentiousness in entering upon War, because they thought that no War but such as is lawful and accompanied with Moderation, ought to be carried on.³²⁷

This is the way Grotius comes to construct what anachronistically can be seen as an international space where war is not simply an instrument at sovereign disposal as in Gentili, but it is a dynamic instrument enclosed in a system of normative bonds.

2.5.1 *The Individual as a minimal condition*

For Grotius war intended as an archetypical moment of violence is acceptable in inter-individual relations if aimed at redressing a wrong that an individual has received from another. This for Grotius holds true in a non-civil society, a sort of *natural state*, never rendered explicitly, where civil law cannot perform its role. The violent response by individuals that Grotius calls private war is acceptable as long as it does not violate others' rights.

It is here that the determinant of the individual as a *spatio-temporal* unity makes the difference in light of whole Grotius' construction. Grotius constructs his theory of *ius* and force starting from a minimalist idea of right and from an atomist concept of the potentially violent actor, namely the single individual. To normatively ground this assertion Grotius uses three different levels, which bear three different orders of weight in the *economy* of his work. The first one is natural law; the second one is divine law, which speaks through the proof of sacred history and sacred scripture; and the third level is that of the consensus of the wisest and most civilized nations which have agreed upon the custom. All the three levels are anyway traceable back to natural law and, eventually, to the image of God impressed in human being. After all, says Grotius quoting the Bible, even God inflicts punishment against those who are his enemies (the evildoers). Grotius minimalism and atomistic logic are put forward plainly in this passage of the *De iure praedae*:

³²⁶ Grotius and Tuck, *The Rights of War and Peace*, 1275.

³²⁷ Grotius and Tuck, 101.

God created man “free and sui iuris” so that the actions of each individual and the use of his possessions were made subject not to another’s will but to his own. Moreover, this view is sanctioned by the common consent of all nations. For what is that well-known concept, “natural liberty,” other than the power of the individual to act in accordance with his own will? And liberty in regard to actions is equivalent to ownership in regard to property. Hence the saying: “every man is the governor and arbiter of affairs relative to his own property.”³²⁸

What is remarkable in the passage quoted above is the emphasis put not simply on individuals’ right to life, but also to enjoy property. Property and possession are the two requisites to access the society of humans and thus to have a normative position in the world. These two natural characters of the individual, which are related and necessary one to the other, are the conditions upon which the society of humans can be regulated. War is part of the ways in which those who possess property used to communicate. This is the original, atomistic, and minimalistic premise of Grotius political theory.

The individual and his faculty of possessing a property are the unit of measurement for establishing a political order, the first unity to construct an enclosed dimension of space and time where war can be fought, can be contained within specific boundaries, and can eventually be concluded with a peace. In the *De iure praedae* Grotius claims sardonically:

Is not the power to punish essentially a power that pertains to the state [*respublica*]? Not at all! On the contrary, just as every right of the magistrate comes to him from the state, so has the same right come to the state from private individuals; and similarly, the power of the state is the result of collective agreement ... Therefore, since no one is able to transfer a thing that he never possessed, it is evident that the right of chastisement was held by private persons before it was held by the state.³²⁹

Grotius political theory is funded upon the laws illustrated in the *De iure praedae*, then perfected with a voluntarist approach in the *De iure belli ac pacis*. First, “it should be permissible defend one’s own life and to acquire for oneself those things which are useful”. None then is entitled to inflict injury or seize possession of that which has been taken into possession of another. Evil deeds must be corrected, and good deeds must be recompensed.”³³⁰ Individuals, through natural law, are constructed as equal as long as fulfilling the requirements proscribed by natural reason: life and property.

2.5.2 State-Individual analogy: the invention of the *persona publica* and its fictional space

Considering *civitates* growing in power and assertiveness, Grotius is aware that a normative system that has the ambition to moderate war cannot abstain from thinking the relations among such powerful polities. The Dutch thinker says that the same principle concerning property of private individuals can be equally applied to the laws of nations since nations in their relation and in relation to the whole of mankind occupy the same position of private individuals.³³¹ As remarked by Tuck “we can best understand the rights which individuals possess *vis-a-vis* one another (outside the arbitrary and contingent circumstances of their civil agreements) by looking at the rights which

³²⁸ Grotius and Van Ittersum, *Commentary on the Law of Prize and Booty*, 18.

³²⁹ Grotius and Van Ittersum, 92.

³³⁰ Grotius and Van Ittersum, 499–500.

³³¹ Grotius and Van Ittersum, 330.

sovereign states seem to possess against one another.”³³² Tuck concludes that “if an individual could not own something, he could not give his rights in it to a state; and since ‘every right comes to the state from private individuals’, a state could not have political control over unownable territory.”³³³ The autonomy of personhood of keeping property, defending himself, and keeping faith to promise, can be extended to the state.³³⁴ The individual-state analogy is a rhetorical device to justify the existence of the state and its autonomous *nature*. The analogy is based on the principle of existence and property, which Grotius extends from the single individual to the collective political entity. If something cannot become property and owned, then it is of none. This is the *spatio*-temporal argumentation of *Mare Liberum*, revived in the other works on war. The analogy thus is based on a sort of anatomical metaphor which serves the scope of giving life to the *civitas* and thus the subjective rights accorded to the individual:

As the Body is the common Subject of Sight, the Eye the proper; so the common Subject of Supreme Power is the State; which I have before called a perfect Society of Men... The proper Subject is one or more Persons, according to the Laws and Customs of each Nation.³³⁵

The analogy, though, touches even upon the spatial existence of the state, resonating the idea of property valid for the individual. State sovereignty is juxtaposed to individual property. Grotius accordingly pushes his analogy between private possession and public sovereignty through an explicit use of space, more precisely of land, as a reference point:

Ownership [*Occupatio*] ... both public and private, arises in the same way. On this point Seneca [*De Beneficiis*, VII. 4·3] says: “We speak in general of the land of the Athenians or the Campanians. It is the same land which again by means of private boundaries is divided among individual owners.”³³⁶

From the *De iure preaeede* in which the power to wage war is attached to individuals to the *De iure belli ac pacis* there is an important change that seems to accommodate the individual-state analogy. Grotius makes a crucial distinction between these public wars not declared and those wars officially declared he defines “solemn war.” Wars formally declared between two peoples have peculiar legal effects that do not follow from “the nature of war itself” but in virtue of their status.³³⁷ Kalmanovitz notes that solemn war is not based on corrective justice but rather on the Roman definition of enmity, in particular Pomponius’s definition in the *Digest*, according to which enemies are “those who in the name of the state declare war upon us.”²⁴ To exist as a status or situation rather than a simple act, “solemn war” must be located in a political space of sovereignty and must last for an official time, namely the time of the declaration of war. This is a rather modern move, in that Grotius to anchor his definition needs to employ the categories of time and space to define qualify “solemn war.” The territorial qualification of enmity ends with this equation: “whenever a prince is an enemy, his

³³² Tuck, *The Rights of War and Peace*, 85.

³³³ Tuck, 92.

³³⁴ Blom, *Property, Piracy and Punishment*, 2009, 2.

³³⁵ Grotius and Tuck, *The Rights of War and Peace*, xxxii.

³³⁶ Tuck, *The Rights of War and Peace*, 91.

³³⁷ Kalmanovitz, *The Laws of War in International Thought*, 50.

subjects are also enemies.”³³⁸ “The power of the state is the result of a collective agreement,” indeed, says Grotius:

As long as this “body of free persons” was independent of any other such body, it was itself free and sovereign: “we . . . exclude the Nations, who are brought under the Power of another People, as were the Roman Provinces; for those Nations are no longer a State, as we now use the Word, but the less considerable Members of a great State, as Slaves are the Members of a Family.”³³⁹

The qualification of space and time bears important consequences. War can only be waged under the authority of the holder of the ‘sovereign power in the state (*summa in civitate potestatem*).’³⁴⁰ Hence, in the *De iure praedae* Grotius concludes that legitimate enemies are said those enemies who are acting in obedience to a magisterial authority. The organicist medieval idea of the political body encounters natural law individualism. They do not fuse together, the *civitas* is double-face construction, on the one hand an analogous of the physical body, on the other hand the sum of individuals coming together. What, however, makes the difference is that in this conception, in the plural of *civitates* the mechanisms of socialization and regulation of violence resonate those standing between individuals. Hence, the shape of a *persona propria* constituting the space of *civitates* starts emerging with clarity.³⁴¹ Grotius pushes his analogy between private possession and public sovereignty through the use of space, more precisely of land, as a reference point:

Ownership [*Occupatio*] ... both public and private, arises in the same way. On this point Seneca [*De Beneficiis*, VII. 4·3] says: “We speak in general of the land of the Athenians or the Campanians. It is the same land which again by means of private boundaries is divided among individual owners.”³⁴²

2.5.3 Space, time, and the concept of enemy

“Solemn war” presupposes two specific conditions to resort to war: “belligerents must be sovereign and their decision to wage war must be publicly declared. Without these formalities, a war cannot have the legal effects of solemnity, just as without proper formalities legal wills and marriages are empty of legal effect.”³⁴³ In the definition of “solemn war” Grotius immediately states that both space (he uses the term nation) and time are defining categories because it is the dimension in which the contending parties are immersed and can be said to be connected one to the other. This helps constructing a theory where the parties can be in a symmetrical position. This also leads to define the enemy:

As for those who are actually subjects of the enemy the laws of nations permits them in their persons wherever they are. Whoever is an enemy may be attacked anywhere. Such people may be killed with impunity on our own soil, on enemy’s soil, on no man’s soil or on the sea.

³³⁸ Grotius and Van Ittersum, *Commentary on the Law of Prize and Booty*, 418.

³³⁹ Grotius and Tuck, *The Rights of War and Peace*, xxxi.

³⁴⁰ Dante Fedele, “Grotius and Late Medieval *Ius Commune* on Rebellion and Civil War,” *Grotiana* 41, no. 2 (December 17, 2020): 371–89, <https://doi.org/10.1163/18760759-41020007>.

³⁴¹ Todescan, “Dalla ‘persona ficta’ alla ‘persona moralis’ - Individualismo e matematismo nelle teorie della persona giuridica del secolo XVII.”

³⁴² Tuck, *The Rights of War and Peace*, 91.

³⁴³ Kalmanovitz, *The Laws of War in International Thought*, 51.

But within a country which is at peace it is not lawful to kill or use force on them. The right to this security does not belong to them personally but is the right of him who is sovereign there. For political societies have been able to establish the rule that no violence should be done to persons in any land at peace.³⁴⁴

Grotius theory of “solemn war” is different from what he defines as “private” due to the collective entities he has in mind. He reminds that “when a prince has been challenged to combat, all of his subjects, confederates and assistants have been challenged” because, following the Stoics, he argues that the public man, “the wise man is never a private citizen.”³⁴⁵ As he repeatedly reports, with notable quotations as to support his argument with Greek tragedians and Thucydides, “all person within a territory have pledged allegiance to the assembly, the made themselves part of the political community”.³⁴⁶ Space and time are two categories used to limit the effects of war, to moderate it. But they are not absolute, they can be used in different way. And Grotius theory is open to other ways. The indeterminacy of the multiple just causes for war, makes the enemy potentially without limit. The spatio-temporal distinction leaves little room for other forms of distinction. In this respect, it could be argued that Grotius attempt to moderate war is inattentive to forms of distinction already conceived during the Middle Ages. In what we are used to know as *ius in bello*, Grotius allows for a “promiscuous right of inflicting injury” which permits the killing of enemies without distinction.”³⁴⁷ “If in the first instance the core goal of Grotius’s theory of just private war is to enforce the protection of subjective rights,” as concludes Kalmanovitz, “the distinctive aim of the theory of solemn war is to manage and limit the destructiveness of [what will be] inter-state wars.”³⁴⁸ The aim of creating a system of laws, *ius gentium*, applicable only in the *foro externo* to bind sovereign entities and not to private individuals is explained by Grotius following two practical reasons.³⁴⁹ First, being the *civitas* a confined spatial entity, it is assumed that it can enclose the space of war and limit the disruption of violence and contain it:

But this Right of Licence is of a large Extent, for it reaches not only those who are actually in Arms, and the Subjects of the Prince engaged in War, but also all those who reside within his Territories; as may appear from that form in Livy. a Let him, and all that live within his Country, be our Enemies. [...] And without doubt Strangers, that come into an Enemy’s Country after a War is proclaimed, and begun, are liable to be treated as Enemies.³⁵⁰

The second reason is something that emerges already in the *De iure praedae* with a significant quotation by Grotius and is then reaffirmed in the *De iure belli ac pacis* with more emphasis in the context of “solemn war.” The public authority of the *civitas*, being charged with the common consent of its members, grants justness and fairness. The *civitas* is a productive space, where the sum of individuals’ property can be turned into a secure space for labor, resources, transformation, and trade. Grotius’s idea of sovereignty is strictly tied to the possibility of economic transformation. The *civitas*, in other words, is an association aimed at peace and security, or in more modern terms, at order and it is from order that other essential activities for humans, as labor and trade, can flourish.

³⁴⁴ Grotius and Tuck, *The Rights of War and Peace*, 1298.

³⁴⁵ Grotius and Van Ittersum, *Commentary on the Law of Prize and Booty*, 140.

³⁴⁶ Grotius and Van Ittersum, 409.

³⁴⁷ Kalmanovitz, *The Laws of War in International Thought*, 51.

³⁴⁸ Kalmanovitz, 59.

³⁴⁹ Boisen, “Hugo Grotius, Declaration of War, and the International Moral Order.”

³⁵⁰ Grotius and Tuck, *The Rights of War and Peace*, 1280.

The state (*civitas*) is a complete association of free men, joined together for the enjoyment of rights and for their common interest. Political society is instituted, public magistrates come to have the privilege to use force, and private individuals must give up their natural rights to punish and exact reparations.³⁵¹

Grotius concept of enemy is inscribed in his theory of legitimate recourse to war and maintenance of peace. The argumentation on regular enemy is not exempt from exceptions and dark spots, as it is constantly exposed to potential argumentative instrumentalization. As a matter of fact, the concept of enemy lies within the horizons of just war theory where war still retains the nuances of punishment, and the adjective “just” accompanies most of the definitions of war.

But, as noted by Straumann, that of Grotius is a re-interpreted understanding of justness in neo-Roman terms, which relies heavily on Cicero. Indeed, as Grotius states in the *De iure Praedae* “no war is just unless it is waged either after the procedure of *rerum repetitio* has been followed or after notification and warning thereof have been given and formal declaration made.”³⁵² Grotius, echoing the Scholastics and in particular Vitoria, but nonetheless being more explicit on that than theologians, constructs his notion of regular enemy by first recognizing its symmetrical status through public authority, which responds to a precise *spatio*-temporal qualification, identified in sovereign jurisdiction. Grotius specifies that, with a line of argumentation that yields for war to be a symmetrical institution, “for the term *hostes* [public enemies], in its legal connotation, comprises not only those persons against whom we publicly decree war, but also those who publicly decree war against us.”³⁵³

2.6 Hobbes geometrical theory of politics and the concept of war

The imaginary of a *spatio*-temporal enclosure of war where the enemy is in a symmetrical position with Self is taken by Thomas Hobbes (1588-1679), but in a more radical way than Grotius. If the system sketched by Grotius lies on an ethical premise, in the system designed by Hobbes the premise is eminently political and the starting assumption is of negative sign, non-ethical. Human beings do not seek to socialize: Hobbes utterly rejects Aristotelianism and, as a consequence, all the thinkers that across the Middle Ages and modernity try to ground political theory on human sociability assumption.³⁵⁴ Hobbes reverses natural sociability into natural conflict-proclivity and represents it through the famous pre-political imaginative condition of the *state of nature*. The *state of nature* is pre-political because; politics can be thought only outside it through rational means and artificial constructions. Hobbes rationalism is a method rather than a proper epistemology. Rationalism is a method to the extent that it serves the political scope of giving a shape to nature, because nature in non-normative and natural law is not capable of giving a moral shape to human life.

³⁵¹ Grotius and Tuck, 44.

³⁵² Grotius and Van Ittersum, *Commentary on the Law of Prize and Booty*, 149.

³⁵³ Grotius and Van Ittersum, 150.

³⁵⁴ Hobbes in the *De Cive* addresses directly the issue: “the majority of previous writers on public Affairs either assume or seek to prove or simply assert that Man is an animal born fit for Society,—in the Greek phrase, Ζῶον πολιτικὸν [political animal]. On this foundation they erect a structure of civil doctrine, as if no more were necessary for the preservation of peace and the governance of the whole human race than for men to give their consent to certain agreements and conditions which, without further thought, these writers call laws.” Thomas Hobbes, *De Cive* (Place of publication not identified: Createspace, 2015), 22.

This is the main trait of Hobbes natural law, which dramatically distinguishes his political theory from the established traditions of natural law of his time. *Nature* in Hobbes is shapeless and needs to be normatively addressed. *Nature* is assimilated to a state of endless and spaceless war among individuals which has no political form and can potentially affect anyone. Contrary to Grotius, there is no natural *telos* towards peace in Hobbes understating of natural man. As stressed in the *Elements of law*, human life, if left to its natural inclination, is afflicted by human passions and human destructiveness.³⁵⁵

The *state of nature* is a powerful rhetorical instrument that makes Hobbes theory formidably coherent and understandable. This rhetorical instrument, notwithstanding its visionary traits, is not purely imaginative as it resonates the internecine violence of wars of religion in England which Hobbes attends with his eyes and the historical narrative of civil war in antiquity.³⁵⁶ Hobbes is an English philosopher, trained with a traditional humanist curriculum but also cultivating manifold parallel scientific interests as optics, medicine, anatomy and mathematics.³⁵⁷ His devotion to the study and theorization of politics goes through an important work on the theory of the citizen and the *civitas*, call the *De Cive*, and reaches a zenith of complexity and comprehensiveness with his major work, *Leviathan* (1651). His intellectual intentions are radical exactly because they aim at rethinking the foundations of human political existence and its management of violence and fear through the use of logic as an epistemology.³⁵⁸ What may certainly be emphasized is the dramatic emphasis that the viciousness of violence due to religious conflicts has on Hobbes intellectual direction. His interest in war derives essentially from the capital place that he accords to conflict in the life of humans. Hobbes is also a man of science and war seems, at his time, among the most resistant objects to human understanding. This is probably a reason behind his attempt to sever with the traditional perspectives on war and to introduce scientific methods to the study of politics.³⁵⁹

Hobbes is inventor of a fictional political space that draws its ethical existence on the principles of survival. In such a fictional space, individuals are qualified by the normative *ratio* that holds the existence of the space: defense, protection of life. Hobbes fictional space thus is defensive. Any fictional space aimed at preserving the right to life must be regarded as a regular enemy, who can legitimately engage in a state of war.

2.6.1 Hobbes context: internecine violence and political theory

Hobbes life is comparable to that of Grotius, being himself a man of letters trained at the university and at the same time experiencing strict connection with political power. If Hobbes intellectual life is shaped essentially by a Humanist education in Reformed intellectual environments, his lifeworld experience is certainly impacted by the shocking events of his time: geographical

³⁵⁵ Thomas Hobbes et al., *The Elements of Law, Natural and Politic: Part I, Human Nature, Part II, De Corpore Politico ; with Three Lives*, Oxford World's Classics (Oxford ; New York: Oxford University Press, 2008), 78.

³⁵⁶ The description of Corcyra *stasis* in Thucydides seems to be a powerful source of inspiration for Hobbes; see Thomas Hobbes and Richard Tuck, *Leviathan*, Rev. student ed, Cambridge Texts in the History of Political Thought (Cambridge ; New York: Cambridge University Press, 1996), xii.

³⁵⁷ Noel Malcolm, *Aspects of Hobbes* (Oxford University Press, 2002), 9–11, <https://doi.org/10.1093/0199247145.001.0001>.

³⁵⁸ Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge ; New York: Cambridge University Press, 1996), 19–23.

³⁵⁹ Michael Oakshott, *Hobbes on Civil Association* (Indianapolis: Liberty Fund, 2000), 5–17.

expansion of the world and the series of wars on different scale tearing Europe apart.³⁶⁰ The seventeenth century economic, military, and ideological transformations and especially the viciousness of political violence engendered by wars of religion are characters of his life. The fear that such events produce is taken by Hobbes as an epistemic object. Especially the violence of civil war in England and the war with Spain are a constant reminder for Hobbes of the predicaments that curse social life and political organization. The potential untrammelled character of political violence is the ground for Hobbes political theory.

Hobbes is a groundbreaker in that he sees politics as a void space, where no morality exists other than the sheer tendency of individuals to self-preservation. There is no system of justice, nor peace that can be attained. This makes Hobbes theory suspected of atheism by the Catholic Church so much to be listed afterwards among the father of secularization. The only *spatio*-temporal dimension in which a morality can be attained is the internal and closed artificial space of politics. Political order is the only premise for any thinkable justice. This makes Hobbes often associated with absolutism and his *Leviathan* is received as a substantial apology for monarchical power, with atheistic traits. In this sense, though distant, the theories of Grotius and Hobbes are complementary in the use of rationalist vocabularies as order and justice, to neutralize the disruptive tendency of violence. To control violence Hobbes proposes to name things appropriately. Hobbes rejects the existence of trans-corporeal matters and recognizes only matters in motion, which can be understood through a proper classification. Thus, he creates a difference between inside and outside politics: within the space of politics either there are internal subject, or enemies. Enemies for the sake of survival must be repulsed outside. Modern political thought tries to make operational this clear distinction to establish a hierarchy and cease horizontal violence. The influence of physical and mathematical sciences is beyond any doubt strong.

2.6.2 *The place of war in Hobbes theory of the Commonwealth*

Hobbes vocabulary is not distant from that of Grotius, even if it breaks with canons in a significant way. The answers provided by Grotius come close to Hobbes system, since for Grotius “undoubtedly that fact [of difference between individuals and states] is civil power, which is established by common consent.”³⁶¹ Of course, the war envisaged by Hobbes is a different phenomenon than that of Grotius and occupies a different place in his theory. But, the two meet on the idea of sovereignty and on its place for thinking politics. Hobbes completes and perfects the sovereignty theory that Grotius, for obvious reasons of purposes, does not expound in detail. Hobbes focus is on *foro interno* and his theory is concentrated on sovereignty as an internal political problem. And, for this reason, it can be said that Hobbes “absolutist solution to civil war destroys the normative basis of Grotius’s project.”³⁶²

Hence, Hobbes cannot be seen otherwise than in discontinuity with the traditions of thought of his time. He indeed severs his ties with the tradition by denying any form of transcendence. His theory starts with a simple *datum*: the existence of separate and autonomous individuals in a state of entropy and disorganization. Hobbes hypothesizes that in this status, though endowed with different physical characters, individuals are in a perfect equality, “by which everyone ha[s] a right to

³⁶⁰ Hobbes and Tuck, *Leviathan*, xlii.

³⁶¹ Grotius and Van Ittersum, *Commentary on the Law of Prize and Booty*, 197–98.

³⁶² Martin Harvey, “Grotius and Hobbes,” *British Journal for the History of Philosophy* 14, no. 1 (February 2006): 27–50, <https://doi.org/10.1080/09608780500449131>.

everything (*ius in omnia*), and thus, everyone [is] at war against everybody else.”³⁶³ The condition of equality may result in an inter-individual war that Hobbes call *bellum omnium contra omnia*. Hobbes resort to the Latin word *bellum* to formalize the character of war, because individuals face each other’s as enemies. The concept of enemy in Hobbes is structural because it helps making concrete the paradoxical character of the *state of nature* and the negative anthropological posture of single individuals. The ethical thinking of Hobbes is expressed by the polarity that sees order and disorder, articulated through two artificial concepts: war and politics. Hobbes situates politics and war in opposite positions and uses *ius* in a two-fold manner: *ius* is a natural claim to life of each individual and or an indeterminate and paradoxical *ius in omnia* that all can enjoy. In the *state of nature* there is no sign of just, as the difference between just and unjust does not hold. As Hobbes states “to this *Warre* of every man against every man this also is consequent that nothing can be Unjust.”³⁶⁴ In Hobbes *state of nature*, hostility is fundamental to think the contingent and insecure relations undergoing among individuals. In the *state of nature* enemy is not simply another, it is an equal, a fellow human being.³⁶⁵

From this equality of ability ariseth equality of hope in the attaining of our Ends; and therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become Enemies; and in the way to their End (which is principally their owne conservation and sometimes their delectation only) endeavor to destroy or subdue one another.³⁶⁶

This paradoxical, though evocative, condition is the premise for Hobbes theoretical construction. Natural law, which manifest through reason, dictates that each individual looks at his own preservation as a *ius naturalis* to life and self-preservation. In Hobbes political theory there is no room for property or accumulation, laws of nature directed only towards life and its preservation. To attain such preservation individuals, who are “fearful and self-defensive”, choose to cease a relation of hostility and yield their power of offense to a collective authority.

As aptly observed by Holmes, in Hobbes mechanics of political power, individuals in the state of nature are naturally enemies one to the other due to their equal power of harming and killing each other.³⁶⁷ But, in order to escape the worst enemy of all that is “death”, individuals have to relinquish their power of harming and killing, to translate their own single power into that of an artificial *persona*: the sovereign Commonwealth. To ground the exit form the state of nature, Hobbes relies again to natural law, in a slightly different reworked formula, that is “laws of nature.” The Laws of nature drive human beings trying to achieve their natural right of self-preservation towards a common agreement. The laws of nature indeed oblige the individual to keep faith to his agreements. Natural right and laws of nature are connected in the escape from the *state of nature*.

The collective authority created through a common agreement is not simply a juridical person, but it is above all a fictious spatio-temporal condition. The outcome of the contract between individuals is what Hobbes terms as the Commonwealth, an artificial political space where individuals decide to yield their power and subject to a collective authority for a specific time. The

³⁶³ Beneyto and Corti Varela, *At the Origins of Modernity*, 10:37.

³⁶⁴ Hobbes and Tuck, *Leviathan*, 90.

³⁶⁵ Stephen Holmes, “Does Hobbes Have a Concept of the Enemy?,” *Critical Review of International Social and Political Philosophy* 13, no. 2–3 (June 2010): 371–89, <https://doi.org/10.1080/13698231003787802>.

³⁶⁶ Hobbes and Tuck, *Leviathan*, 87.

³⁶⁷ Holmes, “Does Hobbes Have a Concept of the Enemy?”

accomplishment of the artificial political construction of the Commonwealth allows authority to rule as sovereign and absolute. However, it is noteworthy to highlight that the construction of a Commonwealth is not an irreversible process. In different passages, Hobbes leaves open the question of the destruction of the Commonwealth, by means of internal division or by means of external conquest.

2.7 Hobbes concept of regular enemy

Hobbes, taking up the Bodinian argument that the sovereign serves two purposes “namely the peace of the subjects within themselves, and their defense against a common enemy”³⁶⁸ traces a sharper distinction than Bodin between inside and outside. Sovereign authority does not simply mean a peace inside against seditious attempts; rather sovereign authority implies the capacity to face what comes from outside as a threat to the existence of the Commonwealth and provide a defense. Hostility is spatially and temporally bound outside the Commonwealth and is structural to the existence of the Commonwealth as a community of defense. There is no space nor time for internal hostility. It either takes the name of “seditiousness” and is punished with military power, or the name of “criminality” and is punished with positive law. In the *Elements of Law, Natural and Politics* Hobbes is clear on the matter:

“[...] no subject can privately determine who is a public friend, who an enemy [...] Harm inflicted upon one that is a declared enemy, falls not under the name of Punishment, ‘the punishments set down in the Law, are to Subjects, not to enemies’.”³⁶⁹

Therefore, in contrast to the natural state, individuals in the civil state, as are freed from the imminent danger of death, are enemies only towards other external political entities, under the conditions established by the Commonwealth. In other words, this means individuals are no more single enemies, they are a collective entity facing as enemies. Hobbes inter-commonwealth theory is not elaborated in detailed. But what can be inferred is that he proposes an analogy individual-state *more geometrico*. Despite he mentions the existence of the law of nations in a *Disocurse of Laws* (1620) passage, he does so simply by relying on *Digest* division with no critical engagement. For Hobbes it is natural law and its principle of natural right to represent the only possible normative stances valid between nations. Indeed, in the geometrical science of intern-individual equality elaborated by Hobbes through the *state of nature*, the sovereign Commonwealth is no exception, it is immersed into an anarchical pluriverse where the same equality presupposed for single individuals is now applied to states.³⁷⁰ Logically, each pacified and ordered Commonwealth is likely to face another pacified Commonwealth as another or, in political terms, as a regular enemy extorting its natural right of self-preservation.³⁷¹ Therefore, enemies are located outside the borders of the sovereign Commonwealth,

³⁶⁸ Stephen Holmes, “Does Hobbes Have a Concept of the Enemy?,” *Critical Review of International Social and Political Philosophy* 13, no. 2–3 (June 2010): 371–89, <https://doi.org/10.1080/13698231003787802>.

³⁶⁹ Hobbes et al., *The Elements of Law, Natural and Politic*, 110.

³⁷⁰ Annabel S. Brett, James Tully, and Holly Hamilton-Bleakley, eds., *Rethinking the Foundations of Modern Political Thought* (Cambridge, UK ; New York: Cambridge University Press, 2006), 224.

³⁷¹ Discussing “Man”, Hobbes writes that if there has never been a time of war of ala against all, the anarchical state between Commonwealths is a reality. He indeed concludes with a historical conclusion that “[...] yet in all times, Kings and Persons of Sovereign Authority, because of their Independence, are in Continual Jealousies are in a state and posture of Gladiators, which is a state of *Warre*.” See Hobbes and Tuck, *Leviathan*, 90.

they are equals and most likely they are collectives. The regular enemy appears to be the minimal consequence that Hobbes political theory of *foro interno* bears on *foro externo*. In sum and in our language, the concept of regular enemy is the very ramification of Hobbes theory of the Commonwealth in an imaginative space of intern-Commonwealth relations. It is certainly less clarified as a regular enemy in a legal sense.³⁷² For Hobbes, as matter of fact, the enemy is a political figure. His regularity is only a consequence of the political construction that Hobbes calls the Commonwealth. The definition of enmity as the possibility of using force legitimately against another is bound to sovereignty and its *spatio-temporal* borders, since the sovereign detains the monopoly on the political subjectivity.³⁷³ As Hobbes states in the in the *De Cive*:

[...] in the purely natural state, if you wish to kill, you have the right to do so on the basis of the natural state itself; so that there is no need to trust first and kill later when he lets you down. But in the civil state, where the right of life and death and of all corporal punishment are [*sic*] the responsibility of the Commonwealth, this right of killing cannot be allowed to any private person”.³⁷⁴

Hobbes’ enmity between commonwealths is not temporally indeterminate as the absolute enmity against “Rebels and Tyrants” which knows no temporal boundaries.³⁷⁵ Enmity between Commonwealths is contingent to a specific temporal circumstance of threat to the peace of the said Commonwealth. That contingent time is the state of war, which Hobbes defines with a famous metaphor of “bad weather”, as not an act of hostility, rather as a state of hostility. The regular enemy distinction traced by Hobbes, however, does not come as sharp and without discrepancies and exceptions as one may believe at a first sight. Indeed, being the horizons of Hobbes still greatly influenced by the phenomenon of civil wars, an important subject of his theory of the enemy is the internal enemy, that he calls the “rebel”, which he prescribes must be treated as an enemy though he is still within the borders of the Commonwealth. In Hobbes’ *civil* philosophy the regular enemy” not only is a didactic notion to metaphorically portrait a dangerous individual, group or state in a political arena, and it is not simply a stable and monolithic denotative concept to describe the different one who confronts the Self with evil intents.

2.7.1 Hobbes regular enemy: the creation of a fictional defensive space

For Hobbes the enemy is the indicator of specific fictional *spatio-temporal* condition wherein politics can fabricate order and resist disorder. Overall, what Hobbes tries to make undisputed is that without a hostile political figure there is no precise political distinction between inside and outside.

³⁷² As noted by Jaede “Hobbes does not draw a static distinction between public and private enmity. Rather, the analysis of his Latin terminology will reveal that he describes individuals in the state of nature as *hostes*, i.e. as public enemies that possess a right to use force analogous to the sovereign’s right to make war. By contrast, people in the civil state are *inimici* (private enemies), because, as will be further shown, the right of war and subjection to the sovereign are mutually exclusive. Maximilian Jaede, *Thomas Hobbes’s Conception of Peace: Civil Society and International Order*, 1st ed. 2018, International Political Theory (Cham: Springer International Publishing: Imprint: Palgrave Pivot, 2018), <https://doi.org/10.1007/978-3-319-76066-7>.

³⁷³ Leo Strauss and Elsa M. Sinclair, *The Political Philosophy of Hobbes: Its Basis and Its Genesis*, 6. impr (Chicago: Univ. of Chicago Press, 1973), 143.

³⁷⁴ Hobbes, *De Cive*, 40.

³⁷⁵ Peter Schroder, “Carl Schmitt’s Appropriation of the Early Modern European Tradition of Political Thought on the State and Interstate Relations,” *History of Political Thought* 33, no. 1 (2012): 348-372.

Hobbes accomplishes the modern appropriation by politics of the concept of enmity by linking it to a delimited condition of war, that Hobbes, in a defensive stance calls “resistance”:

And forasmuch as they who are amongst themselves in security, by the means of this sword of justice that keeps them all in awe, are nevertheless in danger of enemies from without; if there be not some means found, to unite their strengths and natural forces in the resistance of such enemies, their peace amongst themselves is but in vain. [...] so must also be the forces; but limited forces, against the power of an enemy, which we cannot limit, are insufficient.³⁷⁶

In Hobbes’ construction of his theoretical model the enemy is a lens to look at the direction, intensity and validity of the *vectors* of political discourses and practices. Enmity is the structuring element of the Hobbes *ethico*-political space as it allows thinking in strictly distinctive terms: outside and inside, before and after. Yet, the model of Hobbes cannot go beyond a limitation and instrumentalization of political violence by the construction of a geometric and logical system of distinct concepts.³⁷⁷ Enmity is a concept that establishes a border for potential political agency between the “Self” and the “Other” and structures the meaning of each action behind and beyond such a border. The outcome, as a consequence of his symmetrical political theory, is that for Hobbes the regular enemy can be only the collective Commonwealth. Defining the different Commonwealths that occupy the pluriverse space of inter-Commonwealth relations as enemies is nothing more than extending the analogy of individuals in the *state of nature* to collective Commonwealths. The anarchical inter-Commonwealth space is not entirely comparable to that of individuals, though. Commonwealths can find forms of regulations firstly by recognizing each other’s as enemies, namely by acknowledging the presence of a circumscribed state of hostility, and secondly by resorting to similar means to solve their quarrels. Without excessively distorting Hobbes’ thought, it can be claimed that the state of hostility between states is not a purely anomic *state of nature*. Sovereign authority and the collective character of the Commonwealth appear to be minimal normative conditions to enforce political forms (as the army, diplomacy, treaties, etc.) that single individuals cannot reach. Hobbes in the *Dialogue Between a Phylosopher and a Student, of the Common-Laws of England* (1666), specifies the inter-Commonwealth condition with more clarity than in the *Leviathan* and states:

You are not to expect such a Peace between two Nations, because there is no Common Power in this World to punish their Injustice: mutual fear may keep them quiet for a time, but upon every visible advantage they will invade one another.³⁷⁸

In such a normative minimal condition, space and time are qualified politically and are indispensable to trace normative boundaries that distinguish between individuals and collective entities. Only those collective entities capable to qualify space through a territory and time through a pact, can be regarded a regular Commonwealth, and, therefore, as regular enemies. Hobbes pragmatic, yet frightening and prescient conclusion on the form that inter-Commonwealth relations (will) assume, can be drawn from an emblematic sentence opening the *De Cive*:

³⁷⁶ Hobbes et al., *The Elements of Law, Natural and Politic*, 128.

³⁷⁷ Galli, Minervini, and Sitze, “On War and on the Enemy.”

³⁷⁸ Brett, Tully, and Hamilton-Bleakley, *Rethinking the Foundations of Modern Political Thought*, 227–28.

There are two maxims which are surely both true: Man is a God to man, and Man is a wolf to Man. The former is true of the relations of citizens with each other, the latter of relations between commonwealths.³⁷⁹

3. The concept of regular enemy in the juridical reflection on war: Emer de Vattel

Inheriting the tradition of natural law thinkers on the problems of international relations, almost a century later than Hobbes and Grotius, the Swiss diplomat Emer de Vattel (1714-1767) draws the boundaries of a legal fictional space whose actors can regard each others as regular enemies. Vattel constructs a normative theory of relations among sovereign states, which he expounds in his most famous *oeuvre*, the *Droit des gens* (1758). The influence of Enlightenment on Vattel is remarkable: it leads him to question the underpinnings of seventeenth century natural law theories and to project the law of nations into a rather different path than that traced by previous thinkers. Enlightenment tenor manifests in the systematic, scientific style of the work, in the vocabulary, and in the approach to the law of nations cleared by theological utterances. However, the influence, the preoccupations, and the solutions offered respectively by Grotius and Hobbes can be felt as still present throughout Vattel's whole work. As Koskenniemi warns, it is advisable to “nuance our understanding of “positivism” and to claim that instead of being ideologically or methodologically *opposed* to natural law, positivism emerged as a logical development of natural law in order to answer those practical questions that arose once a naturalist worldview had consolidated as part of educated European common sense.”³⁸⁰ Indeed, Grotius system appears to be among the key sources to the scaffolding of the *Droit des gens*, despite the ambiguous position of the Dutch jurist on the boundaries between the law of nations and the law of nature, which the Swiss Vattel complains about and tries to adjust. Grotius has no true guilt anyway, Vattel assures, as his creative and ingenious mind had to craft a raw, rude material that none had previously treated. Grotius's work is considered more eclectic, rather than ambiguous and represents an undisputed fount of knowledge whose support is crucial for Vattel's passage from the law of nature to the law of nations. At the same time, Hobbes radical reworking of natural law theory and his construction of international relations starting from the individual-state analogy attracts the attention of Vattel and seems to be, at least partially, recovered in his work. As recalled by Armitage, “by the time Emer de Vattel published his *Droit des gens* in 1758, Hobbes's contribution had become foundational but not incontrovertible” and indeed Vattel tries exactly to carve out Hobbes core tenets as the *datum* for his theory. In Vattel's theory the ontological starting point, as noted by Bartelson, is that “the state is already there as a legal and political fact and is instead justified with reference to its inner purpose and the prospects of its perfection in the context of international competition and cooperation.”³⁸¹ For this reason and in order to ground his theory, in the preface of his *oeuvre* Vattel needs to recall Hobbes groundbreaking effort and writes:

Hobbes...was the first, to my knowledge, to give us a distinct though imperfect idea of the Law of Nations...His statement that the Law of Nations is the natural law applied to States or Nations is sound. But...he was mistaken in thinking that the natural law did not necessarily undergo any change in being thus applied.³⁸²

³⁷⁹ Thomas Hobbes, Richard Tuck, and Michael Silverthorne, *On the Citizen*, Cambridge Texts in the History of Political Thought (New York, NY: Cambridge University Press, 1998), 3.

³⁸⁰ Martti Koskenniemi, “Into Positivism: Georg Friedrich von Martens (1756-1821) and Modern International Law,” *Constellations* 15, no. 2 (June 2008): 189–207, <https://doi.org/10.1111/j.1467-8675.2008.00484.x>.

³⁸¹ Bartelson, “War in International Thought,” 159.

³⁸² Brett, Tully, and Hamilton-Bleakley, *Rethinking the Foundations of Modern Political Thought*, 230; Emer de Vattel, Bela Kapossy, and Richard Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct*

As it appears immediately clear while looking at the fundamental hypothesis underlying Vattel's work, the Swiss is interested in outlining a distinct and discrete place to the law of nations in the general theory of natural law. The core epistemological issue is how to address in a determinate fashion the relationship between the law of nature and the law of nations so to fathom the quandary of what sort of obligations enable the law of nations to coerce its subjects. It is not a matter of the quality of the relationship between and among nations, while it is a matter of the ground on which the normative prescriptions that regulate relations among nations rest. This is the reasons why Vattel theoretical building can be called, without intellectual overstretching, a legal reflection on war. Law is intended a set of rules, whose origin and *status* is clarified through a genealogical process and whose very ground lies both in natural law and in the historical deliberative moment of their intersubjective agreement. The law of nations rules that Vattel aims at addressing in a systematic and organized manner are grounded in the principles of natural law governing individual behaviours and in common consent of nations. Common consent is a *practical* and historical category, declined in different modes, as *voluntary*, *explicit*, or *tacit*. As a historical category, the law of nation cannot produce an obligation that is completely external and independent from the will of its subjects, i.e. nations.³⁸³ On the contrary, it can act as a persistent instrument of mediation between necessity (nature) and society (need to coexist). The science of the law of nations looks at delineating the rights arisings between nations and the "obligations correspondents to these rights", trying to sketch a system where moderation and symmetry can construct and preserve balance.³⁸⁴ Law is interlinked to morality and politics in such a way to acquire a standing position in the relation among nations. This is the reason why Vattel's reflection on war is counted as "legal" in this paragraph. Certainly, Vattel's reflection on war is imbued with morality which represents its humor; nevertheless here it is emphasized how the place of law as a normative and as a political tool heightens in Vattel's work if compared to previous thinkers.

For twentieth century international relations and international law scholars Vattel thought is located beyond any doubt in the modern pluralist field that conceives the existence of space called "the international." Vattel is interpreted as a fine propagator of the idea sovereign states' system and an outstanding contributor to the idea of society of nations. As Hunter puts it, "for theorists of international society, such as Martin Wight, Hedley Bull and John Vincent, Vattel stands full square in the pluralist camp. He upholds the idea that there can indeed exist an international society of states — 'the great society established by nature between all nations', as Vattel calls it."³⁸⁵ However, leaving aside the (sometimes obvious) relevant implications with European imperialism underlined by post-colonial scholars, it can be noted that Vattel pluralism is punctuated by serious ambiguities and dark spots.³⁸⁶ His system is thus complex and gives a glimpse on the manifold implications and pitfalls that subtend the attempt to legalize the relations among independent collective entities. In

and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury, Natural Law and Enlightenment Classics (Indianapolis, IN: Liberty Fund, 2008), 8.

³⁸³ Vattel, Kapossy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 8–9.

³⁸⁴ Vattel, Kapossy, and Whatmore, 67.

³⁸⁵ Ian Clark, Iver B Neumann, and St. Antony's College (University of Oxford), *Classical Theories in International Relations* (London: Macmillan in association with St Antony's College, Oxford, 1996), 233, <http://www.vlebooks.com/vleweb/product/openreader?id=none&isbn=9781349247790>.

³⁸⁶ Rech, *Enemies of Mankind*, 109.

sum, Vattel political agenda is characterized by a practical strive to *reconciliation* between the law of nations tradition and the idealistic program to apply natural law to sovereign states; yet, far from solely idealistic, his program envisions a powerful representation of the modern meaning of concepts as states, war, and peace.³⁸⁷

3.1 Vattel's international legal reflection and the place of war

Vattel is a cultivated man, educated mainly with philosophy, theology, and mathematics and, at once, he is a man of statecraft, given his diplomatic career and his manifold relations with prominent political figures of his time. Born in the city of Couvet, in Neuchâtel Canton, during Prussian imperial rule by Frederick I and coming from a Calvinist consistory family, Vattel travels along Europe (mainly in Switzerland and Germany), in times of interstate and civil war. In his youth he attends the lectures of jurists and philosophers in his hometown, then moving to Basel to study theology and receiving a humanist training.³⁸⁸ After experiencing discomfort with theology and following a growing anti-clerical sentiment, in 1733 he moves to the free city of Geneva.³⁸⁹ At this time, with great probability, he attends Burlamaqui's lectures, and it is at this moment he is introduced to natural law and jurisprudence debates of the time, mainly through the works of Wolff and Leibniz. If on the one hand Burlamaqui's utilitarianism slightly influences Vattel's thought towards pragmatism, certainly his acquaintance with the German school of natural law is the crucial encounter for his intellectual development.³⁹⁰ In particular, he receives the echo of Euclidean Aristotelian methods of dealing with natural law and the law of nations. Indeed, his first published works deals with Leibniz *Theodicy* and appears in 1741 once he closes his studies at the Academy in Geneva. After graduating in Geneva, Vattel tries to obtain a post as civil servant in Prussian foreign service, but he fails following several attempts; thus, he moves from Berlin to Dresden where he engages in an intellectual relation with Count Brühl, statesman at the court of Saxony. It is at this time, around 1747, that Vattel finally enters the foreign service of Saxony as a special envoy to Bern and Neuchâtel by invitation from Augustus III, King of Poland and Elector of Saxony.³⁹¹ During his service as envoy, Vattel has probably inspiration from states diplomatic practices and enough time to begin his masterpiece. Initially deemed as a commentary on Wolff's *Ius gentium*, his work on the law of nations assumes critical stances towards Wolff theory of *civitas maxima*, and points elsewhere. The *Droit des gens* is published in 1758 and grants Vattel a remarkable fame, suddenly in the following years the publication in French.³⁹² The *Droit des gens* is a self-standing and extremely comprehensive work, with a strong propensity towards the assimilation of politics with sovereignty; the systematic and scientific-like style seems to address to practitioners of interstate politics, as statesman, diplomats, and military men.

³⁸⁷ Ian Hunter, "Law, War, and Casuistry in Vattel's *Jus Gentium*," *Parergon* 28, no. 2 (2011): 87–104, <https://doi.org/10.1353/pgn.2011.0070>.

³⁸⁸ Here Vattel attends the courses of Huguenot Pastor Pierre Roques during which he is introduced to Pufendorf for the first time. Diego Lazzarich, *Stato moderno e diritto delle genti: Vattel tra politica e guerra* (Benevento: Labrys, 2016).

³⁸⁹ Rech, *Enemies of Mankind*, 23.

³⁹⁰ Rech, 20.

³⁹¹ Rech, 22.

³⁹² The first English edition is reported in 1760. See Elisabetta Fiocchi Malaspina, *L'eterno Ritorno Del Droit Des Gens Di Emer de Vattel (Secc. XVIII-XIX): L'impatto Sulla Cultura Giuridica in Prospettiva Globale*, Global Perspectives on Legal History, volume 8 (Frankfurt: Max Planck Institute for European Legal History, 2017), 37.

3.1.1 Vattel in context: the *École Romande du droit naturel*, metaphysics, and the use of history

Vattel's intellectual environment is a remarkable element to assess and understand his law of nations theory and its place more broadly in the European reflections on war of his time. The ascendancy on Vattel of the scholarly discussions taking place among jurists active in the Francophone cantons of Switzerland is relevant and constitutes a crucial passage in Vattel's intellectual journey. Indeed, the territorial transformations occurring in Western Europe during the first decades of the eighteenth century, due to the end of Spanish rule over most of North Italy regions and to the peace treaties signed in the Low Countries, boost a debate on the grounds and content of the rules governing relations among sovereign states around European cities.³⁹³ Eminent law scholars working in cities as Lausanne and Geneva commit to the study, translation and reworking of traditional texts on natural law and the law of nations. It is in this context, defined as the *École Romande du droit naturel*, that Vattel can engage with the recently appeared translations of Grotius and Pufendorf by Barbeyrac (1674-1744), with a thinker as Burlamaqui, and can contribute to the circulation of natural law theories.³⁹⁴ Vattel begins his intellectual career publishing a first article, *Apologie de la médisance*, where he emphasizes the connection between self-love and friendship following Wolffian philosophy.³⁹⁵ The *École Romande du droit naturel* is the intellectual cradle in which Vattel can conceive the necessity of an organized treatment of the law of nations in connection with the tenets of natural law. And this is the endeavor he will tackle in *Droit des gens*.

The overall intention behind the *Droit des gens* is immediately clear in the preface where Vattel explicitly laments that the knowledge of the law of nations cannot be limited to a translation of what the law of nature prescribes for individual. The problem identified is the absence of systematic doctrinaire body of the law of nations in connection with the prescription of the law of nature. The Roman distinction between different *iura* is not sufficient in Vattel's opinion. His objective is indeed to fill this gap by resorting to the scientific method:

The natural law of nations is a particular science, constating in a just and rational application of the law of nature to the affairs and conduct of nations or sovereigns.³⁹⁶

Vattel starts from the Hobbesian assumption that to constitute a Commonwealth each individual must resign a part of his right and that the Commonwealth is enabled with the capacity of commanding over its members. And, he equally accepts the Hobbesian negative premise that a civic association is necessary. But to this, with the aim of drawing an independent place for the law of nations, Vattel adds the natural liberty of nations. A liberty which takes the forms of life intended as thrust to survival and to self-preservation and wealth, intended as natural inclination to commerce. Vattel is mainly influenced by the German school of natural law, whose main representatives are the philosophers and legal theorists Wolff and Pufendorf. The application of logic to field of law and "human perfectibility" are among the methods and ideas the from German natural law school (and from

³⁹³ Simone Zurbuchen, ed., "The Circulation of the *École Romande Du Droit Naturel* in Eighteenth-Century Italy," in *The Law of Nations and Natural Law 1625–1800* (BRILL, 2019), 306, https://doi.org/10.1163/9789004384200_014.

³⁹⁴ Zurbuchen, 310.

³⁹⁵ Stephane Beaulac, "Emer de Vattel and the Externalization of Sovereignty," *SSRN Electronic Journal*, 2003, <https://doi.org/10.2139/ssrn.471382>.

³⁹⁶ Zurbuchen, "The Circulation of the *École Romande Du Droit Naturel* in Eighteenth-Century Italy"; Vattel, Kapossy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 3.

Thomism) reappear in Vattel.³⁹⁷ What, notwithstanding, is extremely relevant here, is how the Wolffian idea of society as a legal fiction is reworked by Vattel and applied meticulously to the system of sovereign nations, so to create a fictional inter-sovereign legal space. His theorization combines the *datum* of the *state of nature* with the typical Enlightenment theme of liberty and self-accomplishment, from which it emerges “a law of nations that is both ‘liberal and pluralist.’”³⁹⁸ Vattel translates Wolff self-perfectibility so to bind “sovereigns in their conscience, [...] by the natural law principles of universal justice based on a natural law metaphysics of self-perfecting corporate persons.”³⁹⁹ History is the means to proceed along with Vattel project of continuous adjustment between natural law and historical circumstances is aimed at the practical applicability of his normative system. Vattel’s logics and “discourse on the law of nations is designed to open a particular space of practical judgement.”⁴⁰⁰ The legal space Vattel aims at creating is regulated by a careful exchange between the role of reason and the judgement of specific circumstances.⁴⁰¹ In this space war is accepted as lawful instrument, as long as it fulfills specific requirements, which means, in the vein of Grotius “solemn war”, “having a due form.”⁴⁰²

3.1.2 *The law of nations and the paradigm of the guerre en forme*

In accordance with the Enlightenment style, the vocabulary adopted by Vattel is complementary to the argumentation of his work: nature, society, liberty, and civilization are the guiding concepts. Nature is turned into a reified, positive matter, which impending over society determines, in an ennobled Hobbesian fashion, the escape of individuals from the *state of nature* and their quest for a for perfection and happiness. The system of Vattel is characterized by two central features, which we can still recognize as familiar, since they represent the premises of our contemporary international relations and international law. The first one is about the role of individual subjects. As pointed out by Jouannet, “individuals are relegated to the internal space of the state” and this prevents them from a status in the law of nations.⁴⁰³ The application of the law of nations is bound to the subjects for which it is designed and is not applicable to subjects of different nature than sovereign states. In this context, Vattel can expose his dual division of the law of nations, which represents the second central feature of his *oeuvre*. Duality of norms in the law of nations consists in distinguishing between natural or *necessary* law, and positive law. *Necessary* law of nation, which arises directly from natural needs, consists in the application of the primary laws of nature applied to nations. *Necessary* law of nations is a sort of internal law because it operates directly on the individuals who compose the nation. Therefore, it is duty of the state and of its rulers to align their choices with natural law, thus making the law of nations consistent with natural law. Such law is directed to man and having man as its subject is immutable, as indeed is immutable the “substance of man.” Individuals, despite their choice to enter civic association, cannot be dissociated from the

³⁹⁷ Bardo Fassbender and Anne Peters, eds., *The Oxford Handbook of the History of International Law*, 1st ed. (Oxford University Press, 2012), 815–16, <https://doi.org/10.1093/law/9780199599752.001.0001>.

³⁹⁸ Fassbender and Peters, 826.

³⁹⁹ Zurbuchen, “The Circulation of the École Romande Du Droit Naturel in Eighteenth-Century Italy,” 161.

⁴⁰⁰ Hunter, “Law, War, and Casuistry in Vattel’s *Jus Gentium*.”

⁴⁰¹ Rech, *Enemies of Mankind*, 111–15.

⁴⁰² Kalmanovitz, *The Laws of War in International Thought*, 69.

⁴⁰³ Vincent Chetail and Peter Haggemacher, *Vattel’s International Law from a XXIst Century Perspective, Le Droit International de Vattel vu Du XXIe Siècle: Le Droit International De Vattel Vu Du XXIe Siecle*. (Dordrecht: BRILL, 2011), 133, <http://public.eblib.com/choice/publicfullrecord.aspx?p=737682>.

“universal society of human race.”⁴⁰⁴ The entire edifice of Vattel law of nations lies on a fundamental, yet at a time indeterminate, hierarchy. Vattel says that the first general law binds every nation to contribute everything in her power (in lawful terms) to the happiness and perfection of all the others.” Though, he immediately corroborates the statement adding that “the duties that we owe ourselves [are] unquestionably paramount to those we owe to others” in terms of liberty, happiness, and perfection.⁴⁰⁵ Hobbesian equality is brought to an extreme almost paradoxical extent. The equality among individuals supposed in the *state of nature* and then transposed to the anarchical system of Commonwealths is taken by Vattel as a datum to ground the fictitious legal space of his international relations. Vattel, however, reformulates it as to turn the anomic and violent *state of nature* into legal space where individuals and nations inherit from nature obligations and rights. From the anarchical space where sovereigns are reversible creatures, Vattel creates a legalized space where equality is formalized into a juridical trait. Hence, he can conclude that:

Since man are naturally equal and perfect equality prevails in their rights and obligations [...] nations composed of men are naturally equal. Power or weakness does not in this respect produce any difference. A dwarf is as much as a giant; a republic is no less a sovereign state than the most powerful kingdom. By a necessary consequence of that equality whatever is lawful for one nation is equally lawful of any other.⁴⁰⁶

The second stratum of the law of nations, still anchored to the impending validity of natural law but grounded in other *loci*, is represented by the *positive* law of nations. It is distinguished in three different kinds. The first kind is the *voluntary* law of nations and obliges state to carefully weight the general welfare and security and yield their power if required. The second is conventional and is essentially represented by agreements nations reach by explicit consent. While the third kind is *customary* law of nations and is based on those prescriptions that are agreed by tacit consent. It could reasonably seem that in such a perfect and balanced theory there could not be room for any form of violence. However, even war is put under pressure of law and is turned into a specific legalized condition. The rights that all nations retain to resort to “forcible means of repression” in case of necessity must be carefully balanced with the rights of the other members of the society of nations. The idea of society of civilized nations is mostly a historical construction and has a dialectical structure. The use of history allows to make a distinction between civilized and barbarous nations, using the law of nation as a teleological device destined to embrace all humanity. He, however, punctuates his theory with a third category, that of the monster. The monster is “a theoretical concept to signify individuals or nations who lack the minimum of morality that is necessary for social life, and who are, therefore, morally speaking, more similar to brutes than to men.”⁴⁰⁷

Given the above premises, it appears clear that the practice of war in such a balanced system amounts to a serious theoretical problem. War is an exceptional event, recognized in its destructive character. Indeed, Vattel “insists that ‘a just and wise nation, or a good prince’ has recourse to this ‘wretched and melancholy expedient’ for obtaining justice ‘only in extremities’”.⁴⁰⁸ War cannot be

⁴⁰⁴ Vattel, Kapossy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 70.

⁴⁰⁵ Vattel, Kapossy, and Whatmore, 73.

⁴⁰⁶ Vattel, Kapossy, and Whatmore, 75.

⁴⁰⁷ Zurbuchen, “The Circulation of the École Romande Du Droit Naturel in Eighteenth-Century Italy,” 164.

⁴⁰⁸ Vattel in the *Introduction* to the *Droit des gens*, reminds the destructive character of war by referring to episodes as “[...] the slaughter of men, the pillage of cities, the devastation of provinces”. See Simone Zurbuchen, “Vattel’s Law of

either thoroughly a function of self-interest because this would imply justifying tyrannical and hegemonic behaviours; nor it can be solely function of the collective will of the society of nations, as this would result into the breaking of states independence. To escape such a dilemma, “Vattel elaborates an array of casuistical rules oriented to harmonizing competing national interests to the extent that this is possible, [to] constitute the positive law of nations.”⁴⁰⁹ If Vattel discussion of war starts by shedding light on just war doctrine and its intimate relationship with natural law and natural right, he proposes an argument that recasts the *justa causa* system on a cognitive basis. In facts, to avoid the aporetic gulf between justice and interest, Vattel imbues his theory of “war with a legality of form that substitutes for the justice of the cause.”⁴¹⁰ From being an external event, Vattel tries to turn war into internal event subject to rules of the society of nations. The key formalities that make a war lawful are four: the power to undertake war is limited to sovereign states only; war must be the consequence of a right infringement; hence it must have a workable pretext; it must be publicly declared; and finally, it must comply with the rules of *decorum* in fighting.⁴¹¹ Vattel defines war in the following manner:

War is that state in which we prosecute our right by force [...] Public war is that which takes place between nations or sovereigns, and which is carried on in the name of the public power, and by its order. A right of so momentous a nature,—the right of judging whether the nation has real grounds of complaint,—whether she is authorised to employ force, and justifiable in taking up arms,—whether prudence will admit of such a step,—and whether the welfare of the state requires it,—that right, I say, can belong only to the body of the nation, or to the sovereign, her representative.⁴¹²

The public war that the Swiss diplomat terms “lawful and formal” amounts to a war that has an enclosed and determined form, “war in due form”. Lawful and formal war has a dimension, fictional as it may be, in which violence can outburst between two contenders and limited to them. In so doing, Vattel is shaping not only the form of war, but also the form of war as a reflection of the conditions of coexistence among different political entities in Europe. In other words, he “[is] circumscribing lawful warfare in specific geo-political and geo-intellectual terms by excluding all those groups – bandits, pirates, ‘Tartars’ – who make ‘private’ war.”⁴¹³

3.2 The fictional space of formal war and the concept of regular enemy

By constructing “war in due form”, Vattel is not simply drawing the boundaries of a constituent theory for an international society, he is also reacting to a changing political context. Indeed, despite the characteristic cruelty that comes along with any form of violence (war included),

Nations and Just War Theory,” *History of European Ideas* 35, no. 4 (December 2009): 408–17, <https://doi.org/10.1016/j.histeuroideas.2009.05.001>.

⁴⁰⁹ Hunter, “Law, War, and Casuistry in Vattel’s *Jus Gentium*.”

⁴¹⁰ Hunter.

⁴¹¹ Vattel, Kapossy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 497–502; Kalmanovitz, *The Laws of War in International Thought*, 78.

⁴¹² Vattel, Kapossy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 469–70.

⁴¹³ Hunter, “Law, War, and Casuistry in Vattel’s *Jus Gentium*.”

the second half of the eighteenth century knows a restraint in the destructiveness of war among European states, especially in comparative terms.⁴¹⁴ Vattel theory reacts to such a changing mode of practicing war and simultaneously provides the intellectual instruments to think about these changes. Vattel's *oeuvre*, nowhere near a humanitarian work, is testimony and key interpreter of the modern process that sees the political passage from the *homo ierarchicus* to the *homo aequalis* and the implications thereof.⁴¹⁵ His theory of symmetrical war brings the supposed equality of individuals into the society of sovereigns and gives this space of inter-sovereignty a legal attribute. The sovereign state is the core subject operating in this legal space and the only one legally entitled to use violence. By using the war declaration Vattel echoes a tradition of jurists who consider the war declaration a formal element from which stem a specific condition.⁴¹⁶ This is how Vattel envisions the power sovereign states are endowed in his juridical construction:

No individual, though ever so free and independent, can be placed in competition with a sovereign; this would be putting a single person upon an equality with an united multitude of his equals. Nations and sovereigns are therefore under an obligation, and at the same time have a right, to maintain their dignity, and to cause it to be respected, as being of the utmost importance to their safety and tranquility.⁴¹⁷

In the juridical space of inter-sovereigns, single sovereign states once engaged in war in due form, can regard each other's as lawful enemies. The construction of the regular enemy concept occurs through two interlinked passages. The first one is recognizing the equality of states as legitimate and lawful bearers of arms. Vattel does so by "following Hobbes and Pufendorf, Wolff and Vattel [conception] of nations as personified collectives or unified 'moral persons' which, even though radically unequal in size, power, constitutional form, confessional type," can be treated and regarded as symmetrical actors, bearing the same rights and duties.⁴¹⁸ The second passage is to dictate in which space and in which time the legitimate actors can lawfully resort to war. The doctrinaire style definition of regular enemy that Vattel gives in the *Third Book* of the *Droit des gens* is unequivocal on the two passages:

The enemy is he with whom a nation is at open war. The Latins had a particular term *Hostis* to denote a public enemy and distinguished him from a private enemy *Inimicus*. Our language affords but one word for these two classes of persons, who ought nevertheless to be carefully distinguished [...] When the sovereign or ruler of the state declares war against another sovereign, it is understood that the whole nation declares war against another nation [...] Enemies continue such, wherever they happen to be. The place of abode is of no consequence here. It is the political ties which determine the character. Whilst a man continues a citizen of his own country, he is the enemy of all those with whom his nation is at war.

⁴¹⁴ This does not imply that in other places of the earth violence is unrestrained. The argument regards precisely Europe and Vattel context. Corroborating this argument, Baumgartner proves that war formalities as the declaration of war contribute to contain the eruption of violence; similarly, Duffy's reconstruction of military practices explains how specific techniques during Frederick II time reduce war violence. See Frederic J Baumgartner, "Declaring War in Early Modern Europe" (New York, NY: Palgrave Macmillan, 2011), 1–6; Christopher Duffy, *The Military Experience in the Age of Reason*, First issued in paperback (London New York: Routledge, Taylor & Francis Group, 2016), 3–5–112.

⁴¹⁵ Gabriella Silvestrini, "Giustizia della guerra e disuguaglianza: Vattel, l'aggressore ingiusto e il nemico del genere umano," *Filosofia politica*, no. 3 (2008): 381–400, <https://doi.org/10.1416/28101>.

⁴¹⁶ Silvestrini.

⁴¹⁷ Vattel, Kapossy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 281.

⁴¹⁸ Kalmanovitz, *The Laws of War in International Thought*.

It can be inferred that State-authority is the substance that creates the normative conditions for legitimate war. Besides an ambiguous prescription of moderation and a list of persons whose way of life is distant from the military,⁴¹⁹ Vattel does not yield for any actual principle of distinction between combatants and non-combatants: once a state is at war, then the entire population is at war.

3.2.1 Unjust enemies and Monsters: Vattel's opaque exceptions to the concept of regular enemy

Though exceptionally coherent and detailed in its boundaries, Vattel theory of war in due form and its connotation of regular enemy is the by-product of legal Enlightenment and lays in strict continuity with modern political thought. This, argues Silvestrini, does not spare Vattel idea of regular enemy from polemical dynamics of exclusions and inclusion that characterize all modern political thought.⁴²⁰ Indeed, the “war in due form” cannot exist without forms of radical inequality that legitimize it. What Vattel does with the concept of enemy in order to save the regular enemy is to reformulate the typical inequality that characterizes the concept of enemy to discharge all its radical hostility unto other figures of alterity. In this sense, he does not detach from the law of nations canon of theologians and jurists, who used quote the Roman *topos* of pirates and brigands as enemies of humanity. However, Vattel theory of enmity is more than that. Since he cannot destroy the semantics of the regular enemy, which holds the entire building of his law of nations, and he does not contempt with repeating the *topos* of pirates, he elaborates a theory of exceptional irregular enmity. As Rech illustrates with extraordinary clarity, the case against corsairs' warfare talks much of Vattel dual system of enmity:

To make a case against Barbary warfare, Vattel had to depart from the idea that sovereignty as such elicited the right to make war, [...] all of which entailed that the Barbary corsairs must be treated as lawful enemies. Vattel instead stigmatised the 'robber nations' and denied that they should be treated as lawful enemies. He equated the wars waged by ancient robber nations (and now by the Barbary corsairs) with analogous robberylike or piracy-like enterprises such as those of the medieval *grandes compagnies* and the filibusters, who waged war without formalities and for the sake of gain. Vattel claimed that, similarly, the Barbary corsairs did not observe the (European) laws of war and acted *animo furandi*, without 'any other motive than the lust of plunder.' He insisted that for these reasons, Barbary privateering might be treated as piracy, [and] that the corsairs should be considered criminal for waging war without a valid motive and without declaring war.⁴²¹

Vattel does not renounce to the presence of a radical form of enmity his theory, echoing both just war theory and Roman legal vocabulary. Vattel establishes two paradigms that contrast the regular enemy: the “unjust enemy” and the “*Monster*” or “enemy of the human race”.⁴²² They are two different forms of hostility based on the degree of hostile intensity they carry. The unjust enemy is a regular enemy, namely a sovereign state, who unjustly aggresses another sovereign state by an unjust cause. The unjust character of his action is determined by the absence of a declaration of war expressing the

⁴¹⁹ Vattel describes “woman, children, men of religion as people who make no resistance”. See Zurbuchen, “Vattel's Law of Nations and Just War Theory”; Vattel, Kaposy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 549.

⁴²⁰ Silvestrini, “Giustizia della guerra e disuguaglianza.”

⁴²¹ Rech, *Enemies of Mankind*, 107–8.

⁴²² Silvestrini, “Giustizia della guerra e disuguaglianza.”

material reasons behind his war or by the use of pretexts in his war declaration to engage in war only for profit. The “unjust enemy” can be subject to a unilateral action of punishment by the aggressed state.⁴²³ While the “enemy of human race” is an enemy recidivous to the violation of the law of nations. Vattel equates the “enemy of human race” to a monster, as his intention to violate the law of nations is not only a hypocritical disregard of law, but amounts to a total rejection of law.

Pretexts are at least a homage which unjust men pay to justice. He who screens himself with them shews that he still retains some sense of shame. Whoever, without justificatory reasons, undertakes a war merely from motives of advantage, acts without any right, and his war is unjust. Nations that are always ready to take up arms on any prospect of advantage, are lawless robbers: but those who seem to delight in the ravages of war, who spread it on all sides, without reasons or pretexts, and even without any other motive than their own ferocity, are monsters, unworthy the name of men. They should be considered as enemies to the human race, in the same manner as, in civil society, professed assassins and incendiaries are guilty, not only towards the particular victims of their nefarious deeds, but also towards the state, which therefore proclaims them public enemies.⁴²⁴

Eventually, it can be noted that on the one hand, the two concepts of unjust enemy and monster (or enemy of mankind) strengthen his theory of the society of states. The presence of an enemy of all implies the supposed presence of shared values and the possibility of a shared will in the society of nations. On the other hand, the idea of a radical enemy of mankind, though detailed and defended through the use of *exempla*, seems to be extremely controversial. It risks undermining the entire theoretical scaffolding of “war in due form”, as “enemy of mankind” is a concept open to interpretation and instrumentalization and its indeterminacy blurs the boundaries with the concept of regular enemy.⁴²⁵ Accordingly, this dual system of enmity crushes the concept of regular enemy between a teleological promise of civilization for all those embracing the law of nations and a practical impossibility of being regular enemies. In facts, this is a typical trait of Vattel system: the legal fictional space does not cover all conditions of possibility and it is punctuated by dark spots, unaddressed issues, cases that result exceptional and unreachable by the law. In such cases the Swiss

⁴²³ In particular, Vattel states that “whoever, without justificatory reasons, undertakes a war merely from motives of advantage, acts without any right, and his war is unjust. And he, who, having in reality just grounds for taking up arms, is nevertheless solely actuated by interested views in resorting to hostilities, cannot in- deed be charged with injustice, but he betrays a vicious disposition: his conduct is reprehensible, and sullied by the badness of his motives.” See Silvestrini; Vattel, Kaposy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 487.

⁴²⁴ Vattel, Kaposy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 486–87.

⁴²⁵ The concept of “enemy of human race” and the concept of “monster” will be employed few later, around the end of the eighteenth century, by French revolutionaries as Brissot, Cloots e Barrère to address the King and other political opponents, including other European powers as England and German Kingdoms. In 1794 the French National Convention defines “the English as ‘enemies of humanity’, ‘assaulting the law of peoples and threatening to annihilate freedom’. As Robespierre few later explains ““those who make war on a people to halt the progress of liberty and destroy the rights of man must be attacked, not as ordinary enemies, but as assassins and rebel brigands.”” Roman Schnur and Pier Paolo Portinaro, *Rivoluzione e guerra civile* (Milano: Giuffrè, 1986), 56; Silvestrini, “Giustizia della guerra e disuguaglianza”; Richard Whatmore and James Livesey, “Étienne Clavière, Jacques-Pierre Brissot et Les Fondations Intellectuelles de La Politique Des Girondins 1,” *Annales Historiques de La Révolution Française*, no. 321 (September 1, 2000): 1–26, <https://doi.org/10.4000/ahrf.175>; Sibylle Scheipers, *Unlawful Combatants: A Genealogy of the Irregular Fighter* (Oxford University Press, 2015), 46, <https://doi.org/10.1093/acprof:oso/9780199646111.001.0001>.

diplomat resorts to an emblematic concept of *humanity*, which leaves room for ambiguity and manipulation.

Notwithstanding these considerations about the ambiguity of the concept, the system of war “in due form” and the regular enemy do not disappear with Vattel’s death and continue to survive with argumentative force in the legal reflections on war in the centuries ahead. Vattel’s system will be received and employed. The idea of a society of nations, with its controversies and dark spots, will assume a real form a century later, exactly through practice work of those people to whom Vattel addresses in the *Droit des gens*: statesman, international legal scholars, diplomats, and military men.

3.2.2 Vattel in the Hague: the regular enemy, civilization, and the laws of war

The thought of Vattel is destined to influence the form that the law of nation’s late modern *daughter*, International Law, takes in the nineteenth century and the normative force attached to it. Under the thrust of the resurgence of irregular warfare after the French Revolution and the penetration of the latter in regular warfare between armies with Napoleon, Vattel normative system is vivified in treaties aimed at regulating the conduct of war.⁴²⁶ Among the most notable to revive Vattel’s intellectual legacy is the German law professor Friedrich Georg von Mertens (1756-1821), engaged in the project of outlining the principles governing the *Droit Public de l’Europe*.⁴²⁷ According to von Martens war is to understand as a fact of the international order of sovereign states: the old natural law distinction between a just and an unjust war is unproductive in the Europe of independent sovereign states. War is a fact because it is an objective status, which can be differentiated by peace by a reasoning of logical opposition. As proved by Koskenniemi for von Mertens:

War had no intrinsic normative status. It was simply a fact and a process, one of the “*voyes de fait*” (in addition to retorsions and reprisals) on par with – though defined by its opposition to – peace. Again what matters is the synchronic relationship between the opposing elements: each receives meaning from its negation of the other, not from any moral or psychological meaning “peace” or “war” might possess.⁴²⁸

On the path traced by Vattel, Mertens comes to claim that “war gives a nation an unlimited right of exercising violence against its enemy. But the civilized nations of Europe, animated by a desire of diminishing the horrors of war, now acknowledge certain violences as [...] unlawful.”⁴²⁹

The journey of Vattel ideas will not be limited to the European continent, it will cross the Atlantic reaching the United States, and will have a strong relevance for the universalizing thrust of International Law. First at the Congress of Vienna (1815) in the first decade of the nineteenth century and then after the Crimean War (1853-1856), Vattel system and in particular the prudent idea of balance of power and rules of war will have direct influence on the codification of International Law. The end of Crimean War sees for the first time ever *privateering*⁴³⁰ being officially outlawed by

⁴²⁶ Scheipers, *Unlawful Combatants*, 70.

⁴²⁷ Benjamin Straumann and Benedict Kingsbury, “The State of Nature and Commercial Sociability in Early Modern International Legal Thought,” *Grotiana* 31, no. 1 (2010): 22–43, <https://doi.org/10.1163/187607510X540204>.

⁴²⁸ Koskenniemi, “Into Positivism.”

⁴²⁹ Bartelson, “War in International Thought,” 165–66.

⁴³⁰ The Declaration of Paris of 1856, under Article 1 proclaims: “Privateering is, and remains, abolished.” Here “privateers” are defined as “private persons (at times known as corsairs, not to be confused with pirates) who obtained official letters of marque from a government.” See Rudolf Bernhardt, *Use of Force. War and Neutrality Peace Treaties*,

European nations through a treaty.⁴³¹ While few later, at the beginning of the second half of the century, the Lieber Code (1863) is drafted, directly inspired by the principles enucleated in Vattel's work.⁴³² During the *Hague Conferences*, then, Vattel's ideas will resonate in the strive to moderate the recourse to war as a prerogative of states by the institution of shared rules of war initiation and conduct.⁴³³ As pointed out, the birth of International Law in the nineteenth century will not simply adopt the sovereign state as a foundational paradigm, but it will rework it in a progressivist mode with the explicit aim of humanizing and restraining war and promote peace and civilization. The first one concerns the status of single combatants in war and the substantial differentiation between combatants and those outside the conflict. This distinction has found its main sources in the legal grounds laid down by customary international law, the body of theories inherited by traditional Christian Just War, and ultimately by the intellectual synthesis of these traditions initiated by the lawyers at the *Institut de droit international* in Ghent in 1873 and on with the Hague Conventions.⁴³⁴ The first private compilation of international humanitarian law appears around 1863, following the American Civil War. The *Lieber Code* (1863), from the name of the historian compiling it, defines several legal issues that the parties should take into consideration during a public war.⁴³⁵ Among such issues, for instance figure the principle of necessity, the principles of distinction, and the treatment of prisoners of war. As noted by Scheipers "Lieber was ambivalent when it came to protecting civilians from the effects of war. The Lieber Code granted military commanders a high level of discretion in the treatment of civilians."⁴³⁶ But it nonetheless relies on a Vattelian notion of regular enemy. In the *Lieber Code* the idea of regular enemy subtends all the normative logic of the laws of war, but a crucial passage is more explicit on how the regular enemy is intended once placed in the fictional legal space of regular war:

The law of nations allows every sovereign government to make war upon another sovereign state [...] Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are

Encyclopedia of Public International Law, 03 04 (Amsterdam New York Oxford: North-Holland publ. company, 1982), 152.

⁴³¹ Janice E. Thomson, *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*, Princeton Studies in International History and Politics (Princeton, N.J: Princeton University Press, 1994), 72–72.

⁴³² In this context, it should be noted that Vattel *Droit des gens* arrives at Harvard Library in 1763 and is read by the Founding Fathers during the American Revolution. See Lazzarich, *Stato moderno e diritto delle genti*, 48; Senellart, "La Qualification de l'ennemi Chez Emer de Vattel."

⁴³³ In 1914 the American political scientist Fenwick writes that "the fundamental principles of international law as they are set forth in Vattel's treatise have remained practically unchanged down to the present day." See Charles G. Fenwick, "The Authority of Vattel II," *American Political Science Review* 8, no. 3 (August 1914): 375–92, <https://doi.org/10.2307/1946172>.

⁴³⁴ In fact, starting from the mid-nineteenth century and intensified across the twentieth century – in particular with the revision of 1949 Geneva Conventions – the codification of norms regulating the condition of combatants in war and the distinction of those 'innocentes' and those not, has considerably mitigated the former state-centred approach towards a more individual-centred approach. This, for instance, has led to 'ICRC's efforts, however tentative, to find ways to reduce military casualties by quantifying the principle of unnecessary suffering.' See, Koskeniemi, *The Gentle Civilizer of Nations*, 39–45.

⁴³⁵ Detlev F. Vagts and Theodor Meron, "The First Modern Codification of the Law of War," in *Humanizing the Laws of War*, by Richard Baxter, ed. Detlev F. Vagts et al. (Oxford University Press, 2013), 121–27, <https://doi.org/10.1093/acprof:oso/9780199680252.003.0007>.

⁴³⁶ Scheipers, *Unlawful Combatants*, 83.

means to obtain that object of the belligerent which lies beyond the war. Unnecessary or revengeful destruction of life is not lawful.⁴³⁷

Concomitant to the drafting of the *Lieber Code*, in 1864 a group of philanthropists and former war generals gathers in Geneva plenipotentiaries from almost all Western European countries to draft a treaty that binds states to humanitarian treatment of soldiers in battle.⁴³⁸ The *First Geneva Convention* in its ten articles encapsulates an unprecedented principle of reciprocity and humanity, namely that once those engaged in fighting are materially prevented from fighting by wounds must be spared and rescued.⁴³⁹ The members of the *Geneva Convention* meet again few years later, in 1868, in Saint Petersburg to agree the prohibition of certain lethal weapons. The number of signatory states increase and the objective of forbidding the use of certain weapons that cause unnecessary harm is reached.⁴⁴⁰ As a premise to the *Declaration*, the signatories decide to spell out the existence of an holding principle in war that should moderate the use of force: military necessity. This fundamental principle does not only look at the soldier as an individual human being, but also serves as to remark the underlying logic of regular hostility in modern war. As the *Declaration's Preamble* enacts, the parties agree:

That the only legitimate object which States should endeavor to accomplish during war is to weaken the military forces of the enemy; [...] That for this purpose it is sufficient to disable the greatest possible number of men; [...] That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable; [...] That the employment of such arms would, therefore, be contrary to the laws of humanity.⁴⁴¹

The content of the *Preamble*, despite its “prosaic and rhetorical style”, has a pervasive impact on the core tenets of International Humanitarian Law and on the conduct of war.⁴⁴²

⁴³⁷ Government Printing Office and Francis Lieber, *Instructions for the Government of Armies of The United States in the Field: 1898*, II (CreateSpace Independent Publishing Platform (28 settembre 2014), 2014), 24.

⁴³⁸ The newborn *International Committee of the Red Cross* and its founder Gustave Henry Moynier play a crucial role in defining the objectives of the *First Geneva Convention* and in paving the way for its applicability. Kalmanovitz, *The Laws of War in International Thought*, 128.

⁴³⁹ As stated in the *Preamble* “Such a principle demands that, in time of war, all those not actively engaged in the hostilities and all those placed *hors de combat* by reason of sickness, wounds, capture, or any other circumstance, shall be given due respect and have protection from the effects of war, and that those among them who are in suffering shall be *succoured* and tended without distinction of race, nationality, religious belief, political opinion or any other quality. The High Contracting Parties solemnly affirm their intention to adhere to this principle. They will ensure its application, by the terms of the present Convention, to the wounded and sick of armed forces in the field, and pledge themselves to respect, and at all times to ensure respect for, the said Convention.” International Committee of the Red Cross, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge: Cambridge University Press, 2016), 29, <https://doi.org/10.1017/9781316755709>.

⁴⁴⁰ Emily Crawford, “The Enduring Legacy of the St Petersburg Declaration: Distinction, Military Necessity, and the Prohibition of Causing Unnecessary Suffering and Superfluous Injury in IHL,” *Journal of the History of International Law / Revue d'histoire Du Droit International* 20, no. 4 (February 19, 2019): 544–66, <https://doi.org/10.1163/15718050-12340097>.

⁴⁴¹ Dietrich Schindler and Jiří Toman, eds., *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and Other Documents*, 4th rev. and completed ed (Leiden ; Boston: Martinus Nijhoff Publishers, 2004), 92.

⁴⁴² Robert Kolb and Momchil Milanov, “The 1868 St Petersburg Declaration on Explosive Projectiles: A Reappraisal,” *Journal of the History of International Law / Revue d'histoire Du Droit International* 20, no. 4 (February 19, 2019): 515–43, <https://doi.org/10.1163/15718050-12340099>.

The *Lieber Code*, alongside the *First Geneva Convention* and *Saint Petersburg Declaration*, form the basis for the codification of the *International Declaration Concerning the Laws and Customs of War*, ratified in 1874 during the Brussel Conference, and eventually for the *Hague Conventions on Land Warfare* of 1899 and 1907 establishing International Humanitarian Law. Here the concept of regular enemy is the premise of the treaty and essentially amounts to one of its core tenets. The regular enemy is no more solely a collective body, but the enemy is distinguished according to the social role that each individual plays within a specific state (be him military personnel or not) and, above all, the single individual belonging to the enemy is recognized in his autonomy and dignity. This premise will be among the core values of the late-modern normative prescriptions on the conduct of hostilities, then termed *ius in bello*. As the *International Declaration Concerning the Laws and Customs of War* proscribes:

War by no means absolves us from all obligations towards the enemy, on all grounds. They result in part from the object of war, in part from the fact that belligerents are human beings.⁴⁴³

The humanitarian logic behind the project of humanizing war and establishing a solid paradigm of regularity between enemies in war, however, does not actually fulfill its universalist premises. Philanthropists, lawyers, statesmen, and military men reflect on the actual applicability of such a legal regime beyond civilized nations, especially in the colonial effort. The answer is controversial, but it seems immediately clear that some exceptions may be yielded to European powers and that, for example, uncivilized people cannot amount to regular enemies.⁴⁴⁴ As the United States General Tasker H. Bliss insisted, with an exemplificatory rhetoric, at the 1899 *Hague Convention*:

[t]he United States . . . should demand as its right, the right of civilization, that . . . millions of men of savage races shall not be trained to take part in possible wars of civilized nations.⁴⁴⁵

4. The concept of regular enemy in the strategic thought on war: Carl von Clausewitz

The concept of regular enemy is not only structural to ethical and legal attempts to give a normative shape to organized violence; the concept of regular enemy also plays an essential role in the attempts to contain the effects of war through its means, material and intellectual. A thinker of war through its means, namely in strategic terms, is Carl Von Clausewitz (1780-1831). Prussian of noble origins, Clausewitz encounters war in his youth and since then his life is tied with the military as an institution and with war as a political event. He is a war general, a teacher of strategy, and a profound thinker, with strong philosophical inclinations, on the phenomenon of war. Reader of eighteenth-century German philosophers, fascinated by the study of classics from antiquity, and partly attracted jurists thought on war, his reflection on war is an accurate alchemy between sensorial experience and philosophical reasoning. And for this reason, it can be claimed without fault that

⁴⁴³ Vagts and Meron, "The First Modern Codification of the Law of War," 130.

⁴⁴⁴ Anne Orford, *International Law and Its Others* (Cambridge: Cambridge University Press, 2006), 276, <https://doi.org/10.1017/CBO9780511494284>.

⁴⁴⁵ Orford, *International Law and Its Others*, 2006, 277.

Clausewitz's reflection on modern war is the most exhaustive and comprehensive among the ones surveyed. With an approach that combines philosophical and sociological intellectual tools, Clausewitz is able to prove that war is not simply the continuation of politics by other means, but it is politics mirror.⁴⁴⁶ War reflects political power distribution and the complexity of social world once entered into the realm of violence. He thinks about force as a substance that cannot be reduced either to material force or to moral force. It is substantially dialectical. Among the many things he deals with in his magnum treatise named *On War*, posthumously published in 1932, Clausewitz provides a hint about the status of the enemy in European war in the late seventeenth century. Clausewitz's logic on war is intrinsically informed by a notion of the enemy as an equal. The enemy as an equal is located along with the Self in a system of forces; this reflection is amply influenced by Enlightenment thinking. His mechanistic trinitarian theory of war starts exactly from the assumption that war is the function of a certain degree of equality of forces between combatants as it happens in any physical system. Clausewitz defines war with a powerful metaphorical argument. For him war is "duel on a large scale" and in essence, continues, Clausewitz:

War is thus an act of force to compel our enemy to do our will. Force, to counter opposing force, equips itself with the inventions of art and science. Force—that is, physical force, for moral force has no existence save as expressed in the state and the law—is thus the means of war; to impose our will on the enemy is its object.⁴⁴⁷

4.1 Clausewitz philosophy of war: the enemy between enlightenment and revolution

Clausewitz in his definition of war does not go further than the tradition of modern philosophers: war as an armed encounter of opposing wills. However, as observes acutely Aron, the words "act of force" and "will" are the very key to understand the Prussian thought and his insights on later modern war. "Act of force" reminds the physical nature of the phenomenon of war; while "will" is essentially the metaphysical counterpart.⁴⁴⁸ Aron sees in Clausewitz's definition the idea that war is a dual phenomenon divided between mind and matter. It is such a duality, between idea and act of force that makes war intrinsically collective. War cannot be fought without combat, namely without an encounter, and at the same time war cannot be war unless it is thought through an intersubjective idea of what is war. The concept of enemy stands exactly in this political horizon of war's intrinsically collective character. The enemy in Clausewitz's definition is unquestionably described as an equal, as a regular enemy, regardless his military or political might. The entire book *On War* is pervaded by the image of the enemy as the pole in continuous exchange of energy. The locus of this exchange is the physical system in which forces encounter. In this sense, war is an enclosed condition determined by the boundaries that strategy imposes on the use of force.

4.1.1 The concept of regular enemy and the clockwork war

⁴⁴⁶ Alessandro Colombo, *La guerra ineguale: pace e violenza nel tramonto della società internazionale*, Ricerca (Bologna: Il Mulino, 2006), 73.

⁴⁴⁷ Carl von Clausewitz, Michael Eliot Howard, and Peter Paret, *On War*, First paperback printing (Princeton, N.J.: Princeton University Press, 1989), 75.

⁴⁴⁸ Aron, *Clausewitz*, 12.

Clausewitz is tied to the Enlightenment philosophy and language, and this is visible in his attention to the role he attaches to reason as a form of mediation. The construction of war as a space of reason where a careful balance between the forces at stake can produce efficient results appears to be a fully Enlightenment philosophy. However, Clausewitz is not a true Enlightenment. There is no sign of civilization, progress, and other forms of universalism. His very interest lays in finding the possibility of penetrating the relationship between the physical and ideal character of war. For him the physical is a perfect balance of forces. In this sense the enemy is described in a physical sense. The enemy is a counter part in a game of forces. It is a matter of the reasonable man to calculate and assess correct employment of means to reach ends. Reason as a logical and scientific mode of calculating the effects given the premises is a mediation which neutralises the destructiveness of violence.⁴⁴⁹ When politics appropriates and controls reason, then war can be put under control. The tripartite image offered by Clausewitz is a picture of the relationship between war and politics, where reason is the mediating power that keep the balance between the three forces. The space wherein the three forces meet is a fictional space, but still is the space where war can be contained. In this fictional space the forms of the two contenders cannot be but specular: in order to have a duel on a large scale the two parties must possess the same social and political forms. The form of the state, as already seen in Vattel, retains authority and addresses politics through government. Because, as Clausewitz reminds, “combat in war is not a contest between individuals.”⁴⁵⁰ And, finally, the form of the army, the section of a society of those trained to violence and disciplined through the means of logic and mathematics (hierarchy, geometry, and order) retains the power to physically employ force. Through these forms, war approaches the form of a game than that of chaos. Here the regular enemy is key element. Clausewitz dialectical method presupposes the opposite in the entire edifice of his theory. The enemy thus, in the mechanics of real war, is a specular of the Self:

We can now see that many roads lead to success, and they do not all involve the opponent’s outright defeat. They range from the destruction of enemy’s forces, the conquest of his territory, to a temporary occupation or invasion [...] in the sense that either the objective is to overthrow the enemy—to render him politically helpless or militarily impotent, thus forcing him to sign whatever peace we please; or merely to occupy some of his frontier-districts so that we can annex them or use them for bargaining at the peace negotiations.⁴⁵¹

Here it is possible to see how Clausewitz constructs a space of war where the strategic computation is the only boundary to violence. This strategic computation is never univocal. The counterparty is essential to assess properly how to direct force. Therefore, the counterparty is structural to the system designed by Clausewitz. As Clausewitz writes, addressing his words against the strictly mechanistic understanding of war as for instance that of de Jomini, war is a constant equilibrium of forces:

They direct the inquiry exclusively towards physical quantities, whereas all military action is intertwined with psychological forces and effects. They consider only unilateral action, whereas war consists of a continuous interaction of opposites [...] Action in war is like movement in a resistant element. Just as the simplest and most natural of movements,

⁴⁴⁹ Carlo Galli, *Forme della critica: saggi di filosofia politica* (Bologna: Il mulino, 2020), 224.

⁴⁵⁰ Clausewitz, Howard, and Paret, *On War*, 95.

⁴⁵¹ Clausewitz, Howard, and Paret, 93–94.

walking, cannot easily be performed in water, so in war, it is difficult for normal efforts to achieve even moderate results.⁴⁵²

The counterparty does not simply play a static role in a balanced system. The enemy can escape the dialectic and produce the unexpected. For Clausewitz the enemy is not a dead matter, it produces “friction.” The enemy is alive and the friction between the forces of the Self and the forces of the enemy can produce the unexpected, can in other words, go beyond reason and calculation. As intelligently remarked by Pick, “Clausewitz constantly shifts the optical perspective, moving back and forth between the Enlightenment and its romantic shadows, between an age of rationalism and its subsequent critique, sliding away from the vantage point of ‘the eyes of reason’ to which the text is nevertheless committed. The machine constitutes one of the most deeply ambiguous and troubling central analogies of his story of war.”⁴⁵³

4.1.2 The concept of regular enemy and the possibility of the extremes

It is under the light of this more profound and more revelatory meaning of the regular enemy that Clausewitz theory assume relevance for the historical development ahead his time. Aware of and impressed by the political and military crisis that the French revolution was engendering on European state system and on the art of war more broadly, Clausewitz reflection on enmity goes somewhat deeper than the simple idea of the enemy as an equal in a mechanical relation of force. The mass of men mobilized by the “nation in arms” is a substantial disruptive element in the equilibrium of forces that characterizes the “war in due form” theorized by Vattel. The arrival of passionate mass of men on the stage of the battlefield breaks the balance of traditional war between professional aristocratic armies and leads war rapidly to its own extremes, to a total annihilation of the enemy and to an overwhelming of politics by violence. Clausewitz describes as such his glimpse on the extremeness of war and enmity in the reminiscence of what he witnesses during Napoleonic wars:

We said in the opening chapter that the natural aim of military operations is the enemy's overthrow, and that strict adherence to the logic of the concept can, in the last analysis, admit of no other. Since both belligerents must hold that view it would follow that military operations could not be suspended, that hostilities could not end until one or other side were finally defeated [...] We must allow for natural inertia, for all the friction of its parts, for all the inconsistency, imprecision, and timidity of man; and finally we must face the fact that war and its forms result from ideas, emotions, and conditions prevailing at the time-and to be quite honest we must admit that this was the- case even when war assumed its absolute state under Bonaparte.⁴⁵⁴

Even Clausewitz reflection shares with his moral and legal counterparts, the shadow of disruptive exceptions impending on his theory. Clausewitz absolute war is an imaginative horizon, which takes inspiration from the eruption of national wars and ideological fractures within society. However, as in imaginative horizon, it provides a perceptive idea on what kind of paths modern war is accessing after Clausewitz time.

⁴⁵² Clausewitz, Howard, and Paret, 136.

⁴⁵³ Pick, *War Machine*, 35.

⁴⁵⁴ Clausewitz, Howard, and Paret, *On War*, 579.

5. Conclusion. A backlight glimpse of the concept of regular enemy

Few concluding remarks may come along such a contrasting picture as the one offered here. Therefore, it will be by briefly reversing the perspective so far offered that the chapter tries to draw some conclusions. Borrowing the powerful words of one of the most penetrating critics to the idea of regular war it is possible to shift our sight and look critically at the construction given by regular war theorists. Rousseau, an author remained under the shadow so far, yet constantly present in the backdrop of the theories illustrated and already encountered at the beginning of this thesis, offers the chance to look otherwise. His critique does not follow theological or moralist idealism. It is delivered on another ground, and it aims at the disentangling the relationship individual-collective constructed, among the others, by regular war theorists. Indeed, the Grotian, the Hobbesian and the Vattelien constructions are well known to Rousseau. His critique points against the ideological nature through which they legitimize authority. The way they represent regular war is very the target of his polemics. Rousseau understands that the enclosed space of war is a fictional construction and criticizes it as a feature of absolutist ideology, where free men are forced to slaughter each other's without even being hating or having reason for killing. Regular war is a cage within which free man are forced by the interests of political power. Those who propose to regularize war into specific condition are but apologists of modern machine that enslaves individuals for interests that are not theirs: the state. as This how Rousseau spells out his view:

[I]t is doubtful, then, according to Grotius, whether the human race belongs to a hundred men, or whether these hundred men belong to the human race; and he appears throughout his book to incline to the former opinion, which is also that of Hobbes. In this way we have mankind divided like herds of cattle, each of which has a master, who looks after it in order to devour it. Just as a herdsman is superior in nature to his herd, so leaders, who are the herdsmen of men, are superior in nature to their people. Such was, according to Philo's account, the reasoning of the Emperor Caligula, infer- ring truly enough from this analogy that kings are gods, or that men are animals. The reasoning of Caligula is similar to that of Hobbes and Grotius.⁴⁵⁵

Rousseau grasps with unique intellectual acuteness the underpinnings of modern regular war theory. And, exactly by this acute grasping, the critique he offers is mighty. He indeed addresses first and foremost his critique against how the Grotian, and the Hobbesian constructions have *trapped the mind* of later theorists of war. Rousseau critique is not a marginal one in modern thought. It amounts to a critique functional to the project, parallel and sometimes meshing with that of regular war, of revolutionizing the world of sovereigns and liberating individuals from the yoke of sovereign authority.

⁴⁵⁵ Rousseau, Dunn, and May, *The Social Contract*, 157.

***Interlude.* The end of the Cold War, international relations, and political concepts**

1. Introduction: a leap into the present. The concept of regular enemy in contemporary thought on war

After having discussed in the first part how the concept of regular enemy is constructed as a shared language to identify the other party in war through the instrument of authority and through a *spatio*-temporal dimension, the second part will be devoted to discussing what does survive of the regular enemy concept in the contemporary thought on war.

In particular, it will be analyzed the contemporary thought on war through three paradigms, specular to the three paradigms tackled in the previous pages. The first one is an *ethico*-political paradigm. The second one is a legal paradigm; and the third one is a strategic paradigm. They may be not exhaustive of the manifold theories on war that stand by contemporary war. Beyond the ethical, legal, and strategic character of war, war is also a cultural, a social, and a psychological phenomenon, and corresponding theories exist on war. For reasons of scope and space these theories will not be taken into account here.

Rather, the aim of the following pages is to convey in these three paradigms some of the most relevant intellectual perspectives on contemporary war. Of course, something may be left aside. After analyzing the idea of enemy that subtend the three paradigms here considered, it is argued that in contemporary thought on war the concept of regular enemy is not disappeared altogether. Though, there will be discussed substantial differences with the modern concept of regular enemy that highlights the tendency towards the so-called *individualization of war*.

The concept of regular enemy is thus used as a lens to look at contemporary war. Contemporary, as made clear in the introduction, is an (practical) adjective that refers to an open-ended timeframe that includes the very recent past, the current present, the utopias of the future, and, with no exception, also the layers of sedimentation of the very long past.

The post-Cold War era assumed in this second part is thus a fictional, yet historically significant, interval of time characterized by specific tendencies and specific conceptual categories. In this regard, the post-Cold War era is an epoch as it is an autonomous timeframe which has its own rules, tendencies, logics, and dominant narratives. Its tendencies are markedly in contrast to what comes before the post-Cold War, but at the same time its tendency is to accomplish the promises left unanswered before the end of the Cold War. Thus, the post-Cold War era is not a thoroughly new epoch, it stands in a dual relationship of rupture and continuity with the past, both the recent and long. Overall, the time frame of analysis here considered is neither essentialized as a limit nor intended as conceptual boundary. It is rather a fictitious edge that serves the scope of delimitating the range of action of the enquiry, but not limiting the depth of analysis of political processes linked to the transformation of the enemy concept before the end of the Cold War.⁴⁵⁶

1.1 Continuity and transformation: international relations concepts and the end of the Cold War

Without overexaggerating the significance of the transformations ascribable to the end of the Cold War, it can be said that it has marked a crucial discontinuity in the reflection, discourses, and practices of war. As any post-war, indeed, even the end of the bipolar epoch is symbolically a

⁴⁵⁶ Koselleck, Hoffmann, and Franzel, *Sediments of Time*, 2018, 18.

threshold which represents a temporal *caesura* in two opposite directions. It can be seen as a threshold for exiting and accessing. Exiting from the homogenous time of the bipolar experience and the “short century of extremes and ideologies.”⁴⁵⁷ And as a moment of access into the new century, imagined as another homogenous time beginning on the premises of the USSR “soft” defeat and the triumph of the capitalist and liberal world, stimulated by the propulsion of its two major engines: market and democracy.⁴⁵⁸ Especially in the literature dealing with the emergence of *individualized war* there is a problematic node that often scholars avoid or do not tackle directly: the problem of the enemy. The entire modern architecture of international relations organized around the spatio-temporal articulation of politics as interstate is questioned. The cognitive understating of international politics through the categories of inside and outside and before and after is challenged. The concept of war and the concept of enemy are among these concepts radically questioned by the *spatio-temporal* transformations. This does not mean that modern concept change or are cast aside at once. Rather it means that modern concept are reworked and re-articulated according to the new *spatio-temporal* compass of the post-Cold War. Concepts are the mirror-like image of the new spatio-temporal organization of international relations.

Therefore, here the end of Cold War here is taken as a passage, a *flash of light* that highlights the trajectories of some ongoing processes, remained less visible due to temporary restraints, but already largely operative before 1989. The end of the Cold War conveys many latent trends and allows them to come out and become visible. It will be precisely on these trends that the next chapter will focus, trying to highlight the genetic, or prehistoric, phases of those thoughts or intellectual paradigms that became powerful and dominant in the nineties and at the opening of the *new millennium*. In Koselleck terms the end of the Cold War is a timeframe in which both the notion of time and the notion of space, especially in the West, are subject to considerable processes of transformation.⁴⁵⁹ Indeed, both spatial and temporal practices, discourses, and experiences are radically shackled by the systemic events and equally by the way the system is interpreted and represented with new parameters of time and space.⁴⁶⁰

1.2 The concept of war in the post-Cold War era

In such a politico-cultural context, dominated by a strongly *self-confident* liberal paradigm,⁴⁶¹ the reflection and discourses about war have been constrained by two intermingled intellectual conditions, already latent during the Cold War and liberated only at its epilogue:⁴⁶² the first condition being the alleged less likelihood of war in its traditional interstate form, while the second being the intense necessity to rethink some of the core pillars of the modern paradigm of war due to the erosion of state monopoly on violence.⁴⁶³ Thus, especially in American and European academics, policy-

⁴⁵⁷ Eric J. Hobsbawm, *The Age of Extremes: The Short Twentieth Century, 1914-1991*, repr (London: Abacus, 2011), 25.

⁴⁵⁸ Alessandro Colombo, *La Disunità Del Mondo: Dopo Il Secolo Globale*, 1. ed. in "Campi del sapere.", Campi Del Sapere (Milano: G. Feltrinelli, 2010), 8.

⁴⁵⁹ Koselleck, Hoffmann, and Franzel, *Sediments of Time*, 2018, 3–9.

⁴⁶⁰ Kadelbach, Kleinlein, and Roth-Isigkeit, *System, Order, and International Law*, 506–12.

⁴⁶¹ Barry Buzan, “The English School: An Underexploited Resource in IR,” *Review of International Studies* 27, no. 03 (July 2001), <https://doi.org/10.1017/S0260210501004715>.

⁴⁶² Martti Koskeniemi, “International Law as Political Theology: How to Read Nomos Der Erde?,” *Constellations* 11, no. 4 (December 2004): 492–511, <https://doi.org/10.1111/j.1351-0487.2004.00391.x>.

⁴⁶³ In terms of the first condition, it can be claimed that interstate war has appeared less likely for four main reasons: first, because of the atomic terror and the still-operative trauma of total wars; second, because of the legal ban on war from states’ foreign policy and thus its appearance as something residual and anachronistic; third, because of the spread of

making, and media environments, the concept of war and its meaning for international relations have undergone a phase of thorough intellectual and categorial reconsideration.

The above-illustrated two conditions of unthinkability and the necessity to re-conceptualize war have led to a gradual de-concretization and neutralization of the traditional concept of war in the new *globalized* jargon of international relations in the West. The outcome has been, on the one side, that the spread of international military actions by the so-called West has called for a recovery of the ancient ‘intervention’ or ‘enforcement’ lexicon so as to insist on the intrinsic legal and moral difference between those acting and those passives. Euphemistic formulas as ‘responsibility to protect’, or expression leveraging on the counter-concept of war, i.e. peace, as ‘peacekeeping’ and ‘peace enforcing’, have been deployed.⁴⁶⁴ On the other side, in contrast but only partially, the reconceptualization has started with a composition of the concept of war with characterizing and specialized adjectives, consistent with that tendency labelled as ‘the re-enchantment of war’.⁴⁶⁵ Such adjectives have rendered war a phenomenon substantially discontinuous with the past and determined by no other character than that of those fighting.⁴⁶⁶ This has implied a radicalization of the images of war into something abnormal and different from a clash between equals. Scholars, policy makers, and journalists have produced several different definitions of war, putting war on the conceptual backdrop as a dependent variable of actors and means employed in war. Among them, the luckiest definitions have been “hybrid war”, “surgical war”, “new war”, or critical versions such as “globalized war”, “Western way of war”, and the fortunate neologism “policing war.”⁴⁶⁷ As is evident, war has gradually been deprived of its conceptual intensity and concreteness of shared experience that made it the exact opposite of peace. Rather, it has been intended and deployed as a perverse remnant within an irreversible process of planetary pacification. *Global war on terror* has been late only in time, perfectly fitting the same conceptual logic – ‘terror’ as a fuzzy concept that adapts to an array of different phenomena and contexts, and the concept of war as a theatrical scenery lacking its concrete elements, as for instance a *spatio-temporal* delimited field of interaction, a status of ostensible reciprocity, and, primarily, a credible prospect for its end.

Not surprisingly, the emergence of the debate on *individualization of war* has been part of such a thorough reflection on the transformation of war that in the post-Cold War politico-cultural context. In this respect, *individualized war* has been a picklock idea to conflate not simply the focus on individuals, but also the related tendencies of high professionalization and concomitant demobilization of the armed forces, and of increasing privatization of war in the economic, social,

scientific (quantitative) evidence proving the tendency of democracies not to engage in war with each other; and fourth, because of the unprecedented presence of a single military pole, the United States, capable of commanding the commons indisputably on the global scale. In contrast, in terms of the second condition, the necessity to rethink war came primarily from the access, already visible across the entire twentieth century but incremented and hyperbolically stressed after the nineties, of actors other than states to the world of organized violence. Such *post-industrial* actors (such as terrorist groups, guerrilla bands, warlords, and smugglers) have robustly claimed legitimacy over the use of organized violence, challenging states from inside and outside. See Colombo, *La guerra ineguale*, 276; Christopher Coker, *The Future of War: The Re-Enchantment of War in the Twenty-First Century*, Blackwell Manifestos (Malden, MA ; Oxford, Eng: Blackwell Pub, 2004); Caroline Holmqvist, *Policing Wars: On Military Intervention in the Twenty-First Century* (Basingstoke: Palgrave Macmillan, 2014).

⁴⁶⁴ Daverio Rocchi and Birgalias, *Dalla concordia dei Greci al bellum iustum dei moderni*, 202.

⁴⁶⁵ Coker, *The Future of War*, 2–9.

⁴⁶⁶ Jeremy Elkins, “The Model of War,” *Political Theory* 38, no. 2 (April 2010): 214–42, <https://doi.org/10.1177/0090591709355389>.

⁴⁶⁷ Vivienne Jabri, *War and the Transformation of Global Politics* (London: Palgrave Macmillan UK : Imprint : Palgrave Macmillan, 2007), 7–9, <https://link.springer.com/openurl?genre=book&isbn=978-1-349-28243-2>; Martin Shaw, *The New Western Way of War: Risk-Transfer War and Its Crisis in Iraq* (Cambridge ; Malden, MA: Polity, 2005), 20; Holmqvist, *Policing Wars*, 2.

and political domains. The debate on individualization of war has concentrated on two main drivers leading to the individualization of war:⁴⁶⁸ a “powerful process of normative developments” articulated in the burgeoning of both moral and legal discourses and practices; and a process of incessant technological evolution.⁴⁶⁹

2. *Individualization of war in the debate on the transformation of war*

The academic scholarship about individualizing tendencies in war belongs to the broad debate about the transformation of war. Broadly speaking, this debate enquires whether war has changed character and nature in light of the erosion of state’s monopoly on violence at the close of the twentieth century.⁴⁷⁰ The thrust to a reorganization of international relations at end of the Cold war, and then, with more intensity, the response to transnational terrorism following 9/11, have been two *earthquakes* for international politics, whose effects still impact on the intellectual categories through which we try to understand our international reality. This has put the *classical* paradigm of interstate war under a strain, but it has not signed its decisive disappearance. A huge intellectual effort has been made to make sense of the causes, the movements, and the effects of such *earthquakes* in the discipline of international relations and beyond. Among the massive literature appeared on the transformation of war, the individualization of war is one aspect of the tendencies highlighted by scholars. Individualization of war can be inscribed in the larger process of war transformation alongside other two relevant tendencies that are not inconsistent with it: the privatization of war and the hybridization of war.

Privatization is the outsourcing by states of their military burden to other actors not belonging to the public sphere.⁴⁷¹ This has been recently visible for instance with military agencies in Europe and with military security companies throughout the world as in Libya, Ukraine, Syria. Privatization of war has led to a thrust to demobilize standing armies in industrialized countries in favor of guilds of military and security professionals. By the same token, privatization has also included the increasing access to the cosmos of war of non-public actors as smugglers, criminals, financial investors, and warlords who have used conflicts for private purposes.⁴⁷² Individualization of war shares some features of privatization. The employment of private lawyers and intelligence cooperating with drone crews or the massive resort to private data about terrorists used to draw the infamous “kill-list” based on biometrics are certainly patterns of privatization.

The other process consistent with individualization is the ambiguous process of war hybridization with other practices less intense than war.⁴⁷³ Over the last decades, war has sometimes been unrecognizable as such because of its blending with other phenomena, and some have even

⁴⁶⁸ Jennifer M. Welsh, ‘The Individualisation of War: Defining a Research Programme’, *Annals of the Fondazione Luigi Einaudi: An Interdisciplinary Journal of Economics, History and Political Science* : LIII, 1, 2019, LIII, 2019 <<https://doi.org/10.26331/1067>>.

⁴⁶⁹ Welsh.

⁴⁷⁰ For example, see Lawrence Freedman, *The Future of War: A History*, First edition (New York: Public Affairs, 2017); Coker, *The Future of War*; Martin Van Creveld, *The Transformation of War* (New York : Toronto : New York: Free Press ; Collier Macmillan Canada ; Maxwell Macmillan International, 1991); Shaw, *The New Western Way of War*; Mary Kaldor, *New and Old Wars* (Cambridge [England]; Malden, MA: Polity Press, 2012), <http://site.ebrary.com/id/10695857>.

⁴⁷¹ Deborah D. Avant, *The Market for Force: The Consequences of Privatizing Security* (Cambridge, UK ; New York: Cambridge University Press, 2005), 3–4.

⁴⁷² Kaldor, *New and Old Wars*, 8–9.

⁴⁷³ Williamson Murray and Peter R. Mansoor, *Hybrid Warfare: Fighting Complex Opponents from the Ancient World to the Present* (New York: Cambridge University Press, 2012), 14.

adventurously foresighted its end. War has gone through a fluid mingling with phenomena as non-conventional threats, internal strife, criminal activities, assertive territory occupations, and destabilizing practices. As a matter of fact, due to legal, moral and strategic necessities non-states and states have growingly resorted to violent practices as sanctions, illegal propaganda, forced migration flows, and cyberattacks.⁴⁷⁴ The practice of targeted killing, given its limited impact on the socio-political context is a consistent with the logics of hybrid forms of war because of its low-intensity consequences.

Though consistent with war privatization and hybridization, individualization of war has its own specificities that differentiate it from the other two tendencies. There are empirical and theoretical specificities of individualization of war to enquire. Among empirical ones it is certainly most relevant the emergence and institutionalization of targeted killings as the leading practice in the *global* response to terrorism by the United States and its allies. While among theoretical specificities what matters the most is the rhetorical edifice mobilized by United States and European policymakers to justify such practices. Scholars from different ontological and epistemological perspectives have tried to enquire with an in-depth sight this self-legitimizing tendency. The most significant accounts on the individualization of war can be distinguished along three diverse thematical axes: the ethical axis, the legal axis, and the material axis.

2.1 Individualization of war and international ethics

The first axis in the literature interrogates whether individualization depends on the affirmation of specific normative values to regulate the use of force at the international level. Here three theses are worth to be considered. The first resonates consequentialist premises combined with de-historicized deontological prescriptions drawn from Just War Theory. Supporters of this thesis argue that if an evil person is threatening a state, no matter its juridical and ethical standing, be it a simple citizen or leader, the threatened state has the moral duty and right to take measures against that individual. Such violent measures are morally justified if allow avoiding greater evils.⁴⁷⁵ This perspective is anachronistic as it does not conceive history being a variable and poses individualization of war as an in-between measure between peace and war, something more than arrest and less than war. Individualized war is simply a variant of national security policy and is legitimate as long it avoids greater evils.⁴⁷⁶ This argument, by de-historicizing some tenets of Just War Theory, is marked by a strong theological tone as it echoes Middle-Ages tyrannicide doctrines and Judaism prescriptions on self-defense.⁴⁷⁷ Walzer, talking about the recent intensification of U.S. targeted killings, claims that individualized war, “as long as undertaken with care,” is morally admissible. He makes clear that “tyrants do have to be targeted, however; blowing up the neighborhood in which they live is not a moral option.”⁴⁷⁸ Critical observers see this sort of moral

⁴⁷⁴ Robert Johnson, “Hybrid War and Its Countermeasures: A Critique of the Literature,” *Small Wars & Insurgencies* 29, no. 1 (January 2, 2018): 141–63, <https://doi.org/10.1080/09592318.2018.1404770>.

⁴⁷⁵ William H. Shaw, “Utilitarianism and Recourse to War,” *Utilitas* 23, no. 4 (December 2011): 380–401, <https://doi.org/10.1017/S0953820811000276>.

⁴⁷⁶ Seth Lazar, “In Dubious Battle: Uncertainty and the Ethics of Killing,” *Philosophical Studies* 175, no. 4 (April 2018): 859–83, <https://doi.org/10.1007/s11098-017-0896-3>.

⁴⁷⁷ Steven R. David, “Israel’s Policy of Targeted Killing,” *Ethics & International Affairs* 17, no. 1 (March 2003): 111–26, <https://doi.org/10.1111/j.1747-7093.2003.tb00422.x>.

⁴⁷⁸ Michael Walzer, “Targeted Killing and Drone Warfare,” *Dissent Magazine*, January 11, 2013, https://www.dissentmagazine.org/online_articles/targeted-killing-and-drone-warfare.

justification of extrajudicial assassinations as an anachronistic reinvention of Just War filled with “teleocratic aspirations,” ultimately leading to justify discriminatory forms of war.⁴⁷⁹

A second relevant thesis in the literature, instead, insists on the ineluctable spread of the liberal *ethos* at the international level. For liberal internationalists it still holds true what Thomas Paine had to say about war and the individual, namely that ‘man is not the enemy of man but through the medium of a false system of government.’⁴⁸⁰ Starting from progressivist positions,⁴⁸¹ scholars supporting the linkage between liberalism and individualized war try to hold that the incrementation of both individual protection and liability in war is the natural consequence of affirmation of the rational, self-interested individual as the sole political subject.⁴⁸² A path that can only end up by embracing the entire planet, because ontologically, as claimed by Moravcsik, “individuals are prior to politics, and therefore individuals rights are prior than any other political fact, including war.”⁴⁸³ Buchanan yields that the individualization of war is an intermediate stage of progressive rationalization of politics towards individualism. Such an intermediate stage sees the end of the sovereign state’s power to wage major war in favor of more limited phenomena of punishment against single individuals that do not share basic values of peaceful coexistence.

Liberals’ positions are not immune from critiques. Scholars as Dillon, Reid, and Neal, deploying *biopolitics* lexicon, argue the ontology of liberalism implies a ‘dual nature’ of the individual, a sacralized form of life endowed with natural reason and its opposite, the dangerous, risky individual to sweep away.⁴⁸⁴ Indeed, as put by Jabri, liberalism does not take away with war altogether as its defenders claim, rather it has necessarily to transform it into a “matrix of individual control” that knows no borders and assumes a global extent.⁴⁸⁵ Similarly, the French philosophers Gros and his fellow Férey convincingly propose to see in individualized phenomena of war a late-modern stage of social disaggregation in which political forms are shapeless: not war anymore, rather “états de violence” where “armed liberalism” provides security by disciplining individuals.⁴⁸⁶

The third ethical perspective is that of cosmopolitanism. Cosmopolitans are liberals and overlap with liberals blame on the nation-state, but deploy a different vocabulary and have a different theoretical referent point.⁴⁸⁷ Cosmopolitans conceive “humanity” as the ground of any possible politics.⁴⁸⁸ Cosmopolitanism underpins its ontology in the “Western natural law matrix” – based on

⁴⁷⁹ Nicholas Rengger, “On the Just War Tradition in the Twenty-First Century,” *International Affairs* 78, no. 2 (April 2002): 353–63, <https://doi.org/10.1111/1468-2346.00255>.

⁴⁸⁰ Michael Howard, *War and the Liberal Conscience* (London: Hurst & company, 2008), 30.

⁴⁸¹ The intellectual shift that underpins this reflection has its roots in the long tradition of liberal thinking and has found a proper international stature through a Rawlsian conception of justice and morality inevitably reducible to an individualistic theoretical basis situated in the liberal internationalism tradition, see Allen Buchanan, “Political Liberalism and Social Epistemology,” *Philosophy&Public Affairs* 32, no. 2 (April 2004): 95–130, <https://doi.org/10.1111/j.1088-4963.2004.00008.x>.

⁴⁸² Costas Douzinas, “Humanity, Military Humanism and the New Moral Order,” *Economy and Society* 32, no. 2 (January 2003): 159–83, <https://doi.org/10.1080/0308514032000073383>.

⁴⁸³ Andrew Moravcsik, “Taking Preferences Seriously: A Liberal Theory of International Politics,” *International Organization* 51, no. 4 (1997): 513–53, <https://doi.org/10.1162/002081897550447>.

⁴⁸⁴ Michael Dillon and Julian Reid, *The Liberal Way of War: Killing to Make Life Live*, Global Horizons (London ; New York: Routledge, 2009), 23–28.

⁴⁸⁵ Vivienne Jabri, “War, Security and the Liberal State,” *Security Dialogue* 37, no. 1 (March 2006): 47–64, <https://doi.org/10.1177/0967010606064136>.

⁴⁸⁶ By reworking some of the theses exposed by Judith Shklar on Liberalism Férey puts forward a critique of Liberal use of force, see Amélie Férey, *Assassinats Ciblés: Critique Du Libéralisme Armé*, Collection “Guerre et Stratégie” (Paris: CNRS éditions, 2020), 10–12.

⁴⁸⁷ Cécile Fabre, *Cosmopolitan War*, 1st ed (Oxford: Oxford University Press, 2012), 3–16.

⁴⁸⁸ Ruti G. Teitel, *Humanity’s Law* (Oxford ; New York: Oxford University Press, 2011), 74–78.

the centrality of the principle of “property” as opposed to that of “sovereignty” – to assert the universal validity of certain basic rights for the human.⁴⁸⁹ While the belief in the tendency towards a world city represents the *telos* of history,⁴⁹⁰ the institutionalized monopolization of force by a neutral *tertium* is the philosophical means to attain a such basic rights.⁴⁹¹ Cosmopolitans employ the doctrine of human rights as their universal institutional regime of basic rights, since “human rights [...] seek to protect human beings as persons rather than as citizens of particular states.”⁴⁹² Therefore, the logical side-effect of human rights regime is that those available to violate the basic principles of human rights can be identified as individuals by their personal denial of such principles and thus can be themselves excluded by the protection of such basic rights. Individualized war stands as a the only feasible measure to prevent human rights violation and avoid other violations with large-scale wars.⁴⁹³ Teitel, in her *Humanity’s Law*, is unequivocal on the point: “the judicialization of the war on terror reflects its globalization—that is, its spread and regulation beyond the state, and beyond the political. In this regard, the course of the war on terror, and that of the counterterror campaign, are illuminated by a humanity law approach.”⁴⁹⁴

The momentum of cosmopolitan theories in the post-Cold War era has prompted unsympathetic reactions from those seeing in cosmopolitanism dangers of a *monarchie universelle*. Critics argue that such a construction of universal ethics filling an ideal world-city is flawed by eurocentrism and infused with sheer Western hegemonic interest. Historians cautious to cosmopolitan projects have efficiently demonstrated how human rights are a historical product far from universal. Human rights are a polemical concept, which “evoke[s] hope and provoke[s] action.” Among such actions to enforce human rights violence is always included.⁴⁹⁵ The philosopher Zehfuss, while debating targeted killing, states the use of cosmopolitan ethics to defend the association between precision and ethics is a language of power that instrumentalizes ethics to render more acceptable Western interventionism. Cosmopolitanism and its human rights doctrine are neither new nor irreversible, reminds the legal philosopher Zolo, “repeated attempts in fact amount to the pursuit of a modern Cosmopolis in which peace and stability are to be guaranteed by a legitimized power hierarchy.”⁴⁹⁶

The three theses and their respective counter positions focus on the justifications of war, but do not emphasize on the political status of the subject of this kind of war. If those reviving Just War

⁴⁸⁹ Both Cassese and Peters, besides legal implications they discuss, put forward fundamental ethical arguments, see Antonio Cassese, *I diritti umani oggi* (Roma; Bari: GLF Editori Laterza, 2012), 38; A. Peters, “Humanity as the A and of Sovereignty,” *European Journal of International Law* 20, no. 3 (August 1, 2009): 513–44, <https://doi.org/10.1093/ejil/chp026>.

⁴⁹⁰ Seyla Benhabib et al., *Another Cosmopolitanism*, The Berkeley Tanner Lectures (Oxford; New York: Oxford University Press, 2006), 16.

⁴⁹¹ Norberto Bobbio, *Il problema della guerra e le vie della pace* (Bologna: Il Mulino, 2009), 109.

⁴⁹² Thomas Risse et al., *Power of Human Rights*. (Cambridge, GBR: Cambridge University Press, 1999), 5, <http://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=4638544>.

⁴⁹³ Welsh, “The Individualisation of War”; Ruben Reike, “The ‘Responsibility to Prevent’: An International Crimes Approach to the Prevention of Mass Atrocities,” *Ethics & International Affairs* 28, no. 4 (2014): 451–76, <https://doi.org/10.1017/S0892679414000604>; Ezio Di Nucci and Filippo Santoni de Sio, eds., *Drones and Responsibility: Legal, Philosophical and Sociotechnical Perspectives on Remotely Controlled Weapons*, Emerging Technologies, Ethics and International Affairs (Milton Park, Abingdon, Oxon; New York, NY: Routledge, 2016), 17 e passim.

⁴⁹⁴ Teitel, *Humanity’s Law*, 126.

⁴⁹⁵ Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2012), 20–23, <https://doi.org/10.2307/j.ctvj2vkvf>.

⁴⁹⁶ Danilo Zolo, *Cosmopolis: Prospects for World Government* (Cambridge, U.K.; Cambridge, MA: Polity Press, 1997), 130.

Theory have an anthropological understanding of the human subject, for liberals and cosmopolitans the subject is first and foremost a by-product of reason and culture. There is no contemplation of otherness as radically opposed to the Self in these accounts. Defining who the subjects of individualized war are and what political qualification they have then is not a primary concern for international ethicists, who rather try to work on transhistorical theories of war.

2.2 Individualization of war and legal arguments

Legal arguments on individualized war can be divided in two groups: a more nuanced approach that understands rules in *quasi*-constructivist terms, and a stronger, more formalist approach that reifies the validity of rules. In the first group, legal scholars with a softer approach defend the idea that individualization of war depends on a progressive process of “humanization of war” on behalf of the individual.⁴⁹⁷ Individualized war is the outcome of a cultural assimilation of international humanitarian law by military personnel and state officials that eventually has led to greater discrimination between civilians and combatants. Dill for instance claims that “the individualization of war is not only a moral goal that law ought to pursue. It is an observable multi-dimensional norm-shift in international relations, which creates a political imperative for international humanitarian law to effectively address and benefit the individual.”⁴⁹⁸ As noted by Melzer, despite the very ground of the laws of war, i.e. Lieber code and Geneva Conventions, explicitly prohibit practices as targeted killing, in exceptional circumstances when serious human rights violations are at stake, this practice may become a well-accepted custom.⁴⁹⁹

Nonetheless, legal scholars skeptical on the process of “humanization of war” have observed that the practice of targeted killing lies in a grey legal area that accommodates only strong party interests. In virtue of their asymmetric power, states violate basic requirements of the laws of war and misinterpret international law to pursue military goals.⁵⁰⁰ The argument is that lawyers are increasingly deployed alongside soldiers to fight wars that appear justified by using new legal artifacts or by pushing the limits of interpretation beyond decency.⁵⁰¹ Thus law is used instrumentally to serve power interest rather than addressing towards a culture of discrimination. Gunneflo, using historical cases, shows that “targeted killing is steeped in law from the outset and that law, particularly international law, has both *shaped* and *been shaped* by this practice.”⁵⁰² In favor of these skeptical views, it should be noted that targeted killings executed in the *war on terror*, if regarded in a heuristic

⁴⁹⁷ Theodor Meron, “The Humanization of Humanitarian Law,” *American Journal of International Law* 94, no. 2 (April 2000): 239–78, <https://doi.org/10.2307/2555292>.

⁴⁹⁸ Janina Dill, “Do Attackers Have a Legal Duty of Care? Limits to the ‘Individualization of War,’” *International Theory* 11, no. 1 (March 2019): 1–25, <https://doi.org/10.1017/S1752971918000222>.

⁴⁹⁹ Nils Melzer, *Targeted Killing in International Law*, Oxford Monographs in International Law (Oxford ; New York: Oxford University Press, 2008).

⁵⁰⁰ Mary Ellen O’Connell, “Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004–2009” (Rochester, NY: Social Science Research Network, November 6, 2009), <https://papers.ssrn.com/abstract=1501144>; Tamar Meisels and Jeremy Waldron, *Debating Targeted Killing: Counter-Terrorism or Extrajudicial Execution?*, Debating Ethics (New York: Oxford university press, 2020); Richard H. Pildes and Samuel Issacharoff, “Targeted Warfare: Individuating Enemy Responsibility,” *SSRN Electronic Journal*, 2012, <https://doi.org/10.2139/ssrn.2129860>; Kenneth Anderson, “Targeted Killing in U.S. Counterterrorism Strategy and Law,” *Contributions to Books*, January 1, 2009, http://digitalcommons.wcl.american.edu/facsch_bk_contributions/46.

⁵⁰¹ Susanne Krasmann, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” *Leiden Journal of International Law* 25, no. 3 (September 2012): 665–82, <https://doi.org/10.1017/S0922156512000337>.

⁵⁰² Markus Gunneflo, *Targeted Killing: A Legal and Political History* (Cambridge, United Kingdom: Cambridge University Press, 2016), 3.

way, are a collection of discrete episodes located in different and irreconcilable legal frames.⁵⁰³ It is indeed beyond any doubt that law has played a crucial role in shaping Western response to terrorism.

Formalists, instead, hold that individualization of war is a function of the progress made by the implementation of stricter rules in armed conflict that enhance individual liability and, by the same token, individual protection. On the Anglo-American side, scholars have argued that individualized war can be read into the frame of progressive and incontrovertible individualization of international law. They claim that since Nuremberg, through developments in international criminal law up to the establishment of the International Criminal Court, the individualization of international law has been tangible at different levels.⁵⁰⁴ It is held that by broadening the scope of international criminal law, there may be cases in which international law contemplates the killing rather than capture. Individualization of war amounts exactly to that kind of measure in the frame of individualizing international law.⁵⁰⁵ Due to the effect of more precise rules and liability mechanisms on individuals' behavior, individualization of war is part of the same process. On the other side of the Atlantic, instead, in Germany, Spain and Italy, a formalist and functionalist body of literature, following Jacobs theory of "enemy criminal law" or "Feindstrafrecht,"⁵⁰⁶ has purported the necessity to broaden the scope of domestic criminal law so to include the possibility of treating certain individuals as enemies under domestic criminal law.⁵⁰⁷

Critics see the formalist perspectives, both the Anglo-American and the European, as aporetic because both tend to intermingle the structures of two distinct domains, the domestic and the *international*, by hybridizing criminal law logics with *jus in bello* principles.⁵⁰⁸ To grasp the controversial relationship between individualized war and law, it is worth considering what David Kennedy has to say in the epilogue of his influential *Of Laws and War*: "in contemporary conflict law and force flow into one another. We make war in the shadow of law and law in the shadow of force. The boundary between war and peace are marked and unmarked in the language of law."⁵⁰⁹ Kennedy recognizes that the contentment of legal scholars with formal and traditional definitions of the other party in war without a problematization of its changing character in contemporary war is a symptom of the ambiguities that seize laws regulating the use of force. Much stronger is the opinion of Wouter Werner who argues that the contemporary reflection on international law is affected by a universalist understanding of international relations and consequently does not contemplate the existence of any legitimate form of difference. Wouter concludes that "the law of the liberal world order has a deeply rooted tendency to regard its enemies, not as equals, but as disturbing elements,

⁵⁰³ Marco Sassòli, "The Status of Persons Held in Guantanamo under International Humanitarian Law," *Journal of International Criminal Justice* 2, no. 1 (March 1, 2004): 96–106, <https://doi.org/10.1093/jicj/2.1.96>.

⁵⁰⁴ Alexandre Skander Galand, "Bemba and the Individualisation of War: Reconciling Command Responsibility under Article 28 Rome Statute with Individual Criminal Responsibility," *International Criminal Law Review* 20, no. 4 (August 7, 2020): 669–700, <https://doi.org/10.1163/15718123-bja10018>.

⁵⁰⁵ G. Blum, "The Fog of Victory," *European Journal of International Law* 24, no. 1 (February 1, 2013): 391–421, <https://doi.org/10.1093/ejil/cht008>; Adil Ahmad Haque, "Law and Morality at War," *Criminal Law and Philosophy* 8, no. 1 (January 2014): 79–97, <https://doi.org/10.1007/s11572-012-9165-x>.

⁵⁰⁶ Alessandro Gamberini, ed., *Delitto politico e delitto penale del nemico*, 1. ed, Nuovo revisionismo penale (Bologna: Monduzzi, 2007), 2–13.

⁵⁰⁷ Simone Regazzoni, *Stato Di Legittima Difesa: Obama e La Filosofia Della Guerra al Terrorismo*, Saggi (Milano: Ponte alle Grazie, 2013), 1–5; for a critical reading, see Roberto Bartoli, *Lotta al terrorismo internazionale: tra diritto penale del nemico, jus in bello del criminale e annientamento del nemico assoluto*, Itinerari di diritto penale 40 (Torino: Giappichelli, 2008), 12–29.

⁵⁰⁸ Bartoli, *Lotta al terrorismo internazionale*, 25.

⁵⁰⁹ David Kennedy, *Of War and Law* (Princeton [N.J.]: Princeton University Press, 2006), 165.

lawbreakers or enemies of the liberal legal order and thus humanity as a whole.”⁵¹⁰ It appears, then, that for legal scholars the traditional notion of *iustus hostis* is still a backdrop of reference to think about the other party in individualized war, but there is a poor reflection on the changing conditions that make such concept concrete.

2.3 Individualization of war and the power of technique

The third axis of scholarship emphasizes the material-technical dimension as the core determinant sustaining the individualization of war. A consistent group of scholars and policy makers is convinced that the possibility of fighting a war against single individuals is broadly a function of systemic technological developments.⁵¹¹ It is claimed that the more single individuals seek harmful ways for attacking independently, the more, consequently, states acquire asymmetric capabilities to prevent individuals’ threats. On the matter, Blum and Wittes, who hyperbolically depict something like a technological state of nature, have written that “modern technology enables individuals to wield the destructive power of states.”⁵¹² For this reason states have indeed shown in the last three decades to seek different grounds of confrontations, trying to minimize political risks and maximize political outcomes.⁵¹³ As once asserted by Donald Rumsfeld “we need to find new ways to deter new adversaries.”⁵¹⁴ Individualized war allows to control and target exactly only dangerous individuals, reducing costs and minimizing losses. An economic-oriented form of war, sustainable and always under control of escalation. In Colonel Voelz view, “individualization of war” is not simply a tactic, rather “it reflects a new strategic calculus that has elevated the status of the individual combatant into a foremost concern of national security policy and made the targeting of these entities a major driver of doctrinal and technical innovation on the battlefield.”⁵¹⁵

Post-colonial scholars, political economists and geographers of Marxist heritage have raised doubts on the simplistic and deterministic tone of technology-based arguments. The main object of critique is the fact that contemporary targeted killings take place exactly where the effects colonial domination have been decisive on the development of stable political structures: Somalia, Yemen, Palestine, Afghanistan. Hence, material inequalities cutting across the *international* are still able to explain uneven relations of domination and violence between North and South. In the case of individualized war, as argued for instance by Satia, post-colonial dynamics still operate on the same fault lines that defined the imperial punitive use of violence during colonization. By this standpoint, individualized war is conceived as a more sophisticated expression of the relationship of exploitation and violence on scattered subjects in colonial rule.⁵¹⁶ While for political economists the possibility of

⁵¹⁰ Werner, “From Justus Hostis to Rogue State the Concept of the Enemy in International Legal Thinking.”

⁵¹¹ “Disequilibrium” is read in the terms proposed by Gilpin, see Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1983), 14–19, <https://doi.org/10.1017/CBO9780511664267>.

⁵¹² Benjamin Wittes and Gabriella Blum, *The Future of Violence: Robots and Germs, Hackers and Drones: Confronting a New Age of Threat* (New York: Basic Books, 2015), 25.

⁵¹³ Claus Kreß and Robert Lawless, eds., *Necessity and Proportionality in International Peace and Security Law*, 1st ed. (Oxford University Press, 2020), 131–34, <https://doi.org/10.1093/oso/9780197537374.001.0001>.

⁵¹⁴ Donald H. Rumsfeld, “Transforming the Military,” *Foreign Affairs* 81, no. 3 (2002): 20, <https://doi.org/10.2307/20033160>.

⁵¹⁵ Glenn J Voelz, *Rise of Iwar: Identity, Information, and the Individualization of Modern Warfare* (New York: Skyhorse Publ., 2018), 1.

⁵¹⁶ Priya Satia, “Drones: A History from the British Middle East,” *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 5, no. 1 (January 28, 2014): 1–31, <https://doi.org/10.1353/hum.2014.0002>; Christine Agius, “Ordering without Bordering: Drones, the Unbordering of Late Modern Warfare and Ontological Insecurity,” *Postcolonial Studies* 20, no. 3 (July 3, 2017): 370–86, <https://doi.org/10.1080/13688790.2017.1378084>.

targeting single individuals does not simply depend on West technological progress, but it also depends on the West capability to combine its military-industrial complex with the patterns of globalized economy. As demonstrated by the data provided, the Western military-industrial complex has become an economic *chimera* embedded in scientific research, entertainment industry, and global finance, which makes war surprisingly sustainable in economic terms if compared to the past.⁵¹⁷

The materialist approaches to individualization of war depict an interesting picture of the levels of asymmetry in experience, stakes, risks, and expectations between actors in contemporary war. The power of technique, namely the power of impacting reality by invention, transformation, and production of material artifacts, is shaping our world and the political relations therein in an unprecedented way. Such materialist scholars however, even in their neo-Marxists accounts, do not go beyond the rigidities of political economy critique and end by overemphasizing the relevance of material inequalities, paying far less attention to other dimensions of power as the power of ideas, of language, and of concepts. Therefore, the asymmetry between the West and the other party they focus on is eventually reduced simply to a material asymmetry with no reference to the intellectual asymmetry that marks individualized war. This does not reconstitute a full picture explanation of contemporary patterns of war where vocabularies, ideas and concept

3. The concept of regular enemy and the *individualization of war*

In the second part, the thesis will examine the concept of regular enemy at the time of *individualized war*, analyzing the three paradigms that underpin the *individualization of war*. It will be addressed how the regular enemy is constructed and represented in the three paradigms as: “unjust combatant”, “unlawful combatant”, and “target”. The concept of enemy does not disappear altogether, but it is reframed in new argumentations about war. Such new argumentations do not discharge the concept of regular enemy, but to a certain extent they reframe it. Reframing means challenging the premises illustrated in the discussion on modern thinkers. The construction of a fictional space of war, where war is delimited status is challenged at its roots. Therefore, as it will be illustrated henceforth, regular enmity in contemporary war is the by-product of an intellectual negotiation between modern arguments about war and the enemy and new articulations of space and time, peculiar to the late globalization.

The thesis will try to show that with the rhetorical and material emergence of the *individualization of war*, once again (and perhaps this time in a radical way) the problematic and presumed completeness of the modern binomial synthesis ‘state-individual’ in matters of political violence seems to be questioned. In post-Cold War socio-cultural context, the concept of the enemy in its modern declination as a collective regular enemy does not disappear altogether, but certainly remains crushed in a series of distortions, asymmetries, contradictions, and hypocrisies and it appears to be gradually contaminated with other concepts in a continuum of potential indistinction. Here, then, the fault-lines of international enmity become difficult to trace along traditional borders of states, or of other collective political entities (in the making) such as national entities; and, at the same time, the absence of a temporal mediation in the interaction between the two parties makes enmity

⁵¹⁷ Geoff Martin and Erin Steuter, *Drone Nation: The Political Economy of America's New Way of War* (Lanham, Maryland: Lexington Books, 2017), 1–15; James Der Derian, *Virtuous War: Mapping the Military-Industrial-Media-Entertainment Network*, 2nd ed (New York: Routledge, 2009), 126.

against single individuals forcibly irreversible, thus projecting the fault-lines of enmity also towards the future and opening the way to the possibility of pre-emptive actions.

SECOND PART

Chapter 3 – The *ethico*-political paradigm: *Revisionist* positions in just war theory and the “unjust combatant”

1. Introduction

This chapter aims at looking through the lens of the concept of regular enemy to an intellectual paradigm emerged after the end of the Cold War in Western political thought. The paradigm here considered is that of the so-called *revisionist* just war theorists; a paradigm elaborated with peculiar emphasis by Western analytic philosophers and ethicists, mainly working in Anglo-Saxon universities and academic institutions. This intellectual paradigm is, above all, *ethico*-political as it tends to analyze the phenomenon of war on the moral axis and to provide practical political responses on moral behavior in war. The tradition to whom *revisionists* belong is that of the Scholastics just war theory⁵¹⁸, resurged during the twentieth century in a secularized variant. *Revisionists*, nonetheless, attempt to distance from core Scholastics prescriptions and try to challenge at its roots the political tenets of just war theory, by following a liberal-individualist epistemology. *Revisionists* theory impact has gone well beyond the mere theoretical reflection on war, influencing juridical, strategic, and, more broadly, cultural understanding of contemporary phenomena of war.

As this chapter tries to show, the emergence and the consolidation of *ethico*-political perspectives on war cannot be seen in isolation from the context in which *revisionists* philosophers have advanced their theories and from the role of moral experts they have played in such a context. *Revisionists* ideas on just war must be regarded as part of the post-Cold War Western project of consolidating an international order grounded on a liberal *ethos* and on the principles of objective justice. *Revisionist* theorists are, of course, not coterminous with the ideologues of the liberal international order project, though, they share some intellectual convictions, as individualism and progressivism, which eventually point to similar directions as the reduction of war through morality and the *juridification* of international relations. Re-interpreting the concept of enemy and, more specifically, the concept of regular enemy, is a substantial element of the broad idea they purport to limit the destructive effects of war through morality.

In order to have a sight on the underpinnings of just war *revisionist* positions emerged in the passage between the end of twentieth and beginning of twenty-first century, it is essential to situate this stream of thought within the larger framework of the late-modern rediscovery of just war theory. Accordingly, this chapter firstly locates *revisionist* thinkers in the specific intellectual context of just war theory revival and consolidation of the so-called *traditionalist* just war canon. Then, it explores the core tenets of *revisionist* theory on war, comparing it to the *traditionalist* canon, and eventually it assesses the use and the meaning of the concept of the regular enemy within *revisionist* theory.

The chapter argues that the *revisionist* distinction between “just combatant” and “unjust combatant” undermines the logics of the modern regular enemy concept, but at the same time does not completely detach from it. As a matter of fact, the concept of regular enemy functions as a scenery in *revisionists* just war theory that serves the scope of conceptually turning war from a collective to

⁵¹⁸ Compenetrated by legal, theological, and political discourses, just war is a complex set of argumentations on war that have defined and still define the ethical normative understanding of war. Rengger, “On the Just War Tradition in the Twenty-First Century.”

an *individualized* form. In other words, *revisionists* use part of the argumentative logic that defines the concept of regular enemy as to anchor their theory, but eventually detach their theory from the idea of war as a collective enterprise and inscribe it into a form of *individualized war*.

2. The twentieth century revival of just war tradition and its repercussions

As showed in the previous chapters, tracing a neat line between the intellectual tradition of just war and the late-comer tradition of regular war amounts to a risky anachronistic artificiality. Just war theory sharply consolidates through the work of Scholastics theologians, among whom stand unchallenged the legacies of Aquinas and Vitoria. However, the logics and the vocabularies peculiar to just war cannot be limited to the sole Scholastics' work and cannot be opposed to modernity as pre-modern categories. Just war theory is wholly a modern tradition which intermingles with other theories and is vivified time after time by figures as Alberico Gentili, Hugo Grotius, and Emer de Vattel. Both Gentili and Grotius while paving the way for the thinkability of regular war, are simultaneously catalysts of just war ideas and strive to integrate such ideas in their normative systems. Even later, the constellation of the ideas composing just war theory does not disappear; Vattel amply resorts to just war vocabulary, which underpins his theory of "war in due form." Substantial traces of the system of just war theory can eventually be found within the articles of the International Conventions on the Laws of War, drafted at the beginning of the twentieth century. Put simply, just war theory is a powerful and articulated argumentative instrument that cannot be cast aside easily. Neither its Christian origin, nor its abstract premises and speculative method, nor its controversial complicity with colonialism and imperialism,⁵¹⁹ are sufficient reasons to discard just war relevance for the reflection on war. If it apparently disappears once challenged by the secularizing regular war theory, just war runs parallel and amalgamates with other theories on war, reappearing often on the surface with powerful momentum.

The end of the nineteenth and the beginning of twentieth century is a moment in which just war theory comes back with momentum. Late modernity witnesses a significant revival of scholastic just war theory as part of the expanding agenda of the newborn doctrine of International Law. Facing the quandary on how to regulate war as a policy instrument, firstly with the Franco-Prussian War and then with the race to armaments preceding the First World War, international lawyers struggle to find a ground for International Law.⁵²⁰ Amidst the lively opposing between pacifist movements and interventionist policies, international lawyers seek an institutional, yet morally grounded, way to regulate international relations.⁵²¹ Their intention is to identify a ground that transcends positive law and touches upon a deeper nucleolus of political morality that prevents states from using war as a policy tool. At the Ghent *Institut de Droit International*, the founder members Jaquemyns (1835-

⁵¹⁹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, 1st ed. (Cambridge University Press, 2005), 14–22, <https://doi.org/10.1017/CBO9780511614262>.

⁵²⁰ In the *Institut* "Preamble to the Statutes" the members write "les grands événements dont l'Amérique et l'Europe ont été récemment le théâtre, ont fait naître partout le sentiment profond de l'imperfection du droit international. A mesure que les relations des peuples entre eux deviennent plus fréquentes, plus intimes et plus fraternelles, cette imperfection trouble et alarme davantage les intérêts et provoque, parmi les nations civilisées, une aspiration toujours plus vive vers une situation mieux en harmonie avec le progrès accompli dans les autres branches des sciences juridiques. On regrette qu'il n'existe point de règles claires, précises et généralement acceptées qui permettent, par exemple, de discerner le caractère injuste d'une agression." Arthur Eyffinger, *T.M.C. Asser (1838-1913) (2 Vols.): "In Quest of Liberty, Justice, and Peace"* (Brill | Nijhoff, 2019), 539, <https://doi.org/10.1163/9789004397972>.

⁵²¹ Luigi Nuzzo, "Disordine politico e ordine giuridico. Iniziative e utopie nel diritto internazionale di fine Ottocento," *Materiali per una storia della cultura giuridica*, no. 2 (2011): 319–38, <https://doi.org/10.1436/35957>.

1902), Lorimer (1818-1890), and Nys (1851–1920) “h[o]ld that the Vitorian tradition should be recovered as a nourishing intellectual source of the ‘science of the law of peoples,’ to the development and progress of which the Institute foundationally pledged itself in 1873.”⁵²² In their opinion, just war thinkers as Vitoria not simply can be regarded as noble fathers of the discipline, but provide the ground for the exportation of International Law *verbum* beyond Europe. Indeed, Scholastics thinkers serve to locate the origins of the idea of a moral unity of the world.⁵²³ The moral unity of the world, as indeed hold the founders of the Ghent *Institut*, is the very basis for any theory of International Law that aspires to be universal and to solve the problem of war as an instrument of policy.⁵²⁴

The veritable rediscovery of just war theory, though, occurs in the United States, in the frame of revival of the figure of Francisco de Vitoria and Francisco Suárez. Due to the shocking brutality of the Balkans Wars and of the First World War, to the problematic institute of neutrality, and to the destabilizing effect of war on international relations, American International Law scholarships feels the urgency to rethink the meaning of war. American international lawyers realize ahead of time the need of an integral international legal system that grants the United States its hegemony in the Americas and its detachment from European troubles. It is in the context, that the figure of Vitoria, his theories on war and the theories of his disciples are decisively recovered as a sort of intellectual solution to the moral dilemmas posed by interstate *realpolitik* and world wars. War as instrument of policy that, despite its international undesirability, state can use on a symmetric ground without incurring in moral or legal guilt, proves to be destructive and must be stopped. The uncertainties of the time and the profound transformations impressed on war by the two mechanizing components, namely masses of men and the large-scale industrialization, show that the logic of regular war is potentially unlimited. War escapes the boundaries that the Vattelian system a century earlier imagined containing violence through the combination of the natural law and the law of nations. War reaches the Clausewitzian extremes, breaking any possible equilibrium of force, well beyond what Clausewitz could think eighty years before. For diplomats and lawyers on the other side of the Atlantic, recovering just war theory means exactly challenging the idea of “war as policy” and reestablishing a substantial difference between those making war justly and those unjustly. The underpinnings that make just war theory an efficient system to think about war and international relations are chiefly three: the universalist cosmopolitanism of its interpreters, for whom humanity is the main reference. The existence of a value of justice external to political relations, to assess with the instruments of logic and with rational argumentation. And the firm belief in law and morality as tools to teleologically direct history towards progress and peace.

The use of just war theory presupposes that resorting to war is made upon the condition of justice and not upon other conditions as necessity, empire, or faith. The use of justice to justify the use of force is primarily an ethical mode of argumentation. It first and foremost regards drawing an ethical difference between the Self and the other party in war based on a moral position. This implies

⁵²² José María Beneyto, *Empire, Humanism and Rights: Collected Essays on Francisco de Vitoria*, 2022, 77, <https://doi.org/10.1007/978-3-030-82487-7>.

⁵²³ Luigi Nuzzo, “Disordine politico e ordine giuridico. Iniziative e utopie nel diritto internazionale di fine Ottocento.”

⁵²⁴ As Jaquemyns writes some years before the foundation of the *Institut* “ainsi les documents communément indiqués comme sources du droit international, puisent eux-mêmes leur force obligatoire dans une source commune, qui est la conscience du genre humain, manifestée par l’opinion collective des hommes éclairés. Mais cette conscience n’est pas stationnaire; elle est éminemment progressive. Les principes admis au début vont d’âge en âge s’épurant, s’amendant, se rectifiant. Il en résulte que le droit international est également progressif de sa nature. Le but de ce progrès, son idéal est d’établir entre tous les hommes une espèce de société autre.” Gustave Rolin-Jaequemyns, T.M.C Asser, and John Westlake, *Revue de Droit International et de Législation Comparée*, v. 1 (Institute of International Law B. Christophe, 1869), 228.

not recognizing the other party in war as a moral peer, as a regular enemy justly standing in his position and fighting for his right, but as unjust party, who takes part in the war without a proper moral standing.

2.1 Early twentieth century appeal to just war thinkers against power politics

Central figure in the political rediscovery of the Second Scholastics at the dawn of the twentieth century is the American international lawyer James Brown Scott (1866-1943). Scott is a jurist and his work is juridical, however he immediately realizes that the intellectual project of International Law cannot be grounded elsewhere than in a international ethical theory. This is one among the reasons why Scott looks back at just war theory and its main interpreters.

The ambitious intellectual project of Scott is to re-ground the newborn International Law into the Scholastics thought and decenter it from secularizing thinkers as Grotius and Enlightenment philosophers.⁵²⁵ Member of the American delegation at the second Hague Conference in 1907 and associate to the *Institut de Droit International* in Ghent, Scott is a crucial character in the dissemination of the Scholastics thought in the Americas and beyond.⁵²⁶ His project is conducted by re-reading Vitoria and Suárez works in historical continuity with International Law and inscribing the Salamanca theologians' works into contemporary history. As the broader narrative in the discipline at Scott's time used to attribute to Hugo Grotius the paternity of International Law, Scott's political objective is setting the foundation of International Law very *nucleus* in the Scholastics thought, claiming:

From a different approach, they [Vitoria and Suárez] reached a common goal – the establishment of a single and universal standard of right and wrong in the relations of individuals within a state, in the relations of states with one another and in the relations of the international community composed of these individuals and of these states.⁵²⁷

To Scott, International Law is more than a discipline, “it [is] almost a religion based upon universal principles of morality.”⁵²⁸ Scott philosophical standing is “firmly rooted in Jeffersonian liberalism, with its emphasis upon the individual.”⁵²⁹ His endeavor consists in recreating a narrative of the “trued birth” of the discipline and establishing an ethical line of continuity between the past and the present so to authorize International Law morally and historically. This move is done by a reading from an secularized perspective the Scholastics universalist thought and understanding it in light of his present needs, in particular, in light of the wars breaking out in Europe between 1912 and 1918.⁵³⁰

⁵²⁵ Paolo Amorosa, *Rewriting the History of the Law of Nations: How James Brown Scott Made Francisco de Vitoria the Founder of International Law*, First edition, *The History and Theory of International Law* (Oxford, United Kingdom; New York, NY: Oxford University Press, 2019), 9–10.

⁵²⁶ Juan Pablo Scarfi, *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford University Press, 2017), 3, <https://doi.org/10.1093/acprof:oso/9780190622343.001.0001>.

⁵²⁷ James Brown Scott, “Francisco Suarez: His Philosophy of Law and of Sanctions,” *Georgetown Law Journal* 22, no. 3 (1934 1933): 405–518.

⁵²⁸ R.D. Nurnberger, *James Brown Scott, Peace Through Justice* (Georgetown University, 1975), 2, <https://books.google.ch/books?id=TIKRnQEACAAJ>.

⁵²⁹ Nurnberger, ii.

⁵³⁰ George A. Finch, “James Brown Scott, 1866-1943,” *The American Journal of International Law* 38, no. 2 (1944): 183–217, <https://doi.org/10.2307/2192693>.

The revival of just war theory aims at bringing the decisive banning of war as an instrument of policy. This implies reassessing the relationship between war and necessity that regular war theories had established. The outcome is to attribute to certain subjects the power to resort to war under specific conditions. And the passages of Vitoria in the *Relectiones* on the Indians and on war and excerpts from Suárez treatise on war can serve as the most authoritative sources to move into this direction.⁵³¹ Grounding International Law in Vitoria's thought means, first of all, establishing justice outside the sovereign state and defining justice as a matter of man versus man relation. As with the lesson of the Second Scholastics, the state is only a form of mediation where political authority rests on temporarily, but it in no way can alone possess the measure of justice. The authority of the state must balance the attainment of justice with external, objective conditions. As Scott himself writes after the First World War "whether we admit it with open eyes, or ostrich-like bury our heads in the sand, there is such a thing as justice, independent of the state, above it and beyond it."⁵³² This is core tenet from which a theory of just war can spring and from which objective principles of international justice can be enucleated. Scott follows Vitoria on the importance of a legitimate authority as a requirement to declare public war, but he attaches to law the very role of authority. Law transcends states and political authorities and becomes the only principle through which war can be declared:

[T]here will be a single law, with a single and impersonal application in every one and all of the states forming the international community, and the citizens or subjects of these states will be coterminous and identical with humanity, which always was, which is and ever should be above and beyond any nation or any group of nations, however great, however powerful, however civilized.⁵³³

Scott stresses the fact that Vitoria allows only a narrow space for war to be just. The subtle difference that Vitoria makes about the case for a just war is a remarkable element for Scott, which makes Vitoria exactly what Scott is looking: the father of International Law intended as the moral counterpart of war. According to Scott, Vitoria detailed precision in constructing its normative theory of war can guide policy even in the twentieth century and after the shocking event of the First World War. Indeed Scott, commenting Vitoria's passage on the laws of war, claims:

By a series of analogies Vitoria demonstrates that the prince engaged in a just war is to be regarded as a judge, with the rights and the duties of a judge in all matters which could be the objects of a suit, civil or criminal, if they could be brought as private causes before a national court. The implication is clear that such matters would assuredly have been objects of a suit before an international court of the princes, if one had existed in his day with jurisdiction over foreigners according to his conception. As thus stated, the matter seems

⁵³¹ In the re-reading of Vitoria and Suárez contributions, Scott highlights the consistency of just war system. See James Brown Scott, *Law, the State, and the International Community* (Union, N.J: Lawbook Exchange, 2002), 281–88.

⁵³² Scott's process of re-writing the origins of International Law culminates in 1911 with the decisive editorial work on the *Classics of International Law Series*. commissioned. Scott is appointed General Editor by the *Carnegie Endowment for Peace* for the publication of the key works deemed to be at the origins of International Law in *Series*. As noted, "although an enthusiastic believer in the casebook method of teaching law in the classroom, including international law, as Solicitor for the Department of State Dr. Scott was confronted at once with the need of access to wider sources of the law. In confessing this need he admitted that "it is impossible for students of international law in our various colleges and universities to trace the history of international law to its sources." See Finch, "James Brown Scott, 1866-1943."

⁵³³ Amorosa, *Rewriting the History of the Law of Nations*, 113.

simple. [...] What is the authority which granted this jurisdiction? 'It is granted by the laws of nations and by the authority of the whole world.'⁵³⁴

The rereading and commenting of Vitoria, occurs with the intention to institutionalize war into the action of supranational organs so to outlaw any other kind of war outside this dimension. Scott's revisitation of just war indeed considers war as an *extrema ratio*, in which it is an institution that decides on behalf of the whole (not always clear whether Scott intends the whole as "humanity", the "world", "family of nations", etc.) to move war. Scott "[a]t the Hague Convention of 1907, proposes to reform every aspect of the international legal order, including the establishment of an International Court of Justice, along US or at best Anglo-American lines."⁵³⁵ The concept of just war returns thus not in the Vitorian fashion which sees the prince as judge, but into an internationalist, institutionalized version. Indeed, Scott borrowing from Vitoria's the logic of just war, tries to unhinge the power of states to make war without doing away thoroughly with the authority of states.

It is not improper to observe that the world of our day seems not yet to have grasped the full significance and meaning of the Spanish Dominican's doctrine. Modern nations, to be sure, have long been accustomed to act as judges in controversies affecting them; but too often they have insisted, and still insist, on this as their peculiar and exclusive right, stubbornly maintaining that in all disputes which concern their interests they themselves, even if their cause be the most dubious, are the sole judges competent to enter judgment. Victoria's view was that each and every ruler had the power of a judge only if his cause were just, and that his support of an unjust cause stripped him at once, so far as international law was concerned, of any power to pass on the right or wrong of the controversy. The simple truth is that the Victorian conception is entirely incompatible with the doctrine of sovereignty, by which, in its baldest form, each so-called sovereign nation claims the absolute right to do as it pleases in so far as its strength permits, without reference to the rights of any other nation or to the international community and its rules.⁵³⁶

As highlighted by Scarfi, Scott's understanding of international relations is progressivist and deeply rooted in American exceptionalism. It combines a form of "flexible pragmatism with a certain degree of idealism."⁵³⁷ Scott and his colleagues resort to Christian thought on war because it epitomizes perfectly a solution for the tension between self-interest and morality.⁵³⁸ Christian thought allows to keep together morality, law, and politics through the two poles: community and individual, state and humanity. Their objective is to advance a theory of international relations and of International Law that contemplates autonomy and sovereignty on the one hand, and intervention and missionary politics on the other. Scott "promote[s] not only anti-colonial principles of self-government but also the international rule of law, the legal condemnation of conquest, war, and aggression, the judicial settlement of international disputes through the creation of international courts of justice, the codification of international law and ideals of international and hemispheric solidarity and

⁵³⁴ James Brown Scott and Francisco de Vitoria, *The Spanish Origin of International Law. Francisco de Vitoria and His Law of Nations* (Union, N.J: Lawbook Exchange, 2000), 210–11.

⁵³⁵ Mark Somos and Joshua Smeltzer, "Vitoria, Suárez, and Grotius: James Brown Scott's Enduring Revival," *Grotiana* 41, no. 1 (June 16, 2020): 137–62, <https://doi.org/10.1163/18760759-04101007>.

⁵³⁶ James Brown Scott, *The Catholic Conception of International Law: Francisco de Vitoria, Founder of the Modern Law of Nations, Francisco Suárez, Founder of the Modern Philosophy of Law in General and in Particular of the Law of Nations: A Critical Examination and a Justified Appreciation* (Clark, N.J: Lawbook Exchange, 2007), 212.

⁵³⁷ Scarfi, *The Hidden History of International Law in the Americas*, 4.

⁵³⁸ James Brown Scott, "Judicial Settlement of International Disputes," *Georgetown Law Journal* 15, no. 1 (1927 1926): 35.

cooperation.” Scott’s idea of international peace is thus dependent on the submission of state relations to juridical bodies that can assess the justness of the use of force.⁵³⁹ To assess such a justness the substantial move is to create a moral-juridical *fattispecie*: aggression. Aggression is stigmatized as the kind of behavior that generates moral and juridical injustice. The consequence is that the enemy cannot be intrinsically regular but, following the path traced by Christian thinkers on war and re-adapted to the crime of aggression, only a wrongdoer.

On this phase of the subject I shall invoke the authority of Francis of Vitoria [...] It may be difficult to decide whether a war is just in its causes; it is, however, possible and in a way easier to reject causes as palpably unjust. Thus, according to our friend Francis ‘difference of religion is not a just cause of war.’ This statement is a commonplace to us in 1926; it was a brave pronouncement in 1532. ‘Extension of empire is not a just cause of war “Therefore it is certain,’ continues Francis without an interruption, ‘that princes can punish enemies who have done a wrong to their state and that, after a just war has been duly and justly undertaken, the enemy are just as much within the jurisdiction of the prince who undertakes it as if he were their proper judge.’ War was only justifiable if its cause would have justified a court of the community of nations, had one existed in his day, to assume jurisdiction of the offense and to render judgment. It is therefore of interest, in the light of the progress which we are making in this direction, to dwell upon the matter somewhat, for the views of Francis, of his predecessors and contemporaries are the foundation and justification of an international court of justice.⁵⁴⁰

The difference with Vitoria and the Second Scholastics is that the aggressed state is no more *iudex hostium*, namely empowered to judge the aggressor.⁵⁴¹ In Scott institutionalized just war theory the aggressor must be brought before international institutions as a violator of peace. Of course, this does not mean that the concept of regular enemy is altogether delegitimated and abandoned; though, this links the concept of enemy strictly on the case of aggression. Such a linkage represents a major conceptual shift in international affairs.⁵⁴² Scott thorough view on institutional just war, emerged in the thirties, can be explicated as such:

The history of mankind is but the history of individuals on a larger scale; the arbitration of private parties is the precedent of arbitration between nations just as arbitration between nations is the forerunner of judicial proceedings of nations in courts of their own creation. The process is simple and it is inevitable.⁵⁴³

Finally, in the thirties, Scott’s institutional just war theory perspective leads him to regard critically the Hague Conferences achievements, holding in the *Preface* of his *Law, the State, and International Community* that:

[M]y belief that the so-called law of war is not true law. The late Andrew Carnegie rightly condemned war as the ‘foulest blot upon our civilization,’ and the idea that the rules and regulations applying to that ‘blot’ should be raised to the dignity of law seems little if

⁵³⁹ Scott.

⁵⁴⁰ Scott.

⁵⁴¹ Schmitt and Ulmen, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, 121.

⁵⁴² As noted by Schmitt in different passages, the recovery of Vitoria as father of International Law is myth-making that serve polemical scopes and a political agenda. Schmitt and Ulmen, 119; Carl Schmitt et al., *Writings on War* (Cambridge, UK ; Malden, MA: Polity, 2011), 33-39–126.

⁵⁴³ Scott, “Judicial Settlement of International Disputes.”

anything less than an absurdity. Law is one of the highest expressions of civilization: war is, for the most part, the negation of law; and to speak of the law of war is -to bestow the name of law upon the very rules by which it is either silenced or destroyed.⁵⁴⁴

The rediscovery of the Scholastics and thus of his just war vocabulary has profound influence and tangible implications on legal and politics practices on war. The conceptual shift that the recovery of just war thinkers as Vitoria and Suárez produces on international relations is evident and is inextricable from the context of the interwar period. Scott's approach relies on the idea of justice as morality and law, where war has no other place than as a response to aggression. Aggression is stigmatized in a legal *fattispecie* and formalized as the core tenet of international relations. And the regular enemy is therefore morally stigmatized in relation to the case of aggression. This logic is strictly connected to the interwar evolution of international institutions. From the mechanism of war prevention instituted with the League of Nations since 1919 to the *Briand-Kellog Pact* (1928) aimed at the "outlawry of war", it is possible to see the intellectual move that leads towards delegitimizing war as a regular instrument of policy. Such intellectual move is a by-product of a conceptual shift in the regularity of the enemy. The role of International Law experts and international lawyers as Scott, Nys, and Trelles in providing the authoritative sources for such a conceptual shift is certainly determinant.⁵⁴⁵

2.2 The experience of abyss and the appeal to conscience: just war theory after the Second World War

The Christian thought of just war theory is subject to another moment of prosperity in recent history: the second half of the twentieth century. The trauma of the Second World War and its tragedies, the often-bloody process of decolonization, and the configuration of a nuclear age, pose important moral dilemmas on the use of force. In the West, alongside historians, military strategists, International Relations and International Law scholars, even ethicists and theologians are interested in addressing how and in under what conditions the use of force is not simply legal, but also morally permissible. Rather than starting from the mechanisms for the attainment of universal justice as done by James Brown Scott, the preoccupation of this second generation of Just War theorists is how to justly respond to injustice without committing further injustice.

These theorists adopt a view on war that largely corresponds to the "post-Second World War legal regime governing the use of force".⁵⁴⁶ The legalization of self-defense under article 51 of the United Nations Charter and the ban of aggressive war heritage of the *Briand-Kellog Pact*, are the intellectual backdrop of the second generation of just war theorists. Their fundamental concern is how to govern states' use of force in such cases in which the legal regime rules are indeterminate.

The potential presence of injustice in the world is the basic datum that holds this second revival of just war tradition. Even in this case, the Scholastics writings on war prove once again to be a viable and authoritative source to ground a moral theory of war to respond to evil. The main critical fault-line on which such thinkers work is the tension between justice and power; a question that becomes more and more relevant when Western societies face the confrontation between nuclear

⁵⁴⁴ Scott, *Law, the State, and the International Community*, ix.

⁵⁴⁵ Koskenniemi, *The Gentle Civilizer of Nations*, 39.

⁵⁴⁶ Daniel R. Brunstetter and Cian O'Driscoll, eds., *Just War Thinkers: From Cicero to the 21st Century*, War, Conflict and Ethics (London ; New York: Routledge Taylor & Francis Group, 2018), 209.

powers during the Cold War. These ethicists speak to the audience of secular and liberal states, where democratic institutions allow to constrain tyrannical use of force and grant against irrational use of force. From such a perspective, just war theory is used as an intellectual device that allows to combine political power with moral responsibility and create deontological guidance to politics finding a balance between justice and power, might and right. Two main approaches stand out in the second revival of just war: a religious, theological approach and a secular one.

In the theological approach, the American Jesuit John Murray (1904-1967) suggests using just war theory to advance a moderate and relative Christian pacifism. The key tenets of such relative pacifism are two: that the deliberation on the use of force must be a function of social morality and prudence, while the second that war against profound forms of injustice is the only acceptable use of force.⁵⁴⁷ Just war tradition is seen by religious thinkers as the only viable argumentative restraint to the cynical realist arguments, dominating international politics at the Cold War time. But it does not propose a practical agenda beyond a prescription for moderation and prudence.

While the second approach, the secular one, engages in more vivid discussion of morality and does fail to tackle the question of “what to do?”. In the early sixties the American philosopher Paul Ramsey (1913-1988) publishes two books on war, directly referring to just war core tenets and arguing that in specific circumstances conducting a war is justified. Ramsey never really looks to revitalize just war tradition thoroughly, “rather he understood himself as a theologian drawing on immutable ideas to explicate Christian just war doctrine. Employing the ideas on War of Augustine and Aquinas as “treating them as windows on the absolute.”⁵⁴⁸ Ramsey objective is to express a rational, prudential theory of political responsibility, which includes guidance on the use of force.⁵⁴⁹ Ramsey dwells deep in the principle of authority to understand what sort of moral obligation can justify the use of force and “establishes the theological foundations of his political ethics [...] to the external rather than internal nature of moral obligation.”⁵⁵⁰ From this preoccupation stems his political theory of war, which situates between a form of light pacificism that rejects violence and a realism that presupposes “might as right”. His theory is based on the Christian “love for the neighbor” premise, which means that “so long as there is injustice in the world, there may arise some circumstances in which acting out of love for the neighbor implies using violent force in the service of that neighbor.”⁵⁵¹ Ramsey’s pivotal ethical preoccupation, which he shares with Ambrose and other Christian thinker on war, “is not whether to engage in violence but how to act out of love toward the neighbor.”⁵⁵² Indeed, in his second book, *Just War: Force and Political Responsibility* (1968), Ramsey plainly explicates his foremost concern, writing:

The use of power and possibly the use of force, is one of the *esse* of politics [...] therefore, I say, the use of power, and possibly the use of armed force is of the *esse* of politics and inseparably connected with those higher human goods which are the *bene esse* of politics in all the historical ages of mankind. This interpretation of political authority is held in common

⁵⁴⁷ John Courtney Murray, “Remarks on the Moral Problem of War,” *Theological Studies* 20, no. 1 (February 1959): 40–61, <https://doi.org/10.1177/004056395902000102>.

⁵⁴⁸ James T. Johnson, “Just War in the Thought of Paul Ramsey,” *The Journal of Religious Ethics* 19, no. 2 (1991): 183–207.

⁵⁴⁹ This leads Ramsey to engage with his contemporary international affairs and in particular with the moral quandary of United States intervention in Vietnam. James Turner Johnson, “Thinking Historically about Just War,” *Journal of Military Ethics* 8, no. 3 (September 2009): 246–59, <https://doi.org/10.1080/15027570903230307>.

⁵⁵⁰ Brunstetter and O’Driscoll, *Just War Thinkers*, 194.

⁵⁵¹ Johnson, “Just War in the Thought of Paul Ramsey.”

⁵⁵² Johnson.

by Augustinian tradition and its two main branches: the natural law theory of politics and the Lutheran analysis of the state as an “order of necessity” (Notverordnung).

Ramsey, through the principle of “love for the neighbor” establishes the limits to the use of force that make such use legitimate. Indeed “at the same time love also sets limits on the target of that force and its intensity. In just war terms, [...] these two forms of limits become the principles of discrimination and proportionality.”⁵⁵³ For Ramsey there can be no justification, neither utilitarian nor consequentialist, that allows the violation of discrimination and proportionality principles. Ramsey’s theory, nonetheless, presents pitfalls that may feed further moral dilemmas. For instance, Ramsey does not properly address what is called *ius ad bellum*, prescribing only a general attention to prudence and to legitimate authority and “competent judgment”. While addressing the necessity for discrimination and proportionality in war, Ramsey leaves indeterminate the fundamental issue of under what circumstances starting a war is morally permissible. His theory of just war is informed by a non. The enemy cannot be a regular enemy because he is unjust, however as such war has to be limited recognizing that the enemy, despite in a position of guilt, retains basic, mandatory rights. Given this, however, Ramsey is aware that for those who hold political offices when it comes to the use of force their choices are always the outcome of moral weighing. Ramsey proposal is exactly to establish deontological limits to those choices. For Ramsey therefore the enemy is not simply a guilty presence, but it is another (“a neighbor”) with whom we are morally obliged to established a relation of violence to protect justice. To render such relation of violence just and justified, it is compulsory to follow basic rules of “prudence, temperance, and courage” as discrimination and proportionality in the use of violence. For Ramsey “justified war is ultimately a pursuit of justice, and justice, ultimately, is a form of discipleship, a form of participation in Christ.”⁵⁵⁴

2.2.1 Walzer and the milestone ideas of Just and Unjust Wars: moral criteria for thinking war

The legacy of Ramsey is taken up with rigor by another ethicists that contributes to a further popularization of just war doctrine in the second half of the twentieth century: the philosopher Michael Walzer (1935). Walzer gathers the fruits of Ramsey’s work on discrimination and proportionality and combines it with a moral positivism, centered on the idea of human rights. Walzer thought on war is enormously influenced by interpretation of the tragedies of late-modern politics, as the Holocaust and the violence outburst in the Second World War. Hi attempt is to reconcile the abyss of such tragedies with human conscience, through a pragmatic guide for action. But his peculiar interest for war and for a moral, applicable theory of war is boosted the American debate on Vietnam war.⁵⁵⁵ Stimulated and puzzled by the ethical predicament surrounding the American war in Vietnam, Walzer, who at the time is a recent history graduate with training also in philosophy and theology, embarks in a discussion of the cases in which force can be considered morally just. His method is indeed moral casuistry, namely the examination of historical cases with a moral propensity to assess the wrong and just.⁵⁵⁶ Walzer has a more radical position than Ramsey and essentially considers war

⁵⁵³ Johnson, “Thinking Historically about Just War.”

⁵⁵⁴ Brunstetter and O’Driscoll, *Just War Thinkers*, 199.

⁵⁵⁵ Walzer opens the Preface of his book stating “I did not begin by thinking about war in general, but about particular wars, above all about the American intervention in Vietnam.” Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Fifth edition (New York: Basic Books, a member of the Perseus Books Group, 2015), xix.

⁵⁵⁶ Brunstetter and O’Driscoll, *Just War Thinkers*, 207.

as a crime. In his most famous book on the issue of war, *Just and Unjust Wars* (1977), Walzer tries to sketch a transhistorical moral theory of the use of force. Walzer sources and doctrinaire body of reference is the Christian just war theory. He tries to oppose “political realism, according to which *inter arma silent leges*, and argues persuasively that the reality of war is not beyond any moral judgement.”⁵⁵⁷ Just war is presented as a moral frame available to rationally assess those cases in which using war is just or not. Walzer provides, by borrowing mainly Scholastics suggestions on war, a moral guide applicable to a world of sovereign states to constrain the use of force and to limit it only to those cases in which war can establish peace. Echoing Vitoria, Walzer’s line of argumentation presupposes that both human individuals and states are endowed with moral rights. Individuals’ moral rights are protection of life and defense of liberty; while states’ moral rights are self-determination and the integrity of territory. Any form of breach of such moral rights, which cannot be justified as a defense of rights, is to be considered wrong. When states or person incur in violation of others’ rights, they consequently forfeit their rights. This is the essential, yet consistent, argumentation about when it is justified to go to war. It can be a self-defense against a received wrong or against an imminent threat, as it can be an external intervention to protect those exposed to the deliberate violence of a government. War is an autonomous phenomenon in Walzer, is an exception to any other political form.⁵⁵⁸ As aptly pointed out, “his approach to the tradition” is neither dogmatic nor coherent; rather “it is *à la carte* – he takes from it what he needs, what makes sense to him, and leaves the rest: historical examples for their moral exemplarity.”⁵⁵⁹ Indeed, Walzer constructs a theory of war divided in the two dimensions of right: *ius ad bellum* and *ius in bello*. For Walzer, as showed in his famous piece *The problem of dirty hands* political authority represents the great moral difficulty, but at the same time the greatest moral principle. Walzer takes authority as the only locus where war can be decided because, after all, the state is a responsible institution. But it is not independent and detached from individuals. Walzer constructs his theory attaching to the individual the ultimate rights. In other words, Walzer recognizes the validity of the social construction as a source of collective authority, but ultimately binds it to the moral standing of its members. State power is not absolute. For this reason, Walzer conceives war as an irreducible, collective activity. Walzer idiosyncratic interpretation is that his just war theory, “recognizes the moral standing of states, and its corollary, the moral equality of soldiers, because it rests on this rationale for political authority.”⁵⁶⁰ Authority is the basic principle required to conduct a morally justified war, but it is not an absolute principle through which justifying any right violation. As he writes:

The moral standing of any particular state depends on the reality of the common life it protects and the extent to which the sacrifices required by that protection are willingly accepted and thought worthwhile. If no common life exists, or if the state doesn’t defend the common life that does exist, its own defence may have no moral justification.⁵⁶¹

⁵⁵⁷ Thomas Maissen and Fania Oz-Salzberger, eds., *The Liberal-Republican Quandary in Israel, Europe, and the United States: Early Modern Thought Meets Current Affairs*, Israel, Society, Culture and History (Brighton, MA: Academic Studies Press, 2012), 139.

⁵⁵⁸ Walzer, *Just and Unjust Wars*, 127–28.

⁵⁵⁹ Brunstetter and O’Driscoll, *Just War Thinkers*, 205.

⁵⁶⁰ Terry Nardin, “Michael Walzer, Just and Unjust Wars,” in *The Oxford Handbook of Classics in Contemporary Political Theory*, by Terry Nardin, ed. Jacob T. Levy (Oxford University Press, 2015), <https://doi.org/10.1093/oxfordhb/9780198717133.013.26>.

⁵⁶¹ Walzer, *Just and Unjust Wars*, 54.

Authority serves as a threshold to assess the principles that justify the recourse to war, namely the right *ad bellum*. Authority indeed has the responsibility of justifying war as a last resort, proportional and likely to succeed. By setting the principle of authority as an essential feature of just war, Walzer tries to create the conditions for rendering the *ad bellum* threshold high. War that is not self-defense should be highly unlikely justifiable.

By dividing *ius ad bellum* from *in bello*, Walzer can arrive at the center stage of his theory: the moral equality of combatants. “A state’s decision to wage war can be just with respect to its cause but unjust in execution, and vice versa.”⁵⁶² Political authority is that power which can be held responsible for a wrong in the *ad bellum* evaluation; but such a wrong should not be shouldered by ordinary people, combatants, and non-combatants, in war. For Walzer *ius in bello* is an essential feature of moral theory because it created a “war convention” in which “soldiers should not be understood as simply individuals – they are representatives of a political community, but, nonetheless, they do have rights, which govern the circumstances under which they may kill, or be killed, and the ways in which they kill or are killed.”⁵⁶³ Only under certain exceptional conditions states may violate *in bello* tenets as distinction and proportionality. Such exceptional conditions are the cases of “supreme emergency” in which a pre-emptive war is required to prevent extreme human rights violations – genocide and mass enslavement are mentioned in this context. In this case the enemy political authority can be suspended because of “crimes that shock the conscience of mankind” or “crimes against humanity.”⁵⁶⁴ The convention of war creates the conditions for setting the “moral equality of combatants” principle, which implies that all combatants are legitimate targets whether fighting in a just cause or not and subject to the same limitations on the weapons that may be employed. As Walzer points out in his *Just and Unjust Wars*:

The purpose of the war convention is to establish the duties of belligerent states, of army commanders, and of individual soldiers with reference to the conduct of hostilities. I have already argued that these duties are precisely the same for states and soldiers fighting wars of aggression and wars of defense. In our judgments of the fighting, we abstract from all consideration of the justice of the cause. We do this because the moral status of individual soldiers on both sides is very much the same: they are led to fight by their loyalty to their own states and by their lawful obedience.⁵⁶⁵

In this sense, Walzer just war theory is centered on a concept of enemy that belongs more blatantly to the regular war tradition. Indeed, as it appears quite evidently from one of the key passages in Walzer’s *Just and Unjust Wars*, the enemy is a peer. In this sense, the enemy may be wrong in his actions that lead *ad bellum*, but overall on the battlefield the moral equality cannot be disputed. To prove it Walzer relies on a two-fold argument⁵⁶⁶ that leans on historical examples and simultaneously on moral reasoning:

Among soldiers who choose to fight, restraints of various sorts arise easily and, one might say, naturally, the product of mutual respect and recognition. The stories of chivalric knights

⁵⁶² Nardin, “Michael Walzer, Just and Unjust Wars.”

⁵⁶³ Brunstetter and O’Driscoll, *Just War Thinkers*, 209.

⁵⁶⁴ Nardin, “Michael Walzer, Just and Unjust Wars.”

⁵⁶⁵ Walzer, *Just and Unjust Wars*, 127.

⁵⁶⁶ To corroborate the moral equality thesis, at times Walzer leads the reader towards an ethical assessment, at times he provides historical examples as “as among aviators in World War I, for example, who imagined them selves (and who have survived in the popular imagination) as air borne knights.” See Walzer, 32–38.

are for the most part stories, but there can be no doubt that a military code was widely shared in the later Middle Ages and sometimes honored. In any case, the death of chivalry is not the end of moral judgment. [...] The military code is reconstructed under the conditions of modern warfare so that it comes to rest not on aristocratic freedom but on military servitude. [...] It is the sense that the enemy soldier, though his war may well be criminal, is nevertheless as blameless as oneself. Armed, he is an enemy; but he isn't my enemy in any specific sense; the war itself isn't a relation between persons but between political entities and their human instruments. These human instruments are not comrades-in-arms in the old style, members of the fellowship of warriors; they are 'poor sods, just like me,' trapped in a war they didn't make. I find in them my moral equals.⁵⁶⁷

The meaning of Walzer argument is that "just war thinking is concerned with the conduct of states and with the acts of individuals in their public roles as soldiers, citizens, and government officials."⁵⁶⁸ Walzer attempts to provide a language of morality working in the context of war that stands in between the self-preservation logic of sovereign states and the individual protection, "between state-centric realism, which concerns the fate of a particular political community, and utilitarianism, which concerns the good of human beings everywhere, as members of the "civilized community."⁵⁶⁹ The individual once is inscribed into the spatial dimension of political authority is a political subject, but this does not define his existence thoroughly. Walzer leaves enough autonomy to the individual, even in the context of war, in his theory to accommodate the (at his time growing) theory of human rights. The individual therefore is inscribed in the political dimension, but at the same time retains rights that stand above his political identity and should be assessed once in the context of war. Walzer can therefore conclude, "not without hesitation and worry, that the rights of innocent people can be overridden to preserve a particular political community."⁵⁷⁰ As noted, "the driving force" of Walzer analysis and use of just war tradition "actually lies in his account of the rights of the individual and of the political community."⁵⁷¹ His idea of war reflects the modern paradigm of war intended as an activity that involves political communities at first, but have nonetheless heavy fall-out on individuals then. The two dimensions cannot be kept divided and it is exactly Walzer's intellectual intention to keep them together to express a reliable moral judgement on war. By this intellectual move, Walzer idea of regular enemy is split in two dimensions: the public, political dimension in which the enemy can be treated as a guilty if violates *ius ad bellum*; and the individual, human dimension in which the enemy in war is counted as regular and as a moral peer.

This is consistent with the context of Walzer, as the age of total (and nuclear) war and, in particular, as the opening age of asymmetric war; it seems that in *Just and Unjust Wars* the entirety of late-modern political catastrophe rests in the backdrop of his theory as an endless moral reminder of the potentiality of evil. Walzer reasoning on war cannot get rid of the moral weight that the tragedies of the twentieth century impress on it. The book boosts a significant debate which strongly influences the moral approaches to the study of war in the West. The binary scheme of just and unjust becomes a *topos* to weigh moral considerations in war and the language of *ad bellum* and *in bello* are further popularized as languages to describe and understand war.

⁵⁶⁷ Walzer, 35–36.

⁵⁶⁸ Nardin, "Michael Walzer, Just and Unjust Wars."

⁵⁶⁹ Nardin.

⁵⁷⁰ Nardin.

⁵⁷¹ Brunstetter and O'Driscoll, *Just War Thinkers*, 211.

2.3 *The consolidation of the just war traditionalist paradigm and its challengers*

The theories illustrated above represent a milestone in the ethical thinking on war in the West and also beyond the West. The first crucial test that Walzer moral approach to international affairs undertakes is during the years marking the end of the Cold War. In 1989 Panama is militarily invaded by the United States with the objective of a regime change. The intervention is called “Operation Just Cause” and the motivation behind it resonates Walzer style of argumentation and Walzer moral logic. Few later, in 1991, when the United States is intentioned to sanction with force the Iraqi military invasion of Kuwait, the United States administration shows notable keenness in the use of just war theory vocabularies to address the legitimacy of the war.⁵⁷² The Gulf War is presented a supreme just war against an aggressor. As recalls Walzer himself, not without bitter irony, “the odd spectacle of George Bush (the elder), during the Persian Gulf war, talking like a just war theorist.”⁵⁷³ In this context, as in other contexts throughout the nineties from Somalia to the Balkans, just war theory proves to be a viable intellectual device to think and speak about war.⁵⁷⁴ Justice is the argumentative picklock through which making war morally acceptable. Despite its often-inconsistent character once applied in reality due to the unbridgeable gulf between moral theory and the battlefield, Walzer just war theory emerges as a solid intellectual paradigm through which war can be constrained and justified. Walzer just war theory liberal and human rights centered approach combines with no great difficulty with the project of the liberal international order agenda on war. The just war theory of Walzer and his followers is thus established as a canon, which by virtue of its continuity with the Scholastics tradition is named the “traditionalist approach to just war.”⁵⁷⁵

Though, the changing conditions of the battlefield, the appearance of technologies with unprecedented precision, and, especially, the tendency of war to turn into an asymmetric struggle, pose several conundrums on just war applicability.⁵⁷⁶ In particular, the complex and articulated system of war restraints imagined by Walzer seems unsuitable into the new ideological, strategic, and economic international environment. War has changed its form, it is vehemently claimed.⁵⁷⁷ Paradoxically, some of the radical challenges to Walzer traditional approach come from those who contest just war theory serious aversion to the easy use of force. Such challengers assert that just war theory is strict with consenting the use of force and this crashes with the multiplying of threats as terrorism, *warlordism*, ethnic cleansing, piracy, and others non-state forms. The challenge comes from theorist that inherit the legacy of Walzer and think along the same transhistorical axis of morality. Though belonging to the same traditions, such challengers call for a more scientific and precise approach to the study of the ethics of war so to escape *traditionalist’s* oversimplification and moral traps.⁵⁷⁸

⁵⁷² Daverio Rocchi and Birgalias, *Dalla concordia dei Greci al bellum iustum dei moderni*, 202–6.

⁵⁷³ Michael Walzer, “The Triumph of Just War Theory (and the Dangers of Success),” *Social Research* 69, no. 4 (2002): 925–44.

⁵⁷⁴ Michael Walzer, “Regime Change and Just War,” *Dissent* 53, no. 3 (2006): 103–8, <https://doi.org/10.1353/dss.2006.0086>.

⁵⁷⁵ Graham Parsons and Mark Anthony Wilson, eds., *Walzer and War: Reading “Just and Unjust Wars” Today* (Ethics of war and peace conference, Cham, Switzerland: palgrave macmillan, 2020), 20.

⁵⁷⁶ John Langan, “The Just-War Theory after the Gulf War,” *Theological Studies* 53, no. 1 (March 1992): 95–112, <https://doi.org/10.1177/004056399205300106>.

⁵⁷⁷ Kaldor, *New and Old Wars*, 4.

⁵⁷⁸ Jeff McMahan and Robert McKim, “The Just War and The Gulf War,” *Canadian Journal of Philosophy* 23, no. 4 (December 1993): 501–41, <https://doi.org/10.1080/00455091.1993.10717333>.

3. Just war again: the arguments of *revisionist* thinkers in the twenty-first century

Considering the consolidated paradigm of just war theory simplistic and inapplicable to the changing conditions of war, a group of skeptical scholars, then labeled as *revisionists*, proposes to rewrite the tradition of just war and its entire logical scaffolding. Ethicists trained in analytic philosophy as Jeff McMahan, David Rodin, and Cecile Fabre,⁵⁷⁹ since the early nineties and then, with momentum during the first years of the *global war on terror*, advance an updated and analytical theory of just war. Starting from strong progressivist and liberal positions and backed by a rational positivist epistemology,⁵⁸⁰ *revisionist* theorists attribute substantial weight to the development and affirmation of universal moral values that increment both individual protection and individual liability in conflict. The basic idea behind the project is not simply to adapt just war theory to a changing strategic environment, but also to deploy just war concepts in a logical and analytical, yet abstract casuistry. The objective is to obtain from just war a detailed and rigorous code of moral conduct that can prescribe what to do even to single individuals at any time in war. It is, in other words, an attempt to subjugate moral forces operating in war to the power of a sort of *scientific* morality, by eliminating the theological element and replacing it with logics and rationality. To attain rational and logical prescription of what is just in war, *revisionist* scholars look at the phenomenon of war from a selective, individualistic perspective.

3.1 *Revisionists' epistemology and definition of war*

The entire intellectual edifice built by *revisionists* is held by a specific epistemology that serves the scope of studying war as inter-individual phenomenon and by an internal cosmopolitan teleology that justifies the preeminence of the individual on the sovereign state.⁵⁸¹ *Revisionists' epistemology* is marked the tendency towards logical reductivism and essentialism. Reductivism and essentialism obscure the political identity of individuals and emphasize the basic characters of human life as a natural element. The style they employ is that of studying war through cases.⁵⁸² The use of cases, as Luban sardonically defines it, is part of that “Oxford style” according to which “toy cases are artfully constructed [to] pull toward one and only one intuitively right answer for each case in the sequence, and those answers will vary as the philosopher manipulates first one variable and then another.”⁵⁸³

Revisionists main claim is that the moral understanding of war has always been conditioned by the false belief that given its collective character, war is a morally different dimension. This, argues

⁵⁷⁹ Helen Frowe and Seth Lazar, *The Ethics of War*, ed. Seth Lazar and Helen Frowe, vol. 1 (Oxford University Press, 2017), 3–8, <https://doi.org/10.1093/oxfordhb/9780199943418.013.29>; David Rodin, *War and Self-Defense* (Oxford : New York: Clarendon Press ; Oxford University Press, 2002), 1–6; Biggar summarizes Rodin's argument as “liberal individualism.” Nigel Biggar, *In Defence of War*, First edition (Oxford ; New York, NY: Oxford University Press, 2013), 151.

⁵⁸⁰ Buchanan, “Political Liberalism and Social Epistemology.”

⁵⁸¹ Cecile Fabre, “Cosmopolitanism, Just War Theory and Legitimate Authority,” *International Affairs* 84, no. 5 (September 2008): 963–76, <https://doi.org/10.1111/j.1468-2346.2008.00749.x>.

⁵⁸² Luban refers to cases as “your life is threatened by a criminally insane psychopath who has been improperly released from hospital because of a financial crisis in the health system.” Parsons and Wilson, *Walzer and War*, 22; David Rodin and Henry Shue, eds., *Just and Unjust Warriors: The Moral and Legal Status of Soldiers* (Oxford ; New York: Oxford University Press, 2008), 49.

⁵⁸³ Parsons and Wilson, *Walzer and War*, 19.

McMahan, has led in history to justify unjustifiable atrocities as they were part of collective enterprises.⁵⁸⁴ The intellectual shift that underpins this reflection has its roots in a Rawlsian conception of justice inevitably reducible to an individualistic theoretical basis. In this conception, justice operates through the individual rational understanding of his rights and others' rights and is attainable only through effective institutional arrangements centered on the individual, as for instance the human rights regime.⁵⁸⁵ Indeed *revisionists* "think that all justified killing, in war or outside of it, is justified at root by precisely the same properties. In their most extreme moments, they argue that wars are justified if and only if they are composed exclusively of justified acts of individual self- and other-defense."⁵⁸⁶ McMahan explains that revisionists epistemology is based on the reduction of war into single cases of interindividual use of force extended in a *spectrum* of chained events.⁵⁸⁷ Building on this epistemology, *revisionist* theory presupposes that war is no different from other violent contexts and the same moral rules that would be applied elsewhere, must be applied in war. McMahan defines war in the following terms:

‘War’ is ambiguous in a way that it is important to be clear about. Most commonly it refers to the aggregate fighting of a number of belligerent parties. World War II, for example, was fought by Germany, France, Britain, and a large number of other countries. This war as a whole was not a just war, though neither was it an unjust war. War as the sum of the fighting of all the belligerents can be neither just nor unjust. Yet we can also say of each belligerent in World War II that it fought a war. Britain fought a war against Germany and Germany fought a war against Britain (among others). Each of those wars was a part of World War II. It is wars in this second sense that are just or unjust. In World War II, Britain’s war was just, Germany’s unjust.⁵⁸⁸

War according to *revisionists* must be regarded as a state of social interaction between individuals and the interaction must be epitomized through the means of logic and morality.⁵⁸⁹ Therefore, the very premise of *revisionist* just war theory is that, according to the fact that war is a context as many others, *ius ad bellum* and *ius in bello* cannot be two separated dimensions. The injustice of a person starting a war cannot be lifted once that person engages in combat. Logically, the unjust position at the beginning of the war holds even during the fighting. Such a premise can lead to two critical points that underpin *revisionists*' theory of war and differentiate it from *traditionalist*: civilian immunity is weakened and can be easily questioned; and combatants' equality is challenged at its conceptual root. These two consequences distance from the idea of war as an institution of regular relations, while approach the idea of war as simple exchange of violence between autonomous subjects. The

⁵⁸⁴ Jeff McMahan, *Killing in War*, Uehiro Series in Practical Ethics (Oxford: New York: Clarendon Press; Oxford University Press, 2009), 1–3.

⁵⁸⁵ Moyn, *The Last Utopia*, 20–23.

⁵⁸⁶ Seth Lazar, "Just War Theory: Revisionists Versus Traditionalists," *Annual Review of Political Science* 20, no. 1 (May 11, 2017): 37–54, <https://doi.org/10.1146/annurev-polisci-060314-112706>.

⁵⁸⁷ McMahan describes *revisionists* epistemology as such: "first imagine a case in which a person uses violence in self-defense; then imagine a case in which two people engage in self-defense against a threat they jointly face. Continue to imagine further cases in which increasing numbers of people act with increasing coordination to defend both themselves and each other against a common threat, or range of threats, they face together. What you are imagining is a spectrum of cases that begins with acts of individual self-defense and, as the threats become more complex and extensive, the threatened individuals more numerous, and their defensive action more integrated, eventually reaches cases involving a scale of violence that is constitutive of war." Jeff McMahan, "War as Self-Defense," *Ethics & International Affairs* 18, no. 1 (March 2004): 75–80, <https://doi.org/10.1111/j.1747-7093.2004.tb00453.x>.

⁵⁸⁸ McMahan, *Killing in War*, 5.

⁵⁸⁹ Rodin and Shue, *Just and Unjust Warriors*, 4–9.

institutional dimension of war is no more considered relevant for *revisionists*, as it potentially misleads moral judgments. War can therefore be reduced to an interindividual phenomenon of violence.

3.1.1 The concept of “unjust combatant”: end of symmetry and individualization of war

As war is considered the sum of violent actions in a specific interindividual context, its justness can be assessed by a sheer calculus on the just causes of its participants. To assess the just cause of a war it is matter of computing the number of rights that are violated in it and pit them against the potential rights that can be violated to redress the victims. *Revisionists* propose to use human rights paradigm to undertake such a calculus. As a matter of fact, the flipside effect of human rights universal validity is its potential excluding logic.⁵⁹⁰ In facts, the human rights paradigm to be ontologically effective on a universal scale does not simply presuppose a holder, but also a potential violator. A rights claim (‘I *have* a right to that’), especially an individual right, Reus-Smit points out, “is more than a reminder or an appeal; as it also involves a powerful *demand* for action.”⁵⁹¹ Therefore, the logical side-effect of the calculus of human rights is that those available to violate the basic principles of human rights can be identified as individuals by their personal denial of such principles and thus can be themselves excluded by the protection of such basic rights.

On this premise, *revisionist* propose to radicalize just war theory moral symmetry and distinguish not simply the parties to a conflict, but also the single combatants according to their own justness in engaging war.⁵⁹² A combatant justness is assessed exactly based on his acceptance of basic human rights principles and on the contingent respect of such rights. Unjustness, hence, can be punished in the name of others’ rights violation. This gives rise to a stronger and more radical revisitation of Walzer symmetrical approach, which brings methodological reductionism used in closed societal contexts straight to the context of war.⁵⁹³ It is by starting from the space of exception left opened by the *traditionalist* Walzerian view that *revisionists* take their first steps. The ambiguous and controversial exceptional case of supreme emergencies mentioned by Walzer, creates a contradiction that *revisionist* unpack and use as the very moral ground of their theory. *Revisionists* can argue “that what really grounds liability is *responsibility* for a *wrongful* threat.”⁵⁹⁴ Indeed, the “unjust combatant” is distinguished by the “just combatant” as such:

To state a third and final distinction, I need to invoke a notion from the theory of the just war. That theory rightly insists that for a war to be just, it must have a ‘just cause.’ The notion of just cause is variously understood in the literature. As I understand it, a just cause is an aim that satisfies two conditions: (1) that it may permissibly be pursued by means of war, and (2) that the reason why this is so is at least in part that those against whom the war is fought have made themselves morally *liable* to military attack. With this notion as background, we can now distinguish between “just combatants,” who fight in a just war, and “unjust combatants,” who fight in a war that lacks a just cause. [...] If it is correct that it is wrong to

⁵⁹⁰ H. L. A. Hart, “Are There Any Natural Rights?,” *The Philosophical Review* 64, no. 2 (April 1955): 175, <https://doi.org/10.2307/2182586>.

⁵⁹¹ Christian Reus-Smit, *Individual Rights and the Making of the International System* (Cambridge: Cambridge University Press, 2013), 37, <https://doi.org/10.1017/CBO9781139046527>.

⁵⁹² Bradley Jay Strawser and Jeff McMahan, *Killing by Remote Control: The Ethics of an Unmanned Military* (Oxford ; New York: OUP USA, 2013), 11.

⁵⁹³ Jovana Davidovic, “Should the Changing Character of War Affect Our Theories of War?,” *Ethical Theory and Moral Practice* 19, no. 3 (June 2016): 603–18, <https://doi.org/10.1007/s10677-015-9653-x>.

⁵⁹⁴ Lazar, “Just War Theory.”

fight in a war that lacks a just cause, this has considerable practical significance. Unjust wars can occur only if enough people are willing to fight in them.⁵⁹⁵

The claim that in war exists a moral difference between combatants based on their individual choice to join or not to join an unjust war is essentially rooted in a non-institutionalist understating of war. It is relevant to note, that *revisionists* argument does not develop from a single epistemological approach to war. The “just/unjust combatant” argument is corroborated, also, by the growing leverage of studies devoted to the investigation of deviant behaviors in politics, as cases of suicide terrorism or other forms of political violence. Recent rise to the fore of international relations of studies coming from other disciplines as political psychology, criminology, and social anthropology⁵⁹⁶ are used to substantiate *revisionist* arguments to empirically prove that the causes of war can be directly attributed to specific deviant and pathological individual behaviors.⁵⁹⁷ This has engendered a reconfiguration of the meaning of morality in war by a peculiar emphasis on the position of the individual as an independent subject and, at the same time, by an odd neglect of war as social and political phenomenon.⁵⁹⁸ The analysis of war is turned into the analysis of a struggle against individuals, where the agent acting against individuals however remain indeterminate and ambiguous: it can be a special operation force, a state, the international community, the West, the family of civilized nations, or humanity as a whole. By depicting the individual as morally liable, the idea of *individualization of war* proposes to morally unbalance the equality of the parties in war and to outweigh the burden of war entirely on the other party taken as individual. This creates the conditions for identifying easier political responses in war and for a moral apologetic argumentation of the Self.⁵⁹⁹ In a nutshell, the *individualization of war* is an argument for making war morally light and less costly inside the state and to provide credible justifications outside the state, at the international level.

3.2 The concept of regular enemy in the path towards the individualization of war

Re-interpreting and challenging the concept of regular enemy is the quintessence of *revisionists* argument. By claiming that each single soldier stands in a specific just or unjust moral position, *revisionists* are not simply denying the basic ground of the regular theory of war but, as shown, they are turning war from a collective phenomenon into a substantially *individualized* violent encounter. The idea that this reading of war propounds is that war can be fought, understood, and justified in accordance with an inter-individual scheme. The individual becomes the center of gravity of war and the entire intellectual and conceptual scaffolding of war revolves around the individual.

⁵⁹⁵ McMahan, *Killing in War*, 6–8.

⁵⁹⁶ Stanley Hoffmann, “On the Political Psychology of Peace and War: A Critique and an Agenda,” *Political Psychology* 7, no. 1 (March 1986): 1, <https://doi.org/10.2307/3791154>.

⁵⁹⁷ Margaret G. Hermann, “Explaining Foreign Policy Behavior Using the Personal Characteristics of Political Leaders,” *International Studies Quarterly* 24, no. 1 (March 1980): 7, <https://doi.org/10.2307/2600126>; Margaret G. Hermann and Charles W. Kegley, “Rethinking Democracy and International Peace: Perspectives from Political Psychology,” *International Studies Quarterly* 39, no. 4 (December 1995): 511, <https://doi.org/10.2307/2600804>.

⁵⁹⁸ Jesse Kirkpatrick, “Moral Injury and Revisionist Just War Theory,” *Ethics & International Affairs* 36, no. 1 (2022): 27–35, <https://doi.org/10.1017/S0892679422000041>.

⁵⁹⁹ A thesis defended by the *revisionist* scholar Draper with a clear example: “[...] if the individual who looks like a child is actually a terrorist disguised as a child and is attempting to detonate a bomb in a crowded marketplace, then defense on my part might well be a terrible though understandable mistake, and so it is likely that I lack a fact-relative justification for killing the gunman. When I speak of the “appeal to defense,” I am referring to a fact-relative justification.” Kai Draper, *War and Individual Rights: The Foundations of Just War Theory* (New York, NY: Oxford University Press, 2016), 65.

To take such a radical step, however, *revisionist* scholars do not sever altogether the relationship between their understanding of war and the modern idea of regular war. They simply operate a translation of the logic of modern regular war from the state to the individual. The outcome of such an operation is that on the one hand it remains as scenery the entire construction of war as a state of reciprocal violence; but, on the other hand, only the individual is endowed with authority upon himself, and this forecloses the individual the possibility of acting justly, independently from the cause of war. In the following paragraphs it is addressed what remains of the regular enemy concept in the distinction between “unjust and just combatants” and what, instead, irremediably falls.

3.2.1 “Just and unjust combatant” and the remaining frames of regularity

The theoretical construction proposed by *revisionist* scholars is anchored to the modern concept of regular war in which two parties are entitled to regard each other’s as regular enemies. At least, regular war is the cognitive backdrop of this theory. The parties indeed can regard each others as regular enemies as they decide to take arms and thus they assume the risk of dying. This implies that in this definition the idea of a legitimate state of *killability* between regular enemies, granted by the fact of being combatants, still defines a *spatio-temporal* condition in which war can be fought. In this sense, *revisionists* scholars do not consider the other party in war as criminal, outlaw, or pirate. They rather, by employing the distinction between “just and unjust combatant”, try to unbundle on a moral ground the relationship between individual combatant and political authority. Their attempt is to bring to a more precise and more consistent level the traditional theories of war so to construct a moral space which is valid even for single combatants. *Revisionists* shift the moral logic of regular enmity that traditionally applies between political authorities, onto interindividual relations. By pinpointing to the distinction between “just and unjust combatants”, *revisionist* look at enhancing the moderating effects of *temperamenta belli* and to shrink the destructiveness of war. This certainly is consistent with and reflects the underlying logic of the modern concept of regular enemy for a simple reason: the regular enemy is the pole of a reciprocal relation of right to use force.

3.2.2 “Just and unjust combatant” and the fading of regular enemy

However, despite still being formally anchored to the idea of regular enmity, the distinction between “just and unjust combatant” is controversial and inconsistent if looked from the logics of the regular enemy concept. By shifting the entire moral center of gravity of war from the political authority to the individual human being the meaning of killing between regular enemies in war is radically subverted. Indeed, the fact that there can exist a dual morality between those engaged as peers in a common phenomenon as war, undermines in two directions the entire modern edifice of regularity. On the one hand, the category of “unjust combatant” breaks away with formal distinctions and focuses only on an arbitrary criterion of justness based on the just cause of war. This paves the way for a moralizing logic of distinction that always privileges the Self and prejudices the enemy. Indeed, as unequivocally writes McMahan, “just as combatants on the just side are not liable to deliberate attack, so some non-combatants on the unjust side are morally liable to deliberate attack.”⁶⁰⁰ This logic is first and foremost detrimental to the principle of discrimination between civilians and non-combatants and engenders the status of civilians in war.

⁶⁰⁰ Rodin and Shue, *Just and Unjust Warriors*, 47.

On the other hand, while making “just combatants” immune since they can fight without the moral risk of dying, it makes “unjust combatants” endless enemies. This creates the conditions for an easy access to the use of force for those deemed “just” and a status of impossible peace for those deemed “unjust”. Moreover, it engenders on another dimension the life of civilians, by implicitly justifying collateral damages that may arise by the targeting “unjust combatants”.

The overall consequence of the *revisionists* scientization of morality in war is that the *spatio-temporal* fictional dimension in which two political entities and the respective individuals can regard as regular enemies is not a confined space; on the contrary, given that each “unjust combatant” can be killed according to his unjust status, the state of war can be created anywhere a morally liable unjust individual is located.

4. Conclusion. The political implications of *revisionists*’ concept of “unjust combatant”

Revisionists are not simply advancing a neutral, objective argument as it may appear from their contention of applying a scientific method to the ethics of war. Their *logical* arguments are deeply embedded in and dependent on the dynamics of contemporary war and its intellectual, cultural, and political context. The impact of *revisionist* just war scholars, as a matter of fact, cannot be confined to the sole academic philosophical discussion. And it cannot simply be described as a marginal speculative endeavor on war. *Revisionist* theories have a relation of mutual exchange with the conduct of contemporary war and with decision-making processes related to war. Such philosophers have acted as experts and authoritative speakers on matters of war in several policy-relevant circumstances in the recent past. Scholars adopting *revisionist* views have recently worked side by side with policy makers, practitioners and militaries of Western countries as the United States, Israel, and the United Kingdom. Engaged in the drafting of strategic documents, in military advise, and in governmental justification of military interventions, the ethics of war scholarship is amply embedded in political discourse and political practice.⁶⁰¹

In particular, it seems that *revisionist* theories have found applicability and their *raison d’être* in the face of the growing leverage of non-state actors on the international scene and with the rise of the Western perception of terrorism as the utmost international threat. Just war theorists in the context of the Western decades-long struggle against groups as *Al-Qaeda* and the *Islamic States*, have provided important linguistic and conceptual tools to policymakers to justify the light use of force against single individuals, even outside hot-zone of war. Delivering a speech in 2013 at the *National Defense University*, the United States President Obama has proved this *liaison* with analytic philosophical thinking on war, using just war theory vocabulary to talk about drone warfare:

⁶⁰¹ The figure of Bradley Strawser, philosopher, policy and military advisor, and professor at *United States Naval College* is emblematic as for the implications that *revisionists* have had on policy-making and public opinion. Strawser and McMahan, *Killing by Remote Control*, 7–9; David Whetham, “‘Are We Fighting Yet?’ Can Traditional Just War Concepts Cope with Contemporary Conflict and the Changing Character of War?,” *The Monist* 99, no. 1 (January 2016): 55–69, <https://doi.org/10.1093/monist/onv029>; Bradley Jay Strawser, *Killing Bin Laden: A Moral Analysis* (Houndmills, Basingstoke, Hampshire ; New York, NY: Palgrave Macmillan, 2014), 1–5.

We are at war with an organization that right now would kill as many Americans as they could if we did not stop them first. So this is a just war – a war waged proportionally, in last resort, and in self-defense.⁶⁰²

Revisionist arguments find consensus in the United States and in some European countries and seem efficient in solving moral quandaries for three main reasons. First, the moral argumentation on war based on inter-personal ethics combines extraordinarily well with the languages, imaginations, and expectations on war that dominate in Western societies. Secondly, the paradigm of *revisionists* reflects the recent tendency (peculiar to the West) to extend the logics of domestic criminal law into the international domain. Contemporary war is highly compenetrated by an ethics that ultimately employs the paradigm of guilt person, which pertinent to domestic criminal law. And thirdly, it reflects a changing strategic and technological environment in which the asymmetric distribution of power is a determinant feature of the form of war.

Only by facing the possibility of such asymmetric wars as the *global war on terror* or other Western interventions as the NATO operation in Libya or the endless campaign against the *Islamic State* in Iraq and Syria,⁶⁰³ it is possible to imagine the reformulation of modern concept of regular enmity. *Revisionists* have been committed to provide credible justifications for the *individualization of war* in the case of drone warfare and in other cases of targeted killing. The idea of fighting a war with semi-autonomous weapons poses relevant ethical questions, which their theory solves exactly by building its justification on the “just/unjust combatant” dichotomy.

The context that lies behind the intellectual effort undertaken by *revisionists* is a determinant element to the conclusions they reach and to the theoretical model they build. The *global war on terror*, the hysteric reaction of the West to the multiplication of threats, and the political and cultural imagination of war as an *individualized* struggle, are among the crucial triggers that lead to break with the tradition of moral symmetry between enemies. It is in this context that *revisionists* scholars can imagine such a problematic and blurred category as the “unjust combatant.”

In their arguments the concept of regular enemy remains crushed into a contradictory logic. Their idea of enemy has an appearance of regularity because it is one who bears arms and thus can be legitimately killed in the context of war. However, his position is no more determined by a *spatio-temporal* circumscribed condition of war where the political authority defines the boundaries. By lifting the guilt from the state as a *spatio-temporal* element of mediation and applying it entirely to the individual, the morality of war is assessed only on the basis of individual behavior. This bears implications for the political meaning of war and for the entire *ethico-political* principles that regulate the use of force at the international level.

⁶⁰² Andreas Behnke, “Drone Warfare and the Emergence of Spaces of Exception,” in *Law, Security and the State of Perpetual Emergency*, ed. Linda S. Bishai (Cham: Springer International Publishing, 2020), 37–65, https://doi.org/10.1007/978-3-030-44959-9_3.

⁶⁰³ Holmqvist, *Policing Wars*.

Chapter 4 – The legal paradigm: the emergence of the “unlawful enemy combatant”

1. Introduction

This second chapter, following the route traced in the previous one, aims at looking at another intellectual paradigm shift of the post-Cold War era. The attention of the research here is focused on a particular legal artifact that serves to underpin the *individualization of war*. Such a legal artifact is the category of “unlawful enemy combatant”, crafted and used during the years of the *global war on terror* by legal experts and then circulated among policymakers, mainly in the United States and in Israel. Such an artifact represents a legal paradigm primarily because it is crafted in case-law, it is articulated through legal argument, and it is employed as an elaborated legal justification. “Unlawful enemy combatant” is not simply a hybrid category breaking the traditional legal difference between combatant and non-combatant; but it is an astute legal tool deployed to disrupt the difference between the domestic and the international legal dimensions and to justify *individualized* forms of war. The category “unlawful enemy combatant” attached by the United States to a variety of persons “ranging from suspected members of the al-Qaeda leadership to low-level, local insurgents [is] a steppingstone on the route to the most disastrous aspects of the ‘war on terror’, such as *incommunicado* detention, rendition, torture, and inhumane treatment”, targeted killing and the infamous Abu Grahیب and Guantanamo policies.⁶⁰⁴

Though many scholars claim that the “unlawful enemy combatant” is the “most prominent embodiment of the irregular fighter in the twenty-first century,”⁶⁰⁵ this chapter challenges such a view with more a moderate argument. The chapter argues that the “unlawful enemy combatant” entertains with the concept of regular enemy a relevant and complex relationship, made of continuities and contradictions. As a matter of evidence, “unlawful enemy combatant” does not entirely sever its connection with the semantics of the regular enemy concept; the category of “unlawful enemy combatant” rather signals the tendency of the concept of regular enemy to move towards an *individualized* character.

As explained in the following paragraphs, the category of “unlawful enemy combatant” deployed by legal experts during the *global war on terror* originates from three different genetical pathways. The first one is the search during the Second World War for an in-between category to go beyond the *Geneva Conventions*’ schematic distinction between “combatants and non-combatant.”⁶⁰⁶ The second one is the emergence of international criminal justice and the idea of prosecuting single individuals as universal criminals.⁶⁰⁷ While the third one, only partly opposed to the second one, is the tendency by domestic legal systems to intervene on international issues to counter threatening individuals as terrorists or smugglers.⁶⁰⁸ The category of “unlawful enemy combatant” crafted and deployed by legal experts and policymakers during the *global war on terror*, stands exactly in-

⁶⁰⁴ Scheipers, *Unlawful Combatants*, 188.

⁶⁰⁵ Scheipers, 189; Orford, *International Law and Its Others*, 2006, 277.

⁶⁰⁶ Yoram Dinstein, “Direct Participation in Hostilities,” *Tilburg Law Review* 18, no. 1 (January 1, 2013): 3–16, <https://doi.org/10.1163/22112596-01801002>.

⁶⁰⁷ K. Anderson, “The Rise of International Criminal Law: Intended and Unintended Consequences,” *European Journal of International Law* 20, no. 2 (April 1, 2009): 331–58, <https://doi.org/10.1093/ejil/chp030>.

⁶⁰⁸ Alessandro Gamberini, ed., *Delitto politico e delitto penale del nemico*, 1. ed, Nuovo revisionismo penale (Bologna: Monduzzi, 2007), 2–6.

between these three tendencies. This category is the by-product of the intellectual shifts that the three tendencies have in the last decades impressed on legal vocabularies of war and on the concept of regular enemy.

2. The genesis of the “unlawful enemy combatant” category: a brief historical appraisal

The *global war on terror* category of “unlawful enemy combatant” hinges exactly on the modern concept of regular enemy and on the distinction between combatants and non-combatants that it presupposes. As highlighted in the previous chapters, the modern concept of regular enemy has in its *nucleus* an ontological distinction between combatants and non-combatants. Such a distinction is in a first moment conceptualized only as a moral distinction. The Scholastics just war thinkers and in a similar vein Grotius emphasize the difference between *nocentes* and *innocentes* as a moral issue. In Vattel’s work, notwithstanding in several places of his *Droit des gens* he seems to be ambiguous on the meaning of the concept of regular enemy forces, such a moral distinction is turned into a logical consideration. Vattel indeed considers that women, children and those unavailable to fight belong to an enemy nation, but this does not imply treating them as those who bear arms.⁶⁰⁹

It is only since the second half of the nineteenth century, with the beginning of the laws of war codification, that it is recognized the existence of a proper legal distinction on the basis of the “custom among civilized nations.”⁶¹⁰ Combatants are therefore defined as those who formally or informally bear arms in the context of war and contribute “substantially and directly” to the fighting.⁶¹¹ At the 1907 *Hague Convention*, such a definition is for the first time codified in *Chapter One* of the *Regulations*. Combatants count as those fulfilling specific formal conditions that distinguish them from the enemy population.⁶¹² At the 1907 *Hague Convention* the distinction, however, does not specify who noncombatants are. A proper formal distinction between combatants and noncombatants (namely “civilians”) comes after the Second World War, in 1949 with the *Fourth Geneva Convention*. Noncombatants in the 1949 *Fourth Geneva Convention* are defined *ex negativo*,⁶¹³ as the opposite of those that “take directly part hostilities.”⁶¹⁴ The 1977 *Additional Protocol*, with Article 48 and Article 51 recognizes the proper distinction between combatants and civilians, stressing that an individual can belong either to one category or to the other. In particular, Article 48 of the *Additional Protocol* states that in international conflicts:

⁶⁰⁹ Vattel, Kapossy, and Whatmore, *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*, 510.

⁶¹⁰ Kalmanovitz, *The Laws of War in International Thought*, 129.

⁶¹¹ Dinstein, “Direct Participation in Hostilities.”

⁶¹² According to the 1907 *Hague Convention* “the Qualifications of Belligerents’ is applicable to ‘armies’ and to ‘militia and volunteer corps’ fulfilling the four conditions of: (a) responsible command, (b) fixed and recognizable distinctive emblem, (c) carrying arms openly, and (d) compliance with the laws and customs of war. Included in the notion of ‘belligerents’ are not only regular and irregular armed forces, but also participants in a *levée en masse*, if they carry arms openly and respect the laws and customs of war.” Andrew Clapham and Paola Gaeta, eds., *The Oxford Handbook of International Law in Armed Conflict*, First edition, Oxford Handbook (Oxford, United Kingdom: Oxford University Press, 2014), 300.

⁶¹³ Vagts and Meron, “The First Modern Codification of the Law of War,” 44.

⁶¹⁴ Dinstein, “Direct Participation in Hostilities.”

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.⁶¹⁵

As commented by Melzer, the distinction, in principle, should be read as unambiguous; indeed, “in a situation of armed conflict, every person is either a legitimate military target (military objective) or a protected person—*tertium non datur*. The principle of distinction reflects the idea that belligerent hostilities constitute limited confrontations between organized armed forces, and not between entire populations, and that their sole legitimate aim is to weaken and defeat the military forces of the enemy.”⁶¹⁶

In this distinction, the enemy is defined as regular not simply by his moral belonging to a state or a nation, but also by his belonging to a legally recognized force. The regular enemy is thus equated to a sum of lawful combatants and as such they are protected by specific legal provisions. The definition is constructed through the use of political authority (be them already formed states or states in becoming) as the mediation between the individual and the state of war. The distinction relies on the state as an institution and the state of war as a *spatio*-temporal dimension which qualifies the right to kill and the risk of being killed for those engaged in it. In the context of war, International Law protects combatants with specific forms of tutelage, while for all the others it is domestic state jurisdiction to apply the law. This is the creation of a distinct legal *spatio*-temporal fictional dimension of war. As summarized with outstanding clarity and historical evidence by the American lawyer Baxter, the underlying idea of this distinction is based on a specific concept of regular enemy:

War is not an armed conflict between states as abstract entities. It is rather a conflict between populations, in which each national of one belligerent is pitted against each national of the other. Without the humane intervention of international law, war would entail death or enslavement for the combatant or non-combatant overcome by the enemy. To ancient Greece, all inhabitants of an enemy state were themselves enemies whose persons were at the mercy of the conqueror, to be killed or made slaves as expediency might dictate, and it has been said that only considerations of political policy dissuaded the Romans from following a like course. Even through the Middle Ages it was the practice to kill infidels and to enslave Christians captured in war. Since the founders of modern international law were not prone to overlook the verdict of the past, they were forced to admit that every enemy could in strict law be subjected to violence and could only urge that non-combatants be spared from attack as an act of mercy.⁶¹⁷

Though, as noted by Baxter himself, International Law leaves the issue of those not adhering to the formalities of belligerency, yet participating to the hostilities, substantially indeterminate. The distinction between combatant and noncombatant necessarily presupposes that some form of combatant can stand in between. As for example civilians who join the armed forces with the aim of

⁶¹⁵ Michael Bothe et al., *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, Second edition, Nijhoff Classics in International Law 1 (Leiden: Martinus Nijhoff Publishers, 2013), 321.

⁶¹⁶ Clapham and Gaeta, *The Oxford Handbook of International Law in Armed Conflict*, 297.

⁶¹⁷ Detlev F. Vagts and Theodor Meron, “So-Called ‘Unprivileged Belligerency’: Spies, Guerrillas, and Saboteurs*,” in *Humanizing the Laws of War*, by Richard Baxter, ed. Detlev F. Vagts et al. (Oxford University Press, 2013), 40, <https://doi.org/10.1093/acprof:oso/9780199680252.003.0003>.

deceiving, or outlaws that use violent means outside the state. The *Geneva* distinction seems to be insufficient and fragile before this further distinction.

This is not simply a theoretical problem that arises concomitantly with the *Geneva Conventions*, as highlighted by Baxter, but it is quandary reflected by the reality of war, especially during and after the Second World War. The reality of war shows more than once that the more specific legal categories are required to overcome the *Geneva* simplistic and schematic distinction. The linearity of the *Geneva* legal distinction seems not to capture the many nuances of the twentieth century battlefield and, in particular, it seems to be highly problematic to apply in the face of changing strategies of war both on the side of armed forces and on the side of civilians.⁶¹⁸ A large number of figures escape the traditional binary distinction and locate in-between it. The involvement, terrorization, and targeting of noncombatants characterizes twentieth century war. From *Amritsar* massacre in India to *VI bombs* dropped on London, from Italian wars in the *Horn* and Belgian colonial policies in Congo to the bombing of Dresden and Hiroshima up to the decolonization, the International Humanitarian Law distinctions are irremediably overshadowed and transcended, at times as a habit and at times as a strategic project.⁶¹⁹

It is in the face of such a complex legal reality that the genesis of “unlawful enemy combatant” category can be traced back. The centrality and the ambivalence of the individual in twentieth century war calls for a proper categorization which specifies personal responsibilities beyond International Humanitarian Law distinctions and takes into account the nuances of the battlefield. Three different intellectual pathways try to make sense of such nuances. In the following three paragraphs they are explored.

2.1 In the interstices of the legal distinction between “combatants” and “non-combatants”

The first pathway of genesis of the “unlawful enemy combatant” can be seen as a consequence of the attempt to find a legal category for those combatants violating the basic rules of war on enemy territory. The *Geneva Convention* distinction as highlighted, comes at a time in which the practical distinction between combatants and civilians has undergone a slippery slope. Total war has brought intentionally and unintentionally civilians in the spiral of war violence and terror. Both the direct involvement of civilian population and the use of indiscriminate attack undermine the logic of distinction.⁶²⁰ The use of treason in war, the use of technical means and the intentional use of atrocious methods undermine the possibility of distinguishing. The overwhelming presence of irregular combatants, as partisans, *saboteurs*, militias, and civilians using terrorist tactics, is not a novelty, but certainly reaches unprecedented levels during Second World War and sounds as a forecast of what is yet to come with the decolonization process few later. This puts under pressure the *Geneva* binary distinction.

The *Geneva* distinction leaves enough space to interpretation about what really the legality of combatants means and gives sufficient tools to distinguish between a legal combatant and an illegal combatant. Since none is a combatant at birth, the status of combatant is temporarily and can be ascertained only in relation to the existence of a status of war. Being a combatant is a contextual categorization that strictly depends on the fulfillment of certain prerequisite and condition.

⁶¹⁸ Scheipers, *Unlawful Combatants*, 4–9.

⁶¹⁹ Pick, *War Machine*, 4–9.

⁶²⁰ Dinstein, ““Direct Participation in Hostilities.””

International Humanitarian Law, in its effort to consolidate the fictional *spatio*-temporal dimension of regular enmity, prescribes that no middle way exists between combatants and non-combatants. It can be the case that “a civilian convert himself into a combatant. [...] But at any given point a person is either a combatant or a civilian: he cannot (and is not allowed to) be both at the same time, nor can he constantly shift from one position to the other.”⁶²¹ As Dinstein sharply acknowledges “whether on land, by sea or in the air, one cannot fight the enemy and remain a civilian.”⁶²² Therefore, the distinction makes the combatant a special case of legally killable person who is also entitled to kill other combatants as long as he respects the temporal and spatial boundaries of the state of war. Combatants may also be captured, thus, becoming prisoners of war, but their capture has nothing to do with judicial capture under domestic jurisdiction. What International Humanitarian Law intends with capture is a measure of detention for the only sake of preventing the captive from performing his right of fighting.⁶²³ Therefore, those using violence but failing to respect the basic rules, can be defined as combatant, but qualified as illegal.

Following this logical ratio, during the Second World War, a United States Military Commission conceptualizes a third legal position that escapes the *Geneva* binary distinction. To complement and clarify, as argued by Military judges who issue the sentence, the legal provisions about distinction of *ius in bello*, a third position in-between the combatant-noncombatant distinction must be created wherever a jurisdiction can be established. Those combatants, argues the Commission, who intentionally wear the clothes of civilians to deceptively perform military acts must not enjoy the status of lawful combatants.⁶²⁴ The Military Commission opinion in puts forward in the occasion of the trial of eight German *saboteurs* that during the Second World War attempt to destroy American war industries with explosives. The eight Germans, once arrested, are not treated as prisoners of war but as military personnel guilty of violating the laws of war. The Military Commission argues that establishing an in-between category aims at protecting both ordinary (lawful) combatants from being confused with treacherous fighters and civilians from the infiltration of combatants among them. The Military Commission condemns the eight Germans in virtue of the jurisdiction granted by their in-between status and their presence on the United States territory. The Germans are defined “unlawful combatants” and it is in virtue of such status they forfeit the protection of International Humanitarian Law.⁶²⁵ The Military Commission decision, then become famous as an eminent precedent under the name *Ex parte Quirin*, is confirmed in 1942 following the appeal by the United States Supreme Court. The Supreme Court to justify its decision relies again on the same concept of “unlawful combatant” and holds:

Being enemies of the United States and acting for . . . the German Reich, a belligerent enemy nation, secretly and covertly passed, in civilian dress, contrary to the law of war, through the military and naval lines and defenses of the United States . . . and went behind such lines,

⁶²¹ Yoram Dinstein and Fania Domb, eds., “Unlawful Combatancy,” in *Israel Yearbook on Human Rights, Volume 32 (2002)* (Brill | Nijhoff, 2003), 247–70, https://doi.org/10.1163/9789004423169_007.

⁶²² Dinstein and Domb.

⁶²³ As explained by Dinstein “[be]ing a prisoner of war means denial of liberty, i.e., detention for the duration of the hostilities (which may go on for many years). However, that detention has only one purpose: to preclude the further participation of the prisoner of war in the ongoing hostilities. The detention is not due to any criminal act committed by the prisoner of war, and he cannot be prosecuted and punished “simply for having taken part in hostilities.” Dinstein and Domb; Bothe et al., *New Rules for Victims of Armed Conflicts*, 267–80.

⁶²⁴ Dinstein, ““Direct Participation in Hostilities.””

⁶²⁵ Allison Danner, “Defining Unlawful Enemy Combatants: A Centripetal Story,” *Texas International Law Journal* 43, no. 1 (2007): 1.

contrary to the law of war, in civilian dress . . . for the purpose of committing . . . hostile acts, and, in particular, to destroy certain war industries, war utilities and war materials within the United. By the law of war, lawful combatants are subject to capture and detention as prisoners of war; unlawful combatants, in addition, are subject to trial and punishment by military tribunals for acts which render their belligerency unlawful.⁶²⁶

The logic that underlies the Court decision is that there are cases in which members of enemy forces use civilian clothes and act without formal insignia. In such cases “unlawful combatants” can be arrested, detained, or sentenced without constitutional protection and without enjoying the privileges prescribed by the laws of war. The category of “unlawful combatant” appears few later also in military manuals. For example, in the *United States Military Manual FM 27-10 – The Law of Land Warfare* issued in 1956 it is contained a provision that reflects almost the same category crafted by the Military Commission on *Ex parte Quirin*. The category is expounded in different words, but it recalls the same logic:

Persons in occupied areas not falling within the categories set forth in Article 4 [GC III], who commit acts hostile to the occupant or prejudicial to his security are subject to a special regime [reference is made to the provisions of GC IV, Part III, Section III] [...] Persons Committing Hostile Acts Not Entitled To Be Treated as Prisoners of War.

Similarly, within *British Manual Part III—The Law of War on Land* issues in 1957, it is stated that:

Should regular combatants fail to comply with these four conditions [of GC III, Art. 4], they may in certain cases become unprivileged belligerents.⁶²⁷

Both the Military Field Manuals prescribe that when found such unprivileged combatants can be killed if military necessity requires it. If captured, they cannot enjoy the International Humanitarian Law protection and they must be tried by competent courts and treated as special individuals.

In military manuals as well in the *Ex Parte Quirin* decision reference is made to specific territorial conditions wherein the individual must be located in order to be treated as “unlawful combatant.” Indeed, “unlawful combatants” are identified only as those unqualified individuals who are located in a war zone within a country and perform hostile acts within a specific territory. Given their status they cannot enjoy the protection of International Humanitarian Law and as such they fall under the jurisdiction of the competent tribunals, be it a military or a domestic court.

2.2 International criminal law: juridification of the enemy in the second half of the twentieth century

The second pathway of genesis of the “unlawful enemy combatant” category can be identified as the tendency to institute specific categories of international crimes that can be attributed to single individuals. International Law after the end of the Second World War witnesses a fundamental paradigm shift. International Law discloses for the first time its operative force directly on

⁶²⁶ U.S. Supreme Court, “*Ex Parte Quirin*, 317 U.S. 1,34 (1942).,” 1942.

⁶²⁷ Knut Dörmann, “The Legal Situation of ‘Unlawful/Unprivileged Combatants,’” *Revue Internationale de La Croix-Rouge/International Review of the Red Cross* 85, no. 849 (2003): 45–74, <https://doi.org/10.1017/S0035336100103521>.

individuals, without the traditional state mediation. The London Charter establishing the Nuremberg and the Tokyo Tribunals and the parallel establishment of the United Nations Charter contemplating a set of violations for which single individuals can be retained liable, open to the compenetrating of criminal law logics into International Law.⁶²⁸ Such a tendency is articulated in two interrelated passages.

The first passage is the legal institutionalization of an international criminal justice capable of formally prosecuting individuals for serious violations of international law, without provoking any repercussions on collectivities.⁶²⁹ In 1943 Kelsen encapsulates this in a fundamental essay, writing that “[...] the opinion that the State as a body corporate cannot have a guilty mind because it has no psychic functions, is not conclusive. The State acts only through individuals; acts of State are acts performed by individuals in their capacity.”⁶³⁰ The intellectual shift is exactly traceable in the re-discovery, during the interwar period, of the piracy analogy as a reliable source. Kelsen assumes customary law dispositions against pirates – designated as *hostes humani generis* – as a source for individual criminal justice and its universal jurisdiction.⁶³¹ According to Kelsen “supranational judicial action can be capable of affecting the macro-structural dimensions of war much more than diplomatic, political or economic activity.”⁶³² The concretization of this idea is also possible by designing a universal planetary jurisdiction where individuals could be formally legal subjects and by the progressive disregarding of the *si omnes* clause, which provides that if a state or organization is not party to a treaty, then treaty law does not apply. The further intellectual step is made by grounding the universal criminal jurisdiction in the 1948 United Nations Declaration, as does the British jurist Lauterpacht. Indeed, Lauterpacht “insists that Arts 1(3) and 55(c) of the Charter, dealing with ‘promoting...respect for human rights,’ are not simply programmatic postulates but create enforceable legal obligations.”⁶³³ Moreover, the fact that national constitutions adopted in Europe after the end of the Second World War were imbued with individualism and individual rights had a rampant influence on international law and corroborated its incoming individualized legal imaginaries.

While the second and most recent passage is the actual establishment of peculiar mechanisms of international criminal prosecution. The setting of Special Tribunals in the nineties and the eventual institution of the permanent International Criminal Court in 1998 by the Rome Statute,⁶³⁴ create the conditions for a universal jurisdiction through which attributing criminal responsibility to single individuals. The special tribunals, drawing from International Humanitarian Law provisions and from the United Nations Conventions,⁶³⁵ is for the first time capable of trying individuals acting on behalf

⁶²⁸ Anderson, “The Rise of International Criminal Law.”

⁶²⁹ Danilo Zolo, *La Giustizia Dei Vincitori: Da Norimberga a Baghdad*, 1. ed, Sagittari Laterza 145 (Roma: GLF editori Laterza, 2006), 20–28.

⁶³⁰ Hans Kelsen, “Collective and Individual Responsibility in International Law with Particular Regard to the Punishment of War Criminals,” *California Law Review* 31, no. 5 (December 1943): 530, <https://doi.org/10.2307/3477207>.

⁶³¹ Kelsen. It should be noted that, faithful to his formalistic view, Kelsen was bitterly critical to the Nuremberg Tribunal for its inconsistent application of retroactive rules to cope with the principle of *nullum crimen sine lege*. Kelsen argued the Tribunal attempted to deduce criminal responsibility from the Briand-Kellogg Pact, which however contained none.

⁶³² D. Zolo, “Hans Kelsen: International Peace through International Law,” *European Journal of International Law* 9, no. 2 (January 1, 1998): 306–24, <https://doi.org/10.1093/ejil/9.2.306>.

⁶³³ Koskenniemi, *The Gentle Civilizer of Nations*, 395.

⁶³⁴ Galand, “Bemba and the Individualisation of War.”

⁶³⁵ Zolo, “Hans Kelsen.”

of their political collectives, making them “special international criminals,” individually accountable for their conduct in war.⁶³⁶

2.3 The “enemy criminal law” theory: domestic criminal law facing international enemies

The third pathway of genesis of the “unlawful enemy combatant” category pertains to the so-called process of internationalization of domestic criminal law. Between the late eighties and the nineties of the last century, the German jurist Günther Jacobs advances a theory that tries to enlarge the scope of domestic criminal law to international issues. The theory diffuses among Western European countries as the “enemy criminal law.”⁶³⁷ Jacobs imagines that, in light of the porous character of borders due to globalization, acts as transnational terrorism, international smuggling, and trafficking can be prosecuted by domestic courts on a separate, yet complementary, track of criminal law. Jacobs main preoccupation is how a domestic court can deal with an individual which is not a citizen and poses an existential threat to the state. Thus, he argues that in order to completely subjugate an individual who otherwise would endanger an entire juridical order such must be neutralized by means of law.⁶³⁸ His theory aims at providing domestic criminal law with “excluding effect measures or forms of preventive punishments.”⁶³⁹ Three mechanisms can be identified in Jacobs theory: “punishment comes well before an actual harm occurs; second, it contains disproportionate, i.e., extremely high, imprisonment sanctions; third, it suppresses procedural rights.”⁶⁴⁰ Jacobs’ theory inaugurates the idea of empowering national courts to resort to legal instruments aimed at prosecuting external enemies with preventive measures. As noted by Krassman, this leads to the “confusion of two different legal spheres, namely, that of punishment as a reaction to crimes and that of prevention of possible future harms. Enemy penology, in contrast, opens a kind of third space aiming at externalizing the identified problem through the invention of an additional, quasi-legal system.”⁶⁴¹

Jacobs’ theory, in the nineties is received with hesitation in the continent, especially in civil law countries. Lawyers raise doubts about the contradictory logics of the using criminal law against someone who is located outside the jurisdiction. However, the attacks of September 2001 in New York, boost an unexpected revitalization of the theory and its innovative intellectual shift.

2.4 The deployment of the “unlawful enemy combatant” category in the wake of the global war on terror

The category “unlawful enemy combatant” appears for the first time in the United States as the legal definition of those captured or killed in accordance with the 2001 Presidential Military Order

⁶³⁶ Dill, “Do Attackers Have a Legal Duty of Care?”

⁶³⁷ Gamberini, *Delitto politico e delitto penale del nemico*, 2007, 18.

⁶³⁸ Bartoli, *Lotta al terrorismo internazionale*, 7–9.

⁶³⁹ Carlos Gómez-Jara Díez, “Enemy Combatants Versus Enemy Criminal Law: An Introduction to the European Debate Regarding Enemy Criminal Law and Its Relevance to the Anglo-American Discussion on the Legal Status of Unlawful Enemy Combatants,” *New Criminal Law Review* 11, no. 4 (November 1, 2008): 529–62, <https://doi.org/10.1525/nclr.2008.11.4.529>.

⁶⁴⁰ Díez.

⁶⁴¹ Susanne Krasmann, “Enemy Penology,” in *Oxford Research Encyclopedia of Criminology and Criminal Justice*, by Susanne Krasmann (Oxford University Press, 2018), <https://doi.org/10.1093/acrefore/9780190264079.013.365>.

– AUMF.⁶⁴² Beyond the war theaters of Afghanistan and Iraq, the *global war on terror* takes place in an array of different contexts. Acting “under the umbrella of Operation ‘Enduring Freedom’”, the United States special forces and intelligence agencies start incessantly hunting terrorists in the Philippines, the Horn of Africa, and the Maghreb, and even a small contingent of Special Forces [in] the Caribbean.”⁶⁴³ It is immediately clear that a war on such a scale, to find a legal justification internally and externally,⁶⁴⁴ needs an appropriate legal vocabulary that complements the traditional understanding of time and space contained in the *Hague* and *Geneva Conventions*.

Few later, in response to the intensification of hostilities between Palestinian and Israeli forces on the contended territories,⁶⁴⁵ in March 2002 the *Knesset* “passe[s] an ‘illegal combatants law’ that allow[s] for indefinite detention of anyone suspected engaging in ‘hostile activity against Israel, directly or indirectly.’”⁶⁴⁶ Considered as “armed adversaries”, but not recognized as part of an enemy state, Palestinian armed individuals must be embedded in a legal framework. The answer is the category of “unlawful enemy combatant.”⁶⁴⁷

In both cases the term conveys the three tendencies described above and it seeks to address the puzzling issue of transnational terrorism. The notion of “unlawful enemy combatant” is used by the Bush administration to depict all individuals who in the *global war on terror* can be detained indefinitely without trial or if necessary targeted at any time. The *Quirin* case is unearthed as to serve to legally ground the category “unlawful enemy combatant.” “In fact, one of the attractions of *Quirin* for an Administration intent on preserving flexibility was that the case did not actually define the contours of the ‘unlawful enemy combatant’ category.”⁶⁴⁸ On the one hand, the usage of the category is combined with an idea of universal global jurisdiction drawn from the logics of the internationalization of criminal law. Indeed, the term “unlawful combatant” is not simply deployed on the national territory. Despite both US and Israeli have ratified the *Conventions* in 1950, they found themselves under the necessity to apply the category outside their national borders. On the other hand, the category is used by legislative bodies and domestic courts, which actively use the category to justify the use of measures inapplicable in domestic criminal jurisdictions.

Setting aside the constitutional issues that the use of such categories has raised and still raises in domestic legal system, it is here shown how the “unlawful enemy combatant” category is adopted and disseminated by the case law in Israeli and United States domestic jurisdiction. Some empirical examples of the emergence and consolidation of the “unlawful enemy combatant” category in legal vocabulary are drawn from the Supreme Courts practice. Notwithstanding the criticism of activists

⁶⁴² Curtis A. Bradley, “The United States, Israel, and Unlawful Combatants,” *SSRN Electronic Journal*, 2009, <https://doi.org/10.2139/ssrn.1408135>.

⁶⁴³ Scheipers, *Unlawful Combatants*, 193.

⁶⁴⁴ The main issue relates the possibility of convincing Western Public opinions that the war, in its manifold manifestations, is entirely in accordance with international and domestic law. As emphasized by Scheipers, in the United States, “soon after the start of military operations in Afghanistan, a debate emerged within the Bush administration over the detention and treatment of terrorist suspects and their supporters. The main players in this debate were the Department of Justice (DOJ), the Department of Defense (DOD), and the White House.” Danner, “Defining Unlawful Enemy Combatants: A Centripetal Story”; Scheipers, *Unlawful Combatants*, 194.

⁶⁴⁵ Bradley, “The United States, Israel, and Unlawful Combatants.”

⁶⁴⁶ The conflict is also known as the “Second *Intifada*”. In particular, on “28 September 2000, six weeks after the collapse of the Camp David final status negotiations, the second intifada erupted and was immediately militarized when Israel deployed tanks, helicopter gunships, and snipers against demonstrating crowds.” Lisa Hajjar, “International Humanitarian Law and “Wars on Terror”: A Comparative Analysis of Israeli and American Doctrines and Policies,” *Journal of Palestine Studies* 36, no. 1 (October 1, 2006): 21–42, <https://doi.org/10.1525/jps.2006.36.1.21>.

⁶⁴⁷ Bradley, “The United States, Israel, and Unlawful Combatants.”

⁶⁴⁸ Danner, “Defining Unlawful Enemy Combatants: A Centripetal Story.”

and academics of “unlawful combatant” as a “legal black-hole;”⁶⁴⁹ it can be claimed that the category is the by-product of an intense intellectual and argumentative endeavour by Western legal experts.⁶⁵⁰

2.4.1 “Unlawful combatant” in the United States and Israeli Supreme Courts case law

For its part, departing from the long-awaited judgment *Hamdi v. Rumsfeld* of 28 June 2004, the United States Supreme Court endorses in turn this three-fold approach. Hamdi is a United States citizen who after his capture in Afghanistan, is detained in Guantanamo as an “unlawful enemy combatant” and eventually convicted before the United States Supreme Court after having filed a petition for *habeas corpus*. Herein, the Court specifically examines whether the Government could indefinitely detain a United States citizen labelled as “unlawful enemy combatant” without a hearing. What is interesting to note here is that the Court recognizes Hamdi as “unlawful enemy combatant”, despite being captured in a theatre of war. His status is diverse from the lawful combatant being suspected of terrorism but at the same time, being captured in a context of war as a combatant he cannot enjoy the status of criminal civilian to which. He is therefore not by protected by the *Geneva Conventions* and not protected by the United States criminal law. The Court states, assuming implicitly the existence of the category and its boundless application, that:

The capture and detention of lawful combatants and the capture, detention, and trial of unlawful combatants, by “universal agreement and practice,” are “important incident[s] of war.” *Ex parte Quirin*, 317 U. S., at 28. The purpose of detention is to prevent captured individuals from returning to the field of battle and taking up arms once again. There can be no doubt that individuals who fought against the United States in Afghanistan as part of the Taliban, an organization known to have supported the al Qaeda terrorist network responsible for those attacks, are individuals Congress sought to target in passing the AUMF. We conclude that detention of individuals falling into the limited category we are considering, for the duration of the particular conflict in which they were captured, is so fundamental and accepted an incident to war as to be an exercise of the “necessary and appropriate force” Congress has authorized the President to use.⁶⁵¹

Other examples follow soon after. Among the others, the pivotal decision *Hamdan v. Rumsfeld* is of relevance. In this case concerning the self-confessed Osama Bin Laden driver and bodyguard, the Court holds the Military Commissions set up by the President and that charged Hamdan to violate common Article 3 of the *Geneva Conventions* as far as they allowed an execution to be carried out without the previous judgment of an independent Court. It is interesting to note that in this decision Justice Stevens refers frequently to the concept of “unlawful enemy combatant” while considering the applicable legislation and the arguments put forward by the Government but failed to question the merits of such a classification taking it for granted.

As a plurality of the Court observed in Hamdi, the “capture, detention, and trial of unlawful combatants, by ‘universal agreement and practice,’ are ‘important incident[s] of war,’” Hamdi, 542 U. S., at 518 (quoting *Quirin*, supra, at 28, 30; emphasis added), and are therefore “an exercise of the ‘necessary and appropriate force’ Congress has authorized the President

⁶⁴⁹ Silvia Borelli, “Casting Light on the Legal Black Hole: International Law and Detentions Abroad in the ‘War on Terror,’” *International Review of the Red Cross* 87, no. 857 (March 2005): 39–68, <https://doi.org/10.1017/S1816383100181184>.

⁶⁵⁰ Scheipers, *Unlawful Combatants*, 222; Danner, “Defining Unlawful Enemy Combatants: A Centripetal Story.”

⁶⁵¹ 542 United States 507 (2004), *Hamdi v. Rumsfeld*

to use.” Combatant Status Review Tribunal (CSRT) convened pursuant to a military order issued on July 7, 2004, decided that Hamdan’s continued detention at Guantanamo Bay was warranted because he was an “enemy combatant.” An “enemy combatant” is defined by the military order as “an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners.”⁶⁵²

The self-standing existence of this category is further confirmed in 2008 in *Boumediene v. Bush*.⁶⁵³ *In casu* the United States Supreme Court, by declaring the Military Commission Act inconsistent with the Constitution, holds federal Courts to be competent over the *habeas corpus* petitions filed by Guantanamo detainees qualified as “unlawful enemy combatants.”

By contrast, the Israeli Supreme Court endorses a two-fold approach, namely refuses to explicitly recognize “unlawful enemy combatants” as a third standalone category under International Law. According to its view, “unlawful enemy combatants” should be conceived as a “sub-category of civilians.”⁶⁵⁴ The Court firstly corroborates its position in December 2006 when, sitting as the High Court of Justice, issues the decision *Public Committee against Torture in Israel v. Government of Israel*.⁶⁵⁵ Herein, the Court – demanded to assess the legality under International Law of the Israeli’s Government policy of “targeted killing” – denies for the first time the existence⁶⁵⁶ of a third status of “unlawful combatant” under international law:

There is insufficient information for saying that a third category of ‘unlawful combatants’ has been recognized at this time by customary international law. Since terrorists do not satisfy the requirements of the definition of ‘combatants’ in international law, because inter alia they do not observe the laws and customs of war, they must be classified as civilians.⁶⁵⁷

This statement is further corroborated in the 2008 decision *A and B v. State of Israel*⁶⁵⁸ issued sitting as the Court of Criminal Appeals. In this case, while challenging the constitutionality of the Israel’s *Internment of Unlawful Combatants Law of 2002*,⁶⁵⁹ the Court once again holds that International Law does not recognize the existence of a separate category of “unlawful enemy combatants”:

With regard to the appellants’ aforesaid arguments we should point out that the question of the conformity of the term ‘unlawful combatant’ to the categories recognized by international law has already been addressed in our case law in *Public Committee against Torture in Israel v. Government of Israel*, in which it was held that the term ‘unlawful combatants’ does not constitute a separate category but is a subcategory of ‘civilians’ recognized by international law. This conclusion is based on the approach of customary international law, according to

⁶⁵² 548 United States 557 (2006), *Hamdan v. Rumsfeld*

⁶⁵³ 553 United States 723 (2008), *Boumediene v. Bush*

⁶⁵⁴ Bradley, “The United States, Israel, and Unlawful Combatants.”

⁶⁵⁵ HCJ 769/02.

⁶⁵⁶ However, it still recognizes this status *de facto*: Orna Ben-Naftali and Keren Michaeli, *Public Committee Against Torture in Israel v. Government of Israel*. Case No. HCJ 769/02, *The American Journal of International Law*, Apr., 2007, Vol. 101, No. 2

⁶⁵⁷ HCJ 769/02, p. 459.

⁶⁵⁸ CrimA 6659/06; CrimA 1757/07; CrimA 8228/07; CrimA 3261/08

⁶⁵⁹ Incarceration of Unlawful Combatants Law, 5762-2002, available at <https://www.jewishvirtuallibrary.org/jsource/Politics/IncarcerationLaw.pdf>

which the category of ‘civilians’ includes everyone who is not a ‘combatant.’ We are therefore dealing with a negative definition.⁶⁶⁰

As Chief Justice Barak in *Ajuri* case in the Israeli Supreme Court claims “we doubt whether the drafters of the provisions of [...] the Fourth Geneva Convention anticipated protected persons who collaborated with terrorists and ‘living bombs.’”⁶⁶¹ Barak’s ambiguous comment shows the determination of domestic as well as international lawyers and legal experts to adapt and re-interpret International Law provisions on war under the light of an *individualized* understating of war. Indeed, as skeptically emphasized by two Israeli legal scholars:

This indeterminacy concerning the applicability of the *Fourth Geneva Convention* and *Additional Protocol I* ultimately generated further confusion into the judgment’s already eroded distinction between civilians and combatants: it explains why the judgment while denying that there is a third status of “unlawful combatants,” nevertheless *de facto* recognizes such status, equating it with civilians who take a direct part in the hostilities. Such “civilians/unlawful combatants” are bereft of either immunity (of civilians) or privileges of combatant.⁶⁶²

3. “Unlawful enemy combatant”, the concept of regular enemy, and *individualization of war*

Looked from a conceptual point of view, the category of “unlawful enemy combatant” is not entirely a new tool to define the enemy. It is rather a bricolage of different concepts and different ideas. It is an intellectual tool that conveys forms of irregularity and forms of regularity in the same category. The very scope of this intellectual category is to create a concept of enemy that can be identified only as an individual and as such it is no more mediated by other political forms. His belligerency, his acts in legal terms are not part of a collective effort, but rather pertain to the individual sphere of criminal responsibility. By creating an *individualized*, distinct enemy status, which in light of his unlawfulness, is not protected by the laws of war, the category of “unlawful enemy combatant” creates the conditions for a form of enmity that transcends the context of war and can be located everywhere, at every time.

Therefore, the category of “unlawful enemy combatant” still retains the political intensity given by the act of hostility it contains. But at the same time the legal *spatio*-temporal dimension in which it is embedded is reduced to the sole individual and to his body. Neither domestic legal rules, nor the rules regulating international, nor the rules regulating non-international armed conflict apply. The category of “unlawful enemy combatant” allows to use force outside the fictional *spatio*-temporal dimension of war. This, as evident, does not only deprive the individual from the traditional legal protection of combatants but, as argued, it leaves the single individual into a boundless legal space. There is neither spatial jurisdiction nor temporal jurisdiction, since, given the nature of the act the individual is suspected or accused of, the “unlawful enemy combatant” must be neutralized wherever is located whenever it is possible.

⁶⁶⁰ CrimA 6659/06; CrimA 1757/07; CrimA 8228/07; CrimA 3261/08, § 12.

⁶⁶¹ Marco Sassòli and Daniel Reisner, “‘Unlawful Combatants’: The Law and Whether It Needs to Be Revised,” *Proceedings of the Annual Meeting (American Society of International Law)* 97 (2003): 196–203.

⁶⁶² Orna Ben-Naftali and Keren Michaeli, “Public Committee Against Torture in Israel v. Government of Israel. Case No. HCJ 769/02,” *The American Journal of International Law* 101, no. 2 (2007): 459–65.

However, the category of “unlawful enemy combatant” is not really a legal black-hole and is not the very negation of the laws of war. It is rather a specific and detailed legal instrument, which relies both on caselaw, on an argumentative deconstruction of the International Humanitarian Law, and on a legal argumentation that in virtue of national security and military necessity justifies significant violations of law. How is this category constructed, then? The underpinnings of this concept can be divided in two different kinds. On the one hand, a traditional understanding of the regular enemy. On the other hand, a thorough reconfiguration of the spatio-temporal dimension in which the regular enemy is located.

3.1 What remains of the regular enemy concept

On the one hand, the category of “unlawful enemy combatant” evidently contains the semantics of combatant. The semantics of combatant implies as its core character that combatant is a person whose legal status depends on a specific political *spatio-temporal* framework and whose tutelage falls under specific bodies of law, as for instance International Humanitarian Law. Indeed, as noted, “while combatants may be held as prisoners of war in every corner of the earth, civilians may never be deported out of an occupied territory.”⁶⁶³ It is thus evident that “unlawful enemy combatant” has a strong continuity with the way the regular enemies combatant are treated in war. The practice of the United States to kidnap, arrest, and target single individuals in different areas of the globe is consistent with the logic of self-defense in war against regular enemies. Similarly, in the case of Israel, the practice of targeting on *Hamas* members and suspected affiliates is consistent with the logic of self-defense against a regular enemy who poses a threat to a state. IN both the cases, the United States and Israel, the individual arrested or targeted is treated as a combatant, as a potential threat that must be neutralized. In this sense, the semantic scope of the terms “enemy” and “combatant” in the “unlawful enemy combatant” category have special preeminence. They signify that the individual arrested or targeted belongs to the category of those that accept to enter the *spatio-temporal* dimension of *killability* that the status of war creates. The use of categories of “enemy” and “combatants” together implies that the individual can be subject, depending on the military necessity, to an array of different treatments, from detention to killing.

3.2 What falls of the concept of regular enemy

On the other hand, Western legal experts, by reviving the concept of “unlawful enemy combatant” aim at overcoming the *spatio-temporal* obstructions that the concept of regular enemy poses. Drawing from *Ex parte Quirin* case and combining it with the extent of international criminal law and with domestic enemy criminal law, United States and Israeli lawyers attempt to craft a category that operates on single individuals and on global extent. The “unlawful enemy combatant” challenges the concept of regular enemy on the basis of its supposed boundless character. The modern concept of regular enemy implicates an enclosed *spatio-temporal* in which the individual is qualified, and this *spatio-temporal* dimension is almost impossible to be defined in the case of “unlawful enemy combatant”. The category presupposes that the individual loses his juridical status and acquires an indefinite personal responsibility. It still retains a form of regularity, given by the important dimension played by the category of “combatant.” However, its unlawfulness does not really place

⁶⁶³ Sassòli and Reisner, “‘Unlawful Combatants’: The Law and Whether It Needs to Be Revised.”

the subject identified as such outside law, but more precisely outside the *spatio*-temporal enclosure of law. Its unlawfulness is an open-ended classification that can be used to justify the treatment of enemies in different modes: from indefinite detention, to torture up to the killing in any part of the globe. As the Marine Veteran and Law Professor Garry Solis holds, the “unlawful enemy combatant” is the appropriate legal category to identify the enemy in the case of targeted killing because the practice of targeted killing is intrinsically tied to a situation of unlawfulness. According to Solis targeted killing is:

The intentional killing of a specific civilian or unlawful combatant who cannot reasonably be apprehended, who is taking a direct part in hostilities, the targeting done at the direction of the state, in the context of an international or non-international armed conflict.⁶⁶⁴

In effects, the legal justification provided by the category of “unlawful enemy combatant” corresponds with the re-emergence of the tactic of targeted killing. Both the United States, which prohibited targeted killing by executive orders since 1977,” and Israel resort to the targeting of individuals deemed dangerous and suspected of terrorism as a preventive war measure. Officials and policymakers in Israel and in the United States use the “unlawful enemy combatant” reasoning to justify the assassination of suspected individuals. An example is the case of “Ali Qaed Sinan al-Harithi and five others (including a U.S. citizen)”, killed in Yemen in a targeted killing. Claiming that “because Harithi was allegedly a member of *Al-Qaida* and because arrest was impossible,”⁶⁶⁵ United States Department of Defense Officials argue that the policy of targeted killing is the only available measure against an “unlawful combatant” who represents an immediate threat to national security.

4. Conclusion. A legal artifact for the *individualization of war*

The chapter tries to demonstrate that the category employed during the *global war on terror* represents a mode of articulation of the concept of regular enemy in *individualized* terms. The “unlawful enemy combatant” represents a kind of legal argumentation that ends up underpinning and justifying form of war entirely outweighed on the individual in legal terms. The fictional *spatio*-temporal dimension in which the role of the individual is mediated by the state and thus the individual is turned into a soldier, authorized to kill and being killed, is dramatically shrunk. The use of this legal category signals three relevant elements about the process of *individualization of war*.

First, that the usage of such a category engenders the crumbling of the distinction between domestic and international jurisdictions. The activity of the Supreme Court and the legal vocabulary employed in its rulings are evident signs of the theoretical extension of the Court jurisdiction into the international realm. The second element regards the laws of war and the effectiveness of International Humanitarian Law in contemporary war. The “unlawful enemy combatant” legal artifact creates a significant precedent in undermining the efficacy of the laws of war and in preventing a certain group of individual enemies from their protection. Third, the category of “unlawful enemy combatant” can be easily deployed in controversial cases beyond the case of terrorism to justify the use of lethal force both before international law and before national constitutional law. As aptly commented by Philippe Sands on the ambiguous nature of the category, “legal opinions became expressions of policy [...] whether this was aided by ideology or driven by other ambitions matters not: a violation of the law is

⁶⁶⁴ Strawser and McMahan, *Killing by Remote Control*, 75.

⁶⁶⁵ Hajjar, “International Humanitarian Law and “Wars on Terror.””

a violation of the law.”⁶⁶⁶ The emergence of the category of “unlawful enemy combatant”, marks a slippery path of the concept of regular enemy into a grey area where legal experts try to craft categories to substitute collective political responsibility with individual, criminal responsibility. This implies that the individual in war is no more protected by general treaties and provisions as the laws of war, but he is called to respond personally of his military acts. Eventually, such a logic is consistent with the project of the *individualization of war*.

⁶⁶⁶ Scheipers, *Unlawful Combatants*, 221.

Chapter 5 - The strategic paradigm in the contemporary reflection on war: the regular enemy as “target”

1. Introduction

This chapter looks at the concept of regular enemy in the contemporary strategic reflection on war.⁶⁶⁷ Since the end of the Cold War, Western strategists have increasingly addressed the enemy as “target”. The use of “target” to address the enemy has been the result of the predominant role that air power has played in Western strategy.⁶⁶⁸ The joint use of laser-guided weapons, computers, satellite integrated systems and semi-autonomous aircrafts has allowed an ever more precise pattern of targeting the enemy. In the post-Cold War era and more precisely in the years of the *global war on terror*, the “target” has become the pivotal element in strategic reflection on war, defining war logics, justifications, and languages.

Though, the idea of aerial “target” does not emerge thoroughly after the end of the Cold War. To understand the genesis of the concept of “target” and the process that has led to the substitution of the concept of regular enemy with that of “target” in military and political jargons, it is necessary to look back at the development of early air power doctrines. Contemporary strategic reflection indeed stands in a line of continuity with the theories of aerial bombing emerged at the beginning of the twentieth century.

To trace the history of the idea of enemy as “target”, the chapter uses three elements that have shaped the theory of air power towards the pattern of “targeting.” The first one is the element of the vertical perspective offered by the airplane, namely verticality. Attacking the enemy with firepower from above means fighting in an intrinsically asymmetric position where the enemy is regarded as a passive matter. The second element, which pertains chiefly to the post-Cold War era, is the attempt to achieve a panoptic visibility in warfare. The emergence of information and complex computer technologies in the late eighties has led to conceptualize the enemy as an entirely visible and deeply knowable subject in the war theatre. While the third element, pertaining mostly to the years of the *global war on terror*, is autonomy intended as the capability of remotely piloting aerial technologies. All the three elements have shaped and directed the processes of *targetization*, turning throughout the last century the regular enemy into a target. In the history of air power, indeed, the relevance of the process of targeting represents a line a continuity that connects experimental bombing by Italian and British air forces in the colonies in the twenties to the *CIA* hunt of Taliban leaders in Afghanistan in 2010.

As it is shown by the chapter, the three elements, namely verticality, panoptic visibility, and autonomy, find a paroxysmal combination in the recent phenomenon of drone warfare. Autonomy, combined with verticality and panoptic visibility, allows to penetrate in the enemy space with low

⁶⁶⁷ Here, as in chapter two section devoted to Clausewitz, by “strategic” it is meant the rational effort to manage material and non-material forces with the aim of maximizing objectives and minimizing costs in the confrontation with an opponent. Strategy, intended in this strict meaning, is the by-product of modern Western scientific, technical, and economic thought. See for instance the definition given by Lawrence in Philip K Lawrence, *Modernity and War: The Creed of Absolute Violence*. (Place of publication not identified: Palgrave Macmillan, 2014), 3–9.

⁶⁶⁸ As claimed by Builder “air power is the Icarus’ wax of Western strategy.” It can be the utmost strength of Western military power and at the same time overreliance on air power has proved to be a severe weakness for the West in war. The use and the doctrine of air power are by now indissociable elements of the Western way of war. Carl H Builder, *The Icarus Syndrome: The Role of Air Power Theory in the Evolution and Fate of the U.S. Air Force.*, 2017, 25, <https://www.taylorfrancis.com/books/e/9781315132532>.

risks and low costs and to identify the enemy even in its individual form. Drone warfare is the sublimation of the process of targeting because the enemy is attacked from above, studied and known in advance by panoptic technologies, and engaged with no stakes from autonomous platforms.

2. Verticality: atomization of the enemy's body politic and the invention of aerial target

The idea of target is certainly not coterminous with the advent of air power. Targeting the enemy and its weaknesses is part of the traditional Clausewitzian picture of war as a duel on large scale well before the advent of air power. As seen in the first part of the thesis, modern strategic thinkers as Clausewitz have a clear idea of how, by identifying specific sites in enemy *body politic*, it is possible to revert on own favour the balance of forces that animate war. However, early air power theorists elaborate an idiosyncratic idea of target, exactly starting from the Clausewitzian duel on a large scale. The Clausewitzian idea that conceives the target as a part of the enemy force is reformulated by air power strategists in light of the new aerial technology and the concept of target assumes a different meaning.⁶⁶⁹ Indeed, the logics of air power “put[s] an end to the firm precept expressed first by the French strategist Antoine-Henri Jomini and then reaffirmed by the American Alfred Thayer Mahan: ‘The organized forces of the enemy are always the principal objective.’”⁶⁷⁰

Due to the vertical position of vantage over the enemy offered by the airplane, air power theoreticians start conceiving the target as the crucial mode of representation of the enemy as a cluster of bare objectives to attack. The idea of target that air power theoreticians elaborate is inextricably linked to the perspective peculiar to aerial war: verticality.⁶⁷¹ Verticality, they claim, allows to regard the enemy not as a peer, but as an assemblage of meaningful and non-meaningful passive elements that can be attacked. This is the genetical moment of the idea of aerial “target.” What seems innovative for the theorists of airpower is that from above the enemy unitary body politic can be discomposed in pieces and, by insisting on this aspect, the entire equilibrium of forces of war can be changed.

The concept of “target” elaborated by airpower strategists has not only a linguistic dimension in strategy, but it has also a strong political significance. Before the advent of air power “the destructive zone of war was always limited to where the enemy could deploy their land or naval forces, whether it was in armed combat or in the prosecution of a siege or blockade. Aircraft changed this natural order of things. The effective utilization of air power added, for the first time in history, a third dimension to war: a dimension which allowed direct attack on enemy rear zones, cities, economies and, perhaps most importantly, civilian populations.”⁶⁷² After witnessing the experimentation of the vertical perspective in air bombing first in the colonial context and then on

⁶⁶⁹ Bousquet notes that “the ideal of Newtonian science excited the military thinkers of the Enlightenment and gave rise to an ever-present yearning to infuse the study of war with the maximum mathematical precision and certainty possible. Certainly, bombardment and fortification became increasingly guided by geometrical principles and the developing science of ballistics.” Antoine J. Bousquet, *The Scientific Way of Warfare: Order and Chaos on the Battlefields of Modernity* (New York: Columbia University Press, 2009), 54; Azar Gat, *A History of Military Thought: From the Enlightenment to the Cold War* (Oxford; New York: Oxford University Press, 2001), 30.

⁶⁷⁰ Thomas Hippler and David Fernbach, *Governing From the Skies: A Global History of Aerial Bombing*, English language edition (London: Verso, 2017), 60.

⁶⁷¹ Peter Adey, Mark Whitehead, and Alison J. Williams, *From Above: War, Violence, and Verticality* (New York, NY: Oxford Univ Pr, 2014), 2–15.

⁶⁷² John Buckley, *Air Power in the Age of Total War* (Bloomington, Ind: Indiana University Press, 1999), 1.

European cities, air power theoreticians try to develop doctrines that make sense of this revolutionary weapon from above. The idea of “target” is the central elements of such doctrines.

2.1 Bombing from above: the implications of attacking the enemy from a vertical perspective

The possibility of using aircrafts for attacking the enemy in war discloses at a crucial moment of Western military history. It discloses between the last European thrust of imperial expansionism and the two world wars. At this time, the phenomenon of modern war, pushed by the energies of industry, science, and social masses, is showing its all-encompassing force, investing and transforming every domain of life: as a matter of fact, the military effort of European states is reaching totalizing extents. The civilian and the military spheres are almost entirely compenetrated. It seems that the advent of air power in war at this time, at once revolutionizes military strategy in an unprecedented way and at once perfectly matches with the existing military tendencies and necessities of the time.⁶⁷³

It is an early morning of November 1911 when an Italian aviator named Giulio Gavotti, embarks in the first aerial military mission.⁶⁷⁴ Gavotti flies with a monoplane over Ain Zara, a small oasis-village in Tripolitania (current Libya), loaded with small grenades to drop on Ottoman soldiers, lying in barracks on the ground.⁶⁷⁵ The mission is successful. Despite Gavotti’s use of air power is mainly tactical, the strategic implications behind his mission are immediately clear to him and to his superiors. The vertical perspective granted by the airplane allows startling the enemy, hitting the its forces heavily when least expected, and deploying a negligible military effort. Gavotti realizes that the enemy forces seen from above appear different, so much that he will later write in a personal memory that Ottoman soldiers in Ain Zara looked like toys.⁶⁷⁶

The vertical perspective offered by the airplane used in military missions proves to be a revolutionary and disquieting weapon. By using the airplane firepower can potentially be brought everywhere at any time, above cities, civil infrastructures, industrial facilities. Everything is potentially in danger. The rapidity, the destructive efficiency, and the discretion that air power allows excite and at the same time frighten *fin de siècle* modern men. The vertical advantage is experimented in two different military contexts: the colonial context and the European urban context. The use of airpower in these two contexts is essential to the conceptualization of proper theories of aerial warfare. If in the colonial context the use of such a frightening mode of attack is justified by the barbarous character of enemies, in the European context it is used in the hope of warding off ideological enemies living in major cities.⁶⁷⁷ The idea of using air power against such enemies lead to place significant trust, especially European and American military schools, in the strategic role that air power can play in war.

2.1.1 Airpower and the colonial enemy: verticality in “air policing control”

⁶⁷³ Jeremy Black, *Air Power: A Global History* (Lanham, MD: Rowman & Littlefield, 2016), 16.

⁶⁷⁴ Matthew Evangelista, “Blockbusters, Nukes, and Drones: Trajectories of Change over a Century |,” *The Asia-Pacific Journal: Japan Focus*, Issue 23, Volume 14, no. 3 (December 1, 2016), <https://apjif.org/2016/23/Evangelista.html>.

⁶⁷⁵ Hippler and Fernbach, *Governing From the Skies*, 14–18.

⁶⁷⁶ Hippler and Fernbach, 19.

⁶⁷⁷ Hippler and Fernbach, 60–71.

Alongside the Italian *Regia Aeronautica* experimental use of air power in Libya by Gavotti, other Western powers in the same years resort to the practice of bombing on non-European territories. Airplanes are deployed against stateless populations in the Horn of Africa, India, Maghreb, and the Middle East. There are two incentives that bring to experiment the use of air power in the colonies. On the one hand, the alleged uncivilized nature of colonial subjects absolves European military and political leadership from moral consideration on a new form of atrocious violence. On the other hand, the promise that air power allows to rapidly suppress rebel populations and keep imperial possessions with low costs and low risks.

Between 1914 and 1916, when the *Métropole* is committed to the defence of the Eastern front against Germany, the French Government deploys small aircrafts squadrons to bomb local populations rebelling to French rule in Tunisia, Algeria, and Morocco. Bombs are dropped over villages and over civilians camps guarding no specific distinction, with the intent to terrorize. These colonial, stateless lands become, according to a French military historian, “le théâtre d’expérimentations aériennes militaires dans les dernières années de la Belle Époque [...] plusieurs raids en vol de groupe à travers l’Afrique du Nord, véritables démonstrations de force dont l’impact psychologique sur les populations locales, [...] s’était révélé loin d’être négligeable.”⁶⁷⁸

Few later, in the early twenties, in times of financial stringency, the British Government opts for a “policy of substitution” of regular troops for controlling imperial possessions and decides to deploy aircrafts to bomb as well.⁶⁷⁹ Navy and land forces personnel are substituted by biplanes in the task of imperial control of the British colonial mandates established after 1918.⁶⁸⁰ It appears clear that bombing from the air can be efficient and cheap: the British Government in 1918 releases two reports stating that “in the next war the existence of the British Empire will depend primarily on its air force.”⁶⁸¹ Following the 1918 statements, the first significant military aerial campaign is conducted by the newly-born *RAF* “in Afghanistan in 1919 in the so-called ‘Third Afghan War’ and, in spite of difficult operating conditions, air raids [are] carried out on Kabul, Jalalabad and Dakka along with leafleting designed to demoralize the Afghan troops.”⁶⁸² A year later the *RAF* pilots are deployed in Somaliland to suppress the Dervish uproots and then, in 1922, the *RAF* is consistently used in Iraq to crush local anti-colonial rebellions. The use of airplanes in Iraq “turn[s] the desert’s apparent lack of cover and landmarks to the intruder’s advantage, making it impossible for an enemy to move without discovery. Pilots could communicate with tribes and officers marooned in the desert, restoring their bearings, and spreading news like *dei ex machina*. They could discreetly reconnoiter places otherwise forbidden to Europeans.”⁶⁸³

⁶⁷⁸ Jean-Baptiste Manchon, “Tenir le désert : la lutte aérienne contre les Senoussis à la frontière sud-tunisienne (1916-1918),” *Outre-Mers* 390–391, no. 1 (2016): 153–71, <https://doi.org/10.3917/om.161.0153>.

⁶⁷⁹ As documented by Black “in Britain, which rapidly integrated air power into army maneuvers, an Air Battalion was established in 1911, followed by the Royal Flying Corps in 1912. [I]n France in 1910, a military aviation service was created, as was a permanent inspectorate of military aviation.” Black, *Air Power*, 15.

⁶⁸⁰ Andrew Mumford, “Unnecessary or Unsung? The Utilisation of Airpower in Britain’s Colonial Counterinsurgencies,” *Small Wars & Insurgencies* 20, no. 3–4 (September 2009): 636–55, <https://doi.org/10.1080/09592310903251906>; Buckley, *Air Power in the Age of Total War*, 102.

⁶⁸¹ Mark Neocleous, “Air Power as Police Power,” *Environment and Planning D: Society and Space* 31, no. 4 (August 2013): 578–93, <https://doi.org/10.1068/d19212>.

⁶⁸² Buckley, *Air Power in the Age of Total War*, 103.

⁶⁸³ P. Satia, “The Defense of Inhumanity: Air Control and the British Idea of Arabia,” *The American Historical Review* 111, no. 1 (February 1, 2006): 16–51, <https://doi.org/10.1086/ahr.111.1.16>.

Similarly, the United States armed forces in the mid-twenties deploy small air bombing squadrons in Mexico and Nicaragua to control indigenous populations.⁶⁸⁴ Air bombing rapidly intensifies the levels of violence not only in war but even beyond it, in the so-called “police control operations.” Air power suppresses the hope of the targeted people by denying any possibility of reaction to the bombing from above. It is, in other words, a strategy of punishment.

Despite air power in ample spaces as desert lands or mountains shows the manifold technical vulnerabilities of fighting from above and pilots often feel disoriented, air power proves that verticality offers a unprecedented perspective in war and beyond. In this sense, air power contributes to the extension of war logics beyond war and to the contamination of the civilina sphere by the military. As observed in 1921 by an *RAF* officer stationed in Mesopotamia, “The ‘long arm’ of the new weapon renders it ubiquitous . . . [and] *makes it practicable to keep a whole country under more or less constant surveillance.*”⁶⁸⁵ The officer does not simply realize the tactical effect, but also how bombing has a moral effect on population and thus strategic effects.⁶⁸⁶ After the bombing of civilians, the entire population subdues because of a moral discomfort. Bombing colonial villages proves that the dynamics of the traditional horizontal exchange of fire with the enemy can be completely reverted by the use of air power. It disaggregates the enemy body politic and creates patterns of fear that prevent any form of resistance. If the costs of suing airplanes are relatively low, the damages produced by bombing of targets as agriculture and breeding are incommensurable. As commented again by an *RAF* Officer after a mission over Iraq, the Kurds and the Arabs:

Now know that within 45 minutes a full sized village (vide attached photos of Kushan-Al-Ajaza) can be practically wiped out and a third of its inhabitants killed or injured by four or five machines which offer them no real target, no opportunity for glory as warriors, no effective means of escape.⁶⁸⁷

The *RAF* Air Staff acknowledges that the panic produced by initial contact with airplanes would first give way to indifference, before morale finally collapsed as bombing continually disrupted everyday life. “Panic [is] often the first reaction, both to aircraft in general and to bombing in particular.”⁶⁸⁸

The effects of the technological military experiment of “air policing control” in the colonies demonstrate that the use of air power shifts the equilibrium of forces in war towards an undisputable asymmetry. The relationship between costs and outcomes is completely outweighed if compared to other kinds of war as land and naval warfare.⁶⁸⁹

2.1.2 Airpower and the ideological enemy: visions of universal peace in European air bombing

The other context in which the verticality of air bombing manifests its exciting and frightening potential is European most developed and most advanced places: major cities. The industrial, populous cities of European states can be sites of aerial bombing. “In 1917, paralleling the turn to

⁶⁸⁴ Black, *Air Power*, 55.

⁶⁸⁵ Satia, “The Defense of Inhumanity.”

⁶⁸⁶ Neocleous, “Air Power as Police Power.”

⁶⁸⁷ David E. Omissi, *Air Power and Colonial Control: The Royal Air Force, 1919-1939*, Studies in Imperialism (Manchester [England] ; New York : New York, NY: Manchester University Press ; Distributed exclusively in the USA and Canada by St. Martin’s Press, 1990), 154.

⁶⁸⁸ Omissi, 132.

⁶⁸⁹ Omissi, 151.

unrestricted submarine warfare, the Germans launched an air assault on Britain [...] the attacks were intended not so much to serve attritional goals, but rather to be a decisive, war-winning, strategic tool. This, the first attempt to use air power as a truly strategic weapon, rather than simply as a renewal of the zeppelin offensive, was a form of war that was novel. The targets were not fortresses.”⁶⁹⁰ German raids on the city of London in 1917 lead to immediate “public outcry in Britain” to stop the war due to their terrifying and inescapably deadly character of such attacks.⁶⁹¹

Behind the bombing urban areas lies the illusion to transform war into a short, effective endeavour. Both on the German side and on the Allied side, rests the conviction that aerial warfare can be an effective solution to great power clash. The experience of the First World War destructive magnitude, especially the deadly fighting of the trenches, have traumatized European societies and public opinions.⁶⁹² The idea of fighting a war that can be rapidly ended by decisive strikes is not only a literary phantasy, but also a widespread political utopia filled with moral rationality.⁶⁹³

It is immediately recognized that even in Europe attacking from above allows to identify the critical components of a state. “The effectiveness of aircraft machine guns, and their psychological impact, was underscored by the use of the German verb for such an attack, *strafen*, ‘to punish.’ In just one pass, an aircraft could kill or wound twenty to thirty soldiers.”⁶⁹⁴ By attacking on the one hand the economic fabric of a country, thus interrupting its industrial war effort, and by infusing panic and terror in civilian population it is possible to penetrate the enemy core political structure and force it to surrender.

Even in the European air power experiment as in the colonial one, bombing from above proves to be an unparalleled strategic means. Verticality of air power allows dismembering the enemy body politic with a precise targeting of its vital components, as the industrial sector or urban areas. It is acknowledged that by air attack is possible to annihilate any state, even the most aggressive and organized ones, and dissect its social and political organization.⁶⁹⁵ As remarked, with incredible prescience by the British writer Wells in 1908, “the special peculiarities of aerial warfare were of such a nature as to trend, once it had begun, almost inevitably towards social disorganization. [...] The war bec[o]me[s] perforce a universal guerilla war, a war inextricably involving civilians and homes and all the apparatus of social life.”⁶⁹⁶

Air power catalyses the fears and hopes of Western societies on the promise that the encounter between technique and science can end all wars and project a global pacification.⁶⁹⁷ This leads to believe that a sort of aerial League of Nations can be formed to maintain peace or to propose an international armed force to stop aggressive states. “The International Police Force and International Air Force themes recurred throughout the 1920s, as various members tried to remedy the League of

⁶⁹⁰ Black, *Air Power*, 31.

⁶⁹¹ Black, 32.

⁶⁹² Brett Holman, *The next War in the Air: Britain's Fear of the Bomber, 1908-1941* (Farnham, Surrey: Ashgate Publishing Limited, 2014), 2–6.

⁶⁹³ Phillip S. Meilinger, “Trenchard and ‘Morale Bombing’: The Evolution of Royal Air Force Doctrine Before World War II,” *The Journal of Military History* 60, no. 2 (April 1996): 243, <https://doi.org/10.2307/2944407>.

⁶⁹⁴ Black, *Air Power*, 28.

⁶⁹⁵ Hippler and Fernbach, *Governing From the Skies*, 84.

⁶⁹⁶ H. G Wells, *The War in the Air* (Waiheke Island: Floating Press, 2009), 305–8.

⁶⁹⁷ As demonstrated by Spaight in the introduction of his first book on air power. J.M. Spaight, *Aircraft in War* (Macmillan and Company, limited, 1914), 5–6.

Nations' lack of "a core of organized power." The most notable of those attempts were the Draft Treaty of Mutual Assistance and the 1924 Geneva Protocol."⁶⁹⁸

2.2 Theorists of airpower and the changing face of enmity from above: the invention of the target

The experiences of colonial air power and European bombings suggest that air power can be extremely efficient. The vertical position of attack offers a new dimension of action and a new perspective on the enemy forces. This requires a proper strategic theorization of the use of air power in war. What is to be defined is the objective of bombing from above and the strategies to adopt when attacking the enemy with air power. Three Western military men, Douhet, Trenchard, and Mitchell try to disentangle the phenomenon of air power and to analyse its strategic significance for war. Such theorists, on whom the experiences of war both on Colonial and European battlefields leave a significant mark, propose a reflection that stands between a philosophical appraisal on the changing technical conditions of war and a plan for political action.

The theory of strategic air bombing starts with a first fundamental realization: from above the enemy "has a different face."⁶⁹⁹ It is from this realization that the concept of aerial target develops as a central element of air power theory. The fact that the enemy has a different face from above is due to three reasons. First, the enemy is undeniably in a non-symmetric position. Bombing is possible and effective when the two parties are in a different position, one above and the other on the ground. Second, the territoriality of the body politics seen from above is discomposed, and the enemy is no more part of a secure land with its morphology that assures protection, but it is rather a bare social body disseminated in a flat land that can be targeted everywhere. Third, the limits to the possibility of striking this enemy are no more the same as in horizontal attack; the reach of airplanes increasingly grows as technology develops.⁷⁰⁰

Target is among the most important vocabularies that air power theoretician craft and theorize. Their vocabularies, their intuitions, and their imaginations mark a watershed in Western reflection on war in the twentieth century and are destined to last long. They provide the theory of war with new concepts and, above all, they catch with words the importance that the new aerial technologies and the vertical perspective play in war. They are men of their times, strongly implicated in national political agendas, recognizably signed by the trauma of total war, and conditioned by the cultural movements of their time. The rapid chain of tragical events that unfold between the beginning of the century and the Second World War stands as a tragic backdrop of their intellectual effort and has an evident mark on such an intellectual effort.

2.2.1 Douhet, Trenchard, and Mitchell: strategic bombing in the first Western air power doctrines

The Italian aviator Giulio Douhet (1869-1930) inaugurates what can be called the first true doctrine of air power. Douhet is an engineer, an artillery officer and a prolific writer. Deployed in Libya as a young soldier and then witnessing the Austrian bombings during the First World War, he shows uncommon grasp for the role that machines can play in war. He is an engineer with enough

⁶⁹⁸ Roger A. Beaumont, *Right Backed by Might: The International Air Force Concept* (Westport, Conn: Praeger, 2001), 37.

⁶⁹⁹ Adey, Whitehead, and Williams, *From Above*, 8.

⁷⁰⁰ Jean-François Kervégan, "Carl Schmitt et «l'unité du monde»," *Les Etudes philosophiques* n° 68, no. 1 (March 1, 2004): 3–23.

technical knowledge to understand the implications and the problems that may arise by deploying aerial technology in war. At the same, he is also a cultivated man with philosophical and historical keenness, open to absorbing the reverberations of cultural movements present in Italy at his time.⁷⁰¹ This allows him to realise the political consequences of such a revolutionary weapon as the airplane. In his prodromal writings he catches with creativity the significance of air power in war. Reader of Clausewitz, with great probability he imagines lying the ground for a new philosophy of war from above. Douhet is a fervent proponent of the establishment of an independent military body, the air force, whose aim is to fight in the air. As Douhet emphatically writes in his masterpiece *The Command of the Air* in 1921 about the use of airplanes in war:

The airplane has complete freedom of action and direction [...] by virtue of this new weapon the repercussions of war are no longer limited [...] no longer can areas exist where life can be live in safety and tranquillity, no longer can the battlefield be limited to actual combatants.⁷⁰²

Douhet is not so much fascinated by the intrinsic technological development of aeronautics. Rather he identifies in the vertical perspective that aerial warfare offers the key to render attack always efficient and to play a revolutionary political role. Douhet recognizes that attacking from above has unparalleled effect on the moral standing of the enemy in war. In his view the scope of air power, by exhausting population capacity to bear the damages of bombing, can be detaching the political leadership from the population. The military aircraft for Douhet must be intended as independent from war context and, being detached from the friction of war, it can grant a true military superiority on the enemy forces.

With about fifty airplanes, capable of carrying a ton of bombs, it is possible, once engaged in a combat against a nation, to offend for each flight at least twenty inhabited centers or cities. This is more than enough to bring about the moral collapse and material collapse of the enemy nation in a few days.⁷⁰³

Though, Douhet theory of targeting is not complete and reflects the uncertainties on the character of war peculiar to his time. The Italian writer indeed leaves some essential questions open and does not engage to define what in his theory could be considered “valuable targets.”

The truth of the [targeting] matter is that no hard and fast rules can be laid down on this aspect of aerial warfare. It is impossible even to outline general standards, because the choice of enemy targets will depend upon a number of circumstances, material, moral, and psychological, the importance of which, though real, is not easily estimated. It is just here, in grasping these imponderables, in choosing enemy targets, that future commanders of Independent Air Forces will show their ability.⁷⁰⁴

⁷⁰¹ Futurism is among the most relevant streams influencing Douhet’s thought. Thomas Hippler, *Bombing the People: Giulio Douhet and the Foundations of Air-Power Strategy, 1884-1939*, Cambridge Military Histories (Cambridge: Cambridge, 2013), 21.

⁷⁰² Giulio Douhet et al., *The Command of the Air*, Fireant Books (Tuscaloosa, AL: University of Alabama Press, 1998), 3.

⁷⁰³ Self-translation from Giulio Douhet, Emilio Canevari, and Italo Balbo, *La Guerra Integrale*, Roma : Campitelli, 1936, Dottrine Moderne Di Guerra, 1936, 181.

⁷⁰⁴ Douhet et al., *The Command of the Air*, 59–60.

Contemporary to Douhet, Hugh Trenchard (1873-1956), a British military officer with experience of aerial bombing in France in 1918 and in colonial wars, shows peculiar interest in developing and perfecting the doctrine of strategic air power initiated by Douhet. In 1919 he is appointed by Churchill Secretary of State for War and for Air. He founds the *RAF* Cadet College and strives to secure the existence of the *RAF*, in times of relative peace and budget shortages. Trenchard intellectual contribution to air power doctrine does not consist in a treatise or in systematic theories. His ideas, he meticulously disseminates among his fellows, are rather contained in *RAF War Manuals* and in *RAF* official short memos transcriptions. Pragmatic in style and empirical in method, Trenchard is a man of vision and experimentation rather than a proper man of theory.

Though, his simple yet logical ideas on air warfare, his unique field experience, and the vocabulary he coins are remarkable and destined to last long. Trenchard's thought is visibly influenced by and embedded in the uncertain times of the interwar period. The tragic experience of the First World War convinces the *RAF* leadership that war has to be fought in a rational, strategic fashion, with the intent of bringing the enemy to sudden capitulation. British military leadership deems the catastrophic trench warfare a type of combat to be avoid at any cost. Trenchard's belief is "that the airplane, employed in mass, [is] an inherently strategic weapon that [is] unmatched in its ability to shatter the will of an enemy country." Trenchard idea of strategic use of air power is to massively direct it towards the vital centers of enemy's social and political life. Thus, Trenchard elaborates "an airpower theory that advocated attacks on enemy industry designed to break the morale of the factory workers, and by extension, the population as a whole."⁷⁰⁵

Trenchard pragmatic approach to air power theory is centered on three main principles.⁷⁰⁶ First that air superiority is the very prerequisite to military success. Second, that airpower is inherently and can only be offensive weapon. And third "that although airpower's material effects [are] great, its psychological effects [are] far greater."⁷⁰⁷ The core idea behind the three principles is that if the enemy can be bombed strategically and can be inflicted severe damages on its social and political life so to morally annihilate it, then the result may be an "early offer of peace."⁷⁰⁸ To achieve such a scope Trenchard directs his attention towards critical weaknesses that can be identified in the enemy lines that he terms as "interdiction targets."⁷⁰⁹ According to the British officer the core concept of strategic air power has its true significance in the process of target selection and finding "interdiction targets" can mean a rapid victory. Trenchard claims that "interdiction targets" as infrastructural networks and industrial working place must be among the first objectives to be considered as they allow paralyzing the enemy political will and goes on explaining that:

The objectives to be attacked will be centers which are essential for the continuance of the enemy's resistance. They will vary frequently and the air forces will be directed against the one which at the moment is the best for air attack [as] centers of communication such as major roads, rail lines, and telephone exchanges, as well as munitions factories.⁷¹⁰

⁷⁰⁵ Meilinger, "Trenchard and 'Morale Bombing.'"

⁷⁰⁶ John Gooch, ed., *Airpower: Theory and Practice* (London ; Portland, Or: F. Cass, 1995), 92–94.

⁷⁰⁷ Meilinger, "Trenchard and 'Morale Bombing.'"

⁷⁰⁸ Phillip S. Meilinger, *Airwar: Theory and Practice*, Cass Series--Studies in Air Power 14 (London ; Portland, OR: Frank Cass, 2003), 38.

⁷⁰⁹ Meilinger, 41.

⁷¹⁰ Meilinger, "Trenchard and 'Morale Bombing.'"

Across the Atlantic, in the United States, another officer experienced in aerial combats in France during the First World War, devotes his intellectual attention to the theory of air power.⁷¹¹ His name is Billy Mitchell (1879-1936) and he is considered the intellectual father of United States air force. Mitchell is catalyst of other thinkers' ideas rather than a proper innovator. He benefits from the pioneering ideas of the aviator de Seversky on the possibilities offered by aerial attack and from the European debate on strategic use of air power.⁷¹² He can amply dwell on Douhet and Trenchard theoretical accounts and he can elaborate his theory of aerial war resorting to their pioneering languages, to their observations, and to their imaginative force. Mitchell, as his Italian and British counterparts, is a fervent proponent of an independent branch of the armed forces devoted exclusively to aerial warfare.

However, different from the Italian and the British aviators, Mitchell is a democratic and anti-imperialist. His theory of air power seeks to complement the logics of the Monroe Doctrine, making aerial warfare the instruments for protecting American continental exceptionalism and freedom of navigation and trade.⁷¹³ Mitchell thinks that air power is a means for protecting American exceptionalism and a means to extend the United States capacity to prevent aggressions.

As a matter of fact, his democratic spirit and his liberal values lead him to advocate a moderate, parsimonious theory of air warfare. For Mitchell air power is principally the means to fight wars overseas. Its vertical perspective allows to capitulate enemy forces by using parsimoniously fire over specific, critical targets that constitute enemy's core power. Mitchell, contrasting Douhet and Trenchard, is proponent of a "smarter" use of firepower from above. He is the first theorist to argue for a precision-bombing strategy, which engages the enemy long before it can expect it and prevents it to fight. The use of precise targeting should be the very *ratio* of using the vertical advantage. As for Mitchell there is no specific justification to use massive firepower from airplanes. Airplanes must be employed for precision bombing. The use of air power must be concentrated against the enemy military forces to prevent the enemy from using force. Mitchell thus argues for preventive targeting; he claims that enemy military means must be destroyed in advance and with extreme precision. Air power must be turned into a "pursuit aviation" and it is for this reason that what matters the most for Mitchell is the identification of targets to pursuit from above. As Mitchell writes in 1925:

To gain a lasting victory in war, the hostile nation's power to make war must be destroyed [...] Aircraft operating in the heart of an enemy's country will accomplish this object in an incredibly short space of time, once the control of the air has been obtained and the months and even years of contest of ground armies with a loss of millions of lives will be eliminated in the future. Air power has introduced new considerations which should be weighed carefully in estimating their effect on the possibility of the limitation of armaments.⁷¹⁴

2.3 The enemy as a collection of strategic targets

As highlighted in above, from the vertical perspective the concept of regular enemy assumes a different shape: the enemy is a collection of targetable critical spots. The target is not simply a

⁷¹¹ Phillip S Meilinger et al., *The Paths of Heaven: The Evolution of Airpower Theory* (Maxwell Air Force Base (Alabama): Air University Press, 2010), 79.

⁷¹² Gooch, *Airpower*, 9.

⁷¹³ William Mitchell, *Winged Defense the Development and Possibilities of Modern Air Power-- Economic and Military* (Tuscaloosa, Ala.: University of Alabama Press, 2009), 112.

⁷¹⁴ Mitchell, 126-27.

critical segment of the enemy, it is the very core focus on which war from above has to be fought. Verticality allows to see the enemy territory as a collection of less and more relevant targets. Air power theorists insist, though with divergent arguments, on the relevance of targeting as the very scope of aerial warfare. Their theses converge on the idea that verticality provides a secure, totalizing view of the enemy. Bombing from above, the airplane does not enter the fictional *spatio*-temporal dimension of war, but controls it. This allows to deconstruct the enemy political body into its critical nodes and to strike at such nodes wherever and whenever necessary. What emerges from the writings of the early twentieth century air power theorists is that, through the use of air power, the modern Clausewitzian symmetry of forces with enemy is increasingly turned into an asymmetrical relationship between bomber and target. The relation bomber-target is a relation of control, rather than conflict, whose aim is “to dissolve the military into the political, as the project of strategic bombing recommended.”⁷¹⁵

Douhet, Trenchard, and Mitchell all realize that the advantage granted by the vertical position of the airplane on the enemy territory allows looking at it from a different perspective and, as such, the enemy can be represented as a collection of strategically significant targets: infrastructures, working places, urban areas, industries, transportation.

Though, beyond the rhetoric of easy victory that imbues air power theories,⁷¹⁶ the material use of air power is far from a decisive weapon. During the Second World War air power is extensively employed to annihilate the morale of and to terrorize enemy populations. War does not end rapidly as hoped by air power advocates. It takes weeks and months of destruction before it produces political effects and more than once the use of strategic bombing exacerbates the conditions of conflict.⁷¹⁷ Its strategic role is frequently counterbalanced by effective air defence systems, which cause aircrafts destruction, significant losses and incessant cycles of reprisal. The use of air power combines consistently with the already marked totalizing tendencies of war. Strategic bombing turns into indiscriminate *area bombing* over civilian and urban sites, as in the case of the Spanish civil war or in the cases of allied forces bombing Berlin, Dresden, Cologne, and other German and Italian cities. In a single night in 1943 by means of air power 50.000 people are killed in Hamburg and in 1945 a quarter of Tokyo’s surface is completely obliterated.⁷¹⁸ The intuitions of air power theorists are overextended as to match with a totalizing conception of war: residential buildings, civilian neighbourhoods, up to entire cities and entire populations become the deliberate target of aerial attacks. The United States dropping of atomic bombs in Japan only intensifies and enhances the possibilities of an established strategic paradigm. It is, by now, hardly negligible that bombing from above has assumed a critical significance as a terrorizing and disruptive means in war.⁷¹⁹

3. Panoptic visibility: the re-discovery of airpower after the end of the Cold War

⁷¹⁵ Hippler and Fernbach, *Governing From the Skies*, 122.

⁷¹⁶ Tami Davis Biddle, *Rhetoric and Reality in Air Warfare: The Evolution of British and American Ideas about Strategic Bombing, 1914-1945*, Princeton Studies in International History and Politics (Princeton, N.J: Princeton University Press, 2002), 15–19.

⁷¹⁷ Germans drop millions of bombs over Spain between 1936 and 1939. The Spanish Civil War however is protracted by the bloody guerilla warfare that tears apart the country. Sven Lindqvist, *A History of Bombing*, trans. Linda Haverty Rugg, 2nd edition edition (London: Granta Books, 2012), 156.

⁷¹⁸ Basil Henry Liddell Hart, *History of the Second World War* (London: Cassell, 1970), 596–604.

⁷¹⁹ Kenneth P. Werrell, “The Strategic Bombing of Germany in World War II: Costs and Accomplishments,” *The Journal of American History* 73, no. 3 (December 1986): 702, <https://doi.org/10.2307/1902984>.

The end of the Cold War in the West does not (supposedly) only end the dominance of nuclear deterrence logics and Mutual Assured Destruction policy, but it also opens the horizons for the adoption of new strategic paradigms and for the rediscovery of past doctrines. It is in the context of the Gulf War that early twentieth century air power theories are unearthed and pitted against the reality of war of the nineties.

Eminent figure in this rediscovery is the United States Colonel John Warden (1943). Veteran aviator of the Vietnam war, Warden is a convinced that the United States needs to rediscover a traditionalist, articulated strategic approach to the use of air power to face the challenges of emerging technology and the new organization of international relations. Warden manifestly inherits and integrates the legacy of early theorists of air power in his vision of aerial warfare. He places substantial weight on the theoretical significance of the vantage point granted by verticality. However, given the strategic necessities, the changed ethical, technological, legal, and cultural context, Warden applies significant refinements to air power theories. Along with other United States air power theorists as John Boyd, Warden main theoretical apport is to combine a traditionalist approach to air power with the opportunities offered by the Information Revolution. As he interestingly claims in 1995:

Our conflict vocabulary flows from ancient times and traps us mentally and physically into concepts that no longer make sense, so our vocabulary must change.⁷²⁰

Warden objective, as he admits, is to update the theory of air power to a strategic environment in which air power can be combined and used with informational technologies into an integrated network. His main scope is to theorize how to “paralyze enemy forces” so to obtain rapid, cost-saving, and efficient victory. Warden’s theory insists on shifting the United States strategic paradigm from “annihilation” to “control” warfare.

As twentieth-century strategists, we must demystify war to a considerable extent. Napoléon and Clausewitz were right when they talked about friction, fog, and morale. They were right, however, in a time when Communications were almost nonexistent. [...] Today the advent of airpower and accurate weapons has made it possible to destroy the physical side of the enemy. This is not to say that morale, friction, and fog have all disappeared. It is to say, however, that we can now put them in a distinct category, separate from the physical. As a consequence, we can think broadly about war in the form of an equation: (Physical) x (Morale) = Outcome.⁷²¹

Warden bases the underpinnings of his theory on the attempt of build an omniscient perspective in war, consistent with and integrated into the emerging network-centric models of war.⁷²² The possibility of having a panoptic view on the battlefield is the premise for a new paradigm of targeting: panoptic aerial war. Warden theorizes a form war in which different systems interact and exchange information about the enemy so to provide the ultimate platform, namely the airplane, sufficient information to strike with outstanding precision at the target and decapitate the enemy in a short time.

⁷²⁰ John A. Warden III, “The Enemy as a System,” *Airpower Journal Special Edition - Air University Press* Spring IX n.1 (1995): 40–55.

⁷²¹ Warden III.

⁷²² John Arquilla and David Ronfeldt, “The Advent Of Netwar” (Product Page, Santa Monica, CA: RAND Corporation, 2001), https://www.rand.org/pubs/monograph_reports/MR789.html.

3.1 Air power and the enemy as a system: targeting the leadership

Obtaining a total, panoptical visibility of the enemy forces and its organizational structure is the strategic premise of Warden theory of aerial war. Warden insists on conceiving the enemy as a system of interconnected forces, which can be targeted according to a precise hierarchy that the military establishes in advance. Having a hierarchy of targets allows to paralyze the entire enemy system and allows to accelerate the path to the socio-political collapse of the enemy. Warden is extremely clear on the necessity to have an omniscient knowledge of the enemy forces and on the necessity to scientifically compute what has to be targeted first in order to maximize the strategic effects. The calculus of target hierarchy allows to save fire power, to spare civilians, and to reduce costs and risks.

Warden defines the enemy system as a concentric circles structure on whose top stands the political leadership. In concentric circles theory extraordinary relevance is placed on the political leadership. He claims that the very objective of warfare is to provide enough information on the enemy system so to enable air power to target the political leadership as soon as possible. Leadership is the centre of gravity of enemy forces and, as Warden claims, air power must be employed to attack the leadership in the first instance and to massively concentrate firepower on that. Warden theorizes an essentially pre-emptive and offensive use of aerial force, which aims at avoiding combat with the enemy forces and lead the enemy to capitulate before any form of reaction. As Warden, reflecting retrospectively on his theory, puts it:

If we see the enemy as a system, we first determine what the system needs to look like so that we can realize our future picture for it. After identifying our objective, which could range from destruction through immobilization to recruitment, we analyze the fielded force as a system and find the relevant centers of gravity, starting from the center. The number of centers of gravity with which we have to deal in this case will normally translate into far fewer targets than if we took the traditional approach of a war of attrition against the force's personnel and equipment. The number of targets associated with operational level centers of gravity for even a large fielded force is again surprisingly small— probably in the low thousands at most (e.g., the Iraqi army in Kuwait in 1991).⁷²³

The essentially offensive theory of Warden should be situated in the strategic environment of the nineties. Indeed, it should be noted that Warden elaborates his theory in a very transformative context, where technological innovation proceeds at a rapid pace. The theorization of pre-emptive attacks on enemy leadership is possible because of the information superiority granted by the Internet revolution and by the use of satellites for geolocation. While the theorization of precise targeting aimed at decapitating the leadership is undeniably eased by the advent of laser-guided missiles in the late eighties and by the successful engineering work to build stealth bombers. Laser-guided ammunitions grant unprecedented levels of precision and stealth bombers allows entering enemy air space without being detected.

The tangible outcome of such a reflection is visible in the material reality of war throughout the nineties. Warden's theoretical insights are applied during in 1991 in *Desert Storm Operation* with a scientific accuracy. The United States forces paralyze the Iraqi military forces, aiming immediately

⁷²³ John A. Warden III, "Strategy and Airpower," *Air and Space Power Journal*, Air University Press, Report (2011).

at the centre of gravity of the country in less than a week.⁷²⁴ Airfields, military bases, power plants, and oil pipelines are targeted with an unprecedented rapidity. The United States losses amount to few hundreds, while the result on Iraqi side is disastrous.⁷²⁵ In the Gulf War the use of air power is unprecedented and for the first time it is integrated with land forces, with navy forces and with intelligence information gathering process. The 1991 Iraqi *Operation* plays as the field application of a decade-long theorization of air warfare and is a valuable lesson for the development of the United States strategic approach in the near future. Indeed, in 1999 Warden theory seems to be still a viable approach during NATO intervention in the Balkans. The “78-day air war, called *Operation Allied Force*, represent the third time during the 1990s in which air power proves pivotal in determining the outcome of a regional conflict.”⁷²⁶ Serbian leadership is led to capitulation only by the use of air power. The strategic approach is, once again, based on the premise of acquiring a panoptic view of the battlefield and exploiting verticality to strike the enemy forces in its critical spots. Targeting becomes an almost scientific practice, on which the entire architecture of war is based.

4. Autonomy: from *Shock and Awe* to drone warfare. Western airpower doctrine in the twenty-first century

In the first days of October 2001, the United States General Chuck Wald and his deputy Dave Deptula supervise the development of military operations in Afghanistan as a response to September 11. The crew members of a *CIA* spy-drone working in Virginia, at Langley Air Force Base, report that they are almost sure they can locate the Taliban leader Mullah Omar in a house complex in Kandahar, Afghanistan. The drone is hovering over his house, they claim. It is only the beginning of the war and the United States has the sudden opportunity to attack the enemy forces with a devastating blow, which essentially can decapitate Taliban leadership. At the United States Central Command where Wald and Deptula are coordinating the operations comes an unexpected request by the *CIA*. They require permission to fire on the house Complex in Kandahar. The Central Command replies affirmatively without questioning and the Predator drone hovering over Mullah Omar fires a small laser-guided missile, killing four Taliban bodyguards. At the Central Command, where the episode is broadcast on a video-screen everyone is surprised and someone asks “who the fuck did that?”⁷²⁷ From the *CIA* comes the unexpected response “it was the drone, it was our predator armed with a hellfire missile.”⁷²⁸

This, at least according to the romantic story that United States officer Deptula told the press in the subsequent years of the *global war on terror*, is the genetical moment of drone warfare.⁷²⁹ Detaching from the massive use of force peculiar to *Shock and Awe* strategy of the Gulf War, the United States and its European allies adopt in the first years of the new century a light-footprint air

⁷²⁴ Christopher Chant, *Air War in the Gulf 1991* (Oxford: Osprey, 2001), 7–10.

⁷²⁵ Daryl G. Press, “The Myth of Air Power in the Persian Gulf War and the Future of Warfare,” *International Security* 26, no. 2 (2001): 5–44.

⁷²⁶ Benjamin S. Lambeth, *NATO’s Air War for Kosovo: A Strategic and Operational Assessment*, Project Air Force Series on Operation Allied Force (Santa Monica, CA: Rand, 2001), xiii.

⁷²⁷ Chris Woods, *Sudden Justice: America’s Secret Drone Wars*, First published in the United Kingdom (London: Hurst & Company, 2015), 23.

⁷²⁸ Chris Woods, “The Story Behind America’s First Drone Strike,” *The Atlantic*, May 30, 2015, 24, <https://www.theatlantic.com/international/archive/2015/05/america-first-drone-strike-afghanistan/394463/>.

⁷²⁹ Brian Glyn Williams and David Deptula, “The Drone Campaign against Al Qaeda and ISIS: Interview with Lt. General David Deptula USAF (Ret.),” *Perspectives on Terrorism* 9, no. 3 (2015): 65–70.

power strategy: semi-autonomous weapons to kill single individuals. Drone warfare is not a sudden and powerful attack, rather it consists in single, isolated blows.

Drones had been deployed with no firepower load by the United States for around ten years on war theatres as spy-aircrafts for intelligence and reconnaissance missions. It is only after the attempt to kill Mullah Omar, that the United States military realizes the operational potential of drones. Indeed, few days after the attempt to kill Omar, another strike is reported to be successful in Yemen. This is the opening of a long and amorphous shadowy war against single individuals. Drone warfare is fought by the United States Air Force in combination with the *CIA* and with European allies against alleged terrorists, Taliban leaders, militia men, and other subjects on an almost global scale. It is a low intensity, cheap and extremely efficient war *ad hominem*. The concept of target is fundamental for the entire undertaking of such kind of war. Targets must firstly be identified by intelligence agencies, then studied and followed by the *CIA* jointly with the Air Force crews and finally “obliterated” by pilots. “Target” is the building-block of the military chain that culminates in the drone strike.

Drone warfare is not simply the West struggle against terrorism; it is also and most importantly the combination of verticality, panoptic visibility with a new paradigm: autonomy. The three elements of airpower find an efficient way of combination in drone warfare and in the most emblematic event of drone warfare: the drone strike.⁷³⁰ The drone strike is made possible by the vertical asymmetry between attacker and target, by the panoptic view of the battlefield granted by network technologies, and by the autonomous nature of the drone which allows to project power in depth. In the words of the United States General McChrystal, one of the leading theoreticians of drone warfare, the notion of target is structural to drone warfare. McChrystal describes concisely the logics of drone warfare as such:

So the first thing we did when I took over in late 2003 was realize that we needed to understand the problem much better. er. To do that, we had to become a network ourselves—to be connected across all parts of the battlefield, so that every time something occurred and we gathered intelligence or experience from it, information flowed very, very quickly. The network had a tremendous amount of geographical spread. At one point we were in 27 countries simultaneously. People hear mostly about the targeting cycle, which we called F3EA—‘find, fix finish exploit, and analyze’ You understand who or what is a target, you locate it, you capture or kill it you take what intelligence you can from people or equipment or documents, you analyze that, and then you go back and do the cycle again, smarter.⁷³¹

⁷³⁰ Drone *strikes* undertaken by the United States in the last decades cannot be declassified to sporadic operations in the framework of the struggle against terrorism; on the contrary, the *strikes* have been the very “backdrop” of the long and amorphous global war on terror and progressively they have constituted a mode of the use of force “among the most continuous in time and most efficient in history”, as in declared in a triumphal statement by former *C.I.A.* director Pompeo Eric Schmitt and Matthew Rosenberg, “C.I.A. Wants Authority to Conduct Drone Strikes in Afghanistan for the First Time,” *The New York Times*, September 15, 2017, sec. U.S., <https://www.nytimes.com/2017/09/15/us/politics/cia-drone-strike-authority-afghanistan.html>. The United States have year-by-year dramatically intensified the number of attacks almost on a daily basis, widening their spatial scope to all the regions of the world. Similarly, Israel, has increased with an exponential pace its use. It is also noteworthy the rapid technological adaptation by some of NATO partners – as France, Turkey, Italy, and United Kingdom – which until now have deployed drones for diverse missions. Certainly suggestive, but for this reason not less relevant, it is important to recall here what military experts call the “rapid drone proliferation beyond the West, and among non-state actors” Michael J. Boyle, “The Costs and Consequences of Drone Warfare,” *International Affairs* 89, no. 1 (January 1, 2013): 1–29, <https://doi.org/10.1111/1468-2346.12002>.

⁷³¹ Stanley McChrystal and Gideon Rose, “Generation Kill: A Conversation With Stanley McChrystal,” *Foreign Affairs* 92, no. 2 (2013): 2–8.

4.1 The individual as “target”: the regular enemy in drone warfare

The concept of “target” is functional to drone warfare strategic logics. Drone warfare is entirely focused on the target. The target is intended as a single individual or a small group. In this sense, drone warfare is the sublimation of Douhet theory strategic bombing and Warden idea of leadership decapitation. In drone warfare the target bears the entire burden of war. Violence is completely reversed on the target which, by means of its high strategic value, must be searched, located, and killed alone. In this context, the “clash between two opposing wills”, that is the “core of the traditional” battle and the essence of war in Clausewitzian terms. Evidently, from a strategic perspective the opportunity of combining the use of air space as an undisputed environment, a convincing level of precision, average costs and minimized risks for personnel, represents for states a “clear” and “coherent” reason to resort to drones.⁷³² In particular, in “theatres” where the presence of non-state military actors is diffused, drones can be extremely efficient. Indeed, it is absolutely reasonable to think that to pursue “men with no state” and therefore “with no territory”, whose “sanctuaries are located in weak states and remote areas”, it is more efficient to use objects rather than man, and to use precise and selective tools rather than massive bombing campaigns

. Hence, it can be said that drones, on the one hand meet the necessity to operate flexibly and persistently against subjects fighting irregularly and transnationally. While on the other hand they match with a logic deeply oriented to “*cost-efficiency*” performances, which implies parsimony both in the use of firepower and in mobilization of human resources. All this grants to drones an almost autonomous operative stature, “the only game in town” as *C.I.A.* directors often like to remark,⁷³³ and this makes drone *strikes* events that can happen in isolation from other military phenomena. In fact, drones offer to their users the possibility of a total disconnection from violent encounters, namely allow not to mobilize and expose the own forces to a threatening situation, while at the same time granting the exercise of immediate power over the target.

4.2 Projection of power, depth of action and reduction of costs and risks: towards the individualization of war

Drone warfare is paradigmatic for the tendency towards the *individualization of war*. It represents a paradigm because it allows to project power, to attack deeply in the enemy territory, and to limit costs and risks. Drone warfare is characterized by two elements that synthesize its unique capacity to *individualize* the enemy war. The first one is the “immediacy”⁷³⁴ of the attack. A drone *strike* usually takes place when a target, be it an individual or a small group of individuals, is deemed a valid one for elimination. The decision about elimination is bound to a process of target’s analysis that can take some time – from few hours to weeks – and can involve different professionals, as intelligence, police and military personnel working jointly. Tracking the target for a long time allows, beyond an almost certain elimination of the latter, to minimize the effects of kinetic violence on the

⁷³² Jean-Baptiste Jeangène Vilmer, “Légalité et légitimité des drones armés,” *Politique étrangère* Automne, no. 3 (October 10, 2013): 119–32.

⁷³³ Micah Zenko, “Leon Panetta Reflects on U.S. Drone Strikes,” *Council on Foreign Relations*, February 4, 2013, <https://www.cfr.org/blog/leon-panetta-reflects-us-drone-strikes>.

⁷³⁴ “Immediacy” here intended as “not mediated”, “direct”, “simultaneous”. The destruction, the annihilation of the “Other”, thanks to technology, can take place “immediately” by linking with no mediation different dimensions: the local to the global Galli, *Spazi politici*, 12..

socio-political environment wherein the target is located. The violence is precise as there can be no mediation to its execution, and therefore, the very focus of this kind of political violence can be the single individual and its peculiarities, movements, behaviours, and biological characters; it is exactly the private subjectivity to be the strategic focus of this kind of violence.

The second feature relates to the radical “disconnection” that technology⁷³⁵ enables between the parties. There is a disconnection both in symbolic terms, as conflicting parties have no possibility of interaction, and in material terms, as one party is physically secured and only slightly mobilized, while the other party is exposed to a condition of inescapable violence, to which it can oppose nothing but a lucky run. As consequence, due to the use of unparalleled levels of technology, the field of combat is discomposed on different dimensions for the whole time of the operation, and only at the end it recomposes in a span of few seconds on the body of the target and from there it immediately evaporates. Such a disconnection resolves and finds its meaning in the sudden, immediate moment of target’s “elimination. Then, “disconnection” makes violence spatially insignificant, as there is no spatial unity between the place of the attacker and the place of the target: space is unbundled. While “immediacy” breaks down any potential temporal significance of violence as the attack occurs in a single, sudden, and unconditional blow. A drone *strike* therefore appears almost as a technological “miraculous” event, wherein the offender “comes from nowhere and immediately hides away in the darkness”, and the offended is obliterated from above without even realising it.

The concept of target substitutes that of regular enemy due to the immediacy and disconnection patterns. A manifest example of this tendency is the possibility that the Obama administration has disposed to the Pentagon to designating the so-called “*AAH* – Areas of Active Hostilities” in different world regions.⁷³⁶ By the term *AAH*, which does not belong to a specific legal vocabulary, The White House (2013) tried to designate a geographical threshold that contains two operative spaces: on the one hand the spaces wherein force can be used due to the activeness of fighting, and on the other hand the limit which can be overcome in some exceptional cases.

There eventually remains only an absolute category: the target (alternatively declined under the broad and typified category of the *terrorist*).

5. Conclusion

The theorists thinking about the advent of air power in war change the vocabularies through which the regular enemy is conceived and represented. However, they do not sever entirely and thoroughly the legacy of modern regular enemy as an opposing active force. Rather, the concept of target is continuous and at the same time contradictory with the concept of regular enemy.

On the one hand, the idea of target still reflects the existence of an opposing will which has its own strategic aims that the military strategists must understand, assess, and counter.

On the other hand, the enemy in the theory of air power is substantially tied to a semantics of passivity and asymmetry. Defining the enemy as target implies reducing its potential effect on war

⁷³⁵ Here “technology” is understood closely to the original Greek “*téchne*”: affine to “ability”, which includes “creativity” and “invention”, but also opens to a semantic field as wide as “cunning” and “research, by means of knowledge and experimentation, of a condition of superiority to the opponent” Arthur Bradley, *Originary Technicity: The Theory of Technology from Marx to Derrida* (Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2011), 11–18.. Broadly speaking, technology here is read as the “sum of specific scientific knowledge and of technic development turned into material artefacts” Langdon Winner, “Do Artifacts Have Politics?,” *Daedalus* 109, no. 1 (1980): 121–36..

⁷³⁶ Antonio Cerella, “Spaces of Terror,” *The Philosophical Salon* (blog), June 4, 2018, <https://thephilosophicalsalon.com/spaces-of-terror/>.

and thus its regular character. The target cannot react because is in a position of inequality. The development and refinement of air power theory has tried to make the target more and more specific and more and more critical for the conduct of war. This reasoning has been based essentially on rational propositions of maximizing the effects and reducing the costs and risks in war. In this sense, there is a pattern of continuity with the concept of regular enemy.

The regular enemy, eventually does not disappear, is reformulated in an *individualized* form. Making the regular enemy a “target” implies justifying practically and discursively the use of force as acceptable by depicting it less dangerous, more efficient, and less costly. Especially, in the practice of drone warfare it is possible to observe how the concept of target that substitutes the concept of regular enemy plays a legitimizing and justifying role.

However, the concept of target breaks decidedly with the fictional *spatio*-temporal condition of war that modern thinkers of strategy as Clausewitz theorize. The aerial target can be located at any time in any place. Thanks to the combination of vertical perspective, panoptical view of the battlefield, and eventually of autonomous weapons, the enemy is turned into a passive matter that can be hit with no possibility of escaping.

As Bousquet notes with extraordinary acuity in his study on the combination of verticality, panoptic view and autonomy, the idea of target has rapidly evolved in the last three decades turning into an individualized pattern:

On its initial operational deployment during the 1991 Persian Gulf War, the kill box was a vast expanse of around 900 cubic kilometers (roughly the area of New York City), patrolled for the aerial interdiction of the adversary state’s armed forces. At the turn of the millennium, the concept evolved to refer to a ‘three-dimensional area reference that enables timely, effective coordination and control and facilitates rapid attacks.’ This more flexible and spatially restricted use of the kill box was notably deployed in the aerial support of the initial invasion of Iraq in 2003. With the drone’s capability for lethal surveillance, the kill box’s field of application has now migrated from the exclusive domain of designated war zones to, at least in principle, any location that presents a target of opportunity. Concurrently, the kill box’s scale has been contracting down to that of a target individual’s body, an exercise that the American military refers to as putting ‘war-heads on foreheads.’⁷³⁷

⁷³⁷ Antoine Bousquet, *The Eye of War: Military Perception from the Telescope to the Drone*, 1 edition (Minneapolis: Univ Of Minnesota Press, 2018), 5.

Chapter 6 - Concluding remarks

It is here argued that the concept of regular enemy is far from disappeared from our political culture and from our political horizons. The modern concept of regular enemy does not go away in the post-Cold War era and instead survives through the morphological changes that war undergoes. The categories illustrated in the second part of the thesis are far from conceptual substitutes of the concept of regular enemy. They are just variants of it. They are modes of argumentation that try to situate the regular enemy in a different *spatio*-temporal dimension but still refer to the conceptual *nucleus* of the modern concept of regular enemy. The dimension into which the enemy is represented through the variants of the “unjust combatant”, “unlawful enemy combatant”, and “target” is a rhetorical *spatio*-temporality of geographical homogeneity and temporal continuity. Such a rhetorical *spatio*-temporality tries to sever the relationship between war and politics as a collective activity. The force of the ethical, legal, and strategic argumentations is exactly that they succeed in depicting such a *spatio*-temporality as a reality, creating the intellectual conditions for thinking a war that is more and more *individualized*.

This responds to what it is possible to address as the Western project of *individualization of war*. A rhetorical and practical project initiated after the end of the Cold War and intensified with the *global war on terror*. As proved throughout the chapters, such modes of argumentation are neither marginal in international relations debate nor simply theoretical. They are forms of argumentation about the enemy, which have important practical and political implications, being crafted by experts and authoritative speakers as philosophers, lawyers, policy makers, and military strategists. Such experts are committed to rethink war under the light of the project of *individualization of war*. The project aims at representing war to Western public opinions as a light, cheap and highly moral endeavor. The thesis contends that when the individual is juxtaposed to the category of regular enemy as in the three cases examined in the thesis (“unjust combatant”, “unlawful enemy combatant”, and “target”), the modern concept of enemy does not disappear altogether, but there is a substantial re-interpretation of the *spatio*-temporal logics underpinning the concept of regular enemy.

Hence, *individualized war* differs from the modern paradigm primarily in light of the political, cultural, and social abyss that divides the two parties involved. Eventually, little remains of the modern war paradigm, only some exhausted *fragments* remain of the modern *edifice* of war, which are in turn used instrumentally to justify own choices or delegitimize other’s actions. The concept of war, declined as *individualized*, in fact lacks its ordering capacity because once approached to the *individualization* process it loses its essential features as a space, a set of rules and specific languages that give it shape and differentiate it from formless violence. *Individualized war* is a type of war in which the individual is the heart of the action not because it is present and acting,⁷³⁸ but precisely because its attack is supposed to escape the logic of war as a collective action. However, the *spatio*-temporal condition in which this war can take place and can, so to speak, be thought, imagined and practiced, is a space still defined by states and their power, which although in crisis and decaying (as for example in cases of states as Somalia or Afghanistan), are still symbolically functional, at least as illusory political enclosures on which boundaries political contestation can erupt. In this sense,

⁷³⁸ For example, in civil wars the individual and his personal (even biological) characteristics are part of the triggering reason for political violence, but this does not mean that every civil war falls into the category of individualized warfare.

individualized war is an intellectual project that takes place in social and political fields still determined by the sovereign state, its rules, its boundaries, and its symbols. It is based on these symbols, on the rubble of these symbols, which individuals and states try to appropriate, reactivate, or reverse their power relations. That of individualized war is not the smooth space of the presumed irreversible globalization within which individuals allegedly move freely, it is instead the striped space of an uneven and incoherent processes of partial globalization in which the state and its power relations are still determinant. In *individualized war* the modern paradigm of war remains on the backdrop, constrained in the distortion of its core features, but it does not disappear altogether.⁷³⁹ *Individualized war* as a conceptual construction can be conceived only within the horizons and logics of modernity and by keeping the state as a declining but still alive scenery, an entity which, despite its decay, is still capable to define political experience, perception, and expectation. Consequently, the debate *individualization of war* is inextricably tied to the substantial inconsistencies and contradictions that it entails. *Individualized war* cannot be otherwise than a contradictory idea in which the individual and war do not combine.

The consolidation of the project of *individualization of war* in the languages and in the practices of the West has both intellectual and material political implications. Intellectually the erosion and reformulation of the concept of regular enemy leads to a serious failure in understating the plural nature of international relations. In material terms, war is depicted as a far different activity from what it really is on the battlefield. *Individualized war* can be used in political speeches as a soft substitute for “war”, “attack”, “killing”, as it appears as less destructive and less inhumane than traditional military language. Especially in domestic political arenas, by using *individualized* or synonyms the usual, modern jargon of militarism and jingoism, in which war is contemplated as a core concept, is refined and lightened. And this has repercussions on political agendas. This, moreover, is a phenomenon that involves mostly democratic states, whose constitutions reject the use of force for offensive purposes. The *individualization of war* is a project that has found proponents and enthusiasts in democracies and have been represented as perfectly compatible with democratic politics and with democratic constitutions.

Taken together, in its intellectual and material dimension, the project of *individualization of war* prevents those who adopt it as a prism to look at the contemporary reality of war to underestimate and misconceive the innumerable tragedies that, at different scale, still tear apart states, people, individuals, and the environment in which they live on the entire planet.

⁷³⁹ Benjamin de Carvalho, Julia Costa Lopez, and Halvard Leira, eds., *The Routledge Handbook of Historical International Relations* (London ; New York, N.Y: Routledge, Taylor & Francis Group, 2021), 130.

Bibliography

- Adey, Peter, Mark Whitehead, and Alison J. Williams. *From Above: War, Violence, and Verticality*. New York, NY: Oxford Univ Pr, 2014.
- Agius, Christine. “Ordering without Bordering: Drones, the Unbordering of Late Modern Warfare and Ontological Insecurity.” *Postcolonial Studies* 20, no. 3 (July 3, 2017): 370–86. <https://doi.org/10.1080/13688790.2017.1378084>.
- Aho, James Alfred. *This Thing of Darkness: A Sociology of the Enemy*. Seattle: University of Washington Press, 1994.
- Alciati, A. *De Verborum Significatione: Libri Quatuor*. Gryphius, 1530.
- Amorosa, Paolo. *Rewriting the History of the Law of Nations: How James Brown Scott Made Francisco de Vitoria the Founder of International Law*. First edition. The History and Theory of International Law. Oxford, United Kingdom ; New York, NY: Oxford University Press, 2019.
- Anderson, K. “The Rise of International Criminal Law: Intended and Unintended Consequences.” *European Journal of International Law* 20, no. 2 (April 1, 2009): 331–58. <https://doi.org/10.1093/ejil/chp030>.
- Anderson, Kenneth. “Targeted Killing in U.S. Counterterrorism Strategy and Law.” *Contributions to Books*, January 1, 2009. http://digitalcommons.wcl.american.edu/facsch_bk_contributions/46.
- Anghie, Antony. *Imperialism, Sovereignty and the Making of International Law*. 1st ed. Cambridge University Press, 2005. <https://doi.org/10.1017/CBO9780511614262>.
- ———. “The Evolution of International Law: Colonial and Postcolonial Realities.” *Third World Quarterly* 27, no. 5 (July 2006): 739–53. <https://doi.org/10.1080/01436590600780011>.
- Armitage, David. “Fighting Words? A Reply to My Critics.” *Global Intellectual History* 4, no. 3 (July 3, 2019): 334–46. <https://doi.org/10.1080/23801883.2019.1641958>.
- Aron, Raymond. *Clausewitz*. Translated by R. Falcioni. Il Mulino, 1991.
- Arquilla, John, and David Ronfeldt. “The Advent Of Netwar.” Product Page. Santa Monica, CA: RAND Corporation, 2001. https://www.rand.org/pubs/monograph_reports/MR789.html.
- Asbach, Olaf, and Peter Schröder, eds. *War, the State, and International Law in Seventeenth-Century Europe*. Farnham, Surrey, England ; Burlington, VT: Ashgate, 2010.
- Avant, Deborah D. *The Market for Force: The Consequences of Privatizing Security*. Cambridge, UK ; New York: Cambridge University Press, 2005.
- Barkawi, Tarak, and Shane Brighton. “Powers of War: Fighting, Knowledge, and Critique.” *International Political Sociology* 5, no. 2 (June 1, 2011): 126–43. <https://doi.org/10.1111/j.1749-5687.2011.00125.x>.
- Barkawi, Tarak, and Ketih Stanski, eds. *Orientalism and War*. Oxford University Press, 2013. <https://doi.org/10.1093/acprof:oso/9780199327782.001.0001>.
- Barker, Rodney S. *Making Enemies*. Basingstoke [England]; New York: Palgrave Macmillan, 2007. <http://site.ebrary.com/id/10487616>.
- Bartelson, Jens. “War in International Thought.” Cambridge Core, November 2017. <https://doi.org/10.1017/9781108297707>.
- Bartoli, Roberto. *Lotta al terrorismo internazionale: tra diritto penale del nemico, jus in bello del criminale e annientamento del nemico assoluto*. Itinerari di diritto penale 40. Torino: Giappichelli, 2008.

- Bashir, Khaled Ramadan. *Islamic International Law: Historical Foundations and Al-Shaybani's Siyar*. Cheltenham, UK: Edward Elgar Publishing, 2018.
- Baumgartner, Frederic J. “Declaring War in Early Modern Europe.” New York, NY: Palgrave Macmillan, 2011.
- Beaulac, Stephane. “Emer de Vattel and the Externalization of Sovereignty.” *SSRN Electronic Journal*, 2003. <https://doi.org/10.2139/ssrn.471382>.
- Beaumont, Roger A. *Right Backed by Might: The International Air Force Concept*. Westport, Conn: Praeger, 2001.
- Behnke, Andreas. “Drone Warfare and the Emergence of Spaces of Exception.” In *Law, Security and the State of Perpetual Emergency*, edited by Linda S. Bishai, 37–65. Cham: Springer International Publishing, 2020. https://doi.org/10.1007/978-3-030-44959-9_3.
- Bell, Duncan S. A. “History and Globalization: Reflections on Temporality.” *International Affairs* 79, no. 4 (July 1, 2003): 801–14. <https://doi.org/10.1111/1468-2346.00337>.
- Belli, P., and A. Cavaglieri. *De Re Militari et Bello Tractatus*. Classics of International Law, No. 18,v. 2. Clarendon Press, 1936.
- Beneyto, José Maria. *Empire, Humanism and Rights: Collected Essays on Francisco de Vitoria*, 2022. <https://doi.org/10.1007/978-3-030-82487-7>.
- Beneyto, José María, and Justo Corti Varela, eds. *At the Origins of Modernity*. Vol. 10. Studies in the History of Law and Justice. Cham: Springer International Publishing, 2017. <https://doi.org/10.1007/978-3-319-62998-8>.
- Benhabib, Seyla, Jeremy Waldron, Bonnie Honig, Will Kymlicka, and Robert Post. *Another Cosmopolitanism*. The Berkeley Tanner Lectures. Oxford ; New York: Oxford University Press, 2006.
- Benigno, Francesco. *Terrore e Terrorismo: Saggio Storico Sulla Violenza Politica*. Einaudi Storia 81. Torino: Giulio Einaudi editore, 2018.
- Benveniste, Émile. *Economia, parentela, società. I I*. Torino: G. Einaudi, 2001.
- Bernhardt, Rudolf. *Use of Force. War and Neutrality Peace Treaties*. Encyclopedia of Public International Law, 03 04. Amsterdam New York Oxford: North-Holland publ. company, 1982.
- Biddle, Tami Davis. *Rhetoric and Reality in Air Warfare: The Evolution of British and American Ideas about Strategic Bombing, 1914-1945*. Princeton Studies in International History and Politics. Princeton, N.J: Princeton University Press, 2002.
- Biggar, Nigel. *In Defence of War*. First edition. Oxford ; New York, NY: Oxford University Press, 2013.
- Black, Jeremy. *Air Power: A Global History*. Lanham, MD: Rowman & Littlefield, 2016.
- Blom, H. W., ed. *Property, Piracy and Punishment: Hugo Grotius on War and Booty in De Iure Praedae: Concepts and Contexts*. Leiden ; Boston: Brill, 2009.
- Blom, Hans. *Property, Piracy and Punishment: Hugo Grotius on War and Booty in De Iure Praedae: Concepts and Contexts*. BRILL, 2009. <https://doi.org/10.1163/ej.9789004175136.i-422>.
- Blom, Hans W. “Sociability and Hugo Grotius.” *History of European Ideas* 41, no. 5 (July 4, 2015): 589–604. <https://doi.org/10.1080/01916599.2014.987558>.
- Blum, G. “The Fog of Victory.” *European Journal of International Law* 24, no. 1 (February 1, 2013): 391–421. <https://doi.org/10.1093/ejil/cht008>.
- Bobbio, Norberto. *Il problema della guerra e le vie della pace*. Bologna: Il Mulino, 2009.
- Bodin, Jean, and Michael Tooley. *Six Books of the Commonwealth*. Lexington, Kentucky: Seven Treasures

- Publications, 2009.
- Boisen, Camilla. “Hugo Grotius, Declaration of War, and the International Moral Order.” *Grotiana* 41, no. 2 (December 17, 2020): 282–303.
 - Borelli, Silvia. “Casting Light on the Legal Black Hole: International Law and Detentions Abroad in the ‘War on Terror.’” *International Review of the Red Cross* 87, no. 857 (March 2005): 39–68. <https://doi.org/10.1017/S1816383100181184>.
 - Bothe, Michael, Karl Josef Partsch, Waldemar A. Solf, and Martin Eaton. *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*. Second edition. Nijhoff Classics in International Law 1. Leiden: Martinus Nijhoff Publishers, 2013.
 - Bousquet, Antoine. *The Eye of War: Military Perception from the Telescope to the Drone*. 1 edition. Minneapolis: Univ Of Minnesota Press, 2018.
 - Bousquet, Antoine, Jairus Grove, and Nisha Shah. “Becoming War: Towards a Martial Empiricism.” *Security Dialogue* 51, no. 2–3 (April 1, 2020): 99–118. <https://doi.org/10.1177/0967010619895660>.
 - Bousquet, Antoine J. *The Scientific Way of Warfare: Order and Chaos on the Battlefields of Modernity*. New York: Columbia University Press, 2009.
 - Bowden, Brett. “Civilization and Savagery in the Crucible of War1.” *Global Change, Peace & Security* 19, no. 1 (February 2007): 3–16. <https://doi.org/10.1080/14781150601137937>.
 - Boyle, Michael J. “The Costs and Consequences of Drone Warfare.” *International Affairs* 89, no. 1 (January 1, 2013): 1–29. <https://doi.org/10.1111/1468-2346.12002>.
 - Bradley, Arthur. *Originary Technicity: The Theory of Technology from Marx to Derrida*. Houndmills, Basingstoke, Hampshire ; New York: Palgrave Macmillan, 2011.
 - Bradley, Curtis A. “The United States, Israel, and Unlawful Combatants.” *SSRN Electronic Journal*, 2009. <https://doi.org/10.2139/ssrn.1408135>.
 - Braun, Harald E., Erik de Bom, and Paolo Astorri, eds. *A Companion to the Spanish Scholastics*. Brill’s Companions to the Christian Tradition, volume 102. Leiden Boston: Brill, 2022.
 - Brett, Annabel. “Roman Law and Roman Ideology in Alberico Gentili.” *Huntington Library Quarterly* 83, no. 3 (2020): 499–517. <https://doi.org/10.1353/hlq.2020.0016>.
 - ———. “The Space of Politics and the Space of War in Hugo Grotius’s *De Iure Belli Ac Pacis*.” *Global Intellectual History* 1, no. 1 (September 2016): 33–60. <https://doi.org/10.1080/23801883.2016.1228175>.
 - Brett, Annabel S. *Changes of State: Nature and the Limits of the City in Early Modern Natural Law*. Princeton, N.J.: Princeton University Press, 2011.
 - Brett, Annabel S., Megan Donaldson, and Martti Koskenniemi, eds. *History, Politics, Law: Thinking Internationally*. Cambridge, United Kingdom ; New York, NY: Cambridge University Press, 2021.
 - Brett, Annabel S., James Tully, and Holly Hamilton-Bleakley, eds. *Rethinking the Foundations of Modern Political Thought*. Cambridge, UK ; New York: Cambridge University Press, 2006.
 - Brock, Lothar, and Hendrik Simon, eds. *The Justification of War and International Order: From Past to Present*. History & Theory of International Law - Cloth. New York: Oxford University Press, 2020.
 - Brunner, Otto. *Land and Lordship: Structures of Governance in Medieval Austria*. Middle Ages Series. Philadelphia: University of Pennsylvania Press, 1992.
 - Brunstetter, Daniel R., and Cian O’Driscoll, eds. *Just War Thinkers: From Cicero to the 21st Century*. War,

- Conflict and Ethics. London ; New York: Routledge Taylor & Francis Group, 2018.
- Brunstetter, Daniel R., and Dana Zartner. “Just War against Barbarians: Revisiting the Valladolid Debates between Sepúlveda and Las Casas.” *Political Studies* 59, no. 3 (October 2011): 733–52. <https://doi.org/10.1111/j.1467-9248.2010.00857.x>.
 - Buchanan, Allen. “Political Liberalism and Social Epistemology.” *Philosophy & Public Affairs* 32, no. 2 (April 2004): 95–130. <https://doi.org/10.1111/j.1088-4963.2004.00008.x>.
 - Buchanan, Allen E., ed. *States, Nations, and Borders: The Ethics of Making Boundaries*. 1. publ. The Ethikon Series in Comparative Ethics. Cambridge: Cambridge University Pr, 2003.
 - Buckley, John. *Air Power in the Age of Total War*. Bloomington, Ind: Indiana University Press, 1999.
 - Builder, Carl H. *The Icarus Syndrome: The Role of Air Power Theory in the Evolution and Fate of the U.S. Air Force*. 2017. <https://www.taylorfrancis.com/books/e/9781315132532>.
 - *Bullettino dell’Istituto di Diritto romano “Vittorio Scialoja”*. Vol. 2. Milano: Giuffrè, 2013.
 - Burgess, Douglas Richard. “Hostis Humani Generis : Piracy, Terrorism and a New International Law.” *Ph.D. Thesis*, 2003. <https://doi.org/10.14288/1.0077587>.
 - Burns, J. H, and Mark Goldie. *The Cambridge History of Political Thought, 1450-1700*. Cambridge: Cambridge University Press, 2008. http://histories.cambridge.org/book?id=ch09780521247160_CHOL9780521247160.
 - Butterfield, Ardis. *The Familiar Enemy: Chaucer, Language, and Nation in the Hundred Years War*. Oxford ; New York: Oxford University Press, 2009.
 - Buzan, Barry. “The English School: An Underexploited Resource in IR.” *Review of International Studies* 27, no. 03 (July 2001). <https://doi.org/10.1017/S0260210501004715>.
 - Byman, Daniel L., and Matthew C. Waxman. “Kosovo and the Great Air Power Debate.” *International Security* 24, no. 4 (April 2000): 5–38. <https://doi.org/10.1162/016228800560291>.
 - Byman, Daniel, and Jennifer Williams. “Jihadism’s Global Civil War.” *Center for the National Interest*, no. No. 136 (April 2015): 10–18.
 - Carvalho, Benjamin de, Julia Costa Lopez, and Halvard Leira, eds. *The Routledge Handbook of Historical International Relations*. London ; New York, N.Y: Routledge, Taylor & Francis Group, 2021.
 - Cassese, Antonio. *I diritti umani oggi*. Roma; Bari: GLF Editori Laterza, 2012.
 - Cassi, Aldo Andrea, ed. *Dalla civitas maxima al totus orbis: diritto comune europeo e ordo iuris “globale” tra età moderna e contemporanea*. Jus. Soveria Mannelli: Rubbettino, 2007.
 - ———. *Santa, Giusta, Umanitaria: La Guerra Nella Civiltà Occidentale*. Piccoli Saggi 56. Roma: Salerno editrice, 2015.
 - Castrucci, Emanuele. *Le Radici Antropologiche Del “Politico”*: *Lezioni Di Antropologia Politica*. Saggi 352. Soveria Mannelli: Rubbettino, 2015.
 - Cerella, Antonio. “Spaces of Terror.” *The Philosophical Salon* (blog), June 4, 2018. <https://thephilosophicalsalon.com/spaces-of-terror/>.
 - Chant, Christopher. *Air War in the Gulf 1991*. Oxford: Osprey, 2001.
 - Chetail, Vincent, and Peter Haggemacher. *Vattel’s International Law from a XXIst Century Perspective, Le Droit International de Vattel vu Du XXIe Siècle: Le Droit International De Vattel Vu Du XXIe Siecle*. Dordrecht: BRILL, 2011. <http://public.ebib.com/choice/publicfullrecord.aspx?p=737682>.
 - Chignola, Sandro, and Giuseppe Duso. *Storia dei concetti e filosofia politica*. Per la storia della filosofia politica

22. Milano: F. Angeli, 2008.
- Cicero, Marcus Tullius, Miriam T. Griffin, and E. M. Atkins. *On Duties*. Cambridge Texts in the History of Political Thought. Cambridge [England] ; New York: Cambridge University Press, 1991.
 - Cicero, Marcus Tullius, Giusto Picone, Rosa Rita Marchese, Marcus Tullius Cicero, and Marcus Tullius Cicero. *De officiis: quel che è giusto fare*, 2019.
 - Clapham, Andrew. *War*. First edition. Clarendon Law Series. Oxford: Oxford University Press, 2021.
 - Clapham, Andrew, and Paola Gaeta, eds. *The Oxford Handbook of International Law in Armed Conflict*. First edition. Oxford Handbook. Oxford, United Kingdom: Oxford University Press, 2014.
 - Clark, Ian, Iver B Neumann, and St. Antony's College (University of Oxford). *Classical Theories in International Relations*. London: Macmillan in association with St Antony's College, Oxford, 1996. <http://www.vlebooks.com/vleweb/product/openreader?id=none&isbn=9781349247790>.
 - Clausewitz, Carl von, Michael Eliot Howard, and Peter Paret. *On War*. First paperback printing. Princeton, N.J.: Princeton University Press, 1989.
 - Clulow, Adam, Tristan Mostert, Internationales Wissenschaftsforum, and Universität Heidelberg, eds. *The Dutch and English East India Companies: Diplomacy, Trade and Violence in Early Modern Asia*. Asian History. Amsterdam: Amsterdam University Press, 2018.
 - Coker, Christopher. *The Future of War: The Re-Enchantment of War in the Twenty-First Century*. Blackwell Manifestos. Malden, MA ; Oxford, Eng: Blackwell Pub, 2004.
 - Colombo, Alessandro. *La Disunità Del Mondo: Dopo Il Secolo Globale*. 1. ed. in "Campi del sapere.". Campi Del Sapere. Milano: G. Feltrinelli, 2010.
 - ———. *La Grande Trasformazione della guerra contemporanea*. Quaderni. Milano: Fondazione Giangiacomo Feltrinelli, 2015. <http://fondazionefeltrinelli.it/schede/la-grande-trasformazione-della-guerra-contemporanea/>.
 - ———. *La guerra ineguale: pace e violenza nel tramonto della società internazionale*. Ricerca. Bologna: Il Mulino, 2006.
 - Costa, Pietro, and al. *I diritti dei nemici*. Vol. 38. Quaderni fiorentini per la storia del pensiero giuridico moderno. Milano: Giuffrè, 2009.
 - Craven, Matthew C. R., Malgosia Fitzmaurice, and Maria Vogiatzi, eds. *Time, History and International Law*. Developments in International Law, v. 58. Leiden ; Boston: M. Nijhoff, 2007.
 - Crawford, Emily. "The Enduring Legacy of the St Petersburg Declaration: Distinction, Military Necessity, and the Prohibition of Causing Unnecessary Suffering and Superfluous Injury in IHL." *Journal of the History of International Law / Revue d'histoire Du Droit International* 20, no. 4 (February 19, 2019): 544–66. <https://doi.org/10.1163/15718050-12340097>.
 - Curi, Umberto, ed. *Xenos: filosofia dello straniero*. Paradosso 2002. Padova: Poligrafo, 2002.
 - Danner, Allison. "Defining Unlawful Enemy Combatants: A Centripetal Story." *Texas International Law Journal* 43, no. 1 (2007): 1.
 - Daryl G. Press. "The Myth of Air Power in the Persian Gulf War and the Future of Warfare." *International Security* 26, no. 2 (2001): 5–44.
 - Daston, Lorraine, and Michael Stolleis, eds. *Natural Law and Laws of Nature in Early Modern Europe: Jurisprudence, Theology, Moral and Natural Philosophy*. Farnham, England ; Burlington, VT: Ashgate Pub. Company, 2008.

- Daverio Rocchi, Giovanna, and Nikos Birgalias, eds. *Dalla concordia dei Greci al bellum iustum dei moderni*. San Marino University press 1. Milano, Italy : [San Marino]: FrancoAngeli ; San Marino University Press, 2013.
- David, Steven R. “Israel’s Policy of Targeted Killing.” *Ethics & International Affairs* 17, no. 1 (March 2003): 111–26. <https://doi.org/10.1111/j.1747-7093.2003.tb00422.x>.
- Davidovic, Jovana. “Should the Changing Character of War Affect Our Theories of War?” *Ethical Theory and Moral Practice* 19, no. 3 (June 2016): 603–18. <https://doi.org/10.1007/s10677-015-9653-x>.
- Del Vecchio, Alberto. “Di Alcune Recenti Opere Italiane, Intorno Ad Alberigo Gentili Ed a Pierino Belli, Precursori Di Grozio.” *Archivio Storico Italiano* 3, no. 109 (1879): 63–79.
- Der Derian, James. *Virtuous War: Mapping the Military-Industrial-Media-Entertainment Network*. 2nd ed. New York: Routledge, 2009.
- Díez, Carlos Gómez-Jara. “Enemy Combatants Versus Enemy Criminal Law: An Introduction to the European Debate Regarding Enemy Criminal Law and Its Relevance to the Anglo-American Discussion on the Legal Status of Unlawful Enemy Combatants.” *New Criminal Law Review* 11, no. 4 (November 1, 2008): 529–62. <https://doi.org/10.1525/nclr.2008.11.4.529>.
- Dill, Janina. “Do Attackers Have a Legal Duty of Care? Limits to the ‘Individualization of War.’” *International Theory* 11, no. 1 (March 2019): 1–25. <https://doi.org/10.1017/S1752971918000222>.
- Dillon, Michael, and Julian Reid. *The Liberal Way of War: Killing to Make Life Live*. Global Horizons. London ; New York: Routledge, 2009.
- Dinstein, Yoram. “‘Direct Participation in Hostilities.’” *Tilburg Law Review* 18, no. 1 (January 1, 2013): 3–16. <https://doi.org/10.1163/22112596-01801002>.
- Dinstein, Yoram, and Fania Domb, eds. “Unlawful Combatancy.” In *Israel Yearbook on Human Rights, Volume 32 (2002)*, 247–70. Brill | Nijhoff, 2003. https://doi.org/10.1163/9789004423169_007.
- Dörmann, Knut. “The Legal Situation of ‘Unlawful/Unprivileged Combatants.’” *Revue Internationale de La Croix-Rouge/International Review of the Red Cross* 85, no. 849 (2003): 45–74. <https://doi.org/10.1017/S0035336100103521>.
- Douhet, Giulio, Emilio Canevari, and Italo Balbo. *La Guerra Integrale*. Roma : Campitelli, 1936. Dottrine Moderne Di Guerra, 1936.
- Douhet, Giulio *Il dominio dell'aria*, a cura e con un saggio introduttivo di Luciano Bozzo; Roma : Aeronautica Militare, Ufficio Storico, 2002 Conforme all'edizione Roma : C. De Alberti, 1927
- Douhet, Giulio, Joseph P. Harahan, Richard H. Kohn, and Dino Ferrari. *The Command of the Air*. Fireant Books. Tuscaloosa, AL: University of Alabama Press, 1998.
- Douzinas, Costas. “Humanity, Military Humanism and the New Moral Order.” *Economy and Society* 32, no. 2 (January 2003): 159–83. <https://doi.org/10.1080/0308514032000073383>.
- Draper, Kai. *War and Individual Rights: The Foundations of Just War Theory*. New York, NY: Oxford University Press, 2016.
- Duffy, Christopher. *The Military Experience in the Age of Reason*. First issued in paperback. London New York: Routledge, Taylor & Francis Group, 2016.
- Dufour, Alfred. “L’influence de La Méthodologie Des Sciences Physiques et Mathématiques Sur Les Fondateurs de l’Ecole Du Droit Naturel Moderne (Grotius, Hobbes, Pufendorf).” *Grotiana* 1, no. 1 (1980): 33–52. <https://doi.org/10.1163/187607580X00053>.

- Dupuy, Pierre-Marie, and Vincent Chetail. *The Roots of International Law / Les Fondements Du Droit International: Liber Amicorum Peter Hagggenmacher*. Brill | Nijhoff, 2014. <https://doi.org/10.1163/9789004261655>.
- Duso, Giuseppe. *La Logica Del Potere: Storia Concettuale Come Filosofia Politica*. Collana Di Filosofia Politica. Monza (Milano): Polimetrica, 2007.
- Duso, Giuseppe, and Stephen Marth. “Thinking about Politics beyond Modern Concepts.” *CR: The New Centennial Review* 10, no. 2 (2010): 73–97. <https://doi.org/10.1353/ncr.2010.0029>.
- Elkins, Jeremy. “The Model of War.” *Political Theory* 38, no. 2 (April 2010): 214–42. <https://doi.org/10.1177/0090591709355389>.
- Evangelista, Matthew. “Blockbusters, Nukes, and Drones: Trajectories of Change over a Century |.” *The Asia-Pacific Journal: Japan Focus*, Issue 23, Volume 14, no. 3 (December 1, 2016). <https://apjff.org/2016/23/Evangelista.html>.
- Evrigenis, Ioannis D. *Fear of Enemies and Collective Action*. Cambridge: Cambridge University Press, 2007. <https://doi.org/10.1017/CBO9780511509636>.
- Eyffinger, Arthur. *T.M.C. Asser (1838-1913) (2 Vols.): “In Quest of Liberty, Justice, and Peace.”* Brill | Nijhoff, 2019. <https://doi.org/10.1163/9789004397972>.
- Fabre, Cécile. *Cosmopolitan War*. 1st ed. Oxford: Oxford University Press, 2012.
- Fabre, Cecile. “Cosmopolitanism, Just War Theory and Legitimate Authority.” *International Affairs* 84, no. 5 (September 2008): 963–76. <https://doi.org/10.1111/j.1468-2346.2008.00749.x>.
- Fassbender, Bardo, and Anne Peters, eds. *The Oxford Handbook of the History of International Law*. 1st ed. Oxford University Press, 2012. <https://doi.org/10.1093/law/9780199599752.001.0001>.
- Fedele, Dante. “Grotius and Late Medieval Ius Commune on Rebellion and Civil War.” *Grotiana* 41, no. 2 (December 17, 2020): 371–89. <https://doi.org/10.1163/18760759-41020007>.
- ———. *The Medieval Foundations of International Law: Baldus de Ubaldis (1327–1400), Doctrine and Practice of the Ius Gentium*. Brill | Nijhoff, 2021. <https://doi.org/10.1163/9789004447127>.
- Fenwick, Charles G. “The Authority of Vattel II.” *American Political Science Review* 8, no. 3 (August 1914): 375–92. <https://doi.org/10.2307/1946172>.
- Férey, Amélie. *Assassinats Ciblés: Critique Du Libéralisme Armé*. Collection “Guerre et Stratégie.” Paris: CNRS éditions, 2020.
- Finch, George A. “James Brown Scott, 1866-1943.” *The American Journal of International Law* 38, no. 2 (1944): 183–217. <https://doi.org/10.2307/2192693>.
- Finkelstein, Claire, Jens David Ohlin, and Andrew Altman, eds. *Targeted Killings: Law and Morality in an Asymmetrical World*. Oxford University Press, 2012. <https://doi.org/10.1093/acprof:oso/9780199646470.001.0001>.
- Fiocchi Malaspina, Elisabetta. *L’eterno Ritorno Del Droit Des Gens Di Emer de Vattel (Secc. XVIII-XIX): L’impatto Sulla Cultura Giuridica in Prospettiva Globale*. Global Perspectives on Legal History, volume 8. Frankfurt: Max Planck Institute for European Legal History, 2017.
- Foucault, Michel. “The Subject and Power.” *Critical Inquiry* 8, no. 4 (1982): 777–95.
- Freedman, Lawrence. *The Future of War: A History*. First edition. New York: Public Affairs, 2017.
- Freund, Julien, Alain de Benoist, and Pierre Bérard. *Le Politique, Ou, L’art de Désigner l’ennemi*. Éternel

- Retour. Paris: La Nouvelle Librairie éditions, 2020.
- Freund, Julien, and Alessandro Campi. *Il terzo, il nemico, il conflitto: materiali per una teoria del politico*. Arcana imperii 33. Milano: Giuffrè, 1995.
 - Frowe, Helen, and Seth Lazar. *The Ethics of War*. Edited by Seth Lazar and Helen Frowe. Vol. 1. Oxford University Press, 2017. <https://doi.org/10.1093/oxfordhb/9780199943418.013.29>.
 - Fukuyama, Francis. “Reflections on the End of History, Five Years Later.” *History and Theory* 34, no. 2 (May 1995): 27. <https://doi.org/10.2307/2505433>.
 - Galand, Alexandre Skander. “Bemba and the Individualisation of War: Reconciling Command Responsibility under Article 28 Rome Statute with Individual Criminal Responsibility.” *International Criminal Law Review* 20, no. 4 (August 7, 2020): 669–700. <https://doi.org/10.1163/15718123-bja10018>.
 - Galli, Carlo. *Contingenza e Necessità Nella Ragione Politica Moderna*. 1. ed. Sagittari Laterza 165. Roma: Laterza, 2009.
 - ———. *Forme della critica: saggi di filosofia politica*. Bologna: Il mulino, 2020.
 - ———. *Spazi politici: l'età moderna e l'età globale*. Saggi 540. Bologna: Il Mulino, 2001.
 - Galli, Carlo, Amanda Minervini, and Adam Sitze. “On War and on the Enemy.” *CR: The New Centennial Review* 9, no. 2 (2009): 195–219.
 - Galula, David, and John A. Nagl. *Counterinsurgency Warfare: Theory and Practice*. PSI Classics of the Counterinsurgency Era. Westport, Conn.: Praeger Security International, 2006.
 - Gamberini, Alessandro, ed. *Delitto politico e delitto penale del nemico*. 1. ed. Nuovo revisionismo penale. Bologna: Monduzzi, 2007.
 - ———, ed. *Delitto politico e delitto penale del nemico*. 1. ed. Nuovo revisionismo penale. Bologna: Monduzzi, 2007.
 - Gat, Azar. *A History of Military Thought: From the Enlightenment to the Cold War*. Oxford ; New York: Oxford University Press, 2001.
 - Gelderblom, Oscar, Abe de Jong, and Joost Jonker. “The Formative Years of the Modern Corporation: The Dutch East India Company VOC, 1602–1623.” *The Journal of Economic History* 73, no. 4 (December 2013): 1050–76. <https://doi.org/10.1017/S0022050713000879>.
 - Gentili, Alberico. *Alberico Gentili: il diritto di guerra; (de iure belli libri III, 1598)*. Edited by Giuliano Marchetto, 2008.
 - Gentili, Alberico, Benedict Kingsbury, Benjamin Straumann, and David A. Lupher. *The Wars of the Romans: A Critical Edition and Translation of De Armis Romanis*. Oxford ; New York: Oxford University Press, 2011.
 - Gentili, Alberico, and John Carew Rolfe. *De Iure Belli Libri Tres. 2: The Translation of the Edition of 1612*. Reprint der Ausg. Oxford, 1933. The Classics of International Law 16. Buffalo, NY: Hein, 1995.
 - Gilpin, Robert. *War and Change in World Politics*. Cambridge: Cambridge University Press, 1983. <https://doi.org/10.1017/CBO9780511664267>.
 - Ginossar, Shalev. “Outlawing Terrorism.” *Israel Law Review* 13, no. 2 (April 1978): 150–59. <https://doi.org/10.1017/S002122370000621X>.
 - Girard, René. *Violence and the Sacred*. John Hopkins paperbacks ed., [Nachdr.]. Baltimore: Hopkins Univ. Press, 1979.
 - Gooch, John, ed. *Airpower: Theory and Practice*. London ; Portland, Or: F. Cass, 1995.

- Gordon, Matthew, Richard Kaeuper, and Harriet Zurndorfer, eds. *The Cambridge World History of Violence*. 1st ed. Cambridge University Press, 2020. <https://doi.org/10.1017/9781316661291>.
- Government Printing Office, and Francis Lieber. *Instructions for the Government of Armies of The United States in the Field: 1898*. II. CreateSpace Independent Publishing Platform (28 settembre 2014), 2014.
- Greenwood, Rayan. “War and Sovereignty in Medieval Roman Law.” *Law and History Review* 32, no. 1 (2014): 31–63.
- Gregory, Derek. “The Black Flag: Guantánamo Bay and the Space of Exception.” *Geografiska Annaler: Series B, Human Geography* 88, no. 4 (December 2006): 405–27. <https://doi.org/10.1111/j.0435-3684.2006.00230.x>.
- Grotius, Hugo, John Clarke, and Maria Rosa Antognazza. *The Truth of the Christian Religion*. Natural Law and Enlightenment Classics. Indianapolis, [Ind.]: Liberty Fund, 2012.
- Grotius, Hugo, Richard Hakluyt, William Welwood, and David Armitage. *The Free Sea*. Natural Law and Enlightenment Classics. Indianapolis, Ind: Liberty Fund, 2004.
- Grotius, Hugo, and Richard Tuck. *The Rights of War and Peace*. Natural Law and Enlightenment Classics. Indianapolis, Ind: Liberty Fund, 2005.
- Grotius, Hugo, and Martine Julia Van Ittersum. *Commentary on the Law of Prize and Booty*. Natural Law and Enlightenment Classics. Indianapolis: Liberty Fund, 2006.
- Gunneflo, Markus. *Targeted Killing: A Legal and Political History*. Cambridge, United Kingdom: Cambridge University Press, 2016.
- Haakonssen, Knud. *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*. 1st ed. Cambridge University Press, 1996. <https://doi.org/10.1017/CBO9781139172905>.
- Hagenmacher, Peter. “Genèse et Signification Du Concept de ‘Ius Gentium’ Chez Grotius.” *Grotiana* 2, no. 1 (1981): 44–102. <https://doi.org/10.1163/187607581X00043>.
- ———. “Guerre Juste et Guerre Régulière Dans La Doctrine Espagnole Du XVI^e Siècle.” *Revue Internationale de La Croix-Rouge* 74, no. 797 (October 1992): 450–62. <https://doi.org/10.1017/S0035336100088274>.
- ———, ed. *Il Diritto Della Guerra e Della Pace Di Alberico Gentili: Atti Del Convegno, Quarta Giornata Gentiliana, 21 Settembre 1991*. Centro internazionale di studi gentiliani. Milano: A. Giuffrè, 1995.
- Hajjar, Lisa. “International Humanitarian Law and “Wars on Terror”: A Comparative Analysis of Israeli and American Doctrines and Policies.” *Journal of Palestine Studies* 36, no. 1 (October 1, 2006): 21–42. <https://doi.org/10.1525/jps.2006.36.1.21>.
- Hall, Ian, and Mark Bevir. “Traditions of British International Thought.” *The International History Review* 36, no. 5 (October 20, 2014): 823–34. <https://doi.org/10.1080/07075332.2014.951951>.
- Haque, Adil Ahmad. “Law and Morality at War.” *Criminal Law and Philosophy* 8, no. 1 (January 2014): 79–97. <https://doi.org/10.1007/s11572-012-9165-x>.
- Hardt, Michael, and Antonio Negri. *Empire*. 1. Harvard Univ. Press paperback ed., [Nachdr.]. Cambridge, Mass.: Harvard Univ. Press, 2003.
- Hart, H. L. A. “Are There Any Natural Rights?” *The Philosophical Review* 64, no. 2 (April 1955): 175. <https://doi.org/10.2307/2182586>.
- Hartmann, Wilfried, and Kenneth Pennington, eds. *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*. History of Medieval Canon Law. Washington, D.C: Catholic University of America Press, 2008.

- Harvey, Martin. “Grotius and Hobbes.” *British Journal for the History of Philosophy* 14, no. 1 (February 2006): 27–50. <https://doi.org/10.1080/09608780500449131>.
- Heller-Roazen, Daniel. *The Enemy of All: Piracy and the Law of Nations*. New York : Cambridge, Mass: Zone Books ; Distributed by The MIT Press, 2009.
- Hermann, Margaret G. “Explaining Foreign Policy Behavior Using the Personal Characteristics of Political Leaders.” *International Studies Quarterly* 24, no. 1 (March 1980): 7. <https://doi.org/10.2307/2600126>.
- Hermann, Margaret G., and Charles W. Kegley. “Rethinking Democracy and International Peace: Perspectives from Political Psychology.” *International Studies Quarterly* 39, no. 4 (December 1995): 511. <https://doi.org/10.2307/2600804>.
- Hillman, James. *A Terrible Love of War*. [2nd ed.], First published, New York (N.Y.), the Penguin press, 2004. New York (N.Y.): Penguin books, 2005.
- Hippler, Thomas. *Bombing the People: Giulio Douhet and the Foundations of Air-Power Strategy, 1884-1939*. Cambridge Military Histories. Cambridge: Cambridge, 2013.
- Hippler, Thomas, and David Fernbach. *Governing From the Skies: A Global History of Aerial Bombing*. English language edition. London: Verso, 2017.
- Hippler, Thomas, and Miloš Vec, eds. *Paradoxes of Peace in Nineteenth Century Europe*. Oxford University Press, 2015. <https://doi.org/10.1093/acprof:oso/9780198727996.001.0001>.
- Hobbes, Thomas. *De Cive*. Place of publication not identified: Createspace, 2015.
- ———. *The Elements of Law: Natural and Politic*. Second edition. Routledge Revivals. Abingdon, Oxon New York, NY: Routledge, Taylor & Francis Group, 2018.
- Hobbes, Thomas, Thomas Hobbes, John Aubrey, and J. C. A. Gaskin. *The Elements of Law, Natural and Politic: Part I, Human Nature, Part II, De Corpore Politico ; with Three Lives*. Oxford World’s Classics. Oxford ; New York: Oxford University Press, 2008.
- Hobbes, Thomas, and Richard Tuck. *Leviathan*. Rev. student ed. Cambridge Texts in the History of Political Thought. Cambridge ; New York: Cambridge University Press, 1996.
- Hobbes, Thomas, Richard Tuck, and Michael Silverthorne. *On the Citizen*. Cambridge Texts in the History of Political Thought. New York, NY: Cambridge University Press, 1998.
- Hobsbawm, Eric J. *The Age of Extremes: The Short Twentieth Century, 1914-1991*. Repr. London: Abacus, 2011.
- Hochstrasser, Tim J., and Peter Schröder. *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment*. Archives Internationales d’histoire Des Idées 186. Dordrecht: Kluwer academic, 2003.
- Hoffmann, Stanley. “On the Political Psychology of Peace and War: A Critique and an Agenda.” *Political Psychology* 7, no. 1 (March 1986): 1. <https://doi.org/10.2307/3791154>.
- ———. “Rousseau on War and Peace.” *American Political Science Review* 57, no. 2 (June 1963): 317–33. <https://doi.org/10.2307/1952825>.
- Holland, T.E., and J.L. Brierly. *Iohannis de Lignano De Bello, de Represaliis Et de Duello*. Classics of International Law. Carnegie Institution of Washington at the Oxford University Press, 1917.
- Holman, Brett. *The next War in the Air: Britain’s Fear of the Bomber, 1908-1941*. Farnham, Surrey: Ashgate Publishing Limited, 2014.
- Holmes, Stephen. “Does Hobbes Have a Concept of the Enemy?” *Critical Review of International Social and*

- Political Philosophy* 13, no. 2–3 (June 2010): 371–89. <https://doi.org/10.1080/13698231003787802>.
- ———. “Jean Bodin: The Paradox of Sovereignty and the Privatization of Religion.” *Nomos* 30 (1988): 5–45.
 - Holmqvist, Caroline. *Policing Wars: On Military Intervention in the Twenty-First Century*. Basingstoke: Palgrave Macmillan, 2014.
 - Hopf, Ted. “The Promise of Constructivism in International Relations Theory.” *International Security* 23, no. 1 (July 1998): 171–200. <https://doi.org/10.1162/isec.23.1.171>.
 - Höpfl, Harro, Martin Luther, and Jean Calvin, eds. *Luther and Calvin on Secular Authority*. Cambridge Texts in the History of Political Thought. Cambridge ; New York: Cambridge University Press, 1991.
 - Howard, Michael. *War and the Liberal Conscience*. London: Hurst & company, 2008.
 - Hunter, Ian. “Law, War, and Casuistry in Vattel’s *Jus Gentium*.” *Parergon* 28, no. 2 (2011): 87–104. <https://doi.org/10.1353/pgn.2011.0070>.
 - Huntington, Samuel P. “The Clash of Civilizations?” *Foreign Affairs* 72, no. 3 (1993): 22. <https://doi.org/10.2307/20045621>.
 - Ifversen, Jan. “About Key Concepts and How to Study Them.” *Contributions to the History of Concepts* 6, no. 1 (January 1, 2011). <https://doi.org/10.3167/choc.2011.060104>.
 - Inayatullah, Naeem, and David L. Blaney. *International Relations and the Problem of Difference*. Global Horizons, v. 1. New York: Routledge, 2004.
 - International Committee of the Red Cross. *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*. Cambridge: Cambridge University Press, 2016. <https://doi.org/10.1017/9781316755709>.
 - Ish-Shalom, Piki. “Conceptual Relics, Mutual Assured Evilness and the Struggle over Israeli Public Commonsense.” *International Politics* 51, no. 4 (July 2014): 543–60. <https://doi.org/10.1057/ip.2014.24>.
 - Ittersum, Martine Julia van. “Hugo Grotius in Context: Van Heemskerck’s Capture of the ‘Santa Catarina’ and Its Justification in ‘De Jure Praedae’ (1604—1606).” *Asian Journal of Social Science* 31, no. 3 (2003): 511–48.
 - ———. “Mare Liberum Versus the Propriety of the Seas? The Debate between Hugo Grotius (1583–1645) and William Welwood (1552–1624) and Its Impact on Anglo-Scotto-Dutch Fishery Disputes in the Second Decade of the Seventeenth Century.” *Edinburgh Law Review* 10, no. 2 (May 2006): 239–76. <https://doi.org/10.3366/elr.2006.10.2.239>.
 - Ittersum, Martine Julia van. “The Wise Man Is Never Merely a Private Citizen: The Roman Stoa in Hugo Grotius’ *De Jure Praedae* (1604–1608).” *History of European Ideas* 36, no. 1 (March 2010): 1–18. <https://doi.org/10.1016/j.histeuroideas.2009.10.005>.
 - Jabri, Vivienne. *War and the Transformation of Global Politics*. London: Palgrave Macmillan UK : Imprint : Palgrave Macmillan, 2007. <https://link.springer.com/openurl?genre=book&isbn=978-1-349-28243-2>.
 - ———. “War, Security and the Liberal State.” *Security Dialogue* 37, no. 1 (March 2006): 47–64. <https://doi.org/10.1177/0967010606064136>.
 - Jaede, Maximilian. *Thomas Hobbes’s Conception of Peace: Civil Society and International Order*. 1st ed. 2018. International Political Theory. Cham: Springer International Publishing : Imprint: Palgrave Pivot, 2018. <https://doi.org/10.1007/978-3-319-76066-7>.
 - Johnson, James T. “Just War in the Thought of Paul Ramsey.” *The Journal of Religious Ethics* 19, no. 2 (1991): 183–207.

- Johnson, James Turner. “Aquinas and Luther on War and Peace: Sovereign Authority and the Use of Armed Force.” *Journal of Religious Ethics* 31, no. 1 (March 2003): 3–20. <https://doi.org/10.1111/1467-9795.00120>.
- ———. “Thinking Historically about Just War.” *Journal of Military Ethics* 8, no. 3 (September 2009): 246–59. <https://doi.org/10.1080/15027570903230307>.
- Johnson, Robert. “Hybrid War and Its Countermeasures: A Critique of the Literature.” *Small Wars & Insurgencies* 29, no. 1 (January 2, 2018): 141–63. <https://doi.org/10.1080/09592318.2018.1404770>.
- Jünger, Ernst, Joachim Neugroschel, and Russell A. Berman. *Eumeswil*. Candor, NY: Telos Press Publishing, 2015.
- Kadelbach, Stefan, Thomas Kleinlein, and David Roth-Isigkeit, eds. *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel*. First edition. The History and Theory of International Law. New York, NY: Oxford University Press, 2017.
- Kaldor, Mary. *New and Old Wars*. Cambridge [England]; Malden, MA: Polity Press, 2012. <http://site.ebrary.com/id/10695857>.
- Kalmanovitz, Pablo. *Early Modern Sources of the Regular War Tradition*. Edited by Seth Lazar and Helen Frowe. Vol. 1. Oxford University Press, 2015.
- ———. *The Laws of War in International Thought*. First edition. The History and Theory of International Law. Oxford ; New York, NY: Oxford University Press, 2020.
- Kalyvas, Stathis N. “The Paradox of Terrorism in Civil War.” *The Journal of Ethics* 8, no. 1 (2004): 97–138. <https://doi.org/10.1023/B:JOET.0000012254.69088.41>.
- Keegan, John. *A History of Warfare*. 1. ed. New York: Vintage books, 1994.
- Keen, Maurice, ed. *Medieval Warfare: A History*. Oxford ; New York: Oxford University Press, 1999.
- Keen, Maurice Hugh. *The Laws of War in the Late Middle Ages*. This edition first published. Routledge Library Editions Military and Naval History, Volume 16. London New York: Routledge, 2016.
- Keene, Edward. “International Intellectual History and International Relations: Contexts, Canons and Mediocrities.” *International Relations* 31, no. 3 (September 2017): 341–56. <https://doi.org/10.1177/0047117817723068>.
- Kelsen, Hans. “Collective and Individual Responsibility in International Law with Particular Regard to the Punishment of War Criminals.” *California Law Review* 31, no. 5 (December 1943): 530. <https://doi.org/10.2307/3477207>.
- Kempe, Michael. “Beyond the Law. The Image of Piracy in the Legal Writings of Hugo Grotius.” *Grotiana* 26–28, no. 1 (2007): 379–95. <https://doi.org/10.1163/187607508X366472>.
- Kennedy, David. *Of War and Law*. Princeton [N.J.]: Princeton University Press, 2006.
- Kervégan, Jean-François. “Carl Schmitt et « l’unité du monde ».” *Les Etudes philosophiques* n° 68, no. 1 (March 1, 2004): 3–23.
- Kilcullen, David J. “Countering Global Insurgency.” *Journal of Strategic Studies* 28, no. 4 (August 2005): 597–617. <https://doi.org/10.1080/01402390500300956>.
- Kingsbury, Benedict, and Benjamin Straumann, eds. *The Roman Foundations of the Law of Nations: Alberico Gentili and the Justice of Empire*. Oxford ; New York: Oxford University Press, 2010.
- Kirkpatrick, Jesse. “Moral Injury and Revisionist Just War Theory.” *Ethics & International Affairs* 36, no. 1 (2022): 27–35. <https://doi.org/10.1017/S0892679422000041>.

- Kolb, Robert, and Momchil Milanov. “The 1868 St Petersburg Declaration on Explosive Projectiles: A Reappraisal.” *Journal of the History of International Law / Revue d’histoire Du Droit International* 20, no. 4 (February 19, 2019): 515–43. <https://doi.org/10.1163/15718050-12340099>.
- Koselleck, Reinhart. “Begriffsgeschichte and Social History.” *Economy and Society* 11, no. 4 (November 1982): 409–27. <https://doi.org/10.1080/03085148200000015>.
- ———. *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*. Reprint. Studies in Contemporary German Social Thought. Cambridge, Massachusetts: The MIT Press, 2015.
- Koselleck, Reinhart, Stefan-Ludwig Hoffmann, and Sean Franzel. *Sediments of Time: On Possible Histories*. Cultural Memory in the Present. Stanford, California: Stanford University Press, 2018.
- ———. *Sediments of Time: On Possible Histories*. Cultural Memory in the Present. Stanford, California: Stanford University Press, 2018.
- Koselleck, Reinhart, and Michaela Richter. “Basic Concepts in History: A Historical Dictionary of Political and Social Language in Germany.” *Contributions to the History of Concepts* 6, no. 1 (January 1, 2011): 1–37. <https://doi.org/10.3167/choc.2011.060102>.
- ———. “Basic Concepts in History: A Historical Dictionary of Political and Social Language in Germany.” *Contributions to the History of Concepts* 6, no. 1 (January 1, 2011): 1–37. <https://doi.org/10.3167/choc.2011.060102>.
- Koskenniemi, Martti. “Empire and International Law: The Real Spanish Contribution.” *University of Toronto Law Journal* 61, no. 1 (January 2011): 1–36. <https://doi.org/10.3138/utlj.61.1.001>.
- ———. “Histories of International Law: Dealing with Eurocentrism.” *Rechtsgeschichte - Legal History* 2011, no. 19 (2011): 152–76. <https://doi.org/10.12946/rg19/152-176>.
- ———. “Imagining the Rule of Law: Rereading the Grotian ‘Tradition.’” *European Journal of International Law* 30, no. 1 (May 24, 2019): 17–52. <https://doi.org/10.1093/ejil/chz017>.
- ———. “International Law as Political Theology: How to Read Nomos Der Erde?” *Constellations* 11, no. 4 (December 2004): 492–511. <https://doi.org/10.1111/j.1351-0487.2004.00391.x>.
- ———. “Into Positivism: Georg Friedrich von Martens (1756/1821) and Modern International Law.” *Constellations* 15, no. 2 (June 2008): 189–207. <https://doi.org/10.1111/j.1467-8675.2008.00484.x>.
- ———. *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. 1st ed. Cambridge University Press, 2001. <https://doi.org/10.1017/CBO9780511494222>.
- ———. *To the Uttermost Parts of the Earth: Legal Imagination and International Power, 1300-1870*. Cambridge, United Kingdom ; New York, NY: Cambridge University Press, 2021.
- ———. *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870*. 1st ed. Cambridge University Press, 2021. <https://doi.org/10.1017/9781139019774>.
- ———. “Vitoria and Us: Thoughts on Critical Histories of International Law.” *Rechtsgeschichte - Legal History* 2014, no. 22 (2014): 119–38. <https://doi.org/10.12946/rg22/119-138>.
- Krasmann, Susanne. “Enemy Penology.” In *Oxford Research Encyclopedia of Criminology and Criminal Justice*, by Susanne Krasmann. Oxford University Press, 2018. <https://doi.org/10.1093/acrefore/9780190264079.013.365>.
- ———. “Targeted Killing and Its Law: On a Mutually Constitutive Relationship.” *Leiden Journal of International Law* 25, no. 3 (September 2012): 665–82. <https://doi.org/10.1017/S0922156512000337>.

- Kreß, Claus, and Robert Lawless, eds. *Necessity and Proportionality in International Peace and Security Law*. 1st ed. Oxford University Press, 2020. <https://doi.org/10.1093/oso/9780197537374.001.0001>.
- Lambeth, Benjamin S. *NATO's Air War for Kosovo: A Strategic and Operational Assessment*. Project Air Force Series on Operation Allied Force. Santa Monica, CA: Rand, 2001.
- Langan, John. "The Just-War Theory after the Gulf War." *Theological Studies* 53, no. 1 (March 1992): 95–112. <https://doi.org/10.1177/004056399205300106>.
- Lawrence, Philip K. *Modernity and War: The Creed of Absolute Violence*. Place of publication not identified: Palgrave Macmillan, 2014.
- Lazar, Seth. "In Dubious Battle: Uncertainty and the Ethics of Killing." *Philosophical Studies* 175, no. 4 (April 2018): 859–83. <https://doi.org/10.1007/s11098-017-0896-3>.
- ———. "Just War Theory: Revisionists Versus Traditionalists." *Annual Review of Political Science* 20, no. 1 (May 11, 2017): 37–54. <https://doi.org/10.1146/annurev-polisci-060314-112706>.
- Lazzarich, Diego. *Stato moderno e diritto delle genti: Vattel tra politica e guerra*. Benevento: Labrys, 2016.
- Lesaffer. "The Medieval Canon Law of Contract and Early Modern Treaty Law." *Journal of the History of International Law / Revue d'histoire Du Droit International* 2, no. 2 (2000): 178–98. <https://doi.org/10.1163/15718050020956821>.
- Lesaffer, Randall. "Grotius on the Use of Force: Perfect, Imperfect and Civil Wars. An Introduction." *Grotiana* 41, no. 2 (December 17, 2020): 255–62. <https://doi.org/10.1163/18760759-41020001>.
- Lévesque de Burigny, Jean. *The Life of the Truly Eminent and Learned Hugo Grotius: Containing a Copious and Circumstantial History of the Several Important and Honourable Negotiations in Which He Was Employed : Together with a Critical Account of His Works*. Charleston: Bibliobazaar, 2007.
- Liddell Hart, Basil Henry. *History of the Second World War*. London: Cassell, 1970.
- Lindqvist, Sven. *A History of Bombing*. Translated by Linda Haverty Rugg. 2nd edition edition. London: Granta Books, 2012.
- Lloyd, Howell A., ed. *The Reception of Bodin*. Brill's Studies in Intellectual History, volume 223. Leiden ; Boston: Brill, 2013.
- Luban, David. "The Enemy of All Humanity." *Netherlands Journal of Legal Philosophy* 47, no. 2 (December 2018): 112–37. <https://doi.org/10.5553/NJLP/221307132018047002002>.
- Luigi Nuzzo. "Disordine politico e ordine giuridico. Iniziative e utopie nel diritto internazionale di fine Ottocento." *Materiali per una storia della cultura giuridica*, no. 2 (2011): 319–38. <https://doi.org/10.1436/35957>.
- Luo, Bingxiang, and Sumner B. Twiss, eds. *Chinese Just War Ethics: Origin, Development, and Dissent*. War, Conflict and Ethics. London: Routledge/Taylor & Francis Group, 2015.
- Luther, Martin, Jaroslav Jan Pelikan, Walter A. Hansen, George Victor Schick, and Paul D. Pahl. *Luther's Works*. Saint-Louis (Mo.): Concordia publishing house, 1968.
- Maissen, Thomas, and Fania Oz-Salzberger, eds. *The Liberal-Republican Quandary in Israel, Europe, and the United States: Early Modern Thought Meets Current Affairs*. Israel, Society, Culture and History. Brighton, MA: Academic Studies Press, 2012.
- Malcolm, Noel. *Aspects of Hobbes*. Oxford University Press, 2002. <https://doi.org/10.1093/0199247145.001.0001>.

- ———. “Thomas Hobbes: Liberal Illiberal.” *Journal of the British Academy* 4 (August 31, 2016): 113–36. <https://doi.org/10.5871/jba/004.113>.
- Manchon, Jean-Baptiste. “Tenir le désert : la lutte aérienne contre les Senoussis à la frontière sud-tunisienne (1916-1918).” *Outre-Mers* 390–391, no. 1 (2016): 153–71. <https://doi.org/10.3917/om.161.0153>.
- Martin, Geoff, and Erin Steuter. *Drone Nation: The Political Economy of America’s New Way of War*. Lanham, Maryland: Lexington Books, 2017.
- McChrystal, Stanley, and Gideon Rose. “Generation Kill: A Conversation With Stanley McChrystal.” *Foreign Affairs* 92, no. 2 (2013): 2–8.
- McMahan, Jeff. *Killing in War*. Uehiro Series in Practical Ethics. Oxford : New York: Clarendon Press ; Oxford University Press, 2009.
- ———. “War as Self-Defense.” *Ethics & International Affairs* 18, no. 1 (March 2004): 75–80. <https://doi.org/10.1111/j.1747-7093.2004.tb00453.x>.
- McMahan, Jeff, and Robert McKim. “The Just War and The Gulf War.” *Canadian Journal of Philosophy* 23, no. 4 (December 1993): 501–41. <https://doi.org/10.1080/00455091.1993.10717333>.
- Meier, Heinrich. *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy*. Expanded ed. Chicago: The University of Chicago Press, 2011.
- Meier, Heinrich, and J. Harvey Lomax. *Carl Schmitt and Leo Strauss: The Hidden Dialogue*. Chicago: University of Chicago Press, 2012. <http://public.ebib.com/choice/publicfullrecord.aspx?p=2130113>.
- Meilinger, Phillip S. *Airwar: Theory and Practice*. Cass Series--Studies in Air Power 14. London ; Portland, OR: Frank Cass, 2003.
- ———. “Trenchard and ‘Morale Bombing’: The Evolution of Royal Air Force Doctrine Before World War II.” *The Journal of Military History* 60, no. 2 (April 1996): 243. <https://doi.org/10.2307/2944407>.
- Meilinger, Phillip S, Air University (Maxwell Air Force Base), Air Command and Staff College, and School of Advanced Airpower Studies. *The Paths of Heaven: The Evolution of Airpower Theory*. Maxwell Air Force Base (Alabama): Air University Press, 2010.
- Meisels, Tamar, and Jeremy Waldron. *Debating Targeted Killing: Counter-Terrorism or Extrajudicial Execution?* Debating Ethics. New York: Oxford university press, 2020.
- Melzer, Nils. *Targeted Killing in International Law*. Oxford Monographs in International Law. Oxford ; New York: Oxford University Press, 2008.
- Meron, Theodor. “The Humanization of Humanitarian Law.” *American Journal of International Law* 94, no. 2 (April 2000): 239–78. <https://doi.org/10.2307/2555292>.
- Miglio, Gianfranco, Moreno Morani, Pier Paolo Portinaro, and Alessandro Vitale, eds. *Amicus (Inimicus) Hostis: Le Radici Concettuali Della Conflittualità “Privata” e Della Conflittualità “Politica.”* Arcana Imperii 25. Milano: Giuffrè, 1992.
- Minois, Georges. *Le Couteau et Le Poison: L’assassinat Politique En Europe (1400-1800)*. Nouvelles Études Historiques. Paris: Fayard, 1997.
- Mitchell, William. *Winged Defense the Development and Possibilities of Modern Air Power-- Economic and Military*. Tuscaloosa, Ala.: University of Alabama Press, 2009.
- Monod, Jean-Claude. *Penser l’ennemi, affronter l’exception*. Paris: La Découverte, 2016.
- Moravcsik, Andrew. “Taking Preferences Seriously: A Liberal Theory of International Politics.” *International*

- Organization* 51, no. 4 (1997): 513–53. <https://doi.org/10.1162/002081897550447>.
- Morgenthau, Hans J., Hartmut Behr, Felix Rösch, and Maeva Vidal. *The Concept of the Political*. New York: Palgrave Macmillan, 2012.
 - Moudarres, Andrea. *The Enemy in Italian Renaissance Epic: Images of Hostility from Dante to Tasso*. Early Modern Exchange. Newark: The University of Delaware Press, 2019.
 - Moyn, Samuel. *The Last Utopia: Human Rights in History*. Harvard University Press, 2012. <https://doi.org/10.2307/j.ctvj2vkf>.
 - Mumford, Andrew. “Unnecessary or Unsung? The Utilisation of Airpower in Britain’s Colonial Counterinsurgencies.” *Small Wars & Insurgencies* 20, no. 3–4 (September 2009): 636–55. <https://doi.org/10.1080/09592310903251906>.
 - Murray, John Courtney. “Remarks on the Moral Problem of War.” *Theological Studies* 20, no. 1 (February 1959): 40–61. <https://doi.org/10.1177/004056395902000102>.
 - Murray, Williamson, and Peter R. Mansoor. *Hybrid Warfare: Fighting Complex Opponents from the Ancient World to the Present*. New York: Cambridge University Press, 2012.
 - Nardin, Terry. “Michael Walzer, Just and Unjust Wars.” In *The Oxford Handbook of Classics in Contemporary Political Theory*, by Terry Nardin, edited by Jacob T. Levy. Oxford University Press, 2015. <https://doi.org/10.1093/oxfordhb/9780198717133.013.26>.
 - Nellen, Henk J. M., and J. C. Grayson. *Hugo Grotius: A Lifelong Struggle for Peace in Church and State, 1583-1645*. Leiden : Boston: Brill, 2014.
 - Neocleous, Mark. “Air Power as Police Power.” *Environment and Planning D: Society and Space* 31, no. 4 (August 2013): 578–93. <https://doi.org/10.1068/d19212>.
 - ———. *The Universal Adversary: Security, Capital and “the Enemies of All Mankind.”* Abingdon, Oxon ; New York, NY: Routledge, 2016.
 - Neumann, Iver B. “Self and Other in International Relations.” *European Journal of International Relations* 2, no. 2 (June 1996): 139–74. <https://doi.org/10.1177/1354066196002002001>.
 - Nijman, Janne E. *Grotius’ Imago Dei Anthropology*. Vol. 1. Oxford University Press, 2017. <https://doi.org/10.1093/oso/9780198805878.003.0005>.
 - Nijman, Janne E. “Grotius’ ‘Rule of Law’ and the Human Sense of Justice: An Afterword to Martti Koskenniemi’s Foreword.” *European Journal of International Law* 30, no. 4 (December 31, 2019): 1105–14. <https://doi.org/10.1093/ejil/chz068>.
 - Nucci, Ezio Di, and Filippo Santoni de Sio, eds. *Drones and Responsibility: Legal, Philosophical and Sociotechnical Perspectives on Remotely Controlled Weapons*. Emerging Technologies, Ethics and International Affairs. Milton Park, Abingdon, Oxon ; New York, NY: Routledge, 2016.
 - Nurnberger, R.D. *James Brown Scott, Peace Through Justice*. Georgetown University, 1975. <https://books.google.ch/books?id=TIKRnQEACAAJ>.
 - Oakeshott, Michael. *Hobbes on Civil Association*. Indianapolis: Liberty Fund, 2000.
 - O’Connell, Mary Ellen. “Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009.” Rochester, NY: Social Science Research Network, November 6, 2009. <https://papers.ssrn.com/abstract=1501144>.
 - Odysseos, Louiza. *The Subject of Coexistence: Otherness in International Relations*. Borderlines, v. 28.

- Minneapolis: University of Minnesota Press, 2007.
- Olivo, Gilles. *Descartes et l'essence de La Vérité*. 1re éd. Epiméthée. Paris: Presses universitaires de France, 2005.
 - Omissi, David E. *Air Power and Colonial Control: The Royal Air Force, 1919-1939*. Studies in Imperialism. Manchester [England]; New York : New York, NY: Manchester University Press ; Distributed exclusively in the USA and Canada by St. Martin's Press, 1990.
 - Orakhelashvili, Alexander, ed. *Research Handbook on the Theory and History of International Law*. Second edition. Research Handbooks in International Law. Cheltenham, UK ; Northampton, MA, USA: Edward Elgar Publishing, 2020.
 - Orford, Anne, ed. *International Law and Its Others*. Cambridge ; New York: Cambridge University Press, 2006.
 - ———. *International Law and Its Others*. Cambridge: Cambridge University Press, 2006. <https://doi.org/10.1017/CBO9780511494284>.
 - ———. *International Law and the Politics of History*. Cambridge: Cambridge university press, 2021.
 - Orna Ben-Naftali and Keren Michaeli. “Public Committee Against Torture in Israel v. Government of Israel. Case No. HCJ 769/02.” *The American Journal of International Law* 101, no. 2 (2007): 459–65.
 - Pagden, Anthony. “The ‘defence of Civilization’ in Eighteenth- Century Social Theory.” *History of the Human Sciences* 1, no. 1 (May 1988): 33–45. <https://doi.org/10.1177/095269518800100104>.
 - Panizza, Diego, ed. *Alberico Gentili, Politica e Religione: Nell'età Delle Guerre Di Religione*. Centro Internazionale Di Studi Gentiliani (Series). Milano: A. Giuffrè, 2002.
 - ———. “Political Theory and Jurisprudence in Gentili’s De Iure Belli: The Great Debate between ‘Theological’ and ‘Humanist’ Perspectives from Vitoria to Grotius.” *SSRN Electronic Journal*, 2005. <https://doi.org/10.2139/ssrn.871754>.
 - ———. “The ‘Freedom of the Sea’ and the ‘Modern Cosmopolis’ in Alberico Gentili’s De Iure Belli.” *Grotiana* 30, no. 1 (2009): 88–106. <https://doi.org/10.1163/016738309X12537002674321>.
 - Pankakoski, Timo. “Conflict, Context, Concreteness: Koselleck and Schmitt on Concepts.” *Political Theory* 38, no. 6 (December 2010): 749–79. <https://doi.org/10.1177/0090591710378572>.
 - ———. “Containment and Intensification in Political War: Carl Schmitt and the Clausewitzian Heritage.” *History of European Ideas* 43, no. 6 (August 18, 2017): 649–73. <https://doi.org/10.1080/01916599.2016.1234967>.
 - Paret, Peter. *Clausewitz and the State: The Man, His Theories, and His Times*. Princeton, N.J: Princeton University Press, 2007.
 - Paret, Peter, Gordon Alexander Craig, and Felix Gilbert, eds. *Makers of Modern Strategy: From Machiavelli to the Nuclear Age*. Princeton Paperbacks. Princeton, N.J: Princeton University Press, 1986.
 - Parker, Geoffrey. “The Limits to Revolutions in Military Affairs: Maurice of Nassau, the Battle of Nieuwpoort (1600), and the Legacy.” *The Journal of Military History* 71, no. 2 (2007): 331–72. <https://doi.org/10.1353/jmh.2007.0142>.
 - Parry, Clive. “The Trading With The Enemy Act and The Definition of an Enemy.” *The Modern Law Review* 4, no. 3 (January 1940): 161–82. <https://doi.org/10.1111/j.1468-2230.1940.tb00769.x>.
 - Parsons, Graham, and Mark Anthony Wilson, eds. *Walzer and War: Reading “Just and Unjust Wars” Today*. Cham, Switzerland: palgrave macmillan, 2020.

- Peter Haggemacher. *Grotius et La Doctrine de La Guerre Juste*. Graduate Institute Publications.
- Peters, A. “Humanity as the A and of Sovereignty.” *European Journal of International Law* 20, no. 3 (August 1, 2009): 513–44. <https://doi.org/10.1093/ejil/chp026>.
- Pick, Daniel. *War Machine: The Rationalisation of Slaughter in the Modern Age*. New Haven, Conn: Yale University Press, 1993.
- Pildes, Richard H., and Samuel Issacharoff. “Targeted Warfare: Individuating Enemy Responsibility.” *SSRN Electronic Journal*, 2012. <https://doi.org/10.2139/ssrn.2129860>.
- Pio, Berardo. “«In superbos reges»: il tirannicidio in Boccaccio e nel pensiero politico del Trecento.” *Studi storici*, no. 3 (2017): 693–718. <https://doi.org/10.7375/89301>.
- Policante, Amedeo. *The Pirate Myth: Genealogies of an Imperial Concept*. Law and the Postcolonial: Ethics, Politics, & Economy. Milton Park, Abingdon, Oxon [UK] ; New York, NY: Routledge, 2015.
- Portinaro, Pier Paolo. *Il realismo politico*. 1. ed. Biblioteca essenziale Laterza 28. Roma: GLF Ed. Laterza, 1999.
- Preterossi, Geminello. *Autorità*. Lessico della politica 9. Bologna: Il Mulino, 2002.
- Prozorov, Sergei. “Liberal Enmity: The Figure of the Foe in the Political Ontology of Liberalism.” *Millennium*, June 24, 2016. <https://doi.org/10.1177/03058298060350010801>.
- Quaglioni, Diego. “Pour Une Histoire Du Droit de Guerre Au Début de l’âge Moderne. Bodin, Gentili, Grotius.” *Laboratoire Italien*, no. 10 (December 31, 2010). <https://doi.org/10.4000/laboratoireitalien.498>.
- Rech, Walter. *Enemies of Mankind: Vattel’s Theory of Collective Security*. The Erik Castrén Institute Monographs on International Law and Human Rights, volume 18. Leiden: Martinus Nijhoff Publishers, 2013.
- Regazzoni, Simone. *Stato Di Legittima Difesa: Obama e La Filosofia Della Guerra al Terrorismo*. Saggi. Milano: Ponte alle Grazie, 2013.
- Reike, Ruben. “The ‘Responsibility to Prevent’: An International Crimes Approach to the Prevention of Mass Atrocities.” *Ethics & International Affairs* 28, no. 4 (2014): 451–76. <https://doi.org/10.1017/S0892679414000604>.
- Rengger, Nicholas. “On the Just War Tradition in the Twenty-First Century.” *International Affairs* 78, no. 2 (April 2002): 353–63. <https://doi.org/10.1111/1468-2346.00255>.
- Reus-Smit, Christian. *Individual Rights and the Making of the International System*. Cambridge: Cambridge University Press, 2013. <https://doi.org/10.1017/CBO9781139046527>.
- Risse, Thomas, Stephen C Ropp, Kathryn Sikkink, Steve Smith, Thomas Biersteker, Chris Brown, Phil Cerny, Alex Danchev, Joseph M Grieco, and John Groome. *Power of Human Rights*. Cambridge, GBR: Cambridge University Press, 1999. <http://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=4638544>.
- Rodin, David. *War and Self-Defense*. Oxford : New York: Clarendon Press ; Oxford University Press, 2002.
- Rodin, David, and Henry Shue, eds. *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*. Oxford ; New York: Oxford University Press, 2008.
- Roelofsen, Cornelis G. “Grotius and the Development of International Relations Theory The ‘Long Seventeenth Century’ and the Elaboration of a European States System.” *Grotiana* 18, no. 1 (1997): 97–120. <https://doi.org/10.1163/187607597X00073>.
- Rolin-Jaequemyns, Gustave, T.M.C Asser, and John Westlake. *Revue de Droit International et de Législation Comparée*. v. 1. Institute of International Law B. Christophe, 1869.
- Rosales, José María, and Rosario López. “Introduction: Exploring Methodological Pluralism in Intellectual and

- Conceptual History.” *Global Intellectual History* 6, no. 1 (January 2, 2021): 1–4. <https://doi.org/10.1080/23801883.2019.1657635>.
- Roshchin, Evgeny. “The Concept of Friendship: From Princes to States.” *European Journal of International Relations* 12, no. 4 (December 2006): 599–624. <https://doi.org/10.1177/1354066106069325>.
 - Rousseau, Jean-Jacques, Susan Dunn, and Gita May. *The Social Contract: And, The First and Second Discourses*. Rethinking the Western Tradition. New Haven: Yale University Press, 2002.
 - Rubin, Alfred P. “The Law of Piracy.” *Denver Journal of International Law and Policy* 15, no. 2 & 3 (Winter/Spring 1987): 173–234.
 - Rumsfeld, Donald H. “Transforming the Military.” *Foreign Affairs* 81, no. 3 (2002): 20. <https://doi.org/10.2307/20033160>.
 - Ruschi, Filippo. *Il mare, il pirata, il diritto: una ricerca di filosofia del diritto internazionale*. Quaderni de L’altro diritto 7. Pisa: Pacini giuridica, 2020.
 - Russell, Frederick H. *The Just War in the Middle Ages*. Cambridge Studies in Medieval Life and Thought, 3d ser., v. 8. Cambridge ; New York: Cambridge University Press, 1975.
 - Sassòli, Marco. “The Status of Persons Held in Guantanamo under International Humanitarian Law.” *Journal of International Criminal Justice* 2, no. 1 (March 1, 2004): 96–106. <https://doi.org/10.1093/jicj/2.1.96>.
 - Sassòli, Marco, and Daniel Reisner. “‘Unlawful Combatants’: The Law and Whether It Needs to Be Revised.” *Proceedings of the Annual Meeting (American Society of International Law)* 97 (2003): 196–203.
 - Satia, P. “The Defense of Inhumanity: Air Control and the British Idea of Arabia.” *The American Historical Review* 111, no. 1 (February 1, 2006): 16–51. <https://doi.org/10.1086/ahr.111.1.16>.
 - Satia, Priya. “Drones: A History from the British Middle East.” *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 5, no. 1 (January 28, 2014): 1–31. <https://doi.org/10.1353/hum.2014.0002>.
 - Scarfi, Juan Pablo. *The Hidden History of International Law in the Americas: Empire and Legal Networks*. Oxford University Press, 2017. <https://doi.org/10.1093/acprof:oso/9780190622343.001.0001>.
 - Scattola, Merio, ed. *Figure Della Guerra: La Riflessione Su Pace, Conflitto e Giustizia Tra Medioevo e Prima Età Moderna*. Per La Storia Della Filosofia Politica 14. Milano: FrancoAngeli, 2003.
 - ———. *Teologia Politica*. Lessico Della Politica 15. Bologna: Il mulino, 2007.
 - Scheipers, Sibylle. *Unlawful Combatants: A Genealogy of the Irregular Fighter*. Oxford University Press, 2015. <https://doi.org/10.1093/acprof:oso/9780199646111.001.0001>.
 - Schillings, Sonja. *Enemies of All Humankind: Fictions of Legitimate Violence*. Re-Mapping the Transnational : A Dartmouth Series in American Studies. Hanover, New Hampshire: Dartmouth College Press, 2017.
 - Schindler, Dietrich, and Jiří Toman, eds. *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and Other Documents*. 4th rev. and Completed ed. Leiden ; Boston: Martinus Nijhoff Publishers, 2004.
 - Schmitt, Carl. *The Concept of the Political*. Chicago: University of Chicago Press, 1996.
 - ———. *Theory of the Partisan: Intermediate Commentary on the Concept of the Political*. New York: Telos Press Pub, 2007.
 - Schmitt, Carl, Timothy Nunan, Carl Schmitt, and Carl Schmitt. *Writings on War*. Cambridge, UK ; Malden, MA: Polity, 2011.
 - Schmitt, Carl, and G. L Ulmen. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*,

2006.

- Schmitt, Eric, and Matthew Rosenberg. “C.I.A. Wants Authority to Conduct Drone Strikes in Afghanistan for the First Time.” *The New York Times*, September 15, 2017, sec. U.S. <https://www.nytimes.com/2017/09/15/us/politics/cia-drone-strike-authority-afghanistan.html>.
- Schnur, Roman, and Pier Paolo Portinaro. *Rivoluzione e guerra civile*. Milano: Giuffrè, 1986.
- Schroder, Peter. “Carl Schmitt’s Appropriation of the Early Modern European Tradition of Political Thought on the State and Interstate Relations.” *History of Political Thought* 33, no. 1 (2012): 348-372.
- Scott, James Brown. “Francisco Suarez: His Philosophy of Law and of Sanctions.” *Georgetown Law Journal* 22, no. 3 (1934 1933): 405–518.
- ———. “Judicial Settlement of International Disputes.” *Georgetown Law Journal* 15, no. 1 (1927 1926): 35.
- ———. *Law, the State, and the International Community*. Union, N.J: Lawbook Exchange, 2002.
- ———. *The Catholic Conception of International Law: Francisco de Vitoria, Founder of the Modern Law of Nations, Francisco Suárez, Founder of the Modern Philosophy of Law in General and in Particular of the Law of Nations: A Critical Examination and a Justified Appreciation*. Clark, N.J: Lawbook Exchange, 2007.
- Scott, James Brown, and Francisco de Vitoria. *The Spanish Origin of International Law. Francisco de Vitoria and His Law of Nations*. Union, N.J: Lawbook Exchange, 2000.
- Scuccimarra, Luca. *Proteggere l’umanità: Sovranità e Diritti Umani Nell’epoca Globale*. Studi e Ricerche 713. Bologna: Il mulino, 2016.
- Senellart, Michel. “La Qualification de l’ennemi Chez Emer de Vattel.” *Astérian*, no. 2 (July 1, 2004). <https://doi.org/10.4000/asterion.82>.
- Shaw, Martin. *The New Western Way of War: Risk-Transfer War and Its Crisis in Iraq*. Cambridge ; Malden, MA: Polity, 2005.
- Shaw, William H. “Utilitarianism and Recourse to War.” *Utilitas* 23, no. 4 (December 2011): 380–401. <https://doi.org/10.1017/S0953820811000276>.
- Silvestrini, Gabriella. “Diritti naturali e diritto di uccidere. Teorie moderne della guerra fra modelli teorici e tradizioni di pensiero.” *Filosofia politica*, no. 3 (2007): 425–52. <https://doi.org/10.1416/25452>.
- ———. “Giustizia della guerra e disuguaglianza: Vattel, l’aggressore ingiusto e il nemico del genere umano.” *Filosofia politica*, no. 3 (2008): 381–400. <https://doi.org/10.1416/28101>.
- Skinner, Quentin. “Meaning and Understanding in the History of Ideas.” *History and Theory* 8, no. 1 (1969): 3. <https://doi.org/10.2307/2504188>.
- ———. *Reason and Rhetoric in the Philosophy of Hobbes*. Cambridge ; New York: Cambridge University Press, 1996.
- ———. *The Foundations of Modern Political Thought*. Cambridge ; New York: Cambridge University Press, 1978.
- Slaughter, Anne-Marie. “Al Qaeda Should Be Tried Before the World.” *New York Times*, November 17, 2001, Opinion edition.
- Slomp, Gabriella. *Carl Schmitt and the Politics of Hostility, Violence and Terror*. Basingstoke: Palgrave Macmillan, 2009.
- Somos, Mark. *Secularisation and the Leiden Circle*. Leiden ; Boston: Brill, 2011.
- Somos, Mark, and Joshua Smeltzer. “Vitoria, Suárez, and Grotius: James Brown Scott’s Enduring Revival.”

- Grotiana* 41, no. 1 (June 16, 2020): 137–62. <https://doi.org/10.1163/18760759-04101007>.
- Spaight, J.M. *Aircraft in War*. Macmillan and Company, limited, 1914.
 - Stråth, Bo, and Peter Wagner. *European Modernity: A Global Approach*. Europe’s Legacy in the Modern World 6. London ; Oxford ; New York: Bloomsbury Academic, an imprint of Bloomsbury Publishing Plc, 2017.
 - Straumann, Benjamin. “The Rule of Law: Sociology or Normative Theory? An Afterword to Martti Koskenniemi’s Foreword.” *European Journal of International Law* 30, no. 4 (December 31, 2019): 1121–27. <https://doi.org/10.1093/ejil/chz069>.
 - Straumann, Benjamin, and Benedict Kingsbury. “The State of Nature and Commercial Sociability in Early Modern International Legal Thought.” *Grotiana* 31, no. 1 (2010): 22–43. <https://doi.org/10.1163/187607510X540204>.
 - Strauss, Leo, and Elsa M. Sinclair. *The Political Philosophy of Hobbes: Its Basis and Its Genesis*. 6. impr. Chicago: Univ. of Chicago Press, 1973.
 - Strawser, Bradley Jay. *Killing Bin Laden: A Moral Analysis*. Houndmills, Basingstoke, Hampshire ; New York, NY: Palgrave Macmillan, 2014.
 - Strawser, Bradley Jay, and Jeff McMahan. *Killing by Remote Control: The Ethics of an Unmanned Military*. Oxford ; New York: OUP USA, 2013.
 - Tabassum, Sadia. “Combatants, Not Bandits: The Status of Rebels in Islamic Law.” *International Review of the Red Cross* 93, no. 881 (March 2011): 121–39. <https://doi.org/10.1017/S1816383111000117>.
 - Teitel, Ruti G. *Humanity’s Law*. Oxford ; New York: Oxford University Press, 2011.
 - Teschke, Benno. *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations*. London ; New York: Verso, 2003.
 - The White House. “Fact Sheet: U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities.” Office of the Press Secretary, May 23, 2013. <https://obamawhitehouse.archives.gov/the-press-office/2013/05/23/fact-sheet-us-policy-standards-and-procedures-use-force-counterterrorism>.
 - Thomas, and R. W. Dyson. *Political Writings*. Cambridge Texts in the History of Political Thought. Cambridge, UK ; New York: Cambridge University Press, 2002.
 - Thomson, Janice E. *Mercenaries, Pirates, and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*. Princeton Studies in International History and Politics. Princeton, N.J.: Princeton University Press, 1994.
 - Thorup, Mikkel. “Enemy of Humanity: The Anti-Piracy Discourse in Present-Day Anti-Terrorism ¹.” *Terrorism and Political Violence* 21, no. 3 (June 29, 2009): 401–11. <https://doi.org/10.1080/09546550902950282>.
 - ———. “The Anarchist and the Partisan—Two Types of Terror in the History of Irregular Warfare.” *Terrorism and Political Violence* 20, no. 3 (July 2008): 333–55. <https://doi.org/10.1080/09546550802073300>.
 - Todescan, Franco. “Dalla ‘persona ficta’ alla ‘persona moralis’ - Individualismo e matematismo nelle teorie della persona giuridica del secolo XVII.” *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno* 11 (1982): 59-.
 - ———. *Le radici teologiche del giusnaturalismo laico*. Giuffrè, 1983.
 - Tuck, Richard. “Grotius and Selden.” In *The Cambridge History of Political Thought 1450–1700*, by Mark Goldie, 499–529. edited by J. H. Burns, 1st ed. Cambridge University Press, 1991.

<https://doi.org/10.1017/CHOL9780521247160.019>.

- ———. *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*. Repr. Oxford: Oxford Univ. Press, 2009.
- Turner, Karen. “War, Punishment, and The Law of Nature in Early Chinese Concepts of The State.” *Harvard Journal of Asiatic Studies* 53, no. 2 (December 1993): 285. <https://doi.org/10.2307/2719452>.
- U.S., N.S.S. 2002. “UNITED STATES The National Security Strategy of the United States of America. [Washington], President of the U.S.” The White House, 2002.
- U.S. Supreme Court. “Ex Parte Quirin, 317 U.S. 1,34 (1942).,” 1942.
- Vadi, Valentina. “Perfect War: Alberico Gentili on the Use of Force and the Early Modern Law of Nations.” *Grotiana* 41, no. 2 (December 17, 2020): 263–81. <https://doi.org/10.1163/18760759-41020002>.
- Vagts, Detlev F., and Theodor Meron. “So-Called ‘Unprivileged Belligerency’: Spies, Guerrillas, and Saboteurs*.” In *Humanizing the Laws of War*, by Richard Baxter, 37–57. edited by Detlev F. Vagts, Theodor Meron, Stephen M. Schwebel, and Charles Keever. Oxford University Press, 2013. <https://doi.org/10.1093/acprof:oso/9780199680252.003.0003>.
- ———. “The First Modern Codification of the Law of War.” In *Humanizing the Laws of War*, by Richard Baxter, 121–48. edited by Detlev F. Vagts, Theodor Meron, Stephen M. Schwebel, and Charles Keever. Oxford University Press, 2013. <https://doi.org/10.1093/acprof:oso/9780199680252.003.0007>.
- Van Creveld. “The Persian Gulf Crisis of 1990-91 and the Future of Morally Constrained War.” *Parameters* 22.2, no. 21 (1992).
- Van Creveld, Martin. *The Transformation of War*. New York : Toronto : New York: Free Press ; Collier Macmillan Canada ; Maxwell Macmillan International, 1991.
- Vattel, Emer de, Bela Kapossy, and Richard Whatmore. *The Law of Nations, or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury*. Natural Law and Enlightenment Classics. Indianapolis, IN: Liberty Fund, 2008.
- Vergerio, Claire. “Alberico Gentili’s De Iure Belli: An Absolutist’s Attempt to Reconcile the Jus Gentium and the Reason of State Tradition.” *Journal of the History of International Law* 19, no. 4 (October 21, 2017): 429–66. <https://doi.org/10.1163/15718050-19041006>.
- ———. “Context, Reception, and the Study of Great Thinkers in International Relations.” *International Theory* 11, no. 1 (March 2019): 110–37. <https://doi.org/10.1017/S1752971918000192>.
- Villani, Tiziana, Pierre Dalla Vigna, and Mario Perniola. *Guerra virtuale e guerra reale: riflessioni sul conflitto del Golfo*. Milano: Mimesis, 1991.
- Villey, Michel, Stéphane Rials, and Éric Desmons. *La formation de la pensée juridique moderne*. 2. éd. Quadriga manuels. Paris: PUF, 2013.
- Vilmer, Jean-Baptiste Jeangène. “Légalité et légitimité des drones armés.” *Politique étrangère* Automne, no. 3 (October 10, 2013): 119–32.
- Vitoria, Francisco de. *Vitoria: Political Writings*. Edited by Anthony Pagden and Jeremy Lawrance. 1st ed. Cambridge University Press, 1991. <https://doi.org/10.1017/CBO9780511840944>.
- Vitoria, Francisco de, and Carlo Galli. *De iure belli*. 1. ed. Universale Laterza 852. Roma: Laterza, 2005.
- Voelz, Glenn J. *Rise of Iwar: Identity, Information, and the Individualization of Modern Warfare*. New York: Skyhorse Publ., 2018.

- Voice of America. “Bush: ‘You Are Either With Us, Or With the Terrorists.’” *Voice of America*, September 21, 2001, News edition. <https://www.voanews.com/a/a-13-a-2001-09-21-14-bush-66411197/549664.html>.
- Wagner, A. “Francisco de Vitoria and Alberico Gentili on the Legal Character of the Global Commonwealth.” *Oxford Journal of Legal Studies* 31, no. 3 (September 1, 2011): 565–82. <https://doi.org/10.1093/ojls/gqr008>.
- Wallace-Hadrill, J. M. “War and Peace in the Earlier Middle Ages.” *Transactions of the Royal Historical Society* 25 (December 1975): 157–74. <https://doi.org/10.2307/3679091>.
- Wallerstein, Immanuel Maurice. *The Modern World System. 1: Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century: With a New Prologue / Immanuel Wallerstein*. Studies in Social Discontinuity. Berkeley, Calif.: Univ. of California Press, 2011.
- Waltz, Kenneth N. “Structural Realism after the Cold War.” *International Security* 25, no. 1 (July 2000): 5–41. <https://doi.org/10.1162/016228800560372>.
- Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. Fifth edition. New York: Basic Books, a member of the Perseus Books Group, 2015.
- ———. “Regime Change and Just War.” *Dissent* 53, no. 3 (2006): 103–8. <https://doi.org/10.1353/dss.2006.0086>.
- ———. “Targeted Killing and Drone Warfare.” *Dissent Magazine*, January 11, 2013. https://www.dissentmagazine.org/online_articles/targeted-killing-and-drone-warfare.
- ———. “The Triumph of Just War Theory (and the Dangers of Success).” *Social Research* 69, no. 4 (2002): 925–44.
- Warden III, John A. “Strategy and Airpower.” *Air and Space Power Journal*, Air University Press, Report (2011).
- ———. “The Enemy as a System.” *Airpower Journal Special Edition - Air University Press Spring IX n.1* (1995): 40–55.
- Watson, Adam. “Systems of States.” *Review of International Studies* 16, no. 2 (1990): 99–109.
- Wells, H. G. *The War in the Air*. Waiheke Island: Floating Press, 2009.
- Welsh, Jennifer M. “The Individualisation of War : Defining a Research Programme.” *Annals of the Fondazione Luigi Einaudi : An Interdisciplinary Journal of Economics, History and Political Science : LIII, 1, 2019*, no. LIII (2019). <https://doi.org/10.26331/1067>.
- Werner, Wouter G. “From Justus Hostis to Rogue State the Concept of the Enemy in International Legal Thinking.” *International Journal for the Semiotics of Law Revue Internationale de Sémiotique Juridique* 17, no. 2 (2004): 155–68. <https://doi.org/10.1023/B:SELA.0000033619.30374.15>.
- Werrell, Kenneth P. “The Strategic Bombing of Germany in World War II: Costs and Accomplishments.” *The Journal of American History* 73, no. 3 (December 1986): 702. <https://doi.org/10.2307/1902984>.
- Whatmore, Richard, and James Livesey. “Étienne Clavière, Jacques-Pierre Brissot et Les Fondations Intellectuelles de La Politique Des Girondins 1.” *Annales Historiques de La Révolution Française*, no. 321 (September 1, 2000): 1–26. <https://doi.org/10.4000/ahrf.175>.
- Whetham, David. “‘Are We Fighting Yet?’ Can Traditional Just War Concepts Cope with Contemporary Conflict and the Changing Character of War?” *The Monist* 99, no. 1 (January 2016): 55–69. <https://doi.org/10.1093/monist/onv029>.
- Wight, Martin, Gabriele Wight, and Brian Porter. *International Theory: The Three Traditions*. Reprint. London:

- Leicester University Press for the Royal Institute of International Affairs, 1996.
- Wilde, Marc de. “Enemy of All Humanity: The Dehumanizing Effects of a Dangerous Concept.” *Netherlands Journal of Legal Philosophy* 47, no. 2 (December 2018): 158–75. <https://doi.org/10.5553/NJLP/221307132018047002005>.
 - Williams, Brian Glyn, and David Deptula. “The Drone Campaign against Al Qaeda and ISIS: Interview with Lt. General David Deptula USAF (Ret.)” *Perspectives on Terrorism* 9, no. 3 (2015): 65–70.
 - Winner, Langdon. “Do Artifacts Have Politics?” *Daedalus* 109, no. 1 (1980): 121–36.
 - Wittes, Benjamin, and Gabriella Blum. *The Future of Violence: Robots and Germs, Hackers and Drones: Confronting a New Age of Threat*. New York: Basic Books, 2015.
 - Woods, Chris. *Sudden Justice: America’s Secret Drone Wars*. First published in the United Kingdom. London: Hurst & Company, 2015.
 - ———. “The Story Behind America’s First Drone Strike.” *The Atlantic*, May 30, 2015. <https://www.theatlantic.com/international/archive/2015/05/america-first-drone-strike-afghanistan/394463/>.
 - Zagorin, Perez. “Hobbes without Grotius.” *History of Political Thought* 21, no. 1 (2000): 16–40.
 - Zakaria, Fareed. “Wanted—A New Global Strategy.” *Newsweek*, November 28, 2008, World edition.
 - Zenko, Micah. “Leon Panetta Reflects on U.S. Drone Strikes.” *Council on Foreign Relations*, February 4, 2013. <https://www.cfr.org/blog/leon-panetta-reflects-us-drone-strikes>.
 - Žižek, Slavoj. “Are We in a War? Do We Have an Enemy?” *London Review of Books*, May 23, 2002, Vol. 24 edition, sec. n. 10.
 - Zolo, D. “Hans Kelsen: International Peace through International Law.” *European Journal of International Law* 9, no. 2 (January 1, 1998): 306–24. <https://doi.org/10.1093/ejil/9.2.306>.
 - Zolo, Danilo. *Cosmopolis: Prospects for World Government*. Cambridge, U.K. ; Cambridge, MA: Polity Press, 1997.
 - ———. *La Giustizia Dei Vincitori: Da Norimberga a Baghdad*. 1. ed. Sagittari Laterza 145. Roma: GLF editori Laterza, 2006.
 - Zurbuchen, Simone, ed. “The Circulation of the *École Romande Du Droit Naturel* in Eighteenth-Century Italy.” In *The Law of Nations and Natural Law 1625–1800*, 304–26. BRILL, 2019. https://doi.org/10.1163/9789004384200_014.
 - ———. “Vattel’s Law of Nations and Just War Theory.” *History of European Ideas* 35, no. 4 (December 2009): 408–17. <https://doi.org/10.1016/j.histeuroideas.2009.05.001>.

