

# II.1

## Universalistic Thinking in Christian Legal Philosophy – Bartolomé de las Casas and Francisco de Vitoria

### I. Prolegomena

This chapter will discuss a new epoch of universalisms in international political thought, namely, sixteenth-century legal philosophy as it developed in Spain during the reign of King Charles V and his successors, Kings Phillip II of Spain and Ferdinand I. This epoch is especially fascinating in the context of our discussions because it was not only highly influential for the development of a legal framework for the conduct of 'international' relations for the centuries to come, but it also faced a yet unknown confrontation between different, that is, European and non-European, cultures in the context of the Spanish overseas expansions into Central and South America. In the wake of respective experiences, questions arose regarding not only the legitimacy of those expansions and about just war and warfare, but also whether, or not, Indian natives are to be regarded as human beings. These questions were perceived as all but self-evident, and the legacies of Aristotelian, Augustinian, and Thomist philosophy were not regarded as providing sufficient and satisfactory answers. Fierce debates evolved between defenders of the Spanish conquests and their critics. Interestingly, the main criticism was pronounced by representatives of the Catholic Church while Catholicism was, on the other hand, used to legitimize the expansion by those who were in favour of the conquests. The main critical voices from within the Catholic Church came from Bartolomé de las Casas, Francisco de Vitoria, Francisco Suárez, Domingo de Soto, and Luis de Molina (for more on this body of political thought, see Hamilton, 1963).

This body of critical literature as it developed in sixteenth century Spain is sharply distinguished from Northern European political thought, which emerged under the influences of the Reformation, in that Spain did not break with the natural law tradition. The Thomist version of natural law theory, which was strongly attacked in all northern universities during

the fourteenth and fifteenth centuries and largely jettisoned in Protestant countries, continued unbroken in Spain, and had, indeed, a new flowering during the sixteenth "golden" century... In all cases... the Thomist hierarchy of laws, and in particular natural law, forms the framework for their discussion of politics and the political community' (Hamilton, 1963, p. 11). This tradition and its critical discussion indeed provided the intellectual framework for what became the main achievements of international political thought as it developed in sixteenth-century Spain, namely, first, the framing of universal human rights, their extension beyond Christian Europe, and their application to Indian indigenous cultures in the Americas; and second, the development of universal legal standards and jurisdiction as a guarantor for peaceable relations among political communities. Here, also he idea of the sovereignty of political communities under the condition of their mutual recognition as sovereign was born under the intellectual auspices of natural law. This idea – which prepared the soil for legal thinking in international political thought as it developed in the seventeenth and eighteenth centuries – is very different from the modern idea of sovereignty and recognition as it emerged in the nineteenth century with regard to the transcendental structure which is perceived (and believed) to provide and guarantee recognition. Whereas it was universal natural or divine law (and 'God', respectively) and/or anthropological universalism which imposed legal and ethical principles of recognition up into Enlightenment philosophy, it became individual and particularized rationality (as it politically manifested in the coming nation state and the inside/outside logic of modern sovereignty) which underpinned the modern concept of recognition. This rationality is tangible and shared only – and indeed has over and over again been *not* shared – on the basis of individualized appreciation, toleration, and morality, however, not as a demand on the basis of something 'natural' and 'normal'. As Bernice Hamilton explains, 'Natural law has the twofold sense of something which is reasonable and at the same time is generally accepted... The natural was... the normal' (Hamilton, 1963, p. 11).

Against this background of the innovation of universal legal standards in sixteenth-century Spanish philosophy, including European overseas expansion and conquest, the Spanish authors of the sixteenth century belong to the main body of international political thought in their own right and are not only to be seen as predecessors of Hugo Grotius or successors of Thomist thought. Richard Hartigan emphasizes with regard to de Vitoria that his work was 'no simple reiteration of St Thomas' thought; rather, it is a thoroughly contemporary, sixteenth-century exposition, lucidly phrased, of the morality of war' (Hartigan, 1973, p. 82); the same can be said of las Casas. And looking ahead in the centuries to come, a thorough study of las Casas and de Vitoria suggests that Grotius strictly follows the legacies of the former, rather than being the 'founder' of international law. Thomas A. Walker notes that '(again) and again the reader of the pages of Grotius, who shall have made the acquaintance of the lights of moral and legal learning

of the sixteenth century, will catch the echo of their opinions and their very phrases' (1899, p. 333).<sup>59</sup> The following discussions will therefore emphasize las Casas and de Vitoria and link to other Spanish authors of the sixteenth century where it seems appropriate to highlight general patterns of sixteenth-century thought on universal human rights and international jurisdiction.

With Bartolomé de las Casas (1484–1566) and Francisco de Vitoria (1485 [?]–1546) we thus encounter the foundation of one of the most important tools for organizing international politics. Although the relevance of international legal arrangements, treaty systems, and a distinct legal ethics has been emphasized in the history of international political thought prior to las Casas and de Vitoria (as in Thucydides, Cicero, Augustine, and Aquinas), the legal theorists of the sixteenth century developed these thoughts into a more coherent and formalized corpus of theories. While they drew, though critically, upon legacies stemming from Greek and Roman as well as Christian political thought, arguing on the basis of universal views on divine and natural law, they faced historically different and novel political situations and were situated in advanced secularized social and political contexts which influenced their theorizing. There are not only the rationalized versions of Christian humanism (founded by Augustine and Aquinas, as seen in the previous chapter) and the tremendously influential impacts of humanistic political culture of the Italian renaissance on political and social thought (see more on that in the next chapter on Machiavelli), but also the philosophical movements of scholasticism in general and nominalism in particular. Political thought, already rationalized in Augustine and Aquinas, developed more and more autonomy from, even if still liaised with, religious thinking. The sphere of natural and especially human law increasingly gained autonomy from divine law. Authors such as Anselm of Canterbury, Maimonides, Roger Bacon, Johannes Duns Scotus, William of Ockham, and, of course, Thomas Hobbes (see the next chapter) represent these philosophical moves. Nevertheless, divine law, or universal reason (in which men as rational beings participate), was still perceived as the guarantee of the existence and operability of human law. And their belief in the order of creation 'backed up' the order of the political, domestically and internationally. Thus, the old universalism of international political thought and corresponding ethical teachings lost their substantial identity with principles being perceived as divine and sacral; however, a strong notion of common ethical and natural bonds among peoples and human-kind survived.

Las Casas and de Vitoria are both linked with Latin American history and the effort to defend the indigenous peoples of Latin and South America against Spanish conquest and exploitation. Both did so by extending human rights to Indians and by introducing a body of legal restrictions and guidelines in international politics. The writings of both men established a strong legacy of modern legal thought, which then had a tremendous impact on

Hugo Grotius, for example, who massively drew upon traditions of Roman and Christian political and legal thought. Some commentators describe de Vitoria as the 'eminent precursor of Grotius... Not that he alone is the author of modern [international law], but it is hard to envision the category in its present form without his contribution' (Hartigan, 1973, p. 80). Also Joachim von Elbe writes with regard to the problem of just war that Grotius would adopt 'more or less unchanged from his predecessors', the Spanish theologians of the sixteenth century (von Elbe, 1939, p. 678). Anthony Padgen goes even further and notes that 'Vitoria's claim that all humans have a right grounded in nature of free (and peaceful) access to all parts of the world draws upon a long ancient and humanist tradition, which is, like the natural law, itself Stoic in origin... All of them, together with Vitoria's own formulation of the argument, were employed by Grotius in what was perhaps his most widely read work, *De mare liberum* of 1607, a tract whose initial purpose was to deny that the Portuguese had any right over trade in the Indian Ocean' (Padgen, 2003, pp. 186-7). Padgen's view is supported when we read in de Vitoria the following passage, which strongly foreshadows Grotius's argument on the freedom of the sea or natural resources in general, respectively:

Therefore it appears that friendship among men exists by natural law and it is against nature to shun the society of harmless folk... By natural law running water and the sea are common to all, so are rivers and harbors, and by the law of nations ships from all parts may be moored here; and on the same principle they are public things... it is an apparent rule of the *jus gentium* that foreigners may carry on trade, provided they do no harm to citizens. (de Vitoria, 1917, p. 152)

Las Casas witnessed Spanish conquest in the Caribbean, foremost in Cuba, when he was a priest, the first Bishop of Chiapas, and later in his life when he became a Dominican monk. Apart from scholarly work, he became an advocate acting on behalf of the native population, protesting against Spanish genocidal attacks in the West Indies and travelling back and forth across the Atlantic, the most famous of his journeys leading him to the royal court for the important debate with Juan Gines de Sepulveda (more on that below). Consequently, most of his scholarly work is a defence of Indians' human rights and against the emerging slave trade between the Caribbean and Europe. His conceptualization of human rights, explicitly including the Indians and applying to mankind as an universal reference, as well as of the equality of relations among humans and 'nations' is derived from an Augustinian and Thomist version of human reason and united mankind created in the image of God. On this basis, Las Casas founded and represented a new type of critical political and legal thought at the time when European powers were going overseas in an unprecedented way and starting

to colonize the new world. Paradoxically, however, he did this according to the legacies of (rationalized) Christian thought, hence, following the same pattern in whose name the devastation of indigenous cultures took place, a devastation that some politically defended (or at least tried to defend).

Contrary to Las Casas, we know very little of the life of de Vitoria, even his date of birth is uncertain. Like Las Casas, he was later in his life a Dominican monk and then priest. It is recorded that he became a university teacher in Paris in 1512 where he stayed until 1523 when he received the title of a doctor of theology. Between 1523 and 1526, he taught theology in Valladolid at the Colegio de San Gregorio before he was appointed *catedra de prima* (the most important chair of theology) at the renowned university of Salamanca where he worked until his death in 1546. De Vitoria's most important writings are *De potestate civili* and *De jure belli* in which he elaborated a theory of state power and juridical foundation of international law. His most famous theological writing is a commentary on Aquinas's *Summa theologica* in which he primarily discusses Aquinas's views on justice. In his *De Indis et de Jure Belli Relectiones*, which will be discussed here as his most practical treatise, de Vitoria describes the motivation and background for his discussions as follows:

The whole of this controversy and discussion was started on account of the aborigines of the New World, commonly called Indians, who came forty years ago into the power of the Spaniards, not having been previously known to our world. This present disputation about them will fall into three parts. In the first part we shall inquire by what right these Indian natives came under Spanish rule. In the second part, what rights the Spanish sovereigns obtained over them in temporal and spiritual matters. In the third part, what rights these sovereigns or the Church obtained over them in matters spiritual and touching religion. (de Vitoria, 1917, p. 116)

Both Las Casas and de Vitoria do not belong to the canon of political theorists in IR although they are, as we will see, much more original and foundational for modern international law than Grotius. Indeed, de Vitoria established the major part of the theoretical body of modern international law, arguing for equal state relations protected by legal arrangements on the ethical basis of just war and the legal basis of mutual recognition and territorial integrity. Las Casas was more concerned with human rights and their extension to the native peoples of the Americas (discovered and yet undiscovered).

It is interesting to note that both Las Casas and de Vitoria formulated their thoughts in a critical discussion of Christian thinking while, at the same time disassociating from Christian orthodoxy. It has to be asked, therefore, how far critical Christian thought, that is, critical towards the Augustinian

and Thomist orthodoxy, provided the intellectual framework for the development of modern international political theory, mainly of the axioms of legal equality among states and the mutual recognition of sovereign rights. I argue that indeed major theorems of modern international political and IR theory are critically considered and partly secularized, nevertheless, Christian concepts while a strong theological background is alive until at least the eighteenth century, however, abandoned thereafter (see also Becker, 2003). In this regard Padgen argues that the modern 'concept of human rights [for example] is a development of the older [Christian] notion of natural rights and that the modern understanding of natural rights evolved in the context of the European struggle to legitimate its overseas empires' (Padgen, 2003, p. 171), or, what should be added, to delegitimize respective conquests, as in the case of las Casas and de Vitoria. This legacy might be the reason why Christian thinkers never found serious reception in IR, which started to perceive itself, especially during the second half of the twentieth century, as a rationalist, not to mention thoroughly secularized and antinormative, 'science'; this perception took hold, however, at the cost of ignoring its origins and neglecting the wide range of international political thought and corresponding notions of ethical deliberation.

## 2. Universalistic human rights and their extension beyond Europe

When the Spanish Empire started to conquer the Americas at the end of the fifteenth century and to subjugate its peoples, one might argue that neither Spain nor any other European nation was prepared for both the material and philosophical challenges of overseas expansion (see Donavan, 1965). Nevertheless, this is a retrospective assessment only, while the majority of contemporaries believed in the hierarchy of cultures with Europeans at the top and all other nations following on a declining ladder of (what was defined as) 'barbarism' (very instructive on this are Bitterli, 1991; Greenblatt, 1991; Ryan, 1981; Seed, 1992). The philosophical legacies, which were cited to support those prevailing forms of Eurocentrism and racism, followed by systematic politics of annihilation of indigenous people and cultures as well as by individual atrocities,<sup>60</sup> were taken from Aristotle's idea of a natural distinction of mankind in masters and slaves and from a Christian tradition of a civilizing mission stemming from Augustine and Aquinas (see above), and more on that in relation to las Casas below, for thoughts on 'otherness' in antiquity see the excellent monograph by Dihle, 1994. I will not discuss whether, or not, and how far these understandings seem to do justice to Aristotle; I will, however, come back to the chapter on Augustine and Aquinas since we find some references to possible misunderstanding in the previous interpretation which are also flagged and discussed by las Casas. The key questions, which arose with Spain's overseas expeditions and related

experience and which las Casas addresses<sup>61</sup> while being personally involved in the Spanish conquests and becoming more and more critical towards the Spanish tyranny and economic exploitation in the Americas,<sup>62</sup> were whether the Indians should have the same rights as Europeans; whether they possessed intrinsic rights to their land and culture; and whether they were to be perceived as human beings at all.<sup>63</sup> The enduring relevance of las Casas's main writing, *In Defense of the Indians* (1992a), lies, first, in its presentation of universal human rights, extending their validity beyond Europe, and his philosophical criticism of European traditions of thought which have been used to justify the Spanish conquests and the disregard of Indians as human beings; second, las Casas develops a system of jurisdiction which he perceived as the guaranteeing framework for the existence and observance of human rights and for relations among peoples based on equal rights and mutual recognition. The first aspect will be discussed now, the second in the following section.

Two epochal events occurred during the lifetime of las Casas – the bull *Sublimus Dei* promulgated by Pope Paul III on May 29, 1537, and the so-called Valladolid debate in 1550 – which signalled a new course for the Catholic Church and for the King of Spain and Emperor of the Holy Roman Empire, Charles V, towards the European overseas expeditions. In both events, las Casas is either directly involved (the Valladolid debate) or at least his arguments have been echoed and recognized by the pope. In *Sublimus Dei*, Pope Paul III, some years before the Valladolid debate, recognized Indians as 'truly men' and condemned any deprivation of their life, possessions, and liberty. This meant a revolutionary new 'policy' for the Vatican, emphasizing at the same time a new humanism and the Catholic Church's claim for universal reign of mankind. The bull states that the Catholic Church considers

Indians are truly men and that they are not only capable of understanding the Catholic Faith, but, according to our information, they desire exceedingly to receive it... that, notwithstanding whatever may have been or may have said to the contrary, the said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property; not should they be in any way enslaved; should the contrary happen, it shall be null and have no effect.<sup>64</sup>

We clearly see that, on the one hand, the relations of European powers towards the Indians and towards 'all other people who may be discovered by Christians' shall be conducted in an equal and respectful way regarding and preserving their life, liberty, and possessions; that, on the other hand, however, the fundament for this recognition is the Christian faith itself.

The criteria, even, to define Indians as human beings is their capability to understand and finally receive Catholic faith. Taking this paradox – which David Campbell rightfully criticizes as a ‘persistent Eurocentric, phonological, ontological, and epistemological logocentrism’ (Campbell, 1992, p. 118) – into consideration as the weak part of traditional universalistic thinking, which can think about ‘otherness’ only in terms of self-definition,<sup>65</sup> one nevertheless has to concede the revolutionary accomplishment by *Sublimus Dei* defining intercultural and international relations on the basis of the principal equality and recognizing beliefs other than the Christian as legitimate. The same paradox of ‘logocentrism’ on the one hand and the demand of human and religious equality on the other also applies to de Vitoria. In the ‘First Relectio’ of his *De Indis et de Jure Belli Relectiones*, he argues that the Indians would be true possessors of their land and dominion and the Spaniards had no right to deprive them of what naturally belongs to them. This is certainly a considerable accomplishment in terms of the recognition of their way of living and of different forms of rationality, emphasized by his notion that ‘they also have a kind of religion’. The rationale for this recognition is twofold: it stems from natural law as well as from the circumstance that the organization of their societies and politics is reasonable according to European standards. In this second rationale, the paradox reveals. De Vitoria writes:

The Indian aborigines are not barred on this ground from the exercise of true dominion. This is proved from the fact that the true state of the case is that they are not of unsound mind, but have, according to their own kind, the use of reason. This is clear, because there is a certain method in their affairs, for they have politics which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops, and a system of exchange, all of which call for the use of reason; they also have a kind of religion. (de Vitoria, 1917, p. 127)

The universal extension of human rights and subsequently the recognition of different peoples and their cultures as politically equal was effectively translated into the official position of King Charles V and the Spanish court when the emperor ordered las Casas and Juan Gines de Sepulveda, one of Spain’s leading intellectuals of the sixteenth century who had massive influence at court and who tried to defend the Spanish conquerors and the system of ‘encomienda’, together with other jurists and theologians to the ‘Council of the Indies’ at Valladolid for a debate on the merits of just wars and Aristotelian logic in order to determine ‘how conquerors may be conducted justly and with security of conscience’ (quoted in Hanke, 1959, p. 36). Las Casas was given three days for his speech before the court in which he lectured from the manuscript of his *In Defense of the Indians*. Before discussing las Casas’s arguments in detail, which refute Sepulveda step by step, it

is worth mentioning that we find the same logocentric paradox in las Casas that was communicated in Pope Paul’s bull. This logocentrism has been summarized by Bill Donovan as follows:

Las Casas indicted individuals for the New World’s problems. Although he saw the encomienda system as inherently wicked, it was till colonists – not the king, Spain, or Christian Europe – whom he found responsible for the evil committed under its guise. The suggestion never arises, for example, that Indians just left be alone. Christian responsibility, for las Casas, meant exposing native people to Grace. Indeed, Indians could not be left alone: they were, to use, his phrase, good enough to be Christians and to be integrated into Christian society. Yet, what did it mean to be a Christian? Las Casas implies that that was unclear to Spaniards living in the Americas, but it was clear to him: he was a Christian opposed to Christianity as it existed in the New World. (Donovan, 1965, p. 21)

Las Casas begins his defence of the Indian populations by a juxtaposition of the Indians and the Spaniards as the most peaceful and peace-loving, obedient, and friendly people on the one side and, on the other side, the Spanish conquerors ‘who immediately behaved like ravaging wild beasts, wolves, tigers, or lions that had been starved for many days’ (las Casas, 1992a, p. 29). This juxtaposition, which traces through all his writings, results in the historical narrative that ‘only after the Spaniards had used violence against them, killing, robbing, torturing, did the Indians ever rise up against them’ (las Casas, 1992a, p. 32). Besides the fact that this assessment leads to a clear judgement about the unrestricted guilt of the Spaniards, las Casas argues that, from a Christian point of view, this treatment most heavily violates every appropriate way to ‘have the Indians been brought to embrace the [Christian] Faith and to swear obedience to the kings of Castile’ (las Casas, 1992a, p. 48). As he explains in detail in his work *On the only Way of Attracting All Peoples to the True Faith* (1992b) it is love, teaching, and preaching, not the sword, which have the power and which are described by the holy sacraments as the only rightful way to spread Christianity and to convert ‘unbelievers’. In the Indies, however, peoples were told that ‘they must embrace Christian Faith immediately, without hearing any sermon preached and without indoctrination’. They were told ‘to subject themselves to a King they have never heard or nor seen ... by the King’s messengers who are such despicable and cruel tyrants that deprive them of their liberty, their possessions, their wives and children’ (las Casas, 1992a, p. 48).

The Spaniards’ behaviour would thus contradict the commandments of Christ Jesus, and the Indians eventually had no other choice than to resist. Las Casas asks, ‘What will these people think of Christ ... when they see Christians venting their rage against them with so many massacres?’ (las Casas, 1992a, p. 27). However, las Casas’s condemnation of the Spanish

conquerors relates not only to the violation of the holy sacraments and of Jesus's teachings, but also to an utmost disregard of the Indians as human beings. This argument seems from an international politics perspective more relevant because it finally results in the recognition of other nations on the basis of equal mutuality; it deflects, as Hayward R. Alker emphasizes, 'a process of mutual recognition, respect, and toleration' (Alker, 1992, p. 362). Evolving the argument that Indians are to be regarded as 'true men' and belong to one (and the same) mankind as Europeans leads Las Casas to discuss critically the arguments Sepulveda brought forward in the Valladolid debate. Sepulveda referred to an Aristotelian legacy of differentiating peoples into 'barbarian' and 'civilized' and applied this differentiation to the Spanish as civilized and the Indians as barbarian. He concluded from this differentiation some natural hierarchy between master and slave in order to justify the Spanish conquerors and their use of violence to dominate indigenous peoples. Las Casas criticizes Sepulveda's argument and emphasis on Aristotle's definition of barbarism as those forms of life which would not know any form of government, political institutions, and order. Las Casas writes that these 'are barbarians in the absolute and strict sense of the word... they lack reasoning and way of life suited to human beings and those things which all men habitually accept' (Las Casas, 1992a, p. 30). Aristotle would indeed write about those peoples as barbarians calling them slaves by nature; however, contrary to Sepulveda's interpretation and application of this distinction, Aristotle would note that this form of life is 'rarely found in any part of the world and [is] few in number compared with the rest of mankind' (Las Casas, 1992a, pp. 33-4).<sup>66</sup>

Consequently, Las Casas argues that this definition cannot be applied to the Indians who, in addition to the fact of the rareness of such a kind of barbarism in general, did develop highly sophisticated systems of government, would know legal bodies to regulate their social and political life, and had accomplished many cultural achievements (of which Las Casas most admired their architecture). Therefore, they would not be barbarians, and Sepulveda's understanding and application of Aristotle's distinction would be wrong. Las Casas notes:

They [the Indians] are not ignorant, inhuman or bestial. Rather, long before they had heard the word Spaniard they had properly organized states, wisely ordered by excellent laws, religion and custom. They cultivated friendship and, bound together in common fellowship, lived in populous cities in which they wisely administered the affairs of both peace and war justly and equitably, truly governed by laws. (Las Casas, 1992a, pp. 42-3)

It is less important here whether, or not, Las Casas's assessments of Indian life, culture, and politics communicates an historically true image

and conveys a proper description, rather than that he critically discusses philosophical traditions which seemed to be set in stone and appeared all too easy to apply (by Sepulveda and the Spaniards) to the justification of Spanish conquests and mass murder. By his critical discussion, Las Casas opens the intellectual and (as seen by the Valladolid debate) political horizon of sixteenth-century international politics, facing overseas expansions and experiencing different forms of human life which provoked philosophical reflection. Just as Machiavelli notes in the Preface of his *Discourses* that political philosophy has to break with traditions and metaphorically requests that it set out for new shores (see more on that below), Las Casas is actually realizing such a program in the philosophical and most practical sense, being motivated by the factual historical realities of overseas expansion and novel intercultural encounters. Learning towards John G. A. Pocock's (1975) metaphor of a 'Machiavellian moment' in Renaissance political theory and its influences, Alker speaks of a 'Las Casas moment in Renaissance humanist thought' (Alker 1992, p. 363).

What, according to Las Casas, enabled the Indians to accomplish the cultural and political achievements that allowed them to be seen as 'true' human beings and as civilized? Las Casas's answer to this question lies in his belief in God's order of creation and subsequently in the endowment of universal mankind with reason. It is the rational nature of their being with which God gifted all men, by which all men are made perfect 'in no other way than by his intellect', and by which all men are finally distinguished from animals: 'For since God's love of mankind is so great and it is his will to save all men, it is in accord with his wisdom that in the whole universe, which is perfect in all its parts, his supreme wisdom should shine more and more in the most perfect thing: rational nature' (Las Casas, 1992a, pp. 35-6). According to this universal belief, Las Casas concludes that a 'natural light' has been imparted in all human beings which requires mutual respect and humanist recognition for all forms of human life, even if they might be (very) different in their conduct of every life and in terms of religion, customs, and politics. Las Casas's ethical backbone derived from this universal humanism can be found in the Christian (and later on philosophical; see below with regard to Kant) doctrine 'See that you do not do to another what you would not have done to you by another' or '(Always) treat others as you would like them to treat you' (Las Casas, 1992a, p. 27). This ethical principle, Las Casas argues, would be known, and has to be respected, by all men according to their natural reason.

With regard to philosophical and Christian traditions, Las Casas enters not only into critical debates with Aristotle, but also with Augustine and Aquinas. This becomes obvious when he radicalizes the elements of Augustine's and Aquinas's rationalist construction of God even more, arguing for some form of religious relativism. This does not mean that he leaves the common ground of perceiving Christianity as the only true faith,

however, he admits freedom of religion and equal status to religious beliefs at least *before* Christianity was taught in the rightful way and made known to the yet 'unbelievers'. Men, gifted with natural reason, would also be enlightened with some form of spirituality. However, las Casas denies that this would necessarily lead to *one* form of religious beliefs and practices, and states, rather, that a multitude of worshipping *habitudes* would legitimately exist among mankind. This multitude is to be respected by every true and honourable Christian, and that is why, '(if) they [the unbelievers] refuse to listen, we must go to other places, until we find friendly listeners' (las Casas, 1992a, p. 178). Las Casas argues for an anthropological constitution shared by all men which imparts spirituality or some form of 'a common knowledge of God', which is, however, 'very vague and universal and shows only that there is someone who puts order in things that we see functioning according to some order' (las Casas, 1992a, p. 131); this does not, however, refer necessarily and only to the Christian God.

Las Casas here radicalizes Augustine's and Aquinas's rationalist principle of God that perceives God as a cognitive construction, admitting that men, by their constitution, *depend* on some form of spirituality due to the intellectual 'limitations in themselves' (las Casas, 1992a, p. 132). Due to this limitation, men were simply not capable of having logical explanations for the natural order of things. They therefore try to 'reconcile' their experience and such incomprehensibilities through religion and forms of worshipping; and 'if someone objects that worshipping stones as god is contrary to natural reason and thus forbidden... we answer that the ordinary and ultimate intention of those who worship idols is not to worship stones but to worship, through certain manifestations of divine power, the planner of the world, *whoever it may be*' (ibid., pp. 132-3; emphasis mine).

This recognition of a multitude of forms of worship as equally religious practices and beliefs is really revolutionary and places different religions at the same level with Christianity; not with regard to their final truthfulness, but in terms of their acknowledgement and deserved respect. Although they do not worship the true God, the Indians can, however, not be made responsible until Christianity has been preached and taught to them in a proper way. Before this might have been successfully, but peacefully, achieved, one religion is as true as any other and deserves full respect. For the humanist ethics of the respectful treatment of other cultures and religions, it is important to recall las Casas's argument that the Gospel should not be spread among nations by the power of weapons and conquest, but must be taught in a peaceful and brotherly way. Only love for your neighbour and for all mankind would correspond with the ethics of the Sermon of the Mount (see particularly *In Defense of the Indians*, chapter XI).

We can summarize that las Casas's universalism consists of the extension of the definition of humanity to all mankind because all men, by the power of natural reason, bear the natural and unalienable right of their

liberty, regardless of differences in cultural, habitual, and political matters; or, as Alker puts it, las Casas's universalism consists of 'the cognition of and respect for universally/naturally grounded, species-wide, creative capacities, together with the recognition of the intrinsic worth of different, voluntarily accepted, cultural expressions of these capacities' (Alker, 1992, p. 363). In addition to this, the exercise of different religions is perceived as a human right itself, which has to be equally respected, and whose violation is a sin against the teachings of the holy sacraments.

The previous discussions of human rights and the question whether, or not, they apply beyond Europe to the indigenous peoples of the Americas also included the question of the Indians' right to possession. The conquest of the Spanish and the seizure and devastation of the Indian's land brought up this question, and it is de Vitoria who devotes large parts of his *De Indis et de Iure Belli Relectiones* to discussing it. De Vitoria develops his very clear outlook on this issue – stating uncompromisingly that the Indians have full rights to possession and dominion and that neither the Spanish King (the 'Emperor') nor the Pope has any legitimization to deprive the Indians of this right – on the basis of natural law. Hamilton argues that de Vitoria formed a theory of human dignity based on natural law, which would bridge the differences between peoples and cultures and demand mutual responsibility 'extending far beyond the bounds of one country' (Hamilton, 1963, p. 105). De Vitoria writes: 'I ask first whether the aborigines in question were true owners in both private and public law before the arrival of the Spaniards', and he concludes 'that the people in question were in peaceable possession of their goods, both publicly and privately. Therefore, unless the contrary is shown, they must be treated as owners and not be disturbed in their possession unless cause be shown' (de Vitoria, 1917, p. 120). This right of true possession, according to natural law, applies to all mankind, regardless of their differences in race, culture, and religion. Indeed, de Vitoria explicitly states that

The foundation of the law is in fact that no matter how many diverse peoples and kingdoms the human race may be divided into, it always has a certain unity, not merely as a species but even a sort of political and moral unit, which is indicated by the natural precept of mutual love and mercy which extends to everyone, even to foreigners of any nation. (de Vitoria quoted in Hamilton, 1963, pp. 108-9)

The unity of mankind of which de Vitoria speaks is created by natural law and does not suffer any harm from differences in religion. The above-mentioned recognition of different rationalities, as it communicates from de Vitoria (and also from las Casas), reveals also here with regard to the right of possession. And even if de Vitoria is bound to term the Indians' religion 'unbelief', he nevertheless contests the idea that 'unbelief' would prevent 'anyone from

being a true owner' (de Vitoria, 1917, p. 123) since natural law establishes 'a bond of relationship between all men', which is why 'it is contrary to natural law for one man to disassociate himself from another without good reason' (de Vitoria, 1917, p. 153). Thus, according to Vitoria, the right to possession is guaranteed by natural law, and as an unalienable right cannot be taken away from anyone on the basis of human law whatsoever this law might suggest. He thus declares the Spanish conquests and their seizure of Indian land and goods as illegitimate. As did las Casas, Vitoria assumes that natural law, tangible by all men, exists among all peoples, whether Christians or not, as a system which provides human dignity and an ethical bond among all men and which stands on its own regardless of individual attributes. How this universalism of reason and human rights translates into teachings for legal relations among nations will be discussed in the next section.

### 3. Jurisdiction as landmark and guarantor for universal human rights and just war

In the Preface of his *In Defense of the Indians*, las Casas outlines the course of his arguments against Sepulveda. First, he says, he shall refute his argument that war against the Indians would be justified assuming that they are barbarous and uncivilized. This argument and las Casas's anthropological universalism of human rights was discussed in the previous section. I will now discuss his second, third, and fourth argument of the Valladolid debate, which focus on the question of just war in general (his second and third argument) and on the question whether, or not, the Indians were subject of both the King of Spain and the Catholic Church and would thus fall under their authority and jurisdiction (his fourth argument); for this argument also de Vitoria is very relevant; see below). It is with regard to this argument and the question of jurisdiction and boundaries of jurisdiction, respectively, that las Casas and de Vitoria developed a new standard for the conduct of state relations. This standard puts the same legal restrictions on *each* state, requires mutual recognition among states, and protects each of them on an equal basis against hostile aspirations of other states and unjust war. The reference for this international jurisdiction stems, on the one hand, from their universalism of human rights, and, on the other hand, from a universal notion of natural and divine law.

Although we have reviewed discussions of universal legal standards to regulate state relations from Thucydides and Cicero, and of divine law from Augustine and Aquinas, thus prior to las Casas and de Vitoria, there is nevertheless a new momentum in both. This originality is to be seen in the equality of nations being protected from each others' claims of any nature and subsequently in the recognition of diverse cultural, political, and social patterns of life, whereas prior legal principles were either quite vague (Thucydides), even if their notion existed, or drafted in favour of imperial

power (Cicero) and superior truth (Augustine and Aquinas), not, however, on the basis of nations' equality and guaranteed protection by *mutual recognition*. Equality and recognition in las Casas and de Vitoria are based upon the notion of spheres of jurisdiction and are as such supposed to not only protect each nation from other nations' political aspirations, but, in case war should break out and seems inevitable, also to provide standards for just war and warfare.<sup>67</sup>

When las Casas prepares his defence and approaches the development of his second, third, and fourth arguments, he again critically refers to Augustine, Aquinas, and the official position of the Catholic Church prior to *Sublimus Dei* (1537) and breaks with previously well-established traditions – traditions which have been emphasized by Sepulveda and which las Casas set out to refute successfully. His critique goes to the heart of Christian self-perception *and* politics, tackling the question of the righteousness of mission and appropriate respective political means. He argues that Sepulveda concludes from Christian authorities, namely, Augustine, Aquinas, and previous papal bulls,<sup>68</sup> that it would be 'totally just, as well as most beneficial to these barbarians [the Indians], that they be conquered and brought under the rule of the Spaniards' since this might be the easiest way for them to embrace the Christian religion (las Casas, 1992a, p. 15). He then explicitly criticizes Augustine and Aquinas for having stated that 'if someone is unwilling to do what is good for himself and he is obliged to act for his own welfare, it is just to force him to do even he is unwilling and resists' (las Casas, 1992a, p. 12). Las Casas puts Christian superiority in spiritual and political matters into question and refutes the perception that the Indians themselves were responsible for being forced to be subjugated to the Spaniards and Christian rule because they did not recognize and even denied what might be good for them. This perception sounds absurd to us, and so it does to las Casas (see also Donavan, 1965, p. 15).<sup>69</sup>

Before evolving his arguments regarding just war, las Casas summarizes Sepulveda's view that the armed expeditions against the Indians were justified as long as they corresponded with the rule(s) under the authority of the King of Spain as the legitimate sovereign. It might thus be sufficient to expect the Indians to immediately subjugate themselves to this rule and to embrace Christian belief without any negotiation. If this does not happen, then waging war against them would be just according to civil law (set up by the sovereignty of the Spanish king) and natural law: according to natural law, the Indians' status is to be perceived as uncivilized and barbarous, and consequently it would be justified that the civilized (Spain) should govern them. Las Casas's critique of that outlook applies to the just war problematic in that he radically alters this definition and declares all wars that the Spaniards fought against the Indians were 'unjust wars' and all wars that the Indians fought against the Spanish conquerors were 'justifiable' (las Casas, 1992a, pp. 41–8).



The main criterion for this turn is a redefinition of natural law from an ostensible natural master-slave hierarchy to the natural right of peoples to defend their liberty. Rhetorically, he introduces an historical analogy asking Sepulveda (as well as the jurists, theologians, and representatives of the Spanish court at the Valladolid debate) what he thinks of the Spanish wars against the Roman Empire and whether they were just or unjust, then applying this analogy to the rebellions of the Indians against the Spanish conquerors. 'Did the Spanish wage an unjust war when they vigorously defended themselves against them [the Romans]?' (Las Casas, 1992a, p. 43). Las Casas's answer is they did not, and he denounces such an argument as 'absurd'. This does not mean, on the other side, that he renounces all claims of spreading Christianity and preaching the gospel to other, non-Christian peoples because Las Casas – despite all of his arguments on behalf of equality and recognition – remains convinced that it belongs to the church to teach the 'truth'. But, as was argued above and as he lays down in *The Only Way* (1992b), this has to occur by means of brotherly love and peaceful means, not by war, violence, and coercion. If, however, someone *actively* opposes the Catholic Church preaching the gospel, then it becomes just to wage war against those 'unbelievers', when and under the condition that this happens *within* the jurisdiction of the church. He writes:

Therefore the Church, to which belongs the care of peoples throughout the world as regards to preaching the truth, can justly wage war upon those who prevent the gospel from being preached within their jurisdiction... It should be noted that... war against unbelievers can be just only when the rulers or kings maliciously prevent the spread or preaching of the gospel... But if both the rulers and all their peoples... out of love for and devotion to their religion, refuse to hear or admit Christian preaching, then, under no circumstances, can they be forced by war to let them come in. (Las Casas, 1992a, pp. 170, 172; also *ibid.*, p. 107)

We find here a clear insinuation towards the relevance of *jurisdiction*; before I discuss this matter explicitly below, I shall further reconstruct Las Casas's argument for the justification and legitimization of self-defence. His first argument can be summarized by the dictum that when the Catholic faith is or has been lectured in a proper Christian way, everyone is obliged to accept and to follow. This, he argues, would be a consequence of natural law since no one can, or should, resist the truth; in this regard, Las Casas subscribes to orthodox Christian beliefs. If, however, someone is *forced* to accept Christianity and coercively baptized (or tried to be baptized), resistance would be legitimate since violent conversion would not only contradict Christian values, but also natural law. Las Casas develops here an *individualistic voluntarism* which goes hand in hand with his universal anthropology

of reason and virtue, writing that 'men are obliged by the natural law to do many things they cannot be forced to do against their will' (Las Casas, 1992a, p. 46). Individual voluntarism and reason, which make men equal, count higher than the ambitions of missionary work and (the pretence of) superior wisdom; they thus represent eternal law.<sup>70</sup> This individualistic notion, both with regard to the individual human being and an individual nation, is Las Casas's strongest argument against, and at the same time represents his philosophical dissociation from, Aristotelian legacies and Christian orthodox doctrine handed down from Augustine and Aquinas.<sup>71</sup> He concludes that 'every nation, no matter how barbaric, has the right to defend itself against a more civilized one that wants to conquer it and take away its freedom' (Las Casas, 1992a, p. 47).<sup>72</sup>

De Vitoria shares these views, and in his practical way of thinking, being sometimes more like a lawyer than a philosopher, he lists three reasons which could never justify war and hence always initiate unjust war. In his 'Second Relectio' of his *De Indis et Iure Belli Relectiones*, he posits that 'difference of religion is not a cause for just war',<sup>73</sup> that 'extension of empire is not a just cause of war', and that neither would 'the personal glory of the prince nor any other advantage to him [be] a just cause of war' (de Vitoria, 1917, p. 170).<sup>74</sup> The last aspect would not only characterize just or unjust war, but in addition to this also mark the difference between a lawful king and a tyrant in that the latter would seek his own advantage in war, a lawful king, however, would wage war only for the common good or avoid war when it would not be necessary for realizing the common good. The perspective that war declared for the glory of the king is always an unjust war, and the related idea questioning whether the belief of the king that a certain war would be just can actually make a war just, are important for de Vitoria. Here, the experience with the reign of Charles V and the absolutist declaration of the empire's expansion might have been the impetus for de Vitoria to further argue that a 'king is not by himself capable of examining into the causes of a war and the possibility of a mistake on his part is not unlikely and such a mistake would bring great evil and ruin multitudes... war ought not to be made on the sole judgment of the king, nor, indeed, on the judgment of a few, but on that of many, and they be wise and upright men' (de Vitoria, 1917, p. 174).

A circumstance in which war can be just exists, de Vitoria argues, only when and under the circumstance that a 'wrong has been received' and that this circumstance is scrutinized carefully (de Vitoria, 1917, p. 170). The definition 'when a wrong has been received' results in the argument, similar to Las Casas (as well as to what we know from Cicero, Augustine, and Aquinas), that only wars of defence could be declared just wars because '(not) every kind and degree of wrong can suffice for commencing a war' (de Vitoria, 1917, p. 172). He concludes, therefore, that the Spanish conquests would be profoundly unjust – indeed they would be waged for reasons of 'expansion

of empire' and attempted to be justified by 'difference of religion' and the necessity to spread Christianity. We read:

The Indians in question are not bound... to believe it [the Christian faith], in such way that they commit mortal sin by not believing it, merely because it has been declared and announced to them that Christianity is the true religion and that Christ is the Saviour and Redeemer of the world, without miracle or any other proof of persuasion... Therefore, where there are no such signs nor anything else of persuasive force, the aborigines are not bound to believe... which of the two is the truer religion, unless a greater weight of probability be apparent on one side... From this proposition it follows that, if the faith be presented to the Indians in the way named only and they do not receive it, the Spaniards can not make this a reason for waging war on them or for proceeding against them under the law of war. This is manifest, because they are innocent in this respect and have done no wrong to the Spaniards... Where, then, no wrong has previously been committed by the Indians, there is no cause of just war. (de Vitoria, 1917, p. 143)

From this treatment, the following arguments on just war and warfare can be concluded which then lead to de Vitoria's outlook on the final purpose of war itself. He introduces a basic notion which is thoroughly innovative for the discussion of just war against the views of the Spanish colonialists and those who support them. De Vitoria puts stress not on an enemy's subjective or subjectively perceived guilt, but on objective acts and their assessment as just or unjust according to their status as combatants or non-combatants. No longer must there be a rather vague identification of the enemy as a mass of wrong-willed individuals whose subjective guilt must be certified or supposed, according to which criterion a determination of the innocent is almost impossible' (Hartigan, 1973, p. 89). From this is derived a norm of noncombatant immunity, which is a universal norm that must be observed by everyone, including the emperor and the Spanish conquerors. Hartigan argues that de Vitoria thereby established 'real life' for an abstract moral principle: the 'innocence' was not a tangible reality. The spirit of innocence could now have concrete form as the 'uninvolved' (Hartigan, 1973, p. 89).

When this norm is combined with de Vitoria's determination of unjust causes of war, the final purpose of war, if it is necessary at all, is revealed. This final purpose is found in the realization of peace, security, and the common good not only for one political community, but also for mankind and the world as a whole. De Vitoria writes, 'there would be no condition of happiness for the world, nay, its condition would be one of utter misery, if oppressors and robbers and plunderers could with impunity commit their crimes and oppress the good and innocent, and these latter could not in turn retaliate on them' (de Vitoria, 1917, p. 167). The question which

arises now is this: who are the oppressors, robbers, and plunderers, and why? Here, de Vitoria relates to a thoroughly Aristotelian (and Augustinian and Thomist) definition in that he shares the idea that a perfect political community 'is one which is complete in itself, that is, which is not part of another community, but has its own laws and its own council and its own magistrates (de Vitoria, 1917, p. 169). What does this mean for the question of the legitimacy of Spanish colonialism in the Americas?

Here, the question of jurisdiction and sovereignty develops its full meaning. For if a community is only a perfect one under the condition of sovereignty ('not being part of another community'), if war is unjust for reasons of a prince's glory as well as because of mere expansion, and if different religion(s) is (are) not a just cause of war, however, self-defence is a just reason of war, it then follows that the Spanish have no right whatsoever to subjugate the Indians. In addition to this, the primary obligation of each king and prince, who acts lawfully, is to recognize the above conditions; de Vitoria argues:

Now, in point of human law, it is manifest that the Emperor is not lord of the world, because either this would be by the sole authority of some law, and there is none such; or, if there were, it would be void of effect, inasmuch as law presupposes jurisdiction. If, then, the Emperor had no jurisdiction over the world before the law, the law could not bind one who was not previously subject to it. Nor, on the other hand, had the Emperor this position by lawful succession or by gift or by exchange or by purchase or by just war or by election or by any other legal title, as is admitted. Therefore, the Emperor never was the lord of the whole world. Second conclusion: Granted that the Emperor were the lord of the world, still that would not entitle him to seize the provinces of the Indian aborigines and erect new lords there and put down the former ones or take taxes. The proof is herein, namely, that even those who attribute lordship over the world to the Emperor do not claim that he is the lord of ownership, but only in jurisdiction, and this latter right does not go so far as to warrant him in converting provinces to his own use or in giving towns or even estates away at his pleasure. This, then, shows that the Spaniards can not justify on this ground their seizure of the provinces in question. (de Vitoria, 1917, p. 134)

And some pages later in the same paragraph of this treatise he repeats 'that at the time of the Spaniards' first voyages to America they took with them no right to occupy the lands of the indigenous population' (de Vitoria, 1917, p. 138).

The next question, which arises for de Vitoria is this: Can the pope be said to have jurisdiction over the Indians due to his religious and spiritual authority? In order to investigate this question, de Vitoria distinguishes between

temporal power, civil power, and spiritual jurisdiction. In this regard, de Vitoria is certain that the pope has no temporal or civil power, because not even Christ wielded this kind of power, and the pope is nothing but 'Christ's vicar', so how could he have this type of power? (de Vitoria, 1917, p. 135). What about his spiritual power and his religious authority over the Indians? In his answer, de Vitoria refers to the New Testament (St. John) and the narrative about inner-world temporality as it is expressed by the metaphor of 'one flock and one shepherd'. This metaphor clearly suggests that there will be only 'one flock and one shepherd' at the end of ages, that is, when Christ descends from heaven. As long as this has not happened, the world is divided into different peoples and religions. From this reality of the peoples of the world being differentiated into a multitude of religions and organized in diverse political communities, de Vitoria regards it as evident that the pope also has no spiritual power over the Indians or any non-Christian people. He concludes:

The Pope has no temporal power over the Indian aborigines or over other unbelievers... For he has no temporal power save such as subserves spiritual matters. But he has no spiritual power over them... Therefore he has no temporal power either. The corollary follows that even if the barbarians refuse to recognize any lordship of the Pope, that furnishes no ground for making war on them and seizing their property... even if the barbarians refuse to accept Christ as their lord, this does not justify making war on them or doing them any hurt... Therefore they cannot be compelled to recognize this lordship. (de Vitoria, 1917, p. 138)

It also would be false to assume 'that the Pope has jurisdiction over the Indian aborigines' (de Vitoria, 1917, p. 146).

From las Casas's and de Vitoria's conceptions of jurisdiction and sovereign spheres of jurisdiction follows a triangular relation between natural law, the right to defend one's freedom, and the right to repel force by force (see, for example, in las Casas, *Defense of the Indians*, chapter XXVII). Consequently, war against the Indians in order to convert them to Christianity is unlawful and their 'rebellion' and eventual war against the Spanish conquerors is just. In addition to this, there is still another argument that waging war against non-Christian peoples is unlawful and unjust. This argument embodies another important pillar of their juridical framework, pointing to the circumstance of *innocence* and the conclusion that killing innocent people can under no circumstances be lawful. This fully applies to the Indians (and other native peoples to be 'discovered' in the future) because they had no chance to hear of the Christian God, thus, they are not responsible for their 'unbelief'. Punishing them for this 'unbelief' or, put differently, for worshipping their own gods consequently would be unjust and evil. It will be important to come back to this aspect of innocence. First, however, I shall

discuss how this emphasis on innocence provides important criteria not only for just or unjust war, but also for laws of war and warfare.

Las Casas explores the problem of laws of warfare in two chapters of his *Defense* (chapters XXVIII and XXX). In doing so, he develops an anti-utilitarian, *universal ethics*. His arguments again are directed against Sepulveda and his argument that, in order to successfully subjugate the Indians to Spanish (and Christian) rule, not only war itself would be justified, but also *each* means of warfare which would make them obedient, such as means of killing, massacres, public punishing to terrify others, retaliation, and so on. Las Casas condemns such behaviour as sinful not only according to Christian morality, but also on grounds of an ethical position that means can never cure or justify the (possible) ends. He writes:

From this arises the rule that when evil and good [the prospect of conversion to Christianity as such] are so conjoined that, from the good I wish to do, evil would necessarily or almost always result, if the evil is greater than the good I seek to accomplish, the good (action) must always be omitted lest the evil should result. (las Casas, 1992a, p. 202)

From this ethical position, he claims that not only innocent people, but also obviously harmless persons such as children, women, and the elderly must be spared. Las Casas illustrates this claim and his respective ethics by the question whether, or not, and under which circumstances to attack a city or fortress. With this example,<sup>75</sup> he makes the same important argument which we know from Cicero and Augustine, namely, that a just war – that is, a war which was begun and waged with just reasons – can turn into an unjust war simply by using methods of unjust warfare. Therefore, he first condemns the argument that when once a city has been taken in a just war, all its inhabitants are presumed to be enemies as well and consequently have to be killed; and second, he states that when some military action is not necessary 'for the favorable outcome of the whole war' (1992a, p. 200), such as the attack of a fortress and its complete annihilation, it would be unjust to undertake this attack. The reason behind these repudiations is that in every city or fortress, in each community, there are innocent people (such as children, women, and the elderly, but also 'farmers, workmen, merchants, and pilgrims'; *ibid.*), and to attack or kill such people would be a mortal sin. His notion of just war is therefore bound to certain methods of warfare to both ensure that a just war remains just and, given an unjust war, to avoid at least the worst outcome of a war which in itself, is an evil deed. Those methods require restriction of warfare to those who are supposed to fight the war and who are professional soldiers and to spare the innocent and civilians.

The following question has to be asked: how are las Casas's and de Vitoria's normative determinations of the recognition of universal human rights,

religious freedom, and just war and warfare to be guaranteed in practical political life? The following elaboration of this question reveals their original principles of international jurisdiction. These principles revolutionized the medieval notion of one (Christian) empire and introduced the early modern concept of a world divided into different 'nations' with individual systems of law and authority. According to las Casas, and as seen above in de Vitoria, in such a world different 'nations' can exist concurrently and are granted mutually recognized sovereignty, however, only on the basis of an universal conceptualization of equality and equal rights to freedom, property, and religion.

Kenneth Pennington acknowledges that las Casas's principles 'were preliminary to a nascent international law' (1970, p. 160). Las Casas's international legal principles are established on, and depend upon, his anthropological and ethical universalism. Further than that, only this universalism allows him to recognize and acknowledge differences as equally legitimate articulations and manifestations of one and the same substance of which the human and political world is made, namely, universal human and divine reason, ethics, and finally universal humanity. Similar to Pennington, Hamilton argues that 'for sixteenth century Spaniards the *jus gentium* was in one sense normative, a reflection of the natural law, in another sense customary and improving slowly', and he concludes that, when considering these foundations of international law, 'we are forced back on the hypothesis that morality, and not our selfish interests or those of our state, may prove the best policy in our relations with all mankind' (Hamilton, 1963, p. 167).

The framework which politically warrants, or is supposed to warrant, the mutual recognition and acknowledgement of difference is delivered by rights and obligations of 'international' jurisdiction. In developing this framework, las Casas and de Vitoria refer to their argument against the claim, which the Spaniards upheld, namely, of superior wisdom which would legitimize conquest (see above). Contrary to such a claim, las Casas argued that the Indians' war of defence against the Spaniards is by all means to be perceived as the legitimate form of violence in all confrontations which take place in the 'New World' (No) free person, and much less a free people, is bound to submit to anyone, whether king or nation, no matter how much better the latter may be and no matter how advantageous he may think it will be to himself (las Casas, 1992a, p. 47). Following this argument, he consequently declines to term the Indians' resistance a 'rebellion' and the Indians themselves 'rebels' because, as he notes, 'no one can be called a rebel if... he is not a subject of the King' (las Casas, 1992a, p. 65). This definition goes immediately to the heart of the body of the universalistic thinking in Christian legal philosophy in the sixteenth century which is based upon the conviction that the legitimate use of authority and power stems from legalized relations between those who exert authority and those who are subject to this authority, domestically *and* internationally.

All these arguments were developed against those who supported the Spanish conquests, most prominently Sepulveda, and the conviction that the Spaniards would rightfully conquer the Americas and could punish the Indians for 'idolatry' and 'disbelief'. 'The ancient concept of *jus gentium* received new life in Spain through the discovery and conquest of the Americas... But their consciousness of living in an expanding world made them [the respective critical theologians] more aware of the unity of mankind and more anxious to assert it' (Hamilton, 1963, p. 98). In chapter VI of *In Defense of the Indians*, in which las Casas attacks Sepulveda on the ground of his legal theory, he is more explicit on his definition of jurisdiction. 'In this chapter... we shall prove that unbelievers who have never embraced the faith of Christ and who are not Christian subjects cannot be punished by Christians, or even by the Church, for any crime at all, no matter how atrocious it may be' (las Casas, 1992a, p. 55).<sup>76</sup> Jurisdiction, and then the definition of being subject to one's authority, or not, and of legitimately, or illegitimately, exerting political power, is determined by territorial spheres. Only *within* the territory of his own nation is a sovereign entitled to wield his authority. He has no legitimate power outside the borders of his body politic.

Those living outside, as the Indians with regard to the Spanish Empire, are therefore neither subject of the Spanish Empire nor of the authority and power of the King of Spain who 'has no jurisdiction in this area' (las Casas, 1992a, p. 55, here similar to de Vitoria; see above), regardless of the possible seriousness of 'crimes': 'Therefore, in this case, the emperor, the prince, or the king has no jurisdiction but is the same as a private citizen, and whatever he does has no force' (ibid.). Beyond the territorial definition of political power, authority, and jurisdiction, we see that certain terms and concepts become political and accomplish political character only by the possibility of their legal definition, such as 'rebellion', 'rebel', and 'crime', which become definable only under the condition that they apply and can be applied in a juridical context. The limitation of political authority through a territorially defined body politic and the recognition of the political sovereignty and independence of other 'nations' relates, however, not only to matters of resistance and punishment, but also to religious or spiritual matters. Also here, the power to convert people ends at one's own kingdom's borders, hand in hand with the request to recognize other peoples' right of religious freedom. Las Casas notes in the same tone as de Vitoria:

(As) regards to religion or spiritual matters, no matter whether they be Jews, Mohammedans, or idolaters they are in no way subject to the Church nor to her members, that is, Christian rulers. And therefore when they celebrate and observe rites they cannot be punished by Christian rulers, for [they] lack jurisdiction in this area. (las Casas, 1992a, pp. 54-5)

This form of 'relativism', or as termed above with regard to de Vitoria, 'recognition of different rationalities' is more strongly developed in las Casas than in de Vitoria, and therefore he shall be discussed in further detail. Pursuing this 'relativism', las Casas extends the determination of the territorial limits of jurisdiction and subsequently the assignment of who is, or is not, subject to a distinct authority beyond the relation between Spain and the Indians to, first, the Catholic Church and the pope and, second, to each kind of relations among states. Regarding the Catholic Church and the authority of the pope, las Casas differentiates between 'actual' (or 'factual') and 'potential' power. Actual power relates to those who are indeed subject to the Catholic Church by embracing the Catholic faith and by being baptized, that is, believers and heretics or sinners who break from the church, but are under the jurisdiction of the church. They belong, as las Casas states in reference to Augustine, to the City of God, and hence the church and the pope may exert power over them. In contrast, persons who never embraced the Christian faith and did not subject themselves to Christ's jurisdiction are therefore outside the church and Christian law. Although the 'Eternal Father', as las Casas says, 'gave Christ power over all nations, believing and unbelieving in heaven and on earth' (1992a, pp. 55-6), those who are not baptized and did not willingly submit themselves are only potentially, or 'habitually' (*ibid.*, p. 57) subject.

In Book IX of *In Defence of the Indians*, las Casas describes the holy sacraments as the borders of the City of God and baptism as the gate to this city. Here again we see the importance, as it has been in his discussion of just war and warfare, of *innocence* and, as has been seen in his debate on human rights, the powerful aspect of *voluntarism*, which overrides philosophical and orthodox Christian traditions claiming some form of natural communitarianism. Innocence applies here to the 'pagan' who has never heard of Christ nor received faith and hence cannot be an actual subject to the church and the pope; the pagan cannot be made guilty of not embracing Christian faith because he or she never learned about Christ and the sacraments. In addition, las Casas stresses the voluntary character of receiving faith and why, in religious matters, no one can be made a subject against his or her free will. Regarding the aspect of innocence in relation to jurisdiction and the power of the church and the Vatican, see especially chapter XVIII (las Casas, 1992, pp. 127-9).

To summarize this point, the pope has no authority to judge those who are outside, 'he has no actual jurisdiction over these ... unbelievers who are completely outside the Church [and] are not subject to the Church, nor do they belong to its territory or competence' (*ibid.*, p. 62). He is 'actual king within the Church and potential king outside the Church' (*ibid.*, p. 144), and as such has theoretically no greater political power than any secular ruler. Indeed, their power is both limited and granted by the spheres of their actual jurisdiction; in case of a secular ruler, this limitation is territorial

because 'jurisdiction is said to be implanted in a locality or territory' (*ibid.*, p. 83); in the case of the pope, this limitation is symbolized by individuals who are, in terms of their belief and spirituality, outside the Christian faith and who must not forcefully be converted against their will.

This principle of recognition applies generally to the relations among all 'nations' and peoples. Every ruler and sovereign is thus restricted in the exercise of his power to the territory of his polity and has to respect the sovereign jurisdiction of other polities. Power and authority for all sovereigns end with the borders of their own body politic. This principle has to be acknowledged by everyone as a divine law which forbids anyone to violate or transgress another's territory or jurisdiction' (las Casas, 1992a, p. 84). Las Casas employs this principle to the international relationship between France and Spain and states that neither have authority outside the borders of their empire, nor would the 'king of France pronounce sentence in Spain [of] the king of Spain dictate laws for France' (*ibid.*, p. 83); and borders were called so because they 'limit, determine, or restrict the property, power, or jurisdiction of someone' (*ibid.*, p. 80).

It is important to see that this new principle of international jurisdiction and territorial integrity breaks with Roman law according to which possession was perceived as legitimate by physical presence and the factual hold of territories. Las Casas replaces this traditional notion with the principles of territorial jurisdiction (see also Seed, 1992). It is also worth pointing to the explicitness with which the principle of political territoriality in relation to jurisdiction and political power has been introduced, while there is a clear hierarchy between politics and jurisdiction. As seen above, politics and political terms, respectively, attain meaning only in a legal framework which defines relations of legitimate authority. The triangular interlink between politics, territoriality, and jurisdiction and the claim of mutual recognition of territorial integrity characterizes the Spanish theologians as major thinkers of the early modern state system, which was established about one hundred years later in Europe as the so-called Westphalian state system. Lewis Hanke even goes so far as to declare that las Casas prefigures the United Nations' Declaration of Human Rights (Hanke, 1970, p. 116). Even if this might appear to be an overstatement because there is a clear difference between modern international law and the *ius gentium* of, and leading up to, the sixteenth century not only with regard to the notion that the *ius gentium* is solely customary and unwritten law, but also in relation to their philosophical and epistemological frameworks regarding their universalism, it can nevertheless be stated that a practically significant (in its own times) and relevant (for the centuries to come) universalistic ethical and legal normative philosophy emerged based 'not on the habits and conduct of one people or another, but of the whole world ... in harmony with the unity of mankind' (Suárez, quoted in Hamilton, 1963, p. 108).

## II.2

### Universalistic Frameworks in Early Modern Political Theory

#### 1. Niccolo Machiavelli

Any interpretation of Niccolo Machiavelli (1469–1527), which intends to portray him as a nontotalitarian, or even republican thinker in the tradition of ancient Greek and Roman thought has to fight against deeply rooted mainstream perceptions of so-called *Machiavellism*. These perceptions construe Machiavelli as a reckless and brutal defender of power politics as long as such politics serve the power-increase of a political leader and the stability of the political system. The ethics underlying Machiavelli are said to be functional because the ends would legitimate the means, thus, all means would be acceptable to accomplish the growth and stability of a political leader's power. Machiavellism is widely applied to domestic and international politics, and this perception was introduced by Elizabethan writers in England and strongly promoted and popularized by the Prussian king Frederick II and his work *L'anti Machiavel, ou, Essai de critique sur le Prince de Machiavel* (1958).<sup>77</sup>

It is interesting, however, that those who promote this perception of Machiavellism appear to base their interpretation exclusively on one work of Machiavelli, namely, *The Prince* (written in 1513), thereby ignoring Machiavelli's main work, *The Discourses*, which was finalized some years later (around 1518). (Both works were published posthumously; copies of *The Prince*, however, were circulated during Machiavelli's lifetime.) This neglect is especially the case in International Politics/IR, leading to an interesting question: why was *The Prince*, and not *The Discourses*, received by posterity as the main piece on which interpretations of Machiavelli were based? Or, to put it differently: why did posterity choose Machiavelli's small piece and not his more comprehensive volume? Perhaps *The Prince* was chosen because it is shorter; perhaps because it is more bellicose and less reflective and thus makes a better fit with the prevailing perception of Machiavellism. Perhaps interpreters chose this work because it better suits their own ideological interests in two ways, that is, they can use Machiavelli as a political 'realist',

who very vividly described politics, both domestic and international, with a clear view<sup>78</sup> for reality, or they can blame him for a political tradition and attitude of rigid and amoral power ambitions. Whatever the answer, the ignorance of his *Discourses* is striking, and Bernard Crick ironically paraphrases 'What do you know of Machiavelli who only *The Prince* have read?', suggesting that it is probably the brevity of *The Prince* which made this piece 'famous' (Crick, 2003, p. 19).

There is, however, another tradition in the interpretation of Machiavelli, which promoted a kind of rehabilitated reading of Machiavelli as a republican in the tradition of Aristotle and Cicero<sup>78</sup> and understanding his *Prince* as one of the first works in what we would call today 'political sociology' and 'totalitarianism studies'. This tradition starts with Alberico Gentili in the second half of the sixteenth century and comprises, for instance, James Harrington, Francis Bacon, David Hume, Baruch Spinoza, Charles de Montesquieu, and Jean Jacques Rousseau who wrote, 'While appearing to instruct kings he has done much to educate the people. Machiavelli's *Prince* is the book of Republicans' (quoted in Viroli, 2005, p. xix).<sup>79</sup>

With regard to the discipline of International Politics/IR, only a few works explicitly discuss *The Discourses* while many (pretend to) know *The Prince*, raising their voices in accordance with the orthodox interpretation of Machiavellism and contributing to the solidification of this one-sided perception. At the same time, Machiavellism became a keyword in International Politics/IR while Machiavelli is (mis)used by 'realists' and neo-realists as a kind of founding figure (together with Thucydides and Hobbes) of their own patterns of international thought. Machiavelli also is (mis)used by internationalists, who cast him as the villain who established selfishness and brutality in international politics and created the basis for others, mostly dictators, to legitimize their politics (see Russett, 1974, 1993), and members of the school of democratic peace, who usually juxtapose Machiavelli as the villain and Kant as the upright politician.<sup>80</sup>

I do not intend discussing Machiavelli to provide the right interpretation. Nor do I want to try to understand Machiavelli solely on the basis of his *Discourses*, an approach that would commit the same error as the many interpreters from our discipline who focus only on *The Prince*, only the other way around. Nor do I want to turn Machiavelli into a peace-loving 'good guy' and mitigate his statements from *The Prince* while arguing that the *real* Machiavelli can be found in *The Discourses*. I rather want to point to three circumstances which highlight the relevance of interpreting Machiavelli for our present-day understanding of international/international politics. First, *The Discourses* also comprises important thoughts on international politics, and this work should not be ignored in interpretations of Machiavelli's outlook on international politics. Second, to get the 'whole story', it does not suffice, therefore, to quote again and again only from *The Prince*; those who do generate suspicions that they are less interested in

Machiavelli and more interested in promoting their own politically motivated interests. And finally, we get a different picture of Machiavelli when we broaden the basis for our understanding and interpretation; thus, including both *The Prince* and *The Discourses* suggests some revisions of orthodox beliefs in International Politics/IR. That we should consider both of his writings is last but not least suggested by Machiavelli himself when he explicitly advises his audience in the first book of *The Prince* to read the *Discourses*, too, because he notes that *The Prince* deals with principalities only and not with republics (which, as he says, he had treated 'elsewhere' at great length). This is a clear statement very early in the text saying that *The Prince* does not provide Machiavelli's complete outlook on the political world but a partial one focusing solely on one form of government ('De principatibus'). Those who ignore *The Discourses* hence appear not to have read *The Prince* from the beginning, or they have not taken Machiavelli's advice seriously.

The different picture we get when we consider both *The Prince* and *The Discourses* and inquire his conceptualizations of international politics consists of the following: Machiavelli's main interest tends to be in domestic politics, and above all in the well-being of the city-republic of Florence. Nevertheless, he is fully aware that a republic's welfare also depends on its foreign politics. He therefore perceives the international realm divided up into competing republics, city-states, and empires which are all interested in their own political and economic well-being. Machiavelli has no principal complaint about this situation and does not construct a metaphysically or ethically inspired counter-picture of the international world against this reality. He rather conceptualizes political order and political action within this given context and accepts conflict and competition as patterns of political reality. However – and the mainstream interpretation in our discipline repeatedly ignores this – Machiavelli has a notion of universalistic principles which are common to all political bodies and affect all politics, and he envisions the creation of principles to construct international order in this reality. These are the vital forces of republican politics and virtue. These principles have an impact on political fortune and qualify the fate of single political bodies. State leaders must be aware of these principles and must not only develop instruments of political, sometimes despotic power, but also virtue, confidence, and morality. Finally, these principles constitute common guidelines of politics in general and foreign politics in particular and affect the conduct of each state's foreign politics with the same ordering principles. Consequently, they integrate 'international' politics in frameworks common to all political communities. From this perspective, it is not only and not always a thirst for power and power maximization which prevails over international politics, but also aspirations of harmonic conduct of 'state-to-state' relations, diplomacy, and international negotiation. At the same time, diplomacy and negotiation not only generate common norms and values among republics and city-states, but they also are backed by, and

based upon, common norms and values – under the condition that state leaders have developed certain capacities of virtue and morality.

If we read Machiavelli this way – and this picture will be elaborated throughout the following paragraphs – against the mainstream interpretation of Machiavelli as an all-out 'realist', we learn to conceive of him as an intermediate figure. He is not universal like Augustine and Aquinas (see above) or universalistic like las Casas and de Vitoria (see above) or Kant (see below), and he differs from Thucydides (see above) in the decisiveness of exhorting war atrocities and requesting legal norms. We learn, however, that he also refers to universalistically valid principles, which impinge on international politics and apply to all political units, bridge potential disintegration of the 'international', and provide eventual ethical standards for the conduct of foreign politics.

#### 'Two Machiavellis': Political sociology and republican ethics, or the 'analytical' and the 'normative'

We know statements from Machiavelli such as 'A wise ruler... cannot and should not keep his word when such an observance would be to his disadvantage, and when the reasons that caused him to make a promise are removed' (*The Prince*, chapter VXIII), or 'A Prince... must not have any other object nor any other thought, nor must he adopt anything as his art but war, its institutions, and its discipline' (*The Prince*, chapter XIV). These and similar statements have been used by scholars and politicians alike to form the interpretations of Machiavellism. However, we also find other statements such as 'But let us come to the second instance, when a private citizen becomes prince of his native city not through wickedness or any other *intolerable* violence, but with the favour of his fellow citizens' (from *The Prince*, chapter IX, 'Of the civil principality'; my emphasis). We also read about his admiration of 'Ecclesiastical Principalities' because of their realization of what can be called good and humane government (*The Prince*, chapter XI): we encounter the statement 'For there is such a distance between how one lives and how one ought to live, that anyone who abandons what is done for what ought to be done achieves his downfall rather than his preservation' (*The Prince*, chapter XV); and we find Machiavelli writing 'How praiseworthy it is for a prince to keep his word and to live with integrity... everybody knows' (*The Prince*, chapter XVIII).

The purpose of these quotations<sup>81</sup> is to illustrate an ambivalence in Machiavelli, which opened his writings to one-sided interpretations that either exploit him as a supporter of brutal power politics and reckless selfishness, if opportune, or construe him as a republican thinker. Both ways of understanding are, to my point of view, insufficient because both have a strong tendency to neglect one or the other side of his writings and to pick out single sentences and paragraphs without trying to read them in combination with, and with regard to, the architecture of both *The Prince* and

*The Discourses*. We have to ask the following questions: Why this ambivalence? How can it be explained? What consequently is this architecture of his political thoughts? By trying to find an answer to these questions, I intend to demonstrate that Machiavelli is much more complex than assigning him for now and ever to be a republican or a totalitarian. Or to put it differently, I believe that we have 'two Machiavellis' and that we have to understand his two sides in combination in order to solve the seeming ambivalences.

However, I would like to suggest that the two sides of Machiavelli are not represented in either *The Prince* (a despotic Machiavelli) or *The Discourses* (a republican Machiavelli), but rather alongside the distinction of a Machiavellian historic-analytical political sociology (of principalities and republics) and a Machiavellian ethically oriented political thought. Machiavelli knows very well the importance of distinguishing between the analytical (i.e., his political-sociology approach) and the normative in the study of politics (i.e., his judging and evaluating comments). In most parts of both writings, Machiavelli is a political sociologist. He analyzes politics in principalities and in republics, more or less descriptively, focusing on the mechanisms and 'logic' of power. Thus, he asks questions – evidently using a different political terminology, but one that is similar to modern political sociology – concerning political leadership, political friendship, the role of political elites, the function of religion and the role of the church, political power, the significance of political mores, 'social capital,' and so on.<sup>82</sup> The discussion of such questions, in combination with Machiavelli's quite unsparring treatments of political power, appears to be responsible for his reputation as a supporter of reckless power politics and political deceit and for interpretations of Machiavellism as if he subscribed normatively to these mechanisms, instead of having them (just) analyzed.

However, to assume that a scholar of totalitarianism would be a totalitarian thinker is absurd, and indeed most of them during the twentieth century – for example, Hannah Arendt, Carl Joachim Friedrich, Eric Voegelin, and many others – have been themselves victims of European totalitarian politics and staunch republican thinkers. But Machiavelli was not a great methodologist and he provides just some hints about what he is doing and heading for, namely in the 'Preface' of *The Discourses* when he writes:

Although owing to the envy inherent in man's nature it has always been no less dangerous to discover new ways and methods than to set off in search of new seas and unknown lands because most men are much more ready to belittle than to praise another's actions, none the less, impelled by the natural desire I have always had to labour, regardless of anything,

on that which I believe to be for the common benefit of all, I have decided to enter upon a new way, as yet untrudged by anyone else. (1983, p. 97)

This introductory paragraph can be understood in two ways: as the invention of a historical method comparing the current situation in sixteenth century Italy and primarily Florence with examples from Greek and Roman antiquity and especially with the Roman Republic (what would not be really a new method); or as the invention of an analytical method to describe the mechanisms and structures of government and practices of power, both in principalities and republics (what would indeed be a new method). He notes in the Dedicatory Letter and the second chapter of *The Prince*:

I have neither decorated nor filled this work with elaborate sentences, with rich and magnificent words, or with any other form of rhetorical or unnecessary ornamentation that many writers normally use in *describing* and enriching their subject-matter, for I wished that nothing should set my work apart or make it pleasing except the variety of its material and the gravity of its contents... I shall aside any discussions of republics, because I have treated them elsewhere. I shall consider solely the principality... and I shall discuss *how* these principalities can be [not ought to be] governed and maintained. (2005, pp. 3, 7; emphasis mine)

We here learn that Machiavelli intends to restrict himself in order to be analytical and that he refrains from presenting his analysis normatively. As with the navigator and explorers of his time who sailed across the oceans to discover new land, Machiavelli wants to invent a new 'way' (*metodos*) of political study. This new way should be without 'ornamentation' and 'rhetoric', but straightforwardly heading for an 'objective' ('objective' in his sense of drawing lessons from historical comparison by refraining from personal comments) and analytical description of state leaders' successful conduct of politics. I hence ask if we tend to suppose George Orwell had an interest in defending and legitimizing the totalitarian government of pigs in his *Animal Farm* or, much worse, to advise dictators in their government? My guess is that we well understand that Orwell's intention was to describe and illustrate (and, of course, to criticize) the mechanisms of totalitarian government in order to teach people how such governments come into being and how they operate. So why do we assume then that Machiavelli supports rude and selfish government, without taking seriously enough into account his statements from the Preface of the *Discourses* and the Dedicatory Letter and the second chapter of *The Prince* (as quoted above) about his real interest? And why are we instead seduced in our understanding by misled assumptions either about 'his' normative support of egoistic and opportune government, or about a Machiavellian tendency to separate politics from morality?<sup>83</sup>



Instead of being trapped in such misleading assumptions, a different view is suggested here, namely, to understand Machiavelli's analytical focus as, in modern terms, a 'political sociology' perspective. On this aspect, Alker's notion is instructive when he writes about 'Machiavelli, Renaissance Humanism, and Modernity' and reveals an analytical dimension in Machiavelli which he deems being 'reflectively modern'. 'With a keen eye and ear for provocative formulations, he built an imperfect but prescient, proto-scientific... grammar of emerging... modern power relations' (Alker, 1992, p. 358; emphasis mine).<sup>84</sup> In order to further investigate Machiavelli's analytical and normative dimension, I suggest that we carefully read Machiavelli's comments on 'good' and 'evil' behaviour, 'just' and 'fair' government, and a cooperative and peaceful conduct of international politics in the short paragraphs he interspersed throughout the main text despite his stated intention to omit 'rhetoric' and 'unnecessary ornamentation'. In these paragraphs, Machiavelli discloses his normative ideas, apart from his analytical outlook. We hence have to understand Machiavelli as an author who sharply distinguishes the analytical from the normative level and who consequently focuses on two separate units of his study.<sup>85</sup> The empirical-analytical outlook in Machiavelli is thereby based on his historical studies of Roman and Greek antiquity, especially the Roman Republic, whereas his normative views are derived from political principles and ethics of republicanism and self-government. This applies, as I will try to demonstrate, both to domestic and international politics.

No argument, however, can be made that Machiavelli would derive his normative outlook from his analysis of the 'real' world. He does not derive normative 'ought' obligations from his analyses, but only 'must' maxims about what a prince or republican leader had to do in order to stabilize his power (the reification problem, which we observe in neo-realism, thus does not apply to Machiavelli and appears to be a distinct problem of scientific epistemology; see below, IV.2.2). Thereby, Machiavelli tries to uncover the mechanisms of despotic and republican government; however, he never states that principalities or bellicose empires would represent ideal political orders and one should, normatively speaking, realize them. There might be times and certain circumstances when a principal government is necessary to guarantee stability and to overcome crisis. This does not imply Machiavelli's normative outlook, however, but merely his concession towards the might of 'necessity' (*necessitas*), that is, to do the right thing in the right moment. (The gauge to judge what is 'right' is political stability and the question of what can bring about stability).<sup>86</sup> When a situation arises in which necessity requires certain actions, and they might imply war and dictatorial leadership, it then is, according to Machiavelli, crucially important to know *what* to do and *how* to act.<sup>87</sup>

But again, this is not a normative 'ought' obligation but a 'must' maxim due to political analysis and born out of necessity, that is, the requirement

to act successfully in order to stabilize the community. Only from the viewpoint of a contemporary political-science orthodoxy – which lost its normative orientation – and of an International Politics/IR – which is dominated by the epistemological naivety of neo-realism and identifies the normative with the analytical – can Machiavelli be understood as someone who takes political reality (or what he thinks it is) at face value to derive general 'ought' obligations from it.<sup>88</sup>

Coming back to the question of international politics in Machiavelli: much is here about war and warfare and the leader's capability and knowledge of how to wage war successfully. Machiavelli also writes about colonies and how empires expanded and why they declined. He also covers the question of how military discipline can be created and how important it is that troops are well trained and reliable to their leader and home country, and how a country and its society that have been defeated can successfully be ruled. The criteria for success are provided by the realization of stability. As Crick notes, Machiavelli attaches an 'extraordinarily high value to political stability' (Crick, 2003, p. 24). This concern stems from his belief in the periodic and inevitable rise and fall of political orders which would cause each political unit to decline eventually, regardless how huge and powerful it once was. Thus, stability can at least enable a political unit to last, although it cannot prevent its final decline. In this regard, Machiavelli stands in the tradition of the Greek-Roman historian Polybius, and, as he writes in *The Discourses*, there is a 'cycle through which all governments pass' (1983, p. 109). It therefore is the greatest challenge for a political community, whether it is a principality, an empire, or a republic, to resist its decline as long as possible. One guarantor for stability, according to Machiavelli, is expansion, if necessitated by war. Thus, war and statesmen's necessary capabilities and expertise as war leaders are permanent motives in *The Discourses* and *The Prince*. His thoughts on that topic can, in a summarized form, also be found in *The Art of War*, which 'repeats and assumes every essential proposition of both *The Prince* and *The Discourses* – for the art of war is an extension of the whole condition of society' (Crick, 2003, p. 37; also Machiavelli, 2003). I do not want to discuss this further because this discussion would distract from my main concern, which aims to address the question whether, or not, there is something in Machiavelli pointing to an international order in the sense of some common principles shared by single states.

### Regional republican order

Asking whether, or not, there is some principle in Machiavelli constituting an in-between among states, and whether Machiavelli's thought does, or does not, reach beyond the interests of *single* political units, it might be surprising that we find in his writings the idea of a regional republican order. This idea relates to the normative, not to the analytical, side of his

writings and therefore may be not part of the main attention his studies have received. This is, however, astonishing because it is as early as in Book I.1 of *The Discourses* when Machiavelli talks about the very reason for the foundation of cities, and he refers to international politics to explain this reason. We thus can conclude that, for Machiavelli, international politics lies at the very heart of each city (and politics), and the foundation of a city is the first occasion when dispersed small communities join, and that is for the better enjoyment of their security. 'Hence... either of their own accord or at the suggestion of someone of greater authority among them, such communities undertake living together in some place they have chosen in order to live more conveniently and the more easily to defend themselves' (Machiavelli, 1983, pp. 100-1). What Machiavelli describes here is nothing else but the creation of a security community in which cities, because of their individual smallness, unite together for the better realization of their common shared interest in security. Machiavelli construes such a unification of small communities into a greater (and stronger) association as the most fundamental motor in, and the first motive for, the creation of politics, and both relate to international politics. This motor and motif are understood by Machiavelli as historical conditions and, as such, as an analytical description of 'The Origins of Cities in General and of Rome in Particular' (Book I.1, *The Discourses*).

It seems crucially important to relate any understanding and interpretation of Machiavelli with regard to international politics to the paragraphs mentioned above. He herein not only esteems international politics as the fundamental grounding of politics, he also describes how, and why, individual communities form an association of a greater community. In Machiavelli, we do not find the image of only particularized and singularized interests 'out there' in international politics, but of unifying common principles and shared values guiding states' (foreign) politics. According to our present-day terminology, Machiavelli here notes the beginnings and foundation of an 'international society'. And even if such a society breaks apart from time to time because of the natural rise and decline of states and empires and due to their eventually selfish, bellicose, and power-seeking behaviour, common interests and the shared value of security operate as the founding principles of international politics. Shared norms and values hence do exist in international politics and operate in the international realm as ordering standards. As I argued above, this picture is to be comprehended as historical and analytical, not (yet) normative. Much about security depends on the military organization of a community and the state-leader's capacity as general of his army. In *The Discourses*, I.4, we read that 'where the military organization is good there must be good order' (p. 113).

We now have to turn to Machiavelli's normative thinking, because the term *good order* is elusive at first. When further inquiring into the meaning of good order, we have to consider two aspects: both relate to the domestic

order of cities, and both reach out into the international sphere. Thus, there is a link between domestic order and international politics in Machiavelli, not only in terms of negative impacts because of bellicose and imperialistic politics of states, but also in a positive, normative sense. One of these aspects concerns Machiavelli's preference for small republics. His argument does not, however, foreshadow Rousseau's (domestically oriented) argument stating that small cities are better suited for ('democratic') republics, but is, on the contrary, borrowed fully from an international perspective. He writes:

I am firmly convinced... that to set up a republic which is to last a long time, the way to set about it is to constitute it as Sparta and Venice were constituted... not to make it so large as to appear formidable to its neighbours... if it be content with its own territory, and it becomes clear by experience that it has no ambitions, it will never occur that someone may make war through fear for himself, especially if by its constitution or by its laws expansion is prohibited. Nor have I the least doubt that, if this balance could be maintained, there would be a genuine political life and real tranquility in such a city. (Machiavelli, 1983, pp. 122-3)<sup>89</sup>

It is the domestic organization of a city as a small city which has a pacifying effect on the international sphere. No other state, Machiavelli argues, has to fear a small city. If the peaceful conduct of its foreign politics were additionally determined by its constitution and laws, this would produce an even better and more preferable situation. Machiavelli well realizes analytically that states may be driven by ambitions to increase their influence, power, and glory; however, normatively he envisions a different, and more peaceful, international order, one which is made up of small states unified by their common interest in increasing, and their value for, their quality of life.<sup>90</sup> Towards the end of this quotation, we notice that Machiavelli talks about 'genuine political life' and 'real tranquility' that stipulates a deeper inquiry into the second aspect of (and link between) domestic order and international politics. The second aspect touches upon good 'order'.

There should be no doubt that Machiavelli prefers republics to all other forms of government, such as principalities, empires, and, of course, dictatorships - 'if you can get them', as Crick formulates (Crick, 2003, p. 24). A paragraph from *The Discourses* should leave no doubt about this position:

It is not the well-being of individuals that makes cities great, but the well-being of the community; and it is beyond question that it is only in republics that the common good is looked to properly in that all that promotes it is carried out... The opposite happens where there is a prince. (II.1)

We can add now that he prefers small republics to large ones due to their pacifying effect on international politics. Machiavelli explicitly discusses the question of a confederation of republics in Book I.59 of *The Discourses* under the topic 'What Confederations or Leagues can be trusted most, those made with a Republic or those made with a Prince' (p. 257). His answer to this question is very clear. He comments that confederations made by republics are much more reliable. And '(instances) might be cited of treaties broken by princes for a very small advantage, and of treaties which have not been broken by a republic for a very great advantage' (p. 259). We hence learn that republics would be more reliable because they 'abide by their agreements far better than do princes' (p. 259). Again, the 'normative Machiavelli' not only highly esteems associations of republics (what he calls 'confederations' or 'leagues') based on their common norm and value of security, but he also measures the preference of republics over principalities by their far better fulfilment of treaty obligations (see also Gaubatz, 1996, pp. 109–23). We here touch upon an aspect which seems constantly neglected in International Politics/IR when it comes to Machiavelli, namely his normative esteem (and factual analysis) of international treaties.

It should be clear by now that we have to revise the common picture of Machiavelli as an uncompromising realist, who is nowhere speaking of 'anarchy' in 'international' politics, and who qualifies power politics by normative principles. His normative notion of 'international' politics is based on a twofold notion of common norms and shared values between states: stability and international law.

In this regard it is interesting to look closer at his argument *why* republics are more reliable. Although his argument is hidden in one sentence only and Machiavelli lacks a modern political science terminology, we can nevertheless learn that his preference for republics is very much due to (what we would call today) a system of *checks and balances* which operates in republics, but *not* in principalities. His argument is about time, and he notes that republics 'are slower to act and take more time than princes in arriving at a decision' (1983, p. 259). In more current terminology, this argument is well known from the *Federalist Papers* when James Madison argues for the advantages of republican orders in opposite to kingdoms and refers to the idea of time in the decision-making process of republics. The momentum of a slower pace in the decision-making process of republics would guarantee a more reflective, moderate, and thus less emotional and sounder political outcome. The mechanism, according to Madison, for preventing decisions being made too promptly is the system of checks and balances between the executive, the legislative, and eventually the juridical branch. That is, in terms of time, a system of negotiation, vetoes, co-operation, and votes operates in republics. When it comes to defence issues and military questions, however, Madison finds his counter-argument in the *Federalist*-articles of

Alexander Hamilton who argued that in wartime decisions have to be made immediately and without delay. Therefore, a strong executive, equipped with military command, would be required.<sup>91</sup> As to Machiavelli, he views the slow pace of decisions made in republics as beneficial for international politics because it increases the reliability of such governments with regard to their treaty obligations.

Thus, we have to realize two links which universally operate between the domestic order of cities and the international sphere. On the one hand, (small) republics are less frightening and are of a more peaceful character towards their neighbours; on the other hand, the quality of domestic decision-making endows republics with a greater reliability in the international environment. Both characteristics are conducive for less conflictive and more cooperative international relations; this again provides not only international, but also domestic stability. In *The Discourses*, II.4, Machiavelli consequently projects a regional order of free republics, a projection, which is based on his normative outlook as well as on historical examples of peaceful and flourishing state relations. We read:

The student of ancient histories will find that there are three ways in which republics have expanded. The first was that which the Tuscans of old adopted, namely, that of forming a league consisting of several republics in which no one of them had preference, authority or rank above the others; and in which, when other cities were acquired, they made them constituent members in the same way as the Swiss act in our times, and as in Greece the Achaeans and the Aetolians acted in olden times... The method of leagues... does not readily involve you in wars... Twelve or fourteen communities join together and beyond that they do not seek to go... Hence, when they have reached the number which appears to promise them security, they devote themselves to... the protection of those who apply for it, and by this means get from all around money which can easily be distributed among them. (1983, pp. 285–7)<sup>92</sup>

I do not want to overstretch my interpretation of Machiavelli, either in terms of a modern political science terminology nor by turning him into a peace-loving universalist. However, I would argue that his normative picture for an international order made up by republics strongly resembles models which are in our days discussed as regional security orders, or 'regional security complexes' (Buzan and Waever, 2003). No convincing argument exists, however, for seizing Machiavelli as a 'realist', who would argue in favour of power politics and a leadership of foreign policy elites (a 'prince' and his cronies), independent from their society, and who would furthermore base his analysis and international outlook on assumptions of 'anarchy' and a intransigent promotion of 'national interest'. On the contrary, we could see that reliability, treaty obligations, cooperation, and the internationalization

of republicanism rank high in his thoughts. Further to this, he perceives *no* dualism between domestic ('inside') and international ('outside') order, with two aspects of the domestic order (of republicanism) reaching into the international. The belief to expose Machiavelli as a realist must hence be understood as one (further) misreading of present-day International Politics/IR. This misreading seems due to the lack of a differentiation between, and the equation of, a normative and an analytical level of studying the international as well as due to the solidification of an 'inside'-'outside'-dualism in post-nineteenth century inter-national theory, which appears to operate as an a-historical, ontological lens, even when looking at pre-nineteenth century international politics.

The purpose of this chapter, to say it again, is not to show *the* right and the one and only possible Machiavelli. Rather, I intend to show him in a different light, contrary to how he is usually portrayed in our discipline, and thereby to broaden the perspective of understanding him as an international theorist. Finally, we must realize that he does not fit into the modern dualism of thinking the domestic here and the international there, that he thinks *beyond* the welfare and interest of a single (his) state only, and that his thoughts are well informed by international principles which are valid, if not always empirically, then normatively, for all states. There remains one aspect to discuss which is important for domestic and international politics alike: conflict. Machiavelli is aware of the (potentially and factually) conflictive behaviour of states, and it is in order of their stability, not for some power maximization (or expansion, or glory) *per se* that states have to deal and to cope successfully with political conflicts.<sup>93</sup> However, Machiavelli accepts the reality of political conflict and does not try to project an order in which conflicts are eliminated. On the contrary, he perceives conflict as a stimulating and 'creative momentum' of politics (Crick, 2003, p. 36). He thus does not believe in any eternal or divine harmonic order of the world and its political and social affairs (as, for instance, in Augustine and Aquinas). He discharges medieval political metaphysics in the most sustainable way. He formulates a concept which displays conflict not as some decline and disassociation from order, but as a *genuine* pattern of the world and *within* the sociopolitical order. Conflict is nothing bad which has to be overcome. It is a pattern with which politics has to deal and which has to be civilized, cannot be abolished, and, after all, *should* not be abolished. This is true for domestic and international politics, and in international politics, it is the projection of a regional republican order which would best suit the challenge to *civilize* conflict.

A further aspect, fundamental to Machiavelli's conception of politics, comes into play when we consider why conflict *should* not be abolished. Recapitulating Machiavelli's idea of a republican international order in combination with his perception of political conflict, we see that such an international order best suits the challenge to *civilize* international conflict

and therefore is the order which provides the most stability. Consequently, a successful conduct of international politics requires distinct capabilities from statesmen as much as the conduct of domestic politics does. We can hence apply Machiavelli's concept of *virtù* to international politics. From a theory of action-perspective, *virtù* represents for Machiavelli a guideline and normative requirement for a league (or confederation) made up of republics as the best international order possible.

But what is the meaning of *virtù*? To put it simply, a basic meaning of *virtù* is the capacity 'to do the job well'. It can be compared with Aristotle's *techné* (art; Aristotle, *Nicomachean Ethics* 1139b, 5-17), which has a practical goal beyond mere knowledge. There is a medical art, which aims at healing the patient; there is the art of an architect to build a house; there is the art of a musician to play the flute; there is the art of a carpenter to construct chairs and tables and so on. In this meaning, 'art' combines knowledge with practical wisdom aiming at a certain goal (*telos*). Pursuing the art of one's profession with great excellence and realizing the goal of the related action (e.g., the doctor heals the patient, the musician plays the flute well, the carpenter constructs a nice chair) entitles the person who acts with virtue. There is a virtue of a doctor, a carpenter, a musician, and so on. The highest form of art in Aristotle is the *techné politika*, the art of politics (*Nicomachean Ethics*, 1094a, 21-24), which aims at the realization of the 'good life' for individuals and tranquillity for the political community (*eudamonia as the virtue of politics*; 1097b, 12-34).

Construing Machiavelli's *virtù* from this perspective, we can concretize his talk about the *virtù* of a general, for instance, who successfully controls his troops and achieves glory for his country through successful battles (see, e.g., *The Discourses*, III 12, 18); or about the *virtù* of a doctor (one of Machiavelli's favourite examples) who heals his patients and contributes to their well-being. What does this imply for a republic and for international politics pursued in a republican international confederation? In political terms, virtue means a 'civic spirit' (Crick, 2003, p. 46), which is necessary because a republic's good order and tranquillity depend on citizens' readiness to subordinate their own interests to that of the common good. Machiavelli says, both in *The Discourses* and the *Prince*, a city which rests upon the *virtù* of its citizens is the most difficult to seize by a foreign army, and its stability enables it to resist domestic disorder and decline.

But how to create *virtù* in a city and in a republican international confederation? At this point, Machiavelli's esteem of political conflict has to be reconsidered. In his architecture of the political, conflict is the momentum which keeps politics alive, it is the immediate matter of politics, and it prevents stagnation. Finally, conflict is the rationale behind the 'come and go' of cities, empires, and leagues. Because conflict is, however, the very nature of politics, the art of politics and political virtue develop through dealing with conflicts and trying to *civilize* them. This is a radical discharge of

the ancient and medieval imagination that political virtue becomes manifest in acting in accordance with harmony and a divine order of concord. Machiavelli topples that picture upside-down, saying that it is exactly the opposite, namely, the management and civilization of conflict which create and generate political virtue, and the capability of doing so characterizes a great politician and a tranquil political community. And because conflict is permanent, this kind of political virtue is always required. If, so we can conclude, conflict would be eliminated (which is, moreover, impossible), then the development of *virtù* would stagnate, a community would become complacent, and the attitude of political leaders would degenerate into hubris.

We hence can conclude that *virtù* always implies political ethics. This is an ethics which is not gained from imaginations of acting according to some eternal 'good order' or harmonic cosmic or divine law, but rather an ethics which stems from the idea that political conflicts have to be dealt with and civilized. It is thus an inner-worldly ethics,<sup>94</sup> arising from the practical and purely political knowledge of what to do strategically in the right moment in order to cope with conflictive circumstances. However, the goal of acting ethically in this sense is not glory or power or something similar *per se*, but – and here again we encounter 'the normative' in Machiavelli – the realization of republican order. And a *republican* order is one in which the civic spirit is most developed and which, due to the existence of civic spirit, is most difficult to destroy; it best resists instabilities as well as the cycle of rise and decline. We can conclude that there exists a genuine fourfold relation in Machiavelli between the art of politics, *virtù* (or civic spirit), republican order, and stability. When we apply this picture to the international sphere, we learn that virtue in international politics never exists in a policy which tries to eliminate conflict by oppressing others directly because this would represent a 'useless method' (*The Discourses*, II, 4, pp. 283–5). It is also difficult to form hegemonic and imperial alliances 'in which you reserve to yourself the headship, the seat in which the central authority resides, and the right of initiative' (p. 284), a method which the Romans applied but which appears historically unique. From this point of view, a league of republics consequently appears to be the best and most appropriate method because it is governed by 'a council', which has to arrive 'at any common decision' (p. 286) and which symbolizes the institutional body for dealing with and managing conflicts among its members. Again, conflict is being seen as a positive motivator which requires a certain virtue.

According to Machiavelli, probably the most important 'art of civilizing conflict' in international politics is diplomacy. The conduct of diplomatic relations contributes to the creation of trust and confidence among states, and it is the most effective means of moderating conflict through direct and personal political communication. Machiavelli is regarded the 'founder of modern diplomacy' because he invented the idea and practice of continuing diplomatic relations with neighbour states by permanent ambassadors and

embassies, a practice which replaced the then-usual practice of individual and temporary delegations when required for immediate conflict settlement.

It may overinterpret this picture arguing that Machiavelli perceives such a league of republics as a means for peace in international politics. However, we see that Machiavelli has a (normative) outlook on international politics which is based on the idea of cooperation and an inner-worldly ethics oriented towards the stabilization of a republican regional order. The rationale behind such a mode of cooperation is a notion of conflict, which is a constant in politics and cannot be abolished but has to be dealt with and to be civilized. Conflict, however, as history teaches, is also played out from time to time through war. In wartime, yet another *virtù* is required, namely, the virtue of a general and perhaps a prince, so that the state might last through the politics of hardship and not perish too quickly before the historical cycle of decline and fortune (*fortuna*) will eventually extinguish even a successful and powerful state. However, a state based upon 'well-ordered' virtue will last longer because fortune, like a river, 'turns her impetus towards where she knows no dikes and dams have been constructed to hold her in' (for this metaphor see *The Prince*, chapter XXV; here p. 84). Furthermore, the perception of a cycle of the rise and fall of powers teaches not only prudence, but also 'moderation' as a matter of political virtue and as a 'moral lesson' in foreign politics. According to this teaching, even a powerful and successful state should act with 'responsible moderation' and not challenge the mighty powers of *fortuna* (see Mansfield, 1981). We have seen that construing Machiavelli as a 'realist' whose thinking would lack normative perspectives on cooperative international politics and who would not know about common ethical principles bridging states and enabling them to consider jointly their common matters appears to be not only incorrect, but also an instrumentalization of his notion of conflict as if he would promote and approve of bellicose, malicious politics. We thus can learn about a very different Machiavelli compared to the image we are used to understand as Machiavellism.

## 2. Thomas Hobbes

The references in International Politics/IR to Thomas Hobbes (1588–1679) as a 'realist' are endless.<sup>95</sup> And indeed, it is very difficult and challenging to argue against this image and to demonstrate arguments which allude to a political, if not ethical, self-constraint in Hobbes. The 'realist' picture consolidated in our discipline performs predominantly as 'the liberal' script of modern political thinking. And of course, we all know paragraphs which seem to leave no room for interpretation, such as the following:

I show that... the condition of men outside civil society (the condition one may call the state of nature) is no other than a war of all men against

all men; and in that war all men have right to all things... All men, by necessity of their nature, want to get out of that miserable and hateful state, as soon as they recognize its misery. But they can only do so by entering into agreements to give up their right to all things. (Hobbes, 1968, pp. 11–12)

Applied to the sphere of international politics,<sup>96</sup> this paragraph seems to serve the projection of anarchy perfectly, although Hobbes's statement does not refer to the international realm, rather to the state of human life before individual men enter into a social contract. In the *Leviathan* (Part II, chapter 30) we read:

Concerning the Offices of one Sovereign to another, which are comprehended in that Law, which is commonly called the *Law of Nations*, I need not say any thing in this place; because the Law of Nations, and the Law of Nature, is the same thing. And every Sovereign hath the same Right, in procuring the safety of his People, that any particular man can have, in procuring the safety of his own Body. And the same Law, that dictateth to men that have no Civil Government, what they ought to do, and what to avoyd in regard of one another, dictateth the same to Commonwealths, that is to the Consciences of Sovereign Princes, and Sovereign Assemblies; there is no Court of Natural Justice, but in the Conscience only; where not Man, but God reigneth. (Hobbes, 1968, p. 394)

Following these statements, two options appear to exist for international order only. One option seems to be the natural state where all states fight each other, and anarchy would prevail due to the lack of international law (or Law of Nations, as Hobbes says). The other option would be the erection of a world-state Leviathan which would, on the basis of his sovereignty superior to single nations, govern the single states like the 'domestic' Leviathan is supposed to govern its people: namely, with strict laws, according to his definition of 'justice' and 'injustice', with the power of the sword, and the submission of the individual units.<sup>97</sup> The benefit for single nations – comparable to individuals in the state – would be the provision of 'safety' by which 'is not meant a bare Preservation [of life], but also all other Contentments of life, which every man by Lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe (*Leviathan*, Part II, chapter 30; p. 376). However, as Hobbes posits very concisely in *A Dialogue between a Philosopher and a Student of the Common Laws of England*, 'there is no Common Power in this World to punish injustice: mutual fear may keep them [states] apart for a time, but upon every visible advantage they will invade one another' (1971, p. 57). It is probably due to these paragraphs that Hobbes is univocally called a 'realist' and his approach is called an 'empirical realism' (e.g., Boucher, 1998).

However, we have to ask whether these views do justice to Hobbes's philosophical outlook and what conclusion we can draw from Hobbes for international politics. Can we find indications for a third and, compared to the well-established views in International Politics/IR, more appropriate option for interpreting Hobbes based on a deeper philosophical understanding of his writings?

The following interpretations assume that the central points for understanding Hobbesian international politics can be seen neither in the 'problem' whether, or not, the notion of individual behaviour applies to state behaviour nor, if we suppose it does apply, in the understanding whether, or not, international politics would be characterized by permanent war, due to the lack of an international sovereign.<sup>98</sup> I rather argue that, for understanding Hobbes, the question whether states act like individuals and the question of a world-state Leviathan are completely irrelevant. They are irrelevant because, although an international sovereign obviously does not exist, a mechanism operates in international politics which functions totally independent both from (the erection of) international sovereignty and from a possible analogy between individuals and states. This mechanism relates to Hobbes's construction of a relation between sovereignty, legitimacy, and security which powerfully reaches from domestic politics into the international realm and which establishes a common (and, apart from defensive wars, pacifying) regulative reference for all sovereigns in their conduct of foreign policy.

The difficulty with Hobbes's outlook on international politics is to be found in the circumstance that he seems to be primarily interested not in international but in domestic politics. We thus find just a few paragraphs in his *oeuvre* where he is explicitly considering interstate relations. There is nothing, however, that prevents us from investigating Hobbes's contribution to international politics further or, as David Gauthier puts it: 'The elements of my presentation are all to be found in Hobbes, but what I shall present is the theory he never gave' (Gauthier, 1979, p. 548). Such investigation into the consequences and deeper meaning of his thoughts has to analyze the notions of conscience, rationality, fear, legitimacy, and law of nature, and will reveal that the legitimacy of the sovereign is not unconditioned. It rather rests on his fulfilment of the mutual obligations derived from the social contract which is conceptualized as an equally binding agreement between the people and the sovereign himself. Hence, he can lose his legitimacy – a contingency which has far-reaching impact on international politics and foreign policy.

#### The triangular relationship between conscience, political rationality, and fear

Prior to the analysis of the relation between sovereignty, legitimacy, and security, we have to consider Hobbes's outlook on international politics in a

much wider context than relying on his direct statements on international politics only. We therefore have to take into consideration his references to conscience, political rationality, and fear. This triangular relationship enables us to see Hobbes's thought on international politics in a different way. Against the common understanding, Hobbes's theory is informed by a counterbalance to unrestricted sovereignty of the Leviathan, which, at least normatively, is mighty enough to discipline and regulate states' behaviour so that the prevailing picture of international politics in Hobbes is *not* anarchy and permanent war, but a political and ethical norm of self-constraint. This counterbalance is not just an accidental aspect of his politico-philosophical worldview, but lies very much at the heart of his system. We have to ask three basic questions in relation to the *function* of conscience, political rationality, and fear in his philosophical system in order to understand this counterbalance, which qualifies the familiar statement and image of anarchy.

First, how do people or states, which are said to fight each other constantly because they are being driven by their passions, achieve reasonable judgment when they begin to understand that only the rendering of their individual natural rights to a common sovereign power could overcome their bellcose natural state? Second, where 'in man' is his ability for reasonable judgment located? Is it a mere functional consequence of 'fear', is it political rationality, or is it a capacity endowed by 'God'? And third, is there a relation between domestic and international politics in Hobbes: If yes, how does it affect the foreign policy of sovereigns? In discussing these questions, I try to demonstrate that we find a political and ethical counterbalance against the state of 'anarchy' and permanent war in Hobbesian international politics. Consequently, we have to rethink the understanding of Hobbes as a 'realist' and should renounce the perception of a 'realist' tradition in international political thought which would last from Thucydides over Machiavelli to Hobbes.

### *Conscience*

In order to answer the first question, we have to examine the reason for conflict. It seems to be a popular assumption in International Politics/IR that fear, implanted naturally in human beings, is the *reason* for conflict and war. However, not fear seems to be the real reason for the 'war of all men against all men',<sup>99</sup> but fear is only the psychological dimension accompanying, and itself being caused by, the fight over conflicts. The reasons of conflicts in politics are to be found foremost in religious and metaphysical worldviews solidified into ideologies. Hobbes himself experienced such conflicts in his lifetime, encountering the religious and civil wars in England (a period which can be dated from 1580 to 1680), which prompted him to flee England for France and back again. In relation to traditional metaphysics, Hobbes has mainly the political philosophies of Plato, Aristotle, and Cicero in mind, which would be based on speculations instead of reason and logic

and thus seduce the people. Traditions of 'natural Philosophy' and religious ideologists would be responsible for revolution, war, and conflict:

To conclude, there is nothing so absurd, that the old Philosophers (as Cicero saith, who is one of them) have not some of them maintained. And I believe that scarce any thing can be more absurdly said in natural Philosophy, than that which now is called *Aristotle's Metaphysics*; nor more repugnant to Government, than much of that hee hath said in his *Politiques*; nor more ignorantly, than a great part of his *Ethiques*... If such *Metaphysiques*, and *Physique* as this, be not *Vain Philosophy*, there was never any. (*Leviathan*, chapter 46; here, 1968, pp. 686–7, 696)

In the first dialogue of the *Behemoth* (written between 1665 and 1668), Hobbes identifies the seduction of metaphysics and religion, combined with human passion, as the evil of contemporary politics. He especially refers to the unrest in the period between the 'Long Parliament' and the reestablishment of the Stuart monarchy under Charles II (1660 to 1680). The most important reasons of conflict are listed below:

The seducers were of divers sorts. One sort were ministers; ministers, as they called themselves, of Christ; and sometimes, in their sermons to the people, God's ambassadors; pretending to have a right from God to govern every one his parish and their assembly the whole nation. Secondly, there were a great number... which notwithstanding that the Pope's power in England... had been by Act of Parliament abolished, still retain a belief that we ought to be governed by the Pope... Fourthly, there were an exceeding great number of men of better sort, that had been so educated, as that in their youth having read the books written by famous men of the ancient Grecian and Roman commonwealths concerning their polity and great actions; in which books the popular government was extolled by the glorious name of liberty; and monarchy disgraced by the name of tyranny... Sixthly, there were a very great number that had either wasted their fortunes, or thought them too mean for the good parts which they thought were in themselves; and more there were, that had able bodies, but saw no means how honestly to get their bread... These longed for war. (Hobbes, 1969, pp. 2, 3)

I quoted this paragraph because it makes very clear that, in Hobbes's analysis of unrest and (civil) war, fear plays a minor role and is *not* – neither is human nature – said to be the reason of conflict. Instead, Hobbes offers a range of politically and socially grounded reasons for civil conflicts. As we know from the *Leviathan* and much more from *De Cive*, men are also perceived as passion-driven and are instilled with an existential fear of violent death (*'metus mortis violentiae'*). But as we learn from the above quoted

paragraph, fear itself is caused by the possibility of being killed, by civil unrest, and permanent insecurity. It is though far from being the genuine cause of conflict. One element, which operates as an additional driving force behind conflictive human behaviour is, however, passion. But passions not only have a conflictive nature, they also perform as pacifying forces, namely, they are 'that incline men to Peace' because of his 'fear of Death' and 'Desire... to commodious living' (*Leviathan*, chapter 13; p. 188). However, there is no automatism, which translates fear (and passion) into (reasonable) judgment of individuals when they eventually transfer their rights to a sovereign power in order to achieve an ending of conflict, peace, and political order. Passions and fear form initiating and energetic, but not causal, forces. Such a force, to bring about a decisive turning point, is yet required when men proceed from the state of natural conflict and war to the institutionalization of a common sovereign as conceptualized in Hobbes by the social contract.

In regard to the reason of conflict in Hobbes, the discussions of Richard Ashcraft are very informative: 'Hobbes'... explanation of the civil war establishes a relationship between class interests and ideology, or, in his terms, the economic, political and religious meanings of faction' (1978, p. 44). Ashcraft further argues that Hobbes's explanation of the English Revolution offers the basic parameters within which his political philosophy – foremost his analysis of conflict, its reasons, and means to overcome conflict – has to be understood. Consequently, Ashcraft argues that Hobbes's *Behemoth* (where Hobbes analyzes political conflict historically) and *Leviathan* (where he develops his theory to discipline and overcome conflict) form a unit, and the one could not be understood properly without the other. He quotes from a letter which Hobbes wrote in August 1641 in which he maintains that 'the cause of civil war in all places of Christendom' is traceable to religious controversies which undermine the exercise of civil power (quoted in Ashcraft, 1978, p. 33). The same point results from the debate between C. B. Macpherson and D. J. C. Carmichael – initiated by Macpherson's book *The Political Theory about Possessive Individualism* (1962) – about the influence of class interests and bourgeois capitalism on social conflict. Although the mutual criticism is quite harsh, there is nevertheless on common point in Macpherson's and Carmichael's arguments, namely, that neither fear nor human nature are the reasons of conflict, but conflicts are social and political in nature (see Carmichael, 1983; Macpherson, 1983).

Thus, there must be something that finally enables men to cease engaging in conflict and to progress to rational action and reasonable judgment. This 'something' must furthermore instill social trust and confidence into the individuals and make them believe that the sovereign power to be erected is of different character than anything else and all the other institutions men are familiar with and that previously 'seduced' them. The sovereign power to be established must be thought of – different from what people

know from their 'state of nature' – as an institution which does not act for its own profit and well-being but for the good of the people. (In *De Homine*, chapter 11, Hobbes calls this good a 'common good' that all human beings want and can share; here Hobbes, 1972.) The yet missing link is what Hobbes calls 'reason' perceived as a kind of rational calculation and 'counting' (see the quotes below as well *Leviathan*, chapter 5; pp. 110–18). But where does this ability come from?

#### *Political rationality*

This 'missing link' is provided by the human ability to use reason and to conclude reasonable judgment. Since reason is, according to Hobbes, counting, subtraction, and addition, we have to ask what do men subtract and add and consequently conclude to accomplish reasonable judgment? Hobbes writes in the *Leviathan* (chapter 3), 'Prudence is a *Præsumption* of the *Future*, contracted from the *Experience* of the *Past*: So there is a *Præsumption* of things *Past* taken from other things (not future but) *past* also' (p. 98). We therefore can determine that reasonable judgment is experience-based, and each conclusion by men is founded on the evidence of his past and of what he knows from the past. But to what experience and logical operation of the mind does Hobbes refer – especially under the paradox that this experience is, on the one hand, the ground of people's judgment and, on the other hand, the constituents of the same experience which must be left behind in order to establish something completely new (namely, political order and the *Leviathan*)?

Hobbes is referring to the addition of one distinct logical operation grounded in experience-based evidences, evidences, which yet taught nothing but fear, ruin, chaos, and men making war. Evidence-based judgment is hence grounded in politically and socially taught (bad) experience. But *abstract* reasoning, by 'addition' and 'subtraction', attaches the decisive added value by one intellectual operation, which asks the following question: if there is (and was) a predominant cause for substantial fear in the past (namely, conflict and war), what has to be logically 'added' to this experience in order to abolish the reason of fear? That is, what has to be added to the experience of the past and 'links the past with the present' (Ashcraft, 1978, p. 38) is – so reason teaches – another logical step (a kind of 'subtotal'<sup>100</sup>), namely, the 'entering into agreements' by which people 'give up their right to all things' (from the Preface of *On the citizen*). They thus become disciplined for the future, renouncing their passion-driven aspirations (of the past) to possess the belongings of, and to govern the lives of, others while at the same time trusting the newly erected sovereign power – and finally trusting the operations and results of mathematical reason.<sup>101</sup> In so far, reasoning means, even if 'taken from past', a leap in being of human life by becoming political, although reasoning has no insinuation about the quality of the future besides the promises of logical reasoning itself.



This understanding of reason points to Hobbes's methodology of, and his political confidence in, *more geometricus*. Walker thematizes this leap under the rubrics of change and 'the historicity of the contract' (Walker, 1987, p. 74). Perhaps Walker's argument that Hobbes intends to abandon time entirely is overdone – because we could see the paramount relevance of 'experience' in Hobbes; nevertheless, he realizes very clearly that the 'geometrical method, the appeal to reason, the artifice based on reason, and finally 'his concern with order' (ibid.) constitute a completely new political situation *after* the social contract has been agreed. This new situation causes us to revise the Hobbesian outlook on international politics and to finally realize that the analogy between the individuals' 'state of nature' – which relates to the time before the social contract – and the principles operating in international politics does not lead us any further. On the 'Use and End of Reason' Hobbes writes:

The Use and End of Reason, is not the finding of the summe, and truth of one, or a few consequences, remote from the first definitions, and settled significations of names; but to begin at these; and proceed from one consequence to another. For there can be no certainty of the last Conclusion, without any certainty of all those Affirmations and Negations, on which it was grounded. (*Leviathan*, chapter V, 1968, p. 112)

Passion seems to be excluded from this logic of 'Addition of parcels' and 'Subtraction of one summe from another' (ibid., p. 110) and appears to be irrelevant in this kind of mathematically guided intellectual operation. Applied to politics, the experience on which *political* judgment is based is summed up and aggregated by what man 'hath seen by what courses and degrees, a flourishing State hath first come into civil warre, and then to ruine; upon the sights of the ruine of any other State, will guess, the like warre, and the like courses have been there also' (ibid., p. 98). The experience of such ruin, chaos, and battle, and the addition of such experience might trigger in men the fear to encounter the same destiny, to suffer physical violence, and to be in permanent danger of a violent death. Experience, accompanied by fear, might convince men eventually to use their capability of prudence and reasonable judgment by adding these experiences and 'conceiving of the consequences' (ibid., p. 110). However, fear is far from being the causal reason of prudence and judgment (as well as of conflict), rather it is a trigger, and judgment is grounded in experience and made by an experience-based, logical conclusion.

Experience of social conflict and war, evaluated by logical reasoning (or prudence), and only accompanied by fear and passion, leads individuals to political judgment in order to relinquish insecurity, ruin, and chaos. This complex relationship is at the foundation of the Hobbesian social

contract and its erection of the sovereign body. Consequently, sovereignty is fundamentally based on the sovereign's guarantee to prevent citizens from further exposure to political conflict, fear of violent death, and insecurity. As Hobbes very clearly states, the sovereign's legitimacy to exert power over its citizens depends totally on its success guaranteeing safety for its citizens. This guarantee constitutes the whole purpose of the social contract. We read:

The Office of the Sovereign, (be it a Monarch, or an Assembly) consisteth in the end, for which he was trusted with the Sovereign Power, namely the procuration of the *safety of the people*. (*Leviathan*, chapter 30; p. 376)

Or:

The Obligation, and Liberty of the Subject, is to be derived ... from the End of the Institution of Sovereignty; namely, the Peace of the Subjects within themselves, and their Defence against a common enemy. (*Leviathan*, chapter 21; p. 268)

We can therefore conclude a vital interdependency among sovereignty, the legitimacy of the sovereign's power, and the provision of safety.

*Fear*

Security is the rationale of sovereignty and of the legitimacy of the sovereign's power, institutionalized due to individuals' political (rational) judgment. We have to understand security as a protection from domestic and *external* threats and violence. Before entering into the agreement to erect a common sovereign body, the social contract, men were living in permanent fear and insecurity; but free. Now, under the conditions of the social contract, men renounce their 'rights to everything' and are subordinate to the sovereign. However, security, which is the initial rationale for the social contract, also remains its lasting rationale. This means that

The Obligation of Subjects to the Sovereign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them. For the right men have by Nature to protect themselves, when none else can protect them, can by no Covenant be relinquished. The Sovereignty is the Soule of the Common-wealth; which once departed from the Body, the members doe no more receive their motion from it. The end of Obedience is Protection. (*Leviathan*, chapter 21; 1968, p. 272)

Accordingly, the individuals regain their full right of nature under the condition that the sovereign does not, or is not able to, guarantee their

security any more. They then fall back into their original state of nature, and every person is fully responsible and entitled to care for his or her own life. The sovereign's legitimacy to exercise power then consequently comes to an end, too. The social contract and even the political itself dissolve because the mutual obligation of the contract between the sovereign and the individuals depends on obedience as the people's contribution, on the one side, and on the sovereign's obligation to ensure their security, on the other side. As Peter Steinberger notes, 'For Hobbes, the bonds of the commonwealth dissolve when it fails to achieve the ends for which it was created... When the state fails to do what it was designed to do - when it threatens, rather than protects, the interests of the citizens - then the social contract, i.e., the original agreement... is annulled' (Steinberger, 2002, pp. 858-59). This mechanism is based on the unalienable 'Right of Nature' (*ius naturale*) which

Is the Liberty each man hath, to use his own power, as he will himself, for the preservation of his own Nature: that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto. (*Leviathan*, chapter 12, p. 189)

This 'Right of Nature' - that is, liberty - results in a 'Law of Nature' (*lex naturalis*) - two categories which, according to D. J. C. Carmichael, are the 'twin pillars of Hobbes' jurisprudence' (1990, p. 4) - which remains valid even under the condition of the social contract.<sup>102</sup> And if the sovereign breaks his obligation to ensure security for his subjects, and the lives of the individuals are threatened (again), the law of nature - derived from natural, unalienable liberty to do everything to preserve one's own security - prevails over the political, sovereign law established by the social contract, or, as Morton Kaplan notes, the 'laws of nature and the rights of nature apply to the actions of men, even after formation of the commonwealth... A higher law does limit the sovereign' (Kaplan, 1956, pp. 390-1).<sup>103</sup> Men then do not have to abide by the political law any more and can refer in their decisions and acts to the permanent validity of the law and right of nature. And, even more, they are not only allowed to return to the presocietal and prepolitical state of nature, according to Hobbes, they are even prohibited (by the law of nature) to do anything which *could* harm one's life or contradi- dict its conservation. This prohibition includes the observation of orders of the sovereign in the case that he risks his subjects' lives. It then appears to be an obligation by the law of nature to resist those orders; at least, the subjects have a *right* to resist.

A Law of Nature... is a Precept, or generall Rule, found out by Reason, by which man is forbidden to do, that, which is destructive of his life, or

taketh away means of preserving the same; and to omit, that, which he thinketh it may be best preserved. (*Leviathan*, chapter 12; p. 189)

The subjects must abide, however, by the sovereign's orders when these orders aim at, and do serve, their security. Hobbes qualifies the conditions of the right for self-protection, on the one hand, and the duty to obedience, on the other hand, quite clearly in chapter 21 of the *Leviathan*. He here discusses, from an individual's point of view, both righteous conditions of desertion *and* the duty to perform the obligations of a military draft (in the case that they aim to, and are appropriate to, defend the people's security). Hobbes trusts the individual to competently decide and judge whether, or not, a policy enacted by the sovereign is appropriate to produce and to preserve security.<sup>104</sup> If an individual feels that a sovereign's policy or order does not lead to security and endangers his personal life, Hobbes concedes this individual a right to desert or to lay down his arms. Another case in which surrender is legitimate is simply fear. The background, however, is the same: to secure one's security and prevent violent death.

No man is bound by the words themselves, either to kill himselfe, or any other man; And consequently, that the Obligation a man may sometimes have, upon the Command of the Sovereign to execute any dangerous, or dishonourable Office, dependeth not on the word of our Submission; but on the Intention, which is to be understood by the End thereof. When therefore our refusal to obey, frustrates the End for which Sovereignty was ordained; then there is no Liberty to refuse: otherwise there is... Upon this ground, a man that is commanded as a soldier to fight against the enemy, though his Sovereign have Right enough to punish his refusal with death, may nevertheless in many cases refuse, without Injustice... And there is allowance to be made for natural timorousnesse... When armies fight, there is one side, or both, a running away; yet when they did it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably. For the same reason, to avoid battell, is not Injustice, but Cowardise. But... when the Defence of the Common-wealth, requireth at once the help of all that are able to bear Arms, every one is obliged; because otherwise the Institution of the Common-wealth, which they have not the purpose, or the courage to preserve, was in vain. (pp. 269-70)

#### A revised interpretation of Hobbesian international politics

What can we conclude from these arguments? My argument is that the mechanism of sovereignty, legitimacy, and security also applies to, and operates in, international politics. I am not alone with this proposition. In the wide field of interpreting Hobbes's outlook on international politics, it is to my knowledge, however, only Michael C. Williams who relates Hobbesian international politics to the question of, and interconnectedness between,

sovereignty and legitimacy and endorses the argument of a 'relationship between (the sovereign's) external relations and relations with its own citizens' (Williams, 1996, p. 232).

Although Williams develops his argument differently – reading, to my view, Hobbes too much as a 'constructivist' and neglecting, or at least relativizing, thereby the fundamental and universal roles of reason and of the law(s) and right(s) of nature – this circumstance does not detract from the coincidence of our finding. To put it in Williams's words: 'While the sovereign ... has in principle the right to act in any way it chooses, Hobbes argues that a correct understanding of politics will lead not only to obedient citizens but also to prudential self-limitation of activity by a rational sovereign. The sovereign will avoid actions that too obviously threaten the interests of the citizens for fear that will lose their acceptance of its authority ... This places considerable limits ... on state action both domestically and internationally. Since the sovereign's authority ... depends upon its ability to retain legitimacy in the eyes of its citizens, the sovereign should always weigh the implications of its actions on the lives and opinions of its citizens ... In its external relations, the same logic applies' (Williams, 1996, pp. 221–2).

My argument consists of three parts. Its first part stems from Hobbes's universalistic outlooks, which are rooted in the nature of the social contract itself. This construction claims validity not only for the contemporary politics which Hobbes witnessed, but also for all political bodies and all men. Second, the 'mechanism' of the social contract consequently applies to all sovereigns internationally and thus represents a regulative function of foreign policy conduct, qualifying conditions and constraints of political legitimacy. And third, from this qualification we learn a Hobbesian universalistic norm for the conduct of (each sovereign's) foreign policies which contradicts 'realist' interpretations on three levels: There is a fundamental relation between domestic and international politics which contradicts the (neo-)realist notion of the state as an unitary actor (on this point, see also Williams, 1996, p. 223). There is also a self-constraining element in foreign and international politics which sees the 'national interest' of a state in relative terms. Finally, there is a notion which forbids offensive, preventive, and/or hegemonic war, which is fought in order to create alliances or to amount the nation's security targeting potential threats, however, actually risks people's life. The only war, which can be judged as a legitimate (just) war is a war to defend the political 'commonwealth' from an *immediate* external threat when otherwise the people's security could not be guaranteed. And even here, if an enemy's army is overwhelmingly stronger, surrender and submission to another sovereign for the purpose of saving one's life are deemed by Hobbes not as illegitimate behaviour, but just as cowardice (see the quotation above).

In general terms, we can determine that the mechanism of sovereignty, legitimacy, and security constrains a sovereign from leading a war in which

he endangers his people's lives and security (besides a defensive war; see more below). If the sovereign risks his people's lives unnecessarily, he is losing his (domestically obtained) legitimacy. And because this risk and endangerment are present in each war, and because this mechanism operates in each state, we have a powerful norm in international politics which universally regulates foreign politics. This Hobbesian norm should not be mistaken for the conceptualization of an international sovereign who rules international politics and governs over single states, but as a norm for interstate conduct. This norm does not stem from international politics itself, but is derived from the realm of domestic politics. Nevertheless, we clearly see that there is no anarchy 'out there', no haphazardous state, and no unbridgeable dualism between 'inside' and 'outside'. Rather, the domestic norm of legitimacy reaches into the international sphere and teaches each sovereign to avoid war on behalf of safeguarding his citizen's security. The only exception to this general rule is a war of defence, which must necessarily be commanded and fought so that the citizens will not be victims of a foreign army and be violently killed due to another sovereign's orders.

The arguments developed by Hobbes resemble the definition of 'just' and 'unjust' war from Hugo Grotius (see Tooke, 1965): the only just war is a war of defence, and the aim of war always must be peace. However, the threat must be immediate, and a war which is waged preventively, anticipating a future possible threat, or due to hegemonic aspirations, even if such a war aims at finally pacifying state relations, is unconditionally unjust and evil.<sup>105</sup> Hobbes considers – in a passage in chapter 14 of the *Leviathan* which is mostly ignored in interpreting his outlook – peace to be the general aim of politics, which would correspond with the fundamental law of nature and the general rule of reason. This rule of reason can legitimately be suspended only in a case of defence when all means of warfare were allowed. We read:

And consequently it is a precept, or generall rule of Reason, *That every man, ought to endeavour Peace, as farre as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre.* The first branch of which Rule, containeth the first, and Fundamentall Law of Nature; which is, *to seek Peace, and follow it.* The second, the summe of the Right of Nature; which is, *By all means we can, defend our selves.* (1968, p. 190; emphasis in the original)

We thus find two universalistic elements in Hobbes's thoughts on international politics. First, the mechanism of sovereignty, security, and legitimacy applies to all commonwealths and is an unconditioned, general element of each political order (and social contract). Second, this mechanism, which fundamentally qualifies war and warfare, is based on universal reason with which all men are endowed and from which we can assume – as we know from no restriction in Hobbes due to culture, development, or

'civilization' – that it operates in every state. On the ground of both universality, we can further conclude a regulative momentum in international politics. Although there is no sovereign beyond states, there exists a mechanism in international politics which applies to all states. This mechanism operates in interstate relations and ties together sovereigns' foreign policy decisions by dictating, with the power of universal reason and the law of nature, the *same* principle of an interdependent mechanism between sovereignty and legitimacy upon them.

There is, however, one condition to make this mechanism work effectively, namely, that all states have to be commonwealths based on the identical principle of legitimacy. Additionally, all states must recognize the permanent validity of the basic fundamental right of nature (which remains valid even under the social contract) as well as of the general rule of reason. The fundamental right of nature and universal reason guarantees two things: first, that men have an unalienable right to protect and preserve their life and second, that men and sovereigns should seek peace. In short, all commonwealths have to be political bodies organized and operating according to Hobbes's construction of the social contract so that the norm of not waging wars, which unnecessarily puts citizens' lives at risk, can perform internationally.

As mentioned above, the only wars, which do not expose men to inconsequential risks and endanger their lives unnecessarily are wars to defend one's commonwealth facing an *immediate* threat. These are likewise the only wars which can be perceived as 'just' wars, because destruction and occupation of the commonwealth by another sovereign would render worthless the entire reason and rationale for why it has been erected, namely, to provide security. It is not my intention to over-interpret Hobbes. But because this interpretation causes us to revise our familiar picture of Hobbes, one further consideration seems worthwhile: namely, answering the questions whether the Hobbesian mechanism of sovereignty, legitimacy, and security and the deriving norms of avoiding war (apart from wars of defence) and seeking peace constitute two basic principles of what we today call 'international society'? Although I do not want to elaborate on this question, I think it is worth conceding that this mechanism creates a political principle which can be common to all (or at least a group of) states. This principle unifies states on the basis of their common acknowledgement of each state's 'right of nature' (i.e., to procure for its security) and the 'law of nature' (or 'general rule of reason', i.e., to seek peace). It creates a shared norm of conducting peaceful relations in the primary sense of *avoiding* war and in a subsequent meaning of producing cooperation, concordance, and international institution building. 'Hobbes suggests', so confirms Donald W. Hanson, 'that the true sovereign would recognize the imprudence of an adventurous foreign policy' (Hanson, 1984, p. 349).

From this perspective, which supports the emphasis on rules and norms in the constitution of "international society" (Williams, 1996, p. 215), Hobbes's principles can be understood as a precaution against international despotism, hegemony, and the arbitrariness of sovereigns' foreign policy: they create a 'pacifying dynamic' (Williams, 1996, p. 232) must, however, be understood and seems to be endorsed, if not enabled, politically by the verdicts of the Peace of Augsburg (1555) and the Treaties of Westphalia (1648), the latter being agreed three years before the first publication of Hobbes's *Leviathan*. Hobbes himself lifts these principles to ethical standards and adds a second 'Law of Nature' to the first – which stated that men must (and should) seek peace. His second law of nature claims a mutual policy of concession, which reminds us of Kant's 'categorical imperative' and the Gospel's 'golden rule', respectively. From the viewpoint of international politics/IR orthodoxy, the assertion of an ethical dimension in Hobbes might be the most controversial conclusion of my interpretation. However, the consequences of the 'First and Second Law of Nature' make clear statements which should not be ignored. 'The laws of nature', Gauthier endorses, 'are the grounds at [which] point morality enters Hobbes's account... Peace is a common instrumental good, since it is a necessary means to each man's chief good, his own preservation. Reason is instrumental, but the laws of nature, which prescribe the means of peace, are addressed equally to each man's reason, and so are rational for all' (1979, pp. 551, 553).

An ethical interpretation on these 'laws of nature' is also presented by Jean Hampton who concludes the assertion of a norm of 'cooperative forms of behaviour [which] effect peace and peace in turn helps to effect longer life' (Hampton, 1992, p. 337). It thus seems consequent that Hobbes, in the *Leviathan*, chapter 15, writes that 'all men agree on this, that Peace is Good, and therefore also the way, or means of Peace, which (as I have shewed before) are *Justice, Gratitude, Modesty, Equity, Mercy*, & the rest of the Laws of Nature' (Hobbes, 1968, p. 216; emphasis in the original).<sup>106</sup> Finally Hobbes notes:

From (the) Fundamental Law of Nature, by which men are commanded to endeavour Peace, is derived this second Law; *That a man be willing, when others are so too, as farre-forth, as for Peace, and defence... himselfe he shall think it necessary, to lay down this right to all things: and be contented with so much liberty against other men, as he would allow other men against himselfe...* For as long as every man holdeth this Right, of doing any thing he liketh; so long are all men in the condition of Warre... This is that Law of the Gospel; *Whatsoever you require that others should do to you, that do ye to them.* (*Leviathan*, chapter 14; p. 190; emphasis in the original)

### 3. Immanuel Kant

In this chapter, I will focus on Immanuel Kant's *On Perpetual Peace*, which will be identified as the last work in the history of political thought which adheres to, and at the same time enables, universal/universalistic thinking of an international order. Its appearance in 1795<sup>107</sup> sharply marks the shift from universalism to particularism, which evolved around the end of the eighteenth century to the beginning of the nineteenth century. Just two decades later, particularism found a seminal important originator of nationalized and particularized inter-national thought in Hegel (see Chapter III.1). Kant is writing explicitly about peace, and thus there is a twofold coincidence of his *On Perpetual Peace* according to the interpretations undertaken here. On the one side, we learn about his ideas on peace and how he thinks international peace can be possible: it is not just 'some' peace, but an *eternal* peace. On the other hand, it is exactly this work which best reveals his ideas on political universalism in a practical sense. Kant's definition of peace already points to his universalistic concept of an international order insofar as this determination is so fundamental that it necessarily requires some general grounding. The first paragraph of the First Section of *On Perpetual Peace* contains Kant's preliminary articles of a perpetual peace as well as his statement that 'no conclusion of Peace shall be held to be valid as such, when it has been made with the secret reservation of the material for a future War'.<sup>108</sup>

Kant thus specifies peace as a true peace which, in the first instance, is different and has to be distinguished from a mere truce or 'suspension of hostilities'. As he further explains in this paragraph, he deems this qualification necessary because of his ambitious aim to talk about an eternal, or perpetual, peace, and hence he would be remiss not to distinguish the objective of such an undertaking from minor forms of 'peace' like a cease-fire, for example. In practical concerns, such a peace would have to be characterized by an entire abolishment of all standing armies, both because war will always threaten as long as states maintain armies and because the expenses for the maintenance of standing armies become 'in the long run even more oppressive than a short war' (*On Perpetual Peace*, First Section, Third Article). Such a peace furthermore includes real chances for the reconciliation of two previously warring parties, what could best be accomplished by avoiding, or having avoided, any 'dishonourable stratagems' during past wars. These three major characteristics of an eternal peace – the definition of peace as more than just a truce, but as something more fundamental; the idea that armies must be abolished; and finally that war atrocities, or dishonourable behaviour, must be avoided – are, according to Kant, 'valid without distinction of circumstance' (*On Perpetual Peace*, First Section, Third Article). In this absoluteness, they represent a 'right of humanity' (*ibid.*).

These short introductory notes on some of Kant's main practical imperatives on peace reveal much about his conceptual approach to international

political order and indicate the trajectories of his further argument. His further argument will be about universalistic determinations of *rights*, which should govern the international relations between states, as well as about the *normative and ontological unit* – which is mankind and cosmopolitan society – at which international politics aims or should aim. Kant's principles of right encompass humanity as a whole, and his vision of peace hypothetically and normatively aims at an universal community of mankind, governed, as we will see at the end of this chapter, by cosmopolitan laws. This reference to an universally construed ontological unit not only communicates from Kant's *On Perpetual Peace*, but can further be seen by his addition of a fourth philosophical main question – 'What is man?' – in his *Anthropology* (1974), supplementary to the three questions from his first *Critique* (1982; see also Kant, 2004: 'What can I know?' 'What ought I do?' 'What may I hope?').<sup>109</sup>

#### The creation of peace: universal republican, legal, and ethical order

Both law as well as a universal foundation of international society are necessary conditions for Kant's normative conception of peace to build upon because peace 'is not the natural state' of the international order, as Kant notes (*On Perpetual Peace*, Second Section, Introduction). This *normative* conception should not be confused with what we usually tend to understand as idealistic. Peace, Kant says, 'has to be established' (*ibid.*). It is thus a creation of men, and Kant's intention is to demonstrate that an eternal peace is possible. He also wants to elaborate on the conditions of its possibility (*Bedingung der Möglichkeit*) as practical guidelines for international politics. In other words, Kant's doctrine 'sets forth... those obligations which are the conditions of the achievement of peace among nations' (Sacksteder, 1954, p. 853).

Because the establishment of a peaceful international order (in the 'true sense) is for Kant a moral obligation of politics and mankind, the question is for the guiding principle on which such an establishment must, and can, be based. The answer to that question points to Kant's essential reference to law and to the elemental significance of internationally shared legal standards among states. For that reason of mandatory provision, Kant titles the section in which he states this credo 'The definite articles of a perpetual peace between states', and he notes that only under conditions 'which are regulated by Law' could peaceful state relations flourish (*On Perpetual Peace*, Second Section, Introduction).

Such law, which is to guide and regulate the creation of peaceful international order, has two sides: one domestic, and one international. Strictly speaking, Kant discusses the domestic relation of international law only in the First Definitive Article of the Second Section. To my mind, however, the Second Definitive Article, in which Kant elaborates his famous idea about an international federation, belongs to the domestic side of his treatment

of law. Because such a 'federation of states' develops from, and only under the condition of, a certain domestic order which is present in *all* states participating in this federation, the federation itself incrementally depends on the *domestic* side of law in each participating state. The *international* side of law is then the issue of the Third Definitive Article, in which Kant posits a cosmopolitan law of international hospitality.

Both sides and aspects of law are understood by Kant as universal (universalistic) concepts which promote the creation of an eternal peace. According to Kant's philosophical differentiation between the concrete possibility (the occurrence) of something and the condition of the possibility of something (and of its occurrence, respectively), *Bedingung der Möglichkeit*, law, both its domestic and its international side, does not create peace automatically. The application of laws does not automatically lead to peace; laws are, however, the necessary and indispensable conditions for peace insofar as they make an eternal peace principally possible at all. They provide, to take up Kant's distinction again, not the concrete possibility of eternal peace but the condition of the possibility of eternal peace. As such, laws symbolize Kant's reference to transcendental metaphysics, which is, theoretically speaking, to be found as the *Bedingung der Möglichkeit*, and, practically speaking, manifests in a certain pattern of domestic and international rule of law for conceptualizing and potentially accomplishing international peace. (The ontological unit of international politics for Kant is mankind; see below).

The domestic side of law posits that 'the civil constitution in every State shall be a republic' (*On Perpetual Peace*, Second Section, First Definitive Article). Kant writes that a republican order in all states 'includes the prospect of realizing the desired object: perpetual peace among the nations' (ibid.). In addition to this, he conceives republicanism – which would be the only rightful fashion of domestic rule of law according to the imperatives of (pure) reason (see more on this below) – not only as the realization of the universal principle in the realm of domestic politics, but also as universally possible in all nations worldwide. The internationalization of republicanism is, to anticipate his next argument, the necessary condition on which an International Federation of Peoples can be based. A federation of this kind would eventually make eternal peace possible. However, we have to delve into Kant's idea of republicanism in more detail, mainly because the equation of Kant's republicanism with democracy, as has become common in present-day IR, buries another misconception in our discipline (amongst others, see Bruce Russett's writings on the idea of 'democratic peace'; Russett, 1974, 1993; see critically Williams, 1992).

In the First Definitive Article of the Second Section, Kant notes that 'the Republican Constitution is not to be confounded with the *Democratic* Constitution' (italics in the original version). As this were 'commonly done, the following remarks must be made in order to guard against this confusion' (ibid.). Kant's distinction between republicanism and democracy

relates democracy, as it was usually decried in his time, to an immediate, nonrepresentative form of people's government. He also distinguishes a republican form of government from a despotic form of government. The decisive difference is then that in a republican form of government the executive power is separate from the legislative power, whereas in a despotic form of government both powers are represented in one institutional body. Only a separation of powers that is both personal *and* institutional would, according to Kant, guarantee the realization of the 'public will' (as distinct from the 'private will'). So Kant avoids the term *democracy* completely as an indication of preferred form of government because he associates this form of government with despotism. Democracy would not be a representative form of government, but the 'lawgiver in one and the same person may, at the same time, be the executive administrator of his own Will' (*On Perpetual Peace*, Second Section, First Definitive Article).

By this definition it becomes clear that Kant's understanding of *democracy* inherits the traditional way of thinking about republicanism and democracy, which associated democracy with an unleashed public will and which favoured, in order to conceptualize a free form of government 'based on the consent of the governed' (the famous definition of James Madison in *Federalist Paper* No. 10), the idea of republicanism. On the other hand, republicanism understood this way was perceived as a form of government which was realizable universally, without obstacles stemming from cultural and religious contexts or differences.<sup>110</sup>

#### International Pacific Federation

This universal conceptualization becomes clear in the Second Definitive Article, where Kant argues in favour of an 'international federation of the people', based on republican national governments and assembling, at its best, all republican nations worldwide ('would at last embrace all the Nations on Earth'). Such a federation would enthroned 'reason' as the 'highest moral law-giving power' and would condemn 'War as a mode of Right, and, on the contrary, makes the state of Peace an immediate duty'. The international federation of the people may also be called a 'Pacific Federation', which is to be distinguished from a 'mere treaty or Compact of Peace in the latter merely puts an end to one war whereas the former would seek to put an end to all wars forever' (*On Perpetual Peace*, Second Section, First Definitive Article).

In short, the universalism of the republican principle would bring and guarantee peace not just in the form of a 'suspension of hostilities', but as an 'end of all hostilities' (we remember Kant's basic definition of peace from his First Section, First Article). It is important to note that this federation is not a world government or world state. Kant explicitly stresses that each nation in this federation remains sovereign and free from external regulation of its domestic affairs. A. C. Armstrong notes on this point that 'the federation

does not seek any of the powers of a state' (1931, p. 203). Towards the end of the Second Definitive Article, Kant clearly juxtaposes the idea of a 'Universal Republic' and his idea of a 'Federation of the States'. A 'Federation', opposite to an 'Universal Republic', will found in men a higher moral capacity based on reason and free will and will operate as a universal legal power, which is supposed to be based upon international treaties and international law between states that retain their sovereignty and individual political and legal personality. Kant writes:

This Federation will not aim at the acquisition of any of the political powers of a State, but merely at the preservation and guarantee for itself, and likewise for the other confederated States, of the liberty that is proper to a State; and this would not require these States to subject themselves for this purpose... to public laws and to coercion under them. The practicability and objective realization of this idea of Federalism, inasmuch as it has to spread itself over all States and thereby lead to Perpetual Peace, may be easily shewn. (*On Perpetual Peace*, Second Section, Second Definitive Article)

Both the universalism of a worldwide federation of republics and the idea of the universal practicability of republicanism are interrelated with three more universal principles which are normative prerequisites and necessary conditions for a working peace system à la Kant: first, with *universal reason*, which provides and imparts to men the capability of overcoming the distinction of peoples into autonomous and divided nations (*On Perpetual Peace*, First Supplement); second, with a *universal commercial spirit*, which drives men to peaceful cooperation across their states in order to trade (*ibid.*); and third, with men's natural right claiming universal and *cosmopolitan hospitality* (*On Perpetual Peace*, Second Section, Third Definitive Article).

Possibly the most important underlying condition of Kant's 'Federation of States' is the assumption of what Kant calls a 'pure practical reason'<sup>111</sup> which would be common to all human beings as an 'objective reality'. Therefore, Kant posits that it can be 'realized in fact' (*On Perpetual Peace*, Appendix). This reason operates not only as a moral lawgiver, but also provides a system of 'unconditionally authoritative laws [in a legal sense]... in accordance with which we ought to act' (*ibid.*). This system of authoritative law prominently manifests in the formal moral principle, which is known as Kant's 'categorical imperative': 'Act so that thou canst will that thy maxim shall become a universal Law whatever may be its end' (*ibid.*). Applied to the idea of a perpetual peace, this principle reads as follows: 'Seek ye first the Kingdom of pure Practical Reason and its *righteousness*, and then will your object, the benefit of Perpetual Peace, be added unto you' (*ibid.*). Williams concludes from this that '(in) Kant's view, we must always ask the question "What would the world be like if everyone acted this way?"' (Williams,

1992, p. 108). The categorical imperative, as the foundation of Kant's moral philosophy, thus is essential for his understanding of international politics. What a difference this is to the maxim of international politics, which follows Kant, immediately in Hegel, and which is guided and determined by what can be termed the 'national interest'! This maxim in opposition to Kant could be formulated alike: Act always and without restriction so that it benefits the well-being of your *own* state and its people and measure your means and strategies by that end (for further discussion, see Part III and onwards). A further quotation from Kant might be useful to emphasize this difference even more strongly: Perpetual peace and the rightful conduct of international politics, he says,

Requires above all, an internal political constitution, arranged according to pure principles of right [that is republicanism], and further, the union of it with neighbouring or distant States, so as to attain a legal settlement of their disputes by a constitution that would be analogous to a universal State. This proposition just means that political maxims must not start from the prosperity and happiness that are to be expected in each State from following them, nor from the end which each of them makes the object of its will as the highest empirical principle of politics; but they must proceed from pure conception of the duty of Right or Justice, as an obligatory principle given *a priori* [this means as the condition of the possibility of peace ('Bedingung der Möglichkeit')] by pure reason. And this has to be held, whatever may be the physical consequences which follow from adopting these political principles. (*On Perpetual Peace*, Appendix)

The second transcendental formula grounds Kant's conception of a perpetual peace, based on an international federation of sovereign republics, is the idea of an universal commercial spirit that is deeply embedded in human nature and that is indispensable for a successful conduct of politics. This spirit is, according to Kant, a power strong enough to prevent war insofar as commercial interests and trade would be harmed by war and hence would impact international politics in a pacifying way. War would destroy the realization of commercial interests, and 'the power of money is the most reliable', Kant writes, 'and thus the States find themselves driven to further the noble interest of peace' (*On Perpetual Peace*, First Supplement). And last, but not least, there is the concept of universal hospitality, which is an undivided political necessity to make the concept of perpetual peace work. Kant discusses the concept of universal hospitality in the Second Section, Third Definitive Article. So at a very early stage in *On Perpetual Peace* he is indicating the importance of this concept within his whole treatise.

Kant's concept of universal hospitality is being used in the debates about global citizenship, which has become a frequent and popular topic in contemporary global studies.<sup>112</sup> However, it is not only the idea of universal

hospitality itself, which should be seen as topical, but also the founding idea which stands behind it. Kant notes that a peaceful conduct of international politics strongly depends on 'means for social intercourse' among the states (*On Perpetual Peace*, Third Definitive Article). In current terms, this idea of a social intercourse among states corresponds to what Raymond Aron called 'transnational society' (Aron, 1966). The similarity of both concepts can be seen when Kant notes, that the

Social relations between the various Peoples of the world... have now advanced everywhere so far that a violation of Right on *one* place of the earth, is felt *all* over it. Hence the idea of a Cosmo-political Right of the whole Human Race, is no phantastic or overstrained mode of representing Right, but is a necessary completion of the unwritten Code which carries national and international Right to a consummation in the Public Right of Mankind. (*On Perpetual Peace*, Third Definitive Article)<sup>113</sup>

According to this conception, the surface of the earth would not belong to a particular state or people, but to populate the earth is a right of nature to all men. Therefore, Kant concludes, a universal hospitality should indiscriminately grant a right of entering and visiting another state's territory. This is not meant to be a guarantee for some form of permanent residence. However, by itself, the right to visit would promote peaceful relations among states and its peoples who would enter into mutual social bonds and communication by mutual contacts. Together with the driving force of commercial spirit and free trade among states, the cosmopolitical right of free entry into another state would propel societal international relations which in the long run would contribute to the abolishment of the danger that states, being interlinked by trade and transnational social ties, would wage war against each other.

Kant's conceptualization of universal hospitality, of the federation of states, and of the moral duty to act in accordance with universal law (the 'categorical imperative') emphasizes the paramount relevance of his thinking in constitutional and judicial terms. Consequently, just and peaceful international politics depends upon a legal regulation (*Verrechtlichung*) of states' and men's behaviour. Even if Kant endows men with the capability of reason through which they are enabled to overcome the distinction of the earth in different nations and peoples by conceiving and politically realizing the imperatives of pure and practical reason, he does not completely trust the good morality of men, but finally deems it necessary to refer back to law as guarantors for peace and well-being in the international realm. The 'Federation of States' will finally operate as an international treaty system. Consequently, he notes towards the end of his treatise: 'Now, in fact, both philanthropy and respect for the rights of men, are obligatory as duties. But the former is only a *conditional* duty, the latter is *unconditional*

and absolutely imperative' (*On Perpetual Peace*, Appendix; emphasis in the original).

Kant's vision of international politics, which is still framed within the traditions of natural law and unalienable natural rights of the individual, clearly marks the end of universal/universalistic thinking in international political thought. 'The Kantian vision of a cosmopolitan world... sank beneath the rising tide of nationalism, much of which, of course, was driven onward by precisely the kind of imperial ambitions Kant himself hoped would finally come to an end' (Padgen, 2003, p. 188). In order to better understand this 'hope' we should briefly contrast Kant's *On Perpetual Peace* with his *Idea for a Universal History from a Cosmopolitan Point of View* (1784 [1963]). Although *On Perpetual Peace* is the more famous piece, we nevertheless should take a look at his *Idea for a Universal History* because we will note some interesting ambivalence with regard to his idea of cosmopolitanism and humanity. This ambivalence relates to the question of how best to prevent war and belligerent relations among states and whether a 'Federation of States' best promotes the conditions for the possibilities of accomplishing (eternal) peace (as outlined in *On Perpetual Peace*) or if peace were best guaranteed by a new authoritarian kind of world government (as argued in the *Idea for a Universal History*). This ambivalence demonstrates Kant's struggle to recognize the diversity and plurality of sovereign states while, at the same time, he attempts to envision and to outline the conditions of the possibilities for international pacification through the integration of states in some common legal, political, and societal framework based on universality. A closer look at this ambivalence may even reveal some uncertainty and scepticism in Kant about the most appropriate and promising political, that is, practical, means for the realization of cosmopolitanism (for further discussion on this, see Franke, 2001; Höffe, 2006). He thus remains a true philosopher, one might say, in that he tries to imagine and to elaborate the conditions of the possibilities – which *per definitionem* are and have to be universal in character – which men can have to create peace. His focus on, and elaboration of, the conditions of the possibilities of (eternal) peace seems to be the reason why he titled his writing on peace not just *Perpetual Peace* (*Ewiger Friede*), but *ON Perpetual Peace* (*Zum Ewigen Frieden*) – and why the translation of the title as just 'Perpetual Peace' is deficient in this sense.<sup>114</sup> Consequently, he 'does not', as Barry Hindess observes, 'present his universal history as an exercise in empirical composition'; Kant would consequently not make an 'attempt to synthesise what is known about the past and present conditions of the diverse sections of humanity and to extrapolate the results into the future' (Hindess, *The Very Idea of a Universal History*, p. 3). His universalism and cosmopolitanism are therefore not to be seen and simplified as a straightforward template for some kind of liberal inter-national institutionalism (à la democratic peace theory), but rather as a last example of a philosophical draft on the



conditions of the possibility of peaceful relations among mankind before the advent of the nineteenth century and its oncoming force of nationalism. Kant still tried to think of the international as integrated into some common *telos* of universal mankind and humanity, and understanding his attempt as a study of the conditions of the possibilities of such teleology strictly forbids stigmatizing Kant as an 'idealist' or his *On Perpetual Peace* as a work of 'idealism' in international political theory, opening up a dualism between (such kind of) 'idealism' and 'realism'. The narratives in IR, which construct this kind of opposition and dualism, appear to ignore or to not understand the philosophically ambivalent character Kant's writings on international politics, which acknowledge and even affirm the international system of sovereign states. At the same time, they seek to establish universal/universalistic ontological and epistemological principles and linkages across states – a worldview and interest that Kant has in common with all the authors discussed so far. However, this worldview comes to an end and becomes lost with the advent of the authors and schools of thought in International Political Theory/IR which we will discuss in the remainder of this book.

### Part III

## The Emergence of Particularism in the Nineteenth and Twentieth Centuries