JAMES TURNER JOHNSON

Ideology, Reason, and the Limitation of War

Religious and Secular Concepts, 1200-1740

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for my PARENTS

CONTENTS

IDEOLOGY, REASON, AND THE LIMITATION OF WAR

A great deal has been written upon the Augustinian and medieval backgrounds of Christian just war doctrine, and likewise the lineage from this doctrine to the modern field of international law has been copiously explored. One of the best recent books on Christian just war thought, Paul Ramsey's *War and the Christian Conscience* (Durham, N.C.: Duke University Press, 1961), goes all the way back to Augustine to find the genesis of noncombatant immunity, and traces certain modern-sounding elements in the principle of proportionality back to Thomas Aquinas.[1] Other Protestant theologians have not always been so thorough; for example, the German ethicist Helmut Thielicke looks mostly to Luther for his wisdom from the past.[2] But Roman Catholic writers take the Augustinian-medieval etiology as commonplace, though they are willing to look for modification of the classic doctrine in the pronouncements of recent popes, as witness John Courtney Murray's *Morality and Modern War* (New York: Council on Religion and International Affairs, 1959). The most

[1] See Chaps. II and III.

[2] Helmut Thielicke, *Theological Ethics*, vol. 2: *Politics*, ed. by William Lazareth (Philadelphia: Fortress Press, 1969), sect. 25. Thielicke *does* treat Roman Catholic moral theology, the Church Fathers, and the Bible as sources for relative justification of war, but he does this only briefly, sketchily, and with apparently little understanding of the interaction of the elements making up just war doctrine. On the other hand, he stresses the contribution of evangelical theology (and particularly Luther) out of all proportion to its actual contribution to the tradition.

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careful and sustained twentieth-century Catholic dis-
cussion of the growth of classic just war doctrine re-
mains Alfred Vanderpol's *La Doctrine scholastique du
droit de guerre* (Paris: A. Pedone, 1919), but among
books in English perhaps the most helpful is another
classic, John Eppstein's *The Catholic Tradition of the
Law of Nations* (Washington: Catholic Association for
International Peace, 1935), which besides commentary
offers considerable excerpts from relevant documents
not elsewhere translated, and moreover takes Catholic
just war tradition up into the period between the two
world wars.

When one turns to the relationship between inter-
national law and Christian war doctrine the landscape
is equally full of worthwhile studies. At the head of the
list should be the entire Carnegie series *Classics of In-
ternational Law*, several volumes of which are noted in
the bibliography to the present book. But in the space
of one volume James Brown Scott's *The Spanish Origin
of International Law* (Oxford: Clarendon Press; Lon-
don: Humphrey Milford, 1934) is a seminal and com-
prehensive study of the relationship between the
thought of certain Spanish theologians of the sixteenth
and seventeenth centuries (most prominent of whom
are Franciscus de Victoria and Francisco Suarez) and
the new secular science of international law as set forth
by such as Alberico Gentili and Hugo Grotius. A recent
book that has had a wide readership, Telford Taylor's
Nuremberg and Vietnam: An American Tragedy (Chi-
cago: Quadrangle Books, 1970) derives the moral
limitation of war in international law explicitly from
Christian antecedents, even though Taylor is neither
comprehensive nor particularly accurate in his historical
sketch. Finally, one should not fail to mention certain

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works on war itself in which the etiology of attempts to limit war is investigated. Two such standard works have been extremely helpful in the preparation of the present book: John U. Nef's *War and Human Progress* (Cambridge, Mass.: Harvard University Press, 1950) and Quincy Wright's *A Study of War* (2 vols.; Chicago: University of Chicago Press, 1942).

With so many acknowledgedly excellent books available (and there are a great many others, of varying scope and quality, which I have not mentioned here), why yet another? This book has two fundamental aims: first, to explore the nature of the interaction between religion and secular society, not just in the dissolution of just war doctrine but also in its formation; and second, to investigate just war doctrine as an ideological pattern of thought, expressive of a greater ideology. Neither of these aims has been pursued in the studies presently available.

None of the theological histories that trace just war doctrine to its Augustinian and medieval roots exhibits any particular concern with the effect of this doctrine on the society to which it was preached and on which it was imposed as a moral guide; nor do these studies examine the input of secular forces into the very making of just war doctrine (which, after all, did not simply spring full-grown out of the thigh of Augustine of Hippo). On the other hand, secular historians who grant willingly that the chivalric code stands in some important way behind the development of doctrine on limiting war in western Europe do not draw connecting lines between this knightly code and the war doctrine of the church. My first purpose in writing this book

might thus be put simply as an attempt to get the theologians and the secular historians who have written about this subject into a meaningful dialogue with one another—and incidentally to rewrite some of the history of the development of Christian just war doctrine.

My first concern with the development of doctrine out of the interplay between secular and religious forces derives from research into the growth of English Puritan marriage doctrine done while I was a doctoral candidate at Princeton University (see my *A Society Ordained by God: English Puritan Marriage Doctrine in the First Half of the Seventeenth Century* [Nashville and New York: Abingdon Press, 1970]). The social position of the Puritan spokesmen, as opposed to their more High Church contemporaries, greatly influenced which elements of the Christian tradition they chose to emphasize and which to ignore. Similarly, to anticipate later discussion (Chapter II below), the tendency of the English to draw the just war doctrine that they inherited over into a new doctrine justifying holy war (which they still called "just war") cannot be understood simply as a theological movement. The documents bear this out: social factors, such as an overpowering fear of Spain and a deep hatred of rebellion, had a great deal to do with the development of holy war thought in sixteenth- and seventeenth-century England. Sir George Clark's *War and Society in the Seventeenth Century* (Cambridge: At the University Press, 1958), which I encountered at about the same time as the first of the holy war documents, further fueled my interest in the relation of social forces to ideas in the particular case of war; yet Clark's book also begs the question of what was happening in theological thought

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on war during the social changes, some quite massive, that he treats.

Final focusing of the ideas that led to the present book came after reading M. H. Keen's *The Laws of War in the Late Middle Ages* (London: Routledge & Kegan Paul; Toronto: University of Toronto Press, 1965). This book, a brilliant and insightful treatment of secular developments in the law of war between the thirteenth and the sixteenth centuries, would nevertheless if read alone leave one with the same question left by Clark's study: how does the development of Christian doctrine relate to secular developments? This present study has benefited from material not readily available to all students of seventeenth-century warfare: the works of Vanderpol and Eppstein, cited earlier; Keen's own acknowledgment of an influence of canon law on developing secular law; and perhaps most important, points of contact between the secular and religious traditions in the persons of certain late medieval writers, most notably Honoré Bonet, a cleric whose *L'Arbre des battailes* (*Tree of Battles*) was written as a guide to the nobility and was based in both Christian theory and secular law (Bonet is treated in Chapter I below). Keen provides the missing part of the picture painted by Vanderpol and Eppstein; or conversely they fill in the picture created by Keen. Yet alone neither offers a complete understanding of the development of just war doctrine in the late Middle Ages.

Those authorities who have traced Christian just war theory back to its Augustinian and medieval roots have overlooked one simple yet devastating fact: *there is no just war doctrine, in the classic form as we know it today*, in either Augustine or the theologians or canonists

of the high Middle Ages. This doctrine in its classic form, including both a *jus ad bellum* (statement on the right to make war) and a *jus in bello* (statement on what is allowable in the course of war), both in a reasonably elaborate form close to what twentieth-century commentators mean when they say "just war doctrine," *does not exist* prior to the end of the Middle Ages. Conservatively, it is incorrect to speak of classic just war doctrine as existing before about 1500. Earlier there exist *two* doctrines, a religious (*i.e.*, theological and canonical) one largely limited to the right to make war (*jus ad bellum*) and a secular one whose almost total content related to the proper mode of fighting (Law of Arms, *jus in bello*).

As the first stage in reconstructing the development of classic just war doctrine, Chapter I below explores the merging of the *jus ad bellum* provided by religion with the *jus in bello* provided by the knightly code and civil law. The gradual amalgamation of these two distinct traditions on war into one in the late Middle Ages has a counterpart in the gradual dissolution of classic just war doctrine in the century following the Reformation. This metamorphosis too has been improperly understood. Just as a religious and a secular source had come together in the formation of that doctrine, so in the post-Reformation century of political and intellectual instability the unified just war doctrine of the late Middle Ages divided along a line between the religious and the secular. The split was not, however, between *jus ad bellum* and *jus in bello* but between two divergent readings of the received *jus ad bellum*: one that took war for religion to be the purest, holiest, most just kind of conflict imaginable, and another that consciously and completely ruled out war for religion and empha-

sized as just causes of war those that could be put in natural-law (mainly political) terms. This latter tradition retained most of the classic provisions of just war doctrine and, in particular, kept a surer hold on the law of war (or *jus in bello*). This tradition, manifested most fully but not exclusively in the works of the Spanish theologians Victoria and Suarez mentioned above, is nevertheless *not* the classic doctrine because of the clear and uncompromising disallowance of any right to make war for religion and because of its exponents' concern with grounding their arguments in natural law rather than in revelation. This tradition, as I have already noted, further metamorphoses into secular international law. To distinguish it from the classic doctrine I call this position, treated below in Chapter III, "*modern* just war doctrine."

The other tradition that comes out of classic just war doctrine is the more controversial and the more misunderstood. For this line of thought, which emphasizes the place of religion in justifying war, I use the term "holy war" (following the usage of the sixteenth- and seventeenth-century proponents of the doctrine), but the "holy war" of the early modern period is both in derivation and in intention a just war doctrine. Much of the misunderstanding of this tradition of thought on war derives from the typology put forward by Roland Bainton in his book, *Christian Attitudes toward War and Peace* (Nashville, Tenn.: Abingdon Press, 1960), and in an earlier paper, "Congregationalism: From the Just War to the Crusade in the Puritan Revolution" (*Andover Newton Theological School Bulletin*, 35, no. 3 [April 1943], pp. 1–20). Bainton distinguishes sharply among the ideas of pacifism, just war, and crusade in Christian history and associates the crusade "type" di-

rectly with not only the medieval wars generally called crusades but also the English Puritans in particular. According to Bainton's typology the crusade (or holy war) has four distinguishing marks: a holy cause, God's direction and help, godly crusaders and ungodly enemies, and unsparing prosecution.[3] A full discussion of what is right and wrong with Bainton's thesis, in the specific case of the Puritans, is undertaken in Chapter II below, but the most important points in my criticism should be noted here. First, Bainton does not take into account that those whom he terms "crusaders" understood themselves to be squarely within the just war tradition, and in particular the Puritans derived their thought on war directly from the classic Christian doctrine. Second, to single out the Puritans as English "crusaders" is to overlook all the other classes of Englishmen who at about the same time were clamoring for religious war on the basis of their own various preferences in religion. Two obvious examples of the latter are those Catholic clergy in exile who attempted to stir up English and Irish Catholics to holy rebellion against the anti-papal royal authorities, and political advisers to Elizabeth I who, Protestant though not Puritan, counseled war with Spain not just because that country was powerful and predatory but because it was *Catholic*.

In short, a proper understanding of the post-Reformation development of just war doctrine, including the preparation for the new science of international law, must take into account the separation from the mainstream of that doctrine of an element that is very much a part of classic doctrine (and indeed ultimately de-

[3] Bainton's four defining marks appear in virtually the same form in the cited article (p. 15) and book (p. 148).

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rives from Augustine): the allowance of war for reli-
gion among the just causes enumerated in the *jus ad
bellum*. The holy war doctrine that resulted from tak-
ing this as the most just cause legitimizing war must be
set in complementation to the modern just war doctrine,
which allows only natural-law causes as justification
for war. Only when *both* are understood as progeny
of classic just war doctrine can the development of
thought on limiting war in the modern period be under-
stood for what it is: an attempt to eliminate the obvi-
ously ideological aspects of the inherited just war doc-
trine and to base all proposed limits on war squarely in
the natural—reason, custom, positive law.

The second of the principal aims of this book is to
investigate the ideology of just war thought in a crucial
period of its development.

Since the term "ideology" has come to be employed
in a variety of ways, some of them mutually contradic-
tory, it is necessary to explain the usage in this book.
Broadly put this term has a negative connotation when
used to refer to the beliefs and ensuing behavior of a
partisan group with which one disagrees. Thus rightists
decry the "ideological" nature of Communism, while
leftists respond with denunciations of "Fascist ideol-
ogy." Both rightists and leftists here find in "ideology"
something sinister, something to be avoided. Corre-
spondingly, in speaking of their own convictions Com-
munists refer to Marxist-Leninist "thought" or Maoist
"thought"—not "ideology." This negative usage has had
influential expression by Karl Mannheim in his widely
read *Ideology and Utopia*.

There is, however, another connotation to "ideology,"

which can be traced to the writings of Max Weber and
which is neutral in flavor. "Ideology" in this neutral or
relativistic sense is used to refer to belief structures that
are discretely based and different from one another,
and no value judgment as to their contents is implied.
In this sense of the term both Communism and Fascism
are ideologies, and one may speak also of Puritan ideol-
ogy, the ideology of the Pure Land School of Buddhism,
or indeed the ideology of a world religion such as Chris-
tianity. Unless otherwise specified or clear from the con-
text, "ideology" in this book has a neutral or relativistic
sense.

In this sense, then, classic just war doctrine is inher-
ently ideological. This doctrine, as already argued
above and further probed in Chapter I below, devel-
oped within the ideological limits set by medieval
Christendom. Two main factors defined these limits.
The first, a theological factor, was simply Christian doc-
trine as it took shape in the West. But the second was
geographical: the boundaries of Europe. Within these
two limits Christendom came into being, not cotermi-
nous with the spread of Christianity over the world,
not present in Europe either before or after it was
gripped by a united faith, but a theologically and geo-
graphically defined entity unique in history. This was
a community diverse in languages, physical types, local
customs, and many other respects, but united in belief,
moral code, scholarship (and scholarly language), and
certain larger customs that affected the well-being of
Christendom as a whole, among these the mode of wag-
ing war. We may speak of an ideological unity within
this community; indeed, the ideological unity made
community possible. When just war doctrine developed

within this community it incorporated the values resident in the common ideology—not *Christian* ideology, which incorporated Byzantines and Copts as well as Catholics, but the ideology of *Christendom*, defined by geography as well as theology. Because it developed out of the community as a whole and not merely out of Christian theology or canon law this war doctrine had a relevance and an adequacy, both moral and political, that it could not have had otherwise. There is considerable evidence that so long as Christendom existed the developing just war doctrine did effectively limit conflicts within the community. Here the ideological nature of just war doctrine worked in its favor. The doctrine expressed "community law": the law of coordination.

Sociologists of law define three basic types of law, including the law of coordination.[4] Its most salient characteristic is given by the nature of community itself: a grouping of people sharing a common end who are internally driven to seek that end and help one another toward it. The family, especially in its classic Greek and Roman forms, is an example of a nearly pure type of community; the medieval monastery is another. In a community the *coordination of effort* is the primary function of law. Since everyone agrees as to the ends to be sought, law coordinates their activities so as to maximize attainment of those ends. Such was the character of just war doctrine in medieval Christendom.

At the opposite extreme from community law, the law of coordination, stands the law of power, or "society law." The outstanding characteristic of this kind of law

[4] For fuller discussion of this perspective see Georg Schwarzenberger, *The Frontiers of International Law* (London: Stevens and Sons, 1962), chap. i, "The Three Types of Law."

is the use of power—usually military force—by an elite to subjugate the other members of the society and ensure their cooperation in producing the ends the elite wish for themselves. Here "might makes right" is a truism. A slave-holding aristocracy offers one example of this; Hitler's "New Order" offers another.

Between the two extremes set by the law of coordination and the law of power stands a third kind of law, that of *hybrid groups*: the law of reciprocity. Consider the case of a society in which there exist two groups (two communities) of equal strength. Neither has the power to impose its will upon the other. Within each group community law has sway, but in the society as a whole the law of reciprocity must obtain. A state of affairs in which equilibrium of power makes it possible for power to be ignored is the most outstanding characteristic of hybrid groups. The United States, with all its pluralism, is one example of hybrid grouping, and much of American law is reciprocal in nature, with everyone reasonably content so long as he believes he has received at least as much as he has given. The international order, so far as it *is* an order, is a second example of hybrid grouping in the contemporary world.

What is the place of ideology *vis-à-vis* each of these types of human grouping, with their corresponding kinds of law? In communities the same ideology is shared by all; this is what is meant by the individuals' wanting the same ends. In "societies" the ideology of the elite is imposed upon those subjugated. Thus Hitler imposed Nazism upon the conquered peoples of Europe, whatever their own preferences might have been. In hybrid groups a plurality of ideologies coexist—one for each community participating in the grouping. Here

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the imposition of ideology is frustrated by the balance of power, and community ideology tends, in the group as a whole, to be subordinated to those needs and desires amenable to satisfaction by bartering. Of course, even in hybrid groups some ends are held in common (hence the grouping); these tend to produce a group ideology in which elements of particular community ideologies may find expression. Robert Bellah's construction of a "Civil Religion in America" (*Daedalus*, 96, no. 1 [Winter 1967], pp. 1–21) out of elements of patriotism fused with beliefs drawn from the three major United States religions gives an illustration of this phenomenon.

Returning to the question of just war doctrine as a manifestation of community law in Christendom, the peculiarly ideological component of this doctrine is its notion of justice, conditioned both by theological and philosophical heritage and by common custom. The destruction of classic just war doctrine amounted to the removal of this component of justice, with no satisfactory replacement. This destruction or dissolution of the classic doctrine moved through two stages, which also marked the transformation of the community that was Christendom into the hybrid grouping that is international society today.

The first stage was the destruction of the theological, and to a lesser extent the philosophical, unity that characterized Christendom. I have already alluded to the immediate results of this: the creation of two communities, Catholic and Protestant, with conflicting belief structures that were taken by the two sides to be mutually exclusive. The concept of just cause was rent asunder. On the one side it was converted into a con-

cept of holy cause (as one Puritan preacher put it, "Whose cause is juster than God's?"),[5] and on the other an attempt was launched to find a more inclusive concept of justice (the natural) than could be any longer provided by religion. In the hands of the holy warriors just war doctrine became an ideological weapon to stir up the faithful against the infidel; and in the hands of the secularizers the *jus ad bellum* of the classic doctrine became increasingly formalized, and the doctrine as a whole increasingly reduced to a set of limits on the pursuit of wars between sovereign states. The ideological character of classic just war doctrine shifted when the unified community that had produced it split into two mutually antipathetic groupings—each with, nevertheless, the same heritage in the war doctrine of Christendom. With this split Europe ceased to be a community and became a hybrid grouping, and the law of coordination had to give way to the law of reciprocity. Secular naturalist international lawyers effected this change (though their way was prepared by the last great theologians of the Spanish school), and they did so by eliminating the concept of just cause, which had so easily been made to serve narrow, partisan ends. The *jus ad bellum* conceived as *compétence de guerre* was one result; by this doctrine each sovereign had the right and authority to decide when just cause for war existed, and the search for a definition of justice by an overarching ideology was in effect abandoned within international law. Another result of this transformation has been balance-of-power politics: reciprocity in action.

[5] William Gouge, *Gods Three Arrowes, III. The Churches Conquest over the Sword* (London: George Miller for Edward Brewster, 1631), p. 215.

INTRODUCTION

The second stage in the destruction of classic just war doctrine was reached when the geographical boundaries of Christendom ceased to contain all relevant international intercourse. I wish here to skip over a stage in which the law of power obtained in European relations with the rest of the world and consider what has happened as a result of the end of the colonial era. This stage has been mainly completed in the twentieth century. The standard of "civilization" that had replaced the old notion of justice in traditionalist international law as the chief limiting principle on war ceased to obtain when "uncivilized" nations (many of them former colonies) were admitted to full status in the world. But because many of the new nations were, in regard to power, hopelessly inferior to the "great powers" of Europe, the United States, Japan, and China the doctrine of *compétence de guerre* no longer sufficed as an adequate statement of reciprocal law on war. This doctrine had, after all, made colonialism possible by permitting strong states to subjugate weak ones in the name of overriding national interest or an ostensibly altruistic desire to "civilize" the conquered peoples. The twentieth century has seen a cumulative attempt to restate the law of reciprocity on the right of resort to war, moving through the League of Nations Covenant, the Kellogg-Briand Pact, and the United Nations Charter, with mutual nonaggression treaties and mutual defense alliances springing up in train. As I have elsewhere argued, the result has been generally to outlaw all first use of force while normally allowing second use as defensive *per se*.[6] This avoids the ideological pitfalls

[6] See my article, "Toward Reconstructing the *Jus ad Bellum*," *The Monist*, 57, no. 4 (Oct. 1973).

presented by classic just war doctrine, but the question needs to be seriously asked whether this new doctrine is any longer a *just* war doctrine.[7]

The two main factors I have cited in the dissolution of classic just war doctrine do not, of course, comprise everything that can be said about the matter, even when the scope is restricted to that which has to do with ideology. Though these are the principal contributing factors, there is one other that is important enough to deserve mention here, though I do not treat it elsewhere in this book. That is the use made of even the secularized doctrine of *bellum justum* by sovereigns

[7] A certain irony exists with regard to Christian doctrine on war during the period of dissolution of classic just war doctrine. There is no discrete and recognizable Protestant war doctrine, except among the pacifist sects, after the post-Reformation wars have ended. In a masterpiece of syncretism, the state—and through the state, international law—is allowed to speak for Protestant Christians. On the other hand, by holding themselves aloof from the modern secular state Roman Catholic theorists maintained a just war doctrine fundamentally the same as that of the sixteenth-century Neo-Scholastics until the twentieth century. But in a hybrid-group world this latter doctrine was but the expression of one particularist ideology on how to conduct war and was not recognized as binding by members of other ideological faiths. When, in the late nineteenth and early twentieth centuries, the Roman church began to come out of its cloisters and meet the world, it began to abandon its classic war doctrine and to speak the language of international law—which, perhaps, it took to be the "community law" of the world. The teaching of recent popes makes this abundantly clear. But the world is not now a community, and it is the law of reciprocity that holds foremost place in international law, not the law of coordination. Thus the Roman church made a fundamental mistake, weakening her war doctrine to conform to international law. For fuller treatment of this see the article cited in note 6, above.

in the sixteenth and seventeenth centuries. I speak here of the doctrine as shaped by such theologians as Victoria and Suarez and such pioneering secular theorists as Gentili and Grotius. In spite of their different value bases these four men and others like them agree more than they differ in the just war doctrine that they proclaim, and in their writings the serious attempt to make war conformable to standards of justice, defined from nature by reason, reaches a zenith. But I wish to point to the way in which sovereigns applied the theories, not the theories themselves. The ideology of the just war was twisted out of shape to serve princes' own ends. Three cases will illustrate this point.

First, both Gentili and Grotius transform the medieval requirement of proper authority to wage war into the requirement that war be a public contest, solemnly declared. So long as this provision aided sovereigns to suppress civil wars and engage in wars of conquest against lesser lords—that is, until the absolutist state was firmly established—princes and their spokesmen could conveniently cite this requirement to "prove" the justice of this particular use of force, the injustice of that. With the absolutist state firmly established, however, other considerations of interest led sovereigns to ignore the need for a solemn declaration of war, and this provision lapsed into general disuse.

To take a second case: Victoria expressly forbids a state to make war to spread religion. Yet the Spanish colonizers of the New World evaded this point by looking to another one also in Victoria's theory: the insistence that peaceful missionaries and traders be given free passage wherever they went. If the Indians resisted the missionaries and the traders (and the soldiers who accompanied them), force could justly be used—not,

indeed, to spread religion, but rather to insure the right of free passage.

A third case is provided by the use of the idea of simultaneous ostensible justice. Beginning with Victoria the possibility is admitted that, while one side may *actually* be in the right in a given war, the other side may, because of invincible ignorance, *believe* itself to be in the right also. In such cases, according to Victoria, only God can know which side really is fighting justly. The belligerents should be chastened by the realization that both sides might seem to be equally in the right, and so be especially scrupulous in observing the *jus in bello*, the rules of war. The doctrine of simultaneous ostensible justice was thus intended to affect the *conduct* of war, not the *resort* to war. The same is true in Grotius, who takes this idea over from Victoria and further develops it. But princes who had read Machiavelli as well as Victoria and Grotius applied the doctrine another way. *Any* resort to war could be justified, they argued, because invincible ignorance clouded men's minds and made all concerned in a dispute think they were right. The doctrine of *compétence de guerre* followed from such reasoning.

These three cases illustrate that sovereigns were all too ready to use just war doctrine to provide an ideology to excuse their resorting to war, not, as was intended, as a set of moral limits on the use of war. Thus what had been a universal ideology was transmuted into a particularistic one—an ideology in the negative sense, because it excuses *my* actions while condemning *yours*. Perhaps the most important phenomenon exhibiting this tendency was the hundred years of war for religion that followed the Reformation, including the German civil wars between Catholic and Protestant